CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

Date: November 6, 2023

MEMORANDUM

TO: Heather Bailey, City of Madison Preservation Planner

FROM: Kate Smith, Office of the City Attorney

RE: Mailings associated with Legistar Item 79099

You asked for clarification on whether Legistar Item 79099 was properly noticed after several neighbors complained they had not received a mailed postcard. At issue is a request for new construction on a designated landmark site, a project subject to Madison General Ordinances Chapter 41. MGO Sec. 41.06 outlines the public notice requirements, which are copied below in full:

41.06 PUBLIC HEARINGS AND HEARING NOTICES.

(1) Hearings, General . The Landmarks Commission shall hold a public hearing whenever a hearing is required by this chapter, and may hold other hearings as necessary to carry out its responsibilities under Sec. 41.04 and Sec. 33.19.

(2) Hearing Notices, General . Notice of the time, place and purpose of the hearing shall be given by a Class 2 Notice in the official City newspaper or as otherwise allowed under Wis. Stat. § 985.07, for all of the following:

(a) Any hearing on the proposed designation of a landmark under Sec. 41.07 or the proposed rescission of a landmark designation under Sec. 41.08.

(b) Any hearing on a proposed certificate of appropriateness under Subchapter F.

(c) Any hearing on a proposed variance under Sec. 41.19.

(d) Any hearing on the proposed creation or amendment of a historic district under Subchapter D.

(e) Any hearing on a Notice of Demolition by Neglect under Sec. 41.15. (Cr. by ORD-16-00082, 9-15-16)

(3) Additional Notice; When Required . In addition to notice provided under sub. (2) above, the Commission shall in the following cases mail additional notice to the following persons at least ten (10) days prior to the hearing date: (Am. by ORD-21-00080 , 11-26-21)

(a) If the hearing pertains to a specific site or structure:

1. Each owner of record of the lot on which that site or structure is located.

2. Each owner of record of each lot located within two hundred (200) feet, measured according to Sec. 41.03(5) of any lot on which the site or structure is wholly or partially located.

(b) If the hearing pertains to the creation or amendment of a historic district:

1. All owners of record of lots located wholly or in part within the historic district.

2. The alder of each aldermanic district in which any part of the historic district is located.

(c) If the hearing pertains to a proposed certificate of appropriateness or variance, to the alder in whose aldermanic district the affected site or structure is located.

Under MGO 41.06, this application requires a public hearing with a Class 2 Notice and an additional mailing to nearby owners under MGO 41.06(3). A neighbor says she canvassed the relevant owners and they did not receive the mailing. On the other hand, you confirmed with City Printing that they mailed the postcards and provided an invoice along with a list of addresses, etc. Our ordinance does not require the postcards be sent via certified mail, nor is it City practice to do that.

On balance, we are in compliance with MGO 41.06. The hearing and agenda items received a Class 2 Notice. The printing invoice is counter balanced by neighbors saying they did not receive the mailing, but the invoice does provide evidence that the ordinance was complied with as written in subsection (3). There is no legal requirement to pull the item from the agenda.