

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

Date: January 8, 2014

MEMORANDUM

TO: Katherine Cornwell

FROM: Maureen O'Brien, Assistant City Attorney

RE: Review of Demolition by Building Inspection and Landmarks Commission

You asked me to provide you some background on the building located at 127 N. Gilman Street, and to explain the differences between the Landmarks Commission demolition approval process and a Building Inspection prosecution.

In summary, the Landmarks ordinance found in MGO 33.19 outlines specific factors for the Commission to consider when reviewing a demolition request. These factors are unique to the Landmarks ordinance. The Commission should be careful to make its determination based on the factors in the ordinance, and not the actions of the Building Inspection Division.

1. Background

According to the City Assessor's website, the building's current owner is Gilman Lodge LLC. The property, along with two adjoining parcels, was purchased by Steven D. Brown in 1994. The entire combined parcel was sold to Gilman Lodge LLC in 2001. The property is in the Mansion Hill historic district, and is zoned Downtown Residential 1 (DR1). The property owner has requested approval to demolish the structure.

There are at least three separate sets of City of Madison Ordinances that regulate repair, demolition, and use of this property. First, all properties in the City are required to comply with the City's minimum housing and property maintenance code, which is found in Chapter 27. This code regulates property so that it does not become "dilapidated, unsafe, dangerous, unhygienic, overcrowded, inadequately maintained or lacking in basic equipment or facilities, light, ventilation and heating so as to constitute a menace to the health, safety and general welfare of the people." MGO 27.02(2).

Second, all properties in the City are required to comply with the zoning code, Chapter 28. The zoning code regulates the use of land to, among other things, stabilize and protect property values, protect environmentally sensitive areas, promote the conservation of historic resources, provide an adequate variety of housing types to satisfy the City's social and economic goals, and promote orderly development and economic vitality of the City. MGO 28.002(1). In addition to the general zoning rules, the DR1 zoning district provides regulations that apply within the district.

Finally, this property is in the Mansion Hill historic district. This district was established by the City's Landmarks ordinance, MGO 33.19. The Landmarks ordinance regulates construction, demolition, and repair of landmarks and properties in historic districts. Among other things, this ordinance is designed to protect, enhance, and perpetuate the use of structures of historical interest and safeguard the City's historic and cultural heritage. MGO 33.19(1).

While each set of regulations deals with the demolition request for this property, each has its own purpose, process, and rules. Each process must proceed according to its own rules and considerations.

2. Landmarks Commission Approval Standards

The Landmarks ordinance prohibits demolition of a property in an historic district unless the Landmarks Commission has granted a Certificate of Appropriateness. MGO 33.19(5)(c). When considering a request for demolition, the "Landmarks Commission shall consider and *may give decisive weight* to any or all of the following:

- a. Whether the building or structure is of such architectural or historic significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the City and the State;
- b. Whether the building or structure, although not itself a landmark building, contributes to the distinctive architectural or historic character of the District as a whole and therefore should be preserved for the benefit of the people of the City and the State;
- c. Whether demolition of the subject property would be contrary to the purpose and intent of this chapter as set forth in Sec. 33.19 and to the objectives of the historic preservation plan for the applicable district as duly adopted by the Common Council;
- d. Whether the building or structure is of such old and unusual or uncommon design, texture and/or material that it could not

- be reproduced or be reproduced only with great difficulty and/or expense;
- e. Whether retention of the building or structure would promote the general welfare of the people of the City and the State by encouraging study of American history, architecture and design or by developing an understanding of American culture and heritage;
 - f. Whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it, provided that any hardship or difficulty claimed by the owner which is self-created or which is the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a Certificate of Appropriateness;
 - g. Whether any new structure proposed to be constructed or change in use proposed to be made is compatible with the buildings and environment of the district in which the subject property is located.”

MGO 33.19(5)(c)3. (*Emphasis added.*) While the Landmarks Commission is required to consider all of the listed standards, it has the flexibility to determine which standard (or standards) it finds most important. It may give decisive weight to any, or all, of them.

For example, the Commission has the authority to base its decision on standard d., the uniqueness of the building. After considering the other standards, it may give decisive weight to the fact that a structure is not of a very old, unusual, or uncommon design and its reproduction would be relatively easy or inexpensive.

Alternatively, the Commission may focus on demolition by neglect. After considering the other standards, it may give decisive weight to the fact that standard f. has not been met, because the deteriorated condition of a property is a result of the owner’s failure to maintain it in good repair.

As another example, the Commission could choose to focus on the proposed new structure, under standard g. After considering the other standards, it could find that the proposed structure is compatible with the buildings and environment in the district in which the subject property is located, and give decisive weight to that factor.

3. Building Inspection Case

The City of Madison Building Inspection Division has issued work orders for repairs of the building. These relate to violations of Madison General Ordinances Chapter 27, the minimum housing code, and include orders to repair the roof,

soffits and fascia, replace missing railings, fix a broken window, remove junk, trash, debris and glass from the yard, and repair siding (inspection date 1-22-02); and to replace a wooden beam supporting the front porch, repair wood soffits/fascia, and exterior painting, (inspection date 5-25-11).

On June 1, 2013 the case was referred to the City Attorney's Office for prosecution. The issue at trial, if one were held, would be whether a violation of the minimum housing code existed on the property on the dates alleged in the complaint. Each date a violation continues is counted individually. Generally, the goal of a Building Inspection prosecution is to bring the property into compliance with the minimum housing code, to stop a problematic situation from continuing any longer. To achieve compliance, a property owner usually has the option to fix the problem or pursue demolition of the structure. This case has been set for review to allow time for the property owner to seek approval of a demolition permit.

4. Discussion and Conclusion

Each process has its own factors for consideration. The question at issue for the Building Inspection case is whether a violation of Chapter 27, the minimum housing code, existed on the property. Under the minimum housing code, the property owner is responsible for maintenance and repair regardless of the status of the property at the time of purchase. Building Inspection has the authority to charge additional fines for each day a violation continues. One means of resolving a violation is demolition of the offending structure.

When considering a request for demolition, the Landmarks Commission may consider whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it. However, Commission should not approve a demolition based on this factor if the hardship or difficulty claimed by the owner is self-created. This consideration is unique to the Landmarks Commission's review. A work order or prosecution by the Building Inspection Division does not necessarily answer this question. Additionally, how the prosecutor working with the Building Inspection Division decides to resolve that case is not a factor for the Commission to consider. The Commission must make its own determination of whether or not demolition is appropriate, based on the factors outlined in its own ordinance. The Commission may give decisive weight to any of the listed factors in MGO 33.19(5)(c).