



DATE: February 21, 2019
TO: Wisconsin Local Historic Preservation/Landmark Commissions
FROM: State Historic Preservation Office
RE: Interpretation of Recently Enacted Commission Review Legislation

State Statutes grant units of government the authority to enact ordinances to regulate historic places for the purpose of preserving these properties' significant characteristics. To do so, units of government may pass ordinances creating landmark commissions to designate historic places. Subject to these provisions, commissions may designate and regulate historic landmarks and all property within landmark historic districts to preserve the character of both individual historic landmarks as well as the character of each district.

Effective April 2018 new language related to commission review of historic properties was added to State Statutes:

In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this section, the [unit of government] shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

This language was drawn from the Secretary of the Interior's Standards for Rehabilitation, and gives very specific guidance to commissions that only apply to repairs and replacements.

Questions have arisen about whether this language requires commissions to approve all new materials. In our interpretation, this new language does not change the role of the commission, but rather empowers it to determine if a material or product is an appropriate replacement. All other powers of commissions under their local ordinances remain.

During the commission's COA review process, the commission should first determine if repair or replacement is a component of the application. If no, proceed according to established process. If yes, the commission, using its expertise, should determine if the repair or replacement materials are sufficiently "similar" to original materials. The commission, not the owner, makes this determination. If the commission rules that the material is not similar, it has the authority to deny a certificate of appropriateness. In the commission's decision documentation, it should clearly state that it reviewed this question and give factual reasons why the material is or is not similar in design, color, scale, architectural appearance, and other visual qualities.

This legislation does not give an owner unilateral approval for any material or project they propose. Ultimately it is the commission's responsibility to review each project application objectively against their ordinance and to provide a professional opinion of appropriateness.