

JKM Statement to LORC (Nov. 5, 2020)

My name is James Matson. I am currently retired, but for 28 years I was chief legal counsel for the WI Dept. of Agriculture, Trade and Consumer Protection. I am a member of the Madison Alliance for Historic Preservation, but I am speaking this evening on my own behalf. I'm not being paid by anyone, and I have no property or investment interest in this matter.

The Alliance recently suggested a common sense way to update historic district ordinances. It offered a clear, consistent template for all current and future district ordinances, while maintaining needed district-specific flexibility. Each district would still have its own ordinance, as under current law; but those ordinances would follow a consistent template.

The Alliance offered clear definitions and core "preservation principles" for all district ordinances. The core principles can be converted to district ordinance standards, just by changing "shoulds" to "shalls." But the city can also refine individual district standards, as necessary, to provide more local detail and a good fit for each district. Property owners can get everything they need, including detailed practical guidance, just by looking at their own district ordinance.

I recently used this framework to draft hypothetical district ordinances for all 5 of Madison's current historic districts. You have those drafts, and a description of my method. The drafts are just hypothetical, and I'm sure they can be improved. But they show that the Alliance framework can produce state-of-the-art district ordinances that follow clear, consistent core principles while *also* providing a good fit for individual districts. This can be achieved in a short time, without an undue expenditure of staff resources.

The current city staff proposal is quite different. In one fell swoop, it would rip up the 5 current district ordinances and replace them with a single, monolithic set of standards binding on every property in every current and future historic district in the city, with no district-specific flexibility. If I were you, that would make me a little queasy.

Taking its cue from a deeply flawed consultant's report, the staff proposal focuses obsessively on routine maintenance details – an area where the Landmarks Commission has only tangential jurisdiction. Do I need a certificate of authority from the Commission to paint my house? What will the Commission do if I don't paint my house for a few more years?

At the same time, the draft treats new construction – the central challenge for our historic districts – as a low priority topic warranting only vague and unhelpful treatment. This is straining at gnats, and swallowing camels whole. The Alliance proposal offers a much clearer, more proportionate, and more workable focus.

The Williamson Street commercial corridor is very different from the Marquette Bungalows district, yet the city proposal applies the same standards to both areas. Non-historic buildings and features are treated as if they were historic landmarks. Single-family residences are treated just like large commercial developments.

Vague, "one-size-fits-all" construction standards will spawn more controversy, not less. And if you try to add clarifying detail while keeping the "one-size-fits-all" format, you will run into the opposite problem. Details that make sense for a large commercial building on Williamson Street may be completely wrong for a Marquette bungalow, and vice-versa. When you add in all the exceptions that will be needed, you will have a confusing legal mess that will be hard for property owners to read and understand.

The Alliance has offered you a way out of these dilemmas. I would urge you to follow the common sense path that they suggest. I believe the substantive details can be worked out, without undue difficulty.