

**Date:** October 4, 2021

**To:** LORC and staff

**From:** David Mollenhoff, Chair, Madison Alliance for Historic Preservation

**Subject:** The Alliance decision to stop working on a revised historic preservation ordinance

### **Introduction**

At your meeting on September 1, you received in advance a one-page written statement from Jim Matson and me and another from me that I read. Copies of both are attached.

In our statements Matson and I provided nine reasons why our Alliance fundamentally disagrees with LORC's one-size-fits-all approach and we asked you to tell us what is wrong with the extensive work we have prepared for you. You declined our request with silence.

In my Zoom statement I suggested that LORC earmark a substantial amount of time at your October 6 meeting so that we could present the substantial work in the ring binder to you. After I took slightly less than three minutes of LORC's time, Chair Furman asked if any committee member had any questions for the registrants. (There was one other speaker.) There were none.

Then at the end of your meeting you discussed "next steps," what you should do at your meetings scheduled for the rest of the year (October 6, October 27, and November 30). Here is what I heard you say that you wanted to discuss at these meetings:

- when and how LORC should present its draft ordinance to the public for their review.
- staff analyses showing how the draft ordinance would work on specific projects (case studies)
- the need to schedule additional meetings with landmarks commissioners to get their input

During this discussion not one LORC member suggested that you discuss our ring binder at future LORC meetings. That was extremely disappointing and disheartening to us. Here's why:

### **LORC-1**

Some of you know that our Alliance began working with LORC when it was created in 2013—eight years ago!

During LORC-1 we tried to provide constructive leadership and I would like to think that we succeeded. It was our Alliance that urged LORC to create an entire new chapter for Madison's historic preservation ordinance—Chapter 41—and then provided you with a complete draft of this ordinance! We were proud that our draft was the basis of today's ordinance.

For a group of citizen volunteers to prepare a complete draft of a complex new ordinance is extremely rare in Madison history. But that is what we did.

We were able to do this because our Alliance was composed of members with extensive experience in historic preservation including people who served on the Madison Landmarks Commission and on the State Preservation Review Board, a lawyer who spent his professional career providing counsel to a large cabinet level agency and writing state statutes, Madison's former preservation planner with 29 years of experience, and veteran leaders of neighborhoods with historic districts.

This process produced a new ordinance covering historic preservation's purposes, policies, and procedures, but left the development of standards for Madison's existing and future districts for LORC-2

## LORC-2

To prepare district standards, staff recommended and LORC agreed to hire a consultant. For this purpose, a Sheboygan architect was hired who had never done an ordinance revision. The consultant recommended that Madison adopt a single set of standards for all of its districts, that is, a one-size-fits-all approach.

From the day she presented this concept in 2017, we have strenuously opposed it because we do not believe that it will effectively preserve the historic character of our distinctively different historic districts.

Since 2017 LORC-2 has met at least 25 times for about two hours per meeting or at least 50 hours. Of this total, I would guess that LORC has spent about 90% of its time discussing the one-size-fits-all concept or staff-prepared drafts of an ordinance embodying this concept.

We have attended all of these meetings and have made written and oral statements at nearly all.

Before I continue, I want to express our deep appreciation for your commitment to create state-of-the-art standards for existing and future historic districts and for your willingness to spend very substantial amounts of time to realize that goal. This is an important point for you to understand even though the Alliance strongly disagrees with your one-size-fits-all principle.

Before COVID required Zoom meetings, we were able to meet with you face-to-face across the same table and you allowed us to raise our hands and be recognized when we wanted to make constructive and sometimes corrective statements. But since COVID our testimony has been limited to disembodied voices (Zoom audio only) with no opportunity to use Zoom's "raise hand" feature. Rarely does LORC have any questions for our speakers.

Being effectively excluded from LORC discussions was very frustrating for us so we decided to make one last attempt to persuade you that the one-size-fits-all approach would fail to produce an ordinance that will effectively preserve the character of our distinctively different historic districts.

For that purpose, we assembled and hand-delivered to all of you a 9-tab ring binder where we attempted to systematically demonstrate the validity and value of our approach. We spent countless hours and several thousand dollars assembling and printing this document, and we did this with the hope that LORC would devote some serious time to consider its carefully-prepared content.

We especially hoped that you would find the following components of our ring binder compelling:

- Attorney Will Cook's letter (Tab 8). Cook is arguably the most highly respected national authority on local ordinances as his attached resume clearly shows. As stated in his introductory paragraph:  
 " ... the City of Madison should adopt an approach that allows for a core set of standards with district-specific differentiation and interpretive guidelines, in line with the Alliance's proposed ordinance revisions. Adopting such an ordinance would place Madison at the forefront of historic preservation regulation and would provide a model for other communities to follow."
- Our new state-of-the-art draft of Chapter 41 (Tab 9) that provides a unified regulatory approach composed of core standards for all historic districts, supplemented with interpretive guidelines and with district specific standards where necessary.
- 10 standards for new construction (Tab 2).

- The inclusion of BUILD-II standards (Tab 5).
- A clearer more user friendly ordinance organization (Tab 7)

We urge you to compare our work in the ring binder with your current draft and then to determine which draft will do the better job of protecting our historic resources!

### **Conclusion**

During your discussion of “next steps” at the end of your September 1 meeting, you dashed our hopes that LORC would give our proposal serious consideration. Therefore, we have decided to terminate further work on this project.

As citizens who have made an extraordinary eight year commitment to a model historic preservation ordinance, and we depart confident that we have given you a compelling option for a state-of-the-art ordinance.

### **Attachments:**

Written Alliance statement to LORC from Matson and Mollenhoff dated August 30, 2021  
Oral Alliance statement to LORC from Mollenhoff dated September 1, 2021

cc: Landmarks Commissioners  
Alder Brian Benford  
Madison Alliance for Historic Preservation  
Assistant City Attorney Kate Smith

DATE: August 30, 2021  
 TO: Landmarks Ordinance Review Committee (LORC)  
 FROM: Dave Mollenhoff and James Matson,  
 Madison Alliance for Historic Preservation (Alliance)

SUBJECT: **Proposed Historic Preservation Ordinance**

At its meeting on September 1, LORC will once again consider the city staff proposal to *repeal all of Madison's current historic district ordinances*, and replace them with a single "one size fits all" ordinance for all current *and future* historic districts.

The Alliance has profound concerns regarding this proposal, which it has repeatedly expressed over the past 2 years and 29 LORC meetings. We have not had time to review the staff's latest "one-size-fits-all" proposal (9-1-21) in depth. We believe that there have been some improvements, based in part on Alliance suggestions. But overall, based on our initial review, we are deeply disappointed in the latest proposal for several reasons:

- It fails to protect the unique character of individual historic districts.
- It fails to provide clear standards for development in historic districts. In particular, it fails to provide clear standards for new construction, which is *the* primary existential challenge for historic districts. This is a recipe for future "train wrecks."
- It fails to account for important differences between historic districts, and between different properties within historic districts (e.g., commercial vs. residential, and historic vs. non-historic properties). The same cookie cutter is applied to all properties.
- It sweeps away all current district ordinance standards – often substituting voluntary "design guidelines" which, when divorced from underlying legal standards, have no interpretive or legal weight.
- It ignores current city plan requirements – most notably the "Build II" preservation standards for Williamson St., which the full Common Council *directed* staff to include.
- It fails to provide the clarity and confidence that are needed, in order to ensure sensitive new development and ongoing historic preservation investment.
- It fails to define critical terms and leaves key decisions to administrative whim.
- It misses opportunities to improve overall ordinance organization and clarity.
- It requires *more* cumbersome cross-referencing than the Alliance proposal, not less.

Our concerns focus on a flawed overall approach, not minor details. The Alliance has offered a "win-win" approach that addresses these concerns, while also meeting LORC's overall goals. We have provided you with a ring binder that clearly summarizes our proposal (the contents are also posted on Legistar). We urge you to read it and compare. For example, you might compare the Alliance standards for new construction with the vague "non-standards" proposed by staff. You might also compare the impact on current historic districts, such as Third Lake Ridge (including the Williamson St. corridor covered by the "Build II" plan).

The Alliance has offered you a commonsense approach to a complex challenge. We urge you to give it the serious attention that it deserves. We would like to know what objections, if any, you have. If we get the framework right, the substantive details can be worked out without undue difficulty.

**Mollenhoff statement to LORC on behalf of the Madison Alliance for Historic Preservation  
September 1, 2021**

The revision of Chapter 41 has required all of us to walk a very long road.

The goal of LORC-1 that ran from 2013-2015 was to prepare a state-of-the-art set of purposes, policies and procedures for historic preservation. To achieve this goal, our Alliance provided a complete new draft of Chapter 41 and LORC used this draft to complete this part of its assignment.

The goal of LORC-2 that began in 2017 was to prepare state-of-the-art standards for Madison's current and future historic districts. Staff hired a consultant for this purpose and she concluded that a single set of generic standards would be sufficient to protect our historic resources.

Our Alliance strongly opposed this one-size-fits-all concept and in our statement sent to you on Monday, we reiterated our reasons.

In our draft we have taken a very different approach, a unified regulatory system composed of:

- core standards for all historic districts,
- supplemented by interpretive guidelines, and
- with district-specific standards where necessary.

We have provided a copy of this new draft of Chapter 41 that incorporates this approach in Tab 9 of our ring binder.

Our approach is strongly endorsed by a letter from Attorney Will Cook, one of the most respected national authorities on local preservation ordinances. It appears as Tab 8 in our ring binder.

We have spent a great deal of time preparing this new draft and we believe that it provides a clear, concise, user-friendly, unified state-of-the-art ordinance that effectively protects all of our historic resources.

We do not say that our draft is perfect, but we do say that you can save countless hours if you use it as a primary document for your remaining discussions.

Why not make our new draft a major agenda item for your October 6th meeting? It will surely provide LORC with a shorter road to the destination that we all want. Our hope is that we can be partners with you on this last leg of this very long road.

Thank you.