



City of Madison

City of Madison
Madison, WI 53703
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Meeting Minutes - Draft AD HOC LANDMARKS ORDINANCE REVIEW COMMITTEE

Thursday, November 20, 2014

5:30 PM

215 Martin Luther King Jr. Blvd.
Room LL-130 (Madison Municipal Building)

****Note**** Quorum of the Landmarks Commission may be in attendance at this meeting.

CALL TO ORDER / ROLL CALL

Alder Bidar-Sielaff left at 6:40 p.m.

Present: 5 - Marsha A. Rummel; Steve King; Mark Clear; Chris Schmidt and Shiva Bidar-Sielaff

APPROVAL OF October 9 and 22, November 6, 2014 MINUTES

A motion was made by Bidar-Sielaff, seconded by Clear, to Approve the Minutes of October 9, October 22, and November 6, 2014 meetings. The motion passed by voice vote/other.

PUBLIC COMMENT

Stu Levitan, representing the Landmarks Commission, registering in neither support nor opposition and available to answer questions.

Gary Peterson registering in support and wishing to speak. Peterson explained that Madison is not a historic city and that there are many other qualities other than preservation that make it successful. He explained that the Ordinance should not give a citizen body more power than the Common Council by requiring a super majority vote to overturn an appeal. Peterson explained that the determination of neglect is an impossible judgment that burdens the property owner.

Rummel asked how he would differentiate the failure of the building over time and the responsibility of the property owner to maintain the building. Peterson explained that historic buildings were not constructed to meet building codes and the buildings lack integrity by today's standards. He also explained that citizen bodies should not make judgments.

David Mollenhoff, Ordinance Committee of Madison Alliance for Historic Preservation, registering in support and wishing to speak. Mollenhoff explained the documents with the three column format which was devised to compare the current ordinance, the draft ordinance and the proposed chapter 41. He explained that the better ordinances that have been reviewed highlight the importance of maintenance and enforcement. Mollenhoff explained that the intent statement at the beginning of the Obligation to Maintain section should be moved to the Purpose and Intent statement to show the importance of maintenance and enforcement.

Clear asked the ordinance should account for normal wear and tear or is there a presumption that with maintenance, a building will last forever. Mollenhoff explained that all buildings require preventive and routine maintenance. Clear asked for clarification. Mollenhoff explained that wood deck boards on a porch must be replaced over time and when you buy a property you are also purchasing the obligation to maintain it.

Katherine Rankin registering in support and wishing to speak. Rankin explained that the obligation to maintain has been put into the outline format. Rankin also explained that in the current ordinance there is language that allows other agencies to approve a slight variation in the code provided that there are other ways to achieve public safety. She explained that the work on the ordinance is appreciated.

Rummel asked Rankin to comment on the draft maintenance section. Rankin explained that property owners have an obligation to maintain their properties through the building code. She explained that it is not true that historic buildings were built to a lesser standard than modern buildings. Rankin explained that the Maintenance section formalizes what is already in the codes, that approvals to demolish buildings in historic districts have been approved, and artificial siding is allowed in some cases.

John Schlaefer, representing the Alliance for Historic Preservation, registering neither in support nor opposition and wishing to speak. Schlaefer explained that the draft language for (10)(c) is vague and that the Chapter 41 language suggests that the Landmarks Commission should be responsible for administration and enforcement of the ordinance and may work with other city agencies for oversight. He explained that other ordinances and codes do not specify the agency that is responsible for oversight and that other agencies should report to the Landmarks Commission when violations are noted. Schlaefer explained that the chapter 41 language authorizes the Landmarks Commission to inspect properties, issue non-compliance warnings, and send cases to the city attorney. Schlaefer explained that the language should include the maximum penalties for violations.

Clear asked how Schlaefer envisioned the Landmarks Commission having enforcement authority. Schlaefer explained that the Landmarks Commission would be in a leadership role, but that the Commission would work with city agencies and the Preservation Planner and Building Inspectors would be in the field.

Jeff Vercauteren, representing Urban Land Interests, Apex Properties, Inc., Hovde Properties, Steve Brown Apartments, and Wright 2102 LP, registering neither in support nor opposition and wishing to speak. Vercauteren discussed the details of the written statement he provided. He explained that renters should not be included in the Obligation to Maintain section since the ultimate responsibility for the property is with the owner. Vercauteren explained that the enforcement role of the Commission is unclear, but it seems the draft language allows the Commission to act as judge, jury, and executioner. He explained that there is a current process with Building Inspection and the City Attorney to prosecute property owners and that the Commission should not become the prosecutor.

King asked for Vercauteren to describe the compatibility standard that was previously discussed. Vercauteren explained that he suggested that the Visually Related Area (VRA) circles be changed to a district wide compatibility standard which would take a holistic view of the district. Vercauteren explained that the 200 foot VRA circles create sub-districts which do not represent the character of the whole district.

King asked if the existing language covered the notification of potential violations. Vercauteren explained that with the current process, a Building Inspector issues a

notice to have work completed and when the work is not completed, there are fines and prosecution, but that the draft language jumps directly to enforcement. He explained that there is no reason to add an additional layer to the existing enforcement process.

Rummel asked if the term "legal custody" was contributing to Vercauteren's concern and that it could be changed to "possession" or "control". Vercauteren explained that all of the words introduce ambiguity. Rummel asked if a mortgage holder should have the responsibility to maintain. Vercauteren explained that in the case of a foreclosure, the mortgage company would have the responsibility as the owner. Rummel asked if a local management company should be responsible. Vercauteren explained that the responsibility for maintenance should be identified in the contract between the property owner and the management company. Rummel asked why Vercauteren used the words "notice" and "determination" in 1 and 2 under (e). Vercauteren explained that the words "compliant" and "decision" have connotations associated with litigation.

Clear asked what was trying to be prevented with the definition of demolition by neglect that Vercauteren proposed. Vercauteren explained that (10)(c) provides the standards and should be consistent with (10)(e) so that the definition of demolition by neglect references the standards.

King asked ACA Strange about the definition of owner and the intent of the language in the draft ordinance. ACA Strange explained that a long term renter and possibly someone who has an option to purchase are ownership types that the Landmarks Commission was concerned about. The intent was to have multiple options of contact for maintenance compliance.

Bidar-Sielaff asked about the legal definition of owner and if it covered someone with an option to purchase. ACA Strange explained that someone with an option to purchase is not an owner. He explained that the Landmarks Commission differentiates between the owner and the applicant. There was general discussion about the policy regarding who would be responsible for property maintenance. ACA Strange explained that the tenant would be responsible if it is specified in the lease that they are responsible which is similar to the sidewalk shoveling ordinance.

Rummel noted that a person with an option to purchase can have land use entitlements approved which sets up an interesting situation with demolition by neglect. Rummel asked if removing the words "legal possession" would help. ACA Strange explained that if the policy was determined to not have the tenant liable, the words would need to be removed.

Bidar-Sielaff asked Levitan about enforcement. Levitan explained that the Landmarks Commission does not want the authority to actually go on property to enforce the ordinance. He also explained that there should not be a joint authority over ordinance implementation and that maintenance enforcement is a professional responsibility of the Building Inspection Division.

Daniel Einstein, representing Madison Trust for Historic Preservation, registering neither in support nor opposition and not wishing to speak.

Jason Tish, representing Madison Trust for Historic Preservation, registering neither in support nor opposition and wishing to speak. Tish chose to not provide any comments.

Jim Skrentny, representing the Alliance as a property owner in the First Settlement Historic District, registering in support and wishing to speak. Skrentny explained that demolition by neglect is one of the most serious threats to historic preservation efforts because it is gradual and cumulative and if it goes unchecked, it can result in the loss of historic resources. Skrentny explained that the proposed chapter 41 language prohibits demolition by neglect by requiring maintenance and that additional standards for maintenance of historic structures is proposed to bridge the gap where the building code leaves off. For example, the building code does not cover the retention of architectural features which is very important in assessing the integrity of historic buildings. Skrentny explained that in the past the Landmarks Commission takes the lead on identifying the condition issues and it seems reasonable to provide the Commission with the ability to take on the enforcement when necessary. Skrentny explained that the proposed chapter 41 language prohibits the demolition of landmarks as the landmark designation would need to be rescinded before the building could be demolished. He explained that demolition in historic districts would be done by Certificate of Appropriateness. In both cases, demolition should not be considered if it is based on poor conditions caused by the neglect of the property owner.

Fred Mohs, registering neither in support nor opposition and wishing to speak. Mohs agreed that renters should not be responsible for maintenance of buildings. Mohs explained that a prospective buyer in a historic district would look at the way the ordinance was interpreted and enforced over time to determine if they would make an investment. As an example he explained that the neighborhood covenants in University Hill Farms provided a standard for understanding consistency and expectations which have provided that neighborhood with integrity and made it worthy of being a National Register historic district. Mohs explained that when determining the visually related area in a historic district, the context should be understood at the compact 200' level instead of the district level to establish a specific consistency.

Clear asked if Mohs supported the suggestions made by Vercauteren to remove the language after "owner". Mohs agreed.

King explained that the historic district is created at the district level and that reviewing development proposals at the micro level seems wrong. Staff explained that a historic district may be a historic resource due to its different associative qualities and that the contexts within the historic district boundary may vary, but that the specific parts join to make the historic district.

DISCLOSURES AND RECUSALS

None

1. [34202](#) Ad Hoc Landmarks Ordinance Review Committee Materials

No discussion on this item. This file is used as a document repository only.

2. [34577](#) Repealing and recreating Section 33.19 of the Madison General Ordinances to update the Landmarks Commission ordinance.

There was a general discussion about the removal of the language after "owner" and why the Commission proposed the language. The discussion included the distinction between the responsibilities of a single tenant in a multi-tenant building compared to a single tenant in a one tenant building, the need for a definition of "owner", the need to prevent maintenance issues, the process in the minimum housing code to have

maintenance issues addressed to a minimum standard, the possibility of a historic preservation amendment to the building code, and the possibility of a preservation fund could be fed by penalties incurred on maintenance enforcement cases.

A motion was made by King, seconded by Clear, to remove the language after "owner". The motion failed by a vote of (1:2). Ayes: King. Noes: Clear, Rummel

Schmidt suggested that "or entity" after "person" if draft language is being kept. Clear suggested that the language be further tightened so tenants are not held responsible in the ways that have been discussed. There was general discussion about the intent and ACA Strange was asked to draft language to capture the intent.

There was general discussion about the purpose statement in this section. ACA Strange explained that the purpose statement is placed in that section specifically to addresses that it is in the public interest to maintain property which relates to the appeal language. There was general discussion about the condition being a result of willful neglect if that language is narrowed.

There was general discussion about striking the language after "ordinances" and making revisions to (10)(c).

Schmidt noted that there is a suggestion in the proposed chapter 41 to divide the sections on landmarks and historic districts. Mollenhoff explained that dividing the sections make structural sense and would be more user friendly.

A motion was made by Clear, seconded by Rummel, to Refer this item to the next meeting. The motion passed by voice vote/other.

3. Discussion of Work Plan and Schedule

Schmidt explained that it appears the work of the LORC will not be completed by the date specified in the resolution so he suggests extending the deadline to April.

King explained that it is difficult for him to break away and come back at each meeting. King suggested that the LORC find a day to have a daylong meeting or longer meeting to have the momentum to get the work completed.

Schmidt suggested that we look to schedule this meeting in January and that he will revise the resolution to extend the schedule.

ADJOURNMENT

A motion was made by King, seconded by Clear, to Adjourn the meeting at 7:24 p.m. The motion passed by voice vote/other.