

**Adverse Issues Relating to Proposed Changes to
City of Racine Historic Preservation and Related Zoning Ordinances**

(Note: City staff responses indicated in italicized print.)

Note: Comments to City staff responses indicated in red.

- I. The City of Racine Landmarks Preservation Commission has recommended several revisions to City of Racine Ordinances, Chapter 58 (Historic Preservation) and Chapter 114 (Zoning). These recommended revisions widen the scope of properties which may be subject to the costs and obligations of an historic designation and do not insure that all the affected property owners will consent to or have knowledge of such burdens.**

CITY STAFF RESPONSE:

The recommendations help clarify the treatment of properties within a historic district. The inclusion of “contributing property” acknowledges the fact that within a historic district, not all properties rise to the level of landmark status but by nature of their conditions and character “contribute” to the overall value of a historic district.

COMMENTS TO CITY STAFF RESPONSE:

Overall, the proposed ordinance revisions reduce the standards necessary to create an H-Historic District while increasing the scope of impact of the imposition of such a district. As currently contemplated by staff and the Landmarks Preservation Commission, consent of only a simple majority of property owners within a proposed H-Historic District would be needed for the requirements of such a district to be imposed on all property owners within the designated area. This is position is contrary to the current language of the City of Racine zoning ordinances governing H-Historic overlay districts.

Sec. 114-614 states : The H historic properties district is an overlay district intended to be applied by the common council to those specific properties, structures, defined areas or locations where, upon the owner's written petition or written consent, it has been recommended by the landmarks preservation commission under the authority of chapter 58, that historical, architectural, archeological and cultural resources exist that are important to preserve as a landmark or landmark site to aid in the documentation, study and understanding of the collective history of the city, county, state, region or nation. (emphasis added).

Further , pursuant to Sec 114-617, in making a determination as to whether to designate the H historic properties district for a specific property, structure, area or location, the plan commission and common council shall consider whether all affected property owners have submitted a written petition or written consent for the rezoning of the subject property (emphasis added).

The proposed changes include the following:

- Creating a definition of “Contributing Property.” Under the definition, a Contributing Property is designated as one or a multiple of properties or structures

that comprise the cohesive basis for the establishment of an H-Historic Properties District. A Contributing Property is designated based on the same criteria as a Landmark or Landmark Site, however, the proposed revisions add a new criterion which essentially is the definition of a Contributing Property - “Contributes to the character or understanding of a district and is one or a multiple of properties that help form the basis of a district”.

True. Not all properties rise to the level of landmark status but by nature of their conditions and character “contribute” to the overall value of a historic district.

- Broadening the scope of properties requiring governmental approval before exterior work or construction can be undertaken to include Contributing Properties and vacant or cleared lots within an H-Historic Properties District.

True.

- Creating a definition of a “Certificate of Appropriateness” for properties within a designated H-Historic Properties District. Under the proposed definition, a Certificate of Appropriateness is a ruling from the Department of City Development or the Landmarks Preservation Commission approving exterior treatment for work on Landmarks, Landmark Sites, Contributing Properties as well as new construction on vacant or cleared lots.

True. These administrative and legislative entities appear to be the best equipped to make such determinations. Their decisions can be appealed to the Plan Commission and Common Council.

COMMENTS TO CITY STAFF RESPONSE:

Note that as part of its mission, the Landmarks Preservation Commission is supposed to work on a voluntary basis with owners of landmarks, landmark sites or areas, advising them on benefits, problems and techniques of preservation and encouraging their participation in preservation activities (Sec 58-27(c)(7)). The proposed ordinance revisions will force property owners to work with the Landmarks Preservation Commission on more than a voluntary basis.

- Listing of activities that require a finding of appropriateness.

True. Provides more clarity to an ordinance that currently impacts only the five existing re-design landmarks, and any future designations or re-designations.

COMMENTS TO CITY STAFF RESPONSE:

This may now potentially affect only five properties, but will impact every property owner within a H-Historic District, including owners of vacant and cleared lots, if the proposed ordinance is passed and implemented as contemplated by the Landmarks Preservation Commission.

- Attempting to describe procedures for obtaining a Certificate of Appropriateness.

True. Provides more clarity to an ordinance that currently impacts only the five existing re-design landmarks, and any future designations or re-designations.

COMMENTS TO CITY STAFF RESPONSE:

Definitions of minor and major repair are not sufficiently specific and may give staff and Landmarks Preservation Commission undue leeway in determining which entity should make a decision in a particular instance. As noted above, these ordinance revisions may at the time of their adoption affect only five properties, but will impact every property owner within a H-Historic District, including owners of vacant and cleared lots, if the proposed ordinance is passed and implemented as contemplated by the Landmarks Preservation Commission.

- Attempting to allocate responsibility for determining whether to grant a Certificate of Appropriateness between the Department of City Development and the Landmarks Preservation Commission.

True. These administrative and legislative entities appear to be the best equipped to make such determinations. Their decisions can be appealed to the Plan Commission and Common Council. In the case of subject properties being contained within a design district, only a review by the applicable design review authority is required.

- Authorizing the establishment of guidelines for exterior work on Landmarks, Landmark Sites or Contributing Properties as well as new construction on vacant or cleared lots.

True. Provides more clarity to an ordinance that impacts the five existing re-designated landmarks, and future designations.

COMMENTS TO CITY STAFF RESPONSE:

As noted above, the intended scope of the ordinance is far reaching, and will impact owners of all properties within an H-Historic District, regardless of whether they agree with or consent to being included in such a district. This differs significantly from applying an ordinance to a limited number of properties which have been designated landmarks with the consent of the owners of such properties as is currently contemplated by Sections 114-614 and 114-617 of the Zoning Code.

- Promulgating such guidelines.

True. Provides more clarity to an ordinance that impacts the five existing re-designated landmarks, and future designations.

II. The expansion of governmental approval requirements to the newly created “Contributing Property” category and to vacant or cleared lots creates additional, less well protected categories to which a property owner may be subjected against that property owner's will and potentially without that owner’s knowledge.

False. To establish a historic district, three public hearings are required by the Municipal Code and State Statute as follows:

First Hearing (exploratory): before the Landmarks Commission as required by Chapter 58-62. All affected property owners within the proposed district are required to be notified.

COMMENTS TO CITY STAFF RESPONSE:

58-62 deals only with procedure for identification of landmarks, landmark sites or, under the proposed revisions, contributing properties, and does not address the creation of an H-Historic District. To suggest otherwise would be to suggest that the boundaries of an H-Historic District had been created before any hearings were held on whether potential landmark or contributing properties had been evaluated by the Landmarks Preservation Commission on their merits, and the owners of such properties had an opportunity to be heard on those issues.

Second Hearing (exploratory): before the Plan Commission as required by Chapter 114, Article II, Division 4. All property owners within the proposed district as well as those within 200 feet of the proposed boundaries are required to be notified.

Third Hearing (statutorial): before the Common Council as required by Chapter 114, Article II, Division 4 and Wisconsin State Statute 62.23. Class 2 notice in the Journal Times.

COMMENTS TO CITY STAFF RESPONSE:

Class 2 notice by publication is insufficient given the impact of creation of an H-Historic District on the property owners within such an area.

- Expansion of the scope of the historic designation ordinance is contrary to the intent that property owners request historic designation and consent to such designation and the responsibilities inherent in such designation.

False. See above, and the City has the authority under Chapter 58-62 and Chapter 114, Article II, Division 4 to be the applicant in historic district nominations and rezonings.

COMMENTS TO CITY STAFF RESPONSE:

Section 58-62 does not speak to the issue of who may be the applicant. The City may have authority to be an “applicant” generally in with respect to zoning, but to allow the City to take such action in connection with the creation of a H-Historic District would be contrary to the specific language of Section 114-614.

- Notice of public hearing notice is not required to be given to owners of vacant lots, yet vacant lot owners are treated in a similar manner as Landmark, Landmark Site, and Contributing Property owners.

False. Notice provided as indicated above.

COMMENTS TO CITY STAFF RESPONSE:

See comments above regarding notice.

- Notice of public hearing is not required to be given to all property owners within the boundaries of the proposed H-Historic Properties District, but the owners of non-contributing properties will be subject to governing requirements if they clear their lots in the future.

False. Notice provided as indicated above.

COMMENTS TO CITY STAFF RESPONSE:

See comments above regarding notice.

- The proposed revisions require record notice only with respect to Landmarks and Landmark Sites, not with respect to Contributing Properties and vacant lots or other lots in an H-Historic Properties District. This could mean that potential purchasers of Contributing Properties and any vacant lot or other lot that may be cleared would not have record notice of the H-Historic Property District requirements. An uninformed purchaser could be put in the position of assuming unwanted and unanticipated responsibilities.

True in part, False in part. Landmark designation is a higher degree of recognition (recorded notice at the register of deeds, plaque issued, listed in City publications, etc.) than a contributing property. Contributing properties documented no differently than typical zoning classification and would be disclose/discovered as part of the normal due diligence process for any real estate transaction.

COMMENTS TO CITY STAFF RESPONSE:

The City's response assumes a level of sophistication that may not be present, particularly in residential real estate transactions, and leaves potential purchasers to the perils of a "buyer beware" situation.

- III. Procedures recommended by the Landmarks Preservation Commission require additional commitment of time and money on the part of property owners. In the current economic environment, this could have a chilling effect on interest in purchasing, maintaining, renovating and restoring properties in the City of Racine.**
- True in part, False in part. Additional time may be needed to prepare plans (if detailed plans are needed), however it has been found that frequently, staff can offer suggestions that result in cost savings to a property owner, or better design and materials being used which enhance the longevity of the project which in the end saves money.*

COMMENTS TO CITY STAFF RESPONSE:

Any beneficial impact of staff involvement has yet to be shown. In any case, this requirement will take away certain rights of the property owner and certainly has the potential to result in increased cost and work for the property owner.

- The "suggested" pre-application conference is an additional time commitment for any affected property owner. Also, due to lack of record notice, Contributing Property owners and vacant land owners may not be aware that they are required to obtain a Certificate of Appropriateness. They may be well along in their planning process, and may have invested money in that process, before having an opportunity for such a conference.

True in part, False in part (see above).

- Fees associated with process add cost to any project.
False: There are no fees for Certificate of Appropriateness review.

COMMENTS TO CITY STAFF RESPONSE:

Recreated Section 58-64(f) references a fee. If no fees are to be charged, this language should be deleted.

- The process of obtaining a Certificate of Appropriateness takes up to 45 days for initial determination. The property owner then has a limited window of only 90 days to appeal. If the property owner files an appeal, the Plan Commission has an additional 30 days to forward recommendation to the Common Council. The Common Council then must act, which, of course would require additional time.

False: Staff review for minor changes is proposed to be ten days. Since the Landmarks Commission meets monthly, and depending on the timing of an application filing, review of major changes could take a little as 14 day, but in most cases should take no longer than 31 says.

COMMENTS TO CITY STAFF RESPONSE:

Proposed Section 58-64(f) provides for 45 days for Landmarks Preservation Commission to make its determination. An appeal will draw out the process even further as noted above.

- The proposed general guidelines do not take cost into account as a factor in the determination of what is appropriate. For example, the guidelines state that deteriorated historic features should be repaired rather than replaced; replacement of missing features should be substantiated by documentary, physical, or pictorial evidence; cleaning should be by “gentlest means possible”; and new additions, etc. must be “undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. The guidelines do not weigh the merits of these items against their cost.

False in part, true in part. False in the fact that one of the specific criteria for designating a landmark, landmark site or contributing property is that consideration be given to “the cost of maintenance and repair”[Sec 114-617 (4)].

True in the fact that this is a historic preservation ordinance just as a farmland preservation ordinance seeks to preserve farmland. The goal of the historic preservation ordinance and the subject design guidelines is to preserve historic structures for their community value. If preservation is not possible, than documentation of the feature or structure is the next prudent step.

COMMENTS TO CITY STAFF RESPONSE:

Sec 114-617 (4) deals only with the initial designation. The guidelines should contain specific criteria requiring consideration of the cost of the action being required to be taken by a property owner in connection with the application of the guidelines.

- The more specific guidelines promulgated in connection with the ordinance revisions generally require, or give the deciding body latitude to require, the use of more expensive materials.

True in part, false in part. Requirements of the deciding body may increase costs of a project. However, it has been found that frequently, staff can offer suggestions that result in cost savings to a property owner, or better design and materials being used which enhance the longevity of the project which in the end saves money.

COMMENTS TO CITY STAFF RESPONSE:

See comments regarding staff suggestions above.

- If the property owner cannot afford to repair or renovate, the time required to rescind the historic designation and the high threshold for doing so negatively impact the property owner. In order to rescind an existing designation, the property owner must demonstrate that “as a result of such designation the owner is unable to find a buyer willing to preserve such landmark, landmark site or contributing property, even through the owner has made reasonable attempts in good faith to find and attract such a buyer.” (Sec. 58.78).

Citation out of context: Section 58-78 sets out actions to be taken by the property owner and landmarks commission to rescind the designation should the owner be unable to locate a buyer for the property. The ordinance goes on to describe how the (landmarks) commission is to assist the owner in locating a buyer.

COMMENTS TO CITY STAFF RESPONSE:

The Landmarks Preservation Commission is only obligated to work with a property owner to locate a buyer for the property who is willing to abide by the designation. Sec. 58.78 does not create any requirement that an evaluation of the economic impact on the property value be considered; this would be critical in the case of residential real property, which may be a major and substantial asset of the property owner. The property owner may face substantial financial detriment by being forced to accept a below market offer based on the efforts of the Landmarks Preservation Commission, which are focused only on finding a buyer willing to take on a property burdened by constraints.

- IV. For the reasons stated above, the Racine Plan Commission should not recommend passage of the proposed revisions to Chapter 58 and Chapter 114 as written. Instead, the Plan Commission should further study the impact of any proposed changes on potentially affected City of Racine property owners prior to making any revisions to these Chapters or proceeding with the creation of H-Historic Property Districts and should amend the proposed ordinance revisions to include the following:**

- An opt-out provision for any property owner that does not approve of or consent to its property being designated as a Landmark, Landmark Site or Contributing Property.

Disagree: An “opt-out” provision would be as ill-advised in this application as it would be in establishing a residential district or any other district. The establishment of any district succeeds because all properties are held to the same standards within a defined geographic area. In example, the establishment of the downtown design district was not met with unanimous consent for the property owner. However, its indisputable success is attributable to the application of the design standards to all properties.

COMMENTS TO CITY STAFF RESPONSE:

As pointed out by a member of the Plan Commission, the establishment of an H-Historic District, presumably encompassing residential properties, is not the same as creation of a downtown design district, where all of the business owners benefit from the enhanced commercial atmosphere, and, as such, should be required to carry their weight in maintaining that atmosphere. The individual homeowner does not reap such a benefit and should have the right to opt out. Sections 114-614 and 114-617 as currently existing indicate that the consent of the property owner is of paramount importance in placing this designation on a property.

It is not the stated intention of the ordinance creating the H-Historic District to sweep in unwilling property owners by the acquiescence of a simple majority of area property owners. If the City of Racine desires to shift the focus of the ordinance, the ordinance should be revised to make this clear so the public has an opportunity to make its opinions known of this point-- and has an opportunity to speak before being subjected to such a district designation.

- Written notice of any public hearing to the record owners of all properties within the boundaries of any proposed H-Historic Properties District.

Agree: Such notice is **currently required** under Chapter 58-62. and Chapter 114, Article II, Division 4.

COMMENTS TO CITY STAFF RESPONSE:

Comments regarding notice are set forth above. Specific direct mailed notice should be given to each potentially affected property owner; written notice by publication is insufficient given the potential impact of the H-Historic Designation.

- Record notice to all present and future property owners who may be subject to requirements with respect to exterior work or construction on vacant or cleared lots.

Agree: Such recorded notice is **currently required** for a landmark and landmark cite designations. All other properties within an H-Historic district have such a note or flag placed on their assessment record that would be disclose/discovered as part of the normal due diligence process for any real estate transaction. Typically this discovery

takes place when the realtor contacts the city to ascertain the zoning of a property prior to its listing.

COMMENTS TO CITY STAFF RESPONSE:

As noted above, the City of Racine may be creating an unfortunate “buyer beware” situation.