

Report to City of Waukesha Ordinance and License
Committee

From:
Adhoc Committee to review Chapter 28 – Landmarks
Ordinance

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Summary

The Adhoc Committee was formed at the request of the Ordinance and License Committee to review the Landmark Ordinance and make recommendations on two items: 1) Changes to allow a property owner to opt-out of participation in the ordinance; and 2) to review and make recommendations on any other changes to the ordinance. The Adhoc Committee met on March 21, 2012 to review, discuss, and make recommendations about changes to the Landmarks Ordinance. For the full transcript, please review the minutes from the meeting. The balance of this report will focus on a summary of the results of the Adhoc Committee meeting; references to the draft copy of the meeting minutes will be made throughout the summary by listing both the relevant page number and line number.

The Adhoc Committee that was formed to review the Landmarks Ordinance concluded that the current Landmarks ordinance should not be changed to allow individual property owners to opt-out of the property's participation in the Landmarks Ordinance, since to make such a change would disqualify the City of Waukesha from being a participant in the Certified Local Government Program, which would have wide ranging negative consequences for the City and property owners as whole. The committee also concluded that as the current ordinance properly follows the State of Wisconsin's Landmarks Ordinance model, no other changes should be made.

Changes to allow for an opt-out provision

The discussion focused on two main points with respect to an opt-out provision of the ordinance. First: to clarify exactly who would be included in an opt-out provision; second, to review and discuss the impact of allowing an opt-out provision in the Landmarks Ordinance.

A good portion of the discussion of the Adhoc Committee was focused on understanding the scope of the opt-out provision. The ordinance provides for two types of historic designations - individual, and district. Was the scope of the referral to cover individual property owners only, or was it to include all property owners (both individual historic properties, and properties that are part of an historic district)? After obtaining clarification from Alderman Paulson, the originator of the referral, the result of the discussion was the conclusion that the referral was to cover both types of historic properties ^{page 4, line 17}.

Property Owner Rights

The justification for allowing a property owner to opt-out falls under the concept of property owner rights. Some members on the committee voiced the opinion that it is unfair to a property owner to impose additional property regulations that would add an unwanted burden; a statement was further made that this ordinance 'is a taking' of the property on the part of the City without compensation ^{page 9 line 16}. Mr. Eastman spoke to this point clearly; "... there are a long line of cases that say a Landmark ordinances such as the one they have does not constitute a taking of the property" ^{Page 3 line 1, page 9 line 25}. Based on his comments, it is clear from a legal perspective that the current wording of the ordinance is legal and valid. A point was further made by Mr. Eastman that the meeting should be a policy discussion, not a legal discussion, and that the committee (as well as Ordinance and License, and the Council) should from that point forward focus on the impact of the proposed change and not its legality ^{page 9, line 31}.

Impact of opt-out on the City

The committee was then provided with expert opinion by Joe DeRose of the State Historical Society (SHS). Mr. DeRose has been with the SHS since 1990, and his duties include administration of the Certified Local Government (CLG) Program ^{page 4, line 23}. The City has been in the CLG Program since the mid 1980s. The committee asked for clarification from Mr. DeRose on what, if anything, would be lost if Waukesha included an opt-out in the ordinance.

There are both direct and indirect benefits to participating in the CLG program. The direct benefits include both grant money and the ability to use the Historic Building Code. The money for the CLG program comes from the federal government, which requires that 10% of state funding be distributed to local CLG participants ^{page 4, line 28}. The money available at the local CLG level is typically \$50,000 to \$100,000 annually ^{page 5, line 10}. This money can be used for various historic preservation activities, including performing intensive surveys that identify properties and districts that should be listed as historic. The City of Waukesha heavily used CLG grant money prior to 1990 (no exact figures are available) to fund the creation of the current list of historic districts, and many of the locally designated landmarks. Since 1990 the City has only applied for \$29,000 worth of CLG grants ^{page 4, line 34}. Mr. DeRose made it clear that if the City of Waukesha changed the ordinance to include an opt-out provision, it would no longer qualify to participate in the CLG program ^{page 4, line 50}.

The second benefit of the CLG program is the ability of commercial properties to use the historic building codes. The historic building codes allow a commercial property to adhere to a more relaxed set of codes than would otherwise be allowed. As an example, doorways must be of a minimum width for new construction or major renovation, but the historic building code would allow a given property to keep the doors at their original historical dimensions ^{page 5, line 23}. If no longer in the CLG Program, the City would lose the ability to apply the historic building codes to its local historic properties.

Additionally, one of the most important indirect CLG Program benefits is the money received by local property owners, who are able to participate in the Federal and State historic preservation tax credit program. Tax figures up through 2009 (the minutes report that the figures are up to 2007 but the data included with minutes show that the figures go up through 2009) show that home owners in the City of Waukesha have received 1.5 million dollars in historic tax credits. Commercial property owners have received 8 million dollars ^{page 10, line 7}. Many of these properties are only eligible to participate in the tax credit program because that property is located in an historic district. A historic district is a group of properties that don't qualify as historic individually, but as a group they represent an important point in time of a community's history; a local example being the McCall street district. Such districts require a clear definition of its boundaries approved by the Common Council and submitted and approved by the SHS before individual properties can participate in the historic tax credit program. Allowing a property to 'opt-out' of a district would negate the district as a whole. Therefore, if the ordinance is modified to allow an opt-out and a current district property owner exercises the provision, it could negate the existence of the existing district entirely, denying the owners of the remaining properties in the former district the ability to use the tax credit program. This automatic delisting of an historic district can also happen when a substantial portion of the existing properties of a district are altered to the point that they are no longer considered 'historic'.

Other less obvious impacts to the community include the increased property values traditionally found in historic districts and individual historic properties. According to the attached document "Benefits of Residential

Historic District Designation for Property Owners”, property values saw a 5% to 35% increase per decade over undesignated neighborhoods ^{page 5 of report}.

It should be noted here that the document was not presented as part of the Adhoc Committee. It is being provided here as additional information to reinforce similar statements made during the meeting with respect to property values.

Other recommended changes

The Adhoc Committee reviewed other changes that might be made to improve the current ordinance. Mr. DeRose made several recommendations on things that a local ordinance should include, and it was confirmed by Mr. Eastman that in each case those items are already included in the current ordinance. It was clear that the Landmarks Ordinance meets the current standard model and the Adhoc Committee could not justify suggesting any further changes.

Conclusion

The committee made one motion to include opt-out language to the current landmark ordinance. The motion failed due to a lack of a second. It is clear from the discussion that the addition of opt-out language would have a substantially negative impact to the City of Waukesha and its historic properties owners. The main justification for adding opt-out language is mainly a concern for property owner rights; the case most often brought up as example being the recent Y.M.C.A property, which was designated historic after the purchase of the property. It has since been identified that the City of Waukesha needs to take a new look at its historic property inventory so that new listings are done more promptly. In the case of the Y.M.C.A. property designation, it can be stated that the outlined process for landmark designation worked correctly, though the timing of final decision may not have been satisfactory to all parties involved. Since the property owner had ‘their day in court’ and the property was delisted and ultimately demolished, the property rights of the Y.M.C.A. could not be said to have been denied them.

It has recently come to my attention that the City of Milwaukee is also investigating the possibility including opt-out language in their Landmarks Ordinance. As part of that discussion, the National Trust for Historic Preservation sent the chair of Milwaukee’s Historic preservation a letter that warned of possible increased litigation risk due to adding an opt-out clause in the local ordinance. A copy of that letter is also included with this report. This information was not available at the time of the meeting of the Adhoc Committee; therefore, its contents were not part of the original discussion.

Respectfully submitted

Reginald W. Sprecher