



## *Office of the City Attorney*

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### **Memorandum**

From: Brian Running  
To: Common Council, Mayor  
Re: Procedure for Appeal from the Landmarks Commission's Denial of a Certificate of Appropriateness for the Demolition of the Moor Mud Baths Building

As you know, Waukesha County requested a Certificate of Appropriateness for the demolition of the Moor Mud Baths building from the Landmarks Commission, and the Commission denied the request. The Certificate of Appropriateness is required for demolition of the building because it is designated a landmark.

The County is allowed to appeal the Commission's decision, and the appeal is to the Common Council. This appeal right is provided for by both state statute and our Municipal Code. However, neither the statute nor the code specify a procedure for the appeal. All we have to go by is Municipal Code §28.05(3)(g), which says:

(g) Common Council Review. If a timely appeal is filed with the City Clerk, the Common Council shall promptly review the decision of the Commission applying the factors set forth in 3(b) above. The Council may reverse or affirm wholly, partly, or may modify the decision of the Commission.

So that the parties know what to expect and can prepare for the hearing, it is strongly advisable that we set procedural rules in advance of the hearing. The Council may set its own procedural rules for the hearing, as long as the rules comply with the Code and with principles of due process.

We have had extensive discussions about this here in my office, and we suggest that the Council adopt the rules of procedure shown on the attached proposed resolution for the hearing. Most of the suggested rules are self-explanatory, but the very first one is not. "De novo" just means that the Council will be hearing the application for the Certificate of Appropriateness from scratch, as if it were in the place of the Landmarks Commission. You will follow the same rules that the Landmarks Commission was bound to follow. You will not be bound by the Landmarks Commission's decision, you will be free to reach your own conclusion.

There will be a memo sent to you closer to the date of the hearing explaining the matter in more detail, and the laws that will apply. A copy of Code §28.05 is attached for your reference.

## **28.05 Powers and Duties**

(1) DESIGNATION. (Am. #9-13) The Commission shall have the power, subject to Common Council approval and §28.06 of this Code, to designate landmarks, landmark sites and historic districts within the City limits, based upon the criteria established under §28.04. Once the Common Council approves their designation, such landmarks, landmark sites and historic districts shall be subject to all the provisions of this chapter.

(2) RECOGNITION OF LANDMARKS AND LANDMARK SITES. Upon designation of a landmark or landmark site in accordance with §§28.04 and 28.06 hereof, the Commission shall, with the owner's permission, cause to be prepared and erected on such property, at City expense, a suitable plaque declaring that such property is a landmark or landmark site. This plaque shall be so placed as to be easily visible to passing pedestrians and shall state the accepted name of the landmark or landmark site and other information deemed proper by the Commission.

### **(3) (Am. #47-05) REGULATION OF CONSTRUCTION, RECONSTRUCTION, EXTERIOR ALTERATION AND DEMOLITION**

(a) Certificate Required. No owner or person in charge of a historic structure, historic site, or structure within a Historic District shall reconstruct, alter or demolish all or any part of the exterior of such property or construct any improvement unless a Certificate of Appropriateness has been granted by the Landmarks Commission. Unless such Certificate has been granted by the Commission, the Building Inspector shall not issue a permit for any such work.

(b) Factors Considered. Upon the filing of an application for a Certificate of Appropriateness with the Commission, the Commission shall consider the following:

1. In the case of a designated historic structure or historic site, whether the proposed work would detrimentally change, destroy or adversely affect any exterior feature of the improvement or site upon which said work is to be done;
2. In the case of the construction of a new improvement upon a historic site, or within a historic district whether the exterior of such improvement would adversely affect or harmonize with the external appearance other neighboring improvements on such site or within the district;
3. In the case of any property located in a historic district, whether the proposed construction, reconstruction, exterior alteration or demolition does not conform to the purpose and intent of this section and to the objectives and design criteria of the historic preservation plan for said district;
4. Whether the building or structure is of such architectural or historical significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the City and State;
5. In the case of a request for the demolition of a deteriorated building or structure, any economic hardship or difficulty claimed by the owner shall not be self-created or is the result of any failure to maintain the property in good repair.

(c) Review and Approval. If, after applying the factors set forth in (b) above, the Commission determines that the completed application for a Certificate of Appropriateness and the proposed changes are consistent with the character and features of the property or district, it shall issue the Certificate of Appropriateness. The Commission shall make this decision within forty-five (45) days of the filing of a completed application.

(d) Other Permits Required. The issuance of a Certificate of Appropriateness shall not relieve the applicant from obtaining other permits and approvals required by the City. A building permit or other municipal permit shall be invalid if it is obtained without the presentation of the Certificate of Appropriateness required for the proposed work.

(e) Continuing Obligation. If the Commission fails to issue a Certificate of Appropriateness, the Commission shall, with the cooperation of the applicant, work with the applicant in an attempt to obtain a Certificate of Appropriateness within the guidelines of this ordinance.

(f) Appeals. Should the Commission fail to issue a Certificate of Appropriateness after considering the factors set forth in (b) above, the applicant must be notified in writing and given a reason for the denial. The applicant may appeal such decision to Common Council by filing an appeal with the City Clerk within thirty (30) days of receipt of the determination.

(g) Common Council Review. If a timely appeal is filed with the City Clerk, the Common Council shall promptly review the decision of the Commission applying the factors set forth in 3(b) above. The Council may reverse or affirm wholly, partly, or may modify the decision of the Commission.

(4) SALE OF LANDMARKS AND LANDMARK SITES. (Am. #9-13) Any person listed as the owner of record of a landmark site at the time of its designation, who can demonstrate to the Commission that by virtue of such designation the owner is unable to find a buyer willing to preserve such landmark or landmark site, even though he has made reasonable attempts in good faith to find and attract such a buyer, may petition the Commission for a rescission of the designation. Following the filing of such petition with the secretary of the Commission:

(a) The owner and the Commission shall work together in good faith to locate a buyer for the property who is willing to abide by its designation.

(b) (Am. #9-13) If at the end of a period not exceeding 2 months from the petition date no such buyer can be found, and if the owner still desires to obtain such rescission, the Common Council shall rescind the designation of the property.

(c) In the event of such rescission, the Commission shall notify the City Clerk, Building Inspector, City Attorney and the City Assessor of the rescission, and shall cause the same to be recorded, at its own expense, in the office of the Waukesha County Register of Deeds.

(d) (Am. #9-13) Following any such rescission, the subject property may not be redesignated as a landmark or landmark site within 5 years following the date of rescission, without the owner's permission.

(5) REGULATION OF DEMOLITION. (Rep. #47-05)

(5) OTHER DUTIES. (Ren. #47-05) The Commission shall have the following duties in addition to those previously specified:

(a) Actively work for the passage of enabling legislation which would encourage landmark owners to carry out the intent of this chapter.

(b) Work closely with appropriate individuals and agencies in attempting to include landmarks or landmark sites on the National Register of Historic Places.

(c) Work to educate and inform the citizens concerning the City's historic heritage, landmarks and landmark sites as designated in this section.

(d) As it deems advisable, receive and solicit funds for the purpose of landmarks preservation in the City. Such funds shall be placed in a special City account for that purpose.