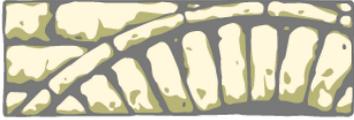


MADISON TRUST



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HISTORIC PRESERVATION

Mayor Paul Soglin
210 MLK, Jr. Blvd., Room 403
City-County Bldg.
Madison, WI, 53703

27 April, 2011

Mayor Soglin-

I'm writing to ask you to give some urgent attention to a policy implication that has arisen peripheral to the Edgewater expansion proposal. It is urgent because the city has until May 14 to respond to an appeal of the suit brought by Fred Mohs and Eugene Devitt in the wake of the Council's overturning of the Landmarks Commission decision.

As you know, the Landmarks Commission voted to deny Hammes Co. a Certificate of Appropriateness for the proposal. Hammes Co. appealed that decision to the Council claiming financial hardship pursuant to MGO 33.19(5)f. The Council voted to overturn the Landmarks Commission decision. Fred Mohs and Eugene Devitt filed a suit contending that the Common Council's vote overturning the Landmarks Commission was based on a flawed interpretation of the ordinance that defined the "applicant" as being the same as the "owner" of the property.

The suit was dismissed by Dane County Circuit Court Judge Juan Colas. However, in dismissing the suit, Judge Colas found that the Council was indeed given inappropriate advice on the interpretation of the terms *applicant* and *owner*.

The ordinance (at 33.19(5)f) allows a decision of the Landmarks Commission to be appealed to the Common Council "by the *applicant* for the permit." Upon appeal the Council may reverse or modify the decision of the Landmarks Commission if a majority finds that failure to grant the Certificate of Appropriateness will cause "serious hardship for the *owner*." When the Council voted on the appeal, Hammes Co. was not the owner of the property. It was only a corporation that had an option to purchase the property, yet it was allowed to appeal the Landmarks decision **based on a claim of serious hardship**, a right afforded the *owner* of a property by the Landmarks Ordinance, not an entity with an option to purchase it.

If this interpretation of the ordinance is defended by the city, it will seriously jeopardize the integrity of the Landmarks Ordinance and its intended purpose to compel the maintenance of the historic character of our historic districts. It would allow any person or corporation to secure an option on any property in a historic district, propose a project that defies the design guidelines in the district, and then claim financial hardship as the *owner* of the property to appeal the decision to the Council when the Landmarks Commission denies them a CoA. The intent of the appeal language

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appears quite clearly to be to provide a shield for property *owners* who are unduly financially burdened by the requirements that the Landmarks Ordinance may place on their property.

We urge your office to consider the long-term implications of defending this policy, and to modify the city's Brief in response to the appeal of the suit to the State Court of Appeals in District IV.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Tish', written in a cursive style.

Jason Tish
Executive Director

cc: Amy Scanlon
Mansion Hill Neighborhood Association
Anne Monks
Ken Golden

Dedicated to the Preservation of Madison's Historic Places

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