



CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
381 East Main Street, Stoughton, WI. 53589

(608) 873-6619

www.ci.stoughton.wi.us

RODNEY J. SCHEEL
DIRECTOR

Date: April 5, 2017

To: Planning Commissioners

From: Rodney J. Scheel
Director of Planning & Development

Michael P. Stacey
Zoning Administrator/Assistant Planner

Subject: Agenda Item for the April 10, 2017 Planning Commission Meeting.

5. Request by Dackprint, LLC (Dennis & Amy Kittleson) for approval of a Downtown Design Overlay Zoning District project review to demolish the building at 305/315 E. Main Street.

This property is part of the Downtown Design Overlay Zoning District which requires project review approval by the Planning Commission. Project review is also required to follow the conditional use procedures. As part of the conditional use process, a public hearing is required at a Planning Commission meeting and has been noticed for this meeting as such. This building is arguably in very poor condition and the owners would like to remove it and plan for public open space with the potential for redevelopment/infill in the future. A letter from the State Historical Society has been provided which allows the demolition of a contributing historic structure within the Downtown Historic District. City Attorney Matt Dregne has provided a letter regarding the process for a demolition request within this overlay district. A resolution and supporting documents are provided.

CITY OF STOUGHTON, 381 E. MAIN STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE PLANNING COMMISSION

Project review and approval to demolish the structure located at 305-315 E. Main Street, Stoughton

Committee Action: Planning Commission approves the site plan – 0 with the Mayor voting.

Fiscal Impact: None.

File Number: R - 10 - 2017

Date Introduced: March 13, 2017

RECITALS

- A. Dackprint, LLC (Dennis and Amy Kittleson) (the “Applicant”) is seeking project review and approval, pursuant to Section 78-913 of the City Code, to demolish the structure (“Structure”) at 305-315 E. Main Street in the City of Stoughton, Dane County, Wisconsin (the “Property”), to grade the site consistent with the grade present before demolition, and to seed the site to ensure the growth of grass to cover the Property.
- B. The Property is zoned CB – Central Business and is within the Downtown Design Overlay Zoning District.
- C. The City Planning Commission reviewed and discussed the request to demolish the structure at their regular March 13, 2017 meeting.
- D. Under Section 78-913(4)(c), when reviewing an application to demolish a building in the Downtown Design Overlay Zoning District, the plan commission “shall focus its review on the application’s compliance with sound aesthetic, land use, site design and economic revitalization practices. In part, this effort shall be guided by the comprehensive plan.”
- E. With respect to the “sound aesthetic” and site design factors, the City Planning Commission finds that:
1. Preserving the building [IS / IS NOT] important to preserve aesthetic or other qualities of the District based upon the following qualities that [CONTRIBUTE TO / DETRACT FROM] the historical and visual character of the District:

 2. The proposed open space plan for the Property [CONTRIBUTES TO / DETRACTS FROM] the visual quality of the District.
- F. With respect to the “land use” factor, the City Planning Commission finds that:
1. The open space plan [DOES / DOES NOT] provide an acceptable land use, at least until a new structure is constructed on the Property.

2. Preserving the building [IS / IS NOT] practicable given the nature of the building and the legally and practically available uses of the buildings. The Commission [FINDS / DOES NOT FIND] that use of the first floor for residential purposes is not allowable under existing regulations and use of the first floor for commercial purposes would require interior design modifications.

G. With respect to the “economic revitalization” factor, the City Planning Commission finds that:

1. Removing the building would [ADVANCE / INTERFERE WITH] economic revitalization of the District.
2. The open space plan would [ADVANCE / INTERFERE WITH] economic revitalization of the District.

H. Applying one or more the foregoing factors, the City Planning Commission finds that demolition of the Structure and conversion of the Property to open space [IS / IS NOT] in compliance with sound aesthetic, land use, site design, and economic revitalization practices.

I. The City Planning Commission finds that demolition of the Structure and conversion of the Property to open space [IS / IS NOT] consistent with the City of Stoughton Comprehensive Plan for the following reason(s):

- a. _____.
- b. _____.
- c. _____.
- d. _____.

RESOLUTION

THEREFORE, BE IT RESOLVED by the City of Stoughton Planning Commission that the application for Project Approval to demolish the structure at 305-315 E. Main Street, Stoughton, WI, is [approved / denied].

Mayor Donna Olson
Planning Commission Chair

Date

PUBLIC HEARING NOTICE

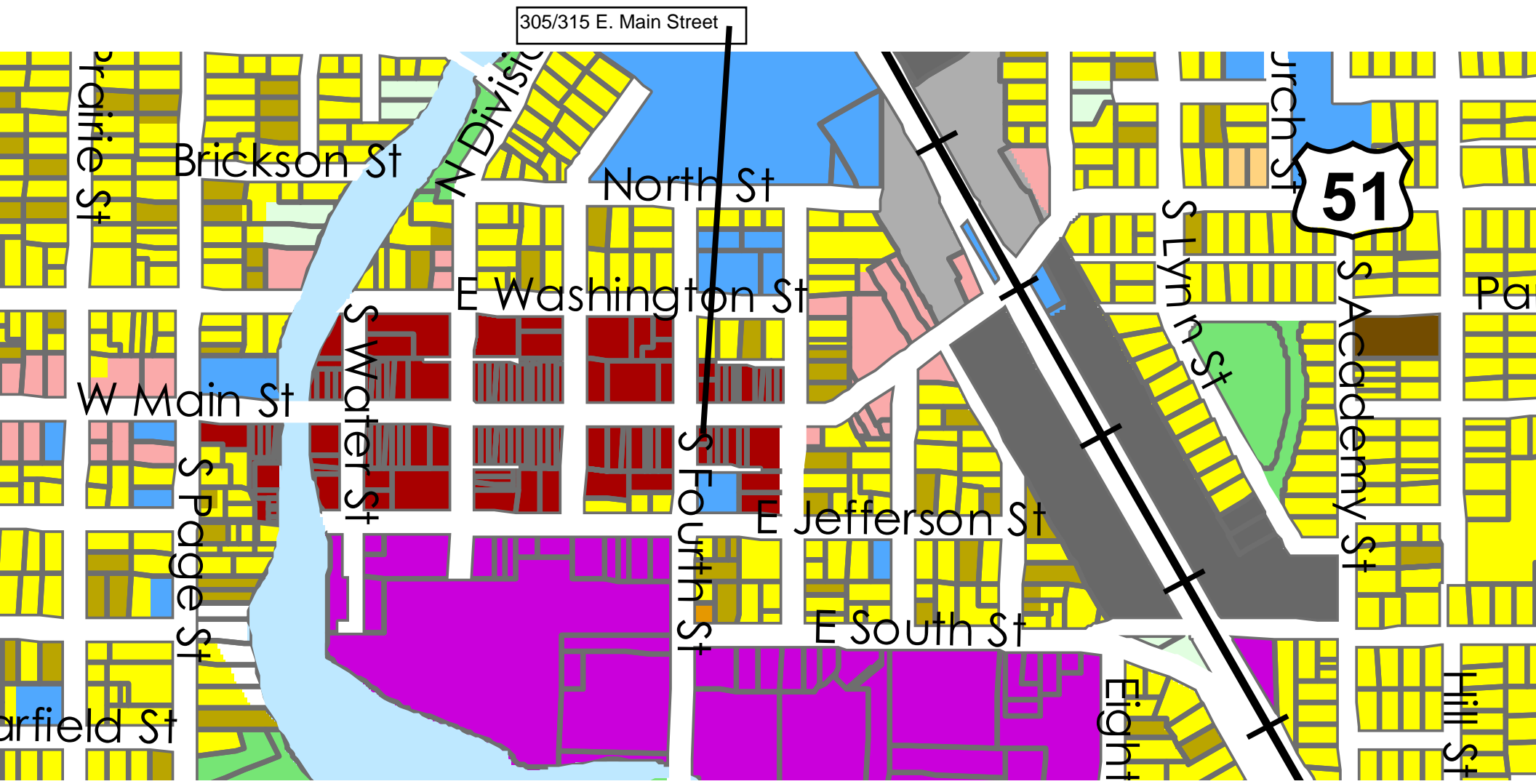
The City of Stoughton Planning Commission will hold a Public Hearing on Monday, April 10, 2017 at 6:00 o'clock p.m., or as soon after as the matter may be heard, in the Council Chambers, Public Safety Building, 321 South Fourth Street, Second Floor, Stoughton, Wisconsin, 53589, to consider a proposed application by Dack Print LLC (Dennis and Amy Kittleson), for a Downtown Design Overlay District Project request to remove the building at 305/315 E. Main Street, Stoughton.

For questions regarding this notice please contact Michael Stacey, Zoning Administrator at 608-646-0421.

Additional information including a location map can be found at:
<http://stoughtoncitydocs.com/planning-commission/>

Michael P. Stacey
Zoning Administrator

Published March 23, 2017 Hub
Published March 30, 2017 Hub



305/315 E. Main Street



Brickson St

North St

E Washington St

W Main St

S Water St

S Page St

S Lynn St

E Jefferson St

E South St

S Academy St

Eight

Hill St




January 25, 2017

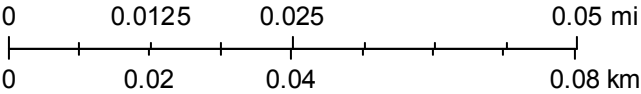
House Number

CSM Text

Plat Labels

 Tax Parcels

1:1,068



Planning
Sources: Esri, HERE, DeLorme, Intermap, increment P Corp.,
GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL,
Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong),
swisstopo, MapmyIndia, © OpenStreetMap contributors, and the

CITY OF STOUGHTON
DEPARTMENT OF PLANNING & DEVELOPMENT
BUILDING/ZONING PERMIT APPLICATION

Date of Application September 27, 2016

Applicant Name 315 E. Main Stoughton LLC **Phone** 608-370-7175

Applicant Email tim@wislaw.net (Contact person: Tim Homar, 635 Water St., PO Box 458, Sauk City, WI 53583)

Owners Name (if different than applicant) _____ **Phone** _____

Subject Property Address 315 E. Main, Stoughton, WI

Permit for Demolition

Proposed use(s) Demolish two-story building, level site, restore to grass

Project area for new structures and additions (sq. ft.) n/a

Estimated building construction cost including labor n/a

Estimated electric construction cost including labor n/a

Estimated plumbing construction cost including labor n/a

Estimated hvac construction cost including labor n/a

*Do not include costs related to flooring, carpeting or painting.

Permit fee \$85.00

.....
Contractor Information:

Construction _____ **Phone#** _____ **Lic#** _____

Electrical _____ **Phone#** _____ **Lic#** _____

Plumbing _____ **Phone#** _____ **Lic#** _____

HVAC _____ **Phone#** _____ **Lic#** _____

—

Cautionary Statement to Owners Obtaining Building Permits

Section 101.65 (1r) of the Wisconsin Statutes requires municipalities that enforce the Uniform Dwelling Code to provide an owner who applies for a building permit with a statement advising the owner that:

If the owner hires a contractor to perform work under the building permit and the contractor is not bonded or insured as required under Section 101.654(2)(a), the following consequences might occur:

The owner may be held liable for any bodily injury to or death of others or for any damage to the property of others that arises out of the work performed under this building permit or that is caused by any negligence by the contractor that occurs in connection with the work performed under this building permit.

The owner may not be able to collect from the contractor, damages for any loss sustained by the owner because of a violation by the contractor of the one and two-family dwelling code or an ordinance enacted under sub.

(1)(a), because of any bodily injury to or death of others or damage to property of others that arises out of the

work performed under this building permit or because of any bodily injury to or death of others or damage to property of others that is caused by any negligence by the contractor that occurs in connection with the work performed under this building permit.

Cautionary Statement to Contractors for Projects Involving Buildings Built Before 1978

If this project is in a dwelling or child-occupied facility, built before 1978, and disturbs 6 sq. ft. or more of paint per room, 20 sq. ft. or more of exterior paint, or involves windows, then the requirements of Chapter DHS 163 requiring Lead-Safe Renovation Training and Certification apply. Call (608)266-6876 or go to <http://dhs.wisconsin.gov/lead/WisconsinRRPRule.htm>

Wetlands Notice to Permit Applicants

"You are responsible for complying with state and federal laws concerning construction near or on wetlands, lakes, and streams. Wetlands that are not associated with open water can be difficult to identify. Failure to comply may result in removal or modification of construction that violates the law or other penalties or costs. For more information, visit the Department of Natural Resources wetlands identification web page: (<http://dnr.wi.gov/wetlands/delineation.html>) or contact a department of Natural Resources service center."

Additional Responsibilities for Owners with Projects Disturbing One or More Acres of Soil

I understand that this project is subject to Chapter NR 151 regarding additional erosion control and stormwater management and will comply with those standards.

IF APPLICABLE, A PLAN MUST BE SUBMITTED SHOWING LOT LINES AND ALL DIMENSIONS OF THE PROJECT. NO WORK SHALL BEGIN WITHOUT A BUILDING PERMIT. ANY QUESTIONS, CALL THE DEPARTMENT OF PLANNING & DEVELOPMENT AT 608-873-6677. THERE IS ADDITIONAL INFORMATION AT WWW.CITYOFSTOUGHTON.COM/PLANNING

Owner/Contractor Signature Timothy M. Han Date 9/27/16



CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
381 East Main Street, Stoughton, WI. 53589

(608) 873-6619

www.ci.stoughton.wi.us

RODNEY J. SCHEEL
DIRECTOR

September 27, 2016

Chief Office of Preservation
State Historical Society
Chip Brown
816 State Street
Madison, WI. 53706

Dear Mr. Brown:

Per State Statute section 66.0143, I am providing notice that 315 E MAIN STOUGHTON LLC, (Timothy Homar) owner of the property at 315 E. Main Street, Stoughton, Wisconsin has applied for a demolition permit for removal of the office building. The property in question is dated c.1884 and is contributing to the Main Street Historic District. I am providing this letter of notice, request to raze property and pictures of the office building on disk.

Please contact me at 608-646-0421 to let me know if anything else is necessary. I understand there is a 30 day waiting period before we can issue a demo permit to remove the structure.

Sincerely,
City of Stoughton

Michael P. Stacey

Michael P. Stacey
Zoning Administrator/Assistant Planner

cc. Timothy Homar (via-email)

16-1028/DA

STATE HISTORIC PRESERVATION OFFICER NOTICE

PER WIS. STAT. § 66.0413 — RAZING HISTORIC BUILDINGS

REQUEST TO RAZE PROPERTY LISTED ON STATE REGISTER/NATIONAL REGISTER OF HISTORIC PLACES

Requesting Unit of Government: City of StoughtonProject Contact Person: Michael StaceyContact Return Address: 381 E. Main Street, Stoughton, WI. 53589Contact Phone Number: 608-646-0421 FAX Number: 608-873-5519Contact Email Address: mstacey@ci.stoughton.wi.usListed Property Name: N/AListed Property Address: 315 E. Main Street, Stoughton, WI. 53589

Town, Range and Section # (If applicable): Town: _____ Range: _____ E/W (circle one) Section: _____

Indicate the Following Where Applicable (Check Boxes):

Map Showing Property Location Included YesCurrent Photos of Property Included Yes

Property is Publicly-owned – Public Entity Name: _____

Property is Non-publicly-owned – Owner Name: Timothy HomarAuthorized Signature: Michael Stacey Date: 9/27/2016Type or Print Name: Michael Stacey

STATE HISTORIC PRESERVATION OFFICE RESPONSE

☒ Acknowledge Notice☒ Waive Remaining 30-day Time Period (Demolition may proceed upon receipt of this response)

Request 30-day Time Period to Create/Preserve Historic Record of Property

Other: _____

Authorized Signature: _____

Date: 10/28/16

To address the Conditional Use Permit.

I (Dennis Kittleson) am writing this letter to address the form that is used for the Conditional Use Permit for the property at the address of 305-315 East Main Street Stoughton WI 53589. The intention is to remove the existing building and then convert the property into a gathering area style of park. The intended use is to keep it as an open area that could be used for various activities. It will be privately owned with the intention that it will be open to the public to use as long as it is respected.



315 E. Main St
Stoughton, WI 53589



h St

E Main St

315 E. Main

27.09.2016 11:33



04.06.2017 13:22



04.06.2017 13:25



04.06.2017 13:24



04.06.2017 13:24



NO
TRESPASSING

04.06.2017 13:23



04.06.2017 18:28





NO PARKING
IN FRONT OF
AUTHORIZED
VEHICLES ONLY
UNAUTHORIZED
VEHICLES WILL
BE TOWED AWAY
AT THE OWNER'S
EXPENSE

27.09.2016 11:29

To Plan Commission
Rodney Scheel, Planning Director

From Matt Dregne, City Attorney

Date January 20, 2017

Re Demolition of building in downtown design overlay zoning district

This memo addresses two questions relating to the proposed demolition of a building in the downtown design overlay zoning district. One question asks what procedure applies to a request to demolish a building in the downtown design overlay zoning district. In my opinion, the procedures applicable to conditional use permits must be followed, except where Sec. 78-913 specifies a different procedure. The second question asks whether demolition of the building and converting the site to open space (rather than replacing the building) is allowable under existing regulations. In my opinion, such demolition is allowable if approved by the plan commission.

BACKGROUND INFORMATION

The owner of the building at 315 East Main Street has proposed demolishing the building and converting the site to open space. The building and site are located in the downtown design overlay zoning district (a special, overlay zoning district under the City's zoning code). The building is also located in a historic district listed on the national register of historic places. The building has not been designated as a "landmark" pursuant to Chapter 38 of the Municipal Code.

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0120171536

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53226-3282

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Fax 414.982.2889
www.staffordlaw.com

DISCUSSION

1. *What is the procedure for obtaining City approval to demolish a building in the downtown design overlay zoning district?*

Chapter 78 (the zoning code) contains the following provisions relating to the demolition of a structure in the downtown design overlay zoning district:

- a. An application to demolish an existing building is subject to “Project Review.” Sec. 78-913(3)(c).
- b. The Plan Commission shall serve “as the final discretionary review body on aesthetics and site design, and shall focus its review on the application’s compliance with sound aesthetic, land use, site design and economic revitalization practices.” Sec. 78-913(3)(c) and (4)(c).
- c. “Project review proposals shall follow procedures for conditional use permits, refer to section 78-905.” Sec. 78-913(4)(c)1. Section 78-905 contains detailed procedures for processing conditional use permits, including requiring a public hearing preceded by publication of a Class 2 notice. Under the CUP procedure, the plan commission makes a recommendation and the city council makes the final decision. Sec. 78-905.
- d. Appendix F to Chapter 78 contains an outline of the process for reviewing proposals in the downtown design overlay district. Under the procedure outlined in Appendix F, the Plan Commission makes the final decision on Project Review.

Sections 78-913(3)(c) and (4)(c), and Appendix F, are clear in stating that the plan commission is the final Project Review decision-maker. The interpretive challenge is presented by Section 78-913(4)(c), which states that project review shall follow procedures for conditional use permits. It is not possible for the CUP procedures to be applied in their entirety, without conflicting with the clear language giving the plan commission final Project Review authority.

The Wisconsin Supreme Court has described statutory interpretation as follows:

Thus, we have repeatedly held that statutory interpretation “begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.” (citations omitted) Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-

defined words or phrases are given their technical or special definitional meaning. (citations omitted)

Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results. (citations omitted).

State ex rel. Kalal v. Circuit Court for Dane County, 271 Wis. 2d 633 (2004).

Applying these principles of statutory interpretation, the requirement that project review “follow procedures for conditional use permits” must be reasonably interpreted in relation to other language in Section 78-913. In my opinion, this means that the procedures applicable to conditional use permits must be followed, except where Sec. 78-913 specifies a different procedure. That means, for example, that the plan commission must conduct a public hearing on the matter, preceded by publication of a Class 2 notice. That also means that the Plan Commission makes the final decision on project review.

The building in question has not been designated as a landmark under Chapter 38 of the City’s ordinances. If a building has been so designated, then additional procedural issues would need to be addressed. For example, Chapter 38 states that a designated landmark may not be demolished without prior approval of the landmarks preservation commission. Under Chapter 78 “Project Review,” if a building is a designated landmark, the landmarks commission serves as the “recommending body” to the plan commission.

Finally, the building in question is located in a historic district listed on the national register of historic places. Before a building contributing to a historic district listed on the national register of historic places can be demolished, it is necessary to give notice to the State Historical Society, so that the Society can take steps to create or preserve a historic record. It is my understanding that such notice has been given here.

2. *May a building in the downtown design overlay district be demolished and not replaced?*

The Plan Commission has the responsibility and authority to decide whether to authorize the demolition of a building in the downtown design overlay district. The ordinance says that the Plan Commission is to “focus its review on the application’s compliance with sound aesthetic, land use, site design and economic revitalization practices.” Sec.

78-913(4)(c). Nothing in the ordinance prohibits the plan commission from approving the demolition of a building where the building will be replaced with open space.

cc: Mayor Donna Olson

Matthew P. Dregne
Government Law Team Leader

222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
mdregne@staffordlaw.com
608.259.2618

March 17, 2017

By Email and U.S. Mail
dackprint@gmail.com and dkittleson@ci.stoughton.wi.us

Dennis Kittleson
109 East Taft Street
Stoughton, WI 53589

Dear Mr. Kittleson:

The Planning Commission is scheduled to conduct a public hearing on your application for project review approval relating to the proposed demolition of the building at 305 – 315 East Main Street. The purpose of this letter is to request that you supplement your application with additional information required by City ordinances.

Your application seeks approval to demolish the existing building, and to convert the property to park-like open space. The City's ordinance requires the application to describe how this property will look after it is converted to open space. Specifically, the application must include (1) a "clear depiction of the proposed appearance of the property," (2) a "detailed landscape plan of the subject property ... showing the location, species and size of all proposed plant materials," and (3) a "written description of the proposed project, including a complete listing of proposed components, materials, and colors." If approved, these plans are binding. The conceptual open space plan included with your application does not provide all of the required information. In addition, the plan in the application needs to be an actual, final plan for the project, rather than a conceptual plan that you might change later.

The City's ordinance also requires the application to provide a "written justification for the proposed alteration consisting of the reasons why the applicant believes the requested alteration is in harmony with the standards of the Downtown Design Overlay Zoning District." This element is missing from your application.

Milwaukee Office

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March 17, 2017

Page 2

I have prepared the enclosed outline to help you and the Planning Commission understand and apply the City's ordinance. Under the ordinance, the Planning Commission is required to determine whether the proposed demolition (and the proposed new open space area) complies with sound aesthetic, land use, site design and economic revitalization practices. The enclosed outline provides examples of how you and the Planning Commission might approach those standards. I hope this is helpful to you in supplementing your application.

The Planning Department will need your supplemental materials by no later than April 4, in order to have them in time to be ready for the April 10 Planning Commission meeting. If you have questions about this letter or other matters relating to your application, the Planning Department and I will do our best to answer them.

Very truly yours,



Matthew P. Dregne

MPD:kps

Enclosure

cc: Mayor Donna Olson (By Email)
Rodney Scheel, Director of Planning & Development (By Email)
Michael Stacey, Zoning Administrator (By Email)

Project Review: 305 – 315 East Main Street

1. Proposal is to (1) demolish existing structure and (2) convert site to open space.
2. Purposes of Downtown Design Overlay Zoning District (Sec. 78-913(1):
 - A. To preserve and enhance the aesthetic qualities (historical and visual) of the community, and attain a consistent visually pleasing image for portions of the City.
 - B. To forward aesthetic and economic objectives of the City by controlling the site design and appearance of development in the district.
3. Standards to guide the decision:
 - A. Sound aesthetic, land use, site design and economic revitalization practices.
 - B. Consistency with Comprehensive Plan.
4. Possible framework for evaluating proposed demolition and conversion to open space.
 - A. Aesthetic considerations.
 - (1) Is preserving the building important to preserve aesthetic or other qualities of the district?
 - (2) Even if the building serves important aesthetic interests, is preserving the building practicable, given the nature of the building, and the legally and practically available uses of the building?
 - (3) Assuming removing the building is appropriate, does the proposed open space plan for the property appropriately enhance the visual quality of the district?
 - B. Land use considerations.
 - (1) Does the open space plan provide an appropriate land use, at least until a new structure is constructed on the site?
 - C. Site design considerations (see aesthetic considerations).

D. Economic revitalization considerations.

- (1) How would preserving the building promote or impair economic revitalization of the district?
- (2) How would removing the building promote or impair economic revitalization of the district?
- (3) How would the open space plan promote or impair economic revitalization of the district?

Applicant Response to Attorney Dregne's Letter

March 17, 2017

Dennis Kittleson
109 East Taft Street
Stoughton, WI 53589

Dear Mr. Kittleson:

The Planning Commission is scheduled to conduct a public hearing on your application for project review approval relating to the proposed demolition of the building at 305 — 315 East Main Street. The purpose of this letter is to request that you supplement your application with additional information required by City ordinances.

Your application seeks approval to demolish the existing building, and to convert the property to park-like open space. The City's ordinance requires the application to describe how this property will look after it is converted to open space. Specifically, the application must include (1) a "clear depiction of the proposed appearance of the property," (2) a "detailed landscape plan of the subject property ... showing the location, species and size of all proposed plant materials," and (3) a "written description of the proposed project, including a complete listing of proposed components, materials, and colors." If approved, these plans are binding. The conceptual open space plan included with your application does not provide all of the required information. In addition, the plan in the application needs to be an actual, final plan for the project, rather than a conceptual plan that you might change later. *The plan is to grade and plant Madison Parks grass seed at this time. We had submitted a plan previously for conceptual purposes. We will be using the time after the grading and seeding to determine what would be the best use of the space. At that time we will seek out what departments we need to contact to further our idea / plans.*

The City's ordinance also requires the application to provide a "written justification for the proposed alteration consisting of the reasons why the applicant believes the requested alteration is in harmony with the standards of the Downtown Design Overlay Zoning District." This element is missing from your application. *The building in question has been in a state of disrepair for a number of years. Extenuating circumstances have brought about the desire to do something with this property. Since it is located next to our business we elected to purchase it. We are looking to remove the building since it is not effective as a location for a business. The only parking that it has is off street. We have wondered why the building was allowed to become in such a state of disrepair. The building is run-down, and has sat vacant for multiple years. This building does not appear to fit in with other buildings within the downtown. This building is stick built and the downtown buildings are of brick and mortar. The building has a leaking roof which has caused*

interior water damage, a slab foundation that is cracked and in poor shape and a root cellar that is crumbling and leaks water.

I have prepared the enclosed outline to help you and the Planning Commission understand and apply the City's ordinance. Under the ordinance, the Planning Commission is required to determine whether the proposed demolition (and the proposed new open space area) complies with sound aesthetic, land use, site design and economic revitalization practices. The enclosed outline provides examples of how you and the Planning Commission might approach those standards. I hope this is helpful to you in supplementing your application.

The Planning Department will need your supplemental materials by no later than April 4, in order to have them in time to be ready for the April 10 Planning Commission meeting. If you have questions about this letter or other matters relating to your application, the Planning Department and I will do our best to answer them.

Very truly yours,

Matthew P. Dregne

MPD:kps

Enclosure

cc: Mayor Donna Olson (By Email)
Rodney Scheel, Director of Planning & Development (By Email)
Michael Stacey, Zoning Administrator (By Email)

Project Review: 305 — 315 East Main Street

1. Proposal is to (1) demolish existing structure and (2) convert site to open space.
2. Purposes of Downtown Design Overlay Zoning District (Sec. 78-913(1):
 - A. To preserve and enhance the aesthetic qualities (historical and visual) of the community, and attain a consistent visually pleasing image for portions of the City. **Our plan is to create an aesthetically pleasing area for the public to enjoy.**
 - B. To forward aesthetic and economic objectives of the City by controlling the site design and appearance of development in the district. **We believe at some point in the future this lot will be part of some type of redevelopment project and at that point the site design and appearance will need to meet the district requirements. At this point there are no plans to redevelop the site.**
3. Standards to guide the decision:
 - A. Sound aesthetic, land use, site design and economic revitalization practices. **We believe the current open space plan uses sound aesthetics until such time as the property is redeveloped.**
 - B. Consistency with Comprehensive Plan. **One of the objectives of the Comprehensive Plan includes: Encourage rehabilitation, redevelopment, and infill development of older areas of the downtown in a manner which respects Stoughton's character, is compatible with surrounding uses, and improves overall appearance. We believe the removal of the building furthers this objective.**
4. Possible framework for evaluating proposed demolition and conversion to open space.
 - A. Aesthetic considerations.
 - (1) Is preserving the building important to preserve aesthetic or other qualities of the district? **We believe the building is not contributing to the aesthetic nature of the district and does not appear to fit in with most downtown historic buildings.**
 - (2) Even if the building serves important aesthetic interests, is preserving the building practicable, given the nature of the building, and the legally and practically available uses of the building? **We believe the building is not**

economically practical to preserve and the property would serve a better purpose being open space until such time as a redevelopment/infill project is planned.

- (3) Assuming removing the building is appropriate, does the proposed open space plan for the property appropriately enhance the visual quality of the district? We propose to create an area of open space for the public to enjoy. We have not yet decided exactly what to plant on the property but would consider recommendations of the Planning Commission. Current plans are to seed and mulch the site.

B. Land use considerations.

- (1) Does the open space plan provide an appropriate land use, at least until a new structure is constructed on the site? We believe open space is needed in the downtown and is appropriate for this location at this time.

C. Site design considerations (see aesthetic considerations).

D. Economic revitalization considerations.

- (1) How would preserving the building promote or impair economic revitalization of the district? We don't believe the preservation of the building would promote nor impair the economic revitalization of the district. This building has been minimally used or vacant for decades.
- (2) How would removing the building promote or impair economic revitalization of the district? We believe removal of the building will go farther to promote economic revitalization than preserving the building would due to the extensive cost to restore the existing building.
- (3) How would the open space plan promote or impair economic revitalization of the district? We believe the open space plan is a great way to promote the downtown by creating a space for the public to enjoy. As we have stated, it is likely this property will be part of a redevelopment/infill project at some point in the future. However, we have no plans to redevelop.

985; publishing on the political subdivision's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. At least 30 days before the hearing described in par. (d) is held a political subdivision shall provide written notice, including a copy or summary of the proposed ordinance, to all such persons whose property, the allowable use of which, may be affected by the proposed ordinance. The notice shall be by mail or in any reasonable form that is agreed to by the person and the political subdivision, including electronic mail, voice mail, or text message. The political subdivision may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person.

(5) **APPLICABILITY OF A REGIONAL PLANNING COMMISSION'S PLAN.** A regional planning commission's comprehensive plan is only advisory in its applicability to a political subdivision and a political subdivision's comprehensive plan.

(6) **COMPREHENSIVE PLAN MAY TAKE EFFECT.** Notwithstanding sub. (4), a comprehensive plan, or an amendment of a comprehensive plan, may take effect even if a local governmental unit fails to provide the notice that is required under sub. (4) (e) or (f), unless the local governmental unit intentionally fails to provide the notice.

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90; 2003 a. 33, 93, 233, 307, 327; 2005 a. 26, 208; 2007 a. 121; 2009 a. 372; 2011 a. 257; 2013 a. 80; 2015 a. 391.

A municipality has the authority under s. 236.45 (2) to impose a temporary town-wide prohibition on land division while developing a comprehensive plan under this section. Wisconsin Realtors Association v. Town of West Point, 2008 WI App 40, 309 Wis. 2d 199, 747 N.W.2d 681, 06–2761.

The use of the word "coordination" in various statutes dealing with municipal planning does not by itself authorize towns to invoke a power of "coordination" that would impose affirmative duties upon certain municipalities that are in addition to any other obligations that are imposed under those statutes. With respect to the development of and amendment of comprehensive plans, s. 66.1001 is to be followed by the local governmental units and political subdivisions identified in that section. OAG 3–10.

66.10015 Limitation on development regulation authority and down zoning. (1) DEFINITIONS. In this section:

(a) "Approval" means a permit or authorization for building, zoning, driveway, stormwater, or other activity related to a project.

(as) "Down zoning ordinance" means a zoning ordinance that affects an area of land in one of the following ways:

1. By decreasing the development density of the land to be less dense than was allowed under its previous usage.

2. By reducing the permitted uses of the land, that are specified in a zoning ordinance or other land use regulation, to fewer uses than were allowed under its previous usage.

(b) "Existing requirements" means regulations, ordinances, rules, or other properly adopted requirements of a political subdivision that are in effect at the time the application for an approval is submitted to the political subdivision.

(bs) "Members-elect" means those members of the governing body of a political subdivision, at a particular time, who have been duly elected or appointed for a current regular or unexpired term and whose service has not terminated by death, resignation, or removal from office.

(c) "Political subdivision" means a city, village, town, or county.

(d) "Project" means a specific and identifiable land development that occurs on defined and adjacent parcels of land, which includes lands separated by roads, waterways, and easements.

(2) **USE OF EXISTING REQUIREMENTS.** (a) Except as provided under par. (b) or s. 66.0401, if a person has submitted an application for an approval, the political subdivision shall approve, deny, or conditionally approve the application solely based on existing requirements, unless the applicant and the political subdivision agree otherwise. An application is filed under this section on the date that the political subdivision receives the application.

(b) If a project requires more than one approval or approvals from more than one political subdivision and the applicant identifies the full scope of the project at the time of filing the application for the first approval required for the project, the existing requirements applicable in each political subdivision at the time of filing the application for the first approval required for the project shall be applicable to all subsequent approvals required for the project, unless the applicant and the political subdivision agree otherwise.

(c) An application for an approval shall expire not less than 60 days after filing if all of the following apply:

1. The application does not comply with form and content requirements.

2. Not more than 10 working days after filing, the political subdivision provides the applicant with written notice of the noncompliance. The notice shall specify the nature of the noncompliance and the date on which the application will expire if the noncompliance is not remedied.

3. The applicant fails to remedy the noncompliance before the date provided in the notice.

(d) This section does not prohibit a political subdivision from establishing an expiration date on an approval.

(3) **DOWN ZONING.** A political subdivision may enact a down zoning ordinance only if the ordinance is approved by at least two-thirds of the members-elect, except that if the down zoning ordinance is requested, or agreed to, by the person who owns the land affected by the proposed ordinance, the ordinance may be enacted by a simple majority of the members-elect.

History: 2013 a. 74; 2015 a. 391.

66.1002 Development moratoria. (1) DEFINITIONS. In this section:

(a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

(b) "Development moratorium" means a moratorium on rezoning or approving any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236.

(d) "Municipality" means any city, village, or town.

(e) "Public health professional" means any of the following:

1. A physician, as defined under s. 48.375 (2) (g).

2. A registered professional nurse, as defined under s. 49.498 (1) (L).

(f) "Registered engineer" means an individual who satisfies the registration requirements for a professional engineer as specified in s. 443.04.

(2) **MORATORIUM ALLOWED.** Subject to the limitations and requirements specified in this section, a municipality may enact a development moratorium ordinance if the municipality has enacted a comprehensive plan, is in the process of preparing its comprehensive plan, is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality, or is exempt from the requirement as described in s. 66.1001 (3m), and if at least one of the following applies:

(a) The municipality's governing body adopts a resolution stating that a moratorium is needed to prevent a shortage in, or the overburdening of, public facilities located in the municipality and that such a shortage or overburdening would otherwise occur during the period in which the moratorium would be in effect, except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer stating that in his or her opinion the possible shortage or overburdening of public facilities justifies the need for a moratorium.

(b) The municipality's governing body adopts a resolution stating that a moratorium is needed to address a significant threat to the public health or safety that is presented by a proposed or anticipated activity specified under sub. (4), except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer or public health profes-

SUMMARY TIMELINE OF THE DEMOLITION REQUEST

FOR 305-315 E. MAIN STREET

- September 27, 2016 – Application filed by Tim Homar (previous owner) to demolish the building.
- September 27, 2016 - Staff believed the demo request would have to follow the project review requirements for the Downtown Design Overlay Zoning District (DDOZD) which appeared to only require Planning Commission approval.
- September 27, 2016 – City Staff sent letter to State Historical Society per State Statute 66.0143 which requires a 30-day notice prior to a demolition.
- October 31, 2016 – City received the acknowledgment notice from the State Historical Society.
- November 16, 2016 – Dennis & Amy Kittleson purchased the property with the intent to continue with the demolition process.
- December 15, 2016 – Dennis Kittleson provided documentation that asbestos had been abated from the building.
- January 9, 2017 – Request went to Planning Commission for project review where it was tabled to allow Attorney Dregne to review.
- January 20, 2017 – Memo provided by Attorney Dregne addressing the standards for project review for the demo request which includes the conditional use process with the Planning Commission as the final approval authority.
- January 24, 2017 – Dennis Kittleson provided the application and fee of \$440 for the conditional use process.
- January 24, 2017 – Public hearing set for the March 13, 2017 Planning Commission meeting.
- February 2017 – Further staff discussion with Attorney Dregne revealed only the public hearing portion of the conditional use process is required and the requirements related to project review of the DDOZD applies.
- March 13, 2017 – Planning Commission tabled the request due to an overlap of noticed meetings.
- March 2017 – Public hearing set for the April 10, 2017 Planning meeting.

- March 17, 2017 – Attorney Dregne sent a letter to Dennis Kittleson outlining the requirement for project review including information missing in his application.
- April 6, 2017 – Dennis Kittleson provides information to address Attorney Dregne's letter.
- April 10, 2017 – Public hearing at the Planning Commission meeting.



CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
381 East Main Street, Stoughton, WI. 53589

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RODNEY J. SCHEEL
DIRECTOR

April 6, 2017

Dennis & Amy Kittleson
109 E. Taft Street
Stoughton, WI. 53589

Dear Property Owner:

I have completed a review of the proposed request to demolish the building at 305 - 315 E. Main Street, Stoughton, WI. – Demo application received 9/27/2016. A public hearing is scheduled for April 10, 2017 at the Planning Commission meeting of which you will receive notice.

1. The property at 305/315 E. Main Street is zoned CB – Central Business and is within the Downtown Design Overlay Zoning District.
2. An application was received on September 27, 2016 to demolish the structure at 305/315 E. Main Street. Per State Statutes Section 66.0143, a request to raze a property listed on the State Register/National Register of Historic Places was provided to the State Historical Office of Preservation. The City received a response from the State Historical Office dated October 31, 2016 which acknowledged the request and waived the 30-day time period which allows the demolition to proceed.
3. Zoning code section 78-913(1) related to the downtown design overlay district, states “Purpose and scope. These districts are intended to implement the urban design recommendations of the comprehensive plan by preserving and enhancing the aesthetic qualities (historical and visual) of the community, and by attaining a consistent visually pleasing image for various portions of the city. As emphasized by said plan, these districts are designed to forward both aesthetic and economic objectives of the city by controlling the site design and appearance of development within the district in a manner which is consistent with sound land use, urban design, and economic revitalization principles. The application of these standards will ensure the long-term progress and broad participation toward these principles.” The Planning Commission shall take into consideration the purpose of the overlay district during their review. The ordinance states the Planning Commission has final approval authority. The applicant has offered reasons why removal of the building and creating open space is consistent with sound land use, urban design, and economic revitalization principles. The current plan is to remove the building then grade and seed the property with future plans for

landscaping. Your application indicates the desire for input regarding landscaping of the property.

4. Zoning code section 78-913(3) states in part, “The plan commission shall be involved with all projects involving changes to the building appearance with the downtown design overlay district and the landmarks commission shall be involved only on locally-recognized landmarks.” **The structure at 305/315 E. Main Street is not locally recognized so landmarks commission involvement is not required.**
5. Zoning code section 78-913(3)(c) states, “Applications which involve modification to the physical configuration of a property (such as grading, the erection of a new building, the demolition of an existing building, or the addition or removal of bulk to an existing building) are subject to project review by the zoning administrator, landmarks commission (for locally-recognized landmarks), and the plan commission. The zoning administrator shall serve as the liaison between the applicant, landmarks commission, and the plan commission in facilitating the thorough and expedient review of an application, and shall ensure that the technical and procedural requirements of the zoning ordinance are met. The landmarks commission shall serve as the recommending body to the plan commission on locally-recognized landmarks. **The plan commission shall serve as the final discretionary review body on aesthetics and site design, and shall focus its review on the application's compliance with sound aesthetic, land use, site design and economic revitalization practices. In part, this effort shall be guided by the comprehensive plan.**” A resolution drafted with the assistance of Attorney Dregne will help guide the Planning Commission during this review process.
6. Zoning code section 78-913(4)(c)1 requires “Project review proposals follow procedures for conditional use permits, refer to section 78-905.” Section 78-905 contains detailed procedures for processing conditional use permits, including requiring a public hearing preceded by publication of a Class 2 notice. Under the CUP procedure, the planning commission makes a recommendation to the city council and the city council makes the final decision regarding the conditional use. However, the zoning code also states that the plan commission is the final discretionary review body. **The City Attorney has determined that the conditional use permit procedures apply, except where more specific language in the code requires otherwise. See City Attorney Matt Dregne’s previously provided opinion letter dated January 20, 2017.**
7. All project review applications shall meet the requirements of zoning code section 78-913(4)(c)2 as follows:
 - a) A clear depiction of the existing appearance of the property. Clear color photographs are recommended for this purpose. Scaled and dimensioned drawings of existing components such as windows, doors, railings, fencing or other site components, and/or detailed building elevations which are proposed for alteration or replacement may be required by the city. **Color photographs of the structure proposed to be demolished will be provided to the Commission.**
 - b) A clear depiction of the proposed appearance of the property. Paint charts, promotional brochures, and/or clear color photographs of replacement architectural components are recommended for this purpose. Scaled and dimensioned drawings of proposed components such as windows, doors, railings, fencing or other site components, and/or

detailed building elevations which are proposed for alteration or replacement may be required by the city. **A landscaping concept plan has been provided. Applicant proposes at this time that the property be seeded. Applicant anticipates the possibility of additional landscaping, and has indicated a desire for input from the Plan Commission regarding such additional landscaping.**

- c) For all projects involving a new building, or an addition exceeding 100 square feet of gross floor area, a detailed site plan which provides the following information:
- A. A title block indicating name and address of the current property owner, developer and project consultants;
 - B. The date of the original plan and the latest date of revision to the plan;
 - C. A north arrow and a graphic scale. Said scale shall not be smaller than one inch equals 100 feet;
 - D. All property lines and existing and proposed right-of-way lines with bearings and dimensions clearly labeled;
 - E. All existing and proposed easement lines and dimensions with a key provided and explained on the margins of the plan as to ownership and purpose;
 - F. All existing and proposed buildings, structures, and paved areas, including walks, drives, decks, patios, fences, utility poles, drainage facilities, and walls;
 - G. All required building setback lines;
 - H. A legal description of the subject property;
 - I. The location, type and size of all signage on the site;
 - J. The location, type and orientation of all exterior lighting on the subject property;
 - K. The location of all access points, parking and loading areas on the subject property, including a summary of the number of parking stalls and labels indicating the dimension of such areas;
 - L. The location of all outdoor storage areas;
 - M. The location and type of any permanently protected green space areas;
 - N. The location of existing and proposed drainage facilities;
 - O. In the legend, the following data for the subject property:
Lot area; Floor area; Floor area ratio; Impervious surface area; Impervious surface ratio; and Building height. **These requirements are not applicable since a new building or addition is not planned at this time. Before a new structure could be constructed on the site, City approval would be required based on City ordinances in effect at that time.**
- d) A detailed landscaping plan of the subject property, at the same scale as the main plan, showing the location, species and size of all proposed plant materials.
A concept plan has been provided and the initial intent is to plant grass to stabilize the site. The applicant seeks Plan Commission recommendations for future landscaping of the site.

- e) A written description of the proposed project, including a complete listing of proposed components, materials, and colors. **Information has been provided to describe the project.**
 - f) Written justification for the proposed alteration consisting of the reasons why the applicant believes the requested alteration is in harmony with the standards of the Downtown Design Overlay Zoning District, section 78-517. **Information has been provided related to the reasons for the demolition.**
8. Zoning code Appendix F contains an outline of the process for reviewing project proposals in the downtown design overlay district. **Under the procedure outlined in Appendix F, the planning commission makes the final decision on project reviews.**
9. Some of the Goals, Objectives and Policies of the Comprehensive Plan related to this request include:
- Promotion of redevelopment of lands with existing infrastructure;
 - Maintenance and rehabilitation of existing commercial structures;
 - Encourage the preservation of historically and architecturally significant structures;
 - Develop and enforce property maintenance;
 - Enhance and maintain the City's downtown area;
 - Encourage rehabilitation, redevelopment, and infill development of older areas in the downtown;
 - Encourage public-private partnership as a way to promote investment in the downtown area and to spur downtown revitalization.

Arguably, the approval of this demolition request would be promoting redevelopment of a property with a dilapidated building. The request certainly does not meet all of objectives of the Comprehensive Plan but some types of redevelopment cannot be achieved without removal of an existing structure. The fact that the building was vacant for many years contributed to the lack of maintenance especially the roof. At this point, it may not be economically feasible to rehabilitate the building. We have received information from you related to how you believe this request meets the goals, objectives and policies of the Comprehensive Plan.

10. The Planning Commission is charged with deciding if the proposed demolition and open space is in compliance with sound aesthetic, land use, site design and economic revitalization practices. Additionally, the Commission shall find whether or not the demolition and open space is consistent with the City of Stoughton Comprehensive Plan.
11. We believe reuse of the building for a commercial use would be challenging due to the narrow door openings since the original use for this building was for residential. Code requires the main floor be used for commercial use.

If you have any questions, please contact me at 608-646-0421

Sincerely,

City of Stoughton

Michael P. Stacey

Michael P. Stacey

Zoning Administrator/Assistant Planner