To Matt Dregne

From Laura Callan

Date December 5, 2017

Re Stoughton's Revised Historic Preservation Ordinance

INTRODUCTION

Wisconsin Stat. § 62.23(7)(em) gives cities broad authority to regulate places, structures or objects of special character, historic interest, aesthetic or archaeological interest, or other significant value. Cities may also designate historic landmarks and establish historic districts and may regulate the historic landmarks or the properties within a historic district.

Pursuant to this authority, Stoughton is certain ordinances relating to historic preservation, and in particular is addressing the demolition of historic buildings.

This memorandum evaluates the proposed ordinance against potential conflicts with Wis. Stat. § 66.0413 regarding orders to repair or raze buildings, and constitutional takings challenges. For purposes of this memorandum, I assume the ordinance will provide notice and review procedures sufficient for due process purposes.

DISCUSSION

1. Conflict Preemption

The first question to consider is whether the City has authority to require approval by the Commission of the demolition of a historic building for which its building inspector has issued a raze order pursuant to Wis. Stat. § 66.0413(1) or the circuit court has issued a raze order pursuant to Wis. Stat. § 66.0413(2).

Section 66.0413, the repair or raze statute, has four subsections. Subsection (1) describes the authority and procedure for razing buildings; subsection (2) deals with razing a building that is a public nuisance; subsection (3) provides that no historic building may be razed until the municipality in which the historic building is located gives a notice to the state historical society; and subsection (4) gives first class cities authority to adopt by ordinance alternative or additional

Madison Office
222 West Washington Avenue
P.O. Box 1784
Madison, Wisconsin
53701-1784
608.256.0226
888.655.4752
Fax 608.259.2600
www.staffordlaw.com

Milwaukee Office
1200 North Mayfair Road
Suite 430
Milwaukee, Wisconsin
53226-3282
414.982.2850
888.655.4752
Fax 414.982.2889
www.staffordlaw.com

provisions than those set forth in subsections (1)-(3). In Wis. Stat. § 66.0413(1), the legislature expressly affirmed the power of municipalities to exercise powers granted by other statutes (like § 62.23(7)(em)) such that the City may adopt additional provisions regarding the demolition of a historic building before it becomes subject a raze order issued by the building inspector. However, Wis. Stat. § 66.0413(2) likely preempts the City's ability to alter the procedures for razing a historic building that has been deemed a public nuisance.

A. Wis. Stat. §§ 66.0413(1) and (2)

Section 66.0413(1)(b)1. and § 10-14 of the Stoughton ordinances authorize the building inspector to issue orders to repair or raze buildings. If a building is old, dilapidated or out of repair and consequently dangerous, unsafe, unsanitary or otherwise unfit for human habitation and unreasonable to repair, the owner may be ordered to either make needed repairs or to raze the building, at the owner's option. *Id*. The cost of repairs of a historic building, as determined by the building inspector, must exceed 85% of the assessed value before the repairs are presumed to be unreasonable. § 66.0413(3)(d). Once the order has been served, an affected party has 30 days within which to apply to the circuit court for a restraining order. § 66.0413(1)(h); § 893.76. The court reviews whether a building inspector's order is reasonable as a matter of law. § 66.0413(1)(h).

If the owner fails to comply within the time specified in the order, the building inspector may proceed to raze the building. § 66.0413(1)(f). Section 66.0413(1)(g) also authorizes the municipality to commence and prosecute a circuit court action for an order of the court requiring the owner to comply with an order to raze a building issued under subsection (1)(b)1.

Section 66.0413(2) provides an *in rem* procedure whereby the owner of a building constituting a public nuisance shall be issued written notice of the defect that makes the building a public nuisance and directed to remedy the defect within a 30-day period. § 66.0413(2)(b). While the authority to issue a § 66.0413(1)(b)1. order is discretionary, § 66.0413(2)(b) requires the building inspector to issue a notice of a public nuisance.

If an owner fails to remedy the defect within the 30-day period, the building inspector shall apply to the circuit court for an order determining that the building constitutes a public nuisance. § 66.0413(2)(c). If, after a hearing, the circuit court determines the building constitutes a nuisance, the court shall issue an order directing the owner to remedy the defect within a reasonable period of time. *Id*. Should the owner fail to remedy the defect within the time specified by the court, the court shall authorize the building inspector to raze the building or appoint a receiver to remedy the defect or sell the building to a buyer who will have the building reoccupied in a legal manner. § 66.0413(2)(d).[1]

B. Analysis

To put the preemption question in context, consider the following hypothetical. Stoughton's building inspector determines pursuant to Wis. Stat. § 66.0413(1)(b)1. that a historic

[1] A city may also commence an action under Chapter 823 to abate a nuisance.

building is unfit for human habitation and that it is economically infeasible to repair. As a result, the inspector orders the owner to raze the building. Does the inspector's order supersede the demolition permission provisions described in the preservation ordinance? Or may the inspector be required to first obtain the consent of the Landmarks Commission before issuing the raze order? The answer turns on whether § 66.0413(1) preempts the ordinance.

Municipalities may enact ordinances in the same field and on the same subject covered by state legislation where such ordinances do not conflict with, but rather complement, the state legislation. *Fox v. Racine*, 225 Wis. 542, 546, 275 N.W.513 (1937). Therefore, wrote the *Fox* court, where "the state has entered the field of regulation, municipalities may not make regulation inconsistent therewith because a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized or required, or authorize what the legislature has expressly forbidden." *Id*. at 545. A municipal ordinance is preempted if: (1) the legislature has expressly withdrawn the power of municipalities to act; (2) it logically conflicts with the state legislation; (3) the ordinance defeats the purpose of the state legislation; or (4) it goes against the spirit of the state legislation. *Wisconsin Carry, Inc. v. City of Madison*, 2017 WI ¶ 64, 373 Wis.2d 543, 892 N.W.2d 233.

Section 66.0413(1)(L) expressly provides that "[t]his section does not limit powers otherwise granted to municipalities by other laws of this state." Rather than withdraw the power of municipalities to act, the legislature expressly affirmed a municipality's pre-existing power to regulate the demolition of historic buildings. Section 66.0413(1)(L) allows broad municipal regulation of the demolition of historic buildings, subject only to the limitations set forth in § 62.23(7)(em) or by other law. This provision supports the ability of the City to legislate with confidence that its proposed preservation ordinance is not preempted by § 66.0413(1). The ordinance, as applied in the hypothetical context, would also not violate the second, third or fourth tests if it limits the discretion of the building inspector to issue an order to raze an historic building. Under these circumstances, the ordinance would complement § 66.0413(1)(b).

A different analysis, however, applies to § 66.0413(2). Suppose that the City building inspector, pursuant to Wis. Stat. § 66.0413(2), issues to the owner of a historic building a notice of a defect that makes the building a public nuisance. Further assume that when the owner fails to correct the defect, the building inspector, as required by that statute, applies to the circuit court for an order determining that the building is a nuisance. May the City require the building inspector to first obtain the Commission's approval before invoking the process set forth in § 66.0413(2)? Under current Wisconsin preemption jurisprudence, the answer is most likely no.

Unlike section 66.0413(1), subsection (2) does not contain a "no limit on municipal powers" provision. A historic preservation ordinance that gives the Commission authority to approve demolition of a historic building that constitutes a public nuisance would conflict with the legislature's framework mandating that building inspectors and circuit courts manage public nuisances. The hypothetical provides an example of how such an ordinance would run counter to Wis. Stat. § 66.0413(2). The ordinance would purport to require an additional approval from the Commission before an inspector issues a notice even though the inspector's obligation to issue such notice is mandatory. For the same reason, the ordinance would frustrate the legislative purpose in creating a comprehensive procedure in Wis. Stat. § 66.0413(2). Allowing the Commission to prevent demolition of a building, and thereby frustrate the elimination of public

nuisances, defeats the legislative purpose in establishing a mandatory, expedited, and court-supervised procedure for managing public nuisances. The approval scheme that the proposed ordinance imposes, as applied to a historic building deemed a public nuisance, is likely to be invalid because it conflicts with, defeats the purpose of, and violates the spirit of the legislature's comprehensive procedure for public nuisance management in § 66.0413(2).

C. Summary

To avoid a preemption conflict, the revised preservation ordinance should make clear that it does not apply to any building which has been ordered razed pursuant to Wis. Stat. § 66.0413(2). In addition, the ordinance should make it clear whether it does or does not apply to any building which has been ordered razed pursuant to Wis. Stat. § 66.0413(1). If the intent is to have the preservation ordinance apply to a building subject to a § 66.0413(1) order, drafting care should be taken to harmonize the demolition permission requirement in the ordinance with the building inspector's duties under section 10-14 (Stoughton Ordinances) and the statute.

2. Taking and Inverse Condemnation

An aggrieved property owner might contend that the demolition restrictions in the ordinance constitute an unconstitutional taking without just compensation. The federal and state constitutions require that the government provide just compensation for any taking. *260 N. 12th St., LLC v. DOT*, 2011 WI 103, ¶43, 338 Wis. 2d 34, 808 N.W.2d 372.[2] A "taking" can occur if the government enacts a regulation "that is 'so onerous that its effect is tantamount to a direct appropriation.'" *E-L Enters., Inc. v. Milwaukee Metro. Sewerage Dist.*, 2010 WI 58, ¶22, 326 Wis. 2d 82, 785 N.W.2d 409 (*quoting Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005)).

A landowner who believes the government has taken his or her property without instituting formal condemnation proceedings may bring an inverse condemnation claim under Wis. Stat. § 32.10 to recover just compensation. *See E-L Enters.*, 326 Wis. 2d 82, ¶36. That statute, which is the legislative fulfillment of WIS. CONST. art. I, § 13, is, by its terms, designed solely to deal with the traditional exercise of the government's eminent domain power vis-à-vis physical occupation. *E-L Enters.*, 326 Wis. 2d 82, ¶36. However, the Wisconsin Supreme Court has concluded regulatory takings are also cognizable under § 32.10. *See E-L Enters.*, 326 Wis. 2d 82, ¶37.

The landmark case in the area of regulatory takings is *Howell Plaza, Inc. v. State Highway Commission*, 66 Wis. 2d 720, 226 N.W.2d 185 (1975). There, the court concluded "that there need not be an actual taking in the sense that there be a physical occupation or possession by the condemning authority …." *Id*. at 730. To state a claim under Wis. Stat. § 32.10 in the absence of physical occupation, the facts alleged must demonstrate that a government restriction "deprives the owner of all, or substantially all, of the beneficial use of his property." *Id*. at 726;

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[2] The Fifth Amendment of the United States Constitution, made applicable to the States through the Fourteenth Amendment, "mandates that private property shall not 'be taken for public use, without just compensation.'" *260 N. 12th St., LLC v. DOT*, 2011 WI 103, ¶43, 338 Wis. 2d 34, 808 N.W.2d 372 (quoting U.S. CONST. amend. V). The Wisconsin Constitution prohibits the taking of private property "'for public use without just compensation therefor.'" *Id*. (quoting WIS. CONST. art. I, § 13).

see also E-L Enters., 326 Wis. 2d 82, ¶37. As the recent U.S. Supreme Court decision in *Murr v. Wisconsin* illustrates, owners face a heavy burden in proving an unconstitutional regulatory taking of property.

The best defense to a regulatory takings challenge to the demolition restrictions is to incorporate the rights of property owners into the ordinance itself. Many preservation ordinances contain an exceptions clause that prohibits enforcement of preservation mandates (that is, the clause would prohibit the denial of a demolition permit) when doing so would impose unreasonable economic hardship on the owner. Some jurisdictions make this exception coterminous with the standards for a regulatory taking.

Such an exceptions clause in the context of an application to demolish has two effects. First, it permits the owner to demolish a building in the unusual circumstances where there is no alternative use, thereby avoiding constitutional litigation. A property owner who is prevented from demolishing an existing historic structure could, by definition, derive some economic value out of the structure. Where, however, there is no economically viable use of a structure on a property, demolition must be approved under the exceptions clause. Second, it places disputes about economic impact within the demolition permitting process, giving initial control over fact-finding about economic harms and alternatives to the Landmarks Commission. Such a scheme usually creates a steeper hill for the takings claimant to mount.

To mitigate the ordinance's vulnerability to legal challenge that the denial of a demolition permit constitutes a taking without compensation, the City may wish to consider including an "exclusions clause." For example, the ordinance might provide that an application for a demolition permit shall be approved if:

(1) The Common Council and the Landmarks Commission find that:

(a) denial of the demolition permit will result in economic hardship to the owner, or
(b) the building, through no fault of any owner (after the effective date of the ordinance), does not contribute to the architectural or historic character of the district [and its demolition will not detract from the architectural or historic character of the district];or
(c) demolition is necessary for the public interest.
(d) For purposes of the finding under (1)(a), economic hardship means that the failure to issue a permit would amount to a taking of the owner's property without just compensation.

The District of Columbia has an extensive preservation law that is available at https://planning.dc.gov/node/594032. You may wish to review this law for language helpful in drafting Stoughton's revised ordinance.

Sec. 78-517. - Downtown design overlay district.

(1) *Purpose*. This district is intended to preserve and enhance the historical and aesthetic qualities of the downtown, and retain a consistent and visually pleasing image for the downtown area. This district is designed to forward both aesthetic and economic objectives of the City by regulating development within the district.

(2) *Boundaries*. This district is coterminous with the Main Street Historic District as established by the Stoughton Landmarks Commission, [shouldn't this refer to the Main Street Historic District as listed on the National Register of Historic Places?] which extends along Main Street from the Yahara River to 5th Street, as depicted on the official zoning map.

(3) *Definitions*. In this section, the following terms have the following meanings:

(a) "Maintenance" means work involving maintaining the existing, exterior appearance of a building or structure (such as repainting, re-roofing, residing or replacing with identical colors, finishes, and materials).

(b) "Renovation" means work involving a change in the appearance of a building or structure (such as painting, roofing, siding, architectural component substitution, fencing, paving, or signage with different colors, finishes, or materials).

(c) "Structural Project" means work involving modification to the physical configuration of an existing building or structure (such as grading, the erection of a new building, or the addition or removal of bulk to an existing building), or the construction of a new building or structure.

(d) "Demolition" means the razing or destruction, entirely or in significant part, of a building or structure, and includes the removal or destruction of any façade of a building or structure.

(e) "Design Guidelines" means the guidelines set forth in the booklet entitled *Historic Downtown Stoughton Design Guidelines – A Guide to Renovation and Rehabilitation of Commercial Buildings on Main Street*, prepared by Lynch & Company, Ltd., Waukesha, June 1993, and on file with the Stoughton City Clerk.

(f) "Development Agreement" means an agreement that (1) requires an owner to construct a new building or structure that is replacing an existing building or structure in the district, within a reasonable time, (2) requires the owner to provide surety to secure the construction of the new building or structure, in the form of a cash deposit, letter of credit, or other surety acceptable to the City in amount equal to 110 percent of the estimated cost of constructing the new building or structure, and (3) authorizes the City to complete construction of the new building or structure, using the surety provided, if the owner fails to do so. [Note: the surety

requirement will be difficult for an owner, because it will require the owner to tie up an amount of capital equal to the cost of constructing to the new building, in addition to financing the construction itself. If the new building will cost $500,000, the owner would essentially need access to $1,000,000 to proceed.]

(4) *Application of Regulations.*

Except as expressly provided otherwise in this Section, the regulations of this section apply to all maintenance, renovation, structural projects and demolition within the district.

This section does not apply to any building or improvement designated as a landmark or located within a historic district established pursuant to Chapter 38 of this Code.

This section does not apply to the demolition of a building or structure has been ordered to be razed by a court of competent jurisdiction pursuant to Wis. Stat. § 66.0413(2).

This section does apply to the demolition of a building or structure ordered razed by the building inspector pursuant to Wis. Stat. § 66.0413(1), and neither the city nor any city official may demolish a building pursuant to Wis. Stat. § 66.0413 without first obtaining approval pursuant to this section.

(5) *Procedural Requirements and Standards for Approval*.

(a) Maintenance. Maintenance shall be subject to approval by the Zoning Administrator. The Zoning Administrator shall approve a maintenance application upon verifying that the proposed work consists only of maintenance.

(b) Renovation. Renovation shall be subject to approval by the Plan Commission. The Plan Commission shall approve an application for renovation if the applicant demonstrates that the renovation will conform with the Design Guidelines. Applications for approval of renovation shall be made to the Zoning Administrator, and shall be accompanied by all of the following:

1. The building permit application.

2. 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;

3. 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;

4. A written description of the proposed modification, including a complete listing of proposed components, materials, and colors.

5. Written justification for the proposed alteration consisting of the reasons why the applicant believes the requested alteration is in harmony with the Design Guidelines.

(c) Structural Projects. Structural Project applications shall be subject to approval by the Plan Commission. Before acting on an application for a Structural Project, the Plan Commission shall conduct a public hearing on the application, which hearing shall be preceded by publication of a Class 2 Notice. The Plan Commission shall approve an application for renovation if the applicant demonstrates that the Structural Project will conform to the Design Guidelines. Applications for approval of Structural Projects shall be made to the Zoning Administrator, and shall be accompanied by all of the following:

1. A building permit application.

2. 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.

3. 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.

4. 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.

5. 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.

6. A written description of the proposed project, including a complete listing of proposed components, materials, and colors.

7. Written justification for the proposed alteration consisting of the reasons why the applicant believes the requested alteration is in harmony with the Design Guidelines.

(6) *Demolition.*

(a) Demolition is subject to approval by the Common Council. Before the Common Council may act on a demolition application, the application shall be submitted to the Landmarks Commission and the Plan Commission for review and recommendation to the Common Council. If either the Landmarks Commission, the Plan Commission or both have not made their recommendation to the Common Council within 60 days after the application has been submitted to the Landmarks Commission and Plan Commission, the Common Council may act on the application without such recommendation or recommendations.

(b) Demolition shall be approved if the applicant demonstrates any of the following:

1. (i) Notwithstanding the condition of the building or structure, there is no economically viable use of the building or structure, and (ii) a permit for construction of a new building or structure on the site has been approved and issued, and (iii) the owner has entered into a Development Agreement with the City; or

2. (i) The building or structure is in not in good repair; (ii) the cost of repairing the building or structure would exceed ____ % [50%? 85%] of the assessed value of the building or structure, and (iii) a permit for construction of a new building or structure on the site has been approved and issued prior to or simultaneously, and (iv) the owner has entered into a Development Agreement with the City; or

3. The building or structure, through no fault of an owner, is detrimental to, or does not contribute to, the architectural or aesthetic character of the district. Where a building or structure has been allowed to deteriorate in a manner that failed to comply with City property maintenance ordinances, such deterioration is the fault of the owner.

4. A failure to issue the permit will result in a taking of the of the owner's property without just compensation in violation of the Constitution of the State of Wisconsin or the Constitution of the United States of America.

(7) *Residential Construction.* Proposed residential construction, located on properties having frontage on Main Street between the Yahara River and 5th Street, including new structures, building additions, building alterations, and restoration or rehabilitation shall be reviewed per subsection (3) above by the Plan Commission. The building setback, height, mass, roof form, exterior materials, exterior surface appurtenances, exterior colors, landscaping and lighting shall be compatible and harmonious with the general design theme noted in subsections (1) through (4) above, as determined by the Plan Commission. [Note: this language is in existing code. Are there any residential properties existing or allowed in the district?

(Ord. No. 0-6-09, 6-23-2009; Memo. of 3-22-2010; Ord. No. 0-4-2011, § 114, 5-10-2011)

To: Mayor Donna Olson
Rodney Scheel, Director of Planning and Development
Michael Stacey, Zoning Administrator / Assistant Planner
Tim Swadley, Council President
City of Stoughton

From: Matthew P. Dregne
Jeffrey A. Mandell

Date: November 30, 2017

Re: 2017 Wisconsin Act 67 Makes Major Changes to Wisconsin Land Use Law

A new law signed by Governor Walker makes major changes to how private property can be regulated in Wisconsin. This new law, 2017 Wisconsin Act 67 (the "Act"), makes broad changes. This post addresses two aspects of the Act: changes to conditional use permits and preemption of clauses that merge substandard lots.

Conditional use permits

Before the Act, conditional use permit regulations were a flexible zoning tool that allowed potentially objectionable land uses, but only if the community determined that the use would meet specified standards. For example, a community might use a conditional use process to authorize a restaurant or nightclub in a neighborhood business district, but first require the applicant to demonstrate that the proposed operation will not lead to noise, traffic, or other conflicts with neighboring properties.

Act 67 upends or casts doubt upon several longstanding practices associated with conditional use regulations and proceedings. For decades, Wisconsin courts have upheld ordinances that contained generalized standards allowing the community to consider a proposed conditional use's impacts on public health, safety, and general welfare. For decades, plan commissions and governing bodies have had the right to consider testimony from concerned citizens. For decades, communities have had the right say no to a proposed conditional use, if the applicant failed to convince the community that the proposed use met specified community standards. The Act alters all of these.

Madison Office
222 West Washington Avenue
P.O. Box 1784
Madison, Wisconsin
53701-1784
608.256.0226
888.655.4752
Fax 608.259.2600
www.staffordlaw.com

Milwaukee Office
1200 North Mayfair Road
Suite 430
Milwaukee, Wisconsin
53226-3282
414.982.2850
888.655.4752
Fax 414.982.2889
www.staffordlaw.com

First, the Act requires that standards governing conditional uses be "reasonable and, to the extent practicable, measurable...." This new requirement is certain to spark litigation. You should expect legal challenges to generalized health, safety, and welfare standards that are common in zoning codes but leave significant discretion to municipal decision-makers. Especially in the short-term, communities will likely struggle to identify standards that will withstand legal scrutiny when challenged under the Act. Even before the courts weight in, it is clear that the Act reduces the flexibility enshrined in prior law.

Second, the Act prohibits a community from basing a conditional use permit decision on "personal preferences or speculation." Much public testimony will be subject to challenge under this language. Public testimony from concerned citizens about the impact of a proposed conditional use will be off-limits, unless it is directly tied to "reasonable" and "measurable" standards. You should expect permit applicants to challenge most adverse public testimony on the theory that it improperly expresses personal preferences or contains speculative personal opinions. But members of the public are not always experts in science or the law, and it may provide difficult for many to share their concerns in a way consistent with the Act. This new evidentiary standard will prove frustrating and difficult for citizens and public officials alike.

Third, the Act instructs that, where an applicant "meets or agrees to meet all of the requirements and conditions specified" in the ordinance or imposed by the decision-maker, the conditional use permit must be granted. This language appears to put the burden on the community to prove that a proposed conditional use cannot meet "reasonable" and "measurable" standards. This reverses prior law, which placed the burden on the applicant to show that it would meet the community's standards.

In light of these changes, Wisconsin communities will need to reevaluate their ordinances—and even the viability of conditional use regulations. Communities will need to review (and likely revise) the conditional use standards currently set forth in their ordinances if they want future decisions on conditional use permits to withstand legal challenges. The Act may significantly decrease the incidence of the conditional use process, because communities may choose to remove potentially objectionable conditional uses from zoning districts rather than allow permits for such uses to be more easily obtained. Communities should also consider educating their plan commissions and governing bodies—as well as their residents—about how the Act has turned the old way of doing things upside-down.

Merger clauses

The Act also creates new statutory provisions, Wis. Stat. § 66.10015(4) and § 227.10(2p), that preempt any ordinance, rule, or action requiring lots to be merged without the consent of the owners. Like the treatment of conditional use permits, this is a significant departure from settled law.

As the U.S. Supreme Court noted earlier this year, merger provisions are "legitimate exercise[s] of government power, as reflected by [their] consistency with a long history or

state and local merger regulations that originated nearly a century ago." *Murr v. Wisconsin*, 137 S. Ct. 1933, 1947 (2017). Merger provisions are also widespread in Wisconsin, in use by more than two-thirds of Wisconsin counties. *See* Brief of Amici Curiae Wis. Counties Ass'n, et al. at 7, *Murr v. Wisconsin*, No. 15-214 (U.S.) (filed June 16, 2016).

The state's blanket preemption of merger provisions will remove a major tool that local governments and regulatory agencies have used to reduce the number of properties too small to comply with land-use restrictions. "When States or localities first set a minimum lot size, there often are existing lots that do not meet the new requirements, and so local governments will strive to reduce substandard lots in a gradual manner." *Murr*, 137 S. Ct. at 1947. As the Supreme Court recognized, one "classic way of doing this" is "by implementing a merger provision, which combines contiguous substandard lots under common ownership, alongside a grandfather clause, which preserves adjacent substandard lots that are in separate ownership." *Id.* The Act's preemption of merger provisions removes this tool to ameliorate the number of substandard lots.

Moreover, the Act favors substandard lots over minimum lot-size regulations. It creates another new provision, Wis. Stat. § 66.10015(2)(e), which prohibits a local government from taking any action "that prohibits a property owner from…conveying an ownership interest in a substandard lot [or] using a substandard lot as a building site." Property regulators are thus restricted in two ways: they cannot restrict the development of properties that do not meet current restrictions and they cannot reduce the number of such properties through merger. Under the new rules, once a property has been created and recognized by law, it is largely immune from later-enacted restrictions on development or sale.

Municipalities should review their ordinances for provisions restricting substandard lots or providing for merger of such lots that are now inconsistent with state law.

While Act 67's changes are substantial, they do not go as far as the sponsors of the legislation initially proposed. The legislation that became Act 67—2017 Assembly Bill 479—was initially introduced as an effort to reverse the outcome in *Murr*. There, Wisconsin state courts and then the U.S. Supreme Court affirmed the use of land use regulations and a merger clause as proper exercises of regulatory authority to protect environmentally sensitive land along the shores of the Lower St. Croix River.

As initially proposed, the responsive legislation sought not only to protect substandard lots but also to adopt by statute a lower legal threshold for a plaintiff to prove that a land-use restriction constituted a government taking that necessitates government compensation of the landowner. The Wisconsin legislature amended the legislative language to remove the takings language. For land-use regulators, this small victory may be cold comfort given the extensive ways the Act limits the tools available to them.

ARTICLE VII. - MINIMUM MAINTENANCE STANDARDS

Sec. 10-311. - Penalty.

Any person who shall violate any provision of this article or any order, rule or regulation made under this article shall be subject to a penalty as provided in section 1-3.

(Code 1986, § 14.20)

Sec. 10-312. - Purpose.

(a) The city council finds that there are or may be in the future pieces of real property and buildings in the city which are so dilapidated, unsightly, dangerous, unsanitary, overcrowded or inadequately maintained as to constitute a menace to the persons residing on such property and to be deleterious to the general aesthetics and property values of persons residing in the vicinity of such property. The city council further finds that widespread concern exists regarding the allocation of responsibilities for such maintenance between owners of such property and tenants residing therein.

(b) It is the purpose of this article to preserve and promote the public health, safety, convenience, prosperity and general welfare of the people of the city by regulating in a manner which corrects the problems in subsection (a) of this section with only minimal infringement on each affected person's property.

(Code 1986, § 14.17(1))

Sec. 10-313. - Definitions.

The definitions listed in section 10-241 shall apply to this article wherever the words so defined appear.

(Code 1986, § 14.17(2))

Cross reference— Definitions generally, § 1-2.

Sec. 10-314. - Applicability.

This article shall apply to all dwellings, dwelling units, roominghouses and premises including single-family owner-occupied dwellings.

(Code 1986, § 14.17(3))

Sec. 10-315. - Inspections.

Upon written complaint to the mayor, city councilmember, police department or building inspector, the building inspector may seek issuance of a search warrant from the municipal judge to make an inspection to determine the condition of the dwelling, dwelling unit, rooming unit or premises complained about so that he may prefer in the duty of eliminating the problem consistent with the findings of section 10-312. For the purpose of making such inspection, every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent, access to any part of such dwelling or dwelling unit or its premises at any reasonable time for making such repairs or alterations which are necessary to comply with this article or any lawful order issued by the building inspector.

(Code 1986, § 14.17(4))

Sec. 10-316. - Enforcement and appeals.

(a) *Notice of violation.* Whenever the building inspector determines that reasonable grounds exist to believe that a violation has occurred of any provision of this article affecting the health of the occupant of a dwelling, dwelling unit or rooming unit or the health of the general public, or whenever the building inspector determines that reasonable grounds exist to believe that a violation has occurred of any provision of this article affecting the safety of such occupant or the safety or aesthetic values of the general public, the building inspector shall notify the person responsible for such violation.

(b) *Information on notice.* Such notice shall:

(1) Be in writing;

(2) State the reason for its issuance;

(3) Allow 15 days for the performance of any act it requires;

(4) Be served on the person responsible for such violation;

(5) Contain an outline of remedial action which, if taken, will comply with this article.

(c) *Service of notice.* Service of such notice upon the person responsible for the violation shall be deemed proper if served personally, or by registered mail to his last known address, or by posting it in a conspicuous place in the premises affected by such notice or by serving the notice by any other method authorized by statute.

(d) *Hearing.* Any person affected by such notice may petition for a hearing before the board of appeals. Such petition must be filed with the department of planning and development within ten days after service of the notice. Such petition shall contain a written statement of the grounds for appeal. Upon receipt of such petition, the department of planning and development shall give written notice to the petitioner of the time and place of the hearing, which shall be held as soon as practicable after receipt of the petition. At such hearing, the petitioner shall be given an opportunity to be heard and to show cause why he should not comply with such notice.

(e) *Determination of board of appeals.* After the hearing, the board of appeals shall sustain, modify or withdraw the petition based upon whether or not there has been compliance with this article. If the board of appeals sustains or modifies such notice, it shall be deemed to be an order. Any notice served shall automatically become an order if no petition is filed with the department of planning and development within ten days after service of the notice. After a hearing in a case when the board of appeals sustains a notice suspending a permit required by this article, the permit is deemed to have been revoked. Any permit suspended by notice shall be automatically revoked if no petition is filed with the department of planning and development within ten days after service of the notice.

(f) *Record of proceedings; appeal.* The hearing proceedings shall be summarized and reduced to writing. The public record of each case shall contain the written summary, the board of appeals' written findings and decision and any notice or order issued in connection therewith. Any person aggrieved by the board of appeals' decision may seek judicial review thereof as provided by law.

(g) *Emergency work and orders.* Whenever the building inspector finds that an emergency exists which requires immediate action to protect the public health or safety, he may, without notice or hearing, issue an order reciting the facts constituting the emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such emergency order shall be effective immediately notwithstanding the other provisions of this article. Upon petition by the affected person, a hearing shall be held as soon as possible. After such hearing, the board of appeals shall sustain, modify or revoke the emergency order depending upon whether or not the building inspector has complied with this article.

(Code 1986, § 14.17(5))

Sec. 10-317. - Maintenance responsibilities of owners and occupants.

(a) Every owner shall, either personally or by agent, improve and maintain all property under his control to comply with the following requirements:

(1) All courts, yards and other outdoor areas on the premises shall be graded to divert surface water flow away from buildings.

(2) All exterior property areas shall be kept free from noxious weeds. See Public Nuisances Ordinance subsection 58-8(6) regarding noxious weed definitions and regulations.

(3) All exterior property areas shall be maintained in a condition free from debris, rubbish, garbage, physical hazards, rodent harborage and infestation.

(4) All fences and other minor construction, paved walkways and vehicular areas shall be maintained in a safe and sanitary condition.

(5) All exterior surfaces of buildings made of materials not inherently resistant to deterioration shall be periodically coated with paint or another suitable preservative which provides adequate resistance to weathering and maintains a neat and attractive appearance.

(6) All outdoor walkways and parking areas serving multiple dwellings shall be kept free from snow, ice or other hazardous conditions.

(7) All shared or public areas of a building containing multiple dwellings shall be maintained in a safe and sanitary condition.

(8) In buildings containing more than four dwelling units, garbage disposal facilities or garbage storage containers shall be provided and periodically emptied.

(9) Where rodent or insect infestation exists in two or more dwelling units in a building, or in the shared or public parts of any dwelling containing two or more dwelling units, or in one dwelling unit where caused by the owner's failure to maintain the dwelling in a rodentproof or reasonably insectproof condition, the owner shall be responsible for their extermination.

(b) Every occupant of a dwelling or dwelling unit shall be responsible for complying with the following requirements:

(1) All portions of a dwelling or dwelling unit which he occupies and controls shall be kept clean and sanitary.

(2) All rubbish and garbage shall be placed in the required garbage disposal facilities or garbage storage containers in a clean and sanitary manner. The occupant of a building containing four or fewer dwelling units shall supply such facilities or containers.

(3) Every dwelling unit shall be supplied with adequate rubbish storage facilities, the type and location of which are approved by the building inspector.

(4) Every dwelling unit shall have adequate garbage disposal facilities or garbage storage containers, the type and location of which are approved by the building inspector.

(5) Except where the owner has agreed to provide such services, the occupant shall hang all screens, screen doors, storm windows and storm doors required by this article.

(6) Where the occupant's dwelling unit is the only one infested with insects, rodents or other pests, he shall be responsible for their extermination unless such infestation is caused by the owner's failure to maintain the building in a rodentproof or reasonably insectproof condition.

(7) All plumbing fixtures shall be used and operated properly and shall be kept in a clean and sanitary condition.

(Code 1986, § 14.17(6); Ord. No. 0-23-10, § 1, 11-9-2010)

Sec. 10-318. - Outdoor storage of unsightly items.

No person shall store or accumulate outdoors on his own land any of the following unsightly items unless such land is zoned to permit such storage or accumulation:

(1) Motor vehicles, boats or aircraft not in operating condition.

(2) Junk, salvage, old machinery or fencing materials.

(3) Commercial trucks, tractors or trailers.

(4) Building materials, construction or earth moving equipment not being used on a building project currently in progress.

(Code 1986, § 14.17(7))

Sec. 10-319. - Abatement of nonconforming uses.

All dwellings, dwelling units, premises and uses existing on January 23, 1979, which are in violation of any provisions of this article are nonconforming uses which shall be abated by February 23, 1979.

(Code 1986, § 14.17(8))

Chapter 38 – HISTORICAL PRESERVATION

Footnotes:

-- (1) --

Cross reference – Buildings and building regulations, ch. 10; utilities, ch. 74, zoning, ch. 78.

ARTICLE I. – IN GENERAL

Secs. 38-1—38-30. – Reserved.

ARTICLE II. – LANDMARKS PRESERVATION COMMISSION

8-31. - Intent.

The protection, enhancement, perpetuation and use of improvements and districts of special character or historical interest is a public necessity required in the interest of the health, prosperity, safety and welfare of the people of the city. This article is intended to:

(1) Accomplish the protection, enhancement and perpetuation of such improvements and districts which reflect elements of the city's cultural, social, economic, political and architectural history.

(2) Safeguard the city's historic and cultural heritage, as embodied in our landmarks and historic districts.

(3) Stabilize and improve property values.

(4) Foster civic pride in the beauty and accomplishments of the past.

(5) Protect and enhance the city's attractions to residents, tourists and visitors.

(6) Support the business, industry and economy of the city.

(7) Promote the use of landmarks and historic districts for the education, aesthetic pleasure and welfare of the city's people.

(Code 1986, § 12.135(1))

Sec. 38-32. - Definitions.

As used in this article, unless the context clearly requires otherwise, the words defined in this section have the following meanings:

Alteration is any construction on or change to the exterior of a building, structure, object, or site including, but not limited to, the changing of foundation, wall or roofing and the changing, eliminating or adding of doors, windows, steps, railings, porches, balconies, signs or other ornamentation, new construction or relocation of any property, structure or object, or any part of a property, structure or object. Ordinary maintenance and repairs shall not be considered an alteration.

Certificate of appropriateness (COA) is a document that describes exterior repair or alteration to a landmark property or interior repair or alteration that affects an exterior feature. Approval of the COA by the landmarks commission is required prior to obtaining a building permit and commencement of work.

Commission means the landmarks preservation commission created by this article.

Contributing property is any building, structure or object which adds to the historical integrity or architectural qualities that make a historic district, listed locally or federally, significant.

Demolition is any act that destroys in whole or in part a building, structure, object or site.

Historic district (local) means an area designated by the commission which contains one or more landmarks or landmark sites, as well as those abutting improvement parcels which the commission determines should fall within the provisions of this article to ensure that their appearance and development is harmonious with the abutting landmarks or landmark sites.

Historic downtown design guidelines guide the renovation and rehabilitation of commercial buildings on Main Street.

Improvement means any building, structure, landscape feature, work of art or other object which is all or part of any physical betterment of real property.

Landmark means an improvement which has a special character or historic interest in showing the development, heritage or cultural character of the city, state or nation which has been designated as a landmark under this article. All mention of landmark within this text is meant to mean "local landmark."

Landmark site means a parcel of land having historic significance due to its value in tracing the prehistoric activities of Native Americans or is the location of an historic event.

Ordinary maintenance and repairs is work that corrects any deterioration or damage to a building or structure in order to restore it to its condition prior to the deterioration or damage. The work does not involve a change in the design, material, or outer appearance of the building or structure.

(Code 1986, § 12.135(2); Ord. No. 0-2-2015, 7-14-015)
Cross reference—Definitions generally, § 1-2.

Sec. 38-33. - Composition and terms.

The commission shall be composed of seven persons competent and informed in the historical, architectural and cultural traditions of the city, to be appointed by the mayor subject to city council confirmation by majority vote. All commission members may be appointed for three years as terms expire. Commission members may be appointed to successive terms. In addition, the zoning administrator shall be an ad hoc member of the commission and shall not be entitled to a vote. If any vacancy occurs, the mayor shall appoint a person subject to the city council confirmation for the unexpired term. The commission may suggest a candidate to the mayor for appointment. No compensation shall be paid to commission members except for expenses necessary in carrying out their duties. The commission shall annually select from its members a chair, vice-chair and secretary and shall fill vacancies in such offices.

(Code 1986, § 12.135(3); Ord. No. 0-2-2015, 7-14-2015)

Sec. 38-34. - Landmark and landmark site designation criteria.

(a) The commission shall consider the following criteria in determining whether or not to recommend that the city council designate an improvement or improvement parcel as a landmark or landmark site:

(1) Whether it exemplifies or reflects the cultural, political, economic or social history of the city, state or nation.

(2) Whether it is identified with important historic or prehistoric persons or events in community, state or national history.

(3) Whether it embodies distinguishing characteristics or an architectural type specimen, valuable for a study of a period, style, construction method or indigenous materials or craftsmanship.

(4) Whether it is representative of the notable work of a master builder, engineer or architect.

(5) Whether it is a unique and irreplaceable asset to its neighborhood and the city.

(6) Whether it provides an example of the physical surroundings in which past generations lived.

(b) The commission may adopt specific written guidelines for designation of landmarks, landmark sites and historic districts providing such conform to the provisions of this article.

(Code 1986, § 12.135(4))

Sec. 38-35. - Powers and duties.

(a) The commission may, subject to section 38-36, recommend that the city council designate landmarks, landmark sites and historic districts within the city, based upon the criteria of section 38-34. Once so designated, such landmarks, landmark sites and historic districts shall be subject to all the provisions of this article.

(b) The commission may regulate, approve or deny proposed changes or alterations to landmark properties in accordance with section 38-36.

(c) The commission shall cooperate with the state liaison officer and the governor's liaison committee for the National Register of Historic Places of the United States National Park Service in trying to include city landmarks or landmark sites as national landmarks or landmark sites in the National Register of Historic Places.

(d) The commission shall work for the continuing education of the citizens of the city about the historic heritage of the city.

(e) The commission shall actively work for the passage of legislation which would permit the granting of full or partial tax exemptions to properties designated under this article in order to encourage owners to assist in carrying out the intent of this article.

(f) The commission may, as it deems advisable, solicit and receive funds for the purpose of landmarks preservation in the city. Any funds so received shall be placed in a special city account for such purpose.

(Code 1986, § 12.135(5); Ord. No. 0-2-2015, 7-14-2015)

Sec. 38-36. - Regulation of construction and alteration.

(a) Any person filing an application for a building permit involving property which has been designated as a landmark, or a landmark site, or is in a historic district created under Section 38-41, shall also file such application in the form of a certificate of appropriateness (COA) with the commission, for approval.

(b) No person shall alter, reconstruct or permit any alteration or reconstruction affecting the exterior of any landmark, landmark site or property in a historic district unless the commission has approved such work and unless so approved, the building inspector shall not issue a building permit for such work.

(c) Upon the filing of an application, the commission shall determine whether:

(1) The proposed work would not destroy or affect in a deleterious way any important feature of the landmark, landmark site or historic district; and

(2) The proposed work is appropriate according to the Secretary of the Interior's Standards for the Treatment of Historic Properties; and

(3) The exterior of any proposed improvement will be compatible with the exterior appearance and character of neighboring properties.

(d) If the commission agrees with all the statements in subsection (c) of this section, it shall approve the work and issue a COA. Its decision shall be made within 60 days of filing. If the commission decides any statements in the negative, it shall inform the building inspector to deny issuance of the permit. Denial of a permit may be appealed to the city council. In addition, if the commission denies an application, it shall, at the request of the applicant, cooperate and work with the applicant in an attempt to obtain approval within the guidelines of this article.

(Code 1986, § 12.135(6); Ord. No. 0-20-2015, 7-14-2015)
Cross reference— Buildings and building regulations, ch. 10.

Sec. 38-37. - Regulation of demolition.

(a) No person shall demolish all or part of a landmark or improvement on a landmark site, unless the commission has approved such work. Unless the commission has approved the work, the building inspector shall not issue a building permit for such work.

(b) When a person applies for a permit to demolish all or part of a landmark or improvement on a landmark site, such application shall also be filed with the commission.

(c) A demolition application under this section shall not be approved unless the commission makes the following findings: (1) the physical characteristics of the

building or improvement have changed since the landmark designation was made; (2) the change has caused the structure to no longer have the physical integrity needed to embody the physical characteristics that led to the landmark designation; and, (3) the change was not caused by a current or prior owner's failure to maintain the building or structure. Denial of the demolition permit may be appealed to the city council.

[Note: City Attorney recommends authorizing demolition when it has been ordered under Wis. Stat. § 66.0413, and when necessary to avoid inverse condemnation.]

(d) The commission shall be informed of all demolition permit requests for any property listed in the National Register of Historic Places.

(Code 1986, § 12.135(7); Ord. No. 0-2-2015, 7-14-2015)
Cross reference— Buildings and building regulations, ch. 10.

Sec. 38-38. - Recognition of landmarks, landmark sites and historic districts.

After a landmark, landmark site or historic district has been designated in accordance with sections 38-34 and 38-36, the commission shall cause to be prepared and erected on such property at city expense suitable plaques or signs recognizing the landmark. Such plaques shall be placed for ease of pedestrian visibility. The plaques shall contain all information deemed appropriate for the landmark by the commission.

(Code 1986, § 12.135(8))

Sec. 38-39. - Rescission of landmark designation.

(a) Designation may be rescinded upon petition to the commission and compliance with the procedures as follows:

(1) Petitions for rescission may be submitted to the landmarks commission for consideration and public hearing.

(2) When considering rescission of a landmark designation, the commission shall consider whether the landmark or district no longer meets the criteria for designation.

(3) The commission shall make a recommendation to the city council including a report regarding whether the landmark or district does or does not continue to retain significance and integrity.

(4) The council shall make its decision only after the above procedures have been followed.

(5) The council shall rescind a designation only upon a finding based on the commission recommendations that the designated landmark or district no longer meets the criteria in accordance with section 38-34.

(b) In the event of rescission, the commission shall notify the city clerk, building inspector and assessor of the rescission and shall cause the rescission to be recorded at its expense in the county register of deeds.

(c) Following any such rescission, the commission may not redesignate the subject property as a landmark or landmark site for at least five years from the date of rescission.

(Code 1986, § 12.135(9); Ord. No. 0-2-2015, 7-14-2015)

Sec. 38-40. - Procedures.

(a) Before establishing any landmark or landmark site, the commission shall hold a public hearing thereon after giving at least ten days written notice of such hearing and appeal procedures to the owners and occupants of the affected premises and the owners of land located within 200 feet of the affected property. Notice of such hearing shall also be published as a class 1 notice under the statute. The commission shall also notify the building inspector and the public works committee of the hearing and they may respond to the commission's proposed designation in writing or by appearance. At any time after the closing of the public hearing, the commission may recommend that the city council designate the affected property as either a landmark or landmark site. Upon the request of any aldermember or the owner of a landmark or landmark site, a public hearing shall be held by the city council before it votes on whether or not to establish the landmark or landmark site. Notice of such designation shall be given to the property owner, the city clerk, building inspector, assessor and the county register of deeds.

(b) The owner of any landmark or landmark site may, following the designation of the property, enter into voluntary restrictive covenants on the property with the commission. The commission may assist the owner in preparing the covenants in the interest of preserving the landmark or landmark site and the owner shall record such covenant in the county register of deeds and notify the assessor thereof.

(Code 1986, § 12.135(10))

Sec. 38-41. - Historic districts.

The commission may select geographically defined areas for recommendation for designation by the city council as historic districts and shall prepare, in ordinance form, an historic preservation and land usage plan for each such area. The designation criteria for such historic district shall be in accordance with section 38-36. Each historic preservation and land usage plan shall contain specific guidelines for development, a list of appropriate and banned land usage and a statement of preservation objectives within the district.

(a) The commission shall hold a public hearing when considering the plan for a historic district. Notice of the time, place and purpose of such hearing shall be given by publication as a class 2 notice under statute in the official city newspaper. Such notice shall also be sent by the city clerk to the aldermember of the aldermanic ward in which the historic district is located as well as the owners of record, as listed by the assessor, of property located at least in part within the district at least ten days prior to the date of such hearing. Following the public hearing, the commission shall vote to recommend, reject or withhold action on the plan. The recommendation, if any, shall be forwarded to the city council for its action.

(b) Upon receipt of such recommendation, the city council may by majority vote either designate or reject the historic district. Designation of the historic district shall constitute adoption of the district in ordinance form.

(c) Every person in charge of any landmark, landmark site or improvement in a historic district shall conform to the guidelines for development of land usage for property within the district as well as any regulations developed under this article.

(d) Following the designation of the historic district, the city council shall direct the department of planning and development staff to modify the official zoning map to reflect this change.

(Code 1986, § 12.135(11); Ord. No. 0-2-2015, 7-14-2015)
Cross reference— Districts and areas, § 78-61 et seq.

Sec. 38-42. - Maintenance of improvement on landmark site or within historic district.

Every person in charge of an improvement on a landmark site or within a historic district shall keep in good repair all of the exterior portions of such improvement to prevent it from becoming damaged or falling into a state of disrepair. This section shall be in addition to all other provisions of law relating to a premises repair.

(Code 1986, § 12.135(12))

Sec. 38-43. - Penalties for violations.

(a) Failure to perform any action required by the article or performance of any act prohibited by the article shall constitute a violation. Any persons violating any provision of this article shall be subject to a fine of up to $500.00 for each separate violation. Each and every day during which a violation continues shall be deemed to be a separate offense. Notice of violations shall be issued by the building inspector.

(b) Additionally, the commission may seek reversal of prohibited work without regard to economic hardship. Procedures for the reversal of prohibited work shall be outlined in a COA approved by the commission.

(Ord. No. 0-2-2015, 7-14-2015)

Sec. 38-44. - Commission records.

The city staff person for the commission shall cause to be prepared permanent public records of all actions taken by the commission in connection with landmarks, landmark sites and historic districts. Such records shall be maintained in such form as to permit ease of access and the city staff person shall provide guidance for any person seeking to search its records. The commission secretary is responsible for taking minutes and maintaining records if the city staff person is unable to attend a commission meeting.

(Code 1986, § 12.135(13); Ord. No. 0-2-2015, 7-14-2015)

Editor's note— Ord. No. 0-2-2015, adopted July 14, 2015, renumbered § 38-43 as § 38-44 to read as set out herein.