

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

RECEIVED

05-16-2011

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

FREDERIC E. MOHS,
EUGENE S. DEVITT,
122 EAST GILMAN LLP,
WISCONSIN AVE. HOUSE LLC,

Appeal No. 2011-AP-000340

Plaintiffs-Appellants,

v.

CITY OF MADISON,

Defendant-Respondent,

and

LANDMARK X, LLC,

Intervenor-Respondent.

Appeal from a Judgment of the Circuit Court of Dane County, Wisconsin
Case No. 2010-CV-003244
Honorable Juan B. Colas, Presiding

**BRIEF AND SUPPLEMENTAL APPENDIX OF
INTERVENOR-RESPONDENT LANDMARK X, LLC**

Allen A. Arntsen
WBN 1015038
Foley & Lardner LLP
P.O. Box 1497
Madison, WI 53701-1497

*Attorneys for Intervenor-Respondent
Landmark X, LLC*

TABLE OF CONTENTS

STATEMENT OF THE ISSUE	1
STATEMENT ON ORAL ARGUMENT.....	2
STATEMENT ON PUBLICATION.....	2
STATEMENT OF THE CASE	3
ARGUMENT	4
1. STANDARD OF REVIEW.	4
2. THE COMMON COUNCIL REASONABLY CONCLUDED THAT DENYING A CERTIFICATE OF APPROPRIATENESS WOULD CAUSE SERIOUS HARDSHIP FOR THE OWNER OF THE EDGEWATER PROPERTY.	5
3. THE RECORD SUPPORTS THE FINDINGS MADE BY THE COMMON COUNCIL IN ISSUING THE COA.....	11
4. THE COMMON COUNCIL MADE ALL FINDINGS NECESSARY TO ITS DECISION.....	15
A. The COA is Supported by Special Conditions Pertaining to the Edgewater.....	16
B. The Serious Hardship of Record Relates to the Property for Which the COA was Granted.	16
C. The Record Supports the Common Council’s Decision That That Serious Hardship Would Result From the Denial of the COA.	18

D.	The Record Contains Substantial Support That Denial of the COA Will Cause Serious Hardship to the Property Owner.	19
E.	The Hardship Was Not Self-Created.	19
CONCLUSION		20
CERTIFICATION		
CERTIFICATION		
CERTIFICATION OF SUPPLEMENTAL APPENDIX		
INTERVENOR-RESPONDENT LANDMARK X, LLC’S SUPPLEMENTAL APPENDIX		

TABLE OF AUTHORITIES

STATE CASES

<i>Bishop v. City of Burlington</i> , 2001 WI App 154, 246 Wis. 2d 879, 631 N.W.2d 656.....	4
<i>Block v. Waupaca</i> , 2007 WI App 199, 305 Wis. 2d 325, 738 N.W.2d 132.....	14
<i>Bratcher v. Housing Auth.</i> , 2010 WI App 97, 327 Wis. 2d 183, 787 N.W.2d 418.....	4
<i>Hilton v. Dept. of Natural Res.</i> , 2006 WI 84, 293 Wis. 2d 1, 717 N.W.2d 166	14
<i>Lamar Central Outdoor, Inc. v. Board of Zoning Appeals</i> , 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87	12-13
<i>Ottman v. Town of Primrose</i> , 2011 WI 18	4-5, 7, 12
<i>Peace Lutheran Church & Acad. v. Village of Sussex</i> , 2001 WI App 139, 246 Wis. 2d 502, 631 N.W.2d 229.....	12
<i>Teriaca v. Milwaukee Emp. Ret. Sys./Annuity & Pension Bd.</i> , 2003 WI App 145, 265 Wis. 2d 829, 667 N.W.2d 791.....	4

STATE STATUTES

Wis. Stat. § 62.11	13
Wis. Stat. § 62.23(7)(e)9 (2003)	12

OTHER AUTHORITIES

Madison General Ordinance § 32.19(5)(f)6, 13

Madison General Ordinance § 33.19(5)(b)25, 18

Madison General Ordinance § 33.19(5)(f)3, 16

STATEMENT OF THE ISSUE

Did the Madison Common Council act reasonably and lawfully in issuing a Certificate of Appropriateness for the Edgewater Hotel project?

Answered “yes” by the Dane County Circuit Court.

STATEMENT ON ORAL ARGUMENT

Because the parties' positions are exhaustively set forth in the record on review and the briefs to this Court and the circuit court, oral argument is unnecessary.

STATEMENT ON PUBLICATION

Because this case involves the application of well settled rules of certiorari review to an extensive, case specific factual record, publication of the decision is unlikely to clarify Wisconsin law or enunciate new rules of law.

STATEMENT OF THE CASE

The Edgewater Hotel redevelopment project (“Edgewater”) that is the subject of this appeal was among the most extensively reviewed City of Madison redevelopment projects in recent memory. As shown by the Madison Common Council record filed in the underlying certiorari action (Record (R.) 14), the Edgewater was reviewed on multiple occasions by numerous City of Madison boards and commissions, culminating in a marathon 13 hour Madison Common Council meeting on May 18-19, 2010. Among the land use decisions that the Common Council approved at that meeting was a 14 to 4 vote to overturn the Madison Landmarks Commission and grant a certificate of appropriateness (“COA”) under Madison General Ordinance (“MGO”) § 33.19(5)(f) to allow alterations to the existing Edgewater Hotel and the construction of a new hotel tower. (R. 14:5-6; Intervenor-Respondent’s Supplemental Appendix (“Supp. App.”) 1-2.)

Appellants Frederic E. Mohs and Eugene S. Devitt (“Mohs”), who have opposed the Edgewater from its inception, appealed the COA grant to the Dane County

Circuit Court, which, in a December 30, 2010 decision (R. 20; Appendix of Appellant (“App.”) 1), upheld the Common Council decision. This appeal ensued.

ARGUMENT

1. STANDARD OF REVIEW.

This Court’s certiorari review is of the decision of the Common Council. *Bratcher v. Housing Auth.*, 2010 WI App 97, ¶ 10, 327 Wis. 2d 183, 787 N.W.2d 418. The Court’s task is not to review the wisdom of actions taken by a city council. *Bishop v. City of Burlington*, 2001 WI App 154, ¶ 30, 246 Wis. 2d 879, 631 N.W.2d 656. “[T]here is a presumption of correctness and validity to [the Common Council’s] decision.... The presumption of correctness and validity is appropriate because it recognizes that locally elected officials are especially attuned to local concerns.” *Ottman v. Town of Primrose*, 2011 WI 18, ¶¶ 48, 51. “This court cannot substitute its judgment for that of the [Common Council] regarding the weight or credibility of the evidence on any finding of fact.” *Teriaca v. Milwaukee Emp. Ret. Sys./Annuity & Pension Bd.*, 2003 WI App 145, ¶ 30,

265 Wis. 2d 829, 667 N.W.2d 791 (internal quotations and citations omitted).

This Court may overturn the Common Council's decision only if it finds that: (1) the Common Council exceeded its jurisdiction; (2) the Common Council proceeded on an incorrect theory of law; (3) the Common Council's decision was arbitrary, oppressive or unreasonable and represented its will, not its judgment; or (4) the Common Council decision was not supported by substantial evidence. *Ottman*, 2011 WI 18, ¶ 35. The Common Council decision must be affirmed if the evidence in the record is such that a reasonable person could reach the same decision as the Common Council, even if a different decision were also reasonable. *Ottman*, 2011 WI 18, ¶¶ 53, 81.

2. THE COMMON COUNCIL REASONABLY CONCLUDED THAT DENYING A CERTIFICATE OF APPROPRIATENESS WOULD CAUSE SERIOUS HARDSHIP FOR THE OWNER OF THE EDGEWATER PROPERTY.

A COA was necessary for the Edgewater project to proceed because the Edgewater is located in the Mansion Hill Historic District in the City of Madison. MGO

§ 33.19(5)(b)2 requires a COA to construct, reconstruct or alter a structure in a historic district. (R. 14:346.) The Common Council’s decision to issue a COA was based on MGO § 32.19(5)(f), which reads, in pertinent part:

[T]he Council may, ... reverse or modify the decision of the Landmarks Commission if ... the Council finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the Certificate of Appropriateness will ... cause serious hardship for the owner, provided that any self-created hardship shall not be a basis for reversal or modification of the Landmark Commission’s decision.

R. 14:350.

Mohs’s first argument is that “the common council committed error by considering the hardship of an applicant, rather than the owner of the property.” Appellants’ Br. at 14.

Because the Madison Landmarks ordinance is uniquely crafted to address local Madison concerns and does not “parrot[] the standard set forth in the state statute,” a reviewing court should defer to the Common Council’s interpretation if it is reasonable because “[if] the language was drafted by the municipality in an effort to address a local concern . . . the municipality may be uniquely poised to

determine what that ordinance means.” *Ottman*, 2011 WI 18, ¶¶ 58, 60.

Mohs fails to cite anything in the record to support his assertion that the Common Council erroneously based its decision on the hardship that the COA applicant, the Hammes Company—rather than the owner of the Edgewater Hotel, Scott Faulkner—would suffer from failing to grant the COA.

To the contrary, the motion to grant the COA specifically includes a finding that “special conditions of the property create development constraints that cause serious hardships for the *owner*” (emphasis supplied). (R. 14:5-6; Supp. App. 1-2.) “On certiorari, a court will sustain a municipality’s findings of fact if any reasonable view of the evidence supports them. *Ottman*, 2011 WI 18, ¶ 53. Mohs’s counsel’s conceded before the Common Council that “[t]here is no doubt there was some display of hardship tonight.” (R. 14:76.) In fact, substantial evidence in the record supports the serious harm that the condition of the Edgewater property would cause any owner of the Edgewater if a COA

to allow alterations, construction or reconstruction were refused.¹

The following exchange between Alder Bidar-Sielaff and Bob Dunn makes clear that the Common Council was focused on the hardship to the owner of the property, rather than that suffered by the applicant.

ALDER BIDAR-SIELAFF: Okay. So one of the questions that keeps coming up is, as you talk about serious hardship, I'm back at this serious hardship, is the fact that you actually don't own the property right now. You have an option to purchase the property first, is that correct?

BOB DUNN: That's correct.

ALDER BIDAR-SIELAFF: So ...

BOB DUNN: Wouldn't call an option to purchase, but we have a contract.

ALDER BIDAR-SIELAFF: Yeah. I'm certainly not a developer, so I'm sure there are fancier words than that. So your explanation of hardship, if I understand it correctly, is that you believe that hardship exists regardless of who owns the site ...

BOB DUNN: Yes. Absolutely.

¹ While the Madison City Attorney issued an opinion that the serious hardship issue should be viewed in terms of the "applicant" (R. 14:325-26), and respondents maintained that position in the Circuit Court proceedings, the evidence of record (*see infra*, pp. 8-12) makes the owner/applicant distinction irrelevant to this appeal.

ALDER BIDAR-SIELAFF: ... that is based on the condition of the site as it exists.

BOB DUNN: *There is hardship here that has to be dealt with no matter who owns the property. It is not self-created.*

R. 14:85-86 (emphasis supplied).

Mohs's counsel validated this statement.

I'd like to speak very briefly to Mr. Dunn's issue with regard to serious hardship as to the Landmarks Commission issue. *As he has correctly pointed out, in order for you to overturn the Landmarks Commission in this case, you must find that there would be serious hardship to the property owner if the certificate of appropriateness were not issued.*

R. 14:76 (emphasis supplied).

There was ample support in the record of the serious hardship that denial of a COA would cause the Edgewater owner because of the structural condition and configuration of the existing hotel building and property. Mr. Dunn extensively testified to the condition of the Edgewater Hotel and what was necessary to preserve and redevelop the Edgewater into an economically viable use. (R. 14:71-72, 81-82 (with reference to R. 14:303; Supp. App. 31, and the current owner, Scott Faulkner).) This testimony was referenced by Common Council members in their questions

and debate. *See* R. 14:83 (Ald. Cnare), R. 14:243-44 (Ald. Bidar-Sielaff), R. 14:248 (Ald. Maniaci).

The record also contains extensive written presentation materials detailing the serious hardship “that currently exists for any owner” interested in redeveloping the Edgewater hotel. (R. 14:275-304; Supp. App. 3-32, R. 14:1517-19.)

These include:

- Site constraints caused by waterfront setback requirements and a view preservation easement. (R. 14:276; Supp. App. 4.)
- Necessary window, roof and facade replacement and stabilization because of construction deficiencies and water seepage. (R. 14:277-79, 294-95; Supp. App. 5-7, 22-23.)
- Pervasive noncompliance with American Disability Act requirements (slopes, elevators, hallways, doorways, bathrooms, stairs). (R. 14:280-83; Supp. App. 8-11.)
- Economically obsolescent floor plates and structural grid. (R. 14:284-86, 291-93; Supp. App. 12-14, 19-21.)
- Non-code compliant elevators and stairways. (R. 14:287-89; Supp. App. 15-17.)
- Non-code compliant mechanical, electrical, plumbing, and fire and safety systems. (R. 14: 296-300; Supp. App. 24-28.)
- Significant presence of asbestos and lead. (R. 14:301-02; Supp. App. 29-30.)

The impact of these hardships was summarized on R. 14:303; Supp. App. 31, which makes clear that the cost to renovate the historic Edgewater Hotel would yield a negative return for any owner, and that doing nothing would result in continued deterioration of the Edgewater, no matter who owned it.

The testimony of Scott Faulkner, whose family owns the Edgewater (*see* R. 20:6 n. 1; R. 14:151), is consistent with the above record. Mr. Faulkner supports the Edgewater redevelopment project. (R. 14:126.) He deferred to Bob Dunn as to what would happen to the property if the COA was refused, and discussed the need for a vapor barrier to seal the building. (R. 14:151.) In sum, consistent with the circuit court decision (R. 20:6-7; App. 1), the owner/applicant distinction trumpeted by Mohs is a red herring, as ample evidence supports the Common Council's finding that the owner of the Edgewater would suffer serious hardship if the COA were refused.

**3. THE RECORD SUPPORTS THE FINDINGS
MADE BY THE COMMON COUNCIL IN
ISSUING THE COA.**

Mohs's next challenge is to the adequacy of the record before the Common Council and the findings made by the

Common Council in reaching its decision. A city council is not required to make findings as to every issue relating to its decision, so long as its findings inform the parties and the court of the basis for its decision. *Peace Lutheran Church & Acad. v. Village of Sussex*, 2001 WI App 139, ¶ 33, 246 Wis. 2d 502, 631 N.W.2d 229. “On certiorari, a court will sustain a municipality’s findings of fact if any reasonable view of the evidence supports them.” *Ottman*, 2011 WI 18, ¶ 53.

Lamar Central Outdoor, Inc. v. Board of Zoning Appeals, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87, on which Mohs principally relies for his argument that the Common Council provided an insufficient record for review (see Appellants’ Br. at 25-26), is inapposite to this case. *Lamar* involved an appeal of a local board of zoning appeals variance decision under (subsequently repealed) Wis. Stat. § 62.23(7)(e)9 (2003)², which required that “the grounds for every such determination shall be stated” by the board of appeals. The portion of *Lamar* relied upon by Mohs is the

² Wis. Stat. § 62.23(7)(e)9 was repealed effective August 30, 2005, shortly after *Lamar* was released. See 2005 Wis. Act 34, § 6.

court's interpretation of "grounds." *Lamar*, 2005 WI 117, ¶¶ 27-39. Neither the applicable Madison ordinances nor the law of common law certiorari require that the "grounds" of a decision be stated. *See* section 1, *supra*; MGO § 32.19(5)(f) (R. 14:350).

In addition, *Lamar* involved an appeal of a decision of a five person appointed quasi judicial body limited to zoning issues, as opposed to a decision of a 20 person elected Common Council that is the governing body of the City of Madison. Wis. Stat. § 62.11. Finally, between the time the zoning board issued its decision in *Lamar* and the Supreme Court decision cited by Mohs, the law governing zoning variances had changed substantially, requiring a remand to the zoning board irrespective of the record underlying the board's decision. *Lamar*, 2005 WI 117, ¶¶ 17-24. In short, for myriad reasons, *Lamar* does not support overturning the Common Council decision.

Mohs correctly states that common law certiorari review requires that a court be given "something to review." Appellants' Br. at 25. However, a court may "turn to the transcript of the [Common Council's] proceedings to

determine if it has adequately expressed its reasoning.”

Block v. Waupaca, 2007 WI App 199, ¶ 7, 305 Wis. 2d 325, 738 N.W.2d 132. Review is not limited to written decisions or transcripts, but “upon an examination of the *entire record . . .*” *Hilton v. Dept. of Natural Res.*, 2006 WI 84, ¶ 52, 293 Wis. 2d 1, 717 N.W.2d 166 (emphasis added).

Mohs concedes that the extensive testimony and documents produced at the May 18-19 council meeting “may well contain some pieces of evidence that might support the ultimate decision of the Common Council.” Appellants’ Br. at 32. In fact, the certiorari record (R. 14) provides substantial support for the Common Council’s decision that “balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes,” a COA should be issued. See R. 14:5-6; Supp. App. 1-2, R. 14:350. As observed by Alder Bidar-Sielauff, the entire record weighs on one side of the scale, as the public interest in preserving the historic Edgewater Hotel is directly aligned with the interests of the owner in redeveloping the Edgewater Property into an economically viable use. (R. 14:243-44.) Indeed,

Alder Bidar-Sielaff's statements in this regard are the only record citations offered in support of Mohs's argument. *See* Appellants' Br. at 25-33.

Substantial evidence supports the congruent interests of the public and the owner that were served by the Common Council's decision to issue a COA. *See* R. 14:58, 81, 106-07, 127, 129, 133-34, 137, 153-54, 156-57, 164, 243-45, 253, 897-916, 926. Alder Bidar-Sielaff summarized: "I think we have heard information about how this property is not going to be preserved if there is not a significant investment in doing so." (R. 14:244.) The record provides more than ample support for the Common Council's application of the balancing test.

4. THE COMMON COUNCIL MADE ALL FINDINGS NECESSARY TO ITS DECISION.

As set forth above, no specific findings beyond those made in the motion for approval (R. 14:5-6; Supp. App. 1-2) are required to sustain the Common Council's grant of a COA so long as the decision is supported by the record. *See supra*, pp. 4-5, 12, 14. The certiorari record (R. 14) fully supports the Common Council decision.

A. The COA is Supported by Special Conditions Pertaining to the Edgewater.

Mr. Dunn testified extensively as to the structural conditions of the Edgewater Hotel that supported the requested COA. (R. 14:68-73, 80-92.) This testimony was supported by substantial written materials presented to the Common Council. (R. 14:275-303; Supp. App. 3-32.) Mohs's demand that the serious hardship showing include "a financial analysis as to the costs of repair or renovation by the owner" (Appellants' Br. at 44) has no support in MGO § 33.19(5)(f) or applicable law. Mohs's arguments based upon testimony of competing hoteliers (Appellants' Br. at 36-37, 46-47) simply emphasize that the Common Council heard a great deal of evidence and testimony at the May 18-19 meeting and made a proper legislative decision amply supported by the record, which is entitled to deference, and should be upheld by this Court.

B. The Serious Hardship of Record Relates to the Property for Which the COA was Granted.

While Mohs attempts to subdivide the Edgewater project for purposes of the hardship test (Appellants' Br. at 38-42), the Common Council properly viewed the Edgewater

project as a whole. The COA encompassed and was required for the entire project, which included renovation of the original 1940s hotel, removal of a portion of the 1970s addition and construction of a new hotel tower. *See* City of Madison Planning Department May 10, 2010 Staff Report to the Landmarks Commission (R. 14:965-77); Hammes Company March 29, 2010 Landmarks Commission submittal (R. 14:1143-1225).

The evidence presented to the Common Council reflected the integrated nature of the Edgewater project. The Design Overview portion of the COA request (R. 14:875-963) shows an integrated hotel, public plaza and related amenities, which supported an economically viable hotel redevelopment (*see* R. 14:303; Supp. App. 31), improved view corridors, public lakefront access, and rehabilitation of the historic Edgewater Hotel. *See* R. 14:897.

The Report of the City of Madison Planning Staff to the Landmarks Commission confirms that: “the proposal is a single integrated project and the Landmarks Commission is being asked to grant a single Certificate of Appropriateness for the project in its entirety.” (R. 14:977; *see also* R. 14:965

(“this is a single integrated project”).) The serious hardship of record is directly related to the COA and property that is the subject of this appeal.

C. The Record Supports the Common Council’s Decision That That Serious Hardship Would Result From the Denial of the COA.

Mohs’s argument that “[t]he alleged hardship relates only from the current condition of the property, not from the denial of the COA” (Appellants’ Br. at 42-43), is a *non sequitur*. Because the Edgewater property is located in a historic district, any alteration, reconstruction or construction requires a COA. MGO § 33.19(5)(b)2. (R. 14:346.) Accordingly, failure to grant a COA precludes taking any steps to remedy the deficiencies in the property. As Mr. Dunn stated: “Absent the redevelopment they have an asset here that is not sustainable because of serious hardship, and it’s not sustainable economically.” (R. 14:81.) Not surprisingly, this section of Mohs’s brief contains no citations to the record and is pure attorney argument. As set forth in section 2, *supra*, the certiorari record (R. 14) contains ample evidence of the serious hardship that would result from denial of the COA.

D. The Record Contains Substantial Support That Denial of the COA Will Cause Serious Hardship to the Property Owner.

Pages 43-45 of Appellants' Brief simply restates Mohs's argument that there was no showing that failure to grant a COA will cause serious hardship to the property owner. As set forth in section 2, *supra*, there is substantial evidence of record of the serious hardship that would befall the owner of the Edgewater property as a result of the denial of the COA. The financial consequences of denial of a COA are summarized at R. 14: 303; Supp. App. 31, which calculates the financial consequences of various redevelopment scenarios in light of the "combination of factors that currently exist for any owner." (R. 14:275; Supp. App. 3.)

E. The Hardship Was Not Self-Created.

Mohs's final argument, that any hardship was self-created, contains no citations to the record other than a statement by an alder who voted against the COA. *See* Appellants' Br. at 45-48, R. 14:6; Supp. App. 2. There is no evidence that any of the extensive elements of serious hardship that the condition of the Edgewater property caused

its owner were created by the Faulkner family or Hammes Company. Rather, the record confirms that the hardship was the function of a sloped site leading down to the lake, a 1940s construction approach that led to substantial water infiltration, and a building and construction design that posed substantial challenges to achieve disability, building, electrical and mechanical code compliance in a way that allowed an economically viable use of the property. *See* pp. 9-11, *supra*; *see also* R. 14:956-59. As Alder Bidar-Sielaff said during debate: “[B]ased on the information provided by Mr. Dunn I do believe they have defined hardship that is not self-created I do think that the physical issues with the building is, do create hardship that is not self-created.” (R. 14:244.) Again, the record is all on one side of this issue, as there was absolutely no evidence that any of the hardships presented by this property were created by the owner.

CONCLUSION

For the foregoing reasons, Intervenor-Respondent Landmark X LLC asks that the appeal be dismissed and the matter remanded to the circuit court for final disposition.

Respectfully submitted this 16th day of May, 2011.

FOLEY & LARDNER LLP

MAILING ADDRESS

Verex Plaza
150 East Gilman Street
Madison, WI 53703-1481
Post Office Box 1497
Madison, WI 53701-1497
608.258.4293
608.258.4258 Facsimile
Email:
aarntsen@foley.com

By: s/Allen A. Arntsen

Allen A. Arntsen
WBN 1015038

*Attorneys for
Intervenor-Respondent
Landmark X LLC*

CERTIFICATION

I certify that this Brief and Appendix of Intervenor-Respondent Landmark X LLC conforms to the rules contained in Wis. Stat. § 809.50(1) for a brief produced using the following font:

_____ Monospaced font: 10 characters per inch; double-spaced; 1.5-inch margin on left side and 1-inch margins on the other 3 sides.

XX Proportional serif font: Minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 3,335 words.

Dated this 16th day of May, 2011.

FOLEY & LARDNER LLP

MAILING ADDRESS

Verex Plaza
150 East Gilman Street
Madison, WI 53703-1481
Post Office Box 1497
Madison, WI 53701-1497
608.258.4293
608.258.4258 Facsimile
Email:
aarntsen@foley.com

By: s/Allen A. Arntsen
Allen A. Arntsen
WBN 1015038

*Attorneys for
Intervenor-Respondent
Landmark X LLC*

CERTIFICATION

I certify that:

I have submitted an electronic copy of this brief, including the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

FOLEY & LARDNER LLP

MAILING ADDRESS

Verex Plaza
150 East Gilman Street
Madison, WI 53703-1481
Post Office Box 1497
Madison, WI 53701-1497
608.258.4293
608.258.4258 Facsimile
Email:
aarntsen@foley.com

By: s/Allen A. Arntsen

Allen A. Arntsen
WBN 1015038

*Attorneys for
Intervenor-Respondent
Landmark X LLC*