



# CHRIS KAPENGA

WISCONSIN STATE SENATOR

## Testimony on Senate Bill 314

Senate Committee on Insurance, Financial Services, Government Oversight and Courts

Tuesday, July 16<sup>th</sup>, 2019

Thank you Chairman Craig and committee members for hearing testimony on Senate Bill 314 today. This bill was crafted in consultation with Waukesha County to address a specific issue regarding a county owned building and its historic designation. I will leave some of the details of the case to County Executive Farrow and his team, but will give a high level overview of the situation as it stands and why I decided to author this legislation.

Under current law, local municipalities can form local landmark commissions with the ability to designate and regulate properties it deems historic. These local landmark commissions have little accountability to the taxpayers as they are unelected. When a building receives a historic designation, its owner often has to go through extensive red tape in order to make any modifications to the building. This bill would prevent the City of Waukesha from regulating county owned buildings under their landmarks ordinance.

In 2001, the City of Waukesha's non-elected landmarks commission designated the former Health and Human Services building as a local landmark, despite objections from the county. In 2013, the County built a new Health and Human Services building, leaving the old building vacant. After two separate attempts to sell the building, the County approached the City to rescind the landmark designation and allow them to proceed with demolishing the building. The City of Waukesha denied this request.

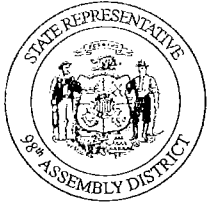
The former HHS building has reached a point of deterioration that will require extensive repairs to keep the building in suitable condition. Given the state of the building, spending upwards of \$1 million of tax dollars for upkeep on an outdated and dilapidated building seems like an unwise use of money. That money would be better spent on other capital projects, such as repairing roads around the county.

As someone who has put an emphasis on property rights during my time in the legislature, I have concerns with government having the ability to "lock down" a property without the owner's consent, regardless of whether it is private or public. The bottom line is that the county owns this property, and they should have the ultimate say in how it is utilized. Unlike the landmarks commission, the county executive and the county board are directly elected. Their constituents have the ability to hold them accountable for any decisions they make, including demolishing this vacant building.

It is also important to note that county governments are effectively an extension of state government, carrying out a number of services delegated by the state. Under current law, Waukesha County has no outlet to address the ongoing situation with the former HHS building outside of the courts. A potentially lengthy court battle between the City and County would needlessly spend additional tax dollars.

Some have claimed that this is a "backdoor effort" by the legislature to subvert local control on this issue. I contend that this bill is the exact opposite. We are having a public hearing today, in the light of day, where people on both sides of the issue will have the opportunity to express their opinion. I am hopeful that this legislation will continue to spur additional discussion on this important issue.

Thank you, Mr. Chairman and Committee members, for your time and consideration of this bill.



# Adam Neylon

State Representative • 98th Assembly District

**DATE:** July 16, 2019

**TO:** Senate Committee on Insurance, Financial Services, Government Oversight and Courts

**FROM:** Representative Adam Neylon

**RE:** Senate Bill 314

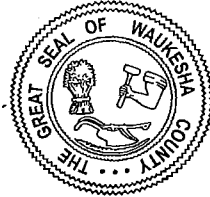
Chairman Craig and Committee Members, thank you for holding this hearing and considering Senate Bill 314.

Waukesha County acquired the Health and Human Services building in 1972 from the City of Waukesha. In 2001 the city's non-elected landmarks commission designated the building a local landmark. Since then, county taxpayers funded a new Health and Human Services building and continue funding the old building, which has been vacant for 5 years.

The landmarks commission has denied the county's request to remove the building's historic designation, which requires the county to maintain the building despite the fact that it is vacant. County taxpayers, therefore, are obligated to pay for repairs to the vacant building that will cost in excess of \$1 million dollars, potentially taking money from other needed capital projects such as roads.

The intention of the bill is to prevent a non-elected commission preventing the elected county officials from making the best use of their tax dollars, which is not to pay for repairs to maintain an unused and vacant building. I am confident County Executive Farrow and County Board Members will make better use of these tax dollars. As you review and consider this legislation, please keep in mind, Waukesha County owns this building, not the City of Waukesha, and these county tax dollars are being used to repair and maintain an unused vacant building.

Thank you for your time.



## WAUKESHA COUNTY OFFICE OF THE COUNTY EXECUTIVE

To: Senate Committee on Insurance, Financial Services, Government Oversight and Courts  
From: Waukesha County Executive Paul Farrow  
Date: Tuesday, July 16, 2019  
Re: Support Senate Bill 314

Thank you Chairman Craig and members of the Senate Committee on Insurance, Financial Services, Government Oversight and Courts for having this hearing today. I am strongly urging you to support Senate Bill 314, which limits the authority of 2<sup>nd</sup> class cities to designate and regulate historic landmarks.

Waukesha County requested this legislation in order to tear down a building on our county campus that once housed our Health and Human Services (HHS) department. Coming to the legislature for help was not done hastily. The former HHS building has been vacant since 2013 and despite painstaking efforts by county staff, the city's Landmark Commission has held the county hostage to a building that poses significant cost and safety liability to the taxpayers of Waukesha County.

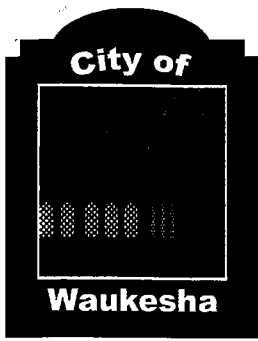
The county acquired the HHS building in 1972 at the urging of the City of Waukesha. In 2001, over the county's objection, the city's non-elected landmarks commission designated the building a local landmark. In 2006 the county decided to build new after an independent building assessment report found it would cost \$24 million dollars to renovate the building.

The County has made two separate attempts to turn over the former HHS building. The first seeking someone to lease the building and the second releasing a request for proposal to sell the building. The county received only one bid with a purchase price well below the \$1.3 million market value for the property, and the bid failed to meet conditions of sale requirements. The County Board voted to reject the bid. The city's Landmark Commission concluded the county did not act in good faith to find a buyer for the property, and refused, when asked in writing, to articulate what a "good faith" effort entails.

The county remains obligated to maintain the building even as it sits vacant. The county spends over \$26,000 annually on maintenance and imminent costs of roof repair exceed one million dollars. This is not a good deal for taxpayers. With tight budgets and levy limits, the taxpayer's money should be prioritized towards public safety and road repair, not maintaining an empty building.

It is also important to note that the county values its history. The county spent over \$5 million dollars to improve the infrastructure of the original 1893 county courthouse when we sold it to the Waukesha County Museum and Historical Society for one dollar. The old HHS building has been significantly altered through multiple renovations and additions since its time as a springs resort and has lost its historical significance.

Thank you for your time and consideration. Please do not hesitate to reach out to me if you have any questions.



## OFFICE OF THE MAYOR

201 DELAFIELD STREET  
WAUKESHA, WISCONSIN 53188-3633  
TELEPHONE 262/524-3700 FAX 262/524-3899

Shawn N. Reilly, Mayor  
sreilly@waukesha-wi.gov

July 15, 2019

To: Senator Craig, Senator Stroebel, Senator Feyen, Senator Risser, Senator L. Taylor  
CC: Senator Kapenga, Representative Allen, Representative Neylon  
Re: 2019 Senate Bill 314

The City of Waukesha Common Council and Mayor Shawn Reilly are writing to oppose 2019 Senate Bill 314, limiting certain 2nd Class Cities the ability to designate or regulate historic landmarks. This bill only applies to a 2nd class city located in a county with a population greater than 380,000, adjacent to a county with a population greater than 800,000. This very specific description ONLY applies to the City of Waukesha, and specifically takes local control away from the City of Waukesha.

This Bill is in direct conflict with State Statutes Section 62.23(em) 1, which grants Cities, as an exercise of its zoning and police powers for the purpose of promoting the health, safety, and general welfare of the community and of the state, the ability to regulate by ordinance any property that is listed on the National Register of Historic Places or the State Register of Historic Places and to create a Landmarks Commission to designate historic or archaeological landmarks and establish historic districts.

The City of Waukesha has been designated a Certified Local Government (CLG) by the State Historic Preservation Office and the National Park Service since 1985. The CLG program helps communities save the unique and irreplaceable historic character of places. Through the certification process, communities make a local commitment to historic preservation. This commitment is key to the ability to preserve, protect, and increase awareness of our unique cultural heritage found in the built environment across the country. Being a CLG demonstrates the City of Waukesha's commitment to saving what is important from the past for future generations. City of Waukesha Municipal Code Chapter 28 describes the powers and duties of the Landmarks Commission including the designation of landmarks, regulation of exterior alterations, demolition, and sale of landmarks. Chapter 28 is fully compliant with CLG requirements and State law, including the recent law changes which required the ability to **appeal Landmarks decisions directly to the Council.**

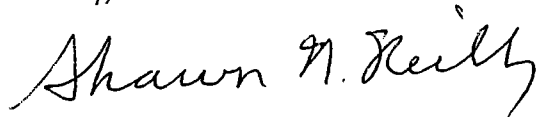
2019 Senate Bill 314 is specifically crafted so that Waukesha County can ignore the Local Landmark Designation for the Grandview Heath Resort/Moor Mud Baths (most recently used as the Waukesha County Health and Human Services building) in spite of the City's Landmarks Ordinance. Waukesha County has not met the local criteria to rescind the Landmark designation, nor has it exhausted all the avenues in the City's Landmarks Ordinance to receive permission to raze the building. The State legislature with this bill would create special legislation that applies ONLY to the City of Waukesha that would allow the County to ignore allow them to avoid having to follow local ordinances.

Waukesha County has received interest from reputable developers, each with a strong track record of redeveloping historic buildings into successful housing developments, but has not made good faith efforts to sell

the building or enter into a long-term lease with any of them. This building is still structurally sound and in good condition which make it an attractive redevelopment project. The availability of State and Federal Historic Tax Credits for redevelopment of this property add to its appeal.

We feel that passing a bill that is so specific that it only affects ONE property in ONE City in the entire State of Wisconsin sets a bad precedent and diminishes local control. Waukesha County has not exhausted all local avenues to either rescind the Landmarks Designation or to receive approval to raze the building. Crafting a bill that is so specific that it only applies the property that Waukesha County owns within the City of Waukesha is not good public policy and we would urge you to vote against 2019 Senate Bill 314.

Sincerely,

A handwritten signature in black ink that reads "Shawn N. Reilly". The signature is written in a cursive style with a prominent 'S' and 'R'.

Shawn N. Reilly  
Mayor

**City of Waukesha, Wisconsin**

**Common Council Resolution**

Resolution No. 31 - 19

**Whereas**, Grandview Health Resort/Moor Mud Baths, has been a part of the Waukesha community since 1911.

**Whereas**, Grandview Health Resort/Moor Mud Baths was designated to the National Register of Historic Places and State Register of Historic Places in 1982 and designated a local landmark by the City of Waukesha in 2001.

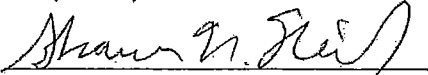
**Whereas**, at the time of designation, Waukesha County **never** filed a formal objection to its being listed to the National Register of Historic Places, the State Register of Historic Places and its Local Landmark designation.

**Whereas**, in 2019, Senate Bill 314 (Historic Landmarks) is attempting to limit "certain 2<sup>nd</sup> class cities" ability and authority to designate or regulate historic landmarks.

**Whereas**, the lone property in the State of Wisconsin to qualify for altered or revoked landmark status under the SB-314 amendment is Grandview Health Resort/Moor Mud Baths.

**Now, therefore, be it resolved**, that, the City of Waukesha Common Council strongly opposes such legislation limiting established local control over matters and designation of landmark status and historic value.

Adopted by the Common Council the 13<sup>th</sup> day of July 2019

  
Shawn N Reilly, Mayor

Attest:  
  
Gina L. Kozlik, City Clerk



WISCONSIN  
HISTORICAL  
SOCIETY

Chair Craig, Vice-Chair Stroebel, and members of the committee: Thank you for the opportunity to testify today regarding historic preservation. My name is Daina Penkiunas and I am the State Historic Preservation Officer at the Wisconsin Historical Society. I am here today to testify for information regarding Senate Bill 314.

Before I begin I would like to note that our office is working with Waukesha County outside of the local landmark process pursuant to state statutes that require negotiation with local units of government for impacts to listed properties.

My comments today reflect on a general statewide perspective. I am also distributing a copy of our recently released report on the work of Wisconsin's historic preservation commissions, which I will reference in my testimony.

Historic preservation brings economic revitalization, neighborhood stability, and livability that can transform communities into more prosperous, desirable, and healthier places to live, work, and grow.

At its core, the National Historic Preservation Act of 1966 and Wisconsin Act 395 of 1987 were adopted to ensure that the special places that tell stories of our past remain relevant today and allow us to pass on our beliefs, values and traditions to future generations.

State statutes allow units of government to create landmark commissions and designate local landmarks and local historic districts. Commissions and their duties are established through local ordinances and these ordinances are enacted and revised by elected officials. Landmark commission members need to meet specific guidelines or areas of expertise to serve and are appointed by the chief local official.

This year, Wisconsin's State Historic Preservation Office completed a nearly yearlong study of the work of local landmark commissions from across the state. We surveyed the then 70 Certified Local Government commissions and property owners coming to commissions to have work approved. Fifty-six communities and over 200 applicants responded to the surveys. The collected data demonstrated several key takeaways. First, within the 56 communities, an average of 98.7% of parcels were not subject to local landmark ordinances. Second, for the small number (1.3%) of properties covered by landmark ordinances, 98% of property owners applying had their projects approved. These numbers show that while commissions may designate local landmarks, these are actually few in number. And, commissions work with applicants to achieve approvable projects.

As with all reports, the survey and feedback also identified areas of improvement. The State Historic Preservation Office works to provide guidance and training to local commissions through workshops, conferences, web content, and webinars. The results of the surveys will guide future outreach and training.

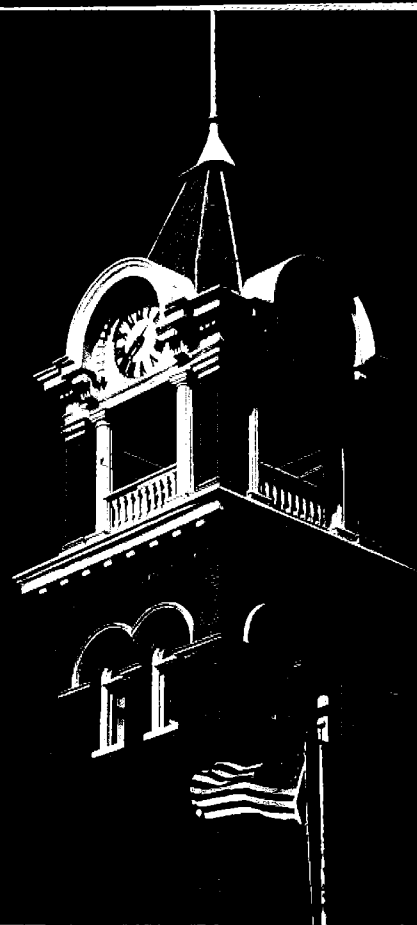
I would be happy to meet with members of the committee to discuss the work of the State Historic Preservation Office and to answer any questions you or your staff may have.

Thank you for your time.

For more information, contact Daina Penkiunas at (608)264-6511 or [daina.penkiunas@wisconsinhistory.org](mailto:daina.penkiunas@wisconsinhistory.org)

# WISCONSIN CERTIFIED LOCAL GOVERNMENT

## HISTORIC PRESERVATION COMMISSIONS



**H**istoric Preservation and Wisconsin's historic preservation commissions add value to communities. Historic Preservation improves our quality of life, reinvigorates our neighborhoods, and is what gives our communities each their own distinctive character. It celebrates the places that are important to us, and identifies the places that tell our history.

### What is a Certified Local Government (CLG)?

A CLG is any city, village, county, or town that has been certified by the State Historic Preservation Office (SHPO) and the Department of the Interior to meet these basic criteria:

- ▶ Establish by ordinance a qualified historic preservation commission
- ▶ Enforce state or local legislation for the designation and protection of historic properties
- ▶ Maintain a system for the survey and inventory of local historic resources
- ▶ Provide public participation in the local historic preservation program

### Wisconsin Requirements for Certified Local Governments

The CLG must adhere to all of the federal and state requirements or the SHPO may revoke the CLG certification. The Wisconsin SHPO has established these additional requirements:

- 1 The CLG must enact and enforce a historic preservation ordinance that regulates historic property.
- 2 A CLG must provide annual reporting to the SHPO on CLG activities.
- 3 A CLG must send copies of meeting minutes and agendas to the SHPO following each meeting.
- 4 The ordinance must not allow historic property owners to opt-out of local historic designation.
- 5 Designation must not require owner consent.
- 6 The commission must approve work on locally designated properties and recommendations may not be advisory.

### What is a Historic Preservation Commission (HPC)?

The governmental entity responsible for overseeing design review in a municipality's locally designated districts. Wisconsin Act 176 requires that all decisions of the HPC have an appeal process for the property owner. These appeals typically go before the city council, town board or county board depending on which jurisdiction is covered by the ordinance.

### How are Historic Preservation Commissions funded?

Commissions generally receive a small amount of funding from their local government. Since 1985, CLGs are eligible to apply for competitive Historic Preservation Subgrants from the Wisconsin SHPO. Each year, several communities receive grants up to \$25,000 for a total of approximately \$100,000 awarded to subgrant projects. In the past ten years, the SHPO granted \$984,598 to 37 different CLGs.

### What is a Landmark?

A building, structure, object, or site identified under the guidelines of the local historic preservation ordinance as a historic resource of particular significance.

### What is a Certificate of Appropriateness (COA)?

A document issued by a HPC that allows an applicant to proceed with a proposed alteration, demolition, or new construction in a designated area or site on a designated local landmark, following a determination of the proposal's suitability according to applicable criteria.



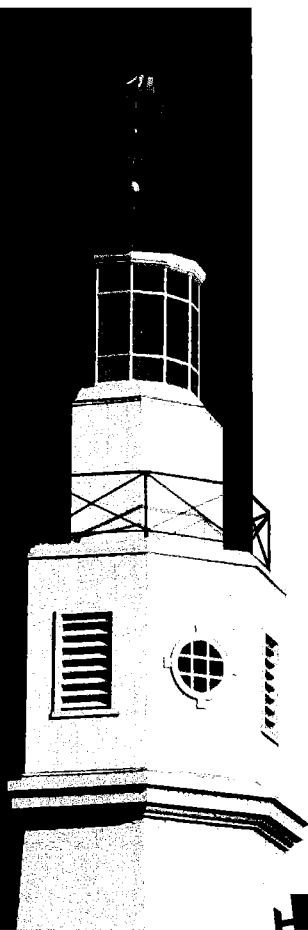
WISCONSIN  
HISTORICAL  
SOCIETY

THIS PROJECT WAS FUNDED THROUGH THE GENEROUS  
SUPPORT OF THE JEFFRIS FAMILY FOUNDATION



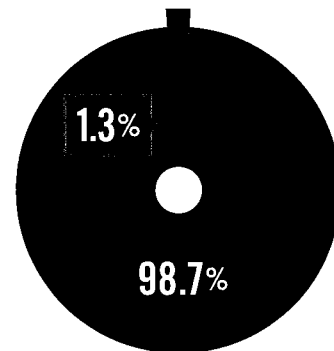
This data is based on a 2018 survey of 70

Wisconsin Certified Local Governments that received responses from 56 communities. Property owners who had recently applied to CLGs for Certificates of Appropriateness also received customer satisfaction surveys to rate their experience working with CLGs.

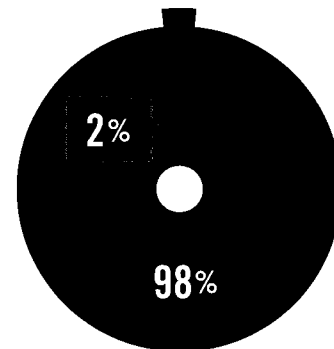


## STATEWIDE STATISTICS

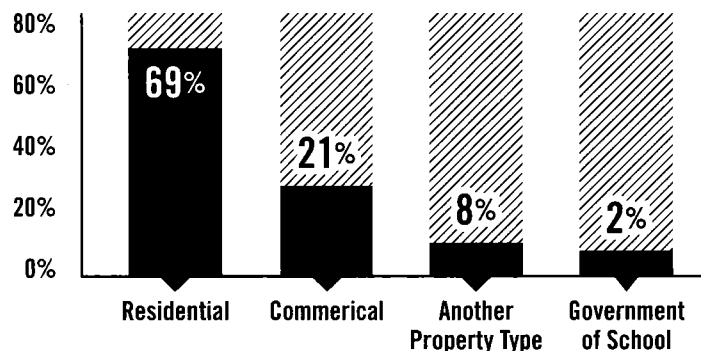
### % OF LANDMARKED PARCELS IN CLG COMMUNITIES



### COA APPROVAL

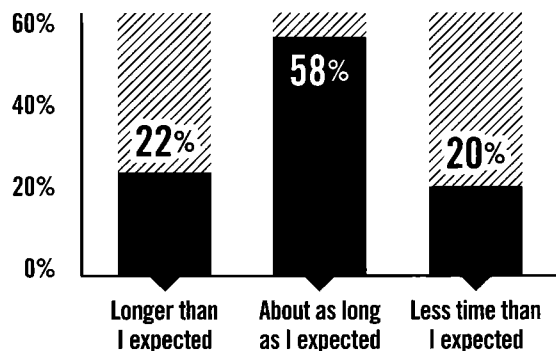


## TYPES OF COA PROJECTS



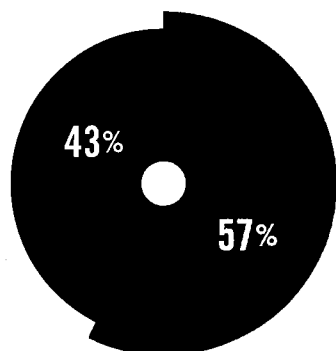
From 2015-2018, on average, 918 COA applications were reviewed statewide per year.

## HPC REVIEW TIME OF COAs



Met or exceeded expectations of 78% of applicants

## % OF REPORTING COMMUNITIES THAT HAVE A LOCALLY DESIGNATED HISTORIC DISTRICT



- Have a locally designated historic district
- Do not have a locally designated historic district

The average number of districts per community is 1.6. Only Janesville, Madison, Milwaukee, and Waukesha reported more than three districts.

## HISTORIC PRESERVATION COMMISSION TRAINING

► [wihist.org/hpc-training](http://wihist.org/hpc-training)

The Wisconsin SHPO Historic Preservation Commission Training is a comprehensive training for new commissioners as well as a reference site for experienced commissioners covering every aspect of commission operation and historic preservation.

## WISCONSIN CERTIFIED LOCAL GOVERNMENTS

► [wihist.org/clg](http://wihist.org/clg)

The Wisconsin SHPO provides training and assistance to CLGs as well as a competitive subgrant program to fund preservation projects in CLG communities.

## HOW TO PRESERVE YOUR HISTORIC BUILDING

► [wihist.org/preserve-your-building](http://wihist.org/preserve-your-building)

This collection of articles provides owners with best practices for restoring and rehabilitating historic buildings.

For the full report, visit [wisconsinhistory.org/clg-report](http://wisconsinhistory.org/clg-report)

# MADISON TRUST



for Historic Preservation

NATIONAL  
TRUST  
FOR  
HISTORIC  
**PRESERVATION** Local Partner

July 16, 2019

Hon. David Craig  
Hon. Duey Stroebel  
Hon. Dan Feyen  
Hon. Fred A. Risser  
Hon. Lena C. Taylor

Re: Senate Bill 314

Dear Senators:

The Madison Trust for Historic Preservation strongly opposes SB 314.

The bill places the State of Wisconsin legislature in the middle of a factual and legal dispute between Waukesha County and the City of Waukesha. Without reference to the relevant facts or the relevant law, the bill would overturn the conclusion reached after public hearing by the City of Waukesha Landmarks Commission and after a hearing held before the City's Administrative Review Appeals Board.

What precedent would this legislative effort establish? Municipal commissions make thousands and thousands of decisions every year. Is every commission decision to be subject to review by the legislature?

SB314's sponsors apparently suggest that a "non-elected commission" has no value and that only elected officials are in a position to render decisions. This suggestion ignores the specific language found in s. 62.23(7)(em)3., Stats., which provides: "An owner of property that is affected by a decision of a city landmarks commission may appeal the decision to the common council. The common council may overturn a decision of the commission by a majority vote of the common council." If the concern is that elected officials need to weigh in on the decision that underlies this bill, then Waukesha County should appeal the decision to the City of Waukesha's Common Council, not to the Wisconsin legislature.

The Madison Trust believes that the topic of historic preservation is an important one to our State and to our local communities. For those properties found within a city, the Wisconsin legislature has wisely vested the authority in that city's landmarks commission to make decisions whether to grant local landmark status or to remove that status. The City of Waukesha's Landmarks Commission is required to apply a carefully crafted standard before rescinding a designation: "Any person listed as the owner of

*Dedicated to Preserving Madison's Historic Places*

record . . . who can demonstrate . . . that by virtue of [the landmark] designation the owner is unable to find a buyer willing to preserve such landmark . . . even though he has made *reasonable attempts in good faith to find and attract such a buyer*, may petition the Commission for a rescission of the designation." Waukesha Municipal Ordinance Sec. 28.05(4). Senate Bill 314 would pluck a single property out of that structure with no apparent justification and upset the process (established by this legislature) for appealing the landmarks commission's decision.

Respectfully submitted,

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

Kurt Stege  
President

**Hearing on Bill # 314**  
**Hearing Room 300 Southeast**  
**Presenter: Eugene Hackbarth, Member De Pere, WI Historic Preservation**  
**Commission**

I travelled more than 125 miles to provide my input regarding Bill # 314 this morning. Besides serving on the De Pere Historic Preservation Commission, I also serve as Vice-President of the Wisconsin Association of Historic Preservation Commissions. It's important to hear and discuss my concerns before moving forward this legislation. I also want to thank those of you who participated in the passage of the 2014 legislation that increased the Historic Tax Credits from 5% to 20% for Commercial projects that meet Department of Interior Guidelines. The economic impact on Wisconsin Communities of all sizes has been tremendous since its passage a few years ago.

**Economic Impact in the State**  
**Jan 1, 2014 – Dec 31, 2018 Totals**

- **Economic Activity.** \$1.5 billion of economic activity generated by historic rehabilitation work reviewed by the SHPO
- **More jobs.** SHPO historic preservation programs created 27,076 jobs in the state
- **\$228.8 million in federal tax savings for state property owners**
- **\$300 million in state tax savings for state property owners**

**Analysis by the Legislative Reference Bureau**

Generally under current law, a city, village, town, or county (political subdivision) may designate and regulate historic properties to preserve their significant characteristics. Cities may also exercise such authority with regard to archaeological landmarks and, in some cases, a city is required to exercise such regulatory authority. Under this bill, with regard to properties owned by a certain county, a 2nd class city may not designate or regulate such historic, or archaeological, properties or districts. The bill only applies to a 2nd class city that is located in a county with a population greater than 380,000, which is also adjacent to a county with a population greater than 800,000. If such a city has in effect on the effective date of the bill an ordinance or regulation that regulates such county-owned historic, or archaeological, properties or districts, the ordinance does not apply and may not be enforced.

Question: Is this legislation written for one city in the state (Waukesha) and only affects the Moor Mud Baths property including the golf course, clubhouse, hotel building and springhouse. Legislation for one owner and one property sets a bad precedence

Which Wisconsin Second Class Cities meet the criteria described above?

I want to stress that this legislative bail-out will be detrimental to the morale of Historic Preservation Commissioners and review board members, who duly follow legal procedures, but then have uncooperative parties attempt to make an end run on a fair and open process.