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# MEMORANDUM

## COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

TO: Thomas Thomas, City Manager

SUBJECT: Amici Curiae Response to Hanna v. City of Chicago

DATE: October 25, 2012

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The City of Rock Island has been asked by Landmarks Illinois to gather organizations and municipalities with historic preservation commissions in support of the City of Chicago in its legal defense of the Chicago Landmarks Ordinance which is being challenged in *Hanna v. City of Chicago*. They have directly appealed to Rock Island again, since the City was a supporter of the amici curiae brief in 2009. The City of Rock Island has until Tuesday, November 13 to join the brief.

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Landmarks Illinois board members Richard Friedman, of Neal & Leroy, and Julie Bauer, of Winston & Strawn, are providing pro bono assistance to write a second amicus brief. Landmarks Illinois assumes the second brief will raise many of the same themes included in the 2009 version.

### List of Amicus Curiae Organizations – 2009

AIA Chicago	Landmarks Illinois
City of Aurora	National Alliance of Preservation Commissions
City of Highland Park	National Trust for Historic Preservation
City of Lake Forest	New York Landmarks Conservancy
City of Rock Island	Pittsburgh History and Landmarks Foundation
City of Urbana	Preservation Action
Cleveland Restoration Society	Preservation Chicago
Illinois Association of Historic Preservation Commissions	Village of Oak Park
Illinois Historic Preservation Agency	
Illinois Municipal League	

### Background

On January 30, 2009, the Illinois Appellate Court described the designation criteria in Chicago's preservation ordinance, in effect for more than 40 years, as "vague," and ordered a Cook County court to decide whether the ordinance is unconstitutional. The appeals court opinion went on to describe the designation criteria as "unconstitutionally vague," leaving the trial court little room to determine otherwise. In response, the City of Chicago appealed the decision to the Illinois Supreme Court. The City of Rock Island, among others listed above, filed an *amicus* brief in support of the City of Chicago. The Illinois Supreme Court did not take the case, but, in an unusual act, remanded it back to the Circuit Court. In May 2012, Judge Sophia H. Hall of the Circuit Court of Cook County held the Chicago ordinance criteria for determining whether a building should be designated a landmark is constitutional, and further held the appointment of members to the commission and the delegation of authority to the commission by the Chicago City Council were also constitutional.

However, at the time, the pro bono attorneys for *amicus* brief, the firm Neal & Leroy in Chicago, believed plaintiffs (Hanna and Mrowka) would likely file an appeal, which would place the case back in the hands of the Illinois Appellate Court. This circumstance has occurred, hence the appeal filed once again.

### **Why is this Important to Rock Island?**

There are ramifications for this court decision in Rock Island. Our Preservation Ordinance, adopted in 1984, contains parallel language to Chicago's ordinance – as do hundreds of similar ordinances across the country. While the designation criteria are not exactly the same, they are very similar in wording and definition. The court case challenges the Chicago ordinance in three main areas:

1. "Vague" terms used in the language of the criteria (specifically mentioned were the following terms: value, important, critical, historic and significant, most of which are included in the Rock Island Preservation Ordinance);
2. The selection of Landmarks Commission members who "have demonstrated special interest, knowledge, or experience in architecture, history, neighborhood preservation or related disciplines." This last notation refers to people who have made history or architecture their passion or advocacy, but who have not obtained degrees or certification in the fields mentioned in the ordinance (history, architecture, historic architecture, planning, archeology, real estate or historic preservation); and
3. The constitutionality of the Chicago City Council to delegate legislative power to the Chicago Landmarks Commission. This same delegation of power was accorded the Rock Island Preservation Commission by the Rock Island City Council.

While the remanded case reversed on all points, these issues are likely part of the second appeal. The Rock Island ordinance is very parallel to the Chicago ordinance on all three of these points. In Rock Island, it would be difficult to find (and rotate every six years) nine people who have degrees or certification in those specific disciplines. The Rock Island Preservation Ordinance states: "At least one member of the Commission shall be an attorney, one an architect, and one shall be an active member of the Rock Island Preservation Society. Six commission members shall be appointed at large on the basis of expertise, experience or interest in the areas of architectural history, building construction or engineering, finance, historical and architectural preservation, landscape architecture, geography, neighborhood organizing or real estate." If such language were enforced, it would mean citizens with general knowledge and interest, but not a degree in these fields, would not be qualified for the Rock Island Preservation Commission.

Because the Rock Island Preservation Ordinance includes the same language, the Illinois Appellate Court had declared "unconstitutionally vague" for the City of Chicago, staff has been closely following the Chicago response and felt compelled to join the *amicus* brief representation agreement, which was signed by former City Manager John Phillips in March 2009. At this time, a second *amicus* brief will be necessary.

Landmarks Illinois will need a preliminary agreement by the City of Rock Island by November 13, 2012 so that documents can be prepared by their pro bono attorneys, Richard Friedman of Neal & Leroy and Julie Bauer of Winston & Strawn, in time for the submission deadline on November 27, 2012. It is our understanding there is no cost incurred by the City of Rock Island to join the *amicus* brief.

**Recommendation:** The Preservation Commission unanimously approved a motion urging the City Council to preliminarily agree to join with Landmarks Illinois and others as a "friend of the court" in the appeal of Hanna and Mrowka v. City of Chicago, and authorize the City Manager to sign the "Representation Agreement" as *amicus curiae* once the proper documents are prepared by Landmarks Illinois counsel.

Submitted by: Alan M. Carmen, Planning and Redevelopment Administrator  
Jeffery A. Eder, Community and Economic Development Director

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Approved: Thomas Thomas, City Manager