

Landmark Preservation Ordinance Update Task Force
Meeting #3 – May 8, 2018
Summary

Present: Mark Bowman, Marilyn Quinn, Dennis Humphries, Jeff Pearson, Will Baker, Charles Jordy, Amy Cole, Adam Harding, Tania Saldago, Annie Levinsky, Chris Cowan, Scott Chomiak, Councilman Kevin Flynn, Councilwoman Robin Kniech, Stephanie Fernandez, Hayden Hirschfeld

Staff: Jenn Cappeto, Kara Hahn, Jenny Buddenborg, Becca Dierschow, Krystal Marquez, Caryn Champine

Meeting Objectives:

- Generate options for improving the process of designations that come from demolition review
- Identify those options that have the greatest chance of meeting the criteria for success

Generating Options for Ordinance Revisions – How to Handle designations that come from the demolition process?

I. Staff Presentation

A. Demolition review in Chapter 30.6

- Prevents demolition of historically significant buildings without public notice
- There are two avenues for demolition review:
 - o Certificate of Non-Historic Status (CNHS) - for properties that are neither designated nor slated for designation. Allows a building to be assessed for landmark potential. If no potential is found or a designation is not brought forward, owner gets a certificate that is good for five years that allows them to bypass demolition review
 - o Demolition Permit - whenever a contractor applies for a total demolition permit for a building over 30 years of age, they must get Landmark approval before they can pull the permit
- In 2017, staff reviewed 675 demolition permits. 33 were posted for notice, no designations were approved
- Demo Review process -
 - o Receive a demo application with pictures, assessor's records, and application form
 - o Staff assesses the building for potential. May do further research to make that assessment
 - o After the assessment, the property is either released for demolition or is publicly posted
 - o 'Posting' means that signs are physically posted on the property, the staff report is made available on our website, and an email is sent to key stakeholders

Q: How do you assess a building as a contributing building to a potential district?

A: We don't - it must be assessed as an individual landmark

Q: Does every demo permit trigger this review?

A: No, has to be 30 years of age; we do not review accessory structures under 1 ½ stories

Q: How is 30 years chosen?

A: In our landmark ordinance, 30 years is the age requirement for landmarks; only look at total demolitions, not de facto demolition, or less than 40%, etc

- If Landmark Staff finds potential, building gets posted for 21 days
- If the department receives a notice of intent to file within 14 days, the posting is extended 28 days. 28 days allows further time for community to discuss the demolition with the property owner and to allow someone to actually write a designation
- Staff has not written designation applications historically but the ordinance does not preclude us from writing designations
- If a designation app is not received, the permit is issued
- Staff reviewed 12 peer cities in greater depth to see how other cities handle this process, based on geography, size, etc

B. Designation Process from the Demo Review Process- DRMC 30.4

- If a designation application is received, the property must be designated within 120 days from when the **demolition application** was submitted
- If we get a designation application, landmark staff reviews for completeness. If Staff does not believe the designation application meets the criteria, it is released for demo
- If the designation application does meet the criteria, it goes to LPC. LPC can deny the application or can approve the application and send it on to City Council. City Council can approve the designation or can deny it
- Designation app comes in at day 40; Staff reviews, 2 days; LPC Hearing 25-40 days; Committee - 14 days; City Council Vote - 14 days
- 120 days is incredibly tight - if one thing goes wrong or there is one public holiday, the process can end without the designation reaching City Council

Q: What happens if you get to the end of the 120 days without it reaching City Council?

A: Staff works very hard to get on the correct meetings, etc. Otherwise, would be out of luck

Q: Is there a process to stop the clock?

A: If the applicant, owner and LPC agree to do so, the pause could happen if all parties agree to withdraw their applications

Q: How many times has designation applications been received through this process? Does not happen very often

A: Three times in three years. Times overall

Q: When these designations happen, what happens with staff time?

A: this becomes staff priority #1

- Peer cities do demo review, led by preservation staff
- Process allows for designation from demo process
- LPC is often involved earlier

- Stronger incentives to designate
- Council process is similar
- City Overview
 - o Austin
 - o Boulder
 - o San Diego
 - o Portland
 - o Washington DC

II. Ideas from the Taskforce

- The real impetus of demo review is about creating the time for negotiating and finding alternatives
- Our process doesn't have any economic analysis
- Process encourages mediation but is not required - how do you provide time for meaningful dialogue, who facilitates, is there a structure, what information is required
- Hardest part is the pressure at the beginning - the only way to create time for dialogue is to submit designation
- Could we create a requirement for negotiation, applicant and owners; could we make that requirement before application?
- Would you start clock at a different place?
- In the commercial realm, someone is contemplating redevelopment, file for demolition even if they are not fully intending to demolish; that is what the CNHS is intended for; the application process should direct them to that choice
- For a small zone lot that doesn't go through site plan development – there has to be a way to let homeowners and small commercial lots know about the CNHS; add it to commercial guides, etc.
- Some of the best results come not from designation but from negotiation
- 1899 York - new buyer kept the historic home, the lot was split and the second lot built on
- Others have put covenants in place that protect the building from demolition
- When you engage in that negotiation, the parties have to be defined; need to clarify who has authority; no clear definition, but generally RNO or applicant, owner, or Historic Denver
- Streamline the process using the current 120 days
- So many steps – could look to bypass those that the city charter don't require
- Communicate to stakeholders that they need to be aware of demo review; that process should be formalized, people should know
- 30 years – the right age could be older or younger
- People are fearful that they want to change their property and they won't be allowed to do it; for residential population, they need accurate information
- When you purchase a home, that's when people should know how this works
- Could add it to the assessor record for designated properties

- Discover Denver – create a survey that we use to identify buildings with potential; Chicago has a survey that is tiered, that informs staff review, etc.
- It's in progress, hard to get it funded and get it finished
- Portland does not have a demo review; designations by city staff for National Register buildings to provide some protection
- Need to add something to commercial zoning guide, to let people know that they need to do a CNHS
- Need to educate realtors, brokers etc.
- Some ordinances name entities that can negotiate a solution, some do not; some ordinances lay out what you may negotiate about - can the house be moved, what is the economic hardship of retaining the buildings, etc. – we need to do more of these things
- Historic Denver is likely at the table with the backup of Discover Denver data
- Owner, applicant, the city, preservation organizations could be represented
- The owner is often the applicant, getting through demo review for the developer, as part of their contract
- We have to sort out who the appropriate applicant for the demo application is; who should be at the table
- We need to know early if a building has potential; gaining information is important; earlier
- Look to cities where city staff is writing designations; these decisions should come from more objective stance
- In DC, staff is neutral, shepherds through the process
- Get better analysis and better application if staff writes application
- In those cities, LPC is much more heavily involved; commission flags a very small # of properties; Commission has ability to delay demo or send it to City Council
- Fees are all structured differently
- Our application fee for owner-opposed designations is \$875, up from \$250 in 2012
- The fee is a burden to communities that are not well organized; applications have to be a high standard - which means paying someone, which is very expensive
- If staff does it, it becomes an educated decision, not an emotional decision
- Would like to talk more about LPC role:
 - The commission could choose to hit the pause button, or direct staff to write the application
 - Right now, the LPC only gets to weigh in if a complete application reaches their meeting
- One of things that brought the taskforce together, was that some council members think the process is not neutral enough
- The ordinance does have an intent - toward preservation – that has to be protected
- For some people, staff writing would make the process even less neutral, but some would think it's more neutral

- Balance - if we increase the role for the commission, they should look at the economics and the condition of the building, etc.
- Make sure the staff isn't becoming activist on the behalf of neighborhood, instead is working to find a bargain that serves everyone
- Are rezoning staff seen as neutral? Yes, because it's usually granting more building height, density, etc., rather than limiting, so owners see it differently
- The fact that there is a third party -imposing a burden on an owner is worrisome
- Need ways to buy properties that should be saved
- Recent case, the homeowner would not talk to potential preservation-oriented buyers despite offers of equal value; community had no chance to see if there was a viable solution
- Instead of buying the house – purchase a conservation easement, facade easement, etc
- Residential easements are very minimal, from an economic perspective, depending on zoning, buildable land, etc.
- Based on appraisal, before and after, can get tax credits; IRS scrutiny has chilled the market for easements
- Denver has very few local incentives; permitting advantages could be one
- Other cities had remarkably strong incentives in many areas; property tax incentives
- Denver has very low property taxes, uniform taxation rules; so, the city can only rebate back a very small amount
- Need different incentives for different audiences, commercial and residential
- Perhaps a difference in process between commercial and residential
- Fort Collins differentiates between the two - commercial properties must be saved
- Q: can application be withdrawn?
- Yes, all applications – demolition and designations can be withdrawn
- Mediation could start an agreement to withdraw both the demolition application and the competing designation application
- Some of the best outcomes come from both people agreeing to withdraw, cool off
- We need something that is outside the black-and-white of demolition or designation
- Last year, 16 demo applications were withdrawn
- Will be hard to legislate negotiation
- If we lengthen the time clock beyond 120 days, that's a negative for developers - they have time pressure
- Some cities have a good relationship with developers - a culture of negotiation
- Need an 'off ramp' or pause button, otherwise it's an adversarial situation from the beginning
- The idea behind adding the 14 days was to make sure designation applications didn't surprise developers on the 21st day; that may encourage people to come to the table
- Developers and sometimes the owners, sometimes not
- Not as concerned about developer clock, want to make sure residents are protected, community is heard, give the owner and the community a chance to get what they need
- Longer timeline may give owners what they want, and serve the community

- Owners who might not be used to the real estate world and don't know the language – we need ways to engage with them
- Whether it's residential or commercial, there has to be clarity – who you are negotiating with, as you make deals with people, ensure that everyone honors the deal and ensure that others won't step in later
- We shouldn't accept a third-party application on an individual designation when a demo permit or CHNS isn't being applied for (this is permitted in the Ordinance but has not been used)
- Neutrality analysis - economic assessment, building assessment; outline the information that needs to be available in conversation and who prepares it – to make it neutral
- Remember though we're starting with this topic, this is not how we do most of preservation – these are the exceptions

III. Most Promising Changes to the Ordinance

Each task force member identified the ideas that seem most promising to improve the ordinance

- Clarifying who can applying for the demolition permit
- Getting the facts out early about the significance of the building
- Neutral analysis, including economics
- Getting information about the process out to public
- Letting people know about the process before they get too far into designing their project
- Early negotiation
- Reduce the adversarial nature of the current process
- Getting staff and commission in earlier as neutral parties
- Requiring mediation
- Creating incentives and disincentives
- Identifying owner and applicant
- Mandatory cooling off period / mandatory negotiation
- Increased role for the designation effort to be supervised by qualified staff
- Negotiation with landmark staff as a resource
- Allowing a pause button in the timeline
- Explore the role of LPC
- Genuine understanding of the economics of the owner, etc.
- Residents need tools to address neighborhood character other than individual designations
- Expand the set of tools, design overlays, etc.
- Pause button, substantial dialogue with the right people, alleviate adversarial nature
- Ordinance was designed to let community know when there are significant buildings coming down, and finding another alternative that preserves that building
- LPC having more participatory role, pause button, resources for people who need help with designation

- Pause button
- Early analysis from staff
- Commissioners weighing in on designation
- Need to transmit information about CNHS etc to homeowners, architects, etc.
- 120 days is too short; start the 120 days from the day the designate app comes in
- Applicant with owner consent submits the demo permit

Next steps:

- o Staff will research different options from the list the taskforce has generated; likely these come back to the task force in July at the earliest
- o Tee up other topic for next meeting