

**Landmark Preservation Ordinance Update Task Force  
Meeting #10 – February 20, 2019 – Summary**

Present: Councilman Flynn, Councilwoman Kniech Mark Bowman, Dennis Humphries, Rosemary Stoffel, Will Baker, Amy Cole, Scott Chomiak, Charles Jordy, Hayden Hirschfeld, Annie Levinsky

Staff: Jenn Cappeto, Kara Hahn, Becca Dierschow, Jenny Buddenborg, Caryn Champine (CPD); Adam Hernandez (COA)

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**Meeting Objectives:**

- Finalize the Staff Proposal to Council and the Task Force Recommendations
- Clarify areas of consensus support and any areas of ongoing difference

**Address these topics:**

- Economic Hardship language
  - Revisit Owner-Opposed Designation Outside Demo Review Process
  - Require a Community Meeting for historic district
  - Culture – creating clear and distinct criteria
  - Threshold for qualification of potential landmarks
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**I. Opening and Preliminary Matters**

Staff indicated that some of the Task Force recommendations would result in changes to Chapter 30 of the Denver Revised Municipal Code, some would be appropriate for rule-making, others would be administrative changes from the Landmark staff, and finally, a fourth group would be advanced in cooperation with other part of the city:

- Ordinance changes include the demolition review pause and the new culture criteria
- Rule-making can accomplish updates to the designation application information
- Administrative changes include website updates, outreach for updates to demolition process
- Coordination with others will advance zoning code changes for signage and expansion of administrative adjustments

Q: How will the staff address the need to add ownership information to the demolition application?

A: In rule-making

**II. Economic Hardship**

Task Force had concerns with “economic return”, wanted to simplify how LPC makes determination of Economic Hardship. In considering revisions, the staff found that LDDRB already has language for economic hardship which includes information on how LDDRB makes its determination. The LDDRB rules contain a robust description of how they decide and contain minimal applicant instructions:

“The board shall consider the following factors in making a determination on a request for a demolition permit of a contributing structure:

- (1) Significant economic hardship to the property based on the following economic factors:
  - a. Structural condition of the building and practicality of rehabilitation and reuse;
  - b. Determination of economic hardship based on a comparison of 1. and 2. Below:
    1. Economic feasibility of rehabilitation and reuse of the structure
    2. Economic feasibility of the proposed redevelopment plans.

3. This comparison must establish as a base line the property as it is and what value the property contributes to either 1. or 2. above.
- (2) Significant harm to the public interest based on the following preservation factors:
    - a. Age of the building.
    - b. Architectural and historic significance of the building as related to the district.
    - c. Extent to which the structure maintains the continuity, scale and massing of adjacent contributing structures, and the prominence of the structure within the block.
  - (3) Extent to which reuse or proposed redevelopment implements the goals of the Lower Downtown neighborhood plan and the purposes of this district.
  - (4) Burden of proof and appeal.
    - a. The burden of proof as to whether the structure should be demolished is on the applicant.
    - b. The applicant may appeal the decision under the provisions of section 30-48(a)(9), above.
  - (5) Applications for demolition review of contributing structures shall include, but are not limited to, the valuation of the property, estimates of the costs and income for rehabilitation of the building, estimates of the costs and income for new development plans, and reports as to the condition of the building prepared by professionals with experience in preservation and rehabilitation. The board shall establish the submittal requirements for an application by rules and regulations....

Staff suggested that the task force could recommend using the LDDRDB language for LPC's determination or could clarify language about what constitutes economic hardship from previous task force discussion to build the new definition for both LPC and LDDRDB.

Q: Has the LDDRDB hardship process ever been used? LPC?

A: LDDRDB economic process has not been used in the last 8 years; LPC, three times in the last 8 years

Q: We talked about what Economic Hardship is not, will that be in rules and regs?

A: Yes, that will be in rules and regs or customer guide

Discussion:

- Larimer Square redevelopment will be contention and the developer may make this kind of claim, so need a very clear definition
- The LDDRDB the definition is useful; it includes economic value of building as well as the historical significance of the building, and it includes information on the burden of proof
- That information is also guidance to the decision makers - so it needs to be in rules and regs
- It is useful to outline the steps in the process – demolition denial, then the economic hardship appeal and then a new demolition application
- We should look at whether this works for individual homeowners since this comes from a commercial context

Conclusion:

- Task force is supportive of adopting the LDDRDB language and making the LDDRDB and LPC definitions and processes the same
- Staff will refine the LDDRDB language for LPC

### III. Owner-Opposed Designations Outside the Demolition Review Process

Currently it is possible to submit an owner-opposed designation whether there is a demolition application or not. The designation application encourages the applicant to contact the property owner prior to bringing forward an application. In previous discussions, the Task Force recommended amending the designation application to require the applicant contact the property owner. The Task Force discussed whether the ordinance should allow for owner-opposed applications only when there is a demolition application.

Discussion:

- An owner-opposed designation has never been submitted outside of the demo review process before for an individual building
- Not clear how this would work in a district
- Currently, for individual designation, staff would discourage the applicants from submitting until they reach out to the property owners
- Although a potential applicant would be allowed to file a designation application without the owner's support, it is unlikely that such an application would be successful
- If staff are discouraging these kinds of applications anyway, then we could change the ordinance to eliminate the possibility altogether
- As a practical matter, if there is no threat, there is no motivation
- Outside of the demo review process, there are no time limits, so there is more flexibility on timelines more latitude in the process – that makes it advantageous to keep the ordinance as is
- It is important to have the possibility in the ordinance because we don't want to discourage people from being proactive; we don't want to have all discussion of designation taking place under the pressure a demolition application
- By the time there is a demolition permit, it might be too late
- Being required to wait for a demolition application creates a contentious process
- That's what the task force is supposed to help prevent; we were tasked with trying to make designation less contentious, more proactive
- Are we adequately considering property owner rights?
- If I were a property owner, I would want to know about the community concerns earlier in the process
- If we require the property owner to be contacted before the application is submitted, they will know this is coming
- There would be a contact requirement but there would not be a mediation requirement (as in our proposed demolition review revisions)
- There are lots of ways the application doesn't make it to City Council - there are several steps in the process where staff, LPC, etc. can counsel the applicants to withdraw if it's unlikely to be successful at city council
- We never want to talk someone out of being proactive; we should leave the ordinance unchanged
- Perhaps the contact requirement need a list of requirements, e.g. "upon request property owner can require applicants to attend mediation" to mirror the demolition review pause

This discussion prompted a separate discussion of applications for historic districts:

- Historic district applications also will happen without a demolition permit and will likely have at least some owner opposition – we don't require these applications to wait for a demolition permit or to have complete owner support
- We should add a required community informational meeting to application, run by landmark staff, not community members; a city-sponsored meeting can encourage dialogue and provide information

- In practice, staff participates in several different kinds of community meetings already, but this will formalize the process
- The timing is important – historic districts can take a long time to move through the process – we need to decide whether this should be early or if the meeting takes place after a formal application is submitted
- After the application is submitted – we would get better attendance and we don’t want to raise concerns if no application will ever be filed
- An earlier meeting be better to give people more time to form opinions
- Remember the Task Force has already offered improvements in how neighborhood opinions are registered
- If the meeting is late, opponents will feel that they don’t have the time to get organized, so earlier makes sense
- In rezoning, there is no required community meeting, but there is a public hearing
- For the historic district application, the community meeting would take place before the required public hearing at LPC and city council
- Staff: Submission of a complete application triggers community meeting; information from the meeting can be integrated into the application; if the meeting leads to changes in the application (boundaries changed, etc) it may trigger an amended application with a new community meeting
- Currently, the protocol is to mail all property owners, and include a map of district. Now, the mailing would include: fact sheet, thirty-day notice of the public meeting, then later there would be a thirty-day notice for each public hearing
- This will add time to the process for designating districts
- This proposal would achieve our goals on making a better, more deliberative process, with better information
- Staff should not open the website for comments until **after** the community meeting
- This process can be part of rules and regs changes
- This doesn’t replace the informal outreach that should occur – that should be happening very early in the process – but it ensures there is a chance for people to weigh in and learn about the process

**The Task Force agreed to recommend adding the community meeting to the process for creating historic districts**

**IV. Culture Criteria**

New Proposed Definition of Culture:” Culture includes the traditions, beliefs, customs, and practices of a particular community. It can encompass structures, features, businesses, institutions, organizations, events, arts, and crafts”. To address task force concern about the overlap between history and culture, staff proposes changes to History and Culture sections of the criteria:

History - C. Have direct and substantial association with **an identified person** or group of persons who had influence on society.

Culture – C: Be associated with social movements, **groups**, institutions, or patterns of growth or change that contributed significantly to the culture of a neighborhood, community, city, state, or nation.

Over the last month, staff met with several different cultural organizations, all of whom are excited about including culture in the criteria.

**At this stage, the Task Force is in agreement that adding culture is right. The Task Force finds the definition of culture acceptable.**

However, at this stage more discussion is needed to distinguish history and culture and to decide a threshold for designation.

Discussion:

- The differentiation between culture and history is still incomplete
- There may always be some overlap
- This may make it possible for sites to be designated without using architecture
- If a building is designated under history and culture but not architecture, that raises questions of how you conduct design review
- It would require customized design guidelines to reflect the culture; staff would add a chapter to Denver Design Guidelines
- Threshold for Designation
  - With the revisions, there are now 4 categories and 13 criteria
  - Staff recommends removing categories; this is a standard practice nationwide, would align us with best practices of preservation, then we need a numeric threshold
  - By removing categories, we could have designations for architecturally interesting buildings that lack history or culture
  - Another way to approach this is to combine History and Culture, keep the categories and keep the threshold of 2 out of 3 categories
  - Culture is distinct from history; it is not famous people or historical figures; people are mourning the loss of their communities' culture and they don't see that culture represented in the landmarks
  - We could edit the thirteen, condensing to ten very distinct criteria
  - In that case, a threshold of 3 of 10 makes sense
  - If we remove categories and condense the criteria, we want to stay inclusive
  - 2a is a broad statement that could be revised
  - 2a is actually hard to meet - a property must have a high degree of integrity; 2a is also a bedrock of preservation theory; it is used in National Register designations and across the country
  - We could combine 2a and 2c
  - We have to define culture in ways that make it achievable
  - Remember that the percentage of buildings that we would post will still be very small. In the demolition review process, only **one** designation has been successful in eight years and every year there are three or four intent-to-file, one or two designations submitted, and they rarely make it to city council
  - It is important to remember that we were not asked to make it harder to designate – the problem we were convened to solve is the contentious nature of the demolition review process; we have solved that through the pause button; changing the criteria is solving a diversity and equity issue

Conclusion:

- Staff will edit the criteria with an eye toward writing ten and having no categories
- The Task Force will review these and consider whether the threshold should be three of ten
- The Task Force reinforced the idea that they have to have time to see these and consider them in advance of another meeting