

**Landmark Preservation Ordinance Update Task Force  
Meeting #9 – January 9, 2019 – DRAFT Summary**

Present: Councilman Flynn, Councilwoman Kniech Mark Bowman, Rosemary Stoffel, Will Baker, Amy Cole, Scott Chomiak, Charles Jordy, Hayden Hirschfeld, Annie Levinsky, Adam Harding, Tania Salgado,

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

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Meeting Objective: Address ordinance/policy changes on these topics:

- Finalizing Changes to Landmark Ordinance
  - Establish Next Steps for Non-Ordinance Changes in Policy and Practice
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## **I. Task Force Purpose**

Staff reminded the Task Force of their goal:

1. Preserve neighborhood character and the diverse history of the city
2. Improve the quality of decision-making and public process
3. Provide a wider range of preservation tools

## **II. Economic Hardship**

Definition: Is the building so structurally unstable or does its condition render it irreparable; does it not make sense economically to retain the building?

Initial Staff recommendations from Meeting #8:

- Add in definition of economic hardship to ordinance
- Clarify language about what constitutes economic hardship
- Require additional information in the application
- Clarify how LPC makes determination

In Meeting #8, the Task Force requested simplification in LPC determination. Staff presented new process for LPC determination - *“in considering the economic hardship application, the commission shall assess whether the requirements set forth by the commission shall deny all reasonable and beneficial use, or economic return from the property”*

Discussion:

Q: Does this apply to buildings that are not landmarks?

A: No, only to designated landmark properties

- “Return” is the wrong word - return means profit; not making a profit is not the proper definition of economic hardship

Q: Should there be a difference for individually designated buildings as opposed to ones in historic districts?

A: No – We would create significant confusion if there were two different definitions in the ordinance.

Q: How did the Supreme Court define economic hardship/economic return in the Penn Central case?

A: The Supreme Court decision refers to “reasonable return on investment” and these three factors:

1. the economic impact of the regulation on the claimant
2. the extent to which the regulation has interfered with distinct investment-backed expectations and
3. the character of the governmental action. (does the action benefit public or private interests?)

- This comes up rarely. Perhaps we don't need to do we need change anything
- Use "economic viability" instead of "return"
- The task force wants to encourage designation. People resist designation because they don't understand the standards. This should be defined clearly and simply so people understand what it means
- Economic return is related to the timing and the amount of the original investment; if someone bought a property 50 years ago the return is different than it would be for someone who bought the same property a year ago – that variability means that economic return can't be the standard
- The LPC should be able to consider the cost of repair, the cost of the property and the ability to sell
- "included but not limited to" give the applicant and the LPC the ability work with additional information

**Next Step: Staff will do a simple update to the section to incorporate consensus from meeting #8 and will edit the language related to LPC determination in the rules and regulations.** It is important to remember that changes to the rules and regulations are subject to another public process.

### III. LDDRB

Initial staff recommendations from Meeting #7:

- Review Area: increase purview of LDDRB from LoDo to downtown core. This proposal has been tabled because it poses too many logistical questions
- Clarifying membership requirements
- Add two members to increase diversity of expertise

Staff recommendations: strike "two of the four" residential requirements for first four LDDRB board members - at least three members will always be associated with district, other four people may or may not. Staff finds it difficult to find residents who are also preservation architects or real estate developers.

Add two members: Recommend adding architectural historian and at large member. Change practicing architect to architect because "practicing" doesn't have an established, recognized meaning in the profession.

Resolving Quorum issues:

- Current Majority: 4 of 7
- Proposed: 5 of 9
- Current super majority: 5 of 7
- Proposed Super majority: 6 of 9

**Task Force Recommendation: Add two at large members. Can appoint an architectural historian if desired but gives more flexibility for membership requirements. Strike "two of four language". Change quorum requirements based on new membership numbers.**

### IV. Design Review Timeframes

The Board of Adjustment, Planning Board, Arapahoe Square have no maximum timeframe, and maintain a set, limited meeting agenda. LPC is the only board/commission that has time requirement and no meeting limits. Currently, there is no consequence for not meeting the timeframe, and the requirement places a burden on LPC to have extraordinarily long meetings to meet the timeframe. Additionally, there is no language on projects that can be reviewed at the administrative level.

In Meeting #8, staff recommended removing the 30-day requirement for applications to be heard by LPC.

Staff's goal is to balance workloads and avoid having some very long and some very short meetings. They need to be able to set the agendas and the schedule.

Discussion:

- It is important to remember that the commissioners are volunteers who can't always stay no matter the length of the meeting
- It is not clear what happens to projects when LPC loses quorum as the meeting goes on

Q: Would it be possible to increase administrative reviews?

A: Our design guidelines specify what must go to the LPC; would require a change to design guidelines

Staff Recommendations:

- No change to filing deadlines (still 1 month)
- Specify maximum # of design review cases
- No limit on the number of consent agenda items to encourage applicants to get on consent agenda
- Projects to be placed in the meeting in order they are received. If agenda is full, projects received by filing deadline will be placed first on next meeting

Discussion:

- We need to allow for ebbs or flows in development process, otherwise overflowing agendas mean customers don't get good customer service
- The recommended approach will encourage people to submit complete applications on time

Q: Do we know what this impact is on private side?

A: We can assess whether applicants will be helped by the changes, as we expect

- If the changes add a month to a project schedule, it is hard to recover that time
- Applicants need clarity about the process and how it works, need clear explanation of what constitutes a complete application and of the true timeline

Q: How many projects have been automatically approved in LoDo because of these rules?

A: Almost one – only because the staff and LPC have ensured that the vote happens on time, thus the long meetings

- It could make more sense to add alternate commissioners

***The Task Force agreed to support staff removing the requirements***

## **V. Adding definitions to ordinance**

Staff recommendations:

- Add definition of demolition for the purposes of demolition review - based on zoning code (If definition of demolition changes in zoning code, will need to be updated in Chapter 30)
- Add definition of 'object' - based on NPS definition, to allow designation free-standing signs, statues, art, etc.
- Add Definition of Period of Significance - based on NPS definition
- Add Definition of Temporary - based on city language so that staff do not need to review temporary signs, construction trailers, etc.
- Rename Certificate of Non-Historic Status

Discussion – Objects:

Q: Would it be able to move a designated sign around on a site?

A: Would be a design review question

Q: Would this mean all objects in the city are up for designation (such as a retaining wall)?

A: No. The object has to meet the landmark criteria for significance

- Meeting with Denver Arts and Venues about art objects and with other agencies that have some responsibility for regulating the placement of objects would make sense to consider potential unintended consequences

Discussion – Period of Significance:

- Q: What about areas that may have two periods of significance?  
 A: NPS definitions allows for more than one period of significance

Discussion – Definition of Temporary:

- Q: What is the timeframe for ‘temporary’? A year? Six months?  
 A: Existing definitions vary by work group, project, and/or permit type

Discussion – Name of the Certificate:

- Good program, bad name, not well understood
- Alternative Options:
  - Certificate of Landmark Review
  - Certificate of Landmark Release
  - Certificate of Landmark Clearance
  - Certificate of Demolition Eligibility
- Certificate of Demolition Eligibility says precisely what people are looking for when they apply

***The Task Force agreed to recommend changing/adding the definitions of demolition, period of significance and temporary and renaming the Certificate of Non-Historic Statues the Certificate of Demolition Eligibility.***

***Next Step: Staff will confer with Arts and Venue, Parks and to assess the implications of defining and allowing designation of an object. Staff will also begin compiling guidelines for and information about the landmark inspector.***

## **VI. Culture Criteria**

Staff Recommendations:

- Add definition: “Culture is rooted in a community’s heritage. It includes the traditions, beliefs, customs, and practices of a particular community. It can encompass businesses, institutions, organizations, events, arts, and crafts.”
- Include culture as a separate criterion, expanding to list to four:
  - Culture. To have cultural significance, the structure or district shall
    - A. Represent an era of culture or heritage that allows an understanding of how the site was used by past generations;
    - B. Be a feature of a neighborhood, community, or the city that is a source of pride or cultural significance; or
    - 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.
- Qualification – Two of Four Criteria

Discussion – Definition:

- NPS definition uses lifeways and social institutions – elements that are outside the built environment
- Social is useful – it implies community
- Including ‘social’ may narrow the definition
- Does including ‘social’ exclude important things?

Discussion – Criteria:

- 'Source of pride' is too easy a test
- It may actually be more limiting – sometimes history is not a source of pride, but we want to remember the challenges our communities have faced
- The proposed list of three allows for non-traditional groups and communities to apply for designation for something that is a source of pride for their community

Q: What is the Difference between c in culture and c in history?

A: 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 – is distinct from History C – Have direct and substantial association with a person or group of persons who had influence on society – the culture criterion allows for groups or events that were not covered at the time or written about in history book

Q: If you meet 1 c, will you automatically meet 4 c?

A: Not necessarily – staff currently interprets it as the difference between the influence of a broad movement / community (culture) vs individuals or families (history)

- Integrity is another issue - if you force buildings to meet architecture (in addition to history or culture) and thus, integrity, then it makes it difficult to designate a non-traditional building, which was the point of adding culture criteria. Allowing a building to meet history and culture – for similar but different reasons, more buildings can be designated
- Pierre's in Five Points is a good example. This was a popular restaurant and community gathering space for African Americans. However, it had numerous additions over the years and had lost architectural integrity. When it came in for demolition, it was an unlikely candidate for designation because it would have a hard time meeting two of three criteria (history, architecture, and/or geography). Culture criteria could have made it a stronger candidate for designation.

Discussion – Number of Criteria Required

- 2 out of 4, vs 3 out of 4
- Other options:
  - Put history and culture in one category
  - Eliminate categories, set a number of criteria (Most cities do not have categories)
- Denver sets the bar higher and gets fewer designations than other cities – 3 of 4 is too rigorous
- If we use 3 of 4, we won't achieve the goal of expanding the type of landmarks to get beyond the old, dead white-guy landmarks
- 3 of 4 ensures that the designated landmark has real significance

Q: Should it be different for owner-opposed designations?

A: A building is either significant or it isn't – it doesn't depend on who is trying to designation

***The Task Force agreed to leave social out of the definition.***

***Staff agreed to continue reflecting on the distinction between Culture C. and History C and how each is written.***

***No agreement on the number of criteria***

## **VII. Demolition Review**

The designation-through-demo review process is incredibly difficult and actually very rare. It is not very successful. It has produced ONE successful designation since 2006.

Staff recommendations: Extended pause (60 days), city-facilitated required mediation with stakeholders and change the notice of intent to three people rather than one, in line with designation submission requirements.

Questions for the Task Force:

- Does this make the demo review process more peaceful?
- Does it improve the likelihood that options can develop?
- Does it give owners, neighbors, developers and preservationists time to talk and to bring in the expertise they need?

***The Task Force agreed to support these changes to the demolition review process***

## **VIII. More to Do?**

Though this was intended to be the final meeting, the Task Force agreed to schedule one more meeting to complete its deliberation.

The topics for the final meeting may include:

- Items from today that staff agreed to investigate further – designating objects, clarification of Economic Hardship language etc.
- Items that the Task Force did not conclude – the number of criteria necessary for designation, etc.
- Final items from individual task force members, including these:
  - Incentives and removing barriers to designation
  - Owner-opposed designations without an active demo/CNHS application

***Task Force members with proposals or topics for the final meeting must send these to staff ASAP***

***Mike will poll the group for the meeting date in February***