

LANDMARK PRESERVATION COMMISSION
Special Meeting
January 29, 1996
Council Liaison: Gina Janett
Staff Liaison: Joe Frank
Commission Chairperson: Jennifer Carpenter (225 - 0960)

SUMMARY OF MEETING: This special meeting was held to discuss options around implementing an interim control (a 180 day hold on work to be done on designated properties) during the District Designation Process. Discussion stressed the process itself and both the advantages and disadvantage of interim control.

CALL TO ORDER AND ROLL CALL: Commission Chairperson Jennifer Carpenter called the meeting to order 9:40 a.m., 281 North College Avenue, Advance Planning Conference Room. Secretary, Nicole Sneider called the roll. Commission members Ruth Weatherford, Jean Kullman, Terence Hoaglund, Bud Frick and James Tanner were present. Per Hogestad was absent. Carol Tunner and Karen McWilliams represented staff.

GUESTS: Paul Eckman, Fort Collins Deputy City Attorney was present.

DISCUSSION ITEM:

Proposed District Designation Process - Karen McWilliams and Paul Eckman, Deputy City Attorney

Ms. McWilliams has presented the District Designation Process to the LPC at prior meetings. It was decided that there are three choices involved in initiating interim control during this process. These three options were documented in a memorandum dated January 25, 1996 to the LPC from Ms. McWilliams. Mr. Paul Eckman attended the meeting to discuss the process and these options.

The LPC had concerns about needing to change the landmark ordinance in order to change when the interim control would be implemented. Mr. Tanner had a suggestion which avoids changing the ordinance. He asked Mr. Eckman what the phrase "upon application" means. The phrase is used in the Landmark Preservation ordinance, Initiation of Procedure, Section 14 - 21. Mr. Tanner questioned if an application procedure exists. If the application procedure is defined, and accordingly the applicant had to provide all of the information needed by the LPC to make a decision, then the LPC would have to delay forming their opinion until all of the information was provided. If all of the necessary information is presented during the application process, then the LPC can form an opinion and begin the 180 days of interim control from that point. Mr. Eckman assumes that there is an application procedure. Ms. McWilliams noted that the application form is not

designed for district designation. The existing application is not appropriate for a citizen proposing a district designation. Ms. Weatherford reminded the Commission that in the past they had discussed considering that anyone coming to the LPC and stating they would like to designate a district would be considered an application. Mr. Tanner's opinion is that they really do not have a demanding application process. Any neighbor could walk into the Commission and tell them that a house or a district should be designated, preventing property owner(s) from doing any work on the property for six months. Ms. Carpenter reminded Mr. Tanner at that point the Commission would have to accept whether or not the proposed designation is viable. Mr. Tanner said that all that is necessary is for the Commission to deliver an official opinion as to whether or not the property or district is eligible. Mr. Tanner added that they could not deny designation if the property was determined to be eligible. Mr. Eckman summed up that an application could be submitted for your neighbor's house and if the Commission determined that in its opinion the property was eligible, that would put a hold on work to the property. An elaborate application would provide the LPC with more information and more time.

Ms. Carpenter's opinion was to change the ordinance so that the LPC decides if 180 days of interim control is necessary if there is an eminent threat. If the ordinance is going to be changed, it would have to be done in order to avoid allowing someone to propose the entire city or entire East Side or West Side, therefore, putting a hold on any work being done to any property within that area. Ms. Carpenter questioned whether the 180 day hold only applies to non-consensual designations. She recalled that usually when an owner comes in for designation there are current plans for the property submitted along with the designation. Staff added that a hold is placed on any building permit for the designated property until City Council takes final action. Ms. Carpenter explained that there are people who are currently working on their property while submitting an application for Local Landmark Designation. Ms. Turner stated that permits are sometimes sought before the designation process begins. She added that ideally the Building Department should be informed of when a property is in the designation process so that they will not award any permits until final action is taken by Council. Mr. Tanner then returned the discussion to the Commission's original concerns about opening the code up for revision. He expressed that proposing an area as an historic district is a large effort and there should be information to support the designation.

Ms. Weatherford suggested discussing rewriting the application procedure to be a more elaborate process and to provide more information. Mr. Eckman suggested requiring a more detailed application process so that designations will not be frivolous. Mr. Tanner explained that enough information should be provided to set the proper mechanisms in place involved in the District Designation Process. Mr. Eckman suggested opening the code to state what is necessary for an application to be complete because currently there is no criteria in the code which defines this. He added that the LPC is already considering revising the code to give the City Manager the authority to promulgate rules and regulations the District Process. A revised application as well as regulations as to what should be on the application form could also be included in the revised code. If approved,

City Council will have granted the City Manager the authority to come up with the application criteria. He questioned the Commission if this is a reasonable solution. He asked, for example, if an individual home owner wants to designate their property do you want to put them through a detailed application process. Ms. Carpenter was concerned with how this procedure will affect the LPC's ability to stop demolition with a non-consensual designation. Mr. Eckman said the LPC still has the Demolition Ordinance. Ms. Carpenter added that the ordinance will not actually stop someone from destroying an historic structure. The only way to stop a demolition is by non-consensual designation.

The discussion then returned to the 180 days of interim control. Ms. McWilliams asked if the application process is used as the trigger to begin the 180 days of interim control. Mr. Eckman explained that was not the idea. The idea was to create a complex application process to keep people from frivolously applying for district designation and then the 180 day hold on work would occur when the LPC considers the application. Before it reached the LPC there would be a long procedure to go through, possibly at the staff level. Ms. Weatherford suggested including neighborhood meetings as part of the application process. Ms. McWilliams explained that according to the way Mr. Eckman rewrote Step #1 *Initiation of District Designation Process*, it gives the LPC the power to look at an application and determine if it is frivolous or not. In order to determine the validity of the application, more information may have to be provided on the application.

Ms. Carpenter stated that there are two conflicting goals: 1) there should be the opportunity for non-consensual designations that are not frivolous and 2) to make sure that when districts are being designated that it is a friendly process which includes education and will ultimately come out from within the neighborhoods. Through education it will become an easier, smoother process. Mr. Eckman explained that the way the code is written, people would not run out and get building permits right away. At present the LPC would like to stress education but if they need to, they would like to have the authority to stop a threat to an historic structure if necessary. The LPC needs the flexibility and discretion involved in approaching the process through either educating residents or protecting an historic building or district from an eminent threat. Ms. Carpenter asked Mr. Eckman if there is any way of not having the 180 days of interim control be automatic at the onset of the District Designation Process, but be able to trigger the hold if the LPC needs it for the protection of a property. Mr. Eckman suggested possibly leaving the hold automatic and allowing for codified exceptions if someone really needs a building permit and can submit their plans to the LPC. Ms. Carpenter stressed that as discussed before, districting would be an education process and districts would be initiated by the neighborhoods. They don't want to impose extra restrictions or procedures just because neighborhoods and the LPC are going through an education process for districting. So ideally, the 180 day hold should not be automatic, but available if there is a threat.

There was discussion of whether or not the interim control should be automatic. Ms. Weatherford's major concern is with developers. Mr. Frick suggested to consider how many situations like that will come up and how will it affect the entire district. Mr. Eckman

questioned if you do not place a hold at any time during the designation process, then until it's designated work not approved by the LPC could be done. Ms. Carpenter asked if this applies to individual designations as well. Mr. Eckman responded, this code applies to both individual landmarks and historic districts. If there needs to be a bifurcated system then the code will have to be rewritten to include one procedure for individuals and one for districts.

The goal here is to follow the same process for district designation without violating the present code and at the same time include more neighborhood meetings and opportunity for public education. Ms. Tunner explained that the application already has references to districts, but there have been no local residential districts proposed. Upon examining the current application, *Local Historic Landmark Designation Nomination Form*, the LPC realized that they would need a larger context for districts included in the application and the last page only has a space for one owner to sign. Ms. Tunner said that she can research what sort of procedure was followed during the designation of the existing Old Town Historic District. Mr. Tanner stated that he disagrees with keeping the 180 hold discretionary because he feels there should be a set procedure. If someone wants their home or neighborhood designated there should be specific procedures and requirements which they can plan on going through. Without set procedures it leaves the entire process arbitrary and leaves the LPC open for accusations of favoritism. Ms. Carpenter asked how can the Commission stop the ability of an individual making an application for a district, which will include and affect other people during the procedure. Mr. Frick suggested it be done administratively and by creating a more detailed application to be completed. Mr. Eckman thought that maybe included in the procedure could be the LPC's ability to grant something like a variance when needed. Criteria would have to be defined to govern the LPC's decisions so they would not be considered arbitrary. Mr. Eckman speculated that a resident may come to the Commission and claim to be experiencing a hardship due to the districting procedure and interim control. If the LPC could determine that if a building permit was granted it would not negatively affect the preservation efforts of the City and the neighborhood, then that person may obtain a permit. This would be site specific and considered case by case. The Commission discussed some of the criteria and standards that would be required for a complete application for District Designation.

Ms. Carpenter explained that District Designation should be done in conjunction with the residents of the neighborhood. This process should give the residents the opportunity to explore some of the benefits and incentives of owning property in an historic district. Mr. Frick said that these goals are still part of the proposed procedure being discussed. Prior to designating a district, a lot of exploratory research needs to be done and this data needs to be included in the application. For example, if three property owners come in and want their lots to be considered a district, how does the LPC determine if a three lot district is valid. Mr. Frick explained that the information provided in the application will justify the proposed district. Mr. Eckman suggested that the staff administratively prepare an application which answers what the code requires. Mr. Eckman suggested the next step is to define what is the criteria of a Landmark District Designation. It would be appropriate

for the staff to build an application that asks the right questions for the LPC to determine if the proposed district meets the criteria or not. In this case whenever the LPC decides that the application for District Designation meets the criteria then, the 180 days of interim control begins.

Ms. McWilliams reviewed two issues which Ms. Carpenter had brought up. The first is how can the LPC determine if the application is frivolous and decide to reject it. The second issue is once the process is initiated what will it entail. In answer to the first part, Step #1 of the District Designation Process gives the LPC the opportunity to state that an application does not fit into their goals at present and can be redone in the future. Ms. Carpenter questioned whether the LPC can state that a district which appears to be eligible does not fit into their preservation goals at that time. Ms. Weatherford commented that sort of decision seems arbitrary. Mr. Eckman agreed if the application meets the criteria, then to turn it down at that time would be an arbitrary decision. Ms. Carpenter presented some examples of when the LPC would not want to complete the designation process when a proposed district is eligible. For one, the education process may not have been completed and only one person may be informed and is proposing that district for Local Landmark Designation. District Designation is a process which ideally is accepted by the residents in the proposed district.

Mr. Eckman explained that is it more than just criteria - it is political acceptability. Ms. Carpenter said most of the time a district covers a large area and if one property is compromised in that area it does not ruin the historic integrity of the entire district. An individual landmark is different. If it was demolished or irreversibly altered it would be lost as an historic landmark. For the district, the criteria would be different because it is not as easily affected as the individual landmark. Ms. Weatherford suggested including in the application procedure some of the optional steps listed on the flow chart. The survey and neighborhood meetings included in the education process may be involved in the preliminary application process and some hardship situations could be addressed so that people do not feel like they have no options or flexibility once the 180 days are initiated.

Mr. Tanner pointed out that the 180 days are designed to be a maximum so that no one will have to wait longer than that to do work they have planned for the property. If you count up the number of weeks of processing, it is about half that. Possibly one neighborhood meeting could be cut out as well, if it could be completed as part of the application and educational process. Mr. Tanner thought if people understood that if their research was done, the process would be expedited and the 180 day hold would be the worst case scenario. So if someone was serious about designation and had done their research, a 90 day hold may be realistic. Ms. Carpenter said that she wants people to understand the designation process and to decide if they are serious about designating a district before submitting an application. Mr. Tanner wants to see an elaborate application process which involves a majority opinion. He is opposed to non-consensual designation as applied to neighborhoods and districts. In any case he believes that the application process should include enough steps so that by the time the application

reached the LPC they can identify if there is a strong, substantial majority desire to be designated as a district. Ms. Carpenter agrees that the designation process should wait until after people are educated about districts and should pursue designation themselves. Mr. Eckman explored a different issue - if there is a reluctance on the part of the City to do non-consensual designation, then the code could be changed to exclude that. Ms. Carpenter explained there is some reluctance, but they would like the opportunity to use non-consensual designation as a tool to save a threatened structure.

Mr. Eckman suggested another way to designate districts, rather than getting a consensus over a large area, is to focus on smaller districts. The Commission agreed that this is one way to approach District Designation, on a smaller, neighborhood scale. Mr. Tanner had a problem with this notion of a district. For example if a developer wants to demolish five houses on contiguous lots and these lots are non-consensually designated as a district, the definition of a district would have been changed to accomplish some political agenda. Ms. Carpenter explained that the structures could not be designated right away. If it was determined to be a potential district, then the hold would take affect to see if it was a part of a larger district or if its demolition would affect the district. Mr. Frick said that this is the first time he had heard such an example and requested to have that process more clearly defined. According to Ms. Carpenter an historic district exists because of a common history of an area and has definite boundaries. Mr. Eckman questioned what are the criteria which make up a district. Ms. Carpenter and Ms. McWilliams agreed that no criteria exists at this time. Ms. Tunner questions small pockets of houses coming in as a district and would prefer to see districts come in as historic subdivisions. This is the way districting is done in Denver. Ms. Tunner further explained that a subdivision was built around the same time and mostly in the same style. She and Ms. McWilliams explained that the whole town is divided into subdivisions and added that some recognized areas such as the East Side neighborhood may be made up of three or four subdivisions.

Ms. McWilliams added that she was concerned about being able to come up with a revised application or definite criteria in time for this process to go through Council with the East Side/West Side Design Standards. She suggested going back and looking at options #2 and #3 from her memo, to change the ordinance and to consider that the first part be handled by step one, giving the LPC the ability to refuse to pursue a proposed district designation. A rejected application could be pursued as a larger district or when they are presented with more information in the future. Mr. Tanner approved as long as their rejection was based on an incomplete application. Mr. Eckman believed the criteria to accept an application for District Designation is based on Section 14 - 1 which includes eight paragraphs which defines a landmark or landmark district. These criteria are not very specific. Ms. McWilliams pointed out that definition #6 allows the LPC to state that a proposed district is really part of a larger area and should be developed as a larger district and considered at another time. Mr. Eckman presented some situations to test these existing criteria to see if they would stand up and to try to determine if additional, more specific criteria is necessary. He suggested generating some language added to existing criteria #6, which reads if the distinctive area is larger than the proposed area then

the Commission should wait for the district to be presented in its entirety. Mr. Frick asked if the Commission could construct additional definitions and requirements administratively, without opening the code but base them on existing criteria in the code. The more specific interpretations of the existing criteria and definitions could be included in the revised application.

Mr. Eckman explained that authorization will be needed to do administrative changes and the code will have to be revised in Section 14 - 48, *Approval of proposed work*, to add the Historic Old Town Guidelines and the Standards and Guidelines for Historic Properties in the East Side/West Side Neighborhoods as part of the criteria that the LPC uses to review any changes. Ms. Carpenter asked if the ordinance could be revised so that LPC can make a choice on whether or not to impose the 180 day hold. Mr. Eckman responded, only if the LPC had specific criteria to guide them so that these decisions won't be arbitrary. Ms. Carpenter asked if it could also include cases of eminent threat to a landmark or historic district. Mr. Eckman said if eminent threat can be defined so everyone knows what eminent threat is, and that would be very difficult. Mr. Tanner questioned if Section 14 to 21, *Initiation of Procedure*, already gives the LPC the power to delay something because the application is not complete. Mr. Eckman was hoping to add additional criteria to these definitions in order to more clearly define a district so that if an applicant submitted a partial district it could be rejected on the basis of it being part of a larger district. He suggested that the LPC stay with the criteria that they have, use their discretion, and see what happens.

Mr. Frick asked if covenants could exist and then a set of internal guidelines be used that address landmark districts. Mr. Eckman thought that in the process of giving the City Manager the authority to define the procedure, the LPC can also present a set of guidelines. Mr. Frick questioned if they would have to be codified or if the LPC would have the authority to develop guidelines that could be changed over time as their needs changed. Mr. Frick asked if within the language of the guidelines, the LPC could be authorized to issue a delay of work at certain points along the process. The Commission agreed that the situations in which they would have to issue the delay would not be specifically defined and therefore may be considered arbitrary. Mr. Eckman questioned when the 180 days of interim control would be important.

Ms. McWilliams reviewed option #3 and explained that there are thirty days when the option to issue a hold is in affect and it can be issued at any point when there is an eminent threat perceived. There is no time limit between the LPC presenting their opinion and passing a resolution, and having the designation hearing. So during this time all of the education meetings can be held and if there is a sign of a threat then they can quickly hold the designation hearing. Ms. McWilliams said that realistically a developer can't get approval on their plans and a building permit within thirty days. Ms. Tunner reminded the Commission that the Demolition Delay Ordinance can also hold up unwanted demolition. Mr. Hoaglund informed the Commission that when a developer proposes to build over two lots they must go through the PUD process which is a very long process. Staff said that

most projects where buildings fifty years old or older are involved are sent to them for review by the Building Department. Ms. McWilliams believes that option #3 gives the LPC the most latitude with the least amount of changes being made to the ordinance. In this case the 180 day hold would go into affect when the LPC issued an opinion to move forward with the designation. Ms. Carpenter asked if that would affect individually eligible landmarks and the answer was yes. Mr. Eckman added that usually individually designated landmarks are consensual. The Commission also discussed the Old Post Office as an example of a non-consensual designation. In this situation Ms. McWilliams explained that the historic fabric of the building was being demolished. Even when pursuing a non-consensual designation there would still be thirty days until a hold can be issued on Building Permits, except in cases where the demolition delay process has been started.

Ms. McWilliams recommended that the LPC accept step #1 which gives the Commission the right to decide that a proposed district may not be acceptable because it is part of a larger district or that the proposed designation is frivolous. Option #3 gives the LPC the right to start that 180 days of interim control when the LPC decides where the greatest need is. The interim control can be initiated from the formation of an opinion if there is a threat or held off until the very end of the procedure if it is a district that may not be greatly endangered. Mr. Frick asked if they have to issue a 180 day hold at all. Ms. McWilliams said that in this scenario, the LPC would issue the hold at the last possible point - at the designation hearing. It would be 30 days and probably would not be a problem for most people. The designation process can take anywhere from one month to six months. The East Side/ West Side Neighborhoods would need completed surveys and some advance preparation before the process could be completed in as little as one month. Ms. McWilliams further explained it would take one month for the designation to go through the LPC and one month for the designation to go through two City Council hearings. The hold would only be during the thirty days when it was presented to Council because it begins when the resolution by the LPC is passed at Step #7. Ms. McWilliams said it was up to the LPC when they want to instigate a hold. It can be done in the beginning, middle, or the very end of the process depending on when the LPC holds their designation meeting. At Step #4, both an opinion can be presented and a resolution passed. Then one month would have to be free for public notice and input with no interim control. The Demolition Delay Ordinance would still be available if needed. Mr. Eckman asked if the LPC would try to get consent before Step #4. It was discussed that the goals are to explore district designations without creating undo hardship and to stop demolition of contributing buildings. In order to avoid interim control, the LPC can institute the process on a larger scale to include the proposed district as part of a larger district and not conduct the designation hearing at that time. During the waiting time, the Demolition Ordinance is available to protect properties. Ms. McWilliams read from the ordinance Section 14 - 5, which explained that any site, object, structure, or district which contributes by having historical, architectural, or geographical importance can be protected by demolition delays which are good for ninety days from when the Historic Resources of Merit Form is submitted.

Ms. McWilliams summed up this discussion by explaining that the LPC may in the future look into changing their application for District Designation and possibly the ordinance. For now the Commission agrees to support Option #1 to avoid making further changes to the ordinance. At this time, the code will only be changed so that the City Manager promulgates rules and regulations regarding the District Designation Process within the East Side/West Side Design Standards and Guidelines.

The Commission was also concerned over rejecting a district and then having to wait over one year for the applicant to re-submit their application to the LPC. Mr. Eckman said that if they table the application then no opinion, either acceptance or rejection is formed. He also brought up for discussion the matter of appeals to City Council. The LPC in this case would explain that they needed more information, education and survey data to determine if the proposed district meets their criteria. Mr. Eckman suggested that if the LPC doesn't have enough information to decide if the proposed district meets the criteria or not then reject it, don't table it. The LPC then can further explore where the potential district exists.

Mr. Tanner moved that the Landmark Preservation Commission supports that the code be amended to establish an administrative procedure for Local Landmark Districts and that it also be amended to include in the criteria for Approval of Proposed Work, the Secretary of the Interior's Standards for Rehabilitation of Historic Buildings, the Design Guidelines for Historic Old Town Fort Collins, and the Standards and Guidelines for the Historic Properties in The East Side/West Side Neighborhoods. The motion was seconded by Ms. Weatherford, which passed unanimously. (Yeas:6 and Nays:0).

There was discussion between the Commission and staff that the proposed Standards and Guidelines for Historic Properties in the East Side/West Side Neighborhoods be a stand-alone document and they would apply to neighborhoods in Fort Collins outside these boundaries. Ms. Tunner explained that people in other parts of the city won't understand that these standards and guidelines apply to their property too. Ms. McWilliams suggested that they adopt the document to apply city-wide or they will have to come up with a new document to apply across the board.

Mr. Frick moved to propose the Standards and Guidelines for Historic Properties in the East Side/West Side Neighborhoods in Fort Collins apply city-wide. The motion was seconded by Mr. Hoaglund. Yeas: Frick, Weatherford, Kullman, Carpenter, Hoaglund. Nays:Tanner.

The districting process already applies city wide.

This proposed districting process will go along with the East Side/West Side Design Standards and Guidelines and the city-wide Standards and Guidelines for Historic Properties to City Council. In the future, staff will rework the Local Historic Landmark

Designation Nomination Form to better suit districts and to define district criteria. Ms. Carpenter pointed out that the Process for District Designation that is going to Council does not address the interim control hold. Mr. Eckman explained that the hold begins whenever the Commission first considers and accepts the district designation with a satisfactory application or the application can be rejected and the hold is not instated. Ms. McWilliams stated that the hold on an accepted potential district begins in Step #1, when the LPC issues their favorable opinion.

The meeting adjourned at 11:20 a.m.

Submitted by Nicole Sneider, Secretary.