

HISTORIC LANDMARK COMMISSION STAFF REPORT

Salt Lake City Economic Hardship Code
Zoning Text Amendment
Petition PLNPCM2009-00014 (400-99-50) –
City-wide
February 4, 2008



Planning Division
Department of Community and
Economic Development

Applicant: Planning Commission

Staff: Robin Zeigler 535-7758
robin.zeigler@slcgov.com

Master Plan Designation:
City-wide

Council District: City-wide

Applicable Land Use Regulations:

Review Standards: 21A.50.050
Standards for General Amendments

Affected Text:
21A.34.020

Notification

- Notice mailed on January 20, 2009

Attachments:

- Proposed Text Amendments
- Department Comments
- Public Comments

REQUEST

The Planning Commission is requesting a reconsideration of the Economic Hardship provisions of the ordinance to provide for clarity and a more effective process.

STAFF RECOMMENDATION

Based on the comments, analysis and findings of fact listed in the staff report, Planning Staff recommends the Historic Landmark Commission transmit a favorable recommendation to the Planning Commission for a recommendation to the City Council to adopt the proposed text amendments.

Background/ Project Description

The City adopted a comprehensive Zoning Ordinance in April 1995. At that time, it was understood that adjustments to the Zoning Ordinance would be necessary once it had been implemented, and people had an opportunity to work with it.

At this time, the Planning Division is processing changes to the Economic Hardship portion of the Salt Lake City Code. The proposed alterations to the ordinance are a response to a 1999 Petition for amendments requested by the Planning Commission, a 2004 Legislative Action, and the 2008 Citygate study of the planning processes.

Economic Hardship is a process available to an applicant after the Historic Landmark Commission (HLC) has reviewed and denied an application for demolition because the application did not meet the standards for demolition. All property owners are protected from overly burdensome regulations through the Fifth Amendment to the U.S. Constitution. According to “Economic Hardship and Local Preservation Law: Understanding the Legal and Financial Aspects”, the applicant must make the case that to keep the structure would be, in essence, be a taking of his or her property. An unjust taking is when a government acquires private property and fails to compensate an owner fairly. A “taking” can occur even without the actual physical seizure of property, such as when a government regulation has substantially devalued a property. Economic Hardship provisions provide assurance to property owners that relief is available in situations where the impact of a particular action (in this case, denial of demolition) proves to be especially harsh.

It is important to clarify that Economic Hardship relates to the property not the property owner. Economic Hardship relates to the question of whether the property can realize a reasonable return on investment, or whether a viable use of the property remains.

The changes recommended are to assist both the HLC and the applicant to understand the requirements of determining Economic Hardship and to improve the process both for the HLC and the applicant. Staff met with HLC members, RDA staff, a subcommittee of the HLC, and past Economic Hardship panelists to identify issues and concerns with the current language of the ordinance. An open house was held on August 28, 2008 and staff accepted emailed, written, and verbal comments at that time from the general public. In addition, staff researched other Economic Hardship ordinances and legal cases related to the topic and conferred with the consultants of the Preservation Plan, Clarion Associates, and Julia Miller, Editor of the *Preservation Law Reporter* which is published by the National Trust for Historic Preservation. Based on this input and research, staff recommends the attached changes.

Summary of Proposed Code Changes

The Salt Lake Planning Division is processing Economic Hardship code adjustments to the Salt Lake City code. A summary of the text changes proposed are discussed below. Exhibit A – Proposed Ordinance Amendments includes a more detailed report on the specific code changes.

1. Section 21A.34.020 (K)

Section K of Chapter 21A.34.020 provides for the definition and determination of economic hardship. This section currently states that the applicant must provide evidence to make their case. It is recommended that this be further stressed and explained with additional language which states that “the

burden of proof is on the applicant to prove that all reasonable reuse and return has been denied as a result of the denial of the demolition application.” Denial of “all reasonable use and return” is the standard applied by the U.S. Supreme Court to determine a “taking”.

The recommendation includes additional standards and additional language for existing standards that will help to clarify the intent of the existing standard. Additional standards include:

- Description of past and current use;
- Consideration of alternative zoning and variances or financial incentives; and
- Impact of the proposed project on the neighborhood.

Redevelopment. The standard (i), “impact of the proposed project”, allows the HLC to consider the value of City-instigated redevelopment projects and the recognition that these projects are as much in the public’s interest as historic preservation.

Multiple Lots. Recommendations to this section include a clarification that in the case of multiple lots, each lot should be considered individually, since the value of assembled lots would likely always result in a determination of Economic Hardship.

Applicant Knowledge. Recommended language includes a clarification of the applicant’s knowledge of the condition of the property and the applicant’s plans for the property at time of purchase. The purpose of this standard is to clarify that a landowner’s purchase of historic designated property with the assumption that they can demolish the buildings should not be a reason for economic hardship as the zoning and the restrictions of the historic overlay is information readily available to the public. Property owners should not be rewarded for poor business decisions.

Hearing Officer. Another change for this section is a provision for a hearing officer with expertise in real estate appraisal as opposed to the current three-person economic hardship review panel. There are three reasons for this recommendation.

- In discussions with former applicants, economic hardship panelists, and the HLC, it was clear that the panel was not a fair representation of either the applicant or the HLC, was a cumbersome process for everyone, and confusing to both the applicant and the public.
- The existing ordinance requires the HLC adopt the decision of the economic hardship panel unless the HLC finds that that the panel acted in arbitrary manner or that its report was based on erroneous information. This may be problematic as it relies too heavily on the decision of those who are not appointed by the Mayor, hired by the City, or elected into an office and equates to the HLC “giving away” their decision making authority.
- The economic hardship review panel’s makeup of three people is difficult to achieve. The three person panel is supposed to consist of a representative of the HLC, a representative of the applicant and a third party neutral expert. It is difficult for the HLC to find a third party that meets the qualifications and is also willing to volunteer their time to review large amounts of complicated documentation.

2. Section 21A.34.020 (L)

Section L provides the standards for a Certificate of Appropriateness for demolition of a contributing structure.

One of the recommendations for this section is to require that all standards be met as opposed to only a

set number of standards. The purpose of this is to avoid an applicant trying to implement the most difficult standards and then saying he or she has no ability to use the building. Because the applicant has already gone through the process of requesting demolition and has been denied based on the finding of the Historic Landmark Commission that the property is contributory, the standards for reaching a hardship should be set high. According to Julia H. Miller, Esq., editor of the *Preservation Law Reporter*, “a high showing of hardship is required to justify overriding a commission determination. The impact must be substantial. Otherwise the application of the ordinance could become administratively infeasible, and the underlying objectives of the preservation ordinance—to save historic resources—would not be met.”

Alterations of this section also include lowering the one-year deferral to a six month deferral. This was a request of the RDA.

3. Section 21A.34.020 (M and N)

Sections M and N deal with a decision to defer a Certificate of Appropriateness for demolition. The recommendation is to add that an applicant also must apply other available incentives in the bona fide effort to make the building usable during the bona fide effort.

4. Chapter 21A.34.020 (O)

Recordation of a property that has been approved for demolition is a current requirement of the ordinance. Alterations of this section also allow the Historic Landmark Commission to request salvage of building materials. This alteration is in keeping with the City’s sustainability efforts.

Comments

Public Comments

An Open House was held on August 28, 2008. Notice of the Open House was sent to Community Council chairs and those whose names are on the Planning Divisions List serve. Notice was also posted on the City’s website and in a newsletter sent to all owners of property with local historic designation. Please see attachment C.

City Department Comments:

Staff sent information regarding the proposed text changes to applicable City Departments. Department responses are included in Attachment B.

Analysis and Findings

21A.50.050 Standards for general amendments.

A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the City Council and is not controlled by any one standard. However, in making its decision concerning a proposed amendment, the City Council should consider the following factors:

A. Whether the proposed amendment is consistent with the purposes, goals, objectives, and policies of the adopted general plan of Salt Lake City;

Analysis: The community master plans land use policies generally state that historic structures and neighborhoods should be preserved.

The purpose of Economic Hardship is to provide an applicant an opportunity to show that denial of an application for demolition of a structure with local historic designation will result in an economic hardship. All of the proposed changes to the text, as outlined, are intended to clarify or further advance the purposes, goals, objectives and policies of the adopted general plan of Salt Lake City. The proposed changes do not alter the various purpose statements included in the Zoning Ordinance. The proposed amendment will help ensure compatibility with the adopted master plans of the City.

Finding: The proposed text amendments provide additional refinement of the zoning regulations of the City's Code by providing corrections, clarification and consistency within existing regulations and provide an effective system of determining Economic Hardship. The proposed alterations are consistent with the City's land use policies.

B. Whether the proposed amendment is harmonious with the overall character of existing development in the immediate vicinity of the subject property;

Analysis: The proposed amendments are not site specific. Therefore, they will not interfere with the character of specific properties.

Finding: The proposed amendments are City-wide and do not require changes to the existing development in the City.

C. The extent to which the proposed amendment will adversely affect adjacent properties;

Analysis: The proposed amendments are not site specific. Therefore, they will not interfere with the character of specific properties.

Finding: The proposed text changes will not adversely affect adjacent properties.

D. Whether the proposed amendment is consistent with the provisions of any applicable overlay zoning districts which may impose additional standards; and

Analysis: The proposed text amendments do not specifically relate, nor impact provisions of any other adopted overlay zone.

Finding: The proposed text amendments are consistent with the provisions of all applicable overlay zoning districts that may impose additional standards, except for the H Historic Preservation Overlay district. The proposed amendments to this Overlay District are intended to clarify the standards and provide consistency within existing regulations.

E. The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, schools, storm water drainage systems, water supplies, and wastewater and refuse collection.

Analysis: The proposed ordinance changes do not relate to provisions governing public facilities and services.

Finding: The proposed ordinance changes should not impact the adequacy of public facilities and/or services.

Exhibit A
Proposed Ordinance Amendments
Salt Lake City Code Maintenance

PROPOSED REVISIONS OF ECONOMIC HARDSHIP PROVISIONS OF THE HISTORIC PRESERVATION OVERLAY ZONING DISTRICT

Proposed language is in red and underlined and language recommended to be removed has been stricken.

21.A.34.020

K. Definition And Determination Of Economic Hardship: The determination of economic hardship shall require the applicant to provide evidence sufficient to demonstrate that the application of the standards and regulations of this section deprives the applicant of all reasonable economic use or return on the subject property.

1. Application For Determination Of Economic Hardship: An application for a determination of economic hardship shall be made on a form prepared by the planning director and shall be submitted to the planning division. The application must include photographs, information pertaining to the historic significance of the landmark site and all information necessary to make findings on the standards for determination of economic hardship.

The burden of proof is on the applicant to prove that all reasonable reuse and return has been denied as a result of the denial of the demolition application. Simply showing some effect on value is not sufficient.

2. Standards For Determination Of Economic Hardship: The historic landmark commission shall apply the following standards and make findings concerning economic hardship for each separate structure proposed for demolition. Additional standards are provided in subsection i for city instigated redevelopment projects:

- a. The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition, the applicant's knowledge of the condition of the property at time of purchase, and the applicant's plans for the property at time of purchase;
- b. The current level of economic return on the property as considered in relation to the following:
 - i. The amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant, and the person from whom the property was purchased,
 - ii. The annual gross and net income, if any, from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and depreciation deduction and annual cash flow before and after debt service, if any, for the previous three (3) years,
 - iii. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years,
 - iv. Real estate taxes for the previous four (4) years and assessed value of the property according to the two (2) most recent assessed valuations by the Salt Lake County assessor,

- v. Recent (no more than six months old) appraisal including all appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property,
- vi. ~~The fair market value of the property immediately prior to its designation as a landmark site and the fair market value of the property as a landmark site at the time the application is filed,~~ The fair market value of the site, improvement or object in its existing condition taking into consideration the control of the historic district overlay, and the inherent assumption that the property might not be allowed to be demolished. Assembled lots should be considered individually and not as a whole.
- vii. Form of ownership or operation of the property, i.e., sole proprietorship, for profit corporation or not for profit corporation, limited partnership, joint venture, etc., and
- viii. Any state or federal income tax returns on or relating to the property for the previous two (2) years;
- c. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding:
- i. Any real estate broker or firm engaged to sell or lease the property,
 - ii. Reasonableness of the price or rent sought by the applicant, and
 - iii. Any advertisements placed for the sale or rent of the property;
- d. The infeasibility of alternative uses that can earn a reasonable economic return, in the case of income producing, or use for the property as considered in relation to the following:
- i. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation,
 - ii. Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the decision of the historic landmark commission concerning the appropriateness of proposed alterations,
 - iii. Estimated market value of the property in the current condition after completion of the demolition and proposed new construction; and after renovation of the existing property for continued use, and
 - iv. The testimony of an architect, developer, real estate consultant, appraiser, or other professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;
- e. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.
- f. Descriptions of past and current use.

g. Consideration of alternative zoning and variances or financial incentives such as property tax abatement and transfer of density to alleviate hardship.

h. The City and the applicant may submit additional evidence relevant to the issue of economic hardship for the review and consideration of the commission.

i. Because city-instigated redevelopment projects are assumed to be in the public's best interest on a level equal to the city's desire to retain its historic fabric, the historic landmark commission shall also consider the following standards for each separate structure proposed for demolition.

i. The extent to which a building or site in poor condition contributes to the blight of the neighborhood and is expected to continue to do so, taking into account its attractiveness as a location for criminal activity, its negative aesthetic impact on the neighborhood, and its decreased potential for redevelopment because of low property values;

ii. The contribution the site makes to the historic integrity of the district or its individual significance;

iii. The neighborhood's need for proposed redevelopment and the inability of the existing structure(s) or site to be incorporated into the planned redevelopment; and

iv. The applicant seeks and intends, in good faith, to demolish the structure immediately for the purpose of constructing on the site, within twelve months, a new building or other facility that will have a greater chance of addressing the blight of a neighborhood in a positive manner than the rehabilitation of the existing structure or site.

3. Procedure For Determination Of Economic Hardship: The historic landmark commission will hire an administrative hearing officer with an expertise in real estate appraisal, if such expertise does not exist among staff, to present findings to the commission in addition to the findings of staff. ~~shall establish a three (3) person economic review panel. This panel shall be comprised of three (3) real estate and redevelopment experts knowledgeable in real estate economics in general, and more specifically, in the economics of renovation, redevelopment and other aspects of rehabilitation. The panel shall consist of one person selected by the historic landmark commission, one person selected by the applicant, and one person selected by the first two (2) appointees. If the first two (2) appointees cannot agree on a third person within thirty (30) days of the date of the initial public hearing, the third appointee shall be selected by the mayor within five (5) days after the expiration of the thirty (30) day period.~~

a. Review Of Evidence: ~~All of the evidence and documentation presented to the historic landmark commission shall be made available to and reviewed by the economic review panel. The economic review panel shall convene a meeting complying with the open meetings act to review the evidence of economic hardship in relation to the standards set forth in subsection K2 of this section. The economic review panel may, at its discretion, convene a public hearing to receive testimony by any interested party; provided, that notice for such public hearing shall be in accordance with part II, chapter 21A.10, "General Application And Public Hearing Procedures", subsection 21A.10.020E and section 21A.10.030 of this title.~~

b. Report Of Economic Review Panel: ~~Within forty five (45) days after the economic review panel is established, the panel shall complete an evaluation of economic hardship, applying the standards set forth~~

~~in subsection K2 of this section and shall forward a written report with its findings of fact and conclusions to the historic landmark commission.~~

c. Historic Landmark Commission Determination Of Economic Hardship: At the next regular historic landmark commission meeting following receipt of the staff report ~~of the economic review panel,~~ the historic landmark commission shall reconvene its public hearing to take ~~final~~ action on the application.

i. **Finding Of Economic Hardship:** If after reviewing all of the evidence, the historic landmark commission finds that the application of the standards set forth in subsection K2 of this section results in economic hardship, then the historic landmark commission shall issue a certificate of appropriateness for demolition.

ii. **Denial Of Economic Hardship:** If the historic landmark commission finds that the application of the standards set forth in subsection K2 of this section does not result in economic hardship then the certificate of appropriateness for demolition shall be denied.

iii. ~~**Consistency With The Economic Review Panel Report:** The historic landmark commission decision shall be consistent with the conclusions reached by the economic review panel unless, based on all of the evidence and documentation presented to the historic landmark commission, the historic landmark commission finds by a vote of three fourths (3/4) majority of a quorum present that the economic review panel acted in an arbitrary manner, or that its report was based on an erroneous finding of a material fact.~~

L. Standards For Certificate Of Appropriateness For Demolition Of A Contributing Structure In An H Historic Preservation Overlay District: In considering an application for a certificate of appropriateness for demolition of a contributing structure, the historic landmark commission shall determine whether the project substantially complies with the following standards:

1. Standards For Approval Of A Certificate Of Appropriateness For Demolition:

- a. The physical integrity of the site as defined in subsection C2b of this section is no longer evident;
- b. The streetscape within the context of the section H historic preservation overlay district would not be negatively affected;
- c. The demolition would not adversely affect the section H historic preservation overlay district due to the surrounding noncontributing structures;
- ~~d. The base zoning of the site is incompatible with reuse of the structure;~~
- e. The reuse plan is consistent with the standards outlined in subsection H of this section;
- f. The site has not suffered from willful neglect, as evidenced by the following:
 - i. Willful or negligent acts by the current owner that deteriorates the structure,
 - ii. Failure of the current owner to perform normal maintenance and repairs,

iii. Failure to diligently solicit and retain tenants, and

iv. Failure to secure and board the structure if vacant; and

g. The denial of a certificate of appropriateness for demolition would cause an economic hardship as defined and determined pursuant to the provisions of subsection K of this section.

2. Historic Landmark Commission Determination Of Compliance With Standards Of Approval: The historic landmark commission shall make a decision based upon compliance with the requisite number of standards in subsection L1 of this section as set forth below.

a. **Approval Of Certificate Of Appropriateness For Demolition:** Upon making findings that ~~at least six (6)~~ of the standards are substantially met, the historic landmark commission shall approve the certificate of appropriateness for demolition.

b. **Denial Of Certificate Of Appropriateness For Demolition:** Upon making findings that two (2) or less of the standards are met, the historic landmark commission shall deny the certificate of appropriateness for demolition.

c. **Deferral Of Decision For Up To ~~One Year~~ Six Months:** Upon making findings that three (3) to five (5) of the standards are met, the historic landmark commission shall defer a decision for up to six months ~~one year~~ during which the applicant must conduct a bona fide effort to preserve the site pursuant to subsection M of this section.

M. Bona Fide Preservation Effort: Upon the decision of the historic landmark commission to defer the decision of a certificate of appropriateness for demolition for up to six months ~~one year~~, the applicant must undertake bona fide efforts to preserve the structure. The six months ~~one year~~ period shall begin only when the bona fide effort has commenced. A bona fide effort shall consist of all of the following actions:

1. Marketing the property for sale or lease;

2. Filing an application for alternative funding sources for preservation, such as federal or state preservation tax credits, Utah heritage revolving fund loans, redevelopment agency loans, ~~ete.;~~ and other currently available incentives.

3. Filing an application for alternative uses if available or feasible, such as conditional uses, special exceptions, ~~ete.;~~ and other currently available incentives.

4. Obtaining written statements from licensed building contractors or architects detailing the actual costs to rehabilitate the property up to International Building code.

N. Final Decision For Certificate Of Appropriateness For Demolition Following Six Month ~~One Year~~ Deferral: Upon the completion of the six month ~~one year~~ period and if the applicant provides evidence of a bona fide preservation effort, the historic landmark commission shall make a final decision for the certificate of appropriateness for demolition pursuant to subsection F2 of this section. The historic landmark commission shall approve the certificate of appropriateness for demolition and approve, approve with modifications or deny the certificate of appropriateness for the reuse plan for new construction pursuant to subsection F2, H or P of this section.

O. Recordation And Salvage Requirements For Approved Certificate Of Appropriateness For
Demolition: Upon approval of a certificate of appropriateness for demolition of a landmark site or a contributing structure, the historic landmark commission shall require the applicant to provide archival quality photographs, plans or elevation drawings, as available, necessary to record the structure(s) being demolished. The historic landmark commission may also require the applicant to make the property available/accessible to architectural salvage or certified non-profits for the purpose of salvaging materials.

Exhibit B
Department Comments

Comments from Larry Butcher, Permits

January 5, 2009

Recommend changing “Assembled lots should be considered individually and not as a whole” to “Lots to be assembled should be considered individually and not as a whole.”

Recommend changing “current adopted Building Code Standards” to “International Building Code.”

Comments from Barry Walsh, Transportation

January 5, 2009

“We see no issues impacting the public transportation corridor system or the requirements of the existing site as a non-conforming or a conforming proposed site development.”

Exhibit C
Public Comments

Written Public Comments from Open House

1. Agree with draft proposal—process needs to be fair and not subject to manipulation. Standard for demolition approval needs to be very high. I especially support the changes to eliminate panel and requirement to split assembled parcels. Consider potentially changing demolition standards to remove set number of standards to allow/defer/deny demolition. Allow more latitude for HLC to make this decision.
2. Consider the possibility of using language that does not specify set numbers of standards needed for compliance. Instead, language should be included that allows the commission to make the decision with latitude to judge substantial compliance. In general, very support of the improved ordinance proposal and the new language. The new format to have a single hearing officer to review information will make the information the primary resource of the hardship review, not the debate between panel members, which in the past some reviews became.
3. I think replacing the review panel with an administrative officer with expertise in real estate appraisal sounds like a great idea. The panel has never seemed to work well and favored the larger developers. Eliminating the requirement for the applicant to come up with fair market value prior to designation seems much more doable.

Verbal Public Comments from Open House

1. K.b.2.vi. This language should also include something like “full acknowledgement of the control of the designation”.
2. The hearing officer should be paid by the applicant, either directly or through a high application fee.
3. Should clarify that the hearing officer cannot be a city employee. Staff stated that with the current draft it might be possible for a hearing officer to be a city employee if that person had the proper expertise.
4. Need to define “reasonable return”. Staff recommended that the HLC have guidance in the form of a policy document instead of adding information that may need to change over time or case-by-case in the ordinance.
5. Public utilities have rates of return that can be used.

Emailed Public Comments

1. There have been in the past, many people who have declared this. I feel that there should be a good time limit on just how long the property owner has possession of the property in question. I feel very strongly that it has been used only for the purpose of building what they desire on said property, with full knowledge of it's condition when it was purchased. They used this condition to be allowed to build exactly what they wanted. We, in the Capitol Hill area have many, now empty lots because of this rule now. There needs to be a ruling of some kind that just because they want to build here, they can't just come in and destroy a building or home that could & should be restored.

For instance, if a home has been owned for years by, say an elderly couple who does not have the ability or finances to keep up a home completely. Letting it deteriorate some. Someone comes in to buy it after the couple pass on, or moves to a care center. They know at the time of purchase, that it is going to be an expensive project. This person should own or live in this home for at least a year or more, before they are able to even be

considered for an Economic Hardship, and allowing them to tear it down.

I do hope you understand what I'm trying to say. We need to protect some of our older homes & buildings from the actions of a few.

2. The issues we are trying to solve to avoid demolition in historic districts for economic hardship is usually reactive—a proactive approach is needed. How about an ordinance that says: “no sale of property in a historic district in Salt Lake city can be concluded without the purchaser acknowledging to the City at the time or purchase he/she understands that approval for demolition will not be allowed for economic hardship only because he paid too much for the property anticipating he can avoid restrictions the ordinance might require; and that such approval will not consider the value of the property in the economic hardship calculation with demolition and ‘improvements’; but only the appraised value it would have with preservation or improvements allowed by the ordinance.”

Comments from Preservation Plan consultants, Clarion

Matt Goebel, Clarion

Robin: You asked that I take a look at the staff’s January 2007 memo on possible revisions to the Economic Hardship ordinance and indicate whether I believe you’re on the right track. I’ve now taken a look at the existing ordinance in more detail and also the staff memo, as well as the notes on this issue that came out of our interviews for the preservation plan. I offer the following comments:

- **Issue: Appointment of Economic Review Panel.** The staff memo proposes replacing the Economic Hardship Review Panel with a specialist hired on retainer to review the proposed economic hardship applications. The staff proposal is consistent with the practice in many jurisdictions of hiring a “hearing officer” to hear variance applications. This can result in decisions being made more quickly and ideally without the possible politicization that can occur with the ERP. In our interviews with some citizens who have served on the ERP, we discussed this possibility and they generally thought it was an idea with merit that should be seriously considered. There could be two options here: 1) the hearing officer is given authority to make a final decision, which can be appealed to the HLC; or 2) the hearing officer forwards a recommendation to the HLC, which makes the final decision (and is appealed to council).
- **Issue: Processing of incomplete applications.** The staff’s proposed solution is right in line with what we recommend to all our clients in general zoning code rewrites. The planning director (or their designee) should be authorized to define what constitutes a complete application, and **shall not** process applications that are not complete and submitted with the required fee. If this provision doesn’t exist generally in the SLC code for all zoning issues, then I recommend it be added now to the EH ordinance.
- **Issue: Inflated land values.** I don’t fully understand the problem that’s described in the issue statement in the staff memo. Certain elements of the proposed solution make sense, including the consideration of lots individually rather than as a whole, and the requirement that estimates be based only on bringing the property up to code, not to its highest potential. However, one segment of the proposed solution strikes me as overbroad – the requirement that values be determined for the property prior to designation. (For example, if a property was designated 15 years ago, this solution would make them provide financial records dating back 15 years?)
- **Other Issues.** We heard a few comments in our interviews that are not addressed directly in the staff memo. In particular, there was general consensus that appeals of the ERB’s decisions (or decisions by a hearing officer if one is appointed) should go to the Council, not the LUAB. This issue was discussed in the 2004 audit report. Also, the staff memo does not address the issue of the problematic underlying

zoning for many properties, or the lack of current survey information – both of which are not problems with the EH ordinance itself, but rather with the larger preservation program

I hope this is helpful feedback. Please let me know if you have any questions or would like to discuss any of these issues further. We plan on addressing these issues in the policies and strategies in the preservation plan, but I understand the city may be looking at some immediate ordinance amendments now before we get to that point.

Comments From Former Economic Hardship Review Panelists

Jessica Norie

I think these are very good changes. The only thing I would add is that I think the commission needs the ability to deny economic hardship based on an applicant over paying for a property because the applicant did not do their due diligence, or had no intention of keeping the buildings. If the applicant purchased the property based on an appraisal that did not consider the landmark designation, or did not do an appraisal and paid cash; they are able to claim economic hardship if there is no way to get a return on their investment. Is it possible to add under # 2 the intention/plans of applicant when acquiring the property? I think 2.a and 2.b.vi starts to address this issue.

Sarah Sabiston

Need to look at underlying zoning and how the HLC can offer/suggest/recommend conditional uses or rezoning in order to increase a property owner's options. Need to encourage opportunity and flexibility.

Work with RDA to provide financial incentives.

Feels the ordinance does not have teeth.

Property owner should have to prove the feasibility of a use of the property rather than prove the infeasibility.

Applications should be thoroughly reviewed and not submitted until they are complete with all supporting documentation.

Although lots should be considered individually and not as a whole, the structures themselves need to be considered within the context of the district.