



Memorandum

Planning Division
Community & Economic Development Department

To: Historic Landmark Commission

From: Robin Zeigler, Senior Planner

Date: May 6, 2009

Re: Economic Hardship Ordinance Discussion

A draft of a revised economic hardship ordinance was reviewed by the Historic Landmark Commission on February 4, 2009. The Commission identified concerns about the potential hearing officer, definition of blight and changing the 12 month delay to 6 months. Therefore, the Commission created a committee to explore these concerns. The three volunteers for the Committee were Arla Funk, Sheleigh Harding and Earle Bevins. The Committee met two times. To continue the discussion on changes to the economic hardship section of the ordinance during the work session on May 6, 2009, the following information is attached:

- Meeting notes from the first committee meeting on March 19, 2009
- Staff research as a result of the first Committee Meeting
- Meeting notes from the second committee meeting on March 27, 2009
- Revised Working Draft of Ordinance with notes
Because demolition is closely tied to economic hardship, sections of the ordinance related to demolition have been added to the working draft.

Economic Hardship Committee Meeting Notes March 19, 2009

Attending: Arla Funk, Earl Bevins, Sheleigh Harding, Joel Paterson, Janice Lew, Robin Zeigler. One member of the public listened to the meeting: Cindy Cromer.

Salvage

Arla stated that the request that, “salvage shall be made available” should be more forceful. Sheleigh stated that “shall” meant that the applicant has to make it available.

Arla asked if there was a way to require the applicant to obtain the cost of sending the building proposed to be demolished to the landfill. Paul and Robin stated that this was difficult to quantify. Arla requested contact information for Dan Corson who spoke about this issue at the commissioner’s training. Mr. Corson’s response to this question was:

Embodied energy quantification probably has a way to go before it may be computed, and even then it will be disputed. However, for environmental purposes one can legitimately argue that the embodied energy of a historic building is a lot less than new construction replacing it. This is because historic buildings use local materials (thereby low transportation related energy use) that are natural (therefore no energy consumptive manufacturing process).

For construction costs, one should sort out the costs that would be spent regardless of whether the project is rehab or new construction (rewiring, HVAC, wood floor finishing) and take them completely out of the equation except where a tax credit may be applicable to the entire project. Subtract all financial incentives from the rehab estimate not including the costs shared by both new construction and rehab. [One would not receive the incentives if the project were not a rehab project.] Be certain to include landfill and other dump fees relative to each analysis.

Hearing Officer/Expert

All debated whether it was a true hearing officer or a staff member with a certain expertise that was desired to review applications. Sheleigh explained that a hearing officer was like a judge and if we had a true hearing officer, then their decision should be final with the appeal going to LUAB/court, and that the decision would be taken out of the hands of the Commission. Arla expressed concern with taking the decision away from the commission and out of the public venue.

A panel of experts was recommended. The panel could be volunteers or ad hoc commission members that are appointed. Their expertise should include real estate appraisal and building contracting.

Paul pointed out that one potential draw back of hiring an expert is that they want to please the City and may feel that providing the decision that the City is hoping for will assure them future work. Arla recommended that if an expert is hired, that they be hired for a specific number of years, to alleviate this concern.

Earle was concerned about the length of time for economic hardship review and believes that a hearing officer would provide for a more timely decision.

Arla stated that economic hardship is a result of lack of maintenance and over paying for a property. Since the majority of issues are self-imposed, she was not concerned about providing the applicant with a timely review.

Either way, all agreed that there needs to be better clarification as to what the panel/team/expert hearing officer is supposed to do, standards they follow, who appoints/hires them, and qualifications.

Knowledge of Designation

Re: K.2.a Standards for Determination of Economic Hardship. “The applicant’s knowledge of the landmark designation at the time of acquisition...” Committee members agreed that their knowledge was irrelevant. We have to assume that the owner has done their due diligence. Paul agreed.

One commissioner stated that we need signage on streets to inform and remind people that they are in a historic district.

Contribution to neighborhood

Re: K.2.i.i. “The extent to which a building or site in poor condition contributes to the blight of the neighborhood...”

Arla felt that whether or not the structure fit-in could be interpreted differently by different people. Who makes this decision? Sheleigh felt the language set a high standard to achieve and that the decision had to be made by the Commission. The committee recommended that the City agency be required to submit two plans showing development that incorporates the structure as well as a plan with the structure demolished.

One committee member asked if it was problematic for the city to have standards for city projects (K.2.i) that did not apply for all applicants. Paul stated that municipalities have been treated as special in the courts and he did not see a problem with this in terms of its legality.

The ordinance needs to include a definition of blight.

Arla asked if there is a list of incentives available to developers.

Standards

The committee recommended a panel of experts that review at least three cost comparisons of each scenario.

Committee recommended that in addition to requiring descriptions of past and current use, that the applicant be required to provide a description of the building's current condition with an explanation as to why it is in poor condition, if it is in poor condition. For instance, the owner cannot be blamed for an incident beyond his/her control such as a fire, but is responsible for deterioration due to lack of maintenance.

Bonds

At the HLC meeting a bond or performance guarantee was recommended. More research is needed to determine how bonding is handled by the city and state and if bonding should be included in this portion of the ordinance or elsewhere.

A committee member asked if the HLC can require the applicant to have funding in place before the demolition is permitted. Paul stated that that would be the purpose of the bond and Joel stated that sometimes a developer cannot obtain funding until they have all necessary permits and approvals.

Deferral

A comment in the HLC meeting was to reinstate the 12 month deferral and not change it to 6 months as currently recommended. The committee said that they would like to have the full commission make that decision.

Results of Economic Hardship Ordinance research requested at HLC subcommittee meeting.

Decision Making Body

Cities have undertaken the decision of economic hardship by either making the decision themselves, as currently is the case for Salt Lake City, appointing a committee, deferring to another body, appointing a hearing officer, or by soliciting expert testimony. Following is how different cities have addressed decision making in terms of economic hardship.

The overwhelming majority of cities use their historic landmark commission to make final decisions on economic hardship. Some specify that the commission may “solicit expert opinion”. For example, in Manitou Springs, Co, the ordinance reads “*The Commission may appoint an expert or experts to provide advice and/or testimony concerning the value of the Resource, the availability of incentives and the economic impacts of approval or disapproval of a MCAC application*”. They do not provide any criteria for what constitutes an “expert”.

The majority of ordinances provide very little guidance on standards and how economic hardship is determined. Some, like Savannah, GA have never had a case of economic hardship and so have never battled with the issues that we do. For those reasons, I don’t think that we should adopt a procedure simply because the majority has done it that way. The National Trust does not recommend any one way for decision making, stating that it depends on the city’s particular situation and how the pros and cons of each scenario weigh out in terms of the goals of the commission.

Committee

A small number of cities use another body or an ad hoc committee to make the final decision regarding economic hardship.

Portland, Maine uses the Board of Adjustment (BOA) to hear economic hardship cases. They allow the Planning Board and/or historic commission to provide a report or any other information, documentation, evidence or assistance for the BOA review. The issue is handled like a variance.

Philadelphia uses a committee on financial hardship who recommends approval or denial to the historic commission. There is no information as to who should be on the committee or what their credentials should be.

Spokane, Washington is one of the few cities that use an ad hoc committee instead of the historic commission. The seven member committee is appointed by the mayor and confirmed by city council and consists of “at least seven members as follows:

one member of the real estate development community or association such as CCIM Institute, Institute of Real Estate Management, the Society of Office and Industrial Realtors, and Building Owners and Managers Association; one member

from a banking or financial institution; one licensed architect registered in Washington State; one member from the property management industry; one member representative of property developers; one member of the landmarks commission; and one member representing the neighborhood council where the historic structure is located.

The Ad Hoc Committee will be a standing committee with one revolving member representing the specified neighborhood in which the property resides. There is a preference for developer and architects who participate on the ad hoc committee to have both new building construction and historic renovation experience. There is a preference for the neighborhood representative who participates on the ad hoc committee to have experience in development, appraising, construction and or related skills. Members of the ad hoc committee shall serve for two year terms and may be reappointed for additional two year terms.

The decision of the ad hoc committee may be appealed to the hearing examiner.

Hearing Officer

Chicago, IL mentions a hearing officer as giving advice/testimony, but leaves the final decision to the commission. Wilmington, NC uses a hearing officer to make the final decision.

Washington, DC uses a hearing officer who makes the final decision, but they have had some issues. The officer changes over time and is appointed by the Mayor. Because of this, there is always anxiety over who it will be and the position has become political. Right now, the officer is the director of planning who is the preservation review board staff's boss--which is awkward. In the past, DC has used an administrative law judge, with mixed results.

Comparison: Expert vs. Hearing Officer vs. Committee

	Expert	Hearing Officer	Committee
Qualifications?	Need	Need	Need
From what pool will the appointments be made?	Anyone meeting qualifications	Only city employees ? Other?	Anyone meeting qualifications
Who appoints?	Commission? Planning Director?	Mayor? City Council?	Mayor? City Council?
Where do appeals go?	Usual process	HLC? Court?	HLC? Will depend on if they decide or recommend

public involvement?	Yes	Maybe but limited	Maybe
Does the Commission decide or recommend?	Recommend	Decide	Either
Danger of becoming political	Low	High	Medium
Need for other staff?	No	Yes	Yes
How will additional costs be covered?	Application fee?	Application fee?	No direct costs but additional staff costs

Avoiding Demolition with Incentive Plans

Several cities, such as Portland, Maine, require an incentive plan if economic hardship is found, to attempt to avoid demolition. Portland, Maine uses the Board of Adjustment (BOA) to hear economic hardship cases. The Board can create/request an appropriate incentive plan or impose a reasonable condition. Their incentive plan must go to the city council for final approval.

The planning board, in cooperation with the committee and the owner, may prepare a report and recommend to the board of appeals an incentive plan to assure reasonable use of the structure. This incentive plan may include, but is not limited to, loans or grants from the City of Portland or other public or private sources, acquisition by purchase or eminent domain, building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation or renovation, changes in applicable zoning regulations, including a transfer of development rights, or relaxation of the provisions of this article sufficient to allow reasonable use of the structure. (<http://www.portlandmaine.gov/chapter014.pdf>)

In Pittsburg the city has to work with their development agency and other departments to provide an incentive plan to relieve the hardship. If they cannot do so within 60 days, than a demo permit should be issued.

In Will County, IL:

Within sixty (60) days from receiving a request for a Certificate of Economic Hardship, the Commission, upon a determination that the denial of a Certificate of Appropriateness has denied, or will deny the owner of a landmark or of a property within a preservation district of all reasonable use of or return on the property, may undertake one of the following actions:

i) offer the owner of the property reasonable financing, tax or other incentives sufficient to allow a reasonable use of, or return on, the property; or

ii) offer to purchase the property at a reasonable price or institute eminent domain proceedings pursuant to Article VII of the Illinois Code of Civil Procedure; or

iii) issue a Certificate of Appropriateness for the proposed construction, alteration, demolition or removal.

In Wilson, NC:

In the event a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the city or other public, private or nonprofit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations, or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship. The commission shall report such finding and plan to the Inspector who shall cause to be issued an order for such property to be repaired within the time specified, and according to the provisions of the recommended plan.

In McHenry, IL

In cases of denial of a Certificate of Economic Hardship, the City may offer the owner of the property reasonable financing, tax or other incentives sufficient to allow a reasonable use of, or return on, the property; or that the City offer to purchase the property at a reasonable price or institute eminent domain proceedings

Waynesboro, GA takes a vague stance by saying the commission “*shall have the power to vary or modify strict provisions*” thereby relieving economic hardship.

In Chicago, if the commission finds economic hardship then they send their report and an incentive plan to relieve the hardship to the finance committee of the city council. The finance committee has an opportunity to modify the plan before sending it to the city council with a recommendation for approval or denial. If the city council does not approve a plan to relieve economic hardship then a certificate for demolition is issued. If the city council

approves a plan to relieve economic hardship that requires that any action be taken by city departments or agencies, the action shall be initiated within 30 days following passage of the ordinance.

In order for incentives to work, they need to be available. At the moment, the only real incentives are federal and state tax credits. The draft Preservation Plan calls for additional incentives; however, this will need to be a city-wide discussion. It may be that we could add vague language about incentive plans, as seen above, knowing that it is our intent to work with the City to provide incentives.

Different standards

A few cities use different standards for different types of applicants, as the current draft recommends doing for city projects.

New York uses different standards for non-profits than for any other applicant of economic hardship, but there is no legislative history for this section of the code.

The code identifies landowners who qualify for this separate standard by their tax-exempt status and creates a separate “no reasonable return” category. This section allows non-profit to make the following showing:

(2) In any case where any application and request for a certificate of appropriateness...is filed with the commission with respect to an improvement, the provisions of this section shall not apply to such request if the improvement parcel...has received, for three years...and at the time of such filing continues to receive [specified tax exemptions for non-profits]... and the applicant establishes to the satisfaction of the commission, in lieu of the requirements set forth [for commercial properties] that:

(a) The owner of such improvement has entered into a bona-fide agreement to sell...or to grant a term of at least twenty years...which agreement is subject to or contingent upon the issuance of the certificate of appropriateness or a notice to proceed;

(b) The improvement parcel..., as existing at the time of the filing of such request, would not, if it were not exempt in whole or in part from real property taxation, be capable of earning a reasonable return;

(c) Such improvement has ceased to be adequate, suitable or appropriate for use for carrying out both

(1) the purposes of such owner to which it is devoted and

(2) those purposes to which it had been devoted when acquired unless such owner is no longer engaged in pursuing such purposes; and

(d) The prospective purchaser or tenant:

(1) In the case of an application for a permit to demolish seeks and intends, in good faith either to demolish such improvement immediately for the purpose of constructing on the site thereof with reasonable promptness a new building or other facility; or

(2) In the case of an application for a permit to make alterations or reconstruct, seeks and intends in good faith to alter or reconstruct such improvement, with reasonable promptness.

Philadelphia provides different standards for non-profits, low and moderate income persons, and public interest. Different standards for low and moderate income persons is not recommended by the National Trust since economic hardship should be a question of a governmental taking and not take into account the financial status of the property owner.

In addition to the general standards that are similar to ours, Philadelphia provides these submissions for non-profits:

- Maintenance costs for the performance of the mission or function of the organization
- A comparison of the cost of the performance of the mission or function of the organization in the existing building and in a new building, and a comparison of the cost of rehab of the existing building with the demo of the existing building and construction of a new building
- Impact of the reuse of the existing building on the financial condition of the organization
- Impact of the reuse of the existing building on the organization's program, function, or mission
- Additional cost, if any, attributable to the building of performing the organizations' service or function within the context of costs incurred by comparable organizations,
- Grants received or applied for to maintain or improve the property
- Organization's budget for the current and immediately past fiscal year
- Consideration given by the organization to relocation

In addition to their general submission requirements they also have two more for "public interest". I suspect that this is their way of dealing with what we have been struggling with—how do you balance the goals of the RDA who is trying to wipe out blight with the goals of preservation.

- *The Commission finds that issuance of the [demolition] permit is necessary in the public interest.*
- *The applicant shall demonstrate the necessity of demolition in the public interest.*

Portland and DC allow City Council to approve a COA for projects of "special merit" that sounds similar to Philadelphia's "public interest". Portland's criteria are:

- *Be consistent with the city's comp plan;*
- *Substantially outweigh the loss of the historic properties and provide significant public and civic benefits (although such benefits shall not be primarily economic or property tax benefits to the city); and*
- *Be of exceptional design and compatible with the surrounding area; and*
- *They require building permits for replacement structures to be issued before they will issue a COA.*

Portland's council may withhold permits if the developer cannot produce binding financial commitments for the new buildings. Performance bonds may also be required. In addition, the project must receive an affirmative recommendation from the Planning Commission and go through public hearings with the Planning Commission and City Council.

DC provides for different standards for low-income owners that provides heightened statutory protection beyond that of federal constitutional law; however, they have never issued a demolition permit under this provision. If the commission wants to continue to use economic hardship solely as a means for avoiding a takings, as it has been used in the past, this route is not recommended.

Low-income owners may obtain economic hardship if to keep the structure is "an onerous and excessive financial burden." They define "low-income owner" as:

an owner who is an applicant when the application is for a building or site owned by him or her and used as his or her principal place of residence, and whose household income is eighty percent (80%) or less of the median household income for the Washington Metropolitan Area as established from time to time by the U.S. Department of Housing and Urban Development.

"Onerous and excessive financial burden" is not well defined but appears to allow for demolition when the costs of restoring the property exceed the owner's financial means. (<http://lsr.nellco.org/cgi/viewcontent.cgi?article=1009&context=georgetown/hpps>)

Salvage

The only salvage clauses within an ordinance that could be found were quite vague. Scottsdale, AZ and Atlanta, GA require preparations of salvage strategies. Oregon's model ordinance simply states that the commission may impose conditions on demolition permits, one being "salvage and curation of significant elements". Within their approval of demolition section, Oregon also requires that the approval for demolition "may be conditioned on stipulations that provide for rights of access to the property for the purposes of documentation or for agreed upon removal of artifacts." Collingswood, NJ requires "a statement that the owner will salvage or allow to be salvaged the building's interior or exterior architectural features" as an attachment to a demolition application.

Boulder, CO has a general ordinance requiring deconstruction. There is a non-profit subsidized by the city for used building materials to which items may be taken and thus their value may be taken as a charitable donation. For Boulder, economic hardship cases are rare, but few have involved consideration of demolition costs.

In Fort Worth, TX, it is the commission's responsibility to put together a salvage plan and submit it to the applicant. "Such plan may suggest salvage and preservation for reuse in restoration elsewhere, specified classes of building materials, architectural details, ornaments, fixtures and the like. The Historic and Cultural Landmarks Commission may require such owner to comply with the salvage plan as a condition for issuance of a certificate of appropriateness."

The Preservation Plan recommends that the City be a partner in creating a non-profit salvage yard that would be open to the public and also provide materials for city projects. Such a project would make the request for salvage more reasonable.

In Iowa City, Friends of Historic Preservation, runs the Salvage Barn as a service for the City. “Working the Historic Preservation Commission, FHP encourages the owners of historic homes to repair and maintain their homes according to the Secretary of Interior’s guidelines. The Salvage Barn supports this effort by making materials available at reasonable prices.” This salvage yard supports the efforts of nearby cities too.

In New York, the Landmarks Preservation Commission runs an Architectural Salvage Warehouse in Brooklyn. Since 1985 they have sold salvage removed from city buildings, donated by the public or placed on consignment. Items are sold to city residents only. Some significant pieces are saved for specific city projects that might not be in the works at the time of demolition. For instance, elements of an historic theater were saved but are not for sale in the hopes that they can be used in the construction of a new theater—thereby preserving context. (<http://query.nytimes.com/gst/fullpage.html?res=940DE0DC113BF930A25752C1A96E948260>)

Prince George's County Historical and Cultural Trust in Maryland manages, with volunteers, the Newel Post, a salvage center where reusable architectural elements may be donated. Montana’s Butte Citizens for Preservation and Revitalization collects salvage for reuse in historic buildings. New Bern, NC, Greensboro, NC and Portland, ME have similar programs and there are many others.

Bonds/Fees

One request made by the subcommittee was to require a bond to assure that a building would be constructed to replace the building approved for demolition based on economic hardship. Staff conducted research to determine if bonds were the best tool for the end goal. Currently, the city takes surety bonds, cash bonds, and letters of credit.

A surety bond is held by an insurance company. City staff who have dealt with bonds feel that it is very difficult to get the money out of an insurance company who will come up with multiple reasons that they will not pay.

Cash bonds are held by the City and have worked the best for small projects such as required landscaping, but would be unreasonable for large projects such as the construction of a building or a full development because of the amount of money needed.

Staff gave the following reasons a bond may not have the desired result:

- In general, all bonds or a letter of credit would need to be reviewed by the legal department. For landscaping, a form has been used, but for something as varied and complex as new construction, this document could be quite lengthy and it would be unlikely it could be completed in a timely manner for the applicant.

- The City has never claimed a bond because they do not have the staff to track, inspect and enforce. The City averages between 50 and 300 bonds at one time.
- Once a bond has been held for one year past the due date the money goes to the state.
- Most bonds do not cover the full cost of the work that needs to be done and the changing economy could mean that a bond covers even less of the necessary work.
- It is not an incentive for some developers as they consider it the cost of doing business and do not mind losing the money.
- If the bond is for new construction, the City is not staffed for the work required. The City would need to hire a construction manager and contractor.
- In most cases a developer has not gone to the expense of producing construction drawings when going through the process. They will have elevations and site plans but not full construction drawings. The City would then need to cover the expense of creating construction drawings but would not have legal rights to use the design.
- Bonds for projects such as landscaping requirements have worked because a Certificate of Occupancy will not be issued until the work has been completed. However, in the case where there is no building, there is no incentive.

Staff also looked into the possibility of daily fines, but it is a similar issue. They are easy to levy, but difficult to collect. The City has never foreclosed on a judgment. After seven years, you have to refile and convince the judge that the empty lot is a detriment to the City.

Staff recommends, rather than spending too much time on finding a way to obtain assurances that in the end really do not work, we should focus more energy on different types of incentives that could be offered, making it difficult to make the argument for economic hardship at all.

Economic Hardship Committee Meeting Notes March 27, 2009

Attending: Arla Funk, Earl Bevins, Sheleigh Harding, Joel Paterson, Janice Lew, Robin Zeigler. One member of the public listened to the meeting: Cindy Cromer.

The Committee agreed that an expert who provides advice to the Commission was more desirable than a hearing officer.

Comments from commissioners on research:

- “Restoration architect” should be the background of an expert and that the language from Manitou Spring’s ordinance was sufficient. The expert does not need to be defined.

Note: City Attorney and staff disagree feel that specifying qualifications of the expert would be useful.

- Incentive plans need to be recommended to City Council.
- A time table needs to be set so that a building cannot be demolished until the building permits have been approved.
- Reuse should be defined as meeting codes.
- The cost of demolition should be included in the cost of new construction.

WORKING DRAFT OF ECONOMIC HARDSHIP PROVISIONS OF THE HISTORIC PRESERVATION OVERLAY ZONING DISTRICT—Revised APRIL 16, 2009

Proposed language is in red and underlined. Notes are in blue. Language recommended to be removed has been stricken.

21.A.34.020

(For demolition of a non-contributing structure or accessory structure, please see subsections F.d-e of this section.)

F.2.g. Review and Decision By The Historic Landmark Commission: The Historic Landmark Commission shall make a decision at a regularly scheduled meeting, ~~within sixty (60) days following receipt of a completed application, except that a review and decision on an application for a Certificate of Appropriateness for demolition of landmark site or contributing structure declaring an economic hardship shall be made within one hundred (120) days following receipt of a completed application.~~

J. Standards For Certificate Of Appropriateness For Demolition Of Landmark Site: In considering an application for a certificate of appropriateness for demolition of a landmark site, the Historic Landmark Commission shall only approve the application upon finding that the project fully complies with ~~one of~~ the following standards:

1. The demolition is required to alleviate a threat to public health and safety pursuant to subsection Q of this section; or

2. The physical integrity of the site as defined in subsection C2b of this section is no longer evident and the loss of historic integrity is not due to the willful neglect by the current owner, as evidenced by the following:

i. Willful or negligent acts that have caused the deterioration of the structure,

ii. Failure to perform normal maintenance and repairs,

iii. Failure to diligently solicit and retain tenants, and/or

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

~~2. The demolition is required to rectify a condition of economic hardship, as defined and determined pursuant to the provisions of subsection K of this section.~~

Discussion: It is not possible to have economic hardship until demolition has been denied.

K. 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 21A.34.020 H historic preservation overlay district would not be negatively affected;
- c. The demolition would not adversely affect the section 21A.34.020 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; or
- 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.

NOTE: There was some discussion in the meeting that it should remain 12 months. The committee asked that the issue be taken back to the full HLC.

L. 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 two written good-faith effort statements from licensed building contractors or architects detailing the actual costs to rehabilitate ~~the property~~ the structure to meet minimum International Building code standards.

M. 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.

N. K. Definition And Determination Of Economic Hardship: If a property owner has been denied an application for demolition of a Landmark Site or Contributing Structure in a local historic district and is therefore denied all reasonable economic return or use of the subject property, they may apply to the Historic Landmark Commission for a 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 within thirty (30) days of denial of a Certificate of Appropriateness for demolition. 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 owner or owners 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 or purchasing the property for substantially more than market value at the time of purchase is not sufficient.

Discussion: 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”.

It is a lot of information to put together. Should we give them more than 30 days to apply?

2. Standards For Determination Of Economic Hardship: The Commission shall schedule and hold a public hearing on the application for determination of economic hardship within 120 days from receipt of the application. The Historic Landmark Commission shall apply the following standards and make findings concerning economic hardship for each separate primary structure proposed for demolition. Additional standards are provided in subsection i for city instigated redevelopment projects:

Discussion: Deadlines are something missing throughout the ordinance. Does this conflict with other changes?

a. ~~The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition,~~ the condition of the property at time of purchase and the applicant's plans for the property at time of purchase.

Discussion: The applicant's knowledge of designation is not relevant to the case. In addition, it must be assumed that the applicant conducted due diligence before purchasing the property and should not benefit from a poor decision.

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. An appraisal, no older than six months at the time of application for determination of economic hardship conducted by an appraiser from the City's Property Management Department's list of approved appraisers. Also 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 structure in its existing condition taking into consideration the regulations 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 or alteration, including the cost of demolition or and 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~~ two of the following as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.

Testimony should be solicited from an: architect, developer, real estate consultant, appraiser, ~~or~~ other professional experienced in rehabilitation; .

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. If the building does not meet City building codes, information as to the cause of the building's current condition.

h. A Salvage Plan explaining what elements will be salvaged and how they will be used, such as reuse within the new building, donation to non-profit, and/or sale to salvage company.

i. Consideration of alternative zoning designations, conditional use options, variances, or financial incentives to alleviate hardship.

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

k. 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, as defined by state redevelopment codes, 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 eliminating blight in the neighborhood in a positive manner than the rehabilitation of the existing structure or site.

3. Procedure For Determination Of Economic Hardship:

a. The Commission may appoint an expert or expert team to evaluate the application and provide advice and/or testimony concerning the value of the structure and whether or not the denial of demolition could result in a governmental taking. The expert(s) should have considerable experience in at least two of the following: appraising historic properties, real estate development, economics, accounting, finance or law. The team may include an "advisory opinion" from Utah's Office of the Property Rights Ombudsman. ~~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 meeting following receipt of the staff report of the economic review panel, the Historic Landmark Commission shall reconvene its schedule a 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.~~

O. **Recordation 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 may ~~shall~~ require the applicant to provide the following before the Certificate of Appropriateness for demolition is issued. The Commission may require that the applicant return to the full commission or may delegate review to staff:

a. Approved Salvage Plan.

b. Completed building plans and issued permits, if applicable; and

c. Approved, letters of commitments from lending institutions or other funding sources, if applicable.

d. Documentation specified by the Documentation Subcommittee. ~~archival quality photographs, plans or elevation drawings, as available, necessary to record the structure(s) being demolished.~~ Documentation shall include any or all of the following as determined by the Documentation Subcommittee following a field inspection, if necessary, of the subject property.

i. Drawings. A full set of measured drawings that includes the following:

a. 1/16" = 1'0" site plan showing the location of the building and its access;

b. 1/8" = 1'0" scale, dimensioned and labeled floor plans; and

c. 1/8" = 1'0" scale, dimensioned and labeled building elevations and sections (two perpendiculars) with reference to building materials.

d. Landscaping plan, including walkways, retaining walls, fountains and pools, trees and plantings, statues, and other decorative elements, such as light posts, railings, etc.

e. Ceiling plans with architectural features such as skylights, plaster work;

f. Interior elevations with architectural features;

g. Building sections; and/or

h. Specific architectural, structural, mechanical, and electrical details.

ii. Photographs. Digital or print photographs that meet the standards of the National Register of Historic Places for National Register nominations.

Views should include:

- a. interior and exterior views
- b. close-ups of significant interior and exterior features
- c. views that show the relationship of the structure to the overall site, accessory buildings and/or site features.

iii. Written Data. History and description with specific information that is unique to the building, structure, or site and the context of the building in Salt Lake City history.

Note: The documentation information is a simplified version of the policy document.

~~**P. Review Of Post Demolition Plan For New Construction Or Landscape Plan And Bond Requirements For Approved Certificate Of Appropriateness For Demolition:** Prior to approval of any certificate of appropriateness for demolition the historic landmark commission shall review the post demolition plans to assure that the plans comply with the standards of subsection H of this section. If the post demolition plan is to landscape the site, a bond shall be required to ensure the completion of the landscape plan approved by the historic landmark commission. The design standards and guidelines for the landscape plan are provided in section 21A.48.050 of this title.~~

~~1. The bond shall be issued in a form approved by the city attorney. The bond shall be in an amount determined by the zoning administrator and shall be sufficient to cover the estimated cost, to: a) restore the grade as required by title 18 of this code; b) install an automatic sprinkling system; and c) revegetate and landscape as per the approved plan.~~

~~2. The bond shall require installation of landscaping and sprinklers within six (6) months, unless the owner has obtained a building permit and commenced construction of a building or structure on the site.~~

Note: Bonds have not been shown to be a good assurance of a project and the landscaping is required by the Building Services Division. To keep from duplicating efforts, the above portion is proposed to be deleted and replaced with a requirement to have building permits issued before a demolition certificate will be issued. See section O.

P. If a Landmark property is approved for demolition, the designation shall be removed after the property has been demolished, but not before.

- Q. **Exceptions Of Certificate Of Appropriateness For Demolition Of Hazardous Structures:** A hazardous structure shall be exempt from the provisions governing demolition if the building official determines, in writing, that the building currently is an imminent hazard to public safety. ~~Hazardous structures demolished under this section shall comply with subsection P of this section.~~ Prior to the issuance of a demolition permit, the building official shall notify the planning director of the decision. (Ord. 77-03 §§ 6, 7, 2003: Ord. 35-99 §§ 42-44, 1999: Ord. 83-96 §§ 4, 5, 1996: Ord. 70-96 § 1, 1996: Ord. 88-95 § 1 (Exh. A), 1995: Ord. 26-95 § 2(17-1),

Note: Along with the ordinance changes the Commission may recommend that the City Council instigate the development of incentives for reuse of existing buildings as opposed to demolition. The incentives would not necessarily need to only be available in the case of economic hardship, but could be available to all primary buildings within historic designation. Examples of incentives that could be explored include:

- Tax moratorium
- Waive of permit fees
- Transfer of Development Rights
- Low income and/or revolving loan fund
- Density bonuses

Recommend adding a new definition:

Salvage Plan: A Salvage Plan is one that defines what and how architectural resources will be salvaged in the case of a full or partial demolition. The Plan should include what elements will be saved, the general manner in which they will be recovered, and how they will be saved, reused, sold, or donated.