



Memorandum

Planning Division
Community & Economic Development Department

To: Historic Landmark Commission

From: Janice Lew, Senior Historic Preservation Planner

Date: July 11, 2013

Re: Work Session on Petition PLNPCM2009-00014 - Demolition of
Historic Buildings

Purpose

Staff provides the following discussion and revised ordinance in response to the Commission's discussion during its most recent work sessions. The highlighted portions of the ordinance are amendments to previous drafts.

Topics for Discussion

Economic Hardship

The National Trust for Historic Preservation in its educational law material, *Assessing Economic Hardship Claims* (see Attachment B) states that "under typical economic procedures, an applicant may apply for a "certificate of economic hardship" after a preservation commission has denied his or her request to alter or demolish a historic property protected under a preservation ordinance." The National Trust also found that requests for relief on economic hardship grounds are usually decided by historic preservation commissions, although some preservation ordinances allow the commission's decision to be appealed to the city council. In some jurisdictions, the commission may be assisted by a hearing officer. A few localities have established a special review panel. Following is how various cities have addressed decision making in terms of economic hardship:

Committee

Portland, ME uses the board of appeals to hear requests for demolition. Applicants seeking demolition approval must also apply for a certificate of economic hardship.

Philadelphia, PA uses a committee on financial hardship that makes a recommendation to the commission. In addition to the commission and committee on financial hardship, an architectural committee reviews all permit applications claiming financial hardship.

Spokane, WA utilizes an ad hoc committee to determine economic hardship instead of the preservation commission. The committee is appointed by the mayor and confirmed by the city council, and consists of at least seven members.

Dallas, TX establishes an ad hoc three-person economic review panel to review demolition requests based on whether an economically viable use of the property exists.

Hearing Officer

Chicago, IL mentions a hearing officer who makes a determination, but leaves the final decision to the commission.

Commission

Scottsdale, AZ uses the commission to determine whether a certificate of economic hardship should be granted for a historic resource. If an applicant is using economic hardship to justify demolition, an application for a certificate of economic hardship is submitted with the application for a certificate of demolition.

Louisville, CO uses an architectural review committee consisting of a designated staff person and 2 preservation commission members to review applications for a certificate of appropriateness. Should the committee deny a request, the applicant may request an economic hardship exemption from the commission.

Houston, TX uses the commission to determine whether the applicant has demonstrated an unreasonable hardship. The issuance of a certificate of appropriateness for demolition is subject to the establishment by the applicant of an unreasonable economic hardship or the establishment of an unusual and compelling circumstance.

Auburn, NY provides relief where a certificate of appropriateness has been denied when the historic resources review board finds that an economic hardship has been proven by the applicant.

Lake Forest, IL economic hardship is determined by the preservation commission following a denial of a certificate of appropriateness by the commission.

Staff Recommendation: Staff continues to support a process whereby an applicant may apply for a “certificate of economic hardship” after the preservation commission has denied his or her request to demolish a historic property protected under the preservation ordinance.

Special Merit Exception

This section of the ordinance is intended to provide a mechanism for consideration of the level of importance of other adopted City policies in the demolition analysis of contributing property. The City Council adopted Preservation Program Philosophy states that, “historic preservation policies will be considered when developing an appropriate course of action when multiple City policies are involved.” In addition, the preservation plan states that, “consideration of other adopted policies should not be weighed more heavily than the adopted preservation policies.” Staff firmly believes in the capabilities of the Commission to weigh the contribution of a particular contributing property in a historic district with other important adopted City policies in an equitable manner.

The proposed “special merit” addition to the ordinance is largely based upon a District of Columbia ordinance provision. Under the DC’s act, only the mayor or his agent may issue a permit to demolish a historic landmark or structure within a historic district, and only where he has determined that the issuance of the demolition permit is “necessary in the public interest,” or where failure to issue a permit would result in “unreasonable economic hardship” to the owner of the historic property. “Necessary in the public interest” is defined as a project that is: (1) consistent with the purposes of the Act or (2) necessary to allow the construction of a project of special merit. “Special merit” is defined by the Act to mean: “a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community service.” The Act’s definition stops here, leaving the Mayor to articulate the meaning of a project of “special merit.”

Staff was only able to find one other jurisdiction-San Antonio-that appears to have anything like a special merit exception. In San Antonio, the special merit of the proposed replacement project is evaluated as part of the economic hardship determination.

Staff Recommendation: This provision would only apply to contributing buildings, structures or sites. Staff proposes to use the DC definition of “special merit,” but has attempted to offer more guidance (criteria) to interpreters of the ordinance. A two tiered process, decision-making authority would be given to the Historic Landmark Commission. However, a committee would be established to evaluate whether a project was in the “best interest” of the overall community. Committee members would include one (1) Historic Landmark Commission member, one (1) Planning Commission member and the planning director or designee. Their recommendations would be forwarded to the Historic Landmark Commission prior to the subsequent regularly scheduled meeting, where the Commission would make the final determination as to whether the project provided significant public benefits. The second step would entail a determination that the proposed project was of exceptional quality. If the Historic

Landmark Commission was able to make findings that the proposed project provides significant benefits to the overall community and exhibits exceptional qualities as well, then the application for a special merit exception would be approved and a demolition permit could be issued.

In response to comments made by Commissioners, staff has also revised the ordinance so that the determination of a project of “special merit” would be a standalone process which would not require the Commission to deny a request for demolition first.

Incentives - Preservation Fund

The development of a preservation fund supports the City’s goals to develop a wide range of incentives to encourage the protection of historic properties. Staff is proposing that a preservation fund be established, however, concern was expressed that the proposed building replacement fee schedule would not generate sufficient funds to accurately represent the value of the loss of a historic building. The original fee schedule presented to the Commission was solely based on San Antonio’s ordinance, but staff was unable to ascertain how the various levels of contribution were established.

Utilizing the City’s housing mitigation ordinance (Chapter 18.97) as a model also appears to be inadequate for placing a value on a historic building. The fee is generally based on the difference between the fair market value of the housing units planned to be eliminated or demolished and the replacement cost of building new units of similar size. However, the ordinance which has been recently amended also specifies a flat fee of \$3,322.33 be paid if approved by the CED director and if the owner demonstrates that: (1) they will not be replacing the housing, unit for unit or, (2) that the fee based on the difference between the housing value and replacement cost is unreasonable.

Staff Recommendation: Staff has incrementally increased the fees to address this issue.

Demolition by Neglect

Although a concern expressed by Commissioners and identified as an issue in the preservation plan, a more extensive analysis of this topic may be undertaken in the future. The following provides greater detail on other City policies and regulations regarding demolition:

Orion Goff, Building Official stated in an email:

“Demolition by Neglect” (DBN) is a difficult term to define adequately. Basically, unless a building meets the requirements in the Uniform Code for Abatement of Dangerous Buildings, (UCADB) then we would have a difficult time proving DBN. In Chapter three of that code there are eighteen items that constitute a dangerous building and are grounds for condemnation for repair or removal.

Speaking practically, our stance on demolition has been that; if a building is secure – so as not to be an “attractive nuisance” and it has no danger of

collapsing and hurting someone in the public ROW or an adjacent owner, we have not pursued 'forced demolition'. However, the new demolition ordinance passed late last year, which also addressed boarded buildings, has some untested language and requirements in it that we are still working out - as far as process goes.

Randy Isbell, Civil Enforcement Manager indicated in an email:

Going back 15 years there have been 9 emergency demolitions, all as a result of extensive fire damage, not neglect. Two of the structures were located in a historic designated district.

Staff Recommendation: At this time, staff has merely referenced the section of the City's code that addresses "demolition by neglect." (Chapter 18.64) A property owner should not neglect a building or structure to the point that the building or structure fails to conform to the exterior maintenance (section 18.50.140) and electrical (18.50.230) standards of the ordinance.

Note – There is an open zoning case on the property at 235 South 600 East. In an email dated June 17, 2012, the enforcement officer on the case indicated that the house was secure, and we could not make the owner board it unless doors were open or windows broken on the main or basement level. Current violations include re-roofing the building without appropriate approvals. A stop work order was issued on May 3, 2013. A new complaint regarding the maintenance of the home was received on July 2, 2013. Notice will be sent to the property owner regarding the height of weeds.

Attachments

- A. Draft Ordinance
- B. Resources

Attachment A
Draft Ordinance

**ZONING ORDINANCE CHAPTER 2.62 Recognized or Registered Organization
Notification Procedures**

2.62.040: PARTICIPATION IN PLANNING PROCESS

D. The Salt Lake City planning division staff shall require all special merit exception applicants to meet with affected recognizes organization to discuss and receive input on the petition or application proposal prior to scheduling the matter for consideration by the historic landmark commission. A report of the discussions with the affected recognized organizations and applicant shall be contained in the historic landmark commission staff report.

ZONING ORDINANCE CHAPTER 21A.06 Decision Making Bodies and Officials

21A.06.050: HISTORIC LANDMARK COMMISSION

B. Jurisdiction And Authority: The historic landmark commission shall:

3. Review and approve or deny applications for the demolition of buildings, structures or sites in the H historic preservation overlay district pursuant to chapter 21A.34 of this title;

12. Authorize issuance of a certificate of appropriateness for demolition as part of an approved special merit exception pursuant to the procedures and standards set forth in section 21A.34.020 of this title.

**ZONING ORDINANCE CHAPTER 21A.34.020 H Historic Preservation Overlay
District**

B. Definitions

11. Special Merit Exception: A project having significant benefits to the City or to the community by virtue of exemplary architecture, special features of land planning, and social or other benefits having a high priority for community amenities (See subsection O of this section).

12. Economic Hardship: Failure to issue a certificate of appropriateness for the demolition of a landmark site, or contributing principal building or structure would likely amount to a regulatory taking of the owner's property without just compensation (See subsection N of this section).

F. Procedure For Issuance Of Certificate Of Appropriateness

2. Historic Landmark Commission: Certain types of construction, demolition and relocation shall only be allowed to be approved by the historic landmark commission subject to the following procedures:

a. Types Of Construction: The following shall be reviewed by the historic landmark commission:

- (1) Substantial alteration or addition to a landmark site or contributing structure/site;
 - (2) New construction of principal building in H historic preservation overlay district;
 - (3) Relocation of landmark site or contributing building, structure or site;
 - (4) Demolition of landmark site or contributing building, structure or site;
 - (5) Applications for administrative approval referred by the planning director; and
 - (6) Installation of solar energy collection systems that may be readily visible from a public right of way, as described in and pursuant to chapter 21A.40 of this title.
- c. Materials Submitted With Application: The requirements for the materials to be submitted upon application for a certificate of appropriateness shall be the same as specified in subsection F1c of this section. ~~Applications for a certificate of appropriateness for demolition shall also submit a reuse plan for the property.~~
- g. Review And Decision By The Historic Landmark Commission: The historic landmark commission shall ~~make a decision~~ consider an application for a certificate of appropriateness at a regularly scheduled meeting, within sixty (60) days following receipt of a completed application, except that ~~a review and decision on consideration of an application for a certificate of appropriateness for demolition of a landmark site or contributing principal building or structure declaring an economic hardship shall be made within one hundred twenty (120)~~ ninety (90) days following receipt of ~~an~~ completed application.
- (1) After reviewing all materials submitted for the case, the recommendation of the planning division and conducting a field inspection, if necessary, the historic landmark commission shall make written findings of fact based on the standards of approval as outlined in this subsection F through subsection ~~LQ~~ of this section, whichever are applicable.
 - (2) On the basis of its written findings of fact the historic landmark commission shall either approve, deny or conditionally approve the certificate of appropriateness. A decision on an application for a certificate of appropriateness for demolition of a contributing principal building or structure may be deferred for up to one year pursuant to subsections ~~LK~~ and ~~ML~~ of this section.
 - (3) The decision of the historic landmark commission shall become effective at the time the decision is made. ~~Demolition permits for landmark sites or contributing structures shall not be issued until the appeal period has expired.~~ Appeals of a decision of the historic landmark commission on an application for a certificate of appropriateness for demolition of a landmark site or contributing principal building or structure shall stay consideration of a reuse plan for new construction until the appeals hearing officer makes a determination.

(4) Written notice of the decision of the historic landmark commission on the application, including a copy of the findings of fact, shall be made pursuant to the provisions of section 21A.10.030 of this title. ~~sent by first class mail to the applicant within ten (10) working days following the historic landmark commission's decision.~~

h. Appeal Of Historic Landmark Commission Decision To Appeals Hearing Officer: The applicant, any owner of abutting property or of property located within the same H historic preservation overlay district, any recognized or registered organization pursuant to [title 2, chapter 2.62](#) of this code, the Utah State Historical Society or the Utah Heritage Foundation, aggrieved by the historic landmark commission's decision, may object to the decision by filing a written appeal with the appeals hearing officer within ten (10) calendar days following the date on which a record of decision is issued. The filing of the appeal shall stay the decision of the historic landmark commission pending the outcome of the appeal, except that the filing of the appeal shall not stay the decision of the historic landmark commission if such decision defers a demolition request for up to one year pursuant to the provisions of subsections ~~L~~K and ~~M~~L of this section.

J. Standards For Certificate Of Appropriateness For Demolition Of A 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~~ The physical integrity of the site as defined in subsection C10b of this section is no longer evident nor is it reasonable to accurately re-establish the historical appearance in form and detailing as an integral part of a rehabilitation project. The loss of the site's historic appearance is not due to the willful or negligent acts of the past or current owners that have caused the deterioration of the site or principal building or structure, as evidenced by the following:

a. Failure to perform normal maintenance and repairs;

b. Failure to diligently solicit and retain tenants; and/or

c. Failure to secure and board the building if vacant.

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.~~

~~L~~K. Standards For Certificate Of Appropriateness For Demolition Of A Contributing Principal Building Or Structure In A 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 C210b of this section is no longer evident nor it is reasonable to re-establish the historical appearance of the site as an integral part of a rehabilitation project;
- b. The streetscape within the context of the H historic preservation overlay district would not be negatively affected.
- c. The demolition would not adversely affect the concentration of historic resources used to define the boundaries of the district.
- ~~ed.~~ The demolition would not adversely affect the H historic preservation overlay district due to the surrounding noncontributing structures the nature or concentration of historic resources used to define or maintain the eligibility for designation as a historic district as defined in subsections C10 and 11 of this section.
- ~~de.~~ The base zoning of the site is incompatible with reuse of the building or 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 by past or current owners of the property, as evidenced by the following:
 - (1) Willful or negligent acts that have caused the deterioration of the structure,
 - (2) Failure to perform normal maintenance and repairs,
 - (3) Failure to diligently solicit and retain tenants, and/or
 - (4) Failure to secure and board the structure if vacant.
- ~~g.~~ The denial of a certificate of appropriateness of 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 LK1 of this section as set forth below.

- a. Approval Of Certificate Of Appropriateness For Demolition: Upon making findings that at least ~~six (6)~~ five (5) of the standards are 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: Upon making findings that three (3) to ~~five (5)~~ four (4) of the standards are met, the historic landmark commission shall defer a decision for up to one year during which the applicant must conduct a bona fide effort to preserve the site pursuant to subsection ML of this section.

ML. 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 one year, the applicant must undertake bona fide efforts to preserve the principal building or structure. The ~~one-year~~ deferral 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, including without limitation, posting a sign on the property indicating that the property is available and providing notice to local realtors and preservation organizations. Prior to making an offer to sell or lease, an owner shall first file a statement with the planning director, identifying the property, the offering price or rent and the date the offer to sell or lease shall begin. Documentation of the reasonableness of the price sought by the applicant shall be provided and may include:
 - a. A market analysis of at least three (3) comparables prepared by a licensed real estate broker or agent.
 - b. Assessed value of the property according to the two (2) most recent assessed valuations by the Salt Lake County assessor.
 - c. An appraisal, no older than six months, conducted by a MAI certified appraiser licensed within the State of Utah.
2. ~~Filing an application for~~ Filing and providing proof of a denial or approval of an application for alternative funding sources for preservation, such as federal or state preservation tax credits, Utah Heritage Foundation revolving fund loans, redevelopment agency loans, etc.; and other currently available economic incentives;
3. Filing an application for alternative uses if available or feasible, such as conditional uses, special exceptions, etc.; and other currently available incentives; and
4. Obtaining two (2) written statements from licensed building contractors or architects with experience in historic rehabilitation detailing the ~~actual~~ estimated costs to rehabilitate the property to meet the minimum applicable City adopted construction codes.

NM. Final Decision For Certificate of Appropriateness For Demolition Following ~~One-Year~~ Deferral Period: Upon the completion of the one-year period and if the applicant provides all evidence, in accordance with subsection L above, of a continuing bona fide, reasonable and unsuccessful effort

~~to find a way to retain and preserve the building or structure preservation effort, then the historic landmark commission shall make a final decision approve 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 application for the reuse plan for new construction pursuant to subsection F2, H or P of this section.~~

~~KN. Definition And Determination Of Economic Hardship Exception: 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. Upon denial of a certificate of appropriateness for demolition of a landmark site, or contributing principal building or structure, the owner and/or owner's representative will have thirty (30) calendar days from the end of the appeal period as described in section 21A.06.04 of this title, to submit an application for a certificate of economic hardship. The owner and/or owner's representative shall attend a pre-application conference with representatives of the planning division for the purpose of discussing the review process, outlining the application requirements and providing information on incentives that may be available to the applicant.~~

1. ~~Application For Determination Of Economic Hardship: An application for a determination of economic hardship shall be made on a form prepared provided by the planning director and shall be submitted to the planning division. As outlined in subsection N2 below, the application mustshould include photographs, information pertaining to the historical significance of the landmark site or contributing principal building or structure, and all information necessary to make findings on the standards set forth in subsection N3b of this section.~~
2. ~~Standards Evidence For Determination Of Economic Hardship: The historic landmark commission shall apply the following standards and make findings concerning economic hardship. The burden of proof is on the owner or owner's representative to provide sufficient evidence to demonstrate that the application of the standards and regulations of this section deprives the applicant of all economically viable use of the subject property either in its current form or if rehabilitated. Any finding in support of economic hardship shall be based solely on the hardship of the property, not conditions personal to the landowner. Simply showing some effect on value or purchasing the property for substantially more than market value at the time of purchase and considering its historic designation shall not be considered sufficient information to make this determination. Such material may include, but is not limited to:~~
 - a. ~~The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition, 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:~~

- (1) 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,
 - (2) 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,
 - (3) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years,
 - (4) 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,
 - (5) An appraisal, no older than six months at the time of application for determination of economic hardship conducted by a MAI certified appraiser licensed within the State of Utah. 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,
 - (6) The fair market value of the property, taking into consideration the regulations of the H historic preservation overlay district, and the inherent assumptions that a principal structure or building might not be allowed to be demolished. Assembled lots shall be considered individually and not as a whole; 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,
 - (7) 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
 - (8) ~~Any~~ For income producing properties, 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, ~~as determined by 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:
- (1) Any real estate broker or firm engaged to sell or lease the property,
 - (2) Reasonableness of the price or rent sought by the applicant, and
 - (3) Any advertisements placed for the sale or rental of the property,

- d. The infeasibility of alternative uses that can earn a reasonable economic return in the case of income producing uses, for the property as considered in relation to the following:
- (1) Report from a licensed engineer or architect with experience in rehabilitation of older buildings and structures as to the structural soundness of any structures on the property ~~and their suitability for rehabilitation,~~
 - (2) ~~An Estimate~~ An 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~~ potential cost savings for reuse of materials,
 - (3) ~~The Estimated~~ The Estimated market values 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
 - (4) The testimony of ~~an architect, developer, real estate consultant, appraiser, or other professional experienced in~~ two of the following as to the economic feasibility of rehabilitation or reuse of the existing structure or building on the property: an architect, developer, real estate consultant, appraiser, or any other professional experienced in rehabilitation of older structures and buildings and licensed within the State of Utah.
- e. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.
- f. Description of past and current use.
- g. An itemized report that identifies what is deficient if the building does not meet minimum City building code standards, and that includes City code violations.
- h. Consideration of conditional use options, variances or financial incentives to alleviate hardship.
- i. The City and the applicant may submit additional evidence relevant to the issue and determination of economic hardship for the review and consideration of the historic landmark commission.
3. Procedure For Determination Of Economic Hardship: ~~The historic landmark commission 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. The Planning Director may~~

appoint an expert or expert team to evaluate the application and provide advice and/or testimony concerning the value of the property and whether or not the denial of demolition could result in a regulatory taking of the property. 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 historic landmark commission may also at its sole discretion solicit expert testimony.

a. ~~Review Of Evidence: The historic landmark commission shall consider an application for determination of economic hardship within 90 days from receipt of an application. 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 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 report of the economic review panel, the historic landmark commission shall reconvene its public hearing to take final action on the application.~~

b. ~~(4)Finding Of Economic Hardship: If after reviewing all of the evidence, the historic landmark commission finds that the applicant has presented sufficient information supporting a determination of economic hardship if the application for a certificate of appropriateness for demolition is denied, application of the standards set forth in subsection K2 of this section results in economic hardship, then the historic landmark commission shall approve a certificate of economic hardship demolition. The Historic Landmark Commission shall make findings concerning economic hardship for each separate property proposed for demolition. In order to show that all beneficial use and/or reasonable economic return cannot be obtained, the applicant must show that:~~

(1) For demolition of an income-producing property:

(a) the site, building or structure currently cannot be economically used or rented at a reasonable rate of return in its present condition or if rehabilitated taking into consideration any available incentives. Reasonable rate of return does not mean highest rate of return; and

(b) bona fide efforts during the previous year to sell or lease the site, or building or structure at a reasonable price have been unsuccessful.

(2) For demolition of a non-income producing property:

(a) the site, building or structure cannot now be put to any beneficial use in its present condition or if rehabilitated taking into consideration any available incentives; and

(b) bona fide efforts during the previous year to sell or lease the site, building or structure at a reasonable price have been unsuccessful.

c. Certificate Of Economic Hardship: The certificate of economic hardship shall be valid for a period of one (1) year unless a certificate of appropriateness for demolition is issued within that time. The planning director may approve extensions of this one (1) year period, not to exceed a total period of two (2) years from the original approval of the certificate of economic hardship, provided that a written request by the applicant is received prior to the expiration date of the certificate of economic hardship that shows circumstances beyond the control of the applicant. If a certificate of economic hardship expires, a new certificate must first be obtained before a certificate of appropriateness for demolition may be issued.

~~(2d.)~~ Denial Of A Certificate Of Economic Hardship: If the historic landmark commission finds that the applicant has failed to prove an economic hardship, the application of the standards set forth in subsection K2 of this section does not result in economic hardship then the application for a certificate of economic hardship shall be denied.

(1) No further Certificate of Economic Hardship applications may be considered for the subject property of the denied certificate of economic hardship for three (3) years from the date of the final decision. The historic landmark commission may waive this restriction if the historic landmark commission finds there are changed circumstances sufficient to warrant a new hearing other than the re-sale of the property or those caused by the negligence or intentional acts of the owner.

(2) Any owner adversely affected by a final decision of the historic landmark commission on an application for a certificate of economic hardship may appeal the decision to the appeals hearing officer in accordance with the provisions of chapter 21A.16 of this title. The filing of an appeal shall stay the decision of the historic landmark commission pending the outcome of the appeal.

~~(3) 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 ($\frac{3}{4}$) 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. Special Merit Exception for Demolition of a Contributing Building, Structure or

Site: The owner and/or owner's representative shall attend a pre-application conference with representatives of the planning division for the purpose of discussing the review process, outlining the application requirements and providing information on incentives that may be available to the applicant. A special merit exception shall be considered necessary in the public interest if it exhibits exceptional qualities and provides significant benefits to the overall community. A special merit exception shall be processed in accordance with the following procedures:

1. Application: An application shall be made to the zoning administrator on a form or forms provided by the office of the zoning administrator, which shall include at least the following information:

a. General Information:

- (1) The applicant's name, address, telephone number and interest in the property;
- (2) The owner's name, address and telephone number, if different than the applicant, and the owner's signed consent to the filing of the application;
- (3) The street address and legal description of the subject property;
- (4) The zoning classification, zoning district boundaries, and present and proposed use of the subject property;
- (5) A vicinity map with north arrow, scale, and date, indicating the zoning classifications and current uses of properties within eighty five feet (85') (exclusive of intervening streets and alleys) of the subject property; and
- (6) The proposed title of the project and the names, addresses and telephone numbers of the architect, landscape architect, planner or engineer on the project.
- (7) A complete description of the proposed project that addressed how it provides significant benefits to the overall community; and
- (8) A signed statement that the applicant has met and explained the proposed project to the appropriate neighborhood organization(s) entitled to receive notice pursuant to Chapter 2.62 of this title.

b. Fees: The application shall be accompanied by the fee shown on the Salt Lake City consolidated fee schedule.

c. Determination Of Completeness: Upon receipt of an application, the zoning administrator shall make a determination of completeness pursuant to section [21A.10.010](#), "General Application Procedures", of this title.

2. Review Panel for Determination of Public Benefit: Upon receipt of a complete application, the commission shall establish a three (3) person review panel. This panel shall consist of one (1) historic landmark commission member, one (1) planning commission member, and the planning director or the planning director's designee.

a. Review of Evidence: The review panel shall convene a meeting complying with the open meetings act within forty five (45) days after the review panel is established. The 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 chapter 21A.10 of this title.

b. Report of Review Panel: The panel shall complete an evaluation of public benefit, applying the standards set forth in subsection O3 of this section and shall forward a written report with its findings of fact and conclusions to the historic landmark commission. If the review panel is unable to reach a consensus, the report will indicate the majority and minority recommendations.

3. Historic Landmark Commission Determination of Public Benefit: At the next regular historic landmark commission meeting following the evaluation of the review panel, the historic landmark commission shall convene a public hearing to take action on the application, base on the following factors:

a. Whether the project will provide significant public benefits including, without limitation, social or other benefits which are a high priority to the community as stated through its various adopted planning documents and particularly desirable at the location proposed. Such benefits must substantially outweigh the loss of the affected contributing building(s), structure(s) or site(s) in the district. Factors common to all projects would not be considered "special".

b. Evidence of the alternatives to demolition which were considered, as well as detailed information concerning why the various alternatives were rejected including the redesign of the development to include the subject contributing building, structure or site.

c. Whether the building or structure can be moved to an alternative site.

4. Denial of Special Merit Exception: If the historic landmark commission finds that the application of the standards set forth in subsection O3 of this section does not result in a project of significant public benefit then the special merit except for demolition shall be denied.

5. Written notice of the decision of the historic landmark commission on the determination, including a copy of the findings of fact, shall be sent by first class mail to the applicant within ten (10) working days following the historic landmark commission's determination.

6. Appeal Of Historic Landmark Commission Decision To Appeals Hearing Officer: The applicant, any owner of abutting property or of property located within the same H historic preservation overlay district, any recognized or registered

organization pursuant to [title 2, chapter 2.62](#) of this code, the Utah State Historical Society or the Utah Heritage Foundation, aggrieved by the historic landmark commission's decision, may object to the decision by filing a written appeal with the appeals hearing officer within ten (10) calendar days following the date on which a record of decision is issued. The filing of the appeal shall stay the decision of the historic landmark commission pending the outcome of the appeal.

7. Development Plan Required to Determine Projects of Exceptional Quality: Following the historic landmark commission making a determination that the proposed project would provide significant public benefits, the owner and/or owner's representative will have one (1) year from the end of the appeal period as described in section 21A.06.04 of this title, to submit a development plan for design review of the proposed replacement project:

a. Development Plan: The application shall include photographs, construction drawings and other documentation such as an architectural or massing model, window frame sections and samples deemed necessary to consider the application properly and completely. Such material may include, but is not limited to the following

- (1) The location, dimensions and total area of the site;
- (2) The location, dimensions, floor area, type of construction and use of each proposed building or structure;
- (3) The number, the size and type of dwelling units in each building, and the overall dwelling unit density;
- (4) The proposed treatment of open spaces and the exterior surfaces of all buildings and structures, with sketches of proposed landscaping, buildings and structures, including typical elevations;
- (5) Architectural graphics, if requested by the zoning administrator, including typical floor plans and elevations, profiles and cross sections;
- (6) The number, location and dimensions of parking spaces and loading docks, with means of ingress and egress;
- (7) The proposed traffic circulation pattern within the area of the development, including the location and description of public improvements to be installed, including any streets and access easements;
- (8) A traffic impact analysis (if required by the city transportation division);
- (9) The location and purpose of any existing or proposed dedication or easement;
- (10) The general drainage plan for the development tract;

- (11) The location and dimensions of adjacent properties, abutting public rights of way and easements, and utilities serving the site;
- (12) Significant topographical or physical features of the site, including existing trees;
- (13) Soils and subsurface conditions, if requested;
- (14) The location and proposed treatment of any historical structure or other historical design element or feature;
- (15) One copy of the development plan colored or shaded (unmounted) for legibility and presentation at public meetings; and
- (16) A reduction of the preliminary development plan to eight and one-half by eleven inches (8 1/2x 11"). The reduction need not include any area outside the property lines of the subject site.
- (17) Fees: The application for design review shall be accompanied by the fee shown on the Salt Lake City consolidated fee schedule.

d. Staff Report: A staff report evaluating the project shall be prepared by planning staff.

e. Historic Landmark Commission Public Hearing: The historic landmark commission shall schedule and hold a public hearing on the completed application in accordance with the standards and procedures for conduct of the public hearing set forth in chapter 21A.10, "General Application And Public Hearing Procedures", of this title.

f. Review Criteria and Decision: After reviewing all material submitted for the case, public comment and conducting a field inspection, if necessary, the historic landmark commission shall approve, approve with modifications or deny the proposed project based on the following factors:

(1) Whether the project substantially complies with the standards outlined in subsection H of this section.

(2) Whether the project demonstrates excellence in building craftsmanship, use of materials, technical innovation, and/or architectural quality. Exterior materials must also have a proven durability for the regional climate.

(3) Whether the project exhibits landmark site quality and makes a unique and positive contribution to the quality of the neighborhood and historic district.

(4) Whether the project utilizes innovative energy and environmental design technologies.

(5) Whether the project demonstrates best practices in urban design.

g. Written notice of the determination of the historic landmark commission on the application, including a copy of the findings of fact, shall be sent by first class mail to the applicant within ten (10) working days following the historic landmark commission's determination.

h. Appeal Of Historic Landmark Commission Decision To Appeals Hearing Officer: The applicant, any owner of abutting property or of property located within the same H historic preservation overlay district, any recognized or registered organization pursuant to [title 2, chapter 2.62](#) of this code, the Utah State Historical Society or the Utah Heritage Foundation, aggrieved by the historic landmark commission's decision, may object to the decision by filing a written appeal with the appeals hearing officer within ten (10) calendar days following the date on which a record of decision is issued. The filing of the appeal shall stay the decision of the historic landmark commission pending the outcome of the appeal.

8. Final Approval Of A Special Merit Exception: Pursuant to the provisions of subsections O3 and O7 of this section, if the historic landmark commission finds that the proposed project exhibits exceptional qualities, provides significant benefits to the overall community and is in the best interest of the city, then the application for a special merit exception for demolition shall be approved.

9. Limitations on Special Merit Exception: Subject to an extension of time granted by the historic landmark commission, no special merit exception shall be valid for a period longer than one year unless a building permit has been issued or complete building plans have been submitted to the division of building services within that period and is thereafter diligently pursued to completion, or unless a certificate of occupancy is issued and a use commenced within that period, or unless a longer time is requested and granted by the historic landmark commission. Any request for a time extension shall be required not less than thirty (30) days prior to the twelve (12) month time period. The approval of a proposed special merit exception by the historic landmark commission shall authorize only the particular project for which it was issued.

P. Postdemolition Plan: No certificate of appropriateness for demolition shall be issued unless the landmark site or contributing principal building or structure to be demolished is to be replaced with a new principal building or structure that meets the following criteria:

1. The replacement building or structure satisfies all applicable zoning and H historic preservation overlay district standards;

2. The certificate of appropriateness for demolition is issued simultaneously with the appropriate approvals and permits for the replacement building or structure; and

3. Once the replacement plans are approved a fee as shown on the Salt Lake City consolidated fee schedule shall be assessed for the demolition based on the approved replacement plan square footage. The fee must be paid in full prior to issuance of any permits and shall be deposited into an account as directed by the City Council for the benefit and rehabilitation of local historic resources. Fees shall be as follows and are in addition to any fees charged by the City:

a. 0 – 2,500 square feet = \$5,000.00

b. 2,501 – 10,000 square feet = \$10,000.00

c. 10,001 – 25,000 square feet = \$20,000.00

d. 25,001 – 50,000 square feet = \$30,000.00

e. Over 50,000 square feet = \$40,000.00

ØQ. ~~Recordation Requirements~~ For Certificate Of Appropriateness For Demolition: Upon approval of a certificate of appropriateness for demolition of a landmark site or a contributing principal structure or building, applicant shall submit archival quality photographs, plans or elevation drawings, as available, necessary to record the structures(s) being demolished all of the following information to the planning director before the certificate of appropriateness for demolition is issued.

1. Issued approvals and permits for the new construction.

2. Financial proof as demonstrated to the planning director of the owner's ability to complete any replacement project on the property, which may include but not be limited to a valid and binding commitment or commitments from financial institutions sufficient for the replacement structure or building or other financial resources that are sufficient (together with any valid and binding commitments for financing) and available for such purpose.

3. Documentation of the landmark site or contributing structure or building in a historic district as specified by the planning division. Documentation may include any or all of the following, after a site inspection, if necessary, of the subject property:

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

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

(2) 1/8" = 1'0" scale, dimensioned and labeled floor plans;

(3) 1/8" = 1'0" scale, dimensioned and labeled building elevations and sections (two perpendiculars) with reference to building materials;

- (4) Landscape plan, including walkways, retaining walls, fountains and pools, trees and plantings, statues, and other decorative elements, such as light posts, railings, etc.
- (5) Ceiling plans with architectural features such as skylights and plaster work;
- (6) Interior plans with architectural features;
- (7) Building sections; and/or
- (8) Specific architectural, structural, mechanical and electrical details;

b. Photographs. Digital or print photographs that meet the standards of the National Register of Historic Places for National Register nominations. Views should include:

- (1) Interior and exterior views;
- (2) Close-ups of significant interior and exterior features;
- (3) views that show the relationship of the primary structure to the overall site, accessory structures and/or site features.

c. 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.

4. Efforts made to salvage, relocate, donate, or adaptively reuse building materials of the site.

PR. Review Of Postdemolition Plan For New Construction Or Landscape Plan And Bond Requirements For Approved Certificate of Appropriateness For Demolition; Revocation Of The Designation Of A Landmark Site: Prior to approval of any certificate of appropriateness for demolition the historic landmark commission shall review the postdemolition plans to assure that the plans comply with the standards of subsection H of this section. If the postdemolition plan is to landscape the site, a bond shall be required to ensure the completion of the landscape 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. If a landmark site is approved for demolition, the property shall not be removed from the Salt Lake City Register of Cultural Resources until the building, structure or site has been demolished (See subsection D of this section).

- ~~1. The bond shall be issued in a form approved by the city attorney. The bond 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.~~

Q.S. Exceptions Of Certificate Of Appropriateness For Demolition Of Hazardous Structures: A hazardous structure shall be exempt from the provisions governing demolition if the chief 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. 20-11: Ord. 69-09 §§ 6,7, 2009: §§ 4, 5 1996: Ord. 70-96 § 1, 1996: Ord. 88-95 § 1 (Exh. A), 1995: Ord. 26-95 § 2(17-1), 1995

T. Demolition by Neglect: It shall be the responsibility of the owner to stabilize, repair and maintain the property so as not to create a structurally unsound, substandard, hazardous, or dangerous building or structure as set forth in title 18 of this code.

Attachment B Resources

Preservation Law Educational Materials . . .

ASSESSING ECONOMIC HARDSHIP CLAIMS UNDER HISTORIC PRESERVATION ORDINANCES

Historic preservation ordinances in effect around the country often include a process for administrative relief from preservation restrictions in situations of “economic hardship.” Under typical economic hardship procedures, an applicant may apply for a “certificate of economic hardship” after a preservation commission has denied his or her request to alter or demolish a historic property protected under a preservation ordinance. In support of an application for relief on economic hardship grounds, the applicant must submit evidence sufficient to enable the decisionmaking body to render a decision. The type of evidence required is generally spelled out in preservation ordinances or interpreting regulations. The burden of proof is on the applicant.

The exact meaning of the term “economic hardship” depends on how the standard is defined in the ordinance. Under many preservation ordinances economic hardship is defined as consistent with the legal standard for an unconstitutional regulatory taking, which requires a property owner to establish that he or she has been denied all reasonable beneficial use or return on the property as a result of the commission’s denial of a permit for alteration or demolition.

Requests for relief on economic hardship grounds are usually decided by historic preservation commissions, although some preservation ordinances allow the commission's decision to be appealed to the city council. In some jurisdictions, the commission may be assisted by a hearing officer. A few localities have established a special economic review panel, comprised of members representing both the development and preservation community.

Economic Impact

In acting upon an application for a certificate of economic hardship, a commission is required to determine whether the economic impact of a historic preservation law, as applied to the property owner, has risen to the level of economic hardship. Thus, the first and most critical step in understanding economic hardship is to understand how to evaluate economic impact.

Commissions should look at a variety of factors in evaluating the economic impact of a proposed action on a particular property. Consideration of expenditures alone will not provide a complete or accurate picture of economic impact, whether income-producing property or owner-occupied residential property. Revenue, vacancy rates, operating expenses, financing, tax incentives, and other issues are all relevant considerations. With respect to income-producing property, economic impact is generally measured by looking at the effect of a particular course of action on a property’s overall value or return. This approach allows a commission to focus on the “bottom line” of the transaction rather than on individual expenditures.

In addition to economic impact, the Supreme Court has said that “reasonable” or “beneficial use” of the property is also an important factor. Thus, in evaluating an economic hardship claim based

on the constitutional standard for a regulatory taking, commissions will need to consider an owner's ability to continue to carry out the traditional use of the property, or whether another viable use for the property remains. In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), the landmark decision upholding the use of preservation ordinances to regulate historic property, the Supreme Court found that a taking did not arise because the owner could continue to use its property as a railroad station.

The Supreme Court has also said that the applicant's "reasonable investment-backed expectations" should be taken into consideration. Although the meaning of this phrase has not been delineated with precision, it is clear that "reasonable" expectations do not include those that are contrary to law. Thus, an applicant's expectation of demolishing a historic property subject to a preservation ordinance at the time of purchase, or likely to be subject to a preservation ordinance, would not be "reasonable." Also pertinent is whether the owner's objectives were realistic given the condition of the property at the time of purchase, or whether the owner simply overpaid for the property. Under takings law, government is not required to compensate property owners for bad business decisions. Nor is the government required to guarantee a return on a speculative investment.

Commissions may also be able to take into account whether the alleged hardship is "self created." Clearly relevant is whether the value of the property declined or rehabilitation expenses increased because the owner allowed the building to deteriorate.

Application of the takings standard in the context of investment or income-producing property is usually fairly straightforward. The issue can be more complex, however, in situations involving hardship claims raised by homeowners. In the context of home-ownership, it is extremely difficult for an applicant to meet the standard for a regulatory taking, that is, to establish that he or she has been denied all reasonable use of the property. Even if a commission insists that houses be painted rather than covered with vinyl siding, and windows be repaired rather than replaced, the applicant can still live in the house. The fact that these repairs may be more costly is not enough. Even if extensive rehabilitation is required, the applicant must show that the house cannot be sold "as is," or that the fair market value of the property in its current condition plus rehabilitation expenditures will exceed the fair market value of the house upon rehabilitation. See *City of Pittsburgh v. Weinberg*, 676 A.2d 207 (Pa. 1996). It is also important to note that "investment-backed expectations" are different in the context of home ownership; owners often invest in home improvements or renovations without the expectation of recouping the full cost of the improvement in the form of increased property value.

In addressing hardship claims involving historic homes, commissions must be careful to be objective and consistent in their approach. Otherwise, a commission may undermine the integrity of its preservation program and raise due process concerns as well. Ideally, grant money, tax relief, and other programs should be made available to historic homeowners who need financial assistance.

Special standards for economic hardship may apply to nonprofit organizations. Because these entities serve charitable rather than commercial purposes, it is appropriate to focus on the beneficial use of their property, rather than rate of return, taking into account the particular circumstances of the owner (i.e., the obligation to serve a charitable purpose.) In such situations, hardship analysis generally entails looking at a distinct set of questions, such as: the organization's charitable purpose; whether the regulation interferes with the organization's ability to carry out its charitable purpose; the condition of the building and the need and cost for

repairs; and whether the organization can afford to pay for the repairs, if required? (Note, however, that while consideration of financial impact may be appropriate, a non-profit organization is not entitled to relief simply on the basis that it could raise or retain more money without the restriction.)

The Proceeding

Under a typical hardship process, the applicant will be required to submit specific evidence in support of his or her claim. Once a completed application has been filed, a hearing will be scheduled, at which time the applicant generally presents expert testimony in support of the economic hardship claim on issues such as the structural integrity of the historic building, estimated costs of rehabilitation, and the projected market value of the property after rehabilitation. Once the applicant has presented its case, parties in opposition or others may then present their own evidence. The commission may also bring in its own expert witnesses to testify. As noted above, the burden of proof rests on the property owner.

In hearing economic hardship matters, commissions must be prepared to make a legally defensible decision based on all the evidence presented. In the event of conflicting expert testimony, which is often the case in economic hardship proceedings, the commission must be prepared to weigh the evidence, making specific findings on the relative credibility or competency of expert witnesses.

In evaluating the evidence, the commission should ask itself five distinct questions:

- 1) **Is the evidence sufficient?** Does the commission have all the information it needs to understand the entire picture, or is something missing. The application is not complete unless all the required information has been submitted. If additional information is needed, ask for it.
- 2) **Is the evidence relevant?** Weed out any information that is not relevant to the issue of economic hardship in the case before you. Commissions may be given more information than they need or information on issues that are not germane to the issue, such as how much money the project could make if the historic property were demolished. The property owner is not entitled to the highest and best use of the property.
- 3) **Is the evidence competent?** Make an assessment as to whether the evidence establishes what it purports to show.
- 4) **Is the evidence credible?** Consider whether the evidence is believable. For example, ask whether the figures make sense. A commission will need to take into consideration the source of the evidence and its reliability. (If the evidence is based on expert testimony, the commission should determine whether the expert is biased or qualified on the issue being addressed. For example, it may matter whether a contractor testifying on rehabilitation expenditures actually has experience in doing historic rehabilitations.)
- 5) **Is the evidence consistent?** Look for inconsistencies in the testimony or the evidence submitted. Request that inconsistencies be explained. If there is contradictory evidence, the commission needs to determine which evidence is credible and why.

In many instances the applicant's own evidence will fail to establish economic hardship. However, in some situations, the question may be less clear. The participation of preservation organizations in economic hardship proceedings can be helpful in developing the record. Commissions should also be prepared to hire or obtain experts of their own. For example, if a

property owner submits evidence from a structural engineer that the property is structurally unsound, the commission may need to make an independent determination, through the use of a governmental engineer or other qualified expert, as to the accuracy of that information. It may be impossible to evaluate the credibility or competency of information submitted without expert advice.

The record as a whole becomes exceedingly important if the case goes to court. Under most standards of judicial review, a decision will be upheld if it is supported by substantial evidence. Thus, in conducting administrative proceedings, it is important that evidence provides a true and accurate story of the facts and circumstances and that the commission's decision is based directly on that evidence.

EVIDENTIARY CHECKLIST

The following checklist is a useful tool for local commissions and other regulatory agencies considering economic hardship claims:

1. **Current level of economic return**

- Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased;
- Annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;
- Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years;
- Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations;
- All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
- Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;
- Any state or federal income tax returns relating to the property for the last two years.

2. **Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding:**

- Any real estate broker or firm engaged to sell or lease the property;
- Reasonableness of price or rent sought by the applicant;
- Any advertisements placed for the sale or rent of the property.

3. **Feasibility of alternative uses for the property that could earn a reasonable economic return:**

- Report from a licensed engineer or architect with experience in rehabilitation as to the

- structural soundness of any buildings on the property and their suitability for rehabilitation;
- Cost estimates for the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness;
 - Estimated market value of the property: (a) in its current condition; (b) after completion of the proposed alteration or demolition; and (c) after renovation of the existing property for continued use;
 - Expert testimony or opinion on the feasibility of rehabilitation or reuse of the existing structure by an architect, developer, real estate consultant, appraiser, and/or other real estate professional experienced in historic properties and rehabilitation.
4. **Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.**
 5. **Knowledge of landmark designation or potential designation at time of acquisition.**
 6. **Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.**