

**HISTORIC LANDMARK COMMISSION
STAFF REPORT
Legislative Item**



Planning Division
Department of Community and
Economic Development

**Demolition of Historic Buildings
Zoning Text Amendment
PLNPCM2009-00014
April 4, 2013**

Applicant:

SLC Corp., Mayor Ralph Becker

Staff:

Janice Lew
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Current Zone:

N/A

Master Plan Designation:

City-wide

Council District:

City-wide

Community Council:

City-wide

Applicable Land Use Regulations:

- 21A.2.62 Recognized Organization
- 21A.06 Decision Making Bodies
- 21A.34.020 H Historic Preservation Overlay District

Notification:

- Published in newspapers March 23, 2013
- Notice mailed on March 22, 2013
- Agenda posted on the Planning Division and Utah Public Meeting Notice websites March 22, 2013

Attachment

- A. Text Amendments
- B. Public Comment

Request

Salt Lake City Mayor Ralph Becker is requesting that the City adopt new regulations that will clarify how proposed demolitions of landmark sites and contributing buildings will be evaluated and the process for approving or denying a demolition request. The Historic Landmark Commission (HLC) is required to transmit a recommendation to the Planning Commission and City Council for Zoning Text Amendment Requests.

Recommendation

Based on the findings listed in the staff report, it is the Planning Staff's opinion that the overall amendment petition generally meets the applicable standards and therefore, recommends the Historic Landmark Commission transmit a favorable recommendation to the Planning Commission to forward a positive recommendation to City Council relating to this request.

Recommended Motion: Based upon the findings listed in the staff report, testimony and proposed text amendments presented, I move that the Commission transmit a favorable recommendation to the Planning Commission to forward a positive recommendation to the City Council to adopt the proposed changes to the zoning ordinance as it relates to the demolition of all City designated landmark sites and contributing buildings within the *H Historic Preservation Overlay District*.

Background

Project Description

The Planning Division is processing changes to the demolition provisions of the *H Historic Preservation Overlay District*. The proposed alterations to the zoning ordinance are a response to a 1999 petition for amendments requested by the Planning Commission, a 2004 Legislative Action, the 2008 Citygate study of the planning processes, and the Community Preservation Plan. Issues identified during previous discussions regarding the demolition and economic hardship provisions of the ordinance are listed below:

- Some comments received during the development of the Community Preservation Plan suggested that the current demolition provisions of the ordinance (including the economic hardship process) are too complex.
- The standards for determination of economic hardship have not contributed to a clear and consistent process for landowners and applicants.
- The current provisions make it difficult to balance the goals of historic preservation with other goals of the City.
- The economic hardship review panel's makeup of three people is difficult to achieve. The three person panel is supposed to consist of a representative of the HLC, a representative of the applicant and a third party neutral expert. It is difficult to find a third party that meets the qualifications and is also willing to volunteer their time to review large amounts of complicated documentation.
- The three-person economic review panel is not a fair representation of either the applicant or the HLC, is a cumbersome process for everyone, and confusing to both the applicant and the public.

Summary of Proposed Ordinance Changes

The Planning Division is proposing specific changes to the zoning ordinance. The proposed major changes are discussed below in the order that they would appear in the City code.

1. Chapter 2.62 – Recognized or Registered Organization Notification Procedures

Provides an opportunity for affected recognized organizations to give input on special merit exception petitions. (pg.11)

1. Chapter 21A.06 – Decision Making Bodies

Provides language that gives the Planning Commission the authority to issue a certificate of appropriateness for demolition as part of an approved special merit exception and includes a recommendation from the Historic Landmark Commission. This allows the Commissions to balance historic preservation goals of the city with other objectives. (pg.11)

2. Chapter 21A.34.020 – Historic Preservation Overlay District

Provides new definitions for “Special Merit Exception” and “Unreasonable Economic Hardship.” (subsection B, pg.11)

Modifies standards for a certificate of appropriateness for demolition of a landmark site and contributing principal building or structure. (subsection J & K, pg.13)

Clarifies the economic hardship determination process. Allows the HLC final authority in determinations of economic hardship and eliminates the Economic Hardship Review Panel. Establishes criteria for income producing and non-income producing property. Allows the HLC and planning staff to solicit expert advice. Sets limitations on economic hardship determinations. (subsection N, pg.16)

Establishes a process for Special Merit Exceptions (subsection O, pg. 21)

Only allows the issuance of a CoA for demolition simultaneously with the appropriate approval and permits for the replacement building or structure. Eliminates a landscape plan as an appropriate replacement plan. (subsection P, pg. 24)

Creates a preservation fund through additional fees for approved demolitions. (subsection P, pg. 24)

Outlines documentation requirements if demolition is approved. (subsection Q, pg. 25)

Public Notice, Meetings and Comments

The following is a list of public meetings that have been held related to the proposed project:

- Open House (to be held following the Historic Landmark Commission's review)
- Historic Landmark Commission work session held on January 3, 2013
- Historic Landmark Commission work session held on February 7, 2013

Notice of the public hearing for the proposal includes:

- Public hearing notice posted in newspaper on March 23, 2013
- Public hearing notice posted on City and State websites on March 22, 2013.
- Public hearing notice emailed to the Planning Division listserv on March 22, 2013.

City Department Comments

Staff sent information regarding the proposed text changes to several City Departments and only received comments from Paul Nielson, Senior City Attorney. The Planning Division has not received comments that cannot reasonably be fulfilled or that warrant denial of the petition.

Demolition Committee

The Committee met on March 6, 2013 and again on March 13, 2013. Commissioners Funk and Harding attended both of the meetings. Commissioner James had no major concerns, but was unable to attend the meetings. The Committee provided a number of refinements to the proposed text. The committee also discussed the following topics:

- the salvage of materials,
- consistency in the use of terms,
- the amount of evidence necessary to make a determination of a regulatory taking,
- demolition by neglect, and
- the ability for the Commission to stop the review process for a special merit exception project.

For the most part, staff has addressed these items in the ordinance. The Planning Commission, however, remains the decision-making body for special merit exception projects in the proposed ordinance.

Public Comment

Public comment regarding this petition is included as Attachment B of this staff report. Kirk Huffaker, Executive Director of the Utah Heritage Foundation, submitted an e-mail indicated his support for making changes to the existing demolition and economic hardship standards of the zoning ordinance and made several suggestions for further refinements.

Analysis and Findings

Findings

21A. 50.050 Standards for general amendments

A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the City Council and is not controlled by any one standard.

A. In making its decision concerning a proposed text amendment, the city council should consider the following factors:

1. Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the city as stated through its various adopted planning documents;

Analysis: The community master plans and their land use policies are intended to guide and set a framework for future land use and development. The zoning ordinance and other land use regulations are essential tools for implementing City policy. All citywide, community and small area master plans promote the importance of historic preservation. The proposed text amendments to the zoning ordinance will further the goals and objectives of these documents by clarifying the jurisdiction and authority of the Historic Landmark Commission, strengthening the role of the Commission and enabling the Commission to function more effectively.

Finding: The proposed text amendments are a refinement of the existing demolition and economic hardship standards of the zoning ordinance. They support and are consistent with the purposes, goals, objectives and policies of the various adopted planning documents of the City.

2. Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance;

Analysis: Historic preservation is an integral element of creating livable, vibrant and unique neighborhoods within the city. The zoning ordinance lists objectives that the city seeks to achieve regarding the *H Historic Preservation Overlay District*. These objectives include:

- Provide the means to protect and preserve areas of the city and individual structures and sites having historic, architectural or cultural significance;
- Encourage new development, redevelopment and the subdivision of lots in historic districts that is compatible with the character of existing development of historic districts or individual landmarks;
- Abate the destruction and demolition of historic structures;
- Implement adopted plans of the city related to historic preservation;
- Foster civic pride in the history of Salt Lake City;
- Protect and enhance the attraction of the city's historic landmarks and districts for tourists and visitors;
- Foster economic development consistent with historic preservation; and
- Encourage social, economic and environmental sustainability.

As such, the administration of the overlay district by the Historic Landmark Commission is intended to support the welfare, prosperity and education of the people of Salt Lake City.

Finding: The proposed text amendments further refine the demolition and economic hardship standards of the zoning ordinance by providing corrections, clarification and consistency. The proposed amendments would have a positive impact on the City's land use regulations and further the specific purpose statements found throughout the zoning ordinance.

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

Analysis: The city has established and continually improves an array of tools and programs aimed at protecting the buildings and landscapes from its past. The purpose of the *H Historic Preservation Overlay District* is to provide the means to protect and preserve areas of the city and individual buildings, structures and sites having historical, architectural or cultural significance. The intent of the proposed amendments is not to create any inconsistency or conflict with applicable overlay zoning districts, but to improve the existing standards and provide consistency in the application of the regulations.

Finding: The proposed text amendments are consistent with the provisions of all applicable overlay zoning districts that may impose additional standards and supports the purposes and provisions of the existing City code.

4. The extent to which a proposed text amendment implements best current, professional practices of urban planning and design.

Analysis: The proposed text amendments reflect current practices in urban planning and will clarify, update and enhance the City's planning practices as it relates to the Historic Preservation Program.

Finding: The proposed text amendments strive to implement current best practices of historic preservation. As such, they will have a positive effect on the City's review processes affecting historic properties governed by the *H Historic Preservation Overlay District*.

Alternatives

Alternatives in relation to the proposal would be to recommend the demolition regulations *H Historic Preservation Overlay District* remain unchanged. This option would continue the current review process and standards.

Another alternative would be to approve only a portion of the proposed text amendments or suggest other amendments. There is some risk with this option in that the modifications or suggests have not had a chance to be considered by staff and other departments. If suggesting new text amendments, additional staff review time should be conducted and followed by another public hearing.

Commission Options

If the proposed text amendments are denied in their entirety, no changes would be made to the ordinance provisions regulating the demolition of City designated landmark sites and contributing buildings in local historic districts.

If the request is modified, depending on the extent, additional city staff review time and public input should occur in order to assess impacts to current practices.

If the text amendments are approved as proposed, the new review processes and standards could be implemented if adopted by the City Council.

Potential Motions

Not Consistent with Staff Recommendation (modify): Based on the testimony presented and the following findings, I move that the Historic Landmark Commission transmit a favorable recommendation to the Planning Commission to forward a favorable recommendation to the City Council relating to the proposed text amendments to the ordinance provisions regulating the demolition of City designated landmark sites and contributing buildings in local historic districts with the following modifications: *(list the modifications and their section number for clarification)*.

Not Consistent with Staff Recommendation (no amendments): Based on the testimony presented and the following findings, I move the Historic Landmark Commission transmit a negative recommendation to the City Council relating to the proposed text amendments to the ordinance provisions regulating the demolition of City designated landmark sites and contributing buildings in local historic districts.

The Historic Landmark Commission shall make findings on the zoning text amendment standards as listed below:

1. Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the City as stated through its various adopted planning documents;

2. Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance;
3. Whether a proposed text amendment is consistent with the purpose and provisions of any applicable overlay zoning districts which may impose additional standards; and
4. The extent to which a proposed text amendment implements best current, professional practices of urban planning and design.

Attachment A Text Amendments

ZONING ORDINANCE CHAPTER 2.62 Recognized or Registered Organization Notification Procedures

2.62.040: PARTICIPATION IN PLANNING PROCESS

B. The Salt Lake City planning division staff shall encourage all zoning petition, planned development, ~~and/or~~ conditional use and/or 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 planning commission. A report of the discussions with the affected recognized organizations and applicant shall be contained in the planning commission staff report.

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

21A.06.030: PLANNING COMMISSION

B. Jurisdiction And Authority: The Planning Commission shall have the following powers and duties in connection with the implementation of this title:

10. 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.

21A.06.050: HISTORIC LANDMARK COMMISSION

B. Jurisdiction An 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. Make recommendations to the planning commission regarding special merit exceptions as defined in subsection 21A.34.020O 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, or social or other benefits having a high priority for community amenities (See subsection O of this section).

12. Unreasonable 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 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 a 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 ~~E~~N 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 LK and ML 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 current owner 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 ~~LK~~L1 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~~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 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: 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. 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 filing of an appeal shall stay the decision of the Historic Landmark Commission pending the outcome of the appeal.
 - a. 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.

~~1.2.~~ 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 N3 below, the application must should 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 N4b of this section.

~~23.~~ ~~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 the Historic Landmark Commission to make a determination that there are no reasonable measures that can be taken which would enable the owner to make a beneficial use of the property and/or derive all reasonable economic return from the property either in its current form or if rehabilitated. 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) A 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 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 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.

~~34. 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 a complete 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.

~~e. 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. ~~(1) Finding Of Economic Hardship: If after reviewing all of the evidence, the historic landmark commission finds that the applicant has presented sufficient information supporting an unreasonable 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 is not capable of providing any reasonable return in its present condition. Reasonable rate of return does not mean highest rate of return;

(b) bona fide efforts to sell or lease the site, or building or structure at a reasonable price have been unsuccessful; and

(c) the cost required to rehabilitate the property, building or structure is such that any reasonable return on such an investment is not achievable taking into account any financial incentives available for rehabilitation.

(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;

(b) bona fide efforts to sell or lease the site, building or structure at a reasonable price have been unsuccessful; and

(c) it is not economically reasonable to rehabilitate the site, building or structure taking into account any financial incentives available for rehabilitation.

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 three (3) 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.

d.(2) Denial Of A Certificate Of Economic Hardship: If the historic landmark commission finds that the applicant has failed to prove an unreasonable 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.

(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: The planning commission may authorize issuance of a certificate of appropriateness for demolition as part of a special merit exception at the request of any 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 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.

b. Development Plan: A development plan at a scale of twenty feet (20') to the inch or larger, unless otherwise approved by the zoning administrator, setting forth at least the following, unless waived by the zoning administrator:

(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.

2. Fees: The application for a special merit exception shall be accompanied by the fee shown on the Salt Lake City consolidated fee schedule.

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

4. Staff Report: A staff report evaluating the special merit application shall be prepared by planning staff.

5. 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.

6. Historic Landmark Commission Recommendation: Following the public hearing, the commission shall submit a recommendation to the Planning Commission for approval, approval with modifications or denial of the proposed special merit exception based on the following factors:

- a. 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 landmark site or contributing building, structure or site;
- b. Whether the building or structure can be moved to an alternative site; and
- c. Whether the project is of exceptional and distinct architectural design, utilizing a range of exterior materials as defined by the character of the surrounding streetscape, area and district. Exterior materials must also have a proven durability for the regional climate.

7. Planning Commission Hearing: The planning commission shall schedule and hold a public hearing to consider the proposed special merit exception 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.

8. Planning Commission Decision: Following the hearing, the planning commission may approve the proposed special merit exception, approve the proposed special merit exception with modifications, or deny the proposed special merit exception. In making its decision concerning a proposed certificate of appropriateness for demolition as a part of a special merit exception, the planning commission shall consider:

- 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 landmark site or contributing building(s) or structure(s) in a district. Factors common to all projects would not be considered “special”;
- b. Whether specific features of the proposed development promote the purposes, goals, objectives, and policies of the city as stated through its various adopted planning documents and exceed the minimum requirements of the zoning ordinance; and
- c. The recommendation by the Historic Landmark Commission.

9. Limitations on Special Merit Exception: Subject to an extension of time granted by the planning 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 and licensing 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 planning 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 planning commission shall authorize only the particular project for which it was issued.

P. Review of Postdemolition Plan for New Construction: 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 = \$2,000.00

b. 2,501 – 10,000 square feet = \$5,000.00

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

d. 25,001 – 50,000 square feet = \$20,000.00

e. Over 50,000 square feet = \$30,000.00

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.~~

QS. 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 and maintain the property so as not to create a structurally unsound, hazardous or dangerous building or structure as set forth in title 18 of this code.

Attachment B
Public Comment

From: Kirk Huffaker [Kirk@utahheritagefoundation.org]
Sent: Friday, March 01, 2013 4:34 PM
To: Lew, Janice
Subject: Comments regarding the demolition provisions of the H historic preservation overlay district

Categories: Other

Janice,

First off, thanks for your good work on this. It's been needed for quite a long time and needed someone that would give it the thorough analysis it deserved to make it useful for its preservation purpose.

The following are my comments, submitted on behalf of Utah Heritage Foundation.

1) I believe that it is appropriate that the COA for demolition be issued simultaneously with approval and permits for the replacement structure. This will raise the risk level that is required of the developer to that of the community risk to allow demolition of contributing or designated structures.

2) Paragraph L.1 – Bona Fide Preservation Effort

Under the marketing section, the paragraph should include efforts that have been undertaken in the past when this has been required, including:

- a large commercial-type sign signifying that the property is available, and
- sending notice to local and interested commercial realtors and preservation organizations.

3) Paragraph N.2.d.(4) – Evidence for Determination of Economic Hardship

This paragraph should clearly state if this testimony is solicited and arranged by either the Historic Landmarks Commission or the applicant.

4) Paragraph O – Special Merit Exception

While I appreciate that this section is attempting to define the process and evaluation criteria for a Special Merit Exception, this entire new idea provides enough open-ended factors that it can allow a political process to influence decisions, effectively granting a project a political “out.” I believe it is unfortunate that the entire review of a Special Merit Exception rests with the Planning Commission. It is strongly encouraged that the Historic Landmarks Commission be the first step in this review process, include a public hearing, and that the HLC be granted the ability to vote “no” and stop the process or continue the process by forwarding a positive recommendation to the Planning Commission. In addition, the factors listed in Paragraph O.8.a are subjective as to their interpretation (i.e. exceptional design, significant public and civic benefits, promotion of the purposes of the city). Lastly, the

Historic Landmarks Commission and the Planning Commission don't always meet eye-to-eye on direction for the city's development which could present a conflict in this process.

5) Paragraph Q – Requirements for Certificate of Appropriateness for Demolition

We encourage that this paragraph also include the requirement to submit a noise and air pollution management plan for the Historic Landmark Commission's consideration. Though omitted here from the list, these two items have become sources of contention between neighbors in historic neighborhoods during renovations and the city should begin to require contractors and/or designers to factor this into their planning.

Please let me know if you have any questions about my comments.

Kirk

Kirk Huffaker
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