



**Land Use, Transportation & Infrastructure Committee
Summary Minutes**

Tuesday, November 13, 2012 10:30 AM City & County Building, Room 391

Committee Members: Robb, Chair; Montero, Vice-Chair; Brown; Lehmann; López; Shepherd

Committee Staff: Gretchen Williams

Council Members Present:	Lehmann, Lopez, Montero, Robb, Brown, Shepherd, Susman, Kniech, Nevitt
Members Absent:	None

Bill Requests

BR12-0820 **A bill for an ordinance modifying Chapter 30, Landmark Preservation, continued from Oct. 30.**
Barbara Stocklin-Steely, Landmark Preservation Commission Staff

Barbara Stocklin-Steely, Landmark Preservation Commission (LPC) staff explained two minor changes in the proposed bill made after the Committee reviewed the bill at its meeting on Oct. 30, 2012.

- Page 2. Line 16: Deleted the language referring to the National Register Bulletins published by the National Park Service. Community comments indicated discomfort with the idea of having to be familiar with following those publications.
- Page 3, Line 24: Corrected and clarified the language related to the proposed new requirement that non-owner applications be submitted by three Denver residents/owners/businesses/organizations.

Councilwoman Susman asked if the proposal will prevent applications for structures which have obviously lost any integrity, citing the recent application for designation of the dilapidated warehouse on Huron.

Ms. Stocklin-Steely replied that the proposed changes make it clear that the LPC may consider the physical integrity of the structure as well as any significant events or persons associated with the site.

Councilwoman Robb asked Ms. Stocklin-Steely to go through all of the proposed changes in the bill, listed on the document titled "Proposed Revisions to Landmark Designation Process" as revised October 10, 2012 (attached to the meeting), noting that numbers 1 and 2 apply only to non-owner applications; number 3 applies only to undesignated properties; and the rest apply to any property.

1. Fee for non-owner applications:

The LPC recommendation is that Manager of Community Planning & Development (CPD), who is responsible for setting application fees, raise the fee for non-owner applications from the current \$250 (which is same for owners) to "up to \$1,000".

Councilmen Nevitt and Brown argued that the fees should be even higher and at least cover the City's costs. Current fees have been in place for a long time (probably mid-1980's) and should be adjusted for inflation.

Dennis Humphries, Chair of the LPC, said all of the proposed amendments are critical to tighten the criteria and processes to be clear about the potential for designation. The LPC unanimously supports increasing all fees and having a higher fee for non-owner applications.

Councilwoman Robb pointed out that the Council is not setting the fees; the Manager of Community Planning & Development sets the fees outside of ordinance. She asked if anyone would like to consider adopting fees by ordinance. The Committee agreed not to put fees in ordinance.

Councilwoman Montero and Councilman Lopez offered a change to the proposed bill to make it clear that a member of Council may be the applicant for designation.

Council Lopez said in some neighborhoods with structure worthy of designation, the people do not have the resources or energy to prepare an application. Their council member should be able to submit an application on their behalf.

Councilwoman Montero said the perception of this ordinance is that it discourages people from applying for designation. Perhaps \$250 is too low, but Council needs to find a way for anyone to be able to apply. She is trying to find a middle ground, a stop-gap, to ensure that people are not excluded from the process. That stop-gap is the council representative.

Councilwoman Robb took a straw poll on the proposed addition of "member or members of City Council", and the Committee agreed.

Kerry Buckey, Assistant City Attorney, noted that the current language of the ordinance does allow council members to apply, under the definition of "the city" and without a fee. If council members are specifically added, the CPD Manager should also be added. The Committee agreed.

Councilwoman Robb said that council members will be under pressure to submit applications, and they will have to be direct. She has tried to be very open about it when presented proposed applications she just cannot support.

Councilwoman Montero said she and Councilman Lopez propose that the Registered Neighborhood Organizations (RNOs) be added as possible applicants as well. She cited a letter from INC, the umbrella RNO group, stating that the fees are going to be too high for some neighborhoods, and the RNO needs to be able to apply in some cases.

Mr. Bucky said that as the bill is currently drafted, the RNO could be one of the three applicants required for non-owner applications. These would require two additional applicants.

Councilman Brown was adamantly opposed to adding RNOs. If the RNO is concerned about the loss of a building, they can lobby their council member. He said some RNOs encompass less than a block.

Councilwoman Robb said some of the RNOs in her district have been very effective applicants, which they can be under the code even today. Even if RNOs are not listed in the ordinance, they can continue to be applicants. She expressed concern that if we start listing everyone who may apply, someone or organization will be omitted, such as Historic Denver.

A motion offered by Councilmember Brown, duly seconded by Councilmember Lehmann, to amend the amendment offered by Councilmembers Montero and Lopez to strike "Registered Neighborhood Organizations" and insert "the Manager of Community Planning & Development" in the list of who may apply for landmark designation carried by the following vote:

AYES: Susman, Brown, Lehmann, Robb, Shepherd(5)
NAYS: Lopez, Montero(2)
ABSENT: (None)
ABSTAIN: (None)

Committee discussion of the proposed amendments continued.

2. Non-owner applicants (who may apply)

The proposed change would require three applicants for these applications, and require that the applicants be persons who are a resident of or owner of property in Denver (persons includes Denver-based firm, corporation, association or other organization). The Committee accepted this proposal.

3. Limit demolition permit review

The proposal is to limit review of demolition permit applications to only undesigned properties to only the primary structures and large accessory structures (1.5 stories or more). Responding to a question from Councilwoman Shepherd, Ms. Stocklin-Steely said this limitation is a recommendation from the LPC and Historic Denver. The Committee was agreeable to this proposal.

4. Historic or physical integrity considerations

Expand designation criteria to include the above, giving LPC more latitude to not forward an application to Council if LPC found that the building's structural integrity was so compromised that even though the property meets the significance criteria, it is in too poor a condition to merit designation. The recent Gates designation application is an example.

Broaden LPC's review by having it explicitly consider the proposed structure's or district's level of significance and relative importance compares to other structures or districts with similar history, architecture or geography.

The Committee agreed with these proposals.

5. Clarify when to use the application for a structure and when to use the application for a district.

This is an internal LPC policy, not part of the ordinance, and was not discussed in detail.

6. Allow staff to determine completeness of applications

This will relieve applicants of the current “two-step” review process, reducing the time necessary to schedule the item before LPC for its consideration of whether to set a public hearing or not. The Committee agreed with this proposal.

7. Encourage landmark designation issues to be resolved as part of the General Development Plan (GDP) process

The suggestion is to make any certificates of non-history status (CNHS) granted for any structures within a proposed GDP to be in effect for up to 10 years rather than the standard five years. The CNHS would be valid for the period during which the GDP is vested or five years from the date of issuance, whichever is longer, up to a maximum of ten years.

At the forum held by Historic Denver, it was proposed that the community should be able to work on any designation applications before the GDP is approved. The developer should be encouraged to designate buildings by offering this incentive.

Councilman Nevitt liked the idea, and added that the extended CNHS should be considered entitlements. This would offer an incentive to get the issues settled early. If the GDP is not finalized, the certificates revert to the standard five years.

Mr. Buckey said that currently, there is a GDP requirement for historic assessment, but that is not performed by the LPC, which should be involved on any structures with serious potential for designation.

The Committee agreed with this proposal.

8. Planning Board’s position

The Planning Board has the option to not take a position on a proposed designation application. The proposed language would clarify that when this occurs, it does not mean the Board is giving a favorable recommendation to Council. The Committee agreed.

Councilman Nevitt noted there was an issue raised in testimony from Historic Denver associated with the time period to file a designation application following posting a property as a result of an application for a CNHS. The proposal was to increase the time from 21 days to 28 days if the designation applicant provided notice of intent by the 14th calendar day after the posting.

Councilwoman Robb said that historic preservation advocates make the case that if the fees increase, the city could at least provide more latitude with a long period to get their application and fees in order by giving early warning.

Ms. Stocklin-Steely noted that the LPC is trying to be more user-friendly by giving people 28 days to apply for designation. She emphasized that in the case of non-owner applications, the time period to get the application all the way through the process and approved by City Council is 120 days. That timeframe does not change by giving an extra week to apply, so this would not make the entire process any longer. With the early warning notice, the property owner/developer knows sooner if there may be an application.

Councilwoman Robb said the timeframe is very short, and this would enable the community discussion with the developer to begin sooner and before the fee was paid, which might make for a more productive conversation.

Councilwoman Kniech said this provides an incentive for early notification because you have two more weeks to prepare an application and gather the fee. We want folks talking before the application fee is paid.

She added that most groups meet on a monthly basis, and it is difficult to get consensus and commitment with only 21 days.

Councilman Brown opposed the 28 day timeframe.

Councilwoman Robb said once someone has paid the fee, they may be more motivated to just push all the way through Council. We need to find the right balance. She said she would offer this amendment on the floor if it did not come out of Committee with this alternative.

A motion offered by Councilmember Robb, duly seconded by Councilmember Lehmann, to add an option to file a notice of intent to apply for designation by the 14th calendar day after a property is posted that a demolition permit application has been received, increasing the time to submit an application for designation from 21 to 28, day carried by the following vote:

AYES: Lehmann, Lopez, Montero, Robb(4)

NAYS: Brown(1)

ABSENT: (None)

ABSTAIN: Shepherd, Susman(2)

A motion offered by Councilmember Shepherd, duly seconded by Councilmember Montero, to file the bill, as amended by the Committee, carried by the following vote:

AYES: Susman, Brown, Lehmann, Lopez, Montero, Robb, Shepherd(7)
NAYS: (None)
ABSENT: (None)
ABSTAIN: (None)

The Committee revisited the issue of non-owner application fees and what the Committee wants to recommend to CPD.

Councilman Brown said \$500 is not high enough. People should have skin in the game; even \$1000 is not enough.

Councilwoman Robb said we have spent five months vetting this with the community. We have had recommendations from groups and individuals for \$500 for non-owners. She said she would not go higher than \$1000. There is a public good to designation, and the City does not always charge the full cost when there is a public good.

She added that Council should not be referring to landmark designation is a "property taking". Raising the fees so high is an over-reaction.

Councilwoman Susman said she did not want to send the message that Council will support non-owner designations, and the city should not subsidize someone who wants to designate someone else's property.

Councilwoman Robb said strong leadership from Council can send that message.

Councilwoman Kniech suggested recommending that CPD charge "up to the cost" of processing the application.

Councilman Nevitt said it is really hard to determine "the cost". Douglas County charged an application fee greater than the budget of its entire planning department, and that was upheld in court. We are still well within that fee range.

Councilwoman Shepherd said CPD has said its average cost is \$500 to \$1000.

Councilman Nevitt was not sure there is a public benefit to non-owner designations.

Councilwoman Robb summarized the recommendation of the Committee to the CPD manager: three members would support more than \$1000; two would not support over \$1000; and one member is unsure.