

Memorandum

TO: Denver City Council VIA E-MAIL
FROM: Brian J. Connolly
CC: City Attorney's Office
DATE: April 19, 2021
RE: 123 East Speer Boulevard—Review Criteria for Landmark Designation

Our firm is working with the landowner and contract purchaser of the property located at 123 East Speer Boulevard, which is the subject of an owner-opposed landmark designation application. Below, we discuss the approval criteria that City Council is required to consider in its action on the application.

Section 30-4(10) of the Denver Revised Municipal Code provides that the “City council may approve the designation of property. . . after considering the recommendations of the [Landmark Preservation Commission], the written views of owners of affected property, and any other comments received at the public hearing; *and city council may deny the designation based on any of the considerations above*” (emphasis added). Thus, City Council is required to consider three things: (1) the recommendations of the LPC, (2) the written views of the property owner, and (3) public comments. **The Landmark Ordinance, D.R.M.C. Chapter 30, purposefully gives the City Council a much broader purview than the LPC in reviewing designation applications.** And unlike, say, a rezoning, the criteria that City Council must consider in a landmark designation are much broader and less restrictive.

The City Council's purview in analyzing the application is not limited to the designation criteria considered by the LPC. Under D.R.M.C. § 30-4(8), the LPC “shall consider the criteria in Section 30-3 in making” its recommendation. Thus, the LPC must find that the criteria in Sections 30-3(1) and 30-3(2), as well as three of the ten criteria in Section 30-3(3) are met in order to recommend approval of a landmark application. The LPC is not permitted to consider any criteria beyond those set forth in Section 30-3. In contrast, under D.R.M.C. § 30-4(10), the City Council is not bound by the recommendation of the LPC (and in fact, the City Council is not even required to consider the same criteria that the LPC considers), can determine on its own that the designation criteria set forth in Section 30-3 are not met, and must evaluate the written views of the property owner.

In this case, the property owner has submitted written statements expressing its views on the Application, including the following items:

- A March 23, 2021 statement from Dean Littleton, Vice President and General Manager of Denver7 KMGH-TV. This statement addresses, among other things, Denver7's position that designation would

impede its ability to grow its local journalism business; thwart the creation of a lively, pedestrian-oriented, mixed-use area envisioned in the City’s adopted plans; and—because the applicants appear to be using the designation process to influence redevelopment—undermine the credibility of the City’s otherwise-laudable landmark preservation process.

- A March 22, 2021 letter from Mike Epstein, Vice President, Risk Management and Business Continuity for Scripps Media, Inc. This letter identifies several designation-imposed limitations on both employee safety and building maintenance that would create a risk of loss of service to viewers and compromise building security.
- A March 22, 2021 report prepared by Heritage Consulting Group, Inc. (“HCG”). This report concluded that the designation criteria set forth in D.R.M.C. § 30-3 are not met in this case.

The owner anticipates submitting additional information prior to the public hearing before the City Council, which will include: (1) a summary of the owner’s community outreach efforts relating to its request for a certificate of demolition eligibility; (2) a description of the application’s relationship to City Council-adopted plans; and (3) a supplemental report from HCG addressing matters asserted by the applicants in the April 6, 2021 LPC hearing.

Pursuant to D.R.M.C. § 30-4(10), the City Council is required to consider these materials in its evaluation of the application. Moreover, it is the landowner’s position that the information contained in these materials demonstrates that the application fails to meet the criteria in D.R.M.C. § 30-3 and that the application should be denied based on the City Council’s review criteria.