

CITY OF ELLENSBURG

Date and Time:

Place of Meeting:

Commissioners Present:

Commissioners Absent:

Others Present:

Minutes of the Landmarks & Design Commission

April 2, 2013 at 7:00 p. m.

City Council Chambers, City Hall

Christina Wollman, Meg Ludlum, Dorothy Stanley, Fred Krueger and David Wheeler

Fennelle Miller & Anne Denman

Director Mike Smith, Senior Planner Dan Valoff, City Attorney Terry Weiner, Land Use Attorney Michael Connelly, Carolyn Honeycutt, Ellensburg Downtown Association, Arts Commission members: Alex Eyre, Sarah Scott, Laura Bobovski, Lisa Rushton, Jerry Dougherty & Monica Miller.

Chair Wollman opened the meeting at 7:05 p. m. Chair Wollman asked if there was anything that needed to be added to the agenda. There were none.

Minutes of March 19, 2013, it was moved and seconded to approve of the minutes subject to corrections. Motion carried with a vote of 5 to 0.

CORRESPONDENCE

None

SIGN REVIEWS

None

DESIGN REVIEWS

None

UNFINISHED BUSINESS

- a) Mural discussion with the Arts Commission – Director Smith started the meeting with having everyone introduce each other. Director Smith gave an overview of the Development Code Update process. At the last City Council meeting the Council directed staff to initiate a meeting with the Arts & Landmarks Commissions and have a discussion in on the mural process. He also indicated that the City's Land Use Attorney would attend the meeting to discuss Constitutional issues as well as citizen commissions role in development review.

Attorney Connelly prepared a memorandum for the Commissions review for tonight's discussion. He started his presentation by giving a brief frame work on design review commissions and the constitutional issues relating to signs. With respect to signs he stated it was best for commissions to develop simple language in the form of what objectives you want to achieve, rather than develop specific code language to regulate sign, then have the regulations developed to achieve these objectives. The courts will look more favorably on what the overall city objective in regulating signs rather than the specific code language.

Discussion ensued from the Commission members on the distinction between historic signage and current (less than 50 years old) signage and cited various examples around town. Alex Eyre provided some examples from around the country regarding signs & mural issues. He stressed that the Arts Commission would like to encourage artistic speech (murals) around town. He stated that one objective would be to develop a definition of murals and signs in the historic district, as well with the rest of the city. He provided an example from Savannah Georgia which he thought would provide a good framework for the Commissions to start with.

Attorney Connelly stated to the Commissions that the regulatory authority that the city has is the size, height, scale, and themes on signage. If you go beyond this you potentially run into trouble. Content regulation is very tough to do and would not pass constitutional muster. If you allow murals with certain limitations and then have a commission to encourage them that is OK, but if you prohibit them you will have constitutional challenges. You need to prohibit them in your code language and not by discretion, your prohibitions should be clear and concise to be put into your code, i.e. the following are prohibited or the following are limited to. Code provisions may not be unconstitutionally vague. Examples of vague terms are: harmonious, bright or brilliant, interesting and compatible. Examples of clear/not vague terms are technical words, words you can look up in the dictionary, detailed and technical standards also work. It is best not to lift code language from different cities because the courts will look at what are the important objectives of your community and are you doing the least obtrusive method to achieve these objectives.

Alex Eyre asked Mr. Connelly what he sees the next step for the Commission's to do to achieve these goals. Attorney Connelly stated that you cannot do this in one meeting. It should take a series of meeting to have consensus on what you want to allow and what you do not want to allow. And when you reach that point then it is easier to draft some regulatory language.

Attorney Connelly summed up what he heard tonight and what the direction the Commissions are going, looking at reasonable size, placement, spacing and controls over murals, restricting murals with advertising to old ones, which might be regulating content and subject to challenge and how to keep historic murals from disappearing. He suggested that a one paragraph "purpose statement" be prepared to help with providing direction to the attorney.

Attorney Connelly stated that the function of design review is to take zoning review to higher step to enhance the community. You can encourage proposals to provide enhancement the community. You can't impose a requirement that is not supported by code. The design review commissions are not established by statute, they are established to make recommendations and are an arm of the police power granted to the City Council who is the body that adopts development regulations.

The Commissions asked which members would like to work on a sub-committee to work on developing language for murals and signs. Carolyn Honeycutt suggested that the sub-committee can use the Ellensburg Downtown Association office. A meeting was scheduled for Thursday April 10 at 4:00 p.m.

Attorney Connelly had a couple of issues with the proposed changes that the Landmarks & Design Commission had with the Development Code Update. The first was that design review be conducted for properties on the Historic Properties Inventory. The Commission indicated that review would be limited to demolition, small wind facilities, non-conforming uses, ADU's & wireless facilities. Mr. Connelly's concern was this would apply to all buildings that are 50 years and older and if that number is large it could open the city to potential challenges and the constitutional due process issues. The second concern was the desire of the Commission to have decision making powers. Generally he recommends against this. The expertise of the Commission with historic buildings in making recommendations is desirable, but there are other processes that need to be reviewed in making final decisions, such as SEPA, compliance with the Comprehensive Plan, takings, vesting issues and such. In having the Landmarks Commission making the final decisions, it would divest others charged with expertise with other components of the review. The other issue would be that it would be in conflict with the hearing process provided for in the GMA RCW 36.70B for one open record and one closed record hearing. It could provide for potential liability for the City. The statute gives land use

authority to the legislative body and allows them to delegate them to the Planning Commission that is established by statute but does not give the other of the city commissions any decision making authority. The demolition changes do not cause too much of a problem, but warned to be cautious when dealing with religious intuitions. Also, he did not think that the Commission could stop a historic property from being demolished. He stated that you can slow it down, provide incentives and such, but he did not believe you could ultimately deny a historic structure from being demolished.

NEW BUSINESS
None

LEGISLATIVE UPDATE
None

MISCELLANEOUS
None

The meeting adjourned at 9:07 p.m.

Respectfully submitted,
Dan Valoff, Senior Planner