

AGENDA REPORT

Date: March 15, 2013
To: City Council
Thru: Ted Barkley, City Manager *TB*
From: Mike Smith, Community Development Director *MS*
RE: Landmarks and Design Commission Comments
- Draft Land Development Code
- Murals
- Demolitions

Summary: At its March 18 meeting Council discussed Landmarks and Design Commission recommendations for inclusion in the final draft Land Development Code and requested staff to return in May with an update on several remaining Commission recommendations and on the City's insurance carrier's land use attorney review and discussion of those recommendations.

Background: The Landmarks and Design Commission (Commission) has completed its review of the current draft of the LDC and has made a number of recommendations for amendment regarding the Landmarks Commission role in:

- design review
- departure requests from the proposed new design standards in the land development code
- historic property alterations and demolitions, and
- approval of murals on Landmark Register properties.

Council provided direction on some of those recommendations and requested staff to return in May with an update on the remaining recommendations.

There has been significant effort made on these recommendations by the various stakeholders (Landmarks Commission, Arts Commission and staff) as well as the City's insurance carrier's land use attorney who has met jointly with the two Commissions and provided guidance on the constitutional and regulatory issues involved with murals and historic preservation regulations. The attorney has also reviewed the Landmarks Commission draft mural ordinance and has provided recommended edits.

However, due to the legal nature of the concepts that underpin many of these remaining issues, as well as the enthusiasm exhibited by the various stakeholders, there continues to be some disagreement as to the direction the city should go on the remaining issues. In addition, there has been a lot of Landmarks Commission generated background material on these remaining issues (Attachments 1 thru 5) and there is also new attorney generated background material with legal analysis and recommendations on those issues (Attachments 6 with Exhibits A thru F).

The attorney's materials were unfortunately not delivered to the city until late Tuesday afternoon, with this agenda report needing to be completed and submitted to City Manager by 9 AM the following morning. As such, there has been insufficient time to prepare a detailed staff analysis on all of the

materials provided as attachments. Staff has instead attempted to summarize the remaining issues with the Landmark Commission's current recommendation and the attorney's general analysis and/or recommendation and has provided a number of staff recommendations.

Staff Recommendation: Because some of the issues will need additional discussion and analysis, staff makes the following recommendation:

Separate the issue of Landmark Commission permit decision-making authority from the demolition and mural issues.

- a resolution on the Landmark Commission decision-making authority requires some Council direction in order to move the draft code toward completion and initiation of the final public review and approval process
- the demolition and mural issues could and should continue to be worked on by the various stakeholders, and perhaps some Council direction could be provided to assist that discussion
- any final product on those issues could then be added to the final land development code during the public review process prior to adoption or could be added later by amendment to that adopted land development code.

Analysis:

1. **Landmark Commission's decision-making authority**

In current code, the Landmarks Commission has decision-making authority on:

- issuance of Certificates of Approval (COA) for all alterations, new construction, and demolitions of properties that are on the Landmark Register
- design review of projects city-wide involving construction of new nonresidential structures greater than 4,000 square feet in size and all new residential structures with more than 4 units
- designations of properties for listing on the Landmark Register, with property owner consent

In the currently drafted land development code, the Landmarks Commission decision-making authority is changed as follows:

- Certificate of Approval reviews will only be for purposes of making a recommendation and the final decision will be made by the designated decision-maker (Administrator or Hearing Examiner)
- design review functions outside of the Landmark Register properties have been eliminated and will be handled by the Administrator and/or Hearing Examiner because the new code contains substantial design criteria and standards
- design review functions for Landmark Register properties will be recommendatory, with the final decision made by the designated decision-maker (Administrator or Hearing Examiner)

The Landmarks Commission's current recommendation is discussed in Attachment 2 – *LDC Further Comments on LDCU*, Attachment 4 – *Summary of Comments on Land Development Code Update*, and Attachment 5 – *Email: Time Sensitive Question*. The recommendation is to keep decision-making authority with the Landmarks Commission for the following actions:

- all alterations and new construction involving properties on the Landmark Register

- all demolitions, small wind energy systems and commercial towers involving properties that are on the Landmark Register (LR) and on all non-LR properties that are 50 years of age or older
 - NOTE: The Commission's earlier recommendation was to include LR properties and properties identified on the Historic Resource Inventory (properties 50 years or older that have been deemed through a survey to be worthy of listing on a historic register but have not yet been listed). In response to Council's concerns regarding the use of the HRI for demolition regulation purposes they are now recommending the substitution of a broader criterion for special review of demolitions, SWES and commercial towers. (SEE discussion on Demolitions below.)
- all Departure requests from the new code design standards

The land use attorney has recommended that Landmarks Commission decision-making authority be limited just to designations of properties for listing on the Landmark Register and that on all other matters it should only have a recommendatory authority, with the final decision being made by staff or the Hearing Examiner. (SEE Attachment 6 and in particular Exhibit A of that Attachment which analyzes the various sources of Landmark Commission authority.) The reasons for the recommendation are based primarily on ensuring that a number of permit processing requirements enacted by the Legislature dealing with numbers and types of hearings allowed to be held, notice requirements, and final decision requirements, are complied with in the permit decision-making process in order to minimize potential risk of liability for the City.

The land use attorney is OK with Landmarks Commission making final decisions on property designations to the Landmark Register because that involves their expertise and there is clear authority for them to make that decision. In addition, the designation requires the property owner's consent, so the procedural error risk is not an issue. But for permit decisions, the land use attorney believes that the Landmarks Commission should only hold a public meeting, as defined in RCW 36.70B(5) which specifically references the public meeting process for "design review or architectural control board meetings", and then use its expertise in the subject matter to make a formal recommendation on the proposal that would be forwarded to the decision-maker.

Staff Recommendation

The land use attorney recommendation to empower Landmarks Commission with only recommendatory power for permit decision-making, but with decision-making power for Landmark Register designations, is the same as the City's previous land use attorney's recommendation and staff is supportive of that recommendation for several reasons:

- Citizen bodies are valuable sounding boards with particular areas of expertise and they provide great assistance in project reviews but they do not have expertise in the procedural requirements involved in permit decision-making.
- The risk of liability for a procedural error has now become a dollar and cents issue rather than just a wrong decision or process issue that can simply be reversed, and the outcomes of legal challenges for procedural errors typically involve very large dollar amounts.
- Some examples of procedural errors likely to arise include appearance of fairness issues, pre-judgement issues, use of anecdotal information as evidence in support of the decision, inability to formulate accurate wording of motions to approve or deny or for

the findings and conclusions necessary to support the decision, and timing delays in the deadline specific decision process due to lack of quorums.

One of the Landmark Commission's strongest arguments in support of their position is that only they have the necessary expertise to make the decision. And, while staff would agree with that in relation to the historic review aspect, it would disagree with that in relation to the procedural requirements that must be followed. Making the Commission a recommendatory-body would still result in the Commission's expertise being utilized by the final decision-maker who then has expertise in the procedural requirements for final decision-making. If it turns out, as some Commissioners fear, that the Commission's recommendations are not being followed by the decision-maker, then that matter can be discussed with City Council if it becomes a problem.

2. Design Review

The current draft land development code contains significantly more design standards and criteria (Articles 4 and 5) than does current city code, and the Landmarks Commission has indicated that it is supportive of removing general design review authority from the Commission and placing that design review function with the Administrator and/or Hearing Examiner. Staff and the land use attorney are in agreement with that.

Landmarks Commission, however, recommends that it still retain design review decision-making authority for Landmark Register properties and for all Departure requests city-wide from the new code's design standards. As discussed in number 1 above, the land use attorney and staff are recommending that the Commission be a recommendatory body in those areas rather than the final decision-maker. Staff originally indicated support for allowing the Commission to be the decision-maker for Departure requests, but has changed that position in light of the attorney's discussion and the increased risk of procedural error and liability to the City.

Staff Recommendation

Eliminate all design review matters from Landmark Commission decision-making authority, but authorize the Commission to be a recommendatory body for design review of alterations and new construction, as well as Departure requests, for properties that are on the Landmark Register.

3. Demolitions

Landmarks and Design Commission is recommending that additional demolition regulations be added to code that would help to protect Landmark Register properties and some non-Landmark Register properties from demolition. (SEE Attachments 1, 2, 3 and 4 relating to demolitions). The recommended regulations involve:

- an extended demolition decision timeline (up to 120-days)
- additional notice requirements designed to find a solution other than demolition
- provision of a building replacement plan for review by the Commission and demonstration of financial ability to follow thru on that plan and a requirement that the new construction begin within 1 year of demolition

The original recommendation was to apply the new requirements to properties on the LR and to properties that are on the Historic Resource Inventory (HRI) which would consist of properties

50 or more years of age that have been surveyed by the Commission and deemed eligible for listing on the LR, but that have not yet been designated on the LR. In response to Council concerns regarding the use of the HRI for demolition review purposes, the Commission has now recommended that the proposed demolition regulations be applicable to properties on the LR and to all properties that are 50 years of age or older, which they feel is a broader and more fully objective criteria for such review than the HRI.

The land use attorney has provided some comments regarding the demolition recommendations in Attachment 6 - Exhibit C, and some general comments on the designation process for HRI properties in Attachment 6, page 1, item 1.

Staff Recommendation

Do not include demolition language in the draft land development code at this time, but consider providing direction on current demolition proposed language. Clearly there are still issues to be resolved with demolitions, including some requirements that would more appropriately be included in the City's Building Code, and staff would rather separate this discussion from the draft land development code discussion at this time in order to move that draft code toward a final draft for public review purposes. Work should continue on the demolition language, including the key question of which properties should these additional protection processes be added, and final demolition code language can be added to the land development code later if that is the appropriate venue for such language.

4. Murals

Murals are currently not specifically regulated by city code. Staff has taken the recent position that they would fall within the current Landmark Register alteration code processes if they involve a LR property, although there is currently no regulatory criteria on which to make a decision to approve or deny the mural request. Murals also would require building code review if they are to be affixed to a wall with any sort of framework or attachment device.

The Arts Commission and the Landmarks Commission have jointly discussed murals with the land use attorney and a basic purpose statement was prepared as a result of that discussion. It seems that everyone is in agreement with the constitutional restrictions on regulating the content of murals, and understand that only the size, scale and location of murals can be regulated in some reasonable manner.

Subsequently, however, the Landmarks Commission decided that the direction the process seemed to be going may not adequately address historic preservation goals and has decided to again recommend its original mural ordinance language with some changes to the definition of a mural. SEE Attachment 1 discussion of murals and pages 18 thru 20 of Attachment 4 for the Commission's currently recommended mural code language.

The attorney has inserted his recommended changes into the Landmark Commission recommended mural code language – SEE Attachment 6 - Exhibit B.

Due to the shortness of time in receiving the attorney's comments, the Arts Commission has not yet been provided with the attorney's recommended mural language.

Staff Recommendation

Do not include mural language in the draft land development code at this time, but consider providing direction on the proposed mural code language. Clearly there are still issues to be resolved with murals, including the inherent tension related to murals in the historic downtown, and staff believes that there is still a need to involve the Arts Commission, as well as the Ellensburg Downtown Association, in a review and discussion of the current draft mural ordinance in conjunction with the attorney's recommended edits. In particular, while everyone seems to agree that content cannot be regulated, the question of who makes the decision for the City that a mural can or cannot be installed and on what basis remains to be resolved.

Landmarks Commission is recommending that it be the decision body for murals proposed on Landmark Register properties and on Historic Resource Inventory properties, and that the approval criteria include, among other things, that the mural be "consistent and compatible with the architectural and historical character of the historic district. ..." Staff believes there needs to be greater clarity as to what that means and also feels that the Arts Commission should have an opportunity to offer suggestions.

Recommendation:

1. **Provide direction on the permit decision-making authority of the Landmarks Commission for purposes of inclusion in the draft land development code. SEE discussion in Analysis item 1.**
2. **Provide direction on remaining issues relating to demolition processes and mural processes.**

Mike Smith

From: Meg Ludlum <megludlum@kvalley.com>
Sent: Monday, April 29, 2013 3:13 PM
To: Mike Smith
Cc: Daniel Valoff; Lance Bailey; Christina Wollman; David Wheeler
Subject: Further Comments from LDC on LDCU
Attachments: LDC further comments on LDCU.docx; demo memo.docx; demo-COA Flow Chart.docx; LDC Comments on LDCU Final Draft 2013 - Meg Fennelle and Mike S - 4-29-13.docx

Hello Mike,

The landmarks commission wants to provide further input on murals, demolition (including whether to use the historic resource inventory as the trigger for commission review), and the issue of the commission's authority. This input is attached in the form of (a) further comments on these topics (I understand Fennelle has already sent you this), (b) on demolition, the information on numbers of demolitions (below) as well as the attached memo and flow chart, and (c) further proposed revisions to the land use code update (I couldn't get Word to use a very distinctive color, so I've also highlighted the changes). The entire commission has approved all of these materials; they were done by Fennelle and me on behalf of the commission, not ourselves.

We trust you will be able to include the substance of this information in this week's council packet. Thank you for the opportunity to provide further input.

Meg

From: Daniel Valoff [<mailto:valoffd@ci.ellensburg.wa.us>]
Sent: Thursday, March 21, 2013 9:08 AM
To: Anne Denman; Carolyn Honeycutt (director@ellensburgdowntown.org); Christina Wollman; David Wheeler; Dorothy Stanley; Fennelle Miller; Fred Krueger; Meg Ludlum
Subject: Demo permits

The following is a total of demolition permits issued. These totals will include demolition permits for all sorts of things: houses, garages, commercial buildings, chimneys, shops, barns, sheds, and may include some interior remodels.

2000 = 14
2001 = 9
2002 = 14
2003 = 12
2004 = 16
2005 = 21
2006 = 17
2007 = 18
2008 = 13
2009 = 11
2010 = 4
2011 = 9
2012 = 11

Dan Valoff
Senior Planner

Mike Smith

From: Fennelle Miller <fennelle@kvalley.com>
Sent: Monday, April 29, 2013 2:45 PM
To: Mike Smith; Daniel Valoff
Cc: 'Meg Ludlum'; 'Christina Wollman'; 'Anne Denman'; 'David Wheeler'; 'Dorothy Stanley'; 'Fred Krueger'
Subject: LDC - to go with Meg's materials
Attachments: LDC further comments on LDCU.docx
Importance: High

All:

Attached please find a document with supporting citations for the Landmarks Commission to retain decision-making authority for such things as COAs and murals (which, arguably, should have to go through a COA process on Historic Register-listed or District properties). Meg will be sending additional material.

Mike is concerned that the minutes do not reflect that the whole commission is in favor of this. We probably need to be making motions on everything we discuss and agree upon; otherwise, these things are not "Commission-approved"!

Fennelle

Fennelle Miller, Principal
FDMC
605 North Anderson Street
Ellensburg WA 98926
fennelle@kvalley.com
509.899.2448

**Landmarks and Design Commission
Further Comments on Land Development Code Update**

Murals

The Landmarks and Design Commission's comprehensive comments on the land development code update, which were presented to the City Council at its March 18th meeting, included a proposal for regulating murals. The Council asked the LDC to consult with the Arts Commission on this proposal. A joint meeting of the commissions, along with the City's land use attorney Michael Connelly, was held on April 2; a follow-up meeting of some members of both commissions occurred on April 10. The product of the second meeting was forwarded to Mr. Connelly, but it failed even to include the goal of historic preservation. Scheduling another joint commission meeting was postponed until we receive further input from Mr. Connelly.

Besides refinement of the definition of murals and addition of a definition of historic murals, the LDC has not heard anything to alter its proposed mural language for the land use code update. Our criteria for regulating murals are consistent with mural regulations enacted by other Washington cities (Port Townsend, Seattle, and others), and with the Secretary of the Interior's Standards for the Treatment of Historic Properties, specifically the "Standards for Preservation." These are very detailed, specific, and have been upheld through many legal challenges since they were written in the 1970s.

A series of Technical Briefs published by the National Park Service (NPS) can also provide specific technical guidance on a variety of subtopics, including the "preservation of historic signs," "removing graffiti from historic masonry," "the preservation and repair of historic stucco," etc. Not being very familiar with historic preservation, Mr. Connelly had been concerned that there are no well-defined standards guiding historic preservation, particularly in respect to historic murals. Actually, NPS Technical Preservation Brief #17 is entitled "Architectural Character - Identifying the Visual Aspects of Historic Buildings as an Aid to Preserving Their Character." These Standards & Guidelines were produced in support of the implementation of a series of federal laws passed and used since 1969.

Therefore, at its April 16 meeting at its April 16 meeting, **the Landmarks Commission decided that its proposal on murals should stand as originally submitted, except for two changes to definitions included in the further code comments we are providing.** Murals must comply with the Secretary of the Interior's Standards and Guidelines for Historic Properties, and therefore must include a COA issued by the Landmarks Commission because they will inherently change the character of a historic building façade. If the Arts Commission wants to participate in a cooperative way with the Landmarks Commission, they must familiarize themselves with the local, state, and federal regulations and standards for historic properties. **Our Commission would be happy to work with the Arts Commission in issuing mural approvals/denials/COAs, with the understanding that we will not be regulating content, but simply size, scale, and location of the proposed murals.**

Demolition and the Historic Resource Inventory

At its March 19 meeting, the LDC decided to prepare additional materials for the City Council in support of our comments on demolition. These materials (a memo and flow chart) were modified and then approved by the entire commission at its April 16 meeting; they are being provided to staff along with these notes. At that same meeting, the commission decided to address the City Council's expressed concern about using a "historic resource inventory" created by the commission to regulate demolitions

and certain other subjects (murals, small wind energy systems, communications towers, non-conformities, and accessory dwelling units above garages abutting alleys). The concern was that such regulation might be perceived as arbitrary if the commission created the list on its sole authority. We were asked to “come up with something the council could accept.” The alternative to an onerous process to get property owners’ permission to be listed on an inventory that will subject them to regulation seems to be a broad but simple definition by age. Property owners may not like regulations – like building and critical area codes – to be applied to their historic properties, but it is for the public good.

Therefore, we decided to substitute the broader but fully objective and equitable criterion of buildings or structures over 50 years of age for special review of demolitions (and other regulations involving the HRI). While the number of such buildings may be substantial, the number of demolition (and other) actions is small and many buildings over 50 years old will be quickly eliminated from the need for further review. As information provided by staff shows, demolitions are few and the only COA that the landmarks commission denied in almost a decade was for demolishing the Hubbell/Geddis building. We are not in the business of denying people the use of their property, but only of assuring that new areas of regulation in the land use code affecting historic properties come before a commission with expertise and interest in historic preservation (see flow chart).

The one change regarding the HRI requires a number of changes to our code comments. Along with these notes, staff is being provided with new tracked changes to the LDCU to reflect these comments (as well as the changes to murals definitions).

Authority of the Landmarks and Design Commission

The commission also believes our proposal to have the LDC in a decision-making rather than recommendatory role does not pose the risks that Mr. Connelly cited, and is in fact contradictory to the purpose of the Certified Local Government (CLG) program, both nationwide and statewide. We authorized one commission member to conduct the research on this topic that is reported below.

Federal law (36 CFR 61) is the portion of the National Historic Preservation Act (NHPA), passed in 1966, that originally set up and defined the role of Certified Local Governments and local Landmarks Commissions. Many other laws, guidelines, standards, and implementation documents have then built off the NHPA. For instance, see the Department of the Interior publication on CLGs:

<http://www.dahp.wa.gov/sites/default/files/PreservingYourCommunity.pdf> On page 7 of this publication, it is clearly stated that it is the Landmarks Commission itself who takes on the regulatory role in CLG activities:

In many local historic districts, the preservation commission's review of building permits helps to ensure that exterior alterations are compatible with the historic character of the area. Many commissions use the Secretary of the Interior's Standards and have created user-friendly design guidelines for property owners. This kind of activity promotes good communication with building permit officials and other regulatory agencies.

Page 14 states: “At the state level, CLG programs attempt to balance the regulatory and educational roles of historic preservation commissions.” On pages 16 and 17, the publication outlines the important roles and authority of Landmarks Commissions:

Requirements

While the National Historic Preservation Act establishes a framework of minimum federal requirements for participation in the CLG program, National Park Service regulations encourage each State Historic Preservation Office to shape the program to the particular needs of the state. Under the Act, CLGs are required to:

- Enforce appropriate legislation for the designation and protection of historic properties.
- Establish and maintain a qualified historic preservation commission.
- Maintain a system for identifying historic properties.
- Provide for public participation in the local historic preservation program.
- Perform other agreed upon functions delegated to it by its State Historic Preservation Officer.

Incorporating and expanding upon these minimum federal requirements, each SHPO develops its own procedures (approved by the NPS) for certifying local governments. State procedures detail requirements regarding the following: the kinds of legislation that local governments seeking certification must enact and enforce (for example, a local historic preservation ordinance); the expertise and background of members to serve on the local historic preservation commission; the frequency with which the commission meets; and, methods necessary to satisfy the requirement for public participation in the local preservation program. Upon approval of a CLG's application for certification, the chief elected local official (or his or her designee) and the SHPO sign a certification agreement that specifies the responsibilities of each party.

Benefits

A local government receives many benefits from becoming certified in addition to eligibility to apply for CLG grants. The most significant benefit is the close working relationship that certification establishes between the local government and the SHPO. CLGs get to know the SHPO staff and call upon them for assistance. Similarly, SHPO staff become familiar with the strengths and needs of a CLG's preservation program and can direct appropriate assistance to the local government. SHPOs are required to provide orientation and training to the CLGs; this often takes the form of an annual statewide CLG conference that allows local commission members and staff representatives to communicate. In addition, CLGs often are called upon to offer their views on the SHPO's programs. They have a special responsibility to help the SHPO shape the statewide historic preservation plan, which the National Historic Preservation Act requires of all SHPOs.

In addition to the strong ties certification fosters between local governments and the SHPO, CLG status gives local governments additional authority and responsibility regarding nominations of local properties to the National Register of Historic Places.

CLGs review the nominations and give an official opinion on the property's eligibility for National Register listing. Beyond this, joining the CLG program enables a local government and its historic preservation commission to become part of a statewide and national preservation network. CLGs receive statewide newsletters, National Park Service preservation publications and journals, as well as announcements and invitations to preservation conferences, workshops, and related events. Finally, in addition to these tangible benefits, many local governments view CLG status as an opportunity to enhance the image of their local preservation efforts. Certification by the SHPO with the concurrence of the National Park Service is seen by many, including state and federal agencies, as recognition of a certain level of professionalism and expertise in the local preservation program.

We offer the following link to the DAHP's website listing all of the state's 69 participating CLG's (many more than Mr. Connelly apparently knew about?): <http://www.dahp.wa.gov/clg-program-participants>

We encourage interested parties to peruse the sample ordinances provided by DAHP at <http://www.dahp.wa.gov/sample-ordinances-design-review> . The City of Roslyn, City of Oysterville, City of Wenatchee, City of Seattle, King County, City of Everett, City of Bothell, City of Ritzville, Clark County, City of Vancouver, and many others have Landmarks or Preservation Commissions that have been given regulatory authority under local ordinances. Furthermore, many of the CLG participants have a professional Preservation Planner on staff, which Ellensburg does not, meaning that decisions not made by the LDC would be made by individuals with no education or experience in the subject matter.

One legal case found on the Municipal Research and Service Center website seems to implicitly uphold the authority of local preservation boards:

Butnick v. City of Seattle, 105 Wn.2d 857, 719 P.2d 93 (1986)

In commanding building owner to remove and replace a parapet/pediment, the Pioneer Square Historic Preservation Board did not work an unconstitutional taking of property. Local governments may enact land use restrictions or controls to enhance quality of life by preserving the character and desirable aesthetic features of a city. Furthermore, the estimated cost of replacing the parapet does not impose an unnecessary or undue hardship on the property owner, considering the building's high market value and income-producing potential.

Another document found on the Municipal Research and Service Center website, entitled "A Citizen's Guide to Protecting Historic Places: Local Preservation" includes the following:

3. Preservation Commissions

Some entity within local government must be charged with administering the ordinance. Usually this is a preservation or design review commission comprised of local citizens. Many ordinances require preservation commissioners to have special expertise in certain disciplines, such as architectural history, architecture, law or real estate, to guard against claims or arbitrary and capricious decision making. Some ordinances call for representation by the city planning board on the commission to ensure that local planning goals are related to historic preservation. The qualifications of commission members as well as their terms of office need to be spelled out.

4. Commission Powers and Duties

Most commissions are charged with the duty to conduct historic surveys, maintain inventories, and keep adequate records of their actions. Their authority over the designation and regulation of historic properties varies, however. **Some commissions may only make recommendations** to other governmental bodies--e.g., a planning board or city council--**whereas others have the final word on whether and how historic properties may be altered. Although a property owner must submit development or rehabilitation plans to a commission with merely advisory powers, he or she need not follow the commission's recommendations. Obviously the more authority vested in the commission, the stronger the protection for historic sites** (emphasis added).

There are numerous other documents that support our premise that local Landmarks or Preservation Commissions need to be the body with regulatory authority in this arena, with appeals to the Hearing Examiner or City Council, as the case may be.

The Landmarks Commission is different from other city boards & commissions, in that its functions are prescribed by federal and state law. If this commission becomes recommendatory only, it is most likely that the applicant will not attend the "voluntary meeting," and choose instead to appear at the hearing, where the recommendatory body will simply have a one-way report of finding of facts and conclusions,

and the City Council or Staff, Hearing Examiner will then have to decide (lacking wholly in the professional expertise) whether the proposed actions meets the Secretary of the Interior's Standards for Historic Preservation. I don't think this is what anyone in staff or Council wants to have happen.

MEMORANDUM

To: Mike Smith
Meg Ludlum

From: Fennelle Miller

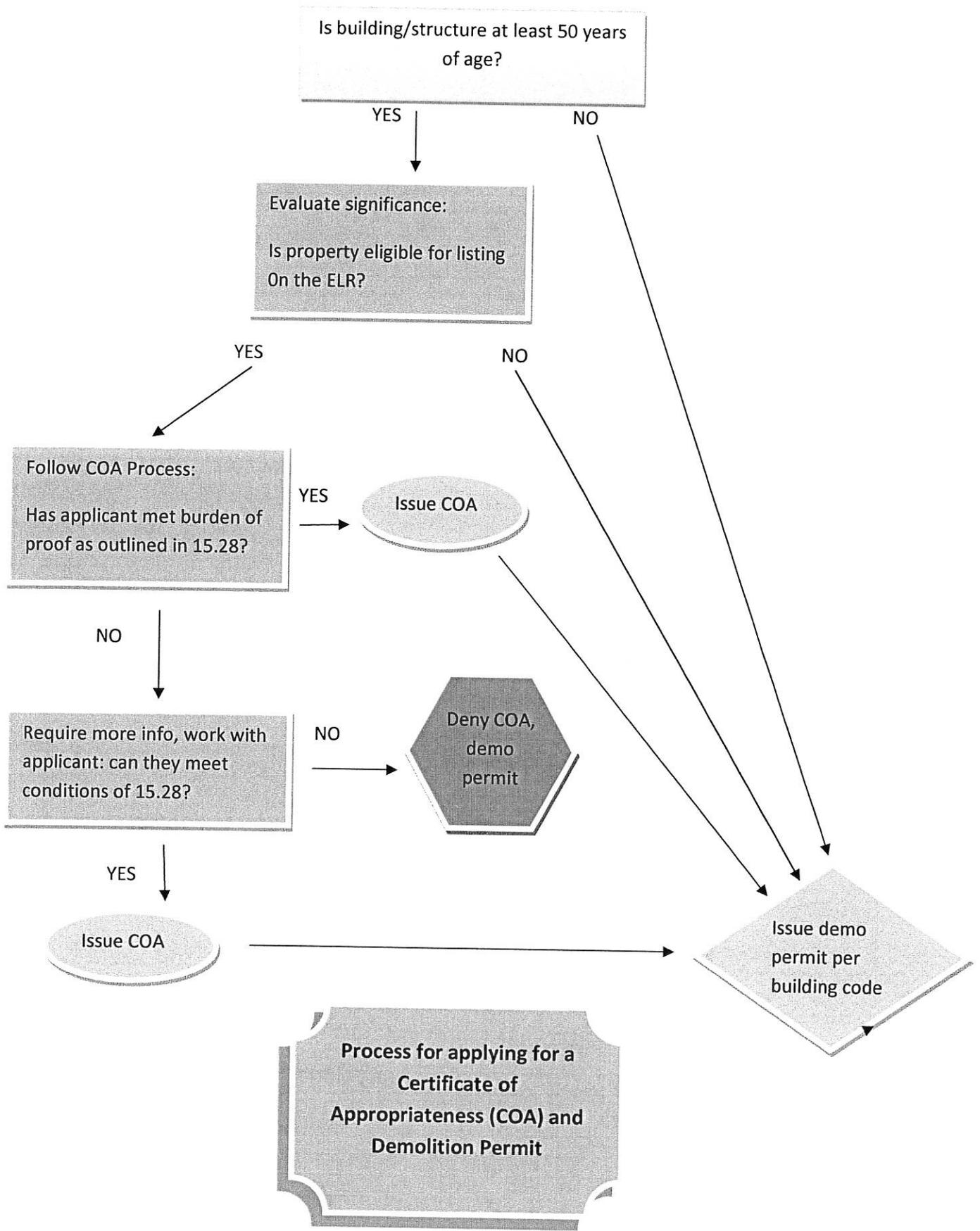
Date: 25 March 2013

RE: Historic Preservation & the Land Use Code Update

1. Preserving historic buildings cannot be limited to Landmarked buildings. If we are to save our important historic buildings and structures, we must acknowledge that demolition cannot be allowed to take place on buildings and structures that are on *or eligible for listing on* the ELR, Washington State Heritage Register (WSHR), Heritage Barn Register (HBR), or National Register of Historic Places (NRHP) without following the Certificate of Appropriateness (COA) process.
 - a. This means that the demolition permit process will have to include a requirement that a building or structure over 50 years of age must be evaluated for listing on the ELR, and this must be done by an historic preservation professional or by the City Landmarks and Design Review Commission.
2. If there is a building or structure that is listed on one of the registers, or has been determined to be eligible for listing on a register, the clock commences, demolition should be delayed for 120 days, and the following steps should be taken [this should be illustrated in a flow chart]:
 - a. Applicant is required to prove that there is no reasonable and prudent means of preserving the property in-place. This can be through continued use or adaptive re-use. Input from others in the community and the L&DRC should be taken into consideration when deciding whether applicant has proved this or not. Should another portion of the City code (parking, open space, etc.) be in conflict, that portion of the code may be waived to allow/encourage preservation of eligible or listed buildings and structures. Preservation is the preferred option. This option should be explored over a period of not less than 30 days.
 - b. If applicant successfully proves that there is no reasonable and prudent alternative to not preserving the historic property, then applicant must attempt to market the building or structure for removal from the site, and preservation intact on another parcel. This must be demonstrated with a receipt from a notice placed in the local daily newspaper, and by posting the property in a conspicuous manner, including a sign measuring no less than 3' x 5' (reading something like "Free House -Must be Moved"). The L&DRC will maintain a list of house movers; vacant, suitable lots; and permits required to move a building. Attempts to have the building or structure moved must be made over the course of no less than 60 days.
 - c. If the building or structure cannot be preserved in place, and cannot be moved, then materials must be made available to salvage for re-use elsewhere. This can be done by selling or donating the materials, and efforts to market the materials must be proven in writing, as with Step 2a above. There must be a minimum of 30 days allowed for this step.
 - d. Once all of these steps are followed, the L&DRC may issue a Certificate of Appropriateness (COA), allowing demolition of the listed or eligible historic

building or structure. Demolition may be allowed only if another building/structure is to be built in its place, and applicant can prove financial ability to construct a new building/structure.

Government-owned properties are not exempt from these requirements, except in the case of imminent danger to the public. Similarly, there should be an exemption allowed for privately owned properties when there is danger to life.



Landmarks and Design Commission Summary of Comments on Land Development Code Update

The landmarks and design commission's review identified four key issues.

1. **Scope of the commission's role.** This is where we comment, as requested by City Council, on the definition of major vs. minor projects. We are proposing that the commission have a smaller role in design review (i.e., none at all, if the code is followed, except for landmarks properties and districts), but that it have a role in reviewing all departures from the design standards, except for single family and duplex residential projects, as well as all projects involving a landmarked property or a property in a landmark district. This proposal implies that the distinction between major and minor project design review would no longer be needed if the design standards are sufficient, as the land development code update sought to make them.

2. **The commission's authority.** While the commission would like to focus more narrowly on historic preservation and the associated design review, we believe that the commission needs the authority to make decisions on these matters rather than recommendations to the director, who lacks both time and expertise to make such decisions. Members of the landmarks and design commission – alone among the city's commissions – are required to possess interest, involvement, and professional expertise in fields related to their responsibilities (historic preservation and design review). Even the city's preservation planner (should there be one in the future) may not duplicate the commission's collective expertise, assuming decisions were delegated and s/he had the time.

We believe that the commission, not the director or his/her designee, should be the decision-maker on issues regarding historic/landmarked properties. Our detailed comments below suggest a modification to the proposed Type II process that would allow the commission to retain this authority.

3. **Demolition.** We have proposed some improvements to demolition procedures for historic properties that were suggested after the three buildings on University Way were demolished. We have added these to 15.28.090(D) and 15.28.050(A), as well as changed Table 15.21.050(B).

4. **Sign review, including murals,** on which the need for a policy was highlighted by recent installations. We have added this kind of sign to Chapter 56, with a definition in 15.13.130 and related changes in 15.22.020(B) and 15.28.090. Other comments on Article 5 are also included in the detailed comments that follow.

NOTE: The Landmarks & Design Commission has made some changes to the Landmarks Code (15.28) and requests these changes be cross-referenced to the upcoming Building Code revisions – specifically, the demolition section. The primary foci of these changes include the ability of the city to place publicly owned eligible historic properties on the Ellensburg Landmarks Register (ELR); the removal of the exemption of single family houses on the ELR from having to comply with the terms of the Certificate of Approval Process; and the drafting of additional language in the proposed Demolition section of the building code. The purpose for these proposed changes is to bring these sections of the Land Use Code and Building Code into alignment with the Comp Plan and the Energy Efficiency and Conservation Strategy, along with the stated goals of 15.28.

Landmarks and Design Commission
Detailed Comments on Land Development Code Update

15.13 Definitions ...

15.13.030 A definitions.

Arts commission. "Arts commission" means the duly constituted arts commission of the city of Ellensburg. [Ord. 3587 § 1, 1987; Ord. 3269 § 1, 1980.]

15.13.030 C definitions.

Certificate of approval or COA. "Certificate of approval" or "COA" means the approval issued by the landmarks and design commission for alterations to a designated landmark, or to a property located within a landmark historic district, certifying the changes as having no adverse effect on the significant features of the property that contributed to its designation.

Class of properties eligible to apply for special valuation in the city of Ellensburg.

"Class of properties eligible to apply for special valuation in the city of Ellensburg" means only those properties listed on the Ellensburg landmarks register or the National Register of Historic Places, or properties contributing to an Ellensburg landmarks register historic district, which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

Commission. "Commission" means the duly constituted planning commission of the city of Ellensburg. [Ord. 2810 § 2.02, 1970.]

15.13.080 H definitions.

Historic resource inventory. "Historic resource inventory" means the city-maintained list of historic properties that have been surveyed and documented by or on behalf of the city.

Historic mural. An "historic mural" is a mural that may contain advertising, which was originally created more than 50 years before the current date and which has been or will be inventoried by the landmarks and design commission.

Historic properties. "Historic properties" are those buildings, structures, sites and districts that are 50 years of age or older.

15.13.120 L definitions.

Landmarks and design commission. "Landmarks and design commission" means the duly constituted landmarks and design commission of the city of Ellensburg. [Ord. 4245, 2000.]

Mural. A "mural" is a singular work of visual art, ~~which may include historic advertising (advertising that is itself at least 50 years old) only, painted or otherwise applied or directly on or on materials attached to~~ on a building. New murals may not contain advertising.

15.13.160 P definitions.

Planning Commission. "Planning Commission" means the duly constituted planning commission of the city of Ellensburg. [Ord. 2810 § 2.02, 1970.]

15.21 Permit Review Process "Types" ...

15.21.020 Determination of proper permit review process type. (NEW) ...

D. Decision-maker(s). Applications processed in accordance with subsection (B) of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decision-maker(s). The city council is the highest, followed by the hearing examiner or landmarks and design commission or planning commission, as applicable, and then the director.

15.21.030 Permit review process types, defined. (NEW) ...

B. Review Process Type II. Unless otherwise specified, ~~the~~ director makes most of these decisions based on standards and clearly identified criteria. These decisions require public notice but typically do not include a public hearing. This process type requires that the ~~director~~ reviewing authority issues a written report that sets forth a decision to approve, approve with modifications, or deny the application. The ~~director's reviewing authority's~~ report will also include any threshold determinations under SEPA or critical area final determinations under ECC Article 6. Such projects are appealable to the hearing examiner.

15.21.040 Permit review process types: Decision-making, procedures & notice requirements. (NEW)

Table 15.21.040(A) Decision making and appeal process for permit review process types.

	Type I	Type II	Type III	Type IV	Type V
Final decision made by:	Director	Director or Designated body	Hearing Examiner or Designated body	City Council	City Council
Recommendation made by:	NA	NA	NA	Designated body	Planning Commission
Open record predecision public hearing - decision	No	No	Yes	Yes	Yes
Open record appeal public hearing - appeal	No	Yes	No	No	No
Closed record appeal hearing	No	No	Yes	No	No
Appeal to:	Superior Court	Hearing Examiner	Hearing Examiner (if decision by Designated Body, Otherwise by City Council)	Superior Court	Superior Court or to the Growth Management Hearings Board if GMA action
Judicial appeal (see ECC 15.23.110)	Yes	Yes	Yes	Yes	Yes

15.21.050 Projects under permit review process types. (NEW)

Table 15.21.050(A) Projects under Type I review process. Where superscript numbers are included in a cell, please reference the applicable number under "Notes/conditions" below the table.

Type I project ¹	Decision-making, procedures or noticing variation from ECC 15.21.040	Relevant ECC chapter or section(s)
Administrative decision	No variation	15.13.010(D)
Permitted use	No variation	Chapter 15.31
Commercial wireless communication support towers, antenna arrays and facilities in residential zones	No variation <u>except prohibited in landmark districts on historic properties</u>	15.34.080
Boundary line adjustments	No variation	15.26.050
Plat vacation	No variation	15.26.080(B)
Plat alteration	No variation	<u>15.26.080(C)</u>
Final subdivision Approval	Final decision by City Council; See 15.26.070	15.26.070
Final short subdivision approval	See 15.26.090	Chapter 15.26
Formal code interpretation	No variation	15.11.060(E)
Minor changes to approved preliminary subdivision	No variation	15.26.080
Non-conforming use Determination	No variation	Chapter 15.24
Critical area allowed activity	No variation	Article 6
Critical area final determination	No variation	Article 6
Site development permit	No variation	15.26.090
Small wind energy system (one per parcel) ²	No variation <u>except prohibited in landmark districts on historic properties</u>	15.34.070
<u>Signs – except landmarks register</u>	<u>No variation</u>	15.25.030 <u>Chapter 15.56</u>
Home occupation	No variation	ECC 15.34.020

Formatted: Space After: 0 pt, Line spacing: single

Formatted: Highlight

Formatted: Highlight

Formatted: Space After: 0 pt, Line spacing: single

Notes/conditions:

1. If any Type I project requires a SEPA threshold determination it automatically becomes a Type II project.
2. Where more than one small wind energy system is proposed for a parcel, then a conditional use permit is required.

Table 15.21.050(B) Projects under Type II review process.

Type II project	Decision-making, procedures or noticing variation from ECC 15.21.040	Relevant ECC chapter or section(s)
Code interpretation	No variation	15.11.060(E)
Temporary use	No variation	15.25.010
Design review, minor project	No variation	15.25.030 Article 5 (Project Design)
Minor project design review with departure(s) request Minor project design review with departure(s) request	No variation Decision by <u>landmarks & design commission at a public meeting (see ECC 15.13.160)</u>	
Design review, major project	Recommendation by Landmarks & Design Commission at a public meeting (see ECC 15.13.160) <u>No variation</u>	15.25.030 Article 5 (Project Design)
Commercial wireless communication support towers, antenna arrays and facilities in commercial and industrial zones	Recommendation by landmarks & design commission at a public meeting (see ECC 15.13.160) <u>No variation; prohibited in landmark districts on historic properties</u>	15.34.080
Signs – minor project	No variation	15.25.030 Chapter 15.56
Signs – major project or landmarks district register and historic resource inventory properties	Recommendation Decision by Landmarks & Design Commission at a public meeting (see ECC 15.13.160); <u>Appeal open record to Hearing Examiner</u>	15.25.030 Chapter 15.56
Landmark certificate of approval (COA)†	Landmarks & Design Commission <u>recommendation decision</u> after public meeting; <u>decision by director</u> ; Appeal open record to <u>Hearing Examiner city council</u>	15.28.090
Landmarks register listing	Landmarks and design commission recommendation after public meeting; <u>decision by director</u> ; Appeal open record to <u>city council</u> Landmarks and design commission decision after public meeting; Appeal open	15.28.080

Formatted: Space After: 0 pt, Line spacing: single

Formatted: Highlight

Formatted: Highlight

Formatted: Space After: 0 pt, Line spacing: single

	<u>record to city council</u>	
Landmarks register and historic resource inventory properties demolition	Landmarks & Design Commission recommendation decision after public meeting; decision by director; Appeal open record to City Council	15.28.090
Short subdivision, preliminary	No variation	Chapter 15.26 (Subdivisions) Article 4 (Community Design)
Critical area initial determination	No variation	Article 6
Critical area exemption	No variation	Article 6

Formatted: Space After: 0 pt, Line spacing: single
Formatted: Highlight

15.22 Permit Review Procedures ...

15.22.020 Application. (NEW) ...

B. Submittal requirements.

List of materials to be submitted with application for a mural:

1. Drawings (elevation, site plan), photographs of building, map of land uses within 300'
2. Written description, including materials used and how mural will be affixed
3. Color image of mural and artist's portfolio
4. Plans for financing, installing, maintaining the mural
5. Authorization from property owner

15.24 Nonconformance (13.46)

15.24.010 Purpose. (13.46.020) ...

C. Encourage the adaptive re-use of existing non-conforming public facilities, which will continue to serve the community, and to ensure public review of redevelopment plans by allowing:

1. Temporary re-uses of closed public school facilities retained in school district ownership, and the reconversion of a temporary re-use back to a school use;
2. Permanent re-use of surplus nonresidential facilities (e.g., schools, fire stations, government facilities) not retained in school district ownership; or
3. Permanent re-use of historic structures listed on the National Register or designated as city landmarks by the city historian Ellensburg historic resource inventory and accepted by the city council.

Formatted: Highlight

D. Encourage the re-use of all historic properties eligible for the Ellensburg landmarks register.

15.24.050 Nonconforming structure. (NEW)

Except for historic properties on the Ellensburg historic resource inventory, no nonconforming structure may be expanded, enlarged, or extended where they increase an existing nonconformity. Nonconforming buildings may be repaired, maintained and rebuilt provided such work does not increase an existing nonconformity.

Formatted: Highlight
Formatted: Highlight
Formatted: Highlight

15.25 Review and Decision Criteria ...

15.25.020 Site development permits – Type I or II review process. (NEW)

A. Purpose. ...

7. (NEW) Preventing adverse impacts to historic properties.

15.25.030 Design review – Type II review process. (Chapter 1.45)

A. Purpose.

1. To promote the public health, safety, and general welfare of the citizens of the city;
2. To recognize that land use regulations aimed at the orderliness of community growth, the protection and enhancement of property values, the preservation of historic properties, the minimization of discordant and unsightly surroundings, the avoidance of inappropriateness and poor quality of design and other environmental and aesthetic objectives provide not only for the health, safety and general welfare of the citizens, but also for their comfort and prosperity and the beauty and balance of the community, and as such, are the proper and necessary concerns of local government;
3. To increase awareness of design considerations among the citizens of Ellensburg; and
4. To create a review process that balances flexibility and predictability for applicants, staff, public officials, and community members. ...

B. Definition of minor and major project design review.

Both major and minor design review projects, as defined in ECC 15.13.04130, are reviewed for conformance with applicable land use and zoning provisions in Article 3, applicable community design provisions in Article 4, and applicable project design provisions in Article 5, plus other applicable provisions set forth in the LDC. Due to their size, major design review projects require additional review, as set forth in subsection (D) of this section below.

Exceptions: All activities involving the exterior modification of any property that is on the landmarks register must undergo design review as set forth in ECC 15.28.090.

The director, however, shall have the authority to determine if a minor exterior modification to a non-landmarks register property is not significant, and therefore does not require design review, based on factors such as the scope, location, context and visibility of the change or modification. The director may determine that design review is not required for such minor exterior modifications including, but not limited to: repainting structures to similar colors; relocating, modifying or adding mechanical equipment; reorganization of portions of parking lots involving less than 5 spaces; modifications to locations of existing lighting; or minor changes to existing approved landscaping. Except for landmarks register properties, there shall

be a rebuttable presumption of nonsignificance, and therefore no requirement of a formal design review, if all of the following conditions are met:

- a. The cost of the work does not exceed 15 percent of the structure's current Kittitas County assessed value as of the time the initial application for the work is submitted;
- b. There is no additional structure or parking lot, or any enlargement of or addition to an existing structure or parking lot;
- c. The work does not result in a reduction in the landscaped area;
- d. The work does not remove or diminish an existing perimeter landscape screen area;
- e. The work does not include new or additional service or mechanicals areas; and,
- f. The work does not include additional exterior lighting or a new or enlarged exterior sign.

If there is no current Kittitas County assessed value for a structure, a current appraisal of the structure, which shall be provided by the applicant and acceptable to the director, shall be used as the value point of reference for the structure.

C. Procedures. Minor and major design review projects are subject to the Type II review process as set forth in ECC Chapter 15.21, with the following exceptions:

1. Major design review projects require a pre-application meeting (see ECC 15.22.010); and
2. Projects which include one or more departure requests require a review and ~~recommendation approval~~ by the landmarks and design commission at a public meeting as defined in ECC 15.13.160. The proceedings at a public meeting may be recorded and included in the permit application file. Public notice for a public meeting shall be the same as set forth for a public hearing (see ECC 15.23.020). ...

15.25.070 Master site plans for regional retail commercial projects – Type IV review process. (13.25.070 and 13.25.110)

COMMENT: The landmarks and design commission appreciates its continued role in this process and thinks the proposed code is much improved from the current one.

C. Decision criteria. ...

9. Types of uses and development permitted. Uses defined as "regional retail commercial" development in ECC 15.13.180. In addition, the uses allowed outright in the ~~F-C-T~~ zone are allowed in a regional retail commercial development located in the ~~F-C-T~~ zone. The uses allowed outright in the C-H zone are allowed in a regional retail commercial development located in the C-H zone; and

10. The regional retail commercial master site plan and subsequent development shall comply with applicable project design provisions of ECC Article 5. Where there is a conflict between the provisions of ECC Article 5 and this section, the provisions of this section shall apply.

15.25.080 Comprehensive plan amendments – Type V review process. (NEW)

C. Procedures.

4. Review of text and map amendments. The city may request other city boards or agencies or other governmental entities to provide comments and recommendations on comprehensive

plan amendments. The comments and recommendations must be submitted to the city by the date of the planning commission's hearing unless the city grants an extension of time. In proposing any changes to its comprehensive plan, the city shall notify the department of community, trade and economic development (CTED) [this agency no longer exists; which agency should be here instead?] of its intent to adopt such amendments at least 60 days prior to final adoption. The city shall transmit a complete and accurate copy of its comprehensive plan to CTED within 10 days of adoption in accordance with state law.

15.27.120 Threshold determinations

D. Environmental checklist.

3. The responsible official shall use the environmental checklist to determine the lead agency. If the city is the lead agency, information provided in the environmental checklist, critical area information form or critical area report and/or COA application shall assist the responsible official in making a threshold determination.

15.28 Ellensburg Landmarks Register & Procedures (Chapter 1.45)_ ...

15.28.010 Short title. (1.45.040)

The following sections shall be known and may be cited as the "landmarks and design ordinance" of the city of Ellensburg." [Ord. 4245, 2000.]

15.28.040 Members, qualifications and terms. (1.45.200) ...

C. The commission shall include at least 2 owners of property ~~from~~ within the downtown and First Railroad Addition historic districts, as defined in 15.30.060(B) and (C) or a property individually listed on the Ellensburg landmarks register. One member shall be a ~~member representative of the city's downtown task force and shall be designated by the downtown task force~~ Ellensburg Downtown Association (EDA) for a term of 4 years or until no longer a downtown task force member. One member shall be a general at-large position. The commission shall include at least 3 professionals (active or retired) who are selected from work or worked among the related fields of history, architecture, construction, landscape design, historic preservation, planning, anthropology, archaeology, cultural geography, American studies, land use law, or real estate.

...

15.28.050 Powers and duties. (1.45.240)

The primary role of the Ellensburg landmarks and design commission is two-fold: historic landmarks preservation and design review.

A. Historic landmarks preservation. In the area of historic landmarks preservation, the primary role of the Ellensburg landmarks and design commission is to identify and actively encourage the conservation of Ellensburg's historic resources through a register of landmarks and historic resources and a review of proposed changes to landmarks; to raise community awareness of Ellensburg's history and built environment; and to serve as the city's primary

resource in matters of heritage, historic planning, and preservation. In carrying out these responsibilities, the Ellensburg landmarks and design commission shall engage in the following:

1. Conduct and maintain a comprehensive Ellensburg historic resource inventory of historic places within the boundaries of the city of Ellensburg; publicize and periodically update inventory findings. Properties included in the inventory shall be noted on official zoning records with an "HI" (for historic inventory). This notation shall not modify the underlying zone classification. ...

13. Provide current information to property owners on techniques and appropriate treatments for maintaining and rehabilitating historic properties. This may take the form of pamphlets, newsletters, workshops, or similar activities.

14. Compile a list of historic preservation consultants, building movers, and available vacant lots to assist in avoiding demolition of historic buildings. Consider proposing a property maintenance ordinance to assist with mothballing vacant historic buildings.

~~14~~15. Conduct educational and interpretive programs pertaining to Ellensburg's historic resources.

~~15~~16. Serve as the local review board for special valuation as provided under Chapter 84.26 RCW and ECC 15.28.110.

B. Design review. In the area of design review, the primary role of the Ellensburg landmarks and design commission is to review and approve ~~make recommendation on major design review projects, certain minor design review projects (those seeking specific departures),~~ and modifications (including signage) to a registered landmark or any property located within a landmark district. See ~~ECC 15.2513.0430~~ ECC 15.50.030 for the definitions of major and minor design review projects ECC 15.50.030 for information on departures and ECC 15.28.090 for the design review process for landmark property/district related projects. The landmarks and design commission is available to advise any project developer on historical compatibility and to assist in resolving disputes.

15.28.080 Ellensburg landmarks register. (1.45.360)

B. Process for designating properties to the landmarks register (a Type II review process exception). ...

1. Any person may nominate a building, structure, site, object, or district for inclusion in the Ellensburg landmarks register. Members of the landmarks and design commission or the landmarks and design commission as a whole may generate nominations. In its designation program, the landmarks and design commission shall consider the Ellensburg historic resource inventory and the Ellensburg comprehensive plan. Owner(s') consent is required before the landmarks and design commission's consideration of the nomination, except in the case of non-city publicly owned properties. ...

5. Whenever the landmarks and design commission finds that a nominated property meets the criteria set forth in subsection (A) of this section, ~~it shall make a recommendation to the director that the property should~~ shall be officially listed as a landmark, landmark site, or landmark district or part thereof. Within 10 working days of the decision about whether to list the property, ~~the director shall review the record and the landmarks and design commission~~

and recommendation and shall render a decision on whether or not to officially list the property and notice of the decision shall be sent to the property owner(s), the author of the nomination, any lessees, the preservation planner, and the Ellensburg city council. ...

8. Whenever the ~~director~~ landmarks and design commission rejects the nomination of all or any part of property, ~~the director~~ it shall, within 10 working days, issue a written decision including reasons supporting the determination that the criteria set forth in subsection (A) of this section have not been met. Notice of the decision shall be sent to the property owner(s), author of the nomination, any lessees, the preservation planner, and the Ellensburg city council.

9. The ~~director~~ landmarks and design commission's decision on a COA may be appealed to the city council in an open record appeal hearing.

C. Downtown and residential historic districts. ...

3. The provisions of ECC 15.28.090 and 15.28.100(C) shall hereafter apply to the downtown historic district and the First Railroad Addition historic district.

15.28.090 Review of changes to landmarks register properties. (1.45.380)

A. Review required.

1. No person shall alter, repair, enlarge, newly construct, relocate, or demolish any registered landmark, or any property located within a landmark district, nor install any exterior sign or mural pursuant to subsection (A)(2) below, without review by the landmarks and design commission and approval of a certificate of approval (COA). In the case of murals, the arts commission shall also review and provide input to the landmarks and design commission on the artistic content and method of application (colors, artistic design, durability and impact of materials on the building and environment) of any mural proposed to be located within a landmark district or on a listed property.

2. This review shall apply to all exterior features of the property visible from a public right-of-way. This review applies whether or not a permit from the city of Ellensburg is required.

3. Review of alterations to Ellensburg landmarks register properties under this chapter is in lieu of design review required for ~~both major and minor~~ projects and sign review per ECC 15.21.050(B).

B. Exemptions. The following activities are exempted from landmarks review and do not require a COA: maintenance and repairs in-kind which do not alter the historic character-defining appearance of exterior features visible from a public right-of-way and do not utilize substitute materials; repairs to or replacement of utility systems which do not alter exterior features visible from a public right-of-way; and all interior work. ~~Except for exterior changes to properties on the historic resource inventory, changes to existing owner-occupied single-family homes, both exterior and interior, are exempted from landmarks review, and do not require a COA. Single-family homes applying for incentives are not exempt. ...~~

C. Review process - (a Type II review process exception).

1. Requests for review and issuance of a certificate of approval.

a. Application for a COA shall be made by filing an application for such certificate with the preservation planner on forms provided by the department. A written description of materials

required for the landmarks and design commission's review, including but not limited to site plans, elevations, and material samples, shall be provided to the applicant. Preliminary plans may be submitted to the preservation planner for review and an advisory opinion. ...

2. Landmarks and design commission review.

- a. At a regularly scheduled public meeting, the landmarks and design commission shall review the proposed work according to the design provisions set forth in ECC 15.53.020 and other relevant sections of Article 5 of this title. After concluding the public meeting, the landmarks and design commission shall ~~make a recommendation to the director as to approval, approve or disapproval~~ of the application. Recommendations to approve. Approval of projects shall be based upon appropriateness of design as reflected in said standards and guidelines provisions.
- b. The landmarks and design commission may ~~recommend approval~~ with or without conditions or ~~recommend disapproval~~ of an application. The ~~recommendation~~ decision of the landmarks and design commission shall be ~~transmitted to the director~~ rendered within 15 working days of the date of receipt of a completed application, unless the parties agree to an extension. The landmarks and design commission's findings in support of any ~~recommendation~~ decision shall be in writing and shall cite the applicable design provisions.
- c. ~~The director shall then review the record and the recommendation and findings of fact from the~~ If the landmarks and design commission ~~and makes~~ a decision to issue a COA, ~~and such certificate shall be promptly issued to the applicant forthwith and by the preservation planner shall promptly transmit~~ and a copy of such certificate shall be transmitted to the building official.
- d. If the ~~director~~ landmarks and design commission denies the application, the applicant and the building official shall be notified of such denial, including the reasons why approval of the application is not warranted.
- e. The director's decision on a COA may be appealed to the ~~hearing examiner~~ city council in a closed record appeal hearing.

D. Demolition. NOTE: This section should provide citation placeholders to demolition code language to be developed by new building official in building code.

Application for a COA for whole or partial demolition of a historic property listed in the Ellensburg landmarks register, or located in an Ellensburg landmark district, historic resource inventory shall be reviewed by the landmarks and design commission in accordance with the procedures set forth in subsection (C) of this section and ECC 15.28.100 with the following exceptions:

1. The landmarks and design commission shall meet initially with the applicant to consider alternatives to demolition, including available incentives for preservation and the possibilities of moving, mothballing, or deconstructing the building [citation]. These negotiations may last no longer than ~~90~~ 120 days from the first meeting of the landmarks and design commission, unless either party requests an extension. During these negotiations, the applicant should allow the commission to review its site and building plans for the replacement building and evidence of the applicant's financial ability to construct the replacement building. A demolition notice must also be placed

Formatted: Highlight

Formatted: Highlight

on the property and published in the newspaper. Construction must begin within one year after demolition.

2. If no request for an extension is made and the existence of a condition of unreasonable economic return, as set forth in ECC 15.28.100 and [same citation], has been proven and no alternative to demolition has been agreed to, the landmarks and design commission shall ~~make a recommendation for approval to the director~~ issue a COA to the applicant. The preservation planner shall promptly transmit a copy of such certificate to the building official.
3. The landmarks and design commission may ~~recommend~~ require conditions of approval including, but not limited to, mitigation measures.
4. ~~The director shall review the record and the landmarks and design commission recommendation and shall make a decision to approve the issuance of a COA or to deny the demolition application~~
5. Any person aggrieved by any action of the ~~director~~ landmarks and design commission in denying or approving a demolition request may file a notice of appeal as set forth in Chapter 15.23, however, such appeal shall be to city council rather than to the hearing examiner.

15.30 Zones, Maps and Designations ...

15.30.050 Commercial and mixed-use zones.,,

D. Residential office zone (R-O).

8. (NEW) Encouraging historic preservation or adaptive re-use of historic properties.

98. Use of this zone is appropriate for: ...

G. Light industrial zone (I-L).

2. ~~Providing for eating and drinking establishments that serve other permitted uses in the zone;~~
3. ~~Providing for offices as an accessory use, except where owners have purchased development rights from county properties within defined sending areas (subject to the city's adoption of a TDR program);~~

COMMENT: the reason for suggesting this deletion is that allowing them in I-L erodes the idea that the historic downtown is the center for these uses and will discourage continued use and rehab of historic buildings. This comment is not to preclude ancillary uses such as a brewpub in a brewery.

15.31 Permitted Uses

15.31.040 Use tables.

COMMENTS:

Residential – footnote needs to be added to table stating that ground floor residential is prohibited within 30' of the sidewalk in the C-C and C-CII zones according to 15.51.050(E).

Retail – Unless ancillary to general retail activity, Greenhouses & Nurseries should not be allowed in C-C or C-CII because they are land-intensive, and since vacant land is at a premium in these zones, this use should be prohibited as competing with other retail uses that require less land.

Hospitals in CC?? Why? Ditto nursing homes and Schools and Interim Recycling Facilities and Utility Facilities.

UNDER NO CIRCUMSTANCES SHOULD SMALL WIND ENERGY SYSTEMS OR ADDITIONAL WIRELESS COMMUNICATIONS FACILITIES BE ALLOWED IN EITHER HISTORIC DISTRICT.

15.32.030 Form and intensity standards table – Residential zones. (NEW)

Table 15.32.030 Form and intensity standards table – Residential zones.

Development conditions:

12. Accessory structures and accessory dwelling units, where built on top of an existing garage that abuts an alley, may be built to a property line abutting an alley, provided sufficient turning movement and emergency vehicle access is provided within the alley. However, when the structure and/or unit is accessory to a historic property on the historic resource inventory, the process outlined in 15.28.090 shall be followed.

Formatted: Highlight

Formatted: Highlight

15.33 Density Bonus Incentives

15.33.010 Purpose. ...

E. To encourage the preservation of valuable resource lands outside of the city, and to encourage the preservation or adaptive re-use of historic resources inside the city.

15.33.020 Density bonus system for the R-S and R-L zones. (NEW) ...

E. Historic preservation. ...

2. Eligibility. Properties eligible for this density bonus option must feature a property that is eligible for historic landmark listing under the Ellensburg landmarks register, per ECC

15.28.080. Subject properties must be in habitable or usable condition, or improved to habitable or otherwise usable condition. Developments may also receive the density bonus credit if they are moved to another site within the city provided the applicable structure building/ structure or site meets applicable standards set forth in this Title.

15.34.070 Small wind energy systems. (NEW)

C. Where permitted.

3. SWES systems are not permitted on properties on the historic resource inventory properties.

Formatted: Highlight

15.34.080 Commercial wireless communication support towers, antenna arrays and facilities. (15.34.400-700) ...

D. Facilities within an Ellensburg landmark district.

Construction of a wireless communication support tower, wireless communication antenna array or wireless communication facility within an Ellensburg landmark district are subject to the procedures set forth in ECC 15.28.090 on historic properties on the historic resource inventory is not permitted.

Formatted: Highlight

Formatted: Highlight

Article 5: Project Design

15.50 Introduction ...

15.50.030 How the provisions of this article are applied. (NEW) ...

D. Departures are provided for specific standards. They allow alternative designs provided the reviewing authority determines the design meet the purpose of the standards and guidelines and other applicable criteria. See ECC 15.21.060 for related procedures associated with departures. All projects featuring one or more departure requests will be reviewed approved by the landmarks and design commission at a public meeting as set forth in ECC 15.25.030(C). The reviewing authority shall document reasons for approving all departures (to be maintained with project application records) for the purpose of providing consistency in decision-making by the city. See ECC Chapter 15.21 provisions for Type II projects for further details.

....

15.51.040 Street frontage type maps. (NEW)

Figure 15.51.040(A). Index map for street frontage type designations.

NOTE: insets have wrong numbers: 14.XXX should be 15.XXX.

Figure 15.51.040(B) sets forth street frontage type designations for the greater Downtown area, which is roughly bounded by West 9th Avenue in the north, the railroad in the west, Mountain View Avenue in the south, and Walnut Street in the east. (NOTE TO REVIEWERS: The streets surrounding the courthouse have been changed from Secondary to Storefront per council member comments received)
Other storefront streets need to be extended in downtown.

Figure 15.51.040(C) sets forth street frontage type designations for the Canyon Road corridor/south interchange area.

Why is there a separate designation (Secondary Street 2 for one project?)

Figure 15.51.040(D). Street frontage type designations for the west interchange area.
Dolarway/3rd Avenue should be a gateway street.

15.51.050 Storefront Street standards.

A. Applicability. Except in the downtown historic district, the standards herein shall apply to all designated Storefront Streets per ECC 15.51.040.

C. Parking location. [see Figure 15.51.050(B)]

Parking shall be located to the rear, below, or above storefronts. Where some off-street parking (both surface and structured) adjacent to the storefront street is unavoidable, except in the downtown historic district, no more than 60 feet of frontage shall be occupied by parking and vehicular access. New parking lots adjacent to street corners shall be prohibited.

G. Weather protection.

NOTE: Figure 51.050(A) is inconsistent with text (north & east vs. south & west).

I. Ground floor and façade heights.

1. The ground floor shall have a minimum floor-to-floor height of 15 feet, as measured from grade.

2. All storefront facades shall maintain a minimum height of 20 feet.

NOTE: These two requirements are confusing – how do they differ?

15.51.060 Secondary Street standards. (NEW) [see Figure 15.51.060(A)]

D. Parking location. [see Figure 15.51.060(B)]

No more than 50% of the street frontage can be occupied by off-street parking and driveways. DEPARTURES will be considered pursuant to ECC 15. 21.060 and ECC 15.51.130 below.

COMMENT: why are we allowing 50% for streetfront parking? Wouldn't 25% work just as well and prevent a Canyon Road-type landscape?

15.51.080 Landscaped Street standards. (NEW) [see Figure 15.51.080]

G. Parking location. No more than 50 percent of the street frontage can be occupied by offstreet parking and driveways. DEPARTURES will be considered pursuant to ECC 15.21.060 and ECC 15.51.130 below.

COMMENT: why can't we allow only a driveway leading to parking at rear, side, or underneath of building? 25% is plenty!

15.53.030 Architectural scale. (NEW)

G. Maximum façade width. [see Figure 15.53.030(G)]

NOTE: Text (120') is inconsistent with figure (100').

....

15.56 Signage (To replace current Chapter 3.12)

15.55.020 Scope. (current 3.12.040)

NOTE: this section should be numbered 15.56.020.

All signs erected on properties that are on the Ellensburg Landmarks Register (see ECC 15.28.080) shall meet the requirements of this chapter and shall also undergo design review pursuant to the requirements in ECC 15.28.090.

COMMENT: In general, the landmarks and design commission is pleased with the proposed sign code and thinks it reflects our input over the years.

15.56.145 Murals. (NEW)

Murals, as defined in 15.13.130, shall conform to the following requirements:

A. Permitted number of murals. Only one mural will be permitted on a building at a given time.

B. Minimum and maximum sizes. Murals should not be less than 32 square feet and shall not exceed 60 square feet in area. Exception: Where large expansive planar walls over 2,000 square feet in uninterrupted area occur, larger murals may be permitted provided that they do not overwhelm the size, scale, design and historic integrity of the building.

C. Location and design

1. Murals shall not be permitted on unpainted brick (?), unpainted or painted stone (?), wood sidings with surface detail, or any other material that does not have a planar or flat character. The surface to which the mural will be applied must be in good condition prior to the installation.
2. Murals shall not overlap or be incompatible with existing architectural details.
3. Murals on ~~Landmark Register properties and Historic Resource Inventory~~ historic properties must complement the architectural and historical character of the historic district, reinforce the architectural features of the building on which they are located, and be compatible with the appearance of adjacent buildings and community character.
4. Murals may not have electrical or mechanical components.
5. Three-dimensional murals are not allowed.
6. Murals must not be located on the primary street façade of buildings.
7. Murals must not damage or lead to accelerated deterioration of the building surface.
8. Murals shall not create traffic or safety hazards.

Formatted: Font color: Red

Formatted: Highlight

D. Duration and removal

1. The mural, as approved by permit, shall be maintained without alteration for a minimum of X years. During this time, alterations may be made or the mural may be removed only under the following conditions.
 - a. The building on which the mural is located is sold, or
 - b. The building or property is substantially remodeled or altered in a way that precludes continuance of the mural.
2. Alterations of the mural after the first X years from date of completion require approval of a new permit through the process in 15.28.090.
3. Removal of the mural after the first X years from date of completion does not require a permit or letter of intent.
4. Any associated materials that were used to affix the mural to the wall must be removed at the time of the removal of the mural. This includes, but is not limited to, mounting hardware or brackets, caulk or grout, and adhesives or glues.
5. Murals shall not be subject to the removal provisions of 15.56.210.

E. Installation and maintenance

1. The artist shall be under contract to complete the installation of the mural.

2. Murals shall be installed for durability and must be maintained by the building owner for the life of the mural or until the mural is removed.
3. Murals shall use materials, coatings, or other protective techniques that will resist vandalism, weathering by sun or water, and graffiti.

F. Existing murals

1. The landmarks and design commission will conduct a survey of existing murals and include those deemed historic in the Ellensburg historic resource inventory.
- 1-2. New murals shall not be painted over historic murals. These murals may not be repainted, painted out, removed, or otherwise disturbed unless the structural integrity of the building is at stake.
3. If the building is repainted, it must be done in a way that follows the Secretary of the Interior's Standards for Historic Preservation.
4. The landmarks and design commission will review the possibility of initiating a program to restore historic murals.

15.56.160 Non-conforming signs. (current 3.12.320)

Signs which were existing and in lawful use prior to the adoption of the ordinance codified in this chapter, except temporary, special signs, special event signs or signs on historic properties, which are not subject to pre-existing non-conforming sign status, shall be considered nonconforming signs and may continue in use subject to the following requirements:

Formatted: Underline

Formatted: Highlight

Article 6: Critical Areas

Footers name this article in all other articles as well.

Mike Smith

From: Fennelle Miller <fennelle@kvalley.com>
Sent: Tuesday, April 30, 2013 2:22 PM
To: Mike Smith
Cc: 'Meg Ludlum'; 'Carolyn Honeycutt'
Subject: FW: Time-Sensitive Question!

This is from the Deputy SHPO/Director of DAHP...

From: Griffith, Greg (DAHP) [<mailto:Greg.Griffith@DAHP.WA.GOV>]
Sent: Tuesday, April 30, 2013 1:05 PM
To: Fennelle Miller; Duvall, Megan (DAHP); Brooks, Allyson (DAHP)
Cc: 'Meg Ludlum'
Subject: RE: Time-Sensitive Question!

Fennelle, in response to your question (below), it is our opinion that landmarks/historic preservation commissions do have authority to regulate actions involving historic resources, but not through the CLG program itself, but rather through State statutes that enable local jurisdictions to regulate land use actions.

In regard to the CLG program, it is the National Historic Preservation Act does require that approved State historic preservation programs certify local governments that:

- (A) Enforces appropriate State or local legislation for the designation and protection of historic properties;
 - (B) Has established an adequate and qualified historic preservation review commission by State or local legislation.
- 16 U.S.C. 470

This language from the Act is mirrored in 36 CFR 61.5 (c) that states that the State shall require local governments to satisfy minimum requirements that "Enforce appropriate State or local legislation for the designation and protection of historic properties."

And this is again echoed in the State of Washington CLG Requirements and Procedures approved by the NPS:

All CLGs shall adopt and enforce a local historic preservation ordinance that provides for the designation and protection of historic properties. The ordinance must contain provisions establishing a qualified local historic preservation review commission with authority to designate or recommend designation of historic properties... The commission's role in the local designation and protection process may be advisory to the local legislative authority.

It is interesting to note that the last sentence says "may be advisory" implying that the commission's role might just as likely be a required one.

This all adds up to it being both the intent of Congress, NPS, and the State that CLG's have authority to protect historic properties in accord with State or local legislation.

Also, we should point out that in jurisdictions that have adopted a Special Valuation Property Tax RCW 84.26 do have final say on applications for that incentive.

Like Allyson recommended, you should talk with Kristin Griffin and Reuben McKnight about the jurisdiction of their commissions and any challenges that they have faced in court. On that point, it may go without saying that the Supreme Court

upheld the authority of preservation commissions to designate and protect historic properties based upon the landmark Supreme Court case of Penn Central v NYC (438 U.S. 104 (1978)).

I trust the above comments respond to your question, but if not, feel free to let me know.

From: Fennelle Miller [<mailto:fennelle@kvalley.com>]
Sent: Saturday, April 27, 2013 9:37 PM
To: Duvall, Megan (DAHP); Brooks, Allyson (DAHP); Griffith, Greg (DAHP)
Cc: 'Meg Ludlum'
Subject: Time-Sensitive Question!
Importance: High

<snip>

So, in your professional opinion, and in your professional capacity, do Landmarks Commissions themselves have authority through the CLG program to regulate actions involving historic resources? If so, has this authority been upheld in any court?

We need to get this into the City Council report no later than 9am Wednesday, so if one of you could please get back to me ASAP, that would be awesome.

Thanks so much!

Fennelle

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2013.0.2904 / Virus Database: 3162/6287 - Release Date: 04/30/13



KOEGEN EDWARDS LLP

ATTORNEYS AT LAW

MEMORANDUM

Attorney-Client Privileged Communication

TO: Terry Weiner, City Attorney, City of Ellensburg

FROM: Michael F. Connelly

DATE: May 14, 2013

RE: **Design Policies and Murals**

I have reviewed the City of Ellensburg's (the "City") current landmarks and design chapter (ECC 1.45), specific proposed changes to that code (proposed ECC 15.28) and the changes recommended by the Landmarks and Design Commission (the "Commission") reflecting the Commission's initial proposal and more recent recommendations. Finally I have reviewed the comments submitted on April 30, 2013, by the Commission and some of its members and provided specific responses to their comments and suggestions. (See attached Exhibit A.)

Initially, I have the following general comments on the code changes proposed by the Commission:

1. Any process to determine if a property or a historical mural is to be placed on the Ellensburg Historic Resource Inventory should include properties within the Historic Preservation District that meet a certain age requirement and that the Commission has determined meets specific criteria for historic preservation properties or features. The criteria for both buildings and murals should be either contained in the code or be a document referenced by the code. In my previous memorandum I discussed the necessity for clear criteria upon which decisions should be based. This decision could be made by the Commission or the Commission could make a recommendation to an official, the hearing examiner or the City Council. This decision should be subject to an appeal to a higher authority. The process should be compliant with the constraints of RCW 36.70B, the key provisions of which are as follows:

Restrictions Imposed by RCW 36.70B. RCW 36.70B.020(3) defines an "open record hearing" as "a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an 'open record predecision hearing.' An open record hearing may be held on an appeal, to be known as an 'open record appeal hearing,' if no open record predecision hearing has been held on the project permit."



RCW 36.70B(5) defines a “public meeting” as “an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government’s decision. **A public meeting may include, but is not limited to, a design review or architectural control board meeting . . .** A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government’s project permit application file.” (Emphasis added.)

RCW 36.70B.050 states as follows:

Not later than March 31, 1996, each local government shall provide by ordinance or resolution for review of project permit applications to achieve the following objectives:

. . .

(2) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, provide for no more than one open record hearing and one closed record appeal. (Emphasis added.)

The risk in creating a separate “project permit” process with a final decision by the Commission is that such an action may be in conflict with the provisions set forth above. That conflict could form the basis for a challenge to the process itself or any specific decision made by the Commission that is inconsistent with these statutory provisions. The statute seems to contemplate that a “design review or architectural control board meeting” would be considered a “public meeting” not an open record hearing as defined by the statute.

2. While the Commission may, where the decision is not a part of another application process that would be subject to the provisions of RCW 36.70B, make a final decision on the issuance of a Certificate of Approval or the approval of a departure without violating the provisions of RCW 36.70B.030, the bulk of the materials provided and that I have reviewed to date and the practice of other communities would suggest that any such decision-making authority is usually limited to the act of classifying property, not the approval or rejection of permit or departure applications. In my response to the most recent comment submitted, I have examined in detail the various guidelines provided. (See attached Exhibit A.)

3. I would adopt the suggested purpose language and the expanded definition of a mural that has been provided. (See attached Exhibit B).

4. I would also adopt the proposed definition of a historic mural; however, I would add the following: “pursuant to the criteria set forth in ECC ____, and the process set forth in ECC ____, and then make sure to include both the criteria and process in the code provisions. (See attached Exhibit B.) Because the proposal appears to regulate non-commercial murals, it is



important to keep in mind the constitutional limitations of this regulation. (See Paragraph 8 below.)

5. I would remove the language prohibiting the painting over or removal of historic murals. Alternate language suggested is set forth in Exhibit B.

6. I would eliminate the minimum time requirement for newly permitted murals. There seems to be little basis for singling out this type of building permit from any other, and, it may, under certain circumstances, pose a significant economic hardship by interfering with a property owner's legitimate business expectations or be considered a limitation of free speech. (See attached Exhibit B; see also the discussion of the constitutional issues in Paragraphs 8 and 11 below.)

7. I would eliminate the financial requirements for a new mural permit. The same reasoning as is set forth in Paragraph 6 above applies. (See attached Exhibit B). The City can deal with unfinished work or shoddy workmanship through the building permit and enforcement processes. I have discussed the constitutional issues surrounding such a request in Paragraph 11 below.

8. I would remove any content controls or overviews of new or historic murals other than to state that if the mural is deemed a form of advertisement for an on-site business it will be regulated under the sign code.

Free Speech & Land Use Ordinances. The First Amendment to the federal constitution provides "Congress shall make no law . . . abridging the freedom of speech . . ." U.S. Const. amend. I. Washington State's constitution (the "State Constitution") protects freedom of speech, guaranteeing that "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." Wa. Const., art. I § 5.

This constitutional provision has been interpreted to allow greater governmental regulation when regulating commercial speech. In this case it is my understanding that any "commercial" murals would not be regulated under these code provisions but instead be reviewed under the sign code.

The Supreme Court has said commercial speech is "expression related solely to the economic interests of the speaker and its audience." Another formulation is "speech proposing a commercial transaction." *Catsiff v. McCarty*, 167 Wn. App. 698, 704 (2012). The State Constitution allows greater governmental regulation of commercial speech because commercial speech has a great potential to mislead and because Washington State has an interest in protecting the public from those seeking to obtain the public's money. *Kitsap County v. Mattress Outlet/Kevin Gould*, 153 Wn.2d 506, 511-12 (2005).



Federal courts have interpreted the First Amendment as requiring a substantial or important governmental interest be demonstrated when imposing time, place and manner restrictions:

- Applying to time, place, and manner restrictions on pure speech a test requiring a “substantial” governmental interest. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 50 (1986).
- Applying to time, place, and manner restrictions on expressive conduct a test requiring an “important or substantial” governmental interest. *United States v. O'Brien*, 391 U.S. 367, 377 (1968).

Prior Restraints. “Prior restraints are ‘official restrictions imposed upon speech or other forms of expression in advance of actual publication.’ While under the First Amendment a ‘system of prior restraint is not presumptively unconstitutional,’ a prior restraint is unconstitutional per se under article I, section 5.” *Catsiff*, 167 Wn. App. at 711. City ordinances and other regulations that do not ban expression but instead impose valid temporal, geographic, or manner of speech limitations are analyzed as time, place, and manner restrictions. *See Id.*

9. I think mural size and placement restrictions in the historic district are appropriate. See my prior memorandum dated April 2, 2013. I made a few suggested changes to this section and attach the same. (See attached exhibit B.)

10. With respect to demolition permits, the ability to extend the time period should rest with the applicant, not “either party.” (See attached Exhibit C.)

11. **Demolition.** Some other jurisdictions do require specific financial information with respect to a demolition permit. See for example the language in Port Townsend. (See attached Exhibit F.) The City’s current and proposed code provisions also have similar requirements. See ECC 1.45.420 and proposed ECC 15.28.100. I find no direct case law prohibiting such a request that is related directly to the economic function of the building itself. Financial information of an individual’s personal or corporate financial health not related to the ongoing economic feasibility of the building in question would likely not be reviewed favorably by the courts.

The lawfulness of a requirement that a party proposing demolition must provide development plans and some financial assurance that the development plans will be constructed is less clear. The City could make an argument that they have a legitimate interest in assuring that an unsafe construction site will not be the end result of a demolition permit and that something, permitted under the zoning rules that apply to the property, will be constructed within a reasonable time. I have not found a Washington case or code provision that contains this requirement. Such a provision would also have to meet the standards of *Penn Central* set forth below.



I do not think the City has the ability to constrain the new construction other than to ensure that it meets the zoning regulations in place at the time the permit is established, or to order a property be placed for sale as a condition of issuing a demolition permit.

See *Munns v. Martin*, 131 Wn.2d 192, 201 (1997), where the court recognized the validity of landmark preservation laws, “enacted pursuant to legislative authority regulate land use by conserving structures with historic or aesthetic significance that enhance the quality of life of all citizens . . . further cultural and aesthetic interests.” In *Munns* the court cited *Penn Cent. Transportation Co. v. City of New York*, 438 U.S. 104 (1978) which stated in pertinent part as follows:

The New York City law is typical of many urban landmark laws in that its primary method of achieving its goals is not by acquisitions of historic properties, but rather by involving public entities in land-use decisions affecting these properties and providing services, standards, controls, and incentives that will encourage preservation by private owners and users. While the law does place special restrictions on landmark properties as a necessary feature to the attainment of its larger objectives, the major theme of the law is to ensure the owners of any such properties both a “reasonable return” on their investments and maximum latitude to use their parcels for purposes not inconsistent with the preservation goals.

Courts have also recognized, in a number of settings, that cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city. See *New Orleans v. Dukes*, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9–10, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974); *Berman v. Parker*, 348 U.S. 26, 33, 75 S.Ct. 98, 102, 99 L.Ed. 27 (1954); *Welch v. Swasey*, 214 U.S. 91, at 108, 29 S.Ct. 567, at 571, 53 L.Ed. 923(1909).

The limitation of this granted authority is measured by a number of factors discussed in *Penn Central*, recently summarized in the case of *McClung v. City of Sumner*, 548 F.3d 1219 (2008) as follows:

Penn central acknowledges that it was “unable to develop any ‘set formula’” for evaluating these types of claims, but identified relevant factors, such as the economic impact of the regulation on the claimant, the extent to which the regulation has interfered with distinct investment-backed expectations, and the character of the governmental action.

Assuming there is no infringement upon a protected class, which may require a showing of a “compelling state interest.” (See *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203 (1992)). The test, set forth in the case of *Buttnick v. City of Seattle*, 105 Wn.2d 857 (1986), and reiterated in *Conner v. City of Seattle*, 153 Wn. App. 673 (2009), is whether



application of the historical preservation ordinance imposes an unnecessary or undue hardship on the property owner considering the market value of income producing potential of the building. If this standard is met and there is a clear and legitimate goal of preserving historical properties along with a reasoned determination as to what properties should be included, then a decision impacting demolition or the removal of an architectural feature should be approved by the courts.

In one Washington case, the failure to issue a demolition permit led to an award of money damages against a city. *See Pleas v. City of Seattle*, 112 Wn.2d 794 (1989) where the court held a city was liable for intentional interference of a business expectancy when the city refused to issue demolition permits. In *Pleas* the City disregarded normal procedures set forth in their ordinances and tried to downzone the property to prevent the multi story building the owner intended to construct after the existing building was demolished. Any denial of a demolition permit should be subject to appeal with not more than an open and closed record hearing.

12. I would limit any restrictions on cell towers with the language “to the extent permitted by law.” (See attached Exhibit E.)

13. Finally I would not change the rules of nonconformity with respect to historical buildings from those applicable to all building without a precise statement of why this is necessary and reasonable. (See attached Exhibit D.)

EXHIBIT A

Comments on the Landmarks and Design Commission Recommendations dated April 30, 2013.

1. Scope of commission's role. I do not see any legal issues with respect to the Commission's recommendations.

2. The commission's authority. The commission is requesting that the council delegate all of its decision-making authority to the commission when Certificates of Approval ("COAs") for historic properties are issued and where departures from design standards are requested. The specific authority of the city council to regulate design is set forth in my previous Memorandum dated April 2, 2013. As mentioned therein, RCW 36.70A.020(13) lists "historic preservation" as one of the numerous goals of the Growth Management Act (the GMA").

The specific Washington Administrative Code (the "WAC") section cited (WAC 365-196-450), that purports to implement this statutory provision, lists the following recommendations for meeting the statutory call to, "identify and encourage the preservation of lands, sites, and structures that have historical ... significance ..."

The code provisions provides: "Although the act does not require a separate historic preservation element, counties and cities must be guided by the historic preservation goal in their comprehensive plan." Other recommendations include:

- a. *Use of existing programs in identifying cultural resources such as The National Register of Historic Places and the Washington Historic Register, properties identified by the Department of Archaeology and Historic Preservation (DAHP) and properties listed in a local register of historic places.*
- b. *Establishing a process to encourage the preservation of cultural resources including use of existing state and federal resources and the following specific steps:*
 - (a) *Establish a local preservation program and a historic preservation commission through adoption of a local preservation ordinance. The department of archaeology and historic preservation provides guidance on using the National Certified Local Government Program as a local program.*
 - (b) *Establish zoning, financial, and procedural incentives for cultural and historic resource protection*
 - (c) *Authorize a special valuation for historic properties tax incentive program*
 - (d) *Establish incentives such as preservation covenants/easements and/or current use/open space taxation programs.*

- (e) *Establish design guidelines, and authorize historic overlay/historic district zoning.*
- (f) *Adopt the historic building code.*
- (g) *Establish a program for transfer of development rights to encourage historic preservation.*

The state and/or federal programs listed above provide specific tools for historic preservation. It should be kept in mind, however, that the power to adopt and enforce design guidelines, regulate demolition permits or regulate murals derives from the City's authority to zone pursuant to the constitutional and statutory provisions listed in my previous memorandum.

Further, if the City ordains that the design review process and its efforts to promote historic preservation is to be guided by specific provisions of Federal or State law, then those rules or regulations should be expressly adopted by the city's code provisions as the criteria for specific decisions that are being made.

A review of the resources mentioned within this WAC provision reveals the following:

1. Comprehensive Plan. While the plan recognizing the goal of historic preservation it provides little specific guidance.
2. Department of Archaeology and Historic Preservation (DAHP) Model Ordinance. The DAHP Model Ordinance is a model state ordinance created by the DAHP. The following sections provide optional decision making authority to the Commission only when determining eligibility for the local register of historic places (Section 5, below). The Model ordinance further specifies that the commission, in reviewing changes to a local register of historic places (Section 6, below), should be restricted to the authority to review and make recommendations only.

Section 5. [Location] Register of Historic Places.

B. Process for Designating Properties or Districts to the [Local Register]

4. The Historic Preservation Commission shall consider the merits of the nomination . . . and according to the nomination review standards established in rules, at a public meeting. Adequate notice will be given to the public, the owner(s) and the authors of the nomination. . . prior to the public meeting . . . Such notice shall include publication in a newspaper of general circulation . . . and any other form of notification deemed appropriate . . . *If the commission finds that the nominated property is eligible for the [local register] the commission [shall list the property in the register/ shall list the property in the register with the owner's consent/ make recommendation to the City/County council that the property be listed in the register/ make recommendation to the City/County that the property be listed in the register with the owner's consent].* In the case of historic districts, the commission shall consider [a simple majority of property owners/ or specified percentage of property owners] to be adequate for owner consent. . .(emphasis added).

The authority portion of this section is limited to the decision of whether or not a property is to be placed upon the register. It also provides a number of options, i.e. with or without the owner's consent, for example.

Section 6. Review of Changes to [location] Register of Historic Places Properties

C. Review Process

2. Commission Review. The owner or his/her agent . . . shall apply to the commission for a *review* of proposed changes on a . . . property or within a . . . historic district and request a Certificate of Appropriateness or, in the case of demolition, a waiver. Each application for *review* of proposed changes shall be accompanied by such information as is required by the commission established in its rules for the proper review of the proposed project.

The commission shall meet with the applicant and review the proposed work according to the design review criteria established in rules. **Unless legally required, there shall be no notice, posting, or publication requirements for action on the application, but all such actions shall be made at regular meetings of the commission. The commission shall complete its review and make its recommendations** within thirty (30) calendar days of the date of receipt of the application. If the commission is unable to process the request, the commission may ask for an extension of time.

The commission's recommendations shall be in writing and shall state the findings of fact and reasons relied upon in reaching its decision. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. If the owner agrees to the commission's *recommendations*, a Certificate of Appropriateness shall be awarded by the commission according to standards established in the commission's rules.

The commission's recommendations and, if awarded, the Certificate of Appropriateness shall be transmitted to the building or zoning official. If a Certificate of Appropriateness is awarded, the building or zoning official may then issue the permit. (Emphasis added.)

This section is concerned with Certificates of Approval, demolition waivers and likely exceptions. ("Departures" under the city's current and proposed code.) The model ordinance clearly avoids both an open public hearing as defined by RCW 36.60B or a final decision in order to ensure compliance with the provisions of RCW 36.70B.

3. National Certified Local Government Program. A local government may be certified by the DAHP as part of the Certified Local Government program. This program was created by the National Historic Preservation Act (16 U.S.C. §470), and in Washington it is implemented and administered by the DAHP.

For certification, a local government must (1) pass a historic preservation ordinance; (2) create a Historic Preservation Commission; and (3) Establish the Commission's bylaws. Once these three steps are completed, a local government may apply to the DAHP for certification.

Once certified, the local government must maintain a historic preservation commission, survey local historic properties, enforce state or local preservation laws, review National Register Nominations, and provide for public participation in historic preservation activities. In exchange, benefits include the ability to apply for a portion of the State's annual Historic Preservation Fund provided to the local government from the State Historic Preservation Officer (SHPO), which in Washington is the DAHP. Additionally, special tax valuations may be provided. *See* 16 U.S.C. §470a(c) (governing certified local governments); *see also* 16 U.S.C. §470c(c) (governing funds for certified local governments). *See also* 36 C.F.R. §§61.6, 61.7 (governing certified local government programs).

There is no specific language in 16 U.S.C. §470, et seq. or 36 C.F.R. 61 language in regards to a Commission's authority and zoning power.

4. The documents entitled "Preserving Your Community," found at <http://www.dahp.wa.gov/sites/default/files/PreservingYourCommunity.pdf> does not discuss the actual authority or regulatory powers of a Historical Preservation Commission, and does not cite any authority supporting its proclamations. Further, page 16 and 17's "Requirements" and "Benefits" sections pertain to the "requirements" and "benefits" a local government must adhere to and receives, respectively, from becoming a certified local government.(CLP). These requirements and benefits are not specific to Landmarks and Design Review Commission, and do not discuss any role or authority of such a commission.

5. Further, the DAHP "sample ordinances" found at <http://www.dahp.wa.gov/sample-ordinances-design-review> are design guidelines. The only sample ordinance, is the model ordinance, discussed above. The remaining documents found at this site are detailed design guidelines.

6. Please see the chart of other cities' authority, attached in my April 2, 2013 Memorandum. The one City which provided the Design Review Commission with decision making authority provided that authority to the selection of properties for placement on the local register.

7. In the cited case of *Buttnick v. City of Seattle*, 105 Wn.2d 857 (1986), the Seattle City Council passed an ordinance creating the Pioneer Square Historic District. The ordinance:

... require[ed] no permits shall be issued for alterations to the exterior appearance of buildings in this historic district except pursuant to a certificate of approval from the Director of the Department of Community Development. The seven-member Pioneer Square Historic Preservation Board, a citizens' advisory board, *makes recommendations* to the Director regarding application requests." *Id.* at 858-59 (emphasis added).

8. The document entitled "A Citizen's Guide to Protecting Historic Places: Local Preservation Ordinances," found on the MRSC website is not the recommendation or opinion of

MRSC. It is a document created by the National Trust for Historic Preservation and provides citizens with information to challenge or further understand preservation ordinances. Further, this document, written in 2002, is not specific to Washington law and does not cite legal authority for its statements.

9. Historic Building Code – Washington

RCW 19.27.120 Buildings or structures having special historical or architectural significance – Exception.

The pertinent statutory provisions are as follows:

(1) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, strengthening, or continued use of a building or structure may be made without conformance to all of the requirements of the codes adopted under RCW 19.27.031, when authorized by the appropriate building official under the rules adopted under subsection (2) of this section, provided:

(a) The building or structure: (i) Has been designated by official action of a legislative body as having special historical or architectural significance, or (ii) is an unreinforced masonry building or structure on the state or the national register of historic places, or is potentially eligible for placement on such registers; and

(b) The restored building or structure will be less hazardous, based on life and fire risk, than the existing building.

(2) The state building code council shall adopt rules, where appropriate, to provide alternative methods to those otherwise required under this chapter for repairs, alterations, and additions necessary for preservation, restoration, rehabilitation, strengthening, or continued use of buildings and structures identified under subsection (1) of this section.

Nothing in this section grants independent authority to regulate or conditions historic buildings. It does allow certain waivers of adopted code to occur when specific conditions are met.

EXHIBIT B

Formatted: Centered, Space After: 12 pt

Specific code suggestions are as follows:

15.13.080 H definitions

~~Mural. A 'mural' is a work of visual art, which may include historic advertising (advertising that it itself at least 50 years old) only, painted directly on or on materials attached to a building.~~

A 'mural' is a singular work of art containing graphic or text, painted or otherwise directly applied or attached on a building, structure, fence, or other object within public view. A mural, as defined herein, does not contain text, graphics, or symbols which specifically advertise or promote a business, product, or service; nor does it promote a specific political candidate or party.

~~Historic murals. Historic murals' are signs, advertising or murals that have been created prior to 50 years of current date and have been inventoried and identified -by the Landmarks and Design Commission pursuant to the criteria set forth in ECC _____ and the process set forth in~~

~~Signs — landmarks register and historic resource inventory/Decision Recommendation by Landmarks and Design Commission at a public meeting (See ECC 15.13.160) Appeal open record to hearing examiner~~

B. Submittal requirements.

Use of materials to be submitted with application for a mural;

1. Drawings (elevation, site plan), photographs of building, map of land uses within 300'.
2. Written description, including materials used and how mural will be affixed
3. Color image of mural and artist's portfolio
4. ~~Plans for financing, installing, maintaining the mural~~
5. ~~4.~~ Authorization from property owner.

15.56.145 Murals. (NEW)

_____ Purpose.

The City of Ellensburg believes that murals foster a sense of community and connection and enrich the experience of both tourists and residents. Acknowledging that murals provide economic benefit and enhance livability, the City seeks to establish a mural policy that both preserves historic signage already in existence and provide guidance for creation of new works of art.

6B

Murals, as defined in 15.13.130, shall conform to the following requirements:

A. **Permitted number of murals.** Only one mural will be permitted on a building at a given time.

B. **Minimum and maximum sizes.** Murals should not be less than 32 square feet and shall not exceed 60 square feet in area. Exception: Where large expansive planar walls over 2,000 square feet in uninterrupted area occur, larger murals may be permitted provided that they do not cover more than _____ % of the square footage of the planar wall, overwhelm the size, scale, design and historic integrity of the building.

C. **Location, ~~and~~ design and style**

1. ~~Murals shall not be permitted on unpainted brick (?), unpainted or painted stone (?), wood sidings with surface detail, or any other material that does not have a planar or flat character. The surface to which the mural will be applied must be in good condition that would allow the permanent attachment of the requested mural prior to the installation.~~

2. ~~Murals shall not overlap or be incompatible with existing architectural details. Of the building or structure to which it is affixed.~~

3. ~~Murals on Landmark Register properties and Historic Resource Inventory properties must complement—be consistent and compatible with the architectural and historical character of the historic district, reinforce—and the architectural features of the building on which they are located,— and be compatible with the appearance of adjacent buildings and community character.~~

4. Murals may not have electrical or mechanical components.

5. Three-dimensional murals are not allowed.

6. Murals ~~must shall~~ not be located on the primary street façade of buildings.

7. Murals must not damage or lead to accelerated deterioration of the building surface.

0. ~~Murals shall not create traffic or safety hazards.~~

E.D. **Duration and removal**

1. ~~The mural, as approved by permit, shall be maintained without alteration for a minimum of X years. During this time, alterations may be made or the mural may be removed only under the following conditions.~~

~~— The building on which the mural is located is sold, or~~

~~4. The building or property is substantially remodeled or altered in a way that precludes continuance of the mural.~~

4.1. ~~Alterations of to the any existing or permitted mural except murals deemed historic in the Ellensburg historic resource inventory, including removal of part or all of the same after the first X years from date of completion requires approval of a new permit through pursuant to the process set forth in 15.28.090. Such removal shall not damage or lead to the destruction or deterioration of a building or structure or adversely impact the architectural and or historic character of any building located with the historical district.~~

5. ~~Removal of the mural after the first X years from date of completion does not require a permit or letter of intent.~~

6.2. Any associated materials that were used to affix the mural to the wall must be removed at the time of the removal of the mural. This includes, but is not limited to, mounting, hardware or brackets, caulk or grout, and adhesive or glues.

7.3. Murals shall not be subject to the removal provisions of 15.56.210.

F.E. **Installation and maintenance**

1. Murals shall be installed in a manner to ensure that they withstand the elements, to the greatest degree that is feasible as determined by the building official for durability and must be maintained by the building owner for the life of the mural or until the mural is removed.

2. Murals shall use materials, coatings, or other protective techniques that will resist vandalism, weathering by sun or water, and graffiti to the greatest degree feasible as determined by the building official.

G.F. **Existing Historic murals**

1. The landmarks and design commission will conduct a survey of existing murals and include those deemed historic in the Ellensburg historic resource inventory.

2. New murals shall not be painted over historic murals. ~~These m~~Murals designated on the Ellensburg historic resource inventory may not be altered repainted, painted out, removed, or otherwise disturbed unless the structural integrity of the building is at stake- without compliance with the following:

(a) Prior to the alteration, repainting, painting out, removal or other disturbance of a historical mural the property owner shall obtain a COA. Application for a COA shall be reviewed by the landmarks and design commission in accordance with the procedures set forth in EEC 15.28.090(C) and ECC 15.28.100 with the following exceptions:

(b) The landmarks and design commission shall meet initially with the applicant to consider alternatives to the alteration or removal including available incentives for preservation of the mural. These negotiations may last no longer than 120 days from the first meeting of the landmarks and design review commission unless the applicant agrees to an extension. During these negotiations, the applicant should allow the commission to review the site and plans for the alteration and/or removal of the mural. An alteration and/or removal notice must also be placed on the property and published in the newspaper.

(c) If no request for an extension is made and no alternative has been agreed to and the applicant has made a showing that such action is necessary to provide a reasonable beneficial use or reasonable economic return, the landmarks and design commission shall make a recommendation for approval of the alteration, repainting, painting out, removal or other disturbance of the historic mural to the director.

(d) The landmarks and design commission may further recommend conditions of approval including, but not limited to, measures to mitigate a direct impact of the action including compliance with the Secretary of the Interior's Standards for Historic Preservation, and including mitigation of an identified environmental impact pursuant to SEPA.

(e) The director shall review the record and the landmarks and design commission recommendation and shall make a decision to approve the issuance of a COA or to deny the application.

(f) Any person aggrieved by any action of the director in denying or approving the applicants request may file a notice of appeal as set forth in Chapter 15.23, however, such appeals shall be to city council rather than to the hearing examiner.

3. ~~If the building is repainted, it must be done in a way that follows the Secretary of the Interior's Standards for Historic Preservation.~~

H.G. The landmarks and design commission will review the possibility of initiating a program to restore historic murals.

Formatted: Indent: Left: 1", First line: 0.5",
Space After: 12 pt, No bullets or numbering

EXHIBIT C

D. Demolition (reference building code).

Application for a COA for whole or partial demolition of a property listed in the Ellensburg historic resource inventory shall be reviewed by the landmarks and design commission in accordance with the procedures set forth in subsection C of this section and ECC 15.28.100 with the following exceptions:

1. ~~(New language) “ ... unless either party requests the applicant agrees to an extension, an extension. During these negotiations, the applicant should allow the commission to review its the site and building design plans for future site development the replacement building, and evidence of the applicant’s financial ability to construct the identified site development. replacement building. A demolition notice must also be placed on the property and published in the newspaper. Construction of this reevelopment shall must begin within one year after demolition.”~~
2. ~~if no request for an extension is made and the existence of the denial of the proposed whole or partial demolition would prevent a reasonable beneficial use or reasonable economic return a condition of unreasonable economic return, as set forth in ECC 15.28.100 and [], has been proven and no alternative to demolition has been agreed to, the landmarks and design commission shall make a recommendation for approval to the director issue a COA to the applicant...~~
3. ~~the landmarks and design commission may require recommend conditions of approval including, but not limited to, mitigation measures to mitigate a direct impact of the action, including compliance with the Secretary of the Interior’s Standards for Historic Preservation and including mitigation of an identified environmental impact pursuant to SEPA.~~
4. ~~The director shall review the record and the landmarks and design commission recommendation and shall make a decision to approve the issuance of a COA or to deny the demolition application.~~
5. Any person aggrieved by any action of the director in denying or approving a demolition request may file a notice of appeal as set forth in Chapter 15.23, however, such appeals shall be to city council rather than to the hearing examiner.

6 C

EXHIBIT D

Formatted: Centered, Space After: 24 pt

15.56.160 Non-conforming signs. *(current 3.12.320)*

~~Non-conforming signs murals and historic murals shall have the same non-conforming rights of other development pursuant to the provisions of this code. Signs which were existing and in lawful use prior to the adoption of the ordinance codified in this chapter, except temporary, special signs, special event signs or signs on historic properties, which are not subject to pre-existing sign status, shall be considered nonconforming signs and may continue in use subject to the following requirements:~~

6 D

EXHIBIT E

ECC _____

Cell towers/prohibited in landmark districts. Add to the extent allowed by law.

ECC _____

Construction of a wireless communication support tower, wireless communication antenna array or wireless communication facility on properties on the historic resource inventory is not permitted to the extent permitted by law.

Formatted: Font: Bold

Formatted: Centered, Space After: 18 pt

Formatted: Space After: 12 pt

Formatted: Justified, Space After: 12 pt

6 E

EXHIBIT F

Port Townsend

1. Demolition: PTMC 17.30.300 to 17.30.400 (Historic buildings).
 - a. 17.30.320 Applicant must obtain a certificate of approval.
 - i. City may abate.
 - ii. City can, under SEPA, review, condition, or deny any proposed demolition “based upon the identification of probable, significant adverse environmental impacts.”
 - b. 17.30.340 Application.
 - i. For demolition of a building for reasons other than unsafe conditions the applicant “shall supply a report from a . . . financial analyst or economist.”
 - ii. The report has to demonstrate the maintenance of the building will not impose an economic hardship, analyze reasonable alternatives to demolition, etc. (17.30.340(B)(1)-(7) are requirements).
 - c. 17.30.360 Applications – Development Services Department director shall issue a written decision, granting, granting with conditions, or denying the application.
2. Murals PTMC 17.76.080(I).
 - a. Permit Signs: Mural signs are allowed subject to prior approval of historic preservation committee.
 - i. Port Townsend historic preservation design guidelines manual section on “Design Guidelines for Murals in the Special Overlay Design Review District and National Landmark Historic District.”

6 F

CITY OF ELLENSBURG
Date and Time: Minutes of the Landmarks & Design Commission
May 7, 2013 at 7:00 p. m.
Place of Meeting: City Council Conference Room, City Hall
Commissioners Present: Christina Wollman, Meg Ludlum, Dorothy Stanley, Fred Krueger & Fennelle Miller
Commissioners Absent: David Wheeler & Anne Denman
Others Present: Senior Planner Dan Valoff & Ann Miner (owner of Yarn Folks)

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. Member Miller asked to discuss the status of Diana Painter survey. Chair Wollman stated that it would be added to miscellaneous. Senior Planner Valoff wanted to submit a memo from Planning Supervisor Lance Bailey regarding the upcoming 2013 Comp Plan Amendment process.

MOTION 5-7.1: Member Miller moved to add an update on Diana Painter's survey and the Comp Plan Amendment memo be added to the agenda. Member Ludlum seconded, the motion passed with a 5 to 0 vote.

Minutes of April 16, 2013, it was moved and seconded to approve of the minutes subject to corrections. Motion carried with a vote of 5 to 0.

CORRESPONDENCE

2013 Comprehensive Plan Amendment memo – Senior Planner Valoff passed around the memo prepared by Planning Supervisor Lance Bailey regarding the 2013 annual Comprehensive Plan Amendment process. The City Council will review any proposed amendments at the July 1st council meeting and docket the amendments. Any proposed amendments should be submitted to Community Development by June 19 for docket consideration by the City Council on July 1st.

SIGN REVIEWS

Yarn Folk – 300 N. Pearl St. – Ann Miner the owner of Yarn Folks at 300 N. Pearl Street and presented the sign that she proposes to place at her business. Two signs are being proposed, one would be a projecting sign over the sidewalk and the other being placed on the front of the awning facing the street. Member Miller had some questions regarding the sign material and the placement on the façade.

MOTION 5-7.2: Member Miller moved to approve the Yarn Folk sign as presented, Member Ludlum seconded the motion, the motion passed with a 5 to 0 vote.

DESIGN REVIEWS

None

UNFINISHED BUSINESS

- a) Murals/Land Development Code Update Discussion – Member Miller stated that she has sent out the comments last week and hoped that the Commission members had read it and concurs with what is being presented to Council.

MOTION 5-7.3: Member Miller made a motion that the Landmarks Commission request to retain authority over location, size and scale of murals in the Downtown Historic District. Member Kruger seconded the motion, the motion passed by a 5 to 0 vote.

Member Ludlum indicated that they should do the same thing regarding demolition. Member Miller stated that the Commission wants to issue a COA for demolition as well changes to historic buildings.

MOTION 5-7.4: Member Ludlum made a motion that the comments previously presented by the Commission (to the City Council) together with the supplemental comments

represent the position of the entire Landmarks & Design Commission. Member Kruger seconded the motion, the motion passed by a vote of 5 to 0.

Member Miller suggested that members of the Commission be present at the May 20 City Council Meeting to make a presentation regarding their recommendations to the Council. The Commission agreed that several members would be present at the May 20th Council meeting.

- b) Inventories & Lists –Member Miller wanted to table this until the Development Code Update is complete. Senior Planner Valoff present the Commission with a GIS map of the Ellensburg Landmarks & Landmark Districts. Member Ludlum reminded the Commission that at the next meeting we would be preparing some criteria for the mural inventory to be conducted on June 18th.

NEW BUSINESS

None

LEGISLATIVE UPDATE

None

MISCELLANEOUS

Senior Planner Valoff gave a status report on the Diana Painter survey. No materials have been delivered to Community Development. He stated that this is being presented to the City Attorney for what the next steps will be.

The meeting adjourned at 7:50 p.m.

Respectfully submitted,
Dan Valoff, Senior Planner