

HISTORIC PRESERVATION COMMISSION OF THE CITY OF PLATTEVILLE



MINUTES

TUESDAY, JULY 20, 2021 – 6:00 P.M.

COUNCIL CHAMBERS IN CITY HALL – 75 N. BONSON STREET

MEMBERS PRESENT: Beth Frieders, Ken Kilian, Garry Prohaska, Bill Cramer

ALTERNATES PRESENT: None

MEMBERS ABSENT: Ben Seigel

STAFF PRESENT: Ric Riniker, Joe Carroll, Adam Ruechel

OTHERS PRESENT: Jeff Haas, Lisa Haas, Terry Burns, Krystal Prohaska, Laurie Graney

Call to Order

Chairman Kilian called the meeting to order.

Public Hearing: Request to Amend Historic Designation of 130 Market Street Property

a. Staff Presentation

Carroll provided a summary of the process. The owners of the property at 130 Market Street submitted a letter requesting an amendment to the historic designation of the property. The ordinance requires the Commission to hold a public hearing after providing adequate notice as provided in the ordinance. The Commission then makes a recommendation to the Council, who makes the final decision. The item will be on the Council agenda for information/discussion at the July 27th meeting, and for action at the August 10th meeting.

b. Applicant Statement

Lisa Haas and Jeff Haas presented information regarding the request. The property was initially residential, but now is required to abide by commercial building codes. Since they cannot verify previous use as commercial, they are required to follow the procedures for a change in use. They believe any decision regarding the designation and property changes should be based on what is best for City and community, not on personal opinions. The impact from previous decisions from the Commission has been negatively impacting the business. The decisions have been based on rumor and speculation. These decisions have created lapse in progress and created delays, which has impacted the business profit. Historic designation has not resulted in compensation to them when it delays projects or results in higher costs. The Commission does not grasp problems that come with commercial restoration projects. They had to follow modern construction guidelines even though building was older. Property was residential until we changed it, and the commercial rules are difficult to interpret and understand. The Commission is making decisions without full knowledge. People do not want to purchase property in district, and they no longer will purchase any properties in the district. Delays due to impact of decisions from the Commission resulted in loss of revenue for over a year. State approved plans are expensive and following them is difficult.

c. Public Statements in Favor

None

d. Public Statements Against

None

e. Public Statements in General

None

f. Applicant Rebuttal

None

g. Commission Discussion and Action

Prohaska asked if Staff had any more information to present. None presented.

Prohaska provided additional information on rescinding designation and provided a handout on talking points. (included in the minutes)

The HPC has adopted the Secretary of Interior Standards as recommended by all historic agencies. All decisions based on these standards are more legally defensible. This process is not to be taken lightly. This process is outlined in the ordinance, and must be clear, fair and defensible. He received guidance from various historic agencies and other communities that have been through the process. He was told the Commission must follow the same process to rescind as to designate. Rescinding the designation impacts the entire district and jeopardizes the ability of the other properties to use tax credits, etc.

There are a few criteria that should be followed when making this decision. Property has ceased to meet standards due to loss of characteristics, damage, demolition, etc. Additional research has been conducted that resulted in a different opinion regarding the historic value of the property. There was an error in judgement when designating the property. There were procedural errors when designating the property. A public hearing shall be held, criteria should be followed when deciding.

No information has been presented showing modifications or alterations have eliminated the features that lead to designation. The property is part of a historic district, not a stand-alone designation. No additional information on the property has been presented. No errors have been discovered regarding the process or judgement when the property was designated.

Prohaska also stated that when going forward the main comment is that a decision is based on law and must follow our ordinance. The Commission needs to follow the process. There should be strict criteria in our ordinance, which are not present, so we should use national standards as a replacement.

Cramer asked for clarification regarding if the vote on this district impacts the entire district. Prohaska stated that the vote could set a precedent that would impact decisions on requests for other properties.

Prohaska mentioned that the historic tax credits are only available for designated properties.

Motion by Prohaska to deny the requested amendment. Second by Cramer. Motion approved 4 to 0.

Approval of Minutes – June 24, 2021

Motion by Frieders to approve the minutes. Second by Prohaska with an addition that there was a discussion regarding some concern with the proposed green color. The color was approved because there was a valid argument presented. He would like the minutes to include that discussion. Motion approved.

Action Items

- a. Review and Recommendation – NRHP Nomination for 350 E. Furnace Street

The City received a letter from the State asking for input and a recommendation from the Commission regarding the designation request.

Motion by Prohaska to send a letter recommending designation of the property at 350 E. Furnace Street. Second by Cramer. Motion approved 4 to 0.

Discussion Items

- a. Request For Bids – NRHP Nomination Grant for 230 Market St. and 315 N. Second St.

Carroll provided an update. The City signed the Memorandum of Agreement (MOA) with the State, so we can begin the process of selecting a consultant. The State requires a request for bids process following certain requirements. They have indicated there are three consultants that are interested in the project: Cultural Resource Management – UW Milwaukee, Preserve LLC, and the Lakota Group. We can also send it to other consultants. If we select a different consultant, we must make sure they are qualified. Carroll asked for input on other potential consultants to be included in the process.

Prohaska would like to include Fairchild & Flatt Consulting and Legacy Architecture.

Carroll also asked if the Commission would like to review the Request for Bids document before it is sent to the consultants. The Commission replied yes, so this item will be on the next agenda.

Indian Park Update

Krystal Prohaska provided an update. The register of deeds received a document regarding the cataloguing of the property as a cemetery, which provides the most protection provided under the law. This was recorded on July 12th and signed by the State Historical Society. Richard and Laurie Graney provided the required documents to be a registered interested party, due to direct kinship. The property also designated by the Council as a local historic site.

Terry Burns commented on the grant that was received to do the research to help tell the story of the property. The group is working with several consultants to help determine the best way to proceed. Will have focus sessions with the public to determine how best to tell the story of the property. Looking for ways to obtain additional funds.

Prohaska thanked them for their work on the project and asked if the Commission could be kept informed if activities happen on the property through other City departments.

Laurie Graney stated it has been a privilege to work on this project. They are doing additional research and keep finding more information. Thanks to the Council for designating the property and obtaining the grant.

Citizen Comments

None

Announcements/Upcoming Items

Prohaska stated that the Wisconsin Preservation Trust sent information regarding a conference at Taliesin. The focus of the conference is on historic theaters. A deal is available for trust members which includes

tours of the property. WHAPC working on a fall conference. He would like the Commission to be a member of the National Alliance of Historic Preservation Commissions.

Kilian encourages members to attend the upcoming Council meetings regarding the request to amend the historic designation of the 130 Market Street property - July 27th and August 10th.

Next Meeting Date August 17, 2021 at 6 pm

Adjourn

Motion by Prohaska to adjourn. Second by Cramer. Motion approved 4 to 0.



Joe Carroll, Community Development Director

8/17/2021
Date Approved

To members of the Platteville HPC,

Points to ponder Rescinding Historic Designation

There is a legal process for designation and criteria that has to be met to qualify for designation. This process also precedes the methods to rescind or removal from designation. What has changed being the legal aspects? Our landmark and de-landmark processes have to be clearly established, fair, consistent, and not subjective if they are to be defensible.

State, National and Local criteria follow each other and have a high bar to clear that is very specific. I have attached research and opinion I have accumulated on "removal of historic designation". The direction and assistance mostly came from NAPC, the National Alliance of Preservation Commissions.

Please read before the Hearing on July 20, 2021,

Garry Prohaska

Platteville Historic Preservation Commission Member

36 CFR Ch. I (7–1–12 Edition)

<https://www.govinfo.gov/content/pkg/CFR-2012-title36-vol1/pdf/CFR-2012-title36-vol1-part60.pdf>

60.4 Criteria for evaluation.

60.5 Nomination forms and information collection.

60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation programs.

60.7–60.8 [Reserved]

60.9 Nominations by Federal agencies.

60.10 Concurrent State and Federal nominations.

60.11 Requests for nominations.

60.12 Nomination appeals.

60.13 Publication in the FEDERAL REGISTER and other NPS notification.

60.14 Changes and revisions to properties listed in the National Register.

60.15 Removing properties from the National Register.

(a) Grounds for removing properties from the National Register are as follows: (1) The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing; (2) Additional information shows that the property does not meet the National Register criteria for evaluation; (3) Error in professional judgment as to whether the property meets the criteria for evaluation; or (4) Prejudicial procedural error in the nomination or listing process.

Properties removed from the National Register for procedural error shall be reconsidered for listing by the Keeper after correction of the error or errors by the State Historic Preservation Officer, Federal Preservation Officer, person or local government which originally nominated the property, or by the Keeper, as appropriate.

+++++

Excerpt from NAPC member "Steph McDougal Principal Consultant MCDoux PRESERVATION LLC

napc-l@googlegroups.com <napc-l@googlegroups.com

Rescinding Historic Designation

I have seen a few cities specify the process for removal of the local landmark designation in their ordinance. Here's some typical language I found with a quick Google search, in this case from Escondido, California. Note that they have specified two possible reasons for a designation to be rescinded, both of which have nothing to do with the owner's business plan. I'm in meetings all morning, but if you search for "removing local landmark designation", you will probably find more examples like this.

[Sec. 33-795. Procedure and criteria for rescinding local register or landmark status](http://www.qcode.us/codes/escondido/view.php?topic=33-40-33_795&frames=on)
http://www.qcode.us/codes/escondido/view.php?topic=33-40-33_795&frames=on

(a) Submittal. Any person may submit a written request to the planning division to remove his or her resource from the local register or to rescind a local landmark designation. The application shall be made on forms provided by the city.

(b) Review. The HPC shall hold a public meeting. In their review of the request to remove a local register or landmark designation, the HPC shall consider the criteria listed in this section. Upon rescission, any associated Historic Property Preservation Agreement (Mills Act agreement) will be cancelled.

(c) Criteria. The criteria listed in this section shall be used to determine whether to remove a resource from the local register or to rescind its local landmark designation.

(1) New documentation has been presented disproving the information upon which the resource was placed on the local register or given landmark status;

(2) Evidence has been presented showing that modifications and alterations to the resource have eliminated the distinctive architectural features that warranted its placement on the local register or its designation as a local landmark. (Ord. No. 2000-23, § 4, 9-13-00; Ord. No. 2008-16, § 4, 7-16-08; Ord. No. 2016-15, § 4, 10-26-16)

I would assemble everything that I can find to show that, since so many other cities have already codified this, it is likely to be a DEFENSIBLE process. The key here, I believe, is to focus on the process and the City protecting itself from lawsuits. I'd confer with your City attorney on this and show them the precedent processes from other cities that you've found. If the property owner wishes to provide evidence to refute yours, they are welcome to do so.

Your landmarking and de-landmarking processes have to be clearly established, fair, consistent, and not subjective if they are to be defensible. Focusing on the process takes away the arguments about whether the designation is good for the business plan or not. If nothing else, I'd argue that the City needs to table the request for de-designation until it can conduct a thorough investigation of best practices, share options with the community and receive feedback, and take the creation of a de-designation ordinance through all of the proper channels. That way, it's not about this one person and their request; you end up with a replicable process that is supported by the community; and after that the property owner can make the request, including potentially being denied and appealing to council, which should only grant the appeal if the de-designation process was not followed.

I'd recommend bringing in an expert from somewhere else to facilitate this process for you.

+++++

https://library.municode.com/co/pagosa_springs/codes/code_of_ordinances?nodeId=CH21LAUSDECO_ART8HIPR_8.4REAMREDE

Receiving, amending or removing designation

F. The Historic Preservation Board and the Town Council shall base their decision to remove a designation upon the following findings:

1. The Historic Landmark or Historic District no longer maintains their historic significance as determined in their designating ordinances.

2 The property within the Historic District is no longer a part of the geographically definable area possessing a concentration, linkage or continuity of buildings, structures an/or objects united by past events, plans, social activities or physical development as determined in the District's designating ordinance.

G. An approval to remove a designation by the Town Council shall be made by ordinance. Such ordinance shall include a description of the characteristics of the property, building, structure, feature, object, and/or area that justify the historic designation removal and a legal description of the location and/or boundaries of the former Historic Landmark or former Historic District boundary.

+++++

<https://www.chicagotribune.com/suburbs/highland-park/ct-hpn-landmark-removal-bid-tl-0720-20170718-story.html>

"What disturbs me about this is the precedent that it sets," said City Councilman Anthony Blumberg, who serves as liaison to the preservation commission. He said the city's ordinance sets a high standard for removing landmark standing so it's not used lightly whenever homeowners have a change of heart or change of mind.

Freeman's request to de-landmark her home alleges that errors were made during the process. She contends two landmark criteria were misapplied to her property. While the commission in 2013 found the home embodies distinguishing characteristics of an architectural style and is valuable for study, Freeman's petition says the home is a "colonial craftsman-like emulation that is common in Highland Park" and not a uniquely qualified, pure or historically accurate example.

Referring to the second criteria, the owner said the design elements, detailing and craftsmanship are "commonplace and ordinary" and typical of all homes of this style.

The owner also pointed out two factual errors in the landmark documentation: A misspelling of her first name and the inclusion of a garage that belongs to a neighboring property. Members of the Historic Preservation Commission unanimously agreed that nothing had changed to warrant removal of the landmark designation. The residence is located in the 100 block of Laurel Avenue, which is included in the Historic Preservation Commission's Laurel-Prospect Walking Tour, though the home itself is not one of those highlighted.

+++++

[Cornell Law School](#)

Legal Information Institute

36 CFR § 60.15 - Removing properties from the National Register.

<https://www.law.cornell.edu/cfr/text/36/60.15>

§ 65.9 Withdrawal of National Historic Landmark designation.

<https://www.law.cornell.edu/cfr/text/36/65.9>

(a) National Historic Landmarks will be considered for withdrawal of designation only at the request of the owner or upon the initiative of the Secretary.

(b) Four justifications exist for the withdrawal of National Historic Landmark designation:

- (1) The property has ceased to meet the criteria for designation because the qualities which caused it to be originally designated have been lost or destroyed, or such qualities were lost subsequent to nomination, but before designation;
- (2) Additional information shows conclusively that the property does not possess sufficient significance to meet the National Historic Landmark criteria;
- (3) Professional error in the designation; and
- (4) Prejudicial procedural error in the designation process.

(c) Properties designated as National Historic Landmarks before December 13, 1980, can be dedesignated only on the grounds established in paragraph (a)(1) of this section.

(d) The owner may appeal to have a property dedesignated by submitting a request for dedesignation and stating the grounds for the appeal as established in subsection (a) to the Chief, History Division, National Park Service, Department of the Interior, Washington, DC 20240. An appellant will receive a response within 60 days as to whether NPS considers the documentation sufficient to initiate a restudy of the landmark.

(e) The Secretary may initiate a restudy of a National Historic Landmark and subsequently a proposal for withdrawal of the landmark designation as appropriate in the same manner as a new designation as specified in § 65.5 (c) through (h). Proposals will not be submitted to the Advisory Board if the grounds for removal are procedural, although the Board will be informed of such proposals.

(f)

- (1) The property will remain listed in the National Register if the Keeper determines that it meets the National Register criteria for evaluation in 36 CFR 60.4, except if the property is redesignated on procedural grounds.

(2) Any [property](#) from which designation is withdrawn because of a procedural error in the designation process shall automatically be considered eligible for inclusion in the [National Register](#) as a National Historic [Landmark](#) without further action and will be published as such in the FEDERAL REGISTER.

+++++

From: 'npsc-l@googlegroups.com'

Michael A. Lambert Preservation Planner

To your specific point, we require a public hearing that considers the same types of information that led to the designation of the district in the first place. If something has material changed in the district or a substantial error in evaluation occurred at the time of designation, then a property of group of properties may be removed from a designated district. In the case of on-going survey work, new documentation may actually surface that strengthens an older district designation.

Our specific language regarding the de-designation of all or part of a designated Historic District states:

10-6-7.A16. Rescinding of Designation. Any property owner of record; a contract purchaser of a nominated property; individual or group of city residents; association with members who are city residents; or the historic preservation commission, on its own initiative and with prior consent of the city council, may request that the designation of a historic district be rescinded, in whole or in part, by the same procedures and according to the same criteria set forth herein for designation. The city council may rescind historic district designation of any designated property or group of properties provided that the vote to rescind the designation is not less than a two-thirds (2/3) vote of the aldermen then holding office.

No de-designation application relating to the same group of improvements, buildings, structures, objects, and/or sites may be entertained by the historic preservation commission for twelve (12) months following city council action regarding the designation of said group of improvements, properties, and/or sites as a historic district.

In the case of designation or de-designation, the public hearing is held at the Commission level; the Commission makes a recommendation to the City Council for their consideration. It is essential that the City Council be reminded of the standards identified in your local ordinance for the designation of historic properties, individually or as a group of properties.

Thank You for reading this entire document,

Garry Prohaska