



AGENDA ITEM SUMMARY

City Council

STAFF

Paul Sizemore, Director, Community Development & Neighborhood Services
Maren Bzdek, Manager, Historic Preservation Services
Jim Bertolini, Senior Historic Preservation Planner
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SUBJECT

Appeal of 1802 North College Avenue City Landmark Eligibility for Development Review.

EXECUTIVE SUMMARY

The purpose of this quasi-judicial item is to consider an appeal of the Historic Preservation Commission's (HPC) Decision on July 20, 2022, determining that the property at 1802 North College Avenue, Pobre Pancho's, is eligible as a Fort Collins Landmark and subject to the provisions of Land Use Code 3.4.7. Appeals of quasi-judicial commission decisions are processed under Municipal Code Chapter 2, Article II, Division 3. The Council is tasked, after considering the evidence, to uphold, overturn, or modify the decision of the Historic Preservation Commission (Sec. 2-56). The Council may also remand the matter to the HPC or an alternate decision-maker in certain circumstances under Sec. 2-56.

A Notice of Appeal of the HPC's decision was filed on August 3, 2022. The appellant, H and H Properties, LLC, (H&H) appealed the decision on two grounds. First, H&H argues that the HPC considered evidence relevant to its findings which was substantially false or grossly misleading. Second, H&H argues that the HPC failed to properly interpret and apply provisions of the City Code, specifically Municipal Code Sec. 14-22, Standards for Eligibility, and Sec. 14-23 Process for Determining Eligibility.

This item is a quasi-judicial matter and will be considered in accordance with the Council appeal procedures described in Division 3 of Article II of Chapter 2 of the City Code.

STAFF RECOMMENDATION

Not Applicable.

BACKGROUND / DISCUSSION

SUMMARY OF HISTORIC PRESERVATION COMMISSION HEARING

Subject: The subject of the hearing was the evaluation of the building at 1802 North College Avenue to determine the property's eligibility for designation as a Fort Collins landmark according to the eligibility requirements contained in City Code Section 14-22. A staff decision on this matter was issued on April 22, 2022, in response to a development application put forward by Raising Cane's that would demolish the existing properties at 1800 and 1802 North College Avenue for a new restaurant. Properties associated with potential development applications that contain buildings at least 50 years old are subject to Landmark

eligibility evaluation as an application pre-submittal requirement, as outlined in Land Use Code Section 3.4.7(C), Determination for Eligibility as a Fort Collins Landmark.

Based on the evidence in the historic survey form provided by the third-party historian, Front Range Research Associates (FRRA), on April 22, 2022, staff provided an official determination that the property meets the eligibility requirements for significance and integrity. Staff's findings were based on the following notes in the survey form:

- *“The property is evaluated as potentially eligible for listing in the State Register of Historic Places and as a local landmark for its historical associations (Criterion A and 1) in the following areas of significance: Ethnic History/ Hispanic/Mexican for its association with the Perez family, Mexican immigrants who came to Fort Collins and established a restaurant business reflecting Mexican foodways....The Perezes were drawn to the US during World War II to work in agriculture, and the subsequent establishment and growth of Pobre Pancho’s reflects the upward mobility and entrepreneurial spirit of one Latino family.”*
- *“A 2003 historical context on Hispanics in Fort Collins by Adam Thomas is silent on Latinx participation in the local business community, suggesting such enterprises were rare. Current data from the City of Fort Collins reinforces this legacy, indicating that as of 2018 Hispanic residents made up nearly 12% of the city’s population but only 3% of its business owners. Research by the City to this point documents the discrimination against Hispanic residents, which made business ownership both more difficult due to institutional and overt racism in the Fort Collins business community, but also important as a means to provide commercial venues open to Hispanic residents.”*
- *“El Burrito restaurant (404 Linden Street), established by Jesse and Dorothy Godinez in 1960, is another example of a longtime Latinx restaurant. Both Pobre Pancho’s and El Burrito are included on the city website in a tour of Latinx resources. In regard to Pobre Pancho’s the tour observed: “The establishment of the second restaurant [at 1802 N. College Avenue] was a sign of the growing number of Latinx residents living along North College Avenue, typically in seasonal worker’s shacks or in the mobile home parks that began developing north of the Poudre River as a result of gentrification and displacement from neighborhoods like Holy Family and Tres Colonias.””*
- *“Pobre Pancho’s is also significant in the area of Commerce, as an example of one of the city’s longer-lived restaurants of any cuisine, successfully operating for more than half a century in this location. By contrast, USA Today reported in 2018 (pre-pandemic) that “the average lifespan of a restaurant is five years and by some estimates, up to 90 percent of new ones fail within the first year.””*
- *“The building retains historic integrity based on its appearance in a 1976 assessor appraisal card photograph, which shows the front and south walls, displaying the projecting entrance bay and fenestration present today. A subsequent rear addition was added in 1992, following the same materials and design approach as the original building, including stucco walls, board and batten gable face, and small, narrow windows. The building form reflects the functional and humble nature of a family owned restaurant but displays some decorative embellishments, including the façade’s two stained glass windows with sombreros and roses and the carved wood entrance door. The colorful wall signs were added in 2010. The expansions were made under Perez ownership and were necessitated by the growth of their business. The setting has been impacted by removal of the freestanding sign and relocation of parking access to the rear.”*

The City Code allows for an appeal to the HPC of a staff decision regarding eligibility. The property owner, H&H, appealed the initial determinations of eligibility to the HPC on May 2, 2022. It should be noted that the developer with the responsibility for ordering a historic survey as a requirement of the development review process and the current property owner are separate entities, and it was the owner who appealed this finding.

As with staff's determination of eligibility for the property, the HPC's sole consideration was a *de novo* evaluation of the properties' eligibility for designation as a Fort Collins Landmark. While the implications of the results of that evaluation include how the existing buildings would be treated as historic resources under the Land Use Code, the HPC did not consider or review a proposed development application for the

properties, and the members did not discuss how the Land Use Code or approved modifications of standards might be applied to the properties.

City Code Requirements: The HPC's evaluation of 1802 North College, the former site of Pobre Pancho's Restaurant, was governed by City Code Section 14-22, *Standards for determining the eligibility of sites, structures, objects, and districts for designation as landmarks or landmark districts*. Section 14-22 establishes that a property or district must possess significance under at least one of four criteria for significance (events, persons/groups, design/construction, or information potential) and must also possess integrity, i.e. the ability to convey any established significance through existing, related physical characteristics. Integrity is evaluated based on seven aspects as noted in the City Code: location, design, setting, materials, workmanship, feeling, and association. All seven are not required "as long as the overall sense of past time and place is evident."

Decision and Findings: To arrive at findings for a de novo determination regarding the property's landmark eligibility status, the HPC considered the property's intensive-level historic survey document that was the basis for staff's determination of eligibility, as well as additional information from staff regarding the property's history, current condition, and discussion of professional methodology that is commonly used to evaluate historic properties in Fort Collins and for the National Register of Historic Places.

On a vote of 7-0 (2 vacancies), the HPC found that the 1802 North College Avenue property, formerly Pobre Pancho's Restaurant, meets the requirements for eligibility for Landmark designation under both Standards 1 for Events/Trends for its association with Hispanic/Latinx history in Fort Collins, and under Standard 2, Persons/Groups, for its association with the Perez family, key Hispanic business leaders in Fort Collins in the mid/late twentieth century (The HPC motion is in verbatim transcript on page 33, 23-43). The HPC passed the motion finding the 1802 North College Eligible for Landmark designation under the Standards in Sec. 14-22 based on the following three findings of fact:

1. "...the Pobre Pancho's building is significant to the history of Fort Collins and the local Latino community under criterion one – events, for its association with a Mexican immigrant family that established a restaurant business reflecting the spread of Mexican foodways, and which also speaks to the changing taste of local non-Mexican residents who came to embrace the flavors of Mexico, and also the site's association with, perhaps even leading the trend, towards Mexican-American and Hispanic businesses moving north along [U.S. Highway] 287 north of Fort Collins beginning during the '60's and a pattern of development that is still evident today.
2. "...the Pobre Pancho's building is also significant to the history of Fort Collins and the local Latinx community under criterion two – people, for its association with four generations of the Perez family including...Amelia Perez, Frank Perez, Mary Perez, daughter Amelia Perez, Monica Bird, and Carolyn Bird...who made their mark upon our local history through the Mexican restaurant business;
3. "...the Pobre Pancho's building retains integrity and clearly conveys the functional and humble nature of the family-owned restaurant while still displaying some lovingly added decorative embellishments showing the importance of the building to the Perez family and the Fort Collins community that enjoyed dining in the Pobre Pancho's establishment.

Note: A verbatim transcript of the HPC's hearing, along with a link to the FCTV recording on this item, is part of the record provided to Council for this appeal.

APPEAL ALLEGATIONS

Despite the order in which arguments are made in the Notice of Appeal by H&H, Council must consider argument #2 first as it alleges that the HPC hearing was not fair. If Council finds that an unfair hearing was held, it must remand the matter for further hearing and decision and need not analyze H&H's argument regarding interpretation or application of Section 14-22 of the City Code.

The Notice of Appeal also alleges that the HPC failed to properly interpret and apply City Code Section 14-22 - *Standards for determining the eligibility of sites, structures, objects and districts for designation as*

landmarks or landmark districts and City Code Section 14-23 *process for determining eligibility*. Because the appellants arguments do not address City Code Section 14-23, the following focuses on the allegations regarding City Code Section 14-22.

Page 3 of the Notice of Appeal states the Appellant's primary objection to the HPC's decision is based on the allegation that the building is not a significant example of Hispanic heritage in Fort Collins, nor is the Perez family significant enough to local history to warrant designation of their family restaurant under Standard 2 for Persons/Groups.

The Notice of Appeal includes several points related to the allegation regarding interpretation and application of the designation standards. A list of those points with related information in the record is provided below.

1. "Construed generously, the Survey opines that the structure, as the site of a long-lived Mexican restaurant, has historic significance due [to] association with the following historic events or trends: systematic racism against Latinx people in Fort Collins that made successful Latinx businesses rare; (2) general migration of Latinx people to the city, state, and nation; and (3) settlement of Latinx people north of the Poudre River due to gentrification elsewhere in Fort Collins. Appellant contends that at the LPC hearing, the evidence did not show specific connections between these historic trends and the Pobre Pancho's business or Perez family that would merit preserving the building as a historic landmark. Thus, the evidence failed to show a sufficient "association" with historic events or trends." Related information in the record is found in the verbatim transcript, page 5, line 37 through page 8, line 2.
2. "The Survey also suggests that the structure at 1802 S. College has historical significance by being "associated" with the lives of important persons or groups, namely, the Perez family and the long-lived Pobre Pancho's restaurant. Appellant agrees that immigrating to the United States and opening a restaurant that stayed in business for fifty years is an accomplishment for Frank Perez and his family. However, millions of other immigrants have similar stories. The Perez family's story is certainly significant to the Perez family and perhaps to some of Pobre Pancho's customers. But, the story is not "historically significant" to the economic or cultural history of the nation, the State of Colorado, or even the City of Fort Collins. The LPC was wrong to find otherwise." Related information in the record is found in the verbatim transcript, page 8, lines 3-12.
3. "Appellants also contend that the structure at 1802 N. College lacks integrity, which is defined as "the ability of a site, structure, object, or district to be able to convey its significance." All of the alleged historic significance is connected to the experience of Latinx people, specifically Mexican people and the Perez family. However, the building itself was not built by the Perez family. It started out as a sporting goods store. There is no dispute that the building is completely generic, lacking any architectural distinction. Aside from two stained glass windows depicting sombreros and roses, the building itself reflects absolutely no Latinx or Mexican influence and so has no ability to convey its alleged significance. Thus, it lacks integrity and the LPC [sic] was wrong to find otherwise." Relevant information in the record is found in the verbatim transcript, page 8, line 13 through page 9, line 40.

The Notice of Appeal also includes a second allegation, related to the fairness of the HPC hearing, alleging that the HPC considered misleading evidence that was used as a basis for its decision. The Appellants' primary justification with related information in the record is provided below.

1. "At the LPC [sic] hearing, members of the Perez family complained about the abrupt way in which the Hauns shut down the restaurant. Such evidence is misleading because the closing is in line with industry norms. The restaurant's closure is also irrelevant to whether the building is landmark eligible. Members of the Perez family also described in some detail the history of the restaurant and the friendly, hard-working personality of the restaurant's founder, Frank Perez. While this information may be true, the information is misleading because it does not establish any "historical significance" of interest

beyond the relatively few members of the Perez family and former customers.” Related information in the record is found in the verbatim transcript, page 5, lines 13-21 and 26-36; page 10, lines 25-42.”

CITY FINANCIAL IMPACTS

Determination that a property is Eligible as a City Landmark generally has no financial impact on the City, as formal designation is typically required for accessing public incentives for historic properties. Designation as a Fort Collins Landmark qualifies property owners to apply for certain financial incentives funded by the City, as well as allows private property owners to leverage State tax incentives for repairs and modifications that meet national preservation standards. These include a 0% interest revolving loan program and Design Assistance mini-grant program through the City, and the Colorado State Historic Tax Credits.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

On a vote of 7-0 (2 vacancies), the HPC found that the 1802 North College Avenue property, formerly Pobre Pancho’s Restaurant, meets the requirements for eligibility for Landmark designation under both Standards 1 for Events/Trends for its association with Hispanic/Latinx history in Fort Collins, and under Standard 2, Persons/Groups, for its association with the Perez family, key Hispanic business leaders in Fort Collins in the mid/late twentieth century (The HPC motion is in verbatim transcript on page 33, 23-43). The HPC passed the motion finding the 1802 North College Eligible for Landmark designation under the Standards in Sec. 14-22 based on the following three findings of fact:

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PUBLIC OUTREACH

The Historic Preservation Commission recommendation was made at a properly noticed public hearing.

ATTACHMENTS

1. Agenda Item Summary
2. Notices and Mailing List
3. Notice of Appeal
4. Staff Report to Historic Preservation Commission
5. Staff Presentation to Historic Preservation Commission
6. Applicant Presentation to Historic Preservation Commission
7. Link to Historic Preservation Commission Meeting Video

8. Verbatim Transcript
9. Presentation