

**Applicant Presentations to
Historic Preservation
Commission**

JULY 17, 2024

201 Linden Hotel

Request for Certificate of Appropriateness:
Window Replacement Request
&
Combined Conceptual & Final Review
FCMC Section 14-54

Brownstein



201 Linden Hotel Team

David Diehl – OneSeven Advisors, LLC – Owner’s Representative

Mark Wernimont – Colorado Sash and Door – Expert

Claire Havelda – Brownstein Hyatt Farber & Schreck, LLP

Introduction

Request.

- Approval of replacement of all 42 of the 147-year-old 2nd and 3rd story windows for the 201 Linden Hotel. **Only visual impact less than ½ inch change to the window check rail.**

Clarification.

- Expert Report Timing.
 - October 21, 2023 – Window Failure.
 - November 9, 2023 – Meeting with the City.
 - Discussed finding a neutral expert to do the window assessment as Owners had grave concerns about the inadequacies of the Barlow Report.
 - Owners Representative contacted all suggested experts.
 - A few never returned calls.
 - 1 Declined. Offered to do a ballistic report. (Heritage Window Restoration)
 - Engaged Mark Wernimont – Colorado Sash and Door – Report provided with application in June 2024.
- City's Expert Report.
 - The City commissioned report – August?
 - We have grave concerns about the limited focus and scope of that report and do not believe it will address the fundamental issue at hand. Design Flaw & Lack of consideration of relevant City and Owner goals.

Record

1. Request that the complete application, including the letter of June 24, 2024, and all attachments submitted therewith.
 1. Record reflect that Mr. Wernimont's Report included reference to the proposed replacement window.
 2. Unclear whether HPC was provided this application prior to Work Session.
 3. Did not see in the packet was the City's "Legal Memorandum" dated November 27, 2023, that was sent to the Applicant Team. Important that this also be included in the record as it gives context to our Application, outlines the limited scope of review the City's Report will cover, and documents the tenor that the City's Legal Team has chosen to engage in.
2. Ask that these slides be included.
3. Ask that the prior information included in the Agenda Packet of Item 3 attachment 1 of the 12/17/18 HPC Agenda Packet from Dohn Construction and Mr. Wernimont's past reports be included.
4. The proposed window replacements be included in the record – in form that makes most sense (photographs or originals).

History of 201 Linden Hotel Replacement Requests

- First request to replace 128-year-old windows first made in 2005.
 - City denies.
- Second request to replace 141-year-old windows made in 2018.
 - Expert Report by Dohn Construction Submitted.
 - City commissions Barlow Report and uses as basis for denial.
 - Flaws in Barlow Report & Newly Commissioned City Report.
 - No weight given to:
 - Private Property Owner Rights – Concerns of window operability, safety, civil liability and sustainability.
 - Onerous Repair Requirements =*Potential Violation of Sheetz v. County of El Dorado CA, 144 S. Ct. 893 (2024). Permit conditions must have rough proportionality to impact on land-use interest – may not require landowner to pay more than is necessary to mitigate harms resulting from development.*
 - City Climate Action/Sustainability Goals OR HPC Goals.
 - October 2024 – 2nd Story Window Fails.
- Third request to replace 147-year-old windows made 2024.
 - Windows contain a **Fundamental Design Flaw** that Rehabilitation does not sufficiently address.
 - Significant deterioration to warrant replacement under Secretary of Interior Standards 36 CFR Section 68.3.

REPAIR v. REPLACEMENT

REPAIR

- Secretary of the Interior Standards:

“[C]annot, in and of themselves, be used to make essential decisions about which features of the historic building should be saved and which can be changed. But, once a treatment is selected, the Standards and Guidelines provide a consistent philosophical approach to the work.”

Rehabilitation is not appropriate in this case where window design is fundamentally flawed, significantly degraded windows, and attempts at rehabilitation have not proven sustainable.

Rehabilitation does not meet:

- Operability standards private property owners have a right to in a residential building.
- Safety standards private property owners have a right to in a residential building nor does it meet the proportionality test of *Sheetz*.
- Historic Preservation Commission Goals.
- City of Fort Collins Sustainability Goals.
 - Either for energy efficiency or maintenance sustainability.

REPAIR v. REPLACEMENT

REPLACEMENT ALIGNS WITH GOALS & STANDARDS

- Proposed Replacement Windows Meet Secretary of Interior Standards.
 - When the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and **where possible** materials.
 - If using the same kind of material is not feasible, then a compatible substitute material may be considered.
- Proposed Windows Meet HPC Goals.
- Proposed Windows Meet Building Safety Standards.
- Proposed Windows Meet City Energy and Maintenance Sustainability Goals.

REPAIR v. REPLACEMENT

Replacement Continued

1. Replacement does not create an adverse affect on the general historical character of the landmark – windows are visually identical from the exterior street view.
2. Replacement holds with the general historical character of the landmarked area.
3. Retention of the faulty materials does not outweigh the safety, operability, environmental and sustainability concerns replacement would address.
4. No visible change to the exterior key characteristic of the landmark.
5. Replacement will encourage the protection, enhancement and perpetuation of use of the landmark by honoring owner concerns related to safety and sustainability.
 1. This is not a first-floor commercial building where interior is open to inspection by public. 2nd & 3rd floor exterior visual impact only.
 2. The current windows also creating water damage on the interior of walls of 201 Linden Hotel.
6. Replacement minimizes ongoing disruption to lives of residents of the 201 Linden Hotel, unlike a piecemeal rehabilitation approach.

SECRETARY OF INTERIOR STANDARDS FOR REPLACEMENT

- ✓ Replacement material should match the old with exception of hidden structural reinforcement.
- ✓ Restoration Standards
 - When the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and where possible materials. It further states that “if using the same kind of material is not feasible, then a compatible substitute material may be considered.”
 - Mr. Wernimont discuss in detail later in presentation.

HISTORIC PRESERVATION COMMISSION'S DEFINED PURPOSES

Fort Collins Municipal Code Section 14-2

- **Stabilize and improve the aesthetic and economic vitality and values of historic sites and structures.**
 - Owners attempting protect building, interior & exterior.
- **Promote the use of historical structures.**
 - Private residences. No public access. However, the Owners are committed to ensuring visual consistency with the original windows.
- **Promote and encourage continued private ownership and utilization of such sites/structures.**
 - Must be a consideration of private property owners' rights in this balance; including operability, safety and exposure to civil liability for failing windows.
 - Visual difference of less than ½ inch check rail – imperceptible from exterior.
 - Repair requires ongoing excessive maintenance and defeats this purpose.
- **Promote economic, social and environmental sustainability through ongoing “use” of existing buildings.**
 - Replacement is the only economically and environmentally sustainable option.

SAFETY AND SUSTAINABILITY

- OWNERS SAFETY AND SUSTAINABILITY GOALS.

- Safety & Operability.
 - Repair = Seal Shut
- Energy Efficiency.
 - Repair = Seal shut.
- Predictable long term maintenance costs; budget. Not yearly reviews by HPC.

- CITY'S SUSTAINABILITY GOALS.

- The Replacement windows meet the City's adopted the International Building Code Standards:
 - Window opening operability 1015.8;
 - Wind Loading in 1609.3;
 - Sound Control 3603.2; and the
 - Dessing Pressure rating for windows.
- City's adopted "Our Climate Future" Plan and the City's published Our Climate Future Action Guide, identify the urgent need to reduce carbon emissions and improve energy efficiency.
 - City documented that 2/3 of Carbon Emissions come from buildings providing heating, cooling and lighting.
 - New Replacement windows are energy efficient and significantly reduce carbon emissions.

OLD TOWN DESIGN STANDARDS

- **Design Standards.** Design standards promote historic preservation best practices. They seek to:
 - Manage change so the historic character of the district is respected while accommodating compatible improvements.
 - They reflect the city’s goals to promote economic and sustainable development, enhance the image of the city and reuse historic resources.
- **When Strict Adherence to the Design Standard is Inappropriate.**
 - In addition, there are many cases in which the standards state that one particular solution is preferred . . . but . . . some alternatives may be considered if the preferred approach is not feasible.
 - In those instances, the HPC should consider:
 - The quality, appearance and character of alternative solutions, such as new materials.

OLD TOWN DESIGN STANDARDS /cont.

Old Town Design Standards claim that does not hold true for this matter:

1. Repair is generally claimed as less expensive than replacement by the Standards (P. 19) and by Staff.
 1. This is not accurate in this case.
 1. **Repair.** Ongoing repair of the current windows is estimated to be **\$352,798** over a thirty-year period.
 2. **Replacement.** 1st Option **\$284,690** / 2nd Option **\$218,950** (Applicant Preferred Option).
 3. **Cost Difference.** 1st Option \$68,108 / 2nd Option \$133,848.
2. OTDS language indicates that cost was a consideration in developing these standards and thus, may be considered in the HPC's analysis.

Repair Costs

Paint 2024	1	42	100	350	18900	10000	\$28,900	
Paint 2031	1	42	126	442	23856	11000	\$34,856	
Paint 2038	1	42	159	560	30198	12000	\$42,198	
Paint 2045	1	42	200	707	38094	13000	\$51,094	
Assume 3.75% per year Same as 2016 thru 2024								
Repair	1	42	225	4150	183750	12000	\$195,750	
							\$352,798	133848

*Note – Repairs do not allow for Operability of Windows or meet Environmental Sustainability Goals.

Replacement Costs (#1 Wood & #2 Clad Options)

			Material	Labor		Set Up		
Option #1								
Wood		42	3300	1500	201600	10000	\$211,600	
Paint	1	42	121	424	22890	12000	\$34,890	
	1	42	133	467	25200	13000	\$38,200	
							\$284,690	65740
Option #2								
Clad		42	3700	1275	208950	10000	\$218,950	Base Line

OLD TOWN DESIGN STANDARDS

Standard	Content	Met
Policy LIV 17.2 Encourage Adaptive Reuse.	In order to capture the resources and energy embodied in existing buildings, <u>support and encourage the reuse, and adaptation of historically significant and architecturally important structures,</u> including but not limited to Downtown buildings, historic homes, etc.	✓
Policy LIV 17.3 Ensure Congruent Energy Efficiency.	Ensure that <u>energy efficient upgrades contribute to or do not lessen the integrity of historic structures.</u>	✓

OLD TOWN DESIGN STANDARDS

Standard	Content	Met
<p>3.9</p> <p>Replace a historic window with a matching design if repair is not possible.</p>	<ul style="list-style-type: none"> • Replace with the same material*. Match the appearance of the historic window design (i.e., if the historic is double-hung, use a double-hung replacement window). • Maintain the historic size, shape and number of panes. • Match the profile of the sash, muntin and its components to the historic window, including the depth of the sash, which may step back to the plane of the glass in several increments. • Use clear window glazing that conveys the visual appearance of historic glazing (transparent low-e glass is preferred). • Do not use vinyl and unfinished metals as window replacement materials. • Do not use metallic or reflective window glazing. • Do not reduce a historic opening to accommodate a smaller window or increase it to accommodate a larger window. 	<p>✓</p> <p>*One of two options for replacement varies materials but is visually identical to the original materials.</p>

OLD TOWN DESIGN STANDARDS

Standard	Content	Met
3.10 Replace a historic window with a matching design if repair is not possible.	Give special attention to matching the historic design and materials of windows located on the façade.	✓

Expert Analysis

- Fundamental Design Flaw.
- Sustainability/Significant Deterioration.
- Costs in Time & Money of Ongoing Piecemeal Repair.
- Energy Efficiency.
- Operability.
- Safety.
- Acknowledging Bias of “Repair” Experts.
- Recommendation: Replacement.

Consideration of Additional Impacts of Delayed Replacement

1. Impacts of water infiltration on interior walls of 201 Linden Hotel.
2. Impacts to lives of property owners for delay to replacement & requirement for piecemeal approach to repairs.
3. Liability concerns.

REQUEST FOR A BALANCED APPROACH

When interpreting Municipal Code, must give “consistent, harmonious and sensible effect to all of its parts.”*

When review this request holistically and accounting for all policy goals and objectives, **Replacement** of the 201 Linden Hotel Windows far outweighs the benefits of an exorbitantly costly, piecemeal, unsustainable and unnecessary **Repair** approach.

Thus, the applicant team respectfully asks for your approval to replace all 42 of the 147-year-old 2nd and 3rd Floor Windows of the 201 Linden Hotel.

• **R.W. v. People in Interest of E.W.*, 532 P.3 422, 425 (Colo. 2022).

*Thank you for your thoughtful
consideration.*

CONTACT

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AUGUST 21, 2024

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Rebuttal Presentation

CRAFTSMAN REPORT ERRORS

1. Assumption/Meritless Accusations of Code Violations by Owners.
 - a) Lack of Discussion with Owners.
 - b) Purpose of 2nd Opinion undermined.
 - c) Lower v. Upper Sash Recommendations – failure to address safety.

2. Failure to Consider Relevant Expert Reports.
 - a) Best Practice.

3. Failure to Analyze Fundamental Design Flaw after Acknowledgment of the Same.
 - a) Craftsman Report begins by acknowledging design flaw – but provides no analysis of impact.

CRAFTSMAN REPORT ERRORS – CONTINUED

4. Failure to Analyze Operability Issues and Inappropriate Recommendation for Storm Windows.

- a) “Operability” improvements not quantified.
- b) Storm window recommendation:
 - i. Lack of Operability.
 - ii. Violation of Old Town Standard 3.11.
 - iii. No analysis of Repairs and Climate Action Goals without impermissible application of storm windows.
- c) Simply cannot be repaired to meet Safety, Climate Action Goals and Operability standards.

CRAFTSMAN REPORT ERRORS – CONTINUED

5. Inaccurate and Contradictory Cost Estimates and Lack of Inflation Analysis.

- a) No Replacement Cost for Upper Sash – which is what failed.
- b) Inapplicability National Trust for Historic Preservation.
 - i. Residential. 1500 sq ft Queen Anne. Not comparable.
 - ii. “Window repairs costs not considered.”

6. Weight of Expertise.

- 1. Concerns about Barlow Report from the beginning.
- 2. Craftsman Report did little more than parrot the Barlow Report.
- 3. Craftsman 6 years experience (3 during pandemic) v. Mr. Wernimont’s 30 years of experience.

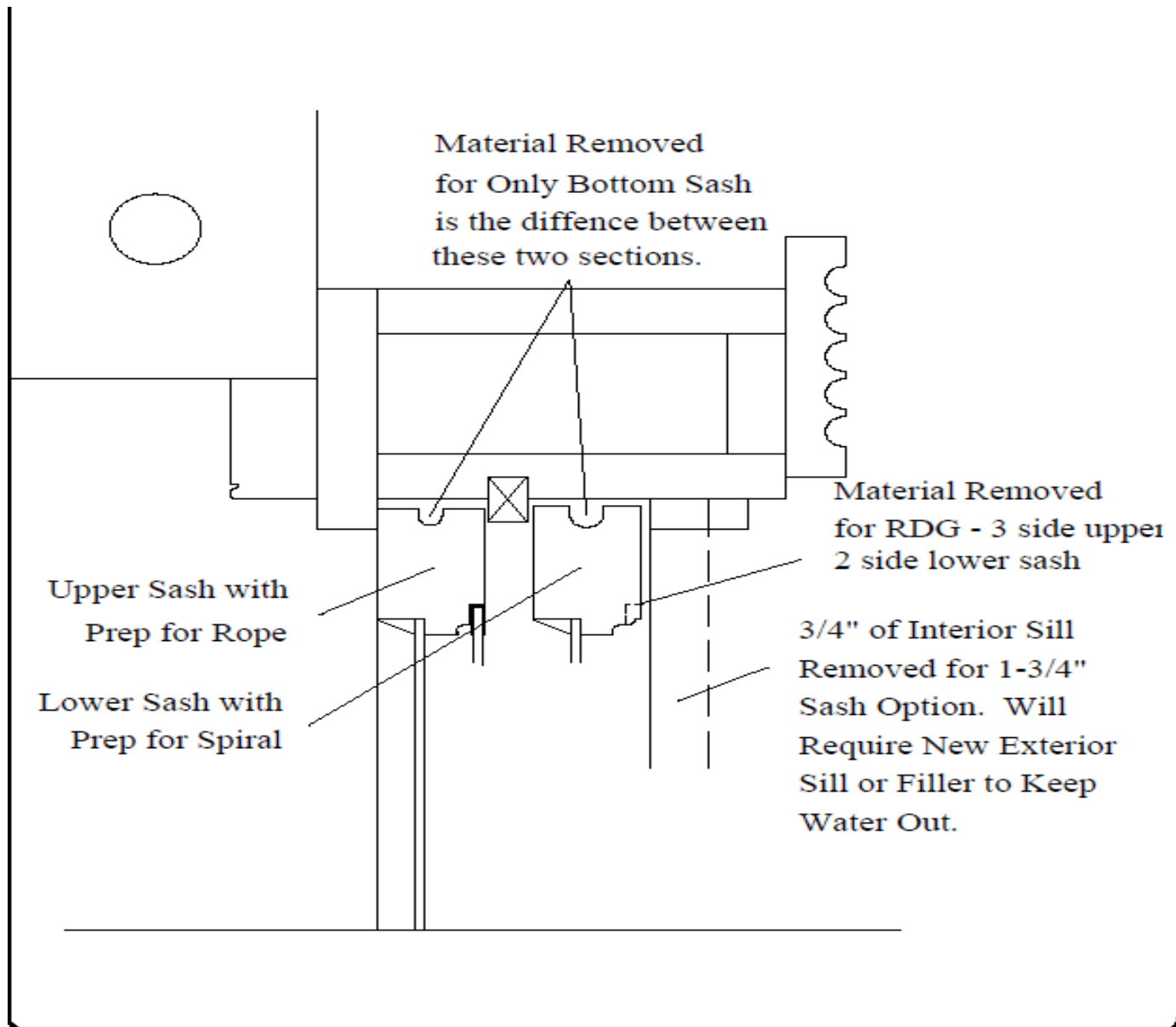
Wernimont Rebuttal Report Highlights

- **Expertise**
- **Inaccuracies in Craftsman Report**
 - Materials
 - Wood
 - Metal Clad
 - Weather Stripping
 - Glazing
 - Storm Windows

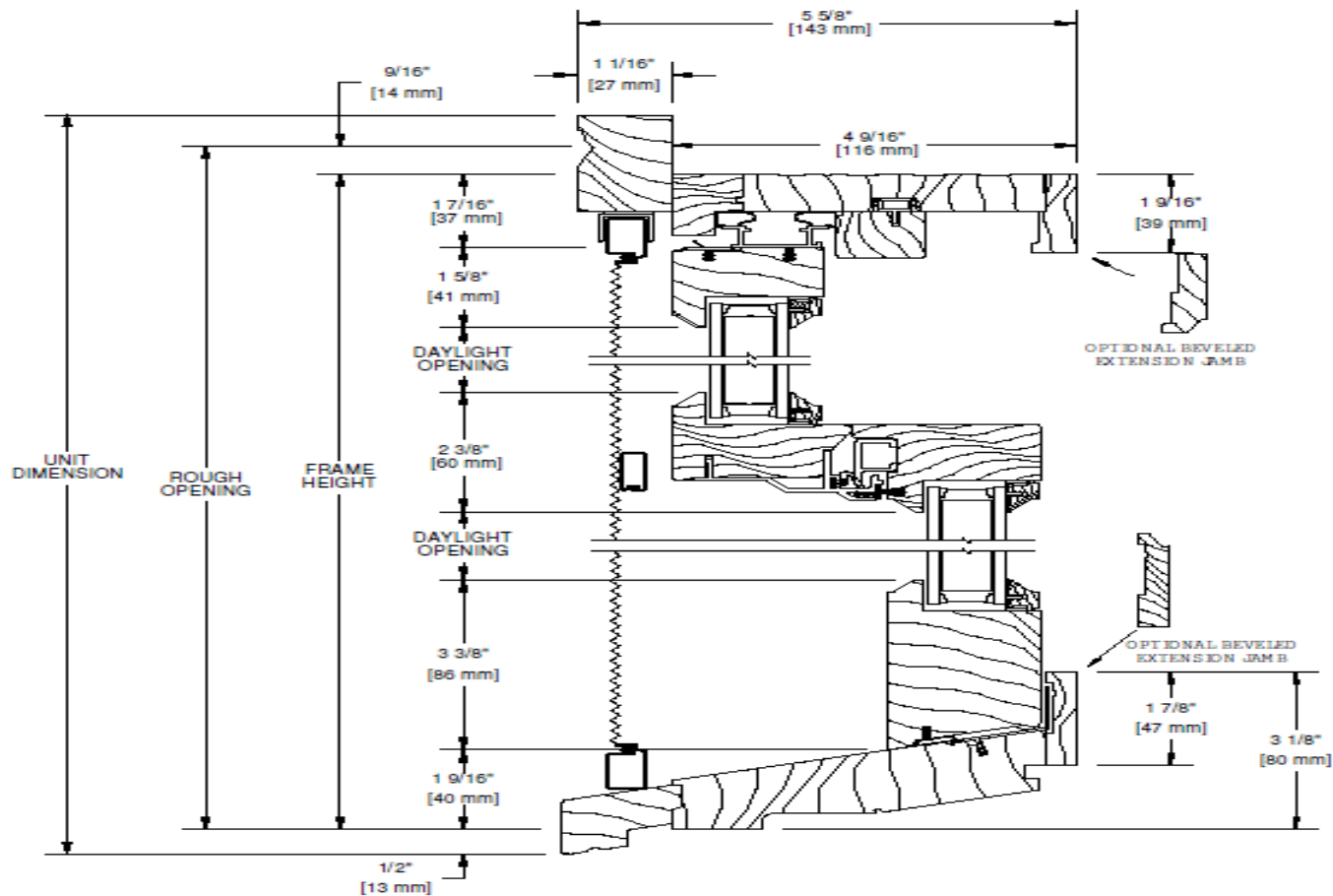
Wernimont Rebuttal Report - Continued

– **Past Studies**

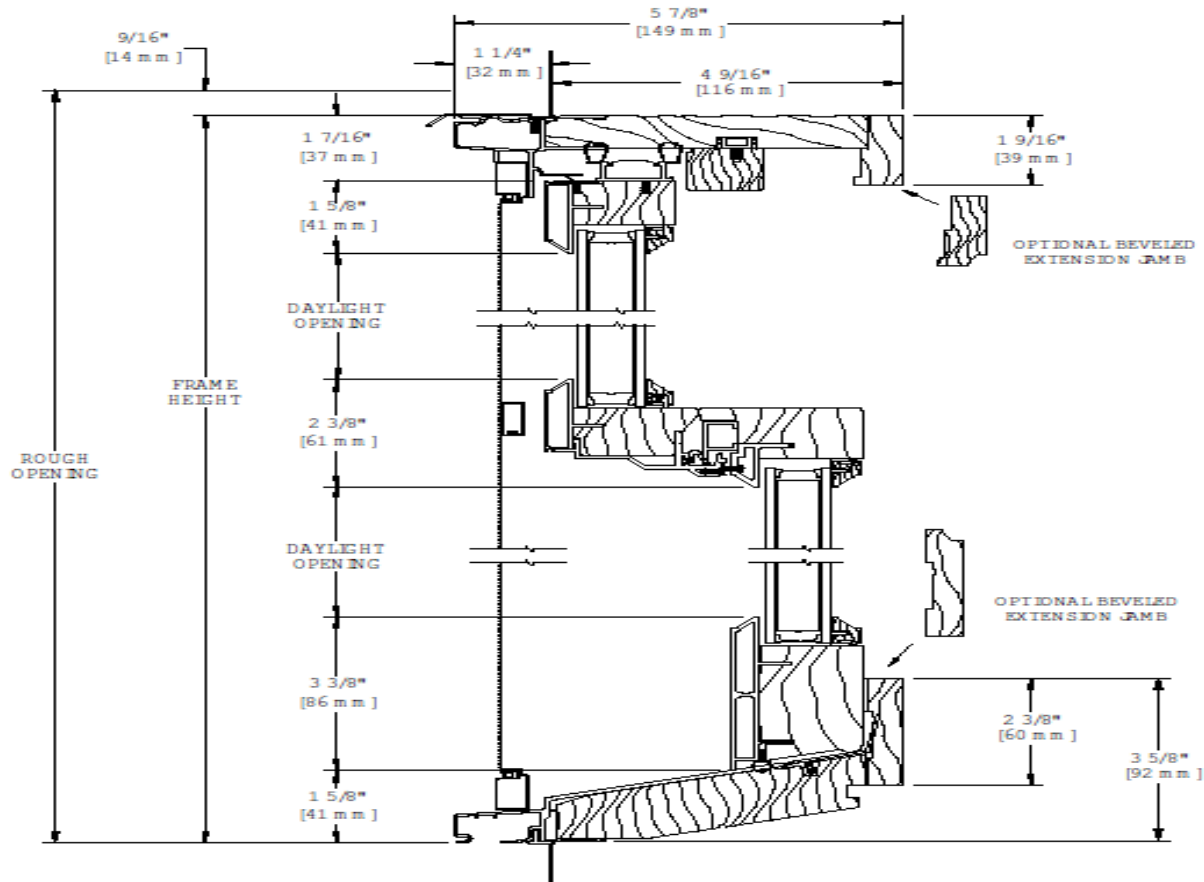
- State of Windows prior to 2018.
- Original Construction – Design Flaw Acknowledged but not addressed
- Materials Removed in 2018.
- Balance System
- Glazing Repairs
- Wood Cover Over Balance Tube
- Paint
- Add Storm Windows
- Weather Stripping
- Rebuild Lower Sash
- Glazing



Sterling Double Hung – Operating Standard Performance Wood



Sterling Double/Single Hung – Operating High Performance Clad



Wernimont Rebuttal Report - Continued

Costs

- **Option B:** This option seems to move restoration from year #10 to Year #1 and even if you ignore the painting cost difference, you get to a cost of \$147,860 but again add the storm at \$163,620 for a total of \$311,420. And would grow by another estimated cost of \$51,400 for the correct finishing costs which makes the total \$362,820.

- **Option C:** Adds \$20, 000 in year one to the cost of Option B, so the total grows to \$382,820.

Wernimont Rebuttal Report - Continued

- **Option E:** Craftsman new window pricing is 25% less than what we have priced, (but the 1 3/8” thick sash does not meet the structural performance for the size of the openings.) I am not aware of any product that will hit this budget unless they are using a price for smaller residential house sized windows.

They may meet the details but would not provide the custom color with the 4-step paint process in a temperature and humidity-controlled environment that we have provided. Their total is \$376,960 and doesn't account for storm windows, which would be an additional cost of \$163,620 for the wood version, for a total of \$540,580.

Our price for this is \$284,960 and, critically, would not require storm windows.

HISTORIC PRESERVATION COMMISSION'S DEFINED PURPOSES

Fort Collins Municipal Code Section 14-2

- **Stabilize and improve the aesthetic and economic vitality and values of historic sites and structures.**
 - Craftsman Report fails to improve the aesthetic with storm window recommendation.
 - Craftsman Report fails to improve economic vitality of historic site with exorbitant costs.

- **Promote the use of historical structures.**
 - After seeing what the Owners have gone through to get historically accurate windows replaced, very likely to have a chilling effect on anyone else contemplating ownership of historic buildings.

- **Promote and encourage continued private ownership and utilization of such sites/structures.**
 - Must be a consideration of private property owners' rights in this balance; including operability, environmental standards, safety and exposure to civil liability for failing windows. None of this was sufficiently considered by City Experts.

- **Promote economic, social and environmental sustainability through ongoing "use" of existing buildings.**
 - Craftsman Report discourages economic and environmental sustainability.

*Thank you for your
thoughtful consideration*

CONTACT

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