

AGENDA ITEM SUMMARY

City Council



STAFF

Kim Meyer, Interim Director, Community Development & Neighborhood Services
Maren Bzdek, Manager, Historic Preservation Services
Jim Bertolini, Senior Historic Preservation Planner

SUBJECT

Appeal of the Historic Preservation Commission’s Landmark Design Review Decision Denying Metal-clad Window Replacement at 201 Linden Street (aka the Linden Hotel), a Fort Collins Landmark.

EXECUTIVE SUMMARY

The purpose of this quasi-judicial item is to consider an appeal of the decision of the Historic Preservation Commission (“HPC”) on August 21, 2024, denying the applicant’s/appellant’s request to replace all of the second and third-story windows at 201 Linden Street, also known as the Linden Hotel, with pre-fabricated metal-clad window units.

The Appellant, Linden Street Treehouse, LLC, the owner of the Property, via OneSeven Advisors and their attorney, raise nine issues on appeal:

1. The HPC failed to conduct a fair hearing under all 5 grounds:
 - a. The HPC exceeded its authority or jurisdiction as contained within City Code by improperly using the *U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties* and Old Town Design Standards to justify its denial of window replacement, required repair of interior features not subject to Chapter 14, Article IV, and that the HPC failed to adequately consider Municipal Code 14-2 (Preservation Purposes), the City’s Climate Action Plan, or International Building Codes; and
 - b. The HPC substantially ignored its previously established rules of procedure by failing to initially accept the Applicant’s proffered window exhibit; and
 - c. The HPC considered evidence relevant to its findings which was substantially false or grossly misleading, specifically by utilizing the erroneous and false information in the 2018 Barlow report and 2024 Deep Roots Craftsmen report in their final decision-making; and
 - d. The HPC improperly failed to receive all relevant evidence offered by the appellant by initially refusing to review and accept the Applicant’s proffered window exhibit into the record; and
 - e. The HPC was biased against the appellant by reason of conflict of interest or other close business, personal, or social relationship that interfered with their independence of judgement; and
2. That the HPC failed to properly interpret and apply provisions of City Code, specifically:
 - a. Applicable sections of the Building Code,
 - b. Municipal Code Section 14-2 establishing the purpose of the City’s historic preservation program,

c. The U.S. Secretary of the Interior's Standards (adopted by the City for historic preservation use in Municipal Code 14-53), and

d. The Old Town Design Standards.

BACKGROUND / DISCUSSION

SUMMARY OF HISTORIC DESIGNATION AND FINANCIAL INCENTIVES

City Council individually Landmarked the Linden Hotel in 1974 (Ordinance 1974-44), but the property was also later included as a contributing building in the Old Town Landmark District, designated by City Council in 1979 (Ordinance 1979-170, and subsequent 1998-102 and 1998-124). The hotel was additionally listed in the National Register of Historic Places in 1978 as part of the Old Town Historic District – the Hotel is listed as “the central anchor for the district.”

Since 1978, the property has received significant public investment from federal, state, and local sources in excess of \$400,000 to preserve its historic features, including:

- 1994-1995 – Federal Historic Tax Credit
 - o 20% of total rehabilitation costs
- 1994-1995 – Multiple funding sources for comprehensive rehabilitation
 - o State Historical Fund, \$100,000
 - o Downtown Development Authority and City of Fort Collins Historic Preservation Fund, \$250,000
- 2011 – DDA Façade Restoration Program, \$68,555
 - o column and stone base repair
- 2017 – Design Assistance Grant for rooftop modifications
- 2018 – Design Assistance Grant for window study (Barlow) – approx. \$1500
- 2024 – Design Assistance Grant for updated window study (Deep Roots Craftsmen) – \$4100

SUMMARY OF HISTORIC PRESERVATION COMMISSION HEARING

The purpose for the Historic Preservation Commission hearing regarding the historic Linden Hotel at 201 Linden Street was to consider a request for the replacement of upper floor windows with a metal-clad wood replacement product proposed by the applicant. The HPC is required by Municipal Code Chapter 14, Article IV to base its decisions regarding exterior projects on designated City Landmarks on the applicable federal standards and guidelines adopted by the City for historic preservation purposes (the *U.S. Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties*), and the Old Town Design Standards adopted by City Council in 2014 that interpret those federal standards and guidelines specifically for this collection of buildings.

As a standard part of any request for comprehensive treatment of windows on an historic building, whether that be repair or replacement, City staff completed a window study using a third-party expert in historic window treatment, Deep Roots Craftsmen. Window studies provide the decision maker with the level of detail required to make an informed decision and they protect applicants by providing rigorous evidence for the decision-making process.

In this case, staff engaged Deep Roots Craftsmen, an experienced and well-respected historic preservation contractor based in Fort Collins that regularly completes historic preservation work regionally and throughout the country, including for the National Park Service. The City contracted with Deep Roots Craftsmen under the Design Assistance Program to conduct a full window study that would include treatment recommendations consistent with Municipal Code requirements while accounting for any changes in window condition since the 2019 closure of the previous request and the window study

conducted at that time. The contractor concluded that the windows had deteriorated to a degree requiring more significant intervention. The contractor's top recommendation was to repair the existing upper sashes, replace the lower sashes, and install exterior wood storm windows to improve energy performance. Staff recommended that approach to the Commission, while also acknowledging that the contractor's window study noted that full in-kind (i.e., wood) replacement would be appropriate based on the condition of the windows as assessed in July/August 2024.

Historic Preservation Commission Hearings and Finding

The HPC initially heard this item at the applicant's request at its regular meeting on July 17, 2024. At that time, the window study was still underway. Based on the incomplete evidence and a staff recommendation, the HPC left the hearing open and continued the hearing until August 21, 2024, to allow for the completion of the updated window study. A window study is a standard reference document when window treatment and/or replacement is being considered, and provides a detailed, professional recommendation for treatment based on the Standards named above and current conditions in the property. Key considerations when applying the Standards, in order of priority, include:

- Preservation of historic character via authentic, historic materials; and
- Conservation of durable historic materials to avoid the environmental costs of manufacturing replacement products; and
- Livability for building residents, considering the historic use of the spaces in question for hotel rooms, including energy performance.

The HPC considered the following information when making their decision:

- Information contained in the Landmark Design Review application, staff reports, and presentations for both July 17 and August 21, 2024;
- Statements and evidence provided at both the July and August 2024 HPC meetings, including staff presentations, applicant presentations, and public comments.
- Attachments provided by staff, including National Park Service guidance on how to approach window treatments in historic buildings in a manner consistent with the Secretary of Interior's Standards for Treatment of Historic Properties, which is required by the Fort Collins Municipal Code;
- The application and attachments from the appellant, including correspondence and reports from a previous application to replace the same windows in 2018-2019, Poudre Fire Authority statements related to the current condition concerns (2023-2024), and information from the applicant's own window replacement consultant, Colorado Sash & Door, etc.
- Site visit and agenda packet information from the HPC's review of the previous application for window replacement, from December 2018 and June 2019 (Note: the June 2019 item was pulled from the then LPC's agenda).

The HPC determined the following regarding the Application:

The HPC voted on two motions at their August 2024 meeting:

- *The first motion supported in-kind replacement and failed on a vote of 2-4;*
- *The second motion denied the request for window replacement, which passed 4-2.*

In the HPC's discussion (included on August 2024 transcript pages 28 [line 18] through 37 [line 5], several primary factors drove the discussion:

- General consensus among commissioners that exterior storm windows were not an appropriate treatment for this building (pp28-30).

- Concerns about the amount of loss of historic material if replacement were approved (most notably, p28, lines 32-44 and p29 lines 1-13).
- Concern about practical modification of the windows to meet staff's top recommendation for partial replacement and exterior storm windows only, and concern about over-emphasis on energy performance (*Note: these topics did not have full consensus from all commissioners as to the degree of concern or emphasis*).

Motion to Approve In-Kind Replacement (Failed to Pass)

Following discussion at their August 21, 2024, meeting, the HPC first introduced a motion to approve replacement of the second and third story windows in-kind (wood) (p35, lines 1-6). However, in discussion prior to a vote, it became clear that there was confusion among several commissioners about whether the proposed motion would approve a wood, *in-kind*, un-clad replacement or just approve the applicant's original request. The HPC voted 2-4 (2 absent, 1 vacancy) against the motion.

Motion to Deny Applicant's Request (Passed)

On a vote of 4-2 (2 absent, 1 vacancy), the HPC denied the applicant's request to replace the windows with the aluminum-clad wood product originally proposed, finding it didn't meet the City's adopted Standards for historic buildings or the Old Town Landmark District (p37, lines 34-39).

CLAIMS ON APPEAL

Appellant filed a Notice of Appeal seeking reversal of the HPC's decision to deny replacement of the existing upper-story windows at 201 Linden with metal-clad replacement windows. Appellant asserts six claims:

1. Appellant alleges that the HPC failed to "properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter, specifically "1) City Code including fundamental policy documents implemented throughout the Building Code; 2) City Code Section 14-2; [3] the SOIS [the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, or "Standards."]; and 4) the [Old Town] Design Standards." More specific arguments made by Appellant under this allegation include:
 - a. That the HPC read the federal Standards and Old Town Design Standards in conflict with Municipal Code 14-2, Municipal Code Chapter 5's International Building Code adoptions, the City's Climate Action Plan, and in direct conflict of the owner's property rights.
 - i. *Staff Response: The Appellant's interpretation of this overall relationship between the adopted codes, standards, and policy documents, is inconsistent with the established precedent regarding the application of the City's Chapter 14 requirements and the role of the HPC to make decisions based on the primary position of those requirements. The primary quasi-judicial responsibility of City historic preservation staff and HPC appointees is to implement the adopted Code and Standards pertaining to their purview as specialists in historic preservation. While other policy documents and standards may influence their decisions, when those additional considerations are in direct conflict with Chapter 14 requirements for Landmark Design Review they cannot abandon clearly and firmly established precedent, guidance, and adopted City Codes without a change in those Codes to support it. The proper process by which Codes and policies are realigned to meet new plans, etc., is to change the code or policy. In this case, Municipal Code 14-53 adopts the federal Standards for the Treatment of Historic Properties as the basis for City review of projects on City Landmarks.*
 - ii. *The allegation of conflict with the International Building Code is not relevant to this matter. The International **Existing** Building Code (IEBC), not the International Building Code, is the relevant building code for historic building considerations. The IEBC applies to existing buildings and is*

adopted by the City of Fort Collins. The IEBC includes code variances for historic buildings when character-defining features do not strictly meet IEBC requirements. Staff would note that the wood windows on this building are character-defining features, and windows regularly are character-defining features.

- iii. *The Historic Preservation program and current code requirements are inherently consistent with climate action goals and Our Climate Future, particularly in relationship to the goal to reduce construction and demolition waste through the adaptive reuse of existing structures and materials. Additionally, the program is taking steps to enhance that inherent compatibility with more precise and predictable allowances for energy-efficiency treatments and other necessary climate-related alterations. Broadly speaking, historic preservation codes and policies are designed to consider both concerns about energy use and efficiency in the built environment and resource use and solid waste management. These codes and guidelines provide a balanced decision-making methodology that conserves materials as well as improves energy performance. Wholesale replacement of historic features made of durable materials generally does not meet this call for balance in the Standards and their supporting guidelines unless those materials are beyond repair.*
 - iv. *Regarding property rights, municipal governments' right to reasonably implement and enforce historic preservation codes at the local level have consistently been upheld by the courts, most notably with the landmark United States Supreme Court decision, Penn Central Transportation Co. v. New York City (1978), which ruled in favor of the City when it denied Penn Central's bid to build a large office building on top of the landmark Grand Central Terminal. This reinforced existing case law extending back to the 1920s that has upheld the authority of local governments to enforce land use and zoning laws (which includes historic preservation codes) in a manner balanced with property rights.*
- b. That the HPC failed to read its adopted Standards in harmony with other adopted City Codes and policy documents.
- i. *Staff Response: As noted above, the HPC and City preservation staff are required to make decisions based on the code requirements. As with any local government program, historic preservation policies and code language are continuously updated over time to reflect and align with new adopted plans, but deviation from application of the currently adopted Standards cannot be done without a change in code.*
- c. That replacement of the windows with the aluminum-clad product meets several of the Purposes of the City's historic preservation program contained in Municipal Code 14-2.
- i. *Staff response: The Old Town Design Standards, adopted as enforceable standards by City Council in 2014, considered the purposes of the program outlined in 14-2 as the basis for those Standards, but provides more specific requirements that apply to the specific historic buildings and features of the Old Town District. The Standards elaborate on the broad purpose of the program as outlined in 14-2. Those more specific adopted requirements provide very limited circumstances under which substitute materials, such as aluminum-clad replacements for original wood windows, can be approved. Additionally, the applicant presented an alternative, all-wood replacement product that does meet the requirements of the Old Town Design Standards.*
- d. That replacement of the windows meets the Old Town Design Standards by meeting Policy LIV 17.2.
- i. *Staff response: This claim misreads this section of the Old Town Design Standards (p5). On this page, the Old Town Design Standards include reference to City Plan, the City's comprehensive master plan, and the various policies adopted in City Plan that are the foundation for adopting*

the Old Town Design Standards elaborated later in the document. LIV 17.2 is a City Plan policy, not an Old Town Design Standards policy. Furthermore, the relationship assumed is that the adopted Standards support the policies in City Plan, not the other way around.

- e. That replacement windows meet the International Building Code Standards and failure to approve the selected replacements do not.
 - i. *Staff response: This claim is invalid because the International Building Code (IBC) does not apply to this circumstance; the relevant code reference is the International Existing Building Code (IEBC). The IEBC includes fairly broad discretion for a local government's chief building official to support variances (such as performance based or "as good or better than" treatments) where strict adherence to IEBC would destroy a character-defining feature of an historic building. Staff would note that the wood windows on this building are considered a character-defining feature.*
 - f. That replacement windows support the City's *Our Climate Future* Plan and that failure to approve replacement windows does not.
 - i. *Staff response: The Our Climate Future plan has been a key topic of both the HPC's, and Historic Preservation staff's, work plan since its adoption. Reflection on the inherent relationships between preservation and climate goals and, when necessary, preservation policy reform to implement climate-action priorities more directly, is a regular part of the HPC's agenda. However, Our Climate Future considers both energy use and performance **and** solid waste diversion as interrelated and mutually supportive strategies to address climate action goals. The removal of serviceable historic material for energy performance creates new energy waste for extraction, manufacture, and transportation of the new products, and typically does not support Our Climate Future if the entire document is considered. Historic preservation policy has supported climate action since the 1960s and considers careful balances between energy performance improvements and conservation of existing materials.*
2. Appellant alleges that the HPC failed to conduct a fair hearing, specifically that the HPC "exceeded its authority or jurisdiction as contained in the Code or Charter."
- a. Appellant alleges that the *U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties* "could not be used to make essential decisions about which features of a historical building should be saved and which changed," claiming that the HPC "relied upon [the Standards] and the Old Town Historic Design Standards...to justify their denial of the Applicant's request to replace the windows."
 - i. *Staff response: The HPC and City staff are bound by Municipal Code 14-53 to use the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties, and the Old Town Design Standards (as a local interpretation of those federal standards for use in the Old Town Landmark District), as the basis for their decision-making. Failure to do so would be a breach of Municipal Code.*
 - b. Appellant further alleges that Old Town Design Standards are "to be used by the Landmark Preservation Commission and city staff to review any changes to the **exterior** (emphasis added) of buildings within the Old Town Historic District" and that "nowhere does [the Old Town Design Standards] claim to supersede these standards..."
 - i. *Staff response: The National Park Service and Colorado's State Historic Preservation Office (a division of History Colorado) establish as a standard practice that all local governments with historic preservation ordinances should adopt localized design standards for specific historic districts so that the broad language of the federal Standards and Guidelines can be more predictably applied to an area with a shared history and historic character. It is for this*

reason that the City of Fort Collins has adopted preservation design standards specifically for the Old Town Landmark District since 1981, two years following designation of the district itself.

ii. *Window units have both interior and exterior components that are part of the overall exterior of a building and are subject to building permits. Interior components, with limited exceptions such as interior sills, affect and are part of the overall integrated window unit system. As is clearly stated in Municipal Code 14-51(b)(2), “Exterior alterations, including windows or siding replacement...” require a certificate of appropriateness. This prevailing logic is the underpinning of the requirement for landmark design review of applications to replace windows, a review process that has been consistently applied to all landmark properties for decades in Fort Collins.*

c. Appellant further alleges that the HPC flouted the “interplay and primacy of overarching municipal code sections 14-2, International Building Codes...and the City’s Climate Action Plan by failing to read the SOIS or the OT Development Standards in harmony therewith.”

i. *Staff response: This allegation fails to acknowledge the underlying premise of using the federal Standards and Old Town Design Standards for reviewing projects in the Old Town Landmark District (and the city as a whole). The premise is that by using those Standards to provide a predictable and consistent environment for project approval on designated historic buildings, the purposes of 14-2 are being met.*

3. Appellant alleges that the HPC failed to conduct a fair hearing, specifically that the HPC “substantially ignored its previously established rules of procedure.”

a. Appellant states that “by initially refusing to review and accept the Applicant’s proffered window exhibit into the record, the HPC substantially ignored its previously established practice of accepting and consider.”

i. *Staff response: The record does not support this allegation. All evidence, including a sample window exhibit, previous LPC materials from 2018-2019, etc., were included in the record at the Applicant’s/Appellant’s request. This is further substantiated by the hearing transcripts and video recordings.*

4. Appellant alleges that the HPC failed to conduct a fair hearing, specifically that the HPC “considered evidence relevant to its findings which was substantially false or grossly misleading.”

a. Appellant argues that “the HPC’s reliance on misstatements and erroneous analysis in both the 2018 Barlow Report, the 2024 [Deep Roots Craftsmen] Report and Staff recitation of facts created a prejudgment and bias that all but two members of the HPC was not able to overcome in their final decision making.”

i. *Staff response: At all quasi-judicial hearings for landmark design review decisions, Staff is required to present all known facts and professional analysis and guidance that has been collected to support the discussion item. In 2018 and again in 2024, City staff carried out the standard procedure of engagement with professionally trained and experienced experts in the preservation of historic windows, who provided their best analysis and judgement based on that experience and training. The HPC and City staff regularly employ trained experts to provide third-party expertise in cases like this where a best course of action is unclear. Furthermore, the production of a window study prior to any comprehensive treatment plan, whether it be repair or replacement, is specifically called for in the federal guidelines that support the federal Standards that the City has adopted in Municipal Code*

14-53. *The appellant presents no evidence of fact to support the claim that the expert opinions of the professional consultants are erroneous.*

5. Appellant alleges that the HPC failed to conduct a fair hearing, specifically that the HPC “improperly failed to receive all relevant evidence offered by the appellant.”
 - a. Appellant states “By initially refusing to review and accept the Applicant’s proffered window exhibit into the record, the HPC substantially ignored its previously established practice of accepting and considering evidence presented. This demonstrated a clear prejudgment of the matter.”
 - i. *Staff response: The record does not support this allegation. All evidence, including a sample window exhibit, previous LPC materials from 2018-2019, etc., were included in the record at the Applicant’s/Appellant’s request. This is substantiated by the hearing transcripts and video recordings.*
6. Appellant alleges that the HPC failed to conduct a fair hearing, specifically that the HPC “was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the [HPC’s] independence of judgement.”
 - a. Appellant cites the “substantially false and grossly misleading evidence of the 2018 Barlow Report and subsequent 2024 [Deep Roots Craftsmen] Report repeated by the City Staff and Ms. McWilliams so fundamentally interfered with the HPC’s independent judgement as to render their...decision erroneous” and that there “is a distinct appearance of impropriety and bias towards the City’s expert when one of the Commission Members engaged Deep Roots Craftsman to do repair work on her own home’s windows during the time frame the Linden Hotel was reviewed.”
 - i. *Staff response: This is not supported by the record. First, the City regularly engages qualified experts, including Philip Barlow and Deep Roots Craftsmen (owned by Jon Sargent) who are experienced historic window experts, to help develop treatment plans for historic windows, as called for under the federal guidelines. While there is disagreement in the record over the responsible party for the detrimental window modifications, the HPC’s decision, as reflected in their discussion on August 21, 2024, was based on the windows’ current condition and best practices allowed under the City’s adopted standards for this scenario.*
 - ii. *Regarding the claim of impropriety and bias, there is no evidence in the record to suggest that the Commissioner in question based their vote in the meeting on that interaction, and furthermore, the simple act of engaging a specialist who happens to be hired by the City for consultation at a later date is not grounds for impropriety and is a coincidence of events that is impossible to avoid. In this case, several commissioners expressed similar concerns, including prior to that statement, that wholesale replacement of the windows in question would not meet the City’s adopted standards and that an alternative approach was needed. That sentiment is based in the clearly established federal guidelines that support the federal Standards, as well as the Old Town Design Standards.*

CITY FINANCIAL IMPACTS

The City has, to date, spent approximately \$4,100 of Design Assistance Program funds to engage window specialists to provide best practice guidance under the federal standards and guidelines related to repeated requests to replace the windows.

ATTACHMENTS

1. Process Overview

2. Notice of Appeal
3. Clerk Notice of Public Hearing-Mailing List
4. Staff Report to Historic Preservation Commission, July 17, 2024
5. Staff Report to Historic Preservation Commission, August 21, 2024
6. Staff Presentations to Historic Preservation Commission
7. Applicant Presentations
8. Sign in Sheets
9. Link to Videos
10. Verbatim Transcripts
11. Appeal Presentation