



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, AICP, Community Development Director

DATE: September 6, 2007

SUBJECT: Demolition Review for Protecting Historic Resources

Introduction and Background

In June 2007, Councilmember Roberts proposed that the City review demolition permit applications with the goal of preventing loss of historic resources not designated as local historic districts and landmarks. (See attached.) The proposal suggests Urbana adopt a process requiring all residential and commercial buildings 60 years old and older to be reviewed once a demolition permit is applied for.

Councilmember Roberts' proposal references the National Trust for Historic Preservation publication, *Protecting Potential Landmarks through Demolition Review*. (See attached.) This publication provides the following overview of demolition review practices:

Demolition review is a legal tool that provides communities with the means to ensure that potentially significant buildings and structures are not demolished without notice and some level of review by a preservation commission. This process creates a safety net for historic resources to ensure that buildings and structures worthy of preservation are not inadvertently demolished.

Demolition review does not always prevent the demolition of historically significant buildings or structures. Rather, as the name suggests, it allows for review of applications for demolition permits for a specific period of time to assess a building's historical significance. If the building is deemed significant, then issuance of the permit may be delayed for a specific period of time to pursue landmark designation, or alternatively, to explore preservation solutions such as selling the property to a purchaser interested in rehabilitating the structure or finding alternative sites for the proposed post-demolition project.

It should be noted that *Protecting Potential Landmarks* uses the terms "demolition delay" and "demolition review" fairly interchangeably. For discussion purposes, the following definitions are used in this memo.

Demolition delay. A delay of a demolition permit application which does not automatically trigger a public review process. The purposes of demolition delay can include providing a "cooling off" period, allowing consideration of demolition alternatives such as selling the property to preservation-minded

buyers, or possibly providing time for a landmark application to be submitted. In essence, this is delay for the purposes of delay.

Demolition review. Defined here as a public review process automatically triggered by submission of a demolition permit application and which determines whether or not an application will be approved or denied. Demolition review laws are generally separate from historic preservation ordinances as they apply to all buildings of a certain age. When a demolition permit is applied for a building greater than a specific age (usually 50 years), a review process to determine any historical or architectural significance is automatically triggered. Usually the Historic Preservation Commission or its designee reviews the applications, often using the criteria laid out in their Historic Preservation Ordinance to determine whether or not the building is historically significant. If the building is determined to be significant, a local historic landmark application may be triggered, depending on how the law is written.

Interim protection. “Interim protection” is a short-term moratorium on building and/or demolition permits for properties already under consideration for designation as a local landmark or historic district. The most commonly cited purpose is to prevent loss of properties as a reaction against the landmark application. Interim protection is typically a component of a municipality’s historic preservation ordinance. The City of Urbana has interim protections already incorporated into its Historic Preservation Ordinance.

2005 Comprehensive Plan Policies

The following pertinent goals and objectives were adopted as part of the *2005 Urbana Comprehensive Plan*.

Goal 12.0 Preserve the characteristics that make Urbana unique.

Objectives

- 12.1 Identify and protect neighborhoods and areas that contain significant historical and cultural resources.
- 12.2 Pursue the establishment of historic landmark and/or historic district status for sites that have contributed to the history of Urbana.
- 12.3 Encourage public/private partnerships to preserve and restore historic structures/sites.
- 12.4 Promote and educate the public about the benefits of historic preservation.

The following implementation strategies adopted as part of the *2005 Urbana Comprehensive Plan* should also be noted.

Update historic surveys of older neighborhoods in order to develop an inventory of historic resources.

Designate downtown Urbana and portions of West Main Street (where appropriate) for historic district status.

Designate civic buildings that contribute to Urbana’s history for landmark status.

In summary, the City of Urbana’s comprehensive plan recognizes preservation of the community’s historic resources as public policy. The plan calls on the City to protect significant historical and cultural resources by establishing local landmarks and historic districts, encouraging cooperative public/private efforts, and educating the public about the benefits of historic preservation.

It should be noted that the City also has a number of policies that promote the redevelopment of older areas as infill; these areas naturally include an older building stock. The City's redevelopment policies are implemented in part through our four tax increment finance districts. Relevant policies include:

Goal 18.0 Promote Infill Development.

Objectives

- 18.1 Promote the redevelopment of underutilized property using techniques such as tax increment financing, redevelopment loans/grants, enterprise zone benefits, marketing strategies, zoning incentives, etc.

Goal 22.0 Increase the vitality of downtown Urbana as identified in the Downtown Strategic Plan and Annual Action Plan.

Objectives

- 22.1 Promote the creation of housing in downtown Urbana.

- 22.5 Use tax increment financing to promote new development and redevelopment opportunities, mini-parks, and plazas.

- 22.7 Pursue redevelopment of the North Broadway corridor.

Prior Discussion

In October 2006, the City Council engaged in extensive discussion on the topic of demolitions in Urbana as a part of the Neighborhood Conservation District Report review. Information on the history and patterns of demolitions in Urbana's neighborhoods is contained on pages 7 through 12 and in the attachments to this prior staff memorandum (copy attached). As part of this discussion, staff provided the City Council with research on demolition policies in 35 communities, including several cities using demolition review. Staff concluded that in order to be legally defensible, demolition review requirements must be based on historic preservation standards and criteria. Staff further concluded that the best way to protect historically significant properties in Urbana is to designate them as historic landmarks and districts. Due to a variety of legal and practical reasons, staff strongly advised against reviewing demolitions other than for designated local landmarks and historic districts. Also attached from this prior analysis, is a memorandum from the City's Legal Division outlining Fifth Amendment issues that would be raised by improperly established demolition review as a regulatory taking. Other considerations identified included conflicts with redevelopment plans and programs, interference with real estate market transactions, and major impacts on staff priorities and resources.

The prior discussion at City Council did result in a modification to the City's demolition noticing procedures, adopted in February 2007. Under these new procedures, the Community Development Services Department now provides a courtesy notice to neighbors and other stakeholders about pending demolitions and posts the property at least five days prior to the demolition. These procedures have been very helpful in keeping neighbors better informed about activities in their neighborhood and provides a forewarning to neighbors about potentially noisy demolition activities. Administration of the new procedures has not proven to be problematic in terms of staff effort.

Demolition Delay and Review Practices in Illinois

In response to the current demolition review proposal by Councilmember Roberts, City staff surveyed 14 Illinois cities with Historic Preservation Ordinances specifically for whether or not they practice demolition delay and review. The following table categorizes these practices. Further details on each program are provided in an attachment to this memo.

USE OF DEMOLITION DELAY OR REVIEW AMONG SELECTED ILLINOIS CITIES*			
Neither	Demolition Delay		Demolition Review
	With advisory process	With landmark application possible	
Bloomington Champaign Danville Evanston Oak Park Quincy Rockford Rock Island	Glencoe Highland Park Plainfield Springfield	Chicago Lake Forest	None known
*Refers only to demolition review other than for locally designated landmarks and historic districts.			

Neither demolition delay or review. Eight of the 14 Illinois cities surveyed with historic preservation ordinances do not review demolitions other than for historic districts and landmarks.

Demolition delay. Four of the 14 cities surveyed – Glencoe, Highland Park, Plainfield, and Springfield – require delay of demolition of historically significant properties. The delay period provides an opportunity for alternatives to demolition to be explored. While the delay process is mandatory the outcomes are not. At the end of the delay period, the applicant can still choose to demolish the property. Two cities – Chicago and Lake Forest and Chicago – also require a demolition delay process but landmark applications can be submitted for the property during the delay, meaning that there is an opportunity for the property to be designated and protected. If no landmark application is submitted during the required delay period, then the demolition permit is authorized. In the case of Chicago, demolition delay is limited to only those properties identified through a comprehensive, city-wide historic resource survey as having city-wide or national significance. Additionally, due to the sheer volume of demolition permit applications Chicago city staff is limited to submitting landmark applications for only the most important properties of city-wide and national significance.

Demolition review. No Illinois cities were found to have an automatic demolition review process which would use historic significance as a factor in approval or denial. (Again, this does not include review for properties designated as local historic districts and landmarks.) This finding is consistent with the City’s legal analysis and prior recommendations.

Demolition Delay and Review Practices in Non-Illinois Cities

Based on cities surveyed in *Protecting Potential Landmarks through Demolition Review*, and from other sources, City staff contacted seven non-Illinois cities which use demolition review in order to better understand their procedures. Requirements vary from permit delay with an advisory process

(Somerville, Massachusetts) to automatic review of permits for historic significance (Ames, Iowa; San Antonio, Texas; and St. Charles, Missouri). (See attached.)

Historic Resource Surveys

Ideally, demolition delay and review ordinances are based on a comprehensive, city-wide historic resource survey. Historic surveys provide both the rational and legal basis for determining which properties should be subject to further scrutiny when demolition permit applications are submitted. For instance, the City of Chicago completed a city-wide survey of all properties more than 50 years old and identified those which have either city-wide or national significance. Demolition permits for either category of properties are subject to demolition delay. Other cities such as Ames, Iowa and St. Charles, Missouri limit demolition review outside historic districts to areas identified as having a significant concentration of historic resources. Ames, Iowa, for instance, limits demolition review to a 160-acre area. St. Charles, Missouri limits demolition review to an area within the historic core of the city with concentrated historic resources identified in a comprehensive, city-wide survey.

In the case of Urbana, six historic resource surveys have been conducted since the 1970's, but none of these surveys have been comprehensive in nature. A list of these surveys is attached, as is a map showing which properties have been surveyed in all six surveys. Over 1,000 properties in Urbana have been surveyed for historic significance, but in terms of scope these have been concentrated mainly in one neighborhood (West Urbana). Further survey work would be necessary for the City to have a sufficient basis upon which to form any new policies on demolition delay or review.

Historic Building Permits

Good historic building permit records are another key component of demolition delay and review programs. In order to administer such programs, cities need to be able to quickly determine if a particular property is subject to review. In Councilmember Roberts' proposal, only properties greater than 60 years old would be subject to demolition review. The earliest City building permit records date to the 1940s meaning that records are not available for most historic properties. Although the Cunningham Township Assessor's Office does have records that generally include construction dates, these dates are not always accurate. Consequently, the City does not have good records by which to administer demolition review.

Discussion

City staff's survey of cities using demolition review has found very mixed results. The majority of those cities reviewing permits outside of historic districts use a demolition delay process. Again, this is a "cooling off" period during which alternatives can be explored, but after which the applicant can still proceed with demolition if they so choose. It requires the property owner to listen but does not necessarily offer a basis for negotiating repairing or selling the property. This can create unreasonable expectations that historic resources are protected, and the outcomes of this advisory process can be unpredictable. Staff members interviewed from cities using demolition delay indicate a few successes using demolition delay, but it appears that significant manpower must be expended compared to the results.

A few communities such as Chicago and Lake Forest, Illinois allow a landmark application to be submitted during the delay period. This offers the advantage of potentially protecting historic properties

not yet designated as landmarks, but a major drawback is that it can be a significant burden in having to quickly research and write a landmark nominations. In the case of Chicago, basic research has already been completed through a comprehensive, city-wide historic resource survey. However, Urbana does not have the benefit of such of survey.

Although over 1,000 properties in Urbana have completed historic resource surveys, these surveys have not been carried out in a systematic way on a city-wide basis. The attached map shows that the vast majority of properties surveyed are in one neighborhood (West Urbana). Using these surveys as the basis for demolition review would discount resources in the Historic East Urbana Neighborhood and in North Urbana. Additionally, a number of those blocks surveyed may have few or no historic resources.

Another limitation of demolition review is that it would divert the City's limited historic preservation resources toward whichever properties are to be demolished rather than toward protecting and promoting the City's most significant resources. City manpower would need to be applied for all properties for which a demolition permit application is received, regardless of whether the property has historic or architectural significance. Rather than focusing on the most important historic resources, City efforts would be redirected to just as many which are insignificant and which would therefore be demolished anyway. This would be an inefficient way of protecting the City's most significant resources given the means within which the City must operate. And finally, demolition review also often focuses on properties at the end of their life cycle meaning that saving them requires a significant concentration of resources into properties of minor or moderate historic significance, as well as those of major significance.

Given the City of Urbana's limited historic preservation resources, City staff recommends the most effective way to protect historic landmarks is to carry out an ongoing program to identify, prioritize, and designate the city's most significant properties as landmarks and historic districts. In this way the community's most significant historic resources would be both protected and recognized. Doing so would also insure that the City spends its resources on the most significant properties rather than those which happen to be subject to a demolition permit application. While this approach could mean that some properties of minor to moderate significance may be lost, this does not preclude property owners and neighborhood groups from nominating such properties for City designation and protection. Demolition delay and review can easily create a process which would too often lead to historic preservation failures. Alternatively, protection by designation as historic landmarks and districts follows a transparent process and creates predictable outcomes.

The following are significant steps the City can take to increase the number of historic landmarks and districts:

- (1) Expand the coverage of historic resource surveys.
- (2) Using historic surveys and other resources, prioritize properties for designation.
- (3) Request that the University of Illinois' historic preservation class devote time to nominating significant properties as local landmarks, in cooperation with property owners. The City of Champaign has 26 locally designated historic landmarks and districts, the majority of which were researched and nominated by students taking the University of Illinois' historic preservation class.
- (4) Amend the Historic Preservation Ordinance to allow Historic Preservation Commissioners to nominate local landmarks and districts and refrain from discussion and voting on the application.

- (5) Have the Community Development Services Department budget staff time on an ongoing basis to coordinate landmark and historic district nominations on a consistent, ongoing basis. Approximately 20 hours per week is anticipated.

Staff Recommendations

City staff continues to recommend strongly against reviewing demolitions other than for designated local landmarks and historic districts, due to a variety of practical and legal reasons set forth previously.

As a practical alternative, City staff recommends that the City Council direct staff to:

- Expand the coverage of historic resource surveys.
- Expand efforts to designate historic landmarks and districts.
 - Using historic surveys and other resources, prioritize properties for designation.
 - Request that the University of Illinois' historic preservation class devote time to nominating significant properties as local landmarks, in cooperation with property owners.
 - Amend the Historic Preservation Ordinance to allow Historic Preservation Commissioners to nominate local landmarks and districts and refrain from discussion and voting on the application.
 - Have the Department of Community Development Services budget staff time on an ongoing basis coordinate historic landmark and district nominations on a consistent, ongoing basis.
- For properties subject to a demolition permit application, have City staff conduct a simple reconnaissance to determine if historic significance is possible and then if appropriate to provide the applicant with advisory information about the possible historical significance of the property along with an offer to assist with further exploration into preserving the property.

Prepared by:

Robert Myers, AICP
Planning Manager

Rebecca Bird
Planning Intern

Attachments:

- A: Prior Staff Memoranda
- B: Demolition Noticing Procedures
- C: Examples of City-Required Delay for Demolition Permits
- D: Overview of Historic Resource Surveys Conducted in Urbana
- E: Map of Urbana Properties Surveyed for Historic Significance
- F: Protection of Historic Homes through Demolition Review (Dennis Roberts)
- G: Protecting Potential Landmarks through Demolition Review (Julia Miller, National Trust for Historic Preservation)

cc: Historic Preservation Commissioners



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Bruce K. Walden, Chief Administrative Officer

FROM: Elizabeth H. Tyler, AICP, Director

DATE: October 19, 2006

SUBJECT: Neighborhood Conservation District Report Update

Introduction

This memorandum is intended to provide the Plan Commission and Committee of the Whole with further information requested about Neighborhood Conservation Districts (NCDs). Specifically, the Plan Commission requested at the August 24, 2006 meeting that a table be provided with a side-by-side comparison for how NCDs might deal with various neighborhood issues. A clearer definition of “Neighborhood Conservation District” was also requested. The Committee of the Whole at the August 28, 2006 meeting requested that City staff follow up on three items: (1) information on review of building demolitions; (2) making presentations to neighborhoods on the NCD concept; and (3) consideration of the idea of forming a special task force to identify potential historic landmarks and districts.

Extensive background information on NCDs is provided in the Neighborhood Conservation District Study, prepared by Rebecca K. Bicksler, in partial fulfillment of the requirements for a Master’s of City Planning, dated July 2006; a Memorandum to the Urbana Plan Commission, dated August 18, 2006; a Memorandum to the Urbana City Council, dated August 24, 2006; and a Memorandum to the Urbana Historic Preservation Commission, dated August 31, 2006.

Discussion

One of the basic premises behind city planning is that people’s lives can be improved by good physical design. As planning tools, NCDs are intended to stabilize and improve existing neighborhoods in terms of design and operation. NCDs focus on conserving, preserving, and enhancing mature neighborhoods. However, in themselves, NCDs have only a limited ability to change behavior. For example, trash cans can be provided as part of a plan to beautify a neighborhood, but the plan cannot force people to use them. Likewise, a plan to promote home ownership can be carried out, and design review through a NCD can insure that buildings look like single-family homes, but an NCD cannot prevent homes from being rented out.

Plan Commission Issues

Definition of Neighborhood Conservation District

A Neighborhood Conservation District is a tool used by some cities to identify and protect the character of established neighborhoods. The focus is on physical design and can include both the private and public realms. The most common approach taken by communities is to use both a prescriptive plan for the neighborhood and zoning or other regulations to implement the plan.

NCDs may be used in neighborhoods where outside influences threaten the integrity and character of the neighborhood, through factors as varied as inflated real estate costs, lack of reinvestment, inappropriate underlying zoning, failing public infrastructure, and impacts of nearby institutions.

The most common way of implementing NCDs is through design review based on design guidelines. NCD may also be used in lieu of historic preservation or as an historic district buffer area in cases where the character of an area is valued, but it does not quite meet the standards necessary to achieve designation as a fully protected historic district.

A NCD program studied for Greenville, South Carolina included a stated objective to: “maintain and conserve the neighborhood’s character by outlining procedures and policies for alterations or demolition of existing structures and design of new construction in the district.” The City of Champaign, Illinois has a zoning category for “In Town – Neighborhood Conservation” within which single-family homes can be converted to apartments but only if they continue to appear as a single-family home. The City of Wilmington, Delaware uses NCDs where “...traditional City Historic District protection is not suitable or warranted, either because of a lack of significant community or political support, or because the built environment does not meet the criteria for historic resource recognition as defined by the Secretary of the Interior and the Delaware State Historic Preservation Office.” These representative examples are principally concerned with neighborhood protection through design review and are based upon the community’s desire to preserve and protect the overall character of the area.

The City of Urbana’s Mixed Office/Residential (MOR) Zoning District and the Downtown to Campus Plan of which it was an outgrowth should also be recognized as a form of NCD. According to the Downtown to Campus Plan, the Green and Elm Street corridors were identified as a uniquely challenging area in which the residential character was sought to be maintained at the same time as commercial adaptive use was to be encouraged. Within the MOR District, site plan and development review of major exterior alterations and new construction are carried out by the City’s Development Review Board. The Development Review Board includes representatives of the neighborhood, a developer’s representative, historic preservation commissioner, and experts in architecture and design. In conducting their review the Development Review Board refers to a set of design guidelines that have been adopted by the City for use in the MOR District. These design guidelines were used to improve recent development projects in the MOR, including the Coler Crossing Apartments at 701 West Green Street and the Barr Apartments at 611 West Green Street.

City staff have previously suggested that extension of DRB review to the Lincoln-Busey corridors could help to address the appearance of this sensitive mixed-use area and achieve an improved transition between the campus use on the west side of Lincoln Avenue and the residential uses on the east side of Lincoln Avenue. Design review is not recommended in areas which are homogeneous in land use and zoning regulations, are not experiencing development pressure, and/or which do not have specific urban character challenges. For example, many of Urbana's residential areas are fully built-out and are homogeneously zoned R-1, R-2, or R-3. Design review of these stable residential neighborhoods does not appear to be warranted or desirable.

It is important to recognize that design-based NCDs work best in areas with a strong real estate market. Because design review is triggered only when property owners choose to make exterior changes to their property, areas with low levels of construction activity would have few opportunities for design review. It should also be noted that design regulations have special challenges in areas where institutions lead development. Local government regulations have limited powers over other local, County, State, and Federal governments and religious institutions, but in these cases cities can work cooperatively and promote use of design guidelines. As discussed later in this memorandum, this fact is pertinent for neighborhoods such as West Urbana where the majority of demolitions of single-family homes during the period 2000-2006 were due to expansion of schools and churches.

Side-By-Side Comparison

Table 1 provides a side-by-side comparison of how NCDs do or do not address a specific set of neighborhood issues. These issues are ones identified primarily for two Urbana neighborhoods: the West Urbana Neighborhood and the Historic East Urbana Neighborhood. Following each issue are three columns representing possible solutions, including currently available tools, Neighborhood Conservation Districts, and recommended new initiatives.

The Neighborhood Conservation District column is subdivided into categories for "regulation-based" versus "plan-based" NCDs. "Regulation-based" NCDs conserve neighborhoods through regulation of private development. "Plan-based" NCDs are typically advisory documents which can provide a vision and a guide for both public and private investments, but do not promulgate specific requirements. In the discussion about NCDs held to date in Urbana, most people have referred to NCDs in terms of regulations, and this is also how most cities have used NCDs. Regulation-based NCDs are most often based upon zoning requirements and are most often implemented by a design review process using design guidelines as the basis. The strength of regulation-based NCDs is that the outcome is predictable.

A second type of Neighborhood Conservation District is essentially a physical or capital facilities plan and is usually carried out in guiding future neighborhood investments. Such a plan can be for private or public investment, or both. Plan-based NCDs are typically promoted as a preferred standard through public education. Although the private sector may be encouraged but not required to follow them, these standards are sometimes adopted by cities as the official design standard for public investments programmed through the capital improvements program (CIP). An example of a plan-based NCD is the brick sidewalk plan that has been adopted for portions of Urbana.

The last column in Table 1 lists a set of City staff recommended initiatives intended to address the neighborhood issues identified. Based on staff analysis, it is believed that these initiatives taken collectively would provide a broader and more effective approach than would adoption of NCDs alone. However, this approach does not preclude implementing these initiatives in conjunction with design review through an NCD. For instance, NCD-style design review can be carried out in the Lincoln-Busey Corridor, other areas could be rezoned from multi-family to single-family zoning, and yet other qualifying areas might be designated as local historic districts. Another recommended approach is the use of neighborhood housing corporations to promote the rehabilitation of distressed properties where government funded programs are not available.

From the comparison in Table 1, it can be concluded that there are three issues in Urbana where regulation-based NCDs could be helpful: infill development, control of gravel parking lots, and reducing the number of cars parked on certain properties. Plan-based NCDs can be used to address the improvement of historic brick sidewalks and to address the lack of curb and gutter in certain areas, when tied to City expenditures such as through the Capital Improvement Program or Annual Action Plan. NCDs are not well suited to address issues such as conversion of owner-occupied housing to rental property and abatement of common nuisances, but these can be addressed through other initiatives, such as the proposed Rental Registration Program.

**TABLE 1. SOLVING NEIGHBORHOOD PROBLEMS:
Neighborhood Conservation Districts Compared to Other Approaches**

NEIGHBORHOOD ISSUES	CURRENTLY AVAILABLE TOOLS	NEIGHBORHOOD CONSERVATION DISTRICTS (√ = CAN ADDRESS ISSUE)		RECOMMENDED INITIATIVES
		Regulation-Based	Physical Plan-Based	
Development Issues				
Incompatible infill development	Zoning standards for infill development Zoning Map amendments Designation of local historic landmarks & districts Design review (such as in MOR District)	√		Examine rezoning selective blocks in East Urbana Create an overlay zone for the Lincoln/Busey Corridor with design guidelines for alterations and new development Identify potential historic districts Adopt ordinance allowing neighborhoods to apply for NCD status
Gravel parking lots	Zoning standards for parking lots	√		Improve requirements and enforcement for gravel parking lots (research underway)
Property Use Issues				
Lack of care in property maintenance	Property Maintenance Code inspections Rental inspection program			Improve ordinances impacting property maintenance (Fall 2006)
Conversion of owner-occupied homes to rental			√	Assist in creating a private community development corporation to promote housing rehabilitation and home ownership (Fall 2006)
Over occupancy	Occupancy limits enacted through the Zoning Ordinance, Property Maintenance Code, and Fire Code	√		Improve enforcement of occupancy limits, such as through the Rental Registration Program (Fall 2006)
Nuisances (noise, trash, couches on porches)	Nuisance ordinances Public education			Improve ordinances impacting property maintenance (Fall 2006)
Too many parked cars on properties	Zoning regulations Police enforcement for parking on dirt/grass	√		Improve Zoning Ordinance requirements for private parking (research underway)
Public Right-of-Way Issues				
Too many cars parked on street	Parking sticker/fee for on-street parking	√		<i>Already in force in WUNA and parts of North Urbana</i>
Loss of brick sidewalks	Brick Sidewalk Plan		√	<i>Already adopted in HEUNA and other parts of Urbana</i>
Lack of curb and gutters	Work plans for maintaining streetscapes and improving roads (completed annually by Public Works)		√	<i>Already addressed in the CIP and AAP, on an annual basis</i>

City Council Issues

The City Council requested staff to follow up on three issues: (1) information on demolition review, (2) making presentations to neighborhoods on the NCD concept, and (3) considering the idea of forming a special task force to identify potential historic landmarks and districts.

In terms of neighborhood presentations on the NCD concept, this process has already begun. City staff has made one presentation in West Urbana and is seeking to meet with a second group. In Historic East Urbana, staff is scheduled to make a presentation at a neighborhood association meeting. Staff will also seek to present to UCAN and other groups in North Urbana.

On a related topic, City staff have organized a special workshop on the formation of Neighborhood Housing Development Corporations with guest speaker Bob Yapp. Mr. Yapp is a recognized expert in the field of renovating older homes and neighborhoods. He is currently in charge of Renaissance Danville and has previously hosted the PBS series "About Your House with Bob Yapp". The workshop is scheduled for Wednesday, November 8, 2006, from 6 to 8 pm at the Phillips Recreation Center and will be well advertised to neighborhood and civic leaders and other residents.

Creating a special task force or other entity to identify potential historic landmarks and districts could be helpful in that Urbana Historic Preservation Commission is largely set up to review applications for local landmarks and historic districts that have been initiated by others. Having other individuals and groups identify and recommend designation of landmarks would help the Commission to remain impartial in carrying out their duties. As a private, not-for-profit group, with extensive member expertise, the Preservation Conservation Association (PACA) could play a key role in advising the Historic Preservation Commission on priorities for designating local landmarks and historic district. Also, the University of Illinois' Historic preservation class is an excellent resource which can be consulted for help with prioritizing potential landmarks and districts. It would be appropriate for the City to request assistance by these groups in identifying potential districts and landmarks for possible designation.

It should be noted that the historic resources of Urbana have been assessed and some priorities established as part of the Urbana Historic Preservation Plan (1998), Reconnaissance Survey (1999), and 2005 Comprehensive Plan. In addition, over the years, students in the University of Illinois' Historic preservation class of the Department of Urban and Regional Planning have surveyed many blocks of older houses in Urbana and full surveys have been completed for approximately 474 properties. Almost all of these are residential properties in the West Urbana and Historic East Urbana Neighborhoods. The surveys are maintained by the City's Community Development Services Department and are available for use in historic district nominations. City staff are investigating the potential for scanning these documents into digital form so that they can accessed by the public via an electronic data base.

The next step in using the property surveys is to determine which properties are the most significant and retain the most integrity. Using the priorities suggested by the Comprehensive Plan, Historic Preservation Plan, and the Reconnaissance Survey, and the data contained in the surveys, groups such as PACA and the U of I's Historic preservation class should be able to

bring forward recommendations for properties that the community feels are the most significant and then to implement the designation of these properties as landmarks and districts according to the procedures laid out in the Zoning Ordinance.

Demolition Practices and Review

The City Council specifically asked staff whether or not any cities review demolition applications outside of historic districts. In researching this question, staff reviewed the recent history of demolitions in two areas of the City to identify local trends in demolitions and also conducted a survey of 35 other communities for their demolition policies. The surveyed communities included those with significant historical resources and preservation programs.

The City of Urbana currently issues demolition permits upon receipt of a valid permit application and an appropriate fee. Demolition must be completed by a properly qualified contractor and must follow a demolition plan that meets the approval of the Building Official. Demolition is delayed until such time as utility companies are notified and all utilities are properly disconnected, usually requiring at least 2 - 3 days. At this time, PACA is notified in the event that building material salvage is desirable by that organization. Demolition permits are posted on the website and listings sent to the local newspaper. The cost for a demolition permit for principal structures is \$7.00 per \$1,000 of the estimated cost of demolition, but not less than \$100. The demolition permit fee for an accessory or temporary structure less than 800 square feet in area is \$35. Typical contractor costs for demolitions are in the range of \$8,000 to \$10,000 for a single-family residence to several hundred thousand dollars for large commercial or institutional buildings. Additional costs may be necessary for asbestos removal and post-demolition site grading.

Under the City's property maintenance code provisions (1990 BOCA, Section PM-110.0), demolitions of property may be ordered by the City in cases where a property is deemed to be so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation, occupancy or use and where it would be unreasonable to repair said structure. In such cases, the City will file a demolition order against the property and may demolish the property and place liens against it if the owner fails to comply with the order.

Demolition of property in Urbana and other surveyed jurisdictions is "by-right" in all cases except if the property is locally designated a landmark or a part of a locally-designated historic district. If a locally designated historic property is proposed for demolition, the petitioner must seek approval in the form of a Certificate of Appropriateness from the Historic Preservation Commission under Section XII-6 of the Zoning Ordinance. If the Commission denies the application, the owner may appeal to the City Council. It should be noted that placement of a property on the National Register of Historic Places alone does not protect against demolition and provides no level of mandatory demolition review.

The ability to demolish property by right in all cases unless there is a demonstrated historic preservation basis for denial is generally considered to be a well established property right in the United States. The denial of this property right would likely be considered a "taking" and the City (or other authority) could be held liable for this action and the imposing legislation deemed

illegal. Further legal analysis would be necessary to determine the extent to which the right to demolish non-historic property is consider the rule of law in the United States and to identify any instances where communities have successfully attempted to limit demolition rights.

In order to evaluate recent demolition trends in the West Urbana Neighborhood and Historic East Urbana Neighborhood, Staff reviewed demolition permits for the period 2000-2006. The results of this evaluation are as follows. The attached table “Demolitions Permitted, 2000-2006” can be reviewed for more detailed information, as can the attached photographic inventory showing the current conditions of these properties.

Demolition Patterns in West Urbana

During the period 2000-2006, the City issued demolition permits for 31 buildings in the West Urbana Neighborhood. Twenty of the 31 demolished buildings (65%) were for expansion of seven institutions: Alpha, Chi, Omega Sorority parking (one building), Church of the Latter Day Saints (three buildings), Leal School (six buildings), Presbyterian Church parking (two buildings), Twin City Bible Church (two buildings), Urbana High School (two buildings), and Urbana Middle School (four buildings). Public review of most of these projects took place as part of the institutional planning process or necessary zoning approvals. In other cases (Sorority parking and Presbyterian Church parking), subsequent revisions to the Zoning Ordinance have been made to require public review of these projects in future similar cases.

Six of the demolished buildings are now vacant lots/expanded yard space. Three demolished buildings were replaced by apartments. Two of these were Apartments which underwent City design review as part of the Mixed-Office Residential (MOR) Zoning District. The remaining two buildings demolished were replaced by new single-family houses (see photographs).

In terms of what was removed, 24 of the 31 buildings (77%) were single-family houses. Other buildings demolished were apartments (3 buildings), rooming houses (2 buildings), and mixed commercial/single-family residential (2 buildings). Unfortunately, photographs showing the condition of buildings removed are unavailable.

In summary, the leading category of demolitions in the West Urbana Neighborhood for the period 2000-2006 was for expansion of institutions, and the primary loss was in single-family houses. Clearly absent are demolitions due to construction of huge homes (sometimes referred to as “McMansions”) and demolitions taking place for business encroachment into the neighborhood. The reason for the lack of business encroachment is the underlying zoning of the West Urbana Neighborhood area, which limits uses to residences at all locations except the southeast corner of Race and Washington, which is zoned Neighborhood Business.

The ability to expand institutions such as schools, churches, libraries, and playgrounds in established neighborhoods is an important “smart growth” means to ensuring a vital in-city neighborhoods and containing sprawl on the edges of the community. Unlike other communities, Urbana residents have supported the continuation of its in-city institutions at their current locations, even if it means the loss of some adjacent properties. This commitment is seen in some of the projects identified here.

Demolition Patterns in the Historic East Urbana Neighborhood

Demolition patterns in the Historic East Urbana Neighborhood are quite different than those in West Urbana. The level of demolition was lower in East Urbana, and there is no leading category for what replaced demolished buildings. During the period 2000-2006, the City of Urbana issued permits to demolish eight buildings which were replaced with the following: apartments (two buildings), condominiums (two buildings), vacant lots/expanded yards (two buildings), single-family residences (one building), and duplexes (one building). In terms of what was lost to demolition, 7 of the 8 buildings (88%) were single-family houses, and 1 building demolished was a duplex. Property Maintenance Code requirements played in role in a number of the demolitions in HEUNA, as the properties were deemed to be unsafe and could not reasonably be repaired.

It should be noted that the apartments and condominiums constructed in Historic East Urbana were allowed by current City zoning designations. If these uses are considered to be incompatible with the predominant single-family character, it is possible for the zoning to be changed to prevent this. In fact, consideration of zoning changes in portions of East Urbana is recommended by the Comprehensive Plan and has been suggested by staff as an NCD strategy. Currently, staff are working with HEUNA to update a draft neighborhood plan and to seek formal adoption of this document by the City. This plan also encourages selective rezoning within the Historic East Urbana neighborhood.

Demolition Review in Other Communities

Staff surveyed approximately 35 cities that were deemed to potentially have controls on demolitions due to presence of historic resources or other characteristics. Only three communities have any level of demolition review outside of historic districts, but in each case there is a basis for the review that is related to the presence of potentially significant historic resources. These communities are Chicago and Highland Park in Illinois and St. Charles in Missouri.

In all three cities, demolition review is used as a historic preservation tool. Rather than pre-designating properties as landmarks, a review for local landmark designation takes place once a demolition application is submitted. Demolition review in the City of Chicago has been a response to a unique problem. Chicago's extensive building stock reflects its status as an important birthplace of architectural innovation. In recent years, an unprecedented pace of real estate development combined with the very large and significant historic building stock has resulted in a number of nationally significant buildings being lost to demolition. Landmark preservationists in Chicago have not been able to keep up with the reviews and determinations necessary to preserve this stock. Chicago-style politics have also played in part in which areas of the City have had properties razed or preserved. Consequently, demolition review is used as a forced "cooling off" or "catch up" period during which City staff and the historic preservation community can work with the property owner to find ways to save the building. In some cases the City of Chicago has held demolition permit applications for as long as five years.

In St. Charles, Missouri, demolition review is not intended to provide a cooling off period. Instead properties within the Extended Historic Preservation District – a transition zone around six historic districts -- are reviewed to determine whether or not they would qualify as a local landmark. If they qualify as a local landmark, the City of St. Charles will not issue a demolition permit unless an appeal is made that there is no viable use for the building.

In the case of Highland Park, Illinois, the City of Highland Park has a "Demolition of Dwellings" ordinance. This ordinance requires the Historic Preservation Commission to review all demolition permit applications for houses to determine whether or not the property qualifies for designation as a local landmark. If the property preliminarily qualifies, the landmark application process is automatically initiated. If the property owner objects in writing during the process, a higher level of significance is required before the City Council can designate it as a landmark. Highland Park is a very high income mature suburb of Chicago where the existing land uses and economic forces at work are significantly different than in Urbana-Champaign.

Additional Comments

Even if found to be legal, the use of demolition review outside of designated historic districts means that property owners cannot know the extent of their property rights at the time they purchase the property. They cannot know whether they can demolish and rebuild on the site until they actually receive the demolition permit. They would not know if they could rebuild in the event of significant damage, unexpected repair costs, to accommodate a disabled family member, or simply to build their dream home on their property. This lack of certainty in real estate value and rights could have an immediate and profoundly negative economic impact upon the affected area. Imposition of demolition reviews outside of historic districts is not recommended from an economic development standpoint, particularly as the City of Urbana is situated within a highly competitive housing market. In making real estate decisions, purchasers consider a number of factors, including the property itself, the surrounding neighborhood, community services, real estate taxes, and the ability to fully use and enjoy the property within reasonably acceptable limits.

From an historic preservation standpoint, review of demolitions outside of historic districts would not protect truly historic properties up for alterations other than demolition. A building's historic integrity can be lost to inappropriate alteration almost as much as to demolition. Cities using a long "cooling off" period such as found in Chicago leaves them open to litigation for procedural due process rights protected in the U.S. and Illinois constitutions. If an area is thought to be historically significant and worthy of protection, then it should be duly designated as an historic district and protected in a thorough, upfront, and defensible manner.

While architectural integrity is important in NCD design review, historic integrity is not. In historic districts, traditional building materials are inherently significant. Preservation standards for historic buildings call for repair rather than replacement: windows and cornices for instance should be repaired unless impossible to do so and original wood siding should not be covered with aluminum or vinyl siding. Replication should only occur when historic materials are missing or too damaged. NCDs, however, are based on architectural rather than historic significance, and replacement of and covering original building materials may be perfectly

acceptable.

In conclusion, unless a property meets specific criteria for designation as a local landmark/historic district, there appears to be no rational (and therefore legal) basis for denying a demolition. On the other hand, design review for exterior alterations and new construction in appropriate areas does not have to be based on historic preservation criteria. Such design review is now carried out by hundreds of cities nationwide, including the City of Urbana, and the abilities of City's to exercise such review has held up well to challenges.

Conclusions and Recommendations

The following are City staff's key conclusions in our updated information:

1. A Neighborhood Conservation District is a tool used by some cities to identify and protect the character of established neighborhoods. The focus is on physical design, and the most common approach taken by communities is to use zoning regulations to implement design goals.
2. In a study of several dozen cities using Neighborhood Conservation Districts, design review based on design guidelines is by far the most commonly used tool.
3. An outside group, such as PACA, can help to advise and assist the City in identifying additional potential historic landmarks and districts using already existing resource materials.
4. Different neighborhoods have different causes for demolition. Two-thirds of the buildings demolished in the West Urbana Neighborhood for the period 2000-2006 were due to expansion of institutions such as schools and churches. The level of demolition in the Historic East Urbana Neighborhood is much lower, with some due to construction of attached housing (both apartments and condominiums) as allowed by zoning and others due to property maintenance code concerns. Neither West Urbana nor East Urbana are experiencing demolitions due to construction of significantly larger homes as is happening in Chicago and other major cities. Neither has commercial encroachment caused demolitions in those neighborhoods. This is because both neighborhoods are protected by residential zoning.
5. Design review for alterations and new construction in established neighborhoods can help maintain the overall form and building character. Design review works best in non-homogeneous areas where there is development activities and pressures, such as the MOR district.
6. Demolition review appears to be legally indefensible unless based on historic preservation standards and criteria. Demolition review outside of historic districts is not recommended in Urbana due to both legal and economic development concerns. Areas that are worthy of preservation should be legitimately designated as historic districts or landmarks.

In response to the specific issues identified in our Neighborhood Conservation District study and in previous memoranda, City staff recommend the following strategies to help implement neighborhood conservation measures:

1. Consider extending MOR District design review requirements to the Lincoln/Busey corridor.
2. Rezone selected blocks in the Historic East Urbana Neighborhood where zoning is inconsistent with land uses, as identified in the 2005 Comprehensive Plan. Ongoing work with HEUNA on a neighborhood plan will help to facilitate this effort.
3. Make neighborhoods aware of how private, not-for-profit community development corporations can be formed to achieve neighborhood housing goals. A first step will be the upcoming workshop with Bob Yapp.
4. Adopt a neighborhood conservation district ordinance that would enable neighborhoods to apply for design review and other NCD protections, using a process similar to that for establishing an historic district.
5. In identifying priorities for protection as local landmarks/historic districts, request assistance from groups such as the Preservation and Conservation Association (PACA) and the University of Illinois' historic preservation class making use of existing resources.
6. Meet with neighborhoods to discuss neighborhood conservation problems and possible solutions. These meetings are underway.
7. For reasons discussed above, Staff strongly advises against reviewing demolitions other than for designated local landmarks and historic districts.

Prepared by:

Robert Myers, AICP, Planning Manager

Rebecca K. Bicksler, Community
Development Associate

cc: Plan Commission
Historic Preservation Commission
West Urbana Neighborhood Association
Historic East Urbana Neighborhood Association

DEMOLITIONS PERMITTED, 2000-2006
West Urbana Neighborhood

PERMIT	DATE	PREVIOUS USE	ADDRESS	ZONING	PIN NO.	CURRENT USE
2006	12/11/2000	Single-Family	403 CALIFORNIA, W	R2	92-21-17-179-005	Leal School
2009	12/15/2000	Commercial/ Apartment	302 GREEN, W	MOR	92-21-17-136-012	Vacant/Open Space
2019	1/30/2001	Single-Family	606 HIGH, W	R3	92-21-17-112-010	Vacant/Expanded Yard
2021	2/12/2001	Single-Family	810 ILLINOIS, W	R5	92-21-17-103-011	Church of Latter Day Saints
2022	2/12/2001	Single-Family	812 ILLINOIS, W	R5	92-21-17-103-010	Church of Latter Day Saints
2020	2/12/2001	Single-Family	406 LINCOLN, S	R5	92-21-17-103-009	Church of Latter Day Saints
2237	1/11/2002	Commercial/ Single-Family	508 GREEN, W	MOR	92-21-17-127-009	Parking for Presbyterian Church
2238	1/11/2002	Apartment	510 GREEN, W	MOR	92-21-17-127-008	Parking for Presbyterian Church
2282	4/8/2002	Single-Family	417 MAIN, W	R2	91-21-08-381-002	Vacant
2311	5/8/2002	Single-Family	909 VINE, S	R3	93-21-17-402-007	Urbana Middle School
2350	6/19/2002	Single-Family	404 OREGON, W	R2	92-21-17-179-011	Leal School
2349	06/19/2002	Apartment	402 OREGON, W	R2	92-21-17-179-013	Leal School
2352	6/20/2002	Single-Family	605 BIRCH, S	R2	92-21-17-179-012	Leal School
2353	6/20/2002	Single-Family	401 CALIFORNIA, W	R2	92-21-17-179-006	Leal School
2354	6/20/2002	Single-Family	405 CALIFORNIA, W	R2	92-21-17-179-004	Leal School
2351	6/20/2002	Single-Family	205 WASHINGTON, E	R3	93-21-17-402-003	Urbana Middle School
2365	7/16/2002	Rooming House	805 IOWA, W	R3	93-21-17-302-004	Vacant/Open Space
2385	7/31/2002	Single-Family	103 WASHINGTON, W	R2	93-21-17-401-013	Urbana Middle School
2432	10/2/2002	Single-Family	201 WASHINGTON, E	R3	93-21-17-402-002	Urbana Middle School
2493	2/17/2003	Apartment	611 GREEN, W	MOR	92-21-17-112-001	Apartment building
2522	4/10/2003	Single-Family	503 PENNSYLVANIA, W	R1	93-21-17-377-005	Vacant/Expanded Yard
2651	8/27/2003	Single-Family	708 RACE, S	R3	92-21-17-261-004	New Single-Family Home
2694	10/15/2003	Single-Family	208 OREGON, W	R2	92-21-17-255-003	New Single-Family Home
2724	11/25/2003	Single-Family	303 ELM, W	MOR	92-21-17-136-005	Vacant
2733	12/10/2003	Single-Family	410 1/2 ELM, W	MOR	92-21-17-131-008	Apartment building
2796	4/13/2004	Single-Family	701 GREEN, W.	MOR	92-21-17-107-008	Apartment building (Coler Crossing)
2974	10/04/2004	Rooming House	806 IOWA, W	R7	93-21-17-301-006	Parking for Sorority
3040	12/27/2004	Single-Family	106 IOWA, W	R2	93-21-17-401-020	Urbana High School
3041	12/27/2004	Single-Family	107 IOWA, W	R2	93-21-17-401-020	Urbana High School
3193	6/29/2005	Single-Family	806 MICHIGAN, W	R2	93-21-17-304-007	Twin City Bible Church
3192	6/29/2005	Single-Family	808 MICHIGAN, W	R3	93-21-17-304-008	Twin City Bible Church

DEMOLITIONS PERMITTED, 2000-2006
Historic East Urbana Neighborhood

PERMIT	DATE	PREVIOUS USE	ADDRESS	ZONING	PIN NO.	CURRENT USE
1968	10/4/2000	Single-Family	201 GROVE, S	R5	92-21-17-235-007	Apartment building
2200	11/8/2001	Single-Family	406 ELM, E	R5	92-21-17-228-008	Apartment building
2867	6/16/2004	Single-Family	406 WEBBER, S	R3	92-21-16-108-007	Vacant Lot/Open Space
2986	10/14/2004	Single-Family	505 URBANA, S	R3	92-21-17-276-005	Duplex
3142	5/18/2005	Duplex	408 JOHNSON, S	R3	92-21-16-112-010	Single-Family Residential
3258	9/6/2005	Single-Family	505 LYNN, S	R3	92-21-16-152-010	Vacant/Expanded Yard
3465	4/20/2006	Single-Family	602 GLOVER, S	R4	92-21-16-178-023	Condominiums (6 units)
3468	4/20/2006	Single-Family	506 GLOVER, S	R4	92-21-16-178-015	Condominiums (6 units)



LEGAL DIVISION
(217) 384-2464
FAX: (217) 384-2460

JAMES GITZ
City Attorney

JACK WAALER
Special Counsel
jwaaler@city.urbana.il.us

Memorandum

DATE: 10/27/06
TO:
FROM: Jack Waaler
RE: Fifth Amendment

It is a basic premise in American Law that private property cannot be taken without payment of just compensation. The principle is easy to apply in the simple situation where the government brings eminent domain to acquire a property for direct public use. For example, a public road. An eminent domain case can acquire edges of uncertainty when the purpose of the taking is not clearly for a public use. (See for example, *New London v. Kelo*).

It is come to be recognized that the basic premise, that private property cannot be taken without payment of just compensation, can occur in situations where the government is not exercising the power of eminent domain. The Courts have come to recognize that a regulatory restriction on property can operate (intentionally or even unintentionally) to significantly diminish the use of the land to the extent that the actions amounts to a taking for which compensation should be required. This line of reasoning is known as a “regulatory taking.”

A regulatory taking is an exception to the general rule that the government can adjust the “bundle of rights” that an owner has in his property without the government being required to pay just compensation. This point is well stated in *Chevron v. Lingle*.

The rub, of course, has been—and remains—how to discern how far is “too far.” In answering that question, we must remain cognizant that “government regulation—by definition—involves the adjustment of rights for the public good.” *Andrus v. Allard*, 444 U.S. 51, 65 (1979), and that “Governmental hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.” *Mahon, supra*, at 413.

If the regulation is not “too far”, then the government action is labeled as a legitimate exercise of the police power.

Despite the similarity in results, the analysis of a taking under eminent domain, differs from the analysis of a regulatory taking. In analyzing the propriety of a taking under eminent domain, the only significant question is whether the taking was for a public purpose whereas in an alleged regulatory taking, the first question is whether the case presents a legitimate exercise of the police power. If so, no compensation is due, or do the facts not fit with a legitimate exercise of the police power in which case no amount of compensation can authorize such action. To be a valid police power measure, there must be a logical connection between the governmental action and the purpose, otherwise the regulatory restriction violates due process because it is arbitrary and capricious.

“[A] use restriction on real property may constitute a “taking” if not reasonably necessary to the effectuation of a substantial public purpose.”

“[T]he due process clause is intended, in part, to protect the individual against the exercise of power without any reasonable justification in the service of a legitimate governmental objective.”

Thus, we have two questions to answer to determine if a regulatory taking has occurred. First, does the regulation have a logical connection with a legitimate governmental purpose? If so, the Court must also consider the three (3) Penn Central factors to determine if it nevertheless amounts to a regulatory taking. The three (3) Penn Central factors are:

1. Economic impact of the regulation on the claimant.
2. The extent to which the regulation interferes with the distinct investment backed expectations of the claimant.
3. The character of the government action.

Using those three (3) factors, you can determine whether or not this regulation is over the line and the taking is compensable.

Although it is not entirely clear to me what is proposed regarding delay or, indeed, totally prohibiting a demolition in a Neighborhood Conservation District, I will generally speculate on where the above analysis would lead us.

It seems that such a proposal regarding demolition is obviously a regulatory measure that restricts the property owner's rights to demolish a building on his/her own property. Such a measure could be regarded as an regulatory taking (albeit for a temporary period) if it cannot be shown that the restriction furthers some legitimate governmental goal. What would the governmental goal be in delaying or prohibiting demolition? If a logical connection cannot be demonstrated, the regulation would be held to be arbitrary, capricious, and thus, invalid. Even supposing that a logical connection can be established, whether the regulatory restriction is nevertheless the sort of regulatory restriction that will constitute a regulatory taking, we have to apply the three (3) Penn Central factors.



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Building Safety Division

m e m o r a n d u m

DEMOLITION NOTICING PROCEDURES Proposed Modifications February 5, 2007

The following measures are proposed to improve noticing and awareness of demolition activities:

1. Courtesy Notice to Nearby Properties

Courtesy notice of demolitions will be provided via U.S. Mail to all properties within one block of the address, as indicated by GIS data base.

2. Posting of Property

City staff will post the demolition permit application or similar notice on the property at least five days prior to the earliest scheduled date for demolition.

3. Other Notices

Currently, the alderperson and Mayor are noticed via e-mail when a demolition permit application is received. The Fire and Police Departments is also notified in case training exercises at the property may be desired. PACA is notified for possible salvage. This notice will be extended to all Councilmembers, the Historic Preservation Commission, and the relevant neighborhood organization.

4. Web Postings

Currently, demolition permits are included in a monthly report that is posted on the website [Community Development/Building Safety/Permits/Utility Permits]. This report will be updated weekly and demolition permits will be separated out from other utility permits.

5. Other Postings

Currently, the News Gazette publishes new building permits on a weekly basis. We have requested that the newspaper also publish demolition permits as a service to readers.

Implications:

Urbana has an average of 28 demolition permits granted per year. The new procedures will require additional staff time for preparation and mailing of notices and posting of properties. Additional waiting time for permit applications will also be required to accommodate time for noticing. This period is estimated to lengthen from the current period of 5 days to 10 or more days. Benefits will include improved public knowledge and awareness of demolition activities and fewer surprises for people who will be in the vicinity of such activity.

ATTACHMENT C
EXAMPLES OF CITY REQUIRED DELAY
FOR DEMOLITION PERMITS

The following provides a summary of demolition delay policies in 13 Illinois cities as well as those in selected other U.S. cities.

Illinois Communities Surveyed with Demolition Delay

Village of Glencoe, IL (permit delay with advisory process)

The Village of Glencoe's Historic Preservation Commission conducted a survey in the early 1990s and identified buildings that are of historical or architectural interest. They now have a file for every building in the Village. When a demolition permit application is submitted for a building that has been identified as being of historical or architectural interest, a 180-day demolition delay is triggered. During this time the Historic Preservation Commission will try to meet with the owner and encourage them to either renovate or sell the building. If, however, at the end of the waiting period, the owner wants to proceed with the demolition, the permit is granted. According to the Assistant Village Manager, a "couple" of homes have been saved through this process.

City of Highland Park, IL (permit delay with advisory process)

Demolition applications for all properties go to the Historic Preservation Commission for review. The Historic Preservation Commission uses the nine criteria set forth in their historic preservation ordinance to approve or deny the demolition permit. If the property meets one or two of the criteria, a six-month demolition delay is granted. If the property meets three or more of the criteria, a one-year demolition delay is granted. The delay is in place so that the City can work with the property owner to find an alternative to demolition, such as a preservation-minded buyer for the property or for the property to go through the local landmark process. If, however, the owner holds on to the property throughout the waiting period and there is not a landmark application in process, the owner is granted the demolition permit. This process has saved at least four buildings this year alone, according to Highland Park's historic preservation planner. During the delay period, City staff often work with the property owners and real estate agents to try and find buyers who are interested in restoring the property.

Highland Park has found that realtors have found a loophole in their demolition review ordinance: the realtors ask homeowners to apply for a demolition permit, knowing it might get delayed, but also that the home will spend some time on the market. Often, by the time the home sells, the delay has expired. Their historic preservation planner recommends having an ordinance provision ensuring the demolition delay and permit are not transferable to a new owner.

Village of Plainfield, IL (permit delay with advisory process)

The Village of Plainfield in 2005 adopted a demolition delay ordinance which can require the property owner to provide a historic and architectural assessment of the property, conducted by a qualified professional, which is reviewed by the Historic Preservation Commission through a public hearing process. If the Commission determines that the structure to be demolished meets the standards for historical and/or architectural significance, the Commission can recommend delay of the demolition permit for up to 60 days to find alternatives to demolition for all parties to consider. The village board

makes the decision to approve or deny the 60 day delay. The delay order may include a request for a conference with the owner. Once the delay expires a demolition permit may be issued.

City of Springfield, IL (permit delay with advisory process)

The City of Springfield conducted a study in 2002 to look at “preserving the past and building the future” of Springfield. This study recommended that the City commission a historic survey/inventory of every building within the city limits in order to evaluate the whole of their historic building stock. The study then went on to recommend that the City use the survey to create a demolition delay list and adopt a demolition delay ordinance. The following year, the City had a committee that included architects, historic preservationists, and civic leaders survey the housing stock of the entire City and create a list of properties that are potentially historically or architecturally significant. This list is now managed by the Historic Sites Commission and is published annually in the local paper. When a demolition permit application is submitted, if the property is on the demolition delay list, there is an initial 30 day delay period. During this time, the Historic Sites Commission meets to discuss the application. They have the authority to either approve the demolition application or to add a further 30-day delay. This delay is intended to provide the Historic Sites Commission additional time to investigate a preservation alternative with the property owner. The property owner does, however, have the right to the demolition permit at the end of the second delay period. According to City staff, this ordinance has saved one house since its inception in 2003.

City of Chicago, IL (permit delay with protection possible)

The City of Chicago conducted an eleven-year citywide survey, the Chicago Historical Resources Survey, in which all buildings 50 years old and older were rated for their architectural and historic importance. Buildings considered of citywide importance were rated “orange” while buildings of national importance were rated “red”. The City has a demolition-delay ordinance which establishes a delay up to 90 days in issuing a demolition permit for buildings rated red or orange. The ordinance is designed to allow City staff the time to explore options, as appropriate, to preserve the building, including but not limited to landmark designation. However, according to one historic preservation planner, their staff doesn’t have the resources to work with the majority of owners and most property owners just wait out the delay period. At the end of the delay period, they will then be issued the demolition permit.

City of Lake Forest, IL (permit delay with protection possible)

In addition to demolition applications in historic districts reviewed by the Historic Preservation Commission, demolition applications for properties outside historic districts are reviewed by the Building Review Board. Factors used by the Building Review Board for review of demolition applications include:

- Historic significance,
- Structural integrity,
- Whether realistic alternatives to demolition have been explored, and
- Design of replacement structure.

If the Building Review Board determines the property meets these criteria then they can authorize issuance of the demolition permit. However, if the Board determines that the building is historically significant and structurally sound, if realistic alternatives to demolition have not been explored, or if the replacement structure is not in keeping with the scale, style, and materials of the neighborhood, they will

order a two-year waiting period until the property owner can apply to the City for a demolition permit. During this time, a local historic landmark application can be submitted, but it is not an automatic part of the process. At the end of the waiting period, the demolition permit still depends on design review for the replacement building, but the other criteria no longer apply. If a property is in a historic district, the historic preservation ordinance provides the legal basis for review, but for all other properties the Architectural Design and Review Ordinance provides the legal basis.

Some Illinois Communities with no Demolition Delay or Review

The following Illinois communities do not have demolition delay or review outside of local historic districts.

- City of Bloomington
- City of Champaign
- City of Danville
- City of Evanston
- Village of Oak Park
- City of Quincy
- City of Rockford
- City of Rock Island

Cities Outside Illinois with Demolition Delay or Review

City of Ames, IA (permit review with protection possible)

Architectural and demolition review are carried out in two design review districts -- the Old Town Historic District and the East University Impacted District. To demolish a building in either district, the property owner must demonstrate that the property has no economic return. The City Council makes the final determination. According to the City's historic preservation planner, the districts, totaling 160 acres, are based on a study completed for both areas. Community input was involved, and the districts are noted in the comprehensive plan. These areas do not fall under the jurisdiction of the City's historic preservation ordinance, and neither district is an official historic district. The East University Impacted District is nearly all historic "Greek" housing.

City of Lansing, MI (permit review with advisory process)

All demolition permits in the City of Lansing are subject to review for historical and architectural significance prior to being issued. According to a city staff member, the planning department reviews all demolition permits for zoning compliance and flags them if the building is believed to possibly be significant. It is an informal process not required by city code. The Planning Department, therefore, has a general idea of which properties are significant. Planning Department staff rely on a reconnaissance-level survey in the 1980s that looked at the historical and architectural significance of all properties in the City. There have been several follow up studies since then with intensive-level surveys in certain areas.

County of New Castle, Delaware (permit delay with advisory process)

When a demolition permit application is submitted in New Castle County, if the building is thought to be over 50 years old, the county may issue a nine-day delay. During this time, the Historic Preservation Commission (HPC) must review the building and determine its significance. If the HPC finds the

building significant, it can issue a nine-month delay, which is then used to explore preservation alternatives.

City of St. Charles, MO (permit review with protection possible)

The City of St. Charles in 1977 created the Extended Historic Preservation District (EHPD) within which demolition applications were reviewed for loss of historically significant properties. The EHPD is essentially a very large historic district within which the only type of exterior change reviewed is demolitions. The district was created based on a district-wide *potential* for historic significance, and properties are reviewed on a case-by-case basis only when demolition permits are applied for. The Historic Landmarks Preservation and Architectural Review Board approves or denies Certificates of Demolition or Removal based on the criteria for designation of local historic landmarks. If a property meets the criteria for individual designation as a local landmark, the demolition permit is denied. Applicants can appeal to the City Council. Exemptions from demolition review include structures less than 50 years old and accessory structures less than 500 square feet in area, unless the Director of City Development finds significance and refers them to the Board. In 2001, the original ordinance was amended such that the Board now reviews all building permits for exterior work on structures in the district. Several administrative issues raised are:

- (1) The City of St. Charles did not demonstrate the significance of all properties in advance. Although properties are reviewed on a case-by-case basis when demolition applications are applied for, not having a property-by-property historic resource survey apparently leaves the district open to due process and other legal challenges.
- (2) In cases of demolition, properties in the *district* are reviewed using the criteria for designation of *individual* landmarks. Thus marginally significant properties which can be included in historic districts are reviewed using the more stringent individual landmark standards;
- (3) Depending on the type of exterior alteration, properties are reviewed using two standards following distinct philosophies. A structure to be demolished would be reviewed under historic preservation-based standards but to be rehabilitated would be reviewed under non-historic design review standards.

City of San Antonio, Texas (permit review with protection possible)

In San Antonio, when a demolition permit application is submitted, it first goes to the Historic Preservation Officer (HPO) to make an initial determination of the building's significance. If the HPO finds the building is not significant, the demolition permit is issued. If, however, the HPO finds the building significant, the application is forwarded to the Historic and Design Review Commission (HDRC). If the HDRC finds the building is not significant, the demolition permit is issued. If, however, the HDRC finds the building significant, the Commission recommends designation to the City Council. The Council then votes to approve or deny the designation of the building as a local landmark.

City of Santa Monica, CA (permit delay with protection possible)

The City of Santa Monica has demolition delay for all buildings over 40 years old. When a demolition permit application is received for such a building, it is forwarded to the Landmarks Commission. The Commission then has 60 days to decide whether to file an application for landmark designation. If the building is not 40 years old, or if the Landmarks Commission does not file an application for designation, the demolition will be approved subject to compliance with other normal requirements. If the Landmarks Commission files an application for designation, the City evaluates the historic integrity of the property.

City of Somerville, MA (permit delay with advisory process)

The City of Somerville adopted a demolition review ordinance in May 2003. The ordinance affords public review of demolition permit applications for potentially “significant buildings”. Demolition permit applications for all structures over 50 years old, with the exception of those in two industrial districts earmarked for massive redevelopment, are referred to the Historic Preservation Commission. When the Historic Preservation Commission determines that a building is significant and should be preserved, demolition may be delayed for up to nine months, during which alternatives to demolition can be pursued. If the property owner waits out the nine-month delay, the building may be demolished. The intent of the delay period is not to prevent demolition but to find alternatives.

A “significant building” is: a) one that is listed on the National Register, individually or within a historic district; or b) which is the subject of a pending application for listing on the National Register; or c) is at least 50 years old and is determined by the Historic Preservation Commission to be a significant building because it is either:

- Importantly associated with a historic person or event, or with the broad architectural, cultural, political, economic, or social history of the City or the state, or
- Historically or architecturally significant either by itself or in the context of a group of buildings.

ATTACHMENT D

HISTORIC RESOURCE SURVEYS CONDUCTED IN URBANA

1975 Illinois Historic Structures Survey—This survey included 52 Urbana structures of special interest because of their architectural or artistic merit or their contribution to the urban fabric. This 1975 report was prepared by the Illinois Historic Structures survey under the auspices of the Illinois Department of Conservation. Every Illinois town over 500 in population was researched by field surveyors.

1974 Illinois Historic Landmarks Survey—This report included 9 Urbana landmarks that were considered of special historical interest. This 1974 report was completed by the Illinois Historic Sites Survey under the auspices of the Illinois Department of Conservation. A list was compiled for each county in Illinois and was a compilation of sites referred to the agency by people within the county and sites obtained through research by field surveyors.

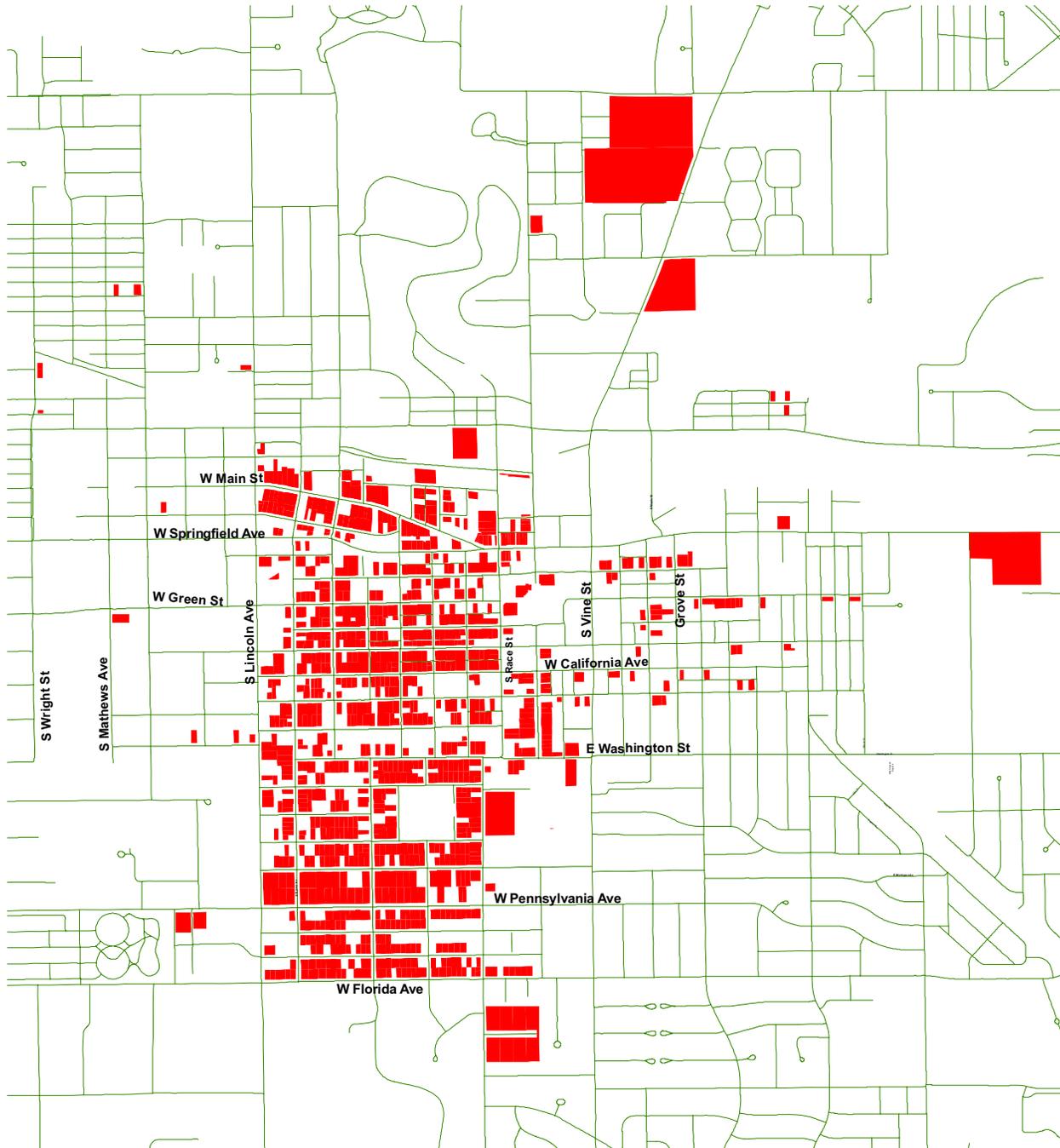
1971 State of Illinois Survey of All Buildings of Architectural Significance Built Prior to WWII—From 1971-1975, all Illinois cities and towns with a population greater than 500 were surveyed. Surveyors photographed and located all buildings of architectural interest. Photos are catalogued at the State Historic Preservation Office.

1985 Preservation & Conservation Association Survey of Downtown to Campus—The purpose of the PACA survey was to inventory a section of residential Urbana that was under increasing development pressure due to its close proximity to the University of Illinois. The survey was intended as a basis for a comprehensive preservation plan. The area consists of 55 blocks bounded by Race Street, California Street, Lincoln Avenue, and the Conrail railroad tracks. Commercial areas were not included.

1975 Survey by University of Illinois Planning Students—This survey included structures compiled from a variety of professional and community sources. The client group for this survey was comprised of Urbana community members. The significance of the sites was based on two factors. The first factor was the number of times it was included on different official lists from other agencies, organizations, and individual professionals. The second factor was the collective opinions of the client group and a special advisory panel assembled to review the master inventory. Students, who did most of the leg-work for the survey, made no judgments on the importance of sites.

1998-2007 UP320/420 Planning for Historic Preservation Survey Projects—This survey includes nearly 900 structures selected by Alice Novak, Urban Planning Professor and City of Urbana Historic Preservation Commission Chair. Students in the class between 1998 and 2007 have conducted intensive level surveys on each of these structures. The surveys are not ranked in any way and the structures were not selected based on architectural or historic significance.

Historic Properties in Urbana Combined Surveys



0 1,500 3,000 6,000 9,000 12,000 Feet



Highlighted properties have been surveyed for historical and/or architectural significance.

- * 1975 Illinois Historic Structures Survey
- * 1974 Illinois Historic Landmarks Survey
- * 1971 State of Illinois, Bldgs of Architectural Significance to WWII
- * 1985 PACA Downtown to Campus
- * 1975 UIUC Planning Department
- * 1998-2007 UIUC UP420 Student Surveys

Prepared 07/20/2007 by Community Development Services - rlb

Protection of Historic Homes through Demolition Review

The City must initiate a Demolition Permit Review Process to make sure that homes, commercial buildings, and other structures, trees, or objects, which may be unique to or are importantly linked with Urbana's history, its citizens, or culture, are not permanently lost to the community by demolition without due consideration.

1. DEMOLITION PERMIT NOTICE

Awareness of proposed house demolitions is vital for monitoring the fate of older structures within the city limits. The City has recently adopted several policies which allow residents to become more aware of potential demolitions in older neighborhood areas.

In February, 2007, the Community Development Director announced the adoption the following policies:

1. Courtesy Notice to Nearby Properties, by U.S. mail in a one block area of the demolition
2. Posting of Property, 5 days prior to demolition
3. Other Notices, by emails to Councilmembers, H.P.C., and neighborhood groups
4. Web Posting, on the city web site
5. Other Postings, including requested publication in The News-Gazette

These new policies are important tools in monitoring future demolitions in Urbana.

2. DEMOLITION PERMIT REVIEW

Goal: To make historic preservation review an integral part of any Demolition Permit approval process for buildings in the city limits which may be 60 years of age or older.

- The demolition of older residential structures and commercial stores is one of the greatest threats to Urbana's physical historic legacy. While the demolition of unsafe, heavily deteriorated, fire damaged structures is necessary, many structurally sound houses of a unique and historic nature have been bulldozed for the convenience of development without due consideration of the long term impact to Urbana.
- Urbana supports wise renewal of its housing stock and supports infill urban redevelopment. Demolition Review is not directed against wise redevelopment practices. It is, however, necessary to have a review before demolition of older properties in "at risk" neighborhoods, where the historic fabric of the community may have seen consistent demolition of older housing stock.

A Demolition Permit Review Process shall be established in Urbana for any residence or commercial property 60 years of age or older. The Community Development Department shall automatically forward a request for demolition and the information on the location, owner, and structure to be demolished, to the Historic Preservation Commission or its appointed subcommittee for review.

The Commission shall review the request and evaluate the historic impact the demolition will have on the legacy of the community.

The review shall take place at a regular meeting of the Commission members, in an open public hearing, allowing opportunity to receive public testimony, presentation by the property owner as to the need to demolish, and general due deliberation.

In cases where the loss of significantly important historic buildings is judged to be irreplaceable, the Commission will recommend denial of demolition. In cases where no irreplaceable loss is determined, the Commission shall approve demolition.

The Property owner may appeal to the Urbana City Council to overturn a permit denial by the Commission.

Citizens may appeal to the City Council to reconsider an approved demolition.

Appeals shall be forwarded to City Council and shall be placed on the agenda in regular meeting. A simple majority vote by Council will determine denial or approval.

Investigation Fee

Whenever any application for demolition is filed with the city involving a building or structure 60 years of age or older, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected to cover the cost of investigation time at public archives which may be required to collect data and process information by the Historic Preservation Commission, its subcommittee, or research specialists concerning the historic status of the property.

CITIES WITH ESTABLISHED DEMOLITION DELAY AND REVIEW:

The National Trust for Historic Preservation lists the following communities with Demolition Review policies:

California

Alameda

Alemada City Code § 13-21-7

http://www.ci.alameda.ca.us/code/Chapter_13/21/7.html

Davis

DavisBuilding Ordinance § 8.18.020

http://www.city.davis.ca.us/pb/pdfs/planning/forms/Demolition_Permit_Requirements.pdf

Santa Monica

Santa Monica Municipal Code § 9.04.10.16.010 (as amended by Ordinance No. 2131 {July 27, 2004})

<http://www.codemanage.com/santamonica/>

Colorado

Boulder

Boulder Revised Code § 10-13-23 <http://www3.ci.boulder.co.us/cao/brc/10-13.html#Demolition>

Connecticut

Monroe

Monroe Demolition Delay Ordinance

<http://www.cttrust.org/index.cgi/1049>

Wilton

Wilton Demolition Ordinance

<http://www.cttrust.org/index.cgi/1049>

Delaware

New Castle

New Castle County Code § 6.3.020(B)

http://www.municode.com/resources/online_codes.asp

Florida

Gainesville

Gainsville Code of Ordinances § 6-19

http://www.municode.com/resources/online_codes.asp

Illinois

Chicago

Chicago, Illinois. Municipal Code of Chicago § 13-320-230(a)-(c) and § 2-76-215

http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/ DemolitionPermits.txt

Highland Park

Highland Park Ordinances, Ch. 17 §§ 170.040.

<http://www.cityhpil.com/govern/ordinances.html>

Lake Forest

Lake Forest, Illinois, Building Scale and Environmental Ordinance § 9-87

<http://www.cityoflakeforest.com/pdf/cd/bsord.pdf>

Louisiana

Baton Rouge Area

Baton Rouge and East Baton Rouge Parish Demolition and Relocation Ordinance

http://municode.com/resources/on-line_codes.asp

Massachusetts

Boston

Boston Zoning Code, Art. 85, §§ 1-8.

<http://www.cityofboston.gov/bra/pdf/ZoningCode/Article85.pdf>

Cambridge

Cambridge Municipal Code Ch. 2.78, Art. II

<http://bpc.iserver.net/codes/cbridge/index.htm>

Newton

Newton Revised Ordinances, Ch. 22, Art. III, § 22-44.

http://www.ci.newton.ma.us/legal/ordinance/chapter_22.htm#art1

Weston

Town of Weston Bylaws, Art. XXX.

<http://www.lmstrategies.com/whc/by-law1.htm>

Maryland

Montgomery

Montgomery County Code, Part II § 24A-10

http://www.amlegal.com/montgomery_county_md/

Michigan

Pleasant Ridge

Pleasant Ridge Historic District

http://www.Michigan.gov/hal/0,1607,7-160-17445_19273_19318---,00.html

Lansing

www.cityoflansingmi.com/pnd/bldgsafety/demolition.jsp

New Hampshire

Concord

Concorde Code of Ordinances, Art. 26-9 §§16-9-1 through 16-9-5

http://municode.com/resources/on-line_codes.asp

Keene

Keene Code of Ordinances, Art. IV, §§ 18-331 through 18-335

http://municode.com/resources/on-line_codes.asp

Texas

San Antonio

San Antonio Unified Development Code. Art. 4, § 35-455(b)(2)

http://www.sanantonio.gov/dsd/pdf/udc_article4_04.pdf

pg.3.

Dennis Roberts / Alderman, Ward 5

STATISTICS — URBANA DEMOLITIONS, 2006

12	Residential
21	Apartments (Lakeside Terrace: 19 units)
10	Commercial (O'Brien's: 7)
2	Garages

A National Trust preservation law publication . . .

Protecting Potential Landmarks Through Demolition Review

by Julia H. Miller



NATIONAL TRUST
for HISTORIC PRESERVATION®

1785 Massachusetts Avenue, NW
Washington, D.C. 20036
202.588.6035

The National Trust for Historic Preservation provides leadership, education, and advocacy to save America's diverse historic places and revitalize our communities. Support for the National Trust is provided by membership dues, endowment funds, individuals, corporate and foundation contributions, and grants from federal and state agencies.

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Cover Photo: Redwood Street Historic District, Baltimore, MD (Historic American Buildings Survey, NPS)

Protecting Potential Landmarks through Demolition Review

By Julia H. Miller*

Last year, the wrecking ball fell twice in downtown Baton Rouge—almost. Two historic buildings, the 1910 S.H. Kress Building, the site of a 1960 civil rights protest at the then all-white, lunch counter of the five and dime, and the adjacent Welsh & Levy Building, built in 1885, were spared only after the owner backed off his plans to demolish the buildings for a surface parking lot in response to public outcry. The fate of a third building, the Old Baton Rouge Ice Plant, proved less fortunate. This 1880s one-story brick building was demolished for a riverfront condominium project. Once used for ice production, the building had been located on the Mississippi River on one of the city's few remaining intact blocks dating from the Nineteenth Century.

Baton Rouge has since taken steps to protect its unprotected resources and other communities can too. Through the adoption of a “demolition review ordinance,” older buildings (generally those over 50 years) cannot be demolished without review by a preservation commission or special committee to determine whether a building is historically significant. If the building qualifies as significant, then a commission may delay the issuance of a demolition permit to explore preservation alternatives, such as designating the building as a historic landmark or finding a purchaser who may be interested in rehabilitating the building.

What is a Demolition Review?

Demolition review is a legal tool that provides communities with the means to ensure that potentially significant buildings and structures are not demolished without notice and some level of review by a preservation commission. This process creates a safety net for historic resources to ensure that buildings and structures worthy of preservation are not inadvertently demolished.

Demolition review does not always prevent the demolition of historically significant buildings or structures. Rather, as the name suggests, it allows for review of applications for demolition permits for a specific period of time to assess a building's historical significance. If the building is deemed significant, then issuance of the permit may be delayed for a specific period of time to pursue landmark designation, or alternatively, to explore preservation solutions such as selling the property to a purchaser interested in rehabilitating the structure or finding alternative sites for the proposed post-demolition project.

What is the Difference between “Demolition Review Laws” and “Demolition Delay” or “Interim Protection” Provisions used in Preservation Ordinances?

Demolition review laws are typically, but not exclusively, separate and distinct from historic preservation ordinances. They preclude the demolition of *any* building or structure over a certain age, or any building or structure identified for protection—regardless of significance—for a specific period of time, to allow for a determination of historical or architectural merit. Historic properties may or may not be designated as a landmark at the culmination of this process, depending upon a law's specific terms, and such laws may or may not include a

*Special Counsel and Legal Education Coordinator, National Trust for Historic Preservation

“demolition delay” or “waiting period” component.

The nomenclature can be confusing. Demolition review laws are sometimes called “demolition delay ordinances” or simply, “demolition ordinances.”

Demolition delay provisions in historic preservation ordinances are used to prevent the demolition of buildings or structures that have already been designated as historic landmarks or as contributing structures in a historic district for a specific amount of time, usually ranging from 6 to 24 months. During that time, the preservation commission, preservation organizations, concerned citizens, and others may explore alternatives to demolition, such as finding a purchaser for the structure or raising money for its rehabilitation.

These provisions are typically used by communities that lack the authority to deny demolition permits. For example, in North Carolina, local jurisdictions generally only have the authority to delay a demolition permit up to 365 days unless the structure at issue has been determined by the State Historic Preservation Officer to have “statewide significance.” *See* N.C. Gen. Stat. § 160A.400.14.

Interim protection provisions are also found in preservation ordinances. They preclude the demolition or alteration of buildings or structures during the period in which the building is under consideration for historic designation. The objective is to preserve the status quo pending designation and to prevent anticipatory demolitions. For further information, see Edith M. Shine, “The Use of Development Moratoria in the Protection of Historic Resources,” 18 PLR 3002 (1999).

Why Do Communities Adopt Demolition Review Procedures?

Demolition review procedures help to prevent the demolition of historically significant buildings. Given the vast numbers of older buildings in cities and towns across the United States, it is virtually impossible for a community to identify all buildings that should be protected under a historic preservation ordinance in advance. By establishing a referral mechanism, communities can be assured that buildings meriting preservation will not fall through the cracks. The delay period provides an opportunity for the municipality or other interested parties to negotiate a preservation solution with the property owner, or to find persons who might be willing to purchase, preserve, rehabilitate, or restore such buildings rather than demolish them.

Demolition review procedures have also been adopted to protect buildings that may not meet the standards for designation but nonetheless embody distinguishing features that help to make a community an attractive place to live or work. For example, demolition review provisions are being used to address the proliferation of “teardowns” in many of our older neighborhoods. By delaying demolition for a period of time, concerned residents may be able to negotiate the preservation of character-defining houses on a case-by-case basis. *See, e.g.* Santa Monica, California, and Highland Park, Illinois.

Which Properties are Subject to Demolition Review Procedures?

Demolition review ordinances typically set forth objective criteria for determining which properties are subject to review. For example, a demolition review ordinance may require some level of review for all buildings built before a specific date or all buildings that have attained a certain age on the date the permit application is filed. Many communities use “50 years” as the critical benchmark. *See, e.g.* Boston, Massachusetts, Boulder, Colorado, and New Castle, Delaware. A few jurisdictions have opted for a shorter time period, largely in recognition of their younger building stock, *see, e.g.* Santa Monica, California (which uses a 40-year benchmark), and Gainesville, Florida (all structures listed in the state’s “master site

file" and/or 45 years of age). Still others utilize a specific date. See, e.g. Alameda, California, and Weston, Massachusetts, which protect all buildings constructed prior to 1945.

Alternatively, the demolition ordinance may only apply to properties identified on a historic survey or listed on a state historic register or the National Register of Historic Places. Chicago, for example, requires review for the roughly 6,200 buildings designated as "red" or "orange" on its 1996 Historic Resources Survey. Montgomery County, Maryland, stays the issuance of a demolition permit for properties included on its Locational Atlas and Index of Historic Sites.

Finally, some communities limit the scope of protection afforded to buildings located within a specific geographic area. Baton Rouge's newly-enacted demolition ordinance, for example, applies only to its downtown buildings. Boston's law governs any buildings located in its downtown area, Harborpark, and neighborhood design overlay districts, in addition to all those that are at least 50-years old.

Keep in mind that the viability of this system may depend upon an applicant's representation or a permit official's ability to verify or accurately determine a building's age. Boston addresses this issue by insisting that all demolition permit applications be referred to the city's landmark commission. Staff to the commission makes the determination as to whether the building is subject to review.

In Wilton, Connecticut, the burden of establishing the age of the building rests on the demolition permit applicant. Applications must include a statement regarding the size and age of the building or structure to be demolished with verification through independent records such as tax assessment records or the city's cultural resource survey. Santa Monica bases its age determination on the date the original permit for the building or structure was issued. Alameda, California's law provides that the age is to be determined by review of city records. Weston, Massachusetts, protects against the potential problem that the date of a building or structure cannot be determined by record by also requiring the review of all properties of "unknown age."

What Actions Generally Trigger Demolition Review?

All demolition review procedures are triggered by the filing of an application for a demolition permit. The scope of demolition work requiring review, however, varies from jurisdiction to jurisdiction. In addition, requests for permits to move or substantially alter buildings may also require review.

In Boulder, demolition review is required for the demolition or removal of any building over fifty years old. Demolition includes the act of either demolishing or removing—

- Fifty percent or more of the roof area as measured in plan view (defined as the view of a building from directly above which reveals the outer perimeter of the building roof areas to be measured across a horizontal plane); or
- Fifty percent or more of the exterior walls of a building as measured contiguously around the "building coverage"; or
- Any exterior wall facing a public street, but not an act or process which removes an exterior wall facing an alley.

[Illustrations omitted.] To meet the exterior wall retention standard,

- The wall shall retain studs or other structural elements, the exterior wall finish, and the fully framed and sheathed roof above that portion of the remaining building to which such wall is attached;

- The wall shall not be covered or otherwise concealed by a wall that is proposed to be placed in front of the retained wall; and
- Each part of the retained exterior walls shall be connected contiguously and without interruption to every other part of the retained exterior walls.

In Davis, California, the city’s demolition review procedures apply to “the destruction, removal, or relocation of a structure not classified as an ‘incidental structure,’ or the permanent or temporary removal of more than twenty-five percent (25%) of the perimeter walls of a structure.” Incidental structures are accessory buildings such as sheds, fences, play structures, and so forth.

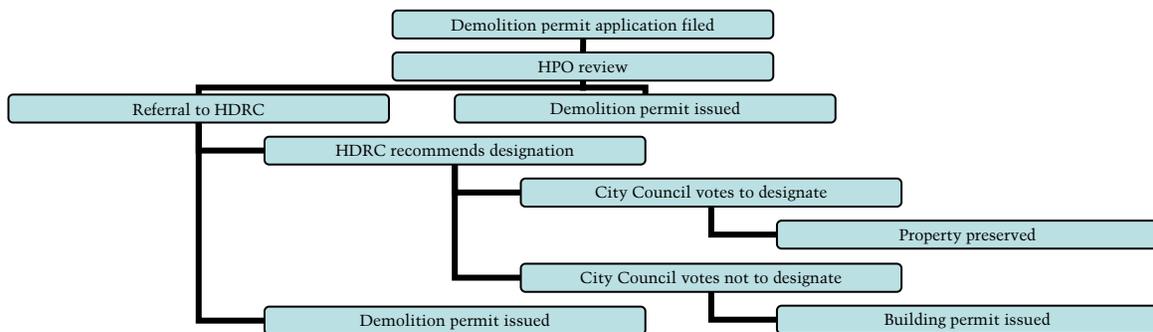
In Newton, Massachusetts, the demolition review requirement applies to any permit, without regard to whether it is called a demolition permit, alteration permit, or building permit, if it involves total and partial demolitions. A “total demolition” is “[t]he pulling down, razing or destruction of the entire portion or a building or structure which is above ground regardless of whether another building or structure is constructed within the footprint of the destroyed building or structure.” A “partial demolition” is “[t]he pulling down, destruction or removal of a substantial portion of the building or structure or the removal of architectural elements which define or contribute to the character of the structure.”

A few jurisdictions have narrowed the number of applications requiring review by limiting referrals to projects entailing the demolition of at least 500 square feet of gross floor area. *See, e.g.,* Concord, New Hampshire, and Monroe, Connecticut.

How is Demolition Review Accomplished?

Under typical demolition review procedures, the permitting official is directed to refer a demolition permit application to a review body for an initial or preliminary determination of significance. In San Antonio, for example, all demolition permits are referred to the city’s Historic Preservation Officer (HPO) to determine within 30 days whether or not a building or structure is historically significant. If the HPO finds the building significant, the HPO is required to forward the application to the Historic and Design Review Commission (HDRC) for review and recommendation as to significance. If the HDRC concurs in the HPO’s finding of significance, then the Commission must recommend designation to the City Council. Buildings and structures not deemed significant at any time during these proceedings may be demolished.

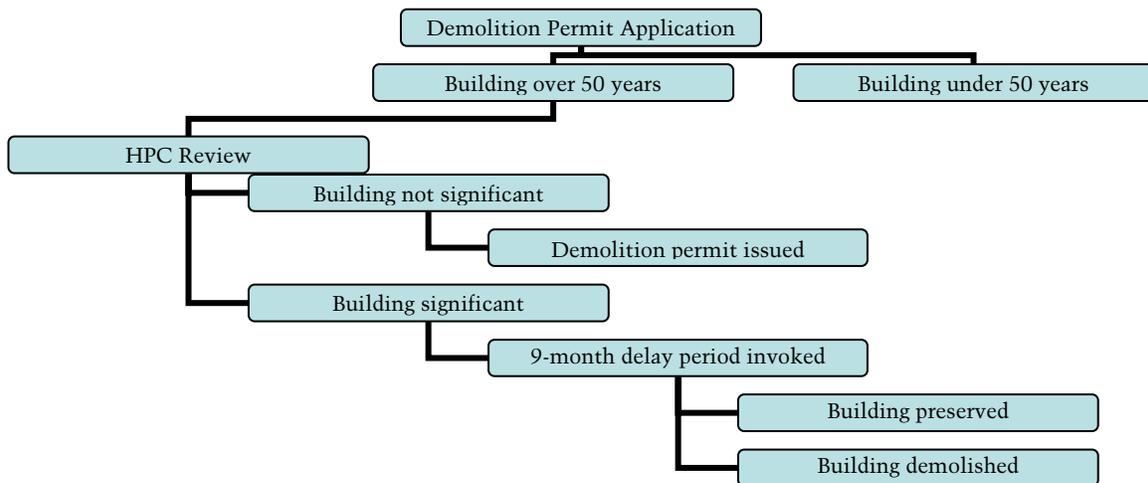
San Antonio Demolition Review Process



Santa Monica and Chicago also delay issuance of a demolition permit to allow for the landmark designation of the building, if warranted. In Santa Monica, the demolition permit may be issued if no application to designate is filed within 60 days. Chicago’s demolition ordinance delays issuance of permit up to 90 days “in order to enable the department of planning and development to explore options to preserve the building or structure, including, but not limited to, possible designation of the building or structure as a Chicago Landmark in accordance with Article XVII of Chapter 2-120 of this code.”

Some demolition review laws simply provide for a delay in the issuance of a permit to explore preservation-based solutions. New Castle County, Delaware utilizes this approach. The county may delay issuance of a demolition permit for any building “thought to be over 50 years old” for a period up to 10 days, during which time the Historic Review Board must make a determination whether the building is historically significant. If the building is deemed significant, then the board may order further delay up to 9 months from the date the application was initially filed to seek demolition alternatives.

New Castle County Demolition Review Process



In Boston, the Inspectional Services Department must transmit a copy of an application for a permit to demolish a building to the Boston Landmarks Commission within three days. The commission staff, in return, must make a determination within 10 days as to whether the building is (1) subject to review and (2) significant under specific criteria. If the property is determined not to be significant, then no further review is required. If the property is significant, the commission must hold a public hearing to determine whether the building should be subject to demolition delay. A decision on whether to delay the permit must be made within 40 days from the date the demolition permit application was initially filed.

To invoke the delay period, the commission must find that, in considering the public interest, it is preferable that the building be preserved or rehabilitated rather than demolished. Factors for consideration include: (a) the building’s historic, architectural, and urban design significance; (b) whether the building is one of the last remaining examples of its kind in the neighborhood, the city, or the region; and (c) the building’s condition. If the commission finds that the building is subject to demolition delay, issuance of the demolition permit may be delayed for up to 90 days from the close of the public hearing. A “Determination of No Feasible Alternative” may be issued during the public hearing or prior to the expiration of the 90-day period if the commission finds that there are no feasible alternatives to demolition.

Who Makes the Determination of Significance?

In most cases, the historic preservation commission makes the determination of significance, with initial review by the staff to the commission. *See, e.g.*, Boston, Massachusetts, Davis, California, and San Antonio, Texas. Variations, however, do exist from community to community. In Santa Monica, for example, demolition permit applications are forwarded directly to each of the members of the landmarks commission. In Boulder, initial review is performed by the city manager and two designated members of the landmarks board. If the property is significant, then the matter is referred to the city's landmarks board. In the cities of Keene and Concord, New Hampshire, the demolition review committee, comprised of three members of each city's heritage commission, is responsible for conducting the initial review, making an official determination of significance, and holding a meeting to explore preservation alternatives.

What Evidence Must be Submitted for Review?

Most jurisdictions require the submission of sufficient information to enable the decision maker to make an informed decision on a building's age and significance. In Santa Monica, for example, a completed application form must be submitted to the landmarks commission, along with a site plan, eight copies of a photograph of the building, and photo verification that the property has been posted with a notice of intent to demolish.

Boston requires the submission of photographs of both the subject property and any surrounding properties with a demolition permit application. In addition, the applicant must provide a map identifying the location of the property, a plot plan showing the building footprint and those in the immediate vicinity; plans for site improvements, including elevations if a new structure is planned, and the notarized signatures of all owner's-of-record along with proof of ownership. Additional materials may be required if a public hearing on the issue of whether the property is "preferably preserved" is held. Items such as a structural analysis report, adaptive reuse feasibility studies, the availability of alternative sites for the proposed project, effects of post-demolition plans on the community, and other materials the commission may need to make a feasibility determination may be requested.

Newton, Massachusetts has comparable requirements. In the case of partial demolitions involving alterations or additions, the town also requires the submission of proposed plans and elevation drawings for the affected portion of the building.

What Standards are Used to Determine Historical Significance?

In Gainesville, Florida, the preservation planner is essentially charged with determining whether the structure would qualify as a landmark under the city's historic preservation ordinance. A demolition permit may be issued if the planner finds that the structure "is not designed in an architectural 'high style' or a recognized vernacular building pattern, and it does not have historic events or persons associated with it."

In New Castle County, Delaware, the Historic Review Board makes a determination as to whether the building or structure is historically significant, based on the criteria for listing in the New Castle County Register of Historic and Architectural Heritage.

In Baton Rouge, Louisiana, the city's planning commission is charged with determining whether "[t]he structure is individually listed on the National Register of Historic Places or included in a National Register Historic District, or the structure is classified as National Register Eligible or Major Contributing in the historic building survey of the Central Business District."

In Westfield, Connecticut, individual findings of significance are not made. Rather, to invoke the 90-day, demolition delay period, the structure must be listed in or located within a historic district listed in the National Register of Historic Places, the State Register of Historic Places, the Westfield Historical Commission Register of Historic Places, or a local historic district created under the city's historic preservation ordinance. To be included on the city's historic register, the property must "contain or reflect distinctive and demonstrably important features of architectural, cultural, political, economic or social significance to the City of Westfield."

In Boulder, a preliminary finding on whether there is "probable cause" for designation as an individual landmark is made. If there is "probable cause," then the matter is required to be referred to the landmark commission for a public hearing on the eligibility of the building for designation as a landmark. In addition to determining whether the building meets the objectives and standards for landmark designation under its preservation ordinance, the Boulder commission must also take into account: (1) "[t]he relationship of the building to the character of the neighborhood as an established and definable area;" (2) "the reasonable condition of the building;" and (3) "the reasonable projected cost of restoration or repair." If the building is found to merit designation, then a delay period not to exceed 180 days from the date the demolition permit application was initially filed may be invoked.

Cities and towns enacting demolition review procedures in Massachusetts may not invoke a delay period until the building or structure at issue is found to be both "significant" and "preferably preserved." The term "preferably preserved" essentially means that it is in the public's interest to preserve the building. In some cases, a determination may be made to seek landmark status. Newton's "demolition delay ordinance" is illustrative. Under the city's law, a significant building is "any building or structure which is in whole or in part fifty years or more old" and which:

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or

(2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or

(3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:

a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or

b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

A building or structure is "preferably preserved" if issuance of the requested demolition permit "would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton."

What Procedures are Used to Evaluate Significance?

The notice and hearing requirements set forth in demolition review ordinances normally address two concerns. One is meeting the constitutional rights of the applicant to due process. The other is ensuring that the community knows about the pending demolition and has a meaningful opportunity to participate in the proceedings. Determinations of significance are generally held upon review by a city's historic preservation commission at a public hearing.

Notice. Individual notice is often required when specific findings are made affecting the applicant's request for a demolition permit. For example, in Boulder, notice must be provided to the applicant upon a finding by an initial review committee that probable cause exists that the building or structure may be eligible for designation as an individual landmark. The applicant is also entitled to notice of the public hearing before the full commission regarding the property's eligibility for landmark status and notice of the commission's final decision to stay the demolition permit for a period of 180-days to explore preservation alternatives.

Public notice requirements under demolition review ordinances can also be extensive. In situations where delay periods may be invoked for the purpose of exploring preservation alternatives, public awareness can be critical. In Monroe, Connecticut, for example, concerted efforts are made to inform the public. The city's ordinance requires publication of notice in newspaper of general circulation and individually-mailed notice to the city's historic district commission, the town historian, the Monroe Historical Society, and all abutting property owners. In addition, the city is required to post for at least 30 days a 36 by 48" sign visible from nearest public street with the words "DEMOLITION" printed on the sign with the letters being at least 3 inches in height. Among other requirements, Gainesville, Florida, requires that the historic preservation planner post a sign on the property "notifying the public of the owner's intent to demolish the structure in order to allow interested parties to come forward and move the structure upon consent of the owner."

Hearings. Public hearings are typically required under demolition delay provisions to determine whether the building or structure posed for demolition is historically significant. See, e.g. Baton Rouge, Louisiana, Boston, Massachusetts, Boulder, Colorado, Westfield, Connecticut, Gainesville, Florida, and Concord, New Hampshire. Some demolition delay laws also use the public hearing format to consider alternatives for demolition delay. The Westfield, Connecticut, ordinance, for example, specifically states that "[t]he purpose of said Hearing shall be to discuss, investigate and evaluate alternatives that will allow for the preservation of such buildings, structures, features/components or portions thereof." It provides, however, that [t]he applicant's intended use/reuse of the property is not a topic of the hearing."

How Long Do Delay Periods Typically Run?

The delay periods invoked under demolition review ordinances run from 30 days to two-years, with most falling within the 90-day to six-month range. In some jurisdictions, the length of the delay period may be prescribed by state law. For example, in Connecticut, § 29-406(b) of the Connecticut General Statutes authorizes any town, city, or borough to impose a waiting period of not more than ninety days. Also note that the effective length of equivalent waiting periods can vary significantly, depending upon the date upon which the delay is measured. Boston, for examples, measures its 90-day delay period from the close of the public hearing. Chicago, in comparison, measures its 90-day delay period from the application filing date.

Communities with longer delay periods sometimes include specific provisions that enable the issuance of a demolition permit prior to the expiration of the waiting period if spe-

cific conditions are met. For example, in Lake Forest, Illinois, the city's 2-year waiting period for all demolition permits may be waived or shortened, upon a finding by the Building Review Board, after holding a public hearing, that—

- a. The structure itself, or in relation to its environs, has no significant historical, architectural, aesthetic or cultural value in its present restored condition; or
- b. Realistic alternatives (including adaptive uses) are not likely because of the nature or cost of work necessary to preserve such structure or realize any appreciable part of such value; or
- c. The structure in its present or restored condition is unsuitable for residential, or a residentially compatible use; or
- d. The demolition is consistent with, or materially furthers, the criteria and purpose of this section and Section 46-27 of the Zoning Code.

In Newton, Massachusetts a demolition permit may be issued before the expiration of the city's 12-month delay period if the Newton Historical Commission is satisfied that the permit applicant:

- has made a "bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or
- has agreed to accept a demolition permit on specified conditions approved by the commission.

See, also, Boston's Demolition Delay Ordinance, which provides for the issuance of a finding of "no feasible alternative to demolition" at the public hearing or any time prior to the expiration of the delay period.

Also note that some jurisdictions insist that the property be secured during the demolition delay period. In Boston, for example, the applicant is required to secure the building during the review period. If the building is lost during this period due to fire or other causes, then the action is treated as an unlawful demolition.

How are Demolition Alternatives Explored?

The historic preservation commission usually sits at the center of the preservation effort. The commission will work with the owner and other interested organizations, public agencies, developers, and individuals who may be instrumental in developing a workable solution. Boston's demolition review ordinance specifically identifies who must be asked to participate in the city's investigation of alternatives. In addition to the owner, the Landmarks Commission must invite the Commissioner of Inspectional Services, the Director of the Boston Redevelopment Authority, and the Chairperson of the Boston Civic Design Commission, and any other individual or entity approved by the applicant. In Boulder, the Landmarks Board may "take any action that it deems necessary and consistent with this chapter to preserve the structure, including, without limitation, consulting with civic groups, public agencies, and interested citizens."

The range of alternatives that may be pursued may be specifically identified in the ordinance or left to the preservation commission's discretion. In addition to considering the possibility of landmark designation, the moving of a building to an alternative location, and the salvaging of building materials, the Boulder Landmarks Board is empowered to "take any action that it deems necessary . . . to preserve the structure." In Wilton, Connecticut, the Wilton Historic District Commission or the Connecticut Historical Commission is charged

with “attempting to find a purchaser who will retain or remove such building or who will present some other reasonable alternative to demolition” during the 90-day delay period.

Alternatives that are often considered include the possibility of rehabilitating the building with the assistance of tax incentives or other financial assistance; adapting the building to a new use; removing the building to another site; finding a new owner who is willing and able to preserve the building; incorporating the building into the owner/applicant’s redevelopment plans; and using an alternative site for the owner/applicant’s project.

The submission of specific information pertaining to the property is generally required. An applicant, for example, may be required to submit a structural engineer’s report and information on the cost of stabilizing, repairing, rehabilitating, or re-using the building, plans for the property upon demolition, and the availability of other sites that would meet the applicant’s objectives.

What Exceptions May Apply to the Strict Application of Demolition Review Laws?

Many demolition review laws recognize exceptions upon a showing of economic hardship or where the public safety is at stake. In Gainesville, Florida, for example, the demolition delay period may be waived by the historic preservation board if the applicant can demonstrate “economic hardship.” As is generally the case with the consideration of economic hardship claims under historic preservation ordinances, the burden of proof rests on the applicant to show that retention of the property is not economically viable and the applicant must set forth specific relevant information to make his or her case.

Virtually every demolition review law recognizes an exception on public safety grounds. Gainesville also provides that “any structure that has been substantially burned or damaged by an event not within the landowner’s control with more than 50 percent of the structure affected” may also be demolished, regardless of the building’s significance.

Weston, Massachusetts provides the following exception:

Emergency Demolitions

Notwithstanding the following provisions, the Building Inspector may issue a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to deteriorating conditions. Prior to doing so, the Building Inspector shall inspect the building and document, in writing, the findings and reasons requiring an emergency demolition, a copy of which shall be forwarded immediately to the Commission. Before allowing emergency demolition, the Building Inspector shall make every effort to inform the Chairperson of the Commission of his intention to allow demolition before he issues a permit for emergency demolition.

No provision of this by-law is intended to conflict with or abridge any obligations or rights conferred by G.L.c.143 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

Once the Delay Period Expires, What Other Restrictions May Apply?

Some jurisdictions also require the submission of documentation of the property and/or the salvage of significant architectural features prior to the issuance of the demolition permit. Boulder, Colorado, expressly authorizes the city manager to require the submission of documentation about the building prior to the issuance of a demolition permit, such as a de-

scription of significant events, information on its occupants, photographs, plans, and maps. In Keene, New Hampshire, the demolition review committee is required to “photographically document the building” prior to demolition. In addition, the salvage of significant architectural features is encouraged.

How are Demolition Review Ordinances Enforced?

Experience has shown that historic buildings will be demolished, without regard to protections against demolition, if the ramifications for non-compliance are minor or insignificant. Accordingly, communities generally seek to establish penalties that will, in fact, discourage violations from occurring. Commonly used penalties, for example, include the imposition of significant fines for each day of the offense, and the preclusion of a permit to develop or occupy the property for specific period of time.

In New Castle County, Delaware, the county attorney is authorized by ordinance “to take immediate action prosecute those responsible” for the demolition of structures determined to have historic significance prior to the issuance of a demolition permit. In addition, building permits for the parcel affected may be withheld for a period of one to three years. Violators of the demolition ordinance in Monroe, Connecticut, may be subject to a fine amounting to the greater of one thousand dollars or the assessed value of the property for each violation. In Highland Park, Illinois, a person who violates the demolition review ordinance may be assessed a fine equal to “90 percent of the fair market value of the cost of the replacement of such regulated structure.”

Newton, Massachusetts, authorizes the imposition of a \$300 fine and two year ban on the issuance of a building permit against anyone who demolishes a historically significant building or structure without first obtaining and fully complying with the provisions of a demolition permit issued in accordance with its demolition review ordinance. However, a waiver on the building permit ban may be obtained in instances where reuse of the property would “substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property” either through reconstruction of the lost elements or significant enhancement of the remaining elements. As a condition to obtaining the waiver, however, the owner must execute a binding agreement to ensure that the terms agreed to are met.

Do Demolition Delay Ordinances Work?

On December 15, 2003, a Chicago Tribune article written by architectural critics, Blair Kamin and Patrick T. Reardon, made headline news. Kamin and Reardon reported that, in a year’s time, only one of 17 buildings slated for demolition had been preserved under the city’s much acclaimed “demolition delay ordinance.” The critics asserted that the city’s much-touted effort to preserve the buildings coded red or orange on Chicago’s 1996 Historic Resources Survey through the imposition of a 90-day waiting period on demolition permits, wasn’t working. They attributed the loss of the buildings to the city’s failure to make preservation a priority and by not providing sufficient legal protections and financial incentives to get the job done.

In the same article, Kamin and Reardon also reported that the Chicago Landmarks Division had made a contrary assessment. Sixteen out of the 17 orange-rated buildings posed for demolition were not recommended for designation because they had failed to meet the criteria for landmark status and the one building that was saved would have been demolished but for the demolition delay ordinance.

It cannot be denied, as Kamin and Reardon noted, that demolition review laws seem to support an “ad hoc” approach to landmark designation. The buildings being designated are

those threatened by demolition rather than those most deserving. Also, the question of what is preserved often depends upon who cares about the matter, rather than the historical or architectural merit of the building at issue.

Keep in mind, however, that the need for such laws really stems from the fact that it is impossible to designate every building worthy of protection in advance, especially in cities like Chicago, where over 17,000 buildings have been listed on the city's historic survey. Historic preservation commissions are often understaffed, and often cities simply lack the resources or political will to protect all of their historic properties in advance.

Indeed, in Massachusetts, where over 100 demolition review laws have been adopted, demolition review laws are considered overwhelmingly successful. According to the Massachusetts Historical Society, demolition delay enabled the preservation of the Coolidge Corner Theater and a Lustron house in Brookline. Negotiations under Eastham's delay provision enabled a historic house to be moved rather than demolished. Demolition review requirements have also helped to stem the tide of teardowns in residential areas in Newton, and resulted in the rehabilitation of the circa-1710 Foster Emerson House in Reading. For more information, see Christopher Skelly, "Preservation through ByLaws and Ordinances" (Massachusetts Historical Commission 2003).

What Else do I Need to Know About Demolition Review Laws?

By now you should be aware that demolition review laws can vary significantly. In developing your own program, it is important to understand not only how such laws work generally, but also to think about how such a law would work in your own community. Basic considerations include the types and number of buildings likely to require review, who should conduct that review, and how the law would relate to your city or town's historic preservation program. Communities should also seek to —

- **Establish an efficient process.** Provide a quick and efficient means for ensuring that permits on non-significant buildings are not held up unnecessarily. The number of demolition permit applications filed in a given year can sometimes be staggering. The San Antonio Historic Preservation Office, for example, reports that it reviews approximately 900 applications per year.
- **Have resources in place which help applicants and/or permitting officials determine the age and significance of their buildings.** In other words, take the guesswork out of the process.
- **Avoid making the safety net too small.** It is important to ensure that potential landmarks are, indeed, subject to the law's protections. In communities with resources from the recent past, for example, it may be necessary to establish a threshold date that is commensurate with those resources. Communities relying on specific dates rather than the age of the building may find the need to amend the ordinance over time. If demolition review is limited to a category of buildings or list of structures, comprehensive survey work must be done prior to the law's enactment to ensure that all buildings meriting protection are included.
- **Keep the community informed.** Effective notice provisions, such as the posting of a large sign, are critical. Members of the public cannot respond to a demolition threat unless they know about it.
- **Don't make the delay period too short.** Without a meaningful delay period, leverage is lacking. It takes time to find a new buyer or a new site, or to even make an assessment as to whether an adaptive reuse project would work.

- **Give the preservation commission the necessary tools to negotiate a solution.** Preservation solutions are more likely to be forthcoming with some level of financial assistance or tax savings. Enable the commission to draw on the expertise of other city officials when necessary and invite critical players to the table. Demolition review provides an invaluable opportunity to improve communication between a preservation commission and its staff, and other governmental officials and the development community.
- **Enable the property to be designated, if designation is warranted.** Negotiated preservation is no substitute for a strong preservation ordinance.
- **Enforce your ordinance.** Ensure that the penalties effectively deter non-compliance and be prepared to enforce your ordinance if violations occur.

Where Can I Find Examples of Demolition Delay Ordinances?

Listed below are examples of demolition delay ordinances that have been adopted around the country.

California

Alameda City Code § 13-21-7.
http://www.ci.alameda.ca.us/code/Chapter_13/21/7.html

Davis Building Ordinance § 8.18.020
http://www.city.davis.ca.us/pb/pdfs/planning/forms/Demolition_Permit_Requirements.pdf

Santa Monica Municipal Code § 9.04.10.16.010 (as amended by Ordinance No. 2131 (July 27, 2004)).
<http://www.codemanage.com/santamonica/>

Colorado

Boulder Revised Code § 10-13-23.
<http://www3.ci.boulder.co.us/cao/brc/10-13.html#Demolition>

Connecticut

Monroe Demolition Delay Ordinance
<http://www.cttrust.org/index.cgi/1049>

Wilton Demolition Ordinance
<http://www.cttrust.org/index.cgi/1049>

Delaware

New Castle County Code § 6.3.020(B).
http://www.municode.com/resources/online_codes.asp

Florida

Gainesville Code of Ordinances § 6-19.
http://www.municode.com/resources/online_codes.asp

Illinois

Chicago, Illinois. Municipal Code of Chicago § 13-320-230(a)-(c) and § 2-76-215.
http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/DemolitionPermits.txt

Highland Park Ordinances, Ch. 17 §§ 170.040.
<http://www.cityhpil.com/govern/ordinances.html>

Lake Forest, Illinois, Building Scale and Environmental Ordinance § 9-87.
<http://www.cityoflakeforest.com/pdf/cd/bsord.pdf>

Louisiana

Baton Rouge and East Baton Rouge Parish Demolition and Relocation Ordinance
http://municode.com/resources/on-line_codes.asp

Massachusetts

Boston Zoning Code, Art. 85, §§ 1-8.
<http://www.cityofboston.gov/bra/pdf/ZoningCode/Article85.pdf>

Cambridge Municipal Code Ch. 2.78, Art. II
<http://bpc.iserver.net/codes/cbridge/index.htm>

Newton Revised Ordinances, Ch. 22, Art. III, § 22-44.
http://www.ci.newton.ma.us/legal/ordinance/chapter_22.htm#art1

Town of Weston Bylaws, Art. XXX.
<http://www.lmstrategies.com/whc/by-law1.htm>

Maryland

Montgomery County Code, Part II § 24A-10
http://www.amlegal.com/montgomery_county_md/

New Hampshire

Concord Code of Ordinances, Art. 26-9 §§16-9-1 through 16-9-5.
http://municode.com/resources/on-line_codes.asp

Keene Code of Ordinances, Art. IV, §§ 18-331 through 18-335.
http://municode.com/resources/on-line_codes.asp

Texas

San Antonio Unified Development Code. Art. 4, § 35-455(b)(2).
http://www.sanantonio.gov/dsd/pdf/udc_article4_04.pdf