



Memorandum

TO: Planning Commission

FROM: Sara Javoronok, Associate Planner

DATE: July 19, 2010

SUBJECT: Proposed Revisions to the July 21, 2010 Public Hearing Draft

This memo identifies potential changes to the draft code amendments establishing a Historic Review Board discussed by the Planning Commission and Historic Resources Advisory Board at their July 12, 2010 joint meeting. Several changes to the draft code amendments were suggested. Changes to Section 99.060D (2) and (3) are included at the end of this memo and are highlighted in red. Those in attendance at the meeting asked that staff draft language that would require the Planning Commission to adhere to the Historic Review Board's recommendation on a quasi-judicial project unless it was inconsistent with the comprehensive plan or Community Development Code. However, legal council said that approach is not acceptable because the Planning Commission by code has decision making authority and cannot delegate that authority to another board or commission.

If the code requires the Planning Commission to adhere to the Historic Review Board recommendation on a quasi-judicial application, due process would not be fully available to the parties. The Historic Review Board review would not be through a public hearing that follows quasi-judicial process. As a result, for instance, if a proposal is reviewed by the Historic Review Board where more than one alternative is discussed, the proponent of the alternative that is not selected by the Historic Review Board will not have an opportunity to have the decision maker, the Planning Commission, consider the merits of the alternative nor the possible downside of the preferred alternative. The Planning Commission would not be able to take into consideration anything but the alternative selected by the Historic Review Board. Therefore, seven additional alternatives are outlined below for your consideration.

At issue is that the Historic Review Board currently reviews and makes a decision on design review projects in the Willamette Falls Drive Commercial District based on Chapter 58: Willamette Falls Drive Commercial District Design Standards. The Historic Review Board has not applied applicable code requirements in Chapter 55: Design Review. In addition, there are conflicting code sections in chapters 58 and 99 that have led to issues regarding the appropriate approval authority for projects.

The alternative code revisions and their implications are as follows:

Alternatives for reviewing projects subject to HRB and Planning Commission review	Implications
<p>#1: July 21, 2010 Public Hearing Draft Proposal (as revised based on the July 12, 2010 Work Session)</p> <ul style="list-style-type: none"> - The Historic Review Board would review projects subject to Class II Design Review in Chapter 55 and make a recommendation to the Planning Commission. - Up to two members of the Planning Commission would attend the Historic Review Board meeting. - Staff would include the Historic Review Board’s recommendation and any conditions of approval in the staff report to the Planning Commission. - Up to two members of the Historic Review Board would have the opportunity to speak at the Planning Commission meeting following staff. The Board members would also be able to answer questions and would not be limited in time. - The Planning Commission decision would be appealable to the City Council. 	<ul style="list-style-type: none"> - Single public hearing - Single 120-day clock - Historic Review Board decision would not be binding. - Planning Commission could alter Historic Review Board recommendation and findings. - Could have a process for the Historic Review Board to appeal to the City Council.
<p>#2: Historic Review Board Review</p> <ul style="list-style-type: none"> - The Historic Review Board would review and make a decision on projects for compliance with both Chapter 58, Willamette Falls Drive Commercial District Design Standards and Chapter 55, Design Review for projects in the Willamette Falls Drive Commercial District. (In the past, the Clackamas County Historic Review Board review looked only at Chapter 58). - The Historic Review Board would also review and make a decision on all historic landmark and historic district projects that required Chapter 55 review. - The Historic Review Board would review and make a decision on any variances, conditional uses, etc. for properties in the Willamette Falls Drive Commercial District, historic landmarks, and historic district(s). 	<ul style="list-style-type: none"> - Historic Review Board would not typically review criteria outside of chapters 25 (Historic District), 26 (Historic Landmarks), and 58 (Willamette Falls Drive Commercial District) and would not be as experienced as the Planning Commission. However, the planning staff would offer a recommendation and support. - Single public hearing - Single 120-day clock - Similar process followed in Portland.

<ul style="list-style-type: none"> - The Historic Review Board decisions would be appealable to the City Council. 	
<p>#3: Joint Hearing</p> <ul style="list-style-type: none"> - The Historic Review Board and the Planning Commission would review projects subject to Class II Design Review at a joint hearing. - The Historic Review Board would review the project under chapter 25, 26, and 58, as applicable. - At the same meeting, the Planning Commission would review the project and make a decision. 	<ul style="list-style-type: none"> - Single meeting - Single 120-day clock - Process could provide for greater understanding and collaboration between the Historic Review Board and Planning Commission since both will be in attendance. - Historic Review Board decision would not be binding. - Planning Commission could alter Historic Review Board recommendation and findings. - Professionals with joint hearing experience have felt the process was cumbersome, difficult, and didn't work very well.
<p>#4: Parallel Review</p> <ul style="list-style-type: none"> - Two applications would be submitted, one for a Historic Review Board decision, and the other for a Planning Director or Planning Commission decision. - Each application would have a separate 120-day clock. - The Historic Review Board would hold a public hearing to review projects under chapters 25, 26, or 58, as applicable, and make a decision. - The Planning Director would make a decision or the Planning Commission would hold a public hearing and make a decision on any land use applications under its purview. 	<ul style="list-style-type: none"> - Both processes would be binding. - If a Historic Review Board application was appealed, the appeal could take up significant time on the 120-day clock and potentially leave little time for Planning Commission review and a potential City Council appeal. - There might be challenges reconciling the two decisions. - Professionals with experience with this review process preferred it. - Similar process followed in Oregon City and Albany.
<p>#5 Historic Review Board and Planning Commission or Planning Director Review</p> <ul style="list-style-type: none"> - This process would be similar to #4 above, except the Planning Director or Planning Commission would first review the project, then it would be reviewed by the Historic Review Board. - Two applications would be submitted, one for a Planning Director or Planning Commission 	<ul style="list-style-type: none"> - Both processes would be binding. - If the Planning Commission or Planning Director decision was appealed, the appeal could take up significant time on the 120-day clock and potentially leave little time for Historic Review Board review and a potential

<p>decision and the other for a Historic Review Board decision.</p> <ul style="list-style-type: none"> - Each application would have a separate 120-day clock. 	<p>City Council appeal.</p> <ul style="list-style-type: none"> - May present a challenge if an applicant required approval for a conditional use or other application that requires Historic Review Board review in conjunction with a design review application that required Planning Commission approval. - There might be challenges reconciling the two decisions. - Similar process in Salem.
<p>#6 Combination of #1 and #4 Above</p> <ul style="list-style-type: none"> - There are currently three groups of properties that are reviewed by the Historic Review Board: historic landmarks, properties within the Willamette Historic District, and properties in the Willamette Falls Drive Commercial District. Many of the properties in the Willamette Falls Drive Commercial District are not designated as historic and it is unusual for a Historic Review Board to review properties that are not designated. - To address this, projects for properties that are not designated as historic would be reviewed as outlined above in #1. - Projects for properties that are designated as historic would follow the parallel process outlined above in #4. 	<ul style="list-style-type: none"> - Would provide for the greatest level of historic review for designated historic properties. - Would continue to provide for Historic Review Board review for properties in the Willamette Falls Drive Commercial District that were not designated, but the Planning Commission would make the final decision. - Similar to Oregon City and Albany process for historic landmarks and historic districts.
<p>#7: Historic Review Board and Planning Staff Review</p> <ul style="list-style-type: none"> - An application that required Historic Review Board review and typically, Planning Commission design review, would be reviewed only by the Historic Review Board and Planning Staff. - Applications that also required a conditional use, Class II variance, etc. would be subject to Consolidation of Proceedings and would be reviewed as provided in #1 above (and would not be reviewed by staff). 	<ul style="list-style-type: none"> - Would simplify the process for projects that would otherwise be subject to review by two bodies. - Would remove Class II Design Review from the purview of the Planning Commission for historic properties and those in the Willamette Falls Drive Commercial District. - Similar to Oregon City process where design review is done at the staff level.

APPROVAL AUTHORITY

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HISTORIC REVIEW BOARD AUTHORITY

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D. The Historic Review Board shall have the authority to:

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2. The Historic Review Board shall have the opportunity to review an application for compliance with chapter 25, 26 or 58, as applicable, and make a recommendation to the approval authority specified in Section 99.060. This authority shall apply for the following: regarding proposed:

a. Designation of a historic landmark or a historic district;

b.a Major or minor remodel, alteration, or addition to a historic landmark, property within a historic district, or property within the Willamette Falls Drive Commercial District that is subject to Class II Design Review under Chapter 55;

c.b New construction within a historic district or new construction within the Willamette Falls Drive Commercial District that is subject to Class II Design Review under Chapter 55;

d.e A partition or subdivision of property containing a historic landmark or property within a historic district;

e.d Conditional use of property containing a historic landmark; and

f.e A zone change for property containing a historic landmark or property within a historic district.

(Staff Comment: #3 below is removed and added as (2)(a) above since the language in (2) changed.)

~~3. The Historic Review Board shall review and make a recommendation to the approval authority, as applicable, on applications for the designation of a historic landmark or historic district.~~