

MUNICIPAL FACILITIES COMMITTEE AGENDA

April 25, 2013 - North Conference Room

21630 11th Avenue South – Des Moines 98198

5:15P – 6:20P

1. Call to order
2. Approve minutes 3/28/2013 meeting
3. Marina Development RFQ
(Staff to provide update on the RFQ – informational only)
4. Beach Park Buildings
(Staff will go over the preliminary Beach Park demolition costs and quickly go through the rules and procedures set by the Landmarks Commission that govern the removal of such structures - Staff is seeking direction from the Committee on how to proceed.)
5. Marina & Beach Park Site Management Plan (Parking & Security)
(Harbormaster to share more parking data that has been collected by the Marina staff and discuss the proposed inclusion of the South Parking lot in the Marina Parking Curfew Ordinance – informational only.)

Des Moines City Council Municipal Facilities Committee Minutes – 03/28/2013

Meeting called to order: 5:09 PM on March 28, 2013, in North Conference Room @ 21630 11th Avenue S, Des Moines WA 98198.

Council Members

Melissa Musser - Chair
Carmen Scott
Dan Caldwell - absent

Other City Staff

Tony Piasecki – City Manager
Patrice Thorell – Parks, Rec & Sr Serv Director
Joe Dusenbury – Harbormaster
Dan Brewer – Acting Public Works Director
Denise Lathrop – Acting Community Dev Director
Grant Fredricks – Special Projects Consultant
Marion Yoshino – Economic Dev Manager
Peggy Volin – Admin Asst II

Guests:

Kevin Brown, Division Director King County

AGENDA:

1. Approve minutes of 1/24/2013 meeting
2. King County Parks Levy
3. Marina Development RFQ
4. City Hall/Courthouse Planning

MEETING:

1. Minutes from January 24, 2013, were unanimously approved.
2. King County Parks Levy: Patrice Thorell introduced Kevin Brown, Division Director with King County, who updated the Committee members on the upcoming King County Parks Levy. Kevin outlined King County's Parks vision which is to provide regional and rural recreational facilities; to partner with business and the community; and to connect the county with the regional trails system and open space corridors. He explained the regional levy and local benefits and went through the current 2008-2013 Operations and Maintenance Levy. He showed how the 2012 adopted revenues were split and also the projections for the KC Parks business revenues. He then talked about planning for the future and explained that the proposed 2014-2019 Parks Levy has four goals – 1) Take care of what they have; 2) Grow/connect regional open space and natural lands; 3) Improve regional trails system and regional mobility; and 4) Make parks more accessible. A Levy amount of 18.91 cents is proposed by King County Executive Dow Constantine. 14.89 cents (80%) of the Levy would replace the existing 2008-2013 Levies at the same level of work which would provide approximately \$300,000 pass-through funds to Des Moines for Park projects. 4.02 cents (20%) would fund enhancements such as the continuation of the Lake to Sound Trail System that connects to the Des Moines Creek Trail. He wrapped up the discussion by outlining the proposed trail investments, the regional open space and the parks infrastructure repair.
3. Marina Development RFQ: Denise Lathrop informed the Committee of the Draft Request for Developer Qualifications for the Des Moines Marina and Beach Park Development – Part I. She

Memorandum



To: Patrice Thorell, Parks & Recreation

CC:

From: Development Services

Date: April 24, 2013

Re: Preliminary Permitting and Costs for
Demolition of Beach Park Buildings

Assumptions:

1. All identified buildings would be removed within a relatively close time frame. Proposed buildings include: Carlson House, Sun Home Lodge, Caretaker's Residence, Sports Cabin, Roadside Cabin.
2. Programmatic review – all proposed work reviewed as one project under single permits.
3. Special studies will be required for the permit submittals. No cost estimates/RFPs have been conducted at this time. Staff rough estimate of \$20-25,000
4. Demolition permit fees based on rough contractor estimates of \$8500 for four smaller buildings and \$15000 for Sun Home Lodge.

Permits/Reviews/Fees:

1. Shoreline Substantial Development Permit, \$3500
2. SEPA Environmental Review, \$4500
3. Critical Areas Review, \$4500
4. Flood Hazard Development Permit (fees part of critical areas review)
5. Demolition Permit \$1375 (based upon assumption #4)

Special Studies:

1. Wetland delineation and restoration
2. Stream delineation and restoration
3. Hillside/Ravine Sidewall – including structural implications from removal of buildings at the toe of slope
4. Floodplain/Base Flood Elevation/Biological Assessment

outlined the content of the RFQ which consists of the Executive Summary, Introduction, Development Context, Development Standards & Entitlement Process, Terms and Conditions, Selection Process and Criteria, Submission Requirements, Submission Instructions and Exhibits. She said the selection criteria for the RFQ will be broken down into three categories with percentages assigned to each category – 1) Relevant Developer Team Experience & Qualifications – 40%; 2) Initial Development Concept – 40% and 3) Financial Capacity – 20%.

Tony commented to the Committee that he felt it was important for them to review the selection criteria and the relative weight given to each one; the length of response to the Initial Development Concept; and who should be on the committee to score the responses.

It was decided that the selection committee should consist of five people - the three Municipal Facility Committee members; Tony Hettler, Chair of the former Citizens Advisory Committee for the Marina & Beach Park Development Plan; and a City staff member to be determined.

4. City Hall/Courthouse Planning: Grant Fredricks, Special Projects Consultant handed out a guideline he had prepared that related to the 2013 City Council-Adopted Strategic Objective: Develop a plan to build a new Court House and City Hall in Des Moines. He outlined the general approach by saying don't reinvent the wheel, be comprehensive and be resolute but flexible. The planning phases should include:

- Plan Development
- Stakeholders
- Task Organize
- Potential Sites
- Functional and Space Programming
- Design Standards
- Cost Estimating
- Conceptual Schematic Design Concepts
- SEPA Review

He said the next steps would be to continue research on other agencies projects; to brief this Committee monthly to incorporate policy direction in planning the work and brief the Council in July or August in order to obtain policy direction on how to bring an MCI Capital Budget proposal forward for Council approval in November to continue Planning in 2014.

Comments were to include the KC Library as part of this new facility.

Adjourned 5:58 PM

Minutes submitted by:

Peggy Volin

Administrative Assistant II

Talking Points- Preliminary Permitting and Demolition costs for Beach Park Buildings

City Council removed Des Moines Beach Park Buildings including: Sun Home Lodge, Caretaker's Residence, Sports Cabin, Roadside Cabin and Carlson Cottage from the 2013 -2018 CIP and asked staff to provide cost estimates for the removal of the buildings.

Staff has identified a list of items and issues to be considered in the preparation of the cost estimates to include:

Permits/Reviews/Fees: (Estimate \$13,875)

1. Shoreline Substantial Development Permit, \$3500
2. SEPA Environmental Review, \$4500
3. Critical Areas Review, \$4500
4. Flood Hazard Development Permit (fees part of critical areas review)
5. Demolition Permit \$1375

Special Studies: (Rough estimate \$25,000)

1. Wetland delineation and restoration
2. Stream delineation and restoration
3. Hillside/Ravine Sidewall – including structural implications from removal of buildings at the toe of slope
4. Floodplain/Base Flood Elevation/Biological Assessment

Demolition Costs: (Rough estimate \$78,214)

Asbestos & Lead Abatement costs \$17,260

Disconnect Utilities \$1,840

Site Restoration \$7,000

Buildings Demolition \$45,900

Sales Tax \$6,522

Engineering/Project Management 40%: \$46,836

Total Estimated Demolition Cost: \$163,925

Other Issues:

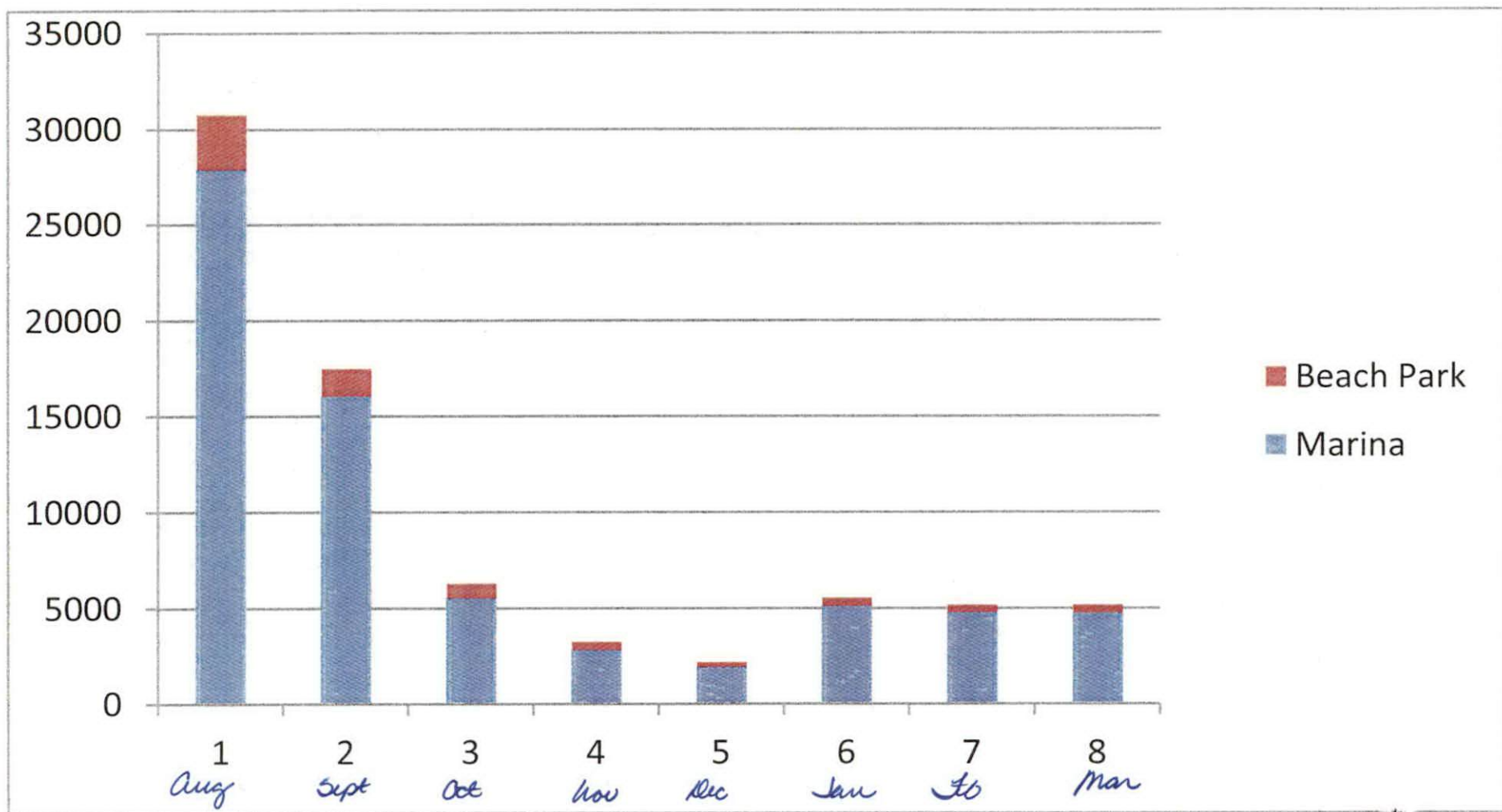
National Historic District Status:

1. Requires Certificate of Appropriateness- Type III

- a. Requires threat to public health and safety exists- independent analysis and supporting information demonstrating all available alternatives
- b. Action is required to rectify a condition of unreasonable economic return- applicant must establish and commission must find the building incapable of earning a reasonable economic return
 - i. Requires a public hearing
- c. Appeals
 - i. The City may overturn the decision of the Heritage Commission

2. City could lose opportunity for future grants and appropriations to complete restoration projects and/or could be required to return project funding

Total Estimated COA Process Cost: Unknown



BEACH PARK BUILDINGS DEMOLITION COST ESTIMATE

March 20, 2013

Scope of Work Description	Carlson House	Sun Home Lodge ⁶	Caretaker's Residence ⁷	Sports Cabin	Roadside Cabin
Asbestos "Demolition" Survey	\$1,500.00	NO	NO	NO	NO
Asbestos & Lead Abatement Costs ¹	\$6,948.00	\$6,358.00	\$0.00	\$1,621.20	\$833.76
Demolition Permit Fee	\$202.60	\$521.80	\$202.60	\$202.60	\$202.60
Demolition Costs ^{2,3}	\$5,400.00	\$24,750.00	\$5,250.00	\$5,250.00	\$5,250.00
Disconnect Gas Service ⁴	\$500.00	\$1,250.00	NO	NO	NO
Disconnect Power Service	YES	YES	YES	NO	NO
Disconnect Phone Service	NO	NO	NO	NO	NO
Disconnect Cable Service	NO	NO	NO	NO	NO
Sewer Capping Permit Fee	\$30.00	\$30.00	\$30.00	NO	NO
Disconnect Water Service	YES	NO	YES	NO	NO
Site Restoration Costs ⁵	\$200.00	\$5,000.00	\$1,500.00	\$150.00	\$150.00
9.5% Sales Tax	\$1,192.06	\$3,430.26	\$641.25	\$667.01	\$592.21
SUBTOTAL:	\$15,972.66	41,340.06	7,623.85	7,890.81	7,028.57

GRAND TOTAL: \$79,855.95
Notes:

- 1) Asbestos & Lead Abatement Costs are estimated from the 2002 Pacific Highway South Project; inflated 3% per year for 2013.
- 2) Demolition Costs are estimated from typical contracting costs; inflated 50% to account for prevailing wages.
- 3) Sun Home Lodge Demolition Costs are higher due to tight quarters, and having to protect the existing Auditorium improvements.
- 4) Staff estimates, not actual costs from PSE.
- 5) Site Restoration estimates are based upon blending the site area to match that of the adjacent vicinity.
- 6) Lead Abatement only.
- 7) No Asbestos or Lead present.

Last Revised: 03/20/2013 SJR

RULES AND PROCEDURES OF THE CITY OF DES MOINES LANDMARKS COMMISSION

The following Rules and Procedures have been adopted by the Des Moines Landmarks Commission (Commission) pursuant to Des Moines Municipal Code (DMMC) Chapter 18.96.

- Part I: Ethics and Conflict of Interest
- Part II: Organization
- Part III: Conduct of Meetings and Hearings
- Part IV: Nomination and Designation of Landmarks
- Part V: Design Review Guidelines
- * Part VI: Certificates of Appropriateness
- * Part VII: Evaluation of Economic Impact
- Part VIII: Incentive Programs
- * Part IX: Appeals and Reconsideration

Definitions: The words and terms, as defined in DMMC 18.96 are used in these Rules and Procedures.

Order of Precedence: These Rules and Procedures are adopted pursuant to DMMC 18.96. In the event of any conflict between these Rules and Procedures and DMMC 18.96 the provisions of the code shall govern.

PART I: ETHICS, CONFLICT OF INTEREST AND APPEARANCE OF FAIRNESS

- A. The members of the Commission shall be governed by the City of Des Moines Code of Ethics as hereafter amended. (DMMC 18.03.280)
- B. In their capacity as members of the Des Moines Landmarks Commission, Commissioners will avoid participating in deliberations or acting on any matter in which there exists either a conflict of interest or the appearance of a conflict of interest.
1. Conflict of interest or a perceived conflict of interest shall be deemed to exist with respect to any matter:
 - a) In which the Commissioner or any member of his or her immediate family¹ has a direct financial interest.
 - b) Which will directly involve (e.g. grants, contracts, landmark designation, Certificate of Appropriateness, special tax valuation) any organization in which the Commissioner is a director or officer or has within one year been a director or officer.
 2. No Commissioner shall communicate with or attempt to influence any other Commissioner concerning any matter before the Commission, or which may reasonably be expected to come before the Commission, in which such Commissioner has a conflict of interest or a perceived conflict of interest.
- C. Commissioners must decide any quasi-judicial matters² brought before the Commission only on the basis of the public record and such things on which they may properly take judicial notice. Commissioners should avoid all ex parte³ communications concerning any quasi-judicial proceeding.
1. Quasi-judicial matters which may come before the Commission are:
 - a) Landmark nominations
 - b) Certificate of Appropriateness applications

¹"Immediate family" spouse, dependent children, and other dependent relatives if living in his or her household. (K.C. C. 3.04.17H.)

² "Quasi-judicial" is a term applied to the action of public administrative officers who are required to investigate facts or ascertain the existence of facts and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.

³ On one side only; by or for one party; done for, in behalf of, or on application of one party only.

2. An "ex parte" communication refers to information received by a Commissioner outside of the official proceeding on the matter.
 - a) Commissioners are encouraged to view the property which is the subject of the proceeding. The fact of such visit should be reported at the hearing and made a part of the record.
 - b) If a Commissioner receives information outside of the public proceeding he or she should report the receipt of such information and the nature of such information for the record. If the information was received in tangible form it should be made a part of the record.
3. In their deliberations Commissioners may take "judicial notice"⁴ of any commonly known fact even if not made a part of the record. (e.g. the laws of the state, historical events, the constitution, the course of nature, geographical features, etc.)

PART II: ORGANIZATION

- A. Membership. The Commission shall consist of current appointed and confirmed members of the King County Landmarks Commission and a special member representing the City of Des Moines. The special member shall participate in and vote on all matters pertaining to landmark nomination and designation, and review of certificates of appropriateness, special tax valuation, and other incentive program applications for properties within the city.
- B. Special Member Term of Office. The special member, and alternate if any, shall be appointed by the City. Such special member shall be a voting member of the Commission on all matters relating to or affecting landmarks within the City of Des Moines. The special member shall have a demonstrated interest in historic preservation. The appointment shall be for a three-year term. Such special member shall serve until his or her successor is duly appointed and confirmed. Such special member may be re-appointed, but may not serve more than two consecutive terms. Such special member shall be deemed to have served one full term if such special member resigns at any time after appointment or if such special member serves more than two years of an unexpired term.
- C. Chair and Vice Chair. The Chair and Vice Chair of the Commission shall be the Chair and Vice Chair of the King County Landmarks Commission. The Vice Chair shall act for the Chair in his or her absence or unavailability and shall perform such additional duties as may be delegated to him or her by the Chair.

⁴ "Judicial Notice" is that which is so notorious that everybody, including judges, knows about it.

- D. Standing Committees. Standing committees of the King County Landmarks Commission shall act as standing committees for the Commission. The special member shall participate in committee meetings affecting properties in Des Moines.
- E. Ad Hoc Committees. From time to time the Chair may appoint or the Commission may establish committees for special purposes. Such committees may include members of the Commission and non members, provided however, the Commission shall not delegate any of its powers to any Committee which includes non members of the Commission.
- F. Membership on Other Committees. The Chair may from time to time appoint members of the Commission as Commission representatives on joint committees made up of representatives of other public and private organizations. If any member so appointed is authorized to make commitments on behalf of the Commission such appointment and the extent of his or her authority shall be subject to confirmation by the Commission.
- G. Commission Acts Collectively. The Commission acts as a body. No individual Commissioner has authority to act in his or her individual capacity. Individual Commissioners may, from time to time, be delegated specific authority to act for and on behalf of the Commission. The Chair is the official spokesperson for the Commission, except to the extent he or she may delegate specific matters to other Commissioners.
- H. Correspondence. Under the direction of the Commission, the King County Historic Preservation Officer or his or her designee shall conduct all official correspondence.

PART III: CONDUCT OF MEETINGS AND HEARINGS

- A. Procedures. Meetings shall be conducted in accordance with the Procedures of Small Boards in Robert's Rules of Order, Newly Revised, except to the extent that they are in conflict with DMMC 18.96 and these Rules and Procedures.
- B. Presiding Officer. During the course of quasi-judicial proceedings, the Chair of the Commission shall act as presiding officer and rule on all procedural matters, including objections, requests, and motions brought by participants in the quasi-judicial proceeding, and shall regulate the course of the hearing and the admission of evidence. In the absence of the Chair, the Vice-Chair shall perform these duties, and in the absence of both the Chair and the Vice-Chair, the Commission shall select one of its members to act as presiding officer.
- C. Quorum. A majority of the currently appointed and confirmed members of the Commission shall constitute a quorum for the transaction of business. All official actions of the Commission shall require a majority vote of the members present and eligible to vote. No member shall be eligible to vote upon any matter requiring a public hearing, unless that member has attended the hearing or familiarized him or herself with the record.

- D. Absence of a Quorum. No official business shall be conducted by the Commission in the absence of a quorum. However, the Commissioners present may establish a time and place for an adjourned meeting.
- E. Scheduling of Meetings. The Commission shall meet as necessary for the purpose of holding public hearings on landmark nominations, and reviewing applications for certificates of appropriateness, the special tax valuation program, and landmark loans.
1. Notice of the cancellation or rescheduling of a meeting shall be published not less than six days before the scheduled meeting and not less than six days before the changed meeting date.
 2. Special meetings may be held at the call of the Chair or at the written request of three Commissioners.
 - a) Notice of a special meeting must be delivered personally or by regular or e-mail, at least 24 hours before the time of such meeting as specified in the notice, to each Commissioner; and to each local newspaper of general circulation and to each local radio or television station which has on file with the Commission a written request to be notified of such special meeting or of all special meetings.
 - b) The call and notice of the special meeting shall specify the time and place of the meeting and the business to be transacted. The Commission shall not take final action on any matter not specified in such notice.
 - c) Written notice may be dispensed with as to any Commissioner who is actually present at the meeting at the time it convenes or who, prior to the time the meeting convenes, files with the Historic Preservation Officer a written waiver of notice. Such waiver may be given by e-mail or FAX.
 - d) Notices provided in this Section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.
 3. Notice of Public Hearings. Notice of all public hearings shall be published pursuant to the provisions of King County Code (KCC), Chapter 20.62 unless such hearing is a continuation of a previously noticed hearing.

4. The Historic Preservation Officer shall cause notice of any meeting or hearing or of the cancellation, rescheduling or adjournment of any meeting or hearing to be mailed to any persons or organizations who have requested in writing that they be notified. Such request may be for all meetings of the Commission or for only those meetings with certain subjects on the agenda.

F. Open Meetings. All meetings of the Commission shall be open to the public.

G. Public Participation. Members of the public may speak to matters on the agenda at the invitation of or the approval of the Chair.

H. Public Hearings. A public hearing is a meeting or part of a meeting of the Commission held for the purpose of receiving information from the public on a matter on the Commission agenda.

1. A public hearing shall be held prior to a decision of the Commission on:
 - a) Landmark nominations, including, but not limited to, amendments and terminations of designations
 - b) Certificate of Appropriateness applications, except Type I Certificates, as required pursuant to DMMC 18.96 and KCC 20.62.080
 - c) Other matters on which it desires public input.
2. The Applicant for a landmark nomination, certificate of appropriateness or special valuation application, and the owner, if not the applicant, shall be allotted reasonable time to present their case. Applicants or owners may speak through a personal representative.
3. The order of speaking at a public hearing may be determined at the discretion of the Chair, however the following order shall generally apply:
 - a) Staff and Commission's experts
 - b) The Applicant and Applicant's experts
 - c) The Owner and Owner's experts
 - d) Members of the public
 - e) The Applicant and the Owner will have five minutes at the end of the hearing to summarize and close

4. The Chair may limit the time for public comment (e.g. three minutes per speaker) but may not prevent relevant public comment by any person making a timely request to speak unless such person is disorderly or attempts to disrupt the meeting.
 5. The Chair shall maintain order at all public hearings. The Chair may request any persons who are disorderly or attempt to disrupt the meeting to leave the meeting and may, if necessary, adjourn the meeting until order can be restored.
- I. Minutes. The Historic Preservation Officer shall keep, or cause to be kept, minutes of all meetings of the Commission, showing the actions of the Commission on each question. The minutes shall be filed in the office of the Historic Preservation Officer and the Des Moines City Clerk and shall be public records.
- J. Electronic Recording of Proceedings. At all public meetings of and hearings before the Commission, all oral proceedings shall be electronically recorded. Such recordings shall be filed with the minutes of the meeting.
- K. Training Sessions. The Commission may, from time to time, hold training sessions or workshops for the purpose of training or education at which no minutes need be kept or electronic recordings made. Such meetings are open to the public but no notice need be made.
- L. Executive Session. At the request of any Commissioner, the Commission may go into executive session to discuss personnel matters or matters pertaining to potential or actual litigation.
- M. Exempt Information. Commission records identifying the location of archaeological sites and potential sites are exempt from public information requests pursuant to RCS 42.17.310 (1.c.), as amended, in order to avoid looting and degradation of such sites.

PART IV: NOMINATION AND DESIGNATION OF LANDMARKS

- A. No historic resource may proceed through the nomination procedure of King County Code Section 20.62.050 until the Des Moines City Council has approved the historic resource for nomination. A minimum of four Council members must vote in favor before the resource is eligible for the nomination.
- B. Nominations shall be made on the City of Des Moines Landmark Registration Form which shall be furnished by the Historic Preservation Officer upon request. For nominations submitted as part of a Multiple Property Documentation, the Landmark Registration Form shall be supplemented with a Multiple Property Documentation.
- C. Only properties which are owned by the City of Des Moines may be considered for nomination per DMMC 18.96.060.

- D. National Park Service Bulletin 16A, *How to Complete the National Register Registration Form*, shall serve as technical guidance in the preparation of the Landmark Registration Form.
- E. National Park Service Bulletin 15, *How to Apply National Register Criteria for Evaluation*, shall serve as technical guidance for interpreting the landmark designation criteria contained in DMMC 18.96.
- F. Landmark Registration Forms for Historic Districts shall contain a brief description and identify specific features of significance for all contributing properties within the district. Contributing properties are defined as historic resources that are directly associated with the period of historic significance with which the district is associated, and which possess strong historic association and/or continue to exhibit good integrity of design, materials, association, setting, feeling, and location. All other properties in the district shall be considered non-contributing properties, which are defined as those properties that are not associated with the period of significance or, if historic, have been substantially altered and do not possess sufficient historic or physical integrity. A non-contributing property shall not be considered a feature of significance pursuant to the provisions of DMMC 18.96, however, such property may be subject to voluntary provisions of any district design guidelines that are adopted by the Commission pursuant to Part V below.
- G. All nominations shall be filed with the Historic Preservation Officer and shall include all supplemental data required by the Commission.
- H. The Historic Preservation Officer shall review all nominations submitted. When the Historic Preservation Officer is satisfied that the nomination contains sufficient information and complies with DMMC 18.96 and the requirements of these Rules and Procedures, the Historic Preservation Officer shall notify the owner of the property, the person submitting the nomination, the City, and any interested persons of record, and set a date for a public hearing on the nomination not less than 30 or more than 45 days from the date of such notice, except as provided in Part V below.
- I. In the event the Historic Preservation Officer or any member of the Commission has reason to believe that immediate action is necessary to prevent destruction, demolition or defacing of an historic or archaeological resource, the public hearing on a nomination may be held less than 30 days from the day of the notice to the owner provided in Part III E.2 above, provided that the notice shall so state and shall set forth the reasons for such shortening of time.
 - 1. A special meeting, pursuant to Part III E.2 of these Rules and Procedures, may be called for the purpose of hearing any such nomination.
 - 2. In order to give all interested persons an opportunity to be heard, the Commission may, at the hearing held less than 30 days from the date of notice to the owner, make a preliminary determination of significance and shall continue the hearing to a date more than 30 days from such notice, but not less

than 180 days, to receive further testimony before rejecting or approving the nomination.

PART V: DESIGN REVIEW GUIDELINES

- A. *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995) shall serve as the basis for design review conducted by the Commission pursuant to DMMC 18.96, unless specific design guidelines have been otherwise adopted by the Commission.
- B. Specific design guidelines may be prepared for designated landmark districts (district) at the Commission's discretion. The design guidelines shall be consistent with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995). The Commission shall follow the design guidelines in considering Certificates of Appropriateness applications affecting features of significance within districts.
- C. The design guidelines may address building orientation and siting, lot coverage, massing and dimensions, materials, forms, fenestration, paint colors, signage, parking, landscaping, street furniture, new construction, and other aspects of the physical environment that may affect the integrity of the district, as consistent with the features of significance identified in the preliminary determination of significance or the designation report.
- D. Development of design guidelines shall be conducted in cooperation with property owners in the district. Specific procedures for development of the guidelines shall be established on a case by case basis for each district.
- E. Following adoption of the design guidelines by the Commission, copies shall be provided to the City, and owners of all properties within the district.

PART VI: CERTIFICATES OF APPROPRIATENESS

- A. A Certificate of Appropriateness must be obtained from the Commission before any alterations can be made to the features of significance of a landmark as set forth in the preliminary determination of significance or as specified in the designation report. This requirement shall apply whether or not the proposed alteration requires a building or other permit.
- B. *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995) shall serve as the basis for all design review conducted by the Commission, unless specific design guidelines have been otherwise adopted by the Commission pursuant to Part V herein.
- C. Ordinary repairs and routine maintenance that do not alter the appearance of a significant feature (and do not utilize substitute materials) do not require a Certificate of Appropriateness. Repairs to or replacement of utility or mechanical systems do not require a Certificate of Appropriateness unless such work will alter a feature of significance.

D. There shall be three types of Certificates of Appropriateness: Type I for major repairs, in-kind replacement and restoration work; Type II for alterations in appearance, replacement of historic materials or new construction or additions; and, Type III for demolition or relocation of a landmark building, object, structure or site. Type III also includes excavations, test boring, site clearing or construction and grading activity on a landmark archaeological site. When a Certificate of Appropriateness is required, the following procedures shall govern according to the type of Certificate of Appropriateness required:

E. Type I Certificate of Appropriateness: Major repairs, in-kind replacements and restoration work of any feature of significance of a landmark property or landmark district, shall require a Type I Certificate of Appropriateness. Type I Certificates of Appropriateness may be approved administratively by the Historic Preservation Officer. Applications for a Type I Certificate of Appropriateness shall be submitted to the Historic Preservation Officer on forms and according to instructions provided by the Historic Preservation Officer, and in accordance with the following provisions:

1. Construction activities which constitute major repairs, in-kind replacement, and restoration work include, but are not limited to, the following:
 - a) Repairs (minor repairs are exempted) using the exact same materials and design as the original feature.
 - b) Repainting using the existing color or the same color that was originally used based on a professional paint analysis.
 - c) Reroofing using the same type and color of roofing material.
 - d) Replacement of sidewalks and driveways using the same type and color of materials.
 - e) Replacement of foundations or major portions thereof, using the same type and color of materials.
 - f) Replacement of utility systems if features of significance are affected
2. A clear photograph or photographs of the portion(s) of the building, object, site or structure that will be affected by the project, project drawings or documents, and a brief written description of the intended work. Samples of proposed paint colors or construction materials for comparison with the existing or the original materials must be submitted with the application.
3. The decision of the Historic Preservation Officer on the application shall be made within ten working days from the date on which the Historic Preservation Officer receives the application.

4. The Historic Preservation Officer may on his or her own motion refer the application to the Commission for a decision in accordance with the procedures set forth for a Type II Certificate of Appropriateness. The time for a decision of the Commission on the application shall run from the date that the application is referred to the Commission by the Historic Preservation Officer.
 5. Appeals from a decision of the Historic Preservation Officer regarding the issuance of a Type I Certificate of Appropriateness may be made by an aggrieved person by filing a notice of appeal with the Historic Preservation Officer, specifying the grounds thereof, within five working days after the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from. The Commission shall hear the appeal within 45 days after the notice of appeal is received by the Historic Preservation Officer. The Historic Preservation Officer shall give notice of the hearing and due notice to the parties of record. At the hearing before the Commission any party may appear in person or by agent or by an attorney. The Commission shall decide the appeal within 45 days of the hearing. An appeal shall be sustained upon an expressed finding by the Commission that the Historic Preservation Officer's action was based on an error in a material fact or that the decision of the Historic Preservation Officer was based on an error in judgment or conclusion. In exercising its powers the Commission may reverse or affirm in whole or in part or may remand to the Historic Preservation Officer with direction.
- F. Type II Certificate of Appropriateness: Alterations in the appearance of a significant feature, additions to a landmark or new construction on a landmark site or in a landmark district, or any excavation of an archaeological site requires a Type II Certificate of Appropriateness. Applications for a Type II Certificate of Appropriateness shall be submitted to the Historic Preservation Officer on forms and according to instructions provided by the Historic Preservation Officer, and in accordance with the following provisions:
1. A clear photograph or photographs of the portion(s) of the building, object, site or structure that will be affected by the project, project drawings and/or contract documents and a brief written description of the intended work. Samples of paint colors or construction materials for comparison with the existing or the original materials must be furnished as part of the application.
 2. The Certificate shall be granted in accordance with the following criteria:
 - a) The degree to which the project complies with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*;

- b) The extent to which the proposed alteration or significant change would adversely affect the specific features or characteristics specified in the latest of the preliminary determination of significance, if any, or the designation report;
- c) The reasonableness or lack thereof of the proposed alteration or significant change in light of other alternatives available to achieve the objectives of the owner and the applicant;
- d) The extent to which the proposed alteration or significant change may be necessary to meet the requirements of any other law, statute, ordinance, regulation, code or ordinance; and
- e) The extent to which the proposed alteration or significant change is necessary or appropriate to achieving for the owner or applicant a reasonable return on the landmark property taking into consideration factors specified in DMMC 20.18 and adopted by reference in KCC 20.62.080 and Part VII of these Rules and Procedures and the economic consequences of denial.

G. Type III Certificate of Appropriateness: Demolition in part or whole or relocation of a landmark or a significant feature of a landmark district, excavation of a landmark site, or excavation, test boring, site clearing or construction and grading activity on a landmark archaeological site require a Type III Certificate of Appropriateness.

1. Type III Certificates of Appropriateness shall be issued by the Commission only when one or both of the following two conditions have been established pursuant to the following standards and criteria:

- a) The requested action is required to alleviate a threat to public health and safety; and/or
- b) The requested action is required to rectify a condition of unreasonable economic return.

2. The standards and criteria required in order to establish the existence of the conditions specified in subsection G.1 above shall be as follows:

- a) Threats to public health and safety. To prove the existence of a threat to public health and safety the applicant must establish and the Commission must find:
 - i) That a major and imminent threat to public safety exists as demonstrated by an independent analysis and supporting other information;

ii) That all available alternatives for rectifying the threat have been considered as demonstrated by analysis of all such alternatives; and,

iii) That the costs associated with rectifying the threat would create a condition whereby the investments in the project are incapable of earning a reasonable economic return as described in DMMC18.96 and adopted by reference in KCC 20.62.080 and Part VII of these Rules and Procedures.

b) Unreasonable economic return. To prove the existence of a condition of unreasonable economic return the applicant must establish and the Commission must find that the building is incapable of earning a reasonable economic return as described in DMMC 18.96 and adopted by reference in KCC 20.62.080 and Part VII of these Rules and Procedures.

- H. Application for a Certificate of Appropriateness may be made by filing an application with the Historic Preservation Officer on forms provided by the Commission. The application for a Certificate of Appropriateness shall include all information and materials deemed necessary by the Commission. The Commission may consider or issue a Certificate of Appropriateness without the submission of final drawings, plans and specifications.
- I. Upon receipt of a complete application for a Type II Certificate of Appropriateness, the Historic Preservation Officer shall refer the application to the Design Review Committee, a sub-committee of the King County Landmarks Commission, for consideration at its next regular meeting. The owner and/or applicant and any interested person of record shall be provided with the agenda and invited to participate in the meeting. At the meeting the Committee shall review the application according to the criteria contained in Section 6 of this Part and prepare a formal recommendation that shall be presented to the Commission at its next regular meeting.
- J. No hearing shall be required for a Type II Certificate of Appropriateness if the Commission and the owner and the applicant, if the applicant is not the owner, agree in writing to a stipulated Certificate approving the requested alterations, changes or modifications thereof. If the Commission approves a Certificate of Appropriateness, such Certificate shall be issued forthwith and the Historic Preservation Officer shall promptly file a copy of such Certificate with the City of Des Moines Permit Center. If necessary, within 45 calendar days after the filing of an application for a Certificate of Appropriateness the Commission shall hold a public hearing thereon. The Historic Preservation Officer shall mail notice of the hearing to the owner and interested persons of record not less than ten calendar days before the date of the hearing.

- K. After the Commission has commenced proceedings for the consideration of any application for a Certificate of Appropriateness for a particular alteration or significant change by giving notice of a hearing pursuant to Section J of this Part, no other application for the same or a similar alteration or significant change may be made until such proceedings and all administrative appeals therefrom pursuant to KCC 20.62 as adopted by reference in DMMC 18.96.050 or this Part VI have been concluded.
- L. At the public hearing on any application for a Certificate of Appropriateness the Commission shall, when requested by the property owner, consider evidence of the economic impact on the owner of the denial or partial denial of a Certificate. In no case may a Certificate be denied, in whole or in part, when it is established that the denial or partial denial will, when available incentives are utilized, deprive the owner of a reasonable economic use of the landmark, and there is no available alternative which has less impact on the features of significance specified in the preliminary determination of significance or the designation report.
- M. If the Commission denies the application for a Certificate of Appropriateness, in whole or in part, it shall so notify the owner, the person submitting the application and interested persons of record setting forth the reasons why approval of the application is not warranted.
- N. Any interested person of record may appeal the approval or denial of a Certificate of Appropriateness as provided in Part IX herein.

PART VII: EVALUATION OF ECONOMIC IMPACT

- A. At the public hearing on any application for a Certificate of Appropriateness the Commission shall, when requested by the property owner, consider evidence of the economic impact on the owner of the denial or partial denial of a Certificate. In no case may a Certificate be denied, in whole or in part, when it is established that the denial or partial denial will, when available incentives are utilized, deprive the owner of a reasonable economic use of the landmark, and there is no viable and reasonable alternative which would have less impact on the features of significance specified in the preliminary determination of significance or the designation report.
- B. In considering what constitutes an unreasonable economic return, the Commission shall consider the property owner's reasonable expectations of economic return on the property, including the following:
 - 1. The owner's knowledge of the preliminary determination of significance or the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition. Owners are presumed to have constructive notice of preliminary determinations and designations of landmarks, notice of which are filed with the Division of Records and Elections, and of zoning codes affecting landmark properties.

2. Whether the landmark was purchased for use or for investment.

- a) If the landmark was purchased for use (e.g. as a residence or for business use), does the landmark designation interfere with the property's intended use.
- b) If the landmark was purchased as an investment (e.g. rental income) does the landmark designation adversely affect the return on the investment considering alternatives and incentives available to the owner.

C. To prove the existence of a condition of unreasonable economic return, the applicant must establish and the Commission must find, both of the following:

1. That the landmark is incapable of earning a reasonable economic return without making the alterations or significant changes proposed. This finding shall be made by considering and the applicant shall submit to the Commission evidence establishing each of the following factors:

- a) The current level of economic return on the property as considered in relation to the following:
 - i) The amount paid for the landmark, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.
 - ii) The annual gross and net income, if any, from the landmark for the previous five years; itemized operating and maintenance expenses for the previous five years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
 - iii) The remaining balance on any mortgage or other financing secured by the landmark and annual debt service, if any, during the prior five years.
 - iv) The remaining balance on any mortgage or other financing secured by the landmark and annual debt service, if any, during the same period.

- v) Real estate taxes for the previous four years and assessed value of the landmark according to the two most recent assessed valuations.
 - vi) All appraisals obtained within the previous three years by the owner in connection with the purchase, financing or ownership of the landmark and all other applicable appraisals to the extent available.
 - vii) The fair market value of the landmark immediately prior to its designation and the fair market value of the landmark at the time the Certificate of Appropriateness application is filed.
 - viii) Form of ownership or operation of the landmark whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture, or both.
 - ix) Any state or federal income tax returns on or relating to the landmark for the past two years.
2. That the landmark is not marketable or able to be sold or leased when listed. The sales price or rent asked and offers received, if any, sale or rent, price asked, and offers received if any within the previous two years, including testimony and relevant documents shall be submitted by the property owner. The following shall also be considered:
- a) Any real estate broker or firm engaged to sell or lease the landmark.
 - b) The reasonableness of the price or rent sought by the owner.
 - c) Any advertisements placed for the sale or lease of the landmark.
3. The infeasibility of alternative uses that can earn a reasonable economic return for the landmark as considered in relation to the following:
- a) A report from a licensed engineer or architect with experience in rehabilitation/restoration as to the

structural soundness of the landmark and its suitability for rehabilitation/restoration.

- b) Estimates of the cost of the proposed alteration or significant change and an estimate of any additional cost that would be incurred to comply with the recommendation and decision of the Commission concerning the appropriateness of the proposed alteration or significant change.
 - c) Estimated market value of the landmark in the current condition after completion of the proposed alteration; and, in the case of proposed demolition, after renovation of the landmark for continued use.
 - d) In the case of proposed demolition, the testimony of an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation/restoration/reuse of historic buildings.
 - e) The infeasibility of new construction around, above, or below the existing landmark.
- 4. Potential economic incentives and/or funding available to the owner through federal, state, county, city or private programs
 - 5. The owner has the present intent and the secured financial ability, demonstrated by appropriate documentary evidence, to complete the alteration or significant change. In the case of demolition or relocation of the landmark, the owner has the present intent and secured financial ability, demonstrated by appropriate documentary evidence to complete the building or structure proposed to replace the landmark.
 - 6. Upon reasonable notice to the owner, the Commission may appoint an expert or experts to provide advice and/or testimony concerning the value of the property, the availability of incentives and the economic impacts of approval, denial or partial denial of a Certificate of Appropriateness
 - 7. Any economic impact caused intentionally or by willful neglect shall not constitute a basis for granting a Certificate of Appropriateness.

PART VIII: INCENTIVE PROGRAMS FOR LANDMARK PROPERTY OWNERS

- A. All landmark rehabilitation projects that may utilize any of the incentive programs offered through the King County Historic Preservation Program (low interest loans, grants) must be reviewed and approved by the Commission and receive a Certificate of Appropriateness according to the procedures set forth in Part VI herein.
- B. If the City appoints a local design review board for the purposes of reviewing certificate of appropriateness applications pursuant to the provision of DMMC 18.96, and such an application is tied to an above-referenced incentive program, the review and approval of such application shall be conducted by the Commission.

PART IX: APPEALS AND RECONSIDERATION

- A. Appeal. Any person aggrieved by a decision of the Commission (i) designating or rejecting, in whole or in part, a nomination for designation of a landmark or (ii) issuing or denying, in whole or in part, a Type II or III Certificate of Appropriateness may, within 35 calendar days of mailing of notice of any such action appeal such decision to the Des Moines City Council. Written notice of appeal shall be filed with the City Clerk and a copy sent to the Historic Preservation Officer and shall be accompanied by a statement setting forth the grounds of the appeal, supporting documents and argument.
- B. Reconsideration by the Commission. If, after examination of the written appeal and the record, the City Council determines that an error in fact may exist in the record, the decision may be remanded to the Commission for reconsideration. If the City Council determines that the decision is based on an error in judgment or conclusion; the decision may be modified or reversed. The action of the City Council sustaining, reversing, modifying or remanding a decision of the Commission shall be final unless an aggrieved person obtains a writ of certiorari from Superior Court of King County for the purpose of additional review. (DMMC 18.04.255E)

**RULES AND PROCEDURES
OF THE
CITY OF DES MOINES LANDMARKS COMMISSION**

The following Rules and Procedures have been adopted by the Des Moines Landmarks Commission (Commission) pursuant to Des Moines Municipal Code (DMMC) Chapter 18.96.

- Part I: Ethics and Conflict of Interest
- Part II: Organization
- Part III: Conduct of Meetings and Hearings
- Part IV: Nomination and Designation of Landmarks
- Part V: Design Review Guidelines
- Part VI: Certificates of Appropriateness
- Part VII: Evaluation of Economic Impact
- Part VIII: Incentive Programs
- Part IX: Appeals and Reconsideration

Definitions: The words and terms, as defined in DMMC 18.96 are used in these Rules and Procedures.

Order of Precedence: These Rules and Procedures are adopted pursuant to DMMC 18.96. In the event of any conflict between these Rules and Procedures and DMMC 18.96 the provisions of the code shall govern.

PART I: ETHICS, CONFLICT OF INTEREST AND APPEARANCE OF FAIRNESS

- A. The members of the Commission shall be governed by the City of Des Moines Code of Ethics as hereafter amended. (DMMC 18.03.280)
- B. In their capacity as members of the Des Moines Landmarks Commission, Commissioners will avoid participating in deliberations or acting on any matter in which there exists either a conflict of interest or the appearance of a conflict of interest.
1. Conflict of interest or a perceived conflict of interest shall be deemed to exist with respect to any matter:
 - a) In which the Commissioner or any member of his or her immediate family¹ has a direct financial interest.
 - b) Which will directly involve (e.g. grants, contracts, landmark designation, Certificate of Appropriateness, special tax valuation) any organization in which the Commissioner is a director or officer or has within one year been a director or officer.
 2. No Commissioner shall communicate with or attempt to influence any other Commissioner concerning any matter before the Commission, or which may reasonably be expected to come before the Commission, in which such Commissioner has a conflict of interest or a perceived conflict of interest.
- C. Commissioners must decide any quasi-judicial matters² brought before the Commission only on the basis of the public record and such things on which they may properly take judicial notice. Commissioners should avoid all ex parte³ communications concerning any quasi-judicial proceeding.
1. Quasi-judicial matters which may come before the Commission are:
 - a) Landmark nominations
 - b) Certificate of Appropriateness applications

¹"Immediate family" spouse, dependent children, and other dependent relatives if living in his or her household. (K.C. C. 3.04.17H.)

² "Quasi-judicial" is a term applied to the action of public administrative officers who are required to investigate facts or ascertain the existence of facts and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.

³ On one side only; by or for one party; done for, in behalf of, or on application of one party only.

2. An "ex parte" communication refers to information received by a Commissioner outside of the official proceeding on the matter.
 - a) Commissioners are encouraged to view the property which is the subject of the proceeding. The fact of such visit should be reported at the hearing and made a part of the record.
 - b) If a Commissioner receives information outside of the public proceeding he or she should report the receipt of such information and the nature of such information for the record. If the information was received in tangible form it should be made a part of the record.
3. In their deliberations Commissioners may take "judicial notice"⁴ of any commonly known fact even if not made a part of the record. (e.g. the laws of the state, historical events, the constitution, the course of nature, geographical features, etc.)

PART II: ORGANIZATION

- A. Membership. The Commission shall consist of current appointed and confirmed members of the King County Landmarks Commission and a special member representing the City of Des Moines. The special member shall participate in and vote on all matters pertaining to landmark nomination and designation, and review of certificates of appropriateness, special tax valuation, and other incentive program applications for properties within the city.
- B. Special Member Term of Office. The special member, and alternate if any, shall be appointed by the City. Such special member shall be a voting member of the Commission on all matters relating to or affecting landmarks within the City of Des Moines. The special member shall have a demonstrated interest in historic preservation. The appointment shall be for a three-year term. Such special member shall serve until his or her successor is duly appointed and confirmed. Such special member may be re-appointed, but may not serve more than two consecutive terms. Such special member shall be deemed to have served one full term if such special member resigns at any time after appointment or if such special member serves more than two years of an unexpired term.
- C. Chair and Vice Chair. The Chair and Vice Chair of the Commission shall be the Chair and Vice Chair of the King County Landmarks Commission. The Vice Chair shall act for the Chair in his or her absence or unavailability and shall perform such additional duties as may be delegated to him or her by the Chair.

⁴ "Judicial Notice" is that which is so notorious that everybody, including judges, knows about it.

- D. Standing Committees. Standing committees of the King County Landmarks Commission shall act as standing committees for the Commission. The special member shall participate in committee meetings affecting properties in Des Moines.
- E. Ad Hoc Committees. From time to time the Chair may appoint or the Commission may establish committees for special purposes. Such committees may include members of the Commission and non members, provided however, the Commission shall not delegate any of its powers to any Committee which includes non members of the Commission.
- F. Membership on Other Committees. The Chair may from time to time appoint members of the Commission as Commission representatives on joint committees made up of representatives of other public and private organizations. If any member so appointed is authorized to make commitments on behalf of the Commission such appointment and the extent of his or her authority shall be subject to confirmation by the Commission.
- G. Commission Acts Collectively. The Commission acts as a body. No individual Commissioner has authority to act in his or her individual capacity. Individual Commissioners may, from time to time, be delegated specific authority to act for and on behalf of the Commission. The Chair is the official spokesperson for the Commission, except to the extent he or she may delegate specific matters to other Commissioners.
- H. Correspondence. Under the direction of the Commission, the King County Historic Preservation Officer or his or her designee shall conduct all official correspondence.

PART III: CONDUCT OF MEETINGS AND HEARINGS

- A. Procedures. Meetings shall be conducted in accordance with the Procedures of Small Boards in Robert's Rules of Order, Newly Revised, except to the extent that they are in conflict with DMMC 18.96 and these Rules and Procedures.
- B. Presiding Officer. During the course of quasi-judicial proceedings, the Chair of the Commission shall act as presiding officer and rule on all procedural matters, including objections, requests; and motions brought by participants in the quasi-judicial proceeding, and shall regulate the course of the hearing and the admission of evidence. In the absence of the Chair, the Vice-Chair shall perform these duties, and in the absence of both the Chair and the Vice-Chair, the Commission shall select one of its members to act as presiding officer.
- C. Quorum. A majority of the currently appointed and confirmed members of the Commission shall constitute a quorum for the transaction of business. All official actions of the Commission shall require a majority vote of the members present and eligible to vote. No member shall be eligible to vote upon any matter requiring a public hearing, unless that member has attended the hearing or familiarized him or herself with the record.

D. Absence of a Quorum. No official business shall be conducted by the Commission in the absence of a quorum. However, the Commissioners present may establish a time and place for an adjourned meeting.

E. Scheduling of Meetings. The Commission shall meet as necessary for the purpose of holding public hearings on landmark nominations, and reviewing applications for certificates of appropriateness, the special tax valuation program, and landmark loans.

1. Notice of the cancellation or rescheduling of a meeting shall be published not less than six days before the scheduled meeting and not less than six days before the changed meeting date.
2. Special meetings may be held at the call of the Chair or at the written request of three Commissioners.

- a) Notice of a special meeting must be delivered personally or by regular or e-mail, at least 24 hours before the time of such meeting as specified in the notice, to each Commissioner; and to each local newspaper of general circulation and to each local radio or television station which has on file with the Commission a written request to be notified of such special meeting or of all special meetings.
- b) The call and notice of the special meeting shall specify the time and place of the meeting and the business to be transacted. The Commission shall not take final action on any matter not specified in such notice.
- c) Written notice may be dispensed with as to any Commissioner who is actually present at the meeting at the time it convenes or who, prior to the time the meeting convenes, files with the Historic Preservation Officer a written waiver of notice. Such waiver may be given by e-mail or FAX.
- d) Notices provided in this Section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

3. Notice of Public Hearings. Notice of all public hearings shall be published pursuant to the provisions of King County Code (KCC), Chapter 20.62 unless such hearing is a continuation of a previously noticed hearing.

4. The Historic Preservation Officer shall cause notice of any meeting or hearing or of the cancellation, rescheduling or adjournment of any meeting or hearing to be mailed to any persons or organizations who have requested in writing that they be notified. Such request may be for all meetings of the Commission or for only those meetings with certain subjects on the agenda.

F. Open Meetings. All meetings of the Commission shall be open to the public.

G. Public Participation. Members of the public may speak to matters on the agenda at the invitation of or the approval of the Chair.

H. Public Hearings. A public hearing is a meeting or part of a meeting of the Commission held for the purpose of receiving information from the public on a matter on the Commission agenda.

1. A public hearing shall be held prior to a decision of the Commission on:
 - a) Landmark nominations, including, but not limited to, amendments and terminations of designations
 - b) Certificate of Appropriateness applications, except Type I Certificates, as required pursuant to DMMC 18.96 and KCC 20.62.080
 - c) Other matters on which it desires public input.
2. The Applicant for a landmark nomination, certificate of appropriateness or special valuation application, and the owner, if not the applicant, shall be allotted reasonable time to present their case. Applicants or owners may speak through a personal representative.
3. The order of speaking at a public hearing may be determined at the discretion of the Chair, however the following order shall generally apply:
 - a) Staff and Commission's experts
 - b) The Applicant and Applicant's experts
 - c) The Owner and Owner's experts
 - d) Members of the public
 - e) The Applicant and the Owner will have five minutes at the end of the hearing to summarize and close

4. The Chair may limit the time for public comment (e.g. three minutes per speaker) but may not prevent relevant public comment by any person making a timely request to speak unless such person is disorderly or attempts to disrupt the meeting.
5. The Chair shall maintain order at all public hearings. The Chair may request any persons who are disorderly or attempt to disrupt the meeting to leave the meeting and may, if necessary, adjourn the meeting until order can be restored.
- I. Minutes. The Historic Preservation Officer shall keep, or cause to be kept, minutes of all meetings of the Commission, showing the actions of the Commission on each question. The minutes shall be filed in the office of the Historic Preservation Officer and the Des Moines City Clerk and shall be public records.
- J. Electronic Recording of Proceedings. At all public meetings of and hearings before the Commission, all oral proceedings shall be electronically recorded. Such recordings shall be filed with the minutes of the meeting.
- K. Training Sessions. The Commission may, from time to time, hold training sessions or workshops for the purpose of training or education at which no minutes need be kept or electronic recordings made. Such meetings are open to the public but no notice need be made.
- L. Executive Session. At the request of any Commissioner, the Commission may go into executive session to discuss personnel matters or matters pertaining to potential or actual litigation.
- M. Exempt Information. Commission records identifying the location of archaeological sites and potential sites are exempt from public information requests pursuant to RCS 42.17.310 (1.c.), as amended, in order to avoid looting and degradation of such sites.

PART IV: NOMINATION AND DESIGNATION OF LANDMARKS

- A. No historic resource may proceed through the nomination procedure of King County Code Section 20.62.050 until the Des Moines City Council has approved the historic resource for nomination. A minimum of four Council members must vote in favor before the resource is eligible for the nomination.
- B. Nominations shall be made on the City of Des Moines Landmark Registration Form which shall be furnished by the Historic Preservation Officer upon request. For nominations submitted as part of a Multiple Property Documentation, the Landmark Registration Form shall be supplemented with a Multiple Property Documentation.
- C. Only properties which are owned by the City of Des Moines may be considered for nomination per DMMC 18.96.060.

- D. National Park Service Bulletin 16A, *How to Complete the National Register Registration Form*, shall serve as technical guidance in the preparation of the Landmark Registration Form.
- E. National Park Service Bulletin 15, *How to Apply National Register Criteria for Evaluation*, shall serve as technical guidance for interpreting the landmark designation criteria contained in DMMC 18.96.
- F. Landmark Registration Forms for Historic Districts shall contain a brief description and identify specific features of significance for all contributing properties within the district. Contributing properties are defined as historic resources that are directly associated with the period of historic significance with which the district is associated, and which possess strong historic association and/or continue to exhibit good integrity of design, materials, association, setting, feeling, and location. All other properties in the district shall be considered non-contributing properties, which are defined as those properties that are not associated with the period of significance or, if historic, have been substantially altered and do not possess sufficient historic or physical integrity. A non-contributing property shall not be considered a feature of significance pursuant to the provisions of DMMC 18.96, however, such property may be subject to voluntary provisions of any district design guidelines that are adopted by the Commission pursuant to Part V below.
- G. All nominations shall be filed with the Historic Preservation Officer and shall include all supplemental data required by the Commission.
- H. The Historic Preservation Officer shall review all nominations submitted. When the Historic Preservation Officer is satisfied that the nomination contains sufficient information and complies with DMMC 18.96 and the requirements of these Rules and Procedures, the Historic Preservation Officer shall notify the owner of the property, the person submitting the nomination, the City, and any interested persons of record, and set a date for a public hearing on the nomination not less than 30 or more than 45 days from the date of such notice, except as provided in Part V below.
- I. In the event the Historic Preservation Officer or any member of the Commission has reason to believe that immediate action is necessary to prevent destruction, demolition or defacing of an historic or archaeological resource, the public hearing on a nomination may be held less than 30 days from the day of the notice to the owner provided in Part III E.2 above, provided that the notice shall so state and shall set forth the reasons for such shortening of time.
 - 1. A special meeting, pursuant to Part III E.2 of these Rules and Procedures, may be called for the purpose of hearing any such nomination.
 - 2. In order to give all interested persons an opportunity to be heard, the Commission may, at the hearing held less than 30 days from the date of notice to the owner, make a preliminary determination of significance and shall continue the hearing to a date more than 30 days from such notice, but not less

than 180 days, to receive further testimony before rejecting or approving the nomination.

PART V: DESIGN REVIEW GUIDELINES

- A. *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995) shall serve as the basis for design review conducted by the Commission pursuant to DMMC 18.96, unless specific design guidelines have been otherwise adopted by the Commission.
- B. Specific design guidelines may be prepared for designated landmark districts (district) at the Commission's discretion. The design guidelines shall be consistent with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995). The Commission shall follow the design guidelines in considering Certificates of Appropriateness applications affecting features of significance within districts.
- C. The design guidelines may address building orientation and siting, lot coverage, massing and dimensions, materials, forms, fenestration, paint colors, signage, parking, landscaping, street furniture, new construction, and other aspects of the physical environment that may affect the integrity of the district, as consistent with the features of significance identified in the preliminary determination of significance or the designation report.
- D. Development of design guidelines shall be conducted in cooperation with property owners in the district. Specific procedures for development of the guidelines shall be established on a case by case basis for each district.
- E. Following adoption of the design guidelines by the Commission, copies shall be provided to the City, and owners of all properties within the district.

PART VI: CERTIFICATES OF APPROPRIATENESS

- A. A Certificate of Appropriateness must be obtained from the Commission before any alterations can be made to the features of significance of a landmark as set forth in the preliminary determination of significance or as specified in the designation report. This requirement shall apply whether or not the proposed alteration requires a building or other permit.
- B. *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995) shall serve as the basis for all design review conducted by the Commission, unless specific design guidelines have been otherwise adopted by the Commission pursuant to Part V herein.
- C. Ordinary repairs and routine maintenance that do not alter the appearance of a significant feature (and do not utilize substitute materials) do not require a Certificate of Appropriateness. Repairs to or replacement of utility or mechanical systems do not require a Certificate of Appropriateness unless such work will alter a feature of significance.

- D. There shall be three types of Certificates of Appropriateness: Type I for major repairs, in-kind replacement and restoration work; Type II for alterations in appearance, replacement of historic materials or new construction or additions; and, Type III for demolition or relocation of a landmark building, object, structure or site. Type III also includes excavations, test boring, site clearing or construction and grading activity on a landmark archaeological site. When a Certificate of Appropriateness is required, the following procedures shall govern according to the type of Certificate of Appropriateness required:
- E. Type I Certificate of Appropriateness: Major repairs, in-kind replacements and restoration work of any feature of significance of a landmark property or landmark district, shall require a Type I Certificate of Appropriateness. Type I Certificates of Appropriateness may be approved administratively by the Historic Preservation Officer. Applications for a Type I Certificate of Appropriateness shall be submitted to the Historic Preservation Officer on forms and according to instructions provided by the Historic Preservation Officer, and in accordance with the following provisions:
1. Construction activities which constitute major repairs, in-kind replacement, and restoration work include, but are not limited to, the following:
 - a) Repairs (minor repairs are exempted) using the exact same materials and design as the original feature.
 - b) Repainting using the existing color or the same color that was originally used based on a professional paint analysis.
 - c) Reroofing using the same type and color of roofing material.
 - d) Replacement of sidewalks and driveways using the same type and color of materials.
 - e) Replacement of foundations or major portions thereof, using the same type and color of materials.
 - f) Replacement of utility systems if features of significance are affected
 2. A clear photograph or photographs of the portion(s) of the building, object, site or structure that will be affected by the project, project drawings or documents, and a brief written description of the intended work. Samples of proposed paint colors or construction materials for comparison with the existing or the original materials must be submitted with the application.
 3. The decision of the Historic Preservation Officer on the application shall be made within ten working days from the date on which the Historic Preservation Officer receives the application.

4. The Historic Preservation Officer may on his or her own motion refer the application to the Commission for a decision in accordance with the procedures set forth for a Type II Certificate of Appropriateness. The time for a decision of the Commission on the application shall run from the date that the application is referred to the Commission by the Historic Preservation Officer.
 5. Appeals from a decision of the Historic Preservation Officer regarding the issuance of a Type I Certificate of Appropriateness may be made by an aggrieved person by filing a notice of appeal with the Historic Preservation Officer, specifying the grounds thereof, within five working days after the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from. The Commission shall hear the appeal within 45 days after the notice of appeal is received by the Historic Preservation Officer. The Historic Preservation Officer shall give notice of the hearing and due notice to the parties of record. At the hearing before the Commission any party may appear in person or by agent or by an attorney. The Commission shall decide the appeal within 45 days of the hearing. An appeal shall be sustained upon an expressed finding by the Commission that the Historic Preservation Officer's action was based on an error in a material fact or that the decision of the Historic Preservation Officer was based on an error in judgment or conclusion. In exercising its powers the Commission may reverse or affirm in whole or in part or may remand to the Historic Preservation Officer with direction.
- F. Type II Certificate of Appropriateness: Alterations in the appearance of a significant feature, additions to a landmark or new construction on a landmark site or in a landmark district, or any excavation of an archaeological site requires a Type II Certificate of Appropriateness. Applications for a Type II Certificate of Appropriateness shall be submitted to the Historic Preservation Officer on forms and according to instructions provided by the Historic Preservation Officer, and in accordance with the following provisions:
1. A clear photograph or photographs of the portion(s) of the building, object, site or structure that will be affected by the project, project drawings and/or contract documents and a brief written description of the intended work. Samples of paint colors or construction materials for comparison with the existing or the original materials must be furnished as part of the application.
 2. The Certificate shall be granted in accordance with the following criteria:
 - a) The degree to which the project complies with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*;

- b) The extent to which the proposed alteration or significant change would adversely affect the specific features or characteristics specified in the latest of the preliminary determination of significance, if any, or the designation report;
- c) The reasonableness or lack thereof of the proposed alteration or significant change in light of other alternatives available to achieve the objectives of the owner and the applicant;
- d) The extent to which the proposed alteration or significant change may be necessary to meet the requirements of any other law, statute, ordinance, regulation, code or ordinance; and
- e) The extent to which the proposed alteration or significant change is necessary or appropriate to achieving for the owner or applicant a reasonable return on the landmark property taking into consideration factors specified in DMMC 20.18 and adopted by reference in KCC 20.62.080 and Part VII of these Rules and Procedures and the economic consequences of denial.

G. Type III Certificate of Appropriateness: Demolition in part or whole or relocation of a landmark or a significant feature of a landmark district, excavation of a landmark site, or excavation, test boring, site clearing or construction and grading activity on a landmark archaeological site require a Type III Certificate of Appropriateness.

1. Type III Certificates of Appropriateness shall be issued by the Commission only when one or both of the following two conditions have been established pursuant to the following standards and criteria:
 - a) The requested action is required to alleviate a threat to public health and safety; and/or
 - b) The requested action is required to rectify a condition of unreasonable economic return.
2. The standards and criteria required in order to establish the existence of the conditions specified in subsection G.1 above shall be as follows:
 - a) Threats to public health and safety. To prove the existence of a threat to public health and safety the applicant must establish and the Commission must find:
 - i) That a major and imminent threat to public safety exists as demonstrated by an independent analysis and supporting other information;

ii) That all available alternatives for rectifying the threat have been considered as demonstrated by analysis of all such alternatives; and,

iii) That the costs associated with rectifying the threat would create a condition whereby the investments in the project are incapable of earning a reasonable economic return as described in DMMC18.96 and adopted by reference in KCC 20.62.080 and Part VII of these Rules and Procedures.

- b) Unreasonable economic return. To prove the existence of a condition of unreasonable economic return the applicant must establish and the Commission must find that the building is incapable of earning a reasonable economic return as described in DMMC 18.96 and adopted by reference in KCC 20.62.080 and Part VII of these Rules and Procedures.

- H. Application for a Certificate of Appropriateness may be made by filing an application with the Historic Preservation Officer on forms provided by the Commission. The application for a Certificate of Appropriateness shall include all information and materials deemed necessary by the Commission. The Commission may consider or issue a Certificate of Appropriateness without the submission of final drawings, plans and specifications.
- I. Upon receipt of a complete application for a Type II Certificate of Appropriateness, the Historic Preservation Officer shall refer the application to the Design Review Committee, a sub-committee of the King County Landmarks Commission, for consideration at its next regular meeting. The owner and/or applicant and any interested person of record shall be provided with the agenda and invited to participate in the meeting. At the meeting the Committee shall review the application according to the criteria contained in Section 6 of this Part and prepare a formal recommendation that shall be presented to the Commission at its next regular meeting.
- J. No hearing shall be required for a Type II Certificate of Appropriateness if the Commission and the owner and the applicant, if the applicant is not the owner, agree in writing to a stipulated Certificate approving the requested alterations, changes or modifications thereof. If the Commission approves a Certificate of Appropriateness, such Certificate shall be issued forthwith and the Historic Preservation Officer shall promptly file a copy of such Certificate with the City of Des Moines Permit Center. If necessary, within 45 calendar days after the filing of an application for a Certificate of Appropriateness the Commission shall hold a public hearing thereon. The Historic Preservation Officer shall mail notice of the hearing to the owner and interested persons of record not less than ten calendar days before the date of the hearing.

- K. After the Commission has commenced proceedings for the consideration of any application for a Certificate of Appropriateness for a particular alteration or significant change by giving notice of a hearing pursuant to Section J of this Part, no other application for the same or a similar alteration or significant change may be made until such proceedings and all administrative appeals therefrom pursuant to KCC 20.62 as adopted by reference in DMMC 18.96.050 or this Part VI have been concluded.
- L. At the public hearing on any application for a Certificate of Appropriateness the Commission shall, when requested by the property owner, consider evidence of the economic impact on the owner of the denial or partial denial of a Certificate. In no case may a Certificate be denied, in whole or in part, when it is established that the denial or partial denial will, when available incentives are utilized, deprive the owner of a reasonable economic use of the landmark, and there is no available alternative which has less impact on the features of significance specified in the preliminary determination of significance or the designation report.
- M. If the Commission denies the application for a Certificate of Appropriateness, in whole or in part, it shall so notify the owner, the person submitting the application and interested persons of record setting forth the reasons why approval of the application is not warranted.
- N. Any interested person of record may appeal the approval or denial of a Certificate of Appropriateness as provided in Part IX herein.

PART VII: EVALUATION OF ECONOMIC IMPACT

- A. At the public hearing on any application for a Certificate of Appropriateness the Commission shall, when requested by the property owner, consider evidence of the economic impact on the owner of the denial or partial denial of a Certificate. In no case may a Certificate be denied, in whole or in part, when it is established that the denial or partial denial will, when available incentives are utilized, deprive the owner of a reasonable economic use of the landmark, and there is no viable and reasonable alternative which would have less impact on the features of significance specified in the preliminary determination of significance or the designation report.
- B. In considering what constitutes an unreasonable economic return, the Commission shall consider the property owner's reasonable expectations of economic return on the property, including the following:
 - 1. The owner's knowledge of the preliminary determination of significance or the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition. Owners are presumed to have constructive notice of preliminary determinations and designations of landmarks, notice of which are filed with the Division of Records and Elections, and of zoning codes affecting landmark properties.

2. Whether the landmark was purchased for use or for investment.
 - a) If the landmark was purchased for use (e.g. as a residence or for business use), does the landmark designation interfere with the property's intended use.
 - b) If the landmark was purchased as an investment (e.g. rental income) does the landmark designation adversely affect the return on the investment considering alternatives and incentives available to the owner.
- C. To prove the existence of a condition of unreasonable economic return, the applicant must establish and the Commission must find, both of the following:
1. That the landmark is incapable of earning a reasonable economic return without making the alterations or significant changes proposed. This finding shall be made by considering and the applicant shall submit to the Commission evidence establishing each of the following factors:
 - a) The current level of economic return on the property as considered in relation to the following:
 - i) The amount paid for the landmark, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.
 - ii) The annual gross and net income, if any, from the landmark for the previous five years; itemized operating and maintenance expenses for the previous five years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
 - iii) The remaining balance on any mortgage or other financing secured by the landmark and annual debt service, if any, during the prior five years.
 - iv) The remaining balance on any mortgage or other financing secured by the landmark and annual debt service, if any, during the same period.

- v) Real estate taxes for the previous four years and assessed value of the landmark according to the two most recent assessed valuations.
 - vi) All appraisals obtained within the previous three years by the owner in connection with the purchase, financing or ownership of the landmark and all other applicable appraisals to the extent available.
 - vii) The fair market value of the landmark immediately prior to its designation and the fair market value of the landmark at the time the Certificate of Appropriateness application is filed.
 - viii) Form of ownership or operation of the landmark whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture, or both.
 - ix) Any state or federal income tax returns on or relating to the landmark for the past two years.
2. That the landmark is not marketable or able to be sold or leased when listed. The sales price or rent asked and offers received, if any, sale or rent, price asked, and offers received if any within the previous two years, including testimony and relevant documents shall be submitted by the property owner. The following shall also be considered:
- a) Any real estate broker or firm engaged to sell or lease the landmark.
 - b) The reasonableness of the price or rent sought by the owner.
 - c) Any advertisements placed for the sale or lease of the landmark.
3. The infeasibility of alternative uses that can earn a reasonable economic return for the landmark as considered in relation to the following:
- a) A report from a licensed engineer or architect with experience in rehabilitation/restoration as to the

structural soundness of the landmark and its suitability for rehabilitation/restoration.

- b) Estimates of the cost of the proposed alteration or significant change and an estimate of any additional cost that would be incurred to comply with the recommendation and decision of the Commission concerning the appropriateness of the proposed alteration or significant change.
 - c) Estimated market value of the landmark in the current condition after completion of the proposed alteration; and, in the case of proposed demolition, after renovation of the landmark for continued use.
 - d) In the case of proposed demolition, the testimony of an architect, developer, real-estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation/restoration/reuse of historic buildings.
 - e) The infeasibility of new construction around, above, or below the existing landmark.
- 4. Potential economic incentives and/or funding available to the owner through federal, state, county, city or private programs
 - 5. The owner has the present intent and the secured financial ability, demonstrated by appropriate documentary evidence, to complete the alteration or significant change. In the case of demolition or relocation of the landmark, the owner has the present intent and secured financial ability, demonstrated by appropriate documentary evidence to complete the building or structure proposed to replace the landmark.
 - 6. Upon reasonable notice to the owner, the Commission may appoint an expert or experts to provide advice and/or testimony concerning the value of the property, the availability of incentives and the economic impacts of approval, denial or partial denial of a Certificate of Appropriateness
 - 7. Any economic impact caused intentionally or by willful neglect shall not constitute a basis for granting a Certificate of Appropriateness.

PART VIII: INCENTIVE PROGRAMS FOR LANDMARK PROPERTY OWNERS

- A. All landmark rehabilitation projects that may utilize any of the incentive programs offered through the King County Historic Preservation Program (low interest loans, grants) must be reviewed and approved by the Commission and receive a Certificate of Appropriateness according to the procedures set forth in Part VI herein.
- B. If the City appoints a local design review board for the purposes of reviewing certificate of appropriateness applications pursuant to the provision of DMMC 18.96, and such an application is tied to an above-referenced incentive program, the review and approval of such application shall be conducted by the Commission.

PART IX: APPEALS AND RECONSIDERATION

- A. Appeal. Any person aggrieved by a decision of the Commission (i) designating or rejecting, in whole or in part, a nomination for designation of a landmark or (ii) issuing or denying, in whole or in part, a Type II or III Certificate of Appropriateness may, within 35 calendar days of mailing of notice of any such action appeal such decision to the Des Moines City Council. Written notice of appeal shall be filed with the City Clerk and a copy sent to the Historic Preservation Officer and shall be accompanied by a statement setting forth the grounds of the appeal, supporting documents and argument.
- B. Reconsideration by the Commission. If, after examination of the written appeal and the record, the City Council determines that an error in fact may exist in the record, the decision may be remanded to the Commission for reconsideration. If the City Council determines that the decision is based on an error in judgment or conclusion; the decision may be modified or reversed. The action of the City Council sustaining, reversing, modifying or remanding a decision of the Commission shall be final unless an aggrieved person obtains a writ of certiorari from Superior Court of King County for the purpose of additional review. (DMMC 18.04.255E)

PRESENTATION NOTES

MUNICIPAL FACILITIES COMMITTEE

Thursday, April 25, 2013

MARINA AND BEACH PARK SITE MANAGEMENT PROJECT

- STAFF HAS CONTINUED SURVEYING PARKING IN THE MARINA & BEACH PARK
- WE NOW HAVE 8 MONTHS OF SURVEYS – AUG THRU MAR
- SINCE AUG WE HAVE RECORDED OVER 75,000 “VEHICLE HOURS” OF PARKING
- SAMPLE SIZE – MOST ACTIVITY TAKES PLACE BETWEEN 5 AM & 10:00 PM. A TOTAL OF ABOUT 530 HOURS PER MONTH.
- IN AUG WE COUNTED PARKED VEHICLES 142 OF THE 530 HOURS AVAILABLE OR ABOUT 27%.
- IN JAN THE SAMPLE SIZE WAS 23% OF THE AVAILABLE HOURS.
- SAMPLE SIZE IS LARGE ENOUGH BUT MISSING EVENING HOURS BETWEEN 6:00 – 10:00 PM
- SECURITY COMPANY COUNTING FOR US AT 10:00 PM AND 4:00 AM. HELPS WITH THE SECURITY AND OPERATION ASPECTS OF THE PROJECT.
- FOR INSTANCE THE AVG NUMBER OF VEHICLES IN THE NORTH LOT IN JAN AT 10:00 PM IS 16. FISHING PIER WAS STILL OPEN AND SQUID SEASON WAS OPEN. IN MAR. THE PIER WAS CLOSED AND SQUID WERE GONE. AVG NUMBER OF VEHICLES WAS 5. THAT TELLS US THAT WHEN THERE IS FISHING AVAILABLE WE NEED TO PLAN FOR ABOUT 12 VEHICLES PER NIGHT. ABOUT 5 VEHICLES ARE THERE FOR SOME OTHER REASON.
- IN JAN IN THE SOUTH LOT AT 4:00 AM THE AVG COUNT WAS 15 VEHICLES. IN MAR THE AVG COUNT WAS 17. THAT TELLS US THAT WE CONSISTENLTLY HAVE ABOUT 15+ VEHICLES PARKED IN THE SOUTH LOT, POSSIBLY ALL NIGHT. IN JAN WE HAD 5 LIVABOARDS IN THE MARINA.
- WE WILL CONTINUE SURVEYING AT THE CURRENT LEVEL AND START BREAKING DOWN THE DATA TO GET MORE INFORMATION.

MARINA REDEVELOPMENT

- RFQ OUT
- INFORMATIONAL MEETING WED. MAY 8TH.