

NOTICE OF APPEAL

Action Being Appealed: Denial of Request for Certificate of Appropriatness

Date of Action: 08/21/2024 Decision Maker: Historic Preservation Commission

FOR CITY CLERK'S
USE ONLY:

DATE FILED: 9/3/24

INITIALS: Jllw

Appellant/Appellant Representative (if more than one appellant):

Name: Linden Street Treehouse, LLC via OneSeven Advisors Phone #: (970) 420-8897

Address: 148 Remington Street, Ste. 100
Fort Collins, CO 80524

Email: david@onesevenadvisors.com

INSTRUCTIONS

For each allegation marked below, attach a separate summary of the facts contained in the record which support the allegation of no more than two pages, Times New Roman 12-point font. Please restate allegation at top of first page of each summary.

GROUND FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):

- Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:

Please see attached.

Failure to conduct a fair hearing in that:

- (a) The Board, Commission, or other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter. [New evidence not allowed]
- (b) The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure. [New evidence not allowed]
- (c) The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. [New evidence allowed]
- (d) The Board, Commission or other Decision Maker improperly failed to receive all relevant evidence offered by the appellant. [New evidence allowed]
- (e) The Board, Commission or other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment. [New evidence allowed]

NEW EVIDENCE


All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence. No new evidence will be received at the hearing in support of these allegations unless it is submitted to the City Clerk by the deadline (7 days after the deadline to file appeal) or offered in response to questions posed by Councilmembers at the hearing.

APPELLANTS

Parties-in-interest have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns or occupies the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.
- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.

Signature: 	Date: 09/02/2024
Name: David Diehl	Email: david@onesevenadvisors.com
Address: 148 Remington St., Ste. 100, Fort Collins, CO 80524	Phone #: (970) 420-8897
Describe how you qualify as a party-in-interest: Mr. Diehl is the Owner's Representative hired to manage the 201 Linden Hotel Property and sought approval of the Certificate of Appropriateness on the Owner's behalf.	

Signature:	Date:
Name:	Email:
Address:	Phone #:
Describe how you qualify as a party-in-interest:	

Signature:	Date:
Name:	Email:
Address:	Phone #:
Describe how you qualify as a party-in-interest:	

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY

September 3, 2024

Claire N. Havelda
Attorney at Law
303.223.1194 direct
chavelda@bhfs.com

NOTICE OF APPEAL OF THE HISTORIC PRESERVATION COMMISSION'S DENIAL OF A CERTIFICATE OF APPROPRIATENESS FOR THE 201 LINDEN HOTEL: WINDOW REPLACEMENTS

Ms. Heather N. Jarvis
Assistant City Attorney
City of Fort Collins
300 Laporte Avenue
PO Box 580
Fort Collins, CO 80522
hjarvis@fcgov.com

Fort Collins City Council
City of Fort Collins
300 Laporte Avenue
Fort Collins, CO 80522

Dear Madam Mayor, Members of City Council and Ms. Jarvis:

This letter and attachments hereto serve as Notice of Appeal of the Historic Preservation Commissions' ("HPC") denial of the Applicant's¹ request for a Certificate of Approval to replace the one-hundred and forty-two (142) year-old failing windows of the 201 Linden Street Hotel ("Linden Hotel").

1. Background.

On behalf of the owners of the Linden Hotel ("Owners") the Applicant has been in conversation with the City of Fort Collins, specifically the Historic Preservation Staff (the "City"), for many years seeking to appropriately replace windows that lack operability, and do not provide the level of safety and energy efficiency the residential units contained in the building require.

On October 21, 2023, part of the upper window sash of a second story window dislodged from the Linden Hotel and crashed to the sidewalk below. The Poudre Fire Authority was called to respond and aid in securing the windows as they now constituted a safety hazard for all pedestrian sidewalk and street traffic below.² According to the Poudre Fire Authority Report getting the windows replaced, "now

¹ Mr. David Diehl (the "Applicant"), the Owner's Representative for the Linden Hotel located at 201 Linden Street, Fort Collins, Colorado 80524.

² See Poudre Fire Authority Incident Report October 21, 2023. Exhibit A.

presented a safety hazard for the public and the historic criteria was now irrelevant.”³ The City was also immediately contacted to attempt to reach a resolution.

A meeting was held with the City on November 9, 2023, to attempt to determine a path forward to address the windows as soon as possible. Since this time, three additional windows have failed.⁴

The Historic Preservation Staff and Applicants discussed the need for an expert report to make recommendations regarding whether **replacement** or **repair** of the windows would be appropriate. At this time, the Applicant expressed deep concerns about the objectivity and substantially false and grossly misleading analysis of the City’s window expert who had previously produced the 2018 Barlow Report related to the Linden Hotel windows. A few weeks after the meeting, the City provided a list of acceptable experts to complete the window analysis. The Applicant team contacted all those on the list. The listed experts either did not respond to the Applicant or could not provide the services discussed by the City.⁵

The Applicant’s 2024 request to replace the 201 Linden Hotel windows is the **third** such request made of the City since 2005 – the HPC denied them all.

2. Historic Context.

The Linden Hotel was established in 1882. The majority of the windows in the Linden Hotel are believed to be original, and thus, over one-hundred and forty-two years old (**142**). These windows have not functioned in an acceptable manner since at least 2005 (for almost 20 years). It bears mentioning, that prior to its Landmark designation, the Linden Hotel was in a state of complete and utter disrepair. Tens of thousands of dollars in combined private money has been spent by the owners to rehabilitate the building. Rehabilitating the building was such a monumental feat that the then owners of the building were awarded the City’s “Friend of Preservation” Award for their “courageous effort” to restore it.

The Linden Hotel was in such disrepair that in 1994, four of the Linden Hotel windows were replaced when the west wall collapsed during the rehabilitation project.⁶ In 2005, (19 years ago) the Edge

³ *Id.* Narrative Section second to last paragraph.

⁴ The night of the Second HPC Hearing Mr. Diehl testified that three windows had failed, that very night, a fourth window failed. The most recent window failure is held in place by plexiglass. *New Evidence presented in conformance with Fort Collins Municipal Code section 2-49(b)(5) and 2-48(b)(2)(b).*

⁵ One proposed expert confirmed they were not available to perform the scope of work requested but offered to perform ballistics testing on the windows by taking them to a firing range and shooting at them and reporting on their “safety” afterwards. Failing to see how this would aid the HPC in their decision-making process, the Applicant declined. The other proposed experts, including Deep Roots Craftsman (the City’s later engaged expert) did not return the Applicant’s calls.

⁶ See December 2018 Staff Report, Items 3. P.3.

Report⁷ submitted to the HPC contained a window assessment which documented the inoperability of the majority of the windows. That same year, the former building owners proposed replacing some of the then one-hundred- and twenty-three-year-old (123) windows. However, the City never approved the request.

In 2018, the Linden Hotel was remodeled to change from office use to residential use, on the second and third floors. During that approval process, the current Owners informed the City that they intended to clean and re-glaze the windows.⁸ In August of 2018, Mr. Wernimont of Colorado Sash and Door, Inc. (the Owner's Window Expert), contacted the then director of the City's Historic Preservation Department (the "Director"). In his August 22, 2018, email correspondence to the Director, he notes multiple areas in which he had concerns regarding the design of the windows and the ability of the balance system to accommodate their weight.⁹ He also specifically requests time to meet with the City to discuss these matters. In September of 2018, the Landmark Preservation Commission's Design Review Subcommittee provided a recommendation of approval for the administrative design review regarding replacement of the four windows on the west wall "due to their lack of significance."¹⁰ At this time, a second request was made to replace all the windows. The Owner's submitted their Expert's Report, the 2018 Dohn Report, which proposed a plan to replace the windows which met the Standards for Rehabilitation in 36 Code of Federal Register Section 68.3 because the "existing window frames and sills are severely deteriorated."

Rather than accept the recommendations of the Applicant's expert, in November of 2018, City Staff led by Karen McWilliams, took it upon themselves to order an additional historic windows report from Barlow Cultural Resources Consulting, LLC (the "2018 Barlow Report"). The entire focus of this report was focused on restoring the appearance of the windows, not on the combined objectives of safety, performance, sustainability and operability of the windows. The Owners expressed grave concerns and objected that the 2018 Barlow Report was inaccurate and did not address their very real safety, operability and performance issues. Over these objections, City Staff recommended denial of the request to replace the Linden Hotel windows, citing the 2018 Barlow Report and the HPC denied the replacement request.

3.a. 2024 Procedural Background.

Because of the very serious safety risks the windows posed, the risk of civil liability should additional windows fail, and the inability to receive a response from the City's proposed experts, the Owner's

⁷ 2006 Edge Architect Report, Project Summary.

⁸ See December 2018 Staff Report, Item 3 p.3

⁹ See Email Correspondence from M. Wernimont to Karen McWilliams, August 22, 2018.

¹⁰ See December 2018 Staff Report, Items 3. P.3.

reengaged Mr. Wernimont. Mr. Wernimont produced his 2024 report (the “2024 Wernimont Report”) regarding the state of the windows, analysis of **repair** versus **replacement**, and an analysis of whether the proposed replacement windows met the Secretary of Interior Standards (“SOIS”). In June 2024, the Applicants submitted their request for a Certificate of Appropriateness to replace the windows based on the results of Mr. Wernimont’s 2024 Report and noted their concerns for the bias and false statements contained in the 2018 Barlow Report. The Applicants requested the soonest hearing date possible before the HPC. The matter was then set for July 17, 2024.

Upon receipt of the request, the City contacted Deep Roots Craftsman to review the state of the windows. This time, Deep Roots Craftsman chose to respond to the request to engage in an expert report. The 2024 Deep Roots Craftsman Report (“2024 Craftsman Report”) was not scheduled to be completed until the first week of August 2024.

3.b. HPC Work Session July 10, 2024.

At the HPC Work Session on July 10, 2024, Historic Preservation Staff presented an overview of the 201 Linden Hotel history and request for window replacement. The City’s grossly misleading and substantially false 2018 Barlow Report was referenced as a support for the assumption that the windows could be replaced rather than repaired and that the damage to the windows was done in 2018 by the Applicant. Additionally, Staff informed the HPC that repair of historic windows is almost always preferable and that windows can usually be retrofitted for modern operability and energy performance requirements. This statement was not supported in the context of the 201 Linden Hotel windows by either the 2024 Craftsman Report or the 2024 Wernimont Report.

Notably, Staff did not address how the Secretary of Interior Standards and the Old Town Design Standards could be read in harmony with City Code Article 14-2 which governs the Purpose of the Historic Preservation regulations, the City’s Climate Action Plan, building standards, or the Applicant’s fundamental property rights.

At the close of the Work Session, one of the Commissioners stated that the City’s chosen expert, Deep Roots Craftsman would be coming to her home to repair her windows.

3.c. HPC Hearing #1 - July 17, 2024.

The HPC first heard the Applicants’ request to replace the windows with windows that met the Secretary of Interior Standards for **replacement** on July 17, 2024. It bears repeating that the Applicant’s proposed windows are virtually identical to the historic windows. The only visual difference being a less than one-half inch difference on the check rail of a nine-foot-tall window; a difference that is visually imperceptible from the street to the second and third floor windows. The Applicants presented

evidence, the expert report and testimony from their expert, Mr. Mark Wernimont. The Applicant team also quoted the SOIS Standards that notes that the SOIS:

“[C]annot, in and of themselves, be used to make essential decisions about which features of the historic building should be saved and which can be changed. But, once a treatment is selected, the Standards and Guidelines provide a consistent philosophical approach to the work.”¹¹

The Applicant team explained that rehabilitation was not appropriate in this case where the window design is fundamentally flawed, the windows significantly degraded, and attempts at rehabilitation had not proven sustainable.

The Applicant Team also presented evidence of how the proposed window replacements were in alignment with the SOIS, the Old Town Design Standards, City Code Article 14-2, the City’s Climate Action Goals, the Owners’ fundamental property rights, and safety concerns. The Applicant again quoted the SOIS which states that replacement windows meet the SOIS standards:

“When the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and where possible materials.

If using the same kind of material is not feasible, then a compatible substitute material may be considered.”¹²

The SOIS standards for Replacement of Windows were further met by the Applicant because according to the SOIS standards:

- A. Replacement material should match the old with exception of hidden structural reinforcement.
- B. When the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and where possible materials. It further states that “if using the same kind of material is not feasible, then a compatible substitute material may be considered.”¹³

¹¹ See Applicant Power Point Slide No. 6 for First HPC Hearing.

¹² See Applicant Power Point Slide No. 7 for First HPC Hearing.

¹³ See Applicant Power Point Slide No. 9 for First HPC Hearing.

The Applicant Team demonstrated that Replacement of the Windows was appropriate over Repair because:

- A. Replacement does not create an adverse affect on the general historical character of the landmark – windows are visually identical from the exterior street view.
- B. Replacement holds with the general historical character of the landmarked area.
- C. Retention of the faulty materials does not outweigh the safety, operability, environmental and sustainability concerns replacement would address.
- D. Replacement will result in no visible change to the exterior key characteristic of the landmark.
- E. Replacement will encourage the protection, enhancement and perpetuation of use of the landmark by honoring owner concerns related to safety and sustainability.
- F. This is not a first-floor commercial building where interior is open to inspection by public; rather there would be only 2nd & 3rd floor exterior visual impact.
- G. The current windows are also creating water damage on the interior of walls of the Linden Hotel.
- H. Replacement minimizes ongoing disruption to lives of residents of the Linden Hotel, unlike a piecemeal rehabilitation approach.¹⁴

The Applicant then proffered its main piece of evidence in the form of a 100+ pound nine-foot tall proposed replacement window that the Owner’s Representative had brought to the hearing. Despite the Applicant’s request that the HPC examine the window, the HPC refused to do so and the only representations placed in the record at that time were after taken pictures of the window. No piece of evidence could have been more relevant to the Applicants’ case than the proposed replacement windows, which met all of the SOIS standards for replacement. The Applicant is unaware of any other HPC hearing where an offer of evidence was denied with no legal basis. The HPC’s reasoning was that it wanted to wait until it had the City’s Craftsman Report before even entertaining the evidence before it. The clear implication was that the HPC had prejudged the matter in favor of the City’s forthcoming expert report, which contained the foregone conclusion of repair recommendations over replacement.

¹⁴ See Applicant Power Point Slide No. 8 for First HPC Hearing.

Despite the Applicant Teams' expressed safety concerns and opposition to delay, the HPC insisted on waiting for an additional "expert" report.¹⁵

At the end of the First Hearing, disturbingly, members of the HPC reiterated the substantially false and grossly misleading narrative contained in the 2018 Barlow Report that the Linden Hotel windows were damaged by the Owners' 2018 repairs and neglect of the windows. Another HPC member commented that the windows could not contain a fundamental design flaw because they had lasted for 142 years. This biased and prejudicial statement ignored the fact that in the early 1990's four of the windows had failed causing an entire wall of the building to collapse and at the time of hearing three windows had failed; facts clearly in the record at that point in time. The Applicant Team adamantly disputed these facts in both its written submissions to the HPC and at the Hearing. But because the HPC had prejudged the matter, these factual statements fell on deaf ears.

3.d. Second HPC Work Session August 14, 2024.

During the HPC's second work session, again the false narrative of the window damage being done by the Owners in 2018 was repeated at the Work Session, solidifying the bias of the HPC against the Applicants in favor of the City's forthcoming expert report. Work Sessions do not allow for any objection by the Applicant Team, and thus, these grossly misleading and prejudicial errors contained in the 2018 Barlow report were allowed to further influence the HPC.

3.e HPC Hearing #2 - August 21, 2024.

At the second HPC Hearing, City Staff and the City's Expert, Deep Roots Craftsman presented their report findings. Notably, one of the first findings in the Craftsman Report was confirmation that the original window design was fundamentally flawed.¹⁶ Unfortunately, rather than analyzing this, it too parroted the grossly misleading information contained in the 2018 Barlow Report. The 2024 Craftsman Report failed to consider the Applicant's 2018 Dohn Report or even speak to the Owners to verify how and when the damage was actually done. Had either the author of the 2018 Barlow Report or the 2024 Craftsman Report bothered to contact the Owners to discuss this prior to issuing their reports, they would have been informed as to the actual state of the windows prior to the 2018 repairs as noted above.¹⁷ Adding insult to injury, the former Director of the City's Historic Preservation Team, Ms.

¹⁵ The un rebutted evidence at the July 18, 2024, hearing was that Deep Roots' Craftsman had not responded to the Applicant's attempts to contact them to inquire about securing an expert report prior to hiring Mr. Wernimont.

¹⁶ Craftsman Report, p. 13 ("Whereas most historic wooden commercial windows tend to be 1 3/4" thick, the windows are thinner at 1 3/8" thick, more consistent with residential windows from the era. The window openings are unusually large in their size when it comes to the surface area of the glazing.")

¹⁷ See further detail related to status of the window damage in Applicant's Rebuttal Letter of 8.17.24 and Mr. Wernimont's Rebuttal Report **Exhibit A**.

Ms. Heather N. Jarvis
Fort Collins City Council
September 3, 2024
Page 8

McWilliams took it upon herself to parrot this false narrative and other grossly misleading statements in her public comment.¹⁸

A full articulation of the errors in the 2024 Craftsman Report can be found in the Applicants Counsel's letter of August 17, 2024, and Mr. Wernimont's Rebuttal Report of 2024 submitted to the Historic Preservation Commission prior to the Second Hearing and incorporated herein by reference.¹⁹ In summary, the errors in the 2024 Craftsman Report include:

- A. Assumption/meritless accusations of code violations by Owners.
- B. Failure to consider relevant expert reports.
- C. Failure to analyze the windows' fundamental design flaw after acknowledgement of the same.
- D. Failure to analyze operability issues and inappropriate recommendation of the addition of storm windows.
- E. Inaccurate and contradictory cost estimates that lack inflation analysis.

These concerns were further documented and addressed during the Second Hearing by the Applicant Team.²⁰

4. Failure to Conduct a Fair Hearing.

The HPC demonstrated through its actions listed above that:

- A. The HPC exceeded its authority or jurisdiction as contained in the Code.
 - a. Despite the SOIS clear directive that it could not be used to make essential decisions about which features of a historical building should be saved and which changed,²¹ the HPC relied upon the SOIS and the Old Town Historic Design Standards ("OT Design Standards") to justify their denial of the Applicant's request to replace the windows

¹⁸ Ms. Karen McWilliams went so far as to tell the HPC that "replacement was never appropriate" in the Old Town District and that storm windows could be placed on the outside of the building despite the clear language of OT Design Standard 3.11. Appellant's Counsel objected to Ms. McWilliam's statements but the damage had likely been done given her prior relationship with the HPC.

¹⁹ All Applicant submissions to the City in this matter including letters, expert reports, power point presentations, proposed window replacement are part of the record on appeal and incorporated herein by reference.

²⁰ Please see Applicant Team's August 21, 2024 Power Point Presentation, August 17, 2024 Rebuttal Letter and Mr. Wernimont's 2024 Rebuttal Report entered into the record and incorporated herein by reference for additional information.

²¹ <https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>.

indicating through their discussion that only a piecemeal approach to repairs would be approved by the majority.

- b. Further, the SOIS states that when replacement of portions of a historic building is necessary replacement material should match the old “with the exception of hidden structural reinforcement.” Despite this, the HPC denied the replacement request stating a clear preference for “repair” of the windows, which would largely require rebuilding the windows and their interior components.²²
- c. Additionally, the OT Design Standards state that they are “to be used by the Landmark Preservation Commission and city staff to review any changes to the exterior of buildings within the Old Town Historic District.”²³ The HPC’s demand for repair of the windows largely focuses on keeping interior components of the windows and retention of historic material that is unseen from the outside of the building. This demonstrates a clear misinterpretation/misapplication of the standards.
- d. The OT Design Standards then go on to reaffirm the SOIS for Rehabilitation; nowhere does it claim to supersede these standards in the manner the HPC interpreted them.²⁴
- e. The OT Design Standards state that, “[i]n addition, there are many cases in which the standards state that one particular solution is preferred . . . but . . . some alternatives may be considered if the preferred approach is not feasible. In those instances, the HPC should consider . . . the quality, appearance and character of alternative solutions, such as new materials.”²⁵ The HPC completely ignored this provision demanding instead that the Applicant engage in repairing the windows in a manner not proven to address safety, operability, environmental or financial concerns.
- f. Finally, the most egregious act of the HPC was in flouting any consideration of the interplay and primacy of overarching municipal code sections 14-2, the International Building Codes adopted into City Code Chapter 5, and the City’s Climate Action Plan by failing to read the SOIS or the OT Development Standards in harmony therewith.

²² <https://www.nps.gov/orgs/1739/upload/treatment-guidelines-2017-part1-preservation-rehabilitation.pdf>.

²³ *Old Town Historic District Design Standards for Fort Collins Colorado*, p. 3.

²⁴ *Id.* at p. 6.

²⁵ *Id.* at 15; see also Applicant Power Point Slide No. 12 for First HPC Hearing.

Not to mention the complete and utter failure to consider the fundamental property rights of the Owners.

- B. The HPC substantially ignored its previously established rules of procedure.
 - a. By initially refusing to review and accept the Applicant's proffered window exhibit into the record, the HPC substantially ignored its previously established practice of accepting and consider.
- C. The HPC considered evidence relevant to its findings which was substantially false or grossly misleading.
 - a. As discussed at length above, the HPC's reliance on misstatements and erroneous analysis in both the 2018 Barlow Report, the 2024 Craftsman Report and Staff recitation of facts created a prejudice and bias that all but two members of the HPC was not able to overcome in their final decision making.
- D. The HPC improperly failed to receive all relevant evidence offered by the appellant.
 - a. By initially refusing to review and accept the Applicant's proffered window exhibit into the record, the HPC substantially ignored its previously established practice of accepting and considering evidence presented. This demonstrated a clear prejudice of the matter.
- E. The HPC was biased against the Appellant by reason of conflict of interest or other close business, personal or social relationship that interfered with the HPC's independent judgment.
 - a. As discussed at length above, the substantially false and grossly misleading evidence of the 2018 Barlow Report and subsequent 2024 Craftsman Report repeated by the City Staff and Ms. McWilliams so fundamentally interfered with the HPC's independent judgment as to render their ultimate decision erroneous.
 - b. Additionally, there is a distinct appearance of impropriety and bias towards the City's expert when one of the Commission Members engaged Deep Roots Craftsman to do repair work on her own home's windows during the time frame the Linden Hotel was reviewed. She pointedly compared her own historic residential windows against the Linden Hotel windows during the second HPC Hearing, using this as a basis to

discount any evidence of energy efficiency and environmental concerns that would be ongoing if the Linden Hotel windows were repaired rather than replaced.

5. Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code and the Charter.

The HPC failed to properly interpret: 1) City Code including fundamental policy documents implemented throughout the Building Code; 2) City Code Section 14-2; e)the SOIS; and 4) the OT Design Standards.

To properly interpret a municipal code, the courts will turn to rules of statutory construction.²⁶ In arriving at the correct interpretation of a municipal code, therefore, courts look to the legislative declaration or purpose. Additionally, municipal codes should be given “the construction and interpretation which will render it effective in accomplishing the purpose for which it was enacted.”²⁷ Courts also read the “statutory [code] design as a whole, giving consistent, harmonious, and sensible effect to all of its parts.”²⁸ But reviewing courts, and by extension City Council’s, acting in their quasi-judicial capacity, should avoid constructions that lead to “illogical or absurd results.”²⁹

Acting in its quasi-judicial capacity, City Council is the ultimate authority on how its Codes and governing policy documents are to be interpreted. The Applicant urged the HPC to read all relevant City Code and policy documents in harmony when interpreting the application of the SOIS and the Old Town Design Standards in this matter. Allowing for the replacement of the windows with visually identical product allows all relevant Code’s and policies to align. Unfortunately, the HPC chose to read the SOIS and the Old Town Design Standards in conflict with City Code Section 14-2 Historic Preservation, Chapter 5’s Building Codes, the City’s Climate Action Plan and in direct conflict with the Appellant’s fundamental property rights.

Instead, the HPC misinterpreted the SOIS and the OT Design Standards to require an ongoing piecemeal exorbitantly expensive approach to repairing the windows on the basis that the HPC was not bound by the City’s Climate and energy efficiency goals, completely ignoring and failing to analyze their own Article 14-2 standards, the adopted International Building Codes and the fundamental property rights of residents. The HPC also engaged in glaring overreach by questioning if there were any restrictions on their authority to govern the interior of landmarked buildings despite the clear guidance of the SOIS. In making these findings, the HPC clearly violated the tenant of Code construction that requires that a

²⁶ *Town of Erie v. Eason*, 18 P.3d 1271, 1275 (Colo. 2001).

²⁷ *City and County of Denver School District No. 1 v. Dener Classroom Teachers Ass’n*, 407 P.3d 1220, 1223 (Colo. 2017); citing *Zaba v. Motor Vehicle Div., Dep’t of Revenue*, 516 P.2d 634, 637 (Colo. 1973).

²⁸ *Denver School District No. 1*, 407 P.3d 1223; citing *Young v. Brighton Sch. Dist. 27J*, 325 P.3d 571, 576, (Colo. 2014).

²⁹ *Denver School District No. 1*, 407 P.3d 1223; citing *Johnson v. People*, 379 P.3d 323, 327 (Colo. 2016).

City's governing Codes and policy documents be read in harmony and not result in illogical and absurd results.

The HPC's interpretation of the SOIS and the OT Design Standards in this case is an egregious example of government overreach and complete failure to harmonize their interpretation to support fundamentally important City Codes and policies. The HPC's statements throughout the hearings make it clear that they feel entitled to regulate whether or not a private property owner can open the windows in their home, have to spend hundreds of thousands of dollars repairing windows for years to come, and remain at risk of being responsible for the potentially fatal result of window failure without out being able to articulate any commiserate common good.

It must be pointed out that the replacement windows will not be visually distinguishable from the originals. As these are second and third-floor residential units, members of the public (including the HPC) will not be able to examine the windows up close. Thus, there is no way, through any of the five senses, sight, taste, touch, smell, or hearing that the windows could be distinguished from the originals. So what objective is being achieved through such draconian requirements? The HPC certainly couldn't answer this other than to say that to allow for replacement in this instance may produce a "slippery slope" in the future where other changes to other buildings may be requested. Such an argument is pure speculation and frankly stretches the bounds of credulity when one looks at the zealous and wildly overreaching manner in which the HPC functions.

But perhaps most concerning, is the fact that the SOIS were adopted in 1990 and have not been updated to take into consideration matters of climate change, energy efficiency or private property owner rights in the thirty-five (35) years since their adoption. Similarly, the City's OT Design Standards were adopted ten (10) years ago with little if any discussion regarding how they should interplay with the City's Climate goals and policies and private residential property owner rights. Since the adoption of the SOIS and the OT Design Standards, the City has significantly updated its Building Code to continue to address environmental and safety matters, but the HPC and City Historic Preservation Staff have never been given direction on how to read these updated governing City codes and policies in harmony with the SOIS, the OT Design Standards and private property owner rights. It is unfortunate that this appeal brings these matters to a head; however, it does present City Council with the opportunity to provide direction to the Historic Preservation Staff and the HPC regarding harmonizing the interpretation of City Code.

Appellant Urges City Council to Interpret its Code and Policy Documents in Harmony.

No evidence was presented at either hearing that the Craftsman Report's "repair" recommendation would address the fundamental design flaw that created the underlying safety concern posed by nine-

foot glass crashing to the sidewalk below. Inexplicably, the Craftsman Report focused on repair to the lower sash of the windows, despite the fact that it is the upper sash that failed.

Appellant's evidence clearly showed that to follow the "repair" recommendations of the 2024 Craftsman Report would result in windows that, even when fully repaired did not come close to meeting today's energy efficiency standards, were inoperable, exorbitantly expensive and would require repeated trips to the HPC,³⁰ and did not address fundamental safety concerns. And all of this, because the HPC refused to approve windows that were visually indistinguishable from the originals.

Article 14-2 Historic Preservation Code Provisions & Fundamental Private Property Rights.

Article 14-2 of the Fort Collins Municipal Code governs the defined purposes of the HPC. It states in relevant part that the purpose of Historic Preservation Regulations is to:

- (c) Stabilize and improve the aesthetic and economic vitality and values of the historic sites and structures.
 - Replacement: The Owners request to replace the windows demonstrates their attempts to protect the interior and exterior of the building (as well as the safety of pedestrians below).
 - Repair: The Craftsman Report recommended the addition of exterior storm windows to the Linden Hotel. As this is not permitted by the DT Historic Standards and greatly visually impacts the aesthetics of the building, this option was unanimously rejected by the HPC. Additionally, the exorbitant costs associated with repair fly in the face of improving the economic vitality of the building.
- (e) Promote the use of important historical, archeological, or architectural sites, structures, objects and districts for the education, stimulation and welfare of the people of the City;
 - Replacement: The second and third floor of the Linden Hotel are private residences with no public access. However, the Owners are committed to ensuring that the replacement windows are visually identical to the originals from the street.
 - Repair: Disregards the welfare of the Owners of the building and the safety of passersby.

³⁰ Some HPC Commission Members noted that request for replacements should not be done all at once, but rather window by window as the window demonstrated failure. See Transcript of August 21, 2024 Hearing.

- (g) Promote and encourage continued private ownership and utilization of such sites, structures, objects or districts now so owned and used, to the extent that the objectives listed above can be attained under such a policy; and
 - Replacement. City Council must take into consideration the fundamental property rights of the Owners, which includes their desire to have safe, operable energy efficient windows. The current HPC decision prevents homeowners from opening their windows, ensuring safety for passers by below, and meeting environmental goals they hold as important. It also makes the cost of maintaining their homes prohibitively expensive.³¹ Such an approach is the antithesis of “encouraging continued private ownership.”
 - Repair: would require ongoing excessive government involvement and intrusion into the lives of private property owners, not to mention ongoing closing of the street and sidewalks below the residences.
 - Repair: After the protracted and overreaching demands of the HPC in this matter, the prejudicial and false reports generated by the City’s experts, and the complete disregard for environmental, safety and private property owner rights, repair over the Owner’s objections will do nothing but have a chilling effect on people contemplating the purchase, use or renovation of historic sites in Fort Collins. The HPC has essentially taken ownership of the Linden Hotel through regulations but provided none of the funding or compensation to merit such a taking of property rights.
- (h) Promote economic, social, and environmental sustainability through the ongoing survey and inventory, use, maintenance, and rehabilitation of existing buildings.³²
 - Replacement windows are the only environmentally and economically sustainable option.
 - Repair: Discourages economic and environmental sustainability for all the reasons discussed above.

Old Town Design Standards.

³¹ See Applicant’s Power Point Presentation for July 17, 2024 Slides 13-15 and Applicant’s August 21, 2024 Power Point Presentation Slides 11-12.

³² Fort Collins Municipal Code Section 14-2(c), (e), (g) and (h).

Replacement of the windows meets the OT Design Standards Policy LIV 17.2 by supporting the reuse and adaptation of historically significant buildings. Supporting the residential use of the Linden Hotel will ensure it is cared for and protected for years to come. Policy LIV 17.3 encourages energy efficient upgrades that do not lessen the integrity of the historic structure. The replacement windows prevent the infiltration of air and moisture, thus, protecting the structure of the building in a manner repairs simply do not. Standard 3.9 and 3.10 require replacement of historic windows with matching design – the Applicant’s proposed replacement does exactly this.³³

As demonstrated at the hearing, energy efficiency of even fully repaired windows does not come close to meeting energy efficiency standards or protecting the integrity of the building from moisture coming in through the windows.

City’s Adopted International Building Code Standards and Safety Considerations.

The City’s applicable adopted International Building Code Standards are also met through replacement windows. These include:

- Item 1015.8 for Window Opening operability for windows 72” from exterior grade;
- Item 1609.3 Wind Loading. This standard established a required wind loading capability of 140 mph ultimate for sural performance of all exterior items;
- Item 3603.2 Sound Control. This requires the exterior wall assembly meet an STC 39 when within 1,000 feet of an active train line – which the Linden Hotel is; and
- The Dessing Pressure rating for the windows.

The International Code Council section 403.1 that provides guidance on the International Property Maintenance Standards requires that every Habitable Space has at least one operable window. The total operable area of the window in every room shall be equal to at least 45 percent of the minim glazed area. When a private property owner wishes to provide operable windows in its residential buildings to support the buildings long-term utilization, this is a factor that the City should weigh heavily as a recognition of private property owner rights. The same can be said of factoring in the City and private property owners’ sustainability goals.

There was no evidence presented at the hearings that the “repaired” windows would meet any of these requirements.

³³ See Power Point Presentation for July 17, 2024 Slides 16-18.

The Private Property Owners of the Linden Hotel also have a right to ensure that their windows do not risk continuing to crash to the sidewalk below and leave that in the very real position of being responsible for grievous bodily harm and open to incredible civil liability risks.

City's Adopted Our Climate Future Plan and Environmental Sustainability Goals.

City's Adopted "Our Climate Future" Plan and the City's published Our Climate Future Action Guide identify the urgent need to reduce carbon emissions and improve energy efficiency.

- The City has documented that 2/3 of Carbon Emissions come from buildings providing heating, cooling and lighting. The Replacement windows were demonstrated by the experts to vastly outperform the repaired windows.
- New replacement windows are energy efficient and significantly reduce carbon emission.
 - Without the addition of storm windows to the outside of 201 Linden (which is prohibited by the OT Design Standards 3.11), the repaired windows do not come close to meeting energy efficiency standards or reducing carbon emission. The replacement windows, however, certainly do.

Turning to larger scale sustainability goals, the City of Fort Collins Our Climate Future adopted policy documents recognize that "[a]cting on climate change is urgent and we recognize it will take our community actively working together to address the challenge. . . Our Climate Future expresses our unwavering commitment to mitigating climate change with a systematic approach that is centered in people and community priorities."³⁴ One of the clearly stated objectives of the Climate Future policy document is to have "Efficient, Emissions Free Buildings."³⁵ The City espouses similar goals in the creation of a Fort Collins "Our Climate Future Action Guide" of reducing home and business carbon emissions and improving energy efficiency.³⁶ The buildings in Fort Collins comprise over two-thirds of its carbon emissions to provide for heating, cooling, lighting etc.³⁷ Demanding adherence to the SOIS Rehabilitation over Replacement standards defeats these goals. The Owners support the City's commitment to these climate action goals and seek to further them through replacing windows at 201 Linden with those that have far superior energy efficiency but are visually virtually indistinguishable from the originals.

³⁴ City of Fort Collins, Our Climate Future Plan p. 4.

³⁵ *Id.* at p. 25, 42-43.

³⁶ City of Fort Collins, Our Climate Action Guide p. 7

³⁷ Our Climate Future Plan p. 42.

The replacement windows serve to protect, enhance and perpetuate the use of the Linden Hotel as a residential building while aligning with City environmental goals. The investment in quality replacement windows also significantly decreases the ongoing maintenance needs required by the current windows, which, frankly, are unsustainable.

The evidence presented at hearing by both the Applicant's expert and admitted to by the City's expert is that repair of the windows without the addition of storm windows would not come close to meeting the energy efficiency of the replacement windows or the current energy efficiency standards.

6. Conclusion.

At this time, for reasons of safety, operability, energy efficiency, fundamental private property rights, cost, and alignment with all applicable City Code and policies implemented therein, the Applicant requests that the 142-year-old windows of the Linden Hotel be replaced. The proposed window replacements meet the purpose articulated in the applicable Code and Policy documents of the City.

Because it has been proven in extensive detail that the Applicant cannot receive a fair hearing before the HPC and that the HPC misinterpreted the applicable Code provisions, City Council is asked to overturn the HPC's denial of the Applicant's request for a Certificate of Appropriateness to replace all windows on the Linden Hotel with the virtually identical clad replacement windows.

Sincerely,



Claire N. Havelda

cc: David Diehl, Jim Bertolini, Maren Bzdeck



NFIRS Full Report

Basic-Details

Incident Number: PFA232940 039 **NFIRS Number:** 2328711 **Exposure:** 0 **Incident Date:** 10/21/2023
Call Dispatched as: SRVICE **Incident Type:** 460-Accident, potential accident, other
Primary Action Taken: 86-Investigate
Aid Given or Received: None
Fire Service Deaths: 0 **Fire Service Injuries:** 0
Civilian Deaths: 0 **Civilian Injuries:** 0

Basic-Location and Property Info

Incident Street Number: 201 **Incident Street Name:** Linden **Incident Street Type:** ST-Street
Incident City: FORT COLLINS **Incident Postal Code:** 80524
Incident Location Type: 1-Street address **Property Use:** 400-Residential, other
Mixed Use Property: 58-Business and residential use **Incident GPS Location:** 40.588386,-105.075422

Person/Owner Involved

Business Name	Phone Number	Person or Entity Involved Type	Person Involved Title	Person Involved First Name	Person Involved Last Name
Natures Own	(970) 484-9701	5101012-Employee		Brady	Geraghty
Linden Street Treehouse LLC	(970) 420-8897	5101017-Property Manager	MR-Mr.	David	Diehl
Lochland Management Company	(970) 215-1794	5101017-Property Manager	MR-Mr.	Mark	Wimmer

Basic-Times and Apparatus

PSAP Date Time: 10/21/2023 14:16:01 **Alarm Date Time:** 10/21/2023 14:16:51 **Arrival Date Time:** 10/21/2023 14:21:26 **Last Unit Cleared Date Time:** 10/21/2023 15:26:42
Shifts or Platoon: B 4896
Suppression Apparatus: 2 **Suppression Personnel:** 7
EMS Apparatus: 0 **EMS Personnel:** 0
Other Apparatus: 0 **Other Personnel:** 0

Apparatus

Apparatus or Resource ID	Apparatus or Resource Dispatch Date Time	Apparatus or Resource Enroute Date Time	Apparatus or Resource Arrival Date Time	Apparatus or Resource Clear Date Time	Apparatus or Resource Response Mode to Scene

Any fields that are blank in this report did not pertain to this incident

Apparatus or Resource ID	Apparatus or Resource Dispatch Date Time	Apparatus or Resource Enroute Date Time	Apparatus or Resource Arrival Date Time	Apparatus or Resource Clear Date Time	Apparatus or Resource Response Mode to Scene
E01	14:16:51	14:18:14	14:21:26	15:26:42	Non-Emergent

Apparatus Personnel

Personnel Name/ID

Meza, Carlos

Bourdon, Robert

Tete, Caleb

TW01	14:25:16	14:26:31	14:33:06	15:23:11	Non-Emergent
------	----------	----------	----------	----------	--------------

Apparatus Personnel

Personnel Name/ID

Moinester, Justin

Hubbard, Gregory

Newby, Dawson

Russell, Steven

Basic-Resources Utilized

Was this address accessible by type 1 and support apparatus?: Yes-Both

Was an on-call bureau called for on this incident: No

Did you consult with the hazmat team via phone, radio, etc.: No

Basic-Internal Data Collection

Did this call involve known or suspected weapons: No

Was this call related to the homeless population: No

Was a monitor used: No

Fire-Details

Exposure Report: N-No

Hazmat Ops Level Report

Did you consult with the hazmat team via phone, radio, etc.: No

Any fields that are blank in this report did not pertain to this incident

Narratives

Primary Narrative: Dispatched to a report of a service call regarding windows that were falling from the 2nd and 3rd floors at the stated address. Upon arrival, command was established and contact was made with the RP.

RP reported he needed assistance as the windows were beginning to fail and that one pane of glass was about to fall. He stated one window pane had fallen along the east side from the 2nd floor earlier in the day. He also pointed out along the Southside of the building on the 3rd floor a window had already fallen out previously and was missing and another window that had a pane of glass that was not secure and could fall at any moment. The sidewalk was immediately shut down in front of the building. Due to the height of the un-secure window, TWR1 was requested to gain access to remove the pane of glass from the exterior.

TWR1 then arrived on scene and accessed the pane of glass that was un-secure via the aerial. They also checked multiple windows to see their current status and multiple windows showed signs of the exterior frame rotting. E1 crew made access interior and checked the windows from the inside on floor three. No other windows had glass that was insecure though windows showed signs of frame rot.

These findings were passed on to the RP. The RP advised they had been working to get the windows replaced but were having issues dealing with the city as they were considered "historic" windows.

E1 officer then requested a building inspector to respond out through dispatch. Dispatch then advised the building inspector would not be responding out as all they would do was advise the owners to board up and secure the windows and then hire a contractor to fix them. E1 officer advised how the windows were historic windows and dispatch advised the building inspector was not concerned and they just need to hire a contractor.

This information was passed on to the property manager and the manager of the building LLC. They advised they would work on getting the windows secured and replaced. The sidewalk on both the Walnut and Linden sides of the road were taped off in an attempt to secure the area from any other hazards for foot traffic. E1 officer contact info was left for any further communication the RP's needed in replacing the windows. The RP's were advised the PFA crews were not able to check all windows, but that the issue presented a safety hazard and needed to get addressed immediately. If some had already failed, then it was likely that more would soon fail. RP's understood and advised no other assistance was needed. E1 officer also advised the RP's that a Bureau reference would get sent in to see if the Bureau of the PFA could assist in anyway to help them deal with the city in getting these windows replaced as it now presented a safety hazard for the public and the historic criteria was now irrelevant.

With no other needs from the RP's on scene, E1 and TWR1 crews cleared and became available.

Narratives

Additional Narratives

PFA23-20507 | 10/21/2023 14:16:47FCC270 [1] panes of glass from 2nd and 3rd floor windows falling out - staff requesting fire dept assist for public safety | 10/21/2023 14:17:11FCC270 [2] on site employee/Wimmer,Mark ph/9702151794 | 10/21/2023 14:17:59FCC270 [3] they are old historic windows that started falling out today unexpectedly - a couple have already fallen and staff is trying to keep ppl off the sidewalk | 10/21/2023 14:21:26E01 [4] E01 OS at 10/21/2023 2:21:26 PM, Latitude: 40.5879628, Longitude: -105.0752043 | 10/21/2023 14:25:17FCC271 [5] Backed up E01 with TW01 | 10/21/2023 14:31:04FCC271 [6] E01 MAY NEED CITY BLDG INSPECTOR - 2 WINDOWS HAVE FALLED OUT, DOUBLE PANED WINDOWS | 10/21/2023 14:31:17FCC271 [7] E01 WINDOWS ARE HISTORIC | 10/21/2023 14:33:06TW01 [8] TW01 OS at 10/21/2023 2:33:06 PM, Latitude: 40.5882908, Longitude: -105.0758298 | 10/21/2023 14:40:37FCC271 [9] SPOKE WITH BLDG INSPECTOR DAMIAN 970-218-1073 AND HE SAID HE WOULD ONLY GO OUT AND TELL THEM TO BOARD UP THEIR WINDOWS - THEY NEED TO FIND A CONTRACTOR

Apparatus

There are no apparatus narratives

CRR/Outreach

CRR Referral-Please Other
select the

Any fields that are blank in this report did not pertain to this incident

appropriate choices
below:

Provide information explaining your referral above: RP's on scene may need help dealing with the city getting these windows replaced. RP's report they have been trying to get the windows replaced prior to this occurrence but were running into issues dealing with the City as the windows were considered "Historic". With the windows now presenting a safety hazard for all foot traffic below, repairs are now needed and a push from Community Risk Reduction to help make this happen may be needed. Perhaps a follow up with the involved parties may be helpful to see if any roadblocks are still being encountered in their process of addressing the issue.

Attachments

Addendums

Authorization

Member Making Report: 1239

Member Making Report - Signature: Meza, Carlos

Member Making Report - Position or Rank: Lieutenant

Officer in Charge: 1239

Officer in Charge - Signature: Meza, Carlos

Officer in Charge - Position or Rank: Lieutenant

Any fields that are blank in this report did not pertain to this incident