

Historic Preservation in the Original Highlands, Clash or Convergence?

By

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Introduction

As President of the OHNA, I would like to share my thoughts on historic preservation in the Original Highlands. In addition, *the OHNA will be holding its first informational meeting on Historic Preservation District Designation at 6:00 pm on Wednesday, July 18th, 2007 at the Traditional Middle School, 1418 Morton Avenue.* I strongly encourage all stakeholders to attend in order to gain a true picture of the Designation.

Let's begin with a review of recent activity. Earlier this year, the OHNA Board voted to begin developing an application to submit to the Historic Landmarks and Preservation Districts Commission. If submitted, this application will trigger a series of public hearings to assess whether or not the Original Highlands should become a Historic Preservation District. Submitting the application does not mean we are ceding control of the Preservation District review process. It basically represents the start of the process.

The idea to investigate this Designation comes from analysis and due process and is incorporated in our Neighborhood Plan, the result of year-long study by a task force made up of residents and business owners. The neighborhood planning process was a public one. Triggering the Preservation District review process is democracy at the grass-roots level (please note that any individual citizen can develop an application and trigger the review process).

I am dedicated to an objective review and analysis of the pros and cons associated with the Designation. In addition, I will not isolate and distribute sections from local ordinances in order to scare residents. As playwright and actor Sam Shepard once said:

You have to take care of democracy. As soon as you stop being responsible to it and allow it to turn into *scare tactics*, it's no longer democracy, is it?

Let's first examine the issues by exploring the key arguments made by anti-preservationists. My apologies in advance for the length of this article!

A Review of Key Arguments Made by Anti-Preservationists

1. Historic Preservation District Designation is simply “un-American” and a violation of property rights

This is, of course, the foundational argument for many libertarian-leaning, property rights advocates. In my opinion, Historic Preservation District Designation is actually an innovative way to keep “Big Brother” out of the Original Highlands. “Big Brother” being government officials and developers who may not have the best interest of the Original Highlands in mind when contemplating development and/or renovation. For help with this argument, let’s reflect on the *Kelo Ruling*. This recent Supreme Court case goes way beyond the scope of this article but it’s applicable in this discussion. On June 23rd of 2005 the U.S. Supreme Court ruled 5-4 against Ms. Susette Kelo and in favor of the city of New London, Conn. According to *Preservation Online*:

In 1997, Connecticut nurse Susette Kelo renovated her 19th-century house in a waterfront neighborhood in New London, Conn. Three years later, the city condemned it, along with her neighbors’ houses, to make way for new housing, offices, and a marina that would generate more money for the city¹.

Basically, The Supreme Court said that local governments could seize Kelo’s property along with others and clear the site for economic reasons. The Fifth Amendment to the Constitution stipulates that governments can seize by eminent domain only for "public use," which the Court decided includes private development.

Okay, so why am I bringing this case up? Surely Louisville Metro and our local developers would insure that “development” in the Original Highlands is done within the historical context of our neighborhood, right? Don’t count on it! *Our neighborhood is vulnerable to overzealous development*. Just ask the folks down in Irish Hill about the River Metals property. Or perhaps a little closer to home – would you like to have a say in how the Mercy Academy property is developed? Perhaps there are a few homes on your street in disrepair with no clear path for restoration or renovation? There are

¹ Foster, Margaret, http://www.nationaltrust.org/Magazine/archives/arc_news_2005/062705.htm (June, 2005)

numerous examples I could mention here but let's press on. Here's the bottom line from Leonard Zax, a partner at the Washington, D.C.-based firm Latham & Watkins LLP:

The emergence of *historic-preservation laws* throughout the country now provide protection for those historic buildings and neighborhoods in the face of eminent domain for any reason, including economic development.²

Dana Berliner, Senior Attorney for the Washington, D.C.-based Institute for Justice goes on:

In towns *without historic-preservation ordinances* some neighborhoods are still at risk. Old buildings are going to bear the brunt of condemnations for private development. A lot of the neighborhoods targeted to be condemned for private development are older neighborhoods.³

The other interesting twist here is that property rights advocates are often the first in line to support historic preservation even though it's not easily justified by their political leanings. According to Eric Miller:

One theory offered an *economic justification*. While it may seem like a violation of property rights on the surface, a restored, historic house in a certified historic district is worth more than a re-muddled one that doesn't look quite right. Further, *the value of one property affects the value of those beside it*. If I purchase a house in a historic district, "modernizing" or otherwise changing it to be out of context with the district could have a negative economic impact on the other properties on the street the same way a blighted house would. As my friend said, your plastic awning lowers the value of my house.

While the right of private property is important, in any society an action must be weighed against the effect it will have on others. *The*

² Ibid.

³ Ibid.

*aesthetic restrictions can be logically compared to other restrictions we would never deny for the sake of property rights, such as that preventing you from keeping a cow on your lawn or playing loud music on your own property in the wee hours of the morning.*⁴

Historic Preservation District Designation for the Original Highlands actually gives us more control over our individual destinies! Those that rail against zoning and historic preservation status simply have no alternative to it. According to the City Comforts blog, “it is obvious to the vast majority of people that if we are to live in relatively high density then we need some set of rules...”⁵ it is a way of “enhancing social efficiency by creating a common set of rules about what one can do with property.”⁶

2. Historic Preservation District Design Guidelines are rigid and restrictive

If the Original Highlands becomes a Historic Preservation District, our community will be required to utilize “Design Guidelines” governing the alteration of the exterior portion of your home. According to the Historic Landmarks and Preservation Districts Commission Website:

Design Guidelines describe the criteria by which the Architectural Review Committees (ARCs) and staff evaluate proposed exterior alterations. They are intended to serve as a reference and a resource for property owners, clarifying in advance what is expected.⁷

More on ARCs later. There is no doubt that Design Guidelines in many historic neighborhoods are too rigid and restrictive. Here’s what opponents of the Designation won’t tell you – *we get to develop our own Design Guidelines customized for the Original Highlands!* Let me give you an example, I had a conversation with Mike O’Leary the other day. Mike is the former President of the Clifton Community Council.

⁴ Miller, Eric, *Sprawling Capitalism*, <http://www.newcolonist.com/sprawlap.html>

⁵ Fletcher, David, *Where are the libertarians/conservatives on land use?*, http://citycomfortsblog.typepad.com/cities/2003/05/where_are_the_1.html

⁶ Ibid.

⁷ <http://www.louisvilleky.gov/PlanningDesign/designguidelines.htm>

He led the Clifton Neighborhood through the Designation process. In Clifton, many folks are fond of chain-link fences. Guess what made it into the Design Guidelines for Clifton? Yep, that's right, chain-link fences are "good to go" in Clifton.

Design Guidelines aren't handed down by some Louisville Metro bureaucrat. They're developed by a team of residents and representatives from the Landmarks Commission. The very folks that are opposed to historic preservation can serve on this team! One final clarification – if we become a Historic Preservation District, we will utilize the generic Design Guidelines found on the Historic Landmarks and Preservation Districts Commission Website until we develop our own "customized" Design Guidelines. Check out the Website for additional information:

<http://www.louisvilleky.gov/PlanningDesign/designguidelines.htm>

3. Architectural Review Committees (ARCs) are made up of city bureaucrats and preservationist

If the Original Highlands were to become a Historic Preservation District, we would need to appoint an ARC. According to the Louisville Landmarks Commission Guidelines, Introduction, "each ARC includes the Director of the Department of Inspections, Permits, and Licensing, two Landmarks Commission members, property owners or tenants of the district, a real estate professional and an architect."⁸ *The individuals that make up ARCs associated with the various Historic Districts in Louisville are all volunteers who are passionate about their neighborhood.* Again, those individuals so adamantly opposed to the Designation could serve on this committee and play an active role. In some cases, ARCs review proposed exterior alteration, demolition, or new construction in the Historic Preservation District. They use the aforementioned Design Guidelines to help drive the review process. Now it is certainly true that a review process which involves Design Guidelines and ARCs is prone to bureaucratic snafus. Again we must look to the Clifton and Butchertown neighborhoods for a more efficient review process if we are to move forward.

⁸ Louisville Landmarks Commission Design Guidelines, Introduction, Page 5

4. Historic Preservation District Status reduces creativity

The conventional wisdom cited by anti-preservationists is that ARCs work to suppress creative land use. Nothing could be further from the truth. Let's begin by making an analogy. Let's say you are wealthy enough to purchase this work of art:



Exhibit 1 – Starry Night by Vincent van Gogh

After some reflection, you decide that Vincent got it wrong and that the painting should be modified to reflect a more accurate depiction of the village to the right in the painting. You get your paint set out and begin your work. What's wrong with this scenario? After all, it's your painting and you're free to do whatever you want with it, right? Well, not really. *Starry Night* is essentially part of "humanity's cultural heritage"⁹ Modifying the painting would essentially hurt your fellow man.

Now I'm not saying that my 90-year old craftsman-style house in the Original Highlands is comparable to the mastery of *Starry Night* but I happen to be pretty proud of the place. The key here is to use van Gogh's masterpiece to stimulate your own creativity. I bet countless artists have been inspired by *Starry Night* but they certainly wouldn't think to use the original masterpiece for their creative expression. They might write a song or create their own painting. In fact, one could argue that the current historic districts (Cherokee Triangle, Old Louisville, Butchertown, Clifton, etc.) are home to some of the most creative and artistic folks in Louisville.

⁹ *Open Arguments: Living History*,

http://blogs.fortwayne.com/opening_arguments/2007/04/with_important_do.html (April, 2007)

5. Historic preservation is punitive

What about those civil penalties mentioned in the flyer I received the other day. Doesn't this present an economic hardship on folks? After all, there are folks in the Original Highlands that just can't afford to fix up their place in a historically accurate manner.

I don't make a habit of reading city ordinances but the reality is that most have provisions for violation penalties. Check out Louisville Metro's Property Maintenance Code at this site if you don't believe me:

<http://www.louisvilleky.gov/ip/PropertyMaintenance/PM-PMC.htm#998>

I could scare you by rattling off the fines associated with violating the property maintenance code but that wouldn't be productive. You get the point – *fines are usually a last resort and are simply a way to give a local ordinance some teeth*. According to Louisville Metro Planning & Design, in the past four years, only one (1) fine has been carried through to enforcement. The goal is to not fine people but to encourage participation in the process and seek resolution.

I won't lie to you – ARCs have created economic hardships for folks in the past. This is especially true in some of our neighborhoods that embraced historic preservation 30-plus years ago. More recent adopters of the Designation, namely Butchertown and Clifton, present a different scenario however. *ARCs in these neighborhoods have a history of making exceptions for economic hardship*. They understand the economic context of the neighborhood and work hard to develop solutions that are economically feasible for applicants.

In fact, Butchertown and Clifton's ARCs often serve as a place where residents can go for a "second opinion". Wouldn't it be great to get free advice from an ARC made up of residents, architects, and other experts before making a major change to the exterior of your home? *ARCs in these neighborhoods provide solutions that are more cost-effective and energy efficient than what is being peddled by your average replacement windows/siding salesperson*.

6. Landmarks is a deed restriction

A deed restriction is a clause or clauses in a deed limiting the future uses of the property. *Historic Preservation District Designation is not a deed restriction.* There is often confusion on this point because some communities around the country have utilized deed restrictions as a preservation tool. According to *Preservation Seattle*:

The use of deed restrictions or covenants on a property that guarantee the preservation of an historic property for generations to come, is another powerful means for protecting a historic property. By voluntarily placing restrictions on the deed of a property, an owner can ensure the preservation of particular important features.¹⁰

The Designation works in a similar manner to zoning. The Designation, as with zoning, may restrict the owner's ability to alter or use the property in a way that might conflict with the historical character of the property. The Designation certainly does not deprive the property of all beneficial economic uses. Most of the Original Highlands is zoned R6, which allows multi-family households. This zoning category obviously limits what I can use my property for. Historic Preservation District Designation is a logical extension of zoning and an added layer of protection against demolition.

It would be fair to say that the Designation and deed restrictions are two different tools that are used to protect real estate investments. According to the City of Ft. Wayne's Website:

Property owners in historic districts are assured that their investment in their property will be not be harmed by inappropriate alterations or construction on adjacent properties. The process and its benefits are similar to *deed restrictions* that are placed on lots in modern housing developments. In both cases, the goal is to guide development in order to protect individual investment.¹¹

¹⁰ McKnight, Reuben, *Conservation Easements*,
<http://www.historicseattle.org/preservationseattle/publicpolicy/defaultnovember.htm>. (November, 2002)

¹¹ *Benefits & Procedures, Land Use Management & Zoning*,

7. Historic preservation requires inefficient and expensive solutions

Anti-preservationists claim that their replacement options are limited when it comes to their homes if a neighborhood becomes a Historic Preservation District. Windows, in particular, are often a major sticking point for individuals living in historic districts. On the surface, repair and renovation of old windows seems expensive when compared to replacement solutions like vinyl windows. Many studies and experts in the field of renovation and restoration contradict this conclusion. Here's an excerpt from an interview with Bob Yapp, a Community Preservation Specialist for the Historic Landmarks Foundation of Indiana:

The big lie is that preservation is expensive. Preservation doesn't cost; it pays. Retaining original materials virtually always costs less than replacing things, and it's almost always more energy efficient. People can hire someone—or do it themselves—to restore original windows, make them more energy efficient than a replacement window, almost as easily cleaned as a replacement window, for less money than a replacement window. Most consumers are blown away when I walk them through this. They slap their foreheads and say, this makes perfect sense. They say, why have we been lied to? They're mad at the replacement product industry because they've been duped.¹²

I could site numerous studies focused on the economics of preservation but you get the idea. The other point to remember here is that the community gets to develop its own Design Guidelines. There is no reason why we can't consider a more flexible Guideline when it comes to the replacement of windows and siding, for that matter. *Finally, for those residents concerned about the environment, renovation and historic preservation is the obvious choice.* Wood is a renewable resource, unlike vinyl, which is a petroleum product.

http://www.cityoffortwayne.org/index.php?option=com_content&task=view&id=107&Itemid=244

¹² *Past, Present & Future, Friends of Historic Preservation*, <http://www.ic-fhp.org/newsletterSp2005.pdf>

The Benefits of Historic Preservation District Designation

I'd like to close this article by reviewing the benefits of moving forward with the Designation in the Original Highlands:

1. Historic Preservation District Designation generates more secure property values

According to Michael Sacks, Professor of Sociology at Trinity College, "historic districts may serve a function similar to that of a designer label: it guarantees the quality of the merchandise, reducing the uncertainty facing the buyer regarding the future value of the purchase."¹³

Now don't get me wrong here, I've never been a fan of the "silver bullet". For me to say that the Designation will automatically trigger higher property values would be a bit naive. That said, *the economic payoff of living in a publicly recognized historical district seems quite clear and there is plenty of research to back this premise up!* This seems especially obvious when you combine the Designation with all the other unique assets of the Original Highlands. What I'm talking about is sustaining the value of our homes. Historic preservation gives us a tool to bring stability to the value of our properties. Quite simply, *the Designation protects your investment.*

2. Historic preservation has important political consequences

All politics is local, right? Again, according to Sacks, "the label brings greater public attention; it signals that the community recognizes the area's significance."¹⁴ In an empirical study of the impact of historical preservation on property values, Peter Schaeffer and Cecily Millerick argue that the attention associated with the Designation "makes it politically more difficult for governments to neglect the areas in the provision of basic services and the maintenance of infrastructure."¹⁵

¹³ Sacks, Michael, *Models for Neighborhood Revitalization in Historic Districts*, Trinity Center for Neighborhoods, (February, 1997)

¹⁴ Ibid.

¹⁵ Schaeffer, Peter V. and Cecily Ahern Millerick. *The Impact of Historic District Designation on Property Values: An Empirical Study*, Economic Development Quarterly 5 (4): 301-12. (1991)

3. Historic Preservation District Designation provides free design and technical assistance

The aforementioned ARCs can provide a wealth of design and technical assistance to homeowners living in a Historic Preservation District. This gives each homeowner a distinct advantage when it comes to maximizing their investment.

4. Historic Preservation District Designation will assure that new construction in the Original Highlands will enhance the area

Anti-preservationists often claim that the Designation turns a neighborhood into a museum. The reality is that Designation manages change “without destroying the important historic fabric of the community.”¹⁶ According to the Spruce Hill Historic District Website:

Designation only recognizes that there is something of value already here, and that if changes are desired, they should be thoughtful ones. Historic preservation doesn't seek to freeze a neighborhood in time, nor does it ask people to live in museums.¹⁷

5. Historic preservation encourages investment

Historic Preservation District Designation encourages the purchase and rehabilitation of properties because the investment is protected from trends that might otherwise harm the character and vitality of a neighborhood.

6. Historic Preservation District Designation helps retain history and authenticity

The Original Highlands has a rich history and the Designation will help retain that history for generations to come. The vast majority of houses in the Original Highlands were constructed between 1860 and 1895.

¹⁶ FAQ, Philadelphia Historical Commission, <http://sprucehill.uchs.net/faq.htm>

¹⁷ Ibid.

Conclusion

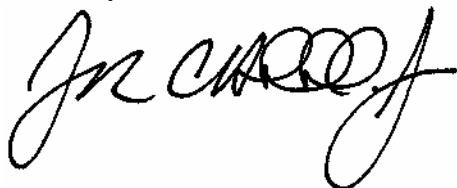
In conclusion, let me concisely state my position on Historic Preservation District Designation for the record:

Historic Preservation District Designation is the right thing for the Original Highlands. There are positives and negatives associated with the Designation but, on a whole, it would be a huge boost to our community. The Designation for the Original Highlands represents the convergence of property rights and historic preservation and we would be wise to move forward.

Finally, we can't wait until some disaster occurs to seek the Designation. Most of the time, the demolition of an important landmark precipitates a neighborhood pursuing the Designation. I'm suggesting that we be proactive about it. Only Historic Preservation District Designation can provide a process for public input into the demolition of buildings in our neighborhood.

The Original Highlands can either embrace the *convergence* of history and our longstanding tradition of property rights or we can *clash* using scare tactics and misinformation. Regardless, I am dedicated to a fair and objective examination of the Designation in a public forum. If you have any questions on this document or the Designation process, feel free to call me at 216-2602 or email me at jriddick@insightbb.com.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Riddick, Jr.", written in a cursive style.

John C. Riddick, Jr.