

# CITY OF TALLAHASSEE

## ***Long Range Target Issue Committee AGENDA ITEM***

<b>ACTION REQUESTED ON:</b>	May 29, 2012
<b>SUBJECT/TITLE:</b>	Historic Preservation District Designation Process Update
<b>TARGET ISSUE:</b>	Long Range Community Based Planning

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### **STATEMENT OF ISSUE**

In 2010, a proposed procedure and timeline to address issues pertaining to the historic preservation district process was presented to the Long Range Target Issue Committee (LRTI). The LRTI directed staff to move forward and requested that guidelines be established for selecting representatives to serve on a citizen's working group so that all viewpoints were represented. Additionally, the LRTI requested that the role of the Architectural Review Board be clearly outlined in the proposed ordinance, that notification procedures be addressed, and that a minimum percentage of residents approving an historic preservation district be established before an application is processed. This agenda item is to provide an update and present a draft ordinance, written by staff with assistance from the citizen's working group (see Attachment 1).

### **RECOMMENDED ACTION**

Option 1: Approve Attachment 1, and direct staff to take the ordinance to the Planning Commission and City Commission for public hearings.

### **FISCAL IMPACT**

There is no fiscal impact as a result of the proposed ordinance.

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Planning, Land Management and Community Enhancement

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**SUPPLEMENTAL MATERIAL/ISSUE ANALYSIS**

**HISTORY**

**August, 2008:** Property owners in Lafayette Park filed an application with the Architectural Review Board (ARB) to have a portion of the Lafayette Park neighborhood designated a historic preservation district on the local register of historic places. Staff prepared a request for the Planning Commission to initiate a rezoning to add Historic Preservation Overlay zoning to the properties in the proposed district. The original application was found to be incomplete by the Planning Commission attorney and the City Attorney's Office and the Planning Commission voted unanimously to continue the item until the next meeting. On March 11, 2009, the City Commission voted to put the pending application into abeyance, with instructions to staff to streamline and clarify the historic preservation district process.

**November 17, 2010:** A proposed procedure and timeline for developing a revised process for the designation of historic preservation districts was presented to the LRTI. The LRTI directed staff to move forward on the item, and requested that staff establish guidelines for selecting representatives to serve on a citizen's working group so that all known viewpoints were represented. The LRTI also requested that the role of the ARB be clearly outlined in the draft ordinance, that notification procedures be addressed, and that a minimum percentage of residents who must approve of an historic district be established before an application is processed.

**January 19, 2011:** The Planning Department held an Open House for the purpose of receiving citizen input on the process of designating historic preservation districts. The Planning Department, the City Attorney's Office, the Growth Management Department, and the Tallahassee Trust for Historic Preservation (TTHP) staff were available to answer questions from citizens. Eleven citizens spoke at the event. An exact number of attendees was not recorded, but their accumulated concerns have been categorized and placed in a table (Attachment 2). Citizens were made aware of the need for a citizen's working group and were informed that applications were available on the City website. Written citizen comments that were received are also included in Attachment 2.

**February, 2011:** The Planning Department coordinated the creation of a citizen's working group to assist with revisions to the historic district designation process in the Land Development Code. A detailed description of the group is on pages 3 and 4, below, and in Attachment 3.

**March 2, 2011:** The Planning Department held a Round Table meeting to provide information regarding the historic preservation district process and to receive citizen comments. The Planning Department, the City Attorney's Office, the Growth Management Department, the Economic and Community Development Department, and the TTHP staff were available to answer questions from citizens. Approximately 20 citizens attended the Round Table and no written comments were submitted to staff.

**April 6, April 28, May 26, June 23, and December 8, 2011:** The citizen's working group met to discuss and make decisions on issues related to proposed revisions to the current historic district designation process in the Land Development Code. The names of the citizens on the working group and the entities/interests each represented are listed on Attachment 3.

**January 26, 2012:** The Planning Department held an Open House to present the draft ordinance to the public. The Planning Department, the City Attorney's Office, the Growth Management Department, the Economic and Community Development Department, and TTHP staff were available to answer questions from citizens. Approximately 13 citizens attended the Open House and one written comment is provided as Attachment 4.

**February 1, 2012:** The ARB reviewed the proposed ordinance and voted to recommend support of the proposed ordinance (see Attachment 5).

**June 1, 2012:** Submit the proposed ordinance to the State of Florida Historic Preservation Officer (SHPO) for their review and comments. The ordinance must be approved by the SHPO in order to maintain the City's status as a Florida Certified Local Government for historic preservation.

**June 13, 2012:** The Planning Commission will hold a workshop to discuss the proposed ordinance and provide comments to staff.

**July 3, 2012:** The Tallahassee-Leon County Planning Commission will conduct a public hearing and review the proposed ordinance to determine consistency with the Comprehensive Plan.

**August 22, 2012:** The proposed ordinance will be introduced by the City Commission.

**October 24, 2012:** The City Commission will hold the first and only public hearing on the proposed ordinance.

**FACTS & ISSUES**

**BACKGROUND: LAFAYETTE PARK APPLICATION**

As mentioned above, property owners from the Lafayette Park Neighborhood submitted an application to the ARB in August, 2008 for a portion of the neighborhood to be listed as an historic district on the local register of historic places. The ARB recommended that the requested portion of the neighborhood be listed as an historic district on the local register and that a rezoning be approved to add Historic Preservation Overlay (HPO) zoning to the proposed district.

Planning staff prepared an agenda item for the Planning Commission to initiate the rezoning request. Weeks before the agenda item appeared before the Planning Commission, a number of residents had become actively involved either supporting or opposing the listing and the HPO overlay, and also complaining about the historic preservation district process. Additionally, the Planning Commission attorney and the City Attorney's Office made the determination that the original application was incomplete.

Staff presented the item at the Planning Commission public hearing with a recommendation to hold the public hearing, take comments and provide staff direction. Many issues had arisen as the application made its way through the process, on which staff requested Planning Commission direction. The Planning Commission continued the item until their next meeting. Before that

next meeting was held, due to the complexity of the issues and the lack of clarity in the City's historic district designation process, the City Commission voted to put the pending application into abeyance, with direction to staff to create a more clear and streamlined process.

**CITIZEN'S WORKING GROUP MEETINGS AND THEIR DECISIONS**

Pursuant to City Commission direction, staff assembled a citizen's working group composed of 10 members who represented a range of viewpoints on the issues (Attachment 3). The members represented the following affiliations:

- Lafayette Park Neighborhood (2 members)
- Myers Park Neighborhood
- Council of Neighborhood Associations (CONA)
- Tallahassee Board of Realtors
- Tallahassee Builders Association
- Tallahassee Trust for Historic Preservation
- Florida Heritage Foundation
- Architectural Review Board
- Citizen without affiliation to Historic Preservation group

The Planning Department staffed five meetings of this working group, along with staff from the Growth Management Department, Economic and Community Development Department, City Attorney's Office, and TTHP. Staff prepared agendas for each meeting addressing the following topics of discussion:

- Florida Certified Local Government Guidelines
- Criteria for designation of historic district
- Application process
- Review process
- Follow-up Issues

**FLORIDA CERTIFIED LOCAL GOVERNMENT GUIDELINES**

Staff informed the working group that the City of Tallahassee is required to meet specific qualifications for certification as a Florida Certified Local Government (FCLG). Currently, the City is a FCLG, which is necessary for federal and state grant funds to be utilized for local historic preservation programs. The City's Historic Preservation Officer stated that these funds were used to create the Myers Park Design Manual. Staff also informed the working group of the availability of the City's Historic Preservation Grant program that can be utilized to make improvements to historic property. Lastly, staff informed the working group that one of the primary requirements to remain a FCLG is that the State Historic Preservation Officer (SHPO) must review and approve the revised ordinance 30 days prior to the City Commission review. Staff has scheduled the revised ordinance to be reviewed by the SHPO during the month of June.

CRITERIA FOR DESIGNATION OF HISTORIC DISTRICT

The City's Historic Preservation Officer informed the working group that the National Register criteria is currently used to evaluate properties and districts proposed for local historic preservation designation. The working group discussed the potential need for an operational/procedural manual to assist in objectively describing the process for evaluating properties and districts being proposed for designation, and to better define the terminology. Staff recommended that the manual be created and the working group agreed by consensus. A draft version of the manual can be found as Attachment 6.

APPLICATION PROCESS

Staff informed the working group that currently a citizen, whether they are a property owner or not, can only initiate a rezoning by requesting the Planning Commission or City Commission to do so. The working group discussed this issue and the need to better define this process in the new ordinance. They requested staff to prepare a draft of the application process in the form of a flow chart that compares the process for rezonings, the current process for historic preservation district rezonings, and a proposed revised historic preservation district rezoning process. The draft flow charts that have been approved by the working group can be found as Attachment 7.

During the process of finalizing the flow charts, the working group made decisions, some by consensus, others by vote. The decisions made by vote, and the minority opinions, are as follows:

1. The working group decided that a formal vote of property owners shall be required in order to initiate an application. The group discussed how a vote should be counted. The two options discussed were as follows:
  - Each property owner counts as one vote.
  - Each tax identification number counts as one vote.

The working group voted 5-3 that each tax identification number should count as one vote.

**Minority Position:** The minority voters' primary concern was that property owners with more than one property were allowed to have more than one vote. An "absentee landlord" for example, who owns 5 properties, would have more say than a resident who owns one property. The resident's vote should have the same weight as the absentee landlords' in the opinion of the dissenting voters.

2. The working group decided that a certain percentage of yes votes were required in order to initiate an application. The two options discussed were as follows:
  - A super majority equal to or greater than 66.67% in favor.
  - A majority of 50% plus 1 in favor.

The working group voted 8-1 that a super majority (66.67%) would be required for the application to move forward.

**Minority Position:** The minority voter was concerned that requiring a super majority was an excessively high requirement and that a majority of 50% plus 1 in favor was more equitable (and democratic).

3. The working group decided that there must be at least 50% plus 1 of the ballots returned before the vote is counted. The vote was unanimous (9-0). If 50% plus 1 are not returned, the initiation of the application is ended.
4. The working group discussed having an opt-out provision wherein a property owner had the option to remove their property as a designated property in an established historic district. The committee voted 2-8 against the opt-out provision.

**Minority Position:** The minority voters were concerned that property owners should be given the opportunity to opt-out if they do not want their property included in an historic district. They were concerned that requiring a property owner to designate their property as part of an historic district without their consent may violate the 5<sup>th</sup> and 14<sup>th</sup> amendments of the US Constitution.

The Planning Department and the City Attorney's Office were concerned that an "opt-out" provision would weaken the ordinance. The case law cited by the minority voters in support of their position was reviewed, and the City Attorney's Office did not agree with the interpretation suggested by the minority voters. In addition, the proposed ordinance provides additional due process for property owners through an appeal process for owners that do not want their properties designated as contributing structures. The appeal process includes a hearing before a hearing officer (See Attachment 1, page 16). For more detailed information regarding the appeals process see the last paragraph of this section.

As mentioned previously, there were also decisions made by clear group consensus. One of these decisions was the approval of staff's version of the proposed Application for Initiation of Historic Preservation District Viability Study and Petition for Initiation for Historic District Study, the latter of which is an attachment to the former (see Attachment 8). This document is required to be completed by the applicant(s) prior to scheduling a pre-application meeting with Planning Department staff.

Another decision was made pertaining to application review by the ARB, and what should happen to the application if the ARB recommends denial. The working group decided that if the ARB recommends denial, the application would be forwarded to the Planning Commission. If the Planning Commission also recommends denial, the decision would be final and the application would not proceed to the City Commission. Based on this decision, the City Attorney's Office drafted an appeals process for denied applications, which states that an applicant may challenge a final decision of the Planning Commission to deny an application in Circuit Court no later than 30 calendar days after the Planning Commission's final decision is rendered (Attachment 1, page 19). This appeals process was also agreed upon by clear group consensus.

A second appeals process was established for owners who object to the designation of their property(ies) as contributing. After an application has been initiated and before it appears before the ARB, a determination is made by the Planning Department and the Historic Preservation Officer (HP Officer) whether the properties within the proposed historic preservation district are contributing or non-contributing. If an owner objects to the HP Officer's decision, they may request a hearing. The hearing will be conducted by a hearing officer who is selected by the City and is determined by the City Attorney to have expertise in historical preservation. The hearing officer may affirm or overturn the Planning Department's decision on whether a property is contributing or non-contributing and that decision shall be final. By clear group consensus, this appeals process was established as part of the proposed ordinance (See Attachment 1, page 16).

### **REVIEW PROCESS**

The working group also reviewed specific entities (and their role in the proposed process) such as the ARB, the Tallahassee Trust for Historic Preservation Board, the Planning Commission, the City Commission, and staff. The two roles that were discussed by the working group were the dual role of the Planning Commissioner and the role of the HP Officer.

#### **Dual Role of a Planning Commissioner**

The working group discussed the dual role of a Planning Commissioner that sits on the ARB and the potential appearance of a conflict of interest. A suggestion was made that a Planning Commissioner should recuse himself from the vote on the listing of a historic preservation application since they will also provide a vote at the Planning Commission meeting. The City Attorney's Office responded that it is legal and common for a member of the Planning Commission to also serve on other boards and that the commissioner can assist in providing direction to the Planning Commission on a particular item. This item was not agreed by a unanimous vote. Removing the Planning Commissioner from this role would have no real negative impact on the process as it is staff's responsibility to convey the issues and findings from the ARB meetings.

#### **Role of Historic Preservation Officer**

The City utilizes the HP Officer to provide expertise with regards to historic preservation and to make recommendations to the ARB regarding applications requesting to be listed on the local register. With regards to the role of the HP Officer, the working group addressed whether this role would be more appropriately located in the Planning Department as opposed to being located in the TTHP, while also being the latter organization's Executive Director. The Executive Director of the Tallahassee Trust for Historic Preservation (TTHP) has served as the City's HP Officer since October, 1997 (See Attachment 9). Prior to that date, the Historic Tallahassee Preservation Board (HTPB) served as the City's historic preservation agency. The HTPB staff implemented the Historic Preservation Element of the Tallahassee-Leon County Comprehensive Plan and provided one staff member to serve the ARB. The Historic Tallahassee Preservation Board was eliminated (along with all but one historic preservation boards across the state) by the Florida Legislature in May, 1997. In October, 1997, the City Commission unanimously voted to direct staff to negotiate a contract between the City and the TTHP (See Attachment 10, page 12). The contract would establish the Executive Director of the TTHP as the staff member to serve the ARB.

During the public hearing on the proposed contract, the City Commission discussed the pros and cons of contracting with the TTHP versus establishing a staff position in the Planning Department. According to the staff report, the most significant advantages of contracting with the TTHP were: 1) it is less expensive than funding a staff position in the Planning Department, and 2) it promotes the use of a public/private partnership to undertake a key public service function. The most significant disadvantage was that the TTHP was a newly formed organization (at that time) that would require strong volunteer commitment to sustain and develop the organization. The most significant advantage for transferring the preservation function to be in-house was that the local government would have more direct management of the position. Increased costs for having an in-house staff person was the most significant disadvantage.

The working group discussed the pros and cons of retaining the TTHP to provide the HP Officer versus moving the HP Officer to a staff position within the Planning Department. Some of the same reasons that were debated during the original contract discussion by the City Commission were discussed. One reason given as to why the HP Officer should reside in-house is that he/she would not appear to be representing an outside group that advocates for historic preservation. Additionally, a staff position would be under the direct management of the Planning Director. However, some members of the working group countered this argument: the current arrangement appears to work and it is less expensive.

As part of this discussion, the Director of PLACE stated that the current contract between the City and the TTHP has the HP Officer providing reports to the Economic and Community Development Department. However, the Planning Department director currently signs historic preservation rezoning agenda items without being able to take full responsibility for the contents of the item since the HP Officer does not report to him. Furthermore, the HP Officer has no reporting structure to a regulatory division such as the Planning or Growth Management Departments. In order to remedy both issues, the Director of PLACE recommends that the contract be revised to specify that the HP Officer report to either the Growth Management or the Planning Department. The working group did not form a clear consensus on the Director of Place's recommendation.

At the end of the discussion, a group member made a motion that the HP Officer, including all duties and responsibilities, would be more appropriately placed in the Planning Department. The motion failed due to the lack of a second.

**Minority Position:** The minority group member is concerned that continuing to have the HP Officer located outside of the Planning Department will continue the appearance of outside advocacy for historic preservation. If the HP Officer were located in the Planning Department, the HP Officer could not act as an outside advocate, but would be subordinate to the Planning Director.

**FOLLOW-UP ISSUES**

The working group discussed the issue of providing notification to future buyers of properties that have an historic preservation designation. One member of the working group checked with the Real Estate Board (REB) about adding a section to the Seller's Disclosure form asking if the

property is zoned HPO or is in the process of being considered for this zoning. The REB agreed to revise the form immediately and added the requested section.

**SUMMARY OF PROPOSED NEW HISTORIC PRESERVATION OVERLAY DISTRICT PROCESS**

After resolution of the above issues, staff drafted an ordinance which incorporated the working group's decisions into a new process for establishing historic preservation districts (see Attachment 1). Below is a broad outline of the key steps in the proposed process, from when the applicant(s) submit the initial application to the final review by the City Commission. For more details on the steps see the draft historic preservation district process flow chart provided as Attachment 7.

1. The applicant(s) submit(s) an Application for Initiation of Historic Preservation District Viability Study. Included with the submittal is the requirement for the applicant(s) to conduct a petition drive which must reflect a 30% approval by the listed property owners within the proposed district (as identified by Leon County Property Appraisers tax identification numbers).
2. If the petition drive reflects the required 30% approval, the Planning Department and the HP Officer shall conduct community involvement meetings to educate the property owners within and around the proposed district.
3. After the community meetings are held, Planning Department staff and the HP Officer present the application to the LRTI and request direction on the application prior to a formal vote by the property owners.
4. The Planning Department shall mail voting ballots to all property owners (by tax identification) within the proposed district. 50% plus 1 of mailed ballots must be returned and a super majority (66.7%) of the respondents must approve the initiation.
5. If the vote is equal to or greater than 66.67% in favor, the application moves forward and the application is deemed initiated. Planning Department staff and the HP Officer then compile data and prepare an analysis for a staff report and recommendation to the ARB. The analysis includes a finding as to whether each property is contributing or non-contributing.
6. Prior to the ARB meeting, any owner who objects to the designation of the owner's property as contributing or non-contributing may request a hearing before a hearing officer appointed by the City. The hearing officer may affirm or overturn the determined status and the decision shall be final.
7. The ARB reviews the application at a public hearing and makes a recommendation to approve or deny.
8. The application and the ARB recommendation are submitted to the Planning Department, whose staff then prepares an analysis and recommendation for an HPO rezoning to the Planning Commission.
9. The Planning Commission reviews staff's analysis and recommendation on the request for listing and rezoning, which includes the ARB's recommendation, and provides a recommendation to the City Commission.
10. The Planning Commission's recommendation and staff's analysis is reviewed by the City Commission for final action at a public hearing.

**ARCHITECTURAL REVIEW BOARD RECOMMENDATION**

The ARB reviewed the proposed ordinance at their February 1, 2012 meeting and unanimously voted to recommend support of the ordinance with some minor non-substantive revisions (Attachment 5).

**OPTIONS**

Option 1: Approve Attachment 1, and direct staff to take the ordinance to the Planning Commission and City Commission for public hearings.

Option 2: Provide alternative direction.

**ATTACHMENTS/REFERENCES**

1. Draft Ordinance.
2. January 19, 2011 Open House Citizen Comments.
3. Citizens Working Group.
4. January 26, 2012 Open House Citizen Comments.
5. February 1, 2012 ARB Minutes.
6. Draft Operational/Procedural Manual.
7. Draft Historic Preservation District Process Flow Chart.
8. Draft Application for Initiation of Historic Preservation District Viability Study/Petition for Initiation for Historic District Study.
9. City Commission agenda item dated October 8, 1997.
10. Commission meeting minutes dated October 8, 1997.