

Landmarks Preservation Commission
City of Berkeley

January 14, 2010

Mayor Tom Bates
Member, Berkeley City Council

The LPC is very concerned about the law and process regarding the Jan. 19 hearing pertaining to Berkeley Iceland. In 2007, the commission voted to designate a new landmark in the city – Berkeley Iceland. This was done only after carefully prepared documentation was submitted and then carefully reviewed; this review included many hours of testimony. Subsequently, our decision was appealed to the City Council, as provided for in the Landmarks Preservation Ordinance. The Council voted on July 17, 2007, by a margin of 5 - 4 to uphold our decision.

The LPC has not been informed of the review on January 19, 2010, and cannot find the supporting law for this hearing in our ordinance. Is this hearing a de facto second appeal? If so, and if the designation is to be reconsidered, the commission would like formal notification and the opportunity to defend our decision.

If such a second appeal is allowable, we would like to be assured that all protocol of an original appeal hearing will be followed, including an in-depth review of all documentation regarding the merits of the landmarking, as well as a full presentation by the applicants, the appellants and the public.

The LPC is concerned by language in the agreement which, in our opinion, is untrue and misrepresents facts about the building, about our decision making process, and even about the powers vested in the LPC by the Landmarks Preservation Ordinance. We are therefore very unhappy that the Council would agree to this language. As a Certified Local Government, we are your qualified representatives in Historic Preservation with the State Office of Historic Preservation, and we are therefore qualified to hear testimony and read presented materials in order to make decisions regarding which sites qualify as landmarks. The final decision belongs to the Council, of course, but there should be no doubt as to our qualifications and our integrity.

The following point is key to any designation within the city – and it is misrepresented in this settlement:

A landmark is defined by its "site", and then the features to be preserved are specified. The City of Berkeley uses the parcel number as the "site", and the landmark designation decision is carried onto the title for the parcel with the County of Alameda using that parcel number. Therefore the statement in the settlement that we could have landmarked "certain of the building's features" is a false argument. The authors of the agreement did not know better, but certainly

our City Attorney does. It was within the Council's purview to change the features to be preserved at the original appeal hearing, and that was not done.

**3.24.100 Landmarks, historic districts and structures of merit—
Designation—Procedures required—Control and standards.**

- A. Each designation of a landmark, historic districts or structure of merit by the commission shall include a description of the characteristics which justify its designation and a description of the particular features that should be preserved, and shall include the location and boundaries of the landmark site, historic district or structure of merit site. Any such designation shall be in furtherance of and in conformance with the purposes of this chapter and the standards set forth herein.
- B. The property included in any such designation shall upon designation be subject to the controls and standards set forth in this chapter. In addition, the said property shall be subject to the following further controls and standards if imposed by the designation:
 1. For a publicly owned landmark or structure of merit, review of proposed changes in major interior architectural features;
 2. For an historic district, such further controls and standards as the commission deems necessary or desirable, including but not limited to facade, setback, height controls, signs and public improvements.

The commission may, upon receipt of any significant new information, reconsider after two years any structure of merit and designate it as a landmark, subject to all the procedures set forth in this section for an original landmark designation. (Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 3, 1974)

This is our very specific criteria:

**3.24.110 Landmarks, historic districts and structures of merit—
Designation—Criteria for consideration.**

A. Landmarks and historic districts. General criteria which the commission shall use when considering structures, sites and areas for landmark or historic district designation are as follows:

1. Architectural merit:
 - a. Property that is the first, last, only or most significant architectural property of its type in the region;
 - b. Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works of the best surviving work in a region of an architect, designer or master builder; or
 - c. Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.

2. Cultural value: Structures, sites and areas associated with the movement or evolution of religious, cultural, governmental, social and economic developments of the City;
3. Educational value: Structures worth preserving for their usefulness as an educational force;
4. Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley/Alameda County/California/United States.

History may be social, cultural, economic, political, religious or military;

5. Any property which is listed on the National Register described in Section 470A of Title 16 of the United States Code.

B. Structures of merit. Criteria which the commission shall use when considering a structure for structure of merit designation are as follows:

1. General criteria shall be architectural merit and/or cultural, educational, or historic interest or value. If upon assessment of a structure, the commission finds that the structure does not currently meet the criteria as set out for a landmark, but it is worthy of preservation as part of a neighborhood, a block or a street frontage, or as part of a group of buildings which includes landmarks, that structure may be designated a structure of merit.
2. Specific criteria include, but are not limited to one or more of the following:
 - a. The age of the structure is contemporary with (1) a designated landmark within its neighborhood, block, street frontage, or group of buildings, or (2) an historic period or event of significance to the City, or to the structure's neighborhood, block, street frontage, or group of buildings.
 - b. The structure is compatible in size, scale, style, materials or design with a designated landmark structure within its neighborhood, block, street frontage, or group of buildings.
 - c. The structure is a good example of architectural design.
 - d. The structure has historical significance to the City and/or to the structure's neighborhood, block, street frontage, or group of buildings.
(Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 3.1, 1974)

The agreement includes information about the landmark ordinance which is patently untrue. The LPC cannot 'force a use'. Additionally, our commission cannot make a decision regarding landmark status with any consideration of financial hardship – it is not in our ordinance, and therefore not within our purview. The only mention of financial hardship in the ordinance is under the section relating to the alteration permit process:

3.24.270 Permit application—Finding of hardship authorized when—Effect.

Regardless of whether or not the standards set forth in Section [3.24.260](#) are met, **the commission may approve a permit application to carry out alterations or construction on a landmark site, in an historic district or on a**

structure of merit site, if the applicant presents clear and convincing evidence to the commission that such disapproval will work immediate and substantial hardship because of conditions peculiar to the particular structure or feature involved, and that failure to disapprove the application will be consistent with the purposes of this chapter. If hardship is found to exist under this section, the commission shall make a written finding to that effect, and shall also specify in writing the facts relied upon in making such finding. Nothing in this section shall prohibit the commission from acting to modify or to suspend action on any application pursuant to Sections [3.24.220](#) through [3.24.250](#) hereof. (Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 6.2, 1974)

The section that the agreement refers to actually assumes that the property is ALREADY designated, and not in the process of being considered for designation.

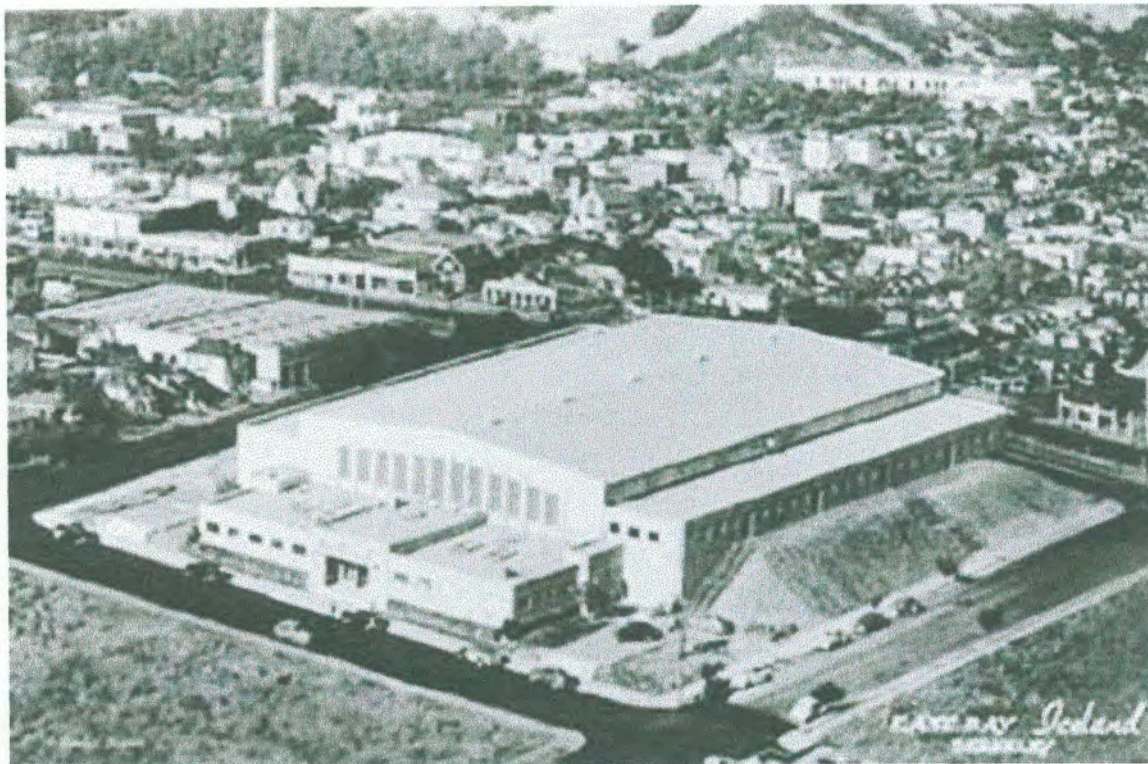
3.24.360 Enforcement—Exemption for financial hardship when.

Any owner, lessee or other person in actual charge of a landmark, a structure in an historic district, or structure of merit, upon presentation of clear and convincing evidence demonstrating to the satisfaction of the commission that compliance with these regulations will work immediate and substantial financial hardship on such owner, lessee or other person in actual charge of a landmark, a structure in an historic district, or a structure of merit, shall be exempt from the provisions of this section and Sections [3.24.370](#) through [3.24.390](#). (Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 14 (d), 1974)

Berkeley loeland started as a community venture. Begun in 1938 and completed in 1940, Berkeley loeland was a project of a Berkeley Civic Committee. The committee sold shares to the community, through professors at the university, through local businessmen, and in other ways. Ordinary citizens answered a knock on their door, and gave freely to fund this community project. For the next 60 years, professional skaters of great repute, hockey clubs (including the UC team), and those same ordinary citizens shared time on the ice. It is truly a Berkeley Landmark in every sense of the word, and our commission is very proud of this designation.

Regarding the issue of features to be preserved, we would like to call your attention to the following picture of the original site, which is still intact today. Please notice that the western façade, the portion that some may mention as the only original feature worthy of preservation, is actually a very small percentage of the overall structure. The berms are clearly visible here. The appeal says that earth berm buildings are not rare in Berkeley – we disagree. The agreement also states that the berms weren't incorporated as an energy strategy because there is no evidence saying so. The building itself stands as evidence that the berms are an energy strategy. The building was constructed on a shoestring; to avoid moving that much earth off site saved a lot of energy (money) during construction, and not dispersing the fill evenly over the site, but berming the building instead indicates a willful use of that material to shelter the building. The agreement states that the berms don't shield exterior walls, which is clearly wrong. These types of details

are very important and we do not want the acceptance of the settlement, motivated for other reasons entirely, to rewrite the designation of that building.



Sincerely,

Gary Parsons
Chair, Landmarks Preservation Commission