



## *Legal Counsel.*

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VIA ELECTRONIC MAIL

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RE: Lawton Court Individual Landmark Designation Petition

Dear Ms. Ferguson:

I am writing to you on behalf of CEPEDA Associates, Inc., a property owner of several properties on Lawton Court. REcollection Inc. and Beargrass Thunder (the "Petitioners") have recently submitted a single petition to designate several properties located in Lawton Court as an Individual Landmark (the "Petition"). The properties listed in the Petition as located in Lawton Court and the property owners who would be directly impacted by the Petition are as follows:

1467 S. Preston Street – CEPEDA Associates, Inc.  
400 Lawton Court – Housing Authority of Louisville  
401 Lawton Court – CEPEDA Associates, Inc.  
402 Lawton Court – CEPEDA Associates, Inc.  
402 ½ Lawton Court – CEPEDA Associates, Inc.  
403 Lawton Court – CEPEDA Associates, Inc.  
404 Lawton Court-- CEPEDA Associates, Inc.  
405 Lawton Court – CEPEDA Associates, Inc.  
406 Lawton Court – CEPEDA Associates, Inc.  
407 Lawton Court – CEPEDA Associates, Inc.  
408 Lawton Court – CEPEDA Associates, Inc.  
409 Lawton Court – William T. Lewis, Jr.  
410 Lawton Court – Lisa R. Lewis  
411 Lawton Court – CEPEDA Associates, Inc.  
412 Lawton Court—Address Does Not Exist  
413 Lawton Court—Address Does Not Exist

414 Lawton Court—Address Does Not Exist  
415 Lawton Court – CEPEDA Associates, Inc.  
416 Lawton Court—Address Does Not Exist  
417 Lawton Court –Robert D. Marcum  
418 Lawton Court—Address Does Not Exist  
419 Lawton Court—CEPEDA Associates, Inc.

## **I. The Petition Should be Rejected Because it is Technically Deficient.**

Petitioners should not receive an Individual Landmark designation via a single petition for several properties. The structures on each individual property do not adjoin one another and are separate shotgun style homes. Petitioners are attempting to designate an entire court, not a specific structure or site under the Petition.

Section 32.260(I) of the Ordinance states, “The Commission may designate a structure or site as an individual landmark if it receives a written request of the owner or owners of the structure or site, or a petition requesting designation containing the verified signatures and addresses of no fewer than 200 residents of Louisville Metro and provided that at least 101 of those verified signatures and addresses contained in the petition are residents or property owners within one of the following boundaries: (1) a one-mile radius surrounding the structure or site proposed for landmark designation, (2) the Council district in which the proposed landmark is located or (3) the cumulative area formed when the boundaries of (1) and (2) are combined.” [Emphasis Added] This section refers to a “site” or a “structure” in the singular as designable as an individual landmark, not several different sites and structures.

If the Petitioners seek to designate Lawton Court as a landmark, they must apply for a Historic District. Section 32.260 covers the designation of districts and individual landmarks. Section 32.251 defines a Historic District as a “ground of structures or sites united historically or aesthetically by physical development or plan” and an Individual Landmark as “a landmark structure or site...which represents irreplaceable distinctive architectural features or historical associations that represent the historic character of the city, the Commonwealth, or the nation.”

Section 10.04 of the Louisville Metro Government Code of Ordinances provides that ordinances should be interpreted by the same rules of construction as those governing the interpretation of state law. ““One of the most basic interpretative canons’ of statutory interpretation is that “[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]””<sup>1</sup>

Section 32.260 clearly differentiates between historic districts and individual landmarks. There are different requirements for the designation of historic districts and individual landmarks, and the designations have different impacts. These distinctions must be given effect.<sup>2</sup>

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<sup>1</sup> *Travelers Indem. Co. v. Armstrong*, 565 S.W.3d 550, 563 (Ky. 2018) (quoting *Corley v. United States*, 556 U.S. 303, 314, 129 S. Ct. 1558, 173 L. Ed. 2d 443 (2009)).

<sup>2</sup> *See id.*

While we believe that these definitions would categorize an individual property as an individual landmark and a group of properties as a district, we referred to other resources for further clarity on these definitions.

The New York City Landmarks Preservation Commission distinguishes the two and finds that “historic districts are collections of landmark buildings that, together, create a distinct sense of place,” while “individual landmarks are standalone structures that have architectural, cultural, or historical significance.”<sup>3</sup>

In *Virginia Historic Landmarks Commission v. Board of Supervisors*, the Virginia Supreme Court established the importance of distinguishing between a district and an individual landmark. The Virginia Historic Landmarks Commission adopted a resolution that identified the Green Springs Historic District as a landmark for the Virginia Landmarks Register. This District contained approximately 14,000 acres and four houses that were designated as individual historic landmarks. The Court found that the choice of language used in the resolution that identified the district as a landmark “was ill-advised, and the area should have been identified as a historic district on the ground that it is an area which contains registered landmarks.”<sup>4</sup> Further, the Court stated that a historic district is “a geographically defined area, which contains a significant concentration of historic buildings, structures or sites, sharing a common historical, architectural or cultural heritage.”<sup>5</sup>

The Petitioners refer to the historic integrity of the neighborhood and its development as a whole, indicating a Historic District is being requested rather than an Individual Landmark. Petitioners further argue the historic integrity of the shotgun style home in congruence with the pedestrian court, referring to the properties overall rather than individually.

Based on the definitions given in the Louisville Metro Code of Ordinances, the distinction between a district and individual landmark made by the New York Landmarks Preservation Commission and the Virginia Supreme Court, we believe that the Petition should be considered one seeking the creation of an Historic District. The allowance of multiple properties to be designated as an Individual Landmark rather than the traditional designation of separate sites and structures frustrates the distinction between a Historic District and Individual Landmark designation.

Finally, the treatment of the various houses and vacant lots of Lawton Court as a single individual landmark defies the common practice of the Landmarks Commission. Where applicants have sought an individual landmark designation two buildings, the applicants have provided justifications for both properties that are independent from the justification of a single building, meaning each building, standing alone, has significance as an individual landmark. Here, there is

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<sup>3</sup> Landmark Designation - LPC, <https://www1.nyc.gov/site/lpc/about/landmark-designation.page> (last visited Sep 16, 2022).

<sup>4</sup> *Virginia Historic Landmarks Com. v. Board of Supervisors*, 217 Va. 468, 474, 230 S.E.2d 449, 453, 1976 Va. LEXIS 306, \*14 (Va. November 24, 1976).

<sup>5</sup> *Virginia Historic Landmarks Com. v. Board of Supervisors*, 217 Va. 468, 473, 230 S.E.2d 449, 452, 1976 Va. LEXIS 306, \*11 (Va. November 24, 1976).

nothing unique about the individual buildings on Lawton Court. There were different types of structures built on Lawton Court. They were built in different years by different people, and they had different owners. They were renovated at different times, and some were even demolished. Nothing about Lawton Court suggests that it should be treated as a single complex. Rather, the only purported reason for making the houses landmarks are the alleged association with the other houses around Lawton Court and the Court itself. But, in a case where the main historic significance comes from a structure's association with other structures of a certain age, these structures are best designated as contributing structures in an historic district, not an individual landmark.

## **II. The Individual Landmark Petition Did Not Pay the Applicable Fee.**

Even if the Committee treats the Petition as a request for an individual landmark designation, which it should not, the Petition still fails because the Petitioners did not pay the appropriate fee. The Landmark Commission's By-laws require a \$500 fee for each local landmark designation. In practice, this fee is required for each building that is to be designated a local landmark. For example, the buildings on Whiskey Row each required a \$500 fee for them to be designated as a local landmark.

Here, Petitioners seek to designate 14 structures as individual landmarks. The fee associated with this request would be at least \$7,000. Petitioners have not paid the requisite fee, so the Petition should be dismissed.

## **III. There Is No Lawton Court Complex, and the Tracts in the Petition Do Not Describe the Extent of the Purported Lawton Court Complex.**

The first page of the Petition that was circulated for signatures included specific tracts of land that were to be designated. Some of these tracts do not exist: "the addresses 416 and 418 Lawton Court do not appear to exist."<sup>6</sup> Other tracts are vacant lots. The tracts omit tracts that were part of Lawton Court: "400 Lawton Court and 1499 S. Preston Street are not included in the designation request."<sup>7</sup> The tracts do not encompass the public tract of land in the middle of the buildings, which purportedly makes Lawton Court unique. This does not comply with section 4.2 of the Landmarks Commission's By-Laws, so the petition must be rejected.

The Bylaws also require petitions to include "all structures, properties, and public rights-of-way for a distance of 200 feet outside of the proposed local landmark site boundary." The Petition did not include this information, so it fails to comply with the Commission's requirements and is an independent basis for rejecting the petition.

The Bylaws further require that a petition for individual landmarks include a "narrative describing the category or categories under which the designation is requested pursuant to the criteria established by ordinance including a summary history of the structure or property and photographs of all facades of the structure or views of the property, with locations from which

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<sup>6</sup> Draft designation, p. 8.

<sup>7</sup> *Id.* at 2.



each photograph was taken to be noted on the map.”<sup>8</sup> The Petition fails to comply with this requirement. The actual petition that was circulated does not include any pictures of the facades of any of the structures. Therefore, the Petition is invalid and must be dismissed.

#### **IV. The Draft Report Fails to Properly Discuss the Extent of the Issues with the Petition to Make Lawton Court an Individual Landmark and Omits Critical Findings of Fact.**

The draft report on the proposal for designation as an individual landmark (22-Landmark-002) makes findings that are inconsistent with the designation of an individual landmark, which further supports why the petition must be rejected.

The Petition seeks to designate as individual landmarks vacant tracts of land where the houses have been demolished. Specifically, the Petition seeks to designate as an individual landmark 402 Lawton Court, which “is a vacant lot located between 400 Lawton Court and 402 ½ Lawton Court (Figure 7). The former shotgun style house was demolished December 2021.”<sup>9</sup> In addition, the Petition seeks to designate 413 Lawton Court as an individual landmark despite the fact that the “house was demolished between 1983 and 1992.”<sup>10</sup> 402 Lawton Court has also been demolished.<sup>11</sup>

The two Lawton Court properties that were not included in the designation also are the sites of vacant lots where the old houses were previously demolished. “The former shotgun style house [at 400 Lawton Court] was demolished between 1983 and 1992 according to aerial photographs.”<sup>12</sup> “The former two-story commercial building [at 1499 Preston Street] was demolished between 1993 and 1998 according to aerial photographs.”<sup>13</sup>

“The buildings located in the complex have been altered over time.”<sup>14</sup> “[S]ome materials have changed over time, like windows, siding, etc.” Nothing suggests that the shotgun homes are in their original condition or that the improvements maintain historic character. Indeed, there are fourteen mentions of fiberglass in the report despite the fact that fiberglass was not even invented when the Lawton Court houses were built.

Browsing images available on Google Maps shows changes to the Lawton Court area in the last fifteen years (the older images are on the left compared to the new images on the right).

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<sup>8</sup> Bylaws, 4.02(2)

<sup>9</sup> Draft Designation, p. 8.

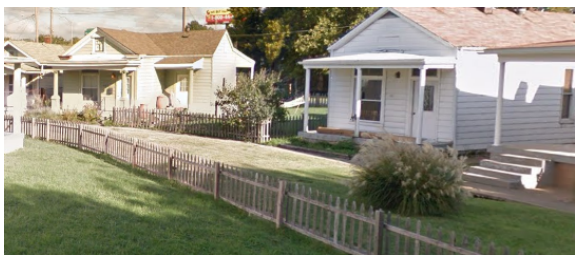
<sup>10</sup> *Id.* at 27.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.* at 32.

<sup>13</sup> *Id.* at 34.

<sup>14</sup> *Id.* at 54.



The alterations do not end there. The recent listings that are available online evidence the complete renovations that have occurred since the construction of Lawton Court. For example, in 2021, 406 Lawton Court was listed for sale: “The ULTIMATE ugly duckling to STUNNING swan story...right here, right now...this absolutely spectacular renovation is just waiting for you to make

it your own. . . . *absolutely all of it is NEW...guttled to the studs and redone.*”<sup>15</sup> The video of the property before the renovation confirm the drastic remodel, and it also shows that other houses were being renovated.<sup>16</sup> It appears that a renovation also occurred at 411 Lawton Court: “Home is in the process of a complete remodel.”<sup>17</sup> These changes are omitted from the draft report. Further, many of the other houses of Lawton Court are in significant disrepair.

There have also been significant changes in the area. “Residential and commercial buildings that were once located immediately north and south of the court have been demolished, and the lumber yards that also once bordered the Court on the east have been demolished. Furthermore, I-65 was constructed across S. Preston Street from the Court.”<sup>18</sup>

The addition of I-65 dramatically altered the area near Lawton Court, and it had an impact on the design and functionality of Lawton Court:



The draft report makes clear that “[t]here are no singularly significant historic events that give Lawton Court its historic significance.”<sup>19</sup> “[T]here are many shotgun style houses across Louisville Metro. . .” According to the Application, “Shotgun houses are among Louisville’s most abundant house types. . .”<sup>20</sup> “Lawton Court is not identified as the work of an architect, landscape architect, or master builder whose individual work has influenced the development of the city, the Commonwealth, or the nation.”<sup>21</sup>

The significance of the buildings is “not for their architectural design.”<sup>22</sup> “Lawton Court does not represent a significant architectural innovation.”<sup>23</sup> “Independently, the houses on Lawton Court do not convey the complex’s historic significance.”<sup>24</sup> However, the Petition does not even request that Lawton Court—the public area in between the houses—be designated an individual landmark. Instead, it seeks the designation of certain properties that are not significant for their

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<sup>15</sup> <https://www.redfin.com/KY/Louisville/406-Lawton-Ct-40217/home/84109655> (emphasis added).

<sup>16</sup> <https://www.youtube.com/watch?v=DCpO0QcpL6E>

<sup>17</sup> <https://www.redfin.com/KY/Louisville/411-Lawton-Ct-40217/home/71130286>

<sup>18</sup> Draft Designation, p. 48.

<sup>19</sup> *Id.* at 50.

<sup>20</sup> Application.

<sup>21</sup> Draft Designation, p. 52.

<sup>22</sup> Draft Designation, p. 50.

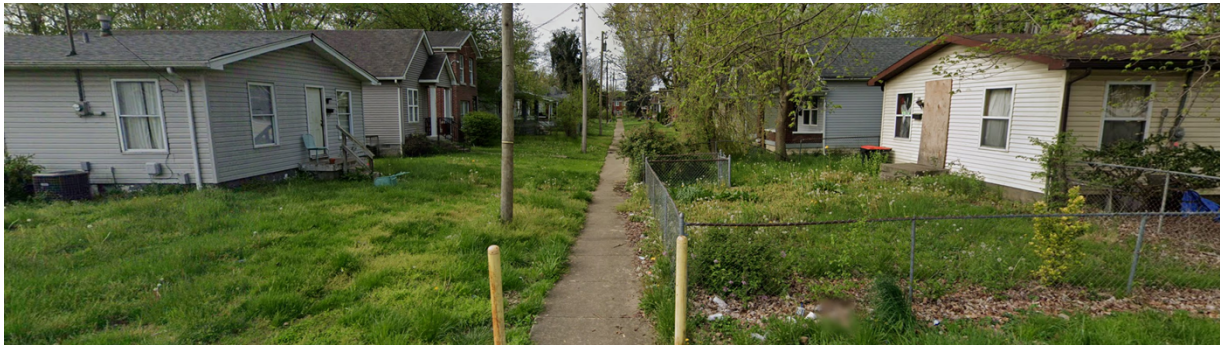
<sup>23</sup> *Id.* at 50.

<sup>24</sup> *Id.*



architectural design.<sup>25</sup> The Petition and draft designation report appear to place all of the weight on the fact that this was a walking court surrounded by shotgun houses. However, 1467 S. Preston Street—the first property of the purported individual landmark—is not a shotgun house.<sup>26</sup> Instead, it is a bungalow.<sup>27</sup> Bungalows near walking courts are not unique in Louisville.<sup>28</sup>

A comparison of Lawton Court to some of the other walking courts in Louisville shows that there are no unique characteristics to Lawton Court not present in other extant walking courts. For example, Boston Court shares many of the same characteristics as Lawton Court, and as Lawton Court does not represent a significant architectural innovation and the buildings are not known for their architectural design, nothing remains to differentiate these walking courts.



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<sup>25</sup> Draft Designation, p. 50.

<sup>26</sup> *Id.* at 4.

<sup>27</sup> Application, p. 8.

<sup>28</sup> Draft Designation, p. 43.



The Petition and report suggest that Lawton Court embodies the history of an underrepresented group—the white working class. According to the 1920 Census, there were 190,000 white individuals who lived in Louisville, which represented a large majority of the individuals in Louisville. There are still plenty of houses in Louisville from the 1920s where the white working class lived. The Petition and the draft report offer nothing unique that ties Lawton Court to the history of the white working class.

The Petition and draft report pass off more than a dozen tracts of land with different types of houses built at different times, renovated at different times and in various states of disrepair, and owned by various people as a single complex that should be made a *single individual landmark* without any basis for doing so. Nothing about the Petition or report indicates that any of the structures are individual landmarks—much less the entire “complex.” In addition to ignoring the plain language of the Landmark Ordinance, the Petition is a thinly veiled attempt to save houses from redevelopment without any historical connection. As a New York state court has warned: “Manipulation of the Landmarks Law by the Landmarks Preservation Commission only for the purpose of preserving the Broadway theatre industry, rather than individual theatres, would have been improper (see, Landmarks Law [Administrative Code] § 25-304 [a]). Such a practice would misconstrue zoning matters for landmark matters.”<sup>29</sup>

For the reasons set out above, we kindly request the Petition be denied.

Sincerely,

Clifford H. Ashburner

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<sup>29</sup> *Shubert Org., Inc. v. Landmarks Pres. Com.*, 166 A.D.2d 115, 121, 570 N.Y.S.2d 504, 507 (App. Div. 1st Dept. 1991).