NOTICE OF APPEAL

FOR CITY CLERK'S USE ONLY:
DATE FILED: 8/3/2022
INITIALS: AJ

Action Being Appealed: Finding of Eligibility as Landmark - 1502 N. College

Date of Action: July 20, 2022 **Decision Maker:** Landmark Preservation Commission

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

Name: Jeffrey Cullers, Attorney for Appellant H and H Properties, LLC

Phone #: 970-498-9999

Address: 3600 S. College Ave. Suite 204 Fort Collins, CO 80525

Email: jeff@hhlawoffice.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.

GROUNDS 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:**

Municipal Code Section 14-22, Standards for Eligibility
" " " 14-23, Process for Determining Eligibility

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:** August 3, 2022
Name: Jeffrey Cullers, o/b/o H and H Properties, LLC	**Email:** jeff@hhlawoffice.com
Address: 3600 S. College Ave. Suite 204, Fort Collins, CO 80525	**Phone #:** 970-498-9999
Describe how you qualify as a party-in-interest: H and H Properties, LLC is the owner of the subject property.	

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

Appeal of Eligibility Determination:
1802 N. College Ave., Fort Collins, CO 80524

Presented by Appellant H and H Properties, LLC ("Appellant"). Appellant opposes this latest non-consensual landmarking action by the Fort Collins Landmark Preservation Commission.

Error 1: Failure to properly interpret and apply relevant code provisions.

At its July 20, 2022 hearing, the Landmark Preservation Commission ("LPC") was tasked with determining whether the subject structure (the building at 1802 N. College Ave.) was "eligible" for designation as an historic landmark. The "eligibility" standards are found in Section 14-22 of the Fort Collins Municipal Code (the "Code"). Section 14-22 provides a two-step framework to decide this issue, addressing whether the subject structure is historically "significant" and has sufficient "integrity."

At the hearing, the LPC considered a staff presentation that was based on a Colorado Cultural Resource Survey ("Survey") triggered by the proposed redevelopment of the site that would involve demolition of the structures on 1802 N. College Ave. This was location of the now-closed Pobre Pancho's Mexican restaurant. Pobre Pancho's operated at that location from 1969 until 2022. Pobre Pancho's was started by Frank Perez and remained in the Perez family until summer 2020, when the family sold the side and the restaurant to longtime customers Darren and Asher Haun. Asher Haun decided to close the restaurant in spring 2022 due to mounting financial losses.

Under the standards in Code Section 14-22, the subject structure must be historically significant in at least one of four ways: (1) "association" with historic events or trends; (2) "association" with the lives of important persons or groups; (3) a distinguished design or construction; and (4) has yielded or is likely to yield important historical information.

Construed generously, the Survey opines that the structure, as the site of a long-lived Mexican restaurant, has historic significance due association with the following historic events or trends: (1) systematic racism against Latinx people in Fort Collins that made successful Latinx businesses rare; (2) general migration of Latinx people to the city, state, and nation; and (3) settlement of Lantinx people north of the Poudre River due to gentrification elsewhere in Fort Collins. Appellant contends that at the LPC hearing, the evidence did not show specific connections between these historic trends and the Pobre Pancho's business or Perez family that would merit preserving the building as a historic landmark. Thus, the evidence failed to show a sufficient "association" with historic events or trends.

The Survey also suggests that the structure at 1802 S. College has historical significance by being "associated" with the lives of important persons or groups, namely, the Perez family and the long-lived Pobre Pancho's restaurant. Appellant agrees that immigrating to the United States and opening a restaurant that stayed in business for fifty years is an accomplishment for Frank Perez and his family. However, millions of other immigrants have similar stories. The Perez family's story is certainly significant to the Perez family and perhaps to some of Pobre Pancho's customers. But, the story is not "historically significant" to the economic or cultural history of

the nation, the State of Colorado, or even the City of Fort Collins. The LPC was wrong to find otherwise.

Appellants also contend that the structure at 1802 N. College lacks integrity, which is defined as "the ability of a site, structure, object, or district to be able to convey its significance." All of the alleged historic significance is connected to the experience of Latinx people, specifically Mexican people and the Perez family. However, the building itself was not built by the Perez family. It started out as a sporting goods store. There is no dispute that the building is completely generic, lacking any architectural distinction. Aside from two stained glass windows depicting sombreros and roses, the building itself reflects absolutely no Latinx or Mexican influence and so has no ability to convey its alleged significance. Thus, it lacks integrity and the LPC was wrong to find otherwise.

Accordingly, the building does not meet either of the two steps required for a finding of "eligibility" as an historic landmark.

Error 2: Consideration of Misleading Evidence.

At the LPC hearing, members of the Perez family complained about the abrupt way in which the Hauns shut down the restaurant. Such evidence is misleading because the closing is in line with industry norms. The restaurant's closure is also irrelevant to whether the building is landmark eligible. Members of the Perez family also described in some detail the history of the restaurant and the friendly, hard-working personality of the restaurant's founder, Frank Perez. While this information may be true, the information is misleading because it does not establish any "historical significance" of interest beyond the relatively few members of the Perez family and former customers.

Thus, for these reasons and others that will be addressed at a future hearing or via future submissions of information, Appellant asks that City Council overturn the LPC's non-consensual finding of eligibility for 1802 N. College Ave.

Submitted by Jeffrey Cullers, attorney, on behalf of H and H Properties, LLC
August 3, 2022.