

## **THC Special Meeting Minutes**

*Consideration of Denial of Petition for Reconsideration by Judge Hilliard, APD, in the Matter of  
Forrest Descendants and Sons of Confederate Veterans, Docket No. 04.47-1509371*

**March 13, 2019**

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In the absence of Chairman Mitchell, Vice-Chair for East Tennessee, Allen Carter, conducted the meeting. Mr. Carter called the meeting to order at 9:02 A.M. C.S.T.. The meeting was convened by telephone, with a physical meeting place provided in Conference Room 2E of the William R. Snodgrass Tennessee Tower, located at 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243, where Mr. Joseph Sanders from the Tennessee Department of Environment and Conservation (TDEC) Office of General Counsel (OGC) was present. Also present via electronic means was Mr. Edward Phillips III, the attorney for the Forrest Family and the Sons of Confederate Veterans. In attendance via telephone at the Tennessee Historical Commission's office was Ashlee Pierce, the Administrative Secretary. Ms. Pierce called the roll. Members present included Vice-Chair for East Tennessee Allen Carter, Vice-Chair for West Tennessee Derita Williams, Ernie Bacon, Doug Cupples, Sam Elliott, Loni Harris, Tiny Jones, Lucy Lee, Linda Moss Mines, Joanne Moore, Don Roe, Ray Smith, State Librarian and Archivist Chuck Sherrill, Joseph Swann, and David Tipton. Representing TDEC Commissioner David Salyers was David Owenby. Members absent with given explanations were Beth Campbell, Kent Dollar, Jeremy Harrell, Toye Heape, Don Johnson, Bill Lyons, Chairman Reavis Mitchell, Mike Moore, Keith Norman, Beverly Robertson, State Historian Carroll Van West and Kelly Wolfe. Executive Director of the Commission, Mr. E. Patrick McIntyre, Jr. was in Washington, DC participating in the annual meeting of the National Conference of State Historic Preservation Officers. A quorum was met.

Chairman Carter noted that the Commission needed to adopt the Statement of Necessity for meeting by means of electronic communication for a quorum as required by TCA 8-44-108. The statement had been provided to members prior to the meeting and a motion and a second was required to continue. Mrs. Harris made the motion, and Mrs. Moore seconded the motion. The motion passed unanimously.

### **Motion to meet electronically passed.**

Chairman Carter turned the meeting over to Senior Legal Advisor, Mr. Joseph Sanders, the Tennessee Historical Commission's legal counsel from TDEC OGC, to outline the purpose of the call and the options before the Commission. Mr. Sanders reviewed the prior meeting relative to the current one, and the purpose of the current meeting was explained as discerning whether

or not the Commission will take up the matter on its own motion to review the A.L.J.'s ruling. The other potential action was explained that the Sons and the Descendants appeal, as is their right, to the Commission. If they do the latter, the judge's ruling would again be before the Commission. In order for the Commission to act on its own motion, to review the A.L.J.'s initial order, they would have to do that that day. Mr. Elliott confirmed that if the Sons and Descendants would like the Commission to take up the matter on its own motion that day, that they are free to file an appeal. He continued that in his view, that if they would like to file an appeal, then the Commission should allow them to do so and then the Commission can deal with it after the appeal. Dr. Cupples asked if the Commission stepped back and let them file their appeal, would the Commission then lose its right to consider the matter. Mr. Elliott answered that the only thing that would make the Commission lose the right to consider the matter would be if the appeal was not filed. Mr. Sanders and Mr. Elliott clarified that if the Commission does not vote to hear the petition on its own motion today, and if the Sons and the Descendants do not file an appeal, it would not be back before the Commission. If the Court of Appeals hears it, then it could come back before the Commission, however, if they do not file an appeal on the Motion to Reconsider, then they can appeal directly to the Chancery Court. Essentially it is the Sons and Descendants choice as to what route of appeal they wish to take. More concerns were discussed and several members wanted to insure the Commission remained included in the process and not dismissed for one reason or another. As there is no extra evidence to be heard, all the Commission can hear is a legal appeal. While the Commission can issue a legal ruling, the ruling would be reviewed by a court without any sort of presumption of correctness and by just what the Commission thinks that the law is. To Mr. Elliott, figuring out what the law is is not the Commission's role, but is the court's. Mrs. Moore then asked what the Commission needed to do to fulfill the role it was entrusted with. Previous motions relating to the current matter were discussed at length. Mr. Phillips offered his assistance if needed. Mr. Elliott asked if Mr. Phillip's' clients were planning on appealing. Mr. Phillips reviewed the earlier noted appeal options. Dr. Cupples expressed his concerns, and Mrs. Moore agreed with him and noted the precedent that could be set by this current decision. Judge Tipton said that in his opinion the matter consisted of mostly legal issues that a court would have to decide on and that are not in the Commission's jurisdiction. He also answered that the non-legal ones were not likely in the Commission's purview either. Mr. Elliott added in response to Mrs. Moore, that the legislature has taken steps to close the loophole that formerly existed and likely allowed Memphis to take the actions they did leading to the matter being discussed at present. Therefore no precedent can be set in regards to the handling of this matter. He then motioned to decline taking the matter up on the Commission's own motion and to allow the parties to appeal if they so desire. Mr. Phillips informed the Commission that the Descendants would appeal. He expressed that one of the descendant's concerns is the burial of their ancestors and laws pertaining to it. Mr. Elliott asked Mr. Phillips if the

Commission should wait to see what the Court of Appeals does before they proceed. Mr. Phillips replied that at the oral argument that was held on February 26<sup>th</sup>, the judge wanted to defer to the Commission. Mr. Elliott restated his earlier motion and Mrs. Harris seconded the motion. Chairman Carter clarified the motion. Mr. Elliott stated his motion was to decline to act on the Denial of Reconsideration on the Commission's own motion. Mrs. Moore requested to amend the motion to add that the Commission still maintains their authority through the Tennessee legislature to be the "final determining word," even if a decision is not made that day. Mr. Elliott replied that he did not see that amendment necessary for the motion as if an appeal is made, then the Commission would be hearing it regardless. Judge Tipton discussed with Mrs. Moore and expressed that he agreed with Mr. Elliott that the amendment is not needed. Mr. Elliott responded that he chose not to favor the amendment in order to keep the motion clear, and that the purpose of the amendment was still being heeded in his actual, original motion. He asked Mrs. Harris to second again and she did. There were no seconds to Mrs. Moore's amendment to the motion, so Chairman Carter requested a vote on the Mr. Elliott's motion. Votes were taken by roll call by Ms. Pierce. All present were yays, except Mrs. Moore who voted nay. The motion to decline to act on the Denial of Reconsideration on the Commission's own motion passed with fourteen yays and one nay.

**Motion to decline to act on the Denial of Reconsideration on the Commission's own passed.**

Chairman Carter thanked everyone for their time and Judge Tipton asked if the matter would be heard in the June meeting. Chairman Carter replied he would have to speak to Mr. McIntyre regarding that. Mr. Sanders replied that at this time there is no way to be certain when this matter would be heard. There was some discussion about the upcoming June meeting. Mr. Elliott asked Mr. Sanders if the Commission has to hear this in person later, if there would be an Administrative Law Judge as we had the last time. Mr. Sanders replied that there would be, but that it would not be the same judge the Commission had the last time who did the appeal.

Mr. Elliott moved to adjourn, and Mrs. Lee seconded. The meeting was adjourned at approximately 9:45 A.M.

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E. Patrick McIntyre, Jr.  
Executive Director

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Dr. Reavis L. Mitchell, Jr.  
Chairman