



TENNESSEE HISTORICAL COMMISSION

Special Meeting

*Review of Administrative Law Judge's Initial Orders in Elizabeth Coker v. City of Franklin, APD Docket Numbers
04.48-191924J & 04.47-201126J*

December 4, 2020

Minutes

MEMBERS PRESENT:

Madam Chair Derita Coleman Williams; Middle Tennessee Vice Chair Beth A. Campbell; East Tennessee Vice Chair, Allen F. Carter; Ernie Bacon; Dr. Douglas W. Cupples; Dr. Kent T. Dollar; Sam D. Elliott; Jeremy Harrell; Loni Harris; Cato Johnson; Mrs. Robert L. "Tiny" Jones; Lucy W. Lee; Doris McMillan; Linda Moss Mines; Joanne Cullom Moore; Dr. Keith Norman; Beverly C. Robertson; Don Roe; Phil Hodge, State Archaeologist; Chuck Sherrill, State Librarian and Archivist

MEMBERS ABSENT:

Toye Heape; Dr. William Lyons; Ray Smith; Joseph Swann; Judge David W. Tipton; Kelly Wolfe; Don R. Johnson, Governor Lee's Representative; Gerald Parish, Commissioner Salyers' Representative; Dr. Carroll Van West, State Historian

GUEST:

Joseph Sanders, TDEC Senior Legal Advisor, Counsel for the THC

STAFF PRESENT:

E. Patrick McIntyre, Jr, Executive Director of Tennessee Historical Commission; Susan McClamroch, Historic Preservation Specialist, Tennessee Heritage Protection Act and Outreach

A. ANNOUNCEMENTS:

Madam Chair Williams called the meeting to order. The meeting was convened by internet and telephone, in compliance with Governor Lee's Executive Order No. 16 regarding electronic meetings. She informed that all votes would be conducted by roll call and emphasized to members that they say their name prior to speaking, while otherwise remaining muted. She reminded members of the Certificate of Merit Awards applications that are due soon. Ms. Pierce was out on leave, so Executive Director McIntyre conducted the roll call while Ms. McClamroch tended to the technical side of the meeting. A quorum was met with 20 members of the required 15 members present.

B. REVIEW - APD DOCKET NUMBER 04.48-191924J:

Madam Chair Williams called members to review the initial order in Case APD Docket Number 04.48-191924J – the case involving the wooden posts. Each member was previously provided the initial orders from the Administrative Law Judges in both cases being reviewed at this

special meeting. In this first case, she pointed out that the ALJ ruled that Ms. Coker failed to (1) prove that the posts were lawfully created, erected, named, or dedicated and (2) that Ms. Coker failed to prove that the posts were memorials, as that term is defined by the Act. Therefore, the ALJ found that the Heritage Protection Act was simply not applicable to these posts. For that reason, the ALJ dismissed this case for lack of subject matter jurisdiction.

Shortly before the time for appeal expired, the Commission's staff and attorneys sent an email to Commission members asking if the Commission members wished to convene to determine if the Commission wanted to review the ALJ's decision on its own motion. The Commission's attorneys advised that if the Commission did not meet and vote to review the ALJ's decision and if Ms. Coker did not appeal the ALJ's decision to the Commission, the ALJ's decision would become a final decision. The majority of the Commission indicated that it did not wish to convene a meeting to vote to review the ALJ's decision. The Commission did not receive a timely appeal from Ms. Coker.

The legal advice from the attorneys for the Tennessee Historical Commission was that the Commission should not review the ALJ's initial order in this case because the ALJ's decision is believed to be legally sound and correctly decided by the ALJ based on the law. Mr. Phillips, the attorney representing Ms. Coker, sent a letter to the Commission and all members received copies. The legal counsel for the THC does not believe taking any action on the letter is necessary at this time. Madam Chair Williams opened the floor to discussion. Discussion ensued.

Motion

Mr. Elliott motioned to decline to review the initial order of the Administrative Law Judge. Mrs. Campbell seconded.

A roll call vote was conducted, with 18 yays and 2 nays. Motion carried.

C. REVIEW - APD DOCKET NUMBER 04.47-201126J:

The second matter before the Commission is whether to review the initial order of the Administrative Law Judge in Case of APD Docket Number 04.47-201126J – the case involving placing markers on the square in Franklin. In this case the Commission did receive a timely appeal of the ALJ's decision from Ms. Coker. Therefore, it is not necessary for the Commission to review this matter on its own motion. The Commission previously set a briefing schedule for Ms. Coker's appeal. Deciding not to review the initial order on the Commission's own motion will not prevent the Commission from hearing Ms. Coker's timely appeal. She reminded members they have received all materials relevant to this case, including the ALJ's order. Madam Chair Williams opened the floor to discussion.

Motion

Mr. Elliott stated that since Ms. Coker filed a timely appeal to this case, and upon advice of counsel that any action by the Commission to make a review on their own motion would be made mute, he motioned to decline to review this decision on the Commission's own motion. Mr. Bacon seconded.

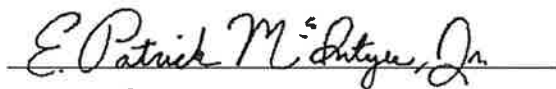
A roll call vote was conducted, with 19 yays and 1 nay. Motion carried.

Prior to the roll call vote, Mrs. Campbell asked when the case would be heard. Mr. Joseph Sanders, a Tennessee Department of Environment and Conservation senior legal advisor and

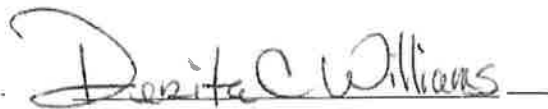
counsel for the Tennessee Historical Commission, replied that the date would be decided at the regular February meeting.

D. ADJOURNMENT

Madam Chair Williams adjourned the meeting at 2:31 P.M. C.S.T..



E. Patrick McIntyre, Jr.
Executive Director



Derita Coleman Williams
Chair

