



TENNESSEE HISTORICAL COMMISSION

William R. Snodgrass Tennessee Tower
Nashville Room, 3rd Floor
Phone and Webex

April 22, 2022

Minutes

MEMBERS PRESENT:

Madam Chair Derita Coleman Williams; Middle Tennessee Vice Chair, Beth A. Campbell; East Tennessee Vice Chair, Sam D. Elliott; Dr. Kent T. Dollar; Brad Grantham; Jeremy Harrell; Loni Harris; Kem Hinton; Dr. Bill Kennedy; Dr. William Lyons; Ray Smith; Laura Todd; Ann Toplovich; Susan Williams; Commissioner Salyers' Representative, Gerald Parish; State Archaeologist Phil Hodge

Webex: Allen F. Carter; Cato Johnson; Doris McMillan; Don Roe; Hanes Torbett; Governor Lee's Representative, Alec Richardson; State Historian, Dr. Carroll Van West

MEMBERS ABSENT:

Dr. Keith Norman; Beverly C. Robertson; Kelly Wolfe; State Librarian and Archivist Chuck Sherrill

GUESTS:

Carole Briggs, Court Reporter; Will Kerby, Associate Counsel, Office of General Counsel Acting and Counsel for the Tennessee Historical Commission (T.H.C.); Jeff Moseley, Counsel for Williamson County; Judge Claudia Padfield, Administrative Law Judge; H. Edward Phillips, III, and Will Pomeroy, Counsel for Sons of Confederate Veterans Major Nathaniel Cheairs Camp.

STAFF PRESENT:

E. Patrick McIntyre, Jr, Executive Director of the T.H.C.; Ashlee Pierce, Administrative Secretary

A. ANNOUNCEMENTS

Madam Chair Derita Williams called the meeting to order at 9:00 A.M. C.D.T. and welcomed newest Commission member, Laura Todd of Collierville. Mrs. Todd was the longtime director of Collierville Main Street and is head of Downtown District Consulting. She has some familiarity with our meetings as she hosted the June 2012 meeting in Collierville. She then revealed that Chuck Sherrill would be retiring soon as director of the Tennessee State Library and Archives (T.S.L.A.). He was not present for the meeting, but she wished him the best in his future endeavors and relayed that he will still be involved with T.S.L.A. working on special projects. Madam Chair noted that one of the esteemed and accomplished members of the Commission, Robert Hicks of Franklin, passed away since the last meeting. Mr. Hicks only served on the Commission for a short time, but he was a legendary storyteller in Tennessee and played a large

role in preservation efforts in Williamson County and Middle Tennessee for many years. Also, the longtime chairman of the State Historic Preservation Office's National Register Review Board, Dr. Michael Birdwell of Cookeville, died recently after a long battle with cancer. He was the curator of the Alvin C. York Papers, a recipient of a T.H.C. Certificate of Merit for his work in saving the York Institute from demolition and authored over 250 scholarly and popular works. Lastly, she acknowledged the passing of Ray Smith's wife, Fanny, to whom he had been married for 57 years. Madam Chair requested a moment of silence in their memory. Administrative Secretary, Ashlee Pierce, called roll. Dr. Keith Norman and Kelly Wolfe were absent without excuse. Beverly Robertson and State Librarian and Archivist Chuck Sherrill were absent with excuse. There being a physical quorum of 15, a Determination of Necessity was not required.

B. MINUTES

Madam Chair Williams asked if there was a motion to accept the minutes of the February 18, 2022 meeting.

Motion

Dr. Bill Kennedy motioned that the Commission accept. Ms. Susan Williams seconded. Madam Chair Williams asked if there were any discussions or questions, and there were none. She provided voting directions and the motion to approve the minutes of the February 18, 2022 meeting passed.

C. TENNESSEE HERITAGE PROTECTION ACT – WILLIAMSON COUNTY PETITION FOR DECLARATORY ORDER

Madam Chair Williams announced that the next item on our agenda is the petition for declaratory order, or P.D.O., filed by Williamson County as part of the county's waiver petition filed pursuant to the Tennessee Heritage Protection Act (T.H.P.A.). She asked Commission members to recall in this matter that Williamson County filed a petition for waiver under the T.H.P.A. concerning the seal for Williamson County. She added that later in these proceedings, Williamson County filed a petition for declaratory order contending that the seal was not covered under the T.H.P.A. and was not a memorial or not otherwise covered under that statute. Madam Chair stressed that the petition for declaratory order is the concern for this particular meeting, and not the waiver request.

The first issue the Commission must decide is whether to take up the county's P.D.O. as outlined in Tennessee Code Annotated section 4-5-223. As the agency having primary jurisdiction over the T.H.P.A., this commission is charged with the responsibility to consider the county's P.D.O. and decide whether to convene a contested case hearing. If the T.H.C. decides to convene a contested case and issue a declaratory order, the Commission will determine whether alteration of the Williamson County seal is subject to the THPA. First though, she asked T.H.C.'s counsel to explain what they were about to do and the legal provisions applicable to the hearing. Will Kerby, Associate Counsel for the Office of General Counsel, passed around a handout with relevant Uniform Administrative Procedures Act's (UAPA) provisions for member's review and explained what a petition for declaratory order is under the UAPA. He stated that in this case, the statute at issue is the Tennessee Heritage Protection Act which is under the primary jurisdiction of the Tennessee Historical Commission (THC). The county's P.D.O. is essentially asking this commission to determine the applicability of the THPA to the county's proposed action of altering its county seal. The THPA only governs procedurally for complaints and waiver petitions, but the UAPA provides the process for handling all other pleadings, such as

P.D.O.s. For that reason, the THC operates under the processes outlined in the UAPA to properly address the county's PDO. Mr. Kerby then asked if there were any questions about what he had described, or the two acts applicable to today's hearing.

Motion

Mr. Sam Elliott moved to convene a contested case hearing pursuant to Tennessee Code Annotated section 4-5-223(a)(1) and consider the issue of the declaratory order in this matter. Mr. Jeremy Harrell seconded. Madam Chair requested clarification on the order and what that would mean next for the Commission. Mr. Kerby pointed to the provided documentation and explained that Tennessee Code Annotated section 4-5-223 requires the decision of whether to convene the contested case and issue the order - a preliminary decision the THC must make. If the Commission chose not to do so, the parties would have a chance to file a declaratory judgement in chancery court. If the THC were to convene the contested case and move forward, we would then have a chance to hear from the parties and move into the merits of the PDO itself. Ms. Pierce conducted a roll call vote. Motion to convene a contested case hearing pursuant to T.C.A. section 4-5-223(a)(1) and consider the issue of the declaratory order in this matter passed unanimously. Since the commission voted to take up the petition for declaratory order, Madam Chair Williams turned the meeting over to Administrative Judge Claudia Padfield to begin the hearing.

(Official court transcript of hearing available upon request only. Fee required.)

Judge Padfield introduced herself, had counsel introduce themselves, and gave opening instructions. Jeff Moseley, of the Williamson County Bar and counsel for Williamson County gave his opening remarks, followed by H. Edward Phillips, III, Attorney at Law and Counsel for Sons of Confederate Veterans, Nathaniel Cheairs Camp. Discussion ensued and questions were asked by Commission members and answered by both sides of counsel. After closing arguments by both sides of counsel concluded, a ten-minute recess was taken. Following the recess, Judge Padfield gave her charge and took questions from Commission members. She then turned the case over to the Commission for deliberation.

Madam Chair Williams thanked Judge Padfield and said she wanted to briefly address public comments. She relayed that even though a chance was offered for citizens to make comments, no one signed up to make a comment at the meeting. She reminded them though that they were given the one written comment that was received prior to the meeting and asked them to remember the comment as they proceeded. Madam Chair then inquired if there were any recommendations from members on how to proceed with our deliberations. She added that since this is not a waiver request, a simple majority vote is all that is required for the vote.

Motion

Mr. Elliott reviewed some of the judge's comments and motioned that the Joint Stipulation of Facts, be the THC's Findings of Fact. Mr. Gerald Parish seconded. Madam Chair provided voting directions. The motion to adopt the Joint Stipulation of Facts as the Tennessee Historical Commission's Findings of Fact passed.

Mr. Elliott noted that he appreciated what both lawyers had done in this case as it was difficult being a public interest topic and he knew there are people who are offended by the Confederate flag and people who want to fight back about that, but that the lawyers did a very fine job and he

appreciated what was presented to the Commission and their responses to some of their off-beat questions.

Motion

Mr. Elliott motioned that they adopt as conclusions of law, two statements - first, that the Williamson County Seal is not a memorial as that term is defined in the T.H.P.A., and the second finding, based on the former's consideration, the T.H.C. determines that the T.H.P.A. is not applicable to the seal. Dr. Carroll Van West seconded. Madam Chair provided voting directions. The motion to adopt as conclusions of law, that the Williamson County Seal is not a memorial as defined in the T.H.P.A., and that based on the former's consideration, the T.H.P.A. is not applicable to the seal, passed unanimously.

Motion

Mr. Elliott motioned next on the public policy aspect - that the THC's ruling further defines the parameters of the THPA which is in the public interest. Mr. Allen Carter seconded. Madam Chair provided voting directions. The motion passed unanimously.

Motion

Mr. Elliot then asked to go back and amend his second motion on the conclusions of law, adding a third conclusion which states that the THC finds that concept of judicial estoppel does not apply to this factual situation. Dr. West seconded the amended motion. Madam Chair provided voting directions. The motion to amend the conclusions of law by adding a third conclusion which stated that the THC finds that concept of judicial estoppel does not apply to this factual situation, passed unanimously.

Motion

Madam Chair Williams asked that now that they have informally reached a decision and order if she heard a motion to adopt this decision and draft as the Commission's final order on this petition for declaratory order. Mr. Elliott moved to adopt the decision and draft it as the THC's final order on the P.D.O.. Dr. Kent Dollar seconded. Madam Chair requested Ms. Pierce perform a roll call vote. Motion passed unanimously.

Since the commission granted the county's P.D.O. and determined the county's proposed action is not subject to the T.H.P.A., she asked that Mr. Kerby and Ms. Sara Page, counsel for the Commission, work with counsel for Williamson County to draft an Order that reflects the decision of the T.H.C.. She then asked Judge Padfield if there was anything further that the Commission should do before proceeding to the remaining agenda items. Judge Padfield reminded the intervenor that there is the right to appeal the final decision once it is signed by the Commission Chair. She also informed the Commission members that she must wait until that particular time period has completed before she can dismiss the underlying waiver petition. If it is appealed, she will then "stay" the waiver petition, and it would go to chancery court. However, the intervenor could ask for reconsideration, which would then put it back to the Commission. The hearing regarding the petition for declaratory order adjourned at 11:17 A.M..

D. Other Business

Madam Chair explained that the new meeting schedule of meeting five times a year, adding in April and August will possibly occur this year as there are many new waivers that have come in. She noted the next meeting date in June would be the 17th, and the Commission would meet in Williamson County. Madam Chair recruited Kem Hinton to assist Mrs. Doris McMillan with the

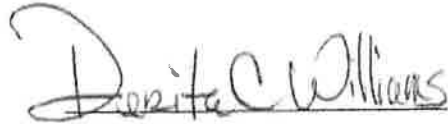
pre-meeting events as he also lives in Williamson County. She relayed that she intended to have more meetings that include historic sites under the care of the T.H.C.

E. ADJOURNMENT

Mr. Elliott motioned to adjourn, and Madam Chair Williams provided voting directions. The motion to adjourn passed. The meeting adjourned at 11:37 A.M. C.D.T..



E. Patrick McIntyre, Jr.
Executive Director



Derita Coleman Williams
Chair

