



TENNESSEE HISTORICAL COMMISSION

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

September 16, 2022

Minutes

MEMBERS PRESENT:

Madam Chair Derita Coleman Williams; East Tennessee Vice Chair, Sam D. Elliott; Brad Grantham; Jeremy Harrell; Loni Harris; Kem Hinton; Doris McMillan; Reggie Mudd; Dan Pomeroy; Laura Todd; Ann Toplovich; Susan Williams; Governor Lee's Representative, Alec Richardson; Commissioner Salyers' Representative, Gerald Parish; State Archaeologist Phil Hodge; and State Librarian and Archivist Jamie Ritter

Webex: Middle Tennessee Vice Chair, Beth A. Campbell; Allen F. Carter; Dr. Kent T. Dollar; Dr. Bill Kennedy; Dr. Bill Lyons; Don Roe; and Ray Smith

MEMBERS ABSENT:

Dr. Keith Norman; Beverly C. Robertson; Hanes Torbett; Kelly Wolfe; and State Historian, Dr. Carroll Van West.

GUESTS:

Wilma Hutchison, Court Reporter; Sara Page, Associate Counsel, Joseph Sanders, Senior Legal Advisor, and Heather Iverson, Senior Legal Counsel, Office of General Counsel, Counsel for the Tennessee Historical Commission (THC); Macy Forrest Amos, Senior Metropolitan Attorney and Counsel for Metropolitan Board of Parks and Recreation; Judge Michael Begley, Administrative Law Judge; and L. Marshall Albritton, Counsel for the City of Forest Hills

STAFF PRESENT:

E. Patrick McIntyre, Jr, Executive Director; Caty Dirksen, Tennessee Heritage Protection Act and Outreach Coordinator; Ashlee Pierce, Administrative Secretary

A. ANNOUNCEMENTS

The meeting began at 9:02 a.m. CDT. Madam Chair Derita Williams reviewed some housekeeping rules and welcomed two new members to the Commission, Reggie Mudd, from Gallatin in Sumner County, and a new ex-officio member, the new State Librarian and Archivist, Jamie Ritter, formerly of Maine. She then announced the resignation of West Tennessee member, Cato Johnson, and called upon Ms. Ashlee Pierce, Administrative Secretary, for roll call. Dr. Keith Norman, Mrs. Beverly C. Robertson, Mr. Kelly Wolfe and State Historian, Dr. Carroll Van West were absent without excuse. Mr. Hanes Torbett was absent with excuse. There being a physical quorum of 16, a Determination of Necessity was not required.

B. MINUTES

Madam Chair Williams asked for a motion to accept the June 17, 2022 meeting minutes.

Motion

Mrs. Loni Harris motioned that the Commission accept the minutes, and Mr. Jeremy Harrell seconded. Madam Chair Williams asked if there were any discussions or questions, and there were none. Motion passed.

C. TENNESSEE HERITAGE PROTECTION ACT

1. *City of Forest Hills Petition for Declaratory Order, Docket # 04.47-222480J*

Madam Chair Williams moved to the hearing portion of the meeting and introduced the Petition for Declaratory Order (PDO) filed by the City of Forest Hills as part of the city's waiver petition filed pursuant to the Tennessee Heritage Protection Act (THPA). She informed the Commission that this was the first of the two PDOs before the Commission that day. The PDO sought to determine whether the city's proposed action of changing certain street names is subject to the Heritage Protection Act. Madam Chair Williams turned the meeting over to Administrative Judge Michael Begley to begin the hearing.

(Official court transcript of hearing available upon request.)

Judge Begley introduced himself and gave instructions. Counsel for the City of Forest Hills, L. Marshall Albritton, gave a review of the City of Forest Hills along with his opening statement. Following his statement, the Judge turned the meeting back over to the Chair for deliberations. Before proceeding with receiving recommendations, Madam Chair Williams opened the floor up for discussion and advised that it is important to hear from multiple Commission members on this topic. Comments were requested to be under two minutes. She asked Judge Begley if legal questions from the members could be directed to their legal counsel, Ms. Page, during the deliberations. He replied that as long as she only acted in an advisory role, then that would be permitted. Madam Chair Williams proposed that a straw vote be taken to move the process along. Deliberations took place. Mr. Elliott stated that the Commission needed to be careful about defining away the statute, and that on at least two occasions the statute had been amended - once in 2016 and the other in 2018. The legislature says that the statute "is remedial in nature and shall be liberally construed in favor of historic preservation," and as a result of that, Mr. Elliott felt they did not have any choice but to deny the petition and hear the waiver in due time. Madam Chair moved forward with the straw vote requesting by a showing of hands if one was in favor of granting the petition for declaratory order by the City of Forest Hills.

Motion

Mr. Elliott motioned that the Commission adopt the Findings of Fact and Conclusions of Law submitted by Mr. Albritton for the City of Forest Hills, 1 through 11; as Finding 12, "the city stipulates that the streets are public property"; as Finding 13, "all of these streets relate to a "historic conflict" The Civil War [a.k.a. The War Between the States as defined by T.C.A. section 4-1-412(a)(2) or a name for historic figures who were involved in the War Between the States; Finding 14, the city wants to change the name of the following streets – Confederate Drive; Robert E. Lee Court; Jefferson Davis Drive; Jefferson Davis Court; and General Forrest Court, which are located within the corporate limits of the City of Forest Hills, and has filed a pending waiver petition in accordance with T.C.A. 4-1-412(c), but has filed this petition for declaratory order asking the Tennessee Historical Commission to hold that the act does not apply to streets in the

city that were owned and named by private parties and included on plats that were submitted to and approved by the city's planning commission, T.C.A. 4-1-412(a)(7), if such relief is granted, the waiver petition will be muted. Mrs. Toplovich seconded. Mr. Harrell requested an amendment to Finding 12 to say, "currently" public property. Mr. Elliott and Mrs. Toplovich accepted the amendment to the motion. Motion carried.

Motion

Mr. Elliott proceeded to the Conclusions of Law, and moved that the Commission approve the following, "1. The Commission has jurisdiction to make a declaratory order pursuant to T.C.A. 4-5-223(a)(2). The City intends that as private developers named the streets in question after the historic conflict of the War Between the States; a historic entity, the Confederacy; and historic figures, Jefferson Davis and Generals Lee and Forrest, while they were still private property, and the city merely accepted their dedication, the streets so named, the Heritage Protection Act does not apply. 3. The definition of memorial found at T.C.A. 4-1-412(a)(7)(A) and (B), has no requirement that the memorial be named or dedicated by the public entity. By the terms of the statute, it is sufficient that the named memorial be located on public property. The city has stipulated that the streets at issue are public property. 4. Based on the foregoing Findings of Facts and Conclusions of Law, Confederate Drive; Robert E. Lee Court; Jefferson Davis Drive, Jefferson Davis Court, and General Forest Court located within the corporate limits of the City of Forest Hills are "memorials as defined by the Tennessee Heritage Protection Act. 5. The legislature has mandated that the construction of the Tennessee Heritage Protection Act is remedial in nature and shall be liberally construed in favor of historical preservation. 6. The declaratory order sought by the City is denied. Mr. Pomeroy seconded. Dr. Dollar; Mr. Hinton; Dr. Kennedy; Dr. Lyons; Ms. McMillan, and Mrs. Derita Coleman Williams were in opposition. The total vote count was 17 in favor and 6 in opposition. Motion carried.

Motion

Mr. Elliott moved that the policy finding be that the construction of the statute is in the public interest. Mrs. Toplovich seconded. Motion carried.

Since the commission has denied the city's petition for declaratory order and determined the city's proposed action is subject to the Heritage Protection Act, Madam Chair Williams requested that Ms. Page and Mr. Sanders, counsel for the Commission, work to draft an Order that reflects the decision of the Historical Commission. Mr. Albritton asked for clarity on the City's next step, and it was determined that the City's pending Petition for Waiver would be on the February agenda. A brief recess was taken.

Before the next hearing began, Ms. Caty Dirksen, the new Historic Preservation Specialist representing the Tennessee Heritage Protection Act and Outreach Coordinator, was introduced. Mr. McIntyre thanked her, Ms. Pierce, Ms. Page, and Mr. Sanders for their support.

2. Metro Board of Parks & Recreation Petition for Declaratory Order, Docket # 04.47-223160A

The next item on the agenda was the PDO filed by the Metro Board of Parks and Recreation, part of the Board's waiver petition filed pursuant to the Tennessee Heritage Protection Act. The PDO sought to determine whether the Board's proposed action was subject to the Heritage Protection Act. Madam Chair Williams turned the meeting over to Judge Begley who began the hearing.

Judge Begley asked for those members who felt they needed to recuse themselves from participating and voting in the case to do so, and Ms. Ann Toplovich did so. Ms. Macy Forrest Amos, Senior Metropolitan Attorney and Counsel for Metropolitan Board of Parks and Recreation gave her opening statement. Deliberations occurred and a straw vote was taken by participating members. Madam Chair Williams relayed that all of the proper notices for cases and hearings were posted online on the THC's website.

Motion

Mr. Elliott motioned that since they are in the record, that the Commission adopt both the Findings of Fact and the Conclusions of Law submitted. Mr. Mudd seconded. Ms. Page encouraged discussion. Discussion ensued. Ms. Pierce performed a roll call vote. 15 were in favor, and 7 were in opposition. Those who voted no were Mr. Grantham; Mr. Harrell; Mrs. Harris; Mr. Hinton; Mrs. McMillan; Mr. Pomeroy; and Mr. Hodge. Motion carried. Since the commission granted the Board's petition for declaratory order and determined the Board's proposed action is not subject to the Heritage Protection Act, Madam Chair Williams requested that Mr. Sanders and Ms. Page, counsel for the Commission, work with Counsel for the Board to draft an Order that reflects the decision of the Historical Commission.

Motion

Mr. Elliott moved that the policy reason adopted by Commission be that the construction of the THPA is in the public interest. Mr. Mudd seconded. Ms. Pierce performed a roll call vote. Motion carried.

D. Other Business

Madam Chair reviewed that there had been a change in the bylaws in 2021 adding a number of regular meetings, and she suggested that not cancelling the August meeting might have prevented the need to schedule a special meeting. Mr. Elliott put forth a suggestion of only having THPA cases that require an Administrative Law Judge during the February, April, and August meetings - so that there could be at least two guaranteed meetings where the Commission could travel to another region for a regular meeting. He asked that this be considered at the next meeting in Greeneville. Madam Chair Williams relayed there was a restructuring of the Committees in order to properly represent the three Grand Divisions, and that she would like for all committees to be active. Mr. Pomeroy was given the task of chairing an ad hoc committee to review the THC Foundation, with Madam Chair Williams and Mr. Elliott also on the committee as they were in the past.

E. ADJOURNMENT

Mr. Elliott motioned to adjourn, and Ms. Williams seconded. Motion passed. The meeting adjourned at 11:54 A.M. CDT.



E. Patrick McIntyre, Jr.
Executive Director



Derita Coleman Williams
Chair