



TENNESSEE HISTORICAL COMMISSION

Meeting Minutes

February 17, 2023

On Friday, February 17, 2023, the Tennessee Historical Commission (THC) met in person at the William R. Snodgrass Tennessee Tower in the Nashville Room, in Nashville, TN for its regularly scheduled meeting. Participation was also provided via Webex. *The attachments referenced herein were sent to the Commission along with the agenda, prior to the meeting date.*

Members present in person were Madam Chair Derita Coleman Williams; Vice-Chair for Middle Tennessee, Beth Campbell; Vice-Chair for East Tennessee, Sam Elliott; Dr. Kent Dollar; Brad Grantham; Jeremy Harrell; Loni Harris; Judge Jim Haywood; Kem Hinton; Dr. Bill Kennedy; Dr. Bill Lyons; Reggie Mudd; Dan Pomeroy; Beverly Robertson; Ray Smith; Laura Todd; Ann Toplovich; Hanes Torbett; ex officio members Phil Hodge, State Archaeologist; Gerald Parish, Commissioner Salyers' Representative; and Jamie Ritter, State Librarian and Archivist. Member attending virtually via Webex was Susan Williams. Communications explaining absences were received prior to the meeting for Allen Carter; Doris McMillan; Don Roe; ex officio members Dr. Carroll Van West, State Historian; and Alec Richardson, Governor Lee's Representative. Dr. Keith Norman and Kelly Wolfe were absent without excuse.

Staff present in person were Patrick McIntyre, Executive Director, and State Historic Preservation Officer; Linda Wynn, Assistant Director for State Programs; Dan Brown, Historic Sites Program Director; Caty Dirksen, Tennessee Heritage Protection Act (THPA) and Outreach Coordinator; Graham Perry, Cemetery Preservation Program Director; and Ashlee Pierce, Administrative Secretary. Nina Scall, Tennessee Wars Commission Program Director, participated via Webex.

Madam Chair Williams called the meeting to order at 9 AM CST and informed those present that votes would be conducted by roll call. The roll was called, and a quorum was present.

A. ANNOUNCEMENTS

Madam Chair Williams welcomed everyone to the meeting, which included a new member, Judge Jim Haywood of Brownsville, and the new incoming attorney for the Commission, Miranda Christy. She thanked the staff for their presentations during the Open House the day prior at their offices located at Clover Bottom Mansion. Judge Jim Haywood introduced himself. Madam Chair Williams recognized Joe Sanders from the Office of General Counsel and announced his retirement would take place March 31st. She thanked him for all of his assistance with the Commission including guidance with the Tennessee Heritage Protection Act. Madam Chair also offered condolences to Commission Member Doris McMillan and her family over the recent passing of her husband, Robert McMillan. Madam Chair also welcomed Sen. Joey Hensley, who

was in attendance. Ms. Pierce called the roll and determined there was a quorum, with 22 people attending, and one of those attending virtually.

B. APPROVAL OF MINUTES FROM OCTOBER 21, 2022 MEETING

Madam Chair Williams reminded the Commission that the minutes from the previous regular meeting were included in the packet emailed to members.

Motion

Ms. Harris made a motion to approve the minutes and Mr. Harrell seconded. A roll call vote was conducted. Motion carried.

C. NOMINATING COMMITTEE

Motion

A slate of nominees for Chair and Vice Chairs of the Commission were next to be presented and voted on by the Commission. Mr. Elliott interceded and made a motion to move the nomination process to after item M on the agenda due to several members having a short amount of time available for the meeting, and that the hearing had still not begun. He also noted that there had been several new members since the last election, and it would probably be a good idea for them to have a review of the functions of the chair and vice chairs' role. Mrs. Susan Williams seconded. Discussion ensued. Ms. Pierce led a roll call vote. There were 17 yeses and 5 nos. Motion carried.

D. TENNESSEE HERITAGE PROTECTION ACT

1. Patten Parkway WWII Memorials, Chattanooga

Madam Chair Williams guided the Commission into the THPA portion of the meeting with the first item of business concerning the Patten Parkway World War II memorials in Chattanooga. The Commission heard the case in 2018 and made a final determination at that time. In addition, this case was filed under the provisions of the THPA. The current purpose was to determine if the proposed new location fell under Alternative 3 from the approved Findings of Fact and Conclusions of Law for a Final Determination ("Final Determination"). The Commission maintains jurisdiction on the original petition for waiver. Mr. Blythe Bailey from the City was introduced, and he presented his proposal to the Commission.

Motion

Mr. Elliott moved to approve Alternative 3 with a requirement for the City to report back to the Commission at the February 2025 meeting, which would be the first meeting of 2025. In the meantime, the Commission would retain jurisdiction over the matter to make sure that it is completed in accordance with the Final Determination. Dr. Dollar seconded. Ms. Pierce conducted a roll call vote. Motion carried.

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

2. Final Hearing, Nashville Confederate Monument

Before turning the meeting over to Judge Richard Murrell for the hearing, Madam Chair Williams noted that Tennessee Code Annotated section 4-1-412(c)(6) provides, in part, that:

An interested entity, group, or individual shall be afforded an opportunity to offer public comments regarding a petition for waiver at any commission hearing on a petition.

To comply with this provision the Commission allowed those who signed up to make comments after both Metro and the Intervening Party rested their cases and prior to Judge Murrell charging

the Commission. Chair Williams then asked Caty Dirksen to explain the public comment process. Ms. Dirksen complied. Madam Chair Williams turned the meeting over to Judge Murrell to preside over the hearing.

Judge Murrell addressed everyone and acknowledged Macy Amos, counsel for the petitioner, Board of Parks and Recreation for Nashville, and Edward Phillips, counsel for the intervenor, Joseph E. Johnston, Camp 28, Sons of Confederate Veterans. Ms. Amos gave her presentation requesting the waiver of subdivision (b)(1) of the THPA to allow Metro to remove the Confederate Private Monument based on compelling public interest. The Commission asked questions of Ms. Amos. Mr. Phillips then gave his presentation of opposition. The Commission asked questions of Mr. Phillips. Judge Murrell turned the meeting back over for public comments. Ms. Dirksen explained the comment making process and introduced the only speaker, Mr. Chris Coats. Following the public comment, Judge Murrell charged the Commission, and included the following from the THPA:

1. For a waiver to be granted, the public entity seeking the waiver must demonstrate by clear and convincing evidence that a material or substantial need for a waiver based on historical or other compelling public interest exists.
2. The commission may grant a petition, in whole or in part, by a two-thirds (2/3) vote of the entire membership of the commission by roll call vote. The commission may include reasonable conditions and instructions to ensure that a memorial is preserved and remains publicly accessible.
3. Any petition that fails to receive a two-thirds (2/3) vote shall be denied.

He reminded the Commission members that Tennessee Code Annotated section 4-1-412(c)(6) provides, in part, that: "An interested entity, group, or individual shall be afforded an opportunity to offer public comments regarding a petition for waiver at any commission hearing on a petition. An interested entity, group, or individual may file a memorandum, report, study, letter, or other document related to the petition for consideration by the commission." He noted Commission members have heard the public comments made today and all memorandum, reports, studies, letters, and all other documents received by the Commission related to the petition. The Commission was to give these comments and documents consideration during their deliberations. Counsel for the parties also provided proposed findings of fact and conclusions of law. While not evidence, the Commission could utilize the proposals to assist its creation of a final order. Judge Murrell completed his charge and turned the case over to the Commission for deliberation. Mr. Elliott offered to review some findings of fact for the Commission to discuss before voting on them. Mr. Harrell agreed. Madam Chair Williams questioned whether a straw vote would be helpful, and discussion ensued. Ms. Page explained how a straw vote works. Concern over a straw vote was discussed. A straw vote was conducted by roll call vote.

Motion

Mr. Elliott proposed certain Findings of Fact and Conclusions of Law. First Mr. Elliott proposed the adoption of Metro Nashville's Finding of Fact numbers 1 and 2, and intervenor's Finding of Fact number 3. Mr. Harrell proposed one amendment to the motion correcting a typographical error. Ms. Toplovich suggested that in addition to the phrase "War Between the States" that the term "American Civil War" be added, since that is more frequently used. Mr. Elliott summarized adding "also known as the American Civil War" after the phrase, "history of the period of the war between the states." Mr. Elliot proposed that Findings of Fact number 4 be part of Metro's number

7, with the addition of “however the board ultimately decided to seek removal of the monument instead of installing the signage.” Judge Murrell noted that in Finding of Fact 1, it did not indicate that the “board” was going to be defined as Metro, Nashville, Davidson County’s Board of Parks, so a later reference to the board may be disjointed. He recommended when counsel is editing, that they include that parenthetical so that it can refer back to the petitioner. Mr. Elliott believed these four findings were sufficient for moving forward and motioned to approve what had just been stated. Ms. Toplovich seconded. Mr. Harrell questioned whether a Finding of Fact should address whether or not this falls under the THPA. Mr. Hinton questioned if it could be noted that the sculpture was done by George Zolnay, who is regarded as one of the finest sculptors in the United States. He proposed a motion to amend the motion on the table by adding the intervenor’s Findings of Fact number 8 addressing the significance of the sculpture itself. Ms. Toplovich extended her second, noting that this Findings of Fact also acknowledges the sculpture’s placement on the National Register of Historic Places. This would make number 5 for the collected and approved Findings of Fact by the Commission. Another amendment was made removing the phrase, “yet another reason why Confederate memorials should not be removed,” from the Commission’s potential Finding of Fact number 5. Ms. Toplovich agreed. Ms. Robertson inquired about installing contextual and interpretive signage near the monument, as she expressed that, “it is always good when you talk about history to provide the context for those who are not aware of that history.” She hoped to advance the notion that there should be something that sets the context for the monument. Mr. Elliott restated the motion since there had been several amendments. Ms. Toplovich seconded. Discussion ensued over the sentence regarding the sculptor, and it was decided that a period would be added after “moreover the Gold Star Monument is thought to be one of the last public works by Mr. Zolnay,” followed by, “the two memorials are supporting objects aiding in the placement of...” A roll call vote was conducted on the Findings of Fact. Motion carried.

Motion

Mr. Elliott proceeded with the motion for the Conclusions of Law. For the first Conclusion of Law, Mr. Elliot proposed adoption the intervenor’s number 4, stating Metro Parks as “the public entity seeking the waiver shall demonstrate by clear and convincing evidence” under Tennessee Code Annotated section 4-1-412(c)(8)(A) “that a material or substantial need for a waiver based on historical or other compelling public interest exists.” In consideration of all the evidence, exhibits, and testimony presented at the hearing of this matter, the Commission finds and concludes that Metro Parks has failed to meet its burden of proof. The second Conclusion of Law was number 2 of the intervenors. The third Conclusion of Law was to state the relief sought by Metro, or the board, was removal of the monument. The fourth Conclusion of Law was to state that the legislature has provided that the Act is to be liberally construed in favor of historic preservation, and even if a waiver is granted, the Commission is to provide that the memorial is preserved and publicly accessible. The fifth Conclusion of Law was to state that in connection with the Forrest bust in the capital, the Commission emphasized that the relocation of a monument is paramount to public education. The sixth Conclusion of Law was to state the regulation that governs the consideration of action on a monument is Rule 0400-70-01-.01. Some of the criteria being whether a removal distracts from the commemoration and whether a removal diminishes the historic integrity. Consideration is to be given to whether the memorial is part of the National Register of Historic Places. The sixth Conclusion of Law would be that Metro, the board, has failed to prove by clear and convincing evidence that a removal is appropriate. Discussion ensued. A

seventh Conclusion of Law was added to include Tennessee Code Annotated section 4-1-412(c)8 (A). The last two Conclusions were switched in their order. Mr. Grantham seconded the motion. Motion carried.

Motion

The next motion Mr. Elliott made was relative to the relief sought in the petition. The motion was to deny the relief sought by Metro Nashville in the petition. Judge Murrell provided some clarification of procedure. Dr. Lyons seconded. Discussion ensued. Ms. Toplovich noted that ascribing the ideology of their leaders to private conscripted soldiers is not always a correct application. Dr. Dollar offered that he believed a good compromise would be to contextualize the markers and encouraged Metro to look into that. He noted it would be an opportunity to provide additional information for those who visit the sites. Discussion continued with various members giving their opinions on their reasoning for their vote. Ms. Pierce conducted a roll call vote. Motion carried.

Motion

Mr. Elliott motioned to set out a policy finding supporting the Commission's decision, which would be that a denial is necessary to effectuate the policy of liberal construction in favor of historic preservation. Mr. Ritter seconded. Ms. Pierce conducted a roll call vote. Motion passed. Madam Chair Williams asked Mr. Sanders and Ms. Page, counsel for the Commission, to draft an Order that reflects the decision of the Historical Commission.

Motion

Judge Murrell encouraged the Commission to consider authorizing counsel to include an introductory paragraph that indicates the hearing was held that day, that the Commission was properly seated, what occurred, the appearances that were made by both sides, and the individual that asked to speak. Mr. Elliott made the motion, and Mr. Harrell seconded. Ms. Pierce conducted a roll call vote. Motion carried.

The hearing portion of the meeting was adjourned. A lunch break was taken.

E. FINANCE COMMITTEE

The meeting returned to regular business. Madam Chair Williams asked Mrs. Harris from the committee, to present the Finance report. Mrs. Harris submitted the financial statement (*Attachment E1*).

Executive Director of the Commission, Mr. Patrick McIntyre, reviewed the budget update for fiscal year 2023-2024 (*Attachment E2*). He noted an improvement request of \$10,000 for publications was made, as it had been noted that there had not been an increase in funding in many years. However, the Governor's budget did not include that request. In addition, two requested capital projects were not included in the Governor's budget as well.

F. PUBLICATIONS COMMITTEE

Madam Chair Williams had Ms. Toplovich, Chair of the Publications Committee, review her report. Ms. Toplovich gave an update on the Tennessee History Book Award.

G. HISTORIC SITES COMMITTEE

Mr. Brown, Program Director for Historic Sites, reviewed his report (*Attachment G*). He expressed concern over the Rock Castle State Historic Site capitol project that is seriously in need of funding and subsequently has had to scale back on several planned improvements. Rock Castle

is one of the most frequented sites under THC administration and has been so for over 50 years. He requested \$4.1 million from the Historic Property Land Acquisition Fund (HPLAF) for completion, as the viability of the project is in question. He also relayed concerns for all projects as supply chain issues and increasing prices are halting or delaying most. Mr. McIntyre explained the HPLAF. Discussion ensued.

Motion

Mr. Elliott motioned to approve Mr. Brown's request for \$4.1 million from the Historic Property Land Acquisition Fund (HPLAF) for completion of the Rock Castle State Historic Site capitol project. Mr. Parish seconded. Ms. Pierce conducted a roll call vote. Motion carried unanimously.

H. MONUMENTS AND MARKERS COMMITTEE

Mr. Elliott presented the Monuments and Markers Committee report (*Attachment H*).

Motion

Mr. Elliott moved to approve the 7 proposed markers. Mr. Hinton seconded. A roll call vote was taken. Discussion ensued on the first marker, and it was decided that the year was incorrect and that the wording needed editing. It was determined that the marker had an event planned for it, so the Commission did not want to defer it to a future meeting. Mr. Elliott withdrew his motion so the Monuments and Markers Committee could work on re-wording as the meeting continued to the next section. The meeting would return to the section once the editing was completed.

I. TENNESSEE WARS COMMISSION COMMITTEE

Ms. Nina Scall, the Director of the Wars Commission gave her Project Proposal report (*Attachment I.2-3.*), beginning with the slate of Tennessee Wars Commission Grant Fund projects. Ms. Page explained conflict of interest for voting on the project funding. Discussion ensued.

Motion

Ms. Scall paused her review of the report for a motion and vote on the projects. Dr. Dollar motioned for approval of all five Tennessee Wars Preservation Fund projects. Ms. Toplovich seconded. A roll call vote was taken. Motion carried.

Ms. Scall continued presenting the current slate of Civil War Sites Preservation Fund applicants.

Motion

Dr. Dollar moved to approve the two Civil War Sites Preservation Fund applicants. Mrs. Campbell seconded. A roll call vote was taken. Motion carried.

Dr. Dollar introduced Tom Bennett, from the American Battlefield Trust to say a few words.

H. MONUMENTS AND MARKERS COMMITTEE

The Commission returned to the Monuments and Markers proposed markers, and to the edit of the first listed marker, "Medal of Honor Recipient Charles C. Davis."

Motion

Mr. Elliott changed the first half of the first sentence to "Captain Charles Davis of the 7th Pennsylvania Volunteer Cavalry received the Medal of Honor for leading a cavalry charge on June 27, 1863 to the south of this site, directly...", and motioned to accept this and the remainder of the proposed markers. Mr. Harrell seconded. A roll call vote was taken. Motion carried.

J. TENNESSEE CEMETERY PRESERVATION PROGRAM

Mr. Graham Perry, Cemetery Preservation Program Director, gave his report (*Attachment J*).

K. FEDERAL PROGRAMS REPORT

Mr. McIntyre thanked all the staff for their presentations to the Commission the day prior and presented the Federal Programs Report (*Attachment K*). Madam Chair Williams thanked the staff as well.

L. MERIT AWARDS COMMITTEE

Dr. Kennedy reviewed the report (*Attachment L*) and relayed that there were nine applicants. He named the winners and their projects.

Motion

Dr. Kennedy motioned to approve all eight Merit Award nominations and one Preservation Leadership Award nomination. If approved, this would only be the fifth ever Preservation Leadership Award to be given. Mr. Elliott seconded. Motion carried. Discussion ensued. A roll call vote was taken, and the motion carried unanimously.

C. NOMINATING COMMITTEE

Mr. Elliott requested to return to the Nominating Committee section and reviewed the significance and role that the Chair, Vice-Chairs, the Executive Director, and the Commission as a whole play. Mr. Harrell read the charter and relayed the slate of nominees for the Chair and Vice-Chairs for the upcoming terms. The nominees were Derita Coleman Williams from West Tennessee for Chair, and Dr. Bill Kennedy as Vice Chair from East Tennessee and Mrs. Doris McMillan as Vice Chair for Middle Tennessee.

Motion

Mr. Parish motioned to approve the Nominating Committee's slate of officers for the upcoming term. Mr. Pomeroy seconded. Ms. Pierce took a roll call vote. Motion carried.

M. AUDIT COMMITTEE

Dr. Bill Lyons, Chair of the Audit Committee, presented their report (*Attachment M*).

N. FOUNDATION COMMITTEE

Mr. Pomeroy, Chair of the Foundation Committee presented their report.

O. OTHER BUSINESS

1. Public Comments

There were no public comments.

2. Report from State Archaeologist

Mr. Hodge gave his report. He recognized the State Librarian and Archivist, Jamie Ritter, for providing a venue for the annual Current Research in Tennessee Archaeology (C.R.I.T.A.) conference after their original venue became unavailable.

3. Report from State Historian

Dr. Carroll Van West provided a written report that was distributed to the Commission a few days prior.

4. Report from State Librarian and Archivist

Mr. Ritter had to leave the meeting to attend another and was unable to present a report.

5. Black History Month, and National Historic Preservation Month

Madam Chair Williams read a note from newly appointed Vice-Chair from Middle Tennessee, Doris McMillan in regard to Black History Month. In it she commended Mrs. Wynn on the recent Nashville Conference on African American History and Culture that she chaired and has been working with since its inception 42 years ago. She also acknowledged the passing of renowned African American historian and author, Bobby Lovett. Mrs. Wynn was given a round of applause for her ongoing work with the Nashville Conference on African American History and Culture. She passed along that the theme for the 2023 Conference was "Tell it Like It Is: Exploring African American Public, Oral, and Written History in Tennessee." The national 2023 Black History Month theme was "Black Resistance," which focused on exploring how African Americans have addressed historic and ongoing disadvantage and oppression, as evidenced by recent events.

6. April and June Meetings

According to the revisions of the bylaws, the next meeting was scheduled to take place on April 21st. Ms. Page advised there was a new complaint filed, but that it was unlikely to be ready to be heard by the April meeting.

Motion

Madam Chair Williams motioned that if there is not THPA business before the Commission for a meeting, that the Commission will not meet in April, but instead meet in June. If the Commission deems it appropriate, we can entertain a motion to cancel the April meeting unless there is a THPA matter that needs to come before the Commission. Mr. Elliott seconded. For the June meeting, West Tennessee was chosen to travel to, with Collierville and Memphis being the locations. Discussion ensued. Motion carried.

Ms. Toplovich noted the draft document for rulemaking that Mr. Sanders gave the Commission in October and sought clarification on it as an agenda item for the June meeting.

7. Committee Assignments for 2023

Madam Chair Williams requested members advise her of committee preferences.

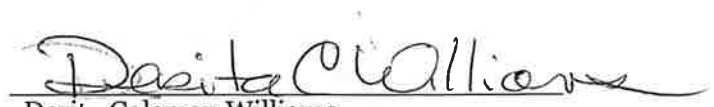
P. ADJOURNMENT

Madam Chair Williams thanked Kelley Clemons, Katie Hicks, and Ellen Sherrill from the Tennessee Department of Environment and Conservation (TDEC) for providing coffee and water and assisting with the lunch delivery. Mrs. Susan Williams corrected the title of the book, "*Title IX, Pat Summitt, and Tennessee Trailblazers, 50 Years, 50 Stories*," for the book award nominations, adding another "t" at the end of Summitt.

There being no further business to come before the Commission, Madam Chair Williams thanked everyone for their time and attention. Mr. Parish motioned to adjourn. Dr. Dollar seconded.

The meeting adjourned at 3:15 p.m. C.S.T..


E. Patrick McIntyre, Jr.
Executive Director


Derita Coleman Williams
Chair