

# HERITAGE COMMISSION

January 6, 2011

The Heritage Commission held its regular monthly meeting in the City Council Chambers at 37 Green Street, Concord, New Hampshire, on Thursday, January 6, 2011, at 4:30 p.m.

## 1. Call to Order and Seating of Alternates:

Chairperson Philip Donovan called the meeting to order at 4:35 p.m.

Present at the meeting were Chairperson Philip Donovan, Vice-Chairperson Frederick Richards, and members Carol Durgy Brooks, Marilyn Fraser, James McConaha, Robert V. Johnson II, and Dr. Bryant Tolles. [Member Elizabeth Durfee Hengen arrived later in the meeting]. Absent from the meeting was Commission Member Steve Shurtleff. City Planner Douglas Woodward and Administrative Specialist Donna Muir were also present.

Chairperson Donovan elevated the alternate members to full member status for the meeting.

## 2. Minutes of the December 2, 2010 meeting:

The Commission considered the minutes of the December 2, 2010, Heritage Commission meeting. A motion was made by Ms. Fraser to accept the minutes as presented and seconded by Mr. Johnson. Chairperson Donovan asked if there was any discussion regarding the minutes. The motion to accept the minutes of the December 2, 2010, meeting passed unanimously.

## 3. New Business:

- a. *Further consideration of an amendment to Section B-5, Voting, of the Heritage Commission's procedural rules relative to adding a requirement for members to meet a juror standard or to otherwise disqualify themselves from participation in any decision making when reviewing applications in the Historic District and applications for Demolition Delay.*

Chairperson Donovan asked Mr. Woodward to provide an update to the Commission. Mr. Woodward stated that he had spoken with the City Solicitor about the issue. The City Solicitor had prepared a memorandum stating that this amendment would only apply to the Commission's role in reviewing applications in the Historic District, and not to its role in Demolition Review. Mr. Woodward stated that the City Solicitor wanted to make a change to the memorandum he had not received a revised copy of the memorandum as yet.

Chairperson Donovan suggested that the Commission would wait for a copy of the City Solicitor's memorandum prior to taking a vote on the amendment. Chairperson Donovan stated that this item would remain on the table.

[Ms. Hengen arrived at 4:42 p.m.]

Mr. Johnson stated that although the Heritage Commission and the Demolition Review Committee do not have judicial capacity, he has a concern with a circumstance where a member of the Heritage Commission or the Demolition Review Committee takes a public position, such as was done with the Green Street project. Ms. Fraser asked whether Mr. Johnson would feel differently if the Heritage Commission members were out in public with placards, but as citizens and not representatives of the Heritage Commission. Mr. Johnson replied that it all comes down to

appearances. Ms. Fraser asked whether the Heritage Commission members should check with the Chairperson of the Heritage Commission prior to voicing opinions or picketing publicly.

Chairperson Donovan suggested that this discussion continue at the next Heritage Commission meeting, once the City Solicitor's memorandum was available.

b. *Election of Officers.*

Chairperson Donovan turned the meeting over to Mr. Woodward to proceed with the nominations for the Chair of the Heritage Commission. Mr. Woodward opened the floor for nominations. Mr. Richards nominated Phil Donovan for another term as Chair, and Ms. Fraser seconded the nomination. As there were no further nominations, Mr. Johnson moved that the nominations be closed and that the City Planner be instructed to cast one ballot for Phil Donovan for Chair. Ms. Fraser seconded the motion. The motion carried. Mr. Woodward then turned the meeting back over to Chairperson Donovan.

Chairperson Donovan opened the floor to receive nominations for the position of Vice Chair of the Heritage Commission. Mr. McConaha nominated Fred Richards for another term as Vice Chair, and Ms. Brooks seconded the nomination. As there were no further nominations, Mr. Johnson moved that the nominations be closed and that Chairperson Donovan be instructed to cast one ballot for Mr. Richards for Vice Chair. Ms. Fraser seconded the motion. The motion carried.

c. *Update on the Technical Assistance Grant to the City from EPA to facilitate Sustainable Redevelopment of historic properties in Downtown Concord.*

Chairperson Donovan asked Mr. Woodward to update the Commission regarding the Technical Assistance grant to the City from EPA. Mr. Woodward said he thought there would be new information to provide to the Heritage Commission since their last meeting, however, the scheduled weekly conference call with EPA was postponed until next week. The City is waiting for a draft of a document from EPA. Mr. Woodward said that the visit with EPA was good. There were a series of meetings with various boards, committees, property owners, and various community groups. Three Downtown properties were visited including the Phenix Hall owned by Mark Ciborowski, and the two Zachos' buildings, all on North Main Street.

Ms. Hengen asked if there was a projected end date for the project. Mr. Woodward stated that he believes it will be April or early May. EPA is scheduled to make a presentation on the project in Concord at a conference. Mr. Johnson asked whether a decision has been made as to what building might be used in the project. Mr. Woodward indicated that no determination has been made yet as to which building or buildings might be used as prototypes for the project.

Mr. Woodward stated that he would keep the Heritage Commission informed.

d. *Site Plan Review.*

Chairperson Donovan stated that the Heritage Commission has been doing a lot of work regarding demolition review in this past year, which has shown the Commission the shortcomings with the demolition review process. It has been realized that as projects come up for demolition review, the contractors know that all they have to do is bear with the process and wait it out for the 49 days as indicated in the ordinance. Chairperson Donovan stated that he had spoken with Mr. Woodward about reviewing the Planning Board's regulations and using the Planning Board to help in

preserving historic buildings. Mr. Woodward stated that the Planning Board and the Planning Division Staff are in the process of reviewing the Site Plan Regulations. Chairperson Donovan believes that the Heritage Commission and the Demolition Review Committee should review the site plan regulations and make suggestions to the Planning Board. He stated that he had asked Vice Chair Richards to look into this. Vice Chair Richards said that he hadn't had the opportunity to do so.

Mr. Woodward said that the Planning Board has been working to update the Subdivision Regulations and the Site Plan Regulations. To date, the Subdivision Regulations have been updated and adopted. He believes that the Site Plan Regulations are more appropriate to the Heritage Commission and Demolition Review Committee, as they cover site specific topics. He said that right now there isn't much regarding historic buildings in the Site Plan Regulations. He also stated that he isn't sure how far the Planning Board can go in denying a site plan application because of a building's historic significance. Mr. Woodward indicated that in Keene and Portsmouth that the burden of proof for a proposed demolition is on an applicant to prove that a building is structurally inadequate. Ms. Hengen thinks that it is only within the historic districts of those communities.

Chairperson Donovan stated that this issue is on the front burner and that there may be other buildings in the very near future coming up for demolition review. He feels it is the Heritage Commission's role to move this forward, especially in light of the Planning Board's review of the Site Plan Regulations. Mr. McConaha asked whether there were clear limits on the Planning Board's authority to establish criteria for site plans, especially for certain development areas of the city. Mr. Woodward said that there hasn't been any research as to how far the Planning Board's authority could extend as far as historic preservation. Mr. McConaha cited the Supreme Court case of *Richmond vs. the City*. Mr. Woodward stated that the specific words cited in the Supreme Court decision were based on language of the Zoning Ordinance at that time. The Zoning Ordinance is adopted by the City Council, not the Planning Board.

Mr. McConaha asked if the Planning Board could be specific in identifying certain buildings or whether they could specify certain criteria for historical significance. Ms. Hengen asked whether instead of specific buildings, could the Planning Board look at areas which are already on or eligible for inclusion to the National Register and then each building within that area would have to meet certain criteria as to whether the particular building adds to that area. Mr. Woodward said that he would do some research, asking other planners in New England through the several planners' associations. He thinks that the Planning Board is sympathetic to the preservation of historic buildings, especially in the downtown area. Vice-Chair Richards asked about how much time he could have to do some of this research. Mr. Woodward stated that the Site Plan Regulations would likely be adopted by the Planning Board prior to the end of May. Ms. Hengen stated it would be beneficial for the Heritage Commission to avail themselves of information from the various planners' associations, as well as the Preservation listserves, and the legal department of the National Trust. Ms. Hengen asked if Mr. Woodward would write up what they should ask about. Mr. Woodward stated that it would be whether a municipality had any provisions in their site plan regulations or in unified codes relative to buildings with historic significance.

Ms. Brooks agreed that looking at the site plans regulations is important, but also feels that they should also look into the subdivision regulations, in order to cast the broadest possible net. Mr. Woodward stated that the subdivision regulations deal with land and its division into lots, and not buildings, so it wouldn't apply. Mr. McConaha wondered if the Planning Board undertakes these revisions to the regulations, would they be in a position to impose a moratorium on demolitions until the revisions are complete. Mr. Woodward said that the Planning Board did not have the

authority to impose moratoriums. Once the Board announces public hearings on the revisions, then nothing can occur which is contradictory to the proposed regulations until a vote is taken. There are also vesting laws that have to be respected.

Mr. Johnson asked who would be given the authority to make a decision regarding historic buildings – the Heritage Commission submitting recommendations to the Planning Board or the Planning Board submitting recommendations to the Heritage Commission. Chairperson Donovan thinks that it should be the Heritage Commission submitting recommendations to the Planning Board. Ms. Fraser said that the Heritage Commission members are advocates for historical properties and that if the Commission is granted authority to make determinations, they wouldn't be able to advocate.

Vice-Chair Richards said that he would use whatever information that Mr. Woodward and Ms. Hengen came up with and work with both of them to complete the research. Ms. Hengen thinks that the Heritage Commission is going in the right direction by using the Planning Board regulations. Chairperson Donovan said that the neighborhood heritage districts could be more restrictive and feels that both the Planning Board regulations and the local districts are equally important. Mr. Johnson suggested that another approach would be to look at enabling acts in other states that could be used in New Hampshire.

*e. Heritage Sign Program.*

Ms. Brooks updated the Commission on the Heritage Sign program. She said that there will be a Heritage Sign Program Workshop on January 26, 2011, from 4:00 p.m. – 5:15 p.m., in the Concord Room, at the City Library. Anyone interested in attending must sign up, as the workshop is limited to ten people. Ms. Brooks asked that this announcement be posted on the Heritage Commission's webpage.

[Mr. Johnson left the meeting at 5:47 p.m.]

*f. 23-25 Green Street.*

Chairperson Donovan updated the Commission members regarding the 23-25 Green Street project. At the Planning Board meeting, the Board asked Mr. Woodward to meet with the Concord Housing & Redevelopment Authority (CHRA) and the Heritage Commission to see if they could come up with an agreement regarding rehabbing the front of the building and building a new rear portion of the building, in lieu of the demolition of the entire building. Mr. Woodward, Chairperson Donovan, John Hoyt, Director of CHRA, and Jim Fowler, CHRA Board member, met and cleared up some misunderstandings. The outcome of that meeting was a successful negotiation for the CHRA to hire a company to look at the building to see if a compromise could be made to save the front portion of the building. The NH Preservation Alliance (NHPA) offered CHRA a \$3,000 matching grant to contribute toward the preparation of an estimate. Mr. Woodward stated that the grant negotiations were between the NHPA and CHRA, and he was not involved in this. Although the NHPA is not requiring that the Secretary of the Department of Interior Standards for preservation be followed, they wanted to ensure that the firm hired to provide an estimate would be knowledgeable of the standards.

Chairperson Donovan stated that Frank Lemay of Milestone Engineering was hired by CHRA to provide an estimate for the project. He said that Milestone in looking at keeping the exterior of the front of the building intact even though there would be some challenges with the Americans with

Disabilities Act and the installation of new windows. Milestone is also looking to ensure that the rear of the building is compatible with the front portion. Mr. McConaha stated that he hopes the Heritage Commission would be invited to look at the plans. Chairperson Donovan stated that the Commission would be invited to look at the plans, but there will need to be some compromises. Mr. McConaha asked if anyone on the Commission was familiar with Milestone Engineering's work product. Mr. Woodward said that they are very knowledgeable and that Milestone's website showed some of their projects.

Chairperson Donovan stated that Mr. Hoyt has talked about the needs of the CHRA and their clients. The office space would not reflect the history of the building. Dr. Tolles asked whether the question of alternative space for this project came up. Mr. Woodward said that he mentioned it to them. Chairperson Donovan said that the scope of their meetings was to work together to make this particular building work for the CHRA. Chairperson Donovan stated that Mr. Lemay understood that the time frame for the estimate needed to consider the upcoming CHRA Board meeting on February 2nd, the Heritage Commission meeting on February 3<sup>rd</sup>, and the Planning Board meeting on February 16<sup>th</sup>.

Vice-Chair Richards feels that the Heritage Commission still has a chance to succeed in preventing the demolition. Ms. Hengen stated that she has had a number of people call her and thank the Heritage Commission for their work on this project.

Chairperson Donovan stated that there are still questions surrounding whether federal money is involved in the Green Street project. No definitive answer has been received from CHRA. Mr. McConaha has done some research and prepared a draft letter for the Chair of the Heritage Commission to sign. This letter will be sent to various agencies to try to determine whether federal funds are being used for this project. One of the agencies is the Advisory Council on Historic Preservation. Ms. Hengen asked whether a time frame for response was included in the letter. Mr. McConaha said there was not a time frame in the letter, but it should be included. There was continued discussion as to who should receive copies of the letter; a number of organizations and agencies were included. Ms. Hengen suggested that the Heritage Commission and the Planning Board sign the letter jointly. Mr. Woodward said that the Planning Board didn't specifically ask CHRA about funding, so they wouldn't be in a position to sign the letter.

Chairperson Donovan said that he would keep the Commission updated on this project.

There being no further business, a motion was made by Vice-Chair Richards and seconded by Ms. Brooks to adjourn the meeting. The motion carried. The Chairperson adjourned the meeting at 6:30 p.m.

A TRUE RECORD ATTEST:

Donna Muir  
Administrative Specialist