

**MINUTES OF THE REGULAR MEETING OF THE
SANFORD HISTORIC PRESERVATION COMMISSION**

**WEST END CONFERENCE ROOM
7:00 PM, MONDAY, JULY 26, 2010
SANFORD MUNICIPAL BUILDING**

Roll Call:

Commissioners Present: Al Roethlisberger, David Nestor, Donnie Worley
Brandon Atkins, Ed Page, Shannon Gurwitch, &
Mike Humphrey

Staff Present: Bob Bridwell, Planning Director, Attorney
Susan Patterson, Anne Sears

Government Official Present: Charles Taylor, City Councilman

ORGANIZATIONAL MEETING:

Susan Patterson, City attorney opened the Organizational Meeting, where the Commission needed to select the Chairman, Vice Chairman and the Clerk of the HPC Commission for the year. Attorney Patterson stated although the selection of Chair, Vice Chair and Clerk was number four on the agenda, election of officers should happen before the meeting was called to order, since the commission had an opportunity to change officers.

Commissioner Roethlisberger nominated Commissioner Shannon Gurwitch for Chair. Commissioner Page nominated Commissioner David Nestor; Commissioner Humphrey nominated Commissioner Brandon Atkins. Commissioner Brandon Atkins asked to withdraw his nomination as Chairman. Attorney Patterson again asked if there were any other nominations. Commissioner Page moved that the nominations be closed. Seconded by Commissioner Gurwitch, the motion passed unanimously. Attorney Patterson noted that there were two nominations for Chair. The vote was taken by roll call vote made by Clerk Anne Sears. Votes for Commissioner Gurwitch were Commissioners Roethlisberger, Gurwitch, and Humphrey; votes for Commissioner Nestor were Commissioners Nestor, Atkins, Page, and Worley. Attorney Patterson stated by a four to three vote, David Nestor was elected as Chairman.

Chairman David Nestor called for nominations for Vice-Chairman. Commissioner Atkins nominated Commissioner Page. Commissioner Roethlisberger nominated Commissioner Gurwitch. Chairman Nestor asked if there were any other nominations. Hearing none, Commissioner Gurwitch moved to close the nominations. Seconded by

Commissioner Atkins, the motion passed unanimously. The vote was taken by roll call vote made by Clerk Anne Sears. Votes for Commissioner Gurwitch were Commissioners Roethlisberger, Gurwitch, and Humphrey; votes for Commissioner Page were Commissioners Nestor, Atkins, Page, and Worley. Chairman Nestor stated by a four to three vote that Commissioner Page was elected as Vice-Chairman.

Attorney Patterson stated that the clerk's position needed to be voted on, even though, historically, that role is assigned to a city staff member. Commission Roethlisberger made a motion to nominate Anne Sears as Clerk, and the motion was seconded by Commissioner Page. Commissioner Humphrey raised a question. He stated that he knew that the Rules and Procedures had been changed but hadn't seen the new changes; however, he said his recollection was that this position was the staff person that handled the day to day operations for the Commission. Attorney Patterson said this position was generally assigned to staff and paid for by the city. She noted that the Commission could technically assign someone else to be clerk if they wanted to, but it was more a formality. Chairman Nestor asked if there were any other nominations. Commissioner Page moved that the nominations be closed. Seconded by Commissioner Worley and approved by acclamation seven to none, the motion passed unanimously. Anne Sears was elected as Clerk for the HPC Commission.

The Regular Meeting was called to order by Chairman David Nestor.

APPROVAL OF THE AGENDA FOR JULY 26, 2010.

Chairman Nestor asked to approve the agenda. Commissioner Roethlisberger made a motion to amend the agenda to move item four of voting for Officers to item one which had already been accomplished, and then submit that as the agenda to be approved. Seconded by Commissioner Worley, the motion passed unanimously. Commissioner Gurwitch asked wouldn't the meeting have been in effect and called to order by Attorney Patterson. Attorney Patterson explained that until they had their Organizational meeting they could not call the Historic Preservation meeting to order, and now the Chairman was calling to order the meeting of the Historic Preservation Commission. The Organizational meeting had to take place before any discussion.

APPROVAL OF THE PREVIOUS MEETING MINUTES JUNE 21, 2010 AND THE AGENDA FOR JULY 26, 2010.

Chairman Nestor stated that they did not have the minutes from the last meeting. City Attorney, Susan Patterson shared that they were mailed to you in your packet, but there were typos and other small changes that needed to be made, and she requested that the Commission wait until the next meeting for their approval. She continued to say it was just format changes. Commissioner Roethlisberger said they all understood that the minutes were a synopsis of the meetings; while, they probably ought to be verbatim, often time they were not. Attorney Patterson said that minutes should never be verbatim. Commissioner Roethlisberger stated his point was there was always a happy medium to

be struck, and that he noticed in many cases the minutes seem to leave out some of the discussions such as Meadow Defosche pillars. There was some debate and some justification about his disagreement and why he opposed that project. His concern was that his thoughts had not really clearly been reflected in the synopsis form in those minutes, so someone looking at these some months later without listening to the tape may not know why opposition was made. His comment was that they should look at a way to format the minutes that strike a happy medium so that those basics were covered a little better. Attorney Patterson noted that minutes should never be a verbatim transcript, even in a quasi-judicial hearing. Sometimes the tape was not even preserved after the minutes were approved; some boards did keep the tape, but usually there was a period of time in which one could bring a case, an appeal to the court. Basically the tape was no longer an official record of the meeting, the minutes were. Attorney Patterson stated it never should be reflected as a court transcript would be, as every word spoken. That was one of the things that she was in discussion with the staff about; if a person changes thought mid-sentence, should the staff make the sentence sound clearer. Chairman David Nestor wanted some clarification when a Commissioner didn't like or care for something in the minutes from the last meeting, should the minutes be amended at the meeting or before then. Attorney Patterson said when they received the draft in their packet, if there were typos or things like that, the clerk should be made aware of things that they wanted changed. When a Commissioner came to a meeting, they could also do it then, but then one has to wait to have it amended with the change. If a Commissioner could get it to the clerk ahead of time, then everybody would have seen it. If they wanted corrections to be included in the minutes, they should notify the clerk by e-mail ahead of time. She would be able to amend the minutes and get them back to everyone before the next meeting for approval.

Commissioner Humphrey addressed the Chair and relayed that at the previous meeting he had spoken during Public Comment, and he felt that his concerns were not shown in the previous minutes. Mr. Bridwell explained the process of the minutes and while they did need to follow the context and the flavor of the meeting, he said few boards were taking verbatim minutes. Commissioner Humphrey wanted his complaints from the previous meeting to be made part of the record, so that down the road, if that issue still came about, it was part of the record. Mr. Bridwell said there was an essence in getting the minutes in terms, and getting the context where it would not be too lengthy. The minutes should reflect or be precise enough to cover the facts.

Commissioner Humphrey stated the following:

1. The general basis and the concerns should be in there.
2. If Attorney Patterson was consulted, then that material also needed to be in there.

Chairman, Nestor said his concern was everything that was spoken about during the public comment period, may not be under the control of the Commission. Chairman Nestor said that they ruled on COAs that came before them, and he expressed that is why they had public hearings during Major COAs.

Commissioner Gurwitch felt that:

1. The Commission needed public comment.
2. That the purpose of this Commission was more than making decisions on COAs. The commission was supposed to also provide information and educate the public regarding historic preservation. She stated that perhaps having it in the minutes would be beneficial to the commissioners as a whole, so that they knew what was discussed or what topics of concern were presented to this body by the public. Chairman Nestor said that it would be nice to have it on paper, but once again it would be tough to keep track of everything. Commissioner Roethlisberger's opinion was that anything that is pertinent to the meeting should be summarized in the minutes in some format that conveys what actually occurred.

Councilman Taylor asked Susan Patterson to define what the role of the Commission was and how they served. Councilman Taylor said he was hearing different comments, and wanted to get it on the right track. Attorney Patterson answered his question by saying that the record ought to reflect the actions of the committee. Actions were the ones in which votes took place and hearings were conducted. There were also other aspects that the minutes, (which were valid points being made by other members), helped inform those that could not attend or were absent on what occurred or what transpired. Some of that would not be verbatim, but summarized or made concise so that the minutes didn't take up pages and waste a lot of time. Attorney Patterson pointed out that this was not only a regulatory but an advisory board, such as recommending districts for local designation. The Commission was supposed to be composed of individuals with special interest or education in certain areas of history, architectural, archeology, and other things. Soliciting the public input or comment was supposed to pertain to activities in the historical districts. The Commission heard cases that may impact the surrounding properties by a change. Attorney Patterson also shared that this was the only board that she knew of other than the city council, the school board, and the county commissioners, which had a public comment time. She noted that for the HPC, public comment was not required per the general statutes. It was the Commission's choice to have. She continued to note that during the public comment period in council meetings that there was no back and forth response between council members and the speakers. The speaker was given three minutes to speak and that was what they were there for. She continued to say that summarizing what was said so there was an accurate review of what had been said would be fine. Attorney Patterson clarified that the public comment time was a time for the public to speak, not for the Commission to engage. While the Commission should want to hear from the public and have their input on government, an important part of democracy, a board needed to have the business in front of it, accomplished.

Commissioner Roethlisberger mentioned after attending the Quasi-Judicial Training that it might be advisable to take notes throughout the year and then annually look at their Rules and Procedures and take the opportunity to amend them if necessary. Commissioner Page noted that he thought that it was appropriate for individual speaker comments to be summarized; however, if a Commissioner felt strongly during a particular item, during discussion of a COA or other business before the Commission,

that one way to get that important point was to make a motion for some kind of finding of fact. Even though it might be denied, it might get the point across and get it in the minutes. Commissioner Page stated that this was just a way to assure that it got in there. Commissioner Humphrey shared similar remarks, and had concerns of two motions hitting the floor at the same time. Commissioner Gurwitch also had concerns regarding the past minutes, and Mr. Bridwell said that Attorney Patterson could help the clerk to make some adjustments, and that was what was being suggested. Commissioner Gurwitch stated for the record that she had expressed concerns before as a member of this Commission that certain responsibilities that should fall to this board of commissioners was not. She felt the Commission's authority was regularly usurped, and she was not comfortable with that. Commissioner Gurwitch noted that the Commission should make the decision if the minutes should be adopted not someone else. Commissioner Gurwitch had concerns that there will be two months of minutes up for approval at the next meeting.

Commissioner Humphrey made a motion to take the minutes and table them until the next meeting, and put a deadline on it. If people had other suggestions, to please forward them by e-mail to Clerk Anne Sears no later than Monday, August, 2, 2010. Seconded by Commissioner Roethlisberger, the motion passed unanimously.

There was no Public Comment.

At this time Mr. Bridwell shared that he and Marshall Downey were certified planners, and had attended a program back in February on Quasi-Judicial procedures. At Attorney Patterson's suggestion, staff thought it would bring the training before them. Mr. Bridwell commented that it might be very useful, and hoped it would help answer some questions. Mr. Bridwell shared that Marshall Downey, Assistant Planning Director had been a planner for a number of years and his primary responsibility was Current Planning, which also included the Board of Adjustment.

Mr. Downey introduced himself as the Assistant Planning Director with Sanford/Lee County. His current role was primarily Planning and Building Inspections for Sanford/Lee County and the town of Broadway. He said that he had staffed three Planning Boards, and three Boards of Adjustment. He said that the presentation would be a real overview, not a lot of details, but it would touch on some of the key issues as a Quasi-Judicial body.

Mr. Downey started the slide presentation. (Note: training brochure attached)

These were the topics that were discussed:

- **What's a Certificate of Appropriateness**
- **HPC Rules of Procedure**
- **How is a COA Hearing Conducted**
- **Conflicts of Interest**
- **Time Limits on Speakers**

- **Collecting Evidence**
- **Competent Evidence**
- **Cross-Examination/Subpoenas**
- **Open Meetings**
- **Quasi-Judicial Do's and Don't**

Notes/Comments by Commission members during the discussion

1. Once minutes are transcribed and adopted and approved, they become the record that is the official record.
2. Councilman Taylor asked to refer back to previous tapes regarding closure of COAs.
3. Commissioner Humphrey had questions about individuals that went out and looked at a project prior to hearing a case. It was recommended by staff that if approached by an applicant for an upcoming COA hearing, to tell that person that they could not discuss the case that was to be heard. Commissioner Humphrey indicated that he found it helpful to visit the proposed site. He also noted that being a resident of a neighborhood himself, one might know something about the houses from first hand knowledge that could be beneficial to the case. He asked how that applied to collecting evidence. Mr. Downey suggested if a Commissioner mad a site visit, which they had the right to do, then that Commissioner should disclose that prior to hearing the case. Mr. Downey asked Attorney Patterson if she agreed. She stated it should be disclosed if it occurred. She said what they were committed to do was make a decision on evidence presented solely at the hearing, but every commissioner also brought to the case their own individual experiences and knowledge. Mr. Downey stated the key about the fixed opinion was as long as they disclosed it, and it was clear to everyone, that then it was ok. Attorney Patterson also shared that Commissioners should not go from a judge standpoint to a witness standpoint, because if one is already biased, then it would not be appropriate to judge. Commissioner Humphrey asked what if you have a situation where an applicant fills out the application, they do a site plan, they have the pictures, etc., but the member knows that the pictures have been taken from an advantageous point that doesn't show something that was an issue and should be on the table. Commissioner Page shared that if one had a question about a case you should refer it to the staff person, to ask the question; the staff would be the witness in the case. He stated if it was really that important to lay one's eyes on a site, rather than just based on what was submitted in the application, then a Commissioner should really ask himself if they are an impartial decision maker in the case. Attorney Patterson also mentioned by asking questions will put the burden back on the applicant. Commissioner Roethlisberger spoke and said that there are roles that staff brings to the Commission for evidence. Staff should inform the applicant, and should explain what the applicant needs to do and provide. He referenced page 100 in the Guidelines for a checklist for COAs.

4. Commissioner Roethlisberger brought up the issue of photographing sites for major cases. The end result was that the applicant should provide all the evidence necessary to render a decision on a major COA.
5. Both Community Development Director Marshall Downey, and Attorney Patterson agreed that staff should not offer recommendations on cases.

Councilman Taylor and Commissioner Page left at 8:45 p.m.

Mr. Downey continued with his presentation.

6. A Competent Evidence Letter was a letter that one could take as information or it could be rejected. It was something that members should not rely on. It should be included as exhibit A, or exhibit B, and it needed to be attached. The letter must stay with the case, and the applicant may take a copy home.

***Note: Mr. Downey suggested that the Commission should let persons know if what they were saying was perceived as hearsay, so that they understood that information was not going to be part of the evidence. He also mentioned that the HPC commission did have the authority to subpoena if they ever needed it.

7. If the Commission conducted a hearing or deliberated or took action otherwise, or otherwise transacted any public business then they were subject to open meeting laws. A minimum of 48 hour prior notice must be given for any public meetings. The standard meeting date for HPC meetings was the fourth Monday of the month.

Commissioners discussed that the following would be helpful during the deliberation of a case.

- **Checklist**
- **Video of the neighborhood - when case is presented.**
- **GIS area maps would be helpful**
- **Requirement of the applicant to have photos of property**
- **Application be included when packet is mailed to HPC members**

Attorney Patterson said an official meeting was when a majority of the members met to deliberate or conduct a hearing. Chairman Nestor said so Commissioner Gurwitch and he could get together and talk about design guidelines and they didn't have to advertise that they we're doing that, but if four of them got together, it would be an official meeting, which must be advertised by notice. Attorney Patterson shared that they could have a sub-committee that was formed, to help carry out that type of business. She said they should not talk about major COAs; that was quasi-judicial business. Mr. Bridwell gave positive comments about the Commission and how it helped specific areas of the city, the vitality and wealth of those neighborhoods.

Mr. Downey completed his presentation.

Commissioner Roethlisberger asked Mr. Bridwell, if the training of the Quasi-Judicial Training could be done annually staff changed. Mr. Bridwell said it was at their discretion, and Chairman Nestor said he was in agreement.

OLD BUSINESS:

- Updates of the current guidelines were made by Commissioner Worley. Chairman Nestor said he would ask staff to address it one more time, and give them a red-line copy.
- Commissioner Gurwitch made a motion that they table the continuation of the discussion of the Draft Review Manual as revised July 13, 2010, until their next meeting, until they had a more clear indication of the changes that had been made. Seconded by Commissioner Roethlisberger, the motion passed unanimously.

NEW BUSINESS:

- Mr. Bridwell passed out the printout of Minor & Major COA cases for the month of June.
- He also distributed handouts of training opportunities for HPC members.

Commissioner Roethlisberger asked if staff could provide for renewals COAs not only the COA number that was being renewed, but also a brief description of what was being renewed. Commissioner Roethlisberger made a motion to request that future staff reports for COA renewals include a description of the original COA that was being renewed. Seconded by Commissioner Worley, the motion passed unanimously.

Commissioner Humphrey had questions on the spreadsheet. He noted at one time it provided more detail than the ones that were presented that evening. Commissioner Humphrey would like this e-mailed to the commissioners along with a copy presented at the meetings. Commissioner Gurwitch felt like it was a waste of paper, and would like to see it in digital format. Discussion continued among members, and Commissioner Roethlisberger said he preferred to see it as a subsection of the HPC website. Mr. Bridwell commented that it could be addressed at a later date.

Commissioner Roethlisberger opened the question of the current staffing of the Commission. At that time Mr. Bob Bridwell was the only one attending the monthly Historic Preservation Meetings. HPC Staff continued to handle the Historic Preservation daily work program. Chairman David Nestor had several inquiries by other commissioners as to HP staff returning to the HPC monthly meetings and the consensus was that the HPC commissioners wanted staff to return to the meetings. Chairman Nestor stated that he had contacted City Manager Hal Hegwer and let Mr. Hegwer know that the HPC wanted staff to return to the meetings as well as carry on the daily work program for Historic Preservation.

With no further business to come before, Chairman Nestor entertained a motion to adjourn. Commissioner Roethlisberger made the motion. Seconded by Commissioner Gurwitch, the motion passed unanimously.

Adopted this _____ day of _____

BY: _____
Chairman, David Nestor

ATTEST: _____
Anne Sears, Clerk