

**MINUTES OF THE REGULAR MEETING OF THE
KINGSPORT HISTORIC ZONING COMMISSION**

August 8, 2011

1:30 p.m.

Members Present

Jim Henderson, Chairman
David Oaks, Vice-Chairman
Liza Harmon, Secretary
Ted Como
Perry Crocker
Jim Lewis
Jewell McKinney

Members Absent

Staff Present

Jason Meredith, Planner
Lynn Tully, Planning Director
Mike Billingsley, City Attorney
D. Michael Freeman, Building Official
Joel Spencer, Building Inspector

Visitors Present

Melanie Hutchins
Skip Norrell
Roselyn Fletcher
John Stewart
Marlies Schmidt

Jim Henderson, Chairman of the Historic Zoning Commission (HZC), opened the regular meeting at 1:30 p.m. Chairman Henderson welcomed visitors and called for the approval of the minutes from the July 11, 2011 regular meeting. Secretary Harmon noted a few revisions to the minutes. On a motion by Chairman Henderson, seconded by Secretary Harmon, the revised meeting minutes were approved unanimously.

Addressing “New Business,” the Commission addressed the issue of Demolition by Neglect. Staff introduced City Attorney Mike Billingsley, who was present to discuss the Demolition by Neglect ordinance. Mr. Billingsley noted that there are three main things the Commission should be aware of. First, the building in question must be a historic landmark, as previously designated by the Commission. Second, the ordinance is not intended to address aesthetics. It addresses the deterioration of a structure directly leading a property to being uninhabitable. Destruction of floor joists, roof joists, or framing were some examples cited. He stated that peeling paint or broken sidewalks are not enough to qualify. The decision is to be made by the Demolition by Neglect sub-committee, who basis their findings on the ordinance. Once a complaint is filed, the Demolition by Neglect sub-committee determines if the property qualifies for Demolition by Neglect. If it is determined that the property qualifies, the homeowners will be served notice and a hearing will be conducted. Mr. Billingsley noted that unlike the Historic Zoning Commission, the focus of the Demolition by Neglect sub-committee is not to govern the appearance of homes in historic districts, but to maintain the historic landmarks. Building Official Mike Freeman stated that buildings in disrepair throughout the city can be demolished regardless of whether they are in a historic district. He further stated the Demolition by Neglect ordinance is designed to be a last effort to prevent a historic building from demolition by requesting City funds to maintain or stabilize the structure. Vice-Chairman Oaks asked for clarification that the City must pay to fix a home that qualifies for Demolition by Neglect if the owner cannot afford or refuses to repair the

building. The Commission confirmed this is correct, should the process determine this is necessary. Secretary Harmon reviewed her understanding of the process. Discussion ensued. Mr. Billingsley stated that once a complaint is received or filed by the Commission, it then goes to the Building Official, who is responsible for calling the Demolition by Neglect sub-committee together. The sub-committee will then make a preliminary investigation of the property and determine if it qualifies and warrants further action. Further discussion ensued. Mr. Freeman reiterated that the only difference in tearing down a dilapidated house in a historic district versus any other house is the Demolition by Neglect ordinance which could require City funds be appropriated by the Board of Mayor and Aldermen to stabilize the structure if the property meets the criteria. Mr. Billingsley addressed the process for designating a structure as a historic landmark. At a minimum the structure must be at least 50 years old and located in a historic district. This was implemented by the Commission at the time to designate the structures which receive this enhanced enforcement. Commissioner Como requested staff assemble a list of properties currently designated as historic landmarks. Discussion continued regarding the process. Mr. Billingsley stated that if the sub-committee determines there is cause to proceed, a complaint is issued dictating the problems with the house and indicating needs to be fixed. Additionally, the letter will serve notice for a hearing to discuss the complaints against their property. At the hearing, the property owner has three options- argue against the charge, accept the charge and agree to take necessary actions to fix problems, or claim undue economic hardship. The Building Official has the means to determine if a property owner has undue economic hardship. If undue economic hardship cannot be proved and the Building Official determines that Demolition by Neglect has occurred, the property owner can fix the property, ignore the charge at his own peril, or appeal the charge. If the property owner appeals the charge to the court system, the court receives a copy of the hearing transcript and determines if there were any facts to support the judgment of the Building Official. If the property owner continues to ignore the charges and takes no action, the City can take the property owner to circuit court and require the property owner to fix the problems under penalty of imprisonment. Alternatively, the City can do the repairs and place a lien on the property, which is not a desirable solution. Commissioner Oaks asked what would happen in the instance of a hole in the roof of property owned by an absentee landlord. Mr. Billingsley indicated that there is a property maintenance code in the City. Under that code, the Building Official can determine the property is uninhabitable, leading to demolition, which we try to avoid. Commissioner McKinney asked how what happens in the event the property owner or inhabitant of a structure in question refuses entry to their house. Mr. Freeman stated that a court order would have to be obtained. Further discussion ensued. Mr. Freeman noted that although a home may not look good cosmetically, it must reach a certain point before any action can be taken. He used the example of the ordinance stating that grass cannot exceed 12 inches in height. Even though it may be 10 inches tall and look bad, nothing can be done until it reaches 12 inches. He stated that Demolition by Neglect does not refer to fixing a roof, painting a wall, or replacing a shutter. Instead it refers to when things get to the point that a home is in jeopardy of being torn down as a result of neglect. Commissioner Lewis stated that he does not believe any property in a historic district has qualified for Demolition by Neglect since he has been on the Commission. Further discussion ensued. Secretary Harmon requested a visual of a house that has been deemed

as uninhabitable from the Building Department. Skip Norrell asked Mr. Billingsley to address deterioration of windows and door frames. Mr. Billingsley stated that Demolition by Neglect is designed to save a historic structure. In the State of Tennessee, a structure is demolished when considered uninhabitable by the Building Official. The Demolition by Neglect sub-commission is responsible for making this determination. Discussion ensued. Mr. Billingsley stated that issues such as a bad chimney and obvious holes in the roof are things to look for which can eventually cause Demolition by Neglect, but the determination is a judgment call for the sub-committee. The sub-committee must evaluate the totality of the circumstances when applying the ordinance. Further discussion ensued. Secretary Harmon asked if a homeowner in a historic district could tear down their home if charged with demolition by Neglect. Mr. Freeman stated that this would not be allowed in a historic district.

Lynn Tully, new Planning Director for the City of Kingsport, was introduced to the Commission.

Commissioner Como asked Mr. Billingsley if previously discussed fine for property owners were \$50 or \$50 per day. Mr. Billingsley said a \$50 fine is all a municipal court can levy by the Constitution, because it is penal in nature according to the Supreme Court. If the nature of the penalty is remedial, it can be greater than \$50, but not in City court because that is their maximum jurisdiction. If the Commission or another administrative body were given the right to levy a penalty for failure to comply, it would be considered remedial in nature and would likely withstand a Constitutional challenge. Secretary Harmon asked if a property owner who does not follow a COA can be fined an amount greater than \$50. Mr. Billingsley stated he should be contacted in this instance as it is a zoning violation, which is handled by the courts through injunctive relief. The court can make you tear it down or comply under the penalty of imprisonment.

Next under "New Business," the Commission reviewed changes for the property at 270 Hammond Avenue. Staff indicated that a gentleman from Lowe's came to retroactively obtain a Building Permit after installing a roof in the Park Hill Historic District. In order to receive a building permit, appropriateness must be granted by the Commission. The Building Department went to inspect the changes and determined it was in compliance. Mrs. Tully indicated that building permits that are retroactively issued are issued at twice the normal fee. On a motion by Commissioner Como, seconded by Commissioner Lewis, the COA was unanimously awarded.

Next under "New Business," Vice-Chairman Oaks presented a slate of officers to be considered for 2011-2012. Vice-Chairman Oaks nominated Jim Henderson as Chairman, Liza Harmon as Vice-Chairman, and Jim Lewis as Secretary. On a motion by Vice-Chairman Oaks, seconded by Commissioner Como, the slate of officers was unanimously approved.

Under "Other Business," the Commission received addresses for properties being considered for Demolition by Neglect. Those properties are 434 W. Sullivan Street and 438 W. Sullivan Street, both of which are located in the Park Hill District. Staff noted

these addresses were also listed last month, but are included again as an informational item at the request of the mayor. Secretary Harmon requested that the Commission receive updates from the Demolition by Neglect Sub-Committee.

Next, the Commission received an updated copy of the active HZC project spreadsheet.

Under public comment, John Stewart noted that there is a new owner at 221 Hammond Avenue and requested the City send a welcome letter to make them aware of historic designation. Skip Norrell presented the Commission with an open letter expressing his concerns with the enforcement of design guidelines. Commissioner Crocker noted that there are challenges that come along with only having monthly scheduled meetings and expressed optimism at the progress that was made during the meeting today. Mr. Norrell stated his belief that things are not happening. Discussion ensued. Staff noted that, as previously emphasized and confirmed by Mr. Billingsley, these are zoning violations and are the responsibility of the Building Official and Zoning Department to enforce through injunctive relief. Commissioner Como suggested that Mr. Norrell take these issues to the City Attorney or the BMA if he does not believe appropriate actions are being taken by the Building Department, as enforcement is not a function of the Historic Zoning Commission. Mrs. Tully stated that the Planning Department will review the complaint process and present a flow chart to the Commission which describes these steps. Chairman Henderson reiterated that the Commission is not designed to police the districts, but rather to grant appropriateness. Mr. Norrell stated that he does not need the Commission. Secretary Harmon asked staff to look into past complaints to see if they have been captured.

There being no further business, the meeting adjourned at 2:50 p.m.

Respectfully Submitted

Liza Harmon, Secretary