

**MINUTES OF A REGULAR MEETING**

**URBANA HISTORIC PRESERVATION COMMISSION**

**APPROVED**

**DATE:** February 6, 2008

**TIME:** 7:00 p.m.

**PLACE:** City Council Chamber, 400 South Vine Street, Urbana, Illinois

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**MEMBERS PRESENT:** Rich Cahill, Katherine Lipes, Alice Novak, Mary Stuart

**MEMBERS EXCUSED:** Scott Dossett, Trent Shepard, Art Zangerl

**MEMBERS ABSENT:** none

**STAFF PRESENT:** Robert Myers, Planning Division Manager; Ron O'Neal, Acting City Attorney; Rebecca Bird, Community Development Associate; Tony Weck, Recording Secretary

**OTHERS PRESENT:** Marie Bohl (did not sign attendance sheet), three other audience members (did not sign attendance sheet)

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**1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM**

The meeting was called to order at 7:05 p.m. by Historic Preservation Commission Chair, Alice Novak. Roll was taken and a quorum was declared.

**2. CHANGES TO THE AGENDA**

There were none.

**3. APPROVAL OF HISTORIC PRESERVATION COMMISSION MINUTES**

Mr. Cahill proposed two corrections to the minutes of the November 7, 2007 meeting. He then moved that the minutes be approved as amended. Ms. Lipes seconded the motion. Upon a vote, the minutes were unanimously approved as amended.

**4. WRITTEN COMMUNICATIONS**

There was a letter from Gerald Brighton to Alice Novak regarding the former's resignation as Historic Preservation Commission observer for the Champaign County League of Women Voters.

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Additionally, there was a letter from Gerald Schmidt, President of the Preservation and Conservation Association (PACA) to Lawrence D. Eppley, Chair, University of Illinois Board of Trustees, copied to Alice Novak, regarding the implementation of Illinois Public Law 86-707 (20 Illinois Compiled Statutes 3420; Illinois State Agency Historic Resources Preservation Act). There was a related letter from William L. Wheeler, Illinois State Historic Preservation Officer, to Melvyn Skvarla, University of Illinois Campus Historic Preservation Officer, copied to Alice Novak. The letter was in regards to the Atkins Tennis Center expansion. Ms. Novak read the letter aloud and asked that it be part of the minutes:

*Dear Mr. Skvarla:*

*We have received a letter from the University of Illinois Facilities and Services Department at the University of Urbana-Champaign of November 19, 2007 concerning the Animal Husbandry Poultry Area and the Atkins Tennis Center Expansion. This letter proposes a memorandum of agreement for demolition or relocation of certain buildings for the expansion of the Atkins Tennis Center. However, our letter of September 27, 2006 requested specific information required pursuant to the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420) [the Act] in order for us to consult concerning your proposal. Instead, it appears that you have already demolished the properties indicated for demolition in the Memorandum of Agreement and have a move scheduled December 11, 2007 for the Mumford Barn. These actions have been undertaken without the required consultation with our office. Therefore, signing a memorandum of agreement either prior to the agreed upon consultation or after actions that have been taken to preclude a meaningful discussion is not possible.*

*Because of these actions, it is not the duty of the University, pursuant to Section 4 (e) of the Act, to hold a public hearing to seek input on this project as it relates to the historic properties and possible mitigation of the demolition undertaken by the University. This meeting shall take place within 60 days of receipt of this letter in Champaign County at a time and place mutually agreed to by the Agency and the University. Until the meeting takes place and we have time to consider the comments received, no work may be undertaken to the Mumford Barn nor any other structures which may remain within the project area.*

*If you have any questions, please call Anne Haaker at 217-785-5027.*

*Sincerely,*

*William L. Wheeler  
State Historic Preservation Officer*

*Cc: David Bahlman, Landmarks Illinois  
Karen Kummer, Preservation and Conservation Association  
Alice Novak, Urbana Preservation Commission  
Steven A. Veasie, Office of University Counsel*

**5. AUDIENCE PARTICIPATION**

There was none.

**6. CONTINUED PUBLIC HEARINGS**

There were none.

**7. OLD BUSINESS**

There was none.

**8. NEW PUBLIC HEARINGS**

There were none.

**9. NEW BUSINESS**

- **Proposed amendment to Sections XII-4.A.1 and XII-5.A.1 of the Urbana Zoning Ordinance concerning nominations for local landmarks and historic districts.**

Rebecca Bird presented the staff report regarding the proposed text amendment. The amendment would allow members of the Historic Preservation Commission to nominate properties for local historic district and landmark designation. The Plan Commission will review the proposed Zoning Ordinance text amendment on February 21, 2008. Staff asked the Historic Preservation Commission for any comments on the proposed amendment. A draft of the revised ordinance, incorporating the proposed text amendment, was provided to the Commission. It was staff's recommendation that the Commission recommend approval of the proposed text amendment to the Plan Commission.

Ms. Novak opened the meeting to discussion of the proposed text amendment by members of the Historic Preservation Commission. There was no discussion.

Ms. Stuart made a motion that the Commission recommend approval of the proposed text amendment to Sections XII-4.A.1 and XII-5.A.1 of the Urbana Zoning Ordinance concerning nominations for local landmarks and historic districts. The motion was seconded by Ms. Lipes. With no further discussion, Ms. Novak called the question. A voice vote was taken; all Commission members present were in favor. The motion passed unanimously.

**10. MONITORING OF HISTORIC PROPERTIES**

Ms. Novak reported no progress with regards to negotiations between the Illinois Historic Preservation Agency and the University of Illinois with regards to a public meeting regarding Illinois State Law 86-707.

With regards to the house at 102 S. McCullough Street, directly behind the local landmark-designated 502 W. Elm St., it was noted that the former had been demolished and Mr. Shepard asked if any plans or permits had been approved for a structure to replace the house that had been demolished. Mr. Myers stated that building plans had been submitted for a new apartment building at that location.

## **11. STAFF REPORT**

Ms. Bird gave a brief report to the Commission on the upcoming “Inside Historic Urbana” series on UPTV, in which viewers will be taken on a tour of historic homes throughout the city. Ms. Bird also updated the Commission on the status of the Champaign County Archive’s LSTA grant application. She noted that the application had been denied. Lastly, Mr. Myers presented an article from *USA Today* regarding the decline of downtown enclosed shopping malls, focusing on a 1960’s downtown mall in Rochester, New York which is slated for demolition. The National Register nomination for Urbana’s Lincoln Square Mall compared ours to the downtown mall in Rochester.

## **12. STUDY SESSION**

- **Study session on public hearing procedures**

Acting City Attorney Ron O’Neal gave a presentation to the Commission on public hearing procedures. He outlined due process requirements for public hearings, after which followed a question-and-answer period with members of the Commission.

Ms. Novak, on behalf of Mr. Zangerl, asked if a “witness” is equivalent to an “interested party.” Mr. O’Neal answered that it could be but that there is no concrete rule on the matter. He said that a witness could be the nominator in a case or a resident in the neighborhood affected by a nomination. Ms. Stuart inquired as to who defines what a witness or interested party is. Mr. O’Neal answered that this is a decision that the body (such as the Historic Preservation Commission) would have to decide. Ms. Stuart asked also if a nominator in a case, for example, would be legally compelled to submit to questioning by counsel for the opposition to a nomination. She said that after the public hearing for the West Main Street case, she spoke with Urbana Special Counsel Jack Waaler, asking him the same question. She said that his answer was that no one is compelled to submit to any line of questioning. She felt that this was a very important point that should be emphasized. Mr. O’Neal agreed, saying that no participant in a public hearing is participating under subpoena and is therefore not legally compelled to testify or submit to questioning. A participant may, in fact, perform only the necessary steps in submitting a nomination and then choose not to attend the public hearing. If this happens, however, it should be noted on record so that if the case were ever to come to court, it would be on record that the opposition was given the opportunity to question the petitioner and the petitioner declined to be questioned. This, he said, would show that due process was afforded in a given case. Ms. Stuart felt that it should be documented somewhere so that all interested parties could be informed that a public hearing conducted by the Commission is not a court of law and that no one would be compelled to testify or submit to questioning. She felt that this removes the perceived element of penalty for declining to testify, be questioned or otherwise participate in a public hearing. Mr. O’Neal answered that the Commission is welcome to do so and that he felt it was important for the Historic Preservation Commission to have its own set of rules and procedures

for public hearings. Further, he said that the Commission has to be mindful of public hearing procedures so as to avoid participants being intimidated but at the same time the Commission must also be mindful of the property interests of those affected by a nomination. He said that it is a matter of law that all affected parties in a case have to be accorded due process.

Ms. Novak inquired as to what is to be done if, for example, counsel for the opposition to a nomination “doesn’t behave.” Mr. O’Neal answered that the Commission chair could stop a line of questioning that is against public hearing procedure so long as those procedures are fair and appropriate and allow for due process to be accorded. Ms. Novak asked what is to be done if an attempt to curb an inappropriate line of questioning was unsuccessful. Mr. Myers suggested that the chair could call a five minute recess in the hearing, which can be effective in stopping out-of-line questioning. Mr. O’Neal suggested that the Commission make the public hearing procedures clear to all who might participate before the hearing begins but that if the situation warrants, an objector or the objector’s legal counsel may need to ask tough, challenging questions but in a respectful way.

Mr. O’Neal reviewed with the Commission their ability to set procedures for public hearings and to set reasonable limitations on public input. He noted, though, that limitations must be appropriate to the situation. Ms. Novak inquired about repetitiveness in public hearings, which is to say, different people saying the same thing. Mr. O’Neal’s legal opinion was that the Commission could limit repetitive public input but if a member of the public had something unique to contribute, that person should be allowed to speak. Mr. Cahill stated that everyone should be given an opportunity to be heard but with regards to the public hearing for the West Main Street case, the public hearing took on a courtroom-like feeling when a lawyer for the opposition was brought in and questioned the petitioner. Mr. O’Neal responded that the opposition’s right to have legal counsel present and for legal counsel to be given the opportunity to cross-examine the petitioner is simply a part of due process. Ms. Stuart advocated making it clear to all participants in a public hearing that no one could be compelled to submit to cross-examination and asked Mr. O’Neal if there would be any legal problems with this. Mr. O’Neal said that he would have to do more research on this matter. Mr. O’Neal suggested that the Commission develop its own set of public hearing procedures, put them on paper, and he would review and discuss them with the Commission.

Ms. Novak asked what suggestions Mr. O’Neal would have, beyond what the Illinois Municipal League recommends, with regards to managing cross-examination during a public hearing. More specifically, she asked if the Commission chair could make the judgment that a particular line of questioning is irrelevant. Mr. O’Neal answered that the chair could make that determination but that such a determination would have to be “reasonable”, as it could be challenged in court at a later date. He said that if an objector or counsel for an objector to a case continues in a given line of questioning after it has been ruled by the chair to be irrelevant, the line of questioning can either be cut off by the chair, or the Commission as a whole can deliberate and choose to disregard the line of questioning on the official record.

Ms. Stuart expressed her concern over the “intimidation factor” that allowing cross-examination of a petitioner brings, that it may dissuade others from submitting nominations in the future for fear of being cross-examined by an attorney, such as that which took place at the West Main Street public hearing.

Ms. Stuart asked what constitutes testimony “under oath” and who administers the oath. Mr. O’Neal answered that the Commission chair could administer an oath if necessary. Mr. Myers noted that at public hearings held by the Zoning Board of Appeals, the chair asks if anyone would like to testify and if so, she asks them to stand, raise their right hand and be sworn in. He noted that with Plan Commission public hearings, this is not done, however due to the different types of cases considered by that body.

Ms. Novak asked Mr. O’Neal for his suggestions on how cross-examination during a public hearing could be better handled. She noted that at the West Main Street hearing, counsel for one of the opponents and the nominator were seated at the same table, facing one another and not relating to the audience or to the Commission. She asked if techniques such as separating the two parties – having the opposition at one table and the nominator at another table, for example – would be more appropriate. Mr. O’Neal agreed.

Mr. O’Neal noted that in the proceedings of a court of law, a pre-trial conference will often take place in which the judge and all attorneys involved in a given case will meet before the trial begins and the judge will set forth what types of questioning will be allowed, how much time will be allotted for examination and cross-examination, et cetera. He suggested that the Commission may wish to do something similar, stating at the beginning of a public hearing what will and will not be allowed in terms of testimony and questioning.

Mr. Myers suggested that the Commission review the Plan Commission bylaws, which include a section of public hearing procedures. Specifically, he cited that the Plan Commission bylaws prescribe that opponents to a given petition are to be given a reasonable opportunity for questioning of the petitioner. If the petitioner is either unwilling or unable to respond to such questioning, the chairperson is to direct the recording secretary to note such in the minutes. He suggested that a similar bylaw could be included in those for the Historic Preservation Commission.

Mr. O’Neal concluded by saying that there is no such thing as a “perfect hearing” and that the need to revise bylaws may arise from time to time. He said that he would be able to help with this in the future if needed.

### **13. ANNOUNCEMENTS**

Mr. Myers announced that the City of Urbana had sent letter to all property owners in the new West Main Street Historic District. The letter was not only to congratulate them on the historic designation of their neighborhood but also intended to inform property owners in the District that as of December 10, 2007, fees for building, plumbing, mechanical and electrical permits may be waived for City-designated landmarks and historic districts. He noted that City staff had proposed this fee waiver and authorized by City Council.

Mr. Myers also noted that the Illinois Historic Preservation Agency has awarded the City a small grant to print the Royer Arts & Architecture District brochure. Ms. Novak asked if the Commission would be able to review a revised version of the brochure before it is printed. Ms. Bird answered in the affirmative.

Ms. Bird announced that the City had received the Looking for Lincoln Wayside Marker for which it had applied in 2007. She said that City staff was in receipt of a proof of what the actual marker would look like. The marker, she said, is to be installed at the corner of Main and Race Streets, adjacent to Busey Bank, as this was once the location of a building in which Abraham Lincoln sat for a photograph.

Ms. Lipes announced that the UIUC Society of Architectural Historians is hosting a speaker from the Illinois Historic Preservation Agency on February 27<sup>th</sup> at 5:30 p.m. in the Architecture Building to give a lecture on Mesker façades.

#### **14. ADJOURNMENT**

Ms. Stuart moved to adjourn the meeting. Ms. Lipes seconded the motion. The meeting was adjourned at 8:55 p.m.

Submitted,

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Robert Myers, AICP  
Planning Division Manager