



HISTORIC REVIEW COMMISSION OF PITTSBURGH

Minutes of the Meeting of December 3, 2008
Beginning at 12:30 PM
200 Ross Street
First Floor Hearing Room
Pittsburgh, PA 15219

In Attendance:

| <u>Members</u> | <u>Staff</u> | <u>Others</u> |
|----------------------|------------------|---------------------|
| | | Jessel August Coota |
| Michael Stern, Chair | Katherine Molnar | Anne Nelson |
| Paul Tellers | Russell Blaich | Alida Baker |
| Ruth Drescher | | Mark Fatla |
| Earle Onque | | Shawn Carter |
| Jill Joyce | | Rev. Ricky Burgess |
| Sergei Matveiev | | |
| Noor Ismail | | |
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Old Business

Nominations Report: There are two buildings in the nomination process. Ms. Molnar reported that the Workingmen’s Savings Bank building is on hold at City Council. Saint Mary’s Academy building in Lawrenceville is scheduled for a Public Hearing at City Council on December 9th, 2008.

New Business

Approval of Minutes: Ms. Molnar indicated that the November minutes were not quite ready, and she asked if their approval could be postponed. All agreed.

Certificates of Appropriateness: Molnar directed the commissioners to the Certificates of Appropriateness. In regards to the November Certificates of Appropriateness, Ms. Drescher moved to approve, Mr. Onque seconded the motion, all voted in favor.

Applications for Economic Hardship: There were none.

Adjournment: Mr. Onque moved to adjourn, Mr. Tellers seconded the motion, all vote in favor.

Discussion on hearing items follows on the attached pages.

ATTACHMENTS

New Legislation

1. Ms. Molnar began by telling the HRC that the demolitions originally scheduled for today would be postponed until next month, when the building inspectors could come. Those were 1109 Bingham Street and 1414 Nixon Street. Molnar continued to introduce the new legislation, bill no. 2008-0827, and indicated that the HRC's responsibility would be to make a recommendation to the City Council.
2. Mr. Stern invited Mr. Reverend Burgess to the table. Rev. Burgess addressed the HRC and gave his credentials, he represents district 9 which is the east end of Pittsburgh. He was on Council when they discussed the Malta Temple historic nomination case, when he believes, the Council failed to recognize the Malta Temple for what it is, a church. He said that the Salvation Army's place of worship was not recognized as a place of worship. He owns a Georgian home, and he believes in preservation efforts, and normally sides with preservation efforts. He thinks that the "preservation" in this case was a pretext for a political agenda. The northsiders had an agenda to get rid of certain kinds of people – even individuals from the northside came to him individually and told him that was the case. When Saint Mary's came to Historic Review Commission, it became clear to him that the legislation concerning religious properties was/is inexact. He cited RLUIPA that prohibits that land use ordinances cannot cause substantial burden on religious properties – and he wanted to try to incorporate RILUIPA into the legislation.
3. Reverend Burgess is working with the law department to make changes to the legislation that will reflect the changes the law department wants to see that they think will be defensible. His process was to research cases across the country. There are numerous cases that address these types of issue. Burgess's office drafted their version of the legislation, and with the law department, they will refine the legislation, and make compromises.
4. Mr. Stern said that given the information provided by Mr. Burgess, it is clear this is a work in progress. We should amend the agenda to say this is a hearing, not a hearing and action. He said that if this was not the final version of the bill, then the HRC could not take action. Everyone was in agreement with this notion. Stern asked Baumiller to give his opinions.
5. Mr. Baumiller stated that he is mainly in agreement with Mr. Burgess, but he has a few issues he'd like to address. Baumiller introduced the federal act RLUIPA – attempted to describe what the act is and said that there was a substantial burden statement – but the act does not clarify what that means. The act, to paraphrase, says that municipalities cannot place a substantial burden with land use or land marking provisions, on religious exercise. That has been litigated quite extensively, but right now, a substantial burden is defined as "something where the government conditions receipts of an important benefit upon conduct prescribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, that's where a burden upon religion exists, while compulsion might be indirect, the infringement upon free exercise is nonetheless substantial." That means there is a substantial burden where a follower is forced to choose between following his religious beliefs and getting some sort of benefit from the government be it land-use approval, or something along those lines, or where

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the government puts substantial pressure through land-use provisions to cause a religious adherent to change their beliefs.

6. Baumiller said that the current Historic Review legislation, as currently enacted, does not put a substantial burden upon religious practice. However, if it were applied in the wrong way, he supposed that it could cause a burden. He thinks that we can work with Burgess to address the Councilman's concerns. The basic question, as far as Burgess is concerned, is substantial burden. Baumiller said that in Historic nomination, there is a three part process with HRC, PC, and CC. Baumiller wanted to know if the HRC thought that the question of religious burden would be a question to the HRC, the PC, or the CC, or all three, or if there should be a separate process. That is a question he hoped to streamline and workout in the course of discussions.
7. Mr. Stern stated that Baumiller had done a lot of research, and asked if other HRCs had similar legislations, and wondered if those laws were working. Baumiller stated that in cases he had reviewed, the protestant claimed they had substantial burdens, and argued against the nominations that way, though the issue of substantial burdens wasn't directly addressed in those ordinances. Stern asked if there were good models out there, that we could be looking at, of other jurisdictions that wrestled with the same problems.
8. Mr. Tellers said that at previous meetings of this Commission, they discussed Economic Hardship. Tellers said that the most common substantial burden of a religious organization owning an historic structure is economic. He asked if there was a connection between Economic Hardship and the Religious Burden? Mr. Baumiller said that the answer depended on which jurisdiction you are looking at. In some jurisdictions, financial hardship is never a substantial burden. However, in California, an economic hardship is a substantial burden, in some cases. Looking at the cases, a mere financial burden is not enough to suggest that someone would be forced to give up their religious beliefs or their ability to practice their religion.
9. Mr. Stern said that in many cases that come before the HRC, economic difficulties is most often the biggest burden. If Baumiller were to rewrite the legislation, it would be useful to clarify this. Tellers asked if the cases who have recently come before us, Malta Temple and St. Mary's, if they could argue Economic Hardship instead of religious burden? Mr. Baumiller said "sure," they could, but that would be separate from the proposed legislation in front of the HRC.
10. Ms. Drescher asked about the definition of religious building. Drescher asked if Baumiller could explain what the changes were being proposed regarding the definition of the "religious structure." Baumiller said that he thought the changes in this regard were very positive. As existing, Baumiller read the existing definition of the religious structure. He said that definition seems to address buildings that were originally built as churches, but does not address church buildings that are no longer used as churches. He wondered what would that mean for buildings that used to be churches. Burgess proposes to remove that definition, and replaced it with a definition of Religious Organization. Baumiller said that the new definition was broad, for the purpose of including all "religion" in general. Defining the religious organization very broadly, and if there is a nomination that is a substantial burden on that organization, then that organization can bring up this is a defense.

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11. Mr. Onque said he was still unclear, as you broaden the definition, if a church or religious organization is engaged in a non “religious” operations, like the Salvation Army’s health store or patient facility. Where do you draw the line? When is it a religious activity, and when does an organization begin to be more of a social services organization? Mr. Baumiller answered by citing a case that addressed this issue. He said that could be a fact intensive question, it would be a burden on the organization to prove that the burden is religious in nature.
12. Ms. Joyce said that makes her think about these buildings that are put up for nomination, and part of the history of a building is its change in use. She asked, “is it now our responsibility to consider the use of a building?” Baumiller said that would be correct.
13. Mr. Tellers asked about buildings that have been converted from religious use to non religious use.
14. Joyce said that this argument could be played out by any building owner, theoretically. Baumiller said that essentially, that would be a correct assessment.
15. Mr. Burgess introduced Mr. Shawn Carter, who has spent “hours and hours and hours...” of work researching this bill. Mr. Burgess said that his intent is to transfer the burden from a building to an organization, because that is what the federal guidelines say. In the Salvation Army’s case, because their building was not built as a church, even though they are using it as a church, they had a stronger burden to prove that it is a church, because it was not designed as a church. According to present law, in terms of the eyes of the HRC, those buildings are not being considered a church, because they were not originally built as a church. Burgess’ office is trying to transfer the burden from the building to the organization. He said that he thinks this is a very rare occasion that this will occur... a very small number of cases. The other purpose of the legislation is to have a “chilling effect”. What he does not want is to have political expediency to use preservation for political intolerance and religious intolerance. He said he knows the nomination process was used in that way at least once before. He wants to make sure that churches are not punished for exercising their faiths. Mr. Burgess said he’d like Shawn to talk.
16. Larry wanted to make a comment before Shawn spoke. Mr. Baumiller said the intent of congress enacting RLUIPA was to prevent religious discrimination under the guise of zoning and land use.
17. Mr. Carter addressed the commission. He said that he worked with the legal department since October when this “first hit the table.” The councilman’s office has some concerns that the bill could be overly broad, without certain safeguards. He gave the church brew works as an example of a church that is not a church. Mr. Carter passed out a handout to the HRC saying his office believed that the nomination of Malta Temple was a guise for a political agenda. The handout was a letter from the Mexican War Streets Society. Prior to the nomination of Malta Temple, the Salvation Army tried to purchase the Greek Church on West North. The community spoke against that effort, and when the Salvation Army decided not to purchase that building, the MWS society nominated the Malta Temple. Carter cited this example of a community using the Historic nomination process to discriminate against a church. He said that Burgess was not a fan of religious discrimination. Carter called for questions.

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18. Mr. Stern said he struggled to understand this based on the context of what the role of the HRC is. He said that they looked at the Malta Temple as a building, absent of its use. They approved its designation based on its architectural significance. Carter said he agreed that is what the role of the HRC is. Carter said that the religious argument question did not even arise at the HRC level, and Carter did not want to blame the HRC for missing anything at the HRC level.
19. Ms. Drescher said that the HRC was not specifically charged with considering use. They discuss architecture and history, how do we make use of the information you are presenting? Mr. Carter said it could be argued that architectural expression was an expression of religious faith.
20. Mr. Burgess said that if he does his job well, these cases will not come before the HRC and the Planning Commission from having to decide what a church is and what a church isn't. This is a "very very very very" tiny amount of cases. First of all, it only applies to buildings that are nominated by a third party. Whatever Burgess and the legal department comes up with as a final compromise, that decision and hearing of religious nature will happen before the nomination goes to HRC and to PC. He wanted to make it clear that he has read the decisions of the HRC regarding St. Mary's and Malta Temple, and he completely agreed with the HRC on their decisions, based on the criteria given in the HP ordinance. He did not find any fault with the HRC. The fault, to him, was with the motivation of the people who nominated the buildings. During internal mediations, it became clear to any outside observer, that this was not about the building at all, but rather the issue was with the Salvation Army trying to help the homeless.
21. Ms. Joyce asked, why the retroactive date of Sept. 22nd 2000? Mr. Burgess said that was the day RLUIPA came into being, but the law department has indicated that the legislation cannot be retroactive by more than 4 years.
22. Sergei Matveiev had to leave.
23. Mr. Tellers had some concerns about the proposed legislation because as it is written, a religious organization just has to make a statement of religious burden, and then those nominations would not ever come before the historic review commission, and the consequences of those nominations would never be known. He also agrees that elected officials, such as City Council, should make the decision as to whether the building is religious or not. He did not think that substantial burden should be decided by the Historic Review Commission or by the Planning Commission.
24. Mr. Burgess said that this would only happen in a "tiny" percentage of applications. Given the nature of our city, however, that percentage may rise because there are a lot of congregations that are struggling. Mr. Stern said that the HRC will struggle because they do not know if there are financial burdens to congregations who don't know what to do with their buildings anymore, or if that is a religious burden because the congregation cannot afford to keep a building.
25. Mr. Burgess said that he would strongly try to put something into the legislation that addresses the question of economic hardship. The Catholic Diocese has put a lot of money into St. Nicholas church -- and when there is such a great need for churches to

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- spend money on other services -- it's too bad the church has to spend the money on a building. Mr. Burgess said that if he did not hear the people in the room who wanted to speak (he had to leave), they would be welcome to come to his office in person, or they should call him personally on the phone. Burgess thanked the HRC for its service to the community.
26. Mark Fatla addressed the HRC as the director of the Northside leadership Conference. He wanted to know if there would be further opportunity for further public comment down the line? Mr. Stern assured that there would be. He did not want to battle the Salvation Army issue. He said that the Councilman conflated the definition of a religious structure or a religious denomination. Fatla said that no one ever argued that the Salvation Army was not a religious organization, yet the Councilman continues to make that false assertion. The only issue in the Salvation Army case was whether the building was used as a place of religious worship. Fatla said that Salvation Army never came to HRC or PC and argued that the building was being used for religious purposes. They could not establish that the building was used as a place of religious worship. Fatla said that the Councilman continues to make false accusations about the motives of organizations and volunteer leadership on the northside. He takes a few comments of individuals and conflates that to the intentions and motivations of organizations of volunteer leadership. It is false, he knows it is false, yet he continues to repeat it. It is offensive and is wrong. In fact, the community organizations of the northside met with the Salvation Army and with Councilwoman Payne present, and tried to work out a solution that not only kept the Army but they also told them they want the Army in the community, that they want the Army's service, and they offered to help finance the renovation of the structure through the NSLC's own fund. Those actions are not isolated comments from individuals. The councilman continues to suggest that the motivations of the community organizations of the northside are somehow improper and discriminatory. This is offensive and false, and he knows it is false. Regarding the Act – the current Historic Preservation ordinance defines a religious structure as a place used for religious purposes. The current legislation doesn't say that a storefront church wouldn't be exempt under the current legislation, nor does it say that a building built as a church, but currently something else, would somehow be grandfathered. The question is, is it now a place of religious worship? It is pretty clear! Fatla said that the proposed amendment would dramatically expand the exemption provided to religious organizations. Under the new proposal, it would exempt any structure owned by a religious denomination. The rectory, school, apartment building, anything they own, would be exempt. It would not be an isolated change, it would not be a rare occurrence. His suggestion to the HRC and to the administration is to stop doing this piecemeal. He recommends that City Planning hire a consultant to review revisions to the code. He said that the HP Ordinance needs a complete comprehensive review.
27. Steven Paul, Preservation Pittsburgh addressed the HRC. Mr. Paul read a prepared statement that said the new legislation was far over-reaching the original intent of the historic preservation law. Mr. Paul said that he supported Mr. Burgess's other bill, because it supports the spirit of historic preservation. He said that if Pittsburgh were in the center of Europe, people would come from thousands of miles away to see it. [Recording of hearing is not clear...] Mr. Paul said that he thought that the current law gives a special exemption to churches that cannot be enjoyed by anyone else, thus creating a form of discrimination. He thought that the proposed legislation would expand

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- that discrimination. He said it would give special treatment to religious organizations, and give them special treatment under the law. To get rid of the discrimination, the religious exemption clause should be removed entirely. Regarding the reference to St. Nicholas church, Mr. Paul said that there was a buyer, who has been trying to buy for the last eight years but the church refuses to sell it. Because the church refuses to sell, it incurs the added expense of keeping the building – all buy its own doing. Mr. Paul said that St. Nick’s is not a viable example of substantial burden.
28. Ms. Anne Nelson, legal representation for Pittsburgh History and Landmarks Foundation addressed the HRC in opposition to the proposed legislation. [Tape recording of hearing unintelligible]... Ms. Nelson did say that no court has yet found historic landmark status a cause of substantial burden on a religious organization. She reiterated what Mr. Paul stated, that the creation of this legislation would give an unprecedented advantage to religious organizations.
29. Mr. John DeSantis addressed the HRC in opposition to the proposed ordinance amendment [tape recording of hearing unintelligible]... Mr. DeSantis said that there is only one other city in the United States that has a religious exemption clause in its historic preservation ordinance, and that city is Chicago. He said that when congress was considering RLUIPA, he was there to testify on it. There were plenty of other preservationists there to comment on it. DeSantis said that the intent of the legislation at that time was not to prevent religious discrimination, as Rev. Burgess believes, but rather to *unintelligible*. The American Court System did not hold up RLUIPA as the House and Senate had felt – according to Case Law, it is extremely difficult to violate the religious rights of an organization or an individual. Mr. DeSantis said that it was the HRC’s job to look at the building itself, not the use. What you’re dealing with today is a bold-faced attempt to simply find another way to exempt another large pool of properties in this city through very badly crafted legislation. If Burgess is truly interested in stopping discrimination, I would encourage him to submit a piece of legislation to undo the legislation that was past several years ago, the one which discriminates against everyone who is not in a religious organization. He has no doubt in his mind that if anyone chose to challenge this, they would have no problem winning in court. The legislation in front of the HRC is ludicrous in the extreme. DeSantis mentioned economic hardship.
30. Steve Zeubeck (sp.) addressed the HRC as a member of St. Nicholas Croatian Parish. Mr. Zeubeck said that St. Nicholas Church in Millvale has incurred the expensed of upkeep at St. Nicholas Croatian, not the Catholic Diocese. As a parish of 170, they have world famous religious murals, which are continuously jeopardized by water damage. They have to borrow money from the diocese for upkeep. The second item he heard from Mr. Paul was that we refused to sell the church. *Unintelligible recording...*
31. Ms. Ismail had to leave the hearing.
32. Mr. Stern thanked everyone for their testimony, and wrapped up the public comment on the hearing.

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MOTION:

Mr. Tellers..... moved to continue the hearing and action.

Ms. Joyce.....seconded the motion.

ALL.....voted in favor

Motion Passes

1. Ms. Molnar introduced the project as the project that had come previously for briefing and also for public comment. Last month, the public stated that they had not received ample time to comment on drawings and write letters of support. Today, the Aviary is back before the HRC with those letters of support and is ready for approval.
2. Pat Mangus handed out letters of support from various community organizations on the northside, but not from the Mexican War Streets, though the group was in support of the project. The Allegheny Commons Park LRC also had a letter of support.
3. Paul Rosenblatt addressed the HRC and described what happened at the last HRC. The HRC previously asked for samples of the materials, which Rosenblatt had available today. Mr. Rosenblatt described the materials and handed out samples of those materials. Ms. Joyce asked about the color of the brick; Rosenblatt replied that there will be some inset highlights to create some verticality.
4. Mr. Tellers was interested in the existing red brick walls on the west elevation and how the new building would match or blend-in with the existing materials. According to Rosenblatt, the colors are subtle to soften the impact of the bold geometric structure. The greens of the park should be prominent, and the building should be neutral in color to lighten the impact of the structure on the park. The mortar will be a gray neutral.
5. Mr. Stern called for public comment –
 - a. John Francona, chair of the Allegheny Commons Initiative. At the last HRC hearing, the ACI had asked the HRC to hold approval until it had a chance to look at the project in more depth [*audio recording of hearing is incomplete*]. The ACI had an opportunity to look at the project in more depth, and gives its conditional approval. The ACI provided a letter stating its concerns and conditions of approval, including that the footprint not be expanded again in the future. The HRC has a copy of this letter.
 - b. John DeSantis, representative of the Allegheny Commons Park LRC, presented a letter of conditional support to the HRC from the LRC. The letter asked for some of the same conditions as the ACI, including that the footprint never be expanded again, anywhere in the park. The LRC also asked that the final landscape plan be presented to the ACI and the LRC before the HRC gives final approval.
6. Molnar informed the HRC that the State Historic Preservation Office would also be reviewing the landscape plan as part of its review. Mr. Rosenblatt said that the relocated Rose Garden would go wherever the ACI wanted it to go – the Aviary would be flexible on the location, but the Park Steering Committee has not finalized its desires for the landscape plan as of yet.
7. Mr. Tellers asked about the lease of the building; the Aviary has a 29 year lease on the property. Mr. Tellers indicated that he did not know if the HRC could make decisions in perpetuity – that he was not sure the HRC could place restrictions on the footprint of the building because he thought those would be questions for future HRCs to consider. Mr. Tellers and Mr. Stern said they would defer questions regarding leases to the legal department. Mr. Tellers said that as usual, any changes to the design would/will have to

come back for HRC approval, and in the meantime, the applicant should continue working with the community groups. Mr. Mangus said the expansion issue would be addressed through the lease. Mr. Stern said that the impression he was getting from the community and from his fellow HRC members was that the general application would be approved, with the condition that the final landscape plan come back to the HRC for approval. Mr. Tellers said that he did not want to adopt the ACI letter as a condition to the HRC approval because some of the items listed in the letter were outside of the purview of the HRC (outdoor bird exhibits, for example). He would rather simplify it and say that the landscape plan be reviewed by the local constituencies and by the HRC.

MOTION:

Mr. Tellers..... moved approve the application as presented with the condition that the final landscaping be reviewed by the local constituencies and that it return to this Commission for final review.

Ms. Drescherseconded the motion.

ALLvoted in favor

Motion Passes