

APPROVED MINUTES

TRAINING for the STATE REVIEW BOARD and HISTORIC RESOURCES BOARD

February 11, 2016, 10:00 a.m.

Virginia Historical Society, 428. North Boulevard, Richmond, Virginia 23221

Historic Resources Board Members Present

H. Edward “Chip” Mann, Chair
Clyde Paul Smith, Vice-Chair
Terri Hauser
Margaret Peters
Eleanor Brown

Historic Resources Board Members Absent

Ashley Atkins Spivey
Drew Gruber

State Review Board Members Present

Dr. Laurant Lee
Sara Bon-Harper
Joseph D. Lahendro
Dr. Carl Lounsbury
John Salmon

State Review Board Members Absent

Dr. Elizabeth Moore, Chair
Dr. Gabrielle Lanier

Department of Historic Resources Staff Present

Julie Langan, Director
Stephanie Williams, Deputy-Director
Gillian Bearn
Jim Hare
Jennifer Loux
Brad McDonald
Lena Sweeten McDonald
Jennifer Pullen

Guests from State Agencies – Catherine Ayres (Office of the Attorney General)

Director Langan began the meeting at 10:00 a.m. by welcoming members of the Historic Resources Board (the “HRB”) and State Review Board (the “SRB”) (together “Board” or “Boards”) and explaining the purpose of today’s meeting. C. Ayres reminded members of the HRB & SRB that the meeting was being recorded and fell under the provisions of the Freedom of Information Act (“FOIA”).

Freedom of Information Act (FOIA) Training (presented by Alan Gearhardt, Virginia Freedom of Information Advisory Council)

Comments Summary:

Mr. Gearhardt provided a summary of the Virginia Freedom of Information Act and its context with regard to other state open meetings and open records laws, and explained how the law has evolved since it was first passed in 1968. The Virginia Freedom of Information Advisory Council was established during the early 2000s to advise and education government and school employees on compliance with FOIA.

Specific FOIA-related topics that were reviewed were how the SRB and BHR are each public bodies, as are subcommittees of each Board; what constitutes a meeting of each Board; that FOIA applies to any discussion or transaction of public business; discussions via email; closed meetings; electronic/remote location meetings; and public meeting notices.

Board meetings that are subject to FOIA are any meetings where three or more Board members (or subcommittee members) have gathered to discuss public business, or where a quorum of the Board (or subcommittee) has gathered to discuss public business. Government employees are not counted as part of the quorum unless they have been officially appointed to the public body. Social

gatherings of Board members do not apply as long as public business does not take place. One-on-one conversations among Board members about public business may take place without violating FOIA.

Care must be taken with email communications among Board members in order to avoid convening an electronic meeting without public notice. One-time emails in which information is shared but no subsequent public business discussion takes place are not subject to open meetings laws. Rapid email exchanges among Board members that discuss public business do constitute a meeting of the Board or Boards. Government staff may distribute materials to Board members, such as advance review materials, without violating FOIA or open meetings laws. Government staff should be copied on all emails among Board members in which information is shared and/or public business is discussed so that these can be archived appropriately at the government office. DHR staff comply with state record retention requirements established by the Library of Virginia (the official repository for all state records). Voting by email is not permitted under open meetings laws.

Board members who are involved in a range of personal, volunteer, and professional activities are advised to create an email account that pertains to each aspect of their email communication needs so that their personal and professional communications remain disentangled with public business-related emails. Under state law, a public record is one that is written (including email) and pertains to public business; recordings that are used as a record in lieu of written minutes also are considered public records. Meeting minutes are not required to be a transcription of the discussion. At minimum, such minutes should include a list of the Board members who are present, a list of absent members, action items, records of votes, and motions to open, close, and reopen a meeting.

There are three requirements to be met to establish if a meeting must comply with FOIA: public notice for the meeting takes place; the meeting is open to the public; and minutes of the meeting are kept. The public notice is required to be posted at least 3 working days in advance of the meeting date, excluding weekends and holidays.

A closed session of a Board meeting must be preceded by an open session. The subject, purpose, and citation of the meeting's exemption from open meetings requirements must be provided in the open session. After a closed session begins, the Board chair shall reconvene the meeting and, at the meeting's end, request a motion to certify the closed session's results.

Electronic and/or remote meeting locations must be open to the public. Such meetings also must be reported on an annual basis to the Virginia FOIA Council.

A Board member may personally call in to participate in a previously called Board meeting if they have been delayed or prevented from attending by unexpected circumstances such as an illness, injury, inclement weather, car breakdown, traffic jam, or similar situation. In these circumstances, the member is not required to be in a publicly accessible place. Members generally are limited in the frequency with which they can call into a meeting rather than physically attending.

Presentation of Draft Bylaws (Catherine Ayres, Office of the Attorney General)

Comments Summary: Ms. Ayres circulated the draft bylaws for the SRB and the BHR among the Board members and provided a summary of each article included in the bylaws. The Board members were asked to review the bylaws prior to the joint BHR/SRB meeting on March 17, 2016, and be prepared to vote on approving or not approving the bylaws at that time.

A break for lunch began at 12:45 p.m. and the meeting reconvened at 1:15 p.m.

Register Training (Jim Hare, Director, Survey and Register Division, DHR)

Mr. Hare presented a PowerPoint presentation with an overview of DHR's National/State Register program that included an overview of the many parties involved in preparation of a nomination packet, from private property owners to local government officials and DHR staff. He reviewed NRHP and VLR programs and what listing in each Register offers to property owners. He next discussed the typical minimum thresholds a property must meet in order to be listed in the Registers, and how a property can be shown to be historically significant at the local, state, or national level under the Criteria for Eligibility and the Criteria Considerations. He concluded with an overview of the 7 aspects of integrity that are used to evaluate if a property retains the physical characteristics necessary to convey its historic associations.

The joint meeting ended at 2:00 p.m. The SRB portion of the training ended. The HRB began a separate session at 2:15 p.m.

Historic Resources Board Members Present

H. Edward "Chip" Mann, Chair
Clyde Paul Smith, Vice-Chair
Terri Hauser
Margaret Peters
Eleanor Brown

Historic Resources Board Members Absent

Ashley Atkins Spivey
Drew Gruber

Department of Historic Resources Staff Present

Julie Langan, Director
Stephanie Williams, Deputy-Director
Gillian Bearn
Joanna Wilson Green
Jim Hare
Jennifer Loux
Brad McDonald
Lena Sweeten McDonald
Megan Melinat
Wendy Musumeci
Jennifer Pullen
Elizabeth Tune
Marc Wagner

Guests from State Agencies – Catherine Ayres (Office of the Attorney General)

Easements

Ms. Tune introduced each Easement Program staff member and provided a brief overview of the agenda for the Easement Program training session. Ms. Bearn discussed the legal framework of the Easement Program, including enabling legislation for conservation easements, state and federal historic preservation and conservation best practices, and program policies and procedures. Ms. Bearn also explained the Virginia Battlefield Preservation Fund and other grant programs associated with the Easement Program.

Comments Summary: Ms. Ayres stated that based on an earlier Office of the Attorney General opinion, if the Commonwealth took underlying fee ownership of a property, it would not merge with the easement. Vice-Chair Smith inquired if an easement could be removed prior to transfer to the National Park Service. Ms. Bearn replied no, an easement could only be extinguished by a judge. Ms. Ayres stated that the HRB usually accepted perpetual easements, consistent with Internal Revenue Service (“IRS”) regulations, even though state law required a five year minimum duration. Ms. Bearn stated that under the Virginia Open-Space Land Act, there was an opportunity for taking an easement greater than five years in duration but less than perpetuity, and that the HRB had not accepted an easement of less than perpetual duration. Chair Mann asked if the perpetual status stayed with the Commonwealth even though the National Park Service might be stewards of a property. Ms. Bearn responded yes and further explained the details of the Virginia Open-Space Land Act. Vice-Chair Smith observed that he thought an easement could never be removed. Ms. Bearn responded by explaining the difference between extinguishment and the conversion/diversion process under Section 1704 of the Virginia Open-Space Land Act. Chair Mann observed it seemed similar to wetlands mitigation. Ms. Ayres noted there were some conflicts between federal law and this law. Ms. Bearn replied that the HRB has generally agreed to placement of a temporary easement with conditions on a property rather than giving away the underlying fee through conversion. Ms. Ayres stated that it was important to note that this provision was in the Virginia Code for public bodies only and not private land trusts and it allowed for the public to anticipate infrastructure projects. Ms. Bearn stated that provision differentiated this board from land trusts and that the HRB represented the sovereignty of the Commonwealth. Vice-Chair Smith asked if the HRB owned land per the Virginia Battlefield Preservation Fund. Ms. Bearn responded no and explained the provisions of the fund. Vice-Chair Smith inquired about the monies in the Virginia Land Conservation Foundation and how they were allocated. Ms. Bearn replied through the General Assembly. Ms. Peters inquired about the exterior or façade of non-historic resources on easement properties. Ms. Bearn responded that integrity was an issue with impaired battlefield properties in particular. Ms. Peters observed that was why the HRB set conditions for approval. Ms. Bearn responded that the HRB could determine when integrity would be restored for easements that did not have an IRS component, but for easements that would include an IRS component the property must have integrity now. Vice-Chair Smith asked why an owner would not take a federal deduction for donation of an easement. Ms. Bearn replied that there were a number of reasons such as estate planning purposes or grant funding. Ms. Hauser asked for clarification that the appraisal was for the value of the easement. Ms. Bearn responded that an easement appraisal by a professionally qualified appraiser was required and generally the before and after valuation method was used. Ms. Brown noted this fell under the charitable donation section of the tax code. Ms. Bearn cited an example where DHR would not sign an easement and required a second appraisal and reminded the HRB of the Easement Program policy on appraisals. Ms. Peters stated that an easement might drive a lower sale price. Ms. Bearn stated that the appraiser was responsible for identifying any reduction in value. Ms. Bearn then briefly reviewed the Section 106 process pursuant to American Battlefield Protection Program grants and the variety of easement templates used by the program. Ms. Peters inquired if a non-profit organization had tax liability. Ms. Bearn responded if they had income then the credits could be sold. Ms. Brown noted they are income taxable. Ms. Bearn provided an example of a partial gift partial sale easement transaction.

Mr. McDonald explained his role as Easement Stewardship Coordinator and discussed the process for stewardship and monitoring of easement properties. Mr. McDonald also reviewed categories of easement violations and potential resolutions.

Comments Summary: Vice-Chair Smith asked what teeth the HRB had in the event of a significant violation such as construction of a convenience store or gas station on an easement property. Ms. Ayres responded that the owner could be sued or taken to court. Ms. Tune observed that while the Easement Program had never received monetary compensation for an easement violation it had successfully defended an easement in court. Ms. Bearn noted that enforcement would depend on the severity of violation and in the case of a major violation the HRB might ask for punitive damages and any mitigation that could be possible under the circumstances. Ms. Bearn explained that DHR would need to issue regulations to be able to fine an easement property owner in the event of a violation and that would be limited to five hundred dollars.

Historic Highway Markers

Comments Summary:

J. Loux, Highway Marker Historian, presented a PowerPoint presentation about the history and legal authority of the Highway Marker Program, funding sources, the marker approval, citing, and dedication process, and composition of the Marker Editorial Committee. J. Loux also highlighted challenges currently facing the program, including lack of funds to replace broken or stolen signs and deterioration/maintenance issues.

Comments Summary: Vice-Chair Smith asked for additional information on markers that had been taken down. Ms. Loux responded that a number of markers were moved in the 1990s through a Transportation Enhancement grant. Vice-Chair Smith noted he would like to see a list of those markers. Ms. Peters noted that even earlier some markers were taken down due to content. Ms. Hauser asked when the highway marker driving application for portable electronic devices would be available. Mr. Hare replied that the grant-funded pilot project along the Virginia Capital Trail was in progress. Chair Mann stated that highway markers were a highly visible part of the Department's responsibilities. Mr. Hare stated that marker dedications were popular events and a great public face of the Department.

C. Ayres asked if there were any more questions. The HRB session ended at 4:11 p.m.

Board of Historic Resources
Special Meeting held on February 11, 2016
Richmond, Va.
DRAFT MINUTES

Members present: E. "Chip" Mann, Chair
Clyde Smith, Vice-Chair
Terri Hauser
Eleanor Brown
Margaret Peters

Members Absent: Drew Gruber
Ashley Atkins-Spivey

The special meeting was called to order by Chip Mann, Chair, at 4:31 pm.

Mr. Mann stated that the purpose of the meeting was to take final action on revisions to the regulations for the permits required for the archaeological excavation of human remains.

Mr. Mann requested a roll call to establish quorum. Five members, including Mr. Mann, Mr. Smith, Ms. Hauser, Ms. Brown and Ms. Peters, were present.

Mr. Mann asked Joanna Wilson Green, Department of Historic Resources Archaeologist, to present the matter.

Ms. Wilson Green stated that the revision process began approximately two years ago. Revisions to Section 10.1-2305 of the Code of Virginia were proposed in recognition that the public notice requirements were no longer adequate. She stated that the public notice requirements were enacted in 1991 which required publication of notice in newspapers. Since that time reliance on print media has declined significantly and the intent of the notice requirement to meet a broad audience would be better served through digital media. In addition, the revisions include a requirement that the applicant submit a financial capacity statement indicating that they have the financial ability to pursue the entire process to completion. There was also a need to correct typographical errors such as references to the Director solely by masculine pronouns.

Ms. Wilson Green noted that the revisions have gone through the entire process under the Administrative Procedures Act including review by the executive branch. Only one comment was received from an archaeologist early in the process and no other comments have been received. Ms. Wilson Green asked if the Board had any questions. There were no questions.

Ms. Hauser made a motion to adopt the revisions as presented.

Mr. Mann asked if there was any discussion. There being none, he asked for a second.

Ms. Peters seconded.

Mr. Mann asked for a vote.

The motion was approved unanimously.

Mr. Mann closed the special meeting at 4:36 pm.