

APPROVED MINUTES

November 14, 2019

BOARD OF HISTORIC RESOURCES TRAINING

Director's Conference Room, Virginia Department of Historic Resources
2801 Kensington Avenue, Richmond, VA 23221

Board of Historic Resources Members Present:

Dr. Colita Nichols Fairfax, Chair
Dr. Ashley Atkins-Spivey, Vice Chair
Erin Ashwell (by phone)
Jeffrey "Free" Harris
Nosuk Pak Kim
Karice Luck-Brimmer
David Ruth

Department of Historic Resources (DHR) Staff Present:

Julie Langan, Director
Brad McDonald
Megan Melinat
Wendy Musumeci
Karri Richardson
Elizabeth Tune
Joanna Wilson Green
Jen Loux
James Hare
Elizabeth Lipford

These minutes summarize the activities that took place at this meeting. The meeting began at 10:17 a.m., with a welcome and introduction of the agenda by Director Langan.

OVERVIEW AND HISTORY OF THE EASEMENT PROGRAM

Ms. Tune presented the history of the easement program.

Comments Summary:

Dr. Atkins-Spivey confirmed that an easement could be renegotiated if the modifications were minimally preservation neutral or preferably, preservation positive in nature. Mr. Ruth asked which other entities had the authority to hold easements. Staff replied that multiple state agencies, including the Department of Conservation and Recreation, the Department of Forestry, and the Department of Games and Inland Fisheries could hold easements, as well as multiple other private entities, all of whom have missions that vary from that of the Board of Historic Resources. Director Langan noted that the American Battlefield Trust funds many battlefield easements in Virginia; and DHR and the Board have the right of first refusal for such easements in the Commonwealth. Chair Fairfax asked if there is an existing memorandum of understanding ("MOU") between DHR and the Virginia Outdoors Foundation ("VOF"). Director Langan replied candidly that a formal agreement is not in place, and the relationship between agencies not particularly positive as the gentleman's agreement of the past is not being upheld – VOF actively pursues easements on properties containing historic resources, particularly cemeteries. Dr. Atkins-Spivey confirmed that the financial implication were likely behind the motivation. Ms. Musumeci explained that DHR's template is more restrictive than VOF's. Director Langan added that the composition of professional staff is also quite different. Ms. Melinat noted that DHR staff responsibilities are regularly written into VOF easements without DHR knowledge or consent. Ms. Kim remarked that an MOU would be an appropriate tool to formalize the relationship between agencies. Dr. Fairfax agreed and offered the Board's assistance. Ms. Musumeci explained that a unique feature of the Board is its ability to hold easement under the enabling legislation and/or the Open Space Land Act, not just the latter. Chair Fairfax inquired about the relationship between an easement and eminent domain. Ms. Kim replied that conversion/diversion and eminent domain are independent of one another. Ms. Musumeci clarified that the conversion/diversion language was added to the Open Space Land Act following a legal challenge at the Board's first easement property, Old Mansion in Caroline County. Mr. Harris asked for clarification on the reference to previous easement properties and owner communication. Dr. Fairfax explained the misunderstanding of these aspects arose previously with controversial projects. Mr. Ruth asked if any easement holder has the same responsibility. Ms. Tune confirmed that this was true of public entities holding easements under the Open Space Land Act, but the responsibility of private easement holders varies.

Chair Fairfax called for a brief break at 11:04 a.m.

The meeting reconvened at 11:13 a.m.

EASEMENT APPLICATION PROCESS

Ms. Richardson presented an overview of the easement application process, including detailed information about the importance of title work review and the two-step approval process by the Easement Acceptance Committee.

Comments Summary:

Mr. Ruth inquired about an unused utility easement. Ms. Richardson replied that DHR would work with the utility to vacate the easement, or the owner to quit claim the land in order to clear the title. Ms. Wilson Green added that an easement predating that of the Board can override its easement, so understanding the implications of earlier easements is important. Chair Fairfax confirmed the

easement application does not quantify the number of photographs required. Easement staff agreed to reevaluate the wording and specify an appropriate range. Chair Fairfax established that all survey discrepancies must be resolved before DHR can move forward with an application, and asked if the application contained notary requirements or statements of attestation. Ms. Richardson replied that these were currently not requirements of the application, but were under discussion. Chair Fairfax encouraged the discussion and noted a preference for more public accountability. Ms. Kim asked for the average length of time for the processing of an application. Ms. Richardson replied that 4-6 months was typical, with more complex offers requiring more time. Mr. Ruth confirmed that DHR requires a determination of eligibility as part of the application. Ms. Kim verified that staff cannot always visit a property prior to its presentation to the Easement Acceptance Committee. Mr. Harris inquired if an easement could be revoked, and noted the potential impact of perpetually protected properties impacted by climate change. Staff replied that an easement could only be judicially extinguished. Ms. Tune noted that the Board is responsible for making determinations on offers of easement and guiding the dedication of state resources. Mr. Ruth noted satisfaction that applicants who may receive a financial incentive cannot reduce the protection of conservation values at a future date. Director Langan observed this was integral to the complexities of the transfer agreement with the National Park Service. Ms. Musumeci underscored the importance of the due diligence phase. Director Langan agreed and added that some section of the public think that DHR is overly particular in this regard, but such requirements are intended to protect future Boards of Historic Resources. Ms. Kim learned that the applicant funds the necessary title insurance.

EVALUATION OF PROPOSED PROJECTS

Ms. Musumeci presented an overview of the criteria for evaluation of new easement offers, including the provisions of *Easement Program Policy #2: Criteria for Acceptance of Easements*. Ms. Musumeci discussed historic integrity and how staff, the EAC, and Board analyze integrity when evaluating proposed easement properties. Finally, Ms. Musumeci presented some administrative resolutions to concerns about integrity with a focus on rehabilitation and management plans.

Comments Summary:

Mr. Ruth asked if an applicant's acknowledgment of relic hunting ever resulted in a denial of an easement offer. Ms. Wilson Green replied that this has only transpired in instances when the donor does not want to cease such occurrences. Ms. Musumeci added that such activity can impact drafting of an easement, depending on the context and the scale of known actions. Dr. Atkins-Spivey added that some battlefield organizations do not fully understand the archaeological resources/records of their properties, and the time periods artifacts may represent. Ms. Musumeci acknowledged that DHR has an educational role in such instances. Mr. Ruth noted that modern intrusions can sometimes be removed to preserve the greater conservation values of a property. Mr. Harris asked if there has even been a property where a significant event happened that now has a modern building located in that spot. Ms. Musumeci replied that the context would be critical, and if the EAC could not make a determination, the offer would be brought to the Board.

EASEMENT DRAFTING, NEGOTIATION & BASELINE DOCUMENTATION

Ms. Wilson Green presented an overview of the easement document template and a brief discussion of what constitutes the recitals, articles, and exhibits sections of the document. Ms. Wilson Green then presented the philosophies behind, and goals of, the easement negotiation process. Finally, Ms. Wilson Green provided an overview of the baseline documentation process, with emphasis on the need for clear, comprehensive, and detail-oriented documentation of the property as well as careful data management on the back end.

Comments Summary:

There was no discussion.

Dr. Atkins-Spivey left the meeting at 12:53 p.m.

PROJECT REVIEW

Ms. Melinat presented an overview of the project review process, and explained that the process is guided by federal guidelines established by the United States Department of Interior. Ms. Melinat generally introduced the Secretary of the Interior's *Standards for Rehabilitation* and how requests for modification are reviewed for their cumulative effect on the historic character of the property. Ms. Melinat explained the project review request form, typical requests and how determinations are made, often with the assistance of a site visit. All determinations are made in writing and are routinely part of a dialogue with the property owner. Ms. Melinat concluded with an explanation of the accompanying administrative and record keeping aspects encompassed by project review and the integral role it plays with regard to DHR's stewardship obligations.

Comments Summary:

Mr. Ruth asked if DHR could require a Phase I archaeological investigation if an impact to archeological resources was suspected. Ms. Wilson Green replied that if the deed of easement has an archeological provision, then DHR can request one; otherwise it is a recommendation. Mr. Ruth asked if survey is required before physical modifications occur. Ms. Wilson Green answered that it was not required, although some owners elect to do so. She added that easement provisions will catch up with the activity, and that all determinations are made based upon available record and documentation.

STEWARDSHIP AND VIOLATIONS

Mr. McDonald presented an overview of the easement inspection/monitoring process as well as an overview of the program's violations policy. For the easement inspection portion of the presentation, McDonald explained the primary reasons for monitoring that include insuring compliance with existing easement document, maintain positive landowner relationships, curation of program archival information, and enhancement of our understanding of a given property through identification and recordation of new, previously unidentified historic resources. For the violations portion of the presentation, McDonald provided an overview of the different types of violations and provided specific examples of how these apply to the on-going stewardship of properties.

Chair Fairfax left the meeting at 1:31 p.m.

Comments Summary:

Mr. Harris expressed concern that easements may be publicly viewed as elitist. Staff cited Oregon Hill as an example of the successful use of easements as a preservation planning tool in a working class neighborhood. Mr. Harris inquired as to the penalty for a violation. Ms. Melinat replied that there is no violation fee structure, per se. Ms. Ashwell expressed the importance of building community with second and third generation property owners who have inherited a property where the opportunity to realize the tax benefit have expired. Ms. Kim asked is DHR is notified when property ownership changes. Staff replied that DHR is often notified, but not always. Director Langan requested that individual board members write a letter to Governor Northam expressing support for the DHR budget requests that are currently under consideration.

The meeting adjourned at 2:09 p.m.

Vice-Chair Atkins-Spivey, Ms. Pak Kim, and Mr. Ruth left the meeting; Ms. Ashwell discontinued the phone call.

The meeting resumed at 2:17 with Mr. Harris and Ms. Luck-Brimmer in attendance.

HIGHWAY MARKER PROGRAM

Jen Loux made a presentation on the purpose and history of the Highway Marker Program, and detailed the application process, development and review of proposed text, and review and approval by the Board.

VIRGINIA LANDMARKS REGISTER AND NATIONAL REGISTER OF HISTORIC PLACES PROGRAMS

James Hare discussed the process for nominating a property to the National Register of Historic Places and Virginia Landmarks Register, noting that the process has evolved greatly since the inception of the programs, and explaining that the nomination documents are intended as planning tools for management of historic resources. Elizabeth Lipford detailed the National Register criteria for evaluation of eligibility, noting that only one criteria must be met in order for a property to be determined eligible for listing. Mr. Hare addressed the seven aspects of integrity, the levels of significance, and the evaluation of a property according to these standards. Ms. Lipford further explained the process for listing a property on the National Register of Historic Places and Virginia Landmarks Register, and Mr. Hare discussed how the Board members are involved in the review of draft nominations.

The meeting adjourned at 4:35.