

North Carolina Historical Commission Meeting Minutes

March 25, 2021

Zoom Conference Call

The North Carolina Historical Commission (NCHC, Commission) met via Zoom conference call on Thursday, March 25, 2021. The meeting was also live streamed on the North Carolina Department of Natural and Cultural Resources' NCHC website. In attendance were the following commissioners: David Ruffin, Chair; Dr. Mary Lynn Bryan; Dr. David C. Dennard, Samuel B. Dixon; Dr. Valerie A. Johnson; B. Perry Morrison Jr.; Susan Phillips; W. Noah Reynolds; and Barbara B. Snowden. Absent were commissioners Dr. Malinda Maynor Lowery and Dr. Darin Waters.

Other staff members of the North Carolina Department of Natural and Cultural Resources (DNCR) in attendance included: Sarah Koonts, Acting Deputy Secretary of the DNCR, Acting Director of the Office of Archives and History (OAH), Acting Secretary of the NCHC, and Director of the Division of Archives and Records (DAR); Phil Feagan, DNCR General Counsel; Ramona Bartos, Director of the Division of Historical Resources (DHR) ; Ken Howard, Director of the Division of State History Museums (DSHM); Michelle Lanier, Director of the Division of State Historic Sites and Properties (DSHSP); Parker Backstrom, OAH administrative assistant and Recording Secretary of the NCHC; and Martha Battle Jackson, Chief Curator for the DSHSP.

Also, in attendance were: Karen Blum, Special Deputy Attorney General, North Carolina Department of Justice (DOJ), and General Counsel to the NCHC in matters dealing with the relocation or removal of confederate monuments; Dr. Jeffrey Crow, former Deputy Secretary of the DNCR; and Matt Zeher and Greg Snyder, Video Producer for the DNCR and DNCR IT specialist respectively, who facilitated the transmission of the video conference call.

Call to Order and Opening Remarks

Chairman Ruffin welcomed attendees and called the meeting to order at 2:02 P.M. He called roll and noted that a quorum was present.

Conflict of Interest Statement

Mr. Ruffin asked each Commission member, their having had a chance to review the agenda in advance of the meeting, whether any might have a real or perceived conflict of interest pertaining to the business that would come before the Commission this day. Mr. Dixon stated that he had a conflict of interest regarding the N.C.G.S. 121-12(a) issue scheduled to be heard and expressed his plan to recuse himself from voting on that matter of business. No other concerns were voiced.

Approval of Minutes

Chairman Ruffin asked whether anyone wished to proffer a motion to accept the minutes from the November 23, 2020 NCHC meeting as written. Mr. Morrison so moved, and Mr. Dixon seconded the motion. Dr. Dennard pointed out two typographic errors and asked that they be corrected. Mr.

Morrison revised his motion to accept the minutes pending these changes. A roll call vote on the amended motion was taken and the motion passed unanimously.

NCHC Meeting Dates Through Balance of 2021

Following consultation with Ms. Koonts and Mr. Feagan, Mr. Ruffin proposed that commissioners select the dates for the remaining regular meetings of the NCHC through the balance of 2021. He proposed June 23, September 22, and December 8, each to commence at 2:00 PM. A motion approving this proposal was put forth by Dr. Bryan and seconded by Dr. Dennard, and a roll call vote to accept was unanimous.

Update on the Search for a New Deputy Secretary of the DNCR

Chairman Ruffin introduced Dr. Crow, who was asked by the DNCR to head up the search for a successor to Dr. Kevin Cherry. Dr. Crow explained the process, stating that a job description was drafted and placed on a number of national job boards. Applicants have been instructed to send a cover letter and Curriculum Vitae to a dedicated NCHC email address, and Mr. Backstrom will forward to Dr. Crow, who will review all materials then forward those from the most qualified applicants to Mr. Ruffin for further review. After Dr. Crow has had a chance to vet the applicants, he suggests that the top three to five be sent to the full Commission for its review. The deadline for submissions by applicants is April 16, and Dr. Crow envisions a subsequent meeting of the NCHC taking place in late April or early May, with interviews with the final candidates possibly taking place in late May. Dr. Crow will draft a recommendation report on behalf of the NCHC, but the NCHC itself will make a final recommendation to DNCR Secretary Reid Wilson, who will make the hire. Dr. Crow opened the floor to questions, but no questions were forthcoming. Mr. Ruffin thanked Dr. Crow for his efforts and Dr. Crow departed the meeting.

Requests for the Placement of Markers at State Historic Sites

Ms. Lanier directed the commissioners' attention to written descriptions and photographs, sent to commissioners in advance of the meeting, pertaining to two commemorative markers the DSHSP proposes be installed at two state historic sites. The first, to be donated by the W.G. Pomeroy Foundation as part of its National Votes for Women Historic Roadside Marker Program, would commemorate the suffrage activities of Dr. Charlotte Hawkins Brown, and would be placed at the Charlotte Hawkins Brown State Historic Site in Guilford County. The second, a bronze memorial plaque, would honor the late Paul M. Laird, former Executive Director of the Friends of Fort Fisher support group, and would be donated by the Laird family and installed at Fort Fisher State Historic Site. After summarizing the language to be used, the designs, and their placement, Ms. Lanier offered to answer any questions. With no questions or comments forthcoming, Dr. Bryan moved approval of the requests. Dr. Dennard seconded the motion, and a roll call vote was taken. The motion carried unanimously.

N.C.G.S. 121-12(a) Matter – Demolition of the John A. Holmes High School and the Relocation of The Boy Scout Hut in Edenton

Ms. Bartos explained that on March 2, 2021, the Edenton-Chowan School Board voted to build a new administration-classroom building in Edenton. It would replace functions currently housed in

the 1950 John A. Holmes High School. Since this is a contributing structure within the Edenton National Register Historic District, the School Board must solicit comments from the NCHC under N.C.G.S. 121-12(a). Ms. Bartos reminded the Commission that its role is an advisory one only, and that the School Board has no obligations to follow any requests or recommendations from the NCHC, though it is required to respond to the NCHC as to its intentions.

Ms. Bartos directed the commissioners' attention to written materials provided in advance of the meeting. She noted that the school board facilitated extensive public engagement regarding the planned relocation of the Boy Scout Hut building, demolition of the central portion of the high school, and subsequent new construction. She stated that the State Historic Preservation Office (HPO) reviewed the design changes and believes the school board has put forth a good faith effort. The HPO asked the school board to thoroughly document the existing structures as they are and to file those documents with the HPO before beginning with relocation and demolition. Ms. Bartos asked the commissioners for comments to be incorporated in a letter to the school board from the HPO on behalf of the NCHC.

Mr. Ruffin asked Ms. Bartos whether anything could affect a designation change once a local entity proposes rezoning. Ms. Bartos replied that it depends on the circumstances. If it is strictly a local designation, then a local historical group could chime in. If a designation falls under federal laws, such as in the case of a listed National Register Historic District, then the state HPO would become involved, primarily to protect such designations. At Mr. Morrison's request Ms. Bartos described what is referred to in her written summary as the Town Green. Mr. Dixon added, given his familiarity with Edenton, his long-time home, that the Town Green hosted many historical events.

Mr. Morrison moved approval of HPO staff requests to the Edenton-Chowan School Board, as proposed. Dr. Johnson seconded the motion, and a roll call vote passed unanimously, with Mr. Dixon abstaining. Said Ms. Bartos, HPO staff will draft a letter incorporating the Commission's comments promptly.

Accessions and Deaccessions from State History Museums and State Historic Sites

Acting secretary Ms. Koonts noted that the OAH Accessions Committee met on March 4 and approved a list of proposed accessions and deaccessions from the Museum of History (MOH), the Mountain Gateway Museum, the North Carolina Maritime Museums (NCMMs), and the DSHSP. That annotated list was sent to the commissioners for their consideration prior to the meeting. Citing that list, Ms. Koonts very briefly summarized the items contained therein and asked whether there were any questions. Mr. Ruffin proposed that all proposed accessions and all proposed deaccessions be voted upon as single slates respectively, as has been done in the past. Ms. Snowden moved acceptance of all proposed accessions, as presented. The motion was seconded by Dr. Johnson and carried unanimously on voice vote. Ms. Phillips then moved acceptance of all proposed deaccessions, as presented. That motion was seconded by Mr. Morrison and carried unanimously on voice vote.

Deaccession of Items from Dorothea Dix Hospital

Explained Ms. Koonts, the Department of Health and Human Services (DHHS) has asked the NCHC to approve the deaccession of items from Dorothea Dix Hospital and transfer of those items to the City of Raleigh (COR) Museum. A copy of that list was made available to the Commission in advance of the meeting. Ms. Koonts summarized that list and reported that staff from both the MOH and the State Archives reviewed the list and neither noted any items they would recommend worth accessioning into either collection. She also noted that a deaccessioning

of DHHS Dix Hospital items and transfer to the COR Museum has been done once before so there is precedence for such an action.

With no discussion, Dr. Johnson moved approval of this deaccessioning and transfer, and Ms. Phillips seconded the motion. The motion carried unanimously on a roll call vote.

Reports from Division Directors

Each division director briefly summarized a fuller, written report that was sent to the commissioners in advance of the meeting. A copy of each full report has been placed in the file for this meeting and available for review.

Division of Archives and Records – Ms. Koonts discussed the OAH’s planning for the USA 250th Commemoration, for which the state soon hopes to launch its branding campaign and announce its partnership with the national commemoration effort. She also touched upon work being done on virtual programming for schools and social media, and grants received to create video tutorials and transcribe court recordings and Colonial court records.

Division of State Historic Sites and Properties – Ms. Lanier shared a “new year” message she wrote to staff reflecting upon the challenges of the pandemic period and moving forward into still uncertain times. In it she reaffirmed guiding priorities for the division. On a more specific level, Ms. Lanier noted that wi-fi has now been installed at all state historic sites and reported that over the past three years the division has successfully received grants totaling some \$6 million.

Division of Historical Resources – Ms. Bartos highlighted a few accomplishments from the constituent offices under her authority. Among them are that the Office of State Archaeology is offering digital lectures monthly, and the Historical Research Office is producing video podcasts. She also touched upon National Register and Historic Tax Credit activity within the Historic Preservation Office and reported that she has been elected President of the National Conference of State Historic Preservation Offices.

Division of State History Museums – Mr. Howard reported that even during the COVID-19 pandemic, museums have continued to be busy with new exhibits, virtual educational programming, and online activities. He reported that the capacity for the Museum of History (MOH) was recently raised from 25 percent to 30 percent. Mr. Howard touched upon the MOH’s expansion planning and noted that it has recently been able to move forward on hiring for several important positions that have stood vacant for some time.

Mr. Morrison commended Mr. Howard on the virtual lectures that the museum has offered, one of which he attended with several others he knows.

Chairman Ruffin thanked the division directors and expressed appreciation for all the work they and their respective staffs have continued to do through these trying times.

Dr. Johnson asked that director of the African American Heritage Commission, Angela Thorpe, be asked to present a report at the June 2021 meeting, which Mr. Ruffin affirmed.

Buncombe and Pasquotank County Confederate Monument Issues

Mr. Ruffin reported that the issue involving a petition to remove a confederate monument in Pasquotank County, discussed at the November 23, 2020 NCHC meeting, has moved into the

litigation phase, based upon the Commission's decision not to take action on the petitioner's request. At the request of the chair, Ms. Blum presented the factual summaries of that case and a new case involving the Zebulon Vance monument in Buncombe County.

In February 2021, the NCHC received a petition asking it to preserve a statue of Zebulon Vance situated in Pack Square in Asheville. The petitioner in the case, the Society for the Historical Preservation of the 26th North Carolina Troops, hereafter referred to as the 26th North Carolina, requested assistance from the NCHC to preserve the monument under two statutes, §143B-62 and §100-2.1. The monument is owned by the city of Asheville and stands on public property. The Buncombe County Commission and the Asheville City Council voted to remove the monument.

Said Ms. Blum, the petition has jurisdictional allegations. The first is under §143B-62, which requires the NCHC to provide aid to organizations in the interest of historical preservation. The second jurisdictional allegation is under §100-2.1, which prohibits objects of remembrance from being permanently removed.

The 26th North Carolina also alleges standing as an organization seeking the NCHC's aid in preserving the monument, and because the 26th North Carolina restored that monument in 2015 under a contract with the city of Asheville. The petitioners are asking the NCHC to hear the petition at this meeting or schedule a special meeting to deal with the petition if appropriate to allow the petitioner to brief the matter or present it for oral argument. As well, they are requesting that the NCHC enter an order requiring the Vance Monument to remain in Pack Square.

In the other case, the petitioners, the state chapter and one local of the North Carolina Division of Sons of Confederate Veterans (SCV), Incorporated, are appealing the NCHC's decision not to hear the matter pertaining to its petition regarding the confederate monument in Elizabeth City, at its November 23, 2020 meeting. To remind commissioners, a petition for declaratory ruling regarding the applicability of §100-2.1 was addressed to and received by the DNCR, while simultaneously requesting relief from the NCHC. The DNCR declined to hear the matter but forwarded it to the NCHC for its consideration. The NCHC in turn declined to hear the matter because it determined that the petitioners were not persons aggrieved. Where it stands now is that the petitioners have appealed the decision by the NCHC and have filed a petition for judicial review and a request for a declaratory order in Pasquotank County Superior Court. They are asking the court to reverse and remand the denial of the request for declaratory ruling by the NCHC, and to enter a declaratory order that the county board needed the NCHC's approval before acting to remove the monument.

On behalf of the NCHC, Ms. Blum has filed motions in Pasquotank County Superior Court to dismiss under the Administrative Procedure Act and North Carolina Rules of Civil Procedure, as well as responded to the petition. She anticipates that this petition will be heard in June in Dare County, due to scheduling conflicts with the attorney that is representing the two SCV groups.

Commissioner Dixon moved that the NCHC go into closed session under the open meetings law to consult with its attorney in order to: preserve the attorney-client privilege and receive legal advice on the merits of handling the petition for judicial review and request for declaratory order filed in Pasquotank Superior Court about the Pasquotank County Confederate Soldiers Monument; and to receive legal advice on the petition to preserve the Zebulon Vance Monument in Asheville. This motion was seconded by Commissioner Johnson. With no discussion forthcoming, Mr. Ruffin conducted a roll call voice vote, and the motion was carried unanimously.

Mr. Ruffin stated that this meeting of the North Carolina Historical Commission would enter closed session pursuant to North Carolina §143-318.11(a)(3) to consult its attorney in order to: preserve

attorney-client privilege and receive legal advice on the merits and handling of petition for judicial review and request for declaratory order filed in Pasquotank Superior Court about the Pasquotank County Confederate Soldiers Monument; and to receive legal advice on the petition to preserve the Zebulon Vance Monument in Asheville. The meeting moved into closed session at 3:31 PM.

Closed Session

The NCHC went into closed session and consulted with its attorney on legal matters pertaining to confederate monuments in Buncombe and Pasquotank counties. No deliberations on the issues were conducted.

Once consultation concluded and following a motion by Commissioner Morrison to return to open session, and a second by Commissioner Snowden, the motion was passed unanimously.

Resumption of Open Session

The open session resumed at 4:15 PM. Chairman Ruffin called the meeting back into order and opened the floor for discussion. He stated that as the Commission understands it the petitioner in the Zebulon Vance monument case, the 26th North Carolina, has presented two requests for relief from the NCHC based upon §100-2.1 and §143B-62. Dr. Dennard stated that it would be in the Commission's best interest to deny any attempt to provide legal relief, based upon its belief that it does not have the legal authority to do so. With Dr. Dennard's blessing Mr. Morrison reframed the statement into the form of a motion, as follows: Motion to deny consideration of the petition to preserve the Zebulon Vance monument, relying on the Commission's understanding that §100-2.1 and §143B-62 do not grant it the authority to take any action with respect to any monuments on property not owned by the state of North Carolina. Dr. Dennard seconded Mr. Morrison's motion.

During the following discussion period, Ms. Phillips expressed her concern that the motion as it stands does not satisfactorily address the Commission's position regarding the authority granted it under the different statutes. She stated her understanding that §100-2.1 would not apply because the monument in question is not on state property. She understands that there is, however, a different legal argument regarding §143B-62. In the latter case, the relief that is being requested, that the NCHC order Buncombe County to maintain the monument in place, does not fall within the legal authority of the NCHC.

Mr. Morrison restated his motion to address the distinctions between the authority granted the NCHC by the two statutes, as follows: Motion to deny consideration of the petition to preserve the Zebulon Vance monument, relying on the Commission's understanding that §100-2.1, even in consideration of §143B-62, does not grant it the authority to take any action with respect to any monuments on property not owned by the state of North Carolina.

Phillips offered a friendly amendment, suggesting that the motion be restated to include the following language: Under §143B-62 the NCHC has no authority to grant the relief requested by the petitioner.

Mr. Morrison restated his motion a second time, to incorporate Ms. Phillips' friendly amendment, to read: Motion to deny consideration of the petition to preserve the Zebulon Vance monument, relying on the Commission's understanding that §100-2.1, does not grant it the authority to take any action with respect to monuments on property not owned by the state of North Carolina; Moreover, under §143B-62 the NCHC has no authority to grant the relief requested by the petitioner.

With the motion on the table, previously seconded by Dr. Dennard, Mr. Ruffin called a vote on the amended motion. The motion was carried unanimously on a roll call vote.

Announcements from the Chair

The Office of the Governor has officially bestowed upon former commissioner Millie M. Barbee the title of Commissioner Emeritus.

He apprised the Commission of the status of the NCHC subcommittee, appointed by the chair on September 3, 2020, and charged with hearing recommendations from OAH staff on the ultimate disposition on the three confederate monuments on Union Square, which were removed by order of the governor during civil unrest in June 2020. Due to the resignation of former DNCR Deputy Secretary Dr. Kevin Cherry, and with his critical role in coordinating staff research in this matter, the chair has deemed it important to wait until a permanent replacement of the deputy secretary is in place before convening this subcommittee.

Mr. Ruffin took a point of privilege to emphasize that the NCHC performs primarily an advisory role and is not a general court of justice, and thereby not an appropriate adjudicator of all things confederate monuments. Specifically, its authority is limited to dispositions of state-owned monuments and monuments on property owned by the state and is not inclusive of those owned and managed by local governments. Furthermore, the NCHC should not be seen by elected officials as a forum for deciding all issues that they themselves have difficulty resolving. In that spirit the Commission requests very specific recommendations by the DNCR and its staff on the disposition of the Union Square monuments as it considers convening its subcommittee as soon as is practicable upon the permanent replacement of the deputy secretary.

Finally, Mr. Ruffin reminded all commissioners to be sensitive to and observe the deadline of April 15, 2021, for submitting the annual Statements of Economic Interest to the Board of Ethics.

Adjournment

At the Chair's invitation, Ms. Snowden moved adjournment. The motion was seconded by Dr. Dennard and was carried unanimously by voice vote. Chairman Ruffin adjourned the meeting at 4:33 P.M.

Respectfully submitted,

Sarah E. Koonts