



City Manager Report

The City of OKLAHOMA CITY

NO. 6624

DATE MAY 1, 2007

TO THE MAYOR and MEMBERS OF THE CITY COUNCIL

SUBJECT HISTORIC PRESERVATION COMMISSION APPEALS

This report is in response to Council's request for additional information regarding the Ordinance amending Chapter 59, Article IV, Section 59-4200 of the Oklahoma City Municipal Code. The Ordinance change details procedures for hearings before the Historic Preservation (HP) Commission on applications for Certificates of Appropriateness and requires that appeals from the HP Commission to the Board of Adjustment (BOA) be on the record.

Background

This Ordinance change was proposed by a BOA member with the intent to address issues that have arisen regarding appeals of decisions made by the HP Commission to the BOA. Currently, when an appeal of the HP Commission is filed to the BOA, each BOA member receives a DVD of the HP Commission meeting and a copy of the HP staff report on the case. BOA members have the opportunity to review this information prior to the meeting and become familiar with the applicant's case as it was presented to the HP Commission, and to gain an understanding of the reasons for the HP Commission decision.

However, when a citizen appeals a decision of the HP Commission to the BOA, the current HP Ordinance does not prohibit the appellant from introducing different information about the condition of the site as well as a different design solution that was not considered by the HP Commission or staff. Therefore, the BOA is charged with reviewing new or different information that requires BOA members to be familiar with the conditions of the property and the nuances of the HP Ordinance, often without the proper disclosure prior to the BOA meeting. Further, the BOA does not have the benefit of staff verification, research or opinion on these newly presented conditions and design issues during the appeal process. BOA members are placed in a position where they must make significant decisions regarding preservation issues, an area in which several board members have indicated a lack of expertise.

On several occasions, the new information presented at the BOA meeting has led the BOA to overturn the decision of the HP Commission. This is problematic because the HP Commission is tasked with deciding preservation issues and members have the necessary background and expertise in this area. Thus, the same information must be presented to the HP Commission as the BOA so that the board's decision on the appeal can focus on the decision of the HP Commission, based on the information that was presented to them.

The proposed amendment will require the Chairman of the HP Commission to admit all authentic and reasonable material into evidence and that such evidence be retained as a part of the HP Commission's record in the case. Also, there is a requirement that all persons giving testimony be sworn upon their oath and the hearing be video recorded. The amendment additionally provides that appeals to the BOA from decisions of the HP Commission be solely upon the record of the proceedings in the case before the HP Commission.

This proposed change is intended to alleviate the possibility of the BOA hearing a case with new evidence that was not considered by the HP Commission and focus the appeal on the accuracy of the decision of the HP Commission.

City Council Concerns

At the April 10, 2007, introduction of this proposed Ordinance amendment to City Council, there were several concerns expressed by City Council members. One concern is that such a process would complicate the HP Commission hearings and create the need for citizens/applicants to acquire legal counsel when presenting cases to the Commission. This may be true occasionally, however; staff does not believe these changes would compel someone to seek legal counsel on a regular basis.

Another concern addressed the swearing in of all persons giving testimony. One way to address this would be for all persons anticipating to give testimony could be sworn in as a group by the Municipal Counselor at the meeting. As speakers come to speak at the podium, the HP Commission Chairman can ask speakers to verify their name and if they have been sworn. This procedure does not single individuals out and may be less cumbersome than other procedures.

There was also a concern that the HP Commission would be the only board in the City that has this requirement. The HP Commission is a quasi-judicial board, as are other design commissions/committees in the City, and it may be appropriate for all boards to establish this process. If Council decides that this change is needed for the HP Commission, there would not be an immediate need to change the process for the remainder of the design commission/committees. Because of the size and nature of its caseload, there are significantly more appeals to the BOA than from the other design commissions/committees.

Potential Alternative

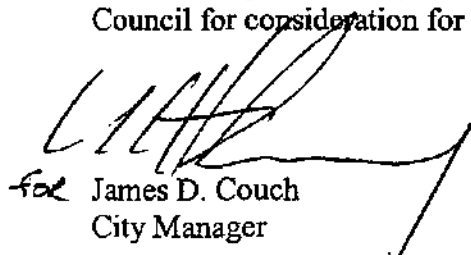
Staff has identified a potential alternative to the proposed Ordinance amendment that would also address the BOA and HP Commission issues outlined in this report and may address concerns regarding creating such a formal process. The alternative would also require an ordinance change in order to codify the process.

The primary elements of this alternative include: 1) As part of a motion, the HP Commission would clearly articulate findings of fact, which are statements of fact, conclusions, and determinations based upon the evidence at hand, presented relative to the standards and criteria to support their decision; 2) In the Notice of Appeal, the appellant would clearly state the basis of

the appeal, specifically how the HP Commission's findings of facts were in error; and 3) The appeal would be limited to the information that was presented to the HP Commission and that stated by the appellant in the Notice of Appeal.

The primary difference between this alternative and the proposed Ordinance amendment is that this alternative would result in the case being tried over again (de novo) at the BOA, rather than limiting the appeal to the information on the record at the HP Commission. The alternative also differs from the proposed Ordinance amendment in that it is a less formal process. Like the proposed Ordinance amendment, the alternative addresses issues of the BOA and the HP Commission as described in the background section of this report by prohibiting new or different information at the BOA meeting that was not heard by the HP Commission. Since part of the existing BOA process includes viewing the DVD of the meeting at which the decision being appealed was rendered, the BOA could identify new or different information and disallow this from being presented at the hearing. In addition, the alternative would require the appellant to clearly state the basis of their appeal, focusing on how the HP Commission's findings of facts were in error. Therefore, this is a feasible alternative that could accomplish the same objectives as the proposed Ordinance amendment.

Planning staff has discussed this alternative with the Municipal Counselor's Office and they are in agreement that this would be an effective method to achieve the desired outcome. If the City Council wishes to pursue a less formal alternative, the Municipal Counselor's Office has offered to draft the alternative in the form of an Ordinance amendment, which would go back through the review process - by the BOA, the HP Commission, Planning Commission, then to City Council for consideration for adoption.


for James D. Couch
City Manager