

**MINUTES  
MIDDLETOWN CITY HISTORIC COMMISSION  
SEPTEMBER 14, 2021**

**TYPE:** Work Session  
**PLACE:** Middletown City Building, Conference Room 2C

**MEMBERS PRESENT:** Jeremy Loukinas      Roger Daniel      Matthew Dixon  
Levi Cramer      Andy Brickler      James Stabler  
David Myers      Nancy Romero

**STAFF:** Ben Yoder, Law Director  
Ashley Combs, Development Services Director  
Devra Wells, Zoning Administrator  
Annette Accurso, Historic Property Specialist

**Roll Call**

Ms. Romero called the meeting to order at 5:31 PM. Roll call was made; voting quorum was present. She then turned the meeting over to the Law Director, Ben Yoder.

**Training by Law Director**

Mr. Yoder introduced himself, welcoming an interactive meeting. Ms. Romero expresses that she though the purpose for the meeting was to discuss how they can put more teeth into their ordinances and have them followed.

Mr. Yoder explained that the issue will be in the presentation. He explained that it is a good time to discuss the issues and explains their roles, responsibilities, how they conduct their meetings, etc. He added the importance of properly conducting a meeting which can be appealed to Planning Commission. He built the presentation to inform the many commissions and boards, and it would be found that much coincides with the Commission.

Each member stated their name, their purpose for being on the Commission, their history.

Mr. Yoder spoke of his background.

He understood the presentation would be an overall training covering:

1. Composition, Powers and Duties of Historic Commission
2. COA's Primer
3. Hearing Procedures
4. Deliberations
5. Maintaining a Good Record
6. Open Meetings Act and Considerations

## 7. Ethical Considerations

### 1. Composition, Powers and Duties of Historic Commission:

Historic Commission was established by Council and created the rules which apply to it. He mentioned the membership composition be of 7 members of specific backgrounds in 8 areas, and one member of Planning Commission. Removal must be done by Council. There may be some updating to look into working with Council to change some issues to be more effective.

Duties of Historic Commission:

- a. Survey & make recommendation to council for designation of landmarks and Historic districts
- b. Establish and implement Written Guidelines for Conservation of Landmarks and historic districts.

Mr. Yoder asked if they have guidelines. Mr. Loukinas mentioned the 1976 Historic Preservation Plan in print. He saw nothing in the codified ordinances. He was curious what other guidelines besides the criteria in Development Code. He referred to enforcement powers using the guidelines, and their importance, should a decision be challenged by an applicant. He added that Council has given the Commission the ability to adopt their own guidelines as it related to conservation of landmarks and districts. He stated they have citation authority whereby they can ask staff, and if staff agrees, they can cite a property for not preserving historic properties.

It was mentioned pulling the Preservation Plan and going back over it to update, which had been discussed many times in the past. Mr. Yoder added when they do that, and determine new guidelines, they can also look at criteria and request Council to vote to change, if necessary.

Ms. Romero advised the Commission has adopted the Secretary of the Interior guidelines for treatment of historic properties.

Mr. Yoder speculated that most of the criteria for COA's were derived from that, added that surrounding communities have modernized their criteria, because it's hard to work within those standards; they have rewritten them to be cleaner and more succinct, citing Cincinnati and Dayton as two communities which have done so.

Ms. Romero stated they adopted Secretary of the Interior Standards once they became a CLG, as many had done.

Mr. Yoder stated that their guidelines are totally different than those (criteria) listed in the codified ordinance for COA.

There was a question raised whether guidelines are used or not when considering COA, but criteria must be followed. Guidelines must be adopted and have proof of adoption and readily available to the public.

- c. Act a liaison and advisor to other boards, commissions, council, departments, individuals, etc.
- d. Adopt & modify City Historic Preservation Plan
- e. Enforce minimum maintenance standards

Commission has the powers to enforce minimum maintenance standards, and to ask staff to look into violations of standards and ask court to make violators comply.

Mr. Brickler asked if challenged, where does it go?

Mr. Yoder stated he works for the City, advises and represents the boards and commissions, it is his job to explain to Council why something may not have been communicated. They are civil cases. It was mentioned cases where people were cited, paid fines, didn't abate the violation, maybe sold properties and have to start new. They have no control how City resolves the violations. He added it is something they could work through, and Commission and City Council must be on board with each other.

- f. Hear & decide substantial hardship appeals of denied demo and alteration for COA's

Mr. Yoder asked if they have dealt with demos and how ordinance makes it a 2-step process, by denial and resubmit a rehabilitation plan of substantiate demo to Commission.

Members stated that people just ignore when denied, they don't tend to follow process.

Mr. Brickler asked what if Commission recommends something, and staff recommends says no. Where is Brownfield then? If it's denied, staff takes their denial to Council.

Mr. Dixon added Commission would have denied the COA for demo. The City should technically have to have a COA approved, but it's never been done in the past.

Mr. Yoder stated the classic way it's supposed to happen, and are subject to the requirements of the code. The City can appeal to Planning Commission.

Mr. Yoder reiterated the need for Commission, Council and a working committee to come up with a good set of balanced criteria to determine as non-subjective as possible, ways to give an applicant exactly what they need to complete their task. It's the best defense with angry people. He felt it could be improved upon.

Mr. Cramer asked how it could be accomplished.

Mr. Yoder suggested Commission, Council, a Historic Consultant in a working group to create modernized professional guidelines that work. He stated he could take it back to Susan, Jim and Council to say there are some things which need to be worked on.

- g. Hear & decide COA's

BREAK

Mr. Yoder explained next slide he explained the legislative vs. administrative functions of Commission, the remedy is different between the two, and how they should act in the hearings.

Legislative - Creation of Historic Preservation Plan or historic designation. Commission can't be sued for those actions.

Administrative – interpretation of existing law, like during hearings for COA's. It serves in a quasi-judicial capacity. Commission must articulate grounds for decisions based on their standards and facts provided.

## 2. COA Primer

Mr. Yoder moved to the applicability of COA's under 1226.08(b):

Anything and everything to do with the exterior of structures. There are exemptions:

Ordinary repair and maintenance, occupancy changes, interior work, HVAC, plumbing, etc. He suggested that is section which Commission may want to clarify in the future.

Mr. Yoder moved to the slide "Fork in the Road" – where Commission determines the significance of a structure – whether it contributing or non-contributing. Commission doesn't distinguish verbally. The way the code is written, it must be determined by Commission whether a building is or not, just because it is within the historic district. If a structure is not significant, has no relevance, Commission can relax the standards. It doesn't determine which whether some, all or one, but that non-contributing may be relaxed.

Mr. Dixon stated he felt that was built into the review criteria.

Mr. Yoder disagreed, citing the above code section (1226.08 (c)(1)(2)):

(1) When making decisions or recommendations about changes to structures subject to the COA requirement, the Historic Commission shall have the authority to make a determination of the historical or architectural significance of the structure based on this section.

(2) For structures that the Historic Commission finds are not historically or architecturally significant, the Historic Commission may relax or waive the standards or guidelines that apply to the project.

He went to the next slide – Factors for Determining Historical or Architectural Significance, referring to 1228.06(c)(4). He added that it helps to establish themselves as professional as possible to the public. It also helps to frame their minds, in each particular case.

He stated if they want to apply all 18 criteria on every case, they could, but suggested to follow their intuition on each case, but use consistency.

Ms. Romero asked if they should state their processes should include verbalize how they're interpreting the ordinance on each case.

Mr. Yoder suggested that, during their deliberation, they should verbalize how the case based on the facts, how its presented to you whether it does or does not comply with each criterion. Hearing and basing decision is on property rights of the applicant and surrounding owners and due process. The best way to preserve is to go by the criteria. Verbalizing is very important to the process.

Mr. Dixon mentioned that there are some criteria which may not apply to some applications, but it all boils down to does it comply with the historic character as well with the historic district.

Mr. Yoder added that those standards are crucial to Commission's existence, and if there are things that need to be changed, they must ask Council to fix them. He suggested they may need a consultant to help with changes, and perhaps there are other examples Commission could suggest other cities compile and advise Council.

Ms. Romero added that in the past, Council has followed their recommendations of issues that need to be changed.

Mr. Cramer stated it's not about what's in the guidelines, it more about getting it on the agenda. It tends to die.

Mr. Yoder stated he/they could help with that.

MR. Daniel mentioned that earlier Mr. Yoder stated there are some things on their application that he hadn't seen on others. He asked if there were things they should look at on apps.

Mr. Yoder stated he was referring to the criteria, many items are substantially different than others.

Ms. Romero suggested that the state would be a good source, to obtain other documents to compare.

Mr. Cramer suggested getting some of other cities ordinances and information together and discussing through work sessions.

Mr. Yoder added that the guidelines and criteria should be on the website and publicly available as a reference which Commission bases their decisions on.

Ms. Romero stated bottom line; what they do must be predictable and defensible.

Mr. Yoder added and known to applicants, particularly when a potential buyer can consider before purchase. He added if they find difficulty in sanctifying their guidelines, then they should consider codifying it through an act of Council.

Ms. Romero agreed, as it would be both predictable and defensible.

Mr. Daniel asked if titles indicate such information.

Ms. Romero stated that it's a state law, and that it is on the disclosure, whether a property is in a historic district.

Mr. Dixon added it's on the deed, not on the record of title.

Mr. Yoder stated that it's in a historic district, but not include the guidelines.

### 3. Hearing Procedures

Mr. Yoder moved on to the next slide listing the example:

1. Provide sign-in sheet, add space for witnesses/attendees and include name, address
2. Chairperson walk public through the process of what shall transpire, stating the following points to the public. May want to provide an agenda for attendees to look over
3. Swear in witnesses including liaison, can do common swearing in for attendees, strengthens importance. Not necessarily lawyers so they should not testify in these cases.
4. Liaison presents staff report, each case individual:

Explain facts, standards, NO RECOMMENDATIONS by staff, as it is an administrative function, not legislative for COA's.

Mr. Yoder clarified that, while zoning and other requirements may be pointed out as fact, and should justify the criteria. Staff gathers all information together prepares a staff report of fact and sends it to Commission before the meeting, and it should be reviewed before the meeting takes place. Staff should also present a PPT, as it is important to Commission, applicant and the public.

5. Applicant presents their case, state name & address and acknowledge that their sworn in
6. Public comments: ask for comments from those who are in favor,
7. Public comments against
8. Allow applicant's rebuttal, should only have to do once
9. Close public comment, make motion and second, take roll call, announce and begin deliberations: DO NOT REOPEN, unless under uncommon circumstances. If so, Commission may move to reopen for public comment for applicant only, not public. Make certain applicant addresses the board, not public. Make motion, 2<sup>nd</sup>, roll call. Once complete, move to close, 2<sup>nd</sup>, roll call.

Mr. Loukinas questioned a point on slide 17 – "During hearing, staff should generally appear neutral". He felt that it goes against asking for a recommendation or having a recommendation from staff.

Mr. Yoder clarified stating that the meeting is an administrative function, not legislative, but staff can acknowledge whether app meets requirements as opinion.

#### 4. Deliberations

Sunshine Law:

1. There shall never be deliberation in private for legislative functions
2. Administrative functions limit deliberations under quazi-judicial nature under Sunshine Law
  - a. Commission may go into executive session under ORC 121.22(G) only
  - b. Best practice is to deliberate publicly, executive session only for subjects regarding legal standards or policies.

Ms. Romero stated that she recalls the only time they had gone into executive session was to learn something, or discuss something to bring everyone up to speed.

Mr. Loukinas elaborated that it had been sensitive, not related to a case, but more an educational/informational thing. They wanted 20 minutes to discuss something they didn't understand; there were no decisions made.

Mr. Yoder clarified that there are specific reasons for going into executive sessions, and suggest they never do so, but if considering speaking to staff and law prior to doing so, to avoid breaking Ohio Sunshine Laws.

He moved on, to what should be considered in deliberations:

1. Staff reports
2. Testimonies given
3. Use each member's expertise
4. Use the criteria in code

What to avoid:

1. Communications with applicants, officials, other members, neighbors, etc., only what was presented
2. Don't include information from research, outside sources, on-site visits
3. Do no rely on standards or factors not contained in the code, only criteria

Mr. Meyers asked if they are supposed to use their knowledge, shouldn't they be able to present that knowledge as part of the evidence. Example would be if applicant states something member knows is contrary, can't they dispute it.

Mr. Yoder stated, not as evidence, but part of deliberations. Mr. Yoder further that there are ways to do so, such as ask applicant for clarification.

The Decision, Finding of Facts & Conclusions of Law

1. Come to a consensus, state a proposed draft of the decision,
2. Move to vote, it is a verbal draft. Decision must occur in a public meeting, not executive session.
3. After the meeting, draft written decision, summarizing facts, the law and why decided (Outcome Letter). Best practices use a written draft to Commission for their viewing, then submit to chairperson for signing and submitting to applicant.

Ms. Romero said they sign minutes.

Ms. Wells added that staff drafts and sends Outcome letters to applicant after meeting. Decision is read aloud in the meeting; typed into outcome letter, not signed by chairperson.

Mr. Yoder stated that customarily the letter should be signed by someone with authority to memorialize the action, and added it is considered best practice.

Ms. Romero asked for clarification: that it should be looked at by the Commission signed by chairperson; and required to be sent to applicant.

Mr. Yoder stated it doesn't have to be, but considered best practice, rather than have a staff member send the letter, though there is nothing that says it can't be done the way it has been done. He mentioned some commissions, vote on the outcome letter at next meeting.

Commission unanimously indicated the time constraints are not accommodating for the applicant most generally.

Again, Ms. Romero asked if Commission is ok with the way they currently do.

Ms. Wells suggested they send him an example of the Outcome letters for his review.

Mr. Yoder did suggest at least the board chair should place her signature on it, and should indicate the word "decision" and "Finding of Facts & Conclusions of Law". He added, the reason is to put it forth as the last chance of defense when placed before a judge, should it be contested.

Mr. Cramer asked, what recourse does Commission have should the application be denied, but the applicant does it anyway.

Mr. Yoder stated that it is a code violation and should be left to staff to deal with. It is the same as with issues in other departments.

Mr. Cramer asked if it is the same when someone submits an application for work that is already completed.

Mr. Yoder stated the concept of asking for forgiveness, as opposed to asking for permission. It is not a standard within the criteria, so whether they completed a project before it was submitted, Commission should not hold that against them. If they want to amend the criteria to include it, they could through Council approval.



Mr. Cramer questioned when they violate the provision stating they must obtain a COA, it's not an action for Commission, but one for staff.

Mr. Yoder confirmed it is staff's job to deal with. Even in violation of standards occurs, it is staff's job to address.

## 5. Maintaining a Good Record

Mr. Yoder summarized, having a good record of a hearing is to make their decisions defensible, it protects Commission from claims of ethical or misconduct. Keeping a solid hearing, procedure etc. provides a solid defense should it be appealed.

Ms. Wells interjected that recently people have requested audio of meetings, and had trouble hearing, due to things like speaking over each other, not speaking into the microphones, etc.

Mr. Yoder emphasized how important a clear recording of the meeting is; speak clearly, into the mic and not speaking over each other. If not, a meeting should not be held.

Mr. Loukinas asked if any particular person can or cannot have a recording.

Mr. Yoder stated he typically has an audio recording and transcribes it. He furthered it is a staff function, but anyone can record it.

He explained why a good record matters:

Standard of Appeal, under Revised Code, a judge is supposed to support Commission's decision as long as it proves it was ethical, arbitrary, supported by evidence and reasonable.

Closed Record Nature, courts may hear appeals of their decision based on the physical file.

Trial may open a record if the meeting lacked in procedure, testimony, facts, procedure, etc.

Ms. Romero stated she understood the only time people were sworn in was during legislative hearings, which is different than an application process.

Mr. Loukinas asked if Ms. Accurso must stand at the podium to be sworn.

Mr. Yoder explained that wherever she stands, she must be in front of a mic, it must be recorded.

Ms. Romero asked for confirmation process.

Mr. Yoder advised he could give them a guideline for a meeting. He stated review minutes after roll call, they could set their agenda as they choose. If they have administrative things to discuss, and before the section where they begin applications, they announce the agenda, and right before Commission begins the hearings, they would swear everyone in, such as a "cattle call". He added that typically someone would make a motion to begin the hearing of case A, etc. He agreed to forward a script for all to use, by their insistence.

Mr. Loukinas suggested doing all commissions the same, and it was agreed that the Pledge of Allegiance should be added.

## 6. Open Meetings Act and Considerations

Commission is a public body and subject to requirements of Ohio Meetings Act. Commission meetings:

- a. prearranged gathering of
- b. a majority of the member, where
- c. where the public's business is deliberated/discussed

Meeting minutes must be maintained. He emphasized not doing any reply all emails, as violates the law by doing a deliberation outside of a public meeting. It creates a public record. All emails should come from staff.

If Commission wants to go into executive session, it can only be for specific purposes. Should there be a need, there must be a motion, and stating the reason for the session, and a roll call for each, and come back to open session.


Mr. Yoder spoke of "Round Robin" meetings. He advised that they should use staff to ask each member a question to build a consensus on subjects or questions related to legislative or policy changes issues. Penalties for invalid resolutions, actions, etc. at illegal meetings are monetary and would require holding another hearing; that meeting would be considered invalid.

Ohio Ethics Commission:

Commission members are considered public officials and subject to the Ethic Statutes, and shall not be involved with conflict of interest issues. If a question, ask staff. Guilty finding is first degree misdemeanor, jail time and fine. Rule of thumb, if a business partner, family member, one should abstain from voting, or recuse during the particular case.

## Adjournment

Motion was made to adjourn by Mr. Cramer, Mr. Brickler seconded, and was unanimously approved at 8:59 PM.

  
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Nancy Romero  
Chairperson

  
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Annette Accurso  
Historic Property Specialist

\*Full recording of the meeting available in the Planning/Zoning Department.