

**RECONVENED MEETING OF
HISTORIC DISTRICT COMMISSION
ONE JUNKINS AVENUE, PORTSMOUTH, NEW HAMPSHIRE**

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:30 p.m.

**July 15, 2015
reconvened from July 1, 2015**

MEMBERS PRESENT: Chairman Joseph Almeida; Vice Chairman/Planning Board Representative William Gladhill; Members John Wyckoff, Dan Rawling, Reagan Ruedig, Vincent Lombardi; City Council Representative Esther Kennedy; Alternate Richard Shea

MEMBERS EXCUSED:

ALSO PRESENT: Nick Cracknell, Principal Planner

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I. APPROVAL OF MINUTES (CONTINUED)

1. June 10, 2015

*Ms. Ruedig made a motion to **postpone** approval of the June 10, 2015 minutes so that the minutes could be amended to reflect the actual sequence of the events instead of the agenda. Councilor Kennedy seconded the motion. The motion **passed** unanimously with all in favor, 7-0.*

2. June 17, 2015

*Mr. Wyckoff made a motion to **approve** the June 17, 2015 minutes. Mr. Lombardi seconded the motion. The motion **passed** unanimously with all in favor, 7-0.*

II. ADMINISTRATIVE APPROVALS

A. 7 Portwalk Place

Mr. Cracknell clarified the petition by stating that the substitution of the aluminum doors on Maplewood Avenue and the ones that replaced the wood doors were part of the mitigation package for the apartment portion. There was an issue as to whether or not the Letter of Decision stipulated that the doors be painted or stained because it didn't specify either one, but it would be left to the HDC's discretion as to whether or not the doors should be wood or aluminum as constructed because it wasn't obligated to have the door painted.

Mr. Wyckoff stated that the HDC's understanding was that there would be no argument with their decision once the mitigation process went through because part of that decision was opting

for the wood doors. Since the doors were sizable, he felt they should be hardwood doors and he wasn't willing to allow the metal doors to continue. Councilor Kennedy agreed.

*Councilor Kennedy made a motion to **deny** the Administrative Approval as presented. Mr. Wyckoff seconded the motion.*

*The motion **passed** unanimously with all in favor, 7-0.*

B. 30 Maplewood Avenue

Mr. Cracknell stated that the applicant had returned with more details, but the issues were minor. All the ground and roof mechanical equipment as well as the wall vents were included in the package. The minor change to the fence and an added gate had already been approved.

Ms. Jennifer Ramsey of SOMMA Studios summarized the revised packet. Mr. Cracknell noted that the patios were not under the Commission's purview and not part of the approval because they were a landscaping feature and required a modification with the Planning Board. Mr. Wyckoff asked whether or not the fence would be the same color and material as the shutter, and Ms. Ramsey said yes. Mr. Shea asked how the gas meter feeds would be handled, and Ms. Ramsey stated that they would be higher than the fence and painted.

Vice-Chair Gladhill stated that he was inclined to keep the open shutter that was changed because of the symmetry. Chairman Almeida agreed, saying that he liked the material and that they were real shutters, and to have an open one reinforced the fact that the Commission went to the trouble to show how they operated. Ms. Ruedig thought it would be more eye-catching to have a random shutter open. Mr. Wyckoff suggested a stipulation that the shutter remain open as originally approved. Vice-Chair Gladhill and Councilor Kennedy agreed.

*Vice-Chair Gladhill made a motion to **grant** the Administrative Approval as presented with the following stipulation:*

- 1) that the open shutter stay as originally approved as an open shutter on Deer Street.*

*Mr. Wyckoff seconded the motion. The motion **passed** unanimously with all in favor, 7-0.*

C. 18 Manning Street

Mr. Cracknell stated that the petition had been approved several months before, with two stipulations: that half screens be used and that a specific type of bracket be required under the 2nd- floor balcony. The applicant was requesting that the two stipulations be removed because she had ordered windows with full screens and had chosen not to put the decorative bracket under the balcony. Chairman Almeida asked whether the Commission had also requested that a ceiling be put in place beneath the balcony and also noted that the railing system appeared to be vinyl. Mr. Cracknell stated that he didn't know and suggested that the petition be continued. Councilor Kennedy stated that she drove by the house and thought the project looked scattered, and she suggested that another purview might be advantageous. Vice-Chair Gladhill stated that he would not approve the petition because the Commission had discussed half screens before the

applicant ordered the windows. Chairman Almeida added that it bothered him because there had been contention about removing historic windows and the Commission had granted a huge amount of relief to the applicant on other issues, such as the balcony hovering over the neighbor's yard. He strongly felt that the applicant needed to be held to the standard that the Commission insisted on. Mr. Cracknell noted that if the Commission denied the request, the applicant had the right to return to a public hearing.

*Mr. Wyckoff made a motion to **deny** the Administrative Approval as presented. Councilor Kennedy seconded the motion. The motion **passed** unanimously with all in favor, 7-0.*

D. 262/264 South Street

Mr. Cracknell stated that the project was a back-of-house modification and that there was a panel screen under the deck that the applicant had not yet screened and preferred that it stay open. Ms. Ruedig said that, because it was the back of the house, it would not be seen.

*Ms. Ruedig made a motion to **grant** the Administrative Approval as presented. Mr. Lombardi seconded the motion. The motion **passed** unanimously with all in favor, 7-0.*

III. REQUESTS FOR RE-HEARING

1. 99 Bow Street, Martingale, LLC, owner, Certificate of Approval granted on June 3, 2015

Mr. Rawling abstained from the vote.

Mr. Cracknell clarified the procedure, saying that applicants could file a request within 30 days of a decision from the HDC. The HDC was obligated under the Zoning Ordinance to grant, deny or suspend their decision. He explained that the applicant for 99 Bow Street filed their petition toward the end of the review period around 30 days, and 30 days tacked onto that would take them to August 5 for action. There was a good reason why the rehearing was requested, and that was because the procedure under the Ordinance was not followed, and he said that the Commission had to take action that evening. Mr. Cracknell said that he summarized the main assertions in the petition and offered preliminary comments, but the applicant might not proceed with the project if the Department of Environmental Services (DES) didn't approve it. He recommended that the Commission consider suspending the approval of the project until the August 5 meeting instead of going through the issues that evening. They could wait and see what the DES did, because if the DES denied or put significant stipulations on the application, the applicant would withdraw the application.

Mr. Shea asked Mr. Cracknell if he had consulted with the Legal Department on whether or not the Commission had made some errors when voting on the application. Mr. Cracknell replied that he spoke with the Planning Department and was told that the notice given out to condominium owners was more of a policy than a Statute and that the assessment list was used to generate the abutters list. For condominiums, the principal point of contact for the association was given to the Planning Department, and then that point of contact was given all notices. If the

association didn't keep the City informed about contact changes, people might not be informed in a timely fashion, so there was an issue that all the owners might not be aware of an application. He said a notice was sent to the association's point of contact and procedures were followed. In that particular case, given that there was first-hand communication before the meeting, he knew the folks were well aware of what was going on.

Mr. Wyckoff said he felt that condominium owners should have the same respect as owners of single homes and that the policy should change so that a notice could be sent to the owner of every unit in the building. Mr. Cracknell said he would review it and get back to Mr. Wyckoff.

Mr. Lombardi stated that some of the issues in the application seemed to pertain more to the Planning Board and the Board of Adjustment, like setbacks and buffer zones. He also asked what the 'no ex-parte' communication meant. Mr. Cracknell said it addressed whether it was germane or not to the HDC and whether massing, scale and volume directly related to setbacks and stepbacks, which were part of their review process. It was a different situation because the building was over water rather than land, but it was all germane. The ex-parte communication related to what was alleged in the petition about a City department providing communications directly to an HDC member, Councilor Kennedy, who received it late and didn't have the chance to read it. Councilor Kennedy stated that she became aware of it during the meeting and that there was never approval from the City Council for that letter to be sent to DES.

Chairman Almeida told the Commissioners that they were not considering the design, only whether a mistake was made or anything unlawful occurred. Mr. Wyckoff asked whether there was a list of criteria for the rehearing, and Mr. Cracknell read the list. Ms. Ruedig thought it might be a good idea to suspend the vote because the Commission had to wait on information from the DES. Mr. Cracknell agreed, saying that the suspension would give the Commissioners time to research it further.

*Mr. Wyckoff made a motion to **postpone** the rehearing until the August 5, 2015 meeting, and Ms. Ruedig seconded.*

*The motion to **postpone** the rehearing until the August 5, 2015 meeting **passed** unanimously with all in favor, 7-0.*

2. Deer Street, Russell Street and Maplewood Avenue, North End Master Development, LP and Deer Street Development Company, DBA HarborCorp, owner, Certificate of Approval granted on June 10, 2015

Mr. Cracknell stated that he received a Request for Rehearing with a number of signatories as well as forty three assertions that were listed in the petition. He said that he went through it several times and created some categories to help the Commission segregate and compartmentalize the variety of assertions made that related to process, the Planning Board review, and comments back to the HDC under the Conditional User Permit (CUP) as well as items related to the validity of the Zoning Ordinance itself and the CUP and whether it was land use control, spot zoning, and so on. Mr. Cracknell stated that he spoke with the Legal

Department, given the complexity of the petition and the number of items, about anything unlawful or unreasonable based on the evidence submitted and discussed both under the CUP and the Certificate of Approval (COA), and he had come up with four general categories that the forty three items fit within. The first category was questioning the validity of the CUP as an Ordinance itself. It was clear to the HDC that their charge was to administer and enforce the existing Zoning Ordinance in respect to the HDC itself and not challenge the City Council as to whether or not what they adopt is valid or constitutional. The items in the petition that spoke to the validity of the CUP were not before the HDC, and they did not have the authority to weigh in on them. He stated that it should not be considered a good reason for a rehearing.

Category 2 addressed the vesting rights that HarborCorp may have under design review. The Legal Department believed that it was not germane to the request. Whether the project had changed or not during the last two years and affected the vesting rights was irrelevant. The City Council created a carve-out in the zoning for the three properties so that the applicant could file using the CUP. The approval used the Zoning Ordinance that was previously passed and adopted by the City Council, so the Legal Department thought that those assertions as to whether or not they were vested with the Planning Board were outside the scope of the HDC.

Category 3 addressed the procedural requirements of the CUP. The Planning Board did not follow proper procedure in managing its process to provide comment to the HDC as part of the CUP. The Statute did not require a public hearing or comment, and the Planning Board did both, so the Legal Department did not believe that there was a procedural error.

Category 4 addressed assertions related to the so-called reasonableness in the HDC's decision in looking at the project design and the criteria for the CUP and the COA and whether or not it was appropriate. A lot of statements and allegations in the petition suggested that elements of scale, heights, and design were inconsistent with the criteria and purpose and intent of the permits issued. Therefore, that category was the one that the HDC would want to consider to determine whether the project as approved met the criteria of the CUP and the COA, and not focus on the constitutionality of the Ordinance itself.

Chairman Almeida stated that all the Commissioners had received and should have read the petition to decide what the Commission's position should be. He thanked Mr. Cracknell for putting it all together and said that it was simply additional information and not meant to steer anyone in any way. Mr. Wyckoff said that it was important to look at the assertions made, namely that the project was inconsistent with the HDC's review criteria and that it was subjective. Mr. Wyckoff said that, as a Board, they made subjective decisions, and a decision on one property was not the same as another one, depending on the location. With the applicant's lot in its location, he felt that the Commission had done a fair job in looking at their criteria and findings of facts, and it led to the 6-1 decision. He also referred to the Planning's Board unanimous decision. He stated that a lot of people were against the project, and they were also against other similar projects, like 111 Maplewood Avenue, because they didn't want to see new construction. He referred to the line in Paragraph 29 that said 'the size would stick out like a sore thumb in the middle of the Historic District', which he felt boiled down to their whole argument. He said that it was just their opinion of the project. There was no evidence shown where the HDC's criteria was not followed, and he felt that the opponents just didn't like the

project and had not introduced enough to justify a rehearing. He didn't feel that the HDC needed to go over all the details again.

Vice-Chair Gladhill said he was amazed when he read the report and that some of the arguments were weak and outside of the HDC's jurisdiction. He stated that the HDC had considered how HarborCorp fit in with the properties around it in the North End. He noted that the HDC did not overturn decisions of the City Council or the Planning Board, and he felt that the HDC had done everything possible to do it right and he would not vote for a rehearing request.

Councilor Kennedy stated that the public did not ask the HDC to overturn the City Council's decision but had asked them to simply reevaluate it to make sure it met the CUP. She had not heard any of them say that they wanted to do away with the project. They were simply concerned about the massing, size and architectural features as well as the surrounding areas, and she saw it as using their rights to come forward and question the HDC's statements and ideas. She stated that she had just received the information from the City and needed time to review it. She was also concerned about people who had not known that the request for rehearing was on the agenda that evening because it couldn't be re-advertised.

Mr. Shea referred to the comment about the HDC not thinking the mass and scale through, and he stated that the Commission spent 18 months of deliberations and redesigns. The argument that the building was too big and should be broken up was not feasible because it was a large project that included a convention center, a supermarket and a garage. He did not feel that anything the petition was bringing up from a design statement was anything new, and that the Commission felt the project was alright and approved it. Ms. Ruedig stated that the Board took a lot into consideration and it came down to the fact that it was what the majority of the Board voted. She did not see any grounds for a rehearing in terms of unlawful or unreasonable actions.

Mr. Rawling stated that the Commission applied the Ordinance and reworked parts of the building many times. The building appeared to be a large mass due to the perceptions of it when looking at the computer models, but the Commission had worked hard to break it up and modulate it to create an interesting streetscape. He felt that the barrier to the North End was the railroad tracks because it was an insurmountable piece. Otherwise, they worked hard to apply the rules and followed the procedures in place to do so. Mr. Lombardi stated that it was about mass and scale and breaking the buildings up into separate units, and he also felt that the problem was the railroad tracks. He pointed out the potential liability of making a narrow pass through the building and the fact that a wide passageway would force the building to be higher. He didn't see anything in the report that was new or could justify a rehearing.

Chairman Almeida asked Mr. Cracknell to speak to the re-advertising issue that Councilor Kennedy had brought up. Mr. Cracknell stated that the Board had 30 days to take action and there was no requirement for re-advertising for a rehearing because it was not a public hearing with public comment. They could place the petition on the next available agenda for a decision to grant, deny, or suspend.

*Mr. Wyckoff made a motion to **deny** the Request for Rehearing. Mr. Rawling seconded the motion.*

Mr. Wyckoff stated that no technical errors were made that would affect the HDC's decision, and their decision was not unreasonable. They spent a lot of time and anguish over the project. There was no new evidence presented in the forty three paragraphs indicating that they had made some error or to change their minds on the project. Therefore, he believed that it was not a candidate for a re-hearing.

*The motion to deny **passed** by a vote of 6-1 with Councilor Kennedy voting in opposition.*

IV. OLD BUSINESS

A. (Work Session/Public Hearing) Petition of **PNF Trust of 2013, owner, Peter N. Floros, trustee**, for property located at **282 Middle Street**, wherein permission is requested to allow exterior renovations to an existing structure (remove and replace clapboards/trim on north east and, replace front columns, change to door and window casings/details, repairs to substrate as required) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 136 as Lot 8 and lies within the Mixed Residential Office and Historic Districts. *(This item was continued to the July 15, 2015 meeting.)*

*Vice-Chair Gladhill made a motion to **postpone** the petition to the August 5, 2015 meeting, and Mr. Wyckoff seconded. The motion **passed** unanimously with all in favor, 7-0.*

B. Petition of **David A. and Regina H. Schirmer, owners, and Richard S. Hayes, applicant**, for property located at **241 South Street**, wherein permission was requested to allow exterior renovations to an existing structure (repair siding and trim, replace windows on sides and rear of structure) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 111 as Lot 36 and lies in the General Residence B and Historic Districts. *(This item was continued to the July 15, 2015 meeting.)*

Chairman Almeida noted that the Commission members attended a site walk before the meeting.

SPEAKING TO THE PETITION

The owner Mr. Richard Hayes stated that the house had water penetration, rot in the sills, mold, and lead, and he wanted an energy-efficient solution. He confirmed that the windows were the Andersen 400 series. Vice-Chair Gladhill asked whether Mr. Hayes had considered restoring the current windows, and Mr. Hayes replied that he was too concerned about the dry and wet rot getting into the sills and casements, so he wanted to pursue the Andersen windows. Mr. Wyckoff discussed replacement options, noting that new construction windows bothered him. He thought that the exterior casings and the moldings could be replaced without tearing into the house. Mr. Shea said he wished to preserve as many of the old windows in the City as he could and noted that the 18th century home had incredible detail. Chairman Almeida stated that, although he was a stickler for historic windows, he felt that the project's windows were completely rotten and required a total rebuilt. The cases and sills were saturated, and the

sheeting boards would have to be refastened when the siding was stripped, which would require a lot of work and expense. He believed that the house was not a candidate for window restoration but should have fully-cased and hung new windows.

Ms. Ruedig stated that the integrity of the building was already harmed because the front façade had all new windows, and she felt that a full restoration would be disproportionate and would not improve the house enough. She thought it would be okay if the Commission could figure out an appropriate window replacement for the sides and back of the house. Vice-Chair Gladhill didn't think the historic windows should be let go because no modern window would give the same feel, and he suggested that the owner hire a company that would use wave replacement windows.

The Commission discussed the fact that the front windows were already replaced and asked whether it was worth doing the sides and back of the house. Mr. Shea suggested replacing the parts that were rotting, and Councilor Kennedy and Mr. Lombardi wanted to preserve the historic windows. Mr. Lombardi suggested that Mr. Hayes consult the experts at Strawberry Banke. Mr. Wyckoff suggested Pella windows on the side and back. Chairman Almeida insisted that it would be an enormous cost the Mr. Hayes to restore the windows. Vice-Chair Gladhill suggested that Mr. Hayes research it and get quotes.

Mr. Rawling asked that the Commission consider having more authentic restored windows on the front block of the house and allowing replacements on the other sides. Mr. Cracknell offered to provide Mr. Hayes with contact information on people who did restoration work so that it could be determined if replacement windows could be used on the three sides. Ms. Ruedig thought that the Commission was pushing the project into a direction that the applicant had not asked for and was nervous about their role.

Mr. Hayes stated that he had done his homework and tried to be consistent with the trim and original windows. He wanted clear direction from the Commission but also wanted to maintain consistency with what had already been done with the house. Chairman Almeida suggested changing the specifications of the windows. Mr. Hayes said he would talk to his builder about duplicating the molding and setting back the window.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak, so Chairman Almeida closed the public hearing.

DECISION OF THE COMMISSION

*Councilor Kennedy made a motion to **postpone** the petition to the August meeting, and Vice-Chair Gladhill seconded. The motion **passed** unanimously with all in favor, 7-0.*

V. WORK SESSIONS

There was a request to postpone Work Session D before addressing the other work sessions. Chairman Almeida turned the gavel over to Vice-Chair Gladhill, who read the petition into the record.

D. Work Session requested by **Joseph J. and Jennifer Almeida, owners**, for property located at **101-105 High Street**, wherein permission is requested to allow exterior renovations to an existing structure (alter roof line and front façade) as per plans on file in the Planning Department. Said property is shown on Assessor 118 as Lot 22 and lies within the CD4-L, Historic, and Downtown Overlay Districts. *(This item was continued at the June 17, 2015 meeting.)*

*Councilor Kennedy made a motion to **postpone** the petition to the August 12, 2015 meeting, and Mr. Lombardi seconded. The motion **passed** unanimously with all in favor, 7-0.*

A. Work Session requested by **Mark A. and Deborah Chag, owners**, for property located at **404 Middle Street**, wherein permission was requested to allow amendments to a previously approved design (modifications to prior approval) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 136 as Lot 21 and lies within the Mixed Residential Office and Historic Districts. *(This item was continued at the June 17, 2015 meeting)*

Mr. Rawling recused himself. Councilor Kennedy left the meeting.

The owner Ms. Deborah Chag and the architect Mr. Dan Rawling were present to speak to the petition. Mr. Rawling discussed the two options for the garage doors. Mr. Wyckoff said that he preferred the transoms and the double door rather than the 16-foot door. Mr. Rawling discussed a second change to the same elevation, which was to add an awning window to the left-hand side. He also noted that the porch design was modified to use an arch bracket and that the number of windows was reduced on that elevation as well. Mr. Shea said that he liked the arch brackets and didn't mind the simple railing, and that he preferred Option A for the garage door because it made it feel like a bigger barn door. Mr. Rawling passed out illustrations of the bracket and discussed where it would go.

Mr. Shea asked whether or not the clapboards would be retained, and Ms. Chag agreed that she would keep as much as possible, especially on the back side. They discussed whether all the windows would be replaced. Mr. Rawling stated that a replacement window was needed on the top floor for egress and that the ground floor windows would be restored. He showed a sample of a LePage window and discussed its features. Mr. Rawling also discussed the north elevation and doing clear lights in a cottage window style for the new window units to keep the same texture and pattern rhythms of the old fenestration. He said that muntins would be used just on the door. He also noted that the porch would have the same cottage shed design.

Mr. Wyckoff felt that the project was more successful and stated that he was 100% more in favor, also noting that Mr. Rawling had done a good job in retaining the flavor of the building. Vice-Chair Gladhill said he was in favor because he could still see the carriage house form. Chairman Almeida said that he appreciated the garage door having more of an opening on each

side. They then discussed the door transom, which Mr. Rawling showed a sample of. Mr. Wyckoff thought it was a good alternative to a custom wood door. Chairman Almeida asked whether it had true windows, and Mr. Rawling said it did. Mr. Rawling also had examples of the synthetic slate to be used on the small roofs.

The applicant indicated that she would file for a public hearing in the near future.

B. Work Session requested by **Richard and Janice Henderson, owners**, for property located at **284 New Castle Avenue**, wherein permission is requested to allow new construction to an existing structure (construct two story addition entry and side porch addition, and front box bay addition) and allow a new free standing structure (construct detached garage) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 207 as Lot 73 and lies within the Single Residence B and Historic Districts.

At the applicant's request, the Commission voted to postpone the application to the August 2015 meeting.

C. Petition of **Timothy R. and Alison E. Malinowski, owners**, for property located at **91 Lafayette Road**, wherein permission was requested to allow demolition of an existing structure (demolish existing garage and enclosed porch) and allow new construction to an existing structure (construct a one story and two story addition, construct two dormers) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 151 as Lot 11 and lies within the General Residence B and Historic Districts.

Mr. Rawling resumed his seat.

The architect Mr. Tom Emerson and the owner Mr. Tim Malinowski were present to speak to the petition. Mr. Emerson stated that the house was isolated and had been renovated in 1970. He showed the context of houses across the street and the existing and proposed plans, and he went through the packet.

Vice-Chair Gladhill stated that he preferred that the front dormers have a similar angle. Mr. Emerson replied that it would take up more space. Mr. Wyckoff said he was impressed with the added Victorian detail and asked whether the wood shingles on the original entry would be retained, and Mr. Emerson agreed. Ms. Ruedig questioned the use of the Hardiplank and Azek because she felt that the texture was different and would look strange placed so near the older wood. She preferred to see the continuation of wood clapboards and shingles. She was also hesitant about the dormers because the front of the house was simple. Mr. Emerson said that the premise of the dormers was to get egress windows.

Chairman Almeida asked why the rear elevation carried the barn board everywhere but down low, and Mr. Emerson said the piece was added in the eave because it made more sense. Mr. Lombardi felt that the dormers were a dramatic change, and they discussed them further. Mr. Shea stated that he didn't mind the dormers but didn't like the Hardiplank and clapboards transition. He asked whether the materials on the façade could be kept as wood as a

compromise. He also felt that the garage had a lot of roof on it and was quite low to the ground. Mr. Rawling said he was comfortable with the dormers the way they were, but he agreed with Mr. Shea and Ms. Ruedig about the material transition. Mr. Wyckoff asked whether the half-posts between the windows would project out beyond the top casing of the window, and Mr. Emerson replied that they would project further than the casing but not as far as the top.

The applicant indicated that he would file for a public hearing in the near future.

VI. ADJOURNMENT

*It was moved, seconded and passed unanimously to **adjourn** the meeting at 10:35 p.m.*

Respectfully submitted,

Joann Breault
HDC Recording Secretary

These minutes were approved at the Historic District Commission meeting on October 7, 2015.