



# Council Communication

Office of the City Manager

Date February 26, 2007

Agenda Item No. 49  
Roll Call No. 07-  
Communication No. 07-116  
Submitted by: Larry D. Hulse, Community  
Development Director

## AGENDA HEADING:

Appeal of the Historic Preservation Commission action regarding the demolition of the building at 901 19<sup>th</sup> Street located in Sherman Hill Local Historic District owned by Kingsway Cathedral Inc., represented by Preservation Properties, LLC (Bernie Van Til, manager).

## SYNOPSIS:

Recommend approval to uphold the decision of the Historic Preservation Commission. Bernie Van Til, representing Kingsway Cathedral Inc., is requesting that City Council reverse the decision of the Historic Preservation Commission, waive the advertising requirement of Section 58-31 of the City Code, and immediately grant a Certificate of Appropriateness for the demolition of the subject building. Staff and the Commission believe the applicants have not demonstrated that they have adequately explored alternatives to demolition.

The City Council also has the option of directing that the property be advertised for redevelopment and continuing the hearing on the appeal until after that advertising has occurred. The Council could also direct that the property be advertised for redevelopment and then remand the matter to the HPC for reconsideration in light of results from the advertising process.

Under either of the last two approaches the City Council (or HPC) will have the benefit of evaluating the response to the advertisement. If a developer steps forward and offers to purchase the property for redevelopment at a reasonable price, the HPC and City Council may then conclude that renovation is feasible and deny the Certificate of Appropriateness for demolition of the building. If no one steps forward and offers to purchase the property for redevelopment at a reasonable price, the HPC and the City Council may then conclude that renovation is not feasible, and grant the Certificate of Appropriateness for the demolition of the building.

When the hearing was set for this item on January 22, 2007, the City Council requested the applicant provide information at the hearing regarding who has legal ownership of the building and documentation of whom Mr. Van Til represents. Staff understands that Mr. Van Til will provide this information at the February 26, 2007, meeting.

**FISCAL IMPACT: NONE**

## ADDITIONAL INFORMATION:

On December 20, 2006, the Historic Preservation Commission denied the request for a Certificate of Appropriateness for the demolition of the Kingsway Cathedral building. The Commission believed the

applicant had not thoroughly explored alternatives to demolition. A communication from Chair Susan Holderness explaining the Commission's position was received by the City Council on January 22, 2007. A summary of the discussion from the December 20<sup>th</sup> meeting is included in the Council packet along with a copy of the staff report. The Commission's motion to deny the request was based on the recommendation from the staff report, which stated the following:

Staff believes the applicant has not demonstrated that the church building is an imminent threat for structural failure or that all avenues for rehabilitation have been explored. Staff further believes that, given the building is identified as a "Pivotal Structure" on the district's nomination to the National Register of Historic Places, that all reasonable avenues should be explored to analyze the renovation potential of the church building.

Based upon the information available at this time, staff recommends denial of the requested Certificate of Appropriateness and that the Commission sends a communication to the City Council requesting they direct the City Manager to implement applicable provisions of Section 58-31 of the City Code.

Bernie Van Til, Preservation Properties, LLC on behalf of Kingsway Cathedral, Inc. is appealing the Commission's decision and requesting the City Council issue a Certificate of Appropriateness allowing the proposed demolition. Section 58-31(f) of the City Code states that decisions of the Historic Preservation Commission may be appealed to the City Council. The Code further states that "in deciding such appeal, the City Council shall consider whether the Commission has exercised its powers and followed the guidelines established by law and ordinance and whether the Commission's action was patently arbitrary or capricious."

Section 58-31 of the City's Historical Preservation Ordinance also states the following with regard to the issuance of a Certificate of Appropriateness for the demolition of structures in local historic districts.

***Sec. 58-31. Certificate of appropriateness required.***

- (d) When an application involves the proposed demolition of a building which is defined by the district's National Register nomination to be either a pivotal or contributing structure, the commission shall not issue a certificate of appropriateness until the following conditions have been satisfied:
- (1) The city shall advertise that the owner will entertain offers from any person or governmental agency desiring to purchase such building and the lot upon which it stands, provided the prospective purchaser agrees to preserve and rehabilitate the building in accordance with the recommended procedures in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.
  - (2) When it has been determined by the commission that such building must be moved to mitigate adverse impact, in lieu of the requirements of subsection (d)(1) of this section, the city shall advertise that the owner will entertain offers from any person or governmental agency desiring to purchase such building, provided the prospective purchaser agrees to cause such building to be moved by a professional mover in accordance with the recommended approaches in the Department of the Interior's "Moving Historic Buildings."
  - (3) The city shall publish such advertisement in a newspaper of general circulation within the city, in both a legal notice and a classified advertisement, once a

*month for three months for contributing structures and once a month for six months for pivotal structures.*

- (4) *Upon the affirmative vote of a majority of the full membership of the commission, the advertising requirements of this subsection (d)(3) of this section may be waived when such waiver is determined to be in the public interest.*

*If the conditions of this subsection have been satisfied and no entity has purchased the building for purpose of rehabilitating or moving it, the commission shall consider the demolition proposal at its next regularly scheduled meeting.*

*Note: The Kingsway Cathedral was identified as a “Pivotal Structure” in the 1976 nomination of the Sherman Hill Historic District to the National Register of Historic Places.*

The appeal and subsequent communication from Mr. Van Til lists several points as to why they believe the Commission’s decision should be overturned. These points can generally be grouped into two arguments. The first set of arguments centers on the deteriorated state of the building and the second set centers on the historical significance of the building.

#### ***BUILDING CONDITION ARGUMENT:***

The appeal suggests the building’s condition has deteriorated to the point that it is a threat to public safety and requests that the City barricade the adjoining segment of 19<sup>th</sup> Street. The support information submitted by the applicant includes a structural report that was prepared on behalf of Kingsway Cathedral Inc. on March 6, 2003, by Dale Smith, Structural Engineer Consultant. The City Permit and Development Center (PDC) has reviewed this study and a second study that was prepared by a separate structural engineer on behalf of the insurance carrier for Kingsway Cathedral Inc. These reports indicate the following points:

- The building has suffered distress in several specific areas. Those areas specifically listed include the interior mezzanine and stairs which have shown separation from adjoining walls; cracks in certain structural timbers; deflection of stained glass in the south and west exterior walls, detached and fallen plaster in various locations, and bulges and open masonry joints in the masonry located high on exterior walls and the tower.
- The reports each suggest various causes of the damage, ranging from age and lack of maintenance, to vibration from adjoining traffic, construction and demolition activities.
- The report commissioned by the owner’s structural engineer suggests that limiting the occupancy of the building in the vicinity of the balcony areas until repaired, repairing the damage to the plaster, glass and masonry, and removing the cross on the rooftop. This report does not suggest that the building be vacated in its entirety.
- The report prepared by the insurance carrier does not suggest specific actions, and is limited to an examination of the damage.

Upon receipt of the report prepared by the owner’s engineer, the City issued notice indicating that the guidance offered in the report be followed, including vacating the specific areas of the building listed by the engineer, repairing the damaged areas, removing the cross from the roof, and securing the exterior in a fashion that limits exposure of the public. The Church has removed the cross, vacated the entire building, and fenced the site, but has not made repairs to the damages. The building remains vacant, and does not appear to be maintained in any significant fashion.

City staff have requested access to the building's interior on several occasions since the appeal was submitted to determine if damages have accelerated as implied by Mr. Van Til. Access to the building has not been granted. Observations of the building's exterior do not reveal signs of additional damage that suggest imminent threat beyond those already identified. No additional reports have been provided from a structural engineer that indicate additional damage, or an increased threat to the public. If those hazards do exist the property owner is responsible for the protection of the public from the hazards in accordance with the Building Code.

The appeal indicates the rehabilitation of the building would cost approximately \$4 million, which Mr. Van Til states would exceed the appraised value of the property after renovation. This estimate is based on the repair costs identified in the Dale Smith report. The applicant posted a for-sale by owner sign at the site on October 31, 2006, to market the building for reuse.

Staff believes the applicant has not demonstrated they have adequately explored alternatives to demolition. The applicant should seek additional evaluations from preservation experts that can provide an independent evaluation of the building and its reuse potential. It has been brought to staff's attention by Jack Porter of the State Historical Society of Iowa that the property might be eligible for a grant from the National Trust of Historic Preservation for the preparation of a preservation plan that would clearly identify the potential reuse of the building and obstacles.

As referenced in the appeal, Kingsway Cathedral Inc. has filed a lawsuit against the City of Des Moines and the Iowa Department of Transportation (IDOT) claiming that the cathedral was so damaged by vibrations from the construction of I-235 and M.L. King, Jr. Parkway that the City/IDOT should be compelled to initiate eminent domain proceedings, because the actions were, in effect, a taking of the cathedral. The City and IDOT moved to dismiss, claiming that under the established principles of eminent domain law, the plaintiff's only remedy for any damages to its building caused by vibrations from the nearby road construction project is in tort, i.e. an action for damages. On appeal, the Supreme Court agreed that any damages that may have resulted from construction activities did not amount to a taking, and therefore, the Court reversed the district court and remanded for an order dismissing the inverse condemnation claim. The lawsuit is still pending.

#### *HISTORIC SIGNIFICANCE ARGUMENT:*

The appeal suggests the Cathedral was inappropriately identified as a "Pivotal Structure" when the Sherman Hill Historic District was nominated to the National Register of Historic Places in 1976. Mr. Van Til argues that the building is not architecturally significant or associated with a significant historical person or event and, therefore, is not significant enough to meet the requirements of being individually listed on the National Register. The National Register nomination process is extensive and includes the review of the application by professionals at the State Historical Society of Iowa and the United States National Park Service. The building has been designated as "Pivotal" for 31 years. The argument that the building is not eligible to be listed individually on the National Register of Historical Places is moot. Neither the Commission's action, nor the criteria for the approval of a Certificate of Appropriateness as set in City Code, identify the building's individual eligibility to the National Register of Historic Place as the basis for making a decision.

The appeal also questions the appropriateness of the boundaries of the local and national historic district. The Sherman Hill Local Historic District was created in accordance with Section 58 of the City Code in 1982. The boundaries have not changed since that time. The boundary line in the northwest portion of the neighborhood has an irregular shape and reflects a street pattern that has been altered by the

reconstruction of Martin Luther King Jr. Parkway. The portion of the district north of Cottage Grove/Crocker Street and west of 19<sup>th</sup> Street no longer contains any buildings and is owned by the City and the Iowa Department of Transportation. However, the portion of the district north of Cottage Grove/Crocker Street and east of 19<sup>th</sup> Street still contains a significant amount of historic structures. Mr. Van Til suggests the northern boundary of the district should not extend past Crocker Street, thus removing these structures including the Cathedral from the local historic district. The removal of structures identified as “Pivotal” or “Contributing” is contrary to the purpose of the City’s Historical Preservation Ordinance. The amendment of the local and national historic district boundaries was not the subject of the request before the HPC and is not a valid argument for appeal.

Staff recommends that the Council uphold the Historic Preservation Commission decision and direct the City Manager to advertise the property in accordance with Section 58-31(d) of the City Code. If the City Council believes there is merit to Mr. Van Til’s request for the property to be removed from the Sherman Hill National Register Historic District then the Council could advise Mr. Van Til to submit a request to the State Historical Society of Iowa to remove the property from the National Historic District. Such a request would be forwarded to the City for review and comment. If the Council believes there may be merit to Mr. Van Til’s request that the property be removed from the Sherman Hill Local Historic District, the Council could initiate such a request and refer the matter for public hearing by the Historic Preservation Commission pursuant to Section 58-29 of the City Code.

#### **PREVIOUS COUNCIL ACTION(S):**

Date: January 22, 2007

Roll Call Number: 07-118

Action: Set date of hearing on appeal by Bernie Van Til, Preservation Properties, L.L.C., of Historic Preservation Commissions’ decision regarding a Certificate of Appropriateness for demolition of Kingsway Cathedral at 901 19<sup>th</sup> Street in Sherman Hill Historic District, (2-26-07). Moved by Hensley to set the date of hearing for February 26, 2007 at 5:00 P.M., and to provide information at the hearing regarding: 1.) Who has legal ownership of the building; 2.) Documentation of who Mr. Van Til is representing. Motion Carried 7-0.

Date: January 22, 2007

Roll Call Number: 07-119

Action: Communication from Historic Preservation Commission. Moved by Hensley to receive and file, and to defer any action until after the hearing on the appeal by Preservation Properties from the Commission’s decision to deny a Certificate of Appropriateness for the demolition of the Kingsway Cathedral. Motion Carried 7-0.

#### **BOARD/COMMISSION ACTION(S):**

Date: December 20, 2006

Roll Call Number: N/A

Action: Historic Preservation Commission voted 7-0 to deny a Certificate of Appropriateness and to send a communication to the City Council requesting that they direct the City Manager to implement applicable provisions of Section 58-31 of the City Code.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**