

★ **Roll Call Number**

Agenda Item Number

17 A

Date January 22, 2007

COMMUNICATION from the Historic Preservation Commission requesting that the City Manager be directed to implement the applicable provisions of Section 58-31 of the Historic District Ordinance by soliciting offers to purchase and renovate the Kingsway Cathedral, a "Pivotal Structure" in the Sherman Hill Historic District, as an alternative to the proposal by Preservation Properties LLC (Bernie Van Til, Agent) to demolish the structure.

MOVED by _____, 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.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

C:\Rog\Historic\Appeals\Kingsway\RC 07-01-22 Receive&File.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLAISIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

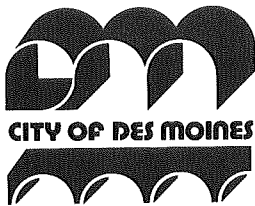
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

January 16, 2007

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:



HISTORIC DISTRICT COMMISSION
ARMORY BUILDING
602 EAST FIRST STREET
DES MOINES, IOWA 50309-1881
(515) 283-4192

ALL-AMERICA CITY 1949, 1976, 1981

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 nomination defined a "pivotal structure" as a structure with outstanding architectural distinction. Such structures are generally individually eligible for the National Register rather than just as part of a district nomination. However, the Kingsway Cathedral has never been individually nominated to the National Register of Historic Places.

On December 20, 2006 the Commission considered an application from Kingsway Cathedral represented by Preservation Properties LLC (Bernie Van Til, Agent) for a certificate of appropriateness to demolish the Kingsway Cathedral located at 901 19th Street. The applicant submitted portions of a structural report on the condition of the church building and a building repair estimate prepared by the same engineer. The application also referenced a lawsuit filed by the Kingsway Cathedral against the City of Des Moines and the Iowa Department of Transportation (IDOT).

The staff report provided a summary which stated that Kingsway Cathedral brought a lawsuit against the City and the Iowa Department of Transportation (IDOT) claiming that the cathedral was so damaged by the 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 no 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.

The staff report also noted that the City Building Official indicated the City has no evidence that the building is an imminent threat and that the concerns that have resulted in the fencing of the property revolve around their structural engineer's opinion regarding the building's condition, specifically with the decay of the parapet masonry joints and the stained glass windows.

The Commission was also aware Jack Porter of the State Historical Society of Iowa had notified staff 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.

Therefore, on December 20, 2006, the Historic Preservation Commission voted 7-0 to recommend the following regarding the Kingsway Cathedral, 901 19th Street:

- **DENIAL** of a request from Kingsway Cathedral Inc. (owner) represented by Bernie Van Til (agent) for the demolition of the church building at 901 19th Street. (20-2007-5.24)
- **APPROVAL** of a communication to the City Council requesting the City Manager be directed to implement applicable provisions of Section 58-31 of the City Code regarding "pivotal structures".

Section 58-31(d) of the City's Historical Preservation Ordinance states:

"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

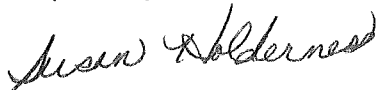
for pivotal structures.

(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.

The Historic Preservation Commission did not elect to waive the advertisement requirements and requests that the City Council direct the City Manager to proceed with advertisement of the Kingsway Cathedral pursuant to Section 58-31 of the City Code.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Susan Holderness".

Susan Holderness, Chair
Historic Preservation Commission