

BEFORE THE TENNESSEE HISTORICAL COMMISSION

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SECRETARY OF STATE

IN THE MATTER OF:)
)
SAM DAVIS MEMORIAL)
ASSOCIATION, TRUSTEES &)
DIRECTORS,)
Petitioner,)
)
v.)
)
TENNESSEE HISTORICAL)
COMMISSION,)
Respondent.)

APD Case No. 04.48-191880A

FINAL ORDER OF DETERMINATION

This matter was heard on February 21, 2020, before Rachel L. Waterhouse, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting with the Tennessee Historical Commission, upon a petition for a waiver filed by the Petitioner, The Sam Davis Memorial Association (SDMA), on August 14, 2019 pursuant to Tennessee Code Annotated § 4-1-412.

ISSUE FOR DETERMINATION

Did the petitioner demonstrate, by clear and convincing evidence, that a material or substantial need for a waiver to sell approximately four (4) acres, as described in the Partial Revocation of Trust, Public Chapter 782, April 5, 2018, in order to raise revenue for the maintenance, repair, and restoration of the various structures located on the Sam Davis Home site.

SUMMARY OF DETERMINATION

It is **DETERMINED** that the Petitioner demonstrated, by clear and convincing evidence, that a material or substantial need for a waiver based upon historical or other compelling public interest exist, and that it is in the public interest that the structures be preserved, and therefore the petition for waiver is **GRANTED** subject to the condition that upon conveyance of the parcel, the grantee shall provide a vegetation barrier or screen so as to reasonably separate the

view of the grantee's structure and use from the Sam Davis Home. This Determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Sam Davis Memorial Association, hereinafter referred to as "SDMA", filed a Petition for Waiver on August 14, 2019 pursuant to Tennessee Code Annotated § 4-1-412 et seq.
2. The Petition was filed seeking permission to sell approximately four (4) acres of the 168 acres of the Sam Davis Home Site, purchased and now owned by the State of Tennessee since 1927. Petition, Exhibit 1, p.001.
3. The General Assembly of the State of Tennessee, pursuant to Public Acts, Chapter 92, 1931 gave control and operation of the Sam Davis Home Site in trust to the SDMA with oversight vested in a Board of nine (9) Trustees. This is now codified at T.C.A. § 4-13-301 et seq. Petition, Exhibit 1, p. 003 and Exhibit 2, p. 019.
4. The SDMA seeks the sale of the four (4) acres in order to generate revenue to address ongoing repair, maintenance and restoration needs of the various structures on the property. In addition, revenue permitting, it will consider the potential for creating an education/event structure to enhance and facilitate year round revenue production by hosting/rental of the structure to larger group/organization gatherings such as weddings, civic organization functions...etc.
Petition, Exhibit 3, p.33-41.
5. There are numerous structures located on the Sam Davis Home site. The major structures, their origin, and approximate date of origin are as follows:

Structure	Origin	Approximate date
Sam Davis Home	built/renovated	1810/1850
Enslaved Persons Cabins (4)	relocated/built	1970's/ early 19 th Century
The White Barn	built	1920
The Creek House	built	1930
The Education House & Extension	built	1940 & 1950
The Boyhood Home	relocated/built	1980's/ 18 th Century

- electrical upgrades, HVAC system inspection/upgrade;
- d. Education Bldg. & Extension roofing, flashing, gutters inspection & repair/replacement; interior leak repairs; bathroom/plumbing upgrades;
- e. Boyhood Home structural engineer inspection; repair & restoration per recommendations;
- f. Privy roof inspection; interior leak repairs;
- g. Kitchen roof inspection/repairs; interior leak repairs;
- h. Visitor Center water damage repair, mildew remediation, ceiling repair & re-paint, temperature control for collections storage, exhibition cases repairs;
- i. Offices electrical system inspection; repair/replacement per recommendations; bathroom/plumbing upgrades; gutter/drainage repair/replacement
- j. Red Barn roof inspection/repairs; interior leak repairs; repair replacement of rotting wood; repainting

Petition, Exhibit 3c, p. 60-83.

8. The SDMA is a 501(c)(3) not for profit corporation. Revenues are typically generated from grants, donations, education events, rentals, special events, and memberships. Typical budgeted and necessary non-budgeted expenditures have been operating costs, staff salaries, and maintenance costs. Comparing actual revenue and actual expenditures for the last six plus operating years reveals the following:

<u>YEAR</u>	<u>Revenue</u>	<u>Expenses</u>	<u>Net Income</u>
2013-2014	\$233,147	\$220,701	\$12,446
2014-2015	\$278,657	\$268,510	\$10,147
2015-2016	\$287,953	\$291,524	\$(3,570)
2016-2017	\$281,673	\$279,241	\$2,432
2017-2018	\$208,394	\$269,566	\$(61,172)
2018 - 2019	\$194,359	\$217,791	\$(23,432)
07/2019 – 12/2019	\$95,562	\$86,161	\$9,401

Petition, Exhibit 2, p. 18 and Filed Exhibits p. 135-136.

9. The SDMA launched a Capital Campaign in 2018 to help generate revenue to address the same concerns that are the object of this Petition. To date* total pledges are \$80,679 and actual monies received are \$52,105. *All funds received have been utilized to assist in the repairs to the Visitor Center. (*as of January 2020)* Petition, Exhibit 3d, p. 84-88.

10. The revenue generated by the SDMA's operation of the Sam Davis Home site and its efforts at a Capital Campaign are insufficient to address the aforementioned maintenance, repair and restoration needs.

11. The land identified for sale by the Trustees and Directors and which is the focus of this Petition is approximately four (4) acres (hereafter referred to as "sale parcel") located at approximately the Southeastern most corner of the Sam Davis Home Property. It occupies a portion of the land located at the Northwestern corner of the intersection of Sam Davis Road and Nissan Drive (State Route 102). Its legal description is as follows:

A parcel of land in the Town of Smyrna, Rutherford County, Tennessee, bounded on the north and west by the remaining land of the Sam Davis Memorial Association (map 27, parcel 6.00), on the east by the west right-of-way for Nissan Drive and on the south by the north right-of-way for Sam Davis Road, being described as follows:

Beginning at a point at the intersection of the north right-of-way for Sam Davis Drive (sic) and the west right-of-way for Nissan Drive; thence with the north right-of way for Sam Davis Drive, westerly, 52 feet more or less; thence with a new line severing the lands of the Sam Davis Memorial Association, being parallel with the west right-of-way for Nissan Drive, northerly 678 feet more or less; thence easterly, 275 feet more or less to a point in the west right-of-way for Nissan Drive; thence with the west right-of-way of Nissan Drive, in a southerly direction, 450 feet, more or less to the beginning of a curve to the right; thence with the west right-of-way for Nissan Drive, with a curve to the right, 353 feet more or less
to the point of beginning, having an area of 4 acres, more or less.

12. In as much as the land is owned by the State of Tennessee, a Partial Revocation of the Trust conveying said land to the control of the SDMA was required. That Partial Revocation was accomplished by the General Assembly, Public Chapter 782, April 5, 2018 and signed into Law by Governor Haslam on April 19, 2018. The Revocation is subject to the SDMA gaining approval of the sale from the Tennessee Historical Commission. Petition, Exhibit 3e, p. 89-91.

13. The sale Parcel is situated some 1,872 ft. from the Eastern edge of the site campus and some 2,050 ft. from the Sam Davis Home. This is over one third mile (1/3+ mi.) in distance from the Campus/Home. Sight of the sale parcel from the Home is blocked by natural barriers/tree lines. Petition, Exhibit 3e, p. 95-96 and Filed Exhibit p. 137

14. The amount of revenue to be generated by the sale of the sale parcel is not known. It is, however, because of its location, anticipated it will attract a commercial buyer or buyers.

15. In the event of a windfall sale, meaning more revenue is generated than is necessary to effect maintenance, repair, and restoration needs, then the SDMA Directors and Trustees will explore ways to utilize the extra income in a manner that will continue to generate income. One such possibility is the consideration of construction of a education/event building in order to transform the home site campus into an attractive year round location for groups needing a gathering location and all weather facility. Petition, Exhibit 3, p. 40-41 and Exhibit 3f, p. 97-99.

16. All Notices required of the Petitioner as set forth in T.C.A § 4-1-412 et seq. and T.C.A. 4-5-101 et seq. have been issued. Petition, Exhibit 5, p. 103-109, Exhibit 7, p.124-131, and Exhibit 8, p.132-134.

17. Support for the Petition's request for the land sale is demonstrated. The Partial Revocation of the Trust by the General Assembly, thereby allowing the sale of the land, was passed without opposition in the House and Senate, and signed by the Governor. Further individual support by a Legislator has been expressed by Representative Charlie Baum of the 37th District. Local support has been expressed by the members of the Smyrna First United Methodist Church through the Chair of their Trustees, Mr. Scott Bucholz. Historical community support has been expressed by Mr. Greg Wade. Petition, Exhibit 6, p. 110-123.

CONCLUSIONS OF LAW

1. Pursuant to Tennessee Code Annotated ("T.C.A.") § 4-5-307 and the Tennessee heritage Protection Act of 2016, T.C.A. § 4-1-412, the Tennessee Historical Commission has provided

formal notice of the commencement of a final hearing upon the above referenced matter regarding a sale of approximately four (4) acres of the 168 acres of the Sam Davis Home site in Smyrna, Tennessee. A final hearing was held in the presence of Administrative Law Judge Rachel Waterhouse, and in the presence of the Tennessee Historical Commission on February 21, 2020 located in the Tennessee Tower, 3rd floor conference room D, 312 Rosa Parks Avenue, Nashville, TN 37243.

2. The procedures for this final hearing have been established as provided in T.C.A § 4-1-412, and have been conducted in a manner consistent with the provisions of the Uniform Administrative Procedures Act governing contested cases, when such provisions are not in conflict with T.C.A. 4-1-412.

3. In order for a waiver to be granted, the public entity seeking the waiver shall demonstrate by clear and convincing evidence that a material or substantial need for a waiver based on historical or other compelling public interest exists; provided, that if a memorial is designated as a national historic landmark or listed on the national register of historic places, there shall be a presumption in favor of preservation of the memorial.

4. At the final hearing, the commission may grant a petition for waiver, in whole or in part, by a two-thirds (2/3) vote of the entire membership of the commission by roll call vote. The commission may include reasonable conditions and instructions to ensure that a memorial is preserved and remains publicly accessible to the greatest extent possible.

5. Pursuant to the Rules of the Tennessee Historical Commission, Chapter 0400-70-01:

(1) When an entity petitions the Tennessee Historical Commission for a waiver relative to Tennessee heritage protection the Tennessee Historical Commission shall evaluate the following considerations when rendering a decision:

(a) Whether the proposed change serves the public interest;

(b) Whether the proposed change has any commercial overtones;

(c) Whether the proposed change has a reasonable relationship to the site;

- (d) Whether the proposed change has demonstrated support or opposition from local residents;
- (e) If a change in name or rededication is proposed, whether the change is in conformance with the character of the existing names or dedications in the area;
- (f) If a change in name or rededication is proposed, whether the change is duplicative of other nearby site names or dedications;
- (g) Whether the proposed change is offensive or has derogatory or defamatory implications;
- (h) Whether the proposed change detracts from or enhances the commemoration of the conflict, event, entity, figure, or organization previously commemorated;
- (i) Whether the proposed change is expected to have a significant positive or negative economic impact;
- (j) Whether the proposed change could cause confusion for visitors interested in the site;
- (k) Whether the proposed change diminishes or enhances the historic integrity of the site;
- (l) Whether the proposed change is relative to a historic site or memorial on the National Register of Historic Places or a national historic landmark; and
- (m) If a relocation is proposed, whether the new location is appropriate.

(2) The enumeration of the considerations in paragraph (1) of this rule does not prevent the Tennessee Historical Commission from taking into account other considerations.

6. Based on the testimony and evidence presented and in the record, and the factual findings in paragraphs 1 – 17, it has been established by clear and convincing evidence that the proposed sale of approximately four (4) acres is necessary and appropriate in order to fund needed repairs, maintenance, and restoration of the structures on the Sam Davis Home site and is therefore:

- (a)** in the public interest in preserving the historical integrity and continuing viability of the structures and site;
- (b)** a change where the historical site and its interpretation is not expected to be influenced by any potential buyer, commercial or otherwise, given the distance and barriers between the selected land for sale and the main campus;
- (c)** a change where the sale of the selected parcel is expected to provide the maximum benefit for the needs of the site with the least impact on the historical integrity and interpretation of the site;
- (d)** supported by the local, historical and state communities;
- (e)** a change that does not involve a proposed change of name or rededication that is not in conformity with those existing;
- (f)** a change that does not involve a proposed change of name or rededication that is duplicative;
- (g)** a change that is a transaction that merely seeks to convey raw land to a potential buyer and is therefore neutral in nature and has no offensive, derogatory or defamatory effect on the historical integrity and interpretation on the remaining site;
- (h)** a sale of raw land located over one third of a mile from the main campus and separated by distance, natural barriers and tree lines and as such is not expected to detract from or enhance the site's historical and continued interpretation other than its impact on the repair, maintenance and restoration needs of the site;
- (i)** expected to have a significantly positive economic effect on the site as it will fund needed repairs, maintenance, and restoration with little impact on the site's historical integrity;
- (j)** a change where no confusion for visitors is realistically anticipated given the distance and barriers between the land selected for sale and the site's main campus;
- (k)** a change that where there is no realistic expectation that it will diminish the historic integrity of the site given the distance and barriers between the land selected for sale and the main campus of the site, and conversely will be the means for much needed repairs, maintenance and restoration;

(m) is a change that does not involve a relocation.


IT IS THEREFORE CONCLUDED the Petitioner demonstrated, by clear and convincing evidence, that a material or substantial need for a waiver based upon historical or other compelling public interest exist, and **THE COMMISSION FURTHER CONCLUDED** that it is in the public interest that the structures be preserved.

Therefore, the petition for waiver is **GRANTED subject to the condition that upon conveyance of the parcel, the grantee shall provide a vegetation barrier or screen so as to reasonably separate the view and activities of the grantee's structure and use from the Sam Davis Home.**


IT IS SO ORDERED.

This **FINAL ORDER** is entered this 21st day of February, 2020. It shall be effective one hundred twenty days after notice of this determination is posted on the Tennessee Historical Commission's web site.

TENNESSEE HISTORICAL COMMISSION

BY: 
Derita Coleman Williams
ACTING CHAIRMAN
TENNESSEE HISTORICAL COMMISSION

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 26th day of February, 2020.


E. Joseph Sanders BPR# 6691
Tennessee Dept. of Environment and Conservation
William R. Snodgrass TN Tower
312 Rosa Parks Ave., 2nd Floor
Nashville, TN 37243

CERTIFICATE OF SERVICE

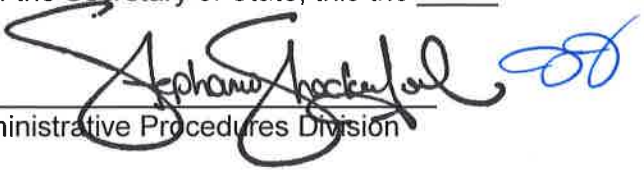
I certify that a true and exact copy of the foregoing was served upon counsel for the public entity and each interested entity, group, or individual who testified or submitted evidence at the final hearing, as listed below, by email and/or depositing same in the United States Mail with sufficient postage thereon this 26th day of February, 2020.

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E. Joseph Sanders

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 25th day of February, 2020.



Administrative Procedures Division