



## **Historic Preservation Commission Remote Meeting Instructions for August 17, 2020 Meeting**

In order to comply with all health orders and State guidelines to stop the spread of the COVID-19 Coronavirus, **no physical location, including the City Council Chambers, will be set up for viewing or participating in this meeting.**

You can view the Historic Preservation Commission meeting by following the instructions below to watch the **YouTube** live stream. By utilizing this option to view the meeting, you will not be able to provide live input during the meeting. To provide live input, see the “In real time” instructions near the bottom of this page.

- From your laptop or computer, click the following link or enter it manually into your web browser: ([www.youtube.com/CityofGreeley](https://www.youtube.com/CityofGreeley))
- Clicking the link above will take you to the City of Greeley’s YouTube channel
- Once there, you will be able to view the meeting

### **Citizen input and public comment for items appearing on this agenda as public hearing / quasi-judicial are valuable and welcome**

There are several options for those who are interested in participating and sharing public comments:

#### **E-mail** – Submit to [cd\\_admin\\_team@greeleygov.com](mailto:cd_admin_team@greeleygov.com)

All comments submitted by e-mail will be read into the record at the appropriate points during the meeting in real time. Comments can be submitted up to and throughout the meeting.

#### **Traditional Mail** – Address to Historic Preservation Commission, 1100 10<sup>th</sup> Street, Greeley, CO 80631

All written comments must be received no later than the day of the meeting. Written comments received by mail will also be read into the record in real time.

#### **Real Time** – Click [here](#)

Clicking the link above will give you access to the live meeting where you will become a virtual audience member and be able to speak under Public Input on items not already on the agenda or during a scheduled public hearing.

Please visit the Historic Preservation web page at <https://greeleygov.com/government/b-c/boards-and-commissions/historic-preservation> to view and download the contents of the agenda packet. You are also welcome to call the Historic Preservation office at 970-350-9780 with any special needs or questions that you may have.



## **HISTORIC PRESERVATION COMMISSION Agenda**

**August 17, 2020  
4:00 p.m.**

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- I. Call to Order and Roll Call**
- II. Approval of Minutes for meeting held on July 6, 2020**
- III. Public Input**
- IV. National Alliance of Preservation Commissions Forum at Home reports (John Gifford, Historic Preservation Commissioner, and Elizabeth Kellums, Planner III – Historic Preservation)**
- V. Tax Initiatives Presentation, City Manager’s Office**
- VI. Annual Refresher Course on Legal Issues Affecting Members of Boards and Commissions (Presenter: Michael Axelrad, Senior Attorney, Greeley City Attorney’s Office)**
- VII. Commission Member Reports**
- VIII. Staff Report**
  - a. Survey Plan Grant Update
- IX. Adjournment**

**Please visit [www.greeleygov.com](http://www.greeleygov.com) for more information about City responses to protect public and employee health and safety**

## **HISTORIC PRESE**

### **RVATION HEARINGS:**

Hearings are held on the 1<sup>st</sup> and 3<sup>rd</sup> Mondays of the month at 4:00 p.m. at City Center South, 1001 11<sup>th</sup> Avenue, Greeley, Colorado. Agendas are posted on the Historic Preservation web page at <http://greeleygov.com/government/b-c/boards-and-commissions/historic-preservation>

September 7, 2020 (Labor Day; no hearing)  
September 21, 2020  
October 5, 2020  
October 19, 2020

November 2, 2020  
November 16, 2002  
December 7, 2020  
December 21, 2020

### **Historic Preservation Public Hearing Procedure**

Public Hearing to...

1. Chair introduce public hearing item
2. Historic Preservation Staff report
3. Applicant Presentation
4. Commission questions
5. Chair opens public hearing
6. Chair closes public hearing
7. Applicant rebuttal
8. Commission discussion and vote



## **HISTORIC PRESERVATION COMMISSION**

### **Proceedings**

**July 6, 2020**

**Council Chambers – City Center South  
1001 11<sup>th</sup> Avenue  
4:00 p.m.**

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#### **I. Call to Order and Roll Call**

Chair Thompson called the meeting to order at 4:00 p.m. Commissioners DePetro, Gifford, McLean, Sattler, Podell and Brunswig were present.

#### **II. Approval of Minutes for the meeting held on April 20, 2020**

Commissioner McLean moved to approve the minutes dated April 20, 2020. Commissioner Brunswig seconded the motion. The motion carried 7-0.

#### **III. Public Input**

Commissioner Thompson called for public input at 4:03 p.m.

Ron Thompson, 1616 12<sup>th</sup> Ave, on behalf of Historic Greeley, Inc. addressed the Commission with updates about current and future projects. He also commented on the Bessie Smith House project.

No further comments from the public.

#### **IV. Public hearing to consider Certificate of Approval for exterior renovations**

Case No.:	HPDR2020-0006
Applicant:	Becky Brunswig, on behalf of Historic Greeley, Inc.
Project Name:	Bessie Smith House Exterior Rehabilitation
Property Location:	2410 35 <sup>th</sup> Avenue, Unit B
Presenter:	Elizabeth Kellums, Planner III

Commissioners Gifford and Brunswig recused themselves from item one.

Elizabeth Kellums, Planner III – Historic Preservation, addressed the Commission by stating the project name as the Bessie Smith House Exterior Rehabilitation and the applicant Becky Brunswig on behalf of Historic Greeley, Inc. Ms. Kellums showed the site map and stated the location of the property. She stated the proposed project is for the exterior rehabilitation of the Bessie Smith House. Mr. Kellums stated that this use is for a community center for meetings and events. Ms. Kellums stated this rehabilitation would include reconstruction of the porch, replacement of the non-original front door and missing side door. She also added repair and replacement of exterior trim and siding as needed, repair of windows, existing storm windows and screens. Ms. Kellums stated this would also include reconstruction of the brick fireplace chimney, brick wing walls, and concrete steps at the front porch, addition of handrails to the entrance and installation of masonry to the portion of the above grade new foundation walls. Ms. Kellums stated that staff did review the project and clarified that the applicant would only be restoring the house and reconstructing missing elements. Ms. Kellums stated that the applicant has had some vandalism problems at the property. She added that with this proposal this would decrease the risk of vandalism. She also stated that the proposed project would meet criteria a(1) and a(3) of Section 18.36.150 of the Greeley Municipal Code (GMC). Ms. Kellums adds that the proposed project would meet criterion a(5), because it would have a positive effect on the protection, enhancement, perpetuation and use of the house. She included that the much needed repairs would protect the house from more weather damage and would make the house useable as a community center, adding years to the viability of the house as a useable property rather than a vacant property. She stated that the proposed project complies with the Secretary of the Interior's Standards for Rehabilitation. Ms. Kellums stated that all aspects of the exterior rehabilitation of the Bessie Smith House comply with the applicable criteria and standards. The reconstruction of the front porch would match the original porch in dimensions, design and materials, and the original porch columns would be repaired if necessary and reinstalled. She also added that all aspects of the proposed project and the project as a whole would have a positive effect on the historical and architectural character of the property and on the exterior architectural features, materials and details because it is preserving and repairing historic materials and replacing missing and deteriorated with appropriate as needed. Therefore, Staff recommends approval.

Commissioner Sattler requested to see the original photos. Ms. Kellums returned to the photos on the power point and pointed out the changes being proposed on the photos, including the reconstruction of the porch Commissioner Podell asked for clarification on what would be removed on the back. Ms. Kellums referenced the pictures on the PowerPoint demonstrating on the photos exactly what the change. Commissioner McLean addressed Ms. Kellums about not having the original documentation for the house. Ms. Kellums stated that it is very rare to find original architectural drawings, the pictures presented original photos of the house. No further questions for staff.

Chair Thompson opened the public hearing at 4:14 p.m.

Ron Edgerton, 2549 58<sup>TH</sup> Avenue , stated that he is a member of Family of Christ Presbyterian Church, which is the owner of this property and he introduced the pastor and members of the church in attendance. He stated that he is eager and happy to preserve this house and do things

the right way. He adds that he has been working with Ms. Kellums and is very pleased with her work and all the staff included in this project. He added that the community will be involved in the new space and that this project being proposed will be a great addition to the City of Greeley.

Chair Thompson closed the public hearing at 4:17 p.m.

Chair Thompson called for a motion.

Commissioner McLean moved that, based on the application received and the preceding analysis, the Historic Preservation Commission finds that the proposal to rehabilitate the exterior of the Bessie Smith House at 2410 35<sup>th</sup> Avenue, Unit B, meets criteria and standards in Section 18.36.150(a) of the Greeley Municipal Code; and, therefore, approves the Certificate of Approval, contingent upon the applicant obtaining all required permits for the project. Commissioner Podell seconded the motion. Motion carried 5-0 (Commissioners Brunswig and Gifford recused themselves).

Commissioners Brunswig and Gifford re-entered the meeting.

#### **V. Informational Presentation**

Topic: Historic Window Rehabilitation

Presenters: Elizabeth Kellums and Mark Wernimont of Colorado Sash and Door

Elizabeth Kellums and Mark Wernimont discussed historic window rehabilitation and repair, as well as projects that meet the Secretary of the Interior's Standards for Rehabilitation.

#### **VI. Commission Member Reports**

No Comments.

#### **VII. Staff Report**

Ms. Kellums reported that she expecting a project but is unsure when it will be ready.

Commissioner Thompson asked about rescheduling the Historic Preservation month event for later in the year or the following year. Ms. Kellums added that she would look into that. No further comments.

#### **VIII. Adjournment**

The meeting adjourned at 5:08 p.m.

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Margaret Thompson, Chair

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Elizabeth Kellums, Secretary



# Community Development Department MEMORANDUM

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TO: Historic Preservation Commission  
RE: Legal presentation  
FROM: Elizabeth Kellums, Planner III – Historic Preservation  
DATE: August 17, 2020

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Because of the status of the Historic Preservation Commission as a quasi-judicial City Council-appointed board, the City Attorney's office will present a training session to the Commission about the legal aspects of serving on the Commission. Michael Axelrad, Senior Attorney with the Greeley City Attorney's Office, will present at the August 17<sup>th</sup> meeting and discuss the following topics:


- Quasi-judicial vs legislative functions of the Commission
- Conflicts of Interest
- Colorado Open Meetings Law

Attached please find a handout of the PowerPoint presentation for your reference.

# Greeley Historic Preservation Commission

2020 Refresher Course

Presented by  
the City Attorney's Office



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## 1. Quasi-Judicial v. Legislative Function

Most of your attention will be on Quasi-Judicial Matters.

Legislative matters generally consist of those times when you:

- Recommend changes to the Municipal Code.
- Modify your by-laws or procedures.



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## What is a Quasi-Judicial Matter?

"Quasi-judicial action ... generally involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question."

*Hoffler v. Colorado Dep't of Corr.*, 27 P.3d 371, 374 (Colo. 2001)



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## Quasi-Judicial Function – Basic Rules

- Decisions are made jointly
- Decisions are based upon hearing/discussion in open meeting
- Protection from individual liability
- Packets of information provided to you ahead of time.
  - Please review
  - Betsy is principal contact person if you have any questions




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## 2. Conflict of Interest

Generally, these are matters of personal judgment.

- If you have concern whether you can be objective
- Whether it might appear that your decision may have been influenced by your connections with other members of the board/ or by external pressures




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## What are some common conflicts?

- Business
- Immediate family
- Extended Family
- Neighbor
- Member of your church




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## How to handle conflict situation?

If you do identify a conflict, or even a potential conflict, is the particular matter one that you feel you need to weigh in on?

Consider whether a member of the public may see your conflict as affecting your judgment. Is this a matter that you would like to see reviewed by City Council? Your individual discretion may be the subject of public scrutiny.




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## Conflicts – Moral of the Story

If there is even a *chance* of conflict, the better practice may be voluntary recusal.




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## 3. Colorado Open Meetings Law ("OML")

"It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." *Colorado Open Meetings Law*




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## Basic Open Meeting Rules

There are two critical rules regarding open meetings:

### First Rule:

All meetings of a quorum or three or more members of a local public body (whichever is fewer) at which any public business is discussed or at which any formal action may be taken are public meetings open to public.




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## Basic Open Meeting Rules

### Second Rule:

Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation or formal action occurs or at which a majority or quorum of the body is in attendance, or is expended to be in attendance, shall be held only after full and timely notice to the public.




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## What Constitutes a Meeting?

Meetings of three or more members of any local public body, or a quorum if fewer than three, at which any public business is discussed or at which any formal action may be taken.

Any gathering convened in person, by telephone, electronically, or by other means of communication.

Emails and social media may implicate OML (discussed later)

§ 24-6-402, C.R.S.




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## What is not a meeting?

**Chance meetings or social gatherings at which discussion of public business is not the central purpose**

**Electronic mail communication among elected officials that does not relate to pending legislation or other public business**  
 Google doc/doodle scheduling




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## Minutes Requirement

- Minutes shall be taken and recorded at meetings where public body adopts proposed policy, position, resolution, rule, regulation, or formal action.
- Requirements for minutes are only triggered if any type of formal action is or may be taken.
- Verbatim recitation is not required – summary or action minutes allowed.




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## Conduct at Meetings

- The public board has the right to establish rules regarding conduct at a public meeting.
- You can limit speaker's times, and can establish procedures regarding conduct of the meetings.
- Make sure they are viewpoint-neutral.
- Three minute time limit is a reasonable time place and manner restriction. *Shero v. City of Grove*, 510 F.3d 1196, 1202 (10<sup>th</sup> Cir. 2007).




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## What Happens if OML is Violated?

- Unlike ethics violations, no potential personal sanctions for noncompliance
- Resolution, rule, regulation, ordinance, or formal action may be declared void
- If court finds a violation of the OML, the court shall award the citizen prevailing in such action costs and reasonable attorney fees, unless the violation is cured prior to filing of lawsuit.




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## Email and Social Media

### Remember:

A meeting is "any kind of gathering, convened to discuss public business, in person, by telephone, electronically or by other means."




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## Email Example: *Guy v. Whitsitt*

An email sent from one councilmember to three others discussing a proposed resolution and the instructions that would be given to staff members about expansion of zone districts where marijuana could be sold

Yes. Public meeting




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### Email Example: *Guy v. Whitsitt*

**Text messages regarding public business from the mayor to the city manager?**

**Not public meeting**




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### Email Example: *Guy v. Whitsitt*

**An email regarding public business sent by one member of the council to another (not quorum)**

**Not a public meeting**




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### E-mail Tips – Do's:

**Have a one-on-one discussion**  
**Respond to constituent e-mails**  
**Correspond with Town staff (consistent with municipal policy)**  
**Copy other Council members or staff on "fyi" only e-mails**  
*But in all situations, do not use e-mail to discuss quasi-judicial matters such as historic designation for individual property or for a historic district*




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### E-mail Tips – Don'ts:

- **Don't** use e-mail to discuss policy with more than one other member
- **Don't** use as substitute for open public meeting discussion
- **Don't** use to discuss or disseminate information on quasi-judicial matters
- **Don't** use as substitute for taking action




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### E-mail Tips:

- **Don't** "reply all" on e-mails sent to more than 2 Council members, excepting only non-policy e-mails
- **Don't** send e-mails with mixed public/private communications
- **Don't** say in an e-mail what you wouldn't say in a public meeting (or what you would not like to read in the paper, or have read to you in a deposition, etc.)




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### Social Media:

- All of the tips applicable to email
- Private messages
- Commenting on interactive spaces




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## Social Media Tips :

### Similar to conducting a meeting

First amendment concerns – limited public forum. *Davison v. Plowman*, 247 F.Supp.3d 767 (E.D. Va. 2017); *Davison v. Randall*, 912 F.3d 666, 672 (4th Cir. 2019)

Removal of comments/blocking users – is this viewpoint discrimination? Ask your attorney!




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## Social Media Caution:

Policing content is a big issue. If you create a social media presence, you have to be very tolerant of the views of the public.

Lafayette and Thornton settlements: \$20,000 and \$30,000 respectively

Effect on public discussion of issues, and the risk of placing yourself in the spotlight




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## Thank you!

I hope this presentation was helpful. The City Attorney's Office represents the HPC, and we are available to answer questions concerning your rights and liabilities as a member of a public board.

Questions?




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