

**Jonathan Association**

# **A Proposal for the City of Chaska**

**December 16, 2011**

### **Location of the Eitel House:**

Eitel House  
112300 Eitel Circle  
Jonathan Neighborhood 8 Plat; Outlot K  
Chaska, Minnesota

### **History of the Eitel House:**

Originally built in 1875, the Chaska-brick constructed Eitel House was built in 1876 after the first frame house on the property burned down in a fire in 1875. It was owned by locally known and important families over the years, namely the Lano's and the Eitel's, and primarily served as a single-family residence and farmstead until 1967, when the property was sold to the Jonathan Development Corporation.

The Eitel House became a building for civil uses in the New Town neighborhood of Jonathan such as a co-op store, welcome center, and as the "Jonathan Children's House" day care facility until the early 2000's when radon levels became a safety concern. Currently, the house is vacant and unused, but is still under the ownership of the Jonathan Association.

### **Description of the Eitel House:**

The Eitel House property is privately owned by the Jonathan Association. The City of Chaska Heritage Preservation Commission has evaluated the Eitel House and found that it meets the Historic Resource eligibility criteria; and for preservation planning purposes the Eitel House is considered a historic building. By means of architectural classification, the Eitel House is an example of a traditional Chaska brick cottage constructed in the late 1800's.

The Eitel House is an interesting vestige of Chaska's farming history. Surrounded closely on all sides by the homes of the Jonathan Association, it is a fairly intact farmstead with fieldstone foundation of a barn, a windmill, and a simple Chaska brick farmhouse.

The house is a two-story T shape with an 8-12 foot pitched gable on each end. It sits on a heavy fieldstone foundation, which is now primarily covered in concrete. The roof on the southern leg of the house is asymmetrical and extends at the same pitch to cover a small room. The eastern face of the house was the front and the markings of an original hipped roof porch can plainly be seen there. The original windows throughout the house are 2 over 2 double hung wooden sashes and are uniform in size with the exception of a larger picture window which overlooked the porch and a newly added window at the rear.

The brickwork is simple and solid with a corbelled double course of brick in an arch above the windows and doors on the northern section of the house. The southern leg of the house does not include this modest decorative element in the window arches and this suggests a different age of construction for this section.

### **Preservation Significance of the Eitel House:**

The Eitel House is worthy of designation as a historic resource because of its historical, architectural and cultural significance; and attained historical significance qualifying it for Historic Resource designation when it was built with Chaska brick in 1876.

The Eitel House embodies the vernacular style for which historic Chaska brick construction is known and is associated with the life of the Eitel Family (early pioneers to Carver County), and also the Lano Family (a well-known family contributing to Chaska's history over the years and who still live in Chaska today). In addition, the house is positioned in a unique location within the Jonathan neighborhood, a New Town built in the 1960's and 1970's, as one of only two Chaska brick farmhouses left in the neighborhood during modern development.

Three historic contexts, as outlined in the City of Chaska's Historic Context Study, are applicable to the historic Eitel House: Chaska Brick (1857-1950), Residential (1857-1950's), and Preservation of the Recent Past (1956-present). The Eitel House is significant in the areas of local architectural history (Chaska brick construction), association with local families (the Eitel's and the Lano's), and neighborhood heritage (farmhouse in the Jonathan New Town neighborhood).

The Eitel House is an outstanding example of the late-nineteenth century cottage architecture and one of Chaska's most valued resources due to both its location in the Jonathan New Town neighborhood and its Chaska brick construction. Contextually, it relates to the early farmstead development to the west and north of historic downtown Chaska and it also relates directly to one of the essential industries in Chaska at the time – Chaska brick production and distribution. This house reminds the community of Chaska's once-thriving brick industry, as well as times when farmsteads and working the land was customary. This old and beautifully uncomplicated house serves as a stoic anchor in a modernly planned neighborhood, signaling to all in the community that the past is worth both remembering and preserving.

The surroundings of the property, the Jonathan neighborhood, is worthy of mention itself, as many homes within the neighborhood are approaching the fifty-year old mark – and so fitting into the "Preservation of the Recent Past" context of the City of Chaska. The Eitel House, along with the Koehnen House (Karen House), are the only original Chaska brick farmhouses left in this neighborhood. They were purposefully left during the design process of the Jonathan New Town in order to make the preservation of Chaska's past a vital part of the new neighborhood.

The main construction material of the Eitel House is Chaska brick, which is integral to understanding its history. Chaska brick was an extremely popular building material in Minnesota during the last half of the 19<sup>th</sup> century. Nowhere was it a more popular material than in the City of Chaska and in the larger environs of Carver County. Residences constructed of Chaska brick, though they vary in period and predominant style, are also relatively congruent. Ornamentation is generally restrained, with arched window heads, ranging from one simple row to rather complex multi-row designs, being the primary decorative enhancement – such as displayed in the Eitel House architecture and design.

The high concentration of Chaska brick buildings in the City of Chaska gives a high level of cohesion to its aesthetic standards, and gives the community a distinctive quality and a sense of place. However, the town has lost many resources as vacant lots and infill construction prove. All of the original major civic buildings have been torn down, as well as some schools and larger commercial properties. Virtually all resources relating to the brickyards (save the clay holes), and most relating to the railroads, are gone. Therefore, it is imperative to preserve the integrity of the original Chaska brick houses as a living and fundamental resource for the community.

The Eitel House historical significance contains a strong cultural and social component. The house is certainly associated with the life of persons who significantly contributed to the City of Chaska's culture and development. More specifically, it is associated with various well-known Chaska and Carver County families.

The Lano Family, with members still living in Chaska today, is one of those important local area families. Theodore, one of Chaska's earliest settlers, arrived in Chaska from Germany in 1855. Through the years, the farm on Sections 29 and 30, Chanhassen Township 116, Range 23, was owned by heirs of Theodore Lano, Margaretha, Michael, Catherine, Peter, Rosemary, Theodore II and III.

Joseph Lano, the patriarch of the Lano Family, was born in the Eitel House in 1859. Members of his family have served the Chaska community as City Councilmen, as board members of Guardian Angels Church and leaders of the American Legion, VFW, the Chamber of Commerce, and the Fire Department.

Three generations of the Lano-Baxter Family owned and operated the Baxter-Lano Fairway grocery store on West Second Street. Other Lano's, four brothers back from service in World War II, founded the very successful Lano Implement Company, which originally featured farm machinery and more recently, construction equipment. Many other Lano's have been contributors to life in Chaska through the years. These include descendants of Peter and Michael Lano.

Another family of note, the namesake of the house, the Eitel Family, was a pioneer in Carver County (Chanhassen Township). John Eitel was born in 1827 in Wurtember, Germany. He relocated to Chaska in 1855 and owned 180 acres of farm south of Hundertmark Road, across from the Eitel horse farm. John ran the Valley Flour Mill. George Eitel was born and raised here

and eventually became the founder of Eitel Hospital in Minneapolis. Harold and Rose Eitel owned the farm off Hundertmark Road from 1946 to 1967 when it was sold to the Jonathan Development Corporation.

### **City of Chaska Perspective on the Eitel House:**

The preservation of the Eitel House as a Historic Resource has proven to be a challenging process, as the current owner of the Eitel House, the Jonathan Association, has in the recent past expressed interest in a demolition permit for the structure. At the time (c. 2006) the Jonathan Association cited maintenance and financial issues, while the City of Chaska saw the move as one motivated by the intent to “eliminate the Eitel House as a historic and cultural resource in the City of Chaska”. The City of Chaska, as the Historic Context Study was being completed, placed a moratorium on the demolition of all historic Chaska brick buildings in the City of Chaska.

As outlined in Chapter 10.5 of the Code of Ordinances, “the Chaska City Council hereby declares as a matter of public policy that the preservation, protection, perpetuation and use of areas, places, buildings, structures and other objects having a special historical interest and value is in the public interest and is required in the interest of health, prosperity, safety and welfare of the community. To this end, the Heritage Preservation Commission is created and charged with the stewardship of Chaska’s heritage.”

On November 28, 2006, a public hearing occurred during the regular Historic Preservation Commission monthly meeting and all property owner whose properties were being nominated for inclusion (in a list of six total properties) as local historic resources in the City of Chaska were notified individually, and a public hearing notice was placed in the Chaska Herald newspaper. The Eitel House, located at 112300 Eitel Circle, was included among these six properties.

At the December 13, 2006, Planning Commission meeting, a recommendation was unanimous to approve the addition of six local historic resources in the City of Chaska. The Eitel House, located at 112300 Eitel Circle, was included among these six properties.

On December 18, 2006 the Chaska City Council passed a Resolution (06-91) approving the addition of six (6) local historic resources in the City of Chaska. The Eitel House, located at 112300 Eitel Circle, was included among these six properties.

**“The City of Chaska wishes to** preserve the Eitel House as an important Historic Resource through the designation process and **actively pursue the best future** for the building and the community.”

- The City of Chaska Historic Resource Nomination & Report: The Historic Eitel House, 112300 Eitel Circle (Prepared by: **Melissa E. Duchinsky**, City Planner, & the Historic Preservation Commission; **October 2006**)

## **Jonathan's Perspective on the Eitel House:**

The Jonathan Association was incorporated on May 21, 1971 as a corporation pursuant to the provisions of the Minnesota Nonprofit Corporation Act, Minnesota Statutes, and Chapter 317.

The Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the maintenance, preservation and architectural control of the Lots, Site, Living Units, Common Areas and Special Common Areas and for the development of such Common Areas within those portions of the Jonathan New Town Development as may be brought within the jurisdiction of the Association, and to promote the health, safety and welfare of the residents within Jonathan.

***In the past***, Jonathan has used the Eitel House in a variety of ways: a) a welcome center; b) a food collection/distribution center; c) a meeting center; and, d) a daycare center. Additionally, some have suggested converting the Eitel House into a "Jonathan Museum". **However, times have changed:**

1. The Karen House at 111000 Bavaria Road is the official headquarters of the Association (enhanced by the addition of a new equipment storage barn), and effectively serves as the official welcome center location as well.
2. Jonathan partners with its nearby organizational neighbor, St. Andrew's West Lutheran Church, in successfully sponsoring efforts to collect and distribute food in the community (as reflected in the 25 consecutive years of successful "Annual Festival of Garage Sales" events).
3. More than enough modern and conveniently located meeting facilities are provided at a number of locations within the Jonathan area – specifically Clover Marketplace, St. Andrew West Lutheran Church, District 112 Kindergarten Center, and the Karen House.
4. Over the course of the last seven years while the Eitel House has been out of use (due to radon concerns) two things have happened: a) the need for daycare services has been adequately furnished by other providers in the community, and b) Jonathan – as a homeowners association - no longer seeks to be in the commercial rental business.
5. Jonathan actively seeks to protect and preserve its "collectible" documents and objects by working in partnership with the Chaska History Center and the Carver County Historical Society....rather than creating its own museum.

As an effective "big picture" guide for decision-making, the Mission Statement of the Jonathan Association Board reads as follows:

***"Our mission is to provide and preserve a unique, quality community environment for our members..."***

- ***By maintaining and improving Jonathan’s facilities and grounds in an aesthetically pleasing condition for all residents’ use and enjoyment, making effective use of available financial resources.***
- ***By assuring that existing and community architecture is consistent and is maintained to Jonathan standards and safety in a consistent and reasonable manner as set forth in our Jonathan Association covenants.***
- ***By communicating, educating and promoting community pride and providing services, benefits and recreation for all members.***
- ***By guaranteeing the community’s future through sound resource management and fiscal responsibility.***
- ***By honoring human worth and dignity, celebrating the diversity of our community and promoting and practicing our community core values.***

***We shall endeavor to carry out this, the Mission of the Jonathan Association, to the best of our ability.”***

### **Eitel House Financial Considerations:**

1. Carver County lists the current property value of the Eitel House for calendar year 2011 at:

Land:	\$68,400.00
Building:	\$97,600.00
Total:	\$166,000.00

2. Carver County lists the current annual property tax assessment for the Eitel House for calendar year 2011 at:

2011: \$2,400.00

3. On November 16, 2009 a reserve study assessment on behalf of the Jonathan Association was completed by Reserve Advisors of Milwaukee, Wisconsin. The goal of this reserve study (dubbed “The 2039 Plan”) was to project the timing and the costs of 116 major common property elements within Jonathan that are likely to require capital repair or replacement during the next 30 years (2009-2039).

“The 2039 Plan” by Reserve Advisors projects the following timing and costs for the repair and restoration of the Eitel House:

Years: 2013 - 2024  
Costs: \$135,500.00

Ever mindful of the guiding purposes of the Association, as described in the Articles of Incorporation and the Mission Statement, the Board of Directors of the Jonathan Association does not regard the Eitel House as an integral part of the central core purposes of this nonprofit corporation:

- “...to promote the health, safety and welfare of the residents within Jonathan”
- “...making effective use of available financial resources...”
- “...assuring that existing and community architecture is consistent and is maintained to Jonathan standards and safety...”
- “...guaranteeing the (Jonathan) community’s future through sound resource management and fiscal responsibility...”

### **JONATHAN BOARD OPINIONS:**

1. The Jonathan Board of Directors does not believe that the Eitel House, in its current condition, is a structure or physical asset that promotes the **“health, safety, and welfare of the residents within Jonathan”**. The hazardous levels of radon gas, increasing amounts of mold, and the dry rot condition found in the supporting timbers make the Eitel House a dangerous facility for individuals and/or groups participating in meetings, tours, gatherings or any other type of indoor activities within this structure.
2. The Jonathan Board of Directors does not believe that the Eitel House, in its current condition, is a structure or physical asset that assures that **“existing and community architecture is consistent and is maintained to Jonathan standards and safety”**. With its focus necessarily concentrated on the Association’s 19 tot lot playgrounds, 34 neighborhood entrance monuments, 10- 15 miles of paved walking trails, 47 mail stations and covered shelters, the Karen House headquarters, a new 1,800 square foot storage barn, miles of boulevards, thousands of trees, and the Lake Grace Pavilion; the Board of Directors and its professional property management company simply do not have the resources of time, staff and money to maintain, much less restore, a 135-year old farmhouse it doesn’t need.
3. The Jonathan Board does not believe that the Eitel House is a physical asset that can be affordably repaired, renovated, or restored given the limited financial resources available to the Association...the expenditure of the necessary funds to complete said repairs, renovation, or restoration would constitute an unjustifiable fiscal burden upon the 8,000 Chaska taxpayers who live in Jonathan...and is not an **“effective use of available financial resources”** by the Association. “The Jonathan Association is not in a financial position to maintain the Eitel House...and can’t afford to fix it.” (Debbie Boe, Jonathan Board member; June 12, 2007 monthly Board meeting).



4. The Jonathan Board of Directors does not believe that the Eitel House, in its current condition, is a structure or physical asset whose significant financial repair, renovation, or restoration costs would constitute a defensible effort at ***“guaranteeing the Association’s sustainable future through sound resource management and fiscal responsibility”*** because “the Association is not in a financial position to maintain the Eitel House...and can’t afford to fix it.” (Boe, 2007).

The City of Chaska is a Certified Local Government (CLG), and as such, has the ability to solicit grant funding from the State of Minnesota. Furthermore, City staff is able to write grant requests for the City of Chaska.

Unlike the City however, the Jonathan Association does not have “Certified Local Government” status, and the Association does not have the professional staff necessary to research and write grant requests to public and private funding sources on behalf of the Association...for the intent of repairing and maintaining property owned by the shareholders of a 501c4 corporation.

As quoted earlier in this document, *“...the preservation of the Eitel House as a Historic Resource has proven to be a challenging process, as the current owner of the Eitel House, the Jonathan Association, has in the recent past expressed interest in a demolition permit for the structure.”* (Duchinsky, 2006)

While the members of the Jonathan Association Board at that time (2006) cited the same concerns then (“maintenance and financial issues”) as the current Jonathan Association Board cites now (2011), there is no remote correlation between the attitude of the Jonathan Board then and the Jonathan Board now!

While the Jonathan Board in 2006 **pursued physical demolition** of the Eitel House with the intent to *“eliminate the Eitel House as a historic and cultural resource in the City of Chaska”* (Duchinsky, 2006); the current Jonathan Board **suggests transfer of ownership** of the Eitel House as a cooperative solution between two organizational partners that will enable the City to carry out its stated purpose to *“...actively pursue the best future for the building and the community.”* (Duchinsky, 2006)

The Jonathan Association Board of Directors asks that the City of Chaska renew the spirit of cooperation and a mutually beneficial problem solving approach that builds on the earlier conversations between the City and the Association. As a demonstration of this prior spirit of cooperation and a mutually beneficial problem solving approach with regard to the Eitel House; the current Jonathan Board members cite a specific example of the type of communication that has transpired in the recent past.

According to a January 24, 2007 letter from Dave Pokorney (Chaska City Administrator) to Tom Davis (Jonathan Association President), the City of Chaska suggested two options:

1. *“Jonathan could deed the Eitel House to the City, with Jonathan assuming ownership of the tot lot within the Clover Ridge neighborhood.”*
2. *“Jonathan could transfer title of the Eitel House to the City, with Jonathan maintaining ownership of the adjacent tot lot. After obtaining title to the Eitel House property, the Chaska Economic Development Authority would complete a renovation of the Eitel House. Following completion of the renovation, the property would be sold for a single-family dwelling. The advantage of this option is that the historic building would be restored and Jonathan would avoid the expense incurred in demolishing the building. Under this option the City would not expect Jonathan to assume any new tot lot ownership or maintenance responsibilities.”*

However, neither of these well-intended options was possible due to Jonathan’s governing documents which require unrealistic membership voting levels:

“The Association is restricted by its governing documents in that as a corporate entity it can dedicate, sell, grant, bargain, convey, or transfer all or any part of the Common areas or any right title, estate, interest therein to any public or municipal agency, authority, corporation, or utility for such purposes and subject to such conditions **as may be agreed to by the members**. No such dedication, conveyance, or transfer shall be effective, however, **unless assented to by two-thirds (2/3) of the members** of the Association...”

(Articles of Incorporation, Jonathan Association)

Rather than try to attain unrealistic voter turnout levels among homeowners in order to carry out an effort to dedicate, sell, grant, bargain, convey, or transfer as suggested in the Pokorney letter above; Jonathan suggests a different approach.

### **PROPOSAL: A Mutually-Beneficial Solution**

The Jonathan Board of Directors requests that the City’s Heritage Preservation Commission (MN Statute 138.71-138.75; MN Statute 471.193) and City Staff – by virtue of the legal powers provided in “Powers and Duties” of the Heritage Preservation Commission, as outlined in Section 30(13) of Chapter 10.5 of the Code of Ordinances – make recommendation to the City Council that ***the Eitel House, an already-designated historic Chaska property, be acquired by the City from Jonathan by the use of eminent domain.***

Benefits:

1. The acquisition of the Eitel House by the City of Chaska via it’s eminent domain authority would guarantee the *“active pursuit of the best future for the building and the community”* (Duchinsky, 2006) **by the City of Chaska HPC and City Staff**; ...and would

also significantly help to *“guarantee the Association’s sustainable future through sound resource management and fiscal responsibility”* **by the Jonathan Association Board of Directors.**

2. The **City of Chaska can’t afford** to allow one of its already-designated historic Chaska properties to continue to disintegrate; and the **Jonathan Association can’t afford** to repair, renovate or restore a 135-year old structure it doesn’t need. “The Association is not in a financial position to maintain the Eitel House...and cannot afford to fix it.” **(Debbie Boe, Jonathan Board Member, 2007).**

## **CONCLUSION:**

The Jonathan Board of Directors believes that the City of Chaska has the legal authority to take ownership of the Eitel House via the eminent domain process as provided to the City in “Powers and Duties” of the Chaska Heritage Preservation Commission **(Section 30.13 of Chapter 10.5 of the Code of Ordinances).**

Further, the Jonathan Board of Directors believes that ownership of the Eitel House by the City establishes the best way forward as both the City of Chaska and the Jonathan Association collaborate in seeking to establish the “best future” for the Eitel House and the community **(Melissa Duchinsky, 2006).**

Additionally, the Jonathan Board of Directors believes that ownership of the Eitel House by the City, rather than Jonathan, enables the Association’s leadership to adhere to its mandate to “make effective use of available financial resources” and “guarantee Jonathan’s future through sound resource management and fiscal responsibility” **(Board of Directors Mission Statement, 2001).**

Finally, the Jonathan Board of Directors believes the cost of restoring a 135-year old house it did not build and does not need is an expense the Association cannot afford...“the Association is not in a financial position to maintain the Eitel House...and can’t afford to fix it.” **(Debbie Boe, Jonathan Board Meeting, June 2007).**

The Jonathan Board of Directors requests that the City of Chaska Heritage Preservation Commission and the Chaska City Staff please give careful and immediate consideration to the Jonathan Association Board of Directors’ request that the City of Chaska take ownership of the Eitel House via the eminent domain process.

Respectfully submitted by,

The Board of Directors of the Jonathan Association  
*“Jonathan in Chaska, a special part of the best small town in Minnesota”*  
 December 16, 2011

# EMINENT DOMAIN

## **Definition:**

Eminent domain is an action of the government to seize a citizen's property, expropriate property, or seize a citizen's rights in property **with due monetary compensation**, but without the owner's consent. The property is taken either for government use or by **delegation to third parties who will devote it to public or civic use**; however, it may also be taken for reasons of public safety.

## **Compensation:**

American courts have held that the preferred measure of "just compensation" is **"fair market value"**, i.e. the price that a willing but unpressured buyer would pay a willing but unpressured seller for the subject property under ordinary circumstances, with both parties fully informed of the property's good and bad features.

Also, **this approach takes into account the property's highest and best use (i.e. its most profitable use) which is not necessarily its current use or the use mandated by current zoning** if there is a reasonable probability of zone change.

When payment of compensation is delayed, the owner of the taken property is entitled to receive interest on the award of compensation that accrues from the time of taking to the time of payment. The interest must be reasonable, so that when prevailing market rates of interest exceed the statutory rate (as in inflationary times); the former has to be used.

In cases of partial takings of land, the owners are entitled to compensation for the taken part, plus severance damages (the diminution of value of what remains of their property after the taking). If the partial taking creates special benefits (i.e. it causes an increase in the value of the remaining land) their value is offset against compensation, with the majority of cases allowing such offsets only against severance damages, so the owner always gets paid for the taken land. When a partial taking impairs access to the remainder land, that gives rise to a contentious issue because courts take the position that diminution in value caused by impaired access is compensable only when the impairment is substantial.

In addition to fee simple titles, all interests in property (easements, leaseholds, etc.) are compensable. The measure of value of a lease-hold is the amount by which prevailing comparable rentals in the area exceed the actual contracted-for rent. This amount is known as a "bonus value" of a lease. It is calculated over the remaining life of the lease and then reduced

to its present value. The measure of compensation for an easement is the difference in the value of the subject land as unencumbered and as unencumbered by the easement.

In determining value, zoning and other land-use regulations are considered, but if it appears that there is a reasonable profitability of zone change to a higher use, that may be shown and in that case the owner is entitled to an additional increment of value (the extra amount over and above the value under current zoning, that the market would pay for the probability of rezoning).

The appraisal profession recognizes several different methods of calculating value, but courts are largely stuck in the conventional approach of using three valuation approaches:

1. Market data analysis or comparable sales value
2. The capitalization of rentals
3. The reproduction-less-depreciation approach under which the cost of reproducing the improvement on the property is estimated and then depreciated to allow for wear and tear and functional or economic obsolescence. The value of the land is then added to the value of the reproduced, depreciated improvements.

Some states allow compensation as the cost of reproduction without depreciation, but only in cases where the subject property, though privately owned, performs an important public or charitable function.

Studies in several parts of the country (California, Georgia, **MINNESOTA**, Utah, and New York) have demonstrated that condemning agencies frequently undercompensate property owners, and that those owners who reject the pre-litigation offers and go to court tend to recover substantially higher awards, whether by judges or juries.

### **Bush Executive Order**

On June 23, 2006, the first anniversary of the *KELO* decision, President George W. Bush issued Executive Order 13406 which stated in Section I that the federal government must limit its use of taking private property for "public use" with "just compensation", which is also stated in the Constitution, for the "purpose of benefiting the general public." However, eminent domain is more often exercised by local and state governments, albeit often with funds obtained from the federal government.

**471.193 MUNICIPAL HERITAGE PRESERVATION.****Subdivision 1: Policy.**

The legislature finds that the historical, architectural, archaeological, engineering, and cultural heritage of this state is among its most important assets. Therefore, **the purpose of this section is to authorize local governing bodies to engage in a comprehensive program of historic preservation**, and to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of this state.

**Subdivision 2: Heritage preservation commissions.**

**The governing body of a statutory or home rule charter city, county, or town may establish a heritage preservation commission** to preserve and promote its historic resources according to this section.

**Subdivision 3: Powers.**

The powers and duties of any commission established pursuant to this section may **include any power possessed by the political subdivision creating the commission**, but shall be those **delegated or assigned by the ordinance establishing the commission**. These powers may include:

- (1) The survey and designation of districts, sites, buildings, structures, and objects that are of historical, architectural, archaeological, engineering, or cultural significance;
- (2) The enactment of rules governing construction, alteration, demolition, and use, including the review of building permits, and the adoption of other measures appropriate for the preservation, protection, and perpetuation of designated properties and areas;
- (3) The acquisition by purchase, gift, or bequest, of a fee or lesser interest, including preservation restrictions, in designated properties and adjacent or associated lands which are important for the preservation and use of the designated properties;
- (4) **The requests to the political subdivision to use its power of eminent domain to maintain or preserve designated properties and adjacent or associated lands;**
- (5) The sale or lease of air rights;
- (6) The granting of use variations to a zoning ordinance;

(7) Participation in the conduct of land use, urban renewal, and other planning processes undertaken by the political subdivision creating the commission; and

(8) The removal of blighting influences, including signs, unsightly structures, and debris, incompatible with the physical well-being of designated properties or areas. No power shall be exercised by a commission which is contrary to state law or denied a political subdivision by its charter or by law. Powers of a commission shall be exercised only in the manner prescribed by ordinance and no action of a commission shall contravene any provision of a municipal zoning or planning ordinance unless expressly authorized by ordinance.

#### Subdivision 4: **Exclusion.**

If a commission is established by the city of St. Paul, it shall for the purpose of this section exclude any jurisdiction over the Capitol Area as defined in section 15B.03, subdivision 1.

#### Subdivision 5: **Commission members.**

Commission members must be persons with demonstrated interest and expertise in historic preservation and must reside within the political subdivision regulated by the ordinance establishing the commission. Every commission shall include, if available, a member of a county historical society of a county in which the municipality is located. (Copyright © 2011 by the Office of the Revisor of Statutes; State of Minnesota. All Rights Reserved).

#### Subdivision 6: **Communication with state historic preservation officer.**

Proposed site designations and design guidelines must be sent to the state historic preservation officer at the Minnesota Historical Society, who shall review and comment on the proposal within 60 days. By October 31 of each year, each commission shall submit an annual report to the state historic preservation officer. The report must summarize the commission's activities, including designations, reviews, and other activities during the previous 12 months.

**History:** 1971 c 128 s 1; 1973 c 123 art 5 s 7; 1985 c 77 s 1; 1989 c 9 s 2; 2003 c 17 s 2

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