

Carnegie Building/City Assets Ad Hoc Committee



Monday, March 23, 2015

1:30 p.m.

Governmental Center - 400 Boardman Avenue

Second Floor Committee Room

Traverse City, MI 49684

Posted and Published: March 20, 2015

If you are planning to attend the meeting and you have a disability requiring any special assistance at the meeting, please notify the City Clerk, immediately.

The City of Traverse City does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. Penny Hill, Assistant City Manager, 400 Boardman Avenue, Traverse City, Michigan, 49684, 922-4440, TDD 922-4412, has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the Department of Justice Regulations. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided thereunder, are available from the ADA Coordinator.

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Agenda

1. Roll Call
2. Consider Approval of Minutes from February 9, 2015 meeting
3. Discussion regarding Report from Tim Chester & Associates on the Con Foster Collection
4. Discussion regarding Building Use Policy
 - a. Review draft policy
5. Public Comment
6. Adjournment

City Commission Ad Hoc Committee
Carnegie Building/City Asset Discussion
Minutes

Meeting of February 9, 2015

A meeting of the City Commission Ad Hoc Committee: Carnegie Building/City Asset Discussion was called to order on Monday, February 9, 2015 at 11:00 a.m. in the 2nd Floor Committee Room, Governmental Center, Traverse City, Michigan.

The following Commissioners were present, constituting a quorum: Commissioner Easterday, Commissioner Richardson, and Commissioner Howe.

The following Commissioners were absent: None.

Staff in attendance: Penny Hill

1. The first item being: "Consideration of approving the minutes from the January 13, 2015, meeting."

It was moved by Howe, seconded by Richardson, to approve the minutes from the meeting of January 13, 2015."

CARRIED unanimously.

2. Next item being, "Discussion regarding proposed lease agreements and terms: a. Crooked Tree Arts Council; b. History Center of Traverse City; c. Grand Traverse Rock and Mineral Club."

General discussion took place regarding lease agreements with a recommendation to be made to the full City Commission for each entity.

3. Next item, "Discussion regarding developing a process for property disposal that may be applied to other City-owned properties: a. review inventory of City-owned properties; b. review draft proposal."

General discussion took place regarding a process for property disposal.

4. Next item, "Public Comment."

The following addressed the Committee.

Michael Jackson
John Noonan
Lauren Vaughn
Paul LaPorte

There being no objection, Commissioner Easterday declared the meeting adjourned at 12:30 p.m.

Commissioner Gary Howe
Designated Secretary

Next meetings to be determined.

All meetings are held in the 2nd Floor Committee Room of the Governmental Center unless otherwise stated.

If interested in being on the outreach list for this ad hoc, please email:
kstroven@traverscitymi.gov.

Addressing the Con Foster Collections

A confidential summary and recommendation report prepared for the City Manager's Office, Traverse City, Michigan

March 4, 2015

Introduction

Timothy Chester of Timothy J. Chester & Associates of Grand Rapids, MI was referred to the City of Traverse City, MI through the office of the Michigan Museums Association when the City sought guidance in addressing the status of the Con Foster Collections it owns. The City is no longer in the business of operating a history museum. Cognizant that the largely artifact collection it owns has been little utilized over a period of many years, the City would now like to assess the status of these collections and deaccession them so that they can be better used than they are now.

These collections were the basis of the city-owned Con Foster Museum, now closed and re-used for a new purpose. They are housed in a municipally owned facility that, until recently, has been jointly operated as a history museum and archives through a contract with the History Center of Traverse City. Although the collections were described as having little or no meaning to Traverse City, it is clear on a brief inspection that many artifacts are important and relate directly to the history of the Grand Traverse region. It is only through inventory, cataloging and implementing intellectual control over the collections that the value of the holdings to a museum operation can be ascertained. The history collections may have been gathered by Con Foster from across the nation, but the origin or place of manufacture of historical collections has little bearing on the stories that are associated with the objects.

The so-called Con Foster collections have their origin in the vigorous collecting activities of the Museum's founder in the 1930s. These historical artifacts and archives have been augmented over the last eighty years by donations from citizens and summer residents. Like many modest museum collections, they are eclectic in nature and reflect the collecting interests of the founder and the subsequent citizen donors. They have had intermittent care from museum and archival professionals, but this has been uneven in nature. There does not appear to have been a continuity of professionally trained staff over long periods of time that might have resulted in a carefully curated museum collection. Moreover, long periods of seasonal operation when the museum was closed during many months of each year have resulted in a collection that is partially inventoried and very minimally catalogued. Likewise, the storage and care of the collections is uneven and regular safe access to them is not possible.

The purpose of Mr. Chester's visit was to make recommendations for an action plan in keeping with the goal of responsibly deaccessioning these collections.

Collections Status

Little is known about the collections that is easily ascertained in their present state, although it is clear that several attempts have been made in the past to inventory the collection and to assign numbering systems that link artifacts to supporting documentation and catalog cards. No one currently employed by the City or for the Traverse City History Center has inventory or intellectual control over the collection.

One of several museum professionals that have worked with the Con Foster collection since the 1980s believe that a complete inventory was made in the mid-1980s lead by Terry Schafer, now deceased, from the MSU Museum. This documentation is said to exist in file cabinets.

Without having access to organized files, it is thought that a modest number of artifacts exist in storage numbering around 10,000. Of these, approximately 7,000 are thought to be of Native American origin, both of local and regional significance and of national significance. A good half of these are lithic or stone tools including arrowheads, projectile points, agricultural equipment, banner stones and fishing net weights.

The remaining non-Native American artifacts, approximately 3,000 in number, are thought to be of historic significance, that is, pertaining to 19th and 20th century history, and encompassing war relics, tools, equipment, commercial artifacts, clothing, domestic artifacts, etc.

The ownership status of the artifacts is unclear at present. While many are thought to have been acquired by Con Foster, acting as an agent of Traverse City, some are long term loans, some may be "deposits" with unknown ownership status, and some are loans from known individuals.

A significant body of material appears to have been lent by the Samels family of Whitewater Township, Grand Traverse County, Michigan and is specifically from the Skegemog archaeological site on the Samels family farm. That site was placed on the National Register of Historic Places in 1972. The following information is quoted from <http://samelsfarm.org/history/> as accessed on 02/19/2015.

From the beginning, Frank Samels found Indian artifacts, arrow points and axes, as he worked the soil. His parents had learned from the Indians that the landing site had been a traditional native camping site. There were many mounds and pits in evidence near the lake shore. As the collection of Indian artifacts grew, word of the pits and Indian mounds spread. In the late 1920's a young archaeologist from the University of Michigan obtained permission to visit the site and collect notes. In 1930, Dr. Wilbert B. Hinsdale, University of Michigan department head, visited the site again to obtain additional information. In 1965 after Frank's death, his sons gave permission to a Michigan State University research team headed by Charles Cleland, Museum Curator, to excavate in the area as long as the pits were undisturbed. Evidence of many Indian cultures was discovered, some dating back to 9000 B. C. On March 24, 1972 the Skegemog Point Site was placed on the National Register of Historic Places. **The artifacts are now housed at Michigan State University and also at the Traverse City History Center.**

Retired MSU Museum Curator Dr. Charles Cleland was the chief archaeologist working at the Samels farm. He is considered one of the foremost academic authorities on the Anishinabek in Michigan. His contact information is ccleland@charlevoixwireless.com, (231) 547-6220. Two other local resources who may be helpful to the City are: Dea Talantis, deannet@charter.net, (231) 933-9628 , a volunteer archaeologist familiar with the Con Foster archeology collection and the Samels Farm collection; and Carol Hale a former mayor and city commissioner of Traverse City, jnchale@charter.net (231) 947-3905. Mayor Hale is thought to have served as a volunteer during the inventory and rectification of the Con Foster collection and the last renovation of the Clinch Park museum in the 1980s.

It appears from conversations with past History Center and Con Foster museum employees that the City is probably not in compliance with the requirements of the federal Native American Graves Protection and Repatriation Act of 1990. This act, best known as NAGPRA, was passed into law by Congress in 1990 and is managed by the National Park Service and the Department of the Interior. It requires all museums to conduct inventories of their Native American collections and to communicate the findings to all possibly interested federally recognized Native American tribes. NAGPRA provides a process for museums to return certain Native American cultural items -- human remains, funerary objects, sacred objects, or objects of cultural patrimony -- to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. NAGPRA includes provisions for unclaimed and culturally

unidentifiable Native American cultural items, intentional and inadvertent discovery of Native American cultural items on Federal and tribal lands, and penalties for noncompliance and illegal trafficking. Detailed introductory information about this law can be found at www.nps.gov/nagpra/FAQ/INDEX.HTM. Non-compliance represents a liability for the City that should be addressed as soon as practical.

It is widely believed that, at the time NAGPRA was adopted, the board of the History Center turned over human remains to representatives of various Native American Tribal governments. If true, this action was outside the requirements of the law and presents both a liability and a complication for the City.

Recommended Action Steps

It is not recommended that the City pursue deaccessioning of its historical collections at this time. Several preconditions must logically and prudently be met before such activity can be planned and Responsibly executed.

- The collections must be properly housed in an electronically secured place with adequate room for the safe handling and identification and photography of the materials.
- Searches and inquiries should be made to determine the status of the mid-1980s inventory completed by Terry Schafer. If found, the data should be modernized into a database if this has not already occurred. Digital photography should be undertaken and the ownership status of each item or group of items should be documented.
- The Native American collections should be separated from the generic historical holdings so that they can be safely inspected and catalogued intellectually to understand the use of each item, its material construction, possible date and that culture group that created it, along with origin and ownership status.
- The status of any human remains that were part of or are part of the collection should be determined.
- A qualified consultant who can assist the city in complying with the requirements of NAGPRA should be placed under contract with the City to conduct the above work. Grant funds to defray costs associated with NAGPRA compliance are available through the National Park Service. The only firm that exists solely to conduct this kind of work is Bernstein and Associates of Denver, CO. Jan Bernstein is a Michigan native and can be reached at:

Bernstein & Associates, LLC

1041 Lafayette Street

Denver, CO 80218

303-894-0648

303-861-2642 fax

<http://www.nagpra.biz/home.html>

jan@nagpra.info

on FaceBook by searching for jan@nagpra.info

[on LinkedIn](#)

- The City should work with its attorney to review its collections management and deaccession policies to ensure that they are the actual procedures that will be followed in the event that deaccessioning is pursued.

- The same careful physical inventory and intellectual cataloging of the remaining historical collections should be undertaken, along with ascertaining the ownership of each item in the collection.
- A list of due diligence questions that would be useful for the city to ask and answer is attached to this report as Addendum A.

When all of this work is complete, the City should be in a legal position where it knows what it owns and is prepared to return loans to their rightful owners.

Although it is currently clear that the City is not in a position to continue operating a museum, it's important to point out that Traverse City is one of the few cities in its region that currently lacks a functioning history museum. There may be several ways in which the City may continue its ownership of the collections, but leverage their value to the benefit of the City and the region. Likewise it might be possible to partner with another existing museum for the creation of exciting outcomes that would be beneficial to many.

The City is urged to vigorously explore these options before deaccessioning the collections through sale or dispersal, which should be approached only as a last resort.

Timothy J. Chester

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Addendum A

Some questions for assessing possible disposal of municipally owned cultural and scientific artifacts

Why are we disposing of these items? Is there a logical and transparent rationale?

What are the legal conditions and restrictions governing disposal of civic property? Of culturally significant property specifically?

Does the city have documented title to the collections? Do any have the status of long term loans or "deposits"?

- The Michigan Abandoned Property law governing long term loans may be of use here. It addresses situations where the donor is deceased or the heirs are too numerous and/or dispersed to easily document.

What is the current and possible future relevance of this material?

Have the collections been inventoried and their source (donor or donors) been documented?

Are any of the collections subject to state or federal laws that would complicate deaccessioning, eg. NAGPRA?

Have the collections been assessed for safety? (eg. toxicity, flammability, instability, explosive? Good examples are poisons, pharmaceuticals, toxic metals such as mercury, nitrate film, explosives, etc.)

Is it worth the time and resources it will take to document these assets and subsequently receive city commission and public approval to deaccession them?

Is the planned disposal consistent with the public responsibility of keeping the collection?

If sale is contemplated, will the proceeds be used to maintain cultural assets in keeping with the ethics standards adopted by the American Alliance of Museums governing deaccessioning of museum assets?

Does the city have a collections management policy with clear guidelines for deaccessioning of its collections?

What is the likely public and/or media response if the city is seen as "selling off its collection?"

Did the city accept gifts of money or collections with written restrictions imposed by the donor or donors that obligate it to operate the museum or maintain the collections?

- Such restrictions may delay action. The city could go to court and ask for a cy près ruling, arguing in effect that what it plans to do is "close enough" to the donor's original intent. If the judge is persuaded, the courts could set aside or modify donor restrictions accordingly. If the city's calculations show that operating a museum is an ongoing financial burden, it could offer to return the gifts of collections to the donor(s) and/or his or her heirs in return for being let off the hook.



**CITY OF TRAVERSE CITY
CARNEGIE BUILDING ROOM USE POLICY**

The following policy applies to all room users of the Carnegie Building and its related facilities located at 322 Sixth Street, Traverse City, MI 49684.

The City of Traverse City does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. The Assistant City Manager has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the Department of Justice regulations. Information concerning the provisions of the Americans with Disabilities Act and the rights provided thereunder are available from the ADA Coordinator.

I. PURPOSE

The purpose and intent of this Policy are as follows:

- (a) The purpose of the Carnegie Building Policy is to manage and regulate room uses at the Carnegie Building.
- (b) It is intended to regulate room uses as to time, place, and manner and not as to content.
- (c) It is acknowledged that the City is charged with the responsibility to manage its assets, including City owned buildings, responsibly and equitably so that they may be enjoyed by all without overuse of City owned buildings, which could result in damage, preventing future use.
- (d) The primary purpose of meeting rooms in the Carnegie Building is for City-related activities.

II. DEFINITIONS

The following words and phrases shall have the corresponding definitions:

- (a) “Applicant” means the person signing and submitting the Application on behalf of the sponsoring organization.
- (b) “Carnegie Building” means the City-owned building at 322 Sixth Street, Traverse City, Michigan.

- (c) “City Clerk” means the person acting as City Clerk of the City of Traverse City or his or her designee.
- (d) “City Manager” means the person acting as City Manager of the City of Traverse City or his or her designee.
- (e) “Room use” means the use of a room within the Carnegie Building.

III. PERMIT REQUIRED

Any person or group desiring permission for room use of the Carnegie Building must submit a Permit Application for Facility Use to the City Clerk. A room use that is announced as going to be held at the Carnegie Building prior to the issuance of a permit is at the sole risk of the applicant.

IV. PERMIT APPLICATION

Permit applications must be completed by a representative of the sponsoring organization who will be the Permit Holder and submitted to the City Clerk’s Office. Such applications and the submittal of the applications shall comply with the following:

- (a) Time. Applications shall be submitted in advance of the requested room use to allow time for processing.
- (b) Signature. The application shall be signed under oath or affirmation by the adult person who will attend and be in charge of the room use and activity or who can bind the organization requesting the permit.
- (c) Permit Holder. The application shall specify the name, address, and telephone number, cell phone number, e-mail address of the Permit Holder who shall be the sponsoring organization or individual and other information deemed relevant or necessary.
- (d) Fee. All applications shall be accompanied by a security deposit at the discretion of the City Clerk. The City Commission shall establish use fees by resolution; all fees are due to the City of Traverse City in advance of the room use.
- (e) Insurance. Unless waived by the City Clerk or City Commission, all Permit Holders shall provide insurance as follows:
 - 1. Comprehensive general liability insurance - \$1,000,000 per occurrence and such additional insurance coverage forms as determined by the City Clerk for special activities. The policy shall name the City of Traverse City as an

additional insured in the policy coverage and shall include an endorsement to the policy naming the City of Traverse City as additional insured. Any amendment to or cancellation of such insurance shall require no less than thirty (30) days written notice provided to the City Clerk of such cancellation and/or amendment.

2. The duration of the insurance shall encompass the total length of time any equipment is placed on City property or the duration of the room use, whichever is longer.
3. Suitable proof of insurance shall be submitted to the City Clerk prior to the room use taking place. In addition, the Applicant and Permit Holder shall execute a hold harmless and indemnification provision agreeing to hold the City and its officials, employees and volunteers harmless and to indemnify the City in the event of a claim resulting solely or partially from the room use or activity applied for.
4. Those selling and/or serving alcohol shall furnish to the City Clerk's Office proof of insurance in the amount and form determined by the City Clerk.

(f) Description of room use. A detailed narrative explaining the nature of the room use, including all activities planned, shall accompany the application.

V. GENERAL CONDITIONS

The following general conditions apply to all room uses. Additional special conditions may be imposed in the Permit. All terms and representations specified in the permit application are automatically special conditions to the Permit unless changed or superseded by the general conditions or an additional condition.

- (a) Users are responsible for seeing that the building, its equipment, furnishings and related facilities are left as they were found. Users shall ensure set up and removal occur promptly and within the time allowed in the permit. Users agree to indemnify the City for all damages, costs, losses and expenses resulting from, arising out of, or in any way connected with the use of the Carnegie Building. The City bears no responsibility for any equipment or other property left at the facility at any time. Property left for 30 days will be deemed abandoned and disposed of in a manner deemed appropriate by the City. This agreement to indemnify applies to the building and to all other City property in proximity, such as sidewalks, parking lots, and outdoor equipment. Any damage to the Carnegie Building, its equipment, furnishings, and related facilities shall be the responsibility of the user. User agrees to reimburse the City for related expense incurred for maintenance and repair after the function.
- (b) Requests from room users will be addressed and processed on a first-come, first-serve basis. All City committees, commissions and boards, departments and other groups under control of the City shall be given priority in scheduling. The City reserves the right

to regulate the time and location of room uses in order to avoid schedule conflicts and to ensure proper protection of the facility. The City may deny a request if deemed in the best interest of the public's health, safety and welfare, including for reasons such as prior experience with an applicant.

- (c) No equipment or furnishing of the Carnegie Building shall be used unless pre-approved by the City of Traverse City. Equipment and furnishings utilized by the user must be cleaned immediately following the room use and returned to a condition approximately the same as when beginning use.
- (d) No smoking is allowed in the building or within fifteen (15) feet of any entrance of the building.
- (e) Permission must be obtained to fasten anything to the wall and tables. No staples, large nails or screws, etc. are allowed.
- (f) The applicant shall provide sufficient supervision so that the room use will remain orderly and to prevent damage to the facility.
- (g) No flames or pyrotechnics or other flammable or combustible activities are allowed.

VI. REVOCATION OF USE

A permit may be revoked in writing at any time by the City Manager if it is determined to be in the best interest of the public health, safety and welfare, or if there has been a misrepresentation by the applicant, or there has been a failure to follow this Policy, or other City ordinance, State law, or condition attached to a permit.

The applicant or permit holder whose permit is revoked by the City Manager may appeal to the City Commission in writing within three (3) days. All activities under the permit shall be suspended pending such appeal. Anyone acting pursuant to a permit that has been revoked or suspended shall be deemed to be trespassing, may be removed by law enforcement, and may, at the discretion of the City Manager, be charged with criminal trespass. In the event that a Permit has been revoked pursuant to provisions of this policy, the Applicant or Permit Holder shall not be granted a Permit under this policy for two years following revocation.

VII. APPEAL.

Any applicant who is denied a Permit by the City Clerk may appeal such decision within three (3) days to the City Manager. No room use which is denied by the City Clerk shall be allowed pending such appeal. The City Manager may overturn or sustain the decision of the City Clerk in the denial of a Permit. The decision of the City Manager may be appealed by the applicant to the City Commission within three (3) days; the City Commission may overturn or sustain the decision of the City Manager.

I certify that the above policy was adopted by the City Commission of the City of Traverse City at its regular meeting of _____, held in the Commission Chambers, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan.

Benjamin C. Marentette, CMC, City Clerk

DRAFT