

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2010-783
Jack and Carolyn Wallace, Janice Milhem, Caroline Constant, Richard Plewa and George Ferrell, Petitioner	Agency No.	10-013-HP
v	Agency:	History, Arts & Libraries
Ann Arbor Historic District Commission, Respondent	Case Type:	Appeal

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Issued and entered  
this 16<sup>th</sup> day of November, 2010  
by Tiffany N. Cartwright  
Administrative Law Judge

**PROPOSAL FOR DECISION**

**PROCEDURAL FINDINGS**

This matter involves an appeal of a decision of the Ann Arbor Historic District Commission (Commission) by the Pumping Station No. 2 Condominium Association. The condominium building is located at 241-251 Mulholland Avenue in the Old West Side Historic District, Ann Arbor, Michigan. The Commission's decision rejected Petitioners' application for a certificate of appropriateness to permanently remove the muntins on the windows on the front and sides of the building. The Commission made its decision on June 10, 2010. Petitioners filed their appeal on August 3, 2010.

The appeal herein was filed under the provisions of Section 5(2) of the Local Historic Districts Act (LHDA).<sup>1</sup> Section 5(2) provides that an applicant aggrieved by a decision of an Historic District Commission may appeal to the State Historic Preservation

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<sup>1</sup> 1970 PA 169, Section 5, MCL 399.205

Review Board (the Review Board), an agency of the Michigan State Housing Development Authority.<sup>2</sup>

Upon receiving the appeal, the Review Board directed the State Office of Administrative Hearings and Rules (SOAHR) to conduct an administrative hearing for the purpose of accepting evidence, hearing legal arguments, and preparing a "proposal for decision." The hearing was convened by SOAHR on September 21, 2010 at the Cadillac Place Building, 3026 W. Grand Boulevard, Suite 2-700, Detroit, Michigan. The hearing was held in accordance with procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969.<sup>3</sup>

On September 21, 2010, the following parties appeared: Petitioners Richard Plewa and Carolyn Wallace; counsel for the Petitioners, Francyne Stacey; counsel for the Commission, Christopher Frost; witness for the Commission, Jill Thacher. Tiffany N. Cartwright, an Administrative Law Judge assigned to the case by SOAHR, served as Presiding Officer.

### ISSUES

Whether the Commission's decision should be reversed because it is not supported by competent, material, and substantial evidence on the whole record or represents an unwarranted exercise of discretion?

### EXHIBITS

The parties submitted the following exhibits for consideration at the hearing on September 21, 2010.

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<sup>2</sup> See Executive Order 2009-36, abolishing the Department of History, Arts and Libraries, effective October 1, 2009, and transferring the State Historic Preservation Review Board to the Michigan State Housing Development Authority.

<sup>3</sup> 1969 PA 306, Section 71 et seq., MCL 24.271 et seq.

**Joint Exhibits:**

<b><u>Number</u></b>	<b><u>Description</u></b>
Exhibit 1	Petitioners' Claim of Appeal dated August 3, 2010
Exhibit 2	June 10, 2010 Historic District Commission Meeting Minutes
Exhibit 3	City Planning Commission Memorandum dated April 17, 1982
Exhibit 4	Historic District Commission Determination dated June 10, 2010
Exhibit 5	Historic District Commission Staff Report dated May 27, 1999
Exhibit 6	Pictures from winter 2009
Exhibit 7	Pictures post-conversion

**Petitioners' Exhibits:**

Exhibit 1	Historic District Commission Application dated May 12, 2010
Exhibit 2	Historic District Commission Staff Report dated June 10, 2010
Exhibit 3	June 10, 2010 Historic District Commission Meeting Minutes
Exhibit 4	Historic District Commission Memorandum dated February 17, 1982
Exhibit 5	Memorandum to City Planning Commission dated March 5, 1982
Exhibit 6	Historic District Commission Determination dated June 10, 2010
Exhibit 7	Letter from Jill Thacher to Janice Milhem dated June 17, 2010
Exhibit 8	Petitioners' Claim of Appeal dated August 3, 2010

**Respondent's Exhibits:**

Exhibit 1	Historic Preservation Ordinance, City of Ann Arbor
Exhibit 2	Local Historic Districts Act
Exhibit 3	Standards & Guidelines for Rehabilitating Historic Buildings

- Exhibit 4 Historic District Commission Application dated May 12, 2010
- Exhibit 5 Historic District Commission Staff Report dated June 10, 2010
- Exhibit 6 June 10, 2010 Historic District Commission Meeting Minutes
- Exhibit 7 Historic District Commission Application dated October 8, 2008
- Exhibit 8 Pictures from 1982, 2008, and 2010
- Exhibit 9 Email from Michael Pender to Jill Thacher dated June 6, 2010
- Exhibit 10 Historic District Commission Determination dated June 10, 2010
- Exhibit 11 Historic District Bylaws

#### **FINDINGS OF FACT**

The Michigan Local Historic Districts Act and Ann Arbor Historic Preservation Ordinance require all persons wishing to perform work on exterior features in a historic district to submit an application for a "certification of appropriateness" to the Commission before obtaining a permit for the work. (Respondent's Exhibits 1, 2). The Commission evaluates applications based on the standards contained in the City code. The Commission is required to follow the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. (Respondent's Exhibit 3).

On May 12, 2010, Petitioners filed an application on behalf of the Pumping Station No. 2 Condominium Association seeking a certificate of appropriateness to permanently remove window muntins on the windows on the east, south, and west sides of the building located at 241-251 Mulholland Avenue in the Old West Side Historic District, Ann Arbor, Michigan. (Petitioners' Exhibit 1). The building's original windows with muntins had been replaced in 1983 with new windows and false applied muntins designed to give

the appearance of the original muntins.

In October 2008, the City's Historic Preservation Coordinator issued an administrative approval for replacement of the 1983 windows and the applied muntins. However, Petitioners replaced the windows and then decided not to replace the applied muntins. Petitioners represent four of the six condominium units of the building. The remaining two owners did not support the application and desired to retain the window muntins.

On June 7, 2010, two of the Commission's seven Commissioners and the City's Historic Preservation Coordinator visited the condominium building to evaluate the proposed changes. The City's Historic Preservation Coordinator, Jill Thacher, prepared a staff report to assist the Commission in evaluating Petitioners' application. (Petitioners' Exhibit 2).

On June 10, 2010, the Commission held a public hearing. Six of seven Commissioners were present. Four condominium owners supported the application. Two condominium owners opposed the application. The Commission heard testimony from the owners, considered the staff report, and after discussing the matter, took a vote. The Commission voted 3/3 in favor of denying the certificate of appropriateness, and 3/3 to grant the certificate of appropriateness. Because there was no majority vote, as required by the Commission bylaws, the certificate of appropriateness was denied. (Respondent's Exhibits 10, 11). Petitioners, representing the four condominium owners in favor of permanent removal of the window muntins, now seek to appeal the Commission's decision on grounds it was not supported by competent, material, and substantial evidence on the whole record or represents an unwarranted exercise of discretion.

CONCLUSIONS OF LAW

The Local Historic Districts Act provides:

- (2) An applicant aggrieved by a decision of a Commission concerning a permit application may file an appeal with the state historic preservation review board within the department. The appeal shall be filed within 60 days after the decision is furnished to the applicant. The appellant may submit all or part of the appellant's evidence and arguments in written form. The review board shall consider an appeal at its first regularly scheduled meeting after receiving the appeal, but may not charge a fee for considering an appeal. The review board may affirm, modify, or set aside a Commission's decision and may order a Commission to issue a certificate of appropriateness or a notice to proceed. A permit applicant aggrieved by the decision of the state historic preservation review board may appeal the decision to the circuit court having jurisdiction over the historic district Commission whose decision was appealed to the state historic preservation review board.

Relief should be granted where a Commission's decision is not supported by competent, material, and substantial evidence on the whole record or represents an unwarranted exercise of discretion. Conversely, when a Commission has reached a correct decision, relief should not be granted.

Under Michigan law applicable to administrative proceedings, a party who stands in the position of an applicant, an appellant or a petitioner typically bears the burden of proof. 8 Callaghan's Michigan Pleading and Practice (2d ed), Section 60.48, p 176, *Lafayette Market and Sales Co v City of Detroit*, 43 Mich App 129, 133; 203 NW2d 745 (1972), *Prechel v Dep't of Social Services*, 186 Mich App 547, 549; 465 NW2d 337 (1990).

The Petitioners occupy that position in this proceeding and accordingly bear the burden of proof regarding their factual assertions.

In this case, the Commission thoroughly considered Petitioners' application.

However, a majority of the Commission did not conclude that removal of the muntins met the standards and guidelines provided by the Secretary of the Interior. Therefore the Commission did not, and could not pursuant to its bylaws, issue a certificate of appropriateness.

The Commission's bylaws required four members to be present and a majority vote to adopt any motion. In this case, there simply was no majority vote. A 3/3 split (or tie vote) is not a majority vote, which is why the certificate was denied. It was the failure to garner a majority vote and not the Commission's failure to consider the evidence that led to the denial of Petitioners' certificate of appropriateness. The Commission's denial was not in any way an unwarranted exercise of discretion. In fact, the Commission did precisely what it was bound to do by its bylaws.

Neither can it be argued that there was a lack of competent, material, and substantial evidence on the whole record. On the contrary, the Commission considered the staff report prepared by Ms. Jill, photos, prior work on the project, the rules and standards set forth by the Secretary of Interior, and even traveled to the location to see first-hand what was at issue. Furthermore, there was vigorous debate on the issue which led to there being an irreconcilable split decision. Without question, the Commissioners thoroughly, thoughtfully, and carefully considered the evidence presented. Given the Commission's decision was supported by competent, material, and substantial evidence on the whole record and did not represent an unwarranted exercise of discretion, the Commission's decision cannot be set aside. The Commission's decision must be affirmed.

**CONCLUSION**

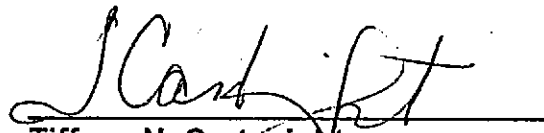
In consideration of the entire official hearing record made in this proceeding, it is concluded that Commission's decision was supported by competent, material, and substantial evidence on the whole record and did not represent an unwarranted exercise of discretion.

**RECOMMENDATION**

In light of the above, I recommend that the Commission's decision of June 10, 2010 be AFFIRMED.

**EXCEPTIONS**

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fifteen (15) days after the Proposal for Decision is issued. If an opposing party chooses to file a Response to the Exceptions, it must be filed within ten (10) days after the Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the State Historic Preservation Review Board, by submission to the **Michigan State Housing Development Authority, 702 West Kalamazoo Street, P.O. Box 30740, Lansing, MI 48909.** All filings must also be served on all other parties to the proceeding.

  
Tiffany N. Cartwright  
Administrative Law Judge



STATE OF MICHIGAN

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

STATE HISTORIC PRESERVATION REVIEW BOARD

JACK AND CAROLYN WALLACE,  
JANICE MILHEM, CAROLINE CONSTANT,  
RICHARD PLEWA AND GEORGE FERRELL  
Petitioners,

v

Review Board Case No. 10-013-HP  
SOAHR Docket No. 2010-783

ANN ARBOR HISTORIC DISTRICT COMMISSION,  
Respondent.

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**FINAL DECISION AND ORDER**

This matter concerns an appeal of a decision of the Ann Arbor Historic District Commission (Commission) which, on June 10, 2010, denied an application requesting permission to permanently remove non-historic, applied muntins to windows on the west, south, and east elevations of the Pumping Station No. 2 condominium complex (Property). The Property is located at 241-251 Mulholland Avenue in the City of Ann Arbor's Old West Side Historic District (District).

The State Historic Preservation Review Board (Board),<sup>1</sup> an agency of the Michigan State Housing Development Authority, has jurisdiction to consider this appeal under the provisions of Michigan's Local Historic Districts Act.<sup>2</sup>

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<sup>1</sup> The Review Board functions under authority of Executive Order No. 2007-53. The Board consists of nine members, all of whom must have demonstrated competency, knowledge, or interest in historic preservation. See also, 36 CFR 61.4(f), which states that a majority of the Board's members must meet the Interior Secretary's Historic Preservation Professional Qualifications Standards and that at least one member of the Board must meet the Secretary's Professional Standards for Architectural History.

<sup>2</sup> 1970 PA 169, § 1 *et seq.*, MCL 399.201 *et seq.*

Jack and Carolyn Wallace, Janice Milhelm, Caroline Constant, Richard Plewa and George Ferrell (Petitioners) filed their Claim of Appeal on August 3, 2010. The appeal was submitted to the Board pursuant to Sec. 5(2) of the LHDA.<sup>3</sup> Sec. 5(2) provides that applicants aggrieved by decisions of historic district commissions may appeal to the Board.

Following receipt of the appeal and at the request of the Board, the State Office of Administrative Hearings and Rules (SOAHR),<sup>4</sup> an agency housed in the Michigan Department of Licensing and Regulatory Affairs,<sup>5</sup> assigned an Administrative Law Judge (ALJ) to conduct the administrative hearing in this case. The hearing was held on September 21, 2010, at the Cadillac Place Building, 3026 W. Grand Boulevard, Suite 2-700, Detroit, Michigan. The hearing was held in accordance with procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969 (APA)<sup>6</sup> for the purpose of receiving evidence, hearing arguments, and preparing a Proposal for Decision (PFD).

The assigned ALJ, Tiffany N. Cartwright, issued and entered the PFD in this case on November 16, 2010. True copies were served on both parties and their attorney(s) of record pursuant to Sec. 81(1) of the APA.<sup>7</sup>

The Board considered this appeal, along with the PFD and all materials submitted by the parties at its next regularly scheduled meeting following issuance of the PFD, *i.e.*, on January 21, 2011.

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<sup>3</sup> 1970 PA 169, § 5, MCL 399.205

<sup>4</sup> By virtue of Executive Reorganization Order No. 2005-1, compiled at MCL 445.2021, SOAHR conducts centralized contested case hearings for numerous State agencies, including the Board. Such hearings afford the parties a fair opportunity to submit evidence and make legal arguments during administrative proceedings. Plummer, *The Centralization of Michigan's Administrative Law Hearings*, 85-11 Mich BJ 18, 20 (2006).

<sup>5</sup> By virtue of Executive Order No. 2011-4, the Department of Energy, Labor, and Economic Growth was reorganized into the Department of Licensing and Regulatory Affairs.

<sup>6</sup> 1969 PA 306, § 71 *et seq.*, MCL 24.271 *et seq.*

<sup>7</sup> 1969 PA 306, § 81 *et seq.*, MCL 24.281 *et seq.*

Having considered the PFD and the entire official record made in this matter, the Board voted \_\_\_\_\_ to \_\_\_\_\_, with \_\_\_\_\_ abstention(s), to ratify, adopt, and promulgate this PFD as the Final Decision of the Board in this matter and to incorporate the PFD into this Final Decision and Order, supplemented with clarifications concerning the Commission's authority and an analysis of the proper rehabilitation treatments at the Property in keeping with the U.S. Secretary of Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Secretary's Standards).<sup>8</sup>

**A. Commission Authority**

On page 5 of the PFD, the ALJ wrote that the Commission held a "public hearing" and that the Commission heard "testimony" offered by the condominium owners at the June 10, 2010 Commission meeting. Notwithstanding the fact that the Ann Arbor City Code<sup>9</sup> refers to historic district commission meetings as "hearings" held in accordance with Michigan's Open Meetings Act,<sup>10</sup> a historic district commission possesses no quasi-judicial or judicial powers. Property owners who file applications with a commission are not "parties" in either the legal sense or in a legal proceeding and have no means to submit "evidence" or "testimony" in the manner as is done in an administrative case hearing or in court litigation. To be sure, each applicant is required to obtain and file appropriate documents to support his or her application, such as work plans, zoning approvals, and environmental clearances, which are adequate to answer questions

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<sup>8</sup> 36 CFR Part 67.7, as revised. The Interior Secretary is responsible for establishing standards for all programs under her/his authority and for advising Federal agencies on the preservation of historic properties eligible for listing in the National Register of Historic Places. In partial fulfillment of this responsibility, the Secretary has issued Standards to guide work on historic resources.

<sup>9</sup> Ann Arbor Code of Ordinances, Title VIII, Chapter 103, § 8:413(1).

<sup>10</sup> 1976 PA 267, §1 *et seq.*, MCL 15.261 *et seq.*

connected with the application (e.g., whether the work plans conform with the Secretary's Standards ).

Rather than acting as an adjudicatory agency, a historic district commission simply functions as a local public body operating under Michigan's Open Meetings Act<sup>11</sup> and other applicable laws. A commission is free to consider and evaluate whatever documentation is attached to an application, as well as hear any comments, statements, and/or other oral information that may be presented to it by any person relative to an application. In the case at hand, the Commission was free to consider and evaluate all information available to it in connection with the Petitioners' request to refrain from reattaching the faux-muntins at issue.

**B. Proper Rehabilitation Treatments**

The preservation-related issue in this case is whether, following completion of repair work, the faux-muntins removed for the Property's 2008 repair should be reinstalled on or left off of the newly-repaired, non-historic replacement windows. Because this preservation-related issue was not addressed by the ALJ, the Board hereby supplements the PFD with an analysis of the Secretary's Standards as to the recommended treatments for historic windows and missing historic features.

By way of a brief factual review, faux-muntins were applied to new, non-historic replacement windows in 1983 when the Property was converted from office space into condominiums. At that time, a decision was made to replace the Property's historic windows with non-historic replacements which failed to convey the Property's historic

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<sup>11</sup> 276 PA 1976, MCL 15.261 *et seq.*

character or same visual appearance.<sup>12</sup> In the attempt to mimic the historic windows' visual appearance, faux-muntins were subsequently applied.<sup>13</sup> Today, after some twenty-five years and as is almost universally the case with modern replacement windows, the circa-1983 windows were deemed to require repair in 2008. Consequently, an application for a Certificate of Appropriateness to repair the Property's non-historic replacement windows in the same configuration was submitted to the Commission and, per the Commission's standard protocol for processing applications, granted permission to do the window repairs by means of "staff approval."<sup>14</sup> Before window repair could be completed, the Petitioners applied for and were denied a Certificate of Appropriateness to abstain from reapplying the faux-muntins which would alter the 2008 Commission-approved configuration. This denial was based in part on the Commission's determination that the proposed muntin work did not comply with Standards 1, 2, and 9 of the Secretary's Standards.

#### **1. The Secretary's Standards**

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<sup>12</sup> These modifications occurred before the Old West Side regulations were changed to require Commission review. As a result, the window replacement was not reviewed by the Commission at that time. Minutes of the Regular Session of the Historic District Commission of the City of Ann Arbor, Thursday, June 10, 2010; page 7, lines 385-388.

<sup>13</sup> It must be observed that had Commission approval to replace the historic windows with modern replacements with faux-muntins been required in 1983, it is highly unlikely that approval would have been forthcoming. Subsequently, the inappropriate 1983 work contributed to the Commission's dilemma in evaluating the 2008 proposed window repairs and again, in 2010, when faced with the faux-muntin issue. Furthermore, it is likely that the Commission will continue to face the question of how to balance the Property's remaining historic integrity and its appropriate historical visual appearance against continued introduction of false historical elements inconsistent with the Secretary's Standards. It was these very issues that contributed to the Commission's three-three deadlock that resulted in application denial as a function of law. Minutes of the Regular Session of the Historic District Commission of the City of Ann Arbor, Thursday, June 10, 2010.

<sup>14</sup> The Commission provides specific written standards for issuing certificates of appropriateness and may delegate the issuance of certificates of appropriateness for certain minor classes of work such as window repair. Ann Arbor Code of Ordinances, Title VIII, Chapter 103, § 8:414.

The Secretary of the Interior is responsible for promulgating standards for all national historic preservation programs administered by the U.S. Interior Department.<sup>15</sup> In particular, 36 CFR Part 67 provides guidance with respect to how the Secretary's Standards, the most prevalent historic preservation treatment today, should be interpreted.<sup>16</sup> Of specific relevance to this case are the preamble and five of the ten standards that comprise the Secretary's Standards:

The following Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility \* \* \*

- (1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize the property shall be avoided \* \* \*
- (5) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- (6) Deteriorated historic features shall be repaired rather than be replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials.
- (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

## 2. The Guidelines

The Interior Secretary has also adopted the *Guidelines for Rehabilitating Historic Buildings*, Revised 1990 (Guidelines).<sup>17</sup> The Guidelines are intended to assist homeowners and professional practitioners alike in applying the Secretary's Standards

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<sup>15</sup> The Secretary's promulgation authority derives from Sec. 101(b)(1) of the National Historic Preservation Act of 1966, 16 USC 470a(b).

<sup>16</sup> In addition for use throughout the nation, the Secretary's Standards have been adopted and codified as part of the Ann Arbor Code of Ordinances. *Supra* Note 9, § 8:415.

<sup>17</sup> <http://www.nps.gov/history/hps/tps/tax/rhb/guide.htm>.

to historic rehabilitation projects of all sizes, materials, occupancy, and construction types.<sup>18</sup> With respect to historic windows, the Guidelines include “recommended” window rehabilitation treatments and techniques deemed consistent with the Secretary’s Standards. Conversely, treatments and repair techniques deemed inconsistent with the Secretary’s Standards are described as “not recommended.”

In regards to recommended historic window treatments, the Guidelines call for:

**Identifying, retaining, and preserving** windows – and their functional and decorative features – that are important in defining the overall historic character of the building. Such features can include frames, sash, muntins, \* \* \*. (Emphasis in original).

**Protecting and maintaining** the wood and architectural metal which comprise the window frame, sash, muntins, and surrounds through appropriate surface treatments \* \* \*. (Emphasis in original).

**Repairing** window frames and sash by patching, splicing, consolidating or otherwise reinforcing. Such repair may also include replacement in kind of those parts that are either extensively deteriorated or are missing \* \* \*. (Emphasis in original).

**Replacing** in kind an entire window that is too deteriorated to repair using the same sash and pane configuration and other design details. If using the same kind of material is not technically or economically feasible when replacing windows deteriorated beyond repair, then compatible substitute material may be considered. (Emphasis in original).

In regards to window treatments not recommended, the Guidelines advise against:

Removing or radically changing windows which are important in defining the overall historic character of the building.

Changing the historic appearance of the windows through the use of inappropriate designs, materials, finishes, or colors which radically change the sash, depth of reveal, and muntin configuration \* \* \*

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<sup>18</sup> General recommended treatments include identification, retention, and preservation of historic features, as well as their functional and decorative features, that are important in defining the overall historic character of a building. Treatments that change the historic appearance of the building are generally not recommended.

Stripping windows of historic material such as wood \* \* \*.

Using a substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the window \* \* \*.

Replacing an entire window when repair of materials and limited replacement of deteriorated or missing parts are appropriate.

The Guidelines also offer guidance when historic features are missing altogether:

When an entire interior or exterior feature is missing, it no longer plays a role in physically defining the historic character of the building unless it can be accurately recovered in form and detailing through the process of carefully documenting the historical appearance. Where an important architectural feature is missing, its recovery is always recommended in the guidelines as the *first* or preferred option. Thus, if adequate historical, pictorial, and physical documentation exists so that the feature may be accurately reproduced, and if it is desirable to re-establish the feature as part of the building's historical appearance, then designing and constructing a new feature based on such information is appropriate \* \* \*. (Emphasis in original).

### **3. Interpreting the Secretary's Standards and Guidelines**

The Secretary's Standards and Guidelines, together with other federal publications such as *Interpreting the Secretary of Interior's Standards for Rehabilitation* bulletins (Bulletins), are designed to work in concert, affording practitioners with generalized guidance that can be flexibly applied in specific situations. The Bulletins themselves are issued to explain specific preservation project decisions and illustrate appropriate and inappropriate implementation of both the Secretary's Standards and the Guidelines. The subject matter of the Bulletins address all aspects of historic rehabilitation activity and, in regards to the case at hand, include publications specifically addressing historic window repair versus replacement, matching historic



design and detail when replacing windows, inappropriate replacement windows, and incompatible replacement windows.<sup>19</sup>

#### 4. Review Board Observations

Prior to considering the current controversy over the 2010 application to reapply the faux-muntins, the Board must first address the 2008 repair application that was approved via the staff approval process. Although the 2008 repair work is not specifically at issue in the current controversy, the decision to proceed with window repair is germane.

As noted above, Commission staff has the authority to review and approve applications for certain types of historic rehabilitation work. This includes staff approval for certain "minor classes of work,"<sup>20</sup> including window repair. Unclear, however, is the nature and extent of the approved 2008 repairs and whether, at that time, the proposals should have been considered "minor classes of work." Indeed, at the June 10, 2010 Commission meeting, Commission staff described the window repair work initially approved in 2008 as "substantial."<sup>21</sup> Furthermore, Petitioner Milhem described the window work as having taken nearly a month and required the boarding over of the windows.<sup>22</sup>

In light of these observations concerning the scope of the 2008 repair work and the permanent original window removal in 1983, the Board cannot help but consider whether there existed the opportunity to reestablish the historic visual character of the

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<sup>19</sup> See Bulletins 81-021, 87-086, 87-087, 87-088, 87-089, and 87-090.

<sup>20</sup> *Supra* Note 12.

<sup>21</sup> This work was characterized as "repair with aluminum thermopane windows." It is unclear to the Board whether either window glass or entire portions of the 1983 windows were being replaced as part of the repair. Minutes of the Regular Session of the Historic District Commission of the City of Ann Arbor, Thursday, June 10, 2010; page 3, lines 109-111.

<sup>22</sup> *Id.*, page 4, lines 162-163.

Property in keeping with the Secretary's Standards. In considering Standard 6 and the Guidelines pertaining to missing historic features quoted above, it is desirable to reproduce missing historic features if they can be accurately recovered in form and detail from historical documentation. If the opportunity did exist, the Commission could have, in response to the 2008 repair application, required implementation of the appropriate treatment options described above and the current faux-muntin dispute would never have developed.

In considering the potential to reestablish the historic visual character of the Property, the Board also observes that the proposed repair work on the non-historic replacement windows contained in the 2008 application was minor in scope. The local ordinance enables such minor work to be approved as a routine matter. This allows the Commission to monitor everyday repair work within the district while facilitating the completion of minor classes of work without delay.<sup>23</sup> In this regard, Commissioners are presumed to act in accordance with the law. *Schommer v DNR* 412 NW2d 663 (1987); *American LeFrance & Foamite Industries v Village of Clifford* 255 NW 217 (1934). Moreover, local officials are presumed to understand the Secretary's Standards as referenced in the Ann Arbor Code of Ordinance. *St Charles Associates, Ltd v United States*, 671 F Supp 1074, 1080 (1987); *Scott Swaboda v Town of LaConner*, 97 Wash App 613, 622; 987 P2d 103,108 (1999). Finally, the Board notes that when undertaking rehabilitation work, it is not uncommon for the initial scope of work and selected treatments to change midstream in response to conditions encountered during the work. In short, what is originally believed to be minor window repair work can easily evolve into a major project that is much more "substantial." Consequently, what was originally

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<sup>23</sup> Supra Note 12.

thought to be minor window repair could indeed only have been identified with the benefit of hindsight as an opportunity to reestablish the Property's missing historic features.

Turning attention back to the 2010 muntin-related application, the Petitioners' application to permanently remove the faux-muntins was in effect an application to modify the 2008 Commission staff approval. At that time (2008), the proposed repair work apparently fell into one of Ann Arbor's minor classifications allowing for Commission staff approval and therefore, did not necessarily present the opportunity to reestablish these particular missing historic features. Furthermore, the proposed work did not intend to change any of the character-defining elements of the windows (*i.e.*, the faux-muntins) as they were configured in 2008. In other words, the proposed work maintained the *status quo* as it pertained to the 1983 replacement windows and their faux-muntins that were applied to mimic the historic character of the original windows.

In conclusion, the Board agrees with the Commission's decision to retain the faux-muntins since that decision struck an appropriate balance between the Secretary's Standards, the Guidelines, the scope of work, and the current use of the building. The retention of the faux-muntins within the context of this case is proper until such time as the entire missing historic feature, *i.e.*, the historic wood windows, can be appropriately reestablished. Moreover, although the faux-muntins are non-historic, their presence helps convey and maintain the historic visual character that was lost when the windows were originally replaced in 1983. Although reestablishment of the missing historic windows and their treatments would ultimately be the most desirable course of action,

the scope of repair at this time did not warrant the Commission to require this level of rehabilitation.

**FINAL ORDER**

**IT IS ORDERED** that this appeal is DENIED.

**IT IS FURTHER ORDERED** that the Commission's decision and orders are AFFIRMED.

**IT IS FURTHER ORDERED** that a copy of this Final Decision and Order shall be transmitted to each party, and to each party's attorney(s) of record, if any, as soon as is practicable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dr. Richard H. Harms, President  
State Historic Preservation Review Board

NOTE: Section 5(2) of the Local Historic Districts Act provides that a permit applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date notice of the Board's Final Decision and Order is mailed to the parties.