

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
STATE HISTORIC PRESERVATION REVIEW BOARD

In the Matter of:

FIRST PRESBYTERIAN CHURCH OF YPSILANTI,
Applicant/Appellant,

v

Docket No. 96-397-HP

YPSILANTI HISTORIC DISTRICT COMMISSION,
Appellee.

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FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Ypsilanti Historic District Commission denying an application seeking approval to demolish or move a property located at 303 North Huron, Ypsilanti, MI 48197.

The State Historic Preservation Review Board (the Board) has appellate jurisdiction to consider such appeals under section 5(2) of the Michigan Local Historic Districts Act, as amended, being section 399.205 of the Michigan Compiled Laws.

At the direction of the Board, an administrative hearing was commenced on August 28, 1996 and reconvened on January 22, 1997 for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on May 30, 1997, and copies were personally delivered to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of Michigan Compiled Laws.

The Board fully considered the appeal, along with the Proposal for Decision and all materials and any exceptions submitted by the parties, at its regularly scheduled meeting conducted on Friday, June 6, 1997.

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Having considered the Proposal for Decision and the official hearing record made in this matter, the Board voted 4 to 0, with 1 abstention(s), to ratify, adopt, and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document; and,

Having done so,

IT IS ORDERED that the appeal be and the same is hereby denied.

IT IS FURTHER ORDERED that a copy of this Final Decision and Order shall be transmitted to all parties as soon as practicable.

Dated: Jan 6, 1997

James R. Roddy, President
David Evans, 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 of the mailing of notice of the Final Decision and Order of the Board. MCR 7.105 and 2.105(G) may prescribe other applicable rules with respect to appeals from administrative agencies in contested cases.

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
HEARINGS DIVISION

In the Matter of:

FIRST PRESBYTERIAN CHURCH OF YPSILANTI, MI
Applicant/Appellant,

v

Docket No. 96-397-HP

YPSILANTI HISTORIC DISTRICT COMMISSION,
Commission/Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Ypsilanti Historic District Commission (the Commission), denying an application for a permit to move - or in the alternative, a permit to demolish - the Towner House, which is located at 303 North Huron Street, Ypsilanti, Michigan.

The appeal was filed under section 5(2) of the Local Historic Districts Act.¹ Section 5 provides that a person who is aggrieved by a decision of an historic district commission may appeal the decision to the State Historic Preservation Review Board (the Board), which is an agency of the Michigan Department of State.

¹ 1970 PA 169, § 5, as amended by 1992 PA 96; MCL 399.205; MSA 5.3407(5).

Upon receipt of the appeal, the Board directed the Michigan Department of State, Hearings Division, to convene an administrative hearing for the purpose of taking relevant evidence and argument. The Hearings Division conducted a hearing on August 28, 1996, in Hearing Room No. 121, the Mutual Building, 208 N. Capitol Avenue, Lansing, Michigan. The hearing was reconvened on January 22, 1997, for the purpose of taking additional proofs and legal arguments. The proceedings were held pursuant to the procedures prescribed in Chapter 4 of the Administrative Procedures Act.²

First Presbyterian Church of Ypsilanti (the Church), the Appellant/property owner, was represented at the hearing by Jerold Lax, Attorney at Law, of the law firm of Bodman, Longley & Dahling LLP, Ann Arbor, Michigan. The Commission/Appellee was represented by Monika H. Sacks, Attorney at Law, of the law firm Nichols, Sacks, Slank & Sweet, Ann Arbor, Michigan. Darcel F. Smith, Administrative Law Examiner, Michigan Department of State, Hearings Division, presided at the hearing. Jane Busch, CLG Coordinator and Historic Preservation Planner, State Historic Preservation Office, Michigan Historical Center, appeared as an observer/representative on behalf of the Board.

² 1969 PA 306, § 71 et seq; MCL 24.271 et seq; MSA 3.560(171) et seq.

Issues on Appeal

In its written request for review, dated June 12, 1996, the Church, through its attorney, asserted that the "Historic District Commission, in denying the Church's petition to move or demolish the Towner House, erred for a number of reasons, including but not limited to the following: (1) compelling the Church to maintain the house in its present location imposes an undue financial hardship upon the Church, (2) retention of the Towner House in its present location is not in the public interest, (3) the house constitutes a hazard to public safety, (4) denial of the Church's petition results in a violation of the Religious Freedom Restoration Act (42 USC 2000bb-2000bb-4), (5) denial of the Church's petition infringes upon the free exercise of religion as guaranteed by the federal and state constitutions, and (6) denial of the Church's petition results in an unlawful taking of property under the federal and state constitutions."

At the hearing, the Church acknowledged that most of these issues had been presented in a prior administrative hearing concerning prior applications; however, the Church indicated that one notable legal difference was the new federal Religious Freedom Restoration Act (RFRA), which had only recently been enacted at the time of the prior hearing. Further, the Church indicated that

there was information regarding financial hardship that had not been previously presented, to wit: that there was a 1996 appraisal by the Gerald Alcott Company indicating that financial hardship includes not only the owner's loss of the economic worth of the property so removed, but also the impact that the removal of property has on the value of the remainder of the property. In addition, the Church expressed concern regarding the procedures used by the Commission for a public hearing held April 16, 1996. In particular, the Church believed that the reasons for denying the permit were prepared in advance and that the Commission members did not have adequate time to review the materials submitted by the Church for the public hearing. It was the Church's contention that the decision rendered by the Commission at the public hearing was, therefore, arbitrary and capricious, in that no real hearing or deliberation occurred.

The Church stated that its principal objective from the beginning has been to make the Towner House available to the community, provided that the house could be moved to another location so that the Church could use the property for religious purposes as it originally intended when it purchased the property in 1972. At that time, Ypsilanti did not have an historic preservation ordinance and the Church could have demolished the

Towner House. Instead, the Church leased the property to an organization that was formed to attempt to preserve the Towner House by moving it to another location. It is the Church's further contention that the inability of this and a later organization to raise sufficient funds to move the house represents a truer measure of the community interest in preserving the structure. While the Church is still willing to preserve the Towner House, it wishes to have the economic burden allocated among all interested parties. The Church believes that moving the Towner House is still the best option, and suggested that it could be moved to a city park located across the street, thus preserving the street scape. In that vein, the petition sought permission to move the Towner House to another location so that the Church can use its property for religious purposes, and to demolish the house only if such a move is not possible.

By way of response, the Commission argued that the Church did not provide any "real" evidence to establish the three points identified in its petition, i.e., "undue financial hardship" to the owner; that it was in the "interest of the majority of the community" that its permit be granted; and that the building poses a hazard to the public. Further, the Commission was not provided any evidence which showed how the retention and maintenance of the

property substantially burdened the Church's religious activities. The Commission also argued that while the permit was to move or demolish the Towner House, the Church did not provide any specifics regarding the proposed move, such as the location the structure would be moved to. Given the lack of evidence presented, the Commission asserted that pertinent ordinance and statutory provisions precluded authorizing the moving or demolition of the building.

In response to the Church's allegations that the Commission's decision had been pre-determined and that it was therefore arbitrary and capricious, the Commission indicated that its practice of outlining the procedures to be followed at public hearings ensured that all legal requirements were met. Further, each Commission member articulated for the minutes the rationale for his or her decision.

At the hearing, the Commission indicated that while the Towner House is a relatively modest home, it is believed to be the oldest residential structure of its type in Ypsilanti, built in 1837. Also of significance, is the fact that it is located on its original site and on its original foundation. According to the Commission, the Towner House is an example of the first housing constructed by relatively ordinary people as they moved from log

cabins into more sophisticated housing. It is situated on a street which includes other examples of Greek Revival architecture and, as a composite picture, provides an assortment of the different examples of architecture which spans the economic gamut and provides information on how life evolved in Ypsilanti.

Summary of Evidence

Section 5(2) of the Local Historic Districts Act, supra, indicates that appellants may submit all or any part of their evidence and argument in written form. In that vein, the Appellant/Church submitted a hearing request with attachments. (Appellant's Exhibit No. 1) This exhibit includes, among other things, copies of the following: letter from the City of Ypsilanti, Michigan, dated April 23, 1996, denying the Church's request for removal or demolition of the Towner House (Appellant's Exhibit 1-1); site survey for First Presbyterian Church of Ypsilanti (Appellant's Exhibit 1-2); warranty deed, dated June 27, 1972, transferring the property at 303 North Huron Street, Ypsilanti, Michigan, to the First Presbyterian Society of the City of Ypsilanti (Appellant's Exhibit 1-3); and a letter from Attorney Lax to the Ypsilanti Historic District Commission, dated April 16, 1996, concerning the permit application submitted to move or demolish the Towner House (Appellant's Exhibit 1-4). Attorney

Lax's letter included thirteen attachments, identified as A through M, which included: a permit application to "move house to a new location or demolish house if not moved within 6 mos." stamped March 11, 1996, with an attachment; a memorandum entitled "The Church's Use of Its East Church Yard"; a copy of the Religious Freedom Restoration Act, (42 § 2000bb-2000bb-4); "Interpreting the Religious Freedom Restoration Act" by Douglas Laycock and Oliver S. Thomas, Texas Law Review, Volume 73, Number 2, December 1994; a "Memorandum on Church Property" by Edward H. Koster, Stated Clerk, Presbytery of Detroit, dated April 15, 1996; a letter from Peter B. Fletcher, President, Ypsilanti Historical Society, dated April 12, 1996; excerpts from the National Park Service regulations (36 CFR Ch. 1); first lease with the Ypsilanti Heritage Foundation, dated November 1, 1974; second lease with the Ypsilanti Heritage Foundation, dated November 10, 1978; Preliminary Analysis of Direct and Consequential Damages, prepared on March 1, 1996, by Gerald Alcock Company, L.L.C.; a memorandum entitled "The Financial Hardship of Restoring 303 North Huron"; letter from David M. DiCiuccioi, Vice President, Giffels Hoyem Basso, Inc., dated June 1, 1995, outlining construction costs for replacement or upgrade of existing HVAC systems; and two letters of support.

The Church offered additional written exhibits at the administrative hearing, including two proposals from Carver Construction Co. for the conversion of the house for office and church use, dated April 15, 1996, with an estimated cost of \$149,031.00 (Appellant's Exhibit 2) and for residential renovation, dated April 15, 1996, with an estimated cost of \$152,981.00 (Appellant's Exhibit 3); a document entitled "The Church's Use of Its East Church Yard" (Appellant's Exhibit 4); a copy of its brief filed in the Court of Appeals, No. 191379 (Appellant's Exhibit 5); a copy of its Reply Brief (Appellant's Exhibit 6); and a document dated April 16, 1996, from Jane Schmiedeke to HDC, Sacks, Goulet, Burg, and Hutchison regarding "Revised Procedure" (Appellant's Exhibit 7). The Church did not present any testimony from witnesses.

The Commission/Appellee also presented written evidence at the hearing. Appellee's Exhibit No. 1 was prepared by the City of Ypsilanti, Community and Economic Development Department, August 13, 1996, and consisted of the Record of Proceedings of Public Hearing Held April 16, 1996, before the Ypsilanti Historic District Commission. The exhibit included, among other things, copies of the following: First Presbyterian Church's Petition to Demolish or Relocate the Towner House (Appellee's Exhibit 1-1); a memorandum

from Monika H. Sacks to the State Historic Preservation Review Board, entitled "City of Ypsilanti Statement of Fact and Law" with attachments A-D (Appellee's Exhibit 1-2); letter to Jane Schmiedeke, Historic District Commission, from Harry Hutchison, Building Inspector Supervisor, dated April 10, 1996 (Appellee's Exhibit 1-3); letter to Jane Schmiedeke, Ypsilanti Historic District Commission, from Richard C. Frank, FAIA, dated April 10, 1996 (Appellee's Exhibit 1-4); eighteen letters supporting the denial of the Church's permit and two letters supporting the approval of the Church's permit (Appellee's Exhibit 1-5); Suggested Lot Split to Maximize the Amount of Property Available for Church Purposes and Preserve the Towner House at Its Current Location, submitted by the City of Ypsilanti, Community and Economic Development Department (Appellee's Exhibit 1-6); Article 8, RO Residential - Office District (Appellee's Exhibit 1-7); Historic District Ordinance, Ypsilanti, Michigan, as amended 1993 (Appellee's Exhibit 1-8); City of Ypsilanti, Historic District Commission, April 16, 1996, Public Hearing and Meeting Minutes (Appellee's Exhibit 1-9); letter from Historic District Commission, dated April 23, 1996, denying the Church's request for the removal or demolition of the Towner House (Appellee's Exhibit 1-10); and

five articles concerning the history of the Towner House (Appellee's Exhibit 1-11).

The Commission also submitted a ten-minute video tape showing the Towner House and the buildings in the surrounding area (Appellee's Exhibit 2).

Jane Schmiedeke, Chair of the Ypsilanti Historic District Commission, testified at the hearing. In brief, Schmiedeke described her contact with the Towner House, dating to 1974. She was involved in the formation of the Ypsilanti Heritage Foundation, which leased the building from the Church for six or seven years. The Foundation in turn rented the house to a single individual who used it as a residence. It was Schmiedeke's recollection that the lease provided the Foundation with the opportunity for possibly moving the building to another site. The monies received by the Foundation from the lease of the house were used for insurance, utilities, maintenance and repairs of the house, but did not allow for relocation of the structure. The Church, however, continued to annually renew the lease with the Foundation. The Church next leased the building to the Friends of the Towner House Children's Museum. It was Schmiedeke's impression that lease was terminated when the Church refused to enter into an extended lease that was

needed in order for the Museum to qualify for federal grant monies. The house has been vacant since 1991.

Schmiedeke stated that the moving of historic properties is now strongly discouraged unless the standards in the Ypsilanti historic ordinance are met.

Regarding the April 16, 1996 public hearing, Schmiedeke testified that the Church did not present any information or examples showing that the Church's activities or mission were impeded by the retention of the house. It was her testimony that, to the contrary, information presented by the Church identified a number of activities occurring at the Church or on the property that indicated an opposite conclusion. Further, that while the Church indicated its general future needs, it did not present evidence to the Commission identifying a specific need or proposed plans for a specific need, such as architectural and engineering plans, proposed budget, proposed construction schedule, etc.

In regards to the three conditions listed in its petition, Schmiedeke testified that although the building was in a deteriorated condition, the Church did not present evidence that the building constituted a hazard to the safety of the public or that the building was not properly secured; the Church did not present evidence of any major improvement program that would be of

substantial benefit to the community that was in danger of not being carried forward due to the retention of this resource; and that the Church presented only general statements regarding undue financial hardship. While the Church provided an estimate for a new heating/cooling system, it did not provide evidence showing its inability to both have this system installed and maintain the Towner House.

Regarding the Church's petition to move the Towner House, Schmiedeke testified that the Church did not present information regarding the location where the structure would be moved to or any specific plans regarding such a move. Without such specifics, the Commission felt it had to consider the petition as one for demolition.

Schmiedeke also testified regarding the "Revised Procedure" she had distributed which identified the procedure to be followed for the Towner House public hearing on April 16, 1996. It included the steps to be followed for the hearing, identified the materials that had been submitted to the Commission, outlined the elements the Commission had to determine in reviewing the Church's permit, indicated the order of presentations and reports by parties at the hearing, and concluded with a vote on the application. Schmiedeke stated the Commission relies on student interns to write the

minutes and that a written statement assists the interns in preparing the minutes.

The Commission also presented the testimony of two other witnesses. Jennifer Goulet, Director for the City of Ypsilanti's Community and Economic Development Department, testified regarding the Church's proposal at the public hearing to move the Towner House. Goulet stated the proposed site was the Riverside Park which is across the street from the Towner House; however, the Church had not petitioned the City Council concerning the move nor submitted any information, such as the route to be taken or the actual site to which the home would be moved. The City provided an alternative proposal during the hearing to reduce the overall size of the Towner House property rather than move or demolish it. The proposal, which was first presented in 1993, would provide additional property to the Church for expansion through the demolition of the garage and possibly the additions, and a relocation of the property boundaries.

The Commission presented the testimony of Harry Hutchison, Building Inspection Supervisor for the City of Ypsilanti. Hutchison had prepared figures to stabilize, but not rehabilitate, the structure. He had also reviewed and agreed with estimates of potential rehabilitation expenses prepared by his predecessor,

Larry Abernathy, which estimated \$77,000.00 in 1993 to restore the structure for a residential setting. Hutchison believed the structure could not be used for residential purposes in its current condition but could be rehabilitated for such purpose or for a business or commercial use. He also indicated that the Building Department has some leniency in working with historic structures.

Findings of Fact

Based on the evidence presented by the parties during the administrative hearing, the facts of this matter are found to be as follows:

A. Background Information

1. The main portion of the Towner House was originally constructed around 1837 as a one and one-half story, wooden frame structure of the post-and-beam, front-gable Greek Revival type, with a fieldstone foundation. The Towner House is believed to be the oldest remaining structure of its type in the City of Ypsilanti. It was owned and occupied for 100 years by the Towner family, who were prominent members of the community, one of whom served as Ypsilanti's mayor during that time.

2. During the 1840's or 1850's, a one-story addition was attached to the second (middle) portion of the house. During the 1870's and 1880's, the house was extensively remodeled when a

second floor was added to the central portion, a fireplace was constructed downstairs, and a third, one-story, addition was added.

3. During the 1910's and 1920's, more large-scale remodeling was done. Two hipped-roof dormers were added to the "main block" gable roof. Between 1916 and 1927, a sun porch was added, and sometime after 1927, a free-standing one-car garage was constructed at the rear of the house.

B. Ownership of Towner House by First Presbyterian Church

4. On June 27, 1972, the Church purchased the property located at 303 N. Huron Street, i.e., the Towner House, for \$60,000.00.

5. Sometime in June of 1974, the Church's Board of Trustees passed a resolution which called for the demolition of the Towner House. Around this time, a group of concerned citizens formed the Ypsilanti Heritage Foundation for the purpose of preserving the Towner House.

6. On November 1, 1974, the Foundation and the Church entered into a one-year lease, which provided an opportunity for the Foundation to find a suitable location and move the Towner House. The Foundation paid an annual rent of \$1.00 and assumed responsibility for the repair and maintenance of the house in the meantime. The lease stated, in pertinent part:

"Landlord (the Church) is desirous of having the structure removed and retaining the land for a future development for church purposes. Tenant (the Foundation) sees historical significance in the structure located at such premises and has requested Landlord for the opportunity to have one year in which to find a location suitable for said structure and remove the structure to said location. Tenant and Landlord agree that in the meantime Tenant will assume all responsibility of any and all nature for the maintenance, upkeep, repair, liability, tax, utilities, and otherwise for the structure and the lot upon which the structure sits and shall hold landlord harmless from any and all liability pertaining thereto. . . . The over-riding consideration of this lease is to permit the Tenant to preserve an historic structure at no risk or no expense to the Landlord and if Tenant is unable to do so within one year Tenant will supply half the cost for demolition of the structure and returning the property to grade."

7. The Foundation continued to lease the property from the Church for the next seven years.³ During that entire period, the Foundation subleased the property to a man who resided in the house. Rents were used to cover expenses for the house, such as utilities, maintenance, repairs, and insurance payments.

8. The Church next leased the property to the Friends of the Towner House Children's Museum until 1990 or 1991. The Towner House has not been occupied since 1991.

C. Ypsilanti Historic District

³ The parties entered into at least one more lease, dated November 10, 1978, which contained virtually identical language, but it also provided for yearly renewals by mutual consent.

9. The City of Ypsilanti adopted historic district ordinances in 1976. The ordinances were revised in 1993 to conform to the revisions of the state statute.⁴ The purpose and intent of these laws⁵ "was" to safeguard the heritage of the City of Ypsilanti by preserving a district which reflects elements of its cultural, social, economic, political, and architectural history and natural environments; to stabilize and improve property values in such district; to foster civic beauty and pride; to strengthen the local economy; to promote the use of the historic district for the education, pleasure and welfare of the citizens of the City of Ypsilanti and the State of Michigan".

10. Section 326 of the City of Ypsilanti's historic ordinances⁶ identifies the boundaries of the Ypsilanti Historic District, including the Towner House and the First Presbyterian Church, which are located together in the district's northeastern corner.

11. The Ypsilanti Historic District is administered by a seven-member historic district commission. Among the Commission's functions is the duty to consider applications for the demolition or the moving of resources located within an established historic

⁴ Ypsilanti Ordinances, Article 2, Chapter 55, § 5.324-341.

⁵ Ypsilanti Ordinances, Article 2, Chapter 55, § 5.324.

⁶ Ypsilanti Ordinances, Article 2, Chapter 55, § 5.326.

district.⁷ While the demolition or moving of a structure within the Historic District is to be discouraged, the Commission must issue a permit,⁸ if one of the four following conditions exists and if it is the Commission's opinion that the proposed changes will materially improve or correct these conditions: 1) the resource constitutes a hazard to the safety of the public or occupants; 2) the resource is a deterrent to a major improvement program that will be of substantial benefit to the community; 3) retaining the resource would cause undue financial hardship to the owner; and/or 4) retaining the resource would not be in the best interest of the majority of the community.

D. 1996 Permit Application for Moving or Demolition

12. On or about March 11, 1996, the Church filed a standard Ypsilanti Historic District permit application to move the Towner House to a new location, or, in the alternative, to demolish the house if it was not moved within six months. In addition to the permit application, the Church submitted a two-page attachment, dated March 11, 1996, which claimed that three of the four conditions identified in Ordinance 5.334(3) were present requiring the issuance of a permit, namely: 1) the house constitutes a safety

⁷ Ypsilanti Ordinances, Article 2, Chapter 55, §§ 5.329 and 5.332.

⁸ Ypsilanti Ordinances, Article 2, Chapter 55, § 5.334.

hazard to the public or the occupants; 2) retention would cause undue financial hardship to the owner; and 3) retention would not be in the interest of the majority of the community. The permit application attachment also noted the enactment of the Religious Freedom Restoration Act in November, 1993.

13. The permit application attachment, in indicating that the Towner House posed a safety hazard, identified concerns with "falling plaster" and "unsafe stairways", and that it was possible for someone to "break in and harm themselves".

14. With regard to undue financial hardship, the attachment indicated that Michigan law prevented the Church from renting or leasing the house, and that the Church can not sell the property because of the Memorial Garden and the future needs of the congregation. The Church further indicated that it can not renovate the House as costs could "exceed from \$75,000 to \$140,000 (the estimate three years ago) for space that we can not use". The attachment noted Section 5 of the Michigan Local Historic Districts Act, which "specifically provides that moving a structure to a vacant site within the historic district may be an acceptable means of alleviating financial hardship".

15. Concerning the extent of community interest in retaining the house, the attachment identified that from November, 1974, to

January, 1991, the Church had permitted the Ypsilanti Heritage Foundation and the Children's Museum Committee to sign leases "promising to move or to restore the house, but both failed to find the community support to enable them to fulfill the terms of their leases." The Church's "offer to donate the house to the City provides the community one more opportunity to demonstrate its interest."

E. Public Hearing Conducted by Commission

16. The Commission considered the Church's permit request at its regular meeting on April 16, 1996. A number of documents were read into the minutes. Among the documents were: City of Ypsilanti's Lot Split Proposal; Residential Zoning Ordinance; several articles which described the history of the Towner House, and/or Towner Family; Published notice of public hearing; the Church's 1996 permit application; a report from the Building Inspector; a report from a restoration architect; and approximately twenty letters from various groups and individuals commenting on the merits of the request (most were against granting the permit).

i. Building Inspection Report

17. Harry Hutchison, Building Inspection Supervisor, reported on the condition of the house. He indicated that he had been

involved with the issue for only a year, but had inspected the house twice for stability. He noted that structural shoring and water damage repairs had been done. Hutchison testified that a report, dated September 21, 1993, prepared by Larry Abernathy, former Building Inspection Supervisor, had been submitted to the Commission. Abernathy had prepared an analysis of the renovation costs and code requirements in January, 1992. With regard to the cost of rehabilitation, Abernathy's report provided two estimates, one to restore the structure to a "near perfect condition" at a total cost of between \$74,600 and \$77,600 and the other to a "habitable condition" at a total cost of \$74,600. Abernathy included a 30% "fudge factor" in calculating the estimate in order to cover any unforeseen repair problems or cost overruns. Hutchison stated that he had reviewed and concurred with Abernathy's figures.

ii. Architectural/Historical Report

18. The second report, dated April 10, 1996, was provided by Richard C. Frank, a Preservation Architect and Planner, who resides in Saline, Michigan. Frank had inspected the exterior of the Towner House in September, 1993. On April 4, 1996, he refreshed observations from the 1993 visit, and he toured the interior of the house. Frank indicated that the Towner House "is an excellent

example of Greek Revival architecture and the early growth of Ypsilanti." He further indicated that, based on the current inspection of the interior, that "there is no question that the house is in a rapidly deteriorating condition", but many "old buildings have a surprising resiliency to a disregard for proper maintenance, as this house has exhibited over the past three years". With respect to significance, Frank's report stated that:

A house with this degree of historic value must be of importance to the city in which it is located. However, when it also is in close physical relationship with other architecturally significant buildings from later stylistic periods, it gains a much broader quality. A grouping of historic buildings is a major contribution to the visual quality of the place we call "home". Remove one part, and that character is seriously diminished. The Towner House is a perfect example of this. It is an integral part of a rich architectural collection of structures along North Huron Street. Its removal would have a definite adverse impact on the streetscape of which it is a part. As a result, the quality of the City of Ypsilanti would be diminished.

Frank indicated that how the building is used in the future has a great impact on the scope of potential restoration. He indicated that one of the purest ways to preserve it, as well as the least costly, would be to remove all additions, along with the garage. A second option would be to leave the first addition intact. It was Frank's opinion that the Towner House is of such value to the

City of Ypsilanti in its existing location that preservation is the only reasonable alternative. Further, he stated that if either of the two options for restoration were to be implemented, the resulting size of the property would allow the Church to expand both its parking lot and the memorial gardens, and would not adversely affect historic or locations values of the house.

iii. Letters of Comment

19. Some 18 letters expressed the view that the Towner House should be preserved at its present site. The majority of those letters came from various preservation groups and government agencies, including: Washtenaw County Historic District Commission; Michigan Historic Preservation Network; Historical Society of Michigan; State Historic Preservation Office; Curatorial staff of Henry Ford Museum & Greenfield Village; Ypsilanti Heritage Foundation; two faculty members of the Historic Preservation Program at Eastern Michigan University; Riverside Arts Center; Architecture Urban Planning Historic Preservation; City of Ann Arbor Building Department; and six individuals.

20. The Commission was also received two letters that supported the First Presbyterian Church's request to move or demolish the Towner House. One of the two letters, from the chief executive administrator of the Presbytery of Detroit, stated that

a study of the entire Presbytery conducted in late 1994 indicated that the First Presbyterian Church is the only one "projected to experience an higher than average population growth in the next five years". This letter went on to state that "additional facilities would be required" and that the "relocation of the Towner House is key to providing necessary space". The second letter was from the President of the Ypsilanti Historical Society and stated that the "Church is being held to a far more stringent standard of historic preservation than others". It went on to state that the society "stands ready to help by providing space to preserve selected sections of especially important construction examples in the Towner House."

iv. Oral Presentations and Comments

21. Prior to receiving oral presentations from representatives of the Church and the Commission, as well as statements from the public, Commission Chairperson Jane Schmiedeke reiterated that, in order to reach a decision, the Commission must determine the following:

- a. whether the Church has proven its claims that the house is a hazard to the safety of the public; retention of the building is a financial hardship resulting in an inability of the church to carry

out its primary religious purpose; and retention is not in the best interest of the community.

- b. whether the Church has proven that retention of the building is a substantial burden to the Church in carrying out its primary religious mission.
- c. whether the City has shown that in denying the permit, it is doing so for a compelling governmental interest, and that it is doing so in the least restrictive way.
- d. whether the property can be sold or leased, whether a market for the property exists, whether the Towner House is historically or architecturally significant, whether the house contributes to the Historic District and to the N. Huron streetscape.
- e. consider all opinions expressed at the public hearing.

22. The Church's lawyer, Gerald Law, made a presentation regarding the claims made by the Church. He provided documents from Carver Construction to rehabilitate the Towner House for residential and office use. He stated that some of the costs have changed since similar proposals were submitted in 1993. He further indicated the Church is not opposed to preservation of the house

and is trying to find a balance consistent with its needs and the community's interest in preservation. Lax indicated the major thing since the 1993 public hearing is the RFRA. He further indicated that the issue is about education space, recreational space for youth programs, expanding the memorial garden, and possibly adding a parking lot. He said restricting the Church from using approximately 20% of its property is a burden on its religious freedom rights. Lax stated that the Church has taken steps to stabilize the building; however, since it stands empty, the potential for break-ins is maximized. As for economical hardship, if the house could be sold, the Church would not be able to recoup the original \$60,000 cost of the property and would have less than 80% of its property value. In addition, the Church needs a new central hearing system which it cannot afford if it has to maintain the Towner House. Lax stated that the public interest of the Church should also be considered and that the issue was to find a way to preserve the house and let the Church use its property. He noted that a number of additions had been made throughout the house's history and not all of them well done. He also noted that restoration architect Frank stated that moving a house is an acceptable way of preserving it.