

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

In the Matter of:

**SCOTT WURM,**  
Applicant/Appellant,

v

Docket No. 98-160-HP

**GRAND RAPIDS HISTORIC PRESERVATION COMMISSION,**  
Respondent/Appellee.

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**FINAL DECISION AND ORDER OF REVIEW BOARD**

This matter involves an appeal of a decision of the Grand Rapids Historic Preservation Commission, denying an application for retroactive approval of the front porch railing installed on the house located in the Heritage Hill Historic District at 600 Crescent N.E., Grand Rapids, Michigan.

The State Historic Preservation Review Board (the Board) has appellate jurisdiction to consider such appeals under section 5(2) of the Local Historic Districts Act (MCL 399.205).

At the direction of the Board, an administrative hearing was held on August 19, 1998, for the purpose of receiving evidence and argument.

A Proposal for Decision was subsequently issued, recommending reversal of the Commission's decision on the basis that new owners should not be held responsible for the actions of prior owners, nor for workmanship associated with construction needed to comply with Federal Housing Administration (FHA) requirements.

The Proposal was issued on September 16, 1998, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act (MCL 24.281).

The Board considered the appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regularly scheduled meeting conducted on Friday, October 2, 1998.

After considering the appeal and all related materials, the Board rejects the Recommendation in the Proposal for Decision and affirms the Commission's decision denying the Appellant's request for retroactive approval of the porch railing. The basis for the Board's decision is as follows:

1. The Board agrees that the Issue on Appeal is as stated in the Proposal; that is, that this appeal raises but a single issue, Is the purchaser of an historical property (a house) responsible for the workmanship involving the front porch railing, if the seller performed the work without the purchaser's knowledge or consent immediately prior to the sale?

2. The Board adopts the Findings of Fact in the Proposal for Decision as its Findings.

3. The Conclusions of Law to the effect that a property owner cannot be held responsible for the actions of the prior owner and also that a purchaser should not be responsible for work performed by the seller to meet an FHA requirement, are rejected, in that the record lacks evidence and legal authority to support such conclusions. The Board's view is that Building Code and other Code violations (such as historic preservation ordinance violations) pass with the property, as do zoning violations. Further, construction of the nonconforming porch railings did not predate creation of the historic district, the Secretary of the Interior's Standard, and the Commission's Porch Guidelines. Dusdal v City of Warren, 387 Mich 354, 359; 196 NW2d 778 (1972). It is concluded that purchasers are responsible for the previous owners' work.

Having considered the Proposal for Decision and the official record made in this

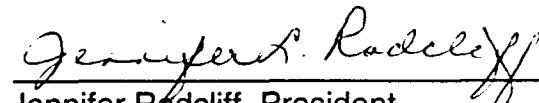
matter, the Board voted   5   to   0  , to reject the Recommendation in the Proposal for Decision and to affirm the Commission's denial of the Appellant's application, because violations of property law pass to the subsequent owner, which is the issue the Appellant raised.

Having done so,

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

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

Dated: Nov. 5, 1998

  
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Jennifer Radcliff, 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. In addition, MCR 2.105(G) and 7.105 may prescribe other applicable rules with respect to appeals of decisions of administrative agencies.

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STATE OF MICHIGAN  
MICHIGAN DEPARTMENT OF STATE  
ADMINISTRATIVE LAW DIVISION

In the Matter of:

SCOTT WURM,  
Applicant/Appellant,

v

Docket No. 98-160-HP

GRAND RAPIDS HISTORIC  
PRESERVATION COMMISSION  
Appellee.

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PROPOSAL FOR DECISION

This matter involves an appeal from a decision of the Grand Rapids Historic District Commission (the Commission), denying the application of Scott Wurm (the Appellant) for retroactive approval of railings installed on an existing porch for his property located at 600 Crescent Street N. E., Grand Rapids, Michigan. The Commission denied approval based on 'poor workmanship'. Under section 5(2) of the Local Historic District's Act (the Act),<sup>1</sup> a person who is aggrieved by a decision of an historic commission may appeal the decision to the State Historic Preservation Review Board (the Board), which is an agency of the Michigan Department of State (DOS).

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

Upon receipt of Wurm's appeal, the Board authorized the DOS to convene an administrative hearing for the purpose of making a proper record of evidence and argument. The hearing was conducted at the Michigan Historical Museum on August 19, 1998. Appearing on behalf of the Commission was Ms. Kay Moul, a city Zoning Inspector. Mr. Wurm could not attend the duly scheduled hearing and telephoned the DOS several days earlier to advise that his employment prevented attendance. The hearing was subject to the contested case provisions of the Administrative Procedures Act.<sup>2</sup>

#### Issues of the Appeal

With the record of this matter having been made, it is evident that this case and controversy raises but a single issue: Is the purchaser of historical property (house) responsible for the historic workmanship involving the front porch railing if the purchaser's seller constructed the railing prior to the sale of the property, without the purchaser's knowledge and pursuant to Federal Housing Association (FHA) guidelines?

#### Summary of Evidence

Section 5(2) of the Act, supra, indicates that the parties to an historic preservation appeal may submit all or part of their evidence and argument in written form. The Appellant submitted a letter for his appeal and also a letter with attachments for his hearing testimony which are marked Appellant's Exhibits 1 & 2. The

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

Commission submitted 14 exhibits at the hearing, as well as providing testimony from Inspector Moul.

The Appellant purchased the property in March of 1997 from Gary Ward, who had constructed the porch railings in question prior to the sale pursuant FHA guidelines. Approximately 11 months later, on or about February 5, 1998, Zoning Inspector Michael Page sent a letter to the Appellant concerning the porch railings. Page advised the Appellant that the previous owner (Ward) had not applied for a Certificate of Appropriateness from the Commission and that he must now do so. Page also included a copy of a letter that he had sent to Ward on December 12, 1996, concerning work affecting the exterior of properties located in historic districts within the City of Grand Rapids.

The Appellant complied with Page's request and submitted the Application for the Certificate that Ward should have not only applied for, but also received prior to the sale. Subsequently, on April 20, 1998, the Commission denied Wurm's application pursuant to the Local Historic Districts Act. Consequently, Wurm appealed the Commission's denial.

#### **Findings of Fact**

The Commission based its unanimous decision in the Notice of Denial sent to the Appellant dated April 20, 1998, upon 'poor workmanship', by stating the porch railing work is not consistent with the historic character of the property. In its hearing presentation, the Commission effectively offered evidence which

continued to support this theory and also adhere to its policy that holds the "property owner responsible". On the other hand, the Appellant argued that the prior owner (Ward) should be held responsible for the porch railing work which he had completed long before the Appellant purchased the property. Wurm also contended that the sale was made with FHA approval. He also pointed out that the difference between acceptable and unacceptable is merely inches in spindle height and carved-round spindles instead of flat spindles. To revise this construction, Wurm argued, would be "very costly" and not reasonable.

Review of the Commission's exhibits 8, 9 and 10 (photographs) show the porch in 1936 and 1948 with porch railings. However, the 1993 photos show no porch railings. Commission exhibits 11 a-g are photos of the completed porch railings taken August 18, 1998. The 1998 photos reveal the porch railings constructed as shown in the 1936 and 1948 photos, but with the differences previously discussed.

#### Conclusions of Law

After careful review and consideration of the record taken as a whole, it is hereby concluded that the Appellant is not responsible for 'poor workmanship' of the porch railing construction. Therefore, the Commission's decision should be reversed.

Two reasons specifically support this conclusion. The first reason involves the basic notions of notice, opportunity and a

sense of fair play which in this matter was not availed the Appellant. He cannot be held responsible for the actions of someone not within his control--the previous property owner Ward. The Appellant also exercised no control over the FHA, whose guidelines were followed to complete the sale of the property. The equitable notions of notice, opportunity and fair play are major components of the concept regarding successor liability which the Michigan Supreme Court articulated quite clearly in Stevens v McLouth Steel Products Corp, 433 Mich 365; 446 NW2d 95 (1989).

The second reason supporting reversal involves the Commission's contention that the porch railings are constructed with 'poor workmanship'. The current railings are different only in height (seven inches due to an FHA requirement) and rounded spindles instead of flat. After examining all of the photos, it must be concluded that no historical significance is lost. With all due respect to historic preservation, the difference visible to the average viewer is almost impossible to distinguish. Any difference is transparent and very similar to that of a philatelist rating a rare and valuable stamp somewhere between extremely fine and superb.

Accordingly, the Appellant should not be unfairly held hostage somewhere between the two standards of the FHA and the Commission, particularly when he lacked notice and control over either. The Commission dutifully pursues continued enforcement of its policy, which holds the property owner liable for workmanship but in this



matter it is the previous owner not the Appellant. Wurm, the proud and happy current property owner, seeks to continue the fine historical tradition established in the district and also is quite willing to work with the Commission to remedy this situation, but within reason and practicality.

Recommendation

It is therefore recommended that the appeal be granted.

Dated: 9-16-98

Robert T. Sacco  
Robert T. Sacco (P39252)  
Presiding Officer

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