

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

In the Matter of:

LIDJIA D. BONER AND KATHLEEN RANDALL,
Applicants/Appellants,

v

KALAMAZOO HISTORIC DISTRICT COMMISSION,
Respondent/Appellee.

Docket No. 00-97-HP

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Kalamazoo Historic District Commission denying an application for retroactive approval to remove a primary wooden door and to install a metal door at the front entrance of the residence located at 612 Minor Avenue, Kalamazoo, Michigan, which is located in Kalamazoo's Vine/South Street Historic District.

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, as amended, being section 399.205 of the Michigan Compiled Laws.

At the direction of the Board, an administrative hearing was held on March 15, 2000, for the purpose of receiving evidence and hearing argument.

A Proposal for Decision was issued on March 30, 2000, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of Michigan Compiled Laws.

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, April 14, 2000.

Having considered the Proposal for Decision and the official record made in this matter, the Board voted 5 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 hereby is, granted.

IT IS FURTHER ORDERED that the Kalamazoo Historic District Commission shall issue a Certificate of Appropriateness to the Appellants, with respect to their application, at the earliest practicable time.

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

Dated: April 14, 2000

Jennifer L. Radcliff
Jennifer L. 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 Board's Final Decision and Order.

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
ADMINISTRATIVE LAW DIVISION

In the Matter of:

LIDJIA D. BONER AND KATHLEEN RANDALL,
Applicants/Appellants,

v

Docket No. 00-97-HP

KALAMAZOO HISTORIC DISTRICT COMMISSION,
Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Kalamazoo Historic District Commission (the Commission), denying a request for retroactive approval of the installation of a primary door in the front entrance of the residence located at 612 Minor Avenue, Kalamazoo, Michigan. The residence is situated in Kalamazoo's Vine Area/South Street Historic District (the District).

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

¹ 1970 PA 169, § 5; MCL 399.205; MSA 5.3407(5).

Upon receipt of the appeal, the Review Board directed the Michigan Department of State, Administrative Law Division, to convene an administrative hearing for the purpose of taking relevant evidence and argument. The Administrative Law Division conducted a hearing on March 15, 2000, in the First Floor Hearing Room, the Mutual Building, 208 North Capitol Avenue, Lansing, Michigan. The hearing was held under procedures prescribed in Chapter 4 of the Administrative Procedures Act.²

The Appellants, Lidjia J. Boner and Kathleen Randall, both appeared in person at the administrative hearing, but chose not to be represented by legal counsel. Larry L. Burns, Historic Preservation Coordinator for the City of Kalamazoo, attended the hearing as a representative of the Commission/Appellee. Amy Arnold, CLG Coordinator and Historic Preservation Planner for the Michigan Department of State, State Historic Preservation Office, attended as a representative of the Review Board. Nicholas L. Bozen, Administrative Law Examiner, Michigan Department of State, Administrative Law Division, presided at the hearing.

Issues on Appeal

In a letter dated February 2, 2000, Randall and Boner first wrote that they felt that the Commission had acted in an arbitrary and capricious manner and that the denial should be reversed.

As a second ground for reversal of the Commission's decision, Boner and Randall stated that they were unaware that an application was required for home improvements, suggesting that

²1969 PA 306, § 71 et seq; MCL 24.271 et seq; MSA 3.560(171) et seq.

they had acted responsibly. They admitted removing and replacing the front door without submitting the proper application, but they stated that they had upgraded all three of their recently purchased properties within one short year of purchase. They pointed out that these three houses had not been taken care of in over ten years. They wrote that the homes were repainted, that windows were repaired, that furnaces were repaired and cleaned, that mud yards now have new grass, and that much interior work, such as painting, replacing bathroom light fixtures, and fixing ceilings, had been completed. They asserted that they are proud homeowners who are not trying to circumvent the system but rather are trying to work within the system.

As a final ground for reversal, Boner and Randall argued that the notice of denial is legally insufficient. In terms of this issue, they asserted that the notification letter they had received from Burns, dated December 8, 1999, said that their application was denied and simply cited "Section #6 and #9" of the Secretary of the Interior's Standards. They stressed that the letter indicated in bold type, see attached procedural attachment for Review Board appeals, but no attachment was enclosed. They went on to say that Randall then telephoned Burns and explained to him that she did not know what Section #6 and Section #9 were and that she wanted more information about why the application had been denied. According to Randall, Burns' reply was that he knew a place where she could buy a wooden door for a reasonable price.

By way of an initial response, at the hearing Burns indicated that he oversees historic preservation for 1,800 properties and

that it is rare for someone in a district not to know their obligations. He expressed regret that this case had proceeded to the appeal stage. He then referenced a letter sent by the Commission Chair, Lynn Smith Houghton. (See Commission Exhibit No. 1) The letter was directed to the Review Board and commented on this appeal. Among other things, Ms. Smith Houghton wrote that on November 16, 1999, the Commission had voted unanimously to deny the request to retroactively approve the replacement door at issue.

Summary of Evidence

Under Michigan law, a party who occupies the position of plaintiff, applicant, or appellant generally has the burden of proof in an administrative proceeding. 8 Callaghan's Michigan Pleading and Practice (2d ed), § 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 Appellants clearly occupy that position in this matter and consequently bear the burden of proving any factual allegation that they have made in this case.

In that regard, the Appellants submitted eleven exhibits. Those consisted of: 1) their letter of appeal dated February 2, 2000; 2) a letter from a civil engineer, Michele J. Wregglesworth, stating that the replaced door had to be replaced in that it was not structurally sound; 3) a letter from a door repairer, Timothy Lent, indicating that when he was asked to give an estimate to repair the wooden door, he determined that the door was falling apart and was beyond his capabilities to repair; 4) the notice of

denial dated December 8, 1999; 5) a Polaroid photograph of the residence's screen door in a closed position in front of the new replacement door; 6) a Polaroid photograph of the replacement door; 7) a copy of a "stop work" order dated May 25, 1999; 8) a copy of a mortgage dated November 19, 1998; 9) three photographs of the front of the premises at 612 Minor Avenue; 10) three additional photographs of the front of the premises; and 11) a tax credit possibility notification addressed to a property owner.

Besides presenting exhibits, Randall and Boner both testified at the hearing. In this regard, Randall stated that her home is located in a "student ghetto", that the neighborhood has a carpenter ant problem, and that the original door was beyond repair and had been hauled away by a neighbor. She also stated that she never received actual notice of the time and place of the Commission meeting at which the application was considered, although she tried hard to find out when and where it would be held. She further indicated that she did not receive any attachments with the notice of denial and she did not know how her new door had violated the law. She mentioned that she had had to contact the Review Board's representative, Amy Arnold, directly in order to find out how to file an appeal.

Boner also testified at the hearing. She indicated that she had personally purchased the replacement door at Menards, for about \$250, and had hung it herself. She also mentioned that at the end of the particular day on which she had replaced the door, a retired neighbor "Jim" hauled the original door away for her and Randall. She further stated that the denial notice simply said

her application was denied, and she thought that she and Randall would have to pay a fine.

The Commission submitted 16 documentary exhibits in connection with this case. These exhibits were: 1) a letter from Commission Chair Lynn Smith Houghton explaining in detail why the Commission had denied the application; 2) four color copies of photographs of the front of the premises, including one picture showing the original damaged wooden door; 3) a color copy of a photograph of the replacement door in the closed position; 4) four Polaroid photographs of the front of the premises; 5) a photograph of the original door taken on May 25, 1999, plus another Polaroid photograph of the new front door; 6) a photocopy of the stop work order; 7) internal computer notes; 8) a letter from Burns to Boner, dated September 17, 1999, stating that unapproved work had been performed at the premises, that an application for project review must be submitted within 30 days, and that failure to do would result in issuance of an enforcement letter with an automatic charge of \$50.00; 9) additional internal computer notes; 10) a letter from Burns to Boner, dated October 27, 1999, stating that the letter was an enforcement letter, that it generates a recovery charge of \$50.00, and that failure to pay the invoice will result in a lien against her property; 11) an application for project review with a receipt date of November 15, 1999; 12) additional internal computer notes; 13) a notice of denial dated December 8, 1999; 14) a residential building data sheet for parcel No. 06-21-292-008; 15) minutes of the Commission meeting held on

November 16, 1999; and 16) a copy of the local Standards and Guidelines for Kalamazoo's Historic Districts.

Larry L. Burns, the Historic Preservation Coordinator for the City of Kalamazoo, testified at the hearing in support of the Commission's action. At the outset of his testimony, Burns described the historic significance of the residence at 612 Minor Avenue. He then explained that he had received a phone call from a person who lived near the house on Minor Avenue, indicating that possibly unapproved work was taking place at the house. He stated that a day or two later, he went to the house, posted a "stop work" order, and took photographs, including two pictures of the original door.

Burns further testified that over time, several conversations had taken place between himself, and Boner and Randall. He then indicated that there was a question in this case as to how he did his job. He asserted that he had made every effort he could make to ensure the best outcome for the homeowner, and that he repeatedly tried to communicate with both Boner and Randall. He also said that he spoke at great length with both of them about the process.

Findings of Fact

Based on the evidence submitted by the parties during the course of this appeal, the facts of this case are found to be as follows:

A. Residence at 612 Minor Avenue

1. The residence at 612 Minor Avenue was constructed in 1904. It is a two-story, single family, wood frame structure built in

the Queen Anne style with a large Colonial Revival porch. (Commission Exhibit No. 14) The building has historic character and is similar in style and appearance to the majority of the houses in the neighborhood. (Testimony)

B. Kalamazoo's Vine Area/South Street Historic District

2. The residence is located in Kalamazoo's Vine Area/South Street Historic District. The South Street portion of the district was originally established in 1976.³ The Vine Area portion of the district was designated in 1990.⁴

C. Local Historic Standards and Guidelines

3. The City of Kalamazoo has adopted standards and guidelines for exterior restoration work in historic districts. (Commission Exhibit No. 16) On or about May 3, 1994, the Commission adopted revised standards and guidelines for proposed work concerning primary doors. (Commission Exhibit No. 16, page 2) Although these standards and guidelines give preference to preserving and repairing existing primary doors, they do allow new wood doors to be installed whenever no salvaged door is available. (Commission Exhibit No. 16, page 2) They also give the Commission discretion to determine the appropriateness of any replacement door. (Commission Exhibit No. 16, page 2) Page 24 of the standards and guidelines presents pictures of six alternative acceptable door designs. The preferred design has an upper glass panel and two lower embossed panels. (Commission Exhibit No. 16, page 24)

³ Kalamazoo Code, § 16-4.

⁴ Kalamazoo Code, § 16-8.

D. Ownership of Property

4. On or about November 19, 1998, Lidjia D. Boner obtained a mortgage in excess of \$50,000.00 with respect to the property located at 612 Minor Avenue. (Appellants' Exhibit No. 7) After acquiring the property, which had been neglected for about ten years, she and her partner, Kathleen Randall, began to make repairs to both the interior and the exterior of the residence. (Testimony) Neither Boner nor Randall was aware that the residence was located in a historic district. (Testimony)

E. Installation of New Primary Door

5. The existing wooden front door on the premises was in bad shape. Many years of exposure to the harsh Michigan climate had caused the door to warp and to no longer properly fit its frame. (Appellants' Exhibit No. 7) An open mail slot had been cut into the door, and the door's structural integrity had been compromised. (Appellants' Exhibit No. 7) The door was falling apart and could not be repaired. (Appellants' Exhibit No. 8)

6. The neighborhood had a carpenter ant problem. Two trees in the front yard of the property had nests of carpenter ants, and Boner was concerned that the ants might migrate into her house through the front door. (Testimony) She felt that installing a metal replacement door would afford her newly mortgaged home maximum protection against insects. (Testimony) On or about May 25, 1999, she proceeded to Menards, purchased a primary metal replacement door with an upper glass panel and two lower embossed panels, and hung the new door. (Testimony) At that time, she was

not aware that that an application was required for this type of home improvement. (Appellants' Exhibit No. 1)

F. Enforcement Efforts

7. Shortly before Boner hung the new door and while she was making preliminary preparations for that work, an individual who lived in the neighborhood contacted Burns and informed him that possible unapproved work was going on. (Testimony) On May 25, 1999, but some time after the replacement door had already been installed, Burns drove to the premises, determined that work was being performed without benefit of a permit, and posted a "stop work" order on the premises. (Testimony; Commission Exhibit No. 6; Appellants' Exhibit No. 7) Burns also took photographs of the replacement door, as well as the original door, which at the time was laying on its side on the front porch. (Testimony; Commission Exhibits Nos. 2 and 5) Still later in the day, a neighbor "Jim" hauled the original door away. (Testimony) At the end of the work day, Randall returned to her home and found the "stop work" order. (Testimony)

8. Randall immediately contacted Burns by telephone. (Appellants' Exhibit No. 1) During that phone conversation, Burns told Randall that she and Boner would have to rehang the old front door. (Appellants' Exhibit No. 1) Throughout this conversation, Randall made many attempts to explain to Burns that the original door had been removed from the premises before the "stop work" order was seen. (Appellants' Exhibit No. 1) She also tried to explain to him that the old door was damaged beyond repair.

(Appellants' Exhibit No. 1) Burns replied that the Commission might take legal action. (Appellants' Exhibit No. 1)

9. In later conversations, Randall again tried to tell Burns that the door was damaged beyond repair. (Appellants' Exhibit No. 1) Burns informed her that he knew of people who could repair the door. (Testimony; Appellants' Exhibit No. 1) He also indicated that the Commission might pursue legal action and said he wanted the old door put back on as soon as possible. (Appellants' Exhibit No. 1)

10. Eventually, Randall convinced Burns that an honest mistake had been made and asked him what her other options might be. (Appellants' Exhibit No. 1) Burns replied that she might have to pay fines, and Randall asked what those would be. (Appellants' Exhibit No. 1) She also asked for some written guidelines so there would not be any further mistakes, particularly since she and Boner had recently purchased three properties on the immediate block and planned to continue to make improvements. (Appellants' Exhibit No. 1) Burns did send Randall a booklet on the requirements for exterior remodeling in a historic district in Kalamazoo. (Appellants' Exhibit No. 1)

11. On September 17, 1999, Burns sent Boner a letter reiterating that unapproved or unpermitted work relating to the removal of the original front door and the installation of a new front door had been performed at 612 Minor Avenue, and that most exterior work in the district requires an application to be submitted before the work may commence. (Commission Exhibit No. 8) The letter further stated that any proposed work within a

historic district must also meet local guidelines and standards, and requires a certificate of appropriateness from the Commission. (Commission Exhibit No. 8) The letter concluded by indicating that they must submit an application for project review within 30 days or an enforcement letter would result, generating an automatic charge of \$50.00. (Commission Exhibit No. 8)

12. Burns later spoke with Boner, who stated that she had no way of putting the original door back and would be willing to pay any fines assessed to her. (Commission Exhibit No. 9)

13. On or about October 27, 1999, Burns sent Boner a violation notice. (Commission Exhibit No. 10) The notice stated that if the violation were not corrected within 30 days, then an appearance ticket would be issued and the matter would be transferred to the City Attorney for legal action. (Commission Exhibit No. 10) The notice also indicated that the matter might be referred to the Dangerous Buildings Board. (Commission Exhibit No. 10) The notice further indicated that by ordinance, the letter had automatically generated a recovery charge of \$50.00 and that failure to pay the charge would result in a lien being placed against the property. (Commission Exhibit No. 10)

G. Application

14. Burns received an application for project review from Boner on November 15, 1999. (Commission Exhibit No. 11) The application requested approval for the replacement of the front door at 612 Minor Avenue and stated that the application was a retroactive request. (Commission Exhibit No. 11) The application further indicated that the old door had previously been removed

and that a new door had already been installed. (Commission Exhibit No. 11)

15. Shortly thereafter, Randall received a telephone message from Burns saying that the Commission was going to review the application and that if she and Boner wanted to attend the Commission meeting, they should please let him know. (Appellants' Exhibit No. 1) Randall left three different phone messages for Burns the next day (November 16, 1999); however, Burns did not return any of those calls. (Appellants' Exhibit No. 1) Randall also telephoned other municipal offices in an attempt to find out when and where the Commission would be meeting, but no one she spoke with had that information. (Testimony)

H. Commission Action

16. The Commission conducted a regular monthly meeting on November 16, 1999 and considered over one dozen applications at that time. (Commission Exhibit No. 15) The last item of new business on the Commission's agenda concerned Boner's application, which had been received the previous day. (Commission Exhibit No. 15) Burns presented information and pictures of 612 Minor Avenue to the Commission, to apprise the Commission of the situation. (Commission Exhibit No. 15) A motion was made to disallow the replacement of the door according to "Sections #6 and #9" of the Secretary of the Interior's Standards.⁵ (Commission No. 15)

⁵ The meeting minutes do not reflect if the motion passed or failed.

17. The next day, November 17, 1999, Burns contacted Randall and told her that the application had been denied. (Appellants' Exhibit No. 1)

18. On December 8, 1999, Burns sent Boner a written notice of denial on behalf of the Commission. (Appellants' Exhibit No. 4; Commission Exhibit No. 13) The notice stated the Commission, at its meeting of November 16, 1999, had denied the request to replace the front door. (Appellants' Exhibit No. 4; Commission Exhibit No. 13) The reason cited for denial was: "Sections #6 and #9 of the secretary (sic) of the Interior Standards". (Appellants' Exhibit No. 4; Commission Exhibit No. 13) The notice also advised that aggrieved applicants had the right of appeal to the Review Board pursuant to an attached procedural handout. (Appellants' Exhibit No. 4; Commission Exhibit No. 13) However, no attachment was enclosed. (Testimony; Appellants' Exhibit No. 1)

19. Randall contacted Burns by telephone and asked about the missing attachment. (Appellants' Exhibit No. 1) She then explained to him that she did not know what Section #6 and Section #9 were and that she would like more information about them. (Appellants' Exhibit No. 1) In reply, Burns told her that he knew where she could buy a wooden door in Dowagiac for a reasonable price. (Testimony; Appellants' Exhibit No. 1)

I. Appeal

20. On or about February 2, 2000, Boner and Randall submitted a letter of appeal to "Kathryn Eckert, Executive Secretary" of the Review Board. (Appellants' Exhibit No 1) The Review Board received this letter on February 9, 2000. (Appellants' Exhibit

No. 1) The appeal was forwarded to the Administrative Law Division for the scheduling of an administrative hearing.

J. Property Owner Tax Credits

21. On or about February 11, 2000, the Commission sent post cards to notify all owners of properties located in any one of Kalamazoo's six historic districts, advising them about the possibility of receiving investment tax credits for rehabilitating qualified historic properties. (Appellants' Exhibit No. 11) Boner and Randall never received a notification card.⁶ (Testimony)

K. Additional Information

22. On or about March 22, 2000, Lynn Smith Houghton, Commission Chair, sent the Review Board a letter explaining the reasoning behind the Commission's decision. (Commission Exhibit No. 1) In this letter, the chair wrote:

According to our Standards and Guidelines: 'No exterior doors, windows, exterior woodwork, or architectural elements should be altered, removed, relocated or added without approval of the HDC.' (Commission Exhibit No. 1)

23. The chair further wrote:

In addition, according to our Guidelines, 'every effort should be made to preserve or repair the existing door. If the door needs to be replaced, the Commission would determine the appropriateness of the replacement door. Whenever possible, a salvaged door of approximate age and style should be used.' Our Guidelines also include drawings of acceptable doors including the statement for primary front doors that they should be 'constructed of wood.' We have allowed painted

⁶ Appellants' Exhibit No. 11 was addressed to a friend, Shirley Rouse.

metal for rear doors, not the front. (Commission Exhibit No. 1)

24. The chair lastly wrote:

We voted unanimously on November 16, 1999 to deny the request to retroactively approve this door based on the following Secretary of Interior's Standards for Rehabilitation:

6. Deteriorated historic features shall be repaired rather than 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. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

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. (Emphasis in original; Commission Exhibit No. 1)

25. The chair concluded her letter by asking the Review Board to take her comments into consideration when deliberating this appeal. (Commission Exhibit No. 1)

Conclusions of Law

As indicated above, section 5(2) of the Act, supra, gives any person aggrieved by a commission's decision the right to appeal to the Review Board. Section 5(2) also provides that 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. Relief should, of course, be granted whenever a commission has, among other things, acted in an

arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial and material error of law. Conversely, when a commission has reached a correct decision on an application and has followed all procedural requirements found in law, then relief should not be awarded.

A. Arbitrary and Capricious Conduct

In the case at hand, the Appellants first asserted that the Commission engaged in arbitrary and capricious conduct by denying the application at issue.

The courts have provided some guidance as to what constitutes arbitrary and capricious activity. In Bundo v City of Walled Lake, 395 Mich 679, 703; 238 NW2d 154 (1976), the Supreme Court pointed out that the words "arbitrary" and "capricious" should be accorded their common and ordinary meanings, that arbitrary refers to decisions made without reference to adequate determining principles, and that capriciousness relates to something apt to change suddenly.

With respect to the issue of the Commission's alleged arbitrariness, it must initially be observed that the Appellants presented no actual evidence on this issue. Simply put, the Appellants presented no proofs whatsoever to show that the Commission had failed to properly apply applicable historic preservation standards when denying the request for the door.

On the other hand, the Commission presented evidence of its own to rebut the Appellants' assertion. Commission Exhibit No. 1 was the March 2, 2000 two-page letter from Commission Chair Smith Houghton detailing the reasons why the Commission had denied the

Appellants' application. In this letter, the Commissioner Chair wrote that the Appellants had removed their wooden front door and replaced it with a metal one, without benefit of a certificate of appropriateness. The Chair then cited Kalamazoo Standards and Guidelines providing that no exterior door can be removed or altered without Commission approval. The Chair went on to write that according to the same guidelines, whenever a damaged wooden door must be replaced, the replacement door should, if at all possible, be a salvaged door, or if not, then at least "be constructed of wood". The Chair added that the Commission has allowed painted metal rear doors, but never on the front. The Chair then quoted Standards No. 6 and 9 of the U.S. Secretary of the Interior's Standards for Historic Preservation, reflecting that Standard 6 provides that replacements for deteriorated historic features must match the old in terms of materials. In a related vein, Standard No. 9 provides that alterations of exterior features must not destroy historic materials.

The official record of the administrative hearing, when viewed as a whole, clearly evidences that the Commission applied applicable legal standards when considering whether to approve or deny the Appellants' application for retroactive approval. Inasmuch as the Commission acted in a proper fashion and conversely did not act in an arbitrary and capricious manner, the Appellants' first argument for reversal must be rejected.

B. Lack of Awareness of Law

The Appellants next argued that the Commission's decision should be reversed because they were unaware that they were

required to obtain a permit and certificate before removing the old wooden door and replacing it with a new metal door.

In terms of this argument, the Appellants presented convincing evidence that neither of them was actually aware that 612 Minor Avenue was located in one of Kalamazoo's six historic districts or that historic regulations must be followed. They presented other convincing evidence to show that they were seriously interested in improving the quality and appearance of their house on Minor Avenue, as well as two other buildings they had also acquired. Their testimony regarding their desire not to circumvent the law and to work within the parameters of the historic preservation system, also appeared credible.

Nevertheless, as a matter of law, the fact that a person may be unaware of the legal requirements associated with doing work on the exterior of historic structures, does not relieve the person of the legal duty to comply with all applicable provisions of law. Indeed, in Michigan and elsewhere, it has long been axiomatic that "ignorance of the law is no excuse". GF Sanborn v Alston, 153 Mich 456, 459; 116 NW 1099 (1908). The general rule is that in civil cases, ignorance of the law, with full knowledge of the facts, furnishes no basis in law or equity for any sort of relief, including the rescission of agreements, the reclaiming of money, or the setting aside of the solemn acts of parties. See Black's Law Dictionary, Revised Sixth Edition, p 747 (West, 1990).

In light of the above, it must be concluded that the Appellants' second argument for reversal lacks merit and must be rejected.

C. Insufficiency of Notice of Denial

As their final ground for reversal, the Appellants argued that the notice of denial which the Commission furnished to them is legally insufficient. On this point, the Appellants indicated that the notice, in terms of the reason for denial, stated simply, "Sections #6 and #9 of the secretary (sic) of the Interior's Standards." Randall went on to indicate that she did not even know what Sections #6 and #9 were and that she therefore contacted Burns, telling him that she wanted more information about how her replacement door had violated the law.

As it happens, section 9 of the Act (MCL 399.209) prescribes certain requirements which are applicable to the written denials that are issued by commissions. Section 9 provides in pertinent part as follows:

Sec. 9. (1) * * * A denial shall be accompanied with a written explanation by the commission of the reasons for denial and, if appropriate, a notice that an application may be resubmitted for commission review when suggested changes have been made. The denial shall also include notification of the applicant's right of appeal to the state historic preservation review board and to the circuit court. The failure of the commission to act within 60 calendar days after the date a complete application is filed with the commission . . . shall be considered to constitute approval. (Emphasis added)

To reiterate, the Appellants are arguing that they did not receive a written explanation from the Commission describing the reasons for the denial.

In order to determine the merits of the Appellants' contention, it is first necessary to look to the principles of statutory

construction. The primary goal of statutory construction is to give effect to the intentions of the legislature. Livingston Co Bd of Social Services v Dep't of Social Services, 208 Mich App 402, 406; 529 NW2d 308 (1995). When the language of a statute is clear, then the law must be enforced as written. Gebhardt v O'Rourke, 444 Mich 535, 541-542; 510 NW2d 900 (1994). To resolve ambiguity, one must look to the object of a statute and to the evil it was designed to remedy. Erickson v Dep't of Social Services, 108 Mich App 473, 478; 310 NW2d 428 (1981). Resort to reviewing dictionary definitions is also appropriate. Ludington Service Corp v Ins Comm'r, 194 Mich App 255, 261; 486 NW2d 120 (1992). In addition, agencies may look to extrinsic factors, such as bill analyses, to assist with ascertaining legislative intent. Webster v Secretary of State, 147 Mich App 762, 766; 382 NW2d 745 (1985).

The language in section 9(1), which requires that there be "a written explanation by the commission of the reasons for denial", was added to the Act by House Bill 5504, a bill enacted into law as 1992 PA 96. According to House Legislative Analysis for HB 5504, dated March 3, 1992, under prior law historic commissions merely had to file approvals or rejections of proposed work with building inspectors, whereas:

Under the bill, historic commissions would (now) have to put in writing their reasons for denying an application" * * *.

Similarly, a publication entitled, "A Guide to Michigan's Local Historic Districts Act", which was prepared by the Michigan

Historic Preservation Network shortly after the Act was amended, stated on page 8 that the amended law "specifies that denials shall be explained in writing to the property owner".

Dictionary definitions shed light on what the legislature intended by enacting the relevant language of section 9(1). Webster's New World Dictionary, Third College Edition, p 479 (1994), indicates that the word "explanation" means something that explains. Further, the word "explain" is defined to mean to make clear, plain or understandable, and to give the meaning or interpretation of.

While there as yet are no Michigan court cases interpreting section 9(1), Michigan courts have construed similar language in other laws. In Post-Newsweek v Detroit, 179 Mich App 331, 336; 445 NW2d 529 (1989), the Court of Appeals indicated that language in Michigan's Freedom of Information Act (1976 PA 442, as amended; MCL 15.231 et seq.) requiring a written notice to contain an "explanation" of the basis for a denial, requires a written justification that is more than merely "conclusory". The Court held that the justification must indicate factually how release of a particular document interferes with agency activities, before the document may be withheld from disclosure. In essence, the Court said that an agency claiming an exemption must support such a claim in writing by substantial justification and explanation, not merely with conclusory assertions.

Applying the above analysis to facts and law in this case, it may be observed that the reason for denial which was set forth in the notice of denial issued by the Commission on December 8, 1999,

was far from detailed. No facts whatsoever were mentioned. As for the law, no local standards or guidelines were cited, and with respect to the federal standards that the Commission did cite, no language was quoted and no verbiage was included to indicate the manner in which the door or the application failed to conform with (or vary from) the cited federal standards.

By way of contrast, the letter sent by the Commission's Chair to the Review Board on March 2, 2000, contains virtually all of that information. The letter authored by the Commission Chair contains a complete and adequate explanation of the reasons for the Commission's action of denial. Unfortunately, the verbiage of the March 2nd letter did not appear in the notice of December 8th.

In summary, there is substantial evidence in the appeal record showing that the Appellants received a written notice which, while mentioning "Sections #6 and #9" of the Interior Secretary's Standards, failed to contain an informative "explanation" of the reason for the denial. From a factual perspective, it appears that the reason for the denial is that a wooden primary door was replaced with a door made from a non-historic material, i.e., metal.

It is therefore concluded that the Commission failed to effectively comply with the provisions of section 9(1). It is further concluded that under the last sentence of section 9(1), the failure of the Commission to act to issue a proper written notice of denial within 60 days of application filing must be considered, as a matter of law, to be approval of the application.


Conclusion

In view of the entire appeal record made in this case, it is first concluded that the Appellants failed to show that the Commission engaged in arbitrary and capricious conduct or that a reversal of the denial should be ordered in that the Appellants lacked awareness of the applicable provisions of law. However, it is further concluded that the written notice of denial furnished to the Appellants under section 9(1) of the Act, supra, failed to contain an adequate explanation of the reason for the denial by the Commission.

Recommendation

Accordingly, it is recommended that the Commission's decision of December 8, 1999 be reversed and that the Review Board issue an order directing the Commission to issue the Appellants a certificate of appropriateness with respect to their application for retroactive approval to install a replacement primary front door made of metal.

Dated: March 30, 2000


Nicholas L. Bozen (P11091)
Presiding Officer

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