

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF HISTORY, ARTS AND LIBRARIES
STATE HISTORIC PRESERVATION REVIEW BOARD

In the Matter of:

JOHN L. NOUD,
Applicant/Appellant,

v

Docket No. 04-012-HP

**EAST LANSING HISTORIC
DISTRICT COMMISSION,**
Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the East Lansing Historic District Commission, denying an application to place vinyl clad muntins in eight replacement windows on the front elevation of an apartment house located at 533 Grove Street, which is situated in East Lansing's College Grove Historic District.

The State Historic Preservation Review Board (the Board) has jurisdiction to consider this appeal 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, the Office of Regulatory Affairs of the Department of History, Arts and Libraries conducted an administrative hearing on February 17, 2004, for the purpose of receiving evidence and hearing arguments.

A Proposal for Decision was issued on April 16, 2004, and true copies of the Proposal were mailed to all parties and their attorneys pursuant to Section 81(1) of the

Administrative Procedures Act of 1969, as amended, being Section 24.281 of Michigan Compiled Laws.

The Board considered this appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regularly scheduled meeting conducted on May 7, 2004.

Having considered the Proposal for Decision and the official record made in this matter, the Board voted 6 to 0, with 1 abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board in this matter, and to incorporate the Proposal into this document, and,

Having done so,

IT IS ORDERED that the Commission's decision issued on August 21, 2003 is **AFFIRMED**.

IT IS FURTHER ORDERED that the appeal is **DENIED**.

IT IS FURTHER ORDERED that a copy of this Final Decision and Order shall be transmitted to each party, and to his or her attorney of record, as soon as is practicable.

Dated: 7 May 2004


Richard Harm, Vice 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.

STATE OF MICHIGAN
DEPARTMENT OF HISTORY, ARTS AND LIBRARIES
OFFICE OF REGULATORY AFFAIRS

In the Matter of:

JOHN L. NOUD,
Applicant/Appellant,

v

Docket No. 04-012-HP

EAST LANSING HISTORIC DISTRICT COMMISSION,
Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of the October 9, 2003 decision of the East Lansing Historic District Commission (the Commission) denying a request to "place vinyl clad muntins in the eight (8) existing windows on the front elevation (facing Grove Street)" on a residential building located at 533 Grove Street, East Lansing, Michigan. The property is located in East Lansing's College Grove Historic District (the District).

The appeal was filed under section 5(2) of the Local Historic Districts Act (the Act).¹ The section 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 History, Arts and Libraries (the Department).

Upon receipt of the appeal, the Review Board directed the Department's Office of Regulatory Affairs to hold an administrative

hearing for the purpose of receiving evidence and hearing arguments. The Office of Regulatory Affairs convened a hearing on February 17, 2004 in the Board Room, Fifth Floor, Michigan Library and Historical Center, 702 West Kalamazoo Street, Lansing, Michigan. The hearing was held pursuant to procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969.²

The Appellant, Attorney John L. Noud, appeared in person at the administrative hearing and represented himself. Attorney Dennis E. McGinty, of the firm of McGinty, Jakubiak, Hitch & Housefeld, P.C., whose offices are located at 601 Abbott Road, East Lansing, Michigan, appeared on behalf of the Commission/Appellee. Kenneth L. Teter, Jr., Administrative Law Judge, Office of Regulatory Affairs, conducted the hearing on behalf of the Review Board.

Issues on Appeal

In his written request for review dated October 21, 2003, the Appellant asked that the Commission's decision be reversed. His request summarized the purported relevant facts and set forth several bases in support of his appeal. He specifically asked for the issuance of a Certificate of Appropriateness to allow the retention of unapproved windows and the installation of muntins in eight front windows facing Grove Street.

Regarding alleged facts, the Appellant asserted that: a) the house at 533 Grove Street had its windows replaced in the fall of

¹ 1970 PA 169, § 5; MCL 399.205.

² 1969 PA 306, §71 *et seq*; MCL 24.271 *et seq*.

2002 because of deterioration, which had created a hazard to the health and safety of student tenants; b) requiring the removal of the replacement windows and the installation of new Commission-approved windows would cause him unreasonable financial hardship; c) requiring the replacement of the newly installed windows was not in the interest of the majority of the community; d) the Commission failed to give reasonable, fair and just consideration to factors he raised, and instead, acted in an arbitrary and capricious manner; e) the Commission failed to consider the historic and architectural values of the deteriorated windows, as well as the structure as a whole, and their relation to the historic value of the surrounding area, as required by specific provisions of preservation law; f) the Commission also failed to consider the historic or architectural significance of the deteriorated windows, as well as the structure as a whole, and their relation to the historic value of the surrounding area; g) the Commission also failed to consider the relation between the architectural features of the deteriorated windows and the rest of the structure (such as aluminum residing after original construction) and the surrounding area; h) the building at 533 Grove Street is not a "historic structure" as defined by the Act; and i) East Lansing's College Grove Historic District was not established in accordance with the Act, but rather was created by means of defective procedures.

At the administrative hearing, the Appellant again asserted that the Commission had acted in an arbitrary and capricious manner in rendering its decision denying his request to either retain the

replacement windows as installed (and without any modification) or to allow the addition of muntins to the front windows only. At the hearing, the Appellant argued that: the overall appearance of the replaced windows represents an improvement, they look nice, and they essentially duplicate the appearance of the original windows; b) the replaced windows are compatible with the windows of other houses located in the District, particularly the windows of houses located on the 500 block of Grove Street; and c) the Commission had previously allowed several other property owners to retain vinyl replacement windows similar in appearance and material to the ones he had installed.

During the course of the administrative hearing in this matter, the Appellant indicated that no evidence would be presented to support his assertion that requiring the removal of the replacement windows and the installation of new Commission-approved windows would cause him unreasonable financial hardship. Consequently, the Appellant withdrew the financial hardship part of his claim of appeal.

In response, the Commission offered several counter-assertions. The Commission particularly asserted that: there was no hazard to the safety and health of student renters sufficient to justified the removal of windows that represent a character-defining feature of the Appellant's house and replacing original windows with nonconforming windows; the Appellant made the claim of hazard merely to avoid compliance with preservation law; the provision of the Act dealing with hazard and relied upon by the

Appellant to justify incorrect replacement only pertains to situations wherein the proposal is to demolish the entire resource, and that the compliance exception does not apply to carry out rehabilitation work. The Commission further asserted that the Appellant failed to argue for, or to offer any evidence to the Commission in support of, the Appellant's claim that removal and replacement with conforming windows will cause him unreasonable financial hardship; that based on price quotes provided by the Appellant, it appears conforming windows could have been selected at a cost comparable to the actual cost of the nonconforming windows installed; and that any hardship which may occur would be caused by the Appellant's own inattention or ignorance of preservation code requirements.

The Commission also disagreed with the Appellant's claim that requiring the replacement of nonconforming windows is not in the interests of the majority of the community. The Commission pointed out that the Appellant had failed to offer any evidence to the Commission in support of this subjective opinion; that no referendum on the Appellant's retention process had occurred; and that the interests of the community would be best served by applying established preservation requirements, which oppose the removal of a defining architectural feature from the Appellant's house and replacement with nonconforming windows.

The Commission further asserted that it properly considered the Appellant's application in accordance with the Act and local preservation code requirements; that the Appellant disregards

crucial elements of the staff reports which analyzed his applications, such as the uniqueness of the original windows, i.e., they were a character-defining architectural feature (along with the "fan-like" accentuated and centered front door) of the house; and that the house was built in 1921 in the Colonial Revival architectural style, which is situated in a historic district that has many architectural styles of predominantly wood-framed, older houses. The Commission determined that the original windows (which were determined to have been balanced, double-hung windows 40/60 with multi-pane glazing 8/12 true divided lights) constituted a significant architectural value that was worthy of preservation. The Commission also determined that the Appellant's proposal "to retain the nonconforming vinyl windows by gluing vinyl strips to approximate exterior raised muntins on the eight front windows" would not replicate the 40/60 wood windows with true divided lights 8/12 and raised muntins, nor does the proposal address the side windows which are equally visible from the street and are an integral element of the architectural appearance of the structure.

The Commission lastly asserted that the Appellant's reference to its handling of vinyl windows on other properties as precedence for allowing his windows is erroneous because none of the other houses involved whole house window replacement and the approved work for those houses was acceptable based on the individual circumstances of each project.

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 Appellant clearly occupies that position in this matter, and consequently he bears the burden of proof as to each of his factual propositions.

A. Appellant's Evidence

Section 5(2) of the Act, supra, indicates that appellants may submit all or part of their evidence and argument in written form. In that vein, the Appellant submitted two exhibits, both consisting of several documents, relative to his appeal of the Commission's decision. Appellant's Exhibit 1 consisted of his Claim of Appeal, accompanied by copies of the following documents: Certificate of Appropriate application for 533 Grove Street, containing the Commission's decision to deny, dated October 10, 2003; a letter from Richard L. Acker, owner of Custom Interiors & Remodeling, to Mrs. Jin Hui Noud, dated September 20, 2002, which indicates that removing 24 existing windows, installing 24 replacement windows, repainting shutters, and related work at 533 Grove Street would cost a total of \$5,266.47; a letter from Mr. Acker to the Nouds, dated January 7, 2003, which indicates Acker had been unaware that replacing windows at 533 Grove Street required a permit or that the

property was situated in a designated historic area, and that he had observed other homes in the District which have replacement windows that do not match other windows on each respective house, and he questions how the those variances were allowed.

Appellant's Exhibit 1 also contained a copy of a Memorandum, dated August 27, 2003, prepared by Noud in support of his resubmitted application, which enunciated his view of the proper legal principles the Commission should follow, asserted factors suggesting that a comparison with other homes in the District establishes that the replacement windows at 533 Grove Street should be acceptable with minor modification (*i.e.*, the adding of muntins on the front windows); and argued that the Commission must exercise its discretion and should approve his application. Appellant's Exhibit 1 additionally consisted of a letter from Jack Olsen of Olsen/Mastermark Company, to Mr. Noud, dated August 26, 2003, which indicates that Olsen could install exterior muntins on the front windows of the house at 533 Grove Street for a total cost of \$2,066.40, including material and labor.

Appellant's multi-part Exhibit 2 contained copies of the following items: a) a letter from Noud to Ronald K. Springer, accompanied by a Certificate of Appropriateness Application requesting retroactive Commission approval for the installation of new windows at 533 Grove Street, both dated February 6, 2003; b) the Commission Staff Report, dated March 6, 2003, concerning Noud's application; c) Commission meeting minutes of March 13, 2003; d) a letter from Springer to Noud, dated March 19, 2003, setting forth

the Commission's decision to deny Noud's application; e) a second Certificate of Appropriateness Application prepared by Noud, dated May 8, 2003; f) a resubmitted Certificate of Appropriateness Application prepared by Noud, dated August 27, 2003, modifying his May 8, 2003 application; g) the Commission Staff Report concerning Noud's resubmitted application, dated October 2, 2003; h) a copy of a Memorandum, dated August 27, 2003, prepared by Noud in support of his resubmitted application; i) Commission meeting minutes of October 9, 2003; j) a letter from Springer to Noud, dated March 19, 2003, setting forth the Commission's decision to deny Noud's resubmitted application; k) a letter from Springer to Mr. And Mrs. Duncan Sibley, dated October 2, 2001, setting forth the Commission action which approved the installation of interior grids to replicate original muntins on second story windows on the house at 20 University Drive; l) a Commission Staff Report, dated September 5, 2001, concerning the application for window work at 20 University Drive; m) a letter from Springer to Timothy Levine and Hee Sun Park, dated November 20, 2002, setting forth the Commission action which approved the installation of two double hung windows in the former south porch of the house at 432 Kensington Road; and n) a Commission Staff Report, dated September 5, 2001, concerning the application for window work at 432 Kensington Road.

The Appellant also presented testimony from four witnesses, to-wit: Richard L. Acker, owner of Custom Interiors & Remodeling; Marjorie L. Hunt, a neighbor residing at 550 Grove Street; the City of East Lansing's Historic Preservation Officer, Ronald K.

Springer; and himself, John L. Noud. Acker testified that he had been a general contractor for nearly 25 years and that during the fall of 2002 he spoke with Mrs. Jin Hui Noud about replacing all the windows in the apartment house at 533 Grove Street, which she was renting to students. Acker said he inspected the windows and he observed that 75% of them were very weather-worn and all of the sashes were beginning to rot. Although Mrs. Noud had trouble communicating in that she spoke in broken English, Acker said she told him that she was tired of painting the muntins, and that she wanted the existing windows removed and replaced with the least expensive vinyl windows.

Acker testified that he then located vinyl replacement windows, that he submitted a proposal to Mrs. Noud to do the entire window replacement project for \$5,266.47, that Mrs. Noud gave him authorization to do the work, and that he completed the work around the beginning of November of 2002. He also explained his lack of knowledge regarding the fact the house was situated in a historic district and his efforts to ascertain whether or not a permit was required. Acker said that after the Commission required the work redone with windows that replicated the originals, he was able to locate such windows "off the shelf" locally at a building supply store.

Marjorie L. Hunt testified that she resides at 550 Grove Street, which is situated across the street and to the north of Noud's house. She indicated that her house was built in 1917 and that she virtually grew up in the house from 1925 to the present

(i.e., she personally lived there continuously over several lengthy periods and she frequently visited there during the other remaining periods). She also said that, of the 13 or 14 houses on the 500 block of Grove Street, only two homes are owner-occupied, and her house is the only one without renters. Hunt indicated that the Nouds had performed good maintenance on their house at 533 Grove Street and that the windows of the other houses on the block were 50/50, with muntins. She expressed the view that the replacement windows installed at 533 Grove Street had not adversely changed the appearance of the neighborhood. Hunt said that she attended the October 9, 2003 Commission meeting and spoke in favor of Noud's proposal, that she had contemplated replacing the windows on her own home, but she became concerned that the cost for compatible windows that would be acceptable to the Commission would have to be custom-made and would be too expensive. She added, however, that she now understood that replacement would likely not require a "custom" job and that compatible windows could be purchased "off the shelf".

Ronald K. Springer testified next. He discussed his role as Historic Preservation Officer for the City of East Lansing, as well as his other job functions; he briefly explained the process for reviewing applications for certificates of appropriateness, including the number of applications that were filed for the past three years (as well as a breakdown of applications that were disposed of by staff and those that required action by the Commission); and he talked about the length of service individual

members had on the Commission (with most members having served three years or less). Springer also described the events surrounding Noud's attempt to gain Commission approval for the retention of replacement windows in the house at 533 Grove Street, including the presentations that were made at two Commission meetings held on March 13, 2003 and October 9, 2003, respectively, as well as his dealings with Acker and Noud concerning their attempts to mitigate the installation of non-compliant windows.

Springer also explained the content of various portions of two staff reports prepared in connection with Noud's applications (such as the architectural composition of houses in the District as a whole and the uniqueness of the original windows that were on Noud's house), he discussed the bases under which Noud's replacement windows and his plan for mitigation were found unacceptable, including the importance of replication, and he pointed out various provisions of the City of East Lansing's Historic Preservation Code and applicable federal standards and guidelines for historic districts which supported the Commission's decisions to deny Noud's applications. Springer also pointed out the reasons why the Commission took certain actions on specific window replacement projects on other properties, and how those projects were distinguishable from Noud's window project.

As the Appellant's final witness, John L. Noud testified on his own behalf. Noud indicated that he and his wife purchased the house at 533 Grove Street on July 1, 1992, and that it was used as a student rental unit. Noud explained that his wife worked as a

real estate agent for a realtor whose office is located in Okemos, and that she had heard student rental properties typically realized a wonderful return on investment. Noud indicated that by late 2002, most of the windows in the house had become so badly deteriorated that cold, outside air was flowing around the frames, and that as a result, his wife hired Acker to replace all the windows. He said that at that time, he and his wife were unaware that their house was situated in a historic district and that a commission's permission was needed beforehand in order to replace the windows. Although he acknowledged that over the years, he and his wife had likely received several City of East Lansing mailings that provided information about their property lying in the District and about preservation requirements, Noud maintained that they never read those mailings.

Noud expressed the opinion that, due to their collective lack of experience, the Commissioners' actions are unduly controlled by Commission staff, particularly the findings and recommendations set forth in staff reports that analyze applications from property owners desiring to do exterior work on their respective structures. Noud asserted that the Commission ignored provisions of the Act and the City of East Lansing preservation ordinance that provided for discretion in Commission decision-making.

Noud also described in detail the events surrounding the two Commission meetings at which his applications were considered. He felt that the Commissioners refused to consider his reasonable bases for approving his proposals (including evidence of similar

work performed at other properties that the Commission found acceptable), they failed to even consider equitable, alternative solutions, and they simply arbitrarily relied exclusively on the opinions advocated by their staff.

Noud indicated that the house at 533 Grove Street currently generates monthly income of \$2,600, that the last remaining mortgage on the property was paid off in mid-2003, and that there is sufficient income generated at present to pay for the conforming windows. He also acknowledged that the cost of using conforming windows would have been approximately the same in comparison to the actual cost of the replacement windows that were installed without Commission approval.

B. Commission's Evidence

The Appellee/Commission also presented documentary evidence at the hearing in order to demonstrate that its decision to deny issuance of a Certificate of Appropriateness was legally proper. Commission Exhibit No. 1 consisted of 24 documents, some of which included sub-exhibits, pertaining to Noud's request for approval for the retention replacement windows on a house at 533 Grove Street. Among the documents were copies of the following: 1) City of East Lansing, Chapter 104, Historic Preservation Code; 2) excerpts of the U.S. Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings; 3) the U.S. Secretary of the Interior's Standards for Rehabilitation; 4) excerpts of the City of East Lansing Historic District Study Commission Final Report, dated March, 1988; 5) map of College Grove Historic District; 6)

photographs of the house at 533 Grove Street taken by City Assessor sometime between October 1999 to December 2000; 7) Assessor's Real Estate Summary Sheet for 533 Grove Street; 8) a 75-page Property Owner's Guide to East Lansing's Historic Districts and Preservation Code, mailed to Appellant around September 25, 1992; 9) a letter, dated July 19, 1993, from the Commission to the Appellant, advising of preservation code requirements; 10) a letter, dated February 7, 1996, from the Commission to the Appellant, advising of preservation code requirements; 11) a letter, dated February 27, 1998, from the Commission to the Appellant, advising of preservation code requirements; 12) a letter, dated November 13, 2002, from Springer to the Nouds, informing them that he noticed new vinyl windows had been recently installed in the house at 533 Grove Street, that the work was done without a required permit, and that the matter would be referred to the Commission.

Commission Exhibit 1 also contained copies of: 13) Appellant's application for Certificate of Appropriateness, dated February 6, 2003; 14) a letter, dated March 19, 2003, from Springer to the Appellant, advising that the Commission denied the application, along with explanations for the denial, and notice that the Appellant was required to remove the nonconforming windows and replace them with approved windows by June 15, 2003; 15) Appellant's modified application for Certificate of Appropriateness, dated May 8, 2003; 16) a letter, dated May 12, 2003, from Springer to the Appellant, advising that the May 8, 2003 application was incomplete and that Acker wished to meet with

Springer during the week concerning a proposal not yet submitted; and 17) a letter, dated June 17, 2003, from Springer to the Appellant, advising that the May 8, 2003 application was being returned because, although promised, the application did not include a plan.

Commission Exhibit 1 further contained copies of: 18) a letter, dated July 2, 2003, from Acker to Springer providing quotations for two corrective window replacement proposals; 19) a letter, dated July 14, 2003, from Springer to the Appellant, advising that either window proposal submitted by Acker would be acceptable, and that Springer needed proof from the Appellant that the work was proceeding by July 31, 2003; 20) a letter dated August 27, 2003, from the Appellant to Springer, resubmitting the May, 8, 2003 application, accompanied by two letters prepared by Acker; 21) the Commission Staff Report concerning Noud's resubmitted application, dated October 2, 2003; 22) a Memorandum, dated August 27, 2003, prepared by Noud in support of his resubmitted application; 23) Commission meeting minutes of October 9, 2003; and 24) a letter from Springer to Noud, dated March 19, 2003, setting forth the Commission's decision to deny Noud's resubmitted application.

Commission Exhibit 2 consisted of the Commission's Reply to the Appellant's Claim of Appeal, accompanied by copies of several documents in support of the Commission's assertions. The supporting documents consist of: a) a Housing Inspection Report, dated December 4, 2001, indicating that the property at 533 Grove

Street was "in compliance" with building code requirements; b) an internal memo, dated February 10, 2003, from Irwin Annette to Springer regarding the physical condition of the property at 533 Grove Street; c) a letter from the City of East Lansing to the Appellant, dated December 17, 2001, indicating that a recent inspection found the property at 533 Grove Street was in compliance with building code requirements, which enabled the renewal of the annual rental housing license; d) one before-work and one after-work photograph of a house at 415 Ann Street, showing recent window replacement work; and e) a chart summarizing window replacement actions taken by the Commission.

Commission Exhibit 3 is a two-page resume for Springer, setting forth his work qualifications, education, and experience. Commission Exhibit 4A consists of a photograph of the house at 20 University Drive taken during the time period October 1999 to December 2000. Commission Exhibit 4B consists of a photograph of the house at 20 University Drive taken on February 12, 2004, showing replacement of a second-story side window.

Findings of Fact

Based on the evidence presented at the administrative hearing, the relevant facts of this matter are found to be as follows:

A. The College Grove Historic District

1. The City of East Lansing has adopted several historic district ordinances since the late 1980s. The primary purpose of

these laws³ is to safeguard the heritage of the city by preserving historic districts which reflect elements of the city's cultural, social, economic, political, and architectural history. Additional purposes are to stabilize and improve property values within districts, to foster civic beauty, to strengthen the local economy, and to promote uses of the district for the education, pleasure and welfare of the citizens of East Lansing and the State of Michigan.

2. On or about July 18, 1989, the City of East Lansing adopted Ordinance No. 710, thereby establishing eight historic districts, including the College Grove Historic District.⁴ This district includes the property at 533 Grove Street. The District includes most of the College Grove subdivisions west of Division Street, and some visually related structures on the north side of Burcham Drive. The centerpiece of the district is M.A.C. Avenue, formerly the route of the streetcar, which for years has been a preferred location for many fraternities and sororities. Grove Street has a high concentration of some of the Bailey area's oldest homes; and both Grove and Charles Streets have attractive, intimate urban streetscapes with mature trees and picturesque early 20th century houses. Housing construction in College Grove spanned a long period with some homes built near the beginning of the twentieth century, and the majority in the 1910s and 1920s. The houses in the College Grove area were built by a number of different builders, and houses are typically pattern-book, modest

³ East Lansing Ordinances, Ch. 104, §8.501 et seq., which is referred to as the "Historic Preservation Code".

⁴ East Lansing Ordinances, Ch. 104, §8.509(2).

quality three-bedroom homes. From its beginning, College Grove was demographically mixed, with boarding houses for students and homes for faculty intermingled.

3. A seven-member historic district commission administers all of the historic districts within the city, including the College Grove Historic District. Among the Commission's functions is the duty to consider applications for repairs (other than routine maintenance) to existing buildings located within an established historic district.⁵ When making a decision to approve or deny a request to perform exterior rehabilitation work on a house, the Commission follows the standards and guidelines issued by the U.S. Secretary of the Interior, as well as pertinent provisions of the East Lansing Historic Preservation Code.

B. Background Information

4. The house situated at 533 Grove Street is a two-story, wood-frame structure built in the Colonial Revival style. The house was originally constructed in 1921. Sometime prior to 1992, the structure was resided in aluminum. The four sides of the house contain a total of 24 windows.

5. On or about July 1, 1992, John L. and Jin Hui Noud, husband and wife, bought the property at 533 Grove Street at a purchase price of \$100,000.00. At the time of acquisition, the house was being used for student rental, and Mrs. Noud, who worked as a real estate agent, believed that owning a student rental property offered a good return on their investment.

6. During the ensuing decade, the Nouds (along with each and every owner of property lying within one of the City of East Lansing historic districts) received several mailings from the City, which provided information about applicable historic preservation requirements, including a 77-page Property Owner's Guide to East Lansing's Historic Districts and Preservation Code, mailed on September 25, 1992. Other mailings were sent on or about July 19, 1993; February 7, 1996; and February 27, 1998. The Nouds never read these mailings.

7. During the fall of 2002, Jin Noud began exploring the possibility of replacing the windows in the house at 533 Grove Street due to complaints she received from renters. Student tenants had informed her that cold outside air was entering around the windows and they had placed Visqueen on various windows to combat the problem.

8. After discussing her window situation with several area landlords with whom she was acquainted, Mrs. Noud eventually contacted Richard Acker, a local general building contractor and the owner of Custom Interiors & Remodeling, and she asked him to inspect the windows. Mrs. Noud was familiar with Acker's workmanship, in that he had done some remodeling at the business office where she worked. During his inspection of the house at 533 Grove Street, Acker noticed that most of the windows were badly weather worn, the sashes were rotting, and there was significant air leakage. Based on the deteriorated condition of the windows,

⁵ East Lansing Ordinances, Ch. 104, §8.505.

Mrs. Noud instructed Acker to find replacement windows for the entire house. She also indicated that she was tired of painting the muntins and that she wanted the new replacement windows to be simple, low-cost and low-maintenance. The topics of historic districts and historic preservation requirements were not discussed.

9. While he was searching for replacement windows, Acker spoke with two persons concerning the need to obtain a permit authorizing the work from the City of East Lansing. One individual was a local building contractor colleague, and the other person, Chuck Rogers, worked as an electrical inspector for the City of East Lansing, and whom Acker ran into at a college sporting event. During his conversations with both individuals, Acker did not inform either person that 533 Grove Street was situated in a designated historic, due to his own lack of knowledge on that subject. Both individuals advised Acker that a license was not needed.

10. On or about September 20, 2002, Acker sent Mrs. Noud a letter outlining the scope of work he would perform at 533 Grove Street. The letter indicated that Acker would: 1) remove existing window shutters, paint and reinstall shutters; 2) remove existing storm, screen combinations and discard to trash; 3) remove 24 existing window sashes and prep window jambs for new windows; 4) install 24 new vinyl replacement windows, caulk and trim as necessary; 5) paint window jambs as necessary; and 6) discard old

windows to trash. The letter also indicated that the complete cost for the project would be \$5,266.47.

11. Mrs. Noud immediately authorized Acker to undertake the work, which he did right away. Acker eventually replaced all 24 windows on the house. Each new replacement was comprised of a double-hung 50/50, single pane, solid vinyl window, without muntins. Mrs. Noud paid Acker \$5,266.47 for that work.

C. Noud's First Application

12. On or about November 13, 2002, Ronald Springer sent the Nouds a two-page letter advising them that he had recently noticed that windows had been replaced on the house at 533 Grove Street, that such work was done without the issuance of a Certificate of Appropriateness, that he was referring the matter to the Commission for its review and action, and that he would mail the Nouds an agenda of the Commission meeting and any staff report concerning the matter. In his letter, Springer included excerpts of various Code provisions that he deemed applicable, and he also enclosed a Certificate of Appropriateness application form and a map of the City's Historic Districts.

13. On or about February 6, 2003, John Noud filed a completed permit application with the Commission seeking the issuance of a Certificate of Appropriateness and retroactive approval for the removal of deteriorated windows and the installation of new vinyl windows on the house at 533 Grove Street. The application was accompanied by a "hand delivered" letter from Noud, in which he apologized for replacing the windows before gaining approval,

explaining that neither he, his wife, nor their contractor (Acker) were aware of the City's Historic Preservation Code and its applicability to windows. Noud went on to write that, although he understood why ignorance of the law is no excuse, his wife thought that Acker would obtain all required permits, and that Acker had relied on a representation from a City employee in proceeding without a permit. Noud asked that the Commission issue a Notice to Proceed pursuant to section 8.516 of the Code to permit the retention of the new replacement windows "for the reason that the replaced windows had deteriorated to the point that they allowed cold air to permeate the house, during the winter months, creating a hazard to the health and safety of the tenants in the house".

14. On or about March 6, 2003, a 19-page Commission staff report was prepared, which identified certain criteria the Commission should consider in reviewing the application and which briefly described the original windows and the window replacement installation work. Among other things, the report contained findings made by staff, including: that the windows at 533 Grove Street are one of the major character-defining features of the structure (as a Colonial Revival architectural style building); that the windows replaced by the Nouds were the original double-hung wood, true divided light windows with a 40/60 proportion, top/bottom sash; that the replacements were one-over-one vinyl, 50/50 proportionate windows lacking exterior muntins; that there were no city records showing that the house was a hazard to the health and safety of the residents; that Noud did not submit any

requisite information to support his contention that requiring the installation of compliant windows would cause him to suffer undue financial hardship; and that no referendum had taken place which might sustain a contention that retaining the appearance of the replaced windows was not in the interest of the majority of the community. The report also set forth certain staff recommendations, in particular: that Noud's application for a Certificate for Appropriateness should be denied for the reason that the windows installed do not meet the accepted standards for replacement windows; that Noud should be required to restore the windows to the condition the windows were in before the inappropriate work occurred; that Noud should be required to remove the nonconforming vinyl windows and to replace them with wood windows that replicate the original windows removed "with the 1) proper sash proportion, 2) number of exterior muntins, and 3) panes per sash", in keeping with old photographs of the structure. The report further noted, "that the rear, or west facade of the house, does not fall under the ordinance and may remain as is".

D. March 2003 Commission Meeting and Determination

15. On March 13, 2003, the Commission considered Noud's permit application at its regular meeting. John Noud was present. Springer gave a staff report and furnished background information to begin the discussion on the application. Springer said that because an illegal demolition of the original windows had taken place without an approved Certificate of Appropriateness or a Notice to Proceed, a "Work without Permit" had occurred. He also

indicated that there are 14 parcels on Grove Street in the 500 block, 13 of which face Grove Street; that the building at 520-524 Grove Street has two windows on the first floor that appear to be vinyl with an unknown installation date; that prior to Noud's house having its windows replaced, approximately 96 percent of the structures had original windows; that after the windows at 533 Grove were replaced, it dropped down to approximately 89 percent. Springer said he determined that the windows the Nouds had installed do not meet the accepted standards for replacement windows under preservation guidelines 2, 3, and 10 in §8.523 of the City Code, and standards 2, 5, 6 and 9 of the U. S. Secretary of the Interior's Standards for Rehabilitation.

16. Commissioner Zynda asked when item 1 under the Notice to Proceed (§8.516) would apply, specifically, "The resource constitutes a hazard to the safety of the public or to the structure's occupants and the Building Official considers emergency maintenance is necessary." Springer explained that it would be something where the Building Department would put a notice on the property. Noud immediately said that he disagreed with Springer. Noud indicated that the Commission has a duty to judge what Springer says, utilizing to their common experience and knowledge, and to properly exercise their duties and responsibilities. He apologized to the Commission for replacing the windows without their approval. He said that his wife manages the home, and that they did not know they needed Commission approval to replace the windows. He said that unfortunately, their contractor did not know

either. He explained that he enclosed a letter from Acker with his application detailing the background for the window replacement. Noud said that over a period of years they rented to mostly young ladies and some young men who put Visqueen over the windows every year in order to provide protection against the winter. He said that although none of the students made formal complaints to the City, they had complained directly to his wife. Noud added that his wife then got a proposal from Acker dated September 20, 2002 to replace the windows for a cost of \$5,266.47. At that point during the Commission meeting, Noud's wife arrived.

17. Mr. Noud asserted that his wife chose to replace the windows to make the home better for the people living there, and that they found out in a letter from Springer dated November 13, 2002, that they should have filed an application before they did the work. He said it is impossible for them to undo that now. He said in the hopes of rectifying the error, they have applied for a Certificate of Appropriateness and that he has spent a lot of recent time learning about their rights and responsibilities under the Code, as well as the Commission's responsibilities. Mr. Noud continued by quoting from §8.513 of the Code regarding the application review process and the criteria the Commission must use in rendering its decision.

18. Regarding the old, deteriorated windows that were replaced, Mr. Noud asserted that they possessed no significant historic or architectural value and no historic or architectural significance. He further felt that the replaced windows had little

relationship to the aluminum sided house. He asserted that he and his wife, in an effort to make the house more comfortable and energy efficient to their student tenants, replaced the windows with new attractive windows that kept out the winter. He next asked, in light of these circumstances, that the Commission exercise its lawful discretion to approve work that is not in compliance with preservation guidelines by issuing him a Notice to Proceed. Noud maintained that, by issuing the Notice to Proceed, the Commission would not destroy the Historic Preservation District. He said that Commission members have a responsibility to balance the interests when there are good arguments on both sides. He said that he and his wife made a mistake, they acknowledge the mistake, but they have done something that has made the house much better for the people who live there at a cost of \$5,266. He said that Springer's recommendation to tear out the windows and redo them is not balancing the interests. He said that the Commission has a right to consider each case as a unique case on its own merits, including his case.

19. In response to an inquiry from Commissioner Quint, Mrs. Noud said that the house was purchased about 10 years ago. Upon inquiry from Commissioner Owen, Mrs. Noud indicated that there had been no attempt to get prices for windows that would replicate what was there. Mr. Noud indicated that it never occurred to his wife to think that there were different kinds of windows. Mrs. Noud said she called several landlords to ask if it was worth it to change the windows and that they had all said it was not worth it

because the tenants will destroy the house. She said she put in the windows because of her concern about her tenants putting plastic up on the windows during the wintertime. She said that the only complaints they have gotten as landlords concerned the windows.

20. Commissioner Quint pointed out that all of the Commissioners strongly believe in our historic neighborhoods. She said while they rely on staff recommendations to provide information that they may not have access to, they take each of their decisions very seriously, they listen very carefully, and this is not a rubber stamp process. Commissioner Owen added that the Commissioners were trying to follow the state and federal guidelines in order to maintain historic preservation and the benefits to those residents in getting loans and tax credits to keep up their houses.

21. Commissioner Owen asked Mrs. Noud if she was aware that the house was in a historic district, and as a realtor did she know the instances where special information has to be filed. Mrs. Noud answered that she was aware at some level, but in this instance she simply forgot.

22. Commissioner Zynda indicated that in an annual housing inspection letter, dated December 4, 2001, the inspector did not make a notation indicating that the windows were, according to Noud, rotting out and deteriorated. She asked if the inspector had said the windows were okay. Mr. Noud responded that, when he had previously said "rotted out", perhaps he overstated it. He said

they were deteriorated windows with dry rot in areas, and they leaked like a sieve. He said that Acker looked at other houses with vinyl windows in the area, which were not approved by the Commission, which is irrelevant. He said that many other houses in the neighborhood had muntins and most of those windows are very deteriorated.

23. Commissioner Zynda asked if the original windows on 533 Grove Street were a health hazard. Mr. Noud answered no. Zynda said since they passed the housing inspection, this was not a health or safety hazard, noting that the Nouds had acknowledged that they made a mistake. She asked the Nouds if they would have tried to replicate the original windows if they had received a Certificate of Appropriateness. Mr. Noud answered yes. He said if they had not been ignorant of the requirements, they would have done whatever the Commission wanted done. He said that now the Commission must balance the competing interests and he asked if the punishment fits the crime.

24. In reply to further questioning, the Nouds indicated that they would not have replaced the windows if the cost for replacements that conformed with preservation guidelines had been much higher than the cost they had actually paid; and they pointed out that the \$5,266 figure seemed reasonable, considering the recommendations from other landlords were to not replace at all.

25. Commissioner Quint then opened the hearing for public comment. No citizen asked to speak. Quint then closed the hearing, and Mr. Noud said he had no rebuttal.

26. Commissioner Thompson moved to deny Noud's request for the issuance of a Notice to Proceed based on the fact that none of the conditions set forth in §8.516 of the Code have been met. The motion carried unanimously by a vote of 6 to 0.

27. Commissioner Zynda then moved to deny Noud's request for the issuance of a Certificate of Appropriateness because the replacement windows do not meet the accepted standard under preservation guidelines 2, 3 and 10 of section 8.523 of the Code; under standards 2, 5, 6, and 9 of the U. S. Secretary of the Interior's Standards for Rehabilitation; and under subsections a, b, c and e of §8.513 of the Code. The motion carried by a vote of 6 to 0.

28. Next, Commissioner Thompson moved to require the Nouds to take specific actions, as follows: remove the vinyl windows installed in 2002 and replace them with wood or clad windows that replicate the original windows removed "(including new frames and sash) with the 1) proper sash proportion, 2) number of exterior muntins, and 3) panes per sash", as depicted in old photographs of the structure; obtain approval for the replacement windows from the City's Historic Preservation Officer (Springer) prior to installation; and complete the replacement work by June 15, 2003. This motion also carried by a vote of 6 to 0.

29. On or about March 19, 2003, Springer sent the Nouds a letter describing the Commission's actions at its March 13 meeting, including the requirement that the Nouds replace the nonconforming

windows with pre-approved windows that replicate the originals no later than June 15, 2003.

E. Noud's Second Application

30. On or about May 8, 2003, Mr. Noud transmitted to Springer by means of facsimile a new Certificate of Appropriateness Application for 533 Grove Street. The application proposed to "(r)emove deteriorated windows and replace them with new windows, in accordance with the plan to be submitted by . . . Acker". The application indicated the reason the work was needed was the "deteriorated" condition of the windows, which "created a hazard to the health and safety of the student tenants".

31. On or about May 12, 2003, Springer sent Noud a two-page letter advising him that the May 8 application was received, but upon staff review, it was determined to be incomplete because it was not accompanied by a detailed plan that demonstrated the proposed work is in compliance with the Code. Springer also wrote that he would meet with Acker shortly, and that he was looking forward to receiving a formal, complete proposal.

32. On or about June 17, 2003, Springer sent Noud a two-page letter advising him that the May 8 application was being returned in that, notwithstanding several assurances by Noud that a plan from Acker was forthcoming, a plan detailing the proposed window work was not submitted. Springer pointed out that the Commission had required compliance by June 15, 2003, and he urged Noud to submit his plan as soon as possible.

33. On or about July 2, 2003, Acker sent Springer a two-page letter that was accompanied by two different quotations for the proposed replacement of 16 windows on the house at 533 Grove Street. In his letter, Acker asked Springer to consider reducing the number of windows requiring replacement to only 12 windows, because the other four windows are "not that visible from the street elevation" and their replacement would merely result in unwarranted costs. Acker also wrote that he was unaware a permit was required at the time he did the window replacement work in November of 2002, that the Nouds did not inform him that the house was located in a historic district until the work was finished, and that Noud only recently informed him of the June 15, 2003 deadline the Commission had imposed to redo the windows. The two quotation options that Acker submitted were: 1) 16 wooden windows manufactured by Semco that consisted of "a vinyl clad exterior along with muttins (sic) and the 60/40 split of eight over twelve panes of glass as existed previously", for a total cost of \$8,784.33; and 2) 16 wooden windows manufactured by Norco that "is very similar to the Semco window except it is in a knock down form and must be assembled on site, but is still of the same quality", for a total cost of \$3,449.79.

34. On or about July 14, 2003, Springer sent the Nouds a letter advising them that he had received Acker's July 2, 2003 letter in which Acker outlined two window replacement proposals and that he (Springer) "will approve either of the two 16-window options with exterior muntins . . . as being in compliance" with

the Commission action of March 13, 2003. However, Springer explained that, on or before July 31, 2003, he must receive either confirmation of the Nouds' "acceptance" of either proposal, "including a copy of an order placed for the windows and estimated timeline for installation", or receive another submission from the Nouds that meets the Commission's conditions, along with the same documentation verifying the work would proceed. He reiterated that the windows were to have been replaced by June 15, 2003, and that if he did not have proof of compliance by July 31, 2003, he would "proceed with implementation of the Commission's action".

35. On or about August 27, 2003, Mr. Noud submitted to the City another Certificate of Appropriateness Application for 533 Grove Street, which Noud labeled a "resubmission of the May 8, 2003 application". This application proposed to "(r)emove deteriorated windows and replace them with new vinyl windows", in accordance with Acker's written proposal, dated September 20, 2002. Noud's application further provided that "(b)ecause said proposal (without changes) is unacceptable to the Commission, and because of the Commission's desire for muntins, I propose to place vinyl-clad muntins in the eight existing windows, on the front elevation (facing Grove Street), with the pattern of the muntins to approximate the pattern of the muntins in the previous windows". The application again asserted that the original windows had been replaced because they had deteriorated, creating a health and safety hazard to student tenants.

36. On or about October 2, 2003, a 12-page Commission staff report was prepared regarding Noud's new application. The report essentially repeated the same background information and findings that were set forth in the March 6, 2003 staff report, e.g., the windows at 533 Grove Street are a major character defining feature of that Colonial Revival architectural style structure; the replacement windows installed by Acker did not replicate the original double-hung wood, true divided light windows with a 40/60 proportion, top/bottom sash; and that there was no evidence showing that the house was a hazard to the health and safety of the residents. The report also noted that the proposal only addressed the front elevation; that the proposed change to the front windows were not compatible with the original sashes; that the proposal failed to include plans showing the design, arrangement and texture of the materials proposed; and the north and south sides of the structure "are still in total nonconformance" with the Commission's action on March 13, 2003. The report concluded by indicating the staff had determined that Noud's proposal to place vinyl-clad muntins on the front elevation windows did not meet applicable standards for replacement windows.

F. October 2003 Commission Meeting and Determination

37. On October 9, 2003, the Commission considered Noud's resubmitted application at its regularly scheduled monthly meeting. John Noud was again in attendance. Springer opened the discussion on the application by recapping pertinent events of the prior 11 months, which included information about the unapproved window

replacement work, the March 13, 2003 actions the Commission took on Noud's first application, the subsequent attempts to have conforming windows installed, and Noud's current alternative proposal to place vinyl clad muntins on the existing front windows, with the pattern of the muntins to approximate the pattern of the prior windows.

38. Noud then submitted a three-page memorandum to the Commission in support of his application for a Certificate of Appropriateness and in response to the October 2, 2003 staff report. In the memorandum, Noud set forth the legal bases under which he professed the Commission was obligated to proceed with its review of his application, and he raised several issues concerning historical and architectural aspects of the windows at 533 Grove Street. The memorandum contained assertions that the windows that were removed in 2002 possessed "no significant historic or architectural value", they possessed "no historic or architectural significance", and there was "no significant relationship between the architecture of those deteriorated windows and the rest of the house, which is covered by aluminum siding". The memorandum also claimed that the Commission had the legal authority to exercise reasonable discretion in enforcing Code provisions, and pointed out that Commission actions in other cases, such as 415 Ann Street, had allowed window replacements similar to the windows the Nouds had installed at 533 Grove Street. In addition to the memorandum, Noud submitted a bid form Jack Olsen of Olsen/Mastermark Company, which

indicated that the installation of exterior muntins on the eight windows would cost \$2,066.40, including material, taxes and labor.

39. After Commission members read over Noud's memorandum, Commissioner Coppersmith asked for comments. Commissioner Thompson suggested that the Commission has never been asked to quantify significance and value and that is not within their purview. She said the Commission did not make up the codes, that their job is to follow them to the best of their ability, and if they get into semantics, it does not lead to a resolution. She asserted the picture of the Nouds' rental house in 2003 looked significantly different than the picture taken of the house in 1957, noting the Commission's job is to maintain the historic integrity of these properties.

40. Springer said that the Code applied to all properties, regardless of the architectural style or year built. He maintained that the staff report had accurately and adequately established that it was important to replicate the original windows at 533 Grove Street under specified preservation standards. He also indicated that the vinyl windows with sandwich muntins at 415 Ann Street had been installed in 1997, that there had been a motion to deny the application for that work, but the motion failed, and 415 Ann Street has nothing to do with Noud's application. He added that the fact all of the other houses on the 500 block have 50/50 sash proportions on their front elevations was irrelevant, that the principal concern was the fact the original windows at 533 Grove Street were 40/60 sash proportions, and that if it was only

necessary to match a particular feature with houses down the street, the Code would not be needed.

41. Commissioner Zynda asked Noud why he is proposing to only put muntins on the front windows. Noud said he was trying to come to a compromise that would be acceptable to the Commission. He felt that muntins are not really necessary, noting that a lot of windows on the houses on the same block only have muntins on the top. He further maintained that the vinyl windows he installed do not violate either the letter or the spirit of the law, because this is such an inconsequential thing. Noud said that most of the windows with muntins on the houses on Grove Street are in a bad state of repair, and that homes in the area are not kept up as well as they might be because it is so costly to repair or replace the older windows with similar materials.

42. Noud said he proposed putting in the muntins because he has been told that if you view these outside muntins from the street no one other than a real expert would see that they are any different than the multi-paned windows. He said that after the Commission denied his first application, he had relied on Acker to solve the problem, inasmuch as the Commission told him his problem was with his contractor. Noud said he told Acker that, if he did not solve the problem, he would initiate litigation against him. Noud indicated that Acker is a small contractor who has had health problems. Noud maintained that Acker has offered to do all of the work of replacement at no cost, but Acker said he would not contribute to the cost of the replacement windows. He said he is

only proposing to install muntins in the windows in the front because he thought in the spirit of cooperation muntins could just go in the top windows on the front and on the sides; however, Springer told him that is not how the house looked in the 1957 photo, that the house had the muntins on the top and the bottom. Noud said is looking for reasonableness and cooperation and felt he is entitled to fairness and justice.

43. Commissioner Thompson asked Springer if he ever got to see the windows that Acker was proposing for the front. Springer replied that he did not see the Caradco window, but that he had reviewed the two windows styles that Acker had proposed and that Springer approved both of them. Noud indicated Jack Olsen told him that the Caradco windows would probably cost around \$6,000 or \$6,500. Springer noted that the proper sash proportion could not be achieved by just installing the muntins.

44. Marjorie Hunt, a resident of 550 Grove Street, spoke next. She indicated that she first lived in her present home when her family moved there in 1925, that she moved away for a while, and that she does not remember what 533 Grove Street looked like previously. She said she drove by 533 Grove Street today, and she thinks it is the most attractive home on the block. She said when she decides to leave her home at 550 Grove, she will seek permission to tear the place down and turn it into a parking lot, because she did not think she could possibly cope with the expenses of replacing the windows. She noted that the windows in her house are deteriorating and should be replaced, but it sounds like she

would need a custom job done. Commissioner Coppersmith said the Commission had approved several windows that were not custom made; that in the case of 533 Grove Street, the owner replaced the windows before he found out that they were subject to the Code. Coppersmith noted that had Noud come to the City to fill out an application, he would have met with Springer who would have given him direction.

45. Hunt asked what the cost is of replacing windows. Springer responded that, according to a local newspaper article, a homeowner should plan on spending between \$800.00 and \$1,000.00 per opening, which would cover the cost of Pella type windows. Springer said windows for sale at Home Depot are vinyl and can cost approximately \$150 per window, that he has found windows priced between \$300 and \$400 that have been approved for houses, and he asked Hunt to contact him when she begins looking into window replacements for her house. Since no one else wished to speak, Coppersmith closed the public hearing.

46. Zynda indicated she did not see how Noud's proposal would change the Commission's original decision, because the windows as they are now are not in compliance with the guidelines, and the proposed muntins, whether in compliance or not, would not change that. The current proposal also does not address the other sides of the house. Commissioners Thompson and Pennock agreed.

47. Commissioner Zynda then moved to deny Noud's request for the issuance of a Certificate of Appropriateness under pertinent provisions of §8.513 and §8.523 of the Code, and under standards 2,

5, 6, and 9 of the U. S. Secretary of the Interior's Standards for Rehabilitation and the accompanying guidelines. The motion carried unanimously by a vote of 5 to 0.

48. On or about October 10, 2003, Springer sent Noud a four-page letter reiterating that the Commission had denied his application for a Certificate of Appropriateness. Springer detailed the reasons for the denial, including quotations from specific provisions of the Code, as well as portions of the federal standards and guidelines.

Conclusions of Law

As previously indicated, §5(2) of the Act, supra, allows persons aggrieved by decisions of commissions 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 where 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, where a commission has reached a correct decision, relief should not be awarded.

A. Laws Governing East Lansing's Historic Districts

In a case such as this, the criteria that a Commission must use to act on an application concerning rehabilitation work affecting the exterior of a resource, either by approving or denying a certificate of appropriateness, is set forth in sections

5(3) and 5(4) of the Act.⁶ Section 5 provides in pertinent part as follows:

Sec. 5. * * *

(3) In reviewing plans, the commission shall follow the United States secretary of the interior's standards - for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the department. The commission shall also consider all of the following:

(a) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.

(b) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.

(c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.

(d) Other factors, such as aesthetic value, that the commission finds relevant.

(4) The commission shall review and act upon only exterior features of a resource and shall not review and act upon interior arrangements unless specifically authorized to do so by the local legislative body or unless interior work will cause visible change to the exterior of the resource. The commission shall not disapprove an application due to considerations not prescribed in subsection (3). (Emphasis added)

The Commission also acted under authority of a parallel local law (i.e., a municipal ordinance) which substantially conforms to many of the mandates of §5(3). That law is East Lansing Historic Preservation Code, Chapter 104, section 8.513, which provides that:

Sec. 8.513. REVIEW PROCESS.

* * *

3. In reviewing applications for a Certificate of Appropriateness, the Commission shall base its decision

⁶ See footnote 1.

on the preservation guidelines stated in Section 8.523, and on any additional preservation guidelines adopted by the Historic District Commission and approved by the City Council and the following:

(a) The historic or architectural value and significance of the district resource and its relationship to the historic value of the surrounding area.

(b) The relationship of any architectural features of the resource to the rest of the resource and the surrounding area.

(c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.

(d) Other factors, such as aesthetic value, that the Commission finds relevant.

(e) Recommendations from the Historic Preservation Officer, Building Official, the Design Assistance Team, and any affected neighborhood association.

The Commission also pointed to particular preservation guidelines set forth in section 8.523 of the East Lansing Historic Preservation Code. The Commission contended that section 8.523 governed its decision in Noud's case. Section 8.523 provides in part that:

Sec. 8.523. PRESERVATION GUIDELINES.

The Commission shall establish preservation guidelines in accordance with this Chapter. The preservation guidelines shall govern the Historic Preservation Officer and Commission's decisions with regard to Certificates of Appropriateness.

The preservation guidelines shall include the following:

1. The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as set forth in 36 CFR part 67.

2. Protected architectural features include, but are not limited to, a building's general shape; gables, dormers and other roof features; cornices, brackets and eaves; size, shape, arrangement, number and size of window panes and muntins; beveled, leaded and stained glass; door and window trim; ornamental moldings; distinctive siding, such as stone, stucco, brick or patterned shingling; distinctive roofing, such as false thatch, slate and Spanish tile.

* * *

10. The shape, size, number, arrangement and function of replacement windows and doors shall preserve the basic design and size of the originals. Replacement windows shall be substantially similar to the old windows and within ten percent of the original dimensions. Muntins on new windows must appear to be the same width as the original muntins. Alternate materials may be used for replacement, provided the new materials replicate the original in appearance. (Emphasis added)

The arguments raised by the Appellant also dealt with whether or not the Commission ought to have issued a Notice to Proceed, in lieu of a Certificate of Appropriateness. In that regard, the Appellant relied on section 5(6) of the Act [MCL 399.205] to support his contention that the Commission should retroactively approve the removal of the original windows and the replacement with windows that are similar in appearance. Section 5(6) provides in its entirety that:

Sec. 5(6) Work within a historic district shall be permitted through the issuance of a notice to proceed by the commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the commission to be necessary to substantially improve or correct any of the following conditions:

(a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.

(b) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.

(c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.

(d) Retaining the resource is not in the interest of the majority of the community.

In addition, section 8.516 of the East Lansing Historic Preservation Code substantially corresponds to section 5(6).

Section 8.516 provides in part that:

Sec. 8.516. NOTICE TO PROCEED.

An application for a Certificate of Appropriateness for work, determined by the Commission to be in noncompliance with the preservation guidelines, may be allowed upon issuance of a Notice To Proceed. The Commission shall issue a notice to proceed instead of a Certificate of Appropriateness if any of the following conditions are found to prevail and the Commission finds that, upon recommendation of the Building Department and the Historic Preservation Officer, the proposed work is necessary to substantially improve or correct any of the following conditions:

1. The resource constitutes a hazard to the safety of the public or to the structure's occupants and the Building Official considers emergency maintenance is necessary.

* * *

5. Retaining the resource is not in the interest of the majority of the community as evidenced by the result of a referendum on the retention of the resource.

B. Windows Constituted Hazard

After withdrawal of his financial hardship claim, the Appellant focused on four grounds for reversing the Commission's decisions. The Appellant requests permission to install exterior vinyl muntins on eight front elevation replacement windows, as an alternative to the Commission's determination regarding the 16 vinyl windows that were replaced without approval, and the Commission's order that they must be removed and replaced with windows that conform with preservation guidelines.

Initially, the Appellant argued that the deteriorated original windows constituted a hazard to the health and safety of the student tenants residing in the house. The Appellant apparently

relied on section 5(6) of the Act and section 8.516 of the East Lansing Historic Preservation Code, which both authorize the Commission to issue a Notice to Proceed, if it finds "the resource constitutes a hazard to the safety of the public or to the structure's occupants" and that the proposed work is "necessary to substantially improve or correct" the condition.

On the other hand, the Commission asserted that city inspectors had conducted bi-annual inspections of the house, that no hazardous conditions affecting the windows were detected during those inspections, and that the Appellant presented no evidence to the Commission to support his claim that a health or safety hazard was present and that such hazard required emergency measures. The Commission further contended that the Appellant made the hazard claim merely because he, his wife, and their contractor had been unaware of preservation requirements and they chose to install nonconforming windows. The Commission also pointed out that, even if a health or safety hazard had existed which necessitated emergency correction, conforming windows were always available at a comparable cost.

Based on a review of the administrative record, the Commission's position on the hazard condition issue is more persuasive than the Appellant's position. The Appellant offered testimony that described the original windows as being badly deteriorated and indicating that renters had placed Visqueen over the windows to keep out the cold air and rainwater. The degree of

deterioration does appear to have been severe enough to warrant replacement. Keeping renters warm during cold weather is certainly a worthy objective. However, no credible evidence was presented to show that the condition of the windows created a health or safety hazard, e.g., no renter was in danger of freezing to death, suffering frostbite, or some other expected harm. The utilization of Visqueen seems to have provided occupants with adequate protection from the cold and moisture, although it was apparently unpopular with the renters and its usage undoubtedly formed one of the least attractive solutions.

In addition, as is evident in the hearing record, the extent of deterioration present at the time the windows were replaced did not require emergency action. John Noud initially told Commissioners at the March 13, 2003 Commission meeting that the original windows were deteriorated with dry rot in areas, and they leaked like a sieve. But when he was subsequently asked point blank if the windows were a health hazard, Noud answered "no". The Nouds also acknowledged at the same meeting that they would have refrained from replacing the windows altogether had the costs been much greater than the \$5,266.47 they paid to Acker. Those statements serve to undercut the Appellant's assertion that a serious hazard existed with the original windows and that immediate corrective action was required.

Moreover, both Acker and Springer testified that replacement windows which matched the originals, including having 40/60 frame proportionality with true divided lights (i.e., muntins), were

readily available "off the shelf" at a local building supplies store. It is also evident that suitable windows could have been installed just as expediently as were the nonconforming windows put in by Acker. Thus, even assuming the window deterioration presented a health threatening condition warranting immediate replacement, which assumption is contrary to the evidence presented, the Applicant could have easily used compliant windows.

The Appellant concedes that ignorance of the preservation requirements is no excuse. Had the Nouds pursued the required application process before the windows were replaced, it is reasonable to presume they eventually would have been apprised of the need to replicate the original windows and they could have installed acceptable windows in a timely manner. Moreover, during the time the Appellant would have spent seeking suitable windows and Commission approval, it is more likely than not that Visqueen, or some other simple covering device, could have been attached to the windows to temporarily address the deterioration problems faced by the Nouds.

C. Retention Not in Best Interest of Community

The Appellant next argued that relief should be granted because requiring the removal of the recently installed windows and the replacement with windows approved by the Commission is not in the best interest of the majority of the community.

In terms of the law, section 5(6)(d) of the Act and section 8.516(5) of the East Lansing Historic Preservation Code both require two determinations: 1) whether retaining the resource would

not be in the best interest of the majority of the community (note: section 8.516(5) of the the Code specifically provides for a public referendum to substantiate community interest in favor of non-retention), and 2) whether destruction would substantially or materially correct or improve the situation.

Regarding the interests of the majority of the community, it must first be observed that section 2 of the Act [MCL 399.202] declares that historic preservation is a public purpose. The section provides as follows:

Sec. 2. Historic preservation is declared to be a public purpose and the legislative body of a local unit may by ordinance regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources within historic districts within the limits of the local unit. The purpose of the ordinance shall be to do 1 or more of the following:

(a) Safeguard the heritage of the local unit by preserving 1 or more historic districts in the local unit's history, architecture, archaeology, engineering, or culture.

(b) Stabilize and improve property values in each district and the surrounding areas.

(c) Foster civic beauty.

(d) Strengthen the local economy.

(e) Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the local unit and the state. (See also, East Lansing Historic Preservation Code, § 8.502)

Regarding the intent of preservation law, one Michigan appellate court has held that the primary purpose of the Act and each local historic preservation ordinance is to safeguard the heritage of the local unit and to further related public purposes. *Draprop Corp v City of Ann Arbor*, 247 Mich App 410, 416-417; 636 NW2d 787 (2001). Moreover, in a leading case on historic preservation with national implications, the United States Supreme

Court reaffirmed the principle that a "(s)tate and (its) cities may enact land use restrictions to enhance the quality of life by preserving the character and desirable aesthetic features of a city." *Penn Central Transportation Co v City of New York*, 438 US 104, 129; 98 S Ct 2646, 2661; 57 L Ed 2d 631, 651 (1978).

The Appellant placed great emphasis on the fact that the Commission acknowledges that the house at 533 Grove Street is not a "historic resource" as that phrase is defined in section 1a of the Act⁷. In essence, the Appellant suggested that whenever any building in a historic district lacked designation as "historic", minimal or no attention need be given to that building's architectural characteristics. Or, to put it another way, for each resource that is not deemed "historic", the replacement of windows is not an important matter, and no one would be interested in whether or not the property owner had followed preservation standards or guidelines.

The Appellant further asserted that the replacement windows installed at 533 Grove Street in 2002 had significantly improved the appearance of the structure, that (except for an expert) no person would visually notice that the composition of the replacement windows did not match or replicate the originals (*i.e.*, the 40/60 proportionality of the upper and lower frames, the use of add-on exterior muntins, and 100% vinyl), and that frame proportionality and muntins are inconsequential matters for his house.

The Commission countered that the Appellant had made no claim in his application that the interests of the majority of the community would allow for the removal of a defining architectural feature and its replacement with nonconforming windows, and he did not offer any reliable evidence to substantiate that contention. The Commission also maintained that the ordinance exception allowing nonconforming work based on the best interests of the community, which is set forth in section 8.516(5) of the City Code, is available only after the results of a referendum on the retention process are scrutinized, and that no such referendum had occurred.

Pursuant to section 5(3) of the Act and section 8.513 of the City Code, the Commission is obligated to review applications for proposed exterior work on each and every resource in a historic district. The Commission must also apply appropriate preservation standards and guidelines when making determinations, such as assessing the architectural features of the resource and its relationship to the surrounding area. When reviewing applications for proposed work, commissions are not authorized to render their decisions on the sole basis of whether or not the work will be pleasing to the eye. While simple logic suggests that a community can benefit whenever a property owner restores or replaces badly deteriorated windows, such rationale does not implicitly lead to a conclusion that the community will benefit when applicable preservation standards and guidelines are ignored. To the

contrary, the Act, the City Code, and the interrelated federal and local preservation standards and guidelines, all contain numerous provisions designed to preserve resources as they existed, whenever possible.

The evidence in the hearing record established that the house at 533 Grove Street is over 80 years old and it was included within the boundaries of the College Grove Historic District as part of a unique mixture of structures. The original windows were clearly distinctive, particularly with respect to frame proportionality with true divided lights. As earlier noted, the core theme or goal of preservation law is the desire to keep or duplicate significant features of each resource in a designated area, even resources that do not meet the definition of "historic resource". Once an important part of a resource is changed or eliminated, the architectural integrity of the structure may be compromised or lost, which in turn may damage or destroy the integrity of the district as a whole.

Aside from the statements of the Nouds and a neighbor (Ms. Hunt) asserting that the replacement windows that Acker installed had significantly improved the appearance of the structure, there was no showing that the community interests were better served by ignoring the need to replicate the original windows under preservation standards. In addition, there was no public referendum on the Appellant's proposal, the results of which might have demonstrated a positive community desire to allow the

replacement windows to stay, regardless of their conformity with preservation guidelines.

In conclusion, the Appellant's argument that replicating the original windows is not in the community interest lacks substantial merit. The retention of historic resources and architectural features *is* the community interest standard within established historic districts. Older structures with distinctive architectural features are non-renewable resources. Once destroyed or altered, they are typically lost forever. The Commission carefully considered all of the information presented to it by Noud. It cannot be said that the best interests of the majority of the community (as well as the intent of the state historic preservation statute and the city history ordinance) would be best and most appropriately served by permitting the Appellant to keep nonconforming windows. The Commission correctly concluded that merely attaching exterior muntins on only eight front, street-side windows would not significantly benefit the community.

D. Failure to Properly Apply Standards and Guidelines

As a third ground for reversal, the Appellant argued that the Commission improperly applied federal and local historic preservation standards and guidelines when denying his requests for vinyl replacement windows, that the Commission had acted arbitrarily and capriciously in denying his application, and that the Commission ignored previous application reviews involving other property owners, wherein permits had been issued allowing the use of similar replacement windows.

In support of his contentions, the Appellant presented a substantial amount of documentary evidence. Among the documents were the March 6, 2003 and October 2, 2003 Staff Reports that evaluated his two separate applications for Certificates of Appropriateness; the October 9, 2003 Commission meeting minutes; and his Memorandum, dated August 27, 2003, which he presented to the Commission in support of his resubmitted second application. The Appellant referred to various excerpts in the Staff Reports that he contended establish the Reports had been intentionally crafted in order to sway Commissioners (most of whom were relatively new members) towards denial of his application, e.g., by unfairly highlighting selected quotations from various legal requirements and by omitting parts of other provisions that were favorable to his position. The Appellant also referred to excerpts of meeting minutes in which Commissioners discussed the merits of his application; he pointed out that his August 27, 2003 Memorandum was considered by the Commission during that meeting; he asserted that the Memorandum had accurately spelled out the matters the Commission was required to consider; and he claimed that the Commissioners had indicated that they would not make historic and architectural evaluations as part of their review, as required by section 5(3) of the Act and section 8.513(3) of the City Code. The Appellant also submitted copies of materials from the Commission's files pertaining to work permits issued for two East Lansing homes that lie within a historic district, i.e., the property at 20 University Drive and the property at 432 Kensington Road. The

Appellant contends that this documentation shows that both property owners were allowed to install vinyl replacement windows on their respective houses and that replicating existing architectural features had not been required by the Commission in either case.

The Appellant also presented the testimony of Acker, Hunt, Springer and himself (John Noud), in order to bolster his claims. Collectively, these witnesses verified that the houses located on the 500 block of Grove Street all had 50/50 window frames, and that some houses had windows with muntins and others did not. Hunt and Noud also expressed their opinion that the replacement windows installed by Acker had made a marked improvement to the building's exterior appearance. Noud additionally held the view that the visual appearance of the replacement windows is not noticeably different from the appearance of the original windows that were replaced. Noud also described his review of Commission files and the findings that lead him to believe that the Commission had approved proposals from other property owners that were similar to his proposal.

To counter the Appellant's contention, the Commissioner also relied on a great deal of documentary evidence, including copies of: the Commission Staff Reports and Commission meeting minutes regarding Noud's two applications; the entire East Lansing Historic Preservation Code; excerpts of the U.S. Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings; the U.S. Secretary of the Interior's Standards for Rehabilitation; and various photographs of the front and side angles of the house at

533 Grove Street, which depict the windows before-replacement and after-replacement.

In addition, Springer testified that the Commission had never before approved any application that called for replacing all of the windows in a house and then replacing the entire lot of them with nonconforming windows. He also disputed Noud's contention that the Commission approvals for using vinyl replacement windows for the properties at 20 University Drive and 432 Kensington Road were not distinguishable from his proposal. Springer pointed out that the window work at 432 Kensington Road involved the construction of a new addition where a former porch stood; and that the work at 20 University Drive entailed replacing only three fairly unobtrusive windows (at the north and south gables and the front dormer), and he noted that a motion to deny the application had failed merely because too few members were present when the vote was taken. Springer also detailed why the Commission determined that the original windows were required to be replicated.

Contrary to the Appellant's account, a review of the October 9, 2003 Commission meeting reveals that, during its assessment of Noud's application, the Commission did assess the historic and architectural significance of the windows, as well as their relationship to the surrounding area. Specifically, the Commission examined old and new photographs of the house, reviewed the standards and guidelines, and took into account architectural resource material (*i.e.*, McAlister 320-324) that expressly found

that the windows, along with the front door, are the most character-defining feature common to Colonial Revival style homes. In particular, the Colonial Revival style is characterized in *McAlister* as follows:

General:

Accentuated front door with fan or side lights, facade normally with symmetrically balanced windows and center door.

Windows:

Windows with double-hung sashes usually with multi-pane glazing in one or both sashes and frequently in adjacent pairs.

As in the originals, most Colonial Revival windows are rectangular in shape with double-hung sashes. In the more accurate copies, each sash has six, eight, nine or twelve panes. Equally common are multi-pane upper sashes hung above lower sashes that have only a single large pane, a pattern never seen on colonial originals.

The Commission also considered the application of standards 2, 5, 6 and 9 of the U. S. Secretary of Interior's Standards for Rehabilitating Historic Buildings. Those standards provide specifically as follows:

2. The historic character of a property shall be retained and preserved. The removal of historic materials shall be avoided.

* * *

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

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.

The U. S. Secretary of Interior's Guidelines for Rehabilitating Historic Buildings (Revised 1990) further addresses the approaches to renovation work that should be taken when restoring older structures. For work involving windows, the Guidelines provide at page 25 as follows:

Windows:

A highly decorative window with an unusual shape, or glazing pattern or color is most likely identified immediately as a character defining feature of the building. * * *

Recommended:

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, glazing, sills, heads, hoodmolds, panelled or decorated jambs and moldings, and interior and exterior shutters and blinds.

Protecting and maintaining the wood and architectural metal which comprise the window frame, sash, muntins, and surrounds through appropriate surface treatments such as cleaning, rust removal, limited paint removal, and re-application of protective coating systems.

Not Recommended:

Removing or radically changing windows which are important in defining the overall historic character of the building so that, as a result, the character is diminished.

Changing the number, location, size or glazing pattern of windows, through cutting new openings, blocking-in windows, and installing replacement sash which does not fit the historic window opening.

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

and muntin configuration; the reflectivity and color of the glazing; or the appearance of the frame. * * *

Having considered the Appellants' presentation on this issue, it must be concluded that the Commission acted properly when determining that the installation of add-on muntins to nonconforming vinyl windows would contravene the applicable historic preservation Standards. The evidence shows that the installation of the new vinyl windows resulted in the removal of a substantial amount of historic wood material, it changed the visually distinctive frame proportionality, and the muntins were eliminated as a significant feature. These were not inconsequential or trivial matters. Standard 2 calls for the retention of historic materials and avoiding alterations of character-defining features and spaces, like windows. Standard 5 calls for the preservation of distinctive features and craftsmanship that characterize a historic property. Windows are unquestionably a distinctive house feature. Standard 6 calls for the repair, rather than the replacement, of deteriorated historic features, and prescribes their replacement in kind, unless it is impossible. Finally, standard 9 provides that historic materials that characterize a resource should not be destroyed and new construction must be compatible with the massing, size, scale and architectural features of the property.

The Appellant's assertion that the newly installed vinyl windows looked like the old wood windows, particularly from as far away as the street, is not accurate. After carefully evaluating

the changes that the newly installed windows made to the appearance of the windows, the Commission determined that significant features of the windows (*i.e.*, frame proportionality and muntins) had been radically changed. The alteration was in contravention of the recommendations set forth in the U. S. Secretary of Interior's Guidelines for Rehabilitating Historic Buildings. The Commission also thoroughly reviewed the proposed use of add-on exterior muntins in the eight front windows and accurately concluded that such alterations would not address frame proportionality nor would it address improper alterations of the sidewindows. In addition, the Commission properly focused on the features of the original windows at 533 Grove Street, and the Commission appropriately concluded that the presence of 50/50 frame proportionality and the presence of muntins in the windows of other nearby houses were irrelevant.

Moreover, the fact that the newly installed windows may have actually improved the overall visual appearance of the house is also of little consequence. Even the choice of color used to repaint a structure's badly faded exterior is subject to preservation standards and guidelines, even in instances when virtually any color will result in an improved appearance. Indeed, Michigan appellate courts have ruled that historic district commissions are empowered to determine that a property owner's unauthorized use of a color was improper and may require the owner

to repaint with an approved color⁸. Again, a review of the preservation standards and guidelines reveals that serious attention must be given to the affect exterior work will have on a building's windows. The emphasis is always to ensure that the new will match the appearance of the old. For Colonial Revival style homes, which is the style in this case, window shape and lighting patterns represent unique architectural features that give those homes character, and their replication is paramount.

It must therefore be concluded that the Commission was correct when it determined that the Appellant's proposed window replacement project did not conform with rehabilitation Standards 2, 5, 6 and 9, and it did not conform with applicable preservation guidelines.

E. Historic District Unlawfully Established

The Appellant's last argument for reversal is that the College Grove Historic District had not been created in accordance with the requirements of section 3 of the Act⁹, but rather had been established pursuant to defective procedures.

As previously observed, the Appellant bears the burden of proof in establishing the merits of each one of his claims. With respect to the issue of the procedures used in creating the College Grove Historic District, the Appellant offered no evidence whatsoever to substantiate the claim that the District was unlawfully formed.

8 See, *City of Ypsilanti v Kircher*, unpublished per curiam opinion of the Michigan Court of Appeals, July 24, 1992 (Docket No. 128107); cert. denied, 442 Mich 876, 500 NW2d 471 (1993).

9 1970 PA 169, § 3; MCL 399.203; MSA 5.3407(3).

On the other hand, the Commission presented a certified copy of Chapter 104 of the City of East Lansing Ordinance. Chapter 104 contains section 8.509, which declares that the City's historic districts, as identified by specified boundaries, including the College Grove Historic District, were all established in accordance with the Act. The property at 533 Grove Street clearly lies within the College Grove Historic District. Moreover, it is well settled law in Michigan that a municipal ordinance is presumed to be constitutional and otherwise lawful, unless the contrary is shown. *City of Hillsdale v Hillsdale Iron & Metal Company, Inc.*, 358 Mich 377, 382, 100 NW2d 467 (1960); *Watnick v City of Detroit*, 365 Mich 600, 606, 113 NW2d 876 (1962).

Without a doubt, the Appellant failed to prove his assertion that the District was unlawfully established and that the Commission's decision to disapprove of the window rehabilitation was not based on proper and valid grounds.

Conclusion

In consideration of the entire official record made in this matter, it is concluded the Appellant failed to show: 1) that the original windows constituted a hazard to the safety of the tenants which justified the installation of replacement windows that did not conform with applicable historic preservation regulations, 2) that the Commission's decision requiring replication of the original windows was not in the best interests of the majority of the community, 3) that the Commission improperly applied historic preservation standards and guidelines to his requests, or 4) that

the College Grove Historic District was not legally established under the Act.

Recommendation

It is therefore recommended that the Commission's decision be affirmed and that the appeal be DENIED.

Dated: April 16, 2004

Kenneth L. Teter, Jr.

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