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

MICHAEL EERDMANS,
Applicant/Appellant,

v Docket No. 03-045-HP

GRAND RAPIDS HISTORIC PRESERVATION COMMISSION,
Appellee.
_____/

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Grand Rapids Historic Preservation Commission, denying an application for retroactive approval of the installation of a vinyl sliding door in an apartment building located at 640 Union Avenue, SE, Grand Rapids, Michigan, which building is situated in the Heritage Hill Historic District.

The State Historic Preservation Review Board (the Review 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 Review Board, the Office of Regulatory Affairs of the Department of History, Arts and Libraries convened an administrative hearing on June 11, 2003 and conducted further proceedings on December 15, 2003, for the purpose of receiving evidence and hearing arguments from the Appellant.

A Revised Proposal for Decision was issued on January 28, 2004, and true copies of the Revised Proposal for Decision were mailed to the parties pursuant to Section 81(1) of the Administrative Procedures Act of 1969, as amended, being Section 24.281 of Michigan Compiled Laws.

The Review Board considered this appeal, along with the Revised Proposal for Decision and all materials submitted by the parties, including the Appellant's rebuttal filed on February 6, 2004, at its meeting conducted on February 13, 2004.

Having considered the Revised Proposal for Decision and the official record made in this matter, the Review Board voted 8 to 0, with 0 abstention(s), to ratify, adopt and promulgate the Revised Proposal for Decision as the Final Decision of the Review Board in this matter, and to incorporate same into this document, and,

Having done so,

IT IS ORDERED that the Commission's action of March 19, 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 the parties and their attorneys, if any, as soon as is practicable.

Dated: 2/12/04

Elisabeth Knibbe, Chairperson
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 Review Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Review 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 Review 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:

MICHAEL EERDMANS,
Applicant/Appellant,

v

Docket No. 03-045-HP

GRAND RAPIDS HISTORIC PRESERVATION COMMISSION,
Commission/Appellee.
_____/

REVISED PROPOSAL FOR DECISION

This matter concerns an appeal of a March 2003 decision of the Grand Rapids Historic Preservation Commission (the Commission), denying an application for retroactive permission to install a vinyl door on a building located at 640 Union Avenue, S.E., Grand Rapids, Michigan. The appeal was filed under authority of section 5(2) of the Local Historic Districts Act (the LHDA),[1] which provides that an applicant aggrieved by a commission's decision may appeal the decision to the State Historic Preservation Review Board (the Review Board), an agency of the Department of History, Arts and Libraries (the Department).

Case Background and Procedural History

Sometime in 1997, the Applicant/Appellant, Michael Eerdmans, began renovating his apartment building at 640 Union Avenue,

[1] 1970 PA 169, § 5, MCL 399.205.

S.E., in Grand Rapids. Because there was no access to Apartment #1 from the back yard, Eerdmans decided to remove a window and install a door on the rear of the building, giving access to that particular apartment. After considering his options for the work, he decided to install a vinyl sliding door. The building itself is located in Grand Rapids' Heritage Hill Historic District. However, Eerdmans did not ask the Commission for permission, *i.e.*, for a certificate of appropriateness, prior to installing the new vinyl door.

Some time later, one of Eerdmans' neighbors complained to the City's Historic Preservation Office. The neighbor complained that Eerdmans had installed a vinyl door and performed other exterior work without obtaining permission. In December of 1998, a Commission staff person who had occasion to inspect the completed work and had taken at least one photograph of it, sent Eerdmans a letter. The staffer's correspondence stated that the door and other work were completed without approval and that the work constituted violations of the Grand Rapids Historic Preservation Code.

On or about December 22, 1998, Eerdmans filed an application with the Commission, requesting permission to retain all of the completed work. The Commission met in February of 1999 to consider the application, including Eerdmans' request for retroactive permission to install the vinyl door. Although the Commission approved some of the completed work, the Commission denied the request to retain the door as installed. The Commission instead required Eerdmans to replace his vinyl door

with a wood door. The Commission's order allowed Eerdmans 12 months to complete the mandated changes.

Following the 12-month period, another Commission staff person notified Eerdmans of the observation that the vinyl door had not yet been replaced with a wood door and that other corrective work had not yet been completed. Eerdmans was also informed that corrective work must be finished by September 30, 2000 or else he would be subject to criminal prosecution. Eerdmans requested a two-year extension; however, he was given only until October 15, 2000 to finish the corrective work. In late October of 2000, a Grand Rapids Assistant City Attorney sent Eerdmans a warning letter concerning the possibility of prosecution. A warrant was issued on December 6, 2000.

On or about March 3, 2003, Eerdmans submitted a second application to the Commission, again requesting retention of the vinyl door. The Commission met on March 19, 2003 to conduct business and consider Eerdmans' second vinyl door application. During the Commission meeting, Eerdmans made numerous arguments in support of keeping his vinyl door. After considering the merits of Eerdmans' arguments, the Commission again denied retention of the vinyl door. Also, the Commission again required the installation of a substitute wood door, in this instance, within six months, based on historic preservation *Guidelines*.

Eerdmans challenged the Commission's March 19, 2003 denial of his second request to install the vinyl door, in a claim of appeal dated April 14, 2003. The Review Board received the appeal on April 24, 2003.

After the appeal was filed, the Review Board directed the Department's Office of Regulatory Affairs to conduct the administrative hearing in this matter. Notice of hearing was served on Eerdmans and the Commission on or shortly after May 21, 2003. The notice indicated that the purpose of the hearing was to afford the Appellant an opportunity to present evidence and argument. The notice also indicated that the Appellant would have the burden of proving that the Commission should have approved the Appellant's application and issued the Appellant a certificate of appropriateness. The notice additionally indicated that the scheduled proceeding would be conducted in accordance with procedures applicable to contested cases, as set forth in Chapter 4 of the Administrative Procedures Act of 1969 (the APA).[2]

The administrative hearing was convened on June 11, 2003, in the Historical Commission Room of the Michigan Library and Historical Center, 702 W. Kalamazoo Street, Lansing, Michigan. Eerdmans appeared and served as his own attorney at the hearing. Ms. Rhonda L. Saunders, Historic Preservation Specialist, and Ms. Susan Thompson, Director, City of Grand Rapids Zoning and Preservation, also attended the hearing. Nicholas L. Bozen, an Administrative Law Judge with the Department's Office of Regulatory Affairs, presided at the hearing.

Shortly after Mr. Eerdmans' arrival in Lansing to present his case, he indicated that he did not know that the hearing would be a ''legal process'' or that he would be making a

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

presentation before a hearing officer and would need ''hard'' evidence. Rather, he said he was expecting to be at a meeting and to appear in front of the Review Board. Although he at one point asked for an adjournment, he decided to go forward with his presentation since he did bring with him a considerable amount of evidence. Eerdmans was allowed to enter the evidence that he had on hand. He also made numerous legal arguments at this time.

In accordance with section 81 of the APA,[3] the presiding officer issued a Proposal for Decision regarding the appeal on August 21, 2003. The proposal recommended that the Commission's decision be affirmed and that the appeal be denied. Copies of the proposal were served on the Appellant and the Commission, and copies were also forwarded to every member of the Review Board for review in advance of the next Board meeting.

On September 3, 2003, the Appellant sent the Review Board ''exceptions'' to the proposal. This filing, labeled ''Rebuttal to the proposal for decision'', accepted most but took issue with some of the proposed findings of fact listed in the proposal. The rebuttal also took issue with the conclusions of law set forth in the proposal. A copy of the rebuttal was promptly transmitted to each member of the Review Board.

The Review Board met at a regular meeting on September 5, 2003 to conduct various items of business, such as to consider National Register Nominations, assess historic district study reports, and decide commission appeals. Regarding the matter at hand, the Board President took note that only two board members

[3] 1969 PA 306, § 81, MCL 24.281.

had actually received the Appellant's rebuttal in advance of the meeting. Another Board member expressed the view that given the circumstances, tabling consideration of Eerdmans' appeal until the Board's next meeting made the most sense. Eerdmans was present at the meeting and spoke briefly about his concerns regarding the circumstances of the administrative hearing. He said he felt that he did not have with him at the administrative hearing all of the evidence that he needed in order for him to present his case. The Board tabled consideration of Eerdmans' appeal to the Board's next meeting.

Following preparation of the minutes of the Board's September 5th meeting, the presiding officer sent a written notice to Eerdmans, advising him that section 87 of the APA[4] allows convening a rehearing in a contested case on request of a party. On or about November 20, 2003, Eerdmans filed a motion for rehearing, with a request to remit additional evidence. Eerdmans wrote that he possessed concrete evidence that the Commission had usurped and abrogated its authority. The motion for additional hearing time was granted on November 20, 2003.

A second day of hearing was scheduled for December 12, 2003. When Eerdmans received notice of the additional hearing day, he contacted the Department's Office of Regulatory Affairs, indicated that he would be out of state on December 12, and requested another date for the second hearing day. Based on Eerdmans' request, the second hearing day was rescheduled for December 15, 2003. Eerdmans appeared at that time and again

[4] 1969 PA 306, § 87, MCL 24.287.

represented himself, in pro per. He was accompanied by a friend, Virgil Boss. Ms. Saunders and Ms. Thompson also attended. In addition, Elizabeth R. White, Assistant City Attorney, City of Grand Rapids, appeared on behalf of the Commission. Nicholas L. Bozen served as presiding officer.

Rescission of Proposal for Decision

In view of the additional evidence and argument presented by the Appellant in this proceeding on the second hearing day, the Proposal for Decision issued on August 21, 2003 is hereby rescinded.

This Proposal for Decision shall be and shall henceforth serve as the only official Proposal for Decision in this matter, for any and all purposes, including the purposes of section 81 of the APA, *supra*.

Issues on Appeal

During the course of this proceeding, the Appellant advanced several legal and factual issues. Some were set forth in his claim of appeal. Others were articulated on the first day of hearing. Still others were advanced in his rebuttal to the proposal and in his motion for a second day of hearing. Issues were also articulated and re-articulated on the second hearing day in December, 2003.

As presently formulated, the Appellant's principal assertions and arguments for reversal of the Commission's March 2003 denial, are as follows:

A. The apartment building was added to the Heritage Hill Historic District in 1991, and thus he (Eerdmans) was new to the rules and processes of historic preservation.

B. There was no door to the back yard of his property from Apartment #1, and the best choice for egress/entrance was a vinyl sliding door, since the door cannot be seen from the street, it looks like wood, and no one can tell whether it is vinyl unless they trespass on the property.

C. Although the Commission's *Guidelines for Historic Districts and Designated Historic Properties* recommend against installing sliding doors, these local *Guidelines* do contain a clause allowing for slider use.

D. Michael J. Page, Historic Preservation Specialist for the City of Grand Rapids, illegally trespassed on the property and took a picture of the vinyl door, at a time when the property was posted against trespassing. Plus, trespass is against the law.

E. The Commission contradicted itself by approving his requests for a hot tub and a deck with lattice and a rail in the rear of the property, on the basis of not being seen from the right of way, and then denying his request for the vinyl door, which also cannot be seen from the street.

F. He was not allowed to present all of the facts of his request at the Commission meeting convened on March 19, 2003.

G. He was experiencing financial difficulties, and replacing the vinyl door with wood after the door's initial installation would constitute a financial hardship for him.

H. Addressing safety violations must take priority over performing corrective historic preservation work, and in any case, setting a time limit for the completion of restoration or other preservation work in a historic district is illegal.

I. The Commission fraudulently assigned unto itself its own authority, ignoring Chapter 68 of the Grand Rapids Ordinances, *i.e.*, the Historic Preservation Code, and in particular, § 5.395, that clearly define the Commission's duties.

J. The Commission usurped and abrogated the law, thus rendering inconsistent decisions on numerous applications.

Summary of Evidence

Under Michigan jurisprudence, a party who occupies the position of a plaintiff, an applicant, a petitioner, or an appellant in an administrative proceeding typically bears the burden of proof. 8 Callaghan's Michigan Pleading & 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 occupies that position in this matter and thus has the burden of proof with respect to each of his factual assertions.

A. Appellant's Evidence

Section 5(2) of the LHDA, *supra*, provides that appellants may submit all or any part of their evidence in written form. In that vein, the Appellant offered 11 exhibits for entry into the official record on the first day of hearing. Among the exhibits presented on that day were copies of the minutes of the Commission meetings of February 17, 1999 and March 19, 2003; photographs of the subject property, one of which depicted a "NO TRESPASSING" sign affixed to a wooden fence; four Certificates of Compliance dating from the early 1990s; a letter dated September 8, 2000 regarding Case Number 9802291; three Code Violation Lists issued in 1996 and/or 2001; and part of Grand Rapids Historic Preservation Code, *i.e.*, § 5.395.

The Appellant also testified on his own behalf on the first hearing day. He explained how he had acquired the building, and he also discussed the steps he had taken to improve it. He then discussed his dealings with Michael Page, his belief that the Commission had not allowed him to adequately present all of his facts, his failed plan to sell the building, and his need to direct his limited financial resources toward correcting safety violations rather than replacing the vinyl door.

The Appellant presented an additional 12 exhibits on the second hearing day (for a total of 23 exhibits in all). The exhibits that the Appellant submitted on day two consisted of: a response to a Freedom of Information Act (FOIA) request filed by Eerdmans with the City of Grand Rapids FOIA Coordinator on

December 1, 2003 (appended to the response were minutes of Commission meetings held on July 16, August 6 and 20, September 3 and 17, October 1 and 15, and November 5, 2003); a subpoena issued for Case No. 00-CM-4846 on November 14, 2003; a copy of the minutes of the Commission meeting of February 17, 1999 (previously admitted as Appellant's Exhibit 2 and Commission Exhibit 6); a mini-taperecording of a conversation between Eerdmans and Ms. Thompson (sealed); an excerpt from the transcript of proceedings in a trial convened before the Honorable J. Michael Christensen on November 18, 2003 (testimony of Rhonda Saunders); a copy of the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1990)*; Chapter 68 of the Grand Rapids Ordinances (part of which was previously admitted as Appellant's Exhibit 11); two pages of the *Guidelines for Historic Districts and Designated Historic Properties* (one of which was previously admitted as part of Commission Exhibit 7); a letter from John Ruud to Michael Eerdmans dated August 20, 2003; copies of four digital photographs depicting the deteriorated condition of the front porch roof of the apartment house; and a photograph printed on August 15, 2003 depicting the front of the apartment house. This photograph shows a wooden fence on the left side of the building, as well as windows on the third floor elevation of a building which is situated behind 640 Union Avenue and faces another street.

Eerdmans testified again on the second day of hearing. He discussed various topics, such as: the fact that he had filed a FOIA request with the City to obtain documents showing that the Commission was arbitrary and inconsistent; that the pillars he had installed to support the deteriorated front porch at his apartment building were intended as a temporary safety measure; that he felt that the Commission denied his second application for a vinyl door on the basis of *Standard 6* rather than *Standard 9*; that he performed good work when he improved his building; and that he spent approximately the following amounts while making improvements; 1997 - $6,000, 1998 - $6,000, 1999 - $6,000 to $7,000, 2000 - $6,000, 2001 - $8,000, 2002 - $6,000, and 2003 - $17,000.

The Appellant also presented testimony from an additional witness on the second day of hearing. Virgil Boss, who is a licensed contractor, testified that he attended a conference at which Ms. Thompson said the Commission never approved the use of vinyl doors on the rear sides of historic buildings. Mr. Boss also testified about the condition of the front porch. In that regard, he stated that he was present when the porch roof was opened up and there was no header inside.

B. Commission's Evidence

The Commission also submitted documentary evidence on the first hearing day. This evidence consisted of: a photograph of the area of the apartment building where the vinyl door would later be installed, as the area appeared on May 3, 1996, and a

photograph of the same area after the door was installed; a letter from Michael Page to Michael Eerdmans, dated December 3, 1998, complaining that a slider door had been installed without review or approval; an application for a certificate of appropriateness, dated December 22, 1998, to install a rear door, a rear deck, and front porch pillars; Commission *Guidelines for Windows, doors, skylights, solar systems and roof accessories*; a letter dated August 17, 2000 regarding Case Number 9802291; a letter from Mr. Eerdmans to the Commission, dated September 6, 2000, regarding the front porch and vinyl door; a warning letter dated October 26, 2000; an application for a certificate of appropriateness dated March 3, 2003; and minute of the February 17, 1999 and March 19, 2003 Commission meetings.

On day one, Rhonda Saunders testified about the Commission's actions. She discussed the Commission's view of the need to correct deficient work within a reasonable time, as well as whether an owner could make the Commission correct inappropriate restoration work which had been performed by the owner. She also testified about her efforts to work with Eerdmans and the fact that certain improvements which he had made to the property, such as the addition of a hot tub, were not actually affixed to the building.

Saunders also testified on the second day of hearing. She stated that according to an application for a building permit filed by Eerdmans on March 3, 2003, Eerdmans had estimated the cost of repairing the front porch header to be only $500. She added no other building permit applications were on file to

address the remainder of the $17,000 spent by Eerdmans on the building during 2003. The Commission offered a copy of the application for a building permit for admission into the official hearing record. It was entered as Commission Exhibit 14.

Sue Thompson was the final witness to testify on day two. She described the City's efforts to furnish a response to Eerdmans' December 1, 2003 FOIA request. She also expressed her view that the Commission's authority to act on an application to undertake work within a historic district derives from the Grand Rapids Ordinances, Chapter 68, as well as from federal and local *Standards* and *Guidelines*.

Findings of Fact

Based on the probative evidence admitted into the official hearing record, the facts of this matter are found to be as follows:

A. Background Information

1. The parcel at 640 Union Avenue, S.E., Grand Rapids, Michigan, encompasses a two-and-one-half story, wood-frame residential structure. The building currently functions as an apartment building, with four units of low-income housing.[5] (Appellant's Exhibit 1)

2. On April 24, 1973, the City of Grand Rapids adopted Ordinance No. 73-25,[6] thereby creating the Heritage Hill Historic District. As established, the district contained several hundred

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[5] Although the Appellant asserted that the rents of the low-income units are ''customary and normal'', he failed to offer any evidence demonstrating what exactly the customary and normal rents were.

[6] Grand Rapids Ordinances, Ch. 68, § 5.411.

properties related by history and architecture. However, the parcel at 640 Union Avenue was not included within the district's original boundaries. (AE 1, 18)

3. Michael Eerdmans purchased the apartment building from his parents in 1981. (AE 1; Appellant's Testimony, Day 1)

4. In 1991, the City added the building at 640 Union Avenue, S.E., to the Heritage Hill Historic District, along with ten other historic properties, by adoption of Ordinance No. 91-39. (AE 1; Appellant's Testimony, Day 1)

B. Housing Code Compliance

5. Throughout the first half of the 1990s, Eerdmans received annual Certificates of Compliance from various Grand Rapids' building inspectors attesting that the rental dwelling at 640 Union Avenue, S.E., was in compliance with the City Housing Code. (AE 7)

6. In 1995, a neighbor filed a complaint with City officials with respect to work going on at Eerdmans' apartment building. This neighbor has filed numerous complaints regarding Eerdmans. (Rebuttal; Commission Exhibit 13)

7. On June 24, 1996, Grand Rapids inspection official Jeri Hancock visited 640 Union Avenue, S.E., inspected the premises, and took note of nine possible violations of the Housing Code. (AE 9)

8. On July 22, 1996, Hancock issued a Repair Notice and Code Violations List to Eerdmans concerning the June inspection. Among other things, the notice indicated that the chimney and foundation were not in good repair, that the exterior wood

surfaces were not protected from weather by paint or stain (especially in the rear), that the rear siding was not in good repair, that the front porch was not in good repair, and that the roofing, fascia and trim at the northeast portion of the house were not in good repair. The notice also indicated that the owner was responsible for restoring any cited item to a safe and stable condition. (AE 9)

9. The due date for completing the repair and restoration work listed in the notice was September 20, 1996. (AE 9)

C. Exterior Renovations

10. In 1997, Mr. Eerdmans started exterior renovations to his apartment house. Because there was no access to Apartment #1 from the back yard, Eerdmans decided that a door was needed. Although he wanted to use swinging French doors from the kitchen, he decided they were not feasible due to the placement of the unit's hot water heat registers. He also decided that a vinyl sliding door was his best option. (AE 1, Rebuttal)

11. Eerdmans obtained a copy of the Commission's *Guidelines for Historic Districts and Designated Historic Properties*. He noted that the *Guidelines* recommended against the installation of modern forms like sliders. However, he further noted that there were usability provisions which allowed for modern forms and materials. Perceiving that a vinyl slider was his best option and that its use was for renters, he installed a vinyl sliding door, with muntins. He also felt that such a door had the added benefit of durability. The door was installed in an enclosed

area and cannot be seen from Union Avenue. However, it can be seen from off the property, to the rear. (AE 1, 3, 25, CE 13)

12. Eerdmans additionally noted that the *Guidelines*, under work which needs to be approved, address exterior structures, sites and open spaces. Observing that his door was in an enclosed area with a fenced-in yard that abutted a non-historic neighborhood, he concluded that he did not need to apply for a certificate of appropriateness from the Commission. (AE 1)

13. Eerdmans made other improvements to his property around the time he installed the vinyl sliding door. In that regard, he installed a deck, a hot tub, a wood fence, a wood side door, a wood front door, and new columns on the front porch. (AE 1, CE 3)

14. At some point, a neighbor filed a complaint with the Historic Preservation Office alleging that the front porch had been altered with the installation of new columns and that a deck and slider door had been installed without Commission review or approval. (CE 3)

15. On or about November 16, 1998, Page inspected the premises at 640 Union Avenue, S.E., in response to the complaint. He took photographs of the house, including the vinyl door.[7] (CE 2, 3)

16. On or about December 3, 1998, Page sent Eerdmans a letter indicating that the front porch pillars, slider door, and deck had been installed without Commission approval and constituted violations of the Grand Rapids Historic Preservation Code. Page added that Eerdmans must send the Commission a

[7] Appellant alleges that if there is a photograph, Michael Page trespassed.

completed application for a certificate of appropriateness by December 28, 1998. Page enclosed a copy of the *Guidelines* with the letter and wrote that any failure to submit a completed application would subject Eerdmans to prosecution in 61st District Court. (AE 1, CE 3)

D. First Application and Commission Review

17. On or about December 22, 1998, Eerdmans filed an application with the Commission. The work described in the application was: 1) repair of front porch with pillars, 2) install rear door to gain access to the back yard, and 3) install a deck in the back yard. (CE 4)

18. Eerdmans submitted a supplemental application on February 2, 1999. This document contained the statement, "See attached explaination (*sic*) & photo's (*sic*)." Eerdmans signed the document. Attached to it was a drawing of the "footprint" of 640 Union Avenue, S.E., demarcating the deck, hot tub, new door, kitchen, and remainder of the first floor, including the front porch. (CE 5)

19. The Commission met on February 17, 1999 to consider Eerdmans' application, including his requests for approvals of the work already completed. Eerdmans was present to advocate for these approvals. He first stated that when he moved into the property, he replaced the privacy fence and then constructed a deck for the hot tub. He added that when he built the hot tub deck, he thought it would not be a problem since the deck was not connected to the house, and in any case was in the rear.

Regarding the vinyl door, he said his original plan was to install French doors from the kitchen, but swinging doors at this location were not possible so a vinyl sliding door had been installed. He also pointed out that the vinyl door was not visible from the street, *i.e.*, Union Avenue. He added that the properties to the rear of his building were not located in the Heritage Hill Historic District. Eerdmans also indicated that there was a window in the location of the new door originally, but that the window did not match the other windows in the building. (AE 2, CE 6)

20. Commissioner Logan commented that it is evident that Eerdmans' door was a vinyl door and that it was visible from other yards. Logan also indicated that the Commission does not oppose sliding doors, provided they are made of an appropriate material. Logan further stated that the hot tub was not an issue and that the deck and rail at the rear were not visible; the door, however, was a concern. (AE 2, CE 6)

21. Mr. Eerdmans later indicated that he had a financial hardship, stating he would like to complete the work that he had begun on the interior of the apartment building. (CE 6)

22. After further discussion, Commissioner Winter-Troutwine, seconded by Commissioner VanScoy, moved to: 1) deny the request to retain the five foot vinyl sliding door and instead require replacement with a wood sliding door without the various divided lights, 2) deny the request to retain the front porch support columns, 3) approve the deck, hot tub and lattice guardrail in the northeast corner of the property, and 4) approve

the wood front door as currently installed. The motion was amended to allow Eerdmans 12 months to complete the required corrective work. The amended motion carried. (CE 6)

E. Plan to Sell

23. In March of 1999, Eerdmans had a plan to sell the building. He ''sold'' the house to a tenant whose loan company told Eerdmans that it would guarantee that the tenant was qualified for a loan. Nevertheless, the deal fell through. By that time, Eerdmans had moved out of the building. He had anticipated that the new owner would make corrective repairs. This did not occur. Eerdmans reacquired the property in September of 1999. (Appellant's Testimony, Day 1; CE 10)

F. Subsequent Enforcement

24. On August 3, 2000, Cindy Thomack, Historic Preservation Specialist for the City of Grand Rapids, inspected the premises at 640 Union Avenue, S.E. She discovered that the support pillars for the front porch were still in place and that the vinyl door had not been replaced with a wood door. (CE 8)

25. On or about August 17, 2000, Thomack sent Eerdmans a notice describing her inspection and informing him that he needed to bring the listed items into compliance or else he would be subject to prosecution. The notice further indicated that Thomack's office would give Eerdmans a final extension until September 17, 2000 to complete the work. Eerdmans received the letter on August 28, 2000. He telephoned Thomack on August 31, 2000, at which time he asked for a two-year extension. She

responded that the corrective work must be completed by September 30, 2000. (CE 8)

26. On September 6, 2000, Eerdmans sent the Commission a letter regarding the notice he had received from Thomack on August 28th. He began his correspondence by writing:

> This letter is in response to your letter, which I received on 8/28/2000, and pursuant to our conversation on the telephone. First and foremost I agree that the columns on the front porch and the vinyl door should be amended as per the guidelines of HHA. Also per our telephone conversation the extension of 9/30/2000 is unexceptable (*sic*), as I don't have the funds to complete the project in correct fashion that both the HHA and I am looking for.
> (CE 10)

27. In this letter, Eerdmans also went on to write that he estimated that the porch repair would cost around $10,000 and that the door correction would cost about $700. He indicated that he possessed receipts detailing expenditures of about $6,000 per year for the last three years for work on the inside. He also wrote that the reason for his slow progress had to do with his personal life. He commented that a nasty divorce which had begun in 1995 became final in 1998, at which time he was awarded custody of his two teenage children. However, he added that he was not receiving any child support, which was causing him great financial hardship. (CE 10)

28. Eerdmans also reported that he had tried to sell the property to one of his tenants in 1999 and had turned it over to the tenant. Eerdmans further stated that the tenant's financing had fallen through, and thus he (Eerdmans) took the property back in September of 1999. Eerdmans then indicated that he was using

a Visa credit card solely for the repairs of the property and that his current balance was $4,406.68. He indicated that he could see no advantage to anyone proceeding with prosecutions and fines. Based on his hard times, he asked for a hardship extension of two more years. (CE 10)

29. On or about September 8, 2000, Thomack sent Eerdmans a reply to his request for a two-year extension. She expressed empathy for his situation, but noted that it had been over two years since the violations were brought to his attention. She wrote that after much consideration and discussion, an extension was granted only to October 15, 2000. She concluded her letter by indicating that if the listed items were not brought into compliance by the due date, an appearance ticket/misdemeanor complaint would be issued. (CE 9)

30. On or about October 26, 2000, Preston Hopson, Jr., Assistant City Attorney, City of Grand Rapids, sent Eerdmans a notice to warn him of the possibility of criminal prosecution. The notice indicated that the Commission had asked him to file a complaint against Eerdmans regarding continuing violation(s) of the Historic Preservation Ordinance. The notice additionally indicated that upon conviction, the maximum penalty would be a $500 fine and 90 days in jail, per count. (CE 11) A warrant was issued on December 6, 2000. (AE 16)

31. On or about August 8, 2001, Grand Rapids inspection official Stephen Love issued a Repair Notice and Code Violations List for the property at 640 Union Avenue, S.E. The notice alleged 29 separate violations of the Grand Rapids Housing Code,

including charges that the driveway was not in good repair and that the front porch deck, siding, and entry trim to the door to Apartment #1 were not in good repair. (AE 6)

32. On or about September 12, 2001, Inspector Love issued a second notice alleging nine additional violations of the Housing Code. (AE 6)

G. Application for Building Permit

33. On or about March 3, 2003, Eredmans submitted an application for a building permit to the Grand Rapids Building Inspections Department. Under ''Work to Be Done'' Eerdmans listed ''Repair supports on front porch''. He estimated that the work would cost ''$500''. (CE 14)

H. Second Application and Commission Review

34. On or about March 3, 2003, Eerdmans submitted a second application to the Commission, requesting retention of the vinyl door on the rear of his apartment building. He stressed that the door was not visible from the street, and he noted that the work was already done. (CE 12)

35. The Commission met on March 19, 2003 to consider Eerdmans' second application to retain the vinyl door. Eerdmans was present at that meeting to discuss his application. At the outset of his comments, he explained that the City of Grand Rapids was prosecuting him on three counts, which were: 1) installing a vinyl sliding door, 2) installing columns on the front porch, and 3) installing both of those without certificates of appropriateness. (CE 13)

36. Eerdmans next stated that when he was a young child, he had lost some of his communication skills. He said he had brought a prepared statement that he would like read. The statement discussed his purchase of the property, the establishment of the historic district, and the work that he had undertaken at his property. The statement also discussed certain personal hardships that lead to him becoming a single father. (CE 13)

37. Eerdmans additionally stated that in 1997, he completed renovations at Apartment #1, moved into the apartment, and at that time installed the vinyl door off the kitchen. He said he felt that the Commission should allow him to keep the door because he also installed a deck and a hot tub. He said he did not ask for a certificate of appropriateness at the time because the historic district was new and he was not familiar with the requirements of historic preservation. Eerdmans then added that he applied to the Commission for permission in 1999, after the fact, and the Commission approved the fence, hot tub and deck, because those structures could not be seen from the street. He also acknowledged that the Commission wanted the pillars removed. He agreed to pillar removal, but he told the commissioners that it would be years before he could accomplish that. The Commission granted Eerdmans six months to remove the pillars because of his stated hardships. (CE 13)

38. Eerdmans then referred to the section of the Grand Rapids Historic Preservation Code[8] which authorizes the Commission to order a property owner to repair and correct

[8] Grand Rapids Ordinances, § 5.395(12).

unauthorized, inappropriate work, and/or to make corrections itself and charge the owner through a special assessment, to recoup the cost of such work. Eerdmans said he felt that the Commission should have performed the corrections itself and imposed a special assessment. (CE 13)

39. Next, Eerdmans asked the Commission to drop the charges against him. Commissioner Ranta responded that the Commission could not drop the charges, in that the Commission had no authority in the criminal matter. Eerdmans replied that someone had to drop the charges. He said that he was upset that a bench warrant had been issued and that he had to hire a lawyer, all for nothing except the vinyl door. He reiterated that the deck and the hot tub were approved because they were not visible from the street, and he argued that the door should have been approved also. (CE 13)

40. Commissioner Aldridge commented that she had visited the property and realized the door was not visible from Union Avenue. However, she added that vinyl doors are not permitted in historic districts and she felt that the vinyl door in question should be replaced with a wood door. Commissioner Korte stated that he too had visited the property and his concern was bad precedent, noting that since the Commission did not allow vinyl it should adhere to its practice. Commissioner Gravelyn added that the same request had been denied in 1999. Eerdmans responded that the reason he had installed vinyl was that this was a rental unit and he felt that vinyl would hold up better than wood. He said he planned to move into the unit within a

year and would be willing to replace the vinyl door with wood in the future. He commented he was of the understanding that if one person is allowed something, each house is still treated as an individual case. Commissioner Aldridge replied that while that was true, the next person who installed a vinyl door would use such an approval as a basis to justify his or her request. (AE 3, CE 13)

41. Eerdmans then stated that the cost of the porch would be $9,000, that he had remodeled all of the apartments, and that he could purchase a wood door ''down the road'' but not in the amount of time the Commission was allowing. Commissioner Ranta noted that it had been four years. Eerdmans responded that it took him four years to save up for the porch. and that he had also put in a new concrete driveway (at a cost of $4,200) and repaired the chimney (at a cost of $1,500) during that time. (AE 3, CE 13)

42. Commissioner Aldridge moved to deny the application as submitted, with support from Commissioner Korte. Ms. Thompson suggested approving the installation of a wood slider door. Commissioner Aldridge then amended his motion, moving to deny the vinyl sliding door and approving its replacement with a wood sliding door within six months, based on local window and door guidelines. Commissioner Korte supported the amendment. The motions carried. (AE 3, CE 13)

I. Additional Commission Actions in 2003

43. On July 16, 2003, the Commission met and considered various alterations to previously approved plans for Cooley Law

School, in connection with 38 Oakes, a property located in the Heartside Historic District. Mr. Hassberger explained that a fresh air intake was needed. He stated that the louvered vent would be the same dark anodized bronze as the window frames and that placement on the second floor would minimize visual impact. A motion to approve carried. (AE 12)

44. Also on July 16, 2003, the Commission considered a request to retain a new front porch at 327 Hollister, S.E., which is located in the Fairmount Square Historic District. Commissioner Misner noted that the Commission did not want to force owners to remove things, but she added that the Commission is placed in a bad position when people do work without permission. Commissioner Ranta stated that the porch is historically correct and meets porch *Guidelines*. Commissioner Chaffee commented that given the circumstances, he hoped never to see this applicant before the Commission again, after the fact. A motion to approve the porch as constructed carried. (AE 12)

45. On August 6, 2003, the Commission met and considered a request to retain glass block in a rear first floor window at 444 Pleasant, S.E., within the Heritage Hill Historic District. Commissioner Ranta noted that the Commission has approved glass block windows when they are not visible from the street and for security reasons. Commissioner Korte noted that each application is reviewed on a case by case basis. Commissioner Gravelyn made clear that the window has been in place for seven years and was not installed by this applicant. A motion to approve carried. (AE 12)

46. On August 20, 2003, the Commission met and considered various applications, including an application to retain lattice above the front porch at 843-845 Wealthy, S.E., which is located in the Wealthy Theatre Historic District. Commissioner Korte stated that he visited the property, and he also said that lattice is not an appropriate solution. A motion to deny the application carried. (AE 12)

47. Also on August 20, 2003, the Commission considered retention of a side entry railing, a metal door, and rear stair railing at 317 Lafayette, N.E., another property located in the Heritage Hill Historic District. Commissioner Aldridge asked whether metal doors are allowed on the back of a building, and Commissioner Ranta responded that such doors have been permitted when there is a safety issue. Mr. Rietema said that the door is not visible from Lafayette Street and that the hospital is the only neighbor behind the house. A motion to require removal of the side handrail based on local porch *Guidelines*; to approve the rear metal door; and to deny the rear rail, which is to be corrected within six months to meet the local porch guidelines, carried. (AE 12)

48. On August 20, 2003, the Commission also considered retention and completion of alterations to a rear porch and the addition of a new deck at 240 Henry, S.E., which is situated within the Cherry Hill Historic District. Commissioner Aldridge asked why the co-owner and her husband had not applied for permission prior to beginning the porch repairs. Ms. Stephanie Oakes replied that her husband had started the work, and she then

stated that from this point on, any plans for any exterior work to her house would be submitted to the Commission for review prior to beginning the work. A motion to approve the application as submitted, based on conformity with local *Guidelines*, was approved. (AE 12)

49. On August 20, 2003, the Commission also considered an application to retain faux double-hung windows at 347 Freyling, S.E., which is located in the Wealthy Theatre Historic District. Commissioners Aldridge and Chaffee agreed that when someone asks to keep something that would not have been approved if the application were made prior to the work being done, then the work should be corrected. A motion to deny the application as submitted and to require replacement with operational, wood double-hung windows, based on local window and door *Guidelines*, carried. (AE 12)

50. On August 20, 2003, The Commission considered retention of glass block basement windows at 338 Eureka, S.E., a property located in the Fairmount Square Historic District. Two commissioners noted that the glass blocks were very visible from the street. A motion to deny the application, based on local *Guidelines*, carried. The motion was amended to require that the glass block windows must be removed and that corrective, wood basement windows with three panes of glass, must be installed, within three months. (AE 12)

51. On September 3, 2003, the Commission met to consider applications, including an application to retain a metal door

installed on the front of the house at 312 Charles, S.E., a property located in the Cherry Hill Historic District. A motion to deny the metal door on the front carried, with a directive to remove the door within 60 days. The motion also indicated that the metal door may be replaced with the same style wood door. (AE 12)

52. On September 17, 2003, the Commission met again to consider applications. One application involved a request to install a new front door, restore the front porch, and alter a stockade fence to a fence with a flat top. This request pertained to 324 Hollister, S.E., which is located in the Fairmount Square Historic District. Mr. Ruud explained that the applicant was in court and pled guilty. Ruud said the owner was required to submit an application and return the items to their original condition by the end of October. Commissioner Misner then clarified that as written, the application meets the *Standards*. A motion to approve the comporting application carried. (AE 12)

53. On October 1, 2003, the Commission considered an application regarding removal of a metal door and retention of vinyl windows at 216 College, S.E. The owner said he was requesting permission to remove a metal door and replace it with a high-density core door made of wood. He also asked to retain vinyl clad windows. Commissioner Miller pointed out that the vinyl clad windows are noticeable. Commissioner Aldridge explained that vinyl windows are not permitted. A motion to approve removal of the metal door and replace it with wood carried. A motion to deny the request to retain the vinyl

windows, based on local window and door *Guidelines*, all carried, with the requirement that the vinyl windows be replaced with wood windows within six months. (AE 12)

54. On October 15, 2003, the Commission met to consider various requests, including an application regarding the front and rear porches at 228 Warren, S.E. Ms. Saunders reported that the front porch had been completed and was historically fine. Saunders added that this was the owner's second or third attempt to correct the rear porch. A letter from the owner was read, stating that finances were an issue and she simply could not afford to make changes again. A motion to approve the rear porch/stairway, based on economic hardship, carried. (AE 12)

55. On November 5, 2003, the Commission met to consider various requests, including a request to replace a rear window with French doors at 545 Lafayette, S.E. The owner explained that her home is eight years old, that the windows are vinyl, and the doors are metal. A motion to allow removal of the rear window and its replacement with a French door, carried. (AE 12)

56. On November 5, 2003, the Commission also considered an application to retain three decorative metal doors installed at 22 Lafayette, N.E. One was located in the front and the other two were situated in the rear. The owner explained that the reason why he installed these doors was the beauty of the doors. He said he could have installed cheap, ugly wood doors, but he rather wanted attractive metal doors. Commissioner Misner informed him that the Commission must adhere to federal *Guidelines*. Mr. Ruud noted that the doors in question are visible

from the alley. A motion to deny the application and require the replacement of the metal doors with wood doors by June 1, 2004, carried. (AE 12)

Conclusions of Law

As indicated above, section 5(2) of the LHDA allows persons aggrieved by a decision of a commission to appeal to the Review Board. Section 5(2) also provides that the Board may affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of appropriateness. Relief should, of course, be granted whenever a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial or material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

The Appellant has advanced no less than ten reasons why he believes the March, 2003 denial should be reversed and/or modified.

A. New Rules and Processes

In his claim of appeal, the Appellant initially wrote that his ''house was added to the historic district in 1991 ... which made (him) new to the rules and processes'' of historic preservation when he installed the vinyl door some six years later. In his rebuttal, he pointed out that the rest of the District had an 18-year head start on him. He argues that he should have been (and should be) given ample and reasonable time to comply and complete the corrective work that he has been ordered to perform by two different City agencies.

The Appellant's first ground for reversal appears to be that because he was new to the rules and processes of historic preservation in 1997, he should be excused from compliance with preservation requirements. To the extent that the Appellant has actually made this claim, the contention lacks merit.

The Appellant purchased the property in 1981 and he owned it in 1991, when it and ten others were added to the adjacent Heritage Hill Historic District. At that time, section 3(2) of the LHDA[9] provided that whenever any historic district was established, a study committee must give notice of a public hearing to the owners of all properties to be included in the district, and shall publish the notice in the manner required by the Open Meetings Act (the OMA).[10] Study committee members, like other public officials, are presumed to know and follow the law. *American LeFrance & Foamite Industries, Inc v Village of Clifford*, 267 Mich 326, 330; 255 NW 217 (1934), *West Shore Community College v Manistee Cty Bd of Comm'rs*, 389 Mich 287, 302; 205 NW2d 441 (1973). It would thus appear that in 1991, the Appellant received actual written notice of the pending inclusion of his property within the Heritage Hill Historic District.

Even if that were not the case, it must also be noted that the Appellant's purported lack of familiarity with preservation law lacks credibility. First, the Appellant owned the property in question for at least six years after its inclusion in the nearby historic district but before performing the work in

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[9] 1970 PA 169, § 3, as amended by 1980 PA 125, MCL 399.203.
[10] 1976 PA 167, § 1 *et seq*, MCL 15.261 *et seq*.

question. In his claim of appeal, he virtually admitted that he had considered the operation of certain provisions in the local *Guidelines* on alterations of historic properties, before he decided to install the vinyl sliding door. In effect, he acknowledged that he had read the *Guidelines* and interpreted them to allow the installation of vinyl doors without seeking prior permission from the Commission. He could have (but did not) consult with staff of the Commission on that issue. He thus must bear the risk of his own (mis)interpretation of the law.

As for not being given an ample and reasonable time to remove the vinyl slider and install a wood door, the official hearing record speaks for itself. The vinyl door was installed in 1997. In February of 1999, the Commission denied the Appellant's first request for door retention and directed door removal within a year and the installation of a wood door without divided lights. In March of 2003, the Commission denied the Appellant's second retention request and directed the Appellant to remove the vinyl door within six months and install wood. Vinyl door removal and wood door installation has been estimated to cost only between $500 and $700. On day two of the hearing, the Appellant testified that he spent approximately $17,000 on work at his apartment building during 2003 alone.

The American Heritage Dictionary, Second College Edition (1985) defines the word ''ample'' to mean ''in abundant measure'', ''More than enough'', and ''Sufficient for a particular need''. *Black's Law Dictionary, Seventh Edition (1999)* defines

''reasonable'' to mean ''Fair, proper, or moderate under the circumstances''. The circumstances here are that in March of 2003, the Appellant was given six months to remove and replace a door he had installed six years earlier and should have replaced in 2000. A motivated individual with carpentry skills could purchase a replacement door at a local building supply store and complete the corrective work in a week. Even if the work were contracted, it could still be completed in a month or two. The evidentiary record in its entirety shows that the Appellant had an ample and reasonable time to complete the corrective work.

B. Slider As Only (or Best) Option

In his claim of appeal, the Appellant wrote ''seeing that a slider was my only option and the use was for renters, I installed a vinyl sliding door for durability....'' In his rebuttal, the Appellant modified this contention slightly, stating ''(a) sliding door is (not the only but) the best option.'' He also added, ''this is a moot argument'' because the sliding door (concept) was already approved by the Commission, since the door cannot be seen from the street.

The Appellant's argument has merit. The hearing record reflects that sliders are permissible in the rear elevations of historic residences. The minutes of the Commission meeting of March 19, 2003 (AE 3, CE 13) show that Commissioner Aldridge amended his motion so as to deny the vinyl door and approve its replacement with a wood sliding door, within six months, based on local window and door guidelines.

In summary, the slider issue is moot.

C. Allowability of Vinyl Doors under Guidelines

The Appellant next argues that the local *Guidelines* allow for the installation of vinyl doors on rear elevations of historic houses. He contends that his vinyl door does not diminish the historic integrity of his building because it cannot be seen from the street. He stresses that Commissioner Aldridge, when visiting the property, realized that the door was not visible (but nonetheless felt it should be replaced with wood). The Appellant therefore contends that since the door is not visible from the right of way, the integrity of the district and the integrity of his house remain intact, despite the fact that the door is composed of a modern material, vinyl.

1. Reason for Wood (As Opposed to Vinyl)

During the course of this proceeding, the Appellant argued that there is no feasible reason for him to utilize wood in his apartment house door (as opposed to vinyl), other than the fact that the Commission just does not like vinyl.

Contrary to the Appellant's contention, federal and local *Standards* and *guidelines*, and related explanatory documents, typically require persons working on historic buildings to use historic materials like wood, and consistently recommend against the use of contemporary materials like vinyl.

The federal *Standards* call for the use of historic materials. In 36 CFR 67.7, the Secretary of the Interior promulgated ten *Standards for Rehabilitation* to assist with the long-term preservation of a property's significance and

integrity. *Standards* which call for the use of historic (rather than modern) materials would include:

> (2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
>
> (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
>
> (6) Deteriorated historic features shall be repaired rather than 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 a 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 federal *Guidelines for Rehabilitating Historic Buildings (Revised 1990)* also address the use of materials when undertaking work. The *Guidelines* were initially developed in 1977 to help property owners, developers, and others with applying the Secretary's *Standards*. In the section of the *Guidelines* governing exterior siding, the *Guidelines* recommend against:

> Using substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the wood feature or that is physically or chemically incompatible. (AE 17, p 18)

In the *Guidelines* section on entrances and porches, the *Guidelines* recommend:

> Replacing in kind an entire entrance or porch that is too deteriorated to repair -- if the form and detailing are still evident -- using the physical evidence to guide the new work. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered. (AE 17, p 29)
>
> Designing and installing additional entrances or porches in a manner that preserves the historic character of the building, i.e., limiting such alterations to non-character-defining elevations. (AE 17, p 30)

The National Park Service has also supplemented the *Standards* and *Guidelines* with a publication series intended to furnish technical information to persons working on historic structures. Known as ''preservation briefs'', these publications discuss 43 specific preservation issues. *Preservation Briefs 16* addresses the use of substitute materials on historic buildings. Among other things, the *Brief* states:

> Because the overzealous user of substitute materials can greatly impair the historic character of a historic structure, all preservation options should be explored thoroughly before substitute materials are used. * * *
>
> In general, four circumstances warrant the consideration of substitute materials: 1) the unavailability of historic materials; 2) the unavailability of skilled craftsmen; 3) inherent flaws in the original materials; and 4) code-required changes.... (*Preservation Briefs 16*, pp 3-4)
>
> **Summary**
> Substitute materials -- those used to imitate historic materials -- should be used only after all other options for repair and replacement in kind have been ruled out. (*Preservation Briefs 16*, p 13)

Preservation Briefs 14, which discusses preservation concerns in relation to exterior additions to historic buildings,

articulates the policy of the National Park Service on this subject, indicating:

> ... a modern addition should be readily distinguishable from the older work; however, the new work should be harmonious with the old in scale, proportion, (and) materials .... (*PB* 14, p 9)

Finally, the Commission adopted local *Guidelines* for use in Grand Rapids in 1995. The *Guidelines* were developed to assist with the interpretation and application of the federal *Standards* and *Guidelines*. They are intended to aide owners, architects, and contractors in planning appropriate repairs and additions. They include a section on windows, doors, skylights, solar systems, and roof accessories. Regarding materials, the *Guidelines* provide as follows:

> Specific issues considered by the Commission include the following: * * *
>
> **2. Materials**
> Appearance of the finished window or door is the paramount concern. Steel, vinyl, aluminum or fiber-glass seldom match the appearance of wood, and they do not lend themselves to the application of added detailing. * * * (AE 19, CE 7, Emphasis added)

The Commission's *Guidelines* also contain a general statement concerning work to be performed in the City's historic districts. In this regard, the *Guidelines* state:

> Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment. (Emphasis added)

Given the above-quoted *Standards, Guidelines* and *Briefs*, all of which call for the use of historic materials like wood and contraindicate the use of contemporary substitutes like vinyl, it is clear that the Commission had a justifiable legal basis for requiring the installation of a wood door on a historic building, rather than a door made of vinyl.

2. Visibility and Importance

As noted above, the Appellant further contends that since his door is not visible, the historic integrity of the district and his house remain intact, and thus the Commission should be reversed.

To assess whether the Appellant's position, or the Commission's, is more valid on this point, it is again necessary to refer to historic preservation source materials.

When discussing work on entrances and porches, the federal *Guidelines* indicate as follows:

> Entrances and porches are quite often the focus of historic buildings, particularly when they occur on primary elevations. Together with their functional and decorative features ... they can be extremely important in defining the overall historic character of a building. * * * (AE 17, p 28)

Also of note is *Preservation Briefs 14*, mentioned above, which states:

> Preservationists generally agree that the history of a building, together with its site and setting, includes not only the period of original construction but frequently later alterations and additions. While each change to a building or neighborhood is undeniably part of its history -- much like events in human life -- not every change is equally important. (*PB 14*, p 1)

Another federal publication of relevance is *Preservation Briefs 17*, which discusses the ''architectural character'' and ''visual aspects'' of historic buildings. At the outset of that document, the *Brief* affirms that the Secretary's *Standards* embody two primary goals: 1) the preservation of historic materials, and 2) the preservation of a building's distinguishing character. The document goes on to describe a three-step process for identifying a building's visual character. Relative to first (and most significant) step, the *Brief* provides:

> **Step 1: Identify the Overall Visual Aspects**
> Identifying the overall visual character of a building is nothing more than looking at its distinguishing physical aspects without focusing on its details. The major contributors to a building's overall character are embodied in the general aspects of its setting; ... the openings for windows and doors; and finally the various exterior materials that contribute to the building's character.
>
> **Step One** involves looking at the building from a distance to understand the character of its site and setting, and it involves walking around the building where that is possible. Some buildings will have one or more sides that are more important than the others because they are more highly visible. This does not mean that the rear of the building is of no value whatever but it simply means that it is less important to the overall character. * * *

At this juncture, a review of the evidentiary record is in order.

The Appellant testified that his new door is not visible from Union Avenue. He is clearly correct. Photographic evidence that he submitted, *e.g.*, AE 23, corroborates his testimony that the door cannot be seen from the right of way in front of his house. Moreover, the record is equally clear that Commissioner

Aldridge visited the property in person and realized that the door was not visible from the street. (AE 3, CE 13) Commissioner Korte and Specialist Saunders also visited the property. (AE 3, 16, CE 13)

Although the record indicates the door is not visible from Union Avenue, the record fails to show that it cannot be seen from elsewhere. Obviously, the tenant(s) in Apartment #1, whoever they may be, can see the door. The tenants in the other three apartments surely also have occasion to see the door. A neighbor complained about the door.[11]

More importantly, photographs submitted by the Appellant himself (AE 5, 23) show that the door is visible from outside the property. The photos prove that the door can be seen from the second and third floor levels of at least one house located behind the Appellant's apartment building. AE 5 suggests that the door can also be seen from the right of way fronting that house.

In addition, the hearing record addresses the issue of the ''importance'' of features on the apartment building's rear elevation. As evidenced by the transcript of a proceeding that occurred on November 10, 2003 (AE 16), Historic Preservation Specialist Rhonda Saunders testified that material makes a difference, even if a door is installed where it is not visible from the right way. She specifically stated:

> Just because it's not seen doesn't mean it's any less important than something that is on the front of the house. The idea of historic preservation is to preserve

[11] While it is possible the neighbor was ''snooping'' on the Appellant's property, nothing in the hearing record shows that for sure.

> the building as a whole, not in multiple pieces. It's not, this (front) side should be restored perfectly; the (actual) side should be, well, we can lean a little, and let this go; and the back, well, you can do what you want. It's as a whole unit, not as separate entities. And whether or not vinyl is compatible has been determined by people with a lot more experience than I have. * * * (AE 17, pp 23-24)
>
> She later added:
>
> Yes, the material matters (even) if you can't see it. (AE 17, p 25-26)

In light of the evidence in the hearing record, as well as the law on this issue, it must be concluded that the rear elevation of a historic building remains ''important'', even though it may be relatively less visible (or not visible at all) from the primary public right of way, than the two sides and the front elevation of the building. In other words, despite the door's relative concealment, it is nevertheless an important (although new) feature of the historic house, the nature of the material used in the door does affect the historic integrity of the building and the district, and the Commission did not err when it required the use of a traditional historic material, *i.e*, wood, in the new door.

D. <u>Illegal Trespass and Photograph</u>

The Appellant next contends that Michael Page, a staff member of the Historic Preservation Office, illegally trespassed on his property and took an inadmissible photograph of the vinyl door. The Appellant pointed out that the door was not visible from the right of way, and he averred that the only way the door was even known about was because Mr. Page trespassed on the property. The Appellant argued that Mr. Page should have

telephoned him (Eerdmans) and made an appointment to see the door. The Appellant further asserts that the property was posted, that trespassing is against the law, and that the photograph should be stricken from the administrative hearing record.

Upon review of these contentions, the Appellant's arguments remain problematic. The City of Grand Rapids has adopted ordinance provisions authorizing the conduct of real property inspections by historic preservation officials. The Grand Rapids Ordinances, Chapter 68, § 5.402, expressly provide that:

> The Commission may: * * *
>
> (3) Inspect and investigate structures, sites and areas which it has reason to believe (are) worthy of preservation.

Michigan's courts have held that the enactment and enforcement of ordinances relating to municipal concerns are valid exercises of police power, as long as the ordinance does not conflict with the constitution or general laws. *Rental Property Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 253; 566 NW2d 514 (1997). Ordinances are presumed to be constitutional. *Rental Property Owner's Ass'n, supra* at 253.

The Appellant contends that Mr. Page's entry into his back yard constitutes illegal trespass. This contention appears to be founded on a ''street wise'' notion of trespass. Significantly, the Appellant failed to cite any Grand Rapids ordinance or state statute prohibiting trespass on private property.

There is a generally recognized anti-trespass provision in the Michigan Penal Code (the Code). Section 552 of the Code[12] provides:

> Any person who shall wilfully enter, upon the lands or premises of another without lawful authority, after having been forbidden so to do by the owner or occupant, agent or servant of the owner or occupant, or any person being upon the land or premises of another, upon being notified to depart therefrom by the owner or occupant, the agent or servant of either, who without lawful authority neglects or refuses to depart therefrom, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than 30 days or by a fine of not more than $50.00, or both, in the discretion of the court.

A review of section 552 and the evidence in the hearing record suggests that Mr. Page did not engage in trespass in violation of the general state law quoted above. Mr. Page was present on the property under authority of Grand Rapids Ordinance, § 5.402. Although Page did not testify at the administrative hearing about the circumstances of his visit, it must be noted that there is no evidence in the hearing record to indicate that the owner, Mr. Eerdmans, had forbidden Page to enter the back yard, or that Mr. Eerdmans asked Page to depart from the rear of the premises. There is nothing in the Penal Code about the effect of ''no trespass'' signs. While the ''best practice'' may well have been for Page to have called Eerdmans, gotten permission, and scheduled an appointment for the property inspection, the evidence and facts in the official hearing record do not demonstrate an ''illegal'' trespass by Mr. Page.

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[12] 1931 PA 328, § 552, MCL 750.552.

As for the admissibility of the questioned photograph (CE 2), section 75 of the APA[13] governs evidentiary matters in administrative hearings. The section provides in pertinent part:

> In a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

The photograph at issue was offered by the Commission at an administrative proceeding as evidence, and as part of the Commission's official file regarding the work at issue. Clearly, official government records are evidence of a type commonly relied on by reasonably prudent individuals in the course of their affairs. They are therefore admissible in contested case proceedings. Moreover, in terms of the Michigan Rules of Evidence, they are also admissible in court, under both the hearsay exception rule[14] and as self-authenticating documents.[15]

In conclusion, the Appellant's request that the photograph be stricken from the hearing record due to Mr. Page's trespass, must be denied.

E. Contradictory Approvals and Denial

The Appellant further contends that the Commission contradicted itself by approving some of his completed work but then denying his request to retain the vinyl door. He posited that if the Commission has approved a hot tub and a deck with lattice and railing because they are not visible from outside the

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[13] 1969 PA 306, § 75, MCL 24.275.
[14] MCR 803(8).
[15] MCR 902.

fence, then the Commission must also approve the vinyl door for the exact same reason.

While the Appellant's fifth contention has some merit on its face, upon due consideration this argument must also fail. The Appellant's contention focuses on a single factor underlying the Commission's action -- the fact that the tub, deck with railing, and vinyl door are all located in the rear portion of the property and are not visible from the principal right of way associated with the house. However, the official hearing record reflects additional rationales for the Commission's decisions.

The minutes of the meeting of March 19, 2003 (AE 3, CE 13) show that at the very least,[16] the Commission applied local window and door *Guidelines* when denying the Appellant's request for the vinyl door. By definition, specific door and window provisions do not apply directly to items such as hot tubs, decks, lattice, swimming pools, roof accessories, *etc.* As it happens, the *Guidelines* indicate that ''modern'' constructs like mechanical and service equipment are recommended against, unless they are placed somewhere that is not conspicuous from the public right of way. A door is not a mere accessory.

Exterior doors which have been (or will be) installed in historic structures are treated differently from modern accessories, such as satellite dishes. The *Guidelines'* provisions on windows and doors, quoted above, are not set forth in general policy terms, but rather are quite specific and detailed in the

[16] Although the evidence is somewhat equivocal on the point, it appears that the Commission was also guided by federal *Standards* and *Guidelines*.

guidance they give to property owners. Regarding the materials to be used to complete historic district projects, the *Guidelines* note that fiberglass, aluminum, and vinyl seldom match the appearance of wood, do not lend themselves to the application of detailing, and should for the most part not be employed in such work. As indicated previously, the rear sides of historic houses, while not as important as the fronts in some cases, still have value to the historic structure as a whole. Also, exterior doors invariably contribute to the historic character of a resource.

Accordingly, the fact that the Commission approved the construction of a deck, *etc.*, but denied installation of a vinyl door in the rear of the historic property, does not in and of itself evidence inconsistent decision-making on the Commission's part, particularly given the fact that the rear side of a historic building, and doors *per se*, both have great importance in association with a building's historic character and integrity, whereas decks and dishes do not.

F. Denial of Opportunity to Present Needed Facts

The Appellant additionally argues that during the Commission meeting held on March 19, 2003, he was denied an opportunity to present all of the facts he needed to present in order for him to support his application, despite having told the commissioners about his ''communication handicap''.

On this issue, the Appellant asserted[17] that he went to the Commission meeting, looked for the meeting rules, and concluded there were none. He also asserted that he was half-way through reading a prepared statement when Commissioner Ranta interrupted him and started asking questions, which he (Eerdmans) answered. The Appellant claimed that his written statement was only three pages long, that he typed it in large print, and that he had saved the best for last, which the commissioners never heard.

The Appellant additionally claimed that after the meeting ended, he asked Ms. Saunders if there was a time limit for an applicant's presentation, and she replied, two minutes or less. He further asserted that he asked her why the Commission did not post its rules of procedure, so he would have known about them, and Saunders said there were no posted rules for meetings.

In addition to factual assertions listed above, the Appellant complained that Commissioner Ranta was ''the rudest chairperson ... (he had) ever encountered in his life''. The Appellant charged that the Commission should have at least listened to, and not interrupted, a person who needed to address the Commission about an application.

The minutes of the Commission meeting of March 19, 2003, which were admitted into the official hearing record (AE 3, CE 13), evidence that at the meeting, the Appellant was allowed to present, at a minimum, all of the following information, arguments, and requests:

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[17] Mr. Eerdmans' account of what transpired at the meeting was set forth in his rebuttal document filed on September 3, 2003. No testimony or other evidence was ever presented to corroborate the assertions in the exceptions.

(1) The City of Grand Rapids was prosecuting him on three counts.

(2) When he was a young child, he had lost some of his communication skills.

(3) He had brought a prepared statement that he would like to read.

(4) The statement as read discussed his purchase of the property, the establishment of the historic district, and the work that he had undertaken at the property.

(5) The statement as read also explained the personal hardships that led to the Appellant becoming a single father.

(6) That in 1997, the Appellant completed interior renovations to Apartment #1, moved into the apartment, and at that time installed the vinyl door off the kitchen.

(7) The Commission should allow him to keep the door because he also installed a deck and a hot tub.

(8) He did not ask the Commission for a certificate of appropriateness because the district was new and he was not familiar with its requirements.

(9) Also in 1997, he became responsible for his children, and because they were doing so well in their schools, he did not want to move them, so he moved.

(10) He did request permission from the Commission in 1999, after the fact.

(11) The Commission approved the fence, hot tub and deck, because they could not be seen from the street.

(12) The Commission also wanted the pillars removed.

(13) He would agree to that, but it would be years before he could do it.

(14) It was necessary to leave the pillars in place for the safety of the tenants and in order to meet the requirements of the Grand Rapids Housing Code.

(15) Based on § 5.395(12) of the Grand Rapids Ordinances, he felt the Commission could have made the desired repairs and placed a lien on his property.

(16) He could not get the work done in six months.

(17) He had to look out for the safety of his tenants.

(18) To repair the porch to original quality would cost $7,000 to $10,000.

(19) He has learned that a certificate of appropriateness was not necessary and that he should have been issued a notice to proceed.

(20) A bench warrant was issued, and he had to hire a lawyer, all for nothing.

(21) The deck and the hot tub were allowed because they were not visible from the street, and the door should be approved also.

(22) He has been involved in this hardship for four years.

(23) The porch is being repaired now and it would have fallen in, had he not left the columns in place.

(24) The reason he installed vinyl was that this is a rental property, and he felt that vinyl would hold up better than wood.

(25) He plans to move into the unit within the next year.

(26) He would be willing to replace the door in the future.

(27) He was of the understanding that each house is still treated as an individual case.

(28) He has remodeled all of the apartments.

(29) He also installed a new driveway.

(30) He can get the door down the road but not in the amount of time allowed by the Commission.

(31) It took him four years to save up for the porch.

(32) He also repaired the chimney.

Taken as a whole, the evidence in the official hearing record supports the proposition that the Commission did afford the Appellant a fair opportunity to present all necessary facts. The minutes of the Commission meeting of March 19, 2003 (CE 13) show that the Commission allowed the Appellant to present information concerning no less than 32 wide-ranging topics pertaining to his door request. The Appellant also submitted a written application on March 3, 2003 (CE 12), to which he could have appended any attachment he felt was necessary to justify his application. The Appellant could given his statement to the Commission. Although the Appellant asserted that the Commission did not hear his last and best basis for approval, in this appeal the Appellant never identified what that ''best'' basis was.

It is therefore concluded that the Commission afforded the Appellant an adequate opportunity to present all needed facts.

G. Financial Hardship

During the course of this proceeding, the Appellant also argued that for him to install a wood door at this time would cause great financial hardship.

The evidence in the official record belies the Appellant's contention. By his own admission, he spent $6,000 to $8,000 per year during each of the years preceding 2003 on repairing, correcting, and improving his property. The record shows that he financed virtually all of that work with a single credit card. The record also shows that the Appellant spent approximately $17,000 in 2003, on mostly unidentified additional repairs and improvements. The Appellant estimated that the cost of installing a wood sliding door would be between $500 and $700.

To be sure, the Appellant did (and does) have other financial considerations in his life. The record shows that in 1997, he became financially responsible for his two teenage children. The record also shows that he was cited for over 35 Housing Code violations in 2001. Furthermore, the Appellant surmised that the cost of repairing the front porch could run as high as $10,000.

Nevertheless, taken as whole, the evidence does not establish that an expenditure of $700 on the Appellant's part would constitute financial hardship. Most of the Appellant's evidence about financial matters focuses on expenditures associated with past work at the apartment. The Appellant presented no financial information, documents, or other evidence concerning his income or net worth. He did not document the rental income from his four-unit apartment building. He did not disclose his personal income, if any, from other sources. In short, he presented insufficient evidence to require a conclusion

that the purchase of a corrective door would actually represent a financial hardship for him or his family.

H. Safety Violation Priority and Illegal Time Limits

The Appellant next contends that addressing safety violations should take priority over performing corrective historic preservation work, and in any case, that setting time limits for the completion of historic preservation work is illegal.

1. Safety Violation Priority

Regarding the priority of addressing safety violations, it must first be acknowledged that the Appellant did submit documentation dating from 2001 (AE 6) showing that the City of Grand Rapids cited 640 Union Avenue, S.E., for over 35 violations of the City Housing Code. The Appellant also presented evidence showing that the porch roof had deteriorated. (AE 21, 22) However, the record is unclear concerning which of the safety citations have been rectified through repairs. Furthermore, while some of the citations obviously concern safety matters, such as charges that the front porch was in bad repair and that kitchen electrical outlets were improperly installed, other citations do not involve safety at all. Those would include citations for failing to install small mesh window screens and failing to re-register the rental dwelling with the City.

Moreover, even if the Appellant had identified safety work to be performed, he failed to cite any state or local law, or court case, to support the legal proposition that correcting a safety violation must always take precedence over other work. It

is well-settled in Michigan that appellate bodies need not search for legal authority to sustain or reject a party's legal position. *Temborius v Slatkin*, 157 Mich App 587, 601; 403 NW2d 821 (1986), *Samonek v Norvell Twp*, 208 Mich App 80, 86; 527 NW2d 24 (1994).

2. Corrective Action Time Limits

The Appellant also contends that setting time limits in orders to perform corrective historic restoration work is illegal.

In the matter at hand, the Commission acted under the authority of section 5 of the LHDA[18] when it denied the Appellant's retroactive application to install a vinyl sliding door. The Commission also acted under the authority of a comparable local historic preservation code (Ordinance No. 93-21),[19] which substantially conforms to section 5. In this regard, the Grand Rapids Historic Preservation Code provides in pertinent part as follows:

> **Sec. 5.395. Permits.**
>
> (1) A permit shall be obtained before any work affecting the exterior appearance of a (historic or non historic) resource is performed within a historic district.... The person ... proposing to do that work shall file an application for a permit with the inspector of buildings, the Commission, or other duly delegated authority. * * * A permit shall not be issued and proposed work shall not proceed until the Commission has acted on the application by issuing a certificate of appropriateness.
>
> * * *
>
> (12) When work has been done upon a resource without a permit and the Commission finds that the work does not qualify for a certificate of appropriateness,

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[18] See footnote 1.

[19] Grand Rapids Ordinances, Ch. 68, § 5.395.

> the Commission may require an owner to restore the resource to the condition the resource was in before the inappropriate work or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply with the restoration or modification requirement within a reasonable time, the Commission may seek an order from the Kent County Circuit Court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a certificate of appropriateness. * * *

Authority for the issuance of permits and corrective orders derives from the language of the ordinance quoted above. The rules for interpreting local ordinances are the same as those for construing state statutes. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). The primary goal of statutory construction is, of course, to ascertain and give meaning to the intent of the enacting body. *Sagar Trust v Dep't of Treasury*, 204 Mich App 128, 129; 514 NW2d 514 (1994). In construing a statute (or ordinance), every word or phrase should be accorded its plain and ordinary meaning. *Livingston Cty Bd of Social Services v Dep't of Social Services*, 208 Mich App 402, 406; 529 NW2d 308 (1995). Legal language should be construed reasonably, keeping in mind the purpose of the law. *Barr v Mt Brighton, Inc*, 215 Mich App 512, 516; 546 NW2d 273 (1996).

The language of the above-quoted historic preservation ordinance is applicable the circumstances of this case. Subsection (12) of § 5.395 covers situations where work has been undertaken without a permit and the Commission has found that such work does not qualify for issuance of a certificate of appropriateness. The quoted ordinance plainly authorizes the

Commission to require an owner to modify the inappropriate work, so that the corrective work qualifies for a certificate of appropriateness. The ordinance also indicates that if the required corrective work is not completed within a reasonable time, the Commission may take further action.

At least one Michigan appellate court has acknowledged that the primary purpose of the LHDA and each local historic preservation ordinance is to safeguard the heritage of the local unit and to further the related public purposes of historic preservation. *Draprop Corp v City of Ann Arbor*, 247 Mich App 410, 416-417; 636 NW2d 787 (2001). In the seminal decision on historic preservation in this nation, the United States Supreme Court reaffirmed the principle that ''(s)tates and 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 argues that the Commission may not legally set time limits for the performance of remedial work. The ordinance, however, plainly authorizes the issuance of corrective work orders and taking further action if remedial work is not completed in a reasonable time. Keeping in mind the purpose of the law, *i.e.*, to preserve the character and desirable aesthetic features of a city, it is clear that § 5.395 does indeed authorize the Commission to prescribe reasonable time limits for the completion of corrective work.

I. Fraudulent Assigning Authority

The Appellant additionally argues that the Commission's March 2003 decision should be reversed, because the Commission fraudulently assigned authority to itself. In this regard, the Appellant more specifically contends that the Commission ignored Chapter 68 of the Grand Rapids Ordinances, § 5.395, which clearly defines the Commission's duties.

As the Appellant points out, the Commission's duties with regard to reviewing applications are set forth in Chapter 68, § 5.395. This section provides in pertinent part as follows:

> (3) In reviewing plans, the Commission shall follow the U.S. 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 the Interior's Standards and guidelines and are established by the bureau. 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 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 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).

A review of the evidence in the hearing records indicates that the Commission did not exceed its authority but rather

followed the parameters of subsections (3) and (4) of § 5.395 in the course of considering the Appellant's application. The evidence in the record (AE 3, CE 13) shows that the Commission considered the merits of the Appellant's application to retain his vinyl door in light of the requirements of law. The minutes show that the commissioners were cognizant that the Appellant was asking to retain modern vinyl material in a door on a historic house. One commissioner (Aldridge) noted that vinyl doors were not allowed in the historic district. Two commissioners reported that they had visited the property. The minutes reflect that the denial was based, at least in part, on local window and door *Guidelines*.

The Appellant further argues that the Commission denied his application on the basis of federal *Standard 6*, which he says applies only to historic features that have deteriorated. He adds, *Standard 6* states that materials must match exactly, and he argues that under it vinyl would seldom be accepted. He further contends that he, in his application, was relying on *Standard 9*, where materials must merely be compatible. The Appellant points out that the dictionary defines ''compatible'' as ''different but goes together''. He additionally states that the dictionary defines ''contemporary'' as ''new, modern''. He stresses that under *Standard 9*, new construction must be differentiated from the old.

As indicated above, *Standards 6* and *9* provide as follows:

> (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. * * *
>
> (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize a 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.

Preservation Specialist Saunders discussed how the Commission applies the *Standards* in its reviews of applications. At the hearing held on November 18, 2003, she testified:

> There's a set of standards of ten that you can use as a whole....
>
> -- there's not separate application for each individual thing. You want to do work on a property, you submit an application. It's considered an Application for Certificate of Appropriateness, (be)cause in the end what you're trying to get is a permit to do your work, a Certificate of Appropriateness to do the work. What the Commission can do from there is take your application, and there's four ways they can look at it. They can table it, saying you don't have enough information; they can deny it, saying the work is inappropriate; they can approve it, saying it's appropriate and give you a Certificate of appropriateness; or there's the rare instances where a Notice to Proceed is issued. Those are usually only issued in cases of demolition....
>
> Approved projects for contemporary use (under *Standard 9*) can be approved if they don't harm, alter, or detract from the historic character of ... the property.
>
> The material has to be compatible. (AE 17, pp 18-21)

Although the Appellant may disagree, a review of the record indicates that the Commission properly applied the *Standards* and *Guidelines* in this case. The evidence shows that the Commission

denied the Appellant's requested installation of the vinyl door because of vinyl's adverse impact on the historic character of 640 Union Avenue, S.E. The house is a historic, wood-frame residential structure. The neighborhood contains comparable houses. The door of Appellant's choosing was a sliding door. This affords sufficient differentiation under the *Standards*.

In summary, there is no evidence to establish that the Commission engaged in a fraud or exceeded its authority under the law when it denied the 2003 application.

J. Usurped and Abrogated the Law

The Appellant's final argument in this matter is that the Commission usurped and abrogated the law by rendering inconsistent decisions on applications it considered during the latter half of 2003. The Appellant therefore argues that the decision to deny should be reversed in his case.

To support his last contention, the Appellant presented partial copies of minutes pertaining to eight meetings held by the Commission in the summer and fall of 2003. (AE 12) The minutes reflect that the Commission considered a variety of work requests during that period. These would include requests to install and/or retain vents, porches, glass block windows, lattice, metal doors, railings, faux double-hung windows, and metal doors. The Commission approved some requests and denied others.

The minutes presented by the Appellant do not evidence inconsistent decision-making or illegal activity on the part of the Commission. As was true in the Appellant's case, the minutes

indicate that requests for concealed and relatively insignificant projects were approved, whereas requests for noticeable and/or important work were denied. Nothing in the record supports the premise that the Commission generally usurped or abrogated the law while performing its duty to review applications.

Conclusion

Upon consideration of the record as a whole, it is concluded the Appellant failed to establish any reasonable basis for modifying or setting aside the March 19, 2003 decision of the Commission or for directing the Commission to issue a certificate of appropriateness.

Recommendation

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

Dated: January 29, 2004

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