

STATE OF MICHIGAN

DEPARTMENT OF HISTORY, ARTS AND LIBRARIES

OFFICE OF REGULATORY AFFAIRS

In the Matter of:

RANDOLPH HENDRICKS, ET AL.,  
Applicant/Appellant,

Docket No. 02-128-HP

v

PONTIAC HISTORIC DISTRICT COMMISSION,  
Commission/Appellee.

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PROPOSAL FOR DECISION

This appeal concerns a decision of the Pontiac Historic District Commission (the Commission), denying permission to install vinyl siding on a residence and garage located at 65 Chippewa in Pontiac, Michigan. The residence is owned by appellants, Randolph Hendricks and Mary Deering, and is located in the City of Pontiac's Seminole Hills Historic District.

The appellants filed their Claim of Appeal under the provisions of section 5(2) of the Local Historic Districts Act [(the LHDA), 1970 PA 169, § 5; MCL 399.205]. Section 5(2) of the LHDA provides that applicants aggrieved by decisions of historic district commissions may appeal to the State Historic Preservation Review Board (the Review Board), an agency of the Michigan Department of History, Arts and Libraries (the Department).

On receipt of the appeal, the Review Board directed the Department's Office of Regulatory Affairs to hold an administrative hearing for the purpose of receiving evidence and

hearing arguments. The Office of Regulatory Affairs convened a hearing on February 13, 2003 in the Archives Administrative Conference Room, Second Floor, Michigan Library and Historical Center, 702 West Kalamazoo Street, Lansing, Michigan. The hearing was held in accordance with procedures set forth in Chapter 4 of the Administrative Procedures Act of 1969 [(the APA) 1969 PA 306, § 71 et seq.; MCL 24.271 et seq.].

The appellants were represented at the hearing by Richard T. White Jr., Attorney at Law, with offices located on 20 North Saginaw, Suite 1008, in Pontiac, Michigan. Linda M. Goetz, Assistant City Attorney, City of Pontiac Law Department, appeared for the Commission. Dragomir Cosanici, an Administrative Law Examiner for the Office of Regulatory Affairs, presided at the hearing.

#### Issues on Appeal

In their Claim of Appeal, the appellants asked the Review Board to reverse the Commission's decision and thereby grant their request to install vinyl siding on the house and garage located at 65 Chippewa in Pontiac, Michigan.

The appellants advanced five arguments as grounds for reversal. They first argued that the Commission misapplied the United States Secretary of the Interior's Standards of Rehabilitation 2, 6 and 9 to their rehabilitation project.

The appellants next contended that the character and composition of their neighborhood had drastically changed so as to render the Commission's standards in the historic district inapplicable. The appellants specifically posited that the

Commission erred by failing to consider the 65 Chippewa property in relationship to its surrounding area. According to appellants, some 89 out of a total of 109 houses in the historic district have vinyl siding on the exteriors. As a result, the appellants were purportedly deprived of due process, equal protection of the law and freedom from discrimination, and that their rights to enter into contracts were seriously impaired.

As a third ground for reversal, the appellants contended that the Commission acted arbitrarily and capriciously by victimizing the appellants through disparate treatment. Specifically, the appellants argued that the Commission treated them with contempt while helping other residents in the same historic district with their preservation projects.

As a fourth ground for reversal, the appellants argued that the costs of restoring their historic property in conformance with historic preservation standards are unreasonable and punitive. The appellants claim that the cost for restoring their property exceeds \$80,000.00, almost equaling the total value of their home.

Finally, the appellants posited that the City of Pontiac expressly violated the requirements of the LHDA by failing to record the boundaries of the Seminole Hills Historic District with the Oakland County Register of Deeds. According to appellants, the City of Pontiac must register a copy of the ordinance establishing the historic district, including a legal description of the property or properties located within the historic district, with the Register of Deeds pursuant to

section 3(3)(b) LHDA<sup>1</sup>, to provide adequate notice to potential buyers such as the appellants.

The Commission responded by claiming that it did not act arbitrarily or capriciously but considered all the information furnished and followed the applicable provisions of the City of Pontiac Code, as well as those of the LHDA. Regarding the reasons for its own actions, the Commission asserted that it acted properly when it determined that the proposed vinyl siding failed to comply with Interior Secretary's Standards 2, 6 and 9, because vinyl siding does not preserve nor rehabilitate the original wood exterior of the historic home and hence compromises its historic integrity.

The Commission argued that it bears no fault in the alleged neighborhood transformation because it has not approved vinyl siding on historic homes in the neighborhood in the Seminole Hills Historic District since its formation in 1990. Specifically, the Commission argued that most Seminole Hills Historic District houses were sheathed in aluminum or vinyl siding before the creation of the historic district.

The Commission next denied the appellants' assertion of disparate treatment or that it deprived them of due process or equal protection of the law by not granting them the permit to install vinyl siding on their historic house. The Commission concluded by arguing that the appellants failed to furnish evidence substantiating their claims.

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<sup>1</sup> MCL 399.203(3)(b).

The Commission also argued that undue financial hardship should only be considered as a factor in retaining a resource when all feasible alternatives to eliminate the financial hardship have been attempted and exhausted by the owners. The Commission posited that the appellants have failed to demonstrate that they have exhausted all feasible alternatives to address the issue of replacing wood with vinyl siding.

Finally, the Commission argued that the City of Pontiac is not required to file a copy of its historic district ordinance with the Oakland County Register of Deeds. Specifically, the Commission asserted that the Seminole Hills Historic District was established two years before the LHDA was amended by 1992 Public Act 196 to include the filing requirement. Moreover, according to the Commission, there is no statutory language evidencing the retroactive application of this amendment. In other words, the Commission has argued that the City of Pontiac was not required to comply with section 3(3)(b) of the LHDA insofar as it relates to Pontiac's historic preservation ordinance enacted in 1990.

In a related vein, the Commission argued that even if the City Council had been required to comply with LHDA's section 3(3)(b), granting appellants a permit to install vinyl siding would not be an appropriate remedy. According to the Commission, the appellants had ample constructive notice of the District's existence through articles published in the Oakland Press. The Commission further argued that appellants in fact had actual notice of the existence of the Seminole Hills

Historic District, because the City of Pontiac had erected a number of readily visible signs throughout the neighborhood identifying its historic status.

Procedural Background

The appellants submitted multiple applications to the Commission in order to secure permission to install vinyl siding on the house and/or its adjoining garage.<sup>2</sup> The record of Commission's meeting minutes, as provided by its counsel, demonstrates that the Commission denied appellants' various requests, on June 18, 2001; April 16, 2002; May 21, 2002; and July 16, 2002. On June 20, 2002, the Commission issued a letter of denial, forbidding the installment of vinyl siding on the exterior of the historic home and its garage.<sup>3</sup> The appellants subsequently reapplied for a certificate of appropriateness in order to install vinyl siding on the exterior of their home. On July 17, 2002, the Commission issued its decision letter, specifically denying the appellants' application to install vinyl siding on the exterior of their home. Pursuant to that decision, the appellants filed this Claim of Appeal with the Review Board on or about September 19, 2003.

The administrative hearing in this case was scheduled and then adjourned on two occasions. During the hearing held on February 13, 2003, the appellants filed a supporting brief. Although the parties failed to stipulate to any evidence before or after the hearing, they submitted voluminous sets of

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<sup>2</sup> Both parties failed to provide a copy of the appellants' original application for installing vinyl siding; a procedural function customarily met by Commissions in historic preservation cases.

evidentiary materials for consideration within a 7-day window after the hearing. Each party strenuously objected to the other's evidence. Finally, by February 27, 2003, within a 14-day window for submission of legal arguments following the hearing, both the appellants and the Commission submitted post-hearing briefs outlining their respective positions.

Summary and Admission of Evidence

Under Michigan law, a party who occupies the position of an applicant or appellant in an administrative proceeding typically bears the burden of proof. 8 Callaghan's Michigan Pleading and Practice (2d ed), § 60.48, p 176, *Lafayette Market and Sales Co v City of Detroit*, 43 Mich App 129, 133; 203 NW2d 745 (1972), *Prechel v Dep't of Social Services*, 186 Mich App 547, 549; 465 NW2d 337 (1990). The appellants occupy that position in this proceeding and accordingly have the burden of proof regarding their factual assertions.

Both parties have submitted voluminous amounts of pertinent and probative evidence. Each party strenuously objected to the other's submitted evidence. Pursuant to Section 75 of the APA<sup>4</sup>, all the evidence provided by both parties, during the hearing and in its post-hearing filings will be considered and admitted into the record. Section 75 of the APA specifically provides:

Sec. 75 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

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<sup>3</sup> Appellants' Exhibit L.

<sup>4</sup> MCL §24.275.

conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, an agency, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in a contested case or by rule for submission of all or part of the evidence in written form.<sup>5</sup> (Emphasis added).

**A. Appellants' Evidence**

Section 5(2) of the LHDA, cited above, indicates that appellants may submit any part or all of their evidence in written form. In that vein, the appellants attached to their Claim of Appeal a letter and a Notice of Denial from the Commission dated July 17, 2002. At the hearing, three additional appellants' exhibits were offered and accepted as evidence.

First, a photocopy of the appellants' warranty deed, marked Appellants' Exhibit 2, illustrates their joint ownership of the property located at 65 Chippewa in Pontiac, Michigan. Second, the hearing resulted in the admission of two estimates of work necessary to remove the existing wood siding on the buildings at 65 Chippewa. The first estimate, from Thermal Shield Windows and Construction Company of Waterford, Michigan, marked Appellants' Exhibit 3, shows an estimate of \$8,000 for the material replacement of the wood siding with vinyl. The second exhibit, marked Appellants' Exhibit 4, is a letter from a Village of Milford, Michigan building official attesting to his opinion that the exterior of the historic property may not be

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<sup>5</sup> MCL 24.275.



rehabilitated but must be replaced with siding found in today's marketplace.

In addition, the appellants submitted 22 exhibits labeled A through W, containing the following evidentiary materials: A) 17 photographs of various houses with vinyl and/or aluminum exteriors located on Chippewa and Iroquois Streets, in the Seminole Historic District, B) 23 pictures of the historic property at issue, showing various stages of its disrepair, C) an index of submitted photographs, D) 5 additional pictures of 65 Chippewa as it had undergone some painting, as well as additional photos detailing the extent of the damage to the exterior siding, E) and F) which are identical copies of appellants' Exhibits 2 and 4, already admitted at the hearing. Because they are cumulative and unduly repetitious, they will not be considered twice.

Exhibit G is a copy of the appellants' closing of title statement as prepared by Century 21 Title, H) and I) which are the appellants' FOIA request to the City of Pontiac, as well as the City's written reply, J) a survey listing with all properties on Chippewa Road in the Seminole Hills Historic District, K) an estimate from Bloomfield Construction Master Remodelers in Bloomfield Hills, Michigan for the exterior of the historic home on 65 Chippewa, L) a copy of the June 20, 2002 letter of denial from the Commission to the appellants, M) a handwritten letter by a neighbor of the appellants supporting their application to install vinyl siding, N) a photocopy of fees paid by appellants for a building permit from the City of

Pontiac, O) various photocopies of real estate documents pertaining to the subject property, P) a photocopy of the Bureau of History survey data and research produced during the City of Pontiac's FY'86 intensive level survey of Norton Avenue and Seminole Hills Districts, and Q) thru V) minutes from various meetings of the Commission from March 21, 2000 until August 21, 2001. Finally, Exhibit W) is a photocopy of a quote for materials from Home Depot.

Besides submitting exhibits, the appellants also presented testimony from three witnesses. First, appellant Randolph Hendricks, the joint owner of 65 Chippewa, testified that he personally has been a licensed contractor in Michigan for 20 years. He testified that prior to purchasing the historic home in question, he observed a sign on Voorheis indicating the the boundary of the Seminole Hills Historic District. He later recanted this statement.

Mr. Hendricks added that a number of houses in the Seminole Hills Historic District had aluminum and/or vinyl siding. He continued his testimony by outlining that the exterior of his home has experienced serious cupping. This is a condition, according to Mr. Hendricks, where the wood exterior has absorbed excessive moisture and the wood has warped by bending away from the moist side, creating a convex surface on the wet side and a concave surface on the other side. Moreover, according to his testimony, the wood was beginning to rot, forcing the appellants to seek a plausible and affordable replacement for it because repairing it was not plausible. Mr. Hendricks testified that, in

his view, the wood exterior must be stripped and new vinyl siding must be installed.

Mr. Hendricks continued by testifying that he has filed three times for a Certificate of Appropriateness before the Commission but was turned down each time. He added that the Commission did not provide information about nor make the appellants aware of alternatives to wood for fulfilling their mandate to preserve the home appropriately. Moreover, according to Mr. Hendricks, he obtained estimates for cedar wood replacement totaling some \$34,000.00, and an estimate of \$24,850.00 for replacement styrofoam and vinyl for the exterior of his home. In his view, the Commission had mistreated them because the appellants could not afford the exorbitant price of replacement wood on the historic house, and the Commission would not entertain affordable alternatives despite the fact that some 89 of 109 houses on Voorheis and Huron Streets were already sided either with aluminum or vinyl exterior siding.

The second witness testifying for the appellants was Mary Deering, the co-owner of 65 Chippewa. She stated that she grew up in the area but was not aware that the subject property was located in a historic district because her title work did not include any notification of the historic district. She also testified that before she purchased her home, she never noticed any of the signs posted in Seminole Hills notifying passers-by about the historic district.

Ms. Deering continued her testimony by recalling that one of the homes on Chippewa had been vinyl-sided in 1997 by

Wallside Windows Company. She also testified about obtaining an estimate from Bloomfield Construction Master Remodelers in Bloomfield Hills, Michigan for the exterior of the historic home. According to Ms. Deering, the Commission treated the appellants harshly and unfairly. During the October Commission hearing, according to Deering, the Commission told them it did not have to hear the appellants. Moreover, Deering testified that the Commission specifically told them that they had no right to be there. Moreover, as Ms. Deering outlined, the Commission failed to provide the appellants with any help, suggesting instead that all the appellants needed was some caulk and paint.

Ms. Deering also testified that obtaining a loan to cover the costs of rehabilitating the home with appropriate wood materials would be prohibitive. In her estimation, the appellants could not afford a large enough loan to rehabilitate 65 Chippewa with wood, a proposition that totaled some \$80,000.00 on a house that is now worth only about \$90,000.00. During cross-examination, Ms. Deering acknowledged that the reason the Commission denied approving the installation of vinyl siding was lack of conforming, in-kind materials. She also confirmed that the Commission provided the appellants with Preservation Briefs that spelled out the appropriate standards and materials for preservation and rehabilitation of exteriors on historic homes.

The last person to testify on behalf of the appellants was Ms. Mary Deering's son, Herbert Allen Deering. His testimony

focused on the condition of the historic property at 65 Chippewa. According to his testimony, he is an experienced electrician who has sided some homes. Moreover, he testified of major disrepair and cupping on the subject property immediately after its purchase by the appellants. He also testified that simply painting and caulking the home's exterior, as the Commission had suggested some time ago, is not enough but that the home must, in his view, be re-sided completely. Finally, Mr. Deering defined what constitutes cupping--a condition where the wood exterior on a house has absorbed excessive moisture and has warped by bending away from the moist side, creating a convex surface on the wet side and a concave surface on the other side.

**B. Commission's Evidence**

The Commission also offered evidence for entry into the official hearing record. The following were admitted into the record at the hearing: 1) a Notice of Pre-Hearing Conference and Administrative Hearing dated November 19, 2002, coupled with a Notice of Adjournment and Rescheduling dated January 14, 2003 2) a photocopy of a photograph of 65 Chippewa that illustrate the words Tell Me Why Mr. Mayor? on the side of the house, and 3) a photocopy of two photographs depicting the appellants' property and detailing the removal of the garage and the wood siding on the exterior.

The Commission, after filing strenuous objections against the evidence proffered by the appellants, submitted a set of 22 exhibits, labeled 1 through 22, which contain the following evidentiary materials:

1) 27 various color photocopies; the first is a photo of a sign notifying passers-by of the existence of the Seminole Hills Historic District and the rest depict houses on various streets of the district, 2) a photocopy of a survey map of the Seminole Hills Historic District, 3) copy of an inspection report related to 65 Chippewa from the City of Pontiac Department of Buildings, 4) a photocopy of the Secretary of the Interior's Standards for Rehabilitation, 5) a photocopy of a City of Pontiac Land Inquiry for 65 Chippewa, 6) through 9) copies of the Commission's minutes from June 18, 2001 to July 16, 2002, 10) Commission's Notice of Public Hearing and regular meeting with notes and record of the proceeding dated September 11, 2002, 11) and 12) municipal infraction citations issued to the appellants, 13) City of Pontiac's Notice of Violations dated July 16, 2002 addressed to the appellants, 14) a photocopy of the Secretary of the Interior's Preservation Brief No. 8, 15) a photocopy of the Secretary of the Interior's Preservation Brief No. 9, 16) a photocopy of the Secretary of the Interior's Preservation Brief No. 16 with Commission's staff report regarding the second application by the appellant, 17) a photocopy of the National Park Service Guidelines for building exterior wood, 18) a photocopy of the Commission's roster, 19) a copy of the Pontiac Historic District Ordinance, 20) a photocopy of the Pontiac Code sections 74-52 through 74-54, 21) a photocopy of the LHDA, section 2 through 5, and 22) the historic district committee study report dated April 1987 discussing every street in the Seminole Hills Historic District.

Besides submitting exhibits, the appellants also presented testimony from two witnesses. As its first witness, the Commission called Ms. Madhu Oberoi, the City of Pontiac's Planning Administrator and staff person for the Commission. Ms. Oberoi testified that she has been employed by the City of Pontiac since 1999, and that she has been in her current capacity since 2002. Ms. Oberoi stated that she holds a Master's degree in Architecture and is a certified planner with some 20 years of experience. She confirmed that a request by the appellants to erect a new garage was approved by the Commission but their request to install vinyl siding on the garage was denied. This witness testified that there were four applications by the appellants to install vinyl siding, and that each time the Commission denied those requests. Ms. Oberoi also indicated that the Commission regularly provides each applicant with copies of applicable Preservation Briefs. She added that the Commission decides individual applications based on the Secretary of the Interior's Standards.

The witness continued her testimony by outlining that clear signs denoting the area of the Seminole Hills Historic District are found at the end of each street in the district. The witness testified that the signs denoting the Seminole Hills Historic District look like actual state historic markers with large green and white letters. She stressed that these markers are prominently displayed.

During cross-examination, Ms. Oberoi testified that she possesses the delegated authority to approve some minor

decisions on behalf of the Commission regarding applications for certificates of appropriateness, but only if these requests pertain to replacement of light materials such as shingles. In addition, she testified that the Commission itself must approve all major changes such as windows, garages and exteriors of homes, because that authority has not been delegated to her.

Ms. Oberoi continued her cross-examination testimony by outlining that any identification of alternative materials for historic home exteriors rests squarely with individual applicants. Although applicants before the Commission receive copies of Preservation Briefs, according to Ms. Oberoi, they are not advised about alternatives to the appropriate historic materials that are to be utilized during rehabilitation projects on historic homes. Finally, Ms. Oberoi testified that, when confronted with a picture of 65 Chippewa in its deteriorating condition, she did not show nor discuss the photograph with the Commission.

The Commission next called Mr. James Martin, a resident of the Seminole Hills Historic District and a member of the Commission since 2002. According to this witness, large signs denoting the Seminole Hills Historic District may be found at the end of each street in the district. Mr. Martin testified that he recalls the Commission meetings dealing with the appellants' applications. According to Martin, the decision of the Commission was based on the fact that vinyl is inappropriate as a replacement material for wood because vinyl does not meet the Secretary of the Interior's Standards of Rehabilitation.



During cross-examination, Mr. Martin did not recall an instance of a Commission meeting where cost-analysis played a factor in its decision to deny the appellants' request to vinyl-side their historic home. Moreover, according to Martin, Ms. Doris Smith, a member of the Commission, was the only member of the Commission discussing the fact that just painting and caulking the appellants' home was an option.

#### Findings of Fact

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

##### A. Background of Seminole Hills Historic District

1. According to the records of the State Historic Preservation Office<sup>6</sup>, the Seminole Hills Historic District was formally created as a local historic district on August 27, 1990. The Seminole Hills Historic District encompasses some 130 acres and 501 buildings, and is roughly bounded by West Huron, Chippewa, Voorheis and Oneida Streets.<sup>7</sup> With winding streets, large trees, and attractive and well-maintained homes, many of which reflect Revival styles dating back to the 1920s, this is one of the most attractive residential neighborhoods in Pontiac.<sup>8</sup>

2. As early as 1987, a number of wood houses in Seminole Hills have been sheathed in aluminum or vinyl siding, compromising some of the visual continuity and integrity of the district's historic building materials.<sup>9</sup>

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<sup>6</sup> Official notice of said records is hereby taken pursuant to §77 of the APA, 1969 PA 306; MCL §24.277.

<sup>7</sup> Appellants' Exhibit P, Letter from the Deputy State Historic Preservation Officer to Mayor of Pontiac, dated 08/12/87.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

3. On August 27, 1990, the City of Pontiac amended section 7-37 of its Municipal Code to create the Seminole Hills Historic District.<sup>10</sup> Among other things, the amended ordinance expressly addressed the standards for obtaining certificates of appropriateness. The Secretary of the Interior's Standards for Rehabilitation and Revised Guidelines for Rehabilitation of Historic Buildings provide the base principles for evaluating applications for certificates of approval.<sup>11</sup>

4. As indicated in Pontiac's historic preservation ordinance, the intent and purpose of the historic district are to protect the rich historical heritage and distinctive character of a city neighborhood, as well as promote the economic and general welfare of the city's residents by fostering civic beauty through the encouragement of appropriate historic settings and the conservation of desirable historic character.<sup>12</sup>

**B. Other Pertinent Preservation Enactments**

5. In 1966, Congress enacted the National Historic Preservation Act [(the NHPA),<sup>13</sup> Public Law 89-655, 16 USC 470 et seq.]. In Section 101 of the NHPA,<sup>14</sup> Congress declared that the spirit and direction of the nation are reflected in its historic heritage. Congress further declared that state and local governments should expand their historic preservation programs and activities.

<sup>10</sup> 1985 Pontiac City Code, §74-53(b)(4).

<sup>11</sup> 1985 Pontiac City Code, §74-55(b); Appellants' Supplemental Brief, p.7.

<sup>12</sup> 1985 Pontiac City Code, §74-51; Commission's Supplemental Brief, p.14.

<sup>13</sup> Official notice of said records is hereby taken pursuant to §77 of the APA, 1969 PA 306; MCL §24.277.

<sup>14</sup> 16 USC § 470

6. In 1970, Michigan's Legislature enacted the LHDA, which took effect on August 3, 1970. This law was intended to protect and preserve Michigan's historic resources. It authorized the creation of local historic districts and the establishment of local historic district commissions.

7. On December 19, 1980, the Secretary of the Interior promulgated "Standards for Rehabilitation", to be used in connection with individual rehabilitation projects around the nation. The Standards are set forth at 36 CFR Part 67. In addition to the Standards, the Secretary also adopted detailed guidelines for the performance of restoration work. [See *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1990).*]

8. The United States Department of the Interior, Technical Services Division, frequently disseminates highly detailed publications to assist homeowners with undertaking historic restoration projects.<sup>15</sup> The Commission made such publications available to the appellants. Among those are the Preservation Briefs series, issue 8<sup>16</sup>, which speaks to the appropriateness of using substitute materials for resurfacing historic wood frame buildings. In addition, Preservation Briefs, issue 9<sup>17</sup>, addresses the repair of historic wooden windows. Finally, Preservation Briefs, issue 16<sup>18</sup>, explains the

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<sup>15</sup> Official notice of said records is hereby taken pursuant to §77 of the APA, 1969 PA 306; MCL §24.277.

<sup>16</sup> Commission's Exhibit 14.

<sup>17</sup> Commission's Exhibit 15.

<sup>18</sup> Commission's Exhibit 16.

appropriate use of substitute materials on historic building exteriors.

C. Commission Meeting and Decision

9. The Commission consists of seven members appointed by the Mayor of City of Pontiac. The current Commission has the following members: Kenneth Burch, Acting Chairman; Yvonne Sabourin, Secretary; Rex Lamoreaux, Doris Smith, Mike Fraser, and James Martin as Commission members; with one spot left vacant.<sup>19</sup>

10. The commission's June 18, 2001 Special Meeting Minutes attest to the fact that appellant Hendricks had applied for a certificate of appropriateness but was denied approval to vinyl-side his garage. Moreover, the minutes show that appellant Hendricks was asked by the Commission to bring forward information on some alternative sidings, because the Commission had approved vinyl siding on at least one garage in the past, but no historic houses.<sup>20</sup>

11. In its April 16, 2002 meeting, the Commission ultimately delayed a final decision on the appellants' request to install vinyl siding on the appellants' house. The Commission heard comments from Commissioner Smith, who made other members aware of the Secretary of the Interior's Standards regarding vinyl siding and windows.<sup>21</sup> In addition, Commissioner Smith explained that many houses in the district already had vinyl siding installed on their exteriors prior to the formation of

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<sup>19</sup> Commission's Exhibit 18.

<sup>20</sup> Commission's Exhibit 6.

<sup>21</sup> Commission's Exhibit 7.

the district in 1990. Commissioner Martin noted that the appellants' paint was not in as bad condition as his, after the removal of vinyl siding on his home. The final decision was postponed until the Commission could get more information. The motion to postpone a final vote passed 5-0.<sup>22</sup>

12. At the May 21, 2002 meeting, the Commission had approved the construction of the appellants' deck and replacement garage but not the vinyl siding on the garage.<sup>23</sup> The appellants were given a copy of the Preservation Briefs on Siding.<sup>24</sup>

13. At the July 16, 2002 meeting, the Commission heard comments from Ms. Oberoi that the appellants had not complied with the Commission's previous directions but had installed several vinyl windows.<sup>25</sup> Appellant Hendricks confronted the Commission, and explained that he has a right to install vinyl on his house because the house is not contributing to the particular district.<sup>26</sup> In addition, the Commission attempted to explain to Mr. Hendricks that the LHDA takes precedence over any other state law on the issue of historic district rehabilitation. The Commission also informed Hendricks was about his right to appeal the Commission's decision to the State Historic Preservation Review Board. During its October 15, 2002 meeting, the Commission tabled any further decisions in light of

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<sup>22</sup> *Id.*

<sup>23</sup> Commission's Exhibit 8.

<sup>24</sup> *Id.*

<sup>25</sup> Commission's Exhibit 9.

<sup>26</sup> *Id.*

the fact that it was unclear whether the appeal pertains to the house and the garage or simply the house.<sup>27</sup>

14. On or about July 17, 2002, the Commission issued a letter of denial to the appellants, signed by Ms. Oberoi, where the request for installment of vinyl siding on the house and garage were both denied. The denial letter stated in pertinent part that:

... This denial is keeping with the standards and guidelines established by the Secretary of Interior item 2 which states: The Historic character of a property shall be retained and preserved. The removal of historical materials or alteration of features and spaces that characterize a property shall be avoided."<sup>28</sup>

#### Conclusions of Law

As earlier mentioned, under Michigan law a party who occupies the position of an applicant or appellant in an administrative proceeding bears the burden of proof. *Prechel, supra*. Accordingly, the appellant has the burden of proof regarding his own assertions.

The Michigan Supreme Court clearly defined the meaning of the terms "arbitrary" and "capricious":

"Arbitrary is: '[W]ithout adequate determining principle ... Fixed or arrived at through as exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances, or significance, ... decisive but unreasoned. Capricious is '[A]pt to change suddenly; freakish; whimsical; humorsome.'" [Citing *United States v Carmack*, 329 US 230, 243; 67 S Ct 252 (1946)].<sup>29</sup>

#### A. Applicable Preservation Standards

<sup>27</sup> *Id.*

<sup>28</sup> Commission's Exhibit 10.

<sup>29</sup> *Bundo v City of Walled Lake*, 395 Mich 679, 703, n 17; 238 NW2d 154 (1976).

The criteria that the Commission must utilize to act on an application concerning work affecting the exterior of a historic resource, either by approving or denying a certificate of appropriateness, are set forth in section 5(3) of the LHDA.<sup>30</sup> The section provides 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 interior's standards and guidelines and are established or approved 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 to the surrounding area.
- (c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.
- (d) Other factors, such as aesthetic value, that the commission finds relevant. (Emphasis added)

The Commission has maintained that approving the installment of vinyl siding would violate Standards 2, 6, and 9 for Rehabilitation of Historic Properties promulgated by the Secretary of the Interior.<sup>31</sup>

1) Standard 2 - Preservation of Historic Character

The appellants first argued that the Commission arbitrarily and capriciously denied their application based on Secretary of the Interior's Standard 2. It mandates that the historic

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<sup>30</sup> MCL 399.205(3).

<sup>31</sup> 36 CFR §67.7

character of properties be retained and preserved. Moreover, Standard 2 prohibits the removal of historic materials and calls for avoiding alterations of characteristic features. Preservation Briefs issue 16 clearly outlines that the Secretary of the Interior's Standards require that deteriorated architectural features on historic building exteriors be repaired rather than replaced.<sup>32</sup> The appellants argue that the condition of the wood exterior is deteriorated to the point where it cannot be saved and must be replaced by vinyl siding.

Under the plain terms of Standard 2, it is clearly inappropriate to cover up historic materials, such as wood exteriors, with synthetic materials that will alter the appearance, proportions and details of a historic building.<sup>33</sup> 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.<sup>34</sup> None of the four factors are present in the case at hand, nor have the appellants argued so.

As observed by the Superior Court of Massachusetts:

Use [of vinyl siding] lacks historical architectural integrity and compromises those characteristics which helped define the historic district. Substitute materials destroy and/or conceal the historic fabric, thereby subtracting from the basic integrity of historically significant buildings. Character defining elements and details are significantly altered or lost with the application of artificial siding.<sup>35</sup>

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<sup>32</sup> Commission's Exhibit 16, p. 1.

<sup>33</sup> *Id.*, p. 2.

<sup>34</sup> *Id.*



The appellants' contention that the Commission acted arbitrarily and capriciously is without merit. The Commission's decision is not whimsical nor without adequate determining principle but rather is one based on sound judgment, applicable preservation standards, and supporting documentation. The Commission properly applied Standard 2 when denying appellants the request to install vinyl siding.

2) Standard 6 - Deteriorated Features

Appellants additionally argued the Commission erred in applying Secretary of the Interior's Standard 6. This standard requires the repair, rather than the replacement, of deteriorated historic features. The standard also mandates that when a feature on the exterior of a historic home must be replaced, the new feature should match the old in design, texture, color, visual qualities, and where possible, materials.

Only after all reasonable options for repair or replacement in kind have been exhausted, may the choice among a wide variety of substitute materials currently on the market be made.<sup>36</sup> The appellants, however, did not provide any evidence to show that wood replacement materials were unavailable. Instead, the appellants merely claimed that properly restoring their property with wood was "costly", possibly exceeding \$80,000.00.

In the same vein, substitute materials must meet three basic criteria before being considered: 1) they must be compatible with the historic materials in appearance; 2) their

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<sup>36</sup> *Federated Church v. HDC for the Town of Edgartown*, 1995 Mass. Super. 432, p. 5 (1995).

<sup>37</sup> Commission's Exhibit 16; Preservation Briefs issue 16, p. 9.

physical properties must be similar to those of the historic materials, or be installed in a manner that tolerates differences; and 3) they must meet certain basic performance expectations over an extended period of time.<sup>37</sup> The appellants have not provided any evidence showing that vinyl is comparable or compatible, in any respect, to wood. The appellants have also failed to demonstrate that vinyl siding may be installed in a manner that tolerates differences.

Because installations of substitute materials such as aluminum or vinyl siding destroy historic building material and features and, as a consequence, result in a loss of the building's historic character, they are not recommended by the National Park Service.<sup>38</sup> Such destruction of historic materials and features confuses the public perception of what is truly historic and what is imitative.<sup>39</sup> For these reasons, the Commission's decision to deny the appellants' request to install vinyl siding is neither capricious nor arbitrary but is based on the application of sound preservation standards.

**3) Standard 9 - Historic Materials**

Appellants additionally claimed that the Commission erroneously applied Standard 9. Standard 9 provides as follows:

(9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, scale, and architectural features to protect the historic

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<sup>37</sup> *Id.* at p. 6.

<sup>38</sup> Commission's Exhibit 14; Preservation Briefs issue 8, p. 8.

<sup>39</sup> *Id.*

integrity of the property and its environment.  
(Emphasis added)

The written guidelines prepared by the National Park Service, designed to implement the Secretary of the Interior's Standards and applicable to exterior wood on buildings, do not recommend in pertinent part:

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

Removing a major portion of the historic wood from a facade instead of repairing or replacing only deteriorating wood, then restructuring the facade with new material in order to achieve a uniform or "improved" appearance.

Radically changing the type of finish or its color or accent scheme so that the historic character of the exterior is diminished.

Stripping historically painted surfaces to bare wood, then applying clear finishes or stains in order to create a "natural look."

Stripping paint or varnish to bare wood rather than repairing or reapplying a special finish, i.e., a grain finish to an exterior wood feature such as a front door.

The appellants argued that they must replace wood with vinyl because the wood exterior is cupping and vinyl is a cheaper and hence more appropriate alternative to wood in their case.

Unfortunately, this radical change would clearly compromise the historic character of the exterior of 65 Chippewa in contravention to Standard 9. Appellant Hendricks has testified

that, if approved, the wood exterior would be stripped in its entirety and new vinyl siding will be installed.

Based upon a review of the submitted materials, the presented testimony, and applicable preservation standards, the appellants' argument is found to be without merit. The appellants have failed to demonstrate that the proposed new siding made out of vinyl will not destroy historic materials that characterize the property, as required by Standard 9. The Commission properly denied the application to install vinyl siding on the appellants' historic home.

**B. Neighborhood Transformation**

The appellants next contended that the character and composition of their neighborhood had transformed or drastically changed so as to render the Commission's standards in the historic district inapplicable. The appellants specifically posited that the Commission erred by failing to consider the 65 Chippewa property in relation to the character of the surrounding area. According to appellants, some 89 out of a total of 109 houses in the historic district have vinyl or aluminum siding on the exteriors. As a result, the appellants were purportedly deprived of due process, equal protection of the law and freedom from discrimination, and their rights to enter into contracts were seriously impaired.

The appellants submitted as evidence some 17 photographs of various houses with vinyl exteriors located on Chippewa and Iroquois Streets.<sup>40</sup> Although the pictures lack authentication and

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<sup>40</sup> Appellants' Exhibit A.

dates, they nevertheless constitute evidence of a compromise in the visual continuity of the district's historic building materials. However, the Commission has countered that it bears no fault here because the Commission has not approved vinyl siding on historic homes in the Seminole Hills Historic District since the district's formation in 1990. Specifically, the Commission has argued that many of these houses were sheathed in aluminum or vinyl siding before the creation of the historic district.

The appellants have submitted the clearest evidence on this issue. The August 12, 1987 letter from the Deputy State Historic Preservation Officer, Michigan Department of State to the City of Pontiac Mayor demonstrates that as far back as 1987, some three years before the establishment of the historic district, Seminole Hills was interspersed with numerous houses whose exteriors were sided with non-historic materials.<sup>41</sup> In pertinent part, the letter states that:

In most part of the district, newer homes are interspersed with the older historic residences so that the overall ratio of "non-contributing" to "contributing" buildings in the Seminole Hills neighborhood is too high to meet National Register standards. Additionally, the great majority of wood houses have been sheathed in aluminum or vinyl siding so that the visual continuity of the district's historic building materials has been compromised. The BOH (Bureau of History) still finds the Seminole Hills District one of architectural and historical significance to the city, but feels that younger homes will need to age and restoration activities will have to uncover the historic building fabric before a National Register nomination can be considered.<sup>42</sup>

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<sup>41</sup> Appellants' Exhibit P, p. 2.  
<sup>42</sup> *Id.*

The evidence clearly demonstrates that a high number of houses in Seminole Hills Historic District were already covered on the exterior with either aluminum or vinyl siding before the formation of the district in 1990. Significantly, there is no proof that the neighborhood changed so drastically since its formation as a historic district as to render the Commission's standards in the historic district inapplicable. In point of fact, the Seminole Hills Historic District still retained enough architectural and historic significance that it successfully obtained the status of a local historic district on August 27, 1990, qualifying for inclusion on the State of Michigan's list of local districts.

The appellants alleged that they were deprived of due process, equal protection of the law and freedom from discrimination, and that their rights to enter into contracts were seriously impaired as a result of the Commission's refusal to grant their request in a historic neighborhood with historic houses that boast vinyl or aluminum siding exteriors. The appellants, however, have failed to produce any evidence to support any of these allegations or to connect the Commission's action to the purported outcome.

Simply put, the appellants have failed to prove that the alleged drastic change in the neighborhood took place *after* the establishment of the historic district in 1990 or that the Commission approved vinyl siding on historic home exteriors in Seminole Hills since its inception. The Commission did not act arbitrarily or capriciously. Its position on this issue is well

founded and thus, the appellants' request for relief based on an argument of a change in neighborhood's character must also be deemed without merit.

C. Disparate Treatment

The appellants next argued that the Commission acted arbitrarily and capriciously by victimizing the appellants through disparate treatment. Specifically, the appellants claimed that the Commission treated them with contempt while giving other residents in the same historic district help with their historic preservation projects, including visits from members of the Commission to their homes. The appellants testified at the hearing that the Commission on multiple occasions treated them poorly, slammed doors of opportunity in their faces, and deliberately withheld helpful information from them.

The Commission denied that it treated the appellants in a disparate manner. The Commission argued that it did not give any other applicant in the district any more help or information than it gave the appellants on many occasions. The Commission presented the testimony of Ms. Oberoi, a staff member, who stated that copies of Preservation Briefs were made available to the appellants on a timely basis.

Although the animosity between the parties and their respective attorneys was visible and omnipresent throughout these proceedings, there is no actual proof that the appellants were treated differently than any other applicants to perform work in the Seminole Hills Historic District. The appellants

failed to submit any evidence that homeowners similarly situated in the district received better treatment from the Commission.

The evidence in the hearing record shows that the Commission furnished the appellants with Preservation Briefs as guidelines for successful applications. In addition, the Commission did not preclude appellants from re-filing their application after initial disapproval. The appellants complained that the Commission did not furnish them with ample examples of alternatives to wood that would meet appropriate preservation standards. The furnished Preservation Briefs, however, contradict this because they specifically detail appropriate alternative materials and appropriate preservation methods for wood exteriors.

In conclusion, the appellants have failed to successfully prove that they were victims of disparate treatment. The Commission did not act arbitrarily or capriciously. Its position was well founded, and thus, the appellants' ground for relief based on an argument of disparate treatment must also be deemed without merit.

**D. Economic Feasibility**

The appellants further argued that the costs of restoring their historic property in conformance with historic preservation standards are unreasonable and punitive. The appellants claim that the cost for restoring their property exceeds \$80,000.00, almost equal the total value of their home currently valued at about \$90,000.00.



The Commission countered by arguing that undue financial hardship should only be considered as a factor in retaining a resource when all feasible alternatives which could eliminate the financial hardship have been attempted and exhausted by the owners. The Commission posited that the appellants have failed to demonstrate that they have exhausted all feasible alternatives to address the issue of replacing wood with vinyl siding.

It should be initially noted that Section 5(6)<sup>43</sup> of the LHDA discusses undue hardship in terms of whether or not to retain a resources, but it does not specifically deal with undue financial hardship for renovation or restoration activities. Section 5(6) specifically provides in pertinent part:

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

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

The Secretary of the Interior's Standards provide that economic and technical feasibility must be considered whenever work is contemplated. The evidence submitted by the appellants shows an estimate of \$8,000.00 for the material replacement of

the wood siding with vinyl. Appellant Hendricks also testified that he obtained estimates for cedar wood replacement totaling some \$34,000.00, and an estimate of \$24,850.00 for replacement styrofoam and vinyl for the exterior of his home. The Commission countered with testimony from Ms. Oberoi and Mr. Martin. Significantly, they have indicated that the appellants do not need to completely replace the entire wood exterior of their historic home.

Assuming that the appellants' financial estimates of rehabilitation costs are accurate, it is noteworthy that there is no proffered evidence to show lack of economic capability on appellants' part to undertake this project. The appellants did not offer any financial documents showing that they have attempted to secure a second mortgage or some other loan, or that they lack the necessary funding to properly rehabilitate their historic home.

Moreover, appellants failed to present any evidence regarding whether they explored the potential of mitigating their rehabilitation expenses by using available government-sponsored financial incentives. Such incentives are often available to offset the homeowners' out-of-pocket expense in a properly undertaken exterior restoration project. Incentives come in various forms. For example, both the Michigan Income Tax Act of 1967<sup>43</sup> and the Single Business Tax Act<sup>45</sup> make 25% tax credits available to property owners who commence restoration

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<sup>43</sup> MCL §399.205(6).

<sup>44</sup> MCL §206.266.

<sup>45</sup> MCL §208.39c.

projects to improve qualified properties within local historic districts. This factor alone could significantly reduce any adverse economic impact of undertaking a historically proper exterior siding project and correspondingly enhancing economic feasibility.

In summary, the appellants failed to furnish any evidence to prove lack of economic feasibility, presuming instead that the cost of the rehabilitation project alone would grant them a legal reprieve. Available case law, however, hints to the opposite conclusion. Michigan's courts have yet to discuss the issue of economic feasibility in a historic restoration denial case. The Court of Appeals, however, has considered economics in the context of costs of painting a historic home. The question before the Court of Appeals was whether or not a \$30,000.00 painting project may be ordered by a historic district commission. The Court of Appeals, in an unpublished opinion<sup>46</sup>, reasoned as follows:

We agree with the trial court that the plaintiff may require the defendant to keep his building painted.

The court cited Ypsilanti Ordinance § 5.336(1), which provides that every person in charge of a landmark or structure in the historic district shall keep its interior and exterior in good repair. Moreover, Ypsilanti Ordinance § 5.324 provides that the purpose of creating the historic district is to stabilize and improve property values and to foster civic beauty and pride.

Having decided that the plaintiff has the authority to require the defendant to paint the building, we next review the trial court's decision that the plaintiff reasonably required the defendant to paint the building. A zoning ordinance is a valid exercise of police power, but if in its application it is unreasonable and confiscatory, it cannot be sustained. *Burrell v City of Midland*, 365 Mich 136,

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<sup>46</sup> *Ypsilanti v. Kircher*, COA Docket No. 128107, (July 24, 1992).

141; 111 Mich NW2d 884 (1961). The (US) Supreme Court has held that financial burdens may be imposed upon a property owner to preserve historic landmarks. *Penn Central Transportation Co v City of New York*, 438 US 104; 98 S Ct 2646; 57 L ed 2d 198 (1978). The financial burden of abating a public nuisance is properly imposed on the property owner, rather than on the public. *Moore v City of Detroit* (On remand), 159 Mich App 199, 203; 406 NW2d 488 (1987).

The unrefuted evidence presented at trial supports the court's finding that the building is an eyesore. The approximate cost of painting the building is \$30,000, including the necessary low pressure water cleaning. Requiring the defendant to paint the building is reasonable under the ordinances, and it is not a confiscatory taking. *Burrell*. Further, it is reasonable under the ordinances for the historic district commission to have input into a determination of the color of the building. (Slip Op., pp 1-2)

Based on the available evidence, the Commission did not act arbitrarily or capriciously. The appellants failed to adequately prove lack of economic feasibility or to show that the cost of the rehabilitation project alone would grant them a legal reprieve. Therefore, the appellants' argument that the costs of restoring their historic property in conformance with historic preservation standards are unreasonable and punitive is meritless.

**E. Filing of Ordinance**

The appellants lastly argued that the City of Pontiac plainly violated the requirements of the LHDA by failing to record the boundaries of the Seminole Hills Historic District with the Oakland County Register of Deeds. According to appellants, the City of Pontiac must register a copy of the ordinance establishing the historic district, including a legal description of the property or properties located within the historic district, with the Register of Deeds pursuant to

section 3(3)(b) of the LHDA<sup>47</sup> to provide adequate notice to potential buyers such as the appellants. As a result, the appellants sought the issuance of the permit to install vinyl siding, in addition to reasonable attorney fees.

The Commission responded by arguing that the City of Pontiac was not required to file a copy of its ordinance establishing the historic district with the Oakland County Register of Deeds. Specifically, the Commission asserted that the Seminole Hills Historic District was established two years before the legislature amended the LHDA to impose the filing requirement. Moreover, according to the Commission, there is no statutory language evidencing legislative intent of the retroactive application of this amendment. In other words, the Commission argued that the City of Pontiac was not required to comply with the aforementioned section 3(3)(b) of the LHDA regarding its 1990 historic district ordinance.

In a related vein, the Commission posited that even if the City Council had been required to comply with Section 3(3)(b), granting appellants a permit to install vinyl siding would not be an appropriate remedy. According to the Commission, the appellants had ample constructive notice of the District's existence through articles published in the Oakland Press. The Commission further argued that appellants in fact had actual notice of the existence of the Seminole Hills Historic District, because the City of Pontiac had erected a number of readily

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<sup>47</sup> MCL 399.203(3)(b).

visible signs throughout the district disclosing its historic status.

In pertinent part section 3 of the LHDA states:

(3) After the date of the public hearing, the committee and the legislative body of the local unit shall have not more than 1 year, unless otherwise authorized by the legislative body of the local unit, to take the following actions:

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(b) After receiving a final report that recommends the establishment of a historic district or districts, the legislative body of the local unit, at its discretion, may introduce and pass or reject an ordinance or ordinances. If the local unit passes an ordinance or ordinances establishing 1 or more historic districts, the local unit shall file a copy of that ordinance or those ordinances, including a legal description of the property or properties located within the historic district or districts, with the register of deeds. A local unit shall not pass an ordinance establishing a contiguous historic district less than 60 days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition. (Emphasis added)

1) Retroactivity

The Legislative history of the LHDA demonstrates that section (3)(3)(b) was added on June 18, 1992, more than two years after the passage of the ordinance that created the Seminole Hills Historic District. The language of the LHDA does not provide for retrospective application. Moreover, the general rule in Michigan is that statutes are presumed to operate prospectively unless contrary legislative intent is clearly manifested.<sup>44</sup> This is especially true if retroactive application of a statute would impair vested rights, create a

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<sup>44</sup> *Lynch v Flex Technologies*, 463 Mich 578, 583; 624 NW2d 180 (2001) (quoting

new obligation, impose a new duty, or attach a disability with respect to past transactions.<sup>49</sup>

The retroactive application of LHDA section 3(3)(b) would create a new requirement and impose a new duty on the City of Pontiac to register its historic preservation ordinance. The plain language of the amended section reflects no legislative intent for anything other than prospective application. For these reasons, the appellants' argument that a certificate of appropriateness must be issued because the City of Pontiac neglected to file its preservation ordinance with the Oakland County Register of Deeds must be rejected. The Commission's decision was neither arbitrary nor capricious but based on sound legal principle and ample evidence.

2) Notice to Buyers

The appellants lastly argued that they have been adversely affected by the City of Pontiac's failure to adhere to the filing requirements of section 3(3)(b) of the LHDA because they purchased the property on 65 Chippewa without knowledge that it was located in a historic district. The appellants presented their own testimonial evidence to support this point. The Commission presented the testimonies of Ms. Oberoi and Mr. Martin who contradicted the appellants. The Commission also submitted photographs of readily visible signs located throughout the neighborhood declaring its historic status, as

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*Hughes v Judges' Retirement Bd*, 407 Mich 85; 282 NW2d 160 (1979).

<sup>49</sup> *Franks v White Pine Copper Div*, 422 Mich 636, 671-74; 375 NW2d 715 (1985).

well as a photocopy of the notification of historic district establishment published in the Oakland County Press.

Significantly, appellant Hendricks gave contradictory testimony and clearly recanted his statements on the issue of notice. Mr. Hendricks first stated that he had noticed the signs before purchasing the home. However, after Ms. Deering's testimony that contradicted his, he changed his response to match hers. In addition, both Ms. Oberoi and Mr. Martin testified that district designation signs were present in the district long before the appellants purchased their home in 1999. Finally, the appellants did not present any evidence contradicting or disproving the photos in support of Commission's contention that the historic district signs existed when they purchased their home in 1999. For these reasons, the appellants' last argument, that they lacked notice before purchasing their historic home, must be rejected. The Commission did not act arbitrarily or capriciously, but based its decision on sound legal principles and ample information.

#### Conclusion

The federal standards, as well as state and local laws cited above, reflect the clear legislative intent to protect, preserve and promote historic districts, structures, features, and characteristics. The appellants' evidence did not demonstrate legal justification to install vinyl siding on the exterior of a historic home characterized by a wood exterior.

In consideration of the entire official hearing record made in this case, it is concluded that the appellants failed to

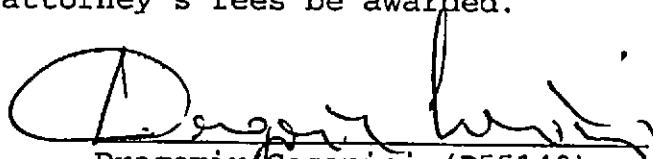


establish that the Commission acted arbitrarily or capriciously when concluding that their proposed vinyl siding replacement violated current historic preservation standards and guidelines. It is further concluded that the Commission did act contrary to state or local law, and did not act improperly when denying the appellants' application to install vinyl siding.

Recommendation

In consideration of the above, it is recommended that the appeal be denied, and that no attorney's fees be awarded.

Dated: 04/01/03



Dragomir Cosanici (P55140)  
Administrative Law Examiner  
Office of Regulatory Affairs  
Dep't of History, Arts  
and Libraries  
P.O. Box 30738  
Lansing, MI 48909-8238



State of Michigan  
Jennifer Granholm, Governor

Department of History, Arts and Libraries  
Dr. William M. Anderson, Director

Office of Regulatory Affairs

Michigan Library and Historical Center  
702 W. Kalamazoo St., 5<sup>th</sup> Floor  
P.O. Box 30738  
Lansing, MI 48909  
517-241-3989

**RANDOLPH L HENDRICKS,**  
Applicant/Appellant,

v  
**PONTIAC HISTORIC DISTRICT COMM'N,**  
Appellee.

*written 2/20 stamp*  
Docket No. **02-128HP**

**NOTICE OF ADJOURNMENT AND RESCHEDULING**

This matter having been scheduled for a prehearing conference and administrative hearing to be conducted on **January 14, 2003**; and

An adjournment having been requested; and

Sufficient reason for an adjournment having been furnished,

IT IS ORDERED that the prehearing conference/administrative hearing presently scheduled in this matter is adjourned.

**NOTICE IS HEREBY GIVEN** that the prehearing conference and administrative hearing have been rescheduled for **February 13, 2003 at 9:30**

**A.M.**

Please report to the Archives Administrative Conference Room 2<sup>nd</sup> Floor, Michigan Historical Center, 5<sup>th</sup> Floor, 702 W. Kalamazoo St., Lansing, Michigan, at the rescheduled time. For further directions, please call 517-373-1630.

**PLEASE NOTE: IF THE APPELLANT ELECTS NOT TO APPEAR NOR TO PRESENT EVIDENCE AT THIS RESCHEDULED PROCEEDING, A DECISION WILL BE RENDERED ON THE BASIS OF THE EVIDENCE AND ARGUMENTS SUBMITTED TO DATE IN WRITTEN FORM.**

Dated: 1/29/03

By: Nicholas L. Bozen  
Nicholas L. Bozen (P11091)  
Office of Regulatory Affairs



**CITY OF PONTIAC**  
**MICHIGAN**

MAYOR WILLIE W. PAYNE

**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**OFFICE OF LAND USE & STRATEGIC PLANNING**

January 8, 2003

Nicholas L. Bozen  
Office of Regulatory Affairs  
Michigan Library and historical Center  
702 w. Kalamazoo Street, 5<sup>th</sup> Floor  
P.O. Box 30738  
Lansing, Michigan, 48909

Re: Prehearing conference and administrative hearing  
65 Chippewa, Pontiac  
Docket No. 02-128HP

Dear Sir:

We request adjournment of the prehearing conference and administrative hearing scheduled for January 14, 2002 as our Historic District Chairperson, Kenneth Burch, Jr. will be unable to attend on that date.

Alternative dates to which this hearing can be rescheduled are January 31, February 4, and February 10, 2003. Please inform us after rescheduling the hearing.

Sincerely,

Madhu Oberoi  
Acting Planning Administrator



State of Michigan  
Jennifer Granholm, Governor

Department of History, Arts and Libraries  
Dr. William M. Anderson, Director

Office of Regulatory Affairs  
Nicholas L. Bozen, Director

702 W. Kalamazoo Street, 5<sup>th</sup> Floor  
P.O. Box 30738  
Lansing, MI 48909  
517/373-3989

In the Matter of:

**RANDOLPH L HENDRICKS,**  
Applicant/Appellant,

v

**PONTIAC HISTORIC DISTRICT  
COMM'N**  
Appellee.

Docket No. **02-128 -HP**

**AFFIDAVIT OF SERVICE**

I, Cecilia Montalvo, Clerk of the Office of Regulatory Affairs, Michigan Department of History, Arts and Libraries being duly sworn, declare that on January 30, 2003, I served a true copy of the attached:

Notice of Adjournment and Rescheduling, and Affidavit of Service,

via United Parcel Service, bearing receipt(s) nos. 004 , enclosed in an envelope plainly addressed to the last known address on file as follows:

- Mr. Ken Burch, City of Law Offices, 149 Franklin Blvd., Pontiac, MI 48342;
- Mr. James Martin, 165 Chippewa, Pontiac, MI 48341;
- Mr. Randolph L. Hendricks, 65 Chippewa, Pontiac, MI 48341;
- Mr. Richard T. White, Jr., Oakland Towne Center, 28 N. Saginaw, Suite 1008, Pontiac, MI 48342;
- Ms. Madhu Oberoi, City of Pontiac, Office of Land Use and Strategic Planning, 51000 Woodward Avenue, Pontiac, MI 48342.

*Cecilia Montalvo*

Cecilia Montalvo  
Clerk, Office of Regulatory Affairs

Subscribed to and sworn to before me a  
Notary Public in and for the County of Ingham,  
State of Michigan, on January 30, 2003

*Sarah E. Villarreal*

Sarah Villarreal  
Ingham County MI  
My commission expires January 1, 2007

SARAH E. VILLARREAL  
Notary Public - Michigan  
Ingham County  
My Commission Expires Jan 1, 2007



State of Michigan  
John Engler, Governor

Department of History, Arts and Libraries  
Dr. William M. Anderson, Director

Office of Regulatory Affairs

Michigan Library and Historical Center  
702 W. Kalamazoo St., 5<sup>th</sup> Floor  
P.O. Box 30738  
Lansing, MI 48909  
517-241-3989

**RANDOLPH L HENDRICKS,**  
Applicant/Appellant,

v

**PONTIAC HISTORIC DISTRICT COMM'N,**  
Appellee.

Docket No. **02-128HP**

**NOTICE OF ADJOURNMENT AND RESCHEDULING**

This matter having been scheduled for a prehearing conference and administrative hearing to be conducted on **November 19, 2002**; and

An adjournment having been requested; and

Sufficient reason for an adjournment having been furnished,

IT IS ORDERED that the prehearing conference/administrative hearing presently scheduled in this matter is adjourned.

**NOTICE IS HEREBY GIVEN** that the prehearing conference and administrative hearing have been rescheduled for **January 14, 2003 at 9:30**

**A.M.**

Please report to the Commission Room, Michigan Historical Center, 5<sup>th</sup> Floor, 717 W. Allegan St., Lansing, Michigan, at the rescheduled time. For further directions, please call 517-373-1630.

**PLEASE NOTE: IF THE APPELLANT ELECTS NOT TO APPEAR NOR TO PRESENT EVIDENCE AT THIS RESCHEDULED PROCEEDING, A DECISION WILL BE RENDERED ON THE BASIS OF THE EVIDENCE AND ARGUMENTS SUBMITTED TO DATE IN WRITTEN FORM.**

Dated: 11/26/02

By: Nicholas L. Bozen/cm  
Nicholas L. Bozen (P11091)  
Office of Regulatory Affairs

Issued by authority of the State Historic Preservation Review Board.



State of Michigan  
John Engler, Governor

Department of History, Arts and Libraries  
Dr. William M. Anderson, Director

Office of Regulatory Affairs  
Nicholas L. Bozen, Director

702 W. Kalamazoo Street, 5<sup>th</sup> Floor  
P.O. Box 30738  
Lansing, MI 48909  
517/373-3989

In the Matter of:

**RANDOLPH L HENDRICKS,**  
Applicant/Appellant,

v

**PONTIAC HISTORIC DISTRICT  
COMM'N**  
Appellee.

Docket No. 02-128 -HP

**AFFIDAVIT OF SERVICE**

I, Cecilia Montalvo, Clerk of the Office of Regulatory Affairs, Michigan Department of History, Arts and Libraries being duly sworn, declare that on November 26, 2002, I served a true copy of the attached:

Notice of Adjournment and Rescheduling, and Affidavit of Service,

via United Parcel Service, bearing receipt(s) nos.1 , enclosed in an envelope plainly addressed to the last known address on file as follows:

Mr. Randolph L. Hendricks, 65 Chippewa, Pontiac, MI 48341;  
Mr. Richard T. White, Jr., Oakland Towne Center, 28 N. Saginaw, Suite 1008, Pontiac, Mi 48342; and  
Ms. Madhu Oberoi, City of Pontiac, Office of Land Use and Strategic Planning, 51000 Woodward Avenue, Pontiac, MI 48342

*Cecilia Montalvo*

Cecilia Montalvo  
Clerk, Office of Regulatory Affairs

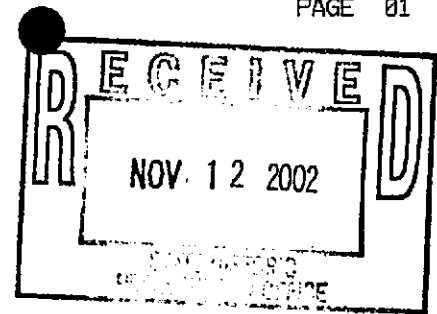
Subscribed to and sworn to before me a  
Notary Public in and for the County of Ingham,  
State of Michigan, on November 26, 2002

*Carol A. Payne*

Carol A. Payne  
Ingham County MI

My commission expires December 19, 2003

**RICHARD T. WHITE, JR.**  
Attorney and Counselor at Law  
Oakland Towne Center  
28 N. Saginaw, Suite 1008  
Pontiac, Michigan 48342



Phone: (248) 332-0550

Fax: (248) 332-8295

**FACSIMILE TRANSMITTAL**

Please deliver to: CECILIA MONTALVO, CLERK, Office of Regulatory Affairs

Re: Request to change hearing date. Hendricks v. Pontiac Historic District  
Docket No.: 02-128-HP

Number of pages: 4 including this transmittal sheet.

Notes to Recipient: As required, I'm enclosing a copy of the Scheduling Order from the Court advising of the November 19<sup>th</sup> United States District Court date. Due to this conflict, I am requesting a change from the hearing date of November 19. You also asked for alternative dates: any time on November 25, 26, or 27, 2002 ; also, if these dates are unacceptable, please let me know what other times might be good. Thank you for your assistance.

I will call you tomorrow, November 12, 2002. Thank you.

Date: 11-11-02

**The original will:**

be sent via U.S. Mail.  
 be sent via Overnight Mail.  
 not be sent.

If you do not receive all the pages indicated, please contact Pat Chechlowski at (248) 332-0550.

This facsimile message is privileged/confidential and as such is intended for the use of the individual or entity named above. Any dissemination copying is neither intended or authorized unless by the person named herein or an employee or agent of such person. If there is an error in transmission to wrong person or entity please promptly advise Sender by telephone and return the original facsimile message to the above address. You will be reimbursed for postage. Thank you for your cooperation.

Recipient's Fax Number: (517) 335-0348

**PLEASE NOTE MAGISTRATE JUDGE PEPE'S CIVIL MATTERS ARE NOW PROCESSED THROUGH HIS ANN ARBOR OFFICE**

**IT IS THE RESPONSIBILITY OF COUNSEL TO READ THE ENTIRE ORDER. THE COURT HAS HIGHLIGHTED THE MOST IMPORTANT ISSUES.**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

NOV 13 4 13 PM '02  
FILED

ESTATE OF KATHLEEN BETHEL, BY BARBARA A. SHOWERS,  
PLAINTIFF(S), CASE No. 02-71678

Vs.

HONORABLE: PAUL D. BORMAN  
MAGISTRATE STEVEN D. PEPE

ROBERT BOELIO,  
DEFENDANT(S).

-----/

**SCHEDULING ORDER**  
**AND**  
**ORDER REQUIRING COMPLIANCE WITH LOCAL COURT RULE 37.1**

**CHECK LIST FOR COUNSEL**

- I. Due Date for Statement of Resolved and Unresolved issues (See ¶ 4 below): 11/12/02, 2002
- II. Hearing Date (See ¶ 5 below): 11/19/02, 2002

The following motion(s) have been filed with the court:

1. Plaintiff's motion to compel defendant to submit to handwriting examination filed 10/18/02
2. IT IS ORDERED that the parties shall meet and confer on all pending discovery motions in accordance with Local Rule 37.1 Prior to the date indicated in I. above, the moving party must make at least three attempts by phone or by mail to arrange a meeting with opposing counsel. If the moving party is unsuccessful in receiving a response from opposing counsel after these attempts, the moving party must file a state of unresolved issues and a statement certifying the unsuccessful attempts for a conference. If a conference is not arranged or a certification of unsuccessful attempt at arranging a conference is not filed by the date set out in "I" above, this will be considered in determining whether an award of attorney's fees is appropriate.



3. IT IS FURTHER ORDERED that, in the event that all disputed issues are resolved as a result of the conference referred to in ¶ 2, the moving party shall prepare a statement withdrawing the motion(s) and shall file it with the Clerk of the Court prior to the hearing date, with a copy faxed to Judge Pepe's Ann Arbor office at 734-741-2051.
4. IT IS FURTHER ORDERED that, if the parties are unable to resolve their differences as the result of such conference, the moving party shall prepare a written Statement of Resolved and Unresolved Issues of no more than five pages certifying that the movant has conferred in good faith with the other party or parties after the filing of the motion in an effort to narrow the areas of disagreement, and specifying the issues with respect to which agreement has been reach, as well as the issues yet to be resolved. (This may be done by reference to paragraph numbers in the original motion(s) and to relevant exhibits to the original motion(s).) THIS STATEMENT MUST BE FILED WITH THE CLERK OF THE COURT, WITH A COPY FAXED TO JUDGE PEPE'S OFFICE AT 734-741-2051, ON OR BEFORE 11/12/02, 2002. The opposing party shall file a response to the original motion, including a written brief, addressing the unresolved issues on or before 11/05/02, 2002.
5. IT IS FURTHER ORDERED that if the parties are unable to resolve all issues, a telephonic hearing will be held on 11/19/02, 2002, between the hours of 9:30 a.m. and 1:00 p.m. When Judge Pepe is prepared to hear the motion(s), his clerk will telephone the moving party, who will then place the conference call. When all parties are connected, the moving party shall telephone Judge Pepe's chambers at (734)741-2307. If either party wishes the hearing to be held in person, s/he may arrange this by contacting the deputy clerk IN ANN ARBOR at 734-741-2298. If either party wishes to have the motion(s) decided with no oral hearing, this too may be arranged by contacting the deputy clerk.
6. IT IS FURTHER ORDERED that the Statement of Resolved and Unresolved Issues and response referred to in ¶ 4 shall not incorporate any pleading, correspondence, and/or material by reference except when such pleading, correspondence, and/or material is incapable of reproduction or is attached to the original motion(s) as an appendix. Because it is anticipated that many issues will be resolved without court intervention, the movant may wish to attach supporting documents only to the Statement of Resolved and Unresolved Issues instead of the original motion(s).

7. IT IS FURTHER ORDERED that if any disputed issue is resolved less than ten (10) days prior to the hearing date, the moving party shall immediately inform Judge Pepe through his deputy clerk by telephone of the resolution.

Dated: ~~28~~ October 2002

Ann Arbor, MI



Steven D. Pepe

United States Magistrate Judge

Copies mailed to:

Kelli A. Eldred, Matthew Quinn

Richard T White, Jr.

cc: Honorable Paul D. Borman

**RICHARD T. WHITE, JR.**  
**Attorney and Counselor at Law**  
**28 N. Saginaw, Suite 1008**  
**Pontiac, Michigan 48342**

**Phone: (248) 332-0550**

**Fax: (248) 332-8295**

September 17, 2002

State Historic Preservation Review Board  
Michigan Historical Center  
717 West Allegan Street  
P.O. Box 30740  
Lansing, Michigan 48909-0348

Via Fax: (517) 335-0348

Re: Appeal from ruling of the Pontiac Historic District Commission  
64 Chippewa, Pontiac, MI

Dear Board Representative:

I represent Ms. Mary Deering and Mr. Randolph Hendricks in the Appeal of a decision rendered by the Pontiac, (Michigan) Historic District Commission.

We have requested that we be allowed an additional hearing to present evidence before the Pontiac Board but this has not been confirmed in writing.

The Appeal is based principally on the following factors:

1. The historic district commission acted in an arbitrary and capricious manner.
2. Retaining the historic resource will cause the owner an undue financial hardship as well as the costs of restoration.
3. The resource is a deterrent to a major improvement program that will benefit the community.
4. The commission failed to properly apply the U.S. Secretary of the Interior's standards for rehabilitation and/or guidelines for rehabilitating historic buildings.
5. The commission used an unlawful procedure when considering the application.
6. The ordinance establishing the Pontiac Commission is contrary to the

- statute permitting the creation a local historic district.
7. The manner in which the Commission for the Pontiac Historical District functions has resulted in a denial of due process and the unconstitutional taking of Deering and Hendricks property.
  8. Failure to comply with the City of Pontiac Ordinance and the Michigan Statute, Act 169 of 1970, as amended.

Very Truly Yours,



Richard T. White, Jr.

RTW:pmc

P.S. ATTACHED IS DENIAL LETTER  
FROM PONTIAC HISTORIC DISTRICT  
COMMISSION



**CITY OF PONTIAC**  
**MICHIGAN**

MAYOR WILLIE W. PAYNE

**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**OFFICE OF LAND USE & STRATEGIC PLANNING**

July 17, 2002

Randolph L. Hendricks  
65 Chippewa  
Pontiac, MI. 48341

Re : HD-02-09  
65 Chippewa

Dear Applicant,

The Historic District Commission denied your request to put vinyl siding on the house and garage. This denial is in keeping with the standards and guidelines established by the Secretary of Interior Item 2 which states: "The Historic character of a property shall be retained and preserved. The removal of historical materials or alteration of features and spaces that characterize a property shall be avoided".

If you have any further questions please feel free to contact me at 248-857-5664.

Sincerely,

A handwritten signature in black ink, appearing to read "Madhu".

Madhu Oberoi  
Acting planning Administrator  
Office of Land Use and Strategic Planning

cc. Tom McIntyre  
Mike Wilson

**From:** Amy Arnold  
**To:** Cecil Montalvo  
**Date:** 1/9/03 2:01PM  
**Subject:** Re: HDC Hearing

I would prefer the 13th simply because the 14th is Valentine's Day and a Friday. I may have a chance to visit my valentine. . . . the 14th in the morning would be ok but leave the afternoon free. thanks.

Amy L. Arnold  
Preservation Planner  
Michigan Historical Center-SHPO  
702 W. Kalamazoo  
Box 30740  
Lansing, MI 48906

ArnoldA@michigan.gov  
Phone: 517-335-2729  
FAX: 517-335-0348

*Contract Blue water*  
*FBI/SHPO*



State of Michigan  
John Engler, Governor

Department of History, Arts and Libraries  
Dr. William M. Anderson, Director

Office of Regulatory Affairs  
Nicholas L. Bozen, Director

717 W. Allegan Street, 5<sup>th</sup> Floor  
P.O. Box 30007  
Lansing, MI 48909  
517/373-3989

In the Matter of:

**RANDOLPH HENDRICKS,**  
Applicant/Appellant,

v

**PONTIAC HISTORIC DISTRICT  
COMM'N**  
Appellee.

Docket No. 02-128-HP

**AFFIDAVIT OF SERVICE**

I, Cecilia Montalvo, Clerk of the Office of Regulatory Affairs, Michigan Department of History, Arts and Libraries being duly sworn, declare that on October 16, 2002, I served a true copy of the attached:

Cover Letter, Letter of Appeal from Mr. White Appealing HDC decision, Denial Letter from City of Pontiac HDC,

via United Parcel Service, bearing receipt(s) nos.001 , enclosed in an envelope plainly addressed to the last known address on file as follows:

Mr. Randolph L. Hendricks, 65 Chippewa, Pontiac, MI 48341;  
Mr. Richard T. White, Jr., Oakland Towne Center, 28 N. Saginaw, Suite 1008, Pontiac, MI 48342;  
Ms. Madhu Oberoi, City of Pontiac, Office of Land Use and Strategic Planning, 51000 Woodward Avenue, Pontiac, MI 48342

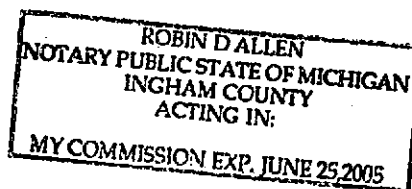
*Cecilia Montalvo*

Cecilia Montalvo  
Clerk, Office of Regulatory Affairs

Subscribed to and sworn to before me a Notary Public in and for the Counties of Ingham and Eaton, State of Michigan, on October 16, 2002

*Robin Allen*

Robin Allen  
Ingham and Eaton Counties MI  
My commission expires June 25, 2005





State of Michigan  
John Engler, Governor

Department of History, Arts and Libraries  
Dr. William M. Anderson, Director

Office of Regulatory Affairs

717 W. Allegan St., 5<sup>th</sup> Floor  
P.O. Box 30007  
Lansing, MI 48909  
517/373-3989

**RANDOLPH L. HENDRICKS,**  
Applicant/Appellant,

v

**PONTIAC HISTORIC DISTRICT COMM**  
Commission/Appellee.

Docket No. **02-128HP**

**NOTICE OF PRE-HEARING CONFERENCE AND ADMINISTRATIVE HEARING**

**PLEASE TAKE NOTICE** that a pre-hearing conference and administrative hearing will be held on the aggrieved applicant's appeal. The conference and hearing will occur on:

**DATE:** November 19, 2002

**TIME:** 9:30 a.m.

**PLACE:** Department of History, Art and Libraries Board Room. The Lake Superior is located on the First Floor, Library and Historical Center 717 West Allegan, Lansing, Michigan.

**ISSUE:** Whether the decision of the **Pontiac Historic District Commission** in relation to an application concerning property located at **65 Chippewa, Pontiac, MI**, should be affirmed, modified, or set aside under section 5(2) of the Local Historic Districts Act [MCL 399.205].

**BY:** Nicholas L. Bozen *n.l.Bozen*  
Administrative Law Examiner

**DATED:** October 16, 2002

The appellant will have an opportunity to present evidence and argument, and has the burden of proving that the Historic District Commission should have approved the appellant's application and issued a certificate of appropriateness or notice to proceed.

This proceeding will be conducted in accordance with procedures applicable to contested cases under chapter 4 of the Administrative Procedures Act (MCL 24.271 MCL 24.287).

IF ONE PARTY DOES NOT APPEAR AT THE HEARING, THE DECISION WILL BE BASED ON THE EVIDENCE AND ARGUMENT SUBMITTED IN WRITING BY THE PARTY WHO DOES NOT APPEAR AND THE EVIDENCE AND ARGUMENT SUBMITTED AT THE HEARING BY THE PARTY WHO ATTENDS. IF NEITHER PARTY APPEARS, THE DECISION WILL BE BASED SOLELY ON SUBMITTED WRITTEN EVIDENCE AND ARGUMENT.

**All filings should be directed to the Michigan Department of History, Arts and Libraries, Office of Regulatory Affairs, Fifth Floor, Library and Historical Center, Lansing, MI 48909; Telephone: (517) 373-1630. Adjournment requests will be granted only upon a showing of good cause. People with disabilities needing accommodations for effective participation should contact Cecilia Montalvo at (517) 373-1630, one week in advance, to request mobility, visual, hearing or other assistance.**

Issued by authority of the State Historic Preservation Review Board.



**RICHARD T. WHITE, JR.**  
Attorney and Counselor at Law  
Oakland Towne Center  
28 N. Saginaw, Suite 1008  
Pontiac, Michigan 48342

Phone: (248) 332-0550

Fax: (248) 332-8295

**FACSIMILE TRANSMITTAL**

Please deliver to: State Historic Preservation Review Board  
Michigan Historical Center  
717 West Allegan Street  
P.O. Box 30740  
Lansing, MI 48909

Re: APPEAL from the ruling of the Pontiac Historic District Commission  
65 Chippewa, Pontiac, Michigan

Number of pages: 4 including this transmittal sheet.

Notes to Recipient: Enclosed is our Appeal and letter of denial from the Pontiac Historic District Commission.

Please acknowledge receipt of this fax. Thank you

---

Date: September 17, 2002

The original will:

be sent via U.S. Mail.  
 be sent via Overnight Mail.  
 not be sent.

If you do not receive all the pages indicated, please contact Pat Chechowski at (248) 332-0550.

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Recipient's Fax Number: (517) 335-0348



**CITY OF PONTIAC  
MICHIGAN**

**MAYOR WILLIE W. PAYNE**

**DEPARTMENT OF COMMUNITY DEVELOPMENT  
OFFICE OF LAND USE & STRATEGIC PLANNING**

July 17, 2002

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Pontiac, MI. 48341

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65 Chippewa

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If you have any further questions please feel free to contact me at 248-857-5664.

Sincerely,

A handwritten signature in cursive script, appearing to read "Madhu Oberoi".

Madhu Oberoi  
Acting planning Administrator  
Office of Land Use and Strategic Planning

cc. Tom McIntyre  
Mike Wilson

51000 WOODWARD AVENUE, PONTIAC, MICHIGAN 48342  
TELEPHONE: (248) 857-5664 • FAX: (248) 857-5621

**RICHARD T. WHITE, JR.**  
**Attorney and Counselor at Law**  
**28 N. Saginaw, Suite 1008**  
**Pontiac, Michigan 48342**

**Phone: (248) 332-0550**

**Fax: (248) 332-8295**

September 17, 2002

State Historic Preservation Review Board  
Michigan Historical Center  
717 West Allegan Street  
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Lansing, Michigan 48909-0348

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Very Truly Yours,



Richard T. White, Jr.

RTW:pmc

P.S. ATTACHED IS DENIAL LETTER  
FROM PONTIAC HISTORIC DISTRICT  
COMMISSION

109 - housing  
city admin - 10 yrs back  
- letter 5 -

65  
Chippewa  
99-202-HCC

acted as real estate -  
no state or not for  
attitude -

no knowledge of h.d. - dump truck  
cost - federal guidelines

4/02  
Chippewa  
4/02

Send  
Chippewa  
4/15/05

Chippewa  
New  
65 Chippewa  
4/15/05

no pictures  
of residential  
home -

4/02 appur - const garage  
no vinyl side

He is a qualified  
contractor  
He is a state  
licensed contractor

830  
225  
213

con - 340 - cov  
oak 100 - cov  
mo 156 - cov  
596  
25  
21

2  
596  
575  
21

