

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

In the Matter of:

**ST. MARY'S MERCY MEDICAL CENTER,
formerly ST. MARY'S HEALTH SERVICES,**
Applicant/Appellant,

v

Docket No. 99-98-HP

GRAND RAPIDS HISTORIC PRESERVATION COMMISSION,
Commission/Appellee.

FINAL DECISION AND ORDER

St. Mary's Mercy Medical Center (St. Mary's or the hospital) appeals the decision of the Grand Rapids Historic Preservation Commission (the Commission), denying its application to demolish the McAuley Building (the Building). This appeal is pursuant to section 5(2) of Michigan's Local Historic Districts Act (the LHDA),¹ which provides that an applicant aggrieved by a commission's decision may file an appeal with the State Historic Preservation Review Board (the Review Board or the Board). All facts referred to in this decision are based on the Hearing Transcript, the record compiled April 26, 1999 by Hearing Officer Gary Basseur, and the remainder of the official record in this case.

Procedural Background

On or about August 31, 1998, St. Mary's filed an "Application for Certificate of

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

Appropriateness" with the Commission [Commission No. 1(20)]², requesting to raze and demolish the McAuley Building because of cost and site development considerations. On January 20, 1999, the Commission held an open meeting to formally consider the request for demolition application. At that time, the members of the Commission discussed the application, all of the information made available by St. Mary's and other interested parties, and the applicable law, after which the Commission voted to deny the application on the basis that it failed to meet any of the criteria for approval specified in the Grand Rapids Ordinances, § 5.395(6)(a)-(d). Written notice of the decision was given to the hospital one week later.

On March 25, 1999, St. Mary's submitted its appeal to the Review Board. An administrative hearing, conducted pursuant to contested case procedures set forth in Chapter 4 of the Michigan Administrative Procedures Act³ (the APA), was held on April 26, 1999, in Lansing, Michigan. Both parties filed post-hearing briefs. The Appellant also filed a reply brief.

On May 27, 1999, the Hearing Officer issued his "Proposal for Decision" in this case (the Proposal). The Proposal indicated that in the Hearing Officer's view, the Appellant had presented sufficient proofs to establish that retention of the McAuley Building would result in undue financial hardship to St. Mary's (due to events beyond its control) and was not in the interest of the majority of the community. The Hearing Officer also found that retaining

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Hearing exhibits will be abbreviated as "Commission No. ____" and "Appellant's No. ____."

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1969 PA 306, § 71 *et seq*; MCL 24.271 *et seq*; MSA 3.560(171) *et seq*.

the Building was not a detriment to a major improvement program, nor was the Building itself a safety hazard. He additionally opined that the Building was not architecturally significant, although it was historical by virtue of its age. It was the Hearing Officer's recommendation that the Commission's decision be reversed and that St. Mary's appeal be granted.

Copies of the Proposal were served on the parties and filed with this Review Board. St. Mary's did not submit any exceptions concerning the Proposal. The Commission submitted "exceptions and written arguments" (exceptions) dated June 2, 1999. A Board meeting to consider this appeal was held on June 29, 1999.

FOR THE REASONS SET FORTH BELOW, WE decline to adopt the Proposal and instead issue this Final Decision and Order affirming the decision of the Grand Rapids Historic Preservation Commission.

Issues

St. Mary's appeal is based on the following issues:

1. The McAuley Building constitutes a potential hazard to public safety.
2. The Building is a deterrent to a major community improvement project.
3. Retaining the Building will cause undue financial hardship to St. Mary's.
4. Retaining the Building is not in the interest of the majority of the community.
5. The Commission failed to consider all relevant information.
6. The Commission acted in an arbitrary and capricious manner.
7. The Commission exceeded its legal authority in denying the request to

proceed with demolition.⁴

At the April 26, 1999 hearing, St. Mary's offered 13 exhibits for admission into the official hearing record and presented testimony from six witnesses. The Commission submitted a copy of its entire "file" on the hospital's application. The file consisted of 33 separate records. The Commission also appended five more exhibits to its post-hearing brief and offered testimony from one witness, Commissioner Metz.

Findings of Fact

Uncontested Findings of Fact

The Hearing Officer's Proposal contained 95 proposed findings of fact. Other than the three exceptions discussed below, neither party contested the Hearing Officer's recommended factual findings. We therefore adopt the Hearing Officer's other 92 proposed findings. These findings are not exclusive, however. We note that our Final Decision is based on the entire official record, which includes the findings, as well as conclusions drawn from the testimony and written evidence that was presented at the administrative hearing. A discussion of contested facts that were raised in the Commission's exceptions to the Proposal follows the Summary of Facts. The Board's revisions to findings 2, 3 and 53 are discussed and noted below.

Summary of Facts

St. Mary's is located at the corner of Lafayette and Cherry Streets in Grand Rapids, Michigan. [Commission No. 1(21)] Sponsored by The Sisters of Mercy, St. Mary's

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The Appellant did not pursue this claim during the course of the administrative appeal.

operates as a non-profit organization. [April 26, 1999 Hearing Transcript (HT) 175; Commission No. 1(21)] St. Mary's provides health care to people who are unable to pay. [HT 42-43; Commission No. 1(9); Finding 7] It has been located in Grand Rapids for 106 years. [HT 163; Appellant's No. 2; Commission No. 1(21)] St. Mary's serves over 675,000 patients each year. [Commission No. 1(21); Finding 54]

The McAuley Building is located on the 11-acre Hospital Complex administered by St. Mary's. [Appellant's No. 13] It is situated in the Heritage Hill Historic District (the Historic District) and is comprised of four aged buildings joined together. [Appellant's No. 4; Commission No. 1(21) and (23); Finding 49] The oldest portion dates from 1909 and is located at the extreme north end of the McAuley Building. [HT 100; Commission No. 1(21); Finding 3] The central and largest portion of the Building dates from 1926. [HT 100; Commission No. 1(21); Finding 3] Two more buildings were added in 1951 and 1953. [HT 100; Appellant's No. 6; Commission No. 1(16); Finding 3] As early as the 1960s, St. Mary's contemplated the replacement and eventual removal of the McAuley Building. [Commission No. 1(9) and (21); Finding 48] The McAuley Building served as the main hospital building for St. Mary's until 1973. [HT 100; Commission No. 1(21); Finding 3]

At present, the McAuley Building is only 25 percent occupied. [HT 45; Commission No. 1(9) and (21); Findings 5 and 55] As recently as June of 1998, it was 60 percent occupied. [Appellant's No. 4; Findings 78-79] The McAuley Building has outlived its usefulness for most direct patient care purposes. [HT 46; Commission No. 1(9); Finding 7] It currently houses various administrative functions, as well as a pharmacy, a credit union, a staff lounge, equipment maintenance, and a temporary "wound care" service. [HT

46; Commission No. 1(21)]

The annual cost of maintaining the Building is approximately \$320,000. [HT 45; Commission No. 1(9); Findings 6 and 49] Leaving the Building unoccupied could entail annual "operating" costs of \$340,000 after closure. [HT 48, 52, 78, 161; Appellant's No. 3; Commission No. 1(5); Finding 90] If the Building were vacant, St. Mary's would still want to provide the same level of fire protection, would still heat the Building to keep the pipes from freezing, and would still pay annual amounts for utilities, insurance, general maintenance, and repairs. [Appellant's No. 3; Commission No. 1(5); Finding 20] Mothballing would also involve one-time "closure costs" of \$49,000. [Appellant's No. 3; Commission No. 1(5); Finding 90] Thus, eliminating the Building could save St. Mary's about \$300,000 yearly, exclusive of depreciation. [Commission No. 1(21); Finding 52]

The vast majority of the income of St. Mary's comes from identifiable sources, including insurance companies, the federal government, state government, commercial insurers, direct pay patients, and charitable donations from individuals in the community. [HT 43-45, 159-160] About 60 percent of its revenue comes from Medicare, Medicaid, and Blue Cross. [HT 160] However, St. Mary's is presently experiencing Medicare and Medicaid payment declines. [HT 160] St. Mary's anticipates further decreases in revenues from Medicare, Medicaid, and Blue Cross. [HT 160] In the current year, St. Mary's expects that its Medicare reimbursements will drop about 4 percent and next year will drop 2 percent more for the same business. [HT 160] Blue Cross has asked St. Mary's to take an 11 percent decrease this year, but St. Mary's hopes to limit the decrease to 5 percent. [HT 160] Altogether, St. Mary's anticipates that it will experience a \$3 million to \$4 million

decrease in reimbursements in the coming year. [HT 160] St. Mary's does not expect the anticipated revenue reduction to be offset by payments from private patients or commercial insurers. [HT 161]

The \$320,000 to \$340,000 cost to maintain or mothball the McAuley Building is roughly equivalent to the cost of just under nine to ten employees at St. Mary's. [HT 161] It also roughly represents the same amount of money that St. Mary's spends to support the McAuley Clinic (which serves HIV-infected individuals) or the Heartside Clinic (which serves poor, homeless people). [HT 42-43, 162] It represents about half the amount of money that St. Mary's spends to support the Browning & Claytor Health Center (which serves an area of 30,000 lower-income people). [HT 43, 162-163]

St. Mary's has recently made a decision to spend \$110 million for renovations. [HT 163] In the past three years, St. Mary's has purchased four buildings and would like to demolish all of them. [HT 174, 189] St. Mary's currently plans to raze Xavier Hall, which is located next to the McAuley Building but is not in the Historic District. [HT 54-55, 169, 188; Commission No. 1(9) and (13); Finding 5] At least one longtime, nearby resident felt that St. Mary's has been involved in institutional development and encroachment for years without enough concern for its individual neighbors. [Commission No. 1(9); Finding 8]

St. Mary's has undertaken extensive long-range planning, with assistance from Mercy Architectural Services (MAS) Associates, Inc., an architectural consulting firm affiliated with St. Mary's parent corporation, The Sisters of Mercy. [HT 61-62, 82; Commission No. 1(21); Findings 47, 51 and 79] MAS Associates, Inc., was involved in preparing a master site plan for St. Mary's in 1996. [HT 69; Commission No. 1(16) and

(18); Findings 46 and 56] The master plan was revised in 1998. [HT 68-69; Commission No. 1(21); Finding 47] The master planning process has lead St. Mary's to the conclusion that it would be in the hospital's best interest to demolish the McAuley Building and to "land bank" the ground area, leaving it as "green space," until other hospital-related functional needs are identified, requiring expansion in a northerly direction. [HT 70; Commission No. 1(1) and (3); Finding 31] St. Mary's refers to land underneath the McAuley Building as the "Regeneration Expansion Zone." [HT 66, 80, 85; Appellant's No. 13] However, the tentative (or non-specific) plan is that St. Mary's will not need to regenerate the hospital for about 20 to 25 years. [HT 179-180]

St. Mary's had the McAuley Building assessed by various building, engineering, and architectural experts (including Ehler/Bryan, The Ritchie Organization, MAS Associates, Inc., and Rockford Construction Company) for use as administrative offices. [Appellant's No. 4, 5 and 6; Commission No. 1(21); Finding 51] These consultants determined that to use the McAuley Building for offices, it must be substantially improved, as follows:

- The HVAC system must be replaced.
- The Building's plumbing system must be replaced.
- The sprinkler system should be upgraded.
- The electrical system should be upgraded.
- Emergency power must be upgraded.
- The exterior walls of the 1926 portion should be replaced. [HT 74-77, 104-105, and 116-119; Appellant's No. 4, 6 and 7; Commission No. 1(21), Finding 51]

One of the consultants for St. Mary's, the Rockford Construction Company (Rockford), estimated that the cost of restoring the McAuley Building for administrative (or general) office use would be at least \$20.5 million (or \$132 per square foot). [HT 149, 152;

Appellant's No. 12; Commission No. 1(22); Finding 53] However, Rockford posited no exterior wall replacement; only retucking and minor repairs. [HT 148-149] Rockford also estimated that the cost of renovating the Building for residential use would be considerably higher than restoration for office use, in that expenditures for extra materials for kitchens, bathrooms, and other personal living quarters would be required. [HT 150-151] St. Mary's concluded: that the office reuse alternative was not viable because the interior columns and load-bearing capacities were not consistent with contemporary office uses [HT 120-121]; that a lack of parking was a substantial impediment to office or residential reuse of the Building [HT 48-49]; that it was poor stewardship to consider a \$20.5 million renovation with no apparent benefit to the hospital, and that it could not afford that expenditure. [HT 170-171; Commission No. 1(9)] St. Mary's did not seriously pursue with Rockford the possibility of financing the restoration with federal historic preservation tax credit incentive dollars. [HT 92-93, 154-155, 181-184; Commission Attachments D and E; Findings 93-95]

St. Mary's consulted with a real estate broker, S. J. Wisinski & Company, regarding whether there would be any market for the McAuley Building. [HT 58-60; Appellant's No. 8; Commission No. 1(11); Finding 91] The company's president, Stanley J. Wisinski, III, wrote that in his professional opinion, the property had no real market value. [Appellant's No. 8; Commission No. 1(11); Finding 91] He also wrote that the McAuley Building would be extremely difficult to sell or lease with no parking available. [Appellant's No. 8; Commission No. 1(11); Finding 91] St. Mary's never listed the property for sale or lease. [HT 60, 171]

As for other marketing efforts, one company wanted to store records there. [HT 159] St. Mary's replied to a city official (Mr. Hoyt) that the hospital would consider having Ambassador Secchia do something with the Building. [HT 159; Finding 92] St. Mary's also had discussions with another charitable organization, Dwelling Place of Grand Rapids, Inc. (Dwelling Place), about that organization using the Building for residential purposes. [HT 159; Appellant's No. 11; Commission No. 1(7) and (8); Finding 92] However, Dwelling Place found that the feasibility of its residential reuse project would require that St. Mary's be willing to donate the second through the eighth floors of the Building to the project, with St. Mary's also renovating the first floor for St. Mary's own use. [Appellant's No. 11; Commission No. 1(8); Finding 92] Simply moving the Building elsewhere was not considered feasible. [HT 38]

In early July of 1998, the Commission engaged the services of an independent expert to evaluate the structural integrity of the McAuley Building as to its feasibility for continued use. [Commission No. 1(13), (14) and (28); *Findings* 65-69] Timothy J. Hoffman, P.E., Structural Consultant, Innovative Engineering Associates, personally inspected the McAuley Building and prepared an engineering evaluation of the Building's structural integrity. [HT 156-157; Commission No. 1(28); Finding 65] Hoffman inspected each of the four sections of the McAuley Building and concluded that basically, all four portions were in "fair" to "good" condition given their age, and all were structurally sound. [Commission No. 1(28); *Findings* 66-69] He also judged all four portions to be "safe for continued use." [Commission No. 1(28); Finding 69] Although the primary structural engineer for St. Mary's (George Ehlert) was critical of Hoffman's evaluation, Ehlert agreed that the Building was

not unsafe. [HT 129; Appellant's No. 7; Findings 70-78] Other than some pre-1950's electrical equipment which is hazardous to service personnel, St. Mary's is not aware that the Building poses any present safety risk to anyone. [Commission No. 1(23)] The problem with deteriorating brick-on-masonry wall-facings can still be remedied by standard repair practices, such as retucking the mortar joints. [HT 148-149; Commission No. 1(7)]

The Historic District was established in 1973. [Grand Rapids Ordinances, § 5.411; Finding 1] The Historic District presently includes well over one thousand properties. [Commission Attachment C 1] The earliest portion of the McAuley Building dates from 1909. [Appellant's No. 6; Commission No. 1(16); Finding 3] The second oldest and largest portion dates from 1926; it is nine stories high, has a gable clay tile roof, and contains a high central tower and a cupola. [Appellant's No. 6; Commission No. 1(16); Finding 3]

With respect to the historical nature of the Building, the exterior masonry/brick walls and their detailed design are a historic component that gives the Building much of its historic "character". [Appellant's No. 6; Commission No. 1(16)] Architecturally, the Building is the most significant non-residential structure located in the Historic District. [Commission No. 1(7) and (9); Finding 7] As such, it is typical of the monumental hospital buildings of its era; built with quality materials, containing a distinctive tower, and reflecting the "modern" style of the 1920s. [Commission No. 1(7)] The Building is the only one of its kind in Grand Rapids. [Commission No. 1(7)] The Building also played a significant historical role as the main facility for the sole Catholic hospital in Grand Rapids. [Commission No. 1(7)] The Building has been (and continues to be) an integral part of the Heritage Hill

neighborhood, the Lafayette streetscape, and the skyline of Grand Rapids. [Commission No. 1(7) and (10)] The expert opinion of at least one professional historic preservation consultant (Metz) was that the McAuley Building, and its several manifestations constructed at different times, is a historic building. [HT 39-40, 184]

At the public hearing held on January 6, 1999, St. Mary's CEO David Ameen, as well as Attorney Randall W. Kraker and Sister Mary Maurita Sengelaub, addressed the Commission on behalf of St. Mary's. [Commission No. 1(9); Finding 4] Several other individuals also addressed the Commission at the public hearing. [Commission 1(9); Findings 8-15] Those who spoke in favor of demolition included Rick Reichman, Tim Ollmann, and David Hathaway, whose personal opinion of the Building was that it was not historic, just bits and pieces. [Commission No. 1(9); Findings 9, 12 and 15] Those who spoke against the application included Robert Ball (President of the Heritage Hill Association), Rebecca Smith-Hoffman (President of the Kent County Council for Historic Preservation), Pat VanDyke (of the Fairmont Square Historic Preservation Study Committee), Chuck Wylie, Curtis Pettijohn, Tom Stankiewicz, Victoria Mullin, and Susie Logie. [Commission No. 1(9); Findings 8, 10, 11, 13 and 14] Commission Chair Logan closed the "public hearing" portion of the meeting and a discussion about the information presented followed.

The Commission convened a regular meeting on January 20, 1999. [Commission No. 1(1)and (3); Finding 27] There was a consensus among the Commissioners that the McAuley Building was both architecturally and historically significant and that it contributed to the historic character of the Historic District. [Commission Nos 1(1) and (3); Finding 29]

Following the discussion, Commissioner Metz moved to deny the application to demolish the McAuley Building:

Ms. Metz MOVED to deny the Notice to Proceed for demolition of Saint Mary's Health Services McAuley Building as the application does not meet the conditions outlined in the ordinance (Sec. 5.395(6)(a) - (d)): As to section A, there has been no evidence presented that the resource constitutes a safety hazard to the public or its occupants. As to [se]ction B, no definite major improvement program has been presented in the application, which would be deterred by retaining the resource which also means that planning and zoning approvals, financing and environmental clearances for such an improvement program could not have been obtained. As to section C, while financial hardship has been claimed in the application, the hardships were not caused by government action, an act of God, or events beyond the owner's control; and all feasible alternatives including the sale of the building, have not been attempted and exhausted by the owner. St. Mary's has not demonstrated undue financial hardship. As to section D, the Commission finds that retaining the resource is in the interest of the majority of the community, as it has significant architectural and historical significance. This motion is to include, by reference, all materials submitted to the file in relation to this request. SUPPORTED by Ms. VanScoy. All in favor. Motion carried.

[Commission No. 1(1), (2) and (3); Finding 44]

On or about January 27, 1999, the Commission's recording secretary sent St. Mary's a written "Notice of Denial." [Appellant's No. 1; Commission No. 1(2); Finding 45] The notice set forth the entire text of the motion to deny, including the reasons for denial, and also contained information about the rights of St. Mary's to appeal to the Review Board and possibly later to the Kent County Circuit Court. [Appellant's No. 1; Commission No. 1(2); Finding 45]

Contested Findings of Fact

St. Mary's filed no exceptions regarding the Hearing Officer's recommended findings. In its exceptions of June 2, 1999, the Commission objected to portions of three of the proposed findings that had been recommended by the Hearing Officer. Section 85 of the APA⁵ provides that if a party submits proposed findings of fact that would control a decision or order in a case, then the final decision and order must include an express ruling on each proposed finding. An express ruling follows regarding each of the Commission's three fact-based exceptions.

A. Buildings in District within St. Mary's Hospital Complex

The Hearing Officer found that "[the McAuley Building] . . . is the only building in the St. Mary's 11-acre Hospital Complex that is located in the (Historic) District." [Proposal, 18] The Commission stated on page 5 of its exceptions:

The McAuley Building is not the only building on the St. Mary's 'campus' that is within the Heritage Hill Historic District. (It is within the District as shown on the Appellee/Commissions Attachments C-1 and C-2 as are parts of other buildings on the west side of Lafayette and all of the

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1969 PA 306, § 85; MCL 24.285; MSA 3.560(185).

hospital owned land and buildings on the east side of Lafayette. The McAuley Building is one of the furthest west buildings still in the District. The District's western boundary is immediately to the west of the McAuley Building).

In view of the map evidence admitted into the official hearing record [Commission Attachment C 1-2], we find that the Commission's exception with respect to this factual issue is accepted. The McAuley Building is not the only building belonging to St. Mary's that is located within the Historic District.

B. Location of McAuley Building

The Hearing Officer found that "[the McAuley Building is located on the northeast corner of the St. Mary's Hospital Complex, bounded by Cherry Street to the north and Lafayette Street to the south." [Proposal, 18] The Commission, on page 6 of its exceptions, stated:

The McAuley Building is not located on the northeast corner of the St. Mary's complex. It is across Lafayette avenue from another older St. Mary's structure, St. Luke's and a new building (entirely within the Heritage Hill Historic District, as is St. Luke's), the Peter M. Wege Center for Health and Learning, located across the street from the McAuley Building at 300 Lafayette SE. (The Wege Center is referred to in the Proposal for Decision at paragraph 5 on page 19).

In view of the map evidence in the official hearing record [Commission Attachment C 1-2], the Board finds that the Commission's second factual exception with respect to the Proposal is also accepted.

C. Proceeding with Planned Projects

The Hearing Officer found that "[e]limination of the McAuley Building would permit St. Mary's to proceed with planned projects" (emphasis added) As to this proposed

finding, the Commission argued at page 6 of its exceptions:

Elimination of the McAuley Building would not allow St. Mary's to proceed with planned projects. There are no planned projects for the land upon which the McAuley Building stands. At most, there are potential projects. Mr. David Ameen, the Chief Executive Officer of St. Mary's testified as to two potential uses - as an office building or a cancer hospital. At most, according to Mr. Ameen, any plans for the land upon which the McAuley Building sits are tentative and not specific. The tentative plan is to regenerate the hospital in 20 or 25 years. (See pages 179-180 of the transcript of the hearing before Hearing Officer Brasseur). Before the Grand Rapids Historic Preservation Commission, Mr. Ameen testified that St. Mary's had '. . . no plans to use the McAuley land for parking, rather for the regeneration of the main hospital campus in the year 2010 or beyond.' (Emphasis in original.)

With respect to this exception, the Commission misunderstood the Hearing Officer's finding. The finding in question (Proposal Finding No. 53) was a restatement of an argument set forth on page 4 of the St. Mary's site development plan (dated 9/4/98), sent by St. Mary's to the Commission as an attachment to the application for demolition. [See Commission No. 1(21)] Consequently, the finding was not to the effect that the "elimination of the Building would allow planned projects to proceed." Rather, it was a re-articulation of a written statement by St. Mary's to that effect.

Based on the evidence in the record, there is no serious dispute regarding whether St. Mary's has formulated a definite plan for the land under the McAuley Building. David Ameen, who is the President and Chief Executive Officer (CEO) of St. Mary's, and also Peter H. Skiles, who serves as the Director of Operations for St. Mary's, both testified that the area (or space) under the McAuley Building would be "land banked" for about 20 to 25 years. [HT 70, 89, 179-180] The Commission's third exception is hereby accepted.

Conclusions of Law

In 1970, the Legislature passed the LHDA,⁶ which is the enabling law that allows local units of Michigan government, such as the City of Grand Rapids, to adopt their own local historic preservation ordinances. In 1993, the City of Grand Rapids adopted its current Historic Preservation Commission Ordinance, which was modeled after the most recent version of the LHDA, amended in 1992.⁷ Grand Rapids Ordinances, § 5.395(6) addresses the undertaking of work,⁸ including demolition, within the historic districts of Grand Rapids. That section provides:

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

- (a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.
- (b) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.
- (c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the

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1970 PA 169, § 1, *et seq*; MCL 399.201 *et seq*; MSA 5.3407(1) *et seq*.

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1992 PA 92.

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Grand Rapids Ordinances, § 5.393(19) defines "work" to mean construction, addition, alteration, repair, moving, excavating, or demolition. (Emphasis added)

historic district, have been attempted and exhausted by the owner.

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

I. Hazard to Safety

In its claim of appeal filed on March 25, 1999, St. Mary's first asserted that the McAuley Building constitutes a "potential" safety hazard. To support this assertion, St. Mary's pointed to information in the report prepared by The Ritchie Organization noting the poor condition of certain electrical equipment [Appellant's No. 4; Commission No. 1(23)] and to the Ehlert/Bryan analyses, which noted the long-term degradation of the exterior brick walls, arguably making them unacceptable for continued long-term use. [Appellant's No. 6; Commission No. 1(16)] However, St. Mary's also conceded that the Building was not a current safety hazard.⁹ The hospital added that its desire was to raze the Building to ensure that it never became a serious safety hazard to the community.

The ordinance requires a finding that "the resource constitutes a hazard to the safety of the public or the structure's occupants." Evidence in the hearing record shows that the McAuley Building is not presently a safety hazard to its occupants or to the public. The city's independent structural engineer (Hoffman) reported that the entirety of the Building is both structurally sound and "safe for continued use." [Commission No. 1(28)] Although the hospital's engineer was critical of Hoffman's methods, he too agreed that the Building was "not unsafe." [HT 129] St. Mary's witness Rick Reichman, MAS Associates, Inc., testified that the Building was not out of compliance with the code. [HT 91]

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See Appellant's post-hearing brief, at p 26.

Furthermore, St. Mary's cited no legal authority to support its contention that a potential hazard to the safety, which may (or may not) materialize at some point in the future, constitutes a legal basis for determining compliance with § 5.395(6)(a) of the ordinance.

In view of the record, we find, and agree with the Commission that, the McAuley Building is not a present hazard to the safety of its occupants or the public.

II. Deterrent to Major Improvement Program

St. Mary's claims that its application should have been approved because the McAuley Building is a deterrent to a major community improvement project. The language of § 5.395(6)(b) sets forth a three-pronged test. To qualify for a demolition permit, an applicant must show: 1) that the resource is a deterrent to a major improvement program that will be of substantial benefit to the community, 2) that the applicant has obtained all necessary planning and zoning approvals, environmental clearances, and financing, and 3) that demolition is necessary to substantially improve or correct the problem.

St. Mary's asserts that recent improvements to its campus have been of substantial benefit to the community, because St. Mary's is one of the three primary care givers in the community, with a special emphasis on meeting the health care needs of the poor. [Commission No. 1(9)] St. Mary's also asserted that the McAuley Building sits on the only land available on its campus for future hospital "regeneration." [HT 80] St. Mary's stated that both short- and long-term campus renewals would be impossible without eliminating the McAuley Building. [Commission No. 1(21)]

We agree with the Commission that St. Mary's failed to demonstrate that the Building is a deterrent to a major improvement program that is of substantial benefit to the

community. The only planned "major improvement program" shown on the record would be to "land bank" the ground underneath the McAuley Building for about 20 to 25 years. [HT 70, 89, 179-180] The Master Site Plan identifies the McAuley site as a "Regeneration/Expansion" zone. [HT 66; Appellant's No. 13]

Moreover, St. Mary's submitted no information either to the Commission or this Review Board to establish that it had complied with all (or any) of the requirements of § 5.395(6)(b) regarding the necessary approvals, clearances, and financing either with respect to the McAuley Building itself or the land underneath it, or with respect to any other possible construction or other project at the Hospital Complex.

Since St. Mary's failed to prove the existence of a major improvement program and to furnish the required approvals, it is unnecessary to determine whether retention of the Building would deter the alleged program and whether demolition would correct it.

III. Undue Financial Hardship

The next purported basis for relief concerns the issue of "undue financial hardship." This criterion is also comprised of three elements. To qualify for a demolition permit under this test, an applicant must show all of the following: 1) that retaining the resource will cause the owner undue financial hardship when the hardship was created by a governmental action, an act of God, or other events beyond the owner's control, 2) that the owner has attempted and exhausted all feasible alternatives to eliminate the hardship, such as offering the resource for sale or moving it elsewhere within the historic district, and 3) that demolition is necessary to substantially improve or correct the undue financial hardship.

A. Undue Hardship Beyond Control

Concerning the first part of the undue hardship test, there was evidence that St. Mary's was incurring annual expenses of \$320,000 to operate the Building and could possibly incur costs of up to \$340,000 or more yearly to mothball the Building. There was also evidence that renovation of the Building for general office use would cost over \$20 million. St. Mary's argued that such expenditures were "undue" because St. Mary's itself had no use for the Building and spending even \$300,000 might mean the closure of beneficial programs serving either HIV-infected individuals or homeless people. [HT 162]

At the administrative hearing, St. Mary's offered evidence that third party providers (such as Medicare, Medicaid and Blue Cross) now expect health care services (like St. Mary's) to absorb reductions in reimbursement -- in St. Mary's case, a possible reduction of \$3.5 million yearly. [HT 159-160] St. Mary's also argued that the Building's "excessive" operating and capital improvement costs, and "excessive" exterior wall repair costs (stemming from age and construction methodology), were conditions that the hospital did not create.

It is our determination that St. Mary's failed to prove financial hardship that is undue and not in the hospital's control. St. Mary's claims that it would cost slightly over \$300,000 yearly to retain the Building either in operation or mothballed. However, although expenditures of \$300,000 often represent "hardship" and "adversity" to many property owners, such expenditures do not always represent hardship to owners *per se*. Indeed, CEO Ameen testified before the Hearing Officer that St. Mary's had recently made a decision to start a \$110 million renovation plan [HT 163] and had purchased four buildings

in the past three years. [HT 174] Ameen was reluctant to give details about the impact of these building purchases on the hospital's cash flow, except to intimate that the purchases would save St. Mary's money on parking. [HT 174]

Here, we must also point out that the hospital's financial evidence¹⁰ focused on \$3.5 million in diminishing reimbursements from third party providers and that St. Mary's was not responsible for that loss. [HT 160] St. Mary's did not suggest that this \$3.5 million revenue reduction would affect the manner in which it furnished services. However, St. Mary's did suggest that spending \$300,000 on the Building might jeopardize one or two of its community outreach programs, or perhaps staffing. [HT 161-163]

Significantly, even the most detailed financial evidence from St. Mary's merely reflected only part of the income and part of the expenses of St. Mary's. Without receiving a more comprehensive picture of the hospital's income, expenses, and available financial resources, there is no way for any reviewing body to adequately evaluate assertions involving alleged financial hardship. In this regard, CEO Ameen failed to give the Commission any specifics about the number of dollars involved, and he indicated he did not even tell the Commission about the "scope" of his fiscal concerns. [HT 173-174] Moreover, St. Mary's gave this Board no evidence regarding its overall financial condition, or that of its parent organization, The Sisters of Mercy. Also, St. Mary's did not argue that its overall financial condition (its "ability to pay") was irrelevant to determining whether

¹⁰ It should be observed that St. Mary's did not present figures or detailed information about the extent of reductions in third party payments to the Commission. [HT 175-176]

Building retention would actually cause a financial hardship. The obligation to furnish documentation rests squarely with St. Mary's.

In addition, we are also concerned that St. Mary's overstated the annual costs of "mothballing" the Building. St. Mary's asserted that the McAuley Building must be heated in order to maintain its fire system, and that other systems (such as water) would also have to be maintained. We find that a more reasonable definition of "mothballing" would be for the owner to turn everything off; in other words, for the owner to drain all the water pipes and board up all the windows. Therefore, the true cost of mothballing should only be the cost of keeping a roof over the structure and the exterior in adequate repair. It is highly unlikely that this would amount to \$340,000 each year. Mothballing is merely the bare bones stabilization of a resource.

As for whether the hardship (if any) was caused by an act of God, a governmental action, or another event beyond the owner's control, St. Mary's also argued that events beyond its control caused the hardship, including the decrease in third party payments. [HT 159-161] In a similar vein, St. Mary's also argued that the "passage of time" and "poor design" both had an adverse effect on the McAuley Building. St. Mary's added that it created none of those conditions and that the conditions resulted in financial hardship to the hospital.

We believe these arguments on causation to be without merit. St. Mary's never presented complete information on its financial status. Such a presentation should have included information about the fact that within the past three years, St. Mary's had purchased four buildings. [HT 174] Information about the purchase prices of those

structures (assuming they were purchased), and where the purchase money came from (a loan or cash on hand), is clearly relevant to the "causation of economic hardship" issue. Had moneys been diverted from those purchases to fund McAuley Building retention or repair efforts, there would be no hardship. Simply put, St. Mary's made its own choices about capital expenditures, and such choices must have impacted the availability of funds to devote to the McAuley Building.

With respect to whether retaining the Building is "excessively" expensive due to wear and tear and an obsolete design, it must again be observed that St. Mary's itself has been the sole caretaker of this Building. St. Mary's has been in its present geographic location for 106 years. Pre-1950's electrical systems and similar equipment in the Building could have been upgraded long ago, had St. Mary's chosen to do so. It did not. With regard to the deteriorating brick-facing matter, the hospital's experts were themselves divided. One expert (Ehlert) would prefer to reface the facade, whereas another (Rockford/Ollmann) would simply perform ordinary maintenance, *i.e.*, the retucking of mortar joints. The city's independent expert (Hoffman) agreed with Ollmann's approach. [Commission No. 1(28)] St. Mary's clearly has the ability to select the inexpensive repair option, thereby obviating the problem of "excessive expense" associated with exterior wall resurfacing.

As for whether the obsolete design problem was beyond the hospital's control, presumably St. Mary's itself chose the designs used in each of the four portions of the McAuley Building. St. Mary's has owned the property for 106 years and clearly owned it when the four portions were designed and constructed. [Appellant's No. 2] The designs in question were no doubt "state of the art" for their eras. [Commission No. 1(7)] However,

St. Mary's cannot reasonably complain now that it had nothing to do with its choices of design and the progressive obsolescence of systems in the McAuley Building. There is nothing in the record to establish that since 1973, when most hospital functions were transferred to the new primary hospital, St. Mary's has done anything to upgrade or modernize the McAuley Building. At most, St. Mary's performed routine maintenance on the Building.

Finally, the hospital's conclusion that the McAuley Building cannot function today as a "contemporary office building" is far from established on the record. The City of Grand Rapids has been experiencing a "rebirth" of adaptive reuses in its older neighborhoods, including the Heritage Hill area. [Commission No. 1(9) and (10)] Structures from the McAuley Building era are being rehabilitated today. [Commission No. 1(1), (3) and (10)] Despite the Building's cosmetic and other problems, the McAuley Building remains a solid, safe and useable structure. [Commission No. 1(10) and (28)]

In summary, St. Mary's failed to prove that its budget cannot reasonably absorb either operating or mothballing expenses at present. In other words, St. Mary's offered no comprehensive financial projections or cash flow analyses proving that retention is not economically viable. It must be further concluded that no act of God, government action, or event beyond the owner's control was responsible for the "financial hardship" alleged. Even if it were conceded that the Medicaid cuts are events beyond St. Mary's control, there simply is no frame of reference for assessing the impact of these alleged reductions on St. Mary's overall financial situation.

B. Exploring and Exhausting Alternatives

The second part of the "undue financial hardship" test requires owners to attempt and exhaust all feasible alternatives to eliminate the hardship, such as offering the resource for sale or moving it elsewhere within the Historic District. Even when undue financial hardship is clearly shown, owners must still comply with the second requirement to qualify for permits.

St. Mary's claimed that selling the property was not a viable option, asserting first, that the Building had no real market value due to an obsolete design, the excessive costs of renovation, and a lack of parking. Second (and more importantly), St. Mary's further indicated that the McAuley Building was an integral part of the Hospital Complex and as such, it made no sense for someone else to occupy the Building (or the land beneath it) when the hospital was already "landlocked." St. Mary's asserted that there was no other readily available land nearby for purposes of hospital expansion or regeneration. Both parties agreed that it was not feasible to move the Building elsewhere in the Historic District. [HT 36-38]

Although St. Mary's presented some evidence of its exploration of alternatives -- examining the costs of mothballing or renovating [HT 171]; replying to a city official regarding possible residential reuses [HT 159]; and having conversations with employees from Dwelling Place [HT 159] and a real estate agent [HT 58-60, 71] -- the record as a whole shows that St. Mary's intends to keep the land for its own use. [HT 179] St. Mary's did not exert any serious effort to offer the Building for sale at market value. Indeed, the McAuley Building's "fair" market value was never established on the record (or even

alluded to by St. Mary's) other than in Wisinski's letter, which posited that the McAuley Building "has no real market value". [HT 59-60; Appellant's No. 8; Commission No. 1(16)] However, to say that a building with land near downtown Grand Rapids has no market value is a highly suspect statement which clearly lacks credibility. Again, St. Mary's never listed the Building for sale or lease. [HT 171]

Obviously, there remain clearly identifiable, feasible alternatives that St. Mary's has yet to explore. Listing the Building for sale at a fair market price is one of them. St. Mary's made a point of eliciting testimony that the Commission does not always require resource listing. [HT 38] Yet, the fact that not every owner must list every property does not mean that St. Mary's is exempt from the obligation to list.

Whether listing may be avoided or not depends on the circumstances. An example of a structure which need not be listed is one which is unquestionably suitable for removal to another site within the district. However, the McAuley Building, given its size and nature, is clearly not such a structure. [HT 38] On the record, it appears that the reason the Building was not listed was that St. Mary's really does not want to sell it. Listing the Building at a fair price would reveal, once and for all, whether the Building actually has a market value and whether any viable interest exists in the community in alternative uses. Should that not prove to be the case, then the hospital's argument for demolition would become all the stronger. Listing is clearly appropriate under the circumstances established before us.

We must also observe that St. Mary's said it could not afford the \$20.5 million cash necessary to renovate the Building for general office purposes. [HT 170-171] There are

at least three problems with this statement. First, St. Mary's has already begun a \$110 million renovation plan. [HT 163] St. Mary's failed to show why some of those moneys could not be diverted to a McAuley project. Second, no mention was made of any effort to do what most large organizations do when faced with the need to raise capital for construction needs, *i.e.*, explore bank financing. Third, the efforts of St. Mary's to explore (much less exhaust) the possibility of securing historic preservation moneys have been all but non-existent. Regarding this point, one of the hospital's engineers (Ollmann) testified that he asked Rockford's financial staff whether the 20 percent federal historic preservation tax credit was available; however, he received a quick negative answer and did not explore it further. [HT 154-155]

However, Jennifer Metz, who is a professional in securing historic restoration project financing by means of marketing tax credit incentives, testified on behalf of the Commission that the McAuley Building would qualify for federal preservation tax credit financing since it was located in a historic district and was a contributing resource. [HT 181-184; see Commission Attachments D and E] She added that even non-profit organizations like St. Mary's can package the 20 percent tax credit available under federal law,¹¹ so as to finance historic rehabilitation projects. An additional 5 percent credit was recently made available by the state.¹² [HT 181-184]

¹¹

See 26 USC 47(a)(1) and (2), and 26 CFR Part 1.

¹²

See 1975 PA 228, § 39c, as added by 1998 PA 534, MCL 208.39c; MSA 7.558(39c), and 1967 PA 281, § 266, as added by 1998 PA 535, MCL 206.266; MSA 7.557(1266).

In conclusion, we find, and agree with the Commission, that St. Mary's has not demonstrated undue financial hardship. Financial hardship itself was not demonstrated, nor was the alleged hardship shown to have been caused by an act of God, governmental action or other events beyond the owner's control. In addition, St. Mary's has yet to fully explore and exhaust all feasible alternatives to razing the McAuley Building.

IV. Majority Interest of Community

With respect to the "community interest" test in § 5.395(6)(d), the Commission determined that retaining the McAuley Building was in the interest of the majority of the community because of its considerable architectural and historic significance. [Appellant's No. 1; Commission No. 1(2)] St. Mary's disagrees with the Commission and argues that the Building lacks any real historic value. We disagree.

Grand Rapids Ordinances § 5.395(6)(d) requires two determinations: 1) whether retaining the resource is not in the interest of a majority of the community, and 2) whether demolition would substantially improve the situation. Section 2 of the LHDA¹³ declares that historic preservation is a "public purpose" and further provides :

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

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

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

¹³

1970 PA 169, § 2; MCL 399.202; MSA 5.3407(2).

- (c) Foster civic beauty.
- (d) Strengthen the local economy.
- (e) Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the local unit and the state.

Furthermore, the United States Supreme Court has reaffirmed the principle that "[s]tates and cities may enact land use restrictions or controls 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 Commission's Vice-Chair, Jennifer Metz, who holds a master's degree in historic preservation and is certified as an architectural historian [HT 34, 39], testified that the McAuley Building is a significant one and has a high degree of architectural and historic integrity. [HT 40, 184] She made similar statements at the Commission meeting held on January 20, 1999 [Commission No. 1(1) and (3)], and also testified that the resource is clearly located in the Historic District. [HT 185] Other evidence in the hearing record also supports the Commission's argument on this question. A letter from Robert Ball, President of the Heritage Hill Association, states that the McAuley Building "is architecturally the most significant non-residential structure located in the nationally and locally designated Heritage Hill Historic District"; that the Building is typical of a period of monumental hospital buildings of its era, built with quality materials, tall, with a distinctive tower, reflecting the "modern" style typical of the 1920s; and that the McAuley Building is the only one of its kind in all of Grand Rapids. [Commission No. 1(7)] In correspondence dated January 6, 1999, Rebecca Smith-Hoffman, President of the Kent County Council for Historic Preservation,

wrote that the demolition of the McAuley Building would remove "an architecturally important contributing building from the fabric of the Heritage Hill Historic District" and would also "destroy a visual landmark of the skyline of Grand Rapids." [Commission No. 1(10)] On January 6, 1999, Ms. Pat VanDyke, who works with the Fairmont Square Historic District Study Committee, told the Commission that the McAuley Building is one of the "oldest and most architecturally distinct buildings" in its area. [Commission No. 1(9)]

Furthermore, at least one of the witnesses for St. Mary's also acknowledged the historic and architectural significance of the McAuley Building. George Ehlert, in a letter to MAS Associates, Inc., dated November 5, 1996, wrote on page 4:

We recognize the Community's concerns regarding the historical nature of this building. Unfortunately, the exterior walls and their detailed design are the very component that provides much of the Building's "character". It is this component that is among the most obsolete characteristics of the building. If the building were to be upgraded for future hospital or medical use, this historical component would be demolished in the process, and replaced with new, re-built walls. [Appellant's No. 6; Commission No. 1(16) (emphasis added)]

Arguably, the only expert evidence in the official record is to the effect that the McAuley Building possesses historic and architectural significance. We therefore find, and agree with the Commission's conclusion, that the McAuley Building possesses considerable historic and architectural significance. Its retention is therefore in the interest of the majority of the community,

St. Mary's asserts that retaining the McAuley Building is not in the interest of the majority of the community because St. Mary's itself is a community resource.¹⁴ St. Mary's

¹⁴

See Appellant's post-hearing brief, at p 23.

also implies that the community interest test involves balancing the community interests of historic preservation against health care and that the Commission did not properly analyze the community interest standard when denying the application.¹⁵ Although the Hearing Officer concluded that razing the Building was in the majority community interest, he also observed that the record contains evidence of strong opposition to the proposed demolition.¹⁶ [Commission No. 1(6), (7), (9), and (10)] In so concluding, we find that the Hearing Officer misapplied the applicable ordinance.

Retaining historic resources is the community interest standard within established historic districts. Here, except for the obvious benefit to St. Mary's itself, the hearing record appears devoid of evidence that the majority interest of the community is somehow not served by the retention of this Building. Indeed, the primary evidence from St. Mary's on this issue consisted of copies of editorials which appeared in *The Grand Rapids Press*, and in another newspaper, supporting the demolition request. [Appellant's No. 9 and 10] Needless to say, the probative value of a newspaper article, much less the personal opinion of a newspaper editor, is highly questionable.

We therefore find that St. Mary's failed to demonstrate that retaining the Building is not in the majority community interest.

V. Failure to Consider All Relevant Information

The next issue for the Review Board's consideration is whether the Commission

¹⁵

See Appellant's post-hearing brief, at p 25.

¹⁶

Proposal, p 60.

failed to consider all relevant information when denying the demolition request.

A review of the record discloses no evidence to prove that the Commission failed to consider all of the information presented to it in connection with the application to demolish. Contrary to the hospital's position, the evidence shows that the Commission did everything in its power to help St. Mary's prepare and submit adequate justification for (and documentation to support) its application for demolition. The evidence indicates that as far back as 1996, the Commission accepted documents and information from St. Mary's on the proposed demolition project. [Commission No. 1(15), (16), (17) and (18)] The record also reveals that the Commission scheduled a public hearing on the application and afforded St. Mary's and its representatives an opportunity to make statements (and to present whatever supplemental materials they wished to) in support of the application at that time. [Commission No. 1(8) and (9)]

In point of fact, the Commission delayed its first scheduled public hearing on the application from November 18, 1998 to January 6, 1999, at the request of St. Mary's, precisely to enable St. Mary's to better prepare for the hearing. [Commission No. 1(unnumbered sub-exhibit)]. Moreover, the Commission tabled any action at the close of the public hearing to afford its members further time to review and reflect upon the information furnished. [Commission No. 1(9)] Indeed, the Commission later affirmatively took note of the information presented by St. Mary's as to the age of portions of the Building, the costs of alternative renovations, the lack of parking, and the costs for mothballing. [Commission No. 1(1) and (3)] Furthermore, Commissioner Metz testified that she personally reviewed and considered all of the information submitted by St. Mary's.

[HT 34-36] Simply put, the record fully supports the conclusion that the Commission weighed all of the relevant information that was presented by St. Mary's.

In consideration of the record as a whole, it is concluded that this allegation of Commission error is without merit and must therefore be rejected.

VI. Arbitrary and Capricious Manner

St. Mary's final argument -- that the Commission acted in an arbitrary and capricious manner when denying the application at issue -- is completely unsupported by the evidence in the record. St. Mary's pointed only to various pages in a "legal brief," plus purported (but not documented) efforts by Commissioners to resolve the hospital's concerns through alternative methods, as evidence of capricious conduct on the part of Commission members. Arguments from attorneys in briefs do not constitute competent evidence for the purposes of this proceeding.

The competent evidence in the hearing record demonstrates that the Commission did give rational and discerning attention to the application and information supplied by St. Mary's (and by other members of the community) and that the Commission appropriately applied the legal criteria to the information made available to it. [Commission No. 1(1) and (3)] Thus, the hearing record as a whole (including particularly the minutes of the January 20, 1999 meeting [Commission No. 1(1) and (3)]) reflects the systematic and careful consideration of each individual criterion set forth in § 5.395(6) of the Grand Rapids Ordinances, in light of the information presented. We find that the Commission's determination regarding the demolition application was in no way arbitrary, capricious, or otherwise biased.

Final Order

In view of the record as a whole, including all pleadings and other submissions, and in light of the competent, material and substantial evidence entered into the entire official record made in this matter, and for the reasons articulated above in this Final Decision, we, the Review Board, hereby

ORDER that the appeal submitted by St. Mary's Mercy Medical Center is hereby DENIED and the decision of the Grand Rapids Historic Preservation Commission is hereby AFFIRMED.

IT IS FURTHER ORDERED that all proposed and draft decisions and orders are hereby rescinded in favor of this, the Review Board's Final Decision and Order in this matter.

IT IS LASTLY ORDERED that true copies of this Final Decision and Order shall be mailed or otherwise delivered to all parties, and to their respective attorneys of record, immediately, or in any event, as soon as is practicable.

Dated: October 28, 1999

By: Jennifer L. Radcliff
Jennifer L. Radcliff, President
State Historic Preservation Review Board

Note: Section 5(2) of the LHDA, cited above, provides that an appellant aggrieved by a Review Board decision may appeal the decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under section 104(1) of the APA [MCL 24.304; MSA 3.560(204)], appellants must file their appeals with the circuit court within 60 days after the date of the mailing of notice of the Final Decision and Order.

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
KENT COUNTY

SAINT MARY'S MERCY MEDICAL CENTER,

Petitioner,

Case No. 99-06962-AA

v

STATE HISTORIC PRESERVATION REVIEW
BOARD and GRAND RAPIDS HISTORIC
PRESERVATION COMMISSION

Hon. H. David Soet

Respondents.

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ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

At a session of said court, held in the city of
Grand Rapids, County of Kent, State of
Michigan, this 20th day of November 1999.

PRESENT: Honorable H. David Soet
Circuit Court Judge

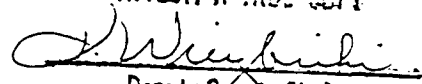
Upon a hearing held November 5, 1999, on Respondents' Motion to Dismiss,
pursuant to MCR 7.105(J), and both parties having been afforded the opportunity to
present their respective arguments,

IT IS HEREBY ORDERED that Respondents' Motion to Dismiss is granted and
Petitioner's Petition for Review is dismissed without prejudice for the reasons
stated by the Court in its bench Opinion of November 5, 1999.

DAVID SOET

H. David Soet
Circuit Court Judge

sad4-cases 99AG:AHV 9955554.7-Day Order

ATTEST: K. WILKINSON

Deputy Clerk

Court of Appeals, State of Michigan

ORDER

Saint Mary's Mercy Medical Center v State Historic Preservation
Review

Docket No. 224034

LC No. 99-006962-AA

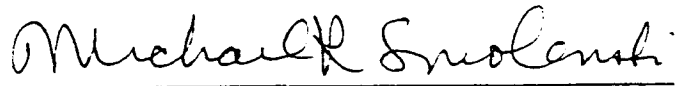
Michael R. Smolenski
Presiding Judge

Richard A. Bandstra
David H. Sawyer

Judges

The Court orders that the motion for extension of time to file responsive answer is
GRANTED.

The delayed application for leave to appeal is DENIED for lack of merit in the
grounds presented.


Presiding Judge



A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

4-13-00
Date



Chief Clerk

DEPARTMENT OF
ATTORNEY GENERAL

MEMORANDUM

April 18, 2000

TO: Brian Conway
Executive Secretary
State Historic Preservation Review Board

FROM: Anne-Marie H. Voice 
Assistant Attorney General
State Affairs Division

RE: *St. Mary's Mercy Medical Center v*
State Historic Preservation Review Board,
Court of Appeals Docket No. 224034,
Kent Circuit Court No. 99-006962-AA

For your information, here is a copy of the Court of Appeals Order received in our office today. The Court denied St. Mary's application for leave to appeal "for lack of merit in the grounds presented." Please pass this news on to the Board members. Thank you.

AHV:lmw
Enclosure
c: Anne Corgan
Nick Bozen

Sad4/199905554C/St. Mary's CoA/Conway.Memo 4/18/00

COPY

St Marys
Declar. Opinion
(Benef. Review)

STATE OF MICHIGAN

THE 17TH CIRCUIT COURT FOR THE COUNTY OF KENT

Dept of Attorney General

SAINT MARY'S MERCY MEDICAL CENTER,

JUL 26 2000

Petitioner,

State Affairs Division
RECEIVED

v

File No. 99-12487-AA

STATE HISTORIC PRESERVATION REVIEW
BOARD and GRAND RAPIDS HISTORIC
PRESERVATION COMMISSION,

Respondents.

OPINION OF THE COURT

BEFORE THE HONORABLE GEORGE S. BUTH, CIRCUIT JUDGE

Grand Rapids, Michigan - Wednesday, July 5, 2000

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TRANSCRIBED BY:

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WITNESSES: PETITIONER

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None

WITNESSES: RESPONDENTS

None

OTHER MATERIAL IN TRANSCRIPT:

None

EXHIBITS:

IDENTIFIED

RECEIVED

None

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Grand Rapids, Michigan
Wednesday, July 5, 2000 - 4:15 p.m.

* * * * *

THE COURT: Let's see, Mr. McGuire, you've replaced Mr. Ophoff. Otherwise, the players are the same as last month.

This is File No. 99-12487-AA, St. Mary's versus the State Historic Preservation Review Board. This action was filed in December. I inherited it from Judge Benson, who has retired.

This Court heard oral arguments last month. The Court has again had an opportunity to review the briefs and the court file. I'd like to compliment both sides on excellent briefs and arguments. It's helped the Court a great deal.

These are never easy cases to decide. The Court, however, always has to remember what the particular facts of the case are and what the standard of review is in these administrative appeals.

Just briefly on the facts, St. Mary's petitioned this Court for review, pursuant to statute and court rule, of the October 28, 1999, "Final Decision and Order" issued by the State Historic Preservation Review Board, which reviewed on appeal a decision of the Grand Rapids Historic Preservation Commission's denial of

1 St. Mary's application for a permit to demolish the McAuley
2 Building, which is really an amalgamation of a number of
3 different buildings over a period of years at the corner of
4 Lafayette and Cherry Streets in southeast Grand Rapids, the
5 St. Mary's campus.

6 The standard of review, as I said, is obviously
7 important here. Under the Constitution, Article 6, Section
8 28:

9 "Judicial review of state agency final action
10 shall include, as a minimum, the determination
11 whether such final decisions, findings, rulings and
12 orders are authorized by law; and, in cases in which
13 a hearing is required, whether the same are supported
14 by competent, material, and substantial evidence on
15 the whole record."

16 "The reviewing court may not substitute its
17 judgment for that of the agency in the absence of
18 fraud or jurisdictional defect. An agency's findings
19 of fact are conclusive unless they are unsupported by
20 substantial evidence."

21 The Court needs to zero in here on the heart of
22 the argument here as raised by the petitioner. They
23 applied to the Grand Rapids Historic Preservation
24 Commission or the Historic Preservation Commission
25 ordinance which provides -- and this is Section 5.395(6) of

1 the ordinance -- addresses when work within a historic
2 district may be undertaken. This section provides as
3 follows:

4 "Work within a historic district or on a
5 historic landmark shall be permitted through the
6 issuance of a notice to proceed by the Commission if
7 any of the following conditions prevail and if the
8 proposed work can be demonstrated by a finding of the
9 Commission to be necessary to substantially improve
10 or correct any of the following conditions:"

11 Now, conditions (a) and (b) were not argued,
12 conditions (c) and (d) were, and those are the heart of this
13 administrative appeal.

14 Paragraph (c), subparagraph (c), contains three
15 parts: Retaining the resource will cause, one, undue
16 financial hardship; and, two, all feasible alternatives to
17 eliminate the financial hardship; and, three, have been
18 attempted and exhausted by the owner.

19 And, then, section (d), retaining the resource
20 is not in the interest of the majority of the community.

21 And, again, both sides did an excellent job of
22 briefing and arguing these two points, paragraphs (c) and
23 (d).

24 The Board found that petitioner failed to
25 demonstrate either (c) or (d). And that would have been --

1 either one would have been required. This Court is
2 affirming the Board for the reason that the Board's
3 decision, the final decision, that's appealed from here was
4 specifically authorized by law. This Court finds that it's
5 supported by competent, material, and substantial evidence
6 on the whole record and, furthermore, that's it's
7 constitutional.

8 Therefore, the Court is affirming this case.
9 And I would ask either the City Attorney or the Attorney
10 General to submit an order, and I will sign it.

11 Thank you.

12 MR. MCGUIRE: Thank you, your Honor.

13 MS. VOICE: Thank you, your Honor.

14 (At 4:20 p.m., proceedings concluded)

15 * * * * *

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
)
COUNTY OF KENT)

I, Patricia E. VanTil, do hereby certify that this transcript, consisting of pages 1 through 8, inclusive, is a complete, true, and correct transcript of the proceedings in the matter of St. Mary's Mercy Medical Center v State Historic Preservation Review Board and Grand Rapids Historic Preservation Commission, File No. 99-12487-AA, on July 5, 2000.

Patricia E. VanTil

Patricia E. VanTil, PR-A, CER-5656
Certified Electronic Reporter
1736 Stonegate Drive
Hudsonville, MI 49426
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July 25, 2000

St Mary's 2
Substantive Con.

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 17th JUDICIAL CIRCUIT
KENT COUNTY

SAINT MARY'S MERCY MEDICAL CENTER,

Petitioner,

No. 99-12487-AA

v

Hon. George S. Buth

STATE HISTORIC PRESERVATION REVIEW
BOARD and GRAND RAPIDS HISTORIC
PRESERVATION COMMISSION,

**ORDER AFFIRMING THE
OCTOBER 28, 1999 FINAL
DECISION AND ORDER OF THE
STATE HISTORIC
PRESERVATION REVIEW
BOARD**

Respondents.

_____ /

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At a session of said court, held in the city of
Grand Rapids, County of Kent, State of
Michigan, this ~~31~~²⁴ day of July, 2000.

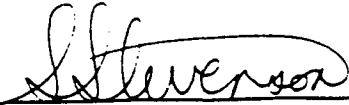
PRESENT: Honorable George S. Buth
Circuit Court Judge

Upon a hearing held June 15, 2000, on Petitioner's Petition for Review,
pursuant to MCR 7.105(J), and all parties having been afforded the opportunity to
present their respective arguments,

IT IS HEREBY ORDERED that the October 28, 1999 Final Decision and Order of the State Historic Preservation Review Board in this matter is hereby AFFIRMED for the reasons stated by the Court in its bench Opinion of July 5, 2000.

GE

Hon. George S. Buth
Circuit Court Judge



Deputy Clerk

Sad4, Cases AG99 AHV 199905554B St. Mary Or 7 10 00

rejected

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
ADMINISTRATIVE LAW DIVISION

ST. MARY'S MERCY MEDICAL CENTER,
formerly ST. MARY'S HEALTH SERVICES,
Applicant/Appellant,

v

Docket No. 99-98-HP

GRAND RAPIDS HISTORIC
PRESERVATION COMMISSION,
Respondent/Appellee.

_____ /

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Grand Rapids Historic Preservation Commission (the Commission) denying an application for a permit to demolish St. Mary's Mercy Medical Center McAuley Building (the McAuley Building or the Building). The Building is located in the Heritage Hill Historic District at 201 Lafayette Avenue SE and is part of the St. Mary's Hospital Complex, Grand Rapids, Michigan.

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

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

State.

Upon receipt of the appeal, the Board directed the Michigan Department of State, Administrative Law Division, to convene an administrative hearing for the purpose of taking relevant evidence and argument. The Administrative Law Division conducted a hearing on Monday, April 26, 1999, in Room 121 of the Mutual Building, 208 N. Capitol, Lansing, Michigan. The hearing was held pursuant to the procedures prescribed in Chapter 4 of the Administrative Procedures Act.²

The Appellant in this case, St. Mary's Mercy Medical Center, formerly St. Mary's Health Services (St. Mary's or the Appellant)³ was represented by Teresa S. Decker of the law firm of Varnum, Riddering, Schmidt and Howlett LLP, Grand Rapids, Michigan. Michael D. McGuire, Assistant City Attorney, City of Grand Rapids, appeared at the administrative hearing as the legal representative of the Commission. Gary W. Brasseur, Administrative Law Examiner, Michigan Department of State, Administrative Law Division, presided at the hearing.

Issues on Appeal

²

1969 PA 306, § 71 et seq; MCL 24.271 et seq; MSA 3.560(171) et seq.

³

St. Mary's President and Chief Executive Officer (CEO), David Ameen, was present at the hearing. Ameen also testified as a witness for St. Mary's.

By letter dated January 27, 1999, St. Mary's appealed a decision of the Commission which was rendered on January 20, 1999. The decision had the effect of denying the Appellant's application for a permit to demolish the McAuley Building located at 200 Jefferson Avenue SE in the St. Mary's Hospital Complex, Grand Rapids, Michigan. The Appellant asserted that the Commission's decision was wrong, in that the Building must be razed for the following reasons: (1) to eliminate the undue financial burden on St. Mary's, (2) to advance the community's interest in St. Mary's continuing ability to provide health care services to the poor, (3) for future development in accordance with St. Mary's long range plans, and (4) to protect the public and the St. Mary's employees from further deterioration of the Building.

The Commission countered that the application was properly denied because: 1) St. Mary's presented no evidence that the Building constitutes a safety hazard to the public or its occupants, 2) no definite major improvement program was presented which would be deterred by retaining the resource, 3) the financial hardship claimed in the application was not caused by government action, an act of God, or events beyond St. Mary's control, and there was no showing that all feasible alternatives, including sale of the Building, had been attempted and exhausted, and 4) retaining the Building was actually in the interest of the majority of the community inasmuch as the Building has architectural and historical

significance.

Summary of Evidence

In a proceeding such as this, appellants have the burden of proof with respect to their factual allegations. 8 Callaghan's Pleading & Practice (2d ed), section 60.48, p 176; Prechel v Dep't of Social Services, 186 Mich App 547, 549; 465 NW2d 337 (1990).

A. Administrative Materials

Certain administrative materials were admitted into the evidentiary record at the hearing. In this regard, one Hearing Officer Exhibit was received into evidence. Hearing Officer Exhibit No. 1 consisted of pleadings, i.e., the Notice of Administrative Hearing, a copy of the Appellant's Claim of Appeal, and a copy of the Commission's Notice of Denial.

B. Appellant's Evidence

Section 5(2) of the Act, supra, provides that appellants may submit all or any part of their evidence and argument in written form. In this vein, the Appellant submitted 13 exhibits in support of its appeal. Appellant's Exhibit No. 1 is a copy of the Commission's Notice of Denial, dated January 27, 1999. Appellant's No. 2 is a set of deeds pertaining to the conveyance of 200 Jefferson SE and 201 Lafayette SE (the McAuley Building) to the Sisters of Mercy of Grand Rapids.

Appellant's No. 3 is a letter from MAS Associates Inc., Rick Reichman, AIA, to the Commission, dated January 18, 1999. The

letter concerns the cost of "mothballing" the McAuley Building. Appellant's No. 4 is a cover memo, dated June 23, 1998, from Paul Konz, The Ritchie Organization (TRO), to Rick Reichman. Attached to to the memo were excerpts from TRO's McAuley Building Engineering Assessment, dated June, 1998. Appellant's No. 5 is a four-page set of drawings depicting the type of wall construction used in the Building. This exhibit also shows typical contemporary wall construction methods. Appellant's No. 6 is a letter, dated November 5, 1996, from George Ehlert to MAS Associates, Inc. The letter contains Ehlert's review of the Building, to evaluate the Building's current structural condition and to comment upon the feasibility of using the Building for hospital or medical purposes.

Appellant's No. 7 is a letter, dated September 14, 1998, from George Ehlert to MAS Associates, Inc. The letter contains Ehlert's assessment of a report prepared by Timothy Hoffman, P.E. of Innovative Engineering Associates for the City of Grand Rapids, Neighborhood Improvement Department. Appellant's No. 8 is a letter, dated October 23, 1998, from Stanley J. Wisinski, III to Peter Skiles, concerning the marketing of the Building. Appellant's No. 9 is the affidavit of Carole Valade, editor of the Grand Rapids Business Journal, pertaining to an editorial which appeared in the October 12, 1998 edition concerning the proposed demolition of the Building.

Appellant's No. 10 is a set of three editorials appearing in

The Grand Rapids Press on November 17, 1998, January 13, 1999 and January 27, 1999, which support St. Mary's request for approval to demolish the Building. Appellant's No. 11 is a letter, dated January 12, 1999, from Dennis Sturtevant, Executive Director, Dwelling Place of Grand Rapids, Inc. (Dwelling Place) to Tom Logan, Chair, Grand Rapids Historic Preservation Commission. The letter's stated purpose is to clarify Dwelling Place's involvement in a review of the feasibility for the redevelopment of the Building. Appellant's No. 12 is a Revised Preliminary Feasibility Chart, dated July 10, 1998, prepared by Rockford Construction Company, Inc. The study details the costs for each of four possible options (demolition, restoration of the 1909 section and demolition of the remainder, restoration of the entire building, and saving and relocating the cupola). Appellant's No. 13 is a 3' x 3 ½' color diagram of St. Mary's Master Site Plan.⁴

St. Mary's also presented witnesses. St. Mary's first witness was Peter Skiles. Skiles is St. Mary's Director of Operations. He testified that he is responsible for facility services. These services include plant operations and maintenance, environmental services, equipment, nutritional services, and patient rehabilitation services. Skiles further testified that he is familiar with all of the services St. Mary's provides to its

4

The diagram was used by St. Mary's during the hearing for demonstration purposes. TR 63 - 65.

customers and the cost of the teaching function and providing health services at the main hospital and primary care at approximately 40 locations in the community.

With regard to the Building, Skiles discussed the annual cost to operate and maintain the Building. Skiles went on to describe the professionals who provide technical assistance to St. Mary's, particularly with regard to long range planning. He indicated that based on the studies, the cost of maintaining the Building is \$320,000 annually. The cost of "mothballing" the Building would be \$340,000 annually, plus some one-time costs to prepare the Building for mothballing. Skiles also testified about St. Mary's parking problem and about efforts to market the Building.

St. Mary's presented Rich Reichman as its second witness. Reichman testified that he has a professional degree in architecture from the University of Michigan and is a registered architect with the State of Michigan. Reichman stated that he is employed by MAS Associates, Inc. (MAS). MAS provides building and site planning services, predominately for health care providers.

With regard to St. Mary's, Reichman indicated that MAS prepared a master plan in 1996 and a revised plan in 1998. The 1998 plan revisited many of the 1996 assumptions. Reichman referred to the Master Site Plan to describe the location and function of the various buildings on St. Mary's 11-acre campus.

Reichman testified that the 1996 master planning study

concluded that St. Mary's really has no further use for the McAuley Building because the structure is functionally obsolete for hospital functions and that it would be in the hospital's best interest to demolish the Building and "land bank" that area for future hospital-related functional needs. Reichman testified further that other geographic areas were not appropriate for future expansion of hospital-related services because they were too remote.

Referring to the Building itself, Reichman indicated that it was not suitable for health care-related functions which rely heavily on mechanical and electrical systems. Additionally, he said there are efficiency-of-space issues and problems with floor-to-floor heights and floor loading capacity. Reichman went on to describe other deficiencies in the Building pertaining to plumbing, sewers and fire protection. He further stated that a study prepared by the Ritchie Organization concluded that the cost to upgrade the Building's mechanical, electrical, plumbing and fire protection would be \$7,460,000. Reichman testified further that "mothballing" the Building would involve a one-time close-out cost of \$49,000 and an annual operating cost of \$340,000.

If permission were granted to demolish the Building, Reichman stated that there is no specific short term use plan for the area. He said that the area occupied by the Building is ideally located for regeneration of hospital uses.

George Ehlert was St. Mary's third witness. Ehlert testified that he is the principal owner of Ehlert/Bryan, Inc., an engineering consulting firm. Ehlert stated that he has a bachelor's degree in civil engineering, majoring in structural engineering. Ehlert said that he has been licensed as a professional engineer in Michigan since 1981 and has 22 years experience as a consultant.

Ehlert testified that his first assignment with the McAuley Building dates back to 1989, when he performed a detailed inspection and evaluation regarding the feasibility of reusing the Building for future planning purposes. He said that he did another detailed survey and evaluation of the Building in 1996. Ehlert described what was involved in doing a detailed survey and evaluation of the Building from a structural engineer's perspective. He stated that his evaluation in 1996 concluded that the Building is not suitable for reuse because: 1) the floors heights are too low, 2) the stairs and elevators are not up to current standards, 3) the mechanical shafts are inadequate to handle the volume of air that is needed, 4) there are too many support columns throughout the Building to meet the needs of today's buildings, and 5) the exterior walls are in very poor condition and cannot support an interior environment that is necessary in today's buildings, and beyond.

Ehlert also testified about his review of Innovative

Engineering Assessment's evaluation of the Building. He indicated that the scope of Innovative's report was very narrow. In his view, the report's author (Mr. Hoffman) failed to address many of the issues necessary to assess the feasibility of reusing the Building. Ehlert stated that Hoffman simply did not have a clue about the problem with the Building's walls.

Ehlert conceded that it was not necessary to tear down every building that was built in the 1920's. He indicated many problems are inherent in structures such as the McAuley Building that need to be appropriately dealt with depending on the building's intended use.

St. Mary's next presented the testimony of Tim Ollman. Ollman stated that he is employed by Rockford Construction Company as a senior project engineer in the company's health care division. Ollman said that he is a graduate of the Navy Nuclear Power Program, holds a bachelor's degree in mechanical engineering, has worked for ten years in mechanical design and another ten years in construction, and is a member of the American Society of Mechanical Engineers and the American Heating and Cooling Ventilation Organization.

Ollman testified that he prepared a estimate of the cost of restoring and renovating the Building. He said that preparing the estimate involved a review of existing documentation of architectural, mechanical and electrical drawings and looking at

the overall size of the systems that are in place. The process also involved bringing in consultants who work with buildings the age of the McAuley Building.

Ollman estimated that the total cost to restore the Building for office use based on 1998 cost figures would be \$20.5 million. Ollman further indicated the cost would be much higher to restore the Building for residential use.

Ollman said he was generally aware that historic tax credits may be available for this type of project but that he personally concentrates on the construction aspects. He said he did not know if a nonprofit entity like St. Mary's would be eligible for tax credits.

St. Mary's next called Harvey Adams as a witness. Adams testified that he was the person who took Mr. Hoffman through the Building. Adams said that Hoffman spent maybe an hour or two in the Building. Adams also stated that Hoffman did not open any windows to look at the exterior of the Building, he did not look at the exterior from adjacent buildings, nor did he go into the basement to check the Building's foundation.

St. Mary's sixth and final witness was its President and CEO, David Ameen. Ameen testified that he has been St. Mary's CEO since July of 1995. Ameen said he joined the organization in November of 1993 as the Chief Operating Officer. As CEO, Ameen said he is responsible for overall management, day-to-day operations, and long

range planning.

With regard to attempts to market the Building, Ameen said that a number of individuals have been through the Building. Ameen said that Mr. Secchia was interested in looking at the Building for housing. Also, there have been discussions with Dwelling Place regarding the possibility of using the Building for residential housing.

Ameen went on to describe St. Mary's sources of income. He made the point that Medicare and Medicaid dropped payments this year by four percent for the same services. Ameen said Medicare and Medicaid have announced another drop in payments for next year of two to three percent. He also stated that "The Blues" are asking for an eleven percent decrease this year. St. Mary's hopes that the decrease can be held to about five percent. Ameen summarized by saying that the hospital is now receiving less reimbursement for the same services that it had provided in the past.

With regard to the annual cost of \$320,000 to operate the Building at 25 percent occupancy or \$340,000 to maintain the Building in "mothballs", Ameen equated that cost to the salaries of ten employees who would not be available to staff the hospital. Ameen also said that money could be used to provide other services that are needed in the community the hospital serves.

Ameen explained that it was vitally important for St. Mary's

to retain the McAuley site for its purposes and mission. He said that St. Mary's has made a commitment to serve the downtown area where it has been located for 106 years. Ameen also said that if St. Mary's is going to remain in the downtown area, it must have the ability to regenerate itself. He stated that this can only be accomplished if St. Mary's is given permission to remove the Building. Ameen said that St. Mary's cannot afford to spend over \$300,000 annually to pay for the use of only 25 percent of the Building. He said this is not a good use of the building and it is not efficient use of limited health care dollars that can only be spent once.

Ameen said that St. Mary's cannot afford to spend more than \$20 million dollars to restore the Building for use as an office building. He said the cost for construction of new high quality office buildings is running \$100 to \$110 per square foot, whereas Rockford quoted a cost of \$132 per square foot to restore the Building.

C. Commission's Evidence

With respect to its own position, the Commission submitted one multi-page exhibit. Commission Exhibit No. 1 included copies of the following: 1) Amended Minutes of the Commission's January 20, 1999 meeting, 2) Notice of Denial, dated January 27, 1999, from Carol Gornowich, Recording Secretary, Historic Preservation Commission to St. Mary's, 3) Item 7, Public Hearing on January 20,

1999, Historic Preservation Commission regarding St. Mary's request for the demolition of the McAuley Building, 4) a letter, dated January 12, 1999, from Dennis Sturtevant, Executive Director, Dwelling Place of Grand Rapids, Inc., to Tom Logan, Commission Chair, 5) a letter, dated January 18, 1999, from Rick Reichman, AIA, MAS Associates Inc., to the Commission, 6) a memorandum, dated January 6, 1999, from James G. O'Connor to the Commission containing his comments on the demolition of the Building, 7) a letter, dated January 4, 1999, from Robert Ball, President, Heritage Hill Association, to the Commission regarding the proposed demolition of the Building, 8) a letter, dated January 12, 1999, from Carol Gornowich, Recording Secretary, Historic Preservation Commission to St. Mary's indicating that the Commission had tabled St. Mary's request for demolition of the Building at its January 6, 1999 meeting, 9) Item 9, Public Hearing, January 6, 1999 Commission meeting regarding demolition of the Building.

Commission Exhibit No. 1 also included copies of the following: 10) a letter, dated January 6, 1999, from Rebecca Smith-Hoffman, President, Kent County Council for Historic Preservation to the Commission regarding the proposed demolition of the Building, 11) a letter, dated October 23, 1998, from Stanley J. Wisinski, III, S. J. Wisinski & Company, to Peter Skiles regarding marketing of the Building, 12) a mailing list of persons notified of the public hearing to be held on November 18, 1998 regarding the

proposed demolition of the Building, 13) a transmittal letter, dated July 2, 1998, from Susan Thompson, Zoning Supervisor, City of Grand Rapids, to Tim Hoffman, I.E.A., regarding the proposed demolition of the McAuley and Xavier Buildings, 14) an unsigned letter to the Commission, dated June 18, 1997, requesting the Commission engage an expert to review engineering reports being used to justify demolition of the Building, 15) a letter, dated December 27, 1996, from Jack Weiner, Vice President, St. Mary's, to Michael Page, Historic Preservation Commission, 16) a letter/report, dated November 5, 1996, from George R. Ehlert, P.E., Ehlert/Bryan, Inc. to MAS Associates, Inc., 17) a diagram documenting the history of construction for St. Mary's Complex, 18) Facilities Evaluation for St. Mary's dated September 1996, 19) a letter, dated September 22, 1998, from Lodewyk (Lody) P. Zwarensteyn, President, Alliance for Health to David Ameen, President, St. Mary's, 20) an Application for Certificate of Appropriateness, dated August 31, 1998, to raze the Building, 21) St. Mary's Site Development Plan, dated September 4, 1998, 22) a Preliminary Feasibility Chart (Revised), dated July 10, 1998, for the Building prepared by Rockford Construction Company, Inc., 23) a transmittal memorandum and McAuley Building Engineering Assessment, dated June 23, 1998, from Paul Konz, The Ritchie Organization, to Rick Reichman, 24) copies of photographs taken July 23, 1998 showing the original 1909 hospital, the 1926

addition, the 1951 addition and the 1953 addition, 25) excerpt of minutes of September 16, 1998 Commission meeting pertaining to demolition request of the Building, 26) a letter, dated September 22, 1998, from Carol Gornowich, Recording Secretary for the Commission, to St. Mary's notifying St. Mary's that its request for demolition of the Building on the agenda for September 16, 1998 was tabled until the next meeting, 27) excerpt of October 7, 1998 Commission meeting to schedule public hearing pertaining to demolition of the Building, and 28) a letter/report from Timothy J. Hoffman, P.E., Structural Consultant, Innovative Engineering Associates, to Sue Thompson, City of Grand Rapids, Neighborhood Improvement Department, pertaining to structural overview and inspection of the McAuley/Xavier Buildings.

The Commission also presented testimony from one witness, Jennifer Metz, Vice-Chairperson of the Commission. Metz said that she holds a master's degree in historic preservation, which includes structural analysis, and is certified as an architectural historian. Metz testified that as the Vice-Chairperson, she reviewed and considered all of the evidence that was presented to the Commission concerning St. Mary's request to demolish the McAuley Building. Metz said that she had reviewed the information contained in Commission Exhibit No. 1 and that that was the record relied upon by the Commission in making its decision.

Metz testified further that the Commission does not interpret

the Historic Preservation Ordinance as requiring a resource to actually be offered for sale in order for an applicant requesting a demolition permit to show undue financial hardship. Metz said that a resource may be offered for sale at its fair market value or it may be moved to a vacant site within the historic district. Metz agreed that it was not feasible to move the Building.

Metz was recalled briefly to testify regarding whether a historic preservation tax credit would possibly be available for renovation of the Building. Metz testified that a nonprofit corporation like St. Mary's can set up a for-profit corporation and either sell the tax credits or have investors in the project. Metz testified further that in her judgment, a renovation project for the Building would be eligible for historic preservation tax credits because the building is located in an historic district, it is a significant building, and it has a high degree of architectural and historic integrity.

Findings of Fact

Based on the evidence presented by the parties during the administrative hearing, the facts of this matter are found to be as follows:

A. Heritage Hill Historic District

1. The Heritage Hill Historic District was established on April 24, 1973 and amended July 16, 1991.

2. The McAuley Building at 201 Lafayette Avenue SE is

located in the District. It is the only building in the St. Mary's 11-acre Hospital Complex that is located in the District.

B. Construction History for McAuley Building

3. The McAuley Building is located on the northeast corner of the St. Mary's Hospital Complex, bounded by Cherry Street to the north and Lafayette Street to the south. The original structure was built in 1909. Additions were made in 1926, 1951 and 1953. The Building served as the main hospital building until construction of the new hospital in 1973.

1909 Building: This is the oldest portion of the current hospital, located at the extreme north end of the McAuley Building. It was originally constructed as a six-story building, with two partial floors added in 1926. It is a cast-in-place concrete structure with interior and exterior load-bearing masonry walls.

1926 Building: This construction constitutes the central portion of the McAuley Building. It is nine floors in height, including the basement. This portion of the building is constructed with a gable clay tile roof and contains the high center tower and cupola. The construction of this building is a cast-in-place concrete structure with masonry exterior walls.

1951 Building: This is the southernmost portion of the McAuley Building, with the original construction again nine floors high, including the basement level. At a later date, a light steel framed tenth floor addition, metal sided, was added. Again, the primary structure is a cast-in-place concrete frame, with masonry exterior walls.

1953 Building: This construction added a small, three story addition to what was the front of the 1926 construction (along the east or Lafayette Street side). Its construction matches that of the 1951 construction. [Appellant's No. 6; Commission No. 1(16)]

C. Public Hearing - January 6, 1999

4. At the public hearing held on January 6, 1999 to consider an application to demolish the McAuley Building, St. Mary's CEO, David Ameen, as well as Attorney Randall Kraker and Sister Mary Maurita Sengelaub, addressed the Commission.

5. CEO Ameen summarized St. Mary's current development plan. Phase 1 of the plan involved construction of the Wege Center, the Professional Office Building and a parking deck. The fourth and final phase of the plan would be the demolition of Xavier Hall and the McAuley Building. The Building is less than 25 percent occupied. A broken window recently caused pipes to freeze and flooring resulting in damages of \$25,000 to \$40,000. Estimates of the cost to renovate the Building for office use ranged from \$16 million to \$20 million.

6. Attorney Kraker reported that Rockford Construction estimated it would cost \$20.5 million to renovate the Building for office purposes and that it would cost \$300,000 annually to maintain the Building in its present state. Kraker asserted that all four conditions in the City Code requiring the Commission to authorize demolition were met because retaining the resource: 1) presents a hazard to the safety of the public or occupants, 2) it is a deterrent to a major improvement program, 3) will cause St. Mary's undue financial hardship, and 4) is not in the interest of the majority of the community.

7. Sister Mary Maurita Sengelaub reported that problems with

the Building's boiler system go back to 1957, its infrastructure and subsystems are deteriorated and worn out, and there is no way that the building could ever realistically be used for direct patient care. Sister Sengelaub stated that St. Mary's does not want to be a steward of bricks and mortar; rather, St. Mary's wants to persevere in its mission of caring for people with compassion, mercy, love and high standards.

8. Chuck Wylie has resided within one block of St. Mary's for 20 years. Wylie expressed his opinion that St. Mary's has been involved in institutional development and encroachment for years without enough concern for its individual neighbors.

9. David Hathaway, a member of the Heritage Hill Association and project engineer at St. Mary's, indicated that he is aware of the problems with the Building. He feels there is no room for a modern facility within the Building. Hathaway pointed out that when looking at the Building from a half block away, one can observe that there are a lot of different pieces that do not match. His personal opinion is that the Building as a whole is not an historic structure . . . just bits and pieces of it.

10. Robert Ball, President of the Heritage Hill Association and Rebecca Smith-Hoffman of the Kent County Council for Historic Preservation, addressed the Commission. Their letters to the Commission were made part of the record.

11. Curtis Pettijohn of 300 Washington SE feels that the

McAuley Building is an incredible building. He wondered how many of the persons proposing demolition are residents of Heritage Hill. Pettijohn expressed his view that the Building could be used for senior citizen housing.

12. Tim Ollman of Rockford Construction described his involvement in preparing a cost estimate for renovation of the McAuley Building.

13. Tom Stankiewicz, a homeowner in Heritage Hill and a St. Mary's employee, spoke in favor of demolition, with the caveat that homeowners in the area have input with regard to future use of the property.

14. Victoria Mullin, a 20-year Heritage Hill resident, urged the Commission to deny the request for demolition.

15. Rick Reichman, an architect with MAS Associates, stated that St. Mary's is committed to historic preservation and the Heritage Hill neighborhood, as demonstrated in the design of the Professional Office Building and Health and Learning Center. Reichman described in some detail what would be involved in a very complicated and expensive renovation of the Building.

16. Commission members expressed their views and noted that several questions were still unanswered about possible uses for the building, and the impact demolition would have on the surrounding homes. In light of the number of unanswered questions, Commissioner Metz's motion that St. Mary's request for demolition

of the Building be tabled until the next meeting unanimously passed.

D Letters to the Commission

17. Jack Weiner, St. Mary's Vice President for Facilities and Ambulatory Operations, sent a letter to the Commission dated December 27, 1996. In his correspondence, Weiner indicated that St. Mary's anticipated filing a request to demolish the McAuley Building as part of its campus-wide development plan. [Commission No. 1(15)]

18. In a letter dated January 6, 1999, Rebecca Smith-Hoffman, President, Kent County Council for Historic Preservation, urged the Commission to deny St. Mary's request for demolition of the McAuley Building. Smith-Hoffman asserted that none of the conditions outlined in section 5.395(6) of the Grand Rapids City Ordinance were met.

19. Dennis Sturtevant, Executive Director, Dwelling Place of Grand Rapids, Inc., wrote to the Commission on January 12, 1999. In his letter, Sturtevant indicated that Dwelling Place wanted to remain neutral on the question of whether the request to demolish the McAuley Building should be granted. Nevertheless, Sturtevant listed nine assumptions pertaining to the feasibility of housing as an alternative use for the Building, all of which may or may not be accurate or realistic. Among these assumption were St. Mary's willingness to donate several floors of the Building for the

project and the availability of funds.

20. In his January 18, 1999 letter to the Commission, Rick Reichman, MAS Associates Inc., addressed the idea of leaving the Building unoccupied (mothballed) for a number of years. Reichman pointed out that even if the Building were vacant, the same level of fire protection would still have to be maintained, the Building would have to be heated to keep the pipes from freezing, and there would still be annual operating costs for utilities, insurance, general maintenance and repairs. Reichman included a detailed breakdown of the annual cost to maintain the building in a "mothballed" state which totaled \$340,000. As a nonprofit corporation, Reichman stated that St. Mary's is not in a position to pay those costs and would have to divert funds from its primary mission of providing health care to the community.

21. James G. O'Connor sent the Commission his comments on demolition of the McAuley Building in a memorandum dated January 6, 1999. O'Connor indicated that although the ordinance section pertaining to demolition could be interpreted in various ways, in his view, its language and intent did not allow demolition in this case. Focusing on the undue financial hardship provisions, O'Connor asserted that the ordinance looks at current hardship, not one that may occur in the future. He also pointed out that St. Mary's had not exhausted all feasible alternatives to eliminate the financial hardship.

22. Robert Ball, President of the Heritage Hill Association, expressed the Associations' opposition to the demolition of the McAuley Building in a letter to the Commission dated January 4, 1999. In his correspondence, Ball indicated that the Building is the most significant non-residential structure located in the Heritage Hill Historic District. Ball indicated also that the building has potential for residential uses and that retaining the building should not cause St. Mary's undue financial hardship. He concluded his letter emphasizing that retaining the building is in the interest of the community and that its retention will not threaten or complicate the future development of St. Mary's.

E. Newspaper Editorials

I. The Grand Rapids Business Journal

23. In an October 12, 1998 editorial, The Grand Rapids Business Journal was critical of the Commission's handling of St. Mary's request for a permit to demolish the McAuley Building. The editorial lauded St. Mary's working with the Heritage Hill Association in the recent construction of its much needed parking garage. The editorial stated that permitting St. Mary's to demolish the Building met the Commission's own conditions because the Building is a deterrent to St. Mary's major improvement plan, retaining the Building causes undue financial hardship, and it is not in the community's best interest that the Building be retained.

(Appellant No. 9)

II. The Grand Rapids Press

24. The Grand Rapids Press strongly supported St. Mary's request to demolish the McAuley Building in three editorials. In a November 17, 1998 editorial, the newspaper commented that, except for the cupola, the building is not historically extraordinary nor architecturally remarkable. The Press opined that critics of demolition would have a stronger hand if they were to step forward with the money needed to convert the Building for housing or other purposes and offer a solution to the parking problem. (Appellant No. 10)

25. In a January 13, 1999 editorial, the newspaper commented that St. Mary's, a socially responsible model institutional citizen, wants to unload the costs of maintaining the marginally historically significant McAuley Building so that it can focus on its health care mission, and that the Commission should not stand in its way. (Appellant No. 10)

26. In January 27, 1999 editorial comments, the newspaper indicated that the Act gives too much authority to the unelected local commissioners and that the Legislature went too far in elevating historical interests so far above those of the community. The editorial went on to state that the Commission denied St. Mary's a permit to demolish the Building despite the Building's lack of historical or architectural importance, the expense of maintaining it, the impracticality of renovating it for future use,

and St. Mary's need for the land. (Appellant No. 10)

F. Commission Meeting - January 20, 1999

27. At its January 20, 1999 meeting, the Commission again discussed several issues regarding St. Mary's request to demolish the McAuley Building. The issues, the comments of individual commissioners, and the Commission's denial of the request appear below.

I. Historical and Architectural Significance

28. Commissioner Metz indicated that even though the Building is not an individually designated site, it is without question a contributing resource to the District. Metz indicated also that being located on the edge of the District showed that it was consciously included in the District, not tacked on. Commissioner VanScoy indicated that in the original historic district study, the McAuley Building was noted as a contributing structure for architectural reasons and also its association with providing health care for the community.

29. There was a consensus among the commissioners that the McAuley Building is significant and contributes to the community.

II. Safety Hazard

30. Based on the results of an independent structural inspection commissioned by the City of Grand Rapids, the Commission concluded that the Building did not pose an immediate safety hazard. With regard to the assertion of St. Mary's legal counsel,

Randall Kraker, that the building may become a safety hazard sometime in the future, the Commission interpreted the law as pertaining to a present hazard not a possible hazard sometime in the future.

III. Deterrent to Major Improvement Program

31. The consensus was that the Commission must be sure what the land was going to be used for before allowing demolition of an existing resource. St. Mary's presented no definite plans for the immediate use of the space. St. Mary's indicated only in general terms that it would be a green space for future use and growth of the hospital.

IV. Undue Financial Hardship

32. Commissioner Logan noted that St. Mary's claimed that renovation costs were too high and that the McAuley Building was not marketable without parking. He felt that with property values going up, the argument that renovation costs are excessive may not be accurate. St. Mary's mission is health care, not preservation of old buildings. All feasible alternatives must be attempted and exhausted. There does not appear to be a desire on St. Mary's part to see the building reused by other parties in the community.

33. Commissioner VanScoy - St. Mary's claimed that the money spent for "mothballing" could be better used to provide health care to the community.

34. Commissioner Barrett noted that solutions are not always

cheap. Mercy Health Care is a profit making business and actually showed a six-digit profit. Neglected maintenance diminishes the market value of a building. If the space is not going to be used until sometime in the future, haste to tear down the Building is not warranted. Information on the Sisters of Mercy web site indicates that it has become a leader in developing affordable housing. There may be potential within the Sisters of Mercy organization for development of the Building that has not been fully explored.

35. Commissioner Metz felt that St. Mary's really wants to sell the McAuley Building. When the Building was evaluated for sale by the S.J. Wisinski Company, St. Mary's did not offer cooperation with regard to parking and other issues. Selling a building like the McAuley Building requires a special marketing effort. The renovation estimates may not be accurate.

36. Commissioner Ranta indicated that the McAuley Building sits within an area of renovation. There have been increases in property values in the District. Renovation projects that were not financially feasible in the past are now being pursued. For example, apartments in a building on Ionia are not renting for \$2000 per month.

V. Maintaining Resource Benefits Majority of Community

37. Commissioner Logan - The standard of retaining the resource is in the interest of the community is vague. St. Mary's

has pitted its health care mission against historic preservation. St. Mary's wants to keep its campus intact.

38. Commissioner Barrett - At the public hearing, 11 citizens spoke in opposition to demolition. Five spoke in favor of demolition. Some of the persons who spoke were St. Mary's employees. There appears to be strong opposition to demolition. On the other hand, newspaper editorials have supported St. Mary's request for permission to demolish the building.

39. Commissioner VanScoy stated that noting a citizen's relationship to the property is not appropriate. He questioned whether St. Mary's really needs a campus within which it has the flexibility to move buildings in order to carry out its mission.

40. Commissioner Logan indicated that "best interest" criteria is not a popularity poll. "Best interest" should be viewed as an undertaking that the community would benefit from. There is no way of knowing what St. Mary's needs will be 20-30 years from now.

41. Commissioner Barrett observed that under the City of Grand Rapids new planning guidelines, a structure cannot be demolished unless a site plan is approved for future use.

42. Commissioner Metz indicated that demolition of the McAuley Building could lead to a situation similar to what happened in Chicago across from Marshall Fields where buildings were demolished and now the lots sit empty.

43. Commissioner Ranta stated that St. Mary's has a lot of choices and flexibility because delivery of health services has changed dramatically in recent years. Health care facilities are now being erected in the suburbs.

VI. Motion to Deny Notice to Proceed

44. Ms. Metz MOVED to deny the Notice to Proceed for demolition of Saint Mary's Health Services McAuley Building as the application does not meet the conditions outlined in the ordinance (Sec. 5.395(6)(a) - (d): As to section A, there has been no evidence presented that the resource constitutes a safety hazard to the public or its occupants. As to action B, no definite major improvement program has been presented in the application, which would be deterred by retaining the resource which also means that planning and zoning approvals, financing and environmental clearances for such an improvement program could not have been obtained. As to section C, while financial hardship has been claimed in the application, the hardships were not caused by government action, an act of God, or events beyond the owner's control; and all feasible alternatives including the sale of the building, have not been attempted and exhausted by the owner. St. Mary's has not demonstrated undue financial hardship. As to section D, the Commission finds that retaining the resource is in the interest of the majority of the community, as it has significant architectural and historical significance. This motion is to include, by reference, all materials submitted to the file in relation to this request. SUPPORTED by Ms. VanScoy. All in favor. Motion carried.

45. Carol Gornowich, Recording Secretary for the Commission, sent the Notice of Denial to St. Mary's by letter dated January 27, 1999. [Appellant No. 1; Commission No. 1(2)]

G. Facilities Evaluation

46. St. Mary's prepared a facilities evaluation in September of 1996. [Commission No. 1(18)] The stated purpose for the

evaluation was to identify deficiencies in St. Mary's current facility infrastructure and to develop a seven-year master plan for capital investment upgrades. With regard to the McAuley Building, the estimated cost of renovating its infrastructure system was \$7,500,000. Due to this cost, the age, structural condition, and code deficiencies, the recommendation of the study was to invest only in those infrastructure items that may be incurred over the next seven years. The evaluation contains assessment of the building's systems, i.e., air handling units, heating and cooling. For the most part, the condition of these systems is addressed in the engineering assessment prepared by the Ritchie Organization (Appellant's No. 4) which is summarized below.

H. Site Development Plan

47. St. Mary's prepared a site development plan dated September 4, 1998. [Commission No. 1(21)] The plan focused on the future viability of the McAuley Building. The plan addressed several advantages St. Mary's would realize by demolishing the building.

48. The plan included the assertion that as early as the 1960's, the eventual removal/replacement of the McAuley Building was identified.

49. The McAuley Building is actually four older buildings tied together. The Building's sections were constructed in 1909, 1926, 1951 and 1953. The Building is 25 percent occupied, housing

various administrative offices, pharmacy, credit union, staff lounges, and equipment maintenance. The annual cost of maintaining the Building exceeds \$300,000.

50. Because St. Mary's is landlocked, future expansion must take place in the existing space. Although long-term needs are difficult to predict, potential future uses for the area occupied by the McAuley building include: 1) emergency room expansion, 2) ambulatory surgery, 3) power plant, and 4) administrative building.

51. Assessments by engineering, architectural and building experts, i.e., The Ritchie Organization, Mercy Architectural Services (MAS), Ehlert/Bryan, and Rockford Construction, determined:

- McAuley cannot be used in its present condition and must be substantially upgraded. The HVAC system must be replaced. The building is currently largely cooled by over 100 window air conditioners.
- The building's plumbing system must be completely replaced.
- Column location and building depth make for very inefficient use of space. The space from exterior wall to corridor wall is 16 feet which is very inefficient.
- The sprinkler system should be upgraded.
- The electrical system is the original system except for the 4th and 5th floors. The equipment is in poor condition. Fuse panels are used throughout the building. Each floor is equipped with an antique fuse panel in the center stairwell.
- Emergency power must be upgraded even if the building is not used for patient care.
- Rockford Construction has identified that much of the building is in a general condition of disrepair and that substantial floor, wall, and ceiling repair and replacement, would have to be performed.
- Ehlert/Bryan Associates concluded that with 50 years of exposure, the exterior walls of the 1926

McAuley Building are at the end of their useful life. A major restoration of this building would require extending the life of these walls a minimum of 20 and ideally 40 years. This is not possible to achieve short of complete removal and replacement with new walls. Similar conditions were observed in the 1951/53 building. Similarly to the 1926 building, complete removal and replacement of the walls is necessary for any long term use of this building.

52. With regard to costs, Rockford projected a restoration cost of approximately \$20.5 million or \$132 per square foot. Because of floor-to-floor requirements, it is literally impossible to return the McAuley Building to a hospital occupancy. The Ritchie Organization estimated a cost of \$1 million to replace the HVAC system. St. Mary's short-term requirements for administrative purposes is approximately 30,000 to 40,000 square feet. At today's cost, this type of space can be constructed at a cost of \$86 per square foot or 40% less than the cost of restoration of the Building. Eliminating the Building would save St. Mary's at least \$300,000 annually, exclusive of depreciation.

53. Elimination of the McAuley Building would permit St. Mary's to proceed with planned projects, such as expansion of the emergency room, providing ambulatory surgery and construction of a new power plant that would be of substantial benefit to the community.

54. St. Mary's will be forced to bear unnecessary operating costs and even more importantly, a huge capital expense for renovation if the Building is not demolished. Given its central

role of serving over 675,000 patients in the community annually, if St. Mary's is required to maintain the Building, its long-term vitality and viability could be harmed, which in turn could harm the majority of the community it serves.

55. The plan contained the following conclusions:

- The cost of restoration of McAuley in total cannot be supported from an economic perspective.
- McAuley serves no useful purpose for the hospital, as building occupancy is currently at 25%. Requiring continued use of this building will result in unnecessary operating costs in excess of \$300,000 annually.
- Expansion to the north where McAuley presently sits is vital to the long term interests of Saint Mary's and the community which we serve. It is essential that expansion capability be preserved for the long term economic viability of Saint Mary's and the health of our community.

I. Engineering Assessments

I. Ehlert/Bryan, Inc. - November 5, 1996

56. In a report to MAS Associates, Inc., dated November 6, 1996, George R. Ehlert, P.E., of Ehlert/Bryan, Inc., summarized his review of the McAuley Building to evaluate the Building's current structural condition and to comment on the feasibility of the continued use or reuse of the Building for hospital or medical purposes. (Appellant's No. 6)

57. Ehlert reported that, generally, the Building's current condition varied from very poor to good, with the original 1909 construction being "very poor", the 1926 addition assessed as "poor" to "fair", and both the 1951 and 1953 constructions assessed

as "fair" to "good".

58. With regard to the 1909 section of the Building, his current review simply reinforced the conclusion he had made following a review seven years earlier, i.e., that demolition was necessary.

59. With regard to the 1926 section, the floor heights are too restrictive for current hospital use. Because there are no interior bearing walls, the closely spaced concrete columns allow only small rooms. The problem with the 1926 section of the Building is the nature and condition of the exterior walls. While the walls appear to be in good condition at first glance, there are numerous and significant deficiencies. The exterior walls of the 1926 section are near the end of their useful life. A major restoration would require extending the life of the walls 20 to 40 years. This is not possible short of complete removal and replacement with new walls capable of accommodating contemporary temperature and humidity requirements. Deterioration of the 1951/1953 sections is not as great, but similar conditions of disrepair exist. 60. Ehlert concluded that from a structural standpoint, the Building's usefulness is extremely limited because it lacks the ability to provide necessary floor space, variable floor loadings, adequate mechanical shafts and spaces, adequate vertical transportation (stairs and elevators), and a proper exterior envelope (energy efficient walls with proper thermal and

moisture barriers).

61. With regard to historical nature of the McAuley Building, unfortunately, if the building were to be upgraded for future hospital and medical used, the exterior walls which provide much of the Building's character, would have to be demolished and replaced.

II. Preliminary Feasibility Chart

62. Rockford Construction Company, Inc., prepared a revised preliminary feasibility chart for the McAuley Building dated July 10, 1998. (Appellant's No. 12) The chart includes four options and the related costs for treatment of the McAuley Building. Option A provides for total demolition of the building for a cost of \$1,127,330. This option could be completed in eight months. Option B provides for restoration of the 1909 section of the building and demolition of the remaining sections for a cost of \$5,785,690. Option B could be implemented in 12 months. Option C provides for restoration of the entire McAuley Building for a cost of \$20,504,849. The completion time for this option would be 18 months. Option D provides for saving and relocating the cupola for a cost of \$215,000.

63. Total square footage for the entire structure is 155,200 square feet. The 1909 section contains 35,000 square feet. The cost to build a new 35,000 square foot medical administrative building would be approximately \$3,010,000 or \$86 per square foot.

64. Kurt D. Hassberger, Rockford's Chief Operating Officer

sent a follow-up letter concerning the feasibility study of the McAuley Building to St. Mary's Director of Operations, Peter Skiles, dated October 19, 1998. In his letter, Hassberger stated that Rockford's review indicated that it is not economically feasible to rehabilitate the building for any potential economic use. Hassberger indicated that: 1) the Building is actually an amalgamation of several additions over time 2) the Building includes large hallways, whose walls are bearing walls, greatly reducing the amount of useable square footage, 3) the exterior skin is in poor condition and would need to be replaced, 4) the HVAC system is in poor condition, and 5) code compliance would be difficult, if not impossible. Hassberger concluded his letter stating, "In short, it is our professional judgment that the building is not a candidate for rehabilitation for any type of development, residential or office."

III. Innovative Engineering Associates - September 8, 1998

65. Timothy J. Hoffman, P.E., Structural Consultant, Innovative Engineering Associates, prepared an engineering assessment of the McAuley and Xavier Buildings at the request of Sue Thompson of the City of Grand Rapids Neighborhood Improvement Department, dated September 8, 1998. [Commission No. 1(28)] Only those parts of the reports pertaining to the McAuley Building were considered.

66. With regard to 1909 section, Hoffman indicated that

although this section showed signs of its age, he found it to be in good condition and structurally sound. He observed random "spider" cracking on the concrete floors and random cracking of the interior plaster walls. On the south side, he noted that the brick was in poor to fair condition and may need to be replaced. Hoffman estimated that even without testing, he estimated the floor design to have a load capacity of 50 pounds per square foot, perhaps as high as 100 pounds per square foot.

67. With regard to the 1926 section, Hoffman found the Building to be in good condition and structurally sound. He did not observe any perceptible differential settlement of the load-bearing walls. He found evidence of surface cracks on the floors, but no evidence of structural failure. The top floor showed signs of considerable water damage from leaks in the tile roof. The finish of the interior walls would have to be addressed, but not related to a structural deficiency. Hoffman found the exterior brick to be in fair to good condition. With regard to moisture, Hoffman noted that moisture infiltration is common with all masonry wall assemblies, even in new buildings. In his view, the walls would not have to be replaced if a new HVAC system with proper air exchange rate were installed. He would not limit floor loading capacity to 40 pounds per square foot, which is the minimum design value even for modern hospitals.

68. With regard to the 1951/1953 sections, Hoffman found

these sections similar in structure and condition to the 1926 section. He observed water damage on the upper floors which could be remedied if the leaks were stopped. He found the extensive water damage limited to the ninth and tenth floors. As with the 1926 section, he found the masonry walls in fair to good condition and not in need of replacement.

69. Based on his inspection, Hoffman offered the following conclusions:

"Generally all the buildings investigated are judged to be structurally sound and safe for continued use. Many areas will require remedial work on wall finishes, such as dilapidated brick and water damaged plaster. However these necessary repairs are cosmetic in nature and will not compromise the structural integrity of the basic framing systems."

IV. Ehlert/Bryan, Inc. - September 14, 1998

70. In a September 14, 1998 letter to MAS Associates, Inc., George R. Ehlert, P.E., evaluated the report of the McAuley Building that Timothy Hoffman, P.E., of Innovative Engineering Associates prepared for the City of Grand Rapids, Neighborhood Improvement Department. (Appellant's No. 7)

71. Ehlert took exception with Hoffman's conclusions that:

"Generally all the buildings investigated are judged to be structurally sound and safe for continued use" and ". . . necessary repairs are cosmetic in nature"

72. Hoffman's conclusions were in marked contrast to Ehlert's conclusions reported in November of 1996. Ehlert attributed the apparent contradictory conclusions to Hoffman's extremely limited

evaluation, inasmuch as Hoffman addressed the structural capacity of the floor systems in only general, non-specific terms. Hoffman addressed only the condition of the exterior masonry walls. Ehlert felt that Hoffman neglected to address many factors that are material to a proper conclusion regarding the feasibility of continued use or adaptive reuse of the building.

73. Ehlert felt that Hoffman was very optimistic relative to floor capacity and that he failed to address functional restrictions due the placement of the concrete columns and floor-to-floor heights, the difficulties and cost of installing new mechanical shafts through the concrete framed structures and installing new elevators and stairs.

74. Ehlert's strongest exception with Hoffman's report was his conclusion with regard to the Building's exterior walls. Whereas Hoffman concluded that walls needed isolated repairs, Ehlert stated this simply was not true. In Ehlert's opinion, most of the walls are in need of complete removal and reconstruction. Additionally, Ehlert felt that Hoffman was incorrect in his conclusion that installing a new HVAC system with proper air exchange would solve the problem with the walls. Ehlert characterized Hoffman's proposed solution of solving a leaking wall problem, letting the moisture come to the inside and then sucking it away by mixing it with drier air, as ludicrous.

75. Ehlert opined that Hoffman's limited inspection led him

to some erroneous and limited conclusions. Ehlert felt that notwithstanding Hoffman's assessment, the basic conclusions stated in his November 1996 report were still valid.

76. Ehlert prepared three diagrams showing how the walls in the McAuley Building operate in the summer and winter, and how modern wall construction techniques address moisture problems. In the summer, water and moisture infiltrate from the exterior into the walls of the McAuley Building. If a vapor barrier is added to the interior face, the wall cannot "breathe" in the summer. (Appellant's No. 5)

77. In the winter, a vapor barrier is required on the warm side of the wall. This conflicts with the requirement that the wall "breathe" in the summer. When condensation occurs, it causes the walls to expand. The exterior face of the brick separates from the backup and the steel angle corrodes and expands, causing the brick to be pushed out. (Appellant's No. 5)

78. With contemporary construction methods, there is a vapor barrier on the warm side of the wall. The barrier blocks migration of the interior humidified air during winter. (Appellant's No. 5)

V. The Ritchie Organization

79. At the request of Rick Reichman of MAS, Inc., in June of 1998, The Ritchie Organization completed a building engineering assessment of the McAuley Building. (Appellant's No. 4) The assessment addressed several areas and systems of the building as

follows:

a. Construction/Current Utilization

80. The Building was constructed in four phases (1909, 1926, 1952 and 1953). The Building served as the main hospital until the new hospital was constructed in 1973. The Building is 60 percent utilized for administrative office, pharmacy, credit union and staff lounges.

b. Systems

(1) Air Handling Units

81. The Building has very few central air handling units. The original building had air-conditioning only for the top floor operating rooms. There is a unit which serves ventilate and heat (no cooling) the common corridor areas. There are units which cool specific areas. When the Building was surveyed in August of 1996, 100 window air conditioning units were installed.

(2) Heating and Cooling

82. Heating is provided from a three-inch pressure steam line from the central plant. The 1951 and 1953 additions are heated by hot water convectors. The 1909 and 1926 sections are heated by steam convectors.

83. The cooling systems are varied in type and age. The rooftop units are 15 years old and in reasonable condition. The window air conditions require constant maintenance and replacement. Units served by chilled water were installed in 1980 as part of the

dialysis project.

(3) **Plumbing, Fire Protection and Electrical**

84. The Building's plumbing systems are in poor conditions. Sprinkler coverage is limited to the 4th and 5th floors.

85. Other than the 4th and 5th floors, the majority of the Building's distribution system is original equipment. The equipment is in poor condition and potentially hazardous. The current configuration of the emergency power in the Building does not meet the latest code requirements. The electrical service capacity of the Building is more than adequate. The electric system installed in 1980 was designed for the entire facility load.

(4) **Fire Alarm and Lighting**

86. The fire alarm system does not meet current NFPA requirements.

87. The lighting system consists primarily of T-12 florescent lamps with magnetic ballasts and incandescent lighting.

c. **Summary of Recommendations**

88.

- It is imperative that the receptacles located in the renal dialysis areas be replaced with ground fault circuit interrupters.
- Replace normal power distribution on all floors except the fourth and fifth floor.
- Replace emergency power distribution on all floors except the fourth and fifth floor.
- Increase capacity of emergency power system in McAuley Building.
- Replace or eliminate 1950's vintage electrical distribution equipment.
- Upgrade fire alarm system, including elevator

recall, fire fighter phone jacks, addressable devices, ADA compliant notification devices.

- Upgrade public address system speakers and wiring.
- Perform complete lighting retrofit/redesign.
- Perform general preventive maintenance, clean panelboards of dust and debris.

d. Summary of Costs

89.

- HVAC -\$4,380,000
- Electrical - \$2,192,500
- Plumbing - \$572,500
- Fire - \$315,000.
- Total - \$7,460,000

VI. Cost Estimate - Mothballing

90. Rich Reichman of MAS, Inc., addressed leaving the McAuley Building unoccupied for a number of years in a letter to the Commission dated January 18, 1999. Reichman concluded that "mothballing" the Building would involve a one-time closure cost of \$49,000 and annual operating costs of \$340,000 after closure. Reichman concluded that "mothballing would cause St. Mary's undue financial hardship and was therefore not a practical alternative."
(Appellant's No.3)

J. Sale or Lease of Building

91. In the view of commercial Realtor Stanley J. Wisinski, III, based on the condition of the Building, the cost of remodeling and the absence of parking, the McAuley Building has no real market value and would be extremely difficult to sell or lease with no parking available. [TR 58-59, Appellant No. 8; Commission No. 1(11)]

92. Ambassador Secchia apparently told a Grand Rapids city official (Mr. Hoyt) that he might be interested in looking at the Building for housing. St. Mary's also had discussions with Dwelling Place about possible uses of the building. (TR 169, Appellant No. 11)

K. Historic Preservation Tax Credits

93. In order to qualify for a rehabilitation tax credit, a structure must be a certified historic structure or a contributing building in an historic district. The structure can be commercial, industrial, or rental housing. The renovation must be substantial. The project must be completed within two years (five years with a plan). The renovation must follow the US Secretary of the Interior's Standards for Rehabilitating Historic Buildings. The Historic rehabilitation is a one-time 20 percent credit on rehabilitation costs. (Neighborhood Reinvestment Training Institute. Attachment D of the Commission's Post-Hearing Brief)

94. Federal tax credits may be sold to investors. Investors may offer up to \$0.62 dollars for every dollar of future tax benefit. (Using HOME With Low-Income Housing Tax Credits - 1. Attachment D of Commission's Post-Hearing Brief)

95. To be eligible for the 20 percent federal rehabilitation tax credit, the building must be depreciable, the rehabilitation must be substantial, the building must be placed in service, and the building must be a certified historic structure. (Federal

Historic Preservation Tax Incentives, National Park Service pp 4 -
5. Attachment D of Commission's Post-Hearing Brief)

Conclusions of Law

As indicated at that outset of this Proposal, section 5(2) of that Local Historic Districts Act, supra, allows persons aggrieved by decisions of commissions to appeal to the State Historic Preservation 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 or a notice to proceed. Relief should, of course, be granted where a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial or material error of law. Conversely, where a commission has reached a correct decision, relief should not be awarded.

A. Standard for Review for Applications

The Commission, in reviewing applications such as the one at issue, was required to follow federal, state and local law. In that regard, section 5 of the Act provides in relevant part as follows:

I. Federal Law

Section 5(3) of the Act provides that in reviewing plans a 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.

II. State Law

Sec. 5. * * *

(5) If an application is for work that will adversely affect the exterior of a resource the commission considers valuable to the local unit, state, or nation, and the commission determines that the alteration or loss of that resource will adversely affect the public purpose of the local unit, state, or nation, the commission shall attempt to establish with the owner of the resource an economically feasible plan for preservation of the resource.

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

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

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

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

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

III. Local Law

With regard to review under local law, the Grand Rapids Historic Preservation Commission Ordinance (City Ordinances, §§ 5.391 - 5.439) is modeled after the Act. In that regard, § 5.395(6) of the Ordinance is identical to § 5(6) of the Act.

B. Architectural and Historical Significance

At the outset of this discussion and in order to place the Appellant's and the Commission's evidence and arguments in proper perspective, it is initially important to address the architectural and historical significance of the McAuley Building itself. There is necessarily a relationship between the significance of a building and the magnitude of the effort required to preserve it. If a building has great architectural and historical significance, then the effort to preserve it must be great. That is to say, virtually no stones can be left unturned to find some alternative to demolition. On the other hand, if a building lacks landmark architectural and historical significance, then even though feasible alternatives must be pursued, the magnitude of the effort required is not as great.

With respect to this issue, there is little evidence in the hearing record to establish that the McAuley Building possesses architectural significance, either as an archetypal example of a classical architectural style, or even as a "hodge podge" of styles. Rather, the evidence in the hearing record showed that, after initial construction in 1909, sections were added to the McAuley Building in 1926 and then again in 1951 and 1953, to meet the hospital's functional needs. When the McAuley Building could no longer deliver effective health care services then a new hospital was constructed in 1973.

While by no means dispositive of the architectural significance issue, the statements of David Hathaway, a member of the Heritage Hill Association and project engineer for St. Mary's,

made at the public hearing on January 6, 1999, are found to be persuasive. Even taking into account Hathaway's possible bias as an employee of St. Mary's as contrasted against his residence in the District, Hathaway's statement that when looking at the McAuley Building from a half block away, one can observe that here are a lot of different pieces that do not match, is significant.

By virtue of its sheer size and age, the McAuley Building is clearly a contributing resource in the District. Commissioner Metz pointed out that inclusion of the McAuley Building in the District was no accident. Even though it sits on the edge of the District and is the only structure in St. Mary's 11-acre campus located in the District, it is nonetheless a contributing resource.

With regard to the McAuley Buildings historic significance, little need be said beyond the fact that the Building is located on the land where St. Mary's has provided health care services to the community for more than 100 years.

C. Undue Financial Hardship

In its appeal, the Appellant argued that retaining the McAuley Building will cause St. Mary's "undue financial hardship" in both the short term and in the long term. In the short term, St. Mary's would incur an annual cost of more than \$300,000 for operating and maintaining a building that is of minimal benefit. In the long term, St. Mary's would have to embark on major capital improvement program at a cost of more than \$20 million to recreate a building with minimal value. Both the short-term and long-term costs create undue financial hardship for St. Mary's merely to perpetuate a

building that is of limited use.

The Appellant further asserted that the financial hardship imposed by the McAuley Building is not of St. Mary's making; rather, it is due to events beyond its control. Third-party providers including Medicare, Medicaid and Blue Cross expect health care providers like St. Mary's to provide the same services in 1999 for three percent less than was reimbursed in 1998. Moreover, projected reimbursement from third parties is expected to be even less in 2000. For fiscal years 1999-2000, St. Mary's anticipates a \$3,200,000 reduction in payments for hospital services. These declining revenues are caused by events beyond St. Mary's control. The Appellant asserted also that claims by a Commissioner that St. Mary's actually showed a profit were totally unsubstantiated.

With regard to the cost of operating the McAuley Building and the high cost for future capital improvements, the Appellant insisted that these costs are very high due to the type of building construction and its age ... not neglect. The Appellant maintained that its engineering consultants were all in agreement that the Building was properly repaired and maintained over the years.

The Appellant advanced that "mothballing" the McAuley Building was not a viable option because mothballing does not eliminate the financial hardship. St. Mary's cannot afford the luxury of doing nothing with the Building, which has an ongoing annual expense in excess of \$300,000. With regard to renovation, this is not a feasible alternative for St. Mary's because it would not eliminate the financial hardship. Renovating the Building at a cost in

excess of \$20 million would simply create space that is not usable for St. Mary's or anyone else because of the limitations of the Building and the absence of parking.

With regard to pursuing alternatives to eliminate the hardship, including offering the Building for sale at its fair market value or moving the Building to another location in the District, St. Mary's claimed that this is not an option for several reasons. First, because the McAuley Building is an integral part of the hospital complex and due to the absence of parking, it is not attractive to third party users. Also, it makes no sense for someone else to occupy the land where the McAuley Building sits when there is no other suitable land available for expansion or reuse for hospital-related purposes.

The Commission countered that at least one Commissioner was of the view that St. Mary's had not demonstrated a willingness to work with other parties in the community to find a feasible use for the McAuley Building. The Commission maintained that there was a dearth of evidence regarding St. Mary's efforts to find an alternative to eliminate the alleged undue financial hardship associated with maintaining or renovating the building.

No evidence or argument was presented by either St. Mary's or the Commission regarding St. Mary's overall financial condition or that of its parent organization, The Sisters of Mercy, or if its overall financial condition was even a factor that could or should be considered in determining whether maintaining the McAuley Building created an undue financial hardship for St. Mary's.

Evidence regarding St. Mary's finances submitted by the Appellant focused on the loss of revenue due to a reduction in payments by third party providers such as Medicare, Medicaid, and Blue Cross, and the impact this reduction would have on St. Mary's operations.

The Appellant's evidence about how the more than \$300,000 to maintain the McAuley Building, or to keep it in mothballs, could be spent to provide needed health care services to the community, does not automatically equate to an undue financial hardship for St. Mary's. St. Mary's CEO, David Ameen, made the obvious point that revenue can only be spent once. On this issue, the Commission's evidence was limited to an unsubstantiated statement made by a commissioner that St. Mary's had actually made a profit.

Evidence submitted by the Appellant established an annual cost of \$320,000 to maintain the McAuley Building in its present state of limited occupancy and an annual cost of \$340,000 to maintain the Building in a mothballed state. With regard to renovation, the Appellant's evidence is both compelling and convincing. The assessment and conclusions contained in the report prepared by Timothy J. Hoffman, P.E., of Innovative Engineering Associates for the City of Grand Rapids Neighborhood Development Department, do not stand up when compared to the more thorough assessments prepared by the consultants and engineers hired by St. Mary's to evaluate the McAuley Building. In this regard, it is worth noting that St. Mary's witness Harvey Adams testified that when he escorted Hoffman through the Building, Hoffman spent no more than one or two hours in the Building.

The thorough report George R. Ehlert, P.E., of Ehlert/Bryan, Inc., prepared for MAS Associates in November of 1996 leaves little room for doubt that his conclusions are sound. Ehlert concluded that from a structural standpoint, the Building is extremely limited because it lacks the ability to provide necessary floor space, variable floor loadings, adequate mechanical shafts and spaces, adequate vertical transportation (stairs and elevators), and a proper exterior envelope (energy efficient walls with proper thermal and moisture barriers). Moreover, Ehlert also concluded that if the Building were upgraded for future hospital and medical use, the exterior walls, which provide much of the Building's character, would have to be removed and replaced.

Ehlert's critique and criticism of Hoffman's report and conclusions, while somewhat harsh, were nonetheless appropriate. Ehlert's testimony and diagrams concerning the inability of a building with McAuley-like walls to satisfy the competing requirement for controlling moisture between winter and summer was particularly persuasive.

With regard to the costs for renovation, the engineering assessment prepared by The Ritchie Organization in June of 1998 established a cost of \$7,460,000 for renovation of the HVAC, electrical, plumbing and fire protection systems of the McAuley Building under the assumption that the Building would not be utilized for significant patient care services. The revised preliminary feasibility chart prepared by Rockford Construction Company in July of 1998 established a cost of \$20.5 million for

restoration of the McAuley Building. These figures show significant costs even with the potential for historic preservation tax credits, which are by no means certain to be available.

Moving the McAuley Building to a vacant site in the District is not an alternative. This leaves offering the building for sale at its fair market price. On this issue, the Appellant has made no secret of the fact that it does not want to sell or lease the McAuley Building. In fact, the exact opposite is true. The evidence overwhelming showed that St. Mary's wants to retain control and ownership of this land for hospital use. While there was evidence of contact with a Realtor for the purpose of "exploring" the sale or lease of the Building, some mention that Ambassador Secchia might be interested in looking into using the Building for residential purposes, and evidence of meetings between St. Mary's and Dwelling Place to consider the feasibility of housing as an alternative use for the Building, St. Mary's efforts to offer the Building for sale at its "fair market value" cannot be considered as great. In fact, the McAuley Building's fair market value was never established or even alluded to either by the Appellant or the Commission.

While there are no Michigan cases which address what constitutes undue financial hardship for a nonprofit organization like St. Mary's, the State of New York has developed a hardship standard for nonprofit agencies. New York's test is whether a building physically or financially prevents or seriously interferes with carrying out the nonprofit's mission.

In 1025 Fifth Avenue, Inc. v Marymount School of New York, 475 NYS2d 182, 123 Misc2d 756 (1983), Marymount, a Catholic preparatory school, claimed it needed to construct a gymnasium to provide a well-rounded education for its students. Affirming the New York City Landmarks Preservation Commission's decision authorizing construction of a nonconforming rooftop gymnasium, the Supreme Court held that the Commission was vested with jurisdiction to issue a notice to proceed where the standard was that landmark-related restrictions should not physically or financially prevent, or seriously interfere with carrying out the school's charitable purpose.

In the absence of Michigan law, the legal standard applied by New York is found to be both reasonable and applicable to the case at hand.

The totality of the evidence in the hearing record established that St. Mary's owns a building of limited architectural and historical significance which has very limited use and is a severe drain on St. Mary's ever diminishing revenues. St. Mary's financial ability to maintain or mothball the Building has been reduced due to factors not of its own doing and beyond its control. Even if a rehabilitation project qualified for both federal and state⁵ historic preservation income tax and single business tax credits that St. Mary's could then sell to for-profit organizations, the overall cost to renovate the Building would

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1998 PA 534; MCL 208.39c and 1998 PA 535; MCL 206.266.

still be prohibitive. Moreover, a renovated building would be of limited use to St. Mary's. St. Mary's mission is to provide health care services to the community. The McAuley Building does not contribute to that mission. In fact, the evidence submitted demonstrated that the Building severely interferes with St. Mary's ability to perform its mission. There is compelling evidence in the hearing record which shows that selling the Building is not a viable alternative because St. Mary's needs to maintain control of this useful land located in its 11-acre complex. Commissioner Metz conceded the Commission does not interpret the undue financial hardship standard as requiring that the resource be offered for sale. Each of these factors must be evaluated with due regard to the resource at issue. Because of its age, size and location, there are no reasonable alternatives available to St. Mary's to eliminate the undue financial hardship caused by retention of McAuley Building.

In light of the above, it must be concluded that the Commission's action in denying the Appellant's application to demolish the McAuley Building should be reversed.

D. Hazard to Safety of Public or Occupants

The Appellant asserted that even though whether the Building "constitutes a hazard to the safety of the public or to the structure's occupants" may appear not to be relevant, its engineering experts highlighted issues that affect the safety of both the public and the Building's occupants. To support this argument, the Appellant relied upon information contained in the report of The

Ritchie Organization noting the poor condition of the electrical equipment and the Ehlert/Bryan analyses which noted the "long-term degradation" of the exterior walls, making them unacceptable for continued long-term use. The Appellant conceded that the Building is not currently a safety hazard.

The Commission countered this argument by pointing out that the Appellant's experts do not consider the Building to pose a current hazard to the safety of the public or its occupants. The Commission pointed out also that the Appellant's counsel, Randall Kraker, acknowledged that St. Mary's is not aware that the Building is a current safety hazard.

The Appellant's evidence and argument on this issue are not persuasive. Appellant has cited no authority to support its argument that a possible hazard to the safety of the public or the Building's occupants sometime in the future provides a basis for granting relief.

In light of the above, the Commission's denial of the Appellant's application on the grounds that the Building constitutes a hazard to safety of the public or its occupants was proper.

E. Deterrent to Major Improvement Program

The Appellant additionally argued that the application should have been approved by the Commission because the McAuley Building is a deterrent to a major improvement program that would be of substantial benefit to the community. St. Mary's asserted that recent improvements to its campus have been of substantial benefit

to the community because St. Mary's is one of the three primary care givers in the community, with special emphasis on meeting the health care needs of the poor. Because the Building sits on the only land available on its campus for regeneration of the hospital sometime in the future, and it is too costly to maintain, mothball, or renovate, demolishing the Building is the only way to alleviate the impediment to St. Mary's improvement plans that will be of substantial benefit to the community.

The Commission countered that St. Mary's claim that the McAuley Building was a deterrent to a major improvement program that will be of substantial benefit to the community was not credible in light of requirement that the applicant proposing the work must first obtain all necessary planning and zoning approvals, financing, and environmental clearances.

There is no room for interpretation when the language of a statute or ordinance is clear. In this regard, in Utter v Secretary of State, 179 Mich App 119, 122 NW2d (1989), the Court of Appeals stated:

"Where the language of a statute is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded. The Legislature must have intended the the meaning plainly expressed, and the statute is to be enforced as written."

The Appellant submitted no evidence to establish that St. Mary's has complied with all or any of the requirements in section 5(6)(b) of the Act with regard to obtaining the necessary approvals and clearances. Moreover, the Appellant offered no authority to support a conclusion that the Commission should have waived these

requirements with regard to its application.

Accordingly, it is unnecessary to consider whether or not the McAuley Building is a deterrent to a major improvement program that will be of substantial benefit to the community.

In light of the above, it must be concluded that the Commission properly denied the application on this ground.

F. Retaining Building Not in Interest of Majority of Community

The Appellant asserted also that the Commission should have granted a notice to proceed with demolition because retaining the McAuley Building is not in the interest of the majority of the community. The Appellant argued that this test is particularly relevant to St. Mary's, because St. Mary's is itself a community resource.

The Commission countered that the Appellant failed to present any evidence as to how the larger community is harmed by retaining the McAuley Building.

Evidence in the hearing record showed that St. Mary's is now required to spend in excess of \$300,000 annually to maintain the McAuley Building that is of minimal use to its mission of providing health care services to the community, especially the poor. The statement of St. Mary's CEO, David Ameen, that the revenue dollars can only be spent once bears repeating. The troublesome aspect of this issue is determining if what is good for St. Mary's is necessarily good for the majority of the community. It goes without saying that demolishing the Building would be good for St. Mary's. There is evidence in the hearing record to support St.

Mary's position that it spends its revenue wisely and that the most of its money is spent to provide health care services for persons living in the immediate area where St. Mary's is located, i.e., the community it serves.

The Commission asserted that St. Mary's has chosen to frame this issue as community health care versus historic preservation. Without doubt, residents of the District benefit from St. Mary's presence by having medical services nearby. St. Mary's also provides employment opportunities. In spite of these obvious benefits, several residents of the District and historic preservationists in the greater Grand Rapids area expressed strong opposition to St. Mary's application.

At the end of the day, the operative word here is "majority". In simple terms, "majority" means "more than half of a total". Webster's New World Dictionary, 2d ed, 1980, p 854. Without determining the size of the community, it is difficult to determine what is in the interest of the majority of that community.

Evidence in the hearing record showed that razing the McAuley Building would clearly be in the Appellant's interest and that St. Mary's would pass this benefit on to the patients it serves. Commissioner Logan made the point that "best interest" is not a popularity poll. Rather, "best interest" should be viewed as something the community would benefit from. Notwithstanding evidence of strong opposition to demolition, the Appellant's evidence is sufficient to establish that razing the Building would be "in the interest of the **majority** of the community". The

Appellant has met its burden of proof on this issue, Prechel, supra.

In light of the above, it must be concluded that it was error for the Commission to deny the application on this ground.

Conclusion

The official record made in this case established that the Commission thoughtfully considered the Appellant's application within the limitations of the information provided. With regard to the issues before the Commission that the McAuley Building constitutes a hazard to the safety of the public or its occupants and that retaining the resource is a deterrent to a major improvement program that will be of substantial benefit to the community, it must be concluded that the hearing record demonstrates that the Commission applied the appropriate standards of review under federal, state and local law.

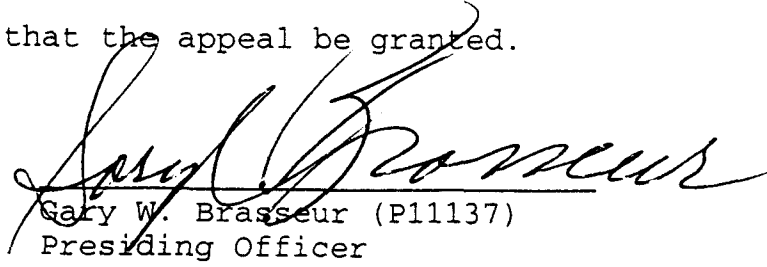
However, with regard to the retention of the McAuley Building causing undue financial hardship due to events beyond St. Mary's control and that retaining the resource is in the interest of the majority of the community, it must be also be concluded that in light of the totality of evidence in the hearing record, the Commission failed to apply appropriate standards of review under federal, state and local law and that the Commission committed error when denying the the Appellant's application for a notice to proceed with demolition of the McAuley Building.

Recommendation

It is therefore recommended that the appeal be granted.

Dated:

May 27, 1999


Gary W. Brasseur (P11137)
Presiding Officer

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