

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

In the Matter of:

**ORLANDO AND CYNTHIA SANMIGUEL,**  
Applicants/Appellants,

v

Docket No. 99-174-HP

**DETROIT HISTORIC DISTRICT COMMISSION,**  
Respondent/Appellee.

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**FINAL DECISION AND ORDER**

This matter involves an appeal of a decision of the Detroit Historic District Commission denying an application for approval to install pewter-colored vinyl siding and tuxedo gray aluminum trim on the building at 407 West Grand Boulevard, Detroit, Michigan, which is located in Detroit's Hubbard Farms Historic District.

The State Historic Preservation Review Board (the Board) has appellate jurisdiction to consider such appeals under section 5(2) of the Local Historic Districts Act, as amended, being section 399.205 of the Michigan Compiled Laws.

At the direction of the Board, an administrative hearing was held on August 18, 1999, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on September 10, 1999, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of Michigan Compiled Laws.

The board considered the appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regular meeting conducted on Friday, October 1, 1999.

Having considered the Proposal for Decision and the official record made in this matter, the Board voted 5 to 0, with 0 abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document, and,

Having done so,

**IT IS ORDERED** that the appeal be and the same hereby is denied.

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

Dated: October 1, 1999

  
Jennifer L. Radcliff, President  
State Historic Preservation Review Board

Note: Section 5(2) of the Local Historic Districts Act provides that a permit applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date of the mailing of notice of the Final Decision and Order of the Board. In addition, MCR 2.105(G) and 7.105 may prescribe other applicable rules with respect to appeals of decisions of administrative agencies.

**STATE OF MICHIGAN**  
**MICHIGAN DEPARTMENT OF STATE**  
**ADMINISTRATIVE LAW DIVISION**

In the Matter of:

**ORLANDO & CYNTHIA SANMIGUEL,**  
Applicants/Appellants,

v

Docket No. 99-174-HP

**DETROIT HISTORIC DISTRICT COMMISSION,**  
Commission/Appellee.

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**PROPOSAL FOR DECISION**

This matter involves an appeal of a decision of the Detroit Historic District Commission (the Commission), denying approval to install pewter-colored vinyl siding and tuxedo gray aluminum trim on the building located at 407 West Grand Boulevard, Detroit, Michigan.

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

Upon receipt of the appeal, the Board directed the Michigan

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<sup>1</sup> 1970 PA 169, § 5; MCL 399.205; MSA 5.3407(5).

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 Wednesday, August 18, 1999, in the Bigelow Room of the Michigan Library and Historical Center, 717 West Allegan, Lansing, Michigan. The hearing was held pursuant to the procedures prescribed in Chapter 4 of the Administrative Procedures Act.<sup>2</sup>

Appellant Cynthia Sanmiguel appeared in person at the administrative hearing. Appellant Orlando Sanmiguel did not attend the hearing. The Sanmiguels were not represented by legal counsel. Angela M. Bodley, Junior Assistant Corporation Counsel, Municipal Affairs Section, City of Detroit Law Department, appeared at the 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**

By means of a letter dated June 28, 1999, the Appellants contested a Commission decision rendered at the Commission's regularly scheduled meeting held on June 9, 1999. The decision had the effect of denying the Sanmiguels' application for a permit to install pewter-colored vinyl siding and tuxedo gray aluminum trim on their home located in Detroit's Hubbard Farms Historic District

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<sup>2</sup> 1969 PA 306, § 71 et seq; MCL 24.271 et seq; MSA 3.560(171) et seq.

(the District). In their letter, the Sanmiguels contended that the application should have been approved because: 1) when they purchased their home in April of 1988, it was not situated in an historic district, 2) in late 1998, they installed a new gray roof and also new gutters and down spouts in tuxedo gray all of which were approved by the Commission, 3) the brownish-color siding suggested by the Commission does not match the roof and gutters, 4) their intention was to improve the looks of their home, using their choice of colors, and 5) they felt that they are an asset to the neighborhood and should be allowed to make this improvement to their home.

The Commission replied that it acted within its legal authority when rendering its decision at its June 9, 1999 meeting, because the Commission properly applied the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, as required by the Act and the 1984 Detroit City Code (the Code).

The Commission voted to deny a certificate of appropriateness because: 1) the proposed modifications would be in direct conflict with Element of Design (9) for the District, 2) the modification would affect the relationship of colors to structures within the District, and 3) the color of the building would be incompatible with the colors in the District. The Commission asserted that it properly considered all of the information submitted and that the

Sanmiguel had not demonstrated any extenuating circumstances sufficient to justify a different decision.

Summary of Evidence

**A. Jurisdictional Materials**

Certain jurisdictional materials were admitted into the evidentiary record at the administrative hearing. In this regard, one Hearing Officer Exhibit was received into evidence. Hearing Officer Exhibit No. 1 consisted of a Notice of Pre-Hearing Conference and Administrative Hearing and Proof of Service.

**B. Appellant's Evidence**

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

Section 5(2) of the Act, supra, indicates that persons who appeal may submit all or any part of their evidence and argument in written form. In this vein, the Appellants submitted four exhibits at the administrative hearing in support of their appeal. Appellants' Exhibit No. 1 is a claim of appeal, dated June 28, 1999, and a copy of the Commission's notice of denial, dated June 16, 1999. Appellants' No. 2 consists of photographs of homes located at 359 West Grand Boulevard and 414 West Grand Boulevard. Appellants' No. 3 is color chart for siding and trim color options

by Wolverine, a vinyl siding manufacturer. Appellants' No. 4 is a color selection chart for Quality Aluminum Products, Inc., of Flat Rock, Michigan.

Appellant Cynthia Sanmiguel testified in person at the administrative hearing. Sanmiguel stated that when she and her husband purchased their home at 407 West Grand Boulevard in 1988 the property was not located in a historic district. She added that she could not remember when the Hubbard Farms Historic District was created.

With regard to the color for the vinyl siding, Sanmiguel testified that the contractor she and her husband selected offered the best price for the siding but only had a limited number of colors to chose from. Sanmiguel further testified that their home's roof sustained significant storm damage in July of 1998. She stated that the Commission approved the colors they had selected for the replacement roof and new gutters, which were dark gray and tuxedo gray, respectively. Sanmiguel said she would like to know what the Commission is doing about the boarded-up houses and the "bad" activities taking place in the District.

In response to questions from the Commission's legal counsel about submitting an application for a permit to replace the damaged shingles, Sanmiguel replied that she had spoken with Kristine (Kidorf) about the color for the shingles. She said that even though there was no discussion about the color for the gutters and

down spouts at that time, as far as she knew the Commission was aware of the color.

**C. Commission's Evidence**

The Commission submitted one exhibit at the administrative hearing. Commission Exhibit No. 1 is a multi-page document consisting of the Commission's answer to the claim of appeal and brief in support thereof, and copies of: A) an application for building permit, dated October 25, 1996 (sic), submitted by Joseph Mazzara, Mazzara Construction Company, for work to be performed at 407 West Grand Boulevard, Detroit, B) a certificate of appropriateness, dated October 26, 1998, authorizing Mazzara Construction Company to perform work at 407 West Grand, C) an application for building permit, dated May 4, 1999, submitted by Orlando and Cynthia Sanmiguel, to install vinyl siding and trim on the complete house located at 407 West Grand Boulevard, D) photographs of various elevations of 407 West Grand Boulevard, E) Staff Report prepared for the May 14, 1999 Commission meeting pertaining to application number 99-44 for work to be performed at 407 West Grand boulevard, F) a notice of tabled application, dated May 18, 1999, for application number 99-44, G) staff report for June 9, 1999 Commission meeting pertaining to application number 99-44, H) notice of Denial for application number 99-44, I) chart for color system B, Detroit Historic District Commission, J) the Local Historic District Act, 1970 PA 169, as amended, K) Chapter 25



of the Detroit Code L) City of Detroit, Historic District Commission, Rules of Procedure, M) the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and N) a letter from Orlando and Cynthia Sanmiguel to the State Historic Preservation Review Board, dated June 28, 1999, appealing the Commission's denial of a request for a permit to install pewter-colored vinyl siding with tuxedo gray trim on their home at 407 West Grand Boulevard.

The Commission also presented testimony from one witness, Kristine Kidorf, who is the Historic Preservation Coordinator for the City of Detroit. Kidorf testified that she holds a bachelor of science degree in architecture and a master of science degree in historic preservation. Kidorf indicated that she has held her current position for more than two years.

With regard to the Sanmiguel application, Kidorf testified that she was familiar with the application filed in 1998 pertaining to the roof and chimney and the installation of gutters and down spouts. Kidorf said that she did not recall the color for the gutters and down spouts. Kidorf made the point that approval of gutters and down spouts usually "is not a big deal".

Kidorf further testified that some time later, the Sanmiguels submitted an application to cover the insulbrick siding with vinyl siding. She said that it was her recollection that because the insulbrick was not a character-defining texture, it would be

permissible to cover the insulbrick with vinyl siding and trim in colors appropriate for the District.

Kidorf further testified that the Commission asked the Sanmiguels to reconsider the colors they had selected because the colors were not in the Commission's color guide. She said that the Sanmiguels did not want to change the colors they had proposed, i.e., two colors of gray, because the colors matched the roof, down spouts and gutters. Kidorf indicated that after tabling the matter at the May meeting, when the Sanmiguels appeared at the June meeting they insisted that they did not want any other colors. They wanted pewter for the siding and tuxedo gray for the trim.

Kidorf also testified about the color guide. She said that each district has a style and a color system. Kidorf said that during the June meeting, commission members tried to compromise with the Sanmiguels to come up with colors that were compatible with the existing shingles, down spouts and gutters. Kidorf concluded her testimony by stating that the proposed work is appropriate, but that the proposed color is inappropriate because it does not conform with the color guide for the Hubbard Farms Historic District.

**D. Post-Hearing Filings**

In addition to the evidence presented at the administrative hearing, the parties were also permitted to submit post-hearing filings. The Appellants did not submit a post-hearing filing. By

transmittal letter dated August 20, 1999, the Commission submitted copies of the following materials: 1) an excerpt from the minutes for the Commission's May 1999 meeting pertaining to the Sanmiguel's application, 2) the Paint Guidelines in The Detroit Historic Districts Style and Color Guide, 3) an excerpt from the Commission's June 1999 meeting pertaining to the Sanmiguel's application, 4) the agenda for the Commission's May 12, 1999 public hearing, 5) the agenda for the Commission June 9, 1999 meeting, 6) section 25-2-12 of the Detroit City Code pertaining to the Hubbard Farms Historic District, and 7) The Detroit Historic District Style & Color Guide.

#### **Findings of Fact**

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

##### **A. History of Property and District**

1. The building located at 407 West Grand Boulevard is located within the City of Detroit's Hubbard Farms Historic District.

2. The Sanmiguel's purchased the residence at 407 West Grand Boulevard, Detroit, Michigan, in 1988.

3. The Hubbard Farms Historic District is designated as an historic district in the Detroit City Code (the Code), Chapter 25, History, Section 25-2-122. (Commission's Post-Hearing filing)

4. The District was created by Detroit City Ordinance No. 1-93, § 1, January 13, 1993.

**B. Permit Applications - Certificate of Appropriateness**

5. Sometime during the month of July, 1998, the roof of the Sanmiguel's residence sustained significant storm damage requiring the shingles to be replaced.

6. On or about October 25, 1998, Joseph Mazzara of Mazzara Construction Company filed an application for a building permit to perform extensive repairs to the Sanmiguel's residence. [Commission Exh. No. 1(A)]

7. On or about October 26, 1998, Kidorf issued a certificate of appropriateness on behalf of the Commission for work to be performed at 407 West Grand Boulevard. The certificate stated in pertinent part as follows:

"The replacement of an existing asphalt shingle roof with a new asphalt shingle roof in the color "~~Dual Slate~~" (slate tone grey) to match the existing color or a medium to dark brown asphalt shingle, and the reconstruction of the chimneys and the installation of gutters and down spouts, meets "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" Standard Number 6, "Deteriorated historic features shall be repaired rather than replaced. . . ."

The certificate did not specify a particular color for the gutters and down spouts. [Commission Exh. No. 1(B)]

8. On or about May 4, 1999, the Sanmiguel's filed an application for a building permit to install pewter-colored vinyl siding and tuxedo gray trim on their residence. [Commission Exh.

No. 1(C)]

C. Staff Report for May 12, 1999 Commission Meeting

9. Kidorf prepared a staff report for the Commission's May 12, 1999 meeting. The report stated in pertinent part as follows:

"PROPOSAL

The applicant proposes to install vinyl siding and encase trim and the soffit and fascia in aluminum. The existing house is covered in "insulbrick" which is in fair condition. The window trim was previously wrapped in aluminum in an off white color. The soffit has decorative rafter tails. The proposed vinyl is a 3" wood grain vinyl in a medium gray color. The proposed aluminum trim is a darker gray.

\* \* \*

RECOMMENDATION

Since the original clapboard material has been covered with "insulbrick" and no longer contributes to the character of the house, and since the original window trim has been previously wrapped in aluminum it is acceptable in this case to install vinyl siding and wrap the windows in aluminum. However, the soffit with decorative rafter tails still contributes to the architectural character of the property and should not be wrapped in aluminum. The porch does not appear to be original and it is acceptable to wrap the porch ceiling and structure in aluminum.

However, the textured vinyl does not duplicate the appearance of historic clapboard which would be painted smooth. A smooth vinyl should be used if its available. Additionally, the colors selected for the siding and trim are not in conformance with *The Detroit Historic Districts Style and Color Guide* and different colors should be chosen. The colors of siding that are closest to what is found in the color guide are: Herringbone, Wicker, or Almond. The trim colors that are found in the color guide are: Antique Ivory, Black, Royal Brown, Imperial Brown, Hickory Clay, Cranberry, Ivy, or Pacific Blue.

I recommend the Commission issue a certificate of appropriateness providing the following conditions have

been met: 1) the soffit and fascia are not wrapped in aluminum; 2) the colors chosen match the colors in *The Detroit Historic Districts Style and Color Guide*; and 3) the colors are approved by Commission staff. . . ."

**D. May 12, 1999 Commission Meeting**

10. At the Commission meeting held on May 12, 1999, Kidorf made an oral presentation outlining the recommendations contained in her report. Following the presentation, Cynthia Sanmiguel told the Commission that after the storm damage in July, 1998, they replaced the old gutters with new tuxedo gray gutters and they had a new roof installed with shingles that were black or dark gray with red specks. Sanmiguel said that she and her husband were just trying to coordinate everything and select matching colors that would look the best on their house. (Minutes of May 12, 1999 meeting contained in Commission's Post-Hearing Filing)

12. In response to a statement by Commissioner Douglas that the colors the Sanmiguels had chosen did not conform to the *Color Guide*, Sanmiguel pointed out that there were other homes in the area that were not color coded. (Minutes of May 12, 1999 meeting contained in Commission's Post-Hearing Filing)

13. The Commission tabled consideration of the Sanmiguels' application until its June Meeting. In the notice of tabled application dated May 18, 1999, the Commission requested the Sanmiguels to study the color guide and material samples, to come up with alternative colors and to meet with Commission staff to review the new colors. [Commission Exh. No. 1(F)]

**E. Staff Report for June 9, 1999 Commission Meeting**

14. Kristine Kidorf prepared a staff report for the Commission's June 9, 1999 meeting. The report essentially replicated Kidorf's report for the May 12, 1999 meeting, with the additions that Cynthia Sanmiguel had reported that smooth vinyl siding was no longer available and that she was continuing to explore color options with her husband.

**F. June 9, 1999 Commission Meeting**

15. At the June meeting, Kidorf summarized the recommendations contained in her report. She reiterated that the Sanmiguels had advised her that smooth vinyl was no longer available and that textured siding was their only option. With regard to the trim, Kidorf recommended that because the new gutters were tuxedo gray, which conformed with the style and color guide, tuxedo gray would be a suitable color for the trim. She underscored that the only real issue was the color of the vinyl siding. (Minutes of June 9, 1999 meeting contained in Commission's Post-Hearing Filing)

16. Cynthia Sanmiguel told the Commissioners that she and her husband had not changed their original color selection of pewter gray for the siding. Sanmiguel emphasized that there was no color in the *Color Guide* that would match the tuxedo gray trim and roof shingles. She indicated that the contractor selected did not have a large variety of colors, only those shown in the siding and color

options. (Appellants' No. 3, minutes of June 9, 1999 meeting contained in Commission's Post-Hearing Filing)

17. Following discussion, Commissioner Linklater summarized the Commission's reasons for denying the application as follows:

"Motion will carry, I'm sorry, the motion to deny is carried, I'm not feeling to well. The recourse you have since you have already committed your money, or a sown payment, to the company you selected to do the siding. Because of the fact the reason we denied it was based upon the color palette. Every home in each of the Historic Districts, depending on the style of the home, we only have so many colors to work with for the body and for the trim. So we have to work only with those colors that we have supplied to you. If at all possible we would ask that, you can of course appeal, and we would ask that you could possibly work with staff to see what compromise can be brought there for you. Once again we have to live by the guidelines that are brought to use and unfortunately that's the decision that we came to tonight. If you have an opportunity I'm sure that staff would be, once again, more than willing to work with you, and maybe even getting larger color chips and seeing if we can find a color that would be compatible within our color board . . . ." (Minutes of June 9, 1999 meeting contained in Commission's Post-Hearing Filing)

18. Following the denial, Cynthia Sanmiguel made two final statements to the Commission. These were as follows:

"My opinion is that we bought the house when it wasn't in historical board and the house is ours and we have to look at it every day, and this is my opinion. It's our house and we have to look at it every day and we pay for the house. So I don't think that the historical board doesn't have to see it and they shouldn't tell us what color we should put on it. We didn't vote the historical board in, and when we bought the house it wasn't historical or else we wouldn't have bought it.

There's houses that are pink, there's houses that are purple and green, there's boarded up houses, and we're trying to improve and we're getting knocked down. I don't understand that. But I don't want to come back, so



I'd like to appeal, or go to the state, or we'll just leave the house the way it is, or I'll go board it up like the one across the street." (Minutes of June 9, 1999 meeting contained in Commission's Post-Hearing Filing)

**G. Notice of Denial and Order**

19. The Commission's notice of denial dated November 16, 1999 stated in pertinent part as follows:

**RE: Application Number 99-44; 407 W. Grand Boulevard;  
Hubbard Farms Historic District**

At its regularly scheduled meeting on June 9, 1999, the Detroit Historic District Commission ("Commission") reviewed the above-referenced application for building permit. Pursuant to Section 25-2-24 of the 1984 Detroit City Code, the Commission hereby issues a notice of denial which is effective as of June 12, 1999. The Commission finds that the proposed work does not qualify for a certificate of appropriateness for the following reasons:

- 1) The proposed color of the vinyl siding is not in conformance with *The Detroit Historic Districts Style and Color Guide*; and
- 2) The installation of Pewter color vinyl siding and Tuxedo Gray aluminum trim as proposed does not meet "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic buildings" standard number 6, "Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence."

You may file a new application for consideration if the application is corrected, if new information is obtained regarding the application, or if the scope of work changes. The application can be corrected by applying to do the following:

Applying to install vinyl siding and trim in colors

that are found in *The Detroit Historic Districts Style and Color Guide*.

### **Conclusions of Law**

As indicated at that outset of this proposal, section 5(2) of the Act, supra, allows persons aggrieved by decisions of commissions to appeal to the 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 when 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 granted.

#### **A. Standard for Review**

In reviewing applications such as the one at issue, the Commission was required to follow federal, state and local law.

##### **1. Federal Law**

The Secretary of the Interior's Standards for Rehabilitation<sup>3</sup> and Guidelines for Rehabilitating Historic Buildings are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility. In its notice of denial, the Commission indicated that proposed color

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<sup>3</sup> 36 C.F.R. part 67.7(6).

of the siding was not in conformance with *The Detroit Historic Districts Style and Color Guide*. The Commission indicated further that the installation of pewter vinyl siding and tuxedo gray aluminum trim as proposed does meet Standard Number 6. This standard provides as follows:

(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

## 2. State Law

With regard to state law, section 5(3) of the Act, which incorporates the federal standards by reference, provides as follows:

### Sec. 5. \* \* \*

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

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

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

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

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

(4) The commission shall review and act upon only

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

(5) If an application is for work that will adversely affect the exterior of a resource the commission considers valuable to that local unit, state, or nation, and the commission determines the alteration or loss of the 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.

### **3. Local Law**

With regard to local law, the City of Detroit has enacted a comprehensive scheme of historic preservation ordinances. Additionally, after completing a thorough study, in 1984 the Detroit Historic Preservation Commission published *The Detroit Historic Districts Style and Color Guide*. The Guide pertains to all historic districts located within the City, including the Hubbard Farms Historic District.

#### **a. The Detroit Code**

Section 25-2-122 of the Detroit Code pertains to the Hubbard Farms Historic District. Subsection 25-2-122(9) prescribes the "relationship of colors: for the District. This subsection states as follows:

(9) *Relationship of colors.* Natural brick colors (red, brown, orange, buff) predominate on brick wall surfaces. Stucco is usually cream, off white, or pale yellow in color. Wooden elements display a variety of colors, depending on what is appropriate for their style. In general, wooden elements of buildings derived from classical precedents, such

as the Neo-Georgian or Colonial revival, are painted in the white-yellow-gray range, while wooden elements of Victorian buildings show more freedom, ranging from shades of rose to green, sometimes with a contrasting color highlighting the architectural detail. Wooden elements of bungalows and arts and crafts influenced buildings tend to be painted in earth tones. Asphalt shingle roofs display a range of colors, from natural slate colors and black to lighter shades of green, gray, brown and red. The original colors of any building, as determined by professional analysis, are always acceptable for that building, and may provide suggestions for similar buildings.

**b. Paint Guidelines**

*The Detroit Historic Districts Style and Color Guide was originally created and published in 1984. The guide was developed according to the study of architecture styles in designated historic districts and the determination of historically accurate colors for those houses. A basic classification system was developed consisting of twenty-three architecturally stylistic classifications and six color systems. These twenty-three classifications include composite and miscellaneous categories so that every building receives a classification number and corresponding color system.*

Paint colors should reflect the historical age and style of the house show the best features of the design, and represent the current owner's taste.

A house of one period rarely looks good with colors of another period. For example, an 1870s brick or stone house requires a dark sash so that the windows will appear to recede into the facade. A white sash, as would be seen on a Colonial Revival style house of c.1910, makes the windows project, changing the relationship between the walls and the window openings.

There should be some thought given to the styles and colors used by owners of other houses on the street or throughout the district. By ignoring the historical appropriate palette for house style and district period, the owner risks injecting a discordant note into the neighborhood that may directly influence the appearance and property values of the entire area.

When dealing with historic neighborhoods, it is safer to select colors that are contemporary with the date and style of the house, leaving "modern" colors for simpler and often characterless suburban homes. This method of selecting colors does not mean that every house in a neighborhood or of a particular period and style should be painted the same color. There is a wide range of attractive color which may be combined in hundreds of ways to provide for individuality with overall neighborhood continuity. All of these combinations are based on colors known to have been available and used in Detroit throughout the 19th and 20th-Centuries.

**c. Color Systems**

Nearly all houses built in America prior to World War I were intended to be "defined" by the trimming color(s). Trim color is used to define wood elements such as corner boards, cornices, and outlining belt course along the siding. All of these elements are usually painted the major trim color to provide contrast or definitions to the body color. In the same fashion, the vertical and horizontal elements of the porches are painted to provide an outline of color in contrast to the body siding.

. **Unpainted brick, stone, or stucco buildings:** The trim will be one color to provide contrast to the masonry while harmonizing well with the color of the brick, stone, or stucco.

. **Frame or masonry buildings:** The gutters

and down spouts should be the same color as the trim to which they are attached.

Six Color Systems A through F have been created that give guidelines for painting a majority of the buildings in Detroit's historic neighborhoods. These systems incorporate the use of 39 total colors. . . .

Color System B contains 22 colors. Any System B color except A:7, A:8, A:9 or B:19 is appropriate for the body. Any System B color is appropriate for the trim.

**d. Summary**

Detroit is in the midst of a rebuilding process that has, in the recent decade, substantially changed the city's image. This rebuilding process is not confined to just the downtown area; it has also reached into Detroit's unique residential neighborhoods. Detroit, like other major U.S. cities, has discovered that the process of rebuilding is also the process of rediscovering one's past; and that inherent historical heritage is one foundation upon which to rebuild.

Detroit has a rich cultural heritage that is visually expressed in its residential neighborhoods through a wide variety of architectural styles. The designation of some of these residential neighborhoods as Historic Districts is a major step in recognizing and preserving this variety of urban cultural and physical heritage.

The vast majority of buildings contained in the Historic Districts are single family residences. The extent of single family ownership in the urban environment is a Detroit tradition rarely found elsewhere. Part of the pride of home ownership is in the understanding of the historical and architectural heritage that is unique to the house and the neighborhood.

With this in mind, it is the purpose of this

guide to assist the homeowner in discovering and recognizing the design heritage of their home. Specifically, through historic research, it establishes guidelines for choosing appropriate color schemes for exterior painting or change in surface treatment of buildings within a Historic District. Such a system creates exterior paint colors that are appropriate to the architectural style and period of a structure and that enhances appearance and reinforces pride not only in the home itself but in the neighborhoods as well.

This study further gives the Detroit Historic District Commission a well-founded and objective guide for approving permit requests for exterior painting or change color of buildings within the Historic Districts.

**B. Early Purchase As Basis for Approval**

The Appellants asserted that because they purchased their home several years before creation of the District, the Commission should have approved their application to install pewter-colored gray vinyl siding and tuxedo gray trim, even though these colors are not found in the *Color Guide* for the Hubbard Farms Historic District.

Evidence in the hearing record showed that the Sanmiguel's purchased their home in June of 1988, more than four years before creation of the District. Again, the District was created in January of 1993. At the June 9, 1999 meeting, Cynthia Sanmiguel stated that she didn't think the Commission should tell them what color siding to put on their house because the Sanmiguel's did not vote for creation of the District. She added that when she and her husband bought their house, it was not in an historic district,



otherwise they would not have purchased it.

The Appellants assertion that the legal restrictions on the use of District property should not apply to them, is without merit. The fact that the Appellants did not vote in favor of establishing the District does not give them the right to ignore the District and its regulations once they have been properly established. The Appellants submitted no evidence to prove (or even suggest) that all legal requirements for creating an historic district were not followed when the District was established by Detroit City Ordinance in January of 1993. The Appellants have the burden of proof on this issue. *Prechel, supra*.

Appellants' use of their property clearly includes the requirement to comply with local laws pertaining to the current restrictions for the historic district in which their property is located.

In light of the above, the Appellants claim that the Commission should approve their application because they purchased their home before the District was created must be rejected.

**C. Colors Not Acceptable**

The Appellants next asserted that brownish-color siding suggested by the Commission does not match the color of their new gray roof and tuxedo gray gutters and down spouts which the Commission approved in 1998, and therefore, that the Commission's "suggestion" could be ignored.

Evidence in the hearing record showed that the Commission issued a certificate of appropriateness for the work done by

Mazzara Construction Company in 1998. Among other things, that work included installing a new dark gray roof and tuxedo gray gutters and down spouts. With regard to the gutters and down spouts, Kidorf made the point in her testimony that the color of gutters and down spouts "is not a big deal".

Given the certificate of appropriateness issued in October of 1998 and Kidorf's testimony, it is apparent that the Commission approved the gray roof and tuxedo gray gutters and down spouts. The color of the siding is another matter.

Evidence in the hearing record also showed that even though textured vinyl does not duplicate the appearance of historic clapboard and that smooth vinyl should be used if it is available, Kidorf leaned toward "recommending" the use of textured vinyl if smooth vinyl were no longer available. Moreover, even though the Commission's denial specifically stated that the proposed pewter-colored vinyl siding and tuxedo gray aluminum trim did not meet Standard 6 of the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings, this appeal is really about the color of the siding.

A review of the *Color Guide* shows that the Commission devoted considerable time and energy in developing a comprehensive color scheme for all the historic districts and within individual districts such as Hubbard Farms. The Commission's effort would be for naught and the *Color Guide* meaningless if property owners residing in historic districts were permitted to substitute their personal tastes and preferences in the place and stead of the

Guide.

It is obvious from the Appellants' presentation that they have concluded that because the Commission approved the color of their new roof and gutters and down spouts, that they, not the Commission, may select the color for the siding and trim. They believe that, if in their opinion it matches, whether or not it is included in the *Color Guide* for Hubbard Farms, they may use it. In other words, Appellants believe that the Commission lacks authority to enforce the provisions in section 25-2-122(9) of the Code. Clearly, this is not the case here.

In *Ypsilanti v Kircher* (Unpublished Michigan Court of Appeals Decision No. 128107, issued July 24, 1992), the Court upheld the order of the Washtenaw Circuit Court that City of Ypsilanti was justified in ordering Kircher to paint his historic building and to paint it with a color compatible with the neighborhood. Kircher had claimed that there was nothing in the Ypsilanti Building Code nor ordinances creating the historic district which gave the City authority to require him to paint his building.

The Appeals Court held "A zoning ordinance is a valid exercise of the police power, but if in its application it is unreasonable and confiscatory, it cannot be sustained." Finding that the unrefuted evidence presented at the trial established that Kircher's building was an eyesore, the Court found that the City reasonably required Kircher to paint the building under the circumstances and that this was not a confiscatory taking.

While there is absolutely no evidence in the hearing record to

suggest that the siding on the Sanmiguels' residence is an eyesore, if the Sanmiguels were to proceed with replacement, the Commission clearly has legal authority to approve the color of the siding selected.

In light of the above, the Appellants' contention that they alone as the property owners should be allowed to select the color of the siding and trim is found to be without merit.

**D. Improvement of Home**

The Appellants also asserted that they feel that they are an asset to the neighborhood and should be allowed to make this improvement to their home.

Evidence in the hearing record supports a finding that the Sanmiguels are indeed responsible citizens and are an asset to the Hubbard Farms Historic District. They acted responsibly by repairing their home after it sustained extensive storm damage in 1998. They acted responsibly by hiring a contractor that filed the necessary application for a permit and received a certificate of appropriateness before proceeding with the work in 1998. They acted responsibly by filing an application for a permit to install vinyl siding and trim in May, 1999. They acted responsibly by attending two Commission meetings and communicating with Commission staff person Kristine Kidorf regarding their application. Lastly, Cynthia Sanmiguel's attendance and participation at the administrative hearing was clearly the action of a concerned and interested citizen.

If the measure and standard for review of the Commission's

action were whether or not the Sanmiguel's were responsible citizens and assets to the District, they would prevail. However, such is not the case.

Moreover, as evidenced by the summary of Commission Linklater, it is clear that the Commission took no pleasure in denying the Appellants' application. Evidence in the record established that the Commission denied the application because the colors proposed for the siding and trim were not compatible with the comprehensive color scheme for all of Detroit's historic districts and the Hubbard Farms Historic District in particular.

Accordingly, the Appellants' argument that they should be allowed to make improvements to the exterior of their home because they are an asset to the District must be rejected.

**E. Arbitrary and Capricious Action**

Did the Commission act in an arbitrary or capricious manner by requiring the Appellants to select a color for the vinyl siding and the trim that is in conformance with *The Detroit Historic Districts Style and Color Guide*?

Michigan jurisprudence offers some guidance on the matter of what conduct constitutes arbitrary and capricious activity. In Bundo v City of Walled Lake, 395 Mich 679, 703; 238 NW2d 154 (1976), the Michigan Supreme Court adopted the meaning of the terms "arbitrary" and "capricious", as defined by the United States Supreme Court, as follows:

"Arbitrary is: '(W)ithout adequate determining principle . . . . Fixed or arrived at through

an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstance, or significance . . . decisive but unreasoned. Capricious is: '(A)pt to change suddenly; freakish; whimsical; humorsome.'" [Citing United States v Carmack, 329 US 230, 243; 67 Sct 252; 91 L Ed 209 (1946)]

In view of the entire hearing record, it must be concluded that the Commission did not act in an arbitrary or capricious manner and that its action was justified under federal, state and local law.

**Conclusion**

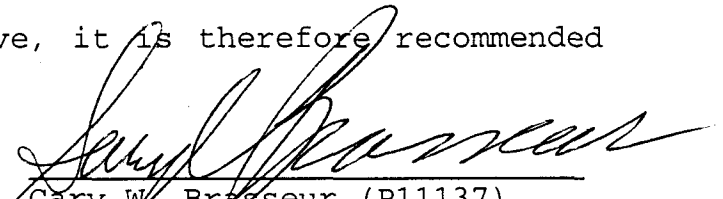
It must be concluded that in light of the totality of the evidence in the hearing record, the Appellants failed to show that Commission's order denying their application to install pewter-colored vinyl siding and tuxedo gray trim on their home was improper under federal, state and local law.

It must also be concluded that the official record made in this case established that the Commission applied the appropriate standards of review under federal, state, and local law in denying Appellants' application because the colors selected were not compatible with comprehensive color scheme for Detroit's historic districts and the Hubbard Farms Historic District in particular.

**Recommendation**

In consideration of the above, it is therefore recommended that the appeal be denied.

Dated: September 10, 1999

  
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Gary W. Brasseur (P11137)  
Presiding Officer