

STATE OF MICHIGAN

DEPARTMENT OF HISTORY, ARTS AND LIBRARIES

OFFICE OF REGULATORY AFFAIRS

In the Matter of:

PROCESSING SOLUTIONS LTD.,
ex rel. JAMES D. AZZAR
Applicant/Appellant,

Docket No. 02-039-HP

v

GRAND RAPIDS HISTORIC PRESERVATION COMMISSION,
Commission/Appellee.

PROPOSAL FOR DECISION

This appeal concerns a decision of the Grand Rapids Historic Preservation Commission (the Commission), denying permission to install stained wood panels over the windows of a historic building, Engine House No. 6, which is located at 312 Grandville SW, Grand Rapids, Michigan. The building is a Grand Rapids historic landmark owned by Processing Solutions Ltd., which in turn is owned by James D. Azzar (PSL or the Appellant).

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

On receipt of the appeal, the Review Board directed the Department's Office of Regulatory Affairs to hold an administrative hearing for the purpose of receiving evidence and hearing arguments. The Office of Regulatory Affairs convened a hearing on February 13, 2002 in the Commission Room, Fifth Floor, Michigan Library and Historical Center, 717 West Allegan Street, Lansing, Michigan. The hearing was held in accordance with procedures in Chapter 4 of the Administrative Procedures Act of 1969 [1969 PA 306, § 71 et seq.; MCL 24.271 et seq.].

Paul A. McCarthy of the law firm of Rhodes, McKee, Boer, Goodrich & Titta, Grand Rapids, Michigan, represented the Appellant. Bernard C. Schaefer, Assistant City Attorney, City of Grand Rapids Law Department, appeared for the Commission. Nicholas L. Bozen, an Administrative Law Judge for the Office of Regulatory Affairs, presided at the hearing.

Issues on Appeal

In its Claim of Appeal, the Appellant asked the Review Board to reverse the Commission's decision and thereby grant its request to place boards over the windows of Engine House No. 6.

As grounds for this request, the Appellant advanced two contentions. The Appellant first argued it has an absolute right to board the windows, since Section 8.231 of the Grand Rapids Building and Maintenance Code (the Maintenance Code) expressly entitles property owners to secure windows against weather with appropriately painted boards. The Appellant added that Section 8.209 of the Maintenance Code provides that the Code's provisions apply to historic buildings such as Engine

House No. 6. The Appellant's conclusion was that the Commission was legally constrained to approve the application and erred by not doing so.

As a second ground for reversal, the Appellant contended that the Commission acted for improper reasons. The Appellant particularly asserted that the Commission saw no reason for the windows to be boarded and did not want the windows boarded permanently. The Appellant also charged that the Commission acted for punitive reasons. The Appellant further charged that a commissioner was in conflict of interest. Appellant concluded that the Commission simply refused to apply the Maintenance Code and, when pushed to justify the denial, merely made a blanket reference to the Grand Rapids Historic Preservation Ordinance (the Preservation Code) and the Secretary of the Interior's Rehabilitation Standards, specifically Standards 2, 5 and 6.

Regarding the Appellant's first issue, the Commission responded that the provisions of the Maintenance Code must be read in conjunction with provisions in the Preservation Code, as laws "*in pari materia*", and that to the extent possible, the Appellant must meet the requirements of both codes whenever performing window work at Engine House No. 6.

Regarding the reasons for its own actions, the Commission asserted that it acted properly when it determined that the proposed window boarding failed to comply with Standards 2, 5 and 6, as promulgated by the Interior Secretary. The Commission also asserted it neither acted punitively nor in any other improper manner.

Procedural Background

Following the administrative hearing in this case, the Appellant requested preparation of a hearing transcript. The requested transcript was completed on March 12, 2002 and was made available to the parties at that time.

The Appellant filed a Post-Hearing Brief, on or about March 28, 2002.

The Commission filed Appellee's Post-Hearing Brief, on or about April 4, 2002.

No rebuttal brief was filed.

Summary of Evidence

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

A. Appellant's Evidence

Section 5(2) of the LHDA, cited above, indicates that appellants may submit any part or all of their evidence in written form. In that vein, the Appellant attached eight exhibits to its Claim of Appeal. Those exhibits consist of: 1) an application dated October 26, 2001, 2) a denial letter dated

November 13, 2001, 3) Section 8.231 of the Maintenance Code, 4) Section 8.209 of the Maintenance Code, 5) the minutes of the Commission meeting of November 7, 2001, 6) Preservation Code, Grand Rapids Ord. No. 93-21, Ch. 68; Section 5.391 *et seq.*, 7) Commission Guidelines for Alterations for Properties within an Historic District & Historic Landmarks, and 8) a quit claim deed dated June 25, 1998. At the hearing, the Appellant also submitted, as Appellant's Exhibit 9, descriptive and photographic material concerning Engine House No. 6, which was printed from the historic sites webpage posted by the State Historic Preservation Office.

B. Commission's Evidence

The Commission also offered evidence for entry into the official hearing record.

Regarding documentary evidence, the Commission submitted nine exhibits as follows: A) an agreement for sale of real property dated June 25, 1998, B) a letter dated December 31, 1999, C) an amended and re-issued final notice to repair dated August 29, 1999, D) a letter dated October 8, 1999, E) an application dated January 6, 2000, F) a certificate of appropriateness dated January 27, 2000, G) a letter dated February 13, 2001, H) ten photographs of the engine house windows, and I) Secretary of the Interior's Standards 1 through 10. The Commission also submitted an additional exhibit, Commission's Exhibit J, which consisted of 11 digital images taken of the Engine House on February 11, 2002.

Besides submitting exhibits, the Commission also presented testimony from two witnesses. As its first witness, the Commission called Ms. Cindy Thomack, a historic preservation specialist for the City of Grand Rapids. Ms. Thomack testified that in her opinion, boarding the windows and doors of a historic building would not comply with Standards 2, 5 and 6, because boarding obliterates considerable architectural detail.¹ She added that there are harmful effects which go along with window boarding, such as nails protruding through the structure and water getting underneath boards to cause further damage.² Moreover, she stated that Standard 2 requires avoiding removal of historic materials and spaces, whereas boarding covers window spaces which are the "eyes to the building"; that Standard 5 indicates distinctive features shall be preserved, while boarding requires making holes with resulting mold and mildew; and that Standard 6 requires repair or replacement, when boarding is neither.³ Thomack added there are "great features" on the building (such as the multi-paints and the detailing of a unique brick arch) that would be covered by boarding.⁴

Ms. Thomack also testified regarding the relationship between the Preservation Code and other local ordinances. She said the Preservation Code frequently takes precedence over other ordinances like the Housing Code, which requires railings to be a minimum of 36 inches.⁵ She commented that high railings

¹ Transcript, page 35.

² *Id.* at p. 36.

³ *Id.* at pp. 37 and 38.

⁴ *Id.* at pp. 38 and 39.

⁵ *Id.* at pp. 44 and 45.

are not allowed in historic districts. She ended her testimony by stating that the Maintenance Code is really subordinate to the Preservation Code, although she acknowledged she had never completely read the Maintenance Code.⁶

The Commission also presented testimony from Ms. Jennifer Metz, who was a Commission member at the time the denial was issued. Ms. Metz testified that the Commission has seen "many applications" from the Appellant regarding Engine House No. 6 and took into account the Appellant's "track record" when considering the application to board the windows.⁷ Ms. Metz said the Commission was "concerned" about the length of "the temporary period" the boards would be present on the windows and whether the windows would actually be repaired at some point in time.⁸ She added the Commission did not see a time frame or plan from the Appellant.⁹ She also said the Commission was concerned about what it viewed as the Appellant's history of timing failures.¹⁰ Nevertheless, Ms. Metz expressly testified that the denial was based on Chapter 68 of the City Code (i.e., the Preservation Code) and Secretary of the Interior's Standards 2, 5 and 6.¹¹

Ms. Metz additionally testified that the Commission generally views the Maintenance Code as subordinate to the

⁶ *Id.*

⁷ *Id.* at p. 48.

⁸ *Id.*

⁹ *Id.* at p. 53

¹⁰ *Id.*

¹¹ *Id.* at pp. 53 and 54.

Preservation Code.¹² She said the Commission's charge is to reference the Preservation Code and the Secretary's Standards, and that that is what the Commission rules on.¹³ She acknowledged there is no training program to become a Commission member, but she testified that new commissioners receive binders with the local preservation guidelines, the Preservation Code, and all pertinent information, and she added that she herself is a 36 CFR Part 61 certified "architectural historian" and that she has a degree in historic preservation and ten years of experience as a historic preservationist.¹⁴ Ms. Metz acknowledged that Commission members are not given a copy of the Maintenance Code or instructed to study and learn that law.¹⁵

Findings of Fact

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

A. Background of Engine House

1. The structure known as Engine House No. 6 is a two-story, brick building located at 312 Grandville SW, Grand Rapids, Michigan. It was designed and built in 1870 by the firm of Robinson and Barnaby. It is Late Victorian in style and features heavy stone window hoods and lintels. Engine House No. 6 remains a landmark of Grand Rapids' southwest quadrant and is one of the very few surviving 19th Century fire stations in the city. (Appellant's Exhibit 9)

¹² *Id.* at p. 49.

¹³ *Id.*

¹⁴ *Id.* at pp. 49 and 50.

¹⁵ *Id.* at p. 50.

B. Preservation Laws and Other Enactments

2. In 1966, Congress enacted the National Historic Preservation Act [(the NHPA),¹⁶ Public Law 89-655]. In Section 101 of the NHPA,¹⁷ Congress declared that the spirit and direction of the nation are reflected in its historic heritage. Congress further declared that state and local governments should expand their historic preservation programs and activities.

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

4. On May 7, 1977, Engine House No. 6 was listed on the State Register of Historic Sites. (Appellant's 9)

5. On July 3, 1979, the Grand Rapids City Council adopted Ordinance No. 79-46 [Preservation Code, Section 5.441] declaring that Fire Engine House No. 6, a City-owned property, be designated a local historic landmark and be subject to the terms, conditions and requirements of the Preservation Code. (Appellant's 9)

6. On December 19, 1980, the Secretary of the Interior promulgated "Standards for Rehabilitation", to be used in connection with individual rehabilitation projects around the

¹⁶ Pursuant to section 77 of the APA [MCL 24.277], official notice is hereby taken of this federal enactment.

¹⁷ 16 USC § 470 *et seq.*

nation. The Standards are set forth at 36 CFR Part 67.¹⁸ In addition to the Standards, the Secretary also adopted detailed guidelines for the performance of restoration work. [See *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1990)*]

7. The Secretary of the Interior also issued historic preservation publications pursuant to the NHPA, which directed the Secretary to make available informational materials concerning work on historic properties. Among those are Preservation Briefs 9, *The Repair of Historic Wooden Windows* (1981) and Preservation Briefs 31, *Mothballing Historic Buildings* (Sept., 1993).¹⁹

8. As one of its duties, the Commission issued local guidelines for restoring historic properties in Grand Rapids. They were set forth in a 36-page publication entitled "Guidelines for Alterations for Properties within an Historic District & Historic Landmarks". The publication includes a detailed section on the subject of "Windows, doors, skylights, solar systems and roof accessories." (Appellant's 7)

9. In October of 1992, the Grand Rapids City Council adopted Ordinance No. 92-69, which amended the Maintenance Code in its entirety. Within the revised Code was Section 8.231, which provided that the provisions of the Maintenance Chapter shall apply to historic landmarks.

¹⁸ See footnote 16.

¹⁹ See footnote 16.

C. Purchase of Engine House and Prior Application

10. On June 25, 1998, James D. Azzar arranged to purchase Engine House No. 6 from the City of Grand Rapids pursuant to an agreement for the sale of real property. (Commission Exhibit A) The agreement listed the Engine House purchase price as \$155,000 and specified that the property would be conveyed via a quitclaim deed to Processing Solutions Ltd., a corporation solely-owned by Azzar. (Appellant's 8; Commission 1) The agreement further stated that the buyer "covenants and agrees" to rehabilitate the property within 12 months and "accomplish said restoration in compliance with the 'Guidelines for Rehabilitation of Historic Buildings' as set forth in the publication so titled by the ... Commission ... and the 'Guidelines for Rehabilitating Historic Buildings' as promulgated by the Secretary of the Interior." (Commission A).

10. In a letter written by Azzar's attorney on or about May 24, 1999, Azzar requested a six-month extension, to December 31, 1999, to complete the historic renovation of Engine House No. 6. (Commission B)

11. On July 29, 1999, Kay Morton, Grand Rapids Zoning Inspector, sent "Mr. James Azzar Processing Solutions LTD" an amended and re-issued final notice to repair. The notice asserted that conditions which are violations of the Maintenance Code have not been corrected as ordered. The notice further asserted: 1) that the door and casing on the east side were rotting, 2) that the exterior windows were neither weather-tight nor in good repair, and 3) that the windowpane on the east side,

third floor, was missing. The notice concluded by stressing in bold, capital letters that the property was a historic landmark.

It added that the Historic Preservation Commission must approve all work. (Commission C)

12. On or about October 8, 1999, Azzar's attorney sent a Grand Rapids zoning inspector a letter stating that Azzar intended to move forward with all work necessary to restore the building. (Commission D)

13. On or about January 6, 2000, Azzar sent the Commission an application for certificate of appropriateness. The application proposed work "(c)onsistent with the (P)reservation (B)riefs" regarding mortar joint repointing. The application also proposed replacing brick, removing paint, and sealing brick. It further proposed:

7. The window frames and other wood trim, doors and other wood elements will be sanded, primed and repainted. The existing window panes will be preserved to the greatest extent possible and any plexiglass will be replaced with glass. Any necessary reglazing will be performed. Any missing, rotted or deteriorated wood will be replaced, primed and painted. The building cornice will also be sanded and repainted.
(Commission E)

14. On January 27, 2000, the Commission issued Azzar a certificate of appropriateness to perform all requested work, subject to certain conditions. One condition was that the wood trim, wood windows and the doors were to be cleaned without the use of chemicals, and then primed and painted. Another condition was that should replacement of an entire window or door be deemed necessary, a new application would be submitted.

Commissioner Metz supported the motion to approve. The motion carried unanimously. (Commission F)

15. On or about February 13, 2001, Mr. Azzar's attorney sent the City a letter indicating that substantial work had been accomplished, including roof reconstruction at a cost of approximately \$25,000, as well as the installation of two new furnaces costing about \$20,000. The letter added that the exterior of Engine House No. 6 "will be restored in compliance with the standards and specifications set forth in the 'Guidelines for Rehabilitation of Historic Buildings' by the end of August, 2001." (Commission G)

D. Application for Window Boarding

16. On or about October 26, 2001, Azzar, as agent for PSL, sent the Commission another application for a certificate of appropriateness. An attachment to the application indicated that pursuant to Section 8.209 of the Maintenance Code, the applicant wished to cover the windows and doors of Engine House No. 6 with textured cedar wood, stained a cream color to match the cornice of the building, as a temporary measure, until the windows and doors could be restored. The attachment further indicated that the boards would be installed through the use of four screws and that a test board had been installed for the Commission to review, if desired. (Appellant's 1)

17. On November 7, 2001, the Commission met to consider the October 26th application and other matters. At that time, Azzar's attorney told the Commission that Azzar had purchased Engine House No. 6 and was in the process of restoring it. The

attorney stated restoration had taken longer than anticipated and that Azzar indicated 1,000 man-hours were put into stripping the paint along the parapet, priming, painting and brickwork. He also stated that the windows were an issue, that Azzar was trying to complete the work with his own crews and resources, that winter was coming on, and that the application was a temporary measure to allow the building to come into perfect compliance with the guidelines. (Appellant's 5)

18. The attorney also said that the Maintenance Code allows for securing the windows with painted boards that match adjacent materials. He added that three cedar test boards had been set up to improve the building's appearance and to temporarily bring it into compliance. He said window boarding would allow the owner to remove the windows on an individual basis and to restore each one individually. (Appellant's 5)

19. Ms. Thomack informed the Commission that all previous approvals had expired. (Appellant's 5)

20. Commissioner Metz indicated that like-for-like repairs could be approved administratively but that approvals are effective for only one year. She added that the completed work looks good but has proceeded at a snail's pace. She said this is a landmark building, which is an investment property for the owner. She stated she saw no reason why the windows could not be worked on in a shop. She expressed her concern that if boarding were permitted, there would be a lengthy period before the boards would be removed. Moreover, she said she felt the

windows could be restored at a reasonable pace if a window repair company were hired. (Appellant's 5)

21. The attorney then stated the owner is committed to doing the work necessary for restoration (although not at the perfect schedule), and he should not be penalized. Commissioner Metz replied that the Commission was not penalizing him, that approvals were granted and work was not finished, and that the owner was creating his own hardships. (Appellant's 5)

22. Commissioner Bazzani commented that the property had been auctioned five years earlier and that the owner agreed to bring the property up to code in a short period of time. Ms. Metz then noted that a misdemeanor complaint had been filed. (Appellant's 5)

23. A commissioner subsequently moved to deny the application for window boarding. The motion was supported. The attorney asked for an articulation of the basis for denial, inasmuch as the Maintenance Code permitted window boarding of historic landmarks. Commissioner Metz stated that the denial could be based on the Preservation Code and Secretary of the Interior's Standards 2, 5 and 6. A vote was taken, and the motion carried. (Appellant's 5)

24. On or about November 13, 2001, the Commission sent Azzar a notice of denial concerning the application. Appended to the notice were partial minutes from the Commission meeting of November 7th. The minutes indicated that the application had been denied on the basis of the Preservation Code and Secretary

of the Interior's Standards 2, 5 and 6. The notice also described the applicant's rights of appeal. (Appellant's 2)

Conclusions of Law

A. Construction of Code Provisions

The first issue for resolution in this case concerns the Appellant's contention that language in the Maintenance Code gives the Appellant an absolute right to board the windows of Engine House No. 6.

To support this argument, the Appellant points out that the Maintenance Code, in Section 8.209 [Ord. No. 93-10], provides as follows:

Section 8.209. Exterior Windows and Doors.

All exterior windows and doors shall be weather tight and in good repair or shall be secured against weather by boarding painted a color matching that of the adjacent exterior siding. (Emphasis in original.)

The Appellant also notes that the Maintenance Code prescribes its scope of applicability and, in Section 8.231 [Ord. No. 95-19], indicates:

Section 8.231. Applicability.

The provisions of this Chapter (on maintenance) shall apply to all Historic Landmarks. They shall also apply to all other non-residential buildings located in whole or in part as follows:

* * *

- (2) In an Historic District as set forth in Chapter 68 of the Code of the City of Grand Rapids. * * *

The Appellant argues that Section 8.209 is specific law and that the Secretary's Standards for Rehabilitation, cited by the Commission, are general in nature. Appellant notes that a fundamental rule of statutory construction is, specific statutes

control over general statutes. *Bauer v Dep't of Treasury*, 203 Mich App 97, 100; 512 NW2d 42 (1993), *Michigan Employment Security Comm'n*, 214 Mich App 261, 265; 542 NW2d 360 (1995). The Appellant's conclusion is that the Maintenance Code, which plainly applies to historic buildings and expressly provides for window boarding, predominates over the "general" Standards cited by the Commission.

The Commission responds that no single ordinance has any special priority over any other, and in instances when ordinances can easily be reconciled, as in this case, owners must obey all that apply. The Commission noted that statutes relating to the same subject are laws that must be read *in pari materia*, i.e., together as a single law, even if they do not refer to each other and were enacted on different dates. *Ins Comm'r v Aageson Thibo Ag'y*, 226 Mich App 336, 343; 573 NW2d 637 (1997). The Commission argues it is important that the evident intent and meaning of two such laws, as well as the force of both, should be preserved. *Rathbun v Michigan*, 284 Mich 521, 544; 280 NW 35 (1938). The Commission stresses that if by any reasonable construction the two laws can be reconciled and a purpose for each served, then both must be enforced and given effect when such can be done without repugnancy, absurdity or unreasonableness. *Rochester Community Schools v State Bd of Ed*, 104 Mich App 569, 579; 305 NW2d 541 (1981).

Before addressing the arguments of the parties, it must initially be observed that the laws cited above are ordinances and rules, rather than statutory enactments. Significantly, in Michigan the principles of statutory construction apply not only to interpretations of statutory enactments but also to interpretations of municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998), *Settles v Detroit City Clerk*, 169 Mich App 797, 808; 427 NW2d 188 (1988). It is equally true that these same statutory construction principles also apply to interpretations of administrative rules and administrative regulations. *General Motors Corp v Bureau of Safety and Regulation*, 133 Mich App 284, 292; 349 NW2d 157 (1984).

The general principles of statutory construction were recently restated in *Draprop Corp v City of Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001), where the Appeals Court opined that:

The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting a provision. Statutory language should be construed reasonably, keeping in mind the purpose of the statute. The first criterion in determining intent is the specific language of the statute. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. However, if reasonable minds can differ regarding the meaning of a statute, judicial construction is appropriate. *** (Further, s)tatutes should be construed so as to prevent absurd results....

The two parties in this case disagree on the meaning and operation of the Maintenance Code, and in particular, Sections

8.209 and 8.231. Given the reasonable basis of the dispute at hand, construction of the pertinent provisions of the Maintenance and Preservation Codes, and other relevant laws, including the Secretary's Standards, is necessary in this case.

In evaluating the contentions of the two parties with respect to statutory construction, it is clear that the Commission has the better argument, for several reasons, as follows:

First, the Appellant's assertion that Section 8.209 is more specific than the federal Standards, is inaccurate. The Appellant contends that since the phrase "exterior windows and doors" appears in the Maintenance Code but not in any of the Standards, the Maintenance Code is more specific than the Standards. This argument must fail, in that although none of the ten Standards uses the phrase "windows and doors", even a cursory reading of the Standards shows plainly that they apply to windows and doors (and to other historic building features) in several specific ways. For example, Standard 5 indicates that deteriorated historic features (like wood sash and ornamental window moldings) must be repaired, rather than replaced. Overall, the Standards contain considerably more detail regarding how to perform work on windows than the single section in the Maintenance Code. Accordingly, it is inaccurate to characterize the Standards as not specific, or less specific than the Maintenance Code.

Second, even if this were not the case, Section 5.395 of the Preservation Code expressly references the Secretary of the

Interior's Guidelines, promulgated to implement the Standards, as being applicable to work on historic resources in Grand Rapids. The federal Standards and Guidelines must be read together. The Guidelines address window work in much greater detail than the Standards. They contain numerous express recommendations regarding work on windows. An example of such a recommendation would be to repair sash "by patching, splicing, consolidating and otherwise reinforcing." Significantly, the Guidelines also contain counter-recommendations identifying what should not be done when window work is undertaken. For example, the Guidelines do not recommend (and thus discourage) "(r)emoving a character-defining window that is unrepairable and blocking it in". Simply put, the Guidelines are very detailed, and under the terms of Section 5.395 of the Preservation Code, they are applicable to work on historic resources.

Third, the Interior Secretary routinely disseminates highly detailed publications to assist owners with undertaking restoration projects. Among those is the Preservation Briefs series, which, in issue No. 9 (1981), addresses not only the repair of historic wooden windows, but also particular weatherization issues. The series contains another relevant publication, No. 31 (Sept., 1993), which discusses how to "mothball" historic properties. This document describes in great detail how to properly secure exterior openings in historic buildings and how to insert plywood panels into window openings. (See Page 6) Again, there is applicable "law" with

extreme detail that applies not only to window repairs but to window boarding as well.

Fourth, the Preservation Code, Section 5.395, authorizes the Commission to adopt local design review guidelines addressing special design characteristics of the historic resources in Grand Rapids. The Commission did so by adopting "Guidelines for Alterations for Properties within an Historic District & Historic Landmarks." (Appellant's 7) This local enactment contains specific mandates regarding work on windows and doors. Commissioner Metz testified that all commissioners receive a binder with the local Guidelines, the Preservation Code, and all other pertinent information. (Transcript, page 50) Such detailed local Guidelines are necessarily consistent with and supplement the federal Standards.

Finally, the rules of statutory construction mandate that laws covering the same subject matter be construed together, in order to preserve the intent of each. *Lindsay and Rathbun*, cited above. Here, the Maintenance Code and the Preservation Code are both intended to preserve and protect buildings in Grand Rapids, from vandalism and weathering. In addition, the Preservation Code is specifically intended to protect the heritage of Grand Rapids by preserving historic buildings and their architectural history. These intents and purposes are neither incompatible nor conflicting. Window work undertaken to meet the purposes of the Maintenance Code can and must be undertaken in a manner consistent with the historic preservation and restoration principles whose use is mandated by the Preservation Code.

It is therefore concluded that the applicable provisions of both the Maintenance Code and the Preservation Code, including related laws, must be read *in pari materia* and that the Appellant's first ground for reversal is without merit.

B. Considerations for Denial

The Appellant next contends that the Commission actually denied the application for window boarding based on certain improper considerations, such as punishment. The Commission counters that the Preservation Code, in Section 5.395, contains legal standards for determining whether work proposed under the Maintenance Code, such as window boarding, is acceptable. The Commission argues that the proposed boarding work did not comply with Standards 2, 5 and 6.

The Preservation Code lists its purposes at Section 5.392. In particular, the purposes of the Code are to safeguard the heritage of Grand Rapids, stabilize and improve property values, foster civic beauty, strengthen the local economy, and preserve local historic landmarks.

The Preservation Code contains both procedural and substantive provisions governing applications to perform work on historic resources in Grand Rapids. In this regard, Preservation Code, Section 5.395 provides in pertinent part:

Section 5.395. Permits.

(1) A permit shall be obtained before any work affecting the exterior appearance of a resource is performed.... The person, individual, partnership, firm, corporation, organization, institution or agency of government proposing to do that work shall file an application for a permit with the...Commission.... A permit shall not be issued and proposed work shall not proceed until the Commission has acted on the

application by issuing a certificate of appropriateness ...as prescribed in this act.

* * *

(3) In reviewing plans (for proposed work), 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 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.

The U.S. Secretary of the Interior's Standards for Rehabilitation of historic buildings are found at Part 67, Chapter 36 of the Code of Federal Regulations. The Standards 2, 5 and 6, at issue here, read as follows:

(b) The following Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

* * *

(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

* * *

(5) Distinctive features, finishes, and construction techniques that characterize a historic property shall be preserved.

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

shall be substantiated by documentary, physical, or pictorial evidence.

In the case at hand, the evidentiary record reflects that the window boards were each to be affixed to Engine House No. 6 by four substantial screws. New screws (and particularly large screws) can have a destructive effect on historic material such as the wood in a window sash. Standards 2 and 5 require that historic character, material and features be retained and preserved. Standard 6 addresses repair and replacement issues. The Commission's decision to deny (Appellant's 2) is based on Standards 2, 5 and 6. There is absolutely no doubt that the unnecessary destruction of historic material would violate the Secretary's Standards. Commissioners, like other public officials, are presumed to follow the law. *West Shore Community College v Manistee Cty Bd of Comm'rs*, 389 Mich 287, 302; 205 NW2d 441 (1973), *American LeFrance & Foamite Industries, Inc v Village of Clifford*, 267 Mich 326, 330; 255 NW 217 (1934). It is moreover concluded that the Commission has made a sufficient showing of the basis for its decision.

Despite the window-boarding proposal's clear non-compliance with the federal Standards, the Appellant nevertheless contends that the Commission denied the application for other impermissible reasons, such as punishment. As indicated earlier in this Proposal, applicants and appellants have the burden of proving their factual assertions in administrative proceedings. The Appellant's evidence does not support the contention of punitive intent. While the evidence does show that Commissioner

Metz and perhaps other Commission members were "concerned" about the Appellant's prior failures to complete restoration work on a timely basis, the record also shows that the proposed work was destructive in nature and did not comport with federal Standards. During the November 7th Commission meeting, and in response to a comment from Appellant's counsel, Metz clearly stated that the Commission was not penalizing the Appellant, noting that Azzar had missed several completion dates and thereby created his own hardships. Her statement that a misdemeanor complaint had been filed does not prove she had a desire to punish Azzar. There is simply no substantial evidence in the hearing record to establish punitive intent. Accordingly, the Appellant's contention that the Commission acted to penalize must be rejected.

Appellant lastly argued that one member of the Commission, Mr. Bazzani, who may have been a bidder to purchase Engine House No. 6 in 1998, was in conflict of interest but failed to disqualify himself from voting on the motion to deny. On this point, the hearing record indicates only that Mr. Bazzani said at a Commission meeting that Engine House No. 6 was an auction acquisition and that the buyer had agreed to bring it up to code in a short period of time. He did not express any personal dissatisfaction with the outcome of the auction. Even if he had abstained, it would have had no impact on the vote, since there were sufficient members of the Commission present and voting.

The minutes of the November 7, 2001 Commission meeting, where the Appellant's application was denied, as well as the

notice of denial dated November 13, 2001, clearly indicate that the basis of the denial was the failure of the application to propose work that met the Secretary's Standards for Historic Preservation. The Appellant failed to prove or demonstrate otherwise. Accordingly, Appellant's final argument is rejected.

Conclusion

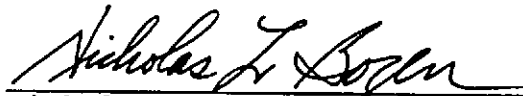
Section 5(2) of the LHDA, cited above, indicates that upon consideration of an appellant's evidence and arguments, the Review Board may affirm, modify or set aside a commission's decision and may order a commission to issue a certificate of appropriateness. The official record made in this case establishes that the Commission reasonably applied the ordinances of the City of Grand Rapids, and related preservation enactments, regarding the application at issue. It must be concluded, in light of the totality of the evidence in the official hearing record, that the Commission fairly applied the appropriate standards and guidelines governing the proposed work and committed no substantial error when denying the Appellant's application to board the windows of Engine House No. 6.

Recommendation

It is therefore recommended that the Commission's decision of November 13, 2001 be AFFIRMED.

Dated:

July 26, 2002


Nicholas L. Bozen (P11091)
Administrative Law Judge
Office of Regulatory Affairs
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