

STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
HISTORIC PRESERVATION LEGAL OFFICE

In the Matter of:

1357 SOUTH SAGINAW REAL ESTATE CORP.
Blair J. McGowan, President,
ex rel. 1,3,5,7 South Saginaw Street
Pontiac, Michigan.

Admin. File No. 09-009-TC
MHC Project No. TX07-53

Tax Credit Certification Appeal

FINAL ADMINISTRATIVE DECISION

This matter involves an appeal of a decision of the Michigan Historical Center (MHC), denying the Part 1 portion¹ of a State Income Tax Credit Certification Application.² The application concerns a partially completed project to rehabilitate three buildings, collectively known as the "Crofoot Block," located at the corner of Pike Street and South Saginaw Street in Pontiac, Michigan. The application more particularly relates to two of the three buildings – the Crofoot Building, located at 1, 3, and 5 South Saginaw Street and the Vernor's Building, located at 7 South Saginaw Street. The buildings are situated in the City of Pontiac's local Commercial Historic District and are owned by 1357 South Saginaw Real Estate Corporation, Blair J. McGowan, President (Appellant).

Procedural History

The Appellant filed his claim of appeal on December 10, 2008. The appeal was submitted under Rule 9 of MHC's Historic Preservation Certification Rules,³ which were promulgated to implement Section 266 of the Michigan Income Tax Act of 1967⁴ and

¹ Part 1 concerns the eligibility of a possible historic resource to participate in the state and federal historic tax credit programs. Part 1 application reviews entail evaluating the status and significance of a possible historic resource 2000 MR 5, R 206.154(4). By way of contrast, a Part 2 review involves an assessment of an owner's plans for rehabilitation, and Part 3 reviews relate to whether completed project work conforms with federal rehabilitation standards.

² Executive Order 2009-36 abolished the Department of History, Arts and Libraries (HAL), effective October 1, 2009. Because HAL still existed at the time the Petitioner filed his appeal, all references to the Michigan Historical Center as the "MHC" are retained in this Final Administrative Decision.

³ 2000 MR 5, R 206.159.

⁴ 1967 PA 281, MCL 206.266.

other tax credit laws. Rule 9 provides that if the MHC denies an application for tax credit certification, the applicant may appeal to MHC's Chief Appeals Officer (CAO).

Following receipt of the appeal and upon request of the CAO, MHC sent its entire official application file to the CAO for review and consideration. That file, along with the Appellant's written submissions, other available information, and the pertinent statutes, standards, guidelines and cases, were considered in deciding this appeal. Pursuant to Rule 9, no administrative or contested case hearing was required or convened. This written decision constitutes the final administrative review of MHC's denial under Rule 9.

MHC's Determination and Appellant's Allegations of Error

On or about August 7, 2007, the Appellant submitted Part 1 of a Historic Preservation Certification Application, along with a Declaration of Location for the Crofoot Block.⁵ The MHC reviewed the application in keeping with its normal time frames and workflow. On November 29, 2007, the MHC sent the Appellant a letter documenting its denial of Part 1 of the Appellant's Tax Credit Application.⁶ The letter set forth the MHC's determination that two of the three buildings were not eligible for program participation. The MHC expressed its conclusion that the "historic integrity" of the two buildings had been compromised over time due to adverse changes. MHC wrote that both the Crofoot and Vernor's buildings showed significant loss of historic fabric and integrity, indicating that neither building exhibited the features nor details from its original design that would denote it as a contributing example of design, style, or type. MHC further wrote that: 1) the Crofoot Building had lost its original roof structure, tower, cornice, decorative window hoods, original window opening size, and storefronts; and 2) the Vernor's Building had lost all historic elements except brick and stone pilasters on either side of the storefront and a small section of cornice brick. MHC summarized its view by stating, "[t]he Crofoot Building and Vernor's cannot be considered contributing resources to the district." The MHC "reaffirmed" its decision in a subsequent letter issued on or about October 10, 2008.

⁵ The Application was date-stamped as received on August 22, 2007. Although the Appellant had nearly completed the rehabilitation of the entire Crofoot Block, Appellant only submitted Part 1 of the three-part application for the MHC's review and certification on that date.

⁶ The MHC's letter outlines its reasoning for determining that, whereas the Annex Building can be considered a contributing resource to the District and that it should be certified, the Crofoot and Vernor's Buildings cannot be considered contributing and subsequently were denied certification.

In its appeal documents, the Appellant contends that MHC erred when it denied his Part 1 Application. The Appellant asserts that the two buildings in fact are contributing resources in the local commercial historic district. As its first basis for reversal, the Appellant argues that MHC erred when it reviewed the application using National/State district designation and significance criteria instead of local district designation and significance criteria. As a second argument for relief, the Appellant alleges that the MHC erred in concluding that the buildings lack historic integrity, because MHC incompletely and incorrectly identified the significance of the buildings. The Appellant points out that the MHC based its determination solely on National Register Criterion C: Design/Construction and ignored two additional criteria for significance: Criterion A: Event and Criterion B: Person.⁷ The Appellant adds that the MHC misapplied Criterion C when it evaluated property significance. The Appellant further alleges that the MHC ignored three of four possible requirements when it evaluated the buildings under only one of the Criterion C eligibility requirements. The Appellant's conclusion is that both buildings constitute contributing historic resources within the district and thus should qualify for participation in Michigan's 25% rehabilitation tax credit program.

Preliminary Matter - Statute of Limitations on Filing Appeal

Rule 9 provides that a person may appeal a denial of an application by submitting a written appeal within 60 days of receipt of the decision that is the subject of the appeal.⁸ In this case, the Appellant received the MHC's initial letter of denial on or about November 29, 2007. However, the MHC continued to correspond and otherwise communicate with the Appellant concerning the validity of the application for nearly 11 months following that date. On or about October 10, 2008, the MHC felt compelled to send a second letter reaffirming the initial decision of its Part 1 denial. The Appellant, acting in the belief that the second letter constituted an official action of the MHC, filed his appeal within 60 days of the October 10, 2008 denial letter. These facts beg the question of whether the Appellant's appeal should be barred from consideration, even though the MHC purportedly led the Appellant to believe that the MHC's initial letter

⁷ National Register Bulletin, *How to Apply the National Register Criteria for Evaluation*.

⁸ 2000 MR 5, R 206.159(2).

might not be its final decision. Put another way, should the MHC be prevented or "estopped" from asserting that its November 2007 letter rather than its October 2008 communication was its final written decision for purposes of starting the clock for appeal.

Generally, estoppel arises where one party, by representation, admissions, or silence induces another party to believe in facts; the other party justifiably relies and acts on this belief; and that party will be prejudiced if the first party is permitted to deny the existence of the facts. *Kelly-Stehney & Associates, Inc v. MacDonald's Indus Products, Inc*, 254 Mich App 608; 658 NW2d 494 (2003). In this case, the record shows that the Appellant and the MHC continued discussions about the Appellant's Part 1 application in numerous phone calls during the 11-month period between issuance of the November 2007 denial letter and the October 2008 letter. While the specifics of the phone discussions are somewhat unclear - no documentation in the form of notes, etc., were recorded or made available - it is clear that the Appellant was induced to believe that the November 2007 was not the final decision triggering the 60-day period to submit his appeal. Even though the November 2007 letter indicated that the Appellant had the right to appeal, it is entirely plausible that ongoing discussions between the Appellant and MHC led the Appellant to believe that the MHC's decision was not final, preserving his right to appeal. The Appellant's subsequent letter - the February 2008 letter requesting that the MHC reconsider its decision and the September 2008 letter asking about the status of the MHC's decision - clearly show that the Appellant believed that the 60-day appeal period had not been triggered. Clearly the Appellant was relying on the fact that the ongoing and repeated discussions with the MHC could possibly result in reconsideration of the Appellant's Part 1 application. Lastly and perhaps most significantly, the MHC apparently concluded that the Appellant still had the right to appeal. Language in the MHC's October 10, 2008 letter indicated that if the Appellant was not satisfied with the MHC's decision, he still had the option to file an appeal. The Appellant was therefore justified in his reliance on his belief that the period to appeal was not triggered until the October 2008 letter from the MHC that re-affirmed the Part 1 denial and that the decision was final.

Summary of Available Information

Pursuant to Michigan law, a party who occupies the position of a plaintiff, an applicant, or an appellant in an administrative proceeding typically has the burden of proof. 8 Callaghan's Michigan Pleading and Practice (2d ed), §60.48, p 176, *Prechel v Dept of Social Services*, 186 Mich App 547, 549; 465 NW2d 337 (1990). As the Appellant, 1357 South Saginaw Real Estate Corporation has the burden of proof in this matter.

Rule 9(2) provides that:

All information, records, and other materials that the appellant wants considered shall accompany the written appeal.

In addition, Rule 9(3) indicates the following:

The [chief appeals] officer shall consider the center's file, all written submissions from the appellant, all pertinent standards and guidelines affecting the historic resource, and any other available information, but shall not conduct a hearing.

The documentary materials and supplemental information available for consideration in this case include the following:

- 1) The MHC's file on Appellant's application for tax credits, including:
 - a) Completed Part 1 of a Historic Preservation Certification Application, date-stamped as received August 22, 2007;
 - b) An MHC Review Sheet signed by Bryan Lijewski, Architectural Coordinator, State Historic Preservation Office, relative to his Part 1 application review;
 - c) City of Pontiac Municipal Code, Chapter 74, *Historical Preservation*;
 - d) Fifteen historic and pre-rehabilitation photographs of the three Crofoot Block buildings, including a postcard with an artist's depiction of the buildings prior to certain 1882 modifications, a 1920s photograph showing the Crofoot Building (in its Second Empire form) and the Annex Building,⁹ a 1937 photograph of the Milner Hotel located at the corner of Saginaw and Pike Streets, a 1940s-era photograph of the Vernor's Building, a 1953 photograph of the Crofoot Building, two 1990

⁹ The Crofoot Annex building is the third of the three buildings comprising the Crofoot Block. It is referred to as the "New Crofoot Block Building" in the Part 1 application. Because of the similarity in names, it is referred to here as the Annex Building for clarity.

photographs showing the entire Crofoot Block with 1950s-era metal facade, and nine photographs of the Crofoot Block (dating from 1994, 1995, 2002 and 2007) depicting pre-rehabilitation condition following removal of the 1950s-era metal facade;

- e) Email communications dated September 28, October 1, and October 3, 2007, between Lijewski and Ms. Madhu Oberoi, Planning Administrator, City of Pontiac, discussing the Crofoot Block, the three buildings' status as contributing to the local historic commercial district in Pontiac, and the availability of information from the Pontiac Historic District Commission pertaining to the Crofoot Block;
- f) Email communications dated September 29, October 2, and October 5, 2007, between Lijewski and McGowan concerning Part 1 supporting documentation, tax assessments of the three properties, as well as the need for additional interior and exterior photographs so that the MHC could better assess the historic integrity of the structures;
- g) A letter, date-stamped received on November 14, 2007, from Mr. Michael J. McCleer, managing architect for the Crofoot Project, responding to Lijewski's request for additional tax assessment information and photographs. This letter has supplemental photographs, as well as a photograph key and accompanying floor plan. The supplemental photographs depict the pre-rehabilitation condition of the three buildings and consist of the following: five exterior photographs of the Crofoot Building dated 1994 and 1995; nine exterior photographs of the Annex Building dated 1995; five exterior photographs of the Vernor's Building dated 1994; eight interior photographs of the Crofoot Building, first and second floors, dated 1994, 1995, and 2007; two interior photographs of the Annex Building, second floor, dated 1995; and three interior photographs of the Vernor's Building, first and second floors, dated 1995 and 2007;¹⁰
- h) Email communications dated November 16, 20, 21, and 22, 2007, between Lijewski and McGowan regarding the tax assessment and additional exterior post-construction photographs of the Crofoot Building, the Annex Building, and the Vernor's Building;
- i) A decision letter dated November 29, 2007, signed by State Historic Preservation Officer Brian D. Conway and addressed to McGowan, notifying him of MHC's denial of the Part 1 application;
- j) A letter date-stamped received on February 4, 2008, from McCleer to Conway formally requesting (on behalf of McGowan) that the MHC reconsider its November 29, 2007 denial;

¹⁰ See MHC's Historic Preservation Certification Application Instructions.

- k) A letter date-stamped received on September 16, 2008, from McCleer to Conway asking about the status of his request made in the February 4, 2008 letter;
 - l) A letter dated October 10, 2008, from Conway to McCleer, in response to McCleer's letters of February 4 and September 16, 2008, acknowledging continued phone conversations concerning the project and reaffirming the MHC's Part 1 denial originally sent November 29, 2007; and
 - m) A letter date-stamped received on December 12, 2008, from McCleer to Conway, notifying the MHC of McGowan's desire to appeal the MHC's decision.
- 2) The Appellant's Letter of Appeal dated December 10, 2008.
 - 3) A letter dated February 2, 2009, from Nicholas L. Bozen, Chief Appeals Officer, to McCleer, notifying the Appellant of the need for additional filings and supporting materials for his appeal.
 - 4) Documentation supplementing Appellant's Letter of Appeal dated February 12, 2009.
 - 5) The MHC's Memorandum in response to Appellant's February 12 supplementary filing dated March 31, 2009.
 - 6) McGowan's response to the MHC's March 31, 2009 Memorandum, dated August 18, 2009.
 - 7) Warranty deed, dated September 1, 1995, recorded at Liber 14876, page 769, conveying title to the 1357 South Saginaw Real Estate Corporation, from the Pontiac Tax Increment Finance Authority, Lot 59, commonly known as 1 South Saginaw 14-29-480-002, as to the North 20 feet of Lot 58, commonly known as 7 South Saginaw.
 - 8) Floor plan of the Crofoot Project with key to photographs described above.
 - 9) Detailed Parcel Information with property description, class of property, and local tax authority.
 - 10) A copy of the City of Pontiac Historic District Commission's *Information for Residents in a Historic District*.¹¹

¹¹ A benefit of historic district designation is to qualify to apply for a 25% state tax credit.

- 11) Lot depiction of the Crofoot Block from *1872 Beer's Atlas of Oakland County* showing a building footprint that extended the full 60 feet frontage along Saginaw Street and the full 140 feet frontage along Pike Street.
- 12) Sanborn Fire Insurance map of 1909.
- 13) Copies of artist Albert Ruger's bird's-eye view of Pontiac in 1867.¹²
- 14) An undated photograph of the Hodges House, originally located across Pike Street at the southwest corner of Saginaw and Pike Street.
- 15) Biographical sketch of Hon. Michael E. Crofoot, owner and developer of the Crofoot Building.¹³
- 16) An undated photograph of the People's State Bank building, originally located at the corner of Saginaw Street and Lawrence Street.
- 17) A letter, dated April 15, 1989, from Martha M. Bigelow, State Historic Preservation Officer, to Carol D. Shull, Chief of Registration, National Register of Historic Places, National Park Service, with nomination materials for the Pontiac Commercial Historic District Amendment for listing on the National Register. This letter classifies 1-7 South Saginaw Street as non-contributing resources to the nominated National Register district because "[p]aneling appears to cover an older building."
- 18) A letter, date-stamped received May 21, 1990, from Owen A. Winnie, Administrator, Planning & Community Renewal Division, City of Pontiac, to Ann A. Webster, Supervisor, Grant Section, Bureau of History, Michigan Department of State, describing Pontiac's Ordinance Amendments to the local Pontiac Commercial Historic District.¹⁴
- 19) Chapter 72, Articles II and III of the Pontiac Municipal Code.¹⁵
- 20) An informational brochure issued by the MHC, then part of the Michigan Department of State, labeled *MICHIGAN'S Historic Preservation Tax Incentives* (January 2000).
- 21) The MHC's Application for Certification Instructions.
- 22) Various laws, standards, guidelines, and court cases.

¹² *100 Maps: The Science, Art and Politics of Cartography Throughout History* John Owen Edward Clark, Jeremy Black. Sterling Publishing Company, Inc., 2005.

¹³ Supplement to the *Oakland Gazette*, Vol. 40, No. 4, 2007

¹⁴ Section 144.23 of the Pontiac Municipal Code (1985, as amended in 1990).

¹⁵ Codified through Ordinance No. 2193, adopted November 16, 2006 (Supplement No. 11).

Factual Determinations

Based on the Appellant's submissions, the MHC's file, and other available information, the relevant facts of the matter are found to be as follows:

A. 19th Century Pontiac

History and Development

1. Pontiac was Michigan's first inland settlement, founded in 1818 by a group of investors organized as the Pontiac Company. The company platted what is now the downtown area of Pontiac as a series of rectangular blocks organized around two principal streets, Saginaw and Huron.¹⁶

2. Pontiac was the early location for the seat of government for Oakland County. It soon became the commercial center for the surrounding area. The business district of historic Pontiac was centered at the intersection of Pike and Saginaw Streets.¹⁷

The Crofoot Building

3. The Crofoot Building was originally built during the late 1830s and early 1840s in the pre-Civil War plain, vernacular architectural style. Continuous open storefronts, brick walls at side-street sidewalks, and brick walls with "punched windows" on the upper floors typify vernacular architecture of the period.

4. The layout of the Crofoot Building is Pontiac's earliest surviving example of the 19th Century delineation of retail and office uses, which took form in the separation of pedestrian-intense retail uses at the sidewalk level, with office use on the second floor.

5. Located at what was in 1875 the major crossroad in Pontiac, the Crofoot Building housed a number of businesses. These included an attorney's office, a saloon, a boot and shoemaker, a railroad office, and the publishers of the *Pontiac Gazette*.¹⁸

6. In 1882, Michael E. Crofoot, owner of the Crofoot Building, and Edward M. Prall, architect, remodeled the Crofoot Building,

Honorable Michael E. Crofoot

¹⁶ City of Pontiac website: <http://www.pontiac.mi.us/history/city.htm>.

¹⁷ *Id.*

¹⁸ *Michigan State Gazetteer and Business Directory of 1875.*

7. Michael E. Crofoot, one of Pontiac's early settlers, came to Pontiac from New York in 1846. Crofoot soon became a prominent Pontiac businessman and noted attorney, who represented a defendant before the United States Supreme Court in 1882. Elected probate judge in 1848, additional highlights of Crofoot's career and philanthropy service include his participation as a delegate at the 1856 Democratic National Convention, tenure as a member of the State Building Commission for the State Asylum in 1874, and President of the St. Clair & Chicago Air Line Railroad (serving the route between St. Clair and Jackson). Lastly, Pontiac's Crofoot School, which is still in use, was named after the Crofoot family.

8. In 1882, Michael Crofoot remodeled the Crofoot Building, converting the pre-Civil War-era vernacular style structure to the Victorian-era Second Empire style with a decorative tower and mansard roof.¹⁹ The remodeling project included adding new plate glass fronts, a third story, the mansard roof, an elevator, and a new steam heating engine.²⁰

The Crofoot Block

9. The three properties comprising the Crofoot Block have been treated as a single business entity since at least 1882.²¹

The Annex Building

10. The back (east) parts of Lot 59 of the Original Plat remained a rear-yard for the Crofoot Building, originally housing a stable and out-house.²²

The Vernor's Building

11. The Vernor's Building dates to the 19th Century and may be as old (pre-Civil War-era) as the Crofoot Building.

B. 20th Century Pontiac

History and Development

12. Automobile manufacturing had its origins in Pontiac in 1904. By 1907, major local carriage firms were shifted to automobile manufacturing. In 1909, General Motors

¹⁹ From selected editions of the *Pontiac Gazette* and *Pontiac Weekly Bill Poster*, ranging in dates from November 1881 to June 1882.

²⁰ From selected editions of the *Pontiac Gazette* and *Pontiac Weekly Bill Poster*, ranging in dates from November 1881 – June 1882.

²¹ Sanborn Fire Insurance Map 1882.

²² From the 1830 original construction.

Corporation (GM) absorbed several of Pontiac's leading independent automobile manufacturers and became the primary employer in the region.

13. Explosive population growth in Pontiac led to the rebuilding of much of the City's central business district during the first quarter of the 20th Century. This resulted in the remodeling of many of the then-existing buildings.

14. During the 1960s and 1970s, urban blight in Pontiac became a major concern. Attempts to combat the problem became part of a concerted program of "urban renewal" in an attempt to revitalize the downtown area. One major result of urban renewal in Pontiac was the destruction of many of the City's earliest historic buildings, including many buildings located along Saginaw and Pike Streets.

The Crofoot Block

15. At some point, the northern 20 feet of lot 58 of the Original Plat was included in the ownership, legal descriptions, operation, and architecture.²³

16. The three buildings that are the subject of the Part 1 Application, despite their different dates of origin, were physically joined together sometime after World War II, likely after 1950 fire damage. Subsequent rehabilitation resulted in the buildings' equalized heights, second story window resets, and their combined street facades which were wrapped in a skin of porcelain-metal panels.

The Crofoot Building

17. A fire during the 1950's destroyed the Second Empire tower and roof. Facade features lost during this fire include the third floor and mansard roof, the tower, the chimneys, storefronts, and decorative window lintels.

The Vernor's Building

18. The Vernor's Building was remodeled in 1926. The work included both an interior and exterior makeover.

19. The 1926 remodeling effort was undertaken in part as a result of Pontiac's increasing urban intensity. One response to increased consumer traffic in Pontiac was for the noted soda manufacturer, Vernor's, to expand outside of Detroit. Vernor's opened and operated a soda fountain in Pontiac for over 20 years. Vernor's expended

²³ The 1924 Sanborn shows openings to 7 South (Saginaw Street) and to the new buildings along Pike Street (including the Crofoot Annex).

considerable architectural effort to remodel one of Pontiac's older buildings, in part to make use of vertical interior and exterior space to maximize the store's effect within the standard 20' wide standard-sized lot.

20. The exterior makeover completely removed and replaced the 19th Century front facade with a two-story storefront. One artist's rendition shows that the original Vernor's Building 19th Century facade had a similar exterior form to that of the Crofoot Building with open storefronts at the sidewalk level and a brick wall at the second floor level with windows "punched" through the wall.²⁴

21. The 1926 remodeling completely eliminated the brick wall at the second floor and raised the second floor level. The open storefront at the sidewalk level was visually expanded upward to emphasize that the Vernor's Building was not a one-story but a two-story soda fountain with expanded interior commercial space. The first floor storefront was opened with second floor concrete block infill and the installation of three double-hung windows.

The Annex Building

22. By 1912, the rear yard had become too valuable to remain vacant, and a new two-story and basement structure was built. The building's street level had four 17-foot wide storefronts facing Pike Street, and the second floor had office space accessible through the original Crofoot Building.

23. The architecture of the Annex Building did not attempt to emulate the Second Empire architectural style of the Crofoot Building and instead emphasized its large window openings on the ground and second floors, surrounding them with a dark brick frame trimmed with limestone.

24. Around 1915, the entire complex was renamed "the New Crofoot Block."²⁵

C. 21st Century Pontiac

History and Development

25. Today, Pontiac's surviving buildings' facades date from about 1865 to 1929. The Pontiac Commercial Historic District exhibits Romanesque Revival, Neo-

²⁴ Postcard view of Saginaw Street elevations, including the edge of the Crofoot Building at 7 S. Saginaw; date unknown.

²⁵ *Pontiac City Directory*.

Classical Revival, Renaissance Revival, Georgian, Commercial Brick, Art Deco, and Moderne architectural styles.²⁶

26. There are two Pontiac Commercial Historic Districts – the National Register listed Pontiac Commercial Historic District established in 1984 and the local Pontiac Commercial Historic District established in 1990 .

The Crofoot Building

27. The Crofoot Building has been remodeled numerous times over its life. Each remodeling project involved some exterior changes.

28. The Crofoot Building is the Pontiac Commercial Historic District's oldest surviving commercial building that is arguably the largest physical survivor of Pontiac's original plat and Pontiac's 19th Century brick architecture. It is a clear example of Civil War-era vernacular architecture within the District and is likely the last remaining example in Pontiac.

29. Today, the Crofoot Building has been rehabilitated and is part of a mixed-use independent entertainment complex.²⁷

30. The Crofoot Building's essential physical features that still remain include, but are not limited to, the following features:

Generally

- a) The building is at its original location;
- b) Present-day floor layouts approximate original floor layouts, including three storefronts on the first floor of the Saginaw Street facade;
- c) The building still has subdividable second floor office space;
- d) Exterior proportions of the building, footprint, height, and character of the first and second floors approximate the Civil War-era vernacular style originally found in Pontiac;²⁸ and
- e) Second floor window openings approximate the Civil War-era period;²⁹

Saginaw Steet Facade

- f) The building retains open storefronts along Saginaw Street;

²⁶ NPS National Register Listing description of the National Register Pontiac Historic Commercial District.

²⁷ Plans include the development of the Eagle Theater as part of the complex, creating an "entertainment block" of four distinct and unique buildings.

²⁸ <http://www.pontiac.mi.us/thenandnow/thenandnow.html>.

²⁹ *Id.*

- g) The second-story masonry appears to be original to the Civil War-era vernacular style;
- h) Remnants of the 1882 remodeled window treatments and keystone/cap additions at the top of the windows are clearly visible and distinguishable from the rest of the second-story facade;³⁰
- i) Existing single or double-hung windows and window treatments retain the simple, vernacular Civil War-era style and appear to be historic (if not original);
- j) Window sashes and mullions appear to be historic, if not original;
- k) Whereas two original brick pillars remain (and appear to have been tuck-pointed) in the center of the Crofoot Building's Saginaw Street facade, modern windows and window treatments have been installed along the entire front facing Saginaw Street, including marble veneers along the base of the facade located underneath the storefront windows;
- l) Cornice-like wood treatments have been added to the first-story center of the Saginaw Street facade, framing either side of the center doorway; and
- m) Cornices have been added below the second-story roofline along the Saginaw Street facade;

Pike Street Facade

- n) A solid brick masonry wall along Pike Street;
- o) The presence of original Civil War-era brick and cut-stone lintels;
- p) Single or double-hung windows and window treatments retain the simple, vernacular Civil War-era style and appear to be historic, if not original;
- q) Window sashes and mullions appear to be historic, if not original;
- r) Remnants of the 1882 remodeling of the Pike Street facade is clearly visible; changes in brick textures and mortar from the filling in of

³⁰ 1920s photograph of Crofoot in its Second Empire form.

windows/openings is easily distinguishable and apparently dates to at least the 1882 remodeling;³¹

- s) The 2007 rehabilitation of the Pike Street facade includes a modern cut-out archway that has been framed with modern brick and mortar;
- t) A cornice has been added along the second-story roofline along the Saginaw Street facade;

Interior

- u) Second floor wood joists and flooring appears historic, if not original;
- v) First floor flooring appears historic, if not original;
- w) Original elements of the stone and brick foundation are present;
- x) Original interior brick shows evidence of coring for the establishment of electric wiring and other utilities; and
- y) An archway has been cut out of the shared interior wall between the Crofoot Building and the Vernor's Building.

Vernor's Building

31. Historic photographs of the local Pontiac Commercial Historic District show numerous buildings with narrow two story storefronts. While these storefronts were at one time common, the Vernor's Building is the only surviving example in the Pontiac District.³²

32. Essential physical features that still remain at the Vernor's Building include, but are not limited to, the following:

Generally

- a) The building is still situated at its original location;

Front Facade

- b) On the first story, the Vernor's building retains a single large open storefront along Saginaw Street;
- c) The open storefront is framed on its sides by vertical strips of alternating buff-yellow bricks and limestone quoins;

³¹ 1920s B&W photograph of the Crofoot Block.

³²Current examples of narrow multi-story storefronts abound in major metropolitan areas such as 42nd Street in New York City and the Chicago Loop in Chicago;
<http://www.pontiac.mi.us/thenandnow/thenandnow.html>.

- d) Exterior masonry facade walls of brick and limestone are original to the 1926 Vernor's remodeling;
- e) Second floor window locations approximate historic locations, size, and height;
- f) The Second-floor windows are not clearly single- or double-hung. They appear to be a modern consortium of window styles comprised of a single pane of glass on the lower portion of the window, with eight decorative panes of glass in the upper portion of the window. The eight panes of glass are divided by multiple mullions that meet in the center and angle outward; and
- g) Window sashes and mullions appear to be of modern materials;

Interior

- h) The floor appears to exhibit historic terrazzo floor tile, likely original to the 1926 remodeling;
- i) The Vernor's-era floor plan remains intact, albeit not followed in its current use as a bar/nightclub;
- j) Vernor's-era, if not original, brick appears to remain under plaster and other wall treatments;
- k) Original elements of the stone and brick foundation; and
- l) Outline of previous staircase is visible, with surviving staircase intact with ornamental iron railings of unknown period.

Annex Building

33. Essential physical features that still remain at the Annex Building include, but are not limited to, the following:

Generally

- a) The building is at its original location;
- b) The solid brick masonry wall along Pike Street, especially on the second floor, remains;

Pike Street Facade

- c) Window sashes and mullions appear to be historic, if not original;

- d) Second-story window openings appear to be in their original location/configurations;
- e) A remnant center brick pillar on the first-floor has been left in its original state, while surrounding brick masonry and brick pillars on either side have been treated and painted;
- f) While the original brick pillars remain (and appear to have been tuck-pointed) in the center of the Annex Building's Pike Street facade, modern windows and window treatments have been installed on the first-story along the entire front facing Pike Street, including marble veneers along the base of the facade located underneath the storefront windows;
- g) Second-story single or double-hung windows, sashes, and mullions retain a simple, vernacular style and appear historic (if not original);
- h) A cornice has been added along the second-story roofline along the Pike Street facade and extends around the corner of the rear of the building, extending approximately three feet along the back roofline;
- i) Masonry treatment and paint extends on the rear of building for approximately three-feet and ends abruptly, leaving the historic, if not original, solid brick masonry wall in its natural condition;
- j) The entire Pike Street facade appears original to its construction date,³³

Interior

- k) The current interior is open with no interior non-load-bearing walls, with a balcony on one side of the second floor;
- l) Original second-story office space has been lost;
- m) Ceiling wood beams, joists, and roof planking appear historic, if not original, and are further supported by modern steel columns and I-beams;
- n) Interior sections of the Pike Street-side masonry walls appear historic, if not original, and are untreated; and

³³ 1920s B&W photograph of the Crofoot Building shows architectural elements of the Annex Building.

- o) Remnant masonry wall shared between the Annex Building and the Crofoot Building appears historic, if not original.

D. Preservation Enactments and Historic District Designations

34. In the 1960s, Congress observed that the spirit of the Nation is reflected in its heritage. Congress also observed that historically significant properties were being altered or lost at an alarming rate. Congress thus declared that preserving the Nation's heritage was in the public interest and consequently passed the National Historic Preservation Act of 1966 (NHPA).³⁴ The NHPA sets as national policy the practice of giving federal assistance to state and local governments, as well as encouraging historic preservation at the state and local levels.

35. In 1970, Michigan's Legislature similarly declared historic preservation to be a public purpose. To implement the State's policy, the Legislature enacted the Local Historic District Act (LHDA),³⁵ which provides for the preservation of Michigan's local historic resources, the creation of historic district commissions, and the designation of historic districts.

36. The National Register Pontiac Commercial Historic District was first established on the National Register in 1984 and was expanded in 1989.

37. The National Register listed Pontiac Commercial Historic District encompasses the core of the commercial area of one of Michigan's first cities outside of Detroit. Many of the buildings are only the second generation located on the 1818 plat of the city's original development and contains the earliest commercial structures still existing in Pontiac.³⁶

38. On April 15, 1989, Martha M. Bigelow, State Historic Preservation Officer and Director, Bureau of History, Michigan Department of State, submitted to the National Park Service a National Register Amendment nomination for the Pontiac Commercial Historic District. This Amendment lists the subject properties as non-contributing due to metal panels covering the buildings.

³⁴ 16 USC 470 *et seq.*

³⁵ 1970 PA 169, § 1 *et seq.*; MCL 399.201 *et seq.*

³⁶ *Id.*

39. The local Pontiac Commercial Historic District was established in 1985. It was amended³⁷ in 1990 to include Lot 59 (i.e., the Annex Building, the Crofoot Building, and the Vernor's Building).³⁸

40. Contained within the State Historic Preservation Office files was documentation on the 1990 Amendment to the local Pontiac Historic District Ordinance. On August 27, 1990, a Notice of Continuation of Public Hearing was received in the State Historic Preservation Office. The Public Hearing Notice pertained to the proposed amendment to "Section 7-37" of the Historic District Ordinance. Page 3 of the Notice refers to the Pontiac Commercial Historic District in paragraph 7. Included with this Notice is an attachment of a map that clearly refers to the proposed amendment labeled "Section 7-37 Proposed Paragraph #7." The map graphically shows the subject properties as non-contributing resources to the district.

41. Both the National Register and the local Pontiac Commercial Historic District include the nine city blocks that formed the commercial core of downtown Pontiac at its peak. Both districts represent the second and third generation of commercial buildings located at the center of the original commercial hub of Pontiac. The districts include commercial, residential, and religious structures of two- to three-stories in height.³⁹

42. Many of the districts surviving buildings typify the "Commercial Brick" style in which the brickwork itself forms a major element of the facade's decoration and detailing and are particularly characteristic of downtown Pontiac, as well as other early Michigan downtown centers.⁴⁰

43. According to the MHC's 1989 assessment, "[a]ll the [Pontiac business] district's contributing buildings and also those historic buildings which have been

³⁷ Part 1 Declaration by Madhu Oberoi, Planning Administrator, City of Pontiac; no commission study reports or study records are available either at the City of Pontiac Historic District Commission or the Michigan State Historic Preservation Office.

³⁸Section 144.23 of the Pontiac Municipal Code (1990); Chapter 72, Articles II, III of the Pontiac Municipal Code codified through Ordinance No. 2193, enacted November 16, 2006 (Supplement No. 11).

³⁹ NPS National Register Listing description of the National Register Pontiac Historic Commercial District.

⁴⁰ Letter and National Register nomination materials dated April 15, 1989, from Martha Bigelow, Bureau of History to Carol Shull, National Park Service.

labeled as non-contributing because of cosmetic surface cover-ups or alterations should be viewed as historic resources worthy of preservation and future restoration."⁴¹

E. Enactment of State Tax Credit Law

44. In 1998, the Legislature enacted new law to help preserve Michigan's historic resources. At that time, the Legislature passed two bills (SB 105 and 106), both of which added a single section of law to of two Michigan tax acts ... the Income Tax Act of 1976⁴² and the Single Business Tax Act, respectively.⁴³ The purpose of the two tax law amendments⁴⁴ was to afford the owners of residential and commercial historic properties the opportunity to claim state tax credits for a portion of their qualified rehabilitation expenses, as a new incentive to rehabilitate the State's privately owned historic resources.

45. In 2007, the Legislature enacted the Michigan Business Tax Act (MBT).⁴⁵ As provided by the MBT, a qualified taxpayer with a certified rehabilitation plan may be eligible for a 25% tax credit for qualified expenditures made to rehabilitate historic resources.⁴⁶

F. Historic Preservation Certification Application

46. The Crofoot Block was conveyed by warranty deed to the 1357 South Saginaw Real Estate Corporation in 1995.

47. McGowan submitted a Part 1 – Evaluation of Eligibility of the Historic Preservation Certification Application to the MHC date-stamped received August 22, 2007.⁴⁷

48. As required by the directions to Part 1 – Evaluation of Eligibility, McGowan attached a Declaration of Location form to his filing. The form included a statement signed by Oberoi on May 23, 2007, attesting to the fact that the Crofoot Block buildings

⁴¹ National Register of Historic Places Continuation Sheet Section 8, page 5, submitted with the April 15, 1989 letter and nomination materials from Martha Bigelow, Bureau of History, State of Michigan, to Carol Shull, National Park Service.

⁴² 1998 PA 535, MCL 206.266.

⁴³ 1998 PA 534, MCL 208.39c, repealed by Act 325 of 2006. The Michigan Business Tax Act 36 of 2007 has since superseded the Single Business Tax Act.

⁴⁴ The two sections of law were both amended one year later, to address technical issues, by enactment of 1999 PA 213 and 1999 PA 214.

⁴⁵ Act 36 of 2007.

⁴⁶ MCL 208.1435 *et seq.*

⁴⁷ See 5.

were located within the boundaries of a local historic district established under the LHDA, that the name of the district was the Pontiac Commercial Historic District, and that in her view the resource was a contributing resource in the local historic district. McGowan also appended a copy of a photograph of the Crofoot Building,⁴⁸ a copy of the Sec 7-37 map of the Pontiac Commercial Historic District Amendment,⁴⁹ an aerial view of all Pontiac's Historic Districts,⁵⁰ and a copy of Chapter 74 Historical Preservation of the City of Pontiac Municipal Code. A fee of \$25.00 accompanied McGowan's filing.

49. Lijewski reviewed Part 1 of the application on behalf of the MHC. As part of his review, he contacted Oberoi by email on September 28, 2007 to obtain additional information. He wrote that it appeared to him that the buildings were defined as non-contributing to the local Pontiac Commercial Historic District and that the only reference that he had was a "(1993?) map that clearly lists them as non-contributing." Lijewski also wrote that the buildings were defined as non-contributing in the 1989 National Register Amendment at a time when the building facades were still covered with metal panels. Lijewski requested additional information, writing that he needed an updated ordinance and a study commission report, etc., that would show that the buildings were contributing and eligible for state tax credits. Lijewski commented that, "[d]ue to the existing condition of the buildings and their compromised integrity, we need to evaluate the eligibility."

50. Oberoi responded to Lijewski by email on October 1, 2007, writing that she did not have any additional information to furnish. She also wrote that it was possible to have City Council appoint a study committee to recommend that the Crofoot Block buildings were contributing and should be eligible for tax credits. Oberoi wrote that she was looking for guidance on how to proceed. She further wrote that "[w]e would certainly like to help this building get a tax credit, as it has contributed to the revitalization of our downtown."

51. Lijewski also contacted McGowan on or about September 29, 2007, requesting additional photographs.

⁴⁸ *Pontiac Press* November 9, 1953.

⁴⁹ See Factual Determinations F-36.

⁵⁰ From the City of Pontiac's Planning and Economic Development Services.

52. McGowan responded to Lijewski's request by email on September 29, 2007. Attached to this response was the Pontiac Municipal Code and a copy of the Warranty Deed. McGowan also wrote that he needed guidance from Lijewski as to "what additional photos would be helpful [to Lijewski] as supplementary to Part 1 of our application."

53. Lijewski responded to McGowan's response by email on October 5, 2007. Lijewski specifically asked for additional information as to whether the Crofoot Block was three different buildings with three separate tax assessments and whether the buildings were totally interconnected on the interior or only with doorways. Lijewski also asked whether the exterior work was completed and, if not, whether McGowan could provide a brief description of the exterior work to be done. Lastly, Lijewski again requested complete photographs of the interior and exterior which were intended to give the MHC an overall view of the resource – enough to give the MHC a sense of the integrity of the buildings.

54. On November 7, 2007, architect Michael McCleer, on behalf of McGowan, responded to Lijewski's October 5 email. As to the tax assessment question, McCleer responded that the Crofoot Block was considered as one property for project purposes.⁵¹ McCleer also wrote that the exterior work had been completed and provided additional photographs with an accompanying floor plan key.⁵²

55. Lijewski completed his review of Part 1 of the application, signing an MHC Review Sheet on November 28, 2007. On the sheet, he noted the need for current photographs and questioned whether the Crofoot Block was comprised of three individual buildings needing three separate tax assessments.

⁵¹The Bank Appraisal for the property completed for the US Small Business Administration consisted of one appraisal that treated the property as one project. The State MEDC in granting Brownfield Tax Credit Certification considered the entire property as one project. Both the State and the City of Pontiac in granting Omnibus Budget Reconciliation Act of 1990 Real Property Tax Abatement considered the property as one project. Lastly, for the purposes of the Crofoot Project, the City of Pontiac treated the property as one project. In this regard, the City required only one construction permit for the proposed rehabilitation of the Crofoot Block.

⁵²The City of Pontiac has included the photographs of the completed rehabilitation of the Crofoot Building as part of its "Then and Now" photo-documentary of Pontiac from their website located at <http://www.pontiac.mi.us/thenandnow/thenandnow.html>.

56. At no time during the review process did a team-member of the MHC conduct an official site visit to inspect the buildings for the purposes of reviewing and evaluating the significance of the structures.⁵³

57. On November 29, 2007, the MHC sent McGowan its initial letter notifying him that the MHC had determined that the property consists of what were historically three different buildings and that, while the Annex Building was deemed to be contributing to the local district, the Crofoot and Vernor's Buildings were deemed to be non-contributing.

58. The MHC's determination that this project did not satisfy Part 1 of the Application was based partially on the fact that both the National Register nomination and the local amendment to the expanded Pontiac Commercial Historic District Ordinance once defined the subject buildings as non-contributing.

59. The MHC took into consideration the fact that when the non-contributing determinations were made, the buildings were covered with metal panels. Sometime after 1994, all metal panels were removed from the facades of the Annex Building, the Crofoot Building, and the Vernor's Building.⁵⁴ While the MHC determined that enough of the historic exterior facade elements of the Annex Building remained to be considered contributing, the Crofoot and Vernor's Buildings were determined to not have enough of their respective historic facades or remaining original architectural elements to consider them as contributing to the local district today.

Discussion and Conclusions of Law

A. Tax Credit Availability for Historic Rehabilitations

Before addressing the Appellant's particular claims of error, it is first necessary to review the underpinning State law on the availability of income tax credits for historic resource rehabilitations.

In this regard, Section 266 of the Tax Act⁵⁵ indicates that a taxpayer may claim as state tax credits 25% of the taxpayer's qualified expenditures made to rehabilitate a

⁵³ In Michigan, there is no legal requirement to conduct site visits for Part 1 evaluation. 36 CFR Section 67.6(e) authorizes site inspections but are also not required.

⁵⁴ Photographs submitted by Appellant with Part 1 Application materials.

⁵⁵ See 3.

"historic resource." However, before such credits can be claimed, the taxpayer must first request and receive from the MHC certifications that the resource has "historic significance" and that the taxpayer's plans for rehabilitation and completed project work comport with the *Interior Secretary's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. In this vein, the Act states:

Sec. 266. * * *

(3) To be eligible for the credit under subsection (2), the taxpayer shall apply to and receive from the Michigan historical center certification that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource meet the criteria under subsection (6) and either of the following:

(a) All of the following criteria:

(i) The historic resource contributes to the significance of the historic district in which it is located.

(ii) Both the rehabilitation plan and completed rehabilitation of the historic resource meet the federal secretary of interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 CFR 67.

(iii) All rehabilitation work has been done to or within the walls, boundaries, or structures of the historic resource or to historic resources located within the property boundaries of the resource.

(b) The taxpayer received certification from the national park service.... * * * (Emphasis added).

Significantly, subsection (3) provides that to be eligible for program participation, a historic resource must also meet one of two inter-related eligibility criteria set forth in subsection (6). The subsection provides:

(6) Qualified expenditures for the rehabilitation of a historic resource may be used to calculate the credit under this section if the historic resource meets 1 of the criteria listed in subdivision (a) and 1 of the criteria listed in subdivision (b):

(a) The resource is 1 of the following during the tax year in which a credit under this section is claimed for those qualified expenditures:

(i) Individually listed on the national register of historic places or the state register of historic sites.

(ii) A contributing resource located within a historic district listed in the national register of historic places or the state register of historic sites.

(iii) A contributing resource located within a historic district designated by a local unit pursuant to an ordinance adopted under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(b) The resource meets 1 of the following criteria during the tax year in which a credit under this section is claimed for those qualified expenditures:

(i) The historic resource is located in a designated historic district in a local unit of government with an existing ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215 (or is located in some other special area designated by law). * * *
(Emphasis added).

The Act also contains a definition of the term "historic resource." Section 266(17), states that a "historic resource" includes privately owned historic buildings, structures, sites, objects, features, or open spaces located within historic districts designated by local units acting under the LHDA, including income-producing commercial or residential resources or historic resources located within the property boundaries of those resources.

The Tax Act required the MHC to promulgate administrative rules⁵⁶ in order to implement its provisions.

B. Administrative Rules Governing Part 1 Evaluations

The MHC adopted rules in February 2000 to govern the submission of applications for tax credit certifications.⁵⁷ Rule 4 of the MHC's rules on historic preservation certification covers requests for historic significance certification⁵⁸ and provides in pertinent part as follows:

Rule 4. (1) A person who is eligible to apply for a tax credit shall first submit an application to the center for certification of the person's possible historic resource. * * * The person shall also file, at the same time, a declaration of location and other project information prescribed by the Michigan historical center. * * * The person shall file 2 copies of each application and declaration.

(2) An application shall contain the information requested in the application. The application shall include, but is not limited to, all of the following information:

(a) Name and mailing address of each owner or long-term lessee, if any, seeking the credit.

(b) Common modern name and historic name, if any, of the resource.

(c) Address of the resource.

⁵⁶ See Sec. 266, subsection (15).

⁵⁷ 2000 MR 5, R 206.151 to 206.160.

⁵⁸ 2000 MR 5, R 206.154.

- (d) Name of the historic district, if applicable.
 - (e) All of the following photographs:
 - (i) Current photographs of the resource.
 - (ii) Photographs of the building or structure, site, and landscaping before alteration.
 - (iii) Photographs showing the property in conjunction with adjacent properties and structures along the streetscape.
 - (iv) A photograph of each distinctive interior space, such as a room, and each significant interior feature.
 - (f) A brief description of the resource, including major alterations, distinctive features and spaces, and dates of construction activity.
 - (g) A brief statement of significance, summarizing how the resource reflects historical values, including the values that may give a designated historic district its historic character.
 - (h) A map clearly locating the resource in a local unit or in an established historic district.
 - (i) The social security number or federal taxpayer identification number of each applicant.
 - (j) The signature of each applicant.
- (3) Together with the application, an applicant shall submit only attachments that the center deems necessary to perform an evaluation and a determination. The center shall notify the applicant, in writing, if additional information or materials are required. If the center notifies the applicant of the need for additional information or materials, then the center shall refrain from processing the application until the requested information or materials, or both, have been furnished.
- (4) Upon receipt of a complete and adequately documented application and a declaration, if applicable, **the center, within 45 days of receipt, shall review the submission to determine the eligibility of a possible historic resource for participation in the federal or state tax credit program, or both. The center shall also evaluate the significance and status of the possible historic resource, including whether it qualifies as a historic resource for purposes of the federal and state tax credit programs.**
- (5) Upon completion of an evaluation and determination of historic significance, including an evaluation of whether a resource is a historic resource and, if so, whether the historic resource is located in an eligible location, the center shall directly ... notify the applicant, in writing, of its determination on the application for historic significance certification. (Emphasis added).

C. MHC's Authority to Review Application

State law calls for implementing a MHC-administered review process relative to certification submissions. As regards to Part 1 applications, subsection (6) of Section 266 of the Act prescribes a two-pronged test that the MHC must apply when certifying a

property's historic significance for program eligibility.⁵⁹ Relative to State tax credit applicants, one prong of the test calls for MHC to determine whether a possible historic resource is actually located within the boundaries of an LHDA historic district (or else whether the property is located in some other special historically protected area identified by State law).⁶⁰ Historic properties situated within such districts benefit from the legal protections afforded by the ordinance.

More importantly, the second prong of the Part 1 test concerns whether the resource is a "contributing" historic resource within the district. Because historic districts can contain non-historic, as well as historic resources, the resource at issue is reviewed by the MHC before credits are granted.⁶¹ Modern resource inclusions will sometimes occur in a large historic district with hundreds of properties, where relatively modern structures, e.g., libraries and gas stations, were built before district designation and may be commingled with far more numerous historically significant buildings. It can also happen that historic properties may undergo adverse changes over time due to natural disasters or inappropriate actions by one or more owners. Hence, whether or not a resource once deemed historic is still historic can pose an actual factual question ripe for review by MHC staff.

Besides the statutory mandate prescribed in the Act itself, the Act directs the MHC to "review the submission to determine the eligibility for a possible historic resource for participation in the ... state tax credit program (and) **shall also evaluate the significance and status of the possible historic resource...**".⁶² In Michigan, the legal principles that guide how statutes are construed apply with equal force when an administrative rule is being interpreted. *Attorney General v Lake States Wood Preserving, Inc*, 199 Mich App 149, 155; 501 NW2d 213 (1993). The principles of statutory construction prescribe that the words in a statute are generally accorded their plain and ordinary meanings. *Willett v Waterford Twp*, 271 Mich App 38, 48; 718 NW2d

⁵⁹ See 3.

⁶⁰ Examples of areas where historic properties are specially protected would be areas within the boundaries of a historic association chartered under 1889 PA 39, MCL 455.51 to 455.72, or an area subject to a historic preservation easement.

⁶¹ Sec. 1a(s) of the LHDA, MCL 399.201a, indicates that a "resource" is one or more publicly or privately owned historic or non-historic buildings, sites, structures, objects, features, or open spaces located within a historic district.

⁶² 2000 MR 5, R 206.154(4).

316 (2006) (Citations omitted). The plain language of the administrative rule governing Part 1 reviews, *i.e.*, Rule 4, requires the MHC to evaluate each property's historic significance and location status.

In summary, based on reason and the express language of the Act and related rules, the MHC has authority and a clear legal mandate to review a property's location status and its historic significance when reviewing Part 1 submissions.

D. Appellant's Arguments for Reversal: The Appellant Alleges that the Crofoot and Vernor's Buildings are Contributing and Eligible for Rehabilitation Tax Credits

1. First Argument – The MHC Improperly Used National Criteria

Turning now to the Appellant's allegations, the Appellant first contends that the MHC's denial of his Part 1 application was improper because the MHC erroneously reviewed the application using National/State district designation and significance criteria. The Appellant posits that since the Crofoot and Vernor's Buildings are located within the *local* Pontiac Commercial Historic District, local district designation and significance criteria should have been used to determine whether the buildings could be deemed contributing to the district for tax credit purposes. Implicit in this assertion is also the proposition that *how* evaluation criteria are used may differ when evaluating national, state, or local significant historic resources.

To determine the merits of the Appellant's assertion, a review of national, state, and local evaluation criteria for significance and how they are used is helpful.

National Criteria

For National Register listing and eligibility certification, **a building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's time and place and historical development.**⁶³ (Emphasis added). A building not contributing to the historic significance of a district is one that does not add to the district's sense of time, place or historical development; or, a building where the location, design, setting, materials, workmanship, feeling and association have been so altered that the historic integrity of the building has been irretrievably lost.

⁶³ 36 CFR 67.5 *Standards for Evaluating Significance within Registered Historic Districts.*

State Criteria

The MHC uses the National Register listing and eligibility certification criteria to determine whether a historic resource is significant and contributes to the local historic district.⁶⁴

City of Pontiac Criteria

The City of Pontiac has specified criteria by which properties are designated by the historic district commission and, before including a property as a historic site, requires consideration of the property's quality of significance in the city's history, architecture, archaeology, engineering and culture.⁶⁵ **Designation criteria also include analysis of the integrity of location, design, setting, and materials of the property. The City also examines the relationship the property has to events that have made a significant contribution to "the broad patterns of our history," as well as examines the property's association with the lives of persons significant in the City's past.** (Emphasis added). Lastly, the property is examined for distinctive architecture of a type, period or method of construction.⁶⁶

Criteria Usage

The Secretary of Interior has published guidelines and technical information outlining how to apply National Register criteria for evaluation.⁶⁷ The Bulletin includes chapters outlining how to evaluate a property, the definitions of categories of historic properties, how to evaluate a historic property within its historic context, and how to identify the type of significance of a property. The Bulletin is the leading authority on how significance criteria are to be used in evaluating a given property's condition and whether the property can be construed as significant and contributing to a given historic district. Subsequently, its rubric is widespread and it's used by national, state, and local

⁶⁴ *Criteria for Evaluation Resources for Inclusion in Local Historic Districts* jointly published by the Michigan Historical Center and State Historic Preservation Office (2002); *Michigan's Historic Preservation Tax Incentives* published by the Michigan Historical Center and Michigan Department of State (2000).

⁶⁵ The City of Pontiac's Historic District Commission is comprised of seven residents appointed by the mayor. Two members are appointed from a list of citizens submitted by a duly organized and existing preservation society. One member is required to be a professionally registered architect. Pontiac Municipal Code Section 144.23 Chapter 72 Section 74-54 (1990).

⁶⁶ Pontiac Municipal Code Section 144.23 Chapter 72 Section 74-53 (1990).

⁶⁷ National Register Bulletin *How to Apply the National Register Criteria for Evaluation*, U.S. Department of the Interior, National Park Service, Cultural Resources, National Register, History and Education (1997).

officials for guidance in their evaluation of the significance of a historic property for inclusion in any nationally or locally registered historic district.⁶⁸ In Michigan, officials are presumed to perform their duties properly and act in accordance with the law. *Schommer v. DNR* 412 NW2d 663 (1987).

Conclusion

This review of evaluation criteria for significance reveals that there is effectively no difference in evaluation criteria or criteria usage at the national, state, or local level. Explicitly shared among jurisdictions is an assessment requirement that evaluates a property's integrity of location, design, setting, and materials. How criteria are applied is guided by the Secretary of Interior's Bulletin, the leading authority directing historic preservation professionals and non-professionals on how to apply significance criteria. After this careful review and consideration, the Appellant's first issue for appeal has no merit and therefore, must be denied.

2. Second Argument – Improper Application of Evaluation Criteria

The Appellant's second basis for relief lies in his assertion that the MHC erred in its evaluation of the buildings' integrity when making the determination that the Crofoot properties are non-contributing resources to the local historic district. The Appellant asserts that the MHC incompletely and incorrectly identified the significance of the buildings relative to the local Pontiac Historic Commercial District. The Appellant alleges that the MHC based its determination solely on National Register Criterion C: Design/Construction and ignored two additional criteria for significance: Criterion A: Event and Criterion B: Person.⁶⁹ Although the basis on which the Appellant asserts MHC error is not entirely correct, the Appellant's assertion that the MHC's significance evaluation was incorrect appears to have merit.

“Contributing” Evaluation Process for Prong 2 of the Act

⁶⁸ *Local Historic Districts in Michigan* published by the Michigan State Historic Preservation Office (2002). The City of Pontiac relies on the Secretary of Interior's *Standards for Rehabilitation and Revised Guidelines for Rehabilitating Historic Buildings* (1983) when it considers permits for construction or repair to historic resources within designated districts. Pontiac Municipal Code Section 144.23 Chapter 72 Section 74-55 (1990). Note that the Secretary's Standards have since been revised, U.S. Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Revised 1990).

⁶⁹ See 61 and 63.

When the MHC evaluates the significance of a property for inclusion in the program, the MHC first categorizes the property, followed by the MHC's determination of which historic or prehistoric context the property represents. The property is examined for its historic significance by identifying the links to important events or persons, design or construction features, or information potential that make the property important.

The significance of a historic resource can only be judged when it is evaluated within its historic context.⁷⁰ Significance must be evaluated with the understanding that a local historic context represents an aspect of the history of a town.⁷¹ In this case, within the framework of the local historic context of Pontiac This is accomplished by determining the following: 1) the facet of history of the local area that the property represents; 2) whether that facet is significant; 3) whether it is a type of property that has relevance and importance in illustrating the historic context; 4) how the property illustrates that history; and 5) whether the property possesses the physical features necessary to convey that aspect of history with which the property is associated.⁷² Once significance is fully established, the issue of integrity is addressed. The question of integrity is answered by whether or not the property retains the identity for which it is significant: why, where, and when a property is important. This is accomplished by evaluating how much a property retains of the seven fundamental aspects of integrity: location, design, setting, workmanship, materials, feeling, and association.

The steps for assessing integrity include: 1) defining the essential physical features that must be present for the property to represent its significance, 2) determining whether the essential physical features are visible, 3) determining whether certain vital aspects of integrity are present and visible (based on the significance and present physical features), and lastly, 4) determining whether the property needs to be compared with similar properties.⁷³ While all buildings change over time, the property

⁷⁰ See 66.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See 52. Ideally, this assessment includes a site visit since touching a building's walls and walking through its open spaces can convey the property's integrity. In addition, a site visit can convey the building's setting and its influence for consideration because a building is always better understood in its context (both time and place). In visualizing the building in its social setting at the time of its construction, historically significant elements are less likely to be overlooked. Dr. Leonard Eaton, Professor Emeritus of

must retain enough of its essential physical features that enable it to convey its historic identity. This includes those features that define why and when a property is significant.⁷⁴

In examining a property's essential physical features, four criteria are used. These include the evaluation of:

1. Criterion A: Event – a property's association with a single event, or a pattern of events or historic trends.
2. Criterion B: Person – a property's association with individuals whose specific contributions to history can be identified and documented.
3. Criterion C: Design/Construction - a property's significance based on its physical design or construction, including elements of architecture, engineering, and artwork.
4. Criterion D: Information Potential – a property's potential to answer research questions concerning human history.

The key to determining whether the characteristics or associations of a particular property are significant is to consider the whole property within its historic context. After applying the relevant historic context with which the property is associated, the above four criteria are applied to the property. Within the scope of the historic context, the four criteria define the amount of significance the property retains.

Local Historic Context

For purposes of Part 1 of the Application, the architectural elements and significance evaluation is limited in scope and should only evaluate a building's remaining historic fabric (*i.e.*, significance and integrity) within, in this case, the local historic context of Pontiac. In other words, does the historic resource still retain enough of its former self to convey its time-period's feel and association through the resource's design, setting, location, workmanship and materials?

In the MHC's March 31, 2009 memorandum in response to the Appellant's supplementary filing, the MHC wrote that the buildings should be considered significant based on their association with significant people and/or events. However, the MHC also points out that for the property to qualify for the National Register it must meet one

Architectural History, University of Michigan, Ann Arbor, in *Historic Preservation*. Norman Tyler, Norton, W. W. & Company, Inc. (1999).

⁷⁴ See 61.

of the National Register Criteria for Evaluation by being associated with an important historic context and it must retain historic integrity of those features necessary to convey its significance. The MHC then correctly asserts that historic integrity of the features of a resource cannot be separated as distinct criteria and that the National Register Criteria define the kinds of significance that a property represents. In support of its position, the MHC notes that it followed the Bulletin's requirement that it evaluate the building as a whole and not on remaining fragments of historic material.⁷⁵

However, the MHC's position indicates that its evaluation was not based upon the Crofoot and Vernor's Buildings significance at the local level. As previously mentioned, significance must be evaluated within the framework of the local historic context. Pontiac, which was founded prior to the Civil War, was a developing city during the post-Civil War-era and continued to grow following the development of the carriage industry in the late-19th Century. The City's population and statewide influence exploded in the early 20th Century when the carriage industry shifted to auto body manufacture in support of Detroit's developing auto industry. Pontiac was subsequently thrust onto the national stage as a vital part of auto manufacturing and its role during WWII as part of America's "Arsenal of Democracy."

Both the Crofoot and Vernor's buildings have lengthy histories in the City. The Crofoot Building (and possibly the Vernor's Building) itself was built shortly after Pontiac's establishment. Still standing in its original location at one of the central business crossroads within historic Pontiac, the Crofoot Building was *the* local landmark throughout most of Pontiac's history. The Crofoot Building was itself named for Michael Crofoot, perhaps still the best-known philanthropist in the history of Pontiac. Over one hundred years later, not only does one of the buildings at issue in this case retain Crofoot's name, but one of the nearby schools also bears his name.

Lastly, two other factors should be noted. First, local opinion indicates that both the Crofoot and the Vernor's Buildings are contributing to the local historic district. Of particular note is a comment made by Oberoi in her email to Lijewski on October 1, 2007, "We would certainly like to help this building get a tax credit, as it has contributed

⁷⁵ One of the most difficult aspects in evaluating a building is that the building often embodies the very Criteria by which it is judged – the architecture and its features are frequently the manifestation of significant events and people by which historic context is applied.

to the revitalization of our downtown.” Further, the City of Pontiac has included the Crofoot Block as part of its “Then and Now” series, and is featured in many economic revitalization advertisements for the City of Pontiac. Second, “urban renewal” has negatively and irreparably damaged the historic fabric of the district. These two buildings are the last of their type in historic Pontiac.

Remaining Architectural Features – Crofoot and Vernor’s Buildings

For Part 1 of the tax credit application, the fundamental question necessarily arises as to the level of adverse architectural changes that have occurred to both buildings: Have the changes over time to the Crofoot and Vernor’s Buildings been so egregious as to strip both buildings of all historic integrity (*i.e.*, significance) rendering them wholly non-contributing to the Pontiac Commercial Historic District? A second related question is whether adverse changes were so egregious so as to render the historic fabric as irretrievably lost?

In its November 29, 2007 denial letter, the MHC outlined that, based on the submitted photographs, both the Crofoot and Vernor’s Buildings still appeared to be non-contributing after the metal sheeting was removed. The MHC wrote that the buildings showed a significant loss of historic fabric and integrity and that neither exhibits features or details from their original design that would distinguish them as contributing examples of design, style or type (*i.e.*, the buildings don’t meet Criterion C). The MHC explained that the Crofoot Building had lost much of its original architectural elements including its original roof, structure, tower, cornice, decorative window hoods, original window opening size, and storefronts. The MHC also points out that the Vernor’s Building only retained its brick and stone pilasters on either side of the storefront, and a small section of cornice brick.

Although both buildings have undergone numerous changes in appearance and use, it is commonly understood that historic properties may undergo adverse changes over time due to natural disasters or inappropriate actions by one or more owners.⁷⁶ In this case, both the Crofoot and Vernor’s Buildings, still at their original locations, have suffered a number of adverse changes over time. In the case of the Crofoot Building, it has suffered damage from at least two fires and a late-19th Century remodeling. Both

⁷⁶ See 62.

the Crofoot and Vernor's Buildings were skinned with metal that covered up their respective distinctive brick facades. Even with the various changes in appearances and materials over time, both buildings still retain important characteristics that contribute to the district. This includes both buildings' history within Pontiac (*i.e.*, Criterion A), their affiliation with Michael Crofoot (*i.e.*, Criterion B), and lastly, their distinctive brick facades (*i.e.*, Criterion C) that are a major architectural element and defining feature of the local Pontiac Commercial Historic District. Support for this last assertion comes from former State Historic Preservation Officer Martha Bigelow. In her April 15, 1989 letter to Carol Shull, National Park Service, Bigelow noted that all the contributing buildings and **those labeled as non-contributing because of cosmetic cover-ups [*i.e.*, metal sheeting] or alterations should be viewed as historic resources worthy of preservation and future restoration** (emphasis added).⁷⁷ Bigelow also wrote that **many of the surviving buildings in the district exemplify a "Commercial Brick" style in which the brickwork itself forms a major element of the facade's decoration and detailing** (emphasis added). Bigelow noted that this distinctive style and material is particularly characteristic of downtown Pontiac. It should also be re-emphasized that these buildings are the last of disappearing historic resources in Pontiac – urban renewal and the razing of other nearby historic buildings have negatively and irreversibly damaged the historic fabric of the entire district.

Beyond the "Commercial Brick" style, additional architectural elements remain. In the case of the Crofoot Building exterior, submitted photographs and, for purposes of this appeal, a site visit revealed that much of the remaining Saginaw Street second story facade appears to be the original, simple, widely practiced Civil War-era vernacular style. Existing window location, layout, sashes, mullions, and other window treatments retain the simple-vernacular style and appear to be historic, if not original. On the Pike Street side of the building, second story windows, window treatments, and overall window configuration within the Pike Street facade appear to date to the Civil War-era, if not original to the pre-Second Empire version of the Building.

Perhaps most significantly, the building retains much of the original brickwork that is particularly characteristic of downtown Pontiac. The second story Saginaw Street

⁷⁷ See 39.

facade brickwork appears original to the Civil War-era and retains the “punched” window appearance. The Pike Street facade appears to retain much of its solid brick masonry wall original to the Civil War-era. Clearly, the Crofoot Building retains significant elements of its exterior “Commercial Brick” style noted by Bigelow in her 1989 letter.

Certain interior features of the Crofoot Building also remain. Second-floor wood joists and flooring on both the first- and second-floors appear historic, if not original. While the original first-floor storefronts have been enclosed, there remains a clear indication of the mid- late-19th Century storefront that would have had multiple vendors operating side-by-side. This configuration clearly conveys the common historic architectural layout of commercial buildings in historic Pontiac.⁷⁸ Furthermore, even though the second-floor interior has been largely gutted (similarly to the Annex Building that was deemed contributing), none of the changes preclude restoration of certain historic period interior elements. Lastly, original elements of the stone and brick foundation remain and some show evidence of original coring for the establishment of electric wiring and other utilities as they became widely available historically.

In the case of the Vernor’s Building’s exterior, it retains a single large open storefront on the first-floor along Saginaw Street – a unique surviving example within Pontiac. While the original first-floor storefront has been enclosed, there remains a clear indication of a previously existing late-19th Century storefront. Retaining its characteristic “Commercial Brick” style, the open storefront is framed on its sides by vertical strips of alternating buff-yellow bricks and limestone quoins that are original to the 1926 Vernor’s remodeling. The second-floor window locations approximate historic locations, size, and height, and currently appear to be a modern consortium of window styles comprised of a single pane of glass on the lower portion of the window, with eight decorative panes of glass in the upper portion of the window. Multiple mullions that meet in the center and angle outward divide the eight panes of glass. The interior exhibits a historic terrazzo floor tile that is likely original to the 1926 remodeling. The Vernor’s-era floor plan remains intact, although the floor plan in its current configuration does not follow or approximate the Vernor’s plan. The Vernor’s-era, if not original,

⁷⁸ See 27.

interior brick appears to remain under plaster and other wall treatments. Lastly, original elements of the stone and brick foundation exist and are clearly visible in the basement.

Conclusion

The above discussion makes clear that both the Crofoot and Vernor's Buildings exhibit some amount of historic integrity and retain some percentage of their respective architectural details. The dispute at issue here is clearly over whether those elements that still exist are sufficient enough for the buildings to convey their sense of time, place or historical development. In other words, as to the remaining historic character and integrity of these two buildings when "de-skinned," is the glass half-empty or half-full?

When evaluating the significance of the Crofoot and Vernor's Buildings, the MHC failed to fully consider the buildings' remaining historic fabric as a whole within the buildings' local historical context, apparently focusing solely on missing architectural elements. Subsequently, the MHC's significance assessment was flawed because the buildings do in fact retain enough of those physical features necessary to convey the local feeling and association of mid- to late- 19th Century Pontiac with which the property is associated. While the buildings may not retain enough of their architectural elements to qualify for National Register eligibility under Criterion C, they clearly retain enough of their architectural elements to convey their associated time period pursuant to Criteria A and B when evaluating the buildings within the whole local historic context. Lastly, the MHC failed to consider that the buildings have not been so radically altered so as to have irretrievably lost their historic integrity.⁷⁹

For a Part 1 assessment, the difficulty is that it must necessarily include some evaluation of architectural elements that remain, as well as those that are missing. While in this case it is arguable that those remaining architectural elements may or may not, by themselves, retain enough historic fabric to be considered contributing to the local historic district, the evaluation must go beyond just the architectural elements. The evaluation must examine those remaining elements in historic context and whether those missing elements that contribute to a building's historic integrity are irretrievably lost. In this case, while it is clear that many character-defining elements of both the pre-Civil War and Second Empire Periods are missing, it is also clear that much of those

⁷⁹ See 62.

character-defining elements remain. Considered in the whole and in context of the history of Pontiac, those missing architectural elements alone do not render either building's historic character as irretrievably lost. Both buildings exhibit their defining architectural element – the Commercial Brick facade noted by Bigelow – as well as other architectural elements. These buildings have been significant to the history of Pontiac and are still at their original locations. While the modern setting of downtown Pontiac is different than it used to be, the feel and association of the local historic district reflects its 19th Century origins. Significantly, both the Crofoot and Vernor's Buildings contribute to that feel and association. When these factors are added into the historic context of 19th Century Pontiac, as well as the current realities of disappearing resources within Pontiac today, it is clear that these two buildings retain sufficient historic fabric and integrity for Part 1 certification as a contributing resource.⁸⁰

Summary of Decision

Rule 9(5) of the MHC's Historic Preservation Certification Rules⁸¹ indicates that:

(5) When considering an appeal, the chief appeals officer shall assess alleged errors in professional judgment and other alleged prejudicial errors of fact or law. The officer may base a decision in whole or in part on matters or factors not addressed in the appealed decision. When rendering a decision, the officer may do 1 of the following:

- (a) Reverse the appealed decision.
- (b) Affirm the appealed decision.
- (c) Resubmit the matter for further consideration

Section 266 of the Tax Act⁸² authorizes a 25% tax credit for qualified expenditures made to rehabilitate a "historic" resource. In order for a property to qualify for tax credit treatment, MHC must certify that the historic significance of a resource meets certain criteria prescribed by law. One such criterion is that the resource must be subject to the legal protections afforded by a historic district designated by a local unit of government pursuant to the Local Historic Districts Act. Another criterion is that the

⁸⁰It should also be noted that for those architectural elements that were missing when the buildings were de-skinned, particularly those of either the vernacular Civil-War era style or even the Second Empire period, character-defining elements could be recovered during proper rehabilitation – an evaluation more appropriately made during Parts 2 and 3 of the application process.

⁸¹ See 2.

⁸² See 3.

resource is and remains a contributing historic resource within the designated historic district.

The Appellant filed an application with the MHC seeking certification of his property's historic significance. MHC denied his Part 1 application, determining that the historic integrity of the Appellant's resource had been compromised over time due to certain adverse changes and that the Crofoot and Vernor's Buildings did not retain enough historic fabric. The MHC therefore concluded that the buildings were not eligible resources and do not qualify for tax credits under the program.

As authorized by Rule 9;⁸³ the Appellant filed an appeal of the MHC's denial with the MHC's CAO. The Appellant's application for historic preservation certification under the Act has been reviewed. Re-examination of the Appellant's application and review of Appellant's appeal documents and other available information confirms that MHC improperly denied the application based on the threshold requirements of Part 1, namely, that the Crofoot and Vernor's Buildings are not contributing historic resources to the local district. The Appellant's arguments on appeal have merit.

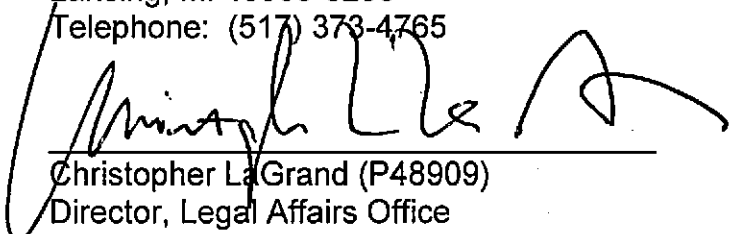
Accordingly, the MHC's determination to deny Part 1 certification is REVERSED.

Dated: January 8, 2010



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⁸³ See 2.