



the one page opinion of engineer Jack Durbin.

The Respondent City of Detroit asserts that incorrect weight was given to the affidavit of Ronald Supal and the one page opinion of engineer Jack Durbin. Respondent asserts that the one page engineer report was conclusory at best, with no supporting facts upon which to base the ultimate conclusion. Respondent further argues that that the opinion did have any supporting evidence which would have given it more credibility, such as a detailing of any of the structural failures, etc. mentioned in the opinion. It would have been far more convincing had it detailed what structural failures existed, and to what extent each contributed to the structural soundness of the building. Further, the opinion was provided by someone who was paid by Petitioner to provide the opinion. Without a chance to question Mr. Durbin, the Commissioners were relegated to reading the opinion and drawing their own conclusions as to its weight. The Commissioners found that the opinion did not rise to the level of meeting the prong of the Notice To Proceed which states that "The resource constitutes a hazard to the safety of the public or to the structure's occupants."

Next, Mr. Supal's affidavit was lacking in weight because it said that it was economically not feasible to save or rehabilitate the structure and thus it must be demolished. Further, he attached pictures to the affidavit that merely showed the structure was open to trespass, not structurally unsound. As the persons in opposition testified at the hearing, the squalid conditions in the structure were caused by Petitioner in leaving it open to trespass. Lastly, the affidavit of Mr. Supal was provided by someone who was paid by Petitioner to provide the

services on which the affidavit was based. Without a chance to question Mr. Supal, the Commissioners were relegated to reading the affidavit and drawing their own conclusions as to its weight. The Commissioners found that the affidavit did not rise to the level of meeting the prong of the Notice To Proceed which states that "The resource constitutes a hazard to the safety of the public or to the structure's occupants."

Respondent next argues that the testimony of all of the persons who testified at the May 14, 2008 hearing in opposition to the demolition of the subject property should be given greater weight than the above mentioned affidavit of Ronald Supal and the one page opinion of engineer Jack Durbin for the following reasons.

First, the persons who testified were not paid to do so, or to render an opinion. They did so of their own free will, and thus their credibility and conclusions should be given greater weight than the affidavit of Ronald Supal and the one page opinion of engineer Jack Durbin. None of them testified that in their opinion the building was unsafe.

Further, each of these people who spoke at the May 14, 2008 hearing had expertise in either historic preservation or in the feasibility of the rehabilitation and development of historic properties. For example, Kristine Kidorf has expertise well known in the area of historic rehabilitation of buildings. She said it could be redeveloped, and that Petitioner, in her experience as former Staff Person for the Detroit Historic District Commission, did not meet the Notice To Proceed requirements. Kathy Makino, a developer, testified that she wanted to buy the

building and that it could be rehabilitated. Alan Levy, former Deputy Director of the City of Detroit Planning and Development Department, said that it could be redeveloped, and that it was economically feasible to rehabilitate and redevelop it.

For all of these reasons, the Commission gave greater weight to the experienced persons who spoke in opposition to the demolition of the building than to the opinion of Mr. Durbin or the affidavit of Mr. Supal. Based on the weight of the opinions of those in opposition to the demolition of the subject property, the Commissioners concluded that the Petitioner did not meet any of the requirements necessary for the issuance of a Notice To Proceed under Secretary of the Interior Standard Number 6.


Therefore, this Honorable Hearing Officer and Board of Review should reject Petitioner's argument that the weight of the evidence presented by Petitioner met the requirements necessary to issue a Notice To Proceed under the Secretary of the Interior Standards, Standard Number 6, and, instead, this Honorable Hearing Officer and Board of Review should affirm the decision of the Detroit Historic District Commission in this matter.

### CONCLUSION

For all of the reasons stated above, Respondent asserts that Petitioner has not met their burden of proof on any and all of the arguments proffered in support of their appeal. Therefore, Respondent asks that this Honorable Hearing Officer and Board of Review reconsider this matter

and apply the above arguments in forming the basis of a new Proposal For Decision which affirms the decision of the Detroit Historic District Commission in this matter and denies Petitioner the relief they seeks in their appeal.

Respectfully submitted,



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Dated: February 13, 2009

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of  
City of Grosse Pointe Park,  
Petitioner,  
v  
Detroit Historic District Commission,  
Respondent.

Docket No. 2008-1002  
Agency No. 08-040-HP  
Agency: History, Arts & Libraries  
Case Type: Appeal  
Hon. Kenneth P. Poirier

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Proof of Service

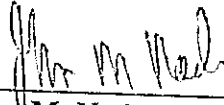
STATE OF MICHIGAN )  
)SS  
COUNTY OF WAYNE )

John M. Nader says that on February 13, 2009, he served a copy of Respondent's Exceptions To Proposal For Decision, and Proof of Service on :

Bodman LLP  
By: Dennis J. Levasseur (P39778)  
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Nicholas L. Bozen  
Michigan Department of History, Arts and Libraries  
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Via fax to their respective fax numbers as listed above and by placing same in envelope and after securely sealing same and affixing sufficient first-class postage thereto, deposited same in the United States mail for transmission to the addressee thereof.



John M. Nader (P41610)

Nick

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of  City of Grosse Pointe Park, Petitioner v Detroit Historic District Commission, Respondent <hr style="width: 30%; margin-left: 0;"/>	Docket No.    2008-1002  Agency No.    08-040-HP  Agency:        History, Arts & Libraries  Case Type:     Appeal
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Issued and entered  
this 29<sup>th</sup> day of January, 2009  
by Kenneth P. Poirier  
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL FINDINGS

This matter involves the administrative appeal of a decision of the City of Detroit Historic District Commission (the Commission), which denied an application to demolish the structures located at 14901-15 East Jefferson and 14917 East Jefferson, in the City of Detroit, Michigan. The buildings are currently situated in the City of Detroit's Jefferson-Chalmers Historic Business District.

The Commission issued its decision on May 16, 2008. The Petitioner filed the instant appeal on July 15, 2008. The Petitioner additionally submitted a brief and 12 Exhibits in support of its appeal.

The appeal herein was filed under the provisions of Section 5(2) of the Local Historic Districts Act (LHDA).<sup>1</sup> Section 5(2) provides that an applicant aggrieved by a

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1 1970 PA 169, Section 5, MCL 399.205



decision of a historic district commission 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).

Upon receiving the appeal, the Review Board directed the State Office of Administrative Hearings and Rules (SOAHR) to conduct an administrative hearing for purposes of accepting evidence, hearing legal arguments, and preparing a "proposal for decision." SOAHR convened a hearing on January 20, 2009, in the Cadillac Place, Second Floor Annex, Suite 2-700, 3026 W. Grand Boulevard, Detroit, Michigan. The hearing was held in accordance with procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969.<sup>2</sup>

Dennis Levasseur, Esq. appeared on behalf of the Petitioner, the City of Grosse Pointe Park, with a witness, Dale Krajniak, City Manager. John Nader, Esq., appeared in these proceedings on behalf of the Respondent, the City of Detroit Historic District Commission, with a witness, Susan McBride, a staff worker for the Commission. Kenneth P. Poirier, Administrative Law Judge, served as Presiding Officer.

At the hearing, Petitioner submitted an additional 30 Exhibits. The Commission submitted an appeal brief, and five supporting exhibits as well.

### **ISSUE**

Did the Commission on May 16, 2008 improperly deny Petitioner's request to demolish the structures located at 14901-15 East Jefferson and 14917 East Jefferson, in Detroit, Michigan?

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<sup>2</sup> 1969 PA 306, Section 71 *et seq.*, MCL 24.271 *et seq.*

**EXHIBITS**

The parties stipulated to the submission of the following exhibits for consideration at the hearing:

<b><u>Petitioner Exhibits</u></b>	<b><u>Description</u></b>
Exhibit A	May 16, 2008 Notice of Denial
Exhibit B	Transcript of Respondent Commission meeting, May 14, 2008
Exhibit C	April 24, 2007 Building Permit and April 27, 2007 Stop Work Order
Exhibit D	April 27, 2007 letter to Homrich Wrecking, Inc.
Exhibit E	Excerpt from Detroit Zoning Ordinance
Exhibit F	May 16, 2007 City of Detroit Historic Designation Advisory Board legal notice
Exhibit G	April 11, 2008 Circuit Court order denying Mandamus
Exhibit H	April 18, 2008 Petitioner application to Respondent for demolition permit
Exhibit I	Respondent staff report for May 14, 2008 meeting
Exhibit J	April 25, 2008 permit application supplement
Exhibit K	December 21, 2006 quit claim deed
Exhibit L	April 18, 2008 affidavit of Ronald Supal
Exhibit 1	May 16, 2008 Notice of Denial
Exhibit 2	April 24, 2007 Building Permit and April 27, 2007 Stop Work Order
Exhibit 3	April 27, 2007 letter to Homrich Wrecking, Inc.
Exhibit 4	Excerpt from Detroit Zoning Ordinance

- Exhibit 5 May 16, 2007 City of Detroit Historic Designation Advisory Board legal notice
- Exhibit 6 April 11, 2008 Circuit Court order denying Mandamus
- Exhibit 7 April 18, 2008 Petitioner application to Respondent for demolition permit
- Exhibit 8 Respondent staff report for May 14, 2008 meeting
- Exhibit 9 April 25, 2008 permit application supplement
- Exhibit 10 December 21, 2006 quit claim deed
- Exhibit 11 April 18, 2008 affidavit of Ronald Supal
- Exhibit 12 April 30, 2007 letter from Chris Garland, Executive Director of Jefferson East Business Association
- Exhibit 13 May 10, 2007 letter from Janice M. Winfrey, City Clerk of the City of Detroit
- Exhibit 14 Undated letter from Marcell R. Todd, Jr., Acting Director of City of Detroit Historic Designation Advisory Board
- Exhibit 15 May 17, 2007 memorandum from Marcell R. Todd, Jr.
- Exhibit 16 June 5, 2007 letter from Marcell R. Todd, Jr.
- Exhibit 17 June 6, 2007 letters from Marcell R. Todd, Jr.
- Exhibit 18 July 10, 2007 Detroit City Council legal notice
- Exhibit 19 June 15, 2007 letter from Marcell R. Todd, Jr.
- Exhibit 20 June 20, 2007 letters from Marcell R. Todd, Jr., and preliminary report on proposed Jefferson-Chalmers historic business district historic district
- Exhibit 21 July 10, 2007 Detroit City Council legal notice
- Exhibit 22 August 9, 2007 letter from Susan M. McBride, Respondent Commission staff
- Exhibit 23 Public notice of Historic Designation Advisory Board October 11, 2007 meeting

Exhibit 24	October 11, 2007 Historic Designation Advisory Board meeting minutes
Exhibit 25	April 25, 2008 letter from Marcell R. Todd, Jr. and Final Report concerning proposed Jefferson-Chalmers Historic Business District
Exhibit 26	May 15, 2008 letter from Janice M. Winfrey
Exhibit 27	Notice of May 21, 2008 Detroit City Council public hearing
Exhibit 28	May 22, 2008 letter from Marcell R. Todd, Jr.
Exhibit 29	May 27, 2008 Detroit City Council Notice of Ordinance Enactment
Exhibit 30	August 19, 2008 letter from Devan Anderson, Chairperson, Historic District Commission

**Respondent Exhibits**

**Description**

Exhibit 1	May 16, 2007 City of Detroit Historic Designation Advisory Board legal notice
Exhibit 2	Final Report concerning proposed Jefferson-Chalmers Historic Business District
Exhibit 3	May 22, 2008 City of Detroit Historic Designation Advisory Board moratorium resolution
Exhibit 4	August 18, 2008 legal notice of May 27, 2008 ordinance establishing Historic District
Exhibit 5	Report for 5-14-06 (sic) Meeting, with May 13, 2008 Michigan Historic Preservation Network letter, May 14, 2008 Preservation Wayne letter, and May 16, 2008 Notice of Denial

### FINDINGS OF FACT

Petitioner purchased property at 14901-15 and 14917 East Jefferson, in the City of Detroit, Michigan, in December 2006. The buildings were constructed in the 1920's, and they had been vacant for approximately two years prior to the purchase. After purchasing the property, the Petitioner submitted an application to the Buildings and Safety Engineering Department of the City of Detroit for a permit to demolish the buildings located on the property. Detroit's Buildings and Safety Engineering Department issued a building permit to allow the requested demolition on April 24, 2007. When the demolition permit was issued, the properties were not located in a historic district. The historic district which ultimately encompassed the properties did not yet exist.

On April 27, 2007, however, the Buildings and Safety Engineering Department issued a "Stop Work" order, canceling the demolition permit. The reason given was that since the property was situated in a "main street overlay area," the Detroit Zoning Ordinance required the City of Detroit Planning and Development Department to approve the proposed work.

Section 61-11-314 of the ordinance requires the Planning and Development Department to verify that the proposed work is "consistent with the design standards of this subdivision." The Buildings and Safety Engineering Department had not sent the Petitioner's demolition permit request to the Planning and Development Department prior to granting the permit on April 24, 2007. The Stop Work order was therefore issued to give the Planning and Development Department the opportunity to review the Petitioner's demolition application. After the issuance of the Stop Work order, the Petitioner ceased its demolition activities which it had begun shortly after receiving the April 24, 2007 permit.

On May 16, 2007, the City of Detroit City Council, pursuant to its authority under Section 14(3) of the LHDA, authorized the Commission to review applications for building and demolition permits within a proposed historic district. The district would be located on E. Jefferson Ave. in Detroit, "between the City Limits east of Alter Road to Eastlawn Avenue ...". Petitioner's Exhibits F, 5, and 15 and Respondent's Exhibit 1. The properties for which Petitioner had requested the demolition permit were located within the proposed historic district.

After stopping their demolition activities, the Petitioner engaged in negotiations with different agencies of the City of Detroit concerning potential future uses for the properties in question. On April 18, 2008, however, Petitioner applied to the Commission for a permit to demolish the properties.

Petitioner's application included an affidavit from Ronald Supal. Petitioner Exhibits H, 7 and 11. Mr. Supal, at the time of his April 18, 2008 affidavit, was employed by a contracting firm engaged in building inspection work for the Petitioner. He served as a building inspector, plumbing inspector, and mechanical inspector for Petitioner, and he was responsible for ensuring that the structures were maintained according to applicable building codes.

Mr. Supal examined the properties in question twice in April 2008. He made a visual inspection of the properties on April 9, 2008, and found that the properties were vacant and dilapidated. Specifically, he stated in his affidavit:

"Based on my inspection, I found that the properties require extensive work in order to comply with the applicable rules and regulations. The properties have become unsafe, unsanitary and lack adequate light and ventilation. These conditions constitute a fire hazard and are otherwise dangerous to human life and public welfare."

On April 15, 2008, Mr. Supal evaluated the properties for their compliance with the 2003 Michigan Building Code. Mr. Supal gave the buildings failing marks with respect to fire safety, means of egress, and general safety, and he commented that, "Even if the buildings were to be rehabilitated, they would fall far short of the requirements for fire safety, means of egress, and general safety." Mr. Supal's conclusions were buttressed by photographs of the buildings showing considerable external and internal decay.

On April 25, 2008, Petitioner supplemented its application, by submitting a one-page report from a professional engineer, Jack Durbin. Petitioner Exhibits J and 9. In his report, Mr. Durbin stated that he had conducted a structural inspection of the properties in question on April 22, 2008. Based on his inspection, Mr. Durbin concluded that the buildings were, "stressed and in structural failure." He also found the structures to be, "unsafe, uninhabitable, unsanitary and a public hazard and nuisance." Both Mr. Durbin and Mr. Supal supported demolishing the buildings in question.

On May 14, 2008, the Respondent Commission held a public hearing in which it considered to Petitioner's application. In anticipation of the hearing, the Commission's staff prepared a report including its own recommendations for the Commission. Petitioner Exhibits I and 8 and Respondent Exhibit 5.

Prior to submitting its demolition application to the Commission, Petitioner had been negotiating with the Department of Transportation of the City of Detroit (DDOT). In its April 25, 2008 supplementary submission, Petitioner informed the Commission of these negotiations. The goal of the negotiations had been to exchange the properties in question for other property owned by DDOT. A bus turnaround site owned by DDOT in Grosse Pointe Park was to be moved to the properties in question. Petitioner planned to

develop the properties in question into a new bus turnaround site, after securing permission to demolish the buildings located on the properties, according to the Petitioner's application materials, and the Respondent's staff report. The report included the following recommendation:

"I recommend that the commission deny the applicant's request to demolish the buildings because it does not meet the Secretary of the Interior's Standards for Rehabilitation standard number 6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence."

Petitioner's attorney and the city manager of Grosse Pointe Park both spoke in support of the Petitioner's demolition application at the May 14, 2008 Commission hearing. A dozen individuals from the audience spoke to oppose demolition. After discussing the matter, the Commission members voted to deny the Petitioner's request to demolish the properties.

On May 27, 2008, the City of Detroit City Council adopted an ordinance establishing the Jefferson-Chalmers Historic Business District. The properties in question lie within this District.

### **CONCLUSIONS OF LAW**

As indicated above, Section 5(2) of the LHDA allows persons aggrieved by decisions of commissions to appeal to the Review Board. Section 5(2) also provides that the Board may affirm, modify or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or a notice to proceed. Relief should be granted where a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial and



material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

Under Michigan law applicable to administrative proceedings, a party who stands in the position of an applicant, an appellant or a petitioner typically bears the burden of proof. 8 Callaghan's Michigan Pleading and Practice (2d ed), Section 60.48, p 176, *Lafayette Market and Sales Co v City of Detroit*, 43 Mich App 129, 133; 203 NW2d 745 (1972), *Prechel v Dep't of Social Services*, 186 Mich App 547, 549; 465 NW2d 337 (1990).

The Petitioner occupies that position in this proceeding and accordingly bears the burden of proof regarding his factual assertions.

Petitioner argues three points in support of its appeal of the Commission's denial of its demolition request. First, the Petitioner argues that the Commission's denial was arbitrary and capricious. Secondly, the Petitioner argues that the buildings in question amount to a hazard to the public safety and welfare. Finally, the Petitioner argues that the standards promulgated by the Secretary of the Interior do not apply to Petitioner's demolition request.

Petitioner's first and third arguments are related. Petitioner maintains that the Commission did not have the authority to deny the Petitioner's demolition request. The Petitioner cites Section 5(1) of the LHDA for the proposition that, "A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district ... ." Referring to the procedural history predating the establishment of the historic district in which the properties in question are located, Petitioner asserts that when the Commission denied the Petitioner's demolition request on May 14, 2008, the district was not a historic district, but only an interim historic district.

**Case Summary**  
**Historic District Commission Appeal**  
**Review Board Meeting Date: May 1, 2009**

**Case Name:** *City of Grosse Pointe Park v Detroit Historic District Commission*

**HAL/Review Board File No.:** 08-040-HP

**SOAHR Docket No.:** 2008-1002

**SOAHR ALJ:** Hon. Kenneth P. Poirier

**Work Requested:** This case concerns the requested demolition of an allegedly old and decrepit building located at 14901-15 E Jefferson and 14917 E Jefferson, in Detroit's Jefferson-Chalmers Historic Business District. The building is owned by the City of Grosse Pointe Park, which bought it in Feb 2007 with the intention of razing it and redeveloping the site. At the time of purchase, the site was not in a historic district.

Grosse Pointe Park obtained a City of Detroit demolition permit in April of 2007, but three days later the permit was revoked, ostensibly because the demolition request was not forwarded by Detroit's Bldg Dept to the Planning Dept. On May 16, 2007, City Council adopted a resolution establishing a study period for the proposed Jefferson-Chalmers Historic Business District, and also established an interim historic district.

On April 18, 2008, Grosse Pointe Park applied to the HDC for a notice to proceed with demolition. Commission staff recommended denial on the basis of Standard 6 language. Grosse Pointe Park argued to the Commission that the bldg required extensive work, that demolition is the only feasible option, the bldg is in structural failure, and the bldg is unsafe and hazardous to health since it lacks adequate light and ventilation, is unsanitary, and is otherwise unsafe. Detroit's HDC denied the demolition request on May 16, 2008.

**Petitioner's Issues:**

In its appeal dated July 15, 2008, Grosse Pointe Park's Attorney, Dennis Levasseur (Bodman law firm), raised three issues:

1. That the HDC was arbitrary and capricious because the LHDA doesn't apply to bldgs in interim historic districts.
2. That Grosse Pointe Park's expert witnesses proved that the bldg is unsafe, that it is in structural failure, that even if rehabbed it will fall far short of the requirements for general safety, fire safety and egress; that there is no feasible alternative to demolition; that the structure is unsanitary, uninhabitable, and a public hazard; and that it cannot be economically rehabilitated.
3. That the Secretary's Standards do not apply because the bldg was not in a duly established historic district when the application was denied.

**The SOAHR Hearing Date was:** January 20, 2009

**Evidence:** One witness testified for each side, Petitioner offered 30 exhibits, HDC five

→ The Commission has expertise  
and can evaluate what  
is presented to it

- The Report is in an NR 1180

- We have experts on the Review Bd  
who can eval

- While the submission appears  
to have a certain amount  
of prima facie validity,  
upon analysis it is  
clearly lacking in adequate  
substance.

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**Case Summary**  
**Historic District Commission Appeal**  
**Review Board Meeting Date: May 1, 2009**

**The Proposal for Decision (PFD) was issued on: January 29, 2009**

**Synopsis of Proposal for Decision:**

In the "fact" section of the PFD, the ALJ notes that the bldg was vacant for two years prior to purchase. The ALJ discussed inspections of the bldg by Grosse Pointe Park's experts, the fact that Grosse Pointe Park had engaged in negotiations with DDOT to exchange properties with the goal of developing a bus turn around site, that Grosse Pointe Park's attorney and city manager spoke in favor of demolition, that a dozen people spoke in opposition, and that City Council officially established the historic district on May 27, 2008.

In the "conclusions of law" section of the PFD, the ALJ noted the inter-related nature of Petitioner's first argument on arbitrary conduct and third argument regarding the HDC's authority to apply the Standards to property in an interim district. The ALJ rejected Petitioner's challenge, opining that Sec. 14(3) of the LHDA allows local units to establish interim districts and require that all applications be considered by the HDC.

As for issue No 2, the safety hazard issue, the ALJ wrote that Grosse Point Park's experts were professionals and that their opinions called for demolition, despite the opposing statements of the dozen individuals who spoke against demolition.

**The ALJ's Conclusion was:** The ALJ concluded the Commission committed error by rejecting the written opinions of PMI Inspection Services consultant Ronald Supal and licensed professional engineer Jack Durbin.

**The ALJ Recommended:** That the Commission's May 14<sup>th</sup> denial be REVERSED.

**Exceptions:** The HDC filed exceptions on February 13, 2009. In the exceptions, the HDC objects to the ALJ's finding that there is a safety hazard and complains that the engineer's one-page report was conclusory at best, stressing that it had no opportunity to question Durbin about structural soundness at its meeting. The Commission also criticized the consultant's affidavit, which concluded it was economically unfeasible to rehabilitate the structure, as well as the fact Supal was not present to question. The Commission also noted that, unlike Grosse Point Park's experts, the people who spoke at the commission meeting were not paid for their opinions and spoke of their own free will. The HDC therefore requests denying Petitioner the relief it seeks.

**Responses to Exceptions:** Grosse Pointe Park asks the Board to affirm ALJ Poirier's well-reasoned proposal for decision. Petitioner notes the engineer's report was prepared at the HDC's request, that the HDC didn't cite the report's failings, and that the HDC never asked to question Durbin. Petitioner posits that Inspector Supal's affidavit was highly relevant, that people who spoke to the Commission were not sworn witnesses, that no foundation was laid as to the expertise of those persons, and that the exceptions are silent on whether the speakers ever inspected the buildings. Petitioner asks the Board to issue a final decision accepting the PFD and reversing Detroit.

**STATE OF MICHIGAN**  
**MICHIGAN DEPARTMENT OF HISTORY, ARTS AND LIBRARIES**  
**STATE HISTORIC PRESERVATION REVIEW BOARD**

**CITY OF GROSSE POINTE PARK,**  
Petitioner,

v

HAL File No. 08-040-HP  
SOAHR Docket No. 2008-1002

**DETROIT HISTORIC DISTRICT COMMISSION,**  
Respondent.

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**FINAL DECISION AND ORDER**

The City of Grosse Pointe Park (City, Grosse Point Park, or Petitioner) appeals a May 16, 2008 decision of the Detroit Historic District Commission (Commission or Respondent), which denied the City's application (No. 08-47 and No. 08-48) to demolish buildings known as 14901-15 and 14917 East Jefferson, located in the City of Detroit. The buildings are also situated within the boundaries of Detroit's Jefferson-Chalmers Historic Business District.

**Procedural History and Issues in the Case**

The Petitioner filed an Appeal of the Commission's decision on or about July 15, 2008, listing three reasons for reversing the denial. Among the Petitioner's purported grounds for relief were that: 1) the Commission's denial was arbitrary and capricious, 2) the buildings constitute a hazard to public safety and welfare, and 3) the U.S. Secretary of the Interior's Standards for Rehabilitation do not apply to these buildings.

The City submitted its appeal and a request for administrative hearing under Sec. 5(2) of the Local Historic Districts Act (LHDA).<sup>1</sup> Sec. 5(2) provides that an applicant aggrieved by a decision of a historic district commission may appeal to the State Historic Preservation Review Board (Review Board or Board), which is an agency of the Michigan Department of History, Arts and Libraries (Department).

When the Review Board received the appeal, the Board promptly referred the case to the State Office of Administrative Hearings and Rules (SOAHR),<sup>2</sup> asking SOAHR to schedule an administrative hearing for the purpose of accepting evidence, hearing arguments, and preparing a Proposal for Decision (PFD).<sup>3</sup>

Accordingly, SOAHR scheduled and noticed the administrative hearing in this case. The hearing was held on January 20, 2009 in Suite 2-700, Second Floor Annex, Cadillac Place, 3026 West Grand Boulevard, Detroit, Michigan. The hearing was conducted pursuant to the contested case procedures prescribed in Chapter 4 of the Administrative Procedures Act.<sup>4</sup> Dennis J. Levasseur, Bodman LLP, appeared on behalf of the Petitioner. John M. Nader, City of Detroit Law Department, appeared for the Respondent. SOAHR Administrative Law Judge (ALJ) Kenneth P. Poirier was assigned to serve as Presiding Officer.

The assigned ALJ issued a 15-page PFD on January 29, 2009. The principal issue considered by the ALJ was: Did the Commission improperly deny the Petitioner's

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<sup>1</sup> 1970 PA 169, § 5, MCL 399.205.

<sup>2</sup> By virtue of Executive Reorganization Order No. 2005-1, MCL 445.2021, SOAHR conducts centralized contested case hearings for many State of Michigan agencies, including the Review Board and the Department. Such hearings afford the parties a fair opportunity to submit evidence and make legal arguments. Plummer, *The Centralization of Michigan's Administrative Law Hearings*, 85-11 Mich BJ 18, 20 (2006).

<sup>3</sup> PFDs are issued pursuant to Sec. 81(1) of the Administrative Procedures Act (APA), 1969 PA 306, § 81, MCL 24.281.

<sup>4</sup> 1969 PA 306, §§ 71 to 86, MCL 24.271 to 24.286.

request to demolish the structures located on East Jefferson in the City of Detroit, Michigan?

In the "facts" section of the PFD, the ALJ wrote that the buildings had been vacant for approximately two years prior to their December, 2006 purchase by Grosse Pointe Park. The ALJ discussed the City's submission of a request to raze the buildings filed with Detroit's Building and Safety Engineering (B&SE) Department, quick cancellation of a B&SE permit, creation of an interim local historic district, and negotiations between Grosse Pointe Park and Detroit's Department of Transportation (DDOT) aimed at moving a bus turnaround site located in Grosse Pointe Park to the historic building site on East Jefferson. The ALJ also referenced Grosse Pointe Park's request to the Commission for a notice to proceed with demolition, inspection of the historic buildings by building inspector Ronald Supal (who in an affidavit gave the buildings failing marks with respect to fire safety, means of egress, and general safety), inspection of the buildings by engineer Jack Durbin (who in a one-page report expressed conclusions that the buildings were stressed, in structural failure, unsafe, unsanitary, uninhabitable, a public hazard, and a public nuisance), statements by the City's attorney and city manager advocating demolition at a public hearing held by the Commission, and the fact that a dozen individuals made statements opposing demolition at the hearing.

In the "conclusions of law" portion of the PFD, the ALJ emphasized the inter-related nature of Petitioner's first argument on arbitrary Commission conduct and third argument on the Commission's lack of authority to apply the Standards to properties located in interim historic districts. The ALJ rejected the Petitioner's misconduct and



authority arguments, opining that Sec. 14(3) of the LHDA<sup>5</sup> allows local units of government to designate proposed historic districts and enables such units to require applicants to file requests to undertake work on properties in these areas. As for the safety hazard issue, the ALJ opined that Grosse Pointe Park's two experts were both professionals, their documents had specificity, and their opinions called for demolition; that the "testimony" of the several individuals who spoke against demolition at the Commission meeting "lacked weight;" that the Commission's failure to approve the application in light of such "substantial evidence" represented error; and that the Commission had therefore improperly denied the demolition request in question.

At the end of the PFD, the ALJ informed the parties of their right to file "exceptions" under Sec. 81(1) of the APA,<sup>6</sup> indicating that if a party chose to take exception to the PFD, the party's written arguments must be filed with the Review Board within 15 days of PFD issuance. The ALJ also indicated that either party's response to the other's exceptions must be filed within 10 days after exception filing and that all submissions must be served on the opposing party and the Board.

On February 13, 2009, the Respondent filed the Commission's Exceptions to Proposal for Decision. In this submission, the Respondent charged that the PFD was partially based on an incorrect conclusion by the ALJ. The Respondent asserted that the ALJ gave incorrect weight to the affidavit of building inspector Ronald Supal and the one-page report of licensed engineer Jack Durbin. The Respondent argued that the engineering report was merely "conclusory," with no cited supporting facts – such as an identification of which structural supports in the buildings were unsound and failing –

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<sup>5</sup> 1970 PA 169, § 14, MCL 399.214.

<sup>6</sup> See footnote 3.

upon which the report's ultimate conclusion was based. The Respondent added that Mr. Durbin did not attend the Commission meeting and thus the Commissioners did not have a chance to ask him questions.

The Respondent also argued that inspector Supal's affidavit was equally lacking in substantive weight. In this regard, the Respondent contended the affidavit's conclusion – that the building was uneconomical to save or rehabilitate – lacked weight since the affidavit, and in particular attached photographs, simply showed that the building was in squalid condition, not that it was structurally unsound. The Respondent pointed out that Supal, like Durbin, was paid by the Petitioner to provide the desired opinion and he was similarly unavailable to answer any questions that the Commissioners might have.

The Respondent further emphasized that each of the dozen people who spoke at the May 14, 2008 Commission meeting did so without compensation and that they all possessed expertise either in historic preservation or in the feasibility of rehabilitating or redeveloping historic properties. The Respondent wrote:

For example, Kristine Kidorf has expertise well known in the area of historic rehabilitation of buildings. She said it could be redeveloped, and that Petitioner, in her experience as a former Staff Person for the Detroit Historic District Commission, did not meet the Notice to Proceed requirements. Kathy Makino, a developer, testified that she wanted to buy the building and that it could be rehabilitated. Alan Levy, former Deputy Director of the Detroit Planning and Development Department, said that it could be redeveloped, and that it was economically feasible to rehabilitate and redevelop it.<sup>7</sup>

The Respondent's conclusion was that, based on the information the Commission had before it, the Commission properly determined that Grosse Pointe

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<sup>7</sup> Commission's Exceptions, pp 3-4.

Park's demolition request did not meet the requirements for receipt of a notice to proceed to demolish.

On February 23, 2009, Grosse Pointe Park filed Petitioner-Appellant's Response to Respondent-Appellee's Exceptions. Therein, the Petitioner asked the Review Board to affirm the ALJ's "well-reasoned" decision. The Petitioner first argued that professional engineer Durbin's report provided "substantial evidence" to support the City's application to demolish, stressing that it had been prepared at the Commission's request. The Petitioner also complained that the Respondent did not cite the report's purported failings and alleged that the Commission could have subpoenaed Mr. Durbin to testify at its meeting.<sup>8</sup>

The Petitioner similarly argued that the ALJ properly concluded that building inspector Supal's affidavit provided "substantial evidence" to support demolition. The Petitioner asserted that Mr. Supal's affidavit was "unrebutted" and highly relevant. The Petitioner pointed out that Supal stated, under oath, that he had conducted a visual inspection of the buildings and found they were dilapidated and required extensive work to comply with applicable codes. The Petitioner added that Supal concluded that the buildings constituted a fire hazard and were otherwise unsafe to human life and welfare.

Regarding the people who opposed the City's application, the Petitioner argued that they merely made "unsworn" public comments at the meeting, which comments were inferior to the City's evidence, adding that the Respondent's exceptions were noticeably silent as to whether Mr. Levy (or others) had actually inspected the buildings or analyzed their structural integrity.

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<sup>8</sup> The Petitioner did not cite any authority for the proposition that the Commission possesses subpoena power.

The Review Board met on May 1, 2009 to conduct regular business, and in the course of its meeting considered this case, the PFD, and the parties' post-hearing submissions. During its contested case deliberations, the Board discussed the primary issue in this case, *i.e.*, whether the Commission improperly rejected the affidavit and report as conclusively demonstrating that the historic buildings were a hazard to public safety and must therefore be demolished. The Board observed that the Commission was constituted by law by experts well versed in a variety of historic preservation disciplines. The Board, which is also constituted by law with professionals possessing historic preservation expertise, after discussing the case, determined that the ALJ, a layperson with no expertise in historic preservation, misunderstood the review process engaged in by the Commission and improperly substituted his lay assessment of the information before the Commission, rather than deferring to the administrative and historic preservation expertise of the several members of that body.

**ACCORDINGLY, WE REJECT THE PFD** as our decision in this case and instead issue and enter this Final Decision and Order, including the Findings of Fact and Conclusions of Law set forth below, which more fully articulate the basis and rationale for our decision.

#### **Submission and Discussion of Evidence**

Under Michigan law, a party who stands in the position of a petitioner or an appellant in an administrative proceeding typically has the burden of proof. LeDuc, Michigan Administrative Law, (1993), § 6:42, Ch 6, p 54, *Lafayette Market and Sales Co v City of Detroit*, 43 Mich App 129, 133; 203 NW2d 745, 748 (1972), *Prechel v Dept of Social Services*, 186 Mich App 547, 549; 465 NW2d 337, 339 (1990), *Brown v Beckwith*

*Evans Co*, 192 Mich App 158, 168; 480 NW2d 311, 317 (1991). The Petitioner occupies that position in this contested case and accordingly bears the burden of proof regarding its factual assertions in this proceeding.

At the administrative hearing, the Petitioner presented a single witness, Grosse Pointe Park City Manager, Dale Kraniak. The Petitioner appended 12 multi-document exhibits to its claim of appeal and submitted 30 exhibits at the administrative hearing, many of which duplicated its administrative appeal attachments. The Respondent also offered testimony from one witness, Commission Staff Person Susan M. McBride. The Respondent offered five exhibits during the administrative hearing, including Ms. McBride's staff report with attachments. The parties stipulated to the submission of all proffered exhibits.

In the PFD, the ALJ made a recommended finding that the Petitioner had presented "substantial evidence" in the form of an affidavit, *i.e.*, sworn witness testimony, and a report of another expert, sufficient to show a safety hazard at the buildings in question. He consequently concluded as a matter of law that the Commission's failure to approve the City's demolition request in the face of such evidence constituted legal error. The parties, in their exceptions and exception responses in the appeal, argued about the proper weight that the Commission should have assigned to the "evidence" presented by the Petitioner at the Commission's May 14, 2008 "public hearing," which was convened as a segment of an open meeting conducted by the Commission. At the meeting, the Commission conducted all of its regular business and made numerous decisions on applications to perform work.

Significantly, the ALJ and the parties' attorneys misunderstood the nature of the application process administered by the Commission. The Commission possesses no quasi-judicial or judicial powers. Property owners who file applications with the Commission are not "parties" in a legal proceeding and do not submit "evidence" or "testimony" in the manner as is done in contested cases or court litigation. To be sure, each applicant is required to obtain and file appropriate documents along with its application, such as work plans, zoning approvals, and environmental clearances, which are adequate to answer questions connected with the application, *e.g.*, whether the work plans conform with the Interior Secretary's Standards for Rehabilitation or whether a major improvement program of substantial community benefit has been proposed for the historic site.

Rather than acting as an adjudicatory body, a commission simply functions as a local public body operating under the Open Meetings Act<sup>9</sup> and other applicable laws. It is free to consider and evaluate whatever documentation is attached to an application, as well as any comments, statements, and/or other information that may be presented to it by any person relative to any application. The Commission was free to consider and evaluate all information available to it in connection with the Petitioner's demolition request. It did not err by rejecting as unreliable documents that may have otherwise constituted "substantial evidence" in a court of law or an administrative tribunal.

Finally, notwithstanding the ALJ's finding that substantial evidence supported demolition, Michigan courts have held that a hearing referee's PFD is only a "proposal," it should be considered a "recommendation," and a reviewing body is "free to accept, reject, or modify" the ALJ's suggested decision even if the PFD is supported by

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<sup>9</sup> 1976 PA 267, § 1 *et seq.*, MCL 15.261 *et seq.*

“substantial evidence.” *Dignan v Pub School Employees Retirement Bd*, 253 Mich App 571, 575-576; 659 NW2d 629 (2002), *VanZandt v State Employees’ Retirement System*, 266 Mich App 579, 584-585; 701 NW2d 214, 218-219 (2005).

### **Findings of Fact**

Based upon a consideration of the official record, including the evidentiary submissions of the parties, the relevant facts of this case are found to be as follows:

#### **A. Background on Historic Neighborhood and Historic Buildings**

1. The area comprising the Jefferson-Chalmers Historic Business District (District)<sup>10</sup> is one of the City of Detroit’s few remaining early 20<sup>th</sup> Century commercial centers that has survived mostly intact. The area was developed during the 1910s and 1920s, when the surrounding neighborhood grew to house factory workers and others who came due to the proliferation of automobile plants and other industries. By the end of the 1920s, an eight-block section along East Jefferson had become the center of the neighborhood’s commercial, religious, social, and cultural life. (Petitioner Exhibits 20 and 25; Respondent Exhibit 2)

2. The eight-block section which became the business district contains a notable concentration of architecturally distinguished commercial, apartment, and church buildings and serves as a gateway into Detroit from the Grosse Pointes. The structures in the neighborhood are generally two stories high, except for the churches and major apartment buildings. Most of the business center’s buildings front East Jefferson and fill their lots with no setbacks from the street, resulting in a long, nearly continuous streetscape. Among the 57 structures that exist today, 40 are considered

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<sup>10</sup> The District was permanently established by action of Detroit City Council undertaken on May 27, 2008, by adoption of Ordinance No. 14-08, which added Sec. 25-2-168 to the Detroit City Code .

“contributing resources.”<sup>11</sup> In addition, the business center meets the criteria for listing as a historic district on the National Register of Historic Places. (Petitioner Exhibits 20 and 25; Respondent Exhibits 2 and 5)

3. The building known as 14901-14915 East Jefferson, which is situated at the east end of the business district on the corner of East Jefferson and Alter Road, is a architecturally unique, two-story brick commercial building constructed in 1918. Its primary facade on East Jefferson was built to house three storefronts, with apartments located above. Elaborate cast stone, marble-like frames surround three triptych-style windows set into the predominant window opening on the first floor of the East Jefferson facade, as well as the seven windows on the Alter Road facade and the corner entrance, which has two doors, one facing each street. The doors also have cast stone pediments. The building was constructed with a metal cornice and has two oriel windows, faced with wooden siding, on the second story of the East Jefferson facade. The Alter Road facade also has an oriel window, which may have been a post-construction alteration. A cast stone bulkhead runs along the Alter Road elevation and a portion of the East Jefferson elevation. The 14901-14915 East Jefferson building retains a significant degree of historic integrity and clearly contributes to the historic significance of the District. (Petitioner Exhibits 20 and 25; Respondent Exhibits 2 and 5)

4. The building known as 14917 East Jefferson, also known as the Grosse Pointe Party Shoppe, is a two-story, brick commercial building constructed in 1920. The building's facade has been altered from its as-built appearance, in that all original windows on the second story were faced and are covered by a tall, slanted shingled

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<sup>11</sup> A “contributing resource” is a historic resource that contributes to the significance of the historic district in which it is located. See Sec. 435(28)(a) of the Michigan Business Tax Act, 2007 PA 36, MCL 208.1435.



overhang. The first floor storefront has also been altered, in that the window openings were changed. The building shares a wall with 14901-14915 East Jefferson. Given its exterior alterations, the building is not presently considered a contributing historic resource.<sup>12</sup> (Petitioner Exhibits 20 and 25; Respondent Exhibits 2 and 5)

**B. Acquisition of Buildings and Initial Effort to Demolish**

5. The City of Grosse Pointe Park purchased the property at 14901-14915 and 14917 East Jefferson, in the City of Detroit, Michigan, from Grosse Pointe Park Rentals, Inc., a Michigan corporation, sometime in 2004. However, the quitclaim deed documenting this transaction was not filed with the Office of the Wayne County Register of Deeds until February 2, 2007. (Petitioner Exhibits B, K, and 10)

6. On or about April 24, 2007, Grosse Pointe Park applied to Detroit's BS&E Department for a building permit to wreck and remove the two buildings located on the City's property. The BS&E Department promptly issued a permit to raze the two buildings. (Petitioner Exhibits C and 2)

7. On April 27, 2007, however, the BS&E Department issued a "Stop Work" order, canceling the permit to raze. The reason for this action was that the Department had been reminded that because the properties were included in a Main Street Overlay Area, Detroit's Zoning Ordinance<sup>13</sup> required Detroit's Planning and Development (P&D) Department to approve all permits to raze, which was not done in this instance. (Petitioner Exhibits C, D, E, 2, 3, and 4)

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<sup>12</sup> It is quite possible that the building will contribute to the historic significance of the District in the future, if and when the overhang is removed and the window openings are modified to their original configurations.

<sup>13</sup> Sec. 61-11-315 of the Detroit City Code.

8. Sec. 61-11-314 of the Detroit City Code requires Detroit's P&D Department to verify that certain building permit requests filed with the BS&E Department are "consistent with the design standards of this subdivision" of the Detroit City Code. The BS&E Department had not sent Grosse Pointe Park's request to raze the buildings to the P&D Department prior to issuing the permit on April 24, 2007. The Stop Work order was therefore issued to give the P&D Department an opportunity to review Grosse Pointe Park's request to raze. After issuance of the Stop Work order, Grosse Pointe Park's demolition contractor, Homrich Wrecking Incorporated, ceased its activities, which had begun shortly after issuance of the April 24, 2007 permit. (Petitioner Exhibits C, D, E, 2, 3, and 4)

**C. Interim Historic District Establishment and Study Report**

9. On or about May 16, 2007, the Jefferson Avenue Business Association (Association) asked Detroit City Council to establish an interim historic district under authority of Ch. 25 of the Detroit City Code<sup>14</sup> and Sec. 14(3) of the LHDA.<sup>15</sup> In response, the Council designated an interim historic district located on East Jefferson in Detroit, "between the City Limits and Alter Road (on the east, running west) to Eastlawn Avenue...". The Association's request was unrelated to Grosse Pointe Park's actions. However, the properties which Grosse Pointe Park had proposed to raze happened to be located inside the newly designated interim historic district. At the time of interim district designation, the Council empowered the Commission to review all work requests, including requests for demolition, pertaining to all structures situated within the interim district. The Association had asked for interim district designation in order to

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<sup>14</sup> Sec. 25-2-4(3) and Sec. 25-2-18 of the Detroit City Code.

<sup>15</sup> See footnote 5.

enable area businesses to claim any state tax credits<sup>16</sup> that might be available, to facilitate the rebuilding of the neighborhood. The resolution directed Detroit's Historic Designation Advisory Board (Advisory Board) to conduct a study to determine whether the area met the criteria for permanent designation as a local historic district. (Petitioner Exhibits F, 5, 12, 13, 14, 15, 16, 17, and 18; Respondent Exhibits 1 and 2)

10. The Advisory Board submitted a draft study report to City Council on June 14, 2007. A public hearing with respect to the district under study was held at the Association's office on October 11, 2007. A final report was prepared within the prescribed one-year period pursuant to the LHDA and the ordinance. (Petitioner Exhibits 19, 20, 21, 22, 23, 24, and 25; Respondent Exhibit 2)

**D. Negotiations and Other Action by Grosse Pointe Park**

11. Following cancellation of its building demolition permit, Grosse Pointe Park engaged in negotiations with DDOT with the goal of exchanging the City's property on East Jefferson for nearby property owned by DDOT. The City's aim was to relocate a bus turnaround site owned by DDOT in Grosse Pointe Park approximately one-half block east of the East Jefferson property, to the East Jefferson site. Grosse Pointe Park desired to redevelop the East Jefferson property in Detroit into the new bus turnaround, subsequent to obtaining permission to demolish the historic buildings. Although initially open to relocating its turnaround to the East Jefferson/Alter Street corner, DDOT latter cooled to the idea. (Petitioner Exhibits B, H and 7; Respondent Exhibit 5)

12. After deciding that further negotiations with DDOT were fruitless, in March of 2008 Grosse Pointe Park filed an action in Wayne County Circuit Court, Case No. 08-107356-CZ, against Amru Meah, in his capacity as Director of the BS&E Department.

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<sup>16</sup> See Sec. 435 of the Michigan Business Tax Act, 2007 PA 36, MCL 208.1435.

The City requested an immediate order to reinstate the April 24, 2007 permit to raze. On April 11, 2008, Circuit Court Judge Kathleen MacDonald issued an "Order Denying Immediate Writ of Mandamus." (Petitioner Exhibits G, 6, and 15)

**E. Historic Resource Regulation in Detroit**

13. Sec. 3(1) of the LHDA<sup>17</sup> empowers local units of government to establish, by ordinance, one or more local historic districts. Pursuant to this grant of power, Detroit City Council has created and designated dozens of local historic districts within the City of Detroit.<sup>18</sup> Under Sec. 3(1), the properties located in local historic districts are administered by historic district commissions established under procedures prescribed in Sec. 4 of the LHDA.<sup>19</sup>

14. Sec. 4 of the LHDA<sup>20</sup> authorizes the legislative bodies of local units of government to adopt ordinances establishing historic district commissions. Detroit City Council established the Commission by adoption of Ordinance 161-H, effective November 5, 1976.<sup>21</sup> By ordinance, the Commission consists of seven members. Its membership must include at least one duly registered Michigan architect with experience in historic preservation, selected from a list prepared by the local chapter of the American Institute of Architects. The Commission must also include two members selected from lists of candidates submitted by duly organized local historic preservation societies.<sup>22</sup> Among the Commission's assigned powers and duties is the responsibility

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<sup>17</sup> 1970 PA 169, § 3, MCL 399.203.

<sup>18</sup> Sec. 25-2-65 *et seq.* of the Detroit City Code.

<sup>19</sup> 1970 PA 169, § 4, MCL 399.204.

<sup>20</sup> *Iden.*

<sup>21</sup> Sec. 25-2-50 of the Detroit City Code.

<sup>22</sup> Sec. 25-2-51 of the Detroit City Code.

to review applications to perform work in each of Detroit's local historic districts at regularly scheduled open meetings.<sup>23</sup>

15. Division 2 of Chapter 25, Article II of the Detroit City Code governs the submission of applications to the Commission for the performance of proposed work, including demolition, on properties located in Detroit's established and interim historic districts.<sup>24</sup> When the Commission reviews plans for a certificate of appropriateness to perform work, it must follow the U.S. Secretary of the Interior's Standards for Rehabilitation, promulgated at 36 CFR 67.7, and implementing Guidelines for Rehabilitating Historic Buildings.<sup>25</sup>

16. The Commission has the power to approve applications for inappropriate work, *i.e.*, work which contravenes the Secretary's Standards, such as demolition, through the issuance of a "notice to proceed," if one of four specified conditions is present and the Commission finds that the contravening work is necessary to substantially improve or correct the condition, the first condition being that the property "constitutes a hazard to the safety of the public or the occupants."<sup>26</sup> In all instances where an application involves demolition, before a Commission makes any decision the Commission must in addition to convening a regular open meeting also hold a "public hearing" and notify legally prescribed persons and interest groups, including historic preservation societies and historic district associations, about the hearing and demolition application.<sup>27</sup> Given that historic properties are valuable, non-renewable resources, Detroit City Council has imposed this additional procedural requirement

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<sup>23</sup> Sec. 25-2-55 of the Detroit City Code.

<sup>24</sup> Sec. 25-2-18 to Sec. 25-2-27 of the Detroit City Code.

<sup>25</sup> Sec. 25-2-20 of the Detroit City Code.

<sup>26</sup> Sec. 25-2-22 of the Detroit City Code. This section of the Code follows the proscription of Sec. 5(6) of the LHDA, 1970 PA 169, § 5, MCL 399.205.

<sup>27</sup> Sec. 25-2-23 of the Detroit City Code.

whenever demolition is threatened. In addition, the Commission may not issue a notice to proceed unless the proposed demolition is without substantial detriment to the public welfare, without substantial derogation from the intents and purposes of Detroit's history ordinance,<sup>28</sup> and where one or more of the four specified conditions has been met.<sup>29</sup>

**F. Submission and Review of Application to Demolish**

17. On April 9, 2008, Ronald Supal, employed by PMI Inspection Services and Consultants, Inc. (PMI), which is a contract entity employed by Grosse Pointe Park for building inspection work, conducted a visual inspection of the properties at 14901-14915 and 14917 East Jefferson. Mr. Supal served the City as a contract building inspector, plumbing inspector, and mechanical inspector and was responsible for ensuring that all structures owned by the City were maintained according to applicable building codes. Based on his inspection, he found that the properties required extensive work in order to comply with applicable codes, rules, and regulations, that they had become unsafe and unsanitary and lacked adequate light and ventilation, and that these conditions constituted a fire hazard and were otherwise dangerous to human life and public welfare. He took two dozen pictures of the buildings' interior and exterior to show dilapidation and decay. The buildings were vacant at the time of his inspection. (Petitioner Exhibits K and 7; Respondent Exhibit 5)

18. On April 15, 2008, Mr. Supal evaluated the properties for compliance with Sections 3410.5.1-3410.5.3 of the 2003 Michigan Building Code. He gave the buildings failing marks with respect to fire safety, means of egress, and general safety. He formed

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<sup>28</sup> The intents and purposes of the Detroit's history ordinance include safeguarding the heritage of Detroit, stabilizing and improving property values in Detroit's historic districts, fostering civic beauty and community pride, strengthening the local economy, and promoting the use of historic districts for the welfare of the citizens of Detroit, the State, and the Nation. Sec. 25-2-1 of the Detroit City Code.

<sup>29</sup> Sec. 25-4-24 of the Detroit City Code.

the belief that even if the buildings were rehabilitated, they would fall far short of the requirements in the three safety areas. He felt there was no feasible alternative to demolition. He executed an affidavit on April 18, 2008 stating his opinions. Significantly, the affidavit failed to mention that the City had previously removed many of the systems he had cited for deficiencies from the buildings. (Petitioner Exhibits K and 7; Respondent Exhibit 5)

19. On April 18, 2008, Grosse Pointe Park submitted a demolition application to the Commission by hand-delivering the application to Commission Staff Person Susan McBride. The application indicated that Grosse Pointe Park planned to demolish the two buildings and redevelop the property to put it to a viable economic use. The application noted that the law allows demolition in a historic district if: (a) the resource constitutes a hazard to the safety of the public or to the structure's occupants, (b) the resource is a deterrent to a major public improvement program, (c) retaining the resource will cause the owner undue financial hardship, or (d) retaining the resource is not in interest of the majority of the community. Supal's affidavit with attachments was enclosed with the application, as was material from Detroit's BS&E Department. The application also asserted that the buildings' condition constituted a safety hazard, that the buildings represented a danger to human life and public welfare, that an assessment of the cost of compliance demonstrated demolition was the only feasible option, and that because of the safety concern the buildings must be demolished immediately. (Petitioner Exhibits K and 7; Respondent Exhibit 5)

20. On April 21, 2008, Ms. McBride telephoned a representative of the City to discuss the need for additional information to justify demolition. During their

conversation, McBride expressed her concern that the City was possibly planning to turn the property into a parking lot. (Petitioner Exhibits I and 9)

21. Due to McBride's call, on April 22, 2008, Jack Durbin, P.E., a registered Michigan engineer employed by PMI, conducted a structural inspection of the properties. In a one-page/two-paragraph structural engineering report dated April 23, 2008, Durbin wrote that he found the buildings to be stressed, in structural failure, unsafe, unsanitary, uninhabitable, a public hazard, and a public nuisance. He expressed his opinion that the structures could not be economically rehabilitated. He also included his recommendation that they be razed immediately. (Petitioner Exhibits J and 9; Respondent Exhibit 5)

22. On April 25, 2008, Grosse Pointe Park filed additional documentation with the Commission to further support its request for demolition. Among the submitted documents was Durbin's one-page report, as well as drawings that showed possible plans for future DDOT development of the property. The cover letter accompanying the filing revealed that Grosse Pointe Park had been in negotiations with DDOT for a property exchange in order to redevelop the property into a bus turnaround loop. The letter added that the enclosed drawings showed a proposed plan to develop the property as a bus turnaround and offered assurances that the property would not be redeveloped as a parking lot. (Petitioner Exhibits J and 9; Respondent Exhibit 5)

23. Following receipt of the City's supplemental documents, Commission Staff Person McBride went to the property, conducted an inspection, and took a half dozen photographs of the buildings' exterior facades. She subsequently prepared a Commission staff report concerning the desired demolition. The report stated that the



applicant proposed to demolish two buildings on the northeast corner of East Jefferson and Alter for a proposed bus turnaround. The report noted that the applicant had submitted information from Mr. Supal, who concluded that the properties had become “unsafe” and were “dangerous to human life and public welfare,” and from Mr. Durbin, who opined that the “structures cannot be economically rehabilitated” and should “be razed immediately.” The report noted that no cost estimates were submitted for rehabilitation. Attached to the report were McBride’s photographs showing the buildings’ exterior architectural features, such as the elaborate cast stone window frames, decorative pediments, and oriel windows. The photos also showed that the windows and doors were all secured and that the facades were obviously in good condition. The report ended with McBride’s recommendation that the Commission deny the application as contravening Secretary’s Standard No. 6, which indicates that deteriorated historic features shall be repaired. (Petitioner Exhibits I and 8; Respondent Exhibit 5)

24. McBride sent a copy of her staff report, along with a notice of public hearing and regular meeting, plus a meeting agenda, to the City. She also sent the notice and materials to other organizations and individuals identified by ordinance. Her transmittal indicated that the report was being sent in advance so that the applicant would be made aware of the staff recommendation. The transmittal stressed that the report was not a final decision, that the applicant would be given an opportunity to make a brief statement and answer questions at the meeting, and that the Commission would review the application and vote on whether or not to approve or deny it. Consideration of the City’s request to demolish the two buildings was scheduled for 5:45 p.m. on Wednesday, May 14, 2008. (Petitioner Exhibits I, 2, and 8; Respondent Exhibit 5)

25. On or about May 13, 2008, the Commission received a letter from Nancy M. Finegood, Executive Director of the Michigan Historic Preservation Network, located in Lansing, Michigan. Ms. Finegood wrote:

The Michigan Historic Preservation Network stands wholeheartedly against the request to demolish the two buildings located at 14901-14917 East Jefferson in the proposed Jefferson-Chalmers Historic Business District. These buildings are contributing structures in one of the last remaining collections of Detroit neighborhood commercial buildings, which still have most of the historic fabric intact, on both sides of the street. As such, it is a highly valued economic asset for Detroit with the potential to generate businesses and jobs unique to Detroit. The community organization, Jefferson East Business Association, has been working hard to revitalize this commercial district and garner municipal and state resources. The neighborhood competed successfully to win designation as a Mayor's Office of Neighborhood Commercial Revitalization District by the City of Detroit and as a Cool Cities Neighborhood by the State of Michigan. These buildings are part of the gateway to the Far East Side Project and revitalization of the commercial buildings is seen as critical to the success of the 1400 new homes project. To help accelerate progress, the City (of Detroit) recently designated the area as an Economic Development Corporation area, so that the streetscape can be redone in a timely fashion by the Detroit Economic Growth Corporation.

The two buildings in question are structurally sound and whatever damage has been done has occurred over the last five years. During this time, the owner, the City of Grosse Pointe Park, has neglected to secure the buildings and allowed them to deteriorate. We are told that the City of Detroit has a developer interested in acquiring both buildings, renovate them and locate their business headquarters there. This is exactly the type of reuse that the Michigan Historic Preservation Network encourages. With the community requesting that the buildings be restored, the city (of Detroit) pouring hundreds of thousands of dollars into the district, the Council about to vote to designate the district, and a viable reuse plan waiting to be executed, it is our hope that the HDC will support these efforts and deny the request to demolish the buildings. (Respondent Exhibit 5)

26. On or about May 14, 2008, Executive Director Francis Grunow of Preservation Wayne sent the Commission a similar letter regarding the demolition request. Mr. Grunow wrote:

I am writing today on behalf of Preservation Wayne to oppose the proposed demolition of the 14901-14917 East Jefferson (buildings) by the City of Grosse Pointe Park, which includes the former Deck Bar Building. These buildings are important contributing members of the proposed Jefferson-Chalmers Historic Business District – currently under review by the Historic Designation Advisory Board – and are a vital link between the cities of Detroit and Grosse Pointe Park.

Demolition of these buildings would erode a substantially intact commercial district, with numerous architecturally significant buildings dating from the early decades of the 20<sup>th</sup> Century. While these buildings are currently vacant, there is no indication that they are structurally compromised in any way or cannot be successfully renovated for viable use again.

The wanton demolition of historic resources without a funded plan for higher, better use countervails national redevelopment patterns which often rely on historic properties to anchor districts and future development. It would seem especially shortsighted to allow demolition in an area of the city (of Detroit) that has embraced the reuse of its historic commercial structures of late and has strong leadership in the Jefferson East Business Association, an organization that utilizes the preservation-minded Main Street model of commercial revitalization. Furthermore, the demolition of these historic assets will prevent the utilization of historic tax credits, a powerful economic development tool that can return 25% on investment for properties such as these.

We urge the Historic District Commission to deny the proposed demolition of 14901-14917 East Jefferson and allow for the process of local designation to take place. The retention and eventual reuse of the structures will serve to strengthen the East Jefferson business district and provide a basis for the local designation of an important commercial corridor. (Respondent Exhibit 5)

27. On May 14, 2008, the Commission held a regular open meeting/public hearing at which it considered, among other things, Grosse Pointe Park's application. Commissioners Hamilton, Phillips, Anderson, Wasko, Wheeler, and Long were in attendance. Commission Staff Person Susan McBride was also present. In addition, 29 other persons attended the meeting. Commissioner Anderson, acting as chairperson, called on Ms. McBride to give her report on the application. She read the bulk of her

report and then recommended that the Commission deny the request to demolish.  
(Petitioner Exhibit B)

28. The City's legal representative spoke next. Maya Hamie stated that the permits should be issued because the buildings posed a serious safety hazard and demolition was the only viable alternative. She said one of the chief arguments was that rehabilitation was simply not feasible. She added that the City had presented unrebutted evidence to show the infeasibility of rehabilitation. She further noted that, as shown by the engineering report, the buildings were in structural failure and most importantly, the buildings posed a safety hazard. Commissioner Anderson asked her whether there was further documentation speaking directly to the issue of economic infeasibility, such as cost estimates, square footage numbers, or financial estimates of the costs of rehabilitation. Her response was the City had not submitted anything in that fashion.  
(Petitioner Exhibit B)

29. Grosse Pointe Park's City Manager, Dale Kraniak, spoke next. In reply to a question from Commissioner Anderson about the condition of the property at the time the City acquired it and what the City had done to mitigate safety concerns, Kraniak said the City had acquired the corner four years ago and the buildings were vacant for one to two years before that. He then said that a gentleman was interested in rehabbing them as a restaurant but there was insufficient parking to support such a use. He said the City tried to broker the buildings with only mild interest. He then said, relative to long-term use, that there was a need for a DDOT turnaround and comfort station. As for condition, he said the wiring had all been stripped, the heating system did not work, the plumbing fixtures had been removed, and floors were buckled. His view was that when you

looked at the structures in total, they were well beyond salvaging as a practical matter. He added that the City had invested \$600,000 on buying the corner and that, while he was not a builder, he guessed it would cost \$150,000 to \$200,000 to improve the buildings, but he did not want to spend any more. He also said the City had acquired the corner basically to improve it, had made no use of the buildings, and had secured them to keep homeless people out. He later added that the buildings were boarded up, the doors were locked, the windows were boarded, and so forth. (Petitioner Exhibit B)

30. Commissioner Anderson then opened the floor to those present who wished to speak in favor of or opposition to the request, cautioning that they must keep their comments to three minutes or less. Kristine Kidorf spoke first. She identified herself as member of the Jefferson East Business Association Design Committee, a member of the Board of Directors of the Michigan Historic Preservation Network, and a resident of Detroit's East Berry Historic District. She formerly served as Staff to the Commission. She first reminded the Commissioners that under Detroit's history ordinance, demolishing the buildings would be a violation of Secretary's Standards, and she would not recommend that the Commission issue a certificate for that. She also said, contrary to the City's contention, the Commission must apply the Standards when reviewing projects either in an established or in a proposed historic district. Addressing the safety issue, Kidorf acknowledged that Grosse Pointe Park thought the buildings were a hazard to safety; however, she stated that the Commissioners had all seen buildings in far worse shape than these, which had been rehabilitated. She added that based on the photographs, the buildings did not appear to be deteriorated beyond repair nor safety hazards. She urged the Commission to deny demolition. (Petitioner Exhibit B)

31. Joshua Elling was the next member of the public to speak. He identified himself as the Executive Director of the Jefferson East Business Association. He said the Association was opposed to the demolition of the structures and their replacement by the bus turnaround loop and restaurant facility. He indicated that the Association was attempting to build a walkable, pedestrian-friendly environment and supported venues that employed Detroit residents and created Detroit-based businesses. He commented that the Association had spent a lot of money providing counseling services to people for facade grants to improve buildings and help redevelop buildings. He said having a vacant lot with a bus turnaround was not going to be a venue where someone could go and establish a network. He added that if the property became DDOT's, it would come off the tax rolls. Responding to a question from Commissioner Anderson, he also mentioned that the Association was one of the first Mayor's Office Neighborhood Commercial Organization Districts in which there was a facade improvement program. He added that the Association had received funding from several sources to improve building facades and give redevelopment grants. He went on to say that the Association was working on the streetscape and parking plan, evaluating parking needs, and determining needed improvements to the sidewalk. (Petitioner Exhibit B)

32. James Turner then addressed the Commission. Mr. Turner identified himself as a former Commissioner and a current resident of the Arden Park – East Boston Historic District. He said he had noticed that Grosse Pointe Park had owned the property for four years and that the obligation was on the City, as owner, to maintain the properties in a safe condition, by boarding the buildings up or mothballing them for another use, regardless of expense. He then stressed that Jefferson East was a Main

Street Project District, an overlay district, which provided added benefits to residents of Detroit, making it a unique, double-impact district for purposes of redevelopment. He commented that it was better to have a district that was redeveloped with historic period-sized, pedestrian-sized buildings rather than just have a white concrete platform intended only for buses. He finished by saying that the community was moving more and more toward being "green" and that it should start at this place between Grosse Pointe Park and the City of Detroit. (Petitioner Exhibit B)

33. The next person to speak was Karen Brown, Executive Director of the Creekside Community Development Corporation, which was based near the properties, so that she walked past the buildings every day on her way to work. Her first statement was that Creekside viewed the buildings as having "rehab" potential, and as part of the history of the community. She said the corner of East Jefferson and Alter was a highly visible corner, and a bus turnaround was far from the corner's highest and best use. She expressed concern that the corner was just 500 or 600 feet from an elementary school and that placing a bus turnaround there would increase the traffic dangers to the children. She stated that Creekside was very much opposed to the demolition and then reminded the Commissioners that the area was already designated as a National Register Historic District. In response to a question from Commissioner Wasko, Ms. Brown replied that her organization had not had any conversations with representatives of the applicant. (Petitioner Exhibit B)

34. Marjo Winters spoke next. She offered comments on behalf of both the City of Detroit and the Mayor's Office for Neighborhood Commercial Revitalization, which she represented. She indicated, first and foremost, that this was one of Detroit's

eight designated commercial corridors and that her office, through the Jefferson East Business Association, had already invested \$500,000 in the area. She emphasized that the corridor was indeed an important gateway for Detroit, and the Mayor's Office agreed that the highest investment for this site must be pursued. She said her superior, Mr. Douglas Diggs, had himself been in conversations with DDOT to identify another location for the bus turnaround and that DDOT had agreed that this corner on East Jefferson would not be the site from DDOT's perspective. She concluded her comments by stating that Detroit wanted to preserve these buildings and that, as she understood it, there was a qualified buyer who was interested in purchasing the property, rehabilitating the buildings, and putting them back to an economically viable use, which the Mayor's Office supported. She added, however, that the Mayor's Office looked forward to working with Grosse Pointe Park to create a win-win situation. Commissioners Wasko and Anderson asked her for further clarification of DDOT's position. Ms. Winters stated that early on, DDOT had written a letter saying that it was willing to relocate at the request of Grosse Pointe Park, but after community and staff concerns had come to light regarding the corner, DDOT asked Detroit's P&D Department to help identify other possible locations for the relocation of DDOT's bus turnaround facility. (Petitioner Exhibit B)

35. Leo Borak spoke briefly, representing himself and Community Legal Resources, a non-profit organization. He said he was there at the hearing as a resident of Detroit, as well as a program manager for Community Legal Resources, and that he was speaking against demolition. (Petitioner Exhibit B)



36. Karen Naugher also offered comments. She identified herself as Board President of Preservation Wayne, an organization which had preserved Detroit's architectural heritage since 1975. She first indicated there were many things which were unclear to her, such as what had been done by the current owner to stabilize the buildings, what the original building templates were when the property was purchased, and how seriously the City had pursued its marketing efforts. She said that aside from that, she wanted to repeat that maintaining and renovating the two buildings was important, stressing that there were multiple uses for the buildings that would be consistent with the Jefferson East Business Association program. She added that she was not just concerned about maintaining valuable historic buildings; she said historic renovation was a far "greener" and better approach than merely constructing a concrete turnaround. At that point, Commissioner Anderson informed future commenters that although the people might be interested in advancing the "greening movement," this was a meeting of the Historic District Commission and "greening" was completely inapplicable to the application at hand. (Petitioner Exhibit B; Respondent Exhibit 5)

37. Libby Pachota was the next speaker. She identified herself as a resident of Grosse Pointe Park and also as one of the people who had worked on getting the East Jefferson Business District listed on the National Register of Historic Places. She stressed that the buildings were listed as contributing resources in the National Register District over six years ago, so she very much was opposed to their demolition. She commented that she understood there was a viable redevelopment proposal, which was what she would love to see happen. She said the cities of Grosse Pointe Park and Detroit should work together for the good of both communities. She pointed out that the

buildings were purchased by Grosse Pointe Park four years ago and were sound and under redevelopment at the time. She said the prior owner had had some personal issues and was forced to sell, which was why Grosse Pointe Park bought the property. She encouraged the Commission to deny demolition so that the two municipalities could work together on a resolution serving the residents of both cities. (Petitioner Exhibit B)

38. Alan Levy was present and offered extensive comments. He identified himself as the former Deputy Director of the Detroit P&D Department, Director of the ONCR, a volunteer with the Jefferson East Business Association, and a resident of Grosse Pointe Park. He began by saying he had had a lot of history with the project, such as being Detroit's point person for the negotiations over the past year and a half. He said his understanding was that a deal was done, so he was very surprised to hear that Grosse Pointe Park was now trying to unmake the agreement it had wanted to make. After giving some background about overlay and Main Street districts, Levy explained that one of the options for the buildings was to take the top floor (or floors), because there were actually two buildings, and put residential housing on the second level. He then said that in Main Street districts, buildings could be built right up to the sidewalk, so therefore the most viable use for the East Jefferson/Alter corner was the adaptive reuse of the existing structures. He verified, as had been said before, that when Grosse Pointe Park first started acquiring the buildings four years earlier, they were both in very sound shape. He said that he was inside them both just a year before and they both looked like they were structurally sound at that time. He expressed his view that the buildings had been slowly allowed to demolish by neglect, adding that that would be the current property owner's responsibility, but it was not the sort of thing that

happened out of the blue. He said as deputy planning director he was very involved with the discussion over what should happen at the site, and when he learned that the City had obtained a demolition permit from the BS&E Department, which was not permissible in an overlay district, he went to the Law Department and asked them to stop it. Levy further indicated that the historic process had been going on for six years, that his office had approached Grosse Pointe Park and offered to buy the buildings, and that Grosse Pointe Park had no interest in that. He repeated that DDOT did not want to make the turnaround deal happen. He noted that the Planning Department had responsibility to act for Detroit and had determined that a DDOT, government-owned piece of property made no sense on that corner from an economic development or a tax standpoint. He further indicated that the Planning Department had identified a viable developer, that she was present at the Commission meeting, and that she was (and for a year and a half had been) ready to buy the historic buildings, renovate them, and put her headquarters in them. (Petitioner Exhibit B)

39. The next person to offer comments was Kathy Makino, who identified herself as the owner of Shellnor Development. She began by saying that she had been trying to buy the buildings for several years. She said her business did a tremendous amount of development work in Detroit and she wanted to move her construction and development business to Detroit from its current location in Wayne. She said her proposed building rehabilitation plan entailed putting loft apartments on the second floor and regular offices on the first floor. She said she had been working with Mr. Levy and Mr. Diggs and felt she was getting close to some sort of agreement, so it was a real

surprise to her when she recently learned that Grosse Pointe Park had proposed tearing the buildings down. (Petitioner Exhibit B)

40. Rebecca Middle Savage, a historic preservation consultant, also spoke against the demolition proposal. She said in 2004, she was the primary author of the National Register of Historic Places nomination for the Jefferson East Historic District, also known as the Jefferson-Chalmers Historic District. She said that she worked for BBH Architecture as a consultant and there was careful consideration of which buildings contributed as historic resources and which did not. She reported that these buildings were evaluated as "contributing" and that the State Historic Preservation Office had worked closely with her in making that determination. She said she and others had gone inside the buildings and had assessed the interiors, and at that time the buildings had a functioning business. She speculated that any deterioration which had occurred must have taken place under Grosse Pointe Park's ownership. She mentioned that in doing the research to designate the properties, she took her work very seriously, so that appropriate historic properties would receive serious protection. (Petitioner Exhibit B)

41. Bob Cosgrove was the last person to speak. He identified himself as a member of the Detroit Historic Designation Advisory Board. Relative to the structure's architecture, he offered the comment that the 14901-14915 building was very unique, with its marble sills facade. He said that his staff had thoroughly studied the architecture and there were no negatives relative to historic district designation. (Petitioner Exhibit B)

42. Commissioner Anderson then closed the public hearing portion of the Commission meeting. Commissioner Hamilton moved to deny the application.

Commissioner Wheeler seconded the motion. A vote was taken. The motion carried by a unanimous voice vote of the Commissioners present and voting. (Petitioner Exhibit B)

43. On May 16, 2008, Ms. McBride sent the applicant a letter documenting the Commission's decision and explaining its action. The letter indicated that under Sec. 25-2-24 of the Detroit City Code, the Commission was issuing a notice of denial relative to the applicant's demolition request. The letter stated that the proposed demolition did not meet Secretary's Standard No. 6, which provides that deteriorated historic features shall be repaired. The letter informed the applicant of its rights of appeal and said that the applicant could send the Commission a revised application with a complete rehabilitation and/or adaptive reuse plan, with financial estimates. (Petitioner Exhibits A and 1; Respondent Exhibit 5)

**G. Permanent Designation of District**

44. On May 27, 2008, Detroit City Council adopted an ordinance, Ordinance No. 14-08, establishing the Jefferson-Chalmers Historic Business District on a permanent basis. The subject properties lie within the District. (Petitioner Exhibits F, 5, 26, 27, 28, and 29; Respondent Exhibits 1, 2, and 3)

**Conclusions of Law**

As indicated above, Sec. 5(2) of the LHDA<sup>30</sup> allows persons aggrieved by decisions of commissions to appeal to the Review Board. Sec. 5(2) also provides that the Board may affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or notice to proceed. Relief should be granted where a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial or

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<sup>30</sup> See footnote 1.

material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

The Petitioner argues three points in support of its appeal of the Commission's demolition denial. First, the Petitioner argues that the Commission's denial was arbitrary and capricious. Second, the Petitioner argues that the buildings in question amount to a hazard to public safety and welfare. Third, the Petitioner argues that the Standards promulgated by the Secretary of the Interior do not apply to Petitioner's demolition request.

**A. Arbitrary Conduct and Application of Standards**

The Petitioner's first and third arguments are related. The Petitioner maintains that the Commission did not have authority to deny the Petitioner's request. The Petitioner cites Sec. 5(1) of the LHDA<sup>31</sup> for the proposition that, "A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district...".<sup>32</sup> Referring to the procedural history predating the establishment of the historic district in which the properties in question are located, the Petitioner asserts that when the Commission denied the Petitioner's demolition request on May 14, 2008, the District was not a historic district, but only an interim historic district. According to the Petitioner's argument, because the LHDA only authorizes the issuance of a permit for work affecting a resource within a historic district, the Petitioner claims that the Commission had no authority to even consider, much less deny, the demolition application concerning the properties in question, since they were located in what was not a historic district, but only an interim historic district.

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<sup>31</sup> *Iden.*

<sup>32</sup> Compare Sec. 25-2-18 of the Detroit City Code.

The implication of the Petitioner's argument is, that since the Commission lacked the authority to even consider the demolition application, its denial was arbitrary and capricious. Similarly, according to the Petitioner, since the properties in question were not located in a historic district at the time of the Commission's denial, the Commission's reliance on the Secretary of the Interior's Standards was misplaced.

To reverse a decision because it is arbitrary, capricious, or clearly an abuse of discretion, a reviewing judicial or quasi-judicial body must find that the result of administrative agency action, for example, the action of a commission, is so palpably or grossly violative of fact and logic that it shows a perversity of will, a defiance of judgment, or an exercise of passion or bias. That is to say, an arbitrary decision is one made without reference to guiding principles, circumstances, or significance, or that reflects a freakish, whimsical, or humorous outcome. *Bundo v Walled Lake*, 395 Mich 679, 703 n. 17; 238 NW2d 154, 165 n. 17 (1976), *Kurzyniec Estate v Dept of Social Services*, 207 Mich App 531, 537; 526 NW2d 191, 194-195 (1994), *VanZandt, supra*, 266 Mich App at 584-585; 701 NW2d at 218-219. The decision of the Commission to deny the Petitioner's demolition request does not meet this standard.

The LHDA, at Sec. 14(3),<sup>33</sup> permits the legislative body of a local unit of government to adopt a resolution requiring that applications arising from desired work on properties in interim historic districts be sent to the appropriate historic district commission for consideration on the same basis as applications arising within established historic districts, under sections 5 and 9 of the LHDA.<sup>34</sup> Sec. 25-2-4 of the Detroit City Code contains comparable implementing law at the local level. The authority

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<sup>33</sup> See footnote 5.

<sup>34</sup> See footnote 1; also, 1970 PA 169, § 9, MCL 399.209.

for review with respect to proposed historic districts continues for one year, or until the local unit of government approves or rejects the establishment of a historic district, whichever comes first.<sup>35</sup> The Commission's denial of the Petitioner's demolition request occurred within one year of the Detroit City Council's designation of the proposed historic district, which ultimately became the Jefferson-Chalmers Historic Business District, where the properties are located. The Commission thus did have legal authority to consider the Petitioner's application, and the Secretary of the Interior's Standards therefore did apply to the Petitioner's application.

Further, the Commission heard the supplemental oral presentation of the Petitioner's representatives at the Commission's public hearing/open meeting held on May 14, 2008 and reviewed the documents that the Petitioner submitted in support of its application to demolish. Since the Commission did consider the Petitioner's April 18, 2008 application, documentary materials and verbal statements, along with other available information, including the staff report of its own historic preservation professional and statements made by knowledgeable, interested members of the public and recognized historic preservation organizations, it must be concluded that the Commission's denial was not erroneous as an arbitrary and capricious decision.

**B. Hazard to Public Safety and Welfare**

In 1970, the Legislature passed the LHDA,<sup>36</sup> which is the enabling law that empowers local units of Michigan government, such as the City of Detroit, to adopt their own local history and historic preservation ordinances. To that end, Detroit City Council

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<sup>35</sup> Sec. 25-2-4(c) of the Detroit City Code.

<sup>36</sup> 1970 PA 169, § 1 *et seq*, MCL 399.201 *et seq*.



adopted an ordinance establishing the Commission<sup>37</sup> and subsequent ordinances designating numerous individual local historic districts.<sup>38</sup> Sec. 25-2-20 of the Detroit City Code requires the Commission to approve applications for work in historic districts that it considers appropriate, directing the Commission to, “follow the U.S. Secretary of the Interior’s Standards for rehabilitation...”. Detroit’s history ordinances also allow for the performance of detrimental, inappropriate work if certain exceptional conditions are present and are established to the Commission’s satisfaction. In this regard, Sec. 25-2-22 of the Detroit City Code provides:

Pursuant to the Act,<sup>39</sup> **an application** for inappropriate work adversely affecting the exterior appearance of a resource, which work cannot be granted a certificate of appropriateness, **shall be permitted by the historic district commission** through the issuance of a notice to proceed **if any of the following conditions prevail and if the commission finds the work is necessary to substantially improve or correct any of these conditions:**

- (1) **The resource constitutes a hazard to the safety of the public or the occupants.**
- (2) The resource is a deterrent to a major community improvement program of substantial benefit to the community. Substantial benefit shall be found only if the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances, and the improvement program is otherwise feasible;
- (3) Retention of the resource would cause undue financial hardship to the owner....
- (4) Retention of the resource would not be in the interest of the majority of the community. (Emphasis added)

In a related vein, Sec. 25-2-24 of the Detroit City Code states:

For work in designated or interim historic districts ... the commission shall determine:

- (1) Whether the proposed work will be appropriate according to ... the Secretary of the Interior’s standards ... in which case the commission will issue a certificate of appropriateness; or

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<sup>37</sup> See footnote 19.

<sup>38</sup> See footnote 16.

<sup>39</sup> That is, Sec. 5(6) of the LHDA, 1970 PA 169, § 5, MCL 399.205.

- (2) Whether the proposed work will be inappropriate according to the Secretary's standards ... **but is without substantial detriment to the public welfare and is without substantial derogation from the intents and purposes of this article**, and where one or more of the conditions of section 25-2-22 have been met, in which case the commission may, in lieu of a certificate of appropriateness, issue a notice to proceed; or
- (3) Whether the proposed work will be inappropriate according to the Secretary's standards..., in which case the commission will issue a denial. \* \* \* (Emphasis added)

In the appeal herein, the Petitioner claims that the buildings at 14901-15 and 14917 East Jefferson qualify for demolition because they are a hazard to the public safety and welfare. To demonstrate this proposition to the Commission, the Petitioner appended a two-page affidavit to its demolition application. The supporting document was signed by building inspector Ronald Supal, who visited the buildings on April 9 and 15, 2008. In the document, he averred the buildings lacked ventilation, lacked adequate light, were unsanitary, and were unsafe. He also averred that the buildings had failed a code inspection. Several digital images were attached to the affidavit to show apparent deterioration, decay, and debris. The Petitioner, after being informed that additional documentation was needed to justify its request, quickly filed a two-paragraph structural engineering report prepared by licensed engineer Jack Durbin. The report repeated that the buildings were unsanitary. The report also said that the buildings were stressed and in structural failure, uninhabitable, and a public hazard and nuisance. Durbin expressed his "expert" opinion that the structures could not be rehabilitated economically, recommending that they be razed immediately.

As the ordinance indicates, the Commission is required to issue a notice to proceed with historic resource demolition if "(t)he resource constitutes a hazard to the safety of the public or the occupants." Additional legal requirements appertaining to

these requests are that the proposed work is “necessary to substantially improve or correct” the problematic condition, and further, that the work is “without substantial detriment to the public welfare” and “without substantial derogation of the purposes and intents ... (of Detroit’s history ordinance).”

In the present case, the ALJ concluded that it was legal error for the Commission not to accept the opinions of Mr. Supal and Mr. Durbin as “substantial evidence” definitively entitling the Petitioner to approval of its demolition request. In our view, the conclusion of the ALJ is clearly erroneous. While the Petitioner’s documents may constitute “substantial evidence” as a matter of law, their content is anything but convincing and such submissions cannot be deemed to definitively entitle the Petitioner to demolition approval. The Commission was well justified in determining that the application fell far short of documenting the requirements for demolition.

Although the Petitioner’s application purports to show the presence of a significant safety hazard inside the buildings, *i.e.*, a degree of hazard calling for their immediate destruction, upon scrutiny the Petitioner’s supporting documents are clearly deficient with respect to documenting such a safety hazard. For example, while the interior photographs taken by inspector Supal show obvious decay and debris, the degree of deterioration depicted in the photos is far less severe than is seen in many buildings which are routinely rehabilitated in Detroit. The Commissioners, preservation experts who have reviewed literally thousands of work requests since the Commission’s establishment in 1976, well understood the content and import of the photographs. The Commissioner’s former Staff Person and well-known and widely-respected historic

preservation expert, Kristine Kidorf, confirmed as much at the public hearing portion of the Commission's May 14, 2008 open meeting.

Moreover, the interior photos do not depict that the buildings, which were actively in use only a few years ago, have deteriorated beyond repair or pose any special hazard to public safety. Buildings suffering from black mold contamination, cock roach infestation, extensive termite damage, or some other problematic condition threatening immediate human peril might qualify as dangerous or hazardous *per se*. Nothing in the affidavit or report even remotely begins to suggest that this type of inherent building hazard is present in the two buildings.

To the contrary, the Petitioner's photographs and other documents suggest there are only relatively minor and fixable problems insofar as the safety issue is concerned. To be sure, the photos do show a messy interior, but clean-up is an ordinary part of historic rehabilitation efforts even when a historic building is in near pristine condition, which few are. Inspector Supal cited the buildings' failure to meet code requirements. Ironically, missing from his affidavit was any mention of the fact that the City had removed the mechanical and other systems he was citing as deficient. Regardless, code compliance is one of the most common reasons for the performance of rehabilitation work on historic structures.<sup>40</sup> Virtually all historic buildings by definition fail to meet modern day building and safety codes. The fact that a historic building does not meet the requirements of current regular (*e.g.*, smoke alarm) codes does not in and of itself constitute a distinct safety hazard insofar as a demolition request is concerned.<sup>41</sup>

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<sup>40</sup> Notice is taken of "Preservation Briefs: 24, Heating, Ventilating, and Cooling Historic Buildings," published by the National Park Service, U.S. Department of the Interior, the federal agency charged with implementing and interpreting the Secretary's Standards and Guidelines on the national level.

<sup>41</sup> See, for example, 2007 California Historical Building Code, 24 CCR Part 8, Sec. 8-201.

The Petitioner supplemented its application with a one-page report from licensed engineer Jack Durbin, who opined that the buildings were stressed, in structural failure, a public hazard, and should be razed. While his report has apparent validity on its face, given its author and state seal, it nevertheless is inadequate for purposes of justifying a demolition request. As pointed out by the Respondent in its exceptions, no specific facts were cited by the engineer to support, justify, or document his ultimate conclusion. No details whatsoever were furnished, such as a reference to the failure of a particular structural support in an important structural component of either building, along with an explanation of when and how that structural failure had occurred or was occurring. Absent such corroborating information, the report lacks credibility or reliability. This is particularly so in light of other available information, such as the statement by Detroit's former Deputy Planning Director, Alan Levy, who had been inside the buildings numerous times, that both buildings looked to him to be in very sound shape and structurally sound and that he was of the view they should be rehabilitated. Preservation experts from the Michigan Historic Preservation Network and Preservation Wayne further confirmed that the buildings were uncompromised and structurally sound. Finally, while neither the LHDA nor the Detroit history ordinances prescribe the means by which applicants must demonstrate imminent hazard to the satisfaction of the Commission, suffice it to say that the showing to the public body must be unequivocal and convincing. That was not so in this instance.

It must also be noted that the ordinance allows for the performance of inappropriate work only when the hazard threatens the safety **"of the public or the occupants."** Even if everyone agreed that the buildings posed an actual safety hazard

in their current condition, the fact remains that these buildings *have no occupants*. The record reflects that the buildings have been vacant for the past four years. Supal's affidavit, dated April 18, 2008, averred, "The Properties are (presently) vacant...". City Manager Kraniak corroborated that the buildings are vacant. As for the buildings' threat to passers by, neighborhood children, and/or the public in general, Kraniak told the Commissioners at the outset of his comments and later in the Commission meeting that *the City had secured the buildings*. He said that after a homeless person was discovered on the premises, the City had locked the doors, boarded the windows, and otherwise secured the buildings to keep the public out. Hence, because the buildings cannot pose a threat to occupants or to the general public, since they are vacant and boarded up, the Petitioner has failed to meet the complete requirements of Sec. 25-2-22(1) of the Detroit City Code.

The Petitioner has moreover failed to demonstrate the "necessity" element prescribed in Sec. 25-2-22.<sup>42</sup> This section of the Detroit ordinances indicates that when a resource constitutes a hazard to the safety of its occupants or the public, permission to demolish shall be granted only if the work "**is necessary to substantially improve or correct**" the problematic condition. The Petitioner posits that it is not economically feasible to rehabilitate the buildings and that demolition is therefore the only viable option to correct whatever hazardous deterioration has occurred. The Commission's decision properly reflects that this showing has not been made. In order for rehabilitation to be deemed economically infeasible, an applicant must present cost estimates, bid proposals, or other financial data projecting the anticipated actual costs

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<sup>42</sup> The necessity element is also prescribed in Sec. 5(6)(a) of the LHDA, 1970 PA 169, § 5, MCL 399.205.

of a rehabilitation effort. While both of the Petitioner's experts wrote that rehabilitation was not feasible, neither of them offered any financial cost estimates or expense projections to validate their views. City Manager Kraniak guessed it would cost \$150,000 to \$200,000 to improve the properties, but he added that the City did not want to spend any more money. He did not say that City funds were unavailable. Deputy Planning Director Levy and Developer Kathy Makino both indicated, as did others, that the properties could and should be redeveloped. State law provides that a taxpayer who rehabilitates a contributing resource in a historic district can claim up to 40% of the costs of rehabilitation as state and federal tax credits, thereby cutting any expenditures for rehabilitation almost in half.<sup>43</sup> Again, the record reflects the Petitioner failed to make an adequate showing to the Commission relative to the "necessity" for demolition.

Note must also be taken of Sec. 22-2-24 of the Detroit City Code, which prescribes *additional elements* for demolishing historic buildings. The section states that when proposed work would violate the Secretary's Standards, the Commission may issue a notice to proceed only if it determines the work **"is without substantial detriment to the public welfare and is without substantial derogation from the intents and purposes of this (history) article."**

Sec. 25-2-1 of the Detroit City Code declares historic preservation to be a public purpose in Detroit. The section expressly indicates:

\* \* \* The purposes of this article are to:

- (1) Safeguard the heritage of the city by preserving areas in the city which reflect elements of its cultural, social, spiritual, economic, political, engineering, or architectural history or its archaeology;
- (2) Stabilize and improve property values in each historic district and the surrounding areas;

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<sup>43</sup> See footnote 14.

- (3) Foster civic beauty and community pride;
- (4) Strengthen the local economy;
- (5) **Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the city, state, and of the United States of America.** (Emphasis added)

The Commission's determination that historic resource demolition was detrimental to the public welfare of the citizens of Detroit and in derogation of Detroit's history ordinances was reasonable and justified. Congress has found that the spirit of the Nation is reflected in its heritage, that the historic foundations of the Nation should be preserved as a living part of community life, and that the preservation of this irreplaceable heritage is in the public interest.<sup>44</sup> The LHDA declares that historic preservation is a public purpose in Michigan.<sup>45</sup> In the seminal case of *Penn Central Transportation Co v New York*, 438 US 104, 108; 98 S Ct 2646, 2650; 57 L Ed 2d 631, 635 (1978), the U.S. Supreme Court has validated state and municipal laws intended to encourage or require the preservation of buildings and areas with historic or aesthetic importance.<sup>46</sup> Given the guidance in federal, state, and local law, historic resource preservation is the *public interest standard* in Michigan and the preservation of irreplaceable local historic resources, such as the unique buildings at 14901-14915 and 14917 East Jefferson, with their marble-like sills facades, *promotes the public welfare*. Hence, the Commission's view, that resource demolition would contravene public welfare and the goals of Detroit's ordinance, was well founded.

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<sup>44</sup> Sec. 1 of the National Historic Preservation Act of 1966, PL 89-665, 16 USC 470.

<sup>45</sup> 1970 PA 169, § 2, MCL 399.202.

<sup>46</sup> See also, *City of Pittsburgh v Weinberg*, 676 A2d 207 (Pa, 1996).



**Conclusion**

In conclusion, inasmuch as the Petitioner has failed to carry its burden of proving that the buildings in question constitute an immediate safety hazard or pose a threat to the safety of building occupants and/or the general public, and has similarly failed to prove that demolition is necessary to substantially improve or correct any such hazard, and further, has failed to demonstrate that that demolishing the two buildings would not be detrimental to the welfare of the citizens of Detroit or the goals and intents of Detroit's history ordinance, the Petitioner's appeal must be rejected.

**Final Order**

In view of the record as a whole, including the pleadings, PFD, exceptions, responses to exceptions, and evidence admitted into the official record, and for the reasons set forth above in this Final Decision,

**IT IS ORDERED** that the decision of the Detroit Historic District Commission, as made on March 14, 2008 and promulgated on March 16, 2008, denying permission to the City of Grosse Pointe Park to demolish the historic buildings located at 14901-14915 and 14917 East Jefferson in the City of Detroit, Michigan, is **AFFIRMED**.

**IT IS FURTHER ORDERED** that Petitioner's Appeal from Detroit Historic Commission's Denial of Application, filed on or about July 15, 2008, is **DENIED**.

**IT IS FURTHER ORDERED** that a copy of this Final Decision and Order shall be served upon the parties and upon their duly authorized legal representatives as soon as is practicable.

Dated: 27 July 2009

  
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Dr. Richard H. Harms, Chairperson  
State Historic Preservation Review Board