

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

<b>IN THE MATTER OF:</b>	<b>Docket No.:</b>	<b>15-049770</b>
<b>Jerzy Aniszczyk, Petitioner</b>	<b>Case No.</b>	<b>N/A</b>
<b>v</b>	<b>Agency:</b>	<b>State Historic Preservation Office</b>
<b>City of Grand Rapids Historic Preservation Commission, Respondent</b>	<b>Case Type:</b>	<b>SHPO</b>
	<b>Filing Type:</b>	<b>Appeal</b>

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**Issued and entered  
this 7<sup>th</sup> day of December, 2015  
by Renee A. Ozburn  
Administrative Law Judge**

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

This is a proceeding held pursuant to the authority granted in Section 5(2) of 1970 PA 169, as amended, MCL 399.205(2), the Local Historic Districts Act (Act 169) and 1969 PA 306, as amended, MCL 24.101 *et seq.*, the Administrative Procedures Act (APA).

The purpose of this review is to examine Petitioner Jerzy Aniszczyk's July 21, 2015 appeal of a Notice of Denial issued by Respondent City of Grand Rapids Historic Preservation Commission on June 8, 2015.

A hearing was held on October 22, 2015. Jerzy Aniszczyk represented himself. Thomas Forshee, Assistant City Attorney for Grand Rapids, represented the City of Grand Rapids Historic Preservation Commission. Ronda Baker testified as a witness for the Commission.

**ISSUES AND APPLICABLE LAW**

The issue is whether Respondent properly denied Petitioner's request to retain windows already installed, pursuant to federal and state standards.

**SUMMARY OF EXHIBITS**

Petitioner Exhibits:

- Exhibit 1      Photograph of Current House Front
- Exhibit 2      Photographic Copy of Original House

Respondent Exhibits:

- Exhibit A      Historic Preservation Commission Meeting Minutes June 3, 2015
- Exhibit B      Notice of Denial from Commission to Jerzy Aniszczyk
- Exhibit C      Packet Including Application for Certificate of Appropriateness, Photographs and Historic Preservation Specialist Summary Report
- Exhibit D      Case History
- Exhibit E      Federal and Local Standards

**FINDINGS OF FACT**

1. In 1999, the Grand Rapids Historic Preservation Commission (Commission) designated the Fairmont Square neighborhood, of mostly residential properties built between 1900 and 1925, an historic district. Properties that had been altered prior to the designation were allowed to stay as is.
2. In September 2013 a Fairmont district home located at 323 Hollister Ave., S.E., was put up for sale. The Commission issued a general information letter to the seller's realtor regarding the historic designation.
3. Jerzy Aniszczyk purchased the Hollister Ave. home. Prior to the purchase, an inspector noted that there were issues, including rotting wood and energy efficiency with a number of windows in the home. Mr. Aniszczyk had Wallside Windows come and give replacement estimates. The purchase of the home was recorded in January 2014. At no time during negotiations for the purchase, did relators, the inspector or anyone from the window contractor indicate to Mr. Aniszczyk that the home was subject to historic designation restrictions on updating windows. When he bought the home, the home's exterior had been completely resided in vinyl and a number of vinyl windows that were not original to the home had been installed. Mr. Aniszczyk made the decision to replace nine remaining wooden windows with more efficient vinyl windows that enhanced safety and made the esthetics of the home more consistent. One original wooden window was left as is because Mr. Aniszczyk was considering closing that opening in the future.

4. Exhibit 1 is a photograph of the front, street-side, of the home as it exists today. Exhibit 2 is a photo copy of the home in its original condition with other lot/land descriptions of the property. Exhibit C contains additional photographs of the sides of the home, which when compared with the original structure, show that the exterior of the home has been substantially altered by vinyl siding, the removal of columns and an upper level balcony, front upper windows of a different shape and number and removal of a chimney. Exhibit C also shows newer vinyl windows existing at the time the house was designated historic.
5. During an area inspection in January 2015, historic district staff noted that there were wooden windows that had been replaced with vinyl windows, subsequent to historic status, without a Certification of Appropriateness having been granted by the Commission. Mr. Aniszczyk was given notice that he had until May 21, 2015, to return nine vinyl windows back to approved wood windows. He appealed.
6. At a Commission meeting held on June 3, 2015, Mr. Aniszczyk appeared and presented his rationale for keeping all of the home's windows as they currently exist.
7. On June 8, 2015, the Commission issued a Notice of Denial (Exhibit B) which approved retention of all vinyl windows except the 9 replaced by Mr. Aniszczyk. The Notice of Denial granted two years, per side, for Mr. Aniszczyk to replace the nine windows with approved wood windows, including at least one window that previously had a mutin pattern that was original to the home. The denial letter cites Secretary of the Interior's Standards 2, 5 and 6, as the basis for denial.
8. The June 3, 2015, Commission meeting minutes indicate there was a discussion in which at least one member acknowledges that a disservice was done to the homeowner in not being informed of the historic renovation requirements of his property by the realtors, sellers or inspectors. The Commission also recognized that a number of renovations and replacements to the historic character of the home, including the majority of the windows, occurred before the area was designated historic. There was further recognition that these previous changes had already substantially "degraded" the character and contribution of the structure as historic. Although there is a statement in the minutes that "The Commission has already determined that the building is contributing and ...the windows that were removed were contributing features to the building" there is no discussion of what makes the house 'contributing'. There was an agreement by at least two members that the wood windows were actually "the last contributing feature of the home". Ultimately, a motion to require that all of the new vinyl windows be restored to wood was passed. (Exhibit A).
9. Rhonda Baker, the Commission's Historic Preservation Specialist, indicated that whether a home is deemed a contributing resource is based on considerations such as the era, style or features of a building.

### CONCLUSIONS OF LAW

Section 5(2) of Act 169 permits an appeal to the State Historic Preservation Review Board (Review Board). This section also provides that the Review Board may affirm, modify, or set aside a local commission's decision. Relief should be given where Respondent has acted in an arbitrary or capricious manner, has exceeded its legal authority, or committed some other substantial or material error of law. Conversely, where Respondent has acted properly, its decision should be affirmed.

Petitioner has the burden of proof to show Respondent's decision should be modified or reversed.

Section 5(3) of Act 169 provides in pertinent part:

- (3) In reviewing plans, the commission shall follow the United States secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R. part 67... The commission shall also consider all of the following:
  - (a) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.
  - (b) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.
  - (c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.
  - (d) Other factors, such as aesthetic value, that the commission finds relevant

Respondent's June 8, 2015 Notice of Denial cites Standards 2, 5 and 6 of 36 C.F.R. as the basis for denying the homeowner's request to keep his windows as is. These standards provide:

- (2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

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

Standard No. 2 states that property shall be retained and preserved, and the removal or alteration of features shall be avoided. At the meeting to consider the homeowner's appeal, the Commission seemed to acknowledge that the property's historic character had not been retained or preserved in substantive ways before it was designated historic, and long before Mr. Aniszczyk bought it. Before and after pictures show all of the exterior siding and most of the windows had been replaced with modern vinyl. Changes to the entire front of the house, which the Commission is not seeking to reverse, have eliminated the possibility that the esthetic of the home's exterior will substantively match other preserved properties in the neighborhood. In fact, the removal of wooden windows by Mr. Aniszczyk resulted in an esthetic that matched the home as it had become before the historic designation. Commissioner comments supporting restoring a few windows to their original state appear to be more concerned with individual features than the overall esthetic of the home as an example of the period sought to be retained.

The comment by one Commissioner implying that allowing a homeowner to make the home consistent with the home he purchased is a 'slippery slope' seems directed more towards a fear that other homeowners may not get the necessary pre-approval for changes than protecting the historic character of the Hollister street home. No persuasive argument was made to support a conclusion that keeping a few original windows on what has essentially become a modern home, maintains the historic character of the home.

Standard No. 5 states that features that characterize a historic property shall be preserved. Again, after appearing to acknowledge that the vast majority of what would characterize the outer structure of the Hollister property as historic no longer exists, and agreeing that a large number of newer vinyl windows consistent with the newer vinyl façade could remain, the Commission inexplicably decided that a consistent exterior was not of importance, rather there needed to be at least one older mutin window on the new façade and a few more older wooden windows scattered about on the sides of the newer façade. Looking at the old print of the original home (Exhibit 2), it is hard to see how the changes the Commission is demanding of the homeowner will restore it to its historic character.

Standard No. 6 refers to repairing deteriorated historic features rather than replacing them. However, interpreting this requirement in a vacuum is unrealistic. For a home such as the Hollister street property, that had already gone through a wholesale replacement of the exterior and the majority of its windows prior to becoming part of a historic neighborhood, it

makes little practical sense to tell a homeowner his house should stand out as a modern house with a few inconsistent historic features for the sake of preserving a feature that was consistent with a property that no longer exist. The exterior of this home is no longer a historic resource for all intents and purposes as evident by both Petitioner and Respondent photographs.

Further, Act 169 directs consideration of the relationship of any architectural features of the resource to the rest of the resource and to the surrounding area, the general compatibility of the design, arrangement, texture, and materials proposed to be used and other factors, such as aesthetic value. When looking at all of the evidence, especially the photographic evidence, of the property at issue, the Petitioner Jerzy Aniszczyk has met his burden of establishing that the window changes he made were appropriate in relation to the architectural features of the existing home, the compatibility of materials with the vast majority of the existing home and the aesthetic value of the home.

In light of how incongruous the resulting home would be if Petitioner were required to restore a few wooden windows in an otherwise vinyl sided and vinyl windowed home, the decision of the Commission appears somewhat arbitrary and capricious. It reflects an absence of consideration of, or adjustment to, the principles articulated in Act 169 and the Secretary of Interior's Standards which are geared toward retaining historic resources within the context of the historic property or neighborhood at issue.

"A ruling is arbitrary and capricious when it lacks an adequate determining principle, when it reflects an absence of consideration or adjustment with reference to principles, circumstances or significance, or when it is freakish or whimsical." *Wescott v Civil Serv Comm'n*, 298 Mich.App. 158.162 (2012).

Based on the record presented, I recommend Respondent's decision be reversed.

**RECOMMENED DECISION**

I recommend the Review Board reverse Respondent's June 8, 2015 decision.

  
\_\_\_\_\_  
Renee A. Ozburn  
Administrative Law Judge

**EXCEPTIONS**

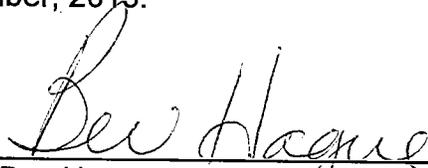
The parties may file Exceptions to this Proposal for Decision within 21 days after it is issued and entered. An opposing party may file a response within 14 days after initial Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the State Historic Preservation Review Board, by submission to the:

**Michigan State Housing Development Authority  
Attention: Scott M. Grammer  
702 West Kalamazoo Street  
P.O. Box 30740  
Lansing, Michigan 48909**

All filings must also be served on all other parties to the proceeding.

**PROOF OF SERVICE**

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by facsimile and/or by mailing same to them via first class mail, at their respective addresses as disclosed below this 7<sup>th</sup> day of December, 2015.



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Bev Hague  
Michigan Administrative Hearing System

City of Grand Rapids Historic Preservation Commission  
Rhonda Baker, Historic Preservation Specialist  
1120 Monroe Avenue, NW  
Grand Rapids, Michigan 49503

Jerzy Aniszczyk  
3725 Kockville  
Saginaw, Michigan 48604

Laurie Kelly  
State Historic Preservation Review Board  
735 East Michigan Avenue  
Lansing, Michigan 48912

STATE OF MICHIGAN  
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

JERZY ANISZCZYK,

Petitioner,

-vs-

Docket No. 15-049770

CITY OF GRAND RAPIDS  
HISTORIC PRESERVATION COMMISSION,

Respondent(s).

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HEARING

BEFORE THE HONORABLE RENEE A. OZBURN, JUDGE  
Lansing, Michigan - Thursday, October 22, 2015

APPEARANCES:

For the Petitioner: JERZY ANISZCZYK  
323 Hollister Avenue SW  
Grand Rapids, MI 49506

For the Respondent: THOMAS H. FORSHEE (P71559)  
300 Monroe Avenue NW  
Grand Rapids, MI 49503  
(616) 456-3181

Transcribed by: Tammi Y. Morris #6670  
Certified Court Recorder  
(586) 372-1169

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TABLE OF CONTENT

WITNESSES: RESPONDENT PAGE:

RHONDA BAKER  
Direct Examination by Mr. Forshee 5

WITNESSES: PETITIONER

JERZY ANISZCZYK  
Direct Examination by Petitioner 68

E-X-H-I-B-I-T-S

EXHIBITS:	MARKED:	RECEIVED:
RX D (document)	9	21
RX A (meeting minutes)	13	23
RX E (guidelines)		33
RX C (packet)		57
RX B (letter)		59
PX #1 (photo)	74/80	81
PX #2 (photo)	80	81

1                   Lansing, Michigan

2                   Thursday, October 22, 2015

3                   ---

4                   THE COURT:   Okay.  We're going to go on the  
5 record in the matter of, um, is it Jersey?

6                   UNIDENTIFIED SPEAKER:  Jerzy.

7                   THE COURT:  Jerzy Aniszczyk versus The City  
8 of Grand Rapids Historic Preservation Commission.  
9 It's Docket Number 15049770, scheduled as a hearing  
10 (inaudible).  October 22<sup>nd</sup>, 2015.

11                   Prior to going on the record, I did  
12 have an informal discussion with the parties and  
13 indicated that although Mr. Aniszczyk is the  
14 Petitioner, I'm going to have the City of Grand  
15 Rapids, the Preservation Commission, go forward first  
16 with its proofs even though the Petitioner has the  
17 burden of proof in this matter.

18                   But, can I start with an appearance by the  
19 City's Representative?

20                   MR. FORSHEE:  Yes.  May it please the  
21 Court, my name is Tom Forshee.  I'm here on the  
22 behalf of the City of Grand Rapids Historic  
23 Preservation Commission.

24                   THE COURT:  Okay.  And Mr. Aniszczyk, you  
25 knew you could have an attorney today, correct?

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MR. ANISZCZYK: Yeah.

THE COURT: And you're representing yourself, correct? And when it's your turn to testify, I would probably help with some questions that will keep you on the path that we need to stay on in this hearing.

Mr. Forshee, did you want to give an opening statement, or do you want to just go to your witness?

MR. FORSHEE: I think I'd just like to go to the witness.

THE COURT: Okay. So who are you calling first?

MR. FORSHEE: I'm calling Rhonda Baker, who's The City of Grand Rapids Historic Preservation Specialist. She's also the staff of the person who represents the Historic Preservation Commission. And she's present at every Historic Preservation Commission meeting.

THE COURT: Okay. Might have to ask her that when - get it from her mouth.

Ms. Baker would you please come up to the witness stand. And when you are seated I need you to state and spell your first and last name for the record.

1 MS. BAKER: Rhonda Baker. R-H-O-N-D-A. B-  
2 A-K-E-R.

3 THE COURT: And Ms. Baker would you raise  
4 your right hand. Do you solemnly swear or affirm  
5 that the testimony you're about to give in this  
6 matter will be the truth?

7 MS. BAKER: I do.

8 THE COURT: Okay. Thank you. Go ahead Mr.  
9 Forshee.

10 RHONDA BAKER

11 (Called by Mr. Forshee and sworn by the  
12 Court, testified as follows)

13 DIRECT EXAMINATION

14 BY MR. FORSHEE:

15 Q Yes. Ms. Baker, can you tell me your position at the  
16 City of Grand Rapids?

17 A Historic Preservation Specialist.

18 Q And what is your role in regards to the City of Grand  
19 Rapids Historic Preservation Commission?

20 A I'm the staff commission and - from liaison for the  
21 City to the Commission (inaudible). I prep the  
22 meeting, packets, minutes. That type of thing.

23 THE COURT: Before we go on. Mr. Aniszczyk  
24 I'm going to give you a pad and pencil here. Because  
25 as she's testified, if questions come up that you

1 want to ask her, you might want to write that down.  
2 Because you'll get a chance to ask questions.

3 MR. ANISZCZYK: Your Honor, I talked to her  
4 several times. So all the things I want to ask her,  
5 I already did.

6 THE COURT: Okay. Well when we get to the  
7 point where it's your turn to ask questions you might  
8 still have some questions. But I understand.

9 Go ahead Mr. Forshee.

10 MR. FORSHEE: Okay. Thank you.

11 (BY MR. FORSHEE, CONTINUING):

12 Q And are you present at these Historic Preservation  
13 Commission meetings?

14 A Yes.

15 Q And were you present at this Historic Preservation  
16 Commission meeting?

17 A Yes.

18 Q And did you prepare the -

19 THE COURT: Did we establish what date that  
20 was?

21 MR. FORSHEE: I'm sorry.

22 (BY MR. FORSHEE, CONTINUING):

23 Q I believe it's June 8<sup>th</sup>, 2015. Were you present at  
24 the June 8<sup>th</sup>, 2015 Historic Preservation Commission  
25 meeting?

1 A Yes.

2 Q And that's the subject of this appeal?

3 A Yes.

4 Q Okay. Um, so I'm going to try to get things into  
5 evidence here. Okay.

6 Did you prepare a detailed case history of  
7 this matter regarding any violations and any past  
8 contacts with Mr. Aniszczyk?

9 A Yes.

10 MR. FORSHEE: And I'd like to offer that as  
11 Exhibit D. Offer that into evidence. This is  
12 included in my brief to -

13 THE COURT: Yeah. Anything that's in the  
14 file, if you want it as part of the evidentiary  
15 record has to be admitted - offered and admitted  
16 separately, so.

17 MR. FORSHEE: Okay.

18 THE COURT: Even though this gives me a  
19 clue as to what may be coming up, it's not considered

20 -

21 MR. FORSHEE: Okay.

22 THE COURT: - part of the official  
23 evidentiary record until it's admitted.

24 MR. FORSHEE: Okay.

25 THE COURT: So -

1 MR. FORSHEE: I'd move to admit -  
2 THE COURT: Okay. So - you got stickers  
3 there -  
4 MR. FORSHEE: Can re-letter them or can I  
5 use -  
6 THE COURT: You can used the same letters,  
7 but - probably should put a mark on it. Did you  
8 bring copies? Three copies?  
9 MR. FORSHEE: Yes. I mailed a copy  
10 previously. And then I brought a copy - three copies  
11 for -  
12 THE COURT: Okay. So, what I prefer is  
13 that in the hearing that you provide a copy and  
14 because somebody may not have brought things that  
15 were mailed to them previously. But mark the copy  
16 with the official sticker that you're going to give  
17 to me. And, um, provide Mr. Aniszczyk with a copy  
18 and the Witness with a copy, so that she can identify  
19 it.  
20 MR. FORSHEE: Would you like me to go  
21 through it and then provide the copies to you after  
22 the fact? Or, do you want me to as I go, approach  
23 you -  
24 THE COURT: Here's what we need. It's for  
25 her to have a copy in front of it to identify it.

1 MR. FORSHEE: Okay.

2 THE COURT: At the same time you can hand  
3 me a copy -

4 MR. FORSHEE: Okay.

5 THE COURT: - and Mr. Aniszczyk a copy.

6 MR. FORSHEE: Okay.

7 This will be for Exhibit D.

8 (Whereupon Respondent's Proposed Exhibit D  
9 is marked for evidence)

10 THE COURT: Okay.

11 (BY MR. FORSHEE, CONTINUING):

12 Q Ms. Baker can you summarize the case history with  
13 your staff or your contacts with Mr. Aniszczyk,  
14 please?

15 A Certainly. What we've been trying to do with the  
16 (inaudible) Association is when the houses come up  
17 for sale we send reminder letters to (inaudible)  
18 pictures and (inaudible). That occurred. And then  
19 once there's a point of sale, we use the assessor's  
20 records for contact information and send welcome  
21 packets to the neighbors, (inaudible) and owner.

22 THE COURT: Okay. So that we have a  
23 complete record here, where is this house and can you  
24 tell me something about the District?

25 THE WITNESS: 323 Hollister is in Fairmount

1 Great Historic District. The Fairmount Great  
2 Historic District was desi pated(sic) in 1999. And  
3 every house is as it is the date of designation.  
4 Which is why this particular house has some vinyl  
5 windows, some vinyl siding, which are things that  
6 aren't normally found to be appropriate for the  
7 standard, but they're not to be retained because  
8 (inaudible) before resolution.

9 The District is mostly residential, with a  
10 little bit of commercial (inaudible). The rest of  
11 the homes are of the 1900's and 1925 era range.  
12 Modest, midsize. The majority of them are wood with  
13 a mixture of modern materials because of the age of  
14 the District.

15 THE COURT: Okay.

16 (BY MR. FORSHEE, CONTINUING):

17 Q Can you tell us the case history of this particular  
18 case?

19 A Sure. Well -

20 Q And how it became - how it came before the - perhaps  
21 Historic Preservation Commission?

22 A Sure. While out doing inspections and following up  
23 on cases, we're in the neighborhood on a regular  
24 basis. We noticed that the windows on this home had  
25 been replaced. As such we send a courtesy pre-

1 complaint notice notifying the owner of the issues  
2 that were found. And methods by which to correct  
3 them. Which in situations like this typically are  
4 either you apply to staff and replace them to match  
5 what you had taken out. That's with the staff of the  
6 authority to approve.

7 THE COURT: The Staff of the Historic  
8 Preservation Commission who does -

9 THE WITNESS: Me.

10 THE COURT: Okay.

11 THE WITNESS: Essentially I am the only  
12 staff at this time.

13 THE COURT: Okay. So I'm just trying to  
14 understand how things happened here. So, there were  
15 just some routine inspections saw the windows had  
16 been replaced and then a notice was sent to the  
17 homeowner?

18 THE WITNESS: A courtesy complaint notice  
19 letting him know of the violations that were found.  
20 What were the violations? The appropriate city  
21 ordinance that it applied to. And it included  
22 options for this then moving forward. How to correct  
23 the violation.

24 Mr. Aniszczyk, the owner, decided to apply  
25 to Historic Preservation - Preservation Commission to

1 one of the options since the windows were already in  
2 to see if he could get approval to keep them.

3 THE COURT: Then what occurred?

4 THE WITNESS: The HPC met in June and  
5 determine that the windows that replaced the vinyl  
6 windows were considered in kind, same for same.  
7 That's when (inaudible) those were able to retained,  
8 but the windows that replaced the existing wood  
9 windows were bound to be inappropriate for the  
10 standards and guidelines and were required to be  
11 replaced.

12 THE COURT: And how many windows are  
13 involved here?

14 THE WITNESS: Nine have to be replaced. I  
15 believe there was a total of twenty-one windows in  
16 all.

17 THE COURT: Twenty-one windows for the  
18 whole house?

19 THE WITNESS: Yeah, I believe so. I know  
20 for certain nine had to be replaced.

21 MR. FORSHEE: Seventeen were the subject of  
22 review.

23 THE WITNESS: Okay.

24 MR. FORSHEE: Okay.

25 THE COURT: Because seventeen windows -

1 MR. FORSHEE: (Inaudible).  
2 THE COURT: Okay.  
3 MR. FORSHEE: So I'm going to mark the  
4 meeting minutes and for the record as Exhibit A.  
5 (Whereupon Respondent's Exhibit A is marked  
6 into evidence)  
7 THE COURT: Okay. Let's - let's got back  
8 to D.  
9 MR. FORSHEE: Okay.  
10 THE COURT: What is D? Ms. Baker you can  
11 just tell me what D contains.  
12 THE WITNESS: D is just a case history  
13 where we put together (inaudible) what has occurred  
14 from start to finish for this case.  
15 THE COURT: But there's more than in this -  
16 what's stabled together that was given to me, there's  
17 more than that.  
18 THE WITNESS: (inaudible) correspondence  
19 they set July 6<sup>th</sup>, 2015, handwritten - it's just a  
20 handwritten note of a discretion Staff had with the  
21 owner.  
22 THE COURT: Whose handwriting is it?  
23 THE WITNESS: That's me. I'm sorry. Tiny.  
24 And then it's in the other correspondence  
25 Staff has had with the owner. And then -

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THE COURT: I do need things identified separately. More specifically.

THE WITNESS: Sure.

THE COURT: So the - after the chronology here of events, the second page is your handwritten notes of what? Because I'm not able to make out anything that it says.

THE WITNESS: It's just handwriting explaining that I met with the owner on July 6<sup>th</sup>, 2015. And just brief excerpts of the things that we've discussed.

MR. FORSHEE: This is really just for a factual background of how we eventually made it to the Historic Preservation Commission. This is not really - it's not determinative to the regal (sic) outcome of the HPC itself. So this is just giving an exhibit to show the history of how it eventually and a why and where this particular location is. And how it made it to the Grand Rapids Historic Preservation Commission in the first place.

THE COURT: Okay. I will not - when you say it non-important to the ultimate issue -

MR. FORSHEE: Well the - the reason given in the minutes by the Historic Preservation Commission, give their reasoning in their standards

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and things like that. This is just -

THE COURT: Here's my bottom line. If you want this to come in as a packet, I do need identify it on the record -

MR. FORSHEE: Okay.

THE COURT: - everything that's in it, so. I'm still on the handwritten notes. They - are your notes after a meeting with the Petitioner on what date?

THE WITNESS: July -

THE COURT: 6<sup>th</sup>?

THE WITNESS: Yep. 2015. We met at the house at 323 Hollister South East.

THE COURT: And then the next page?

THE WITNESS: This is the letter to the owner which is May 21<sup>st</sup>, 2015, from myself, letting him know that I did receive his application. And when the Historic Preservation Commission would hear it.

THE COURT: The next one?

THE WITNESS: Dated - a letter again from myself to the owner dated April 14<sup>th</sup>, 2015, explaining the application process, sending him the application. General information about the process and timelines.

THE COURT: And it's an application for an

1 exemption or -

2 THE WITNESS: No. Historic Preservation  
3 Commission -

4 THE COURT: Just an application to appear -

5 THE WITNESS: Yeah. There are no  
6 exemptions.

7 (BY MR. FORSHEE, CONTINUING):

8 Q And what he would be seeking to obtain from that City  
9 of Grand Rapids Historic Preservation Commission?

10 A That he would be seeking to retain the windows that  
11 he had installed.

12 Q And is that called the certificate of  
13 appropriateness?

14 A If found to be appropriate, yes.

15 Q Okay.

16 THE COURT: So -

17 (BY MR. FORSHEE, CONTINUING):

18 Q So when you do work to a Historic Resource you go to  
19 the Historic Preservation Commission to obtain a  
20 certificate of appropriateness or it to be nide(sic)  
21 - denied such certificate of appropriateness?

22 A Correct.

23 THE COURT: And then, um, wait just a  
24 minute.

25 And then the next correspondence or email

1 it looks like?

2 THE WITNESS: It's an email dated April -  
3 one was from April 6<sup>th</sup>, 2015. And then the other  
4 responds is April 13<sup>th</sup>, 2015. They're from Elizabeth  
5 Seller(spelled phonetically), which is a coworker of  
6 mine. Letting us know that the owner had contacted  
7 her and gave her his old address in Saginaw.

8 (Inaudible) Thanking her for it. And noting that the  
9 address that the owner had on the accessor's record  
10 was incorrect, and I changed. The April 14<sup>th</sup> letter  
11 has the new address on it.

12 THE COURT: And then your next one?

13 THE WITNESS: It's a letter dated January  
14 17<sup>th</sup>, 2014, from myself to the owner, welcoming him to  
15 the Historic District. It's a welcome packet comes  
16 with information about applying applications, owner's  
17 guidelines, general information.

18 THE COURT: So the property as far as you  
19 know or remember was purchased sometime in late 2013  
20 or do you know?

21 THE WITNESS: Yeah. Unfortunately the time  
22 it flips through the accessor it could be a week or  
23 two after the sale. It could be two months after the  
24 sale. It all depends on how fast he gets processed  
25 when the title change goes in.

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THE COURT: And then the next  
correspondence, September 10<sup>th</sup>, 2013, what's this  
about?

THE WITNESS: Its' from myself to the  
seller's realtor who was representing the property  
owner at 323 Hollister at that time. It's a general  
educational letter, fyi letter, to realtors, letting  
them know properties and historic history. If they  
have any questions about it, their potential buyers  
they'll have them contact me. Other information is  
available such as guidelines upon request.

(BY MR. FORSHEE, CONTINUING):

Q Are those letters required by the Act to send?  
A No, none of those.  
Q So you do it just for informational purposes so that  
-  
A Yes.  
Q - (inaudible)?

THE COURT: So you get notice that a house  
is for sale and you on your own initiative contact  
the sellers?

THE WITNESS: If it's represented file  
realtor and posted on a Grand Rapids' Realtors  
Association, I get an automatic email that it's for  
sale. So we send letters out automatically as a

1           courtesy to the realtors. And then we also get  
2           notices if they're processed, letting us know that a  
3           sale has occurred or pending. So we try to track  
4           those. And then go to the accessor's office every -  
5           once a week seeing if the sales had gone through, to  
6           find the information for the new owner. So that's  
7           where the leg time is sometimes. That's usually no  
8           more than thirty days.

9                        THE COURT: And then you send out the  
10           welcome -

11                       THE WITNESS: The welcome letter.

12                       THE COURT: Yeah.

13                       THE WITNESS: It's in a little packet with  
14           a bunch of information in it.

15                       THE COURT: Okay. Okay.

16                       So that's Exhibit D.

17                       MR. FORSHEE: Yes.

18                       THE COURT: Mr. Aniszczyk have you seen all  
19           of these documents that are in D, previously?

20                       MR. ANISZCZYK: No. Those letters that  
21           came in to the wrong address, I didn't see none of  
22           that. When I find out - when I find out about the  
23           problem with those windows I had, that's when I  
24           called them - called Rhonda up and find out and -  
25           'cause I -

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THE COURT: Okay. I understand -

MR. ANISZCZYK: (Inaudible)

THE COURT: - that's okay. I mean this just has - is process related. But right now I'm trying to see if you might have some questions of Ms. Baker about these documents, and whether or not you are challenging that they are authentic or what she says they are? The fact that you might not have seen those, although that might be important down the road, that's something I'm going to let you testify to when you're on the witness stand.

But it doesn't sound like you're saying that -

MR. ANISZCZYK: I believe whatever see says is true.

THE COURT: Okay. About these documents -

MR. ANISZCZYK: Yeah.

THE COURT: - what they are?

MR. ANISZCZYK: I didn't see it. I only seen one paper.

THE COURT: Okay.

MR. ANISZCZYK: Knowing that - that's when I contacted Rhonda.

THE COURT: That's fine.

So -

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MR. FORSHEE: Your Honor, we did mail the whole packet.

THE COURT: Well, whether he received it or not, is a whole different thing. So if he's saying he hasn't seen them, that's something he'll have to address, because maybe that's important -

MR. FORSHEE: I was talking the whole -

THE COURT: - for his case.

MR. FORSHEE: - my brief, my hearing brief, and offers of evidence and answers, and everything I sent you, I also sent to him.

THE COURT: But - but - if I'm understanding him right, he saying he didn't see these when they were mailed originally. Not whether he's ever seen them before.

So I'm going to admit Exhibit D because he's not challenging the authenticity of these documents.

(Whereupon, Exhibit D is admitted into evidence)

MR. FORSHEE: So, I'm going to present Exhibit A to (inaudible).

(BY MR. FORSHEE, CONTINUING):

Q Ms. Baker can you identify this document? The first - how many pages -

1 | A Four.

2 | Q Four pages, yes. The first four pages of Proposed  
3 | Exhibit A?

4 | A They are the meeting minutes for the City of Grand  
5 | Rapids Historic Preservation Commission dated June  
6 | 3<sup>rd</sup>, 2015.

7 | Q Okay. And the meeting minutes accurately reflect  
8 | what?

9 | THE COURT: Let me just ask you before we  
10 | go on with this. When you're asking her to just  
11 | identify the first four pages, is that because that's  
12 | what remains - are separate documents?

13 | MR. FORSHEE: All part of the record of  
14 | what occurred. The first four pages are the meeting  
15 | minutes that - who - that tell what happened at the  
16 | meeting. The other are part of the record which is  
17 | his application.

18 | THE COURT: Okay. I would prefer, it makes  
19 | for a cleaner record -

20 | MR. FORSHEE: Okay.

21 | THE COURT: - if - I mean, if the  
22 | application was done a different date and that  
23 | started the process from the minutes, I'd like  
24 | separate, so. Let's just deal with the four pages  
25 | that are the meeting minutes.

1 MR. FORSHEE: Okay.

2 THE COURT: As Proposed Exhibit A.

3 MR. FORSHEE: Okay.

4 (BY MR. FORSHEE, CONTINUING):

5 Q I think we understand the date on that?

6 A Dated 3/2015.

7 Q And you believe these accurately reflect what

8 happened at the meeting on that date the Historic

9 Preservation Commission?

10 A I do. And the Commission is adopted at the next

11 meeting.

12 Q Thank you.

13 THE COURT: So, are you offering it now?

14 MR. FORSHEE: Yes, I'm offering it.

15 THE COURT: With that explanation?

16 MR. FORSHEE: Yes.

17 THE COURT: Mr. Aniszczyk, do you have any

18 reason to object to the meeting minutes?

19 MR. ANISZCZYK: No, I don't think.

20 THE COURT: I'm going to admit Exhibit A.

21 (Whereupon Exhibit A is admitted into

22 evidence)

23 MR. ANISZCZYK: (Inaudible).

24 THE COURT: Yeah. I understand.

25 It's - the significance of it, I'm relying

1 on what Ms. Baker says when she explains something.  
2 So, um, at this point, just identify the fact that  
3 here was a preservation commission meeting on June 3<sup>rd</sup>  
4 and that some minutes were - were made of that  
5 meeting.

6 Okay. You can go on.

7 (BY MR. FORSHEE, CONTINUING):

8 Q So in my brief that I submitted, pulled some of the  
9 relevant testimony by the Historic Preservation  
10 Commissioners, can you - can you explain the  
11 reasoning for the denial of a certificate of  
12 appropriateness for the nine windows in question?

13 A Essentially the Commissioners looked at the property,  
14 determined the house to be contributing resource to  
15 the District. And from that point you look at the  
16 actual building itself to determine what are the  
17 contributing features that - that make up the design  
18 and the influences that -

19 Q What factors did they use to consider whether this is  
20 a contributing resource in the District?

21 A They look at the era of the building. They looked at  
22 -

23 THE COURT: The what of the building?

24 THE WITNESS: The era of the building. It  
25 was definitely from a period that fell within the

1 same conditions of the neighborhood. They looked at  
2 the overall style of the building, the texture of the  
3 building and its footprint. Its overall features  
4 including doors, windows, foundation, things that  
5 make up the actual building itself. And that's how  
6 they determined that it was still a contributing  
7 building, even though it did have some alterations to  
8 it. And then they went on to -

9 THE COURT: Okay. What did they - does  
10 this consideration all happen at the meeting?

11 THE WITNESS: Yes.

12 THE COURT: So what are they using to  
13 determine whether, you know, the house was a  
14 contributing resource or has features? I mean, are  
15 they - they're not just -

16 THE WITNESS: We had photographs of it.  
17 Some had been to the site. That's how they -  
18 determine - is they're actually looking at the  
19 structure itself. They're also very familiar with  
20 the neighborhood, any contacts to the neighborhood.

21 THE COURT: So at that actual meeting, is  
22 there some standard procedure where photographs are -  
23 everybody looks at the same photographs or - I need  
24 to know how -

25 THE WITNESS: Yes.

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THE COURT: - they come up with -

THE WITNESS: What's submitted to the Commissioners is a packet. And it's sent out to them a week, about a week ahead of the meeting. In the packet they will have the application form from the applicant, and typically a staff report outlining what the applicant's requesting, and the federal and local guidelines that pertain to such question. And then all attachments. Some instances it's drawings, there's always photographs illustrating the leading question.

THE COURT: There are always photographs?

THE WITNESS: Yep. Always photographs. They're in color. The Commissioners do have the option to visit the sites if they have more questions after receiving their packets. But they're complete with typically all the information they need to know for that particular request.

MR. FORSHEE: I move (inaudible) separate to this -

THE COURT: Okay.

MR. FORSHEE: - going forward. So, I have the pictures. I have the rest of the record that she's describing right now.

THE COURT: Okay.

1 MR. FORSHEE: That you have that is labeled  
2 as one exhibit and not separate, so that's -

3 THE COURT: Okay. Just - I mean, although  
4 it's sitting on my desk, I don't have it yet -

5 MR. FORSHEE: Okay.

6 THE COURT: - until separately they are  
7 admitted as -

8 MR. FORSHEE: Okay.

9 THE COURT: - pieces of evidence.

10 MR. FORSHEE: I'm sorry. I didn't - there  
11 was some - there was some discussion about being able  
12 to submit evidence in written form, so. Either side  
13 -

14 THE COURT: Well - yeah, that - that  
15 usually occurs, I mean, prior to the hearing if there  
16 is, um, an agreement that we're not going to do a  
17 regular hearing -

18 MR. FORSHEE: Oh, okay.

19 THE COURT: I mean that's how I usually  
20 interpret that -

21 MR. FORSHEE: Okay. Yeah, I apologize -

22 THE COURT: - provision.

23 MR. FORSHEE: I'm scrambling a little bit  
24 to get the -

25 THE COURT: That's okay.

1 MR. FORSHEE: - exhibits in order for you.  
2 But -  
3 THE COURT: Okay.  
4 So, if you want to have - since we're on  
5 the packet and what the Commissioners were looking  
6 at, if you want to go ahead and present the other -  
7 what you consider to be material -  
8 MR. FORSHEE: On the record?  
9 THE COURT: Yes.  
10 MR. FORSHEE: Okay.  
11 THE COURT: So - actually, if you need a  
12 minute to mark these -  
13 MR. FORSHEE: Yeah.  
14 THE COURT: - so you know how you're going  
15 to present them. Let's take a ten-minute break here.  
16 MR. FORSHEE: Okay. I appreciate that.  
17 THE COURT: And, if you have some other  
18 exhibits that are, you know, a conglomeration of  
19 things, I need - I need those separate so we can  
20 identify them.  
21 MR. FORSHEE: Sure.  
22 (Off the record)  
23 ---  
24 (On the record)  
25 THE COURT: We'll go back on the record.

1 (BY MR. FORSHEE, CONTINUING):

2 Q Let's go back to Exhibit A, which is meeting minutes  
3 and justification for their decision, for HPC's  
4 decision. And you were describing what factors  
5 Commission uses and their reason to find that it's  
6 contributing, and that the windows were not  
7 appropriate for a certificate of appropriateness.

8 And, so, could you help us walk through the  
9 minutes and summarize the reasoning of the Board or  
10 just lay it out more fully in the brief that we  
11 submit it to?

12 A It's dated for when they first started discussing the  
13 structure itself, to determine if they found it was  
14 still contributing to the District or state - found  
15 to be. And then they discussed the features of the  
16 building. One of the features of the building that  
17 really stood out is the remaining, one of those nine  
18 wood windows. They discussed those and felt that  
19 those were a contributing feature to the building and  
20 as such they followed the - ooh, excuse me. The  
21 federal standards as well as the local guidelines in  
22 the reviewing the proposal.

23 MR. FORSHEE: At this point I can introduce  
24 the standards and the federal guidelines that were  
25 used in the decision making -

1 THE COURT: So you've handed me Proposed  
2 Exhibit E?

3 MR. FORSHEE: Yes. The rehabilitation  
4 guidelines that Ms. Baker just spoke about and the  
5 vocal guidelines. That's per the - per the local  
6 (inaudible) that are -

7 THE COURT: Okay. Let her do the  
8 testifying, so.

9 MR. FORSHEE: Okay. Thank you.

10 (BY MR. FORSHEE, CONTINUING):

11 Q So you just mentioned the standards and the local  
12 standards, can you identify what those are?

13 A Certainly. The Federal Government National Park  
14 Service, Secretary of the Interior's Standards, that  
15 satisfied ten standards that created to be used for  
16 reviewing alterations and restorations to restore  
17 properties, along with a set of rehabilitation  
18 guidelines.

19 Q And those are the standards that are in the Michigan  
20 Statute?

21 A Correct.

22 Q For the Board to make their decision?

23 A Yeah. Based on the State Statute and our local  
24 ordinance, the Historic Preservation Commission is  
25 required to utilize those standards as well as their

1 local guidelines which were found by the State's  
2 Historic Preservation Office to be in line with The  
3 Secretary of Interior's Standards as required when  
4 making their determinations.

5 What the Commission did, is they looked at  
6 the (inaudible) from the property owner and - to  
7 determine if what he was asking for met these  
8 standards or not. They found that it did not meet  
9 them. And specifically, it did not meet Standard  
10 Two, Standard Five, and Standard Six, as well as our  
11 local guidelines.

12 THE COURT: Okay. Let's just - let me just  
13 stop right there.

14 THE WITNESS: Um-hmm.

15 THE COURT: When you're saying did not meet  
16 Standards Two, Five, and Six, are you referring to  
17 standards that are in this Proposed Exhibit E, and if  
18 you are, could you tell me are they the subsections  
19 that are on the first page of that exhibit? Is it  
20 the two, five, and six here?

21 THE WITNESS: Yeah. Page one of the  
22 exhibit, there's a listing of numbers, of items one  
23 through ten -

24 THE COURT: Right.

25 THE WITNESS: - that's what I'm referring

1 to. Those are The Secretary of Interior's Standards.

2 THE COURT: So these are Federal Standards?

3 (BY MR. FORSHEE, CONTINUING):

4 Q Federal Standards that are - that end up - but  
5 they're referenced by the State Statute?

6 A Yes.

7 Q As being the standards to be used -

8 A And they're local (inaudible), yes.

9 Q - for evaluating work in our Historic District?

10 A Correct.

11 Q And what is page two of that?

12 A Page two is from our Local Historic District  
13 Guidelines, which are drawn directly from The  
14 Secretary of Interior's Rehabilitation Guidelines.

15 Q So the State Statute says that the Board will use the  
16 federal guidelines and any other local guidelines  
17 that are consistent with the federal guidelines?

18 A That's correct.

19 Q That's what they used to base their decision?

20 A Yes, they did.

21 MR. FORSHEE: So we're offering that into  
22 evidence. The Rehabilitation Guidelines and the  
23 Local Guidelines that were used to make the decision.  
24 That was Exhibit E.

25 THE COURT: I'm going to admit Exhibit E,

1 but I kind of need a - where in the minutes is there  
2 a connection to this specific guidelines that you  
3 just said were used to turn down Mr. Aniszczyk?

4 (Whereupon Respondent's Proposed Exhibit E  
5 is admitted into evidence)

6 MR. FORSHEE: They're - I don't want say -  
7 for her - yeah.

8 (BY MR. FORSHEE, CONTINUING):

9 Q So where in the meeting minutes does the Board  
10 reference the standards in the exhibit we were just  
11 talking about?

12 A What it specifically stated?

13 Q What it specifically -

14 A In the motion.

15 Q In the motion.

16 A On page nine. Where they specifically call out what  
17 their motion is going to be and they referenced.

18 THE COURT: Okay. Let's go there.

19 THE WITNESS: Um-hmm.

20 THE COURT: So we're on Exhibit A, and the  
21 page number nine is actually the third page on the  
22 exhibit.

23 THE WITNESS: The second page.

24 THE COURT: Okay. Mine is -

25 THE WITNESS: It's only two sentences on

1 the third page. They're not part of that -  
2 THE COURT: What I - in my Exhibit A -  
3 THE WITNESS: My bad.  
4 (Laughter)  
5 THE COURT: Page -  
6 THE WITNESS: You're right. I had flipped  
7 the page and forgot about -  
8 THE COURT: Okay.  
9 THE WITNESS: You're right.  
10 THE COURT: So on page nine, so Exhibit A,  
11 where are they referencing -  
12 THE WITNESS: Very bottom of the page where  
13 it's bold -  
14 THE COURT: Okay.  
15 THE WITNESS: - what's the maximize move to  
16 approve. Retention of the vinyl - as you go through  
17 that, you'll see where they come down to their denial  
18 and at the end the motion is based on the Local  
19 Preservation Guidelines and The Secretary of  
20 Interior's Standards Two, Five, and Six.  
21 THE COURT: Okay. I turn it back to -  
22 MR. FORSHEE: Thank you. So let's - now  
23 that we've - you've admitted E, I believe. And so  
24 let's go - let's go to the meeting minutes.  
25 (BY MR. FORSHEE, CONTINUING):

1 Q Can you summarize the findings of the Board where  
2 they were using those standards in applying the facts  
3 of this case to make the findings?

4 A Essentially, Standard Number Two is, the historic  
5 character of the property should be retained and  
6 reserved. The removal of historic materials for  
7 alterations of features and spaces that characterizes  
8 a property shall be avoided. They found the removal  
9 of the historic wood windows to have a negative  
10 impact on it, albeit opposed to the standard to such  
11 removal of the materials, or petition will be voided.  
12 They found that that did not meet that standard  
13 because they were removed so it was not avoided.

14 Five, distinctive features and finishes of  
15 construction techniques, which the wood windows are,  
16 um, a craftsmanship - that (inaudible) property shall  
17 be preserved. They weren't preserved. They found  
18 the windows to have been removed and replaced with  
19 something that was not of like.

20 And Six, references when a feature is  
21 deteriorated to the point where it needs to be  
22 replaced, that it is to be replaced basically in kind  
23 where the new feature will match the old design,  
24 color, texture, and other visual qualities and were  
25 possible materials. When they reviewed it they could

1 not determine if the windows needed replacing because  
2 they were already gone. So there was no discussion  
3 on that element. The discussion went to whether or  
4 not what was put in its place met the, um, portion of  
5 this standard, referencing what it needed to go in  
6 it, as in matching what you had and color, texture,  
7 and other visual quality material which they found  
8 the vinyl windows did not match the wood in any of  
9 those elements. That, that is what they based their  
10 discussion on it.

11 MR. FORSHEE: Your Honor, you'll take into  
12 account the hearing brief that - or did you want me  
13 to have her read the brief itself? You don't want  
14 any of that -

15 THE COURT: I'm not sure what brief you're  
16 referring to.

17 MR. FORSHEE: The brief I submitted on the  
18 20<sup>th</sup> to - hearing brief, offers of evidence, answers,  
19 and objections.

20 THE COURT: Yeah. No - I mean, I now  
21 understand you submitted this because you thought it  
22 might be in lieu of this kind of evidence?

23 MR. FORSHEE: Yeah. Of having to, um, put  
24 things on the record. I thought it could be done in  
25 writing.

1 THE COURT: Right.

2 MR. FORSHEE: But also that the hearing

3 brief, um, also is the argument, basically -

4 THE COURT: Yeah.

5 MR. FORSHEE: The City's argument as well.

6 THE COURT: No. At this point, this is not

7 something - once we begin an evidentiary hearing, if

8 there's going to be any briefing that would occur

9 after, and it maybe that that won't even be necessary

10 because a full record is made during the evidentiary

11 hearing.

12 MR. FORSHEE: Okay.

13 THE COURT: And, I would also then allow,

14 you know, briefing by the other side. But briefing

15 was not ordered by me prior to the hearing. There

16 would have had to have been a request to do the

17 briefing in lieu of evidence that I would have had to

18 have ruled on that. So that both parties had that

19 opportunity to, you know, submit briefs before. And

20 then, you know -

21 MR. FORSHEE: Okay.

22 THE COURT: - maybe come and summarize and

23 we're all on the same page.

24 MR. FORSHEE: Okay.

25 THE COURT: But on your own, just

1 submitting a brief, does not mean I'm accepting that  
2 as your - all of your argument and all of that.

3 MR. FORSHEE: Okay. Previously it was  
4 accepted -

5 THE COURT: At another hearing by somebody  
6 else.

7 MR. FORSHEE: That's neither here nor  
8 there.

9 THE COURT: Yeah.

10 MR. FORSHEE: But that was - I just want to  
11 let you know -

12 THE COURT: Yeah. These don't come up that  
13 often, so -

14 MR. FORSHEE: (Inaudible).

15 THE COURT: Yeah, yeah. It's the luck of  
16 the draw I guess.

17 MR. FORSHEE: I wonder if I might reserve  
18 the right to submit this brief? I don't know.

19 THE COURT: Yeah. I mean, I would just  
20 have to then have some period of time, I mean, for  
21 the other party to respond to it.

22 MR. FORSHEE: Yeah.

23 THE COURT: But, um -

24 MR. FORSHEE: I just wanted to - in the  
25 brief I kind of in detail showed how the meeting

1 minutes, what the state of the meeting minutes relate  
2 to the standards. It was just drawing those  
3 connections in great detail.

4 THE COURT: Yeah. And - and, once we get  
5 into the evidentiary hearing, that's usually done by  
6 the witness, and Ms. Baker is intermittently involved  
7 in this, you know. The whole process was there,  
8 personally observed, personally heard things.  
9 Understands, you know, what the standards are because  
10 of her position.

11 MR. FORSHEE: Okay.

12 THE COURT: So we may be able to make that  
13 - a record of that, just through her testimony.

14 MR. FORSHEE: Okay.

15 May I hand her my brief so that she can  
16 refresh her memory as to -

17 THE COURT: Okay.

18 THE WITNESS: Can I make reference?

19 MR. FORSHEE: Yeah, if - okay. We can do  
20 it that way. We can do it that way.

21 (BY MR. FORSHEE, CONTINUING):

22 Q Can you reference in the minutes and you're probably  
23 like this - you're present at this meeting, what the  
24 Commissioners, in their statements, how they made  
25 their decision based on the standards, and what

1 statements were made by the Commissioners that relate  
2 to the standards that they were charged with during  
3 the evaluation?

4 And that you understand the paragraph?  
5 What line you're talking about?

6 A There's definitely discussion on the first page of  
7 Commissioner Galven(spelled phonetically), she's  
8 expressing concern that it wasn't just the windows  
9 that changed but she had concerns about the opening  
10 sizes that may have been altered as well, because the  
11 sash is now considerably wider than it used to be.  
12 So there was discussion on whether or not that had  
13 occurred.

14 Then you have Commissioner Rodriguez  
15 spelling out, page eight, which would be the second  
16 page, first paragraph.

17 THE COURT: Okay. So - I'm also trying to  
18 figure out how we can move this along. But, um, when  
19 you bring up what the Commissioner's concern was  
20 about the openings of the windows, what - I keep - I  
21 want to as much as we can, tie this back into what's  
22 been asked of Mr. Aniszczyk in terms of undoing  
23 something that's been done.

24 Was the opening of the window something  
25 that the Commission was saying he has to go back and

1 put a wood window in and change the size of the  
2 opening and - because we're not in a vacuum, and you  
3 have a homeowner being asked to something at some  
4 cost.

5 MR. FORSHEE: Yes. Per the - per the Local  
6 Historic District Act, which is the Act that governs  
7 these cases before the Historic Preservation  
8 Commission, it says that if a resource's lost like  
9 this, it shall be replaced or if it's not replaced it  
10 actually gives the City the ability to get a court  
11 order and go and do the work itself and put a lien on  
12 the property to accomplish this work. So the statute  
13 gives the authority of the City to order somebody to  
14 restore what was there or to get a certificate of  
15 appropriateness, as the case may be. And if they  
16 don't, the City can actually go in and do the work  
17 and put a lien on the property per the statute.

18 So that's the - I guess that's - I'm trying  
19 to make the tie between we're ordering Mr. Aniszczyk  
20 to do something that's per the Local Historic  
21 District Act Statute.

22 THE COURT: Well, I guess what I'm trying  
23 to determine is - I don't really want to go through  
24 these minutes and, you know, quote each Commissioner  
25 and what they were saying. I do - I would prefer a

1 little, you know, summary statement here, but -

2 MR. FORSHEE: It's a - record, right -  
3 every line is admitted as evidence, so you can see  
4 what they said and -

5 THE COURT: Yes.

6 MR. FORSHEE: So we don't need to go  
7 through every line.

8 THE COURT: We don't need to go through  
9 every line. I'd like to understand. I'd like - like  
10 a picture painted of - of - we've already established  
11 that there were nine windows that he's being asked to  
12 undo the - that are now vinyl that he's being asked  
13 to undo and make them wood again; is that correct?

14 THE WITNESS: That's correct.

15 THE COURT: Um - and what is it that was  
16 discussed, I guess at the meeting, that you think is  
17 significant with regards to the request that he  
18 replace these nine windows?

19 MR. FORSHEE: I think -

20 THE COURT: I mean, if the opening is just  
21 incidental, the referencing to the opening -

22 MR. FORSHEE: Okay. I see where -.

23 (BY MR. FORSHEE, CONTINUING):

24 Q So just to summarized the main - to simplify it - to  
25 boil it down what I think the main reason is given of

1           although it was talked about extensively in meeting -  
2           you know, it's an open meeting and it should be and -  
3           but, I think the materials -

4    A       I think I got 'cha.

5    Q       Okay.

6    A       Essentially the issue came down to the windows didn't  
7           appear to be the same size. They're not the same  
8           material. They don't have the same sash, widths,  
9           profiles, or design elements to them. They're not  
10          constructed the same as the wood window. Um -

11                   THE COURT: Okay. Let me just -

12                   THE WITNESS: Am I going to fast?

13                   THE COURT: So the windows are not the same  
14          size. What else?

15                   THE WITNESS: They're not the same size. .  
16          They're not the same material. They're sash  
17          dimensions are not the same. The profile for the  
18          sashes are not the same. The construction methods  
19          are not the same. The framing is not the same.  
20          Which created a very different look from the outside,  
21          from what the wood windows would look like.

22                   One in particular had what are called  
23          mutins, which if you look at a window it has a bunch  
24          of lines in it or grills in it. This window had  
25          that. Which the new windows not.

1 (BY MR. FORSHEE, CONTINUING):

2 Q And you said, muffins, correct?

3 A They're called mutin.

4 Q And can you spell that?

5 A M-U-T-I-N.

6 Q Okay.

7 A And your spell check will say it's wrong, but it's  
8 okay. Um, that is the difference, the main  
9 difference between the two in a nutshell.

10 And they are requiring that he remove the  
11 work that was done. Which is take out the entire  
12 vinyl window unit, which would effectively return  
13 window back to its original size. And work with  
14 Staff, with Staff approval of a - a replacement wood  
15 window before he purchase it, to make sure it  
16 complies with what they're looking for.

17 Q This might segue a little bit into the local  
18 standards, but they - they're specific about windows.  
19 So are we - we take for granted what type and  
20 material and things like that - windows. But it's  
21 very important looking at it through the lenses of a  
22 historic preservationist and, um, the local  
23 guidelines which were also used in the basis -

24 A Yes. And they are pretty -

25 Q Which is page two of the exhibit -

1 THE COURT: Which exhibit.

2 MR. FORSHEE: Exhibit E.

3 THE COURT: So what are you - what's on  
4 page two?

5 THE WITNESS: Page two, three, and four,  
6 are sheets from the Local Historic District Guideline  
7 Book, section called windows and doors. It's  
8 referenced pretty much straight from The Secretary of  
9 Interior's Guidelines for Rehabilitation, which tries  
10 to break down the federal standards into more  
11 digestible bites versus the -

12 (BY MR. FORSHEE, CONTINUING):

13 Q Those are authorized by the State Statute?

14 A By the State Statute. And these have been reviewed  
15 and accepted by the State's Historic Preservation  
16 Office as required.

17 Q So per the Act, if we do any local guidelines that  
18 flow from the federal guidelines, they have to be  
19 approved by the State's Historic Preservation Review  
20 Office?

21 A They have to be in compliance with The Secretary of  
22 Interior's Standards and Rehab Guidelines. And then  
23 the State Office has to verify that.

24 THE COURT: And I don't think that this -  
25 getting into the level of what - the nuances of the

1 wood versus the vinyl are, because we're past that.

2 (BY MR. FORSHEE, CONTINUING):

3 Q Yeah. I think there's - I mean, you argued - no one  
4 would argue that wood is vinyl.

5 A No. It's typical cases for how they're found to be  
6 inappropriate. How they're found to not meet the  
7 standards like -

8 Q And you listed all those factors -

9 A Yeah.

10 Q - which were the general factors of how windows  
11 change from before and after?

12 A Correct.

13 Q Some (inaudible) -

14 A And what the uses requiring. Yep.

15 THE COURT: Okay. I would like, and I  
16 don't know if this is where you're going, at least  
17 because it was attached to one of these - what was  
18 Mr. Aniszczyk was applying for? So his application -  
19 that is how we even got to a meeting?

20 MR. FORSHEE: Yes. His application was,  
21 was an application for certificate of  
22 appropriateness.

23 THE COURT: And it looked like it had some  
24 writing - handwritten.

25 MR. FORSHEE: Yes. This is exhibit -

1 Proposed Exhibit C, which is the packet that the  
2 Historic Preservation Commission takes to make their  
3 decision. It's part of their record that they use,  
4 which includes the pictures, his application, and the  
5 staff report.

6 THE COURT: Okay.

7 MR. FORSHEE: So all Commissioners get this  
8 one packet, and they used that along with their own  
9 expertise to make a decision.

10 THE COURT: Okay. We'll see that.

11 MR. FORSHEE: So I'll offer that as C.

12 THE COURT: And then maybe what, Ms. Baker,  
13 what you can do is, um, just give me an example,  
14 given we've got some pictures here of what the issues  
15 are or what the - what's being required.

16 (BY MR. FORSHEE, CONTINUING):

17 Q So Proposed Exhibit - what did I say?

18 A C.

19 Q C. Okay, C.

20 What is that? What is that packet? Is  
21 that - do all the Commissioners get that packet?

22 A Every Commissioner gets the packet. The packets  
23 include the application, any submittals from the  
24 applicant with their application. A staff report  
25 which breaks down what they're asking for. That

1 includes the Federal and Local Guidelines that  
2 pertain to, any questions staff may have. Just  
3 questions. The applicant also gets a copy of that  
4 along with the agenda. And then just, um,  
5 photographs of the property, and the areas affected.  
6 Q The Commissioners used this packet as the - to form  
7 their decision and they use it as their evidence for  
8 - along with own expertise about what is and what's  
9 not historic - by the standards, um - their decision  
10 (inaudible).

11 So, um, can you just give one example on -  
12 if there were windows on all sides of the house, but  
13 - can you just point - can you give an example of the  
14 picture that shows a before and after, and what that  
15 before and - and explain what that before and after  
16 shows?

17 A To help the Commissioners with cases, sometimes find  
18 it easier to have before and after pictures next to  
19 each other so they can readily look up and down and  
20 kind of see the difference for themselves. And  
21 that's illustrated on each of the pages by elevation.

22 An example, this is south elevation that -

23 THE COURT: Okay. What - the first page  
24 doesn't have south on it, so.

25 (BY MR. FORSHEE, CONTINUING):

1 Q Would it be helpful to use the Judge's copy to look  
2 at it so you can reference?

3 THE COURT: If she does, I need to be able  
4 to follow along, so.

5 (Laughter)

6 THE WITNESS: All right. Um, the one  
7 that's says -

8 THE COURT: Just show me the pictures that  
9 you're looking at. That's - yeah, the one that has  
10 the C.

11 THE WITNESS: Okay.

12 THE COURT: Let's start with that.

13 THE WITNESS: That's showing the west,  
14 which is the rear elevation. At the top you're going  
15 to see - top left are two upper windows showing after  
16 the change. Top right shows a first floor window  
17 after the change. If you go below you're going to  
18 see in the middle those two upper windows before the  
19 change. And then the lower, is the lower window,  
20 first floor window before the change.

21 THE COURT: Okay. Then the second page I  
22 have -

23 THE WITNESS: Yeah. It's showing, kind of  
24 an angle shot of the house at the top which is west  
25 rear side and the south elevation, where you can see

1 three upper level windows. All of which are changed  
2 in the upper picture. And then in the lower picture  
3 you're seeing a before of the south, which shows you  
4 an image of that second floor window which that you  
5 can reference on the top page, that's, um, before  
6 picture on the bottom.

7 THE COURT: Okay. This is confusing to me  
8 because I'm not seeing the same angles of anything.  
9 It does look like this - is there like a little bay -

10 THE WITNESS: It's a bay, yep.

11 THE COURT: And then this is the same bay?

12 THE WITNESS: That's the same bay. It's  
13 just taken from the front yard versus - the one on  
14 the top is taken from a rear parking lot.

15 THE COURT: Okay. And what you're trying  
16 to show in this document is what? That the bay  
17 windows have been changed?

18 THE WITNESS: No. Because you can't see  
19 the bay windows very well on the upper because of the  
20 chain-link fence. It shows the second floor window.

21 THE COURT: This window and this window?

22 THE WITNESS: Um - yep.

23 THE COURT: So - and these are - for  
24 instance, the first page of Exhibit C, are showing  
25 windows that were wood at the time Mr. Aniszczyk

1 bought the property?

2 THE WITNESS: Yes.

3 THE COURT: And then the third picture I  
4 have is?

5 THE WITNESS: It's an up close of that  
6 south bay you saw in the previous. The upper is the  
7 before. And the lower is - or excuse me. The upper  
8 is the after. The lower is before. Illustrating the  
9 change between the two.

10 THE COURT: So it looks like - not all of  
11 the bay windows were changed?

12 THE WITNESS: That center large bay window  
13 was never changed. So that was never part of this  
14 case. It's still wood.

15 THE COURT: Okay.

16 THE WITNESS: We did the same thing pretty  
17 much all around the house. I'm trying to illustrate  
18 before and after images for the Commissioners.

19 (BY MR. FORSHEE, CONTINUING):

20 Q And this before after consistently showed what was  
21 before which was?

22 A The wood windows -

23 Q And that was after -

24 A Yeah. Or -

25 THE COURT: Okay. So like on this page -

1 THE WITNESS: The bottom right calls out  
2 that that was a vinyl window. And the bottom left  
3 calls out what was previously a vinyl window towards  
4 the back of the house. And those two elements were  
5 part of the packet and were two windows that he could  
6 keep.

7 THE COURT: So, on the same side of the  
8 house he's being - where there are previously  
9 existing vinyl windows that he's going to be allowed  
10 to keep -

11 THE WITNESS: Um-hmm.

12 THE COURT: - he's being asked to redo a  
13 wooden windows?

14 THE WITNESS: Yeah. On the south  
15 elevation, there were a total of four wood windows  
16 still retained. One of those is still wood today, it  
17 is not a question. Two on that side were already  
18 vinyl. One towards the front. One towards the back  
19 of the house.

20 THE COURT: My question is -

21 THE WITNESS: He would be asked to put back  
22 the vinyl to wood.

23 THE COURT: But that side of the house is  
24 still going to have a hybrid of wood and vinyl?

25 THE WITNESS: Will have a mix. It will end

1 of with four wood windows and two vinyl. Of course  
2 at any time in the future the owner could apply to  
3 replace the vinyl with wood without an issue.

4 THE COURT: We(sic) just trying to make  
5 sure I understand what's going on, on this side of  
6 the house with the bay.

7 So right now there are how many vinyl on  
8 south side?

9 THE WITNESS: All but one, two -

10 THE COURT: So five vinyl and one wood?

11 THE WITNESS: One, two, three - yes. Four  
12 on the first floor. One on the second floor.

13 THE COURT: And then this last photograph?

14 THE WITNESS: It's the north elevation.

15 All those (inaudible) the one towards the front  
16 corner or it would be the west side of that bottom  
17 image was the one with the mutins, the multigrid.  
18 Now they are all vinyl.

19 THE COURT: Okay. So that takes care of  
20 the pictures part of Exhibit C. What in the  
21 remainder of this packet?

22 THE WITNESS: You'll find an application  
23 from (inaudible) and a fine asking to retain the  
24 windows.

25 THE COURT: What's that?

1 THE WITNESS: A fine asking to retain the  
2 windows.

3 THE COURT: Okay.

4 (BY MR. FORSHEE, CONTINUING):

5 Q So that's for a certificate of appropriateness,  
6 correct?

7 A Yeah.

8 Q Which is what the statute requires when work is done  
9 on historic resource?

10 A Yep. For approval of it.

11 Q That's what - it's call the certificate of  
12 appropriateness?

13 A Correct.

14 Q Okay.

15 A And then attached to it is the information he  
16 included with his application from his private home  
17 inspections group.

18 THE COURT: Okay. Attached to the  
19 application?

20 (BY MR. FORSHEE, CONTINUING):

21 Q So that was attached by the Petitioner, right?

22 A Yeah.

23 THE COURT: What's - oh, okay. 'Cause I  
24 was wondering. 'Cause both of these sheets have X's  
25 drawn through them. Do you know who did that or - or

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no -

THE WITNESS: I'm assuming it's because the garage isn't - isn't part of the -

(BY MR. FORSHEE, CONTINUING):

Q But we didn't offer that.

A No, we didn't.

THE COURT: So these two Key Home Inspection pages that were attached to his application, you're saying are not relevant to the window issue?

THE WITNESS: No. No. I said that that X I think was drawn because they X on the garage isn't part of -

MR. FORSHEE: But, yes, we do. This part is we do - using that as reasoning. It's irrelevant whether a private window manufacturer knew or didn't know whether -

THE COURT: Well, I'm just trying to determine what if any significance these two Key Home Inspection attachments?

MR. FORSHEE: We included it - we included it because it's what was submitted to us -

THE COURT: Okay. But this was not part -

THE WITNESS: This was -

THE COURT: - but these -

1 THE WITNESS: - to the Commission's part of  
2 the packet.

3 THE COURT: - pictures and diagrams are not  
4 part of the issue that was -

5 MR. FORSHEE: It's not relevant to their  
6 decision about whether -

7 THE WITNESS: They're not(sic) included in  
8 their packet, so they saw them, read them, when -

9 THE COURT: But there was no discussion  
10 about these in particular, correct?

11 THE WITNESS: I don't recall any.

12 THE COURT: Maybe -

13 (BY MR. FORSHEE, CONTINUING):

14 Q I think - didn't one of the questions say something  
15 about that their contractor may have done him a  
16 disservice?

17 A Yeah.

18 Q But that - it's not relevant -

19 THE COURT: Maybe Mr. Aniszczyk is going to  
20 have to explain the significance of those, but -

21 THE WITNESS: The Commissioners saw it.  
22 They read it. They were aware of it when they made  
23 the decision.

24 THE COURT: Okay. I'm going to move on.  
25 So we got the application. And then the

1 third thing is this memorandum -

2 THE WITNESS: It's a staff report that's  
3 written - there's one written for every application  
4 that goes to the Commission.

5 (BY MR. FORSHEE, CONTINUING):

6 Q And what's the purpose of that? You write that?

7 A I write that. It's basically just to qualify  
8 everything into one for - it explains a little  
9 background history if necessary on it. Sometimes it  
10 includes actual history about the house. It'll  
11 explain if the Commissioners had seen it before. How  
12 it got to them.

13 Q Was it used to present facts to aid in their decision  
14 making?

15 A Yeah.

16 Q And you do it for every case?

17 A Every case.

18 Q Okay.

19 THE COURT: Okay. So -

20 MR. FORSHEE: I just have one more exhibit.

21 THE COURT: Let me - I'm going to admit  
22 Exhibit C.

23 (Whereupon Respondent's Proposed Exhibit C  
24 is admitted into evidence)

25 MR. FORSHEE: Thank you.

1 THE COURT: Going to switch the order  
2 though. Okay. Go ahead with your next exhibit.

3 MR. FORSHEE: Okay. This is the final  
4 exhibit. This is the notice of denial - it's a  
5 letter.

6 (BY MR. FORSHEE, CONTINUING):

7 Q All right. Ms. Baker can you tell us what this  
8 document is?

9 A This is a binding letter that's sent out to all  
10 applicants after a Preservation Commission meeting.  
11 Letting them know what the - breaking down the motion  
12 that was made on a particular request. And it also,  
13 for denials, includes the appeal process.

14 Q Notifying the applicant about the appeals process  
15 that is mandated by the State Statute, right?

16 A Correct.

17 Q So this is basically the final letter telling the  
18 outcome of the case and that their right - that there  
19 is a right to appeal?

20 A Correct. The official notice and usually a copy of  
21 the unapproved minutes at that time, pertaining to  
22 that case, are also included -

23 Q And there's (inaudible) address on that letter?

24 A Yes.

25 THE COURT: Did you get this notice of

1 denial, sir?

2 MR. ANISZCZYK: I don't - being honest, I

3 don't -

4 THE COURT: It doesn't, what? It doesn't

5 look familiar to you or -

6 MR. ANISZCZYK: Right. I don't -.

7 THE COURT: At some point do you remember

8 getting something that caused you to then appeal this

9 matter?

10 MR. ANISZCZYK: Right. They told me I got

11 to replace the windows.

12 THE COURT: Okay.

13 MR. ANISZCZYK: Yeah. Yeah.

14 THE COURT: But did you get something in

15 writing about that?

16 MR. ANISZCZYK: Yes. Yes.

17 THE COURT: Okay. I'm going to admit

18 Exhibit B.

19 (Whereupon Respondent's Proposed Exhibit B

20 is admitted into evidence)

21 Was the applicant at the meeting?

22 THE WITNESS: Yes.

23 THE COURT: Okay. Did he get a chance to

24 speak?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 (BY MR. FORSHEE, CONTINUING):

3 Q There is a public hearing as well, so (inaudible) to  
4 it?

5 A Yes.

6 Q Okay for anybody who wants to come in and give any -

7 A Exactly.

8 Q - testimony. There's no - (inaudible)?

9 A Correct.

10 Q And has to follow the exact -

11 A Um-hmm.

12 Q - the meeting - (inaudible) meeting?

13 A Correct. Um-hmm

14 THE COURT: Any other questions of Ms.  
15 Baker?

16 MR. FORSHEE: I don't think so.

17 THE COURT: Okay.

18 MR. FORSHEE: I don't see any other  
19 information that can help - it's pretty specialized -

20 THE COURT: Well, I do have a question,  
21 because in looking at the Local Historic District's  
22 Act, I noticed that in part six, um, it looks like if  
23 the homeowner had gone through the preapproval  
24 process to make or not make changes, that there is  
25 some consideration allowed for financial - financial

1           hardship to the owner.

2                   THE WITNESS: Based on an Act of God or  
3 something beyond the owner's control.

4 (BY MR. FORSHEE, CONTINUING):

5 Q       That's a notice to proceed in right?

6 A       It's part of the verbiage.

7 Q       Part of the notice to proceed?

8 A       That it was self-created.

9                   THE COURT: Got it.

10 (BY MR. FORSHEE, CONTINUING):

11 Q       And that can only be made on a finding that it's  
12 dangerous or there's -

13 A       Public safety.

14 Q       - public safety, which it could not be any of those  
15 findings?

16 A       There's no other remedy for it that meets the  
17 standard?

18 Q       And there's no other remedy that could meet its  
19 standards?

20 A       Um-hmm.

21 Q       And it's your -

22                   THE COURT: Well I guess my question was  
23 just, um, whether or not the homeowner's  
24 circumstances are considered during one of these  
25 meetings for - in the deliberations of the

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Commission?

MR. FORSHEE: It's not one of the factors for the -

THE COURT: Okay. I need for her to do the testifying.

MR. FORSHEE: Okay.

THE WITNESS: The only time they'd - by consideration per the, um, requirements they have to follow, is when they're looking at a notice to proceed, which is where you can essentially approve something that doesn't meet the standards. But it has to be based on certain sort of criteria. Like a public safety hazard. Hazard to the public and you can't remedy it any other way and still meet the standard. Or an economic hardship based on an Act of God, something - governmental action or something beyond the owner's control.

In this particular instance the hardship would have been self-created because endure (sic) prior to getting any approvals. If he had applied beforehand, he would have known before spending his money that they were not going to approve it. So it doesn't really apply in this instance, because it's not beyond the owner's control.

And in instances of economic hardships,

1 your Honor, would typically have to supply a lot of  
2 economic information about themselves, about their  
3 incomes, their assets to be able to prove that  
4 correcting the matter is an actual financial  
5 hardship.

6 THE COURT: So the preapproval process is a  
7 whole different thing?

8 MR. FORSHEE: Yes, if it's accepted.

9 THE WITNESS: Yes.

10 MR. FORSHEE: He, um -

11 THE WITNESS: He kind of did it backwards.

12 THE COURT: Okay.

13 THE WITNESS: It's like applying for a  
14 building permit. You need to get the permit before  
15 you start the work. This is a request to retain  
16 after the fact.

17 (BY MR. FORSHEE, CONTINUING):

18 Q But nowhere in the standards of - to get a  
19 certificate of appropriateness, which is what you  
20 need to get before you do any work?

21 A Correct.

22 Q Nowhere under those standards does it take into  
23 account a person's financial situation or -

24 A Only a notice to proceed -

25 Q Only a notice to proceed?

1 A Um-hmm.

2 Q It was just a separate statutory provision?

3 A Um-hmm.

4 Q As its own set of standards?

5 A Um-hmm.

6 THE COURT: Okay. I'm not going to belabor  
7 that point.

8 MR. FORSHEE: Okay.

9 THE COURT: Did you have any other  
10 questions?

11 MR. FORSHEE: I don't believe so, your  
12 Honor.

13 THE COURT: Mr. Aniszczyk do you have any  
14 questions to ask Ms. Baker or do you want to just  
15 come up and give your testimony?

16 MR. ANISZCZYK: About the meeting we had,  
17 and the Board it was acting - how many -

18 THE COURT: Okay.

19 MR. ANISZCZYK: - members were on the Board  
20 - was the fact she said seven. Only one person was  
21 in favor of me not keeping the windows.

22 THE COURT: Okay. So you're - let's put  
23 that in the form of the - a question.

24 So first you're kind of asking her, how  
25 many Board Members were there?

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THE WITNESS: Seven.

THE COURT: And if I understood what you were - just the point you were making?

MR. ANISZCZYK: Who's the person was - that wanted to keep the windows on the Board?

THE COURT: So if I understood what you said, initially, you're -

MR. ANISZCZYK: It was - it was seven people. All the other members was saying the house changed a little bit, but - we got mix and match on the windows. Made it look better. And I decided to make it all same windows. And this said - it was suggested to keep it just as is. And the one person - I can't remember -

THE COURT: Okay. So if I'm understanding what you're asking her, is that out of the seven Board Members present, um, was there only one person who -

MR. ANISZCZYK: Against it. And she refused. And they had to make a decision because she refused to -

THE COURT: Okay. Well, let me ask this. If there's going to be a granting of the COA application, does it have to be a unanimous decision of the Board?

1 THE WITNESS: No. It has to be the  
2 majority.  
3 THE COURT: Okay.  
4 THE WITNESS: It was a unanimous decision  
5 for both the (inaudible) and a denial.  
6 THE COURT: Okay. So now I'm not sure if I  
7 understood your question then. Um, heard Ms. Baker  
8 just say it was a unanimous decision -  
9 MR. ANISZCZYK: Was not.  
10 THE COURT: Okay. So you're asking her  
11 wasn't there, uh - I'm not sure what you're asking?  
12 MR. ANISZCZYK: Majority of the Board  
13 wanting to keep the windows as it is.  
14 THE COURT: So just let's just start there.  
15 So he's asking you what's - was the  
16 majority of the Board Members willing to let him keep  
17 the windows as is?  
18 THE WITNESS: No.  
19 THE COURT: Okay.  
20 MR. ANISZCZYK: They didn't take the count?  
21 THE COURT: Is that a question?  
22 MR. ANISZCZYK: Right.  
23 THE COURT: There -  
24 MR. ANISZCZYK: Did they took the count?  
25 THE WITNESS: Yeah. When they made the

1 motion they asked who's in favor and who's opposed.  
2 All were in favor and none were opposed.

3 MR. ANISZCZYK: Because one person that  
4 refused to agree to keep the windows and they had to  
5 make a decision?

6 THE COURT: Okay. So, it may be that  
7 you're going to have to give me this, you know,  
8 scenario when - when you testify, okay. Because she  
9 just testified that it takes a majority to, you know,  
10 grant -

11 THE WITNESS: To make - um-hmm.

12 THE COURT: - grant the application. And  
13 in this case, in this Board meeting, it was - there  
14 was a unanimous decision not to grant the  
15 application. So if you're going to, you know -  
16 you've got a contrary memory of what occurred. We'll  
17 get that when you testify.

18 Was there anything else that you wanted to  
19 ask her while she is the Witness?

20 MR. ANISZCZYK: No.

21 THE COURT: Okay. Ms. Baker you can go sit  
22 next to Mr. Forshee. And then Mr. Aniszczyk can come  
23 up to the witness stand.

24 (Witness excused)

25 And when you're seated, I need you to state

1 and spell your first and last name for the record.

2 MR. ANISZCZYK: My name is Jerzy Aniszczyk.  
3 JERZY. Real name is Jeerahzay (spelled  
4 phonetically), but they call me Jerzy. J-E-R-Z-Y.  
5 A-N-I-S-Z-C-Z-Y-K.

6 THE COURT: And Mr. Aniszczyk would you  
7 raise your right hand. Do you solemnly swear or  
8 affirm that the testimony you're about to give in  
9 this matter will be the truth?

10 MR. ANISZCZYK: Yes.

11 THE COURT: Now just byway of background,  
12 tell me when you bought the house, um, in Grand  
13 Rapids?

14 JERZY ANISZCZYK  
15 (Called by himself and sworn by the Court,  
16 testified as follows)

17 DIRECT EXAMINATION

18 THE WITNESS: I'm in the house?

19 THE COURT: When did you buy the house?

20 THE WITNESS: 2013. I don't know exact the  
21 day. I looked for a house in Grand Rapids. The  
22 reason was my son was here. And he went to school  
23 over here. And I decided to buy a house over here.  
24 Something to work on it so I can come out on a weekly  
25 basis, monthly basis -

1 THE COURT: Where were you living?  
2 THE WITNESS: Saginaw, Michigan.  
3 THE COURT: Do you still live in Saginaw?  
4 THE WITNESS: Right.  
5 THE COURT: Okay.  
6 THE WITNESS: And the background I got. I  
7 remodeled several houses in Saginaw. They're still  
8 standing. Even the houses next door been tear down.  
9 And, so - I work at the GM Plant. And I work on old  
10 houses. That's what I did. I know what I'm talking  
11 about.  
12 THE COURT: So you bought this house in  
13 2013 in Grand Rapids for your son or -  
14 THE WITNESS: What buy for, for me and he  
15 so we can work together and take it loose. Further  
16 understand the process of house.  
17 THE COURT: And, um, there's been some  
18 documents that have been admitted into evidence that  
19 - including your application where you indicate that  
20 you - at the time you bought it, you were not aware -  
21 THE WITNESS: Right. I - we a realtor and  
22 I hired Wallside Windows Company to replace all the  
23 windows. The inspection company to come over inspect  
24 it. Nobody but the (inaudible) area.  
25 THE COURT: Okay. So when you say that you

1 had a realtor, and an inspector, and then you brought  
2 in Wallside Windows, did you decide to replace the  
3 windows prior to moving, you know, occupying the  
4 home?

5 THE WITNESS: When - when we took over and  
6 -

7 THE COURT: Do you remember when that was?  
8 When you say you took over, was that - do you mean  
9 occupied the house?

10 THE WITNESS: Well, when inspection give me  
11 information how windows were bad, and we go in -  
12 that's the first thing we going to do. I told my son  
13 we're going to change the windows. And I would say  
14 it wasn't safe to live, especially one window was a  
15 big window. A single glass. When you slam the door,  
16 the whole window shaking.

17 So there's nobody - and my son - my son  
18 lives there. He still lives there. So, it's not  
19 like how you rent it out to public, because - because  
20 of safety. He going to live there. And I'm going to  
21 come out and we're going to spend some, I call it  
22 quality time, to work on a house, so.

23 THE COURT: So you're - the - you're saying  
24 neither the realtor or the inspector mentioned  
25 anything about it being historic?

1 THE WITNESS: Wallside Company window  
2 didn't mention it. Nobody - even I called them up  
3 after this - all this happened. And they say, we  
4 don't know nothing about the historical area. They  
5 say by look at the house you wouldn't even think  
6 about it. Would be historical house.

7 MR. FORSHEE: Your Honor, just for the  
8 record, I'd like to object to, and the evidence as to  
9 his knowledge of the District and this being  
10 irrelevant. Knowledge - knowledge of District is -

11 THE COURT: I want to understand what  
12 happened?

13 MR. FORSHEE: I understand.

14 THE COURT: So -

15 MR. FORSHEE: Just for the record, I -

16 THE COURT: Okay. You're making your  
17 record.

18 MR. FORSHEE: Thank you.

19 THE COURT: I'm going to let him give his  
20 story.

21 THE WITNESS: When you buy a house, the  
22 realtor going to put a sign out there. And all the  
23 other salesperson work different realtors, they got  
24 rights to sell the house. So if there was letter  
25 that send to realtor, how then - you know, they not

1 going to know. I suggest for a future, if you see a  
2 for sale sign on it, in historical area, to put  
3 something on top of the sign or, you know, put your  
4 own sign on it. Welcome to historical area for a  
5 buyers. Then solve a lot of problem. I'm the kind  
6 of guy I like to prevent what can happen in future,  
7 so.

8 THE COURT: So then you went ahead and  
9 replaced, looks like nine windows that were old  
10 wooden windows, correct?

11 THE WITNESS: Well, I - I didn't think was  
12 nine, but they're saying nine. Fine, it's nine.

13 THE COURT: Okay.

14 THE WITNESS: Okay. And when you look at -  
15 did you look at the -

16 THE COURT: What? The picture?

17 THE WITNESS: - picture of historic house.  
18 I wish I had this house, you know -

19 THE COURT: Is that another house?

20 THE WITNESS: No. No. This is the house,  
21 historical house we're talking about.

22 THE COURT: So this is your - your picture,  
23 your exhibit -

24 THE WITNESS: By the way I had do it - it  
25 was a big old pine tree - so I don't know what this

1 house was taken. Probably hundred years ago.  
2 THE COURT: Okay. Look - wait a minute.  
3 So, you're showing me this picture of the same house,  
4 correct?  
5 THE WITNESS: Correct.  
6 THE COURT: And you got this picture - it  
7 doesn't look like a picture that was taken -  
8 THE WITNESS: I got it from Rhonda.  
9 THE COURT: - recently?  
10 THE WITNESS: I got it from Rhonda. That's  
11 a historical house way it was. What it was  
12 historical.  
13 THE COURT: So do you know where this  
14 picture came from?  
15 THE WITNESS: Yeah. From - Rhonda sent it  
16 to me.  
17 THE COURT: So this was - you're saying a  
18 picture of the house before -  
19 THE WITNESS: Way before -  
20 THE COURT: Before any work was done on it?  
21 THE WITNESS: And there's no - no vinyl  
22 siding on it. There's nothing there. And -  
23 THE COURT: And you want this to be part of  
24 the record? What did you want it - what point did  
25 you want to make?

1 THE WITNESS: I want to make this part of  
2 the record, this picture right here.

3 THE COURT: What point did you want me to  
4 understand from looking at that picture?

5 THE WITNESS: Okay. This is the historical  
6 house way it was historical house.

7 THE COURT: And this is the front of the  
8 house?

9 THE WITNESS: This is the house at -

10 THE COURT: Now?

11 THE WITNESS: - now.

12 THE COURT: I am going to mark this as  
13 your, meaning Petitioner's Exhibit One. And I'm  
14 going to make a copy for you.

15 (Whereupon Petitioner's Exhibit One is  
16 marked for evidence)

17 And, of this - of the windows on the front  
18 of the house here, are any of these windows, windows  
19 that the Commission is saying you have to replace?

20 THE WITNESS: No. That's not a question.  
21 This is front of the house.

22 THE COURT: Front of the house.

23 This was the way it was when you bought it?

24 THE WITNESS: After new windows - after new  
25 windows put in, that's as is right now.

1 THE COURT: Did you put any of these  
2 windows in?  
3 THE WITNESS: Wallside Company put the  
4 windows in.  
5 THE COURT: Right. So, did the house -  
6 okay. Let me go back to the pictures that we already  
7 have in evidence. And - it looks like the only  
8 picture of the - of the front of the house in Exhibit  
9 C that corresponds with your Exhibit One, is an after  
10 photograph. And I'm not sure that the Commission was  
11 challenging windows on the front of the house.  
12 That's what I'm trying to determine.  
13 THE WITNESS: Okay.  
14 THE COURT: If this is what the house looks  
15 like now, and there appears to be one window on the  
16 lower floor front, another window that is by the door  
17 -  
18 THE WITNESS: Right.  
19 THE COURT: - and then this set of four  
20 windows on the top.  
21 THE WITNESS: Right.  
22 THE COURT: Did - they're all vinyl,  
23 correct?  
24 THE WITNESS: Correct.  
25 THE COURT: Were all of those vinyl when

1           you bought the house?

2                       THE WITNESS: Correct.

3                       THE COURT: So you - so even if you

4 replaced some of these vinyl windows, the Commission

5 is saying you don't have to make these wood again,

6 correct?

7                       THE WITNESS: Correct.

8                       THE COURT: Okay. So - but, this is vinyl

9 siding, correct?

10                      THE WITNESS: Vinyl siding.

11                      THE COURT: And vinyl windows.

12                      So this is going to be the way the house

13 looks no matter what, correct?

14                      THE WITNESS: And the front door is a metal

15 door also.

16                      THE COURT: Okay. But that's not a part of

17 the issue, correct?

18                      THE WITNESS: (No verbal response).

19                      THE COURT: So, let me just make a note

20 here.

21                      Mr. Forshee, do you have any objection to

22 this being admitted? It really is kind of the same

23 picture -

24                      MR. FORSHEE: Same -

25                      THE COURT: - as one, but it's a -

1 MS. BAKER: Yeah.

2 THE COURT: - clearer separate picture.

3 MR. FORSHEE: Yes.

4 MS. BAKER: That's the clearest one.

5 THE COURT: Okay. Okay.

6 Go ahead. Tell me what else -

7 THE WITNESS: Okay. And the only thing

8 historical about that house is those wood windows,

9 why changed. And then -

10 THE COURT: Okay. You said the only thing

11 that's historical is the wood windows -

12 THE WITNESS: Wood windows. The one we're

13 talking about, nine windows. And one wood door.

14 And everything else has been changed. If you -

15 THE COURT: Now give me some examples of

16 what you mean everything else has been changed.

17 THE WITNESS: Okay. If you look - I got

18 the picture of the original of this historical house.

19 Now you can - when I tell you, you can see - look at

20 the picture and tell you if it's there or not.

21 THE COURT: That's the same picture as

22 this, correct?

23 THE WITNESS: Right.

24 THE COURT: Okay. So now what - what do

25 you -

1 THE WITNESS: If you look at the roof,  
2 okay. There's a chimney there. Okay. And then now  
3 there's not chimney. Been taken out. So it's on the  
4 roof and the - so chimney's gone.

5 Now we're talking about siding, all vinyl  
6 siding. So all the wood is gone. The front - the  
7 balcony, if you see balcony there on the historical  
8 house, and the one it's gone. That's the front of  
9 the house. All the doors - if you want to look at  
10 the pictures of the doors, I got it right here. What  
11 is left, just give you idea. That's what the doors  
12 are -

13 THE COURT: Now?

14 THE WITNESS: Now. That's my next project  
15 supposed to be, replacing the doors. And -

16 THE COURT: Okay. Wait a minute. Wait a  
17 minute. Wait a minute.

18 So, do - I mean, do you know if any of  
19 these doors are the original doors?

20 THE WITNESS: The one on my left side, that  
21 wood have rotted out from the bottom, that's a  
22 historical.

23 THE COURT: Okay. But the other two doors  
24 have already been replaced?

25 THE WITNESS: No. That it been prior.

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Prior.

THE COURT: Okay. I'm trying to determine if there's really any relevance to this.

THE WITNESS: Give you an idea what the historical house I got now. It's not -

THE COURT: Okay. What I am going to do is, um, mark this black and white picture - let me go and get some copies of these. You didn't -

MR. FORSHEE: I think I'm going to have to just object for the record for this picture too. Because we're really looking at the house when the Historic District was formed which was 1999, and so -

THE COURT: I want him to be able to make his case of things, so.

MR. FORSHEE: I'm totally -

THE COURT: Yeah. So I'm going to make -

MR. FORSHEE: I understand.

THE COURT: I'm going to make pictures - make copies. I'll say they're being offered, and you can put your objection on the record.

MR. FORSHEE: Okay. Thank you.

THE COURT: Was there anything else that want me - that you were going to offer picture wise that you want to -

THE WITNESS: Well, I got - I got some -.

1 I think the house looks pretty nice right now.  
2 THE COURT: Okay. That's not the issue.  
3 THE WITNESS: I know. I know.  
4 I (inaudible).  
5 THE COURT: That's it? Okay. Let me go  
6 make some quick -.  
7 (Pause in the record)  
8 Okay. So, um, I've marked Exhibit's One  
9 and Two. They are pictures of - Exhibit One,  
10 Proposed Exhibit One is a picture of the front of the  
11 house as it exist today. And, a picture - and  
12 Exhibit Two is a photograph of the house supposedly  
13 in its original condition, but it's obviously an  
14 older picture of the house.  
15 (Whereupon Petitioner's Proposed Exhibits  
16 One and Two are marked into evidence)  
17 What did you want to say about that?  
18 THE WITNESS: They send me that picture.  
19 You say relevant to - they sent me the picture. Why  
20 they even bother sending me that picture?  
21 THE COURT: Okay. That's - let me just get  
22 - Mr. Forshee, you wanted to - I mean, do you have  
23 any objections?  
24 MR. FORSHEE: Yes. Just for the record  
25 that the Board, when they're considering the case is

1 looking at the state of the house in 1999. That's  
2 the only thing that they can really rule on. When  
3 they're considering the application when the Historic  
4 District was established. And it was established in  
5 1999. So, I'm just not sure how relevant this old  
6 photo for -

7 THE COURT: Well, here's one of the  
8 standards, if I'm understanding what the Commission  
9 was supposed to be looking at. And this is 205 - 2 -  
10 or no. 205 Section 5 Sub 3A through D(sic). And the  
11 Commission should also consider, and I'm looking at  
12 B. The relationship of any architectural features of  
13 the resourced, the rest of the resourced, and to the  
14 surrounding area.

15 So the status of the house, what it looks  
16 like now, whether the changes that are required are  
17 going to make it look anything like the original  
18 resource is relevant. So, this is - and the  
19 surrounding - its area.

20 THE WITNESS: Can I say something?

21 THE COURT: Yeah. I just have to rule.

22 So I am going to admit Exhibit's One and  
23 Two. Your objection is noted for the record.

24 (Whereupon Petitioner's Proposed Exhibits  
25 One and Two were admitted into evidence)

1 MR. FORSHEE: Thank you.

2 THE COURT: Okay.

3 THE WITNESS: May I?

4 THE COURT: Go ahead.

5 THE WITNESS: The reason why I changed all  
6 the windows, why I not changes the wood windows and  
7 leave those other vinyl windows alone. Okay. The  
8 way I do it, when I come to the house, first I'm  
9 looking for a safety. That means that's safe.  
10 That's the first thing going to do. Then I'm looking  
11 for energy wise. Get efficiency windows. That's the  
12 second thing I do. And, uh - the reason I changed  
13 all the windows because I want to make it look safe  
14 and make look nice. Okay.

15 The nine windows - if I only would change,  
16 would cost me two thousand dollars. Two thousand,  
17 twenty-five hundred. All the other windows cost me  
18 seventy-six hundred dollars.

19 THE COURT: Okay. Let me - let me  
20 understand what you're saying here about these cost  
21 factors.

22 So what cost two thousand dollars?

23 THE WITNESS: It would be those windows -  
24 just to change the windows probably two to three  
25 dollars at the most.

1 THE COURT: Okay. To change them back from  
2 the vinyl?

3 THE WITNESS: No. No. To - when I bought  
4 the house -

5 THE COURT: Yes.

6 THE WITNESS: - to take them out and put a  
7 vinyl windows in. I had to do this other vinyl  
8 windows because it already vinyl was there.

9 THE COURT: I'm not understanding.

10 THE WITNESS: You understand?

11 THE COURT: I'm not following you. Okay.  
12 So, how many windows did you - did Wallside Windows  
13 actually replaced?

14 THE WITNESS: All twenty windows.

15 THE COURT: And, um - but the pictures that  
16 were admitted by the City indicate that there are  
17 still some original wood windows?

18 THE WITNESS: It's a one original wood  
19 window -

20 THE COURT: Just one?

21 THE WITNESS: Okay. I tell - Judge, I tell  
22 you reason why I left it alone. Because when I would  
23 get the part of the siding, this one window is facing  
24 mirror, okay. And then is nothing purpose for the  
25 window, just to look at a neighbor's house. So when

1 I was going get the point, I didn't know was  
2 historical. When I was getting to the point, when  
3 I'm going to do the siding, I was going to tear it  
4 out and put the new material siding looks like wood  
5 (inaudible). Now I'm stopped of doing everything.

6 Anyway, I was going to block the window  
7 off. That's the reason for it. And put the wood -  
8 because there's no -

9 THE COURT: When you say block the windows  
10 off?

11 THE WITNESS: Yeah. Block the window  
12 completely off. The window's only purpose right now  
13 to look at the neighbor's window, okay. And this two  
14 side windows, you still can see a street. You still  
15 can see a backyard, because they sticking out a  
16 little bit. And this straight window, straight to  
17 the neighbor - there was - I don't was reasons.

18 THE COURT: So you were going to eliminate  
19 the windows?

20 THE WITNESS: Eliminate the window.  
21 Exactly.

22 THE COURT: Okay.

23 THE WITNESS: Put a nice siding over it and  
24 make it look good. And those windows really worry  
25 about is from the neighbor's side and the back of the

1 house. The house from the front is good.

2 THE COURT: So what was the two thousand  
3 dollar figure you gave me, what was that for?

4 THE WITNESS: I would say to change nine  
5 windows about three or four hundred dollars at the  
6 most. Three hundred dollars. Twenty-seven - close to  
7 three thousand dollars, probably would be not no more  
8 to change -

9 THE COURT: To change the vinyl windows  
10 back to wood?

11 THE WITNESS: No. We going have to --

12 THE COURT: Let's break it down.

13 THE WITNESS: Break it down. Okay.

14 I bought the house with the twenty windows  
15 in it. Okay. I got a charge to replace those  
16 windows. So, if already vinyl there and I want vinyl  
17 window, why have to replace that?

18 THE COURT: Right.

19 THE WITNESS: And worry about the nine I  
20 got to replace.

21 THE COURT: Okay.

22 THE WITNESS: Okay. Replacing those  
23 windows will only cost me that much.

24 THE COURT: Cost the two thousand dollars?

25 THE WITNESS: Yeah. Two to three thousand

1 dollars.

2 THE COURT: Two to three thousand dollars.

3 THE WITNESS: So, by just to look good,  
4 make the house look good, extra look good - and the  
5 house is in -

6 THE COURT: So there were nine wooden  
7 windows. You're saying if you had just gone ahead  
8 and replaced those nine other wooden windows, that  
9 would have only cost you two to three thousand  
10 dollars?

11 THE WITNESS: Yeah.

12 THE COURT: Okay.

13 THE WITNESS: Now for - to redo the whole  
14 house cost me seventy-six hundred dollars. That  
15 makes a big different. So I could save myself the  
16 four thousand dollars, and you know put the - but I  
17 want to make it look nice. Make it - energy wise and  
18 make it looks of the house.

19 THE COURT: Okay. Have you gotten an  
20 estimate of what it would cost you to get -

21 THE WITNESS: No. No.

22 THE COURT: - it in compliance?

23 THE WITNESS: I didn't go that far.

24 THE COURT: Okay. You're just - you're  
25 going through this process part?

1 THE WITNESS: Yeah. Just going through  
2 this process.

3 THE COURT: Okay.

4 THE WITNESS: And right now I'm afraid of  
5 to touch the house. With the doors, I'm afraid of to  
6 - to touch the siding, you know. They constantly by  
7 my property - by my house. Keep an eye on the house.  
8 See what kind of changes I'm going to do. Making  
9 sure I'm, you know. So I'm - I'm - Judge, I'm 68  
10 years old. I retired. This was something for  
11 process for me, my son to get together and do good.

12 THE COURT: Okay.

13 THE WITNESS: Something good. And here I  
14 am.

15 THE COURT: Okay. Anything else before I  
16 let Mr. Forshee ask you some questions?

17 THE WITNESS: No. He can ask me questions.

18 THE COURT: Okay. Go ahead Mr. Forshee.

19 THE WITNESS: I like him. I like -

20 MR. FORSHEE: It's not personal.

21 THE WITNESS: It's not personal.

22 THE COURT: Okay. I understand. That's  
23 good.

24 THE WITNESS: And I especially like you,  
25 the way you ask those questions so I can understand.

1 THE COURT: Okay. Let's let Mr. Forshee  
2 ask his questions now.

3 MR. FORSHEE: I have no questions.

4 THE COURT: Okay. Okay. Well I think that  
5 we've made the record that we're going to make today.  
6 I'm going to give you these pictures back. I'm not  
7 sure the doors are an issue.

8 And do you have anything further Mr.  
9 Forshee?

10 MR. FORSHEE: Only that you show wish, I  
11 can submit that brief, um -

12 THE COURT: I would prefer just for time  
13 and what this issue is, if you want to give a - like  
14 an oral summary, I think there's quite a bit of  
15 record in here that I - the brief just repeats that.  
16 I don't really need that. But if there's some  
17 argument in the brief that you haven't covered  
18 through Ms. Baker's testimony, then, um, you might  
19 want to just briefly put that on the record.

20 This isn't the type of case I think  
21 requires us leaving the record open, which I would  
22 need to do if I accepted your written hearing brief.  
23 Give Mr. Aniszczyk a chance, so.

24 You have any summary words I would suggest  
25 putting them on the record now.

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MR. FORSHEE: No. I'll just -

THE COURT: Rest on the record?

MR. FORSHEE: Rest on the record.

THE COURT: Okay. That sounds good.

THE WITNESS: On the stand.

THE COURT: We're done for today.

THE WITNESS: Okay. Thank you.

(Witness excused)

THE COURT: So I'm going to close the  
record.

(Proceedings concluded)

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STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

January 20, 2016

In the matter of	Docket No.	15-049770
Jerzy Aniszczyk, Petitioner	Case No.	N/A
	ALJ:	Renee A. Ozburn
v		
City of Grand Rapids Historic Office Preservation Commission, Respondent	Agency:	State Historic Preservation
	Case Type:	Appeal

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**MSHDA**

JAN 25 2016

**LEGAL AFFAIRS**

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**RESPONDENT'S EXCEPTIONS TO PROPOSAL FOR DECISION AND  
REQUEST THAT THE RESPONDENT'S ORIGINAL DECISION BE AFFIRMED**

On June 3, 2015, the Grand Rapids Historic Preservation Commission held a regular meeting and public hearing in compliance with the Open Meetings Act, accepted evidence, and allowed the Petitioner to present his case pursuant to the Michigan Local Historic Districts Act relative to 323 Hollister Avenue SE. The subject of this hearing was due to the replacement of windows in an historic district without having first applied for or obtained a Certificate of Appropriateness contrary to the Michigan Local Historic Districts Act. The Commission made a well-reasoned decision based on clear standards which the

Proposal for Decision now proposes to overturn for improper reasons which are set forth below as Exceptions:

I. The ALJ Exceeded Her Legal Authority And Committed A Substantial And Material Error of Law By Finding That The Respondent's Decision "Appears Somewhat Arbitrary and Capricious"

The ALJ used the incorrect standard of review and stated that the Respondent's decision "*appears somewhat* arbitrary and capricious". See Proposal For Decision, Page 6, para 3. That standard can only be read as something less than "arbitrary and capricious". If the ALJ's finding is that the Respondent's decision was not truly arbitrary and capricious, then the Respondent's decision should be affirmed without further analysis. More broadly, that characterization sets the stage for the rest of the opinion which Respondent argues below is based on substitution of the ALJ's judgment for that of the Respondent, rather than a true finding that the Respondent acted arbitrarily or capriciously.

Alternatively, even if that lesser standard is somehow read to be the proper "arbitrary and capricious" standard, the ALJ still committed a substantial and material error of law by making that finding. To find that a decision is arbitrary and capricious is a high standard and is not the same as finding that the reviewing body would merely have found otherwise had they been sitting on the Commission. "Courts should afford due deference to administrative expertise and not invade administrative fact finding by displacing an agency's choice between two reasonably differing views." *City of Grosse Pointe Park v. Detroit Historic Dist. Comm'n*, No.

298802, 2012 WL 1367533, at \*4 (Mich. Ct. App. Apr. 19, 2012); see also *Dignan v. Michigan Pub School Employees Retirement Bd*, 253 Mich.App 571, 576 (2002).

The case cited by the ALJ in the Proposal for Decision illustrates a long-standing principle: “A ruling is arbitrary and capricious when it *lacks an adequate determining principle*, when it reflects an *absence of consideration or adjustment with reference to principles*, circumstances, or significance, or when it is freakish or whimsical.” *Westcott v Civil Serv Comm’n*, 298 Mich.App. 158, 162 (2012) (emphasis added).

Contrary to the finding in the Proposal for Decision, the ALJ states that “The denial letter cites Secretary of the Interior’s Standards 2, 5, and 6, as the basis for denial.” See Proposal for Decision, Findings of Fact, para 7. Indeed, the Respondent used the United States secretary of the interior’s standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R. part 67 (“Standards”) as is required by the Michigan Local Historic District Act, MCL 399.205(3). These Standards were cited and all discussion in the meeting minutes were an analysis pursuant to these criteria or determining principles. See Exhibit A; see also Supplement I and Transc Pages 34-46. There can be no credible argument that the Commission lacked or failed to consider adequate determining principles. There was very little testimony in the June 3, 2015 meeting minutes, other than Petitioner’s statements, that fell outside the scope of the Standards. There is also no dispute that the Standards were the correct determining principles as required by the Michigan Local Historic Districts Act. The question is not

whether the ALJ agrees with the outcome reached by Respondent, rather whether the Respondent used determining principles or made a decision that was “freakish or whimsical”. Respondent’s record is replete with analysis pursuant to very clearly defined Standards which were ultimately cited explicitly in the motion to deny Petitioner’s application. See Exhibit A; see also Section II below, Supplement I, and the Transcript.

In fact, Respondent argues that a decision to *grant* a Certificate of Appropriateness in this case would have been arbitrary and capricious because the standards are so clear and the evidence presented such that the Commission was bound to find that no approval should be given.

In this same vein, it was not proper for the ALJ to substitute her own judgment when applying the facts to the law, as was done extensively in the Conclusions of Law portion of the Proposal for Decision (Conclusions of Law, Page 5 para 2-end). The Proposal for Decision has several examples of this substitution of a value judgment rather than using the correct standard of review: “No persuasive argument was made to support a conclusion . . .”, “the Commission inexplicably decided that a consistent exterior was not of importance. . .”, “[I]t is hard to see how the changes the Commission is demanding ...”, “[I]nterpreting this requirement in a vacuum is unrealistic”, “[I]t makes little practical sense to tell a homeowner...”, “In light of how incongruous the resulting home would be...”. See Conclusions of Law, Page 5. All of these statements do not reflect an analysis of the Respondent’s meeting minutes or motion, rather, they are made as if by someone who was sitting

on the Grand Rapids Historic Preservation Commission debating facts where reasonable minds could differ. More importantly, these opinion statements are not relevant to the Standards.

The Local Historic Districts Act sets up a system by which historic preservationists with demonstrable experience, who reside in the community, and who are appointed by the City's legislative body, apply the set of facts to the relevant Standards. This deference should survive absent specific findings which were not made in this Proposal for Decision.

II. The ALJ Exceeded Her Legal Authority And The Proposal for Decision Is Not Based on Substantial, Competent, and Material Evidence On The Record.

The Proposal for Decision is based on a misplaced sense of equity, rather than a review of the record and meeting minutes. Again, the proper review standard of this case is limited. "[A] court's review of the Board's decision in this case was "limited to determining whether the decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, was clearly an abuse of discretion, or was otherwise affected by a substantial and material error of law.'" *Galuszka v. State Employees Ret. Sys.*, 265 Mich. App. 34, 41-42, 693 N.W.2d 403, 408 (2004). See also MI CONST Art. 6, § 28 (West).

The ALJ found that "At no time during negotiations for the purchase, did relators (sic), the inspector or anyone from the window contractor indicate to Mr. Aniszczyk that the home was subject to historic designation restrictions on updating

windows.” See Findings of Fact para 3. This, even if true, is irrelevant to the decision before the Respondent. There is no guideline contained in the Standards that excuses work done in a historic district if the owner is merely not aware of the law. In fact, the Petitioner knew or should have known that he was purchasing a home in a historic district by either performing due diligence or acknowledging the multiple courtesy letters sent to him by Respondent staff contact Rhonda Baker.

The Proposal for Decision also sets out in the Findings of Fact that certain Commissioners made comments that: “a disservice was done to the homeowner in being uninformed of the historic renovation requirements”, “a number of renovations and replacements to the historic character of the home, including the majority of the windows occurred before the area was designated historic”, and “previous changes had already substantially “degraded” the character and contribution of the structure as historic.” See Findings of Fact para 8. First, and most importantly, none of these factors alone would necessarily invalidate the Respondent’s unanimous decision. Second, it is an incorrect statement of fact that the majority of windows were replaced previous to the historic district being designated: the house has a total of 18 windows of which only 7 were replaced pre-designation. As to the other statements of Respondent cited by the Proposal for Decision being a basis for reversal, Respondent argues that a Historic Preservation Commission must be able to discuss all aspects of a case freely without fear that their decision will be invalidated by cherry-picking a couple of sentences made during deliberation. Indeed, a Commissioner may change his or her mind during

the course of the hearing if different evidence or explanation is produced. This is very common at oral argument before courts where a judge will posit counter-points or hypotheticals for discussion. However, it is the judge's ultimate opinion that fixes their judgment. Ultimately, Respondent acts as one body through its motion and that decision was to deny the application based on consistent statements found throughout the record.

The Proposal for Decision states, "At the meeting to consider the homeowner's appeal, the Commission seemed to acknowledge that the property's historic character had not been retained or preserved in substantive ways before it was designated historic, and long before Mr. Aniszczyk bought it." (Conclusions of Law Page 5, para 2). Again, the Commission ultimately found that the windows were a historic resource so to find that the Commission as a whole made this finding is not supported by the evidence. Practically speaking, this finding would stand for the proposition that if some historic elements or resources of a house are lost through time (which is not at all uncommon), then no further preservation enforcement or application of the Local Historic Districts Act is allowed. In other words, if this Conclusion of Law were allowed to stand, it would appear that Petitioner could hereafter make any alterations, up to and including demolition of the home, because it has been somehow deemed totally non-historic as a matter of law. Indeed, Petitioner stated he would consider blocking off other windows and removing the existing door, among other things. See Transc 84. That is not what the Standards or the Local Historic Districts Act dictate. "A permit shall be

obtained before any work affecting the exterior appearance of a resource is performed within a historic district..." MCL 399.205(1). "'Resource' means 1 or more publicly or privately owned historic or nonhistoric buildings, structures, sites, objects, features, or open spaces located within a historic district." MCL 399.201a(s).

The Proposal for Decision states, "[I]nterpreting this requirement [Standards No. 6] in a vacuum is unrealistic...it makes little practical sense to tell a homeowner his house should stand out as a modern house with a few inconsistent historic features for the sake of preserving a feature that was consistent with a property that no longer exist. The exterior of this home is no longer a historic resource for all intents and purposes as evident by both Petitioner and Respondent photographs." This statement is a substitution of judgment that does not comport with the Standards or the definitions of the Local Historic Districts Act. Nowhere in the Standards does it state that legal or illegal replacement of some historic resources somehow excuses any further requirement to comply with the Local Historic Districts Act. Nor does any Standard state that if some resources (as defined by the statute) are lost, that other resources lose their unambiguously defined statutory status of "resource". Standard No. 6 need not be read in a vacuum to be a valid reason for Respondent's decision. If there are some historic resources left even after a property owner illegally removes other resources, those remaining historic resources shall be retained.

The Standards are unambiguous and the following statements made by

Respondent Board Members are consistent with Respondent's ultimate motion to deny:

**Standard #2:** The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

The Respondent made it clear that they find the removed windows to be contributing features to the building which should be retained. See Exhibit A, Page 8. Mr. Rodriguez and Ms. Gavin replied that there is a violation. Ms. Baker summarized this finding. See Exhibit A, Page 8, paragraph 8. Mr. Maxam stated that he would not argue against the fact that the windows were contributing. Ms. Uebbing stated that the windows were a contributing feature. Ms. Gavin agreed. See Exhibit A, Page 9, paragraphs 1 & 2. As there should be, there was discussion about what should be done from a practical perspective now that the work had already been done illegally without a Certificate of Appropriateness. The Commission ultimately found that the building had historic resources that should be preserved and that prior destruction of a historic resource should not dictate that all future resources should meet the same fate.

**Standard #5:** Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

The Respondent stated that the windows were a distinctive, contributing feature. The windows were not preserved or replaced with similar

features or construction. Again, there was discussion about what to do now that the resources were removed from a practical perspective, however, Commissioners agreed that the windows were historic and contributing. See Exhibit A, Page 9, paragraph 11. These windows meet the definition of resources as defined by the Local Historic District Act. There is no credible argument that wood is the same material as vinyl and that the features, finishes, or construction techniques are the same or similar.

**Standard #6: Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.**

No evidence was given or could be found as to why in-kind replacement of the removed features should not be required nor evidence regarding whether or not the windows could have been repaired rather than replaced. Even if deterioration was proven that repair was not possible (which we will never know now because the resource was destroyed), the remedy is to match the old design, not replace it with inconsistent features. The Respondent stated that there was no reason to have the windows removed and reiterated that the features were historically defining and could be replaced with historically accurate windows that met the Standards. Again, there is no credible argument that wood matches or is equivalent to vinyl in terms of color, texture, or material.

Further, the Proposal for Decision fails to consider the Respondent's analysis of the local standards which mimic the Federal Rehabilitation Guidelines and are certified by SHPO. This analysis provides further support for the Respondent's decision. Instead of providing that in full here, I would like to refer to **Supplement I** which describes this in detail.

In summary, the Proposal for Decision is not supported by substantial, material, competent evidence on the record justifying a reversal of Respondent's decision.

III. The ALJ Committed A Substantial And Material Error Of Law By Disallowing Respondent To Submit A Brief And Prohibiting A Detailed Questioning Of Respondent's Witness As To The Meeting Minutes Thereby Improperly Excluding Admissible Evidence.

Prior to the hearing, Respondent submitted a brief to the Michigan Administrative Hearing System setting forth the Respondent's argument and properly served such brief on Petitioner (hereinafter "Supplement I" which is attached hereto; Proof of Service can be provided upon request). This was in response to the appeal letter filed by the Petitioner that laid out his argument of the case. Upon arriving at the hearing the brief which contained substantive argument and objections to Petitioner's submitted evidence was deemed not accepted. Thus, in order to present evidence, Respondent attempted to question Respondent's witness by going through the July 3, 2015 meeting minutes in a detailed, line-by-line manner. See Transc 40 and again at Transc 41. The ALJ would not allow this line of questioning and would instead only allow a short summary. Thus, Respondent was prevented from presenting relevant and admissible evidence to the

ALJ for consideration.

Respondent concedes that the ALJ had discretion whether to accept written briefs (although, in Respondent's experience, a brief has never been disallowed before and has historically been heavily relied upon). However, the Respondent should then have been allowed to go through Respondent's meeting minutes line-by-line with Respondent's witness since analysis of that meeting is the most important aspect of this case. By excluding that, the ALJ excluded relevant evidence that should have been admitted and judged for its weight and credibility. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted by the Supreme Court." MRE 402. Moreover, the standard for admissibility of evidence is even more inclusive than that dictated by court rule for administrative hearings. See MCL 24.275.

Page 36

11 MR. FORSHEE: Your Honor, you'll take into  
12 account the hearing brief that – or did you want me  
13 to have her read the brief itself? You don't want  
14 any of that -

15 THE COURT: I'm not sure what brief you're  
16 referring to.

17 MR. FORSHEE: The brief I submitted on the  
18 20<sup>th</sup> to – hearing brief, offers of evidence, answers,  
19 and objections.

20 THE COURT: Yeah. No – I mean, I now

21 understand you submitted this because you thought it  
22 might be in lieu of this kind of evidence?  
23 MR. FORSHEE: Yeah. Of having to, um, put  
24 things on the record. I thought it could be done in  
25 writing.

(Transc 36:11-36:25)

Page 41

22 THE COURT: Well, I guess what I'm trying  
23 to determine is – I don't really want to go through  
24 these minutes and, you know, quote each Commissioner  
25 and what they were saying. I do – I would prefer a

Page 42

1 . . . little, you know, summary statement here, but .

(Transc 41:22-42:1); see also Transc Page 88 (again offering to submit the brief).

Witness testimony or a brief relative to the merits of the case and underlying decision should have been admissible. Unfortunately, the admissible evidence was prevented from being presented which is especially incongruous given Petitioner's wide berth to present what Respondent argues is inadmissible evidence.

IV. The ALJ Committed A Substantial And Material Error Of Law And Exceeded Her Legal Authority By Shifting The Burden Of Proof From Petitioner To Respondent

In contested administrative proceedings, the proponent of an order or petition generally has the burden of proof and the burden of going forward. *Bunce v. Secretary of State*, 239 Mich.App 204, 216; 607 NW2d 372 (1999).

The Petitioner submitted two exhibits, both pictures from one angle provided to him by Respondent's staff, for the proposition that the Commission decision should be overturned. Nowhere did Petitioner state that the decision was arbitrary

and capricious, contrary to law, or improper in any other way. Instead, he argues that it wasn't generally fair or that he was unaware of the historic designation. Petitioner submitted no evidence or testimony at the hearing analyzing the Respondent's meeting minutes or the relevant Standards. Instead, Petitioner relied on an argument of equity and ignorance of the law, neither of which are a basis to overturn the Respondent's decision and all of which Respondent argues is inadmissible as irrelevant or immaterial. See MCL 24.275. While Respondent recognizes the ALJ's ability to question witnesses and probe for evidence, it was clear at the hearing that Respondent was given the burden of proving its position. The transcript reflects an extensive probing for evidence in the Petitioner's favor, although no additional relevant testimony was provided by Respondent. See Transc 68-87). As best as can be ascertained from the transcript, Petitioner apparently disputed the number of votes needed for Respondent to take action (the vote was unanimous) (Transc 66-67), claimed that third party realtors and window installers did not tell him of the requirements, claimed that expense would be incurred to replace the removed windows and justified the changes in the name of safety and energy efficiency. Given the utter lack of substantive testimony given by Petitioner that was material to the case at hand, Respondent's position is that a review of the October 22, 2015 Transcript supports the proposition that the burden was shifted to the Respondent.

At no time did Petitioner make the argument that the Standards were not applied or relied upon by Respondent. Nor did Petitioner make an argument that

based on the record that the decision was “freakish or whimsical”. Although the Petitioner was unrepresented by legal counsel, the burden to prove his case is still operative. Petitioner must in SOME way articulate a legal basis that would necessitate the overturning of Respondent’ detailed record. On the contrary, Petitioner cited no valid legal basis and the basis which he did rely should have been deemed irrelevant and inadmissible. See Supplement I objections raised in disallowed brief. The only conclusion that can be drawn is that the ALJ made the Petitioner’s case and shifted the burden to the Respondent to somehow rebut evidence that was not introduced by Petitioner.

In sum, although Proposal for Decision states that the Petitioner met his burden, Respondent argues that proposition is not supported by the evidence or the transcript.

### CONCLUSION

In light of the errors committed in this Proposal for Decision and the record, Respondent respectfully requests that the State Historic Preservation Review Board reject the Proposed Order and affirm the Respondent’s original decision made on June 3, 2015.

Respectfully submitted,

CITY OF GRAND RAPIDS, a *Michigan*  
*municipal corporation*

Dated: January 19, 2016

By:   
\_\_\_\_\_  
THOMAS H. FORSHEE (P71599)  
Assistant City Attorney  
Attorney for Respondent

# SUPPLEMENT I

## STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM

October 20, 2015

In the matter of	Docket No.	15-049770
Jerzy Aniszczyk, Petitioner	Case No. ALJ:	TBD Renee A. Ozburn
v		
City of Grand Rapids Historic Preservation Commission, Respondent	Agency: Case Type:	State Historic Preservation Office Appeal

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### HEARING BRIEF, OFFERS OF EVIDENCE, ANSWER, AND OBJECTIONS

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#### I. PROCEDURAL HISTORY AND FACTS

Prior to applying for and receiving a Certificate of Appropriateness ("COA") as required by the Local Historic District Act, MCL 399.201 *et seq.*, the Petitioner replaced 17 windows at 323 Hollister SE Grand Rapids, Michigan located in the Fairmount Square Historic District which was established in 1999.

The detailed case history of this matter and prior contacts with Respondent is found in the attached **Exhibit D and offered into evidence.**<sup>1</sup> As it pertains to the windows, the facts of the case are

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<sup>1</sup> As provided for in MCL 24.275, the Grand Rapids Historic Preservation Commission is providing all of its evidence in written form for the purpose of expediting the hearing because it believes that the interests of the parties will not be substantially prejudiced by doing so. This is, of course, subject to the discretion of the ALJ. Rhonda Baker, the City's Historic Preservation Specialist and Staff Commission representative will be present at the hearing

not in dispute. Petitioner acknowledges and admits replacing the existing historic wooden windows with vinyl windows that are the subject of this appeal. See **Exhibit C (showing pictures before and after) which are hereby offered into evidence.**

After repeated contacts with staff regarding the work, the Petitioner filed an application for a COA with the Grand Rapids Historic Preservation Commission ("HPC") relative to the window replacements. A properly noticed, open meeting of the HPC was held on June 3, 2015 to discuss and act on the application. See **Exhibit A (the "Meeting Minutes" and record) which are hereby offered into evidence.**

After consideration, discussion, and input from the applicant, the HPC issued a COA for 8 of the windows that were vinyl previous to the establishment of the historic district and thus deemed to be replaced in-kind. The HPC denied COAs for 9 of the windows that were wooden at the time of the district establishment that were replaced with vinyl (described more particularly as 3 windows on the north elevation, all three windows on the west elevation, and three windows on the south elevation, two upper level and one lower level). The final decision regarding the windows was furnished to the Petitioner at the meeting and by letter dated June 8, 2015. See **Exhibit B which is hereby offered into evidence.**

## II. ARGUMENT

As stated above, it is the Respondent's contention that Petitioner has not cited any relevant evidence or facts, even if all of Petitioner's allegations found in his complaint letter were taken as true, that would require reversal of the HPC. However, for the sake of the record, the Respondent reiterates the reasoning of this case below:

### **Retention of the Vinyl Windows**

The HPC properly denied Petitioner's request to retain the windows in accordance with the Secretary of Interior's Standards and Guidelines ("Standards") with substantial, material, competent evidence on the record. Both MCL 399.205(3) and Grand Rapids City Ordinance Section 5.395(3) require that, "the Commission shall follow the U.S. Secretary of the Interior's Standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R part 67 . . ." Also, Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the department. See **Exhibit E which is hereby offered into evidence.** The HPC based its denial on and cited the Local Guidelines and Secretary of the Interiors Standards 2, 5, & 6 which state:

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should evidence need to be adduced orally or in case there are any other historic preservation questions that need to be addressed. I would also like to disclose to the court that Ms. Baker happens also to be a Board Member of the State Historic Preservation Review Board. She will, of course, abstain from any deliberation or decision-making related to this case.

i. **Secretary of the Interior Standards for Rehabilitation**

***Standard #2: The historic character of a property shall be retained and preserved. The removal of historic materials or alterations of features, spaces, and spatial relationship that characterize a property shall be avoided.***

The HPC made it clear that they find the removed windows to be contributing features to the building which should be retained. See Meeting Minutes Page 8. Mr. Rodriguez and Ms. Gavin replied that there is a violation. Ms. Baker summarized this finding. See Meeting Minutes Page 8, paragraph 8. Mr. Maxam stated that he would not argue against the fact that the windows were contributing. Ms. Uebbing stated that the windows were a contributing feature. Ms. Gavin agreed. See Meeting Minutes, Page 9, paragraphs 1 & 2. As there should be, there was discussion about what should be done from a practical perspective now that the work had already been done without a COA. The Commission ultimately found that the building had historic character that should be preserved and that prior destruction of a historic resource should not dictate that all future resources should meet the same fate.

It is undisputed that in the present case, the historic character of a resource was not retained or preserved by the removal and destruction of the existing wood windows. There was a wholesale removal of distinctive materials that characterize the property.

***Standard #5: Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.***

The HPC stated that the windows were a distinctive, contributing feature. The windows were not preserved or replaced with similar features or construction. Again, there was discussion about what to do now that the resources were removed from a practical perspective, however, Commissioners agreed that the windows were historic and contributing. See Meeting Minutes, Page 9, paragraphs 11. There is no credible argument that wood is the same material as vinyl and that the features, finishes, or construction techniques are the same or similar.

***Standard #6: Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.***

No evidence was given or could be found as to why in-kind replacement of the removed features should not be required nor evidence regarding whether or not the windows could have been repaired rather than replaced. Even if deterioration was proven that repair was not possible (which we will never know now because the resource was destroyed), the remedy is to match the old design, not replace it with inconsistent features. The HPC stated that there was no reason to have the windows removed and reiterated that the features were historically defining and could be replaced with historically accurate windows that met the Standards. Again, there is no credible argument that wood matches or is equivalent to vinyl in terms of color, texture, or material.

ii. **Local Guidelines (which mimic the Federal Rehabilitation Guidelines and are certified by SHPO):**

*“Retain and preserve windows and doors that contribute to the overall historic character of a building, including their functional and decorative features, such as frames, sash, mutins, sills heads, moldings, surrounds, hardware, shutters, glazing . . .”*

HPC discussion centered around the appearance and materials of the new windows versus the original. HPC stated that the windows were contributing to the overall historic character of the building and that the new windows did not retain or preserve the character of the original. Commission Rodriguez remarked that the work done was a clear violation. See Meeting Minutes, Page 8, paragraph 1. Commissioner Rodriguez and Commissioner Gavin found that the work was in violation. See Meeting Minutes, Page 8, paragraph 2.

*“Changing or closing existing window and door openings are considered inappropriate and will only be considered under compelling reasons . . .”*

The HPC found that there was no compelling reason to remove and change the existing windows, in fact, no valid reason was given. Commissioner Gavin stated that there was no reason to believe that the new vinyl windows were a better replacement and that it diminishes the ability of the present owner or those that may come after to maintain the historical accuracy of the building. See Meeting Minutes, Page 9, paragraph 2.

*“Replacement windows and doors should fit existing openings and be consistent with existing trim and other features of the structure. Replacement windows must duplicate the appearance of the existing or original windows in **design**, dimensions, proportion, reflective qualities, profile, sash rails, stiles, mutins, panels, **material** and operation.” (Emphasis added).*

At the risk of being repetitive, it is undisputed that the replacement windows are inconsistent with what was originally installed. There was no attempt to duplicate the original. Disrepair does not excuse the Petitioner from replacing such deteriorating resources per the Standards or the Local Guidelines. Indeed, the opposite is true in that replacement windows should duplicate the original windows, fit existing openings, have consistent trim. Commissioner Gavin and Commissioner Miller noted that the size of the trim was also changed. See Meeting Minutes, Page 8, paragraphs 5 & 6.

iii. **Summary**

Despite the lengthy justification and recitation above, the facts and the commission’s disposition of this case are quite simple: that Petitioner had wooden windows and replaced them with vinyl windows in a historic district without attaining a COA. Those windows were and are character defining and important to the historic nature of the home. Any replacement window should preserve and retain the historic character of the home by matching the original design, texture, and material according to the Standards. The HPC found that the windows were a contributing and defining feature important to the home as well as the

historical character of the neighborhood and cited the relevant Standards. The decision was not arbitrary or capricious and the HPC appropriately denied Petitioner's request to retain the vinyl windows.

### III. RESPONDENT'S OBJECTIONS TO PETITIONER'S OFFERS OF EVIDENCE

**MCL 24.275**, states in relevant part: "*Irrelevant, immaterial or unduly repetitious evidence may be excluded. . . . Objections to offers of evidence may be made and shall be noted in the record.* Subject to these requirements, an agency, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in a contested case or by rule for submission of all or part of the evidence in written form." (Emphasis added.)

The Respondent objects to the following evidence submitted by Petitioner:

#### A. Prior Knowledge of Historic District

It is Respondent's position that because Respondent did not know that he was purchasing a home in a designated historic district or that his privately hired consultant did not inform him of the historic status, or that some other third party did not notify him, that the Local Historic District Act is inapplicable to the property.

There is no authority in law, statutory or otherwise, that excuses a landowner from the requirements of the Local Historic District Act based on when the property was purchased or whether they were informed of the historic district status at the time of purchase.<sup>2</sup> The Respondent may have a cause of action against contractors, but it is in no way the basis for a defense in the present matter.

Therefore, Respondent respectfully requests that any testimony related to such an argument be deemed irrelevant and inadmissible as it pertains to the present case

#### B. City Issued a Building Permit

There were no building permits issued or applied for in this case. A building permit is not required for this work absent some other criteria that are not applicable to this installation. However, even if a building permit had been issued, that would have no relevance to the Petitioner's obligation to comply with the Local Historic Districts Act. Issuance of one permit related to building code does not constitute a blanket permission in all contexts to ignore all other laws and regulations. There is no authority in law, statutory or otherwise, that provides that one specific permit waives all other laws pertaining to an action.

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<sup>2</sup> For accuracy's sake, and although there is no requirement to do so whatsoever, a courtesy letter was sent to the seller's realtor of this property as a reminder and for general information regarding Historic District status on September 10, 2013. Further, staff, as is regular practice, sent a welcome to the neighborhood packet to the Respondent with informational items regarding owning a property in a historic district on January 17, 2014. See Exhibit D.

Therefore, Respondent respectfully requests that any testimony related to such an argument be deemed irrelevant and inadmissible as it pertains to the present case.

**C. Resource Is Per Se Not Contributing If In Disrepair**

The condition of the resource is irrelevant to the findings required by the Local Historic District Act for issuance of a Certificate of Appropriateness. Physical condition may be a factor if a Notice to Proceed is sought which it was not, nor would the work done be appropriate for such a consideration. See Meeting Minutes Page 9, paragraph 4. No evidence was submitted about the disrepair due to the fact that windows were gone and therefore could not be evaluated. Even if there was disrepair and rotting, the legal solution is not removal and replacement without a COA with materials that do not meet the Standards. Certainly, many resources in a Historic District have some level of disrepair due to age as that is the very nature of resources that are being sought to be preserved over time.

Therefore, Respondent respectfully requests that any testimony related to such an argument be deemed irrelevant and inadmissible as it pertains to the present case.

**III. CONCLUSION**

The facts of the case are undisputed regarding the replacement of a window at 323 Hollister SE. The Petitioner has presented no facts or evidence supporting the proposition that the HPC did not properly follow the Standards or that the HPC's decision should be modified or reversed.

The HPC respectfully requests that the HPC decision be affirmed in its entirety which equitably provides a time period of two years per house side to restore the windows.

Respectfully submitted,

**GRAND RAPIDS HISTORIC PRESERVATION  
COMMISSION**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

**THOMAS H. FORSHEE (P71599)**

Assistant City Attorney

City of Grand Rapids

