★ **Roll Call Number**

Agenda Item Number
40B

Date January 22, 2007

Alternate Resolution

RESOLUTION AMENDING THE DECISION OF THE HISTORIC PRESERVATION COMMISSION

WHEREAS, on November 15, 2006, the Historic Preservation Commission conditionally approved an application from Edward C. Muelhaupt III for a Certificate of Appropriateness for the construction of a fence on his property at 649 18th Street; and,

WHEREAS, the Commission's approval of the Certificate of Appropriateness is subject to a limitations on the height and design of the fence; and,

WHEREAS, Edward C. Muelhaupt III has appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code; and,

WHEREAS, on December 18, 2006, by Roll Call No. 06-2643, it was duly resolved by the City Council that the appeal be set down for hearing on January 8, 2007, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, due notice of the hearing was mailed to the applicant on December 20, 2006, and published in the Des Moines Register on December 28, 2006; and,

WHEREAS, on January 8, 2007, by Roll Call No. 07-066, the City Council continued the public hearing on the appeal until January 22, 2007, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, in accordance with the published notice, those interested in the issuance of the Certificate of Appropriateness, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and,

WHEREAS, Section 303.34(3) of the Iowa Code and Section 58-31(f) of the Des Moines Municipal Code provide that on an appeal such as this, the City Council shall consider whether the Historic Preservation Commission has exercised its powers and followed the guidelines established by the law and ordinance, and whether the Commission's decision was patently arbitrary or capricious; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The public hearing on the appeal is hereby closed.

(continued)

2. The City Council hereby finds that the decision of the Historic Preservation Commission to deny the Certificate of Appropriateness was patently arbitrary or capricious for the following reasons identified by the applicant:

   a) it fails to allow privacy fence design elements that are consistent with privacy fences that already exist in Sherman Hill.

   b) it fails to recognize and address the special issue of high volume and high frequency of noise coming from Beacon of Life.

   c) it triples the estimated cost of the privacy fence.

3. The decision of the Historic Preservation Commission to require the redesign of the fence is hereby reversed and modified, and an amended Certificate of Appropriateness is hereby granted allowing the proposed privacy fence to be designed and constructed as proposed by the applicant. All other terms and conditions of the Certificate of Appropriateness issued by the Commission shall remain unchanged.

(Council Communication No. 07-)

MOVED by _____ to adopt and amend the decision of the Historic Preservation Commission as identified above to allow the privacy fence to be designed and constructed as proposed by the applicant.

FORM APPROVED:

Roger K. Brown

Roger K. Brown
Assistant City Attorney
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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

_____ Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk