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**Date** May 4, 2009

**RESOLUTION REVERSING THE DECISION OF THE HISTORIC  
PRESERVATION COMMISSION  
(649 18<sup>th</sup> Street)**

WHEREAS, Des Moines Municipal Code Section 58-31(a) provides in relevant part that no construction of a structure or alternation of any exterior features of a structure within a historic district shall be undertaken unless a certificate of appropriateness has been granted by the Historic Preservation Commission; and

WHEREAS, on March 18, 2009, the Historic Preservation Commission conditionally approved a certificate of appropriateness for the reconstruction of a retaining wall for Kristen and Edward C. Muelhaupt III at their property located at 649 - 18th Street in the Sherman Hill Historic District; and

WHEREAS, the Commission's review of the reconstructed retaining wall was the result of an enforcement action by staff in response to work completed without a certificate of appropriateness; and

WHEREAS, the Commission's approval was conditioned on Kristen and Edward C. Muelhaupt III altering the work that has been completed without the certificate of appropriateness; and

WHEREAS, Kristen and Edward C. Muelhaupt III have contended that a certificate of appropriateness is not required for the work as they believe the retaining wall was restored as nearly as practical to its condition prior to damage caused by the construction of a detached garage in accordance with §58-27(a) of the Des Moines Municipal Code; and

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

WHEREAS, on April 20, 2009, by Roll Call No. 09-638, it was duly resolved by the City Council that the appeal be set down for hearing on May 4, 2009, at 5:00 p.m., in the Council Chambers; and

WHEREAS, due notice of the hearing was mailed to the applicant on April 20, 2009 and published in the Des Moines Register on April 23, 2009, setting forth the time and place for the hearing; 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



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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, or 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.
2. The Historic Preservation Commission had jurisdiction to review and act upon the conditional grant of a certificate of appropriateness in this instance.
3. The City Council hereby finds that the decision of the Historic Preservation Commission to conditionally grant a certificate of appropriateness for a retaining wall at 649 18th Street was patently arbitrary or capricious and should be reversed.

(Council Communication No. 09- 260)

MOVED by \_\_\_\_\_ to adopt, and reverse the decision of the Historic Preservation Commission to conditionally approve the certificate of appropriateness.

FORM APPROVED:

Michael F. Kelley
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, HENSLEY, KIERNAN, MAHAFFEY, MEYER, VLASSIS, and TOTAL.

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.

MOTION CARRIED APPROVED

Mayor

City Clerk