

Date January 23, 2012

**RESOLUTION SCHEDULING HEARING ON APPEAL BY CONLIN PROPERTIES
FROM DECISION OF THE HISTORIC PRESERVATION COMMISSION
REGARDING THE PROPERTY AT 826 18th STREET**

WHEREAS, on November 30, 2011, the Historic Preservation Commission conditionally approved an application from Conlin Properties for a Certificate of Appropriateness to replace ten windows in the first floor of the multiple-family dwelling at 826-18th Street in the Sherman Hill Historic District; and,

WHEREAS, the Commission's approval of the Certificate of Appropriateness is subject to the following requirements:

1. The windows be constructed of wood with no metal cladding.
2. The windows be of the same general style, shape and dimensions as the existing windows.
3. Review and approval of the selected window product by staff prior to installation.

WHEREAS, Conlin Properties has appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code, and seeks to be allowed to use the double-paned, double-locked, energy-efficient windows of the type that have already been installed in five of the ten windows to be replaced; NOW THEREFORE,

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

1. The appeal by Conlin Properties is hereby down set for a public hearing before the City Council on February 13, 2012, at 5:00 p.m., in the Council Chambers, at City Hall, Des Moines, Iowa.
2. The City Clerk is hereby authorized and directed to publish notice of said hearing in the form hereto attached all in accordance with §362.3 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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



Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.

666 Grand Avenue, Suite 2000
Ruan Center, Des Moines, IA 50309-2510

13

December 16, 2011

direct phone: 515-242-2410

direct fax: 515-323-8510

email: gross@brownwinick.com

Via Hand Delivery

Honorable Frank Cownie
Des Moines City Council Members
City Hall
400 East 1st Street
Des Moines, IA 50309

**Re: Appeal from December 5, 2011 Historic Preservation Commission Filing
Certificate of Appropriateness; Case Number 20-2012-5.14**

Dear Mayor Cownie & Des Moines City Council Members:

BrownWinick represents the interests of Conlin Properties with regard to the property located at 826 18th Street, Des Moines, Iowa (hereinafter the "Home"). Conlin Properties hereby formally appeals the December 5, 2011 decision ("Decision") of the Historic Preservation Commission ("Commission") that unreasonably requires Conlin Properties to incur twice the cost for replacing non-original windows in the steel-sided Home. A copy of the Commission's Decision is attached as Exhibit 1.

BACKGROUND FACTS

This appeal arises from the City of Des Moines issuing a notice requiring Conlin Properties to replace certain windows in the Home and the Commission's subsequent Decision that doubles the cost of complying with the City's requirement. The subject windows are indisputably non-original and decaying windows that are located in a newer addition to the steel-sided Home. After receiving notice from the City of Des Moines that the non-original windows needed replacement, Conlin Properties arranged for and began investing over \$6,000.00 in the Home and neighborhood to replace the single-paned, single-locked, non-original windows with double-paned, double-locked, energy-efficient windows to create a safe, secure, and energy efficient Home. After replacing five (5) of the ten (10) non-original windows, the Department of Building posted a "Stop Work" Order citing the "Historic District Guidelines," at which point Conlin Properties immediately ceased replacing the windows. Conlin Properties was unaware of the requirement to apply for a certificate of appropriateness.

Conlin Properties promptly filed an application for a certificate of appropriateness ("Application"). The Application seeks to replace 10 of 54 windows in the Home and explains the replacement windows are thermal-pane windows. On November 30, 2011, the Commission

Mayor Cownie & Des Moines City Council Members
December 16, 2011
Page 2

reviewed Conlin Properties' Application and heard argument on the issues. Thereafter, on or about December 5, 2011, the Commission filed its Decision granting the Application subject to three conditions: (1) The windows shall be constructed of wood with no metal cladding; (2) The windows shall be of the same general style, shape and dimensions as the existing windows; and (3) Review and approval of the selected windows product by staff prior to installation. See Exhibit 1.

On appeal, the City Council is required to consider several criteria. For example, "the city council shall consider whether the commission has exercised its powers and followed the guidelines established by law and ordinance..." Des Moines Municipal Code § 58-31. Further, "the city council shall consider ... whether the commission's action was patently arbitrary or capricious." *Id.* The Commission's Decision requiring wood windows fails to satisfy these important requirements and the condition should be waived.

THE COMMISSION'S DECISION WAS IMPROPER

The non-original and decaying windows, located in a newer addition of the steel-sided Home, do not have any historical, architectural or cultural value. Indeed, during the November 30, 2011 staff presentation, Mr. Jason Van Essen, a Senior City Planner with the City of Des Moines, explained that the Home has been "substantially altered" from its original configuration and that the subject windows are not the original windows. Mr. Van Essen further explained that the small portion of the steel-sided Home at issue was constructed around 1957 - long after the 1880s Victorian period that the Historic District was formed to preserve. Staff's admissions that the steel-sided Home was "substantially altered" and reconstructed around 1957 - nearly eighty (80) years *after* the 1880s era that the District seeks to preserve - and that the windows are not original confirms the lack of historical, architectural and cultural value. Tellingly, the Commission's Decision is void of any finding that the subject windows hold any such value. When a proposal, such as Conlin Properties' proposal, seeks alteration of items having "little" historical, architectural, or cultural value the Commission must endeavor to approve the proposal, which the Commission did not do here.

The Des Moines Municipal Code governs Historic Districts and states the purpose is to serve "Public Policy" concerns. Des Moines Municipal Code § 58-26. To this end, the Municipal Code requires the Commission to "be reasonable in its judgments" and "endeavor to approve proposals for alteration of structures of little historical, architectural and cultural value." *Id.* § 58-31(c). Here, instead of being reasonable and endeavoring to approve a proposal to replace non-original windows with no historical, architectural or cultural value, the Commission arbitrarily, capriciously, and unreasonably rejected the proposal and imposed a cost-prohibitive condition: requiring the windows to be constructed of wood with no metal cladding.

On November 30, 2011, Conlin Properties explained to the Commission that imposing the condition would be unreasonable and undermine the public policy of the Municipal Code. As

Mayor Cownie & Des Moines City Council Members
December 16, 2011
Page 3

explained to the Commission, replacing the non-original windows on this steel-sided Home with wood windows would cost over \$12,000.00 - nearly twice the \$6,275.74 cost of the double-paned, double-locked, energy-efficient windows that Conlin Properties seeks to install. Conlin Properties explained to the Commission that in these tough economic times where home prices are plummeting and the City of Des Moines itself is striving to reduce costs, it is patently unreasonable and violates all public policy concerns to mandate Homeowners incur double the cost for repairs and maintenance. This is especially true when the proposed windows are safer, more secure, and more energy efficient than the current windows and where, as here, the windows being replaced are not original and have no historic value whatsoever.

The Commission arbitrarily and capriciously ignored Conlin Properties' arguments regarding the excessive cost of using wood windows. In fact, during the November 30, 2011 meeting, the Commission made it abundantly clear that it does not consider cost: "We don't care how much [the windows] cost, its not our problem." The Commission's admitted position of turning a blind eye to cost, a fundamental element of any maintenance or repair, is not only unreasonable but it is arbitrary and capricious. The City Council should reconsider the Commission's unreasonable Decision and waive the condition requiring use of wood.

The foregoing is just one of the many items that the Commission failed to consider when it arbitrarily and capriciously imposed the condition of requiring wood windows. In addition to ignoring cost, the Commission also unreasonably ignored Conlin Properties' arguments regarding energy efficiency, safety, and city-approved guidelines that permit the use of vinyl in Sherman Hill. Conlin Properties will further explain these issues to the City Council when this Appeal is heard.

In short, the intent and purpose of replacing the non-original windows on the steel-sided Home is to provide a safer, more secure, and energy efficient living environment – fundamental ideals that undoubtedly promote public policy and should not be ignored. Granting Conlin Properties' Application, as submitted, serves the public policy concerns that the Municipal Code was adopted to advance. Conlin Properties respectfully requests that the City Council waive the requirement of using wood windows and permit the installation of windows as requested within Conlin Properties' Application.

Very truly yours,



Douglas E. Gross

Enclosure
cc: Conlin Properties

00181625

HISTORIC PRESERVATION COMMISSION
CITY OF DES MOINES
CERTIFICATE OF APPROPRIATENESS
In the Following Matter

This Certificate of Appropriateness is valid for one year from the meeting date

REQUEST FROM:	:	CASE NUMBER: 20-2012-5.14
	:	
CONLIN PROPERTIES	:	
	:	
PROPERTY LOCATION:	:	MEETING DATE: NOVEMBER 30, 2011
	:	
826 18TH STREET	:	

This Decision of the Historic Preservation Commission does not constitute approval of any construction. All necessary permits must be obtained before any construction is commenced upon the Property. A Certificate of Occupancy must be obtained before any structure is occupied or re-occupied after a change of use.

SUBJECT OF THE REQUEST:

Replacement of 10 first floor windows.

FINDING OF THE HISTORIC PRESERVATION COMMISSION:

Granting the application as presented subject to the conditions below would be in harmony with the historic character of the neighborhood and would meet the requirements set out in the Historic District Ordinance, the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and the City of Des Moines' Standard Specifications.

CONDITIONS:

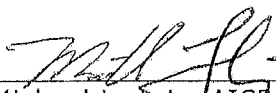
1. The windows shall be constructed of wood with no metal cladding.
2. The windows shall be of the same general style, shape and dimensions as the existing windows.
3. Review and approval of the selected window product by staff prior to installation.




VOTE: A vote of 8-0-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Barry	X			
Griffin	X			
Holderness	X			
Estes				X
Fenton	X			
Marchand	X			
Shaw	X			
Taenzer	X			
Weidmaier	X			

Approved as to form:



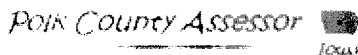
Michael Ludwig, AICP
Planning Administrator



Phil Delafield
Community Development Director

Date Filed: 12/5/11

Filed By: JV

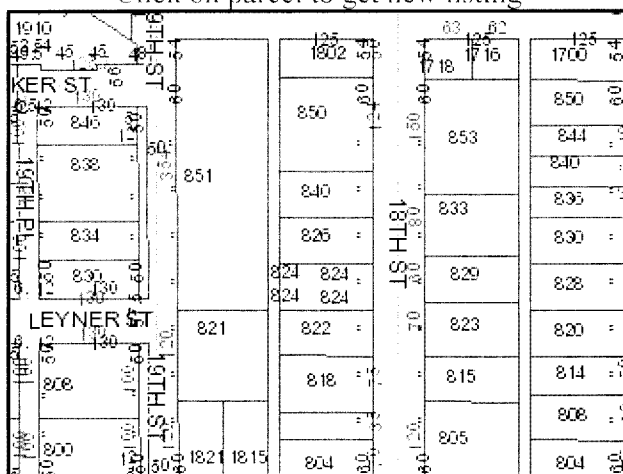


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District/Parcel	GeoParcel	Map	Nbhd	Jurisdiction	Status
030/00392-000-000	7824-05-269-008	0034	DM88/Z	DES MOINES	ACTIVE
School District	Tax Increment Finance District	Bond/Fire/Sewer/Cemetery			
1/Des Moines		Bond=Sherman Hill Historical Street Light 2			
Street Address			City State Zipcode		
826 18TH ST			DES MOINES IA 50314		

Click on parcel to get new listing

[Get Bigger Map](#)
[Google Map](#)



Approximate date of photo
01/13/2004

Mailing Address
REGENCY MANAGEMENT JAMES C CONLIN 319 7TH ST STE 300 DES MOINES, IA 50309-3819

Legal Description
LOT 87 T E BROWNS ADD

Ownership	Name	Recorded	Book/Page	RevStamps
Title Holder #1	CONLIN, JAMES C	1989-12-12	6182/585	