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Date March 12, 2012

RESOLUTION AFFIRMING THE DECISION OF THE HISTORIC PRESERVATION COMMISSION TO CONDITIONALLY APPROVE A CERTIFICATE OF APPROPRIATENESS FOR THE REPLACEMENT OF TEN WINDOWS IN THE MULTIPLE-FAMILY DWELLING 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 for the replacement of ten first floor windows in the multiple-family dwelling at 826 18th Street, subject to the following 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.

WHEREAS, pursuant to §58-31(f) of the Des Moines Municipal Code, Conlin Properties has appealed the conditions imposed by the Historic Preservation Commission and seeks to be allowed to use vinyl windows of the type that have already been installed in 5 of the windows to be replaced; and

WHEREAS, on January 23, 2012, by Roll Call No. 12-0084, it was duly resolved by the City Council that the appeal be set down for hearing on February 13, 2012, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register on January 26, 2012, and a copy of the notice was provided to the attorney for Conlin Properties; and,

WHEREAS, on February 13, 2012, by Roll Call No. 12-0239, the City Council continued the public hearing until March 12, 2012, at 5:00 p.m., at the request of Conlin Properties; and,

WHEREAS, in accordance with the said 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)



Date March 12, 2012

2. The City Council hereby finds that the decision of the Historic Preservation Commission approving a Certificate of Appropriateness for the replacement of ten windows in the multiple-family dwelling at 826 18th Street is not arbitrary or capricious and should be upheld.
3. The City Council hereby finds that the decision of the Historic Preservation Commission to require the replacement windows to satisfy the three conditions identified above was NOT patently arbitrary or capricious for the following reasons:
 - a) The conditions of approval are consistent with the *Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts* and are consistent with past actions of the Commission for both investor-owned and owner-occupied properties.
 - b) The guidelines state that "any replacement windows should duplicate the original window in type, size and material." Design guidelines by nature eliminate some design and material options that may be lower in cost.
 - c) Although the City has ordered the repair or replacement of portions of the windows in question, that order did not excuse the applicant from repairing or replacing the windows in a manner that conforms with the requirements of Article II - Historic Districts, in Chapter 58 - Historical Preservation, in the City Code and the guidelines identified above.

(Council Communication No. 12-)

MOVED by _____ to adopt, and affirm the decision of the Historic Preservation Commission.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED	APPROVED			

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.

Mayor

City Clerk

37A

March 6, 2012

Via email delivery

Honorable Frank Cownie
Des Moines City Council Members
Historic Municipal Building
400 Robert D. Ray Drive
Des Moines, IA 50309

**RE: APPEAL FROM DECEMBER 5, 2011 HISTORIC PRESERVATION
COMMISSION RULING CERTIFICATE OF APPROPRIATENESS;
CASE NUMBER 20-2012-5.14**

Dear Mayor Cownie and Members of the Des Moines City Council:

I write in support of the action taken by the Des Moines Historic Preservation Commission related to their request to make Conlin Properties install appropriate replacement windows in their property located at 826 18th Street.

I am the person who informed the City Staff of what appeared to be work on a neighboring house and did not believe the owner had received a Certificate of Appropriateness. The action I observed was the replacement of existing windows. At that time, I was not aware the replacement windows were vinyl.

I support the action of the Historic District Commission for two reasons.

One, the Commission was exercising their responsibility as directed in Municipal Ordinance 58.30 (e)(2) which states the following:

“The commission shall adopt the rules and regulations necessary to carry out its powers, duties and responsibilities. These shall include the adoption of the 1983 or later revised edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the establishment of additional design guidelines, standards and criteria for reviewing and approving applications for certificates of appropriateness, pursuant to section 58-31 of this article, provided that all such design guidelines, standards and criteria shall be approved by the city council and shall be copied and made available to property owners within each historic district.”

The Secretary of the Interior's Standards for Rehabilitation states the following:

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.”

The Commission acted appropriately and accurately in this matter.

Two, *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* provides direction in retaining existing windows and evaluating proposed replacement windows.

Recommended rehabilitation of existing window state:

“Identifying, retaining, and preserving windows – and their functional and decorative features – that are important in defining the overall historic character of the building. Such features can include frames, sash, muntin, glazing, sills, heads, hoodmolds, paneled or decorative jambs and moldings, and interior shutters or blinds.”

Not Recommended replacement windows state:

“Changing the historic appearance of windows through the use of inappropriate designs, materials, finishes, or colors which radically change the sash, depth of reveal, and muntin configuration; the reflectivity and color of the glazing; or the appearance of the frame.”

Further, the Guidelines provide direction for evaluating new work as it relates to the adjoining historic neighborhood. They state the following:

Not Recommended:

“...New work should be compatible with the historic character of the district or neighborhood in terms of size, scale, design, material, color, and texture.”

This means introducing non-historically appropriate material such as vinyl replacement windows on the primary façade of structures within a historic district is not a good idea.

My support of the action taken by the Historic District Commission is based on the fact the Commission acted appropriately and my opinion the installation of vinyl replacement windows is not appropriate in a historic district such as the Sherman Hill Historic District. I ask the Mayor and Members of the Des Moines City Council to deny the appeal of Conlin Properties and to direct Conlin Properties to work with city staff and Commission members to evaluate whether the existing windows can be repaired, if not repairable, to assist with selecting appropriate wood replacement windows that meet *The Secretary of the Interior's Standards for Rehabilitation*.

I thank you for your consideration.

Sincerely,



Jack C. Porter
815 18th Street
Des Moines, IA 50314



BrownWinick
ATTORNEYS AT LAW®

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

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

37A?

December 16, 2011

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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

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
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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

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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.

Exhibit 1

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, ATCP
Planning Administrator



Phil Delafield
Community Development Director

Date Filed: 12/5/11

Filed By: JV

