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**Date** September 24, 2012

**RESOLUTION REVERSING IN PART 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 appealed the conditions imposed by the Historic Preservation Commission and sought 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 April 23, 2012, after public notice and hearing, the City Council referred the matter back to the Historic Preservation Commission to review new information presented by Conlin Properties; and,

WHEREAS, on May 16, 2012, the Historic Preservation Commission reaffirmed its prior decision and conditionally approved the application for a Certificate of Appropriateness upon the same three conditions identified above; and,

WHEREAS, pursuant to §58-31(f) of the Des Moines Municipal Code, Conlin Properties has again appealed the conditions imposed by the Historic Preservation Commission; and

WHEREAS, on April 23, 2012, by Roll Call No. 12-0629, it was duly resolved by the City Council that the appeal be set down for hearing on July 9, 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 June 29, 2012, and a copy of the notice was provided to the attorney for Conlin Properties; and,

WHEREAS, on July 9, 2012, by Roll Call No. 12-1123, the City Council continued the hearing until September 10, 2012, at 5:00 p.m., and referred to the City Manager and Historic District commission to review the requirements and appropriateness of the materials; and,

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WHEREAS, On September 10, 2012, by Roll Call No. 12-1453, the City Council continued the hearing until September 24, 2012, at 5:00 p.m., and directed the City Manager to

( continued )

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report on the 10-year history of tax values in the Sherman Hill area; to work with Jack Porter to provide information on how vinyl windows are used across the country; and, to receive information from Mr. Conlin regarding wood-grain vinyl products; 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.
2. The portion of the decision of the Historic Preservation Commission requiring that the replacement windows satisfy the three conditions identified above is hereby reversed. A Certificate of Appropriateness is hereby granted for the replacement of the ten windows in the multiple-family dwelling with the vinyl windows, as more specifically described in the application.
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 patently arbitrary or capricious for the following reasons:
  - a) The replacement of the windows in question was initiated by the applicant in response to a Section 8 Housing Inspection Summary Report issued by the Des Moines Municipal Housing Authority for an inspection of the property that occurred on September 7, 2011. That report ordered the repair/replacement of portions of a number of the first floor windows.
  - b) The windows to be replaced are non-original windows that are located in an addition to the structure constructed sometime between 1920 and 1957, and do not have any historical, architectural or cultural value.
  - c) The original home was converted into a multiple-family dwelling and substantially altered sometime prior to 1957, and currently has steel siding.
  - d) Replacing the ten windows with wood windows would cost over \$12,000, nearly twice the \$6,275.74 cost of the more secure, energy efficient windows that Conlin Properties seeks to install.

★ **Roll Call Number**

**Agenda Item Number**

34B

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**Date** September 24, 2012

( Council Communication No. 12- **505** )

MOVED by \_\_\_\_\_ to adopt, and reverse in part the decision of the Historic Preservation Commission as identified above.

FORM APPROVED:

Roger K. Brown  
 Roger K. Brown  
 Assistant City Attorney  
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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