

Case No. CA223-182(RD)

NEW VISION PROPERTIES & LAND	§	
and HEDGESTONE INVESTMENTS	§	
LLC	§	In re 208 Landis Street
Appellants,	§	
	§	
vs.	§	
	§	Appeal to the City Plan Commission
LANDMARK COMMISSION,	§	
Appellee.	§	

BRIEF IN SUPPORT OF THE LANDMARK COMMISSION

TO THE HONORABLE COMMISSIONERS OF THE CITY PLAN COMMISSION:

Now comes the City of Dallas Landmark Commission (“Landmark”) and submits this brief in support of Landmark’s decision to deny without prejudice at its February 6, 2023 meeting the application for a certificate of appropriateness for 208 Landis Street, Case No. CA223-182(RD).

A. Facts and Background

The purpose of the historic district preservation program is to protect, enhance, and perpetuate places that represent distinctive and important elements of the City of Dallas’s historical and architectural history, and to preserve diverse architectural styles, patterns of development, and design preferences reflecting phases of the City of Dallas’s history. Dallas, Tex., Code § 51A-4.501(a). To advance this purpose, all members of Landmark are required to have “demonstrated experience in historic preservation and outstanding interest in the historic traditions of the city and have knowledge and demonstrated experience in the fields of history, art, architecture, architectural history, urban history, city planning, urban design, historic real estate development, or historic preservation.” *Id.* § 51A-3.103(a)(1).

208 Landis Street is a vacant lot in the Tenth Street Historic District. (*See* Am. Record § 3, p. 10.)¹ Because there is not currently a structure on the lot, it is identified as non-contributing to the Tenth Street Historic District. (*Id.*) Appellants filed an application for a certificate of appropriateness to construct a new primary residential building on the vacant lot. (*Id.* § 2, p. 7.) Staff recommended approval with extensive conditions, and the task force also recommended approval with conditions. (*Id.*) Following the task force meeting, Appellants submitted revised plans addressing some but not all of the recommended conditions. (*Id.* § 2, pp. 7-8.)

Landmark heard this matter at its February 6, 2023 meeting. (*Id.* § 4, pp. 44-45.) Despite receiving notice from staff that “strongly encouraged” applicants to attend the meeting (*id.* § 7, p. 113), no representative for Appellants attended the meeting (*id.* § 4, p. 45). At the meeting, Commissioner Swann moved to deny the application without prejudice. (*Id.* §§ 4, 5, pp. 45, 59-60.) Commissioner Swann then explained several issues as to the compatibility of the proposed structure with the Tenth Street Historic District, including the foundation and the design of the porch. (*Id.* § 5, pp. 61-76.) Although Commissioner Swann and others noted that the design was close to being compatible with the district, they felt that it was “not quite there.” (*Id.* § 5, pp. 61, 78.) The motion to deny without prejudice was approved unanimously. (*Id.* § 4, p. 45.) Appellants filed a timely appeal to this Commission. (*Id.* § 7, p. 117.)

B. The Standard of Review for the City Plan Commission

In an appeal from Landmark, the City Plan Commission (“CPC”) “shall give deference to the landmark commission and may not substitute its judgment for the landmark commission’s judgment” and must affirm unless the CPC finds that the decision:

- (A) violates a statutory or ordinance provision;
- (B) exceeds the landmark commission’s authority; or

¹ All Record references are to the section number and the page number in the pdf copy of the Record.

(C) was not reasonably supported by substantial evidence considering the evidence in the record.

Dallas, Tex., Code § 51A-4.501(o). The substantial evidence review is very limited in that it requires only more than a mere scintilla of the evidence to support the decision. Thus, even if a preponderance of the evidence in the record may actually be contrary to the decision, the remaining evidence may nonetheless amount to substantial evidence. *City of Dallas v. Stewart*, 361 S.W.3d 562, 566 (Tex. 2012).

Because the vacant lot is non-contributing to the Tenth Street Historic District, Landmark was required to grant the application if it determined that “the proposed work is compatible with the historic overlay district.” Dallas, Tex., Code § 51A-4.501(g)(6)(C)(ii). Appellants had the burden of proof to establish the necessary facts to warrant a favorable action. *Id.* § 51A-4.501(g)(6)(B).

C. Argument

The record in this case is clear, and there is more than a scintilla of evidence to support the decision. Although staff and the task force recommended approval, both recommended numerous conditions in connection with that approval. (Record § 2, p. 7.) Rather than placing extensive conditions on the approval, Landmark instead chose to deny without prejudice while encouraging Appellants to come back with a revised design. (*See, e.g., id.* § 5, pp. 57-58, 61, 78.) That decision is clearly within Landmark’s authority. Commissioner Swann and others set out in detail on the record why the proposed design was not compatible with the Tenth Street Historic District, laying out a blueprint for Appellant to move forward at Landmark. (*See id.* § 5, pp. 61-77.) Appellant, on the other hand, despite having the burden of proof, did not appear at the Landmark hearing and, therefore, did not offer any response whatsoever to the changes Commissioner Swann and others proposed or any evidence to establish that the changes were not needed to make the proposed

structure compatible with the historic district. Nothing on the record establishes that Landmark's decision to deny without prejudice Appellants' application for a certificate of appropriateness violated a statutory or ordinance provision or exceeded Landmark's authority. Furthermore, given the detailed evidence on the record explaining why the proposed design was not compatible with the historic overlay district and the lack of any responsive evidence from Appellants despite the fact that they bore the burden of proof to establish compatibility before Landmark, Appellants also cannot establish here that the decision was reasonably supported by substantial evidence considering the evidence in the record.

D. Conclusion

The evidence on the record supports the decision of Landmark as to the denial without prejudice of the certificate of appropriateness to construct a new primary residential building under the substantial evidence standard of review applicable here, and there is no evidence that Landmark violated a statutory or ordinance provision or exceeded its authority. Therefore, this Commission should affirm Landmark's decision to deny without prejudice the certificate of appropriateness.

Respectfully submitted,

CITY ATTORNEY OF THE CITY OF DALLAS
Tammy L. Palomino, Interim City Attorney

/s/ Kathleen M. Fones

Kathleen M. Fones
Assistant City Attorney
Texas State Bar No. 24050611
kathleen.fones@dallas.gov

7DN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
Telephone: 214-670-3519
Facsimile: 214-670-0622

ATTORNEY FOR LANDMARK COMMISSION