



January 31, 2016

RE: HB 5232 and SB 720 HISTORIC DISTRICTS MODERNIZATION BILLS

Note: This document may be subject to revision

Historic Preservation has been a driving force in Grand Rapids' economic revitalization. Without PA 169, the Local Historic Districts Act, two-thirds of the Heritage Hill Historic District would have been replaced with surface parking lots and institutional development. The Heartside neighborhood in Downtown would have met the same fate. These districts withstood the Great Recession with minimal losses in value and have continually been viewed as the most desired and beloved places in Grand Rapids. Historic Districts protect property values and assure a return on investment. Grand Rapids has seen residential and commercial neighborhoods rebound from severely depressed areas to vibrant, active neighborhoods that once again contribute to the vitality and overall health of our city because of Preservation.

The City of Grand Rapids and Grand Rapids Historic Preservation Commission would like to express concerns and suggestions regarding the proposed amendments to PA 169, Local Historic Districts Act contained in HB 5232 and SB 720.

1) Definitions

Concern - "Authority" is used in place of "department" and review board in some instances. The Authority is MSHDA, the State Historic Preservation Office is the Department, and the Review Board serves in an advisory and quasi-judicial function. Replacement of text to Authority rather than an assignment to the department or review board will cause confusion because the function of these bodies is not always interchangeable.

Support/Suggestion – The existing definition of "department" is insufficient and should be adjusted. Most uses of "department" suggest that approval is needed from that body as it relates to guidelines and criteria. Decisions are locally made, with recommendations and input from the State Historic Preservation Office received by local units. A definition for Review Board could be added.

2) Page 5, part (A), lines 2-7

Concern – It is common for a single owner or LLC to own a large number of properties in any given area, particularly in urban communities. A defined number, such as 2/3rds, of property owners consenting within the proposed district is problematic for this reason. Deferring entirely to one owner or small number of owners that have large land holdings rather than

resting decision-making with elected officials as representatives of community interests and impacted neighbors disempowers the community good and can adversely affect the property rights and values of non-majority land owners. Consider:

- Important community resources that contribute to the character and values of the community could be readily lost.
- The owner/LLC may be the cause for a failing/troubled neighborhood due to disinvestment; failure to maintain assets results in financial loss for all property owners in the area.
- The ability of neighbors to improve their neighborhood is negated by allowing a large land owner to determine the fate of their community as there is no confidence that property values will increase and investments will be protected.

The current process allows the local unit of government to review each particular situation individually to determine what is appropriate, making sure all voices are fairly considered. The opportunity is at least provided to protect a property, feature, object, etc., and thus protect what citizens cherish and find so important to their community. It is important to note that in most cases local units of government typically do not designate individual properties without owner consent and likewise do not designate districts without the strong support of affected property owners.

3) Page 5, part (B), lines 14-18

Suggestion – It is a very good idea to have an elected member on the study committee. We also believe that it is not necessary for the committee to have a majority of its members with a demonstrated interest in preservation. In fact, we believe that a diversity of opinions results in better decisions. A combination of individuals with a broad range of interests would create a balance that should be able to give due attention to all concerns. We recommend that at least one or two members (beyond the local preservation organization) with a background or interest in preservation or history be assigned for the simple fact that a legally appropriate study report must be produced. Modification of the proposed text language would be beneficial.

4) Page 5, part (B) (i), lines 21-22

Suggestion – The NPS is a helpful tool to follow but it should be a guide not a requirement. The following language is recommended: “Conduct a photographic inventory of resources within each proposed historic district using the procedures established by the National Park Service as a guide.”

5) Page 6, part (F) (v), line 22

Suggestion – The Review Board should continue to be included. The Review Board has no authority over local historic district designations; they operate only on an advisory basis for designation. There is no benefit in removing the Review Board but there is a benefit to the study committee to retain them in the process. The Review Board is highly versed in the Secretary of the Interior criteria and can be an invaluable asset for recommendations as it relates to the study report content and similar efforts.

6) Page 7 & 8, part (D) (ii) to (D) (iii), lines 22-27 and 1-5

Concern - Requiring a vote by electors in the local unit of government at the next regular election is highly problematic as it disempowers decision-making at the most local level. This provision requires people with no direct, or even indirect, interest in a neighborhood to determine the neighborhood's fate. The creation of a historic district directly impacts specific properties within specific bounds. The elected officials of the local unit are able to take into account the desires and concerns of the directly affected owners, and the goals and needs of the area. Parties not affected by the decision and who may object simply based on philosophical reasons could determine the future of a disinvested neighborhood, potentially increasing community inequities and deterring private investment. Further, there may be no other items on the "next" regular election and a local community would incur the cost of a citywide election for a small geographic area.

7) Page 9 & 10, part (2), lines 20-27 and 1-5

Concern – The desire to remove the appeals process from the jurisdiction of the Michigan Historic Preservation Review Board and instead placing it within local unit of government is understandable, however, there are complications with this approach. There are very few appeals of local historic commission decisions. Therefore, if a local body were to be responsible for hearing appeals then the question arises about how best to find individuals with sufficient expertise to make an educated decision about the appeal.

Current practice is that an appeal is heard by a judicial hearing officer, a person who is not a preservationist, but a non-biased third party. The hearing officer looks at the appeal based on legal processes and how the HPC/HDC used the guidelines, etc. This officer then creates a findings that are sent to the Review Board and opposing sides are allowed to comment on. The Review Board serves a quasi-judicial function as a collection of State-appointed individuals with backgrounds in history and historic preservation; the broader composition of the Board assists in removing political or neighbor pressures and to look at each case based on its merits - ensuring a fair and equal review based on the law. If an appellant does not support the findings of the Board, an appeal can be taken to Circuit Court. There is no fee for the current appeals process.

The newly proposed system would move all appeals at the local body, placing a burden on elected officials and staff. As a general matter, quasi-judicial functions do not normally rest with the legislative body; this is why bodies such as the Board of Zoning Appeals or Housing Appeals Board exist. Such a change would result in the elected body being required to hear all testimony, public input, etc. Given that the role of the legislative body is to make the rules, having it hear an appeal of a rule seems counter to the desire for an unbiased and transparent process.

Suggestion – Time has shown that the current system works well and should be retained. If this is not palatable, then appeals of Historic Preservation Commission (HPC) decisions should be treated similarly to a local Board of Zoning Appeals (BZA). Given that very few appeals are filed, it may be appropriate to assign such a function to a local BZA. Additional recourse for

an appellant would then be to go to Circuit Court. We believe that the current system is far more owner-friendly and unbiased through the use of an outside third party (Hearing Officer, Review Board, and Circuit Court), however, if it is desired that all decision-making be held at the local level this would be an option. It should also be noted that an HPC does have the ability to grant waivers of local ordinance through the use of "Notice to Proceed". A better refinement of this system may also provide some flexibility.

- 8) Page 10, part (3), line 13-14; and
Page 10, part (3), line 19

Concern - How an administrative body applies the standards of an ordinance can be the most important question to ask relative to decision-making. The language proposed in this section: "unless the Commission finds that a different standard is in the best interest of the community" is very vague and leaves far too much room to insure consistent administrative reliability or defensible decision-making within a community – let alone across all communities in the State of Michigan. How does a Commission determine the "best interest of the community"? Interestingly, this standard could override other proposed language that seeks to favor individual property owners.

Existing language already makes an allowance for decisions that do not comply with the Secretary of Standards and local guidelines through the issuance of a Notice to Proceed. This element enables Commissioners to approve requests that do not meet the standards and can be based on a number of considerations including community needs. As this ability already exists, in a defined process, it does not appear that such a change is beneficial or necessary as it would only serve to muddy the waters of discussion and the legalities of defensible decision making.

Suggestion – If additional guidelines for decision-making are desired, a listing of those expectations should be defined in the proposed bill to allow for greater definition and clarity. The additional language could be added on page 11 as part a new (3)(f) so that it can become an element of discussion.

- 9) Page 10, part (3), lines 16-18

Concern – This section does not need to be deleted. It provides helpful guidance for drafting documents and insures that decisions are not driven by individual interests but are based in fact due to the unique character of each particular neighborhood. Having it meet the standards does not prevent the guidelines from addressing the specific character and needs of each individual district.

- 10) Page 11, part (d), lines 2-4

Concern –The "reasonableness of additional costs" is similar to the concerns raised for "best interest" on the prior page. The SHPO provides guidance documents on Economic Hardship, Feasibility and related standards to define economic feasibility and economic hardship in restoration to be applied at the local level. Many communities have adopted sections in local ordinances that include some form of economic hardship/relief as a consideration. Many do

so in a manner that would allow an applicant to request a project that does not typically meet historic standards. In such a scenario, the applicant would provide evidence that a hardship exists thus allowing the HPC to make a determination based on evidence and facts. These guidelines make it possible for the HPC to clearly explain and justify to citizens that may have concerns that their decision had merit and legal foundation. It also insures transparency in the process as property owners know that their interests are treated equally.

Suggestion – Local jurisdictions currently have the authority to include economic hardship clauses in their Historic Preservation Ordinances. The existing legal language provided in SHPO’s guidance documents on Economic Hardship (authored by Cosanici/Bozen) could be incorporated into the bill as a required element of local ordinances to insure that such an accommodation is uniformly applied in all communities. A requirement could also be added to the bill that requires the adoption of local guidelines pertaining to alternate materials.

11) Page 11, part (4), line 15

Concern - This section does not need to be removed. This provision can be used for a tax credit easement program that a home owner might seek. It is applied only at the request of the property owner, and most commonly is used by publicly-owned or institutionally held properties (resources such as Frank Lloyd Wright’s Meyer May House or Grand Rapids Public Museum’s Voigt House) where interiors are integral to the historic character of the structure, and the community and owners seek to protect and preserve them.

Suggestion - A caveat that requires owner consent to protect an interior space that does not affect the exterior could be added; this would still allow those desiring such protection to obtain it.

12) Page 13, part (11), line 23

Concern – This modification adds additional obstacles and red tape to the process. Demolition by Neglect is a tool that is often sought to correct or address a hazardous condition/blighted property when the owner is unable or unwilling to comply with ordinances and Code Compliance efforts have been exhausted. In Grand Rapids, Demolition by Neglect is typically requested of the Historic Preservation Commission by a combined effort of Code Compliance and a Neighborhood Association when all other attempts have failed. The legislative body must approve any expenditures to remedy the issue after a judgement has been given by a court of law; this is the final step, not the first, in the commencement of the action. Placing legislative approval at the beginning of the process that typically is remedied through court is an unnecessary additional requirement.

13) Page 15, line 10

Concern - As stated before, the Review Board should remain.

14) Page 16, lines 6-20

Support/Suggestion – Requiring a petition from owners for requests to establish an additional, or modify an existing, district is a good idea. A petition will insure that the owners

are aware of the request and will provide vital information to the committee and local unit of government. The petition should not be construed as a formal vote.

15) Page 16, lines 21-22

Suggestion – Change “may” to “must” as it relates to appointing a study committee for requests to eliminate a historic district. As it reads, the legislative body would have the ability to eliminate a district without research, public input, or a study committee. This would be inappropriate and contrary to government goals of transparency, accountability, and public participation.

16) Page 17, lines 1-3 and part (2), lines 9-19

Concern - The legislative body would have the ability to eliminate a district without research, public input, or a study committee. This would be inappropriate and contrary to government goals of transparency, accountability, and public participation. The process as described in part (2) should remain in the Act. Current wording provides a fair and easily utilized set of parameters that can be interpreted for a variety of situations and issues and gives a legal and justifiable bases for eliminating a district.

17) Page 18 & 19, part (4), lines 17-27 and 1-7

Concern – This provision would require that all historic districts be dissolved 10 years after the bill is enacted, unless a popular vote at the election immediately preceding the district’s dissolution is approved as a renewal, and renewals are required thereafter every 10 years otherwise be dissolved. This provision will have the effect of eliminating all historic districts within the State of Michigan. Expenditures of time, labor and money that would be required of both the City and its citizens every decade would be prohibitive. Further, there may be no other items on the “next” regular election and a local community would incur the cost of a citywide election for a small geographic area.

The severe chilling effect on property values, new investment, and redevelopment in historic districts would be immediate given that owners would have no confidence in the regulatory climate and the protections afforded by a designation.

Historic designation has been used as an incentive within our community for decades to spur economic development, and has produced strong results in the form of revitalized neighborhoods and business districts. Removing that security will directly and negatively impact developers’ and private owners’ decision to invest; and as a result will contribute to the destabilization of designated areas. Property values are higher in historic districts. The removal of district designation will impair, not protect, property values and investment dollars for private owners and investors. The uncertainty created by a 10-year expiration of a district may also impair the ability to impair federal tax credits assigned to structures; additional time will be needed to better understand this impact.

Conclusion

The City of Grand Rapids Planning Department and Historic Preservation Commission looks forward to working cooperatively with legislators on HB 5232 and SB 720 to modify PA 169 Local Historic Districts. We feel that there is an opportunity to improve the legislation as it currently exists to provide greater consistency and predictability across the State of Michigan for property owners. In addition to suggestions provided on preceding pages, areas for discussion may include:

- Appointment of a State Board to research and authorize approved alternate building materials in historic districts to provide guidance to local units.
- Creation of more defined standards that can be applied to Notice to Proceed practices for guidance on unique circumstances that merit flexibility.
- Require disclosure at point of sale and/or in real estate listings so that buyers are fully informed that the property is located in a historic district.

Other opportunities may be revealed as dialogue progresses. Public input and hearings are strongly encouraged to enrich the proposed bills. Grand Rapidians are passionate about our past because preservation has contributed to the creation of vibrant, stable neighborhoods that are experiencing economic prosperity. The proposed legislation threatens to impact property values, erode investment confidence, allow for arbitrary decision-making, and establish practices that are less transparent to the public.