

Case No. CA234-395 (CM)

**MONICA SAMSON –
RUMBA HOLDINGS, LLC,**
Appellant,

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In re 6205 La Vista Drive

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 Commission”) and submits this brief in support of the Commission’s decision to deny without prejudice Appellant’s application for a certificate of appropriateness (“CA”).

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 City Code § 51A-4.501(a). To advance this purpose, all members of the Landmark Commission 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).

The structure at issue is a contributing structure in the Swiss Avenue Historic District. (*See* Record § 3). On May 23, 2024, Appellant filed an application for a certificate of appropriateness (“CA”) seeking to “replace [the] existing slate shingle roof with DaVinci Province Synthetic Slate in the color ‘Vineyard’.” *Id.*

Both Staff and the Task Force recommended that the Landmark Commission deny the request without prejudice. *Id.* Staff based its recommendation on its position that “the proposed work is inconsistent with the standards in City Code Section 51A-4.501(g)(6)(C)(i) for contributing structures; and the Secretary of the Interior’s Standards for Rehabilitation.” *Id.* §§ 3, 4. Likewise, the Task Force members voted 5-0 to recommend denial without prejudice because they believed the vinyl, synthetic slate requested by Appellant is “not typical of the style and period of the home.” *Id.* §3.

The Landmark Commission heard this matter at its July 1, 2024 meeting. *Id.* Appellant, Monica Samson, and her roofing contractor, Anthony Joseph, spoke in support of the CA request and presented evidence that the existing slate roof was old and damaged. *Id.* § 5. Ms. Samson also indicated that she has tried to replace the damaged slate, but “the manufacturer in China no longer exists,” so she cannot source the same slate. *Id.* § 5, p. 3: 20-22. Mr. Joseph shared his opinion that synthetic slate is a superior building material because it can withstand hailstorms better than slate, and he argued that the requested material is safer, due to the tendency of damaged slate shingles to fall off the roof. *Id.* § 5, pp. 4: 17-25; 5: 4-5. Mr. Joseph also stated that another house nearby, located at 6223 La Vista Drive, has a Da Vinci synthetic slate roof. *Id.* § 5, p. 4: 23-24. Later, in response to a question by Commissioner Cox, Mr. Joseph indicated that despite the original slate from China being discontinued, he could source a comparable slate material from another manufacturer in the United States. *Id.* §5, p. 6: 7-9. After a discussion of these points,

Commissioner Reaves moved to deny Appellant’s request for a CA without prejudice, and the motion was approved by a vote of 9 to 6. *Id.* § 5, p. 21. Appellant filed a timely appeal to the City Plan Commission (“CPC”) on July 23, 2024. *Id.* § 7.

B. The Standard of Review for the CPC

On appeal to the CPC, the 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
- (C) was not reasonably supported by substantial evidence considering the evidence in the record.

Dallas City Code § 51A-4.501(o). 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 structure is a contributing structure in the Swiss Avenue Historic District, the Landmark Commission was required to grant the application if it determined that:

- (1) “the proposed work is consistent with the regulations contained in this section and the preservation criteria contained in the historic overlay district ordinance;
- (2) “the proposed work will not have an adverse effect on the architectural features of the structure;”
- (3) “the proposed work will not have an adverse effect on the historic overlay district;” and
- (4) “the proposed work will not have an adverse effect on the future preservation, maintenance and use of the structure or the historic overlay district.”

Dallas City Code § 51A-4.501(g)(6)(C)(i). The historic overlay ordinance for the Swiss Avenue Historic District provides in pertinent part that “roof materials and colors must complement the

style and overall color scheme of the building . . .” *Id.* § 51P-63.116(1)(N)(ii). At the Landmark Commission hearing on this CA request, Appellant 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. The Landmark Commission’s decision to deny the request without prejudice was consistent with Staff’s recommendation and the reasoning for the Landmark Commission’s decision is clear from the record. Moreover, the evidence in the record from Appellant is insufficient to meet Appellant’s burden of proof.

Staff recommended denial of Appellant’s request without prejudice because “the proposed work is inconsistent with the standards in City Code Section 51A-4.501(g)(C)(i) for contributing structures; and the Secretary of the Interior’s Standards for Rehabilitation.” Record § 2. The Task Force also unanimously recommended denial without prejudice, expressing the concern that the requested synthetic materials “are not typical of the style and period of the home,” and stating that “the existing slate should be replaced with natural slate rather than synthetic slate.” *Id.* §3.

The Landmark Commission was guided by these recommendations from staff, which provided a reasonable basis for its decision. During the hearing, Senior Planner, Christina Mankowski, spoke on behalf of City Staff and reiterated the Staff and Task Force position that per the Secretary of Interior’s Standards for Rehabilitation, it is best to “replace in kind, like for like,” wherever possible. *Id.* § 5, p. 10: 22-25. Ms. Mankowski went on to suggest that due to the color variation of this particular roof, much of the existing slate roof tiles could be preserved, reinstalled, and blended seamlessly with new replacement tiles. *Id.* § 5, p. 8: 10-15. Chair Montgomery echoed these sentiments later, stating, “I’ll say that normally I do not like artificial materials replacing

original material . . .” *id.* § 5, p. 26: 4-6, and ultimately supporting the motion to deny Appellant’s request because she was not convinced that “this existing beautiful slate couldn’t be reused.” *Id.* § 5, p. 27: 7-8.

In addition, Appellant did not provide sufficient evidence to “establish the necessary facts to warrant a favorable action” by the Commission. Appellant argued that replacing the slate roof with a synthetic material was preferable to natural slate due to its durability and the difficulty in sourcing matching slate. *Id.* § 5, pp. 3-4. However, the Commissioners pushed back on both points. First, the Commissioners noted that when properly installed, slate is safe and durable, withstanding all but the worst hailstorms. *Id.* § 5, p. 18: 11-17. And second, when questioned by Commissioner Cox, Appellant’s roofing contractor conceded that slate roofing is readily available in matching colors, so the fact that the old slate has been discontinued would not prevent natural slate from being installed. *Id.* § 5, p. 6: 7-9.

More importantly, these concerns do not go to the standard here, which is to prove that the proposed work is compatible with the historic district. The durability of slate versus vinyl and the inability to source the exact same slate that was previously installed are not relevant to that inquiry. As discussed above, Appellant’s roofing contractor has admitted that it would be feasible to replace the existing slate with a closely matching natural slate, but simply prefers the synthetic option due to its durability and lighter weight. Notably, the Commissioners were not convinced that the proposed work was necessary or that the appearance of the synthetic material would match that of authentic slate, particularly after being exposed to the elements. *See id.* § 5, pp. 15: 12-13; 16: 3-5 (“we know what slate looks like after two or 300 years on a house . . . but nobody really knows what’s going to happen in the Texas sun with this product.”). Ultimately, in voting to deny without

prejudice, the Commissioners agreed with Staff that installing synthetic vinyl slate would have an adverse effect on the historic district. *Id.* § 3.

The evidence in the record supports the decision of the Landmark Commission as to Appellant's request and certainly meets the substantial evidence standard of review for CPC. Additionally, it is clear from the record that Appellant did not meet its burden to establish that the proposed work is compatible with the Swiss Avenue Historic District. Moreover, there is no evidence of any violation of a statutory or ordinance provision or that the Commission exceeded its authority in denying the requests without prejudice.

D. Conclusion

Because the Landmark Commission did not violate a statutory or ordinance provision, did not exceed its authority, and its decision is reasonably supported by substantial evidence in the record, the City Plan Commission must affirm the decision of the Landmark Commission. Even if the City Plan Commission could have conceivably come to a different conclusion, the City Plan Commission must give deference to the Landmark Commission's decision and the City Plan Commission may not substitute its judgment for that of the Landmark Commission. The denial without prejudice of the Certificate must be affirmed.

Respectfully submitted,

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