

**Eric Spinazzola**

Appellant,

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**In re 4716 Junius Street**

vs.

**Appeal to the City Plan Commission**

**Landmark Commission,**

Appellee.

**Brief in Support of the Landmark Commission**

**The Issue**

Whether the City Plan Commission (“CPC”), in its appellate role, in reviewing the record using the substantial evidence standard, must affirm the decision of the Landmark Commission to deny Mr. Spinazzola’s request for a certificate of appropriateness (“CA”).

**Summary**

The Landmark Commission requests that the CPC affirm its decision to deny a CA for Hardiboard on the rear facade of a main structure because Mr. Spinazzola did not meet the burden of proof necessary for the Landmark Commission to grant the CA. Mr. Spinazzola appeared before the Landmark Commission twice but failed to provide enough evidence as to how an imitation material (Hardiboard) is historically appropriate.

**Facts/History**

The historic structure at 4716 Junius Street is a contributing structure located in the Peak’s Suburban Addition Historic District.<sup>1</sup> Mr. Spinazzola removed the wood siding and replaced it with Hardiboard without a CA.<sup>2</sup> Mr. Spinazzola received a notice of violation from code compliance in July 2015 for installing Hardiboard siding on the rear and sides of the main structure.<sup>3</sup> After Mr. Spinazzola testified at the Landmark Commission public hearing, the Landmark Commission denied his request.<sup>4</sup> Mr. Spinazzola then appealed that decision to the

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<sup>1</sup> Ordinance No. 22352, Section 6 of the Record.

<sup>2</sup> April 4, 2016, Landmark Commission docket materials, Page 8: “Work completed without a certificate of appropriateness.”

<sup>3</sup> April 4, 2016, Landmark Commission docket materials, Pages 8, 9: Staff report.

<sup>4</sup> Landmark Commission Minutes for December 7, 2015; Section 4: Landmark Commission Minutes.

CPC.<sup>5</sup> CPC affirmed Landmark Commission’s decision as to the side facades, but remanded the issue as to the rear facade to the Landmark Commission for further discussion.<sup>6</sup> On April 4, 2016 Landmark Commission again denied Mr. Spinazzola’s request as to the rear facade.<sup>7</sup>

### The Legal Standard

The owner has the burden of proof to establish the necessary facts to warrant favorable action.<sup>8</sup> The City Council requires that all Landmark Commissioners have expertise in historic preservation.<sup>9</sup> Because of the expertise of the Landmark Commission, the City Council *mandates* that the CPC give deference to the Landmark Commission’s decision, therefore; the CPC, as the appellate body, may not substitute its judgment for the judgment of the Landmark Commission.<sup>10</sup> In reviewing the Landmark Commission’s decision, the CPC shall use the substantial evidence standard of review<sup>11</sup> and is required to affirm the decision of the Landmark Commission, unless it finds that the decision: “(A) violates a statutory or ordinance provision; (B) exceeds the [L]andmark [C]ommission’s authority; or (C) was not reasonably supported by substantial evidence considering the evidence in the record.”<sup>12</sup>

### Substantial Evidence Standard of Review

(a) **The Landmark Commission did not violate a statutory or ordinance provision.** The Landmark Commission followed all federal and state laws and regulations, and all ordinances, rules, and regulations of the city. Moreover, the CPC, as an appellate body, may not substitute their judgment – the ability to make considered decisions or come to sensible conclusions – for the judgment of the Landmark Commission.

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<sup>5</sup> April 4, 2016, Landmark Commission docket materials, Page 9: Staff report.

<sup>6</sup> April 4, 2016, Landmark Commission docket materials, Pages 9: Staff report.

<sup>7</sup> Landmark Commission Minutes for April 4, 2016; Section 5: Landmark Commission Minutes, Pages 62, 64, and 65 of the record.

<sup>8</sup> DALLAS DEVELOPMENT CODE § 51A-4.501(g)(6)(B).

<sup>9</sup> DALLAS DEVELOPMENT CODE § 51A-3.103(a)(1).

<sup>10</sup> DALLAS DEVELOPMENT CODE § 51A-4.501(o): “The city plan commission shall give deference to the landmark commission decision and may not substitute its judgment for the landmark commission’s judgment.”

<sup>11</sup> DALLAS DEVELOPMENT CODE § 51A-4.501(g)(6)(E).

<sup>12</sup> DALLAS DEVELOPMENT CODE § 51A-4.501(o)(2).

(b) **The Landmark Commission did not exceed its authority** by denying the CA. The Dallas Development Code specifically states that the Landmark Commission may approve, deny without prejudice, or deny with prejudice a certificate of appropriateness.<sup>13</sup>

(c) **The decision of the Landmark Commission was reasonably supported by substantial evidence in the record.** Staff's recommendation clearly states that the applicant's request does not meet the standard for approval because the proposed work is not consistent with Section 3.6 of the preservation criteria.<sup>14</sup> The Landmark Commission agreed with staff, as evidenced by their unanimous vote to deny the request per staff recommendation as read into the record.<sup>15</sup> In fact, during discussion, Commissioners Tapscott, Birrer, and Johnson specifically stated that Section 3.6 of the preservation criteria applies to all facades, including the rear facade.<sup>16</sup>

### Conclusion

The Dallas Development Code places the burden of proof on Mr. Spinazzola.<sup>17</sup> Mr. Spinazzola is required to prove that replacing the original wood siding with Hardiboard is historically appropriate. Mr. Spinazzola knowingly ignored the law, altered the property with an imitation material, and now, after being caught, is asking for forgiveness. Mr. Spinazzola testified at two separate Landmark Commission public hearings, but the Landmark Commission did not find his testimony compelling either time.

In its appellate role, the CPC must give deference to the Landmark Commission, even if the CPC may come to a different conclusion, as the CPC may not substitute its judgement for that of the Landmark Commission. Because the Landmark Commission did not violate a statutory or ordinance provision or exceed its authority, and its decision is reasonably supported by substantial evidence in the record, the CPC *must* affirm the decision of the Landmark Commission.

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<sup>13</sup> DALLAS DEVELOPMENT CODE § 51A-4.501(g)(6)(B).

<sup>14</sup> April 4, 2016, Landmark Commission docket materials, Page 6 of the record: Staff report.

<sup>15</sup> Landmark Commission Minutes for April 4, 2016; Section 5: Landmark Commission Minutes, Pages 62, 64, and 65 of the record.


<sup>16</sup> Landmark Commission Minutes for April 4, 2016; Section 5: Landmark Commission Minutes, Pages 63 and 64 of the record.

<sup>17</sup> DALLAS DEVELOPMENT CODE § 51A-4.501(g)(6)(B).

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
1500 Marilla Street 7DN  
Dallas, Texas 75201  
214-670-1332

BY



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LAURA MORRISON  
Assistant City Attorney  
State Bar No. 24056010

## Certificate of Service

On June 17, 2016, a copy of this Brief in Support of the Landmark Commission was mailed by certified mail to:

Eric Spinazzola  
7331 Lakewood Boulevard  
Dallas, Texas 75214



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LAURA MORRISON