

21

COMMONWEALTH OF MASSACHUSETTS

DUKES, ss.

SUPERIOR COURT  
DUCV2013-00045

DANIEL O. SANTANGELO

vs.

JAMES CISEK & others<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER ON  
DANIEL O. SANTANGELO'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Daniel Santangelo filed this action pursuant to G.L. c. 40C, § 12A appealing the November 7, 2013 decision of the Edgartown Historic District Commission (“the Commission”) denying his request to use composite material for the fascia and soffit boards on a newly constructed garage and pool house on his property. This matter is before the court on Santangelo’s motion for summary judgment pursuant to Mass. R. Civ. P. 56. For the reasons discussed below, Daniel O. Santangelo’s Motion To Strike is **ALLOWED**, the motion for summary judgment is **ALLOWED**, and the matter is **REMANDED** to the Commission to provide a supplemental statement of reasons for its decision.

**BACKGROUND**

The Town of Edgartown approved a Historic District By-law on April 14, 1987 (“the By-law”). The purpose of the By-law is to preserve and protect the distinctive characteristics of buildings and places of historical significance to the Town. Section 2 of the By-law states: “There is hereby established in the Town of Edgartown an historic district pursuant to the provisions of

---

<sup>1</sup>Carole Berger, Beverly Fearey, Robbie Hutchinson, Bill Bishop, Edith Blake, and David Thompson, in their capacity as members of the Edgartown Historic District Commission

Massachusetts General Laws Chapter 40C, set forth as shown on a map filed with the Town Clerk entitled 'Edgartown Historic District, 1987'." The Commission recorded the map with the Dukes County Registry of Deeds on May 20, 1987 as Edgartown Case File No. 441 Plan.

Section 5 of the By-law provides: "no building or structure within the historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of nonapplicability, or a certificate of hardship with respect to such construction or alteration." Section 6 of the By-law is entitled, "Standards of Review," and states in relevant part:

In passing upon matters before it, the commission shall strive to advance the purposes of this by-law, and shall consider, among other things, the historical and architectural value and significance of the site, building or structure, the general design, arrangement, proportions, texture, material and color of the features involved, the relation of such features to similar features of buildings and structures in the surrounding area, and the position of such buildings or structures in relation to the public streets, public ways, public parks or public bodies of water in the surrounding area.

Section 7 of the By-law also is entitled, "Standards of Review," and states in relevant part:

While the commission shall encourage owners of buildings and structures in the historic district to use historically authentic materials wherever feasible for any construction or alteration, the use of any particular material shall not be prohibited based upon its composition alone. It is not the intent of this by-law to require that buildings and structures in the historic district be maintained as historic artifacts. Rather, the commission is required to apply the standards set forth herein, particularly those contained in this Section and Section 6, in order to protect and preserve the general flavor, and the distinctive characteristics and architecture of the historic district.

Section 10(c) of the By-law provides in relevant part: "[i]n the case of a disapproval of an application for a certificate of appropriateness, the commission shall place upon its records the

reasons for such determination, and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in its records, to be issued to the applicant. . . .”

Section 10(e) of the By-law authorizes the Commission to adopt and amend “such rules and regulations not inconsistent with the provisions of this by-law and the provisions of the Historic Districts Act, Massachusetts General Laws Chapter 40C . . . .” The Commission adopted amended rules and regulations on September 15, 2006. Under the heading, “General Guidelines - Definition of Terms,” the rules and regulations define “materials” as follows:

Applicants are encouraged to use materials and methods of building that are in keeping with the historic buildings in the district. Natural materials, such as wood, wood clapboards and wood shingles, glass, brick and stone are preferred. Synthetic materials such as plastic, vinyl and in most cases, aluminum or composite materials are not appropriate. In selecting materials, neighboring buildings should be studied for appropriate materials.

In May of 2012, Santangelo purchased a home at 105 Main Street in Edgartown (“the Property”). The Property is located within the Edgartown Historic District. The main house on the Property is constructed with natural materials and wood, including the trim, fascia boards, and soffits. The shutters on the house are made of a composite material, PVC, and most of the gutters and down spouts are made of aluminum. The front of the house has aluminum siding and the roof is made of asphalt shingles.

On December 4, 2012, Santangelo applied to the Commission for permission to build a garage with a guest house above it and a pool house. His application identified the material to be used for all trim, including the fascia boards and soffits, as “wood.” The plans attached to the application depicted “fiberglass shutters and window boxes.” The Commission approved Santangelo’s application and issued a Certificate of Appropriateness, with conditions, on February

19, 2013.

On October 30, 2013, Santangelo submitted an application for a Certificate of Changes to an Approved Plan, requesting permission from the Commission to substitute a composite material, PVC, for the wood trim on the garage and pool house. This application stated that it involved an "Alteration," described as "Request for a change of material used for facias and soffits to composite material, i.e., PVC (see explanation attached)." Santangelo's explanation stated:

- The Application, dated 8/28/12 and on file with HDC, was not the original application prepared for the petitioner.
- The original application, dated 7/19/12, was prepared for the Petitioner by his architect (copy attached) and included in the description of materials to be used "PVC trim at all doors, windows, facias & soffits."

...

- However, the set of plans in front of the Board and approved by the Board was a version of the set of plans showing a detail for wood and not PVC material for the facias/soffits/cornerboards.

...

- Commission Director Garber notified the Petitioner on 10/28/13 that the use of PVC was not approved. Only [then] . . . did the Petitioner become cognizant of the discrepancies between the various sets of plans.
- Petitioner immediately ceased use of additional PVC and is using wood material.

The Petitioner is now aware that the use of PVC materials was not specified on the voted application and the version of the set of plans voted on as approved by the Board on 2/19/13. The Petitioner requests the then approved application and plans be amended to include the use of PVC for the fascias and soffit boards only.

The composite trim which Santangelo desires to use does not cup, twist, or rot and is not affected

by insects; it therefore helps to prevent long-term maintenance.

The Commission held a hearing on November 5, 2013. Santangelo brought samples of the composite material and samples of painted wood trim to the hearing. According to Commission Chairman James Cisek ("Cisek"), the composite material does not look identical to wood. The Commission's minutes state:

**105 Main Street (20D-65) Daniel Santangelo.** (Change to an approved plan. Applicant proposes to change material used for fascias and soffits to a composite material, i.e. PVC. (work completed). . . . Bill Bishop explained that this would not be consistent with the past HDC rulings and would not be fair to other applicants who have had to remove Azek, applied without HDC approval. . . . Mr. Bishop further stated that these materials are not in keeping with the surrounding historic homes. Edith Blake concurred with Mr. Bishop. Carole Berger noted that the composite material is inconsistent with the construction in the Historic District and the material is not compatible with the materials used on the main house of which this is an auxiliary building. . . .

The Commission then voted unanimously to deny Santangelo's application.

By letter dated November 7, 2013, the Commission notified Santangelo of its vote, stating:

Your application sought a change from wood to a composite material (PVC), for the fascia and soffits. The commission found that the requested change is not in keeping with the historical nature of construction in the Historic District, and that synthetic materials, such as plastic, vinyl and composite are not appropriate in these circumstances. The garage and pool house, for which you requested the amended conditions are auxiliary buildings and are accessory structures to a historically significant home within the district. Accordingly, design and materials for the accessory structures should be in keeping with the historic home. Your application for trim materials for this project called for painted wood. It is the practice of this HDC to require the use of natural building materials.

In opposition to Santangelo's motion for summary judgment, the Town has submitted an affidavit by Cisek, who is familiar with the Property. Cisek avers that the main house is situated

close to the sidewalk of Main Street, as one enters the downtown section of Edgartown. The entire Property can be viewed from both Main Street and Pease's Point, a heavily used exit from downtown Edgartown. The Property abuts the Dr. Daniel Fisher House, which houses the Martha's Vineyard Preservation Trust, and is one property away from the historic Old Whaling Church. Neither of those buildings uses composite materials for their exterior trim, siding, or windows.

### DISCUSSION

Summary judgment shall be granted where there are no genuine issues as to any material fact and where the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue and that the summary judgment record entitles the moving party to judgment as a matter of law. Ley v. Beverly Enterprises-Mass., 457 Mass. 234, 237 (2010); Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989). The moving party may satisfy this burden either by submitting affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. Petrell v. Shaw, 453 Mass. 377, 381 (2009); Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

Santangelo brings this appeal pursuant to Chapter 40C, section 12A, which provides in relevant part that a person aggrieved by a decision of a historic district commission may:

appeal to the superior court sitting in equity for the county in which the city or town is situated. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the decision of the commission to be unsupported by the evidence or to exceed the authority of the commission, or may remand the case for further action by the commission or make such other decree as justice and equity may require.

G.L. c. 40C, § 12A. The standard of review under this statute is analogous to that governing review of a special permit decision: the court may annul the commission's decision only if the commission exceeded its authority or its decision was legally untenable, unreasonable, or arbitrary and capricious. Anderson v. Old King's Highway Reg'l Historic Dist. Comm'n, 397 Mass. 609, 611 (1986); Gumley v. Board of Selectmen of Nantucket, 371 Mass. 718, 724 (1977); Warner v. Lexington Historic Dists. Comm'n, 64 Mass. App. Ct. 78, 82 (2005). The party appealing a decision of the commission bears the burden of demonstrating its invalidity. Marr v. Back Bay Architectural Comm'n, 32 Mass. App. Ct. 962, 964 (1992).

When faced with a § 12A appeal, the court conducts a two-step inquiry. Brahm v. Historic Dist. Comm'n of Provincetown, 2012 Mass. App. Unpub. LEXIS 1031 at \*2 (Rule 1:28); Warner v. Lexington Historic Dist. Comm'n, 64 Mass. App. Ct. at 82. First, the court should determine whether the decision, on its face, is insufficient in law to warrant the commission's determination. Warner v. Lexington Historic Dist. Comm'n, 64 Mass. App. Ct. at 82-83; Marr v. Back Bay Architechtrual Comm'n, 32 Mass. App. Ct. at 963. If so, the court should annul the decision unless, in the exercise of its discretion, it chooses to request a supplemental statement of the commission's reasons before any further proceedings are had. Warner v. Lexington Historic Dist. Comm'n, 64 Mass. App. Ct. at 83. If the commission's decision is based on a legally tenable ground, the judge must conduct an evidentiary hearing, find the facts de novo, and determine whether the reasons given by the commission are warranted by the evidence before the court. Harris v. Old King's Highway Reg'l Historic Dist. Comm'n, 421 Mass. 612, 614 (1996); Warner v. Lexington Historic Dists. Comm'n, 64 Mass. App. Ct. at 83; Marr v. Back Bay Architechtrual Comm'n, 32 Mass. App. Ct. at 963. See, e.g., Federated Church v. Historic Dist. Comm'n for

Edgartown, 1995 Mass. Super. LEXIS 432 at \*31-32 (McHugh, J.) (finding, after de novo trial, that Commission properly denied application to replace wood siding with vinyl siding based on visual and structural impact of vinyl on historic building).

Here, Santangelo moves for summary judgment on the ground that the Commission's November 7, 2013 decision is facially invalid.<sup>2</sup> He has moved to strike paragraphs 2 and 3 of Cisek's affidavit, which set forth additional justifications for the Commission's decision. The facts contained in those paragraphs are not relevant to whether the decision, on its face, is insufficient in law. See Warner v. Lexington Historic Dists. Comm'n, 64 Mass. App. Ct. at 82-83; Marr v. Back Bay Architechtural Comm'n, 32 Mass. App. Ct. at 963.<sup>3</sup> Accordingly, this Court will allow the motion to strike.

The court examines the face of the decision to determine whether it is based on a legally tenable ground. Brahm v. Historic Dist. Comm'n of Provincetown, 2012 Mass. App. Unpub. LEXIS 1031 at \*3. A commission must articulate adequate findings to support its decision and cannot merely paraphrase the statutory language. Brahm v. Historic Dist. Comm'n of Provincetown, 2012 Mass. App. Unpub. LEXIS 1031 at \*3-4; Warner v. Lexington Historic Dists. Comm'n, 64 Mass. App. Ct. at 84. Here, the Commission's November 7, 2013 decision focuses on the fact that Santangelo's application involves synthetic materials and concludes: "It is the practice of this HDC

---

<sup>2</sup>In his reply brief, Santangelo states that he no longer intends to pursue the argument that the Commission exceeded its authority based on the failure to record a map of the Edgartown Historic District at the Registry of Deeds.

<sup>3</sup>Similarly, this Court cannot consider the Commission's reasoning as recorded in the minutes of the hearing, except insofar as such reasoning appears on the face of the written decision.

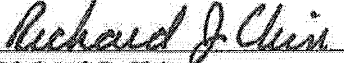


to require the use of natural building materials.” The decision on its face thus appears to violate Section 7 of the By-Law which states: “the use of any particular material shall not be prohibited based upon its composition alone.” Cf. Warner v. Lexington Historic Dists. Comm’n, 64 Mass. App. Ct. at 83 (decision legally untenable where it relied on considerations outside the by-law).

When a commission’s decision is legally untenable on its face, the court is not empowered to order the issuance of a certificate of appropriateness, except in extremely narrow circumstances. Gumley v. Board of Selectmen of Nantucket, 371 Mass. at 725; Brahm v. Historic Dist. Comm’n of Provincetown, 2012 Mass. App. Unpub. LEXIS 1031 at \*6. This Court cannot substitute its judgment for that of the Commission, and the Commission must be given the opportunity to exercise its discretionary power in applying the statutory criteria. See id. Accordingly, the appropriate remedy is to remand the matter with an order that the Commission provide a supplemental statement explaining its rationale for denying Santangelo’s application. See Brahm v. Historic Dist. Comm’n of Provincetown, 2012 Mass. App. Unpub. LEXIS 1031 at \*5; Marr v. Back Bay Architechtrual Comm’n, 23 Mass. App. Ct. 679, 685, rev. den., 399 Mass. 1105 (1987).

**ORDER**

For the foregoing reasons, it is hereby **ORDERED** that Daniel O. Santangelo's Motion To Strike be **ALLOWED**. It is further **ORDERED** that Daniel O. Santangelo's Motion for Summary Judgment be **ALLOWED** and that the matter be **REMANDED** to the Edgartown Historic District Commission to provide a supplemental statement of the Commission's reasons for the November 7, 2013 decision.

  
Richard J. Chin  
Justice of the Superior Court

**DATED:** September *10*, 2014