

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

John J. Turchi, Jr. and Mary Elizabeth :  
Turchi :  
 :  
v. : No. 658 C.D. 2014  
 :  
Philadelphia Board of License and : Argued: February 10, 2015  
Inspection Review, and Concerned :  
Citizens in Opposition to Dilworth :  
House Development :  
 :  
John J. Turchi, Jr. and Mary Elizabeth :  
Turchi :  
 :  
v. :  
 :  
Philadelphia Board of License and :  
Inspection Review, and Society Hill :  
Civic Association, Benita :  
Fair-Langsdorf, Matthew DiJulio, and :  
Donald E. Haviland, Esquire :  
 :  
Appeal of: John J. Turchi, Jr. and Mary :  
Elizabeth Turchi :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: May 15, 2015**

John J. Turchi, Jr. and Mary Elizabeth Turchi (Landowners) appeal from the March 4, 2014 Order of the Court of Common Pleas of Philadelphia County (trial court) affirming the June 28, 2012 remand decision (Remand Decision) of the Philadelphia Board of License and Inspection Review (Board). The Board’s Remand Decision sustained the appeals of Concerned Citizens in Opposition to the Dilworth House Development (Concerned Citizens), the Society Hill Civic Association, including members Benita Fair-Langsdorf and Matthew DiJulio, and Donald E. Haviland, Esquire (collectively, Objectors) from a November 9, 2007 Decision of the Philadelphia Historical Commission (Historical Commission). The Historical Commission’s Decision approved Landowners’ permit application to renovate and develop a historically designated building, the Dilworth House, located at 223-225 South Sixth Street within the City of Philadelphia’s (City) Society Hill Historic District (the Project). On appeal, Landowners argue that the Board erred in sustaining Objectors’ appeals because it did not defer to the Historical Commission’s reasonable interpretations of the Historic Preservation Ordinance (Ordinance),<sup>1</sup> which were supported by substantial evidence in the record, as directed by this Court in Turchi v. Philadelphia Board of License and Inspection Review, 20 A.3d 586, 595-96 (Pa. Cmwlth. 2011) (Turchi I). Because there was substantial evidence to support the Historical Commission’s determination regarding the historical significance of the Dilworth House and its determination that the Project was not a demolition “in significant part,” we reverse.

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<sup>1</sup> The Philadelphia Code (Code) §§ 14-2007(1)-(10). The Ordinance was amended in 2012, several years after Landowners filed their application for the Project with the Historical Commission and, therefore, it is the prior version that applies.

## I. Background

### a. Facts

This matter involves the ongoing attempts of Landowners to develop the Project, which began prior to 2007. In Turchi I, we set forth the following relevant information regarding the Project.

The Project consists of the renovation and preservation of the brick-clad main portion of the Dilworth House<sup>[2]</sup> and the removal of the side and rear wings, which would be replaced with a sixteen-story condominium structure that would connect to the Dilworth House. Because the Project requires the removal of the side and rear wings, along with integration of the condominiums into this historically-designated property, Landowners must comply with the permitting procedures of the . . . Ordinance. Additionally, because the Project requires the removal of a portion of an historically-designated property, the Historical Commission must first determine, pursuant to Section 2(f), whether this removal constitutes a “significant part” of the building because, . . . if it does, Section 7(j) prohibits the issuance of a permit unless the Historical Commission finds that the removal is in the public interest or that the building, structure, site, or object cannot be used for any purpose for which it may reasonably be adapted. ([The Philadelphia] Code [(Code)] §§ 14–2007(2)(f), (7)(j), [Turchi I] R.R. at 316a, 323a.<sup>[3]</sup>) If the Project constitutes a removal

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<sup>2</sup> The Dilworth House was constructed between 1957 and 1958 for Philadelphia Mayor Richardson Dilworth and his wife, Anne. (Remand Decision, Findings of Fact (Remand FOF) ¶¶ 2-3.) It consists of: a three-story brick colonial revival structure, called the “box,” which fronts Sixth Street; a front two-story stair hall; and a rear one- and two-story L-shaped wing. (Remand FOF ¶ 14.)

<sup>3</sup> By Order dated August 18, 2014, this Court permitted Landowners to file the reproduced record from Turchi I as a supplemental reproduced record in their present appeal. Turchi v. Philadelphia Board of License and Inspection Review (Pa. Cmwlth., No. 658 C.D. 2014, filed August 18, 2014) (single judge order). We will refer to the supplemental reproduced record as “Turchi I R.R.”

not “in significant part,” the removal is considered an “alteration,”<sup>[4]</sup> not a “demolition.”<sup>[5]</sup> (Code §§ 14–2007(2)(a), (f), [Turchi I] R.R. at 316a.) The characterization of the Project as either an “alteration” or a “demolition” determines the factors that a permit applicant must satisfy to obtain a permit. Where the Historical Commission has no objection, the Board shall grant the permit subject to other applicable requirements, including, *inter alia*, those found in Section 7(k) regarding “appropriateness.” (Code §§ 14–2007(7)(g), (k), [Turchi I] R.R. at 322a–324a.)

Turchi I, 20 A.3d at 588 (emphasis in original). Landowners applied “to the Historical Commission for a permit to develop the Project pursuant to Section 7 of the . . . Ordinance, Code § 14-2007(7) (establishing the procedures for obtaining a permit to alter or demolish an historically designated building).” Turchi I, 20 A.3d at 588. Before it reviewed the application, “the Historical Commission initially referred the application to its Architectural Committee,” which heard “testimony that the wings, which Landowners sought to remove, were not a defining feature of the Dilworth House because they were service areas, were not architecturally significant portions of the Dilworth House, and were not visible parts of the Dilworth House.” Id. at 588-89. The Architectural Committee recommended approval of the Project if the Historical Commission concluded that, legally, it was not a demolition “in significant part” pursuant to Section 2(f) of the Ordinance.

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<sup>4</sup> The Ordinance defines “[a]lter or *alteration*” as “[a] change in the appearance of a building, structure, site or object which is not otherwise covered by the definition of demolition, or any other change for which a permit is required under The Philadelphia Code of General Ordinances.” (Section 2(a) of the Ordinance, Code § 14–2007(2)(a), Turchi I R.R. at 316a.)

<sup>5</sup> The Ordinance defines “[d]emolition or *demolish*” as “[t]he razing or destruction, whether entirely or in significant part, of a building, structure, site or object. Demolition includes the removal of a building, structure or object from its site or the removal or destruction of the facade or surface.” (Section 2(f) of the Ordinance, Code § 14–2007(2)(f), Turchi I R.R. at 316a.)

(Minutes of the Meeting of the Architectural Committee, July 25, 2006, at 14-15, Turchi I R.R. at 332a-33a.)

Thereafter, the full Historical Commission considered, at its September 8, 2006 meeting, whether the Project involved a demolition “in significant part,” hearing testimony regarding which parts of the Dilworth House were historically or architecturally significant. (Minutes of the Meeting of the Historical Commission, September 8, 2006, at 27-32, Turchi I R.R. at 336a-41a.) By a nine-to-one vote, the Historical Commission voted to “find that the proposed demolition is not a ‘demolition in significant part.’” (Meeting Minutes of the Historical Commission, September 8, 2006, at 32, Turchi I R.R. at 341a.) The Historical Commission then

voted unanimously to approve the Project in concept, with one abstention. The Historical Commission granted final approval on November 9, 2007, after the Project was again discussed in an open public meeting, unanimously approving it as “*not* a ‘demolition in significant part’” and, therefore, an alteration.

Turchi I, 20 A.3d at 589 (citations omitted) (emphasis in original). Objectors filed separate appeals with the Board, challenging, *inter alia*, the Historical Commission’s conclusions that the Project was not a demolition and was appropriate for the area. Id. After holding six full record hearings, “the Board disagreed with the Historical Commission’s interpretations” of the Ordinance, particularly “of the terms ‘alteration’ and ‘appropriateness.’” Id. The Board concluded that the Historical Commission erred in approving Landowners’ application based on the Historical Commission’s determination that the Project was “‘not a demolition in significant part’” and “because the Historical Commission did not define the Project as ‘appropriate’ as the Board would have

defined it.” Id. (citations omitted). Landowners appealed to the trial court, which affirmed. Landowners then appealed to this Court.

*b. Turchi I*

On appeal, Landowners argued that the Board was required to “give deference to the Historical Commission’s determinations made pursuant to the . . . Ordinance, which the Historical Commission is charged with administering.” Id. at 590. After examining and comparing the history, mission, and powers of the Historical Commission and the Board, this Court concluded that the Historical Commission’s interpretations of the Ordinance were entitled to deference. Id. at 590-91, 594. We observed that “[i]t is a fundamental principle of administrative law that an administrative agency’s interpretation of the statute it is charged to administer is entitled to deference on appellate review absent ‘fraud, bad faith, abuse of discretion, or clearly arbitrary action.’” Id. at 591 (quoting Winslow-Quattlebaum v. Maryland Insurance Group, 752 A.2d 878, 881 (Pa. 2000)). Accordingly, we held that given the Historical Commission’s expertise in this area, its ability to promulgate regulations, and its authority to administer the Ordinance, “the Historical Commission’s reasonable interpretations of the . . . Ordinance are entitled to deference and that these interpretations ‘become[] of controlling weight unless [they are] plainly erroneous or inconsistent’ with the . . . Ordinance.” Id. at 594 (second and third alterations in original) (quoting Department of Public Welfare v. Forbes Health System, 422 A.2d 480, 482 (Pa. 1980) (citations omitted)).

We further explained that “the administrative interpretation and [c]onstruction of the phrase ‘in significant part’ and the meaning of the statutory term ‘demolition’ are not matters of ‘credibility,’ . . . but are matters within the

province of the administrative expertise of the Historical Commission.” Id. at 595 (alteration in original) (citation omitted). This Court stated that, “[w]here there are competing interpretations of the definitions of the operational terms in the . . . Ordinance, it is ‘within the province of the [Historical] Commission, not the Board,’ to interpret the . . . Ordinance and adopt a definition.” Id. (second alteration added) (citation omitted). Thus, when the Board substituted its definitions for those of the Historical Commission based on the Board accepting the expert testimony regarding how to interpret the relevant terms of the Ordinance as more credible than the expert testimony the Historical Commission relied upon, “the Board exceeded its appellate scope of review” by “transforming the interpretation of phrases into credibility determinations.” Id. Additionally, we stated that “the Board’s duty was to ‘determine if [the Historical Commission’s] actions can be sustained or supported by evidence taken by [the Board].’” Id. (alterations in original) (quoting Department of Environmental Protection v. North American Refractories Company), 791 A.2d 461, 466 (Pa. Cmwlth. 2002)). For these reasons, we vacated the trial court’s order and

remand[ed] this matter to the Board for further review and for the Board to issue a new determination based on the evidence presently before it, with deference being given to the Historical Commission’s interpretation of the . . . Ordinance and the application of the principle that the Historical Commission’s interpretations “become[ ] of controlling weight unless [they are] plainly erroneous or inconsistent with” the . . . Ordinance. Forbes Health System, . . . 422 A.2d at 482.

Id. at 596 (third and fourth alteration in original).

### *c. Remand Proceedings*

On remand, the Board issued proposed Amended Findings of Fact and Conclusions of Law on January 12, 2012. The Board heard argument on the

Amended Findings of Fact and Conclusions of Law and this Court's remand instructions on February 28, 2012. Thereafter, on June 28, 2012, the Board issued its Remand Decision sustaining Objectors' appeals. After reviewing the relevant definitions in the Ordinance, the Historical Commission's interpretation of those definitions, and the evidence, the Board concluded that the Historical Commission's interpretations and conclusions that the Project did not constitute a demolition and was appropriate were not reasonable and were inconsistent with the plain language of the Ordinance. (Remand FOF ¶¶ 24-25, 48-49; Remand Decision, Conclusions of Law (Remand COL) ¶¶ 2-5.) Notably, the Board indicated that it "has considered the merits of the positions asserted by the various witnesses and has, in accord with the [Turchi I] directive, given deference to the Historical Commission." (Remand FOF ¶ 27.) The Board noted that the term "in significant part," a key to the definition of demolition, was not defined by the Ordinance and that the Historical Commission did not establish a "categorical definition" when it concluded that the Project was not a demolition in significant part. (Remand FOF ¶¶ 26-28.)

The Board explained that, in order for it to determine the appropriateness of the Project and the reasonableness of the Historical Commission's interpretations of the Ordinance, the Board had to consider: "the purposes of the . . . Ordinance"; "the historical, architectural or aesthetic significance of a building, structure, site or object"; "the effect, design and compatibility of the proposed work"; "the Secretary of Interior's Standards [for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary's Standards)]"; "and any special conditions." (Remand FOF ¶ 29.) The Board examined the various witnesses'



testimony regarding whether the demolition here was “in significant part,” comparing both quantitative and qualitative theories. (Remand FOF ¶¶ 32-45.)

The Board disagreed with the testimony that indicated that the only historically significant part of the Dilworth House was the colonial revival part of the structure, which supported the Historical Commission’s determination that the other parts of the Dilworth House, which Landowners proposed to remove, were not significant and could be removed without being a demolition under the Ordinance. (Remand FOF ¶¶ 38-39, 43-45.) Specifically, the Board concluded that the testimony relied upon by the Historical Commission, which reflected that the original architect of the Dilworth House did not reference the non-colonial revival portion in documents related to that structure and that the non-colonial revival parts of the Dilworth House were not discussed as thoroughly in the historical designation documents, did not provide a reasonable basis upon which the Historical Commission could make its decision. (Remand FOF ¶¶ 36-38.) Instead, the Board agreed with the testimony that the proposed demolition of the rear wing would “strip Dilworth House of several of the building’s primary living areas . . . , as well as ‘service’ functions. Destruction of these primary elements, with their references to a Chester County farmhouse and the proportions of a colonial house, lends a qualitative context to the proposed, partial destruction of the building.” (Remand FOF ¶¶ 40, 44.) The Board noted that the removal of the rear wing was more than “a mere ‘change in the appearance’ of the building and would involve much more than alterations such as ‘re[]roofing, cleaning or pointing’ as contemplated by the [Ordinance’s] definition of ‘alter or alteration.’” (Remand FOF ¶ 40 (quoting Code § 14-2007(2)(a), Turchi I R.R. at 316a).) Thus,

the Board concluded that “[t]he rear wing’s architecture engender[ed] distinctive features and construction techniques that are consonant with the purposes of the [Ordinance] and should therefore be preserved. . . . Destruction of the rear wing to accommodate the placement of [the] proposed condominium tower would therefore not be appropriate.” (Remand FOF ¶ 45.) The Board further held that the Project was not appropriate and clearly involved a demolition in significant part because a portion of the rear wing facade would be removed. (Remand FOF ¶¶ 48-49.)

Having determined that the Project involved a demolition, the Board reviewed the factors necessary to determine whether the Project could proceed as a demolition<sup>6</sup> and concluded that no exemption from the Ordinance should be granted. (Remand FOF ¶¶ 51-60; Remand COL ¶¶ 6-10.) Accordingly, the Board

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<sup>6</sup> Section 7(j) of the Ordinance provides that:

No permit shall be issued for the demolition of an historic building, structure, site or object, or of a building, structure, site or object located within an historic district which contributes, in the [Historical] Commission’s opinion, to the character of the district, unless the [Historical] Commission finds that issuance of the permit is necessary in the public interest, or unless the [Historical] Commission finds that the building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted. In order to show that [the] building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted, the owner must demonstrate that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return and that other potential uses of the property are foreclosed.

(Code § 14-2007(7)(j), Turchi I R.R. at 323a.)

again sustained Objectors’ appeals.<sup>7</sup> Landowners appealed to the trial court, which affirmed the Board’s Remand Decision. The trial court concluded that the Board did not exceed its reviewing powers under Turchi I, indicating that the Historical Commission should have inquired whether any demolition to the Dilworth House would occur and, because it would, the Project should have been subject to the hardship-public interest test. (Trial Ct. 1925(a) Op. at 9-10.) The trial court further opined that while this Court’s decision in Turchi I limited the Board’s review of Historical Commission decisions, the Board was not “a mere rubber stamp or useless appendage,” but “serves as an important check upon the Historical Commission’s authority.” (Trial Ct. 1925(a) Op. at 10.) Landowners now appeal to this Court.<sup>8</sup>

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<sup>7</sup> The Board discussed this Court’s holding in Turchi I requiring that it give deference to the Historical Commission’s reasonable interpretations, and asserted that it should be permitted, pursuant to the Philadelphia Home Rule Charter, to modify the Historical Commission’s actions. (Remand COL ¶¶ 14-16.) The Board noted that its authority to review the underlying decisions of Philadelphia’s agencies under the substantial evidence standard has been recognized by this Court on numerous occasions and in Section 754 of the Local Agency Law, 2 Pa. C.S. § 754. (Remand COL ¶¶ 17-18.) Nevertheless, the Board indicated that it “employed the deferential standard of review in conformity and compliance with . . . [Turchi I].” (Remand COL ¶ 19.)

<sup>8</sup> When this Court reviews

a local agency adjudication, where a complete record is made before the agency, a reviewing court shall hear the appeal on the record supplied, and shall affirm the local agency’s adjudication unless it violates constitutional rights, is *not in accordance with law*, violates the statutory provisions governing practice and procedure before local agencies, or contains necessary findings that are not supported by substantial evidence.

In re Rainmaker Capital of Chestnuthill, LLC, 23 A.3d 1117, 1122 (Pa. Cmwlth. 2011) (emphasis added). The phrase, “not in accordance with law,” “might refer to . . . the common law as it has been established in [the supreme] court’s or the intermediate appellate courts’ case[] law.” Slawek v. State Board of Medical Education and Licensure, 586 A.2d 362, 365 (Pa. 1991).

## II. Discussion

### *a. Whether the Board afforded the Historical Commission's interpretations of the Ordinance the level of deference required by Turchi I*

Landowners argue on appeal that the Board again exceeded its reviewing authority, as set forth in Turchi I, when it sustained Objectors' appeals based on its review of the evidence and interpretation of the Ordinance rather than deferring to the Historical Commission's reasonable interpretations of the Ordinance. Landowners maintain that the Historical Commission's interpretations were not clearly erroneous because they were reasonable, consistent with the Ordinance, and supported by substantial record evidence. Landowners further assert that "[d]eference [to the Historical Commission] is especially proper here, where the [agency's] review of the application of [a] statutory standard is factually driven and occurs on a case-by-case basis." Schuylkill Township v. Pennsylvania Builders Association, 7 A.3d 249, 253 (Pa. 2010). According to Landowners, the Historical Commission's interpretation of the phrase demolition "in significant part," as used in the Ordinance and applied to their application, was factually driven, and the Historical Commission relied on the evidence, its expertise, and its judgment in making its determinations. Landowners further note that because the Ordinance leaves that phrase undefined and is subject to multiple interpretations, it is ambiguous and must be interpreted in a way least restrictive to Landowners' property rights.<sup>9</sup>

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<sup>9</sup> Although the Board is listed as an appellee in this matter, the Board is a nominal party and "does not appear, brief or argue appeals of its decisions, per the direction of the Philadelphia City Solicitor, who represents all agencies of the City under its Home Rule Charter." (City's Br. at 2 n.1.) Thus, the City, without objection, has filed a brief in which it supports Landowners' appeal. The City agrees with Landowners that the Board did not follow Turchi I and exceeded

*(Continued...)*

Objectors respond that the Board complied with Turchi I's directive on remand but, after re-reviewing the record and giving deference to the Historical Commission's interpretations as much as possible, the Board concluded that those interpretations were unreasonable and plainly erroneous. Objectors assert that the Historical Commission's interpretation of demolition "in significant part" was erroneous because the Project clearly removes or destroys the facade or surface of an historic building. Objectors further assert that the Board properly considered whether the portions of the Dilworth House that Landowners proposed to remove were significant in a "qualitative context," (Remand FOF ¶ 40), and, citing the evidence, the Historical Commission's minutes, and the Secretary's Standards, concluded that to remove them would contravene the purposes of the Ordinance. Finally, Objectors challenge the Historical Commission's conclusion that the Project was appropriate as not being supported by the Ordinance or the facts, citing, *inter alia*, the Ordinance's purpose, the character of the historic district, and the Project's incompatibility therewith because the size of the condominium tower would dwarf the remaining portions of the Dilworth House, thereby impairing its historical integrity.

The relevant Ordinance sections provide as follows. "*Demolition* or *demolish*" is defined as "[t]he razing or destruction, whether entirely or in significant part, of a building, structure, site or object. Demolition includes the removal of a building, structure or object from its site or the removal or destruction

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its authority in sustaining Objectors' appeals by substituting its own interpretations for those of the Historical Commission. The City contends that, because there was no evidence of fraud, bad faith, abuse of discretion, or a clearly arbitrary action by the Historical Commission in approving Landowners' application, the Historical Commission's interpretations were entitled to deference.

of the facade or surface.” (Code § 14–2007(2)(f), Turchi I R.R. at 316a.) “*Alter or alteration*” is “[a] change in the appearance of a building, structure, site or object which is not otherwise covered by the definition of demolition, or any other change for which a permit is required under The Philadelphia Code of General Ordinances.” (Code § 14–2007(2)(a), Turchi I R.R. at 316a.) Pursuant to Section 4(d) of the Ordinance, one of the duties of the Historical Commission is to “[r]eview and act upon all applications for permits to alter or demolish historic buildings . . . .” (Code § 14–2007(4)(d), Turchi I R.R. at 318a.) Section 7(k) states that

*In making its determination as to the appropriateness of proposed alterations, demolition or construction, the [Historical] Commission shall consider the following: (.1) the purpose of this section; (.2) the historical, architectural or aesthetic significance of the building, structure, site or object; (.3) the effect of the proposed work on the building, structure, site or object and its appurtenances; (.4) the compatibility of the proposed work with the character of the historic district or with the character of its site, including the effect of the proposed work on the neighboring structures, the surroundings and the streetscape; and (.5) the design of the proposed work[.] . . . [I]n addition to the above, the [Historical] Commission may be guided in evaluating proposals for alteration . . . by the Secretary of the Interior’s ‘Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings’ [Secretary’s Standards] or similar criteria . . . .*

(Code § 14-2007(7)(k), Turchi I R.R. at 323a-24a (emphasis added).) Finally, when “the [Historical] Commission has no objection, the Department shall grant the permit subject to the requirements of any applicable provisions of the Code and regulations and subject to any conditions of the [Historical] Commission.” (Code § 14–2007(7)(g)(1), Turchi I R.R. at 322a.)

After reviewing the Ordinance, the record, the Historical Commission’s Decision, the Board’s Remand Decision, and Turchi I, we conclude that the Board exceeded its authority in sustaining Objectors’ appeals because the Board relied upon its own interpretation and application of the Ordinance’s provisions in contravention of Turchi I. On remand, the Board was instructed “to issue a new determination based on the evidence presently before it, with deference being given to the Historical Commission’s interpretation of the . . . Ordinance” and to give those interpretations “controlling weight unless [they are] plainly erroneous or inconsistent with’ the . . . Ordinance.” Turchi I, 20 A.3d at 596 (second alteration in original) (quoting Forbes Health System, 422 A.2d at 482). We also stated that, “[w]hen reviewing a decision of the Historical Commission, the Board’s duty was to ‘determine if [the Historical Commission’s] actions can be sustained or supported by evidence taken by [the Board].’” Id. at 595 (first alteration added) (quoting North American Refractories, 791 A.2d at 466).

Our Supreme Court has recognized that, in reviewing “question[s] of statutory interpretation [arising] in the administrative agency context, we are not presented with a pure question of law. Rather, the issue presents a mixed question of law and fact.” Schuylkill Township, 7 A.3d at 253. Thus, the reviewing entity “must determine whether the [agency] reached the proper legal adjudication in applying a statutory standard to particular facts.” Id. “[W]here [an agency’s] review of the application of [a] statutory standard is factually driven and occurs on a case-by-case basis,” that “agency’s interpretation of [the] statute the agency ‘is charged with implementing and enforcing’” is especially entitled to deference. Id. (quoting Office of Administration v. Pennsylvania Labor Relations Board, 916 A.2d 541, 549 n.11 (Pa. 2007)).

Here, the Ordinance imposes upon the Historical Commission the duty to review applications for permits involving, *inter alia*, the alteration and/or demolition of historically preserved buildings and structures in the City. Turchi I, 20 A.3d at 590. We observed in Turchi I that these matters “require[] reasoned applications of specialized knowledge and experience” and did not involve “bright-line standards or mechanical applications similar to those found in ordinary zoning or land use regulations.” Id. Thus, the Historical Commission, in interpreting the Ordinance, has to consider “the historical importance of a particular property or structure and the design of a project.” Id. The Historical Commission’s interpretations are entitled to particular deference where, as here, they involve the application of a “statutory standard [that] is factually driven and occurs on a case-by-case basis.” Schuylkill Township, 7 A.3d at 253.

We first review the interpretation and application of the phrase demolition “in significant part.” (Code § 14-2007(2)(f), Turchi I R.R. at 316a.) As noted by Landowners, the phrase “in significant part” is not defined by the Ordinance and is subject to multiple reasonable interpretations, making it ambiguous; therefore, it must be interpreted in favor of Landowners and the least restrictive use of the land. Kleinman v. Lower Merion Township Zoning Hearing Board, 916 A.2d 726, 729 (Pa. Cmwlth. 2006); SPC Company, Inc. v. Zoning Board of Adjustment of the City of Philadelphia, 773 A.2d 209, 213 (Pa. Cmwlth. 2001). The Historical Commission interpreted this phrase to mean the demolition of a historically significant part of the building. In applying that interpretation to the facts of Landowners’ application, the Historical Commission heard evidence indicating that the sections proposed to be demolished were not the historically or



architecturally significant parts of the Dilworth House and voted to find that the proposed removal here was not a demolition “in significant part”; thus, the Historical Commission necessarily concluded that the sections of the Dilworth House Landowners propose to remove are not the historically significant parts of the Dilworth House.<sup>10</sup> (Minutes of the Historical Commission, September 8, 2006, at 29-30, 32, Turchi I R.R. at 338a-39a, 341a; Minutes of the Historical Commission, November 9, 2007, at 14, Turchi I R.R. at 366a.) Given the Ordinance’s purpose to protect *historic* structures, (Section 1 of the Ordinance, Code § 14-2007(1), Turchi I R.R. at 315a), the Historical Commission’s particular expertise in this area, and the fact that this phrase must be interpreted in favor of the least restrictive use of the land, Kleinman, 916 A.2d at 729; SPC Company, Inc., 773 A.2d at 213, we conclude that the Historical Commission’s interpretation is reasonable and entitled to deference.

The Board, on remand, accepted the Historical Commission’s interpretation that a demolition under the Ordinance requires the removal or destruction of the historically significant part of a structure. However, the Board then reviewed the record, made its own interpretation as to what historically significant means under the Ordinance, and came to its own conclusion regarding which part of the Dilworth House was historically significant. (Remand FOF ¶¶ 27-28, 30-38, 40, 44-45, 47-48; Remand COL ¶ 4.) In doing so, the Board questioned the soundness of the opinions and evidence supporting the Historical Commission’s

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<sup>10</sup> We note that although the Historical Commission did not expressly state this conclusion, had it found otherwise, it would not have approved the Project as an alteration. Including, in the Historical Commission’s determinations, findings that expressly explain its rationale would assist in subsequent review.

determination, essentially giving that evidence less weight than evidence in the record that supported a contrary conclusion. (Remand FOF ¶¶ 38, 43.) The Board then held that, because the Historical Commission’s Decision differed from the Board’s conclusions, the Historical Commission’s interpretations were clearly erroneous and not in accordance with the Ordinance and, thus, not entitled to deference. In performing this type of review, the Board exceeded its reviewing authority, as set forth in Turchi I, by not deferring to the Historical Commission’s interpretation and application of the Ordinance to Landowners’ application.

The Board also concluded that, under the Ordinance, *any* removal of *any* part of a facade resulted in a demolition under the second sentence of the Ordinance’s definition of demolition, which states “[d]emolition includes the removal of a building, structure or object from its site or the removal or destruction of the facade or surface.” (Code § 14-2007(2)(f), Turchi I R.R. at 316a; Remand FOF ¶¶ 26, 48-49; Remand COL ¶ 3.) However, in approving Landowners’ application, the Historical Commission did not interpret “demolition” so broadly as to include the removal of the non-historically significant parts of the Dilworth House. Because the Ordinance’s purpose is to preserve and protect *historic* buildings and structures, (Code § 14-2007(1), Turchi I R.R. at 315a), the Historical Commission’s interpretation, which focuses on the historically significant portions of an historic structure, is not unreasonable and was entitled to deference under Turchi I.

Finally, the Board considered whether the Project was appropriate under Section 7(k) of the Ordinance. The Board independently applied the requirements of that section to Landowners’ application and concluded that the proposed

removal of the wings of the Dilworth House and addition of the condominium tower were not appropriate and that “the Historical Commission’s approval of the tower is not based on a reasonable interpretation of the [Ordinance] and is plainly erroneous.” (Remand FOF ¶¶ 45, 49-50, 56-60; Remand COL ¶¶ 2, 6-8.) The Board, in reaching this conclusion, did not discuss how the Historical Commission’s interpretation and application of Section 7(k) was erroneous or in contravention of the Ordinance; it simply applied those requirements as the Board saw them and held that the Historical Commission’s differing interpretation and conclusion were not reasonable. (Remand FOF ¶¶ 51-60.) Contrary to the Board’s actions, Section 7(k) provides that it is the Historical Commission that makes the determination of appropriateness after the Historical Commission considers the factors set forth therein. (Code § 14-2007(7)(k), Turchi I R.R. at 323a-24a.) This Court observed the same defect in the Board’s previous decision in Turchi I, stating that the Board did not “explain[] why the Historical Commission’s interpretation of appropriateness was clearly erroneous under Section 7.” Turchi I, 20 A.3d at 596. Accordingly, the Remand Decision does not reflect deference to the Historical Commission’s interpretation of “appropriate” under Section 7(k) of the Ordinance, but a level of *de novo* review rejected by this Court in Turchi I.

*b. Whether the Historical Commission’s interpretations of the Ordinance and application thereof to the facts here are supported by substantial evidence*

Landowners next assert that, because there is substantial evidence in the record before the Board to support the Historical Commission’s Decision, the Board should have affirmed that Decision rather than re-examining the evidence for support of a position contrary to that of the Historical Commission.

Landowners argue that, in the Remand Decision, the Board simply added more factual findings to support its own interpretations and determinations but, as it did in Turchi I, gave no credence to the evidence in the record that supported the Historical Commission's Decision. Landowners note that numerous expert witnesses offered conflicting testimony and evidence regarding what was the historically significant part of the Dilworth House and whether the Project was appropriate, and the Historical Commission, using its expertise, chose to credit the testimony and evidence indicating that it was the colonial revival portion of the structure that was historically significant and that the Project was appropriate. Landowners argue that this credited testimony constitutes substantial evidence to support the Historical Commission's Decision; therefore, under Turchi I, the Board should have affirmed that Decision.<sup>11</sup>

In response, Objectors maintain that the Board's Remand Decision is supported by substantial evidence and it is the Historical Commission's Decision finding the Project appropriate that is not supported by the facts. Objectors argue that, although there are tall buildings in the vicinity of the Project, the buildings immediately adjacent to the Dilworth House are only three to five stories, making the proposed construction of the condominium tower unreasonable and not appropriate.

In Turchi I we stated that, in reviewing the Historical Commission's decisions, it was "the Board's duty . . . to 'determine if [the Historical

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<sup>11</sup> The City agrees with Landowners that the Board applied the wrong standard because it did not examine the record for evidence that supported the Historical Commission's Decision, but looked to see if there was evidence to undermine the Historical Commission's Decision.

Commission’s] actions can be sustained or supported by evidence taken by [the Board.]” Turchi I, 20 A.3d at 595 (alterations in original) (quoting North American Refractories, 791 A.2d at 466). However, the Board did not review the record for support of the Historical Commission’s Decision, but for evidence that supported its own preferred interpretation and application of the Ordinance. The Board then relied upon the testimony that supported its interpretation and application of the Ordinance to reverse the Historical Commission’s Decision. In doing so, the Board exceeded the level of review set forth in Turchi I and it erred in sustaining Objectors’ appeals to the Historical Commission’s Decision granting Landowners’ permit, which was “supported by evidence taken by [the Board].” Id. (alterations in original) (quoting North American Refractories, 791 A.2d at 466).

### **III. Conclusion**

As we stated in Turchi I, the Historical Commission is required by the Ordinance to include, as a majority of its members, individuals “who are learned in the historic traditions of the City and interested in the preservation of the historic character of the City.” (Section 3 of the Ordinance, Code § 14-2007(3), Turchi I R.R. at 317a.) Thus, in passing the Ordinance and requiring that members of this reviewing body have expertise in specialized areas, the City Council recognized the significance of having these important decisions be made by those who are particularly knowledgeable in this field. The Historical Commission’s expert role may not be overridden based on a *de novo* review by the Board, which, as observed in Turchi I, is not required to have members who have any specialized expertise in historic preservation. Turchi I, 20 A.3d at 591.

Accordingly, because the Board “reinterpret[ed] and reconsider[ed] the deliberative, purposeful, and carefully examined interpretations and policies of the Historical Commission . . . [and went] beyond the Board’s limited role as an appellate adjudicative entity, which must give deference to the Historical Commission’s reasonable interpretations,” *id.* at 594, the Remand Decision sustaining Objectors’ appeals was not in accordance with the law. Slawek v. State Board of Medical Education and Licensure, 586 A.2d 362, 365 (Pa. 1991) (stating that the phrase, “not in accordance with law” “might refer to . . . the common law as it has been established in [the supreme] court’s or the intermediate appellate courts’ case[ ]law”).

For the foregoing reasons, the trial court’s Order is reversed and the Historical Commission’s November 9, 2007 Decision is reinstated.

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**RENÉE COHN JUBELIRER, Judge**

Senior Judge Colins concurs in the result only.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

John J. Turchi, Jr. and Mary Elizabeth Turchi	:	
	:	
	:	
v.	:	No. 658 C.D. 2014
	:	
Philadelphia Board of License and Inspection Review, and Concerned Citizens in Opposition to Dilworth House Development	:	
	:	
	:	
John J. Turchi, Jr. and Mary Elizabeth Turchi	:	
	:	
	:	
v.	:	
	:	
Philadelphia Board of License and Inspection Review, and Society Hill Civic Association, Benita Fair-Langsdorf, Matthew DiJulio, and Donald E. Haviland, Esquire	:	
	:	
	:	
Appeal of: John J. Turchi, Jr. and Mary Elizabeth Turchi	:	
	:	

**ORDER**

**NOW**, May 15, 2015, the Order of the Court of Common Pleas of Philadelphia County, entered in the above-captioned matter, is hereby **REVERSED**, and the Historical Commission’s November 9, 2007 Decision is **REINSTATED**.

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**RENÉE COHN JUBELIRER, Judge**