

STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
STATE HISTORIC PRESERVATION REVIEW BOARD

PHIL BELLFY,
Petitioner,

SOAHR Docket No. 2009-1419
Agency No. 09-034-HP

v

**EAST LANSING HISTORIC DISTRICT
COMMISSION,**
Respondent.

FINAL DECISION AND ORDER

This matter involves an appeal of Phil Bellfy's (Petitioner) June 30, 2009 Certificate of Appropriateness Application (Application) for demolition of four houses located at 328, 334, and 340-344 Evergreen Street that was rejected on July 1, 2009 by the East Lansing Historic District Commission (Respondent).

This appeal is brought under Section 5(2) of the Local Historic Districts Act (LHDA).¹ Section 5(2) provides that applicants aggrieved by a commission's decision may appeal to the State Historic Preservation Review Board (Review Board or Board), an agency of the Michigan Department of History, Arts and Libraries (Department).²

At the request of the Board, the State Office of Administrative Hearings and Rules (SOAHR), which is housed in the Michigan Department of Labor and Growth, scheduled a hearing on February 8, 2010 with Administrative Law Judge (ALJ) Andre

¹ 1970 PA 169, § 5, MCL 399.205.

² Executive Order 2009-36 abolished the Department of History, Arts and Libraries (HAL), effective October 1, 2009. Because HAL still existed at the time the Petitioner filed his appeal, all references to HAL as the "Department" are retained in this Final Decision and Order.

Friedlis. In the interim, on October 9, 2009, ALJ Friedlis issued an Order Directing Written Responses addressing two issues: First, did the Respondent issue a decision subject to appeal? Second, if Respondent issued a decision subject to appeal, does Petitioner have standing to appeal Respondent's decision? The Order directed the Respondent to respond to the Petitioner's appeal "focusing on whether Petitioner has standing to bring this appeal and whether Respondent issued a decision subject to appeal under 1970 PA 169." Further, the Order directed the Petitioner to file a response to the Respondent's position statement.

A Proposal for Decision was issued by ALJ Friedlis on November 16, 2009, and true copies of the Proposal were served on the parties and their legal representatives, if any, pursuant to Section 81(1) of the Administrative Procedures Act of 1969, as amended, Section 24.281 of Michigan Compiled Laws.

The Board considered this appeal, along with the Proposal for Decision and all post-hearing filings and responses to filings submitted by the parties, at its regularly scheduled meeting conducted on January 15, 2010.


Having considered the proposal for Decision and the official record made in this matter, the Board voted 8 to 0, with 0 abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board in this matter and to incorporate the Proposal into this document, and,

Having done so,

IT IS ORDERED that the appeal is DENIED and the case is DISMISSED.

IT IS FURTHER ORDERED that a true copy of this Final Decision and Order shall be served on the parties and their legal representatives, if any, as soon as is practicable.

Dated: 22 January 2010



Dr. Richard H. Harms, Chairperson
State Historic Preservation Review Board

NOTE: Section 5(2) of the Local Historic Districts Act provides that an applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under Section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date notice of the Board's Final Decision and Order is mailed to the parties.

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of

Docket No. 2009-1419

Phil Bellfy,
Petitioner

Agency No. 09-034-HP

v
East Lansing Historic District
Commission,
Respondent

Agency: History, Arts &
Libraries

Case Type: Appeal

Issued and entered
this 14th day of November 2009
by J. Andre Friedlis
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5(2) of 1970 PA 169, as amended, MCL 399.205(2), the Local Historic Districts Act (Act 169) and 1969 PA 306, as amended, MCL 24.101 *et seq.*, the Administrative Procedures Act.

The purpose of this review is to examine Petitioner's September 3, 2009, appeal from Respondent Attorney's July 1, 2009, letter rejecting Petitioner's June 30, 2009 Certificate of Appropriateness Application.

On October 9, 2009, I issued an Order Directing Written Responses. The Order directed Respondent to respond to Petitioner's appeal "focusing on whether Petitioner has standing to bring this appeal and whether Respondent issued a decision subject to appeal under 1970 PA 169. Petitioner was directed to file a response to Respondent's position statement.

On October 26, 2009, Respondent filed a statement. Petitioner responded on November 6, 2009.

In my October 9, 2009 Order, I noted that my prior Proposal for Decision issued August 26, 2009 involving the same parties was affirmed by the State Historic Preservation Review Board on September 11, 2009. That decision found Petitioner did not have standing to appeal a prior Respondent decision and even if Petitioner had standing, the appeal was filed beyond the 60 day appeal period permitted by MCL 399.205(2).

ISSUES

1. Did Respondent issue a decision subject to appeal?
2. If Respondent issued a decision subject to appeal, does Petitioner have standing to appeal Respondent's decision?

FINDINGS OF FACT

This case concerns four houses on three lots in East Lansing Michigan. The addresses are 328, 334, and 340 - 344 Evergreen Street. The city of East Lansing wants to demolish these houses to construct a parking ramp for the west end of the downtown area which will also be a part of the City Center II project. The city (not the owners) applied to the Respondent Historic District Commission for approval to demolish the houses because the city was in the process of acquiring the properties.

The Respondent Commission voted to approve this proposal during their August 14, 2008 meeting.

On June 30, 2009, Petitioner filed a Certificate of Appropriateness Application with Respondent. As pointed out in Respondent's October 26, 2009 response to my Order, "Petitioner filed a frivolous certificate of appropriateness application which he

worded in the same fashion as the City's application, that is, it was an application to demolish 334, 340-344 Evergreen Avenue and construct a parking structure." This application was returned to Petitioner without processing. A second filing was also returned.

In fact, Petitioner doesn't want to demolish these homes. This is made clear in Petitioner's September 3, 2009 appeal. Petitioner's appeal states that the purpose of Petitioner's filing of the June 30, 2009 Certificate was to give him standing to appeal. But Respondent did not issue a decision. In fact, Respondent returned Petitioner's request twice.

CONCLUSIONS OF LAW

ISSUE 1 – Did Respondent issue a decision subject to appeal?

MCL 399.205 (2) provides for appeal of a decision issued by a Historic District Commission:

- (2) An applicant aggrieved by a decision of a commission concerning a permit application may file an appeal with the state historic preservation review board within the department. The appeal shall be filed 60 days after the decision is furnished to the applicant....

This Section contemplates a Historic District Commission issuing a decision on a permit application filed by an applicant. Here Petitioner is not a true "applicant". He does not want to have the homes demolished and replaced with a parking structure. The opposite is true. Respondent also considered the application to be insincere and declined to rule on Petitioner's application.

Accordingly, I find Respondent did not issue a decision on Petitioner's application.

MCL 399.211 provides the right of appeal to the Circuit Court for any citizen or resource property owner aggrieved by a decision of a Historic District Commission. Petitioner could consider Respondent's failure to decide as a violation of MCL 399.205(1). But since there has been no "decision of a commission concerning a permit application," there is nothing for Petitioner to appeal. I have no authority to Order Respondent to make a decision on Petitioner's permit application. The only authority Act 169 gives me is to review an appeal from a Commission decision. Since there has been no decision on Petitioner's application, there is nothing for me to review.

But more to the point, at its August 14, 2008 meeting, Respondent already approved the identical request previously filed by the city. As pointed out by Respondent, Section 5(2) of Act 169 permits "[a]n applicant aggrieved by a [commission] decision" to appeal. But Petitioner is not an "aggrieved" applicant. Respondent already approved exactly what Petitioner "requested."

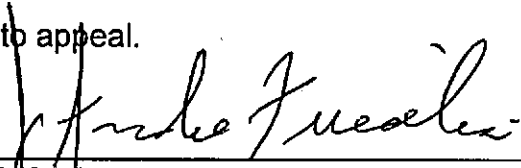
ISSUE 2 - If Respondent issued a decision subject to appeal, does Petitioner have standing to appeal Respondent's decision?

Since it is my finding that the Respondent Commission has not issued a decision on Petitioner's application, there is nothing for Petitioner to appeal and nothing for me to review.

On page 7 of Petitioner's November 6, 2009 statement under "Conclusion," Petitioner asserts that the failure to present Petitioner's application to Respondent "is an act subject to appeal." I disagree with this assertion. Act 169 does not permit me to review what goes on behind the scenes. Petitioner may have the right to bring this issue to the attention of the Circuit Court, but Act 169 give me no authority to review these actions. As noted in Section 5(2) set forth above, Act 169 requires me to review an appeal from a Respondent decision. Here, there has been no decision.

RECOMMENDED DECISION

I recommend the Review Board Dismiss Petitioner's appeal and find Respondent did not issue a decision subject to appeal.



J. Andre Friedlis
Administrative Law Judge

EXCEPTIONS

If a party chooses to file Exceptions to this Recommended Decision, they must be filed within 15 days after this Recommended Decision is issued. If an opposing party chooses to file a Response to the Exceptions, it must be filed within 10 days after the Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the State Historic Preservation Review Board, by submission to the Michigan Department of History, Arts and Libraries, Office of Regulatory Affairs, P.O. Box 30738, Lansing, Michigan 48909, Attention: Scott Grammer. All filings must also be served on all other parties.