

STATE OF MICHIGAN

IN THE 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE PATRIK CORPORATION,

Plaintiff,

File No. 94-79360-CZ

Honorable William E. Collette

v

LANSING HISTORIC COMMISSION,
and the CITY OF LANSING,
jointly and severally,

Defendants.

ATTORNEY FOR PLAINTIFF:

Andrew P. Abood (P43366)
ABOOD, ABOOD & RHEAUME, P.C.
603 South Washington Avenue
Lansing, MI 48933
(517) 372-5700

ATTORNEY FOR DEFENDANT CITY OF LANSING:

John M. Roberts (P19502)
5th Floor City Hall
Lansing, Michigan 48933
(517) 483-4320

At a session of said Court held in the Circuit
Courtroom, City of Lansing, County of Ingham,
State of Michigan, this 15 day of February, 1995

PRESENT: HONORABLE WILLIAM E. COLLETTE

The Court having reviewed the briefs submitted by the parties, having heard oral
argument, and being fully advised in the premises, hereby grants the Plaintiff's Motion.

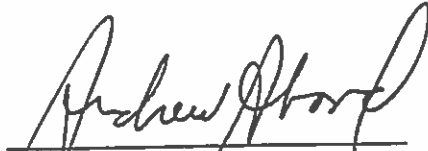
IT IS ORDERED that:

The Defendant City of Lansing shall immediately grant to the Plaintiff, its agents, representatives, heirs or assigns, a demolition permit for 213 East Hillsdale, Lansing, Michigan.



William E. Collette, Circuit Judge

Approved as to form:


John M. Roberts (P19502)
Andrew P. Abood (P43366)

A TRUE COPY
CLERK OF THE COURT
30th JUDICIAL CIRCUIT COURT

STATE OF MICHIGAN JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT	SUMMONS AND COMPLAINT	CASE NO. 94-79360-CZ <i>Judge Calhoun</i>
Court address		Court telephone no.

Plaintiff name(s), address(es), and telephone no(s).	
THE PATRIK CORPORATION	01-10-95 P04:00 RCVD V
Plaintiff attorney, bar no., address, and telephone no.	
Andrew P. Abood (P43366) ABOOD, ABOOD & RHEAUME, P.C. 603 South Washington Avenue Lansing, MI 48933 (517) 372-5700	

Defendant name(s), address(es), and telephone no(s).
LANSING HISTORIC COMMISSION, and the CITY OF LANSING, jointly and severally, LANSING HISTORIC COMMISSION c/o John M. Roberts Assistant City Attorney 5th Floor, City Hall Lansing, MI 48933

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).

If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <i>1/10/95</i>	This summons expires <i>1/31/95</i>	Clerk <i>Joellen Kraus</i>
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*This summons is invalid unless served on or before its expiration date.

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ . The docket number and assigned judge are:

Docket no.	Name of court	Judge	Bar no.
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The action remains is no longer pending.

VENUE

Plaintiff(s) residence Lansing, Ingham County, Michigan	Defendant(s) residence Lansing, Ingham County, Michigan
Place where action arose or business conducted Lansing, Ingham County, Michigan	

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

January 10, 1995

Date

Andrew Abood
Signature of attorney/plaintiff Andrew P. Abood

COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.



STATE OF MICHIGAN

01-10-95 04:00 RCVD

IN THE 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE PATRIK CORPORATION,

Plaintiff,

v

LANSING HISTORIC COMMISSION, and
the CITY OF LANSING, jointly and severally,

Defendants.

VERIFIED COMPLAINT FOR WRIT
OF MANDAMUS & MOTION FOR
EX PARTE TO SHOW CAUSE WHY
A DEMOLITION PERMIT SHOULD
NOT BE GRANTED PURSUANT TO
MCR 3.305©

File No. 94-

79360-CZ

Honorable

ATTORNEY FOR PLAINTIFF:

Andrew P. Abood (P43366)
ABOOD, ABOOD & RHEAUME, P.C.
603 South Washington Avenue
Lansing, MI 48933
(517) 372-5700

NOW COMES the above named Plaintiff, The Patrik Corporation, by and through its attorneys, ABOOD, ABOOD & RHEAUME, P.C., and hereby files this Complaint for Mandamus, and an Ex Parte Motion to show cause why an Order should not be entered mandating the City of Lansing to grant the Plaintiff a demolition permit for 213 East Hillsdale, Lansing, Michigan, and further state as follows:

1. That this matter arises from the failure of City of Lansing, and the Lansing Historic Commission to grant the Patrik Corporation a demolition permit in violation of State of Law. That jurisdiction is granted to this Court pursuant to MCR 3.305(A)(2).
Jesse Cothran signed permit. Andrew & Patricia Abood identified as owners.

2. That Plaintiff, the Patrik Corporation, is a Michigan Corporation whose stock is wholly owned by Andrew Abood & Patricia Abood, husband and wife and whose sole asset is

213 East Hillsdale, Lansing Michigan, which is located in a historic district in the City of Lansing;

3. That on or about April 1, 1994, Plaintiff through its agent, Andrew P. Abood & Patricia L. Abood, agreed to sell 213 East Hillsdale to Jesse Lothamer and Linda K. Lothamer for \$40,000.00 contingent upon the ability to obtain a demolition permit for 213 East Hillsdale; [See attached Exhibit A Buy-Sell Agreement.]. Said Buy-Sell agreement, which has been attached as exhibit A, is scheduled to expire on or about March 31, 1995;

4. That on or about March 16, 1994 an application for demolition permit was requested for 213 East Hillsdale; [See attached exhibit B.];

5. That on or about April 28, 1994, a formal hearing was held before the Lansing Historic Commission to determine whether to grant or deny the request for a demolition permit for 213 East Hillsdale. That a vote was taken and the request for the permit was denied on a vote of 3-2;

6. That pursuant to MCL 399.209; MSA 5.3407(9), the Lansing City Historic Commission was required within 60 days to issue a "written explanation by the commission for the reasons for denial and, if appropriate, a notice that an application may be resubmitted for commission review when suggested changes have been made." Failure to act on the part of the Historic Commission, according to MCL 399.209; MSA 5.3407(9), "within 60 calendar days after the date a complete application is filed with the commission, unless an extension is agreed upon in writing by the applicant and the commission, shall be considered to constitute approval;" [Emphasis Added.]

*no changes
have been
made*

7. That the Defendants, Lansing Historic Commission and the City of Lansing, failed and or refused to provide Plaintiff with a written decision until September 9, 1994; [See attached exhibit C.]

8. That as a result of the Defendants failure and/or refusal to act, Plaintiff subsequently refiled for application based on MCL 399.211; MSA 5.3407(9), but was informed by an agent and employee of Defendants, Lansing Historic Commission and the City of Lansing, Donna Wynant, that no action would be taken on said application; *as advised since no new information was received.*

9. That Plaintiff is suffering permanent irreparable harm in that it is having to expend time and money to maintain the premises fit and habitable, continue to borrow funds to make mortgage payments, incur loan, fees, and other costs to continue to pay for repairs on said property. *property appears to be rented & drawing income.* That said repair is required by statute, MSA 5.3407(5)(11), and failure on the part of the Patrik Corp. to maintain the premises would require the Patrik Corp to make said repairs, or be assessed the costs to make said repairs in the event that the Historic Commission makes said repairs;

10. That further delay could result in the release of the buyers, Jesse Lothamer & Linda Lothamer from the sale of the property pursuant to the buy-sell agreement, and would leave Plaintiff no available purchaser for the premises, *property could be advertised for residential.* and possibly no available remedy against the Defendants for the improper denial of the permit;

11. That the buyer, Mr. Jesse Lothamer & Linda Lothamer, are making improvements to 533 Caesar Chevez avenue, and are being prejudice by the delay on the part of the City of Lansing and Lansing Historic Commission in not being able incorporate 213 East Hillsdale, which is an adjacent property into their plans for 533 Caesar Chevez;

12. That MCR 3.305 permits an action for mandamus to be brought in the Circuit Court. Furthermore, MCR 3.305© provides that a Plaintiff may make a motion for immediate action, and the circuit court may issue an order to show cause why an Order should not be entered. Further, MCR 3.305© provides that said motion may be made in the Complaint.

Improvements to the adjacent structure 533 S. Caesar Chevez are not contingent upon incorporating 213 E. Hillsdale into their plans.

WHEREFORE, Plaintiff respectfully requests this Court to enter an Order requiring the City of Lansing and the Lansing Historic Commission to Show Cause why an Order should not be entered requiring the City of Lansing and the Lansing Historic Commission to issue Plaintiff a demolition permit for 213 East Hillsdale;

Further, that Plaintiff be issued an Order requiring the City of Lansing and the Lansing Historic Commission to issue Plaintiff a demolition permit for 213 East Hillsdale;

Further, that this Court award Plaintiff interest from the date the 60 days expired, costs for having to file this suit, reasonable attorney fees, plus whatever other legal or equitable relief this Court deem just..

I, Andrew P. Abood, declare that I have read the above stated Complaint, and all the allegations are true.

Respectfully submitted,

ABOOD, ABOOD & RHEAUME, P.C.



Andrew P. Abood

STATE HISTORIC PRESERVATION REVIEW BOARD
MICHIGAN HISTORICAL COMMISSION

STATE OF MICHIGAN

IN RE: 213 East Hillsdale
Lansing, MI 48933

Hearing Officer Nicholas Bozen

NOW COMES the above named applicants, Andrew P. Abood & Patricia L. Abood, and hereby submit this supplemental brief in support of its request for a demolition permit, and further state as follows:

That according to the exhibits submitted by the Lansing Historic Commission, the application for wrecking permit was taken on March 16, 1994.¹ A formal hearing was held before the Lansing Historic Commission on or about April 28, 1994. At the hearing, a vote was taken of the those present and the request for the permit was denied on a vote of 3-2. The applicants then proceeded to file an appeal of the decision. Mr. Andrew P. Abood discussed with the staff, specifically Donna Wynant, when a written decision would be issued. Although Donna Wynant stated on numerous occasions that a written decision would be issued shortly, no decision was forthcoming and as such the applicants chose to file their appeal within 60 days of the April 28, 1994 hearing. A written decision was not issued prior to applicants filing their appeal.

The applicants did receive a written decision from the Lansing Historical Commission on September 9, 1994, the morning prior to the hearing before this board

ABOOD, ABOOD
& RHEAUME, P. C.
ATTORNEYS AT LAW
(617) 372-6700

¹ Exhibit 6 of the City of Lansing Historic Commission.

which was scheduled and heard on September 9, 1994 at 9:30 a.m.²

The decision issued by the Lansing Historical Commission on September 9, 1994, fails to comply with the statutory requirements of MCL 399.209; MSA 5.3407(9). According to MSA 5.3407(9),

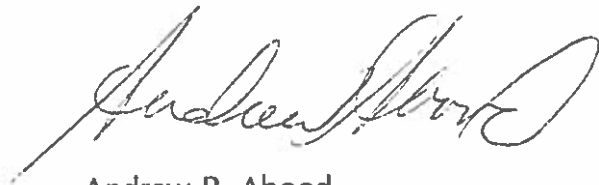
"[i]f a permit application is denied, the decision shall be binding on the inspector or other authority. A denial shall be accompanied with a written explanation by the commission of the reasons for denial and, if appropriate, a notice that an application may be resubmitted for commission review when suggested changes have been made. The failure of the commission to act within 60 calendar days after the date a complete application is filed with the commission, unless an extension is agreed upon in writing by the applicant and the commission, shall be considered to constitute approval.

In this case, the decision provided to the applicants on September 9, 1994 was not within the 60 calendar days, and further failed to provide any reasoning as to why the permit was denied. The decision failed to address the four considerations and how they did not apply to the applicants' requests. The Lansing Historical Commission clearly failed to act according to the statutory requirements and as such, the applicants request must be considered approved.

WHEREFORE, the applicants respectfully requests this Commission to enter an Order Granting the applicants request for a demolition permit.

Dated:

Respectfully submitted,



Andrew P. Abood

A:213SUPP.BRF

ABOOD, ABOOD
& RHEAUME, P. C.
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² See exhibit 10 of the Lansing Historic Commission.