

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

HARRY WILBUR,
Petitioner,

SOAHR Docket No. 2009-1525
Agency No. 10-003-HP

v

**GRAND RAPIDS HISTORIC DISTRICT
COMMISSION,**
Respondent.

FINAL DECISION AND ORDER

This matter involves an appeal of an August 11, 2009 written decision of the Grand Rapids Historic District Commission, which approved an application by Essie Milbrooks to retain new plastic shutters on the house located at 315 Robey Pl. SE, Grand Rapids.

The State Historic Preservation Review Board (Board) has jurisdiction to consider this appeal pursuant to Section 5(2) of the Local Historic Districts Act, as amended, MCL 399.205.

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, convened an administrative hearing on November 25, 2009. This was a limited hearing focused on the issues of jurisdiction and the Petitioner's standing.

A Proposal for Decision was issued on December 10, 2009, by SOAHR Administrative Law Judge C. David Jones, 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, being 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.

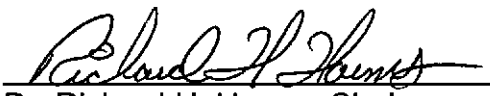
Having considered the proposal for Decision and the official record made in this matter, the Board voted 8 to 0, with 0 abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board in this matter and to incorporate the Proposal into this document, and,

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. 2009-1525

Harry Wilbur,
Petitioner

Agency No. 10-003-HP

v
Grand Rapids Historic
Preservation Commission,
Respondent

Agency: History, Arts & Libraries

Case Type: Appeal

Issued and entered
this 10th day of December, 2009
by C. David Jones
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This is an appeal filed on or about October 5, 2009 by Harry Wilbur of a Certificate of Appropriateness issued by the Grand Rapids Historic Preservation Commission (Commission) on August 11, 2009 which approved an application by Essie Milbrooks to retain new plastic shutters on the house at 315 Robey Pl. SE, Grand Rapids. Petitioner owns property near 315 Robey Pl. SE.

Petitioner, Harry Wilbur filed his appeal under Section 5(2) of the Local Historic Districts Act, 1970 PA 169, as amended, MCL 399.205(2). Petitioner has appealed the decision of the Commission to the State Historic Preservation Review Board (Board) which is an agency of the Michigan Department of History, Arts, and Libraries.

On October 8, 2009, the Board forwarded Petitioner's appeal to the State Office of Administrative Hearings and Rules to hold an administrative hearing.

On October 14, 2009, a Notice of Hearing was mailed to the parties, scheduling the hearing for November 25, 2009, at 9:00 a.m. at 611 W. Ottawa St., Lansing, Michigan.

On November 16, 2009, a Hearing Brief was received from Respondent.

On November 25, 2009, the Hearing convened as scheduled. Petitioner, Harry Wilbur, represented himself. Ta-Tanisha Manson, assistant city attorney, represented Respondent.

At hearing, as the first issue, I considered the issue of jurisdiction, raised in Respondent's hearing brief. The parties stipulated that Petitioner was a complainant, but not the applicant. I held there was no jurisdiction, and the hearing concluded.

No witness testified, and no exhibit was admitted into evidence.

ISSUE ON APPEAL

Does a non-applicant have the right to file an appeal to the Board over a decision by a local commission concerning a permit application?

FINDINGS OF FACT

1. Petitioner did not file an application for permit to retain new plastic shutters on the house at 315 Robey Pl. SE, Grand Rapids.
2. Petitioner is a complainant. He objects to the Commission's issuance of a Certificate of Appropriateness on the application of Essie Milbrooks to retain new plastic shutters.

CONCLUSIONS OF LAW

The Local Historic Districts Act provides the following right to appeal to the State Historic Preservation Review Board, and then the Circuit Court:

(2) An applicant aggrieved by a decision of a commission concerning a permit application may file and appeal with the state historic preservation review board within the department. The appeal shall be filed within 60 days after the decision is furnished to the applicant. The appellant may submit all or part of the appellant's evidence and arguments in written form. The review board shall consider an appeal at its first regularly scheduled meeting after receiving the appeal, but may not charge a fee for considering an appeal. The review board may affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or a notice to proceed. A permit applicant aggrieved by the decision of the state historic preservation review board may appeal the decision to the circuit court having jurisdiction over the historic district commission whose decision was appealed to the state historic preservation review board.

MCL 399.205(2)

The Local Historic Districts Act also provides the following right to appeal to the Circuit Court:

Sec. 11. Any citizen or duly organized historic preservation organization in the local unit, as well as resource property owners, jointly or severally aggrieved by a decision of the historic district commission may appeal the decision to the circuit court, except that a permit applicant aggrieved by a decision rendered under section 5(1) may not appeal to the court without first exhausting the right to appeal to the state historic preservation review board under section 5(2).

MCL 399.211

Since Petitioner is not an applicant, he has no right to appeal the decision of a local Commission to the State Historic Preservation Review Board. MCL 399.205(2). He appears to have a right to appeal the decision of the Commission to the

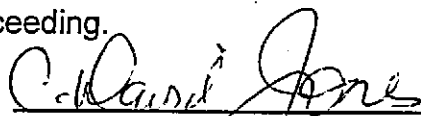
circuit court, under MCL 399.211, but that issue is up to the circuit court.

RECOMMENDED DECISION

Based on the above Findings of Fact and Conclusions of Law, I recommend the following decision: Petitioner is a complainant, not an applicant, and he has no right to file an appeal to the Board over a decision by a local commission concerning a permit application.

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fifteen (15) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within ten (10) days after Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the State Historic Preservation Review Board Bureau at Department of History, Arts and Libraries, Office of Regulatory Affairs, 702 W. Kalamazoo Street, P. O. Box 30738, Lansing, Michigan 48909, Attention: Scott Grammer, and served on all parties to the proceeding.



C. David Jones
Administrative Law Judge