

**STATE OF MICHIGAN**  
**MICHIGAN DEPARTMENT OF HISTORY, ARTS AND LIBRARIES**  
**STATE HISTORIC PRESERVATION REVIEW BOARD**

**PHIL BELLFY,**  
Petitioner,

v

SOAHR Docket No. 2009-817  
Agency No. 09-023-HP

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

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**FINAL DECISION AND ORDER**

This matter involves an appeal of an August 17, 2008 written decision of the East Lansing Historic District Commission, which approved a request to demolish four houses known as 328, 334, and 340-344 Evergreen, all of which are located in East Lansing's Oakwood Historic District.

The State Historic Preservation Review Board (Board) has jurisdiction to consider this appeal under Section 5(2) of the Local Historic Districts Act, as amended, being Section 399.205 of the Michigan Compiled Laws.

At the request the Board, the State Office of Administrative Hearings and Rules (SOAHR), which is housed in the Michigan Department of Labor and Economic Growth, convened an administrative hearing on June 30, 2009. This was a limited hearing focused on the issues of Petitioner's standing and the timeliness of his appeal.

A Proposal for Decision was issued and entered on August 26, 2009, by SOAHR Administrative Law Judge J. Andre Friedlis, 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 September 11, 2009.


Having considered the Proposal for Decision and the official record made in this matter, the Board voted 6 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: 11 September 2009

  
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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.	2009-817
Phil Bellfy, Petitioner	Agency No.	09-023-HP
v East Lansing Historic District Commission, Respondent	Agency:	History, Arts & Libraries
	Case Type:	Appeal

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Issued and entered  
this 26th day of August 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 April 13, 2009, appeal from Respondent's September 17, 2008 written decision permitting demolition of four houses.

On June 10, 2009, I issued an Order to Show Cause directing Petitioner to show cause why Petitioner's appeal should not be dismissed because Petitioner is not the owner of the affected houses and the appeal was filed more than 60 days from Respondent's decision contrary to MCL 399.205(2). (Petitioner also did not file the application for demolition.)

Petitioner responded on June 22, 2009 and June 29, 2009; Respondent filed a Position Statement/Motion to Dismiss on June 18, 2009.

A hearing was held on June 30, 2009, attended by Petitioner Bellfy and Attorney Thomas Yeadon for the Respondent. Ron Springer, East Lansing's Staff Assistant to the Historic District Commission and Mr. Bellfy provided testimony. The following four Respondent Exhibits were admitted:

1. Respondent's Record on Appeal with five tabs identified in the following manner:
  1. July 21, 2008 Certificate of Appropriateness Application for the demolition of 328,334, 340-344 Evergreen;
  2. August 5, 2008, Historic District Commission Final Staff Report with 17 attachments;
  3. Notice of Public Hearing and Affidavit of Publication, July 30, 2008;
  4. August 14, 2008, Historic District Commission Meeting Minutes;
  5. August 20, 2008, Certificate of Appropriateness Application for City Center II Project, July 21, 2008 Certificate of Appropriateness Application for demolition of 328, 334, 340-344 Evergreen, and September 17, 2008 notice of conditional demolition approval.
2. Agreement for Negotiations Prior to Submission of Good Faith Offer between City and Gregory Spiridakos, March 20 and March, 24, 2008; Option to Purchase Real Estate by East Lansing Downtown Development Authority(ELDDA) and Gregory and Effie Spiridakos, September 11, 2008; Purchase Agreement between ELDDA and Gregory and Effie Spiridakos, September 11, 2008;
3. Option to Purchase Real Estate between ELDDA and First Houses LLC, June 17, 2008; Purchase Agreement between First Houses LLC and ELDDA June 17 and June 24, 2008.

4. Affidavit of Receipt of Certificate of Appropriateness Applications, June 16, 2009.

At the close of the hearing record, the parties were given 30 days to file briefs and 15 days for responsive briefs.

Petitioner Bellfy filed a brief dated July 30, 2009. Respondent filed a brief on July 31, 2009. Petitioner filed a reply brief on August 12, 2009.

**ISSUES**

1. Does Petitioner have standing to appeal Respondent's decision?
2. Did Petitioner file a timely appeal?

**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 Historic District Commission for approval to demolish the houses because the city was in the process of acquiring the properties. Tab 1 of Respondent Exhibit 1 is the city's July 21, 2008, application to Respondent for permission to demolish the structures. Tab 2 of Exhibit 1 contains Respondent's Final Staff Report describing each structure. The Staff Report recommended that each house be demolished based on compliance with Section 20-66(2) from City Ordinance Chapter 20 titled Historic Preservation. This section is identical to MCL 399.205 (6) (b) from Act 169:

- (2) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.

The Commission voted to approve this proposal during their August 14, 2008 meeting. This is contained in Tab 4 of Respondent Exhibit 1, page 13 as follows:

**Motion:** Thompson moved to approve a Notice to Proceed for the demolition of the four houses under the finding that the application met Section 20-66(2) of the Historic Preservation Code. The motion to demolish is contingent upon: 1) completion of financial and environmental as outlined in 20.66(2); 2) efforts will be made with respect to potential relocation of the houses in question; 3) salvage rights will be made available to an appropriate organizations. [sic] The motion was seconded by Bollman. **Vote:** Ayes: Christensen, Bollman, Eysseleinck, Thompson. Nays: Koppisch, Mikel. Motion passed 4-2.

Respondent's decision dated September 17, 2008 was sent to the developer Scott Chappelle, CADA Investment Group, LLC. See Tab 5 of Respondent Exhibit 1. As noted above Petitioner's appeal from this decision was dated April 13, 2009.

### CONCLUSIONS OF LAW

#### **ISSUE 1 – Does Petitioner have standing to appeal Respondent's decision?**

**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....

An "applicant" has the right to appeal. Petitioner Bellfy did not apply to Respondent for permission to demolish the houses. While Petitioner argues that the city does not own the houses and cannot be a true applicant, MCL 399.205 (1) does not require a permit applicant be an owner. This provision is much broader:

- (1) A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district... **The person, individual, partnership, firm, corporation, organization, institution, or agency of government proposing to do that work shall file an application for a permit with the inspector of buildings, the commission, or other duly delegated authority....**

Since Petitioner did not file a permit with Respondent, Petitioner cannot be considered an "applicant." Petitioner therefore lacks standing to protest Respondent's decision. While Petitioner's August 12, 2009 brief terms this process bizarre, that is what Act 169 requires.

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 would appear to qualify as one who could appeal to the circuit court from Respondent's decision. But this Section requires a "permit applicant" aggrieved by a commission decision to appeal to the State Historic Preservation Review Board before appealing to the Circuit Court. Petitioner is not a permit applicant.

Petitioner's August 12, 2009 brief asserts that the city of East Lansing had no standing to file the request for demolition. But that is not an issue before me. Respondent accepted the city's petition and decided in the city's favor. The issue before me is whether Petitioner may appeal this decision not who can file a petition with Respondent.

#### **ISSUE 2 - Did Petitioner file a timely appeal?**

As noted above, Respondent voted to approve the application at its August 14, 2008 meeting. A written decision was sent to the developer on August 17, 2008. Act 169 does not require this decision to be sent to the building owners. There was also no requirement for Respondent to send its decision to Petitioner.

Therefore, even if Petitioner were considered a permit applicant, the April 13, 2009, appeal would be beyond the 60 day time limit set forth in MCL 399.205 (2). As pointed out in Respondent's brief, even if it were to be found that Respondent's decision needed to be sent to the property owners, this would not permit Petitioner (a non owner) to file a late appeal.

Petitioner's August 12, 2009 brief asserts Petitioner is acting as Agent for the Spiridakos family. But there is nothing in the record (aside from Petitioner's assertion)

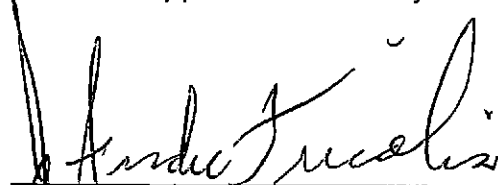
giving Petitioner this authority.

In summary, Petitioner does not have standing to file an appeal from Respondent's decision since Petitioner did not file a permit as provided in MCL 399.205(1) and is not an applicant as required by MCL 399.205 (2).

Even if permitted to appeal based on Act 169, Petitioner did not file an appeal within 60 days of Respondent's decision as provided in MCL 399.205 (2).

**RECOMMENDED DECISION**

I recommend the Review Board grant Respondent's Motion to Dismiss Petitioner's appeal and find Petitioner does not have standing to appeal from Respondent's September 17, 2008 written decision and also that the appeal was filed beyond the 60 day appeal period permitted by Act 169.



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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: Nicholas L. Bozen. All filings must also be served on all other parties.