

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

**LUIS PELLECCER, JR.,**  
Petitioner,

v

Review Board Case No. 10-012-HP  
SOAHR Docket No. 2010-694

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

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**FINAL DECISION AND ORDER**

This matter involves an appeal of an April 22, 2010 written decision of the Grand Rapids Historic Preservation Commission, which denied a request to retain five glass block basement windows installed at the house located at 220 Wellington Ave, SE, and situated in Grand Rapids' Fairmont Square 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 (LHDA), as amended, being Section 399.205 of the Michigan Compiled Laws.

At the request of the Board, the State Office of Administrative Hearings and Rules (SOAHR), which is housed in the Michigan Department of Energy, Labor and Economic Growth, convened an administrative hearing on August 2, 2010. This was a limited hearing focused on the issue of whether the Applicant (Petitioner) filed a timely appeal under Section 5(2) of the LHDA, *supra*.

A Proposal for Decision (PFD) was issued and entered on August 3, by SOAHR Administrative Law Judge C. David Jones. True copies of the PFD 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 PFD and all post-hearing filings and responses to filings submitted by the parties, if any, at its regularly scheduled meeting conducted on September 24, 2010.

Having considered the PFD and the official record made in this matter, the Board voted 7 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 PFD into this document, and,

Having done so,

**IT IS DETERMINED** that the Petitioner filed late and has lost his right to appeal.

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

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

Dated: 24 September 2010

  
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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.	2010-694
Luis Pellecer, Jr., Petitioner	Agency No.	10-012-HP
v	Agency:	Michigan State Housing Development Authority
Grand Rapids Historic Preservation Commission, Respondent	Case Type:	Appeal

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Issued and entered  
this 3rd day of August, 2010  
by C. David Jones  
Administrative Law Judge

**PROPOSAL FOR DECISION**

**Procedural History**

This is an appeal filed on or about June 28, 2010 by Luis Pellecer, Jr., to a decision made by the Grand Rapids Historic Preservation Commission on April 21, 2010. The Applicant requested he be allowed to retain glass block basement windows. The Commission denied the specific request, and the Petitioner appealed under Section 5(2) of the Local Historic Districts Act, 1970 PA 169, as amended, MCL 399.205(2). Petitioner has appealed the decision to the State Historic Preservation Review Board (Board).

On July 1, 2010 the Board forwarded Petitioner's Appeal to the State Office of Administrative Hearings and Rules to hold an administrative hearing.

On July 13, 2010, Notice of Hearing was mailed to the parties scheduling the hearing to commence on August 2, 2010, at 9:00 a.m., at 611 W. Ottawa St., Lansing, Michigan.

On August 2, 2010 the hearing convened as scheduled. Petitioner, Luis Pellecer, Jr., represented himself. Rhonda Baker, Preservationist Specialist, represented Respondent.

At hearing, I considered the question of timeliness of the appeal, raised in Respondent's brief.

The following witnesses testified:

Luis Pellecer, Jr. – Petitioner;

Rhonda Baker – Preservation Specialist;

Scott Grammer – Administrative Law Specialist, State Historic Preservation Officer.

The following exhibits were admitted into evidence:

Petitioner's Exhibit 1: Appeal;

Respondent's Exhibit A: Minutes of April 21, 2010 Minutes;

Respondent's Exhibit B: April 22, 2010 Notice.

### **Issue On Appeal**

Did the Applicant (Petitioner) file a timely appeal under MCL 399.205(2)?

### **Findings Of Fact**

1. On April 21, 2010 the Commission at a meeting denied Petitioner's specific request that he be allowed to retain glass block windows. Petitioner attended the meeting and knew of the denial.

2. On April 22, 2010 the Commission sent to Petitioner's correct address a Notice of Denial. Petitioner received, or should have received this in due course. The only difficulty Petitioner described in receiving mail was that his roommate sometimes tucks away mail. Petitioner alleged the roommate tucked away this notice

so petitioner did not receive it until about April 25 or 26, 2010. However, Petitioner should have anticipated receipt of the notice, and taken better precautions to see he received it timely.

3. Petitioner's appeal was due June 21, 2010.

4. Petitioner's appeal was received on June 25, 2010 or June 28, 2010. Petitioner admitted he may have mailed the appeal between the 59<sup>th</sup> and 61<sup>st</sup> day.

### Conclusions Of Law

The Local Historic Districts Act provides the following right to appeal to the State Historic Preservation Review Board:

(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 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 applicant (Petitioner) did not file his appeal within 60 days after the decision was furnished to him, according to the weight of evidence on record. Therefore, the Applicant no longer has a right to appeal.

Petitioner's roommate may have tucked away the April 22, 2010 Notice for a short time, but Petitioner attended the April 21, 2010 Commission meeting and should have taken precautions to see he received it timely. The Appeal was due June 21, 2010, but was not received until June 25, 2010 or June 28, 2010 (Per Scott Grammar, it is possible there was about a two day delay in date stamping the appeal). Petitioner himself testified he may have mailed it the 59<sup>th</sup> to the 61<sup>st</sup> day.

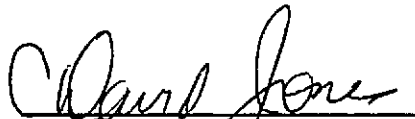
**Recommended Decision**

Based on the above Findings of Fact and Conclusions of Law, I recommend the following decision:

Petitioner has filed his appeal late, and no longer has a right to appeal.

**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 Michigan State Housing Development Authority, 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