

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Docket No. 2007-851

R.T.P. Prose,
Petitioner

Agency No. 07-039-HP

v
Northville Historic District
Commission,
Respondent

Agency: History, Arts & Libraries

Case Type: Appeal

Issued and entered
this 18th day of September, 2007
by Kenneth P. Poirier
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL FINDINGS

This document is being reissued, due to a malfunction in the copy machine that left Page 15 of the decision out. No amendments or changes have been made to this decision except for the date of issuance. We apologize for any inconvenience this may have caused.

This matter involves the administrative appeal of a decision of the City of Northville Historic District Commission (the Commission), which denied an application to demolish the residential structure located at 373 N. Rogers in the City of Northville, Michigan. The residence is situated in the City of Northville's historic district.

The Commission issued its decision on June 20, 2007. The Petitioner filed the instant appeal on June 25, 2007.

The appeal herein was filed under the provisions of Section 5 (2) of the Local Historic Districts Act (LHDA).¹ Section 5 (2) provides that an applicant aggrieved by a decision of an historic district commission may appeal to the State Historic Preservation Review Board (the Review Board), an agency of the Michigan Department of History, Arts and Libraries (the Department).

Upon receiving the appeal, the Review Board directed the State Office of Administrative Hearings and Rules (SOAHR) to conduct an administrative hearing for purposes of accepting evidence, hearing legal arguments, and preparing a "proposal for decision." SOAHR convened a hearing on August 21, 2007, in the Cadillac Place, Second Floor Annex, Suite 2-700, 3026 W. Grand Boulevard, Detroit, Michigan. The hearing was held in accordance with procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969.²

The Petitioner, Thomas Prose, M.D., M.P.H, M.B.A., appeared on his own behalf, with a witness, Frank Bauss. Mr. Bauss did not testify. Marc D. McDonald, Attorney and Counselor, Bloomfield Hills, Michigan, appeared in these proceedings on behalf of the Respondent. Kenneth P. Poirier, an Administrative Law Judge assigned to the case by SOAHR, served as Presiding Officer.

ISSUE

Did the Commission on June 20, 2007 arbitrarily and capriciously deny the Petitioner's request to demolish the structure at 373 N. Rogers, in Northville, Michigan?

EXHIBITS

The parties submitted the following exhibits for consideration at the hearing.

¹ 1970 PA 169, Section 5, MCL 399.205

<u>Exhibit</u>	<u>Description</u>
(Petitioner) Exhibit 1	Homeowner's Affidavit (December 9, 2005)
(Petitioner) Exhibit 2 a-b	Warranty Deed (December 9, 2005)
(Petitioner) Exhibit 3 a-h	Demolition Application (Undated)
(Petitioner) Exhibit 4	Letter to Mr. Starling (July 12, 2007)
(Respondent) Exhibit A 1-3	Demolition Application Excerpt (Undated)
(Respondent) Exhibit B	Letter from Mr. Starling (July 5, 2007)
(Respondent) Exhibit C	Letter to Mr. Starling (July 5, 2007)
(Respondent) Exhibit D	Letter from Mr. Starling (July 11, 2007)
(Respondent) Exhibit E	Letter to Dr. Prose (August 9, 2007)
(Respondent) Exhibit F	Commission Denial Notice (August 15, 2007)
(Respondent) Exhibit G 1-3	Letter to Dr. Prose (August 16, 2007)

FINDINGS OF FACT

During the spring of 2007 the Petitioner submitted an application to the City of Northville for demolition of a 1922 wood frame house located at 373 N. Rogers, in Northville, Michigan. Since the structure is located within the City of Northville's historic district, the application was referred to the Commission for consideration.

The Commission anticipated considering the Petitioner's application at a May 16, 2007 hearing. That meeting, however, was canceled due to a lack of quorum. The Commission again anticipated considering the Petitioner's application at a meeting scheduled for June 13, 2007. That meeting, however, was also canceled due to a lack of quorum. The Petitioner originally learned about each of these meetings when he

² 1969 PA 306, Section 71 *et seq.*, MCL 24.271 *et seq.*

discussed his application with members of the support staff of the City of Northville.

After the June 13, 2007 meeting was canceled, the Petitioner learned from a member of Northville's support staff that another meeting of the Commission was scheduled to be held in July 2007. In late June 2007, however, the Petitioner received a notice from the Commission that it had denied his application on June 20, 2007. The Petitioner did not know that the meeting was scheduled for June 20, 2007, and therefore did not attend. He appealed the Commission ruling to the Review Board five days later,

On or about July 5, 2007, the Petitioner received a letter from Richard Starling, a Building Official speaking on behalf of the Commission. In the letter, Mr. Starling told the Petitioner that the Commission had denied his request to demolish the structure in question. Mr. Starling's letter further explained that the Petitioner's application did not have sufficient documentation, and invited the Petitioner to complete a new application with supporting documentation as required by the Northville Historic District Design Standards and the Guidelines for the Demolition of Structures within the Northville Historic District. Mr. Starling's letter additionally provided the Petitioner with phone numbers with which he could reach Mr. Starling with any questions. Exhibit B.

The Petitioner wrote a letter to Mr. Starling, dated July 5, 2007, in which he acknowledged receiving Mr. Starling's July 5, 2007 letter. The Petitioner further requested a list, "of all required information and/or documentation, which was missing from my application. Please provide this with specificity, so that I may comply with this." Exhibit C.

On or about July 11, 2007, the Petitioner received a letter from Mr. Starling. Enclosed with this letter was an application for demolition of a residential structure which had recently been approved by the Commission. Mr. Starling forwarded this application to

the Petitioner "in an effort to assist you in preparing a more complete application...." Exhibit D. Mr. Starling's letter also invited the Petitioner to attend a Historic District meeting scheduled for July 18, 2007, at which time it was anticipated that the Commission would be able to tell the Petitioner directly what he needed to do to complete his application. The Petitioner, however, is a physician, and his clinical duties prevented him from attending the July 18, 2007 meeting.

On July 12, 2007, the Petitioner sent a letter to Mr. Starling responding to his letter of July 11, 2007. In his July 12, 2007 letter, the Petitioner stated that he had compared his application to the historic district guideline requirements, and that he could find no missing items that were required by those guidelines. He therefore asked for a specific list of items that were missing from his application. Exhibit 4.

On August 15, 2007, the Commission held a meeting at which it considered the Petitioner's application. The Petitioner attended this meeting, and offered oral testimony concerning his application. The discussion of the Petitioner's application took place primarily between the Petitioner and the Commission Chairperson, and lasted approximately 10 minutes. After the conclusion of the discussion, the Commission denied the Petitioner's application, specifically noting that the denial was "due to insufficient information." Exhibit F.

On August 16, 2007, the Commission's Vice Chair sent a letter to the Petitioner describing the events of the previous evening. The letter pointed out to the Petitioner that the Commission's review of the Petitioner's application to demolish the home located at 373 N. Rogers Street took place, "based on your requests that a list be provided stating the items that are missing from your application." The letter went on to list

15 separate items that the Commission considered in denying the Petitioner's application for demolition. Exhibit G.

By the date of the hearing held before the undersigned in this matter, August 21, 2007, the Petitioner had not yet received the August 16, 2007 letter. He did receive a copy of the letter, however, at the August 21, 2007 hearing.

CONCLUSIONS OF LAW

As indicated above, Section 5 (2) of the LHDA allows persons aggrieved by decisions of commissions to appeal to the Review Board. Section 5 (2) also provides that the 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. Relief should be granted where a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial and material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

Under Michigan law applicable to administrative proceedings, a party who stands in the position of an applicant, an appellant or a petitioner typically bears the burden of proof. 8 Callaghan's Michigan Pleading and Practice (2d ed), Section 60.48, p 176, *Lafayette Market and Sales Co v City of Detroit*, 43 Mich App 129, 133; 203 NW2d 745 (1972), *Prechel v Dep't of Social Services*, 186 Mich App 547, 549; 465 NW2d 337 (1990). The Petitioner occupies that position in this proceeding and accordingly bears the burden of proof regarding his factual assertions.

The Petitioner argues that the Commission's June 20, 2007 denial of his application was arbitrary and capricious. He pointed out that he had received no prior

notice of the June 20, 2007 Commission meeting at which this application was denied. The evidence did not contradict the Petitioner in this regard. The Petitioner further pointed out that, as of June 25, 2007, he had not received any reason for the Commission's denial. By means of the July 5, 2007 letter from Mr. Starling to the Petitioner, however, the Petitioner clearly learned that the Commission denied his application because it was looking for further information beyond that which was included in it.

The Petitioner did not understand exactly what the Commission was seeking that he had not already provided, and he asked for specificity on this issue, by means of his correspondence with the Commission. The August 16, 2007 letter from the Commission Vice Chair that the Petitioner received during the August 21, 2007 hearing before the undersigned provided that specificity.

Of the 15 factors identified in the August 16, 2007 letter, the Commission found that the Petitioner's application was complete with respect to three of them. The Petitioner, however, argued that his application sufficiently responded to many of the 15 items identified by the Commission.

One of the factors about which the Commission required some detail, and which was listed on the August 16, 2007 letter, requested a site plan, prepared to scale, "and any other information which accurately describes the proposed use and appearance of the site after demolition or moving of the resource." Exhibit 3 e, page 5 of the Petitioner's Application for Building Permit and Plan Examination shows the proposed use to be an "empty lot." The Petitioner explained at the August 21, 2007 hearing that he anticipated that after demolition of the structure there would simply remain a blank lot with grass.

The August 16, 2007 letter further indicated that a "written discussion of how the demolition or moving of the resource might benefit the community" was also needed. The Petitioner testified at the August 21, 2007 hearing that he had a laboratory report that he had hoped to offer to the Commission during the August 15, 2007 meeting. The Petitioner asserted that the report would have shown the Commission ecological interests that favored the Petitioner's planned use of the property. Further, Exhibit 3 e, in describing the benefit of his proposed use, stated that by demolishing the structure, the Petitioner hoped to "remove an eyesore of no historical value."

The Commission additionally requested historic photographs, the name of the original owner or builder or developer, and historic information regarding the structure. The Petitioner's response at the August 21, 2007 hearing was that the information was either unknown or unavailable.

The August 16, 2007 letter also told the Petitioner that the Commission was interested in learning the "[f]easibility of alternative uses for the property that would allow compliance with Northville Historic District Standards and Guidelines." The Petitioner's response to this factor through his application, Exhibit 3 e, was, "none except single family home."

To reverse a decision because it is arbitrary, capricious, or clearly an abuse of discretion, a reviewing judicial or quasi-judicial body must find that the result of administrative agency action, for example, the action of the Commission, is so palpably and grossly violative of fact and logic that it shows a perversity of will, a defiance of judgment, or an exercise of passion or bias. An arbitrary decision is one made without reference to principles, circumstances, or significance. *Kurzyniec Estate v Dept of Social*

Services, 207 Mich App 531, 537; 526 NW2d 191, 194-195 (1954). The decision of the Commission to deny the Petitioner's application for demolition because of insufficient supporting data does not meet this standard.

Although the Petitioner did not receive notice of the June 20, 2007 Commission meeting at which his application was first denied, the Commission cured this defect. It held another meeting on August 15, 2007 for discussion of the Petitioner's application. The Petitioner was able to participate in this meeting. It is clear from the Commission's denial of the Petitioner's application that he was not satisfied with this result. It cannot be said, however, that the Commission left the Petitioner in the dark concerning why it denied the Petitioner's application, or what the Petitioner needed to do to perfect his application.

A day after the hearing the Commission Vice Chair sent to the Petitioner a detailed letter explaining the pertinent issues. Although by the time of the August 21, 2007 hearing before the undersigned the Petitioner had not yet come into possession of the letter, he received it during the hearing.

Further, it cannot be said that the factors upon which the Commission expected the Petitioner to elaborate amounted to arbitrary hurdles without reference to principles, circumstances, or significance. On the contrary, they are related to the statutory requirements of the LHDA. Under Section 5 (6) of the LHDA, work within an historic district shall be permitted through the issuance of a notice to proceed by the commission if any of four conditions prevail. The four conditions articulated by Section 5 (6) are:

- (a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.
- (b) 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.
- (c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.
- (d) Retaining the resource is not in the interest of the majority of the community.

The 15 factors identified in the August 16, 2007 letter reflect the Commission's efforts to glean information concerning applications such as the one in question that would give it a reasonable basis upon which to decide whether or not proposed work would comply with the statutory guidelines of the LHDA. The information that the Petitioner gave to the Commission in his application, however, left significant questions unanswered about the extent to which his proposal would comply with those guidelines. In the face of these unanswered questions, the Commission's June 20, 2007 decision to deny the application for lack of information represents a reasonable exercise of discretion.

In the photograph of the structure that the Petitioner obtained from the City of Northville's official records, see Exhibit 3 f, the house in question is shown to be seated on what amounts to be a small hill, with steps built into the hill and leading up to the house. The Petitioner's explanation of the appearance of the site after demolition of the house, as

an empty lot with grass, did not explain whether or not the hill would remain on the property. The appearance of the property after the Petitioner's proposed demolition, with or without the hill, could hypothetically add or detract from the property's aesthetic value to the area in question. This would be an important consideration in determining whether or not retaining the resource as it currently stands is in the interest of the majority of the community, the factor identified by Section 5 (6) (d) of the LHDA.

Similarly, the Petitioner contended that the Commission's requested historic photographs, name of the original owner, and other historic information concerning the structure, were either unknown or unavailable. A title search, however, should have at least revealed the name of the original owner. The Petitioner testified at the August 21, 2007 hearing that he consulted public historical records and found no historic photographs or information concerning the property. By failing to specify in his application what research efforts he took, and how they were frustrated, the Petitioner denied the Commission information that would have assisted it in determining whether or not the house in question truly lacked historic value, and therefore, again, whether retaining the House would not be in the interest of the majority of the community under Section 5 (6) (d). Instead, the Commission was left to rely on the Petitioner's unsupported conclusion reported above that the house was "an eyesore of no historical value." Because of the limited explanation provided by the Petitioner concerning the appearance of the site after demolition, therefore, the Commission lacked sufficient information to decide whether or not the proposed demolition would fit under Section 5 (6) (d).

The factor identified in the August 16, 2007 letter concerning the feasibility of alternative uses for the property complied with the condition of Section (5) (6) (c) of the

LHDA that all feasible alternatives to eliminate financial hardship caused by retaining the resource had been pursued prior to requesting demolition. The evidence does not show that the Petitioner provided the Commission with sufficient information about such alternatives that may have been attempted prior to requesting the demolition of the house in question. The Petitioner's cursory response at Exhibit 3 e identifying no alternative use "except single family home" did not provide the level of detail needed by the Commission to make a reasonable decision concerning the factor identified by Section 5 (6) (c) of the LHDA.

The LHDA also provides, at Section 5 (6) (b), that work must be approved when the resource is a deterrent to a major improvement program of substantial benefit to the community. This concern is reflected in the Commission's request, expressed in the August 16, 2007 letter and already mentioned above, for information concerning the proposed use and appearance of the site after demolition or moving of the resource. The only improvement program noted on the record was the Petitioner's plan to leave the property after the demolition of the house as an empty lot with grass. Intuitively, this plan could present at least an initial showing of some benefit to the community.

However, in addition to the uncertainty as to the appearance of the property after the proposed demolition, as discussed above, the record does not show that the Petitioner provided the Commission with information explaining the cost of any landscaping that might be necessary after the house is demolished. There was no indication of how many open lots, such as that contemplated by the Petitioner, currently exist in the community. What access, if any, did the Petitioner anticipate offering the general public to this open lot? The information provided by the Petitioner to the Commission is silent on

this question. If the Petitioner intends to create a park-like "green space," this might indicate some benefit to the community that would result from the Petitioner's proposed plan. Without such information, however, the Commission was unable to determine whether or not the Petitioner's plan amounted to a "major" improvement program of "substantial" benefit to the community, as contemplated under Section 5 (6) (b).

The Commission's request for a written discussion of how the demolition or moving of the resource might benefit the community echoed the concern reflected in Section 5 (6) (a) of the LHDA that the resource might constitute a safety hazard. The Petitioner testified that he had a laboratory report outlining ecological concerns regarding the property available at the August 15, 2007 hearing. The evidence, however, did not indicate that the report was made available to the Commission through the Petitioner's application. By the time of the June 20, 2007 denial by the Commission, then, the Petitioner had not submitted sufficient detail to the Commission to allow it to make a decision regarding the concern reflected in Section 5 (6) (a) of the LHDA.

Additionally, it is worthy of particular note that the Petitioner included no photographic evidence concerning any problems with the property in question that might have required demolition. Those problems may very well have existed at the time of the Commission's June 20, 2007 decision to deny the Petitioner's demolition request. By failing to present photographic evidence of those problems to the Commission, however, the Petitioner again limited the information available to the Commission upon which it could decide whether or not to approve the Petitioner's application on its merits.

It is accordingly concluded that the Commission's June 20, 2007 decision to

deny the Petitioner's application for demolition as lacking sufficient supporting documentation was not made in an arbitrary and capricious fashion. It is further concluded that any error committed by the Commission in failing to notify the Petitioner of the June 20, 2007 meeting was cured by the Commission's later meeting with the Petitioner on August 15, 2007, the Commission's efforts to clarify for the Petitioner what it was looking for in his application, and the Commission's assurance to the Petitioner, in the August 16, 2007 letter, that it would "again hear your case" upon his submission of the information specified in that letter.

Inasmuch as the Petitioner has failed to show that the Commission refrained from considering governing principles in general in its decision-making activities, and in particular, that the Commission had ignored relevant principles of the LHDA in making their decisions, it is concluded that the Petitioner's request for relief should be rejected.

CONCLUSION

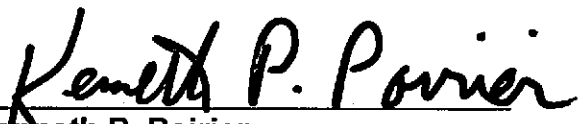
In consideration of the entire official hearing record made in this proceeding, it is concluded that the Commission did not on June 20, 2007 arbitrarily and capriciously deny the Petitioner's request for demolition of the house located at 373 N. Rogers, in Northville, Michigan.

RECOMMENDATION

In light of the above, it is recommended that the Commission's decision of June 20, 2007 be AFFIRMED.

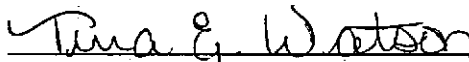
EXCEPTIONS

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. If an opposing party chooses to file a Response to the Exceptions, it must be filed within ten (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, 702 W. Kalamazoo Street, P.O. Box 30738, Lansing, Michigan 48909, Attention: Nicholas L. Bozen. All filings must also be served on all other parties to the proceeding.


Kenneth P. Poirier
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 18th day of September, 2007.



Tina E. Watson
State Office of Administrative Hearings and Rules

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JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF HISTORY, ARTS AND LIBRARIES
LANSING

DR. WILLIAM M. ANDERSON
DIRECTOR

December 11, 2007

R.T. Prose
21333 Haggerty Rd.
Novi, MI 48375

NOTICE OF BOARD MEETING

Marc D. McDonald
Plunkett & Cooney PC
38505 Woodward Ave., Suite 200
Bloomfield Hills, MI 48304

Re: R.T.P. Prose v Northville Historic District Commission
State Office of Administrative Hearings and Rules Docket No. 2007-851
Michigan Department of History, Arts and Libraries Case No. 07-039-HP

Dear Mr. Prose and Mr. McDonald:

Please take notice that the State Historic Preservation Review Board will consider this matter at its next regularly scheduled meeting, which is currently set for 10:00 a.m. on Friday, January 18, 2008. The Board will conduct its meeting in the Lake Huron Room, Second Floor West, Michigan Library and Historical Center, 702 W. Kalamazoo Street, Lansing, Michigan. Enclosed is a copy of the Review Board's tentative agenda for the meeting.

Please further note that although the Board may consider the Proposal for Decision (PFD) and any Exceptions to the PFD and any Responses to Exceptions that have been filed to date, typically the Board does not permit oral argument without prior express Board consent.

Should you have questions about this notice, please let me know.

Sincerely,

Nicholas L. Bozen
Office of Regulatory Affairs
Telephone: (517) 241-3989

enclosure

cc w/enc: Chris Johnson
Richard Starling
Brian Conway

AGENDA (tentative)
State Historic Preservation Review Board
January 18, 2008, 10:00 a.m.
Lake Huron Room, 702 West Kalamazoo Street
Lansing, Michigan

- 10:00 1. Approval of Agenda
2. Approval of Minutes of September 14, 2007
3. Election of Officers
4. Staff Reports
5. National Register Nominations
- 10:30 Central School, Iron River, Iron County – Robert Christensen
Smith-Dengler House, Franklin Twp., Houghton County – Robert Christensen
Marquette & Western Rly. Negaunee Depot, Negaunee, Marquette County – Robert Christensen
Hudsonville Christian School, Hudsonville, Kent County – Robbert McKay
Willis-Selden Historic District Boundary Increase, Detroit, Wayne County –
Rebecca Binno Savage
Woodbridge Neighborhood Historic District Boundary Increase, Detroit, Wayne County –
Kristine Kidorf
Tinlinn Apartments, Flint, Genesee County – Kristine Kidorf
Berridge Hotel, Flint, Genesee County – Kristine Kidorf
Central National Tower, Battle Creek, Calhoun County – Andrea Riegler
- 11:30 6. Historic District Study Committee Reports – Amy Arnold
- Broadway Historic District, Ann Arbor
1011-1013 Broadway Historic District, Ann Arbor
East Side Bridge Street Historic District, Charlevoix
Stockton House Historic District, Flint
Modification of 10234 East Shore (Train Barn) Historic District, Portage
- 11:40 7. Appeals (Proposals for Decision) – Brian Conway
- Rembert C. Parker v Pontiac Historic District Commission
R. T. P. Prose v Northville Historic District Commission
Mendelson Auguste v Pontiac Historic District Commission
8. Dates of Next Meetings
- Proposed dates are May 2, 2008; September 12, 2008; January 16, 2009
- 12:00 9. Adjournment

People with disabilities needing accommodations for effective participation in this meeting should contact Cecilia Cabello at 517/373-1630 (voice) or 1800/827-7007 (TDD) one week in advance to request mobility, visual, hearing or other assistance.