

Historic District Commission  
City of Rochester Hills,  
Rochester Hills, MI

May 12, 2010

Sub: Delisting request for 2371 Livernois Rd

Dear Members,

In reference to our earlier request to the City council, we wish you to please refer to all our documents including our application request, the Dequindre Rd report and our numerous attachments. There are plenty of other documents that we did not attach due to the volumus nature but if need be we will present the same at your meeting.

Back in October 2009 we had applied for the delisting of the above property and the council had asked the commission to submit their comments. Subsequently the commission had hired a Consultant to investigate and consultant report was received in December 09. The commission since then has not presented any comments or report to the council or state for further processing. Unfortunately it has been almost 8 months now and there is no conclusion. We have presented a very strong case and provided each and every material available in support of a) Defective Procedure b) Lost Characteristics and c) Insignificance. I know all members will agree that there is not much more out there to look at as the evidence in front of them is overwhelming in most of these above criteria's, including the positive report by their own consultant.

In 1978's when the historic ordinances were established it was pretty much a volunteer program and property owners did not know the significance of the designation. People were made to believe that it is a recognition for owning something vital and significance. The original owner informed me that she was never made aware of the cons of having the designation and over the years she did not receive any papers or notices for public hearings ever. The intent in the old days was good, however as the thirst to capture even the slightest marginal properties grows and the power of citizens diminishes to fight the goliath cities, it becomes more and more apparent that the Property Rights of the people are being violated and crushed. Cities massive infrastructure, huge budgets, legal teams are no match to the small unprotected owner who cannot fight it to the last. In the current economy and the state of real estate values crash, a

historic designation is huge negative and thus no buyer would want to buy a property that is constrained by any means and is not "CLEAN". Rochester Hills website's almost 5 pages illustrate the process to get approval for any work to be done on Historic properties and the process is scary and could take several months. Owners have to obtain Appropriateness Certificates from State and City first and then only a building permit is issued. One is at the mercy of the bureaucracy. I have talked to several real estate agents and it is very clear that any restrictions on a property such as Historic (unless it is of a very high caliber significance), is not marketable after all the conditions of the historic designation are revealed in writing to the prospective buyer. In our case two companies refused to list the properties as it would be waste of time on their part. A property that the city appraised for \$1.2M is for sale for \$299,000 with no buyers and two contingent offers for a lower price after removal of the historic designation. That is reality. We believe in preservation but if the price to be paid is so huge and the burden is on the owner then it sounds unfair. Since I first started doing business in Rochester Hills, I have seen the city's pro property rights attitude and hence today I can say that with our developments done in the city we are contributing more than \$200,000 per year in property taxes . Today Property owners such as us, who are not only out of work , but also in huge debt crises and with eminent foreclosure on our current house unless we can sell this, are looking up to you to help and be fair. We supported the city and now we ask you to support us. The delisting of our property is very crucial to us and we feel that both our consultant report as well as Ms. Kirdoff report is accurate and fair and therefore there is no question that the property should be delisted.

I would like to request the members to please see the significant and striking resemblance in many ways to the 53187 Dequindre delisting. Our property was moved and extensive renovations were also done similar to the Dequindre property. City's consultant Dr Jane Bush in her report to the HDSC for 56187 Dequindre Road property justified "Lost Characteristics" and , states"

1. " Given the large wings that were added to this formerly small house in 1962, it did not retain sufficient historic character in 1978 to warrant designation as an example of an architectural style or type".
2. " In summary the house at 56187 Dequindre is not significant in the way the original committee thought. It is not significant what events or persons in the history of

Rochester Hills. It no longer retains enough of its historic character to be considered significant for its architecture.

3. She further writes in her Conclusion “ ...The original study committee did not have the benefit of the National register criteria or exceptions to evaluate a moved property and its significance to the history of Rochester Hills”.

Ms. Kidorf report resembles quite a bit to Dr. Bush and has similar conclusions. However a major difference in the report is that Ms. Kirdoff does not acknowledge one of the three criteria for elimination “ Lost Physical Characteristics” like Dr. Bush does in her report of 53187 Dequindre and feels that it is significant, and so does our consultant Bob Morris. Dr. Bush and Bob Morris , our consultant, both agree that the National Register of Criteria Bulletin 15 is applicable in property that have been moved and modified or reconstructed. Dr. Bush, Bob Morris are both very well respected experts in their field and their opinion and conclusions must be respected and given due consideration.

Kirdoff report clearly stated that the property was not “ Historic” due to numbers of reasons stated. The extensive documentation from the City records and in possession of the applicant were enough to conclude that the property did not meet the requirements and criteria set forth by the state and local ordinance.

Both consultants, city’s as well ours have emphasized key elements in this case which are:

1. That the house is known to have been built sometimes in 1945 ( no records) and the owners were no famous people or the house has no record of any significance during that period. None are stated in Survey of 1978 or 1993.
2. That the house was subsequently moved from Rochester Road to the present location . All moving records have been provided. As per national guidelines, once a structure is moved from the original location it losses the significance, in case it had any.
3. That the owners modified the structure extensively adding new siding , windows, front porches, rear porches, and a whole new addition on the entire side, now the east facing front of the house which required roof, windows and siding changes . Building permit,

drawings and other documents presented clearly support this. More than 50% of the exterior of the house was modified and reconstructed due to the extensive addition. The two front and back new porches with new wooden columns, built in 1976 ( Occupancy Certificate provided) totally changed the appearance of the house and as per the owner her nephew used some 2x4's to make the dental molding around the house in 2001 or so.

4. That as per the original owner, after the house was moved and large addition added to the front, the roof line had to be extensively modified and changed and therefore very large portion of the roof was reconstructed including new porches with new columns .
5. That the house is not associated with any famous events or people.

Based on some or all of these criteria's, Ms. Kirdoff as well as our consultant have concluded that the property is not historic.

Ms. Kirdoff has prepared an excellent report and the conclusion is based on hard facts. She does truly state that a lot of information on reconstruction is not available and there is no information on any famous person or events associated with the property. Eventhough the conclusion is to delist we feel that there a few more issues that could be added to the list;

**Defective procedure: Does not meet Single Source Non Contiguous District Criteria:**

Ms. Kirdoff states on her page 3 of the draft dated December 7<sup>th</sup>, “ A primary purpose of the 2002 Rochester Hills survey was to re-evaluate all properties that were designated in 1978..... The 1992 amendments specify requirements for study committee reports in some detail and require study committee to be guided by the evaluation criteria for the National Register of historic places.” . Dr Bush in her report for Dequindre Property states the same. It is therefore clear that the 2002 survey was intended to reevaluate the 1978 surveys which resulted in eliminating three properties . Was 2371 ever looked at even though the survey said ‘need more info’. The 2002 survey sheet prepared by Dr. Bush clearly states - house was moved, states no historic significance and description of the architectural significance is missing. It further states “ Need more info for National Registry” . A condition for the noncontiguous districts, as per

SHPO is that the resource must be eligible for National Register. Example of such a single resource as set forth on SHPO's Page # 3 of Criteria for Evaluating Resources for Inclusion in Local Historic District" states " a single resource district would be a court house; a fire station; an armory; an isolated , intact farmstead; a house designed by Frank Lloyd Wright; the summer cottage of Ernest Hemingway; or the first automobile plant where Henry Ford ...." It seems that even though the resource did not meet the requirement, no further action was taken. As much as the "Re evaluation" was the purpose of the 2002 survey and SHPO's Criteria for Evaluating Resources for Inclusion in Local Historic Districts" dated 4/17/2002 were in place , this property was not evaluated in the light of the criteria established by the state SHPO. In our opinion and the opinion of our consultant and our attorney, the formation and further reevaluation in 2002 of the noncontiguous district did not meet the criteria and therefore was established due to "Defective Procedures" once in 1978 then in 2002. In reference to a Appeals court case , Draprop vs Ann Arbor , Mr. Brian Conway of SHPO has stated " The SHPO did not ( and does not) support the creation of the single resource districts.....that a single resource district must be distinguishable from the surrounding resources , stand alone on its merit, and have individual historic significance using the criteria for eligibility established by the Interior Secretary for National Register inclusion. Examples are a court house; a fire station; an armory; an isolated , intact farmstead; a house designed by Frank Lloyd Wright; the summer cottage of Ernest Hemingway; or the first automobile plant where Henry Ford ...." ( Letter to Mr. Freeman of Troy in delisting of the Quail Run Property) . The 2002 Re-evaluation ,if done effectively, would have certainly delisted this property as was done in case of three other properties including the Dequindre Rd property. We believe it was overlooked and hence "Defective Procedure" for the 2002 re-evaluation as well as the 1978 survey. As per office of SHPO, cities revise and update the inventory in the light of the existing laws and does not stipulate that properties listed earlier that do not meet the current law or were enlisted in error due to misinformation cannot be removed just like the city removed some of them.

**Defective Procedure: Did not meet the requirements of MCL 399.214 for Boundary Modifications:**

In 1992 the state amended MCL 399.214 called for a specific procedure for modifying boundaries It states "Before establishing, modifying or eliminating a historic district , a historic

district study committee appointed by the legislative body of the local unit, shall except provide for in subsection (2) , comply with the procedures set forth in section 3...". In 1995 the city changed the legal boundaries of the district. Did the study committee follow the rules of section 3? To my knowledge, there was no study committee in existence at the time. The amended law specified procedure to do so was also in place and warranted compliance. The city's action to change boundaries without following the rules constitutes " Defective Procedure". In a meeting dated March 23<sup>rd</sup> 2009 of the HSDC, the city attorney states " there is a notice recorded in the chain of the title that would appear during the due diligence of the title insurance" . That is a requirement as per MCL 399.214. There is no such recording for 2371 Livernois and we have not found any reports, filings, minutes in conjunction with the rules of section 3. The amendment did not authorize city to modify boundaries without following the set procedures including notifying owner, submitting report to the council, submitting report to the SHPO, public hearings, court recording etc. The SHPO office in Lansing has no record of such fillings. ( Email from Lansing Office).

#### **Defective Procedure: Misc errors and Wrong Info**

The 1978 survey sheet states " Greek Revival". Later surveys by Dr. Bush make it " Colonial Revival" . Ms Kirdoff states "Colonial Revival" . Hence 1978 info was wrong. The 1978 survey sheet is blank in Historic Significance and the architectural type was incorrect ( Greek vs Colonial). The 1988 Structure Inventory Form sent to Michigan History Division, states" Historic Significance-None". The 1993 Inventory survey by Mr.Mckay does not specify any reason or details for architectural significance, hence incomplete and unjustified. All are extreme evidence that there was no appropriate documentation and the significance –either Architectural or Historical or famous person was never established for designation as per the requirement of Act 169 of 1970 which required to establish a clear significance. The documents have 2409 Livernois as the property designated, which was demolished in 2001. Was it 2409 or 2371.? Hence in more than one way it is "Defective Procedure". It must be mentioned that the SHPO office has no documents pertaining to this property . it is ironical that for the last 30 years, survey after after did not reveal any significant factor related to either architecture, people or event and each failed to comply with the research and documentation required to support the significance and follow the law.

**Comments regarding Ms. Kirdoff Draft Report:**

1. Ms. Kordoff states that the Affidavit dated 1978 has the same legal as the whole parcel however it should be noted that the legal document also contains a description of the boundaries -100 ft from the property line . The legal description of the parcel describes the location of the resource and it stipulates the extent and the boundary in Item 3 of the Affidavit “ Notice is hereby given pursuant to the Ordinance that the said Ordinance being Chapter 4-6 of the code of ordinance, applies to and places certain restrictions upon the structure and the land within 100ft there from...” The boundary is clearly defined which was changed without due process constituting a Defective procedure. Both Dr. Bush and Kirdoff agree that “The 1992 amendments specify requirements for the study committee reports in some detail and require study committees to be guided by the evaluation criteria for the National register of Historic Places” Yet when changing the boundaries no evaluation was done and no due process followed .
2. Ms. Kirdoff also mentions that the 50 year old requirement was an error on the part of the city. We disagree. The booklets were first published 2000 prepared and approved by the committee formed in 1999. The current City’s website still has the same language posted on the web. There is no correspondence or memo anywhere to substantiate that it was a mistake and or is being retracted. In our opinion that is based on the Avon Township Preface published in 1978 “ the city was guided by several surrounding cities who had attained the Historic Status including the SHPO” . In conversation with people at SHPO it was confirmed that 50 year was the guide line in general. Planning Department has always confirmed the contents of the Booklet. Further I would like to state that The National Park Service, National Register Criteria Bulletin 15 all state the 50 year old criteria and has been there prior to 1978 and therefore do not agree that the criteria (50 yrs ) was not taken from any state or National Register Criteria. With a full team of Study Committee and Commission member since 1999, an important criteria such as this would not be a mistake. The criteria was well in line with the existing National Register and in conjunction with various other surrounding communities that Avon Township consulted as laid in their Preface of 1978. We feel that because the 50

year criteria was overlooked both in the 1978 survey as well as the Re-Evaluation survey of 2002, it was “ Defective Procedure ”.

3. On page 4 of the draft report, Ms Kirdoff discusses the 1992 amendment in the light of the word “shall be guided by” and the 2002 amendment clarifying it say “ shall follow”. As per our attorney, Bob Morriss and Nick Bozen of the SHPO office, Brian Conway of SHPO office, the emphasis is on the word “shall” both in 1992 and 2002 and meant pretty much the same thing except and amended to put to bed any questions regarding the intent. Hence based on our discussions and input from legal staff it is clear that “shall be guided by” means the same as “ shall follow the guidelines” or “shall follow”. Therefore 1992 law did indeed require communities to follow the guidelines of National Register criteria. So in our case, by virtue of , the 1993 Survey by the City, 1995 modification of the boundary by the city, and the 2002 Survey by Dr. Bush , the property should have been delisted thus constituting a “Defective Procedure”.

Ms. Kirdoff has adequately concluded that the property does not have architectural significance. As an engineer and builder for 30 years, and in conjunction with our discussions with architects and other engineers, the house was moved section by section. Looking at the North Elevation of the house it will be clear that the new addition to the east, entire front of the house was about 9ft wide by 50 ft long. Looking at the side elevation of the roof it is clear that the entire second floor front gable was new as well including the new porch and all new dormers and windows and roof lines. As per Mrs Berklich, the original owner, the entire back and front of the house was changed and new look was given to the house. The orientation of the house was flipped , front of the house was changed to be the back and the back of the house was made the front and kitchen, dining pantry and large entrance area totaling about 500sft added to the old back but new front. The back of the house ( originally the front ) now faces Livernois. Therefore it is very evident that the whole house was extensively modified, orientation changed, elevations changed, new porches added, new roof lines changed, and many more structural changes to incorporate the new addition. It was a major change and as per the National Register Criteria , it does not meet the Reconstructed Building National Register Criteria E , either.



The house is tucked away almost 150ft from the road with deep forested woodlands obscuring any view from the road which in reality does not contribute any pleasure or appreciation by the common public. The Act 169 of 1970 Section 2 e) “promote the use of historic districts for the education, pleasure, and welfare” . Due to the location ( about 150ft from the road with wall of woods through out entire 400ft frontage) and orientation ( back faces the road) of the house , I am sure that it does not meet requirement of the Act either to educate by being able to see it, or pleasure by being able to see it closely. And even during winter if you can look thru woods it is so far that a common person can hardly see it. In case a drive by will devote too much time to concentrate to see, it will cause a dangerous and accidental environment. Hence the only way to feel it and see it will be to trespass and be on the property. There are no side walks and therefore it will never be able to justify item e of the act.

Rochester Hills has set high standards in every area and therefore is one of the best preferred city in Oakland County. Let us maintain the same in truly evaluating this property and not incorporate any structures that do not look or feel like historic. City should be proud to claim the significance of properties and be able to publish the facts of significance ( See Mr. Webster’s comments meeting dated March 23<sup>rd</sup> 2009 ) and be able to show it off to all visitors and their own citizens.

Ms. Kirdoff has concluded that the property should be delisted. As an expert in her field and someone who has been working with the city for a long time, her opinion and conclusions should be well respected. Both her report as well our comments and our consultants report have put forth a strong case with every possible exhibit and supporting document available, and there is no more information that is out there. We have made an excellent case for your review and presented you with more than sufficient proof . It is my understanding that the commission is now going to meet on May 13<sup>th</sup> and as per council request, would be taking action to process this application. I request the committee to please forward their approval for this delisting at the earliest. Our legal counsel & consultant have reviewed the documents extensively and shall be available to discuss any matters if necessary.

Mukesh Mangla  
Applicant