

**STATE OF WISCONSIN
CITY OF MILWAUKEE
ADMINISTRATIVE REVIEW APPEALS BOARD**

SUZANNE C. SPENNER-HUPY,

Petitioner,

v.

CITY OF MILWAUKEE

Respondent.

**BRIEF ON SUZANNE SPENCER-HUPY’S STANDING FOR A REQUEST OF
REVIEW OF THE HISTORIC PRESERVATION COMMISSION’S DECISION
TO THE ADMINISTRATIVE REVIEW BOARD OF APPEALS**

On April 8, 2022, Chris and Jennifer Abele (“Abele”) submitted a Certificate of Appropriateness application to the City of Milwaukee, Historic Preservation Commission (“HPC”) for a project to add an accessory building to their property. On May 9, 2022, and July 11, 2022, HPC held hearings on the application for the Certificate of Appropriateness. The Petitioner, Suzanne Spenner-Hupy (“Hupy”), is the owner of an adjacent residential property. At the July 11, 2022, hearing, HPC granted Abele a Certificate of Appropriateness for their proposed project.

Hupy has appealed HPC’s grant of Abele’s Certificate of Appropriateness. She alleges that the project will have an adverse impact on her property by creating potential light pollution issues and will cause her special damages. Further, Hupy alleges that the decision violates Milwaukee City Ordinance (“MCO”) 320-21-11-g-3 and that HPC

violated her due process rights when they made their decision based on facts not acquired during official proceedings. Hupy requests a review of HPC's decision to the City of Milwaukee, Administrative Review Board of Appeals ("ARBA") under Chapter 68 of the Wisconsin Statutes and MCO 320-11. For the reasons detailed below, Hupy does not have standing to have her claim heard by ARBA.

I. Hupy does not have standing to request a review of the Historic Preservation Commission's decision to the Administrative Review Board of Appeals under Chapter 68 of the Wisconsin Statutes and MCO 320-11.

Chapter 68 of the Wisconsin Statutes governs municipal administrative procedure. Under Wis. Stat. § 68.01 any person who has "a substantial interest which is adversely affected by an administrative determination" of a commission may have the determination reviewed. A person aggrieved may request to have a determination reviewed. Wis. Stat. § 68.08. A person aggrieved includes any individual "whose rights, duties or privileges are adversely affected by a determination of a municipal authority." Wis. Stat. § 68.06. Hupy requests a review of HPC's decision as an aggrieved person.

Under Chapter 68 of the Wisconsin Statutes, there are two procedures to have a municipal decision reviewed. Under Wis. Stat. §§ 68.08 and 68.09 a person aggrieved may request a review of a municipal determination. Whereas, Wis. Stat. §§ 68.10 and 68.11 allow for a person aggrieved to file an administrative appeal. Here, Hupy explicitly requested a review of HPC's decision. Hupy's brief is titled a request for review. In the brief itself, Hupy refers to our current proceedings as a request for review. Therefore, we must follow Wis. Stat. §§ 68.08 and 68.09.

An aggrieved person may request that a determination be reviewed under Wis. Stat. § 68.08. The request “*shall be made to the ... commission ... who made the determination* but failure to make such request to the proper party shall not preclude the person aggrieved from review unless such failure has caused prejudice to the municipal authority.” *Id.* (emphasis added). If a request for a review is sought under Wis. Stat. § 68.08, the determination to be reviewed shall be termed an initial determination. Wis. Stat. § 68.09(1). A review may be made by the commission who made the initial determination. Wis. Stat. § 68.09(2). This statute does allow for an independent review of an initial determination if the municipality chooses to provide it. *Id.* The person aggrieved may present written evidence and argument to support their position on review. Wis. Stat. § 68.09(4). The municipal authority may affirm, reverse or modify the initial determination. Wis. Stat. § 68.09(5).

MCO 320-11 governs reviews done by ARBA. Under MCO 320-11-2, “All ... commissions of this city shall comply with the requirements of ch. 68, Wis. Stats., and *shall conduct initial administrative reviews of their own determinations* in accordance with s. 68.09, Wis. Stat., upon filing of a proper request written therefor.” (emphasis added). The rules of statutory interpretation apply when interpreting ordinances. *Schwegel v. Milwaukee County*, 2015 WI 12, ¶22, 360 Wis. 2d 654, 859 N.W.2d 78. The general rule of statutory interpretation is that the word “shall” is presumed to be mandatory. *Karow v. Milwaukee Cnty. Civil Serv. Comm’n*, 82 Wis. 2d 565, 570, 263 N.W.2d 214 (1978).

Chapter 68 of the Wisconsin Statutes and MCO 320-11 is clear in its intentions. Wis. Stat. § 68.08 unambiguously states that requests for reviews *shall* be made to the

municipal authority who made the initial determination. Here, Hupy has incorrectly made the request to review to ARBA instead of HPC. Further, it is clear under MCO 320-11-2 that commissions in the City of Milwaukee must first conduct reviews of their own determinations before any other entity. ARBA does not have standing to hear Hupy's request for review.

Hupy provided an ARBA decision from 2009 where the Board determined that an appellant had standing to appeal an HPC decision to ARBA. ARBA found that the appellant had standing because MCO 308-81 was ambiguous with respect to who has standing to appeal an HPC decision. This ordinance is no longer in effect and as detailed above, Chapter 68 of the Wisconsin Statutes and MCO 320-11 unambiguously details the procedure for municipal reviews, specifically relating to ARBA. In the 2009 decision, ARBA also determined that the appellant had a constitutionally protected right implicated by the HPC proceedings. Whether an appellant had a constitutionally protected right implicated in proceedings from 2009 has no bearing on whether Hupy has a constitutionally protected right here. This ARBA decision does not clarify whether Hupy has standing in this ongoing matter.

II. Hupy is not a person aggrieved under Wis. Stat. § 68.06.

To have standing to challenge an administrative determination under Chapter 68 of the Wisconsin Statutes, one must be a person aggrieved. A person aggrieved is one whose rights, duties, or privileges are adversely affected by a determination of a municipal authority. Wis. Stat. § 68.06. Hupy claims she will incur special damages should the project be allowed to go forward according to HPC's decision to grant Abele's Certificate of

Appropriateness. Hupy also claims she has a right to protect the value of her property and the use and enjoyment thereof. In making this argument, Hupy does not provide any meaningful evidence that her rights have been or will be violated by the proposed project and she cannot be considered an aggrieved person.

Hupy does not provide information on how the project would cause her special damages or provide any legal authority on how her rights are violated. She does not provide a monetary figure of how much the damages would cost or how it would affect the value of her property. At the HPC hearing conducted on July 11, 2022, Hupy's concern was that she could see the lights from the accessory building at night and that the proposed height of the accessory building was over 19 feet. Hupy does not show that the project would cause meaningful damages to her property or that her property value and enjoyment of her property are impacted enough to be a violation of her rights. These complaints do not come near an infringement of her rights and she cannot be considered an aggrieved person. Because she is not an aggrieved person, her request for review cannot be heard by ARBA.

CONCLUSION

Therefore, Hupy does not have standing to request a review of HPC's determination to ARBA for the grant Abele's Certificate of Appropriateness. Chapter 68 of the Wisconsin Statutes lays out the process of requesting a review of an administrative determination. That request must be made to the commission who made the initial determination. MCO 320-11-2 requires that commissioners shall conduct initial reviews of their own determinations. Further, Hupy is not an aggrieved party under Wis. Stat. § 68.06. She has failed to show any meaningful infringement on her rights by HPC's decision.

1055-2022-1298/282027