



**APPEALS STANDING COMMITTEE
MINUTES
November 13, 2014**

PRESENT: Councillor Matt Whitman, Chair
Councillor Steve Craig, Vice Chair
Councillor Steve Adams
Councillor Linda Mosher
Councillor Gloria McCluskey
Councillor David Hendsbee
Councillor Bill Karsten
Councillor Brad Johns

STAFF: Ms. Tanya Phillips, Manager, By-law Standards
Mr. Andrew Faulkner, Development Officer
Mr. Trevor Oliver, Compliance Officer
Mr. Jason Thibeau, Assistant Building Official
Mr. Randolph Kinghorne, Solicitor
Ms. Sherryll Murphy, Deputy Clerk
Ms. Krista Vining, Legislative Assistant

The following does not represent a verbatim record of the proceedings of this meeting.

*The agenda circulated to the Appeals Standing Committee is available online:
<http://www.halifax.ca/boardscom/SCappeals/Appeals141113agenda.php>*

The meeting was called to order at 10:00 a.m., and adjourned at 11:01 a.m.

1. CALL TO ORDER

The meeting was called to order at 10:00 a.m.

2. APPROVAL OF MINUTES – October 9, 2014

MOVED by Councillor McCluskey, seconded by Councillor Johns that the October 9, 2014 minutes be approved, as presented. MOTION PUT AND PASSED.

3. APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS

Deletions:

9.2.1 Case #238500, 156 Windgate Drive, Windsor Junction – **the property is in compliance**

9.2.2 Case #236812, 26 Atlantic View Drive, Sambro Head - **the property has changed ownership but is still not in compliance; staff to start the compliance process over with the new owner**

Councillor Adams noted that he had visited the property at 22 Atlantic View Drive, Sambro Head (Case #236812) and in speaking with neighbours there were no concerns with the condition of the property, and he asked for clarification on the outstanding compliance issues. Ms. Tanya Phillips, Manager, By-law Standards advised that she would follow up with the Compliance Officer and report back to the Committee on what issues would need to be addressed with the new owner.

MOVED by Councillor Adams, seconded by Councillor Johns that the agenda be approved, as amended. MOTION PUT AND PASSED.

Councillor Mosher entered at 10:02 a.m.

4. BUSINESS ARISING OUT OF THE MINUTES – October 9, 2014 In Camera

4.1 Ratification of Motion in regard to the Appeal of Ahror Mamadiev – Suspension of Taxi Driver License

This matter was addressed later in the meeting, see page 8.

5. MOTIONS OF RECONSIDERATION – NONE

6. MOTIONS OF RESCISSION – NONE

7. CONSIDERATION OF DEFERRED BUSINESS – September 11, 2014

7.1 Case#201361, 44 Zinck Lane, Southwest Cove, Dartmouth

The following was before the Standing Committee:

- A supplementary staff report dated October 22, 2014

The Chair confirmed that the appellant or representative was not present.

Mr. Trevor Oliver, Compliance Officer provided an overview of the October 22, 2014 supplementary staff report; presenting photographs of the property in question.

The Chair asked if members of the Standing Committee had any questions of clarification for staff.

Mr. Oliver responded to a question on the property's condition, confirming that it had been in its current state for some time. He further spoke to the property owner's intent to demolish the building and having made an application to HRM Building Standards for a construction permit, which has since expired. Mr. Oliver added that the owner had explained his construction plans to him and had made an application in October 2014 for a development permit.

At this time, the Chair confirmed that the appellant had entered the meeting and was present for the hearing.

Councillor Hendsbee questioned whether the property owner would have the same development rights to rebuild on the site, such as the same encroachments to the water, if the building was ordered to be demolished. Mr. Andrew Faulkner, Development Officer advised that the rights would end with the demolition of the building because it would cease to exist. However, Mr. Faulkner explained that the property owner has made an application for a development permit to maintain and recognize the existing building before it is demolished. He noted that the issuance of the permit would be valid for one year and would give the owner time to apply for a construction permit in order to use the existing setbacks. Mr. Faulkner added that HRM was working with the property owner to protect his rights under the development permit. In response to a follow up question, Mr. Faulkner confirmed that a construction permit would be valid for two years.

Mr. Joe Martin, Appellant stated that he has been dealing with HRM development to obtain a development permit; noting that he had previously applied for a permit but had been rejected as he did not have the measurements of the property and the distance between each building. Mr. Martin explained that he has since made arrangements with his friend who is a surveyor to come to the property and take these measurements; which he anticipated being done this weekend. Once the measurements are taken, Mr. Martin confirmed he would provide the information to HRM Development who have indicated to him that his permit application should be approved. Mr. Martin confirmed that he had plans to develop on the land, just not in as short a timeframe, nor was he financially prepared. However, he had been informed a month after purchasing the property by By-law Standards that the building in question needed to be demolished which he was unaware of at the time he purchased the property.

The Chair asked if members of the Standing Committee had any questions of clarification for the appellant.

In response to a question on the development application process and the existing structures being grandfathered, Mr. Faulkner advised that it was a matter of having a complete application. He noted that the property measurements are required as part of the record in order to protect the property owner's rights. Once the building has been demolished, there would not be a record, except for the record provided by the applicant at this time. Mr. Faulkner confirmed that staff were in receipt of photographs of the building in question but that measurements could not be confirmed from the photographs. He anticipated issuing Mr. Martin's permit once the requested measurements were provided.

In response to a follow up question, Mr. Martin confirmed he intended to have Ship Harbour Auto complete the demolition. Mr. Martin spoke to his working relationship with the business and having previously used their services. Mr. Martin noted that Ship Harbour Auto has advised him that they could complete the demolition in May 2015; but he understood the work may need to be done sooner. Mr. Martin further spoke to the challenges of completing the demolition with winter approaching in relation to the property's location.

Councillor Hendsbee questioned how the Municipality would complete the demolition with pending road closures during the winter. Ms. Tanya Phillips, Manager, By-law Standards advised that once the order to remedy had expired, HRM staff would complete a site meeting and ask contractors to provide an estimated timeframe to complete the work; identifying any timing issues in their bids. Councillor Hendsbee questioned HRM's tender process for hiring a contractor, noting concern of increased travel costs for non-local businesses. Ms. Phillips confirmed the tender process was open to any contractor to make a bid, but that HRM Procurement also has a preferred contractor list who would receive notification.

Ms. Phillips added that the tender would be awarded to the lowest bidder and further confirmed that the timeframe to receive bids and award the tender was between three to five (3-5) business days.

Councillor Karsten questioned whether there was any reason the demolition could not be completed within the next 30 days, as outlined in the order to remedy. Mr. Martin responded that he could not see an issue as long as he received his development permit.

Councillor McCluskey asked whether there was another residence on the property, to which Mr. Martin confirmed yes.

MOVED by Councillor Karsten, seconded by Councillor McCluskey that the Appeals Standing Committee finds the property to be dangerous or unsightly as per Section 3(q) of the Charter and as per Section 356 of the Charter, orders demolition of the Dwelling, including but not limited to, the removal of all demolition debris, backfilling of any foundation or crawl space, and disconnecting any and all utility connections to the standard set by each respective utility service provider, so as to leave the property in a neat, tidy, environmentally compliant and safe condition within thirty (30) days after the Order is posted in a conspicuous place upon the property or personally served upon the owner. Otherwise, the Municipality will exercise its rights as set forth under Part XV of the Charter.

Councillor Hendsbee requested confirmation that if the motion was approved, that the property owner would still have thirty (30) days to take action on the property and complete the demolition. Further, that HRM would only act upon the order after the thirty (30) day time period; to which Ms. Phillips confirmed this was correct.

MOTION PUT AND PASSED.

8. CORRESPONDENCE, PETITIONS & DELEGATIONS

8.1 Correspondence – None

8.2 Petitions – None

8.3 Presentations – None

9. REPORTS

9.1 DANGEROUS OR UNSIGHTLY PREMISES: DEMOLITIONS – NONE

9.2 DANGEROUS OR UNSIGHTLY PREMISES: APPEALS

9.2.1 Case #238500, 156 Windgate Drive, Windsor Junction

This matter was deleted from the agenda during the approval of the Order of Business.

9.2.2 Case# 236812, 26 Atlantic View Drive, Sambro Head

This matter was deleted from the agenda during the approval of the Order of Business.

9.3 RESIDENTIAL OCCUPANCY CONDITIONS

9.3.1 Case #239186, 5397 C Victoria Road, Halifax

The following was before the Standing Committee:

- A staff recommendation report dated November 5, 2014

The Chair confirmed that the appellant or representative was present.

Mr. Jason Thibeau, Assistant Building Official provided an overview of the November 5, 2014 staff report; presenting photographs of the property in question.

The Chair asked if the Standing Committee had any questions of clarification for staff.

In reference to the photograph presented showing the large hole in the wall, Councillor Adams questioned whether staff had tested for mold, to which Mr. Thibeau responded no. Mr. Thibeau explained that he did not have the equipment/capability to test for mold. Councillor Adams questioned whether Mr. Thibeau checked for dampness, to which Mr. Thibeau responded yes and that the wall did feel damp. Councillor Adams asked what the recommended remedy was for the hole in the wall. Mr. Thibeau referred to the Order to Remedy dated October 2, 2014, wherein it states that everything needed to be free from dampness. He noted that the Order does not suggest how this should be achieved. Councillor Adams questioned how staff would test to determine the wall was free from dampness and the order has been fulfilled. Mr. Thibeau stated that this would be done through visual and physical inspection. Councillor Adams again asked whether there was a way for Mr. Thibeau to test for mold in the building. Mr. Thibeau pointed out that in other situations he could recommend that a professional test to ensure that there was no mold present. Ms. Tanya Phillips, Manager, By-law Standards pointed out that in hearing the appeal, the Standing Committee has the option to include items they would like the property to address as part of their recommendation.

In response to a question raised, Mr. Thibeau confirmed the tenant was not present. It was confirmed by the appellant that the property was being rented and that they would address this in their presentation.

Having received confirmation that the apartment in question was located in the basement, Councillor Craig asked whether there was any egress to the street other than going to the second level. Mr. Thibeau responded that the main door was on this level. In response to a follow up question, Mr. Thibeau stated that the building's foundation appeared to be brick. Mr. Thibeau was unable to confirm the age of the building.

In response to a question raised, Mr. Thibeau confirmed that staff did not have a photograph of the building's exterior. The Chair noted that this would be helpful information for future appeals of this nature.

Mr. Ben Goldberg, Property Manager of 5397 C Victoria Road, Halifax spoke on behalf of his father, Mr. Paul Goldberg, owner of Renovest Realty Inc., Appellant. Mr. Goldberg noted the events that had unfolded respecting the rental of the unit. He noted that the tenant, identified as Ms. Polegato, and her son had moved into the apartment in question on September 1, 2014. At that time he had heard verbally that there was a hole in the office room; clarifying that the apartment was a two bedroom, plus an office and that the office had no windows and was a spare room not rented as a bedroom. He added that there was an expensive Venmar Air Exchanger system in the building which does reach into the third room; pointing out that this was identified in the November 5, 2014 staff report. Upon inspection of the property, Mr. Goldberg confirmed that he did see the hole identified in the photograph presented by Mr. Thibeau. Mr. Goldberg indicated that he had informed the tenants that arrangements would be made to have the hole in the wall fixed as soon as possible, and confirmed that these arrangements were made with their contractor to have the work completed the following week. Mr. Goldberg stated that no other complaints had been received from the tenants at that time. He went on to note that he had a similar concern regarding mold and that his contractor had looked at the wall and confirmed there was no mold and it was an aging wall and there was no warrant to test for mold. Since this time, Mr. Goldberg confirmed that the wall has been replaced with a vapor barrier inserted and new drywall. Mr. Goldberg further spoke to issues he had with Ms. Polegato respecting verbal harassment. He noted that on September 7, 2014, less than one week of Ms. Polegato taking tenancy, he went to the apartment to pick up the remaining half of September's rent and the apartment had been illegally vacated. Mr. Goldberg confirmed that they have since found a new tenant. He reiterated the point that the apartment had been vacated less than one week/four working days after Ms. Polegato and her son took occupancy. Mr. Goldberg further spoke to Ms. Polegato attempts to have her son's security deposit returned and being unsuccessful in filing a complaint with the tenancy board. Mr. Goldberg went on to refer to an incident that led to him and his family filing a police report on September 17, 2014.

The Chair asked Mr. Goldberg to keep his comments related to the appeal and identify his course of action to the Order to Remedy dated October 2, 2014.

Mr. Goldberg pointed out a discrepancy in the November 5, 2014 staff report, wherein the date of inspection is identified as September 23, 2014 at 10:57 a.m.; however, he suggested this was incorrect as the locks had been changed by that time and new tenants were in place. Mr. Goldberg referred to By-law M-100, explaining that the word "occupier" was not identified and stated that Ms. Polegato would not be an occupier as she was not a tenant of theirs and has no standing and should not have been allowed to file a complaint or be granted access to the building. He further referred to images C-1 and C-2 presented by Mr. Thibeau, explaining the C-1 shows a radiator that was a quarter of an inch away from the wall. He suggested this would require one to two screws to fix. Image C-2 was a piece of missing threshold in the floor, which he did not view as a tripping hazard or warrant anything strong enough for them to be before the Appeals Standing Committee. Mr. Goldberg reiterated that the large hole in the wall should have been a landlord/tenant issue, reiterating that it was resolved the week of September 8th and was in compliance.

In response to Councillor Adams' questions respecting dampness in the walls, Mr. Goldberg noted that they have two dehumidifiers and an air exchanger system in the apartment. He expressed that they could not be held responsible if the tenant chose not to use them. In response to the major complaint around the apartment being infested with mice, bugs and spiders, Mr. Goldberg suggested that image C-4 image presented by staff shows one potato bug on the floor, which he disagreed was an infestation. He further added that this was something an individual would find in any of their homes during the fall. Mr. Goldberg indicated that there was no major evidence to suggest an infestation of mice, pointing out that they have not received any complaints of mice from any of the other building tenants and that they do have Able Pest Control on-site to deal with issues that may arise. Mr. Goldberg expressed concern that he and his father were not given an opportunity to remedy the issues and having to go before the Appeals Standing Committee.

Mr. Paul Goldberg added that he has owned the building since 1998, noting that there has never been an order to remedy and that they were very proud landlords. Mr. Goldberg viewed being before the Appeals Standing Committee to justify the complaint as incredulous. He confirmed that the tenants had only spent four working days in the apartment and had moved out by Sunday, September 7, 2014. Mr. Goldberg spoke to why he thought they may have moved, as well as he referred to the incident that led to the police being called. Mr. Goldberg expressed concern with the infestation complaint and questioned the diameters of the hole shown in Mr. Thibeau's presentation. He commented that the photograph makes the hole look massive. Mr. Goldberg wanted to know what the dimensions of the hole were prior to it being quickly fixed on September 8, 2014.

The Chair asked if the Standing Committee had any questions of clarification for the appellants.

In response to a question raised on the building's size, Mr. Paul Goldberg advised that there were 11 units and the unit in question was a basement apartment that has never had any vacancy issues. Mr. Goldberg further responded to the size of the windows in the basement apartment, suggesting that each of the rooms had normal pane windows. He noted that the living area had windows that bring in light and all the windows in the apartment were large enough to open and let in air/light.

Councillor McCluskey questioned whether an inspection had been completed prior to the apartment being rented. Mr. Goldberg explained that in the south end of Halifax old tenants move out August 31st and new tenants move in September 1st. He confirmed that they did not have an opportunity to inspect the property before the new tenant moved in but if they had seen the hole in the wall they would have had it repaired, reiterating that they did have it repaired on September 8, 2014. Mr. Goldberg commented that they were made aware of the problem and viewed the complaint as a landlord/tenant matter, not an administration matter.

In response to a question on the dehumidifiers, Mr. Paul Goldberg confirmed that the tenant pays the electrical bill, adding that it was the tenant's choice whether to use them. Mr. Ben Goldberg clarified that the air exchanger was on a separate circuit.

In response to a question on the date of inspection being identified as September 23, 2014 in the November 5, 2014 staff report, Mr. Thibeau confirmed that this was the date the case was input to Hansen, the tracking program used by HRM.

For the appellant's information, Councillor Craig provided clarification around By-law M-100 Respecting the Standards for Residential Occupancies, and the process for issuing an order to remedy. Mr. Paul Goldberg expressed concern with the prioritization of the complaint and response time by HRM staff to inspect the property, as the tenants had only been in the apartment for four days.

In regard to the information identified during the hearing around the maintenance issues: heater needing one to two screws, a missing piece of threshold and the repaired wall, Councillor Karsten questioned why the matter was before the Appeals Standing Committee. Mr. Ben Goldberg responded that he and his father take offence to the accusations that their building is not maintained up to the minimum standards required.

In response to a question raised, Ms. Phillips clarified that if the appeal were to be upheld the case would be closed and By-law Standards would not return to the property unless another complaint was received.

Councillor Whitman asked whether there were any outstanding issues that have not been remedied. Mr. Ben Goldberg confirmed that the threshold on the floor had not been repaired but that the heater and the hole in the wall had been fixed.

Councillor Whitman asked staff if there was any evidence of rodents as outlined in the complaint received. Mr. Thibeau referred to photograph C-4 presented which he identified as rodent feces.

For the appellants' information, Councillor Adams provided clarification that his concerns raised earlier were not related to the size of the hole but whether or not there was water damage and the issue of mold.

Councillor Hendsbee asked whether the windows could be opened enough and used as a fire escape. Mr. Randolph Kinghorne Solicitor clarified that the Stranding Committee's debate had to relate to the information identified in the appeal and that there was no basis to address unrelated issues. Councillor McCluskey clarified that her questions on the windows was related to potential concerns with dampness.

Councillor McCluskey questioned what the "black" was around the bathtub, as shown in a photograph presented by Mr. Thibeau. Mr. Thibeau suggested that it could potentially be black mold growth but that he did not do a test.

MOVED by Councillor Karsten, seconded by Councillor Hendsbee that the Appeals Standing Committee allow the appeal of Case #239186, 5397 C Victoria Road, Halifax as required under Administrative Order One, Section 25 (8A).

In response to questions related to the process if the appeal was denied, Ms. Phillips confirmed that a final inspection would be completed by the Compliance Officer with the property owner to ensure the deficiencies had been addressed. Ms. Phillips added that the property owner has provided information that everything had been addressed expect for the threshold; however, staff would still need to confirm.

The Chair reconfirmed that if the appeal was approved the case would be closed.

MOTION PUT AND PASSED.

A note was made for HRM staff that future presentations include a photograph of the building's exterior for appeals of this nature.

Mr. Ben Goldberg sought additional clarification around the process of how this matter was brought forward under By-law M-100 where Ms. Polegato was not an occupier. Ms. Phillips suggested that Mr. Goldberg could speak with the Manager or Supervisor of Municipal Compliance who could provide information around process. Councillor Whitman suggested that Mr. Goldberg may want to involve the area Councillor.

Councillor Mosher asked that the record note that she did not view this complaint as being treated any differently by HRM staff than any other complaint received by HRM. She pointed out that she was aware of complaints having been processed within an hour of HRM receiving them.

9.4 TAXIS, ACCESSIBLE TAXIS AND LIMOUSINES APPEALS – NONE

10. MOTIONS – NONE

11. IN CAMERA

The Standing Committee may rise and go into a private In Camera session for the purpose of dealing with the following;

11.1 Minutes – October 9, 2014

MOVED by Councillor Adams, seconded by Councillor Karsten that the In Camera Minutes of October 9, 2014 be approved as presented. MOTION PUT AND PASSED.

Item 4.1 was addressed at this time.

4.1 Ratification of Motion in regard to the Appeal of Ahror Mamadiev – Suspension of Taxi Driver License

The following was before the Standing Committee:

- Motion memo from the Office of the Municipal Clerk

This matter was addressed during the Appeals Standing Committee October 9, 2014 In Camera session and was now before the Standing Committee for ratification.

MOVED by Councillor McCluskey, seconded by Councillor Adams that the Appeals Standing Committee not grant the appeal of Mr. Ahror Mamadiev requesting the Committee overturn the decision of the license authority to suspend License #H400, which suspension was in accordance with the conditions set out in the private and confidential staff report dated September 16, 2014.

The Chair noted that Councillors Craig and John were exempt from the vote as there were not present at the October 9th meeting.

MOTION PUT AND PASSED.

12. ADDED ITEMS – NONE

13. NOTICES OF MOTION – NONE

14. DATE OF NEXT MEETING – December 11, 2014

14.1 Proposed 2015 Meeting Schedule

MOVED by Councillor Mosher, seconded by Councillor McCluskey that the Proposed 2015 Meeting Schedule of the Appeals Standing Committee be approved as presented.

In reference to Regional Council's 2015 meeting schedule pending approval and confirmation of the summer meeting dates, it was **MOVED by Councillor Karsten, seconded by Councillor Johns that the Appeals Standing Committee Proposed 2015 Meeting Schedule be deferred to the next meeting in order to confirm Regional Council's 2015 meeting dates.**

Ms. Sherryll Murphy, Deputy Clerk advised the Standing Committee that hearings are scheduled on a case by case basis and that the Standing Committee's proposed meeting dates for the summer months, as well as the proposed December meeting date could be noted as "if required".

The mover and seconder with the support of the Committee **withdrew the motion to defer.**

MOTION PUT AND PASSED.

15. ADJOURNMENT

The meeting was adjourned at 11:01 a.m.

Krista Vining
Legislative Assistant