



**APPEALS STANDING COMMITTEE
MINUTES
December 11, 2014**

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

REGRETS: Councillor Brad Johns
Councillor Gloria McCluskey

STAFF: Ms. Tanya Phillips, Manager, By-law Standards
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, supporting documents, and information items circulated to the Appeals Standing Committee are available online: <http://www.halifax.ca/boardscom/SCappeals/ASC141211agenda.php>

The meeting was called to order at 10:00 a.m., and recessed at 10:56 a.m. The Standing Committee reconvened at 11:05 a.m., and adjourned at 11:27 a.m.

1. CALL TO ORDER

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

2. APPROVAL OF MINUTES – November 13, 2014

MOVED by Councillor Hendsbee, seconded by Councillor Adams that the minutes of November 13, 2014 be approved as presented. MOTION PUT AND PASSED.

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

MOVED By Councillor Karsten, seconded by Councillor Hendsbee that the agenda be approved as presented. MOTION PUT AND PASSED.

- 4. BUSINESS ARISING OUT OF THE MINUTES – NONE**
- 5. MOTIONS OF RECONSIDERATION – NONE**
- 6. MOTIONS OF RESCISSION – NONE**
- 7. CONSIDERATION OF DEFERRED BUSINESS – NONE**

8. CORRESPONDENCE, PETITIONS & DELEGATIONS

- 8.1 Correspondence – None**
- 8.2 Petitions – None**
- 8.3 Presentation – None**

9. REPORTS

9.1 DANGEROUS OR UNSIGHTLY PREMISES: DEMOLITIONS – NONE

9.2 DANGEROUS OR UNSIGHTLY PREMISES: APPEALS

9.2.1 Case #241974 – 92 Crichton Avenue, Dartmouth

The following was before the Standing Committee:

- A staff recommendation report dated November 28, 2014
- Correspondence submitted by Richard Norman, Cox & Palmer dated December 4, 2014

The Chair confirmed that the appellant or representative was present.

Ms. Theresa Hickey, Compliance Officer provided an overview of the staff report dated November 28, 2014, presenting photographs of the property in question.

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

In response to a question raised, it was noted that previous photographs taken of the property as it related to progress made were included in the November 28, 2014 staff report.

Mr. Richard Doucette, appellant read from a prepared statement respecting his appeal of Case #241974. On a point of order raised by Councillor Karsten in relation to procedural issues, the Chair asked Mr. Doucette to keep his comments focused to the current appeal case before the Standing Committee and not discuss previous appeal cases. Mr. Doucette provided a copy of his statement to the Legislative Assistant for the record.

Mr. Richard Norman of Cox & Palmer, Counsel for Mr. Doucette referred the Standing Committee to his correspondence dated December 4, 2014. He highlighted that his client's position was that there are two different branches of HRM acting in this situation. Firstly, the HRM building department who issued a valid building permit, valid until September 2015. He noted that Mr. Doucette has relied on this building permit during the renovation of his house. The other was the HRM Charter and the Dangerous or Unightly Premises provisions. Mr. Norman's view was that each department was doing something different. He reiterated that Mr. Doucette has a valid building permit and in his view it was unreasonable under these circumstances for HRM to use the unsightly premises provisions to limit or interrupt Mr. Doucette's renovations. As referenced in his letter of December 4, 2014, Mr. Norman cited the two cases from Alberta that deal with similar circumstances. Mr. Norman pointed out that in both cases judges have stated that it is unreasonable for the Municipality to use unsightly premises provisions to limit or interrupt the building of a house under building permit. Mr. Norman quoted paragraphs 47 and 48 of the *Martynkiw* case decision, as attached to his letter of December 4, 2014:

47. *A central fact here is that Martynkiw obtained a building permit in the County of Parkland and complied with the building permit. He is not in breach of any county building or zoning requirements. In other words, Martynkiw has been led by the county to believe that he was entitled to build the residence he built so long as he complied with the building permit. It is patently unreasonable for the County to give him a permit, stand by and watch him build, and then tell him after he has built that it doesn't like the look of his building and that he must remove it.*
48. *It is also a central fact here that we are dealing with a residence. This is neither a dog-house nor a field of dandelions. A council has an obligation to deal fairly with such an important asset as a residence.*

Mr. Norman further made reference to a portion of paragraph 14 of the Morrison case decision, as attached to his letter of December 4, 2014:

14. *It is manifestly unfair of the County to have allowed Morrison to expend money doing what they knew he was going to do, only to order him to undo it.*

Mr. Norman reiterated that his client's position was that the order was not the appropriate remedy; suggesting that if people had complaints about the pace Mr. Doucette was working, they should speak to the building department and their inspectors, and should not be using the unsightly premises provision method to try to resolve the situation. Mr. Norman closed by noting that the neighbouring homes HRM staff used as comparators were not under construction and were normal buildings not being renovated at this time. Therefore, in his view it was not appropriate to say that Mr. Doucette's house looks different than his neighbour's house; suggesting that Mr. Doucette's house would look different because it was being renovated. Mr. Norman was confident that the Nova Scotia Court would agree with the decisions cited in his December 4, 2014 correspondence.

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

In response to a question raised on the length of time Mr. Doucette has had his building permit, Mr. Norman responded that Mr. Doucette has a two year building permit. Mr. Doucette confirmed that his building permit was first issued in September 2013 and runs consecutively until September 2015. Councillor Adams questioned when Mr. Doucette began renovating his property, to which Mr. Doucette replied that he believed the first permit was issued in 2009.

In response to a question on Mr. Doucette's comments respecting his current property assessment, as outlined in his submission, Mr. Doucette confirmed he had obtained the information from View Point.

Councillor Karsten asked that the record reflect that in his perception neither case cited in Mr. Norman's December 4, 2014 correspondence has anything to do with Mr. Doucette's appeal of case #241974 before the Standing Committee.

In response to a question of clarification on the statement of HRM undoing the work, Mr. Norman clarified that HRM was not asking Mr. Doucette to undo all of his renovations. HRM is indicating that if Mr. Doucette does not do what they say within the time period specified in the Order to Remedy issued October 20, 2014, HRM would come in and do the work for Mr. Doucette. Mr. Norman does not view the work which is ordered as being the next step in the renovation. He further added that HRM would not be speaking with Mr. Doucette about what is appropriate to do at this stage of the project and would effectively be putting the cladding onto the house, as identified in the order. Mr. Norman suggested that regardless of what stage of progress the project was in, at the time the order comes into effect, HRM would hire contactors who would come to Mr. Doucette's house, enter the property against his wishes, and put the cladding on the house. Mr. Norman explained that this process would have the same effect as undoing or interrupting Mr. Doucette's work.

Councillor Hendsbee questioned what work would interrupt the remaining cladding from being completed and he asked Mr. Doucette to explain the order of work left on the project. Mr. Doucette advised that the work was ongoing but that the next order of work was to complete the cladding and then they would be moving inside of the building. He confirmed that all the windows and doors have been installed and the roof was water tight. Mr. Doucette also confirmed that the cladding materials were onsite.

Councillor Craig asked how the Municipality would address dangerous or unsightly matters in relation to a building permit. Mr. Donovan, Manager of Municipal Compliance advised that the Building Code Act allows the resident to undertake construction in compliance with the code. He noted that there are parts of the building code that refer to safety and environmental protection. He indicated that if the applicant were to apply for a renewal or extension of the permit, HRM staff would be in a position to issue the permit. He explained that the building inspector would look at the technical pieces of how the building is put together, separately from what the building looks like in context to the neighbouring community, which is the role of the compliance officer. In response to a follow up question, Mr. Donovan provided examples of a compliance office responding to concerns related to garbage blowing around which is unsightly and not a matter for the building inspector.

Mr. Donovan further advised that the administrative process for the issuance of a building permit was not to exceed two years; noting that modifications could be made if the permit was for projects such as the construction of a swimming pool. Mr. Donovan went on to explain that several permits may be issued over a number of years for a more complex development as the design progresses (i.e. Nova Centre). Mr. Donovan clarified that a residential construction permit is issued for two years with a typical renovation taking approximately six months to a year. Councillor Craig provided an example of completing several renovations to a residential property over a number of years, and applying for permits through a phased in approach to allow for cash flow and construction time, and Mr. Donovan agreed that would be the approach in the case of multiple renovations.

In response to a question raised, Ms. Hickey confirmed that no complaints had been received for Case #241974 related to safety issues, debris blowing onto adjacent properties, or concerns of children accessing the property.

The Chair asked if Mr. Doucette or Mr. Norman had any questions of clarification for staff or the Committee arising from the information provided.

Mr. Doucette questioned the photographs taken of the property, as attached to the November 28, 2014 staff report. Ms. Tanya Phillips, Manager of By-law Standards explained that the photographs were taken from previous cases and past history of the property. She noted that today's presentation was based on the current state of the property and that the past photographs were included to show how the condition of the property had changed. Ms. Phillips further explained that past cases were not relevant to the current case before the Standing Committee.

In response to a question on the number of site visits from HRM staff and whether they were all complaint driven, Ms. Phillips referred the Standing Committee to the background section of the November 28, 2014 staff report which outlines the time line of cases related to this property. Mr. Doucette noted that he had asked staff to provide a full record of the cases on the property in question; pointing out that only one complaint was received on the property within that record.

Councillor Karsten asked Mr. Doucette whether he thought it was reasonable within a neighbourhood, regardless of location, that the neighbourhood should have to endure ongoing construction for four to five years, to which Mr. Doucette responded absolutely.

The permit being valid until September 2015, Councillor Karsten asked Mr. Doucette to provide confirmation on the estimated length of time the remaining work would take to complete. Mr. Doucette stated that he was working within the confines of the statute of limitations of the building permit. Councillor Karsten sought additional clarification that the only order of work left to do on the exterior of the building was the cladding. Mr. Doucette reiterated his plans to complete the exterior work (i.e. cladding and finishing of soffit spaces) and then move to the inside of the building. Mr. Doucette noted that there was also an entryway still to be built on the right hand side of the building which they planned to start construction on in the spring.

In response to a question on the building permit and order, Mr. Norman expressed concern with the appropriateness of the issuance of an order to remedy to solve the problem. Mr. Norman suggested if the Municipality was concerned with the length of time the construction was taking and the need to address complaints made, the a better remedy would be to address the matter under the building inspector's purview and have the inspector set certain milestones. The applicant's view was that the issuance of an order to remedy was not an appropriate method to solve what the Municipality identified as a problem.

Councillor Karsten asked what Mr. Norman's understanding was of the Order to Remedy issued October 20, 2104. Mr. Norman indicated that Mr. Doucette is required to complete the exterior cladding by next week and if that work was not complete within the timeframe of the order, then HRM would hire a contractor who would enter onto Mr. Doucette's property and install cladding. Mr. Norman commented that in his view this was contrary to Mr. Doucette's wishes. Councillor Karsten asked whether Mr. Norman would agree that when an order is given, that an alternative to resolving the issue would be for an individual to hire a contractor to complete the work within the deadline. Mr. Norman agreed with Councillor Karsten but only if the individual agrees with the legitimacy of the order, which Mr. Doucette does not.

MOVED by Councillor Karsten, seconded by Councillor Hendsbee that the Appeals Standing Committee allow the appeal of Case #241974, 92 Crichton Avenue, Dartmouth as required under Administrative Order One, Section 25 (8A).

The Standing Committee entered into discussion with members speaking both for and against the motion.

Councillor Craig spoke in support of the motion and expressed concern with there being a disconnect between dangerous and unsightly matters as it relates to the timeline relative to building permits. He noted that the nature of construction was not in keeping with the neighbourhood. He suggested that if there were limitations on what was deemed to be unsightly, then a review of the by-law and consideration to provisions for buildings that have permits and are under construction should be undertaken. Based on the photographs shown, Councillor Craig viewed the building to be under construction; highlighting that there was no debris and no safety concerns as confirmed by staff.

Councillor Hendsbee spoke in support of the motion, commenting that the building was a work in progress and made similar comments as Councillors Craig in regard to there being no debris onsite or safety concerns. He suggested that Mr. Doucette may want to focus on cladding the front of the property and then work on the back of the property, to address some of the residents' concerns with the building's appearance.

Councillor Mosher spoke against the motion, referring to the discussion section of the November 28, 2014 staff report in regard to the building permit. She commented that wording of the legislation does not provide a blanket defence to the obligations under the HRM Charter, section 354.

MOTION PUT AND DEFEATED.

Committee recessed at 10:56 a.m.
Committee reconvened at 11:05 a.m.

9.2.2 Case #243321 – 48 Antares Court, Westphal

The following was before the Standing Committee:

- A staff recommendation report dated November 24, 2014

The Chair confirmed that the appellant or representative was present.

Ms. Tamar Pryor-Brown, Compliance Officer provided an overview of the staff report dated November 24, 2014, presenting photographs of the property in question.

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

In response to a question raised, Ms. Pryor-Brown clarified that the Order to Remedy issued November 18, 2014 was for the removal of assorted refuse and debris on the property including, but not limited to assorted metal debris, batteries, gas cans, tarpaulins, wood debris, buckets, insulation remnants, tires, cardboard, and associated litter. Ms. Pryor-Brown noted that the property owner had done a fair amount of clean up since her original site visit.

The Chair asked if the appellant had any questions of clarification for staff, of which there were none.

Mr. Edgard Hoyeck, appellant indicated that he was before the Standing Committee not to argue the appeal but to ask for consistency in the process. Mr. Hoyeck spoke to the progress made to his property as compared to what would have been permitted onsite ten years ago. He added that the Order to Remedy issued November 24, 2014 was not the first order to have been issued on his property. Mr. Hoyeck expressed concern with the process undertaken by By-law Services and how he had previously dealt with/negotiated compliance of past cases with By-law Services supervisors and not the compliance officer. He asked that the Standing Committee consider what had been previously agreed upon between himself and By-law Services in order to close Case #243321. He went on to note that materials identified in staff's presentation had been previously permitted and agreed upon between himself and By-law Services staff, noting that he had an audio recording of his discussions with By-law Services staff. Mr. Hoyeck commented that the steel on the property adjacent to the boat had been previously on the property, as identified in photographs taken by By-law Services in April 2013, and that no new materials had been brought onto the property. He further spoke to materials/items having been rearranged on the property and commented that his garage was a carport, which has no doors, and confirmed that the recyclables had been placed under the deck out of sight. Mr. Hoyeck expressed concern with people going into his backyard and looking underneath his deck to see what materials were there and filing a complaint. Mr. Hoyeck's view was that any materials visible to neighbours were not unsightly. He further stated that he had the highest property assessment in the neighbourhood and suggested that his property does not decrease neighbouring property values.

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

In response to a request made by Councillor Karsten, staff reviewed the photographs taken of Case #243321 as presented earlier. Councillor Karsten asked Mr. Hoyeck to identify the tires that he would be putting on vehicles for the winter. Mr. Hoyeck confirmed that there were four sets of winter tires, all on

rims, which were to be placed on his residential vehicles. He confirmed that there were no commercial tires on his property. In follow up, Mr. Hoyeck indicated that he owned 16 residential vehicles but was only permitted to have 7 vehicles on his property.

Based on the information presented and a review of Mr. Hoyeck's property from Google Earth, Councillor Craig asked how the initial complaint had been made, as the materials identified in the November 24, 2014 Order to Remedy were at the rear of the property and were not visible from the street. Ms. Tanya Phillips, Manager of By-law Services advised that By-law Services received a complaint to conduct an inspection at the property in question. She noted that compliance officers are required to walk the property to confirm no violations exist. When the Compliance Officer entered the property in question they confirmed violations were in existence and required action be taken, as outlined in the November 24, 2014 Order to Remedy. In follow up, Ms. Pryor-Brown advised that there were neighbouring properties on either side of the property in question that have views of Mr. Hoyeck's backyard.

The Chair asked if the appellant had any further questions of clarification for staff.

Mr. Hoyeck reiterated his earlier comments of having an agreement with By-law Services staff on what materials he was permitted to have on his property. In response, the Chair suggested Mr. Hoyeck get future agreements of this nature in writing. Ms. Pryor-Brown indicated that she has been a Compliance Officer for 11 years and the materials on the property in question would be in violation if found on any other property, whether or not they could be viewed from the street. Ms. Pryor-Brown further noted that as outlined in Section 3(q), amendment 2 of the Halifax Regional Municipality Charter, an accumulation of materials or refuse that is stockpiled, hidden or stored away is considered to be dangerous or unsightly or offensive to another person.

In response to a question raised by Councillor Karsten, Ms. Phillips indicated that her understanding of the audio recording Mr. Hoyeck had spoken to was in regard to a decision made on a previous order to remedy case for the property located at 48 Antares Court, Westphal. She reminded the Standing Committee that conditions of properties continuously change and it is up to the current investigating compliance officer to make a determination and support their recommendation based on the evidence of the current condition of the property, which is what Ms. Pryor-Brown had done for Case #243321. In response to follow up questions, Mr. Randolph Kinghorne, Senior Solicitor advised that whether or not a property was dangerous or unsightly was a question of fact based on the state of the property on the date the matter becomes an issue. While the Standing Committee may have interest in past cases, Mr. Kinghorne clarified that the matter before the Standing Committee was in regard to Case #243321 and the Committee needed to determine whether or not the materials identified in the November 24, 2014 Order to Remedy are in violation of the Charter.

MOVED by Councillor Hendsbee, seconded by Councillor Adams that the Appeals Standing Committee allow the appeal of Case #243321, 48 Antares Court, Dartmouth as required under Administrative Order One, Section 25 (8A).

Councillor Adams sought clarification on process if the appeal was to be granted or denied. Ms. Phillips advised that if the appeal were to be granted the case would be closed. If denied, the property owner would have 14 days, as per the timeframe specified in the Order to Remedy issued November 24, 2014, to comply with the order. Following this timeframe, an inspection date would be arranged and if the property was still not in compliance, then HRM would enter onto the property and complete the work to bring it into compliance.

Following a further discussion the **MOTION WAS PUT AND DEFEATED.**

- 10. **MOTIONS – NONE**
- 11. **IN CAMERA – NONE**
- 12. **ADDED ITEMS – NONE**
- 13. **NOTICES OF MOTION – NONE**

14. DATE OF NEXT MEETING – January 8, 2015, 10:00 a.m., Council Chambers, City Hall

15. ADJOURNMENT

The meeting was adjourned at 11:27 p.m.

Krista Vining
Legislative Assistant