

DANGEROUS & UNSIGHTLY PREMISES
MINUTES

September 16, 2010

- PRESENT: Councillor Dawn Sloane, Chair
Councillor Sue Uteck
Councillor Barry Dalrymple
Councillor Lorelei Nicoll
Councillor Robert Harvey
Councillor Darren Fisher
- REGRETS: Councillor Gloria McCluskey
Councillor Stephen Adams
Deputy Mayor Brad Johns
- STAFF: Mr. Jeff Rogers, Regional Coordinator By-Law Enforcement
Ms. Tanya Phillips, Manager, By-Law Services
Ms. Erin Dobson, Regional Coordinator, Support Services
Ms. Danielle Banks, Methods & Procedures Analyst
Mr. Stephan Jedynek, Solicitor, Legal Services
Mr. Scott Hill, Officer, By-Law Enforcement
Mr. Robert Ryan, Officer, By-Law Enforcement
Mr. Steve Berkman, Officer, By-Law Enforcement
Ms. Melody Campbell, Legislative Assistant

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1. CALL TO ORDER

The meeting was called to order at 10:02 a.m. in Council Chambers, City Hall.

2. APPROVAL OF MINUTES - June 17, 2010

MOVED by Councillor Harvey, seconded by Councillor Fisher, that the minutes of June 17, 2010, as presented, be approved. MOTION PUT AND PASSED.

3. APPROVAL OF THE AGENDA, ADDITIONS AND DELETIONS

DELETIONS:

- 5.3 Case 136143 - 20 Jubilee Lane, Lower Sackville
- 5.4 Case 143080 - 49 Himmelman Drive, Eastern Passage

MOVED by Councillor Dalrymple, seconded by Councillor Uteck, that the Order of Business, as amended, be approved. MOTION PUT AND PASSED.

4. CONSIDERATION OF ADJOURNED BUSINESS - NONE

5. APPEALS - DANGEROUS AND UNSIGHTLY

5.1 Case 138875 - 21 Maple Grove Drive, Sackville

- A staff report dated September 8, 2010 was before the Committee.

Mr. Steven Berkman, provided the report and pictures to the Committee.

In response to questions by members of the Committee, the following points were clarified:

- The pictures shown are six weeks old, By-law staff were refused access by the property owner, however, the appellant's Solicitor sent a letter to staff advising that the property is in the same condition
- The site is zoned R-1
- Mr. Gillis & Ms. Gillis are living in the house on the property
- To staffs knowledge there is no business operating on the property

Mr. Kevin MacDonald, Solicitor for Mr. & Ms. Gillis addressed the Committee requesting that he be able to cross examine the By-Law Enforcement Officer.

In response to a question by Mr. MacDonald, the Chair on behalf of Mr. Jedynek, Municipal Solicitor advised that, the Officer is an agent of the Crown, and added Mr. MacDonald can ask questions during his ten minute presentation, and rebuttal can be provided by the Officer. However, there will be no cross examination.

Councillor Nicoll entered the meeting at 10:10 am.

The Chair stated the rules of procedure to Mr. MacDonald, Solicitor.

Mr. MacDonald, Solicitor, Crowe Dillon Robinson, on behalf of Mr. & Ms. Gillis addressed the Committee providing the following points:

- Complaint was received by an unidentified person, who appears to have been a neighbor or someone close to the property
- Mr. Gillis objected to anyone on the property, as soon as he was aware of this issue
- What is material is seen in the pictures is not visible to anyone
- He requested clarification from staff whether the complaint was dangerous or unsightly and was told the complaint was regarding unsightly
- Property next door is a properly zoned, fenced, gated salvage yard owned by Mr. Gillis
- The gate and fence provides access to 21 Maple Grove
- It is fenced private property and is signed *Private Property No Trespassing*
- There is a guard dog on site
- Any suggestion by anyone that this is a reason for youth to come in to the property deeming it dangerous is belied by the evidence
- He advised HRM that, in his view, in order for premises to be unsightly they have to be seen from off the property, this is not the case
- The By-Law Enforcement Officer would not be able to take photos if he were not on property
- Mr. Gillis is in process of moving some materials
- Mr. Berkman advised in August that the site was unsightly
- The case law confirms that material must be visible to others or deemed to be lowering property values to be considered unsightly
- There is nothing unsightly in this case
- There is nothing dangerous in this case
- The property is next to a junk yard and is not visible
- This cannot be, by law, considered unsightly
- He requested that the appeal be permitted

Mr. MacDonald requested that he question Mr. Gillis to confirm the representations that he has made.

Mr. Gordon Gillis, the property owner, used the remaining ten minutes of presentation time to address the Committee. Mr. Gillis provided the following points:

- He has been a resident of Halifax for 44 years and was employed as a school teacher for 6 years and in business for 38 years, and is qualified Level II for the Department of the Environment
- He does not know who made complaint, however, it must have been a trespasser

- There is no view of the site from the street or neighbouring properties
- He advised the By-Law Enforcement Officer that he was trespassing and that he was not permitted to take photos
- He did not take the issue lightly that the By-Law Enforcement Officer continued taking pictures
- The By-Law Enforcement Officer declared one vehicle that could not be seen from the road derelict. However, the officer advised that if the vehicle was covered it would not be considered derelict.
- He spent twenty hours reading the act and going over cases
- If site cannot be seen, it cannot be considered unsightly.
- If the site is not visible, it would not entice youth to come on to the property
- If site is fenced and has a guard dog make it much less dangerous
- He added that the order can be reissued
- He stated that then if the appeal is not successful, it is the first time entry to the property can be made
- He added that it is prejudicial that the Committee can view illegally obtained photos and he only has five minutes to defend himself
- He urged the Committee to put this to rest and save HRM and him a great deal of money, as money is not at a surplus.

The Chair called for any questions from Committee members.

In response to a question by Councillor Uteck regarding the condition of surrounding properties, Mr. Berkman advised that the property across the street is a salvage yard and that next to the building there are two properties in immaculate condition.

Councillor Uteck asked for interpretation of what the Committee considers regarding unsightly premises. Mr. Rogers advised the Committee that Mr. MacDonald speaks of case law in Nova Scotia and other areas regarding if the material is visible. He noted that there is also case law to the other affect that to be unsightly, the property does not have to be seen from the road. He advised the Committee of a current Case from July 2010 by Judge Bryson on this issue. A copy of the Case was distributed to the Committee. Mr. Rogers advised that the section 24 and 25 on Page 7.

Mr. Rogers read the following, *Supreme Court of Nova Scotia, Delport Realty Limited v. Halifax Regional Municipality 2010 NSSC 290, Section 24 and Section 25*, under Judge Bryson's decision for the record:

Under Section 24

The applicants have argued that the property is vacant and that the by-law only applies to structures or buildings on a property. Moreover, they say that the debris on the property is not visible from the road. These arguments cannot prevail. The statutory language is no so limited. And when interpreting the powers of the Municipality, it is important to ensure that those powers are given property effect. Municipalities are constrained within the authority provided by the statutes under which they operate.

However, that does not mean that these statutes should be narrowly interpreted. To do so would frustrate the purpose of the legislation. Courts now take a broad and "purposive" approach to Municipal Powers.

Under Section 25

The approach advocated by the applicants would frustrate the purpose of Municipal Legislation. The interpretation of that legislation is a question of law and the standard review with respect to same is one of correctness. However, the finding that the premises are dangerous or unsightly is a question of fact, attracting a high level of deference. The Municipality's determination that the premises were dangerous and unsightly conformed with the legislature language and was reasonable and amply supported by the evidence.

Councillor Sloane advised the definition of unsightly is contained in the Charter in Section 363 to 372.

Mr. Jedynek clarified that Judge Bryson has made an interpretation of the law, and this committee is asked to make a determination of the facts

Councillor Nicoll stated that there is no mention of the property being dangerous. Mr. Rogers advised that the site can be one or the other, dangerous or unsightly. The question is whether the visibility of the materials is relevant.

Councillor Nicoll asked if there are any potential combustibles on site. If so, this would be considered dangerous.

Councillor Harvey expressed interest in Mr. MacDonald's interpretation of Judge Bryson's decision. Mr. MacDonald advised that the interpretation by Justice Bryson, in this narrow instance, that he had an argument what was being complained was not visible from the road, however, the evidence of the case confirmed the area was visible to the public when viewed from other areas. Mr. MacDonald added that this does meet the interpretation of Mr. Rogers' definition. Mr. MacDonald noted that there is no suggestion of dangerous that evidence is not in front of you.

Mr. Rogers reiterated that despite the statements given, the Order states Dangerous or Unsightly, not one or the other, and the legal documents issued on this property indicate both. He added that the test if a reasonable person saw these items, would they consider them unsightly.

MOVED by Councillor Dalrymple, seconded by Councillor Nicoll, that the Dangerous & Unsightly Premises Committee refuse the appeal and uphold the Order to Remedy Dangerous or Unsightly Conditions issued on August 6, 2010

In response to a question by Councillor Uteck, Mr. Rogers advised that under the Charter a Standard is determined under the Community, not HRM as a whole.

Councillor Sloane raised concern regarding runoff to First Lake considering its proximity to the property.

MOTION PUT AND PASSED.

5.2 Case 137491 - 21 Maple Grove Drive, Sackville

- A staff report dated September 8, 2010 was before the Committee.

Mr. Steven Berkman, provided the report and pictures to the Committee. The pictures shown are six weeks old, By-law staff were refused access by the property owner, however, the appellant's Solicitor sent a letter to staff advising that the property is in the same condition

In response to a question by Councillor Uteck, Mr. Berkman advised that there are two cases for this property, the previous case for debris, and the current case for derelict vehicles.

Mr. MacDonald, Solicitor, Crowe Dillon Robinson, on behalf of Mr. & Ms. Gillis addressed the Committee providing the following points:

- He added that his arguments are the same as in the previous case
- He advised that there are assumptions being made by Councillors as there is no oil on the property
- There are no dangerous or unsightly issues
- He was advised that the issue was unsightly not dangerous
- He advised that this is an Estoppel by Representation, with a complaint and investigation ongoing and Legal Council is retained and an HRM representative deems unsightly
- The by-law states Dangerous or Unsightly so it is either/or and possibly both, individual must receive specifications and particulars, these particulars of unsightly must be bound by
- He added, for the record, that it is inappropriate for Councillors to be making assumptions based on their own personal viewing of photographs when it belies the evidence and representations of the by-law officer.

Mr. Rogers clarified that he received fifteen cases from Mr. MacDonald's office, none of which was the Delport Realty case.

Mr. Rogers provided the definition of derelict vehicles for the record:

A derelict vehicle, vessel, item of equipment or machinery that:

- (i) is left on property, with or without lawful authority; and*
- (ii) appears to the Administrator to be disused or abandoned by reason of its age, appearance, mechanical condition, or where required by law to be licensed*

or registered, by its lack of license plates or current vehicle registration.

Councillor Nicoll asked if this material can be contained on the salvage yard. Mr. MacDonald stated yes and he advised that the salvage yard is a matter of ten to twenty feet away.

MOVED by Councillor Harvey, seconded by Councillor Fisher, that the Dangerous & Unsightly Premises Committee refuse the appeal and uphold the Order to Remedy Dangerous or Unsightly Conditions issued on August 6, 2010.

MOTION PUT AND PASSED.

For the record the staff recommendation and the motion passed by the Committee was to decline the appeal and uphold the Order.

5.3 Case 136143 - 20 Jubilee Lane, Lower Sackville

This item was deleted from the agenda.

5.4 Case 143080 - 49 Himmelman Drive, Eastern Passage

This item was deleted from the agenda.

6. DEMOLITIONS - DANGEROUS AND UNSIGHTLY

6.1 Case 112574 - 690 Old Sambro Road, Harriestfield

- A staff report dated September 8, 2010 was before the Committee.

Mr. Robert Ryan, presented the report and pictures to the Committee. He added that no significant work has been done inside the building over a year and it has no power or water service.

Mr. Tony Elia, the property owner, addressed the Committee making the following points:

- The building is not his home
- The property was owned by an older gentleman whom he used to help out by doing work for him
- The gentleman died in 2004 and he now has the property
- He advised he would like to keep home as long as he can
- He is concerned if he tears down, the front yard, 62 Or 68 feet in front, that the frontage may not be enough
- Wants to keep house so he does not lose the property, if he demolishes, he is not sure if he can rebuild
- Other persons were dropping garbage on the property and he tried to keep the

property clean

- He added locks and boarded the house up when requested.
- He painted the house
- He currently is not working so funds are an issue
- If he loses house, the value would be worth nothing.

In response to a question by Councillor Uteck, Mr. Rogers advised that the by-law for derelict buildings has been passed. He added that once a building is identified, the property owner is given 120 days to make it habitable. Mr. Elia was given extra time to work with the development officer to find out what he can do with his property. Mr. Rogers advised that no development permit has been issued on this property.

Councillor Uteck questioned whether this property would be grandfathered, Mr. Ryan advised he knows that the applicant has talked with the development officer and that the application was approved. It was noted that with the C-5 zoning, a building would be permitted to be built on the current footprint.

Councillor Fisher stated that the building does not seem structurally sound.

MOVED by Councillor Harvey, seconded by Councillor Dalrymple, that the Dangerous & Unsightly Premises Committee pass the following resolution:

The Committee finds the property to be dangerous or unsightly as per section 3(q) of the Charter as per section 356 of the Charter, Orders demolition of the Building, including be 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 it rights as set forth under Part XV of the Charter. MOTION PUT AND PASSED.

6.2 Case 132640 - 26196 Highway 7, West Quoddy

A staff report dated September 8, 2010 was before the Committee.

Mr. Scott Hill, presented the report and pictures to the Committee.

MOVED by Councillor Nicoll, seconded by Councillor Fisher, that the Dangerous & Unsightly Premises Committee pass the following resolution:

The Committee finds the property to be dangerous or unsightly as per section 3(q) of the Charter as per section 356 of the Charter, Orders demolition of the Building, including be 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. MOTION PUT AND PASSED.

- 7. APPEALS - DERELICT BUILDINGS - D300 - NONE**
- 8. DEMOLITIONS - DERELICT BUILDINGS - D300 - NONE**
- 9. ADDITIONS - NONE**
- 10. NEXT SCHEDULED MEETING - Thursday, October 21, 2010**
- 11. ADJOURNMENT**

The meeting was adjourned at 11:16 a.m.

Melody Campbell
Legislative Assistant