

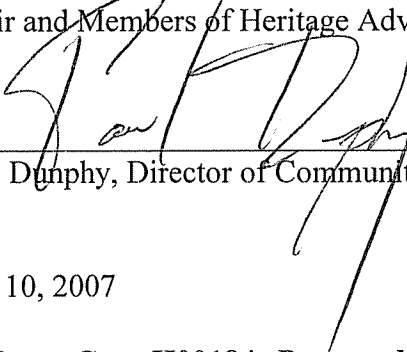


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Heritage Advisory Committee
July 25, 2007

TO: Chair and Members of Heritage Advisory Committee

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: July 10, 2007

SUBJECT: **Heritage Case H00184: Proposed Demolition of 1870 Upper Water Street, Halifax**

ORIGIN

Application by the property owner, Armour Group Limited (President, Mr. Ben McCrea).

RECOMMENDATION

It is recommended that the Heritage Advisory Committee hold a Public Information Meeting on this application, as required by HRM's adopted procedure for public participation in heritage demolition applications.

BACKGROUND

1870 Upper Water Street (the P. Martin Liquors Building) is located in the Historic Properties area, directly across the street from the Historic Waterfront buildings located at 1869 Upper Water (see photo and map in Attachment 1). The building was registered as a municipal heritage property in 1981. It is one of a number of buildings in the Historic Properties area between Granville Street and the waterfront which were restored by Historic Properties Ltd. (now Armour Group Ltd.) in the 1970s, and all of which were registered as municipal heritage properties between 1981 and 1985.

Armour Group applied for a demolition permit for 1870 Upper Water Street on February 12, 2007. This application was made after earlier applications for de-registration and demolition made in August, 2006 had been withdrawn following discussions with staff. In parallel with the demolition application, Armour Group has asserted that 1870 Upper Water Street was registered by mistake and therefore is not, and should not be, considered to be a registered heritage property.

DISCUSSION

Claim of Mistaken Registration

A list of facts and documents pertaining to the heritage registration is shown in Attachment 2. These indicate that the property was registered in 1981 after a due process of owner notification and decision by Halifax City Council, in accordance with the *Heritage Property Act* and the *Heritage Property By-law*. Staff are confident that the property was legitimately registered but recognize that there are inconsistencies and contradictions in the wording of the registration documents that make it difficult to be absolutely certain about the intended basis for the registration. The following points highlight the heritage designation process for 1870 Lower Water Street as well as nearby properties.

- In 1973, City Council passed a motion that all buildings in the area bounded by Granville, Duke, and Buckingham Streets and the waterfront should be preserved.
- In 1978, the *Evaluation and Protection System for Heritage Resources in Halifax* recommended that the entire Historic Properties area between Granville Street and the waterfront should be designated as a Heritage Conservation Area, and included 1870 Upper Water Street on the list of buildings that comprised that area.
- The 1978 document also included 1870 Upper Water Street on a list of buildings that did not meet priority criteria and which were not recommended for registration.
- In 1981, a notice of recommendation to register “1870 Upper Water Street (*Historic Waterfront Buildings*) *Historic Properties*” was sent to Historic Properties Ltd., which was both the owner of 1870 Upper Water Street and lessee of the waterfront buildings.
- The notice specified the address of the property to be registered as “1870 Upper Water Street” but also referred to the “*Historic Waterfront Buildings*”; this suggests that the notice was intended to apply to both properties, i.e., 1870 Upper Water Street and the Historic Waterfront Buildings.
- Although the address of the Historic Waterfront Buildings - 1869 Upper Water - was not specified, the reason cited for the registration was that the property had been previously designated as a Landmark. This was the case relative to the Historic Waterfront Buildings but no so for 1870 Upper Water Street.

Armour Group's assertion is that the registration notice was intended to apply only to the Historic Waterfront Buildings at 1869 Upper Water Street which had previously been designated as a Landmark, and that the inclusion of civic address "1870 Upper Water Street" was a mistake. The company has also stated that, in their recollection, 1870 Upper Water was not part of the group of buildings that Historic Properties Ltd. agreed to register.

Intentional Registration

After reviewing the file staff feel it is reasonable to conclude that the registration of 1870 Upper Water Street was intentional for the following reasons:

- The registration was consistent with the 1973 motion of Council and the 1978 recommendation that the entire Historic Properties area be preserved, and with the fact that all other buildings in the Historic Properties area were registered at about the same time.
- The minutes of the City Council hearing at which the proposed registration was considered (October 5, 1981) indicate that a representative of the company (Mr. Hugh Smith) was present and that he assented to the registration.
- Following the Council decision, a notice of heritage registration (Form B) was sent to the company by registered mail and recorded at the Registry of Deeds in Book 3530 Page 293.
- A heritage plaque was attached to the building in 1990 during the period when Historic Properties Ltd. had its office in the building, and that plaque is still in place.
- In 2001, an application was made by FS Industries c/o Citigroup Properties on behalf of the owner to replace some windows and an entrance door, and the application was reviewed by the Heritage Advisory Committee and approved by Regional Council as required for alterations to a registered heritage property.

These facts suggest that the owner was aware of the heritage registration, both at the time of registration and over subsequent years. In summary, and in light of the fact that the property has been listed as registered for twenty six years without question by the owner until now, staff consider that it is appropriate to continue to regard the property as having been intentionally registered by the former City of Halifax.

Heritage Value of 1870 Upper Water Street

The 1978 *Evaluation and Protection System for Heritage Resources in Halifax* did not contain any detailed historical information on 1870 Upper Water Street. However, file material pertaining to the Historic Properties area in general, as well as supplementary research conducted by staff for the purpose of responding to this application indicates that the building may date back to the 1870s or earlier. The Heritage Trust of Nova Scotia dates the building at c1840.

From 1870 -1878 the property was owned by Peter Martin, who sold groceries and liquor, and it is his name that was placed on the heritage plaque (P. Martin Liquors Building).

The building was originally a 2½ storey structure with a pitched roof. A third storey was added by 1889 creating the flat-roofed building form that we see today. Although the building has been altered

over its lifetime, with removal of decorative trim, storefront renovations, and original windows replaced, it remains a good example of the wooden commercial buildings that were once common in downtown Halifax and the waterfront but are now very rare, with few examples left intact. In this respect it is comparable to the Sievert Cigar Store on Barrington Street, which is a wooden building of similar heritage value and also a registered heritage property.

Application for Demolition

In correspondence related to this application, Armour Group has stated that it is considering a "Founders Square" type of redevelopment of the adjacent buildings, which have been vacated by NSCAD - and this would require demolition of 1870 Upper Water because it is an obsolete, wood-framed building that cannot be viably incorporated into the redevelopment. No formal application or plans for this redevelopment have been submitted.

Section 17 of the *Heritage Property Act* requires that any application for demolition of a municipal heritage property must be referred to the Heritage Advisory Committee for recommendation and to Council for a decision. In addition, HRM's *Demolition of Municipally Registered Heritage Properties: A Procedure for Public Participation* (adopted in 1999) requires a public information meeting, the posting of a notice on the property respecting the proposed demolition, and negotiation with the owner to find alternatives to demolition.

To date, this application has not been referred to the HAC, and the steps outlined in the Public Participation Procedure have not been initiated due to the discussions and correspondence with the owner regarding the registration history and the assertion of mistaken registration. Although more than five months have elapsed since the demolition application was made, staff now recommend that the application be dealt with in accordance with the procedures required by the *Heritage Property Act*, the *Heritage Property By-law*, and HRM's adopted procedure for public participation in heritage demolition applications. This will involve the following steps and timeline:

1. Heritage Advisory Committee considers this report and endorse the following process (next regular meeting on July 25, 2007).
2. HRM Heritage and Building Inspection staff conduct a Structural Integrity inspection of the building and prepare a report (late July).
3. The owner is required to post a notice on the building regarding the demolition application.
4. HAC advertise and hold a Public Information Meeting (early September, 2007).
5. Following the Public Information Meeting, HAC formulate a recommendation to Council (regular meeting on September 26, 2007).
6. Decision by Council (October 2007).
7. If Council refuses to approve the demolition, the one-year demolition delay period will expire on February 12, 2008, after which the owner will be free to demolish the building until February 12, 2009, after which they will have to apply again (as per Section 18 of the *Heritage Property Act*).
8. Staff continue to negotiate with the owner regarding measures to save the building.

Conclusion

Although a structural integrity inspection of the building has not yet been made, the building's appearance suggests it to be in reasonably good structural condition. Armour Group has not stated that it is structurally unsound; rather, their position has been that it is not suited to the type of redevelopment they have in mind. In an important historic area like Historic Properties, this should not be regarded as sufficient justification to tear down a building. In general, where a heritage building is undergoing change but is structurally sound, it is normally the recommendation of staff that the building should be retained and adaptively re-used rather than demolished. This building is an important part of the historical evolution of the Historic Properties waterfront area and is an asset that contributes to the historic character of the area.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

There are no alternatives at this time.

ATTACHMENTS

1. Location Map & Photo
2. Facts and Documents Pertaining to the Heritage Registration of 1870 Upper Water Street

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

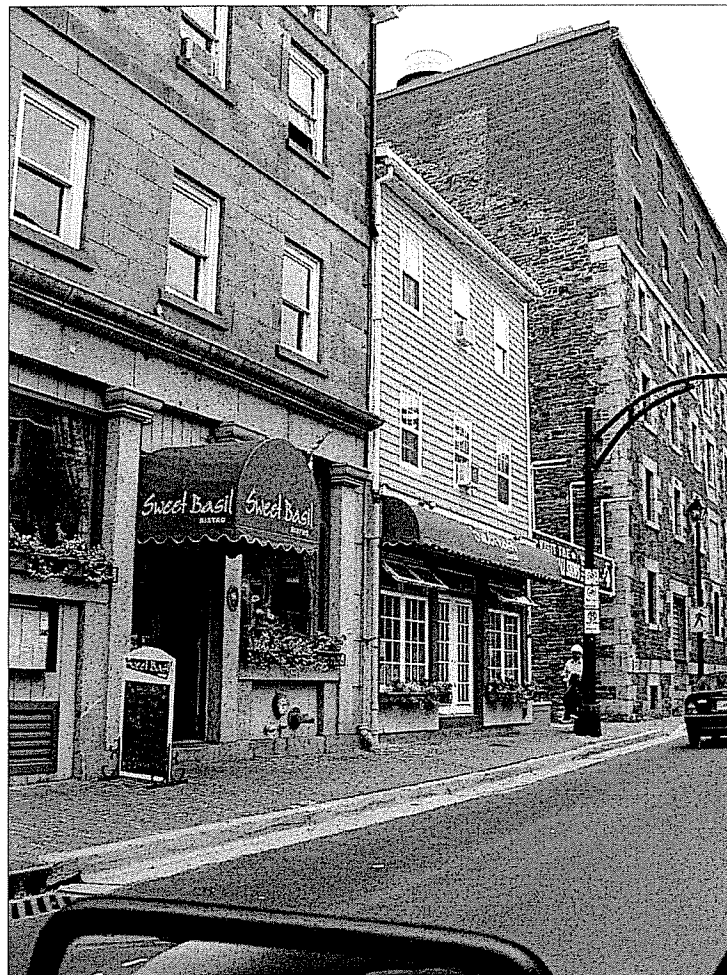
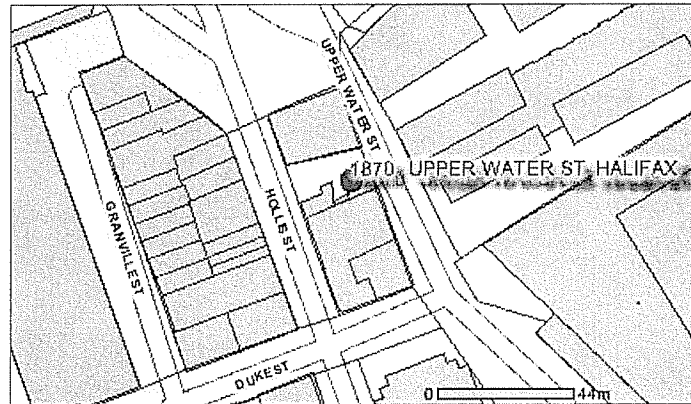
Report Prepared by: Bill Plaskett, Heritage Planner, Community Development, 490-4663

Report Approved by:



Austin French, Manager of Planning Services, 490-6717

Attachment 1
LOCATION MAP AND PHOTO



1870 Upper Water Street (the P. Martin Liquors Building) is located between The Morse's Tea building, formerly known as the Jerusalem Warehouse (on the right) and the W.M. Harrington Building (on the left). Historic Properties (the Historic Waterfront Buildings) are located directly across the street.

Attachment 2

**1870 Upper Water Street
Facts and Documents Pertaining to its Registration as a Municipal Heritage Property**

1. In 1971 the “Historic Waterfront Buildings” were designated as a Halifax Landmark by City Council.
2. In March 1973, Halifax City Council passed a motion as follows:

... that the Granville Street area; Duke Street to Buckingham Street and both sides of Granville Street to the the waterfront should be saved and Council work towards this end to see it developed without cost implications to the City being involved; that the Council go on record as desiring, if at all possible, that developers take into consideration, the wishes of Council that the area in question be preserved in its entirety and its original form as much as possible.
3. In 1978, Council adopted “*An Evaluation & Protection System for Heritage Resources in Halifax*” (“Evaluation”). The Evaluation recommended that certain Buildings, Sites, Streetscapes and Conservation Areas in Halifax be designated as Municipal Heritage Resources.
4. The Evaluation recommended that the “Historic Waterfront Buildings” be designated as Heritage Buildings (p. III-4).
5. The Evaluation did not recommend that 1872 (1870) Upper Water Street be designated as a Heritage Building (p. III-3-4).
6. The Evaluation recommended that the Historic Properties area bounded by mid-block Granville and Barrington/Buckingham to the Harbour be designated as a Heritage Conservation Area and included 1872 (1870) Upper Water Street in the list of addresses included in the recommended Conservation Area (p. III-262-264).
7. In 1981, the City of Halifax issued a “Form A” addressed to Historic Properties Ltd. stating:

“You are hereby notified that:

1. The land and building located at
1870 Upper Water St.
(Historic Waterfront Buildings) Historic Properties

has been recommended to be registered in the Halifax Registry of Heritage Property.

2. The reasons for this proposed designation are:
 - a) pursuant to Section 425 of the Halifax City Charter, the City Council on August 12, 1981, deemed the property to be representative of the social, commercial or political history of the City and declared it to be a Landmark;
[note: the date August 12, 1981 appears to be a typing error and should be August 12, 1971]
 - b) City Council on July 27, 1978, approved a report entitled “An Evaluation and Protection System for Heritage Resources in Halifax”, one of the recommendations of which was that the buildings designated as Halifax Landmarks in 1971, be designated as Heritage Buildings...”
8. The Form A notified Historic Properties Ltd.. that Council would consider the recommendation on October 5, 1981.
9. The Form A that HRM staff have been able to locate is neither dated nor signed by the City Clerk. The Form A states that it was sent by Registered Mail, however there is no record that it was actually sent or received. There is no record of the Form A having been deposited in the Registry of Deeds.
10. The minutes of Halifax City Council on October 5, 1981 disclose that the proposed registration of “1870 Upper Water Street - Historic Waterfront Buildings” was before Council on that date. The minutes disclose that Mr. Hugh Smith of Historic Properties was present at the Council meeting, addressed Council indicating agreement and approval of registering 1870 Upper Water Street - Historic Waterfront Buildings.
11. On October 15, 1981, the motion to register Historic Waterfront Buildings - 1870 Upper Water Street was put and passed by Council.
12. On October 27, 1981, the Form B for “1870 Upper Water Street (Historic Waterfront Buildings) Historic Properties” was issued by the City Clerk. The Form B states at the top that it was sent to Historic Properties Ltd.. by Certified Mail.
11. On October 28, 1981, the Form B was recorded at the Registry of Deeds in Book 3530 at p. 293.
12. 1870 Upper Water Street currently has a plaque on the outside of the building acknowledging that it is a Municipal Heritage Property. The plaque has been on the building since 1990.

13. On January 8, 2001, the Citigroup made an application for a permit under the Heritage Property Program to make alteration to the windows on 1872 (1870) Upper Water Street. The alterations were approved by Regional Council on March 20, 2001.
14. 1870 Upper Water Street is listed as an HRM Heritage Property on the “P. Martin Liquors Building” link in the online Registry of Canada’s Historic Places (www.historicplaces.ca).
15. On July 11, 2006, Mr. Ben McCrea, of the Armour Group, owner of 1870 Upper Water Street, wrote to the Municipal Clerk and expressed surprise that 1870 Upper Water Street was registered as a Municipal heritage property. He requested in that letter that the building be de-registered. On August 3, 2006, Mr. McCrae applied for a demolition permit for the building.
16. In a subsequent letter to the Clerk dated August 21, 2006, Mr. McCrea expressed his opinion that the registration was unwarranted and claimed that he did not know the building was registered. In his recollection, the building had not been part of the group of Historic Properties buildings he had agreed to register. He also suggested it may have been mistakenly registered because in the 1970's and early 1980's there was much confusion over civic addresses in the historic properties area.
17. On September 21, 2006, Mr. McCrae agreed to put the demolition and de-registration permits on hold pending HRM staff research on the issue. The applications were later withdrawn.
18. Mr. McCrae submitted a new demolition application on February 12, 2007.
19. Historic Properties Ltd. was the company responsible for the renovations to the Historic Waterfront buildings. In 1981, prior to the notices of registration having been sent, the offices of Historic Properties Ltd. were located at 1870 Upper Water Street.

Background - Heritage Resource Registration Legislation

1. Section 11 of the *Heritage Property Act*, 1980, S.N.S. c.8 (“HPA 1980”) gave municipalities the authority to establish a Municipal Registry of Heritage Properties and a Heritage Advisory Committee. Section 13 gave the Heritage Advisory Committee the authority to recommend to a municipality that a building, streetscape or area be registered in the Municipal Registry.
2. Section 9(a) of the City of Halifax Ordinance 174 (“Ordinance 174”), passed in June 1981, established the Halifax Registry of Heritage Property and a Heritage Advisory Committee (“HAC”).

3. Section 10 (1) of Ordinance 174 authorized Council, on the advice of the HAC to register a building, streetscape or area in the Halifax Registry of Heritage Property by resolution.
4. Section 10(2) of Ordinance 174 required that, before registration, Council had to notify the “registered owner” of a time and place to appear and be heard before Council. Section 2(I) defined “registered owner” to include “...a person assessed in respect of the occupancy of the land.”

Section 11 required the notice to be in “Form A” and sent by the City Clerk by registered mail.

Section 13(5) of the HPA 1980 required that the notice (Form A) be deposited in the Registry of Deeds.

5. Section 9(b) of Ordinance 174 required that all registered buildings be recorded in the Halifax Registry of Heritage Properties in a “Form B”.

Section 14(3) of the HPA 1980 required that notice of the registration be sent to the owner and a copy of the registration be deposited in the Registry of Deeds.