



**APPEALS STANDING COMMITTEE
MINUTES
April 10, 2014**

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

REGRETS: Councillor Brad Johns

STAFF: Ms. Tanya Phillips, Manager, By-law Standards
Mr. Kevin Hindle, Regional Coordinator License Standards & Taxi,
Limousine Services, Municipal Compliance
Mr. Randolph Kinghorne, Senior Solicitor
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/AppealsApril1014.html>

The meeting was called to order at 10:05 a.m., recessed at 11:23 a.m. and reconvened at 11:28 a.m. The Standing Committee adjourned at 11:35 a.m.

1. CALL TO ORDER

The Chair called the meeting to order at 10:05 a.m.

2. APPROVAL OF MINUTES – March 20, 2014

MOVED by Councillor Karsten, seconded by Councillor McCluskey that the minutes of March 20, 2014 be approved as circulated. MOTION PUT AND PASSED.

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

It was noted that Mr. Palikuca and Mr. Awad had withdrawn their appeals.

Deletions:

- 9.4.1 Appeal of Refusal to Issue a Limousine Owner License – Zlatan Palikuca
- 9.4.2 Appeal of Refusal to Issue a Limousine Owner License – Ashraf Awad

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

- 4. BUSINESS ARISING OUT OF THE MINUTES – NONE**
- 5. MOTIONS OF RECONSIDERATION – NONE**
- 6. MOTION OS 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 STAFF

9.1.1 Process Change – Taxi License Appeals

The following was before the Standing Committee:

- A staff recommendation report dated April 2, 2014
- Correspondence from Krista Vining, Legislative Assistant to the Appeals Standing Committee dated April 7, 2014 re: response from Randy Kinghorne, Senior Solicitor to procedure questions respecting process change to taxi license appeals

Mr. Kevin Hindle, Regional Coordinator License Standards & Taxi, Limousine Services, Municipal Compliance provided an overview of the staff memorandum dated March 21, 2014 re: By-law T-1000 Specific Time Penalty Following Offences as circulated to members with the April 10, 2014 agenda (Information Item 1); and the April 2, 2014 staff report respecting a process change to taxi license appeals.

By-law T-1000: Specific Time Penalty Following Offences

As per the Committee's request of January 9, 2014 staff has conducted research of other municipal by-laws in relation to specific time penalties following offences prior to licenses being issued or renewed. In most cases, other municipal by-laws contained specific time or waiting periods, in addition to and following, the completion of any imposed sentence or conditions before the individual is eligible to apply for a license. A possible by-law amendment could be that *an applicant or license holder must not have been the subject of a court order or condition resulting from a criminal conviction related to the operation of a vehicle for hire within the 12 months preceding the date of their application.* It was noted that if a time penalty is included in By-law T-1000, the applicant would have the option to appeal the decision of the Licensing Authority.

Process Change – Taxi License Appeals

As a result of concerns expressed, HRM Legal Services conducted a review of the current state of law regarding in camera (closed) hearings. The legal review is provided in the private and confidential in camera memorandum to the Municipal Clerk dated March 31, 2014 as circulated to members with the April 10, 2014 agenda (In Camera Information Item 1). It is recommended that on a go-forward basis that taxi license appeals should normally be held in open session, subject to the right of an appellant to specifically request a closed (in camera) hearing, provided the circumstances would warrant that closed hearing. Requests would be considered by the Committee on an individual basis.

MOVED by Councillor McCluskey, seconded by Councillor Hendsbee that, on a go-forward basis, that taxi license appeals be normally held in open session of the Appeals Committee, subject to the right of the appellant to specifically request an in camera hearing providing the circumstances warrant an in camera hearing, for the consideration of the Appeals Committee.

And further, that the appellant be advised of the open session nature of the appeal hearing and the right to request an in camera (closed) hearing together with the reasons which warrant a closed hearing in writing, for the consideration of the Appeals Committee.

Councillor McCluskey questioned how the proposed time penalty would be implemented. Mr. Hindle provided an example wherein an individual has been convicted of driving under the influence (DUI) while operating a vehicle for hire and the court imposed penalty is a one year suspension. He also noted that Access Nova Scotia has a mandatory 90 day suspension. Upon completion of the one year court imposed penalty, the individual could drive a personal vehicle using their Nova Scotia Driver's License but their taxi driver's license would not be reinstated

for hire with the Municipality until one year of clean driving has been completed, which is assessed by Access Nova Scotia.

In response to a question raised by Councillor Karsten around the process for taxi appeal hearings, Mr. Randolph Kinghorne, Senior Solicitor clarified that if the Committee wanted to seek confidential legal advice they would have to move into in camera. In regard to the motion before the Committee, all proceedings should be open and transparent to the public. Mr. Kinghorne appreciated Councillor Karsten`s concerns respecting debate but as outlined in the report the debate should be in public. He provided examples of circumstances where an appellant would want to have their matter addressed in a closed (in camera) session; such as the appellant going through court proceedings and does not want to discuss their defense in the open session. Mr. Kinghorne further advised that the Charter sets out specific instances where Council or a Committee of Council can go in camera. As well, there is a certain amount of discretion laid out by the courts where circumstances warrant appropriate to have closed hearings because of the nature of the information being discussed which is in addition to the list provided in the Charter.

Councillor Hendsbee questioned the process of notifying the appellant of the Committee`s decision and if the appeal is addressed in camera whether the motion would be ratified in an open session. Mr. Kinghorne advised that the intention is for the discussion to be in open form unless the appellant requests and produces circumstances that would warrant moving the appeal into in camera. Mr. Kinghorne clarified that not many taxi appeals would be considered confidential. If debated in camera, then the decision would be made public (i.e. ratify the motion in open session).

MOTION PUT AND PASSED.

In response to a question raised on the time penalty under By-law T-1000, Mr. Kinghorne suggested that the Committee defer the matter to the next meeting to allow clarification to be sought on how to proceed.

MOVED by Councillor Hendsbee, seconded by Councillor Karsten that the Appeals Standing Committee defer the Memorandum from staff dated March 21, 2014 re: By-law T-1000 Specific Time Penalty Following Offences (Information Item 1) to the next meeting to allow for clarification to be sought on how to proceed. MOTION PUT AND PASSED.

9.2 DANGEROUS OR UNSIGHTLY PREMISES: APPEALS – NONE

9.3 DANGEROUS OR UNSIGHTLY PREMISES: DEMOLITIONS

9.3.1 Case#222061, 12 Sylvia Avenue, Halifax

The following was before the Standing Committee:

- A staff recommendation report dated March 28, 2014

Mr. Mark Prosser, Compliance Officer, By-law Standards provided an overview of the March 28, 2014 staff report, presenting photographs of the property in question.

Councillor Adams questioned when the house had been boarded up. Mr. Prosser could not confirm the exact date but indicated approximately two years ago.

In response to a question raised by Councillor McCluskey, Mr. Prosser confirmed that the house being boarded up would not be considered unsightly. He highlighted that staff had been trying to work with the New Armdale Westside Coop Ltd. to move forward and address the property, as the vacant house drew criminal activity.

Mr. David Emery, President of Pathways Housing Services spoke as the representative of the New Armdale Westside Housing Coop Ltd. (Coop). He indicated that the Coop regrets that the building has deteriorated to the point that it has become a nuisance for neighbouring residents. New Armdale Westside Housing Coop Ltd. had been working closely with Housing Nova Scotia to develop a plan to redevelop the Coop and owns 54 units including the property at 12 Sylvia Avenue, Halifax. Since April of 2013 the Coop had been working on a proposal to try and acquire funding, which Mr. Emery noted has been a slow process. The Coop does not have the funding to maintain the building but in light of the Order, Housing Nova Scotia has agreed to pay for the demolition. Mr. Emery advised that quotes have been obtained to move forward on the demolition if the Committee permits, and should be addressed within the time constraints; depending on whether lead paint or other hazardous materials are identified and the necessary permits are obtained.

In response to a question raised by Councillor McCluskey, Mr. Emery confirmed that the Coop was up to date on their property taxes. She noted that the property in its present condition is assessed at \$99,400, commenting that it was unfortunate that the Coop has been overtaxed due to a high assessment.

In response to a question raised by Councillor Karsten, Mr. Emery reiterated his earlier comments on Housing Nova Scotia paying for the demolition and quotes being obtained. If the Coop is allowed to proceed the contract would be awarded and work would commence within approximately a week and they would meet the 30 day timeline.

Councillor Adams pointed out that the water had been turned off to the property in 2009 and there had been no tenants living in the dwelling since that time. However, he expressed concern that on March 18, 2014 Regional Council approved a reduction in taxes by 25% on the understanding that someone was living in the house. He asked Mr. Emery to advise the New Armdale Westside Housing Coop Ltd. that it is wrong to ask for a tax relief under the guise of offering affordable housing if no one is living in the dwelling. The intent of the tax relief program is to allow for that money to be put back into the property. Councillor Hendsbee added that the Coop had been awarded a \$251 tax relief for 2014.

Councillor McCluskey asked whether an oil tank was connected to the property and if so, whether the tank could omit pollution during the demolition. Mr. Emery confirmed that there is an oil tank onsite but that there was no oil in the tank. Until the demolition begins, Mr. Emery indicated that there was no way to determine if this would be a concern.

MOVED by Councillor Adams, seconded by Councillor Mosher 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 Karsten referred to Housing Nova Scotia paying for the demolition and New Armdale Westside Housing Coop Ltd.'s intent to demolish the dwelling within the 30 day timeframe. In response to a concern raised around the 30 day time period, Ms. Phillips advised that staff would be in consultation with the property owner regarding the demolition. If the Coop awarded the contract, and requested a reasonable extension of time in order to complete the demolition, (i.e. 1 or 2 days), that would be acceptable to staff, as the first option is that the property owner takes the steps to deal with the violation.

MOTION PUT AND PASSED.

9.4 TAXI, ACCESSIBLE TAXI AND LIMOUSINES APPEALS

9.4.1 Appeal of Refusal to Issue a Limousine Owner License – Zlatan Palikuca

The following was before the Standing Committee:

- A private and confidential staff recommendation report dated March 31, 2014

This matter was deleted during the order of business as the appeal was withdrawn.

9.4.2 Appeal of Refusal to Issue a Limousine Owner License – Ashraf Awad

The following was before the Standing Committee:

- A private and confidential staff recommendation report dated March 27, 2014
- Correspondence from Ashraf (Ash) Awad, Adam's Taxi and Limousine dated April 5, 2014

This matter was deleted during the order of business as the appeal was withdrawn.

9.4.3 Appeal of Refusal to Issue a Taxi Driver/Owner License – Yashar Ebarhimi

The following was before the Standing Committee:

- A private and confidential staff recommendation report dated March 25, 2014

Councillor Whitman sought confirmation as to whether a request had been or would be made by the Appellant, Mr. Yashar Ebarhimi to have the appeal dealt with in a closed session; to which Mr. Ebarhimi confirmed the appeals could be dealt with in the open session.

Mr. Kevin Hindle, Regional Coordinator License Standards & Taxi, Limousine Services, Municipal Compliance, proceed to present the Appeal of Refusal to Issue a Taxi Driver License and Taxi Owner License of Mr. Yashar Ebarhimi as set out in the March 25, 2014 private and confidential staff report. It was noted that By-law T-108 is referenced in the staff report instead of By-law T-1000 as this was the ordinance in place at the time Mr. Ebarhimi's licenses expired.

In response to a question raised by Councillor McCluskey, Mr. Hindle clarified that the physician's letter indicated that there was no medical evidence provided for the period of time from 2008 preventing Mr. Ebarhimi from applying for reinstatement of his licenses. Therefore the article referenced in the By-law has not been adequately supported and there is no reinstatement of license eligible from the information provided by the physician.

Councillor Hendsbee asked whether Mr. Ebarhimi has kept a valid Nova Scotia Driver's License during the period of time since 2008, or was his driver's license also suspended as a result of his medical condition. Mr. Hindle advised that according to the documentation provided by Mr. Ebarhimi, he had not been able to maintain or obtain a Nova Scotia Driver's License for the entire period of time in question until the summer of 2013.

In response to a follow up question raised by Councillor McCluskey, Mr. Hindle added that Mr. Ebarhimi was convicted of Driving Under the Influence (DUI) in December 2006. Mr. Ebarhimi failed to comply with the requirements under the Provincial guidelines for reinstatement and his Nova Scotia Driver's License was delayed until the summer of 2013.

Mr. Hindle pointed out that the medical information is addressed in the March 25, 2014 private and confidential staff report. Mr. Hindle added that Mr. Ebarhimi could have reapplied to have his Taxi Owner's License reinstated; not necessarily operating the taxi himself, as the by-law article states the condition was for him to reapply to have the license renewed.

Mr. Yashar Ebarhimi, Appellant presented his appeal to the Standing Committee. In 2007 he lost his father and was mentally and emotionally sick and had to leave his house and was on unemployment insurance for two weeks and then on social assistance until 2009. After that time he tried to get back on his feet but owed \$2,000 to Access Nova Scotia and was unable to pay as a result of not working for two to three years. He applied for other jobs in order to pay Access Nova Scotia; working part time until he got a full time position in a restaurant in Bedford. By the time he was able to raise the funds the license period had expired and he was advised that he would have to go to the bottom of the waiting list. Mr. Ebarhimi went on to note his family problems and trying to get his license back to make a living. He had driven a taxi since 1990 at the airport and in 1994 got his city taxi license and drove a taxi in the city until 2006. He commented that he does not have a bad driving record or any concerns with the companies he has worked for and was a hard worker. He spoke to the challenges of trying to find work at the age of 59 and his passion for being in public service; indicating that he would like to drive a taxi

again but did not want to start over and at the bottom of the waiting list. He further added that he needed his license back for his family and was not presently living at home due to family issues.

Councillor Karsten requested clarification around the reasoning from the first physician's letter, Appendix C of the March 25, 2014 private and confidential staff report, stating that Mr. Ebarhimi was unable to work until 2013. Mr. Ebarhimi stated that the reason was because his Nova Scotia Driver's License was suspended.

MOVED by Councillor McCluskey, seconded by Councillor Adams that the Appeals Standing Committee allow the appeal of Mr. Yashar Ebarhimi and overturn the decision of the Licensing Authority not to reinstate his taxi driver and taxi owner licences.

Councillor McCluskey spoke in support of reinstating Mr. Ebarhimi's licenses, pointing out the confusion around the situation and that Mr. Ebarhimi did not reapply to have his licenses reinstated as he was unable to drive.

Councillor Hendsbee questioned what the reasonable timeframe/expectation is for a retroactive application to come forward for consideration (i.e. renewing a license that had been suspended or lapsed for a period of time). Mr. Randolph Kinghorne, Senior Solicitor advised that under the by-law Mr. Ebarhimi has the right to reapply for reinstatement of his license no matter the length of time. The By-law could be amended to provide for annual updates but as it presently states, if the individual has medical reasons and is unable to renew their licenses they can be reinstated at a later date. The issue in Mr. Ebarhimi's case is that the first letter provided from the physician says he was unable to drive but did not provide a medical reason. When staff sent the expectations of the by-law back to the doctor to provide a medical reason, the doctor advised that Mr. Ebarhimi was unable to renew his licenses because he could not afford the fees. Mr. Kinghorne pointed out that not being unable to pay licensing fees was not a medical reason. However, under the by-law if Mr. Ebarhimi provided medical evidence that he was unable to renew his license due to a medical condition than he could have his license reinstated. The question before the Committee is whether they are satisfied with the evidence provided by Mr. Ebarhimi and his physician that a medical condition existed that prevented him from renewing his license. If the Committee is satisfied with the evidence, than the appeal would be allowed and if not than the appeal would be denied.

In response to a question on reporting medical conditions to the Nova Scotia Registry of Motor Vehicles, Mr. Kinghorne advised that doctors are required to report medical conditions where there is a possibility of making the individual an at-risk driver above and beyond the normal situation.

Councillor Hendsbee questioned whether the first letter provided by Mr. Ebarhimi's physician was enough to suspend his Provincial Driver's Licence. Mr. Hindle clarified that the situation regarding Mr. Ebarhimi Nova Scotia Driver's Licence occurred in December 2006 due to operating a motor vehicle while impaired. The Province ceased Mr. Ebarhimi's license and no medical reasons were given other than he was charged criminally and convicted of a DUI. During the process when his license was suspended, there were complications with the Province in order for them to affirm that he completed all tasks necessary to get his license back. What is

presented before the Committee is not the interpretation of the by-law but staff's interpretation on the final letter presented by Mr. Ebarhimi's doctor upon staff's request to receive confirmation of medical evidence in support of his claim. He added that had support for the medical condition been provided than the clause within By-law T-108 would have been satisfied and the license reinstated. It is staff's interpretation that the final physician's letter does not provide medical evidence for the entire period in question and therefore no reinstatement of his license is permitted under By-law T-108.

Mr. Ebarhimi submitted a letter from his physician dated March 25, 2014 which was placed on the overhead projector for the Committee's review.

The Committee proceeded to review the March 25, 2014 letter from Dr. Jana Wieder, along with the previous medical letter's provided by Dr. Wieder.

The Standing Committee recessed at 11:23 a.m. and reconvened at 11:28 a.m.

Discussion on the appeal ensue with Councillor Craig speaking in support of reinstating Mr. Ebarhimi's license based on the information before the Committee.

MOTION PUT AND PASSED.

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

- 14. DATE OF NEXT MEETING – May 8, 2014**

- 15. ADJOURNMENT**

Prior to adjourning and in response to a question raised, the Standing Committee asked Mr. Randolph Kinghorne, Senior Solicitor to consult with the Director of Legal Services on the position of Taxi Appeals and consideration around safety issues having the appellant and staff present during the Committee's deliberation.

The meeting was adjourned at 11:35 p.m.

Krista Vining
Legislative Assistant