



**APPEALS STANDING COMMITTEE
MINUTES
April 14, 2016**

PRESENT: Deputy Mayor Matt Whitman, Chair
Councillor Stephen Adams, Vice Chair
Councillor Russell Walker
Councillor Gloria McCluskey
Councilor David Hendsbee

REGRETS: Councillor Brad Johns

STAFF: Mr. Randolph Kinghorne, Senior Solicitor
Ms. Tanya Phillips, Manager, By-law Standards
Ms. Krista Vining, Legislative Assistant
Ms. Cathy Collett, 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/160114asc-agenda.php>

The meeting was called to order at 10:00 a.m. and adjourned at 11:52 a.m.

1. CALL TO ORDER

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

2. APPROVAL OF MINUTES – February 18, 2016

MOVED by Councillor McCluskey, seconded by Councillor Walker

THAT the minutes of February 18, 2016 be approved as circulated.

MOTION PUT AND PASSED.

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

The Legislative Assistant requested Item 12.3.1 Appeal of Elmer Smith, Suspension of Taxi Driver License #D600 and Taxi Owner License #D342 be heard as the first order of business.

MOVED by Councillor Adams, seconded by Councillor Walker

THAT the agenda be approved as amended.

MOTION PUT AND PASSED.

Item 5 was addressed prior to Item 12.3.1.

5. CALL FOR DECLARATION OF CONFLICT OF INTERESTS

Councillor McCluskey recused herself for item 12.3.1 Appeal of Elmer Smith, Suspension of Taxi Driver License #D600 and Taxi Owner License #D342.

12.3.1 Appeal of Elmer Smith, Suspension of Taxi Driver License #D600 and Taxi Owner License #D342

The following was before the Standing Committee:

- A staff recommendation report dated March 23, 2016

The Chair confirmed that the appellant was present.

Mr. Kevin Hindle, Licensing Coordinator, Municipal Compliance, provided an overview of the staff recommendation report dated March 23, 2016.

Cst. Gillian Foran, Investigating Officer, Halifax Regional Police stated that Halifax Regional Police received a call on February 13, 2016 from the alleged victim regarding her numerous attempts to contact Bob's Taxi via phone and Facebook, to advise that she did not want Mr. Smith to drive her to and from work. Cst. Foran confirmed that there have been various incidences where the alleged victim has called back to Bob's Taxi indicating that Mr. Smith has shown up at her home/work. On one occasion, the alleged victim had gotten into a taxi with the understanding that it was a different driver, and has been driven home by Mr. Smith. The alleged victim has also informed HRP of events where Mr. Smith has parked at the end of her street. HRP have statements from witnesses' validating that Mr. Smith has being parked at the end of the alleged victims' street. In addition, the alleged victim's manager has spoken with HRP regarding a night she drove the alleged victim home from work and a Bob's Taxi had followed them. Cst. Foran advised that the alleged victim has spoken with employees of Bob's Taxi respecting

lewd comments Mr. Smith has made towards her. Cst. Foran indicated that the alleged victim is frightened and wanted the situation resolved.

The alleged victim read from a prepared statement respecting her interactions with Mr. Smith, contact with Bob's Taxi and complaint made to HRP. The alleged victim's statement was submitted for the record.

Mr. Elmer Smith, appellant spoke about the first time he had picked the alleged victim and her boyfriend up in his taxi and how he had commented on the alleged victim's appearance to her boyfriend. Mr. Smith spoke to another event where he had picked up the alleged victim's boyfriend and how he did not have his credit card to pay for the fare, but Mr. Smith told him that he could pay later because of how often they took his taxi. Mr. Smith noted that the alleged victim's boyfriend had paid the outstanding fare. Ms. Smith clarified that he has never driven the alleged victim home from the Superstore. He stated that taxi drivers operate by satellite and can park in permitted areas but that it does not have to be at a taxi stand. He went on to speak about operating out of Zone 12 and expressed that he would be drawing up a law suit against the alleged victim and the Municipality in regard to his reputation and this case. Mr. Smith expressed that he does not have a bad reputation or a criminal record, and has driven a taxi for 35 years. He suggested that taxi drivers should be taught the by-laws when applying for taxi licences. He made reference to discussions the alleged victim has had with a Bob's Taxi dispatch employee about the alleged victim not wanting Mr. Smith to drive her. He confirmed the event where the alleged victim got into his vehicle not knowing he was the driver and how he drove her home. Mr. Smith clarified that the alleged victim has only driven with him on two occasions; stating that he had never asked her to get into his taxi and that she got in on her own. He further clarified that he has never said to the alleged victim that he would drive her to New Brunswick, as noted by the alleged victim in her statement. Mr. Smith did not feel that comments he made about the alleged victim's appearance were inappropriate.

Ms. Angela Jeffrey-Haynes, Halifax Regional Police Victims Services advised that she has been providing support to the alleged victim in relation to the events that have taken place between the alleged victim and Mr. Smith. Ms. Jeffrey-Haynes' areas of concern related to the impact on the alleged victim, general public safety and behavioural patterns.

The following points of clarification were provided by staff:

- Mr. Smith's criminal harassment charge is pending trial
- unable to confirm whether a peace bond application was made by the alleged victim
- Following Mr. Smith arrest, he was released on an undertaking not to have any direct/indirect contact with the alleged victim and her boyfriend; unable confirm whether Mr. Smith had violated this condition
- Halifax Regional Police have two different statements from Bob's Taxi dispatchers who were working the night the alleged victim contacted HRP; the statements validate the alleged victim's claim that Mr. Smith was not on a call at the time he was outside of her place of employment
- Mr. Smith was issued a verbal suspension and Bob's Taxi was notified; the following day, Mr. Smith was observed driving his taxi and a summary offence ticket was issued
- Initial complaint made by the alleged victim was February 13, 2016; Mr. Smith first drove the alleged victim in his taxi approximately six (6) months to a year ago

In response to a question raised, Mr. Smith was unable to confirm the exact date he first drove the alleged victim and her boyfriend in his cab but agreed it was approximately six (6) months to a year ago. He reiterated that he has only driven the alleged victim on two occasions; one time was when she was with her boyfriend and the other he was in a different taxi licensed vehicle.

Mr. Smith expressed concern with being classed as a person who was not fit to operate a taxi. He commented that he has driven a taxi since 1973 and has had no problems with police or taxi by-law officers. In response to the summary offence ticket he was issued, Mr. Smith clarified that he had forgotten to remove his taxi roof light while running personal errands. He reiterated his point about drivers being tested on the by-laws rather than having to know streets.

MOVED by Councillor Hendsbee, seconded by Councillor Adams

THAT the Appeals Standing Committee allow the appeal of Elmer Smith.

Members entered into discussion with staff responding to questions. The following information was provided.

Mr. Hindle spoke to electronic correspondence the Taxi Licensing Authority received from Bob's Taxi dated December 15, 2015 that Bob's Taxi had severed their relationship with Mr. Smith due to an ongoing police investigation related the matter before the Committee. Bob's Taxi had notified the Taxi Licensing Authority that Mr. Smith would not be able to operate under their company name on his roof light for approximately a three (3) week period. Upon receiving this information, the Taxi Licensing Authority notified Mr. Smith that he needed to provide authorization from either a different company or establish his own company. Following this notification, Bob's Taxi contacted the Taxi Licensing Authority to advise that Mr. Smith was still operating under their company name and Mr. Hindle confirmed that Mr. Smith had not provided a different company name or establish a company to operate under. Mr. Hindle expressed concern with Mr. Smith not abiding by the law and requested Mr. Smith's taxi owner and taxi driver licenses continue to be suspended while these issues are under investigation (Section 46.1 of By-law T-1000). Mr. Hindle added that Bob's Taxi had failed to disclose the reason for giving this authorization back to Mr. Smith in their letter to the Municipality dated December 31, 2015.

It was also noted that taxi drivers do not own the licenses' but are given permission to use under the authorization of the by-law, in accordance with the law.

In response to a question raised, Mr. Smith indicated that he had not received a verbal suspension or anything in writing from Bob's Taxi. Mr. Smith did confirm receipt of the letter from the Taxi Licensing Authority, which he discussed with the owner of Bob's Taxi. It was suggested by the owner of Bob's Taxi that the suspension was a mistake made by one of the dispatchers. Mr. Smith pointed out that he was never fired and had not lost any time operating under Bob's Taxi.

The alleged victim advised that she had been in Mr. Smith's Taxi under 10 times.

Mr. Randolph Kinghorne, Senior Solicitor advised that while there is an ongoing criminal proceeding, a complaint has been made by a member of the public who has met with HRP and the Taxi Licensing Authority. Based on the evidence, the Compliance Officer has concluded that on an interim basis it is appropriate for the protection of the public to suspend Mr. Smith's licences subject to review following the criminal proceedings. Mr. Kinghorne clarified that there is no violation of the presumption of innocence and the Committee needs to determine based on the information provided, whether to uphold the decision of the Taxi Licensing Authority.

Mr. Kinghorne further spoke to being suspended with/without pay which is determined based on circumstances. He provided an example where an individual could be terminated from their employment as a result of a criminal investigation, and be reinstated once the investigation concludes. The Taxi Licensing Authority has determined that Mr. Smith has acted inappropriately and have suspended his licences pending the outcome of the criminal proceedings.

Ms. Tanya Phillips, Manager, By-law Standards provided clarification on Mr. Smith's residency in relation to the alleged victim's place of employment.

MOTION PUT AND DEFEATED (with the effect that the decision of the Taxi Licensing Authority stands).

Councillor McCluskey rejoined the meeting at this time.

4. BUSINESS ARISING OUT OF THE MINUTES

4.1 Request for Reconsideration

4.1.1 Appeal of Jon Wilson, Case #265352 – 6852 Chebucto Road, Halifax

The following was before the Standing Committee:

- A supplementary staff recommendation report dated March 22, 2016
- An extract of the draft minutes of the Appeals Standing Committee dated February 18, 2016

The Chair confirmed the appellant was present.

Mr. Jon Wilson, appellant explained that he has been unable to attend the February 18, 2016 hearing date due to illness and submitted a letter from his physician dated February 29, 2016.

In consultation with legal, it was MOVED by Councillor Adams, seconded by Councillor McCluskey

That the Appeals Standing Committee hear the request for reconsideration regarding Case #265352 – 6852 Chebucto Road, Halifax.

MOTION PUT AND PASSED.

Mr. Ben Amini, Compliance Officer gave a brief presentation providing background for the case, showing pictures of the property.

Mr. Wilson agreed that the condition of the wood pile is unsightly. Mr. Wilson indicated that he had been sorting/processing the wood at the time the Compliance Officer visited his property. He pointed out that his truck needed to be fixed before he could haul the wood away and that being sick had prevented him from this.

As identified in the information provided by staff, Mr. Wilson confirmed he was in the process of constructing a new deck. After some discussion, Mr. Wilson was told that he would need to obtain a permit to continue building his deck. To date, no permits have been issued to Mr. Wilson for the work to be completed at the property.

MOVED by Councillor Hendsbee, seconded by Councillor McCluskey

THAT the Appeals Standing Committee allow the appeal.

MOVED by Councillor McCluskey, seconded by Councillor Walker to amend the motion:

To uphold the Order to Remedy dated December 22, 2016 but extend the date of compliance to 30 days.

The Committee discussed whether Mr. Wilson would be able to comply with the Order under the extended time frame.

Ms. Tanya Phillips, Manager, By-law Services reviewed the options with the Committee:

- Allow the appeal
- Allow the appeal with conditions
- Deny the appeal and ask staff not to return to the property until 30 days

Under the third option, the Order is still in effect and if after 30 days the work is still not completed, the Municipality would bring the Order into compliance.

In consultation with staff, the mover and seconder withdrew the amendment in order to provide clearer direction.

The motion before the Committee read:

MOVED by Councillor Hendsbee, seconded by Councillor McCluskey

THAT the Appeals Standing Committee allow the appeal.

The following clarification was provided:

- If the appeal is approved, the case is closed and no further action would be taken
- If the appeal is denied, staff would not return to the property until after 30 days to confirm compliance of the Order

In response to a question raised, Mr. Wilson explained that he was not in a financial position to hire someone to do the work.

MOTION PUT AND DEFEATED (with the effect that the Order stands).

5. CALL FOR DECLARATION OF CONFLICT OF INTERESTS

This matter was addressed earlier in the meeting, see page 2.

6. MOTIONS OF RECONSIDERATION – NONE

7. MOTIONS OF RESCISSION – NONE

8. CONSIDERATION OF DEFERRED BUSINESS – NONE

9. NOTICES OF TABLED MATTERS – NONE

10. CORRESPONDENCE, PETITIONS & DELEGATIONS

10.1 Correspondence – None

10.2 Petitions – None

10.3 Presentation – None

11. INFORMATION ITEMS BROUGHT FORWARD – NONE

12. REPORTS

12.1 DANGEROUS OR UNSIGHTLY PREMISES: APPEALS – NONE

12.2 DANGEROUS OR UNSIGHTLY PREMISES: DEMOLITIONS

12.2.1 Notice to Appear, the Estate of Mary A. Loppie, Case #268305 – 1210 St. Margaret's Bay Road, Beechville

The following was before the Committee:

- A staff recommendation report date March 22, 2016

The Chair confirmed a representative of the Estate of Mary A. Loppie was present.

Mr. Steven Berkman, Compliance Officer gave a brief presentation providing background for the case, showing pictures of the property.

Ms. Donna Simons, representing the Estate of Mary A. Loppie indicated that she has not been physically able to get up to the property over the past year, but could see the building from the road. Ms. Simons noted that the person she had doing property repairs and maintenance had passed away a couple of years ago. She was aware of the building's condition, but was not in a financial position to do the repairs. Ms. Simons pointed out that there were a number of cousins involved in the Estate. She was asked in 2011 to look after paying the water bills and property taxes, which she agreed to because the other family members did not want to participate. Ms. Simons spoke about trying to keep up the property to the best

of her ability and agreed that the building needed to be demolished. Ms. Simon pointed out that there were a couple of legal aspects that still need to be worked out for the property, and how she had tried to get things sorted last year. She understood that whether the family or the Municipality demolished the building, it would be at the Estate's expense. She asked the Committee to consider granting a 60 day extension to allow time to bring the other members of the Estate together and make a decision on whether they or the Municipality would complete the demolition.

The Committee discussed options and HRM programs available to assist the Estate in undertaking the demolition. It was noted that staff is recommending 30 days to complete the demolition due to the current state of the building, as outlined in the Building Official Structural Integrity Report (Appendix B of the March 22, 2016 staff report). Ms. Kristiana Brideau, Building Official spoke to work that had taken place to secure the access points to the building (e.g. boarding up windows and doors). She was concerned that underneath the deck was still open and the columns were not secure. She suggested that underneath the deck be boarded up until the building was demolished.

MOVED by Councillor Walker, 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 and 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 (15) of the Charter.

Ms. Phillips responded to a question on the Municipality's tendering process for Demolition Orders.

In response to a question raised, Ms. Simons confirmed that the family members in attendance at the hearing were in agreement to the 30 day time frame.

Ms. Simons pointed out that at the time when the Municipality undertook the work to board up the building, there was no concern with boarding up underneath the deck. She expressed concern with children coming over from the junior high school and vandalising the building. The family has put up signs (e.g. dangerous and do not enter/trespass) but that children keep taking them down and throwing the signs into the woods. In response, the Chair indicated that the signs should remain up until the building has been demolished. He further suggested that the family take a photograph of the signs on the property to provide confirmation that they are in place.

MOTION PUT AND PASSED.

12.3 TAXIS, ACCESSIBLE TAXIS AND LIMOUSINES: APPEALS

12.3.1 Appeal of Elmer Smith, Suspension of Taxi Driver License #D600 and Taxi Owner License #D342

This matter was addressed earlier in the meeting, see page 2.

12.4 RESIDENTIAL OCCUPANCY APPEALS (By-law M-100) – NONE

12.5 STREETS BY-LAW – NONE

12.6 STAFF – NONE

13. MOTIONS – NONE

14. **IN CAMERA (IN PRIVATE) – NONE**
15. **ADDED ITEMS – NONE**
16. **NOTICES OF MOTION – NONE**
17. **DATE OF NEXT MEETING – May 12, 2016, 10:00 a.m., Council Chambers, 3rd Floor, City Hall, 1841 Argyle Street, Halifax.**
18. **ADJOURNMENT**

The meeting adjourned at 11:58 a.m.

Krista Vining
Legislative Assistant