

**Item No. 4**  
**Halifax Regional Council**  
**January 15, 2013**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

**SUBMITTED BY:** \_\_\_\_\_  
Brad Anguish, Director, Community & Recreation Services

**DATE:** December 19, 2012

**SUBJECT:** Alteration of Sign Bands, Morse's Tea Building, 1877 Hollis Street

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### **INFORMATION REPORT**

#### **ORIGIN**

October 30, 2012 motion of Regional Council:

*“MOVED by Councillor Uteck, seconded by Councillor Watts that Halifax Regional Council request a staff report regarding the painting of the Morse Tea Band and what, if any, financial penalties are there in place for HRM to deliver for altering a designated heritage building. MOTION PUT AND PASSED”*

#### **LEGISLATIVE AUTHORITY**

*The Heritage Property Act.*

#### **BACKGROUND**

The Morse's Tea building is located at 1877 Hollis Street, and was registered as a municipally registered heritage property on November 26, 1981. The building is considered by many to be a landmark, as this solid, 6 storey brick building is one of the first buildings motorists view when exiting the Cogswell interchange to downtown Halifax.

In 2007, approval was granted for a substantial alteration (staff report dated May 11, 2007) to the building to allow for new tenants as the previous tenant, NSCAD, had recently vacated the building. The alterations included changes to door openings and locations on the first floor, as well as replacement of all of the windows on the upper floors (92 windows in total), allowed for

the building to accommodate a restaurant (now Baton Rouge) on the first floor, and 5 floors of office space above.

Until October 27, 2012, two large white painted signs were located on the building at the 5<sup>th</sup> storey on the north and west elevations. The signs extended almost the full width of each elevation (Attachment A). The sign on the north elevation read "Morse's Tea's" and the sign on the western elevation read "Home of Morse's Tea's". While it is unclear how long the signs have been on the building, photographs indicate that they have been in place since at least 1960 (Attachment B). During discussion at the Heritage Advisory Committee concerning the substantial alteration in 2007, questions were raised about the Morse's Tea sign bands to which the project architect stated that owner had not discussed any changes to the sign. The committee discussion noted that the sign bands are distinctive features of the building which would be preferable to maintain in their present form.

On October 27 and 28, 2012, Starfish Properties Limited, the building owner, altered the two painted signs by having the exposed letters painted, thereby leaving solid white bands in their place. The owner did not request approval to alter the signs, and it is staff's position that their alteration constitutes a substantial alteration to the building in accordance with the *Heritage Property Act*. Substantial alterations to municipally registered heritage properties require the approval of Regional Council.

## **DISCUSSION**

It is staff's opinion that the painted signs are character-defining elements that strongly contribute to the heritage value of the building. Staff have discussed this with the building owner who does not share this opinion but, instead, believes that permission was not required prior to undertaking the painting of the signs. Additionally, the owner has indicated that he intends to take no further action at this time relative to the remaining white bands.

### ***Heritage Property Act & Character-Defining Elements***

The *Heritage Property Act* provides that no municipal heritage property shall be substantially altered in exterior appearance without the approval of the municipality. Amendments to the *Act* in 2010 introduced new definitions to certain terms, as follows, to assist in providing context in their application:

*"substantial alteration" means any action that affects or alters the character-defining elements of a property*

*"character-defining elements" mean the materials, forms, location, spatial configurations, uses and cultural associations or meanings that contribute to heritage value and that must be sustained in order to preserve heritage value*

Prior to these amendments, the *Act* required owners of registered heritage properties to request permission prior to undertaking a substantial alteration or demolition but it did not give guidance as to what type of work would constitute a substantial alteration. With the new definitions in

place, there is a greater context to assist heritage property owners and municipalities in determining a property's character-defining elements and in so doing, what building alterations are substantial and the impact of any alteration on the overall heritage value.

Further, it should be noted that in 2008, for the purpose of including the property on the online Canadian Register of Historic Places through the NS Historic Places Initiative, heritage staff created a "Statement of Significance" for the Morse's Tea building which included a list of character-defining elements. While the owner did not participate in the creation of the statement, he did provide his consent to list the property on the Historic Places Initiative. On the Statement of Significance, one of the listed character-defining elements is:

*"Large Morse's Tea signs of exposed brick lettering in parged sign bands, located between the fifth and sixth levels on the north and west sides."*

As such, staff considers the painted signs to have been character-defining elements within the meaning of the *Heritage Property Act*.

### **Contravention of the Act**

The intent of the *Heritage Property Act* is to provide for the identification, preservation and protection of heritage properties. In some cases, protection of a heritage property requires the courts to intercede and provide remedy. Section 25 of the *Act* outlines two possible avenues for recourse (Attachment C).

Upon completion of an investigation to determine if a contravention to the *Act* has occurred, the Municipality may take the matter before the provincial court to lay charges. A person who is found to be guilty of an offence is liable on summary conviction to financial penalties of not more than \$10,000, and a corporation who is guilty of an offence to financial penalties of not more than \$250,000.

Additionally, the *Act* states that where there is a contravention or failure to comply with the terms of the *Act*, a municipality may bring an action to the Trial Division of the Supreme Court of Nova Scotia. In this case the Supreme Court may, in addition to any other remedy or relief make an order:

- a) restraining the continuance or repetition of any such contravention or failure; and
- b) directing the restoration of the property, and if the owner fails to comply with the order, the Municipality may restore the property at the expense of the owner.

The Municipality is actively pursuing an investigation. Upon completion it will be determined which course of action is most appropriate to respond to this matter. Supreme Court action may only be commenced following the CAO's or Council's direction to staff to begin proceedings.

### **FINANCIAL IMPLICATIONS**

There are no financial implications arising directly from this report.

**COMMUNITY ENGAGEMENT**

This is an information report requested by Council; therefore no community engagement was undertaken.

**ENVIRONMENTAL IMPLICATIONS**

No concerns were identified.

**ATTACHMENTS**

Attachment A: Recent Photograph of 1877 Hollis Street, Halifax  
Attachment B: Historic Photograph of 1877 Hollis Street, Halifax  
Attachment C: Excerpt from the *Heritage Property Act* for Nova Scotia

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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: Maggie Holm, Heritage Planner, 490-4419

Report Approved by: \_\_\_\_\_  
Kelly Denty, Manager, Development Approvals, 490-4800

Report Approved by: \_\_\_\_\_  
Martin Ward, Q.C., Acting Director, Legal, Insurance & Risk Management Services

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**Attachment A: Recent Photo of the Morse's Tea Building (1877 Hollis Street)**



**Recent Photograph (2011):** Morse's Tea Building, 1877 Hollis Street, Halifax, after renovations to allow the new tenant the Baton Rouge restaurant.

**Attachment B: Historic Photo**



**Historic Photo:** September 1960 - the Morse's Tea building in the background to the left – the building is easily identified in part due to the sign. Its notable that in 1960's there was a third painted sign on the Upper Water Street (eastern) elevation, however, it's not known when this third sign was removed.

**Attachment C: Excerpt from the *Heritage Property Act* for Nova Scotia**

*Contravention of Act*

25 (1) *A person who contravenes the provisions of this Act is guilty of an offence and is liable on summary conviction to a penalty of not more than ten thousand dollars and in default of payment thereof to imprisonment for a term not exceeding six months.*

(2) *Where a corporation is convicted of an offence against this Act, the maximum penalty that may be imposed upon the corporation is two hundred and fifty thousand dollars and not as provided in subsection (1).*

(3) *Where there is a contravention or failure to comply with the terms of this Act or any agreement made pursuant to this Act, the Minister, with respect to a provincial heritage property, and a municipality, with respect to a municipal heritage property or property located in a heritage conservation district, may bring an action in the Trial Division of the Supreme Court and the Court may, in addition to any other remedy or relief,*

*(a) make an order restraining the continuance or repetition of any such contravention or failure;*

*(b) make an order directing the restoration of the property as nearly as may be to its condition prior to the contravention or failure to comply, and directing that upon failure to comply with the order the Minister or the council, as the case may be, may restore the property or may cause it to be restored at the expense of the owner thereof;*

*(c) make such other order as is required to enforce the provisions of this Act and as to costs and as to the recovery of the expense of any such restoration as the Court deems just. R.S., c. 199, s. 25; 1991, c. 10, s. 9; 2010, c. 54, s. 17.*