

Windsor, Ontario November 20, 2013

A meeting of the **Property Standards Committee** is held this day commencing at 10:00 o'clock a.m. in the Council Chambers, 3rd floor, City Hall, there being present the following members:

John Middleton, Vice Chair
Mark Stephen
Bill Van Wyck

Regrets received from:

Jim Evans

Delegations in attendance:

Raymond Colautti, R. G. Colautti Law, regarding *Jem 5.1*
Ann Marie Laniak, Kevin Flood regarding Item 5.1
Larry P. Lowenstein, Solicitor, Laura Frie, Solicitor, Geoffrey E. J. Grove,
Solicitor, Kevin O'Brien, Solicitor Osler, Hoskin & Harcourt Law Firm

Also present are the following resource personnel:

Bill Jean, Manager of Permit Services/Deputy Chief Building Official
Wira Vendrasco, Legal Counsel
Karen Kadour, Committee Coordinator

1. CALL TO ORDER

The Chair calls the meeting to order at 10:00 o'clock a.m. and the Committee considers the Agenda being Schedule "A" attached hereto, matters which are dealt with as follows:

2. DECLARATIONS OF CONFLICT OF INTEREST

None disclosed.

4. DEFERRALS/REQUEST FOR DEFERRALS

W. Vendrasco requests the Committee stand down from hearing the Appeal or defer consideration of the Appeal.

The salient points of discussion provided by W. Vendrasco are as follows:

- Letter from Christopher Williams, Aird & Berlis LLP, External Counsel for the City in his letter dated November 12, 2013 states the following: *"therefore as provided for in subsection 33(18) of the Planning Act, the appeal and the Property Standards Order are stayed pending: Council's disposition of the application; or, the Ontario Municipal Board has heard an appeal and issued an order; or, the demolition permit application is withdrawn. "*
- Subsection 18 of the Planning Act reads, *"subject to subsection 17 an application to the Council for a permit to demolish any residential property operates as a stay to any proceedings that may have been initiated under any by-law under section 15.1 of the Building Code Act or predecessor thereof of any Special Act respecting maintenance or occupancy standards in respect of the residential properties thought to be demolished until the Council disposes of the application or where an appeal is taken under subsection 4 until the Municipal Board has heard the appeal and issued their order thereon. "*
- Paragraph 22 of the appellant's submission states "September 3, 2013: Laniak-Flood apply for a demolition permit.
- Section 33 subsection 18 of the Planning Act applies, the Demolition Permit application operates as a stay to any proceedings initiated under any by-law under section 15.1 of the Building Code Act.
- Recommends the Committee stand down or defer consideration of this Appeal until Council disposes of the Demolition Application or, if the matter is then appealed to the Ontario Municipal Board and the OMB has dealt with the matter.
- The initial submission and the revised submission by the appellant states the following - "respectfully in the opinion of the appellants the Demolition Application must be dealt with first."
- The Demolition Application must be considered by Council first, and then this Committee can deal with the Appeal.
- Reference is made to the letter from Christopher Williams dated November 12, 2013 as follows: *"therefore the Property Standards Committee should not deal with the appeal at this time nor can the Order be enforced. "* This means the City can also not enforce the Order. The City's actions on this are also stayed by the operation of section 33 subsection 18 of the Planning Act.
- The property at 357-359 Indian Road is not only subject to the Demolition Control By-law, it is also subject to the Sandwich Heritage Conservation District Bylaw.
- Section 42 of the *Ontario Heritage Act* states *"No owner of property situated in a Heritage Conservation District that has been designated by a municipality under this part shall do any of the following unless the owner obtains a permit by the municipality to do so:*
- *Alter or permit the alteration of any of the property other than the interior of the structure or building on the property.*
- *Erect, demolish, or remove any building or structure on the property, or permit erection, demolition or removal of such building or structure. "*

- Reference is made to Raymond Colautti's letter dated November 14, 2013 notably the following excerpt: *"Consequently, on the appeal on November 20, 2013, we will be submitting that the PSC has the following options to consider in disposing this appeal:*
- **1.** *It can quash the Work Orders and order that the structure be demolished if it is satisfied that public health and safety are at risk;*
- **2.** *It can quash the Work Orders and defer the request for a demolition permit to City Council to process if it considers that public health and safety are not at immediate risk;*
- **3** *In any event, it can award the appellants their reasonable legal and engineering costs and order the return of the inspection fee and the fee paid to lodge this appeal."*
- W. Vendrasco's response to the foregoing statements in Mr. Colautti's letter are - *"Quash the order"* - this course of action is not available to the Committee since this matter is stayed by the operation of section 33 subsection 18 of the *Planning Act*. *"Order the structure to be demolished"*, This property is subject to the Demolition Control By-law, which prohibits demolition of residential property without a Demolition permit from Council. This option is not available to the Committee. In terms of *"it can award the appellants their reasonable legal and engineering costs and order the return of the inspection fee and the fee paid to lodge this appeal,* "this Committee is established under the provisions of the Building Code Act and specifically section 15.3 subsection 3.1 of the Building Code Act lists the powers of the Committee on an appeal. It states "on an appeal the Committee has all the powers and functions of the Officer who made the Order and the Committee may do any of the following things, if in the Committee's opinion doing so would maintain the general intent and purpose of the by-law and the official plan or policy statement. It is her submission that this Committee does not have the power to award costs of any kind.
- Mr. Colautti requested production of materials from the municipality. The procedure for this is to file a request with the City Clerk under the provisions of the Municipal Freedom of Information and Protection of Privacy Act.

5. DISCUSSION OF APPEALS

- 5.1 Anne Marie Laniak against an Order issued September 24, 2013 regarding property at 357 Indian Road, Windsor Ontario Lot 17, Plan **888**. The Notice of Appeal dated October 7, 2013 was received within the 14 day timeframe.

The Vice Chair indicates the Property Standards Committee has the authority to award costs under the *Statutory Powers and Procedures Act*.

Mr. Raymond Colautti, R. G. Colautti Law representing Anne Marie Laniak, and Kevin Flood appellants is present. The statements provided by Mr. Colautti regarding the property at 357 Indian Road are as follows:

- Asserts there was an application for a Demolition Permit on September 3, 2013.

- Excerpt from a letter from Mr. Flood dated October 7, 2013 to the Chief Building as follows:
- *"the deadline to appeal the Work Order caused by your decisions to heed Mayor's Office directive to change the strategy on Indian Road expires on October 8, 2013. You informed me on October 1 that you were not aware of who your Inspectors were targeting on Indian Road. I applied for a Building Permit on September 3, 2013. With this information being brought to your attention are you going to rescind the Order and allow this democratic process for the Demolition Application to be heard at Council first. Yes or No? Prior to the Order I had described to you my reasons for Demolition Permit, which coincidentally mirror the Order. If you choose not to rescind the Order will you wave the Inspection Fee of \$225? Yes or No? I know you are going to say that the Chief Building Official's mandated by the Building Code legislation and not the Mayor's Office, so then who made the Property Standards complaint? I trust these simple answers can be answered by noon today October 7, 2013 "*
- They were not answered. Mr. Flood had to file the appeal to protect his rights. He came to this Committee to assert this whole proceeding is illegal; the Orders should never have been issued. The City could have rescinded the Order. The costs for hiring an engineer, acquiring an appraisal report could have been foregone had the Chief Building Official simply rescinded the Order and allowed the process to continue for the Demolition Permit.
- Asserts this appeal should not be deferred and this Order be quashed and provide costs. The costs should include the legal, appraisal and engineering fees incurred in mounting this defense.
- In the report from CSI Engineering, the structure constitutes a danger and a threat to the health and safety of the neighbourhood and should be demolished.
- An overview of deficiencies on the structure are provided which includes - cedar shaped shingle on the upper floor level, aluminum siding on the rear addition, eavestroughs trim downspouts need to be replaced. Windows are old and weathered and must be replaced. Entire rear stairs is substandard and does not meet OBC.
- In the summary of the Engineer's report it states - *"In summary and conclusion it is our professional opinion that utilizing and repairing the remaining proportion of this building is not recommended given the age of more than 80 years. The condition and the design construction of this building does not make economic sense to install all new finishings on this structure. "*
- In the Building Code Act, section 15.9 subsection 2 states *"a building is unsafe if the building is structurally or inadequately faulty for the purpose of which it is used or in a condition that could be hazardous to the health or safety of persons in the normal use of building persons outside the building or person whose access to the building has not been reasonably prevented. "*
- In the Building Code Act, section 15.9 subsection 4 *"an inspector who finds that a building is unsafe may order setting out the reasons why the building is unsafe and remedial steps to render the building safe may require the authority to be carried out within the time specified in the Order. "*

- Asking the Committee to quash the Work Order and defer the request for Demolition Permit to City Council. Should award costs in view of the illegal behavior of the Chief Building Official in issuing the Work Orders in the first place.

In response to a question asked by B. Van Wyck regarding if there is evidence the building is unsafe, B. Jean responds he hasn't viewed the building recently, however, nowhere in the Engineer's report does it state the building is unsafe. He states the building is not at the point of requiring an Emergency Order.

The Vice Chair asks why the Building Inspector who issued the Order and the Manager of Inspections are not present. He requests a short recess to allow Rob Vani, Manager of Inspections to be in attendance.

The Vice Chair asks R. Vani when he last attended the site. R. Vani responds he visited the site approximately three weeks ago. He states based on his last inspection, the building showed no outward deflection of the roof, walls or foundation. The building is secure and would not fall under the guise of an unsafe building.

The Vice Chair states he entered the building with Mr. Flood recently and the interior was gutted in the centre and it appeared there were two by sixes holding up sections of the building. His concern is if children entered the building and hit one of the beams, the second floor could fall on them.

R. Vani indicates he has not conducted an interior review of the building. He advises there is a current building permit on the property so how the building permit owner executes the repairs to the building and how he maintains a safe site would fall under the requirements of the Ontario Health and Safety Act, which is a jurisdiction of the Ministry of Labour (MOL). He notes the Building Department has not been requested to do any investigation for an unsecure building.

W. Vendrasco states Mr. Colautti raised the issue of costs and referred to the provisions of the Statutory Powers and Procedures Act. Section 17.1 subsection 1 in the Statutory Powers and Procedures Act states "*subject to subsection 2 a tribunal may in the circumstances set out in rules made under subsection 4 to order a party to pay all or part of another parties cost in a proceeding*" Subsection 2 states "*a tribunal shall not make an order to pay costs under this section unless the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious, or a party has acted in bad faith and the tribunal has made rules under subsection 4*". As the Statutory Powers and Procedures Act is the prevailing legislation for this Committee, and this Committee has no rules as such, there is no authority to make and order for costs and no rules have been established as to the ordering of costs, the circumstances in which the cost may be ordered and the amount of the costs.

The Vice Chair states it is noted on the Notice of Appeal that the Order was issued "*as a result of a Property Standards complaint.*" He requests the City produce a

copy of the complaint. He also requests the materials outlined in the letter from Mr. Colautti dated November 14, 2013 also be provided within 24 hours.

W. Vendrasco indicates any material must be requested through the Freedom of Information Protection of Privacy Act and that application has to be made to the City Clerk.

R. Colautti states the requested materials are documents the City has in its own file related to the prosecution of this Work Order which they are entitled to see as part of the disclosure.

The Vice Chair advises he is requesting the foregoing materials be produced due to the letter dated October 7, 2013 from Mr. Flood to Ms. Doyle. He states Ms. Doyle should not have issued the Order to Repair which caused Mr. Flood to incur expenses. He requests costs (approximately \$12,198) incurred to Mr. Flood be awarded by the City.

The Vice Chair attempts to put forth a motion however, K. Kadour states he must step down as Vice Chair and one of the members would assume the Chair in order for him to put forth a motion. No member steps forward to assume the Chair.

B. Van Wyck expresses concern the Vice Chair is not following the rules of procedure.

Moved by B. VanWyck, seconded by M. Stephen,

UPON THE APPLICATION of the Appellant by way of Appeal from the Order to Repair made by the Property Standards Officer on the 24th day of September 2013 respecting the property located at 357 Indian Road, Lot 27, Plan 888, City of Windsor and upon reading the said Order,

IT IS ORDERED that the said Order to Repair **BE DEFERRED** pending Council decision on the demolition application.

Carried.

3. MINUTES

Moved by B. VanWyck, seconded by M. Stephen,

That the minutes of the Property Standards Committee at its meeting held October 28, 2013 **BE ADOPTED AS AMENDED** to include the entire e-mail from John Middleton dated October 25, 2013.

Carried.

Moved by B. VanWyck, seconded by M. Stephen,

That Rule 13.9 of the Procedure By-law 98-2011 regarding business not already before the Property Standards Committee **BE WAIVED** to permit Mr. Larry Lowenstein,

Solicitor, Canadian Transit Company without prior notice to speak to the Notices of Appeal for the heritage properties within the Sandwich Heritage Conservation District.

Carried.

Larry Lowenstein, Osler, Hoskin & Harcourt LLP provides the following comments relating to the 31 Orders to Repair for the heritage properties located within the Sandwich Heritage Conservation District:

- The Property Standards Committee at its meeting held October 28, 2013 approved the following motion:
- *"IT IS ORDERED that the hearing of the appeals of the properties within the Heritage Conservation District BE DEFERRED pending a discussion between The Canadian Transit Company and the City of Windsor to resolve the matter."*
- The CTC did not receive any response from the City or its Solicitors to their request to meet.
- Mr. Chris Williams, Solicitor for the City of Windsor stated in an e-mail *"The City is not entering into negotiations regarding the Heritage Properties as that Order of the Property Standards Committee is under appeal"*
- The CTC has a statutory right to appeal the Heritage Property Repair Orders.
- The CTC is here today to proceed with their appeal. Ms. Vendrasco can represent the City.

W. Vendrasco states the City has appealed to the various orders the Committee made at the October 28, 2013 meeting. This is now before the courts. The City will await the decision of the court as to whether or not these are valid and appropriate orders of the Committee. Once the court has made a decision on this matter, the City will respond in accordance with the decision of the court or if the matter is appealed further. So until the court provides the City with some direction on this matter, the City is not prepared to enter into any discussion regarding the heritage properties. It's the City's position that the Committee cannot order the City into discussion with the CTC.

The Vice Chair advises this Committee did not order anyone into negotiations, rather, when the motion was put forward, the consent of both parties was given. He expresses concern that the application the City filed before the courts is no different than the application the CTC has filed in the Federal courts to not allow the City to have jurisdiction over their properties.

W. Vendrasco states the City did not receive notice that the Committee was going to proceed with the appeals on this day. The issue the City is appealing is the jurisdiction the Committee has to require the City to enter into discussion with the CTC.

Moved by B. Van Wyck, seconded by M. Stephen,

WHEREAS, the Property Standards Committee at its meeting held October 28, 2013 approved the following motion:

"UPON THE APPLICATION of the Appellant by way of Appeal from the Orders to Repair made by the Property Standards Officer on the 24th day of September, 2013 respecting the Heritage properties,

IT IS ORDERED that the hearing of the appeals of the properties located within the Heritage Conservation District BE DEFERRED pending a discussion between The Canadian Transit Company and the City of Windsor to resolve the matter."; and

WHEREAS the Canadian Transit Company appeared at the Property Standards Committee meeting held November 20, 2013 and requested that the appeals be heard by the Property Standards Committee;

THEREFORE BE IT RESOLVED that the hearing of the appeals by the Canadian Transit Company of the properties located within the Sandwich Heritage Conservation District **BE DEFERRED** to a date and time to be determined during the week of January 14, 2014.

Carried.

B. Van Wyck indicates he will not attend any future meetings of the Property Standards Committee if the Chair is not present.

The Vice Chair states he intends to discuss at the next meeting the way the media impugned the Property Standards Committee of its meeting held October 28, 2013.

6. REPORTS

None.

7. COMMUNICATIONS

None.

8. ADJOURNMENT

There being no further business, the meeting is adjourned at 12:23 o'clock p.m.

VICE CHAIR

COMMITTEE COORDINATOR

AGENDA
and Schedule "A"
to the minutes of the
PROPERTY STANDARDS COMMITTEE
meeting held
Wednesday, November 20, 2013
at 10:00 o'clock a.m.
Council Chambers, 3rd floor, City Hall

1. **CALL TO ORDER**

2. **DECLARATION OF CONFLICT OF INTEREST**

3. **ADOPTION OF THE MINUTES -**

Adoption of the minutes of the meeting of the Committee held October 28, 2013 -*attached.*

4. **DEFERRALS/REQUEST FOR DEFERRALS**

HEARING OF APPLICANTS AND INTERESTED PARTIES -10:00o'clocka.m.

5. **DISCUSSION OF APPEALS**

5.1 **Anne Marie Laniak** against an Order issued September 24, 2013 regarding property at 357 Indian, Windsor, Ontario Lot 17, Plan **888**. The Notice of Appeal dated October 7, 2013 has been received within the 14 day timeframe.

5.1(a) **Additional Information.::** Correspondence dated November 12, 2013 from Chris Williams Legal Counsel for the City of Windsor - **attached**

5.1(b) **Additional Information** Correspondence dated November 14, 2013 from Raymond Colautti, Legal Counsel for the appellant as follows:

- o Appraisal of 357-59 Indian Road provided by E. S. Gorski Realty Ltd.
- o Building Condition Assessment completed by Chall-Eng Services Inc.
- o Letter from Raymond Colautti, Solicitor dated November 14, 2013

5.1(c) **Additional Information** - Submission by Anne Marie Laniak and Kevin Flood- **atta_ched.**

6. **REPORTS**

None

7. **COMMUNICATIONS**

None

8. **ADJOURNMENT**