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Windsor, Ontario October 28, 2013

A meeting of the **Property Standards Committee** is held this day commencing at 9:30 o'clock a.m. in the Council Chambers, 3rd floor, City Hall, there being present the following members:

Jim Evans, Chair
John Middleton, Vice Chair
Mark Stephen
Bill Van Wyck

Delegations in attendance:

Larry P. Lowenstein, Osler, Hoskin & Harcourt LLP
Laura Fric, Osler, Hoskin & Harcourt LLP
Geoffrey E. J. Grove, Osler, Hoskin & Harcourt LLP
Kevin O'Brien, Osler, Hoskin & Harcourt LLP
Raymond Colautti, R. G. Colautti Law
Sharon Strosberg, Sutts, Strosberg LLP
Patrick Moran, U.S. Counsel
Dan Stamper, President, Canadian Transit Company

Also present are the following resource personnel:

Lee Anne Doyle, Executive Director/Chief Building Official
Rick Gruber, Building Inspector
Dan Lunardi, Manager of Inspections (East)
Mark Mantha, Building Inspector
Bill Szekely, Building Inspector
Rob Vani, Manager of Inspections (West)
Wira Vendrasco, Legal Counsel
Christopher Williams, Aird & Berlis LLP
Karen Kadour, Committee Coordinator

1. CALL TO ORDER

The Chair calls the meeting to order at 9:31 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**

None disclosed.

3. **ADOPTION OF THE MINUTES**

Moved by J. Middleton, seconded by M. Stephen,

That the adoption of the minutes of the Property Standards Committee of its meeting held September 16, 2013 **BE DEFERRED** to allow administration sufficient time to respond to questions asked by John Middleton and to allow representatives from Fire & Rescue Services to be in attendance.

Carried.

4. **DEFERRALS/REQUEST FOR DEFERRALS**

No request for deferral.

5. **DISCUSSION OF APPEALS**

5.1 to 5.114

The Canadian Transit Company against Orders issued September 24, 2013. The Notices of Appeal dated October 9, 2013 were received within the 14 day timeframe.

Larry P. Lowenstein, Solicitor, Laura Fric, Solicitor, Geoffrey E. J. Grove, Solicitor, Kevin O'Brien, Solicitor Osler, Hoskin & Harcourt Law Firm, Patrick Moran, Canadian Transit Company General Counsel and Dan Stamper, President, Canadian Transit Company are present and available to answer questions.

Mr. Lowenstein provides the following comments relating to the 114 Orders to Repair issued to the Canadian Transit Company (CTC):

- CTC has appealed the Orders to Repair under section 15.3 of the Building Code Act
- CTC owns and operates the Canadian half of the Ambassador Bridge and the 114 Orders to Repair relate to the separate properties in the vicinity of the Ambassador Bridge.
- The Orders to Repair should be modified (Option 1) to permit the demolition of these buildings, because it is the evidence and report of the CTC, written by Titan Construction, that it will cost more to repair these properties than what they are worth, in some cases all or substantially all of the value of the properties would be consumed by the repairs that would be required to make the properties habitable.

- Option 2 – Property Standards Committee is in power to rescind and cancel the 114 Orders to Repair. There are two grounds as a basis for such a decision. The first ground is the Orders to Repair have not been made with a degree of fairness and reasonableness. The process is tainted and biased. The second ground is the Orders to Repair do not meet the requirements of the By-law. The By-law provides that sufficient details of the particulars of the Orders to Repair were not adequate.
- Option 3 – To defer or adjourn the hearing as there is a question to whether the By-laws of the City constitutionally or jurisdictionally apply to CTC's properties. The CTC is a federal undertaking in that it is governed by the Canadian Transit Act and the City's By-laws do not apply.
- CTC has applied to the Federal Court to receive a determination as the City lacks authority.
- Due to time constraints, CTC is prepared to review property by property as there are commonalities for all of the properties and the City can exercise their powers to modify and order demolition or rescind based on unfairness for all of the properties.
- The Federal Government has required the bridge to improve the plaza for the next 25 years under the Canada Border Service Agency Master Plan.
- The houses purchased by the CTC are not required for twinning or for the second span.
- CTC has no ability to build a second span without the cooperation of the Federal Government.
- CTC requires the houses to be demolished so they can use the land for maintenance of the existing bridge.
- CTC requests the \$40,000 plus fee that CTC was required to post to be present on this day should be restored as the Orders demonstrated abuse of the City's power under the Building Code Act.
- The City of Windsor has been aware of the purchase of the 114 properties for the last 10 years and at no point before the issue of the Orders has the City nor anyone else raised any issues in regards to these properties being vacant.
- The cost to make the properties habitable is estimated at approximately \$100,000 per property. Reference is made to the Titan Report and copy of the Report was left at the end of the meeting.
- A lawsuit has been commenced by certain property owners regarding the CTC properties
- The City of Windsor has proactively regulated and monitored the 114 properties over the last several years on a monthly basis and an Order to Repair was never issued.
- In 2012, the CTC made application to demolish 44 of the said properties, which was rejected.
- To date, there have been no Orders to Repair and/or demolish under the provisions of the Maintenance and Occupancy By-law 147-2011 on any of the 44 properties proposed for demolition in the CIP.

- The CTC has no interest in restoring these properties, and is not only required to restore them to the Building Code, but is required to undertake massive construction to these properties.
- Sudden blitz of 114 Orders to Repair when the City had apparently been monitoring these properties for years. City advised a complaint was received, however the CTC has no details of the complaint.
- CTC does not require these properties to build a second span. The Canada Borders Services 25 Year Plan does not include anything relating to a second span.
- Orders to Repair are vague and unenforceable and do not clearly state what the owner has to do to repair these properties. The Orders fail to provide the particulars of the Building Code Act.

L. A. Doyle indicates in terms of the Orders to Repair being vague and not specific, she states the City was diligent in being consistent with the Orders and ensured they complied with the Building Code which included checklists and photographs. As it pertains to the timing of the Orders, Ms. Doyle states the Building Department had been monitoring the said properties on a regular basis and an increase in deterioration was noted by the Building Inspectors. She advises the “blitz” was undertaken based on the number of inquiries received from the public as to the status of the 114 properties. She notes the Building Department does not precipitate Orders based on cost and this was not factored into the Order. The Orders are issued to maintain minimum standards.

Christopher Williams, Aird & Berlis LLP indicates he acted on behalf of the City of Windsor in the action heard by Justice Gates several years ago regarding the CTC and the properties in question. He provides the following comments relating to statements made by Mr. Lowenstein:

- He questions how Titan Construction could determine the cost of repairs without the particularity of the Orders that CTC claims they do not have but requires.
- In respect to the bias suggested by Mr. Lowenstein, he refers to a case (Scott versus North Perth) where Scott sued North Perth for allegedly discriminating in its application of the Property Standards By-law because other properties were not complying. He advises the Court stated the assumption that it is unlawful for a municipality to discriminate the enforcement of a Bylaw, that enforcement is an entirely discretionary matter and the municipality has the discretion of enforcement of a By-law on some residents and not against others.
- In response to a statement made by Mr. Lowenstein regarding his claim of not being provided with sufficient information, Mr. Williams advises Mr. Lowenstein and Ms. Fric were provided with volumes of information including the Inspector’s own notes as well as photographs of the premises.
- The following statement was previously made by Justice Gates: “these houses have been previously purchased by the CTC over a number of years to assist in the future construction of a second span of the Ambassador Bridge, which it currently owns and will be located approximately 100 meters west of the present

span. The houses in question, which are vacant and boarded up, in the view of the residents, have become a blight on the community”.

- He states the City does not have the jurisdiction to determine the constitutionality or the applicability of the By-laws on their validity. There is no argument that those properties are part of the Ambassador Bridge, and it is clear the City of Windsor does not have authority over the Ambassador Bridge where it conflicts with the Ambassador Bridge or its operations, but these are properties were acquired for the purposes of building a second span.
- He indicates until there is some modification by the Federal Government, these properties are not subject to Federal jurisdiction, and are entirely within the jurisdiction of the City of Windsor, the Property Standards Committee, and the Property Standards By-law.
- He notes this area is subject to a Demolition Control By-law, and demolition is not possible unless the City authorizes a Demolition Permit, which it has not.

Mr. Lowenstein advises Ms. Doyle did not express openness to provide the documentation required for their case. He states he has not received an answer to explain the necessity of the “blitz”. He acknowledges Titan Construction provided estimates on the cost to bring the properties to the Building Code. (The letter from the Titan Group dated October 22, 2013 to Ken Carter, Ambassador Bridge, is distributed and *attached* as Appendix “A”). He indicates if the City is suggesting restoration that the interior of the properties needs to be addressed. He notes that demolition is provided in the Building Code Act, which is an Ontario Statute that supersedes the Municipal By-law. He states the Federal Government has opposed the second span, and the purpose of the demolition is to provide local residents with green space.

A local resident sitting in the audience advises she lives on Rosedale and states there are raccoons living in some of the properties and, on behalf of the residents, requests restoration of the properties to alleviate this problem. Another resident sitting in the audience advises he was not aware of the CTC’s plan to create green space.

Christopher Williams explains (as it relates to demolition) if there is conflict with the Planning Act or any other Act, the Planning Act prevails and it is a very powerful conflict provision and indicates there is no conflict provision in the Building Code Act. Thus, in accordance with the Planning Act, the CTC would require Demolition Permits and confirms City Council is the authority to approve the Permits subject to an appeal to the Ontario Municipal Board.

John Middleton asks Ms. Doyle if it was not the Building Department’s choice to create this massive volume for the Property Standards Committee by issuing 114 Orders. He also asks why the Orders to Repair in this case, are different than what is usually presented to the Committee. Ms. Doyle responds this situation is unique as the Orders pertain to the same property owner, is more time efficient and consistent.

J. Middleton requests his e-mail to the Committee Coordinator dated October 25, 2013 entitled “Property Standards Meeting” be *attached* as Appendix “B”.

In response to a question asked by J. Middleton regarding the “massive structure resembling a bridge” behind 790 Indian Road, Dan Stamper responds the structure is a ramp to be used as part of the plaza expansion of the Ambassador Bridge. He indicates the ramp was approved by City Council. Rick Gruber clarifies the reason a defect was not done for the exterior walls at 790 Indian Road was because the exterior siding was missing and rotting wood would cause the structure to fail. Rob Vani states that any material alterations to a building under the Ontario Building Code Act require a permit and states eavestroughs require a permit.

J. Middleton asks Ms. Doyle if the City approved the construction of the ramp behind 790 Indian Road. Ms. Doyle responds she did not grant approval of that construction, as the Building Department did not receive a permit under the Building Code Act. She notes his question refers to legislative authority as it does not fall under the City of Windsor’s purview and may need to be deferred to legal counsel. Mr. Vani confirmed a ramp or pedestrian overpass is not considered a building under the Building Code Act and the Building Department would not have issued any permits or conducted any inspections.

J. Middleton questions Mr. Stamper if the properties on Indian Road fall within the Federal Plan as outlined by Mr. Lowenstein. Mr. Stamper replies the properties were purchased for the current expansion that the Canada Border Services Agency requested for current maintenance of the bridge and the demolition of these houses are needed for the maintenance of the existing bridge. In response to a question asked by J. Middleton regarding if demolition of the properties is granted, how long before demolition can begin, Mr. Stamper replies the demolition will take place immediately as abatement on the homes has begun.

Bill Van Wyck asks in the immediate vicinity if there is a clear boundary line of the Ambassador Bridge property. Mr. Stamper states these properties are required and the CTC has discretion to determine what it needs to reasonably maintain an aging structure and to ensure there are clear site lines for security reasons.

Moved by J. Middleton, seconded by M. Stephen,

UPON THE APPLICATION of the Canadian Transit Company, 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 790 Indian, Lot 30 and 31, Plan 1139, City of Windsor, and upon reading the said Order,

IT IS ORDERED that the said Order to Repair **BE MODIFIED** to an Order to Demolish the building forthwith.

Carried.

Moved by B. Van Wyck, seconded by J. Middleton,

UPON THE APPLICATION of the Canadian Transit Company, 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 properties identified in Appendix "A" attached hereto (with the exclusion of properties located within the Sandwich Heritage Conservation District) and upon reading of the said Order:

IT IS ORDERED that the said Orders to Repair **BE MODIFIED** to Orders to Demolish the non Heritage Conservation District properties as identified in Appendix "A".

Carried.

Moved by B. Van Wyck, seconded by J. Middleton,

UPON THE APPLICATION of the Canadian Transit Company, 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, attached hereto as Appendix "B" and upon reading the said Order:

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

Carried.

6. REPORTS

None.

7. COMMUNICATIONS

None.

8. ADJOURNMENT

There being no further business, the meeting is adjourned at 12:15 o'clock p.m.

CHAIR

COMMITTEE COORDINATOR