



Nova Scotia Utility and Review Board

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December 1, 2009

By Electronic and Regular Mail

Paula Rennie
Lunenburg Heritage Society
PO Box 674
Lunenburg, NS B0J 2C0

Dear Ms. Rennie:

Lunenburg Heritage Society - appeal to approval of the demolition of a building located within the Heritage Conservation District at 164 Cumberland Street, Lunenburg - HP-09-03

Receipt is acknowledged of the Notice of Appeal by the Lunenburg Heritage Society under the *Heritage Property Act*, received by the Board by fax on November 30, 2009, in the above-noted matter.

A copy of this letter and your Notice of Appeal are being sent to the Provincial Director of Planning, and the Clerk and Solicitor for the Town of Lunenburg.

The Board has also received an appeal by Peter Greer to the same decision of Council; and therefore, will hold a joint hearing on the matter. The Board's *Municipal Government Act Rules* will apply to this proceeding (copy enclosed).

The purpose of this letter is to set out the responsibilities of the respective parties in the conduct of this appeal and to propose a time line leading to the public hearing on the merits.

Jurisdiction

Section 19F(2) of the *Heritage Property Act* provides:

19F Conditions for approval

(2) Where the council considers an application for a certificate for demolition or removal of a building or structure, the council shall not approve the application unless

(a) there is irreversible structural damage or deterioration to the building or structure; or

(b) the applicable policies of the conservation plan respecting demolition or removal of the building or structure are met.

Section 19H(4) of the *Heritage Property Act* sets out restrictions on the Board's powers:

The Board shall not interfere with the decision of the heritage officer or the council, as the case may be, unless the decision cannot reasonably be said to be consistent with the conservation by-law or clause (a) of subsection (2) of Section 19(F).

The Board may only grant the appeal if council's decision was not consistent with the conservation by-law or clause (a) of subsection (2) of Section 19(F). All evidence and argument in this appeal is limited to this issue.

Preliminary Hearing

The Board will hold a preliminary hearing to resolve any preliminary issues and set the dates for the hearing, and filing of evidence and documents. This preliminary hearing will be conducted by telephone conference call on **Monday, December 7, 2009 at 10:00 a.m.** The Board will initiate the call. If this time is not available, please contact the Clerk immediately.

Proposed Dates

The Board proposes the following dates for this process:

- Date of preliminary hearing at 10:00 a.m. **Monday, December 7, 2009**
- Filing of Appeal Record by Municipality **Monday, December 21, 2009**
- Appellant Filing Written and Visual Evidence
including Experts' Reports, Qualification Statements **Friday, January 8, 2010**
- Municipality Filing any objections to
Qualification Statements Filed by the Appellant **Friday, January 15, 2010**
- Municipality Filing Written and Visual Evidence
including Experts' Reports, Qualification Statements **Friday, January 15, 2010**
- Appellant Filing any objections to Qualification Statements
filed by the Municipality **Friday, January 22, 2010**
- Appellant Filing Written and Visual Evidence
in response to the evidence filed by the Municipality **Friday, January 22, 2010**
- Appellant Filing List of Witnesses **Friday, January 22, 2010**
- Municipality Filing List of Witnesses **Friday, January 22, 2010**
- Public Hearing commences at 9:30 a.m. **Thursday, February 4, 2010**
- Optional Evening Session may commence at 6:30 p.m. **Thursday, February 4, 2010**

Once these dates have been set at the preliminary hearing, the Board will issue a Hearing Order setting the dates and giving directions on disclosure and procedure.

Filings with the Board

All filings are required to be received by the Board at **4:00 p.m.** on the date they are due.

For each filing a complete paper copy must be provided to the opposing party and **two (2)** copies provided to the Board, excluding correspondence.

It is helpful to the Board to receive documents electronically, and searchable, if possible. These may be forwarded to the Board at board@gov.ns.ca.

Delivery or filing of any document required pursuant to the Hearing Order may be by hard copy, CD, fax, or e-mail. If e-mail is used, parties must obtain confirmation of receipt.

Evidence

The Appeal Record to be submitted by the Municipality is to contain all documents relevant to the appeal. These will include either or both of the Municipal Planning Strategy and Land Use By-law as well as all applications, correspondence, and expert reports relating to the decision. At a minimum, the Board requires an electronic filing or CD of either or both of the Municipal Planning Strategy and Land Use By-law. If the other documents are able to be scanned and provided either electronically or on CD, this is helpful to the Board. The Board still requires the two (2) paper copies as noted above.

The types of documents that are included in the written and visual evidence are defined in the Board's *Municipal Government Act Rules*. For ease of reference these are restated: "Written evidence" includes any reports, such as experts' reports, documents, letters, hard copies of overhead projection sheets, and other data. "Visual evidence" includes any photographs, maps, audio tapes, videos, charts, models, overlays, and computer generated images.

Experts

Parties wishing to have an expert appear on their behalf at the hearing must provide either a full expert's report (or a complete summary of the opinions to be expressed by the expert, including the factual basis for such opinions), a curriculum vitae, and a qualification statement outlining the area or areas of expertise for which the witness is sought to be qualified ("qualification statement").

If a party does not consider the individual to be qualified as an expert as outlined in the qualification statement, that party must give notice of their disagreement within seven (7) days of having received the qualifications. If this notice is not provided, then the person shall be deemed to have accepted the qualifications of the expert. Merely because a person accepts the individual as an expert does not prevent the party from cross-examining the expert or to argue at the hearing that the Board should give less or no weight to the expert's opinion.

Notice

The Appellant is required to give Notice of Hearing to property owners within a 500-foot distance of the property at issue and to pay for two public advertisements in the local newspaper. This process will be accomplished as outlined below. In a letter sent today under separate cover, the Board has requested the Director of Assessment/CEO of the Property Valuation Services Corporation to provide a list of all assessed owners of land within a distance of 500 feet of the subject property. Upon receipt of the list, the Board will immediately provide an electronic and hard copy to the Appellant. The Appellant must serve a copy of a Notice of Public Hearing and a letter (both prepared by the Board) on all assessed owners of land on the list within three (3) business days. This service of the Notice of Public Hearing may be carried out in one or more of the following ways:

- (a) by personally serving an occupant of the house or business;
- (b) by leaving a copy at the house or business; or
- (c) by sending a copy by ordinary prepaid mail addressed to the occupant or business at the street address or other known address.

The Appellant must advise the Board how the service was carried out as soon as service is completed. This may be done by affidavit, letter or email.

I will send the Notice of Public Hearing to the local newspaper for publishing on two separate occasions. The Board will invoice you directly in accordance with Rule No. 22 of the Board's *Rules of Practice and Procedure*.

Legal Counsel

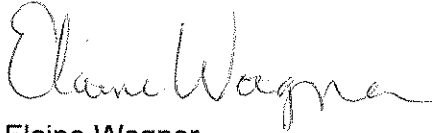
The Appellant may, but is not required to, retain legal counsel to assist it in the conduct of this appeal. In the event the Appellant does elect to retain legal counsel, the Board strongly recommends that it should do so as soon as possible and advise the Town and the Board. The Board does not intend to adjourn the hearing, or delay any filing requirements imposed upon the Appellant(s), by reason of a late decision to retain counsel. Until the Appellant formally indicates that counsel has been retained, service of any documentation upon the Appellant (or its agent as indicated on the Notice of Appeal) shall constitute proper service for the purposes of this proceeding.

Optional Evening Session

If one or more members of the public write to the Board expressing an interest in speaking at the evening session, then this session will begin at 6:30 p.m. If no one writes to the Board asking to be heard, no evening session will be held.

If you have any questions, do not hesitate to contact the undersigned.

Yours very truly,

A handwritten signature in cursive script that reads "Elaine Wagner".

Elaine Wagner
Chief Clerk of the Board

Enclosure

- cc: Patrick A. Burke
Solicitor for the Town

- cc: Peter J. Haughn
Deputy Town Manager/Clerk

- cc: Brant Wishart, Provincial Director of Planning
Service Nova Scotia and Municipal Relations