

Corporation Counsel

Gary C. Wood



**CITY OF PORTLAND**

Associate Counsel

Charles A. Lane  
Elizabeth L. Boynton  
Donna M. Katsiaficas  
Penny Littell

064-E-020

received  
6/8/98

June 5, 1998

Mr. Robert Hains  
14 Taylor Street  
Portland, ME 04102

File

**RE: City Offer to Resolve Outstanding Issues in Relation to Dangerous Fire Escape**

Dear Bob:

You offered to pay \$60.00 of the \$260 that the City is requesting to resolve finally the outstanding issues related to the exterior fire escape that you recently replaced on your property at 12 Gilman Street. I appreciate the fact that you made an offer but I cannot accept it. Here is why.

As you go through my analysis put yourself in a judge's shoes. I tried to do that and I concluded that yes, a judge will have some pointed remarks for the City about the gap in enforcement between 1995 and 1997 and that will lower the fine and attorneys' fees some but it won't lower them to \$260.00 because the judge is going to have much more pointed words and a much more pointed decision for you for not living up to your agreement and fixing the fire escape until three more years had passed and the City had to take you to court to get results even then.

This conclusion rests on the documents in the file and my discussions with various city employees. It also rests in large part on the fact that I have used Marge Schmuckal in prior cases and she is a very convincing and credible witness. Plus, as you stated to me on Wednesday, "I don't remember what I may have agreed to back in December of '94." She does remember.

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Here are the facts as I see them. You were clearly informed in April of 1995 that the City expected you to live up to a prior agreement reached between you and then Code Enforcement Officer Marge Schmuckal to replace the exterior fire escape on this property. Marge's prior letter to you on this matter does state that you have done the minimal amount necessary to get you through the winter. Her willingness to accept the minimal work that you did in December of 1994, which took place almost six months after you were first notified of this problem, is nothing more than a willingness on her part to give you as much of a break as possible given the fact that you were apparently going to have trouble finding a contractor to do the work during the winter and that it would have been difficult to do during that season.

You can certainly argue that as far as you are concerned that work was meant to last a long time and that you were not required to do anything else to the staircase, but we have more than a reasonable chance to convince a judge in this matter that you not only knew your staircase was not sufficient in April of 1995, but did not do anything about it until after the City filed a lawsuit against you in December of 1997.

Given the fairness with which the City treated you back in December of 1994, the almost four-year delay that has occurred in the repair of this fire escape, and the amount of staff time and energy that the City has had to put into this matter to get you to fix the staircase, I think that our request for fees and a fine is extremely reasonable. You will be free at trial to put different inspectors on the stand to try to prove that they clearly told you you would not have to pay any fines or court costs if you fixed the fire escape. That is not what they have told me and in fact your own recollections of exactly what they said to you, ("Your building inspectors told me that they didn't want to take me to court, they wanted to get the fire escape repaired") are consistent with their current version of the interaction that took place prior to the time that the court action was filed. No one, as far as I can tell, including you, is saying that anyone at City Hall told you after the case was filed that all you had to do was fix the fire escape to get rid of the legal action.

Our standard office policy is that if my office receives a case for action from any City department and we are satisfied that the department has made reasonable efforts to negotiate a compromise, and the case is legally and factually solid, we immediately file litigation and the cases are not resolved without the payment of some form of fines, costs and attorney's fees. We are willing to make our settlement requests reasonable on those issues prior to trial. If we have to try the case, we seek much higher fines, costs and

Mr. Robert Hains  
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attorney's fees as allowed by statute, i.e., the original settlement offer is off the table. If we do not seek these fines and costs, then all we do is reward property owners for delaying the time for compliance. Delay obviously saves property owners money because their own money is either earning interest if they have it or they do not have to pay borrowing costs if they have to go out and borrow what they need to fix a problem.

Given all of these factors and the fact that experienced municipal attorneys now charge \$140.00 per hour or more, our offer to settle this for \$260.00 seems to me more than reasonable. Please let me know by 4:00 p.m. on Friday, June 12, 1998 whether you will accept this offer. After that time this offer is off the table. We will begin preparation for trial and any subsequent settlement offers will have to reflect the additional time and costs that we put into trial preparation.

Sincerely,



Gary C. Wood  
Corporation Counsel

GCW:dlc

cc: Robert B. Ganley, City Manager  
Charles Lane, Esq.  
Michael Nugent, Inspection Services Manager  
Marge Schmuckal, Zoning Administrator  
Arthur Rowe, Code Enforcement Officer, Building Inspections

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Sam Hoffses

Corporation Counsel

Gary C. Wood



Associate Counsel

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Elizabeth L. Boynton  
Donna M. Katsiaficas  
Penny Littell

**CITY OF PORTLAND**

July 7, 1998

4064- E-02D

Linda Jowett, Clerk  
Ninth District Court  
205 Newbury Street  
P.O. Box 412 DTS  
Portland, ME 04112

**RE: City of Portland v. Robert Hains**  
**Docket No. CV-97-1331**

Dear Ms. Jowett:

These are the anticipated witnesses to be called by the Plaintiff in the scheduled July 13 trial on the City's 80K Land Use Action. I would appreciate it if you would so advise the Court.

1. Tammy Munson
2. Margaret E. Schmuckal
3. Samuel Hoffses
4. Robert C. Hains

I have also enclosed an Entry of Appearance on behalf of the City.

Finally, by copy of this letter I am providing to the Defendant a copy of the photographs which may be entered as exhibits at trial.

I appreciate your attention to this matter.

Sincerely,

Penny Littell  
Associate Corporation Counsel

Linda Jowett, Clerk  
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PL:meg  
Enclosure  
cc w/encl:

Robert Hains  
Gary C. Wood, Corporation Counsel  
Marge Schmuckal, Zoning Administrator  
Sam Hoffses, Building Inspector  
Arthur Rowe, Building Inspector  
Tammy Munson, Building Inspector  
Michael Nugent, Inspection Services Manager  
Joseph E. Gray, Director  
Gaylen McDougall, Lieutenant, Portland Fire Department

witness.ltr

STATE OF MAINE  
Cumberland, ss.

Ninth District Court  
Civil Action  
Docket No. POR-CV-97-1331

**CITY OF PORTLAND**, a body )  
politic and corporate, located in the )  
County of Cumberland, State of )  
Maine, )  
 )  
Plaintiff )  
 )  
v. )  
 )  
**ROBERT C. HAINS**, )  
 )  
Defendant )

ENTRY OF APPEARANCE

Please record my Entry of Appearance on behalf of the City of Portland in the above captioned case.

Dated: July 6, 1998

  
Penny Littell  
Associate Corporation Counsel  
Bar No. 7352

CITY OF PORTLAND  
389 Congress Street  
Portland, ME 04101