

MARINE DRIVE, VALLEY AND CANAL COMMUNITY COUNCIL
MINUTES
October 24, 2012

PRESENT: Councillor David Hendsbee, Chair
Councillor Barry Dalrymple

REGRETS: Councillor Steve Streach, Vice Chair

STAFF: Mr. Randolph Kinghorne, Municipal Solicitor
Mr. Tyson Simms, Planner
Ms. Thea Langille, Supervisor of Planning Applications
Mr. Ted Aubut, Legislative Assistant

Minutes administratively approved

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1. CALL TO ORDER

The meeting was called to order at 7:13 p.m. in the cafeteria of Georges P. Vanier Junior High School, 1410 Fall River Road, Fall River.

2. APPROVAL OF MINUTES – September 6th, September 25th and October 9, 2012

MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that minutes of September 6th, September 25th and special meeting minutes of October 9, 2012 be approved, as presented. MOTION PUT and PASSED.

3. APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS

MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that the Order of Business be approved, as presented. MOTION PUT AND PASSED.

4. BUSINESS ARISING OUT OF THE MINUTES

4.1 STATUS SHEET REVIEW

A copy of the Status Sheet was before the Community Council for review. No updates were provided.

5. MOTIONS OF RECONSIDERATION – NONE

6. MOTIONS OF RESCISSION – NONE

7. CONSIDERATION OF DEFERRED BUSINESS – NONE

8. HEARINGS

8.1 Case 15969: Open Space Design Development Agreement – Windgate Drive, Windsor Junction

The following documents were before the Community Council:

- A staff report dated May 2, 2012
- A supplementary staff report dated September 13, 2012
- Correspondence from Theresa Scratch dated July 10th, October 10th and October 24, 2012
- Correspondence from Warren B. Ervine, P.Eng., dated September 5, 2012
- Correspondence from David L. Comeau dated October 22, 2012
- Correspondence from Gail Miner dated October 22, 2012
- Correspondence from Alan Joyce dated October 23, 2012

- Correspondence from Marilyn Challis dated October 23, 2012
- Correspondence from Debbie O'Leary dated October 23, 2012
- Correspondence from Gregory John Murray dated October 23, 2012
- Correspondence from Colin O'Neil dated October 23, 2012
- Correspondence from Dale Schimpf dated October 24, 2012
- Correspondence from Jen Powley of Our HRM Alliance dated October 24, 2012
- Correspondence from Sandy Wirtanen dated October 24, 2012
- Correspondence from Michael Creighton dated October 24, 2012
- Correspondence from Rich Peckham dated October 24, 2012
- Correspondence from Shane F. O'Neil dated October 24, 2012

Mr. Tyson Simms, Planner, delivered a presentation to Community Council on Case 15969, an application from Powder Mill Developments Limited to enter into a development agreement for a classic open space design at 156 Windgate Drive, Windsor Junction.

Mr. Simms provided an overview of the subject property, noting that it is 14.2 acres, has significant frontage on Second Lake, and is surrounded, for the most part, by residential development. It is currently home to a 40 year-old commercial horse stable which offers riding lessons.

Proposed for this site, he continued, is the development of 14 detached dwellings under the single ownership of a condominium corporation. This subdivision will impact 40% of the property with dwellings to be clustered together and services, such as septic systems and driveways to be shared. The remaining 60% of land will be retained for common open space, that is, for conservation and passive recreation use, including equestrian use. There will be no option to further develop the site, neither on the 40% reserved for the subdivision nor on the 60% reserved for common open space.

Mr. Simms explained that the property is eligible to connect to central water services along Windgate Drive. For this reason, no hydrological assessment of the property was required. As for sewer services, Mr. Simms described the proposed recirculating sand filter system. He noted that the Province, not the Municipality, regulates onsite systems. As a result, HRM cannot dictate to Powder Mill Developments which system to use. However, the Municipality has the authority to identify the appropriate site for the system. The sewage treatment system, much like the driveway and common open space area, will be the responsibility of the condominium corporation, which will be governed by Service Nova Scotia guidelines.

Mr. Simms explained that minimum setback requirements will separate the 14 dwellings from neighbouring buildings, from the shared driveway, and the open space. Height restrictions of 35 feet will similarly apply to this property. As for accessory buildings, they will be permitted but capped at 600 square feet. Other non-substantive amendments to the proposed agreement include the installation of signage by the entrance of the property and consideration of a private trail adjacent to lands owned by the railway company.

Mr. Simms informed Community Council that the Halifax Watershed Advisory Board had reviewed the proponent's application and, at their request, soil erosion and sedimentation control plan as well as stormwater management plans had been integrated into the development agreement. As for their third request, that the developer adhere to certain LEED standards, Mr. Simms explained that HRM can encourage but cannot force the developer to do so.

The development agreement, noted Mr. Simms, gives the applicant 4 years to commence development and 6 years to complete it. If after 6 years the project is incomplete, Regional Council will have the discretion to discharge if they so wish.

Mr. Simms acknowledged that the Sackville River Association and the Second Lake Regional Park Association, along with members of the public, have expressed a number of concerns regarding the development, including potential leakage of sewage into Second Lake. On this, Mr. Simms reiterated that HRM does not regulate onsite sewage systems but it can and will dictate the location of the system. He noted, further, that a number of environmental protections are built into the development agreement, including the retention of riparian buffers, the protection of vegetation, and the removal of existing manure piles.

In his concluding remarks, Mr. Simms recommended that the Community Council approve the development agreement with the insertion of the words "and may include all or a portion of the on-site sanitary system as identified on Schedule C" to the end of clause 2.2(c).

The Chair thanked Mr. Simms for his presentation. As there were no questions of clarification from Councillors, he reviewed the Rules of Procedure for public hearings, calling three times for speakers for or against the matter to come forward at this time.

Earle Corn, a long-time resident of Lower Sackville, expressed concern over the state of the property adjacent to 156 Windgate Drive, which is owned by a railway company. He wished to know if HRM planned on taking back the property to open up public access to Second Lake.

Marilyn Challis of Lower Sackville requested that HRM or the Province purchase the property at 156 Windgate Drive so that it may be used as a recreational property. She expressed concern over potential septic leakage into Second Lake and the impact it could have on the area's chain of lakes. She also objected to the scale of the development, noting that it is not consistent with the rural character of the area and worried about increased traffic.

Chris Macaulay of Powder Mill Developments and resident of the area explained that the development application is not haphazard, noting that he had entered into discussions with the property owner as early as 2007. He noted that if the property had been developed as of right then less stringent environmental protections would have applied.

Warren Ervine, a retired professor of geology from Dalhousie University and professional engineer explained that he had been asked by several not-for-profit organizations and residents of the area to prepare a geological report on the subject property. Reading excerpts from the report, which was submitted to Nova Scotia's Department of the Environment, Mr. Ervine emphasized the following points:

- The soil in this area, made up of sand, salt and clay, has limited capacity to filter wastewater
- Stormwater has spilled unchecked into the lake from the property
- The protracted use of this property to house, groom and burry horses for 40 years without routine manure removal and proper wastewater drainage has undoubtedly created extreme surface and subsurface contamination
- The proposed development will require a much greater volume of water from the municipal water supply and, accordingly, there will be a need to cleanse and disperse far greater volumes of wastewater. Any attempt to use the underlying unconsolidated material as a filter or even as a dispersal field would not be wise.

Mimi Lacain of 2643 Old Guysborough Road expressed her outrage regarding the personal attacks directed at Shirley Campbell, owner of the subject property. She also questioned the validity of objections raised, noting that if residents were concerned about the health of the lake, then they should not permit planes to take off and land on it.

Theresa Scratch of 109 Cavalier Drive, Lower Sackville asked that staff explain the amendment to the development agreement, noting that it did not make sense that onsite services could be in the 60% open space area.

Mr. Simms explained that common open space refers to a portion of land that is used for common use, including common infrastructure like onsite sanitary systems.

Ms. Scratch expressed her disappointment that the intent of the Sackville Municipal Planning Strategy had not been addressed in the development agreement, namely that it lacks sufficient safeguards to protect Second Lake and its watershed. Ms. Scratch also spoke to the Sackville Land Use By-Law, noting that the development agreement has not sufficiently taken into account the suitability of the soil along the shore of the property. The development agreement, she continued, does not minimize the impact of large-scale as of right development as is intended by the Open Space design policy. Next, she outlined the risks of hooking the property to central water. HRM is not only enabling the use of central water but is requiring the water connection. Given this, she wanted to know what the potential risks of this will be and what HRM will do to remediate them. Finally, she recommended that if in 6 years the project is discharged then a public hearing should be held to discuss future use of the site. She thanked Councillors for their attention and urged them to reject the development agreement or, at the very least, to amend it such that include additional provisions to protect water quality.

David Comeau of 26 Kermit Lane raised concerns about run-off water from the property. He argued that the parcel in question cannot accommodate the volumes of water necessary for 14 large homes, a horse farm, and commercial operations. As a result, untreated effluent could run off directly into Second Lake, which poses a risk to swimmers and wildlife. He indicated that the property's soil is already saturated which means the 20 meter green buffer is less effective than it should be. According to him, this problem will only worsen with the construction of 14 homes. Like the previous speaker, Mr. Comeau also voiced concerns about connecting the on-site disposal system to municipal water. He explained that in the event of an extended power outage, residents would continue to use municipal water, filling the septic tanks and pump chambers. With no electricity generated to operate the pumps, he estimated that sewer backups are apt to occur, with contamination ending up in the ditches and water courses that empty into Second Lake. For these reasons, he concluded that the proposed development should not be considered for the subject property.

Arni Lively of 749 Windgate Drive indicated that 14 additional homes would have a minimal impact on their community. Any potential traffic problems, he continued, could be solved by installing proper signage and traffic lights and by tweaking the location of the driveway to 156 Windgate Drive. As for sewage services, Mr Lively noted that the recirculating sand filter system chosen by the developer works well.

Debbie O'Leary of Lower Sackville worried that the development would negatively affect the lake's water quality, both during and after construction. She noted that the soils of the subject property have 40 years of manure accumulation. Disturbing these soils during construction could contaminate Second Lake as well as Third Lake and the Shubenacadie canal system. Once the lot is developed, she worried that the on-site sewer system could malfunction, causing contaminants to seep into the lake. In both instances, the development could jeopardize recreational use of the lake.

Gregory Murray of 155 Waterwheel Crescent acknowledged the landowner's right to develop the lot but worried that the proposed sewer system is not suitable. He noted that Second Lake is currently in good shape and that steps must be taken to make sure it stays that way.

Ian Andrew of 2 Overbrook Drive stated that he does not have a problem with residential construction around the lake so long as there are assurances that the waters they border remain pristine. He noted that one of the major obstacles for Second Lake is that it has a weak flushing mechanism, which means that contaminants have nowhere to go. He then asked staff to clarify if the site will have public access or if it is a gated community.

Patty Harpell of 265 Windgate Drive raised concerns about wildlife preservation, recommending that motor boats be banned from the lake. As for the development, she indicated that the construction of 14 homes, which more than doubles the number of homes currently on the lake, will increase the risk of water contamination. She indicated, further, that required setbacks from the lake seem insufficient, especially

when compared to American standards. Under no circumstances should this application be approved, she concluded.

Kevin Weary expressed his support for the development, noting that the developer is from the area and cares for it deeply.

Shirley Campbell of 156 Windgate Drive explained that she owns the property and has lived in the community for 50 years. She indicated that as she approached retirement, she met with many developers. Only Chris Macaulay, the developer she selected, shared her values regarding the integrity of the lake and surrounding environment. Responding to concerns over piling horse manure on her property, Ms. Campbell clarified that, until recently, it had been removed regularly. As such, she did not think the soil was contaminated. On the matter of water consumption, she reminded attendees that her property already uses a lot of water for 30 or more horses. She similarly clarified that while the property will be under condominium ownership, the proposed dwellings are single-unit homes, not apartments. She encouraged Community Council to approve this project, noting that the developer had followed all of the criteria set out by HRM.

Gary Geddes of Windsor Junction provided results from water tests performed on Second Lake in mid-October. He found that the E-coli count off 156 Windgate Drive was 1,633 times higher than in other parts of the lake. The coliform count was also high off the property. In other words, the site is already contaminating Second Lake and these contaminants risk traveling through to Third Lake, Keith Lake and the Shubie Canal.

Troy Hall, who grew up in Beaverbank, expressed support for the development, noting that the proposed septic field would be much better than what most neighbours currently have.

Dean Jameson, a resident of Second Lake for 15 years, asked Community Council to hold off on this project until more information is collected on the state of the property. It was his opinion that the proposed development does not adequately protect the health of the lake.

Jerry Wilkins of 860 Waverly Road explained that the septic system put in by the developer will be much better than the ones currently in use in the area.

Citing Lake Banook as an example, **Alan Joyce** of Windsor Junction told Community Council that increased lakefront development can have negative effects on a lake's water quality. To protect the lake, and to make it accessible to the public, he recommended that the Province purchase the property and include it as part of Second Lake Park. As far as he understood, neither the Province nor the property owner had seriously considered this option.

Steve Craig, Councillor-Elect for Lower Sackville, explained that a number of residents had contacted him to express concern over the water quality of Second Lake. He noted

that the proposed recirculating sand filter system may actually improve the lake's water quality but that more safeguards should be written into the development agreement to require ongoing monitoring of the system.

Andrew Benn of Sackville expressed his support for the development, noting that the owner has the right to develop her prime lakeside property.

Bob Vance, who has lived near Second Lake for 20 years, objected to the installation of a septic field so close to the lake and worried that the developer would not be held accountable if, down the road, the septic system failed.

Bob Taylor, of Lower Sackville and Chair of Friends of First Lake, voiced his concerns over the impact of this project on water quality. He noted that HRM must take more responsibility ensuring, for instance, that in 10 years, the septic system still works. He concluded his remarks by expressing his support for a province-operated Second Lake Park.

Ron Banks of Windsor Junction expressed concern about the proximity of the septic field to the lake and the potential for increased traffic. He explained that there is currently no stop sign near the site, which is resulting in backlogs. More cars in the area will only make the problem worse, he noted.

Shane O'Neil of the Second Lake Regional Park Association reiterated concerns over water quality, namely the upkeep of the 20 meter buffer identified in the plan. Instead of it being owned by the condominium corporation, he recommended that it be purchased and maintained by HRM. He stated that he had made this same recommendation at the public information meeting on April 4, 2012 but that he had never heard back from HRM staff.

Theresa Scratch asked staff to explain how it is that a sewage system qualifies as a community facility.

Chris Macaulay of Powder Mill Developments responded to a number of the questions raised, noting the following:

- Engineers have stated that there will be limited difficulties servicing this site in an efficient and environmentally-friendly manner
- While the development agreement does not require that the project adhere to LEED standards, an effort will be made to follow these standards
- The proposed sewage system is superior to that of a standard onsite system
- Third Lake is more developed and has more boats than Second Lake yet it is still home to an abundance of wildlife
- There are muddy waters off the property because previous standards were not as stringent as they are today
- Water quality will improve as a result of the development because there will be fewer horses on the property and less manure seeping into the lake
- He has lived in the area for 20 years and is raising his family here

- His development plan is environmentally-sound and offers more safeguards than if the property had been developed as of right.
- The septic tanks will be closely monitored and pumped on a regular basis.

There being no further speakers, it was **MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that the public hearing be closed. MOTION PUT AND PASSED.**

At the request of the Chair, Mr. Simms responded to questions raised during the public hearing, including public access to the property, monitoring and location of sewage system, and future public ownership.

He explained that a common boat launch is part of the development plan, but that it is for the 14 dwellings only and not for the general public. He reminded residents that the lands will remain private lands, including the 60% portion designated open space.

As for the onsite system, he reiterated that HRM does not have the ability to regulate the type of sewage system that will be installed. It will be up to the provincial government to decide if the proposed system is acceptable. Once approved, it must then be installed by an expert and monitored on an ongoing basis. He noted that if the applicant had chosen a traditional septic field, no monitoring would be required.

Mr. Simms explained that the proposed development agreement identifies the location of the onsite system. If the developer were to choose an alternate system which takes up a larger area, then the developer would not meet the requirements of the development agreement. The onsite system, whichever model the developer chooses, must fit in the area designated by HRM.

Next, Mr. Simms clarified that part of the onsite sewage system will be in the open space zone. He explained that a sewage treatment facility qualifies as a community facility because it services a development. As community facilities are permitted in open zones, then it was the opinion of staff that onsite systems were also permitted there.

The Chair noted that he would like to keep the option open for public access to the lake. If in the future the adjacent railway corridor became a public trail, he wanted to know what would be required to connect the trail to the 20 meter buffer.

Mr. Simms replied that the lands are privately owned and under private ownership, must obey to the 40%- 60% split outlined earlier. Even if the lands are acquired by HRM, they must still meet this split.

Councillor Dalrymple asked if the agreement allows for an easement. To this, staff replied that future amendments to the development agreement would be possible. However, the possibility of an easement had not been considered in staff's assessment of this file.

MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that the Marine Drive, Valley and Canal Community Council:

Approve the development agreement contained in Attachment A of the staff report dated May 2, 2012 to allow for a Classic Open Space Design Development off Windgate Drive, Windsor Junction; and that the proposed development agreement be amended as follows:

Insert the words “and may include all or a portion of the on-site sanitary system as identified on Schedule C”; at the end of clause 2.2(c)

Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval of said agreement by Council and any other bodies as necessary, including applicable appeal periods, whichever is later, otherwise this approval will be void and obligations arising hereunder shall be at an end.

Councillor Dalrymple thanked all of the speakers for sharing their views and for being respectful of the views of others. He explained that he was born and raised less than 1 mile from the property in question and, like many of the speakers, is deeply concerned about the environment, noting that he chairs the Environment and Sustainability Standing Committee and sits on the Shubenacadie Canal Commission.

Despite the concerns raised, he noted that the proposed development agreement meets all HRM requirements. As for the septic system, he reiterated that it is up to the Province to decide which model can be used for the property. He reassured residents that provincial requirements are stringent and that there are many high quality and environmentally-friendly systems on the market today. With these safeguards, he noted, it would be unfair to assume that the system will fail. Furthermore, Councillor Dalrymple explained that a development agreement provides more safeguards than an as of right development.

Responding to concerns over traffic, Councillor Dalrymple recognized that the proposed development would draw much needed attention to safety issues in the community. He suggested that moving the driveway and installing lights at the intersection of Windgate Drive and Beaver Bank Road could be part of the solution.

As for integrating Second Lake into a regional park, he reminded residents that many of HRM's most beautiful parks, like Point Pleasant Park, are bordered by housing developments.

Staff, on the matter of as of right development, quickly clarified that the owner of 156 Windgate Drive has two options: expand the commercial horse stable by adding more horses or develop Area A of the property while retaining Area B as common open space.

The Chair explained that, as a member of the Halifax Watershed Advisory Board, the Halifax Water Commission, and as Councillor for the Lake Echo area, he has a good understanding of water quality issues. Responding to concerns of residents, he explained that this is neither the first development to have central water on an onsite septic system nor is it the Municipality's first lakeside development. The area, he continued, has learned a lot since the 1970s and 1980s about water quality and environmental impacts of development. He noted, further, that there are a number of examples in HRM of residential developments that border parks, such as the subdivisions around Porters Lake Park. Finally, on the matter of public ownership, he noted that the Province has the ability to expropriate land around Second Lake if it is interested in doing so.

MOTION PUT AND PASSED.

At the request of the Chair, the Municipal Solicitor and staff outlined how the appeals process works, noting that an appeal must be registered with the Nova Scotia Utility and Review Board within 14 days of the notice of approval.

Community Council agreed to address item 16 before the remaining items. Please refer to p.13.

9 CORRESPONDENCE, PETITIONS AND DELEGATIONS

9.1 Correspondence - NONE

9.2 Petitions - NONE

10. REPORTS - NONE

11. MOTIONS - NONE

12. ADDED ITEMS - NONE

13. NOTICES OF MOTION - NONE

14. PUBLIC PARTICIPATION

There was no public participation.

15. NEXT MEETING DATE

This was the last scheduled meeting of the Community Council.

16. IN CAMERA

16.1 Minutes – Joint Special Meeting of Harbour East and Marine Drive, Valley and Canal Community Councils, October 9, 2012

In lieu of convening in camera, Community Council decided to approve the minutes in public.

MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that Marine Drive, Valley and Canal Community Council approve minutes from the joint special meeting of October 9, 2012, as presented.

MOTION PUT AND PASSED.

Councillors then returned to item 9. Please see p.12.

17. ADJOURNMENT

The meeting adjourned at 9:24 p.m.

Ted Aubut
Legislative Assistant