

CHEBUCTO COMMUNITY COUNCIL

MINUTES

DECEMBER 13, 1999

THOSE PRESENT: Councillor Bill Stone, Chair
Councillor Stephen D. Adams
Councillor Graham Read
Councillor Russell Walker

ALSO PRESENT: Mary Ellen Donovan, Municipal Solicitor
Roger Wells, Regional Coordinator, Planning Services
Kevin Barrett, Planner
Phil Cochrane, Manager, Streets and Roads
Brian Phelan, Parks & Natural Services
Reg Ridgley, Director of Finance
Veronica Hardy, Administrative Support, Finance
Roel Vis, Schedule Planner, Metro Transit
Sandra Shute, Assistant Municipal Clerk

TABLE OF CONTENTS

1.	Invocation	4
2.	Approval of Minutes	
2.1	Regular Meeting - November 1, 1999	4
2.2	Special Meeting - November 23, 1999	4
3.	Approval of the Order of Business and Approval of Additions and Deletions ..	4
4.	Business Arising Out of the Minutes	4
4.1	Status Sheet Items	
4.1.1	Snow Removal from Sidewalks	4
4.1.2	Extension of Water to Herring Cove	5
4.1.3	Feasibility of Community Transit - Sambro/Harrietsfield Area	4
4.1.4	Dumping - Harrietsfield and Williamswood and Gate	6
4.1.5	Feasibility of PAC Specifically for Herring Cove	6
4.1.6	Protection of Park in Community Council Area by Way of MPS Amendments	6
4.1.7	Hamshaw Drive Concerns	6
4.1.8	911 Protocol	6
4.1.9	Traffic Signals on Prospect Road	6
4.1.10	MPS Dispensation re Provincial and Federal Governments	6
5.	Motions of Reconsideration - None	6
6.	Motions of Rescission - None	6
7.	Consideration of Deferred Business - None	7
8.	Public Hearings	
8.1	Case 00166 - Development Agreement for 6 Armada Drive, The Caribou Lodge	7
9.	Correspondence, Petitions and Delegations	

9.1	Delegations	
9.1.1	Chebucto Community Net - Access Program for HRM	8
10.	Reports	
10.1	Councillor Appointment to Membership Selection Committee	8
10.2	Councillor Appointment to Grants Committee	8
10.3	Decision of Chebucto Community Council re Case 00122 - Respecting Lands of Clayton Park West Phase 4 - Discharge of Existing Stage 1 Development Agreement and Approval of a New Development Agreement for Said Lands	8
11.	Motions - None	9
12.	Added Items	
12.1	Notice of Motion and Set a Public Hearing Date to Consider an Application by Danalie Enterprises for a Development Agreement to Expand a Child Care Centre at 181 Main Avenue, Halifax	9
12.2	Hospital Point - Update	9
12.3	Update - Community-Based Planning Process for Fleming Park - Williams Lake Road Land - Project 00143	11
13.	Notices of Motion - None	12
14.	Public Participation	12
15.	Election of Chair	14
16.	Next Meeting Date	14
17.	Adjournment	14

1. **INVOCATION**

The meeting was called to order at 7:00 p.m. with an Invocation at 2750 Dutch Village Road, Halifax.

2. **APPROVAL OF MINUTES**

2.1 **Regular Meeting - November 1, 1999**

MOVED by Councillors Read and Adams to approve the Minutes of Regular meeting held on November 1, 1999 as circulated. MOTION PUT AND PASSED.

2.2 **Special Meeting - November 23, 1999**

MOVED by Councillors Adams and Walker to approve the Minutes of Special meeting held on November 23, 1999 as circulated. MOTION PUT AND PASSED.

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

Added Items: Councillor Appointment to Grants Committee
Notice of Motion and set a Public Hearing Date to consider an application by Danalie Enterprises Limited for a Development Agreement to expand a Child Care Centre at 181 Main Avenue, Halifax
Hospital Point - Verbal Update
Information Report - Update - Community Based Planning Process for Fleming Park - Williams Lake Road Land
Halifax - Project 00143

MOVED by Councillors Walker and Read to approve the Order of Business as amended. MOTION PUT AND PASSED.

4. **BUSINESS ARISING OUT OF THE MINUTES**

4.1 **Status Sheet Items**

4.1.1 and 4.1.3 **Snow Removal from Sidewalks and Feasibility of Community Transit - Sambro/Harrietsfield Area**

A Staff Report dated November 25, 1999 was before Community Council dealing with both of the above items.

Councillor Walker asked for clarification as to what assessment was being used to calculate the rates. In response, Mr. Ridgley advised it was 1999 assessment, not the year 2000.

Councillor Adams asked for clarification that the report was telling Community Council to wait until the new restructuring. In response, Mr. Ridgley stated that with the HRM Act, you could not put an area rate on commercial property. Under the new Municipal Government Act, it was possible to levy area rates on commercial as well as residential property. That being the case, what staff was saying was that there was a study underway on tax structure but he did not think that should impede the setting of area rates. As to the methodology of setting an area rate, this was included in the report.

Mr. Ridgley then went on to provide Community Council with information on the process for a Plebiscite and the role of Ratepayers Associations. He also provided further information on the Municipal Government Act and how area rates can be levied and for what purpose.

Mr. Phil Cochrane advised that overall there were about 105 kms. of sidewalks in the four Districts, 25 of which HRM was presently serving. Should the remaining 80 km. also be cleared, under By-law 300, staff would be required to meet service standards with a resulting liability if they did not do so. He pointed out that HRM did not presently have in-house equipment available for the extra coverage. He advised what type of equipment was required, the cost of that equipment, the capital outlay, manpower required and the alternative of contracting services from the private sector. Additionally, if Community Council were to go ahead, the pressure would be on the Peninsula area to provide the same level of service.

On a question from Councillor Read as to the cost of buses for Community Transit, Roel Vis advised that the vehicles to be used are at the end of their life for Metro Transit use. The capital cost is pretty well written off. Currently there are four surplus vehicles assigned to Community Transit. 15-18 years is the life cycle of a conventional bus with the original capital cost being borne during that time through the general rate. It would cost about \$3,000 to keep the buses going for another year for Community Transit purposes.

After further discussion and a question and answer period, it was agreed that Community Council had sufficient information at this time.

4.1.2 Extension of Water to Herring Cove - Next Steps in Process

Councillor Adams advised that the process is now underway. This was addressed in a report to Regional Council on November 9, 1999. No further action is required.

4.1.4 Dumping - Harrietsfield and Williamswood and Gate

Letter has been sent to Department of Transportation. No response to date.

4.1.5 Feasibility of PAC Specifically for Herring Cove

Councillor Adams advised there was a community group at work and, according to the Herring Cove Ratepayers Association, he understood they were satisfied with the process of addressing concerns that a PAC would have addressed plus other issues. No further action required.

4.1.6 Protection of Park in Community Council Area by Way of MPS Amendments

Report will be going to Regional Council on December 14, 1999 re Hemlock Ravine. Some of the options in the report could be applied to a wide area. No further action required.

4.1.7 Hamshaw Drive Concerns

An Information Report entitled "Kearney Lake Area - Safety Concerns" dated October 28, 1999 was before Community Council. Councillor Stone advised he was pleased with the information provided to date and the way staff has addressed some of the issues. He felt there might be non-traffic engineering issues still outstanding and requested that the Clerk check to see if all concerns have been addressed. If so, the item can be removed from the Status Sheet.

4.1.8 911 Protocol

Councillor Adams advised that the issues have been dealt with by the new 911 Supervisor. No further action required.

4.1.9 Traffic Signals on Prospect Road - no information received to date.

4.1.10 MPS Dispensation re Provincial and Federal Governments - no information received.

5. **MOTIONS OF RECONSIDERATION** - None

6. **MOTIONS OF RESCISSION** - None

7. **CONSIDERATION OF DEFERRED BUSINESS** - None

8. **PUBLIC HEARINGS**

8.1 **Case 00166 - Development Agreement for 6 Armada Drive, The Caribou Lodge**

A Staff Report dated October 13, 1999 together with a report from Heritage Advisory Committee dated November 9, 1999 was before Community Council. Kevin Barrett, Planner, provided an overview of the application with the aid of overheads. Heritage Advisory Committee recommended approval both of the addition to the building and signage at 6 Armada Drive pursuant to the substantial alteration provisions of the Heritage Property Act. Regional Council, at its meeting on December 7, 1999, gave approval for the expansion. Community Council was considering tonight the Development Agreement to allow for the change of uses.

The Chair called for members of the public to speak for or against the application.

Mr. Bruce Ellis, 6 Armada Drive, the applicant, advised that he tried to have the minimum amount of impact both on the house and the neighbourhood. In terms of traffic, there should be minimal impact and, in fact, if parking is increased, it would ease any congestion on the small section in front of the Bedford Highway. They had an extremely busy year and had to turn away people. The expansion should be beneficial.

The Chair called three times for additional speakers. There were none.

MOVED by Councillors Walker and Adams to close the Public Hearing. MOTION PUT AND PASSED.

Councillor Stone then asked the size of the sign. In response, Mr. Barrett advised it was 48" x 48". Certain criteria had to be met for heritage properties. The sign will be located where the original sign is located but would be of a larger scale.

Councillor Stone advised he had received no calls or correspondence objecting to the application nor was there anything received through the Clerks Office. He felt the proposal would improve the area. He had visited the site and discussed the proposal with Mr. and Mrs. Ellis. He was in support of the application.

MOVED by Councillors Walker and Adams to approve the Development Agreement attached to the Staff Report dated October 13, 1999 to allow expansion of the existing uses as per Heritage Resource Policy 6.8 of the Halifax Municipal Planning Strategy. Further, require the Development Agreement to be signed within 120 days, or any extension thereof granted by Community Council on request of the applicant,

from the date of final approval by Community Council or any other bodies as necessary, whichever is later; otherwise, this approval will be void and obligations arising hereunder shall be at an end. **MOTION PUT AND PASSED.**

9. **CORRESPONDENCE, PETITIONS AND DELEGATIONS**

9.1 **Delegations**

9.1.1 **Chebucto Community Net - Access Program for HRM**

Mr. Bernie Hart, on behalf of Chebucto Community Net provided a presentation on the Chebucto Community Net re the Access Program for HRM. Included in his presentation was information on National Goal/Universal Access, what the program entails, information on a CAP site, targets, requirements, existing sites, rural and urban approaches, goals for metro HRM, neighbourhood clusters and future steps.

Following the presentation, Mr. Hart answered questions posed by Councillors. For further information, Mr. Hart can be reached at 424-7377.

10. **REPORTS**

10.1 **Councillor Appointment to Membership Selection Committee**

MOVED by Councillors Walker and Read that Councillor Stone be re-appointed as Community Council's representative on Membership Selection Committee. MOTION PUT AND PASSED.

10.2 **Councillor Appointment to Grants Committee**

MOVED by Councillors Adams and Read that Councillor Walker be re-appointed as Community Council's representative on Grants Committee. MOTION PUT AND PASSED.

10.3 **Decision of Chebucto Community Council re Case 00122 - Respecting Lands of Clayton Park West Phase 4 - Discharge of Existing Stage 1 Development Agreement and Approval of a New Development Agreement for Said Lands**

A Joint Public Hearing was held with Regional Council on December 7, 1999 at which time Regional Council approved the amendments to the Halifax Municipal Planning Strategy and Land Use By-law respecting the development of lands within the area identified as Clayton Park West, Phase 4.

Roger Wells, Regional Coordinator, Planning Services was in attendance to answer questions from Community Council, if required.

MOVED by Councillors Adams and Walker that the existing Stage I Development Agreement respecting lands of Clayton Park West, Phase 4, be discharged and a new Development Agreement for said lands (Attachment II of the Staff Report dated October 24, 1999) be approved, with amendments to Schedule "C" to limit Parcel BC-3B to six stories and to limit parcel BC-9 to nine stories. Further, the applicant be given one hundred and twenty (120) days to sign the Development Agreement from the date of approval by Community Council, or the date of any other approvals required to sign the agreement as the case may be, unless any extension thereof is granted by Community Council at the request of the applicant; otherwise, this approval will be void and obligations arising hereunder shall be at an end. MOTION PUT AND PASSED.

11. **MOTIONS** - None

12. **ADDED ITEMS**

12.1 **Notice of Motion and Set a Public Hearing Date to Consider an Application by Danalie Enterprises for a Development Agreement to Expand a Child Care Centre at 181 Main Avenue, Halifax**

MOVED by Councillors Walker and Adams that Chebucto Community Council give Notice of Motion to consider an application by Danalie Enterprises for a Development Agreement to expand a Child Care Centre at 181 Main Avenue, Halifax at a Public Hearing to be held on January 10, 2000. MOTION PUT AND PASSED.

Councillor Walker requested that staff ensure that the Trailer Court in the area be included in the notification.

12.2 **Hospital Point - Update**

Councillor Adams advised that Mary Ellen Donovan, Municipal Solicitor was in attendance to provide an update and added that members of the Herring Cove Ratepayers Association were in attendance to hear what she had to say.

Ms. Mary Ellen Donovan advised she was Counsel to Halifax Regional Municipality and has been involved in recent days with the Hospital Point jurisdictional issue and whether or not there is a requirement to obtain a development permit for this particular project. There were some questions on that issue put at the Public Information Meeting held on

October 27, 1999. As a consequence of those questions being put to Planning staff at the time, it was taken to Legal Services for further advice on the subject. Since that time, legal staff looked at the issue and at the position taken by World Wide Fibre, which is pursuant to Federal Telecommunications jurisdiction. This being a Federal undertaking, whether in fact the land use requirements - specifically in this instance the R-2 zoning - were in point of fact not applicable and would excuse them from complying with the Land Use Regulations.

Ms. Donovan advised this was an interesting Constitutional law point and was all tied up with property and civil rights jurisdiction under the Constitution Act, the British North America Act, in conjunction with the telecommunications jurisdiction tied up again in the BNA Act. It was something that staff has looked at and would be discussing with Regional Council tomorrow. Once Regional Council has the opportunity to consider the legal advice on this particular subject, staff would be in a better position to advise the public as to what position the Municipality is going to take on the legal issues. The questions raised at the Public Information Meeting were good questions and raised an interesting point.

Councillor Stone requested that Ms. Donovan provide some background information on the project.

In response, Ms. Donovan replied that the project was quite interesting, part of a very large project by a company originally known as Ledcor which has developed a telecommunications arm called World Wide Fibre, sometimes known as WTI Telecom Inc. There were a variety of names and she was not quite sure of the differences between the different companies. They have built a fibre optic cable in the CN rail rights of way from Vancouver to Montreal and will be continuing to build starting again in the spring with a view of getting to Halifax and completing their project from coast to coast by the end of 2000. At the same time, a \$620 million contract has been let to lay undersea cable which will be two lines across the Atlantic from Halifax (specifically the Ketch Harbour/Herring Cove area) to Dublin and Liverpool. Here, however, the two points of landing were very close and along Ketch Harbour Road. The size of the cable is physically extremely small but, from a communications point of view, extremely large - 1.9 terabits. The existing undersea cable right now only handles about 1 terabit of data. From there they intend to have a network through Europe. Added to that is a US network being built through an Illinois company through rail corridors and part of the attraction in the agreement with the rail industry is to upgrade the traffic signaling system. There were, therefore, tradeoffs and advantages to CN with this particular arrangement. It was an extremely large project; the cabling station valued at about \$50 million at the site in question will provide business development opportunities, not necessarily on the site but to the telecommunications industry in Halifax.

Councillor Adams stated that the big question that has arisen is that the property on which this is proposed to be built is zoned R-2 and the building obviously has a commercial component to it. When the proponents of the project came forward, they purchased the land with the understanding that the zoning regulations did not have to be applied to them. The Ratepayers challenged that. What the Ratepayers would be looking for tomorrow was an answer to that - does the zoning apply and, if not, why not and what clause or policy excludes them. The question needs to be answered not only for this project but to protect the integrity of the Municipal Planning Strategies in place throughout the Municipality.

Peter Pelham, 100 Hebridean Drive asked for permission to speak. Having been given permission, Mr. Pelham stated he attended the Public Information Meeting on October 27, 1999 and was told by the HRM representative that they sought outside legal expert advice, which was provided by Cox Hanson O'Reilly Matheson. The Planner advised that laws had changed under annexation, this was a federal government agency and the laws did not apply. He expressed disappointment that Councillor Adams was out of town on the night of the Public Information Meeting. He asked if the Municipal Solicitor was involved now, why was the municipal solicitor's office not represented on October 27 and why was the public told it was an outside group of legal experts.

Ms. Donovan responded that she read the Minutes of the October 27 meeting and what she understood from them was that at amalgamation, when the siting of the telecommunications structures became an issue in 1996, there was a request for an opinion from Cox Hanson, who routinely provide legal advice to the Municipality as there are insufficient in-house staff to fully respond to all the legal issues. Now that fresh questions were asked, staff came to the in-house Counsel and asked if they could take a second look. That was exactly what was done and the matter will be discussed at Regional Council tomorrow.

Councillor Stone asked if Cox Hanson was still involved. In response, Ms. Donovan replied no, other than acting for World Wide Fibre.

Councillor Adams advised that the reason this has been pushed this far was due in no small part to the Ratepayers, but also because Ms. Donovan would not accept the answer and put some very tough questions to World Wide Fibre. He congratulated Ms. Donovan on being so thorough and ensuring that the integrity of the process, the MPS and zoning laws are followed.

12.3 Update - Community-Based Planning Process for Fleming Park - Williams Lake Road Land - Project 00143

Councillor Read identified the Chair of the Fleming Park-Williams Lake Road Committee, Ms. Melanie Dobson, and thanked Roger Wells, Regional Coordinator, Planning Services

for spearheading the staff component of this Committee. He added that the Committee has gone through an excellent process and the level and quality of public participation certainly bodes well for the future for a wider plan review for all of Mainland South. He expected the final report will be presented to Community Council in March, 2000.

13. **NOTICES OF MOTION** - None

14. **PUBLIC PARTICIPATION**

Mr. Peter Pelham raised the following points:

- He was the lone Director of the Herring Cove Ratepayers Association who attended the Public Information Meeting on October 27, 1999.
- He referred to Implementation Policies 11, 12 and 13. He expressed concern that with regard to Policy 11, notification as required did not take place. This resulted in very few people knowing about the meeting.
- With regard to Policy IM-13, residents within 500' have to be given written notification of the meeting; however, Mr. Don Lowe, who lives less than 260' from the actual construction was not made aware of the meeting.
- Further with regard to notification, Herring Cove Fire Department, Herring Cove Ratepayers Association, St. James Anglican Church Association, St. Pauls Community Council, Elementary PTA and Regional Junior High School PTA were not made aware of the meeting. Under Policy IM-13, that was a requirement.
- At the meeting he asked the Planner a number of times to read certain pages of the District 5 Land Use By-law dealing specifically with development permits, change of zoning and permitted uses in an R-2 zone. The Planner did not do so but showed mapping and zoning and the location of the proposal.
- At the Community Council meeting on November 1, Councillor Adams said that the work started illegally on October 2, they trespassed on private lands, did not have a building permit and Councillor Adams asked the Legal department to put a cease and desist order. A stop work order was issued November 1 but the stop work order was not respected and work did not stop until November 5. He outlined what had transpired on that date when construction did stop.
- He quoted from a response from the Minister of Municipal Affairs.
- Regardless of the information Community Council members might have received regarding the meeting on October 27, that meeting did not conform with the MPS because notification requirements were not followed.
- The Minutes of the meeting of October 27 did not reflect all those who asked for information. If Community Council was going on the Minutes provided, then they were not properly informed.
- Registered letters of appeal have been sent to the Minister of Municipal Affairs and the Solicitor General questioning why HRM would conduct a meeting in the

absence of the Councillor, not follow the process and not inform all the associations in the community as required.

Councillor Stone asked for some clarification from Ms. Donovan.

Ms. Donovan responded that she was asked following the October 27 meeting as a result of the questions put at that meeting to take a look at the jurisdictional issue.

Mr. Steve Anderson, Herring Cove said it would be nice to have clarification on how this venture is a federal undertaking.

Ms. Donovan stated there was absolutely no question that this is a federal undertaking. Given that it is a federal undertaking and it falls within the federal telecommunications jurisdiction, what are the implications of that fact. You have additional jurisdiction under the property and civil rights provisions under the BNA Act that give property and civil rights jurisdiction, under which our Planning laws flow, to the provinces. What you have on one hand is clearly a federal undertaking within the federal telecommunications jurisdiction and, therefore, federal jurisdiction clearly applies but how does that co-exist. It is a classic constitutional law question and these matters have been discussed before the Supreme Court of Canada from time to time. There was a lot of case law on the subject and to fully appreciate the distinctions would require a course in constitutional law. It is not as straightforward as someone might think. That is why the questions were good questions and that is why we have taken a close look at it and the case law applicable and intend to provide our legal analysis of the constitutional law question to Regional Council tomorrow.

Mr. Brian Dempsey, Herring Cove, Chair, Herring Cove Ratepayers Association raised the following points:

- He referred to a letter written to Federal MP Gordon Earle requesting that they let the Ratepayers Association know the policy that the federal government has which permits them to usurp municipal planning strategy laws.
- Gordon Earle could not answer the question and wrote to Mr. McGillivray, who is responsible for telecommunications in Ottawa.
- It appeared that if the federal government licences telecommunications, he could accept that but it did not give them the licence to spot check any parcel or piece of land and usurp laws on that land. As the Chairman of the Ratepayers Association, he would accept nothing less than the written policy stated by the federal government; otherwise, there would be a battle.

15. **ELECTION OF CHAIR**

MOVED by Councillors Walker and Read that Councillor Adams be nominated as Chairman of Chebucto Community Council.

There were no further nominations. Councillor Adams, having agreed to act as Chairman, was declared Chairman.

MOTION PUT AND PASSED UNANIMOUSLY.

Councillor Stone relinquished the Chair to Councillor Adams.

**MOVED by Councillors Read and Walker to move a motion of thanks to Councillor Stone in his position of Chair since the beginning of Chebucto Community Council.
MOTION PUT AND PASSED.**

16. **NEXT MEETING DATE** - Monday, January 10, 2000.

17. **ADJOURNMENT**

On a motion from Councillor Walker, the meeting adjourned at 9:00 p.m.

Sandra M. Shute
Assistant Municipal Clerk

