

HARBOUR EAST COMMUNITY COUNCIL

MINUTES

April 3, 2008

PRESENT: Councillor Bill Karsten, Chair
Councillor Andrew Younger
Councillor Gloria McCluskey
Councillor Jackie Barkhouse

REGRETS: Councillor Jim Smith
Councillor Harry McInroy

STAFF: Ms. Roxanne MacLaurin, Senior Solicitor
Ms. Melody Campbell, Legislative Assistant

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1. CALL TO ORDER

The Chair called the meeting of Harbour East Community Council to order at 7:03 p.m.

2. APPROVAL OF MINUTES - March 6, 2008

MOVED BY Councillor McCluskey, seconded by Councillor Younger that the minutes of Harbour East Community Council March 6, 2008, as presented, be approved. MOTION PUT AND PASSED.

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

Deleted Items:

9.3.1 Presentations - Defining a Capital

10.1.1 Case 01138: Housekeeping Amendments - Subdivision of Semi-Detached Dwellings, Planning District 5

Deleted from Harbour East Community Council Agenda, Belongs to Western Region Community Council

MOVED BY Councillor Younger, seconded by Councillor McCluskey that the agenda, as amended, be approved. MOTION PUT AND PASSED.

4. BUSINESS ARISING OUT OF THE MINUTES/STATUS SHEET

An update of the status report was discussed.

Councillor Younger requested an update by the next HECC for Status Sheet Items:

1. Accessible Playgrounds
2. Dartmouth Lakes Advisory Committee Report

Councillor McCluskey requested an update for the May HECC - Status Sheet Items:

1. Nuisance complaint re: Alderney Appraisals

5. MOTIONS OF RECONSIDERATION - NONE

6. MOTIONS OF RESCISSION - NONE

7. CONSIDERATION OF DEFERRED BUSINESS - NONE

8. HEARINGS

8.1 PUBLIC HEARINGS

8.1.1 Case 00951: Development Agreement for 155 Ochterloney Street Downtown Dartmouth

- A staff report dated February 14, 2008 was before Council.

Ms. Hanita Roberts, Planner presented the report to Council.

Councillor Younger inquired if the third driveway was to remain open and if parking would be an issue. Ms. Roberts advised yes the driveway would remain open and there is plenty of parking in the back of the building.

Councillor Karsten explained the guidelines for public hearings. He explained that the guidelines will apply to the public hearing on this evening's agenda. Councillor Karsten then opened the public hearing calling for any speakers for or against the proposal.

As there were no speakers, the Public Hearing was closed.

MOVED BY Councillor McCluskey, seconded by Councillor Younger to close the public hearing. MOTION PUT AND PASSED.

MOVED BY Councillor McCluskey, seconded by Councillor Younger that Harbour East Community Council:

- 1. Approve the development agreement as contained in Attachment A to the February 14, 2008 report to permit a drive-through ABM at 155 Ochterloney Street, Dartmouth.**
- 2. Require that the development agreement be signed with 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and 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.

8.2 VARIANCE HEARING

8.2.1 Appeal of the Development Officer's decision to refuse a Variance at 84, 86, 88A & 88 B Shore Road, Dartmouth

- A staff report dated March 27, 2008 was before Council.

Mr. Sean Audas presented the report to Council.

Councillor Younger inquired if the lot was not subdivided, would either or both variances still be required. Mr. Audas advised that it would still be required, there is not enough land on the right side, on each variance additional land would have to be purchased.

The Variance hearing was opened to speakers. Speakers eligible are property owners or owners of abutting properties. The following speakers spoke on the Variance.

Mr. Jack Innes, Solicitor for the Appellant presented to Council. He advised that two of the three attachments were not in the report. Last March the two measurements were accepted and approved. No additional work was done. This year they were asked to do an extra measurement, that was not requested last year. The measurement was 3.0 feet. This measurement was not requested last year and questioned why this was not requested in the first place. There is no intentional disregard for this appeal. When the plan was submitted, another variance was added. There is no difference this year than in March 2007. Again, there is no intentional disregard. There is a bulge in the footing. What is before you is a different plan with the exact same circumstances. A lot of work has been done to bring this building into compliance. Council should permit this appeal so the property can be subdivided and sold.

Councillor Younger inquired if the property owners tried to acquire additional land. Mr. Innes replied that the only additional land that was available is at the back and negotiations were under way at one point, but the land was too expensive.

Councillor Younger inquired what is the minimum side yard. Staff replied that under the by-law the minimum side yard is 10 feet. Mr. Innes advised that what is before Council is what the owners have inherited and they are trying to move forward.

Councillor McCluskey asked Mr. Audas why extra measurements were required. Last year, information was requested from the surveyor on the drawing of land, When staff were trying to clarify measurements. Staff wasn't sure if this was approved last year, so an additional measurement was requested.

Councillor Karsten, inquired why the additional attachments were not with the report. Mr. Audas advised these are personal documents so would not have been included.

Ms. Marie Koehler, Fairbanks Street, stated she hopes that the long standing right of way is not included in the land coverage. The builder ignored previous variances, denied long standing rights of way, undermined rock, removed surveyor markers, cut down trees and brush, spewed garbage and building material throughout the area. She questioned why were rules not enforced, the building is too large for the lot. These infractions without penalty need to be corrected. She and neighbours are upset about what happened. She prefers that the variance be passed, so the building can be occupied.

Mr. Leo Pellerine, Shore Road, advised that it is already proven that the measurements by the surveyor is variance manipulation. Mr. Pellerine stated that the appellants have no regard for the by-law.

As there were no further speakers, the following motion was placed:

MOVED BY Councillor Younger, seconded by Councillor McCluskey that the Variance Hearing be closed. MOTION PUT AND PASSED.

Councillor McCluskey added that this is a very difficult decision. She is aware of Mr.

Pellerine's property damage and asked if these damages can ever be remediated. The solicitor advised that the only avenue for the property owner is civil litigation. There is no recourse by HRM. Councillor McCluskey asked what will happen if the variance is denied. Mr. Audas replied that there would be no occupancy permit issued. If the variance is approved, the appellant can proceed. Councillor McCluskey added that this should be looked at, if residents are having problems with a developer/builder, there should be some recourse available.

Councillor Younger requested clarification if the right of way is part of the property. Mr. Audas advised that the right of way is not part of the property.

Correspondence was received from Mr. Barry Banks and Ms. Paige Mason supporting the Development Officer's recommendation to refuse the variance.

MOVED BY Councillor Younger that Harbour East Community Council uphold the Developments Officer's decision to refuse the variance for the side yard and lot overage requirements.

As there is no seconder on the motion, the Motion is LOST.

Councillor Barkhouse noted that this is a very difficult decision and added the concern if this variance is granted that this will set a precedent.

Mr. Pyle advised Council that staff could provide a Supplementary Report to Council for clarification of issues.

MOVED BY Councillor McCluskey, seconded by Councillor Younger that staff provide a Supplementary Report advising Harbour East Community Council of the ramifications of the building if the variance is denied; and

The Variance Appeal decision be deferred until Harbour East Community Council receives the requested Supplementary Report

MOTION PUT AND PASSED.

9. CORRESPONDENCE, PETITIONS AND PRESENTATIONS

9.1 Correspondence - None

9.2 Petitions

Councillor McCluskey presented a petition from business owners of Downtown Dartmouth petitioning Council to terminate the contract with the Downtown Dartmouth Business Corporation and lower the Commercial Mill Rate for the downtown Dartmouth area by 10% or 40 cents per 100 of commercial assessment, the present cost of running the Downtown Dartmouth Business Corporation.

9.3 Presentations - None

10. REPORTS

10.1 STAFF REPORTS

10.1.1 Case 01138: Deleted from Harbour East Community Council Agenda, Belongs to Western Region Community Council

Deleted from agenda.

10.1.2 Regulating Driveway Widths, Dartmouth

The report dated March 18, 2008 was before Council.

MOVED BY Councillor Younger, seconded by Councillor McCluskey, that Harbour East Community Council not initiate a process to establish regulations to set maximum driveway width for residential dwellings.

MOTION PUT AND PASSED.

10.1.3 Case 01091 - Accessory Building Height

The report dated March 8, 2008 was before Council.

MOVED BY Councillor Younger, seconded by Councillor McCluskey, that Harbour East Community Council:

- 1. Give First Reading to the proposed amendments to the Land Use By-law for Planning Districts 14 and 17 as provided in Attachment A of the March 8 report and schedule a joint public hearing with Marine Drive, Valley and Canal Community Council set for April 23, 2008.**

MOTION PUT AND PASSED.

The Joint Pubic Hearing will be held on April 23, 2008 at 7:00 pm at the Henry Bauld Centre, 35 Wilfred Jackson Way, #7 Highway, Dartmouth.

11. MOTIONS - NONE

12. ADDED ITEMS - NONE

13. NOTICES OF MOTIONS - NONE

14. PUBLIC PARTICIPATION

Mr. Shalom Mandeville, Founder of Soil Water Conservation provided an update regarding lake issues.

Mr. Aubrey Fricker provided Council with an update of Defining the Capital.

15. NEXT MEETING

Next scheduled meeting will be on Thursday, May 1, 2008 at 7:00 p.m.

16. ADJOURNMENT

The meeting adjourned at 8:20 p.m.

Melody Campbell
Legislative Assistant