

HALIFAX REGIONAL MUNICIPALITY

HALIFAX REGIONAL COUNCIL MINUTES OCTOBER 14, 1997

PRESENT: Mayor Walter Fitzgerald
Deputy Mayor Jack Greenough
Councillors: Bill Dooks
Gordon R. Snow
David Hendsbee
Ron Cooper
Harry McInroy
Condo Sarto
Bruce Hetherington
Clint Schofield
John Cunningham
Jerry Blumenthal
Graham L. Downey
Larry Uteck
Howard Epstein
Russell Walker
Bill Stone
Ron Hanson
Stephen Adams
Barry Barnet
Bob Harvey
Peter Kelly
Reg Rankin

REGRETS: Councillor Jack Mitchell

STAFF MEMBERS: Mr. Ken Meech, Chief Administrative Officer
Mr. Barry Allen, Municipal Solicitor
Ms. Jane Nauss, Assistant Municipal Clerk

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1. **PUBLIC HEARINGS**

1.1 **Case 7156 - Canada Land Company Limited - Lands of South Bland and McLean Streets; South End Barrington/Inglis Street Study Area**

- Correspondence from Canada Land Company dated October 10, 1997 and Formac Publishing Company Limited dated October 8, 1997 were distributed to Council.

Staff was recommending that Council adopt the amendments to the Halifax Municipal Planning Strategy and Peninsula Halifax Land Use By-Laws noted in the Peninsula Planning Advisory Committee Report dated July 14, 1997.

Mayor Fitzgerald made reference to correspondence received from Canada Lands Company which stated that the company did not receive due notice of the public hearing being held this evening and that the matter should be deferred. The Assistant Clerk stated that staff were satisfied that all affected individuals had been notified.

Councillor Uteck stated this issue had been ongoing for approximately 1 ½ - 2 years. The public hearing had been advertised and that it should not be deferred. The Councillor, however, referenced correspondence from Formac Publishing Company Limited, which requested that Council *not* support rezoning 5502 Atlantic Street from C3 to C3A. As Councillor Uteck sympathized with Formac, he suggested there be a split Motion.

MOVED by Councillors Uteck and Blumenthal to continue the public hearings this evening and deal with Mitchell Street and McLean Street, but that South Bland Street be deferred to refine the intent of the previous meetings.

No vote was taken on the Motion.

SOLICITOR - CANADA LANDS COMPANY

The Solicitor advised that his client had not received any formal correspondence with respect to this public hearing; accordingly, he requested this matter be postponed for forty-five days as his client was in the process of selling the property.

Deputy Mayor Greenough and Councillors Hendsbee and Cunningham suggested this was a reasonable request. In response to an enquiry from Councillor Rankin if staff was satisfied that due notice has been given, Mr. Paul Morgan, Planner, advised that the consultant (who has been the company's representative for the entire process to

date) for Canada Lands Company had been advised of this public hearing by telephone; further, they were in attendance at the Council meeting when the public hearing date had been scheduled.

Councillor Epstein agreed with the deferment in the absence of formal notice.

Councillor Uteck expressed concern with deferment noting he had ongoing conversations with Canada Lands Company up until two weeks ago. Further, he had conversed with their consultants in both their Moncton and Montreal offices. The company had full intention of going ahead with this process today. What is being proposed this evening is the wish of the community, Community Council and Canada Lands Company, and the company is on record as wanting this zoning. Councillor Uteck expressed concern as to why a few are stating they are being left out of the process at this late date.

Councillor Uteck expressed sympathy for Formac Publishing Company Limited in that they feel its future may be adversely affected due to the zoning. However, the Councillor did not feel that Council has any right to delay this open process.

Mr. Paul Morgan, Planner, expressed concern with this delay request as it may not resolve concerns which pertain to the property on McLean Street. During the process, Canada Lands Company specifically requested R-1 zoning. Subsequent to the public hearing being advertised, staff received notification there was interest being expressed in purchasing the property, to develop townhouses on the site. That type of development would require a different zone policy designation. If there was a forty-five day delay, the same amendments would have to be brought back to Council. To consider an alternative i.e. townhouses, a separate public consultation process would have to take place as townhouse development had never been put forward during the numerous discussions held with residents.

To clarify the situation, Mr. Barry Allen, Acting Municipal Solicitor, advised there were two questions:

- (A) **Is Council obligated to grant an adjournment.** It would appear that the company in question did receive notice of this public hearing, either directly or through their agents. There was no requirement, of which he was aware, that an applicant must be given independent notice. The only notice that is required is the advertisement that is inserted in the newspaper which is considered notice to everyone. This is a statutory requirement that was fulfilled in this case. Notice was provided so there is no obligation to grant an adjournment.
- (B) **Does Council wish to grant an adjournment.** This is entirely within Council's power.

Councillor Hendsbee enquired if Council was to move ahead with the public hearing

this evening on any of these particular properties, including Canada Lands Company land, would this have any injurious affect upon the client who may be buying the site?

Mr. Paul Morgan, Planner, advised that the amendments being proposed this evening would preclude townhouse development on the McLean Street property owned by Canada Lands Company. There are numerous zones being proposed throughout this neighbourhood and it is quite possible that after hearing from members of the public, Council could reject the amendments outright, approve all of them, or approve some of them and not others.

Deputy Mayor Greenough advised there was a point that required clarification. Council is being advised that the reason for the delay request is that there may be a different kind of housing proposed than what the current zoning would provide. The Deputy Mayor agreed with staff in that in order to consider other zoning on this property (which might permit townhouses), another public hearing process must take place. Deputy Mayor Greenough enquired if this was a correct assumption.

Mr. Paul Morgan, Planner, advised this is both a zoning amendment and changes to the Municipal Planning Strategy (MPS). By law, it is required that a public consultation process take place prior to the matter coming before Council (public hearing). Mr. Morgan reiterated an earlier comment in that even if Council agrees with a forty-five day delay, staff would still bring back the same proposed R1 Zone and low density designation.

Deputy Mayor Greenough enquired if the Solicitor for Canada Lands Compnay would be able to advise of the reason for the delay request. If this is to provide another zoning which is not provided for in this package, there is no point in delaying this public hearing.

SOLICITOR - CANADA LANDS COMPANY

The Solicitor stated there is due diligence being conducted by the purchaser of the affected property and in the end, the purchaser may find that what he wants to do may not be possible. During this period, however, the Solicitor advised that his client may lose the sale if there is no forty-five day deferment.

Councillor Uteck stated that the municipality and staff have negotiated with due diligence with Canada Lands Company. The Councillor suggested the process has continued far enough that deferment should not be permitted.

MOVED by Councillors Uteck and Hetherington that the public hearing proceed

as advertised. MOTION PUT AND PASSED.

Mr. Paul Morgan, Planner, provided an overview of the matter at hand - amendments as they pertain to an area at the south end of Barrington Street (Barrington/Inglis Neighbourhood Study Area), McLean Street, Atlantic Street and South Bland Street. These amendments were initiated by the former City of Halifax in 1995 largely due to complaints about Ace Towing (Mitchell Street). Subsequently, staff was requested to review the land use adequacies of the policies and regulations of this neighbourhood.

The former City of Halifax accepted the staff recommendation that a consultation process be undertaken with the neighbourhood residents. There was an initial kick off meeting, survey, round table discussion session with staff, and a meeting held in Gorsebrook School. A series of proposals went through the Planning Advisory Committee and Community Council before arriving before Council this evening.

Mr. Morgan provided an overview of the neighbourhood through the use of photographs.

In closing, Mr. Morgan stated that staff was proposing in these amendments, that all properties affected would receive a new business service zone designation. A number of residents supported businesses in the vicinity to allow for employment opportunities, etc. What residents do not desire was businesses that involved environmental degradation, or were a nuisance by virtue of hours of operation or the nature of the operation. Staff is hoping that the uses contemplated would satisfy these criteria.

Mr. Morgan advised Council of their options: approve all amendments in their entirety, reject them in their entirety, or approve some of the amendments but not others.

Councillor Epstein stated he was not aware of any written comments being received from either the Provincial or Federal Environment Departments. The Councillor suggested that written instructions from either level of government be obtained to determine if they have concerns about the possible movement of any of the contaminants from the contaminated site, into what was now being proposed as residential areas.

In response, Mr. Paul Morgan stated there were no written comments received, however, same had been discussed by telephone with both levels of government. They are aware of the proposal and there are environmental guidelines which Canada Lands Company is expected to adhere by, especially since it is a Crown Corporation. Further, he has been advised they gave the company or their consultants, advice on the matter. The company will have to submit a site remediation plan to deal with any contaminants

on the site.

In response to an enquiry from Councillor Epstein as to whether the cleanup will take place on the designated contaminated site only, Mr. Paul Morgan advised he was not certain. However, he understood that the Federal Government undertakes a risk analysis and that they are well aware that the Canada Lands Company is proposing residential development on the site. Further, Mr. Morgan advised that the Federal environment agency looks at the nature of the contaminants and determines whether there is a strong risk that future residents could be adversely affected.

Mr. Morgan further stated that the reason the Provincial and Federal governments can't make any firm commitment is they actually have not received the site remediation plan at this point. However, they have held meetings with the consultants for Canada Lands Company and reviewed some of the initial tests.

In response to an enquiry from Councillor Epstein as to what would occur if there was no remediation undertaken, Mr. Barry Allen advised he would have to look at the Environment Act, but that the municipality is obligated to let the Province know of this matter and then let them deal with it, as it falls under their jurisdiction (unless there is a clause included in the MPS that would allow the municipality to regulate this particular site on the basis of environmental hazards).

At this point in the meeting, it was agreed to commence the public portion of the public hearing.

Mayor Fitzgerald called for comments from the public.

MR. ROBERT GRANT - STEWART, MCKELVEY, STIRLING, SCALES (representing Formac Publishing Company Limited)

Mr. Grant advised that his client objects to the proposal to rezone the property from C3 to C3A. His client sympathizes with residents' concerns, but requested Council to "carve" the Formac Publishing property from this rezoning proposal. This company has received no complaints from the neighbourhood, and is located in an appropriate location. The proposal to rezone has significant implications to the company with respect to the utility of the land to its present operations and also to the value of the land for Formac. The company's views were not considered in the proposal to rezone. It is their perception that the concerns of the residents are not directed at the present use by Formac of its lands or even the permissible uses of the lands. If there are concerns from the residents regarding Formac's land use, Mr. Grant suggested this be referred for further public consultation at which time Formac will participate.

Formac currently uses the property located at 5502 Atlantic Street. Formac Publishing is considered an industrial use and does everything from conceiving initial titles of books - to editing - creating the book in electronic form - publishing - manufacturing -

and, retailing, both on a wholesale and retail basis. Formac has been in this location since 1989 and has received no complaints from the neighbours. Formac is a good company and a good business for the municipality. It is located in an appropriate location which compliments the surrounding land use. The proposed rezoning has significant implications for Formac in that the book publishing industry is a very volatile industry - Formac is constantly having to react to changes within the business. The company may be involved with CDs a year from now, and may be involved in manufacturing published material in a different form. Those type of uses would not be permitted under the new zoning and many of the present uses would be converted to non-conforming uses. Mr. Grant reiterated his earlier request for Council to remove the Formac property from this rezoning proposal and if the residents wish it, to refer it back for further public consultation.

MR. FRANKLYN GORDON - BLOIS, NICKERSON AND BRYSON (representing Mr. Leon Lohnes, owner of property on west side of Mitchell Street, occupied by Ace Towing and Ace Crane).

Mr. Gordon stated his client purchased this property in 1979 and that it was initially a commercial and industrial area with warehouses. This particular location was selected due to the fact it was suitable for his client's business and that his client was looking for a location in which to carry out a long term business association. His business of craning is mainly in the downtown area, including the port and along the waterfront. His client would be greatly prejudiced if this zoning is changed. The towing business, a large portion of it, is carried out on the south end and downtown area.

Since his client purchased the property, there have been a few neighbours on the opposite side of the street who have been adverse to his occupying the property from the time the property was purchased. This is a legitimate use of his property. Granted, the non-conforming use would affect the real property of the buildings on it, but his client uses the land for the storage of vehicles which would not change if it was demolished, or if it was substantially destroyed. His client purchased the property initially in good faith, put a lot of money into the business and this represents his major asset for his family.

Fencing was erected around the property as a result of complaints. There have been complaints of noises in that area, however, a lot of that noise emanates from the grain elevators (large trucks going down to load for the grain at midnight and the clanking of lids on those trucks).

Mr. Gordon wished to go on record, on behalf of Mr. Lohnes, that when his client purchased the property his business was a conforming use and that it forms part of his

estate. Further, his client opposes this particular amendment which would affect his property.

MR. LAWRENCE FREEMAN - MCINNES, COOPER & ROBERTSON (representing the owner of the property where the tenant is Enviro Depot - 960 Barrington St.)

This property is being rezoned from C3 to RC3. Mr. Freeman stated that his client had no idea this public hearing was taking place this evening. If this property is being "down zoned" it would have a significant affect to the commercial value of this property as this would limit the commercial uses. His client invested in this property several years ago as a C3 property. To down zone this property would cause considerable financial hardship to his client. It is difficult to sell and rent commercial property in certain parts of this municipality and this particular area is not the easiest area.

Mr. Freeman requested this property be removed from the process. This business has not been detrimental to the neighbourhood, as there are very few neighbours in that particular portion of South Barrington Street. Further, Mr. Freeman stated he did not think the property has been a nuisance. In closing, Mr. Freeman requested Council to remove this property from this particular process.

MS. CYNTHIA PHILLIPS - 976 Barrington St.

Ms. Phillips commenced her comments noting she did receive formal notification of this public hearing.

Ms. Phillips had been involved with this process for 2 years and has lived in the area for twelve years. She attended all meetings, met with other community people and it was agreed to several times as to what the residents thought was best for the neighbourhood. Ms. Phillips supported all zonings put forth by staff. Although she personally would prefer a lower density, she would accept the RC3 zoning designation over Industrial.

Ms. Phillips has watched the neighbourhood deteriorate as a result of drug, prostitution, and afterhour club problems, as well as general annoyances being experienced as a result of Ace Towing. The owners of Ace Towing have operated their business with total disregard to any one's comfort and enjoyment of their property. Ms. Phillips supported this zoning proposal and hoped these opaque delays do not hold up the process. There has been 2 years of hard work and input on the part of the community in this regard and it was time that the neighbourhood was zoned differently.

SOLICITOR - CANADA LANDS COMPANY

The Solicitor, on a point of clarification, referenced the South Bland properties that are owned by Canada Lands Company and enquired if Council removes the Formac property from the process tonight, is it Council's intent to leave the rest of the South Bland properties.

In response, Councillor Uteck advised it would be his intention to defer the South Bland properties for a limited period of time so that Council can redefine that new zone C3A. The Councillor stated it was certainly not his intention to remove that piece of property from that area.

Councillor Uteck further stated this will be pushed ahead because that is the wish of the neighbourhood and of Canada Lands Company. The Councillor suggested that difficulties with Formac can be worked out, without changing the zone.

The Solicitor stated he would like to go on record that his client would like the South Bland Streets included tonight for their purposes because they did reach their accommodation under the R1 zone, based on discussions with reference to South Bland Street.

Mayor Fitzgerald called three times for further comments. There were none.

MOVED by Councillors Hetherington and Schofield to close the Public Hearing. MOTION PUT AND PASSED UNANIMOUSLY.

Mayor Fitzgerald suggested this matter be deferred for one week prior to Council making a decision.

Councillor Uteck agreed as long as Council can clear up the Formac situation at the same time. Mr. Paul Morgan agreed this matter could be dealt with next week and that he would prepare a supplementary memorandum for Council.

MOVED by Councillors Uteck and Blumenthal to not make a recommendation at this point in time, but to defer a decision for one week. MOTION PUT AND PASSED UNANIMOUSLY.

1.2 Street Closure - Parcel Y-2 (11-15 Titus Street)

- A memorandum prepared for Mr. Larry Corrigan, Commissioner, Corporate Services, on the above-noted, was before Council.

Ms. Anne Feist, Real Estate, reviewed the staff report through the use of overheads.

Mayor Fitzgerald called for comments from the public. There were none.

**MOVED by Councillors Walker and Hetherington to close the Public Hearing.
MOTION PUT AND PASSED UNANIMOUSLY.**

MOVED by Councillors Walker and Hetherington that Parcel X-4, 11 - 15 Titus Street and comprising of 16.8 square meters (180.77 square feet) owned by Mr. Jack Rafuse, be exchanged for Parcel Y-2, HRM owned land and comprising of 42.6 square meters (458.38 square feet) as shown on Plan No. TT-52-32819 and \$2,500.00 as settlement in full, plus any additional taxes or closing adjustments that may be applicable. Funds are available for the project, in Titus Street Upgrading, Account No. 02-97921. MOTION PUT AND PASSED UNANIMOUSLY.

2. REPORTS

2.1 AUDIT COMMITTEE

2.1.1 Comprehensive Audit - Change of Mandate

- A memorandum prepared for Deputy Mayor Jack Greenough, Chair, Audit Committee, and Mr. George McLellan, Commissioner of Regional Operations, on the above-noted, was before Council.

MOVED by Deputy Mayor Greenough and Councillor Sarto to approve the reallocation of resources from the comprehensive audit for the areas of Transit and Fleet Maintenance to an operational review of the Works and Natural Services Division of Regional Operations. MOTION PUT AND PASSED UNANIMOUSLY.

2.2 CHIEF ADMINISTRATIVE OFFICER

2.2.1 Tender 97-087 - Two (2) 1 - Ton Cargo Vans for Fleet Services

- A memorandum prepared for Mr. George McLellan, Commissioner, Regional Operations, on the above-noted, was before Council.

MOVED by Councillors Blumenthal and Hetherington to award Tender 97-087, for Two (2) 1-Ton Cargo Vans for Fleet Services, to the low bidder, Forbes Chev Olds Cadillac, at a total tender price (2 units), including taxes, of \$63,397.20 with \$30,000 authorized from 1996-97 Capital Budget Account #02-95308-6710, One 1-Ton Van, and the balance from the 1997-98 Capital Budget Vehicle Replacement

Account. MOTION PUT AND PASSED UNANIMOUSLY.

2.2.2 Tender 97-088 - Four (4) 1997-98 Model Cargo Vans with Van Mounted Aerial Lifts

- A memorandum prepared for Mr. George McLellan, Commissioner, Regional Operations, on the above-noted, was before Council.

MOVED by Councillor Blumenthal and Deputy Mayor Greenough to award Tender 97-088, for Four (4) 1997-98 Model Cargo Vans with Van Mounted Aerial Lifts, to the low bidder, Forbes Chev Olds Cadillac, for a grand total of \$246,311.60, including taxes, with \$30,000 authorized from 1996-97 Capital Budget Account #02-95310-6710, One 1-Ton Van with Bucket Lift, and the balance from the 1997-98 Capital Budget Vehicle Replacement Account. MOTION PUT AND PASSED UNANIMOUSLY.

3. ADJOURNMENT

MOVED by Councillors Uteck and Sarto to adjourn the meeting at 7:25 p.m. MOTION PUT AND PASSED UNANIMOUSLY.

Jane Nauss
Assistant Municipal Clerk