

HARBOUR EAST-MARINE DRIVE COMMUNITY COUNCIL
MINUTES

October 3, 2013

PRESENT: Councillor Darren Fisher, Chair
 Councillor David Hendsbee, Vice Chair
 Councillor Bill Karsten
 Councillor Lorelei Nicoll
 Councillor Gloria McCluskey

STAFF: Ms. E. Roxanne MacLaurin, Senior Solicitor
 Ms. Jennifer Weagle, Legislative Assistant

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1. CALL TO ORDER

The Chair called the meeting to order at 6:30 p.m. at the Ship Harbour Community Hall, 214 West Ship Harbour Road, Ship Harbour, with the Invocation led by Councillor Hendsbee.

2. APPROVAL OF MINUTES – August 19, 2013

MOVED by Councillor McCluskey, seconded by Councillor Nicoll, that the Harbour East-Marine Drive Community Council minutes of August 19, 2013 be approved as circulated. MOTION PUT AND PASSED.

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

Addition:

- 12.1 Case 17863: Development Agreement – corner of Ochterloney Street and Victoria Road, Dartmouth (*Notice of Motion*)
 - (i) Staff Information report dated September 17, 2013
 - (ii) Heritage Advisory Committee Information report dated August 29, 2013

MOVED by Councillor McCluskey, seconded by Councillor Karsten, that the order of business be approved, as amended. MOTION PUT AND PASSED.

4. BUSINESS ARISING OUT OF THE MINUTES/STATUS SHEET

4.1 Update – Status of Seven Lakes Development Agreement

Councillor Hendsbee provided an update on this matter, advising that the adjacent property owner has signed onto the Development Agreement with an indemnity agreement, and the Agreement has been registered. This item may be removed from the status sheet.

Councillor Hendsbee commented that Community Council is still awaiting the staff report on the rural road designation for the Seven Lakes trail.

5. MOTIONS OF RECONSIDERATION/RECISSION – NONE

6. CONSIDERATION OF DEFERRED BUSINESS – NONE

7. HEARINGS

7.1 Public Hearings - None

7.2 Variance Appeal Hearings

7.2.1 Case 18672: Appeal of Variance Refusal – 58-66 Stella Drive, Porters Lake

A staff report dated August 26, 2013 was before Community Council.

Mr. Andrew Faulkner, Development Officer, presented Case 18672, an appeal of a refusal of a variance request for a property at 58-66 Stella Drive, Porters Lake, to permit an existing accessory building to have a reduced front yard setback.

At the request of members, Mr. Faulkner clarified that if the variance is not approved the building would have to be relocated or removed from the property. He further clarified that the building has a slab foundation, and that the minimum front yard setback requirement for the zone is 20 feet, and the variance requested is 2 feet.

The Chair reviewed the rules and opened the variance appeal hearing.

Mr. Wayne Ubdergrove, Porters Lake, Appellant, clarified that there is a slab and well underneath the building and it would be difficult and costly to move it. He indicated that at the time of construction he did inquire and was told that he didn't need a permit because of size of the building. Mr. Ubdergrove noted that there were no problems until he got into a dispute with a neighbour, noting that his neighbour has two buildings at 2.5 feet from the side yard setback. He submitted photos, which were circulated to members, and are on file. Mr. Ubdergrove noted that the Department of Highways approved his driveway, with no concerns noted.

At the request of Councillor Karsten, Mr. Ubdergrove explained that to move the building he would have to dig up the slab, move the piping and electrical, and fill in the well with concrete.

Ms. Debbie Falle, Porters Lake, advised that she is the neighbour of Mr. Ubdergrove. She noted that Mr. Ubdergrove put a chicken coop on his property without consulting her, he made an inappropriate gesture toward her when she walked by with her grandson and noted concern that he has cameras on his property directed at her house. Ms. Falle indicated that civic no. 58 on the property is a rental property, and Mr. Ubdergrove lives above the garage. She previously let him use the right-of-way and he now parks his septic truck there, which he pumps out often she believes in an attempt to bother her. She inquired why on the diagram civic no. 66 is not marked, noting that it has been rented since 1998. Ms. Falle also noted that the corner of the garage is very close to the road.

The Chair called three times for any further eligible speakers. Hearing none, it was **MOVED by Councillor Karsten, seconded by Councillor Nicoll, that the variance appeal hearing closed. MOTION PUT AND PASSED.**

MOVED by Councillor Karsten, seconded by Councillor Nicoll, that Harbour East-Marine Drive Community Council allow the appeal and overturn the decision of the Development Officer and grant the request for variance.

Councillor Karsten noted that the shed is located on an obscure part of the property, with no impact on traffic or obstruct sight lines or the ability to walk on the road. He noted that the other encroachment on this property at civic number 30 Stella Drive was more apparent from the road. Councillor Karsten commented that it would be difficult and costly to the property owner to move the building, and he does not see a problem allowing the accessory building to remain.

At the request of Councillor Karsten, Mr. Faulkner reviewed images of the building, clarifying that the photos were taken within the last few months, and were taken at the same time as the images used for the previous variance appeal hearing for the same property.

At the request of Councillor Karsten, Mr. Ubdergrove clarified that most of the commercial equipment in and around the building is up for sale.

Councillor Karsten inquired of Mr. Faulkner how Community Council would be assured that the building would not continue to be used for commercial purposes? Mr. Faulkner indicated that if the variance were approved, HRM would issue a permit for a residential accessory building.

Councillor Karsten indicated that he hopes the neighbours can put aside their dispute regarding property lines and encroachments and get along.

At the request of Councillor Nicoll, Mr. Ubdergrove clarified that the well and the accessory building were built at the same time, along with a catch pit that can be cleaned out.

Councillor Fisher questioned whether it would be going against the HRM Charter if Community Council were to overturn the decision of the Development Officer. Ms. E. Roxanne MacLaurin, Senior Solicitor, indicated that Community Council can make any decision that the Development Officer could have made, such as approving a different set back. She noted that the Development Officer's decision was based on his interpretation of the rules.

MOTION PUT AND PASSED.

8. CORRESPONDENCE, PETITIONS & PRESENTATIONS

8.1 Correspondence

Items 8.1.1 and 8.1.2 were dealt with as one item.

8.1.1 Correspondence from Mr. Shalom Mandaville, Soil & Water Conservation Society of Metro Halifax dated August 27, 2013 re: Zoobenthos of Lakes

8.1.2 Correspondence from Mr. Shalom Mandaville, Soil & Water Conservation Society of Metro Halifax dated August 27, 2013 re: Bell Lake, Dartmouth

Correspondence from Mr. Shalom Mandaville, Soil & Water Conservation Society of Metro Halifax dated August 27, 2013 re: Zoobenthos of Lakes was before Community Council.

Correspondence from Mr. Shalom Mandaville, Soil & Water Conservation Society of Metro Halifax dated August 27, 2013 re: Bell Lake, Dartmouth, was before Community Council.

MOVED by Councilor McCluskey, seconded by Councillor Hendsbee, that the correspondences be accepted and forwarded to staff and the Regional Watersheds Advisory Board for their information. MOTION PUT AND PASSED.

8.2 Petitions - None

8.3 Presentations - None

9. REPORTS

9.1 Staff Reports

9.1.1 Case 18553: Telecommunications Tower, Spry Bay

A staff report dated September 5, 2013 was before Community Council.

Ms. Jennifer Chapman, HRM Planner, presented Case 18553, which is an application by Eastlink to locate a new 76.2 metre (250 foot) guyed telecommunications tower at Highway 7, Spry Bay, in between Lake Charlotte and Sheet Harbour.

Ms. Chapman noted a correction to the report, advising that the tower will be a guyed tower and not self-supporting as was indicated in the report.

At the request of Councillor McCluskey, Ms. Chapman reviewed a map of the location, clarifying that the tower will not be on the water side of the road. She noted that it will be one kilometer away from the highway, located on a parcel of 32 acres. Ms. Chapman further clarified that the property will be leased by Eastlink.

At the request of Councillor Hendsbee, Ms. Chapman indicated that she does not have a rendering of the proposed tower from Taylor Head Beach Park, although the tower would be approximately two kilometers away from the water.

MOVED by Councillor Hendsbee, seconded by Councillor Karsten, that Harbour East-Marine Drive Community Council:

- 1. Inform Industry Canada that they have no policy-based objection to the proposal by Eastlink to erect a new 76.2 metre (250 foot), guyed telecommunication tower and associated equipment cabinet located at Highway 7, Spry Bay, Eastern Shore East, as shown on Attachment A of the September 5, 2013 report; and**
- 2. Forward a copy of the report to Industry Canada for background purposes.**

Councillor Hendsbee noted that he has received calls from residents encouraging the approval of the tower for improved cell phone reception. He suggested that any future telecommunications tower applications close to parks include renderings of the proposed tower from the park.

Councillor Karsten noted that the telecommunications tower application process is troubling for municipalities, where whatever is recommended at the municipal level doesn't have a lot of weight when it comes to the final approval by Industry Canada.

Councillor McCluskey agreed with Councillor Karsten, but pointed out that the recommendation of Community Council has changed the decision of an applicant before.

At the request of Councillor McCluskey, Ms. Chapman clarified that the nearest residence is 500 metres (1600 feet) away.

At the request of Councillor Nicoll, Ms. Chapman clarified that HRM does not have the authority to regulate telecommunication towers, so they cannot be in violation to any Land Use By-laws no matter where they are placed.

MOTION PUT AND PASSED.

9.1.2 Case 18556: Telecommunications Tower, Ship Harbour

A staff report dated September 4, 2013 was before Community Council.

Ms. Jennifer Chapman, HRM Planner, presented Case 18556, which is an application by Eastlink to locate a new 76.2 metre (250 foot) guyed telecommunications tower at Highway 7, Ship Harbour, in between Lake Charlotte and Sheet Harbour.

Ms. Chapman noted a correction to the report, advising that the tower will be a guyed tower and not self-supporting as was indicated in the report.

At the request of Councillor McCluskey, Ms. Chapman clarified that the Applicant had indicated that the nearest residence was within 450 metres, although she could not locate any development on the aerial image of the land and there is a site plan that does not indicate any development.

Councillor McCluskey noted that although the tower would be ugly next to the road, it would be important to those that live here without cell reception, especially during power outages.

MOVED by Councillor Hendsbee, seconded by Councillor Nicoll, that Harbour East-Marine Drive Community Council:

- 1. Inform Industry Canada that they have no policy-based objection to the proposal by Eastlink to erect a new 76.2 metre (250 foot), guyed telecommunication tower and associated equipment cabinet located a Highway 7, Ship Harbour, Eastern Shore West, as shown on Attachment A of the September 4, 2013 report; and**
- 2. Forward a copy of the report to Industry Canada for background purposes.**

Councillor Hendsbee indicated that there are no other towers in the proximity, and therefore no opportunity for co-location. He noted that this will help with the cell phone coverage in the area, and will be helpful for ATV users, as it will guide their positioning and provide reception when they are in the woods.

MOTION PUT AND PASSED.

9.2 Boards & Committees - None

10. MOTIONS - NONE

11. IN CAMERA

11.1 Approval of In Camera Minutes – August 19, 2013 (special)

MOVED by Councillor McCluskey, seconded by Councillor Nicoll, that the In Camera minutes from the August 19, 2013 special meeting of Harbour East-Marine Drive Community Council be approved as circulated. MOTION PUT AND PASSED.

This item was dealt with during the public session. No In Camera meeting was held.

12. ADDED ITEMS

12.1 Case 17863: Development Agreement – corner of Ochterloney Street and Victoria Road, Dartmouth (*Notice of Motion*)

An Information report from staff dated September 17, 2013 was before Community Council.

An Information report from the Heritage Advisory Committee dated August 29, 2013 (with attached staff recommendation report dated August 16, 2013) was before Community Council.

MOVED by Councillor McCluskey, seconded by Councillor Karsten, that Harbour East-Marine Drive Community Council give Notice of Motion to consider the proposed development agreement as set out in Attachment A of the August 16, 2013 staff report to allow a development consisting of up to 52 residential units plus commercial space on lands located on the corner of Ochterloney Street and Victoria Road in Dartmouth; and schedule a Public Hearing. MOTION PUT AND PASSED.

The public hearing will be scheduled for November 14, 2013.

12. NOTICES OF MOTION - None

13. PUBLIC PARTICIPATION

Mr. Will Sapphire, Lawrencetown, commented on the proposed telecommunications tower for Lawrencetown. He indicated that the community is vigorously opposed to the tower, and have formed an association. Mr. Sapphire suggested that there is a problem with the approval process, as all of the information that is put into the staff report to Community Council is provided by the applicant, and the information does not appear to be validated by HRM or Industry Canada. He commented that HRM has adopted a practice of claiming that they don't have a say in the placement of the towers, although land use authority is delegated to municipalities. Mr. Sapphire reviewed case law on the subject, which is included in his submission on file. He suggested that there should be a collaborative effort to create a telecommunications tower placement plan, instead of dealing with applications on a tower by tower basis. He noted that this approach is draining on HRM resources, and would be to the benefit of the applicant as well. Mr. Sapphire questioned who is in control of the mailout that is done to notify residents of public meetings on telecommunications tower applications. He suggested that HRM encourage service providers to co-locate on towers.

Mr. Eric Arsenault, owner of a property in Lawrencetown, suggested a 5 km area be retained between telecommunications towers and shorelines and/or provincial parks, to protect these valuable resources. He reminded Community Council that it is an important decision to recommend for or against the placement of a tower, and that they are representing the public. Mr. Arsenault indicated that he does want cell services in

the area, but questioned why they need to be put within 1 km from the road, other than to save the applicants costs. He suggested that HRM encourage applicants to look at other possible positioning further from the road so residents and tourists don't have to see them. Mr. Arsenault noted concern with the proximity of the placement of towers to residential areas. He noted concern that the applicants are leasing properties for the towers before the towers are approved by Industry Canada.

Ms. Giselle LeBlanc, Caldwell Road, Dartmouth, advised that she is co-owner with Mr. Arsenault of a property in Lawrencetown. She indicated that she and Mr. Arsenault purchased the property without knowing about the tower, and only found out about it by accident. They have five children between them and wanted the kids to have a place to live near trails and water. The proposed tower would be 20 feet from their property line, which they purchased with the intention of building a home on. Ms. LeBlanc noted that they have never had a problem with cell phone reception in the area. She indicated that the tower will affect their property values, and they will not feel safe next to it and would find it intimidating. She questioned whether this is corporately responsible or ethical. Ms. LeBlanc encouraged HRM to change the process so that the community has a voice. Ms. LeBlanc submitted a copy of correspondence on the topic to the Clerk following the meeting, which is on file.

Mr. Ron Jennex noted that this would make three telecommunications towers being erected on the Eastern Shore within a 10 km radius. He indicated that the towers are very unsightly and will be very noticeable from the highway. Mr. Jennex noted confusion as to why towers are being built very near where housing is being built.

Mr. Kevin Murphy, Mineville, thanked Community Council for coming to Eastern Shore to meet. He noted that he is here as an interested resident. Mr. Murphy indicated that he went finds telecommunications towers an intimidating sight, and is concerned about the tower proposed for Lawrencetown, and the process that has taken place there. He noted appreciation for the time and effort put forward by members of the association working to stop the tower in Lawrencetown. Mr. Murphy noted that he is a user of personal data devices, and understand concerns with providing communication to the public. He noted that this is a matter of concern to residents all over the municipalities, and suggested that municipalities work together to have the process changed, as the industry is growing at a remarkable pace.

Mr. Cal Moffard supported comments made by earlier speakers. He encouraged HRM to develop a planning strategy for the placement of telecommunications towers, noting that the towers are having an impact on residents' private property.

Ms. Kristin Morash, Three Fathom Harbour, indicated that Community Council do have some power to sway the applicant, and encouraged a strategy for the placement of towers. Ms. Morash questioned whether HRM Planning keeps a record of towers to ensure that co-location takes place where the opportunity exists? She suggested that if there were a strategy for the placement of towers, HRM could suggest co-location opportunities that could happen for future towers.

At the request of Community Council, Ms. Jennifer Chapman, HRM Planner, indicated that HRM does keep track of telecommunications tower applications, and do request further information from the applicant about the possibility of co-location. She clarified that as far as she knows there is no map created that outlines the site of each approved tower in HRM.

Councillor Hendsbee advised that this is an issue that is not just affecting HRM, but municipalities across Canada. He finds it interesting that the applicant would get a lease prior to the tower being approved. He suggested that a map of networks would be of benefit for the public and council. Councillor Hendsbee indicated that he hope that the province steps forward to take up this issue

Councillor McCluskey commented on a tower planned for Slayter Street in Dartmouth, which is under 15 feet, so the service provider did not need to apply. Councillor Hendsbee clarified at the request of Councillor McCluskey that the proposed telecommunications tower for Lawrencetown was before the former Marine Drive, Valley & Canal Community Council (MDVCCC) in 2012. MDVCCC recommended to Industry Canada against the tower, which was accepted and Eastlink then appealed. Industry Canada has not decided on the appeal yet.

Mr. Allan Sullivan, Eastlink, clarified that Industry Canada did ask Eastlink to look at another site for the Lawrencetown tower, although they could not reach an agreement with the property owner. He updated that Industry Canada is still at the information collecting stage, and he is not sure when they will make a decision.

14. NEXT MEETING DATE – October 17, 2013

The next Harbour East-Marine Drive Community Council meeting is scheduled for Thursday, October 17, 2013 at 6:00 p.m. in the Dartmouth Chamber at 90 Alderney Drive, Dartmouth.

15. ADJOURNMENT

The meeting was adjourned at 8:06 p.m.

Jennifer Weagle
Legislative Assistant

INFORMATION ITEMS

- 1. Water Quality Monitoring Results for Russell Lake – June 2013 Sampling Event**