

Marine Drive, Valley & Canal Community Council
June 22, 2011

TO: Chair and Members of Marine Drive, Valley & Canal Community Council

SUBMITTED BY:



For Paul Dunphy, Director, Community Development

DATE: June 3, 2011

SUBJECT: Fence Permit Application #102842 – 91 Glasgow Road

SUPPLEMENTARY REPORT

ORIGIN

- Permit application by Charles Brian Mintus to construct a fence in excess of 6.5 feet in height.
- On March 30, 2011, Marine Drive, Valley and Canal Community Council passed a motion to defer Item 10.1.1 Fence Permit Application #102842 91 Glasgow Road for 60 days (until May 30, 2011) to allow for additional information to be provided to the Community Council.
- On May 26, 2011, MDVCC passed a motion granting an extension to the applicant to the next meeting of the Community Council to be held on June 22, 2011 to provide staff an opportunity to receive/review the requested information and to provide a report.

RECOMMENDATION

It is recommended that Marine Drive, Valley and Canal Community Council approve this fence permit application.

BACKGROUND

Section 10 of Building By-Law B-201 (see Attachment #1) contains provisions for Community Council to approve a permit application for any fence, in excess of 6.5 feet in height, which separates a property containing a residential use from another property.

DISCUSSION

The applicant wishes to obtain approval of an existing 8' high fence constructed without a Construction Permit.

The application was heard on March 30, 2011 by Marine Drive, Valley and Canal Community Council.

Council passed motion to defer Item 10.1.1 Fence Permit Application #102842 - 91 Glasgow Road for 60 days (until May 30, 2011) to allow for the following information to be provided to the Community Council:

- A Survey of the property lines at 91 Glasgow Road and 103 Glasgow Road and the position of the fence as it relates to those lines, to be provided by the applicant;
- Clarification from the Department of Environment respecting the watercourse near the applicant's property to address erosion concerns and whether additional structural fill is required, to be provided by HRM staff; and
- Confirmation whether the structural integrity of the fence would be compromised for aesthetics, to be provided by the applicant.

On May 14, 2011 Mr. Mintus submitted:

- A written report from a licenced surveyor. The survey report is not a survey plan or a location certificate. The report refers to the fence, not the fence base, but appears acceptable;
- An email that refers to supporting evidence of the Province's knowledge regarding the ditch separating the proprieties without a defined water access. No report was included with the email; and
- An email that acknowledged a verbal confirmation from Pat Griggs that the fence is capable of supporting additional finish material. No formal report from the engineer was provided.

A Motion was approved on May 26, 2011 granting an extension to the applicant to the next meeting of the Community Council to be held on June 22, 2011 to provide staff an opportunity to receive/review the requested information and to provide a report.

No further information was received as of June 3, 2011.

Legal Services has been consulted regarding the fact that the fence has been erected without necessary approval. Should Council choose not to approve this permit application, the current

Order to Comply will be enforced and the property owner expected to modify the height of this fence to 6.5 feet. Should no action to comply be forthcoming, staff would proceed with prosecution.

BUDGET IMPLICATIONS

There are no budget implications.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

In accordance with the Municipality's Building By-law 201, the Municipality shall serve notice on the adjacent property owners at least 14 days in advance of the meeting the local Community Council, at which time, the public may speak to the application (Attachment 1).

ALTERNATIVES

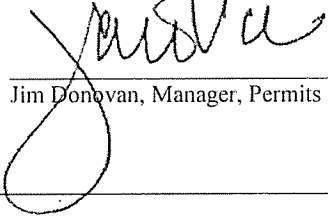
Community Council can approve the application as proposed, or deny the application.

ATTACHMENTS

- Attachment 1 (Section 10 of By-law B-201 Regarding Fences)
- Attachment 2 (Map 1 Site plan)
- Attachment 3 (Engineer's Letter)
- Attachment 4 (Photographs)
- Attachment 5 (additional photographs dated January 11, 2011)
- Attachment 6 (MDVCCC minutes dated March 30, 2011)
- Attachment 7 (email from Mr Mintus dated May 14, 2011)
- Attachment 8 (surveyor's report from W.E Jackson, NSLS dated March 31, 2011)

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Richard MacMillan, Supervisor, 476-4856

Report Approved by: 
Jim Donovan, Manager, Permits & Inspections, 490-6224

Attachment 1

Excerpt from By-law Number B-201 Respecting the Building Code

“Fences

10. (1) No person shall erect a fence more than 6.5 feet in height without first obtaining a permit therefore.

- (2) Where a fence for which a permit is required separates a property containing a residential use from another property, the permit application shall be approved by the local Community Council.

- (3) The municipality shall serve notice on the adjacent property owners at least 14 days in advance of the meeting of the local Community Council, at which time, the public may speak to the application.

- (4) If approved by Community Council, the permit shall be issued by the authority having jurisdiction within five business days.”

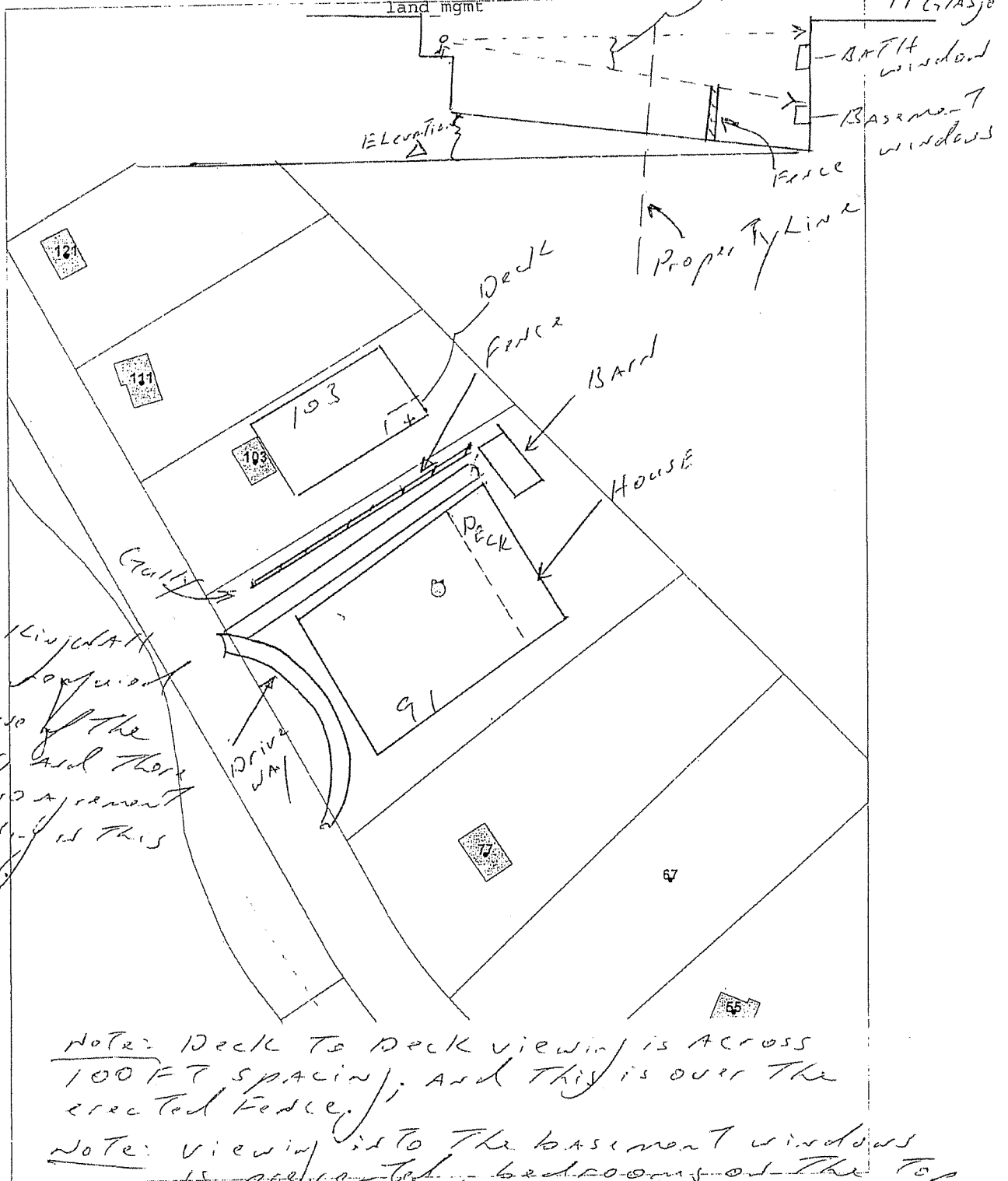
Attachment 2

GLASGOW
#103

SIDE VIEW

LINE OF SIGHT

#91 Glasgow



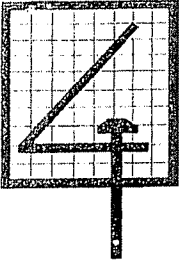
ACKNOWLEDGMENT
 WAS FORGOTTEN
 BECAUSE OF THE
 GULLY AND THERE
 WAS NO AGREEMENT
 AS TO THE WIDTH OF THIS
 GULLY

NOTE: DECK TO DECK VIEWING IS ACROSS
 100 FT SPACING, AND THIS IS OVER THE
 ERECTED FENCE.

NOTE: VIEWING INTO THE BASEMENT WINDOWS
 IS PREVENTED BY BEDROOMS ON THE TOP
 LEVEL IS NOT. (TILKET)

NOTE: A NOISE COMPLAINT WAS ISSUED BY
 RCMP TO #103 GLASGOW.

NOTE: SOUND IS HEARD THROUGH WINDOWS IS VERY UNSETTLING



GRIGGS ENGINEERING LIMITED

Civil / Structural Engineering
& Project Management

August 25, 2009.

To Whom It May Concern:

Re: 8 Foot Tall Fence at 91 Glasgow Road, Dartmouth, Nova Scotia

On August 24th, 2009 the undersigned visited the above noted address to determine whether the fence was structurally sound.

The entire fence structure was erected on the property of Mr. C. Brian Mintus, 91 Glasgow Road, as a visual and noise barrier between he and his next door neighbour.

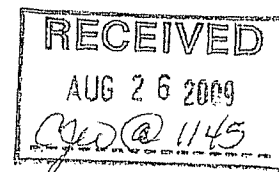
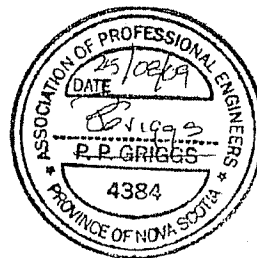
The fence consists of 4" x 4" posts spaced at approximately 6'-0 on centers and anchored to steel post bases driven into the ground. These post bases are further anchored in a 7" thick by 16" wide reinforced concrete curb along the side of the driveway. Between the posts are two rows of 2" x 4" stringers that support 1" x 6" vertical slats. Behind this structure approximately 2 feet there is a substructure of 4" x 4" and 2" x 4" material attached to 8" diameter sonotubes. This substructure provides the main fence with additional stiffness.

It is our opinion that this fence is structurally sound and capable of withstanding the winds of a 1/50 year storm.

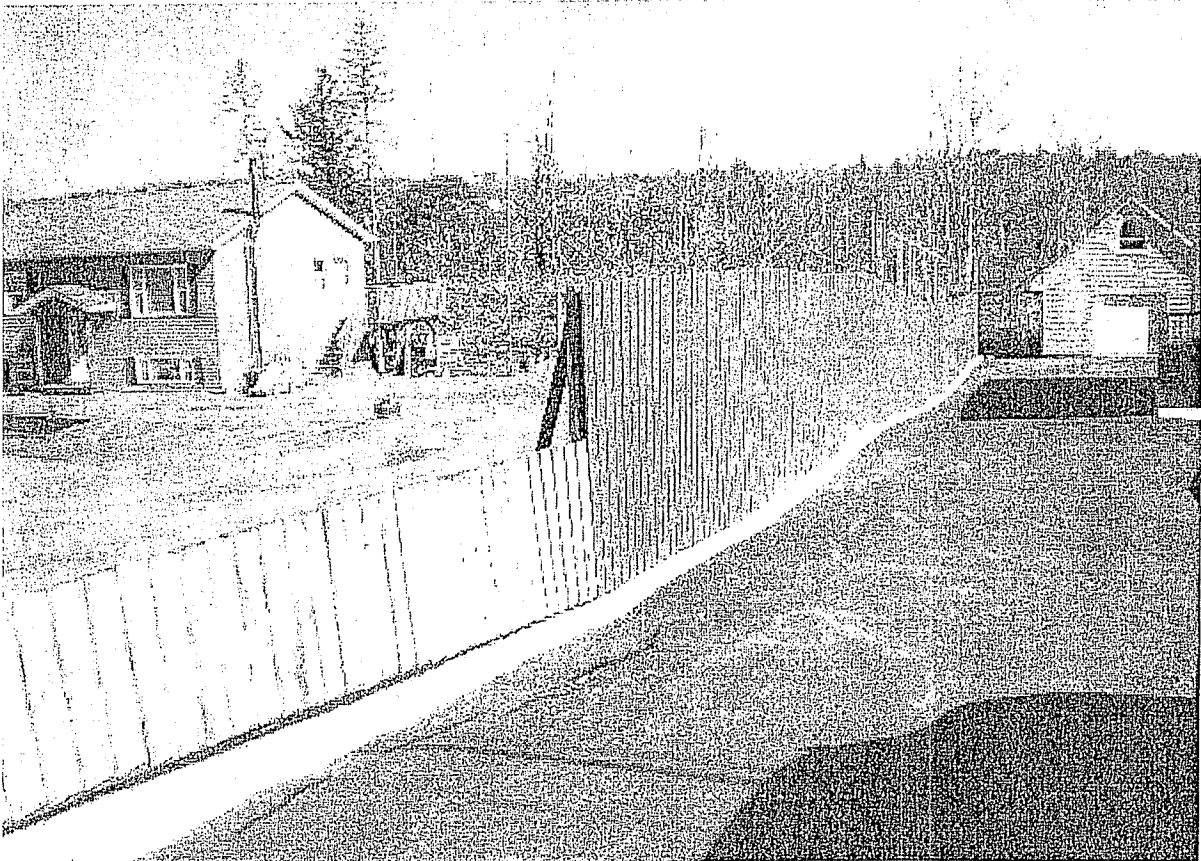
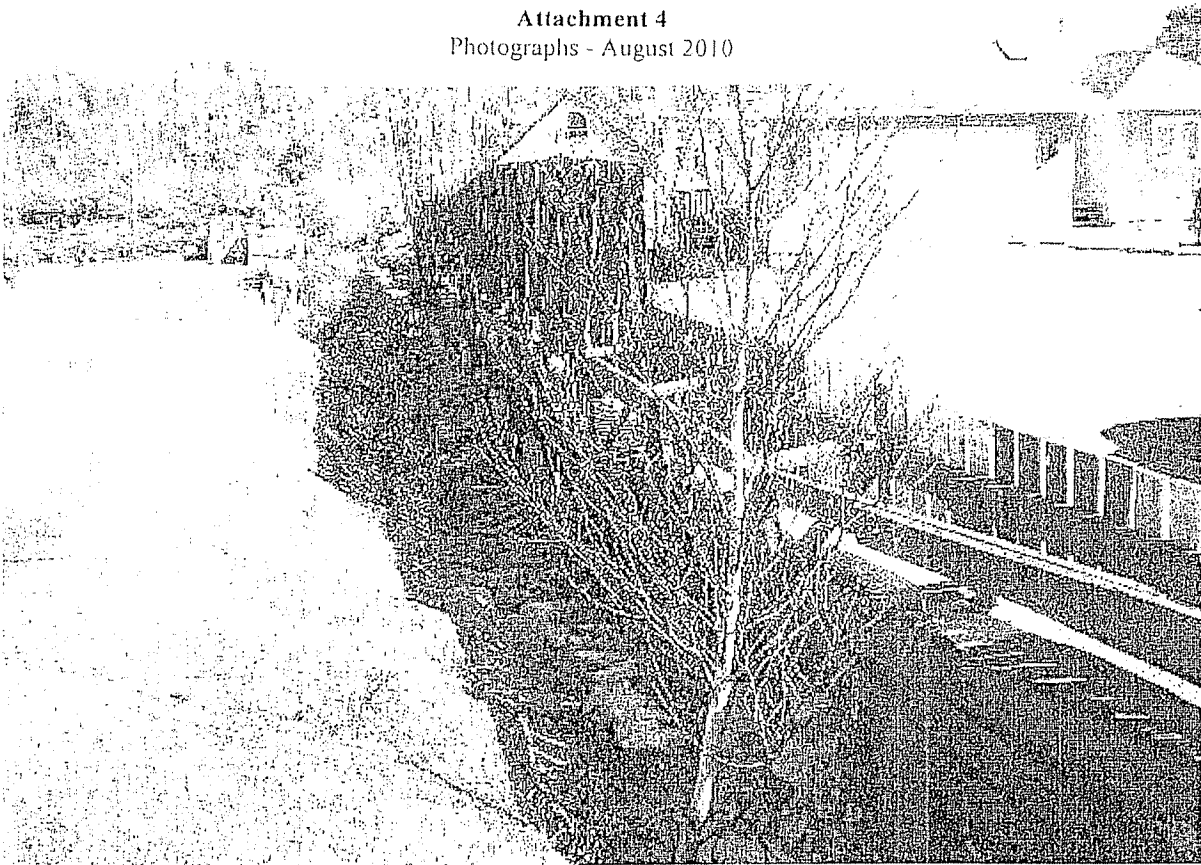
Respectfully

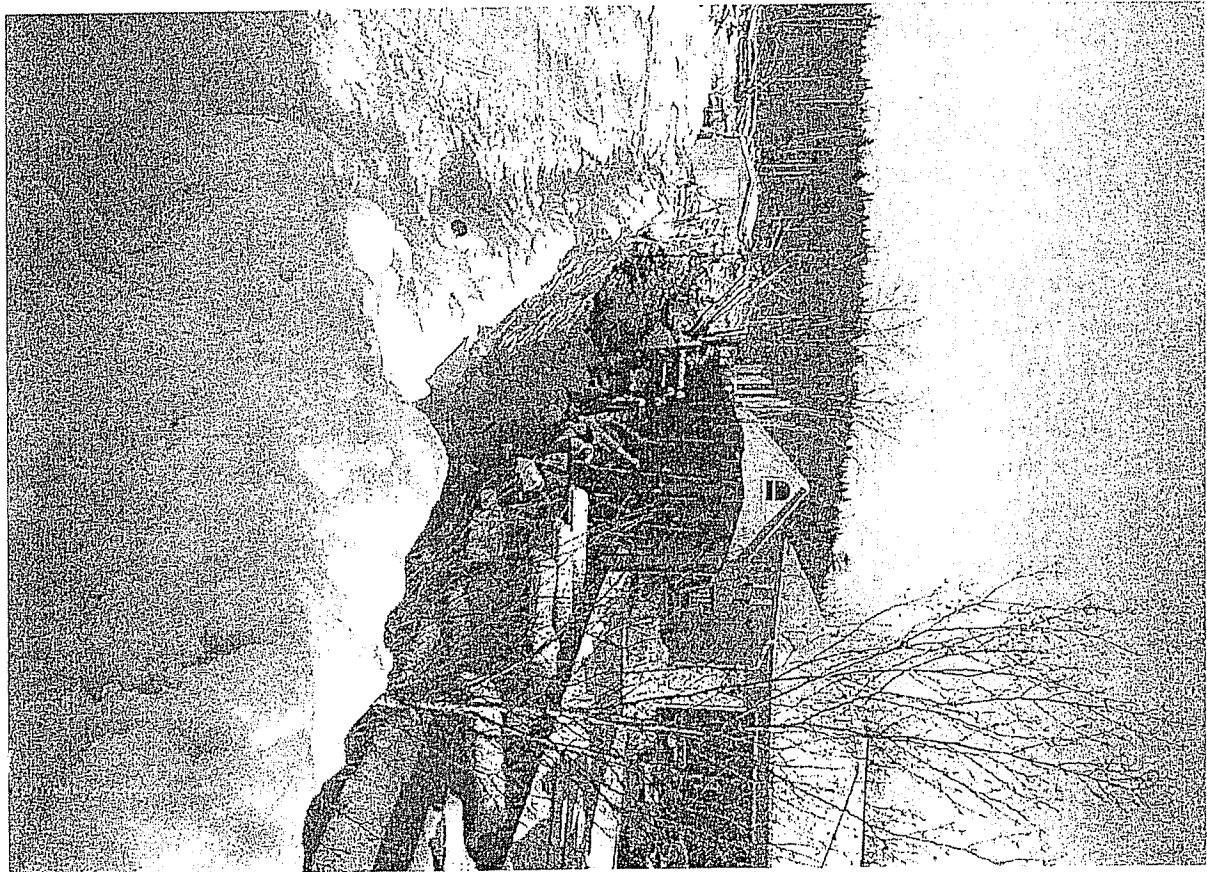
GRIGGS ENGINEERING LIMITED

P. P. Griggs, P. eng.



Attachment 4
Photographs - August 2010





Attachment 5
Photographs - January 10, 2011

Attachment 6

Excerpt from March 30, 2011

MARINE DRIVE, VALLEY AND CANAL COMMUNITY COUNCIL MINUTES

10. REPORTS

10.1 STAFF REPORTS

10.1.1 Fence Permit Application #102842 – 91 Glasgow Road

The following was before the Community Council:

- A staff report dated January 24, 2011.
- Email submissions between C. Brian Mintus, Councillor Hendsbee and HRM staff, dated July 28, 2009, January 21, 2011 and March 29, 2011, including photographs of activity around the fence.
- Submissions from Chris Smith:
 - a letter from Brockman Engineering Inc. to Mr. Smith dated March 24, 2011, with attached photographs of the fence;
 - a letter from Gary and Cindy Compagnon dated April 4, 2010; and
 - a letter from Mr. Smith dated March 30, 2011 with an attached survey of Lots 1-10 and photographs of the fence
- A copy of the Provincial Fences and Impounding of Animals Act.

Mr. Richard MacMillan, Supervisor, Permits & Inspections, Community Development, provided an overview of the January 24th staff report to the Community Council, noting that there was a delay in the fence permit application process due to the file being misplaced. It was further noted that the fence was constructed without a permit. Councillor Hendsbee reviewed the rules and procedure, calling for the applicant and any adjacent property owners to come forward at this time to speak for or against the application.

Mr. C. Brian Mintus, applicant, presented a video he had taken of his fence and the surrounding property. He indicated that he built the fence in 2009 to create privacy. Further points noted by Mr. Minuts:

- the fence was built with eight inch lumber he had on hand
- an engineer's report was completed that indicates that the fence is structurally sound
- to prevent the fence from swaying, he overstressed the fence using knuckle bolt wiring cables to hold the fence from the eastern and western widths
- concerned with his neighbour using boulders to impede water passage, which resulted in a \$17,000 re-modification of drainage (trench) on his property
- the affects of the fence are limited to himself and his neighbour at 103 Glasgow Road

Mr. Christopher Smith, resident of 103 Glasgow Road, noted the following points:

- the fence sits approximately two (2) feet onto his property line; there is no indication as to who removed the property marker; he will be hiring a surveyor to confirm that the fence sits on his property
- when a permit is requested, is it not the responsibility of HRM to ensure the fence meets requirements of property lines, as the building structure must be ten (10) feet away
- the engineer's report he had prepared indicates that the fence is structurally unsafe; over the past two years the fence has weakened and leaned over twice; support posts were installed in 2011
- the fence is unsightly and depreciates the value of his property
- he is not opposed to the size of the fence and would not disagree with a properly constructed fence designed by an engineer and approved by HRM
- concerned with the drainage ditch on his neighbour's property as water is being directed onto his property
- Mr. Mintus should have obtained a permit for the fence two years ago before building his fence

The Community Council entered into discussion. The following points and concerns were raised:

- concerned with the conflicting engineers' reports; possibility of a third engineer's review
- concern with evidence provided by Mr. Smith respecting erosion and shifting of the concrete piers; it appears that there has been some structural issues with the fence
- evidence indicates within the photographs, that Mr. Mintus did tear up his paved driveway to rebuild a drainage ditch to assist with offsetting some of the movement of the fence walls and stabilize the fence foundation on his side of the property
- typically setbacks to property lines are applied to sheds and houses rather than fences; fences can be built up to a foot or even on the property line
- Staff clarified that during the permitting application process, HRM requires the applicant to ensure the fence is being constructed on their property. Should concerns arise during the application process, additional information such as a survey can be requested.

The Municipal Solicitor advised that as this is an application by the property owner to build a fence, the Community Council can request that additional information be provided respecting concerns raised related to the property lines. The onus is on the applicant for the permit to provide the additional information, which may include a survey. He noted that it would be a matter of a surveyor re-establishing the property line and where the fence presently lies in relation to the property line. With respect to the cost of the survey, this is a reasonable request for the applicant to provide the necessary information to continue moving forward with the application.

Following further discussion, it was **MOVED** by Councillor Dalrymple, seconded by Councillor Streach, that Marine Drive, Valley and Canal Community Council defer **Item 10.1.1 – Fence Permit Application #102842 – 91 Glasgow Road** for 60 days to allow for the following information to be provided to the Community Council:

- a Survey of the property lines at 91 Glasgow Road and 103 Glasgow Road and the position of the fence as it relates to those lines, to be provided by the applicant;
- clarification from the Department of Environment respecting the watercourse near the property to address erosion concerns and whether additional structural fill is required, to be provided by HRM staff; and
- confirmation as to whether the structural integrity of the fence would be compromised if aesthetics enhancements were made with the use of, or including, additional boarding, to be provided by the applicant.

It was noted that Mr. Mintus' engineer would have to have review the structural integrity of the fence to ensure there would be no compromise for aesthetic enhancements.

Attachment -7

Excerpt of email received May 14, 2011 from Brian Mintus
Subject: Fence Permit Application #102842-91 Glasgow Road
(Remainder of email was string of previous correspondence)

Hello Mr. Richard Macmillan;

I have spoken with Mr. Griggs regarding the verification of the structural integrity of the fence for aesthetics enhancements with additional boarding as per HRM application request. The letter I was expecting from Mr. Griggs was delayed due to his vacation and I am leaving for work this Sunday afternoon. This leaves me to indicate the understanding of Mr. Griggs and myself, regarding the letter dated February 10.2011 will stand for additional boarding as aesthetics, The fence is strong enough to withstand the past storms we had this past winter and any addition to the other side of the structure will not be detrimental to the structure, therefore I give permission to the additional aesthetics added to my fence.

I have also added as requested the survey report,

I have included the disruption of the water flow by Mr. Smith.

I have received the excess of 20 called to the RCMP for Mr. Smith.
file number: GA-3952-3-01474/11

I have supporting evidence of the Province knowledge regarding this ditch separating our proprieties without a defined water access.

I hope this satisfies you request and I look forward to your reply.

Cheers;

C. Brian Mintus CET

Attachment 8
W.E. JACKSON SURVEYING
24 AMARANTH CRESCENT
DARTMOUTH, NOVA SCOTIA
B2W 4B9
902-434-5838


Attachment
- 8 -

March 31, 2011

Charles Brian Mintus
91 Glasgow Road
East Preston, Halifax County
Nova Scotia

Re: Lot 7, Subdivision of lands Keith & Derrick Williams
Civic #91, Glasgow Road, East Preston

I located survey markers at the back of Lots 7 & 8 from which I was able to produce a line parallel to boundary between Lots 6 & 7. This line had to be offset from actual boundary in order to determine the location of fence in relation to said boundary. From my field measurements it was determined that the fence was either on the line or within your lot.


Walter E. Jackson, N.S.L.S.