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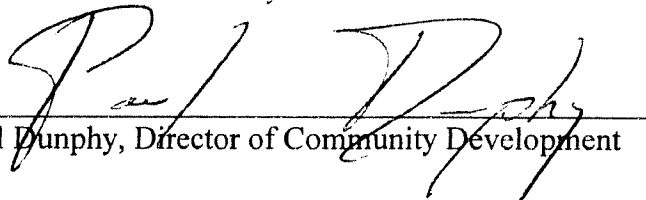
Harbour East Community Council

~~February 1, 2007~~

March 1, 2007

TO: Harbour East Community Council

SUBMITTED BY:


Paul Dunphy, Director of Community Development

DATE: January 25, 2007

SUBJECT: Case # 00981: Scrap Metal Recycling as a Home Occupation

ORIGIN

Motion of Harbour East Community Council on December 7, 2006 to have Scrap Metal Recycling prohibited as a Home Occupation in the Dartmouth Plan Area.

RECOMMENDATIONS

It is recommended that Harbour East Community Council:

1. **Give First Reading to the proposed amendments to the Land Use Bylaw for Dartmouth provided in Attachment D of this report and schedule a public hearing; February 1, 2007**
2. **Approve the proposed amendments to the Land Use Bylaw for Dartmouth provided in this report.**

BACKGROUND

In 2006, HRM received complaints about a property in the north end of Dartmouth where a number of old appliances and other metals had been collecting in the rear yard of the dwelling. Staff determined that the property owner was collecting these materials for the purpose of extracting the metal components in order to sell the scrap metal. The resident was informed that outdoor storage associated with a home occupation was not permitted, however if the material was moved indoors, occupied no greater than 25% of the dwelling, and met all the other requirements of the home occupation provisions of the Dartmouth Land Use Bylaw (Attachment A), the use could be permitted as a home occupation. The resident complied with this request, however community members expressed concern that this use should not be considered an appropriate home occupation. Consequently Harbour East Community Council made a motion on December 7, 2006 to have the Land Use Bylaw amended to prohibit this use as a home occupation.

DISCUSSION

In the Dartmouth Land Use Bylaw, scrap metal recycling falls under the definition for Salvage Yard:

...a lot or premises for the storage, handling, processing of and/or sale of scrap material, and without limiting the generality of the foregoing, shall include waste paper, rags, bones, used bicycles, vehicles, tires, metal or other scrap material or salvage but excluding construction and demolition materials and hazardous waste material storage or disposal sites.

In considering all zoning amendments, Council must have regard for the relevant policies of the Dartmouth Community Planning Strategy (Attachment B). While there are no explicit directions on what type of uses can be considered as home occupations¹, the Dartmouth Land Use Bylaw (LUB) does contain regulations controlling home occupations and these, as mentioned above, do not expressly prohibit a salvage yard as a home occupation.

The Dartmouth Community Planning Strategy (CPS) does however, provide direction on the subject of scrap yards, and sets out a number of potential compatibility, environmental, and other issues associated with this type of use (Attachment B). Policy M-7 directs Council not to permit this type of use in any existing or designated residential area, or within 500 feet of one. This policy intent was not implemented in the Home Occupation provisions of the Land Use Bylaw. Prohibiting this use as a home occupation would therefore be consistent with and carries out the intent of the Dartmouth Community Planning Strategy.

¹The CPS only sets out the land use designations in which home occupations may be permitted (residential and commercial). See Table 4 of the Dartmouth Community Planning Strategy.

There are a number of other concerns with allowing such a use to continue as a home occupation:

- Small operators may be sourcing their materials from items placed curbside on regular refuse pick-up days. This is contrary to Section 16 of Bylaw S-600 (Solid Waste Collection & Disposal).
- Metal waste diverted in this way from the normal refuse collection process may have financial impacts on the Municipality, as metals are currently separated from other waste at the Otter Lake facility, crushed, and sold for processing.
- HRM contractors will not pick up fridges, freezers, a/c units, or dehumidifiers from the curb unless they have a sticker verifying that CFC's have been removed. A small, independent operator may not necessarily be so discriminating, and thus undermine HRM's efforts to prevent pollutants from escaping into the atmosphere.
- Processing consumer goods to extract metals requires frequent drop-off and delivery, can be noisy, and requires space for storage of large bulky items before and after processing. Such activities have great potential to expand beyond the limits within which a home occupation must be contained, and may present a source for frequent complaints, and a corresponding challenge for enforcement.

Public Participation

A public information meeting was held on January 24, 2007 and minutes are included in this report under Attachment C. Two residents who live near a home scrap metal recycling operation attended and described many of the undesirable side effects of this type of business, including noise, deliveries, and burning, as well as their challenges with enforcement.

Should Council decide to hold a public hearing, notices will be placed in the newspaper in accordance with the requirements of the Municipal Government Act. There will be no direct notification to homeowners because the proposed amendment will have area-wide implications, rather than being specific to a single property or small area.

Conclusion

While the operation of a small scale salvage yard does offer income opportunities to individuals, it is staff's conclusion that this type of operation presents far too many potential compatibility issues with adjacent uses to be considered suitable as a home occupation. Staff recommend that Salvage Yards should be added to the list of prohibited uses under Section 23 of the General Provisions of the Dartmouth Land Use Bylaw, as shown in Attachment D. This amendment is consistent with policies M-7 and IP-1(c) of the Dartmouth Community Planning Strategy.

All existing legal home occupation scrap metal recycling facilities will be permitted as non-conforming uses in accordance with the Municipal Government Act. However, future scrap metal recycling will not be permitted as a home occupation if the proposed amendment is approved by Council.

BUDGET IMPLICATIONS

None

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

1. Council may approve the amendment to the Dartmouth Land Use Bylaw as shown in Attachment D. This is the recommended course of action.
2. Council may refuse to amend the Dartmouth Land Use Bylaw. This alternative is not recommended as staff are satisfied that the proposal is consistent with the policies and intent of the MPS.

ATTACHMENTS

Attachment A	Home Occupation Provisions of the Dartmouth Land Use Bylaw
Attachment B	Relevant Policies of the Dartmouth Community Planning Strategy
Attachment C	Minutes of Public Information Meeting January 24, 2007
Attachment D	Proposed Land Use Bylaw Amendment

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: Hanita Koblents, Planner, 490-4181

Report approved by: Austin French, Manager of Planning Application, 490-6717

Attachment A**Home Occupation Provisions of the Dartmouth Land Use Bylaw**

23. A home occupation shall be permitted in any dwelling in an R-1, ***R-1M***, R-2, R-3, R-4, T and TH Zone provided: *(As amended by By-law C-694, Dec. 6/91)*
- (a) it shall be conducted by the resident occupant in his or her residence;
 - (b) it shall be clearly accessory and incidental to the use of the dwelling as a residence;
 - (c) it shall be conducted within the enclosed living areas of the dwelling or accessory buildings;
 - (d) no alterations shall be made which would change the physical character of the dwelling as a residence;
 - (e) no outside storage of any kind shall be associated with the home occupation;
 - (f) there shall be no exterior evidence of the conduct of a home occupation except for a business identification plate or sign of two square feet in maximum area;
 - (g) not more than 25% of the total floor area of the dwelling shall be used for a home occupation;
 - (h) one off-street parking space, other than that required for the dwelling, shall be provided for each 200 square feet of floor space occupied by the home occupation;
 - (i) it shall not be an obnoxious use;
 - (j) ***no stock in trade, except articles produced by members of the immediate family residing in the dwelling shall be displayed or sold on the property; (As amended by By-law C-421, Jan2/81)***
 - (k) ***the following are deemed not to be home occupations:***
 - (i) ***automotive repair shop***
 - (ii) ***autobody repair shop***
 - (iii) ***auto paint shop***
 - (iv) ***machine shop***
 - (v) ***welding***
 - (vi) ***retail sales outlets, except articles produced by members of the immediate family in the dwelling***
 - (vii) ***restaurants***
 - (viii) ***amusement arcades (As amended by By-law C-514, Feb15/84)***
 - (ix) ***adult entertainment uses (As amended by RC January 31/06 Eff date March 16/06)***

Attachment B

Relevant Policy of the Dartmouth Community Planning Strategy

Scrap Yards

It should be recognized that scrap yards, junkyards and salvage yards play a key role in terms of the recycling process, removal of abandoned automobiles and providing materials for the motor vehicle parts and the steel industry.

It should also be recognized that in dealing with scrap yards, junkyards and salvage yards, there is an issue of compatibility with other industrial uses. Problems of visual unsightliness, noise, traffic and burning are required to be addressed in order for scrap yards, junkyards and salvage yards to co-exist with adjacent properties. Also, the storage and processing of certain materials may cause detrimental effects to the environment. These problems can be addressed by providing a special zone for scrap yards, junkyards and salvage yards that are properly fenced and landscaped. The existing scrap yards, junkyards and salvage yards will be made non-conforming uses. (As amended by By-law C-561, Mar.19, 1986).

Policy M-7 It shall be the intention of City Council to permit scrap yards, junkyards and salvage yards in areas designated for industrial uses on the generalized land use map and to require that scrap yards, junkyards and salvage yards be screened by fencing or landscaping or a combination of both to reduce the adverse effects on abutting property, subject to the following:

- (a) no scrap yard, junkyard or salvage yard shall be permitted which is adjacent to or within a 500 foot radius of:
 - (i) community facilities;
 - (ii) any existing or designated residential area.
- (b) no scrap yard, junkyard or salvage yard shall be permitted where it would not be possible to screen those uses from abutting properties. (As amended by By-law C-561, Mar.19, 1986).

Policy IP-1(c)

In considering zoning amendments and contract zoning, Council shall have regard to the following:

- (1) that the proposal is in conformance with the policies and intents of the Municipal Development Plan
- (2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal
- (3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries
- (4) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the City is to absorb any costs relating to the development
 - (ii) the adequacy of sewer and water services and public utilities
 - (iii) the adequacy and proximity of schools, recreation and other public facilities
 - (iv) the adequacy of transportation networks in adjacent to or leading to the development

- (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas
 - (vi) preventing public access to the shorelines or the waterfront
 - (vii) the presence of natural, historical features, buildings or sites
 - (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized
 - (ix) the detrimental economic or social effect that it may have on other areas of the City.
- (5) that the proposal is not an obnoxious use
- (6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:
- (i) type of use, density, and phasing
 - (ii) emissions including air, water, noise
 - (iii) traffic generation, access to and egress from the site, and parking
 - (iv) open storage and landscaping
 - (v) provisions for pedestrian movement and safety
 - (vi) management of open space, parks, walkways
 - (vii) drainage both natural and sub-surface and soil-stability
 - (viii) performance bonds.
- (7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors
- (8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council
- (9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:
- (i) Council with a clear indication of the nature of proposed development, and
 - (ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community
- (10) ***Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (Regional Council - July 2, 2002, Effective - August 17, 2002)***

Attachment C
Minutes of Public Information Meeting January 24, 2007
Case 00981

DATE: January 24, 2007, 7:00pm

LOCATION: Dartmouth High School Cafeteria

IN ATTENDANCE: Hanita Koblents, Planner
Raylene Maclellan, Administrative Support
Councillor Jim Smith
Two members of the public

Ms. Hanita Koblents welcomed residents to the meeting, thanked them for attending, and introduced herself as the planner assigned to this file. She explained that the purpose of the meeting was to discuss a proposal by Harbour East Community Council to have scrap metal recycling added to the list of uses prohibited as home occupations in the Dartmouth Land Use Bylaw, and to obtain more information about the matter from the public.

Ms. Koblents reviewed the current provisions for home occupations, including restrictions on open storage, signage, etc. and noted that while the current provisions restrict many uses such as automobile repair, that 'salvage yards' are not specifically prohibited, and that this has been interpreted by the Development Officer as meaning that they may be permitted.

Ms. Koblents indicated that before this proposal can take effect, Community Council must approve it at a public hearing, which will be advertised in the newspaper.

Mr. and Mrs Urquhart explained that they lived near a house where a scrap metal recycling operation had been permitted by the Development Officer and they could not believe such a use could be permitted.

Ms. Koblents reiterated that because it was not explicitly prohibited, it had been permitted, and that the purpose of the proposed amendment was to ensure that this did not happen again.

Mr. Urquhart asked what could be done to shut the current operation down.

Ms. Koblents explained that as long as provisions of the home occupation section of the Dartmouth Land Use Bylaw are met, then nothing could be done. However, violations of these provisions would warrant a complaint. The home occupation provisions restrict open storage, so there would be grounds for complaint if any materials related to the home occupation are stored

outside. Ms. Koblents offered to forward the home occupation provisions to Mrs. Urquhart via email.

The Urquharts suggested that burning was also an issue and that wires are burned in a drum in the yard.

Ms. Koblents suggested that the fire department should be called if there is a fire hazard.

Mr. Urquhart asked why the existing use would be grandfathered and where the grandfather clause was located.

Ms. Koblents explained that there is no grandfather clause as such, but that 'grandfathering' is a principle that when a law changes, uses that were legally carried before the change, remain legal, however new instances of that use would become illegal.

The Urquharts showed photos of a backyard with appliances, old windows, and sheds and asked what we could do about it.

Ms. Koblents explained that without dates, they would be difficult to use, because it was her understanding that there had been an issue with outdoor storage at the property in question, but it had been cleaned up and moved inside. Ms. Koblents stated that when she carried out a site inspection herself last week, she did not see much evidence of the home occupation outdoors.

Councillor Smith indicated that there have been many unsightly complaints about this particular residence, and that it has been a problem since last spring and he could not believe that this was ever given a permit to operate as a home business.

Mr. Urquhart asked if permission from the landlord, or proof of liability insurance was required for this type of business?

Ms. Koblents indicated that those are matters between the landlord and the tenant and that HRM requires no proof of landlord's permission or liability insurance to permit a home occupation.

Mrs Urquhart said there was also a problem with noise and Mr Urquhart assumed they could only object if it was after 11pm?

Ms. Koblents suggested that there is a Noise Bylaw and if violated at any time of day, could also be grounds for complaint. Ms. Koblents passed on the non-emergency police number to call for this.

The Urquharts expressed their disbelief that this could ever be permitted, and asked when it would be changed.

Ms. Koblents said a public hearing would be held in either March or April, 2007.

Councillor Smith expressed his desire to see this happen sooner than later and suggested that the ad should be placed at the earliest possible time after first reading.

The meeting adjourned at approximately 7:20 p.m.

Attachment D

Proposed Amendment to the Land Use Bylaw for Dartmouth

Section 23 (k) of the General Provisions of the Land Use Bylaw for Dartmouth is hereby amended by:

1. Adding the following, immediately after “(ix)adult entertainment uses (As amended by RC January 31/06 Eff date March 16/06)”:

“ (x) salvage yards”