

HARBOUR EAST COMMUNITY COUNCIL
SPECIAL SESSION
FEBRUARY 17, 2000
MINUTES

PRESENT: Councillor Harry McInroy, Chair
Councillor Ron Cooper
Councillor Jack Greenough
Councillor Bruce Hetherington
Councillor John Cunningham

REGRETS: Councillor Condo Sarto
Councillor Clint Schofield

STAFF: Mr. Roger Wells, Regional Coordinator, Planning Applications
Ms. Cathy Spencer, Development Officer
Mr. Stephen Oakey, Parkland Planner
Mr. Greg Gray, Construction Inspector
Ms. Julia Horncastle, Assistant Municipal Clerk

OTHERS: Mr. Jack Lansing, PERA
Ms. Cathy Hunt, PERA

The meeting was called to order at 3:00 p.m.

The following information was circulated:

- Comments/Recommendations on the Environmental Considerations Adjacent to the Apt at 65 Eisner Blvd from Jack Lansing
- Memorandum from the Dartmouth Lakes Advisory Board
- Memorandum from Cathy Hunt re DA for Portland West
- Two schematic drawings showing the stream bank improvements

Mr. Roger Wells advised the meeting is with respect to the apartment building project at 65 Eisner Blvd in Portland West and the HRM owned buffer area behind that apartment building property, between the rear property line and Ellenvale Brook. The buffer is approximately 20 feet in width with a walkway within that buffer area which was placed there prior to the development agreement for Portland West which came into effect in 1993.

He noted as part of the approval for the apartment building the walkway, which also acts as a berm or a levy between the brook and properties that front on either Eisner Blvd or Parkview Lane, was raised by approximately 18 inches along a portion of it's width which prevented flooding on the property allowing the developer to dig his foundation and construct the building. The raising of the land enhanced the walkway.

Mr. Wells noted the environmental protection schedule of the development agreement indicates *"that the retention of an undisturbed natural buffer area adjacent to all bodies of water will provide natural filtration. The proposed buffer is a minimum of 15 metres in area where it borders Russell Lake and directly continues adjacent to the brook at a minimum width of approximately 6 metres"*. The last clause provides for an undisturbed natural buffer area within 6 metres of Ellenvale Brook, the area under discussion.

He advised there is a difference of opinion between staff and PERA in the interpretation of that clause. He stated staff maintains that because a walkway was in existence prior to the development agreement being approved it constitutes a berm in itself. The walkway has disturbed that area of terrain by the raising of that berm by eighteen inches which staff suggests is not in conflict with the interpretation of the development agreement. PERA has a different interpretation in that it would constitute an amendment to the agreement.

He advised staff acknowledges that it is a different interpretation but from the expertise on staff it is felt that this was okay and proceeded to make the improvement to the walkway.

In response to Councillor Greenough, Mr. Wells confirmed that staff was saying that the walkway in effect creates a berm and adds further protection of the brook and property.

Mr. Gray advised it was not in the original design of the apartment site submitted. He advised he has been monitoring that area for the last number of years and at the time the developer applied for the building permit a visit to the site showed the walkway overflowing. He had relayed this to the development officer who in turn advised if the apartment building was built without the raising of this walkway, the overflow would go through the construction site and cause sediment to get back into the brook. It indicated the water makes a loop then reroutes and goes back into the brook downstream. He said this is an erosion control device and, once the building is completed, the grading from the apartment building will protect the site.

In response to Deputy Mayor Cunningham, Mr. Wells confirmed that it is HRM property and HRM is responsible for the maintenance of that walkway and will continue to be even after the apartment building is completed. He advised the developer has offered to make further improvements downstream from where this work was done to repair existing washed out portions of the walkway down towards Morris Lake.

Mr. Wells stated PERA is arguing process and are suggesting that the development agreement should have been amended even if it is a maintenance item on the walkway.

Councillor Cooper received clarification that the walkway had been put in place originally to provide a walkway to Morris Lake noting, the superstore was not built at the time the walkway was built.

Ms. Hunt advised the apartment building is in a flood plain and natural wetland. She stated the berm will serve as a walkway and a water deflector, deflecting water off the parking lot of the development. She said when the water level rises it covers the two pipes and floods over the walkway. The berm as it stands now, with the polytech fencing, is holding back the sediments and keeping them from getting into the brook.

Mr. Gray stated this was designed by a Geotechnical Engineer who feels it is adequate for now. He stated if the development area continues to grow it may have to be addressed at a later date. He noted the developer of this site cannot be held responsible for all the future development in that drainage corridor. It was not designed for all future development but will control the 100 year flood plain which was identified as part of the approval process.

In response to a query from Ms. Hunt as to who would be responsible if the berm actually starts to wash away and erode, Councillor McInroy stated HRM is responsible.

Ms. Hunt stated that they are aware that that development is in and complies with the 1993 agreement. She stated PERA is concerned with the way this took place, without

input from PERA. In response to Councillor McInroy, Ms. Hunt stated PERA should have had a chance to have some input. She stated if it is going to work and not erode and wash away there needs to be other measures taken.

Councillor Hetherington noted there is a P-3 school being built in that area and work will be done on the walkway as it will be used to access the school.

Mr. Lansing stated they were not notified in advance of this going to Community Council on December 16th. He said if they had been brought in in advance they would not have had a problem with the process. Councillor Hetherington stated it is not a practice, and PERA won't get a copy of every permit that is issued on established development agreements. This was done by a normal process and would not have gone to PERA for approval or to examine.

Ms. Hunt said they are not talking about the permit but rather the work that took place on the undisturbed buffer.

Mr. Lansing stated the current pathway/berm not only serves to protect the erosion and sediment from the development site but also to prevent a breaching of the old pathway. It serves a function of preventing water from going into the old swale on top of the current buffer. If flood waters reach the pathway they would be in contact with the newly disturbed soil and covering it with bark chips or bark mulch is not going to help in a flood situation. In order to prevent that from occurring at a later date and during construction, the berm should not be removed. He stated one of PERA's major concerns with this is with the actual design of the berm. He stated the aggregate is between three and six inches so the minimum was not followed and it is well below the recommended size of eight to eighteen inches. He stated the size of the aggregate bordering on the pathway is of major concern because the flow velocities in that creek are extremely fast in the spring.

Mr. Grey stated this design was done by a Geotechnical Engineer and called for six inch size stone, eight inches thick. He stated in order to get a six inch stone you take a mix anywhere from three up to twelve inches. He stated the average size stone on the site varies from three inches up to twelve inches. In order to get a clean stone any size larger you have to get blast rock which does not come clean. He stated he has asked the workers to take the larger rock and place them on the outside. He stated the Geotechnical Engineer feels that the smaller rocks interwoven with the larger provides a better weave and is adequate.

In response to Councillor McInroy as to what role the DOE has in this process, Mr. Gray advised the design was submitted to them for comments. A permit was not required through DOE as it is not in the watercourse. Ms. Spencer referenced a copy of the comments provided by DOE.

Ms. Spencer advised that the comments from DOE stated that the developer should follow the Erosion and Sediment Control guidelines. In that guideline it gives you a certain size rock that should be used if you are in a stream bed. The guideline that DOE uses if they are not in the stream bed is about a six to eight inch average.

Mr. Wells asked if Mr. Warner had actually been on site. Mr. Gray said he has met him on site several times.

Mr. Gray advised that the developer would only need a berm during construction because the foundation wall is significantly higher than the water or walkway level.

Mr. Lansing stated it is his and PERA's concern that this aggregate is borderline and when there is time right now to correct the problem why wait until there is an infraction or sediment entering into the creek

Councillor Greenough suggested additional larger pieces of aggregate be brought in to supplement what is already there. He asked if there has been anything proposed with regards to planting trees and vegetation.

Mr. Gray advised that it has been proposed that if infolding does take place there should be some kind of surface cover put in noting, this would help in the long term but not in the short term.

Mr. Wells clarified that HRM was in it's own buffer area. He stated there is an opportunity for infolding a portion of the buffer area. He stated the developer has offered, as part of his program when he is backfilling his foundation, which is going to happen within the next couple of weeks, to regrade from the edge of his property to the edge of the walkway using woodchips to stabilize this area. He advised the developer has offered to put in a sufficient amount of bark mulch when he landscapes his own property. Mr. Wells advised the developer is not prepared to wait until HRM goes through an amendment to the development agreement because the development agreement is clear and says the proposed buffer shall remain undisturbed. This is clearly a disturbance in the buffer area. It is minor and staff and the Lakes Advisory Board is in support of this. He stated clarification needs to be given as to whether PERA agrees that for all practical purposes HRM should proceed to do this rather than lose this opportunity.

Mr. Gray said that if HRM goes in after the fact to do this work without being able to go across the developers property it will be very costly and difficult. Mr. Gray further noted that the developers property would be graded in such a way that the runoff from his property would be going into his own collection system and from there into the storm sewer.

Mr. Lansing asked if they could have an opportunity to talk with the residents and environmental staff and provide an answer to staff the following day. He stated if they are in agreement then they would be agreeing to four inches of wood chips and two inches of bark mulch. Further, anywhere the infill is greater than six inches, then some planting be done to stabilize the soil.

MOVED by Councillors Hetherington and Greenough that if PERA agrees with the proposal as put forth by the developer, HRM gives permission for the developer to proceed. If PERA does not agree with the proposal, HRM walks away and the developer does what he needs to do on his own property. MOTION PUT AND PASSED.

There being no other business, the meeting was adjourned at 4:20 p.m.

Julia Horncastle
Assistant Municipal Clerk