

NORTH WEST COMMUNITY COUNCIL

MINUTES

JULY 6, 2000

PRESENT: Councillor Harvey, Chair
Councillor Kelly
Councillor Merrigan

ALSO PRESENT: Wayne Anstey, Municipal Solicitor
Andrew Whittemore, Planner
Tony Blouin, Manager of Environmental Policy
Bob Nauss, Regional Coordinator, Recreation Programming
John Sheppard, Manager, Environmental Services
Sandra Shute, Assistant Municipal Clerk

TABLE OF CONTENTS

1.	Invocation	4
2.	Approval of Minutes	
2.1	Regular Meeting - May 25, 2000	4
2.2	Special Council Session - June 13, 2000	4
3.	Approval of the Order of Business and Approval of Additions and Deletions ..	4
4.	Business Arising Out of the Minutes	
4.1	Testing Results Paper Mill Lake - Bedford Waters Advisory Committee	4
5.	Motions of Reconsideration - None	8
6.	Motions of Rescission - None	8
7.	Consideration of Deferred Business - None	8
8.	Public Hearings	
8.1	Appeal of the Refusal of a Variance - 249 Riverside Drive, Sackville ..	8
8.2	Case 00231 - Application to rezone 927 Sackville Drive, Lower Sackville	10
8.3	Case 00232 - Application to amend the Development Agreement (#89-02) for the Tim Hortons Restaurant situated at 930 Bedford Highway (Moirs Mill)	11
9.	Correspondence, Petitions and Delegations - None	14
10.	Reports	
10.1	Case 00254 - Proposed Self-Support Communication Tower and Equipment Shelter at 429 Kearney Lake Road, Bedford	14
11.	Motions - None	15
12.	Added Items	

12.1	Case 00004 - Extension of Development Agreement, Corner of Beaverbank Road and Stokil Drive, Sackville	15
13.	Notices of Motion - None	15
14.	Public Participation - None	15
15.	Next Meeting Date	15
16.	Adjournment	15

1. **INVOCATION**

The meeting was called to order at 7:00 p.m. with an Invocation in the Sackville Library, 636 Sackville Drive, Lower Sackville.

2. **APPROVAL OF MINUTES**

2.1 **Regular Meeting - May 25, 2000**

MOVED by Councillors Kelly and Merrigan to approve the Minutes of meeting held on May 25, 2000 as circulated. MOTION PUT AND PASSED.

2.2 **Special Council Session - June 13, 2000**

MOVED by Councillors Merrigan and Kelly to approve the Minutes of Special Council Session held on June 13, 2000 as circulated. MOTION PUT AND PASSED.

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

Move Item 10.1 to 4.1 - Bedford Waters Advisory Committee - Testing Results Paper Mill Lake

Added Items: Case 00004 - Extension of Development Agreement, Corner of Beaverbank Road and Stokil Drive, Sackville

MOVED by Councillors Kelly and Merrigan to approve the Order of Business as amended. MOTION PUT AND PASSED.

4. **BUSINESS ARISING OUT OF THE MINUTES**

4.1 **Bedford Waters Advisory Committee - Testing Results Paper Mill Lake**

A report from Bedford Waters Advisory Committee dated June 16, 2000 was before Community Council recommending that even though test result numbers for coliform bacteria are not out of compliance with the Canadian Recreational Water Guidelines, the pattern of the test results suggest there is a problem which may constitute a danger to health. It was recommended, therefore, that Paper Mill Lake be closed to municipal recreational swimming until such time as the source of the problem of contamination is found and rectified.

Brian Hoyle, a member of Bedford Waters Advisory Committee, advised that he had been asked to represent the Committee because of his professional background, with a Ph.D.

in Microbiology and the former Supervisor for the Provincial Water Testing Lab for New Brunswick. He advised that based on his experience and looking at the data from Paper Mill Lake, while the data is not always out of compliance, it was a great concern. There was a long term problem. The lake, in his opinion, was contaminated, potentially hazardous to health and action has to be taken to bring about a solution.

Mr. Hoyle then explained the difference between fecal coliform bacteria and coliform bacteria and why tests are carried out for those bacteria. Because this type of bacteria dies quickly, being present in water indicates a fairly recent fecal contamination. Some people, unfortunately, tend to focus more on fecal coliform results than coliform results but, when there are high coliform counts, alarm bells should go off as it can indicate the presence of e-coli in the water. An event like a sewage spill is a one-time thing; bacteria numbers would go very high but for a very short time as once in-coming water comes into the lake, the bacteria is flushed out and the numbers will drop. Organizations such as the provincial Department of Environment are geared towards responding to this type of situation. The Water Quality Guidelines are geared towards the short term response.

Mr. Hoyle advised that Bedford Waters Advisory Committee is concerned with the results of the testing that has built up over some years indicating a long term on-going event. The problem is that the testing results have consistently shown the presence of coliforms and fecal coliforms often do not have the high numbers over the compliance mark. The trigger, therefore, does not come into play to stimulate action by Department of Environment.

Mr. Hoyle then indicated the testing sites around the lake by way of a map and advised that the results were taken from all around the shoreline and from the lake itself. The two public recreational areas were included. He then showed data by way of overheads on total coliforms and fecal coliforms done under the Development Agreement which began late in 1995 until May, 2000. Until 1996, the analysis was being done in such a way that actual numbers were provided; however, beginning April, 1998 the testing was done indicating > 200 (greater than) but it was not known how many. The samples could be over 400 but the information was not available. There was, certainly, a pattern over the last five years of consistent fairly high numbers of coliforms. The numbers are consistent regardless of season and regardless of the location in the lake. Coliforms and fecal coliforms do not like water, especially cold water and will die quickly; yet they are picked up every time samples are taken.

From Mr. Hoyle's experience, he speculated there might be a broken sewage connection upstream but unless there is a co-ordinated study and action is taken to find out, there would be no way to know for sure. With regard to the two recreational areas, Department of Environment provided data taken last year. The numbers were high but not over the limit but out of compliance on a number of occasions.

Mr. Hoyle stated that Bedford Waters Advisory Committee has recommended to Community Council on several occasions that something has to be done with Paper Mill Lake. BWAC's recommendation directly to Councillor Kelly in May was that the lake should be closed to recreational activities and, subsequently, Councillor Kelly worked hard to obtain funding in the amount of \$2,200 necessary to permit more definitive testing. Councillor Kelly's request was denied. BWAC applauded Councillor Kelly's diligence and deplored the municipal decision to deny funding for the investigation of a potential community health hazard. Out of frustration, Notices to Swimmers have appeared at Paper Mill Lake because people are using the lake fairly heavily for recreational purposes. BWAC urges Community Council to undertake action to identify or rule out the source of contamination. The available data indicates that the Beaver Pond area of the lake may be the potential source of contamination and upstream investigation of that site and some others would be warranted.

Councillor Kelly advised that Dr. Hoyle prepared a proposed protocol for testing which was referred to staff. Staff did meet with Department of Environment but, unfortunately, Department of Environment does not have the same concerns as BWAC. He asked that staff provide information on the discussions with Department of Environment.

Tony Blouin, Manager of Environmental Policy advised that HRM does not regularly conduct testing of lakes as it is not a municipal responsibility but, in this case, the data is available because of the Development Agreement. Normally, Department of Environment tests lakes used for recreational purposes and it is up to them to determine whether the levels are sufficient to cause concern and recommend closure. In the case of Paper Mill Lake, staff discussed the data with Department of Environment. The total coliform level is not atypical for lakes with urbanized watersheds. In the Canadian Water Quality Guidelines, the recreational guideline does not deal with total coliforms but is specific to fecal coliforms and requires that the level measured in five samples taken over no more than 30 days should not exceed 2000 counts per liter. If over 4000, retesting is required. A few of the samples from last year did show levels above the 2000 mark but Department of Environment felt that the aggregate over the 30 day period does not exceed the recreational guidelines.

Mr. Blouin continued that the Recreation Department, who is responsible for providing lifeguarding services for beaches, takes direction from Department of Environment as to whether or not to close a beach. The Fenerty Landing location does receive drainage from Beaver Pond which comes down from the Jack Lake area. Engineering has undertaken some investigation of that area, looking for a cross connection. Because there was some level of concern, staff looked at this year's data from the Development Agreement and there was one sample from May, 2000 taken at 10 sites around the lake. Except for one location, the levels were well within the national guidelines for recreation. Because of the level of concern, staff asked Department of Environment to undertake additional sampling

this month and late last month. The results indicated there was not a sufficient level of contamination to cause a concern for recreational uses. Other lakes within HRM would certainly have those levels which are not atypical to an urban watershed. Department of Environment's position is that it is not sufficient cause to close the beach.

Councillor Kelly asked it if was possible to take the cap off the >200 to get an actual reading for total coliforms. In response, Mr. Blouin said there is no Canadian guideline for recreational use for total coliforms in water. The level of total coliforms does not determine whether or not water is safe for recreational use.

Councillor Kelly acknowledged the expertise on Bedford Waters Advisory Committee and said he was uncomfortable that Department of Environment has taken the approach they have. He acknowledged it was the province's responsibility but there was an opportunity to go a step further with Dr. Hoyle's protocol to do further testing to see what may be the problem. The cost was \$2,200 and he was asking for support from Community Council to follow through on the protocol.

Mr. John Sheppard, Manager, Environmental Services advised that a couple years ago staff carried out an investigation of the portion of the storm sewer system in the area of Paper Mill Lake to determine if there was a cross connection of the sanitary sewer into the storm sewer. There was no evidence of this occurring. Given the concern of the community, staff could go a step beyond and conduct a more in-depth study. Under the circumstances, however, staff would typically not do any more than already has been done.

Councillor Kelly said that, to make it more of a comfort for the community, not only for Paper Mill Lake but Kearney Run and Kearney Lake, further investigation was needed. With all due respect to staff, he wanted to see the extra steps taken.

Mr. Sheppard indicated that from his department's point of view, they were prepared to go in and look at the sewer more closely but did not get involved with lake water testing.

Mr. Blouin advised that the proposed protocol was a complete sampling effort. If there was a desire to spend the money on it, it would certainly give a good view of the lake; however, he felt that a fairly good understanding of the water quality of the lake could be obtained with fewer samples.

MOVED by Councillors Kelly and Merrigan to recommend that Regional Council support the undertaking of the protocol with the source of funding to be identified. MOTION PUT AND PASSED.

The Chair commended Bedford Waters Advisory Committee for acting in a responsible way under its mandate in raising the issue and informing the public of its concern.

Further in the meeting, however, Mr. Bob Nauss, Regional Coordinator, Recreation Programming advised that Recreation Department is concerned with the health and safety of people using the lake. It was becoming a public relations issue at the beach site at Paper Mill Lake as there were lifeguards on site. The question now is finding \$2,200.00 to get the necessary testing done. He could fund this \$2,200.00 from his Beach Budget.

Since the necessary funding was identified, it was agreed that the motion passed previous to Mr. Nauss' information did not need to go forward to Regional Council.

5. **MOTIONS OF RECONSIDERATION** - None

6. **MOTIONS OF RESCISSION** - None

7. **CONSIDERATION OF DEFERRED BUSINESS** - None

8. **PUBLIC HEARINGS**

8.1 **Appeal of the Refusal of a Variance - 249 Riverside Drive, Sackville**

A Staff Report dated May 30, 2000 was before Community Council. Gail Bowen, Development Technician provided background information regarding the permit application, the application for a variance and its subsequent refusal. An appeal was, therefore, received of the application for a variance by Brian and Melinda Rowsell. Community Council could either uphold the decision of the Development Officer to refuse the variance or overturn the decision of the Development Officer thereby allowing the variance. Ms. Bowen circulated pictures of the property in question.

Councillor Merrigan asked for information on what had been there originally. In response, Ms. Bowen advised that the Land Use By-law permits an encroachment for steps but not for a deck. The deck would go out 7' plus another 3.5' for steps for a total of 10.5' in a 21' yard.

Ms. Melinda Rowsell, one of the applicants, advised she understood the question of a variance and regulations. They only had 21' and to allow the steps means there is only a difference of 7'. She circulated pictures of other properties in the neighbourhood where it appeared they did the same thing, whether legally or illegally, without any problem. Originally, they had steps 8' x 6' and were asking for 11' x 14'. She talked to the neighbours who were more interested in why they stopped work on the project. The

neighbours did not have a problem. Having talked to Councillor Harvey, however, she acknowledged that he had indicated it would set a precedent.

Mr. Brian Rowsell, the other applicant, pointed out that it would only be 3' further from where the concrete steps had been located.

Councillor Harvey asked for confirmation of the sequence of events - they made plans, bought materials, applied for the permit, made a start while waiting for the permit.

Councillor Harvey asked if, when they applied for the permit, did they have any consultation with staff as to what they wanted to do and where and if there was any preliminary discussion about setbacks or caution given. In response, Mr. Rowsell advised the first indication was when Ms. Bowen called and advised there would be a stop work order. Subsequently, Ms. Bowen permitted them to do enough work to make the area safe.

Councillor Harvey asked for confirmation that notices were sent to abutters. In response, Ms. Bowen advised they were sent to abutters within 100'.

Councillor Harvey then asked if there was anyone in the public who wished to speak to this matter. There was no one. As well, there was no correspondence received.

MOVED by Councillors Kelly and Merrigan to grant the Minor Variance.

With this motion, however, Councillors pointed out that it was made with the understanding that there have been no complaints from the neighbours and there appears to be an oversight in the process. Additionally, this should not be taken as a precedent to say that there is now a 10' setback on Riverside Drive. All applications are treated on a case-by-case basis.

Further, Councillor Harvey asked if there was a way for applicants to be provided with basic information before they go away from the counter.

In response, Ms. Bowen advised that when an application is made, a sketch is done at the front counter. The sketch in this particular case showed the required setback would be maintained. It was not until the technician looked at the application and realized it was on Riverside Drive and showed 20' and knowing the area, it was questioned whether or not there was enough area. It was not until a site visit was done that it was realized that the setback shown was from the curb and not from the front property line. It was not an oversight on the part of staff.

Mrs. Rowsell stated that she did not know that her property line did not start at the curb. A lot of property owners would not know that.

Councillor Harvey said he did not think there was any intent to shorten the setback; there was an honest belief that the curb was the street line.

MOTION PUT AND PASSED.

MOVED by Councillors Kelly and Merrigan to request that Development Services underscore the importance of making the distinction between the curb line and property line when applications are made, particularly by non-developers. MOTION PUT AND PASSED.

It was suggested that this information could be included in literature being handed out to applicants as well.

8.2 Case 00231 - Application to Rezone 927 Sackville Drive, Sackville

A Staff Report dated May 30, 2000 was before Community Council along with a Memorandum from North West Planning Advisory Committee dated June 7, 2000 containing no recommendation on the merits of the application.

Andrew Whittemore, Planner provided an overview of the application with the aid of overheads and pictures of the site. Staff was recommending approval of the application.

Councillor Kelly asked for clarification regarding use of Judy Avenue. In response, Mr. Whittemore advised that Engineering Department is aware that there should not be access from Judy Avenue and this will be taken care of during the permitting process.

Councillor Harvey asked the status of the public access. In response, Mr. Whittemore advised that the owner indicated he would transfer the path to HRM and HRM was interested in acquiring same. Final negotiations would follow approval of the rezoning.

Councillor Merrigan requested to be kept abreast of the pathway issue as there might be a problem if HRM takes the property. If HRM does not take the path, the distance school children would have to walk would be greater and that area may all be bussed. If HRM takes the path, they might not be bussed.

The Chair called for speakers for or against the application. There were no speakers. There was also no correspondence received.

MOVED by Councillors Kelly and Merrigan to close the Public Hearing. MOTION PUT AND PASSED.

MOVED by Councillors Merrigan and Kelly to approve the application by Andrew Cooke to rezone 927 Sackville Drive (PID 40100802) from R-4 (Multiple Unit Dwelling) zone to C-2 (Community Commercial) zone, as shown on Map 2 of the Staff Report dated May 30, 2000. MOTION PUT AND PASSED.

8.3 Case 00232 - Application to Amend the Development Agreement (#89-02) for the Tim Hortons Restaurant situated at 930 Bedford Highway (Moirs Mill)

A Staff Report dated May 30, 2000 was before Community Council together with a Memorandum from North West Planning Advisory Committee dated June 7, 2000 recommending approval of the application. As well, a Memorandum dated July 4, 2000 was before Community Council from Public Works and Transportation re Turning Controls - Bedford Highway for the area in question.

Andrew Whittemore, Planner provided an overview of the application with the aid of overheads. During the course of his presentation, he advised that as a result of negotiations, a stormceptor will be constructed. The main issue raised, however, was with traffic in the area. Traffic Authority indicated in its report the extension of the dedicated left hand turning lane from Bedford Highway onto Hammonds Plains Road but a dedicated right hand turn into Moirs Mill and Tim Hortons was considered to be a detriment. Another consideration was the fact that because the original Development Agreement was negotiated in 1989, Plan policy has been developed since then which suggests that where there is an existing highway commercial use, Council has the ability to rezone the property to that zone which would, therefore, allow for the drive thru function as of right. This means there would be no Development Agreement or controls required through same. This was not a preferred option by staff. The applicant could also pursue the option that upon completion of the Development Agreement and compliance with the conditions of the agreement, they could ask that the Development Agreement be discharged and an appropriate zone put on the property.

Councillor Kelly asked if there was allowance with the extra parking in the rear of the property for larger vehicles to park. In response, Mr. MacEachren, representing Tim Hortons, advised the parking spaces were 9' x 20' which were larger than required.

The Chair then called for speakers in favour of the application.

Mr. Douglas Murray, Bedford, representing Bedford Waters Advisory Committee advised that the Committee was not opposed to the application subject to concerns re traffic flow and safety, drainage to be fed into a single stormceptor, piling of snow and encroachment on HRM property.

The two first items having been previously addressed, Mr. Whittemore advised that piling of snow will be addressed through the Stormwater Management Plan. He then explained the easement required onto HRM property which happens to be a designated Heritage property. The agreement requires that TDL Group lease the portion from HRM but, before that, Heritage Advisory Committee will have to review the proposal and provide specific recommendations as to what the retaining wall should look like with the intent that it compliment.

Mr. John MacEachren, Director of Real Estate, Tim Hortons Atlantic Region advised that because the development area was being moved back, provision would be for 16 cars stacking within the lot and capacity for 26 at peak times. Tim Hortons will engage Jacques Whitford regarding the stormceptor design.

Mr. Len Goucher, Bedford, a member of both North West Planning Advisory Committee and Bedford Waters Advisory Committee stated there were positive things from the waters side but he still had major concerns with traffic. The inside southbound lane was, in his opinion, a deathtrap as speeds are high in it and people outrace others in the outside lane. The inside land should be a right turn designated lane only to slow down traffic.

Mr. Rudy Sarlos, Bedford stated he was in favour of the project but disagreed with the need for a dedicated right turn. Bedford has peak times; something has to be done about the whole Bedford Highway. A drive thru would alleviate some of the traffic problems if properly constructed, would help alleviate parking at the retail centre next to Tim Hortons. The Visitors Information Centre has parking for eight cars but not enough room for motor homes and they would have to park at either Tim Hortons or the retail centre.

Mr. George Hepworth, Basinview Drive said that with regard to traffic flow, it is only as viable as its lowest point. He asked for consideration of a right turn only lane. Behind Tim Hortons has never been developed properly and the proposal can only enhance the area. The parking lot presently was cramped. People used the Tim Hortons parking lot and the retail centre parking lot as a short cut to run the lights.

A gentleman from Bedford and the owner of a business in the Village Centre stated that lack of parking in the Village Centre might be alleviated somewhat if people used the drive thru.

Mr. Craig MacDonald, 17 Doyle Street, Bedford stated that a drive thru would be better as traffic would not back up around the entrance with everybody trying to get a parking spot. He supported the Development Agreement rather than the possibility of a rezoning.

There being no further speakers in favour of the application, the Chair called for speakers opposed.

Mr. Tony Edwards, Bedford advised he was a member of the Moirs Mill Steering Committee set up from 1988-1990. The proper name for the HRM building was the Bedford Visitors Information Centre. He referred to references in the Staff Report to consultation with Heritage Advisory Committee and pointed out that the heritage property was registered at both the municipal and provincial level and it was only proper to consult at the provincial level. He thought the original agreement indicated that nothing would take place in the back field for perpetuity. He had a major concern with traffic and felt that the traffic situation should be rectified before the application is approved. He felt there would be an increase in traffic with the drive thru. The Moirs Mill Steering Committee consulted with a traffic consultant at the time who expressed concern with the number of exits and entrances onto the Bedford Highway in that particular area. He recommended signage similar to a Tim Hortons in Wolfville.

There were no further speakers.

MOVED by Councillors Merrigan and Kelly to close the Public Hearing. MOTION PUT AND PASSED.

Councillor Kelly said that with respect to traffic, Traffic Authority was on site with him and he intended to go back to them again to see if they would reconsider the right hand turn lane. Unfortunately, law gives them the right and authority to direct traffic flow but, after points raised here, Traffic Authority might concur with revisiting. With respect to environmental aspects, the approach will further control the flow into the brook and minimize impact on water bodies. With respect to the Visitors Information Centre, there were retaining walls on site which are stone laid and he hoped there would be consideration to match them and blend in the two properties.

MOVED by Councillors Kelly and Merrigan to:

- **Discharge the existing Development Agreement (89-02);**
- **Approve the Development Agreement attached to the Staff Report dated May 30, 2000 to permit the addition of a drive-thru function in association with the Tim Hortons Restaurant at 930 Bedford Highway;**
- **Require the amended agreement be signed within 120 days, or any extension thereof granted by Council on the request of the applicant, from the date of final approval by North West Community Council and any other bodies as necessary, whichever approval is later, including applicable appeal periods; otherwise, this approval will be void and obligations arising hereunder shall be at an end.**

MOTION PUT AND PASSED.

MOVED by Councillors Kelly and Merrigan that since there were still traffic concerns expressed even after the report was received from Public Works and Transportation, traffic concerns be referred back to the Traffic Authority for a review and reconsideration of the right turn lane. MOTION PUT AND PASSED.

9. **CORRESPONDENCE, PETITIONS AND DELEGATIONS** - None

10. **REPORTS**

10.1 **Case 00254 - Proposed Self-Support Communication Tower and Equipment Shelter at 429 Kearney Lake Road, Bedford**

A Staff Report dated June 26, 2000 was before Community Council. Andrew Whittemore, Planner provided an overview of the application. Mr. Gerard Daley on behalf of Real Wave was in attendance.

Councillor Kelly reminded Community Council that when the CanTel property was before Community Council, which is on the same property, CanTel agreed to work with any other proponent should one come forward. This has been a contentious issue throughout HRM with the infestation of towers. He felt that Community Council should approve upon the condition that the proposed communications tower co-locate with the existing CanTel tower presently on site. He acknowledged there was a desire to cooperate on the part of the communications companies.

Mr. Gerard Daley advised that his company was discussing this issue with CanTel and the biggest issue was height. It was economically advantageous to do so. With regard to the osprey, Department of Natural Resources advised him that the osprey might not leave the nest until September.

Councillor Harvey pointed out that Industry Canada seeks comments and recommendations but provincial and municipal governments have no constitutional jurisdiction to interfere with or impair radio communication facilities licenced under federal law.

MOVED by Councillors Kelly and Merrigan that Industry Canada be advised that Community Council is neither in favour nor against the application but concern is to be expressed that Community Council would prefer that the proposed communication tower co-locate with the existing Rogers Cantel communication tower presently on site rather than multiple towers and construction of the communication tower not occur during the nesting season of the osprey. MOTION PUT AND PASSED.

11. **MOTIONS** - None

12. **ADDED ITEMS**

12.1 **Case 00004 - Extension of Development Agreement - Corner of Beaverbank Road and Stokil Drive, Sackville**

A Staff Report dated July 5, 2000 was before Community Council recommending a three-year extension to the existing Development Agreement on behalf of Ramar Construction.

Andrew Whittemore, Planner provided background information on the request for extension.

MOVED by Councillors Kelly and Merrigan to approve the request by Ramar Construction to extend the Development Agreement for three (3) years. MOTION PUT AND PASSED.

13. **NOTICES OF MOTION** - None

14. **PUBLIC PARTICIPATION** - None

15. **NEXT MEETING DATE**

Thursday, August 24, 2000 - Upper Sackville Recreation Facility

Also, further meeting dates to be: Thursday, September 28, 2000 and
If required: Thursday, October 26, 2000.

16. **ADJOURNMENT**

On a motion from Councillor Merrigan, the meeting adjourned at 8:55 p.m.

Sandra M. Shute
Assistant Municipal Clerk

