



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 9.1
Halifax Regional Council
August 17, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

Original Signed by

A handwritten signature in black ink, appearing to be "Wayne Anstey", written over a horizontal line.

SUBMITTED BY:

Wayne Anstey, Acting Chief Administrative Officer

Original Signed by

A handwritten signature in black ink, appearing to be "Mike Labrecque", written over a horizontal line.

Mike Labrecque, Deputy Chief Administrative Officer

DATE: August 11, 2010

SUBJECT: **Noise By-Law Exemption - Dexter Construction CN Crossing, Kings Wharf**

ORIGIN

An application (attached as Appendix A) submitted on August 10, 2010 by Robert Cox, Dexter Construction for exemption from provisions of By-Law N-200, Respecting Noise.

RECOMMENDATION

It is recommended that Regional Council approve the Dexter Construction CN Crossing- Kings Wharf application for noise exemption, pursuant to the contents of this report and any matters raised at the hearing.

BACKGROUND

In September, 1999 HRM Council adopted By-Law N-200, Respecting Noise. This by-law prohibits any person from engaging in any activity that unreasonably disturbs or tends to disturb the peace and tranquillity of a neighbourhood.

Section 4 describes specific events, locations and time frames where certain activities have been deemed exempt from the provisions of the Noise By-Law.

Section 6 of the By-Law allows for any person to make an application to Regional Council requesting an exemption from any or all provisions of the Noise By-Law for which that person may be prosecuted. The By-Law states that an applicant or any person opposed to an application may be heard at a session of Council. Notice of the Council Session is required to be mailed to assessed property owners located within 100 feet of the property(ies) which is subject to the hearing.

In deciding whether or not to grant an exemption, Council is to give consideration to :

- the social or commercial benefit of the proposed activity to the municipality;
- the viewpoints of community residents;
- the proposed hours of operation of the proposed noise-emitting activity; and
- the proposed duration of the subject activity,

An excerpt from the Noise By-Law detailing the exemption process is attached as Appendix B.

DISCUSSION

As part of the Kings Wharf project, there is a requirement to cross CN's tracks with underground services. The work would be on CN property, at the corner of Alderney Dr. and King Street and is currently scheduled for the last week of August. The work will be carried out during the night once the last train of the day has gone through and must be completed before the first scheduled train of the next day. The work entails removing a section of track and installing pipe sleeves and precast ducts for site services. Equipment involved will consist of excavators, loader, boom truck, compactors and a CN rail crew.

In a conversation with Robert Cox, Dexter Construction on August 10, 2010 further clarification was provided that the time frame sought for the noise exemption will be between the hours of 9:30 pm through the night to 7:00 am. The specific evening has not been identified but will be one of the evenings between the dates of Monday, August 30 - Friday September 3, 2010.

The applicant is requesting an exemption to the By-Law as the work for this project would be through the evening when the trains are not operating. The noise by-law provides for construction work to take place between the hours of 7:00 am - 9:30 pm. Therefore the work being performed on this project would be taking place outside these specified hours. In addition, the work is in conflict with the following provision of By-Law N-200, Respecting Noise:

Section 3, Part 1 states:

“No person shall engage in any activity that unreasonably disturbs or tends to disturb the peace and tranquillity of a neighbourhood”

Halifax Regional Police does not have any concerns regarding this application.

Notices of the time, date and purpose of the Council Session at which the hearing is proposed to take place to property owners within 100 feet of each designated site identified above is complete.

Under subsections 6(3) and (5) of the Noise By-Law, Council may consider any matters it deems appropriate at the hearing and either reject an application or approve it with or without conditions.

BUDGET IMPLICATIONS

There are no budget implications.

ALTERNATIVES

There are a number of alternatives available to Council in considering this application:

1. Approve the application without conditions;
2. Approve the application with conditions;
3. Reject the application in it's entirety.

**Noise By-Law Exemption
Dexter Construction CN Crossing, Kings Wharf
Council Report**

-4-

August 17, 2010

ATTACHMENTS

- Appendix A:** E-mail of August 10, 2010 making application for Exemption from By-Law N-200, Respecting Noise by a representative from Dexter Construction.
- Appendix B:** Excerpt from By-Law N-200 Respecting Noise re: Granting Exemptions by Council.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4205.

Report Prepared for: Superintendent William Moore, Halifax Regional Police

Report Reviewed by: _____
Deputy Chief A. Burbridge, Halifax Regional Police

Report Approved by: _____
Chief Frank A Beazley, Halifax Regional Police

APPENDIX A:

From: "Robert W. Cox" rwcox@dexter.ca
To: melleetc@halifax.ca
Date: 8/10/2010 9:29 AM
Subject: CN crossing - Kings Wharf
CC: murphyr@halifax.ca

Hello Ms. Mellet,

As part of the Kings Wharf project, there is a requirement to cross CN's tracks with underground services. This work would be on CN property, at the corner of Alderney Dr. And King Street, and is currently scheduled for the last week of August. The work will be carried out during the night once the last train of the day has gone through and must be completed before the first scheduled train of the next day. The work entails removing a section of track and installing pipe sleeves and precast ducts for site services. Equipment involved will consist of excavators, loader, boom truck, compactors and a CN rail crew. We are requesting a variance from the noise Bylaw to allow us to carry this work out through the night. If you have any questions or require any further information, please do not hesitate to contact me.

Regards,

Robert Cox
Dexter Construction
Cell # 222-0847

APPENDIX B:

Excerpt from By-Law N-200 Respecting Noise re: Granting Exemptions by Council.

Grant Of Exemptions By Council

6. (1) Notwithstanding anything contained in this By-Law, any person may make application to Council to be granted an exemption from any of the provisions of this By-Law with respect to any emission of noise for which that person might be prosecuted; and Council, by resolution, may refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect; and any exemption granted shall specify the time period, not in excess of six months, during which the exemption shall be effective and the exemption shall be in written form and shall include such terms and conditions as Council deems appropriate.

(2) In deciding whether or not to grant an exemption, Council shall give consideration to the social or commercial benefit of the proposed activity to the municipality, the views of any residents of the municipality which may be expressed to Council, the proposed hours of operation of the proposed noise-emitting activity and the proposed duration of the subject activity.

(3) In deciding whether or not to grant an exemption, Council shall give the applicant, and any person opposed to the application, an opportunity to be heard during a Council Session and may consider such other matters as it deems appropriate.

(4) Notice of the time, date and purpose of the Council Session at which the hearing is proposed to take place shall be mailed to the assessed owner or owners as shown in the records of the Regional Assessment Office, of property located within 100 feet of the property which will be the subject of the hearing;

(5) Any alleged breach by the applicant of any of the terms or conditions of any exemption granted by Council, shall be investigated by municipal staff, reported to Council in writing and Council shall determine whether or not a breach has taken place. If a breach has taken place, Council may pass a resolution revoking the exemption, without the necessity of giving notice of rescinding motion, and such exemption shall be null and void as of the passing of such resolution.