

Item No. 7
Halifax Regional Council
October 12, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by Director

M.E. Donovan, Q.C., Director, Legal Services and Risk Management

DATE: September 21, 2010

SUBJECT: Development Agreement to Construct Five-Storey Addition at City
Centre Atlantic

INFORMATION REPORT

ORIGIN

Appeal by Halifax County Condominium Corporation No. 192 (HCCC 192) and Jean Morris from the March 30, 2010 decision of Regional Council to approve a development agreement with Dixel Developments Limited (Dixel) to construct a five-storey addition to City Centre Atlantic located at 1515 Dresden Row, Halifax, Nova Scotia.

BACKGROUND

On March 30, 2010 Regional Council approved the entering into of a development agreement with Dixel for a five-storey addition to City Centre Atlantic. On April 17, 2010 HCCC 192 and Jean Morris each filed notices of appeal of Council's decision with the Nova Scotia Utility and Review Board (the Board). HCCC 192 represents the condominium owners of Heritage Way, an existing residential component of City Centre Atlantic, within which Jean Morris owns a condominium unit.

Dixel raised a preliminary issue of whether or not the Board had jurisdiction to hear the appeal. This was on the basis that HCCC 192 and Jean Morris lacked standing by virtue of an express agreement and covenant not to interfere with, disturb, or restrict the alteration of the commercial structure or to object to construction of the tower. This condition was part of the agreement to purchase the condominium units when they were first built.

On September 16, 2010 the Board rendered a decision on the preliminary issue. It found that the Appellants are not aggrieved persons on the basis that they lack standing by virtue of their express agreement and covenant not to interfere with, disturb or restrict the alteration of the commercial structure or to object to such construction. Therefore, the Board determined that it has no jurisdiction to entertain the appeal.

DISCUSSION

Unless the Board's decision is appealed to the Nova Scotia Court of Appeal, Regional Council's approval stands and Dexel is able to proceed to enter into the development agreement and construct the addition. The Appellants have 30 days from the date of the Order of the Board to file an appeal.

BUDGET IMPLICATIONS

N/A

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

N/A

ATTACHMENTS

None

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 490-4208.

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