

**Item No. 4**  
**Halifax Regional Council**  
**June 10, 2014**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

**SUBMITTED BY:** \_\_\_\_\_  
John Traves, Q.C. Director, Legal, Insurance and Risk Management  
Services

**DATE:** May 6, 2014

**SUBJECT:** Northern Construction Enterprises Inc.

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### **INFORMATION REPORT**

#### **ORIGIN**

Northern Construction Enterprises Inc. (Northern) was refused a Development Permit for its proposed quarry operations on lands near the Halifax Stanfield International Airport. The Permit was denied on the basis that rock crushing and associated equipment (extractive facilities) were prohibited at the proposed site by the Land Use By-Law for Planning Districts 14 and 17.

#### **LEGISLATIVE AUTHORITY**

Section 2.29 of the Land Use By-Law for Planning Districts 14 and 17  
Halifax Regional Municipality Planning Strategy for Planning Districts 14 and 17  
*Halifax Regional Municipality Charter*, S.N.S. 208, c.39

#### **BACKGROUND**

The refusal of the development officer was upheld on appeal to the Nova Scotia Utility and Review Board. An appeal of that decision is pending in the Nova Scotia Court of Appeal. In the meantime, Northern brought an Application to the Supreme Court of Nova Scotia seeking a declaration that the section of the Land Use By-Law which prohibited extractive facilities in the zone was *ultra vires* or beyond the powers of the municipality.

## **DISCUSSION**

The Application was heard on July 11, 2013. Justice John D. Murphy rendered his decision on May 5, 2014. His Lordship held that HRM did in fact have the power to enact the By-Law. His Lordship noted that there were a number of provisions in the *HRM Charter* which addressed HRM's ability to regulate and/or prohibit extractive facilities including powers with respect to zoning and development, as well as authority concerning structures, buildings, outdoor storage of goods, machinery, vehicles and aggregates, removal of topsoil, development near airports, businesses, business activities, and industry, health, well-being and safety of persons and property, nuisances, and activities that may cause nuisances including noise, fumes and vibrations.

His Lordship further held that the *Environment Act* was not concerned with zoning, and did not diminish the primary municipal responsibility for land use planning as stated in the *HRM Charter*. Given that the By-Law did not attempt to regulate "extraction" there was no conflict between the By-Law and the *Environment Act* and the By-Law provisions could co-exist with Provincial legislation.

Should Northern decide to appeal the decision of Justice Murphy, it must do so on or before June 24, 2014.

## **FINANCIAL IMPLICATIONS**

There are no budget implications resulting from this report.

## **COMMUNITY ENGAGEMENT**

Dwight Ira Isenor and Stacey Lea Rudderham were Intervenors and made representations in support of HRM's position. Mr. Isenor and Ms. Rudderham were represented at the hearing by their solicitor, Paul B. Miller.

## **ATTACHMENTS**

None.

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: E. Roxanne MacLaurin, Senior Solicitor (490-4226)

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