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10.2.1

Halifax Regional Council
May 13, 2003

TO: His Worship Mayor Peter Kelly and
Members of Halifax Regional Council

FROM: *Sheila Fougere*
Sheila Fougere, Chair
Peninsula Community Council

DATE: May 5, 2003

SUBJECT: **Case 00572 - Amendment to Halifax MPS - Height Precincts, South
End**

ORIGIN

Peninsula Community Council April 14, 2003

RECOMMENDATION

It is recommended by Peninsula Community Council that Halifax Regional Council instruct staff to initiate a process to amend Section V of the Halifax Municipal Planning Strategy with respect to the establishment of height precincts; and further that the public participation be undertaken in accordance with the Public Participation Resolution adopted by Regional Council on February 25, 1997.

BACKGROUND

This matter was initiated by staff.

DISCUSSION

Note was made during discussion at Peninsula Community Council that height precincts in the South End are controversial and it has been twenty (20) years since they have been reviewed.

BUDGET IMPLICATIONS

N/A

FINANCIAL MANAGEMENT/BUSINESS PLAN

N/A

ALTERNATIVES

1. Instruct staff to initiate a process to amend Section V of the Halifax Municipal Planning Strategy with respect to the establishment of height precincts; and further that the public participation be undertaken in accordance with the Public Participation Resolution adopted by Regional Council on February 25, 1997.
2. Reject the recommendation of Peninsula Community Council and take no further action in this regard.

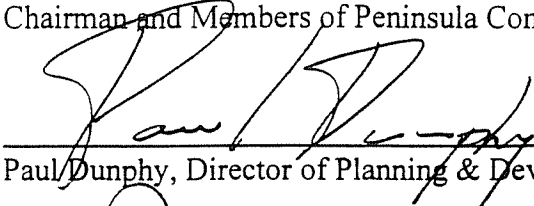
ATTACHMENTS

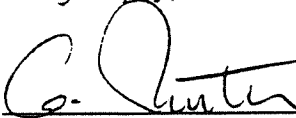
1. March 25, 2003 staff report re Amendment to Halifax MPS - Height Precincts, South End: Case 00572

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| Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208. Report prepared by: Sherryll Murphy, Legislative Assistant 490-6517. |
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Peninsula Community Council
April 14, 2003

To: Chairman and Members of Peninsula Community Council

Submitted by: 
Paul Dunphy, Director of Planning & Development Services


Gary Porter, Planner II

Date: March 25, 2003

Subject: Amendment to Halifax MPS - Height Precincts, South End: Case 00572

ORIGIN:

Staff

RECOMMENDATION:

It is recommended that Peninsula Community Council recommend to Halifax Regional Council that:

1. Staff be instructed to initiate a process to amend Section V of the Halifax Municipal Planning Strategy with respect to the establishment of height precincts; and
2. the public participation be undertaken in accordance with the Public Participation Resolution adopted by Regional Council on February 25, 1997.

BACKGROUND:

Rationale for change

A review of the Halifax Municipal Planning Strategy (MPS) with respect to the policies for establishing height precincts in the South End is appropriate. Policy 1.1.1.3 provides guidance for establishing height limits for buildings in the South End. While this policy sets specific heights for several areas, it also allows Council to consider applications to increase the allowable height of buildings in many other areas.

Four applications to increase the allowable building height on specific properties have been reviewed. Each has been controversial and residents in the community have clearly indicated their lack of support for the flexibility provided by the MPS policy on this issue. While the staff interpretation and advice with respect to this policy has not been popular it has been upheld by the Nova Scotia Court of Appeal on two occasions. Staff and Community Council are therefore obliged to administer this policy in a manner which is consistent with these rulings. As long as this policy remains in place the pattern of applications, controversy, staff advice, Community Council decisions and appeals can be expected to be repeated.

While the courts have ruled on the correct interpretation of this policy they do not have the jurisdiction to determine whether it is a good and appropriate policy. That is Regional Council's mandate. Council has the discretion to review this height policy and either confirm their support for it or change it to reflect current values. This should be done prior to another application being submitted to Community Council. If another application is submitted prior to this review being completed, the current policy will apply once again with similar outcomes. A review of this policy is recommended.

DISCUSSION:

Height Precincts Defined

Most zones have specific building height limits specified in them. Others do not. These include the R-3 (Multiple Dwelling), U-1 (Low Density University Zone), C-3 (Industrial) and certain U-2 zones (High Density University). In these cases, "height precincts" are specified on a map contained in the **Land Use Bylaw** (i.e. zoning map ZM-17). These height precincts are specific height limits which apply to individual sites, blocks or larger areas.

History

Height precincts within the South End were first established in 1983. Since 1983, there have been four applications to amend the Height Precinct Map in the South End. Table 1 on the next page summarises the staff recommendations, Council decisions and appeals with respect of each of these applications.

Table 1

| Location | Request | Staff Recommendation | Council Decision | Utility and Review Board | Nova Scotia Court of Appeal |
|----------------------------------|---------------------------------|----------------------|------------------|---------------------------------|----------------------------------|
| Wellington/ Tower/Inglis Sts. | 35 ft. to 55 ft. and 90 ft.. | Approval | Approved | n/a | n/a |
| 5230 Tobin St. | 45 ft. to 75 ft. | Approval | Refused | Overtured Council's decision | Upheld URB's decision |
| 5206 Tobin St. | 45 ft. to 82 ft. | Approval | Refused | n/a | n/a |
| 5620 South St. | 100 ft. to 190 ft. | Approval | Approved | Overtured Council's decision | Reinstated Council's decision |

Height Policies

Policy 1.1.1.2 of Section V of the Halifax Municipal Planning Strategy provides for height restrictions in the land use by law to ensure that new development is compatible with the existing development (see Attachment A). Policy 1.1.1.3 specifically deals with how height limitations are to be determined. For certain areas within the South End, there is very specific policy direction as to the height limits that must be implemented in the land use by law. These are:

- U-1 zones - 35 feet or four storeys
- North east corner of South Street and Robie Street - 80 feet or eight storeys
- Block bounded by University Avenue, South Park Street, South Street and former Tower Road - 55 feet or five storeys, or the height of the former Sir Frederick Fraser School, whichever is greater.
- Morris Street between Barrington and Queen Streets - 50 feet or five storeys
- Barrington Street between Morris Street and Spring Garden Road - 50 feet or five storeys
- The remainder of DalTech campus (where there isn't a 50-foot limit) - 70 feet or seven storeys.
- South east corner of Queen Street and Spring Garden Road - 70 feet or eight storeys
- C-3 zones within District VIII - 35 feet three storeys (this may be increased to 50 feet or six storeys by development agreement).

The foregoing height precincts are firmly fixed in the policies of the Municipal Planning Strategy. **Changes** to the Height Precinct map in these locations cannot be made without an amendment to the Municipal Planning Strategy.

For the remainder fo the South End three criteria contained in Policy 1.1.1.3 are used to determine the appropriate height limits or "height precincts" (See Attachment A). While existing height limits in the South End have been established based on these criteria, these height limits can be changed, provided the new height still satisfies these three policy criteria. All four applications to amend the height precinct map were within the areas where the heights are based on this policy.

Scope of Policy review

The purpose for reviewing the South End height policy of the Halifax Municipal Planning Strategy is to determine the following:

- if Policy 1.1.1.3 is still appropriate;
- whether more of the heights currently established for the South End should be entrenched in MPS policy;
- whether all of the heights currently established for the South End should be entrenched in MPS policy; and
- whether any of the heights now established for the South End should be changed.

If, following the Public Participation Process, there is community support for MPS amendments new policy will be developed for Peninsula Community Council's and Regional Council's consideration¹.

Implication of MPS change

Amendments to the Municipal Planning Strategy are generally not considered unless it can be shown that circumstances have changed since the MPS was adopted which makes the current designation or policy no longer appropriate. In this case, the portion of the MPS to be reviewed is more than 20 years old and there is reason to believe that community support for it is not as strong as it once was. This is a change in circumstance.

However, if amendments are made to the MPS to entrench specific height limits in policy, such limits could not be changed by community council as an amendment to the land use by law. A change in MPS policy would be necessary in order to change such limit. This requires the approval of Regional Council.

As stated above, it should be demonstrated that a change in circumstance has occurred in order to consider an MPS amendment. It extremely difficult to rationalize amendments to recently adopted policies. Therefore, if amendments are made to the MPS to entrench specific height limits in policy, such limits should remain unchanged for considerable time.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

¹ Community Council can recommend amendments to the Municipal Planning Strategy, however such amendments can only be approved by Regional Council

ALTERNATIVES

1. Community Council may feel that Policy 1.1.1.3 is still appropriate, in which case there is no need to pursue this further at this time.

ATTACHMENTS:

- A Excerpts from Section V of the Halifax Municipal Planning Strategy

Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by Gary Porter, Planning Services, 490-4403.

Attachment A

Excerpts from Halifax Municipal Planning Strategy

Section V - South End Area Plan

- 1.1.1.2 The Zoning Bylaw shall further define elements of scale, proportion, setback and use consistent with the policies of this Plan to ensure compatibility with the districts and neighbourhoods.
- 1.1.1.3 The Zoning Bylaw shall be amended to include height limitations for development in accordance with Policies 4.5.5, 7.2.2.1, 7.2.5.1, 7.5.2, 7.5.3, 7.5.4.1 and 7.8.2 and in accordance with the general intent for land-use control as defined by the policies of this Plan. Where there is not specific guidance by the policies of this Plan for specific height limitations, such limitations shall be included based on:
- (i) the forms of development and distribution of land uses identified on the Generalized Future Land Use Map (Map 2) of this Plan;
 - (ii) the necessity to ensure that appropriate development of any given lot may be secured within the policies of this Plan; and
 - (iii) to fulfill the policy intent that quality residential, commercial, institutional and industrial environments are maintained and encouraged without undue impact on adjacent land use.
- 4.5.5 Pursuant to Policies 4.5.1 and 4.5.2, the City shall amend its Zoning Bylaw to provide for two University Zones: a high-density zone which would allow all university uses, and a low-density zone with a height limitation of 35 feet or four storeys which would allow only university uses which would have minimal impacts on adjacent residential uses.
- 7.2.2.1 The City shall amend its Zoning Bylaw to require that the maximum height of any development on the parking lot shall be 80 feet or eight storeys, and a setback of 20 feet shall be required from any street line.
- 7.2.5.1 The City shall amend its Zoning Bylaw to require that the height of any new developments on this block shall be restricted to 55 feet or five storeys, or the existing height of the Sir Frederick Fraser School, whichever is greater.
- 7.5.2 In the area bounded by College Street, Summer Street, Spring Garden Road, and South Park Street, the City shall amend its Zoning Bylaw to establish height precincts to ensure the preservation of the character of the Public Gardens as an open space area.

- 7.5.3 The City shall amend its Zoning Bylaw to require that new university development on Morris Street between Barrington and Queen Streets or Barrington Street between Morris Street and Spring Garden Road shall not exceed five storeys or 50 feet in height. In the remainder of the Technical University of Nova Scotia campus area, the Zoning Bylaw shall permit developments of up to 70 feet in height or seven storeys.
- 7.5.4.1 The City shall, on said parking lot:
- (i) amend its Zoning Bylaw to permit a maximum building height of eight storeys or 70 feet;
 - (ii) encourage the retention of mature trees; and
 - (iii) amend its Zoning Bylaw to require that any new development be set back a minimum of 40 feet from the street line along Spring Garden Road.
- 7.8.2 Within District VIII, in areas zoned as non-harbour-related industrial, new industrial development shall not exceed 35 feet in height or three storeys, and the City shall amend its Zoning Bylaw to accomplish this intent.