

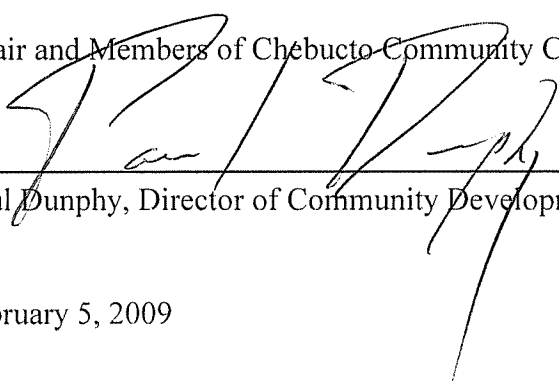


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Chebucto Community Council
March 2, 2009

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY:



Paul Dunphy, Director of Community Development

DATE: February 5, 2009

SUBJECT: Case 01234: LUB Amendment re: Child Daycares, Halifax Mainland

ORIGIN

Motions of Chebucto Community Council and Regional Council.

RECOMMENDATION

It is recommended that Chebucto Community Council:

1. Give First Reading to the proposed amendments to the Halifax Mainland Land Use By-law as shown in Attachment A of this report and schedule a public hearing;
2. Approve the proposed amendments to the Halifax Mainland Land Use By-law as shown in Attachment A of this report.

BACKGROUND

On January 8, 2008, Halifax Regional Council approved the following motion:

“MOVED by Councillor Hendsbee, seconded by Councillor Snow, that Halifax Regional Council:

- 1. Request staff to initiate a process to amend all HRM Land Use By-laws to establish a consistent definition that permits the provision of day care service for children 12 years of age and under;**
- 2. Direct staff to hold a Public Information Meeting regarding this issue in each of the three administrative regions of HRM; and**
- 3. Direct staff to, during the Public Information meetings for this matter, also consult and advise on appropriate requirements for home-based day care facility operators, as well as the scale and possible use of development agreements for these uses.**

This motion stemmed from earlier motions by both Chebucto Community Council and Marine Drive, Valley and Canal Community Council (MDVCC). MDVCC requested that staff provide consistent definitions of daycares in the Land Use By-laws in order to bring them in line with provincial regulations. Chebucto CC requested that staff review the Halifax Mainland Land Use By-law (LUB) with regard to the size of as-of-right daycares, the use of development agreements, separation distances between daycares and the issue of owner-occupancy.

As a result of the above motion, staff opened case # 01074 and held public meetings in each of the three administrative regions of HRM. The Western Region meeting, held on May 22, 2008, generated discussion on issues related to daycares in the Halifax Mainland area. As these issues were focussed on this area of Halifax and no comments were received for the other two regions, this case was opened to deal with the Mainland LUB amendments only. Case #01074 has proceeded separately to Regional Council with regard to harmonization of the daycare definitions in all HRM Land Use By-laws. A new definition of “Day Care Facility” is proposed and is expected to be considered by Regional Council at a public hearing scheduled for March 3, 2009.

DISCUSSION

Size of As-of-Right Daycares

The Mainland LUB permits daycares (“child care centres”) of up to 14 children as-of-right in residential dwellings (refer to Attachment B). Larger daycares in residential zones are only permitted through the development agreement process or in conjunction with a church or recreation centre. Larger centres are also permitted in various commercial, industrial and institutional zones. The LUB definition of “child care centre” includes only those centres which provide care for more than 6 children of any age or more than 8 children who are all school aged.

Concerns have been raised in various neighbourhoods on the Halifax Mainland that the as-of-right allowances for daycares are not restrictive enough and in many instances result in land use conflicts. Issues such as excessive noise and traffic have been raised with regard to some existing facilities, especially those which have a larger number of children than is currently permitted under the LUB and are therefore “grandfathered”. However, the ability to have a daycare with up to 14 children within residential neighbourhoods without any requirement for public input is felt by some to be excessive.

Council may consider amending the LUB in order to reduce the number of children allowed in daycares through the as-of-right permitting process. This would still allow Council to entertain proposals for larger centres in residential areas through the development agreement process on a case-by-case basis. Given the concerns over existing land use conflicts and the potential for future ones, staff feel it is appropriate for Council to consider a reduction in the current as-of-right size of daycares. Staff have consulted with the N.S. Department of Community Services on this matter. A reduction from 14 children to 8 children would strike an appropriate balance between the need to accommodate these facilities in residential neighbourhoods and achieving compatibility with neighbouring properties. Comments received at the public meeting indicated that eight children is a reasonable number of children for one adult to comfortably manage. This number also coincides with the provincial ratio (1:8) of adult care provider to number of pre-school children under the *Day Care Regulations*.

Separation Distance Between Daycares

The issue of separation distances between daycares, as well as other land uses, has been explored in previous staff reports. Staff have consulted with officials from Service Nova Scotia and Municipal Relations on this matter. It was indicated that policies which stipulate separation distances between similar uses can be considered to interfere with business enterprise and may not, if challenged, hold up in court. One principle of zoning is that properties which are zoned similarly are subject to the same regulations. However, with a separation distance in effect, two similarly zoned, abutting properties would not each be permitted the same rights as the other. For this reason, it would not be appropriate for Council to implement such a separation distance.

Owner Occupancy

The current provisions for daycares within residential zones in the Halifax Mainland LUB, which may permit up to 14 children, indicate that the daycare shall be contained within a dwelling which is the principal residence of the “operator” of the facility. As with “home occupations”, the term “operator” includes property owners, but does not require that the operator actually be the property owner. Concerns have been raised with this as well as the fact that there may be existing daycare operations in which the operator is not actually living in the dwelling.

It has been suggested that Council could require, in all cases, that the operator and property owner be one and the same. However, similarly to the issue of separation distances above, staff feel that it would be unfair for Council to stipulate that the operator must be the property owner, as this may be seen as a form of discrimination against renters who may wish to operate such a facility. Zoning

is meant to be property-based regulation as opposed to being based on forms of tenure. Staff feel that simply reducing the number of children, as outlined above, would alleviate these concerns regarding future facilities as it would be increasingly unlikely that a residential property would be purchased for the sole purpose of operating a small facility (i.e., with 8 children) in the absence of the owner/operator living on site.

Conclusion

Due to community concerns with regard to some existing daycare operations in the Mainland area, it is appropriate for Council to consider the proposed LUB amendment (refer to Attachment A) to place further restrictions on as-of-right daycares within residential zones. Staff advise that the proposed amendment is consistent with the intent of the MPS (refer to Attachment C).

Public Participation

As indicated above, public meetings were held in conjunction with those for Case # 01074 in the three administrative regions of HRM. The minutes of the Western Region meeting held on May 22, 2008 are included as Attachment D. If Council decides to hold a public hearing, ads will be circulated in the local newspaper. One written submission was received and is included as Attachment E.

BUDGET IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved operating budget for C310.

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.

ALTERNATIVES

1. Council may approve the proposed LUB amendments. This is the recommended course of action.
2. Alternatively, Council may choose to refuse the proposed amendment. This alternative is not recommended as staff is satisfied that the proposed amendment is consistent with the policies and intent of the MPS and was initiated by Council as a result of community concerns.

ATTACHMENTS

Attachment A	Proposed Amendments to the Halifax Mainland Land Use By-law
Attachment B	Excerpts from the Halifax Mainland Land Use By-Law
Attachment C	Excerpts from the Halifax Municipal Planning Strategy
Attachment D	Public Information Meeting Minutes - Western Region (Case #01074)
Attachment E	Written Submission

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

Report Prepared by: Paul Sampson, Planner I, 490-6259



Report Approved by:

Austin French, Manager, Planning Services, 490-6717

Attachment "A"

Amendments to the Land Use By-law for Halifax Mainland

BE IT ENACTED by the Regional Council of the Halifax Regional Municipality that the Land Use By-law for Halifax Mainland, which was approved by City Council on the 30th day of March, 1978 and the 11th day of May, 1978 and approved by the Minister of Municipal Affairs on the 11th day of August, 1978, as amended, is hereby further amended as follows:

- 1) Amend Clause 20(1)(i) by deleting the following words:

“a day care facility for not more than 14 children in conjunction with a dwelling”

and replacing them with the following words:

“a day care facility for not more than 8 children in conjunction with a dwelling”

I HEREBY CERTIFY that the amendment to the Land Use By-law for Halifax Mainland, as set out above, was passed by a majority vote of the Regional Council of the Halifax Regional Municipality at a meeting held on the ____ day of _____, 2009.

GIVEN under the hands of the Municipal Clerk and Under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2009.

Julia Horncastle
Acting Municipal Clerk

Attachment "B"
Excerpts from the Halifax Mainland Land Use By-Law

HALIFAX MAINLAND LAND USE BY-LAW

DEFINITIONS

"Child Care Centre " means a building or part of a building in which services pertinent to a child's development, apart from the child's parent or guardian, are provided either for 7 or more children, not of common parentage, or for 9 or more children, not of common parentage, who are all school aged. A child care centre does not include a place such as hospital or school and does not include organized religious or recreational activities.

R-1 ZONE - SINGLE FAMILY DWELLING ZONE

20(1) The following uses shall be permitted in any R-1 Zone:

- (i) a child care centre for not more than 14 children in conjunction with a dwelling

CHILD CARE CENTRES

23A Buildings erected, altered or used for a child care centre shall comply with the following requirements:

- (a) Except for outdoor play space, any child care centre shall be wholly contained within a dwelling which is the principle residence of the operator of the facility;
- (b) One off street parking space, other than that required for the dwelling, shall be provided. The required parking space shall be eight feet wide by sixteen feet long, and be exclusive of the front yard.
- (c) The child care centre shall be limited to a maximum of one full storey of the dwelling; this storey may be the basement.
- (d) Only one child care facility shall be permitted to be located on any lot.

23B Notwithstanding the provisions of Sections 20(1)(i) and 23A (a-c) a child care centre may be operated as an accessory use to a church, church hall, or public recreation centre. The parking provisions contained in Sections 11(1) and 11 (2) would apply.

Attachment "C"
Excerpts from the Halifax Municipal Planning Strategy

HALIFAX MUNICIPAL PLANNING STRATEGY

Section II - City-Wide Objectives and Policies

2.4.2 In residential neighbourhoods alternative specialized housing such as special care homes; commercial uses such as daycare centres and home occupations; municipal recreation facilities such as parks; and community facilities such as churches shall be permitted. Regulations may be established in the land use by-law to control the intensity of such uses to ensure compatibility to surrounding residential neighbourhoods.

Implementation Policies

3.20 In order to encourage the establishment of child care centres in a variety of locations to meet the varied needs of families, and to allow the consideration of the specific circumstances of an individual location, a child care centre which does not meet applicable land use bylaw regulations may be permitted by development agreement.

- 3.20.1 In considering approval of such development agreements, Council shall consider the following:
- a. for a child care centre located within a dwelling, alterations to the exterior of the building shall not be such that the building no longer appears to be residential in nature. This shall not prevent facilities for physically challenged children, or playground equipment to be erected on the property.
 - b. the hours of operation shall be such that adverse impacts of noise and traffic movements on adjacent residential uses are reduced.
 - c. parking shall be required on the site of the child care centre to accommodate the employees of the centre. Parking areas should, where necessary, be visually buffered from any adjacent residential uses by the use of fences, screening and/or landscaping as appropriate.
 - d. site design features, including landscaping, outdoor play space, parking areas and driveways shall be designed, sized and located to provide for the needs of the users of the facility, as well as to address potential impacts on adjacent residential uses.
 - e. vehicular access to and egress from the child care centre and pedestrian movement shall be accommodated in a manner which encourages safety.
 - f. signs for the child care centre shall be of a size, design and placement on the lot which reduces impacts on adjacent residential uses.
 - g. centres shall not be located so as to produce a concentration within a particular neighbourhood. In addition, only one centre with a licensed capacity of more than 14 children shall be permitted on any cul-de-sac.
 - h. all other relevant policies of the municipal planning strategy with particular reference to the Residential Environments section.

Attachment "D"
Public Information Meeting Minutes - Western Region (Case #01074)

Public Information Meeting, Case 01074 - May 22, 2008

In attendance: Councillor Walker
Councillor Hum
Paul Sampson, Planner
Joseph Driscoll, Planner
Gail Harnish, Planning Services
Holly Kent, Planning Technician

Mr. Paul Sampson called the public information meeting (PIM) to order at approximately 7:00 p.m. at St. James Anglican Church Hall, Halifax.

Mr. Sampson advised the purpose of the meeting is to discuss the issue of child care centers. The definitions for day care centres and child care centres are not consistent in HRM's land use by-laws (LUBs). Part of the reason we are here is to develop a consistent definition. The other thing we want to discuss is the state of child care centres in residential neighbourhoods and whether or not HRM should continue to allow them through the as-of-right permitting process or require a development agreement if they want to locate in a residential neighbourhood.

Mr. Sampson noted we need to amend all eighteen of HRMs LUBs. As a result of that, we are going to have Regional Council approve these amendments. We want to review how day cares are permitted in terms of:

- zoning provisions
- possible use of development agreements

Mr. Sampson indicated if there are any changes in terms of how they are approved, it may just be in certain areas. Day cares are defined differently in HRMs LUBs so we want to make them consistent. Most of the LUBs include children of ten years of age or younger. Provincial regulations regulate children up to twelve years of age.

An individual questioned whether it was the intention to amend Provincial legislation.

Mr. Sampson clarified it was the intention to make our regulations consistent with Provincial regulations and also to make our by-laws similar.

In terms of how day cares are permitted:

- they are permitted in most residential areas
- they are permitted as-of-right in Halifax for up to fourteen children; anything beyond that requires a development agreement
- are of limited scale
- are a home occupation

- generally, large day cares are located in commercial areas and industrial zones. Some larger day cares are located in some institutional zones, such as in churches.

Mr. Sampson indicated we are looking to get feedback on what the issues are and whether the zoning provisions are working.

An individual stated they have a day care on Sunnybrae Avenue where an individual is using a loophole and has three day cares and lives in none of the three buildings.

Mr. Sampson advised we are anticipating Council will make some changes to the definitions. He encouraged members of the public to make submissions by way of email, phone calls, or written submissions.

Councillor Hum requested that staff email their presentation to Council members and then through their community contact list they can forward it to them and ask for responses back through residents associations and community organizations. Because the scope of the amendments is HRM-wide, we do not always get the numbers of people who might potentially be interested.

Mr. Driscoll indicated this originally initiated from the definition issue. There is an inconsistency which does not make sense from a land use perspective. Regional Council instructed staff to seek public input. In addition to that and as a result of specific concerns in certain neighbourhoods, it was identified there may be concerns with where and how day cares are permitted already. Council asked us to consult on that issue as well.

Mr. Sampson advised we held two meetings so far. Following tonight's meeting, staff will start working on potential amendments and the staff report which would be tabled with Regional Council who would hold the public hearing. There are two separate issues; the appropriateness and effectiveness of the current regulations, and making the definition consistent in all our LUBs.

An individual noted the Province is doing consultation on child care as well and questioned whether HRM staff met with them.

Mr. Driscoll responded yes, and noted a representative from the Province was in attendance.

Mr. John Morrison noted on Sunnybrae Avenue, an individual bought three houses and opened a day care in each of them. He questioned what is an owner operator. The individual has about sixty to seventy kids spread between three houses and sometimes all in one house or another and is basically running a corporate day care in three homes. He was retired and could hear it all day long. Kids are everywhere and there is lots of traffic. The language of the by-law has to be changed.

An individual stated it is affecting their quality of life. They cannot even go out in their yard in the afternoon because of the noise.

An individual questioned how they got approval to potentially have sixty-two kids in three backyards.

An individual stated the definition and the process is so poorly written in the by-laws that this has been allowed to happen which has a very negative impact on their quality of life. Who are we seeking to serve, especially on residential streets?

Mr. Sampson noted the issues raised are owner versus operator and the side by side situation. We have consulted with Legal. You cannot state there has to be a separation distance between day cares. What that does is not treat everybody in an R-1 and R-2 zone the same, but there are other ways. It may be a matter of reducing the number of kids allowed through the as-of-right process.

Councillor Walker referred to the Provincial legislation which refers to the family home day care program. In the definition of an approved family home day care, it means day cares are allowed in a family home. There would be no problem with permitting fourteen children if they used the definition of an approved family home day care. Then it would be the provider's family home.

Mr. Morrison stated that would stop somebody from buying up all the homes in the neighbourhood to use for operating day cares.

Mr. Sampson advised the wording in the Halifax LUB does mention the operator and it does not require that the operator be the landlord.

Mr. Driscoll indicated he did not think we can require that someone operating the business own the land. It is as long as they live there. It could be possible that the operator resides there but not that the operator owns the property.

Mr. Morrison stated someone should not be allowed to run a corporate business at the expense of the residents in the neighbourhood.

Mr. Driscoll noted we cannot regulate that they own the place but the operator has to live there. The owner should not be able to put relatives in the three homes to live there.

An individual questioned whether the individual in question is being taxed as a business. The individual bought the three houses for the purpose of running a business. This woman is using a loophole to make good money and is paying residential taxes.

Mr. Sampson advised that as part of the permitting process, we do get confirmation in writing that the operator lives there.

An individual questioned whether the license is revoked if the employee moves out.

Mr. Sampson advised there may be nothing HRM can do about that instance but we can make it a lot more difficult to happen in the future. If they have permits and are operating within the scope of them, there is probably nothing we can do about them.

An individual stated they see instances when 90% of the kids from the three houses are in one backyard.

Mr. Morrison questioned why the permits could not be revoked if she is breaking her agreement.

Mr. Sampson advised we have a land use compliance section that can look into that. It is complaint driven.

Mr. Morrison said he counted thirty-one kids next door and he has taken pictures and showed them to Councillor Walker. She is not supposed to have any more than fourteen children at that location.

Ms. Angela Power commented she understood it was not fair to restrict people from having day cares side by side. She looked after eight children and lived there, and somebody living next door to her should not be denied the same right. They follow all the rules. They are allowed eight school aged children. She has seen other women trying to do the same thing and have eight kids and make a modest living and pay taxes to Revenue Canada and follow the Federal, Provincial, and Municipal regulations. She was aware of one good provider who could not get enough kids to pay her bills and now lives in public housing. The individual in question is trying to get a monopoly. Once she has all the houses on Sunnybrae Avenue leased out she has put every other member of the neighbourhood out of business. The individual in question lives in Clayton Park West. At least now people have a choice. They can go to another woman in the neighbourhood. Enrollment is declining and there are less and less kids. They only want an opportunity to play the game fairly and live a modest living. She ran her home by looking after children. If she is driven out, she will be living in public housing as well.

An individual stated they wanted the number of children for the person in question to be reduced.

Mr. Sampson advised there was a time when you could have up to thirty-five kids in the R-2 zone through the as-of-right process. Since then, the rules have changed. It was his understanding one of the three houses in question was issued a permit for thirty-five children before the regulations were changed and has a legal status. Permits were issued for the other two properties for up to fourteen children. Complaints can be made to our land use compliance section who will investigate.

An individual questioned the penalty.

Mr. Sampson advised we could take them to court for non-compliance.

Mr. Morrison stated he has taken pictures and sent evidence and nothing has been done about it. There should be a penalty if you break the law. He expressed concern that the individual in question can break the law on a consistent basis and there is no penalty.

Mr. Sampson noted we can follow it up to see what is being done about that particular instance. The purpose of tonight's meeting is to discuss amendments to prevent this from happening in the future.

Councillor Hum advised they got feedback last week from the lunch care service provider at the Grosvenor Wentworth School who advised that it is up to each School Board on how they want to operate their lunch program. Apparently Halifax Regional School Board has advised the schools that private lunch operators operating out of schools are no longer permitted as of September, and they will be going with Excel programs only. This has a number of impacts. The ratio is much higher with Excel. The Grosvenor Wentworth school is considered a walking school but approximately 90% of the school body stays for lunch and has for years had an excellent lunch program. She thought this will have a tremendous impact on the school neighbourhood. It could be an opportunity or a challenge for families whose children attend those schools and will be without lunch time and after school care.

Councillor Hum noted this can lead to a lot more of these day care centres opening up in residential neighbourhoods. You may see a lot more of the school operators operating without having Community Servicing licensing and not have to go through HRM approval.

Councillor Hum indicated she saw this as a real challenge for many families. There could be a lot of illegal lunch, after school, and before school child care facilities opening up. This is coming out in May and the parents have not been officially informed. It will create tremendous challenges for working parents. She also thought we should have a dialogue with officials from the School Board on how that will impact our residential neighbourhoods.

Councillor Hum noted she has had a similar situation on a residential street where somebody bought a house next door and went to their neighbour and asked if they would mind. They understood it would be less than six children and it ended up as a day care for under fourteen children. The neighbours were upset about the noise and the traffic and their quality of life being affected. Staff at the West End Mall office know about the day care in question and the complaints that were generated from the abutting neighbours.

Councillor Hum indicated she was aware of another instance on the Kearney Lake Road where the owner had her manager buy the house across the street and opened up another facility. No complaints were received from the abutting neighbours in that instance. One house is for children under the age of five and the other house is used for lunch and after school aged children.

Councillor Hum said she thought there is strong support for having child care in neighbourhoods for lunch and after school programs but when you run a commercial business, that is when it raises a lot of concerns from the residential neighbourhoods. People do not want the as-of-right. They want every situation with fourteen children or more with a development agreement. One of

the facilities referenced only has one parking space and the rest of the employees park on the street. She indicated she would encourage the parents and the day care owners and operators to submit comments. This could potentially be a controversial issue in the neighbourhoods.

Mr. Sampson commented so far we have only heard of issues in Mainland Halifax. There does not seem to be the same type of issues in the rural parts of the Municipality where the lots size and the street frontage is larger. On the Peninsula, you might not have the traffic concerns because you already have the traffic.

Councillor Hum noted newer developments have small lot sizes. Having day cares on 40' wide lots can be an issue. There is not even room for onstreet parking in these newer developments.

Mr. Sampson indicated we could deal with the definition issue on a regionwide basis and then perhaps make amendments to the Halifax Municipal Planning Strategy and require development agreements at a certain threshold.

Councillor Hum commented it comes down to the integrity of the day care operator. Some of them want to make a living but they do not really care about the impact on their neighbours. If they talked to their neighbours and were honest and upfront with them, it might alleviate some of the concerns.

Councillor Hum noted in a school community, there appears to be more situations where it is not suitable. There is a need for child care but there has to be some controls.

An individual said she talked to Community Services and the intent is community based day care. This goes back to the traffic issue. The suburban people are bringing the kids to where they live. These are not community day cares. They are being set up as commercial businesses. The intent of community based day cares is to serve the community. The average yard would have three to four kids and she did not believe there should be more than that next door to her.

Mr. Morrison stated he did not have a problem with fourteen kids but they have to contend with sixty kids.

An individual indicated a residential neighbourhood should not be subjected to a large number of kids. They could limit the as-of-right and limit the number of kids in a development agreement as well. To prevent this in the future, you could have that as-of-right number and have a development agreement at a certain point. Anything above that number should be restricted to commercial and industrial zones so they are out of the residential neighbourhoods.

An individual stated in other provinces you cannot have many kids in a residential neighbourhood and you have to be in a commercial area.

An individual stated the onus comes back to the City and questioned what they would be doing to protect the residents from these situations. They need to consider the size of the yard and a reasonable number of kids in the backyard.

An individual suggested staff look at the language and definition from Ontario. It speaks to many of the things we are talking about tonight such as traffic and inadequate buffers.

Mr. Sampson indicated he was aware that Mississauga has severely limited day cares in residential neighbourhoods. The other thing we are looking into with Legal is the ownership issue.

An individual stated complaints need to be followed up on.

Councillor Walker noted they are in compliance when staff get there.

Mr. Sampson advised staff will draft some amendments. Complaints regarding existing day cares have to go through our Land Use Compliance section. The staff from that section are former police officers so they know how to investigate. The by-law changes will not affect existing day cares.

An individual suggested they make changes to the by-law in terms of remedies so they would not have to complain.

Mr. Sampson advised remedies cannot be put in our LUBs.

Ms. Power indicated Councillor Hum seems concerned about the programs in the schools being closed out. They have the four programs in their school and they are making money off the kids in their neighbourhood. There are other women who would like to take in kids but there is no opportunity. When they find out these programs are closed in the school, they will see that as an opportunity and will want to look after their children and other children.

Mr. Sampson questioned whether eight children seemed to be the magic number.

An individual said eight children is the number they are allowed, and eight children is a challenge.

Mr. Sampson commented it may be that a lower number is a deterrent for buying properties and turning them into day cares.

An individual stated she was comfortable with eight children and could make a living looking after eight children. She could handle ten kids but would not want fourteen.

An individual stated that ten children would be good.

An individual said the lot size is important when considering the number of children. If the properties are small, it would not be fair to the neighbours if there are ten children. In terms of meeting with the School Board, the enrollment numbers are declining and some of the schools are partially empty. Deals should be struck with the schools. If you put more than fourteen children within a day care facility and associated with a school, then you have access to a gym

and a lot of facilities that should be there for children. With schools being downsized, this could be a good opportunity to clean up some of the day care problems.

An individual commented the continuity makes it confusing. Community Services is putting out a set of rules and then HRMs are slightly different.

Mr. Driscoll clarified our regulation of day cares is more in terms of land use impact. The operational side is what the Province handles. With the definition we are trying to ensure that kids are going to a legally existing day care.

Mr. Driscoll noted the other issue is to look at where and how they are permitted. Each community is different. There are eighteen different plan areas with different regulations. What is appropriate in one may not be in another. We could look at tightening up the existing regulations.

The meeting adjourned at approximately 8:15 p.m.

May 22, 2008

**SUBMISSION TO HRM PLANNING DEPARTMENT & COUNCIL WITH RESPECT TO
CHILD CARE CENTRES IN RESIDENTIAL AREAS**

Having discovered that HRM Council, through Planning Staff, are reviewing the current Land Use By-Law with respect to child care centres in residential areas, I appreciate the opportunity to address this issue with respect to neighbourhood impacts. The opinions and statements to follow are based entirely on my interpretation of the Halifax Mainland Land Use By-Law and personal experience with living next to a child care centre in an R1 zone.

My understanding of the Halifax Mainland Land Use By-Law for residential zones with respect to home occupations can be summarized as follows:

Home based occupations located in residential zones are appropriately restricted in their operations to protect the residential nature of neighbourhoods. The following clauses are taken from the 'General Provisions' of the Land Use By-Law:

(6) The home occupation shall be conducted in such a way that it shall not be apparent from the outside of the dwelling that it is used for anything other than a residence and the home occupation shall be conducted entirely within the dwelling unit;

(10) The home occupation shall not create any noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, traffic, or any such similar nuisance not normally associated with a dwelling;

Child care centres seem to be outside of the definition of home occupations, and excluded from the standard restrictions on business activities within R1 zones which may negatively impact the neighbourhood residents. Specific examples include:

- * no restrictions on extra-curricular events and activities which are over and above the core day-to-day operations and which can generate extraordinary amounts of traffic and people movements;
- * no restrictions on outdoor activities and predictive resulting noise;
- * no requirement to consult with or advise immediate neighbours, and subsequently, no requirement to accommodate the needs and concerns of same neighbours.

By comparison, when a child care business reaches a point of having 15 children, the development agreement process is assumed to be enforced. Although I have never been involved with the development agreement process, it appears to address neighbourhood impacts. In practical terms, there is little difference between a facility of 14 children and one with 15 children. There is, however, a major difference in treatment of child care centres within the HRM Land Use By-Law.

The current Land Use By-law, as relating to as-of-right child care centres in residential neighbourhoods, is an invitation to conflicts between neighbours, particularly in low density, quiet neighbourhoods. Neighbours can find their lives seriously disrupted, particularly during the warm weather months. Due to the year-round nature of child care centres, there is no summer break from all the activity. To the contrary, it is during the warm weather months that the neighbourhood impacts can be at their peak.

Our family lives in the Wedgewood subdivision of Halifax Mainland. Wedgewood offers a private and peaceful living environment. Wedgewood is known for its special 'country in the city' atmosphere, and is the reason we, among many others, chose to live here. We are about to enter our third summer knowing there will be a significant disruption to the normal peace and quiet that exists at home - especially outside, due to operation of a year-round child care centre immediately next to us. As much as I would prefer speaking to all the positive attributes of our neighbour's child care centre, the issue of location is paramount. Specifically:

- noise from outdoor backyard playground that is the children's outdoor play space
- traffic and people generated not primarily because of day-to-day drop-off and pick up of children, but more noticeably from extra-curricular events that bring large numbers of client families and vehicles to the neighbourhood at the same time

The individual disruptions lead to concerns with both the marketability and market value of our own property.

Due to as-of-right provisions in the Land Use By-Law, we have found no meaningful avenue to protect the character of the environment we moved into. I don't know why child care centres at 14 children and under are provided the operational freedoms they are under the Land Use By-Law. I expect the underlying reasoning is related to the need for additional day care spaces. If so, I would ask those reviewing this matter give consideration to the following:

- Not all residential areas are suitable locations for child care centres. In fact, some neighbourhoods are quite inappropriate. Unless location issues around child care centres are addressed, neighbour conflicts can be expected.
- Legitimate and important neighbour questions and concerns arise when a child care centre begins and grows operations, yet no one is required to address them under the current as-of-right provision in the Land Use By-Law. A case in point -- the Department of Community Services offers eligible child care centres an Outdoor Play Space Grant for the purposes of creating and enhancing outdoor play space facilities. The maximum grant amount is \$20,000. A \$20,000 upgrade to a backyard playground is significant and far beyond any definition of normal for a quiet residential area. Yet I see no indication that Department of Community Services has an interest in neighbourhood impacts of child care centres. The predicted outcome will be complaints to HRM after a \$20,000 playground upgrade has occurred.

- I assume a good percentage of child care centres are business operations, and presumably have a need to generate profits. There is an inherent injustice where those operations responsible for negative neighbourhood impacts are the ones profiting from same, while those impacted may be left in a position of not only having their home environments disrupted, but are also potentially affected in a negative way with respect to home and property values.
- Many homeowners are away from home during business hours, which is when the impacts from child care centres are most experienced by affected neighbours. As our society enters the 'retirement boom', as it is, larger numbers of people will be exiting the '9-5' life and spending more time at their homes.

I appreciate the importance of small and new business enterprise, as well as the need for child care facilities within HRM. If the intent with the Land Use By-Law relates to providing positive conditions for additional child care spaces, please consider better and alternative means for doing so. **The current allowances for as-of-right child care centres are bound to lead to an increase in neighbour/neighbour conflicts and grievances directed at HRM.** I am requesting consideration be given to:

1. **a more detailed examination of neighbourhoods and their individual sensitivities to business operations** - with a view to either implementing the development agreement process in residential zones for all child care centres regardless of size, or identifying either 'inclusion' or 'exclusion' areas for child care centres.

2. **HRM take a catalyst role in identifying appropriate locations / partnerships for child care centres.** Examples would be institutional facilities where day care facilities would better complement existing uses or assist at-risk facilities (ie. churches, schools)

I am also asking that consideration be given to applying new restrictions for existing day care operations. Based on our own experience, I suggest these are the most critical:

1. Non-core business related activities and special events are held off-site, as these tend to result in concentrated volumes of traffic and people;
2. Noise containment requirements be implemented for outdoor play spaces

I fully realize the subjectivity around this issue, and the fact that there are child care centres which do not disrupt the existing neighbours and neighbourhoods. However, we are surely not alone in our frustrations, and I do believe this is an issue which can only grow more contentious with time.

Thank you very much for your consideration of this submission.

Respectfully,
 Colleen Johannesson
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 Halifax, Nova Scotia