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Item No. 10.1.1

Chebucto Community Council
November 2, 2009

TO: Chair and Members of Chebucto Community Council

M. Donovan

SUBMITTED BY: _____
M.E. Donovan, Director, Legal Services & Risk Management

DATE: October 16, 2009

SUBJECT: United Gulf Developments Limited and The Waterton Inc. -
60 Walter Havill Drive

ORIGIN

This report originates with the rendering of the decision of the Nova Scotia Court of Appeal dated July 9, 2009.

RECOMMENDATION

It is recommended that Chebucto Community Council pass a resolution approving the amendment to the Development Agreement as ordered by the Board.

BACKGROUND

United Gulf Developments Limited appealed to the Nova Scotia Utility and Review Board a decision of Chebucto Community Council on June 18, 2007 which refused to amend a development agreement to permit two 12 storey towers on a single podium at Site C, in the Stoneridge on the Park (Stanley Park) Subdivision located at 60 Walter Havill Drive, Halifax, NS, as well as a further appeal by United Gulf Developments Limited and The Waterton Inc. of the decision of the Development officer dated November 1, 2007 which refused an application for a developments permit to allow two 12 storey towers on a single podium at the above location. The appeals were heard together on June 9 and June 10, 2008.

On December 23, 2008, the Board rendered its decision allowing both appeals and issued an Order that the development permit be granted and that Chebucto Community Council approve the amendment to the development agreement as requested in the application.

HRM filed an appeal of the Board's decision with the Nova Scotia Court of Appeal which was heard on May 20, 2009. On July 9, 2009 the Court of Appeal rendered its decision and dismissed the appeal without costs.

DISCUSSION

Since the Court of Appeal has dismissed the appeal and no further appeal is feasible, the Board's Decision and Order of December 23, 2008 are binding and conclusive. Therefore, HRM must effect the Order by granting the Development Permit and approving the amendment to the Development Agreement requested in the original application.

BUDGET IMPLICATIONS

n/a

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

There are no alternatives available. Council must approve the amending Development Agreement as set out in the Board's order dated December 23, 2008.

ATTACHMENTS

Copy of the Order of the Nova Scotia Utility and Review Board dated December 23, 2008.

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.

Report Prepared by: Kirby Eileen Grant

Report Approved by: *M.E. Donovan*


M.E. Donovan, Director, Legal Services & Risk Management

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **UNITED GULF DEVELOPMENTS LIMITED** of a decision of Chebucto Community Council on June 18, 2007, which refused to amend a development agreement to permit two 12 storey towers on a single podium at Site C, in the Stoneridge on the Park (Stanley Park) Subdivision, located at 60 Walter Havill Drive, Halifax, Nova Scotia, and **IN THE MATTER OF A FURTHER APPEAL** by **UNITED GULF DEVELOPMENTS LIMITED** and **THE WATERTON INC.** of the decision of the Development Officer dated November 1, 2007, which refused an application for a development permit to allow two 12 storey towers on a single podium at the above location

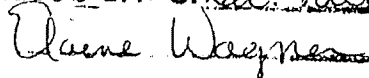
BEFORE:  Roland A. Deveau, LL.B., Member

ORDER

WHEREAS the Board, having heard these appeals on June 9 and 10, 2008, having considered the various written briefs filed by the parties, and subsequently rendered its decision, in writing, on December 23, 2008;

AND WHEREAS the Board, having reviewed all of the evidence, finds that:

- (1) the decision of Andrew Faulkner, Development Officer for Halifax Regional Municipality, conflicts with the provisions of the development agreement, with the R-4 provisions of the Land-Use By-law and with the Schedule I Guidelines of Section X of the Municipal Planning Strategy;
- (2) the decision of the Chebucto Community Council of Halifax Regional Municipality does not reasonably carry out the intent of the Municipal Planning Strategy;

I CERTIFY THAT THE WITHIN IS A TRUE AND CORRECT COPY OF THE ORIGINAL DATED THIS 23rd DAY OF Dec. 2008.


IT IS HEREBY ORDERED that the appeal is allowed respecting the decision of Andrew Faulkner, Development Officer for Halifax Regional Municipality and, pursuant to s. 251(1)(d) of the *Municipal Government Act*, the Board orders that the development permit be granted;

IT IS FURTHER ORDERED that the appeal is allowed respecting the decision of Chebucto Community Council and, pursuant to s. 251(1)(c) of the *Municipal Government Act*, the Board orders that Chebucto Community Council approve the amendment to the development agreement as requested in the application.

DATED at Halifax, Nova Scotia this 23rd day of December, 2008.


Clerk of the Board