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Chebucto Community Council
December 7, 2009

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY: *M. E. Donovan*
M. E. Donovan, Director, Legal Services

DATE: November 9, 2009

SUBJECT: Planning Appeal - Magic Beings Child Care Centre Limited

INFORMATION REPORT

ORIGIN

Decision of Chebucto Community Council on April 6, 2009 approving an amendment to the Halifax Mainland Land Use By-law regarding as-of-right child care centres in residential zones. Appeal by Jodi Tsitouras and Magic Beings Child Care Centre Limited of Council's decision. The Utility and Review Board's decision dismissing the Appeal.

BACKGROUND

On April 6, 2009 Chebucto Community Council approved an amendment to the Halifax Mainland Land Use By-law regarding as-of-right child care centres in residential zones. Chebucto Community Council amended 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 it with the following words:
“a day care facility for not more than 8 children in conjunction with a dwelling”.

DISCUSSION

On April 23, 2009 Jodi Tsitouras and Magic Beings Child Care Centre Limited appealed the approval of the amendment to the Nova Scotia Utility and Review Board. (the "Board"). On June 4, 2009, the Board held a preliminary hearing at the request of counsel for HRM who requested an order from the Board dismissing the first eight grounds of appeal in the Appellant's Notice of Appeal on the basis that the grounds which purported to relate to various alleged procedural irregularities were outside the jurisdiction of the Board. In a decision on June 9, 2009, the Board agreed with HRM's arguments and struck those grounds of appeal. The Board also struck written evidence that had been filed by the Appellants in support of those grounds of appeal.

HRM requested a second preliminary hearing to have the Appellants provide evidence that they were "aggrieved persons" within the meaning of the Halifax Regional Municipality Charter. The Board in its second decision found that the Appellants did have aggrieved persons status and were able to continue with the appeal on the merits.

The matter was scheduled for hearing on September 10, 2009 before the Board. HRM challenged the remaining written evidence that had been pre-filed by the Appellant. The basis of the challenge was that the pre-filed written evidence was not relevant to the issue before the Board and that it was improper evidence before the Board. The Board in its decision dated October 8, 2009 agreed with HRM and struck the remaining evidence filed by the Appellants in the matter and granted a motion for non suit thereby dismissing the appeal. The Board found as follows:

The Board, therefore, finds it would be unfair and unjust to allow this appeal when the Appellants have no evidence. The Appellants had the onus of demonstrating on the balance of probabilities that Council's decision does not reasonably carry out the intent of the MPS. Ms. MacAulay failed to establish this on behalf of the Appellants.

CONCLUSION

The Appeal has been dismissed. The Appellant had 30 days to appeal the Board's decision. No appeal has been filed. The amendments are now in effect.

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.

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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