

HALIFAX REGIONAL MUNICIPALITY

MARINE DRIVE, VALLEY AND CANAL COMMUNITY COUNCIL MINUTES

March 19, 2012

PRESENT: Councillor David Hendsbee, Chair
Councillor Barry Dalrymple, Vice Chair
Councillor Steve Streach

STAFF: Mr. Randolph Kinghorne, Municipal Solicitor
Ms. Krista Vining, Legislative Assistant

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1. CALL TO ORDER

The Chair called the meeting to order at 7:00 p.m. at the Ostrea Lake-Pleasant Point Fire Department, 1765 Ostrea Lake, Ostrea Lake.

2. APPROVAL OF THE MINUTES – February 22, 2012

MOVED by Councillor Streach, seconded by Councillor Dalrymple that the minutes of February 22, 2012 be approved, as presented. MOTION PUT AND PASSED.

3. APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS

MOVED by Councillor Streach, seconded by Councillor Dalrymple that the Order of Business be approved, as presented. MOTION PUT AND PASSED.

4. HEARINGS

4.1 Public Hearing

**4.1.1 Case 17055: Development Agreement – 164 Cross Road, Ostrea Lake
(i) Staff Report
(ii) Halifax Watershed Advisory Board Report**

The following was before the Community Council for consideration:

- Staff report dated December 21, 2012
- Report from the Halifax Watershed Advisory Board dated September 30, 2012
- Submissions from Cpl. Andrew Cole, Deputy Fire Chief Brad Marks, Annette Hart, Michael Stone, Cindy Williams and Judith M. MacDonald

Ms. Jacqueline Bélisle, Planner delivered a presentation on Case 17055, application by Searle Environmental Services Ltd., for the lands of Carol Bentley, to enter into a development agreement to permit a commercial kennel operation at 164 Cross Road, Ostrea Lake.

Ms. Bélisle responded to questions of clarification raised by the Community Council respecting the application and whether there are any known dog kennels currently within the plan area.

In response to question raised by Councillor Hendsbee respecting the number of dogs requested in the application, Ms. Bélisle clarified that the application is to allow for up to 20 dogs; however, the applicant is proposing to start the business with 10 dogs and expand to 20 dogs if the business is successful, rather than going back through the process.

Councillor Hendsbee noted for the record that the September 14, 2011 Public Information Meeting Minutes reflect that the application is for 10 dogs and Ms. Bentley would have to hire additional staff to increase to 20 dogs.

Councillor Hendsbee reviewed the Public Hearing Procedures and opened the public hearing, calling for any speakers for or against Case 17227 to come forward at this time.

Mr. Gerald Mercer of 2129 Ostrea Lake Road indicated that the distance from his home to the proposed kennel is 1.5 kilometres but with sound traveling across the water from the dogs barking, the kennel will feel closer to his home. Mr. Mercer asked whether there will be employees at the kennel 24 hours of the day. He expressed concern with dogs being outside past 11 p.m. unsupervised in their kennels. He provided an example of neighbourhood dogs barking during the night and disrupting residents that have to get up early for work. Mr. Mercer requested clarification on where the composting will be located and whether it would be permitted to remain onsite or have to be hauled away once it has built up. He expressed concern with the compost being left in a pile to build up over a number of years, creating a terrible smell.

Ms. Bélisle provided the following clarification:

- the Development Agreement does not restrict the number of staff or the hours of staff on the property
- the hours of operation for the dog run (ie. 11 p.m.) is consistent with Policy MU-11(i) which was determined by the former Halifax County Municipality in 1996
- the active process of composting will take place on the area identified in the site plan; when the compost has matured, it can not be spread within the watercourse buffer; however, the Development Agreement does not limit where else it can be spread on the property

In response to question of clarification by Councillor Hendsbee, Ms. Bélisle clarified that although there may be some noise heard from inside the building, the difference in the decibel level (Section 3.11 and Section 3.4.9 of the Development Agreement) was determined by the former Halifax County Municipality in 1996, as to what they deemed appropriate to be heard from the property line.

Ms. Cindy Williams of 1867 Ostrea Lake Road advised that she has lived in the community for most of her life, commenting on the importance of quality of life, and that the peace and tranquility in Ostrea Lake is one of the main reasons she lives here. Ms. Williams provided the following comments:

- the proposed dog kennel is approximately one kilometre from her home
- there are dogs in the neighbourhood that bark at times and also at length; the presence of a kennel would only intensify this problem

Ms. Williams went on to express concern with the impact the proposed kennel would have on Williams Lake and the water quality. She is an amateur photographer; wildlife is one of her favourite subjects. The impact of 10-20 barking dogs will drive the animals

away from their natural habitat. A kennel will change the quality of life in the community. She was alarmed to think the proposal could be approved and the peace and quiet of the area would be ruined for the sake of financial gain. She asked Community Council to consider the quality of life for residents who would be affected by this unwanted noise on a daily basis, commenting that the area is not the appropriate place for a venture of this nature. Ms. Williams noted that the landscape changes with the wind on a daily basis; trees are rotten and dead. She was concerned that the tree buffer may not “buffer” for long. Ms. Williams asked the Community Council to reject the proposal.

Ms. Judith MacDonald, resident of Truro, noted that she has a piece of property for sale on Ostrea Lake Road that is close to the proposed kennel. She expressed concern with not being able to sell her property with a kennel so close. She echoed similar concerns on the length of time the dogs will bark and the disturbances it will have on residents and their children’s sleep. Ms. MacDonald commented that the proposal should be turned down and expressed concern that no matter how good the waste is cleaned up, it will eventually end up in the lake and destroy the lake.

Mr. Douglas Walker, Ostrea Lake referenced a former dog kennel in the community and the noise generated from those dogs. He echoed similar concern of neighbourhood dogs barking.

In response to a question of clarification raised by Ms. MacDonald as to who would enforce the noise from the kennel, Ms. Bélisle advised that this is a Land Use By-law compliance matter, in conjunction with noise. If residents hear dogs barking for a continuous period of time they could contact:

- HRM Call Centre
- RCMP (after hours) to enforce the animal by-law
- Development Officer (8:30 a.m. – 4:30 p.m.)

It was noted that once a development agreement is approved, it becomes the administrative property of the development officer to enforce through the Land Use By-law. If there is concern after business hours, residents can bring it to the attention of the development officer following the incident for investigation. Ms. Bélisle further advised that if Land Use By-law Enforcement Officers know of a persistent complaint happening in an area, they will go out after hours to investigate.

Mr. Brad Marks of 1939 Ostrea Lake Road questioned the number of complaints received before a permit is revoked. He echoed concern raised on the effect it will have to the animals (ie. ducks and deer), commenting that dogs barking would cause a chain reaction for other dogs in the community to bark. He questioned the set back requirements to build a house on the land south of the proposed kennel site; indicating that those property owners were not in attendance at the meeting. Mr. Marks closed by commenting that he did not want to see the peaceful community disrupted by this proposal.

Ms. Bélisle provided an overview of the set back requirements identified under the Land Use By-law: not within 30 feet of the road, 8 feet from either side of the property line and 20 feet from the lake.

Ms. Williams commented that the Friends of Jeddore had planned to attend the public hearing but were at another community meeting in relation to wind turbines. In response to question raised, Councillor Hendsbee confirmed that the comments and concerns expressed by the Friends of Jeddore during the September 14, 2011 Public Information Meeting were on record.

Mr. Jill Searle of Searle Environmental Services Ltd. and on behalf of Ms. Carol Bentley, Applicant, advised that Ms. Bentley is a community minded resident, spending years developing her doggie daycare home based business concept. Ms. Bentley's approach to this development continues in the spirit in which she developed her own residence over the last 10 years; with environmental stewardship in the forefront of her mind.

Ms. Searle highlighted the following key points of the property:

- a large rural lot ideally situated for a kennel, as it is not near any residential condensed areas
- the entire site is heavily treed, not just the required 20 metre buffer
- Searle Environmental Services Ltd. conducted a noise level assessment in support of the development agreement application, that calculated the predicted noise levels from the kennel with the maximum capacity of 20 dogs at the property line; therefore, if a house were to be built eight metres from the southern property line, it would be protected based the assessed noise levels predicted

Ms. Searle went on to note that Ms. Bentley's business plan is to operate the kennel by herself with a maximum of 10 dogs. Ms. Bentley would have to hire an employee and construct another building onsite, if she chose to expand her business to the maximum capacity of 20 dogs. Due to the lengthy and onerous process, the application is to permit a maximum of 20 dogs, so that Ms. Bentley does not have to go through this process again should she have a successful doggie daycare and chose to expand her business.

It was further noted that:

- Ms. Bentley has been in contact with her closest neighbours, Mr. and Mrs. Malcolm Morrison, who unfortunately could not be in attendance due to illness but have indicated they would support the proposal
- The proposed doggie daycare is correct in size for Ms. Bentley's personal business plan; Ms. Bentley is prepared to maintain the property and the business herself, as she will live onsite; any type of nuisance behaviour would affect Ms. Bentley first and would not go un-rectified
- The management of dog waste and composting is a viable option for dog waste management; even with a colder climate, the dog compost generated, when

done appropriately, should not have a smell issue and again would be recognized by Ms. Bentley first

- Ms. Bentley's current plan is to use the compost as it matures on her property; in the off chance more compost is generated than Ms. Bentley is able to use, she will be disposing the waste and not selling it roadside.

Ms. Searle indicated that Ms. Bentley has a keen social and environmental conscious, commenting that residents who know Ms. Bentley are aware of this, and it is reflected in her kennel business proposal. Ms. Bentley wanted residents to know that she would not be part of any development proposal that would adversely affect the quality of life for herself or neighbours. Ms. Searle closed by thanking Community Council for allowing her to speak this evening in support of the development.

In response to a comment made by a resident on the lack of trees, Councillor Hendsbee indicated that the cartography photos provided in staff's presentation show plenty of trees and shadows being projected onto the roadway from the trees.

Ms. Margaret Williams of 1867 Ostrea Lake Road echoed similar concerns respecting the level of noise from dogs barking and prior problems on the Crossroad. She provided examples of excessive barking due to the owners being away, leaving the dog home with the windows open. She commented that excessive noise bothers seniors and spoils the quality of life and quietness.

Councillor Hendsbee gave the third and final call for speakers; there being no further speakers, it was **MOVED by Councillor Dalrymple, seconded by Councillor Streach that the public hearing be closed. MOTION PUT AND PASSED.**

In response to a question of clarification by Councillor Streach, Mr. Randolph Kinghorne, Municipal Solicitor advised that under Administrative Order One, it is the intent that Community Council would vote on the recommendation being put forward by staff.

Councillor Streach indicated that he was not in a position to put the staff recommendation on the floor at this time.

Councillor Hendsbee referenced the initial application presented at the September 14, 2012 Public Information Meeting which was for 10 dogs, and information before Community Council this evening which indicated a maximum of no more than 20 dogs. He asked whether an amendment could be made to permit 10 dogs, with a non-substantial amendment to increase the number of dogs upon proof of success of the first 10 dogs. He further questioned whether there was a way to have community monitoring to ensure compliance issues such as noise control and compost management are being adhered.

Mr. Kinghorne clarified that consideration could be given to amending the development agreement at a later date. He recommended against over complicating the matter by making a number of proposed changes. He suggested in fairness to the applicant, if the Community Council wanted to make an amendment to the development agreement, that they give the applicant time to respond and determine if this something they want to consider; where the number of dogs permitted would be decreased by half.

Councillor Hendsbee commented that a reduction to 10 dogs would minimize some of the concerns raised this evening with respect to noise, generated waste and the amount of traffic generated from the kennel.

Both Councillors Hendsbee and Dalrymple provided examples of kennels in their Districts where noise does not seem to be a concern of neighbouring residents.

Councillor Dalrymple agreed with the option to defer to allow the applicant and community time to consider a decrease in the number of dogs, with the possibility for extension at a later date pending the success of the kennel.

Mr. Kinghorne suggested in lieu of a deferral, the Community Council could chose to take a brief recess during which he would ask the applicant about the reduction, confirm they understand the Community Council's direction, and that an increase to 20 dogs would be in the form of a non-substantial amendment.

Councillor Streach spoke in consideration of the comments he has heard this evening, from residents who have contacted him, and the overwhelming resistance to the proposal by the majority of residents. He commented that it was unfortunate that the neighbours in support of the proposal were not in attendance, nor provided their support in writing. He expressed disappointment that the applicant did not speak this evening, as it could have made a difference as to how the community views the proposal.

Councillor Streach expressed concern with moving in the wrong direction by allowing a dog kennel in this area, after hearing comments about the community's experience and noise concern from the previous kennel operated in the community. He further noted his reservations with moving forward with the staff recommendation but indicated he would support a deferral to allow the applicant and community time to gain better understanding on to how best to proceed. Councillor Streach advised that he shared the concerns related to noise, composting and the possible affects on the lake; reiterating that based on this he was not in favour of the staff recommendation at this time but would await further direction or clarification from the application.

In response to a question raised by Councillor Hendsbee, Ms. Bélisle confirmed that a resident could own more than 10 dogs without owning a kennel.

In response to question of clarification raised by Ms. Searle, Ms. Bélisle advised that a non-substantive amendment is an amendment that requires approval of Council, which

is appealable, but does not require a public hearing. A non-substantive amendment is done through a planning application process, with the similar six to nine month time frame, application fee of \$1,830 and can be as onerous as a standard planning application process. With respect to the deposit fee, Ms. Bélisle clarified that there would be a reduction in the advertising deposit and the applicant may receive money back at the end of the process.

The Community Council recessed at 7:50 p.m.
The Community Council reconvened at 8:00 p.m.

Mr. Kinghorne advised that his discussion with the applicant dealt with the appropriateness of the proposed amendment and their option to defer to obtain independent legal advice. He advised the applicant that he was not providing them legal advice and noted to the Community Council that the applicant would like to propose an amendment to their application.

Ms. Searle requested the Community Council's consideration to amend the application to 10 dogs with the provision of a non-substantive amendment to increase to 20 dogs at a future date.

Mr. Kinghorne clarified that this direction requires the Community Council to vote to agree whether or not to accept the amendment.

MOVED by Councillor Dalrymple, seconded by Councillor Streach that Marine Drive, Valley and Canal Community Council approve an amendment to the proposed development agreement as set out in Attachment A of the December 21, 2011 staff report to permit a commercial dog kennel operation at 164 Cross Road, Ostrea Lake to the quantity of dogs permitted to ten (10), with the provision that an application to increase to twenty (20) dogs at a future date be considered as a non-substantive amendment. MOTION PUT AND PASSED.

Mr. Kinghorne provided further clarification on the process, wherein Community Council can proceed with a motion to accept the development agreement as subject to the amended application.

MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that Marine Drive, Valley and Canal Community Council:

- 1. Approve the proposed development agreement as set out in Attachment A of the December 21, 2011 staff report to permit a commercial kennel operation at 164 Cross Road, Ostrea Lake, with an amendment to the quantity of dogs permitted to ten (10), and with the provision that an application to increase to twenty (20) dogs at a future date be considered as a non-substantive amendment; and**

- 2. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.**

Councillor Streach advised he would be voting against the motion, echoing the concerns and issues brought forward by the community.

A brief discussion was held on the development agreement being a contractual obligation and failure to comply would result in fines. The community was reminded of the information provided earlier in the meeting on reporting any concerns related to noise during and after business hours.

MOTION PUT AND PASSED.

5. PUBLIC PARTICIPATION

Ms. Kelie Green, East Lawrencetown submitted a petition containing 60 signatures from residents opposed to the proposed 250 foot high communications tower to be located off the Crowell Road to the right of Little Lake, behind the Seabreeze Subdivision and in sight of and near Lawrencetown Beach Provincial Park in the established community of East Lawrencetown.

Ms. Herrit Davis, East Lawrencetown spoke in opposition of the proposed telecommunication tower for East Lawrencetown - Case 16620 and submitted her comments for the record.

Ms. Green questioned a possible conflict of interest for Councillor Streach in relation to Case 16620 - proposed telecommunication tower for East Lawrencetown.

Councillor Streach indicated he was aware of the concerns expressed by community members respecting a potential conflict related to Case 16620. However, he advised that he sold his cable televisions business in 2005. Councillor Streach noted that it is the responsibility of a Councillor to determine/disclose if they have conflict of interest on a matter. At this time he did not believe he was in conflict and was not prepared to declare a conflict of interest.

Councillor Hendsbee received a Petition on behalf of an Ostrea Lake resident, containing 8 signatures from residents who do not want a dog kennel at 164 Cross Road, Ostrea Lake – Case 17055. As this petition was received after the Public Hearing, it was noted that it will not be included as part of the Public Hearing.

6. NEXT MEETING DATE – March 28, 2012

The meeting will be held at the Lawrencetown Community Centre, 3657 Lawrencetown Road, Lawrencetown.

7. ADJOURNMENT

The meeting adjourned at 8:18 p.m.

Krista Vining
Legislative Assistant

INFORMATION ITEMS – NONE