

# HALIFAX REGIONAL MUNICIPALITY

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## MARINE DRIVE, VALLEY AND CANAL COMMUNITY COUNCIL MINUTES

May 30, 2012

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

REGRETS: Councillor Steve Streach

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

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**1. CALL TO ORDER**

The meeting was called to order 7:00 p.m. at the Porter Lake Elementary School Cafeteria, 40 Inspiration Drive, Porters Lake.

**2. APPROVAL OF THE MINUTES – March 19 & 28, 2012**

**MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that the minutes of March 19<sup>th</sup> and 28, 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 Dalrymple, seconded by Councillor Hendsbee that the Order of Business be approved, as presented. MOTION PUT AND PASSED.**

**4. BUSINESS ARISING OUT OF THE MINUTES**

**4.1 Status Sheet Review**

A copy of the Status Sheet was before the Community Council for review.

No updates were provided at this time.

**4.2 Discussion of timing and location of Annual Meeting**

The Community Council agreed to defer consideration of their Annual Meeting to a later date.

**5. MOTIONS OF RECONSIDERATION – NONE**

**6. MOTIONS OF RESCISSION – NONE**

The Community Council agreed to address Item 8.1.1 - Case 17038: Appeal of Variance Approval, 23 Mannette Court, Porters Lake prior to Item 7.1.

**7. CONSIDERATION OF DEFERRED BUSINESS**

**7.1 Case 17278: Telecommunication Tower – Lawrencetown (deferred March 28, 2012)**

Matter addressed following Item 8.1.1, refer to page 5.

### **8.1.1 Case 17038: Appeal of Variance Approval, 23 Mannelle Court, Porters Lake**

Mr. Andrew Faulkner, Development Officer delivered a presentation on Case 17038, appeal of the Development Officer's decision to approve a variance request at 23 Mannelle Court, Porters Lake.

Mr. Faulker responded to questions of clarification raised by the Community Council respecting the variance request, size and structure of the fence, as well as confirmation that permits will not be issued until the fence has been constructed.

Councillor Hendsbee reviewed the variance hearing procedures, calling three times for the appellants and proponent to come forward at this time to speak for or against the variance.

**Mr. Vincent Fitmorris, 23 Mannelle Court** identified that he had made the request for the variance.

There being no further speakers, it was **MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that the variance hearing be closed. MOTION PUT AND PASSED**

Councillor Hendsbee commented on the uniqueness of the property's Rural Enterprise (RE) zoning in relation to the rest of the neighbourhood. He indicated that concern has been raised that the activity onsite was not compatible with the neighbourhood; however, Mr. Fitmorris is operating the property in accordance with the land use and he hoped Mr. Fitmorris would make efforts to comply/exceed the requirements to make the uses on the property more conducive to the neighbourhood. He noted that there have been numerous complaints expressed by neighbours to both the Municipality and Province in relation to truck traffic, the possibility of endangerment to youth around large equipment, noise and odors from fumes.

Councillor Hendsbee further advised that the neighbourhood has expressed interest in rezoning the entire area to R-1 or R-A zoning which could potentially impact Mr. Fitmorris' property. However, it was his understanding that even if the property were to be designated residential; Mr. Fitmorris' business could still be considered as a non-confirming use.

In response to a question raised regarding the property being rezoned to residential and if there were to be new ownership, Mr. Faulkner advised that property's use would still be considered non-confirming and therefore a new owner could continue with operation of the business. However, the property's current use would not be permitted under the Land Use By-law if the activity were to cease for more than six months.

Mr. Faulker further confirmed that all property owners within thirty metres of 23 Mannette Court were notified in writing and via telephone, and that two appeals were received.

**MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that Marine Drive, Valley and Canal Community Council uphold the Developer Officer's decision to approve the variance at 23 Mannette Court, Porters Lake.**

Councillor Hendsbee reiterated the importance of Mr. Fitmorris being cognizant of neighbours' concerns.

Councillor Dalrymple commented the activity on the property is in accordance with the Rural Enterprise zoning, and relocation or removal of the garage would not address concerns being expressed by the community.

In response to question raised, Mr. Faulker confirmed that that the rear of the property will be fully treed as a barrier to neighbours on Sandy Point Road.

**MOTION PUT AND PASSED.**

Item 7.1 was dealt with at this time.

**7.1 Case 17278: Telecommunication Tower – Lawrencetown (deferred March 28, 2012)**

The following was before the Community Council:

- Staff report dated February 27, 2012
- Declassified private and confidential staff information report dated May 28, 2012 that was approved for released during the Regional Council May 29, 2012 session

Councillor Hendsbee advised that the Community Council deferred Case 17278 on March 28, 2012, pending clarification by staff of the applicability of the Lawrencetown Land Use By-law provisions in relation to cell towers. He provided an overview of the legal opinion provided by staff, as outlined in the declassified May 28, 2012 private and confidential staff information report. It was noted that Legal Services' position is that municipal and provincial legislation, including zoning by-laws, is subject to the Federal process regulating the location of telecommunication towers.

Councillor Hendsbee further highlighted the following within the Lawrencetown Land Use By-law:

*Please note that HRM Council at its meeting on May 9, 2000, approved a motion to insert the following notation in the Land Use By-law as follows:*

*The provisions of the zones described in the bylaw do not apply to property owned or occupied by Her Majesty the Queen in right of the Province of Nova Scotia or Canada in respect of a use of the property made by the Crown. Where a privately owned or occupied property is to be used for a federally regulated activity, the federal jurisdiction may, depending on the particular circumstances, override the requirements of this bylaw.*

In response to a question raised by Mr. Doyle Safire of East Lawrencetown, as to whether HRM has the legal authority to overrule the Municipal Planning Strategy or Land Use By-law, Mr. Randolph Kinghorne, Municipal Solicitor advised that the Municipality has the ability to amend the Land Use By-law. With respect to overruling the By-law there is no issue in the present case as the Municipality is not granting a permit but is providing advice to Industry Canada. In providing their recommendation to Industry Canada, the Community Council must take the By-law into account. Mr. Kinghorne went on to note that even if the By-law were to state that the zoning does not permit a cell tower, the Federal government could still move forward with installing a tower.

Mr. Kinghorne further clarified that if HRM were issuing a permit for the telecommunication tower, then the Municipality would be bound by the rules of the By-law.

Councillor Hendsbee clarified that the Community Council has the authority to make recommendation or comment, as well as forward the matter on to Industry Canada without recommendation or comment, but they do not have the ability to approve or refuse the proposal.

**MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that Marine Drive, Valley and Canal Community Council forward a non-recommendation to Industry Canada on the proposal by EastLink for the construction of a new 50 metre (154 ft.) self-support telecommunication tower and associated equipment cabinets, off of Lawrencetown Road (PID #40194268), Lawrencetown, as shown on Map 1 and Attachment A of the February 27, 2012 staff report, provided no portion of the telecommunication tower or associated infrastructure, including any proposed fencing, is located on any wet area(s), as identified on Attachment A.**

During the discussion it was noted that HRM's policy and procedures for telecommunication towers allow Community Council to make a recommendation to Industry Canada. However, the Community Council was not aware of any regulations that would require them to make a recommendation. The Community Council was not prepared to make a positive recommendation knowing that residents are opposed to the application, as well as, they were not prepared to not recommend the application knowing EastLink has made efforts to find an alternative location.

**MOTION PUT AND PASSED.**

**8. HEARINGS**

**8.1 Variance Hearing**

**8.1.1 Case 17038: Appeal of Variance Approval, 23 Mannette Court, Porters Lake**

Matter addressed earlier in the meeting, refer to page 4.

**9. CORRESPONDENCE, PETITIONS AND DELEGATIONS**

**9.1 Correspondence – None**

**9.2 Petitions – None**

**9.3 Presentations – None**

**10. REPORTS**

**10.1 Staff Reports**

**10.1.1 Notice of Motion Case 15969: Open Space Design Development Agreement – Windgate Drive, Windsor Junction**

**(i) Staff Report**

**(ii) Watershed Advisory Board Report**

The following was before the Community Council:

- Staff report dated May 2, 2012
- Report from the Halifax Watershed Advisory Board dated June 20, 2011
- Submission from Theresa Scratch, Director, Second Lake Regional Park Association dated October 24, 2011

Councillor Dalrymple recognized Ms. Theresa Scratch of the Second Lake Regional Park Association and Mr. Walter Regan of the Sackville River Association who were in attendance.

**MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that Marine Drive, Valley and Canal Community Council Give Notice of Motion to consider the development agreement contained in Attachment A of the May 2, 2012 staff report to allow for a Classic Open Space Design development agreement off Windgate Drive, Windsor Junction and schedule a public hearing.**

Public Hearing scheduled for July 25, 2012, location to be determined within District 2.

**MOTION PUT AND PASSED.**

**10.1.2 First Reading Case 17510: Rezoning and Land Use By-Law Amendment for Dental/Medical Clinic at 3440 Highway 2, Fall River**

A staff report dated May 10, 2012 was before the Community Council.

**MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that Marine Drive, Valley and Canal Community Council Give First Reading to consider the proposed rezoning of 3440 Highway 2, Fall River, from the R-1B (Suburban Residential) Zone to the C-1 (Local Business) Zone, and amend the Land Use By-Law for Planning Districts 14 and 17 to increase the maximum gross floor area for C-1 uses as set out in Attachment A of the staff report dated May 10, 2012, and schedule a public hearing.**

Public Hearing scheduled for July 4, 2012, location to be determined.

**MOTION PUT AND PASSED.**

**10.1.3 First Reading Case 17517: Land Use By-Law Amendments – Larger Accessory Buildings**

A staff report dated May 22, 2012 was before the Community Council.

**MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that Marine Drive, Valley and Canal Community Council Give First Reading to the proposed amendments to the Musquodoboit Valley and Dutch Settlement Land Use By-law as shown in Attachment A of the staff report dated May 22, 2012, and schedule a Public Hearing.**

Public Hearing scheduled for July 4, 2012, location to be determined.

**MOTION PUT AND PASSED.**

**10.1.4 Notice of Motion Case 17492: Development Agreement – Home Hardware, Sheet Harbour**

A staff report dated May 22, 2012 was before the Community Council.

**MOVED by Councillor Dalrymple, seconded by Councillor Hendsbee that Marine Drive, Valley and Canal Community Council Give First Reading to consider the proposed development agreement, as set out in Attachment A of the staff report dated May 22, 2012, and schedule a Public Hearing.**

Public Hearing scheduled for July 4, 2012, location to be determined.

**MOTION PUT AND PASSED.**



- 11. MOTIONS – NONE**
- 12. ADDED ITEMS – NONE**
- 13. NOTICES OF MOTION – NONE**

**14. PUBLIC PARTICIPATION**

Ms. Theresa Scratch, resident of Sackville and member of the Second Lake Regional Park Association, requested a status update on the waste water by-law. She expressed concern with Municipal central water being delivered to close to septic systems. She referred to the Second Lake Regional Park Association's letter to Mayor Kelly and Councillors dated October 24, 2011, submitted earlier in the meeting under Item 10.1.1.

Councillor Dalrymple advised that he is the Chair of the Environment and Sustainability Standing Committee and that the Standing Committee would be meeting June 7, 2012. He suggested the possibility of the Second Lake Regional Park Association's October 24, 2011 letter being added to the June 7<sup>th</sup> agenda to seek a response from staff.

Ms. Scratch further referenced HRM's Classic Open Space Design Development in relation to the protection of conservation areas, and asked what the definition was under the Regional Plan for community facilities. Councillor Hendsbee indicated that he would seek clarification from staff on this definition.

Mr. Walter Regan of the Sackville Rivers Association asked whether Case 17492: Development Agreement – Home Hardware, Sheet Harbour would be referred to the Halifax Watershed Advisory Board for review.

Mr. Regan further expressed disappointment in the cancellation of the Water Quality Monitoring Program, noting that he had sent a letter in this regard to Councillor Dalrymple. He asked whether the Community Council could follow up with staff respecting the status of this program.

Councillor Hendsbee indicated that a letter from the Halifax Watershed Advisory Board had been drafted respecting status of the program, and agreed to have the Community Council following up with staff on the status of this program. Councillor Dalrymple added that the Environment and Sustainability Standing Committee would be reviewing this matter at their June 7<sup>th</sup> meeting.

In response to Mr. Regan's inquiry of Case 17492, Mr. Shayne Vipond, Senior Planner advised that this matter would not be referred to the Halifax Watershed Advisory Board, as in staff's view, the addition is minor and would not impact the building's existing condition.

- 15. NEXT MEETING DATE – July 4<sup>th</sup>, July 25<sup>th</sup> (if needed) & August 29<sup>th</sup> (if needed)**

**16. ADJOURNMENT**

The meeting adjourned at 8:00 p.m.

Krista Vining  
Legislative Assistant

INFORMATION ITEMS – NONE