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FOIPOP Review

NA - Legal Review
Marine Drive, Valley and Canal Community Council

May 29, 2012

Approved to Release

Consents by Motion of RC May 29/2012

Date

May 29/2012

TO:

Chair and Members of Marine Drive, Valley and Canal Community Council

SUBMITTED BY:

Marian Tyson
Marian Tyson, Director of Legal Services and Risk Management

DATE:

May 28, 2012

SUBJECT:

Federal Municipal Jurisdiction re: Telecommunication Towers

PRIVATE & CONFIDENTIAL INFORMATION REPORT

ORIGIN

- Application by Bragg Communications Inc. (EastLink) for a 50 metre (164 ft.) self-support telecommunication tower and associated equipment cabinets off of Lawrencetown Road (PID #40194268), Lawrencetown.
- At the March 28, 2012 meeting of the Marine Drive, Valley and Canal Community Council, Legal Services was requested to provide clarification regarding the applicability of the Lawrencetown Land-Use By-law as it pertains to telecommunication towers.

BACKGROUND / DISCUSSION

At the March 28, 2012 meeting of Marine Drive, Valley and Canal Community Council, staff presented their report, dated February 27, 2012, on Eastlink's application for a 50 metre telecommunication tower and associated equipment cabinets off of Lawrencetown Road (Case:17278). During the meeting, residents raised questions regarding the applicability of the Lawrencetown Land-Use By-law relative to telecommunication towers. Staff advised that telecommunication towers are not subject to the provisions of any Land Use By-law. Due to the input received by residents Council requested that Legal Services provide clarification regarding the applicability of the Lawrencetown Land-Use By-law as it pertains to telecommunication towers.

ANALYSIS

HRM Legal Services reviewed the issue of the applicability of the Lawrencetown Land Use By-laws relative to telecommunication towers and generated a response document. In summary, Legal Services position is that municipal and provincial legislation, including zoning by-laws, cannot regulate the location of telecommunication towers. In support of this position, the following aspects are provided:

The federal government regulates the construction and location of broadcasting structures including telecommunication towers, such as cell phone towers or antennas. Industry Canada encourages local input about the siting of telecommunication towers to help it make a decision. The municipality may make comments based on local input and land management concerns, but those comments are useful to Industry Canada as guidance and are not binding in the decision making process. Industry Canada retains the ultimate jurisdiction to approve any particular location.

The federal government exercises this jurisdiction through the Ministry of Industry. Industry Canada regulates the location of cell phone towers according to the *Radiocommunication Act, RSC 1985, c R-2*. Section 5 of the *Radiocommunications Act* identifies the powers of the Minister:

Minister's powers

"5. (1) Subject to any regulations made under section 6, the Minister may, taking into account all matters that the Minister considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada, ...

(f) approve each site on which radio apparatus, including antenna systems, may be located, and approve the erection of all masts, towers and other antenna-supporting structures;"

The federal jurisdiction in these circumstances overrides the requirements of municipal by-laws. For example, the Lawrencetown Land Use by-law explicitly recognizes this override:

“The provisions of the zones described in this 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.”

Telecommunication towers are exclusively regulated by federal legislation under the *Radiocommunication Act*, administered by the Minister of Industry through Industry Canada. The concerns raised during the public consultation process required by Industry Canada, either the default process or a municipal antenna siting protocol, are elements to be considered by a proponent seeking to install an antenna system. The municipal recommendations and comments generated as a result of the Industry Canada public consultation process will likely be premised on the content of zoning by-laws. However, Industry Canada, after considering all the relevant circumstances, makes the final decision on whether a tower can be constructed

BUDGET IMPLICATIONS

There are no budget implications associated the preparation of this report.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality’s Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

See staff report dated February 27, 2012.

ENVIRONMENTAL IMPLICATIONS

This report meets all Council approved Environmental Policy.

This report is private and confidential.

Report Prepared by: Jim Janson, Legal Services, 490-3295



Report Approved by: _____
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