

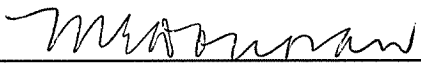
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Chebucto Community Council
May 1, 2006

TO: Councillor Stephen D. Adams, Chair, Chebucto Community Council

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

DATE: April 10, 2006

SUBJECT: **Time Lines re: Re-Submission of Identical Planning Applications for Consideration by Community Council**

INFORMATION REPORT

ORIGIN

Request from the Chebucto Community Council.

BACKGROUND

Further to Councillor Mosher having raised concerns on the number of times the Community Council would have to deal with the same application and put the public through another hearing on the same matter, Chebucto Community Council requested an opinion from Legal Services regarding development applications that are identical, coming forward repeatedly to Community Council. In particular one development agreement has been before Chebucto Community Council three times and the Community Council would like clarification on how many times they will have to deal with the same application with no changes made to the proposal at all. The residents are expressing their frustration at having to appear three times before Community Council to voice their concerns. As an ancillary issue, there arises the question of the requirement for a second public hearing on a re-consideration of a development proposal or its amendment.

DISCUSSION

When dealing with an identical proposal it appears open for Community Council to treat it as being a request for a reconsideration which would permit the application of section 56(1) of Admin Order 1. This section provides as follows:

56. (1) When a motion has been resolved in the negative, it shall not be again brought before the Council, except with consent of two-thirds of the whole Council, until two months have elapsed and, if again resolved in the negative, shall not be again brought before the Council until the expiry of the civic year.

There is always the issue as to whether two applications are the exactly the same. This will require a review and comparison of the substance of each proposal. Some insignificant variations would not necessarily preclude the determination that the proposals are identical. Upon a reasonable review of the proposals are they for all practical purposes identical? When changes to the proposal are such that any doubt exists whether the proposal is identical to a prior one, it should be allowed to proceed. If the proposals are identical then to hear it for a second time during a civic year requires a wait of two months unless two-thirds of the council consents to deal with it earlier. Once it has been rejected twice the proposal must wait until after the end of the civic year to be considered again. The wording of s. 56(1) clearly indicates that after the end of the civic year the motion can be brought again. If again rejected it would appear at that point the s. 56(1) waiting periods would again apply. Within those guidelines it appears that the same motion could be brought twice in each civic year indefinitely.

The requirement of a public hearing in respect of development plans is dealt with in section 230(2) of the Municipal Government Act which provides:

230 (2) A council shall hold a public hearing before approving a development agreement or an amendment to a development agreement.

The MGA on its face requires a public hearing to adopt a development agreement, or its amendment, which implies that a proposed plan or amendment can be rejected without a public hearing. Based on this it is suggested as follows: When an identical development plan proposal is brought for a second or subsequent time, the proponent must present only submissions as to what changes, if any, have been made since the last submission. If something has changed then submissions as to the pros and cons of the changes can be heard. Council can then, based on this, and taking into account submissions at the prior meetings (including recommendations in prior reports to council), either reject it without a public hearing or if it decides not to reject it, set it down for a public hearing for consideration for approval.

BUDGET IMPLICATIONS

There are no significant budget considerations arising from this report. It is noted that while a reduction in the number of public hearing would save costs related to advertising notice of the hearing, this is not a relevant consideration on whether to put a proposal to a hearing.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

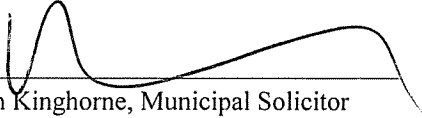
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

Community Council could elect to not treat subsequent motion items as reconsideration unless it is specifically a request to re-consider the earlier motion. This would result in more discussions of matters already dealt with. Council could also order a public hearing on all development agreement and amendment applications before rejecting them with the result of continued public attendance to reiterate concerns.

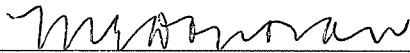
Additional copies of this report, and information on its status, can be obtained by contacting the office of the Municipal Clerk at 490-4210 or Fax 490-4208.

Report prepared by:



Randolph Kinghorne, Municipal Solicitor

Report approved by:



M. E. Donovan, Director of Legal Services