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**Chebucto Community Council**  
**June 12, 2006**

**TO:** Chairman and Members of Chebucto Community Council

**SUBMITTED BY:** Sharon Bondfor  
Paul Dunphy, Director, Planning & Development Services

M. E. Donovan  
M. E. Donovan, Director, Legal Services

**DATE:** June 8, 2006

**SUBJECT:** Former Keddy's Hotel, St. Margaret's Bay Road

**INFORMATION REPORT**

**ORIGIN**

April 10, 2006 request by Chebucto Community Council for a report on the status of the former Keddy's Hotel on the St. Margaret's Bay Road.

**BACKGROUND/DISCUSSION**

**20 St. Margaret's Bay Road - Chronology of Events**

The Howard Johnson's hotel (former Keddy's) on the subject property is a "non-conforming use" under the current zoning bylaw. This means that the zoning on the property does not allow a hotel, but in this case the use as a hotel existed before the zoning restriction. As a result, the hotel use is permitted to continue under the provisions of the Municipal Government Act. One of those provisions states that if the use is discontinued for a continuous period of six months or more, it cannot be reestablished.

On the surface, this would lead one to believe that the use of the property as a hotel should have been discontinued about two years ago. However, as with most pieces of planning legislation, that six month clause is subject to the interpretation of the court system. This is a common clause in Planning law throughout Canada and it has been extensively tested through the court system on many occasions regarding what exactly constitutes discontinuance. In realty, this clause means that the activity on the property must have ceased and that there must be a clear intent to discontinue the use through abandonment of the property or through replacement of the non-conforming use with another

use.

Was the use discontinued for a continuous period of 6 months or more? In the case of the Howard Johnson's hotel, the hurricane of September 2003 caused damage to the building substantial enough to prevent continued occupancy as a hotel. Subsequent to the storm damage, intermittent repair and clean up activity took place on the property for a period of approximately nine months. In June 2004, a permit was issued to repair storm damage and replace windows and doors in the building. This permit is valid until June 24, 2006. For the first while after the issuance of the permit, minimal construction activity took place. However, the activity was sufficient to ensure the continuance of the non-conforming use. Ultimately, this level of activity decreased and the condition of the property deteriorated. As of February 24, 2005, HRM deemed that the non-conforming use was discontinued as construction activity had ceased and the building appeared to be abandoned.

This resulted in a six month deadline for the owners to provide a clear indication of the intent to continue the use. This indication was required to take the form of a completed Development Permit application to effect repairs and improvements to make the building habitable for the hotel use. The owners met the August 24, 2005 deadline by submitting a complete application for total redevelopment of the building for use as a hotel thereby maintaining their nonconforming status.

Since August, 2005, work has consisted primarily of demolition within the structure, removal of asbestos and non-structural repairs pursuant to the existing valid permits. Construction progress was slow and the external condition of the building continued to deteriorate leading to numerous community complaints and Bylaw Enforcement action to remedy unsightly conditions. However, the existence of the valid permits and the level of activity were sufficient to retain the non-conforming status of the building as a hotel.

In response to community concerns, District 17 Councillor Linda Mosher put forward the following motion before Chebucto Community Council on April 10, 2006:

*“Motion passed requesting a staff report on the status of the former Keddy's Hotel on the St. Margaret's Bay Road now that the use has been substantially discontinued. Councillor Mosher expressed concern with what may be permitted in a C2A zone for this area and indicated that she may request a zoning change. Legal Services are requested to comment on this matter as well.”*

In acknowledgment of the Councillor's concerns, the owners made efforts to respond to community issues around impacts related to the construction activity. Staff have met many times with the owner's agent, Mr. Lawrence White, to discuss construction and inspection schedules. Work is ongoing on the property and Mr. White has made himself available for the area residents to respond to any detailed concerns.

The actions by the owner to date have met the established legal test of nonconforming status. There has been no clear intent to discontinue the use through abandonment of the property or otherwise.

On May 24, 2006 Councillor Mosher held a public meeting with representatives from both staff and the developer present. At this meeting concerns were addressed, the developer committed to moving the project forward in a timely manner and staff are monitoring the progress.

### **BUDGET IMPLICATIONS**

None

### **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**

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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