

HARBOUR EAST COMMUNITY COUNCIL
JULY 6, 2000
MINUTES

PRESENT: Councillor Harry McInroy, Chair
Councillor Ron Cooper
Councillor Jack Greenough
Councillor Bruce Hetherington
Councillor Clint Schofield
Deputy Mayor John Cunningham

ABSENT
WITH REGRETS: Councillor Condo Sarto

STAFF: Mr. Gerry Goneau, Municipal Solicitor
Ms. Julia Horncastle, Assistant Municipal Clerk

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1. **INVOCATION**

The meeting was called to order at 7:00 p.m. with an invocation.

2. **APPROVAL OF MINUTES - May 25 (regular session) and June 20 (special session), 2000.**

MOVED by Councillors Hetherington and Cooper that the minutes of May 25, 2000 (regular session) be approved as circulated. MOTION PUT AND PASSED UNANIMOUSLY.

MOVED by Councillors Hetherington and Schofield that the minutes of June 20, 2000 (special session) be approved as circulated. MOTION PUT AND PASSED UNANIMOUSLY.

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

Additions

- 12.1 Appeal of refusal of variance for 93 Regal Road, Dartmouth
- 12.2 Dartmouth Sportsplex Community Association Request for Approval for a Circus/Musical Show
- 12.3 Case 00163 - Concept Plan - 506 Portland Street
- 12.4 Left Turning Lane on Prince Albert Road in front of Banook Shores - Councillor Greenough

Information Items

- 1. Washroom Facilities on Sports Fields
- 2. Development Charges - Morris/Russell Lake Area
- 3. Festival of Sail

MOVED by Councillor Hetherington and Deputy Mayor Cunningham that the Order of Business, as amended, be approved. MOTION PUT AND PASSED UNANIMOUSLY.

4. **BUSINESS ARISING OUT OF THE MINUTES - NONE**

5. **MOTIONS OF RECONSIDERATION - NONE**

6. **MOTIONS OF RESCISSION - NONE**

7. **CONSIDERATION OF DEFERRED BUSINESS - NONE**

8. PUBLIC HEARINGS

8.3 Case 00258: 17 Johnstone Avenue - Application for a Conversion of Ground Floor Commercial Unit to a Residential Unit by Development Agreement

- A report prepared for Paul Dunphy, Director, Planning and Development Services, dated June 16, 2000, on the above noted, was before Community Council.
- Notice of Motion was given on June 20, 2000.

Mr. Mitch Dickey, Planner, with the aid of overheads, presented the staff report outlining the criteria to be considered when examining an application for the development of an apartment building noting, this application would be for an internal conversion with no external extensions or expansions.

In response to Councillor Schofield, Mr. Dickey advised although there is a mix of uses in the area this would be the only apartment building within the immediate vicinity.

Councillor McInroy called for members of the public wishing to speak either in favour of or against the application. Hearing none, the following motion was placed before Community Council.

MOVED by Deputy Mayor Cunningham and Councillor Greenough that the public hearing be closed. MOTION PUT AND PASSED UNANIMOUSLY.

Decision of Council

MOVED by Councillor Hetherington and Deputy Mayor Cunningham that the Harbour East Community Council:

- 1. Approve the development agreement to allow the conversion of up to two ground floor commercial units to residential units in this mixed commercial/residential building at 17 Johnstone Avenue attached as Attachment 1 of the staff report dated June 16, 2000.**
- 2. Require that the development agreement shall be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and any other bodies as necessary, whichever is later; otherwise, this approval will be void and obligations arising hereunder shall be at an end.**

MOTION PUT AND PASSED UNANIMOUSLY.

8.1 Case 00222: Application for a Development Agreement to expand an existing commercial use at 124 Cow Bay Road, Eastern Passage

- Planning Advisory Committee Report, dated May 11, 2000 and Staff Report, prepared for Paul Dunphy, Director, Planning and Development Services, dated April 27, 2000, on the above noted was before Community Council.
- Notice of Motion given May 25, 2000.

Mr. Mitch Dickey, Planner, with the aid of overheads, presented the staff report advising, the business has been located on the property for approximately thirty five years and is a non-conforming use as it was in existence prior to the adoption of the Land Use By-Law for Eastern Passage. The application is to allow for the construction of a service garage on the property.

In response to Councillor Greenough, Mr. Dickey advised the policy is very explicit with regards to the 25 foot sideyard requirement being met; therefore, Mr. Beazley has agreed to moved the current foundation to meet this requirement.

Councillor McInroy called for members of the public wishing to speak either in favour of or against the application.

Antoinette Jullien, Briarwood Drive

Ms. Jullien expressed concern with the creek which is eroding the existing fence and advised any new fence will experience the same erosion problems. She expressed concern with the dust resulting from sand blasting and suggested this activity take place inside the building.

Councillor McInroy called three times for any additional speakers. Hearing none, the following motion was placed before Community Council.

**MOVED by Councillors Hetherington and Cooper that the public hearing be closed.
MOTION PUT AND PASSED UNANIMOUSLY.**

Decision of Council

In response to Deputy Mayor Cunningham regarding the environmental concerns with sand blasting, Mr. Dickey advised the development agreement states that all municipal and provincial statutes have to be satisfied and, if these are not adhered to, there would be penalties.

In response to Deputy Mayor Cunningham, Mr. Dickey advised the development agreement

does not address the issue of the existing fence.

Councillor Schofield noted the business was in existence prior to the approval of the subdivision.

Councillor McInroy noted the application had gone through the public process and issues that were raised have been addressed in the development agreement.

In response to Councillor Hetherington, Mr. Dickey advised the recommendations of the Waters Advisory Committee have been addressed in the development agreement.

MOVED by Councillors Cooper and Hetherington that the Harbour East Community Council:

- 1. Approve the development agreement (Attachment 2 of the staff report dated April 27, 2000) to expand an existing commercial use at 124 Cow Bay Road, subject to the criteria being met (ie., 25' building setback requirement);**
- 2. Require the agreement be signed within 120 days or any extension thereof granted by Community Council on request of the applicant from the date of final approval by Community Council and any other bodies as necessary whichever approval is later, including applicable appeal periods; otherwise, this approval will be void and obligations arising hereunder shall be at an end.**

In response to Councillor Cooper, Mr. Dickey advised Mr. Beazley has agreed to consolidate on site storage. On further question, Mr. Dickey advised sand blasting is regulated under the Department of Environment.

MOTION PUT AND PASSED UNANIMOUSLY.

8.2 Case 00019: Application to Amend a Development Agreement, 95 Montebello Drive, Dartmouth

- A report prepared for Paul Dunphy, Director of Planning and Development, dated May 17, 2000, on the above noted, was before Community Council.
- Notice of Motion was given on May 25, 2000.

Mr. Bernard Moe, Planner, with the aid of overheads, presented the staff report advising, the application is to amend the existing development agreement. Mr. Moe advised the original development agreement was passed in 1985 for a neighbourhood grocery convenience store only which was not to be opened between midnight and seven o'clock in the morning. Mr. Moe advised the current owner had applied in 1997 for changes to allow for a takeout food service with a limited menu to serve the students at the

neighbourhood school.

Mr. Moe advised changes not in compliance with the development agreement, including the installation of deep fryers and extension of the hours of operation, were made. The owner has applied for an amendment to the existing development agreement to allow for the operation of the business to be extended on Friday and Saturday to 2 a.m. and approval for the use of the deep fryers. Mr. Moe outlined the proposed development agreement and recommendations contained therein.

Mr. Moe advised the original development agreement would remain in effect and details not attended to in the original agreement would have to be met including the removal of the two deep fryers if this development agreement is not approved.

In response to Councillor Schofield, Mr. Moe advised closing time was one item that was not honoured from the original development agreement and some of the landscaping items are outstanding as well as the installation of the deep fryers.

In response to Councillor Cooper as to why the original development agreement was limited to a convenience store, Mr. Moe advised at the time of the original agreement in 1985 the owner chose to keep it as a convenience grocery store.

Councillor McInroy called for members of the public wishing to speak either in favour of or against the application.

Mr. Randy Murray

Mr. Murray, representing the Condo Corporation 97, noted the following:

- the hours of operation;
- according to the 1985 agreement the store was to be used as a neighbourhood convenience store only;
- the store is now a convenience store with a take-out service;
- the property around the store and the property at 1 Lombardy Lane has deteriorated as a result of the business operation;
- adolescents hang out around the property and have caused damage;
- neighbourhood residents are being harassed by these adolescents;
- laws have been broken and no inspection has been undertaken to confirm that the conditions of the agreement are being followed;
- there is no policing in this area on a regular basis;
- a chain link fence had to be erected to control traffic using Lombardy Lane;
- there is garbage on the property and the dumpster is unsightly;
- there is an open propane tank and teenagers are smoking in the vicinity of the tank;
- there has been damage to the fence and vehicles have been vandalized;
- the property is an eyesore;
- the dumpster should be enclosed inside a chain link fence;

- the owner does not follow the current development agreement and the store is being operated beyond midnight;
- he was not in favour of the approval of the proposed agreement;
- “no loitering” signs be posted on the property.

In response to Councillor Hetherington, Community Council was advised the propane is used for cooking not heating.

Ms. Dorothy Fenn, 1 Lombardy Lane

Ms. Fenn expressed concern with the kids hanging around the building stating, she does not feel safe in the neighbourhood as a result. The applicant has not met the requirements of the original agreement nor have they been enforced. She expressed concern that there may be nothing to prevent the applicant from doing more than what is approved. She does not feel the deep fat fryer should be approved. She expressed concern with decreasing property values.

Mr. Brenda Julien, 1 Lombardy Lane, Unit #204

Ms. Julien made the following points:

- over the last number of years their property has been filled with garbage;
- she owns her unit and cannot just pack up and move to another location;
- the property owners have erected a fence which has been cut by the teenagers;
- there is a stoop on the back of the store which overlooks her property which is used for storage of used boxes and containers;
- there seems to be no push or any form of control in place to keep the teenagers from loitering on the property;
- the teenagers sit on the electrical box located outside the condo building;
- Council not approve the proposed development agreement.

Mr. Bruce Nunn, 1 Lombardy Lane

Mr. Nunn advised he has two children who are afraid to go to the store because of the teenagers that hang out there. He stated that if they are going to be able to hang out until two in the morning the neighbourhood will become more unsafe. He noted nothing has been done to enforce the development agreement and the owner has continued to break the law.

Mr. Michael Toulaney, Cascade Video

Mr. Toulaney advised:

- the teenagers also cause problems for them by hanging around the property;
- they support community activities;

- they need a time frame in order to complete all requirements;
- they have already placed a light on the property and located garbage cans in the front;
- he will close at midnight throughout the week but was requesting to be allowed to remain open later on Friday and Saturday in order to be comparable with other pizza stores.

Councillor McInroy called three times for any additional speakers. Hearing none, the following motion was placed before Community Council.

MOVED by Councillors Hetherington and Greenough that the public hearing be closed. MOTION PUT AND PASSED UNANIMOUSLY.

Decision of Council

Councillor Greenough stated Council is not here to assess the character of or judge the Toulaneys but rather the amendment to the development agreement. The Councillor advised the store has served as a source of disruption in the neighbourhood because of the take out service. Referencing the original development agreement, the Councillor noted that in the planning stages this neighbourhood did not want a take out service at this location which is why the original development agreement specifies that it is for a convenience grocery store only. The Councillor advised the present operation is a source of disruption and the development agreement has been breached. He further noted that when an amendment was applied for in 1997 it was made on the understanding that it was to serve the students from the french school during the noon hour period but, after the permit was issued, a full menu was printed advising they were offering fast foods take out service and that the hours were extended to 2 a.m. The Councillor advised development services advised the owners they were in breach of the permit and also in breach of the development agreement but he had received calls as late as June 17th that the business was operating past 1:30 a.m. The Councillor advised he did not have confidence that if this amendment was granted that there would be any compliance with it or the terms that have been specified as the owner has had time to comply and to improve the location and has not.

MOVED by Councillors Greenough and Hetherington that the Harbour East Community Council:

1. **discharge the existing development agreement for 95 Montebello Drive and approve the new development agreement, attached as Appendix "A" to the staff report dated May 17, 2000;**
2. **require that the development agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the applicant,**

from the date of final approval by Community Council and any other bodies as necessary, whichever is later; otherwise, this approval will be void and obligations arising hereunder shall be at an end.

Councillor Hetherington stated that if development agreements are not enforced or acted upon then they are no good. He noted if this motion is defeated then the original agreement will be in effect and will have to be complied with.

Councillor Cooper stated development agreements are contracts that should be enforced and the original agreement clearly defined limitations as to size, etc.

Councillor Schofield question why a requested change is sent to Council when the previous development agreement has not been fulfilled. In response, Mr. Roger Wells advised the applicant is within his/her rights to amend a development agreement and even if it is going in defiance to what has already been approved it is still due process. He advised that through the court system when HRM is going the injunction route the judge may not grant the injunction until the applicant has been given due process. Due process in this case is that the applicant goes through a public process and comes to Council with a request to amend the development agreement to increase the hours of operation, etc. Council then has the option of approving that amendment or rejecting it. If Council rejects the amendment then staff can enforce the agreement currently in place. He stated staff cannot say no to something that has been enabled through statute. The applicant has the right to apply for an amendment to a development agreement.

MOTION DEFEATED UNANIMOUSLY.

Subsequently, the following motion was placed.

MOVED by Councillor Greenough and Deputy Mayor Cunningham that the matter be referred to legal services to determine if we can rescind the original permit issued in 1997 for food service as it is not being used for its intended purpose. MOTION PUT AND PASSED UNANIMOUSLY.

8.4 Case 00255: Application by MacPhee Pontiac Buick GMC to rezone a portion of 636 Portland Street, Dartmouth from H (Holding) Zone to C-3 (General Commercial) Zone

- A report prepared for Paul Dunphy, Director, Planning and Development Services, dated June 8, 2000, on the above noted, was before Community Council.

Mr. Mitch Dickey, Planner, with the aid of overheads, presented the staff report advising staff is recommending approval of the rezoning and zone amendment as they are consistent with the intent of the MPS.

In response to Councillor Schofield, Community Council was advised there is a storm sewer which discharges into the wetland portion of Russell Lake.

Councillor McInroy called for members of the public wishing to speak either in favour of or against the rezoning. Hearing none, the following motion was placed before Community Council.

MOVED by Councillors Greenough and Hetherington that the public hearing be closed. MOTION PUT AND PASSED UNANIMOUSLY.

Decision of Council

MOVED by Councillors Hetherington and Greenough that the Harbour East Community Council:

- 1. approve the rezoning to extend the C-3 (General Commercial) Zone over the entire property located at 636 Portland Street as shown on Map 1 of the staff report dated June 8, 2000.**
- 2. approve the amendment to Section 15 of the Land Use By-Law for Dartmouth as shown in Attachment 1 of the staff report dated June 8, 2000.**

MOTION PUT AND PASSED UNANIMOUSLY.

8.5 Case 00251: Application for a Development Agreement, Portland Hills Comprehensive Development District (CDD), Dartmouth

- A report prepared for Paul Dunphy, Director, Planning and Development, dated June 16, 2000, on the above noted, was before Community Council.
- Notice of Motion was given June 20, 2000.

Mr. Roger Wells, Regional Coordinator, Planning Applications, outlined the staff report and the proposed phases of development advising, staff was recommending approval of the proposed application.

Councillor McInroy called for members of the public wishing to speak either in favour of or against the rezoning.

Mr. Robin Smith, 93 Regal Road

Mr. Smith expressed concern with the additional traffic that will be generated by the proposal and the impact it will have on Portland Street.

Ms. Heather Drysdale

Ms. Drysdale, Portland Estates Residents Association, stated that Clayton Developments has proven to be a responsible developer with an interest in improving and maintaining the quality of the communities in which they work. She stated PERA is pleased with the concept plan and this development will set precedents for future developers noting, any errors made at this stage will be compounded over the years. She expressed concern with the commercial uses which allows commercial development to serve adjacent neighbourhoods and the CDD allowing food stores. She expressed concern with the modifications that can be done without due process and how the development agreement will be enforced. She also expressed concern with the lifestyle units and the density issue.

Mr. Tom Patterson

Mr. Patterson, speaking on behalf of his mother owner of 836 Portland Street, advised his mother had sold a parcel of land for the development of Portland Estates while retaining right-of-way access to her property. He suggested before a CDD is approved all legal aspects of the original land sale be examined. He advised the property in question had access to Portland Street through lot 13 of Alpine Drive. He expressed concern that his mother's property may become landlocked in this process stating, there should be reasonable access by way of a road, not a driveway, to the property so that it can be developed at some point in time.

Mr. Mike Willett, Vice President of Development, Clayton Developments

Mr. Willett advised there is a legal issue involving the covenants at the present time and thus it cannot be discussed. Mr. Willett advised Clayton Developments will provide access to an approved single family lot but are requesting cost sharing for services to this lot. He stated they will not block the Pattersons off, will hook them to the sewer services and will give them either a driveway or street access to one house. He advised Clayton Developments will be working with the Dartmouth Lakes Advisory Board to prevent any damage to the lakes. He advised there are best management practices being enforced with regards to sediment control and there will be full time supervision on site as well as a development manager who will work with the Department of Environment, HRM inspectors, the contractor and the consulting engineers.

Councillor McInroy called three times for any additional speakers. Hearing none, the following motion was placed before Community Council.

MOVED by Councillors Hetherington and Greenough that the public hearing be closed. MOTION PUT AND PASSED UNANIMOUSLY.

Decision of Council

Councillor Hetherington stated this is a good plan and will provide environmental protection. The Councillor thanked all those involved in the process.

MOVED by Councillors Hetherington and Greenough that the Harbour East Community Council:

1. **Approve the proposed development agreement, included as Attachment I, to the staff report dated June 16, 2000, to permit the development of a 93 acre mixed residential and commercial CDD, known as Portland Hills, Morris Lake area, Dartmouth.**
2. **Require that the development agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval by Community Council and any other bodies as necessary, whichever is later; otherwise, this approval will be void and obligations arising hereunder shall be at an end.**

MOTION PUT AND PASSED UNANIMOUSLY.

9.1 PETITIONS - NONE

10. REPORTS

10.1 MEMBERS OF COUNCIL

10.1.1 Lands of William Casavechia - Councillor Hetherington

Councillor Hetherington advised Mr. Casavechia owns approximately 40 acres of land on Morris Lake. The Councillor advised large groups of adolescents are hanging out on the property, cutting down trees and burning them expressing concern with what the resulting damage may be if there is a fire in the woods in this area. He noted there is also garbage debris around the lake. The Councillor requested a letter be sent to the RCMP, Department of the Environment, Department of Fisheries and the Fire Marshall for Nova Scotia advising them of the exact location of the property and request their assistance in saving this property and others around the lake from further damage.

MOVED by Councillors Hetherington and Schofield that Community Council write to the RCMP, Department of the Environment, Department of Fisheries and Oceans and the Provincial Fire Marshall requesting assistance in saving this property and others around the lake from further damage. MOTION PUT AND PASSED.

10.1.2 Public Nuisance - Cole Harbour Common - Councillor Cooper

Councillor Cooper advised the wooded areas to the rear of the Cole Harbour Common sports fields are being used during sports events because there are no washroom facilities. He requested Community Council request staff, through Regional Council, investigate the feasibility of locating permanent washroom facilities on the commons and until such time as these are in place, temporary facilities be provided.

MOVED by Councillors Cooper and Schofield that Harbour East Community Council recommend Halifax Regional Council investigate the feasibility of locating permanent washroom facilities on the Cole Harbour Commons and, until such time as these are in place, temporary facilities be provided. MOTION PUT AND PASSED UNANIMOUSLY.

10.2 Case 00234 - Amendment to C-2 (General Business) Zone for Cole Harbour/Westphal - Pudgey Tire

- A supplementary report prepared for Jim Donovan, Acting Director, Planning and Development Services, dated June 29, 2000, on the above noted, was before Community Council.
- Copy of the Harbour East Planning Advisory Committee, dated June 20, 2000 was before Community Council.
- Report prepared for Paul Dunphy, Director, Planning and Development Services, dated June 7, 2000, was before Community Council.

MOVED by Councillors Hetherington and Greenough that Harbour East Community Council not move First Reading to set a public hearing date and in doing so refuse the requested amendment to the C-2 Zone for Cole Harbour/Westphal to allow mobile car wash uses in conjunction with minor automotive repair uses. MOTION PUT AND PASSED UNANIMOUSLY.

11. MOTIONS - NONE

12. ADDED ITEMS

12.1 Appeal of refusal of a variance for 93 Regal Road, Dartmouth

- A from Cathy Spencer, Development Officer, Eastern Region, dated June 28, 2000, on the above noted, was before Community Council.

Ms. Spencer, with the aid of overheads, presented the report advising staff if recommending refusal of the variance as it does not meet the criteria for the granting of a variance.

Mr. Bob Smith, 93 Regal Road

Mr. Smith, property owner, advised every house on his side of the street and directly across from him have provided signed statements that they do not object to his proposal. He advised the current living room is very small and would like to expand it another 4-5 feet. He advised there is 30' from the front of his house to the curb.

MOVED by Councillors Hetherington and Cooper that Community Council uphold the Development Officer's decision to refuse the variance for the property located at 93 Regal Road, Dartmouth. MOTION PUT AND PASSED.

12.2 Dartmouth Sportsplex Community Association Request for Zoning Approval for a Circus/Musical Show

MOVED by Deputy Mayor Cunningham and Councillor Hetherington that the Harbour East Community Council approve the use of the Sportsplex parking lots on an annual basis for a circus/musical show three times per year for a maximum total of 24 days. MOTION PUT AND PASSED.

12.3 Case 00163 - Concept Plan - 506 Portland Street

Community Council received the report for information.

12.4 Left Turning Lane Prince Albert Road in Front of Banook Shores - Councillor Greenough

MOVED by Councillor Greenough and Deputy Mayor Cunningham that the Traffic Authority investigate the possibility of installing a left turning lane coming towards Dartmouth (south) on Prince Albert Road into Banook Shores as well as the possibility of an extension to Sinclair Street. MOTION PUT AND PASSED UNANIMOUSLY.

13. NOTICES OF MOTION - NONE

14. PUBLIC PARTICIPATION - NONE

15. NEXT MEETING

The next meeting is scheduled for Thursday, September 7, 2000 at 7:00 p.m.

16. ADJOURNMENT

MOVED by Councillors Hetherington and Cooper that the meeting be adjourned at 10:55 p.m. MOTION PUT AND PASSED UNANIMOUSLY.

**Julia Horncastle
Assistant Municipal Clerk**

