

**HARBOUR EAST COMMUNITY COUNCIL
MINUTES
MAY 25, 2005**

PRESENT: Councillor Harry McInroy, Chair
Councillor Becky Kent
Councillor Gloria McCluskey
Councillor Andrew Younger
Councillor Bill Karsten

REGRETS: Councillor Jim Smith

STAFF: Mr. Derk Slaunwhite, Municipal Solicitor
Ms. Sherryl Murphy, Legislative Assistant

TABLE OF CONTENTS

1. CALL TO ORDER 4

2. APPROVAL OF MINUTES 4

3. APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS 4

4. BUSINESS ARISING OUT OF THE MINUTES 5

 4.1 STATUS SHEET ITEMS 5

 4.1.1 Case 00770 - 10 Springhill Road 5

 4.1.2 Rezoning - 198 Waverley Road 5

 4.1.3 Street Lighting - Slayter Street 5

 4.1.4 Development Agreements for Institutional Purposes 5

 4.1.5 Control of Lake Levels for Lake Micmac and Lake Charles 5

 4.1.6 Changes to Development Agreement - Penhorn Drive at Woodlawn Mall 5

 4.1.7 Maynard Beach, Dartmouth 5

 4.1.9 Service Building - Cole Harbour Commons 5

 4.1.10 Servicing Plan for Ball and Sports Fields In the HECC Area 6

5. MOTIONS OF RECONSIDERATION 6

6. MOTIONS OF RESCISSION 6

7. CONSIDERATION OF DEFERRED BUSINESS 6

8. HEARINGS 6

 8.1 PUBLIC HEARINGS 6

 8.1.1 Case 00731: Russell Lake West Development Agreement 6

 8.2 Appeal Hearings 9

 8.2.1 Appeal of Development Officer's Decision to Grant Site Plan Approval - 7 George's Lane, Dartmouth 9

 8.2.2 Appeal of Development Officer's Decision to Grant Site Plan Approval - 85/87 Windmill Road, Dartmouth 13

9. CORRESPONDENCE AND DELEGATIONS 13

 9.1 Correspondence 13

 9.2 Presentation 13

10.	REPORTS	13
10.1	Planning Advisory Committee - Harbour East Community Council	14
11.	MOTIONS	14
12.	ADDED ITEMS	14
12.1	Case 00770 - 10 Springhill Road, Dartmouth	14
12.2	Case 00803 - Housekeeping Amendments - Dartmouth Land Use By-law	15
12.3	Naming of Playground and Park - Seaside Elementary School (Gary Babin Memorial Park)	15
12.4	Special Resolution – Downtown Dartmouth Business Commission – Change To Member Terms	15
12.5	Petition – Brightwood Golf Course (Councillor McCluskey)	15
12.6	Allocation of Building Communities Capital Fund	16
13.	NOTICES OF MOTION	16
14.	PUBLIC PARTICIPATION	16
15.	NEXT MEETING	16
16.	ADJOURNMENT	16

1. CALL TO ORDER

The meeting was called to order at 7:05 p.m.

2. APPROVAL OF MINUTES - May 5, 2005

MOVED by Councillor Karsten, seconded by Councillor McCluskey that the minutes of the May 5, 2005 meeting of the Harbour East Community Council meeting, as distributed, be approved.

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

Additions:

- 12.1 Case 00770 - 10 Springhill Road, Dartmouth (see also 4.1.1)
- 12.2 Case 00803 - Housekeeping Amendments - Dartmouth Land Use By-law
- 12.3 Naming of Playground and Park - Seaside Elementary School (Gary Babin Memorial Park)
- 12.4 Special Resolution – Dartmouth East Business Commission – Change to Member Terms (Councillor McCluskey)
- 12.5 Petition – Brightwood Golf Course (Councillor McCluskey)

Later in the meeting Community Council agreed, at the request of Councillor Kent, that the following item be added:

- 12.6 Allocation of Building Communities Capital Fund

Information Items:

- Brightwood Golf Course Re-development

MOVED by Councillor Younger, seconded by Councillor McCluskey that the agenda, as amended, be approved. MOTION PUT AND PASSED UNANIMOUSLY.

4. BUSINESS ARISING OUT OF THE MINUTES

4.1 STATUS SHEET ITEMS

4.1.1 Case 00770 - 10 Springhill Road

This matter is dealt with under item 12.1 and will be removed from the status sheet.

4.1.2 Rezoning - 198 Waverley Road

This matter is dealt with under item 12.2 and will be removed from the status sheet.

4.1.3 Street Lighting - Slayter Street

No information has been received. This matter will remain on the status sheet.

4.1.4 Development Agreements for Institutional Purposes

No information has been received. This matter will remain on the status sheet.

4.1.5 Control of Lake Levels for Lake Micmac and Lake Charles

- An Information Report dated May 9, 2005 was before Community Council.

This matter will be removed from the agenda.

4.1.6 Changes to Development Agreement - Penhorn Drive at Woodlawn Mall

No information received. This matter will remain on the status sheet.

4.1.7 Maynard Beach, Dartmouth

- A staff report dated April 19, 2005 was before the Community Council for consideration.

Councillor McCluskey indicated that she had additional concerns. **Community Council agreed that the matter be included on the agenda for the next meeting.** Councillor McCluskey agreed to discuss her concerns with staff prior to the next meeting.

4.1.9 Service Building - Cole Harbour Commons

No information received. This matter will remain on the status sheet.

4.1.10 Servicing Plan for Ball and Sports Fields In the HECC Area

No information received. This matter will remain on the status sheet.

5. **MOTIONS OF RECONSIDERATION** - None

6. **MOTIONS OF RESCISSION** - None

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

8. **HEARINGS**

8.1 **PUBLIC HEARINGS**

8.1.1 Case 00731: Russell Lake West Development Agreement

- First Reading was given to this matter at the May 5, 2005 meeting of Harbour East Community Council. A previously distributed staff report dated April 5, 2005 was before Community Council for consideration. Also before Community Council was the report of the Russell Lake PPC Sub-committee dated February 3, 2005 which was previously distributed. A memorandum dated May 10, 2005 from Paul Morgan was before Community Council.
- Correspondence from Mr. S. M. Mandaville dated May 23, 2005 was distributed to members of Community Council.
- A memorandum from Paul Morgan dated May 25, 2005 was also distributed to members of Community Council.

Mr. Paul Morgan, utilizing a PowerPoint presentation, briefly reviewed the staff report. Mr. Morgan indicated that approval by Harbour East Community Council is subject to approval by Regional Council of all financial matters.

Mr. Morgan went on to refer to improvements to existing roadways that the developer is prepared to undertake, including Norman Newman Boulevard where it meets Baker Drive. He indicated that the developer will be conducting a traffic study to determine if signals are required at the intersection. Mr. Morgan further noted that the developer would also be reviewing the intersection of Isner Boulevard and Norman Newman Boulevard and the access to Norman Newman from Portland Street to determine if improvements are required.

Mr. Morgan advised that the May 25, 2005 memorandum summarized the amendments to the contract development suggested by Councillor Younger, which Clayton Developments is prepared to accept.

Mr. Morgan then responded to questions from members of Community Council.

The Chair called for persons wishing to speak in favour of or against the proposal.

Shalom Mandaville, Soil and Water Conservation Society of Metro Halifax

Mr. Mandaville referred to his submission dated May 23, 2005 and noted that :

- he is disappointed that Canadian Council of Ministers of the Environment guidelines for phosphorus are not followed
- phosphorus values not increase over 15 micrograms/litre. Based on this guideline, the development should not be allowed to proceed
- concern that the measurement device referred to in the Jacques Whitford report is not very efficient in measuring phosphorus
- phosphorus is far more dangerous than silt

Hugh Millward, Morris Russell Lake Public Participation Committee

Mr. Hugh Millward, Chair of the sub-committee considering this development agreement. Mr. Millward indicated that he was speaking in favour of the Development Agreement.

Mr. Millward spoke as the representative of the Dartmouth Lakes Advisory Committee, as a member of the local Trails Association and in his role as a member of the Regional Planning Steering Committee.

Mr. Millward noted that:

- the plan is the best he has seen for any Development Agreement for the last 12 years sitting on the Dartmouth Lakes Advisory Board
- the plan requires a 100 foot lake buffer and 50 feet buffer from the stream
- the developer is to maintain the buffer as natural including the steep lands back from the lake
- 30% of land will be retained naturally
- as member of the Dartmouth Lakes Advisory Board he has seen the Sediment and Erosion Control Plan which was generally well received.

- trails proposed within for the development will link northwards and southwards to existing trails. A hierarchy of trails exists in the development including active transportation trails, smaller more direct routes through parks and nature trails.
- the proposed development is in keeping with the goals and objectives of the Regional Plan

Concluding his remarks, Mr. Millward reiterated that he was generally in favour of the development agreement.

Henry Richard, Dartmouth

Speaking on behalf of the residents of Portland Estate Boulevard, Mr. Richard expressed concern that the connection of Road E will negatively impact the Boulevard with significantly increased traffic. He went on to suggest that the connection of Road E be reconsidered.

Later in the meeting it was clarified that the Development Agreement before Community Council this evening does not include the connection of Road E with Portland Estate Boulevard.

Phil Elliot, Chair, Morris Russell Lake Public Participation Committee

Mr. Elliot noted that the Public Participation Committee had, after a thorough review, endorsed the recommendation of the sub-committee. Mr. Elliott indicated that he believed this proposal would be an asset to Dartmouth and in the long term help to resolve the existing traffic problems.

Mike Hanusiak , Clayton Developments

Mr. Hanusiak briefly addressed Community Council thanking the members of the Public Participation Committee, staff and the general public for working with Clayton Developments to arrive at the development agreement. He noted that what Community Council has before it this evening is the outcome of a great deal of work.

Mr. Hanusiak then clarified that the intent was to complete Baker Drive to the interchange and reviewed with Community Council the plan for removal of trees from the site. He stressed the purpose of removing trees is only to address Hurricane Juan damage or those infected with the long horn beetle. Concluding his comments, Mr. Hanusiak indicated that the water monitoring program will be carried out at arms lengths from Clayton Developments.

MOVED by Councillor McCluskey, seconded by Councillor Karsten that the public hearing close. MOTION PUT AND PASSED UNANIMOUSLY.

MOVED by Councillor Karsten, seconded by Councillor Younger that Harbour East Community Council:

- **Approve the development agreement attached to the April 5, 2005 staff report with the amendments presented in the staff memorandum dated May 25, 2005, to allow for a comprehensively planned community development between the Circumferential Highway and Russell Lake in Dartmouth.**
- **Require that the development agreement be signed within 120 days or any extension thereof granted by the Community Council on request of the application from the date of final approval by the 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.**

Following a further short discussion the MOTION WAS PUT AND PASSED.

8.2 Appeal Hearings

8.2.1 Appeal of Development Officer's Decision to Grant Site Plan Approval - 7 George's Lane, Dartmouth

- A staff report dated May 17, 2005 was before Community Council.

Mr. Sean Audas, Development Officer, noted that a number of appeals had been received after the filing of the staff report. Mr. Audas indicated that these had been couriered to members of Community Council. A copy of the appeal are included with the file for this meeting. Mr. Audas noted that an appeal received from Stephanie Young and Sergey Gorbanchenko was not valid as the appellants were not within the 30 meters notification area.

Mr. Audas briefly reviewed the staff report regarding the appeal of a site plan approval of a six (6) unit townhouse development at 7 George`s Lane, Dartmouth. Mr. Audas reviewed the criteria under which he is required to consider the site plan approval as found on page three of the staff report. Community Council`s decision regarding this matter is based on this criteria. Mr. Audas noted that the original proposal included a driveway which has subsequently been removed by the applicant.

In response to a question from Councillor Younger, Mr. Slaunewhite, Municipal Solicitor indicated that Community Council's decision is to be based on only the Land Use By-Law (LUB) criteria which is referred to in the Municipal Government Act (MGA). He further clarified

that even if Community Council does not believe that the Land Use By-Law is in keeping with the Municipal Planning Strategy, they must base their decision on the criteria found in the LUB.

Following a further discussion, Mr. Slaunewhite confirmed that there was no right of appeal to the Utility and Review Board relative to this matter.

In response to a question from Councillor Kent, Mr. Audas confirmed that Community Council will make their decision based on the criteria in the Land Use By-law.

In response to Councillor McCluskey, Mr. Audas noted that Section (1) is a purpose or mission statement rather than criteria against which this matter can be considered.

The Chair called for persons within the notification area and for persons having submitted an appeal to speak to the matter.

Ed Lake, appellant

Mr. Lake addressed Community Council noting that he would like to say that the proposal does not meet the criteria, but he cannot. However, there is much wrong with the development outside this criteria. He went on to indicate that he supported the Land Use By-Law (LUB) and understands that it is in place to protect the community and to allow development to occur.

Mr. Lake went on to point out that the Municipal Planning Strategy (MPS) is a comprehensive document which reflects common values of people and the vision for the future. The MPS supports the retention of affordable housing in the downtown. He went on to suggest that removing good quality affordable housing does not meet the policies of the MPS. Mr. Lake indicated that there appears to be a gap in logic between the LUB and the MPS. In conclusion, Mr. Lake commented that basing the criteria only on the LUB and not on the policies of the MPS was a narrow view.

Tom MacDonald, appellant

Mr. MacDonald addressed Community Council representing his mother and, using a copy of a photograph taken in 1905, which includes the pond mentioned previously. Mr. MacDonald indicated that the houses shown in the photograph are for the most part still in use today and that there has been little new development in the area. He suggested that the photograph illustrated the heritage nature of the area which the Downtown Dartmouth Secondary Planning Strategy was trying to maintain. Mr. MacDonald indicated that he did not believe that the proposed development was in keeping with the area.

Steve Glavin , St. George's Lawn Tennis Club, appellant

Mr. Glavin addressed Community Council noting that:

- members of the Club are firmly opposed to any development which would threaten the Club's viability and threaten its role as a unique sports facility in downtown Dartmouth
- St. George's Lane is a variable width street having no sidewalks or curbs and as such is not an appropriate site for multi-residential development
- this development will add to parking and traffic problems already being experienced
- the Lane is already used by many as a shortcut
- given that there has been no traffic studies done in connection with the proposal, Mr. Glavin suggested that a study of the traffic flows be undertaken
- he is appalled that single family dwellings can be converted to multi-unit dwellings under the present regulations
- he is concerned that there appears to be no protection against overcrowding of St. George's Lane
- the existence of St. George's Tennis Club on St. George's Lane is in jeopardy

Concluding his remarks, Mr. Glavin requested that Community Council explore every possible recourse to protect the character of St. George's Lane and enhance and protect the longstanding contribution of the St. George's Tennis Club to the Dartmouth community.

Bill Greateorex, appellant

Mr. Greateorex addressed Community Council noting that he has experienced drainage problems on his property in the past. He went on to indicate that he had been anticipating a report with regard to the drainage and was hesitant to support the proposal without first having reviewed this report. Mr. Greateorex indicated that was concerned that the development would cause a reoccurrence of the drainage problems on his property.

Arlene Deifenbrach, a resident within the area of notification

Ms. Deifenbrach addressed Community Council making the following comments:

- she is concerned that only the criteria in the Land Use By-Law can be considered
- requesting that Community Council consider that every resident on the Lane is of the viewpoint that the development does not fit with the Municipal Planning Strategy
- St. George's Lane is an R-1 and R-2 neighbourhood and multi-units does not fit
- a change in use should require a development agreement
- Community Council, the planner and the developer should all be considering whether or not this development fits with the MPS and improves downtown Dartmouth

- suggested that multi-unit development should be placed on vacant lots or replace derelict buildings

Ms. Stephanie Young representing Jane Gardener addressed Community Council noting that:

- the neighbourhood is a heritage and well maintained area
- residents make a significant effort to maintain the heritage and character of the area
- she is not opposed to development, but fails to see how demolition of a good repair single family dwelling is in keeping with the policies
- precedence setting is of concern
- she fears the impact of this development on the Linden Lea pond
- she is concerned with the increase of noise
- the Lane is narrow and vehicular traffic will increase

There being no further persons wishing to speak, the appeal hearing was **closed**.

MOVED by Councillor Karsten, seconded by Councillor Kent that Harbour East Community Council uphold the Development Officer's decision to grant site plan approval for a six (6) unit townhouse development at 7 George's Lane, Dartmouth, including the revisions to the site plan which eliminates the driveway near Unit 1 and enables the existing vegetation to be retained.

In response to a question from Councillor Karsten, Ms. Kenda MacKenzie, Engineer, confirmed that St. George's Lane is a municipally owned street. She went on to note that information relating to traffic criteria would have to be obtained from Traffic Services.

Councillor McCluskey, referring to the Downtown Neighbourhood Zone, suggested that this townhouse development may be permitted only if it is in keeping with the stated purpose. The purpose of the Zone is to protect the integrity and character of the existing residential neighbourhoods.

Councillor Kent addressed the matter noting that she did not believe that the proposal fits with the neighbourhood. She went on to point out that the proposal did not meet the needs of the neighbourhood. She further indicated that the Land Use By-Law was not in keeping with the Municipal Planning Strategy. Stressing that she was not criticizing the decision of the Development Officer, Councillor Kent indicated that she could not support the site plan approval. In conclusion, Councillor Kent expressed concern that the intent of the MPS will be lost in the wording of the LUB and indicated that steps should be taken to ensure this scenario is not repeated.

Councillor Younger noted that it was absolutely and abundantly clear that the Municipal Planning Strategy and and Land Use By-Law do not match. It is also clear that areas like St. Georges Lane need to be specifically protected. Councillor Younger, noting that he could not support the approval, suggested that St. George's Lane should be designated a heritage streetscape.

Councillor Karsten, agreeing that the MPS does not match the LUB, noted again his concern regarding the interpretation of a street.

In response to Councillor Karsten, the Municipal Solicitor, advised that should Community Council not uphold the decision of the Development Officer, the applicant does not have a statutory right of appeal to the Utility and Review Board. The applicant does have the right to submit an application to the Nova Scotia Supreme Court on grounds of natural justice, excessive jurisdiction, and fairness. The Municipal Solicitor indicated that in terms of civil exposure, the test would be whether or not Community Council was acting in bad faith.

Responding to Councillor Karsten's concerns regarding the interpretation of a street, Ms. MacKenzie indicated that regardless of whether there is a clear definition of a lane and a street, HRM would still be required to grant access. St. George's Lane meets the criteria for a municipally owned and maintained right of way and the only point we could look at is the proposed driveway. Ms. MacKenzie concluded that based upon that fact, staff would not be changing the criteria upon which they would base their decision.

MOVED by Councillor Karsten that a decision relative to this matter be deferred pending a report from Council regarding emergency vehicle access and other traffic issues.

There was no seconder to the motion.

Following a further brief discussion, the **MOTION WAS PUT AND DEFEATED.**

8.2.2 Appeal of Development Officer's Decision to Grant Site Plan Approval - 85/87 Windmill Road, Dartmouth

- A staff report dated May 18, 2005 was before Community Council.

Mr. Audas advised that the appellant and applicant had been able to reach an agreement in regard to this matter. As the appellant was not present, **Community Council agreed to remove the matter from the agenda.**

9. CORRESPONDENCE AND DELEGATIONS

9.1 Correspondence - None

9.2 Presentation - None

10. REPORTS

10.1 Planning Advisory Committee - Harbour East Community Council

- This matter was last considered at the May 5, 2005 meeting of Harbour East Community Council at which time it was agreed that the report would be considered at this meeting.

MOVED by Councillor Kent, seconded by Councillor McCluskey that Harbour East Community Council:

- **Approve the terms of reference attached to the February 28, 2005 staff report for a new Harbour East Planning Advisory Committee that would provide advice for all areas of Harbour East Community Council.**
- **Disband the current Harbour East Planning Advisory Committee that provides advice for the Cole Harbour/Westpac and Eastern Passage/Cow Bay plan areas.**
- **Instruct the Municipal Clerk's office to advertise for expressions of interest for citizens wishing to serve on the Committee and report back to Community Council with the results.**
- **Request staff to provide a report regarding the establishment of a Eastern Passage/Cow Bay Community Planning Advisory Committee including Terms of Reference.**

Referring to the fourth bullet, Councillor Kent noted that the intent is the Eastern Passage/Cow Bay Community Planning Advisory Committee report to Harbour East Community Council. She noted that the community of Eastern Passage/Cow Bay has had a long history of input on planning matters and wishes to continue to provide this input. The Councillor went on to request that staff consider one member of the Harbour East Community Council and one member of the newly established HEPAC serve on this Committee. **MOTION PUT AND PASSED UNANIMOUSLY.**

11. **MOTIONS** - None

12. **ADDED ITEMS**

12.1 **Case 00770 - 10 Springhill Road, Dartmouth**

- A staff report dated May 6, 2005 was before Community Council.

MOVED by Councillor Kent, seconded by Councillor Karsten that Harbour East Community Council give First Reading of the proposed rezoning and schedule a Public Hearing for July 7, 2005. MOTION PUT AND PASSED UNANIMOUSLY.

12.2 **Case 00803 - Housekeeping Amendments - Dartmouth Land Use By-law**

- A staff report dated May 11, 2005 was before Community Council.

MOVED by Councillor Younger, seconded by Councillor McCluskey that Harbour East Community Council give First Reading to the proposed amendment to the Land Use By-Law for Dartmouth provided in Attachment A of the May 11, 2005 staff report and schedule a public hearing for July 7, 2005. MOTION PUT AND PASSED UNANIMOUSLY.

12.3 **Naming of Playground and Park - Seaside Elementary School (Gary Babin Memorial Park)**

- A memorandum dated May 24, 2005 from Peter Verge, Superintendent, Sportfields, Playgrounds and Green Spaces was distributed to Community Council.

MOVED by Councillor Kent, seconded by Councillor Karsten that Harbour East Community Council name a newly established playground and park adjacent to the Seaside Elementary School in Eastern Passage as the Gary Babin Memorial Park. MOTION PUT AND PASSED UNANIMOUSLY.

12.4 **Special Resolution – Downtown Dartmouth Business Commission – Change To Member Terms**

- This matter was added during the setting of the agenda.

MOVED by Councillor McCluskey, seconded by Councillor Younger that Harbour East Community Council, in accordance with the special resolution passed in 2003 relating to the changes in the By-Laws of the Downtown Dartmouth Business Commission, ratify the extension by one year to the current term of the appointees to end on a date in June 2006 coinciding with the date of the Annual General Meeting of the organization. MOTION PUT AND PASSED UNANIMOUSLY.

12.5 Petition – Brightwood Golf Course (Councillor McCluskey)

- This matter was added during the setting of the agenda.

Councillor McCluskey submitted documents from the Citizens for Brightwood Society as follows:

- Document dated May 25, 2005 re sale/purchase of Brightwood Golf and Country Club
- Document dated May 25, 2005 re creation of municipal park on portions of the Brightwood Golf and County Club
- Proposal for Brightwood Golf and Country Club lands in conjunction with other lands within the general area

Councillor McCluskey briefly reviewed the documents including the following key highlights:

- If the Golf and Country Club is to proceed with the sale/transfer its lands, the Citizens for Brightwood Society is requesting that HIM consider purchasing the lands
- That alternative use of this land be in the interest of the community rather than large scale residential development
- Uses such as a municipal park, trails, a new Dartmouth High School, a community center or day care

MOVED by Councillor McCluskey, seconded by Councillor Karsten that staff prepare and submit a report to Regional Council in response to proposals by the Citizens for Brightwood Society as outlined in three submissions made to Harbour East Community Council on May 25, 2005. MOTION PUT AND PASSED UNANIMOUSLY.

12.6 Allocation of Building Communities Capital Fund

- This matter was added to the agenda at the request of Councillor Kent

MOVED by Councillor Kent, seconded by Councillor Younger that Harbour East Community Council approve the allocation of Building Communities Capital Funds at \$25,000 per District within the Harbour East Community Council. MOTION PUT AND PASSED UNANIMOUSLY.

13. **NOTICES OF MOTION** - None
14. **PUBLIC PARTICIPATION** - None
15. **NEXT MEETING** - July 7, 2005
16. **ADJOURNMENT**

There being no further business, the meeting adjourned at 10:10 p.m.

Sherryl Murphy
Legislative Assistant