

10.3.1

From: Luc Ouellet
To: Dawn Sloane; Patrick Murphy; Sheila Fougere; Sue Uteck
Date: 10/09/2008 2:13:14 pm
Subject: Fwd: Re: Office for Professional Person

Councillors,

The following is additional clarification on the above-noted item.

Someone had approached Councillor Uteck earlier in the year requesting that the profession of actuary be added to the definition of "Professional Persons" in the Halifax Peninsula LUB. Currently, this definition lists doctor, physician, surgeon, dentist, barrister, solicitor, architect, engineer, chartered accountant, and psychologist as professions that can have their office in the dwelling house in which they reside in. These professions have rights that go beyond what is currently allowed under the normal home occupation provisions. For example they are allowed an unlimited number of employees and can use as much space in the home as they need or want.

The concept of "Professional Persons" existed prior to the development of the home occupation provisions, and at the time of the coming into effect of the home occupation provisions, staff recommended to Council the deletion of the "Professional Persons" provisions. This did not happen at the time of adoption. However, we still believe that it should be deleted, as the home occupation provisions is an adequate replacement. The May 6, 2008, report clearly explains why we believe this is the best option.

When this item comes up for discussion, Council will have to chose from one of the following options or suggest another:

1. Stick with the status quo, i.e. no change to either the "Professional Persons" provisions or the home occupation provisions. In this case, actuaries will still be allowed to have an office in their respective residences, but will have to abide to the home occupation provisions.

2. Amend the definition of "Professional Persons" to add actuary to the list. If Council, chooses this direction, it should also look at other professions that could also be added, including optometrists, landscape architects, certified management accountants, certified general accountants, occupational therapists, speech therapists, audiologists, etc. In fact, I noted about 30-40 other professional groups that could easily be added to the list. Council might decide to just add actuary, but then we could be stuck with case by case additions.

3. Do away with the concept of "Professional Persons" and make everyone abide to the current home occupation provisions.

4. Do away with the concept of "Professional Persons" and make some adjustments to the home occupation provisions, i.e. increase size and allowance of external employees.

MEMO

TO: Peninsula Community Council

FROM: Sheilagh Edmonds, Legislative Assistant

DATE: August 29, 2008

RE: **Status Sheet Item 4.1.8 - Information Report**

The attached information report was submitted at the May 12, 2008 meeting but it was not addressed.

Staff are requesting that the item be removed from the Status Sheet if Community Council does not wish to take any further action. If you do intend to address this further, staff have noted that in the report they are suggesting the elimination of "Office for Professional Persons" from the Peninsula LUB with corresponding amendments to the "Home Occupation" provisions to allow for additional flexibility.


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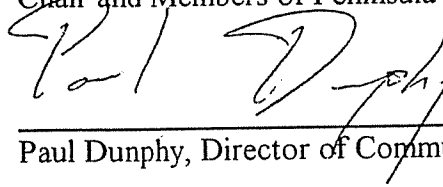


PO Box 1749
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Peninsula Community Council
May 12, 2008

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY:



Paul Dunphy, Director of Community Development

DATE: May 6, 2008

SUBJECT: Office of a Professional Person - Halifax Peninsula LUB

INFORMATION REPORT

ORIGIN

March 3, 2008, motion of Peninsula Community Council requesting staff to look into amending the current definition of a “professional person” found within the Halifax Peninsula Land Use By-law to include the profession of actuary. An information report was requested.

BACKGROUND

The Halifax Peninsula Land Use By-law (LUB) currently permits the following professionals to set up an office within the dwelling house being used as their private residence:

- Doctor, Physician or Surgeon;
- Dentist;
- Barrister or Solicitor;
- Architect or Engineer;
- Chartered Accountant; and,
- Psychologist.

The definition of a “professional person” within the Halifax Peninsula Land Use By-law was first developed in 1950 and included all of the aforementioned professional groups, with the exception of a chartered accountant and psychologist.¹ At the time, the concept of “home occupation” was non-existent in Halifax and there was an attempt made to allow for a limited group of professionals to use a portion of their respective homes to house their professional practice.²

¹ Chartered accountant was added to the definition in 1967, while psychologist was added in 1990.

² The concept of “home occupation” was introduced into the Halifax Peninsula Land Use By-law in 1978.

DISCUSSION

There are now more occupations recognized as professions than there were in 1950. To single out specific occupations and provide them with additional rights under the Land Use By-law not available to other professions, is inequitable and likely discriminatory.

To resolve this problem there are two possible solutions: amend the definition of "professional person" to include all professions; or, establish criteria for allowing a person to work from his or her home.

To simply amend the definition would result in an ever increasing list as it is now generally accepted that a professional is a person who has the ability to perform a particular task and is paid for it. This is not seen as a practical solution.

The second alternative, to establish criteria, has already been incorporated into the Land Use By-law in the home occupation legislation.

There are two major differences between home occupations and offices of a professional person. First, the home occupation can only be carried on by a resident of the dwelling unit whereas the professional can have outside help.³ Second, the home occupation is restricted to one half of one floor of the dwelling to a maximum of 400 sq. ft. while the size of the professional's office is unlimited.

At the time of adoption of the home occupation amendments, it was recommended that the "professional person" provisions be eliminated so that all persons carrying on a business from their home be treated similarly. Council did not approve this approach and two standards now exist.

The purpose of zoning regulations is to create compatibility between land uses. This is achieved in part by requiring separation distances, limiting heights and by grouping like or compatible uses together while excluding incompatible ones.

This process should treat all uses which are similar and are in similar situations in the same manner. This is not being done for offices within residences.

To determine whether a business operating from a home is compatible with its surrounding neighbourhood, the elements of the business rather than the proprietor's qualifications must be examined and their impact on the neighbourhood assessed. The concerns of people living in

³ There is no limit on the size nor the number of employees. A professional could have a receptionist(s), secretary(s) and assistant(s). All must be employees of the professional and not partners unless the partner also lived in the dwelling as might be the case with a typical husband/wife operation.

residential areas include traffic, parking, noise, odours and generally maintaining a quiet atmosphere in which to live.

How might these elements exist if, for example, an architect were to practice out of his/her home? Would conditions be any different if a draftsman were to operate out of his/her home?

In terms of land use, both are very similar. Although both would be allowed to operate from their homes, the draftsman would not be able to have an assistant or secretary while the architect would. The architect could use any amount of his residence for business purposes, yet the draftsman would be restricted to one half of one storey of the building to a maximum of 400 sq. ft. Similarly the doctor, lawyer, engineer, dentist, accountant, and psychologist enjoy the same rights as the architect while such occupations as the photographer, contractor, denturist, land surveyor, craft maker and insurance salesman do not.

Conclusion

It is staff's opinion that this disparity in the Halifax Peninsula LUB should be eliminated. This can be achieved by repealing the "office of a professional person" as a permitted use under the by-law.

In this manner all persons wishing to operate a business from their home would have to meet similar regulations. If Council is of the opinion that the present rules respecting "professional persons" provide sufficient restrictions to enable them to operate in harmony with residential neighbourhoods, consideration could be given to amending the present home occupation legislation to increase the maximum amount of space which can be used and to allow additional employees. If Council wishes to consider this alternative, a thorough review of home occupations should first be undertaken by staff.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

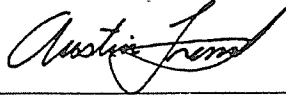
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ATTACHMENTS

None

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Luc Ouellet, Planner, 490-3689



Report Approved by: Austin French, Manager of Planning Services, 490-6717