

HALIFAX REGIONAL COUNCIL
PUBLIC HEARING MINUTES
FEBRUARY 10, 1997

PRESENT:

Mayor Walter Fitzgerald
Councillors Gordon R. Snow
David Hendsbee
Ron Cooper
Bruce Hetherington
Clint Schofield
Jerry Blumenthal
Graham L. Downey
Larry Uteck
Howard Epstein
Russell Walker
Bill Stone
Ron Hanson
Stephen Adams
Barry Barnet
Robert Harvey
Jack Mitchell

ABSENT:

Deputy Mayor Greenough
Councillors Condo Sarto (regrets)
Harry McInroy (regrets)
John Cunningham (regrets)
Reg Rankin (regrets)
Peter Kelly
Bill Dooks

STAFF MEMBERS:

Mr. Wayne Anstey, Municipal Solicitor
Ms. Vi Carmichael, Municipal Clerk
Ms. Jane Nauss, Assistant Municipal Clerk

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Mayor Fitzgerald called the meeting to order at 6:00 p.m.

1.1 **CASE 7345 - PROPOSED AMENDMENTS - HALIFAX MUNICIPAL
DEVELOPMENT PLAN AND LAND USE BY-LAW RE SERVICE
STATIONS AND MOTOR VEHICLE REPAIR SHOPS**

- A staff report which had been presented to Chebucto Community Council on January 6, 1997 and Peninsula Community on January 15, 1997, regarding the above-noted, was before Council for discussion.

Mr. Gary Porter, Planner, Western District, addressed Council, and through the use of overheads, reviewed the issue at hand. The Halifax Planning Advisory Committee was recommending:

- (a) that proposed amendments be approved to the Municipal Development Plan and to the C-2A (Minor Commercial) Zone for the community of Halifax that would permit present service station sites or those most recently occupied as service stations to be used for motor vehicle repair shops, but excluding those that would repair motor vehicles in excess of 6000 pounds or painting or autobody repair shops and to include the performance standards listed in Appendix "C" of the August 15, 1996 report; and
- (b) that the property at 5651 Kaye Street be redesignated and rezoned from Residential Environment and C-1 (Local Business) Zone to Commercial and C-2A (Minor Commercial) Zone respectively.

Mayor Fitzgerald called for comments from Council.

Councillor Epstein enquired on the height of the fence and if this would prove an effective sound barrier. Mr. Bill B. Campbell, Manager, Planning Services, Western Region, stated that fences only act as a visual barrier; further, it may not be possible to build a complete sound barrier.

A brief discussion ensued on the question of dealing with noise levels through the Land Use By-Law or the Noise By-Law. Both Mr. Campbell and Mr. Wayne Anstey, Municipal Solicitor, agreed that noise levels should be dealt with through the Noise By-Law.

Councillor Blumenthal advised he would be moving Option 3 ("to amend the land use by-law to make certain motor vehicle repair shops permitted uses and add site controls") at a later point in the meeting. In response, Mr. Gary Porter stated this

option was not being recommended by the Halifax Planning Advisory Committee to Regional Council this evening; further, that Option 3 had not been advertised.

Mayor Fitzgerald called three times for comments from the public. There were none.

MOVED by Councillors Hetherington and Schofield that the Public Hearing portion be closed. MOTION PUT AND PASSED UNANIMOUSLY.

DECISION OF COUNCIL

It was the consensus to divide the recommendation of the Halifax Planning Advisory Committee into two Motions.

MOVED by Councillors Stone and Hetherington that proposed amendments be approved to the Municipal Development Plan and to the C-2A (Minor Commercial) Zone for the community of Halifax that would permit present service station sites or those most recently occupied as service stations to be used for motor vehicle repair shops, but excluding those that would repair motor vehicles in excess of 6000 pounds or painting or autobody repair shops and to include the performance standards listed in Appendix "C" of the August 15, 1996 report. MOTION PUT AND PASSED UNANIMOUSLY.

MOVED by Councillors Blumenthal and Stone that the property at 5651 Kaye Street be redesignated and rezoned from Residential Environment and C-1 (Local Business) Zone to Commercial and C-2A (Minor Commercial) Zone respectively. MOTION PUT AND PASSED UNANIMOUSLY.

1.2 **APPLICATION PA-SA-001-96-CR - AMENDMENT TO SACKVILLE MPS TO PERMIT A LARGER HOME BASED BUSINESS - 50 WALKER SERVICE ROAD**

- A Supplementary Report prepared for Mr. Dan English, Commissioner, Community Services, on the above-noted, was before Council, for discussion. Copies of Mr. Duck's submission were distributed to Council along with copies of correspondence from individuals opposing the application.

Ms. Jacqueline Hamilton, Planner, Central District, addressed Council, and through the use of overheads, reviewed amendments being considered.

Ms. Hamilton reviewed the three options which Council could consider:

- (a) refuse the site specific MPS amendments contained in Appendix "A" and direct staff to prepare alternative amendments which respond to the broader policy issue of home businesses in Sackville and which would accommodate Mr. Duck's proposal;
- (b) support the site specific MPS amendments which were requested by North West Community Council to accommodate Mr. Duck's proposal;
- (c) support the MPS amendments with any changes deemed necessary. It should be noted that any substantial changes would require another public hearing.

Council was advised that staff do not support site specific amendments to the Sackville MPS which were requested by the North West Community Council and recommend that Regional Council support option "a." Ms. Hamilton stated that should Council support the proposed amendments (option "b"), a Development Agreement process will need to take place to accommodate Mr. Duck's application.

In response to an enquiry from Councillor Harvey asking if Council adopted the site specific amendment, could other property owners with properties of similar characteristics to that of Mr. Duck's, also seek the same thing, Ms. Hamilton stated in the affirmative and that a precedent could be set.

In response to a question from Councillor Epstein enquiring if a time period could be embodied into a Development Agreement, Ms. Hamilton advised that staff had investigated controls relative to the time frame, however, this is difficult to regulate.

Councillor Epstein enquired if Ms. Hamilton was suggesting that should the time frame expire and the Development Agreement was discharged, a non-conforming use would have been created, Ms. Hamilton responded in the affirmative. Further, she noted this issue was reviewed with the Department of Municipal Affairs and Legal Staff.

Mr. Wayne Anstey, Municipal Solicitor, stated that one of the other difficulties is that the policy doesn't specifically address the time specific nature of the development. Therefore, presumably, if one were to get an approval for two years today, and in two years time the same conditions applied, if an extension was applied for by the applicant for another two years, there would be no grounds upon which to refuse it. If it was refused, the owner would have the right to appeal. If there was no policy guidance to restrict it, then the courts would be likely to give permission.

Council was also advised that the initial use of the building was for a stable, however, there were other uses i.e. repair shop for vehicles.

Mayor Fitzgerald called on the applicant, Mr. Michael Duck, to address Council.

MR. MICHAEL DUCK

Mr. Duck addressed Council noting he would like to establish a home based business (manufacturing of dispensing equipment) in the Sackville area. As he needs to hire additional staff, he must relocate to a larger location. Further, his business is very quiet; this is a temporary measure as he has a long term goal to expand even further and again relocate in the future.

Councillor Stone enquired if he has taken the opportunity to advise the neighbourhood of his operation. In response, Mr. Duck advised in the affirmative, noting that pamphlets and brochures were distributed.

In response to an enquiry from Councillor Hendsbee on hours of operation and signage, Mr. Duck advised the hours would be 8:30 a.m. - 5:30 p.m. and no signage would be required.

Mayor Fitzgerald called for comments from the public in favour of the application.

SPEAKERS IN FAVOUR

TERRY JAMES

Mr. James advised he has been a neighbour of Mr. Duck's for ten years and he is impressed with the business he is operating out of his home, the quality of equipment and the fact that he is creating jobs for a number of individuals. In spite of the nature of the business, there are no visible signs that a business of this type is in operation in the area.

LLOYD FAULKNER

Mr. Faulkner advised the property in question is shielded from residents on two sides and the business would have no negative impact on the environment. Mr. Duck offers employment and is receiving no funding from any level of government.

DEBBIE PEVERILL

Ms. Peverill advised she was Mr. Duck's Accountant. His operation is quiet; no signage is required; he is a very successful businessman and will be expanding his business in the future.

RALPH D'EON

Mr. D'Eon advised he has been a neighbour of Mr. Duck's for eight and half years and that Mr. Duck has operated a quiet business. He has created parking for his employees off to one side and there is very little movement of traffic.

ARCHIE FADER

Mr. Fader advised he was looking forward to Mr. Duck relocating to the Sackville area. He provided background information on the property in question.

A brief question and answer period took place between Council and Mr. Fader.

JAMIE KAISER

Mr. Kaiser advised he was an employee of Mr. Duck and expressed appreciation for the job opportunity. Further, Mr. Kaiser referred to the business which was quiet and the fact that the neighbourhood would not even know there was this type of operation on the property.

After three calls, there were no further comments from the public supporting the application.

Mayor Fitzgerald called for comments from the public opposing the application.

SPEAKERS IN OPPOSITION

DENNIS FOUGERE

Mr. Fougere advised he has lived in the area since 1979 and that he is opposed to the business being established in the area. Mr. Fougere suggested this was an industrial business and that it belonged in an industrial park. Further, when the doors of the building are open, it will be very noisy.

In response to questions from Council, Mr. Fougere advised that he lives 800 ft. away from the subject property and that he would rather see a farm established.

EVA BEATON

Mrs. Beaton advised she was speaking on behalf of her husband and was opposed to the proposal as it would open the door for other businesses, traffic would increase, and

the fact there could be lower property values. Finally, she stated she and her husband were in their retirement years and wanted to live in a quiet area.

CINDY KIDD

Ms. Kidd advised she did not live in the respective area but did live in another R-6 zoned area off the Cobequid Road. She was speaking to Council on the site specific aspect and expressed concern with possible ramifications if a “blanket policy” was established.

Councillor Barnet stated he would rather agree with site specific as opposed to “as of right.”

Mr. Wayne Anstey stated that the precedent setting nature is more political than legal since site specific applications involve a Plan amendment. There is no appeal process therefore, Council has the discretion as to whether or not to amend the Plan.

RICHARD BOYD

Mr. Boyd enquired if there were any hazardous chemicals being used to clean the stainless steel coolers, what about refrigeration, where will raw materials go, how is commercial waste to be disposed?

WRITTEN SUBMISSIONS OPPOSING APPLICATION

Written submissions opposing the application were received from the following individuals: Ms. Kathleen Fougere, Ray and Pat Grabo, Neville & Alanna Page, David and Nancy Stoddart, Cathy and Dennis Gaudet, Cindy Kidd, Natalie & Graham Perrier and Conrad Doucet.

Mayor Fitzgerald called for further comments from the public opposing the application. There were none.

Council agreed to permit Mr. Duck to address Council once again.

MICHAEL DUCK

In response to enquires from Mr. Boyd, Mr. Duck advised there were no chemicals being used - Freon was banned in 1995 therefore, he now uses a refrigerant called 134A which is shipped in a proper container and which must be returned to the manufacturer in the same container. With respect to sewer and water, there is a sewer

system in place - any changes required in this regard will be addressed.

Mr. Duck stated he was attempting to continue operating a business in the province, while at the same time, abiding by all legal venues.

A brief question and answer period took place between Mr. Duck and Council with Mr. Duck making the following comments:

- in his current location, the neighbours did not realize he was operating a business;
- he currently employs five individuals; hopes to employ 45 in the future;
- in another location however; costs are too high to relocate to an industrial park at the current time;
- he has the latest technology therefore there is no noise when doors are open;
- if he does relocate the business in the future, he and his family will remain in the home;
- supplies are picked up in the family van which is parked at the back of the building;
- there is no welding involved.

Councillor Mitchell advised he would be supporting the applicant.

MOVED by Councillors Barnet and Schofield that the public hearing portion be closed. MOTION PUT AND PASSED UNANIMOUSLY.

DECISION OF COUNCIL

MOVED by Councillors Harvey and Cooper that the application be denied; that the courses of action offered not be pursued, and that the status quo be maintained as far as home businesses are concerned in R-6 zones.

Councillor Harvey stated that he is impressed with Mr. Duck's operation and that he has not seen nor heard anything to the contrary. This is not an issue with him. His concern was that staff have stated that other R-6 properties, even with site specific proposals, with similar characteristics, could move this type of operation to another property within the R-6 zone. The problem with this application is it re-writes global business policy for R-6 lands throughout the Sackville Plan. This essentially moves businesses out of homes into an accessory building. There is an impact on other R-6 lands in District 20 and Council has heard from some of the residents this evening. If Council wishes to provide a level of protection to people who live in R-6 zones, who have rural, residential properties, then the status quo must be maintained. Anything

short of that, even site specific, opens this up to properties of similar characteristics.

Councillor Barnet advised he could not support Councillor Harvey's Motion. For the record, he pointed out that the majority of R-6 land actually exists in District 19 (75% - 80%). Council has to deal with the merits of this particular application. Whatever the decision of Council on this application, does not mean that the next application will be treated the same. Each application should be dealt with on its own merits and that this is very important.

With respect to job creation, Councillor Barnet stated that an earlier decision of this Council was made to give \$1 million towards the Greater Partnership to promote economic development. This may have been a bad decision on Council's part as no jobs have been realized. Mr. Duck's proposal is creating jobs and not costing the municipality any funds. Machines were operating and none of his neighbours were aware of this. This is the type of non obtrusive business that with the right level of protection, could go forward to a Development Agreement (which is the next process). A Development Agreement can "iron out" conditions i.e. hours of operation, noise, signage, etc.

Councillor Barnet suggested that should a new owner have another good business idea in the future, then Council should look at that situation independently, based on its own merits.

Councillor Barnet suggested the Motion on the floor should be rejected.

Councillor Hendsbee stated this is a situation where Mr. Duck has gone through the correct process and all he is getting is bureaucratic treatment. This is not a precedent setting matter and is not obnoxious. Site specifics should be judged on their own merits. He stated he could not support the Motion on the floor.

Councillor Mitchell stated he could not support the Motion on the floor.

Councillor Cooper addressed Council expressing concern that the wishes of the applicant drastically changes the wishes of the community through its Municipal Development Plan. An R-6 zone was meant to be rural residential. He suggested that Council was now considering an industrial assembly line moving into the area. Councillor Cooper urged Council to support the Motion on the floor until the community has provided input.

Councillor Barnet, on a Point of Clarification, stated that site specific zoning has been in place for years (he provided examples of businesses).

In response, as a Point of Information, Councillor Cooper stated that this particular application is for a new business.

Councillor Epstein expressed concern with this application as it raises the question of what is referred to as a home based business. The Fader property across the road is a mirror image of the proposal before Council. Accordingly, Mr. Fader could make the same type of application. To treat each site specific issue separately would mean treating people differently and this would be unfair. Councillor Epstein suggested that perhaps an R-6 zone is not the appropriate type of zoning for so large an area. He enquired as to what the continuing obligations would be on the property if Council was to move ahead to a Development Agreement. A Development Agreement runs with the land and is not limited to the owner. He requested further clarification on this.

With respect to a non-conforming use at the end of the period - he suggested a time limit be put on the Development Agreement. It was suggested that the owner could request an extension and he expressed concern with this particular aspect.

Councillor Uteck suggested that a Development Agreement could restrict uses and that details could be addressed at the Development Agreement stage.

Councillor Harvey urged Council to consider the Motion on the floor.

MOTION DEFEATED.

MOVED by Councillors Hetherington and Mitchell to approve the site specific amendments to the Municipal Planning Strategy and Land Use By-Law as contained in Appendix 'A' and Appendix 'B' of the January 9, 1997 Supplementary Report, which would accommodate Mr. Duck's proposal for a larger home business that is currently enabled at 50 Walker Service Road in Lower Sackville.

In response to a statement from Councillor Cooper, Ms. Hamilton advised of the process involved should this Motion pass: a Development Agreement would be prepared and brought before the Community Planning Advisory Committee and then on to North West Community Council.

Councillor Cooper reiterated his concern that the Plan amendment has not gone before the community for input.

Councillor Hetherington, on a Point of Order, advised that a public hearing is part of this process.

Ms. Hamilton advised that the North West Community Council requested this application go directly to Regional Council .

MOTION PUT AND PASSED.

2. **ADJOURNMENT**

MOVED by Councillors Hetherington and Barnet to adjourn the public hearing at 8:20 p.m. MOTION PUT AND PASSED UNANIMOUSLY.

Vi Carmichael
Municipal Clerk