

Halifax Regional Council
May 04, 2004

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 
Wayne Anstey, Q.C., Director, Legal Services

DATE: April 30, 2004

SUBJECT: **Bay Haven Beach Villas Inc. v. Halifax Regional Municipality and
Nova Scotia Utility and Review Board**

INFORMATION REPORT

ORIGIN

This Report originates as a result of an appeal of a decision of Development Officer, Cathy Spencer to deny an application for a development permit by Bay Haven Beach Villas Inc. to construct a 65-70 unit condominium complex on lands owned by the applicant at Rainbow Haven Beach in Cow Bay.

BACKGROUND

On March 18, 2002, Bay Haven Beach Villas Inc. filed an application with HRM for a development permit to construct a 65-70 unit residential condominium complex that it indicated would be a "residential seniors complex".

The permit application was reviewed by the Development Officer and on October 15, 2002, the Development Officer refused to issue the permit. The subject property was zoned P-2 (Community Facility) Zone which allows for a range of institutional, park and open space uses. One permitted institutional use was "senior citizen housing". The permit application was refused because it was interpreted that it was not the type of housing contemplated by "senior citizen housing" in the Land Use By-law for Eastern Passage and Cow Bay. There was no definition of the "senior citizen housing" in the Land Use By-law nor in the Municipal Planning Strategy for Eastern Passage and Cow Bay.

The decision of the Development Officer was appealed by the applicant to the Nova Scotia Utility and Review Board (“NSUARB”). The NSUARB upheld the decision of the Development Officer and the applicant further appealed the decision of the NSUARB to the Nova Scotia Court of Appeal. The Nova Scotia Court of Appeal dismissed the appeal and upheld the decision of the NSUARB for reasons given in its decision dated April 28, 2004. The Nova Scotia Court of Appeal also ordered costs payable to HRM in the amount of \$1,500.00.

DISCUSSION

The Nova Scotia Court of Appeal, in its decision dated April 28, 2004 discussed the appropriate standard of review to be used by the UARB in reviewing decisions of a development officer. The Court of Appeal confirmed that the standard of review of a development officer’s decision which is under appeal pursuant to section 250(2) of the Municipal Government Act is one of correctness. That is, the development officer’s interpretation of the By-law must be correct.

The issue in this case was whether the appellant could demonstrate that the development officer erred in interpretation of the Land Use By-law; thus if the appellant could demonstrate that the proposed building did comply with the Land Use By-law, the appeal would be allowed and the permit would be granted. The Court of Appeal undertook its own reasoning process and arrived at the decision that this proposed building was not “senior citizen housing” within the Land Use By-law. The Court of Appeal found that the proposed development was neither an institution nor a community facility. The Court also stated that an institution does not necessarily have to be publically owned. In this case the Court stated that the development did not have an “explicit public, educational or charitable function or benefit”.

The Court also stated that “It is not sufficient for the appellant to say that it is the duty of HRM to enforce the by-law, and if people who are not seniors take up residence in the building, the municipality can take proceedings to have them vacate. On an application for a development permit the applicant has the burden of showing that the proposed project is in compliance with the by-law.”

The Court of Appeal reiterated the use of a liberal and purposive approach to the interpretation of the planning policies and where the Land Use By-law and Municipal Planning Strategy were enacted concurrently, there should be no hesitation in considering the Land Use By-law in light of the Municipal Planning Strategy and attempt to give effect to the policy.

This decision is important because it clarifies the standard to which a development officer’s decision will be reviewed. While there have been numerous decisions dealing with the standard used to review Council decisions, there were previously no higher court decisions dealing with the standard of review of development officer’s decisions.

BUDGET IMPLICATIONS

N/A

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

N/A

ATTACHMENTS

NONE

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:



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490-6477