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Halifax Regional Council
February 27, 2007

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 
M.E. Donovan, Director of Legal Services

DATE: February 19, 2007

SUBJECT: St. Georges Lawn Tennis Club, Joan Rankin & Ed Lake v. Halifax Regional Municipality S.H. No. 261036

INFORMATION REPORT

ORIGIN

An application made to the Supreme Court of Nova Scotia for an Order in the Nature of *Certiorari* to quash the decision made by Harbour East Community Council (“HECC”) on August 4, 2006 which upheld the decision of the Development Officer to approve a site plan application for a six unit townhouse development on property situate at 7 St. George’s Lane in Dartmouth.

BACKGROUND

In March of 2005 Watermark Developments Inc. (“Watermark”) made application to HRM for site-plan approval of a six unit townhouse development that they wanted to build on property located at 7 St. Georges Lane in Dartmouth. The Development Officer, Mr. Sean Audas, approved the site-plan. The Development Officer’s decision was appealed to HECC by a number of individuals. An appeal hearing was heard before HECC on May 25, 2006. Prior to the hearing, Mr. Jess Landry (the vice-president of Watermark), asked the Development Officer if he would be given a chance to speak at the appeal hearing. Mr. Landry was advised that he would be given an opportunity to speak by the Chair of the HECC. Mr. Landry was present at the May 25, 2006 appeal hearing. The Court found that the Chair asked whether anyone wished to speak “against” the application but did not ask if anyone wished to speak “for” the application. Mr. Landry did not raise any objection that evening however telephoned Mr. Audas the next to ask why he was not given the opportunity to speak at the appeal hearing.

An *in camera report* was subsequently prepared for HECC concerning this issue and a motion was passed by HECC that a new appeal hearing concerning this development would be held. The surrounding property owners were advised of the situation and were given notice of the new appeal hearing date.

At the second appeal hearing on August 4, 2006, the Chair of the HECC invited both those opposed and those in support of the development to speak. Two representatives of Watermark took the opportunity to address HECC. HECC voted to uphold the decision of the Development Officer to approve the site-plan.

DISCUSSION

The Supreme Court of Nova Scotia dismissed the application for Certiorari. There were essentially two issues before the Court. First, was the claim by the Applicants that HECC acted in excess of its jurisdiction and violated the doctrine of *functus officio* by reopening the appeal in the face of a lawfully made decision. The court found that HECC acted correctly when it treated the first hearing as a nullity, and proceeded to rehear the matter.

With respect to the second issue of whether Council erred during the second appeal hearing by not adhering to s.217 of the *MGA*, that is, that Council’s decision to approve the site-plan was inconsistent with the MPS, the Court reasoned that there is essentially no discretion by the Development Officer in this case. The Court found that the Development Officer shall approve the site-plan unless the development in question does not meet the criteria set out in the land-use by-law or the applicant fails to enter into an undertaking to carry out the terms of the site-plan. In this case, even the applicants agreed that the development met the land-use by-law criteria.

What is important for Council in this case is that the Supreme Court of Nova Scotia found that the developer had a right to be heard at the appeal hearing but was not given the opportunity, and, as a result, this constituted a breach of natural justice, but which HECC had self-corrected by rehearing the appeal. Further the Court found that there was no requirement for the developer to formally request in writing a new hearing. The Court reasoned at paragraph 60 as follows:

Council was obliged to observe the rules of natural justice when conducting the appeal hearing relating to this development. An interested party had been told that they would be invited to speak before Council made its decision. Through inadvertence this did not occur. The aggrieved party raised the issue in a timely way and Council determined that a second hearing should be held. In my view, it was proper for Council to attempt to correct this breach of natural justice.

Further the Court stated:

[69]The *Municipal Government Act* does not confer the power upon Council to reopen an appeal hearing being held pursuant to s.232 of the *Act*. Nevertheless, I am satisfied that in the case before me there was an error in the initial appeal hearing which rendered Council's decision a nullity and that, based on the above authorities, Council was permitted to start afresh in order to cure the defect. In my view, Council was not prevented by the doctrine of *functus officio* from holding the second hearing.

[70]I am also satisfied that it was not necessary for the original decision to be formally quashed before a subsequent hearing could be held....

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

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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