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Item No. 11.2.1 (ii)

**Halifax Regional Council
July 7, 2009**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 

Wayne Anstey, Acting Chief Administrative Officer

DATE: June 18, 2009

SUBJECT: **Case 01053: Dartmouth MPS / LUB Amendments – Waverley Road**

SUPPLEMENTARY REPORT

ORIGIN

October 30, 2007	Regional Council initiated a review of the Industrial designation
April 1, 2008	Regional Council expanded the review area in response to public input
October 2, 2008	HECC provided direction based on the staff report dated July 24, 2008
April 2, 2009	HECC tabled the proposed amendments to receive public feedback
June 11, 2009	HECC moved to forward the amendment package to Regional Council

RECOMMENDATION

It is recommended that Regional Council:

1. Give First Reading to the proposed amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as shown in Attachments A and B of the staff report dated May 29, 2009, and schedule a public hearing; and
2. Approve the proposed amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as shown in Attachments A and B of the staff report dated May 29, 2009.

BACKGROUND

Staff presented a report dated May 29, 2009 to Harbour East Community Council on June 11, 2009. Community Council added a clause to the recommendation, asking that consideration be given to the following amendments during the public hearing:

1. Allow vehicle uses in the C-1B zone by site approval;
2. That the Land Use By-law allow Council to consider, by public hearing, an extension to the 12 month grandfathering of non-conforming uses to a maximum of 24 months total grandfathered time on application by the property owner to Community Council; and
3. 216 Waverley Road be re-zoned to C-1B if the property owner can provide documentation prior to the public hearing, that the current parking use pre-dates the 1978 Dartmouth Land Use By-law; otherwise, such re-zoning shall, as suggested in the staff report, be by separate application.

DISCUSSION

1. Permit vehicle-related uses in the C-1B zone by site plan approval

The proposed definition of ‘vehicle services’ means “the use of a building, structure or land to provide sales of vehicles or services for vehicles, including but not limited to: autobody shops, automotive repair outlets, car dealerships, car washes, service stations, retail gasoline outlets and vehicle depots”.

Under the proposed amendments, ‘vehicle services’ would not be permitted in the C-1B (Mixed Use Commercial) Zone. Any existing vehicle services would become legal non-conforming uses.

When site plan approval is used, the land use (e.g. vehicle services) is a permitted use, subject only to the approval of a site plan. While site plan approval does give a higher level of control than as-of-right development, certain issues – such as hours of operation – cannot be managed through site plan approval. A development agreement provides Council the highest level of control, allowing the municipality to manage hours of operation, lighting, maintenance, etc.

During the public consultation, issues with regard to vehicle services were a concern. These issues related to noise, fumes, outdoor storage and potential environmental contamination. As such, staff believe that new vehicle services are not an appropriate use in the C-1B zone. If Council wishes to proceed with allowing ‘vehicle services’, staff recommend that Council use the development agreement process rather than site plan approval.

However, if Regional Council wishes to consider this option, staff will prepare policy and regulations for consideration at the public hearing.

2. Potential for a 24 month recommencement period

Staff believe that doubling the recommencement period for legal non-conforming uses from 6 months to 12 months is sufficient, and a reasonable compromise between the neighbourhood's desire for transition and property owners' existing investments.

In addition, existing industrial uses may continue indefinitely as legal non-conforming uses, and may also change or expand through a development agreement. The proposed options for non-conforming uses are beyond those available anywhere else in Dartmouth. As such, staff believe it would not be necessary to provide an additional 12 months to the recommencement period.

Council should recognize that the Dartmouth MPS would not allow a case-by-case public hearing to extend the recommencement period to 24 months. As the amendment package is drafted, a certain number of months – currently 12 – is specified within the Dartmouth LUB. In the future, if Council wishes to change this number, it would be an amendment to the land use by-law.

3. Rezone 216 Waverley Road to C-1B

The use of 216 Waverley Road as a parking lot for patrons of the Micmac Bar & Grill is a legal non-conforming use; however, the use of this property as a parking lot for any other use is illegal.

With respect to Council's suggestion to rezone the property, staff have communicated with the property owners' solicitor, and have requested any documentation be submitted by the date of first reading, so that it may be reviewed and confirmed before the public hearing.

Rezoning this property to C-1B (Mixed Use Commercial) would contradict Council's October 2008 direction, since Harbour East Community Council directed staff (through Option 3) to consider only local commercial uses (e.g. C-1 or C-1A uses) in this area. In addition, due to the proximity of residential uses, staff believe the potential impacts of as-of-right C-1B uses could be significant and inappropriate.

The proposed amendments already include the option to apply for C-1A uses through a development agreement, which could permit restaurants and their accessory uses (i.e. parking) on this property. As such, staff do not believe this property should be rezoned to the C-1B (Mixed Use Commercial) Zone.

However, if Regional Council wishes to consider this option, staff will prepare policy and regulations for consideration at the public hearing.

BUDGET IMPLICATIONS

The costs to process this planning application can be accommodated within the approved operating budget for C310.

The budget availability has been confirmed by Financial Services.

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

1. Council may choose to approve the amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as outlined in this report and presented in Attachments A and B of the staff report dated May 29, 2009. This is the recommended alternative.
2. Council may choose to modify the proposed amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as presented in Attachments A and B of the staff report dated May 29, 2009. If this alternative is chosen, specific direction regarding the requested amendments is required. Substantive amendments may require another public hearing be held before approval is granted.
3. Council may choose to refuse the amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law.

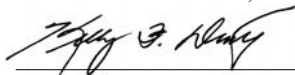
ATTACHMENTS

None.

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

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