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Item No. 4

**Halifax Regional Council
December 8, 2009**

TO: Mayor Kelly and Members of Halifax Regional Council

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

DATE: November 18, 2009

SUBJECT: Olympic International Realty Inc. v. HRM

INFORMATION REPORT

ORIGIN

On November 12, 2009, Justice Haliburton of the Supreme Court of Nova Scotia released his decision in respect of the application for judicial review by Olympic International Realty Ltd. for an order in the nature of Mandamus to require HRM to enter upon lands of United Gulf in the Papermill Lake area, in Bedford and construct the collector road contemplated in the applicable development agreement.

BACKGROUND

On May 17, 1995 the Town of Bedford entered into a Development Agreement (“DA”) with Annapolis Basin Group in respect of lands located at Paper Mill Lake. Shortly after entering the DA the subject lands were transferred from Annapolis to United Gulf which, at the time, had two partners. The DA required the construction of an access road from Moirs Mill to the Hammonds Plains Road but did not contain a timeline for completion. To date the collector road has not been constructed. In early 1998 the two principals of the company parted ways and the lands subject to the DA were divided between their respective companies. Papermill Lakes Developments received 75 acres of the portion of lands located south of Kearney Run with the balance of the Papermill Lake lands remaining United Gulf.

Olympic was appointed as agent for Papermill Lake Developments and authorized to proceed with the development of the 75 acre parcel owned by it. In May 2005, Olympic initiated a process to amend the DA which would permit the development of the Papermill Lake Developments lands without the completion of the collector road. That application to amend the DA was refused by the Northwest Community Council. An appeal of that decision was filed with the Nova Scotia Utility and Review Board. Olympic requested that appeal be put in abeyance pending the outcome of its Supreme Court application.

The basis of Olympic’s application to the Supreme Court was a letter dated May 3, 2007 from Olympic’s legal counsel to HRM advising that development in the subject area was in breach of the Development Agreement and submitting that HRM has two choices:

1. to **expropriate** land from United Gulf and have a road built thereon and charge United Gulf for the expense; or
2. to issue a development permit and allow the land owner to develop the land.

HRM brought an application to summarily dismiss Olympic's application before Justice Hood on June 18, 2008 on that grounds that the facts did not support a claim for an order in the nature of Mandamus. That application was successful in part. Justice Hood concluded that the Court would not have the authority to order HRM to issue a Development Permit to Olympic as such would be contrary to the provisions of the DA requiring the construction of the collector road as a prerequisite to development of the Papermill lands. Accordingly Justice Hood invoked the inherent jurisdiction of the Court to summarily dismiss the mandamus request to order HRM to deliver a construction permit to Olympic.

DISCUSSION

In its application to the Supreme Court Olympic claimed that HRM had breached or permitted the breach of the DA which would entitle Olympic to the remedy it sought. Olympic alleged that HRM had breached the DA by issuing a permit for a 60 unit senior's complex north of Kearney Run adjacent to the Hammonds Plains Road without requiring the construction of the collector road and that the structure contained 60 units rather than 40 permitted under the DA. The Court concluded that the senior's complex was not in breach of the DA or at odds with the original intent of the DA. Olympic also asserted bias on behalf of the municipality. The court concluded that Olympic's application to have the DA amended was not rejected unfairly nor as a result of bias and that it could not be said that HRM had exercised its discretion improperly nor for reasons of bias.

The court concluded:

A decision of the planning authority to amend or alter the Development Agreement is one within its' discretion. This court might intervene by way of an order of mandamus where that decision resulted from bias, bad faith or fraud. I do not find any satisfactory evidence of any such motivation here.

CONCLUSION

Olympic's application was denied by the Court. Olympic has 25 days once the order is issued to file an appeal.

BUDGET IMPLICATIONS

N/A

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

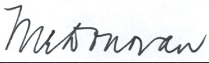
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

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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