


Item No. 9.1(ii)
Halifax Regional Council
September 20, 2011

TO: Mayor Kelly and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer, Operations

DATE: August 30, 2011

SUBJECT: Noise By-Law Exemption – 721 Windmill Road

ORIGIN

On August 30, 2011, staff received an application for an exemption from By-Law N-200, Respecting Noise, by Dexter Construction Company Limited outlined as Appendix A.

RECOMMENDATION

It is recommended that Halifax Regional Council approve Dexter Construction Company Limited's re-submitted application for an exemption from the provisions of the Noise By-Law pursuant to the contents of this report and any matters raised at the hearing.

BACKGROUND

In September, 1999 HRM Council adopted By-Law N-200, Respecting Noise. The By-law states under the **General Prohibition** section:

3. (1) No person shall engage in any activity that unreasonably disturbs or tends to disturb the peace and tranquility of a neighbourhood.

(3) For the purpose of a prosecution pursuant to subsections (1) or (2), evidence that one Neighbour is unreasonably disturbed by a noise is prima facie evidence that the neighbourhood is unreasonably disturbed by the noise.

Section 6 of the By-Law allows for any person to send an application to Regional Council requesting an exemption from any or all provisions of the Noise By-Law for which that person may be prosecuted. The By-Law states that an applicant or any person opposed to an application may be heard at a session of Council. Notice of the Council Session is required to be mailed to assessed property owners located within 100 feet of the properties which are subject to the hearing.

In deciding whether or not to grant an exemption, Council is to give consideration to:

- the social or commercial benefit of the proposed activity to the municipality;
- the viewpoints of community residents;
- the proposed hours of operation of the proposed noise-emitting activity; and
- the proposed duration of the subject activity.

An excerpt from the Noise By-Law detailing the exemption process is attached as Appendix B.

DISCUSSION

On August 2, 2011, Halifax Regional Council approved a noise exemption for Dexter Construction Company Limited (Item No. 9.1). As a result of construction delays, Dexter Construction was unable to commence the work on the approved exemption dates and, as such, they are now seeking Halifax Regional Council approval for their re-submitted application.

Dexter Construction Company Limited is performing pipe installation on Windmill Road as part of the construction of 721 Windmill Road. Dexter Construction Company Limited is proposing:

- a. the work be completed between the hours of 7pm to 7am to minimize traffic delays,
- b. reduce the time frame from an expected 6 days to 3 nights, and
- c. commence work overnight on September 27, 2011 and proceed for approximately 3 nights.

Dexter Construction Company Limited has an active building permit #116157 which was issued on July 5, 2011. The company is requesting an exemption to By-law N-200 as the associated noise from the pipe installation work may be in violation of the following provision: Section 3,

Part 1 which states “**No person shall engage in any activity that unreasonably disturbs or tends to disturb the peace and tranquility of a neighbourhood**”.

Notice of the Council Session at which the hearing is proposed to take place has been sent to property owners within 100 feet of the locations mentioned above. Halifax Regional Police believe the construction should result in minimal concern given the location, nature and scope of the event.

Under subsections 6(3) and (5) of the Noise By-Law, Council may consider any matters it deems appropriate at the hearing and either reject an application or approve it with or without conditions.

BUDGET IMPLICATIONS

There are no budget implications

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

N/A

ALTERNATIVES

There are a number of alternatives available to Council in considering this application:

1. Approve the application without conditions;
2. Approve the application with conditions; or
3. Reject the application in its entirety.

ATTACHMENTS

Appendix A: August 30, 2011 application for Exemption from By-Law N-200, Respecting Noise by Dexter Construction Company Limited

Appendix B: Excerpt from By-Law N-200 respecting Noise re: Granting Exemptions by Council

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

Report Prepared by: Superintendent Colleen Kelly, Halifax Regional Police

Report Approved by:

Deputy Chief A Burbridge, Halifax Regional Police

Report Approved by: Chief Frank A Beazley, Halifax Regional Police

Original Signed

Dexter Construction Company Limited
P.O. Box 48100
Bedford, Nova Scotia B4A 3Z2
Phone: (902) 835-3381
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August 30, 2011

APPENDIX A

Scott Hill
Regional Coordinator
HRM By-Law Services
P.O. Box 1749
Halifax, NS B3J 3A5

Project Description: Windmill Road Apartment Building– 721 *Windmill Road, Dartmouth, NS*

RE: Request to Work After Normal Hours – Resubmission

Mr. Hill,

Upon approval from council for a noise exemption, Dexter Construction would like to resubmit the request to perform all pipe installation on Windmill Road, as part of the above noted project, outside of the normal working hours. Due to delays in the construction schedule and material delivery, we were unable to commence the work at the approved date as originally planned.

As you are aware this is an extremely busy section of road at all hours of the day and will cause considerable traffic delays even with adherence to the typical rush hour policy in place (9am to 4pm). Also, if we are required to work during the day the duration of the piping tasks in this area will be increased by two-fold, which will also extend the inconvenience to resident motorists in the area.

We propose to install the pipe on a shift from 7pm to 7am and would obviously need the permission of the HRM, Halifax Water and confirmation that typical noise bylaws are rescinded for the duration of the pipe installation. We anticipate this would be 2 nights total (plus or minus one night) with a *tentative* start for mainline activities being Tuesday, September 27th, 2011, one week following the September 20th hearing.

If you have any questions, concerns, or if you need a copy of the contract drawings please feel free to contact the undersigned.

Sincerely,

Sam Mayhew

Dexter Construction Company Limited

cc: Kautilya Gandhi – Legacy Home Builders
cc: Stephen Power – Mac Williams Engineering Ltd.
cc: Don Williams – Mac Williams Engineering Ltd.

APPENDIX B

Excerpt from By-Law N-200 Respecting Noise re: Granting Exemptions by Council

Grant Of Exemptions By Council

6. (1) Notwithstanding anything contained in this By-Law, any person may make application to Council to be granted an exemption from any of the provisions of this By-Law with respect to any emission of noise for which that person might be prosecuted; and Council, by resolution, may refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect; and any exemption granted shall specify the time period, not in excess of six months, during which the exemption shall be effective and the exemption shall be in written form and shall include such terms and conditions as Council deems appropriate.
- (2) In deciding whether or not to grant an exemption, Council shall give consideration to the social or commercial benefit of the proposed activity to the municipality, the views of any residents of the municipality which may be expressed to Council, the proposed hours of operation of the proposed noise-emitting activity and the proposed duration of the subject activity.
- (3) In deciding whether or not to grant an exemption, Council shall give the applicant, and any person opposed to the application, an opportunity to be heard during a Council Session and may consider such other matters as it deems appropriate.
- (4) Notice of the time, date and purpose of the Council Session at which the hearing is proposed to take place shall be mailed to the assessed owner or owners as shown in the records of the Regional Assessment Office, of property located within 100 feet of the property which will be the subject of the hearing;
- (5) Any alleged breach by the applicant of any of the terms or conditions of any exemption granted by Council, shall be investigated by municipal staff, reported to Council in writing and Council shall determine whether or not a breach has taken place. If a breach has taken place, Council may pass a resolution revoking the exemption, without the necessity of giving notice of rescinding motion, and such exemption shall be null and void as of the passing of such resolution.