

Item No. 6
Halifax Regional Council
September 11, 2012

TO: Mayor Kelly and Members of Halifax Regional Council

Original Signed by Director

SUBMITTED BY:

Marion Tyson, Acting Director, Legal Services and Risk Management

DATE: August 20, 2012

SUBJECT: Case 01325: Development Agreement for the former St. Joseph's Church site on Gottingen Street, Halifax

INFORMATION REPORT

ORIGIN

- Approval by Regional Council on September 27, 2011, of amendments to the Halifax MPS and Halifax Peninsula LUB
- Approval by Peninsula Community Council on January 9, 2012, of a development agreement permitting mixed use residential and commercial building on the east side of Gottingen Street, between Kaye and Russell Streets in Halifax.

BACKGROUND

On September 27, 2011, Regional Council and Peninsula Community Council held a joint public hearing to consider amendments to the Halifax Municipal Planning Strategy ("MPS") and the Halifax Peninsula Land Use By-law ("LUB"), as well as a proposed development agreement to permit a mixed use residential and commercial building on the east side of Gottingen Street, between Kaye and Russell Streets in Halifax. Subsequent to the joint public hearing, Regional Council gave its approval to the amendments to the Halifax MPS and Halifax Peninsula LUB. The amendments to the Halifax MPS and Peninsula LUB became effective on December 10, 2011. The matter was brought back to Peninsula Community Council for a decision on the proposed development agreement on January 9, 2012. On January 9, 2012 Peninsula Community Council approved the development agreement for the 9-storey mixed use residential commercial building.

On January 30, 2012 Mr. and Ms. Murphy and Mr. and Ms. Randall appealed the Peninsula Community Council's decision to approve the development agreement. The appeal was heard before the Nova Scotia Utility and Review Board on April 2, 2012 and on June 1, 2012 the Board issued its decision dismissing the appeal thereby affirming HRM's decision to approve the development agreement.

DISCUSSION

There was one principle issue in the appeal, namely, whether the appellants could show on the balance of probabilities that Peninsula Community Council's decision to approve the development agreement failed to reasonably carry out the intent of the Halifax MPS. The Board found that the answer to this question was no and thereby accordingly dismissed the appeal.

The Board at paragraph 59 of its decision stated the following:

[59] The Board was never entirely certain of the bases upon which the Appellants were attempting to advance their appeal. At times, it appeared that they might not really be challenging the development agreement itself, but instead were challenging the amendments to the MPS and LUB which had allowed the development agreement to come into existence.

The Board at paragraph 64 of its decision stated the following:

[64] In short, despite Mr. Murphy's words ("the by-law amendment is being tested") the time for "testing" the amendments to the by-law (or to the MPS, for that matter) was long since past. If, in September 2011, Mr. Murphy disagreed with HRM's decisions to amend the MPS and LUB (as he quite evidently did), the time for him to launch any appeal of them would have been then.

The Board noted in its decision that the amendments to the Halifax MPS and Peninsula LUB were "site specific" and that the amendments were very specific in terms of what is permitted on the subject property.

The conclusion that the Board came to after reviewing all of the evidence was that the appellants failed to establish on the balance of probabilities that HRM's decision to approve the Development Agreement did not reasonably carry out the intent of the Municipal Planning Strategy.

BUDGET IMPLICATIONS

N/A

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.

ATTACHMENTS

N/A

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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