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**Item No. 3**  
**Halifax Regional Council**  
**April 9, 2013**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

**SUBMITTED BY:**

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Marian Tyson, Q.C., Acting Director, Legal Services and Risk Management

**DATE:** October 15, 2012

**SUBJECT:** Monaco Investments

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### **INFORMATION REPORT**

#### **ORIGIN**

Refusal by Harbour East Community Council ("HECC") of an application by Monaco Investments to rezone property situate at 307 Prince Albert Road from C-2 (General Business) to R-4 (Multiple Family Residential Zone - High Density) and rezone 5 Glenwood Avenue from R-2 (Two Family Residential) to R-4.

Refusal by HECC to approve a Development Agreement on the property located at 307 Prince Albert Road and 5 Glenwood Avenue to permit a 15-storey, 92-unit residential building.

#### **LEGISLATIVE AUTHORITY**

Monaco Investments appealed the October 12, 2012 decision of HECC under s. 262 of the Halifax Regional Municipality Charter.

## **BACKGROUND**

Monaco Investments applied to the Halifax Regional Municipality (“HRM”) to rezone two properties located at Prince Albert Road and Glenwood Avenue in Dartmouth. The first lot, 307 Prince Albert Road, had been used by Walker’s Funeral Home for several decades. Monaco Investments applied to rezone that property from C-2 (General Business) to R-4 (Multiple Family Residential Zone - High Density). Monaco Investments also applied to rezone 5 Glenwood Avenue, an abutting property, from R-2 (Two Family Residential) to R-4. In the same application, Monaco Investments applied for a Development Agreement which would cover both properties and would permit a 15-storey tower on the lot zoned C-2, 307 Prince Albert Road, and parking on the adjacent lot in connection with the development.

Up until 1991, high-rise developments could occur as of right in the R-3 and R-4 zones. Since 1991, no new residential building with 3 units or more is permitted in Dartmouth unless Council approves a Development Agreement for the particular project.

Planning staff recommended that the Harbour East Community Council (“HECC”) approve the rezonings and Development Agreement. On January 17, 2012, the HECC refused to give First Reading to the proposed rezoning and Development Agreement and thereby refused Monaco Investments’ proposal.

Monaco Investments appealed the decision of Council to Nova Scotia Utility and Review Board (the “Board”). The hearing before the Board was conducted over four days in May of 2012 with written submissions following by the parties; the last written submission having been made by the Appellant on June 4, 2012.

HRM Legal Services lawyers handled the appeal.

## **DISCUSSION**

On October 12, 2012, the Board issued its written decision in this matter. The decision is 130 pages long and can be made available to any Councillor who would like a copy. The Board rejected Monaco Investments’ appeal finding that the decision of HECC to refuse the rezoning and subsequent Development Agreement application reasonably carried out the intent of the Municipal Planning Strategy (“MPS”). While Planning staff wrote a report to HECC recommending both the rezonings and the approval of the Development Agreement, the Board found that the decision of Council to refuse Monaco Investments’ application nevertheless reasonably carried out the intent of the MPS, thereby dismissing the appeal by Monaco Investments.

With respect to the Development Agreement application, the Board notes in its decision that:

[539]...the task of balancing criteria of this type, and making a decision to approve a development agreement, or not, is one which – under the *Halifax Charter*, and, applying the principles previously stated by the Court of Appeal - properly rests with Council in the circumstances of this proceeding.

[540] It is precisely the kind of “value judgment” (in the words of Fichaud, J.A., in *Archibald*), in which municipal councillors are called upon to make difficult choices between conflicting policies.

[541] So long as a decision by a council can be seen as reasonably carrying out the intent of the MPS (which, as indicated, the Board considers occurred here), the Board should show deference to such a decision.

This was a complex matter and two HRM lawyers worked very hard to support HECC’s decision. Legal Services is very pleased with the result and the decision will be helpful to decisions Council will be called upon to make in such situations in the future.

### **FINANCIAL IMPLICATIONS**

There are no budget implications resulting from this report.

### **COMMUNITY ENGAGEMENT**

N/A

### **ATTACHMENTS**

None

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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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