

Item No. 4
Halifax Regional Council
April 9, 2013

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

SUBMITTED BY: _____
Marian Tyson, Acting Director,
Legal, Insurance and Risk Management Services

DATE: March 5, 2013

SUBJECT: CAN-EURO INVESTMENTS LTD.

INFORMATION REPORT

ORIGIN

Approval by the former Harbour East Community Council (“HECC”) of an application by Can-Euro Investments Ltd. (“Can-Euro”) to enter into a development agreement to permit the development of a 27 storey residential and commercial mixed-use building at Horizon Court, Dartmouth.

LEGISLATIVE AUTHORITY

Ollive Properties Ltd., the adjacent property owner, appealed the July 5th, 2012 decision of HECC under section 262 of the *Halifax Regional Municipality Charter*.

BACKGROUND

Can-Euro applied to HRM for a development agreement to permit a 27 storey residential and commercial mixed-use building at Horizon Court in Dartmouth. At the time of the application, there were three existing multi-unit residential buildings on Horizon Court that were owned and operated by Can-Euro. Can-Euro wished to subdivide a portion of their lands to accommodate the proposed building, and at the same time to discharge the existing development agreement and associated amending agreements from the new lot.

The Dartmouth Municipal Planning Strategy specifically allowed for medium to high density residential development on the subject lands. It also provided for commercial use with associated retail uses on the land. The lands of Can-Euro off Horizon Court were subject to a site specific policy being Policy H-17. Planning staff recommended that the HECC approve the development agreement. On July 5, 2012 the HECC approved the development agreement as provided in attachment A of the June 4, 2012 report to council.

Ollive Properties Ltd. appealed the decision of HECC to the Nova Scotia Utility and Review Board ("Board"). The hearing before the Board was scheduled for seven days commencing on January 15, 2013.

Midway through day five of the hearing, and prior to the evidence of Can-Euro's final two witnesses, the Appellant, Ollive Properties indicated that it was withdrawing its appeal. Can-Euro then requested that the Board issue a dismissal order. The Board refused to issue the requested order without the consent of Ollive Properties. Ollive Properties would not consent to the order, and stood by their earlier withdrawal.

DISCUSSION

On March 1, 2013 the Board issued a decision refusing to grant Can Euro's request for a dismissal order, and confirmed that the appeal was withdrawn. In doing so, the Board made certain findings of facts and commented on the intentions of Can Euro with respect to misleading members of the public.

Subsequently, both HRM and Can Euro raised concerns with respect to the Board's March 1, 2013 order given that the Board made findings of fact based on a partial hearing of the evidence. Furthermore, the Board did not give the parties an opportunity to make submissions regarding the dismissal order, nor were they given an opportunity to comment on the ability or inability of the Board to make findings of fact without having afforded the Parties the opportunity of a full hearing. Concern was also raised as to whether the Board's jurisdiction terminated on February 25, 2013 following Ollive's withdrawal of the appeal.

In any event, Legal Services is content with the ultimate result, and notes that HRM staff worked very hard to support HECC's decision.

BUDGET IMPLICATIONS

There are no budget implications resulting from this report.

FINANCIAL MANAGEMENT POLICY/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

No members of the community requested an opportunity to speak and as such there was no public hearing scheduled in relation to the matter under appeal.

ATTACHMENTS

None.

All decisions and orders issued during the course of the appeal are available on the Board's website at www.nsuarb.ca under matter number M050586.

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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