

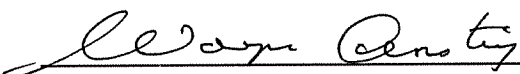
8.1



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Halifax Regional Council
August 8, 2006

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 
Wayne Anstey, Acting Chief Administrative Officer

DATE: July 31, 2006

SUBJECT: Noise By-Law Exemption Application - Mount Hope Avenue/Baker
Drive Construction

ORIGIN

Application by Clayton Developments Limited for an exemption from By-Law N-200, Respecting Noise.

RECOMMENDATION

It is recommended that Regional Council approve the application by Clayton Developments Limited for exemption from the provisions of the noise by-law with conditions as specified in Appendix E of this report.

BACKGROUND

Noise Bylaw Exemptions:

HRM's Noise By-law prohibits any person from engaging in activity that unreasonably disturbs or tends to disturb the peace and tranquillity of a neighbourhood. Section 6 of the By-Law allows Regional Council to approve an exemption from any or all provisions of the Noise By-law. The By-law states that an applicant or any person opposed to an application may be heard at a session of Council.

In deciding whether or not to grant an exemption the by-law states, 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. Notice of the Council Session is required to be mailed to assessed owners of property located within 100 feet of the property which is subject to the hearing.

Under subsections 6(3) and (5) of the 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.

DISCUSSION

A new interchange has been constructed on Highway 111 near Woodside to ultimately provide a link between Woodside Industrial Park and Caldwell Road. This road has been named Mount Hope Extension. The interchange was funded by the three levels of government, with a condition that it must connect to a roadway upon its opening. October 31, 2006 was chosen by the Municipality as a reasonable completion date for the road work. This date was also specified in the development agreement approved by Harbour East Community Council in April 2005.

Capital Cost Sharing:

It should be noted the Municipality, through the Capital Cost Charge program, is cost sharing with Clayton on the construction of the Baker Drive Extension and Mount Hope Avenue Extension. The Noise Bylaw exempts Municipal projects. Since the Municipality is cost sharing on this project it can be argued that the project is exempt. Legally however, since the Municipality

did not let and award the tender, it is not clear that this is a “Municipal” project, therefore a public hearing is being held.

Application:

The application details the following:

- Construction has been hampered by wet weather.
- To meet their deadline they feel it necessary to work 24 hours a day, 7 days a week to make up for lost time (See Appendix A).
- It should be noted that construction on the new interchange was exempted from the Noise By-law as it was a Municipal/Provincial contract. Dexter Construction was the contractor who built the interchange and is also constructing the two roads for which this exemption is being sought.

Conditions of Exemption:

The work on the site generally can be broken into two categories:

Mass excavation, the moving of the soils required to obtain and dispose of the material for building the roadways, typically outside of the proposed Road Right of Way.

Road Bed Construction, the actual placement of materials in the immediate vicinity of the Road Right of Way, creating the roadway structure.

It is recommended that the requested exemption from the Noise By-law be approved with two conditions:

- Exemption does not apply for Sundays and Civic Holidays. Construction on these dates must continue to comply with the By-law (Appendix E).
- Mass excavation near the residential neighbourhood to the southeast, must also comply with the By-law (Appendix E).

Notification:

As required by the By-law, notice of the time, date, place and purpose of the hearing has been mailed to the assessed owners, of properties within 100 feet of the properties containing the future roadways.

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, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

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

10. Approve the application by Clayton Developments Limited for exemption from the provisions of the Noise By-law with conditions as specified in Appendix E of this report. This is recommended as a reasonable course of action and gives consideration to the community.
11. Approve the application without conditions. This is not recommended because it does not give any consideration to the neighbouring community.
12. Approve the application with additional conditions to those outlined in Appendix E.
13. Reject the application in its entirety.

ATTACHMENTS

Appendix A: July 27, 2006 Application by Clayton Developments Limited for Exemption from By-Law N-200, Respecting Noise

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

Appendix C: Copy of the notice sent to the neighbouring citizens, advising them of the hearing scheduled for the August 8, 2006 Regional Council Session

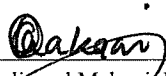
Appendix D: Area for Consideration of Exemption

Appendix E: Proposed Conditions of Exemption

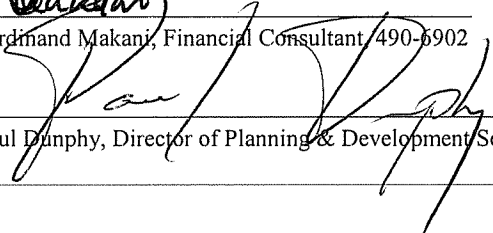
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Kenda MacKenzie, Development Engineer, Planning & Development Services, 490-4907

Financial Review:


Ferdinand Makani, Financial Consultant, 490-6902

Report Approved by:


Paul Dunphy, Director of Planning & Development Services



APPENDIX A

July 27, 2006 Application by Clayton Developments Limited for Exemption from By-Law N-200, Respecting Noise

Clayton Developments Limited
Clayton Professional Centre
255 Lacewood Drive, Suite 100
Halifax, Nova Scotia
Canada B3M 4G2

Tel (902) 445-2000
Fax (902) 443-1611

Subsidiaries
Clayton Realty Limited
Ridgevale Developers Limited

July 27, 2006

Office of the Municipal Clerk
City Hall
1841 Argyle Street
PO Box 1749
Halifax, NS
B3J 3A5

Attention: Ms. Christen MacDonald

Dear Ms. Macdonald;

Re: Mount Hope Avenue/Baker Drive Construction Bylaw N200 - Exemption

Clayton Developments Limited has begun work on the construction of Baker Drive and Mount Hope Avenue adjacent the recently constructed interchange along the Circumferential Highway (No. 111) in Woodside. This construction activity, required to construct these roads and associated municipal services, necessitates the excavation and placement of large amounts of material on site. Work on site has been hampered due to the extremely wet weather experienced since June of this year.

In accordance with the Capital Cost Contribution policy, the Russell Lake West CCC Agreement and subsequent Development Agreement for the Russell Lake West project, Clayton has agreed to construct Baker Drive and Mount Hope Avenue, projects that would have previously been completed by HRM. Completion of these roads, designed to alleviate traffic congestion on Portland Street by providing access to the Circumferential Highway via the newly constructed interchange, is to be completed by October 31, 2006. In order to meet this deadline, our contractor, Dexter Construction, feels it will be necessary to work 24 hours a day, 7 days a week. The intention would be to work under these times until work is completed in the fall, presumably in September 2006.

Disturbance to the existing residents would be limited as there exists approximately 130 feet between the extent of construction and the nearest residential property on Waynewood Drive. Clayton Developments Limited intends to contact residents of Waynewood Drive and outline our intentions, which include restricting construction activity in the area immediately adjacent Waynewood Drive to the hours currently permitted within Bylaw N200.

We understand that no complaints were received by HRM while Dexter carried out the work on the interchange this past winter/spring and would anticipate a similar non reaction to our planned work along Baker Drive and Mount Hope Avenue.

We therefore respectfully request HRM exempt the work required to complete construction of Baker Drive and Mount Hope Avenue from Bylaw N200.

Sincerely,

Clayton Developments Limited


Andrew Connors
Director, Client Services & Design

c.c. Craig Horton, HRM
Kenda MacKenzie, HRM
Sean Audas, HRM

APPENDIX B

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.

APPENDIX C

August 1, 2006

To Whom It May Concern:

**Re: Noise By-Law N200 Exemption Application - Clayton Developments
Mount Hope Avenue/Baker Drive Construction**

This letter is to advise that Halifax Regional Council intends to consider and, if deemed advisable, approve the following application:

Request by Clayton Developments Limited., to be exempted from By-Law N-200 to complete a construction of the Mount Hope Avenue and Baker Drive extensions to provide a connection to the Mount Hope /Highway 111 interchange. The work has commenced already and is anticipated to be complete in September 2006.

A hearing will be held on Tuesday, August 8, 2006 at 6:00 pm in the Council Chambers, 1841 Argyle Street, Halifax for citizens residing near the Mount Hope Avenue/Baker Drive area, who are opposed to the above application.

If you have any questions or concerns, please contact Kenda MacKenzie at (902) 490-4432 or mackenk@region.halifax.ns.ca.

Appendix D: Area for Consideration of Exemption

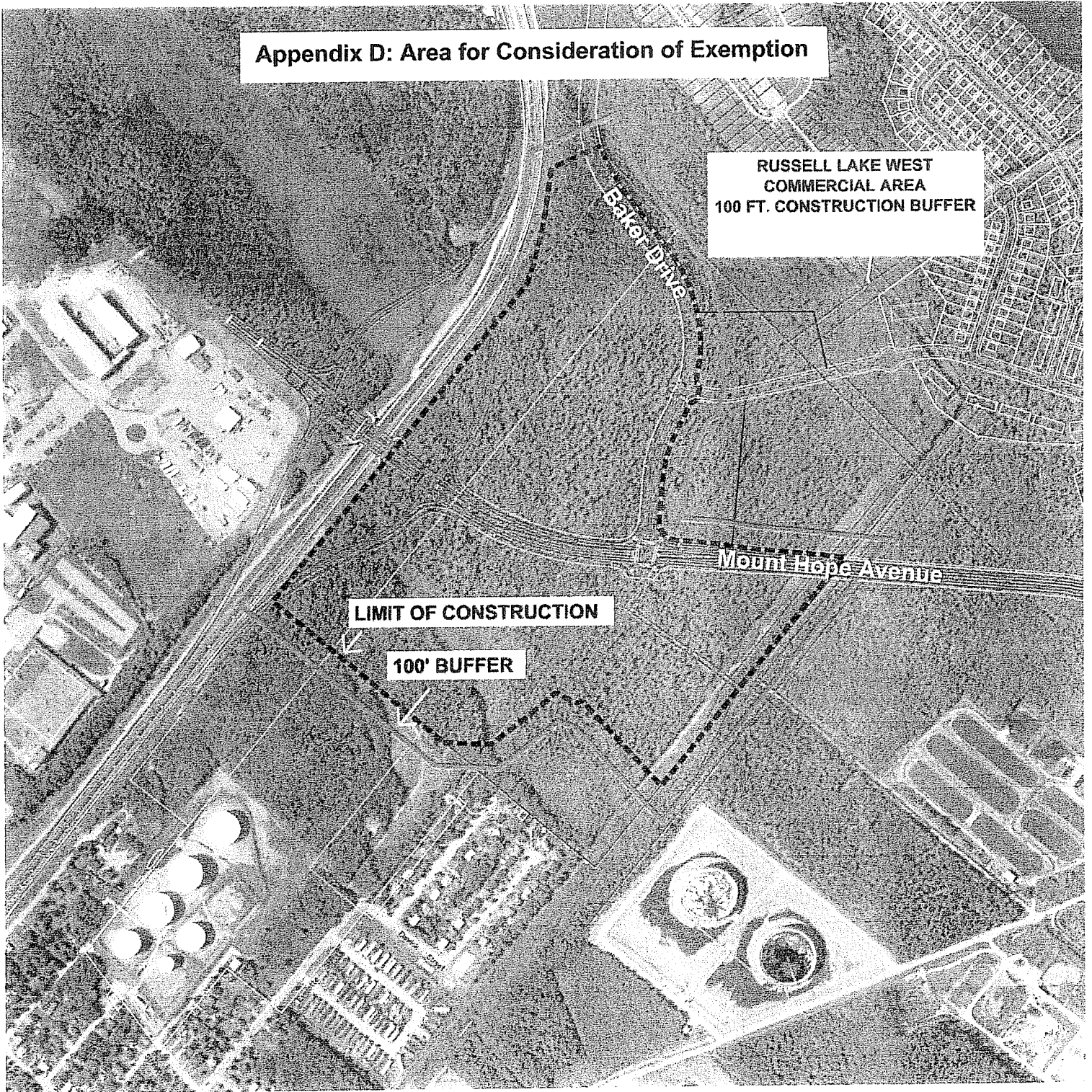
**RUSSELL LAKE WEST
COMMERCIAL AREA
100 FT. CONSTRUCTION BUFFER**

Baker Drive

Mount Hope Avenue

LIMIT OF CONSTRUCTION

100' BUFFER



APPENDIX E

Proposed Conditions of Exemption

1. Exemption does not apply for Sundays and Civic Holidays. Construction on these dates must continue to comply with the hours currently in effect in the Noise By-law N200.
2. Exemption does not apply for mass excavation near the residential neighbourhood to the southeast and this activity must comply with the Noise By-law N200.