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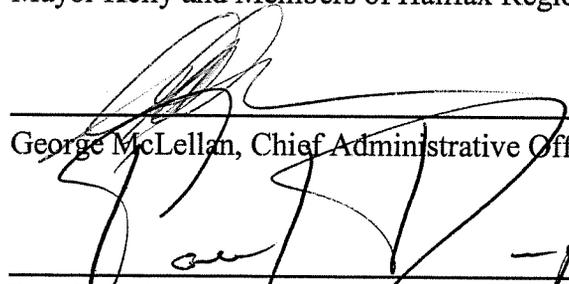


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Halifax, Nova Scotia
B3J 3A5 Canada

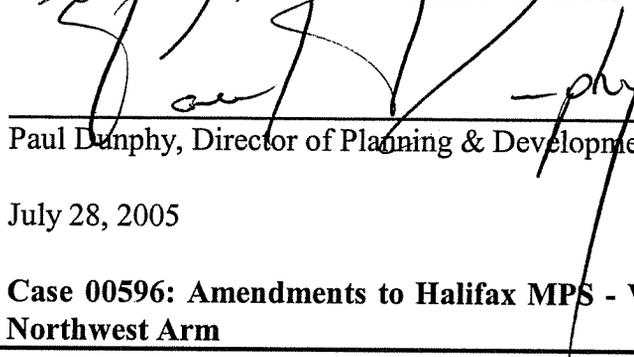
Halifax Regional Council
August 9, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



 George McLellan, Chief Administrative Officer



 Paul Dunphy, Director of Planning & Development Services

DATE: July 28, 2005

SUBJECT: **Case 00596: Amendments to Halifax MPS - Water Lot Infilling on Northwest Arm**

ORIGIN

- Citizen concerns expressed about the infilling of water lots along the Northwest Arm;
- Staff reports to Chebucto Community Council (attached); and
- May 3, 2004, request from Chebucto Community Council that the Harbour Plan include an assessment of infilling activities on the Northwest Arm.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Authorize staff to initiate the process to amend the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland and Peninsula Land Use By-laws (LUB's), in order to establish policies and regulations aimed at controlling development and subdivision on water lots infilled along either side of the Northwest Arm.
2. Instruct that the MPS amendment process include a public participation program in accordance with the Public Participation Resolution adopted by Regional Council on February 25, 1997.

BACKGROUND

Issues related to the infill and subsequent development of water lots along the Northwest Arm have been the subject of recent media and community attention. Citizens and members of Community Council have called upon the Municipality to develop an appropriate response to identified issues. In general, concerns have been expressed about such matters as:

- Restricting the navigability and use of the Arm for sailing and other boating activities by narrowing its width;
- Loss or obstruction of public and private views from either side of the Arm;
- Scale and design of development occurring on infilled water lots; and
- Potentially negative environmental impacts.

Some of the above issues, such as restricting navigability and potential environmental impacts, are directly associated with the activity of infilling itself over which the Municipality has no control.¹ However, the Municipality does control the eventual use and development of land once infilling has been undertaken and it is at this stage where municipal zoning, subdivision and other regulations can be applied in a manner which can address key issues.

Scope of Proposed Amendments:

In order to address the concerns that have been raised about infilling along the Northwest Arm, it is recommended that Regional Council initiate consideration of amendments to the Halifax MPS to enable an appropriate degree of land use control over infilled water lots. It is recommended that the scope of any amendments be limited to the Northwest Arm at this time for the following reasons:

- The Arm is a narrow recreational inlet characterized by major urban parks (Sir Sandford Fleming and Point Pleasant Parks), historical assets and predominately residential uses - this is in contrast to marine-related and mixed use developments occurring around other parts of the harbour;
- The Arm is home to four boat/sailing clubs, which generate significant boating traffic in the harbour. Consequently, infilling activity tends to have a more direct impact on community character and recreational activities than elsewhere in the harbour.
- Citizens and councillors have expressed a desire to move quickly in adopting regulations on the use of infilled land in response to specific issues. Extending the initiative to other areas would lengthen the time required to undertake consultations and adopt new rules.
- Different regulations may be required for individual areas depending on the circumstances - new regulations for the Arm may not be appropriate elsewhere on the harbour.

¹ As discussed in this report, infilling is a jurisdiction of the Federal Government and not the Municipality.

In light of the above, the Northwest Arm may serve as a useful pilot project for further initiatives. It is expected that the results of this initial project could be applied to other locations on the Halifax harbour, either by way of a separate undertaking or through implementation of the Harbour Plan through the proposed Regional Plan.

Jurisdictional Considerations and Land Use Controls:

The Municipality does not have authority to control the actual activity of infilling water lots. This authority rests chiefly with the Federal Government through Transport Canada and the Department of Fisheries and Oceans (DFO).

- The mandate of Transport Canada, as set out in the *Navigable Waters Protection Act* (NWPA), is to ensure that an infill does not significantly impede navigation. Formal approval under the NWPA is only required if an infilling will cause problems with navigation.
- The mandate of DFO (under its Habitat Management Division) is to review any project for potential impact on fish and fish habitat. The *Fisheries Act* provides mechanisms that allow development projects to occur while protecting fish and fish habitat. DFO does not approve developments, but instead assesses proposals for their potential to harm fish or fish habitat, and may authorize the harmful alteration, disruption or destruction (HADD) of fish habitat if deemed appropriate under the circumstances. Subsection 35(2) of the *Fisheries Act* enables the Minister to authorize the HADD of fish habitat, if there is appropriate agreed-upon habitat compensation.
- Once a water lot is infilled and joined to the shoreline, it then falls under municipal jurisdiction from the aspect of land use control. The land use by-laws for Halifax Peninsula and Mainland provide that land created by infilling of a water lot automatically takes on the zoning of abutting land. Use of such land is then subject to the applicable provisions of the LUBs. There are currently no zoning provision in place to address issues related to protecting public views along the Northwest Arm, the use of infilled land or the scale of development which may occur upon infilled land.
- The only special zoning regulation specific to the Northwest Arm is section 34F(1) of the Halifax Peninsula Land Use By-law which applies to properties along the Arm between Horseshoe Island and South Street.² Within this area, R-1 uses are required to have: a minimum lot area of 8,000 square feet; a minimum distance of 30 feet between buildings; and a minimum setback from the shoreline of 30 feet.

²Halifax Peninsula Land Use By-law, Section 34F(1), p. 42. These requirements do not apply to accessory buildings or lots 6 and 7 of the Thornvale Subdivision.

DISCUSSION

Council has determined that no comprehensive reviews of existing community planning strategies will be undertaken pending completion of the Regional Plan and subsequent priority-setting by Council to identify areas where reviews should be conducted. However, the Municipality remains committed to reviewing and amending current policies in response to pressing community issues as they emerge from time to time within existing budget and staff resources. A review of existing land use policies and regulations in respect to infilling along the Northwest Arm falls under the latter category and is therefore appropriate for Council to consider at this time.

Proposed Regional Plan

The proposed Regional Plan references the issue of water lot infilling on the Northwest Arm, specifically that:

Requests for infill projects on private water lots within the harbour are an important matter. Of particular concern is the Northwest Arm, where residents have identified concerns related to loss of navigable water for sailing, loss of views out on the Arm, the type and design of land use on infilled lots and environmental impact. Similar concerns exist for certain shoreline areas of Bedford.

EC-28 HRM, in cooperation with all regulatory agencies having jurisdiction for infill activities on Halifax Harbour, shall establish a working committee to develop a coordinated process for accessing water lot infill applications. Northwest Arm should be used as a pilot project.

EC-29 HRM shall initiate a detailed Secondary Planning Process for the Northwest Arm, to address opportunities and issues concerning water lot infill, environmental management, park and trail development, water-based recreation and navigation, historical assets, public views and related matters.

In reference to Policy EC-28, initial meetings have taken place with representatives of government agencies having jurisdiction over the infill of water lots. In respect to Policy EC-29, a secondary planning process (neighbourhood plan) is a longer term strategy to address various issues surrounding the Northwest Arm.

As an interim measure, steps should be taken to apply appropriate municipal controls on development occurring on infilled water lots. At minimum, provisions should be adopted to:

- prevent habitable buildings from being built on infilled land; and
- prevent additional development and subdivision opportunities which would not exist had a water lot not been infilled.

Proposed MPS and LUB Amendments:

It is proposed that Regional Council initiate consideration of amendments to the Halifax Municipal Planning Strategy to enable the introduction of interim measures aimed at controlling the subdivision, use and development of land resulting from infill of water lots. It is suggested that the use of water lots for the placement of docks, wharves and retaining walls is reasonable and should be exempt from any proposed measures.

While these measures may not prevent infilling, they could:

- provide more effective regulation of the use of infilled water lots on the Northwest Arm; and
- reduce the incentive to infill water lots on the Arm.

At some future point, the measures could either be replaced by new controls, or confirmed as part of a more detailed planning process for the Northwest Arm.

Under current legislation, the Municipality could regulate the use of infilled land in one of four ways:

1. Adopt MPS policy and LUB provisions to control development on infilled water lots;
2. Adopt MPS policy to enable development on infilled land to proceed subject to site plan approval;
3. Adopt MPS policy to enable development on infilled land to proceed subject to a development agreement; or
4. Replace the current LUB provision whereby infilled land assumes the abutting zone with a new zone which specifies permitted uses and other land use controls.

It is suggested that if the objective is to regulate development on infilled land in such a way as to minimize visual impacts and the degree and scale of development occurring on infilled land, then either Option 1 or 4 would offer the more practical means to achieve this. Enabling development to occur subject to site plan approval or development agreement (Options 2&4) would only serve to provide a process whereby activities presently occurring and which have been the source of concern by residents would continue.

BUDGET IMPLICATIONS

There are no budget implications identified with this report at this time.

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

The following alternatives are identified:

1. Regional Council may wish to follow the staff recommendation and initiate a process to amend the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland and Peninsula Land Use By-Laws (LUB), in order to introduce new policies that would regulate development and subdivision on infilled water lots located on both sides of the Northwest Arm.

2. Alternatively, Regional Council may choose not to initiate the amendments to introduce new policies that would regulate development and subdivision on infilled water lots located on both sides of the Northwest Arm This is not the recommended course of action for the reasons stated previously.

ATTACHMENTS

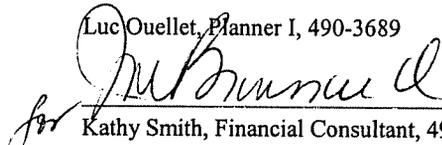
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|----------------|---|
| Map 1 | Area of Interest |
| Attachment "A" | Staff report to CCC dated September 3, 2002 |
| Attachment "B" | Staff report to CCC dated October 27, 2003 |
| Attachment "C" | Staff report to CCC dated March 24, 2004 |
| Attachment "D" | Staff report to CCC dated August 9, 2004 |

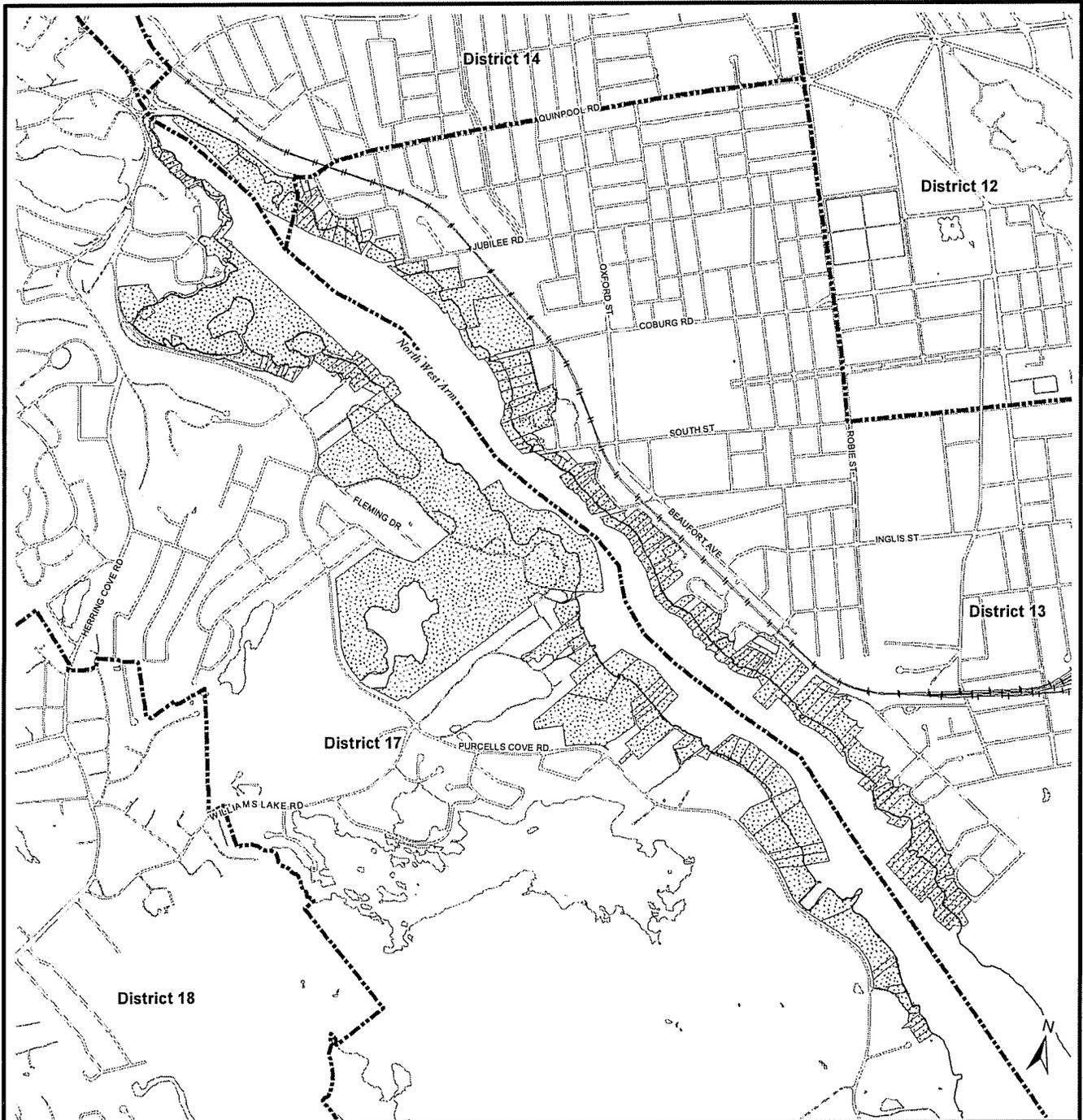
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:

Luc Ouellet, Planner I, 490-3689

Report Reviewed by:


Kathy Smith, Financial Consultant, 490-6153



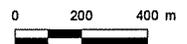
Map 1: Area of Interest

North West Arm
Halifax

 Property abutting North West Arm

Halifax Peninsula By-Law Area

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Peninsula By-Law Area.

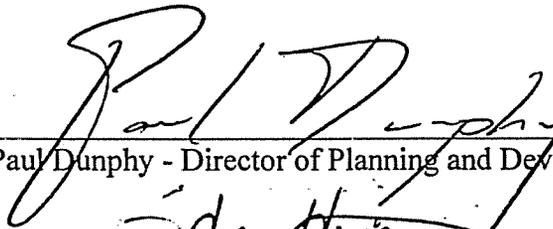
HRM does not guarantee the accuracy of any representation on this plan.



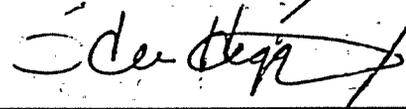
Chebucto Community Council
September 9, 2002

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY:



Paul Dunphy - Director of Planning and Development Services



Steven Higgins - Development Officer

DATE: September 3, 2002

SUBJECT: 26 Armshore Drive, Halifax

INFORMATION REPORT

ORIGIN

At the June 10, 2002 meeting, Community Council heard a presentation from Mr. Lee Fenwick, President of the Regatta Point Landowners Association, regarding 26 Armshore Drive. In response, Council requested staff provide a report.

DISCUSSION

1) The storage of a sailboat on the subject property

This boat had been located in violation of the Halifax Mainland Land Use Bylaw. The property owner was advised of the violation and given opportunity to comply with the bylaw by removing the boat. The boat was not removed within the specified time frame. Evidence was collected and charges were filed. The arraignment date was set for December 31, 2001. The defendants requested and received a deferral until January 31, 2002. The defendant entered a plea of not guilty. The trial date is set for October 29, 2002.

The boat has recently been removed and the property is now in compliance with the Land Use Bylaw. The trial will proceed based on the previous violation.

2) The construction of a stone breakwater into the Northwest Arm

The construction of this breakwater is the subject of continued investigation by Municipal staff with regard to any potential encroachments on HRM property. A survey will have to be done to determine whether there is an encroachment. Staff will report back to Council once this work is complete.

3) The location of an accessory structure on the breakwater

Based on current records, the area of the breakwater where the storage shed is located is owned by the Crown. Typically, zoning regulations do not apply to federally or provincially owned property. Planning and Development Staff, in conjunction with the Legal Department, is currently examining the issue to determine the extent of municipal zoning authority in this situation.

It should also be noted that the Land Use Bylaw requires accessory buildings (ie., the shed) to be located on the same lot as the principle use (ie., the home). Since the shed is located on a separate lot, staff will determine whether this offence can be prosecuted. It should be noted however that the shed would comply with the Land Use Bylaw if the Crown land was purchased and the two properties consolidated into one lot.

4) The general appearance of the property

By-Law enforcement staff have inspected the property on a number of occasions and ordered the property owner to clean up construction related debris. Once informed of the violations, the owner has rectified the situations without delay.

By-Law enforcement staff re-inspected the property on September 4 and 5. The owner was required to erect a barrier around an open excavation at the front of the property. The barrier was installed within 24 hours and the property is now in compliance with Dangerous or Unsightly Premises Legislation.

5) Permit History

There are currently three active Development and Building Permit applications applicable to the subject lot.

- Permit number 31752 is for a covered breezeway and storage structure. That permit was issued on April 5, 2002 and the work is ongoing. The permit will expire on April 5, 2004.
- Permit number 27980 is for the replacement of a deck. That permit was issued on August 23, 2001. Some work remains but the bulk of the job is complete. The permit will expire on August 23, 2003.

- Permit number 27425 is for the addition of dormers to the roof. That permit was issued on September 19, 2001. The bulk of this work is complete. The permit will expire on September 19, 2003.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

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

None

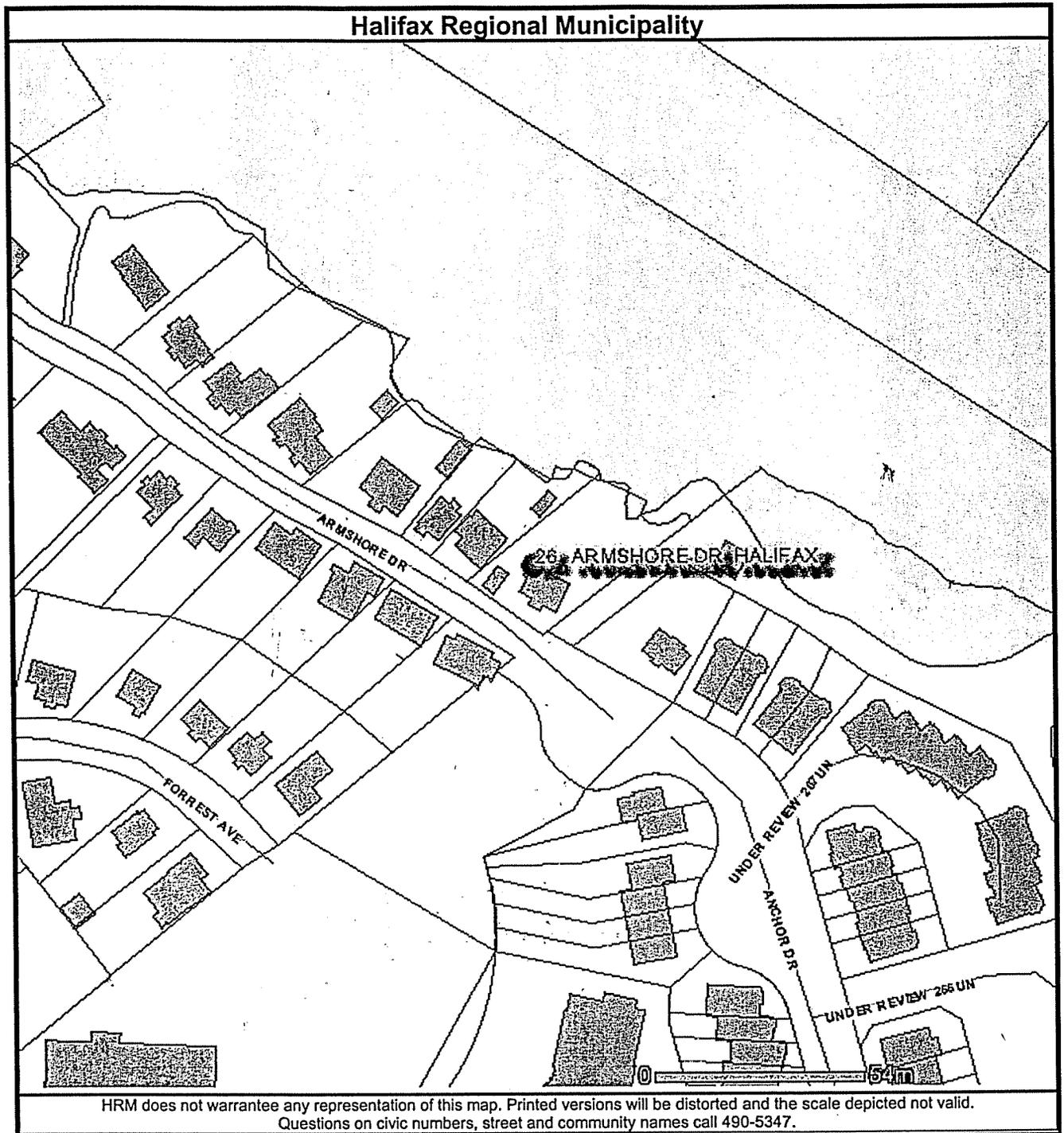
ATTACHMENTS

None

INFORMATION BLOCK

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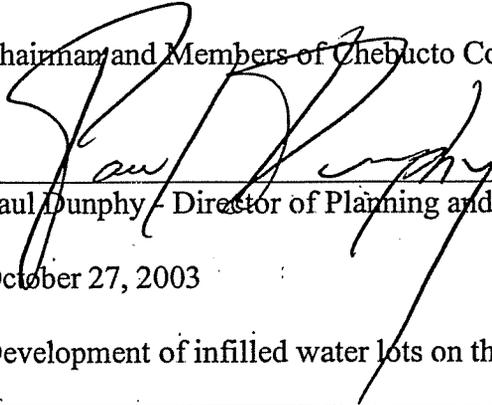
Report Prepared by: Steven Higgins - Development Officer (490-4402)





Chebucto Community Council
November 3, 2003

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY: 
Paul Dunphy - Director of Planning and Development Services

DATE: October 27, 2003

SUBJECT: Development of infilled water lots on the Northwest Arm

INFORMATION REPORT

ORIGIN

This report is submitted in response to a Community Council request from the regular meeting on October 6, 2003.

BACKGROUND

At the regular meeting of Chebucto Community Council on October 6, 2003, Council heard a presentation from Mr. David Copp. Specific concerns were raised regarding the construction of an accessory building at 26 Armshore Drive. The presentation also outlined the general concerns of area residents with respect to the development of lands created by the infilling of water lots on the Northwest Arm.

Council requested staff provide an information report regarding the issues raised during the presentation. Council also requested confirmation of receipt of a report with respect to 26 Armshore Drive that was prepared in response to a Council request from the regular meeting of June 10, 2002. That report was received by Chebucto Community Council on September 9, 2002 (see Attachment 1).

DISCUSSION

A) Activity at 26 Armshore Drive

The subject property is located at the eastern end of Armshore Drive (see location plan - Attachment 2). Building and Development permits were issued for the construction of an accessory building at the above address on August 1, 2003. Upon inspection in early October a stop work order was issued due to construction that was not strictly in conformance with the approved plans. Some issues remain unresolved with respect to lifting the stop work order. The building is currently framed but exposed to the weather. It is also exposed to unauthorized access and could present a hazard to the public. Under these circumstances, staff have instructed the owner to secure the building from the weather and unauthorized access and to proceed no further until the outstanding issues are resolved.

Area residents have expressed concerns with the construction of the building. Within the context of the Freedom of Information and Privacy Act, staff have attempted to maintain clear lines of communication throughout the process. The property owner has responded in good faith and has acted in accordance with all instructions throughout the process.

Staff have re-examined the building proposal in significant detail. Two issues are unresolved as of the date of the preparation of this report.

1. Confirmation that the proposed accessory building is located on the same lot as the principal use (dwelling); and
2. Confirmation that the proposed accessory building is located on land that was created by infilling that was approved by the relevant senior government agencies.

Staff are reviewing the status of the property boundaries and will consult with the relevant Federal approval authorities with respect to the legality of the infilling of the property. Clarification of these issues is anticipated shortly. The stop work order will remain in effect until that time.

B) Regulation of Water Lots on the Northwest Arm

Existing situation

The land use by-laws for Halifax Peninsula and Mainland provide that land created by infilling of a water lot takes on the zoning of abutting land. Use of such land is then subject to the applicable provisions of the land use by-law. There is no specific zoning requirement which applies exclusively to infilled water lots (except the fact that they take on the abutting zoning).

The only zoning regulation which applies specifically to the Northwest Arm is section 34F(1) of the Peninsula land use by-law which applies to properties which abut the Northwest Arm between approximately Horseshoe Island and South Street. Within this area R-1 uses are required to have

a minimum lot area of 8,000 square feet and a minimum distance of 30 feet between buildings and a minimum setback from the shoreline of 30 feet. These requirements do not apply to accessory buildings or lots 6 and 7 of the Thornvale Subdivision.

Options for change

Staff is currently reviewing the issue of zoning for water lots primarily as it applies to the Northwest Arm (Case 00596). The main focus is the use of water lots for floating structures. It appears that this is completely within the jurisdiction of the Federal Government. Investigation on how the Municipality could be involved is currently underway. It is anticipated that the staff report will be completed by early 2004.

The second issue which will be dealt with in the upcoming report is use of water lots which have been infilled. The municipality does have jurisdiction over such land. Use of this land is subject to the provisions of the land use by-law. However, the current zoning regulations do not include any requirements that are unique to water lots which have been infilled. The purpose of this report is to identify possible provisions which could apply or have been suggested could apply to infilled water lot. Further research is required on these options before staff can recommend what, if any changes are appropriate.

As of right

Regulations which apply only to infilled water lots could be added to the land use by-law. Such regulations would probably require adoption of policy in the Municipal Planning Strategy to provide a basis for such regulations. The Municipal Government Act only enables a municipality to prohibit development where a condition which would be hazardous to development exists. On this basis, it is unlikely that all development on an infilled water lot can be prevented by zoning. Further, there are uses such as wharves and boathouses, which are traditionally constructed at or near the shoreline. Prohibition of such uses may not be reasonable.

If as of right provisions are included in the land use by-law which are unique to infilled water lots, they will likely address the mass of structures permitted on such land. These may involve decreasing the allowable height on such land ¹, requiring greater setbacks from the water or decreasing the percentage of land that can be built upon.

¹ Although there are several different zones abutting the Northwest Arm, generally, the present rules allow for principle buildings of 35' in height and accessory buildings of 14' in height, although methods of calculation of these heights varies

Development agreement

A second approach is for use of infilled lots to be subject to a development agreement. This would require the adoption of Municipal Planning Strategy policy to provide criteria against which a proposal could be evaluated. Such regulatory approach could not be used to prohibit development. However, it can be used to achieve a greater level of compatibility than as of right by addressing such matters as design and building materials.

Views protection

This type of legislation may not be appropriate in this situation. While there is view plane legislation applicable to the harbour, such protected views are from public land. If view protection on the Northwest Arm was considered, the protected views would not be taken from private property.

A deviation on this approach is to add a setback requirement from the water which would apply to all properties abutting the Northwest Arm including both traditional lots and lots which have been created through infilling. The line from which the setback is measured would have to be fixed to ensure that the required setback is not compromised by infilling.

Consultation

As stated earlier, land covered by water is controlled by the Federal Government. Permission to fill such lots does not involve the municipality. Suggestions have been made that the municipality should have a role in the Federal process similar to the role the municipality has in the approval of telecommunication towers.

Preliminary discussions with HRM legal staff and the Federal authorities indicates that this is not likely to occur as the two situations are not similar. Licensing of a telecommunication facility involves use of public airwaves to which an applicant has no inherent right. However, infilling of a water lot involves property which is privately owned and, as such, the owner would have certain rights for the use of that property.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

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

None

ATTACHMENTS

1. September 3, 2002 Council Report
2. Location Plan

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.

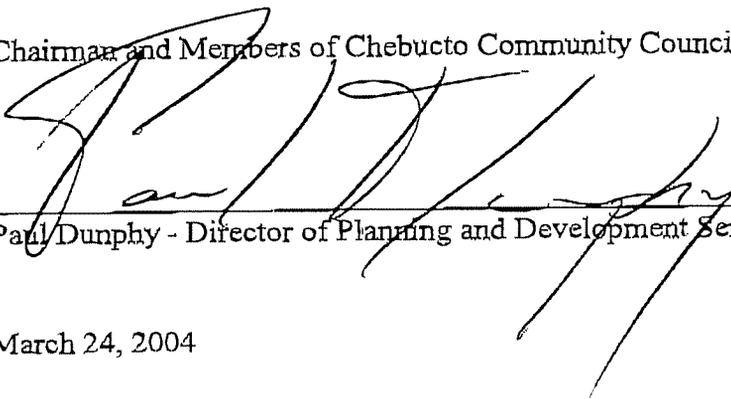
Report Prepared by: Steven Higgins - Development Officer (490-4402)
Gary Porter - Planner (490-4403)

Attachment "C"



Chebucto Community Council
April 5, 2004

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY: 
Paul Dunphy - Director of Planning and Development Services

DATE: March 24, 2004

SUBJECT: 26 Armshore Drive, Halifax

INFORMATION REPORT

ORIGIN

This report is submitted in response to a Community Council request from the regular meeting on October 6, 2003.

BACKGROUND

At the regular meeting of Chebucto Community Council on October 6, 2003, Council heard a presentation from Mr. David Copp. regarding the construction of an accessory building at 26 Armshore Drive. Council requested a report in response to questions raised in Mr. Copp's presentation. A report was submitted to Council on November 3, 2003. At that time, there were several items outstanding. Staff have continued to investigate the circumstances surrounding the property and this report has been prepared to update Council on the current status.

26 Armshore Drive,
Halifax

2

Chebucto Community Council
April 4, 2004

DISCUSSION

The subject property is located at the eastern end of Armshore Drive (see location plan - Attachment 1.)

Building and Development permits were issued for the construction of an accessory building on August 1, 2003. After an inspection in response to concerns expressed by area residents and the local Councillor, a stop work order was issued due to construction that was not in conformance with the approved plans. The property owner was ordered to secure the building to prevent weather related damage and maintain public safety pending resolution of any outstanding issues.

Area residents have expressed a number of specific concerns with the existence of the building and its potential uses. These concerns are set out below along with a specific explanation of the current status:

- 1) Area residents are concerned that the building conflicts with issues of historical preservation and maintenance of significant views along the Northwest Arm

While staff acknowledge these concerns, they are not addressed in the existing zoning regulations. Issuance of building and development permits is a direct function of compliance with these regulations. As there are currently no regulations with respect to these particular items, staff cannot take these concerns into account during or after the review of a proposed building.

- 2) Area residents are concerned about the possibility of the building being used for commercial purposes

Staff cannot act on a violation that has not yet taken place. Therefore, the possibility that the building may be used for non-compliant uses in the future cannot be used to refuse a permit or to initiate prosecution. Occupation of the building for commercial purposes would be contrary to the Land Use Bylaw and steps would be taken by staff to bring the use of the property into compliance.

- 3) Area residents are concerned that the building is located too close to the adjacent HRM owned walkway

This concern is based on the presumption that the adjacent walkway/driveway should be considered to be a street and therefore flanking street setback requirements should be applied.

Staff have considered this concern extensively by consulting with a number of Development Officers and HRM's legal department. The adjacent municipally owned property is used as

26 Armshore Drive,
Halifax

3

Chebucto Community Council
April 4, 2004

a service driveway access to an HRM pumping station. It is also used by pedestrians to access the waterfront walking path along the Northwest Arm adjacent to the Regatta Point development. The walkway in question was not taken over as a street through the subdivision process. It is not named or listed in any registry of HRM streets. It has the appearance of a street only by virtue of the need for HRM staff to access the pumping station with vehicles and equipment. The driveway is secured from other vehicular access. Under these circumstances, the adjacent land is not a street for the purposes of applying the setback requirements in the land use bylaw.

- 4) Area residents are concerned that the building is constructed on lands that were created by infill without the approval of the relevant Federal authorities having jurisdiction

Infilling of land is exclusively under the jurisdiction of the Federal Government. Staff have consulted with the authority having jurisdiction and have been advised that the infill was conducted with the required approvals.

- 5) Area residents are concerned because it is believed the structure is not located on the same lot as the principal dwelling at 26 Armshore Drive

There are two separate relevant points with regard to this issue:

- a) The first point relates to the nature of the land described in the deed possessed by the current owner. This deed describes lot 24 of the Armshore subdivision and all land between that lot and the ordinary low water mark of the Northwest Arm. The property was conveyed in this form in 1941 and again in 1999. The property owner has provided staff with a Certificate of Title for these lands along with an opinion from the solicitor that prepared the title certificate indicating the property is a single entity. Staff have reviewed this information with HRM's legal department and have concluded that the two parcels described in the deeds from 1941 and 1999 cannot lawfully be conveyed separately and therefore are considered to functionally form a single property.
- b) The second point relates to the status of the land created by the infilling activity conducted by the property owner. Staff have obtained surveyors location certificates of the property in question from 1996 (prior to the recent infilling) and 2003 (after the recent infilling). The second survey also shows the precise location of the accessory building in question. Staff feel it is clear from these plans that the building is located on the area created through the infill process and, more significantly, a portion of the structure is located beyond the area described in the above referenced certificate of title. As of the date of the preparation of this report, this issue remains unresolved and the existing stop work order remains in effect. In order to comply

26 Armshore Drive,
Halifax

4

Chebucto Community Council
April 4, 2004

with municipal regulations, the property owner will have to demonstrate ownership of the land upon which the building located or, alternatively, alter the building to eliminate any encroachment. Staff will continue to investigate this situation and follow through to ensure compliance with municipal requirements prior to lifting the stop work order.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report.

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

None

ATTACHMENTS

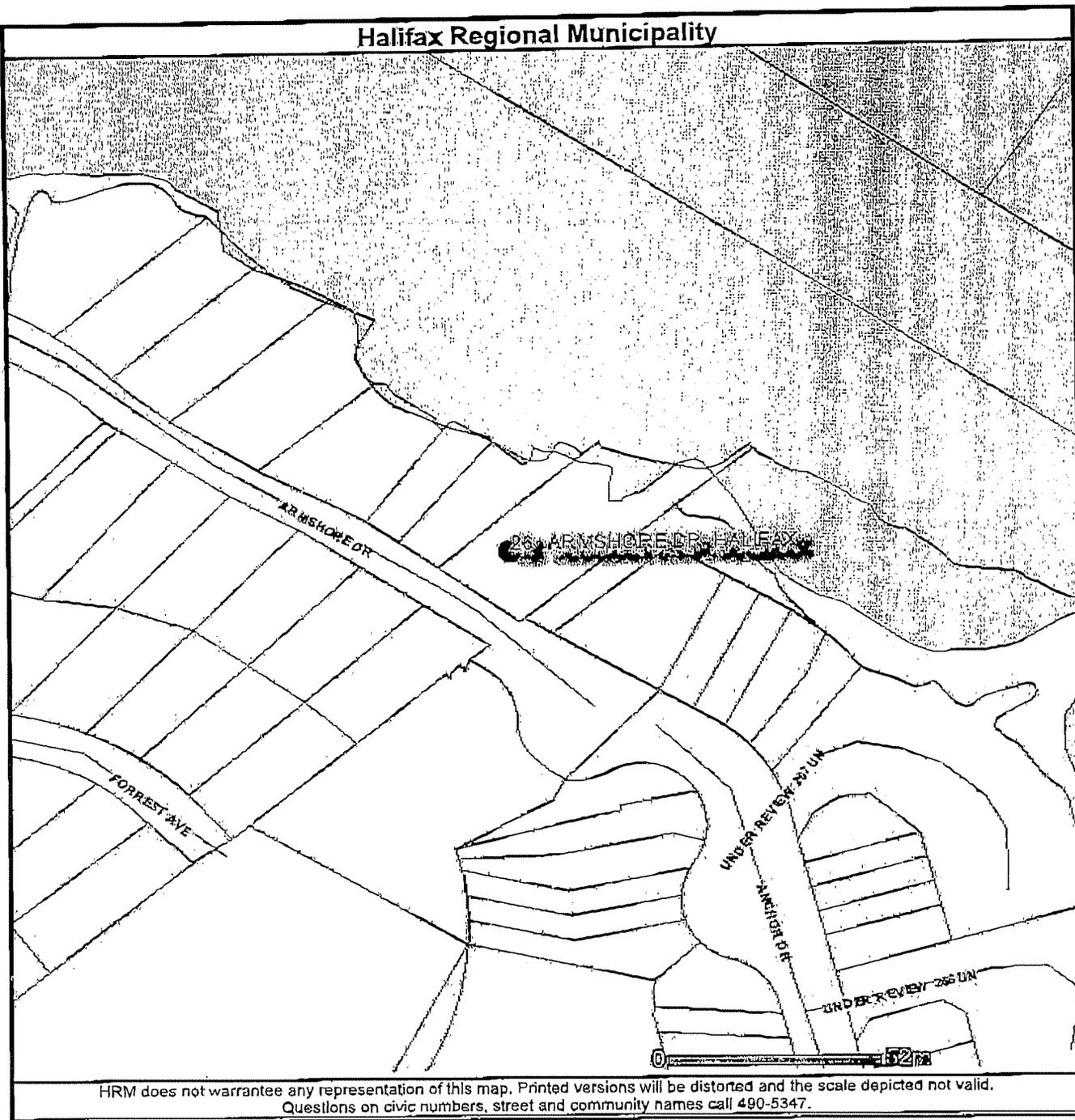
1. Location Plan / Site Plan

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.

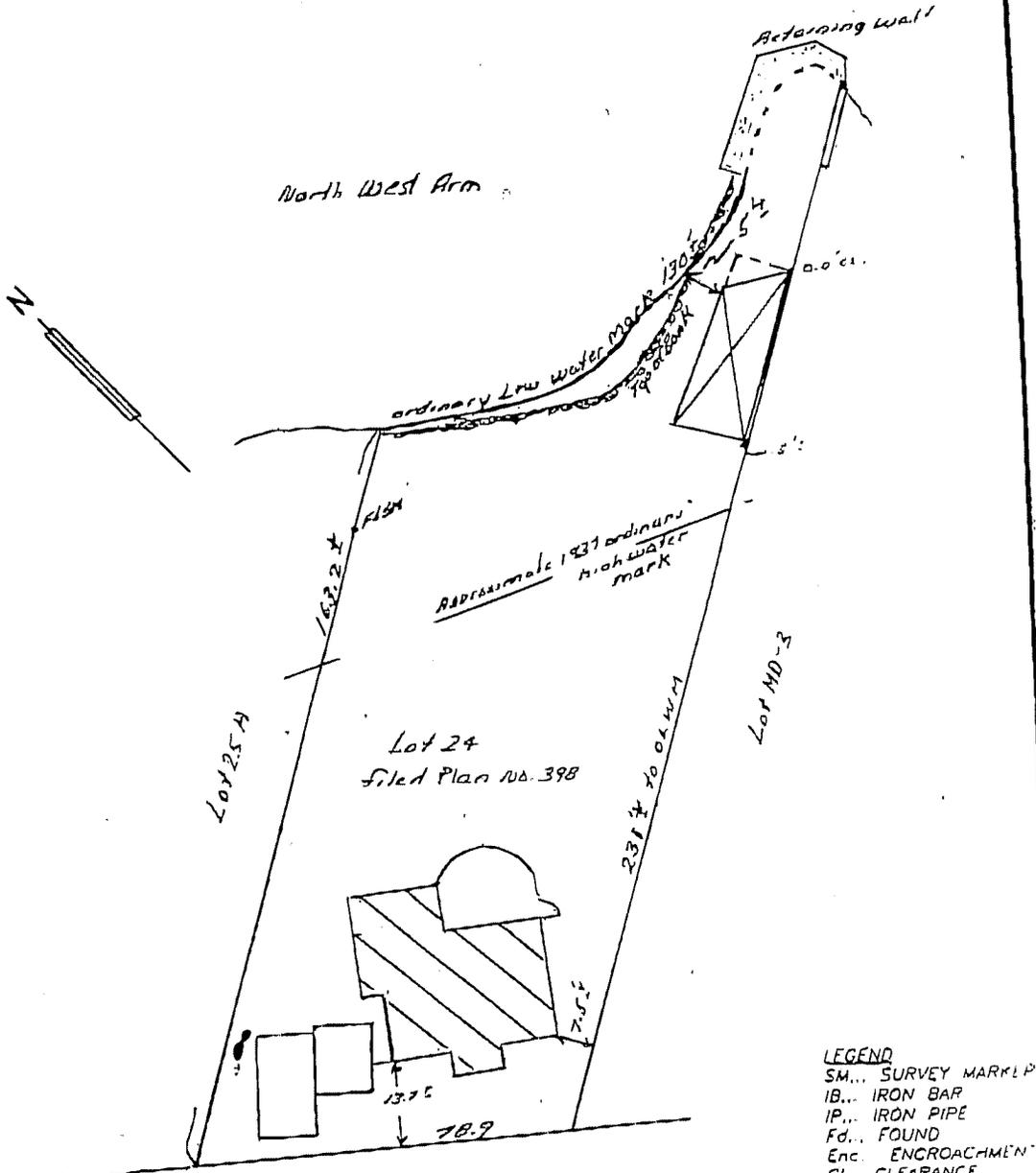
Report Prepared by: Steven Higgins - Development Officer (490-4402)

Attachment 1

Halifax Regional Municipality



CERTIFIED PLOT PLAN



Armshore Drive

LEGEND
 SM... SURVEY MARKED
 IB... IRON BAR
 IP... IRON PIPE
 Fd... FOUND
 Enc... ENCROACHMENT
 Cl... CLEARANCE
 Dwg... DWELLING

I Mark Macmillan, Nova Scotia Land Surveyor, hereby certify that this Surveyor's Location Certificate was prepared under my supervision and in accordance with Part V11 of the Nova Scotia Land Surveyor Regulations made pursuant to Section 8 of the Land Surveyors Act.

1. This plan is intended to show the approximate location of the Building with respect to the boundaries of the referred hereon.
2. This plan is not a boundary survey and is not suitable for construction layouts, the location of any boundaries legal descriptions or in the determination of limits or status of title.

I certify to Carol Harrietha that I have found the Building constructed on property described in Book 6351 Pg. 266 at 26 Perry Lane to be located as shown on the above plan 10/1/02

Date(s) of field surveys OCT 17 2003

SCALE: 1 in. = 30 ft. or 1 ;

DATE: OCT 17 2003 SEC No. 10179



Mark Macmillan Nova Scotia Land Surveyor No. 611

MACMILLAN SURVEYS
 * PUGWASH N.S. *



DECLASSIFIED

Attachment "D"

Chebucto Community Council
September 13, 2004

TO: Chairman & Members of Chebucto Community Council

SUBMITTED BY:


Barry S. Allen, Manager, Legal Services

DATE: August 9, 2004

SUBJECT: Armshore Drive

PRIVATE & CONFIDENTIAL

Origin:

A request made by Chebucto Community Council for a meeting to discuss the permit issued for a building at 26 Armshore Drive.

Background:

The owner of 26 Armshore Drive applied for a permit to construct a building on what he asserts is his property. Some area residents felt the building was an intrusion into the Arm and raised with the development officer several issues respecting the building. The development officer has met with the residents on several occasions and has advised them of the decision made. The residents do not agree with those decisions and have requested a meeting.

Discussion:

The request for a meeting raises interesting questions respecting the responsibility of a municipality to involve people other than an applicant in the process for approving a development permit.

As a preliminary matter a Community Council has no jurisdiction over the process or the development officer who is charged by the *Municipal Government Act* with the power to reject or approve applications for permits. It is therefore not within Council's powers to direct that a meeting take place. The main issue is whether a development officer is required or authorized to engage people other than the applicant in the application process.

In Nova Scotia a property owner is entitled to make whatever use of the land the owner wishes, subject only to government restrictions and the private law of nuisance.

Nova Scotia has set up a structure for development control and the Halifax Regional Municipality has implemented that structure by adopting various land use by-laws, including one which applies to 26 Armshore Drive.

The *Municipal Government Act* establishes the development officer as the authority for granting or refusing development permits. Council and other staff members do not have the authority to direct what decision a development officer makes respecting an application.

The Act distinguishes the process for an application for a development permit from that for the approval of other planning documents. For development permits there is no public notice required, no public consultation required and no public hearing required. The task for the development officer is to decide if an application meets the law in place at that time.

The Act provides an appeal to the Utility and Review Board from the refusal by the development officer to issue a permit. Only the applicant for a permit has a right of appeal. There is no right to appeal the grant of a permit and no one other than the applicant has statutory standing at the appeal.

The legislative scheme is that a development permit is much like a license required under a wide variety of laws. Administratively, it is necessary to assign to someone the authority to decide if the permit or license application meets the requirements of the law. An application is a matter for the applicant and the decision maker. An application is not an invitation for the general public to become involved in a making a decision. The decisions are not to be made on the basis that it may be unpopular. The sole test is whether the decision maker in weighing the application against the requirements of the law determines the requirements to be met.

In the case of 26 Armshore Drive the development officer has decided that the application meets the requirements of the law. There is no right of appeal of that decision.

As a practical matter the development officer will consider objections made by neighbours to the issuance of a development permit and in the case of 26 Armshore Drive the development officer has in fact been far more engaged with residents than is the norm. He has met with them on several occasions, followed up on concerns raised, considered the concerns in making his decision and has advised them of the decision which has been made.

The issue that appears to remain as a matter of concern for area residents is whether the owner of 26 Armshore Drive owns the land on which the building is constructed.

In all applications the development officer relies on the accuracy of information provided by the applicant. The development officer is not equipped nor permitted under Nova Scotia law to make binding rulings respecting the ownership of land and as a practical matter it would be an unwarranted financial burden for property owners to have to prove beyond question ownership of the land subject to every application.

In the case of 26 Armshore Drive the development officer asked for more information on title than would normally be the case and concluded that based on the information received there was no reason to deny the application. Of particular significance to the development officer was the fact that the body which would own the land if the developer did not, took no exception to the claim by the developer to be the owner. Ownership as between the only parties who could claim title was not in dispute.

Conclusion:

The development officer has made a decision in the case. Except for the owner of 26 Armshore Drive none of the other parties mentioned in the resolution of Chebucto Community Council on July 7th, 2004 have a role to play in the decision and there is no right of appeal. Subject only to a very limited scope for appeal to the Supreme Court the matter, from a legal perspective, is closed.

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: Barry S. Allen, Manager, Legal Services,
telephone: 490-4226, fax:490-4232.