
Halifax Regional Council
March 18, 2003

TO: Mayor Kelly and Members of Regional Council

SUBMITTED BY: Wayne Anstey
Wayne Anstey, Q.C., Director of Legal Services

DATE: March 3, 2003

SUBJECT: Tsimiklis - Planning Appeal

INFORMATION REPORT

ORIGIN:

A decision of Chebucto Community Council to amend the Land Use Bylaw for Peninsula Halifax by increasing the height precinct along South Street.

BACKGROUND/DISCUSSION:

On February 26, 2003 the Nova Scotia Court of Appeal released a decision which had the effect of restoring a decision of the Chebucto Community Council made in July of 2001 which permitted the construction of a 19 storey apartment building on South Street between South Park and Queen.

The site was governed by a height precinct which restricted the height of building to 100 feet or about 11 stories. The height precinct was contained in the Land Use Bylaw and was enacted pursuant to policies in the Municipal Planning Strategy which called for a limit on the height of buildings but did not provide a precise limit.

Chebucto Community Council interpreted the policies of the MPS to mean that they allowed Council to alter the height limit provided certain general policies were observed.

The decision of Council was appealed to the Nova Scotia Utility and Review Board by the Peninsula South Community Association and various individuals and the Board adopted a different interpretation of the policies. The Board's view was that by setting the height limit at 100 feet in the Land Use Buy-law, Council had effectively fettered its discretion to change the limit.

The Board's decision was appealed to the Court of Appeal and its unanimous decision was that the Board erred on two main counts.

The Court found first that the Board's interpretation of the policies in this case was simply wrong. A proper interpretation of the policies would not lead to the conclusion reached by the Board.

The Court also re-enforced previous statements it had made on the role of the Board to the effect that a decision of a municipal council was to be upheld as long as it was reasonably consistent with the policies of the MPS. The court recognized that policies often allow for a range of reasonable interpretations and as long as Council's decision fell within the range it ought not be replaced with a different interpretation preferred by the Board.

The decision of the Court of Appeal does not give Council the ability to make any decision it may want in a particular case but it does support the approach that reasonable decisions made by Council which find support in the policies cannot be lightly overturned by the Board.

A copy of the decision can be obtained from Legal Services.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

None.

ATTACHMENTS:

None.

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.

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