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Item No. 13.1.2
Halifax and West Community Council
November 16, 2021

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: *Original Signed*

Kelly Denty, Executive Director of Planning and Development

DATE: October 18, 2021

SUBJECT: **Case 22051: Development Agreement for a service station at 1656 Prospect Road, Hatchet Lake**

ORIGIN

- January 29, 2021 Nova Scotia Utility and Review Board Order, ordering Council to approve the Development Agreement for a service station at 1656 Prospect Road, Hatchet Lake
- On March 30, 2021, Halifax and West Community Council passed the following motion:

THAT Halifax and West Community Council:

1. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of the staff report dated February 3, 2021, to enable a service station with an accessory convenience store and drive-through restaurant at 1656 Prospect Road, Hatchet Lake; and
 2. Require the development agreement be signed by the property owner within 240 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.
- A time extension to the 240 days provided by Community Council to allow for signing the approved development agreement has been requested.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.

RECOMMENDATION

It is recommended that Halifax and West Community Council:

Grant an extension of 120 days to the requirement that the development agreement for Case 22051, approved by Halifax and West Community Council on March 30, 2021, be signed by the property owner within 240 days from the date of final approval of said agreement by Council and any other bodies as necessary, including applicable appeal periods whichever is later. If the development agreement is not signed by the property owner within 360 days from that time the approval of the development agreement shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND / DISCUSSION

On September 24, 2020, Halifax and West Community Council held a virtual public hearing to consider a development agreement to permit a service station (with an associated convenience store and take-out/drive-through restaurant) at 1656 Prospect Road, Hatchet Lake (Map 1 - Staff Report dated August 19, 2020). A service station is not permitted within the existing Light Industry (I-1) Zone. However, it can be considered under policies RB-10 and IM-11 of the Municipal Planning Strategy (MPS) for Planning District 4 (Prospect) by means of a development agreement. The proposed development includes the subdivision of the existing lot to create a separate lot for the proposed service station.

Halifax and West Community Council refused the development agreement stating the proposed development did not reasonably carry out the intent of the Municipal Planning Strategy. The refusal was subsequently appealed to the Nova Scotia Utility and Review Board (the Board). The Board heard the appeal on December 2-3, 2020 (2021 NSUARB 11- M09875) and the appeal was allowed. Consequently, Community Council was directed to approve the development agreement by the Order of the Board and this occurred at the Halifax and West Community Council meeting on March 30, 2021. Refer to the link below for the staff report and development agreement as well as the details on the Order of the Board.

Council's approval motion required the development agreement be signed by the property owner within 240 days from the conclusion of the appeal period which in this instance is March 30, 2021. In accordance with this motion, the development agreement is required to be signed by November 25, 2021 or it becomes null and void.

The proposed development includes the subdivision of the existing lot to create a separate lot for the proposed service station. The subdivision of the lot can occur in accordance with the Regional Subdivision By-law; however, this must take place prior to the signing and registration of the development agreement. The process of obtaining subdivision approval has taken longer than anticipated from all perspectives; the applicant, HRM, the Province and limitations and delays due to COVID-19. Therefore, the applicant has requested additional time to sign the development agreement.

Conclusion

Staff has reviewed the request to extend the timeline for the signing of the development agreement. The extension would have no impact on the previously approved development form or use, and the approved development agreement remains consistent with all applicable planning policies. Staff recommends that Community Council extend the time limit set for the signing of the development agreement.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities, and obligations imposed under or incurred to satisfy the terms of this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2021-2022 operating budget for Planning and Development.

RISK CONSIDERATION

If Council were to refuse to extend the time to sign the agreement and the 240 days were to expire (which is November 25, 2021) without the agreement being executed, the decision of Community Council to approve the development agreement would be considered void. If the applicant were to seek to reinstate this approval, a new public hearing process would be required.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy and is described in the August 19, 2020 staff report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve an alternative time limit for the signing of the Development Agreement.

ATTACHMENTS

HRM web link to the supplementary staff report dated February 3, 2020 for Case 22051 which includes the staff report dated August 19, 2020.

<https://www.halifax.ca/sites/default/files/documents/city-hall/community-councils/210330hwccsp51.pdf>

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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