

**SPECIAL COUNCIL MEETING
SEPTEMBER 30, 2010**

Present: Mayor Ben Cleveland
Deputy Mayor Mike Bartlett
Councillor Peter Turnbull
Councillor Danny Harvieux
Councillor Jean Brittain

Others Present: Tom Ossinger, CAO
Matthew Raymond, Director of Finance
Susan Rice, Administrative Assistant
Tom Hudak – Town Solicitor

Regrets: Councillor Ron Matsusaki
Councillor Brian Manzer

A. Call to Order

The Mayor called the meeting to order at 7:00 p.m.

B. Approval of the Agenda

Motion:

Moved by Deputy Mayor Bartlett and seconded by Councillor Jean Brittain that the agenda of September 30, 2010, be approved as presented.

Motion Carried.

C. Appeal of Site Plan for Mount Street

Churchill Ashford is appealing the site plan approval that was approved by the Development Officer. The two area concerns are not adequately disposing of the storm and surface run-off water from the site and not conforming to the provisions as outlined in the Town of Digby Land Use Bylaw (2000) as written under Part 2-3 Multiple Residential (R2) zone.

Mr. Ashford has a property at 71 Mount Street and there is presently a sanitary sewer line and manhole at the bottom south corner of his property just before the fence but his boundary goes beyond the fence. There are no easements in Weymouth regarding storm water and/or sanitary sewer across the property. It has been there for more than 20 years. In November 2009, Mr. Ashford wrote the Department of Environment regarding the drainage ditch to see if he needed a permit to put in a culvert in the ditch behind his house and they stated no but it was a municipal drain and he should contact the Town of Digby. There was an elevation plan done in 1973 from the Department of Natural Resources. In 1985, the province brought out a Drainage and Ditches Act.

Mr. Ashford stated that he is not prepared to accept the water flow from the above properties. Mr. Ashford also mentioned that surface water has no direction and the increase of the rate of flow from the said property above will cause erosion down below.

The town's solicitor, Tom Hudak, commented on the Common Law and the responsibility of the homeowners accepting drainage water on their property. Mr. Hudak also commented on the case of Groat vs City of Edmonton in 1928.

Mr. Ashford stated that the property law states that the owner does not have to accept the other person's water with the cases that he read. Mr. Ashford stated can't they reroute the storm drain to Victoria Street.

The solicitor stated that the increase of drainage water has to be significant burden on the property.

If the town accepts this water from the development what happens in the future with other developments.

The second concern was the Land Use Bylaw and how the Town is not keeping up with the bylaw because it is from 2000. Mr. Ashford stated that we are not conforming to the provision as outlined in the LUB. Chris Millier explained the bylaw for Mr. Ashford and that the town is conforming to the bylaw. The bylaw setups zones and divides the Town into different zones. If the property already exists then it is grandfathered and it is flexible. There is a standard minimum for frontage, setbacks, green space, etc. and we cannot penalize it but if it is new construction/lots then they have to meet certain criterias and it is not flexible. Mr. Ashford stated that he could not find it in the bylaw in regards to what Mr. Millier stated and the CAO mentioned that he received the information.

The Council reserved to make a decision in regards to Mr. Ashford's two concerns at a later date. If Mr. Ashford is not happy with the decision, he can then appeal to the Supreme Court of Canada.

Ms. Leblanc is concerned as well with the storm drainage and water runoff and there is always a concern with reflooding.

D. Adjournment

The meeting was adjourned by Councillor Turnbull and seconded by Deputy Mayor Bartlett 7:35 p.m.

MAYOR

CLERK