



**Affordable Housing**

No new information

**Derelict Buildings/Minimum Standards**

No new information

**Subdivision By-law Review**

No new information

**Proposed Development Agreement - 3165433 Nova Scotia Limited - update**

Ms. Davis reported that this agreement had been approved by Council and is in effect.

**Joint Planning for Border Areas – Update to follow at next meeting.**

**BUILDING INSPECTOR AND DEVELOPMENT OFFICER REPORT**

**Monthly Reports of February, March and April 2010**

Moved By: Councillor Bregante  
Seconded By: Councillor Seeley

**THAT THE REPORTS OF THE BUILDING INSPECTOR AND DEVELOPMENT OFFICER FOR THE MONTHS OF FEBRUARY AND MARCH AND APRIL 2010 BE RECEIVED AND PLACED ON FILE.**

**Question on motion**

**MOTION CARRIED.**

**NEW BUSINESS**

**Application from Sunrose Consulting for LUB amendment to reduce side yards, Brison Developments Property, Payzant Drive**

Director Davis reviewed the staff report on the application from Sunrose Land Consulting for a site specific LUB Amendment, Brison Developments Property, Payzant Drive, Windsor (PID 45336773).

Ms. Davis noted that the request is to reduce the minimum side yard requirements of the Single Unit Residential (R-1) and Two Unit Residential (R-2) zones as they apply to a 13.6 acre parcel of land owned

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by Brison Developments Limited on the east side of Payzant Drive.

She noted that the R-2 zone requires a minimum side yard of 10 feet on each side for two unit dwellings (with no side yard along the common lot boundary dividing a semi-detached dwelling). Single unit dwellings are also permitted in the R-2 zone, subject to the R-1 zone requirements. In R-1 minimum side yard is 10 feet on one side and on the other side, four feet for a single storey building, plus two feet for each additional storey. The applicant is requesting that the 10 foot side yards in both the R-1 and R-2 zones be reduced to eight feet for the subject property.

Director Davis noted that the request, if approved, would make an exception to the Land Use By-law for this property that would not be available to other landowners in Windsor whose properties have the same zoning.

Director Davis noted that with the exception of the Hants Community Hospital, all of the land surrounding the subject property is vacant. She stated that staff felt that if the Town made this exception to the LUB it would be setting a precedent that other developers would feel that they should be allowed to do as well.

It was noted that the MGA establishes the authority for municipalities to undertake land use planning and section 219(2) of the MGA provides that Council may amend a land use by-law in accordance with policies contained in the municipal planning strategy. Section 219(3) states that Council shall not amend a land use by-law except to carry out the intent of the municipal planning strategy.

Director Davis reported that there is no policy in the *Town of Windsor Municipal Planning Strategy (MPS)* allowing Council to consider LUB amendments to reduce the side yard requirements for a development in the R-1 or R-2 zones. There is also no policy to allow Council to consider this application through a development agreement. The only policy available is the general policy for all LUB amendments and development agreements, Policy 16.3.1.

Director Davis noted that comments were received from the Fire Chief and he raised some concerns about the request.

As a result of Staff's concerns and the Fire Chief's concerns, it was recommended that the request be denied.

At this time, Chair Murley asked if there was anyone who would like to present information to the members of the Committee.

Ms. Jenifer Tsang of Sunrose Land Consulting came forward to make a presentation to the members of Council. Ms. Tsang noted that her application to reduce the side yard setbacks to eight feet for 8 R-1 lots and 7 R-2 lots was because the plan is to have all single story dwellings and the smaller setbacks would enable them to build slightly larger units on each lot. Ms. Tsang advised that she had numerous conversations with Planning staff and it was her impression that this site specific amendment to reduce the side yard setbacks would be supported. She noted that with that impression and her understanding she had discussed the matter with Mr. Brison and on that basis they proceeded with the lot sizes the way they were. In regards to site specific requests setting a bad precedent or undermining the land use bylaw, Ms. Tsang disagreed with that, noting that there are site specific land use bylaws which have been approved by municipalities. She advised that she has researched many municipal units in the province that have 8 foot setback requirements and some have 4 or 6 foot setback. She felt that this request was

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not an unreasonable one. Ms. Tsang felt that their request to have the setbacks reduced to 8 feet is within the realm of normalcy for the province; it is nothing extravagant, nothing outlandish, nothing exceptional. She felt that it was a reasonable request.

Ms. Tsang stated that she had never seen fire department comment on side yard setbacks in the Land Use By-law. She advised that it had been her experience that fire protection is a matter and responsibility of the National Building Code. Ms. Tsang felt that setbacks and land use bylaws are planning matters usually centered around streetscapes, how a street looks, centered around what is currently in the municipality for maintaining character. She stated that these are planning matters, not fire protection matters. Ms. Tsang noted that there had been a comment regarding 3 story buildings however the buildings being proposed for this development are all single story not three story units. She noted that there are already units in the town that have less than a 10 foot setback and she felt that there were other options.

Ms. Tsang advised that they had considered development agreements but felt that it would be overkill in this instance. She noted that in conclusion they are requesting 8 foot side yard setbacks which fits within the normal parameters of other land-use bylaws throughout the Province and it can be approved by Council without having specific plans to change policy support. She noted that this application is not dangerous in any way. She did not believe that it was dangerous in setting side yard setbacks nor is it dangerous in setting a precedent. Ms. Tsang stated that Council is not obligated to entertain or approve any future site specific requests that come forward.

Mayor Beazley noted that there has been lots of correspondence and discussion on this matter and felt that if the Council needs to change the product to meet the needs of what the market is dictating, he likes to think that the Council can do it as quickly, and as nimbly and as efficiently as can be done. He felt that for the Town to have the competitive edge they need to look at surrounding municipal units where setback requirements vary such as Kentville requiring 8 feet on both sides; East Hants, 6 feet on both sides; Wolfville 2 meters and 3 meters; New Minas is 12 feet but they have 4 feet and 16 feet – 4 feet with garages; West Hants, 6 feet on one side, 10 feet on the other side and for R1 zone there are other things taken into consideration. Mayor Beazley felt the main question with this application is to consider if the Town can tailor their product and can it be done in a timely fashion to meet the needs of the developer. Mayor Beazley stated that in his opinion in this case, it is reasonable to ask for an 8 foot setback with the provision that the bylaws be looked at in the future to see if Council wants to change all of the R2 zones to 8 foot setbacks. He thought that would make sense. Mayor Beazley stated that he supports the application and felt that it should go forward and also that sometime in the future discussion should be held on whether changes should be made to the other R2 zones in the area and decide if it should be changed town-wide.

Councillor Bregante agreed with the Mayor and felt that quibbling over a couple of feet here and there could cost tax dollars down the road. He felt that the growth for the community is needed to move forward.

Member Bibby agreed in principle with the application noting that she does not see it as a precedent because there is not a lot of developable land in the Town. She could not see how a development agreement could be more acceptable if the final outcome is the same. She raised a few questions regarding the Fire Departments concerns and Chief Burgess noted that he had a presentation to make which should address concerns.

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Director Davis responded to Ms. Bibby's comment about developable land and noted that there is a limited amount of land available for development. How it could set a precedent is not just with people asking for a reduction in their side yard requirements. She observed that once you start granting exceptions to the Land Use By-law then it could be an exception for anything that someone doesn't want to comply with and that is the fear that it prevents Staff from recommending this application. She noted that if it were only a side yard requirement here and there, that is one thing, but it is another thing when it starts to be everything that is up for grabs and it makes it very difficult for staff to enforce when the Land Use By-law really doesn't hold any water. In respect to how a development agreement might be more acceptable, Ms. Davis noted that there would be criteria in a development agreement that looks specifically at things like fire access and so on. Various things like an alley way for emergency vehicle access could be required through a development agreement.

Councillor Seeley asked if there were views from Member Murphy and the Administrator that could be heard.

Chair Murley noted that Councillor Galbraith had to leave but she had left a note which Chair Murley read. Councillor Galbraith comments: She is in favour of a site specific allowance in lieu of complete policy change. She is not in favour of a town wide reduction of space allowance. Compact development proposals seems like a good way to go. Let's see what this ends up looking like, if it doesn't work than we should have no problems turning down a similar request. She doesn't like the idea of mixed use.

Chair Murley then read Mr. Murphy's response:

Member Murphy's comments: "If the only reason for recommending that the request from Brison Developments be denied is the reduction of 2 feet of the side yard of a single family, single story dwelling and the resulting impact on fire operations, I would suggest that in the event of a working structure complicated by wind or fire comprising the end wall, that the current requirements do not make the environment of the fire fighter any safer for working conditions. I feel that with current National Building Code requirements covering drywall and insulation in fire ratings allows for sufficient safety." He also felt that the request for change be approved. He then sent another e-mail to Chair Murley advising that he would not be able to make the meeting and he mentioned something to think about is that the new growth areas in HRM such as Lakeside and Timberlea are only requiring 2.5 meters.

Chair Murley asked the Director of Planning about a statement that staff really does not have any objections to reduced side yard setbacks, yet you were looking at this as a town wide land use bylaw amendment.

Director Davis stated that as far as staff is concerned they could certainly work with something that goes along with the development principle that encourages compact development. She noted that compact development is not just reduced side yards. It is a number of other things with the intent being to reduce the amount of infrastructure that's required in a street length and all that type of thing. That would certainly be something that staff would support. Ms. Davis stated that with respect to a town wide Land Use By-law amendment, that is a possibility but staff felt that it might not be acceptable on a town wide basis. She noted that is why the other option was proposed for a development agreement to allow more tailoring for a specific location.

Chair Murley asked Chief Burgess if, when he sent his comments in, he was aware that the development in question was going to be a single story.

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Chief Burgess stated that he didn't understand that it would be site specific and he also had no knowledge of who, where or what. It was just a general question and he also was not told of any particular height. What he had to look at was the big picture of what the Fire Department has to deal with at 2:00 o'clock in the morning on a windy winter night no matter what height the building was.

Chair Murley asked Administrator Coutinho if he had any comments or questions and he asked that Chief Burgess make his presentation as he would like to hear it first.

Chair Murley asked Chief Burgess to make his presentation

Chief Burgess had some photos which he wanted to put up on the screen and as he was getting this prepared he stated that he is not against development or policy changes and does appreciate the input as he has worked with planning over the past two years. He explained that the Planning Department now realizes that the Fire Department does work with a lot of issues that are just rubber stamped with no input and aren't covered by the National Building Code.

Chief Burgess proceeded to explain what was happening in the photos where a fire started in a subdivision in a town in Alberta in 2007 and how it spread. He stated that he did not understand why there is a need for the reduction in setbacks because the development is in an open field and it is not trying to squeeze in beside other developments. The event in 2007 has caused the Alberta fire code to be changed. They recognized that modern day products used in structures are a cause for fires to spread more quickly. There was so much heat produced from the building products that buildings a 100 feet away were damaged. Chief Burgess noted that in the 2007 fire there was so much heat that the fire department chose to move down the street to try and save some of the other structures. He noted that the National Building Code is not updated often enough to catch up to technology. He reported that the ULC (Underwriters Laboratories of Canada) had provided information indicating that lightweight construction burns in less than 4 minutes leaving firefighters no time to safely enter the structure to save occupants or contents from destruction. Chief Burgess stated that two feet might not be much but it is time for the firefighters to work on and it could be the difference between life and death in some situations. He went on to talk about accessory buildings and how their contents can be extremely dangerous to the nearby buildings and every foot of setback helps. In closing, Chief Burgess mentioned collapse zone which in the fire business is the height of the building plus one third. With the lightweight truss construction that is happening now, there is about eight minutes before a burning building collapses. When a building collapses it forces the exterior out and it goes toward the next building which means it would touch the next building if there is only a four foot or eight foot setback. He felt the value of a life is greater than that of a development.

Administrator Coutinho advised that he had read all the information and listened to what was said and he noted that in his mind there are five key things:

1. Uniformity - All the buildings have a uniform distance between them
2. Privacy between neighbours - 2 feet is not substantive to privacy issues
3. Distance between neighbours – people might want to be away from their neighbours cooking smell, noise, etc.
4. Adequate room for utility or emergency vehicles and 8 feet is quite acceptable
5. Eight feet is quite acceptable and is widely practiced throughout the province and the country.

Administrator Coutinho commented on Chief Burgess' presentation. He commended Chief Burgess for trying to improve fire safety and the seriousness that he takes in his job. He observed in looking at the

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slides that Chief Burgess showed, that there are risks and everybody takes risks every day. He noted that with looking at eight foot setbacks, houses would be sixteen feet apart (each home would be required to have eight feet from their property line). He wondered how many fires of the type that Chief Burgess showed, had taken place in subdivisions with eight foot setbacks. He agreed that this was not about fear mongering but risk management and he is quite comfortable with leaving it as an eight foot setback.

Administrator Coutinho noted that regarding the issue of precedence, he sees these as policies of Council and he always maintains that planning documents are only as relevant as the last time that they were amended. So if something needs to be amended, Council can do that and in this particular instance the Director of Planning has actually suggested to Council, in her alternatives, that Council can approve the application although this is not recommended for the reasons set out in her report. Administrator Coutinho noted that under Policy 16.3.1 and that is the one that touches on the adequacy of fire protection and it seems that all the rest are met. He asked the Director of Planning what the next step would be if the application was approved and he noted that if changes are wanted for the Land-use Bylaw then they could be done in the future.

Administrator Coutinho asked Chief Burgess what he meant when he talked about collapse zone.

Chief Burgess stated that in any structure, especially with the lightweight construction materials, the collapse is the height of the building plus a third safety factor when the wall kicks out. He noted that they have to deal with some buildings from the corners even the brick buildings and sometimes for safety reasons, they have to pull back and just try to keep the nearby buildings from catching fire. Chief Burgess stated that if there is only a 4 foot setback and the height of the wall is 8 feet and then there is an estimated 3 foot gable on top of that when there is a collapse it would already be touching the next building. So if there was somebody in that area they would be dead because the building would be on top of them.

Director Davis advised that the staff recommendation is against this proposal not because of the comments from the Fire Chief about fire protection. She noted that the main reason for Staff's recommendation is 16.3.1 d) *the pattern of development which the proposal might create* and that is the one that deals with the precedent which might be set, the way that this would weaken and destroy the integrity of the Land-Use Bylaw so then basically you are open to whatever comes along.

In response to the C.A.O.'s question as to what the procedure is, Ms. Davis stated it is a land-use bylaw amendment so it follows the same approval process of any other land use bylaw amendment which is: it goes to Council for first reading; there's advertising; a public hearing is held; then second reading and an appeal period before it can take effect. It is the same process as any land-use bylaw amendment.

Director Davis noted that the developer is proposing at this point, single story buildings and the fact is that this is an as of right development and in R1 or R2 zones up to three storeys is permitted so there is no reason why the developer might not change his mind and do something different and at that point the Fire Chief's comments about height of buildings and setbacks were of concern to him.

For clarity, Chair Murley asked the Director if her main concern was the fact that the pattern of development would possibly compromise the integrity of the Land Use Bylaw.

Director Davis stated that the precedent could be set by allowing exceptions to the Land-Use Bylaw.

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Mayor Beazley felt that with an "as of right" , the developer could put up two or three story apartments having four feet on either side at the present.

Moved By: Mayor Beazley

Seconded By: Councillor Bregante

**TO RECOMMEND TO COUNCIL THAT THE APPLICATION FROM SUNROSE LAND CONSULTING, ON BEHALF OF BRISON DEVELOPMENTS LTD., TO AMEND THE TOWN OF WINDSOR LAND USE BY-LAW BY REDUCING THE SIDE YARD REQUIREMENTS OF THE R-1 AND R-2 ZONES AS THEY APPLY TO LAND OWNED BY BRISON DEVELOPMENTS, PAYZANT DRIVE, WINDSOR (PID 45336773) BE APPROVED.**

**Question on motion**

**MOTION CARRIED.**

The Administrator asked the Director of Planning if this would not qualify for a variance and why not.

The Director of Planning responded that a variance only applies to situation where you would have one lot that could not meet the setbacks for some reason, a variance could be granted. A variance that is general in nature to a whole development could not be granted. A variance applies to individual situations normally. Essentially this request is intended to circumvent the provisions of the bylaw and the changes are not permitted as a variance.

Mr. Brison proceeded to explain the handouts that he had provided at the beginning of the meeting. The first document showed the setbacks required in surrounding municipalities and the second was part of a development agreement for a project in Falmouth which the same planning department had prepared and there was a minimum side yard of six feet and a maximum height of three storeys. He felt that it had been agreed to about three years ago and it should be okay today.

Director of Planning replied that the staff recommendation doesn't really have a whole lot to do with what the setback is but rather the pattern of development and the issue of fairness to all and that an exception not be made to individual property owners that isn't available to any property owner with the same zoning providing they can meet all the other criteria. She noted that the document that Mr. Brison referred to was a development agreement and she was not sure if comments were received from the Fire Department at that time. She stated that staff have found that getting comments from the Fire Department is very, very helpful in making sure that some safety issues are being addressed proactively.

Member Bibby asked if this became a site specific amendment would the proposal be down on paper and can it then limit the rest of Mr. Brison's development to speak to staff's concerns. It would hope that this is not meant to circumvent future development but in situation where you have encountered site specific amendments, what is the procedure, in your experience, has occurred.

Ms. Tsang stated that if this is approved by Council ultimately an amendment to the Land Use Bylaw will be made with basically words being added to the R1 and R2 zones that say that at this location and give the PID & civic address for these specific lots the side yard setbacks are 8 feet for the R2 and 4 feet for the R1's. So it will be an actual sentence to the R2 zone and the R2 zone so that when someone reads it, the information will be there.

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Ms. Davis agreed with Ms. Tsang in the approach to have an amendment that would effect the entire town – it would have to be an amendment to the Land-use Bylaw as noted previously.  
Chair Murley thanked the guests for attending and advised them that they were welcome to stay for the last item if they wished.

**MISCELLANEOUS**

NS PLANNING DIRECTORS CONFERENCE: “New Ideas for a Shrinking World”, May 20 – 21

Chair Murley it had been approved for two members to attend and asked if there was anyone interested in attending the Planning Directors Conference and there were no members present who were able to attend. It was not certain if Member Murphy was interested in attending or not.

**ADJOURNMENT**

Moved By: Councillor Bregante  
Seconded By: Mayor Beazley

**THAT THE MEETING ADJOURN AT 9:00 PM.**

**Question on motion**

**MOTION CARRIED.**

The meeting adjourned at 9:00 pm.

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Chair