

HRM by Design:

The Threat to Democratic Procedure

On Tuesday, May 5, HRMbyDesign will go to a public hearing. If Council accepts this program, it will radically change the process for the approval of developments in downtown Halifax (which will include pretty much everything from the Trade Mart building in the north to the Superstore in the south) and reduce the right of the public, including the residents of downtown, to have a say in future development projects.

Under the Current System:

Many downtown developments are by development agreement, i.e. those that exceed what's allowed by the by-laws. In that case the public is involved almost from day one.

Step 1 is a Public Information Meeting (PIM) held by the developer. The PIM has no legal standing but the public gets a look at what's in store and on occasion the developer even incorporates some of the public's comments/suggestions.

Staff Reports are prepared and are available to Council and the public.

The project then goes to a public hearing, which is exactly what its name says... a hearing before Council where the public gets to comment on the proposal. Written comments are also accepted. After hearing all viewpoints Council votes on the project.

If either the developer or a member of the public feels that Council's decision on the project was not 'reasonably consistent' with the planning strategy the decision can be appealed to the Nova Scotia Utility and Review Board (NSUARB). This is a godsend for cash-strapped community or neighbourhood groups because, although legal counsel is helpful, it's not necessary.

The decision of the NSUARB can then be appealed through the courts, although it is an expensive process; therefore, not one often available to community groups or individuals.

What will happen under HRMbyDesign?

In a nutshell...not much if you are a member of the public or of Council. The new process known as 'site plan approval' will go like this:

Step 1 will still be a public information meeting.

The HRM development officer will then review the development to see if it meets the criteria in the Land Use by law. The Development Officer also has the power to decide on a tricky business known as bonus zoning. In other words, the developer can apply for more than the specified height (usually up to 30% more!) in return for some 'gift' to the city; which can range anywhere from public art to affordable housing units. The public has no say in what they might want or think is an appropriate gift based on the concessions given to the developer.

The project will then go to an HRM-appointed Design Review Committee that will consider the qualitative aspects of the project and has the exclusive power to decide on whether the project goes ahead. And who will be the members of this Design Review Committee? Nine of the ten members must be design professionals, engineers, etc., many of whom will depend on the development industry for their livelihoods. Talk about the fox minding the hen house! There is only one position for a resident at large.

After the project is approved, the Development Officer will put a notice in the paper to inform property owners in the downtown. The only point at which Council might get involved is if the

developer or a downtown property owner is unhappy with the decision of the Design Review Committee and appeals to Council. At this time it would appear that property owners in the downtown will be notified by newspaper ad and get a chance to participate in what approximates the current process for a variance hearing. Small comfort to the public, as any group of neighbours that has been involved in a variance hearing knows. The right to speak is limited to property owners who were notified and there is nothing for tenants (who comprise a huge segment of our downtown population) or any one living/owning property outside the notification area. Developers, but not other citizens, can still appeal to the UARB. In the end there is still the opportunity for individuals or citizen groups (as well as developers) to appeal via the court system but this is unlikely, as it is prohibitively expensive unless you have very deep pockets.

So, that's it folks. A cloak of invisibility will fall over most members of the public and our community groups; a particularly bitter pill to swallow since Council is in the process of adopting a Community Engagement Strategy, the first principle of which is that "Citizen participation is recognised as an asset, is valued and encouraged." Except, of course, if you live in, or have concerns about, downtown.

The executive committee of the Peninsula South Community Association urges you to watch for the HRM by Design public hearing notice. If you have internet access and the patience to troll through it, the Downtown Halifax Secondary Municipal Planning Strategy (the DHSMPS) is on the web, or you can get copies from the HRM Clerk's office, 490-4210). Write to the Mayor and Council with your concerns and if possible speak at the public hearing.

Beverly Miller for the Peninsula South Community Association, February 25, 2009