

**North West Community Council**  
**June 24, 2013**

**TO:** Chair and Members of North West Community Council

**SUBMITTED BY:** Original Signed  
Brad Anguish, Director of Community & Recreation Services

**DATE:** June 21, 2013

**SUBJECT:** **Discharge of an Existing Agreement – 10516 Peggys Cove Road, Glen Margaret**

---

**ORIGIN**

Request from the Estate of Garfield Drake.

**LEGISLATIVE AUTHORITY**

*HRM Charter*; Part VIII, Planning & Development

**RECOMMENDATION**

It is recommended that North West Community Council approve, by resolution, the discharge of the existing agreement for 10516 Peggys Cove Road, Glen Margaret, as provided in Attachment A of this report.

## **BACKGROUND**

This report concerns the discharge of an agreement on the site of a former campground at 10516 Peggys Cove Road, Glen Margaret. The lands are the subject of a real estate transaction and the property owner has requested that the agreement be discharged from the lands prior to their conveyance.

In 2012, a request for a zoning confirmation letter for these lands was filed with the Municipality. Staff research indicated that a 1977 agreement with the former Municipality of the County of Halifax is on title for this property. At the time, it was not clear as to whether the agreement was still in effect, however, through subsequent discussions with Legal Services, it was determined that the agreement remained valid. The zoning confirmation letter request was eventually withdrawn and the letter was never issued.

The subject agreement was approved by the former Municipality of the County of Halifax in 1977 and noted that the zoning applicable to the property was the T Zone (Mobile Home Park Zone) under Zoning By-law No. 24. The agreement restricted the use of the property to a single family dwelling (to be owner occupied) and a seasonal camping ground (owner operated) with a maximum of 37 campsites. The agreement also stated the land was to be used for no other purposes.

Under Section 8 of the agreement, it states that any purchaser, lessee, or other person occupying this property would be required to enter into an agreement with the Municipality on the same or similar terms and conditions as the current agreement. The section further specifies that a written agreement between the owner's successor and the municipality is required prior to the Developer selling, assigning, leasing, or otherwise changing his interest in the property.

### **Land Use By-law Requirements**

The property at 10516 Peggys Cove Road is located within the MU-1 (Mixed Use 1) Zone of the St. Margaret's Bay Land Use By-law (LUB).

Rather than list the permitted residential, commercial, resource and industrial uses, the MU-1 zone is structured to prohibit specific uses such as mobile home parks, multi-unit dwellings, commercial entertainment uses, and campgrounds. The zone would allow the property to be redeveloped for a wide variety of uses.

## **DISCUSSION**

From a planning perspective, staff advises that the purpose of the existing agreement was to regulate the use and development of the campground. Staff understand that the property is no longer being used for a campground and there is interest in developing the property for other purposes. The MU-1 Zone would allow flexibility in the development of the property and there is no longer a need to maintain the agreement on the property.

In consideration of the foregoing, staff recommend that Community Council discharge the existing agreement from the property which would allow the property owner to be subject to the provisions of the MU-1 Zone.

**FINANCIAL IMPLICATIONS**

There are no financial implications.

**COMMUNITY ENGAGEMENT**

There is no community engagement related to this report.

**ENVIRONMENTAL IMPLICATIONS**

No implications have been identified.

**ATTACHMENTS**

Attachment A	Proposed Agreement Discharge Resolution
Attachment B	Existing Agreement for 10516 Peggys Cove Road

---

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Shiloh Gempton, Development Technician, 490-6796, and  
Sean Audas, Development Officer, 490-4402

Report Approved by: Original Signed  
Kelly Denty, Manager, Development Approvals, 490-4800

---

**Attachment A  
Proposed Agreement Discharge Resolution**

**IN THE MATTER OF the *Halifax Regional Municipality Charter*  
being Chapter 39 of the Acts of 2008**

- and -

**IN THE MATTER OF the development of certain lands  
known as 10516 Peggys Cove Road, Glen Margaret;**

**WHEREAS** an agreement between Garfield Drake and the Municipality of the County of Halifax was executed on February 25, 1977 and recorded at the Registry of Deeds for Halifax County as Document Number 25602 in Book 3123 at Pages 494 - 502 (hereinafter called the "Agreement"), for a single unit dwelling and campground for the area described on Schedule A (hereinafter called the "Lands");

**AND WHEREAS**, pursuant to the procedures and requirements contained in the *Halifax Regional Municipality Charter*, the North West Community Council approved, by resolution, the discharge of this Agreement from the Lands as shown on Schedule B, at a meeting held on the \_\_\_ day of \_\_\_\_\_ 2013, said discharge is to take effect upon the registration of this resolution at the Land Registry Office;

**THEREFORE**, the Agreement shall no longer have any force or effect on the Lands.

I HEREBY CERTIFY that the motion as set out above, was passed by a majority vote of the North West Community Council of the Halifax Regional Municipality at a meeting held on the \_\_\_ day of \_\_\_\_\_, 2013.

GIVEN under the hands of the Municipal Clerk and Under the Corporate Seal of the Halifax Regional Municipality this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Municipal Clerk

See drawer 177 for plan  
25602

494

THIS AGREEMENT made in duplicate this 25<sup>th</sup>  
day of February, A. D. 1977.

BETWEEN:

GARFIELD DRAKE of Glen Margaret, in the  
County of Halifax, Province of Nova  
Scotia, businessman, hereinafter called  
the "DEVELOPER"

OF THE FIRST PART

- and -

MUNICIPALITY OF THE COUNTY OF HALIFAX,  
a body corporate, hereinafter called the  
"MUNICIPALITY"

OF THE SECOND PART

W H E R E A S the Developer is the owner of  
certain lands and premises situate at or about Glen Margaret,  
in the County of Halifax, Province of Nova Scotia (hereinafter  
called the "Property") which lands are more particularly  
described in Appendix "A" hereto;

AND WHEREAS at the request of the Developer and  
upon the express understanding that the use of the Property  
would be restricted to, in addition to the present use as a  
single family dwelling of and by the Developer, use as a  
seasonal camping ground and for no other purpose, and subject  
to certain terms and conditions as agreed between the  
Developer and the Municipality hereinafter;

NOW THEREFORE THIS INDENTURE WITNESSETH that in  
consideration of the sum of One Dollar (\$1.00) now paid by the  
Developer to the Municipality (the receipt whereof is hereby  
acknowledged) and for other good and valuable consideration  
the parties covenant and agree with one another as follows: -

1. RESTRICTIONS ON USE OF THE PROPERTY

(1) The Developer shall restrict the use of the  
property to a single family dwelling occupied by himself and to

a seasonal camping ground owned and operated by himself and for no other purpose whatsoever, notwithstanding that the said land is zoned as T-Zone (Mobile Home Park Zone).

(2) The Developer shall restrict the use of that portion of the Property to be used as a seasonal camping ground to the area and configuration or layout indicated on the Plan attached hereto as Exhibit "B". The Developer shall not extend the use of the Property for a seasonal camping ground beyond the boundaries nor shall he vary the configuration or layout indicated on the said Plan except as provided in paragraph 5 hereof.

2. VEHICULAR TRAFFIC

The Developer agrees to restrict the means of vehicular ingress and egress to and from the Property so as to assure safe ingress and egress to and from the Property and any barriers, structures or landscaping required for this purpose shall be erected or carried out to the satisfaction of the Municipal Engineer.

3. FENCING AND LANDSCAPING

(1) The Developer shall landscape the Property with trees, grass, sod and flowers to the satisfaction of the Director of Planning and Development.

(2) The Developer shall erect, construct and maintain in good repair fences of a type, design and construction satisfactory to the Director of Planning and Development.

4. SIGNS

Any signs erected on the Property by the Developer shall be of a type and design satisfactory to the Building Inspector.

5. RESTRICTION ON NUMBER AND CONFIGURATION OF CAMPSITES

The Developer shall restrict the number of campsites to a maximum of 37 and the configuration or layout of the campsites shall be as set forth in Schedule "B" hereto and shall not be varied except with the prior written consent of the Municipality.

6. NOISE AND LIGHT ABATEMENT RESTRICTIONS, ETC.

(1) The Developer agrees to strictly enforce the rules and regulations of his seasonal camping ground including the rules and regulations respecting noise abatement.

(2) Particularly, the Developer shall:

(i) restrict the audio volume of any and all loudspeakers or other such devices whether on the Property or on his cruise boat to a level which shall not constitute a nuisance to neighbouring properties in the vicinity of the Property;

(ii) require all persons utilizing the facilities on the Property to reduce and maintain any and all noise, lighting or the like to a level which will not constitute a nuisance to other persons utilizing the facilities or to neighbouring properties in the vicinity of the Property;



- (iii) require all persons utilizing the facilities on the Property to cease and desist making any and all noise, lighting or other like disturbances not later than 11:00 o'clock in the afternoon on weekdays and not later than 12:00 midnight on the weekends; and
- (iv) take such other good and reasonable measures as may be necessary from time to time to assure the peaceful and quiet enjoyment of the neighbouring properties in the vicinity of the Property and such as to prevent a nuisance to such neighbouring properties.

(3) An act, omission, matter or thing constitutes a nuisance within the meaning of this Agreement when it is injurious to the health or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable, peaceful and quiet enjoyment of life or property.

7. CHANGE IN USE

The Developer shall not alter, vary or change the use of the Property at any time except with the prior written consent of the Municipality which consent may be given by way of executing an amendment to this Agreement.

8. SUCCESSORS

(1) The Developer shall require any purchaser, lessee, or other person occupying the Property to enter into an Agreement with the Municipality on the same or similar terms and conditions as this Agreement.

(2) The Developer shall not sell, assign, lease or otherwise alienate or change his interest in the Property without previously securing a written Agreement between his successor and the Municipality in the same or similar terms and conditions to this Agreement and acceptable to the Municipality.



9. BREACH OF TERMS OR CONDITIONS

(1) Upon the breach by the Developer of any of the terms or conditions of this Agreement, provided that the Developer has been given notice within a reasonable time of the alleged breach of the Agreement, then the Municipality shall be entitled to:

- (i) specific performance enforceable by way of injunction or otherwise; or,
- (ii) in the alternative, and at its option, to liquidated damages the amount of which is hereby agreed to be not less than \$5,000.00 for each such breach; or
- (iii) in the further alternative, and at its option, to rezone the Property back from T-Zone (Mobile Home Park Zone) to G-Zone (General Building Zone) and the Developer shall cooperate fully with the Municipality in having the Property so rezoned.

(2) The Developer shall provide a personal bond (in an amount of \$5,000.00) to be filed with the Clerk of the Municipality upon the execution of this Agreement and such bond shall be security for the performance by the Developer of all his obligations under this Agreement and such bond shall be in a form approved by the Clerk of the Municipality.

10. OBSERVANCE OF LAW

(1) Subject to the provisions of this Agreement the Developer shall be bound by all of the ordinances, by-laws and regulations of the Municipality as well as to any applicable statutes and regulations of the Province of Nova Scotia.

(2) In particular, the Developer and this Agreement shall be subject to the provisions of the Planning Act, being Statutes of Nova Scotia 1969, Chapter 16, as amended from time to time and any Regulations made thereunder.

11. COVENANTS TO RUN WITH THE LAND

The covenants, agreements, conditions, and understandings herein contained on the part of the Developer shall run with the land and shall be binding upon his heirs, assigns, mortgagees, lessees, successors, and occupiers of the Property from time to time.

12. REGISTRATION OF AGREEMENT

It is agreed that this Agreement shall be filed by the Municipality in the Registry of Deeds at Halifax, Nova Scotia, and shall form a charge or encumbrance upon the Property.

13. OCCUPANCY PERMIT

(1) The Developer shall not operate the seasonal camping ground until an Occupancy Permit has been issued by the Municipality specifying that the terms of this Agreement have been complied with.

(2) The Developer must qualify for and obtain such Occupancy Permit within six months of the expiration of the appeal period mentioned in paragraph 16(2) hereof failing which this Agreement shall be null and void except that the Developer agrees to cooperate fully with the Municipality in having the Property rezoned from T Zone (Mobile Home Park Zone) to G Zone (General Building Zone).

14. SEVERABILITY OF PROVISIONS

It is agreed that the provisions of this Agreement are severable from one another and that the invalidity or unenforceability of one provision shall not prejudice the validity or enforcement of any other provisions.

15. INTERPRETATION

(1) Where the context requires, the singular shall include the plural and masculine gender shall include the

feminine and neuter gender and where there is more than one party of the one part they shall be jointly and severally bound to the fulfillment of the obligations hereunder.

(2) "Seasonal Camping Ground" wherever it appears in this Agreement means a seasonal camping ground as defined in the Municipality's Mobile Home By-law from time to time and in no case shall be interpreted so as to include or permit other than seasonal use by campers.

16. EFFECTIVE DATE

(1) This Agreement shall come into effect on the date which the Council of the Municipality approves a by-law amending its Zoning By-law by rezoning the Property from G Zone (General Building Zone) to T Zone (Mobile Home Park Zone).

(2) The Developer shall not commence actual construction on the Property until the expiration of the appeal period provided for by Section 40 of the Planning Act.

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and permitted assigns.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above writtan.

SIGNED, SEALED AND DELIVERED  
in the presence of  
Original Signed

SEALED, DELIVERED AND ATTESTED  
to by the proper signing  
officers of the Municipality  
of the County of Halifax duly  
authorized in that behalf in  
the presence of

Original Signed

Original Signed

GARFIELD DRAKE

MUNICIPALITY OF THE COUNTY  
OF HALIFAX

Original Signed

WARDEN

Original Signed

CLERK

PROVINCE OF NOVA SCOTIA )  
COUNTY OF HALIFAX )

ON THIS 9th day of June, A. D. 1977,  
before me, the subscriber personally came and appeared  
Gwen Campbell a subscribing witness to the  
foregoing Indenture, who, having been by me duly sworn, made  
oath and said that the Municipality of the County of Halifax,  
one of the parties thereto, caused the same to be executed  
and its Corporate Seal to be thereunto affixed by the hands  
of T. S. S. and H. G. Bennett  
its officers duly authorized in that behalf in h[er] presence.

Original Signed

A Barrister of the Supreme Court  
of Nova Scotia  
DAVID W. HOLEY

PROVINCE OF NOVA SCOTIA )  
COUNTY OF HALIFAX )

ON THIS 25 day of February, A. D. 1977,  
before me, the subscriber personally came and appeared  
Joel E. Pink a subscribing witness to the  
foregoing Indenture, who having been by me duly sworn, made  
oath and said that Garfield Drake, one of the parties thereto,  
signed, sealed and delivered the same in h[is] presence.

Original Signed

A Barrister of the Supreme Court  
of Nova Scotia  
KENNETH R. WHITE.  
A BARRISTER OF THE SUPREME  
COURT OF NOVA SCOTIA

502

LOT A  
LANDS OF GARFIELD DRAKE  
GLEN MARGARET

Exhibit "A"  
Klee  
KNS LRS

KENNETH R. WHITE  
ADVOCATE OF THE SUPREME  
COURT OF NOVA SCOTIA

DAVID W. HOOLEY  
A Barrister of the Supreme Court  
of Nova Scotia

Proposed Amendment to Appendix of the Zoning By-law to rezone from a General Building Zone to a Mobile Home Park T-Zone.

ALL that certain lot, piece or parcel of land situate, lying and being at Glen Margaret in the County of Halifax, Province of Nova Scotia bounded and more particularly described as follows:

BEGINNING at the point of intersection of the West boundary of Highway No. 333 with the North boundary of lands now or formerly owned by one Robert L. Fraser:

THENCE S76° 00' 00" W a distance of 232.07';

THENCE S76° 07' 52"W a distance of 416.49' or to the high water line of St. Margaret's Bay;

THENCE along the high water line of St. Margaret's Bay, Northerly, Easterly, and South Easterly to a point, said point being on the former high water line out has now been filled in to form a beach;

THENCE N74° 17' 23" E a distance of 237.71';

THENCE N70° 19' 10"E a distance of 249.82' to the West boundary of Highway No. 333;

THENCE S20° 21' 36" E a long the West boundary of Highway No. 333 a distance of 134.55' to the place of beginning.

ALL the above described lot, piece or parcel of land being more particularly shown on a plan entitled "Plan showing land of Garfield Drake, Glen Margaret, Halifax County, N.S. dated the 20th day of August 1974 and certified by J. Forbes Thompson, R.S.L.S.

Province of Nova Scotia  
County of Halifax

I hereby certify that the within instrument was recorded in the Registry of Deeds Office at Halifax, in the County of Halifax, N.S. at 3:38 o'clock P.M. on the 7<sup>th</sup> day of June A.D. 19 77 in Book Number 3123 of Books 494-502 Klee  
A. Geraldine Klee  
Registrar of Deeds for the Registration District of the County of Halifax