

Executive Standing Committee
June 23, 2014

TO: Chair and Members of the Executive Standing Committee

Original Signed

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

DATE: May 1, 2014

SUBJECT: Use of Buy-Back Agreements in Property Sales to Non-Profit Organizations

ORIGIN

April 1, 2014 Motion by Councillor Watts, seconded by Councillor Mason that Halifax Regional Council request a staff report on the use of Buy-Back Agreements and the implications of the current policy/practice for both the Municipality and community groups; and to provide options for consideration that would allow greater flexibility in buy-back agreements for less than market value sales of municipal property.

LEGISLATIVE AUTHORITY

HRM Charter (2008) s. Section 63 respecting sale of surplus municipal property at a price less than market value to a non-profit organization that the Council considers to be carrying on an activity that is beneficial to the Municipality.

Administrative Order Number 50, the disposal of surplus Real Property, requires that staff review and evaluate submissions by non-profit organizations and the terms of any suggested Buy-Back Agreement.

RECOMMENDATION

It is recommended that Executive Standing Committee recommend to Halifax Regional Council that future Buy-Back Agreements shall:

Recommendations Continued on Page 2

1. Include a provision in the agreement for postponement of the Buy-Back Agreement for the purpose of Purchaser financing, and furthermore that the CAO shall have the authority under the agreement to approve the postponement subject to the financing not exceeding 65 percent of the property's market value as of the date of the request, any Purchaser financing agreement shall include a reservation of right in favour of HRM to have notice of and the option to cover any default under the Purchaser's financing;
2. Shall have an initial term of 25 years followed by an automatic review by Regional Council to consider continuation, amendment or release of the Buy-Back Agreement.

BACKGROUND

Under Section 63 (1) of the Charter the Municipality may sell or lease property at a price less than market value to a non-profit organization that the Council considers to be carrying on an activity that is beneficial to the Municipality. A resolution to sell or lease property at less than market value shall be passed by at least a two-thirds majority of the Council present and voting. Furthermore, where Council proposes to sell property valued at more than ten thousand dollars at less than market value, Council shall first hold a public hearing respecting the sale.

The Buy-Back Agreement is a schedule to the Agreement of Purchase and Sale whereby the Municipality sets specific conditions on a property's use, ownership status and/or development in exchange for Council's contribution of property at less than market value to a non-profit organization. The Buy-Back Agreement is essentially an option in favor of the Municipality to re-acquire the property on certain terms.

In the event the non-profit Purchaser ceases the beneficial activity and/or is in default of the terms and conditions of the Buy-Back Agreement, the Municipality shall, at its sole discretion, have the right to re-purchase the property at a purchase price set out in the Buy-Back Agreement. There is a need to improve the recording and tracking of inventory which is subject to Buy-Back Agreements and a system for follow up on compliance issues.

DISCUSSION

The objective of a Buy-Back Agreement is to allow Council to recover the value of property discount afforded to non-profit organization, on behalf of the public taxpayer, should the organization cease in providing the beneficial activity or use.

Since 1996, approximately 30 properties have been conveyed to non-profit organizations. Without the provisions of the Buy-Back Agreement the total value of taxpayers assets no longer available to the Municipality would be in excess of \$10,000,000. Therefore, it is prudent for the Municipality to put reasonable measures in place to protect the value of its assets and to manage the contractual obligations of the non-profit organization.

It ought to be appreciated that each property is as unique as the non-profit organization that applies for that particular property. This just necessitates that any policy that is developed be flexible in order to accommodate Council's obligations and to ensure compliance within the legislative framework.

Issues

Administrative and applied issues to date can be generally summarized in two areas; the perpetuity of agreements and financing limitations:

- Less than market value sales to non-profit organizations are subject to a Buy-Back Agreement in perpetuity. The open ended nature of such agreements can or may become problematic from a management oversight, risk and long term service delivery perspective.
- Buy-Back Agreements are registered as a first charge against the property title. In some instances non-profit organizations have had difficulty securing conventional financing without a postponement of the Buy-Back Agreement to a second charge behind the loan or financing vehicle. The postponement of a Buy-Back Agreement is subject to approval of Regional Council.

Process Improvements Considerations Going Forward

Staff recommend the continued use of Buy-Back Agreements to secure the asset value and protect the interests of the taxpayer in that regard. Future agreements could be amended to include provisions to improve agreement oversight, management and flexibility.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from the report recommendations.

COMMUNITY ENGAGEMENT

The HRM Charter (2008) requires that the proposed sale of public property valued at greater than \$10,000 at less than market value must be approved by a two-thirds majority of Council present and voting at a public hearing.

ENVIRONMENTAL IMPLICATIONS

Not applicable.

ALTERNATIVES

1. Council could choose to leave the process “as is” which appears to function adequately in light of Administrative Order 50 which is relatively new.

ATTACHMENTS

None.

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.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.

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