

Item No. 11.1.8
Halifax Regional Council
March 18, 2014

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by _____
Mike Labrecque, Acting Chief Administrative Officer

Original Signed by Director

Jane Fraser, Director, Planning and Infrastructure

DATE: February 19, 2014

SUBJECT: Buy-Back Agreement – 2421 Brunswick Street, Halifax

ORIGIN

- April 9, 2013 - Halifax Regional Council meeting and the March 5, 2013, staff report recommending the less than market value sale of 2421 Brunswick Street, Halifax;
- Request from Human Resources & Skills Development Canada (HRSDC) to revise the Buy-Back Agreement to align with the Federal Contribution Agreement with Adsum Association for Women and Children.

LEGISLATIVE AUTHORITY

Section 63 of the HRM Charter (2008) respecting less than market value sale of municipal property.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Authorize the Mayor and Municipal Clerk to execute a deed to convey a fifty (50) percent interest in 2421 Brunswick Street to Canada Mortgage and Housing Corporation (CMHC), to facilitate the conveyance of the property to Adsum Association for Women and Children; and
2. Authorize the Mayor and Municipal Clerk to enter into an amended Buy-Back Agreement with Adsum Association for Women and Children, to enable a federal funding agreement as described in the Discussion section of this report.

BACKGROUND

At the public hearing held on April 9, 2013, Regional Council authorized the Mayor and Municipal Clerk to enter into an Agreement of Purchase and Sale with Canadian Housing and Mortgage Corporation (CMHC) and Adsum Association for Women and Children (Adsum), for the less than market value sale of 2421 Brunswick Street, Halifax, to Adsum, as per the terms and conditions set out in the March 6, 2012, staff report and February 25, 2013, Supplementary Report.

A condition of the Agreement of Purchase and Sale was that the purchaser (Adsum) would enter into a Buy-Back Agreement. The Buy-Back Agreement gives the Municipality an unencumbered and unrestricted right, at the sole discretion of the Municipality, to repurchase the Property in the event that Adsum decides to sell or apply to demolish the building, or they, or any successor, no longer operates the property as a shelter/affordable housing, or in the event of dissolution of the Adsum Association for Women and Children, or does not comply with the other terms and conditions of the Buy-Back Agreement.

However, the Municipality only has a fifty percent interest in the property because HRM co-owns the property with Canada Mortgage & Housing Corporation (CMHC) under the Urban Renewal Lands Agreement.

Staff has been working with CMHC and Human Resources & Skills Development Canada (HRSDC) regarding the Buy-Back Agreement and to have it align with the Federal Contribution Agreement. Adsum is getting funding through HRSDC's Surplus Federal Real Property Homelessness Initiative (SFRPHI) Program, to pay for CMHC's fifty percent interest in the property. Whereas HRM can sell at less than market value, CMHC has no policy to allow it to sell at less than market value. Therefore, Adsum is getting funding from HRSDC through the SFRPHI Program to buy the fifty percent interest, and the agreement to secure the terms of the funding is known as the Contribution Agreement.

DISCUSSION

Fifty Percent Interest to CMHC:

The Municipality and CMHC co-own the subject property, each having a fifty percent interest under the Urban Renewal Lands Agreement, which dates back to the 1980's. However, this is not recognized on Nova Scotia Property Online; therefore, CMHC's interest needs to be registered to facilitate the sale to Adsum. Prior to conveying the property to Adsum, HRM will provide a deed conveying fifty percent interest in the property to CMHC, which will allow the payment of funds from HRSDC to CMHC through the Federal Contribution Agreement.

Amended Buy-Back Agreement:

Typically, a Buy-Back Agreement is used to protect the Municipality against the purchaser ceasing operations and selling the property for market value thereby profiting from the 'contribution' awarded by HRM when the property is sold at less than market value. The standard Buy-Back Agreement is set up in such a way that in the event that the Municipality

elects to buy back the property, in accordance with the terms of the Agreement of Purchase and Sale and Buy-Back Agreement, for the purchaser's failure to comply with the terms of the Agreements, the re-purchase price for the property would be the appraised value of the property at the time the buy-back would be invoked, as determined by an independent appraisal, less the current appraised value of the property. In the case of 2421 Brunswick Street the current appraised value was \$860,000.00, (adjusted for annual inflation to the date of the re-purchase).

In this case without changing the initial Buy-Back Agreement, HRM would pay fifty percent of the re-purchase price because HRM co-owns the property with CMHC under the Urban Renewal Lands Agreement. However, CMHC has stated that it has no interest in re-acquiring the property in the future as it is getting its fifty percent share of the purchase price at closing, and will have no further interest in the property. In this case, Adsum will be the co-owner so buying back a fifty percent interest will not give HRM control of the property.

The Federal Contribution Agreement requires that a restrictive covenant be applied to the property. The covenant shall be registered as part of the transfer documents on the closing date and shall bind the property and all subsequently sub-divided parcels. If Adsum does not complete the project (existing affordable housing for women and children) within six (6) months from the date of transfer or conveyance of the property, or at any time during the "control period" ceases to use the property for the purpose described in the federal funding agreement, disposes of the property or commits a breach of its obligations under the agreement, Adsum shall forthwith pay to HRSDC a sum equivalent to the current market value of the property, excluding all improvements contributed by Adsum. Market value at the time of default will be determined at the expense of Adsum by a licensed appraiser of HRSDC's choosing. In no event shall the fair market value be determined to be less than the value attributed to the property as identified in the current Agreement of Purchase and Sale.

The control period means the period commencing on the date of registration of the property deed and for a period of fifteen (15) years thereafter. Once the control period is over, Adsum's obligation to pay back any money, if they cease operations or sell the property, ceases and HRSDC has no further interest in the property.

The aligning of the HRM Buy-Back Agreement with the Federal Contribution Agreement requires dealing with two different control times (i.e., Federal is fifteen years, HRM is without an end date).

Staff is recommending that both parties move forward with their separate agreements; the Buy-Back Agreement to protect HRM and the Contribution Agreement to protect HRSDC. But each Agreement would contain additional clauses to protect the parties in the event of a default under each document. The default triggers are not identical, but would overlap so both remedies are contained in both the Buy-Back Agreement and the Contribution Agreement.

The additional terms would say:

- A. In the event that there is a default within the first fifteen (15) years, HRSDC would be paid out its fifty percent share, and HRM would have the option of (1) Right of First Offer to buy the property for 100 percent of value, or (2) be paid out its fifty percent share of market value.
- B. In the event that there is a default after the first fifteen years, the Buy-Back will be set up in such a way that HRM will have the option (1) to buy back one hundred percent interest of the Property at the then current appraised market value, less the appraised value at the time of sale (\$860,000) from Adsum, or (2) be paid out fifty percent of the market value of the Property by Adsum. Alternatively HRM could decide to not exercise the Buy-Back Agreement and not buy back the property or be paid out by Adsum.

As with all Buy-Back Agreements, it will be up to the discretion of Regional Council to decide to act upon the terms of the buy back as appropriate in the future. Under this proposal, HRSDC is protected in case of default for the first fifteen years, and will be paid out their 'contribution'. Furthermore, HRM will have options to buy back all of the property or be paid out its share. After the fifteen year control period is up, HRSDC no longer has an interest in the property, and in the case of a default, HRM will have a number of options to buy-back, be paid out, or to walk away from its interest in the property. In this scenario, Council and Adsum would have to agree to a buy back agreement for 100 percent of the property and not 50 percent.

FINANCIAL IMPLICATIONS

During the fifteen year Control Period, HRM would be responsible to pay out the fifty percent interest that HRSDC has in the property in the form of the Contribution Agreement if the Buy-Back is invoked. Once the fifteen year control period concludes, HRM would not be responsible to pay HRSDC its fifty percent share of the property; however, HRM would be responsible to Buy-Back the property from Adsum as per the terms and conditions of the buy-Back Agreement; that being the re-purchase price for the property would be the appraised value of the property at the time the buy-back would be invoked, as determined by an independent appraisal, less the current appraised value of the property (\$860,000).

It should be noted that it is at the sole discretion of Regional Council to buy-back the property in the event that the Buy-Back is invoked due to breach of the conditions of the less than market value sale agreement.

COMMUNITY ENGAGEMENT

As required by legislation for a less than market value property sale, a public hearing was held April 9, 2013. Regional Council's approval of an amendment to the Buy-Back Agreement is required to recognize the uniqueness of fifty percent (50%) shared interest in this property.

ENVIRONMENTAL IMPLICATIONS

None

ALTERNATIVES

Council could determine that the standard terms and conditions of an HRM Buy-Back Agreement be incorporated into the Agreement of Purchase and Sale for 2421 Brunswick Street, Halifax.

This action is not recommended because it would further complicate the documentation for this multi-party conveyance and possibly lead to protracted negotiation or put a federal funding agreement for the conveyance at risk. Furthermore, if Adsum were to default, the consequence of a fifty percent buy-back remedy would put HRM in a fifty percent partnership with the Adsum, the defaulter. This would not be a desirable position.

ATTACHMENTS

None

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

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