



Item No. 11.1.11
Halifax Regional Council
June 10, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY: _____
Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: May 23, 2014

SUBJECT: **Case 19282: Amendments to the Regional Subdivision By-law regarding
Park Dedication**

ORIGIN

Decision of Nova Scotia Utility and Review Board on February 27, 2014, regarding the provision of cash-in-lieu for park dedication.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter – Part IX “Subdivision”

RECOMMENDATION

It is recommended that Halifax Regional Council:

- 1) Direct staff to initiate a process to consider amendments to the existing Regional Subdivision By-law, as provided in Attachment A, to clarify the cash-in-lieu of land park dedication requirements; and
- 2) Direct that staff follow the public participation program as contained in Attachment B of this report.

BACKGROUND

In 2006, Regional Council adopted a Regional Subdivision By-law (RSB) to replace the four by-laws regulating subdivision in the four former municipal units (Dartmouth, Halifax, Bedford and County of Halifax). The By-law is a general harmonization of all former regulations and serves to standardize the subdivision process across HRM. A recent appeal and ruling of the Nova Scotia Utility and Review Board (UARB) regarding the refusal of a subdivision application has the potential to impact cash-in-lieu of park land dedications that HRM receives under the Regional Subdivision By-law. This report outlines the park dedication process, the issue and its impact, and proposed amendments which clarify HRM's process regarding park dedication through the subdivision process.

Subdivision Approval Process – Park Dedication

If a subdivision application results in a net lot gain, HRM requires an applicant to provide a park dedication as per Section 82 of the RSB. The park dedication can occur in one of three general ways: the provision of land (at 10%), provision of cash-in-lieu (3 lots at 5% and all additional lots at 10%), or combination of both and equivalent value (i.e., site preparation). The RSB sets out the criteria by which each dedication type is to occur and the Development Officer has the responsibility of making the decision, in consultation with the HRM Parkland Planner, on which type of park dedication is appropriate for each subdivision application. Regardless of the application, all subdivisions with a net gain in lots are required to provide park dedication, except for subdivisions for individual semi-detached or townhouse dwelling units or subdivision of land owned by HRM in business or industrial parks as outlined in section 86 of the Regional Subdivision By-law.

Subdivision Application Refusal

In 2013, Armco Capital Inc. submitted an application to create one new lot on Hobson's Lake Drive in the Bayer's Lake Industrial Park, Halifax. The application was refused by the Development Officer as the applicant refused to provide cash-in-lieu for the park dedication. The applicant cited three reasons for not paying the park dedication which are summarized as follows:

- Section 17(1) of the RSB provides an exemption to the park dedication requirement if it is unnecessary for proper development of the subdivision on an existing public street;
- The Regional Plan does not provide a clear justification for increased park dedication as per the HRM Charter; and
- The HRM has already collected park dedication for previous subdivisions which it failed to take into account.

UARB Decision

On October 22 and 23, 2013, the UARB heard the appeal of the decision of the Development Officer which refused a subdivision application requesting final approval of one lot on Hobson's Lake Drive in Halifax on the basis that Armco had refused to pay the cash equivalent value for park dedication. Armco alleged that it already made the requisite provision for park dedication and that it was exempt from further payments under Section 17 of the Regional Subdivision By-law. On February 27, 2014, the UARB ruled that the Development Officer's refusal conflicted with the provisions of the Regional Subdivision By-law. Therefore, the UARB allowed the appeal and ordered that the subdivision be approved without any further payment of a park dedication.

The basis for Armco's claim for an exemption from the levy of a park dedication was s.17 of the Regional Subdivision By-Law. That section reads as follows:

17 (1) Where the lots being created front on an existing public street or highway and the creation of these lots will not affect the overall adequacy of the existing services, such primary and secondary services as are unnecessary for the proper development of the subdivision are waived.

(2) For the purposes of subsection (1), it is the responsibility of the subdivider to demonstrate the adequacy of the existing service systems. The methodology and analysis must meet the requirements of the Design Guidelines.

(3) If, in the opinion of the Engineer, the existing services are not adequate to accommodate the needs of the proposed subdivision, it shall be the responsibility of the subdivider to install, upgrade or reconstruct the existing services to accommodate the proposed subdivision. [Emphasis added]

"Primary services" and "Secondary services" are defined in the By-law as follows:

3(v) "Primary services" means those services which must be installed and accepted by the authority having jurisdiction prior to accepting a public street or highway and include park dedication, sanitary sewer, storm sewer, separated storm and sanitary sewer lateral, storm surface drainage, water system, valves and hydrants, water service laterals up to and including the lateral shut off valve, dry hydrants in areas without a water distribution system, street construction including all gravel layers and base lift of asphaltic concrete or Portland cement concrete pavement including curb and gutter backfilled, permanent stabilization of all exposed areas, driveways, guiderails, electrical and communication distribution system including underground conduit, street name signs and sign base and standards, and street lighting system. [Emphasis added]

3(ae) "Secondary services" means all services other than primary services and includes top lift of asphaltic concrete or Portland cement concrete pavement, sidewalks, park dedication site development, walkways with approved surface, sodding, seeding, walkway lights and street trees. [Emphasis added]

The following definitions are also contained in the Subdivision By-Law:

3(u) "Park dedication" means a useable parcel of land for public recreation purposes, **or** equivalent value....

"Equivalent value" is defined in s. 3(m) as:

3(m) "Equivalent value" means, for the purposes of park dedication, cash, site preparation, site development or any combination of land, cash, site preparation and site development.

For the purposes of s.17, the Board found that Hobson's Lake Drive was an existing public street, and that park dedication (including the payment of equivalent value) was a "primary service".

The Board found that the creation of the proposed lots (which results in the net increase of one lot) will not affect the overall adequacy of the existing primary or secondary services serving this area of the Business Park. Hobson's Lake Drive was created and accepted by HRM as a public street in 2011. The surrounding lots were recently developed by Armco and are already serviced. There are businesses operating on the adjacent lots. There was no indication at the hearing that the net addition of one lot cannot be served by the existing infrastructure.

In their decision, the Board was mindful that their findings are inconsistent with how HRM has administered its Regional Subdivision By-law in the past. However, the UARB was clear that Regional Council could bring the by-law in-line with past practices through amendments to the document that clarifies the process regarding park dedication.

DISCUSSION

Amendments to the Regional Subdivision By-law are generally not considered unless it can be shown that circumstances have changed or processes need to be updated or streamlined. To address this case, staff is recommending amendments to the Regional Subdivision By-law to provide clarity regarding the existing park dedication requirements under HRM's subdivision approval processes.

On February 11, 2014, Regional Council initiated a review (Case 19507) of the Regional Subdivision By-law to evaluate and provide clarification on select issues to clarify and improve the subdivision approval process. This process is already underway and staff will be reporting back to Regional Council on the review process through a separate report. Although park dedication was identified as one of the issues to be reviewed through this process, the specific matter outlined in this report relative to cash-in-lieu of land dedications is separate and apart from that review.

Part 17 of the Regional Subdivision By-law is intended to enable consideration of subdivision on existing streets (streets that were in existence at the time of adoption of the By-law – August 26, 2006) with limited ability for flexibility if some of the infrastructure/servicing requirements of the by-law are unable to be met. For example, new lots could be subdivided on an existing street that is currently 40 feet in width, if the conditions on the street could be brought to an acceptable level of service. Part 17 was never intended to enable waiving of park dedication requirements.

In new subdivisions, park dedication in the form of land is accepted in conjunction with HRM's takeover of primary services and is included in the definition of "primary services" to make it clear at what stage the park dedication should be accepted by HRM in the subdivision approval process. To clarify that park dedication was never an item to be waived the proposed amendments recommend removal of the reference to park dedication as a primary or secondary services. Under the *HRM Charter*, the Development Officer will ensure that the park dedication is provided in accordance with the Regional Subdivision By-law prior to final subdivision approval.

Clarifying these items will ensure that the intent of the *Charter* and Regional Subdivision By-law are met and that park dedication will be required where there is net lot gain proposed in any subdivision application unless specifically listed as an exemption within the By-law. By making the above amendments, issues of overall adequacy of services and park dedication appearing to be unnecessary within a subdivision are addressed.

Impact on HRM Park Dedication

If the proposed amendments are not incorporated into the Regional Subdivision By-law, HRM could be challenged for collecting park dedication for new lots being subdivided on existing streets. Based upon the amount of cash-in-lieu of land dedications for the last 7 years, HRM risks losing, on average, \$900,000 annually. Park dedication (i.e., cash-in-lieu) supplied by a subdivision application is not assigned or allocated to the subject area in which it is collected but rather is deposited into the Parkland Reserve account.

The funds may only be used for the acquisition of and capital improvements to parks, playgrounds, and similar public purposes. Through the approval of the annual capital budget, Regional Council allocates some of the funds for improvements to existing parks. Should the amendments to the By-law not be approved, Regional Council could have less funding for future park and recreational needs.

Proposed Amendments

To clarify the park dedication process, staff is recommending changes to the Regional Subdivision By-law as follows:

- 1) Section 3 (Definitions): removal of references to park dedication from the definition section for “Primary Services”, “Primary Services Stage II”, and “Secondary services”. and additional text to provide greater clarity;
- 2) Section 9 (General Requirements): clarify that the “existing” public streets referenced in Section 17 are those that were in existence on the effective date of the by-law;
- 3) Section 82 (General Requirements for Park Dedication): to clarify park dedication is required and when;
- 4) Section 126 (Subdivision Agreement): clarify when park dedication is required in a subdivision agreement;
- 5) Section 128 (Securities): removal of the reference to certification of park dedication site development and site preparation;
- 6) Section 130 (Municipal Service Acceptance Requirements): to clarify the amount of security for park dedication; and
- 7) Appendices and Schedules of the By-law: to reflect the applicable amendments referenced above.

Attachment A contains the proposed amendments to the Regional Subdivision By-law. The proposed amendments are provided at this stage in the process to provide greater detail on the amendments and to enable more focused feedback and discussion.

Public Participation Program

Under Section 219 of the *HRM Charter*, Regional Council is required to adopt a public participation program when considering amendments to its planning documents. Council may adopt different public participation programs for different types of planning documents.

Despite that the proposed amendments to the Regional Subdivision By-law would apply to all subdivision activity throughout HRM, the amendments are intended to only clarify HRM's process regarding park dedication. To ensure the public participation program is reflective of the intent of the proposed amendments and consistent with HRM's Community Engagement Strategy, staff recommends that Regional Council adopt a public participation program specific to this initiative as follows:

- the use of HRM's website to provide information to the public and industry on the proposed amendments; and
- require staff to provide a public notice in the newspaper outlining this issue, and where and how comments can be provided to HRM on the proposed amendments.

Attachment B defines the proposed public participation program for this initiative.

Conclusion

The proposed amendments to the Regional Subdivision By-law will provide clarity to the requirements for subdivision approval relative to park dedication. The major outcome of the proposed amendments is that HRM re-confirms its position that park dedication is required for all subdivision applications that have a lot net gain except for those scenarios under section 86 of the Regional Subdivision By-law. The proposed amendments will also maintain sources of park dedication funds which impact the entire municipality. The proposed public participation program is reflective of the intent of the proposed amendments to provide clarity on the process. Therefore, staff recommends that Regional Council approved the proposed amendments as contained in Attachment A.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved 2014/15 operating budget for C310 Planning & Applications.

COMMUNITY ENGAGEMENT

Staff will consult with the public and industry stakeholders in accordance with the proposed public participation program as contained in Attachment B. The result of this consultation process and staff's review will be a staff report and recommendations to Regional Council. If Council wishes to consider adopting the proposed amendments to the Regional Subdivision By-law it will need to hold a public hearing.

ENVIRONMENTAL CONSIDERATIONS

No implications have been identified.

ALTERNATIVES

1. Regional Council may choose to initiate the process to amend the Regional Subdivision By-law and make modifications to the content of the proposed amendments as contained in Attachment A and the public participation program contained in Attachment B.
2. Regional Council may choose not to initiate the process to amend the Regional Subdivision By-law in accordance with the public participation program contained in Attachment B. This alternative would result in loss of parkland revenue in HRM as discussed in this report.

ATTACHMENTS

Attachment A: Proposed Amendments to the Regional Subdivision By-law
Attachment B: Public Participation Program for Regional Subdivision By-law Amendments

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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Attachment A
Proposed Amendments to the Regional Subdivision By-law

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Regional Subdivision By-law be further amended as follows:

1. That Section 3 be amended by deleting text as shown in strikeout, as follows:

(v) "Primary services" means those services which must be installed and accepted by the authority having jurisdiction prior to accepting a public street or highway and include ~~park dedication~~ sanitary sewer, storm sewer, separated storm and sanitary sewer lateral, storm surface drainage, water system, valves and hydrants, water service laterals up to and including the lateral shut off valve, dry hydrants in areas without a water distribution system, street construction including all gravel layers and base lift of asphaltic concrete or Portland cement concrete pavement including curb and gutter backfilled, permanent stabilization of all exposed areas, driveways, guiderails, electrical and communication distribution system including underground conduit, street name signs and sign base and standards, and street lighting system.

(x) "Primary services stage II" means all primary services other than primary services stage I and include ~~park dedication~~, street construction including base lift of asphaltic concrete or Portland cement concrete pavement including curb and gutter backfilled, guiderails, power poles, electrical and communication distribution systems, street name signs and sign base and standard for erecting traffic control signs, and street lighting system.

(ae) "Secondary services" means all services other than primary and includes top lift of asphaltic concrete or Portland cement concrete pavement, sidewalks, ~~park dedication site development~~, walkways with approved surface, sodding, seeding, walkway lights and street trees.

2. That section 3A be added by adding text in bold, as follows:

For greater certainty, park dedication is excluded from primary services, primary services stage II and secondary services.

3. That Section 9(3) be amended by adding text as shown in bold, as follows:

9(3) For the purpose of subsection (2) **and Section 17**, "existing" includes:

4. That section 82 be amended by adding text as shown in bold, as follows:

(1) Before receiving approval of a final plan of subdivision **and, if applicable, prior to the Municipality accepting a public street or highway**, the subdivider shall provide a park dedication to the Municipality which:

- (a) if in the form of land, shall be equal to at least 10% of the total area of all newly created lots, including any proposed parkland, but excluding proposed public streets or highways, private roads, walkways and the remainder of land owned by the subdivider; and
- (b) if in the form of equivalent value, shall be equal to 10% of the estimated assessed market value of all newly created lots, excluding public streets or highways, private roads and walkways and the remainder of land owned by the subdivider.
5. That section 126 be amended by adding text as shown in bold, as follows:
- 126 (1) Prior to the installation of any primary or secondary services or the approval of the final plan of subdivision by the Development Officer **or the acceptance of the parkland dedication by the Municipality**, the subdivider shall enter into an agreement with the Municipality. Upon execution, this agreement shall be filed with the Registry of Deeds.
- (2) The agreement referenced in subsection (1) shall be generally of the form exhibited in Appendix 1 and shall include the following options:
- (a) "Option A" - Upon execution of the agreement, the subdivider may commence construction of the primary services; however, no lots shall receive final approval nor shall Building Permits be issued until **acceptance of the parkland dedication and** acceptance of the primary services and until receipt of performance security, in the amount of 110% of the approved estimated costs for the installation of the secondary services, to guarantee their installation.
- (b) "Option B" - Upon execution of the agreement, the subdivider may commence construction of the primary and secondary services and shall deposit, with the Municipality, performance security, in the amount of **110% of the estimated assessed value of the parkland dedication and** 110% of the approved estimated costs for the installation of the primary and secondary services, to guarantee their installation. Upon receipt of the performance security by the Municipality, lots within the subdivision may be approved and Building Permits issued, however, Occupancy Permits shall not be issued until acceptance of the primary services.
- (c) "Option C" - Upon execution of the agreement, the subdivider may commence construction of the primary and secondary services. No lots shall receive final approval nor shall Building Permits be issued until **acceptance of the parkland dedication and** acceptance of the primary and secondary services.
6. That subclause ix of clause b of subsection 3 of section 128 be amended by deleting text as shown in strikeout, as follows:
- ~~(ix) certification of park dedication site development and site preparation;~~

7. That subclause xii of clause v of section 130 be amended by adding the text shown as bold, as follows
 - (v) for the subdivision grading plan, the following shall be required:
 - (xii) performance security for the secondary services in the amount of 110% of the approved estimated costs for their installation **and for the parkland dedication in the amount of 110% of the estimated assessed value of the parkland dedication** if Option A is used; and
8. That clause h of section 2 of Appendix 1, Subdivision Agreement, be amended by adding text and subclause C as shown in bold, as follows:
 - (h) If Option A is exercised, upon completion and acceptance of the **parkland dedication and the** primary services, the Subdivider shall deposit with the Municipality:
 - (i) performance security to guarantee installation and completion of secondary services in the following amounts:
 - (A) secondary services: \$_____._____
 - (B) miscellaneous work: \$_____._____
 - (C) **parkland dedication: \$_____.**_____
9. That section clause i of section 2 of Appendix 1, Subdivision Agreement, be amended by adding text and subclause BA as shown in bold, as follows:
 - (i) If Option B is exercised, the Subdivider shall deposit with the Municipality:
 - (i) performance security, for **parkland dedication and for** primary and secondary services, in the following amounts:
 - (A) primary services: \$_____._____
 - (B) secondary services: \$_____._____
 - (BA) **parkland dedication: \$_____.**_____
 - (C) miscellaneous work: \$_____._____
10. That subclause N of clause k of section 2 of Appendix 1, Subdivision Agreement, be amended by adding text as shown in bold, as follows:
 - (k) Upon completion of primary services, the Subdivider shall:
 - (N) **provide** performance security for the secondary services in the amount of 110% of the approved estimated costs for their installation **and in the amount of 110% of the estimated assessed value of the parkland dedication** if Option A is used;

11. That section 3 of Appendix 1, Subdivision Agreement, be amended by adding text as shown in bold, as follows:

3. The Municipality agrees:

- (a) That if Option A is used, upon completion and acceptance of **the parkland dedication and** the primary services and the filing of the security and upon compliance with all the requirements of the *Regional Subdivision By-law* and this agreement, the Development Officer shall approve the final Plan of Subdivision;
- (b) That if Option B is used, upon compliance by the Subdivider with all the requirements of the *Regional Subdivision By-law* **including parkland dedication**, this agreement and the filing of the required securities, the Development Officer shall approve the final Plan of Subdivision;
- (c) That if Option C is used, upon completion and acceptance of **the parkland dedication and the** primary and secondary services and the filing of the required securities, the Development Officer shall approve the final Plan of Subdivision;
- (g) That if Option A is used, upon acceptance of the **parkland dedication and** primary services, Building Permits will be issued upon application for construction on any of the approved lots, provided that all applicable codes, by-laws ordinances, etc., are met;
- (h) That if Option B is used, upon application, Building Permits will be issued for construction of any of the approved lots provided that all applicable codes, by-laws, ordinances, etc., are met. However, Occupancy Permits will not be issued until all primary services have been accepted by the Municipality;
- (i) That if Option C is used, upon acceptance of the **parkland dedication and** primary and secondary services, Building Permits will be issued upon application for construction of any of the approved lots, provided that all acceptable codes, by-laws, ordinances, etc., are met.

12. That Schedule “A” - Form (Construction Schedule), be amended by adding the row “Other” as shown in bold and highlight after the row “Clean Up” and before the row “Park Site Preparation/Development” in the chart as follows:

Stage	Month	Month	Month	Month	Month
Clean Up					
Other					
Park Site Preparation/Development					

13. That Appendix 6, Secondary Services, be amended by deleting text as shown in strikeout, as follows:

~~Park Site Development / Preparation~~

14. That the chart in Appendix 7, Cost Estimate Summary, be amended by adding text as shown in bold, as follows:

ITEM DESCRIPTION	COST (\$)
Primary Services - Stage I	\$
Primary Services - Stage II	\$
Secondary Services	\$
Engineering Services	\$
Park Site Preparation/Development	\$
HST	\$
Miscellaneous Work	\$

Attachment B
Public Participation Program for Amendments to Park Dedication under the
Regional Subdivision By-law

Purpose:

To obtain input from the development industry and the public at large regarding the proposed amendments as contained in Attachment A of this report to Regional Council to clarify the cash-in-lieu of land park dedication requirements in the Regional Subdivision By-law.

Jurisdiction:

The proposed amendments to the Regional Subdivision By-law will impact subdivision activity region-wide and will require a public hearing prior to Regional Council considering the approval of any amendments. All amendments to the Regional Subdivision By-law are within the sole jurisdiction of Regional Council. To ensure the amendments are handled consistently throughout HRM, feedback and discussion by councillors will be done through Regional Council, and not Community Councils.

Process:

A region-wide program for public consultation is required to ensure the proposed topics for amendment under the Regional Subdivision By-law are presented, discussed and adopted as a comprehensive package. Steps in the process are as follows:

- Typically, a public meeting is held for adopting or amending planning documents. Given the timing sensitivities in having this matter considered by Regional Council, the limited scope of the application and the ability for the public to make submissions at a public hearing, rather than hold a public meeting, a public notice will be placed within a regional newspaper and on the HRM website indicating where information can be obtained and how feedback can be provided on the topic.
- Conduct further review of the topics with internal and external agencies.
- Revise wording of proposed amendments to the Regional Subdivision By-law where needed.
- Prepare a staff report outlining the results of the public participation process and staff's recommendation, including all required amendments, for implementing changes to the Regional Subdivision By-law.