

Item No. 3
Halifax Regional Council
June 10, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

SUBMITTED BY: _____
Brad Anguish, Director, Community & Recreation Services

DATE: May 20, 2014

SUBJECT: Transport and Dumping of Fill in Residential Areas

INFORMATION REPORT

ORIGIN

August 6, 2013, Item 14.2 Regional Council passed the following motion:

“MOVED by Councillor Nicoll, seconded by Councillor Fisher that That Halifax Regional Council request a staff report respecting permit regulations as it relates to the transport and dumping of fill in residential areas.”

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Section 58, Section (3), Section 188

BACKGROUND

On June 7, 2011, a petition was submitted from the residents of MacLaughlin Road, Lake Loon Road, Sparks Road, Prescott Drive, and Serpentine Avenue who indicated they had been negatively affected by the heavy traffic from dump trucks. On August 2, 2011, a motion was passed that Halifax Regional Council request a staff report on MacLaughlin Road/Lake Loon Road truck traffic. An information report¹ was provided to Council at their September 20, 2011 meeting wherein the permitting requirements in addition to the safety concerns of residents were discussed as it relates to the transport and dumping of fill in residential areas.

On August 6, 2013, a motion was passed by Regional Council requesting a staff report respecting permit regulations as it relates to the transportation and dumping of fill in residential areas. Concern, and the reason behind this request, focused around truck traffic causing disruption to residential roads/areas, in addition to the possibility of endangering the safety of individuals in these areas.

DISCUSSION

In the process of developing properties, a site can generate a significant amount of what is called 'clean construction waste materials'. These materials, consisting primarily of excavated rock, soil, and grubbing (tree roots, etc.) are created through the stripping and grading of large sites as well as the excavation of materials so that building construction may occur. In instances where there is no opportunity to re-use or relocate these materials on site, these materials are transported to alternative locations. This is typically accomplished by trucking the material to an alternative site. Regional Council has requested staff report on the applicability of municipal by-laws to this activity, which the following commentary of this report addresses:

Truck Routes By-law (By-law T-400)

Within the Urban Core Service Area, vehicles or dump trucks weighing more than three thousand kilograms (3,000 kg), according to their registered vehicle weight are subject to the HRM Truck Routes By-law. The By-law requires that unless providing local service, trucks must use designated truck routes. When a truck driver must leave a truck route to access a site not on a truck route, the by-law reads as follows:

"A person may, for the purpose of making a delivery or collection of goods or supplying a service at a location off a truck route and while using truck routes until unable to continue to do so, drive the truck on those highways forming the most direct accessible connection between the nearest truck route and the delivery point, collection point or service point for merchandise or materials, and shall also return to the truck route by those highways forming the most direct accessible connection."

The Truck Routes By-law does not control the number of trucks on any street. It only controls the routes trucks must use and how the trucks must access any given site. There is no

¹ See staff report at <http://www.halifax.ca/council/agendasc/documents/110920cai02.pdf>

distinguishing between the types of activity for which the truck is intended. Further, the By-law does not differentiate between zoning or land use areas but instead, recognizes only the differences in street types.

Topsoil Removal By-law (By-law No. 40)

The Topsoil By-law of the former Halifax County Municipality applies to works that “alter the grade of land” and requires that a permit be obtained from HRM before operations begin. The purpose of this by-law is to ensure that proper environmental controls are in place to minimize erosion and sedimentation. Depending on the area and extent of the alteration, consultation with Nova Scotia Environment occurs to ensure that the placing of fill in a given location would not constitute a violation of other regulations or cause unacceptable environmental impacts. The By-law applies only to discrete areas of the former County and only to sites that are one acre or more in area.

Noise By-law (By-law N-200)

The hours of operation for trucking are controlled by the Noise By-law (N-200). The allowable hours of operation are Monday through Friday from 7:00 a.m. to 9:30 p.m.; Saturday from 8:00 a.m. to 7:00 p.m.; and Sunday, Statutory Holidays and Remembrance Day from 9:00 a.m. to 7:00 p.m.

Lot Grading and Drainage By-law (By-law L-300)

The Lot Grading and Drainage By-law applies to the development of all lots designed and intended for new single and two unit dwellings for which a building permit is required and within an area where a sanitary sewage system is provided. This by-law does not apply to the former Town of Bedford area.

No lot to which this By-law applies may be developed unless a Lot Grading Permit has been issued by the Municipality. An application for a Lot Grading Permit is made at the time of application for a building permit. This application includes a Lot Grading Plan, as prepared in accordance with the Lot Grading and Drainage General Specifications, by a qualified individual. A Lot Grading Certificate confirming that the lot has been constructed in accordance with the approved plan is required prior to an Occupancy Permit being issued. The Lot Grading Certificate also must be prepared by a qualified individual.

While this by-law applies and regulates development activity at the source of the fill, it does not regulate the activities occurring at the end destination of the fill, nor does it regulate the manner in which the fill is transported between these two locations.

Grade Alteration By-law (By-law No. 23290)

The Grade Alteration By-law applies to those lands contained within the former Town of Bedford boundary limits. This By-law applies to all works whereby moving topsoil, earth or

rocks is done to “alter the grade of land.” It does not apply to home gardening or the installation of laterals.

Within the limits mentioned above, the Grade Alteration By-law applies to all parcels of land with varying technical requirements depending on whether it is residential (single family or semi-detached), commercial, industrial, institutional or multi-unit type of development. At the conclusion of the work, an as-constructed drawing is to be prepared by a qualified professional as defined in the By-law, certifying the work has been completed. At this time, any security deposit being held by the Municipality may be returned.

This by-law is similar to the Lot Grading and Drainage By-law; however, it applies only to the former Town of Bedford are. As is the case with the Lot Grading and Drainage By-law, the Grade Alteration By-law does not regulate the activities occurring at the end destination of the fill, nor does it regulate the manner in which the fill is transported between these two locations.

Land Use By-laws

The key purpose of a Land Use By-law is to regulate development activity with the intent on eliminating or mitigating negative impacts that diverse land uses may have on one another. HRM’s land use by-laws apply to all development and the *HRM Charter* defines “development” as “...*the erection, construction, alteration, placement, location, replacement or relocation of, or addition to, a structure and a change or alteration in the use made of land or structures.*”

The placement of fill on a site is not considered development, within the meaning of the *Charter*. Accordingly, the activity is not regulated by the land use by-laws, and other legislative tools must be used to control this activity.

Conclusion

Existing HRM by-laws focus on mitigating the impact of relocating clean fill to new sites through a series of environmental assessments and permitting requirements, in addition to limiting the routes and times that trucks can take to move this material. Existing policies limit regulation to the process through which the dumping of fill is managed. While this has adequately addressed concerns in the majority of instances, there have been certain specific locations in HRM where increased levels of resident complaints have been received regarding noise, dust, and traffic issues. Staff have responded to these matters and worked with proponents to mitigate these effects. Notwithstanding this, HRM by-laws are currently being enforced to their fullest extent, and no further action can be taken on the part of staff to regulate this type of activity without amending one or more of these by-laws.

All of the by-laws outlined within this report create the framework by which the development industry operates in HRM. A change to this framework is not without potential risk. Amendments to one or more of these by-laws may have unintended consequences as it relates to the costs of developing property, the timelines for construction, and the phasing of projects. Additionally, if amendments are desired in order to respond to specific sites where this activity has been taking place, it is unclear as to how amendments would impact an activity that has been

ongoing for some time. As well, it has not yet been conclusively determined as to whether or not HRM has the legislative authority to deny a private land owner the right to carry out this activity.

The issue of removing and relocating fill from construction sites is not one that is unique to HRM. If Regional Council desires to change the current regulatory regime that applies to the transport of fill, an appropriate step would be to direct staff to complete a best practice review of other jurisdictions and engage with the development and construction industry to assess the potential impacts on their business operations in providing recommendations for Council's consideration.

FINANCIAL IMPLICATIONS

There are no financial implications related to this report.

COMMUNITY ENGAGEMENT

This report is in response to a motion that was passed at Halifax Regional Council. No engagement was required to address this motion.

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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Report Approved by: _____
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