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Item No. 11.1.7
Halifax Regional Council
December 2, 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: November 17, 2014

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

ORIGIN

- Decision of N.S. Utility and Review Board on February 27, 2014, regarding the provision of cash-in-lieu for parkland dedication; and
- June 10, 2014 – Initiation by Regional Council of Amendments to the Regional Subdivision By-law.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter – Part IX “Subdivision”

RECOMMENDATIONS

It is recommended that Halifax Regional Council:

1. Give first reading to the proposed amendments to the Regional Subdivision By-law, as provided in Attachment A, to clarify the cash-in-lieu of land park dedication requirements and schedule a public hearing; and
2. Adopt the proposed amendments to the Regional Subdivision By-law, as provided in Attachment A of this report.

BACKGROUND

On June 10, 2014 Regional Council initiated amendments to the Regional Subdivision By-law (By-law) that were proposed in a May 23, 2014 staff initiation report. The proposed amendments relate to the By-law's park dedication requirements, for both the acquisition of park in the form of land and cash-in-lieu of land. This matter arose in response to a decision of the Nova Scotia Utility and Review Board (NSUARB) from an appeal by Armco Capital Inc. regarding the requirement for a cash-in-lieu of parkland dedication for the subdivision of a lot along Hobsons Lake Drive in Halifax. The NSUARB found that HRM's refusal of the subdivision conflicted with the provisions of the By-law. Further to this, the proposed amendments, contained in Attachment A of this report, clarify HRM's process regarding park dedication through the subdivision process.

Council Request for Information on Other Park Dedication Matters

At the June 25, 2014 meeting of Regional Council the following motion was passed:

"That Halifax Regional Council direct staff to return with a report detailing the scope of the review of the parkland dedication fees and subdivision bylaw for the purpose of determining policies:

- 1. To incorporate possible allocation of parkland fees to develop and/or enhance off-site (but nearby) parkland and playground sites;*
- 2. Dealing with prorating of parkland fees to be assessed in phases as development is started or to be applied as a lien on the properties designated for the proposed development; and*
- 3. Consider if the parkland fees can be assessed to any change in use in density of properties under redevelopment whereby new PIDs are created and be treated as newly created lots."*

On February 11, 2014, Regional Council initiated a limited review of the Regional Subdivision By-law (Case No. 19507) to clarify and improve the subdivision approval process. Staff is reviewing the above noted motion as part of that By-law review process and will report back to Council on the issues raised upon completion of the review.

DISCUSSION

The May 23, 2014 staff initiation report¹ outlined the current park dedication issues that arose from the NSURB hearing and outlined the amendments that are necessary to address these matters. Consequently, that report should be referred to for detailed information on this case. The issue with the current By-law provisions is that they have been interpreted by the NSUARB, based on certain terms that are specifically contained within the By-law, to forgo the requirement to provide a parkland dedication where there are existing and adequate services. In the By-law, park dedication is included in the definitions of both primary services and secondary services:

*"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.*

¹ See report at: <http://www.halifax.ca/council/agendasc/documents/140610ca111111.pdf>

*"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]*

With these two definitions, subsection (1) of Section 17 of the By-law contains provisions that create uncertainty respecting the park dedication requirements:

- (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.** [emphasis added]*

It is not the intent of the By-law to waive the requirements for park dedication where a subdivision is occurring on an existing street. The intention of subsection (1) of Section 17 is to waive certain standard municipal infrastructure requirements (piped storm systems, sidewalks, street trees, etc.) that may not be present on existing streets from needing to be constructed when new lots are being created fronting these streets. The inclusion of "park dedication" and "park dedication site development" within the definitions of primary and secondary services was intended to indicate their timing of delivery during the subdivision approval process. The dedication of the park site itself to the Municipality is to occur when the primary services needed for a subdivision are being provided while any park dedication site development is to occur at the time the secondary services are being provided. To clarify the intent of the By-law, staff recommend proposed amendments to the By-law as generally outlined below:

1. Section 3 (Definitions) and Section 3B (new section): 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.

The actual proposed amendments to the By-law are found in Attachment A of this report. They differ slightly from those that were presented in the May 23, 2014 staff initiation report, but only with regard to the numbering of a new section; Section 3B. This change is necessary to reflect recent unrelated amendments that were done through the Regional Plan review process which came into effect on October 18, 2014. Additionally, the references to the actual provisions being amended for subsections 9(3), 82(1) and subclause 130(c) (xii) were revised and the rows in the charts for Appendix 6, Secondary Services and Schedule A, Form (Construction Schedule), were added. These revisions only describe where the provisions being amended are located in the Regional Subdivision By-law. The text of the

amendments has not been changed from the amendments that were presented to Council on May 23, 2014 in the staff initiation report.

Conclusion

The proposed amendments to the Regional Subdivision By-law provide clarity to the requirements for subdivision approval relative to park dedication. The major outcome of the proposed amendments is that HRM reconfirms its position that parkland dedication is required for all subdivision applications that have a net lot gain except for those scenarios under section 86 of the By-law (refer to the May 23, 2014 initiation report). Staff recommend that Regional Council adopt the proposed amendments contained in Attachment A of this report.

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.

The parkland equivalent value funds are held in the Parkland Reserve account (Q107) and as per s. 283(5) of the *HRM Charter*, are to be used for the acquisition of, and capital improvements to, parks, playgrounds and similar public purposes. Since 2007, the amount of equivalent value funds received each year through the subdivision process is approximately \$1million. Should the proposed amendments not come into effect, there is a risk that the UARB may allow additional appeals from a refusal of a Development Officer to approve a plan of subdivision on an existing street because the applicant refuses to provide cash-in-lieu for the park dedication. This could have a significant effect on the Municipality's ability to fund the acquisition of lands for strategic park purposes as well as carry out improvements to its existing parks.

COMMUNITY ENGAGEMENT

As part of the initiation of the Subdivision By-law amendments, Regional Council adopted a public participation program specifically for this case. The community engagement process was consistent with the intent of the HRM Community Engagement Strategy and the level of community engagement was consultation. The program outlined that public input was to be obtained through an invitation for written submissions, with notification to be provided through an advertisement in a regional newspaper and information to be provided through HRM's website. Further to this, an advertisement was placed in the Municipal Notices Section of the Chronicle Herald and the information about the case was posted in the *Active Planning Applications* section of the HRM website. No submissions from the public were received.

Part of the public participation program process indicated that a review of the topic of parkland dedication practices would be undertaken with internal and external agencies. Such a review has been limited, given the housekeeping nature of the amendments under consideration, but it has included discussions with HRM's Development Officers and staff from HRM Legal Services.

No changes to the proposed amendments have arisen as a result of these consultations. With regard to external agencies, HRM staff is aware that the manner in which parkland dedications are obtained in HRM is common in Nova Scotia, pursuant to the provisions of the *Municipal Government Act*.

ENVIRONMENTAL IMPLICATIONS

No implications have been identified.

ALTERNATIVES

1. Regional Council may choose to adopt amendments that are different from those that are proposed in Attachment A to this report. This may necessitate a supplementary report. If this alternative is chosen, specific direction regarding the requested modifications and amendments is required. Substantive changes to the proposed amendments may require a supplementary staff report and another public hearing to be held before approval is granted.
2. Regional Council could decide not to adopt the proposed amendments to the Regional Subdivision By-law. This is not recommended for the reasons outlined in this report.

ATTACHMENTS

Attachment A Proposed Amendments to the Regional Subdivision By-law

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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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 3B 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 subsection 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 subsection 82(1) 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 deleted, as follows:

~~**(ix) — certification of park dedication site development and site preparation;**~~

7. That subclause xii of clause c of section 130 be amended by adding the text shown as bold, as follows

(c) simultaneously provide the Development Officer with the necessary information including:

(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 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:

Description	Units	Quantity	Unit Price	Total
Landscaping (3 ft. each side) a) sodding with 4" topsoil b) seeding with 6" topsoil				
Park Site Development / Preparation				
Drainage installations a) swale b) culvert c) catch basin				

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	\$

I HEREBY CERTIFY that the amendments to the Halifax Regional Subdivision By-law, as set out above, were passed by a majority vote of the Halifax and West Community Council of the Halifax Regional Municipality at a meeting held on the ____ day of _____, 2014.

GIVEN under the hands of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2014.

Municipal Clerk