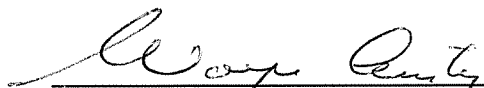


Halifax Regional Council
September 06, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 
Wayne Anstey, Q.C., Municipal Solicitor

DATE: August 16, 2005

SUBJECT: **Regional Council - July 5/05 - 7.9(i) Legislation Penalizing Developers for Incomplete Developments**

INFORMATION REPORT

ORIGIN

At the meeting of Regional Council held on July 05, 2005, the following resolution was adopted:

MOVED by Councillor Younger, seconded by Councillor Karsten that staff prepare a report outlining whether HRM has the legal authority under the MGA to enact legislation to penalize developers for not completing the requirements of developments.

Councillor Younger went on to explain that his intent was to give the Development Engineer the ability to refuse or delay approval on further subdivision applications when the developer has not completed such things as grading plans and second lifts of asphalts in substantially completed subdivisions. Councillor Younger went on to request that if HRM does not have the authority to enact legislation which would allow this, staff include a recommendation on how to obtain the authority.

BACKGROUND/DISCUSSION

In 2003 at the request of Regional Council, the Province was approached to amend the *Municipal Government Act* to enable HRM to compel a developer to comply with the terms and conditions of an existing development agreement as a pre-condition for approving new agreements where a history of non-compliance has been established. The Province identified legal/constitutional issues relating to this degree of authority and refused to so amend the MGA. Having so refused with respect to development agreements, it is staff's opinion that the Province is no more likely to amend the MGA with respect to subdivision agreements.

With respect to development agreements, the following enforcement options were pursued:

- (1) The Province, at the request of HRM amended the MGA to make violations of the terms and conditions of a development agreement a prosecutable offense under the Act;
- (2) Extended the use of performance bonding to require an irrevocable letter of credit as a condition of a development agreement where a history of non-compliance is evident;
- (3) Worded development agreements to specify conditions under which an agreement may be discharged without the concurrence of a property owner, such as where non-compliance is an issue;
- (4) Include provisions in development agreements to enable HRM to carry out specific work on a property to remedy problems and to lien the property to recover costs.

Under the MGA, HRM currently has the following options with respect to the enforcement of the terms and conditions of subdivision agreements:

- (1) It is open to HRM to prosecute for failure to comply with the subdivision by-law and regulations;
- (2) Performance bonding or other security to ensure the installation of water and sewer systems and facilities and other services; the layout, construction, grading and paving of streets and the installation of trees along streets, bus bays, sidewalks and pathways; all to the standards prescribed by HRM is a feature of all major subdivision approvals;
- (3) Performance bonding and other security for the maintenance of the foregoing services for a maximum of two years from the date services are accepted as having been installed to the standards prescribed by HRM;
- (4) The subdivision by-law may require that the applicant have a qualified professional certify to HRM that the services have been designed and installed to the standards prescribed by HRM; and
- (5) The subdivision by-law may require an applicant to carry out a drainage or grading plan and to provide security to the Engineer to secure performance of the plan.

In staff's opinion, these powers should be adequate to properly administer the Subdivision by-law.

BUDGET IMPLICATIONS

There are no budget implications to the proposal.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

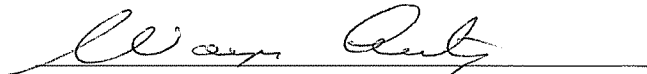
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ATTACHMENTS

None

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared and Approved by:


Wayne Anstey, QC, Director of Administrative Services