



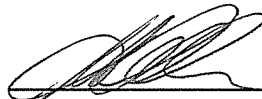
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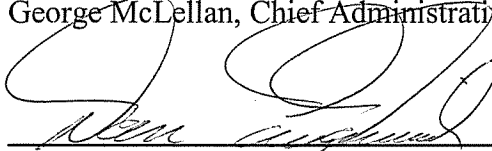
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**Halifax Regional Council**  
**May 10, 2005**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**

  
George McLellan, Chief Administrative Officer

  
Dan English, Deputy Chief Administrative Officer

**DATE:** May 6, 2005

**SUBJECT:** Bill No. 172 Rocky Lake Commons Ice Rinks Act

**ORIGIN**

The following motion was deferred pending a staff report: "That Council take the position of opposition to Bill 172 and communicate this to the three party caucus and Mr. Russell MacKinnon."

**RECOMMENDATION**

It is recommended that :

1. Regional Council support the motion deferred at the May 3, 2005 session of Regional Council, "That Council take the position of opposition to Bill 172 and communicate this to the three party caucus and Mr. Russell MacKinnon."

## **BACKGROUND**

On April 26, 2005 Bill 172, Rocky Lake Commons Ice Rinks Act was introduced at the Legislature by MLA Gary Hines, representing Waverley-Fall River-Beaver Bank. The Act has been written to "Exempt from Municipal Taxation Certain Ice Rinks in Rocky Lake Commons" within the Halifax Regional Municipality.

At the May 3<sup>rd</sup> Regional Council Meeting, Councillor Harvey introduced a motion that HRM council take the position of opposition to Bill 172 and that this be communicated to the three party caucuses and to Mr Russell MacKinnon. Councillor Harvey and a number of other councillors then posed the following questions:

- 1) Would this for-profit recreation proposal meet the test of our own tax exemption by-law?
- 2) Is this a public/private partnership arrangement?
- 3) What other for-profit facilities do we have as examples of property and Business Occupancy tax law application within HRM jurisdiction?
- 4) What precedent is going to be set by this legislation?
- 5) Should the HRM taxpayers be providing what amounts to as a subsidy to this project?
- 6) Why would the Provincial Legislature consider imposing this on HRM without consultation?
- 7) What is HRM's involvement with the three proposed ice surfaces?
- 8) What impact would this facility have on the Sackville Sports Stadium and how the facility's location would impact the Indoor Recreation Facilities Master Plan study being conducted by HRM staff.

The motion was deferred to permit a staff report on the matter to come forward.

The issue of facility need or impact on other facilities, while clearly and understandably are valid questions and of significant interest, are not in staff's opinion, the reason to support or not support the private member's bill. Those reasons should be limited to the implications to the taxation base in the future. In fact the taxation issue may not do justice to the significance of this or any other commercial enterprise. However, several questions were asked by Council last week and are covered below to provide responses.

The MLA has indicated that he will await Council's feedback before moving second reading of Bill 172 in the Legislature.

## **Summary and Conclusion**

As much as staff or Council may support the need and potential benefits of the Rocky Lake ice surfaces, the primary focus of this report and the basis for the staff recommendation is preserving the integrity of HRM's revenue base. This report concludes that HRM should continue to oppose attempts to limit the overall revenue base of the municipality. While there may be other options to explore by HRM, the Province and the representatives of this commercial interest, using the

assessment base is, in staff's opinion, an inappropriate route due to the significant risk of future similar legislation.

## **DISCUSSION**

### **Tax Exemption under By-law T-200**

**Question 1 & 2)** Section 71 of the Municipal Government Act allows Municipalities, through by-law, to exempt from taxation property of a non-profit recreational organization if, in the opinion of council, the organization provides a service that might otherwise be a responsibility of the municipality.

Section 57(2) of the MGA explicitly prohibits HRM from providing a direct tax subsidy to business, commerce or industry. Since the Rocky Lake organization is a for-profit entity, HRM has no authority to provide a tax exemption.

Section 61(1) of the MGA provides that a municipality may agree with any person (including a corporation) to provide a service or a capital facility that the municipality is authorized to provide - essentially a public-private partnership. While this Section does envision municipalities entering into partnership arrangements with businesses to deliver municipal services, it does not over-ride the prohibitions against direct tax exemption. There is no agreement in place between HRM and the Rocky Lake organization making it a public-private partnership.

Presently, under By-law T-200 HRM supports the following community-owned and operated facilities:

Lake District Recreation Association (Sackville Arena) - 100% grant  
Spryfield Lions Rink - 100% grant (in the process of being transferred to HRM)  
St. Margaret's Arena & Community Centre - 100% exempt as is now owned by HRM (formerly received a 100% grant under the By-law)

The By-law provides 100% tax grants only to non-profit, community-owned and operated facilities. Not all sports and recreation facilities receive 100% tax grants. Some sports clubs get only a conversion from the commercial to the residential rate. These are, again, non-profit organizations that Council has agreed will provide some services that might otherwise be a responsibility of HRM.

Other Rink facilities with different tax status:

St. Mary's Arena - exempt by legislation as a university, pay Fire Protection charges  
Dalhousie Arena - exempt by legislation as a university, pay Fire Protection charges  
Federal (forces bases for example) - grant in lieu is paid

All rinks owned and operated by HRM (such as the Gray Memorial, the LeBrun etc) are exempt under the Assessment Act.

Early in the planning stages for the tri-plex in Bedford, questions regarding the property tax status of the facility were posed to staff of HRM's Revenue Division by the entity proposing the facility. The entity was made aware that the facility would be fully taxable under current legislation.

**Questions 3, 4 & 5)** There are several properties in HRM which are owned by the municipality but which are operated on our behalf under agreement or contract by for-profit organizations. They are listed below along with their tax status:

Facility	Business Occupancy Tax	Commercial Property Tax
Otter Lake	Applicable	Not applicable
Compost facilities	Applicable	Not applicable
Metro Park	Applicable	Applicable *

\*HRM considers this property as filling a municipal purpose (HRM specifically solicited proposals resulting in a commercial build and operation of the HRM owned asset). The property has been assessed both business occupancy and commercial real property taxes. HRM has appealed the commercial assessment only based on the above.

The Solid Waste facilities, are specifically for a municipal purpose and are owned by HRM, are therefore commercially exempt. However, since they are operated by a for-profit entity are assessed and pay Business Occupancy Tax.

The Harbour Solutions facilities, once completed, will be owned and operated by HRM and the tax status will be fully exempt as prescribed by the Assessment Act.

### **Exemption from property tax by an amendment to Provincial Legislation**

As stated above, municipalities are prohibited from providing direct subsidies or granting tax exemptions to for-profit organizations. Municipal tax powers are very specific and limited. Legislation specifically restricts municipalities from using their revenues to provide economic development subsidies. Instead, economic development subsidies are provided by the Provincial government from their broader tax base. In recent years the municipality has strongly opposed Provincial action which is contrary to this, specifically, the legislated limitation on the Imperial Oil facility assessment. In that case, although HRM clearly had and has an interest in ensuring that the Imperial Oil facility remains viable, HRM argued strongly against using the narrow municipal tax base to support what amounts to a subsidy. Some of the reasons for this opposition are:

1) Given the narrowness of municipal taxation powers, tax subsidies result in the taxes that would otherwise be paid being absorbed by other municipal taxpayers.

2) That in these situations, municipal revenues are being used to provide a provincial economic development subsidy, which, if there is a Provincial interest, can and should be provided through the Provincial government economic development responsibilities.

The lack of legislative authority for municipalities to make direct grants or subsidies to for-profit organizations has been a frustration for many municipalities over the years whenever there is a clear interest or desire to see business developments take place and or when there may be benefits to the surrounding community. However, the legislation does not allow municipalities to provide subsidies even when they do support the project. Therefore, regardless of how compelling the Rocky Lake project may be, it is staff's belief that supporting a Provincial full or partial exemption of property taxes opens a very big door. If HRM on the one hand opposes Provincial actions which limit or reduce a commercial enterprise' property taxes and on the other hand supports Provincial action with the same effect, one might wonder about the messages this sends for the future. The only exception (provided under existing legislation therefore requiring no amendment) is when a commercial enterprise provides a service under agreement that the municipality would otherwise provide. This is not the case in this situation.

Therefore, while there may well be ways for the Provincial and municipal government to work with the individuals leading this commercial enterprise such that the desired benefits can be achieved, staff strongly suggest that HRM supporting Provincial legislation to exempt property taxes is not the way. In fact, the issue of exemption from property taxation is one of such far reaching impact, far beyond this individual request, that the tax exemption question should be separate and distinct from the merits, needs or advantages of the facility itself. As stated already, we cannot pick and choose when we like or do not like the Province limiting our tax base. To do so threatens the overall integrity of an already limited system.

Providing full or partial tax exemption to for-profit entities would set a strong precedent that could well lead to demands for the equivalent from (a) other non-profit organizations with a sports amenity which will request full exemption beyond that presently provided, and (b) other private for-profit sports facilities [ for example, martial arts, soccer, climbing facilities etc] and in fact (c) other for profit organizations claiming to fulfill a municipal purpose.

### **Provincial Notice**

**Question 6)** Under the provisions of the MGA (Section 519), the Minister of Service Nova Scotia and Municipal Relations is required to provide the Union of Nova Scotia Municipalities with twelve months prior notice of any legislation, regulation or administrative action undertaken by or on behalf of the Government of the Province of Nova Scotia that would have the effect of decreasing the revenues received by municipalities or increasing the required expenditures of municipalities in Nova Scotia.

The *Rocky Lake Commons Ice Rink Act* is a Private Members Bill and not one introduced by the Government of Nova Scotia (the Legislature is not the Government). Therefore, legally, Section 519 does not technically apply to this Bill.

### **Facility Need**

**Questions 7 & 8)** The Burke Oliver Report identified a number of recreation facility deficiencies, including one ice surface for Bedford. The requirement was further substantiated in a subsequent arena capacity study undertaken by HRM in November 2001. Furthermore, The Indoor Recreation Facility Master Plan did acknowledge the need in one of the recommendations as follows:

‘It is recommended that should the tri-pad facility not move forward in Bedford, HRM initiate the development of an additional ice surface for the Bedford area’

With the planned construction of the Mainland Common Recreation Facility to begin this year, and the recent completion of the additional ice surface at the St. Margaret’s Centre, the only facility deficiency remaining from the Burke Oliver Report is the additional ice surface in Bedford.

However, the IRFMP (Indoor Recreation Facility Master Plan) does not identify a preferred location for the suggested Bedford site, but instead lays out a process for review and determination based on certain criteria if HRM were to develop an additional ice surface or any other recreational type facility.

A number of major facilities with ice surfaces have expressed concern about the potential impact of the 3 pad ice surface facility in Bedford on their existing operations. They are concerned it may impact their shoulder hours and summer programs. Feedback during public consultation sessions that were part of the development process of the IRFMP indicated there is a significant amount of additional demand in the community, including updated information obtained from the original author of the Burke Oliver Report. Much of that demand was for more available peak hours of usage.

Understanding that at least one rink is requisite, it could be argued that a commercially operated rink facility will allow HRM to cost avoid the municipal share of capital (not less than \$ 1.5 M) for a new rink. As mentioned in the taxation section, there may indeed be merit in a joint discussion between Provincial and municipal officials and the enterprise regarding this project. If so, this is beyond the question of the property tax exemption which is the sole subject of the deferred motion.

### **Proposed Facility**

Staff has not seen any detailed plans for the proposed facility. The proposal is for a commercial facility. There have been a number of discussions with representatives of the proponent as would be the case for any such development.

Staff also understand there is a proposed senior citizen facility along with a hotel which will be built as part of the complex. Bill 172 relates only to the ice surfaces, not to the remainder of the operation facilities. Planning has advised that the development group will be paying for sewer and water hookup as would be the case normally.

Staff understand that the developer sees a market opportunity for the rinks, given the current pent up demand for ice in the region and the growth of other hockey and related programs. Staff understands that avoidance of the real property taxes on the ice component of the facility would have a positive impact on the ice rental costs, allowing prime time ice costs in the range of \$ 200 / hour. There has been no formal communication to staff of this price point. Currently prime time ice costs are \$133/hour plus HST at Lebrun, and \$149/hour plus HST at the Sackville Sports Stadium.

### **BUDGET IMPLICATIONS**

Estimates of possible budget implications are based on assessed values of potentially comparable properties:

	<u>Assessment</u>	<u>Potential Taxes</u>
Spryfield Lion's Rink	\$1.2M	\$43K
St. Mary's Rink	\$2.0M	\$65K

An estimated subsidy that may result if the 3 rink facility is granted Provincial exemption from property taxation would be approximately \$3.0M to \$6.0M assessed value and \$98,000 to \$196,000 in foregone property taxes, plus an additional \$49,000 to \$98,000 in business occupancy taxes for a total estimated foregone commercial taxes of between \$147,000 to \$294,000 per year.

### **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.

### **ALTERNATIVES**

- 1) Council could support Bill 172. This is not recommended as per the discussion section of this report.
- 2) Council could explore other options which would support the need for additional ice surface.

### **ATTACHMENTS**

None

**Bill No. 172 Rocky Lake Commons Ice Rinks Act**  
**Council Report**

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**May 10, 2005**

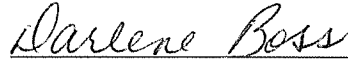
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Catherine Sanderson, CMA Manager, Financial Services

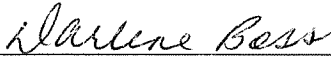
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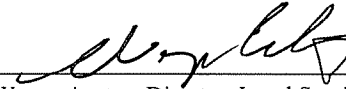
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