

M E M O R A N D U M

TO: Chairman and members of the Halifax Waters Advisory Board

FROM: Andrew Bone, Senior Planner - Planning and Development Services

DATE: March 11, 2008

SUBJECT: Case 01118- Application by HRM to review watercourse setbacks of the Sackville Drive Land Use By-law, specifically to identify when setbacks can be reduced from 30m to 20m along the Little Sackville River.

Proposal

North West Community Council has requested that staff review the watercourse setback requirements in the Sackville Drive Land Use By-law. Specifically, when they can be reduced from 30 m (100 feet) to 20m (66 feet) along the Little Sackville River.

Location:

The Sackville Drive Land Use By-law applies to commercial properties in the heart of Sackville which generally access Sackville Drive. Approximately 20 of these properties are located adjacent the Little Sackville River.

The Sackville Drive LUB has a 30m setback which is greater than the Regional Plan setback requirement of 20 m. Detailed regulations are attached.

Proposal:

Staff have been asked to identify situation under which a reduction of the setback to 20m can be granted for existing lots. Although a staff report has not been prepared with recommendations to Council, staff are considering the following situations for a reduction:

- a) where there is existing disturbance or development on the portion of property identified as within the setback;
- b) where avoidance of right-of-ways creates a hardship;
- c) where the configuration of a lot creates a hardship;

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- d) where the impact of the setback on a lot creates a hardship (percentage of lot covered by setback); and
- e) where a building cannot be built on a lot.

Staff are not considering a reduction in setbacks where: a) there are extreme grades; b) when the land use involves potential petroleum products next to the river; and/or, c) the floodplain exceeds the setback.

Watershed Advisory Board:

Pursuant to the Board's terms of reference, your input with respect to the potential impact on the areas watercourses is requested. Please find attached relevant MPS Policies that the application will be reviewed under.

Staff will be looking for a verbal comment on the proposal at the March HWAB meeting.

If you have any questions on the above matter, please contact me at 869-4226.

Sackville Drive MPS Policies

Policy LSR-2

Within all designations, no development (including the erection of a structure, the clearing of vegetation or the alteration of existing grades) shall be permitted within a buffer zone of undisturbed ground and vegetation that extends 100 feet from all watercourses and wetlands, including floodplain, except required stream crossings, and arcades, esplanades, board walks and opens pace and recreational uses. Provision shall be made for 50 feet buffer zones on lots in existence as of May 7, 2002, would be made unreasonably affected by the 100 feet requirement.

Policy LSR-3

Every effort shall be made to ensure that vegetation remains undisturbed on steep slopes.

Regional Plan Policy

2.2.3 Riparian Buffers

Retaining riparian buffers around watercourses and along the coastline is important for the protection of water quality, wildlife and the protection of property from natural hazards of flooding. In addition to the functions of flood regulation, riparian buffers reduce the impacts of sedimentation and erosion and nutrient loading on watercourses, regulate the temperature of adjacent watercourses, provide important wildlife habitat and add aesthetic value to HRM.

The *Water Resource Management Study*¹ recommends the adoption of riparian buffers as established by the Department of Natural Resources. These setbacks are considered adequate for stream bank stability, water temperature regulation and aesthetic value. They also provide minimal protection of wildlife and flood mitigation and partial benefits for sediment removal. They will be used as a general method of riparian buffer protection for the whole of HRM until buffers that meet the specific needs of each watershed can be determined through the watershed studies and implemented through secondary planning processes.

To maximize the protection benefits of riparian buffers, trees, shrubs, ground cover vegetation and soils must be protected. Retaining native vegetation and native soils enhances runoff storage capacity, infiltration, and nutrient recycling. The canopy should also be retained over watercourses, soil erosion should be prevented, and activities or land uses which introduce nutrients or contaminants into watercourses need to be excluded. In some cases it may also be determined that HRM should consider the ownership of riparian buffers to protect public interest and public access.

E-10 HRM shall, through the applicable land use by-law, require the retention of a minimum 20 metre wide riparian buffer along all watercourses throughout HRM to protect the chemical, physical and biological functions of marine and freshwater resources. The by-law shall generally prohibit all development within

¹ Dillon Consulting Ltd. *HRM Water Resource Management Study*. Dec. 2002. Halifax.

the riparian buffer but provisions shall be made to permit board walks, walkways and trails of limited width, fences, public road crossings, driveway crossings, wastewater, storm and water infrastructure, marine dependent uses, fisheries uses, boat ramps, wharfs, small-scale accessory buildings or structures and attached decks, conservation uses, parks on public lands and historical sites and monuments within the buffer. In addition, no alteration of land levels or the removal of vegetation in relation to development will be permitted.

- E-11 Policy E-10 shall not apply to lands designated Halifax Harbour on the Generalized Future Land Use Map (Map 2), industrial lands within the port of Sheet Harbour and lands within the Waterfront Residential (R-1C) Zone under the Shubenacadie Lakes Secondary Planning Strategy.
- E-12 Further to Policy E-10, where a use or development can be considered by development agreement, HRM shall consider, under the development agreement, the acquisition of riparian buffers as public open space as well as alternative uses within the buffers.
- E-13 Further to Policy E-10, HRM shall, through the applicable land use by-law, relax the riparian buffer requirement for lots in existence on the effective date of this Plan and lots shown on current tentative and final subdivision applications, where otherwise development would be prohibitive. No relaxation to the buffer under the by-law shall be permitted for lots created after the effective date of this Plan.

Sackville Drive Land Use By-law - Watercourse Setbacks

Setbacks from Watercourses

6. Watercourse Setbacks and Buffers

- (1)(a) No development permit shall be issued for any development within 20m of the ordinary highwater mark of any watercourse.
 - (b) Where the average positive slopes within the 20m buffer are greater than 20%, the buffer shall be increased by 1 metre for each additional 2% of slope, to a maximum of 60m.
 - (c) Within the required buffer pursuant to clauses (a) and (b), no excavation, infilling, tree, stump and other vegetation removal or any alteration of any kind shall be permitted in relation to a development.
 - (d) Within the required buffer pursuant to clauses (a) and (b), activity shall be limited to the placement of one accessory structure or one attached deck not exceeding a footprint of 20 m² or a combination of an accessory structure and attached deck not exceeding 20 m², fences, boardwalks, walkways and trails not exceeding 3 metres in width, wharfs, boat ramps, marine dependent uses, fisheries uses, conservation uses, parks on public lands, historic sites and monuments, and public road crossings, driveway crossings and wastewater, storm and water infrastructure.
 - (e) Notwithstanding clause (a), the required buffer shall be 30.5m of the rim of the Sackville or Little Sackville rivers except for activities specified under clause (d).
 - (f) Notwithstanding clause (e), activity within the 30.5m buffer of the Sackville or Little Sackville rivers shall be limited to the placement of board walks, esplanades, arcades, walkways and trails, conservation uses, parks on public lands, public roads and wastewater, storm and water infrastructure.
 - (g) Notwithstanding clause (a), the required buffer for construction and demolition operations shall be as specified under the applicable CD Zone.
 - (h) Notwithstanding the required buffer under clauses (e) and (f), no excavation, infilling, tree, stump and other vegetation removal or any alteration of any kind shall be permitted in relation to a development.
- (2) Notwithstanding subsection (1), where an existing residential main building is located within the required buffer, accessory structures, subject to meeting other requirements of this by-law, shall be permitted provided they are located no closer to the watercourse than the existing main building.
- (3) Where the configuration of any existing lot, including lots approved as a result of completed tentative and final subdivisions applications on file prior to the effective date of the Regional Municipal Planning Strategy, is such that no main building could be located on the lot, the buffer distance shall be reduced in a manner which would provide the greatest possible separation from a watercourse having regard to other yard requirements.
- (4) Notwithstanding subsection (1), nothing in this by-law shall prohibit the removal of windblown, diseased or dead trees, deemed to be hazardous or unsafe.
- (5) Notwithstanding subsection (1), the selective removal of vegetation to maintain the overall health of the buffer may be authorized by the Development Officer

- where a management plan is submitted by a qualified arborist, landscape architect, forester or forestry technician.
- (6)Every application for a development permit for a building or structure to be erected pursuant to this section, shall be accompanied by plans drawn to an appropriate scale showing the required buffers, existing vegetation limits and contours and other information including professional opinions, as the Development Officer may require, to determine that the proposed building or structure will meet the requirements of this section. (RC-Jun27/06;E-Aug26/06)**
7. Notwithstanding, the provisions of Part 6 Section 6, any existing building within the 100 ft (30.48m) wide buffer may be permitted to be enlarged, renovated or repaired subject to the provisions of this Bylaw.