

4.1.9



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

April 3, 2006

TO: Chebucto Community Council

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "M. E. Donovan", written over a horizontal line.

M. E. Donovan, Director, Legal Services

DATE: March 28, 2006

SUBJECT: Cowie Hill Project

ORIGIN

At the March 6, 2006 meeting of Chebucto Community Council the following motion was approved:

MOVED BY Councillor Mosher, seconded by Councillor Wile that Chebucto Community Council request a staff report from HRM Legal Services and HRM Engineering Services reaffirming their position that; since the Cowie Hill area was initially approved and constructed with underground electrical plants that it must be replaced with underground electrical plants.

BACKGROUND

As part of the establishment of the Cowie Hill Condominium project, in 1973 Centennial Properties Limited as the Developer of that project entered into a financing agreement with Nova Scotia Power Inc. to support the placing of both the primary and secondary wiring serving the project underground. The financing agreement provided that the townhouse owners would contribute at a rate of a dollar per month for the 30 year term of the agreement and the apartment dwellers would contribute at a rate of \$0.75/month. These payments financed the differential between the cost of overhead versus underground wiring. That agreement expired in May 2003 and all payments ceased.

The wiring was laid directly in trenches, as per the standard of the day. The life expectancy of the overall installation was 25-30 years. The system is now 33 years old and has reached the end of that life expectancy, at least in respect of the primary wiring, and has begun to fail.

In 2001 Nova Scotia Power included in its annual filing with the UARB its proposal to replace the underground wiring with an overhead system. The Cowie Hill residents objected and on July 31, 2001 they filed a Notice of Objection pursuant to s.83 of the Public Utilities Act. This matter is now scheduled to be heard during the week of May 1st, 2006. HRM has filed as an Intervenor in the complaint.

Nova Scotia Power filed its evidence with the UARB on March 9th, 2006. NSPI has scheduled a meeting for March 29th, 2006 to discuss a "low cost solution" in an effort to resolve this complaint. In the meantime, counsel for the Cowie Hill residents and HRM have been preparing for the hearing.

DISCUSSION

On October 18, 2005 Council adopted a revised Pole-free zone which zone was expanded to include all existing pole free zones. Section 78 of the *Public Utilities Act* requires NSPI to secure the consent of the municipality when it seeks to access municipal streets for its purposes. Should the municipality direct that its consent is subject to the wiring being placed underground, and NSPI does not accept that condition, NSPI has the option of making a complaint to the UARB which has the final decision in respect of the matter.

Similarly, s. 43(3) of the federal *Telecommunications Act* requires telecommunication carriers to secure the consent of the Municipality when it requires access to municipal streets and provides for an application to the CRTC when the access cannot be obtained on terms acceptable to the carrier. It then is left to the CRTC to resolve the question of what are reasonable access terms. However the *Telecommunications Act* is quite specific in addressing underground wiring. It goes on to provide:

44. On application by a municipality ..., the Commission [CRTC] may (a) order a Canadian carrier, subject to any conditions that the Commission determines, to bury or alter the route of any transmission line situated or proposed to be situated within the jurisdiction of the municipality ...; or (b) prohibit the construction, maintenance or operation by a Canadian carrier ... or any such transmission line except as directed by the Commission.

Staff have been unable to locate any decisions by either the CRTC or the UARB addressing the question of underground wiring, although the complaint of the Cowie Hill residents was not the first complaint to the UARB regarding this subject.

Therefore in answer to the Community Council's question respecting the staff position with respect to underground wiring, consistent with the pole-free zone policy and the primary jurisdiction of the municipality in connection with utility infrastructure placed within municipal streets, the staff position is that underground wiring must remain underground within all areas identified as pole-free in the policy adopted by Council. Ultimately, this is subject to any overriding jurisdiction of either the UARB or the CRTC.

BUDGET IMPLICATIONS

None at this time.

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

None at this time.

ATTACHMENTS

APPENDIX "A" October 18, 2005 Pole-Free Zone Report

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 & Approved by: M.E. Donovan, Director, Legal Services, 490-4226

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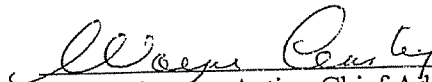


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

HRM Regional Council
October 18, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


Wayne Anstey, Acting Chief Administrative Officer

DATE: October 18, 2005

SUBJECT: Pole Free Areas

ORIGIN

1977 HRM Council Report to Create the Short Term Pole-Free Zone
May 19, 2005 HRM Council Report - Underground Feasibility Study
September 9, 2005 Motion of the Energy and Underground Services Committee of Council

RECOMMENDATION

It is recommended that Regional Council:

- Continue current administrative practices with respect to existing pole-free areas in Halifax, Dartmouth, and Bedford;
- Expand the boundaries of the current Short Term Pole Free Zone to include the entire secondary boundary area of the Capital District (as shown on the attached map).
- Direct staff to negotiate extensions of the current cost sharing agreements for the Short Term Pole Free Zone with Nova Scotia Power and Aliant to include the expanded Pole Free Area.
- Direct staff to develop criteria to assess the merits of underground wiring projects as a tool to prioritize projects and allocate resources.

BACKGROUND

Currently, there are areas of underground wiring in Bedford, Halifax, and Dartmouth. Bedford and Dartmouth had no formal underground wiring policies, however the former City of Halifax adopted an underground wiring policy in 1977 which identified two target areas for underground wiring labelled the Short Term Area and the Long term Area. The policy provided HRM paying 100% of the civil work, and NSPI paying 100% of the electrical. The same concept was applied to undergrounding of telecommunication services with Aliant, with HRM paying 80% of the civil work, and Aliant paying 20% of the civil work, plus 100% of the electrical. The objective of both cost sharing methodologies was to share total project costs equally between the municipality and the utilities. Since 1977 HRM has participated in underground projects within the Short Term Area as opportunities arose through re-development and capital projects. The cost sharing agreements with Nova Scotia Power and Aliant pertain to the existing Short Term Pole Free Zone and would have to be re-negotiated if a larger Pole Free Area is created.

Approximately 90% of what was designated the Short Term area was completed by 1990 when the program largely came to an end through a lack of budget allocation for the program. Substantial undergrounding occurred during the 1980's under Provincial Main Street program funding. This was how Portland Street was funded, as well as areas in Downtown Halifax. The only work done since then has been in conjunction with specific development such as most recently the undergrounding of services along the east side of Granville in front of the new parking garage at the time of its construction.

No work has been done within what was designated as the Long Term Pole free Area, except at the choice of developers who, particularly in the Spring Garden Road area, chose to place the secondary services underground, in conjunction with new developments.

Underground wiring currently exists in the following areas:

Downtown Halifax, within the Short Term Pole Free Area
Downtown Dartmouth - Portland Street
Dartmouth - Main Street (to the NSCC Akerley Campus)
Burnside Business Park
Bedford - Bedford Highway, Main Street area in Bedford
Cowie Hill - Residential neighbourhood

DISCUSSION

The 1977 Pole-Free Area policy remains in effect as it has not been repealed by Council. At this time, staff are of the view that Council should consider whether it wishes to continue with the existing pole-free policy, and if Council does wish to reaffirm the pole-free policy, whether after 25 years, as a result of amalgamation, the boundaries of the pole-free area should be re-considered.

The Pole-Free policy resulted in a significant improvement in the streetscape of the downtown

Halifax area. Underground wiring is compatible with the heritage character of downtown streetscapes. Underground wiring enables significant aesthetic and urban design improvements, improving the function and appearance of downtown streetscapes given the narrow sidewalks, providing more opportunities for street trees and pedestrian amenities. The value of such streetscape improvements is generally recognized with the result that the majority of urban downtown areas in major Canadian cities are pole-free on major streets. Therefore it is staff's recommendations that there continue to be a designated pole-free area within HRM.

The concept of both a short and long-term pole free area has not proven effective with only the short term area being seriously considered for budget expenditures. Staff recommend that the concept of a short term and long term pole-free areas should be abandoned and replaced with designated pole-free areas supported by a plan identifying the manner in which the pole-free areas would eventually be achieved.

There are commercial areas of HRM that are currently pole free located in Dartmouth and Bedford, as well as the designated pole-free area in Halifax. There are also many residential areas which are also pole-free. It is recommended that all areas now pole-free be designated pole-free areas.

On January 22, 2002 HRM Council adopted the Capital District vision, and formally recognized the role of the Capital District as the centre of economy and culture for the region. The Capital District was created to focus resources and coordinate services in this area. In 2004 HRM Regional Council also approved Streetscape Guidelines and Plans for the five commercial districts within the Capital District, which recommend undergrounding within the Capital District. For the same reasons the Capital District area was designated for specific attention, it is recommended that Council consider designating the Capital District (up to the secondary area boundary) as an intended Pole-Free Area.

Establishment of Pole-Free Zones will provide a tool which will enable HRM to capitalize on opportunities to underground wiring as a result of new developments or major street reconstructions and capital projects. It is proposed that new developments within Pole-Free areas should have to provide underground secondary connections at the expense of the developer. Currently, underground wiring projects are not funded on an annual basis through HRM's capital budget process, but take place as opportunities arise in conjunction with other projects. Criteria will be developed for setting priorities and assessing underground wiring projects within the Capital District Pole Free Area, to assist with allocated of resources through the business planning/budget process.

Underground Feasibility Study (approach for underground wiring in new developments)

In May 2005 the results of the Underground Feasibility Study prepared in 2005 by Kinetrics was presented to HRM Regional Council along with a staff report containing three recommendations:

1. HRM develop a Joint Trench Agreement in cooperation with the utilities;

2. Pending adoption of a Joint Trench Agreement, prepare recommendations regarding the type of developments which should have underground services as well as the type of services to be placed underground: and

3. Develop a plan to expand the existing pole-free zone; giving priority to the Capital District, pending negotiation of cost sharing agreements, and delineation of responsibilities amongst utilities and HRM.

These recommendations were passed by Council. In August 2005, HRM reached a mediated agreement with Nova Scotia Power regarding vegetation management easements, and as part of the mediation it was agreed that undergrounding utilities in new developments is the best solution to eliminate tree/utility conflicts. Nova Scotia Power agreed to support HRM's intention to move to underground utilities in new developments, and agreed to cost share on a 50/50 basis (to a maximum of \$30,000) development of the joint trench standard, joint trench agreement, and development of financing recommendations. An RFP to engage a consultant to work with HRM and the utilities on these deliverables will be issued by the end of October 2005.

BUDGET IMPLICATIONS

None at this time. As underground projects are identified in conjunction with other capital projects or developments, they will be submitted for consideration during the HRM Business Planning/Budget process.

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

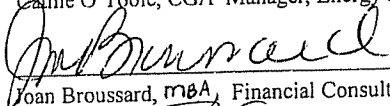
- HRM Council could modify the boundaries of existing pole free areas.
- HRM Council could repeal the existing Pole-Free areas.

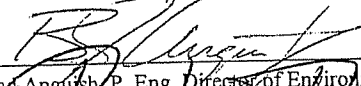
ATTACHMENTS

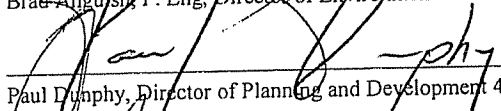
Map showing proposed Pole Free Area of the Capital District
September 9, 2005 Motion from Energy and Underground Services Committee

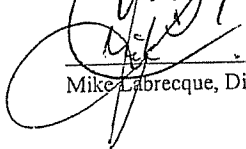
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

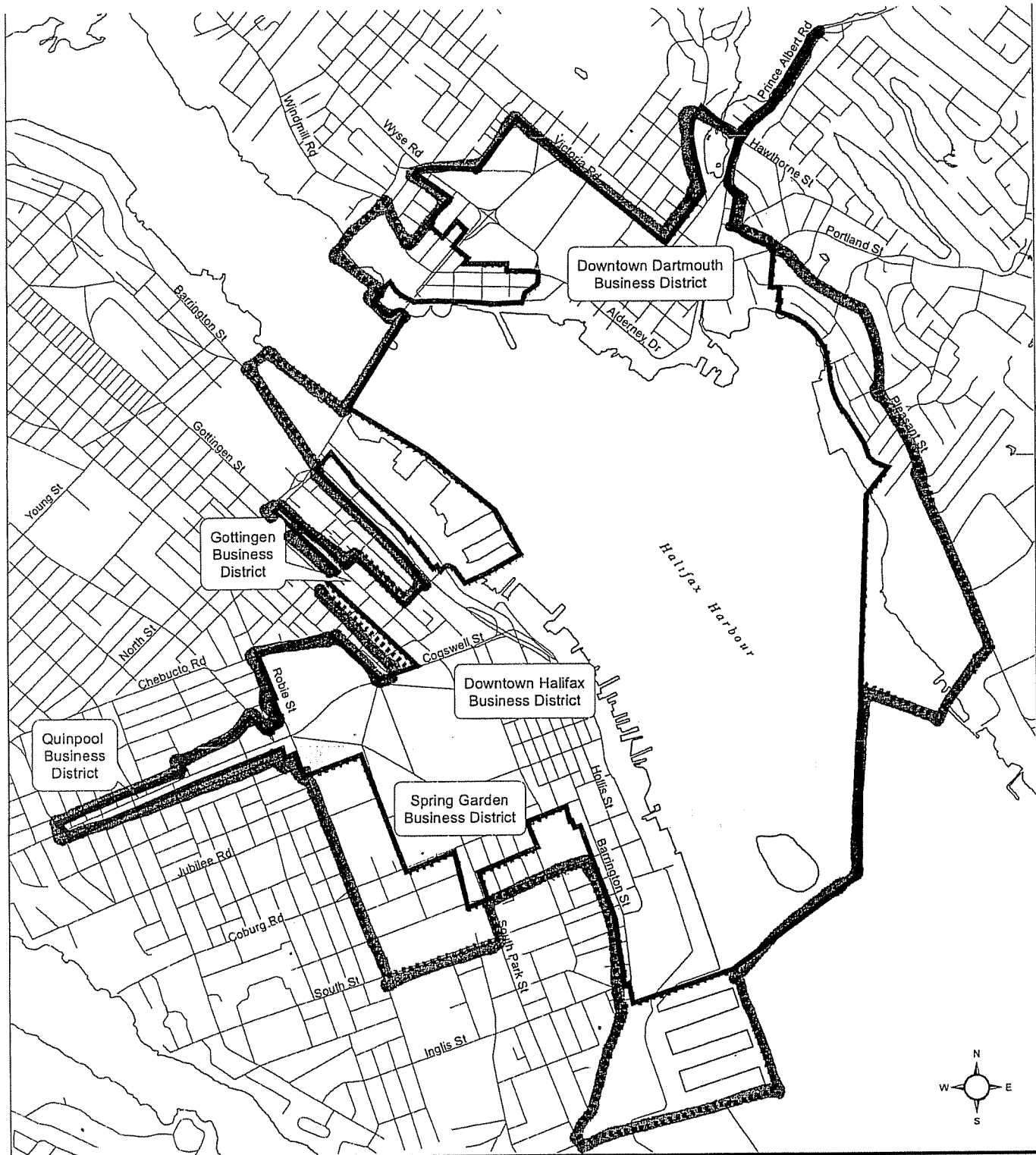
Report Prepared by: 
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Financial Review: 
Joan Broussard, *mBA*, Financial Consultant 490-6267



Report Approved by: 
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Paul Dunphy, Director of Planning and Development 490-4933


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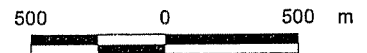


Map 1
Attachment A

-  Primary Area
-  Secondary Area (influence/impact)

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES

**Boundary
HRM Capital District**



September 9, 2005 Motion of Energy and Underground Services Committee

6.2.1 Pole Free Areas

MOVED BY Councillor Uteck, seconded by Councillor Mosher that the Energy and Underground Services Committee direct staff to present a report to regional Council to confirm existing pole free areas in Halifax, Dartmouth and Bedford and expand the boundaries of the current Short Term Pole Free Zone to include the Capital District (including Brunswick Street, Quinpool Road, Barrington Street, Spring Garden Road, the perimeters of Citadel Hill and the portions of downtown Dartmouth within the Capital District.) MOTION PUT AND PASSED UNANIMOUSLY.