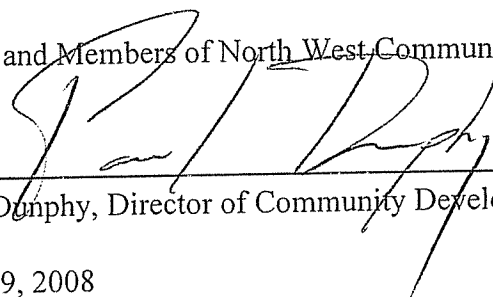




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North West Community Council
May 22, 2008

TO: Chair and Members of North West Community Council

SUBMITTED BY: 
Paul Donphy, Director of Community Development

DATE: April 9, 2008

SUBJECT: Case 01118: Watercourse setback requirements, Sackville Drive LUB

INFORMATION REPORT

ORIGIN

January 24, 2008 motion of North West Community Council.

BACKGROUND

The Sackville Drive Land Use By-law (LUB) currently regulates setback adjacent watercourse including the Little Sackville River. There are two regulating sets of policies, the Regional MPS and the Sackville Drive Secondary Planning Strategy (SPS).

The Regional MPS (Attachment A) requires a minimum setback of 20m (66 feet) from any watercourse, however it permits a reduction where the restriction is prohibitive. The Sackville Drive SPS (Attachment B) requires a minimum setback of 30m (100 feet) from any watercourse, however it permits a reduction to 15.2m (50 ft) where a property is unreasonably affected. The Regional Plan requires where there is a conflict between two policies that the most restrictive applies.

When watercourse setback regulations (Attachment C) were implemented in August 2006 as part of the Regional Plan, the only reduction permitted was when the setback prevented a building from being constructed.

The Sackville Drive Business Association and individual property owners have raised concerns regarding the lack of flexibility in the setback regulations. Further, they have suggested that the current regulations in the Sackville Drive LUB are stricter than what guiding policies require within the Sackville Drive Secondary Planning Strategy.

At the January 24, 2008 North West Community Council meeting, Council requested staff initiate an amendment to the Sackville Drive LUB relating to when the standard watercourse setbacks may be reduced.

DISCUSSION

Staff have reviewed the guiding policies in the MPS and the Regional MPS and are of the opinion that the policies potentially provide for additional flexibility in the watercourse setback regulations. In response to Council's request, staff has opened a Planning Case (01118) for this issue. A Public Information Meeting was held on February 18, 2008 to gather comments from the public on this issue. A detailed report analysing the proposal will be prepared and presented to Council at a later date.

BUDGET IMPLICATIONS

None. The costs to process this planning application can be accommodated within the approved C310 operating budget.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

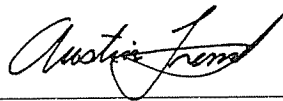
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ATTACHMENTS

- Attachment A Regional MPS Policies - Watercourse Setbacks
- Attachment B Sackville Drive MPS Policies - Watercourse Setbacks
- Attachment C Sackville Drive Land Use By-law - Watercourse Setback Provisions

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.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 : Andrew Bone, Senior Planner, 869-4226



Report Approved by: Austin French, Manager, Planning Services, 490-6717

Attachment A
Relevant Regional MPS Policies

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 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-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.

IM-22 In the event of conflict between this Plan and a Secondary Planning Strategy, the more stringent shall prevail.

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

Attachment B
Sackville Drive MPS Policies - Watercourse Setbacks

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.

- (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 By-law.

Attachment C
Sackville Drive Land Use By-law - Watercourse Setback Provisions

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.