

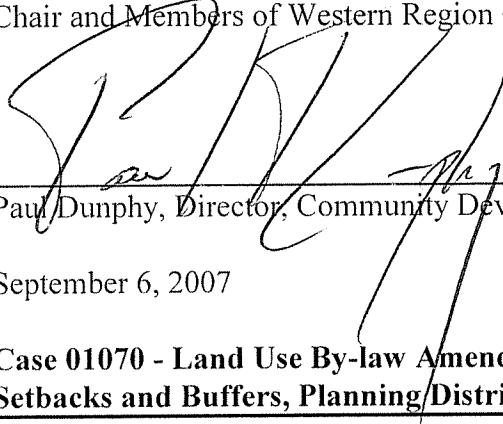


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Western Region Community Council
September 11, 2007

TO: Chair and Members of Western Region Community Council

SUBMITTED BY:


Paul Dunphy, Director, Community Development

DATE: September 6, 2007

SUBJECT: Case 01070 - Land Use By-law Amendment for Watercourse
Setbacks and Buffers, Planning District 5

ORIGIN

Application initiated by staff to rectify an inadvertent land use by-law amendment created during the adoption of the Regional Municipal Planning Strategy.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Give First Reading to consider an application to amend the requirements for watercourse setbacks and buffers to implement the corresponding policies established in the Planning District 5 Municipal Planning Strategy, as shown in Attachment "A".
2. Approve the proposed amendments to the Land Use By-law for Planning District 5, as identified in Attachment "A".

BACKGROUND

It has come to the attention of staff, that inadvertent amendments were created in the Land Use By-law for Planning District 5 during the adoption of the Regional Municipal Planning Strategy. While amending the land use by-law to implement the Regional Plan's requirements for riparian buffers, the existing requirements set out in the Planning District 5 Municipal Planning Strategy (MPS) for a 100 foot wide watercourse buffer became inoperative for those properties included within the Halifax Harbour Designation¹. It was intended that, through amendments to the Regional Plan for the Halifax Harbour Designation, more specific requirements for riparian buffers and other measures to address the impacts of climate change and weather events would be enacted for these areas. In the meantime, the new buffer requirements would not apply within the designation.

Additionally, the Planning District 5 MPS contains more stringent requirements relative to site disturbance within the watercourse buffer and the development of existing lots than does the Regional Plan. These requirements were not retained with the new amendments.

DISCUSSION

In Policy EC-9, the Regional Plan provides that until such time as the amendments for the Halifax Harbour Designation are in place, the existing Secondary Planning Strategies under this designation are to remain in force. The MPS for Planning District 5 has detailed policy for environmental protection in the community of Herring Cove which includes the provision of a 100 foot buffer from all watercourses. The regulations presently in effect are those established under the Regional Plan and incorporate the 100 foot buffer as a minimum everywhere in the Planning District 5 Plan Area except for those lands within the Halifax Harbour Designation. This is contrary to the intent of policies in both the regional and community planning strategies and, accordingly, the setback and buffer requirements should continue to apply to those lands within the Halifax Harbour Designation.

Policies IM-19 and IM-22 of the Regional Plan apply relative to the matters of buffer site disturbance and existing lot development standards. These policies state that the existing community planning strategies are to continue as official municipal policy until they are repealed and where a conflict occurs between the regional and community planning strategies, the more stringent requirements prevail. Since the Planning District 5 MPS contains more stringent policies for site disturbance within the buffer and for the relaxation of the buffer on existing lots than does the Regional Plan, these requirements should remain in place.

¹The Halifax Harbour Designation extends from Hartlen Point in Eastern Passage to Chebucto Head, including Northwest Arm and Bedford Basin, and extends inland generally to the first major roadway parallelling the Harbour.

Public Information Meeting

The public information meeting was waived in consultation with the area councillor. Should Community Council decide to proceed with a public hearing, residents will be notified of the hearing through published newspaper advertisements.

It is recommended that Western Region Community Council approve the amendments to the Land Use By-law as outlined in Attachment "A".

BUDGET IMPLICATIONS

None.

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. Approve the proposed amendments. This is the staff recommendation.
2. Refuse the proposed amendments. Pursuant to Section 230(6) of the *Municipal Government Act*, Council is required to provide reasons justifying this refusal, based on policies of the Regional Municipal Planning Strategy and the Secondary Municipal Planning Strategy for Planning District 5. This alternative is not recommended, as it would leave a portion of the Herring Cove Community without adequate watercourse setbacks and buffers.

ATTACHMENTS

Attachment A	Amendments to the Planning District 5 Land Use By-law
Attachment B	Regional MPS Policies
Attachment C	Secondary MPS Policies

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

Report Prepared by : Kelly Denty, Supervisor, Planning Applications 490-6011



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

Attachment A
Case 01070: Proposed Amendments to the
Planning District 5 Land Use By-law

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Planning District 5 Land Use By-law as enacted by the Council of Halifax Regional Municipality on the 5th day of December, 1994 and approved by the Minister of Municipal Affairs on the 9th day of February, 1995 as amended, is hereby further amended as follows:

1. By replacing clause (d) of subsection (1) of section 4.20 with the following:
 - (d) Notwithstanding clause (c), within the required buffer pursuant to clauses (a) and (b), exceptions may be made to the extent required for required stream crossings, the construction of boardwalks or the placement of walking or hiking trails.
2. By replacing clause (e) of subsection (1) of section 4.20 with the following:
 - (e) Notwithstanding clause (a), the required minimum buffer shall be 30.48 metres within the Herring Cove Community.
3. By replacing subsection (2) of section 4.20 with the following:
 - (2) Notwithstanding the provisions of subsection (1), any existing building within the buffer distance may be permitted to be enlarged, renovated or repaired subject to the provisions of section 4.8 of this By-law.
4. By replacing subsection (3) of section 4.20 with the following:
 - (3) Notwithstanding clause (e) of subsection (1), a reduction of the required buffer to 15.24 metres for lots in existence on May 5, 2001 may be permitted by the Development Officer if the full requirement is prohibitive due to resulting insufficient site area for development.

5. By deleting subsection (7) of section 4.20.

I HEREBY CERTIFY that the amendment to the Planning District 5 Land Use By-law as set out above, was passed by a majority vote of the whole Western Region Community Council at a meeting held on the ____ day of _____, 2007.

GIVEN under the hands of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2007.

Jan Gibson
Municipal Clerk

Attachment B
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*² 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.

² Dillon Consulting Ltd. *HRM Water Resource Management Study*. Dec. 2002. Halifax.

- 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.

5.2.2 Regional Plan Amendments for Areas Within the Halifax Harbour Designation

In conjunction with the formulation of this Plan, Council also initiated a planning process for Halifax Harbour. This Plan supports the completion of this comprehensive planning process to provide Council, the public and stakeholders with a long range vision to guide decision making. Preliminary recommendations contained in a report entitled "Planning Strategy for Halifax Harbour - Preliminary Recommendations"³ were endorsed by Council and used as a basis to conduct further analysis and consultation.

Once the Halifax Harbour planning process is completed, HRM will amend this Regional Plan with a new set of policies that will provide more specific guidance for future land uses and investment within the Halifax Harbour Designation.

The major purpose of the Halifax Harbour planning process is to achieve a sustainable balance among the variety of land uses in the Harbour, including marine-dependent industrial/commercial, transportation, residential, recreational, institutional uses and environmental improvement and protection. The preservation of existing and future opportunities that support the continued economic vitality of the Port of Halifax is of critical importance. This includes marine dependent uses such as our military and coast guard facilities, container terminals, energy producers and support facilities, general bulk cargo facilities, ship manufacturing and repair and cruise ship facilities, plus the transportation linkages to support these installations. Careful attention must be paid to the juxtaposition of marine dependent

³ HRM. Staff report to Regional Council: *Planning Strategy for Halifax Harbour*. July 13, 2004. Halifax.

operations with adjacent existing or future residential development, such that potential negative impacts are minimized. Also of high importance is the continued planning and implementation of further waterfront trail and parkland development, with the objective of establishing a contiguous active transportation route encircling the whole of Halifax Harbour, including linkages to inland trail systems, transit nodes and adjacent residential neighbourhoods. With the realization of Harbour Solutions, increased attention will be paid to opportunities that will further improve the environmental quality of the harbour, through inland watercourse protection, source control strategy and marine habitat restoration initiatives

EC-7 HRM shall prepare an amendment to this Plan for the area defined by the Halifax Harbour Designation on the Generalized Future Land Use Map (Map 2). The purpose of this amendment shall be to provide specific policies and implementation mechanisms which strive to achieve a sustainable and integrated balance among the various land uses around Halifax Harbour, including marine dependent uses, transportation infrastructure, recreational uses, residential uses, institutional uses, and environmental improvement and protection.

EC- 8 Further to Policy EC-7, Council shall use the following guidelines in preparing detailed policies for the area within the Halifax Harbour Designation:

(a) Working Harbour - Marine Industrial/Marine Commercial Uses

- (i) reserve sufficient harbour frontage and harbourfront lands for marine-dependent industrial/commercial development, for the Port of Halifax to remain a globally competitive seaport (refer to Appendix E and Map 9);
- (ii) develop regulations that mitigate potential negative impacts of existing and potential marine-dependent industrial/commercial areas on adjacent uses, while maintaining the economic viability of marine-dependent uses; and
- (iii) discourage new residential development from locating in areas that abut sites designated for intensive marine industrial/marine commercial uses.

(b) Transportation Infrastructure

- (i) in coordination with HRM's Economic Development Strategy and in partnership with senior levels of government and economic development stakeholders, participate in initiatives that will strengthen the Port of Halifax as an economic growth centre, for example, to provide improved inter-modal transportation efficiency and the highest possible

level of freight service to the Port of Halifax, and further exploring the potential for making Halifax a home port for the cruise ship industry (refer also to section 5.4); and

- (ii) proceed with detailed feasibility studies and implementation of a phased high-speed ferry network within Halifax Harbour, such systems to be integrated with land-based transit systems and active transportation opportunities (refer also to Chapter 4).

(c) Recreational Uses

- (i) facilitate, support, plan and develop new parks and trail systems in appropriate locations within the Halifax Harbour Designation (refer to Appendix E and Map 9) including linkages to inland park/trail systems and seek to secure or acquire appropriate waterfront sites for parkland and trail development;
- (ii) integrate trail systems with existing and planned transit corridors and terminals, and to residential neighbourhoods adjacent to the Halifax Harbour Designation;
- (iii) design and develop alternate trail routes around marine industrial operations where safety or security reasons so require;
- (iv) achieve maximum public access to harbourfront locations while respecting international security regulations for port facilities and operations; and
- (v) encourage uses which promote the social and cultural assets which Halifax Harbour provides, to the benefit of both residents and tourists.

(d) Residential Uses

- (i) identify appropriate locations within the Halifax Harbour Designation that are suitable for multi-unit or mixed use residential development (refer to Appendix E and Map 9);
- (ii) establish appropriate regulations for site and building development and appropriate planning approval processes for residential development;
- (iii) ensure that any residential development proposals abutting Halifax Harbour include provision for public access to the Harbour and

- (iv) trail/boardwalk development; and discourage new residential development from locating in areas that abut existing and proposed marine industrial uses. Where residential development is proposed to locate in proximity to existing or proposed marine industrial uses, develop appropriate mitigation measures.
- (e) Marine Environment
 - (i) identify significant environmentally sensitive areas and potential cultural heritage and archeological sites along the shores of Halifax Harbour, and determine appropriate protection or management mechanisms; and
 - (ii) anticipate impacts of climate change and weather events on the shoreline of Halifax Harbour.

EC- 9 Until such time as this Plan is amended to incorporate specific policies for the Halifax Harbour Designation, the existing Secondary Planning Strategies which fall within this Designation shall remain in force, subject to all other relevant policies of this Plan.

EC- 10 Secondary Planning Strategies within the Halifax Harbour Designation may be amended, as appropriate, to address the guidelines as described under Policy EC-8.

IM-19 Existing Secondary Planning Strategies shall remain in effect and continue as official municipal policy until repealed.

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

Attachment C
Relevant Secondary MPS Policies

Environmental Protection in Herring Cove

In addition to the above general policies which apply throughout the plan area, the Herring Cove Area Settlement and Servicing Strategy (2000) makes specific recommendations which should apply within the Herring Cove community. Based on the detailed mapping and physical inventory undertaken as background to the study, there is strong community support for ensuring a greater degree of protection is provided to watercourses and wetlands. This is in recognition that buffer zones can serve several key purposes, including protecting watercourses from erosion, sedimentation and contamination from adjacent development, ensuring existing natural systems remain in place to handle surface runoff, by providing passive recreation corridors, and by maintaining wildlife habitat and corridors. These goals can be achieved by implementing greater setbacks for structures, and by requiring substantial natural buffers to reasonably minimize the risk of water quality reduction which can be caused by erosion and sedimentation during construction and from use of land following development. Appropriate mechanisms should be used during the subdivision and permit review processes to provide additional development-specific information in each case.

- E-31 No infilling of watercourses, wetlands, or flood plains shall be permitted except where absolutely required for the purpose of road and utility access to development which is permitted by the land use By-law. A Conservation Zone shall be applied to all wetlands identified through the Herring Cove Area Settlement and Servicing Strategy, as shown on Map E-1 "Wetlands in Herring Cove".
- E-32 Within the Herring Cove Community 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 floodplains, except for required stream crossings or recreational uses. Provision shall be made for 50 feet buffer zones on lots in existence on the effective date of this policy that would be made unreasonably affected by the 100 feet requirement.
- E-33 Every effort shall be made to ensure that vegetation remains undisturbed on slopes 16% and greater.
- E-34 HRM shall seek preservation and protection of the MacIntosh Run as a fish habitat in cooperation with the provincial Department of Environment and the Federal Department of Fisheries and Oceans.

- E-35 HRM shall support continued public ownership of Crown lands within the MacIntosh Run watershed and encourage their use for conservation and parkland purposes.
- E-36 HRM shall seek ways to mitigate any negative impact of runoff and storm sewer from existing development on surface water resources in the MacIntosh Run watershed.
- E-37 No development shall be permitted within a 100 feet buffer zone of undisturbed ground and vegetation from coastline. Provision shall be made for a 50 feet buffer zone on existing lots that could not be developed with the 100 feet requirement.
- E-38 In the review and implementation of other municipal plans with lands in the MacIntosh Run watershed, the HRM shall give consideration to water quality and habitat issues that affect the Herring Cove area.” (RC - February 13, 2001 / E-May 5, 2001).