

9.1.6




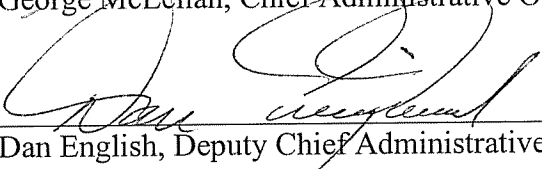
PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Halifax Regional Council  
January 27, 2004

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

**SUBMITTED BY:**

  
George McLellan, Chief Administrative Officer

  
Dan English, Deputy Chief Administrative Officer

**DATE:** December 15, 2003

**SUBJECT:** Measures Respecting Non-Compliance with Development Agreements

#### **ORIGIN**

- August 20, 2002 request by Regional Council to enquire as to the ability of HRM to refuse development agreement applications on the basis of the same developer not being in compliance with an existing agreement(s).
- October 2, 2002 response by the Minister of Service Nova Scotia and Municipal relations identifying legal/constitutional issues with such an approach and recommending further discussion between municipal and provincial staff to identify alternatives.
- Subsequent meetings with provincial staff with a final meeting held November 19, 2003.

#### **RECOMMENDATION**

It is recommended that Regional Council:

- formally request the provincial Minister of Service Nova Scotia and Municipal Relations to amend the Municipal Government Act to make violations of terms and conditions of a development agreement a prosecutable offence under the Act.

## DISCUSSION

There are numerous development agreements in effect throughout the Municipality and these agreements generally provide effective land use control for specific development projects. There have been problems, however, in obtaining compliance from some property owners relative to certain aspects of development agreements, particularly in the case of older agreements which contain limited ability to compel an owner from complying with terms and conditions.

Council has requested the Province to enact legislation enabling HRM to compel a developer to comply with the terms and conditions of an existing development agreement as a pre-condition for approving new agreements where a history of non-compliance has been established. The Province has identified legal/constitutional issues related to this degree of authority. Municipal staff have met with provincial counterparts to discuss other means of ensuring that property owners who are party to development agreements fulfill their obligations under these agreements.

Discussions with provincial staff identified four alternatives to Council's initial suggestion that are worthy of consideration. Three of these are enabled under the existing legislation. The other involves seeking legislative authority which provincial staff support. Following is a summary of enforcement options:

1. *Seek legislative authority to make violations of the terms and conditions of a development agreement a prosecutable offence.*

Although the Municipality has prosecuted violations of development agreements, its authority in this regard has been questioned. Specific legislative authority would enable such measures as Summary Offence Tickets (SOT's) to be utilized as a means of gaining compliance. Authority to issue SOT's currently exists for land use by-law violations, but not for development agreements. ***If Council wishes to pursue this as an enforcement option, then a formal request must be made to the Province requesting the desired legislative changes.*** Provincial staff have indicated that they would support such an amendment.

2. *Broaden the use of performance bonding to require an irrecoverable letter of credit as a condition of a development agreement where a history of non-compliance is evident.*

Irrevocable letters of credit are used as a form of bonding in a number of development agreements approved in recent years but the circumstances for application of measures are not clearly specified. Extending their application to agreements where there is an identified risk of non-compliance, such as where an applicant has a history of non-compliance, might achieve the same purpose as what members of Council have identified in suggesting refusal of a development agreement. An irrevocable letter of credit is more onerous on a property owner than a posted bond effectively requires cash to be provided up front by a developer. Failure to comply with stipulated conditions could result in the letter of credit being cashed which is an effective compliance measure.

3. *Word development agreements to specify conditions under which an agreement may be discharged without the concurrence of a property owner, such as where non-compliance is an issue.*

Discharging a development agreement effectively removes any rights offered under the agreement to remaining, undeveloped areas of a development. This may be effective in obtaining compliance in cases where development has not been completed.

4. *Include provisions in development agreements to enable HRM to carry out specific work on a property to remedy problems and to lien the property to recover costs.*

This form of remedy is presently used in development agreements which have been approved over the past several years and has been an effective measure for ensuring compliance. This Municipal Government Act (Sect. 264) enables similar measures to be considered in cases where the terms and conditions of development agreements approved under previous legislation have been breached. This section provides that a municipality may enter and perform any of the terms and conditions of a development agreement necessary to correct a breach of the agreement and recover any reasonable expenses associated with such actions as a first lien against the property.

There is merit to considering all or any combination of the enforcement measures identified above in order to improve on the ability to achieve compliance for development agreements. Therefore the following course of action appears warranted:

1. Staff will seek ways to improve overall consistency of compliance measures in development agreements under the existing legislation and report back to Council on any measures to be implemented.
2. Council should seek legislative authority to make violations of the terms and conditions of a development agreement a prosecutable offence under the Municipal Government Act.

### **BUDGET IMPLICATIONS**

N/A.

### **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**

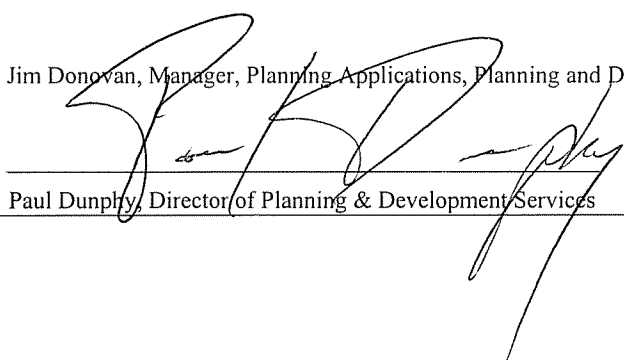
The alternative to the staff recommendation is that Council may choose not to request the legislative change suggested by this report.

**ATTACHMENTS**

None

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: Jim Donovan, Manager, Planning Applications, Planning and Development Services 490-6782

Report Approved by:   
Paul Dunphy, Director of Planning & Development Services