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Item No. 3

**Halifax Regional Council
March 24, 2009**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Paul Dunphy".

Paul Dunphy, Director, HRM Community Development

DATE: March 4, 2009

SUBJECT: **Real Property Tax Status of Theatre Organizations and
Venues in HRM**

INFORMATION REPORT

ORIGIN

January 13, 2009, Regional Council request a report regarding the tax status of theatre groups in HRM.

BACKGROUND

The Halifax Regional Municipality Charter (2008) allows municipality's the discretionary authority to provide full or partial tax exemption to non-profit organizations. HRM By-law T-200 has been in effect since 1997. Presently, there are two theatre organizations on By-law T-200:

Theatre Arts Guild (TAG): TAG is an amateur company; performers and administrators are not paid. The organization was added to By-law T-200 in 1997 at a Conversion from the Commercial to Residential tax rate and a further discount of 50% exempt at the Residential rate.

Neptune Theatre Foundation: Neptune Theatre is a professional theatre company; actors, technicians and administrative staff are paid. The organization was added to By-law T-200 in 1997 at a Conversion from the Commercial to Residential tax rate and a further discount of 50% exempt at the Residential rate. In 2001, Neptune Theatre's tax subsidy was increased to 100% conditional upon the diversion of savings to the retirement of capital debt. Albeit both organizations are theatre companies and own their own venue, there is an historical context to Neptune Theatre's development and the issue of municipal operating assistance. See: **Attachment 1**.

The municipal by-law does not, however, accurately reflect the real property tax status of theatre groups or venues throughout the region. Hence, this Information Report provides a broader basis of comparison.

SUMMARY OF KEY POINTS

- The assessment system categorizes properties by use, not ownership. The system does not distinguish between a private or a for-profit owner vs a non-profit society or charity. Because a theatre or office would not be considered Resource or Residential (defined as a permanent place of residence) the property would be assessed as Commercial.
- Commercial tax rates are higher than Resource or Residential (by about two-thirds) and in effect subsidize municipal services to residential and institutional owners, and those non-profit organizations exempt by legislation or policy.
- By-law T-200 recognizes the limitations of the assessment system and provides eligible recipients at least a Conversion from the Commercial to the Residential tax rate. Some groups receive a further discount that is expressed as a % of the Residential rate. A list of recipients is submitted annually to the Province for an adjustment to the Uniform Assessment¹.

¹The prior year's Uniform Assessment is used to calculate the mandatory taxes collected by HRM on behalf of the Province of Nova Scotia for education, corrections, assessment services etc.

- The *Non-Profit Tax Exemption Program* is not an accurate representation of the real property tax status of theatre organizations or venues in HRM. Some groups leasing in government-owned properties have been afforded tax exempt status by default eg. lack of notification to Assessment Services, or by legislation or policy. Those leasing in the open market pay full Commercial tax.

DISCUSSION

By-law T-200 is not a full and accurate representation of the real property tax status of theatre organizations or venues in HRM. It does not include, for example, groups or facilities exempt by the following:

A. Exempt Under the Nova Scotia Assessment Act (1998)

The Assessment Act excludes certain organizations from real property tax. For example, a place of worship, school, university or college. A discretionary “grant in lieu of taxes” may be paid by the federal or provincial government. Consequently, rental rates for rehearsals, performance, storage or office space in a university or school would not include a proportional share of property tax. Examples include the **Rebecca Cohen Auditorium** and the **James Dunn Theatre** (Dalhousie University), **Bella Rosa Arts Centre** (Halifax West High School), or the proposed auditorium at the **Citadel High School**.

A church hall is exempt property tax if net annual revenues do not exceed \$100 (Assessment Act, Section 5 (b)). In practice there is no monitoring of this provision. Therefore, rental fees to user groups like the **Bedford Players** or **Saints Alive Theatre** do not have to recover a share of property tax.

B. Exempt by an Act of the Nova Scotia Legislature

Prior to the Nova Scotia Societies Act or the federal Income Tax Act some organizations were incorporated under an Act of the Nova Scotia Legislature. In some cases legislation exempted the organization from real property taxes. For example, the **Maritime Conservatory of Music**.

C. Not Assessed for Tax

HRM Facility Management Agreement: Some HRM-owned properties are operated on the municipality's behalf by a third party. These contractual agreements, called a Facility Management Agreement, usually include municipal capital and operating assistance:

Alderney Landing Theatre is a venue managed by the Alderney Landing Corporation. The theatre is available to rent on a recurring or non-recurring basis by a variety of user groups. Therefore, rental fees to user groups such as **Eastern Front Theatre** do not have to recover a share of property tax.

Bicentennial Theatre & Cultural Centre, Middle Musquodoboit, is owned by HRM and operated under a Memorandum of Understanding by the Musquodoboit Valley Bicentennial Theatre & Cultural Centre. The property has not been assessed for property tax. Hence, there are no property taxes to be recovered through rental fees to local and touring productions.

The Head of St. Margaret's Bay Community Centre is an HRM-owned property operated by the Head of St. Margaret's Bay/Boutliers Point Recreation Association. The property has not been assessed for property tax. Therefore, a sub-lease to **Unicorn Theatre** or rental fees to local and touring productions do not have to recover a share of property tax.

Lease Agreement: Under a lease agreement an HRM-owned property, or portion thereof, is leased to a third party. Because a lease affords the tenant exclusivity to the space (ie. it ceases to be available to the general public) the building, or portion leased, is taxable. The collection of property tax can use one of several methods: (a) tax is collected within the base rental payment, (b) tax is collected as an additional charge, or if the lease is long-term (c) the tax bill is issued directly to the tenant or (d) the lease is registered and this triggers an assessment. As owner, HRM is responsible for ensuring that a tax account is created. Presently, the lease agreements with **Shakespeare by the Sea** and **Dartmouth Players** have not been assessed for property tax.

D. Pay Full Commercial Tax in the Market

Private property may also serve as a performance venue, for example the **Bus Stop Theatre** or **North Street Church** ("The Crib"). These venues pay full Commercial property tax. Other theatre companies might rent office, rehearsal or storage space in the open market and pay a proportional share of Commercial tax through the applicable rental or lease agreement. For example, **Onelight Theatre** (office), **Neptune Theatre** (props storage), or the proposed **Paragon Theatre**.

Conclusion

Data on the tax status of local theatre venues and theatre companies in HRM suggests that if the intent were to create “a level playing field” a combination of legislative and policy change would be required.

In the opinion of staff, comparison between venues should not be based entirely on type of service (the programming function of the property) but also the scope of benefit to the general public and/or a specific sector. For example, other factors that might be taken into consideration with respect to an arts venue include: economic development, developmental opportunities for emerging artists or groups, outreach, professional development/employment, affordability (eg. discounts, a sliding scale of fees, bursaries etc), or receipt of public core operating funding such as but not limited to the Canada Council for the Arts or Nova Scotia Tourism, Culture & Heritage.

Anomalies noted with respect to the property tax status of theatre venues or groups within HRM are not unique to the arts sector. The proposed re-design of the *Tax Exemption for Non-Profit Organizations Program* (By-law T-200) can address only those circumstances that fall within our authority as delegated under the Municipal Government Act (1998).

Summary and Next Steps

- Organizations exempt tax under the Assessment Act or by an individual Act of the Nova Scotia Legislature are beyond HRM’s control.
- Staff and the HRM Grants Committee have committed to a review and re-design of the *Tax Exemption to Non-Profit Organizations Program* (By-law T-200). HRM has also asked the Province of Nova Scotia for authority to set non-profit tax rates.
- Draft policy and procedures for Leasing HRM Property to Non-Profit Organizations: Standard Lease Agreements is under review by the HRM Grants Committee. These guidelines recommend a standardized approach to establishing the tax status of tenants in HRM-owned buildings.

BUDGET IMPLICATIONS

None. This is an Information Report only.

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

1. Neptune Theatre: Municipal Funding.
2. List of Venues, Professional and Amateur Theatre Organizations in HRM.

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.

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Attachment 1

The re-development of Neptune Theatre was seen by the former City of Halifax as a major economic development strategy for the downtown core. The business plan accepted by the City included a capital grant, land donation, and on-going operating assistance in the form of “...a minimum of about \$30,000 annually, net of property taxes” (Report to Council, November 10, 1993). Albeit the cash grants and land transfer were completed prior to amalgamation, the follow-up on the business plan respecting property tax grants and net operating grant were not carried through (Report to Council, March 7, 2000. By-law T-201).

Partial payment of property tax in addition to payment on capital debt and operating costs placed considerable strain upon the theatre’s operating viability. Annual cash grants awarded under the *HRM Community Grants Program* did not cover the share of tax paid by Neptune Theatre let alone a net of “...about \$30,000 annually”. In part, the amount of tax payable is a function of the size of the complex, its location in the downtown core where high land values drive annual assessment values, and the municipal urban Commercial tax rate.

In 2001, the Foundation requested an increase in tax assistance to help retire capital debt. The request was approved. It should be noted, however, that within this context HRM’s support to the theatre in terms of a cash grant was reduced to ~\$20,000. This value of grant is lower than grants awarded prior to amalgamation. The *HRM Community Grants Program*² criteria has also been amended to eliminate multi-year funding commitments.

As noted in correspondence from Neptune Theatre dated July 23, 2008, a reduction in tax assistance would create an operating deficit. Conceivably, all or part of this deficit would have to be recovered through an increase in ticket prices and/or facility rental fees. Other theatre, arts and cultural groups would be impacted.

² Presently, *HRM Community Grants Program* funding to the Neptune Theatre Foundation targets the Studio Theatre: a venue that provides a developmental opportunities for many small theatre, dance, musical groups, and cultural events. For example, Zuppa Circus, Onelight Theatre, Atlantic Fringe Festival, Eastern Front Theatre, and the Atlantic Jazz Festival.

Attachment 2.

The following list has been compiled using Theatre Nova Scotia's membership web site, HRM property and assessment data, and awards to theatre groups issued under the *HRM Community Grants Program* 1996-2008:

Theatre Venues

Alderney Landing Theatre (Dartmouth), Bella Rosa Arts Centre: Halifax West High School (Halifax), Bus Stop Theatre (Halifax), Bicentennial Theatre & Cultural Centre (Middle Musquodoboit), Rebecca Cohen Auditorium and James Dunn Theatre: Dalhousie University (Halifax), Mainstage Theatre and Studio Theatre: Neptune Theatre (Halifax), North Street Church (Halifax), Pond Playhouse (Halifax).

Professional Theatre Organizations

2B Theatre (Halifax), Eastern Front Theatre (Dartmouth), In Good Company (Halifax), Luna Sea Theatre (Halifax), Metamorphic Theatre (Halifax), Onelight Theatre (Halifax), Shakespeare by the Sea (Halifax), Zuppa Theatre (Halifax).

Amateur Theatre Organizations

Bedford Players (Bedford), Dartmouth Players (Dartmouth), Northwood Players (Halifax), Saints Alive Theatre (Halifax/Dartmouth), Theatre Arts Guild (Halifax), Unicorn Theatre (St. Margaret's Bay).

Other Theatre Groups

The following theatre groups have received funds under the *HRM Community Grants Program* (1996-2008) but are not currently registered with Theatre Nova Scotia:

Alive Theatre, Bunnies in the Headlights Theatre, Exodus Theatre, Foghorn Theatre, Irondale Ensemble, Jest In Time Theatre (disbanded), Out to Lunch Theatre (disbanded).