

**Halifax Regional Council
March 31, 2009**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Paul Dunphy, Director, Community Development

DATE: March 2, 2009

SUBJECT: As of Right Development in HRM

INFORMATION REPORT

ORIGIN

- October 18, 2005, Motion of Regional Council

“Moved by Councillor Mosher, seconded by Councillor Walker, that staff provide an information report on what “as of right” and “by right” developments are. The staff report be requested on Council endorsing the establishment of a brochure that would detail frequently asked questions (FAQ’s).”

- Supplementary Report dated November 28, 2005, respecting “as of right” development.

BACKGROUND

On October 18, 2005, Council passed a motion requesting staff provide an information report on what constitutes as of right development and further, that staff develop a brochure answering frequently asked questions about as of right development. During discussion on the motion, Councillors asked staff to answer a number of specific questions about as of right development activity in HRM.

On November 28, 2005, staff provided a report to Council advising of three specific initiatives undertaken to address Council’s requests (see Attachment #1). This report updates Council on the status of those initiatives and answers the outstanding questions raised by Council in October, 2005.

DISCUSSION

A Municipal Planning Strategy (MPS) is developed following extensive public consultation as a regulatory framework for Council's development decisions. The purpose of public consultation at the time of adoption of an MPS and land use by-law is to get clear, long range development goals from a community and to determine what constitutes acceptable land use and on-site development in different neighbourhoods.

The MPS is implemented through a number of more specific regulations. Two of those are the Land Use By-law and Subdivision By-law, which divide the Plan Area into zones specifying what types of development may occur in what areas. Each zone contains regulations with respect to the minimum lot size, the type of uses that are allowed, how high a building can be, how close to a property line, how much of the lot can be covered by a building, etc. The HRM Charter, requires Council to appoint a Development Officer to administer the land use and subdivision by-laws on Council's behalf. When development is in accordance with the land use by-law and subdivision by-laws, the Development Officer is authorized to issue approval. *This is not discretionary approval.* This is referred to as by right or as of right approval.

There is no site specific public notification of as of right development. This is because the public participation stage has already been completed with the adoption of the Municipal Planning Strategy, land use and subdivision by-laws, whereby permitted uses and development standards were established in consultation with the community.

The following are responses to Council's questions of October 18, 2005:

1. Request Legal Services comment on whether Development Services can notify adjacent property owners of as of right development and provide contact information. As well, at what point in the application process can the notices be sent.

The Freedom of Information and Protection of Privacy (FOIPOP) legislation provides the legal ability to notify a third party of as of right development. However, that notice cannot contain any personal information, such as the applicant's name or contact information, but can contain the civic address of the property being developed and the use proposed. The site plan and external elevations are public record, but nothing related to the internal construction or design is public for security reasons.

Under the FOIPOP legislation an application is *not* considered public information. Only an approved permit could be made public. Therefore, notification would only be possible after the permit is issued. This is a significant issue, because when residents receive notification it would likely generate false expectations that they can influence the development rights of their neighbours which may stimulate unproductive controversy in neighbourhoods.

2. Request staff provide information on the amount of as of right development and what would be involved in doing mailouts for each application.

In 2008 almost 5,000 construction permits and 400 subdivisions were approved. Of the total number of approvals approximately 10% were for development pursuant to a Development Agreement or variance and therefore public notice occurred. The remaining construction approvals (4,500 permits) are as of right.

To provide notification by mail to abutting neighbours within 30 metres consistent with variance notification procedures for every as of right permit issued in HRM would result in approximately 75,000 letters mailed annually at cost of approximately \$41,000.00.

3. Request staff examine providing notice to apartment tenants.

The difficulty in apartment buildings is that the “front door” of each building and unit is not accessible and access has to be arranged through the property owner or manager. Notification could not be by mail, it would have to be delivered to each door. This is not notification policy for any other Planning or Development application.

4. Request that staff put zoning information on-line.

ExploreHRM is now available on-line at www.halifax.ca which enables residents to check zoning using GIS Mapping. All land use by-laws are available through the HRM website for public viewing to allow a user to confirm requirements of their specific area and zone. As well, GIS staff are examining the possibility of identifying building permit and subdivision activity on ExploreHRM. This may well be the most appropriate and efficient means of communicating this information to residents. Staff will continue to explore this option.

5. Request an internal communication procedure to provide advance notice to Councillors regarding as of right development taking place in their district.

There is a reporting function through the internet that pulls the information from Hansen, which enables Councillors to look-up active permits in their respective districts.

6. As of Right Brochure

Staff have developed an as of right brochure (see Attachment #2). The brochure explains as of right development and answers specific questions as directed by Council in the October 2005 motion. Staff would like Councillor's to review the brochure and provide any additional questions or edits directly to Andrew Faulkner, Development Officer, by e-mail or at 490-4402.

BUDGET IMPLICATIONS

There are no budget implications at this time. Should Council request that staff investigate further, additional analysis on budget implications would be required.

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 1. "As of Right" Development in HRM, Report to Council dated November 28, 2005.
Attachment 2. "A Guide to As of Right Development", brochure

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 Faulkner, Development Officer, 490-4402

Report Approved by:



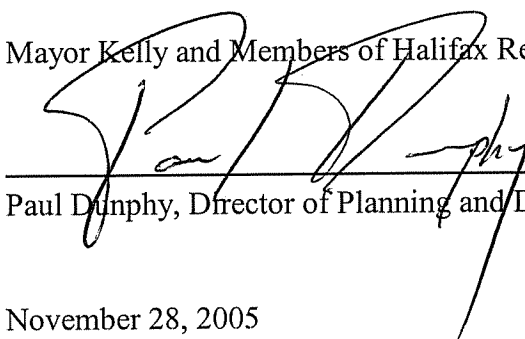
Sharon Bond, Manager, Subdivision & Land Use, 490-4800

Halifax Regional Council
December 6, 2005

TO:

Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


Paul Dunphy, Director of Planning and Development Services

DATE:

November 28, 2005

SUBJECT:

“As of Right” Development in HRM

INFORMATION REPORT

ORIGIN

This report is an update on the status of staff efforts to respond to a Council motion related to “as of right” development (Status Sheet Item #7.15 - October 18, 2005).

BACKGROUND

At the regular meeting on October 18, 2005, Council asked staff to report back with regard to a number of specific questions about “as of right” development activity in HRM.

DISCUSSION

Staff continue to work on a report containing a comprehensive response to all the questions contained in the attached resolution. The finished report is expected to be tabled for Council’s consideration in January of 2006.

To date, the following initiatives have been undertaken:

- A draft brochure has been prepared by staff who have direct daily contact with the general public regarding “as of right” development activity. Prior to completing the report, staff will meet with the Councillors referenced in the resolution to ensure any additional FAQs received by the Councillors are incorporated into the final draft brochure prior to its presentation to Council.

- Staff have developed an on-line reporting system that will provide Councillors with a “real time” list of proposed and approved “as of right” development applications in their districts. This pilot will be “rolled out” in January of 2006 and is part of P&D’s business plan for 2005/2006. This will be a better source of information than relying on staff to inform Councillors individually.
- Staff are presently exploring the legal, time, and cost implications related to undertaking a formal notification program associated with various types of “as of right” development proposals.

BUDGET IMPLICATIONS

There are no budget implications associated with this status update report.

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

This report is presented for information only. There are no alternatives presented for Council’s consideration.

ATTACHMENTS

None

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 : Steven Higgins - Planning and Development Coordinator - 490-4422

Financial Review : Joan Broussard, Financial Consultant, 490-6267

Attachment 2

A Guide to As of Right Development

Prepared by Community Development

March, 2009

Just what is by-right development?

When a Municipal Planning Strategy (MPS) is proposed for a community, a public participation process and public hearing are required prior to Council approval. Public input for as of right projects takes place while the Plan is written and at the time that the Plan is adopted by Council.

Once adopted, the Land Use By-law implements the MPS. It specifies zones on each and every property within the area to which the MPS applies.

The zone outlines what uses may be allowed as of right (permitted uses within the zone) and specifies, among other things, minimum lot frontages, lot areas, lot coverage, setbacks and building height.

If a zone permits a use as of right, a person who develops their property in accordance with the zone is entitled to a development permit. This is *not* a discretionary decision. However all other municipal and provincial requirements must be met in order for a subdivision to be approved or permits to be issued in as of right projects.

As of right development does not require any notification to neighbours in order to proceed.

What are the zoning requirements for my area?

Any inquiry you may have about zoning or possible development of a property may be made at the Regional Offices listed on the back of this brochure. HRM staff will assist you in determining the zoning regulations that apply to your area.

Presently there are 19 Plan Areas within HRM. Individual Land Use By-laws contain zones that are specific to those Plan Areas. An R-1 zone in Halifax is not necessarily the same as an R-1 zone in Sackville. In order to determine which particular Land Use By-law applies to your area, please contact the local HRM development office.

Note: Plan Area boundaries are not the same as electoral district boundaries. Zoning information is available on line by visiting www.halifax.ca ExploreHRM.

What type of development can occur in my community?

Your local HRM office can provide information concerning the types of development that may be considered as of right.

The zone on the land determines what uses are permitted as of right. If a use is not listed as a permitted use within a zone, other options for land development

may be available within the policies of the MPS which could allow for rezoning or development agreement (contract development). Rezoning and development agreements **require public input.**

When can Blasting take place?

It is common during construction of a building foundation to have to remove bedrock. Blasting requires a permit from HRM and the blaster must be a professional, Provincially licensed, blaster. There are stringent standards set out in the HRM Blasting Bylaw to provide notice to the affected neighbours and to ensure the safety of persons and property during blasting. Insurance is required to protect public property. Any damages on private property must be addressed with the blaster and their insurance company. If you have any questions respecting blasting, please contact Development Engineering at 490-5650.

When can construction begin?

As of right construction for a new structure on an individual lot can occur when the proposed structure complies with the land use bylaw, the National Building Code, and the applicant has demonstrated that the property is capable of being serviced, either with municipal sewer and water services or with an on-site system in unserved

areas. The proposed access, if not already in place, must also receive approval from HRM.

Construction Debris Disposal:

The Building Bylaw and Solid Waste Bylaw require that all construction, demolition and renovation debris be removed from the site and disposed of at an approved construction and demolition debris facility. No construction debris may be buried on site.

What about construction noise?

Hours of work during construction are regulated through the HRM Noise Bylaw. Noise is prohibited before 7:00a.m and after 9:30p.m. Monday to Friday, before 7:00a.m. and after 8:00p.m. on Saturday, and before 9:00a.m. and after 7:00p.m. on Sunday and holidays including Remembrance Day. To lodge a noise complaint call 490-4000 and your complaint will be directed to the appropriate authority.

Where is the property boundary?

If you intend to construct on your property, it is important to know the location of proposed buildings in relation to the property lines. Not knowing your property boundaries could result in delays in application approval or

construction. Only a registered Land Surveyor can set or relocate a survey marker. If you have any questions about survey markers or surveying, please contact the Association of Nova Scotia Land Surveyors at 902-469-7962.

What are Watercourse Buffers?

Retaining undisturbed areas around watercourses and along the coastline is important for the protection of water quality and wildlife. HRM Land Use By-laws contain watercourse buffer requirements for lots being developed that are on or adjacent to natural bodies of water. These buffers provide natural protection from flooding, and may also reduce impacts of sedimentation and erosion on watercourses. Buffers can help to regulate the temperature of adjacent watercourses and can protect wildlife habitats.

When new lots are created, the buffer must be identified in order to ensure that there is adequate room on the property for development. Some exceptions to the rules apply for older lots.

NOTE: The buffer applies to watercourses on and off your property. Check with Development Services to determine if the buffer has an impact on your property.

What about damage?

All property owners are responsible for what takes place on their property. If a developer encroaches on or damages an adjacent property, that developer is expected to take responsibility for any damage with individual property owners that might be affected. HRM encourages friendly and open communication between land owners.

Who can I call?

You may apply for subdivision or construction approval at any one of the three Development Services offices listed below.

West End Mall Branch Office
6960 Mumford Road, Halifax
Information 490-5650
Fax 490-4645

Sackville Branch Office - Acadia School
636 Sackville Drive, Lower Sackville
Information 869-4375
Fax 869-4254

Dartmouth Branch Office - Alderney Gate
2nd Floor, Alderney Gate, Alderney Drive
Information 490-4490
Fax 490-4661

Office Hours
8:30 a.m. to 4:30 p.m. Monday through Friday (except statutory holidays)

Other contacts:

HRM Development Engineering
Halifax 490-5660
Sackville 869-4375
Dartmouth 490-4490
Halifax Reg. Water Commission 490-4827
NS Dept. of Transportation . 424-5328
NS Dept. of the Environment
Bedford 424-7773
Sheet Harbour. 885-2462

This brochure has been prepared to provide basic information about "by right" approval process. Any difference between the contents of this brochure and applicable by-laws, regulations, codes and procedures shall be resolved by reference to the official documents.