


Item No. 11.1.6

**Halifax Regional Council
23 June 2009**

TO: Mayor Kelly and Members of Halifax Regional Council



SUBMITTED BY:

Dan English, Chief Administrative Officer



Geri Kaiser, Deputy Chief Administrative Officer - Corporate Services
and Strategy

DATE: 9 June 2009

SUBJECT: Legislative Amendments - Recommendation Report - 2009

ORIGIN

Legal Services has prepared a list of proposed amendments, as requested by staff and Council, in relation to the *Halifax Regional Municipality Charter* (the "*HRM Charter*") for consideration by the Province at the Fall 2009 sitting of the Legislature.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the recommended amendments set out in this report to the *HRM Charter* and related legislation and that the recommended amendments be forwarded to the Province of Nova Scotia for consideration.

BACKGROUND

Since the last report to Council, Legal Services has received various requests for amendments to the HRM Charter. These are in addition to those approved by Council in 2006, 2007 and 2008 which have been held in abeyance by the province pending completion of the HRM Charter and HRMbyDesign legislation.

DISCUSSION

I. Hydrological Assessments

Rationale:

There is currently no requirement in respect of by-right developments to test an area for long-term sustainable water yield, impact or quality. The province currently requires assessment for individual drilled wells. This is not adequate to ensure that as-of-right subdivisions have adequate water quantity and quality. Council has the ability to require a hydrological assessment through the development agreement process; however, Council does not in respect of a subdivision for a by-right development. It is therefore, recommended that Council seek the enabling legislation to require hydrological assessments in the case of all subdivisions not just those through development agreements.

Proposed Amendment:

Amending subsection 281(3) of the *HRM Charter* by adding the following new clause:

(l) requirements to provide an hydro geological impact assessment including quality, yield, and sustainability of water.

II. Surveys for Expropriations

Rationale:

The *Expropriation Act* does not require that a survey be included in a request for expropriation of land. In the case of the provincial expropriations, it is only optional that a survey be obtained. For consistency, it is proposed that the authority to expropriate land in the HRM Charter be amended so that the requirement to obtain a survey of land is also optional.

Proposed Amendment:

By deleting and amending clause 65(2)(a) of the *HRM Charter* to read as follows:

- (2) Where real property is proposed to be expropriated,
- (a) the Municipality ~~shall~~ **may** survey the property and prepare a description of it;
 - (b) municipal employees and agents of the Municipality may enter upon the property to survey or examine it; and
 - (c) the Municipality may make borings or other excavations in the property and shall reimburse the owner for any damage done if the expropriation is not completed.
- (3) The Expropriation Act applies to expropriation proceedings by the Municipality.

III. Exemption for Capital Projects

Rationale:

Currently, any capital expenditures over \$25,000 by a utility, including the Water Commission, require UARB approval. This threshold amount was last increased in 2001 when it was \$5,000. The exemption for capital expenditures in the *Public Utilities Act* at \$25,000 is too low which requires an unnecessary approval process for small projects. It is recommended that this be adjusted to \$250,000.

Proposed Amendment:

By deleting and amending section 35 of the *Public Utilities Act* as follows:

Approval of improvement over ~~\$25,000~~ \$250,000

No public utility shall proceed with any new construction, improvements or betterments in or extensions or additions to its property used or useful in furnishing, rendering or supplying any service which requires the expenditure of more than ~~twenty-five~~ **two hundred and fifty** thousand dollars without first securing the approval thereof by the Board. R.S., c. 380, s. 35; 2001, c. 35, s. 30.

IV. Cutting of Trees

Rationale:

Pursuant to an amendment obtained in 200?, the *HRM Charter* now requires that existing trees or vegetation can be retained or removed only with a municipal permit excepting where land capable of being subdivided into three or fewer lots in serviced areas or in 10 or fewer lots in unserviced areas. Staff are noting that the exemptions are inconsistent with the HRM objective to better manage the denuding of lots being readied for development. These exceptions create planning holes which

may contrast with HRMs comprehensive yet evolving green strategy that requires the ability to manage all green spaces in the HRM area. It is therefore recommended that the Charter be amended to provide more flexibility in the development of an HRM by-law by limiting the exemption from the application of the by-law solely to lands used for agricultural or forestry purposes. The by-law then can be designed to be sensitive to development issues by creating an appropriate balance between the concerns of the development industry and those of residents.

Proposed Amendment:

By deleting from the *HRM Charter* as follows:

190 (1) ~~In this Section, "serviced area" means an area that has access to municipal water or wastewater service or that is identified as a "serviced area" in a municipal subdivision by-law.~~

~~(2) The Council may make by-laws, for municipal purposes, requiring that existing trees or vegetation be retained or only removed pursuant to a municipal permit.~~

~~(3) Subsection (2) does not apply to~~

~~(a) land used for agricultural or forestry purposes;~~

~~(b) land that is in a serviced area and is only capable of being subdivided into three or fewer lots of a size that could be used for development; and~~

~~(c) land that is in an unserviced area and is only capable of being subdivided into ten or fewer lots that could be used for development.~~

V. Density Bonus Zoning

Rationale:

The HRM Charter currently limits the application of the HRM by Design provisions to “in the HRM by Design Downtown Plan Area” and therefore prevents incentive or bonus zoning anywhere outside the HRM by Design Downtown Plan Area , and, is more restrictive than the current 220 (5)(k) of the MGA which allows incentive or bonus zoning anywhere in the municipality. Staff are recommending that this restriction be removed from the hRM Charter. Staff are also recommending that HRM should have the authority to accept cash in lieu dedications.to facilitate the development of a capital reserve for general public realm improvements.

Proposed Amendment:

By deleting and amending the *HRM Charter* as follows:

Section 235(5)(k) provide for incentive or bonus zoning ~~in the HRM by Design Downtown~~

~~Plan Area~~ and specify the cases in which cash in lieu of an on-site contribution shall be transferred to the Municipality;

(l) Where cash is paid in lieu of providing an on-site incentive or bonus zoning contribution, the Council shall use the funds for the acquisition of, and capital improvements to, public realm infrastructure, including transit and active transportation facilities, and similar purposes and may use the interest on any funds not expended for those purposes for the operation and maintenance costs of the infrastructure and facilities.

VI. External Appearance of Buildings

Rationale:

HRM has the authority in section 235 of the *HRM Charter* to regulate the external appearance of structures in the HRM; however, HRM can not regulate the external appearance of structures in site plans other than in the HRM By Design Planning Area. Staff are recommending that the *HRM Charter* be made internally consistent thereby allowing HRM to regulate the external appearance of buildings anywhere in the HRM consistent with the MGA.

Proposed Amendment:

That subsection 246(3) of the *HRM Charter* be amended by deleting as follows:

(k) the external appearance of structures ~~in the HRM By Design Downtown Plan Area;~~

VII. Dartmouth Common

Rationale:

The current Dartmouth transit facility design will displace approximately 140 Dartmouth Sportsplex parking spaces. These can be accommodated within the six acres set aside for the transit facility but an amendment to the Charter is required to allow for this use within the transit facilities six acres.

Proposed Amendment:

By adding to subsection 66 (5) of the *HRM Charter* as follows:

The Municipality may build, expand or improve public transit facilities on that part of the Dartmouth Common adjacent to Nantucket Avenue and not exceeding six acres. **Any existing Dartmouth Sportsplex parking displaced by public transit facilities may be relocated within the same six acre site.**

VII. Community Council authority to amend Municipal Planning Strategies

Rationale:

The *HRM Charter* currently authorizes Regional Council to delegate to Community Councils the adoption of land use by-law amendments. In other discussions concerning improvements to response to planning applications, Regional Council has directed staff to request an amendment to the legislation to allow Regional Council to also delegate to Community Councils their authority to make decisions concerning amendments to the various Municipal Planning Strategies when they are of a local, site-specific nature.

Proposed Amendment:

That Section 30 of the *HRM Charter* be amended by adding after subsection (4) the following new subsection:

- (5) **A community council may amend the municipal planning strategy applicable to the community with respect to any property in the community if the amendment is local in nature and is necessary to enable a site specific land use by-law amendment or a development agreement and, in doing so, the community council stands in the place and stead of the Council and Part VIII applies with all necessary changes.**

BUDGET IMPLICATIONS

Any expenses incurred to implement these changes will be provided for within the Approved 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.

ALTERNATIVES

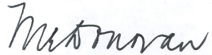
Council could delete any of the proposed amendments.

ATTACHMENTS

Amendment Tracking Spreadsheet

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: Stephan Jedynek, Solicitor



Report Approved by: _____
M.E. Donovan, Director, Legal Services

AMENDMENT TRACKING SPREADSHEET

Last Updated: June 12, 2009

| Particulars of Request | Date of Council Approval |
|--|--------------------------|
| <p>Supplementary Funding & Civic Addressing Amend the <i>MGA</i> to implement Supplementary Funding Agreement with the School Boards.</p> | |
| <p>Amended Sections Bill 179 - section numbers - See Appendix "A"</p> | |
| <p>Waterton Decision Comments - December 23, 2008 Lack of clarity around power of UARB in the event of an appeal from decision of DO.</p> | |
| <p>Incentive or Bonus Zoning The phrase "in the HRM by Design Downtown Plan Area" prevents incentive or bonus zoning anywhere outside the HRM by Design Downtown Plan Area and is more restrictive than the current 220 (5)(k) of the <i>MGA</i> which allows incentive or bonus zoning anywhere in the municipality. See Appendix "B".</p> | |
| <p>Hydrological Assessments Allow HRM to require comprehensive assessment of water tables for subdivision approval</p> | June 2, 2009 |
| <p>Surveys for Expropriation Ensuring <i>Expropriation Act</i> and HRM Charter are consistent making surveys optional (currently mandatory for HRM expropriation)</p> | June 2, 2009 |
| <p>Exemption of Capital Projects Increase exemption from UARB oversight amount to \$250,000 from \$25,000</p> | June 2, 2009 |
| <p>Cutting of Trees</p> | June 2, 2009 |
| <p>Density Bonus Fund</p> | June 2, 2009 |
| <p>Dartmouth Common</p> | June 2, 2009 |
| <p>Setting Speed Limits in School Areas Amending the <i>MVA</i> to set speed limits to under 50 kph</p> | March 10, 2009 |

AMENDMENT TRACKING SPREADSHEET

Last Updated: June 12, 2009

| Particulars of Request | Date of Council Approval |
|--|-----------------------------|
| <p>Service on Clerk Require service on municipal clerk, requirement changed by 2008 Civil Procedure Rules</p> | January 6, 2009 (Tentative) |
| <p>Spending Power for Special Events Clarify HRM may spend money for events on the Commons.</p> | June 17, 2008 |
| <p>Acceptance of Public Streets Clarify that a street does not become a “public street” until the street is accepted by Council or the street is part of an approved subdivision.</p> | June 17, 2008 |
| <p>In Camera Discussion for Intergovernmental Affairs Facilitate In Camera discussions of government initiatives prior to a public announcement of the initiative.</p> | June 17, 2008 |
| <p>Local Improvement Charges relating to Nova Scotia Power. Clarify LICs may be charged against NSPI.</p> | June 17, 2008 |
| <p>Limitation Period for By-law Prosecutions To mirror the <i>Building Code Act</i>, the time limit for laying a charge for breach of a land use by-law or development agreement be increased from 6 months to two years.</p> | June 17, 2008 |
| <p>Amounts Owed to HRM Enhance HRM’s ability to collect fines that have been imposed by the provincial court by amending the MGA to make fines imposed by a provincial court: 1) relating to specific properties, first liens against real property and collectable in the same manner as taxes, (2) relating to two or more convictions for noise violations first liens against the property from where the noisy activity originates. Amend the Summary Proceedings Act so a fine imposed by a court is deemed a judgment of the NSSC. (See also #5).</p> | June 17, 2008 |
| <p>Community Council & Minor Variances Delete the word “minor”.</p> | June 17, 2008 |

AMENDMENT TRACKING SPREADSHEET

Last Updated: June 12, 2009

| Particulars of Request | Date of Council Approval |
|---|--------------------------|
| <p>Charges for Future Use Allow Council the ability to impose changes against persons who will benefit, in the future, from a service (ie water & sewer)</p> | June 17, 2008 |
| <p>Summary Offence Tickets Grant Regional Council the authority to designate wording to make an offence Sottable.</p> | June 17, 2008 |
| <p>Fences Obstructing Streets Permit the Engineer to order fences removed that obstruct the visibility of a driver. (See also #6).</p> | June 17, 2008 |
| <p>Search Warrants Allow a Justice of the Peace to issue a search warrant under the MGA.</p> | June 17, 2008 |
| <p>Dartmouth Common Allow a new Transit system on the Dartmouth Common and more parking for the Sportsplex.</p> | June 17, 2008. |
| <p><i>Smoke Free Places Act</i> Allow placement of cigarette receptacles within the service area of the sidewalk.</p> | June 19, 2007 |
| <p>Noise 1. Address excessive noise and make the owner responsible for the noise of an occupier. 2. Empower peace officer to demand from the owner, within 48 hours, the name and the address of the person occupying the premises or a copy of the lease. 3. Provide landlord redress for noisy tenants. (See also #20).</p> | May 29, 2007 |

AMENDMENT TRACKING SPREADSHEET
Last Updated: June 12, 2009

| Particulars of Request | Date of Council Approval |
|--|--------------------------|
| <p>Obstructions on Streets Clarify that the owner is required to pay for the costs of remedying an obstruction on a street. For example, private fencing obstructing a public street.</p> <p>(See also #24).</p> | May 29, 2007 |
| <p>Active Transportation Seek power to impose active transportation capital cost charges at the development and subdivision stages.</p> | May 29, 2007 |
| <p>Tax Rate for Non-Profits and Charities Grant Council the power to set different tax rates for non-profit and charitable organizations thereby allowing a decrease in taxes payable without the need to amend the bylaw for a partial exemption.</p> | May 29, 2007 |
| <p>Notice of Claims Add a 21 day limitation period in the <i>MGA</i> for transit and snow and ice claims to allow gathering and preservation of the necessary evidence.</p> | May 29, 2007 |
| <p>Accident Benefits (Section “B”) and Unidentified Motorist (Section “D”) Payments on Metro Transit Buses Priority for payment be sought requiring an occupant of a bus, who is insured under his or her own automobile insurance, to claim, in the first instance, section B and section D benefits against his or her own policy rather than against HRM. This still allows recovery from HRM if the occupant does not have his or her own insurance.</p> | May 29, 2007 |
| <p>Maximum and Minimum LUB Provisions Remove the words “minimums” and “maximums” from the LUB provisions found in s. 220(4) to improve flexibility. For example, to permit the regulation of both minimum and maximum frontage rather than only minimum frontage.</p> | May 29, 2007 |
| <p>Increasing Building Requirements Near Nuisances To facilitate greater proximity of residential uses to commercial and industrial developments, allow HRM to impose more stringent construction standards for residential development near nuisances than are contained in the N.S. <i>Building Code Act</i>.</p> | May 27, 2007 |

AMENDMENT TRACKING SPREADSHEET

Last Updated: June 12, 2009

| Particulars of Request | Date of Council Approval |
|---|--------------------------|
| <p>Seniors Housing There is a demand for seniors' housing. It is recommended the Province of Nova Scotia remove barriers to senior housing in the <i>MGA</i> and <i>Human Rights Act</i>.</p> | May 27, 2007 |
| <p>Heritage Incentives Clarify the incentives a municipality may provide to municipal heritage property or a property in a conservation district. Provide municipalities the power to regulate the demolition or removal of municipal heritage property.</p> | October 3, 2006 |
| <p>Vacant Buildings Section 536C grants the municipality the power to expropriate boarded up vacant buildings; however, a clarification is required regarding whether the dangerous and unsightly powers in the <i>MGA</i> also apply to vacant buildings.</p> | October 3, 2006 |
| <p>Maximum Tax Rate and Flexibility Seek powers to: (a) set a maximum tax rate; and (b) to impose charges, in lieu of taxes, for rural area, urban area on: (1) taxable assessed property or (2) dwelling unit based on acreage or frontage. (See also #1).</p> | October 3, 2006 |
| <p>Tax System Provide flexibility to provide tax credits to tax payors with excessive assessments. (See also #4).</p> | March 8, 2005 |