

Item No. 10.1.3
Halifax Regional Council
March 27, 2012

TO: Mayor Kelly and Members of Halifax Regional Council

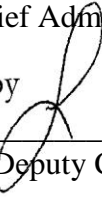
Original signed by



SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by



Mike Labrecque, Deputy Chief Administrative Officer

DATE: February 27, 2012

SUBJECT: Killam Properties Sanitary Sewer Encroachment Agreement

ORIGIN

Application by Killam Properties Inc. to install a new gravity sanitary sewer pipe to connect existing buildings at #1, #2, #3, #4, and #5 Maplehurst Drive to the new separated sanitary sewer on Old Ferry Road, Dartmouth.

RECOMMENDATION

It is recommended that Halifax Regional Council **approve** the attached encroachment agreement to allow the proposed privately owned sewer pipe to be installed under Parker Street.

BACKGROUND

Prior to the Halifax Harbour Solutions project, it is well known that there were many sewer outfalls which discharged directly into Halifax Harbour. While the Halifax Harbour Solutions project addressed the re-routing of the public sewerage outfalls into various treatment facilities, there remain a small number of private outfalls which individual property owners must correct. As the outfalls are identified, Halifax Water notifies the owner and requests that the outfall be re-routed in such a way that the sewerage is treated according to today's standards.

The sanitary sewer from the apartment buildings along Maplehurst Drive in Dartmouth (referred to as the Maplehurst Properties for the remainder of this report) that are owned by the applicant are currently discharging raw sewerage into Halifax Harbour. The applicant has presented a solution, however it does require an encroachment under the HRM lands on Parker Street.

DISCUSSION

Prior to the Halifax Harbour Solutions project, the sewerage from Maplehurst Properties was connected to the public system on Tupper Street via a collector lateral at the rear of the buildings. As part of the Halifax Harbour Solutions project, the combined sewer under Tupper Street was converted to storm sewer main only, and the main still discharges directly to the Harbour. Halifax Water recently discovered that the sewerage from these buildings is still connected to this lateral, and is being discharged directly into the Harbour along with the storm water.

The proposed solution would separate the storm water and the sewerage from this property. The existing lateral would remain connected to the newly converted pipe on Tupper Street, and would be reconfigured to discharge storm water only. The sewerage would be re-routed to a new 200mm diameter long lateral, constructed behind the Maplehurst Properties on private land. The new long lateral would cross under Parker Street which is an HRM owned public street. After crossing Parker Street, the pipe alignment would continue northward, crossing under other lands in easements to another HRM street; Old Ferry Road. The lateral would connect to an existing sanitary sewer manhole at the bottom of Old Ferry Road.

The overall area of the encroachment is approximately 20.0m². In accordance with By-Law E-200, the encroaching lateral pipe will be subject to an annual encroachment fee as prescribed by Administrative Order. The current fee is \$10.00 per square metre.

BUDGET IMPLICATIONS

The applicant is required to pay a one-time license fee of \$125.00 and the annual encroachment fee of \$200.00 (as prescribed by Administrative Order). This new annual revenue will be directed to Cost Centre R112 – 4912.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the

utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

Community engagement was not deemed necessary in this process as there is no long-term impact to the community.

ALTERNATIVES

Council could choose not to approve the proposed encroachment as presented. There were four possible scenarios presented to HRM staff from Halifax Water, and the solution recommended in this report is also the solution recommended by Halifax Water and the solution desired by the applicant. The alternative solutions are:

- (1) Piping the lateral to another existing sewer. This would require a new section of pressurized sewer (also known as a “forcemain”). This is not recommended as there is a viable gravity sewer option.
- (2) Piping to an existing interceptor sewer. There was a significant additional cost to the property owner for construction costs. No estimates were provided for additional engineering, approvals, land, and legal costs that would be incurred by the property owner. This is not recommended due to additional costs and complexity.
- (3) Installing the new pipe as a utility owned and maintained piece of infrastructure rather than a privately owned lateral. If the infrastructure were owned by the utility, there would not be any permanent encroachment for the sections under the public street as the pipes owned by Halifax Water are permitted to be under public street in accordance to existing agreements. The challenges with this scenario are additional upfront costs to the private property owner related to additional inspections and approvals before the pipes would be turned over to Halifax Water, and the long-term maintenance of this pipe would become the responsibility of the utility rather than the private owner.

ATTACHMENTS

1. Encroachment Agreement with a plan showing the proposed encroachment

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: Christopher Davis, P.Eng., Right of Way Engineer, 490-7462

Report Approved by: _____
Phillip Francis, P.Eng., Manager of Right of Way Services, 490-6219

Report Approved by: _____
Taso Koutroulakis, P.Eng., Manager of Traffic & Right of Way Services, 490-4816

Financial Approval by: _____
Greg Keefe, Acting Director of Finance/CFO, 490-6308

Report Approved by: _____
Ken Reashor, P.Eng., Director of Transportation and Public Works, 490-4855

This **Encroachment License Agreement** made this day of , 2012

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
Of the One Part

and

KILLAM PROPERTIES INC., a body corporate
Of the Other Part

Recitals

1. (1) Whereas Killam Properties Inc. wishes to construct a sanitary sewer lateral in Parker Street, from the rear of civic #5 Maplehurst Drive to Old Ferry Road;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2012, the Halifax Regional Municipality agreed to give Killam Properties Inc. an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-Law E-200, being the Encroachment By-Law, and as contained in this license agreement.

Definitions

2. In this agreement, unless the context otherwise requires:

(a) "HRM" means the Halifax Regional Municipality established by S.N.S., 1995, c.3 succeeding and incorporating the former municipal units of the Town of Bedford, the City of Dartmouth, the City of Halifax and the Halifax County Municipality;

(b) "Engineer" means the Engineer as defined by the Halifax Regional Municipality Charter;

(c) "Killam" means Killam Properties Inc.

License

3. Subject to the terms of this encroachment license agreement, HRM hereby grants to Killam the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of Parker Street, Dartmouth, identified on Schedule "A" to install and maintain a sanitary sewer lateral.

Relocation

4. If necessary for municipal purposes, the sanitary sewer lateral must be relocated within the street if requested by HRM, which relocation will be at the expense of Killam. Should Killam wish to relocate the sanitary sewer lateral, such shall be done only upon receipt of the written consent of HRM, which consent shall not be unreasonably withheld, and said relocation shall be at the expense of Killam.

Permits

5. (1) Killam agrees to comply with all municipal by-laws including the Streets By-Law, S-300 for the original construction of the works and all subsequent work which involves the excavation of the street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile stamped by a professional engineer of the proposed sanitary sewer lateral.

(3) The final location of the sanitary sewer lateral shall be subject to the approval of the Engineer.

(4) For the purposes of the construction of the original works, Killam agrees to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia, and to file with the Engineer a written undertaking stating that the professional engineer had been engaged by Killam to supervise and set out the work; that the work will be done in accordance with the approved plans; that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the original works, Killam agrees to arrange a preconstruction meeting with HRM staff.

(6) In addition to meeting the requirement of Streets By-Law S-300, for the purposes of the construction of the original works, Killam agrees to deposit with HRM, performance security, acceptable to the Engineer, in the estimated amount of the cost of restoring the municipal infrastructure affected by the project, which security shall be released upon acceptance of the works by the Engineer and to deposit a maintenance security in the amount of 10% of said costs, or in the minimum amount of \$1,000.00, to be valid for a period of two years from the date of the acceptance of said works.

(7) For the purposes of the construction of the original works, prior to release of said performance security, Killam shall provide HRM with a certificate from a professional engineer certifying that all works are completed according to the approved drawings, any applicable municipal services specifications, and standard drawings and approved changes.

Record Drawings

6. Killam shall provide a copy of the record drawings immediately upon completion of said project, and immediately upon completion of any relocation, both in hard copy and electronic format or in an electronic format approved by the GIS Manager.

Indemnity

7. Killam agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the sanitary sewer lateral however caused, except to the extent that the loss arises out of the gross negligence of HRM.

Fees

8. Killam shall pay the fees set out in Encroachment By-Law E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the lines is 20.0 square metres.

Occupational Health & Safety Act

9. Killam agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically Killam agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

Termination

10. (1) Either party may terminate this license agreement, in writing, at any time.

(2) Upon termination of the license agreement, Killam shall remove the sanitary sewer lateral and reinstate the surface of Parker Street.

Notices

11. Any written notice or communication relating to the administration of this agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by

fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
Director of Transportation & Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5

and

Killam Properties Inc.
100-3700 Kempt Road
Halifax, N. S. B3K 4X8

Legal notices in respect of HRM must be given in compliance with the Halifax Regional Municipality Charter.

12. This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

13. Killam shall not acquire any right, title or interest in or to HRM property or HRM’s public road allowance, or the portion thereof affected by the encroachment, except the right to maintain the encroachment in accordance with this agreement.

14. This agreement shall be construed according to the laws of the Province of Nova Scotia.

Insurance

15. Killam agrees to maintain in full force and effect property damage and general liability insurance in the amount of two million dollars per occurrence insuring against any loss however caused from the installation, construction, existence or operation of the sanitary sewer line. Killam shall be solely responsible for all costs and expenses incurred and all amounts expended for premiums or otherwise in connection with obtaining and maintaining the insurance. HRM is to be named on the insurance certificate as an additional named insured. At the opinion of HRM, certified copies of the policies or certificates of insurance shall be submitted to HRM at the time of signing this agreement and at any other time at the request of the HRM.

IN WITNESS WHEREOF the parties hereto have executed this license agreement as of the day and year first above written.

HALIFAX REGIONAL MUNICIPALITY

Mayor Peter Kelly

Municipal Clerk

KILLAM PROPERTIES INC.

Schedule A – Plans Showing the Proposed Encroachment

