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FOIPOP Review

not

Approved to Release

Comet

Date October 30, 2012

Item No. 14.2.1

Halifax Regional Council
October 30, 2012
In Camera

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original signed
Richard Butts, Chief Administrative Officer

Original Signed
Mike Labrecque, Deputy Chief Administrative Officer

DATE: October 23, 2012

SUBJECT: Former St. Patrick's Alexandra School Property – 2277 Maitland Street, Halifax
Former Gordon Bell School Property - 9 Taranaki Drive, Dartmouth

PRIVATE & CONFIDENTIAL

ORIGIN

This report originates from the Supreme Court decision of September 24, 2012 in relation to the Application for Judicial Review in respect of the former St. Patrick's Alexandra School property.

This item is to be considered in the event of a decision not to appeal the Supreme Court decision.

RECOMMENDATION

1. It is recommended that Halifax Regional Council repeal the current practice of selling surplus school properties passed as policy on January 31, 2012;
2. It is further recommended that Council declare the Gordon Bell Building and property in Cole Harbour surplus, and adopt by resolution a process to dispose of the surplus school

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properties known as St. Patrick's Alexandra, Halifax, and the Gordon Bell Building and property, Cole Harbour, as outlined in Appendix "A". It is recommended that this process be used for the disposal of these two properties in consideration of the Court Decision and pending adoption of a new policy by Council for the disposal of all surplus municipal properties; and

3. It is further recommended that if HRM decides not to appeal the Supreme Court decision, this report be released to the public and this item be moved to the regular agenda.

BACKGROUND

These school properties were included in RFP 11-039 advertised and closed on August 26, 2011. The RFP was structured to be open to proposals for market value and non-market value consideration. The criteria to be addressed in proposals were developed by Tax, Grants and Special Projects, and Real Property staff and proposals received were evaluated by an internal staff review committee created for this purpose. This committee recommended acceptance of the highest scoring proponent for the sale of St. Patrick's Alexandra School property in a report to Council dated November 21, 2011. This sale to Jono Developments Ltd. was approved by Council on December 13, 2011.

The decision concerning the sale of St. Patrick's Alexandra School property was raised again at the January 10, 2012 meeting of Council and added to the agenda. Council rescinded the decision of December 13, 2011 and the matter was referred to staff for a report to address numerous questions raised by Councillors.

On January 24, 2012, Council passed a motion that approved the property as surplus to municipal requirements and that HRM enter an Agreement of Purchase and Sale with Jono Developments Ltd. Partnership subject to the repeal of the September 14, 2000 policy. The September 14, 2000 Policy and Procedures for the Disposal of Surplus Schools was repealed by Council, and Council endorsed the current practice as policy with regard to the disposal of surplus schools by motion approved at the January 31, 2012 meeting of Council. The current practice referred to in the motion was the practice followed in RFP 11-039 and earlier RFPs for school properties which was: to use a Request for Proposals process for the offer of multiple properties, employing criteria drafted by staff, with the proposals evaluated by staff, ending in a recommendation report to Council. The criteria developed by staff included the provision of a detailed description of the intended vision and development for a property as well as a demonstration of capability to undertake and finance the development or project contemplated by the proponent. Staff from Community and Recreation Services, Planning and Infrastructure, and Finance created the process and criteria and/or were evaluators in the process.

The decision of Council to sell the property was challenged by other proponents of RFP 11-039 by way of an Application for Judicial Review to the Supreme Court of Nova Scotia. The

Application was filed on February 1, 2012 by the North End Community Health Association, the Richard Parker Centre for Excellence Society, and the MicMac Native Friendship Society on the initial grounds that the HRM did not follow its Policy and Procedures for the Disposal of Surplus Schools, failed to provide procedural fairness, acted in a manner that was unfair, arbitrary, and was biased. A stay of the sale was granted to the Applicants by the Court in May 2012.

The Decision of the Court was issued on September 24, 2012, after the hearing of the Application on June 12, 13 and 15, 2012.

Staff have been working on a report to Council with respect to a new policy for the disposal of all surplus municipal properties for Council's consideration. It is not expected that that report will be before Council before mid-November.

DISCUSSION

The Decision of the Supreme Court addresses two main arguments put forward by the Applicants, that is, that policy was not followed and the ramifications of that, and that the Charter was not followed with respect to a market value sale.

With regard to the former argument, the Court found that Council bound itself by enacting the procedure contained in the 2000 Policy and Procedures for the Disposal of Surplus Schools and by doing so, the public had a right to assume that Council would follow its own procedures on matters of public importance. The Court concluded that Council owed a duty of procedural fairness to the applicants in the process of disposing of the property. That duty consisted of acting in good faith and in observing HRM's procedure as enacted by Council.

The Court quashed the decision to sell for illegality, but also concluded that Council breached the HRM Charter because while the highest unconditional bid on the property was that of Jono Developments Ltd. of \$3,000,000, the Court observed that Jono Developments Ltd. had indicated it was willing to increase its bid by \$75,000 over the highest bid received to a maximum of \$4,000,000.

As Jono had proposed to be willing to pay as much as \$4,000,000 if necessary due to another bid, the Court reasoned that that was evidence of the market value of the property. As the Charter requires all municipal property to be sold at market value unless Council approves a sale to a non-profit organization, the Court ruled that the approval of a sale to Jono for \$3,000,000 was in breach of the Charter.

A decision of this nature which is a review of the decision-making of Council usually requires that the process and the decision-making be done over, applying and observing the correct policy and procedure and in compliance with the Charter provision. In this instance, subsequent to the second Council approval to sell the property to Jono, and prior to the Application for Judicial Review, Council repealed the 2000 Policy and Procedure for Disposal of Surplus Schools,

the policy in question, and adopted the current practice. The current practice did not give the opportunity to non-profit organizations to submit lower than market value proposals for surplus school properties for the consideration of Council prior to the municipality selling the properties for market value.

It is recommended that Council consider, pending receipt of a staff report on the adoption of a new comprehensive policy for the disposal of surplus municipal property, that the properties under RFP 11-039 be dealt with now in view of the decision of the Supreme Court by implementing the remedy sought by the applicants, which is offering the opportunity for the non-profit organizations, and any other interested non-profit organizations, to submit proposals for less than market value acquisition of the former St. Patrick's Alexandra school property and the former Gordon Bell School property, and that any such proposals received be evaluated by staff and that the evaluations be presented to Council for its consideration. Council would determine if a public hearing should be held to consider a sale at less than market value to a non-profit organization or organizations.

To best achieve this, it is recommended that Halifax Regional Council follow substantially the content of the 2000 Policy for the Disposal of Surplus Schools, repealed on January 31, 2012 for the purpose of allowing non-profit organizations a period of time to submit proposals to acquire either property, at a price less than market value, as contemplated by the original policy.

The process suggested is laid out in Appendix "A" attached.

The process contained in Appendix "A" is not meant to be an exact duplicate of the wording or content of the original repealed policy, but is meant to contain the main criteria for submissions. It also opens the opportunity to all non-profit organizations including local community groups or grant applicants as long as such groups or applicants are non-profit corporations or associations. This course of action is recommended as well to follow the spirit of the original policy of allowing non-profit organizations a chance to bid on the property on a non-market value basis. This course of action will respect the content of the Supreme Court Decision which directs that HRM should adhere to its approved policy.

BUDGET IMPLICATIONS

The net proceeds from the sale of these properties will be credited to the Sale of Land Reserve account Q101. Applicable adjustments to the Purchase Price may include, but are not limited to, appraisal, survey, easements, environmental impacts, grading deficiencies, and wetland management, legal, marketing and administrative costs.

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

This recommendation will enable community engagement as discussed in the Supreme Court decision.

ENVIRONMENTAL IMPLICATIONS

N/A

ALTERNATIVES

1. Council could direct that the original 2000 policy be re-adopted to dispose of the two surplus school properties. Staff are recommending a similar process that reflects substantially the former policy and which is believed to be less ambiguous.
2. Council could direct that the practice currently in effect as policy adopted January 31, 2012 be followed. This could be seen as a process which does not follow the direction and intent of the Supreme Court decision.
3. Council could wait for staff to provide a new comprehensive policy for their consideration and deal with the disposition of the two surplus school properties under the new policy. This direction has the disadvantage of delaying the disposition of the two schools for a longer period of time.

ATTACHMENTS

Appendix "A"

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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APPENDIX "A"

- A. Staff, led by Grants Program and assisted by Community and Recreation Services, to send a notice to the non-profits who have expressed an interest that they should submit a written proposal for the use of the property for community purposes within 90 days. The proposal should set out:
1. the composition of the group, its purpose and management structure, including office-bearers,
 2. the nature of the activities proposed,
 3. a financial statement,
 4. a business plan for the first five years, and
 5. a clear statement of the terms the group is prepared to offer for the purchase or lease of the property.
- B. Advertise the opportunity to all local community groups or grant applicants on the same terms.
- C. All submissions received on or before the last day of submissions will be evaluated by staff for content compliance, viability, compensation, and for benefit to the Municipality.
- D. Staff will report to Council on the submissions received and the evaluation by staff.
- E. Council may determine to select a submission for approval which would be considered on the basis of s. 63(1), (2), (3), (4), (5) of the Charter, the statutory mandate for Council being whether Council considers the non-profit organization to be carrying on an activity that is beneficial to the Municipality, that is, the Halifax Regional Municipality. See s. 63 in its entirety attached.
- F. Council will also consider the overall context of the disposal, including the market value of the property as appraised, the Planning Strategy of the area of the property, and the benefit of any cost saving to the Municipality, and the consequences, beneficial or otherwise, to the community or the Municipality as a whole. Council will weigh the beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value.
- G. If Council decides to consider the disposal at less than market value then because the properties are worth more than \$10,000.00 s. 63(3) requires that Council shall first hold a public hearing respecting the sale, advertised as per s. 63(4), (5) and the resolution of approval for sale will require passage by at least a two-thirds majority of the Council present and voting.
- H. In the event that Council rejects all submissions to purchase the property at a less than market value, then staff will proceed to sell the property at market value through either public advertisement, listing of the property, tender or RFP process.

- 63 (1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that the Council considers to be carrying on an activity that is beneficial to the Municipality.
- (2) A resolution to sell or lease property referred to in subsection (1) at less than market value shall be passed by at least a two thirds majority of the Council present and voting.
- (3) Where the Council proposes to sell property referred to in subsection (1) valued at more than ten thousand dollars at less than market value, the Council shall first hold a public hearing respecting the sale.
- (4) The Council shall advertise the public hearing at least twice, in a newspaper circulating in the Municipality, the first notice to appear at least fourteen days before the hearing.
- (5) The notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or a description of the tangible personal property, the estimated value of the property and the purpose of the sale.