

Item No. 11.1.4
Halifax Regional Council
April 9, 2013

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: February 1, 2013

SUBJECT: **Administrative Order 50 - Disposal of Surplus Real Property**

ORIGIN

This report originates with:

January 10, 2012, Motion by Councillor Watts that Halifax Regional Council request a report to review the current surplus Property Disposal Policy, addressing issues of municipal mandate and requirements and public consultation.

LEGISLATIVE AUTHORITY

The Municipality's powers with regard to real property are under Section 61, Section 63 and Section 64 of the *HRM Charter*. These are summarized on page 2 of this report.

RECOMMENDATION

It is recommended that Halifax Regional Council approve Administrative Order 50, respecting the Disposal of Surplus Real Property, as provided in Attachment A to this report.

EXECUTIVE SUMMARY

The Municipality has certain powers to acquire and hold land under the *HRM Charter*. When a property no longer serves a municipal purpose, it is to be disposed under prescribed modes, depending on how it was acquired, its nature, any conditions attached to it and, in some cases, who may acquire it. From time to time, Council has adopted policy directives for the disposal of property.

Generally, the *HRM Charter* directs that surplus property is to be sold at its market value, or Council may sell property to a non-profit organization for less than market value following the procedural requirements in the *Charter*. The *Charter* does not require Council to give priority to the interests of non-profit organizations. However, in 2000, Council did adopt a disposal policy for surplus school properties which had the submissions of non-profit organizations considered and dealt with first, before considering a market sale. This policy has since been repealed.

This report provides a review of the provisions of the *Charter* and puts forward a suggested policy for the disposal of surplus properties, which aims to optimize the outcome of sales of surplus municipal properties to support community endeavours, to attract development, target industries, grow employment, regenerate neighbourhoods, and generate revenue and property tax revenue.

HRM does not have an umbrella policy to direct and guide how surplus property disposals should be approached by staff and it is recommended that Council establish a policy setting out procedures similar to those established by other municipalities.

Following Council's approval of the policy, properties that are to be excluded from the policy are limited to properties that have previously been declared surplus by Council or are currently under agreement of purchase and sale through delegated authority, or which have not as yet been dealt with by Council but are to go to Council under individual reports prior to March 31, 2013.

BACKGROUND

MUNICIPALITY'S POWERS UNDER THE CHARTER

The Municipality's powers with regard to real property are under Section 61, Section 63 and Section 64 of the *HRM Charter*.

61(1) The Municipality may acquire and own property granted or conveyed to the Municipality either absolutely or in trust for a public or charitable purpose.

(2) Where property is conveyed to the Municipality in trust for a public or charitable purpose, the Municipality holds the property according to the terms of the trust and may do anything necessary to carry out the objects of the trust.

(3) The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.

(4) Possession, occupation, use or obstruction of property of the Municipality does not give an estate, right or title to the property.

(5) The Municipality may

- (a) acquire property, including property outside the Municipality that the Municipality requires for its purposes or for the use of the public;
- (b) sell property at market value when the property is no longer required for the purposes of the Municipality;
- (c) lease property owned by the Municipality at market value;
- (d) sell deeds for cemetery lots and certificates of perpetual care. 2008, c. 39, s. 61.

Sale or Lease of Municipal Property:

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.

Sale to Abutting Owner:

64 Where the Municipality holds land that is of insufficient size or dimensions to be capable of any reasonable use, in the opinion of the Council, all or part of the land may be sold to the owner of any lot abutting that land and may be consolidated with such lot and, notwithstanding Section 63, the sale price of the land so sold may be set by the Council at a price that is less than market value at the time of the sale. 2008, c. 39, s. 64.

Also, there are other provisions in the *Expropriation* Act which can direct the Municipality in its disposal of expropriated property.

DISCUSSION

From time to time, municipal lands become surplus, that is, redundant to the purposes of the Municipality.

For example:

- A property is acquired and upon final definition of municipal requirements, the balance is disposed of, thereby recovering a portion of the initial cost;
- A project is completed and it is determined that certain properties are now surplus to the Municipality's requirements;
- Program or service reduction by the Municipality results in a facility closure;
- A property asset has reached the end of its useful life;
- A project is deleted from the plans of the Municipality;
- A property is transferred to the Municipality from the Province but the Municipality has no use for it.

Staff has reviewed the policies of other Municipalities and Regions including Toronto and Ottawa. These policies tend to be broad in scope and include:

- The property portfolio is reviewed on a regular basis, to determine asset requirements and which assets should be disposed of;
- Council shall, by resolution or delegated authority, declare whether a property is surplus to the municipal requirements;
- Notice of the disposal of real property shall be given; and
- All surplus property transactions will be based on current market value.

Since the inception of HRM, the sale (and lease) of real property has been administered through transaction policies adopted by Council, including delegated approval authority given to the CAO, and the retained direct control by Council for the approval of dispositions of properties of certain value. Staff have followed a procedure for review of whether a property has become surplus to the needs of the Municipality as a pre-condition to considering its disposal. Unique properties, such as school properties declared surplus by the Provincial government and having possession given to HRM, have been challenging for HRM because the structures were built for a single purpose, may be near the end of useful life and may have become integral to the community or neighbourhood needs.

HRM does not have an umbrella policy to direct and guide how surplus property disposals should be approached by staff. It is recommended that Council establish a policy setting out procedures similar to those established by other municipalities.

Proposed Policy - Administrative Order Number 50:

The proposed Administrative Order attempts to bring a regular and comprehensive disposal approach by regularly bringing before Council an inventory of candidate properties for review and decision with respect to: (1) disposal, and (2) category.

It also recognizes that certain properties may, from time to time, be strategic for the growth of HRM or the quality of life for its citizens, or for key community needs or endeavours which are beneficial to the whole of HRM. It is anticipated that these special properties can be identified early in the process, and streamed into the most appropriate category and disposal method. A streamed process should allow finer scrutiny and decision-making as to the best use of such surplus properties.

The proposed approach will provide both transparency of process and accountability to the public with respect to the sale of surplus property. The annual process will provide for a full review of municipal requirements, followed by a report to Council recommending the declaration of certain real estate surplus by category and the recommended manner of market disposal or community disposal.

The disposition of surplus property will include the following steps:

1. Potentially surplus property is identified through a staff review process.
2. Internal program or operational requirements are considered by Business Units.
3. Surplus property with economic development potential is identified.
4. Surplus property with community or not for profit potential is identified.
5. Ordinary property with market value is identified.
6. Remnant property with limited or no market value is identified.
7. Surplus property subject to extraordinary conditions is identified.
8. Report to Council contains recommended lists of properties to be declared surplus and recommended categorization and disposition methods of market value sale, community process for potential less than market value disposition, process sale for strategic properties, and remnant property sales to abutters.
9. Council approval of declaration of surplus property inventory and categorization is sought.
10. Properties recommended for market sale shall be placed on the market. Approval of final conveyances shall be under delegated authority or by approval of Council as required.
11. Properties recommended for community process shall be advertised for non-profit organizations' proposals. Approval of less than market value sales or leases to non-profit organizations shall be by Council as per s. 63 of the Charter. If no submissions are received, or none are approved, then Council will direct the market value disposal under the policy.

Council is asked to refer to the full Administrative Order 50, provided as Attachment A to this report, and the Process Flow Diagram in Attachment B, provided as an aid to this report.

FINANCIAL IMPLICATIONS

There are no financial implications noted at this time.

COMMUNITY ENGAGEMENT

This report deals with an administrative matter and as such public consultation was not undertaken.

ENVIRONMENTAL IMPLICATIONS

Implications not identified.

ALTERNATIVES

1. Council could elect not to adopt a policy and rely solely on the process set out in the Charter.
2. Council could adopt the recommended policy with changes Council considers appropriate.

ATTACHMENTS

Attachment "A" - Administrative Order No. 50, Respecting the Disposal of Surplus Real Property
Attachment "B" - Process Flow Diagram

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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ATTACHMENT A

ADMINISTRATIVE ORDER NUMBER 50 RESPECTING THE DISPOSAL OF SURPLUS REAL PROPERTY

Be it resolved as an Administrative Order of the Council of the Halifax Regional Municipality as follows:

SHORT TITLE

1. The Administrative Order may be cited as Administrative Order Number 50, the Disposal of Surplus Real Property Administrative Order.

POLICY STATEMENT AND CATEGORIZATION

2. (1) The Municipality can acquire and sell real estate within its legislative provisions. Real estate holdings can be a “corporate” asset necessary for municipal functions and purposes of the business units or may be held for particular use of inhabitants of HRM for example, parks and institutional uses. Corporate assets are subject to corporate review by the Asset Owner Business Unit for continuing requirement. Where the business units of HRM have determined that properties no longer serve an operational requirement of the corporation or otherwise appear to be surplus to the needs of the Municipality, then the policy of disposal to be followed in all cases, excepting municipal property which requires particular process through statute or common law or property available in the Municipal Business Parks, is as directed by this policy of Council.
- (2) The Municipality will dispose of real property Council determines is no longer required for the purposes of the Municipality. Staff will identify surplus properties by the following categories:

Economic Development

- (a) Strategic properties having Economic Development potential ought be sold to:

- (i) maximize use or value;
- (ii) achieve the attraction of targeted industries and employment or the regeneration of neighborhoods;
- (iii) to advance development opportunities; and
- (iv) to generate financial return to the Municipality.

Community Interest

- (b) Properties known to have potential for community use, in particular where:

- (i) there has been a prior community or institutional use of the property; or
- (ii) by location or scarcity of available property the consideration would reasonably arise.

Ordinary Sale

(c) Properties of an:

- (i) ordinary or routine nature;
- (ii) which no longer have a municipal purpose.

Remnant

(d) Properties which are remaining or subdivided lands which:

- (i) by nature of their size or dimensions have limited or no reasonable use;
- (ii) but which may have utility for abutting property owners, and can be disposed under s. 64 of the Charter allowing Council to set a price that is less than market value.

Extraordinary

(e) Properties having an historic or legal distinction which include conditions or extraordinary process with respect to their preservation or disposal including but not limited to:

- (i) the Halifax Commons;
- (ii) the Dartmouth Commons;
- (iii) streets;
- (iv) any municipal properties, including parks, which are held in trust, or upon condition, or with reserving interests, or like constraints;
- (v) and parkland acquired through subdivision process.

PROPERTY REVIEW AND DECLARATION OF SURPLUS

3. (1) Real Estate and Land Management staff will facilitate at least one annual review of the Municipality's real property inventory in order to identify potentially surplus properties.
- (2) All Business Units will be solicited to identify any municipal requirements for those properties identified as potentially surplus.
- (3) Upon completion of Business Unit reviews and identification of the operationally surplus property the Real Estate and Land Management Unit will categorize the nature of the inventory of the properties and list them by category.
- (4) Real Estate and Land Management staff will prepare a Surplus Property Report at least one a year to Council which will attach lists of properties by category. The report will recommend that all lists of properties should be declared by Council to be surplus property, that each category be approved by Council, and that the disposal method recommended for each list under this policy be approved by Council.

- (5) Council may approve the recommendations, may remove any property from any list, and may move any property from one list to another list, and may declare the lists, or any of them, surplus to the Municipality's requirements.

DISPOSAL METHODS

4. (1) Following Council approvals under Part 2, staff shall proceed to dispose of the properties as determined by category.

Ordinary Properties

- (a) These properties shall be placed on the market by Real Estate and Land Management. The sale of market properties may be achieved through:
- (i) direct marketing by staff;
 - (ii) listing contracts with licensed real estate brokers;
 - (iii) public tenders; or
 - (iv) proposal call methods.
- (b) Determination of the achieving market value will be supported by appraisal or through the receipt of sufficient offers over an appropriate exposure period.
- (c) Approval of final conveyances shall be under delegated authority or by approval of Council as required.

Economic Development Properties

- (d) These properties viewed by Council to be strategic may be disposed through individually recommended processes contained in the Surplus Properties Report, and may include referral to a special committee or task force of HRM created for the purpose of overseeing the strategic use and disposal of a property.

Community Interest Properties

- (e) Properties with this potential will be advertised by staff, led by Grant Program Staff, with support of Community and Recreation Services, after being the subject of a public information meeting in the area of the property. After advertising the opportunity to submit proposals, non-profit organisations will have 90 days to submit a written proposal for the use of the property. Submissions should set out:
- (i) the name, composition and legal status of the group, its purpose and management structure, including office-bearers;
 - (ii) the nature of the activities proposed;

- (iii) a financial statement;
 - (iv) a business plan for the first five years; and
 - (v) a clear statement of the terms the group is prepared to offer for the purchase or lease of the property.
- (f) All submissions received on or before the last day of submissions will be evaluated by a cross-disciplinary staff committee, including finance and community resources expertise, enlisted by the Grants Program staff for content compliance, viability, compensation, and for benefit to the Municipality.
- (g) Staff will report to Council on the submissions received and the evaluation by staff, including the advisability of a Buy-Back Agreement and the terms of any suggested Buy-Back Agreement.
- (h) Council may determine to select a submission 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 Halifax Regional Municipality.
- (i) Council will also consider the overall context of the disposal, including:
 - (i) the market value of the property as appraised;
 - (ii) the Planning Strategies of the area of the property;
 - (iii) the benefit of any cost saving to the Municipality;
 - (iv) the consequences, beneficial or otherwise, to the community or the Municipality as a whole;
 - (v) the beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value; and
 - (vi) whether or not a Buy-Back Agreement is a condition of a sale.
- j) If Council decides to consider the disposal at less than market value, if a property is worth more than \$10,000, under s. 63(3), Council must first hold a public hearing respecting the sale and advertise as per s. 63(4), (5):

63(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. 2008, c. 39, s. 63.

- (k) The resolution of approval for sale requires passage by at least a two-thirds majority of the Council present and voting.
- (l) In the event that Council rejects any or all non-profit organizations' submissions to purchase at a less than market value, Council may direct staff to proceed to sell the property at market value.

Remnant properties

- (2) Staff will negotiate the sale of such parcels with any interested abutter of such lands and at such price as supported by appraisal or set by Council directly or through policy adopted by Council.

Extraordinary properties

- (3) This category of properties will be dealt with as required by legislation, common law, or contract that governs any disposal by the Municipality, and may be omitted from this policy.

APPRAISALS

- 5. At least one appraisal of the current market value of any Ordinary property, Community Interest property, or Economic Development property will be obtained as part of the disposal process. Appraisals will remain confidential until the sale is completed.

IMPLEMENTATION

- 6. This policy shall apply as of the date of approval of Council, excepting properties which are:
 - (i) already approved by Council as surplus;
 - (ii) under agreement of purchase and sale through delegated approval as of the date of Council approval of this policy;
 - (iii) going to Council for approval by individual report up to and including March 31, 2013.

