

Item No. 6
Halifax Regional Council
February 25, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

SUBMITTED BY:

Jane Fraser, Director, Planning and Infrastructure

Original Signed by Director

John Traves, QC, Director, Legal, Insurance & Risk Management Services

DATE: January 24, 2014

SUBJECT: **Expropriation Process - Real Property**

INFORMATION REPORT

ORIGIN

At the September 24, 2013, session of Regional Council, the following In Camera item was added to the agenda:

13.1 Property Matter – Councillor Hendsbee – Sandy Lake Property

A brief In Camera session was held on this matter; no action resulted from the In Camera session. Following the In Camera session, when Council reconvened to the public session, Council agreed with a 2/3rd vote to add the following motion to the agenda:

MOVED by Councillor Craig, seconded by Councillor Outhit, that Regional Council request a staff report on the expropriation process available to Council for future consideration.

LEGISLATIVE AUTHORITY

The Expropriation Act, s. 26

The Halifax Regional Municipality Charter, Part II, Powers 65 (1) Expropriation

BACKGROUND

Following Council's September 24, 2013 motion, Councillor Hendsbee requested that the report discuss section 26 of the *Expropriation Act*, relating to the aggregate of items to be compensated. Councillor Watts requested some brief information on instances when expropriation has been used by HRM in the past and to provide context for future discussions and decisions.

DISCUSSION

HRM has the power to expropriate real property under the provisions of the *Halifax Regional Municipality Charter* and the *Expropriation Act*. The purpose of any expropriation must be for a municipal purpose i.e., a purpose upon which the municipality has authority to spend money. Halifax Regional Municipality Council (the "Council") is the approving authority under the provisions of the *Expropriation Act*. The purposes which allow the approving authority to authorize expropriation is limited by the Charter at s.65 (1) which says:

Expropriation

65 (1) Where the Council considers it necessary to acquire real property, including real property outside the Municipality, for a purpose for which it may spend money, the Council may expropriate the real property, but this power to expropriate does not authorize the Municipality to expropriate property of another Municipality.

Section 79 (1) of the Charter, under Part IV Finance, lays out what Council may expend money (see section attached as an appendix). For the purposes of interpretation of s.65 of the *Expropriation Act* it has to be read as containing the limits of the reasons for which a municipality can acquire land by expropriation.

Aside from the authority to expropriate, the *Expropriation Act* deals with the compensation payable to the landowner. The *Expropriation Act* identifies certain heads of damage or compensation which is payable which generally consists of the payment of the market value of the property taken, the payment of any injurious affection to the remaining lands of the property owner less any value of the benefit gained by the landowner due to the public work being constructed, also includes a payment for a business or a disturbance damage, and in some rare cases, a payment of a special economic value. There is also alternative compensation where a residence is expropriated and for relocation situations.

There is a large body of jurisprudence which has developed in the area of expropriation compensation and this law is still being developed despite few legislative reforms in Expropriation Acts, the last of which happened in the 1960s and 70s. Expropriation legislation varies from province to province and also federally; therefore, caution is necessary when comparing the compensation allowed in other jurisdictions.

Section 26 of the *Expropriation Act* lists the potential allowable claims as follows:

Aggregate of items to be compensated

26 The due compensation payable to the owner for lands expropriated shall be the aggregate of

- (a) the market value of the land or a family home for a family home determined as hereinafter set forth;
- (b) the reasonable costs, expenses and losses arising out of or incidental to the owner's disturbance determined as hereinafter set forth;
- (c) damages for injurious affection as hereinafter set forth; and
- (d) the value to the owner of any special economic advantage to him arising out of or incidental to his actual occupation of the land, to the extent that no other provision is made therefor in due compensation. *R.S., c. 156, s. 26.*

It is noted above from the wording of this section you have to look further into the *Expropriation Act* to find the full extent and any restrictions on these claims.

However, the general principle regarding the compensation scheme contemplated by the *Expropriation Act* is that a person who has had their land expropriated is to be compensated fairly and neither under compensated nor over compensated. As much as possible, the person is not to experience any residual effect, either financially or from nuisance, because of the expropriation. The compensation in any given case is tailored to the individual circumstances of the use of the land and the characteristics of the property itself.

The *Expropriation Act* indicates that market value is to be determined by appraisal evidence as of the date of the actual expropriation and at highest and best use of the property. Costs of moving incurred are covered plus the value of any element of special economic advantage.

If there is no actual market value to the property, then the cost of equivalent reinstatement to another location can be provided. Further if the property expropriated is a family home, then the *Expropriation Act* allows the acquisition or construction of a reasonably equivalent home or the option of financial compensation. Tenancies are also entitled to compensation.

There is provision for compensation for business loss which is caused from the need to relocate business. If relocation is not feasible, then compensation for the loss of the business and for loss of goodwill is payable.

Usually the most difficult and contentious issue of compensation tends to be that of injurious affection to remaining land. Injurious affection can mean that the market value of lands that were not taken may have been depreciated because of the expropriation or the work. It can also be that access to the property has been compromised which is also compensable. Injurious

affection also includes personal or business damages from the construction or the use of the public works where the owner has had part of their land taken. In instances where no land has actually been taken, injurious affection for personal or business damages can include market value depreciation or damages due to the construction of the public work.

Further, an owner is to be reimbursed for reasonable legal costs, appraisal costs and potentially other experts' costs if successful at a hearing for compensation.

Table 1 of this report highlights for Council's information some recent expropriation activity authorized by Halifax Regional Municipality.

TABLE 1

Property File	Year	Municipal Purpose	Expropriation Authorized by Regional Council	Expropriation Filed at Registry	Outcome
Bayne Street	2005	Economic Development	Yes	Yes	Complete - Settlement reached with property owners.
Chebucto Road	2008	Road Widening	Yes	No	Settlement reached with property owners
Dartmouth Crossing	2010	Sewer Corridor	Yes	Yes	Complete
Maroon Drive	2009	Road Right of Way	Yes	Yes	Compensation Hearing at URB Spring 2013. Decision Jan. 2014.
15 Melva Street	2005	Harbour Solutions	Yes	Yes	Complete - Settlement reached with owner.

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

There are no environmental Implications associated with this report.

ALTERNATIVES

None

ATTACHMENTS

APPENDIX - HALIFAX REGIONAL MUNICIPALITY CHARTER – Section 79

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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APPENDIX

HALIFAX REGIONAL MUNICIPALITY CHARTER

Power to expend money

79 (1) The Council may expend money required by the Municipality for

- (a) expenses of elections and plebiscites;
- (b) premiums on an insurance policy for damage to property, personal injury or liability, including liability of members of the Council or employees of the Municipality, volunteer members of fire departments, emergency services providers and volunteers in municipal programs;
- (c) repayment of money borrowed by the Municipality, the payment of interest on that money and payment of sinking funds;
- (d) police services;
- (e) providing an emergency response system;
- (f) snow and ice removal;
- (g) equipping and maintaining fire departments or emergency services providers;
- (h) honoraria and training expenses for volunteer firefighters and emergency services volunteers;
- (i) providing school crossing guards;
- (j) emergency measures;
- (k) recreational programs;
- (l) advertising the opportunities of the Municipality for business, industrial and tourism purposes and encouraging tourist traffic, with power to make a grant to a non-profit society for this purpose;

(m) promotion and attraction of institutions, industries and businesses, the stabilization and expansion of employment opportunities and the economic development of the Municipality;

(n) lighting any part of the Municipality;

(o) public transportation services;

(p) preventing or decreasing flooding;

(q) collecting, removing, managing and disposing of solid waste;

(r) salaries, remuneration and expenses of the Mayor, councillors, officers and employees of the Municipality;

(s) the reasonable expenses incurred by the Mayor or a councillor for attendance at meetings and conferences, if the permission of the Council is obtained prior to the meeting or conference or the attendance is in accordance with a policy of the Council;

(t) the contribution of the Municipality to a pension or superannuation fund;

(u) where determined by the Board, payment to the Board of an assessment on a public utility owned or operated by the Municipality;

(v) annual subscription fees of the Union of Nova Scotia Municipalities and other municipal or professional associations;

(w) public libraries;

(x) lands and buildings required for a municipal purpose;

(y) furnishing and equipping any municipal facility;

(z) acquisition of equipment, materials, vehicles, machinery, apparatus, implements and plant for a municipal purpose;

(aa) streets, culverts, retaining walls, sidewalks, curbs and gutters;

(ab) private roads, culverts, retaining walls, sidewalks, curbs and gutters that are associated with private roads and are identified and approved for expenditure by the Council;

(ac) placing underground the wiring and others parts of a system for the supply or distribution of electricity, gas, steam or other source of energy or a telecommunications system;

(ad) a system for the supply or distribution of electricity, gas, steam or other source of energy;

(ada) providing for, financing and installing energy-efficiency equipment on private property including, without restricting the generality of the foregoing, solar panels;

(ae) ponds;

(af) a fire alarm system;

(ag) ponds, reservoirs, brooks, canals and other means of accumulating or directing the flow of water to be used in extinguishing fires;

(ah) playgrounds, trails, including trails developed, operated or maintained pursuant to an agreement made under clause 73(c), bicycle paths, swimming pools, ice arenas and other recreational facilities;

(ai) public grounds, squares, halls, museums, parks, tourist information centres and community centres;

(aj) public markets;

(ak) property held by trustees for the use of the public;

(al) wastewater facilities and stormwater systems;

(am) water systems;

(an) solid-waste management facilities;

(ao) buildings for a medical centre to encourage medical doctors, dentists and other health professionals to locate in the Municipality or a part of it;

(ap) industrial parks, incubator malls and land and other facilities for the encouragement of economic development;

(aq) parking lots and parking structures;

(ar) landing strips and airports;

(as) wharves and public landings;

(at) carrying out an agreement with the Minister of Community Services, Canada Mortgage and Housing Corporation or a body corporate or agency made under clause 73(b);

(au) contributing to a hospital to which the *Hospitals Act* applies, with power to raise the amount as an area rate in the area or areas primarily served by the hospital and to borrow for capital grants;

(av) a grant or contribution to

(i) a society within the meaning of the *Children and Family Services Act*,

(ii) a mental health clinic in receipt of financial assistance from Her Majesty in right of the Province,

(iii) an exhibition held by an educational institution in the Municipality,

(iv) a club, association or exhibition within the meaning of the *Agriculture and Marketing Act*,

(v) any charitable, nursing, medical, athletic, educational, environmental, cultural, community, fraternal, recreational, religious, sporting or social organization within the Province,

(vi) a day care licensed under the *Day Care Act*,

- (vii) a registered Canadian charitable organization;
- (aw) all other expenditures
 - (i) authorized by this Act or another Act of the Legislature,
 - (ii) that are required to be made under a contract lawfully made by, or on behalf of, the Municipality,
 - (iii) incurred in the due execution of the duties, powers and responsibilities by law vested in, or imposed upon, the Municipality, the Mayor, Council or officers.