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Item No. 11
Halifax Regional Council
January 13, 2015

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by Director

John Traves, Q.C., Director
Legal, Insurance and Risk Management Services

DATE: January 5, 2015

SUBJECT: **Briefing: Litigation and Property Matters – legal/contractual**
Re: Armco Capital Inc./Twin Brooks Developments Ltd Settlement

INFORMATION REPORT

ORIGIN

On December 23rd 2014, the UARB at the request of legal counsel for Armco and HRM considered alternative dispute resolution of a number of issues arising from Twin Brooks Developments Limited's appeal. A settlement was reached which has been ordered approved by the Board as set out in the attached Order dated December 23rd, 2014.

LEGISLATIVE AUTHORITY

Administrative Order 49 Respecting the Settlement of Actions, Proceedings and Claims

BACKGROUND

In 2014, Armco Capital Inc. and related companies commenced a number of legal proceedings against the Municipality in respect of staff's handling of development applications, developments agreements and other matters.

DISCUSSION

HRM's requirement for additional parkland dedication in relation to Twin Brooks Developments Limited's application for final plan of subdivision approval (Application No. 19442) is at the heart of much of the issues in dispute. The Development Officer has refused the subdivision application for final approval on the basis that the developer is required to provide additional parkland dedication in accordance with the Regional Subdivision By-law. The developer maintains that it has already made the requisite parkland dedication in accordance with the Development Agreement and Subdivision Agreement which it argues

takes precedence over the Subdivision By-law. The matter has been argued before the UARB and a decision is pending on this issue.

In addition to the UARB appeal, four additional separate Court proceedings were commenced against HRM (one of which included claims against three HRM employees) by Twin Brooks and/or Armco and its affiliate APL Properties all with respect to its alleged treatment by HRM with respect to various planning matters.

In our view, the settlement is a satisfactory resolution of these disputes given the issues involved and will assist HRM and the developers to restore relations and allow development matters to proceed while still providing for a full hearing and decision from the UARB with respect to the underlying issue of the Twin Brooks parkland dedication.

FINANCIAL IMPLICATIONS

The parties have agreed to the proceedings being dismissed without costs. HRM has allowed an increase in the credit for the Twin Brooks Neighbourhood Park in the amount of \$53,000 in recognition of the risks of litigation with respect to Development Agreement that was entered into with respect to the Twin Brooks subdivision.

COMMUNITY ENGAGEMENT

N/A

ATTACHMENTS

Order M06387 from the Nova Scotia Utility and Review Board dated December 23, 2014

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: John Traves, Q.C., Director, Legal, Insurance and Risk Management Services, 490-4219

NOVA SCOTIA UTILITY AND REVIEW BOARD**IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER**

- and -

IN THE MATTER OF AN APPEAL by **TWIN BROOKS DEVELOPMENTS LIMITED** to a decision of the development officer dated August 20, 2014, which refused to issue a Subdivision Application requesting final approval of Phase 2B - Lots 222-229 inclusive; Lots 231-236 inclusive; Lots 237A and 237B to 251A and 251B inclusive; Lots 272A and 272B to lots 288A and 288B inclusive, Blocks TH1-TH13 inclusive and Parcels ED-1, FC, RD-1, P and WW, Sackville Drive, Halifax Regional Municipality

BEFORE: Original
signed Roberta J. Clarke, Q.C., Member

ORDER

WHEREAS Twin Brooks Developments Limited ("Twin Brooks") appealed a decision of Kevin Warner, Development Officer, Halifax Regional Municipality ("HRM") which refused to endorse a plan of subdivision for certain lands located at Sackville Drive in HRM to the Nova Scotia Utility and Review Board ("Board" or "URB");

AND WHEREAS the Board heard the appeal on the 17th and 18th of November, 2014, and received final written submissions from the parties on the 9th day of December, 2014, and reserved its Decision;

AND WHEREAS pursuant to s. 269 of the *Halifax Regional Municipality Charter* and Rule 16 of the Board's *Municipal Government Act Rules*, the parties requested the Board to consider alternate dispute resolution of a number of issues arising from the appeal;

AND UPON HEARING Robert G. Grant, Q.C., Counsel for Twin Brooks, and John Traves, Q.C., Counsel for HRM on December 23, 2014;

IT IS ORDERED THAT the Board approves the settlement of a number of issues between the parties on the following terms:

1. The parties agree to consent to Orders dismissing without costs the following proceedings in the Supreme Court of Nova Scotia:

(a) Armco Capital Inc., Twin Brooks Developments Limited and APL Properties Limited v. Halifax Regional Municipality, Kurt Pyle, Rosemarie McNeil and Kemp MacDonald 2014 Hfx No. 431884;

(b) Twin Brooks Developments Limited v. Halifax Regional Municipality 2014 Hfx No. 431692;

(c) Armco Capital Inc. v. Halifax Regional Municipality 2014 Hfx No. 43393;

(d) Armco Capital Inc. and Twin Brooks Developments Limited v. Halifax Regional Municipality, The Attorney General of Nova Scotia, and the Union of Nova Scotia Municipalities 2014 Hfx No. 432045.

2. Twin Brooks has submitted an application for endorsement of the final plan of subdivision for Phase 2B of the Twin Brooks subdivision, which includes: lots 222-229 inclusive; lots 231-236 inclusive; lots 237A and 237B to 251A and 251B inclusive; lots 272A and 272B to lots 288A and 288B inclusive; blocks TH1-TH13 inclusive; and parcels ED-1, FC, RD-1, PWW. Endorsement of these subdivided lots will proceed on the basis of an agreed upon credit for equivalent value for the construction of the Neighbourhood Park in the amount of \$202,050 plus \$53,000 pursuant to paragraph 4. This agreed upon credit may be subsequently adjusted pursuant to paragraph 5. HRM will allow an additional credit as described in item 4 below and will accept a letter of credit (L/C) as security for the remaining obligation in the amount of \$449,472 until the matter and any appeals arising the URB's decision is finally determined. The parties agree to request that the URB agree to the endorsement of all lots in the proposed subdivision using the equivalent value and L/C to cover the parkland dedication requirements for these lots as an interim alternative dispute resolution without prejudice to the position of the parties with respect to the sole remaining issue as described in item 3 below pending the Board's decision and outcome of any appeal.

3. The URB appeal will continue and will determine what, if anything, is owed for park dedication in addition to the agreed upon credit for the Neighbourhood Park. As part of the alternative dispute resolution submission to the Board, the parties will request that the Board as part of its disposition of the appeal provide directions with respect to the sole remaining issue of whether further cash in lieu of parkland is required beyond the provision of the Neighbourhood Park having regard to the provisions of the Development Agreement, the Municipal Planning Strategy, the Land Use Bylaw, the Subdivision Bylaw and the *Halifax Regional Municipality Charter*.

4. HRM will allow Armco and Twin Brooks an increase to the credit for equivalent value with respect to the construction of the Twin Brooks Neighbourhood Park in the amount of \$53,000 which shall be repayable by HRM to Armco in the event Twin Brooks is successful with respect to the URB appeal of the Twin Brooks subdivision decision.

5. HRM agrees that it will consider a further adjustment to the agreed upon credit of \$202,050 for equivalent value for the construction of the neighbourhood park in the

event that Armco and Twin Brooks submit evidence on or before January 30, 2015 of their actual costs exceeding the allowances in the cost estimate for the provision and installation of the 2-5 play structure in the amount of \$25,000, for the provision and installation of the age 5-12 play structure in the amount of \$46,000; in the provision of the pea gravel protective play surface in the amount of \$19,285, and for clearing and grubbing in the amount of \$10,000. In the event Armco and Twin Brooks disagree with HRM's determination, the parties agree that the issue of whether the allowances for these four items are appropriate may be referred to the URB for determination.

6. HRM will accept the transfer of the Marsh Lake Parkland as a parkland dedication bank for the benefit of Armco and its affiliates at a value of \$1,620,000. Any amount found by the Board to be owing as cash in lieu of park land Twin Brooks over the agreed upon equivalent value in the neighbourhood park may be "paid" by a reduction of the amount of the Parkland Dedication Bank. (For example, if it is determined Twin Brooks owes \$449,472 (ie \$704,522 minus \$202,050 minus \$53,000) the L/C is returned and the capital and the Parkland Dedication Bank initially set at \$1,620,000 is reduced by \$449,472 to \$ 1,170,528.) In future subdivisions Armco may satisfy its cash in lieu of land requirements through use of this Parkland Dedication Bank. This Parkland Dedication Bank arrangement is subject to the approval of Regional Council but it is ready to proceed to Council in the next couple of months and HRM staff will provide a support recommending this arrangement.

AND IT IS FURTHER ORDERED THAT the Board retains jurisdiction to decide the remaining issues under appeal as provided for in the above-noted terms of settlement.

DATED at Halifax, Nova Scotia, this 23rd day of December, 2014.

Original Signed

Clerk of the Board