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**Item No. 5**  
**Halifax Regional Council**  
**February 24, 2015**

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:** Original Signed by Director

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

**DATE:** January 30, 2015

**SUBJECT:** Decision of the NSUARB regarding the Appeal of Twin Brooks  
Development Limited of the decision of a Development Officer, who  
refused to issue final subdivision approval for Lots within Phase 2B of the  
Twin Brooks subdivision in the community of Sackville, NS

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**INFORMATION REPORT**

**ORIGIN**

Twin Brooks and HRM disagreed on the quantity of parkland dedication that was required for the Twin Brooks Phase 2B subdivision. The Municipality's Development Officer refused to approve the final plan of subdivision on the basis that the 10% parkland dedication requirements were not satisfied. The parkland calculations confirmed that the newly created lots contained in Phase 2B had a value of \$11,053,300. Staff calculated the outstanding park dedication at \$704,522.34.

Park dedication requirements are set out in the Regional Municipal Planning Strategy (MPS) and are implemented by virtue of s. 82 of the *Regional Subdivision By-Law* (By-Law). In accordance with the MPS and the By-Law, a developer is required to provide 10% park dedication. The By-Law states that the dedication may be in the form of land, cash or equivalent value, or a combination of land, cash and equivalent value.

The Development Agreement for the Twin Brooks Subdivision contained the following provisions.

6.6 Parkland

- 6.6.1 The parkland dedication for this development shall be:  
(a) as generally shown in Schedule B-1;

- (b) useable land necessary for a Neighbourhood Park; and
- (c) solely used to create and improve the Neighbourhood Park. The Developer may fulfill this requirement by providing construction services of equal value to the Neighbourhood Park, as approved by HRM Parkland Planner (or equivalent).

Twin Brooks took the position that by virtue of section 6.6.1 it had contracted out of the By-Law's parkland dedication requirements. Twin Brooks claimed that it was only required to create a neighbourhood park, the value of which it estimated at approximately \$200,000 – \$215,000. Twin Brooks refused to provide the balance of the 10% park dedication. The amount in dispute was approximately \$480,000.

HRM took the position that the amount of park dedication applicable to Twin Brooks Phase 2B was 10%, and that the Development Agreement did not detract from the Developer's obligation in that regard.

### **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter s. 265(2).*

### **BACKGROUND**

The refusal of the development officer was appealed to the Nova Scotia Utility and Review Board. The matter was heard on November 17, and 18, 2014, and the Board's decision was delivered on January 29, 2015. In accordance with the decision, and the Board's Order the appeal was dismissed. Twin Brooks was represented by Robert G. Grant Q.C. and Jeffrey Waugh, and HRM was represented by E. Roxanne MacLaurin.

### **DISCUSSION**

The Board held that clause 6.6.1(c) described an option available to the Developer but did not relieve the Developer from the 10% parkland dedication requirement. The Board reasoned that if the parties had intended to contract for something less than a 10% park dedication that the language of the Development Agreement would have been explicit. The Board, however, did not comment on whether such a contract would have been enforceable or valid, as that was not something which needed to be decided in order to dispose of the appeal.

The Board concluded that the Development Agreement required compliance with the By-Law. Therefore, in order for the subdivision to comply with the Development Agreement it must also comply with the By-law which required 10% park dedication through land, site improvements or cash, or a combination thereof. The Board found that in the circumstances, the Development Officer was not required to approve the final plan of subdivision and the appeal was dismissed.

In accordance with the terms of an earlier settlement agreement between HRM and the Developer, the outstanding park dedication in relation to the Twin Brooks Phase 2B subdivision may be paid by reduction of the amount in the Developer's Parkland Dedication Bank associated with the transfer of the Marsh Lake Parkland. The Parkland Dedication Bank arrangement is subject to the approval of Regional Council and a Staff Report in that regard will be provided to Council shortly. The terms of the earlier settlement are contained in an Order of the Board dated December 23, 2014.

### **APPEAL**

The decision of the Board is subject to appeal to the Nova Scotia Court of Appeal within a period of 30 days. The appeal can only be based on a question of jurisdiction or law.

### **FINANCIAL IMPLICATIONS**

There are no budget implications resulting from this report.

### **COMMUNITY ENGAGEMENT**

No persons registered in response to the advertisement of the public hearing to speak at the evening session, which was therefore cancelled. The Board received two letters of comment from members of the public.

### **ATTACHMENTS**

None.

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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.

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