



P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 06**

**Halifax Regional Council  
January 12, 2016**

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

Original Signed by Director

**SUBMITTED BY:**

Brad Anguish, Director of Parks & Recreation

**DATE:** December 16, 2015

**SUBJECT:** Natural Gas Connection Request

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**INFORMATION REPORT**

**ORIGIN**

May 22, 2012 Item 11.2.1, Halifax Regional Council

MOVED by Councillor Mosher, seconded by Councillor Johns that Halifax Regional Council consider allowing a natural gas connection via the parkland near the Emscote Lands in Wentworth Estates as is currently permitted for water and sewer services.

Without a vote being taken on the motion on the floor, it was MOVED by Deputy Mayor Karsten, seconded by Councillor Sloane that the matter be deferred pending a staff report on whether a formal agreement is required for the encroachment on parkland and that staff outline issues that may be associated with encroachment on parkland and why it is policy that parkland is not traversed. **MOTION PUT AND PASSED.**

May 3, 2012 Item 8.1.1, Chebucto Community Council

MOVED by Councillor Adams, seconded by Councillor Hum that Chebucto Community Council forward a request to Regional Council for consideration with respect to allowing a natural gas connection via the parkland near the Emscote Lands in Wentworth Estates as is currently permitted for water and sewer services. **MOTION PUT AND PASSED.**

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter ("HRM Charter")*, subsection 283 (2) "Where a subdivision by-law provides for the transfer to the Municipality of useable land, the applicant may provide land, equivalent value or a combination of land and equivalent value equal to the amount of the transfer required by the subdivision by-law."

*HRM Charter*, subsection 283(13), "Any land conveyed to the Municipality pursuant to this Section must be

- (a) free and clear of all encumbrances except an easement or right of way that does not materially interfere with the use and enjoyment of the land; and
- (b) used for parks, playgrounds and similar public purposes."

*Regional Subdivision By-law* ("Subdivision By-law"), 82 (3) "The park dedication may be in the form of land, cash or equivalent value or a combination of land, cash and equivalent value, as determined by the Development Officer, as follows:

- (a) land, where a deficiency in parkland exists;
- (b) cash, where sufficient parkland or recreation facilities are available;
- (c) site development, where sufficient parkland is available but a deficiency in recreation facilities exists; or
- (d) a combination of land, cash and site development, where the land dedication required by section 83 will result in more than sufficient parkland to serve the surrounding area."

*Subdivision By-law, clause 3 (k)*

- (k) "Encumbrances" mean, for the purposes of park dedication, legal, environmental, or physical constraints on the property that may limit its use and management or present unreasonable development or remediation costs to the Municipality.

*Subdivision By-law, clause 83 (1)(d)* states "Where the park dedication is to be provided in the form of land, it shall:...

- (d) not include any engineering infrastructure except where the construction material and operational use is complementary to the parkland; and
- (e) at the time of conveyance to the Municipality be certified, in a form acceptable to the Municipality, as being free of all legal encumbrances".

## **BACKGROUND**

### *Bedford South Planning Context*

In 2002, Regional Council approved the Wentworth and Bedford South Secondary Plans (SPS's) which guide the development of a new community on the east side of Highway 102 and west of the Bedford Highway. The SPS includes objectives and policies pertaining to environmental protection, municipal services and land use. All development within the SPS is subject to the development agreement process.

On April 2, 2012, Chebucto Community Council approved a development agreement for 82 acres of the SPS area which enables a mix of residential unit types and approximately 8.1 hectares (20 acres) of park and open spaces lands. At the same meeting, Chebucto Community Council expressed concern with limitations to providing natural gas from Larry Uteck Boulevard to the proposed residential development because a connection may need to cross HRM parkland (Attachment 1). By way of motion, Community Council requested that consideration be given to allowing natural gas connections across parkland in this area.

On May 22, 2012, Regional Council deferred the natural gas line connection matter and requested further information from staff.

## **DISCUSSION**

Since 2012, natural gas has been extended to the residential subdivision discussed above, and did not require connection across any HRM parkland. The extension occurred within the right-of-way of Starboard Drive and Fleetview Drive in May 2013. Consequently, there is no longer a need for a natural gas connection to cross HRM parkland and therefore, Regional Council no longer needs to consider whether to allow a natural gas connection over the parkland in Wentworth Estates.

However, the request from Regional Council also outlined some general questions, specifically:

- Whether formal agreement is required for the encroachment on parkland;
- Issues that may be associated with encroachment on parkland; and
- Why it is policy that parkland is not traversed.

### **Formal Agreement/Parkland Policy**

A requirement for a formal agreement for the placement of natural gas lines on HRM parkland is related to the policy and authority to permit such an installation. Parkland that will be accepted as part of a subdivision cannot be traversed because of the requirements of the *HRM Charter* and *Subdivision By-law*, as outlined in the Legislative Authority section, which do not allow this to occur.

The *HRM Charter* requires that any lands to be conveyed to the Municipality for parkland dedication must be free and clear of encumbrances unless an easement or right of way does not materially interfere with the use and enjoyment of the land. The *Subdivision By-law* goes further and imposes two additional restrictions that, at the time of conveyance to the Municipality, it must be “free of all legal encumbrances” and must not include any engineering infrastructure unless the construction material and operational use is complementary to the parkland. In short, there cannot be an easement on parkland at the time of conveyance to the Municipality, including an easement for natural gas.

Once the land has been conveyed to the Municipality, the *HRM Charter* requires that parkland accepted as part of a subdivision must only be used for parks, playgrounds and similar public purposes. If the land is not required for these purposes, it may be sold but the proceeds must be used for the same purposes.

Whether a third party natural gas easement could cross parkland once it is accepted and owned by HRM would depend on whether Council determined that the easement would materially interfere with the use and enjoyment of the park. If the easement did materially interfere with the use and enjoyment of a park, then it would not be permissible under the legislation. Should Regional Council determine that an easement for infrastructure could be accommodated without interfering with the park use, Regional Council would need to approve the easement agreement as staff does not have that authority under the Transaction Policy.

In summary, consideration of natural gas connections through parkland is not permitted at the time the Municipality accepts parkland due to the provisions of the *HRM Charter* and *Subdivision By-law*. Once it is accepted, the parkland may only be used for parks, playgrounds and similar public purposes and any easement Council grants on parkland cannot materially interfere with these uses.

### **Issues with Encroachment on Parkland**

Challenges with the installation of natural gas pipelines on HRM parkland are multi-faceted. These include:

- HRM land being encumbered by a third party infrastructure for which HRM has limited experience
- Restrictions on use of the parkland as a result of the infrastructure
- Legislation requirements that parkland may only be used for public purposes
- Limitations on HRM's ability to make changes to the parkland including installing parkland infrastructure
- Safety concerns and increased liability related to natural gas leaks

One of the main purposes of the street right of way is to convey utilities and, as a result, they are designed to accommodate various types of infrastructure and mitigate concerns. As a result, installation of private infrastructure primarily occurs in the street right of way, so as to not restrict public use of HRM parkland.

**FINANCIAL IMPLICATIONS**

None

**COMMUNITY ENGAGEMENT**

No community consultation was completed for this report. However, public consultation was conducted for the development of the property for which the initial request was received.

**ATTACHMENTS**

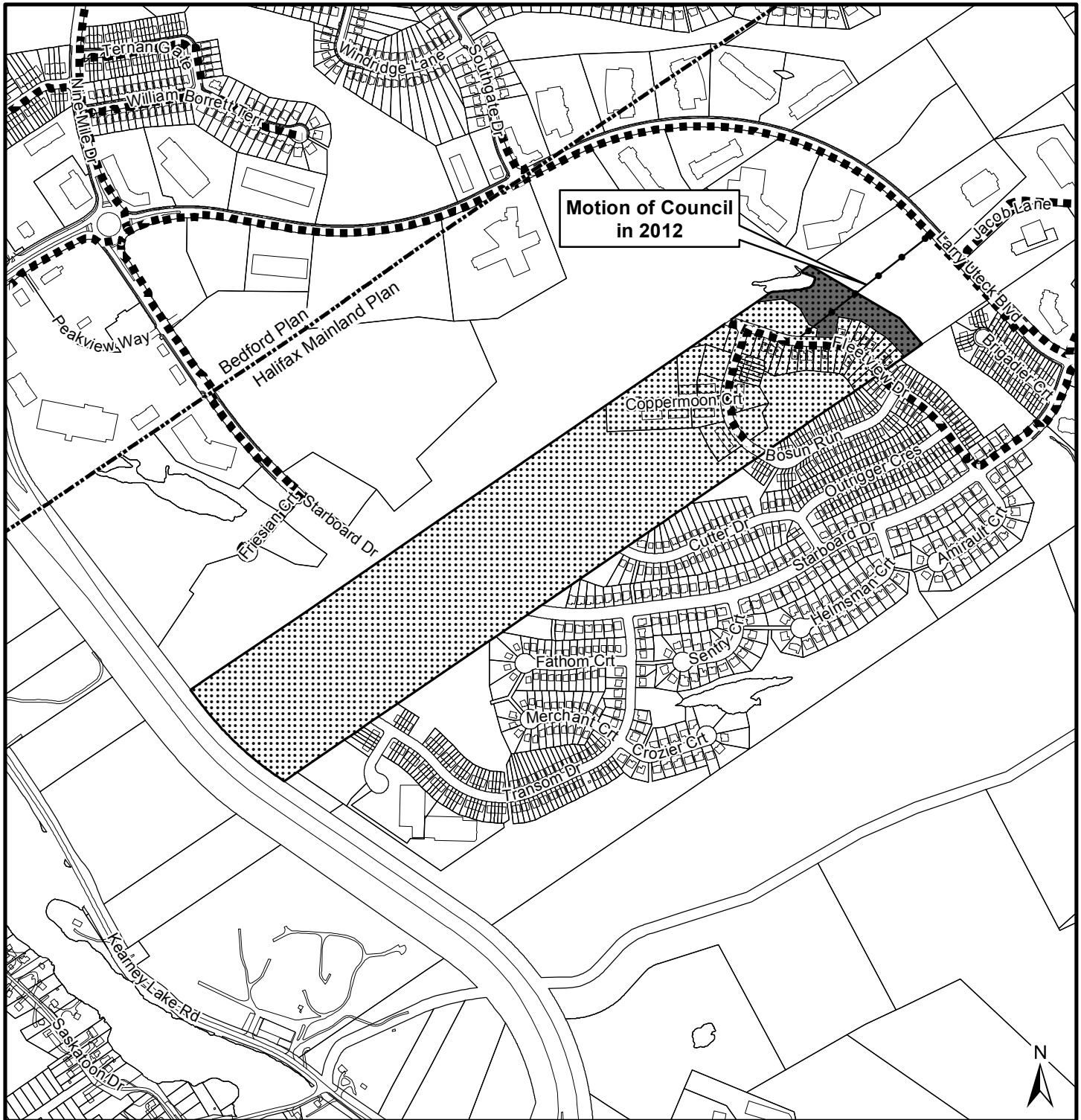
Attachment 1: Location Map

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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.

Report Prepared by: Denise Schofield, Manager, Program Support Services, 902.490.6252

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Motion of Council  
in 2012

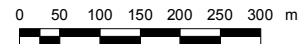
**Map 1**

Bedford South - Wentworth,  
Halifax

**HALIFAX**

-  Development Agreement  
Approved April 2, 2012
-  HRM Parkland
-  Plan Area Boundary

-  Natural Gasline Pipelined  
Over HRM Parkland
-  Existing Natural Gasline



This map is an unofficial reproduction of  
a portion of the plan area indicated.

The accuracy of any representation on  
this plan is not guaranteed.

Halifax Mainland  
Land Use By-Law Area