

HALIFAX

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

Item No. 14.1.6
Halifax Regional Council
December 13, 2016

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Jacques Dubé, Chief Administrative Officer

Original Signed by 
Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: December 1, 2016

SUBJECT: Amendment to Easement Agreement, 39 Coolens Road, Shad Bay

ORIGIN

March 2016 - the property owner of 39 Coolens Road, Mrs. Pomroy/Rose, indicated that the fence installed on her property, as part of an Easement Agreement dated July 30, 1999 with the Municipality, is no longer relevant. The property owner claims it does not serve its intended purpose any further as natural vegetation and a visibly defined path now provides the physical delineation that was originally intended by the fence.

Mrs. Pomroy/Rose is asking that the fence be removed. The fence delineates the public access easement to the beach from the rest of the owner's property. The fence is now leaning in spots, heaved from frost movement, and generally in need of minor repair.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality 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.

79 (1) The Council may expend money required by the Municipality for: (i.e.) public grounds, squares, halls, museums, parks, tourist information centres and community centres;

RECOMMENDATION

It is recommended that Halifax Regional Council;

1. Authorize the Mayor and Municipal Clerk to enter into an Easement Amendment Agreement on the following terms:
 - (a) Owner to permit staff to remove the fence at HRM's cost and at the earliest opportunity; and
 - (b) release the Municipality from all obligations whatsoever under the Easement Agreement, including the obligation to indemnify;

RECOMMENDATION CONTINUED ON PAGE 2

- (c) acknowledge and confirm that on a go forward basis the owner shall be responsible for all future costs and expenses should the owner decide to erect a new fence, including the obligation to maintain in good repair; and
- (d) acknowledge, ratify and confirm the right of the general public to access the beach and waters of Shad Bay unimpeded by the owner.

BACKGROUND

The subject property, 39 Coolens Road, is 40,400 sq. ft. in area, and has approximately 490 feet of beach frontage on Shad Bay. The beach had historically been used by local residents for beach and water access. In 1995, a 3,300 sq. ft. single family dwelling was constructed on the property and public access to the beach was curtailed. The loss of public access to the beach became a contentious issue for the area residents.

In September 1998, Halifax Regional Council authorized the purchase of 39 Coolens Road, Shad Bay, on the condition that the community would pay for, and manage, the property through an area rate. At the time, two options for the property were considered:

1. Convert the property and building into a community recreation facility, with the purchase price, capital and operating costs being carried by the Prospect Recreation Area rate, facility revenues, and Councillor Discretionary Funds.
2. HRM would encumber the property with an access easement or reserve to guarantee access to the beach for the community. The property would then be resold with the encumbrance in place.

The Prospect Road Recreation Association and HRM staff explored the requirements for the conversion of the single family dwelling to a public recreation centre, and determined that although the costs were not prohibitive, it would encumber the recreation area rate for the entire area for up to twelve years or would mean an increase in the area rate levied. The Association concluded that the objective of having beach access could be obtained by encumbering the property with a public access easement that would legally encumber the property, and would remain on the property if it was sold.

In June 1999, Regional Council authorized staff to: create a public access using the beach portion of the property located at 39 Coolens Road; deem the balance of the property surplus to the needs of the Municipality; and place the property on the open market for sale.

In July 1999, Halifax Regional Council approved the market value sale of 39 Coolens Road to Kim and Paul Pomroy.

Also in July 1999, HRM and the Pomroy's entered into an Agreement for the Fence on the property that delineated the Access Easement. The Easement Agreement stated that HRM would be responsible for:

1. The installation and maintenance of a suitable fence between the Access Easement area and the rest of the property;
2. HRM responsible for general public liability insurance; and
3. HRM indemnified the property owner against all liabilities, costs, suits, claims caused by the public use of the property.

DISCUSSION

During a site meeting on May 6, 2016, Mrs. Pomroy/Rose indicated to staff that a suitable fence was required at one time. The current path created from the road does provide access to the beach and its regular users are familiar with this being the access point. During the site visit, it was confirmed the fence does lean in one section and is worn and weathered due to its close proximity to the ocean; however, it does not pose any safety concerns and is functioning as intended.

In July 2016, Mrs. Pomroy/Rose asked for an update as she indicated the fence is an eyesore and was prepared to remove the fence herself.

In September 2016, as a result of a service request where the owner indicated she was going to start removing the fence, staff hand delivered a letter and requested the owner to reconsider and review the Easement Agreement.

There are now bushes and shrubs planted on the site that helps delineate the easement area from the rest of Mrs. Pomroy/Rose's property. In this instance, staff feels that the bushes provide sufficient separation between the public access area and the rest of the owner's land.

The removal of the fence will in no way remove the public right to access the beach area, as the Public Access Easement will remain in place. The only difference will be that the fence requirement for HRM will be removed from the agreement, any future fence will be the responsibility of the property owner, and all of HRM's obligations will be terminated. Removal of the fence will eliminate HRM's liability and costs associated with future maintenance and recapitalization of the fence. The owner appears to be aware of the consequences and still agrees with the removal.

FINANCIAL IMPLICATIONS

The cost for removal of the fence will be absorbed within the 2016/17 Operating Budget for Parks & Recreation.

RISK CONSIDERATION

There is low risk to HRM with the recommendation of this report, as it is removing an HRM responsibility. However, there is a risk to the property owner in that the general public may start using other portions of their property not included in the public access easement area.

COMMUNITY ENGAGEMENT

A representative of the Prospect Road Recreation Association was advised of this request, as they were involved with the decision to install the original fence. The representative advised staff that the Association is not in support of removing the fence; however, no rationale was provided. As stated above, the fence is located on private property and the original purpose of the fence (to delineate private property from the easement) has now been replaced by natural vegetation and a clearly defined footpath.

ENVIRONMENTAL IMPLICATIONS

None

ALTERNATIVES

- Alternative 1: The current Easement Agreement would stay in place and HRM would continue to maintain the fence and plan for capital replacement in 3-5 years.
- Alternative 2: The current wooded board fence would be replaced with a lower chain link fence, which would be less obtrusive.

ATTACHMENTS

- Attachment A - 39 Coolens Road Easement Agreement
Attachment B - 39 Coolens Road Deed
Attachment C - Picture of current fence condition

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: Rob Mullane, Superintendent Parks 902-490-5819

Report Approved by:

Ray Walsh, Manager Parks 902- 490-695

Report Approved by:

John Traves, Q.C., Director, Legal, Insurance and Risk Management Services
902.490.4226

Report Approved by:

Brad Anguish, Director of Parks & Recreation 902.490.4933

Attachment A

THIS AGREEMENT dated the 30th day of July, 1999.

BETWEEN:

KIMBERLEY POMROY and PAUL POMROY, both of Shad Bay, in the Halifax Regional Municipality, Province of Nova Scotia,
(hereinafter called the "Purchaser")

OF THE ONE PART

- and -

HALIFAX REGIONAL MUNICIPALITY, a municipal body corporate
(hereinafter called the "Municipality")

OF THE OTHER PART

WHEREAS the Municipality has conveyed to the Purchaser the lands described in Schedule "A" ;

AND WHEREAS the Purchaser has agreed to preserve public access to the lands described in Schedule "B";

WITNESSETH THAT in consideration of the mutual covenants contained herein and the consideration of the sum of Ten Dollars (\$10.00) paid by each of the parties thereto the other party, the receipt and adequacy of which is hereby acknowledged, the Municipality and the Purchaser hereby agree as follows:

1. The Municipality shall be responsible for the erection and maintenance of a suitable fence between the lands described in Schedule "B" and the remaining lands being conveyed to the Purchaser;
2. The Municipality shall be responsible for obtaining and maintaining general public liability insurance with a minimum coverage of Two Million Dollars for the portion of property described in Schedule "B";
3. The Municipality indemnifies the Purchaser against all liabilities, costs, suits, claims, demands, and actions, and causes of actions of any kind for which the Purchaser may be considered or become liable for by reason of public use of the property described in Schedule "B";
4. The Municipality agrees that any right of reverter shall be subject to any outstanding mortgage with a recognized lending institution on the lands described in Schedule "A" with the intent that the mortgage would be paid in full.

THIS AGREEMENT shall be to the benefit of and binding upon the Municipality and Purchaser, their executors, respective heirs, administrators and approved successors and assigns.

APPROVED
AS TO FORM
Original
signed

IN WITNESS WHEREOF the parties have hereunder executed this Agreement on the day of July, 1999

SIGNED, SEALED AND DELIVERED

Original signed

) KIMBERLEY POMROY

Original signed

) PAUL POMROY

) HALIFAX REGIONAL MUNICIPALITY

) Per

) Per

Municipal Clerk (Acting)

Original signed

Original signed

Original signed

Witness

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

I hereby certify that on this 22 day of July, 1999 Kimberley Pomroy and Paul Pomroy, one of the parties thereto, signed, sealed and delivered the same in my presence.

Original signed

A BARRISTER OF THE SUPREME
COURT OF NOVA SCOTIA

MARILYNN A. LESLIE
A Commissioner of the Supreme
Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this 30 day of July, A.D., 1999 before me, the subscriber, personally came and appeared Robin Primeau and Hardy Hackzell, a subscribing witness to the foregoing Indenture, who having been by me duly sworn, made oath and said that the duly authorized officers of Halifax Regional Municipality, caused the same to be executed in its behalf and its corporate seal to be thereunto affixed in h presence.

Original signed

A BARRISTER OF THE SUPREME
COURT OF NOVA SCOTIA

Schedule "A"

Lot 1

All that certain lot, piece, parcel or tract of land situate, lying and being at Shad Bay in the County of Halifax, Province of Nova Scotia being Lot 1 shown on a plan entitled "Plan Showing Survey of Karl Knox Subdivision," dated November 20, 1984 signed by A.T. Barry, N.S.L.S., said Lot 1 being more particularly bounded and described as follows:

Beginning at a S.M. set on the northern boundary of Coolen Road and the O.H.W.M. of Shad Bay;

Thence in a general northerly and westerly direction along the said O.H.W.M. of Shad Bay distant 489 feet to a S.M. set on the northeastern boundary of Lot 2;

Thence S16 degrees 53 minutes 44 seconds E distant 161.19 feet along the eastern boundary of Lot 2 to a S.M.;

Thence S13 degrees 32 minutes 13 seconds E distant 172.00 feet along the said eastern boundary of Lot 2 to a S.M. set on the said northern boundary of Coolen Road;

Thence easterly along the said northern boundary of Coolen Road being the arc of a curve to the right having a radius of 378.62 feet an arc distance of 117.22 feet to a S.M.

Thence N82 degrees 33 minutes 58 seconds E distant 37.19 feet along the said northern boundary of Coolen Road to the Place of Beginning.

The above described lot 1 having an area of 40550 square feet.
SUBJECT TO the right to public access over the lands described in Schedule "B"

SCHEDULE "B"

PARCEL PA-1

COOLENS ROAD
SHAD BAY, HALIFAX COUNTY

ALL that certain parcel of land lying on the northern side of Coolens Road, Shad Bay, Halifax County, Nova Scotia being PARCEL PA-1 as shown on a plan entitled "Plan of PARCEL PA-1 Public Access Easement over Lot 1, Lands conveyed to Halifax Regional Municipality, Coolens Road, Shad Bay, Halifax County..." dated June 25, 1999 signed by Lawrence G. Miller N.S.L.S., said plan being on file in the office of the Director of Engineering Services for the Halifax Regional Municipality as Plan No. 99021701. The said PARCEL PA-1 being more particularly described as follows:

BEGINNING at a point of curvature on the northern boundary of Coolens Road, said point being N 71° 44' 25" W, 380.266 metres of Nova Scotia Coordinate Monument 10156;

THENCE N 10° 31' 13" E, 9.018 metres;

THENCE N 27° 43' 13" W, 22.897 metres;

THENCE N 56° 28' 45" W, 12.047 metres;

THENCE N 05° 21' 54" W, 18.334 metres;

THENCE N 00° 11' 05" W, 7.510 metres;

THENCE N 84° 07' 45" W, 29.127 metres;

THENCE N 17° 48' 11" W, 28.689 metres to the ordinary high water mark of Shad Bay;

THENCE northeasterly, southeasterly and southerly following the ordinary high water mark of Shad Bay, 150 metres more or less to the northern boundary of Coolens Road;

THENCE S 82° 33' 58" W, 11.336 metres along the northern boundary of Coolens Road to the point of beginning.

CONTAINING 1618 square metres more or less.

BEARINGS are grid, referable to a Modified Transverse Mercator Projection 3° Zone with Central Meridian at 64°30' West longitude.

THE said PARCEL PA-1 is over a portion of Lot 1, lands conveyed to Halifax Regional Municipality as recorded in Deed Book 6278, Page 558 at the Registry of Deeds, Halifax.



HALIFAX COUNTY REGISTRY OF DEEDS		26893	6434	880-883
I certify that this document was registered as shown here.		26893	6434	880-883
Arlene O'Eon	Registrar	ADULT	10:50 AM	
MM	DD	YYYY	Time	

Original

THIS WARRANTY DEED made the 30th day of July, A.D. 1999.

BETWEEN:

I hereby certify that:
 The Deed Transfer Tax has been paid
 and the Deed Transfer Tax is due and payable
 within the prescribed period.
 I dated this 11 day of July 19 99 AD.
 Arlene O'Eon Registrar of Deeds
 Halifax Regional Municipality
 Original signature needed
 Municipal Solicitor

HALIFAX REGIONAL MUNICIPALITY, a municipal body corporate;

Hereinafter called the "GRANTOR"

OF THE ONE PART

- and -

KIMBERLEY POMROY and PAUL POMROY, both of Shad Bay, in the Halifax Regional Municipality, Province of Nova Scotia, as Joint Tenants and not as Tenants-in-common,

Hereinafter called the "GRANTEE"

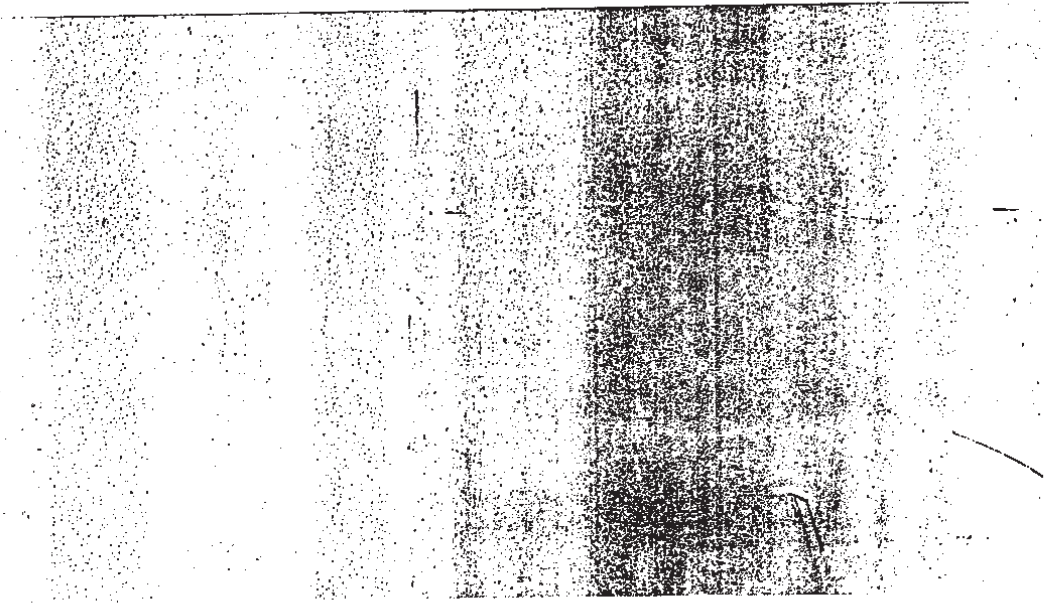
OF THE OTHER PART

WHEREAS the GRANTOR and GRANTEE desire to create a determinable fee simple whereby failure by the GRANTEE to preserve public access to the lands described in Schedule "B", being a portion of the lands described in Schedule "A", shall cause the lands described in Schedule "A" to revert to the GRANTOR or its successor;

WITNESSETH that in consideration of One Dollar (\$1.00) and other good and valuable consideration;

THE GRANTOR hereby conveys to the GRANTEE the lands described in Schedule "A" to this Warranty Deed for so long a public access to the lands described in Schedule "B" is preserved and no longer and hereby consents to this disposition, pursuant to the Matrimonial Property Act of Nova Scotia.

THE GRANTOR covenants with the GRANTEE that the GRANTEE shall have quiet enjoyment of the lands, that the GRANTOR has good title in fee simple to the lands and the right to convey them as hereby conveyed, that the lands are free from encumbrances, and that the GRANTOR will procure such further assurances as may be reasonably required.



In this WARRANTY DEED the singular includes the plural and the masculine includes the feminine, with the intent that this WARRANTY DEED shall be read with all appropriate changes of number and gender.

IN WITNESS WHEREOF the Grantor has hereunto set his hand and affixed his seal the day and year first above written.

SIGNED, SEALED AND DELIVERED)	HALIFAX REGIONAL MUNICIPALITY
- IN THE PRESENCE OF -)	
Original signed [redacted])	Original signed [redacted]
[redacted])	[redacted]
Original signed [redacted])	Original signed [redacted]
[redacted])	Municipal Clerk (Acting)

DOMINION OF CANADA
PROVINCE OF NOVA SCOTIA

ON THIS 30 day of July, A.D., 1999, before me, this subscriber, personally came and appeared Robin Primeau and Marilyn MacKenzie who, having been by me duly sworn, made oath and said that HALIFAX REGIONAL MUNICIPALITY, one of the parties thereto, caused the same to be executed in its behalf and its corporate seal to be thereunto affixed in her presence.

Original signed [redacted]
A Commissioner of the Supreme Court
of Nova Scotia

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Attachment C