

HALIFAX REGIONAL COUNCIL
January 29, 2002
6:00 P.M.

To: Mayor Kelly and Members of Halifax Regional Council

Submitted By: Wayne Anstey
Wayne Anstey, Q.C., Director of Administrative Services

Date: 22 January 2001

Subject: Councillor Goucher - Municipal Government Act
Subdivisions 10% Rule

INFORMATION REPORT

ORIGIN:

At the meeting of Halifax Regional Council held January 8, 2002, Councillor Goucher advised that this matter pertains to Section 279 of the *Municipal Government Act* which states "where a subdivision by-law specifies minimum lot dimensions or lot area and the by-law so provides, the development officer may approve a plan of subdivision that shows not more than two lots that do not meet these requirements, provided lot dimensions and area are not less than 90% of the required minimums". The Councillor noted this section is permissive only in nature and undermines the intent of the MPS and LUB's within HRM. He noted this section is used as of right without consultation and has cast doubts in the minds of the public in Council's ability to control the planning policy. The rule can affect every district without any prior knowledge. He suggested serious consideration be given to termination of the use of this rule.

MOVED by Councillor Goucher, seconded by Councillor Rankin, that Council request that Legal Services provide an opinion with regards to the validity of Section 279 of the MGA without enabling policy contained within planning documents within HRM. Further, Council request planning provide a detailed report as to use of Section 279 of the MGA and it's application. Until such time as a report is returned to Council, ask staff that any approval under Section 279 be withheld. MOTION PUT AND PASSED UNANIMOUSLY.

BACKGROUND:

Section 279 of the *Municipal Government Act* provides:

279 Where a subdivision by-law specifies minimum lot dimensions or lot area and the by-law so provides, the development officer may approve a plan of subdivision that shows not more than two lots that do not meet these requirements, provided that the lot dimensions and area are not less than ninety per cent of the required minimums.

This Section is not new; the previous Planning Acts contained such a provision. The Section is intended to provide a form of minor variance process for subdivisions.

DISCUSSION:

As for the specific jurisdictional question posed by Councillor Goucher, in my opinion, the position stated by the Councillor is correct; the Section is clear that the Development Officer only has the authority to approve undersized lots as contemplated by the Section where Council approves a specific provision in the Subdivision By-law granting that authority.

At the present time, a provision very similar to Section 279 is contained in the Subdivision Bylaw of the former County area and that Bylaw also contains a number of other specific variance provisions; the By-law of the former City of Dartmouth has a general variance provision having a slightly different effect than Section 279; the Bylaw of the former Town of Bedford does not contain this variance provision, but does have some variance provisions dealing with infill lots; the Bylaw of the former City of Halifax does not contain any variance provisions.

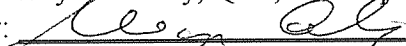
Planning and Development Services have advised me that this section is only used by the Development Officers in the areas of HRM where the authority exists, through the Subdivision and Land Use By-Laws. To apply this section in Bedford and the former Cities of Halifax and Dartmouth, would require an amendment to the Subdivision and Land Use By-Laws.

ATTACHMENTS:

None.

Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by: Wayne Anstey, Q.C., Municipal Solicitor 490-4229.

Report approved by: 
Wayne Anstey, Director of Administrative Services 490-4229