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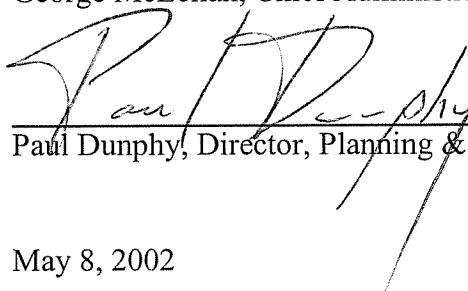
Halifax Regional Council  
May 21, 2002

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

**SUBMITTED BY:**



George McLellan, Chief Administrative Officer



Paul Dunphy, Director, Planning & Development Services

**DATE:** May 8, 2002

**SUBJECT:** Private Members Bill - Estate of Roy Lindsay Taker, Seaforth

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### ORIGIN

Service Nova Scotia & Municipal Relations has received a request from Judith Gass, Solicitor for the Estate of Roy Lindsay Taker, to proceed with a Private Members Bill to enable a subdivision to create three lots that were intended to have been devised through a will. The Province wants to confirm that the Municipality has no objections to the proposed subdivision before proceeding to Cabinet.

### RECOMMENDATION

It is recommended that Regional Council notify the solicitor for Service Nova Scotia and Municipal Relations that Halifax Regional Municipality does not object to the Private Members Bill which will enable subdivision of the Taker Estate into three lots pursuant to Mr. Taker's will.

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## BACKGROUND

- The Taker Estate lands are located in Seaforth and are approximately nine and half acres in area. The lands do not abut a public road but front on the former Canadian National Railway right-of-way which is now owned by the NS Department of Natural Resources and used as a trail.
- Mr. Taker's will specifies that the property should be subdivided into three lots (see attached sketch) to provide one lot for each of the three heirs. This subdivision, is inconsistent with the requirements of the Subdivision By-law since none of the proposed lots will have road frontage.
- The Subdivision By-law permits the creation of a maximum of two lots without road frontage but does not permit the creation of three lots. Under previous Provincial legislation (i.e. the Planning Act) any subdivision of land by will was exempt from municipal subdivision requirements. Consequently the Taker Estate subdivision would have been permitted.
- The *Municipal Government Act* (MGA) replaced the Planning Act and still exempts subdivision of land by will from municipal regulations. The exemption however is now limited to wills signed on or before January 1, 2000.
- In the case of the Taker Estate, the will was drafted prior to January 1, 2000 using the Planning Act as the basis for drafting the will. Unfortunately the will was not executed until after January 2000 due to Mr. Taker's illness. Mr. Taker then died before the change in the law was brought to his lawyer's attention.
- In order to enable the subdivision as intended by the will, the lawyer acting for the Taker Estate has requested a Private Members Bill which will permit the subdivision notwithstanding its date of execution. Because the subdivision would be inconsistent with the requirements of HRM's Subdivision By-law the Province requires confirmation from HRM that it does not object to the subdivision prior to proceeding to Cabinet.

## DISCUSSION

Staff have reviewed the intended subdivision to determine whether the proposal presents any negative implications from a planning perspective.

### Access

The property contains an existing dwelling and is accessed by a driveway from Route 207 which crosses the abandoned rail line corridor. The Province will entertain an application for a license,

easement or right-of-way, to continue the use of the driveway access to the heirs once the estate is settled. Two additional lots are able to make use of the existing driveway, consistent with the access criteria of the NS Department of Transportation and Public Works which allow up to three dwellings to use a single driveway.

### Lot Size

The property's size and configuration provide more than sufficient lot area for each of the three new lots. The proposed lots will be able to meet HRM's minimum area requirements and will be required to Provincial regulations for on-site sewage disposal systems.

### Precedent

The MGA came into effect April 1, 1999. The provisions affecting wills and subdivisions did not take effect however until January 1, 2000. This delay was intended to permit time for lawyers to incorporate the changes into their active case work so that subdivision provisions would not be included in wills drafted or executed after January 1, 2000. The Province communicated this change in legislation to the legal profession through conferences, communications with the Real Estate Lawyers Association of Nova Scotia (RELANS), and the Bar Society's newsletter and mail (see attached note).

With respect to setting a precedent, the solicitor for Service Nova Scotia and Municipal Relations has advised that should it become apparent that the change in the law has created problems for more than one or two estates, then the Province will consider whether a general amendment to the *Municipal Government Act* is warranted. This is unlikely since as statistics from the Registry of Deeds for Halifax County confirm that between 1990 and 2001 less than two wills per year purported subdivided property.

Staff have reviewed all of the relevant information and advise that Council's non-objection to the local bill is not precedent setting and does not violate the intent of the Municipal Planning Strategy and Land Use By-Law for this area.

### **BUDGET IMPLICATIONS:**

None.

### **FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

None.

## ALTERNATIVE

Council could object to the Private Members Bill. Staff does not recommend this course of action since the proposed subdivision would have been permitted had the will been executed when it was drafted prior to January 1, 2000. In addition the lots are able to meet all other planning requirements and this is not expected to create a precedent for creating new lots by wills signed drafted and signed after January 1, 2000.

## ATTACHMENTS

Reminder to Bar Society from Service Nova Scotia and Municipal Relations  
Site Plan showing the proposed subdivision

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: Sharon Bond., Manager, Subdivision & Land Use Compliance

Report Approved by: Paul Dunphy, Director, Planning and Development

**Subdivision by Will**  
**Change of Law Under the Municipal Government Act**

This is a reminder of the change made to the law by the *Municipal Government Act* in case it is helpful.

Subdivision by will, where the will is executed after January 1, 2000, is no longer permitted.

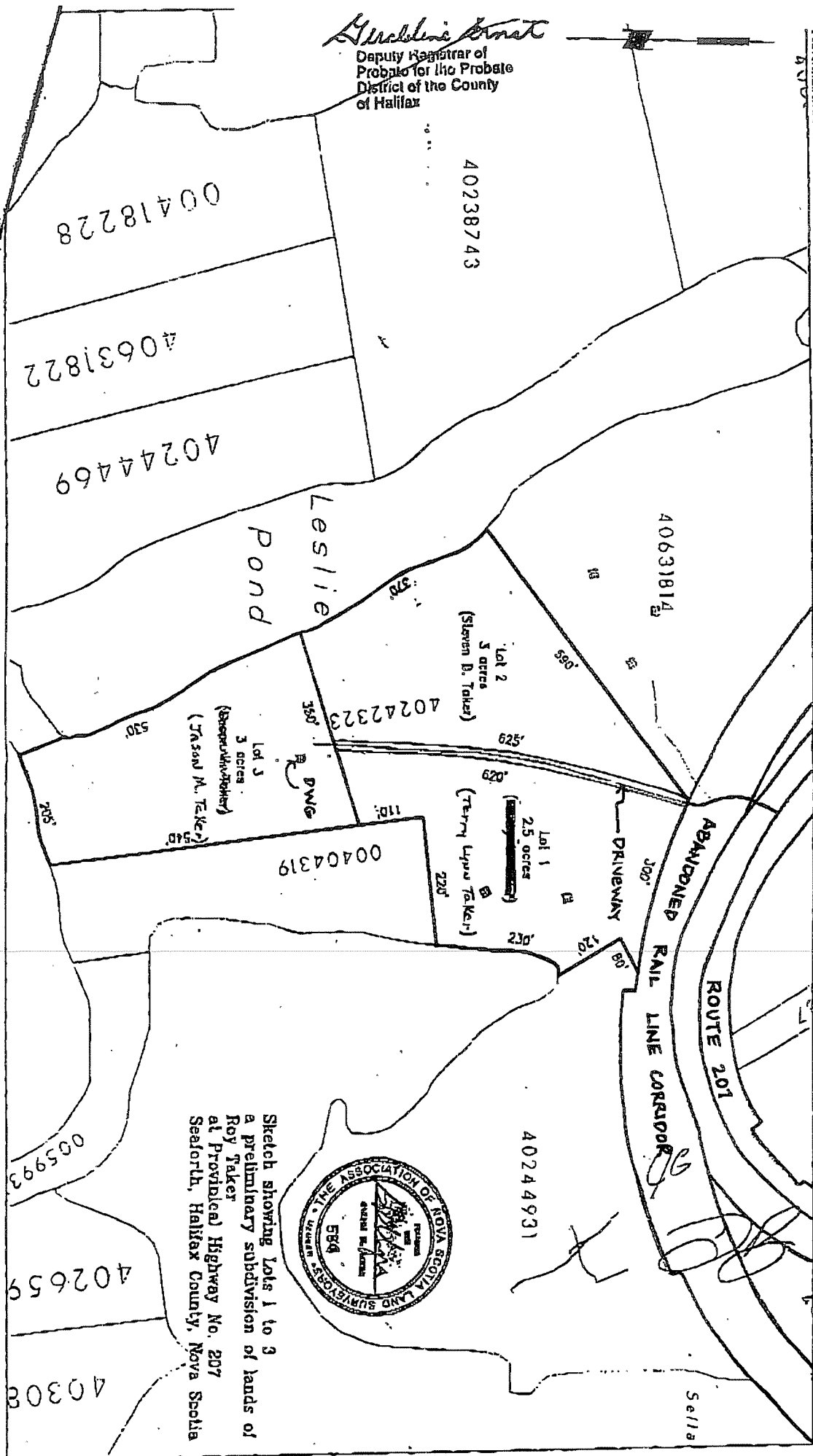
Clause 268(2)(j) of the *Municipal Government Act* has replaced the previous provision in the *Planning Act*. Clause 268(2)(j) provides that the exemption from subdivision approval for a will applies only to a subdivision resulting from a devise of land by will executed on or before January 1, 2000. So wills that existed on January 1, 2000 are not affected by the change in the law. However a will or codicil executed after January 1, 2000 that attempts to divide, re-divide or consolidate land will be ineffective.

Thank you.

Cathleen O'Grady  
Nova Scotia Department of Justice Solicitor  
Service Nova Scotia and Municipal Relations

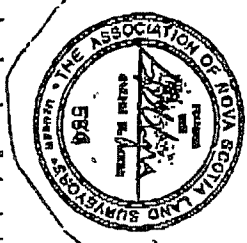
*G. G. G. G.*  
Deputy Registrar of  
Probate for the Probate  
District of the County  
of Halifax

For Land Information Centre  
Information Services Division  
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Nova Scotia Department of  
Housing and Municipal Affairs

5151 Terminal Road - Halifax - NS  
P.O. Box 411-7735 - Fax 902-444-5747



Sketch showing Lots 1 to 3  
a preliminary subdivision of lands of  
Roy Toker  
at Provincial Highway No. 207  
Seaford, Halifax County, Nova Scotia

This map is a simplified representation of property boundaries which are not definitive.