

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: _____
Jacques Dubé, Chief Administrative Officer

DATE: July 7, 2017

SUBJECT: **Administrative Order 50 Disposal of Surplus Real Property – PID 40107153.**
Lot 3 Shore Drive, Bedford

ORIGIN

August 6, 2013 – Regional Council approved the surplus status and disposal of Lot 3 Shore Drive, Bedford, through Section 4(e), Community Interest category of Administrative Order 50.

October 18, 2016 – A Call for Submissions was issued with an application deadline of February 9, 2017.

LEGISLATIVE AUTHORITY

HRM Charter (2008) Section 63

(1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that Council considers to be carrying on an activity that is beneficial to the Municipality.

(2) A resolution to sell or lease property referred to in subsection (1) at less than market value shall be passed by a two-thirds majority of the Council present and voting.

(3) Where the Council proposes to sell property referred to in subsection (1) valued at more than ten thousand dollars at less than market value, the Council shall first hold a public hearing respecting the sale.

(4) The Council shall advertise the public hearing at least twice, in a newspaper circulating in the Municipality, the first notice to appear at least fourteen days before the hearing.

(5) Notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or description of the tangible personal property, the estimated value of the property and the purpose of the sale. 2008, c.39, s.63.

Section 64 Where the Municipality holds land that is of insufficient size or dimensions to be capable of any reasonable use, in the opinion of the Council, all or part of the land may be sold to the owner of any lot abutting that land and may be consolidated into such lot, and notwithstanding Section 63 the sale price of the land so sold may be set by Council at a price that is less than market value at the time of the sale.

Section 120(1)(3) The capital reserve fund includes (a) funds received from the sale of property.

Administrative Order 50 Respecting Disposal of Surplus Real Property.

Administrative Order 2014-015-ADM Respecting Reserve Funding Strategies.

Reserve Business Case, Obligation Reserve – Q526 Capital Fund Reserve.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Schedule a public hearing to consider the sale of PID 40107153 - Lot 3 Shore Drive, Bedford, to the Bedford Basin Yacht Club as per the terms and conditions of sale set out in Table 2 of this report; and
2. Subject to the outcome of the public hearing, approve the sale and authorize the Mayor and Municipal Clerk to enter into an Agreement of Purchase and Sale with the Bedford Basin Yacht Club as per the terms and conditions outlined in Table 2 of this report.

BACKGROUND

Municipal Policy: Administrative Order 50 is a standardized process for the sale of surplus real property according to the intent of the sale. Section 2(b) defines Community Interest properties as known to have potential for community use, in particular where:

- (i) there has been a prior community or institutional use of the property; or
- (ii) by location or scarcity of available property the consideration would reasonably arise.

Section 4(1)(l) states that in the event that Council rejects any or all non-profit organizations' submissions to purchase at less than market value, Council may direct staff to proceed to sell the property at market value.

In 2013, the subject property was declared surplus by Regional Council and assigned to the Community Interest category of Administrative Order 50. An open Call for Submissions was issued on October 8th, 2016. As of the application deadline of Thursday, February 9, 2017, one (1) proposal was received. The offer of purchase is from the Bedford Basin Yacht Club ("the Club").

Property Description: The subject property is a vacant parcel of land improved by asphalt paving and fencing abutting Shore Drive that was formerly used as a tennis court. At 6,359 square feet the site meets the minimum lot area of 6,000 square feet under current zoning. Therefore, the subject property can be developed and does not meet the requirement of Section 64 of the *HRM Charter* in terms of a sale to an abutting property owner at a price determined by the Council.

Zoning: The subject property is zoned Park (P) which permits recreational uses including tennis courts, lawn bowling green, skating rink, athletic field, golf course, picnic area, swimming pool, beach area, day camp and ancillary uses.

Property Valuation and Assessment: In 2016, HRM retained Altus Group Limited to provide an appraisal of the subject property. The appraised value is included in a confidential companion Information Report to Regional Council dated September 5, 2017.

History of Ownership and Use: The subject property has a historical relationship to the former Town of Bedford and the Bedford Basin Yacht Club. This information is provided for context and to explain why HRM is the current owner of half a former tennis court.

In 1969, the Club acquired title to a parcel of land on Shore Drive, Bedford, from the former Bedford Tennis and Bridge Club. The following year the property was sub-divided into five (5) parcels to facilitate sale or

conveyance to raise operating funds. Two parcels of land, identified as Lot 3 and Lot 4, created through the sub-division process contained a tennis court. In 1978, the Club sold these two lots to private interests¹ but the Club enjoyed continued use of the land/amenities presumably with the new owners' consent.

At their meeting of June 14, 1982, the former Town of Bedford debated the purchase of the subject property Lot 3 and was petitioned on the matter by residents who objected based on other municipal expenditures they considered higher priority: a motion to acquire title was defeated². The matter was reconsidered at the following Council meeting where the argument presented in support of acquiring the land was to ensure "the lands presently and formerly occupied by the Yacht Club would remain for recreational use"³. Finally, on July 12, 1982, the Council rescinded its previous motion and approved payment of up to \$41,500; \$40,000 for the land plus legal costs and assumed responsibility for outstanding sewer liens at an unspecified cost⁴.

At some point, the use of the subject property as a tennis court ceased and the land has been used for boat storage and events hosting. Upon amalgamation the subject property ceded to HRM. There is no lease or license agreement in effect and the land has not been assessed as taxable.

DISCUSSION

Proponent Profile: Founded in 1953 and incorporated as a non-profit society in 1959, the Bedford Basin Yacht Club provides a range of services and social functions for members including sailing, boating, cruising, racing and sail training for juniors and adults. Membership is not exclusively based on ability to pay: new members must be approved by the Board of Directors. The Club's by-laws are silent on the disposition of assets upon dissolution of the society.

Club operations are sustained by membership dues, clubhouse dining room revenues and social events, wharf and mooring rentals, yard services⁵, regatta and instructional fees. The Club has a one-time initiation fee of \$825 for senior members and annual membership dues range from \$795 for adults to \$15 for juniors (8 to 18 years of age). In 2016, the membership was approximately 250. Registration fees for the 2016 *Learn to Sail* program were \$175/week for children 5-8 years of age, \$400 for a 2-week junior program age 9 and over, and 2-day club regattas cost \$85 to \$155. Competitive regatta fees vary but are generally higher per boat/crew complement.

Proponent's Intended Property Use: The Club wishes to acquire title to the subject property to ensure the continuation of existing uses, namely a seasonal *Learn to Sail Program* for children and youth and off-season boat storage. The *Learn to Sail* program has experienced significant growth over the last four years with an increase in participation from 42 to 224 students, of which the majority are non-members, with a corresponding increase in net revenues as shown below in Table 1. From the financial information provided by the applicant the 2016 *Learn to Sail* program represented approximately 28% of the Club's total annual revenue.

	2013	2014	2015	2016
Revenue	\$52,734	\$55,356	\$78,824	\$121,232
Expense	\$52,889	\$57,922	\$60,032	\$77,177

¹ Lot 4 sold in June, 1978, and Lot 3 was sold in November, 1978. The Club repurchased Lot 4 in 1980: the transaction appears to have been primarily for the purpose of financing (a mortgage agreement).

² Minutes, Town of Bedford Council, June 14, 1982.

³ Minutes, Town of Bedford Council, June 21, 1982.

⁴ Minutes, Town of Bedford Council, July 12, 1982, pp.4-6.

⁵ Boat storage and launching.

Net Revenue	(\$155)	(\$2,566)	\$18,792	\$44,055
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Proponent's Terms and Conditions of Offer: The Club's offer includes a purchase price of \$2,500 plus closing costs for the property appraisal, deed migration, and "any tax certificate as applicable". Closing within 90 days is preferred. A Buy-Back Agreement of up to five (5) years would be acceptable, however, the Club proposes that any repurchase of the subject property by HRM would be for the original purchase price and any closing costs paid by the Club, plus a "carrying cost" of Prime+3%.

Administrative Order 50 – Community Interest Category

The A050 process for consideration under the Community Interest category is a two-step process to determine the feasibility of a proponent's proposal. The first step requires a technical evaluation by a staff team followed by overall consideration by Regional Council using different criteria.

1. Staff Evaluation Results

An inter-disciplinary team of staff was convened to evaluate submissions. Led by Finance & Asset Management, the team included Grants & Contributions, Real Estate, Financial Policy & Planning, Parks & Recreation. In accordance with Section 4(1)(e) and (f) of A050, staff evaluates submissions on four (4) criteria:

- content compliance
- viability
- compensation
- benefit to the Municipality.

Key Findings:

1. **Content Compliance** – The application met the requirements of policy as set out in Section 4(1)(e)(i) to (v) of Administrative Order 50 and the formal Call for Submissions.
2. **Viability** – The Club is long-standing sport organization whose financial position has improved over the last four years with a modest surplus over the last three years. However, the Club's 5-Year Business Plan indicates that marina berth rentals and membership need to increase to generate additional revenue for re-capitalization.
3. **Compensation** – A proposed purchase price of \$2,500 is below the appraised value and represents 0.39 cents per square foot. The offer also falls well below the price paid by the Town of Bedford to enable the Club's financial position and continuous use of the premises.
4. **Benefit to the Municipality** – While the Municipality does deliver sailing programs out of the St. Mary's Boat Club in Halifax for the public, the role of local yacht and boat clubs in the provision of boat launch facilities for recreational boaters located on Halifax Harbour was recognized in a staff report to the Harbour-East Marine Drive Community Council dated November 2, 2015⁶. The report noted that most yacht clubs and marinas allow non-members use of their launch amenities on a daily basis for a modest fee (may include canoe and kayak).

In summary, the submission scored 67/100 based on the information provided by the applicant. The review concluded that ownership of the subject parcel of land is important to the on-going viability of the Club in terms of its ability to generate annual revenues.

The Club's offer to repurchase the subject property for \$2,500 is substantially lower than the appraised market value and the \$40,000 paid by the former Town of Bedford to acquire title in support of the Club's

⁶ Recommendation Report to December 3, 2015, meeting of the Harbour East-Marine Drive Community Council, Public Boat Launch – Dartmouth Shoreline, dated November 2, 2015.

operational viability at this location: non-members derived limited benefit in terms of access to the former tennis court or as a “public park”.

Recommendation

It is recommended that Regional Council convey title to the property for the purchase price of \$2,500 plus HST and accept the Club’s offer to pay HRM’s closing costs for the property appraisal and deed migration. A tax certificate is not required given the current exempt status of the subject property.

It is recommended that a Buy-Back Agreement be applied to the conveyance for an initial term of 25 years in accordance with Regional Council’s policy⁷. Upon completion of the 25 years there shall be an automatic review by Council to consider continuation, amendment or release. During the term of the Buy-Back Agreement the owner may apply to the Municipality for postponement to secure financing of up to 65% of the property’s market value as of the date of the request. The purpose of the Buy-Back Agreement is to uphold the intent of a less than market value sale.

Table 2. KEY TERMS AND CONDITIONS: PROPOSED	
Civic Address	PID 40117153 – Lot 3 Shore Drive, Bedford.
Landlord	Halifax Regional Municipality.
Tenant	Bedford Basin Yacht Club.
Area	6,359 sf (0.145 acres).
Zoning	Park (P) Zone.
Assessed Value	\$142,000.
Appraised Value	See: In Camera Information Report dated September 5, 2017.
Tax Status	Residential Exempt. Subject to re-assessment by PVSC upon conveyance.
Proposed Purchase Price	\$2,500 plus HST.
Proposed Terms of Offer	A Buy-Back Agreement with an initial term of 25 years shall apply to this conveyance followed by an automatic review by Regional Council.
Proposed Use	Continuation of recreational amenities and programming in accordance with the Club’s Articles of Incorporation.
Conditions of Sale	Property to be conveyed “as is” and as zoned.
Closing Date	Within three months of Council’s approval.
Cost of Sale Recoveries	The Club shall pay HRM’s appraisal cost (\$3,500) plus HRM’s reasonable legal costs and expenses (title and deed migration) estimated at \$1,000 for a total of up to \$4,500 which is in addition to the purchase price and due upon closing.

2. Council’s Consideration

Upon review of staff’s evaluation, Council must review the submissions based on criteria set out in Section 4(1)(i) of the policy, namely:

- (i) the market value of the property as appraised;
- (ii) the Planning Strategies of the area;
- (iii) the benefit of any cost saving to the Municipality;
- (iv) the consequences, beneficial or otherwise, to the community or to the Municipality as a whole;
- (v) the beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value; and
- (vi) whether or not a Buy-Back is a condition of a sale.

⁷ Report to Regional Council meeting of July 22, 2014, “Use of Buy-Back Agreements in Property Sales to Non-Profit Organizations”.

The following information is provided for Council's consideration:

- the assessed value of the property is \$142,000.
- the appraised market value "as is/as zoned" is included in a separate In Camera Information Report⁸.
- the proponent's intended use complies with current zoning.

FINANCIAL IMPLICATIONS

If approved, sale of the subject property for the purchase price of \$2,500 plus HST represents a less than market value sale.

Based on the 2016 assessed value of \$142,000 sale of the subject property to the Club for a lesser value represents an in-kind contribution of \$139,500 by HRM.

If Council decides to proceed with disposal, funds received will be directed to the Capital Fund Reserve Q526.

Obligation Reserve – Capital Fund Reserve Q526

The reserve is funded by the sale of land in HRM, other than Business/Industrial Parks or sale of land conveyed to HRM for parks, playgrounds or similar public purposes. Several other large properties are now excluded from deposit to this reserve and are being redirected to the Strategic Capital Reserve Q606. The Capital Reserve Fund is governed by the Halifax Regional Municipality Charter Section 120(1),(3) and (4). Withdrawals from the reserve are for capital expenses for which the Municipality may borrow. The recommendation does not have a negative impact to the reserve balance as this would be a contribution to the reserve that is part of the budgeted revenue to March 31, 2018.

Budget Summary. Obligation Reserve – Capital Fund Reserve Q526

Balance in reserve March 31, 2017	\$ 12,334,724
Projected revenue to March 31, 2018	\$ 7,445,757
Commitments to March 31, 2018	<u>\$(12,322,406)</u>
Projected net available balance to March 31, 2018	\$ 7,458,075

Deed transfer tax at 1.5% of the purchase price shall be paid by the Club in the amount of \$37.50. This amount represents an opportunity cost of \$2,092 based on an assessed value of \$142,000 (\$2,130 minus \$37.50).

RISK CONSIDERATION

Low to Moderate. The land improvements (asphalt and partial fencing of an unused tennis court) are not in good repair but the primary use for boat and equipment storage reduces risk exposure. The Club has a well-established presence within the community and stable operations. However, continued use of HRM land without a lease or license agreement poses liability to the Municipality and should be remedied in a timely manner.

COMMUNITY ENGAGEMENT

A public information meeting was advertised Saturday, September 17, 2016, and held on Wednesday, October 5, 2016, at the Bedford Public Library, 15 Dartmouth Road, Bedford. The purpose of the meeting was to inform the broader public on the legislated process to purchase municipal property and specific details about Lot 3 Shore Drive, Bedford. A Call for Submissions was issued Saturday, October 8th, 2016,

⁸ Section 5 of A050 requires appraisals remain confidential until the sale is completed.

with an application deadline of Thursday, February 9, 2017 (90 days). Because the property is not encumbered by a building or significant infrastructure proponents were allowed 90 days to prepare their plans and offer. A site visit was not conducted for a vacant land holding.

ENVIRONMENTAL IMPLICATIONS

No environmental testing has been undertaken at this location.

ALTERNATIVES

1. Regional Council could extend the opportunity for the Club to amend its terms of offer, including the proposed purchase price, within 30 days and direct staff to submit a Supplementary Recommendation report for Council's consideration.
2. Regional Council could decline the Club's offer and direct staff to proceed to sell the property at market value in accordance with Section 4(1)(l) of Administrative Order 50.

This action is not recommended: The use of the subject property for instructional programs and off-season boat storage represents a significant revenue source to the Club. The loss of access to this land could compromise the Club's on-going operational viability. Further, the appraised market value for residential redevelopment is modest and the marketability of this land may be compromised given the abutting sailing club activities, for example regattas and events.

3. Regional Council could propose amended terms and conditions of conveyance as deemed advisable.

ATTACHMENTS

1. Site Map and Photograph.

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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HALIFAX

ATTACHMENT 1 PID 40107153 – Lot 3, Shore Road, Bedford SITE MAP AND PHOTOGRAPHY



Site Map



Photo