

# HALIFAX

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**Item No. 14.1.2**  
**Halifax Regional Council**  
**December 5, 2017**

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

**SUBMITTED BY:**

Original Signed by 

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Jacques Dubé, Chief Administrative Officer

**DATE:** November 3, 2017

**SUBJECT:** **Administrative Order 50 Disposal of Surplus Real Property – PID 40028193**  
**Gerard Island, Spry Bay**

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## **ORIGIN**

October 6, 2015 - Regional Council declared PID 40028193 Gerard Island, Spry Bay, surplus to municipal operational requirements and approved disposal through the Community Interest category of Administrative Order 50.

June 17, 2017 – Call for Submissions was issued for the subject property with an October 24, 2017, submission deadline.

## **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (HRM Charter), 2008, S.N.S c.39*

**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.

*HRM Charter*

**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.*

### **Section 2(2)(b) Community Interest**

Properties known to have potential for community use, in particular where:

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

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

Municipal Government Act, 1989, S.N.S c.18

**Section 102(1)** A Council may determine, by by-law, that a deed transfer tax applies to the municipality and the rate of the deed transfer tax, but the rate of the deed transfer tax shall not exceed one and one half percent of the value of the property transferred.

**(2)** A deed transfer tax applies to the sale price of every property that is transferred.

### Section 109

(7) Where the grantee is a registered Canadian charitable organization, the deed is exempt from deed transfer tax if the property is not to be used for any commercial, industrial, rental or other business purpose and if an officer of the grantee makes and files an affidavit to that effect.

(8) Notwithstanding subsection (7), where, within three years after filing of the affidavit, the property is used by the grantee for a commercial, industrial, rental or other business purpose or is sold or conveyed by the grantee, the treasurer shall compute the deed transfer tax for which the grantee would have been liable if the grantee had not been a registered Canadian charitable organization and the grantee is liable to pay the amount of the tax and interest on it at a rate of ten per cent per annum computed from the date of the deed referred to in subsection (7).

### RECOMMENDATION

It is recommended that Halifax Regional Council approve the sale of PID 40028193 and authorize the Mayor and Municipal Clerk to enter an Agreement of Purchase and Sale with the Nova Scotia Nature Trust as per the terms and conditions set out in Table 1 of this report.

### BACKGROUND

**Municipal Policy:** Administrative Order 50 is a standardized process for the sale or lease<sup>1</sup> of surplus real property according to the intent of the sale. Section 2(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.

Sub-clause 4(1) (l). In the event 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 2015, the subject property was declared surplus by Regional Council and assigned to the Community Interest category of Administrative Order 50. Due to title issues, the Call for Submissions process was delayed until June 17, 2017. As of the application deadline of October 24, 2017, one (1) proposal was received. The offer of purchase is from the Nova Scotia Nature Trust.

**Property Description:** Gerard Island<sup>2</sup>, located in Spry Bay, was once home to over a sixty people who settled on the island and made their living through fishing and farming. Today, the island is largely unoccupied and large tracts of land are owned by the Province of Nova Scotia and the Nova Scotia Nature Trust ("the Trust") for environmental conservation. The subject property PID 40028193 is a vacant piece of land of approximately one (1) acre with no deeded access.

**Zoning:** The subject property is zoned RE Rural Resource Zone. Permitted uses include forestry, fishery and fishing support uses, agricultural uses, extractive facilities, communications transmission stations, kennels, hunting and fishing camps, commercial recreation uses, industrial uses and service industries (excluding salvage yards) and composting operations.

**Halifax Green Network Plan:** The subject property is located within an area of ecological significance and appropriate stewardship of this natural habitat is consistent with the aims of Halifax Green Network Plan. This plan recognizes the role of ecosystems in climate regulation, biodiversity, recreational and economic opportunities, and cultural identity.

**Property Valuation and Assessment:** In 2017 HRM retained Alderney Real Estate Appraisals to provide an appraisal of the property. The appraised value is included in a confidential companion In Camera

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<sup>1</sup> Within the context of a disposal the term lease infers an option of a lease-to-purchase.

<sup>2</sup> Might also be referred to as Gerard's Island.

Information Report dated December 5, 2017. In 2016, the assessed value of the property was \$7,300 (Resource Exempt) and increased to \$7,900 in 2017.

**History of Ownership and Use:** The subject property was once the site of a small school (Popes Harbour School) serving island residents and likely became vested in the Municipality by operation of law. There is no metes or bounds legal description for this property. As a result and given the nature of the property, it ought to be conveyed by Quit Claim Deed.

## **DISCUSSION**

**Proponent Profile:** Established in 1994, the Nova Scotia Nature Trust (“the Trust”) is a registered Canadian charity whose mission is to provide permanent conservation and stewardship of ecologically significant lands. The Trust acquires land through donation, purchase, leasing, or conservation agreements. Access to these lands is usually permitted provided such activities do not pose a threat to the habitat or endangered species. The society is sustained through donations, fundraising, and project-specific grants.

**Proponent’s Intended Property Use:** The purpose of the acquisition is to further conservation of Gerard Island and complements the Trust’s current holdings at this location which total 275 acres.

**Proponent’s Terms and Conditions of Offer:** The Nova Scotia Nature Trust offer includes a purchase price of \$1.00 plus “the cost of deed registration and advertising”. The Trust would prefer that a Buy-Back agreement not be applied to conveyance.

### **Administrative Order 50 – Community Interest Category**

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.

#### **Staff Evaluation Results**

An inter-disciplinary team of staff was convened to evaluate submissions. Led by Finance & Asset Management, the team included Grants & Contributions, Finance, and Planning & Development. In accordance with Section 4(1)(f) of Administrative Order 50, 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 sub-clause 4(1)(e) of Administrative Order 50 and the formal Call for Submissions.
2. **Viability** – The Trust manages over 90 properties comprising over 10,000 acres throughout the Province of Nova Scotia. The society has well established cash flows and assets to sustain their operations with demonstrated experience in conservation and stewardship of ecologically significant “natural landscapes”.
3. **Compensation** – A proposed purchase price of \$1.00 is below the 2017 appraised and assessed value but the subject property has very limited access and marketability. The offer of purchase includes compensation to the Municipality for the costs associated with the disposal process.
4. **Benefit to the Municipality** – At 324 hectares, Gerard Island is one of the largest of the coastal islands between Clam Harbour and Mushaboom Harbour that form part of the 100 Wild Islands conservation and eco-tourism initiative. The island is valued for its large areas of undisturbed coastal forest, cobble beaches, wetlands and salt marsh meadows that are important nesting and

migratory grounds for assorted bird species. Retention of this habitat is an important conservation goal while permitting leisure and recreational activities such as bird-watching, fishing, hiking, boating or sea kayaking.

In summary, the submission scored 82/100 based on the information provided by the applicant. The intended use is compatible with current zoning and upholds the aims of the Halifax Green Network Plan in terms of the preservation of coastal ecosystems, recreational opportunities including eco-tourism, and a rural cultural landscape (settlement and economic development linked to natural resources).

**Buy-Back Agreement**

It is recommended that the sale of PID 40028193 Gerard Island, Spry Bay, not include a Buy-Back Agreement. The subject property has negligible market value and re-development is constrained by its remote location. Conveyance of the property by Quit Claim Deed essentially grants any interest the Municipality has in the property to the purchaser without representation or warranty as to title..

<b>Table 1. KEY TERMS AND CONDITIONS (PROPOSED)</b>	
<b>Civic Address</b>	PID 40028193 Gerard Island, Spry Bay
<b>Land Area</b>	Approximately 1 acre or 43,560 square feet
<b>Zoning</b>	RE Rural Resource
<b>Assessed Value</b>	\$7,300 (2016) and updated to \$7,900 (2017)
<b>Appraised Value</b>	See: In Camera Information Report dated October 31, 2017.
<b>Tax Status</b>	Resource Exempt.
<b>Proposed Purchase Price</b>	\$1.00
<b>Terms of Offer</b>	The Trust shall be responsible for all costs including annual real property tax as applicable.
<b>Proposed Use</b>	Environmental conservation: the land is to remain undeveloped.
<b>Conditions of Sale</b>	Property to be conveyed “as is” and as zoned; Quit Claim Deed to contain a restrictive covenant such that the property shall remain in its natural state, be used for conservation purposes only and be described by PID Number.
<b>Buy-Back Agreement</b>	There shall be no Buy-Back Agreement applied to conveyance of the subject property.
<b>Closing Date</b>	Within three (3) months of Regional Council’s approval.
<b>Cost of Sale Recoveries</b>	The Trust shall pay up to a maximum of \$2,500 towards HRM’s costs (title search, deed, advertising) upon receipt of an itemized invoice. Excludes payment for independent appraisal.

Council’s Consideration

Upon review of staff’s evaluation, Council must review the submissions based on criteria set out in Section 4(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.

The following information is provided for Council's consideration:

- the assessed value of the property is \$7,900;
- the appraised market value "as is/as zoned" is included in a separate In Camera Information Report<sup>3</sup>;
- the proponent's intended use complies with current zoning.

### **FINANCIAL IMPLICATIONS**

If approved, the terms of conveyance recommended by the staff review constitutes a less than market value sale because the solicitation of offers has been restricted to only non-profit proponents. A purchase price of \$1.00 represents a less than market value sale.

Based on the 2017 assessed value of \$7,900, if approved the conveyance of PID 40028193 to the Nova Scotia Nature Trust for \$1.00 represents an in-kind contribution of \$7,900 by HRM. If Council decides to proceed with disposal, funds 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 Fund Reserve 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: proceeds from sale would be a contribution to the reserve.

#### **Budget Summary. Obligation Reserve – Capital Fund Reserve Q526**

Balance in Reserve September 30, 2017	\$ 15,105,317
Projected revenue to March 31, 2018	\$ 4,281,382
Commitments to March 31, 2018	<u>\$(11,488,359)</u>
Projected net available balance March 31, 2018	\$ 7,898,340

As a registered Canadian charitable organization, the Trust would be exempt deed transfer tax upon confirmation of non-commercial use. However, acceptance of a purchase price of \$1.00 effectively represents \$0 in deed transfer tax and an opportunity cost of \$118.50.

Acceptance of \$2,500 towards HRM's closing costs represents a further in-kind contribution of approximately \$3,500 for an independent appraisal.

Conveyance of the subject property will necessitate a review of the property's current classification as Commercial Exempt and assessed value by Property Valuation Services Corporation. However, if the land is recognized under the *Conservation Property Exemption Act*<sup>4</sup> the property will be exempt tax and HRM will receive a grant in lieu from the Province of Nova Scotia to compensate for lost tax revenue.

### **RISK CONSIDERATION**

Low. There are no significant risks associated with the recommendations in this report.

### **COMMUNITY ENGAGEMENT**

A mandatory public information meeting was held on June 14, 2017. The meeting was publicized in a newspaper advertisement Saturday, June 3, 2017. The purpose of the meeting was to inform the public on

<sup>3</sup> Section 5 of Administrative Order 50 requires appraisals remain confidential until the sale is completed.

<sup>4</sup> A conservation easement; designated under the *Special Places Protection Act*; or a permanent wilderness area under the *Wilderness Areas Protection Act*.

the legislated process to purchase municipal property and specific details about PID 40028193 Gerard Island, Spry Bay. Four (4) members of the public attended the meeting.

A Call for Submissions was issued Saturday, June 17, 2017. With an application deadline October 24, 2017. There was no site visit: the property is vacant land located on Gerard Island and only accessible by boat.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental testing has been undertaken at this location.

### **ALTERNATIVES**

1. Regional Council could direct staff to negotiate a higher purchase price with the Nova Scotia Nature Trust and prepare a Supplementary Recommendation Report for the Council's consideration.

This action is not recommended: limited access to this remote property significantly impacts the marketability.

2. Regional Council could decline the offer of \$1.00 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: Regional Council has demonstrated support for the 100 Wild Islands conservation project, including a grant of \$300,000 towards the initiative.

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

### **ATTACHMENTS**

1. Site 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.

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**Image Source:** Regional Council Report: Administrative Order 50 Disposal of Surplus Property Package 03.15. October 6, 2015,