



HALIFAX

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Item No. 14.1.12
Halifax Regional Council
October 4, 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: September 26, 2016

SUBJECT: Initiation of MPS Amendments Related to 10 hectare (25 acre) lots

ORIGIN

April 12th, 2016, Item 14.4.2

MOVED by Councillor Hendsbee, seconded by Deputy Mayor Whitman

That Halifax Regional Council request a staff report commenting on the advisability of on an amendment to the rule which provides that HRM no longer provides building permits on lots of land that are 10 hectares/25 acres in size. MOTION PUT AND PASSED.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter ("HRM Charter"), Part VIII, Planning & Development.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Initiate a process to consider amendments to the Regional Municipal Planning Strategy and community land use by-laws, as appropriate, regarding the development of lots that are created through the *HRM Charter* 10 hectare (25 acre) subdivision exemption and do not meet land use by-law road frontage requirements; and
2. Follow the public participation program outlined in the Community Engagement section of this report.

BACKGROUND

The *HRM Charter* enables lots that are 10 hectares (25 acres) or more in size to be created outside of the Municipal subdivision approval process. This exemption is generally intended for resource uses, such as farming or forestry. In recent years, however, it has become more common for people to utilize the exemption with the intent to create such lots for cottage or residential development. Although such lots can be created without meeting Subdivision By-law or Land Use By-law (LUB) requirements, the lots must meet LUB requirements in order to obtain development permits.

While the vast majority of permits are accurately issued, in spring 2016, staff discovered that several permits had incorrectly been issued on lots created through the *HRM Charter* 10 hectare lot exemption that did not meet LUB requirements regarding road frontage. Under the *HRM Charter*, staff cannot issue permits for development that do not meet the requirements of the LUB. As a result, staff ensured that LUB requirements were applied more consistently across the Municipality and clarified the existing LUB requirements with several land owners and the Nova Scotia Land Surveyors' Association (see Attachment A).

Although planning regulations have not changed, several land owners have raised concerns regarding 10 hectare lots and the investments made in preparing properties for development. Given these concerns, on April 12, 2016 Regional Council requested a staff report commenting on the advisability of an amendment to the rule which requires that HRM no longer issue building permits on lots of land that are 10 hectares (25 acres) in size. This report responds to Council's request for information and advice and seeks Council direction to initiate the Municipal Planning Strategy (MPS) amendment process.

HRM Charter

The *HRM Charter* provides HRM with the legislative authority to control the development and use of land, including the ability to regulate subdivision. Regarding subdivision, however, the *HRM Charter* outlines several situations where Municipal subdivision approval is **not** required. Specifically, clause 278(2)(a) states that "*Subdivision approval is not required for a subdivision if all lots to be created, including the remainder lot, exceed ten hectares in area*". This means that subdivisions that create large parcels of land can take place without HRM's knowledge or approval. In such situations, staff do not have an opportunity to review or comment on the ability of lots to meet LUB requirements for the intended use, or ensure subdivisions comply with parkland dedication requirements. Historically, this *HRM Charter* provision was intended to enable large parcels of land to be subdivided for resource uses, such as forestry and agriculture.

Regional Plan

In preparing the 2006 Regional Plan, HRM completed a number of studies that raised concerns with the uncontrolled growth of rural subdivisions due to the costs of providing services, drinking water quantity and quality, and environmental impacts. Consequently, the 2006 Regional Plan significantly changed and improved the way HRM manages rural residential development.

The current 2014 Regional Plan, which builds on the direction established in 2006, controls rural housing development in a number of ways in order to support traditional service centres, manage environmental impacts and preserve rural character. While new housing is permitted on existing public and approved private roads, the development of new public roads is limited to a maximum of 8 lots, and new private roads are prohibited. These controls are intended to direct development to existing roads, which reduces long-term servicing costs, and prevents uncontrolled development of large rural subdivisions. New private

roads are not permitted due to long-term maintenance risks that have resulted in the Municipality being requested to take over private roads at significant costs.

As an alternative, the Regional Plan permits new large scale housing developments only through the conservation design development agreement process. The conservation design approach is intended to preserve significant environmental features, such as wetlands, while clustering development in suitable areas. Accordingly, development proposals seeking a conservation design development agreement are required to submit detailed ground water studies and site analysis reports. While conservation design developments are permitted in most rural areas, in support of traditional centres, higher densities are only permitted within identified growth centres, such as Musquodoboit Harbour and Upper Tantallon. Since 2006, HRM has approved several conservation design development agreements (called open space design in 2006), which enable new housing developments on new public roads or shared private driveways.

Road Frontage Requirements

The requirement for lots to front on a public or approved private road is common throughout Nova Scotia and Canada more generally. From a planning perspective, road frontage is important for safety and service delivery to ensure properties can be accessed by emergency vehicles, as well as other government services, such as waste collection. Road frontage requirements are also an important tool for managing long-term development patterns and related public costs by directing new development to either existing roads, or areas that are planned to accommodate new roads, people and related services.

Generally, HRM's LUBs that apply to rural areas require a minimum amount of frontage on a public or approved private road. However, there are several exceptions that apply to rural areas of HRM. These exceptions are described below.

- Section 38 of the Regional Subdivision By-law enables lots with no road frontage that existed prior to 1987 to be subdivided into two lots. Most LUBs allow residential development on such lots provided all other LUB requirements can be met.
- Most LUBs allow residential development on lots that do not have road frontage that existed prior to the adoption of the applicable LUB.
- Some LUBs make other special exemptions to create and obtain permits on lots without road frontage provided certain requirements can be met.
- Some LUBs enable frontage on a watercourse (including lake) to be substituted for road frontage requirements. In these cases, the water frontage is intended to allow development to be accessed by boat.

Existing 10 Hectare Lots

Staff researched information from HRM and provincial records in order to accurately identify the number and characteristics of lots created through the *HRM Charter* 10 hectare exemption. The following summarizes the information collected.

- there are approximately 1,070 existing privately owned lots located outside of the urban service boundary that are 10 or more hectares in size that do not have public road frontage;
- of these 1,070 lots, approximately 167 were created after January 2005;
- since January 2006, a total of 4,932 permits were issued for single unit dwellings and mobile homes outside of the Urban Service Area boundary;
- out of these 4,932 permits, 13 (0.26%) permits for single unit dwellings appear to have been issued on lots that are both created through the 10 hectare *HRM Charter* exemption from subdivision approval and do not meet LUB requirements regarding public road frontage; and

- of the above 13 permits, 10 are located within four subdivisions.

DISCUSSION

Staff have reviewed the extent and characterises of lots created through the *HRM Charter* 10 hectare exemption. Although road frontage requirements are not new, staff advise that there is merit in considering MPS amendments to address recent concerns raised by landowners. The following sections discuss the potential scope and process involved in considering MPS amendments.

Scope of Potential MPS Amendments

In preparing MPS and related LUB amendments, staff intend to consider the following items.

Intent of the Regional Plan

As previously noted, the 2006 Regional Plan implemented a number of policy and regulatory changes that significantly improved HRM's ability to manage the long-term costs and environmental impacts associated with rural development. Therefore, in considering potential MPS amendments, it is important that any policy changes maintain the general intent of the Regional Plan.

Characteristics of 10 hectare lots

As noted above, staff have identified approximately 1,070 lots that are 10 or more hectares in size that do not meet LUB road frontage requirements. Some are isolated and appear created for resource development purposes, while others are grouped in subdivisions, of which some are actively being developed for residential uses. Rather than creating general MPS amendments for all 1,070 lots, staff expect to focus potential MPS amendments on lots located in definable areas or that meet certain characteristics.

Existing Road Frontage Exceptions

As explained in the Background section of this report, HRM currently makes a number of exceptions to road frontage requirements that are commonly linked to the date the lot was created. Consequently, in preparing MPS amendments, staff intend to consider the relationship between existing road frontage exceptions and any new exceptions related to 10 hectare lots.

Existing Developments

While staff acknowledge that there has been confusion concerning 10 hectare lots, the vast majority of rural development have been consistent with MPS policies and LUB requirements. For example, several developments have successfully followed the conservation design development agreement process or, in consultation with staff, configured subdivisions to meet road frontage requirements. Therefore, in identifying an appropriate scope for potential MPS amendments, staff intend to consider the relationship to the majority of developments that have met MPS and LUB requirements.

Public Feedback

Over the past number of months, staff have been in contact with approximately 40 landowners with questions and concerns regarding 10 hectare lots. Some residents had general questions and comments, while others engaged staff on specific land development proposals in order to better understand their development options. The feedback gathered is helping to inform staff's review. Through the MPS amendments process, staff intend to seek further public feedback to ensure potential amendments appropriately respond to public concerns.

MPS and LUB Amendment Approval Process

Given Council's direction indicating the urgent nature of this issue, staff have identified the following tentative MPS and LUB amendment process that would enable Regional Council to approve amendments within a short time frame while still meeting statutory requirements. To meet this timeframe, this initiative would need to be prioritized above all other projects in the queue. Since the issues concerning 10 hectare lots are regional in nature, staff advise that proposed MPS amendments should be reviewed by Regional Council, as opposed to also involving each Community Council. The following identifies the steps and tentative dates involved in the proposed MPS amendment approval process.

Tentative Date	Step
Oct. 4, 2016	Regional Council Initiation of MPS amendment Process
Oct. 6 -20, 2016	Preliminary consultations through the HRM website (consistent with the <i>HRM Charter</i> and HRM's Public Participation Program requirements)
Nov. 8, 2016	First Reading – Regional Council
Dec. 6, 2016	Public Hearing and Second Reading – Regional Council
Dec. 2016 to Jan. 2017	Provincial Review of MPS amendments
Jan. 2017	MPS and related LUB amendments come into effect

Broader Rural Planning Comments

HRM supports rural economic development, including the Regional Plan's goal to direct 25% of growth to rural areas. Correspondingly, with nearly 5,000 permits issued for single units dwellings outside of the Urban Service Area boundary over the past 10 years, on-going development activity shows that the Regional Plan is providing numerous opportunities for new housing in rural and semi-rural areas.

Over the past few months, HRM has received a number of general comments and concerns related to rural development. Some of the topics raised include road standards, conservation design development agreement requirements and lot grading. In recognition that rural areas face unique planning challenges, the Planning and Development Department recently formed a dedicated team of staff to better focus and coordinate planning matters in these areas. While this report focuses on issues concerning the development of 10 hectare lots, staff intend to consider the broad feedback received through this planning process to inform the Department's on-going development of its rural planning work program.

Conclusion

Staff have reviewed a variety of information concerning the development of 10 hectare lots and advise that there is merit to considering MPS and LUB amendments to address concerns raised by land owners. Although land use controls have not changed recently and the vast majority of rural developments have met LUB requirements, staff acknowledge that there has been confusion concerning the ability to develop lots created through the *HRM Charter* 10 hectare exemption. Therefore, staff recommend that Regional Council initiate the MPS and LUB amendment process regarding lots created through the *HRM Charter* 10 hectare exemption that do not meet LUB road frontage requirements.

FINANCIAL IMPLICATIONS

There are no financial implications. The HRM costs associated with MPS amendment process can be accommodated within the approved 2016/17 operating budget with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. MPS amendments are at the discretion of Regional Council and are not subject to appeal to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amendments are contained within the Discussion section of this report.

COMMUNITY ENGAGEMENT

Since April 2016, staff have been in contact with approximately 40 landowners with questions and concerns regarding 10 hectare lots. Some residents had general questions and comments, while others engaged staff on specific land development proposals in order to fully understand their development options.

Should Regional Council choose to initiate the MPS amendment process, the *HRM Charter* requires that Regional Council approve a public participation program. In February of 1997, Regional Council approved a public participation resolution which provides broad discretion on the consultation process required for MPS amendments that are regional in nature. The 1997 policy provides that, for amendments that are regional in nature, staff would recommend an appropriate public participation program. Accordingly, given the broad geography involved and the urgency associated with this issue, staff recommends that Regional Council obtain public feedback through the HRM website. In addition to this public participation, the HRM Charter requires a public hearing to be held before Regional Council can consider approval of any amendments.

Amendments to the Regional MPS and applicable LUBs will potentially impact the following stakeholders: rural landowners and developers.

ENVIRONMENTAL IMPLICATIONS

No additional concerns were identified beyond those raised in the above background/discussion sections.

ALTERNATIVES

1. Regional Council may choose to initiate the consideration of potential policy that would differ from those outlined in this report. This may require a supplementary report from staff.
2. Regional Council may refuse to initiate the MPS amendment process. A decision of Council to refuse to initiate a process to consider MPS amendments is not appealable to the NS Utility and Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Attachment A Letter to Association of NS Land Surveyors

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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Attachment A - Letter to Association of NS Land Surveyors



April 1, 2016

Association of Nova Scotia Land Surveyors
Mr. James MacIntosh, President
325A Prince Albert Road,
Dartmouth, NS B2Y 1N5

Dear Mr. MacIntosh,

RE: SUBDIVISION CREATING 10 HECTARE PARCELS PURSUANT TO SECTION 278(2)(A) OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

I wanted to take the time to inform your members that lots created pursuant to Section 278(2)(a) of the Halifax Regional Municipality Charter, which are lots that do not require subdivision approval if they are 10 hectares or more in area, may not be eligible to receive a development permit under the requirements of the land use bylaw.

HRM has become aware of a number of these lots that may be intended for development, however many of these newly created parcels do not meet the minimum requirements of their respective zone for public street frontage.

Please advise your members if they are subdividing land for their clients pursuant to Section 278(2)(a) with the intent to develop, those lots must meet the minimum requirements of the land use bylaw (ie: area, public street frontage, etc.) in order to be eligible for a development permit.

If your members have questions about a parcel's potential development abilities, our staff will be more than willing to answer any inquiries. Additionally, please contact me should you have any questions regarding this letter.

Regards.

Original Signed

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