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Item No. 03
Halifax Regional Council
July 26, 2016

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

SUBMITTED BY:

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: June 29, 2016

SUBJECT: "Homes Not Hondas" Petition" – Existing Regulatory Context

INFORMATION REPORT

ORIGIN

May 24, 2016 motion of Halifax Regional Council:

*"MOVED by Councillor Watts, seconded by Councillor Mason
THAT Halifax Regional Council request a staff report addressing the requests identified in the petition
titled Homes Not Hondas submitted on May 10, 2016. MOTION PUT AND PASSED"*

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter); Part VIII, Planning and Development

BACKGROUND

On May 10, 2016, Regional Council received a petition stating the following:

Steele Auto Group has indicated their intent to expand their car sales operation near the Colonial Honda site (2657 Robie Street) in the Peninsula North Planning Area. Through the purchase and obtaining of demolition permits for at least 17 properties in the area, Steele is planning on replacing an extremely large proportion of this mainly residential neighbourhood with a car sales lot. The purpose of this petition is to prevent this destruction to our neighbourhood by preserving its primarily-residential use.

Specifically, the petition requested that options be explored which could prevent the demolition of these buildings, prevent the expansion of the dealership into adjacent lots, and to ensure that the primarily-residential character of the existing surrounding neighbourhood is maintained.

Within the immediate area, some surrounding homes have been boarded shut in preparation for their imminent demolition while others have been demolished. Permits have been issued which allow this to take place in accordance with all required processes.

Currently, all properties within the blocks located on either side of Robie Street located south of the Bloomfield Centre and north of North Street share both the C-2 Commercial Zone of the Halifax Peninsula Land Use By-law as well as the MJC (Major Commercial) designation of the Peninsula North Secondary Municipal Planning Strategy. This uniformity notwithstanding, it is acknowledged that the character of the properties currently existing within this area is diverse.

The current development of May Street and Fern Lane consists of older stock low rise residential development with buildings mostly containing a single residential unit, with a few multiple unit residential buildings and commercial spaces interspersed. Conversely, properties fronting Robie Street and on the block to its immediate west are primarily commercial in nature containing a mixture of automotive sale, automotive repair, restaurant, and retail uses, in addition to a smaller number of residential dwellings.

DISCUSSION

As-of-Right Planning Process

The land use by-law affords land owners development rights which can be exercised through the as-of-right application process. Land use by-laws within the Municipality have been created and adopted through a process wherein the broader community was consulted and engaged in their production and individual land owners had the opportunity to engage Council at a public hearing prior to their adoption. Land owners must be able to rely on the rules that are considered and adopted by Council through this due process, as these rights have as significant impact on the value and utility of their property.

In the as-of-right process, prescriptive, quantitative rules and regulations regarding the use of buildings as well as their size, siting, landscaping, and parking are laid out within a land use by-law adopted by Council. In cases such as this, a property owner may submit an application to the Municipality to be considered against the land use by-law rules. The administration of these rules is carried out by Development Officers who are staff appointed by Council to make decisions of this nature on their behalf.

The benefit of the as-of-right development process is that Council may approve numerous sets of rules and regulations in the form of 'zones' which guide the ongoing development of a community. Decisions as to what uses are and are not allowed, or what size a building can be are made as a single decision ahead of time. This provides certainty and security for land owners, or potential purchasers, as to what development rights they, as a property owner, have as well as what uses could potentially occur on properties surrounding them.

In the case of Colonial Honda, the C-2 Commercial Zone permits the use of "motor vehicle dealers" as an 'as-of-right' use. Any application assessed to be consistent with the prescriptive rules of the land use by-law as it relates to this use or any proposed structure on the lands would be approved by a Development Officer.

Amending the Land Use By-Law

In order to adopt a change to the land use by-law to remove specific uses from being permitted in an area or zone, staff would require direction from Council. With this said, the Centre Plan process is currently underway as is outlined in more detail in the sections of this report below. It is important to note that any amendment to the land use by-law would be limited to development applications made from the time of by-law approval and onward. Canadian case law (*Boyd Builders* case [1965] S.C.R. 408) provides that the owner of the existing auto dealership enjoys certain *prima facie* rights to utilize their recently acquired lands in a manner consistent with the rules under which permits were originally issued. As such, the existing development rights afforded to the property owner cannot be removed in this manner.

Demolition

Prior to the demolition of an existing structure within the Municipality, a land owner is required to make application for a demolition permit. With the exception of properties listed on the Municipal Heritage registry or structures located within a heritage district, demolition permits deal with the safe and timely demolition of structures, and the proper disposal and recycling of demolition materials. Non heritage-related demolition permits do not, and cannot under the *HRM Charter*, address issues such as the existing fabric of communities, architectural merit, or a development that may or may not be proposed subsequent to the execution of a demolition permit.

While the Halifax Regional Municipality Charter contains provisions to require demolition in cases where a property has become dangerous or unsightly to the point of being unsafe, it does not include authority for the Municipality to prevent demolition of privately owned buildings with the exception of the aforementioned heritage related cases. Even in cases where a building is a municipally registered heritage property, Council does not have the ability to prohibit demolition. As per Section 18 of the *Nova Scotia Heritage Property Act* as follows, where an application to demolish a heritage building has been denied, the owner may demolish the building after three years:

“Where the municipality does not approve the application, the property owner may, notwithstanding Section 17, make the alteration or carry out the demolition at any time after three years from the date of the application but not more than four years after the date of the application.”

Relationship to the Centre Plan

The neighbourhood in question was last comprehensively planned for in the mid-1980's when the commercial zoning and policy designations were applied. At that time, it was felt that the future character of Robie Street and its surrounding properties would transition to one which allowed for large assembled properties containing vehicle oriented commercial uses. Some of these uses exist in this location today. Through the public consultation process of the Centre Plan to date, the future of Robie Street, and more specifically the expansion of the Colonial Honda dealership has been discussed at length. It is anticipated that updated policies and Municipal Planning Strategy designations could be applied to areas like these which better reflect the desire of the community to retain the residential character and better integrate into the existing scale of development on streets such as Fern Lane and May Street. It is anticipated that the Centre Plan will be before Regional Council for consideration by the end of 2016.

Conclusion

Prohibiting the demolition of privately owned buildings and the expansion of the existing car dealership is not possible given the existing authority held by Regional Council in addition to the as-of-right provisions allowed within the current Land Use By-law. That notwithstanding, updates to policies that govern use and form are anticipated within the upcoming Centre Plan to ensure established neighbourhoods are developing in a manner consistent with the desires of the community at-large as well as Council. Additionally, the 2016 Planning and Development business plan is committed to providing a staffing complement and organizational structure which will ensure plans are kept current in the future and reviewed on a regular basis in an effort to avoid these situations.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

COMMUNITY ENGAGEMENT

There was no community engagement performed on the content of this report. Additional information in relation to the as-of-right development approval process is available on the Halifax.ca website at <http://www.halifax.ca/as-of-right-development/documents/GuidetoAsofRightDevelopment.pdf>.

ATTACHMENTS

None.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.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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Original Signed