



P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 08**  
**Halifax Regional Council**  
**May 31, 2016**

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

**SUBMITTED BY:** Original Signed by Director  
Brad Anguish, Director, Parks and Recreation

**DATE:** May 6, 2016

**SUBJECT:** Land Acquisition Exchange - Drysdale Bog Lands

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### **INFORMATION REPORT**

#### **ORIGIN**

March 27 2012, Halifax Regional Council motion:

Moved by Councillor Adams, seconded by Councillor Rankin that Halifax Regional Council:

1. Support a request of the Western Region Community Council of August 22, 2011 for consideration of a land exchange/acquisition with a local property owner in regard to the recently rezoned Drysdale Bog lands, and
2. Request an update from staff to the August 22, 2011 request of the Western Region Community Council.

#### **MOTION PUT AND PASSED.**

#### **LEGISLATIVE AUTHORITY**

***Halifax Regional Municipality Charter***, Section 61 (1) The Municipality may acquire and own property granted or conveyed to the Municipality either absolutely or in trust for a public or charitable purpose.

(3) The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise. (5) The Municipality may (a) acquire property, including property outside the Municipality, that the Municipality requires for its purposes or for the use of the public; (b) sell property at market value when the property is no longer required for the purposes of the Municipality.

## **BACKGROUND**

Drysdale Bog is a wetland located along the Prospect Road in the Community of Goodwood (Attachment 1). The lands housing the bog were the subject of a community debate in 2006. The owner of most of the properties over which the wetland is located was assembling lands for a proposed industrial park. The property owner was seeking an easement over municipal lands to create the necessary second access required for development under the land use by-law. The land owner was proposing an access 'loop' road off the Prospect Road over his lands that would connect to Evergreen Place. This proposal involved crossing over a strip of HRM land at two locations. The HRM strip connects lands of the Western Commons north of Drysdale Bog to lands around Big Indian Lake.

The community was concerned that:

- 1) more industrial uses would be located in Goodwood, which was already a mix of industrial and residential homes;
- 2) a potential asphalt plant in the development would produce noxious fumes and noise in a community which already hosted the municipal composting facility at Evergreen Road and waste resource site at Otter Lake; and
- 3) there would be deleterious impact upon Drysdale Bog which flows both into the Western Common Wilderness Common Park, the Terrance Bay Provincial Wilderness Area through Peter's Lake, and ground water for local wells.

In 2006, Regional Council outlined conditions for approval of granting the easement. Those conditions were:

- 1) to require assurances from the Minister of Environment that an Environmental Impact Assessment would be required in the event that the planned asphalt plant was to proceed; and
- 2) that there be a transportation study examining the impact of additional traffic on the Prospect Road.

When the Minister of Environment refused Council's request, the conditions of Council's approval failed and the easement was not granted. Meanwhile, the property owner initiated legal action against HRM. In the course of the legal action, the owner also brought an interim application requesting an order declaring the conditions of Council's approval as invalid and further requesting that HRM be order to grant the easement. The Supreme Court held that the condition was invalid but refused to order HRM to grant the easement.

Subsequently, on October 21, 2008, Regional Council rescinded its motion regarding the easement and requested staff complete a "zoning review and other options to address the situation". Staff outlined the process for the review and consultation in an information report to Regional Council on December 9, 2008 which indicated the process was to culminate with recommendations being presented for Council's consideration upon its completion.

On August 9, 2011, Regional Council held a public hearing to consider rezoning the lands to be in congruence with the surrounding residential area. Regional Council approved a rezoning, bringing the Drysdale Bog lands into the adjacent Planning District 4 Municipal Planning Strategy and zoning them RB-1 (residential). This meant that, as the area is within the Rural Commuter Designation applied by the Regional Plan a proposed residential subdivision of more than eight lots would need to be an Open Space (Conservation) Design Development. This requires subdivisions to account for environmental and cultural features on the property in their design. This is the same policy and regulatory framework that applies to much of the surrounding area.

On August 22, 2011, the previous Western Community Council requested a staff report on the potential consideration of a land exchange with the property owner. Subsequently, on March 27, 2012, Regional Council passed a motion "supporting a request of the Western Region Community Council of August 22, 2011 for consideration of a land exchange/acquisition with a local property owner in regard to the recently

rezoned Drysdale Bog lands...". Regional Council also requested an update from staff regarding the potential exchange/acquisition. This report addresses both that request from Regional Council and original similar request by the community council. The update has been provided to Regional Council as the governing body.

Since the case was under litigation, legal staff advised that it would not be advisable to engage in a possible land exchange or purchase of the lands. As a result, staff did not pursue any negotiations with the owner while the file was moving through the court system.

In 2014, the matter subsequently went to trial on the basis that HRM acted in bad faith in imposing the conditions on the granting of the easement. The Supreme Court found that the Municipality had not acted in bad faith and that the costs incurred by the owner were through the normal course of business with knowledge of the associated risk. Further, the Municipality's decision on the matter was made after those costs were incurred. The Supreme Court of Nova Scotia dismissed the owner's claims against the Municipality.

With the completion of the court case, staff is now in a position to respond to Regional Council's request for an update.

## **DISCUSSION**

At the August 9, 2011 public hearing regarding the rezoning, there were two reasons raised outlining why Regional Council should acquire the lands. The first was to protect the bog, and the second was related to fairness to the land owner whose lands were rezoned.

### *Protection of the Bog*

The Western Common Plan adopted by Regional Council in 2010 recognizes the importance of Drysdale Bog as a headwater wetland to the Prospect River system which runs through the Western Common. As well, a portion of the lands about Phases 3 and 4 of the Western Common Regional Park.

However, Regional Council took steps in 2011 to rezone the lands from Industrial to Residential to make them congruent with the surrounding residential community. This change will also help to prevent environmental damage to the bog by possible future adjacent industrial uses. As a wetland, the area has special protection under Municipal and Provincial regulations. Based on the residential development permitted under the zone, the size and configuration of the lands limits the potential impact on the bog. Thus purchasing the lands is not necessary to achieve protection.

Further, if acquisition was necessary to achieve protection, there would be an expectation and requirement that all lands containing wetlands near residential areas would need to be publically owned. Therefore, acquisition of these lands would create a precedent for future requests.

### *Fairness to the Land Owner*

In terms of fairness, the courts found that Council acted within its responsibility and authority to zone lands appropriately and did not act in bad faith or an unfair way. In terms of being responsible for compensation, HRM cannot speculate on the value of lands before or after a zoning change. Section 270 of the HRM Charter states in part that property is not injuriously affected by adoption or the amending of the municipal planning strategy or land use by-law. Further, Section 61 (5) of the HRM Charter only permits HRM to purchase or acquire lands only when required for a municipal purpose. Lands are not able to be acquired where the purpose is to compensate an owner for a planning change as there would be no municipal or public purpose in acquiring these lands. Overall, Council is not responsible for the return on investment for proposed developments, but rather is concerned with the overall impact to the community, in this case through a zoning change made on behalf of the community.

**FINANCIAL IMPLICATIONS**

There are no financial implications associated with this Information Report.

**COMMUNITY ENGAGEMENT**

No community engagement was undertaken in preparation of this report.

**ATTACHMENTS**

Attachment 1: Map of Subject Lands

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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.

Report Prepared by: Peter Bigelow, Manager of Policy & Planning, Parks and Recreation

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# Map of Subject Lands

