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Item No. 14.1.6
Halifax Regional Council
March 22, 2016

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY:

John Traves, Acting Chief Administrative Officer

Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: February 10, 2016

SUBJECT: 1588 Barrington Street

SUPPLEMENTARY REPORT

ORIGIN

April 14, 2015 motion of Regional Council:

"MOVED by Councillor Mason, seconded by Councillor Fisher that Regional Council request that staff work in support of Neptune Theatre, the Khyber Arts Society and other parties as identified in their letter of March 25, 2015, in the creation of a proposal for a 'Renovation Plan and Operating Strategy' for 1588 Barrington Street with clear financial implications, including and not limited to:

1. access to required building schematics, BMR and other engineering reports, CAD drawings and limited and supervised access to the building;
 2. staff support within Parks and Recreation and Finance to work with the parties during the formation and review of this Operating Strategy; and
 3. a continued moratorium on the municipal sale or demolition of the Khyber Building
- And when complete, a staff report be presented by October 2015 for consideration by Regional Council". **AMENDED MOTION PUT AND PASSED** (13 in favour, 4 against).

LEGISLATIVE AUTHORITY

The Municipality's powers with regard to the sale of the property at issue are set out in the *Halifax Regional Municipality Charter* at:

- Section 61 (5)(b) Powers of Municipality regarding property
- 61 (5) The Municipality may
- (b) sell property at market value when the property is no longer required for the purposes of the Municipality;

Recommendation on Page 2

- Section 63 Sale or lease of municipal property

63 (1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that the 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 at least 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) The notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or a description of the tangible personal property, the estimated value of the property and the purpose of the sale. 2008, c. 39, s. 63.

Administrative Order 50, Respecting the Disposal of Surplus Real Property

RECOMMENDATION

It is recommended that Halifax Regional Council declare the property located at 1588 Barrington Street surplus to municipal purposes pursuant to Administrative Order 50, respecting the Disposal of Surplus Real Property, and dispose of it under the Community Interest Category.

BACKGROUND

The HRM-owned building located at 1588 Barrington Street is a municipally registered heritage building located within the Barrington Street Heritage Conservation District and as such any future development of the property would be within this framework. It does not have many modern building features, including barrier free access, nor any vehicle or loading capacity. It has been leased to two tenants (Heritage Trust and Khyber Arts Society) in recent years.

As a result of concerns related to hazardous materials in the building and overall facility condition, the building was vacated in March 2014. A chronology of the events related to the building from 2012 through 2015 is outlined in Attachment 1.

In June 2014, the property was included in a staff report outlining various properties to be considered surplus to municipal requirements pursuant to *Administrative Order 50, Respecting Disposal of Surplus Real Property*, under the economic development category. On September 9, 2014, Regional Council removed the property from the list pending consideration of staff reports on the facility condition and renovation costs and the arts incubator model.

In August 2014, a public campaign was commenced in order to save the building. In November 2014, arts community representatives, members of the Friends of Khyber, the Khyber Arts Society and the LBGTQ community, along with architectural and real estate planning consultants began meeting to discuss the future of the building.

Reports on both the facility condition and arts incubator model were presented to Regional Council in February 2015. Following those reports, in April 2015, Regional Council directed staff from Parks & Recreation, Finance and Operations Support to work in support of Neptune Theatre, the Khyber Arts Society and other parties in their creation of a proposal for a 'Renovation Plan and Operating Strategy' for 1588 Barrington Street.

Following the April 14, 2015, Regional Council meeting, staff provided the group with building schematics, engineering reports and access to the building to their consultants and representatives from Neptune Theater. Further to Council's motion staff contacts from Parks and Recreation, Finance and Operations Support were also identified for further questions, support and follow up.

HRM received a draft proposal on September 1, 2015, with an updated version submitted on October 1, 2015. HRM staff met with members of the committee to discuss the contents and to provide specific information and clarification on municipal processes regarding the requested sale of the building, tax exemption, and the proposed operating and renovation plans.

Through meetings and discussions with the Society the specifics of the municipality's Administrative Order 50 respecting the disposal of surplus property were outlined. Staff advised that there are two surplus property categories in AO50 that could be relevant: Community Interest and Economic Development. Properties under the Community Interest category, can be considered for disposal to a non-profit organization for less than market value. However, the process set out in the AO50 requires an open call process followed by a public hearing. Properties categorized as Economic Development may be sold to a sole purchaser, however they may only be sold at market value. These categories are discussed in detail below.

On November 9, 2015, HRM received a third and final submission from the 1588 Barrington Street Building Preservation Society. The Society also confirmed that their preferred category under AO50 was the Community Interest stream and they acknowledged that they would be required to submit under the process set out in AO50.

DISCUSSION

Because it is staff's recommendation that the property be categorized as a Community Interest property, which includes a competitive process, it is not appropriate for staff to comment specifically on the proposal that has been submitted. However, more broadly, the proposal as submitted cannot be accommodated under Administrative Order 50 (AO), which outlines the process and requirements for the sale of properties declared surplus to HRM requirements. There is no program of Council that enables staff to negotiate exclusively to donate a building.

There are two surplus property categories in AO 50 that could be relevant: Community Interest and Economic Development. As part of the disposal process, under either category, an appraisal of the property must be obtained to determine current market value (section 5).

Community Interest

Under AO50, Regional Council has the option to place the property in the Community Interest category (section 2(2)(b)):

Properties 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.

Under the Community Interest category, Regional Council can consider the disposal of a property to a non-profit organization for less than market value. However, the process set out in the AO for the Community Interest category does not permit Regional Council to direct staff to negotiate with a specific purchaser. The AO requires an open call process in which all non-profit organizations are invited to submit a proposal for the surplus property and are provided 90-120 days to respond. The responses are then reviewed by staff and presented to Council for consideration. Under the Community Interest category, Council must consider whether the non-profit organization is carrying on activity that is

beneficial to the municipality. If Council deems a proposal to be acceptable, the AO requires a public hearing and two-thirds majority vote of council for disposal of a property for less than market value, pursuant to the *HRM Charter*.

Based on the current list of properties already assigned to the Community Interest category it is estimated that it could be 18-24 months before the property is able to be transferred. This period would then be followed by an extensive renovation project that requires approval(s) from the Heritage Advisory Committee.

HRM would be required to maintain the building in its current state during the Community Interest process at an ongoing cost of approximately \$35,000 per year. Should no proposals be accepted by Council, Council may then direct staff to proceed to sell the property at market value.

Economic Development

Alternatively, section 2(2)(a) of AO 50, Economic Development, states:

Strategic properties having Economic Development potential ought to be sold to:

- (i) maximize use or value;
- (ii) achieve the attraction of targeted industries and employment or the regeneration of neighborhoods;
- (iii) to advance development opportunities; and
- (iv) to generate financial return to the municipality

These properties are viewed by Council to be strategic and may be disposed through individually recommended disposal processes, including a referral to a special committee or task force of HRM. Under this category they are required by the *HRM Charter* to be sold at market value and can include partnership models between private developers and non-profits and municipally defined public use or service delivery components (section 4(1)(d)). Referral to a special committee or task force would not be recommended as that function has essentially been completed through the work carried out on the completion of the current proposal.

Under the Economic Development category, Regional Council could consider arts and culture as the targeted industry or sector and direct staff to negotiate directly with the 1588 Barrington Street Building Preservation Society for the sale of the building at market value. The Economic Development categorization has been used by Council to facilitate market sale of municipal lands for the development of both the convention center and YMCA developments. With ongoing redevelopment within the downtown area and significant vacancy rates, redevelopment of 1588 Barrington with businesses and services that animate the space would enhance the new development in the area.

Summary

The Society understands that their proposal does not fall into any one AO50 category, but rather proposes aspects from two categories. Since the proposal cannot be supported by Council policy as presented to Regional Council, one of the categories must be considered.

Categorizing 1588 Barrington Street under the Economic Development stream and directing staff to negotiate an agreement for market sale with the Society would provide the opportunity to transfer the property to the Society and enable the implementation of the vision outlined in the "Khyber Building Operating, Renovation and Fundraising Plan".

However, with the requirement for a market sale under the Economic Development stream, the Society would be required to fundraise sufficient funding to cover both the renovation costs and value of the property. Therefore, the Society would prefer that the property be assigned to the Community Interest

stream. While that stream would result in the property being disposed of through a “competitive” process, the amount of fundraising required would be less.

With the number of properties already assigned to the Community Interest stream, it is expected there could be further delay in decisions on the property. The time anticipated before the process would be initiated would provide time for the Society to undertake the fundraising campaign. The Society could use their “Building Operating, Renovation and Fundraising Plan” as the basis of their submission to the Community Interest process that would follow.

Therefore, it is recommended that Regional Council declare the building surplus and categorize as Community Interest such that staff can proceed as per the process set out in AO50.

FINANCIAL IMPLICATIONS

Currently, costs associated with the retention of the building at 1588 Barrington Street are approximately \$35,000 per year funded from Operations Support operating budget account W200 for utilities and W169 for security. Should Regional Council approve the recommendation, the building would remain vacant for a period, during which time HRM would continue to provide security and power.

Disposing of the property under the Community Interest category to non-profit organizations allows consideration for a lower than market sale. In the event of a discounted sale price of \$1.00, HRM's potential revenue would be reduced by \$1,510,900 (2015 commercial exempt assessed value) and reduction of deed transfer tax revenue of \$45,300 for a combined in-kind contribution of \$1,556,200. If the building is sold to a non-profit organization, that group would be eligible to apply to HRM's Tax Relief program on an annual basis.

The proposal received from 1588 Barrington Street Building Preservation Society outlines a combination of funding, commitments and in-kind support towards the renovation of the building, along with tax exemption status for which the value would need to be assessed. The financial impacts associated with these requests would be considered according to the formal process and criteria as required by the AO50 Community Interest legislation, and presented in a subsequent council report .

Any proceeds of sale, when finalized, will be directed to the Sale of Capital Assets (Sale of Land Reserve) Q101.

Q101 – Sale of Capital Assets (Sale of Land) Reserve, (March 28, 2000)

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. There is no impact to withdrawals at this time. The recommendation does not negatively impact the reserve, as this is a contribution to the reserve when the sale of the property occurs.

COMMUNITY ENGAGEMENT

The 1588 Barrington Street Building Preservation Society is a committee formed from various community associations.

ENVIRONMENTAL IMPLICATIONS

The building at 1588 Barrington Street requires asbestos and lead remediation. Any work would be completed by a contractor that is qualified to handle hazardous materials.

ALTERNATIVES

- Alternative 1: Regional Council could choose to declare the building surplus to municipal requirements pursuant to Administrative Order 50, Respecting Disposal of Surplus Real Property, categorized as Ordinary and immediately sell the property "as is".
- Alternative 2: Regional Council could choose to declare the building surplus to Municipal requirements pursuant to Administrative Order 50 categorized as Economic Development and direct staff to negotiate an Agreement of Purchase and Sale for 1588 Barrington Street with the 1588 Barrington Building Preservation Society at market value and return to Council to outline the Society's proposal and recommended terms of sale.

ATTACHMENTS

- Attachment 1: Chronology of Events for 1588 Barrington Street, 2012 – 2015
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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.

Report Prepared by: Peter Stickings, Acting Director, Operations Support 902.490.7129

Attachment 1: Chronology of Events for 1588 Barrington Street, 2012 - 2015

December 2012: As part of HRM's Asbestos Abatement program, 1588 Barrington Street was assessed and the presence of asbestos was confirmed. One room was sealed from use and an overall capital plan for the building was determined.

November 2013: The Facility Condition Assessment for 1588 Barrington Street indicated approximately \$3 million in required work to address deferred maintenance and accessibility issues.

December 2013: HRM received notification from tenants that a piece of plaster fell. As required by the Occupational Health and Safety Act, an asbestos abatement was completed. Following this incident, an occupational health and safety assessment of 1588 Barrington Street was also completed. The Assessment documented further plaster and lead paint failures and evidence of imminent failures.

January 2014: As required under the Occupational Health and Safety Act, HRM informed the tenants of the findings and indicated that the building was not suitable for public use due to environmental, health, and safety risks. The tenants were informed that HRM required them to vacate the premises immediately. HRM received letters from both tenants disputing the findings and requesting to stay in the building. HRM undertook additional testing which confirmed the risk and explicitly stated that all plaster in 1588 Barrington Street should be considered asbestos containing materials. The results were sent to the tenants.

February 2014: Registered letters sent to both tenants indicating that HRM was cancelling their monthly lease and they were required to vacate the building by the end of March 2014.

March 18, 2014: Regional Council reduced payments owing by former tenants Khyber Arts Society (KAS) and Heritage Trust and approved a \$45,000 grant to supplement rental costs for KAS.

March 31, 2014: Both tenants vacated 1588 Barrington Street. KAS relocated cultural programming and arts incubation to an alternate location. *In November 2015, the KAS moved from their north end location and relocated to 1880 Hollis Street within NSCAD.*

June 2014: The property at 1588 Barrington was included in a real estate staff report outlining various properties to be considered surplus to municipal requirements pursuant to Administrative Order 50, Respecting Disposal of Surplus Real Property, under economic development.

September 2014: Regional Council removed from the property from disposal of surplus property list pending consideration of staff reports on facility condition and renovation costs and the arts incubator model which was established by the Regional Council in 2010.

February 2015: Staff presented a facility condition update to Regional Council on the building and a report on the arts incubator model. This facility update included an outline of the state of accessibility, functionality and calculated the cost of renovations.

April 2015: Council directed staff from Parks & Recreation, Finance and Operations Support to work in support of Neptune Theatre, the Khyber Arts Society and other parties as identified in their letter of March 25, 2015 in the creation of a proposal for a 'Renovation Plan and Operating Strategy' for 1588 Barrington Street. Following the April 14, 2015, Regional Council meeting, staff provided the Friends of the Khyber building schematics, engineering reports and access to the building to their consultants and representatives from Neptune Theater.

September 1, 2015: Staff received a draft proposal on behalf of the Friends of the Khyber. The submission provided the following information:

- Executive Summary
- Khyber Building Operating, Renovation and Fundraising Plan
- Governance Model

- Building Coordinator's Job Description
- Space Allocation by tenant and floor
- Estimated Revenue vs Expenses, Renovation Plan and Fundraising Plan
- Cost estimate dated June 17, 2015
- Design Drawings prepared by David F. Garrett Architects and G.F, Duffus & Co. Ltd. dated September 2015.

October 1, 2015: A second version of the Plan with graphic enhancements was submitted.

October 15, 2015: Staff met with members of the Steering Committee to discuss the contents and to provide specific information and clarification on municipal processes regarding the proposed sale of the building, tax exemption, the operating plan and the renovation plan. It was determined that the group would make some additional edits to the Plan and resubmit.

October 27, 2015: An Information report was submitted updating Regional Council on the proposal, the assessment process and schedule to return to Council by January 2016.

November 9, 2015: Staff received a third and final submission.