

HALIFAX

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Date- by motion of Council Dec 1/20

Item No. 13.1
Halifax Regional Council
August 18, 2020
November 17, 2020
December 1, 2020
In Camera (In Private)

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: _____
Dave Reage, Acting Chief Administrative Officer

DATE: July 10, 2020

SUBJECT: Property Matter: Property Acquisition, PID 40740276, Lake Echo

PRIVATE & CONFIDENTIAL

ORIGIN

April 14, 2020 motion of Halifax Regional Council requesting a staff report on the possible acquisition of PID 40740276, Highway #7.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter

19 (1) Except as otherwise provided in this Section, Council meetings and meetings of committees appointed by the Council are open to the public.

(2) The Council or any committee appointed by the Council may meet in closed session to discuss matters relating to

(a) acquisition, sale, lease and security of municipal property.

s.61 (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.

s. 65 (1) Where the Council considers it necessary to acquire real property, including real property outside the Municipality, for a purpose for which it may spend money, the Council may expropriate the real property, but this power to expropriate does not authorize the Municipality to expropriate property of another municipality ...

(3) The *Expropriation Act* applies to expropriation proceedings by the Municipality.

- s. 79A (1) Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if
- (a) the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality;
 - (b) the expenditure is in respect of an emergency under the Emergency Management Act; or the expenditure is legally required to be paid.

Halifax Regional Municipality Charter: Part VIII, Planning & Development.

Expropriation Act, R.S.N.S., 1989, c. 156:

s.6: Where a statutory authority desires to expropriate land, it shall be expropriated in accordance with the provisions of this Part but only for the purposes authorized by its statute and to the extent set forth therein.

s.11 (1) Where a statutory authority has authority to expropriate land and it is desired to expropriate the same, the expropriating authority shall deposit at the office of the registrar of deeds for the registration district in which the land is located a document or documents setting forth ...

... (d) the statutory purpose for which the land is expropriated.

RECOMMENDATION

It is recommended that Halifax Regional Council not pursue municipal acquisition of PID 40740276.

It is further recommended that this report not be released to the public.

BACKGROUND

Kiann Management Limited, ("the owner") owns a 47.83 acre parcel of land situate along the No. 7 Highway in Lake Echo ("the property"). The owner applied to rezone a portion of the property to allow the development of a construction and demolition (C&D) transfer recycling facility. The owner also applied for a Development Permit for the establishment of a used building material retail outlet on a different portion of the property that was not subject to the proposed rezoning.

Staff reviewed the rezoning application, consulted with the community and provided a recommendation to Harbour East - Marine Drive Community Council (HEMDCC). Staff's recommendation was to reject the proposed rezoning for not being reasonably consistent with the intent of the Municipal Planning Strategy (MPS). On April 4, 2019 Community Council accepted that recommendation and rejected the application.

Separately, the Development Officer reviewed the Development Permit application for the used building material outlet and that permit was refused.

The owner chose to exercise its right to appeal both decisions to the Nova Scotia Utility and Review Board (UARB). The UARB considered those appeals and found in favour of the appellant in both cases. The UARB ordered HRM to issue the permit for the used building material retail outlet and directed HRM to rezone the property to permit the C&D transfer facility. Upon review of that decision, HRM chose not to

appeal the UARB's decision to the Supreme Court of Nova Scotia. Accordingly, the permit for the building material retail outlet has been issued and the property has been rezoned. As of the date of the preparation of this report, the owner has not yet applied for a permit for the C&D transfer recycling facility.

The presence of the proposed facility has been a highly contentious issue in the community. The majority of residents who engaged with HRM throughout the process were not supportive of the proposal and opposition to the project was widespread. In light of the outcome of the planning and appeal processes, Regional Council requested that staff explore the possibility of HRM acquiring the property in order to prevent the establishment of the facility(ies) at this location.

This report is provided in response to that request.

Site Details

Subject Property	PID 40740276, Highway 7, Porters Lake
Location	North of Highway 7, west of Parker Lane, Porters Lake
Regional Plan Designation	Rural Commuter (RC)
Community Plan Designation (Map 1)	Mixed Use (MU)
Zoning (Map 2)	RE (Rural Enterprise) RA (Residential A) and CD-2
Size of Site	19.4 hectare (48 acre) <i>Area subject to rezoning: 5.9 hectare (14.7 acre)</i>
Street Frontage	975 metres (3,199 feet) along Highway 7 <i>Area subject to rezoning: 285 metres (935 feet) along Highway 7</i>
Current Land Use(s)	Vacant
Surrounding Use(s)	Predominantly residential uses

Site Context

The subject property is undeveloped and contained mature vegetation until June 3, 2008 when a forest fire destroyed much of the existing vegetation on the site and the surrounding area. The property is relatively flat to gently sloped. Toward the centre of the property is the highest elevation between two watercourses that run southwest to Grand Lake. The easterly watercourse is contiguous with a wetland that straddles the northern property boundary.

DISCUSSION

In response to community concerns, Regional Council requested that staff clarify what capacity (if any) HRM has to prevent the establishment of the proposed uses by acquiring the property from the current owner. Council's request specified that options should include acquiring the site through purchase, expropriation or negotiating a land exchange with the developer.

1) Preliminary Property Evaluation

Assessment of the above referenced options for municipal acquisition should be informed by a basic understanding of the value associated with the property in question. Staff engaged HRM's commercial property brokerage and determined a preliminary estimated value of \$1,000 - \$2,000 per acre (wetland area to be excluded as it provides minimal value). This valuation reflects the presence of the unusual and relatively rare CD-2 zoning on a portion of the lands and the existing RE and RA zoning on the balance of the property. The entire site has an area of approximately 48 acres, approximately 3.5 of which are wetland, resulting in a total preliminary estimated value of \$44,000 – \$89,000.

2) Municipal Purpose

Assessment of the above referenced options for municipal acquisition should also be informed by the proposed municipal purpose upon which any proposed acquisition must be based. Council's motion explicitly states that the purpose for requesting this report is to prevent the establishment of the proposed uses by acquiring the property.

In addition to considering that municipal purpose, staff also explored other potential municipal purposes for acquisition of this property. However, there are presently no HRM business units that have identified any need for this property to support delivery of municipal service. This includes Parks and Recreation who considered the acquisition and indicated there is no operational need or strategic value associated with the land. Acquiring the parcel would be inconsistent with the Halifax Green Network Plan's identified approach to Park Network Service Delivery in the rural commutershed, where park and recreational amenities are to be identified in centralized locations in established centres. In terms of HGNP objectives associated with eco-connectivity: the abutting Crown parcel is already serving to provide for an important natural corridor across Highway 7, and the municipality would want to consider other potential priorities in the establishment or provision of essential corridors, as identified in the HGNP.

Accordingly, this report responds to Council's motion based solely on the stated purpose in that motion which is to prevent the establishment of the proposed uses.

3) Acquisition of the Site Through Purchase, Expropriation or Property Exchange

Council's motion is a request for staff to clarify any alternatives that may exist for HRM to acquire the subject property and, as the new owner, prevent the development of the C&D facility. The motion refers to purchase/exchange or expropriation. These are fundamentally different alternatives in that a purchase or exchange requires two willing parties while expropriation essentially requires only one willing party (HRM). These two approaches are also subject to different statutory restrictions. Each alternative is discussed separately below:

a) Purchase

Municipal authority for acquisition of property and expenditures of public funds is governed by the *HRM Charter*. Section 61 of the Charter sets out the municipality's authority to acquire property as follows:

"61 (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;"*

Section 79A of the Charter sets out Council's specific authority to expend public funds as follows:

"79A (1) Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if

- (c) the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality;*
- (d) the expenditure is in respect of an emergency under the Emergency Management Act; or the expenditure is legally required to be paid".*

Generally, Council has relatively broad powers to expend funds. However, those powers are limited to a "municipal purpose". In this case, the purpose being suggested is the prevention of a development that is compliant with municipal regulations which have been lawfully established through the execution of valid orders from the UARB. Under these circumstances, staff advise this is not a valid municipal purpose in the context of municipal acquisition of land.

b) Expropriation

Expropriation is defined in the *Expropriation Act* as ... “the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers ...”. Municipal authority for expropriation is set out in the *HRM Charter* and the *Expropriation Act*.

Section 65 of the Charter contains the following authority:

“65 (1) Where the Council considers it necessary to acquire real property, including real property outside the Municipality, for a purpose for which it may spend money, the Council may expropriate the real property, but this power to expropriate does not authorize the Municipality to expropriate property of another municipality ...

... (3) The Expropriation Act applies to expropriation proceedings by the Municipality.”

Section 6 of the *Expropriation Act* includes the following authority:

“6 Where a statutory authority desires to expropriate land, it shall be expropriated in accordance with the provisions of this Part but only for the purposes authorized by its statute and to the extent set forth therein.” and;

Section 11(1)(d) of the *Expropriation Act* includes the following obligation:

“11 (1) Where a statutory authority has authority to expropriate land and it is desired to expropriate the same, the expropriating authority shall deposit at the office of the registrar of deeds for the registration district in which the land is located a document or documents setting forth ...

... (d) the statutory purpose for which the land is expropriated;”

HRM is a statutory authority and has the general authority to expropriate land. However, as with the property purchase alternative described above, authority for expropriation is limited to acquiring land for municipal purposes. To initiate the expropriation process, the Municipality is required to file documents that include, among other things, a description of the statutory purpose that is to be achieved through expropriation. In this case, the purpose as suggested in Council’s motion is the prevention of a development that is compliant with approved municipal regulations which have been lawfully established through the execution of orders from the NSUARB. Staff advise this is not a valid municipal purpose in the context of expropriation of land.

c) Potential for Negotiated Land Exchange with the Developer

This part of Council’s motion is a request to clarify an alternative that may exist for HRM to acquire the property to prevent the establishment of the proposed use through a land exchange as opposed to a cash payment.

Notwithstanding the difference in the form of the value being exchanged, this option is a form of property acquisition that requires HRM to have authority to both acquire real property for a municipal purpose and dispose of a public asset. The test of municipal authority to acquire the lands in question is identical to that described in part 1) above.

The exchange process would also require identification of any candidate properties, completion of due diligence to confirm accurate property value and completion of the property surplus process required by Administrative Order 50. It should also be noted that there are presently no other properties owned by

HRM that possess the required CD-2 zoning. Any land exchange to permit the C&D use elsewhere would have to be conditional on rezoning of the property to be exchanged.

With respect to the applicant's interest in purchasing HRM land for the C&D operation, Real Estate staff have been in contact with the applicant to gain an understanding of his needs for land area and location. Upwards of 15 acres in the Burnside area was identified as being needed to accommodate the proposed business model.

In terms of a possible swap of the Lake Echo property with lands in Burnside, zoning and price are considerations. Burnside pricing generally ranges from \$350,000-435,000/acre. As current zoning does not permit C&D uses, amendments to the planning documents would need to be undertaken. A report is currently in the Council approval process to consider amendments to land use designations and zoning to implement portions of the Burnside Functional Plan. The proposal includes adding construction and demolition uses to the Plan and Land Use By-law for the Burnside area. This report is anticipated to be considered by Harbour East - Marine Drive Community Council in August for recommendation to Regional Council.

Advancing any land transaction for lands in Burnside would be dependent on the outcome of the rezoning exercise as well as confirmation that a C&D facility of this size can be accommodated in Burnside in Phase 13. Under these circumstances, while a purchase of HRM land by the applicant remains an option, a land swap would not constitute a valid municipal purpose in the context of municipal acquisition of land.

Conclusion

Staff have considered the options for municipal acquisition of the subject property in response to Council's motion.

No HRM business unit has identified an operational or strategic need for acquisition of this property within the scope of the municipality's current operational or capital plans.

The purpose specified in Council's motion is to acquire the property to prevent the development of the land as proposed. Staff advise this is not a valid municipal purpose in the context of the municipality's statutory obligations associated with expenditure of funds and acquisition/disposal of land.

Under these circumstances, no valid municipal purpose for acquiring these lands has been identified, therefore proceeding with acquisition of the property in question is not recommended.

FINANCIAL IMPLICATIONS

Should Council choose to pursue alternatives to acquire the property via purchase, land exchange or expropriation, material costs to HRM will be incurred to carry out that intent. Confirmation of municipal cost is not possible in advance of final determination of the value of the property(s) in question and consideration of the disposition of the existing expenses and obligations that the developer had incurred in good faith relative to the approved permit and C&D zoning. The total preliminary estimated value is between \$44,000 – \$89,000. A potential source of funds is the Capital Fund Reserve – Q526.

RISK CONSIDERATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If the acquisition or expropriation processes were initiated by HRM under these circumstances, there is an additional risk that requests for similar accommodation would be received for other permitted projects that are not broadly supported in the community.

COMMUNITY ENGAGEMENT

The planning process related to the original rezoning application included public information meetings and a statutory public hearing.

The NSUARB hearing was advertised and held in the public forum. Public input was accommodated in accordance with standard procedures for NSUARB hearings.

There was no additional community engagement associated with the development of this report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

ALTERNATIVES

Council could identify a municipal purpose for acquisition of this property and direct staff to pursue acquisition by any of the means noted in this report. This alternative is not recommended for the reasons outlined in this report.

ATTACHMENTS

None

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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