

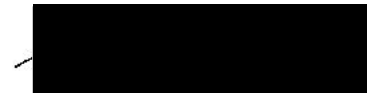


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**Item No. 10.1**  
**North West Community Council**  
**March 27, 2023**  
**April 17, 2023**

**TO:** Chair and Members of North West Community Council

**SUBMITTED BY:**



Kelly Denty, Executive Director of Planning and Development

**DATE:** March 15, 2023

**SUBJECT:** **Case 23247: Amendments to the Sackville Drive Land Use By-law  
Regarding the Measurement of Building Height**

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### **ORIGIN**

November 9, 2020 motion of North West Community Council:

MOVED by Councillor Russell, seconded by Councillor Outhit

*“That North West Community request a staff report for an amendment to the Sackville Land Use Bylaw, Part 6, section 27(a) to allow for the height of a building to be based on the mean grade of the building, not the lowest grade of the curb.”*

MOTION PUT AND PASSED.

### **LEGISLATIVE AUTHORITY**

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

### **RECOMMENDATION**

It is recommended that North West Community Council:

1. Give First Reading to consider approval of the proposed amendments to the Land Use By-law for Sackville Drive regarding the measurement of building heights, as set out in Attachment A of this report, and schedule a public hearing; and
2. Adopt the amendments to the Land Use By-law for Sackville Drive, as set out in Attachment A of this report.

## **BACKGROUND**

On November 9, 2020, North West Community Council passed a motion requesting a staff report regarding amendments to the land use by-law to change the method of calculating building height. On July 12, 2021, staff presented a report<sup>1</sup> to North West Community Council which provided information and sought direction from Council. Subsequently, Council passed a motion for staff to commence the land use by-law amendment process for the Sackville Drive plan area (Map 1).

### **History of LUB Provisions**

Prior to the adoption of the Sackville Drive Secondary Planning Strategy (SPS) and Land Use By-law (LUB), land use and development on Sackville Drive was regulated through the Sackville Municipal Planning Strategy (MPS). The Sackville MPS contained no restrictions on the maximum height of buildings within the C-3 (Commercial Corridor) Zone which was applicable to the majority of properties along Sackville Drive.

In May of 2002, when the Sackville Drive SPS and LUB were adopted, a similar approach of not restricting building heights was taken. Upon adoption of these new rules, staff indicated that a future review of the planning documents may be needed to address any inconsistencies, omissions, or housekeeping matters within the documents. Following the submission of the first development permits under these new rules, it prompted staff to re-evaluate the approach of not regulating building height.

On September 5, 2006, Regional Council held a public hearing and adopted amendments to the Sackville Drive SPS and LUB. One of the approved amendments enabled an as-of-right maximum building height of 50 feet as measured from grade at the front property line, and that buildings greater than 50 feet (measured from grade at the front property line) could only be considered by development agreement. The amendments can be found in Policy SS-4(a) of the Sackville Drive SPS, and Section 27(a) of the Sackville Drive LUB.

While the measurement of grade at the front property line provided for consistent building heights along the front facades on Sackville Drive, it resulted in somewhat of a disadvantage for those sites in which the grades increase in height away from the street. On those upward sloping sites on the north side of Sackville Drive, the resulting building area and mass may end up being reduced in comparison to sites which slope downwards from the street, mostly on the south side of Sackville Drive. As a result, some relatively recent development sites on the north side of the street have been excavated to take advantage of the height regulation, but have also resulted in grade instability during construction, large retaining walls and concern amongst abutting land owners.

At present, there continue to be some inconsistencies and concerns regarding the LUB provisions. Some examples are:

- There are two different references to the base of the building where the height measurement is taken from; one measurement is to be taken from the mean grade of the curb while another is from the established grade at the front lot line;
- The presence of large retaining walls and large-scale site excavations to achieve the height allowance; as a result of the height calculation being based on the street or curb elevation at the front property line, there have been some recent concerns with some sites undergoing large scale excavations to lower the site grade so that a building can be constructed at the street or curb level, thereby maximizing the building's height; and
- Minor errors and inconsistencies regarding building height related definitions and by-law provisions.

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<sup>1</sup> <https://cdn.halifax.ca/sites/default/files/documents/city-hall/community-councils/210712nwcc1311.pdf>

### **Proposed Amendments**

The proposed LUB amendments are contained in Attachment A. The amendments were altered and expanded beyond Council's original motion of November 9, 2020, based on feedback from the public and a review by staff. The proposed LUB amendments intend to provide for the following:

- Greater flexibility in the calculation of building heights for properties along and close to Sackville Drive by providing an alternative option for calculating height according to 'established grade' surrounding the building, instead of the elevation of the street itself; and
- Housekeeping amendments related to building heights to correct and clarify some inconsistencies between different by-law provisions, as detailed in the Discussion section of this report.

### **Enabling Policy and LUB Context**

The Sackville Drive SPS includes Policy SS-4(a) for Council to consider development agreements within all designations for buildings over 50 feet in height above established grade, subject also to Policy I-4 (e) (Attachment B).

The Sackville Drive LUB permits buildings of up to 50 feet in height through the as-of-right permitting process, subject to complying with all other LUB requirements such as those related to architectural and streetscape design, landscaping, parking and signage requirements. The LUB further requires that any building over 50 feet in height, within any designation, be considered by development agreement. Additionally, Part 2 (Definitions) of the Sackville Drive LUB defines numerous terms, including both height and established grade, and the LUB includes general provisions for all zones, including Section 27 (a) related to building height (Attachment C).

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, including a narrated powerpoint presentation describing potential LUB amendments and illustrating building modelling, and a mailout of approximately 1,350 letters to property owners and residents within the notification area seeking feedback. The webpage was viewed a total of 260 times (231 of these are unique) between May of 2022 and February of 2023. The following comments and concerns regarding the initial proposed amendments (per Council motion of November 9, 2020) were raised:

- Concern with the height/ scale and proximity of buildings next to surrounding houses;
- Lack of privacy, negative impact on views from houses;
- Negative affect on surrounding property values; and
- Comments in support of the proposed amendments.

As a result of feedback from the public and a detailed review by staff, the proposed amendments were drafted so that new buildings would be required to be located relatively close to Sackville Drive and have adequate setbacks from abutting residential zones, to take advantage of the alternate option for calculating height according to 'established grade' surrounding the building.

A public hearing must be held by North West Community Council before consideration can be given to the proposed LUB amendments. Should Community Council decide to proceed with a public hearing on this application, in addition to a notice of the hearing published on the Municipality's website at least seven days before the date of the public hearing, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

## **DISCUSSION**

Staff have evaluated Community Council's motion to amend the Sackville Drive Land Use By-law which contained a specific method on how height would be calculated. As a result of community engagement and further staff research and analysis, staff recommend different amendments to the LUB (Attachment A) for Community Council's consideration. Staff have reviewed the proposed amendments relative to all relevant MPS policies (Attachment B) and existing LUB provisions (Attachment C) and advise that the proposed amendments are reasonably consistent with the intent of the MPS.

### **LUB Amendment**

Attachment A contains the proposed LUB amendments, which address the following matters:

- Clarification that the lower starting point for building height calculations are to be from the "established grade along the front lot line or street line" instead of the "mean grade of the curbs of all streets adjoining the building";
- Edits and clarifications regarding the rooftop features which are to be exempted from the height calculations;
- Provision of an alternate method for the calculation of building heights according to 'established grade' surrounding the building, instead of the grade along the street line; and
- Requirements that, if using the alternate method for calculating height, that buildings be located relatively close to the street (within 50 feet or 70 feet, depending on zoning) and an appropriate distance (25 foot setback) from low-density residential uses, to prevent potential conflicts with those abutting uses.

Staff recommend the attached LUB amendments for the reasons outlined below, which have been identified for more detailed discussion.

### **Consistency of Building Heights**

As noted in the Background section of this report, the natural elevations along Sackville Drive result in a condition in many locations whereby the north side of the street is significantly higher than the south side. In the past, staff evaluated the impacts of building heights on both sides of Sackville Drive, and concluded that having no building height regulations could result in inconsistent building heights on opposite sides of the street, which was not the intent or vision of the Sackville Drive SPS. The elevation change from one side of Sackville Drive to the other could result in buildings on the north side of the street being materially taller than buildings on the south side. The implementation of a maximum building height of 50 feet for as-of-right development partly alleviated these concerns.

The proposed amendments will provide some flexibility by providing an alternate method for calculating building heights for sites which slope upwards from the street and are at somewhat of a disadvantage. These amendments are not expected to result in significant changes to building heights or the perception of heights when travelling along Sackville Drive, and will be similar to many other situations in HRM where grades are different on opposite sides of streets. As a result, there will be similarly sized buildings on both sides of the street with less need for large site excavations.

### **Reducing Impacts on Adjacent Residential Uses**

Low-density residential development exists to the rear of many properties fronting Sackville Drive to the north and south. With the original proposal to base the height measurement on the mean grade of the building, regardless of location, there were some concerns that taller buildings along the higher (north) side of Sackville Drive that abut lower scale residential developments at the rear would visually intrude on the existing low-density residential neighborhoods. However, as a result of community engagement and staff review, the proposed LUB amendments were drafted so that:

- The height calculations are applied to land relatively close to Sackville Drive, which provides a street presence and creates certainty with respect to overall building height, as buildings are less likely to have a substantial impact further back on sites;

- The amendments require a minimum 25 foot setback from abutting residential zones, regardless of the building's height (currently the LUB requires a minimum of 15 feet or half the height of the building, whichever is greater); and
- There will still be a development agreement option for buildings higher than 50 feet, provided the proposal meets the intent of current policies in the SPS.

### **Priorities Plans**

In accordance with Policy G-14A of the Regional Plan, this planning application was assessed against the objectives, policies and actions of the priorities plans, inclusive of the Integrated Mobility Plan, the Halifax Green Network Plan, HalifACT, and Halifax's Inclusive Economic Strategy 2022-2027. While these priority plans often contain policies which were originally intended to apply at a regional level and inform the development of Municipal Planning Strategy policies, there are still components of each plan which can and should be considered on a site by site basis. Where conflict between MPS policy and priority plan policy exists, staff must weigh the specificity, age, and intent of each policy, and consider how they would be applied to a specific geographic context. In this case, as the proposed LUB amendments are primarily related to how building height is calculated, there are no identified conflicts with the priority plans.

### **Conclusion**

Staff advise that the proposed amendments to the Sackville Drive Land Use By-law are reasonably consistent with the intent of the Sackville Drive SPS. Therefore, staff recommend that the North West Community Council approve the proposed amendments as contained in Attachment A.

### **FINANCIAL IMPLICATIONS**

There are no financial implications. The Municipality will be responsible for costs associated with processing this planning application. All costs will be accommodated within the approved 2022-2023 budget for Planning and Development.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed LUB amendment are contained within the Discussion section of this report.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

### **ALTERNATIVES**

1. North West Community Council may choose to approve the proposed LUB amendment subject to modifications. Such modifications may require further staff analysis and may require a supplementary report or another public hearing. A decision of Council to approve this proposed LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. North West Community Council may choose to refuse the proposed LUB amendment, and in doing so, must provide reasons why the proposed amendment does not reasonably carry out the intent

of the MPS. A decision of Council to refuse the proposed LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

### **ATTACHMENTS**

Map 1                      Sackville Drive Plan Area  
Map 2                      Notification Area

Attachment A:            Proposed Amendments to the Land Use By-law for Sackville Drive  
Attachment B:            Relevant Excerpts from the Sackville Drive SPS and Regional MPS  
Attachment C:            Relevant Excerpts from the Sackville Drive Land Use By-law

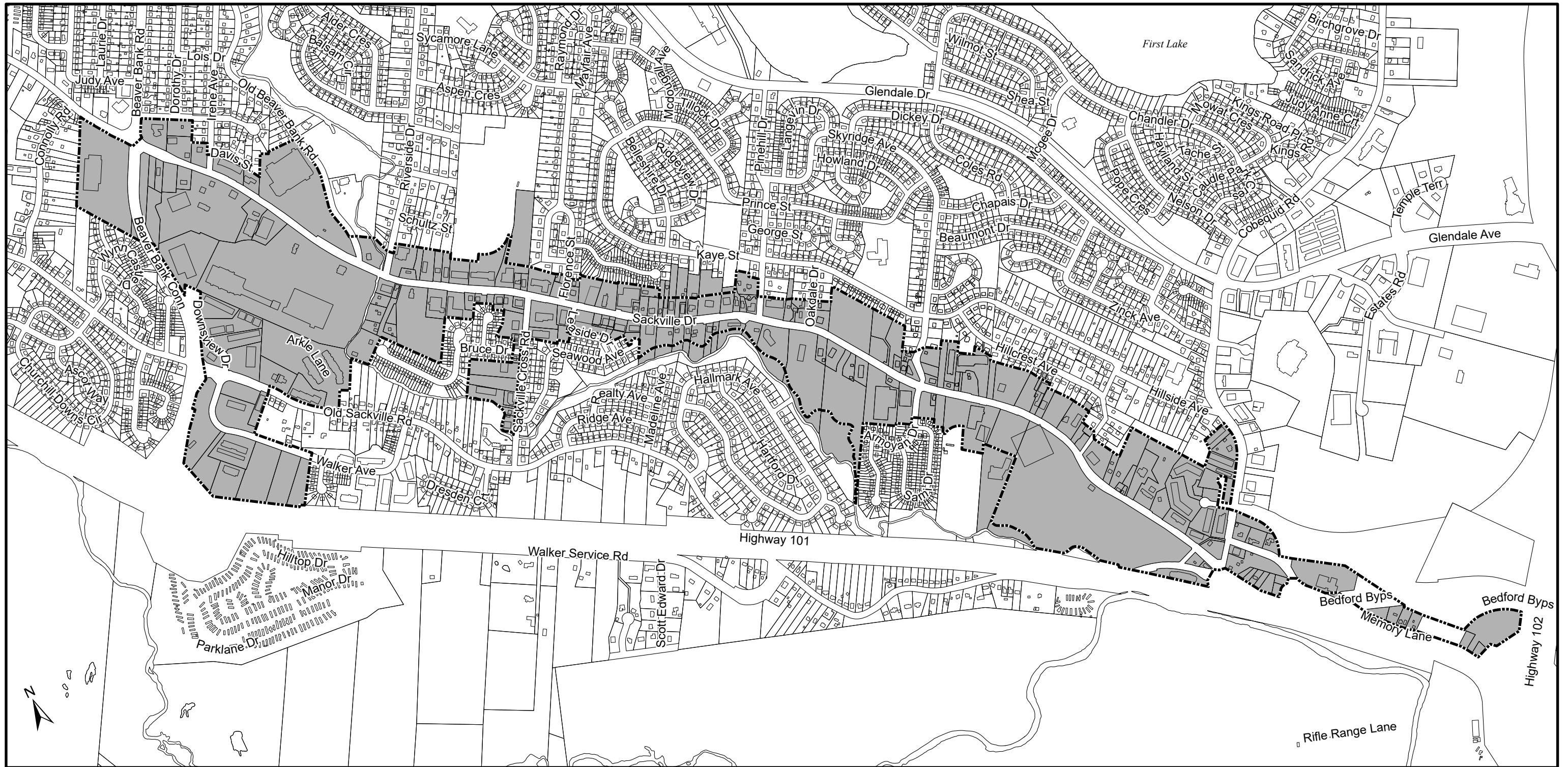
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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by:      Paul Sampson, Planner II, 902.717.8125

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**Map 1- Sackville Drive Plan Area**

**HALIFAX**

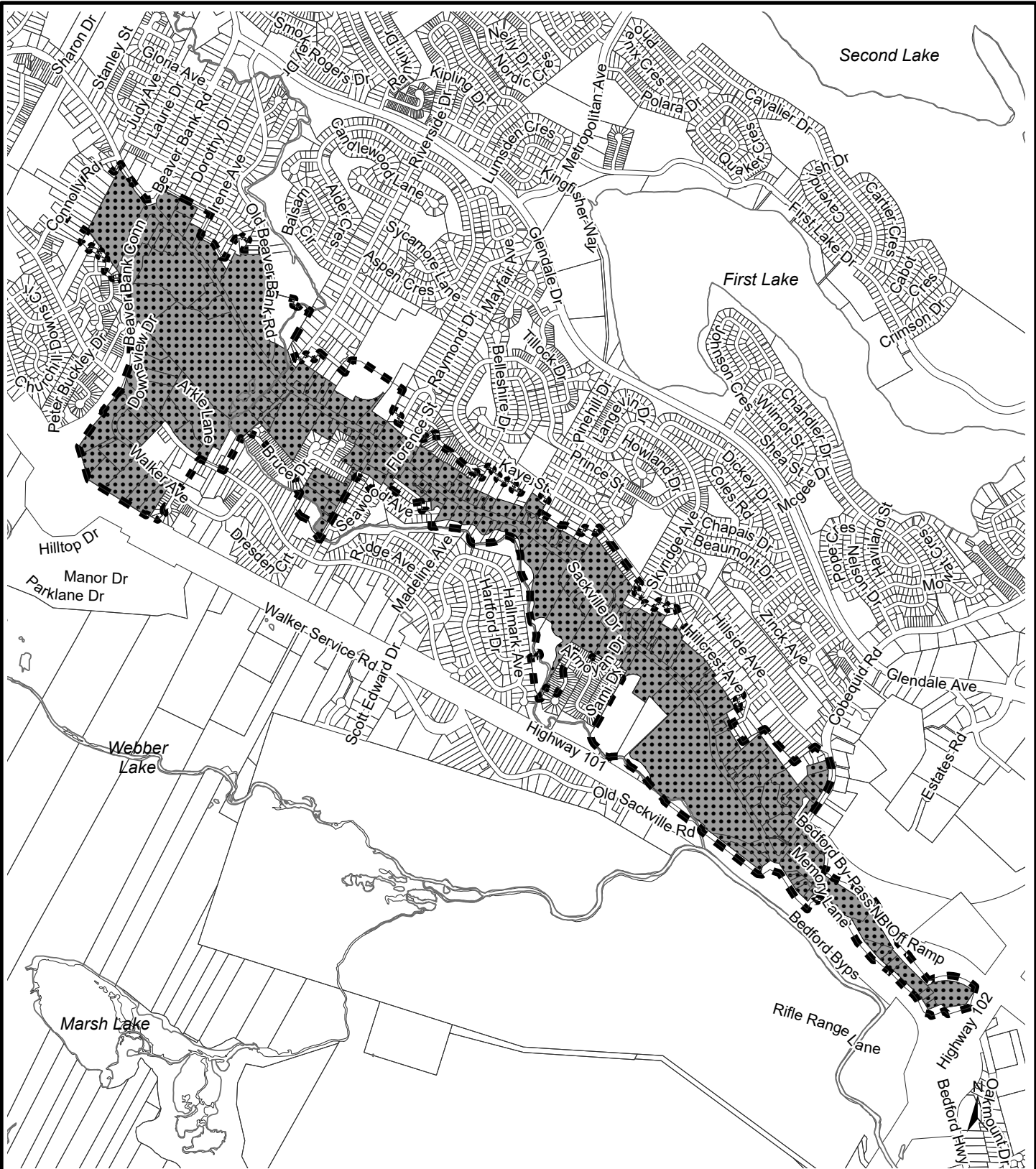
- Subject Properties
- Sackville Drive Plan Area



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

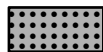
The accuracy of any representation on this plan is not guaranteed.



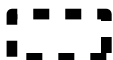


**Notification Area - Map 2**

Sackville Drive Plan Area

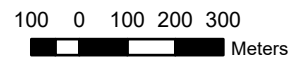


Subject Properties



Notification Area

**HALIFAX**



The accuracy of any representation on this plan is not guaranteed.



## ATTACHMENT A

### Proposed Amendments to the Land Use By-law for Sackville Drive

BE IT ENACTED by the North West Community Council of the Halifax Regional Municipality that the Land Use By-law for Sackville Drive is hereby further amended as follows:

1. Part 2, the definition of '**Height**' shall be amended by deleting the text shown in strikeout and inserting the text shown in bold, as follows:

Height as applied to any building means the vertical distance of the highest point of the roof above the ~~mean established~~ grade of the curbs of all streets ~~the street line~~ adjoining **abutting** the building or the mean grade of the natural ground so adjoining, if such grade of the ground is not below the grade of the curb.

2. Section 27 shall be deleted in its entirety by deleting the text shown in strikeout, and inserting the text as shown in bold, as follows:

Height Regulations

27 ~~**Intentionally deleted** The height regulations of this Bylaw shall not apply to church spires, water tanks, elevator enclosures, silos, flagpoles, television or radio antennae, solar panels, ventilators, skylights, chimneys or clock towers and other architectural elements.~~

3. Section 27 (a) shall be amended by deleting the text shown in strikeout and inserting the text shown in bold, as follows:

27 (a) The height of a building in all zones shall be not more than 50ft (15.24m) in height measured from the established grade ~~at along the front property lot line~~ **or street line**.

(b) On corner lots where there is a difference in established grade on each lot frontage at the street line, the height requirement shall be measured from the street frontage with the lower grade.

~~(c) On lots where there is a difference in established grade, the height requirement shall be measured from the lower grade.~~

(c) Notwithstanding Section 27 (a) ~~the aforementioned~~, chimneys, antennae, flag poles, belltowers, spires, steeples, vents, **water tanks, elevator enclosures, silos, solar panels, skylights, clock towers, parapets** or other roof or building appurtenances extending from the surface of a roof shall not be measured in calculating building height; however, such appurtenances shall not: 1) be habitable living space **and**, 2) extend more than ten (10) feet above the building height. Further, any such building appurtenance shall be integrated with the architectural treatments of the buildings and roof structure.

(d) **Notwithstanding Sections 27 (a) and (b), for parcels of land within the PR and PC zones which have lot frontage on Sackville Drive, the height of the main building may, alternatively, be measured from the highest point of the roof (pursuant to Section 27 (c)) to the 'established grade' surrounding the**

building, provided that the setback of the main wall from the Sackville Drive street line is no more than 15.25 metres (50 feet) and the setback of the main wall from any side or rear lot line that abuts any residential zone is no less than 7.62 metres (25 feet).

- (e) Notwithstanding Sections 27 (a) and (b), for parcels of land within the LS zone and DC-1, DC-2 and DC-3 zones which have lot frontage on Sackville Drive, the height of the main building may, alternatively, be measured from the highest point of the roof (pursuant to Section 27 (c)) to the 'established grade' surrounding the building, provided that the setback of the main wall from the Sackville Drive street line is no more than 21.3 metres (70 feet) and the setback of the main wall from any side or rear lot line that abuts any residential zone is no less than 7.62 metres (25 feet).

I, Iain MacLean, Municipal Clerk for the Halifax Regional Municipality, hereby certify that the above -noted by-law was passed at a meeting of the North West Community Council on the \*\*\* day of \*\*\*\*\*, 20\*\*.

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Iain MacLean  
Municipal Clerk

**Attachment B: Relevant Excerpts from the Sackville Drive SPS and Regional MPS**

**Secondary Planning Strategy for Sackville Drive**

<b>Policy SS-4 (a)</b>
Within all designations, buildings over 50ft (15.24m) in height above established grade shall only be considered by development agreement in accordance with the provisions of the Municipal Government Act. In considering any such agreement, Council shall have regard to the following: <ul style="list-style-type: none"><li>(a) Building shall be oriented to the street and transit services and primary entrances shall be orientated to the sidewalk and primary pedestrian ways;</li><li>(b) in a multiple unit dwelling compatible commercial use may be required at street level and adequate recreation and amenity space shall be provided;</li><li>(c) compatibility and impact on the surrounding built form, lands uses and residential areas;</li><li>(d) microclimate issues such as wind, solar orientation, and shadowing;</li><li>(e) pedestrian street level activity shall be encouraged through, but not limited to, the incorporation of outdoor cafes and ground floor uses. Consideration shall be given to weather protection for pedestrians;</li><li>(f) incorporation of building setbacks at various levels to reduce the visual impact of the height and mass in relation to the surrounding built form;</li><li>(g) landscaping complements shall reinforce circulation paths, highlight entrances, provide shade, and add seasonal interest and designed for appreciation by pedestrians, bicyclists and motorists. Adequate landscaping features and/or street trees should be provided around the perimeter and throughout the site of the development to enhance the aesthetics of the site;</li><li>(h) incorporation of streetscape elements and furniture;</li><li>(i) traffic circulation and access to and from the site should be designed to minimize adverse impacts on the adjacent residential uses and street network;</li><li>(j) significant natural and cultural features on the site should be identified and protected where appropriate;</li><li>(k) lighting shall be designed to provide security, safety, and visual appeal for both pedestrians and vehicles while ensuring minimal impact on adjacent properties;</li><li>(l) the provisions of Policy I-5 be met. (RC-Sep 5/06;E-Oct 7/06)</li></ul>
<b>Policy I-4</b>
The following uses shall be considered subject to the entering into a development agreement: <ul style="list-style-type: none"><li>(e) Within all Designations:<ul style="list-style-type: none"><li>1. Buildings over 50ft (15.24m) in height (Policy SS-4(a)). (RC-Sep 5/06;E-Oct 7/06)</li></ul></li></ul>
<b>Policy I-5</b>
In considering a development agreement or rezoning, Council shall have regard to the following matters: <ul style="list-style-type: none"><li>(a) the proposal furthers the intent of the streetscape guidelines established within the Land Use By-law and Schedule D relating to signage, architecture, landscaping, parking and driveway entrances;</li><li>(b) that the proposal is not premature or inappropriate by reason of:<ul style="list-style-type: none"><li>(i) the financial capability of the Municipality to absorb any costs relating to the development;</li><li>(ii) the adequacy of sewer and water services;</li><li>(iii) the adequacy or proximity of school, recreation and other community facilities;</li><li>(iv) the adequacy of road networks leading or next to, or within the development; and</li><li>(v) the potential for damage to or for destruction of designated historic buildings and sites.</li></ul></li></ul>

(c) that controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:

- (i) type of use;
- (ii) height, bulk and lot coverage of any proposed building;
- (iii) traffic generation, access to and egress from the site, and parking;
- (iv) open storage;
- (v) maintenance; and
- (vi) any other relevant matter of planning concern.

## **Regional Municipal Planning Strategy**

### **9.6.A PRIORITIES PLANS**

Since the adoption of this Plan in 2014, Regional Council has approved several priority plans including the Integrated Mobility Plan, Halifax Green Network Plan, HalifACT, and Halifax's Inclusive Economic Strategy 2022-2027. The second review of this Plan began in 2020 and is expected to be readopted by Regional Council in 2023. The review will revise the policies of this Plan to ensure they are consistent with the priorities plans as approved. In the interim, this Plan supports the priorities plans which are actively used by staff to guide ongoing work.

#### **Policy G-14A**

In considering development agreements or amendments to development agreements, or any proposed amendments to the Regional Plan, secondary planning strategies, or land use by-laws, in addition to the policies of this Plan, HRM shall consider the objectives, policies and actions of the priorities plans approved by Regional Council since 2014, including:

- (a) The Integrated Mobility Plan;
- (b) Halifax Green Network Plan;
- (c) HalifACT;
- (d) Halifax's Inclusive Economic Strategy 2022-2027; and
- (e) any other priority plan approved by Regional Council while this policy is in effect.



## **Attachment C: Relevant Excerpts from the Sackville Drive Land Use By-law**

### **PART 2: DEFINITIONS**

**Established Grade** means with reference to a building, the average elevation of the finished surface of the ground where it meets the exterior of such building, and when used with reference to a structure, shall mean the average elevation of the finished grade of the ground immediately surrounding such structures, exclusive in both cases of any artificial embankment or entrenchment and when used with reference to a street, road or highway means the elevation of the street, road or highway established by the Municipality or other designated authority.

**Height** as applied to any building means the vertical distance of the highest point of the roof above the mean grade of the curbs of all streets adjoining the building or the mean grade of the natural ground so adjoining, if such grade of the ground is not below the grade of the curb.

**Lot** means a parcel of land whether or not occupied by a building.

CORNER LOT means a lot situated at the intersection of, and abutting on, two or more streets.

THROUGH LOT means a lot bounded on two opposite sides by streets or highways provided, however, that if any lot qualifies as being both a corner lot and a through lot as herein before defined, such lot shall be deemed to be a corner lot for the purpose of this by-law.

**Lot Frontage** means the horizontal distance between the side lot lines as measured along the front lot line. In the case of a corner lot with a day-lighting triangle the front and flankage lot lines shall be deemed to extend to their hypothetical point of intersection for the purpose of calculating the frontage.

**Lot Line** means the division line between two or more lots.

FRONT LOT LINE - meaning the line dividing the lot from the street.

FLANKING YARD - meaning the side lot line which abuts a street on a corner lot.

REAR LOT LINE - meaning the lot line furthest from or opposite to the front lot line.

SIDE LOT LINE - meaning a lot line other than a front or rear lot line.

**Main Wall** means the exterior front, side, or rear wall of a building and all structural members essential to the support of a full or partially enclosed space or roof.

**Street Line** means the division line between any street and the abutting lot.

### **PART 5: USES PERMITTED BY DEVELOPMENT AGREEMENT**

1. Notwithstanding Part 4, the following buildings or uses may be permitted by development agreement, in accordance with the development agreement provisions of the Municipal Government Act and as provided for by Policy I-4 of the Secondary Planning Strategy for Sackville Drive:

#### ***Within any Designation***

**(10) buildings over 50ft (15.24m) in height in accordance with Policy SS-4(a) (RC-Sep 5/06;E-Oct 7/06)**

## **PART 6: GENERAL PROVISIONS FOR ALL ZONES**

### **Height Regulations**

**27.** The height regulations of this Bylaw shall not apply to church spires, water tanks, elevator enclosures, silos, flagpoles, television or radio antennae, solar panels, ventilators, skylights, chimneys or clock towers and other architectural elements.

**27 (a)** The height of a building in all zones shall be not more than 50ft (15.24m) in height measured from the established grade at front property line.

On corner lots where there is a difference in established grade on each lot frontage at the street line, the height requirement shall be measured from the street frontage with the lower grade.

On lots where there is a difference in established grade, the height requirement shall be measured from the lower grade.

Notwithstanding the aforementioned, chimneys, antennae, flag poles, belltowers, spires, steeples, vents or other roof or building appurtenances extending from the surface of a roof shall not be measured in calculating building height; however, such appurtenances shall not:

- 1) be habitable living space,
- 2) extend more than ten (10) feet above the building height.

Further, any such building appurtenance shall be integrated with the architectural treatments of the buildings and roof structure. (RC-Sep 5/06;EOct 7/06)