



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

Item No. 14.1.1
Harbour East-Marine Drive Community Council
December 7, 2023

TO: Chair and Members of Harbour East-Marine Drive Community Council

SUBMITTED BY: -Original Signed-

Cathie O'Toole, Chief Administrative Officer

DATE: October 10, 2023

SUBJECT: **Woodland Avenue Fence**

ORIGIN

The March 4, 2021 Harbour East-Marine Drive Community Council Special Meeting (Item 16.1):

MOVED by Councillor Austin, seconded by Councillor Mancini.

THAT Harbour East Marine Drive Community Council request a staff report into the status of the fence that runs along Woodland Avenue in the backyards of homes on Kingston Crescent. The staff report should examine what municipal responsibilities exist regarding this fence and include an examination of written records, including Dartmouth City Council minutes.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, S.N.S. 2008, c. 39 as amended

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;
- (b) sell property at market value when the property is no longer required for the purposes of the Municipality;
- (c) lease property owned by the Municipality at market value;
- (d) sell deeds for cemetery lots and certificates of perpetual care.

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
- (c) the expenditure is legally required to be paid.

RECOMMENDATION ON PAGE 2

RECOMMENDATION

It is recommended that Harbour East Marine Drive Community Council recommend that Halifax Regional Council do not accept ownership and responsibility for future maintenance and capital enhancements of the Woodland Avenue fence from civic # 13 Kingston Crescent to civic # 61 Kingston Crescent.

BACKGROUND

Woodland Avenue Right-of-Way Property Ownership

Property ownership of Woodland Avenue in Dartmouth is divided between the Province of Nova Scotia and Halifax Regional Municipality. Generally, the Province owns from Micmac Boulevard south to approximately Ryland Avenue and Halifax Regional Municipality owns from Ryland Avenue south to Victoria Road. See Attachment A for the property boundaries.

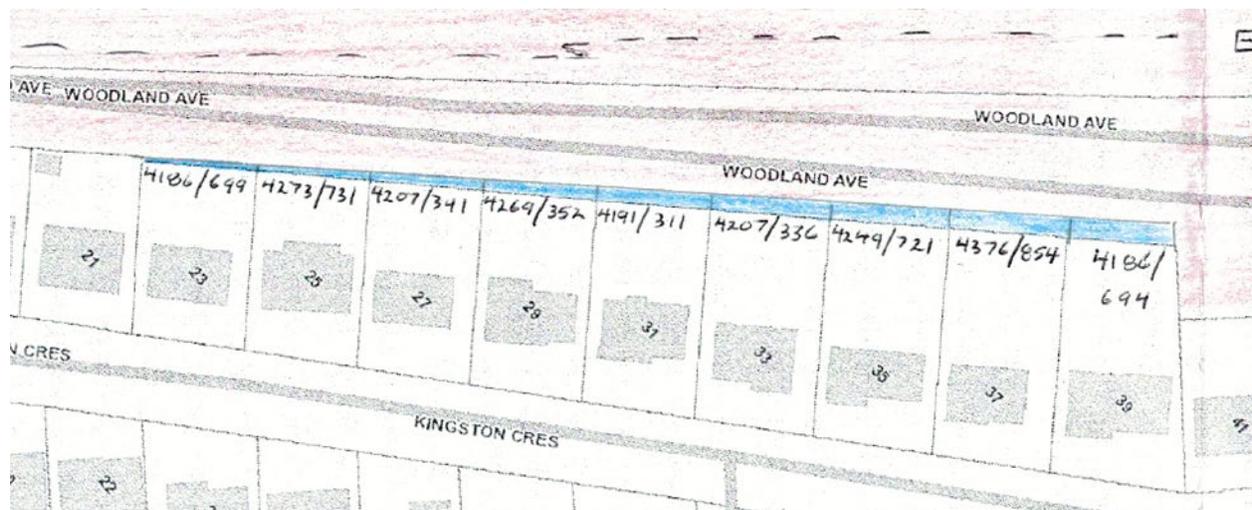


Figure 1 – Property Ownership on Woodland Avenue (Civic #23 to #39 Kingston Crescent only)

Woodland Avenue Fence

The fence that runs along the east side of Woodland Avenue is approximately 570 m long and is of solid wood board construction. The first section is 300 m long and runs adjacent to the sidewalk, from the rear of Civic #13 Kingston Crescent to the rear of Civic #39 Kingston Crescent. At this point the fence jogs away from the sidewalk and runs an additional 270 m before ending at the intersection with Micmac Boulevard. HRM staff were not able to locate any records indicating who constructed the fence or when, but it may have been the original developer given that it extends across many properties but on only one side of Woodland Avenue.

In 1984-85, the former City of Dartmouth acquired land from nine properties (Civic Numbers 23, 25, 27, 29, 31, 33, 35, 37, and 39 Kingston Crescent) to extend the sidewalk along Woodland Avenue to Micmac Boulevard. This strip of acquired land ranged in width from 0 m at the west corner of Civic #23 to 1.739 m at the east corner of Civic #39, with an average of 1.04 m wide. In order to facilitate this sidewalk construction (see Attachments C and D), the former City of Dartmouth removed and replaced approximately 185 m of the existing fence along the back of these nine properties.

The remaining section of fence, from Civic #13 to #21 inclusive and Civic #41 to #61 inclusive, is along the right of way section of Woodland Avenue owned by the Province.



Figure 2 – Approximate Location of Fence

DISCUSSION

HRM Staff have performed the following actions to determine ownership and responsibility for maintenance of the Woodland Avenue fence:

- Conducted a legal survey to confirm location of the fence (Survey Sketch Attachment B).
- Contacted Nova Scotia Public Works to request any relevant records.
- Researched Council reports and minutes from the former City of Dartmouth.
- Searched for record drawings and legal plans.
- Searched Hansen and CityWorks for customer service requests mentioning the fence.
- Researched historical correspondence from HRM staff mentioning the fence.

Survey Evidence

A survey conducted in August 2021 determined that the fence generally follows the street line but is neither completely within the street right of way nor completely within the private properties. The survey also indicated that the fence between Civic #23 to #39 Kingston Crescent was built on the property line.

Province of Nova Scotia

Staff with the Province of Nova Scotia were not able to locate any records indicating when or by whom the fence was first erected, nor any records of the Province spending funds to directly repair or maintain the fence. Representatives of the Province have advised HRM staff that the Province believes responsibility of the fence is with the homeowners.

City of Dartmouth Council Report and Related Minutes

A City of Dartmouth Council report as well as the related minutes from June 25, 1985 (Attachments C and D, respectively) include the motion that the former City “purchase the land required for the construction of sidewalk along the south side of Woodland Avenue from the owners of properties from 23 Kingston Crescent to 39 Kingston Crescent inclusive for the prices outlined in the report (\$59.71 per square meter), construct a new 6’ 6” high solid board fence along the property line to replace existing fences, and provide new trees or compensate for loss of trees which cannot be relocated.”

The information is silent with respect to the City of Dartmouth’s (now HRM through amalgamation) ownership of the new fence or responsibility for any future maintenance or repair costs.

Record Drawings and Legal Plans

HRM staff reviewed legal plans describing the property acquisition on the above-mentioned nine parcels as well as the sidewalk design plans. These plans confirmed the information described above.

Historical Staff Correspondence

Correspondence between HRM staff from September 2000 indicates that the former City of Dartmouth had previously painted the side of the fence facing the highway and recommends that they continue to do so. This only pertains to the fence at the back of Civic #23 through #39 Kingston Crescent (inclusive). The same correspondence notes that a search was conducted for a maintenance agreement with the homeowners of the nine properties, with nothing found. The correspondence is attached as Attachment E.

Fence Maintenance

To date, any maintenance conducted on the fence by HRM has been on a case-by-case basis, has been performed on the Woodland Avenue side of the fence, and was undertaken not for the benefit of the private homeowners along Kingston Crescent.

Municipal Precedence

It is not unusual for HRM to remove, relocate, or replace private property that is damaged or destroyed by construction activities, but it is not common practice to accept ownership of the new infrastructure or responsibility for any future maintenance or repair costs.

On occasion, a retaining wall is required to accommodate new infrastructure. HRM's Retaining Wall Policy states that, "only retaining walls constructed by HRM and located within the road right-of-way shall be maintained by HRM".

Municipal Purpose

At present, the Woodland Avenue Fence does not serve a municipal purpose and was likely intended to provide privacy for the residents along Kingston Crescent. There are currently no other fences located along Woodland Avenue that were constructed or maintained by HRM. In addition, HRM does not currently build fences for homeowner benefit.

FINANCIAL IMPLICATIONS

There are no financial implications at this time should Halifax Regional Council accept staff's recommendation to not accept ownership and responsibility for future maintenance and capital enhancements of the Woodland Avenue fence from civic # 13 Kingston Crescent to civic # 61 Kingston Crescent.

RISK CONSIDERATION

There is a risk that the precedent set by accepting ownership of this fence prompts similar requests in the future. This could be mitigated by ensuring that when fences are built by developers the homeowners are informed up front that the fence along their frontage is their property and responsibility.

COMMUNITY ENGAGEMENT

Residents at both Civic 15 and 35 Kingston Crescent have inquired about ownership of this fence. In 2016

the resident at Civic 35 called to inquire about maintenance and followed up in 2021 to ask that the fence be upgraded to a sound barrier. In 2018 a section of fence at Civic 15 blew down and the resident asked if it could be repaired. Civic 15 was not included in the 1984/5 property acquisition and so is adjacent to Provincial Right of Way rather than property belonging to HRM. It was replaced by the homeowner.

In August 2023, residents of Kingston Crescent with a fence bordering Woodland Avenue were sent a letter to ensure that they all had the same information. As part of that correspondence, the Survey Sketch, Council Report and Council Minutes were attached. The letter also offered residents the opportunity to provide comments or share any relevant documents ahead of the November Harbour East Marine Drive Community Council meeting. Staff have received no correspondence at time of writing this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Harbour East Marine Drive Community Council could choose to recommend that Regional Council:

1. Accept ownership and future maintenance and capital enhancements for the section of fence between Civic #23 and #39 Kingston Crescent, where property was acquired and a new fence constructed as part of the sidewalk expansion completed in 1985.

The length of fence between Civic #23 and #39 Kingston Crescent is approximately 190 meters. Based on a cost of \$500/meter (estimate provided by industry), the estimated cost to replace the 190m of fence including contingency and net HST would be \$134,000.

Staff do not recommend proceeding with this alternative as the information collected is silent with respect to the City of Dartmouth's (now HRM through amalgamation) ownership of the new fence or responsibility for any future maintenance or repair costs. In addition, there is considerable risk that the precedent set by accepting ownership of this fence will prompt similar requests in the future.

2. Accept ownership and future maintenance and capital enhancements for the full length of fence, located between Civic #13 and #61 Kingston Crescent.

The length of fence between Civic #13 and #61 Kingston Crescent is approximately 570 meters. Based on a cost of \$500/meter (estimate provided by industry), the estimated cost to replace the 570m of fence including contingency and net HST would be \$401,000.

Staff do not recommend this alternative as HRM does not currently own the right of way along the fence outside of Civic #23 to #39 Kingston Crescent. This is currently Provincially owned. In addition, homeowners within this area have already replaced segments of the fence themselves. Similar to Alternative 1, the information collected is silent with respect to the City of Dartmouth's (now HRM through amalgamation) ownership of the new fence or responsibility for any future maintenance or repair costs. In addition, there is considerable risk that the precedent set by accepting ownership of this fence will prompt similar requests in the future.

ATTACHMENTS

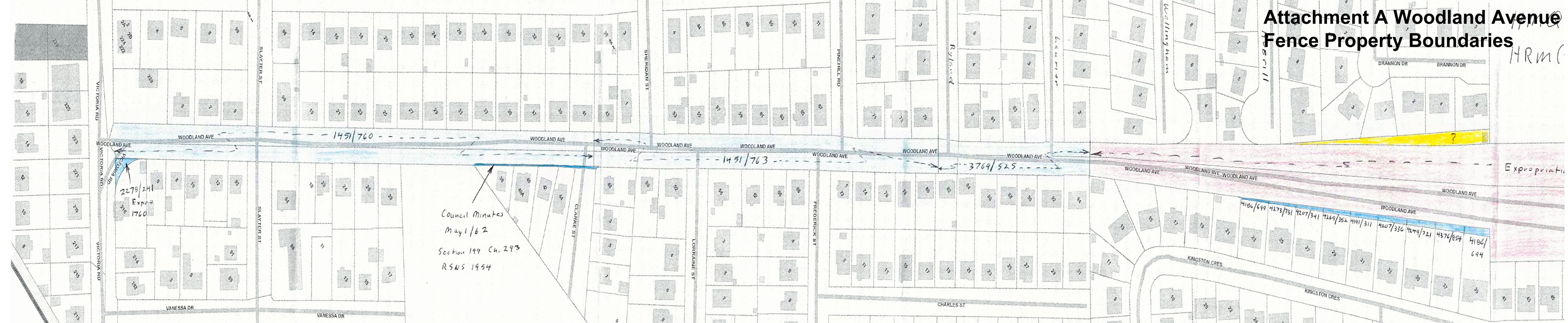
Attachment A – Woodland Avenue Property Boundaries
Attachment B – Survey Sketch 21056401
Attachment C – City of Dartmouth Council Report June 1985
Attachment D – City of Dartmouth Council Minutes June 1985
Attachment E – HRM Staff Correspondence September 2000

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Edmund Surette, Director Project Planning & Asset Management, PW, 902-490-7169

Attachment A Woodland Avenue Fence Property Boundaries

HRMC



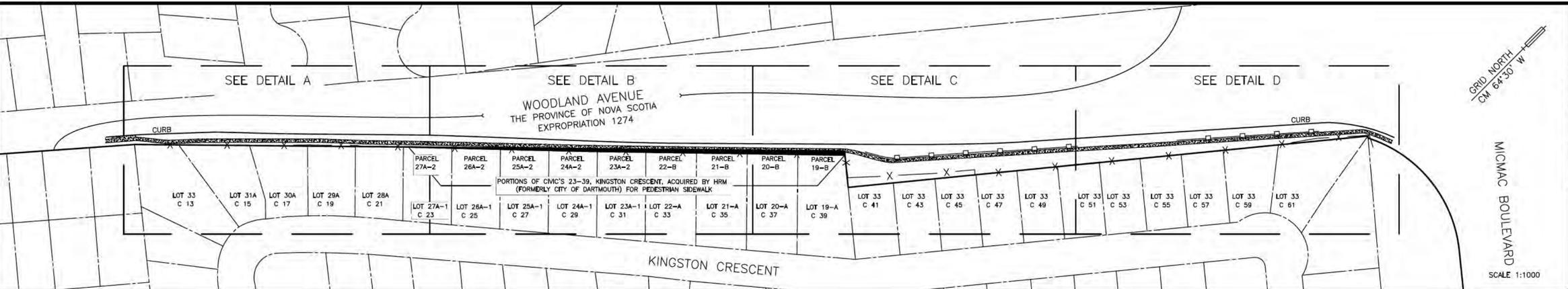
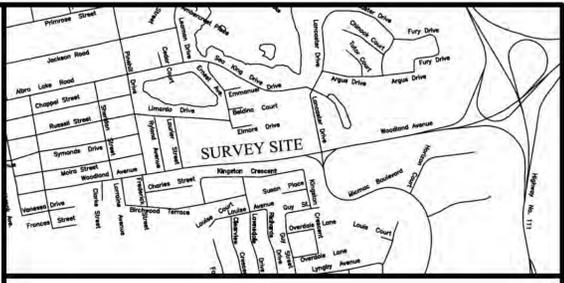
WOODLAND AVE

2279/241
Expi
1760

Council Minutes
May 1/62
Section 199 Ch. 293
RSNS 1954

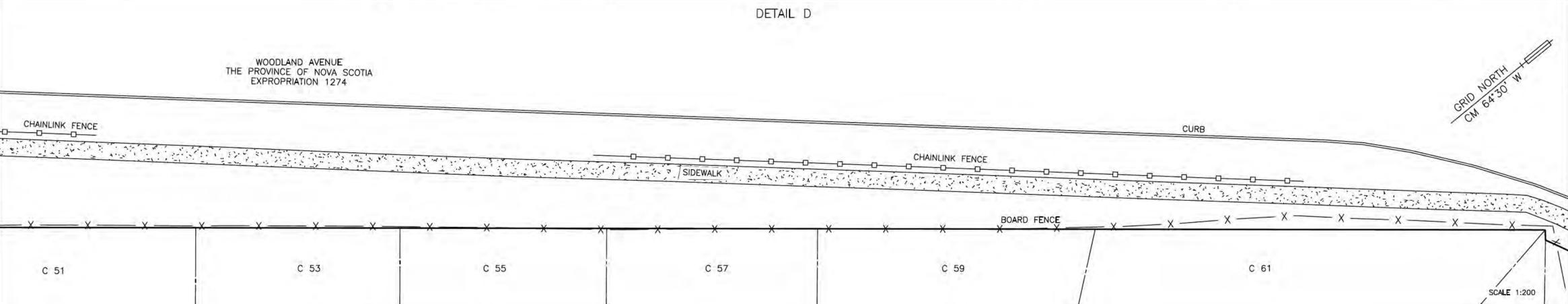
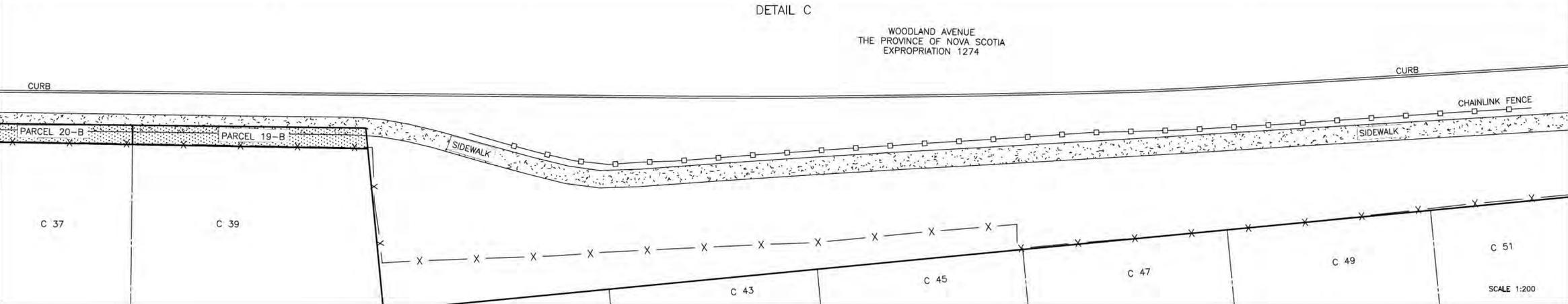
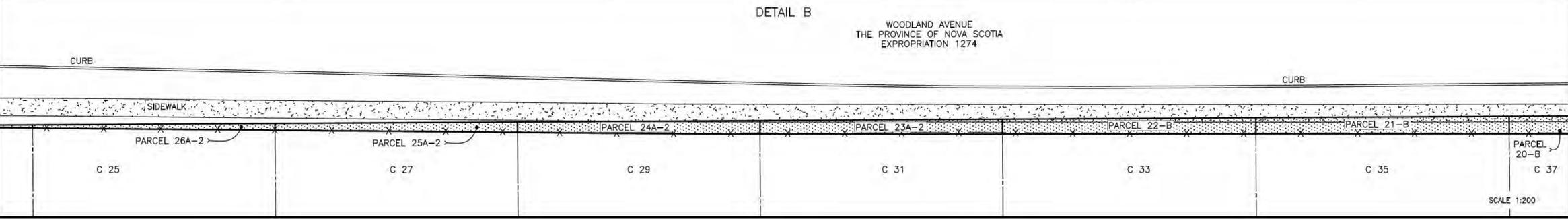
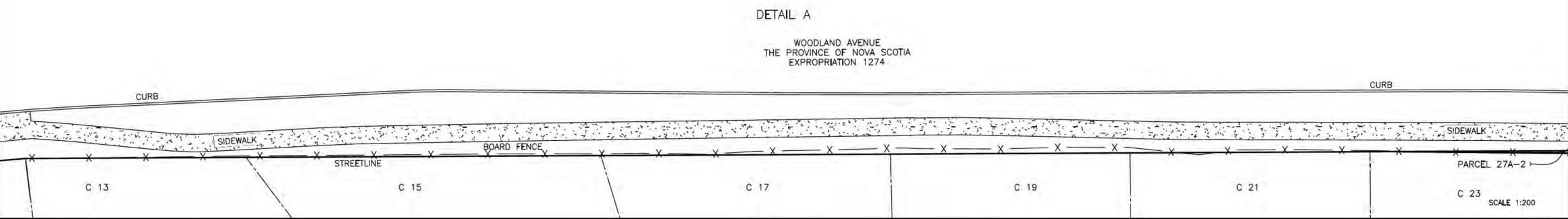
Expropriation

4186/699 4273/731 4207/341 4269/352 4191/311 4207/336 4299/721 4376/854 4186/694



- LEGEND**
- SURVEYED BOUNDARY
 - BOUNDARY FROM GIS
 - X — BOARD FENCE
 - □ — CHAINLINK FENCE
 - C # CMIC NUMBER ON KINGSTON CRESCENT
 - LOT # LOT NUMBER ON SURVEY PLAN
 - PARCEL # PORTION OF LOT ACQUIRED FOR SIDEWALK

**Attachment B Survey Sketch
21056401**



NOTES

BEARINGS ARE DERIVED FROM GNSS OBSERVATIONS AND ARE REFERENCED TO ZONE 5 OF THE NOVA SCOTIA 3° MODIFIED TRANSVERSE MERCATOR PROJECTION IN THE NAD83 DATUM. COORDINATES ARE REFERENCED TO CSRS EPOCH 2010. DISTANCES SHOWN ARE GRID AND ARE MEASURED IN METRES AND DECIMALS THEREOF.

FIELD SURVEYS WERE CARRIED OUT DURING THE PERIOD AUGUST 16 – SEPTEMBER 1 2021

IN 1985 THE CITY OF DARTMOUTH ACQUIRED PORTIONS OF LAND FROM VARIOUS ADJOINERS TO FACILITATE THE INSTALLATION OF A PEDESTRIAN SIDEWALK ON WOODLAND AVENUE.

PLAN REFERENCES

1. REGISTRY PLAN 1274
2. REGISTRY PLAN 7637
3. REGISTRY PLAN 15770
4. REGISTRY PLAN 114420400
5. HALIFAX REGIONAL MUNICIPALITY PLANS 34-407 TO 37-415, 36-0025



SKETCH SHOWING FENCING ALONG WOODLAND AVENUE
13 KINGSTON CRESCENT TO 61 KINGSTON CRESCENT
WOODLAND AVENUE & MIGMAC BOULEVARD
DARTMOUTH NOVA SCOTIA

DATE: SEPT 28, 2021	SCALE: AS SHOWN	DRAWN BY: KDH	PLAN NO.
REVIEWED: ND	SUPERVISOR: ND	JOB NO: SU21082	21056401



City of DARTMOUTH

P.O. Box 817, Dartmouth,
Nova Scotia, Canada, B2Y 3Z3



R.J. FOUGERE, P. Eng.
CITY ENGINEER

428.
Adopted
June 25

DATE: June 4, 1985

TO: His Worship The Mayor and Members of City Council

FR: A. E. Purdy, P. Eng., Assistant City Engineer

RE: - Proposed Sidewalk - Woodland Avenue -

The 1985 Capital Budget provides for construction of sidewalk along the southern side of Woodland Avenue from the existing to MicMac Boulevard and along MicMac Boulevard to Glencairn Crescent. Permission has been obtained from the Department of Transportation to construct the sidewalk on their right-of-way along Woodland Avenue. However, there is one area where there is insufficient space between the curb and the private properties to permit construction of the sidewalk with adequate boulevard width. The City will be required to obtain a strip of land from the rear of nine properties between 23 Kingston Crescent and 39 Kingston Crescent.

Each of the property owners was contacted regarding the acquisition and each was provided with a copy of the survey plan. They held a meeting and delegated two people to speak on their behalf indicating their willingness to sell and their general terms.

I obtained land assessment values to determine an appropriate price and subsequently suggested a price of \$5.55 per square foot which represented the median market value based on the assessment records. I also suggested that a new wood fence would be constructed along the new property boundaries. Also, the City would have to compensate for any trees which cannot be relocated.

The properties are presently fenced with board fences of various styles and heights of 5' and 6'. I had originally indicated the new fence would be 8' high with spaced boards. The owners want the fence boarded on both sides to assure privacy. This design would make the fence effectively a solid wall with respect to wind pressure and would require excessively heavy construction. I, therefore, recommend a solid fence 6' 6" high with boards on the street side only.

His Worship the Mayor and
Members of City Council

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The compensation to the individual property owners would be as follows:

F. A. White	23 Kingston Crescent	\$	██████████
H. Mackie	25 Kingston Crescent	\$	██████████
C. S. McAlden	27 Kingston Crescent	\$	██████████
J. Bezzeg	29 Kingston Crescent	\$	██████████
A. D. Frazer	31 Kingston Crescent	\$	██████████
G. S. Hurford	33 Kingston Crescent	\$	██████████
J. J. MacDougall	35 Kingston Crescent	\$	██████████
K. MacDermid	37 Kingston Crescent	\$	██████████
E. L. Parker	39 Kingston Crescent	\$	██████████

IT IS RECOMMENDED that the City purchase the land required for the construction of sidewalk along the south side of Woodland Avenue from the owners of properties from 23 Kingston Crescent to 39 Kingston Crescent inclusive for the prices outlined above (\$59.71 per square metre), construct a new 6' 6" high solid board fence along the property line to replace existing fences, and provide new trees or compensate for loss of trees which cannot be relocated.

Respectfully submitted,

████████████████████

A. E. Purdy, P. Eng.
Assistant City Engineer

- designing subsequent shoreline cleanup programs to remove rocks, stumps, etc.

Results should be discussed at public meetings before any final decisions are made.

That both sediment removal projects should be budgeted to be conducted some time between April and December 1986. The City should seek outside sources of funding. The Nova Scotia Department of Housing and the County of Halifax should be approached to share the cost of the Cranberry Lake project.

That a monitoring program be designed and funded to follow changes in both lakes before, during, and after the sediment removal projects. All data should be compiled into case studies which will become valuable references to improve the efficiency and effectiveness of any future lake dredging projects.

That consideration should be given to improving City-owned parkland around each lake after dredging so that the general public has better access to the rejuvenated lakes for recreation.

ACQUISITION OF
LAND - PROPOSED
SIDEWALK -
WOODLAND AVE.

A report was submitted by Mr. Purdy regarding the purchase of land required for the construction of a sidewalk along the south side of Woodland Avenue and the construction of a replacement fence. Permission has been obtained from the Department of Transportation to construct the sidewalk on their right-of-way and residents of nine properties along Kingston Crescent have indicated their willingness to sell a strip of land at the rear of their properties. It was therefore moved by Ald. Crawford and Romkey that the recommendations contained in the report be adopted. The motion carried.

MOTION: Moved by Ald. Crawford and Romkey that the City purchase the land required for the construction of sidewalk along the south side of Woodland Avenue from the owners of properties from 23 Kingston Crescent to 39 Kingston Crescent inclusive for the prices outlined in the report (\$59.71 per square metre), construct a new 6' 6" high solid board fence along the property line to replace existing fences, and provide new trees or compensate for loss of trees which cannot be relocated.

SALARIES -
DIVISIONAL
PLATOON
CHIEFS

Council considered a report from Mr. Moir on negotiations with the Divisional and Platoon Chiefs of the Fire Department to attempt to negotiate a 1985-86 salary level. In these negotiations, he sought to maintain a differential above the Captain's rate (Union position). Mr. Moir has recommended that the salary for Divisional Chiefs and Platoon Chiefs

Attachment E: HRM Staff Correspondence
September 2000

From: Gerry Boyd
To: Rick Paynter
Date: Mon, Sep 18, 2000 1:47 PM
Subject: Re: Fence - Woodland Ave.

- gen. CORRES.

In 1985 the City of Dartmouth purchased land at the back of 9 properties on Kingston Crescent for the purpose of installing a new concrete sidewalk along Woodland Avenue. (Those lots fronted on two streets.) A wooden fence was installed either in the fall of 1985 or spring of 1986, at the newly created back lot lines.

Paul Zinck has checked and found no formal written agreement with the homeowners as to who was to maintain the fence; however, the City of Dartmouth has already painted the Woodland Avenue side of the fence once, and I would say that HRM should continue to do so in the future. It should be noted that this pertains only to the fence at the back of Civic No 21 to 39 inclusive on Kingston Crescent. There is considerably more fence at both ends of this section of fence that was installed by homeowners and should not be painted by HRM.

>>> Kulvinder Dhillon 09/06 2:35 PM >>>

Ted/Gerry: Please research this and advise me

What the written agreement was at the time ... and also, what's the land on the other side of the fence ... or is it just abutting the other street?

>>> John Cunningham 9/6/00 10:18:50 AM >>>

KD:

There is a large wooden fence along the back yards of homes on Kingston Cresc.

I am told that, at the time this fence was erected, residents on Kingston Cresc. deeded land to the former City of Dartmouth. The arrangement was that residents would care for the fence facing their side of the properties, while the City would maintain the side facing Woodland Ave.

Residents are complaining that the HRM side is becoming quite unsightly and in need of paint. Can arrangements be done to have this work done soon.

Thanks for your attention to this matter.

John

CC: Kulvinder Dhillon; Ruth McCulloch; Ted Tam