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Item No. 15.1.2
Halifax Regional Council
May 7, 2024

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: April 2, 2024

SUBJECT: **Renewal of a Grade Alteration Permit at PID 40611410,
Lake Loon Road, Westphal**

ORIGIN

Application GRADEALT-2022-14826 was made by Dexter Construction Company Limited (Dexter) requesting to renew their permit to alter the grade at PID 40611410 fronting on Lake Loon Road, Dartmouth for five (5) years.

LEGISLATIVE AUTHORITY

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

353 (1) The Council may make by-laws,
(k) regulating and setting standards for drainage; regulating and setting standards for grading, describing when the standards and requirements must be met, and exempting those classes of lots described in the by-law;

By-law G-200, the Grade Alteration By-law

17. A Grade Alteration Permit shall be valid for a period of one (1) year from the date of issuance by the Engineer.

18. (1) The Engineer may impose conditions on a permit that the Engineer deems necessary for the protection of health, lives and the environment, or to protect the public from nuisances that arise from the grading.

(2) Subject to subsection (1) conditions may include, but are not limited to:

- (i) the months, days and hours of operation;
- (ii) the number of trucks hauling within a residential or school area;
- (iii) noise mitigation measures;
- (iv) dust control measures; and
- (v) additional environmental controls.

RECOMMENDATION ON PAGE 2

19. (1) Notwithstanding section 17, grading activities of a period longer than one (1) year from commencement or renewal of Grade Alteration Permit must be authorized by Council.

(2) Council may direct the Engineer to include such conditions that are deemed by Council to be reasonable and necessary to address issues considered by Council to be in the public interest.

(3) Council may refuse to authorize the Engineer to issue a permit for grading activities that last longer than one (1) year if such refusal is deemed by Council to be in the public interest.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the application to renew the permit to alter the grade at PID 40611410, Lake Loon Road, Westphal for one (1) year, subject to the permit including the conditions proposed by the Engineer as set forth in the Discussion Section of this Report and such conditions are to be in addition to the conditions and requirements already set forth in By-law G200, the *Grade Alteration By-law*.

BACKGROUND

PID 40611410 (the "Site") is a parcel of land approximately 30 hectares in size, locate in the Lake Loon Community, Dartmouth and is owned by Hayseed Acres Inc. The Site is located on Lake Loon Road between Montague Road and McLaughlin Road. Dexter Construction has been using the property as a receiving site for clean fill material that has been excavated from their construction sites over the past 12 years.

Location of the Site is shown in Map 1.

Request Details

Dexter Construction has operated the Site for approximately 12 years with annual permits issued by HRM in accordance with the previous Topsoil By-law T-40 and the more recent Grade Alteration By-law G-200.

The application states that "*the Site is situated to support future construction projects in the Dartmouth area for the next 5 years*" and that "*the Site plays an important role in supporting local residential, commercial and capital projects within HRM. The benefits of allowing the Site to continue to operate include helping to ensure that the construction projects progress in a predictable, timely and cost-effective manner, with as little impact to the environment as possible. Dexter Construction believes that renewing the permit will serve the public interest*".

The applicant's full request for the permit extension is provided in Attachment A.

Grade Alteration By-law G-200 Context

In 2011¹ and 2014², Council raised safety and nuisance concerns with the long-term hauling of fill associated with this specific Site. Council requested staff to review the ability to amend the Land Use By-law to mitigate the nuisances caused by the transportation and hauling of material to commercial fill sites.

A review of the Land Use By-laws determined that the placement of fill on a site is not considered development within the meaning of the Charter and the activity of placing fill is not regulated by land use by-laws. Even if a Land Use By-law did apply, changes made to regulate the placement of fill in commercial fill sites would only apply to sites that were established after the by-law was amended. Pre-existing activities

¹ [Petition – McLaughlin Road and Lake Loon – Heavy Equipment Traffic - Sept 20/11 Regional Council - HRM \(halifax.ca\)](#)

² [Transport and Dumping of Fill in Residential Areas - June 24/14 Regional Council - HRM \(halifax.ca\)](#)

would be exempt from these amendments. For this reason, mitigation nuisances related to longer term grade alteration activities were addressed in changes to the Grade Alteration By-law G-200 in September 2020³.

The Grade Alteration By-law requires a permit for the development of all lots in HRM where the work applies to grading associated with the change in elevation or contour of a parcel of land greater than 0.5 hectares in area; the construction or reconstruction of parking lots; the construction of retaining walls over 1 metre in height; the construction of a multi-unit residential, institutional, commercial or industrial (MICI) project; and the development of land associated with a Subdivision Agreement.

The By-law is intended to regulate the placing of fill, the removal of topsoil and the alteration of the grade of land associated with grade alteration activities to ensure that:

- existing drainage patterns are maintained;
- interference and damage to water courses or waterbodies is limited;
- water quality is maintained;
- erosion and sedimentation are prevented;
- changes to drainage or grade are appropriate to protect natural topography features;
- the use of hazardous or improper fill is prevented;
- unanticipated drainage and site alteration changes are prevented; and
- nuisances associated with long term transport of fill material are minimized.

Typical grading activities for building permits and subdivision development have a time frame of a few months to a year for each phase of construction; this type of work is considered temporary with a defined completion date. The Grade Alteration By-law allows the Engineer to issue a permit for such activities for a period of one (1) year.

Grading activities not associated with an approved development and lasting longer than one year are considered an on-going commercial venture and require Council approval. In these cases, the Grade Alteration By-law allows Council to not allow the activity to continue beyond one year, extend the time limit, or impose any other restriction it deems fit to address community or safety concerns.

The challenge with commercial fill sites is that they receive fill continuously every construction season, providing no relief for the residents within the community. The Grade Alteration By-law attempts to mitigate the nuisances associated with prolonged transportation of fill through residential areas associated with lengthy construction projects or commercial sites which accept fill material.

In accordance with Grade Alteration By-law G-200, Dexter Construction's request to renew the Grade Alteration Permit for five (5) years requires Regional Council's approval, and if approved subject to Permit application fees and a security deposit as outlined in Administrative Order 15.

This is the first request to extend a Grade Alteration Permit for Council since the adoption of the Grade Alteration By-law G-200.

DISCUSSION

HRM has issued grade alteration permits to the Site since 2012 in accordance with the previous Topsoil

³ [First Reading By-laws G-200, Respecting Grade Alteration and Stormwater Management Associated with Land Development; L-402, Respecting Lot Grading; S-701, Respecting Swimming Pools; Proposed AO 2020-010-OP, Respecting Stormwater Management Standards for Development Activities and Amendments to AO 15, Respecting License, Permit and Processing Fees - Aug 18/20 Regional Council | Halifax.ca](#)

By-law T-40 and the more recent Grade Alteration By-law G-200. However, while the Site's operations have adhered to grading by-laws, concerns have persisted regarding the hauling activity impacting the community. Since 2012, residents along MacLaughlin Road have voiced issues regarding truck traffic to the Site, citing concerns about frequency, speed, dust, noise and disruption to safety and quality of life.

Site activity, primarily occurring between May and late fall, sees heightened hauling during summer months. Of particular concern is the safety of children along MacLaughlin Road on their way to school or bus stops, given MacLaughlin Road's rural cross section with two-travel lanes, ditches and a 50 km/hr speed limit. MacLaughlin Road is within the walk distance to Graham Creighton Junior High on Cherry Brook Road. Students who walk travel in both directions along MacLaughlin Road. MacLaughlin Road is also a school bus route with three AM and two PM buses that travel along MacLaughlin Road from Hwy 7 toward Lake Loon Road/Cherry Brook Road. There are school bus stops at the corner of MacLaughlin Road/Prescott Road, in front of civic 119 MacLaughlin Road and at the corner of MacLaughlin Road/Lake Loon Road.

To mitigate the impacts of the truck travelling along MacLaughlin Road for the residents, Staff have worked closely with Dexter Construction since 2012. Permit conditions have been added for increased truck cleaning and tarping to reduce dust, notification of expected truck traffic to HRM, and requiring the applicant to contact impacted community members directly. For the community, the challenge remains of too many trucks travelling through the area.

To balance the applicant's need for a nearby fill site with mitigating impacts to residents, staff propose renewing grading activities with conditions restricting hours and days of truck hauling. Additionally, staff recommend a one year extension, which will allow staff to evaluate whether adjustments to the hauling activity alleviate residents' concerns, providing insight for future Council decisions or allow time for the applicant to locate another fill site better suited to their needs.

Proposed Conditions to be Included in the Permit

The proposed permit conditions are as follows:

- a) Hauling permitted Monday to Friday between last school bus pickup in the morning and before first school bus drop off in the afternoon when school is in session, and Monday to Friday between 9 am and 4 pm when school is not in session.
- b) Hauling not permitted on weekends or holidays.
- c) Applicant required to engage directly with impacted residents along Lake Loon Road and MacLaughlin Road. Provide the residents weekly notifications describing number of trucks expected to be hauling, hours of operation, and dedicated site contact.
- d) Implement further dust control and debris mitigation measures such as requiring the installation of a tire wash station installed prior to the rumble strip to mitigate dirt tracked onto Lake Loon Road and MacLaughlin Road, and securely covering all truck travelling to and leaving the site.
- e) Sampling and analyzing runoff weekly and during/after rainfall events and submitting the results to HRM.

FINANCIAL IMPLICATIONS

No financial implications at this time.

RISK CONSIDERATION

There are no risks associated with staff recommendation.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Regional Council may choose to:

1. Not issue a permit. This is not recommended for the reasons outlined in the report.
2. Modify the proposed renewal time and/or permit conditions as necessary to address issues to be in the public interest.

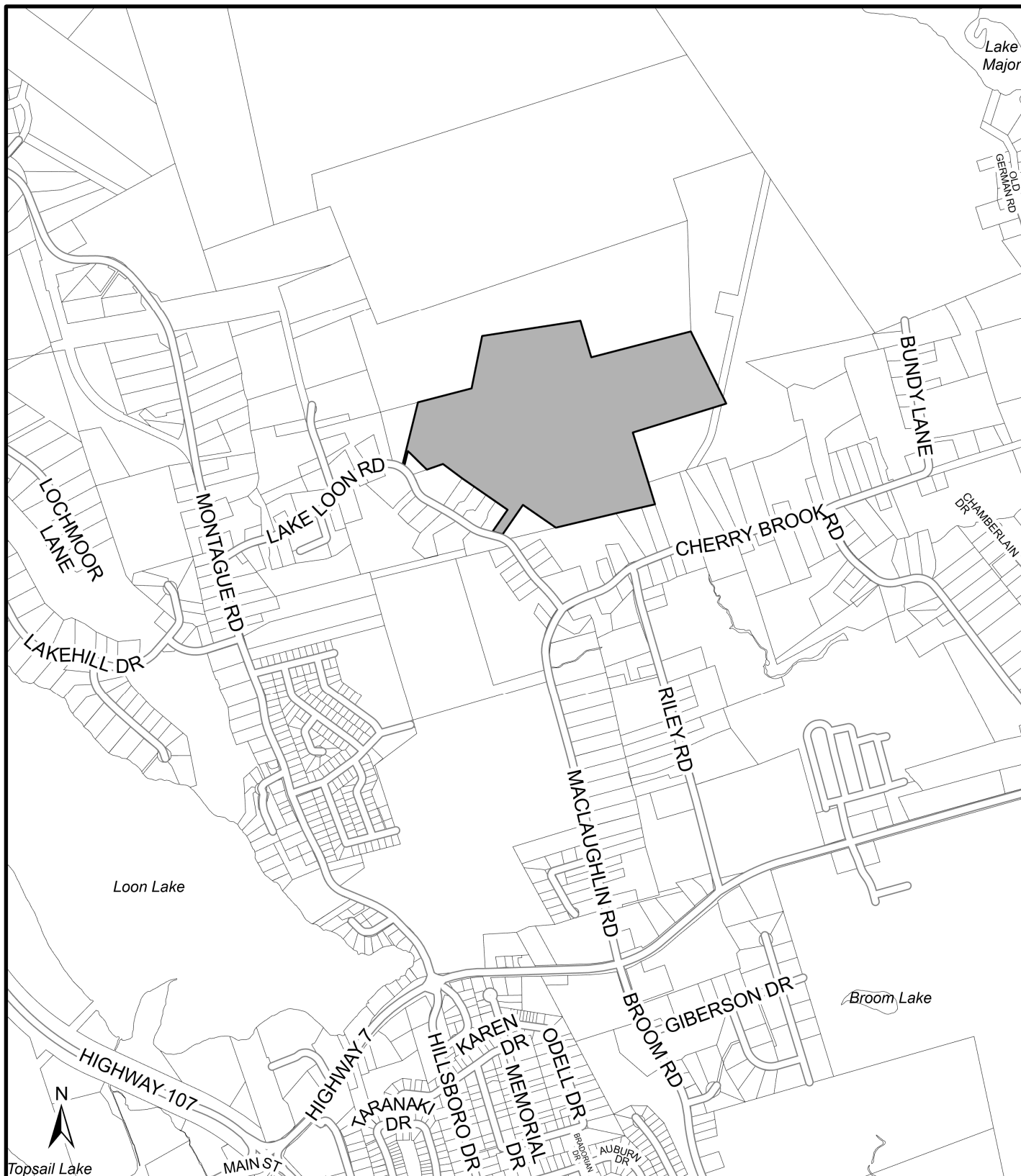
ATTACHMENTS

Map 1 – Location

Attachment A – Grade Alteration Renewal Request from Applicant


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.

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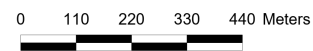


Map 1 - Location Map

PID 40611410,
Lake Loon

 Subject Property

HALIFAX



HRM does not guarantee the accuracy of any representation on this plan.



Introduction

HRM has requested that Dexter Construction submit this summary to provide context for our application to renew a Grade Alteration Permit pursuant to section 19 of the *Grade Alteration By-law*, G-200 in relation to a vacant +/- 76 acre lot described as Lot A-B-C, in the community of Lake Loon, Halifax Regional Municipality (PID 40611410) (the “**Site**”). The Site is located in District 4 (Cole Harbour – Westphal – Lake Loon – Cherry Brook).

The Site has been in operation for approximately 20 years as a receiving site for clean fill material excavated from construction sites throughout HRM. Dexter Construction has operated the Site for the last 12 years pursuant to annual permits issued by the HRM Engineer. With the enactment of the new *Grade Alteration By-Law*, HRM staff required that Dexter Construction submit an application to be considered by Council, rather than providing its usual annual renewal.

We understand that this may be the first such application to be considered by Council. We respectfully stress the importance of applications such as ours being dealt with efficiently, as the construction (excavation) season is imminent and sites such as this are vital to property development and construction in HRM.

Overview of the Site’s Operations

Dexter Construction has operated the Site with the permission of the registered owner, Hayseed Acres Inc. The Site is accessed from Lake Loon Road between Montague Road and McLaughlin Road / Cherry Brook Road. Vehicle traffic to/from the Site is routed from Main Street via McLaughlin Road to reduce traffic along Lake Loon Road.

The Site has played an important role as a receiving site for clean fill material excavated from local construction projects including single and multi-unit residential developments (e.g. Lake Loon Estates – 162 units), commercial developments providing services to the community (e.g. Portland Street and Wilkinson Avenue developments), provincial projects (e.g. Astral Drive School and Cole Harbour High School Expansion), and water, sewer, street and other municipal capital projects (e.g. Ellenvale Improvements Part A-B, Sullivan’s Pond Storm Sewer Replacement, North Dartmouth Trunk Sewer, Forrest Hills Parkway Street Recapitalization projects, Cole Harbour Sports Field, Wright Avenue Extension, and street upgrades for Oland Court, Morris Drive, Rolieka Drive, Kennedy Drive, Woodlawn Road, and Prince Albert Road).

The Site is ideally suited and situated to support upcoming construction projects that deliver both economic and social benefits to the community, such as the Port Wallace and Mount Hope housing developments. In addition to the community benefits from these projects, as the Site receives clean fill material it is built-up and improved, preparing it for possible future development.

As clean fill material is transported by truck, the availability and proximity of a suitable site is an important factor impacting the cost of construction. The Site has provided a constant, convenient and stable fill site for the constructors and owners of these projects, including HRM, allowing them to remove contingencies from their bids and budgets, which in turn reduces overall construction costs, helping to make housing and services more affordable. By contrast, the elimination of the Site would require the establishment of one or more new disposal sites farther from the work resulting in construction delays, increased financing costs, additional start-up costs to prepare the new site, and added trucking and disposal costs. Like all construction costs, these costs are ultimately passed on to the owners, renters, home buyers, consumers and rate payers.

Regarding the environmental impact of this work, an alternate site or sites farther outside HRM will lead to an increased carbon footprint caused by increased trucking distances.

The Site has been built-up in phases with guidance from Dexter Construction's environmental consultant Strum Consulting, who has prepared wetland delineation surveys, Grade Alteration and Storm Water Management Plans, and provided advice and assistance regarding environmental management of the Site over the years. The Site's phased development has ensured that sensitive features (e.g. watercourses and wetlands) are identified and delineated, and that appropriate setbacks are maintained.

Dexter Construction has implemented extensive environmental controls to ensure there is no adverse impact to health or the environment. Dexter Construction takes samples and tests surface water runoff weekly, as well as prior to and immediately following significant rain events. Analytical results are submitted to HRM via the online permitting portal. In addition, exposed soil is hydroseeded and stabilized, and a silt fence has been installed to prevent soil erosion from impacting groundwater in accordance with industry best practices. These environmental controls are inspected regularly by Dexter Construction's staff of environmental scientists and maintained or replaced as necessary.

Dexter Construction has also proactively implemented controls to minimize any disruptions to nearby residents. Through consultation with property owners over the years, Dexter Construction has limited the Site's hours of operation to 6:00 p.m., Monday-Friday, to avoid truck traffic in the evening and nighttime hours. A schedule of planned activity at the Site, including the planned number of daily vehicles and loads, is submitted to HRM bi-weekly. This information is also available to residents upon request. Dust and debris mitigation measures include the application of water to the asphalt to mitigate airborne dust from vehicle traffic; the application of clear stone gravel to cover any exposed soil or mud where vehicles travel; and the installation of a riprap rumble strip to remove any dirt or debris before vehicles leave the Site.

Permit Conditions

Dexter Construction's permit has been subject to comprehensive terms and conditions, including:

- Developing the Site in accordance with the approved Grade Alteration and Storm Water Management Plan prepared by Strum Consulting and ensuring that neighbouring properties are not negatively impacted by grade alteration activities;
- Maintaining erosion and sedimentation controls and stabilizing disturbed areas;
- Completing site rehabilitation on a progressive basis;
- Obtaining all necessary permits and approvals, and complying with all applicable laws such as environmental approvals, the Nova Scotia Temporary Workplace Traffic Control Manual, the HRM Noise By-Law N-200 and the HRM Streets By-Law S-300;
- Accepting responsibility for any damage to street trees or other HRM infrastructure as a result of the Site's operations;
- Sampling and analyzing runoff weekly and during/after rainfall events, and submitting the results to HRM;
- Maintaining dust control measures;
- Ensuring that Lake Loon Road is clean and free from dust and debris at all times.

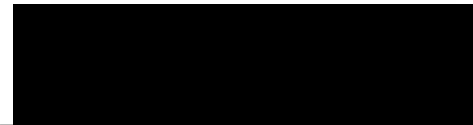
In addition to these measures, Dexter Construction will also continue to submit operational information to HRM, including regular schedules of anticipated vehicle traffic and Site activity. We believe that these conditions mitigate the Site's impact on the environment and community.

Furthermore, Dexter Construction's compliance with the terms and conditions of the permit is guaranteed by a liquid security deposit in the amount of approximately \$155,000 pursuant to Administrative Order 15. HRM may at any time direct that Dexter Construction take the necessary steps to bring itself into compliance with the terms and conditions of the permit, or alternatively elect to perform the work and draw against the security deposit.

Dexter Construction has demonstrated a history of compliance with the terms and conditions of the permit and has proven itself to be a good steward of the Site. Dexter Construction therefore suggests that the permit be renewed on the same terms and conditions.

Conclusion

As explained above, the Site plays an important role in supporting local residential, commercial, and capital projects within HRM. The benefits of allowing the Site to continue to operate include helping to ensure that construction projects progress in a predictable, timely and cost-effective manner, with as little impact to the environment as possible. Dexter Construction believes that renewing the permit will serve the public interest.



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