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Item No. 15.1.3
Halifax Regional Council
August 20, 2024

TO: Mayor Savage and Members of Halifax Regional Council

FROM: Cathie O'Toole, Chief Administrative Officer

DATE: June 14, 2024

SUBJECT: **Sheet Harbour Streetscape Area Rate: Proposed Assignment of Area Rate Agreement**

ORIGIN

November 14, 2023, Halifax Regional Council (Item 16.1)

MOVED by Councillor Hendsbee, seconded by Councillor Kent

THAT Halifax Regional Council direct the Chief Administrative Officer to provide a staff report exploring the possible transfer of responsibilities for the Sheet Harbour Streetscaping Program area rate from the Sheet Harbour and Area Development Corporation to the Sheet Harbour and Area Chamber of Commerce.

MOTION PUT AND PASSED UNANIMOUSLY

EXECUTIVE SUMMARY

This report addresses a request to consider a transfer of responsibility for managing the Sheet Harbour Streetscaping Program and associated area rate from the Sheet Harbour and Area Development Corporation Limited to the Sheet Harbour Chamber of Commerce. It is recommended that:

- (i) the area rate balance held in trust by HRM be released to the Sheet Harbour and Area Development Corporation Limited under the current agreement (2010) to address immediate deficiencies in sidewalk maintenance as identified in HRM asset assessment reports; and
- (ii) HRM negotiate a new, updated agreement that is in accordance with administrative Order 2019-005-ADM for area rate funding for the streetscape project (HRM assets).

A rationale supporting these recommendations is included in the Discussion section of this report.

RECOMMENDATIONS ON PAGE 2

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Direct the Chief Administrative Officer to direct staff to release funds in the amount of \$114,482 held in Operating Account W944 to the Sheet Harbour and Area Development Corporation Limited subject to reasonable conditions to ensure appropriate and sufficient insurance, the remediation of priority sidewalk deficiencies, and snow and ice removal; and
2. Invite the Sheet Harbour and Area Chamber of Commerce to submit a detailed proposal to HRM with respect to the transfer of the area rate, any expansion in the scope of work to be funded using these funds, the uniform charge and/or catchment area, and engagement with residents of Sheet Harbour subject to the area rate in accordance with Administrative Order 2019-005-ADM.

BACKGROUND

In 2006 the Sheet Harbour Chamber of Commerce (“Chamber of Commerce”) initiated a streetscaping project to construct ~2.7 km of sidewalk along Highway 7. Although the provincial government does not provide or maintain sidewalks or streetscape improvements on its highways, municipalities can undertake streetscape projects provided they construct, own, and maintain the assets. The project was funded on a 2/3rds basis under the Federal/Provincial Infrastructure Fund with the balance of funding from HRM and 10% from the Sheet Harbour community under an area rate. The community portion was initially funded through a debenture issued by HRM to be re-paid through the area rate.

In 2009, the Chamber of Commerce established a separate but related entity, the Sheet Harbour Development Corporation (“Development Corporation”), a limited company wholly owned by the Chamber of Commerce, to manage the streetscape project and reduce the Chamber of Commerce’s liability/risk exposure. The following year the Sheet Harbour Streetscape Program area rate was established to fund costs associated with the paving, new sidewalks, storm water management, lighting, and streetscape amenities. The funding agreement between HRM and the Sheet Harbour and Area Development Corporation Limited, dated January 8, 2010, sets out the obligations of both parties. The assets were to be owned by HRM and the Municipality agreed to provide periodic condition assessments to the Development Corporation.¹

Under Clause 4 of the agreement, upon completion of capital work the Development Corporation was to assume responsibility for lifecycle maintenance and replacement, snow clearing, and general upkeep. It appears that HRM paid invoices submitted by the Development Corporation from the area rate until the capital debt portion (debenture repayment) was fulfilled in 2021. Subsequent payments made from the area rate have been for liability insurance and snow clearing.

The implementation of a municipal sidewalk in Sheet Harbour was an ad hoc, case-specific approach linked to an inter-governmental funding opportunity and pre-dated HRM’s new Rural Active Transportation Program. In contrast, the active transportation approach does not devolve responsibility to a separate organization and has a different formula for setting the rate to be paid by local property owners. The staff review concludes that the original agreement (2010) is out-dated, and that the area rate funding agreed should be repealed and replaced with an agreement that reflects current practice following consultation with the Sheet Harbour Chamber of Commerce.

A chronology of the Sheet Harbour Streetscape Project and related activities is included as **Attachment 1** of this report.

¹ <https://legacycontent.halifax.ca/council/agendasc/documents/110201ca1113.pdf>

DISCUSSION

Scope of Current Agreement

The current agreement pertains to a defined portion of Highway 7 for improvements identified in a report entitled Sheet Harbour Waterfront Plan. For context, this agreement was enacted in relation to an inter-governmental funding agreement for a capital project projected to cost approximately \$4 million dollars. Hence, the emphasis was on project financing, adherence to construction standards, project scope, and cost containment. The capital-intensive phase of the streetscape is complete, and the debenture advanced by HRM has been repaid. If residents were/are unaware of their obligation to fund annual maintenance and future recapitalization, they might assume that the area rate would be discontinued or reduced once the capital-intensive phase was complete. It is important to note that the existing agreement did not have a stated duration but could be terminated by either party with four weeks written notice.

In accordance with the agreement, HRM Public Works staff have conducted condition assessments of assets owned by HRM which have been submitted to the Development Corporation. A 5-year summary of assessments conducted annually from 2019 to 2023 is included as **Attachment 2** of this report. The findings suggest that maintenance has not been consistently undertaken, including items identified as “high priority”. Limited capital expenditures on upkeep, notably for sidewalks, may to some degree account for the balance of \$114,482 held by HRM in Operating Account W944. This amount includes the 2024 area rate revenue of \$44,115. The current state of the sidewalk may pose risk to both HRM and the Development Corporation.

Recommendation #1

To address the immediate need to rectify deferred maintenance of the public sidewalk, it is recommended that the area rate balance be issued to the Sheet Harbour Development Corporation conditional upon their commitment to the following:

- Payment of liability insurance with HRM indemnified (Clause 7 of 2010 agreement).
- Commence work in a timely manner to repair or replace sidewalk slabs identified in the asset condition assessments completed by HRM Public Works.
- Contract seasonal snow and ice removal and grass-cutting.
- Address any deficiencies that pose immediate risk to public safety.

This approach is consistent with current practice under Administrative Order 2019-005-ADM for community area rates wherein funds are advanced in accordance with the annual budget submitted by the recipient organization. The intent of recommendation #1 is to address immediate safety concerns while allowing time to transition and align practice with policy. It is anticipated that the Development Corporation may need to confirm if the 3-tier area rate is sufficient to address maintenance, insurance, and upkeep of the streetscape assets given that labour and materials costs have increased over the past 15 years.

Continuation of funding under the current agreement is necessary at this stage because the community area rates policy defines a community organization as a “society” pursuant to the Societies Act (1989); the Sheet Harbour Development Corporation Limited is a limited company and if the use of the area rate funds were to be expanded beyond the streetscape project contemplated in the original agreement (events, beautification, grants to nonprofit or charitable organizations, improvements to non-municipal assets), public consultation in accordance with Section 19 of policy is required to confirm the purpose of the area rate, the catchment area, the rate(s) formula and duration. Under Administrative Order 2019-005-ADM, public consultation to establish or amend an area rate is facilitated by HRM staff. Further, if the service provider were to be changed, HRM would need to consult with the Nova Scotia Department of Transportation as per Section 26 of the Public Highways Act.

Note: the release of the full balance of area rate funds represents a risk in that adherence to the current contract has not been demonstrated in recent years, leading to a deterioration in the

condition of the sidewalk and accessories.

Recommendation #2

If management of the sidewalk area rate is to be transferred to the Chamber of Commerce, a registered non-profit society, the 2010 agreement would need to be discontinued and a new agreement would need to be executed that is in accordance with Administrative Order 2019-005-ADM. Under policy the recipient organization is required to submit a detailed annual business plan (expenditures to be funded using area rate monies), minutes of the society's annual general meeting, and a financial statement for the prior year with accounting for the expenditure of the rate funds. Any change in the purpose of the rate, catchment area, or amount of the area rate(s) requires public consultation and a vote by those property owners subject to the uniform charge. The public consultation is facilitated by HRM staff.

It is probable that two separate area rates may be required; one to address the sidewalk (a municipal asset) and one to initiatives that are unrelated to the sidewalk. In either scenario, the Chamber of Commerce will be required to engage property owners within the defined catchment area to confirm their informed consent.

Other Options

In the absence of updated quotes confirming the cost to remedy deferred maintenance (priority sidewalk repairs or other safety issues) it may be prudent to limit the scope of area rate expenditures until the Development Corporation and/or the Chamber of Commerce can confirm if the existing area rate generates sufficient funds to complete necessary repairs and annual on-going upkeep. In the immediate to short-term, the Chamber of Commerce could be assisted in identifying potential funding sources, excluding the area rate, to support improvements to property or features in the vicinity of Highway 7 located on non-municipal lands. The Chamber of Commerce could be invited to submit a detailed proposal with respect to the transfer of the area rate and intended use, including any proposed community engagement in accordance with municipal policy.

Summary

It is incumbent upon the Municipality to ensure that both the Chamber of Commerce and local residents understand the implications regarding the status of the current area rate and any proposed changes. To do so will require public engagement which should be expected to take months. In the interim, the condition of the public sidewalk requires immediate attention.

FINANCIAL IMPLICATIONS

Operating Account W944 Sheet Harbour Streetscape Program

Balance as of June 01/2024	\$114,482 ¹
Proposed Disbursement/2024	(\$114,482)
Balance	\$0

Notes:

1. The \$114,482 includes the full value of the 2024 area rate which is \$44,115.

RISK CONSIDERATION

Deferred maintenance of a sidewalk owned by HRM poses financial and reputational risk to both HRM and the Sheet Harbour Development Corporation.

COMMUNITY ENGAGEMENT

No community engagement was undertaken in relation to this report.

If the Sheet Harbour Chamber of Commerce wish to pursue a Community Area Rate to fund projects unrelated to the maintenance of a public sidewalk owned by HRM they may elect to do so in accordance with Administrative Order 2019-005-ADM under which a community consultation is required.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

1. Halifax Regional Council could choose to refuse to approve the recommendation to release the balance of funds held by HRM to the Sheet Harbour Development Corporation Limited.

This option is not recommended because the sidewalk condition warrants immediate remedy as indicated in condition assessments completed by HRM Public Works.

2. Halifax Regional Council could propose amendments to the staff recommendations.

If the amendments are substantive in scope or effect a supplementary staff report may be required.

LEGISLATIVE AUTHORITY

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

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(1) The Council may spend money in an area, or for the benefit of an area, for any purpose for which the Municipality may expend funds or borrow

....

(4) The Council may, in lieu of levying an area rate, levy a uniform charge on each (a) taxable property assessment; (b)dwelling unit, in the area.

- *Administrative Order 2019-005-ADM Respecting the Establishment and Use of Community Area Rates in Halifax Regional Municipality.*
- *Administrative Order 2022-005-ADM Respecting the Community Grants Program.*

Administrative Order 2022-008-ADM Respecting the Implementation of Area Rates to Fund Sidewalks Outside of the Urban Tax Area in the Halifax Regional Municipality.

- *Public Highways Act, S.N.S 1989, c.371 as amended.*

26 Agreement between Province and city or town

- (1) The Minister, with the approval of the Governor in Council, and any city or town are authorized to make, enter into and carry out an agreement to co-operate in such a manner as may be agreed on in the construction, reconstruction, or maintenance of any highway or any part thereof in the city or town if, in the opinion of the Minister, the highway forms a connecting link in a main trunk highway of the Province, or is a main highway leading into or through the city or town, and are authorized to make all necessary expenditures in connection therewith, provided always that such an agreement does not require the Minister to undertake more than fifty per cent of construction, reconstruction,

or maintenance of any portion of such highway.

ATTACHMENTS

Attachment 1 - Chronology of Sheet Harbour Streetscape Project

Attachment 2 - Summary of Asset Inventory 2019 to 2023

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: Peta-Jane Temple, Team Lead Grants & Contributions/Revenue, Finance & Asset Management (902) 490.5469.

Chronology of Sheet Harbour Streetscape Program:

1982 - Sheet Harbour & District Board of Trade incorporate as a nonprofit society to provide support services to local businesses and entrepreneurs. Registry of Joint Stock Companies #1385475.

2001 - The society change their registered name to the Sheet Harbour & Area Chamber of Commerce.

2006 - The Chamber of Commerce initiate a planning process to consider potential improvements to park and tourist features and a streetscaping program for the Sheet Harbour main street (Highway 7). The proposed streetscaping project included the construction of sidewalks and the purchase and installation of streetlights, trees, and street furnishings within the right of way.

2009 - The Chamber of Commerce establish a separate but related entity, the Sheet Harbour and Area Development Corporation Limited ("Development Corporation") to manage the streetscape project. Registry of Joint Stocks Companies #3235378.

Although the provincial government does not provide or maintain sidewalks or streetscape improvements on its highways, municipalities can undertake such improvements, provided they build, own, and maintain the assets¹. Because the Municipality did not provide sidewalk improvements outside the tax structure service boundaries access to financing was enabled through an agreement with the Development Corporation.

HRM agreed to:

- Own the sidewalk and streetscape improvements.
- Set construction standards.
- Conduct annual inspections.
- Provide initial financing for the community's share of initial construction costs.
- Issue a debenture to be paid from the area rate.
- Collect applicable local improvement charges or area rates and transfer funds to the Development Corporation.

The Development Corporation agreed to:

- Corporation to pay debenture principal and interest and fund maintenance using an area rate.
- Form a working committee with representation from the Corporation, HRM, and the Province of Nova Scotia.
- Solicit community approval for a local improvement charge or area rate for construction and maintenance.
- Tender work through a competitive process.
- Assume responsibility for regular and capital maintenance.
- Maintain insurance and indemnify the Municipality.

Financing was secured from the Federal Stimulus Program, ACOA, Province of Nova Scotia, and HRM (\$500,000). The proposed community cost share for initial construction and on-going maintenance was to

be collected through a local improvement charge or an area rate.

Source: Recommendation report to the Regional Council meeting of November 24, 2009, Sheet Harbour Streetscape Phase I – Agreement with Sheet Harbour and Area Development Corporation, dated November 7, 2009 [Item 10.1.3].²

2010 - Council approved a uniform charge to be applied to property assessed as Commercial or Residential within a defined catchment area.

2018 - The uniform charge is amended to a 3-tiered rate of \$5, \$15, or \$25 based on a property's proximity to the sidewalk and associated amenities². The 2018-19 business plan on file with HRM included the following budget:

• Snow and ice removal	\$15,600
• Grass cutting	\$1,000
• Debt payment for capital	\$12,900
• Insurance	\$2,400
• Contingency for repairs	\$10,600
• Total	\$42,500

2019 – HRM's Recreation Area Rate Policy and Interim Area Rate Guidelines are replaced by a new policy, Administrative Order 2019-005-ADM Respecting the Establishment and Use of Community Area Rates in Halifax Regional Municipality. The new policy addressed mandatory standards to establish, amend, or terminate an area rate.

- Subsection 2 (g) of policy defined a rate as “an area rate or uniform charge for local community recreation or sidewalks”.
- Subsection 33 (1) (h) (i) (ii) included the construction or enhancement of “sidewalks outside of the Urban Area as established by Council” as eligible expenditures provided specific conditions were met.

The community's share of the initial capital costs in the amount of \$136,681 (principal and interest) is advanced by the Municipality to be recovered through the area rate. Capital and operating expenses were to be reimbursed until HRM's debenture was paid out in full.

2021 - The community's share of the initial capital cost is paid out. However, neither the area rate or scope of work described in the initial agreement (2010) is updated or amended, as applicable. Likewise, the disbursement process for the area rate funds was not amended to conform to similar area rates whereby funds are advanced in full following Regional Council's approval of a business plan and the submission of a financial statement and minutes of the organization's AGM.

2022 - Report to HRM Transportation Standing Committee recommends the removal of new sidewalks from the Community Area Rate Administrative Order and the implementation of a new Administrative Order to provide partial funding towards the construction, maintenance, and operation of sidewalks and multi-use pathways in “candidate” rural communities identified in HRM's Active Transportation Priorities Plan (2014). The aim was to support active transportation between clusters of amenities. The report's preliminary list of “Rural Candidate Communities” included Sheet Harbour.

Source: Recommendation report to the Regional Council meeting of April 10, 2018, Area Rate for Sheet Harbour Streetscape Program, dated March 8, 2018 [Item 14.1.1].

2023 - Administrative Order 2022-008-ADM Respecting the Implementation of Area Rates to Fund Sidewalks Outside of the Urban Tax Area in the Halifax Regional Municipality is adopted. Subsection 2 (p)

² <https://legacycontent.halifax.ca/council/agendasc/documents/091124ca1013.pdf>

of policy defines a sidewalk as “a paved public thoroughfare for use by pedestrians within the Municipality’s right of way”. The area rate is prescriptive and is based on the difference between the urban and residential general tax rates.

Source: Recommendation report to the Regional Council meeting of February 7, 2023, Rural Active Transportation – Administrative Order 2022-008-ADM and Amendments to Administrative Order 2019-005-ADM, dated January 7, 2023 [Item 15.1.2].

2023 - HRM receive an unsolicited *draft* proposal from the Chamber of Commerce to establish a committee to manage the administration of area rate funds. Meetings of the committee to be open to the public. As proposed the use of the area rate would be expanded beyond the streetscape project to include community beautification, events, costs associated with the administration of the area rate (insurance, registration, meeting space rental, photocopying, postage), project grants to other organizations, and unspecified projects as determined by the committee and approved by Regional Council pursuant to Administrative Order 2019-005-ADM.

2023 - Regional Council approve a motion to direct the Chief Administrative Officer provide a staff report regarding the possible transfer of the area rate from the Development Corporation to the Chamber of Commerce.

Source: Minutes of Regional Council meeting of November 14, 2023 [Item 16.1].

2024 – The Chamber of Commerce request \$15,000 under HRM’s Community Grants Program to fully fund repairs to the “West River and Museum Boardwalk”, install safety guard rails, signage, and lighting.

Although the Community Grants Program prioritizes property owned by a nonprofit or charitable organization, Section 6 of Administrative Order 2022-005-ADM permits funding towards improvements to land leased from the Government of Nova Scotia or the Government of Canada specific conditions must be met. Namely, a land lease, the property owner’s written approval of the proposed improvements, and confirmation that application has been made for provincial or federal project funding in an amount equal to or exceeding the value of municipal funding requested. The application was declined because the property is not owned by the applicant and the application did not include confirmation of a lease agreement, the owner’s written consent, and government funds equal to or exceeding the grant requested from HRM.

Source: Recommendation report to the HRM Grants Committee meeting of May 27, 2024, HRM Community Grants Program: Fiscal 2024 – Recommended Awards, dated May 1, 2024 [Item 9.1.6].

Current State – As of June 2024, there is a balance of \$114,482 in Cost Centre W944 – Sheet Harbour Streetscape Program. The \$114,482 includes the full \$44,115 collected through the area rate in fiscal 2024.

Sheet Harbour Streetscape Asset Assessment

Year	Date	Sidewalk Slabs	Trees	Furnishings
2019	15-Aug	Cracked Sidewalk slabs, opposite 22807	Broken off trees 22541, 22569, 22731, 22828	Bench leaning 22563, very unstable & Handrail 22828
2020	24-Jul	Cracked sidewalk slabs, 22462, 22691, 22828 Heat heave - new slab needed 22808 Slab needs to be replaced 22462, crack	Broken off trees 22541, 22569, 22731, 22828 Mature Tree hanger 22703 Maple Tree declines and should be removed 22657 Minor Deadwood Bradford Pear Tree 22679 Blue Spruce 22731, pruning and trimming for access to garbage Gengo Tree 22731, need to be replaced Oak tree 22563 minor elevation	Bench leaning 22563, very unstable Handrail 22828 Garbage Receptacle broken slat 222563
2021	6-Jul	Cracked sidewalk slabs 22427,22563, 22691, 22828, 22864 Patch work needed 22637 (High Priority) Slab needs replaced 22462 (High Priory)	Broken off trees 22541, 22569, 22731, 22828 Mature Tree hanger 22703 (High Priory)	Bench leaning 22563, very unstable Garbage Receptacle broken slat 222563 Handrail 22828, unstable 22427 - retaining wall cap cracked
2022	4-May	Cracked sidewalk slabs 22427,22563, 22691, 22828, 22864 Patch work needed 22637 (High Priority) Slab needs replaced 22462 (High Priory)	Broken off trees 22541, 22569, 22731, 22828 Mature Tree hanger 22703 (High Priory) Maple Tree declines and should be removed 22657	Bench leaning 22563, very unstable Garbage Receptacle broken slat 222563 Handrail 22828, unstable

Cont.	Cont.	<p>Heat heave - new slab needed 22808 (High Priory)</p> <p>Grinded for smoother transition, 22756 (High Priory)</p> <p>Grinded for smoother transition, 22685</p>	<p>Minor Deadwood Bradford Pear Tree 22679</p> <p>Blue Spruce 22731, pruning and trimming for access to garbage</p> <p>Gengo Tree 22731, need to be replaced</p> <p>Oak tree 22563 minor elevation</p>	22427 & 22517- retaining wall cap cracked
2023	5- May	<p>Cracked sidewalk slabs 22427,22563, 22691, 22828, 22864, 22485, 22497, 22517, 22541, 22553, 22579, 22651, 22677, 22681</p> <p>Patch work needed 22579, 22637, 22651 (High Priority)</p> <p>Slab needs replaced 22462 (High Priory)</p> <p>Heat heave - New slab needed 22808 (High Priory)</p> <p>Grinded for smoother transition, 22756 (High Priory)</p> <p>Grinded for smoother transition, 22685</p> <p>Severely Damaged, needs replacement 22517 (High Priority)</p>	<p>Broken off trees 22541, 22569, 22731, 22828</p> <p>Mature Tree hanger 22703 (High Priory)</p> <p>- Maple Tree declines and should be removed 22657</p> <p>Minor Deadwood Bradford Pear Tree 22679</p> <p>Blue Spruce 22731, pruning and trimming for access to garbage</p> <p>Gengo Tree 22731, need to be replaced</p> <p>Oak tree 22563 minor elevation</p>	<p>Bench leaning 22563, very unstable</p> <p>Garbage Receptacle broken slat 222563</p> <p>Handrail 22828, unstable</p> <p>22427 & 22517- retaining wall cap cracked</p>