




P.O. Box 1749
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Item No. 14.1.6
Halifax Regional Council
June 14, 2016

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Martin C. Ward, Q.C. Acting Municipal Solicitor
Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: May 20, 2016

SUBJECT: **Case 18120: MPS and LUB Amendments for 348 Purcell's Cove Road, Halifax**

SUPPLEMENTARY REPORT

ORIGIN

- Application by Sunrose Land Use Consulting
- October 29, 2013 Regional Council initiation of the MPS amendment process
- July 21, 2015 Regional Council deferral of item 11.2.1
- February 23, 2016 Regional Council direction to staff to prepare alternate MPS/ LUB amendments

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax Regional Council refuse the request to amend the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) to permit existing buildings and land uses (single unit dwelling and accessory buildings) at 348 Purcell's Cove Road, Halifax.

BACKGROUND

A request has been submitted for site-specific amendments to the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) for properties located at 348 Purcell's Cove Road, Halifax (Maps 1 to 3 of Staff Report¹ dated June 9, 2015). The purpose of this request is to authorize an existing single unit dwelling, an office of a professional person (former dental office) and accessory buildings, which were constructed without permits and with disregard for the LUB and development agreement requirements, to remain in their current locations on the subject properties. This application was submitted in response to a 2008 LUB compliance case which has been dealt with in Provincial Court, resulting in the payment of a fine. However, there continues to be various issues of non-compliance with the LUB and the development agreement.

On February 23, 2016, Regional Council defeated a motion to refuse the requested amendments to the Halifax MPS and LUB (without holding a public hearing) and passed the following motion for item 9.3.1:

“MOVED by Councillor Adams, seconded by Deputy Mayor Whitman

That Halifax Regional Council refer this matter back to staff with direction to prepare amendments to the Halifax MPS and Halifax Mainland LUB to permit the existing buildings and land uses with the exception that the building containing the office use on Lot G-1 can only be used as an accessory building to the dwelling on lot G-2, municipally known as 348 Purcell's Cove Road, Halifax.

MOTION PUT AND PASSED.”

Further to Council's direction, staff have drafted revised MPS and LUB amendments for Council's consideration (Attachments A and B). In addition, Sunrose Land Use Consulting has submitted a letter on behalf of the property owner (Attachment C) confirming that the subject accessory building can be utilized as an accessory use and will not be used for human habitation if Council proceeds with approval of the revised MPS and LUB amendments.

DISCUSSION

As noted in the June 9, 2015 staff report, there are no site characteristics or unique circumstances that have been identified by the applicant that would warrant amending the MPS and LUB. The site history identifies a disregard for municipal requirements, including the failure to apply for permits and comply with the development agreement, which should not be supported by amendments to the MPS and LUB.

The amendments found in Attachments A and B would achieve the outcome of Regional Council's motion noted above. This would result in the land uses and structures being in conformance with the LUB. This would permit the repair, renovation and replacement of the house and an associated shed and the former dental office building (as an accessory building to the house). It would also allow expansions to only those accessory buildings that are on the eastern and southern portions of Lot G1. However, the staff recommendation to refuse the application, as provided in the June 9, 2015 staff report, remains unchanged.

Implications of Refusal by Council

In the event that Council chooses the staff recommendation to refuse the proposal, then there would be a continuation of the land use compliance case due to the ongoing breach of the LUB. Pursuant to Section 202 of the *HRM Charter*, the Municipality may seek an injunction or other order from a judge of the

¹ Link to staff report: <http://www.halifax.ca/council/agendasc/documents/150721ca1121.pdf>

Supreme Court of Nova Scotia. Such an order could result in one or more of the following outcomes:

- Renovations to, removal or relocation of structures, including:
 - removal of the dwelling on lot G2 or renovations to convert it to a non-habitable boat building and accessory structure;
 - removal or renovations to the former dental office building on Lot G1 to convert it to either a dwelling or non-habitable accessory structure; and
 - removal of other buildings or portions thereof, to meet building setbacks from property lines;
- Relocation of property lines in order to achieve setbacks, which may require negotiation with abutting property owners, land purchase and subdivision process (for alterations to side and rear property lines); and
- Encroachment or easement agreements with HRM for encroachments within the HRM walkway.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved 2016/2017 operating budget for C310 Urban & Rural Planning Applications.

RISK CONSIDERATION

There are no significant risks associated with the recommendation in this report that Council refuse the request to amend the Halifax MPS and LUB. However, there are significant risks related to Council's approval of MPS & LUB amendments to allow the buildings and uses to remain in one form or another, including:

- Reputational harm to HRM, which could lead to other operational or strategic issues and risks. Other property owners in similar situations of non-compliance may seek similar MPS amendments as an alternative to complying with municipal by-laws. Others may choose to violate the terms of development agreements. HRM could be seen as enforcing the law against the average citizen but changing the law in order to assist specific individuals. HRM requires compliance from all members of society. This proposal would enable an individual who deliberately disregarded the law to gain the benefit of their violation.
- Council approval could impede the effectiveness of enforcement programs moving forward. HRM has built credibility in the area of LUB compliance which could be compromised. A decision by HRM Council to change the law in order to resolve a violation may create a precedent by which other violators can argue in court for adjournments, reduced penalties or acquittals. Courts may be motivated to grant lengthy adjournments to enable defendants to make planning or bylaw amendment application. Illegal uses may be allowed to continue for years before they are resolved.
- The effectiveness of deterrent as a means of by-law compliance. The most important concept considered by the courts when assessing penalty in regulatory prosecutions such as Building Code, Fire Code, Land Use By-law or other public safety statutes is that of deterrence. The penalty must "specifically" deter the individual defendant from continuing to violate the law. The penalty must also "generally" deter all members of society from violating the law. Allowing an individual to build, in violation of the law, to keep their illegal structures, would provide no deterrent at all. This would undermine HRM's ability to enforce the law.
- Possible environmental risks, if any, associated with the location of buildings or the on-site sewage disposal system.

COMMUNITY ENGAGEMENT

The community engagement process undertaken for this application is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a Public Information Meeting held on January 13, 2014. Notices of the meeting were posted on the HRM website, in the newspaper, and mailed to property owners within the notification area. The minutes from the meeting are found in Attachment H of the staff report dated June 9, 2015.

Prior to considering the approval of any MPS amendments, Regional Council must hold a public hearing. Should Regional Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, individual property owners within the notification area will be advised of the public hearing by regular mail. The HRM website will also be updated to indicate notice of the public hearing.

The proposed MPS and LUB amendments will potentially impact local property owners.

ENVIRONMENTAL IMPLICATIONS

The proposed amendments as contained in Attachments A and B of this report are inconsistent with the applicable environmental policies of the MPS related to building setbacks and land uses along the shoreline of the Northwest Arm. However, the proposed amendments recognize only the existing buildings and land uses of the properties and do not allow for additional buildings or uses.

ALTERNATIVES

1. Halifax Regional Council may:
 - a. Give First Reading to consider the proposed amendments to the Halifax Municipal Planning Strategy and the Halifax Mainland Land Use By-law as set out in Attachments A and B of this report and schedule a public hearing; and
 - b. Approve the proposed amendments to the Halifax MPS and the Halifax Mainland LUB, as contained in Attachments A and B of this report. A decision of Regional Council to approve or refuse potential amendments is not appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.
2. Halifax Regional Council may modify the proposed amendments to the MPS for Halifax and the LUB for Halifax Mainland, as contained in Attachments A and B of this report. If this alternative is chosen, specific direction regarding the requested modifications and amendments is required as well as a supplementary staff report. This should be done prior to "First Reading", as any substantive amendments following it may require another public hearing to be held before approval is granted. A decision of Regional Council to approve or refuse the proposed amendments is not appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Attachment A	Proposed Amendments to the Halifax MPS
Attachment B	Proposed Amendments to the Halifax Mainland LUB
Attachment C	Letter from Sunrose Land Use Consulting dated March 22, 2016

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Paul Sampson, LPP, Planner II, 902.490.6259
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Report Approved by: _____
Kelly Denty, Manager of Current Planning, 902.490.4800

Report Approved by: _____
Bob Bjerke, Chief Planner and Director, Planning & Development, 902.490.1627

ATTACHMENT A

Proposed Amendments to the Municipal Planning Strategy for Halifax

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Municipal Planning Strategy for Halifax is hereby amended as follows:

1. By adding Policies 1.2.12 and 1.2.12.1 to Section X, Part 1 (Residential Environments), immediately following Policy 1.2.11, as follows:

1.2.12 For the properties at 348 Purcell's Cove Road (PID #00270975, 41158452 and 00633511), in order to recognize the longstanding land uses and existing building locations and sizes, the Halifax Mainland Land Use By-law shall be amended to permit the existing uses and buildings to remain at their present locations as of the effective date of this provision, notwithstanding that building setbacks and other By-law requirements may not be met, subject to the following:

- a) A dwelling and an accessory building shall be permitted on Lot G2 (PID #41158452) and a portion of a water lot (PID #00633511) in their existing locations;
- b) On Lot G1 (PID #00270975), one existing building which is accessory to the dwelling on Lot G2 shall be permitted at a height of three storeys. Two additional existing accessory buildings shall be permitted at a height of one storey in their existing locations on Lot G1;
- c) No additions to existing buildings which would increase the floor area nor any new buildings shall be permitted on any lot, with the exception of accessory buildings on Lot G1 which do not exceed one storey in height; and
- d) Nothing shall prevent repairs and renovations to or the replacement of any existing building.

1.2.12.1 The provisions of Policy 1.2.12 shall not exempt the existing buildings from any associated approvals from agencies which may be necessary in order to obtain development and construction permits for the existing buildings.

I HEREBY CERTIFY that the amendments to the Halifax Municipal Planning Strategy, as set out above, were duly passed by a majority vote of the Halifax Regional Council at a meeting held on the ____ day of _____, 2016.

GIVEN under the hand of the Clerk and the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2016.

Municipal Clerk

ATTACHMENT B

Proposed Amendments to the Halifax Mainland Land Use By-law (LUB)

BE IT ENACTED by the Regional Council of the Halifax Regional Municipality that the Land Use By-law for Halifax Mainland as adopted by Regional Council on the 11th day of May, 1978, and approved by the Minister of Municipal Affairs on the 11th day of August, 1978, which includes all amendments thereto which have been adopted by the Halifax Regional Municipality and are in effect as of the [**insert date of 'appeal date'**] is hereby further amended as follows:

1. By adding a new Zoning Map, **ZM-27**, as presented on Schedule A;
2. By adding subsection **61(5)** to the H (Holding) Zone as follows:

"348 PURCELL'S COVE ROAD"

61(5) Notwithstanding the definitions of "accessory building" and "accessory use" in sections 2, sections 14A, 14C, and 14U, clauses 21 (a), (b), (ba), (e), (f) and (g)) and subsections 61(1), 61(2), 61(3), 61(4), for those properties known as Lots G1, G2 and a portion of a water lot located at 348 Purcell's Cove Road, Halifax (PID #00270975, 41158452 and 00633511) and shown on Map ZM-27, the following shall apply:

- (a) An existing single family dwelling and an accessory building shall be permitted on Lot G2 (PID #41158452) and a portion of a water lot (PID #00633511) as shown on Map ZM-27. No additions to the single family dwelling building or the accessory building which would increase the floor area on Lot G2 shall be permitted. No new buildings on Lot G2 shall be permitted. However, nothing in this clause shall prevent repairs and renovations to or the replacement of buildings that existed on the effective date of this provision on Lot G2;
- (b)
 - (i) An accessory building existing on the effective date of this provision and located in the northern corner of Lot G1 (PID #00270975) shall be permitted:
 - (A) to be accessory to the dwelling located on Lot G2,
 - (B) at a height of a maximum of three storeys and a maximum of thirty (30) feet and
 - (C) to have a minimum setback of zero (0) feet from a side or rear property line, as shown on Map ZM-27.
 - (ii) The accessory building in the northern corner of Lot G1 shall not be occupied at any time as a dwelling.
 - (iii) No additions to the accessory building in the northern corner of Lot G1 which would increase the floor area of this building or increase the existing height of this building shall be permitted.
 - (iv) However, nothing in this clause shall prevent repairs and renovations to or the replacement of the accessory building in the northern corner of Lot G1;

- (c) An existing accessory building located on the eastern side of Lot G1 (PID #00270975) shall be permitted to have a minimum setback of zero (0) feet from a side or rear property line, as shown on Map ZM-27. Additions to this building shall comply with clause 21(f) and shall have a maximum height of fourteen (14) feet;
- (d) The southernmost accessory building on Lot G1 shall be permitted to expand, subject to compliance with clause 21(f) and subject to a maximum height of fourteen (14) feet;
- (e) New accessory buildings on Lot G1 which are accessory to the dwelling located on Lot G2 shall comply with the requirements of Section 21 and shall have a maximum height of fourteen (14) feet; and
- (f) The provisions of clauses 61(5) (a), (b),(c),(d) (e) and subsection 62EE (7) shall not exempt the existing buildings from any associated approvals from any agency or government which may be necessary in order to obtain municipal permits for the existing buildings.”

3. By adding subsection **62EE (7)** to the WA (Water Access) Zone as follows:

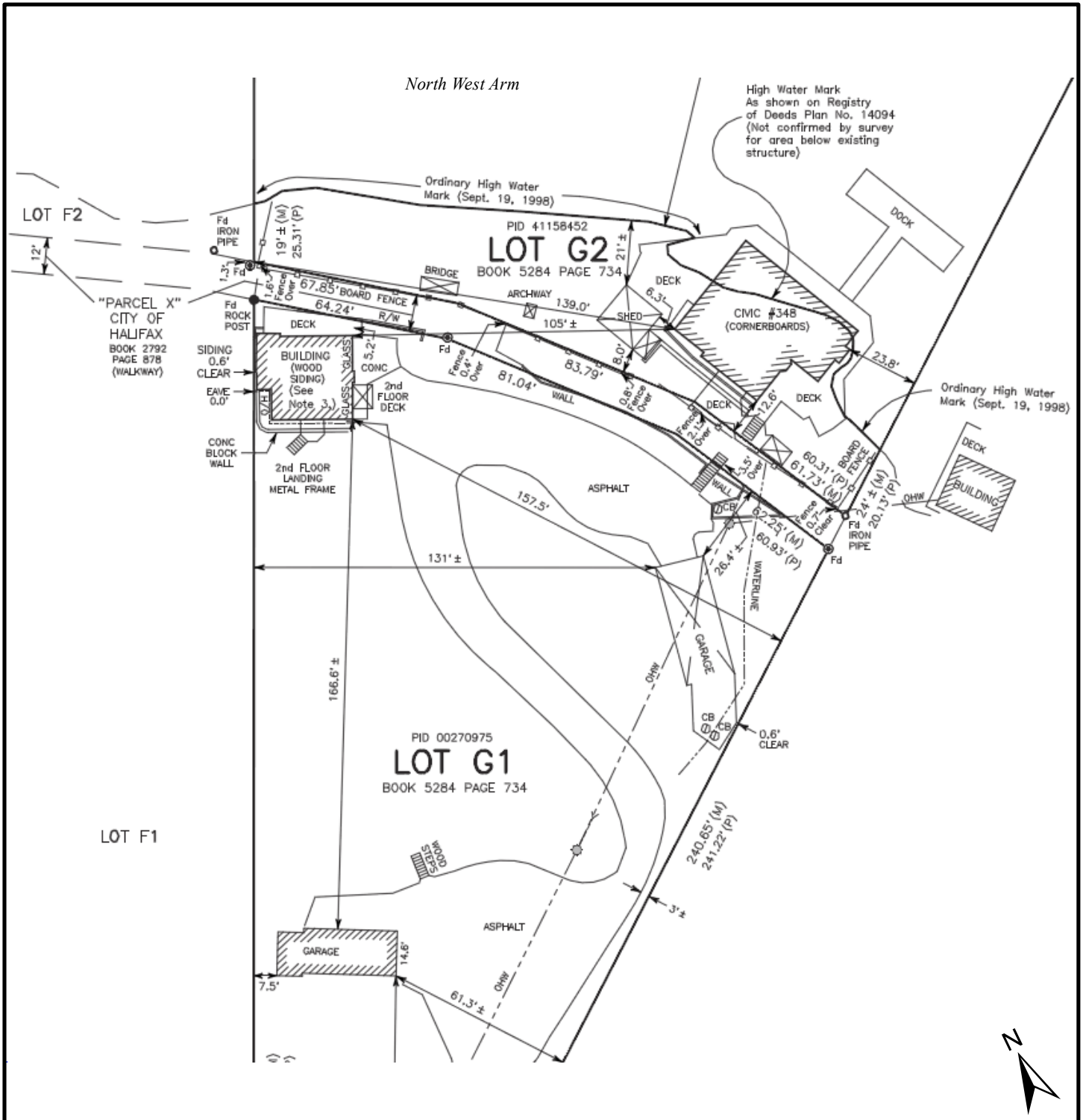
“348 PURCELL’S COVE ROAD

62EE (7) Notwithstanding subsections 62EE(1),(2),(3)(4), section 14U and pursuant to subsection 61(5), an existing single family dwelling shall be permitted on a portion of a water lot (PID #00633511) as shown on Map ZM-27.”

I HEREBY CERTIFY that the amendments to the Land Use By-law for Halifax Mainland, as set out above, were duly passed by a majority vote of the Halifax Regional Council at a meeting held on the ___ day of _____, 2016.

GIVEN under the hand of the Clerk and the Corporate Seal of the Halifax Regional Municipality this ___ day of _____, 2016.

Municipal Clerk



ZM-27

**348 Purcell's Cove Road
Halifax**

HALIFAX

Plan shown is a portion of a location certificate dated February 4, 2010 and revised January 4, 2011
Certified to Gene Jensen by Carl K. Hartlen, NSLS

Halifax Mainland
Land Use By-Law Area

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



Sunrose LAND USE CONSULTING



March 22, 2016

Paul Sampson, Planner
Halifax Regional Municipality
Alderney Gate Office
Dartmouth, Nova Scotia

Dear Paul:

RE: Response regarding Regional Council Motion for Case 18120: MPS/LUB amendments for 348 Purcell's Cove Road, Halifax (PIDs 00270975, 41158452)

As per your request, on behalf of my Client, Paulette Jensen, this letter is to provide our response regarding the motion of Regional Council at their meeting held on February 23, 2016. The motion directed HRM Planning staff to prepare draft MPS/LUB amendments that would allow the Jensen's buildings and properties to remain as is, the residential use to remain as is, but the former part-time dental office land use to be prohibited.

The Jensens are willing to accept Regional Council's approach in considering MPS/LUB amendments that are an alternative to our original amendment request.

You have further asked that I confirm that the accessory building can be used as an accessory use as defined in the Halifax Mainland LUB. This confirmation is sought to address only the accessory land use, and not the size or placement of the accessory building in relation to the main use of the lands; being residential.

The Jensen's accessory building is structurally sound and can be used as accessory to the main use of the lands (being a residential) and will not be used for human habitation. The Halifax Mainland Land Use By-law defines "accessory use" in part: "... that is normally incidental, subordinate and exclusively devoted to a principle use..."

The Jensen's can agree to either our original MPS/LUB amendment application, or the alternative proposed by Regional Council on February 23, 2016. The difference between the two options is whether or not the part-time dental office would be permitted in the accessory building.

Please do not hesitate to contact me if you require any additional information.

Sincerely:

Original Signed
Jennifer Tsang, MCIP

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