

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: October 28, 2022

SUBJECT: **Affirmative Ventures Association – Buy-Back Agreement Request**

ORIGIN

September 29, 2022 – Regional Council motion (Item 18.1)

MOVED by Councillor Mancini, seconded by Councillor Hendsbee

THAT Halifax Regional Council direct the Chief Administrative Officer to prepare a recommendation report to Regional Council regarding the request from Affirmative Ventures Association dated September 23, 2022, for partial or full release of the Buy-Back Agreement that applied to the less than market value sale of 64-66 Lakecrest Drive, Dartmouth, in support of the proposed development located at 139 Main Street, Dartmouth.

MOTION PUT AND PASSED

LEGISLATIVE AUTHORITY

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

Section 63 (1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that Council considers to be carrying on an activity that is beneficial to the Municipality.

(2) A resolution to sell or lease property referred to in subsection (1) at less than market value shall be passed by a two-thirds majority of the Council present and voting.

(3) Where the Council proposes to sell property referred to in subsection (1) valued at more than ten thousand dollars at less than market value, the Council shall first hold a public hearing respecting the sale

(4) The Council shall advertise the public hearing at least twice, in a newspaper circulating in the Municipality, the first notice to appear at least fourteen days before the hearing.

(5) Notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or description of the tangible personal property, the estimated value of the property and the purpose of the sale.

Recommendation on page 2.

RECOMMENDATION

It is recommended that Halifax Regional Council release the Buy-Back Agreement which was registered on title to the lands 64-66 Lakecrest Drive (PID 40638694) and 139 Main Street, Dartmouth, (PID 00191700) on November 15, 2006 as instrument #86617041, in support of the development of affordable housing for mental health consumers and seniors by the Affirmative Ventures Association, contingent upon approval of Affirmative Ventures Association's application for financing from Canada Mortgage and Housing Corporation.

BACKGROUND

The Affirmative Industry Association of Nova Scotia ("the Association") was incorporated in 1992 to promote the financial independence of persons with a disability through vocational training and supportive employment.

In July of 2003 the Municipality received a request to sell 64-66 Lakecrest Drive, Dartmouth ("the Property") to the Association for less than market value to enable expansion of their services. The Property was a vacant parcel of land extending from Lakecrest Drive to Main Street that had been declared surplus by the former City of Dartmouth in 1995 and subsequently listed for sale by HRM through a real estate broker. The Property had an area of approximately 20,760 square feet with 100 feet of frontage on Lakecrest Drive and 50 feet of frontage on Main Street.

In 2004, Regional Council approved the sale of the Property for \$1.00 in support of the construction of affordable housing for mental health consumers served by the Association. The sale transaction closed in November 2006.

To secure the public interest a Buy-Back Agreement was registered on title to the property on November 15, 2006, as instrument #86617041¹. The Buy-Back Agreement gave the Municipality an unencumbered and unrestricted right, at the sole discretion of the Municipality, to buy back the property in the event that the Association decided to sell or demolish the building, or if the Association or its successor in title ceased to operate the property as nonprofit housing for mental health consumers, or if the Association failed to complete construction within three (3) years of the closing of the sale transaction. The repurchase price for the property would be subject to appraisal at the time of repurchase, less \$144,000 which was the appraised value at the time of the original sale. The Buy-Back Agreement has a perpetual term.

In 2007, the Association completed construction and opened the 10-unit apartment building known as *Affirmative House* located at 66 Lakecrest Drive, Dartmouth which the Association has continually operated as non-profit housing for mental health consumers. Currently, there are mortgages registered against the property, including a 2007 mortgage to the Nova Scotia Housing Development Corporation for \$500,000, a mortgage to Inova Credit Union Limited ("Inova"). Pursuant to a Postponement Agreement dated April 26, 2011, the Municipality postponed the Buy-Back Agreement in favour of a second charge mortgage to Inova up to a principal amount of \$675,000. The Inova mortgage principal was increased to \$500,000 by a 2018 mortgage amending agreement.

In 2010, the Association purchased an abutting property located at 139 Main Street from a private owner. The existing building was used for supportive employment programming for clients and meeting space. In 2012, the Association obtained registered charitable status and changed its name to the Affirmative Ventures Association to reflect a broader scope of operations in both supportive employment programming and property acquisitions. The latter includes the purchase of a 6-bedroom duplex in Cole Harbour (2018) and a semi-detached residence in Dartmouth (2019). The Association's operations are sustained by

¹ Report to Regional Council meeting of January 13, 2004, Property Sale – 64-66 Lakecrest Drive, Dartmouth, dated December 10, 2003.

government funding, earned revenues (rent and the sale of goods or services), and donations². HRM provides annual tax relief on the four (4) properties owned by the Association through the Tax Relief for Non-Profit Organizations Program.

DISCUSSION

Description of Proposed Development Project

In support of the development of 139 Main Street for affordable housing, the Association subdivided 66 Lakecrest Drive in 2020 to create two separate parcels: Lot DM-1AB, which fronts on Main Street and Lot BR-3R which fronts on Lakecrest Drive. Lot DM-1AB had been a parking area of limited utility to tenants. Both parcels are still encumbered by the Buy-Back Agreement. The plan of survey is included as Attachment 1 of this report.

The Association proposes to construct a seven-storey affordable housing facility on Lot DM-1AB referred to as the *Main Street Centre*. The building's occupancy is expected to be 87.5% residential and 12.5% non-residential. The latter will provide space for a training centre and supportive employment programs. The residential portion of the building will provide a total of 45 units. Twenty-five (25) units will be reserved for the Association's clients at deeply affordable rates and twenty (20) for seniors which are larger, accessible units that will be rented at or below market value. There will be no income testing but to maintain affordability the CMHC financing agreement does not permit rent adjustments without their approval. HRM issued a development permit in 2020 and application for a building permitted was submitted to HRM on October 14, 2022.

Project Financing

The projected development costs total \$12,865,714³. In December 2021, the Association applied to the Canada Housing and Mortgage Corporation's Housing Co-Investment Fund with partner support including Housing Nova Scotia, Halifax Regional Municipality, the Federation of Canadian Municipalities, and the Community Foundation of Nova Scotia. The Housing Co-Investment Fund provides low-interest and/or forgivable loans for the construction of affordable housing with a focus on energy efficiency, accessibility, and affordability. The Municipality has already demonstrated its support for this project through a grant of \$162,636 under the Affordable Housing Grants Program in fiscal year 2021 and waiver of municipal fees related to construction valued at approximately \$54,725. Although Halifax Water has no authority to waive the \$243,762.76 related to their services, this project is eligible to have the Halifax Water Regional Development Charges applied to non-profit housing (approximately \$243,763) deferred for up to ten (10) years.

Payment or deferral of the water fees is needed to obtain the building permit which in turn is required to secure financing. Releasing HRM's Buy-Back Agreement from the title to 139 Main Street would enable bridge financing to pay the water fees and simplifies the funding agreement with CMHC.

As part of Canada's National Housing Strategy, funding under the Co-Investment Fund targets vulnerable

² Financial statements are posted online with Canada Revenue Agency at https://apps.cra-arc.gc.ca/ebci/srch/pub/dsplyBscSrch?request_locale=en

³ Report to Regional Council meeting of March 1, 2022, HRM Affordable Housing Grant Program Update and Additional Funding Request for Compass NS, dated February 22, 2022. This municipal grant program is primarily funded through incentive or bonus zoning revenues collected within the Regional Centre. Although the Association's development is located outside the Regional Centre a budget allocation of up to \$200,000 has been assigned for affordable housing projects located outside the Regional Centre planning boundary.

populations including seniors and people with mental health or addictions issues⁴. Low-interest repayable loans are available for up to 20 years at a fixed rate for the first 10 years. Although repayable loans are considered first, forgivable loans (essentially a grant contingent upon meeting agreed upon performance outcomes) may be considered to recognize those projects that meet or exceed the program's objectives. As of the date of this report, the Association's funding requested to CMHC is a combination of a mortgage and "grant" representing approximately 76% of the projected cost. Provincial funding representing approximately 21% has been pursued leaving 3% from other sources. The aim is to confirm financing by the end of 2022 and start construction in the Summer of 2023.

Buy-Back Agreement

The Association has requested either a partial release of the Buy-Back Agreement (meaning the Buy-Back Agreement would remain on only the property located at 66 Lakecrest Drive) or full release. However, CMHC will not fund the Association's development project on the Main Street property unless the Municipality releases the Buy-Back Agreement or enters into a tripartite standstill Agreement with CMHC and the Association, that satisfactorily mitigates the risk of financial loss to CMHC by giving CMHC priority as a secured lender. Staff does not see any reason for the Municipality to not release the Buy-Back Agreement, given that CMHC's funding is based on the Association's development and operation of affordable housing units, which was the basis for HRM's conveyance of the land to the Association. Further, the Municipality did not contribute all the lands that have been consolidated to form 139 Main Street.

If the Buy-Back Agreement is released only from the 139 Main Street property, the existing apartment building located at 66 Lakecrest Drive, Dartmouth, would remain encumbered. The Association met its obligations with respect to the construction of affordable housing at this location and has continued to operate it since it was built. The only other conditions that the Buy-Back Agreement was intended to protect against were with respect to any future conveyance or demolition of the building.

Staff recommend a full release of the Buy-Back Agreement on both parcels of land to enable the Association to secure additional mortgage financing and other funding based on the following:

- status as a registered Canadian charity subject to annual financial oversight by Revenue Canada Agency which includes the submission of annual reporting and a statement of accounts in accordance with certain accounting standards, investigation of any complaints, compliance with pre-determined disbursement thresholds, recourse to suspend or revoke registration, and may be subject to regulations regarding advertising, care quality, or fundraising;
- oversight in relation to contracts executed under the Housing Co-Investment Fund under which the Association does not have the discretion to adjust rents without CMHC's approval;
- the Association's established commitment to housing affordability for mental health consumers residing in HRM; and
- HRM's demonstrated support under the municipal Affordable Housing Grants Program.

However, it should be noted that a release of the Buy-Back Agreement would present the risk that in the event of a default under a mortgage to a commercial mortgage lender, under a foreclosure order the mortgaged property could be sold to a buyer who would not be obliged to provide less than market value rental accommodations for vulnerable populations. Other options for Council's consideration are included in the Alternatives section of this report.

FINANCIAL IMPLICATIONS

There are no direct costs to the Municipality associated with the recommendation to release the Buy-Back Agreement.

⁴ CMHC-schl.gc.c

In 2004, the assessed value of the land located at 64-66 Lakecrest Drive, Dartmouth was \$144,000 which represented the value of HRM's in-kind contribution of vacant land. The property has since been improved by the Association's investment in the construction of an apartment building and associated infrastructure. In 2022, the assessed value is \$795,200.

In 2022, the assessed value of 139 Main Street, Dartmouth is \$436,100. Construction of the magnitude envisaged at this location is expected to significantly increase the cost of municipal tax relief.

RISK CONSIDERATION

Not releasing the Buy-Back Agreement encumbering the Main Street property presents a significant risk that the Association will not be approved for CMHC funding. The Association has fulfilled the purpose of the Municipality's original land donation with respect to the construction and operation of supportive housing: *Affirmative House* has operated for 15 consecutive years. The oversight applied by Revenue Canada Agency adds transparency to the Association's operations which in combination with contract management by the Canada Mortgage and Housing Corporation serves to mitigate but does not totally eliminate risk. However, the full release of the Buy-Back Agreement poses a risk should the Association cease operations or default on a mortgage secured by the properties.

The release of a Buy-Back Agreement prior to a 25-year benchmark, at which time a review by Regional Council is required to consider amendment, release or continuation, could encourage similar requests. HRM's practice is to consider such requests on a case-by-case basis and the release or amendment of a Buy-Back Agreement has been approved in similar circumstances to support affordable housing for vulnerable clients. Examples include Adsum Association for Women and Children (Lakeside) and the Dartmouth Adult Services Association (Dartmouth) both of which are registered Canadian charities and had met the intent of the initial Buy-Back Agreement applied to the subject property.

COMMUNITY ENGAGEMENT

No community engagement was required.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

1. Regional Council could choose to release the Buy-Back Agreement from Lot DM-1AB, civic address 139 Main Street, Dartmouth, and leave the Buy-Back Agreement on title to Lot BR-3R, civic address 64-66 Lakecrest Drive, Dartmouth.
2. Regional Council could choose to enter into another postponement agreement postponing the Buy-Back Agreement in favour of the Association's secured mortgage financing for an additional amount.

Although these options could reduce risk to the Municipality, it could hinder the Association's ability to obtain CMHC and additional mortgage financing to meet its goals and the needs of the vulnerable population it serves.

ATTACHMENTS

Attachment 1 - Plan of Survey

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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