

HALIFAX

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Item No. 11.1
Halifax Regional Council
June 20, 2017
July 18, 2017

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: Jacques Dubé, Chief Administrative Officer

DATE: May 30, 2017

SUBJECT: Administrative Order 50 Disposal of Surplus Real Property – PID#41079807
4 Fernhill Drive, Dartmouth

ORIGIN

September 9, 2014 – Regional Council approved surplus status and disposal of 4 Fernhill Drive, Dartmouth, through Section 4 (a) Ordinary category of Administrative Order 50.

October 28, 2014 – Regional Council requested a staff report on the possibility of Lake City Employment Services Association acquiring adjacent land owned by HRM for the purposes of their non-profit activities.

February 24, 2015 – Information Report to Regional Council confirmed that to consider a less than market value transaction for the subject property Regional Council would be required to amend the motion of September 9, 2014, to change the categorization.

February 24, 2015 – Regional Council agreed to waive the requirement for a notice of rescission and directed that the surplus property located at 4 Fernhill Drive, Dartmouth, be categorized as Community Interest and dealt with in accordance with Administrative Order 50.

LEGISLATIVE AUTHORITY

HRM Charter (2008):

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. 2008,c.39, s.63.

RECOMMENDATION ON PAGE 2

HRM Charter (2008):

Section 64 Where the Municipality holds land that is of insufficient size or dimensions to be capable of any reasonable use, in the opinion of the Council, all or part of the land may be sold to the owner of any lot abutting that land and may be consolidated into such lot, and notwithstanding Section 63 the sale price of the land so sold may be set by the Council at a price that is less than market value at the time of the sale.

HRM Charter (2008)

Section 122 Part V of the *Municipal Government Act* shall apply to the Municipality [in regard to deed transfer tax].

Municipal Government Act (1998):

Section 109

(7) Where the grantee is a registered Canadian charitable organization, a deed is exempt from deed transfer tax if the property is not to be used for any commercial, industrial, rental or other business purpose and if an officer of the grantee makes and files an affidavit to that effect.

(8) Notwithstanding subsection (7), where, within three years after the filing of the affidavit, the property is used by the grantee for a commercial, industrial, rental or other business purpose or is sold or conveyed by the grantee, the treasurer shall compute the deed transfer tax for which the grantee would have been liable if the grantee had not been a registered Canadian charitable organization and the grantee is liable to pay the amount of the tax and interest on it at the rate of ten per cent per annum computed from the date of the deed referred to in subsection (7).

Administrative Order 50, the Disposal of Surplus Real Property Administrative Order.

Administrative Order 2014-015-ADM, the Financial Reserves Administrative Order.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Set a date for a public hearing to consider the sale of PID 41079807, Lot A-1A, 4 Fernhill Drive, Dartmouth to the Lake City Employment Services Association as per the terms and conditions outlined in table 1 of this report; and
2. Subject to the outcome of the public hearing, approve the sale and authorize the Mayor and Municipal Clerk to enter into an agreement of purchase and sale with Lake City Employment Services Association as per the terms and conditions outlined in Table 1 of this report.

BACKGROUND

Municipal Policy: Administrative Order 50 is a standardized process for the sale of surplus real property. Section 2(2)(b) defines Community Interest properties as known to have potential for community use, in particular where:

- (i) there has been a prior community or institutional use of the property; or
- (ii) by location or scarcity of available property the consideration would reasonably arise.

Section 4(1)(l) in the event that Council rejects any or all non-profit organizations' submissions to purchase at less than market value, Council may direct staff to proceed to sell the property at market value.

In 2014, the subject property was declared surplus by Regional Council and subsequently assigned to the Community Interest category of Administrative Order 50. An open Call for Submissions was issued on October 8th, 2016. As of the application deadline of Thursday, February 9, 2017, one proposal was received. The offer of purchase is from Lake City Employment Services Association (the "Association").

Property Description: The subject property is a partially wooded vacant parcel of land abutting Fernhill Drive, Dartmouth. The topography of the land limits re-development unless infilled and graded. The site is

encumbered by a Canada Post Community mailbox. Public use has been modest and primarily in relation to a playground serving local residents that has since been removed from the site. With an area of 21,844 square feet the site does not meet the requirement of Section 64 of the HRM Charter in terms of a direct sale to an abutting property owner at a price determined by Regional Council.

Zoning: The property is zoned R-2 and R-3 which permit single unit dwellings, two-unit dwellings, and multi-family residential buildings to a maximum height of 35 ft.

Property Valuation and Assessment: In 2016, the Municipality retained Colliers International to provide an appraisal of the subject property. The appraised value is included in a confidential companion Information Report to Regional Council dated March 17, 2017. The appraisal suggests that the property's assessed market value is substantially over-valued. This discrepancy in value may be a function of the Commercial Exempt assessment classification applied to the subject property despite zoning as Residential and only occasional use in relation to a municipal playground structure. On March 17, 2017, the Municipality requested Property Valuation Services Corporation review the classification and assessed value.

History of Ownership and Use: The subject property and adjacent lands have an historical relationship between the former City of Dartmouth, the Municipality, and the Association. This information is provided in **Attachment 1** of this report for context given a combination of land purchases, exchange, and donation spanning a 30-year period (1972 to 2002).

DISCUSSION

Proponent Profile: The Association's operations began in 1972 as the Dartmouth Activity Centre in collaboration with the Canadian Mental Health Association to assist people living with mental illness reintegrate into the community following hospitalization. Programming primarily consisted of life skills and recreational activities. The Centre's clients identified employment as an important means of re-establishing their participation in the community which led to the establishment of a non-profit society, Lake City Industries Association, in 1982, and the lease of 386 Windmill Road from a local car dealership. In 1984, the Association established an employment-related venture Lake City Woodworkers and purchased the leased premises in 1987.

In 1994, Lake City Industries Association changed its name to the Lake City Employment Services Association and expanded programming with the addition of employment readiness and support services in full and part-time paid employment or volunteer work in addition to positions within their on-site manufacturing business. In 2016, the Association employed 50 people and the employment support services assisted approximately 300 individuals.

The organization is a registered non-profit society and a registered Canadian charity. Operations are sustained by retail furniture sales, funding from the Nova Scotia Department of Community Services, employment-related government grants, non-recurring project-specific grants and fundraising. HRM provides operating assistance through partial property tax relief under Schedule 27 of Administrative Order 2014-001-ADM, the *Tax Relief for Non-Profit Organizations Administrative Order*. Section 2 of the Association's Memorandum of Association requires that should the operations of the society cease, after the satisfaction of all debts and liabilities, any property shall be donated to another charitable organization with similar objectives.

Proponent's Intended Property Use: In accordance with Section 63(1) of the HRM Charter the sale of public property at less than market value aligns with "an activity that is beneficial to the Municipality". Within this context "the Municipality" means the Halifax Regional Municipality and is not construed to mean a defined geographic area.

The subject property is of strategic interest to the Association in relation to the proposed future expansion of its manufacturing facility located at 386 Windmill Road, Dartmouth. The location is also served by public transit which facilitates access for lower income clients. In their submission, the Association proposes to clear a portion of the land for staff parking and free up space at the front of the facility for customer parking

(p. 1). The long-term goal is to grade and infill the site to expand manufacturing capacity.

The property is currently designated Residential under the Dartmouth Municipal Planning Strategy ("MPS") and zoned R-2 and R-3. The proposed short-term use of parking for the Association's non-residential building fronting on Windmill Road is not a permitted use in either zone.

Therefore, both an amendment to the MPS to change the designation from Residential to Commercial and a subsequent Land Use By-law amendment to re-zone the property to commercial would be required prior to the Association's intended uses for the property can be permitted.

Proponent's Terms and Conditions of Offer: The Association's offer includes a purchase price of \$10,000 and closing costs up to \$5,000 for a total investment of \$15,000. The Association is agreeable to the consolidation of the subject property with their abutting property and attending to the land use amendments. The Association is willing to consider a 5-year Buy-Back Agreement, but the Association's preference is that there not be a Buy-Back Agreement applied to the sale (See: page 5 of this report).

Administrative Order 50 – Community Interest Category

The A050 process for consideration under the Community Interest category is a two-step process to determine the feasibility of a proponent's proposal. The first step requires a technical evaluation by a staff team followed by overall consideration by Regional Council using different criteria.

1. Staff Evaluation Results

An inter-disciplinary team of staff was convened to evaluate submissions. Led by Finance & Asset Management, the team included Grants & Contributions, Real Estate, Finance, and Planning & Development. In accordance with Section 4(1)(f) of A0 50, staff evaluates submissions on four (4) criteria:

- content compliance;
- viability;
- compensation; and
- benefit to the Municipality.

Key Findings:

1. **Content Compliance** – The application met the requirements of policy as set out in Section 4(1)(e) of Administrative Order 50 and the formal Call for Submissions.
2. **Viability** – The operations of the Association are well established demonstrating stable cash flow, staffing continuity, an experienced Board of Directors, and proven capacity in real property ownership and operation. Financial reporting for the organization is complete but the application did not include a multi-year capital and operating plan for proposed capital improvements to the subject property.
3. **Compensation** – A proposed purchase price of \$10,000 is below the 2016 appraised and assessed value. The offer represents \$0.45 per square foot and is comparable to that accepted by the Municipality in the 2001 sub-division and sale of 7,730 square feet from the same parcel of land for \$1.00 per square foot. The difference in compensation may be a function of zoning and utility. The sale of a portion of this same land in 2001 did not require improvements to improve its' utility, already fell within the Municipal Planning Strategy's Commercial designation boundary, and therefore could be consolidated with the Association's existing facility. The offer of \$10,000 also exceeds revenue of \$5,588.75 realized by the Association in a 1989 land sale and exchange at this location with the City of Dartmouth.
4. **Benefit to the Municipality** - An expansion of employment opportunities and assistance in securing employment in the open market for persons with special needs enhances social

integration and independence for clients served by the Association. The organization’s operations demonstrate strong partnerships with local vocational enterprises and independent business. Although the direct provision of social or health services is not a municipal responsibility the HRM Economic Growth Plan 2016-2021¹ speaks to (i) the need to reduce barriers to full participation in the local economy and (ii) the benefit of clustering people and business in rural and urban areas.

In summary, the submission scored 80/100 based on the information provided by the applicant. Although the land cannot be immediately used for the Association’s purposes, given limited land availability in the area its acquisition represents a strategic opportunity for future expansion. The intended use is compatible with the commercial and light industrial activity in the vicinity of the subject property. An increase in the number of persons with special needs employed at this location would support the Municipality’s broad economic development goals.

Buy-Back Agreement – 4 Fernhill Drive, Dartmouth

In 2014, Regional Council approved a policy with respect to the use of Buy-Back Agreements in property sales to non-profit organizations². The policy states that a Buy-Back Agreement shall have an initial term of 25 years followed by an automatic review by Regional Council to consider continuation, amendment or release. The Buy-Back Agreement normally forms a first option on the property in favour of the Municipality and is in priority to any financial encumbrances granted by the purchaser after the sale closes. During the term of the Buy-Back Agreement, the owner may apply to the Municipality for postponement of the Buy-Back Agreement to secure financing of up to 65% of the property’s market value as of the date of the request. The purpose of a Buy-Back Agreement is to uphold the intent of a less than market value sale.

In this particular case, the land is to be used in support of opportunities for persons who face barriers to employment and those requiring assistance in securing paid work in the market. Moreover, the Association appears to have a strong positive track record with respect to honouring its commitments with the Municipality. These significant factors together with the Association’s current divesture and wind-up requirements leads staff to recommend selling the property without a Buy-Back Agreement, but nevertheless subject to and conditional upon: (1) the property being consolidated with the Association’s existing property; and (2) the Association’s undertaking to advance and secure any required land use amendments prior to closing.

Proposed Terms and Conditions of Sale

Table 1. KEY TERMS AND CONDITIONS (PROPOSED)	
Civic Address	4 Fernhill Drive, Dartmouth.
Area	21,844 sf. Lot A-1A PID 41079807
Zoning	Residential R-2 and R-3 (Multiple and Two Family Residential).
Assessed Value	\$240,300 Commercial Exempt.
Appraised Value	See: In Camera Report dated March 17, 2017.
Tax Status	Commercial Exempt (under review by PVSC).
Proposed Purchase Price	\$10,0000 plus HST.
Terms of Offer	Subject to and conditional on the (1) the property being consolidated with the Association’s existing property; and (2) the Association’s undertaking to advance and secure any required land use amendments prior to closing. Note: any costs associated with land consolidation and amendments to the

¹ Report to Community Planning & Economic Development Standing Committee, “Implementation of Halifax Economic Growth Plan”, dated April 8, 2016.

² Report to Regional Council dated June 23, 2014 entitled “Use of Buy-Back Agreements in Property Sales to Non-Profit Organizations” approved on July 22, 2014.

	MPS and zoning are exclusively those of the Association and are not included in the closing costs applied to the proposed conveyance of land.
Proposed Use	Re-development of the land to expand manufacturing and retail capacity at this location.
Conditions of Sale	Property to be conveyed “as is-where is” and subject to existing encumbrances, if any.
Buy-Back Agreement	A Buy-Back Agreement shall not be applied.
Closing Date	Within 3 months of Regional Council’s approval, or such later date as may be reasonably required to satisfy the conditions of sale.
Cost of Sale Recoveries	\$5,000 plus HST due on closing upon receipt of an itemized invoice issued by HRM.

2. Council’s Consideration

Upon review of staff’s evaluation, Council must review submissions based on criteria set out in Section 4(2)(i) of the policy, namely the:

- (i) market value of the property as appraised;
- (ii) Planning Strategies of the area;
- (iii) benefit of any cost saving to the Municipality;
- (iv) consequences, beneficial or otherwise, to the community or to the Municipality as a whole;
- (v) beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value; and
- (vi) whether or not a Buy-Back Agreement is a condition of a sale.

The following information is provided for Council’s consideration:

- The 2016 assessed value of the property is \$240,300.
- The appraised market value is included in a separate In Camera Information Report³.
- The purchaser’s intended use requires amendments to the Municipal Planning Strategy and Land Use By-law.

FINANCIAL IMPLICATIONS

The terms of purchase offered by the Lake City Employment Services Association is a less than market value of \$10,000 (not including applicable HST). Based on the 2016 assessed value of \$240,300 and a lower appraised value, if approved the sale to the Association for \$10,000 represents an in-kind contribution by HRM in the range of approximately \$60,000 to \$230,000.

If Council decides to proceed with the sale, funds received from the Association will be directed Capital Fund Reserve Q526.

Obligation Reserve – Capital Fund Reserve Q526
The reserve is funded by the sale of land in HRM, other than Business/Industrial parks or sale of land

³ Section 5 of A050 requires appraisals remain confidential until the sale is completed.

conveyed to HRM for parks, playgrounds or similar public purposes. Several other large properties are now excluded from deposit to this reserve and are being redirected to the Strategic Capital Reserve Q606. The Capital Fund Reserve is governed by the Halifax Regional Municipality Charter Section 120(1), (3) and (4). Withdrawals from the reserve are for capital expenses for which the Municipality may borrow, capital enhancement projects between HRM and Waterfront Development Corporation Limited, capital costs for the Parking Strategy Project – Roadmap, and capital costs of the “Downtown I’m In – Urban Core Community Engagement”.

Budget Summary. Obligation Reserve – Capital Fund Reserve Q526

Balance in reserve (February 28, 2017)	\$11,848,954
Projected revenue (to March 31, 2017)	\$3,184,524
Commitments (to March 31, 2017)	(\$9,562,513)
Projected net available balance (March 31, 2017)	\$5,470,965

The Municipality’s estimated cash expenditures in relation to closing costs is \$6,500. The Association has offered to reimburse up to an amount of \$5,000; acceptance of \$5,000 represents an additional in-kind municipal contribution of \$1,500.

Pursuant to Section 109 of the Municipal Government Act, a registered charity is exempt from deed transfer tax provided the subject property is not to be used for any commercial, industrial, rental or other business purpose and if an officer of the grantee makes and files an affidavit to that effect. Assuming the Association is eligible, the opportunity cost to HRM would be 1.5% of total consideration of any sale to a non-exempt grantee. For the purposes of this report, if the property was sold at fair market value (based on the appraisal), the lost deed transfer tax revenue is estimated at \$1,000.

A sale will necessitate a review of the property’s current classification as Commercial Exempt and assessed value. Upon conveyance, the property will become taxable.

RISK CONSIDERATION

The recommended action states that a Buy-Back Agreement will not be a condition of the sale. Buy-Back Agreements are normally a first charge option on the lands being sold in favour of the Municipality which allows the Municipality to re-acquire the property in the event the purchaser does not use the land for an activity that is beneficial to the Municipality. Normally, it is prudent for the Municipality to put reasonable measures in place to protect the value of its assets and manage contractual obligations pursuant to a Buy-Back Agreement; however, in these unique circumstances if this property is sold subject to and conditional on the (1) the property being consolidated with the Association’s existing property; and (2) the Association’s undertaking to advance and secure any required land use amendments prior to closing, then the risk is considered low to moderate.

COMMUNITY ENGAGEMENT

A mandatory public information meeting was held on September 28, 2016, at the Dartmouth Public Library, 60 Alderney Drive, Dartmouth. The meeting was publicized in a newspaper advertisement Saturday, September 17, 2016. The purpose of the meeting was to inform the general public on the legislated process to purchase municipal property and specific details about 4 Fernhill Drive, Dartmouth. Attendance: 0.

A Call for Submissions was issued and advertised Saturday, October 8th, 2016, with an application deadline of Thursday, February 9, 2017. Because the property is not encumbered by a building or significant infrastructure proponents were allowed 90 days to prepare their plans and offer.

ENVIRONMENTAL IMPLICATIONS

No environmental testing has been undertaken at this location.

ALTERNATIVES

1. Regional Council could decline the offer of \$10,000 representing \$0.45 cents per square foot in favour of a higher sale price. For example, a sale price of \$1.00 per square foot as previously paid by the Association for a portion of the same land (Lot A-1) in 2001. Using a \$1.00 per square foot value the purchase price would be \$21,844 plus \$327.66 HST.

This action is not recommended: The portion of Lot A-1 sold to the Association in 2001 fell within the C-2 General Business designation boundary and as such could be consolidated for immediate use. The property is not comparable in utility and requires land use amendments.

2. Regional Council could direct staff to issue a second Call for Submissions to solicit offers for the development of affordable housing in accordance with the subject property's current zoning.

This action is not recommended: there were no other submissions for the property.

3. Regional Council could apply a Buy-Back Agreement for an initial term of 25 years as per policy (2014), or impose other terms and conditions as Regional Council may deem appropriate to protect the interest of the Municipality.

ATTACHMENTS

Attachment 1 - Supplementary Information: History of Property Ownership and Use.

Attachment 2 - Site Map and Photograph.

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: Peta-Jane Temple, Team Lead Grants & Contributions, Finance 902.490.5469; John Dalton, Real Estate Officer, Finance & Asset Management.

ATTACHMENT 1

Supplementary Information: History of Property Ownership and Use

In 1982, the Lake City Industries Association entered into a lease agreement with a private owner for the premises located at 386 Windmill Road, Dartmouth. The location, size and type of commercial building lent itself to the establishment of a manufacturing program which was formally incorporated as the Lake City Woodworkers in 1984.

The Association purchased the leased property in 1987 but had to address an encroachment by an abutting residential property located on Fernhill Drive. The following year a small portion of the land was sub-divided and deeded to the abutter. In 1989, the Association expanded their holdings the following year through a combination of a land exchange and land sale with the City of Dartmouth⁴. At the time the municipal government was responsible for the provision of social services. The acquisition enabled the Association to expand its premises and construction was completed in 1995.

Immediately prior to amalgamation, the City of Dartmouth declared its land holdings on Fernhill Drive, Dartmouth, surplus but the extent to which they were actively marketed is unknown. In 1996, these lands were vested in HRM and remained largely vacant until 2001 when the Association requested the purchase of a 12,619 square feet remnant lot (identified as Lot A-2) abutting their manufacturing facility on Windmill Road and a portion of a larger parcel (Lot A-1)⁵ known as Farrell Park. The purpose of the acquisition was to allow for expansion of the existing building and the parking lot to accommodate large transport trucks using the loading bay. HRM agreed to convey 12,619 square feet (Lot A-2) zoned C-2 General Business with an appraised value of \$4.00 per square foot at no cost to the Association. HRM also agreed to sub-divide 7,730 square feet from Lot A-1 and sold it to the Association for \$1.00 per square foot plus closing costs. Because the area sold to the Association fell within the boundary of the existing C-2 General Business Zone the Association was able to consolidate these lands with their existing land holdings. The combined value of the Municipality's in-kind contribution was approximately \$50, 476 and the public interest protected through a Buy-Back Agreement wherein the Municipality had the right of first refusal to acquire title for 90% of the original purchase price in the event that the Association failed to complete the proposed expansion of amenities within ten (10) years or wanted to sell the property⁶.

Following the sub-division of Lot A-1 (Farrell Park) the Municipality removed the playground equipment and consolidated the balance of Lot A-1 with an abutting parcel of land acquired by the City of Dartmouth in 1972. The purpose of consolidation was to sell for development. The 'new' parcel is identified by the civic address 4 Fernhill Drive (PID#41079807). The subject property falls outside the commercial designation boundary and is zoned for residential use.

In summary, the development of the Association's facility located at 386 Windmill Road, Dartmouth, has been aligned with abutting municipal land holdings. The request to acquire 4 Fernhill Drive, Dartmouth, includes a partial re-purchase of land sold previously to the former City of Dartmouth for \$5,588.75.

⁴ Minutes, City of Dartmouth Council, October 4, 1988. The Lake City Industries Association received payment in the amount of \$5,588.75 for land identified as Parcel W-2.

⁵ Report to Regional Council, Property Sale/Donation: Lot A-2 and Portion of Lot A-1, Windmill Road, Dartmouth, Lake City Employment Services, dated September 20, 2001. De-classified.

⁶ Minutes, Halifax Regional Council, October 23, 2001, p.7.

ATTACHMENT 2

HALIFAX

INFORMATION

4 Fernhill Drive
Dartmouth, NS

SITE PLAN



This map was produced for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. Date of map is not indicative of the date of data creation.

Date: August 19, 2016
Prepared by: E. Wall

