

Attachment I
Letter from Mr. Peter M. Rogers Q.C., McInnes Cooper Lawyers, on behalf of
10 property owners who abut Purcell's Cove Road

*Submitted by Councillor Adams
Nov. 26/2013*



Peter M. Rogers Q.C.
Direct +1 (902) 444 8448
peter.rogers@mcinnescooper.com

Purdy's Wharf Tower II
1300-1500 Upper Water Street
PO Box 730
Halifax NS
Canada B3J 2V1
Tel +1 (902) 425 8500 | Fax +1 (902) 425 0390

Our File: 108397
November 28, 2013

BY EMAIL: stephen.adams@halifax.ca

Original Signed

Councillor Stephen Adams
Halifax Regional Municipality
P.O. Box 1749
Halifax NS B3J 3A5

Dear Councillor Adams:

Re: Lands abutting Purcell's Cove Road

We are the solicitors representing owners of property abutting Purcell's Cove Road, specifically PID #'s:

- 41342080
- 41221680
- 00270934
- 41044074
- 00052407
- 41342098
- 41342106
- 00269753
- 40060410
- 00269282

The properties in question are identified in the attached property map, Schedule "A".

The purpose of this letter is to formally request that the subject properties be re-designated from "Urban Reserve" to "Rural Commuter". Further, that the properties be rezoned to H (Holding) Zone. This letter of request has been forwarded to you in response to Council's recent decision to table the Purcell's Cove Road water and sewer feasibility study. We would ask that you table this matter with Regional Council with the view to directing the request to the appropriate parties involved with the RP + 5 review.

MULINNES COOPER

Page 2
108397
November 26, 2013

Background

Prior to adoption of the Regional Plan in 2006, the aforementioned lands were designated RDD (Residential Development District) and zoned H (Holding) Zone. As stated under Policy 1.5 of the Mainland South Secondary Planning Strategy:

"Areas designated as "Residential Development District" on the Generalized Future Land Use Map shall be residential development areas planned and developed as a whole or in phases under a unified site design, providing a mixture of residential uses and related recreational, commercial, and open spaces, with an emphasis on a mix of dwelling unit type."

Policy 1.5.2 went on to state:

"Notwithstanding Policy 1.5.1, Policy 2.1.4 of Section II shall remain in force and the City shall maintain a Holding Zone until such time as municipal services are available."

According to the Land Use By-law for the former City of Halifax, The Holding Zone permits single-family dwelling units to be built with onsite sewer and water services. The by-law does not prohibit property owners from subdividing their lands to allow for development of more than one residential dwelling unit.

With the adoption of the Regional Plan in 2006, the subject lands were designated and zoned "Urban Reserve". According to Policy S-4 of the Plan, the designation is intended to ensure "an adequate supply of serviceable land beyond the timeframe of this Plan".

The designation was applied to seven distinct areas of HRM although the rationale for designating these areas Urban Reserve vs. Urban Settlement was never articulated. As part of the new "Urban Reserve" Zone, the ability to subdivide one's property for the purpose of building more than one home was eliminated. Again, there was no rationale provided in the Plan for this cessation of long-standing property rights, particularly for lands in the area of Purcell's Cove Road.

Purcell's Cove Servicing Study

Shortly after adoption of the Regional Plan, Council embarked on a process to study the feasibility and desirability of extending municipal water and sewer services along a portion of the Purcell's Cove Road. This was based on a citizen lead petition from 2006. The process (including terms of reference for the study) was confirmed in 2011 and a citizen-based steering committee was established to oversee the study early in 2012.

What followed can best be described as a concentrated effort by some to frustrate any plans to extend municipal water and sewer services beyond the current terminus of services at the intersection of Purcell's Cove Road and Wenlock Grove. It is our understanding that the study was essentially terminated in the spring of 2013 with the resignation of four members of the steering committee.

McINNES COOPER

Page 3
106397
November 26, 2013

Our clients did not ask to be part of the servicing study but clearly understand the rationale for being included. They also understand that the process that ensued clearly established that most residents in the area of Purcell's Cove do not want to pay to extend municipal water and sewer services nor do they want water and sewer services extended in support of future development. Our clients have grave concerns about the manner in which the feasibility study was conducted. However, their immediate concern centers on the fact the failed process has left their landholdings in a state where only one home can be built upon a property regardless of its size. Moreover, the current thrust of the RP + 5 holds little hope that the lands can be put to any worthwhile purpose now or in the future.

We submit that this is patently unfair and is an unwarranted taking of long-standing property rights. It is our view that Regional Council having determined that municipal water and sewer services will not be extended to the area, should reinstate the property rights that existed prior to the adoption of the Regional Plan. To this end, we are requesting that the lands be designated "Rural Commuter" and zoned "H" (Holding) Zone. This will enable the lands to once again be developed with on-site services in accordance with the Regional Subdivision By-Law.

Rationale

The Regional Plan designated certain areas of HRM "Urban Reserve" for the purposes of ensuring a long-term supply of serviceable land. While our clients accept this to be a reasonable approach for long-term planning, they have considerable doubts that municipal services will ever be extended along Purcell's Cove Road. This position is supported by the following observations:

- HRM staff has repeatedly proclaimed a 30-40 year supply of serviceable lands elsewhere in the region. This does not include lands within the Urban Settlement Designation for which Secondary Planning has yet to commence. As such, the likelihood of seeing services extended to this area in the next 50 years is remote.
- RP+5 places greater emphasis on increasing density in the so-called "Urban Core" and reducing the current emphasis on suburban and rural development. This furthers the notion that there is no desire or urgency to extend municipal service to this area in the foreseeable future.
- A traffic study prepared in conjunction with the Purcell's Cove Road servicing study identified traffic constraints at the interface of Purcell's Cove Road and Herring Cove Road. Councilor Mosher has publicly stated that planned improvements to the Herring Cove Road are not intended to accommodate future growth. This furthers concerns that serviced development of a density required to offset servicing costs will never take place.
- Area residents have overwhelmingly stated that they are not prepared to pay to extend municipal water and sewer services. They have also stated that they do not want new development to help offset the cost of extending municipal water and sewer services to their homes. Based on the public commentary generated during the feasibility study, there is little to suggest that area residents will change their minds in the future.

McINNES COOPER

Page 4
108397
November 26, 2013

- The Purcell's Cove Road feasibility study identified significant costs related to extending municipal services to the area. Our clients have studied these cost estimates and do not agree with the cost-sharing scenarios and methodology proposed by CBCL Limited.

Unlike other Urban Reserve areas, the Purcell's Cove Road lands have been subjected to rigorous debate about serviced development. *Simply stated, serviced development will not happen now or anytime in the foreseeable future.* Consequently, the current Urban Reserve designation is inappropriate and harmful to the value of our client's landholdings. It should be replaced under the RP + 5 review.

Alternatives

In an earlier submission to the Community Design Advisory Committee (CDAC), one of our clients, Clayton Developments Limited, proposed that lands within the so-called Area "1" be designated Urban Settlement. This was based on a series of observations related to proximity to the core, cost to services the lands to the benefit of others, and the presence of essential support services such as transit, fire, schools, etc. While staff recognized the potential for serviced development in the future, they did not support the request due to "an abundance of serviced lands in the western region of the HRM."

As a company that prides itself on developing sustainable communities throughout the HRM, Clayton struggles with staff's simple explanation given the location of several parcels of land throughout HRM that are currently designated "Urban Settlement". Most, if not all, are located further from the Regional Centre than their landholdings opposite the Royal Nova Scotia Yacht Squadron.

In their submission to the CDAC, Clayton has also suggested that the property owners within the Urban Reserve designation should have a choice between developing their lands with on-site services or waiting years in hopes that municipal services will be extended to their respective landholdings. The Urban Development Institute of Nova Scotia has also proposed a similar approach. To the best of our knowledge, HRM staff has not commented on this proposal.

Our clients simply wish Council to return certain property rights that were taken in advance of the feasibility study. To this end, they are prepared to maintain the current designation provided that the development rights that were rescinded in 2006 are restored under RP +5 – i.e. a rezoning of the lands to H (Holding) Zone.

A review of nearby zoning will verify that other lands in the immediate area are zoned H (Holding) Z and are therefore permitted to be subdivided and developed in accordance with the Subdivision By-Law. Given the outcome of the Purcell's Cove feasibility study, it seems only fair that our client's lands be treated in a similar fashion to abutting and nearby properties.

Green-beltting

Our clients are deeply concerned that the Urban Reserve is tantamount to so-called "Greenbelting". Much of the debate generated during the feasibility study was aimed at preserving our client's lands for park and open space. CDAC is no doubt aware of the intent by

McINNES COOPER

Page 5
108397
November 26, 2013

some to use the Urban Reserve Designation to sterile large tracts of land for no other purpose than park and open space. Our clients respectfully urge CDAC not to fall into this obvious and totally self-serving objective. These are private lands that are neither designated nor zoned for park and open space.

The Regional Subdivision By-law ensures that a certain amount of land be devoted to the Municipality as parkland. This is a legitimate and well established practice and one that our clients are prepared to observe if they elect to make application for subdivision. What they are not prepared to do is sit back and allow RP + 5 to further entrench their lands in a state of planning purgatory so that the general public can continue to treat private property as public parkland. This is not what good planning is intended to accomplish.

Time is of the Essence

Our clients recognize that the RP+5 process is drawing to an end. At the same time, CDAC members will appreciate that Regional Council only recently tabled the Purcell's Cove Road study thereby ending any chance of extending municipal services now or in the foreseeable future.

The Purcell's Cove Road area has been subjected to a rigorous debate about municipal water and sewer services. For the most part, area residents are not interested in municipal water and sewer services – some have vowed to stop any and all serviced development in the future. Under these circumstances, the Urban Reserve designation is no longer appropriate and should be removed from the lands under RP + 5. Our clients are prepared to accept provisions within the designation that will allow for subdivision of unserviced lots in accordance with the Regional Subdivision By-law. Whatever the case, they simply request that Regional Council undertake to do that which is morally if not legally appropriate under the circumstances.

Respectfully, 

Original Signed
Peter M. Rogers 

