

Municipal Government Act

progressive powers for municipalities

INFORMATION BULLETIN #13

PARKLAND DEDICATION - SUBDIVISION

- Summary:** If properly supported in the municipal planning strategy, municipalities can require the dedication of up to ten per cent of the land in a new subdivision for park and related purposes.
- Legislation:** *Municipal Government Act (MGA)* Section 273, related: S.269(4), S.271(3)(h)
Halifax Regional Municipality Charter (HRMC) Section 283, related: S.281(3)(h)
- Discussion:** The provisions for dedication of land or equivalent value on subdivision provide considerably more choices for municipalities.
- First, there must be clear authority for the transfer of useable land or equivalent value for parks, playgrounds and similar public purposes. No contribution is required unless there is a provision in the subdivision by-law requiring the transfer: MGA s.271(3)(h), HRMC s.281(3)(h). The amount may not normally exceed five per cent of the area of the lots shown to be approved on the final plan (or instrument; see MGA s.269(4)). A municipality may increase the contribution to as much as ten per cent if both the requirement and the reasons for it are set out in the municipal planning strategy and incorporated in the subdivision by-law.
- The applicant is permitted to provide land only, equivalent value only, or a combination: MGA s.273(2), HRMC s.283(2). Equivalent value means cash or facilities, services or other value in kind related to parks, playgrounds and similar public purposes or a combination as determined by the municipality to be equivalent to the value of the land: MGA s.273(1), HRMC s.283(1). Essentially, the municipality puts a value on "facilities, services or other value in kind". If the municipal valuation is unacceptable to the subdivider, the subdivider can pay all cash.
- Normally, the decision whether to provide land or equivalent value is up to the subdivider. The subdivision by-law can take this choice away from the applicant, but only if specific rules are

set out in the subdivision by-law: MGA s.273(3), HRMC s.283(3).

The amount of "equivalent value" (cash or in kind, or a combination) is determined by an assessor, based on the market value of the proposed lots (exclusive of streets, easements and residue): MGA s.273(4), HRMC s.283(4). Market value is a term used in the *Assessment Act*; however, it means current value, not value as of the assessment date. A provision to allow appeals from the assessor's valuation has been incorporated: MGA s.273(4), HRMC s.283(4). The right to appeal applies to both the applicant subdivider and the municipality. The procedure is the same as on an assessment appeal under the *Assessment Act*.

Cash transferred must be used for the acquisition of, and capital improvements to, parks, playgrounds and similar public purposes: MGA s.273(5), HRMC s.283(5). The simplest way to define a capital improvement is as one that the municipality may borrow to make. ***Cash transferred also may be transferred to a village or non-profit organization that is providing parks, playgrounds or other recreational facilities within the municipality, for those purposes.*** The interest (only) on funds not used for capital purposes may be devoted to operating costs: MGA s.273(5), HRMC s.283(5). A fund can therefore be established to assist in operating expenses. ***The interest, also, may be transferred to a village or non-profit organization that provides recreational facilities for their operating or maintenance costs.*** There is no requirement that the money received be spent in the same area as the subdivision. That is a matter for the council in setting its priorities.

If land is to be conveyed, it must be useable. It must also be free and clear of all encumbrances except easements or rights of way that do not materially interfere with the use of the land. The municipality would be well-advised to include a definition (standards) of what constitutes useable land in the subdivision by-law: MGA s.273(6), HRMC s.283(7). Relevant factors are minimum area, minimum dimensions, maximum slope, street frontage, location and minimum quality. These must be objective standards that can be applied by everyone. The opinion of the development officer is not a sufficient standard. Note that if the land meets the definition of useable, the municipality has to accept it: MGA s.273(9), HRMC s.283(10). It is very important that the definition be carefully drawn up.

Useable land to be conveyed does not include streets or

easements: MGA s.273(8), HRMC s.283(8). The area is calculated based on the area of the lots approved, excluding streets and any residual: 273(8).

If council approves, it can accept an area of land outside the area being subdivided: MGA s.273(10), HRMC s.283(11). This might be, for example, an addition to an existing park.

Council can also agree to accept a bond or other security for the conveyance of land in a future phase of the subdivision; this is sometimes desirable in order to get all of the land in one place, or in the right spot in a phased development: MGA s.273(11), HRMC s.283(12).

Land conveyed to the municipality must be free and clear of all encumbrances except easements or rights of way that do not materially interfere with the use of the land: MGA s.273(12)(a), HRMC s.283(13)(a). Municipalities will have to decide whether to have the developer's solicitor certify clear title to the municipality, which is likely cheaper for both parties, or perhaps to have the municipal solicitor check the title. The ability to charge the cost of a title search back to a developer is questionable.

Land conveyed to the municipality must be used for parks, playgrounds and similar public purposes: MGA s.273(12)(b), HRMC s.283(13)(b). It cannot be used for sewage easements or streets or other public purposes unrelated to parks and playgrounds and like recreational uses.

Where the land may no longer be needed for parks, playgrounds or similar public purposes, it may be sold by the council after notifying the owners of the lots in the subdivision with respect to which the land was conveyed to the municipality. This notice must be an advertisement. The proceeds must be used for parks, playgrounds or similar public purposes: MGA s.273(13), HRMC s.283(14).

Land conveyed to a municipality for parks etc. has to be deeded to the municipality. Note that an acquisition of land by a municipality for municipal purposes is exempt from the requirement for subdivision approval: MGA s.268(2)(e), HRMC s.278(2)(e). The deed of conveyance should include an affidavit specifying the exemption from subdivision approval and the facts supporting it: MGA s.268(3), HRMC s.278(3).

Note: The reader is cautioned that preparation of this and subsequent Information Bulletins containing practical suggestions must necessarily involve interpretation of legislation as it applies in general situations. Specific situations may require careful legal analysis and therefore reference should be made to the *Municipal Government Act* or the *Halifax Regional Municipality Charter*, other relevant legislation and to legal advisors.