

2017

Hfx No. 460474

**SUPREME COURT OF NOVA SCOTIA**

**Between:**

**ANNAPOLIS GROUP INC.**

**PLAINTIFF**

**and**

**HALIFAX REGIONAL MUNICIPALITY**

**DEFENDANT**

**AMENDED NOTICE OF DEFENCE**

**To:**           **Annapolis Group Inc.**  
c/o Neil Finkelstein / Eric Block  
Brandon Kain / Paul Davis  
McCarthy Tetrault LLP  
Suite 5300 TD Bank Tower  
Box 48, 66 Wellington Street West  
Toronto, ON M5X 1G5  
Counsel for the Plaintiff

Court Administration

APR 05 2017

Halifax, N.S.

**And To:**       **Annapolis Group Inc.**  
c/o Christopher W. Maddill  
Stewart McKelvey  
1959 Upper Water Street, Suite 900  
Halifax, NS B3J 3N2  
Counsel for the Plaintiff

**Your action is defended**

The Defendant Halifax Regional Municipality defends your action.

The grounds for the Defence are stated in the attached Statement of Defence.

**Contact information**

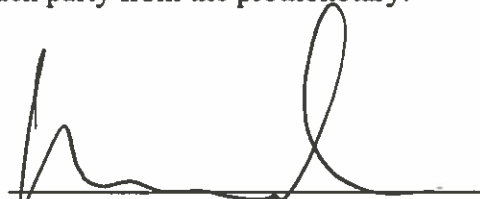
The Defendant designates the following address:

Martin C. Ward, Q.C.  
Halifax Regional Municipality Legal Services  
5251 Duke Street, 3rd Floor, Duke Tower  
Halifax, NS B3J 3A5

Documents delivered to this address are considered received by the defendant on delivery.


Further contact information is available to each party from the prothonotary.

Signed ~~March 9~~ April 5, 2017

  
\_\_\_\_\_  
Martin C. Ward, Q.C.  
Solicitor for the Defendant

**Prothonotary's certificate**

I certify that this amended notice of defence, including the attached amended statement of defence, was filed with the court on ~~March~~ April 5, 2017.

  
\_\_\_\_\_  
Prothonotary  
SARAH DRYSDALE  
Deputy Prothonotary

### **Amended Statement of Defence**

The Defendant Halifax Regional Municipality ("the Municipality"), in answer to the Plaintiff's Statement of Claim, says as follows:

#### **Overview**

1. The Plaintiff is a landowner in the Blue Mountain-Birch Cove Lakes Area lying west of Highway 102 which contains a large tract of Crown land designated a wilderness area and a number of private land holdings. The Plaintiff acquired the land with a view to municipally serviced urban development which was only possible with an amendment to the municipal planning strategy or plan which is a matter within the sole discretion of Halifax Regional Municipal Council ("Regional Council").
2. Following amalgamation in 1996, Regional Council authorized studies which identified Bedford South, Morris-Russell Lake, and the Plaintiff's other lands in Bedford West as the preferred areas of the Municipality for future serviced urban growth. The Municipality conducted master plan studies of these areas and approved plan amendments to permit development. In 2006 Regional Council adopted a new Municipal Planning Strategy ("2006 Regional Plan") which designated these three areas and three others, Port Wallis, Sandy Lake, and the Highway 102 West Corridor, for future urban growth within 25 years. The Highway 102 West Corridor contained a portion of the Plaintiff's land and was added as a result of representations by the Plaintiff. The Regional Plan also stated an intention to acquire land to establish a regional park in the Blue Mountain-Birch Cove Lakes Area, subject to financial ability and community interest, and it provided conceptual boundaries for the park.
3. The Plaintiff and other owners of the latter three sites requested plan amendments to allow serviced development. Staff recommended that the requests be deferred as premature because of a sufficient supply of approved land for several decades and the opportunity cost of infrastructure for such development. In response, the Plaintiff proposed a facilitation process that would tie development approval for its lands to the sale of some portion for inclusion in the proposed regional park. The Municipality agreed to the facilitation process, but only so far as an attempt for consensus on park boundaries and valuation and not for development rights. The facilitation was not successful because the Plaintiff was not prepared to transfer the amount of land which the Municipality needed to achieve park objectives, the parties were far apart on the value of the land that the Plaintiff was prepared to transfer, and the Plaintiff required development approval for the remainder of its lands notwithstanding that such approval would be inconsistent with the policies of the Regional Plan.

4. Decisions on requests for plan amendments to allow development and decisions on municipal acquisition of property are matters wholly within the discretion of Regional Council. This discretion was exercised in good faith and without discrimination in considering such requests by the Plaintiff and other landowners. The Municipality has not *de facto* expropriated the Plaintiff's lands or otherwise taken them for a park. Plaintiff retains the same rights to the development and use of its land that it had pre-amalgamation; that is, the right to request an amendment to the Regional Plan to allow serviced development in accordance with plan policies and the full use and enjoyment of its property subject to the Halifax Mainland Land Use By-Law. The proposed regional park is a concept only and could be realized without including any of the Plaintiff's land.

#### General

5. The Municipality admits the allegations contained within paragraphs 9, 13, 16, 17, 18, 19, 22, 25, 26, 62, 63, 64, 74, 83, and 93 of the Statement of Claim.
6. It has no knowledge of the allegations contained within paragraph 7.
7. As to paragraph 6, it admits that the Plaintiff is the owner of the lands described therein.
8. It denies the remaining allegations in the Statement of Claim and says the following in answer thereto.

#### Background

9. The Blue Mountain-Birch Cove Lakes Area of the Municipality is a vast tract of vacant land stretching from Highway 102 west to the proposed Highway 113. It contains a large holding of Crown land comprising approximately 4,342 acres which has been designated a protected Wilderness Area under the *Wilderness Area Protection Act*, R.S.N.S. 1998, c.27, pursuant to Orders-in Council dated April 2, 2009 and March 24, 2015. It also contains landholdings of a number of private landowners including the Plaintiff.
10. The Plaintiff acquired the majority of its lands in the area prior to 2006 in speculation of potential future serviced urban development. The Plaintiff acquired additional lands in 2014 from Armco Capital and the Sisters of Charity with the same intention.
11. In 1996 the Municipality was created from an amalgamation of the City of Halifax, the City of Dartmouth, the Town of Bedford and the County of Halifax. At that time there were a series of Municipal Development Strategies and Land Use By-Laws inherited from the former municipal units and applicable to various parts of the Municipality.

12. At the time of amalgamation the Plaintiff's lands were zoned by the City of Halifax under the Halifax Mainland Land Use By-Law as in a "holding zone". The zone permitted development of the lands through servicing by on site wells and septic sewerage systems. This zoning continued until the adoption by Regional Council of the 2006 Regional Plan and associated zoning. The Plaintiff did not develop the land prior to 2006 as its intention was urban development with municipal services.

#### Settlement and Housing in HRM

13. The 2006 Regional Plan with associated zoning addressed, among other things, management of urban growth. Previous to that Regional Council considered requests for amendments to various municipal planning strategies to permit serviced development following the preparation of master plan studies for the area in question.
14. In 1998 Regional Council authorized the initiation of master plan studies in four areas Morris/Russell Lake, Port Wallis, Wentworth/Bedford South and Governor Lake North to determine the feasibility of development serviced with central sewer and water. In 2002 Regional Council authorized the initiation of a further master plan study for Bedford West. In 2003 following completion of the master plan study for Wentworth/Bedford South, Regional Council approved amendments to two municipal planning strategies to permit development in this area.
15. On February 25, 2003 Regional Council appointed a Regional Planning Advisory Committee ("RPAC") to oversee the development of the 2006 Regional Plan, including the conduct of public consultation and making recommendations to Council. The RPAC was chaired by and composed of a majority of members of the public selected because of various areas of expertise, as well as several Councillors.
16. In June of 2004 CBCL completed the Greenfield Areas Servicing Analysis for the Municipality which was a comparative analysis of the relative merits for development of ten large holding zones on the edge of the Municipality's service boundary. The study examined development opportunities and constraints and the cost of extending services to these areas. Shearwater/Eastern Passage and Bedford West were the only two areas characterized as having minimal constraints to development. Birch Cove Lakes/Governors Lake and Port Wallis were characterized as having some constraints. Regional Council used the study to set priorities for sites for future serviced development in the 2006 Regional Plan.
17. In June of 2006 the Municipality adopted the 2006 Regional Plan which addressed future urban growth. The Plan divided land available for future potential serviced urban growth into designations of Urban Settlement and Urban Reserve, the former appropriate for potential development within 25 years of the Plan and the latter beyond 25 years. The Plaintiff's land was zoned under the Halifax Mainland Land Use By-Law as a mixture of the two, with more than two-thirds as Urban Reserve.

18. The Regional Plan identified six sites in the Municipality as Urban Settlement; Bedford South, Morris-Russell Lake, Bedford West, Port Wallis, Sandy Lake, and a portion of the Highway 102 West Corridor adjacent to the Blue Mountain-Birch Cove Lakes Area. This latter site included some of the Plaintiff's lands as well as others' lands. The latter two areas, Sandy Lake and the Highway 102 West Corridor were not included in earlier drafts of the plan and were added following representations by the Plaintiff and other landowners to the RPAC. The lands had been proposed for designation as Urban Reserve. The Regional Plan as adopted identified seven sites in the Municipality as Urban Reserve, including the majority of the Plaintiff's land.
19. Development of single unit dwellings was permitted within lands zoned either Urban Settlement or Urban Reserve on existing roads with lots serviced by wells and septic systems. The Plaintiff was interested in development of the land with municipal services and as such, had not constructed roadways or developed its land in this manner.
20. The Municipality subsequently adopted a 2014 Municipal Planning Strategy ("2014 Regional Plan") which continued the designation of Urban Settlement and Urban Reserve lands for potential serviced development. The 2014 Regional Plan identified three Urban Settlement areas where development had been approved through secondary planning strategies (Morris-Russell Lake, Bedford South, and Bedford West) and three areas for future serviced communities, subject to approval of secondary planning (Port Wallis, Sandy Lake, and the Highway 102 West Corridor adjacent to the Blue-Mountain-Birch Cove Lakes Park). The designation and associated zoning of the Plaintiff's lands remained the same.

#### Secondary Planning

21. The development of land zoned Urban Settlement outside the service boundary occurs through a secondary planning process which is wholly within the discretion of Regional Council as conferred by Provincial legislation.
22. Policy S-3 of the 2006 Regional Plan provides that the Municipality will consider requests to initiate a secondary planning process for the development of any of the six sites referred to in paragraph 18 provided that the proposal serves to:
  - a) protect the fiscal health of HRM and its capacity to meet additional financial commitments; and
  - b) address any deficiencies in municipal service systems which would be needed to service the proposed area and the estimated cost of upgrades needed to provide a satisfactory service level
23. Policy S-2 of the 2014 Regional Plan provides that where requests are received to initiate secondary planning for any of the areas identified as potential growth areas in the Plan, consideration shall be given to:

- a) the need for additional lands and the fiscal implications to HRM and Halifax Water and their capacity to meet additional financial commitments; and
  - b) the implications for achieving the HRM growth targets
- 24. Requests to initiate secondary planning prior to March 2011 were referred to the RPAC which made a recommendation to Regional Council, after receiving input from staff by way of a report and input from the party requesting the secondary planning process.
- 25. Requests to initiate secondary planning after March 2011 are referred to Regional Council with input from staff by way of a report and input from the party requesting the secondary planning process.
- 26. Should Regional Council decide to initiate such a process, it will direct staff to prepare a report which includes the necessary plan and zoning amendments which would allow development. Council will then decide whether and if so, how to proceed with secondary planning of an area following a public hearing process as prescribed in the *Halifax Regional Municipality Charter*.

#### Regional Park

- 27. The 2006 Regional Plan contains a statement of intention to create additional regional parks at various locations in the Municipality, including the Blue Mountain-Birch Cove Lakes Area. The 2006 Regional Plan had been preceded in 2006 by a study by Environmental Design and Management Limited ("EDM") to determine an ideal configuration for a park in the area and assess the co-existence of the proposed Highway 113 with the proposed regional park objectives. A conceptual geographic area for the park is shown on Map 13 of the 2006 Regional Plan. The notation on the map provides "This map demonstrates a vision to be implemented over the life of the Regional Plan, through various tools, subject to financial ability and community interest".
- 28. The 2006 Regional Plan noted that the land was both publically and privately owned and that it was the intention over time to acquire necessary private lands within the park for public use. Methods of acquisition would range from provincial and municipal partnerships, land trades and conservation easements. Further, that "once acquired, lands within the park would be re-designated as open space and zoned Regional Park and lands outside the park would be designated and zoned for development as appropriate".
- 29. The generalized park area and conceptual park boundaries set out in the 2006 Regional Plan, based on the EDM report, included land of a number of major private landowners including Barrett Lumber Company, Gateway Materials Limited, Kimberly-Lloyd Developments Limited, Armco Construction, Nova

Scotia Power Incorporated, Parkdale Developments, Piercey Investors Limited, the Sisters of Charity, as well as a portion of the Plaintiff's lands.

30. In 2009 and 2015 the Provincial Crown subsequently designated the 4,342 acre parcel of Crown Land at the centre of the proposed park as a protected Wilderness Area.
31. The 2014 Regional Plan contained the same vision statement concerning the intended development of a regional park and repeated the conceptual boundaries in Map 11 with the same notation that "This map demonstrates a vision to be implemented over the life of the Regional Plan, through various tools, subject to financial ability and community interest".

#### Requests for Serviced Development

32. Prior to 2009 the Regional Council had received requests for and granted secondary planning for three of the six sites identified in the 2006 Regional Plan as potential areas for serviced urban growth, Bedford South, Morris Russell Lake, and Bedford West. In 2009 the Municipality received requests to initiate secondary planning for the remaining sites zoned Urban Settlement and designated for potential growth, being Port Wallis, Sandy Lake, and the Highway 102 West Corridor which included a portion of the Plaintiff's lands.
33. Birchdale Projects Inc. ("Birchdale") submitted the request to Regional Council for the Highway 102 West Corridor lands on behalf of the Plaintiff, Armco Capital Inc., Gateway Materials Ltd. and the Sisters of Charity.
34. The requests were scheduled for consideration by the RPAC at its October 21, 2009 meeting. Staff prepared a report for the Committee recommending that consideration of all of the requests be deferred to the five year review of the 2006 Regional Plan in 2016 for the reasons that:
  - 1) The current supply of suburban lands available for development would satisfy municipal requirements for several decades; and
  - 2) Premature investments in additional infrastructure by the Municipality would adversely affect its financial capacity to proceed with higher priority capital projects.

Chris Lowe, the President of Birchdale was present and made comments to the RPAC. The Committee requested a supplementary report from staff and deferred the matter to a future meeting.

35. Birchdale responded to staff's report and recommendation in two ways. First, they commissioned two reports to challenge staff's conclusions, Altus Group to address the conclusions about the long term future residential land requirements in the



Municipality, and Ernst and Young to address the financial analysis used by staff. Staff reviewed these reports but maintained their position on the issues. The Ernst and Young report was subsequently retracted by Birchdale following discussions with staff.

36. Birchdale also attempted to pursue development of the lands by tying secondary planning to the Municipality's vision in the 2006 Regional Plan of developing a regional park in the Blue Mountain-Birch Cove Lakes Area. As of 2009 there had been no action by the Municipality to attempt to acquire land in furtherance of the concept of a regional park. Birchdale proposed to staff and subsequently to the RPAC, a two phased process involving a facilitation to attempt consensus on the amount of private land to be included within park boundaries followed by approval of development through secondary planning for the remaining private lands in the Highway 102 West Corridor.
37. Staff prepared a supplementary report for the RPAC meeting of June 23, 2010 recommending the facilitation process to attempt to define park boundaries, but maintaining the recommendation to defer all requests for secondary planning processes for the reasons stated in paragraph 34 hereto. Staff maintained that initiating secondary planning for each of the three areas, Port Wallis, Sandy Lake, and the Highway 102 West Corridor was premature and inconsistent with the principle of the 2006 Regional Plan to maintain growth in a cost effective manner. All requestors made presentations to the RPAC, including Chris Lowe on behalf of both Birchdale and the Plaintiff. Mr. Lowe proposed that staff's recommendation should be adjusted such that negotiations for boundaries must be linked to commencing development through secondary planning for the Highway 102 West Corridor by mid-2011.
38. Birchdale and the Plaintiff were unsuccessful in persuading the RPAC to tie the facilitation process for park boundaries to the commencement of secondary planning. At its meeting of August 11, 2010 the RPAC recommended to Regional Council that:
  - 1) Council undertake a watershed study for the Highway 102 West Corridor and await completion of Halifax Water Wastewater Functional Plan;
  - 2) Negotiate boundaries through a facilitation process; and
  - 3) Defer the review of the request to initiate secondary planning for the Highway 102 West Corridor.
39. On November 16, 2010 Regional Council met in Committee of the Whole to consider all requests to initiate secondary planning and the recommendation of the RPAC. Council passed a series of motions including:

That Halifax Regional Council direct staff to undertake a Watershed Study for the Highway 102 West Corridor lands and await completion of Halifax Water's Wastewater Functional Plan.

That Halifax Regional Council direct staff to negotiate boundaries for the Blue Mountain – Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor lands through a facilitated process with an independent facilitator, and further; to bring details of the proposed negotiating process back to Regional Council prior to entering into negotiations.

That Halifax Regional Council defer the review of criteria under Policy S-3 of the Regional Plan to determine whether to initiate a Secondary Planning Process for the Highway 102 West Corridor lands.

That Halifax Regional Council direct staff to undertake a Watershed Study for Port Wallis this year and allow Port Wallis to move to the Secondary Planning Process as soon as the Watershed Study is complete.

That Halifax Regional Council direct staff to defer any Watershed Study for Sandy Lake for two years and also defer any request for a Secondary Planning Process.

That Halifax Regional Council direct staff to explore creative solutions, in regard to funding sources, to have Watershed Studies initiated this fiscal year.

That Halifax Regional Council approve undertaking a Watershed Study for the Port Wallis study area and advanced project funding in the amount of \$150,000 for Project No. CDV00721-Watershed Environmental Studies in the 2011/12 project budget to undertake this study.

40. Regional Council's direction was that the facilitation process with respect to negotiations on boundaries for the proposed Blue Mountain-Birch Cove Lakes Regional Park was to await the completion of the Watershed Study and the wastewater functional plan and then approval of the details of the facilitation process by Council.
41. The development of the Annapolis lands, both Urban Settlement and Urban Reserve was one of the Plaintiff's core objectives in proposing the facilitation process, but not an objective of the facilitation process. The August 11, 2010 recommendation of the RPAC and the November 16, 2010 resolution of Regional Council approving the facilitation process specifically deferred consideration of whether to initiate secondary planning process for the Highway 102 West Corridor lands, being the Urban Settlement lands.
42. Both the November 16, 2010 Regional Council resolution and the Terms of Reference for the Facilitator recite specifically that the purpose or objective of the

facilitation process was to “negotiate boundaries for the Blue Mountain-Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor Lands”. While negotiation of potential park boundaries would entail consideration of the Plaintiff’s competing concepts and plans for the proposed development of its lands, there is nothing in the Terms of Reference indicating that the development of the Plaintiff’s lands was ever an objective of the facilitation process.

43. Further, as stated in paragraphs 21 to 26 hereto, development approval for the Plaintiff’s lands, both Urban Settlement and Urban Reserve, would involve a two stage process. First, it would require a discretionary decision by Regional Council whether to initiate a process to consider amendments to the Municipal Plan and second, a further decision by Regional Council on whether and if so, how to proceed with development through secondary planning following a public hearing process. Regional Council’s discretion would be exercised in accordance with the criteria in the policies of the Municipal Plan and be subject to approval by the Minister of Municipal Affairs in accordance with the *Halifax Regional Municipality Charter*.

41.—

44. On December 13, 2011 staff presented an information report to Regional Council concerning the potential impact of recent sales of land in Bayer’s Lake Business Park on the future of the proposed Blue Mountain-Birch Cove Lakes Park. After noting that the 2006 Regional Plan indicates an intention to acquire private lands over time by a variety of acquisition methods as financial resources permit, staff indicated that the lands were not zoned as parkland when the Plan was adopted because this would have required purchase within one year.

42.—

45. In August of 2012 the Plaintiff notified the Municipality that it was withdrawing from the facilitation process because staff had held a public meeting in May of 2012 at which conceptual boundaries for the park were discussed. This followed a telephone call from the Plaintiff, in advance of a meeting scheduled for July 25, 2012, wherein the Plaintiff advised that they no longer wished to pursue the facilitation process but would entertain a conventional offer for purchase of lands.

43.—

46. On August 8, 2012 staff prepared a report for the Environment and Sustainability Standing Committee meeting of September 6, 2012 seeking approval of a conceptual plan and objectives for the proposed park. Counsel for the Plaintiff wrote to the Municipality objecting to the report as inconsistent with Council’s direction from November 16, 2010. Consequently, the Committee did not consider the matter and referred the report to the Municipal Solicitor. The item was not returned to or considered by the Committee.

The Facilitation Process

44.—

47. The preliminary Watershed Study was presented on October 26, 2012 and the final report presented on March 6, 2013. On June 25, 2013 Regional Council passed a motion to accept the report. In April of 2014 the Utility and Review Board approved the Halifax Regional Water Commission's wastewater functional plan.

45.—

48. On September 17, 2013 Regional Council accepted the proposed terms of reference for the facilitation and authorized staff to enter into discussion with the Plaintiff, through its counsel, to retain the services of an independent facilitator. Justice Robertson was requested to act as facilitator on February 5, 2014 and agreed to act in March, 2014.

46.—

49. On June 27, 2014 the Plaintiff delivered reports and associated plans for the development of the Highway 102 West Corridor lands to the Facilitator. The plans were noted to have taken longer to prepare than anticipated. The plans had been anticipated by mid-April.

47.—

50. On August 20, 2014 the Plaintiff sent documentation to the Facilitator including a valuation report for the Plaintiff's lands prepared by an independent appraiser. The report valued both the Urban Settlement and Urban Reserve lands on the basis that they were approved for development and developed, being a value of approximately \$120 million or approximately \$80,000 per acre as appears from the Plaintiff's Statement of Claim.

48.—

51. On receipt of the appraisal, staff concluded that given the Plaintiff's position on the value of the land, the parties would be unable to reach any agreement with respect to setting boundaries and acquiring the Plaintiff's land. Accordingly, staff advised the Plaintiff that it wanted to cancel the scheduled facilitation dates and approach Regional Council for direction whether to continue with the facilitation process. Staff subsequently recommended that Council end participation in the facilitation process and await the request of the Plaintiff to proceed with their request to initiate secondary planning for development of the lands zoned Urban Settlement in the Highway 102 West Corridor.

49.—

52. In response, the Plaintiff, through its counsel, wrote to staff and to Regional Council stating that it was always contemplated that the parties might not be able to reach an agreement and urging that the Municipality continue the facilitation process. On October 28, 2014 Council directed staff to continue the facilitation

process and if an agreement was concluded on boundaries, to obtain an appraisal and return to Council. Staff continued its participation in the facilitation process and commissioned an appraisal based on the boundaries being proposed by the Plaintiff.

50.—

53. On November 21, 2014 the Plaintiff through its counsel, provided the Facilitator with an addendum to the appraisal report adding to the value of the land contractors' overhead, profit, and real estate commissions.

51.—

54. The parties participated in the facilitation process for approximately 18 months. During this time the parties produced alternate concept plans for park boundaries and development of the area. General agreement was reached with Susie Lakes Development Ltd on park boundaries and appraisal of lands subject to Regional Council approval. No such agreement was reached with the Plaintiff. The Plaintiff made some minor concessions but its opening position on boundaries remained largely unchanged. The parties' representatives did not reach any consensus on boundaries from which staff withdrew. Further, notwithstanding that neither the RPAC nor Regional Council in recommending or approving the facilitation process had agreed to Birchdale's proposal that acquisition of any lands for park must be linked to approval of secondary planning, both Susie Lakes Development Ltd. and the Plaintiff maintained throughout the facilitation process that they would not transfer any land without approval of secondary planning for the remainder of their lands. This included both 281 acres of the Plaintiff's land zoned Urban Settlement and 684 acres zoned Urban Reserve.

52.—

55. On March 22, 2016 Staff submitted a report to Regional Council with an interim facilitator's report seeking instructions concerning proceeding to a public consultation. Regional Council directed staff to assist in the completion of the facilitator's report and proceed to a public consultation on the basis of the developer's plan.

53.—

56. On June 1, 2016 the Facilitator delivered her report to Regional Council as follows. The report indicated that while parties were able to reach general agreement on the boundaries and valuation of lands for Susie Lake Development Ltd., they were unable to do the same for the Plaintiff. It noted that staff considered that the boundaries proposed by the Plaintiff's development plan would not achieve many of the objectives of a regional park and the Plaintiff maintained that to transfer more land would render the development of the remaining land uneconomic given the cost of necessary infrastructure. The Plaintiff valued the land which it would be prepared to transfer at \$6 million as opposed to the Municipal valuation of \$2.8 million. Further, the Plaintiff maintained that the transfer of any land would also be contingent on the granting of secondary planning for development of its remaining

lands while staff maintained that this would be inconsistent with the Regional Plan policy because there is already a 28 to 35 year supply of land approved for development in order to respond to residential growth. In sum, the parties remained far apart on the main issues in the facilitated negotiations. As a whole, the Facilitator indicated favour with the Plaintiff's development plan over staff's concerns about park objectives and financial stewardship. The Facilitator was not required to address, nor did she address, the application of the Regional Plan policy concerning the existing supply of land already approved for residential development.

54.—

57. On June 20, 2016 a public meeting was held at which the Facilitator presented her report, staff outlined the process including next steps, and representatives of the Plaintiff presented their vision for the park which included the developer's map.

#### Regional Council's Decision

55.—

58. Staff prepared a report to Regional Council following the completion of the facilitation and. The report noted that during the facilitation process staff developed an alternative conceptual park boundary map, Map 3A, for discussion purposes. The Map was presented as an attempt at compromise that responded to the development proposal put forward by the Plaintiff while still partially meeting several park objectives. The parties were still not able to reach agreement as the Plaintiff continued to rely on the conceptual boundaries in its development plan. The report indicated that the method of valuation advanced by the Plaintiff did not result in market value and did not reflect a willing seller. The report also noted the Plaintiff had indicated that it would not agree with any proposed park boundary without Regional Council granting its request to initiate secondary planning strategies for its land.

59. On September 6, 2016 Regional Council adopted the following resolution:

That Halifax Regional Council receive the Facilitator's Report Regarding Negotiation of Proposed Boundaries for the Blue Mountain/Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor and take no further action concerning the facilitation process or the report's recommendations.

That Halifax Regional Council refuse the request to initiate secondary planning for all Hwy 102 West Corridor lands at this time.

That Halifax Regional Council direct staff to explore opportunities and develop a program to acquire land to establish the proposed Blue Mountain-Birch Cove regional park with a priority of providing public access to the provincially protected wilderness area, that includes, but is not limited to:

- a) Discussions with the Federal and Provincial governments
- b) Discussions with all private land owners that own property located within the conceptual park boundary in Map 11 of the Regional Plan
- c) Discussions with land conservation and community groups; and
- d) Reviewing the potential use of land use planning tools and conservation easements

Staff is further directed to report back to Regional Council within six (6) months and then on an annual basis, staff report to Council on progress achieved in implementing the established Blue Mountain/Birch Cove Regional Park.

~~56.~~—

60. Regional Council was acting within its jurisdiction and in good faith in the exercise of its discretion in deciding not to acquire the land offered by the Plaintiff, at the price offered by the Plaintiff, and on the conditions imposed by the Plaintiff. Council was entitled to refuse to acquire the land on the basis that it would be insufficient to meet park objectives, the price was not acceptable given the HRM appraisal, and the sale was conditioned on granting development approval for the Plaintiff's remaining Urban Settlement and Urban Reserve lands. Council was not obligated to accept the recommendations in the Facilitator's report. Council was entitled to refuse to initiate secondary planning for the Highway 102 West Corridor at that time on the basis that there was already more than a sufficient supply of serviced residential land approved for future development.

~~57.~~—

61. The parties contemplated that in participating in the facilitation process there might not be an agreement. Staff had anticipated this given the amount of land offered by the Plaintiff, the price for that land, and the condition of development approval irrespective of the criteria in the Regional Plan. The Plaintiff had expressed this in its response to staff's concern about continuing the facilitation process. It does not follow that if there was no agreement, there was any bad faith on the part of either party.

~~58.~~—

62. The regional park in the Blue Mountain-Birch Cove Lakes Area of the Municipality remains a concept only. The Municipality has the right in the public interest to explore other alternatives to acquire public access to the protected wilderness lands and alternative boundaries for a regional park that do not include the Plaintiff's land. It does not follow from this direction that there was any bad faith on the part of the Municipality including either Regional Council or staff.

~~59.~~—

63. The Municipality denies that as a result of Regional Council's decision the Plaintiff's lands have been taken as a park without compensation. Annapolis

retains the same development rights in respect of the development of its lands which it had since before the adoption of the 2006 Regional Plan. It has the right to request that Council consider a plan amendment to initiate secondary planning in accordance with the criteria in Policy S-2 and Policy S-3 of the 2014 Regional Plan.

60.—

64. The Plaintiff proposed and attempted to impose on the facilitation process a requirement that should there be an agreement on boundaries and valuation of land for a park, there would be approval of secondary planning for the remainder of the Plaintiff's lands. The Municipality never accepted this condition or otherwise represented that secondary planning was other than a matter wholly within the discretion of Regional Council to be exercised in accordance with the policies of the Regional Plan.

61.—

65. The Municipality denies that it has been unjustly enriched by having the Plaintiff's lands as a municipal park. These lands have been used for generations by some members of the public for access for recreational purposes. The Plaintiff has long acquiesced in this public use and such use does not make the Plaintiff's land a municipal park. The Plaintiff continues to have the full use and possession of its land and the right to control any illegal use of the land by others.

62.—

66. The Municipality denies that it has encouraged the use of the Plaintiff's land as a park through the failure, if any, of the Halifax Regional Police and/or the RCMP to enforce parking restrictions on the highway adjoining the Plaintiff's land.

63.—

67. The Municipality denies that it has been unjustifiably enriched by any improvements that the Plaintiff has made to the Plaintiff's lands and says that any such improvements have been for the present or future benefit of the Plaintiff and/or the Provincial Crown to the extent that the latter has ownership of any watercourse pursuant to s.103 of the *Environment Act*, S.N.S. 1994-1995, as amended.

#### Alleged Bias and Favouritism

64.—

68. The Municipality specifically denies paragraphs 35 through 58 of Statement of Claim and the allegations of bias against the Plaintiff and favouritism of others in the consideration and approval of requests for development, either through secondary planning or otherwise and puts the Plaintiff to the strict proof thereof. The identity of the owner or potential future owner land is not a factor in such planning and development decisions.



65.—

69. In 1998, prior to the 2006 Regional Plan, the Municipality received requests for serviced urban development from Piercey Investments Ltd. and other landowners for the area known as Bedford South and from Clayton Developments for the area known as Morris-Russell Lake.

66.—

70. Regional Council approved the Bedford South request for development in 2003 following a master planning study of the area. Bedford South was the primary area identified for serviced urban development in the Greenfield study. During the period when the request was under study and consideration by staff and Council, Clayton Developments acquired the interest of Piercey's and the other landowners.

67.—

71. The Municipality did not underestimate the cost of infrastructure including sewers or interior roads and the capital cost contribution arrangement was appropriate. There was a change in the scope and cost of a highway interchange constructed by the Province which cost was shared between the three levels of government and the developer and which interchange serviced more than the Bedford South development. The Bedford South area developed more quickly than anticipated for reasons that had no connection with the Municipality recovering the cost of infrastructure through the capital cost contribution arrangement.

68.—

72. Regional Council approved the Morris-Russell Lake request for development in 2005, again following a master planning study. The area was the second highest priority area for serviced urban development and the highest priority on the eastern side of the Municipality. The Municipality did not underestimate the cost of infrastructure including sewers or interior roads and the capital cost contribution arrangement was appropriate. The Municipality participated in the shared cost of a highway interchange in anticipation that a portion of Federal Crown lands, which were surplus to the Department of National Defence and transferred to the Canada Lands Corporation, would be available for development. The Federal Crown subsequently decided to retain the lands thereby leaving the interchange to service the more limited area approved for development.

69.—

73. On April 14, 2000 the Plaintiff as owner of the Bedford West lands requested that the Municipality initiate a master planning study. The request identified two parcels with a combined area of 1,200 acres for serviced development. No plans or studies were submitted. On July 16, 2002 Regional Council approved the initiation of a master planning study for the area. On June 20, 2006 Regional Council approved development by secondary planning. The duration for approval of the development was occasioned by the size of the project, the studies required for consideration, and the decision to complete the process under the forthcoming 2006 Regional Plan.

70.—

74. The approval for development through a plan amendment was granted to the Plaintiff. The Municipality had no knowledge of any arrangement for the Plaintiff to sell its Bedford West landholdings to Cresco Developments Ltd. or of any partnership between Cresco and Clayton Developments to develop the land until after development was approved. A public announcement of the conveyance of the Plaintiff's land holdings to West Bedford Holdings Ltd. was made shortly after the Province had approved the secondary plan. The Municipality, in approving the Plaintiff's request for development without any knowledge of involvement by Clayton, was not demonstrating bias against the Plaintiff and discrimination in favour of Clayton Developments.

71.—

75. On October 7, 2014 Regional Council authorized a planning application to permit residential development of the former Sisters of Charity Motherhouse lands. The Motherhouse lands, unlike the Plaintiff's lands in the Blue Mountain-Birch Cove Lakes Area, were in an existing area approved for serviced development. They did not require secondary planning and growth projections had already been incorporated into the area. The approval was consistent with the Regional Plan objective for residential growth within, rather than outside, the existing service boundary. The Municipality in approving development of these other lands was not demonstrating bias against the Plaintiff.

72.—

76. In 2011 the Municipality sold land in the Bayer's Lake Business Park which is near the Plaintiff's land and approved development of the land for business. The conceptual boundary for the proposed Blue Mountain-Birch Cove Lakes Park overlapped the land by a very small amount which was returned to the Municipality following the sale as parkland dedication as required in the subdivision process. The sale of this land in the business park for development for business purposes does not demonstrate bias against the Plaintiff.

73.—

77. In 2010/2011 the Municipality constructed an underpass of Washmill Drive at Highway 102. The underpass was constructed to alleviate traffic congestion and provide an additional access to the Bayer's Lake Business Park and the many retail and commercial businesses contained therein. The Municipality did not incur this investment to facilitate the development of lands owned by Clayton Developments or any other residential development.

74.—

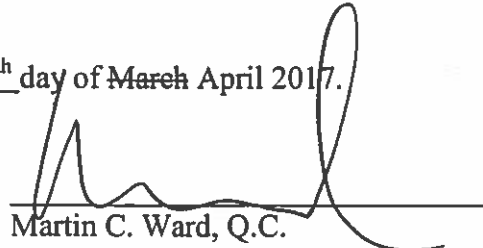
78. The Municipality denies that officers of Clayton Development have any preference in planning and development matters because they were formerly employed as staff by the Municipality and puts the Plaintiff to strict proof thereof.

Relief Sought

75.—

79. The Municipality ~~says that the Plaintiff's Statement of Claim discloses no reasonable cause of action and~~ requests that it the Plaintiff be denied the relief sought and the Plaintiff's action be dismissed with costs to the Defendant on a solicitor-client basis.

DATED at Halifax, Nova Scotia, this 9<sup>th</sup> ~~5<sup>th</sup>~~ day of ~~March~~ April 2017.



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