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July 10, 2023

Via E-mail: mayor@halifax.ca

Mayor Mike Savage
Mayor's Office
1841 Argyle Street,
Halifax, NS B3J 3A5

Dear Mayor Savage:

Re: Wanderers Grounds

I am retained to represent the Friends of Halifax Common in relation to its concerns about the Halifax Regional Municipality's (HRM) use of the Wanderers Grounds.

HRM is operating in violation of the HRM *Charter*, the 1994 Halifax Common Plan and the Plan's intent to maintain public access to all Common land. In particular, HRM contracted the Wanderers Grounds to developer Derek Martin for use by Sports Entertainment Atlantic (SEA) without public consultation, causing the de facto exclusion of amateur players and the public in contravention of the 1994 Plan which was in effect at the time of the lease, and the HRM *Charter*.

Additionally, HRM has permitted "pop-up" stadium structures to remain in place, and changed this removal as a contractual requirement after the first year, despite stating that these structures would be temporary. These structures continue to impede / affect public access to and enjoyment of the Wanderers field, in violation of the 1994 Plan and the *Charter*.

I understand that HRM may extend the lease with Martin and SEA yet again (they have had a series of renewed leases since 2018), in effect privatizing the Wanderers field. All decisions related to current and future Wanderers lease arrangements with SEA have occurred without public consultation. Any long-term leases of a permanent nature or further renewal of short-term leases (effectively the same as a long-term lease), would be inconsistent with the HRM *Charter*, the 1994 Plan and HRM's obligation to maintain public access to all Common lands.

The *Charter* requires that HRM lease the Wanderers Grounds at market value¹ and prohibits HRM from providing financial assistance to SEA.² Funding SEA developments with public money would violate the *Charter*. HRM has already funded the refurbishment of the Field, purchase and installation of new lights and pays for maintenance, lights and water.

HRM must cease and desist these acts of non-compliance with its obligations and take immediate steps to bring itself into compliance. If the HRM does not remedy the above instances of non-compliance, Friends of Halifax Common will seek full redress in the civil courts of Nova Scotia.

The Halifax Common as a Public Space

In 1763, the Crown granted the Halifax Common property to six Halifax citizens to be registered and used as “a Common by the inhabitants of the town of Halifax, as Common *forever*.” In 1829, the Province of Nova Scotia appointed three Commissioners for the Common of Halifax by *An Act concerning the Common of Halifax*, c 32 (1829). This Act stated that the Common should be used and occupied “for the public and common benefit.”³

The 1763 Crown grant creates a right in common for all Halifax citizens. Although the grant does not expressly state that it creates a right in common, its language clearly indicates this intended purpose. Per *Blackstone: Laws of England*, rights in common grant commoners the right to use a particular land, in this case the Halifax Common.⁴

English common law holds that the owner of a common land (here, HRM) has concurrent rights with commoners (Halifax citizens) over the land. However, the owner may *not* operate in a manner that interferes with the commoners’ exercise of their rights. The owner may also not alter the use of the common to the detriment of the commoners without obtaining consent from all commoners. In leasing the Wanderers Grounds to SEA, the HRM significantly altered the use of the land by largely excluding amateur players. The HRM failed to obtain public consent.

The 1994 Halifax Common Plan sets out the following objective for the Wanderers Grounds: “accommodation of existing sports, leisure and maintenance facilities in the short term with, over the longer term, subject to detailed design and acceptable accommodation of existing facilities, an all-season public activity area for athletic, cultural and special events.”⁵ The 1994 Plan also states that the Wanderers Grounds should, over the long-term, “remain under city control and be consolidated for a multi-purpose all-season public area which includes athletic events, special

¹ *Halifax Regional Municipality Charter*, 2008, c 39 s 61.

² *Ibid* at s 71.

³ *An Act concerning the Common of Halifax*, c 32 (1829).

⁴ (1766) vol 2, c 3 at 33

⁵ Halifax Common Plan, 1994, s 5.

events, concerts, public gatherings, and general public use.”⁶ The Plan re-affirms the intended public use of the Grounds.

Prior to leasing the space to SEA, the Wanderers Grounds was used to full capacity by the public. Amateur players booked the space for an average of 325 hours per year. These amateur players included but were not limited to football, lacrosse, rugby, touch football, ultimate frisbee and soccer. Amateur play at the Grounds was only limited by the field conditions and what the natural grass field could sustain.⁷

Although the 1886 *Act relating to the City of Halifax*⁸ states that HRM may lease the land known as the Wanderers Grounds, this power is limited by the 2008 HRM *Charter*. Under section 61(2) of the *Charter*: “where property is conveyed to the Municipality in trust for a public or charitable purpose, the Municipality holds the property according to the terms of the trust and may do anything necessary to carry out the objects of the trust.” The Wanderers Grounds was conveyed to HRM for a public purpose, and HRM must respect this term. By leasing the property to SEA, causing the de facto exclusion of the majority of amateur players, HRM is effectively privatizing a property conveyed to HRM for public use. This violates section 61(2) of the *Charter*.

HRM’s Agreements with Sports Entertainment Atlantic

In the 2017 staff report, the HRM detailed potential lease agreements with SEA. HRM committed to a temporary lease, and “pop-up” stadium structures, underscoring that long term use by a professional soccer team would conflict with the field’s general use.⁹ In 2022, the HRM Master Plan again underscored the 3-year, “temporary nature” of the agreement.¹⁰ Despite the commitment to a temporary lease arrangement and stadium structures, SEA continues to lease the property to the exclusion of the majority of amateur players and structures remain in place and have increased in volume and area occupied.

HRM signed the contract permitting the temporary “pop-up” SEA stadium without engaging in any public consultation. In the 2017 staff report, HRM committed to including questions about citizens’ desired use of the Wanderers Grounds as part of the Halifax Common Master Plan public consultation.¹¹ However, these questions were ultimately excluded from the public consultation. The Community Planning and Economic Standing Committee report on the Master Plan stated that the Wanderers Grounds should be subject to a more detailed plan and public consultation

⁶ *Ibid* at s 5.1.

⁷ Halifax Regional Council, Item No. 14.1.13, (June 20, 2017) at 5.

⁸ 1886, c 59

⁹ *Ibid* at 5.

¹⁰ Halifax Common Master Plan (February 2022) at 145.

¹¹ *Supra* note 5 at 9.

regarding land use.¹² However, this consultation has not occurred. As a result, all decisions regarding the Wanderers Grounds lease arrangements with SEA have been made **without** public consultation.

Obligation to Consult the Public

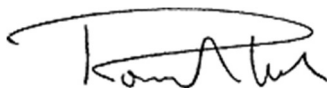
In line with the intended use of the Wanderers Grounds as a public space, HRM would need to engage in meaningful public consultation before leasing the Wanderers Grounds to a private third party like SEA. The HRM has not met this obligation. I remind you that HRM is obliged to always act with good faith.

Further, the obligation of effective public consultation is the case for the entire Wanderers Block which has been excluded from the public consultation process for the Halifax Common Master Plan since it began in 2017. HRM Council had just finalized a private approval and contract with the private, for-profit Wanderers Club directly ahead of the consultation's start. And HRM staff subsequently openly refused to engage in this topic or the Wanderers Block even though it is a large area several significant parts including the Natural History Museum, Halifax Lancers buildings and grounds, HRM maintenance depot and parking, the Power House, Public Gardens greenhouses, Halifax Lawn Bowling Pitch, QEII 8-storey parking garage and Wanderers Field. It is likely that Staff of HRM has acted in bad faith by their actions.

I am writing on behalf of my client to give HRM an opportunity to cease and desist all acts of non-compliance with the HRM *Charter*, 1994 Halifax Common Plan and intended use of the Common as a public space. If the HRM does not remedy its non-compliance or if the HRM enters into further lease arrangements with Derek Martin or SEA or uses public money to support SEA developments in violation of the *Charter*¹³, the Friends of Halifax Common will seek full redress in the courts of Nova Scotia.

Thank you,

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Ronald Pink, KC

RP/aw

c. Client - Friends of Halifax Common Board of Directors
Cathie O'Toole, Chief Administrative Officer, Halifax Regional Municipality

¹² CPED Standing Committee Report on the Halifax Common Master Plan (December 8, 2021) at 5-6.

¹³ *Supra* note 2.