

North West Community Council
February 11, 2013

TO: Chair and Members of North West Community Council

Original Signed

SUBMITTED BY: _____
Brad Anguish, Director, Community and Recreation Services

DATE: January 29, 2013

SUBJECT: **Case 17362: Development Agreement, 5210 St. Margarets Bay Road,
Upper Tantallon**

SUPPLEMENTARY REPORT

ORIGIN

- Application by Genivar
- November 15, 2012 staff report to North West Community Council
- January 14, 2013 motion of North West Community Council requesting additional information

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning & Development

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve the proposed development agreement, presented as Attachment A to this report, to permit larger scale commercial development at 5210 St. Margarets Bay Road; and
2. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

On January 14, 2013, North West Community Council held a public hearing on Case 17362 which proposes the development of three large scale commercial buildings at 5210 St. Margarets Bay Road, Upper Tantallon. Following the public hearing, Council debated the matter and identified aspects of the development that required additional information from staff. In response, North West Community Council approved the following motion:

“MOVED by Councillor Whitman, seconded by Councillor Craig to defer a decision on Case 17362 until the February 11, 2013 North West Community Council meeting to better understand information submitted and heard at the public hearing and request a supplementary staff report to clarify and address questions from Council.”

Matters requiring additional information are as follows:

- a) What is the status of the Community Visioning Process/Project for Tantallon;
- b) Can Council consider the proposed land use policies and by-law provisions for the Visioning Project in Tantallon when forming a decision on Case 17362;
- c) What impact would the proposed land use by-law provisions have on the proposed development being considered under Case 17362; and
- d) What are staff's responses to the comments from the public regarding policy interpretation.

DISCUSSION

Responses to the items raised at the January 14, 2013, public hearing are as follows:

a) Status of the Community Visioning Project for Tantallon

On September 21, 2010, Regional Council directed staff to initiate the process to consider amending the Municipal Planning Strategy (MPS) and Land Use By-law (LUB) for Planning Districts 1 and 3 to implement the results of the Community Forum “Upper Tantallon at the Crossroads” concept plan. This project is being completed by Planning and Infrastructure staff who advise that the proposed MPS and LUB amendments are anticipated to be before Regional Council for a public hearing in late spring.

The proposed amendments will rely on development agreements as the primary tool of implementation. Staff had considered a variety of implementation methods to achieve the community vision and most recently, had hoped to create a plan and by-law based on the approach used in the Downtown Halifax Plan adopted in 2009. However, the *HRM Charter* restricts the key implementation tools used in that plan, namely site plan approval for exterior building appearance and density bonusing, to Downtown Halifax. Unfortunately, anticipated amendments to the *Charter* to allow the use of these tools in other areas of the Municipality did not occur during the fall session of the Nova Scotia legislature. While it is now expected that this legislative authority may be received in the spring sitting of the legislature, staff believe that the community stakeholders would prefer staff proceed with a revised approach based on the existing provisions of the *Charter*.

b) Can Council consider the proposed land use policies and by-law provisions for the Tantallon Visioning Project when forming a decision on Case 17362;

As discussed above, the proposed planning policies and land use by-law amendments for the area are currently being reviewed and drafted by Staff. As such, they are not official policy and cannot be considered by Council in deciding on this proposal. In considering this application, Council must base its decision on the existing policies.

It should be noted that Council has the option to refuse the proposed development agreement. However, in doing so, they must provide reasons for this refusal based on existing policies of the MPS; not based upon the proposed amendments.

c) What impact would the proposed land use by-law provisions have on the proposed development being considered under Case 17362; and

As discussed above, the proposed land use policies and by-law amendments to the planning documents for St. Margarets Bay are still being drafted by staff and cannot be considered by Council when considering the proposed commercial development at 5210 St. Margarets Bay Road. A complete analysis of the proposed commercial development against the proposed land use policies and zoning amendments would be pre-mature as the policies are still in draft form. Staff are reviewing the proposed amendment package which may result in further changes. Additionally, Council could make changes before adopting the amendment package.

d) Staff's responses to the comments from the public regarding policy interpretation.

In the November 15, 2012 staff report, staff provided their analysis of the applicable policy relative to the proposed development. During the public hearing, some of the speakers questioned that some of the existing policies could be interpreted in a different matter and may require further discussion. The policy criteria raised included clauses (a), (d), (e) (f) and (j) of policy MU-16(A). Further discussion of these policies is outlined below.

(a) the architectural design of building(s) that reinforce the style, character and scale of the area's traditional built form;

In the November 15, 2012 staff report staff outlined how the architectural design of the buildings reinforced the style, character, and scale of the area's traditional built form, through the use of pitched roofs, gables, building materials and the scale of the buildings. However, it was noted during the public hearing that the proposed building designs did not go far enough to reinforce the traditional wood frame houses and fishing industry buildings that are exemplified in the preamble of the application.

As noted in the staff report, it is not the intent of this policy to require new commercial buildings to replicate the traditional building style, but rather to incorporate features of the traditional building style into their construction. Previous to the adoption of policy MU-16(A), larger commercial buildings could be developed in the style of "big boxes" with no specific

requirement for architectural treatment. The intent of policy MU-16 (A) was to include traditional design elements when developing larger commercial buildings to avoid this.

(d) controls on signage that reinforce the rural character of the area;

The November 15, 2012 staff report notes that the proposed development agreement includes limits on the number and size of ground signs and fascia signs. The proposed development agreement further restricts the backlighting of fascia signs to one sign.

It was noted during the public hearing that the fascia signs on Building 1 were quite large and did not reinforce the rural character of the area. The elevations for Building 1 include two (2) fascia signs that are approximately 16.56 square metres in area. These are considered to be larger signs and provisions have been included in the proposed development agreement to restrict fascia signs to this maximum. Although these signs may be larger than some fascia signs in the area, they are by no means the largest signs in the area. When compared to signage at some of the larger commercial properties in this area, the proposed sign area of 16.56 square metres is smaller.

As noted in Attachment B of the staff report, the proposed development agreement permits only one ground sign to be constructed on the site at a shorter height than ground signs permitted by the LUB. However, the sign area is larger but is required to be constructed of natural materials. The proposed agreement also includes limits on fascia signs and requires the fascia signs to be front lit, except for one sign which is permitted to be back lit. Staff are of the opinion that the signage provisions in the proposed agreement are consistent with the character of the area.

(e) site illumination to reduce, where possible, the unnecessary illumination of surrounding properties including reasonable limitations on the hours of illumination;

It was noted during the public hearing that there was no discussion of lighting regarding this project. Although there is no schedule outlining the proposed lighting for this development, Section 3.13 of the proposed agreement requires light to be directed to driveways, parking areas, building entrances and walkways. Section 3.13 further requires lighting to be of the full cut-off design and to be arranged so light is diverted from streets, adjacent lots and neighbouring buildings.

(f) the retention of significant features such as any significant wildlife habitat, important scenic vistas, historic buildings, cultural landscapes, mature forest, and other elements that typify the rural character of the area;

The November 15, 2012 staff report states that the area serves as an important gateway to the St. Margarets Bay community and is an important focal point when travelling to Peggy's Cove. However, there is currently no physical representation of this fact on the site. The proposed development agreement requires the development of an amenity area to help signify the importance of this site. It was noted during the public hearing that this amenity area does not go far enough to enhance this site. However, it is important to note that the community design for this area has not been fully established. The developer has proposed to work with the

community to develop a design for this site. Staff are of the opinion that there is an opportunity to establish a space that signifies the importance of this area.

It was also noted during the public hearing that Building 2, which is located at the corner of St. Margarets Bay Road and Peggy's Cove Road, has a blank wall facing this site. As this corner is travelled by many visitors to the area and Peggy's Cove, it was noted more articulation should be provided for the proposed building. The proposed development agreement has been amended to include section 3.5.5 which requires further architectural articulation along the elevation of Building 2 that faces the proposed amenity area and Peggy's Cove Road. A revised development agreement has been included as Attachment A of this report.

- (j) *any other matter relating to the impact of the development upon surrounding uses or upon the general community, and the provisions of policy IM-9.*

The November 15, 2012 staff report identified no additional planning matters relative to the proposed development than those raised in Attachment B of the report. During the public hearing, it was noted that Council should consider the proposed land use policies and by-law provisions for this area when considering policy MU16(A)(j). As discussed previously in this report, the proposed land use policies and by-law provisions cannot be considered by Council at this time. Some aspects from the community consultation were incorporated into the design; however, all the requests that were discussed during the community consultation component can't be required as part of this development.

Conclusion

In staff's opinion, the proposed development agreement for 5210 St. Margarets Bay Road is consistent with the applicable policies of the MPS (Attachment B of the November 15, 2012 staff report). Minor amendments have been made to the development agreement since the public hearing, which includes the addition of Section 3.5.5 to the architectural requirements of the agreement. Staff recommends that North West Community Council approve the revised Development Agreement as presented in Attachment A to this report.

FINANCIAL IMPLICATIONS

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved 2012/13 budget with existing resources.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a public information meeting held on April 12, 2012. A public hearing was held by North West Community Council on January 14, 2013.

Case 17362
Attachment A – Proposed REVISED Development Agreement

THIS AGREEMENT made this day of **[Insert Month]**, 2012,

BETWEEN:

[INSERT PROPERTY OWNER]

a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands at 5210 St. Margarets Bay Road (Highway No. 3), Upper Tantallon and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for three additional commercial buildings on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy MU-16(A) of the Municipal Planning Strategy for Planning Districts 1 and 3 and Section 3.6(q) of the Land Use By-law for Planning Districts 1 and 3;

AND WHEREAS the **INSERT NAME** Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 17362;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Planning Districts 1 and 3 and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any Provincial or Federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words, unless otherwise specifically defined herein, shall be as defined in the applicable Land Use By-law and the Regional Subdivision By-law. Words not defined in these documents shall carry their customary meaning.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop and use the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 17362:

| | |
|------------|--------------------------------|
| Schedule A | Legal Description of the Lands |
| Schedule B | Site Plan |
| Schedule C | Preliminary Landscape Plan |
| Schedule D | Building #1 & #2 - Elevation |
| Schedule E | Building #3 - Elevation |
| Schedule F | Building #4 – Elevation |

3.2 Requirements Prior to Approval

3.2.1 Prior to the commencement of any site work on the Lands, the Developer shall provide the following to the Development Officer:

- (a) A detailed Site Disturbance Plan prepared by a Professional Engineer in accordance with Section 5.1.1 (a) of this Agreement;
- (b) A detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with Section 5.1.1 (b) of this Agreement;

- (c) A detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer in accordance with Section 5.1.1 (c) of this Agreement; and
 - (d) A Top Soil Removal Permit in accordance with Section 5.1.1 (d) of this Agreement.
- 3.2.2 Prior to the issuance of a Construction Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer as per the terms of this Agreement:
- (a) A detailed Landscape Plan prepared by a Landscape Architect in accordance with Section 3.7 of this Agreement; and
 - (b) Approval by the Nova Scotia Environment of on-site sewage treatment facilities in accordance with Section 4.2 of this Agreement.
- 3.2.3 Prior to the issuance of a Construction Permit for Building 2, the Developer shall provide to the Development Officer, a detailed design of the trail and amenity area on the Lands in accordance with Section 3.8 of this Agreement.
- 3.2.4 Prior to the issuance of the first Occupancy Permit, the Developer shall provide the following to the Development Officer:
- (a) A security deposit in amount of 110 percent of the estimated costs to complete the required landscaping pursuant to Section 3.7.5 of this Agreement;
 - (b) Confirmation from Nova Scotia Transportation and Infrastructure Renewal of the completion of the realignment of the merge section along Trunk 3 in accordance with Section 4.1 of this Agreement; and
 - (c) Confirmation from Nova Scotia Environment of the construction of a well in accordance with Section 3.10 of this Agreement.
- 3.2.5 Prior to the issuance of the Occupancy Permit for Building 2 the Developer shall submit to the Development Officer, in consultation with the HRM Parkland Planner, verification that the development of the trail and amenity area has been completed pursuant to Section 3.8 of this Agreement or Security has been provided in accordance with Section 3.8.6.
- 3.2.6 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

3.3.1 The uses of the Lands permitted by this Agreement are the following:

- (a) Commercial uses except for the following uses:
 - (i) commercial entertainment uses;
 - (ii) campgrounds; and
 - (iii) marinas;
- (b) Open space uses;
- (c) Accessory buildings, subject to the requirements of Sections 3.4.6 and 3.4.7 of this Agreement;
- (d) Uses accessory to the foregoing uses; and
- (e) Drive-thrus, however coffee shops with a drive-thru shall not be permitted unless approved by Nova Scotia Transportation and Infrastructure.

3.4 Detailed Provisions for Land Use

3.4.1 No more than four (4) buildings for commercial use are permitted on the Lands.

3.4.2 The gross floor area for each commercial building shall be as generally shown on Schedule B. Variations to the gross floor area of no more than 20 square metres (215.28 square feet) shall be permitted, however the total gross floor area of all 4 buildings shall not exceed 2,400 square metres (25,833.39 square feet).

3.4.3 Each building shall be located on the Lands as shown on Schedule B. Variations to the building locations provided on Schedule B may be permitted provided the variation does not exceed 1.5 metres (5 feet) in any direction;

3.4.4 The height of each building shall not exceed 10.67 metres (35 feet).

3.4.5 Notwithstanding Sections 3.4.2 and 3.4.3, outdoor seating and patio areas may be permitted for any use, provided there is no resultant loss of landscaping.

3.4.6 Further to Section 3.4.1 of this Agreement, one accessory building shall be permitted for the common use of all four (4) commercial buildings and shall be:

- (a) Located in the rear or side yard;
- (b) Located no closer than 2.44 metres (8 feet) from any property line or building;
- (c) A maximum height of 4.57 metres (15 feet); and
- (d) A maximum area of 27.87 square metres (300 square feet).

3.4.7 Further to 3.4.6 an additional accessory building for the enclosure of the on-site sewage treatment facility may be permitted subject to the requirements outlined in Section 3.4.6 of this Agreement.

3.5 Architectural Requirements

- 3.5.1 Each building's exterior design shall be in conformance with Schedules D through F. Notwithstanding the Schedules, the Development Officer may permit minor modifications, such as but not limited to the number and location of doors and windows, to provide flexibility in the leasing of individual commercial spaces.
- 3.5.2 Exterior building cladding for each building shall be provided as shown on the Schedules. Building materials may be substituted with any of the following materials:
- wooden cladding;
 - brick;
 - stone;
 - fibre cement board; or
 - fibre cement stone panelling.
- 3.5.3 All vents, down spouts, flashing, electrical conduits, meters, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate, these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.
- 3.5.4 The blank dormer located on the West (Right Side Elevation) of Building 1, see Schedule D, shall be tempered by the introduction of artwork (murals) or textural plantings or a combination of artwork and plantings.
- 3.5.5 The elevation for Building 2 which faces the amenity area and Peggy's Cove Road shall include further architectural articulation, including but not limited to additional columns or the use of a variety of building materials. Further to this the elevation shall also incorporate landscaping which may include textural plantings.

3.6 Parking, Circulation and Access

- 3.6.1 Vehicle parking shall be provided as generally shown on Schedule B. The minimum amount of parking to be provided for each building shall meet the requirements as shown below. Variations to the number of the parking requirements for each building are permitted as long as a minimum of 125 parking spaces is provided for the whole development.
- (a) Existing Gas Station - 10 spaces
 - (b) Building 1 - 70 spaces
 - (c) Building 2 - 20 spaces
 - (d) Building 3 - 25 spaces
- 3.6.2 Parking spaces, stop bars, pedestrian circulation (walkways and crosswalks) and access shall be generally as shown on Schedule B. Crosswalks shall be demarcated with signs and pavement markings or a differentiated surface material including, but not limited to,

interlocking paving stones.

- 3.6.3 Notwithstanding Section 3.9 of this Agreement, internal traffic signage including, but not limited to, stop signs and drive thru directional signs shall be provided and located where identified on drawings by the Developer's Consultant (Qualified Professional). The signage shall be placed so as to ensure safe pedestrian and vehicle movements and shall be constructed of a reflective material.
- 3.6.4 Bicycle parking shall be provided as generally shown on Schedule B. At least fifteen (15) bicycle parking spaces shall be provided for the whole development. Bicycle parking shall be provided in the form of bicycle racks which permit the locking of a bicycle by the frame and the front wheel and support the bicycle in a stable position with two points of contact.

3.7 Landscaping

- 3.7.1 Prior to the issuance of a Construction Permit, the Developer agrees to provide a detailed Landscape Plan which shall provide details of all landscaped areas shown on Schedule C. The Developer may provide additional plantings and landscaping features than shown on Schedule C. The Landscape Plan shall be prepared by a Landscape Architect, in good standing with the Canadian Society of Landscape Architects and comply with all provisions of this section.
- 3.7.2 Planting details for each type of plant material proposed on the detailed Landscape Plan shall be provided, including a species list with quantities, size of material, and common and botanical names (species and variety).
- 3.7.3 Plant material shall be primarily comprised of native species and conform to the Canadian Nursery Trades Association's Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.
- 3.7.4 Construction Details for all tree protection hoarding, benches, light standards and luminaries, trash receptacles, bike racks, tree grates and guards, planter seating wall, wood arbour, outdoor garbage enclosure, railings, and fencing shall be provided to the Development Officer with the Landscape Plan.
- 3.7.5 Prior to the issuance of the first Occupancy Permit, the Developer shall provide a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a Landscape Architect. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twenty-four (24) months of issuance of the first Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard

exceeding the deposit. The unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

- 3.7.6 Further to Section 3.7.5, of this Agreement, the Developer shall submit to the Development Officer, a letter prepared by a Landscape Architect certifying that all landscaping has been completed according to the terms of this Agreement, prior to any securities being returned to the Developer.

3.8 Trail and Amenity Area

- 3.8.1 Prior to the issuance of a Construction Permit for Building 2, the Developer shall provide to the Development Officer and HRM Parkland Planner, a detailed design of the trail system and amenity area on the Lands as generally shown on Schedules B and C.

- 3.8.2 The amenity area shall include the following features:

- (a) Benches;
- (b) Picnic tables; and
- (c) A centre piece such as interpretive panels, a monument or public art to celebrate the cultural significance of the Lands.

- 3.8.3 All plantings and landscaped features shall comply with Sections 3.7.2, 3.7.3 and 3.7.4 of this Agreement.

- 3.8.4 All trails shall be at least 1.5 metres (5 feet) wide and shall be constructed of a hard surface or crusher dust.

- 3.8.5 Prior to the issuance of the Occupancy Permit for Building 2, the Developer shall submit to the Development Officer, in consultation with the HRM Parkland Planner, verification that the development of the pathway/trail and amenity area has been completed through photographs and other means determined acceptable by the Development Officer.

- 3.8.6 Notwithstanding Subsection 3.8.5, an Occupancy Permit may be issued provided that the weather and time of year does not allow the completion of the outstanding pathway/trail and amenity area works and that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the works. The cost estimate is to be prepared by a Landscape Architect. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the works within nine (9) months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the development of the pathway/trail and amenity area as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the

deposit. The unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

3.9 Signs

- 3.9.1 A ground sign or directional sign may be located near the western portion of the property as shown on Schedules B and C, and shall conform to the following requirements:
- (a) The sign shall not be located closer than 3 metres (9.84 feet) from any property line; however, the specific location of such a sign is subject to approval by the Development Officer and Development Engineer;
 - (b) The maximum height of the sign shall not exceed 3.5 metres (11.48 feet) inclusive of support structures;
 - (c) The face area of the sign shall not exceed 3.25 square metres (35 square feet) per side;
 - (d) The supports and body of the sign shall be constructed of wood, stone or metal. Sign panels may be constructed of alternative materials; and
 - (e) Landscaping shall be provided at the base of the sign to enhance its visual appearance.
- 3.9.2 Fascia signage shall be located as shown on the elevations for each building as shown on Schedules D, E and F.
- 3.9.3 The Development Officer may permit modifications to the location and size of the fascia signs to provide flexibility in the leasing of the commercial spaces, subject to the following requirements:
- (a) No additional signage shall be permitted;
 - (b) The total area of all signage for the entire development shall not exceed 66.1 square metres (771.49 square feet); and
 - (c) No individual sign shall exceed 16.56 square metres (178.25 square feet).
- 3.9.4 All awnings, fascia signage and projecting signs shall be either non-illuminated or illuminated from the front (no back-lit signs shall be permitted).
- 3.9.5 Notwithstanding Section 3.9.4, Building 1 shall have one (1) fascia sign that is back-lit as denoted on Schedule D.
- 3.9.6 Sections 3.9.1 to 3.9.5 of this Agreement shall not apply to the existing Irving Station on the Lands, which will be subject to the signage requirements of the Land Use By-law for Planning Districts 1 & 3 as amended from time to time.

3.10 Well Construction

- 3.10.1 Prior to the issuance of the first occupancy permit, the Developer shall provide to the Development Officer a copy of the design of the well and approval from the Nova Scotia Environment.
- 3.10.2 The design of the well shall include a steel casing at a minimum depth of 12 metres (39.37 feet) with the placement of a PVC liner within the well column complete with a shale trap and bentonite grout.
- 3.10.3 Variations to the design of the well may be permitted; however, the Developer must provide verification from Nova Scotia Environment that the design will provide adequate protection from contamination.

3.11 Solid Waste Facilities

- 3.11.1 All refuse and recycling materials shall be contained within a building, or within suitable containers which are fully screened from view from any street or trail. Further, consideration shall be given to locating all refuse and recycling material to ensure minimal effect on abutting property owners by means of opaque fencing or masonry walls or suitable landscaping.
- 3.11.2 Notwithstanding Section 3.11.1 of this Agreement, small waste receptacles are permitted throughout the development and are to be considered as part of the landscaping for the development.

3.12 Screening

Propane tanks, natural gas service hook-ups and electrical transformers shall be located on the Lands in such a way to ensure minimal visual impact from the public street. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing, masonry walls or suitable landscaping.

3.13 Outdoor Lighting

Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways, shall be arranged so as to divert the light away from streets, adjacent lots and buildings and shall be of a full cut-off design.

3.14 Temporary Construction/Sales Structure

A temporary structure shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. The temporary structure shall be located

no less than ten (10) feet from any watercourse buffer required by the Land Use By-law and shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

3.15 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting or sanding of paved walkways and driveways.

PART 4: STREETS AND SERVICES

4.1 Off-Site Disturbance

Prior to the issuance of a Construction Permit, the Developer agrees to provide to the Development Officer a “Work Within Highway Right-of-Way Permit” approved by Nova Scotia Transportation and Infrastructure Renewal. Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by Nova Scotia Transportation and Infrastructure Renewal.

4.2 On-Site Sanitary System

The Lands shall be serviced through a privately owned and operated on-site sewage systems and treatment facility. The Developer agrees to have prepared by a qualified professional and submitted to the Municipality and Nova Scotia Environment, a design for all private sewage disposal system(s). No Development Permit shall be issued prior to the Development Officer receiving a copy of all permits, licences, and approvals required by Nova Scotia Environment respecting the design, installation, construction of the on-site sewage system and treatment facility.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Stormwater Management Plans and Erosion and Sedimentation Control Plans

5.1.1 Prior to the commencement of any site work on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:

- (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;

- (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other sections of this Agreement, no work is permitted on the Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction;
- (c) Submit to the Development Officer a detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer; and
- (d) Obtain a Top Soil Removal Permit in conformance with HRM By-Law 40 “A By-Law Respecting the Regulations and Controls of the Removal and Movement of Topsoil and Earth and the Alteration of the Grade of the Land”.

5.2 Stormwater Management System

- 5.2.1 The Developer agrees to construct at its own expense the Stormwater Management System for the development which conforms to the concept design submitted to the Development Officer and reviewed by Nova Scotia Transportation and Infrastructure Renewal. The Developer shall provide certification from a Professional Engineer that the system, or any phase thereof, has been constructed in accordance with the approved design.
- 5.2.2 The Developer agrees, at its own expense, to maintain in good order all stormwater facilities on the Lands.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

- 6.1.1 The following items are considered by both parties to be non-substantive and may be amended by resolution of Council.
 - (a) Changes to the location of the landscaped areas as shown on Schedule C that would improve the overall landscaping as detailed in Section 3.7 of this Agreement;
 - (b) Changes to the permitted building materials as detailed in Section 3.5.2;
 - (c) Minor expansions to the commercial buildings, existing or proposed, not exceeding ten percent of the gross floor area of the building;
 - (d) An increase to the size of the accessory building to enclose the on-site sewage treatment facility as detailed in Section 3.4.7
 - (e) The granting of an extension to the date of commencement of development as identified in Section 7.3 of this Agreement; and
 - (f) The length of time for the completion of the development as identified in Section 7.4 of this Agreement.

6.2 Substantive Amendments

- 6.2.1 Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *HRM Charter*.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia, and the Developer shall incur all costs in recording such documents.

7.2 Subsequent Owners

- 7.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 7.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

7.3 Commencement of Development

- 7.3.1 In the event that development on the Lands has not commenced within three (3) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 7.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Construction Permit.
- 7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

7.4 Completion of Development

- 7.4.1 If the Developer fails to complete the development after five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, Council may review this Agreement, in whole or in part, and may:
- (a) Retain the Agreement in its present form;

- (b) Negotiate a new Agreement; or
- (c) Discharge this Agreement.

7.4.2 For the purpose of this section, completion of development shall mean the issuance of the first Occupancy Permit.

7.4.3 For the purpose of this section, Council may consider granting an extension of the completion of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the completion of development time period.

7.5 Discharge of Agreement

Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) Retain the Agreement in its present form;
- (b) Negotiate a new Agreement;
- (c) Discharge this Agreement; or
- (d) For those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Planning Districts 1 and 3, as may be amended from time to time.

PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, to allow for such an inspection during any reasonable hour within twenty-four (24) hours of receiving such a request.

8.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and

waives any defence based upon the allegation that damages would be an adequate remedy;

- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may, by resolution, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or,
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *HRM Charter* or Common Law in order to ensure compliance with this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, _____.

SIGNED, SEALED AND DELIVERED in the presence of:

[INSERT PROPERTY OWNER]

Per: _____

Per: _____

=====

SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

=====

HALIFAX REGIONAL MUNICIPALITY

Per: _____
Mayor

Per: _____
Municipal Clerk

KEY PLAN



LEGEND

Site Boundary

SITE SUMMARY:
 SITE AREA: 5.83 ACRES
 EXISTING ZONE: MIXED USE (MU-2)

| FLOOR AREA | PARKING PROVIDED | RATIO |
|-------------------------|------------------|-------|
| IRVING STATION 3,720 SF | --- | --- |
| BUILDING #1 12,488 SF | --- | --- |
| BUILDING #2 5,122 SF | --- | --- |
| BUILDING #3 4,400 SF | --- | --- |
| TOTAL 25,730 SF | 133 | 5.1 |

NOTES:

- Site subject to detailed landscape design.

SOURCES:
 • 1/2" scale survey plan 'D09393500.dwg' dated December 4, 2009.

Designer: Hans Pfeil
 Planner: Greg Zwicker

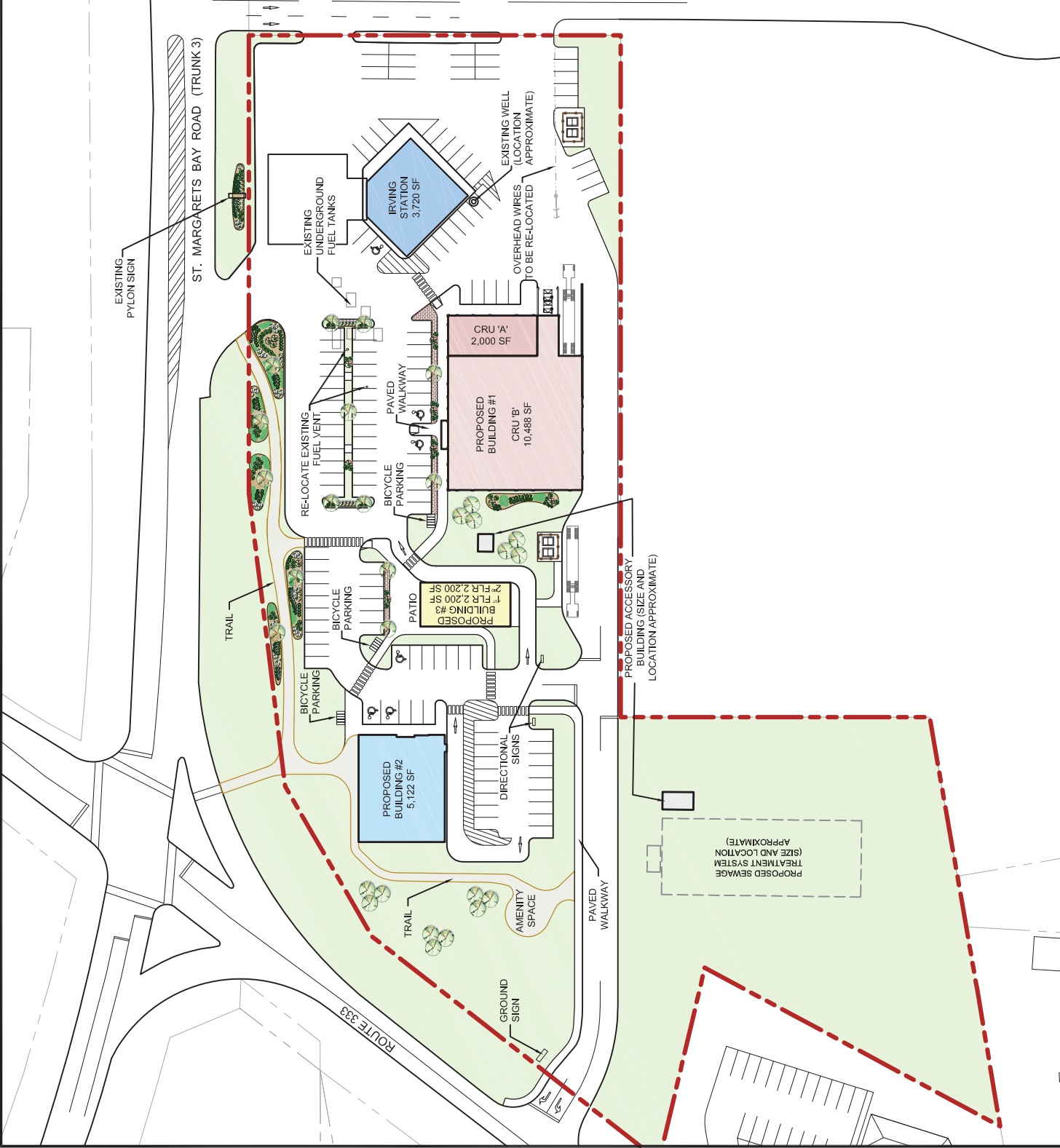
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**SCHEDULE B
 SITE PLAN
 TANTALON, NOVA SCOTIA**



SCHEDULE C
PRELIMINARY
LANDSCAPE PLAN
 TANTALLON, NOVA SCOTIA

SCALE
 15 ft
 0 3 6 9 12 15
 1 : 1000

NORTH

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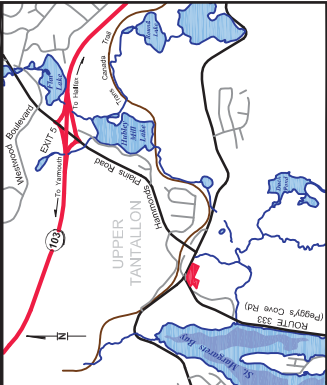
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 D00933-140



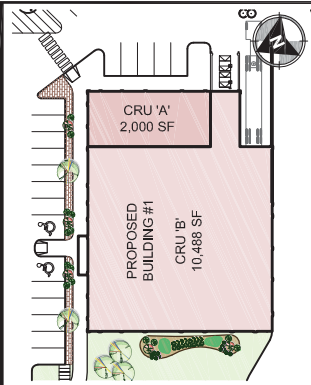
PLANTING LEGEND

| PROPOSED DECIDUOUS TREE TYPICAL SIZE 60MM CAL V.B. | PROPOSED EVERGREEN SHRUBS TYPICAL SIZE 3 GAL 90CM | PROPOSED DECIDUOUS SHRUBS TYPICAL SIZE 3 GAL 90CM | PROPOSED ORNAMENTAL GRASSES TYPICAL SIZE 1 GAL | PROPOSED PERENNIAL PLANTING TYPICAL SIZE 1 GAL |
|---|---|--|---|---|
| GLENLEVEN LINDEN SUNBURST HONEYLOCUST RED MAPLE GREY BIRCH | DENSE YEW HICKS YEW HURD PINE SLOWMOUND MANT JULEP JUNIPER GOLDEN PRITZER JUNIPER | ANNABELLE HYDRANGEA LATE PANICLE HYDRANGEA FROBELLS SPIREA MAGIC CABRET SPIREA RED TWIGGED DOGWOOD | BLUE FESCUE FEATHER REED GRASS FOUNTAIN GRASS | RUDBECKIA SEDUM AUTUMN JOY HYPERICON DAVILY |

KEY PLAN



PROPOSED BUILDING FOOTPRINT



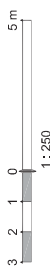
Designer: Hans Pfeil
Planner: Greg Zwickler

VERSION
104

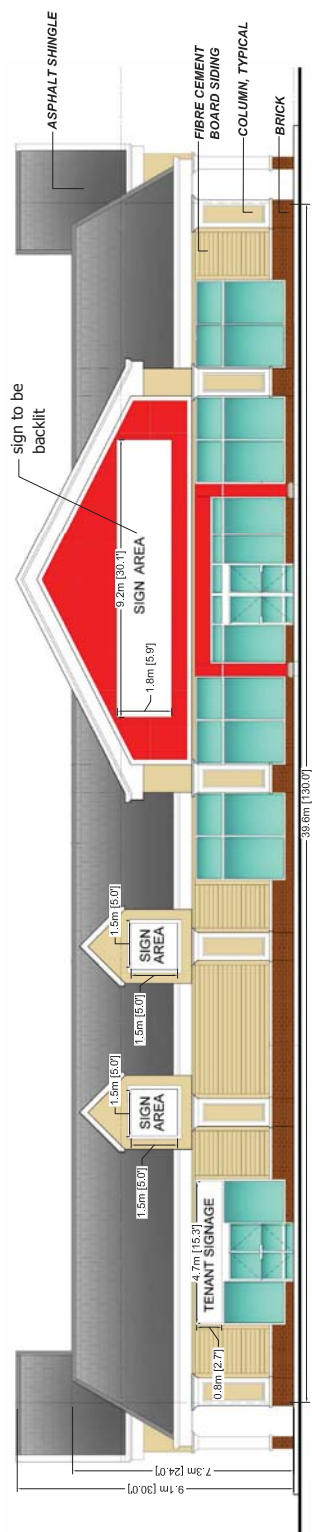
BUILDING #1 & #2 - ELEVATION
TANTALLON, NOVA SCOTIA



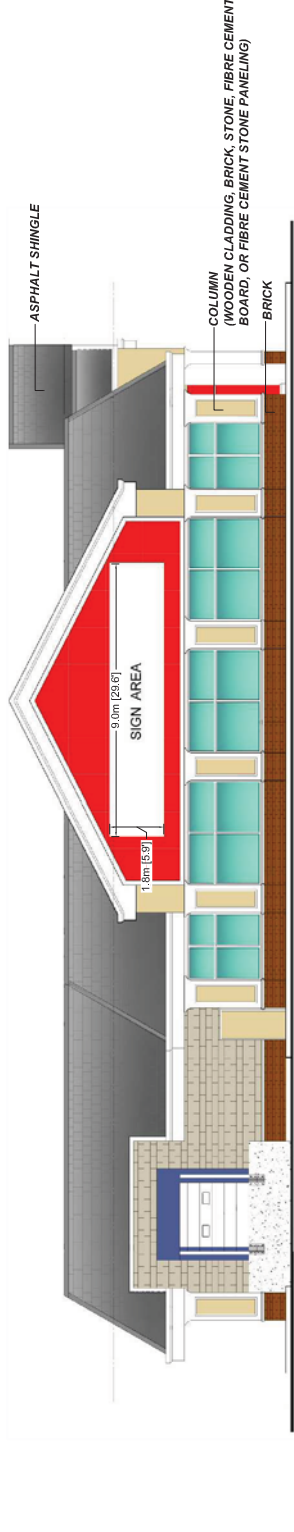
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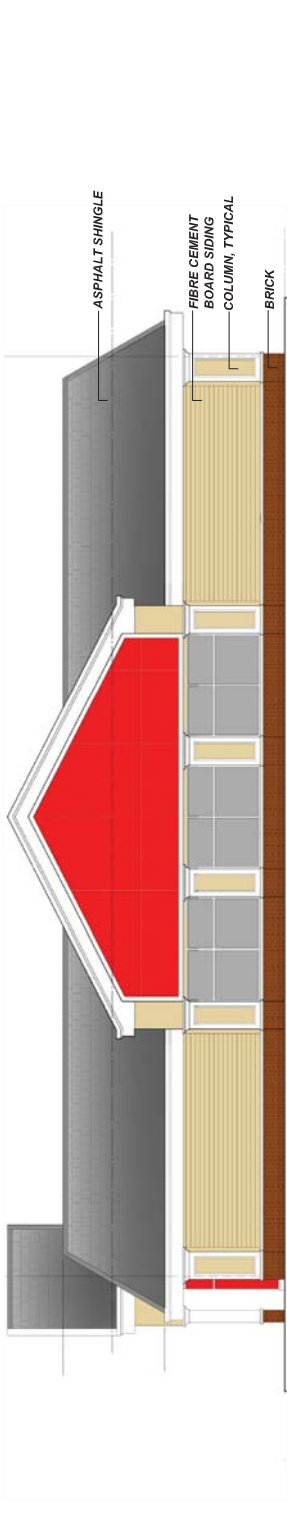
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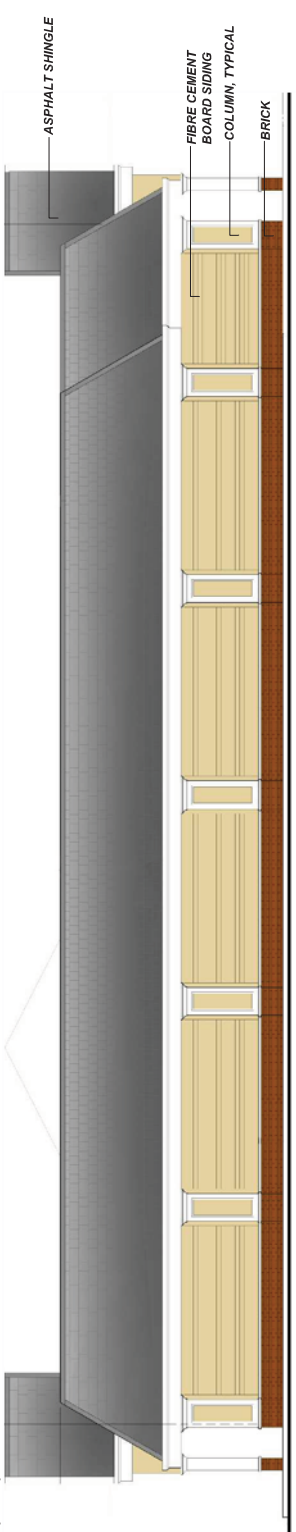
FRONT ELEVATION



SIDE ELEVATION (EAST)



SIDE ELEVATION (WEST)

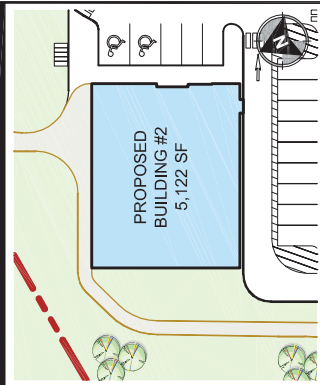


REAR ELEVATION

KEY PLAN



PROPOSED BUILDING FOOTPRINT



Designer: Hans Pfeil
Planner: Greg Zwieter

VERSION
104

**SCHEDULE E
BUILDING #3 - ELEVATION
TANTALLON, NOVA SCOTIA**

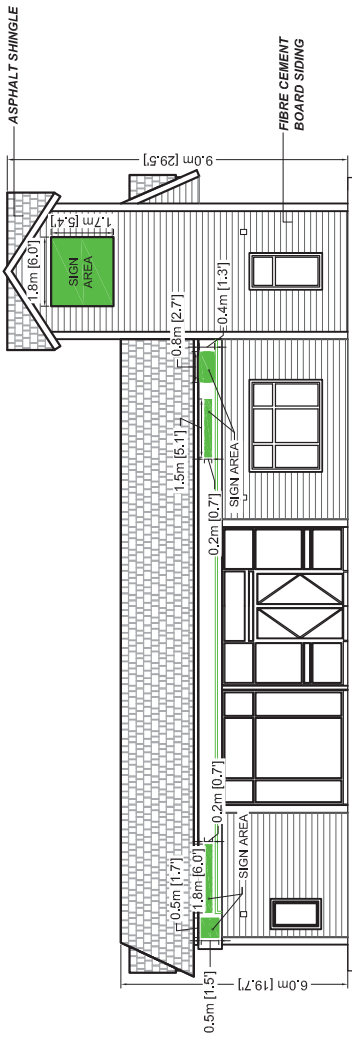


January 8, 2013
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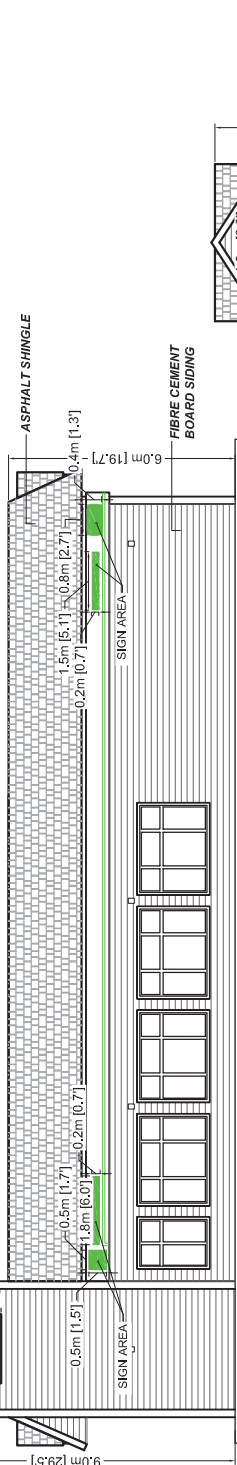


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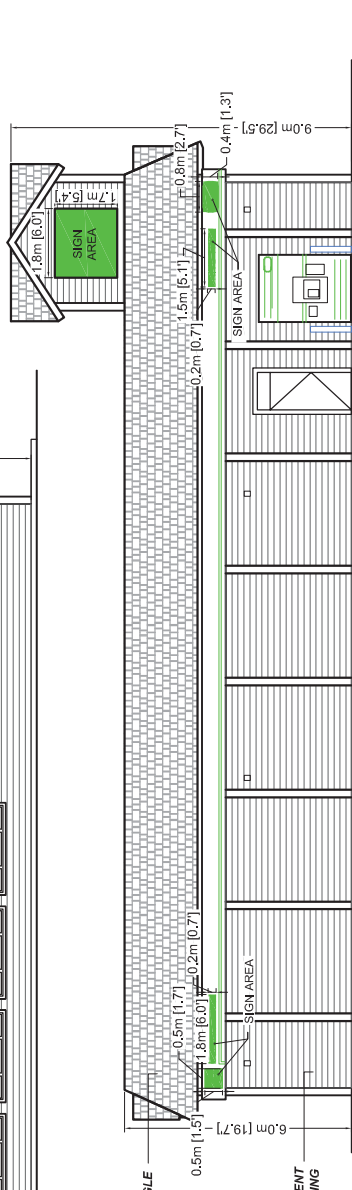
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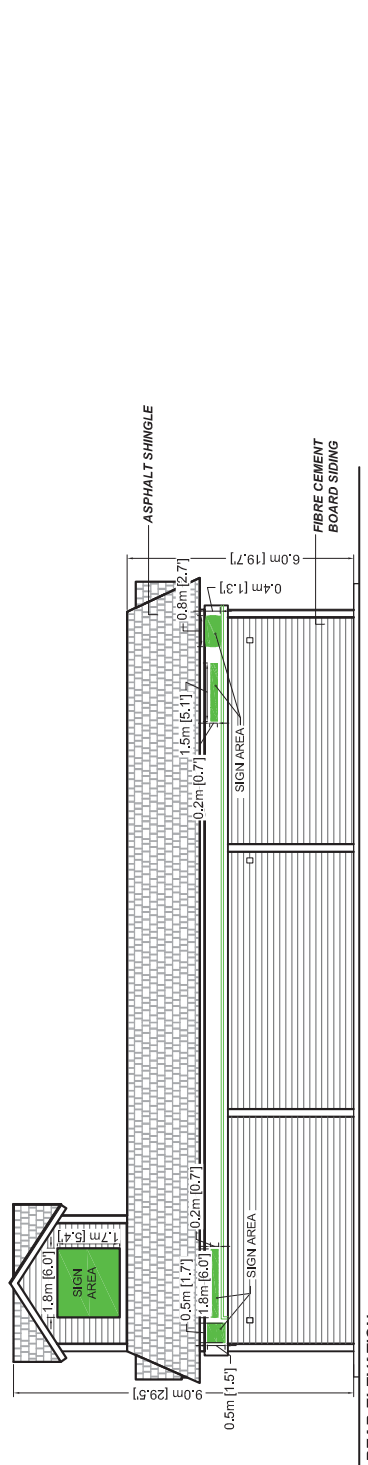
FRONT ELEVATION



SIDE ELEVATION

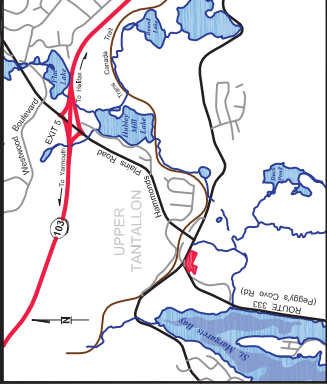


SIDE ELEVATION

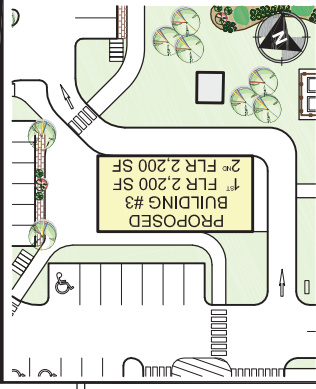


REAR ELEVATION

KEY PLAN



PROPOSED BUILDING FOOTPRINT



Designer: Hans Pfeil
Planner: Greg Zwickler

VERSION
104

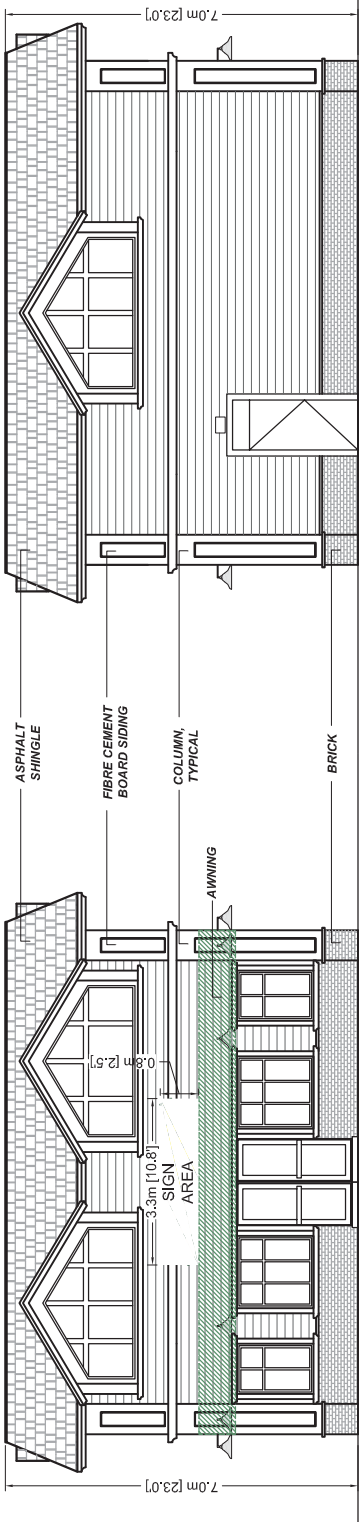
BUILDING #4 - ELEVATION
TANTALLON, NOVA SCOTIA



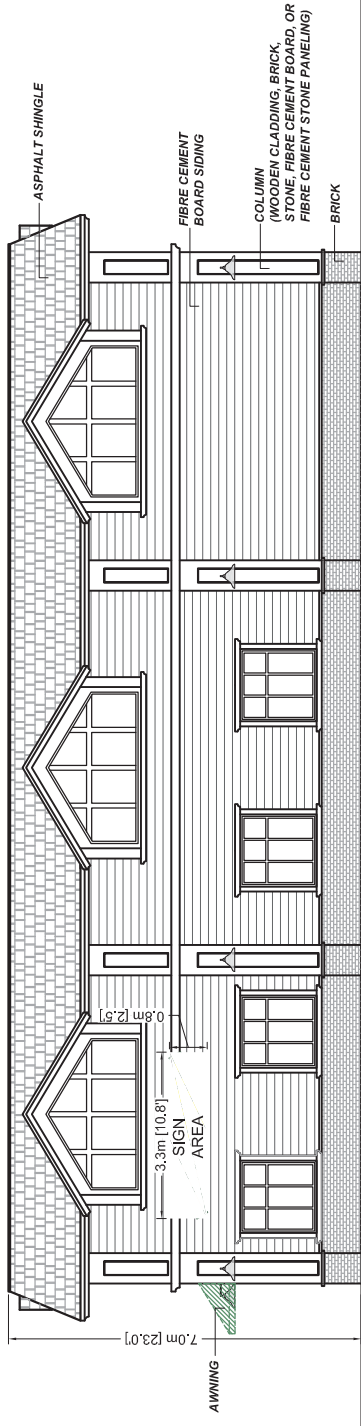
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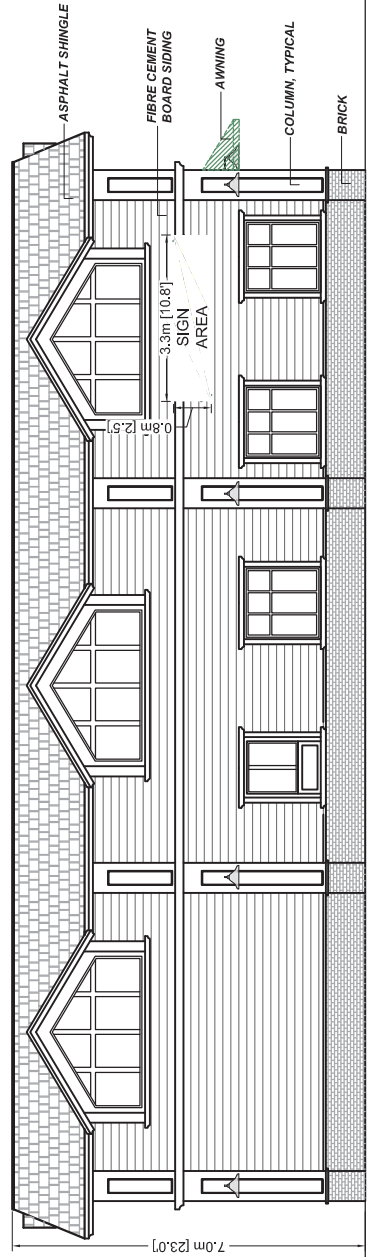
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REAR ELEVATION



SIDE ELEVATION (EAST)



SIDE ELEVATION (WEST)