

North West Community Council
June 24, 2013

TO: Chair and Members of North West Community Council

SUBMITTED BY: Original Signed

Ann Merritt, Chair, North West Planning Advisory Committee

DATE: June 10, 2013

SUBJECT: **Case 18437: Time Extension to Development on Bedford Highway
between Southgate Drive and Glenmont Avenue, Bedford**

ORIGIN

North West Planning Advisory Committee Meeting – June 5, 2013.

LEGISLATIVE AUTHORITY

North West Planning Advisory Committee, Terms of Reference – 4. “To advise the North West Community Council with respect to planning matters generally within the designated area incorporated into the North West Community Council. The term “planning matter” means any discretionary decisions of Community Council related to the use and development of land.”

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve, by resolution, the proposed Amending Agreement as contained in Attachment A of the staff report dated April 18, 2013 to extend the construction commencement **date by two years** rather than the recommended three years by staff for the mixed use development located along the south-west side of the Bedford Highway between Southgate Drive and Glenmont Avenue, Bedford; and
2. Require the Amending 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/DISCUSSION

At its meeting on June 5, 2013 the Committee reviewed and discussed the proposal to amend as set out in Attachment A of the staff report dated April 18, 2013. The Committee did not concur with the recommendation presented by staff which was to extend the construction commencement date by three years. The Committee recommends a two year extension.

FINANCIAL IMPLICATIONS

None were identified.

COMMUNITY ENGAGEMENT

All meetings of the North West Planning Advisory Committee, including that of June 5, 2013 at which this matter was discussed, are open to the public.

ALTERNATIVES

North West Community Council may choose to:

1. Approve the proposed amending agreement, as contained in Attachment A of the staff report dated April 18, 2013, thereby extending the commencement of construction for an additional three years. This is the staff recommendation. A decision of Council to approve this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Approve the proposed amending agreement, as contained in Attachment A of the staff report dated April 18, 2013, with modifications or conditions respecting the commencement of construction. A shorter deadline is not recommended by staff on the basis that the three year extension is reasonable. Some modification or conditions may require additional negotiation with the developer.
3. Refuse to grant the time extension, thus not extending the construction commencement date. This is not recommended for the reasons outlined in the staff report dated March 18, 2013. A decision of Council to reject this amending agreement is appealable to the N.S. Utility & Review board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Staff report dated April 18, 2013.

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared By: Donna Honeywell, Administration/PAC Coordinator 490-4937



P.O. Box 1749
Halifax, Nova Scotia
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North West Planning Advisory Committee
June 5, 2013

TO: Chair and Members of North West Planning Advisory Committee

Original Signed

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

DATE: April 18, 2013

SUBJECT: Case 18437 – Time Extension to Development Agreement on Bedford Highway between Southgate Drive and Glenmont Ave, Bedford

ORIGIN

Application by Jafar Tabrizi

LEGISLATIVE AUTHORITY

HRM Charter, Part VIII, Planning and Development

RECOMMENDATION

It is recommended that North West Planning Advisory Committee recommend that North West Community Council:

1. Approve, by resolution, the proposed Amending Agreement as set out in Attachment A of this report to extend the construction commencement date for the approved mixed use development located along the south-west side of the Bedford Highway between Southgate Drive and Glenmont Avenue, Bedford; and
2. Require the Amending 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 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 May 22, 2008, North West Community Council approved a development agreement (Case Number 00762) to allow a mixed use development on the south-west side of the Bedford Highway between Southgate Drive and Glenmont Avenue in Bedford (Maps 1 and 2). The original development agreement contained a five year time limit for the commencement of construction which expires on July 24, 2013. An application has been submitted requesting a time extension to the construction commencement date by three years to July 24, 2016.

Subject Property

The subject site is generally described as follows:

- located on the south-west side of the Bedford Highway between Southgate Drive and Glenmont Avenue, Bedford (Maps 1 and 2);
- comprised of six lots (820, 822, 824, 826, 836 Bedford Highway and 1 Glenmont Avenue);
- 1.45 hectares (3.58 acres) in size;
- designated Urban Settlement under the Regional Plan;
- designated Neighbourhood A under the Community Concept Plan of the Bedford South Secondary Planning Strategy (SPS) under the Bedford Municipal Planning Strategy (MPS); and
- zoned BSCDD (Bedford South Comprehensive Development District) under the Bedford Land Use By-Law (LUB).

Conditions of Existing Agreement

The existing development agreement permits the development of one multiple unit dwelling containing 44 units, 12 townhouse units, one single unit dwelling, and one commercial building limited to 16,000 square feet in floor area (the site plan for the development is shown on Map 3).

Section 8.3.1 of the development agreement states "*In the event that a Construction Permit has not been issued within 5 years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.*" Community Council may consider extending the five year limit as a non-substantive amendment by resolution under Section 6.2.1(a) of the development agreement. Non-substantive amendments do not require a public hearing.

To date, no construction permits have been issued for the development. The developer has advised that difficult site conditions were encountered during the rough grading of the site beyond what was originally anticipated. This has negatively impacted development costs and additional time is needed to explore potential alternatives. Also, the developer has indicated that they are considering some changes to the site plan which would require amendments to the development agreement that cannot be completed prior to July 24, 2013. Due to these two occurrences, the developer is requesting a three year extension to the required date of commencement.

DISCUSSION

The existing development agreement is enabled through Policy RN-3A of the Bedford South SPS (Attachment B). This is site-specific policy that was approved by Regional Council in March 2008, to enable a mix of low density residential, medium density residential and commercial uses to be considered through the development agreement process.

The existing development agreement contains a commencement date to encourage the timely development and completion of the project. If the development has not commenced within the allotted time, Council may grant an extension at the request of the owner, in cases where it is felt that the development is still appropriate. In this instance, the request is for a three year extension to the commencement of construction deadline.

If Council grants the three year extension, all development rights under the existing agreement will remain. In the event the request for a time extension is denied, the owner will have until July 24, 2013 to acquire a construction permit for the proposed development. If a construction permit is not acquired by that date, Council has the option to discharge the existing development agreement. A new development agreement application would then be required to allow development of the site.

Section 8.3.2 of the existing development agreement currently permits a ten year time frame for the completion of the entire development (July 24, 2018). A three year extension for commencement of construction would result in a two year time frame for the developer to complete construction of the proposed development. This is considered to be reasonable.

Conclusion

It is the opinion of staff that the request to extend the commencement of construction by three years is reasonable and development proposal is still appropriate for the area and meets the intent of Policy RN-3A. Therefore, staff recommend that Section 8.3.1 of the development agreement be amended to extend the construction commencement date from July 24, 2013 to July 24, 2016.

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 Amending Agreement. The administration of the Amending Agreement can be carried out within the approved 2013/14 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 information sharing, achieved through a sign on the site and information on the HRM website. Public information meetings and public hearings are not required for non-substantive amendments to a development agreement. The decision of a non-substantive amendment is made by resolution of Council.

In addition, in accordance with Section 6.2.2 of the existing development agreement, property owners within 152m (500ft) of the site will be informed by mail at least 10 days in advance of the proposed non-substantive amendment being considered by Community Council.

The proposed development agreement will potentially impact (but not be limited to) the following stakeholders: local residents and property owners.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant, environmental policies contained in the Bedford MPS.

ALTERNATIVES

North West Planning Advisory Committee may recommend that North West Community Council:

1. Approve the proposed amending agreement, as contained in Attachment A, thereby extending the commencement of construction for an additional three years. This is the staff recommendation. A decision of Council to approve this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Approve the proposed amending agreement, as contained in Attachment A, with modifications or conditions respecting the commencement of construction. A shorter deadline is not recommended by staff on the basis that the three year extension is reasonable. Some modifications or conditions may require additional negotiation with the developer.
3. Refuse to grant the time extension, thus not extending the construction commencement date. This is not recommended for the reasons outlined in this report. A decision of Council to reject this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

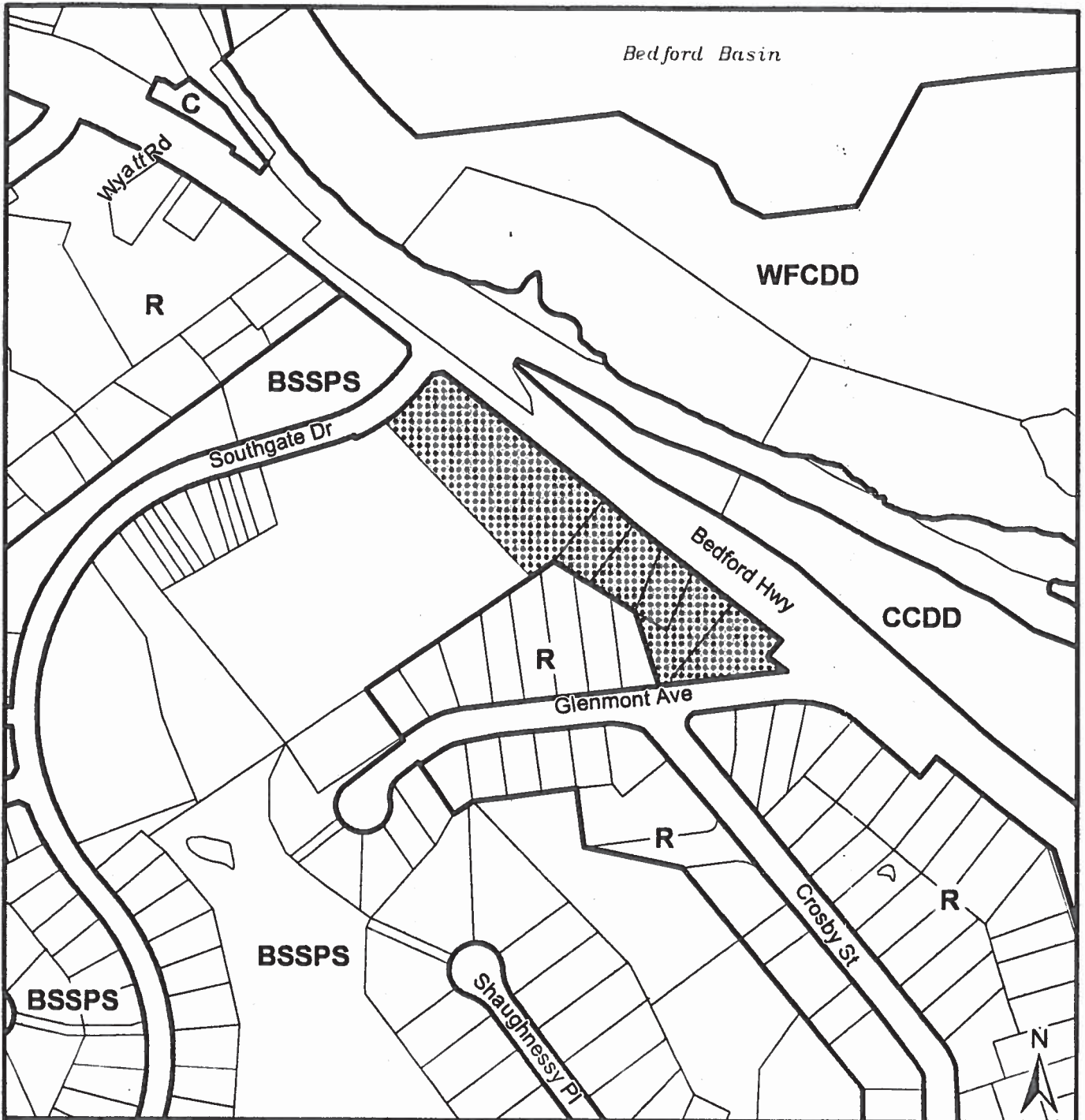
ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification
Map 3	Site Plan
Attachment A	Proposed Amending Development Agreement
Attachment B	Applicable Policies from the Bedford South Secondary Planning Strategy
Attachment C	Relevant Sections of the Existing Development Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Jacqueline Belisle, Planner, 869-4262
Original Signed

Report Approved by:  Kelly Dent, Manager of Development Approvals, 490-4800



Map 1 - Generalized Future Land Use

820, 822, 824, 826, 836 Bedford Highway
and 1 Glenmont Avenue
Bedford



 Subject Property

Designations

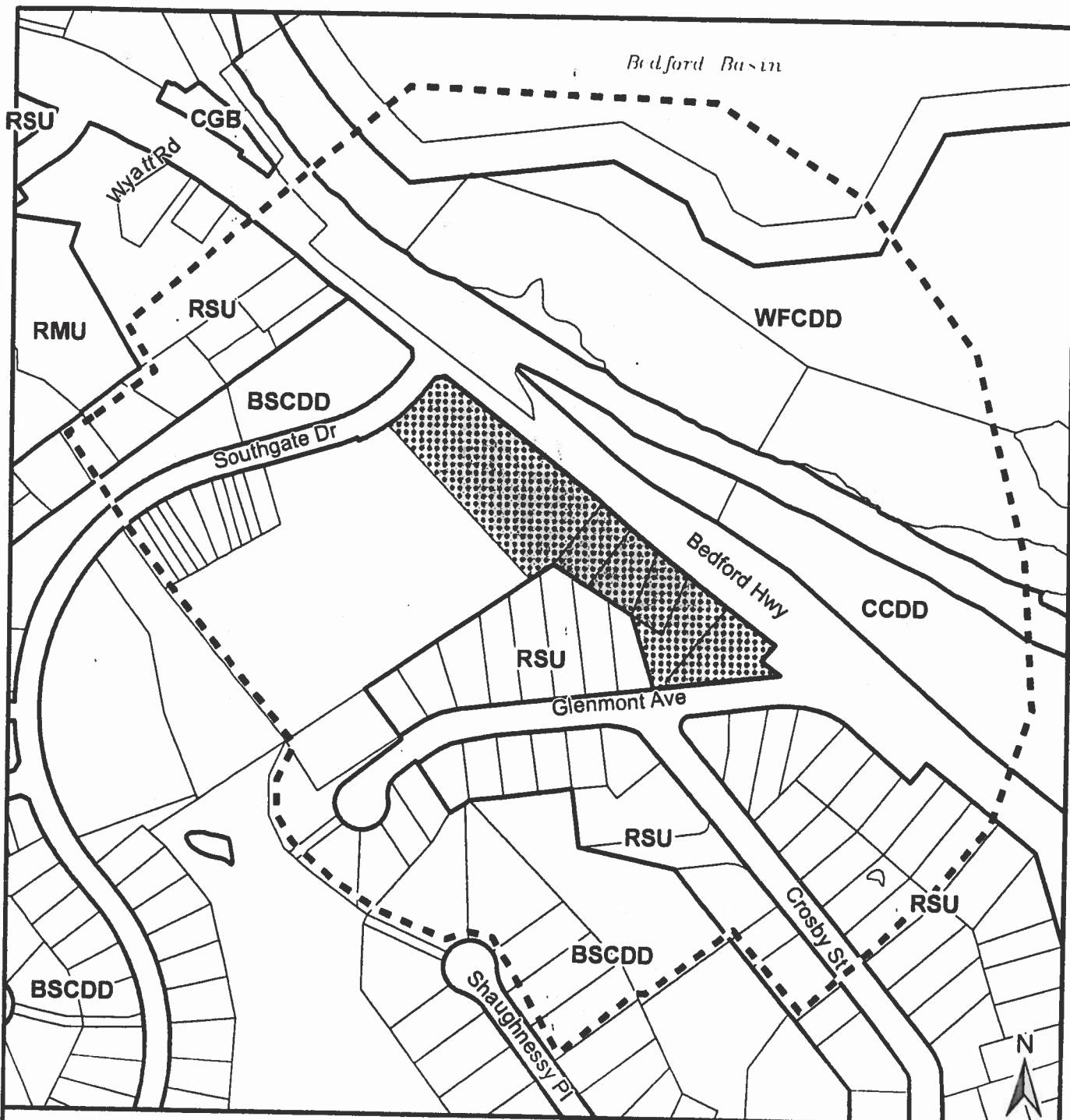
- R Residential
- CCDD Commercial Comprehensive Development District
- WFCDD Waterfront Comprehensive Development District
- BSSPS Bedford South Secondary Planning Strategy



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

HRM does not guarantee the accuracy of any representation on this plan.



Bedford
Plan Area



Map 2 - Zoning and Notification

820, 822, 824, 826, 836 Bedford Highway
and 1 Glenmont Avenue
Bedford



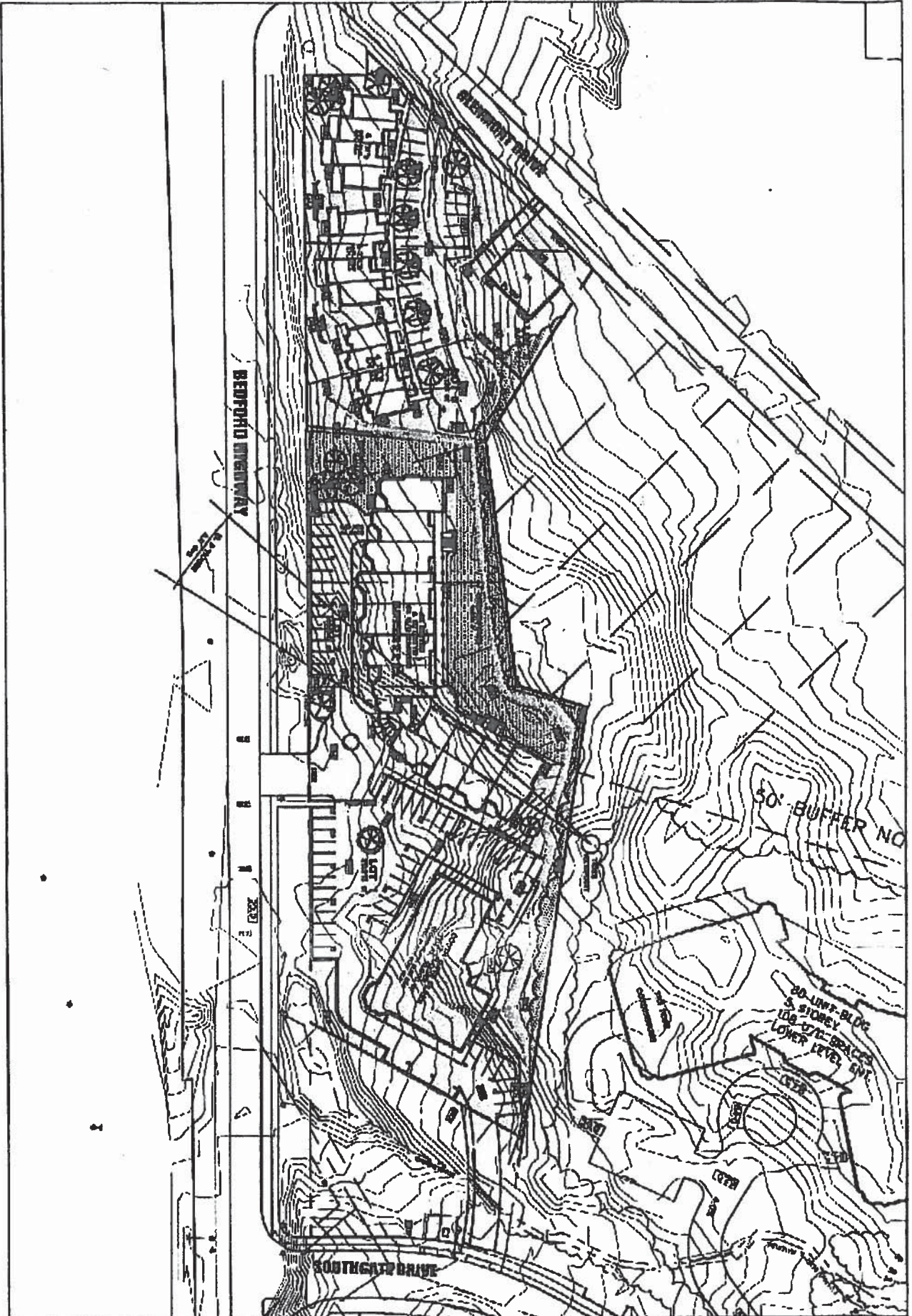
-  Subject Property
-  Area of notification

- Zones**
- RSU Single Dwelling Unit
 - RMU Multiple Dwelling Unit
 - CGB General Business District
 - CCDD Commercial Comprehensive Development District
 - WFCDD Waterfront Comprehensive Development District
 - BSCDD Bedford South Comprehensive Development District



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated

HRM does not guarantee the accuracy of any representation on this plan



SOUTHGATE VILLAGE

BEDFORD HIGHWAY, HALIFAX NS

CONCEPT PLAN

KASSNER/GOODSPEED ARCHITECTS

SUITE 200, 5800 CORNWALL ST
HALIFAX, N.S. S4X 0E6 (922) 422-1857

RECEIVED

OCT 12 2007

SCALE 1:1250
Oct 11, 2007

Attachment A
Proposed Amending Development Agreement

THIS AMENDING AGREEMENT made this _____ day of _____, 2013
BETWEEN:

<INSERT DEVELOPER NAME>,
a body corporate, in the Province of Nova Scotia

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS Cresco Holdings Limited, T&H Investments Inc. and the Halifax Regional Municipality previously entered into an agreement to allow for a mixed use development located along the south-west side of the Bedford Highway between Southgate Drive and Glenmont Avenue in Bedford, the said Agreement being recorded at the Registry of Deeds at Halifax as Document 91203209 (hereinafter called the "Existing Agreement") referenced as Municipal Case Number 00762;

AND WHEREAS the Developer has requested an amendment to the provisions of the Existing Agreement to permit a time extension for the commencement of construction by entering into this Amending Agreement (hereinafter called the First Amending Agreement) referenced as Municipal Case Number 18437; and

AND WHEREAS the North West Community Council of Halifax Regional Municipality, at its meeting on the ___the day of ____, 2013, approved this request, referenced as Municipal Case Number 18437;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree to the following amendment to the Existing Agreement:

1. Section 8.3.1 of The Existing Agreement shall be amended by replacing the words "5 years" with the words "8 years".

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2013.

SIGNED, SEALED AND DELIVERED
in the presence of:

<ENTER NAME OF DEVELOPER>

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

HALIFAX REGIONAL MUNICIPALITY

MAYOR

MUNICIPAL CLERK

Attachment B
Applicable Policies from the Bedford South Secondary Planning Strategy

In 2007, a small parcel of land located on the Bedford Highway near Glenmont Drive was added to the Bedford South Secondary Planning Strategy. This parcel, in conjunction with a parcel currently within Neighbourhood "A" of the Bedford South Secondary Plan, form the entrance to the Bedford South development. The lands are an appropriate site for mixed use development which is more consistent with the type of development within Bedford South rather than the existing residential designation. Due to the existence of development rights with the previous zoning on a portion of these lands, an equivalent number of residential units will be permitted prior to the construction of the Highway 102 interchange for this development.

Policy RN-3A:

Notwithstanding Policy RN-2, RN-3, MS-1 and MS-9 the portion of Neighbourhood A containing PID#'s 00360560, 00430025, 00430017, 00430033, 00429977 and 00430058 may be developed with a mix of low density residential, medium density residential building and commercial uses by development agreement, subject to the following:

- a) total number of residential units shall not exceed 57 units;*
 - b) total amount of commercial space shall not exceed 16,000 square feet;*
 - c) notwithstanding MS-6 and MS-7, the development agreement shall permit a maximum of 13 residential units to be constructed prior to the construction of the interchange at Highway 102;*
 - d) the allocation of housing and the massing and placement of buildings contributes to a sense of community vitality, energy conservation, surveillance of public spaces and provides an effective integration with established neighbourhoods;*
 - e) building locations, site and architectural design, landscaping, and streetscape elements reinforce the themes of neighbourhood identity, pedestrian scale and compatibility with the natural environment and surrounding uses;*
 - f) natural vegetation, landscaping or screening is employed around parking areas for multiple unit buildings to provide screening from streets;*
 - g) all open space/parkland dedications proposed conform with the objectives and policies adopted for the community parkland/open space under this municipal planning strategy and any administrative guidelines adopted by the Municipality;*
 - h) proposal conforms with all applicable provisions and requirements adopted under this Secondary Planning Strategy regarding environmental protection, the community transportation system and municipal services;*
 - i) development agreement shall exempt 13 residential units from infrastructure charges;*
 - j) the development agreement shall not permit the construction of greater than 13 residential units until infrastructure charges have been applied to the new portion of land being added to Neighbourhood A; and*
 - k) traffic generation, access to and egress from the site; and parking.*
- (RC-Mar 4/08;E-Apr 19/08)*

Attachment C
Relevant Sections of the Existing Development Agreement

6.0 AMENDMENTS

6.2 Non-Substantive Amendments

6.2.1 The following items are considered by both parties to be not substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act:

- (a) granting of an extension to the date of commencement of construction as identified in Section 8.3 of this Agreement;
- (b) changes to the exterior architectural appearance of the buildings or the design, layout and positioning of the buildings, provided that such changes are, in the opinion of Council, minor in nature;

6.2.2 In considering the approval of a non-substantive amendment under Section 6.2.1, property owners within 152m (500ft) of the site shall be informed by mail at least 10 days in advance of the proposed amendment being considered by Council.

8.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

8.3 Commencement of Development

8.3.1 In the event that a Construction Permit has not been issued within 5 years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

8.3.2 If the Developer(s) fails to complete the development, or after 10 years from the date of registration of this Agreement at the Registry of Deeds, whichever time period is less, 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.