



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 10.1.5 (i)
North West Community Council
May 25, 2015

TO: Chair and Members of the North West Community Council

Original Signed

SUBMITTED BY:

Bob Bjerke, Chief Planner and Director of Planning and Development

DATE: May 8, 2015

SUBJECT: **Case 19004: Amending Development Agreement – Three Brooks Subdivision, Granite Cove Drive, Hubley**

SUPPLEMENTARY REPORT

ORIGIN

- Application Sunrose Land Use Consulting;
- April 20, 2015 North West Community Council public hearing for Case 19004;
- May 5, 2015 motion of North West Community Council:

“MOVED by Councillor Whitman, seconded by Councillor Johns that North West Community Council

- 1. Waive the rules of order with respect to notice of motion for a motion to rescind (2/3 majority required).*
- 2. Rescind the April 20th 2015 decision to defeat the motion to approve the proposed amending agreement for Three Brooks Subdivision, Granite Cove Drive, Hubley, Case 19004 as outlined in the staff report dated February 27, 2015. (2/3 majority required).*
- 3. Ratify and confirm the deferral of Case 19004 to allow for further clarification with the applicant on the proposed amendments to the development agreement as outlined in attachment A of the staff report dated February 27, 2015 and that staff provide a supplemental report on the matter for consideration at the next meeting of North West Community Council to be held on May 25, 2015. MOTION PUT AND PASSED”*

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

Recommendation on page 2

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve the proposed amending development agreement as contained in Attachment A of this report; and
2. Require that the amending development agreement be signed by the property owner within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval of said agreement by Community Council and any other bodies as necessary, whichever is later, including applicable appeal periods; otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

On April 20, 2015 North West Community Council held a public hearing to consider proposed amendments to a classic open space design development agreement for lands off Granite Cove Drive in Hubley. The existing development agreement was approved in 2012 and permits the development 25 single unit dwellings in three phases.

The proposed amendments that were tabled at North West Community Council are further described in the staff report¹ dated February 27, 2015. At the public hearing, Council had questions regarding some of the proposed amendments and requested that staff provide further clarification on the following items:

- the combination of phases 2 and 3;
- the proposed provisions regarding development in the riparian buffer; and
- the proposed combination of Schedules B and C of the existing development agreement which was considered as a housekeeping amendment.

DISCUSSION

Staff have reviewed Council's request for clarification on the three items raised at the public hearing and provide the following responses for their consideration:

1. Combination of Phases 2 and 3 (*item 9 of the proposed amending development agreement*)

Existing Development Agreement

The existing development agreement allows for a classic open space design development consisting of 25 single unit dwellings in three phases:

- phase 1 allows for 10 dwellings;
- phase 2 allows for 8 dwellings; and
- phase 3 allows for 7 dwellings.

Before development can occur in Phases 2 and 3, a supplementary hydrogeological assessment is required to ensure there is adequate ground water before proceeding to each phase.

Applicant's Request

The applicant has requested an amendment to the existing development agreement to combine Phases 2 and 3, if it is determined that the number of units permitted in the two phases is supported by a

¹ See report at: <http://www.halifax.ca/commcoun/central/documents/150420nwcc811.pdf>

hydrogeological assessment. The applicant has indicated to staff that they would prefer not change the amending development agreement to require Phase 2 and 3 to be completed separately.

Clarification

The proposed amendment would:

- allow for 15 units to be development within a single phase which is considered small in comparison to most developments; and
- the additional 15 units can only be developed if the supplementary groundwater assessment indicates there is sufficient ground water to develop the additional 15 units. If the assessment indicates there is not sufficient groundwater, the developer must reduce the total number of units to be included in this development.

Staff Recommendation

Staff recommends no change to the proposed amendment as outlined in the February 27, 2015 staff report.

2. Riparian Buffer (*item 15 of the proposed amending development agreement*)

Existing Development Agreement

The existing development agreement requires the development to comply with Section 4.19 of the Land Use Bylaw for Planning Districts 1 & 3. Section 4.19 requires a 20 metre riparian buffer around all water courses or wetlands contiguous with a watercourse. Encroachments permitted within the riparian buffer include a deck or accessory structure to a combined maximum footprint of 20 square metres per property. The existing development agreement did not specify if the 20 square metre encroachment is permitted for each home site or if it was to allow for only a single encroachment of this extent for the whole development.

Applicant's Request

The applicant has requested an amendment to the existing development agreement to clarify that a 20 square metre encroachment within the buffer is permitted for each home as is the case for similar developments permitted in an as-of-right situation. Allowing for small encroachments in the riparian buffer for each home site, as proposed in the amending development agreement, is considered essential by the applicant and as such, they do not agree to changing the amending development agreement regarding this item.

Clarification

Policy S-15(l) of the 2006 Regional Plan discusses open space design developments and potential impact to the riparian buffer. The policy does not restrict development in the riparian buffer but rather requires that there is no significant impact to the buffer.

The proposed amending agreement permits each home site the 20 square metre encroachment as permitted in the LUB, however, to respect the conservation intent of the open space design developments, the following additional provisions are included:

- the structure, or main building to which the structure is attached, cannot be placed elsewhere on the Lands and meet all other requirements of this Agreement or without significantly disturbing the grades on the Lands, as determined by the Development Officer;
- a letter is provided from a qualified professional, such as but not limited to a landscape architect, confirming that the encroachment will not significantly impact the watercourse or buffer area;

Further, the proposed amending development agreement specifies that only one encroachment is permitted for each home site and no portion of the building or structure can be located within the Common Open Space as shown on the Schedules. The majority of the riparian buffer is located in the

common open space where no development for the individual home sites is permitted. As 20 square metres of encroachment is permitted per unit, a maximum encroachment within the buffer of 500 square metres is possible. However, based on the location of home sites and the additional provisions required as part of the amendment, it is unlikely that all 25 units will be able to take advantage of the 20 square metre encroachment.

Staff Recommendation

Staff recommends no changes to the proposed amendment as outlined in the February 27, 2015 staff report.

3. Combination of Schedules B and C of the Existing Development Agreement (*item 3 of the proposed amending development agreement*)

Existing Development Agreement

The existing development agreement contains 5 schedules, including Schedule B which outlines the location of the developable area and common open space and Schedule C which provides information regarding phasing and shows the approximate location the home sites.

Staff's Request

As a housekeeping amendment requested by staff, Schedules B and C were combined in the proposed amending agreement attached to the February 27, 2015 staff report. The combined schedule includes the location of the developable area and the common open space but does not include the phasing lines and approximate location of the home sites

Clarification and Amendment

Although both schedules could be combined Staff and the applicant agree that Schedules B and C can be kept as separate schedules as:

- the phasing lines are important information to be retained; and
- although the existing development agreement includes specific setbacks regarding where houses and buildings should be placed, showing the approximate location of the home sites on the schedules is useful as a guide.

Staff Recommendation

Staff recommends that the two schedules be renamed to Schedule B.2 and C.2 in the proposed amending development agreement as contained in Attachment A of this report to reflect the changes to the common open space as further discussed in the February 27, 2015 report. Subsequently the revised landscaping plan, which is also further discussed in the February 27, 2015 report, is renamed Schedule D.2

Conclusion

As noted in the February 27, 2015 staff report the proposed amending agreement is consistent with policy of the 2006 Regional Plan. With the inclusion of a separate schedule which outlines the location of the developable area and common open space and a separate schedule which provides information regarding phasing and shows the approximate location the home sites, Staff recommend the proposed amending development agreement as found in Attachment A of this report.

FINANCIAL IMPLICATIONS

There are no financial implications. The Applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Amending Development

Agreement. The administration of the Amending Development Agreement can be carried out within the approved 2015/16 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 information sharing, as described in the February 27, 2015 report and a Public Hearing on April 20, 2015.

Notices of the public hearing were posted on the HRM website, in the newspaper and mailed to property owners within the notification area shown on Map 3 of February 27, 2015 staff report.

ENVIRONMENTAL IMPLICATIONS

No additional concerns have been identified beyond those raised in this report and the February 27, 2015 staff report.

ALTERNATIVES

1. North West Community Council may choose to approve the proposed amending development agreement subject to modifications. This may necessitate further negotiation with the applicant, the need to hold a second public hearing and a supplementary staff report. A decision of Council to approve the proposed amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. North West Community Council may choose to refuse the proposed amending development agreement, and in doing so, must provide reasons why the amending agreement is not reasonably consistent with the MPS. A decision of Council to refuse the proposed amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Attachment A Proposed Amending Development Agreement as Revised

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 490-4208.

Report Prepared by: Jillian MacLellan, Planner, Development Approvals, 902-490-4423

Report Approved by: Original Signed
Kelly Denty, Manager of Development Approvals, 902-490-4800

Attachment A
Proposed Amending Development Agreement

THIS AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

[Insert Name of Corporation/Business LTD.]
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 located near Granite Cove Drive, Hubley, known as Block TBD-2 and Parcel RR-2, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Western Region Community Council of the Municipality approved an application to enter into a development agreement to allow for a Classic Open Space Design Development of up to twenty-five (25) single unit dwellings in three (3) phases on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy S-16 of the Regional Municipal Planning Strategy, which said development agreement was registered at the Halifax County Land Registration Office on December 10, 2012 as Document Number 102118545 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested amendments to the Existing Agreement to allow for changes to phasing, site disturbance for further hydrogeological assessments, alteration of the common open space boundary, changes to setbacks from the common open space boundary, changes to the landscaping along the common shared driveway, changes to the home site driveway requirements and parking areas and housekeeping amendments;

AND WHEREAS the North West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case 19004;

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

1. Amend Section 2.2(e) by inserting the following text as shown in **bold** and deleting text as shown in ~~strikeout~~ as follows:

(e) "Developable Area" means the portion of the Lands where all development and site disturbance shall be located, ~~including but not limited to~~ **for common uses, such as but not limited to** the Common Shared Driveway **and for home site uses such as but not limited to** Home Site Driveways, **single unit dwellings, accessory buildings, Home Sites, buildings, lawns, and grading alterations, wells and on-site septic systems.**

2. Amend Section 2.2(h) by inserting the following text as shown in **bold**:

(h) "Home Site" means a specific area designated for an individual single unit dwelling **and accessory buildings and uses;**

3. Amend Section 3.1 and the corresponding Schedules by deleting Schedules B, D, and E and replacing them with Schedules B.2 and Schedule C.2 as attached to this Agreement:

Schedule B.2: Developable Area
Schedule C.2: Phasing
Schedule D.2: Landscaping Plan

4. Replace all references to Schedule B or Schedule C with Schedule B.2

5. Replace all references to Schedule D or E with Schedule C.2

6. Amend Section 3.2.2 by inserting the following text as shown in **bold** as follows:

3.2.2 A minimum of 60% of the Lands shall be retained as Common Open Space. The Common Open Space cannot be used for any purpose other than for passive recreation or conservation related uses **intended for common use including, but not limited to trails and common use buildings or structures such as gazebos.**

7. Amend Section 3.3.3 by inserting the following text as shown in **bold** and deleting text as shown in ~~strikeout~~ as follows:

3.3.3 Development for each phase will be considered complete once ~~the occupancy permits for the last single unit dwelling of the phase is issued~~ **have been issued for 50% of the dwelling units in the phase.**

8. Add the following Section after Section 3.3.3, as shown in bold:

"3.3.4 Further to Section 3.3.3, site work required for the Level II Hydrogeological Assessment of Phase 2 and 3 shall include a detailed survey of existing wells in the previous phase(s) of the development (minimum 50% of total number of homes in the previous phase). The scope of this work must be adequate for a qualified hydrogeologist to determine whether existing well use indicates that long term withdrawals of groundwater in the previous phase(s) will be sustainable. Indications of sustainability include (but are not limited to) reports of shortages or interruptions to the supply, changes in water quality or quantity over time, and well performance during dry and peak use periods. If the well survey indicates that

sustainability of existing wells may be in question, the Level II Assessment of Phase 2 and 3 shall include a reassessment of the sustainable yield for Phases 1 and 2 and 3 combined."

9. Add the following Section after Section 3.3.4, as shown in bold:

"3.3.5 Development in Phases 2 and 3 may be combined provided that the number of units is supported by the supplementary hydrogeological assessment"

10. Amend Section 3.5.4(a) by deleting text as shown in ~~strikeout~~ as follows:

3.5.4(a) Certification of the construction of the Common Shared Private Driveway for Phase 1 and compliance with the detailed design of the as required in Section 3.4.2(a);

11. Amend Section 3.5.4(b) by inserting the following text as shown in **bold** as follows:

3.5.4(b) Inspection and acceptance of the Common Shared Private Driveway in the Phase as required by Fire Services, and a registered agreement with the Traffic Authority for Designated Fire Lanes, **if required**;

12. Amend Section 3.6.1 by inserting the following text as shown in **bold** as follows:

"3.6.1 Prior to any site clearing, tree removal or construction on the Lands associated with Phase 2 or 3, **except for what is necessary for the hydrogeological study as required in this section, the developer shall:**"

13. Amend Section 3.7.1(b) by inserting the following text as shown in **bold** and deleting text as shown in ~~strikeout~~ as follows:

3.7.1(b) A detailed site plan focusing on the specific development illustrating **the following features within 30.5 metres from the proposed structure:**

- (i) the proposed location of the building or structure, including setbacks from adjacent property lines, **Granite Cove Drive**, the Common Shared Private Driveway, all surrounding buildings and structures and Common Open Space;
- (ii) the proposed location of the Common Open Space delineation pursuant to Sections 3.5.3 and 3.6.3 of this Agreement;
- (iii) the proposed location and size of the well and septic system;
- ~~(iv) the proposed location and size of the lawn area;~~
- (v) the proposed location and size of all paved areas;
- (vi) any watercourse or wetland be delineated by a qualified professional and confirmed by the Nova Scotia Department of Environment, and the associated riparian buffers;
- ~~(vii) grade alteration; and~~
- (viii) any wetland.

14. Add the following Section after Section 3.7.1(b), as shown in **bold**:

"3.7.1(c) Confirmation from a Professional Engineer that the development is in conformance with the site grading plan and storm water management plan as required in Section 5.1.1 (b) of this Agreement. Any required changes to the site grading plan must be prepared by a Professional Engineer and must confirm that such changes will not create any disturbance within the Common Open Space."

15. Amend Section 3.8.3 by inserting the following text as shown in **bold** and deleting text as shown in ~~strikeout~~ as follows:

~~3.8.3 Nothing in this Agreement shall exempt the Lands from the requirements of Section 4.19 of the Land Use By-law for Planning Districts 1 & 3 concerning watercourse setbacks and buffers as amended from time to time.~~

“3.8.3 Any development in this Agreement shall be subject to the requirements of Section 4.19 of the Land Use By-law for Planning Districts 1 & 3 as amended from time to time.

3.8.4 Further to Section 3.8.3 no building or structure shall be located within the watercourse buffer described in Section 4.19 of the Land Use By-law for Planning Districts 1 & 3, except as follows:

- (a) where the structure, or main building to which the structure is attached, cannot be placed elsewhere on the Lands and meet all other requirements of this Agreement or without significantly disturbing the grades on the Lands, as determined by the Development Officer;**
- (b) a letter is provided from a qualified professional, such as but not limited to a landscape architect, confirming that the encroachment will not significantly impact the watercourse or buffer area;**
- (c) activity is limited to the placement of one accessory structure or one attached deck not exceeding a footprint of 20 sq. metres or a combination of an accessory structure and attached deck not exceeding 20 sq. metres for each Homesite; and**
- (d) no portion of the building or structure is located within the Common Open Space as shown on the Schedules.**

3.8.5 No building or structure for common use shall be permitted within the watercourse setback and buffer as described in Section 4.19 of the Land Use By-law for Planning Districts 1 & 3.”

16. Amend Section 3.8.4(b) by deleting text as shown in ~~strikeout~~ as follows:

3.8.4(b) No portion of a dwelling shall be located less than 3.05 meters (10 feet) from the boundary of the Lands ~~or the Common Open Space~~;

17. Amend Section 3.8.5(b) by deleting text as shown in ~~strikeout~~ as follows:

3.8.5(b) No portion of a building or structure shall be located less than 3.05 meters (10 feet) from the boundary of the Lands ~~or the Common Open Space~~;

18. Amend Section 3.9.6 by inserting the following text as shown in **bold** as follows:

3.9.6 Each single unit dwelling shall include a Home Site Driveway with a maximum width of 6.1 metres (20 feet), **not inclusive of parking areas**”.

19. Amend Section 3.9.7 by inserting the following text as shown in **bold** and deleting text as shown in ~~strikeout~~ as follows:

3.9.7 Up to ~~two~~ **three** single unit dwellings may share a Home Site Driveway **with a maximum width of 7.6 metres (25 feet), not inclusive of parking areas**”.

20. Add the following Section:

“3.9.8 Paved parking areas for each Home Site shall not exceed 540 square feet, not inclusive of the Home Site Driveway.”

21. Amend Section 3.10.8 by inserting the following text as shown in **bold** and deleting text as shown in ~~strikeout~~ as follows:

3.10.8 Prior to issuance of ~~any~~ **the first** Occupancy Permit the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Development Agreement.

22. Add the following Section:

6.1.1(d) Changes to the Common Open Space and Developable Area boundary as shown on the Schedules, as long as a minimum of 60% of the Land within the Common Open Space area is maintained.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

SIGNED, 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

Witness

Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

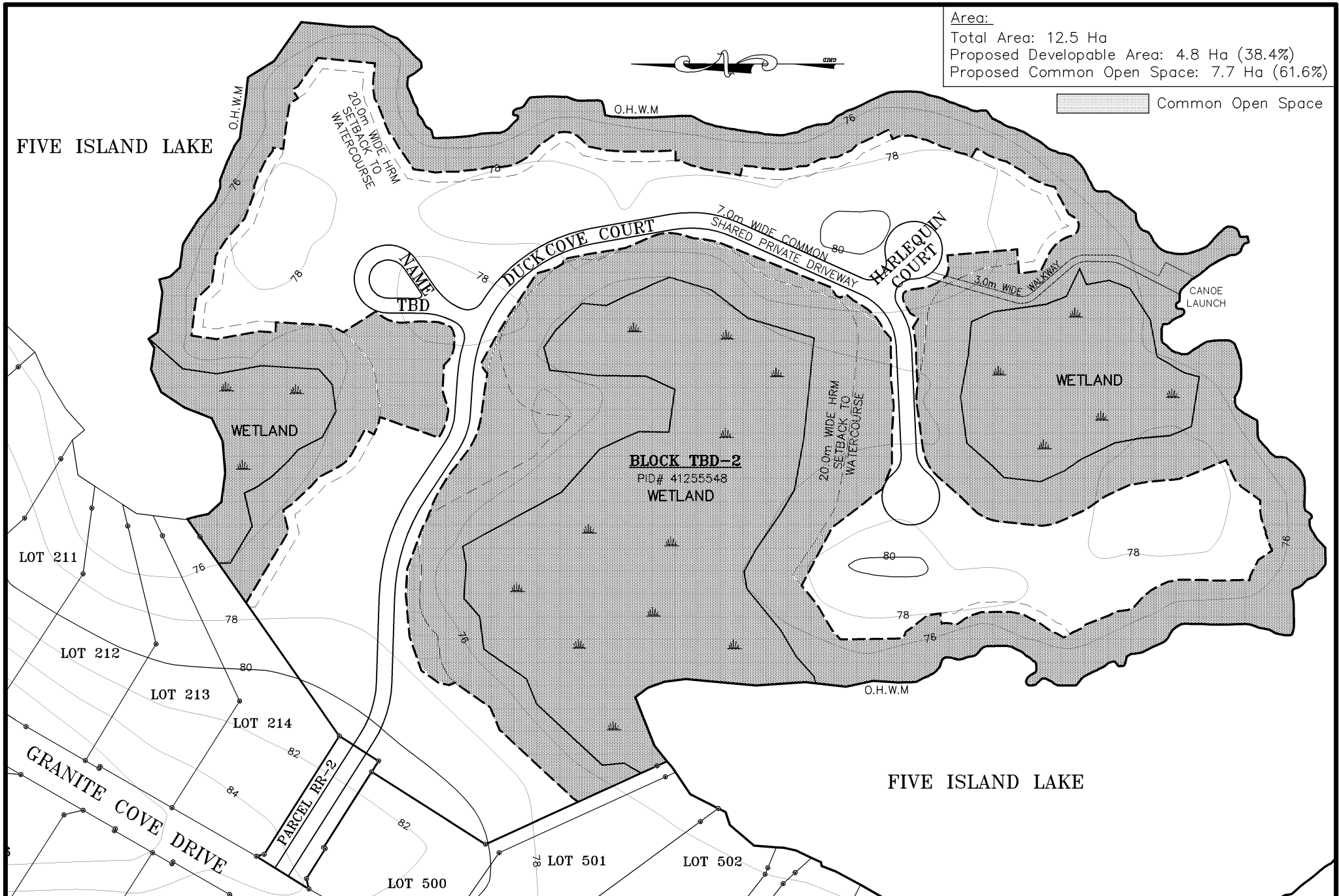
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Cathy Mellett, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

Area:
 Total Area: 12.5 Ha
 Proposed Developable Area: 4.8 Ha (38.4%)
 Proposed Common Open Space: 7.7 Ha (61.6%)

 Common Open Space



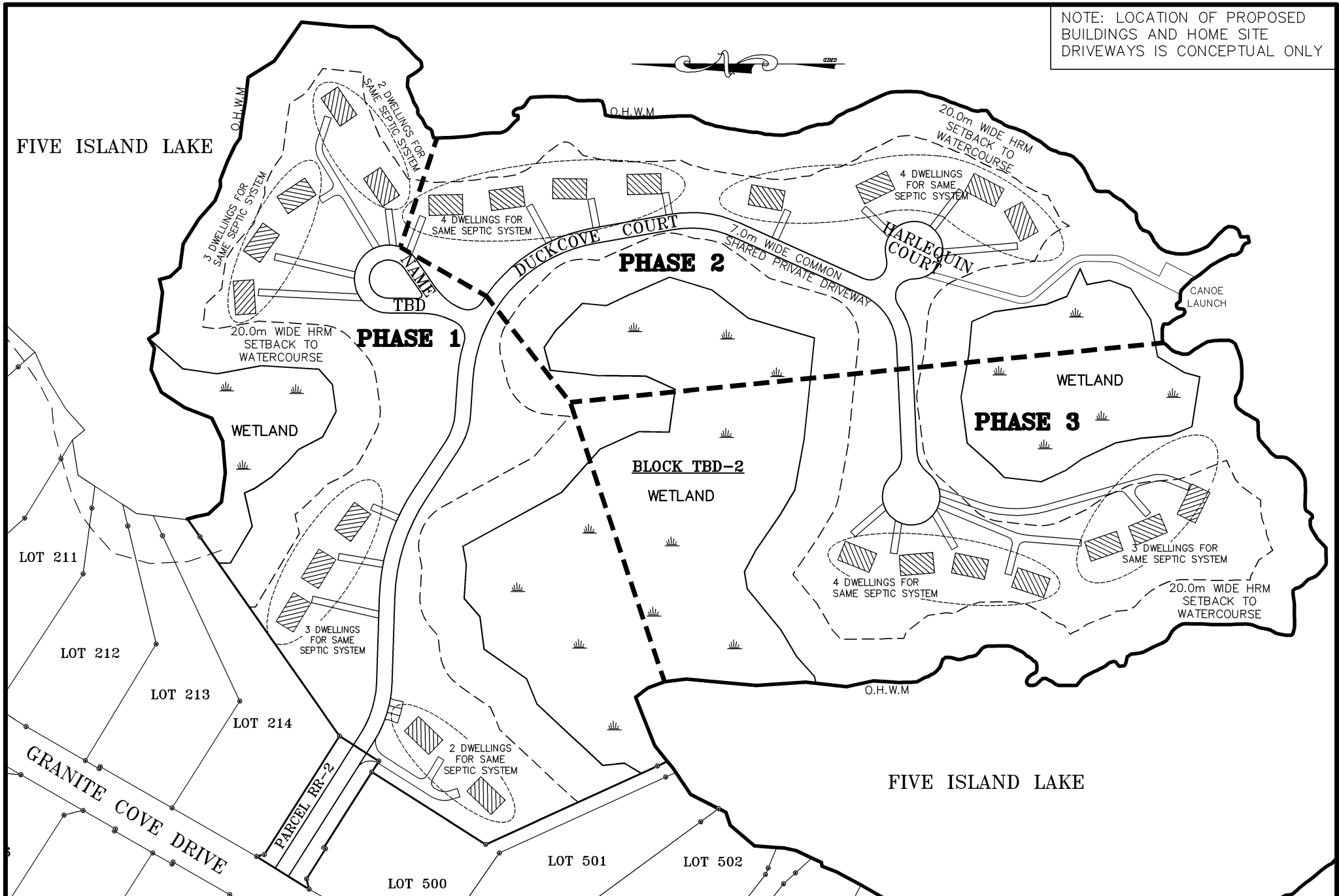
MW
MAC WILLIAMS ENGINEERING LIMITED

THREE BROOKS VILLAGE
 HUBLEY, NOVA SCOTIA
 SCHEDULE B-2- PROPOSED DEVELOPABLE AREA

Revision			
No.	Comments	Date	By
3.	Common Area Revised	Feb 11/14	SRW
4.	Revised PID's	Dec 2/14	SRW
5.	Minor Adjustments	May 1/15	SRW

Date: April 12, 2011
 Scale: Not to Scale
 Project No.: 09507
 Drawing No.: 9507-SK04

NOTE: LOCATION OF PROPOSED BUILDINGS AND HOME SITE DRIVEWAYS IS CONCEPTUAL ONLY



MW
MAC WILLIAMS ENGINEERING LIMITED

THREE BROOKS VILLAGE
 HUBLEY, NOVA SCOTIA

SCHEDULE C2- PHASING

Revision			
No.	Comments	Date	By
0.		Apr 12/11	SRW
1.	Edit Text	Dec 12/11	SRW
2.	Amended Riparian Buffer	May 01/15	SRW

Date: April 12, 2011

Scale: Not to Scale

Project No.: 9507

Drawing No.: 9507-SK05

