

**Harbour East-Marine Drive Community Council
February 6, 2014**

TO: Chair and Members of Harbour East- Marine Drive Community Council

SUBMITTED BY: Original signed

Brad Anguish, Director of Community and Recreation Services

DATE: January 13, 2014

SUBJECT: **Case 18978: Discharge Development Agreement for 301 and 303
Main Street, Dartmouth**

ORIGIN

Application by Dianne Gazzola

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter; Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Harbour-East Marine Drive Community Council:

1. Approve, by resolution, the discharge agreement, presented as Attachment A to this report, for the lands located at 301 and 303 Main Street, Dartmouth; and
2. Require the discharge 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

In 1995, the former City of Dartmouth entered into development agreement to permit a mixed use building, with ground floor commercial space and two residential units on the second floor at 301 and 303 Main Street, Dartmouth, pursuant to policy IP-6 of the Dartmouth Municipal Planning Strategy (MPS). The proposed mixed use building has not been constructed and the property owner now wishes to discharge the development agreement to enable the lands to be subdivided. The subject property currently has two buildings on one lot; a dwelling and a non-conforming commercial restaurant. The applicant would like to subdivide the property to place each building on its own lot, but the existing development agreement does not provide for subdivision of the lands. The development agreement must be discharged to allow the subdivision to occur. The lands are able to be subdivided in conformance with the requirements of the Regional Subdivision By-law.

Location, Designation, Zoning and Surrounding Area

The subject property is:

- located at 301 and 303 Main Street, Dartmouth, and is 20,269 square feet (1883 square metres) in area with approximately 100 feet (30.48 m) of road frontage;
- located near Lemont Lake and Topsail Lake with a mix of residential and commercial uses in close proximity;
- designated Residential under the Dartmouth Municipal Planning Strategy (MPS) (Map 1); and
- zoned R-2 (Two Family Residential) Zone under the Dartmouth Land Use By-law (LUB) (Map 2).

Discharge of Development Agreements

The *Halifax Regional Municipality Charter* provides Community Council with a mechanism to discharge development agreements. Part VIII, Clause 244, identifies that Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner. The *Charter* does not require a public hearing for the discharge of the agreement; the agreement may be discharged by resolution of Community Council.

Summary

Staff has reviewed the discharge request and determined that it is consistent with the MPS policies for Dartmouth. Once discharged, the lands can be developed subject to the land use provisions of the existing R-2 Zone. The restaurant would be permitted to remain as a non-conforming use. Any future development or subdivision of the lands must conform with all applicable provisions and requirements of the Dartmouth Land Use By-law and the Regional Subdivision By-law, as amended from time to time.

Therefore, staff recommends the discharge of the existing development agreement from the lands at 301 and 303 Main St, Dartmouth, as described in Attachment A.

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.

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 property and information on the HRM website. A public information meeting is not required for the discharge of a development agreement, nor is a public hearing. The decision to discharge a development agreement is made by resolution of Community Council.

The proposed discharge will potentially impact, but not limited to, the following stakeholders: local residents, property owners.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVES

1. Council may choose to approve the proposed discharging development agreement, as contained in Attachment A of this report. This is the staff recommendation. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Council may choose to refuse to approve the proposed discharging development agreement and, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. This is not recommended for the reasons discussed above. A decision of Council to reject this discharging development agreement, is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

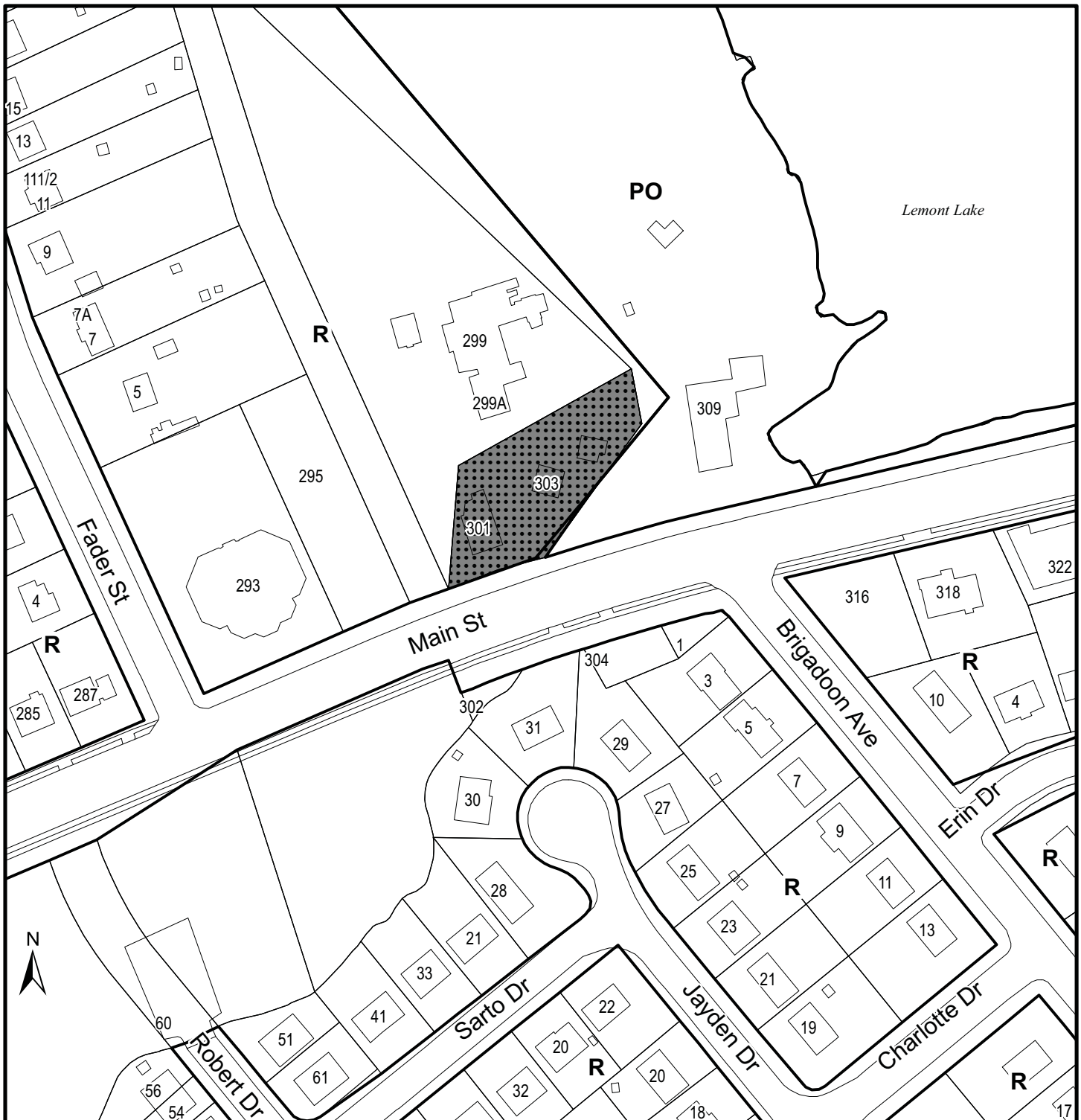
Map 1:	Generalized Future Land Use Map
Map 2:	Zoning and Notification
Attachment A:	Proposed Discharging Agreement

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: Jennifer Chapman, Planner 1, 490-3999

Original signed

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



Map 1 - Generalized Future Land Use

301 Main Street,
Dartmouth

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 20 40 m

 Area Subject to
DA Discharge

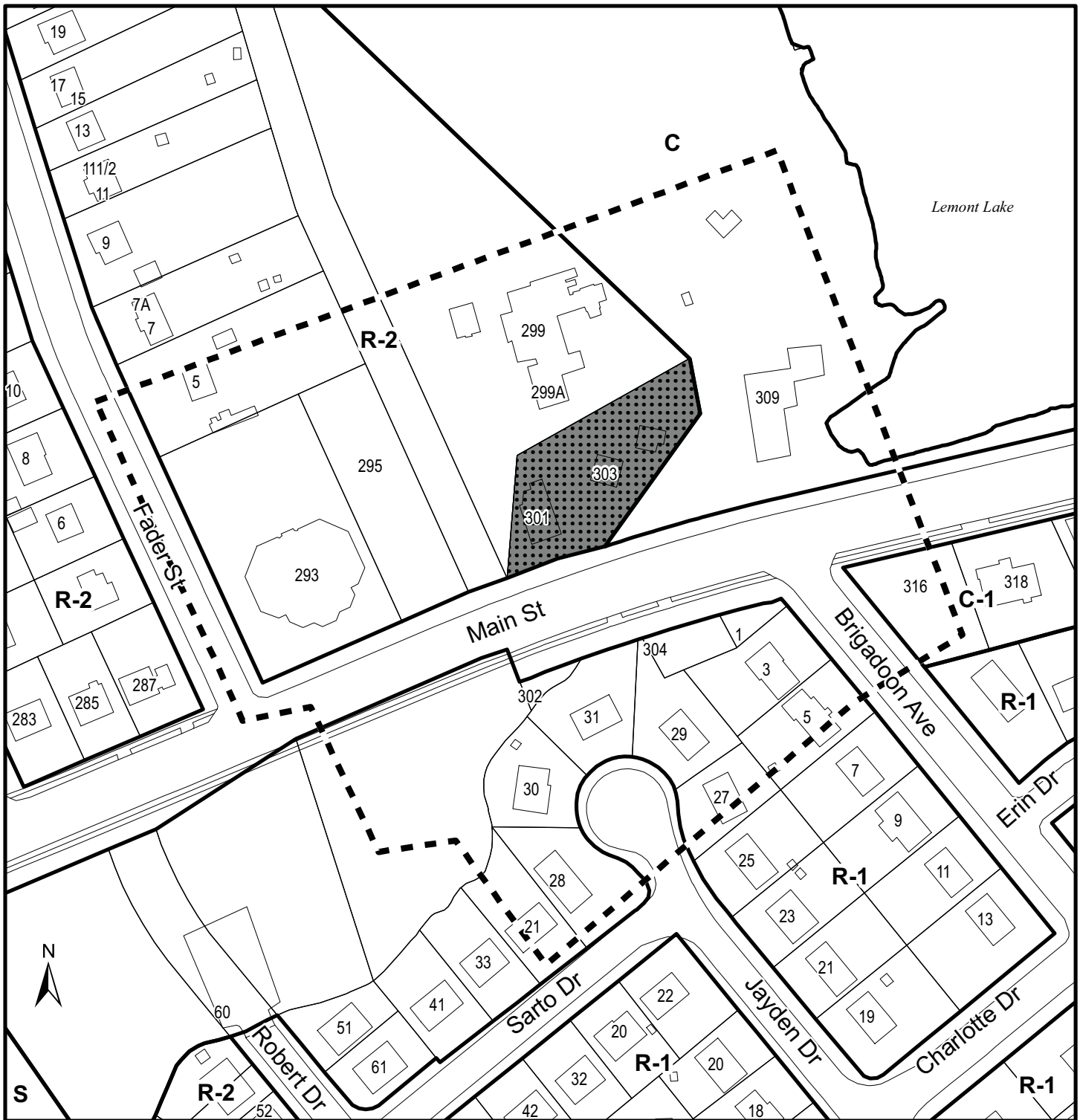
Designation

R Residential
PO Park and Open Space

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.

Dartmouth
Plan Area



Map 2 - Zoning and Notification

301 Main Street,
Dartmouth

-  Area Subject to DA Discharge
-  Area of Notification

Dartmouth
Plan Area

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- C-1 Local Business
- S Institutional
- C Conservation

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 20 40 m

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.

Attachment A
Proposed Discharging Agreement

THIS DISCHARGING AGREEMENT made this day of **[Insert Month]**, 2014,

BETWEEN:

[Insert Individual's name]

an individual, in the Halifax Regional Municipality,
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 at 301 and 303 Main St, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the former Council for the City of Dartmouth granted approval on March, 17th 1995 for a development agreement, which was recorded at Registry of Deeds as Document Number 9428 in Book 5697, at Pages 189-205 (hereinafter called the "Existing Agreement"), to permit the development of a mixed use commercial/ residential building on these Lands;

AND WHEREAS, the developer has requested that the Existing Agreement be discharged from the Lands;

AND WHEREAS the Harbour East- Marine Drive Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 18978;

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

1. The Existing Agreement is hereby discharged and shall no longer have any force or effect.

2. Any future development of the Lands shall conform to all applicable provisions and requirements of the Dartmouth Land Use By-law, as amended from time to time.

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