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Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 10.1.1
Harbour East-Marine Drive Community Council
November 13, 2014

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

SUBMITTED BY: Original signed
Bob Bjerke, Director of Planning and Development

DATE: October 29, 2014

SUBJECT: **Case 18849: Non-Substantive Amendment for 959 Cole Harbour Road, Cole Harbour**

ORIGIN

- July 7, 2014 staff report to Harbour East-Marine Drive Community Council; and
- August 7, 2014 approval by Harbour East-Marine Drive Community Council for non-substantive amendments to the existing development agreement for 959 Cole Harbour Road.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Part VIII, Planning & Development

RECOMMENDATION

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

1. Approve the corrected amending development agreement document for execution, 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 Council on request of the applicant, from the date of final approval of said agreement by 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/DISCUSSION

On August 7, 2014, Harbour East-Marine Drive Community Council approved, by resolution, a non-substantive amendment to an amending development agreement and discharged the existing development agreement for 959 Cole Harbour Road.

The existing and the amending development agreements only permit banks or financial institutions on the property.¹ The former bank on the site has now relocated, and the property owner was seeking approval for all land uses permitted by the C-2 zone and changes to the parking lot layout. Amendments to the permitted uses and parking lot layout are listed as non-substantive matters in Section 6.2 of the development agreement and were approved through a resolution of Council, without a public hearing.

There were no appeals made to Council's decision. However, prior to the non-substantive amending agreement being signed by the Developer, an error in the document recitals was identified. The non-substantive amending agreement (known as the second amending agreement) should reference the first amending agreement and not the existing agreement.

The error is corrected by changing the word "existing" to "amending" in Attachment A of the original staff report. (Attachment A)

It is important to note the required corrections have no effect on the content of the development agreement that was approved by Community Council nor do they require a new public hearing. Council is able to approve the corrections to the amending development agreement by motion of Council. Following this, the amending agreement can be authorized for execution by the Municipality's signing officers.

FINANCIAL IMPLICATIONS

There are no budget 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 budget with existing resources.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

ENVIRONMENTAL IMPLICATIONS

No additional concerns have been identified beyond those raised in the original staff report dated July 7, 2014 for the application.

ALTERNATIVES

1. Harbour East-Marine Drive Community Council may choose to refuse the proposed amending agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended. A decision of Council to reject this amending agreement, with or without a public hearing, is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

¹ A drive through bank kiosk was approved for the site in 1997 as a non-substantive amendment to the original 1995 development agreement. However, this amendment led to the adoption of a second development agreement that largely replicates the original 1995 agreement rather than an amending agreement. The existence of two parallel development agreements leads to confusion and difficulties in administration; therefore the original agreement has been discharged.

ATTACHMENTS

Attachment A Corrected 9th Amending Development Agreement as approved by Community Council on June 4, 2014

The original staff report and development agreement can be found at:
<http://www.halifax.ca/Commcoun/east/documents/140807hemdcc1011.pdf>

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Thea Langille, Major Projects Planner, 902-490-7066

Original signed

Report Approved by: _____
Kelly Denty, Manager of Development Approval, 902-490-4800

**Attachment A
Revised Second Amending Development Agreement**

THIS SECOND AMENDING AGREEMENT made this _____ day of _____, 2014

BETWEEN:

[INSERT Name of Corporation/Business]
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 at 959 Cole Harbour Road, Cole Harbour and which said lands are more particularly described in Schedule A hereto (hereinafter called "the Property");

AND WHEREAS the Cole Harbour/Westphal Community Council of the Municipality of Halifax County approved an application to enter into a Development Agreement to allow for the construction of a driveway to Hugh Allen Drive, which said Development Agreement was registered at the Registry of Deeds in Halifax as Document Number 9139 in Book 5696, at Pages 381 to 390 (hereinafter called the "Existing Agreement");

AND WHEREAS the Harbour East Community Council of the Municipality of Halifax County approved an application to enter into a Development Agreement to allow for the construction of a driveway to Hugh Allen Drive, which said Development Agreement was registered at the Registry of Deeds in Halifax as Document Number 29994 in Book 6086, at Pages 758-769 (hereinafter called the "Amending Agreement");

AND WHEREAS the Harbour East-Marine Drive Community Council of the Halifax Regional Municipality discharged the Existing Agreement by resolution at a meeting held on August 7, 2014, referenced as Municipal Case Number 18849;

AND WHEREAS the Developer wishes to further amend the Amending Agreement to allow for additional commercial uses and changes to the parking lot layout on the Lands pursuant to the provisions of the Halifax Regional Municipality Charter and the Municipal Planning Strategy for Cole Harbour/Westphal;

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on _____, referenced as Municipal Case Number 18849;

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

1. The Amending Agreement shall be amended by deleting 'Revised Schedule B' and replacing it with a new Revised Schedule B, attached hereto as Schedule B.

2. The Amending Agreement shall be amended by deleting Section 4.1 of the Amending Agreement and replacing it with the following:

“4.1 The permitted uses of the Property shall be those permitted by the provisions of Part 17: C-2 (General Business) Zone of the Land Use Bylaw.”

3. The Amending Agreement shall be amended by deleting Section 5.3 (a) and replacing it with the following:

“Parking shall be provided as shown on Revised Schedule B.”

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 Owners Names)

Per:_____

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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

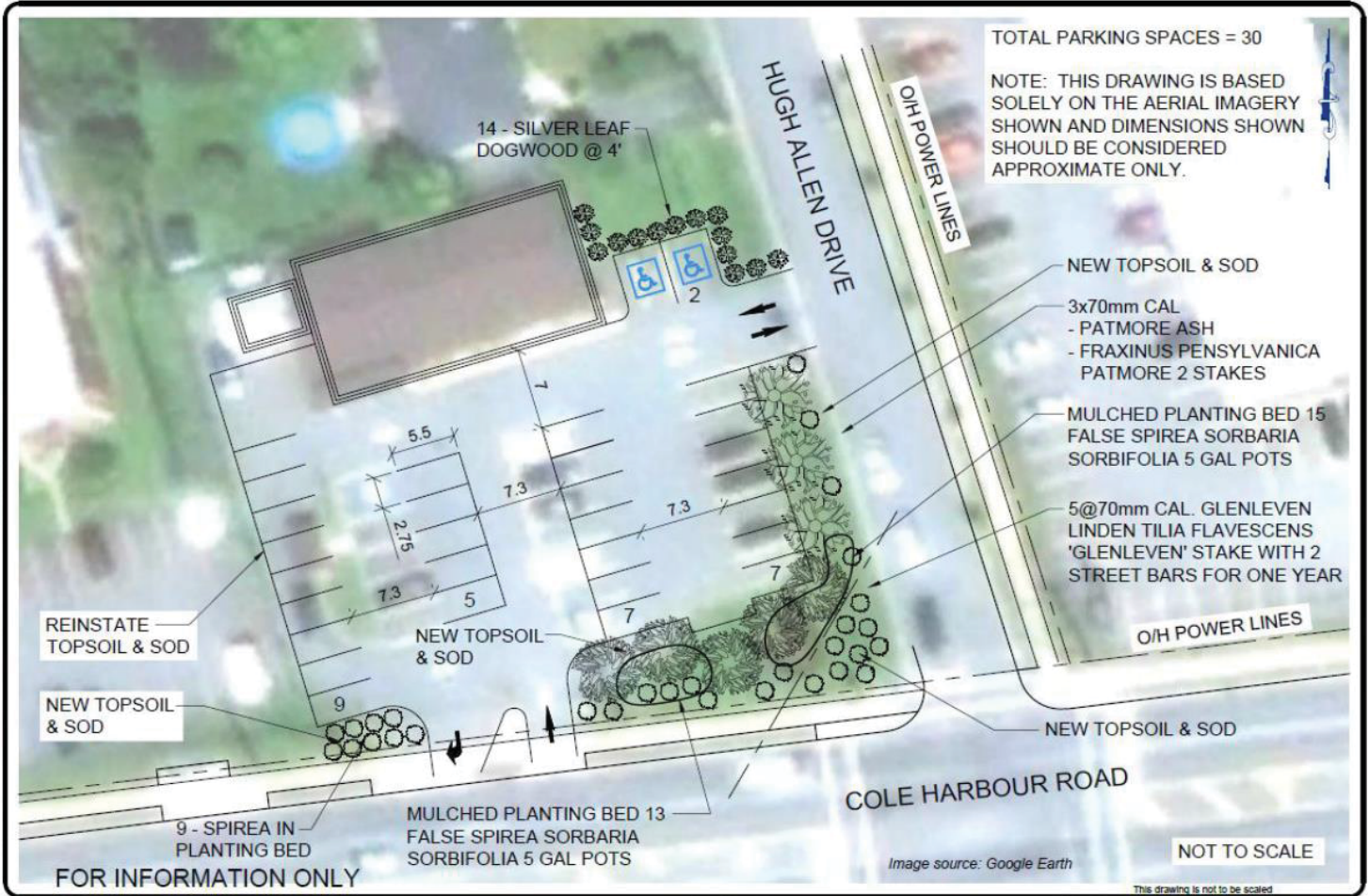
Per:_____

Mayor

Per:_____

Municipal Clerk

Revised Schedule B
Site Plan and Landscaping Plan



FILE: C:\P\2011\0001\188 - HFX\0211477\0211477-010 PLANNING AND DESIGN SERVICES\3-04-09-1.DWG
NOTED BY: JUSTIN McHEWERY
DATE: 2010/06/03 09:03 AM

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Project Title	PROPOSED 959 COLE HARBOUR RD. RE-DEVELOPMENT
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Dwg. Title	LANDSCAPE/PLANTING PLAN (REV1 - PLANTINGS ADDED)
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Drawn By:	Project No. HFX-00211477-A0	
Dwg. Standards Ckd. By:	Dwg. No. SK-1	
Designed By:	Dwg. Design Ckd. By:	Rev. No. 1

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