



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

10.1

Harbour East Community Council
March 5, 2009

TO: Harbour East Community Council

SUBMITTED BY:

Sharon Bond
Sharon Bond, Acting Director of Community Development

DATE: February 16, 2009

SUBJECT: Case 01241: Amending Agreement - 35 Baker Drive, Dartmouth

ORIGIN

Application by 3228801 Nova Scotia Limited.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Approve, by resolution, the non-substantive Amending Agreement for 35 Baker Drive, Dartmouth, presented as Attachment A to this report, to allow for an additional driveway access; and
2. Require that the amending agreement be signed within 120 days, or any extension thereof granted by the Community Council on request of the applicant, from the date of final approval by Community Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

In 2005, a development agreement (Case #00759) was approved by Harbour East Community Council for a multiple unit residential building and a neighbourhood commercial / office building on Parcel 1 of the Morris-Russell Lake Master Plan. Parcel 1 has since been subdivided into two lots, and these two buildings have been constructed. The multiple unit residential building is located at 59 Baker Drive (PID 41195397), and the commercial building is located at 35 Baker Drive (PID 41184375).

Designation Commercial, under the Municipal Planning Strategy (MPS) for Dartmouth

Zoning Comprehensive Development District (CDD), under the Land Use By-law (LUB) for Dartmouth

Enabling Policy

Policy ML-18(a) of the Morris-Russell Lake Secondary Planning Strategy states that Parcel 1 “may be developed with an apartment building not exceeding 84 dwelling units or four stories in height and a commercial building not exceeding 14,000 square feet”.

Existing Development Agreement

The existing development agreement states that “access to the Lands shall be as generally illustrated on Schedule B which limits access to two thirty-foot driveways onto Baker Drive” (Attachment B). The original site plan shows the first driveway servicing the entrance of the residential building. The second driveway is shown between the residential building and the commercial building, and was supposed to service both buildings.

However, the existing development agreement did anticipate that an additional, third driveway may be needed in the future. When the existing development agreement was approved in 2005, it was noted that traffic volumes at the intersection of Baker Drive and Norm Newman Drive could decrease once the Baker Drive extension and the 111 interchange were completed. As such, the existing development agreement included the potential for a third driveway as a non-substantive amendment which could be approved by resolution of Council (Attachment C).

DISCUSSION

The developer has submitted an application for a non-substantive amendment to the existing development agreement in order to permit a third driveway, serving the commercial building at 35 Baker Drive, Dartmouth.

During construction, it was determined that the grade of the site would not reasonably allow the second shared driveway to serve both the residential building and the commercial building. To

address this situation, the developer modified the second driveway to serve only the underground parking of the residential building, and installed a stone retaining wall near the property line to accommodate the change in grade.

This left the commercial building without access to Baker Drive, so the developer put in a third driveway. This third driveway is not permitted by the existing development agreement, but could be permitted through the non-substantive amendment process. Staff have reviewed the proposed third driveway and found it to be in compliance with Municipal Services Systems (MSS) guidelines and the Streets By-law. As well, the proposed third driveway meets the criteria of the development agreement with respect to the non-substantive amendment (e.g. approval of the Development Engineer).

In addition, during road and sidewalk construction, a curb cut was installed towards the north end of the commercial building. If, in the future, the developer wanted approval for a fourth driveway at this curb cut, they would need to make a new application for a substantive amendment to the development agreement. A substantive amendment requires a public process and would be approved or refused by Harbour East Community Council. This driveway cannot be approved through a non-substantive amendment. Until the fourth driveway is approved, it will remain barricaded with a concrete jersey barrier and a "do not enter" sign.

Since the third and fourth driveways are not permitted through the development agreement, a case has been opened with the Land Use Compliance section.

Conclusion

Staff recommend that Harbour East Community Council approve the proposed non-substantive amendment to the existing development agreement for the following reasons:

- The grades between the residential and commercial buildings made the proposed shared driveway difficult to achieve;
- The commercial building requires access from Baker Drive, which the third driveway provides;
- The existing development agreement anticipated that a third driveway may be needed, and included this in the list of potential non-substantive amendments; and
- The third driveway meets the requirements of the MSS guidelines and Streets By-law.

BUDGET 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 Amending Agreement. The administration of the Amending Agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council may choose to approve the attached Amending Agreement. This is the recommended alternative.
2. Council may choose to propose modifications to the Amending Agreement. Such modifications may require further negotiations with the developer, or a second public hearing.
3. Council may choose to refuse to enter into the Amending Agreement. If Council refuses to enter into the Amending Agreement, a reason must be given as to why the Amending Agreement is not consistent with plan policy.

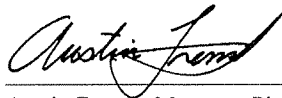
ATTACHMENTS

Map 1	Location and Zoning
Map 2	Generalized Future Land Use
Attachment A	Amending Agreement
Attachment B	Original Site Plan
Attachment C	Excerpt from Existing Development Agreement

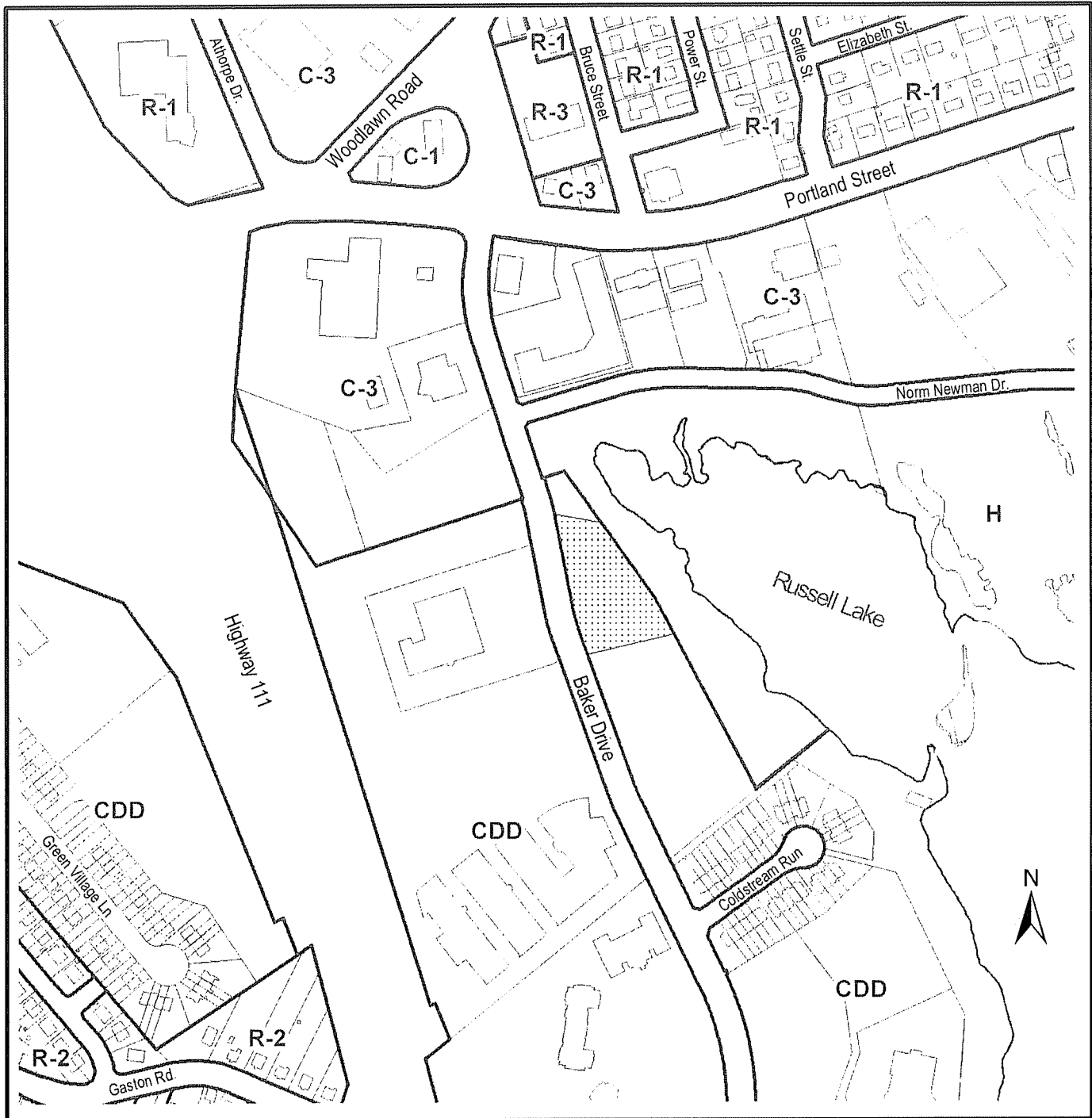
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Mackenzie Stonehocker, Planner I, 490-1948

Report Approved by:




Austin French, Manager, Planning Services, 490-6717



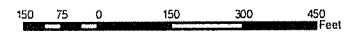
Map 1 Location and Zoning

35 Baker Drive

 Subject Parcel under DA

Zone	
R-1	Single Family Residential
R-2	Two Family Residential
R-3	Multiple Family Residential
C-1	Local Business
C-3	General Business
H	Holding
CDD	Comprehensive Development District

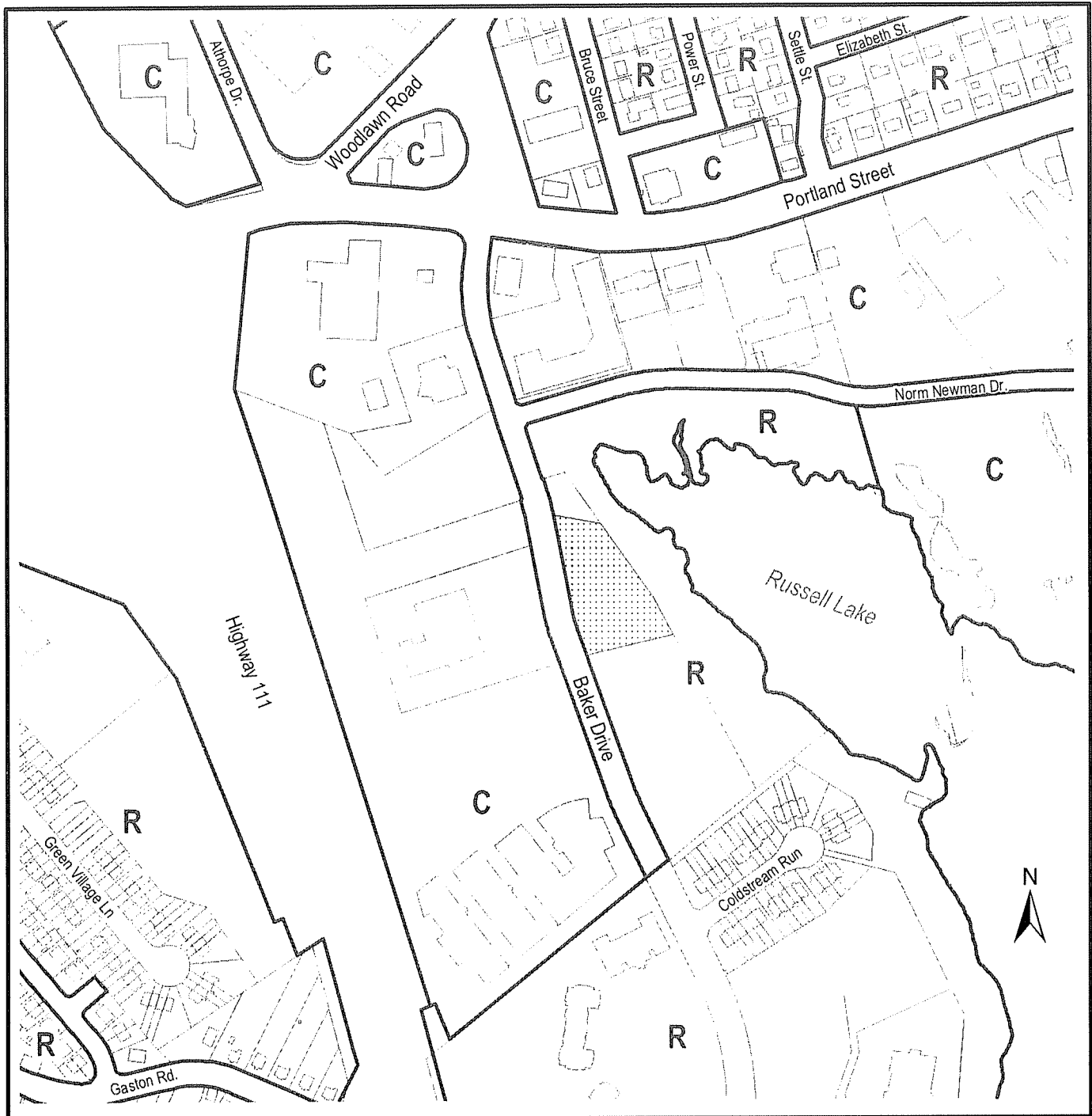
HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Land Use By-law area


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

Dartmouth Plan Area



Map 2 Generalized Future Land Use

35 Baker Drive

 Subject Parcel under DA

Designation

- R Residential
- C Commercial

Dartmouth Plan Area

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



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

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

Attachment A

THIS AMENDING AGREEMENT made this ____ day of _____, 2009,

BETWEEN:

3228801 NOVA SCOTIA LIMITED,

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 now the registered owner of certain lands located at 35 Baker Drive, Dartmouth (Lot WEW-1B; PID 41184375) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS Halifax Regional Municipality previously entered into a development agreement with Baker Drive Developments Limited for a mixed commercial and residential development on October 28, 2005 (Municipal Case No. 00759), which said agreement is recorded at the Registry of Deeds for Halifax County as Document 83934589 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer wishes to amend the Existing Agreement to allow for an additional driveway accessing the Lands from Baker Drive (hereinafter called the "Amending Agreement");

AND WHEREAS the Harbour East Community Council of Halifax Regional Municipality approved this request at a meeting held on ____ [insert date] ____, 2009, referenced as Municipal Case No. 01241;

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

1. The Existing Agreement shall be amended by
 - (a) adding a new Schedule "B1", as attached to this Amending Agreement, after the existing Schedule "B";

- (b) the new Schedule "B1" will apply to Phase 2 (the commercial building), and the existing Schedule "B" will continue to apply to Phase 1 (the residential building); and
- (c) replacing Section 2.7.4 of the existing Parking and Circulation section with the following revised section:

2.7.4 Access to Phase 1 of Lands shall be as generally illustrated on Schedule "B" which limits access to two 30-foot driveways onto Baker Drive. Access to Phase 2 of the Lands shall be as generally illustrated on Schedule "B1" which limits access to one 25-foot driveway onto Baker Drive.

- 2. All other terms and conditions of the Existing Agreement shall remain in full force and effect.
- 3. This Amending Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this amending agreement until it is discharged by the Council.

WITNESS that this Amending Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2009.

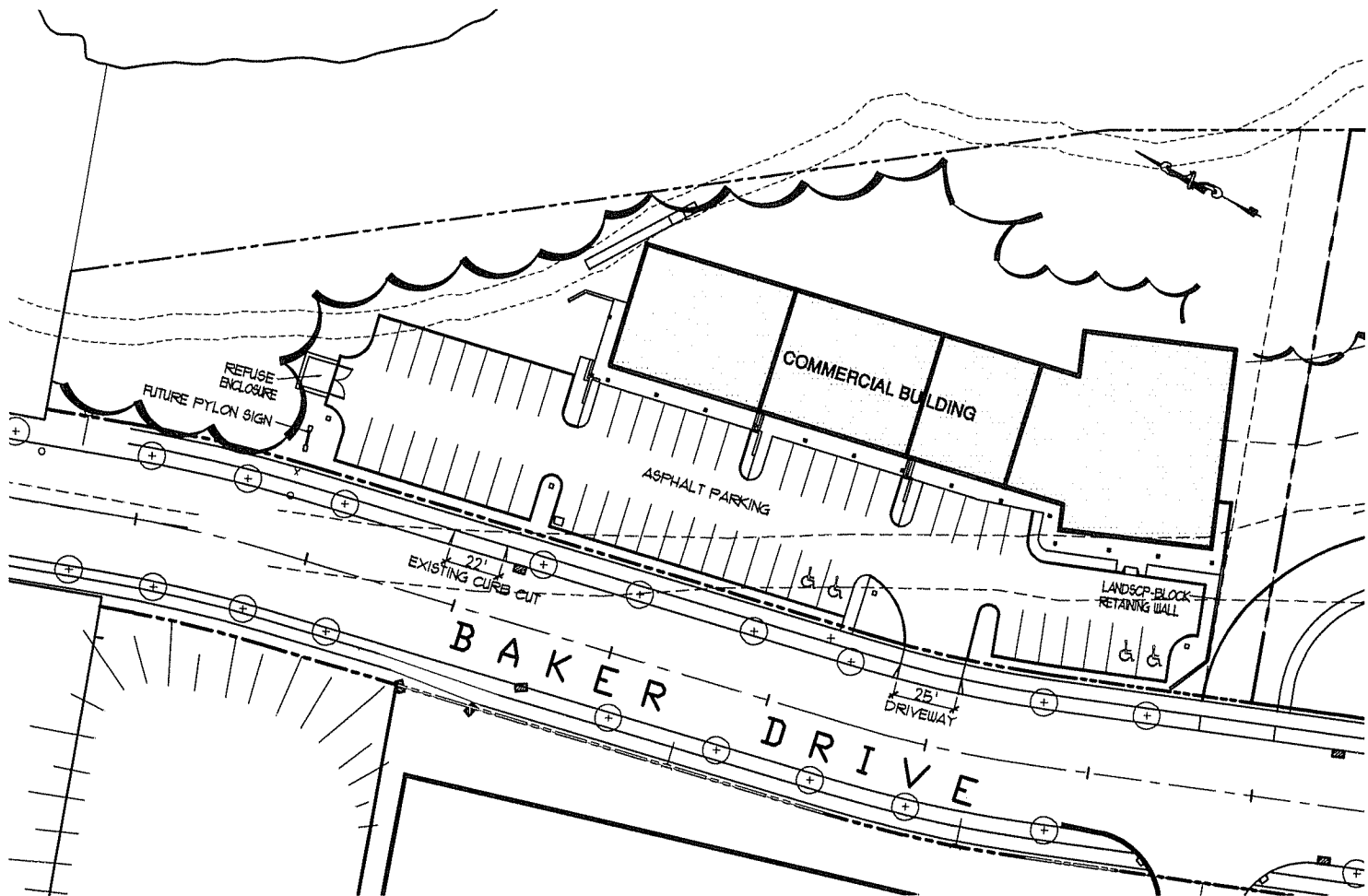
SIGNED, SEALED AND DELIVERED) **3228801 NOVA SCOTIA LIMITED**
 in the presence of)
)
 per _____) per: _____
)

per _____) per: _____
)

SEALED, DELIVERED AND)
 ATTESTED to by the proper)
 signing officers of Halifax Regional)
 Municipality duly authorized)
 in that behalf in the presence) **HALIFAX REGIONAL MUNICIPALITY**
)

per _____) per: _____
) MAYOR
)

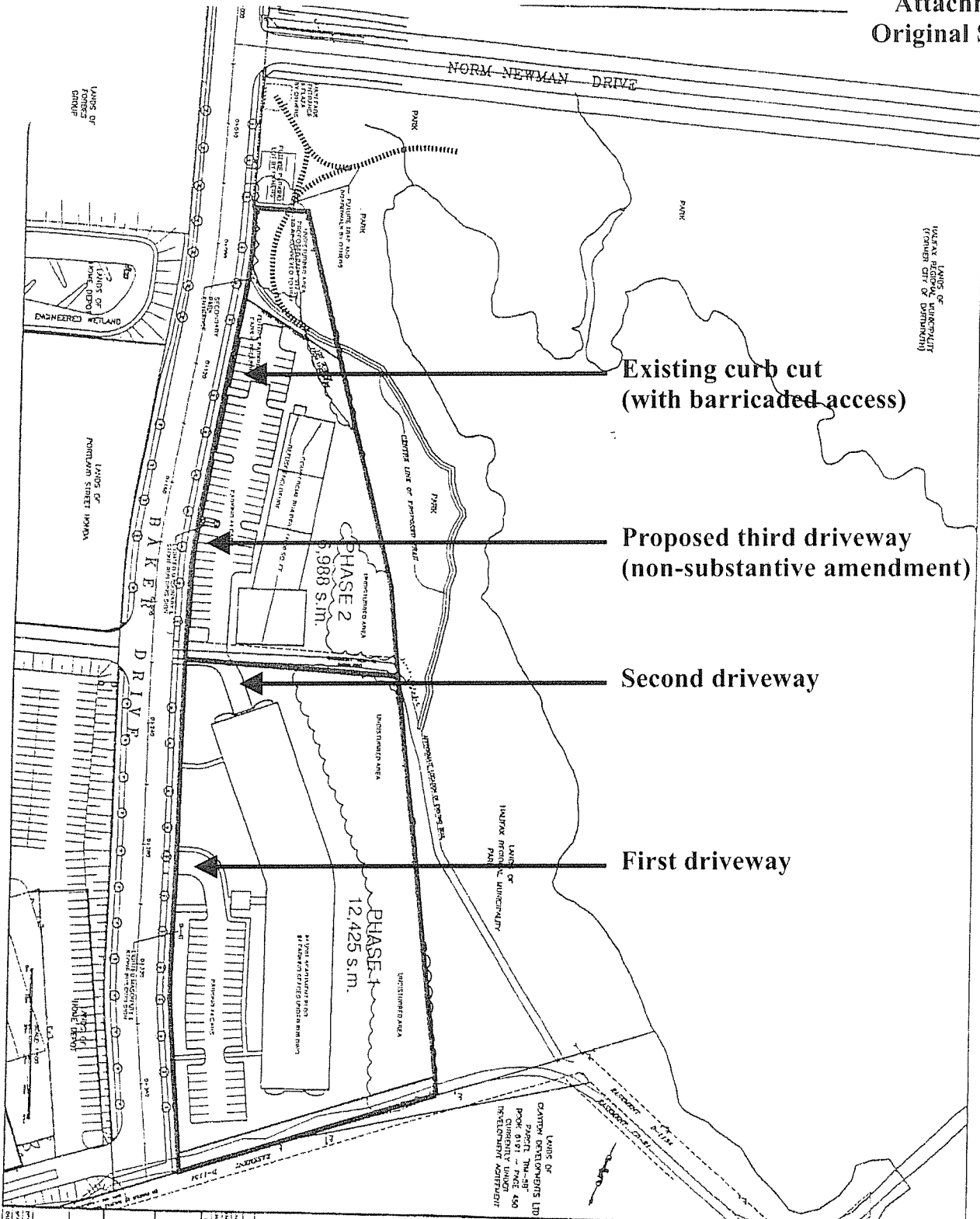
per _____) per: _____
) MUNICIPAL CLERK
)



SCHEDULE B1 - SITE PLAN

0 5 15 25 35 45
SCALE (feet)

Attachment B
Original Site Plan

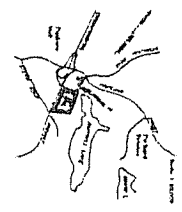


Existing curb cut
(with barricaded access)

Proposed third driveway
(non-substantive amendment)

Second driveway

First driveway



Notes

The development shown on this plan is for the...
 1. The development shown on this plan is for the...
 2. The development shown on this plan is for the...
 3. The development shown on this plan is for the...
 4. The development shown on this plan is for the...
 5. The development shown on this plan is for the...
 6. The development shown on this plan is for the...
 7. The development shown on this plan is for the...
 8. The development shown on this plan is for the...
 9. The development shown on this plan is for the...
 10. The development shown on this plan is for the...

Schedule B
Site Plan

<p>CHARTER DEVELOPMENTS LTD PO BOX 212 7th St SW CALGARY ALBERTA T2C 1S6 DEVELOPMENT AUTHORITY</p>	<p>LANDS OF CHATNER DEVELOPMENTS LTD PO BOX 212 7th St SW CALGARY ALBERTA T2C 1S6 DEVELOPMENT AUTHORITY</p>
<p>Special Review Approved by the City of Edmonton Planning Department 10/15/2015</p>	<p>City of Edmonton Planning Department 10/15/2015</p>
<p>City of Edmonton Planning Department 10/15/2015</p>	<p>City of Edmonton Planning Department 10/15/2015</p>
<p>City of Edmonton Planning Department 10/15/2015</p>	<p>City of Edmonton Planning Department 10/15/2015</p>

Attachment C
Excerpt from Existing Development Agreement

Section 3.1(b) of the existing development agreement states that:

Upon the completion of the Baker Drive extension and the 111 interchange and at the determination of the Development Engineer as to when traffic volumes can be more fully substantiated, one additional driveway access to Baker Drive from the parking lot in Phase 2 [the commercial building] may be permitted subject to:

- i) a traffic study as may be required by the city's Traffic Services division; and
- ii) the approval of the Development Engineer.