

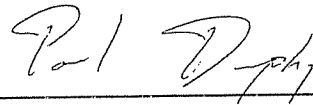


PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

8.1.1

Harbour East Community Council  
August 5, 2010

**TO:** Chair and Members of Harbour East Community Council

**SUBMITTED BY:**   
Paul Dunphy, Director of Community Development

**DATE:** July 27, 2010

**SUBJECT:** Case 15863 - Multiple Unit Dwelling, 185 Windmill Road, Dartmouth

**ORIGIN**

Application by Geoff Keddy Architects for the lands of Rodas JeBailey to allow construction of an addition for 5 apartment units at 185 Windmill Road, Dartmouth.

**RECOMMENDATION**

It is recommended that Harbour East Community Council:

1. Give Notice of Motion to consider the proposed development agreement as set out in Attachment A of this report and schedule a public hearing;
2. Approve the proposed development agreement for 185 Windmill Road, as set out in Attachment A of this report, to permit construction of an addition and allow for a total of 6 dwelling units on the property; and
3. Require the agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, 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**

The subject site is located at the corner of Windmill Road and Jamieson Street as shown on Map 1. The existing building on the site currently has 2 ground floor commercial units, and one 2<sup>nd</sup> floor apartment. The commercial uses consist of a convenience store and a pawn shop, which is a legal non-conforming use. The applicant has applied for a development agreement to permit an addition to the building and up to 6 apartment units.

### **Proposal**

The applicant has submitted a development agreement proposal, to construct a 2<sup>nd</sup> floor addition over the pawn shop, and a 3<sup>rd</sup> floor addition over the convenience store and existing apartment. This added space would consist of 5 one-bedroom apartments, bringing the total number of units to 6. There would be no expansion to the actual ground floor footprint of the building.

### **Zoning and Land Use**

The property is zoned C-2 (General Business) under the Dartmouth Land Use By-law. This zone was placed on the property in 2007, after it was determined that the site had been incorrectly zoned P (Park) in the 1970's. The C-2 zone permits most commercial uses, and multiple unit dwellings pursuant to the density standards of the R-3 (Medium Density Residential) zone. Commercial additions and expansions are permitted to take place on an "as-of-right" basis. However, the construction of more than two dwelling units in the zone requires a development agreement.

The area is mixed residential, with some institutional uses and vacant lots. The property directly abuts a provincially-owned senior citizen housing facility to the rear, and an HRM walkway to the south.

### **Enabling Policy**

Policy IP-5 of the Dartmouth MPS, included as Attachment B to this report, requires that any multiple unit dwelling project in the community go through the development agreement process. In addition, general implementation policy IP-1(c) provides general criteria for consideration.

## **DISCUSSION**

Staff have reviewed the applicable sections of the MPS and are of the opinion that the proposal is consistent with the plan's intent regarding multiple unit development. The following issues have been identified for more detailed discussion.

### **Allowable Density**

Based on the property's lot size of 8500 square feet, the C-2 zone would permit 7 one-bedroom units or 5 two-bedroom or greater units. The proposed combination of 5 one-bedroom and 1 three-bedroom units is also permitted. The development agreement allows variances in the unit type as a non-substantial amendment, pursuant to the density and amenity space standards of the R-3 Zone.

### **Building & Site Design**

The design of the addition emphasises and enhances the original architectural style and character of the existing building through the maintenance of traditional window proportions, and the use of solid clapboard style siding and trim. No vinyl is permitted. This design and the associated materials will reinforce the traditional village feel of the area and present a building with a high quality appearance.

The site has sufficient parking area to accommodate the existing commercial and proposed residential uses. Enhancements to the landscaping are required to increase the amount of greenery, in the form of shrubs and trees.

### **Amenity Space**

The R-3 zone standard requires amenity space such as patios, decks, balconies or useable lawn space. In this case, the space is to be provided on a common roof deck.

### **Signage**

The proposed development agreement addresses fascia signs on the expanded building. To ensure that advertising is kept in scale to the ground floor commercial uses, they may only be located at the first floor level. A planter box sign which already exists is also permitted. Signs may not be backlit, instead less obtrusive spotlighting must be used.

### **Compatibility**

Where the proposal is only for an upper level addition to an established building on a wide collector road, the proposal will have limited visual impact in the area. The only directly adjacent residential property is a 30 unit seniors housing project, which was developed at a higher density under the R-4 (High Density Residential) Zone. These are considered compatible uses.

### **Traffic**

A traffic impact statement indicates that there are no concerns either with access to the site or projected traffic volumes. HRM transportation staff concur with this assessment.

### **Conclusion**

The proposal meets the intent of MPS policy, and the density standards of the land use by-law. The development agreement ensures that the proposed building addition will result in enhancements to the overall appearance of the existing building, as well as the site. Staff therefore recommend approval of the application.

## **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 through a Public Information Meeting held on May 12, 2010, pursuant to standard procedure approved by Council. A public hearing has to be held by Council to consider approval of the development agreement.

For the Public Information Meeting, notices were posted on the HRM website, in the newspaper and mailed to property owners within the notification area as shown on Map 1. Attachment C contains a copy of the minutes from the meeting. Should Council decide to schedule a public hearing, property owners within the notification area shown on Map 1 will be notified of the hearing by mail. Public notices will also be posted in the local newspaper and on the HRM website.

The proposed development agreement will potentially impact the following stakeholders: local residents and property owners.

### **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 Agreement. The administration of the 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 proposed Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

### **ALTERNATIVES**

1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant, or an additional public hearing.
3. Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies.

### **ATTACHMENTS**

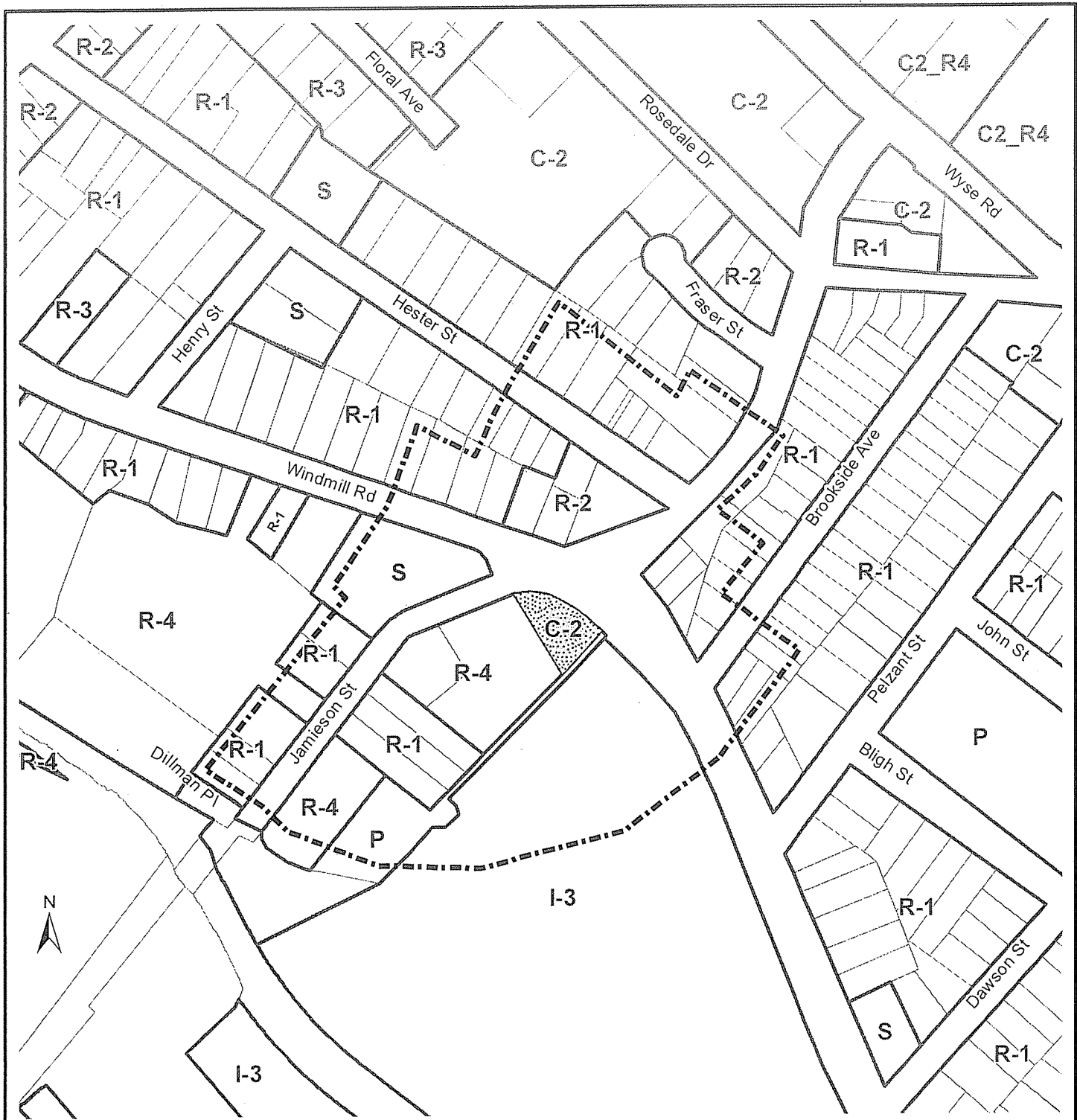
Map 1:	Location and Zoning
Attachment A:	Proposed Development Agreement
Attachment B:	MPS Policy IP-5 Regarding Multiple Unit Development
Attachment C:	Minutes of May 12 Public Information Meeting

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: Mitch Dickey, Planner, 490-5719




Report Approved by: Austin French, Manager, Planning Services, 490-6717



### Map 1 - Location and Zoning

185 Windmill Road

 Subject Property

 Notification Area

Dartmouth Plan Area

#### Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential (Medium Density)
- R-4 Multiple Family Residential (High Density)
- C-2 General Business
- I-3 Harbour Oriented Industrial
- P Park
- S Institutional

**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT  
PLANNING SERVICES

0 60 120 240 360  
Feet

This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Plan Area

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

Attachment "A"  
Proposed Development Agreement

THIS AGREEMENT made this     day of \_\_\_, 2010,

BETWEEN:

**ADELE JEBAILEY AND RODAS JEBAILEY,**

individuals, 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 185, 187, and 187 ½ Windmill Road, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for an addition to an existing commercial/residential building on the Lands, for the purpose of allowing up to six (6) dwelling units pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy IP-5 of the Dartmouth Municipal Planning Strategy;

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on \_\_\_\_\_, referenced as Municipal Case Number 15863;

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

**PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION**

**1.1 Applicability of Agreement**

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

## **1.2 Applicability of Land Use By-law and Subdivision By-law**

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Dartmouth and the Regional Subdivision By-law, as may be amended from time to time.

## **1.3 Applicability of Other By-laws, Statutes and Regulations**

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government, and the Developer agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

## **1.4 Conflict**

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

## **1.5 Costs, Expenses, Liabilities and Obligations**

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.



## 1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

## PART 2: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

### 2.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed at Halifax Regional Municipality as Case Number 15863:

Schedule A	Legal Description of the Lands(s)
Schedule B	Site, Landscaping, and Parking Plan
Schedule C	Front Elevation
Schedule D	Rear Elevation
Schedule E	East Elevation
Schedule F	West Elevation
Schedule G	Third Floor Plan

### 2.2 Requirements Prior to Approval

- 2.2.1 Prior to the issuance of a Construction Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer, detailed construction drawings which are in accordance with the schedules of Section 2.1 of this Agreement.
- 2.2.2 Prior to the issuance of a Municipal Occupancy Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
- (a) Written confirmation from a qualified professional which the Development Officer may accept as sufficient record of compliance with the landscaping requirements of this Agreement.
- 2.2.3 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

### 2.3 General Description of Land Use

The use(s) of the Lands permitted by this Agreement are the following:

- (a) A maximum of six (6) apartments, to be located on the second and third floors, and consisting of no more than one (1) three-bedroom unit, and five (5) one-bedroom units;
- (b) On the ground floor, any commercial use permitted within the C-2 (General Business) Zone, subject to the provisions contained within the Land Use By-law for Dartmouth, excepting all automotive-related uses; and
- (c) A pawn shop as a legal non-conforming use which shall remain subject to the non-conforming use provisions of the *Halifax Regional Municipality Charter*.

### 2.4 Siting And Architectural Requirements

2.4.1 The building's siting, bulk and scale shall comply with that as shown in the Schedules. Balconies may be added to the rear of the building, pursuant to the requirements of the National Building Code.

#### *Building Materials:*

2.4.2 Exterior cladding on the entire building shall consist of a clapboard style, hardboard siding which may be wood or composite material. No vinyl or PVC siding or trim shall be permitted.

#### *Functional Elements:*

2.4.3 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.

2.4.4 The Building shall be designed such that the mechanical systems (HVAC, exhaust fans, etc.) are not visible from adjacent streets or abutting residential properties. Furthermore, no mechanical equipment or exhaust fans shall be located between the building and the adjacent residential properties unless screened as an integral part of the building design and noise reduction measures are implemented. This shall exclude individual residential mechanical systems.

#### *Windows:*

2.4.5 The first floor front façade must include at least 50% windows openings. All windows shall be vertical in orientation, or square. Windows shall be vertically proportioned, where possible. Windows shall be framed with minimum 3" wide wood, prefinished metal, or hard composite material, which shall be painted or stained to provide a contrast to the siding.

*Awnings:*

- 2.4.6 Fixed or retractable awnings are permitted at ground floor levels provided the awnings are designed as an integral part of the building façade.

*Amenity Space:*

- 2.4.7 A minimum of 500 square feet of amenity space as defined by the Land Use By-law shall be provided. This shall include a common roof deck on top of the two storey portion of the building.

**2.5 PARKING, CIRCULATION AND ACCESS**

- 2.5.1 The parking area shall be sited as shown on Schedule B. The parking area shall maintain setbacks from the property lines as shown on the plan.
- 2.5.2 The parking area shall provide a minimum of 12 parking spaces.
- 2.5.3 The parking area shall be hard surfaced.
- 2.5.4 The limits of the parking area shall be defined by curb with landscaping behind.
- 2.5.5 Separate bicycle parking shall be provided for building residents and business customers, pursuant to the Land Use By-law

**2.6 OUTDOOR LIGHTING**

- 2.6.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

**2.7 LANDSCAPING**

- 2.7.1 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.

*Landscaping Plan*

- 2.7.2 Prior to the issuance of a Construction Permit, the Developer agrees to provide a Landscaping Plan which comply with the provisions of this section and generally conforms with the overall intentions as shown on Schedule B. A mix of nursery stock shrubs and trees shall be provided in numbers equivalent to those as shown on Schedule B. The Landscaping Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) or other qualified person and comply with all provisions of this section.

*Compliance with Landscaping Plan*

- 2.7.3 Prior to issuance of an 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.
- 2.7.4 Notwithstanding Section 2.7.3, the Occupancy Permit may be issued provided that the weather and time of year does not allow the completion of the outstanding landscape works and that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

**2.8 MAINTENANCE**

- 2.8.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

**2.9 SIGNS**

- 2.9.1 The following signs only shall be permitted on the Lands:
- (a) Fascia Wall Signs, including fixed and changeable letter models, on the front and west elevations only, which shall:
    - i) not have an area greater than one square foot per lineal foot of building wall (measured along the width of the wall) to which the sign is affixed;
    - ii) extend no more than two feet (2') above the ground floor, and may not extend beyond the extremities of the wall on which it is affixed.
  - (b) Projecting wall signs on the Windmill Road frontage, which shall:
    - i) only be permitted subject to the requirements of By-law E-200 - The Encroachment By-law;

- ii) not exceed an area of 16 sq. ft (1.5 square metres),
- iii) not exceed one per commercial retail unit.

2.9.3 Illumination of signs shall be through the use of shielded exterior lighting only.

## 2.10 TEMPORARY CONSTRUCTION USES

2.10.1 A building shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. A shipping container may also be permitted for tool and equipment storage, only in the rear yard area of the buildings on the Lands. Any construction building or shipping container shall be removed from the Lands prior to the issuance of the Occupancy Permit.

## 2.11 SCREENING

2.11.1 Refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing or masonry walls with suitable landscaping.

2.11.2 Mechanical equipment shall be permitted on the roof provided the equipment is screened and not visible from the adjacent streets or directly abutting residential uses, or incorporated in to the architectural treatments and roof structure.

## PART 3: STREETS AND MUNICIPAL SERVICES

### 3.1 *General Provisions*

3.1.1 All design and construction of primary and secondary service systems shall satisfy Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.

### *Off-Site Disturbance*

3.2 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

### *Outstanding Site Work*

3.3 Pursuant to section 2.7.4, submission of securities for the completion of outstanding on-site paving and landscaping work (at the time of issuance of the Occupancy Permit) may be permitted. Such securities shall consist of a security deposit in the amount of 110 percent of the estimated cost to complete the work. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable automatically

renewing letter of credit issued by a chartered bank. The security shall be returned to the Developer by the Development Officer when all outstanding work is satisfactorily completed.

#### *Solid Waste Facilities*

- 3.5 Refuse containers and recycling and compost bins shall be confined to the rear of the building, and shall be screened from public view where necessary by means of opaque fencing or masonry walls with suitable landscaping. Further, all containers and bins shall be screened from view of the adjacent property to the rear.

### **PART 4: ENVIRONMENTAL PROTECTION MEASURES**

#### **Erosion and Sedimentation Control and Grading Plans**

- 4.1 Prior to the commencement of any onsite works on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall have prepared by a Professional Engineer and submitted to the Municipality a detailed Erosion and Sedimentation Control Plan. The plans shall comply with the *Erosion and Sedimentation Control Handbook for Construction Sites* as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented.

### **PART 5: AMENDMENTS**

#### **5.1 Non-Substantive Amendments**

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) Changes to the landscaping measures as detailed in Section 2.7 which, in the opinion of the Development Officer, do not conform with Schedule B;
- (b) The granting of an extension to the date of commencement of construction as identified in Section 6.3 of this Agreement;
- (c) The length of time for the completion of the development as identified in Section 6.4 of this Agreement;
- (d) The conversion of one or more residential units to commercial office space; and
- (e) The conversion of ground floor commercial space to residential use and alterations in the type of unit by number of bedrooms, pursuant to the requirements of the R-3 (Medium Density Residential) Zone.

## 5.2 Substantive Amendments

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

## PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

### 6.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

### 6.2 Subsequent Owners

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

### 6.3 Commencement of Development

- 6.3.1 In the event that development on the Lands has not commenced within three years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 6.3.2 For the purpose of this section, commencement of development shall mean issuance of a Construction Permit.
- 6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 5.1 (b), if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

### 6.4 Completion of Development

Upon the completion of the whole development or complete phases of the development, 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;
- (c) discharge this Agreement; or

- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Dartmouth, as may be amended from time to time.

## 6.5 Discharge of Agreement

- 6.5.1 If the Developer fails to complete the development after five years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office 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.

## PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

### 7.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

### 7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;



- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SIGNED, SEALED AND DELIVERED** in the presence of:

**Rodas and Adele JeBailey**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

\_\_\_\_\_  
=====

**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**

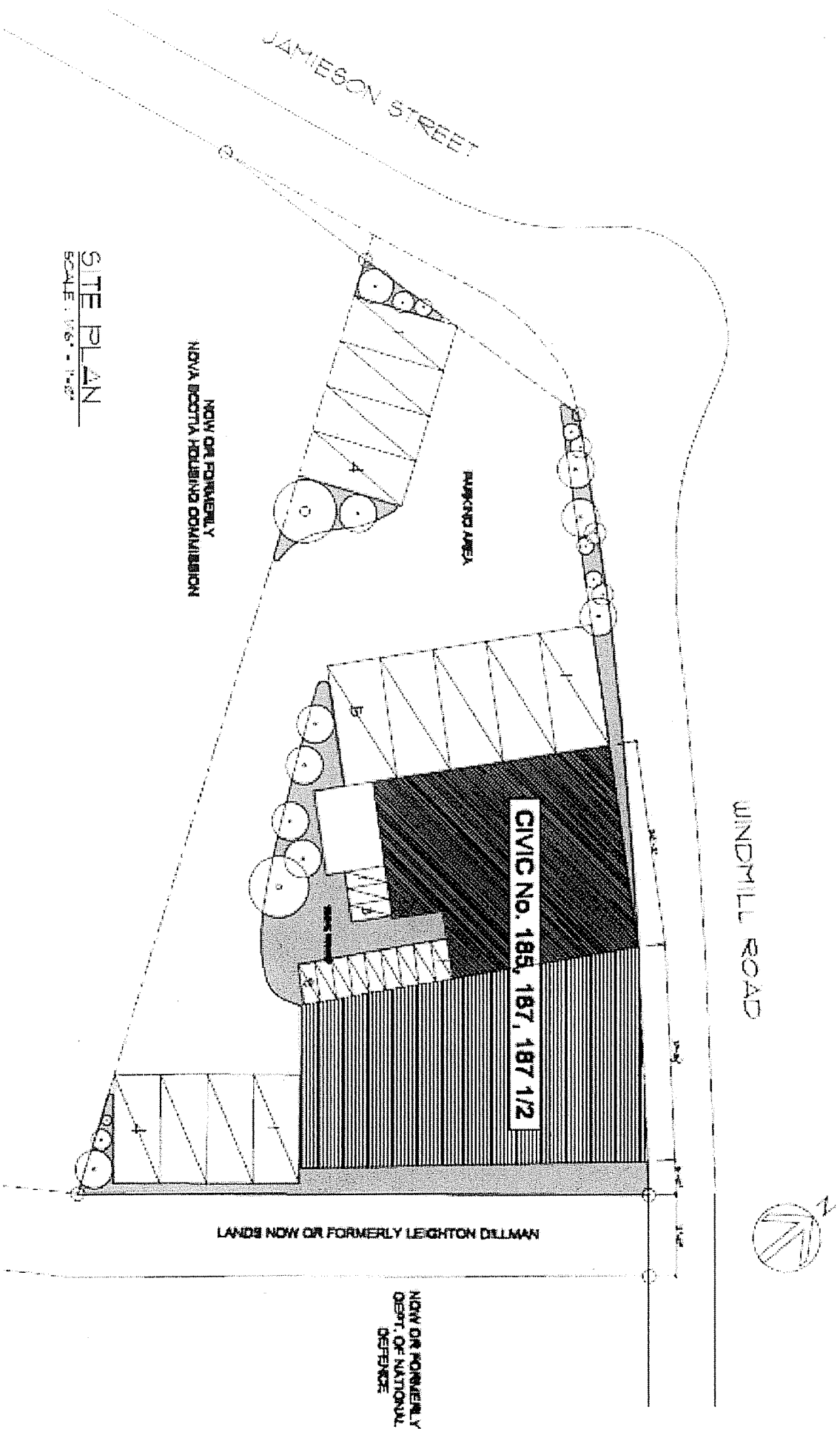
Per: \_\_\_\_\_

Mayor

Per: \_\_\_\_\_

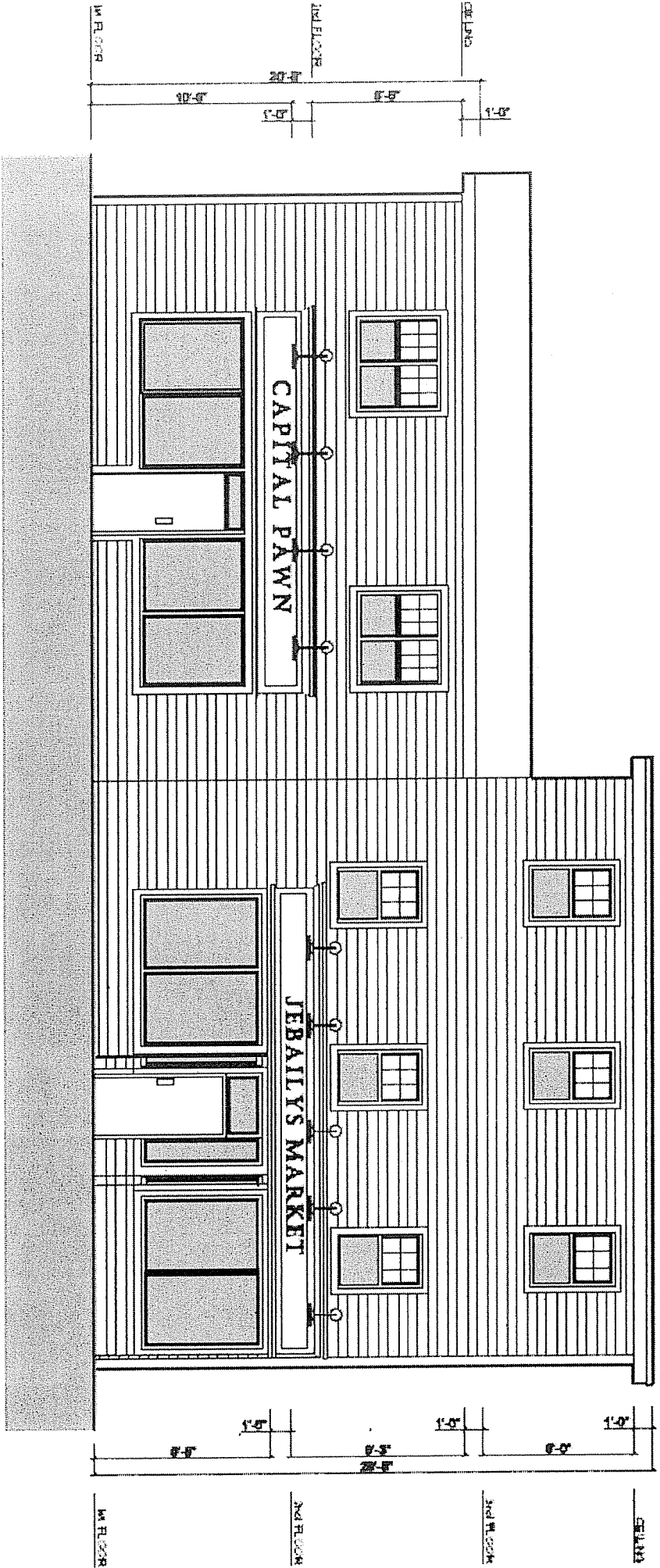
Municipal Clerk

Schedule B  
Site, Landscaping and Parking Plan



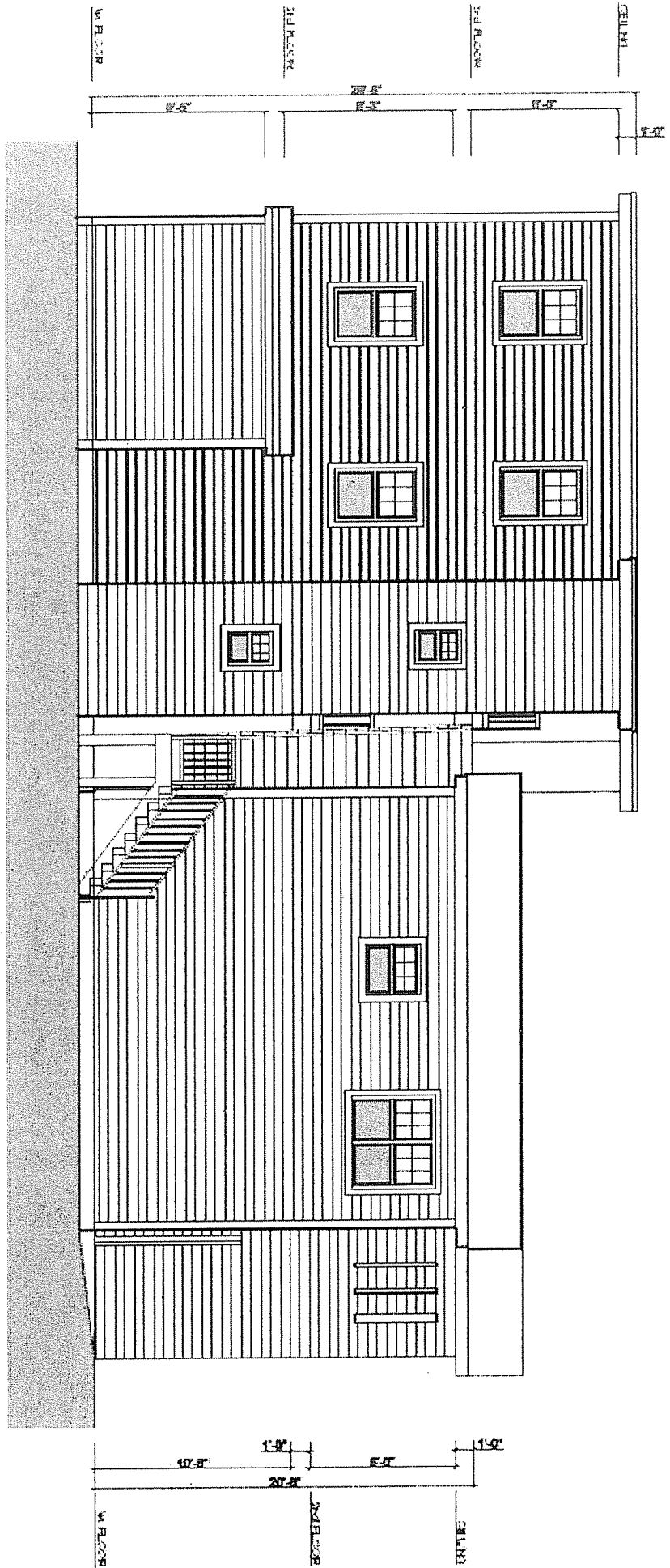
SITE PLAN  
SCALE: 1/8" = 1'-0"

# Schedule C



FRONT ELEVATION  
SCALE: 3/32" = 1'-0"

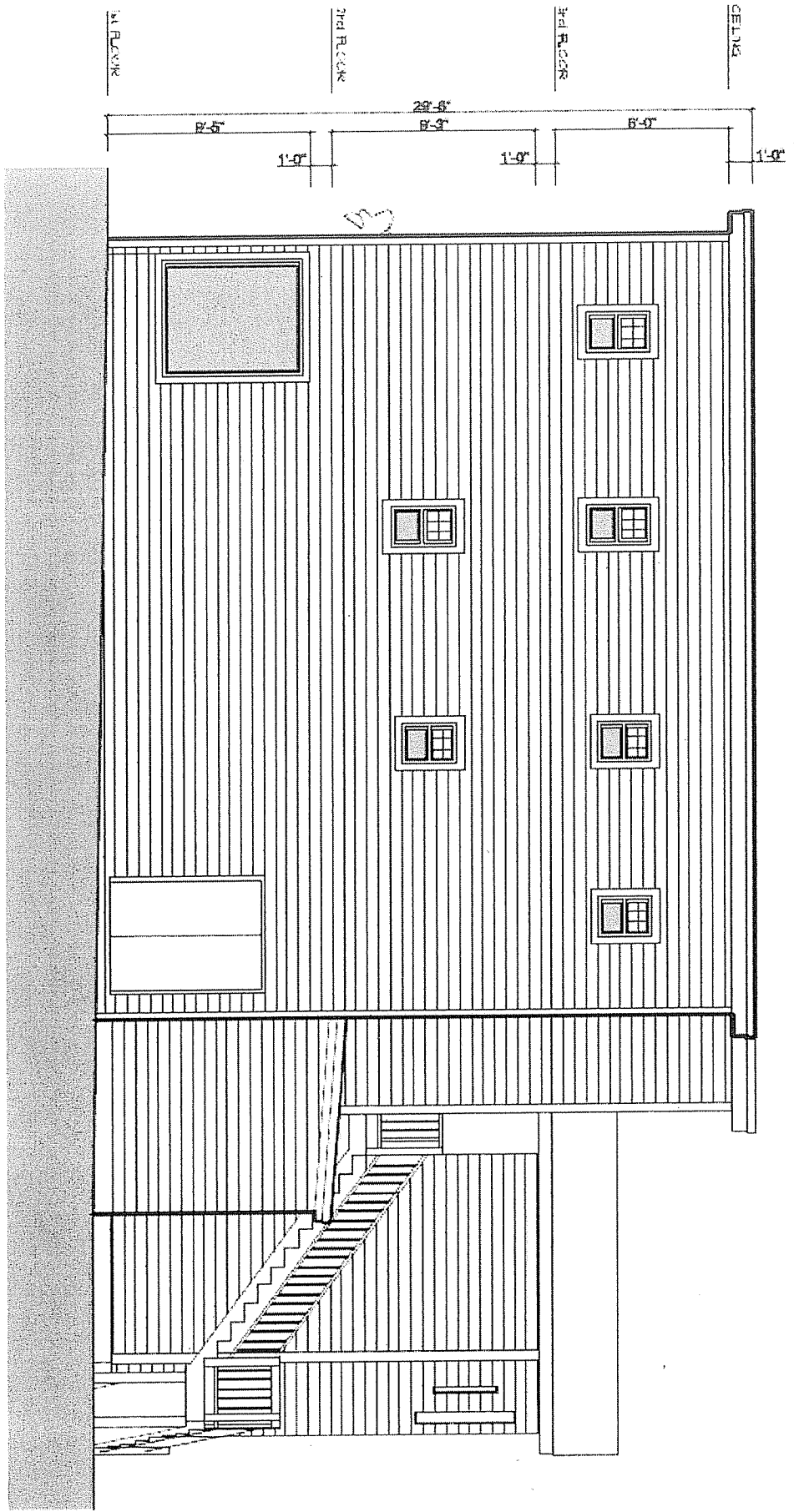
# Schedule D



REAR ELEVATION  
SCALE: 3/8" = 1'-0"

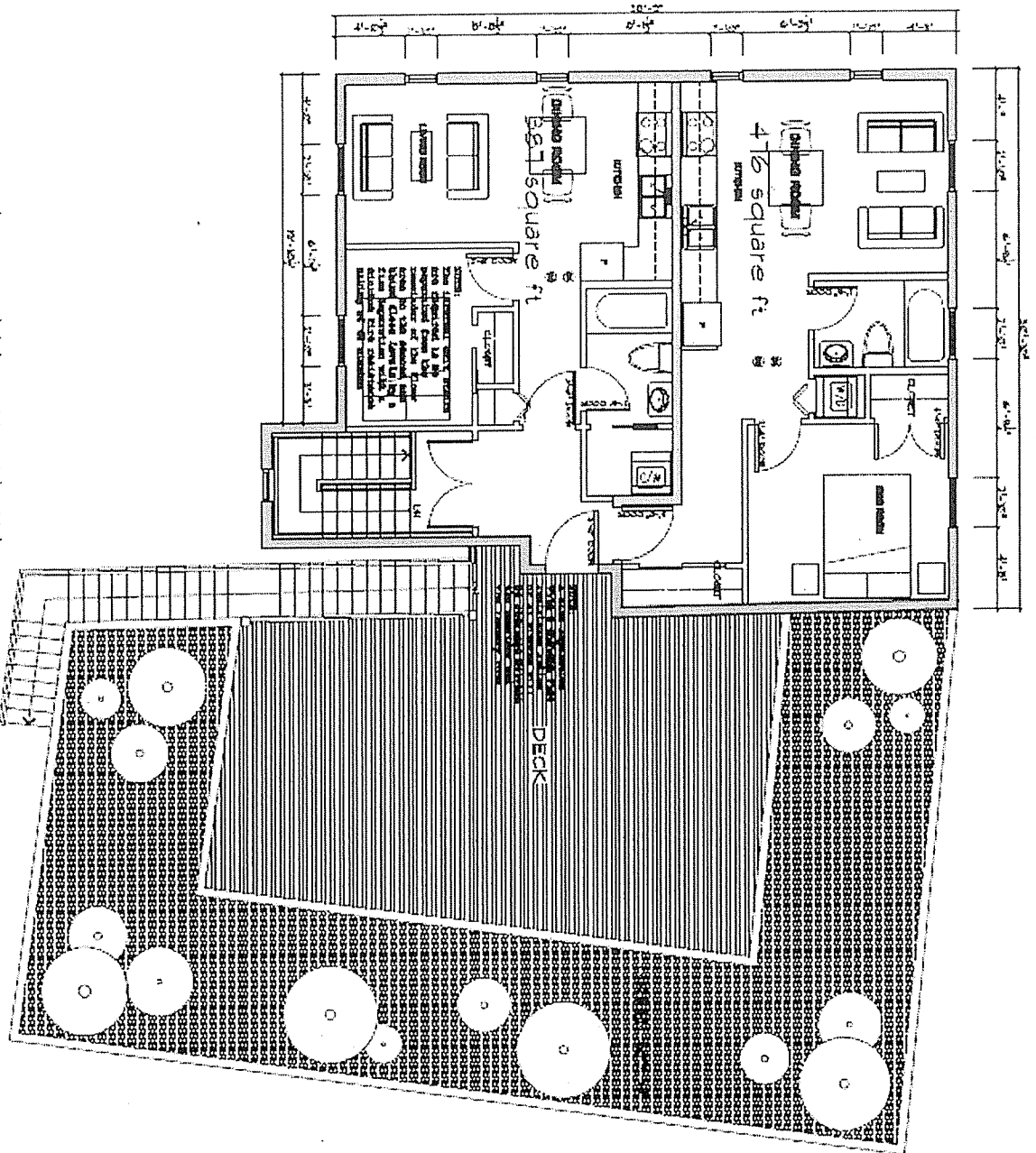


# Schedule F



WEST ELEVATION  
SCALE: 3/32" = 1'-0"

# Schedule G



PROPOSED 3rd FLOOR PLAN

SCALE: 3/32" = 1'-0"

**Attachment B**  
**MPS Policy IP-5 Regarding Multiple Unit Developments**

Policy IP-5 It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access & egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building.

In considering the approval of such Agreements, Council shall consider the following criteria:

- (a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;
- (b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:
  - (i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building;
  - (ii) traffic generation, access to and egress from the site; and
  - (iii) parking;
- (c) adequacy or proximity of schools, recreation areas and other community facilities;
- (d) adequacy of transportation networks in, adjacent to, and leading to the development;
- (e) adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing;
- (f) that mature trees and other natural site features are preserved where possible;
- (g) adequacy of buffering from abutting land uses;
- (h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and
- (i) the Land Use By-law amendment criteria as set out in Policy IP-1(c)



Attachment C  
Minutes of Public Information Meeting

HALIFAX REGIONAL MUNICIPALITY  
PUBLIC INFORMATION MEETING  
CASE NO. 15863 - 185 Windmill Road

7:00 p.m.  
Wednesday, May 12, 2010  
Dartmouth High School, Auditorium

**STAFF IN**

**ATTENDANCE:** Mitch Dickey, Planner, Planning Applications  
Holly Kent, Planning Technician  
Councillor Jim Smith  
Jennifer Little, Planning Controller

**ALSO IN** Geoff Keddy, Geoff Keddy and Associates  
**ATTENDANCE:** Councillor Jim Smith, District 9  
Joe JeBailey, Property Owner

**PUBLIC IN**

**ATTENDANCE:** 8

The meeting commenced at approximately 7:06 p.m.

**1. Opening remarks/Introductions/Purpose of meeting**

**Mr. Mitch Dickey**, Planner, Planning Applications, called the meeting to order at approximately 7:06 p.m. in the Dartmouth High School, Auditorium, 95 Victoria Road, Dartmouth.

Mr. Dickey advised that the application is to enter into a development agreement by Geoff Keddy Architects for the lands of Rodas JeBailey to allow an addition for 5 additional apartment units at 185 Windmill Road, Dartmouth.

Mr. Dickey reviewed the application process, noting that the public information meeting is an initial step, whereby HRM reviews and identifies the scope of the application and seeks input from the neighborhood. The application will then be brought forward to Harbour East Community Council which will hold a public hearing at a later date, prior to making a decision on the proposed development.

Mr. Dickey reviewed the a slide of the area, noting that the site is designated and zoned commercial. The zone permits most commercial uses and medium density residential housing. Key items for consideration are the design, appearance and quality of building and site; potential impact the development might have on abutting uses and potential traffic impacts.

**Mr. Geoff Keddy, Geoff Keddy and Associates, Applicant**, provided an overview of the proposal, reviewing a slide of the site and noting the following:

- The access to the residential units are in the back of the building.
- Reviewed a slide of the rear and side elevation and the parking area.
- Reviewed the floor plan layouts.
- The roof design is flat and will have deck space usable for the residents.
- The structure will have new hardboard siding.

In closing Mr. Keddy commented that he believes the proposed development would be complimentary to the existing neighborhood.

## 2. Questions and Answers

**Ms. Sandra Brownlee, Dartmouth** pointed out that there is a current pathway at this site that leads to the park and has previously decreased in size due to the insertion of the sewer treatment plant. She questioned if this application will have any impact on this pathway.

Mr. Keddy explained that the pathways will not be affected since the footprint of the building will not be expanded.

Ms. Brownlee asked what type of siding will be used.

Mr. Keddy explained that the new siding will be Hardy Plank.

Mr. Dickey explained that it has a wood like look and is a very solid material. This siding is a much better quality and is encouraged on residential/commercial projects.

**Mr. Jeff Chown, Dartmouth**, asked what type of tenants these apartments will attract?

**Mr. Joe JeBailey, Property Owner**, explained that the rent for these apartments will be compatible with other rental units in the surrounding area, but may be a little higher due to it being a newly reconstructed building.

Mr. Keddy added that due to the new construction, it will result in less heating costs and will be more environmentally friendly.

**Councillor Smith, District 9**, asked how many bedrooms will there be per unit?

Mr. Keddy explained that there will be one 3 bedroom unit and five 1 bedroom units.

**Mr. Jeff Chown, Dartmouth**, asked if the roof space will be accessible to the tenants and if so, what is the plan for it?

Mr. Keddy explained that there will be a roof top patio.

Mr. Dickey explained that the zoning by-law standards require 200-300 square amenity space per unit, this space has to be usable for recreational purposes.

Mr. Keddy spoke about the benefits of a roof top garden. On another project Mr. Keddy is currently working on, the patio space has in place TM9 turf mats, which is modular grass tiles developed specifically for converting rooftops into a green space area.

Mr. Dickey asked if there were any particular concerns about the proposal?

**Ms. Jen MacDonald, Dartmouth,** asked if the tenants will be allowed to grow vegetables on the rooftop?

Ms. MacDonald asked if garbage disposal, recycling and pickup arrangements will follow the residential or the commercial schedules?

Mr. Dickey explained that under the solid waste by-law a separate waste stream is required. The owner of the building would have a commercial hauler on a set basis. HRM also requires a full separation of compost, garbage and recyclables.

Ms. MacDonald expressed concern regarding the smell this might generate with a once a week scheduled pickup.

Ms. Brownlee added that the rooftop green space is a great idea. She asked who would be responsible for maintaining it?

Mr. Keddy explained that the grass is very low growth and very low maintenance. He explained that there is a company within the Municipality that can be hired for this type of maintenance.

Mr. Dickey explained that under the zoning by-law, the owner would be responsible for the maintenance and upkeep. Under this by-law, the owners are also responsible for landscaping, parking, paint etc.

**Ms. Norah Ellis, Dartmouth,** asked what the time frame for construction will be.

Mr. Dickey explained that it is likely the application process will go to Council for a Public Hearing in September 2010. Therefore, the applicant could be able to apply for building permits in October 2010.

Mr. JeBailey added that they are very eager to start the process and as soon as they receive approval from Council, they will start construction soon after.

Mr. Keddy explained that the estimated total construction time will take approximately 8 months to complete.

**Mr. Harry Tarbeth, Dartmouth,** asked why they were developing all one bedroom apartments vs. having the apartments accommodate for a family and explained that this will only attract single people.

Mr. Keddy explained that this property is located on a main highway and is likely not to attract families with small children.

Mr. Dickey explained that there are much higher standards and more controls through a development agreement process.

Councillor Smith asked where the refuse containers will be located?

Reviewing a slide of the property, Mr. Keddy pointed to where the containers will be placed, explaining that they will be at the rear of the building.

Mr. Dickey explained that this will be identified more clearly on the final site plan.

Councillor Smith expressed concern with more apartment buildings in the North End that are not of quality and added that residents deserve good quality accommodations. He added that the suggested amenity space may not be appropriate for all residents as some may not garden and for 7 months of the year, it will not be usable due to winter conditions. He suggested that balconies may be a better option and will also benefit the appearance of the building.

Mr. Keddy explained that there are positives and negatives to having balconies. He explained that french balconies could be a better option.

Councillor Smith asked if the current parking lot meets the parking requirements in the By-Law?

Mr. Keddy explained that the current spaces available does meet the commercial zoning requirements.

Mr. Dickey explained that typically for retail space, the two retail units require one space per 300 square feet. However, this may be a bit excessive for this type of use and will be reviewed during the full evaluation of the parking area during the next stage of the application process. He also added that there is also an urban standard for bike racks.

Councillor Smith explained that one of the major concerns that is brought forward is noise complaints. He recommended a sound barriers be placed between the walls, this will allow tenants to enjoy the apartment to its fullest and will possibly result in longer term tenants.

Mr. Keddy agreed and explained that there is a minium standard required by the building code.

A lady of the residents asked if the pawn shop will remain there?

Mr. JeBailey confirmed that the pawn shop will remain.

She expressed concern with fire hazards and asked what the fire evacuation plans are.

Mr. Keddy explained that every unit is accessed directly to the outdoors. The siding is also noncombustible and assured that it will meet all the regulations in the fire code.

Mr. Dickey explained that all new constructions are required to meet HRM's Fire By-Law.

Ms. Brownlee asked what the distance requirements are for building next to an abutting property?

Mr. Keddy explained that National Building Code requirements dictate setbacks based on window openings and combustible materials.

Mr. Jebailey explained that there is a walk way between the two properties of 4-5 feet.

Mr. Dickey explained that this application is to build up and not to widen it in anyway so setbacks are not proposed to be changed.

Ms. MacDonald asked if there will be or can be a non-smoking rule within the apartment.

Mr. Jebailey explained that he couldn't make each of the units non-smoking as it would take away the rights of the tenant.

Mr. Keddy said that there will be a ventilation system in the building, which will ensure high air quality.

Ms. MacDonald asked if it could be a possibility that each tenant own their own individual piece of the green space on the rooftop.

Mr. Keddy explained that it would be too difficult to regulate that.

Mr. Brownlee explained that she has some concern with the neighborhood changing. She addressed concern with the height of this building blocking the views of the bridge. She also explained that there has been some crime activity in this neighborhood and has concern with the possibility of it increasing.

Mr. Keddy explained that this will be a higher quality apartment building and hopes that it will attract higher quality tenants.

**Ms. Holly MacDonald, Dartmouth,** expressed concern with this not improving the quality of tenants.

Mr. JeBailey assured that the quality of tenants is also very important to him as well.

### 3. Closing Comments

Mr. Dickey thanked everyone for attending. He encouraged anyone with further questions or comments to contact him.

4. Adjournment

The meeting adjourned at approximately 7:55 p.m.