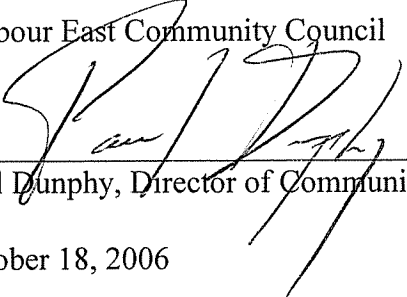


TO: Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: October 18, 2006

SUBJECT: **Case 00922: Non Substantive Amendment to Development Agreement - The Summit (10 Horizon Court)**

ORIGIN

Application by Can-Euro Investments Ltd for a non-substantive amendment to a development agreement to allow for changes to a requirement to consolidate all lots.

RECOMMENDATIONS

It is recommended that Harbour East Community Council:

1. Approve, by resolution, the non-substantive amendment to Can-Euro Investments Ltd's development agreement with the Municipality for a multi-unit residential building at 10 Horizon Court, as shown in Attachment A (the amending development agreement) to allow for changes to a requirement to consolidate all lots.
2. Require the amending 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 whichever approval is later, including applicable appeal periods, otherwise, this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Can-Euro Investments Limited currently owns three buildings on two properties on Horizon Court: the Summit -- a 150 unit, 19 storey building which is currently under construction; Horizon Estates -- a 16 storey, 124 unit building which originally received approval in 1986; and Gardenstone Estates -- an 86 unit, 3-storey low-rise constructed in 1993 (Map 1).

The original agreement for the Summit has been amended twice already, as summarized below:

The Summit - 10 Horizon Court

Case 00427 -- Development Agreement for 142 unit highrise.(May 20, 2003).

Case 00661 -- Amendment to Development Agreement to allow for: six additional units for a total 148 units; changes to the roofline; changes to require consolidation of all lots prior to *occupancy* permit (instead of prior to *development* permit); and changes to allow matters of subdivision/ consolidation to be dealt with in the future as non-substantive amendments (May 6, 2004).

Case 00807 -- Amendment to Development Agreement to allow for two additional units for a total of 150 units (October 6, 2005).

Clause 1.1 of the development agreement currently requires the developer to consolidate all the lands subject to the development agreement into one lot prior to issuance of an occupancy permit. The lands subject to the development agreement include two lots with three buildings as described above (Map 1). The developer would first like to eliminate this requirement to consolidate and then allow for subdivision of the lands along the lines shown in Schedule G of the amending agreement (Attachment A).

DISCUSSION

A review of the original case file (case #00427) suggests that the requirement to consolidate was incorporated into the development agreement at the request of the developer who felt the best way to allow flexibility to shift density from any one portion of their holdings to any other was to consolidate all their lands into one lot. While this is not necessarily the case (density, among other matters, is subject to negotiation through the development agreement process required by policy IP-5 of the Dartmouth Municipal Planning Strategy), the clause was incorporated because there did not appear to be any reason based in policy not to do so.

At this time, it appears that for reasons of financing and mortgage insurance, the developer requires a different lot layout than the existing development agreement stipulates. Staff have evaluated the proposed changes and provided that service and access easements remain in place for any new lots created, have no concerns with the proposal.

Public Participation

Council may approve these changes pursuant to the Non-Substantive Amendment clause (Section 2.10) in the existing agreement. A public hearing is not required.

Conclusion

The original requirement to consolidate was requested by the developer and there appear to be no reasons based in policy resulting from the elimination of this requirement.

BUDGET IMPLICATIONS

None

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

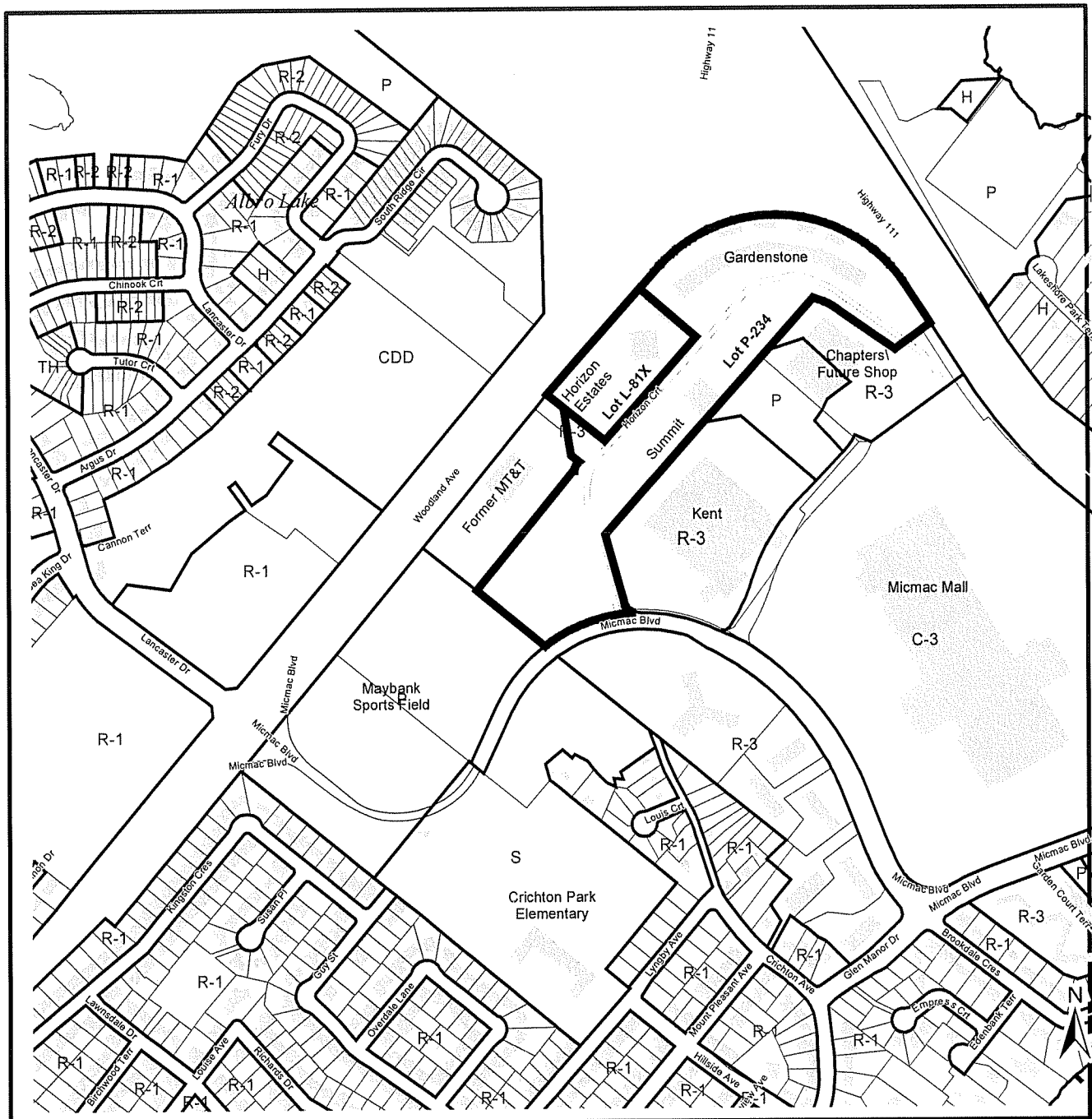
1. Council may approve the amending development agreement. This is the recommended course of action.
2. Council may refuse to amend the agreement. This alternative is not recommended as staff are satisfied that the proposal is consistent with the policies and intent of the MPS.
3. Council may choose to propose modifications to the amending agreement. Such modifications may require further negotiations with the developer.

ATTACHMENTS

Map 1:	Zoning and Location
Attachment A	Draft Amending Agreement

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Hanita Koblents, Planner, 490-4181




Map 1 - Location & Zoning

Horizon Court

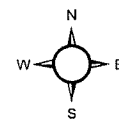
Zoning

- R-1 Single Family Residential Zone
- R-2 Two Family Residential Zone
- R-3 Multiple Family Residential Zone
- TH Townhouse Zone
- CDD Comprehensive Development District

Dartmouth By-Law Area

 Subject site

- C-3 General Business Zone
- P Park Zone
- S Institutional Zone
- H Holding Zone



HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES

0 100 200 m

This map is an unofficial reproduction of a portion of the View Plane Map for the Dartmouth Land Use By-Law Area

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

Attachment A
Draft Amending Agreement

THIS AMENDING AGREEMENT made this day of , 2006,

BETWEEN: **CAN EURO INVESTMENTS LIMITED**
a body corporate, in the County of Halifax
("the Developer")

OF THE FIRST PART

HALIFAX REGIONAL MUNICIPALITY
a body corporate, in the County of Halifax,
Province of Nova Scotia ("the Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located on Mic Mac Boulevard (PID 40661589), Dartmouth, Nova Scotia, and which said lands are more particularly described in Schedule 'A' to this agreement (hereinafter called the "Lands");

AND WHEREAS the Harbour East Community Council of the Municipality approved an application by the Developer to enter into a development agreement to allow for a 142 unit apartment building on the Lands (Municipal Case #00427), which said development agreement was registered at the Registry of Deeds at Halifax in Book No. 7533 at Pages 726-747 (hereinafter called the “Agreement”);

AND WHEREAS the Harbour East Community Council of the Municipality previously amended the Agreement by entering into an amending agreement with the Developer on May 6, 2004 (Municipal Case # 00661), to allow a total of 148 units, changes to the roofline, changes to the lot consolidation requirements and changes to the list of non-substantive amendments; said agreement being recorded at the Registry of Deeds in Halifax as Document 75954157 in Book 7813 at Pages 970-973 (hereinafter called the “First Amending Agreement”);

AND WHEREAS the Harbour East Community Council of the Municipality previously amended the Agreement by entering into an amending agreement with the Developer on October 6, 2005 (Municipal Case #00807) to allow for a total of 150 units; said agreement being recorded at the Registry of Deeds in Halifax as Document #_____ in Book #_____ at Pages #_____ (hereinafter called the “Second Amending Agreement”);

AND WHEREAS the Developer has requested an amendment to the "Agreement" to allow for changes to the lot consolidation requirements;

AND WHEREAS the Harbour East Community Council of the Municipality approved this request at a meeting on the _____ day of _____, 2006, referenced as Municipal Case #00922 (hereinafter called the "Third Amending Agreement");

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

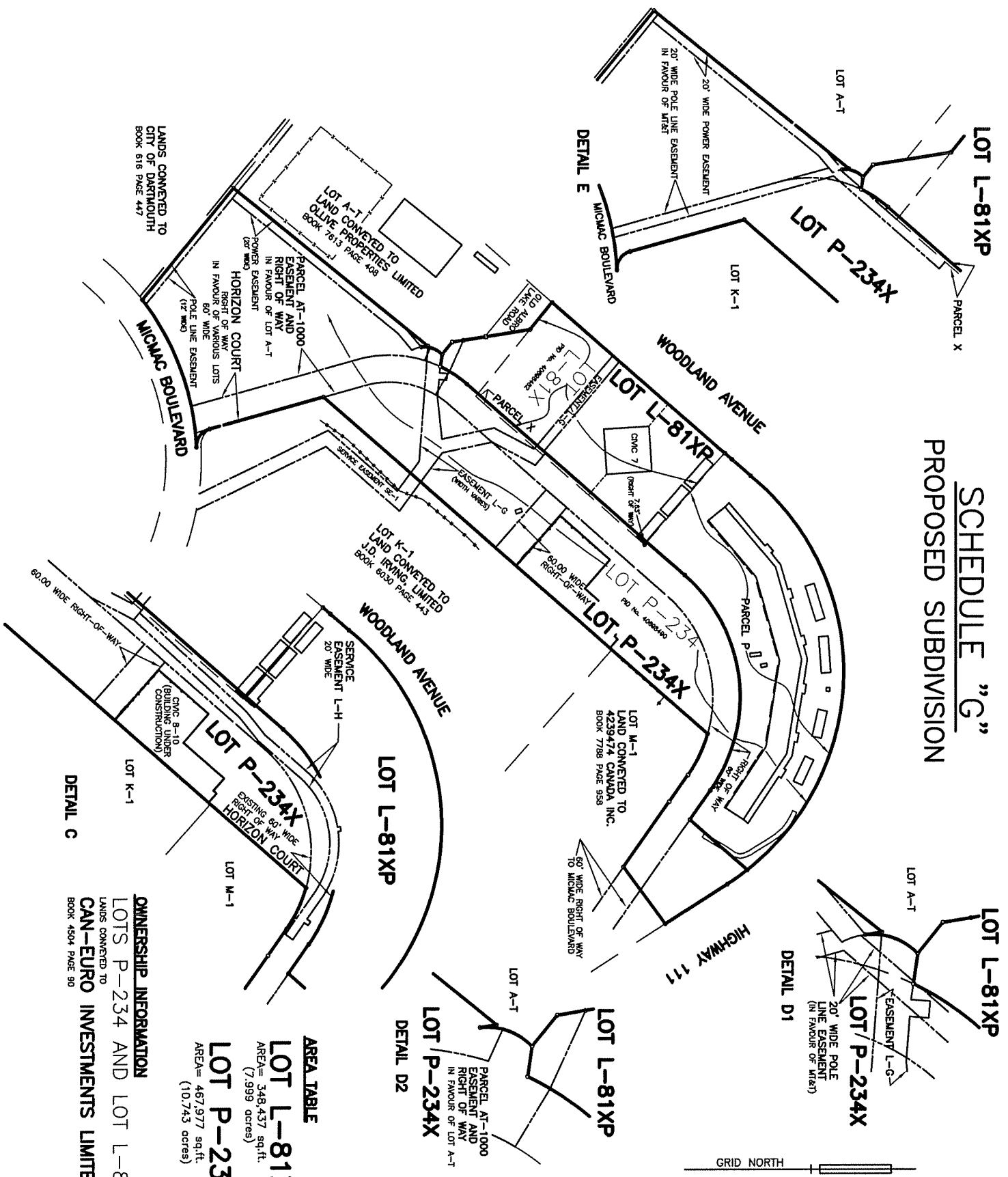
1. To amend Section 1.1 of the Agreement by deleting the second sentence as follows:
1.1 The Developer agrees that the Lands shall be subdivided, developed and used only in accordance with and subject to the terms and conditions of this Agreement. ~~The Developer further agrees that all parcels of the Lands shall be consolidated into one lot prior to issuance of an Occupancy Permit.~~
2. To add to the list of schedules immediately following "Schedule 'F' Erosion and Sedimentation Control Plan" the following:
Schedule 'G' Proposed Subdivision
3. To add Schedule 'G' as attached to this amending agreement to the agreement.
4. To add the following new section to the Agreement immediately following section 2.1:
2.1.1 Subdivision
Subdivision of the lands may be carried out as generally shown on Schedule G, provided that service and access easements are in place over each lot in favour of the other.
5. All other terms of the Agreement shall remain in full force and effect.
6. This Amending Agreement and everything contained herein shall be binding upon the Parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set hands and seals to this Amending Agreement on the day and year first above written.

SIGNED, SEALED AND DELIVERED) CAN EURO INVESTMENTS LIMITED
in the presence of)
)
Per _____) Per _____
)
)
) Per _____

Sealed, Delivered and Attested by the) HALIFAX REGIONAL MUNICIPALITY
proper signing officers of Halifax)
Regional Municipality duly authorized)
on that behalf in the presence of) Per _____
) Mayor
)
Per _____) Per _____
	Municipal Clerk

SCHEDULE "G" **PROPOSED SUBDIVISION**



AREA TABLE

LOT L-81XP
AREA= 348,437 sq.ft.
(7.999 acres)
LOT P-234X
AREA= 467,977 sq.ft.
(10.743 acres)

OWNERSHIP INFORMATION

LOTS P-234 AND LOT L-81X
LANDS CONVEYED TO
CAN-EURO INVESTMENTS LIMITED
BOOK 4504 PAGE 90

DETAIL C

DETAIL D1

DETAIL E

DETAIL D2