

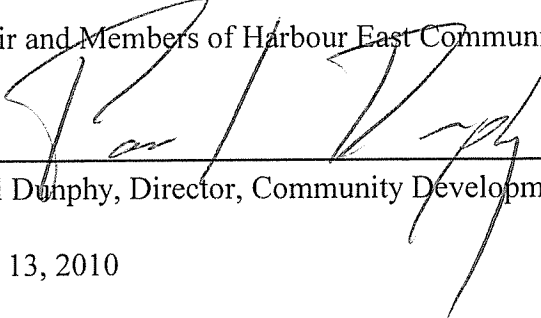
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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
August 5, 2010

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director, Community Development

DATE: July 13, 2010

SUBJECT: Case 16032: Development Agreement - 613 Main Street, Westphal

ORIGIN

Application by Terrain Group Inc., for lands of Madison Realty Limited, to enter into a new development agreement that continues to permit licensed establishments, by replacing the existing development agreements at 613 Main Street, Westphal.

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 as set out in Attachment A of this report to permit licensed establishments within the existing building at 613 Main Street, Westphal;
3. Require the 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; and
4. Discharge, by resolution of Council, the development agreements and associated amending agreements as set out in Attachment B, C and D for 613 Main Street following registration of the new development agreement.

BACKGROUND

The commercial building situated at 613 Main Street contains a number of commercial uses, including drinking establishments which are only permitted within buildings over 10,000 square feet by development agreement. At present, there are three development agreements on the property for the former Par-T Golf site, Beazley's Bowling lanes and the former Dooley's. Terrain Group Inc. has requested an amendment to the development agreement for the former Par-T Golf site, known now as Soul City, to permit a dance floor and stage as part of a dining room and lounge use. They are also requesting consolidation of the 3 existing development agreements applied to the lands.

The lands location, designation, zoning and surrounding land uses are:

- located in the north corner of intersection of Forest Hills Extension and Highway 7;
- approximately 6.26 acres in area and extends northerly to Loon Lake;
- designated Highway Commercial under the Cole Harbour/Westphal Municipal Planning Strategy;
- zoned C-4 (Highway Commercial) under the Cole Harbour/Westphal Land Use By-law; and
- surrounding lands are zoned C-4 and contain a mix of commercial uses.

Enabling Policy

Under the Cole Harbour/Westphal Municipal Planning Strategy (Attachment B), Policy HC-5 permits beverage rooms and other entertainment uses only in commercial structures having greater than 10,000 square feet by development agreement. Policy HC-5 criteria for location of beverage rooms states that Council shall have regard for separation distance from residential uses, site access, site drainage, landscaping and the location of storage, parking and loading.

Existing Development Agreements

The existing development agreements for 613 Main Street were put in place to permit beverage room and licensed eating establishments with lounges for 3 separate businesses as shown on Map 3:

- i) former Par-T Golf - approximately 5000 square feet of licensed area;
- ii) Beazley's Bowling - approximately 1000 square feet of licensed area; and
- iii) former Dooley's - approximately 10,000 square feet of licensed area.

The 3 agreements address the area where alcohol may be consumed, seating capacity, hours of operation, prohibition of adult entertainment and prohibition of dance floors and stages. The agreements share a common site plan and have similar parking and signage requirements.

Provincial Regulations

Anyone who wants to provide liquor service for an establishment or event in Nova Scotia must obtain a licence from Nova Scotia Alcohol and Gaming Division for the particular service they wish to provide. Licences are issued under the *Liquor Control Act* regulations for beverage rooms, lounges, eating establishments, cabarets, clubs, catering and special events. Regulations control such things as hours of food service, hours of operation, entertainment, areas where alcohol may be served and types of alcohol served.

DISCUSSION

Staff have reviewed the proposal based on all applicable policies of the Cole Harbour/Westphal MPS, which are included in Attachment E of this report. Staff are of the opinion that the proposal is consistent with all applicable policies of the Cole Harbour/Westphal MPS. The following issues have been identified for more detailed discussion.

Land Use Conflicts

The existing commercial building on the lands at 613 Main Street is located in a well established commercial area with no immediate surrounding residential uses. However, to minimize impacts of the proposed uses on any adjacent or nearby land uses the draft development agreement (Attachment A):

- restricts hours of deliveries and refuse collection to between 6:00 a.m. and 6:00 p.m.;
- requires lighting to be directed away from streets, neighbouring properties and buildings;
- requires site to be maintained in good repair; and
- prohibits cabaret uses and adult entertainment uses.

Parking and Access

The draft development agreement requires on-site parking to be consistent with the site plan (Schedule B) of the development agreement. The site plan shows 164 existing parking spaces that exceeds the ratio required under the LUB. The applicants also wish to permit an automobile display court on the site that is a permitted use in the C-4 zone. To address this use, those parking spaces situated along the eastern side of the building shall be permitted to be used for the sale and display of automobiles.

To address safety concerns regarding traffic accessing and egressing the site, the proposed Agreement limits access/egress point to the existing situation with no changes permitted.

Landscaping

The terms of the proposed Agreement require that the planter box bases of the existing freestanding signs be planted with a combination of deciduous and coniferous shrubs. Staff believe that these plantings will enhance the signage and soften the large area of asphalt and other hard materials that surround the building. Also, the Agreement requires that wooden planter boxes shall be located by all doorways on the south side (facing Main Street) and planted with a coniferous shrub. This continues the wooden planter theme established on the west side of the building and will contribute to softening the Main Street facade.

Signage

The facade of the building facing Main Street has an existing awning with signage that extends only half way across the building. The draft Agreement requires that the awning continue across the complete facade of the building to visually enhance and unify the Main Street facade. The draft Agreement also permits the existing freestanding signage to remain on the lands.

Liquor Services

When the responsibilities of the former Nova Scotia Liquor Licence Board were assumed by Alcohol and Gaming Division regulations changed in respect to hours of service, admittance of minors, bring-your-own wine, and extended opportunities for liquor service for special events. Also, any changes to size (floor plan), structure or location of licensed premises (e.g. patio) are submitted to the Review Board in order to have changes approved. A development agreement may provide more stringent requirements than those of Alcohol and Gaming. Staff believe that providing for licensed drinking areas within the existing building up to a total of 10,000 square feet, and up to a further 30% increase in floor area by minor amendment, provides the flexibility the applicant is seeking and is consistent with the intent of Policy HC-5 to regulate drinking establishments. Staff are not recommending any further restrictions beyond those of the Alcohol and Gaming Division because there is minimum impact on nearby residential uses as the surrounding land uses are large scale commercial operations.

Discharging of Agreements

If the proposed development agreement is approved, and pending no appeals to the Nova Scotia Utility and Review Board, staff will prepare a supplementary report following signing and registration of the agreement. The report will contain a recommendation for discharging the existing development agreements and any associated amending agreements.

Conclusion

Staff is of the opinion that the proposed development agreement as set out in Attachment A is consistent with the intent of the MPS for the provision of beverage rooms and other entertainment uses within the Highway Commercial designation. Therefore, staff recommend that Harbour East Community Council approve the proposed development agreement, included as Attachment A to this report. Upon registration of the agreement, Council shall discharge all existing development agreements and amending agreements applied to the property.

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 approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

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 June 14, 2010. No members of the public were in attendance at this meeting. A public hearing has to be held by Council before they can consider approval of any applications.

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 2. Should Council decide to proceed with a Public Hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 2.

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

ALTERNATIVES

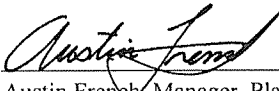
1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant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

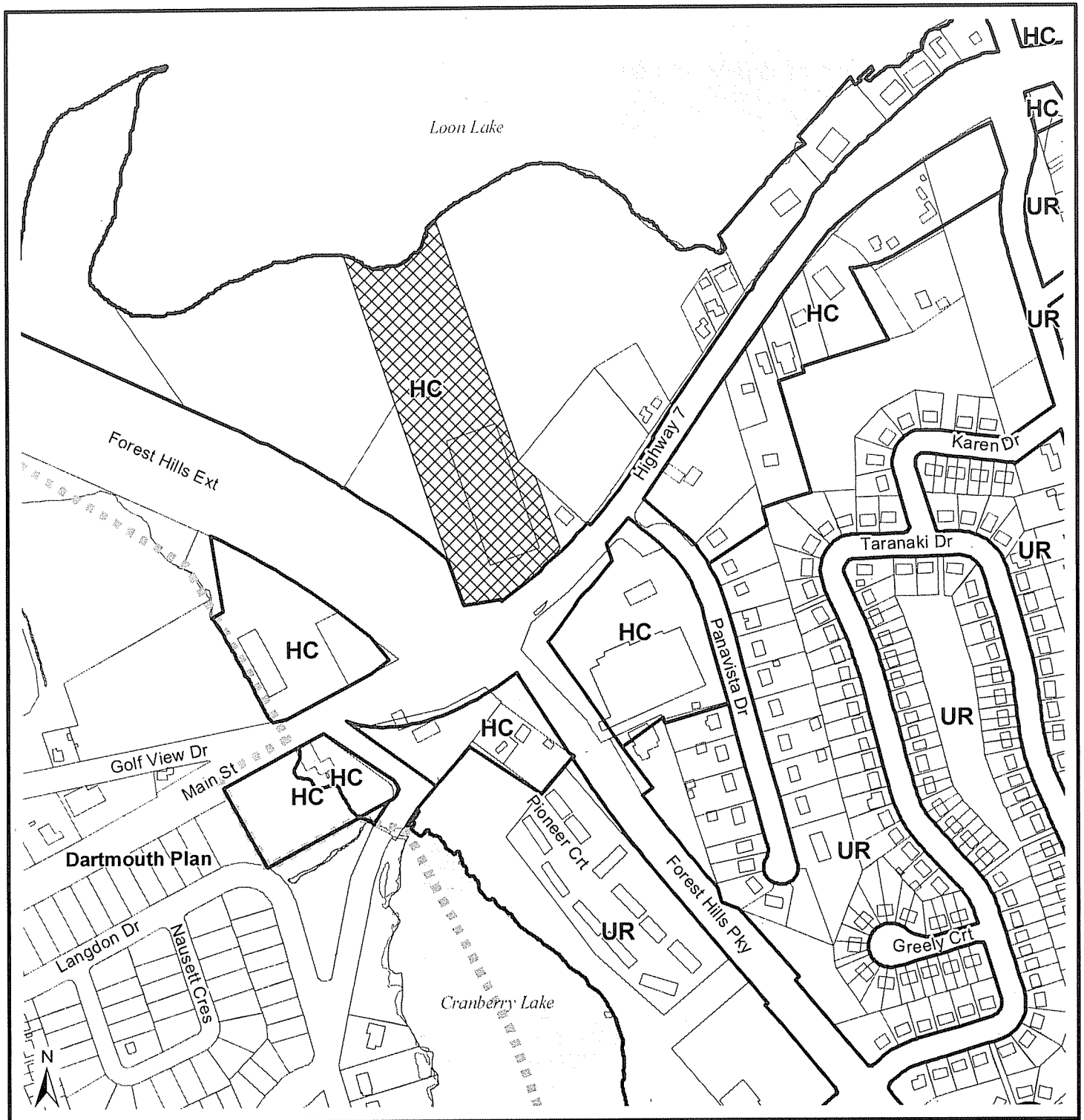
ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification
Map 3	Licensed Areas
Attachment A	Proposed Development Agreement
Attachment B	Discharging Agreement (Sandtrap Amusements)
Attachment C	Discharging Agreement (Beazeley's Bowling)
Attachment D	Discharging Agreement (Dooley's Loon Lake)
Attachment E	Excerpts from Cole Harbour/Westphal Municipal Planning Strategy
Attachment F	Excerpts from Cole Harbour/Westphal Land Use By-law

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 : Darrell Joudrey, Planner 1, Planning Applications, 490-4181

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



Map 1 - Generalized Future Land Use

613 Main Street

-  Subject Property
-  Plan Area Boundary

Designation

- HC Highway Commercial
- UR Urban Residential

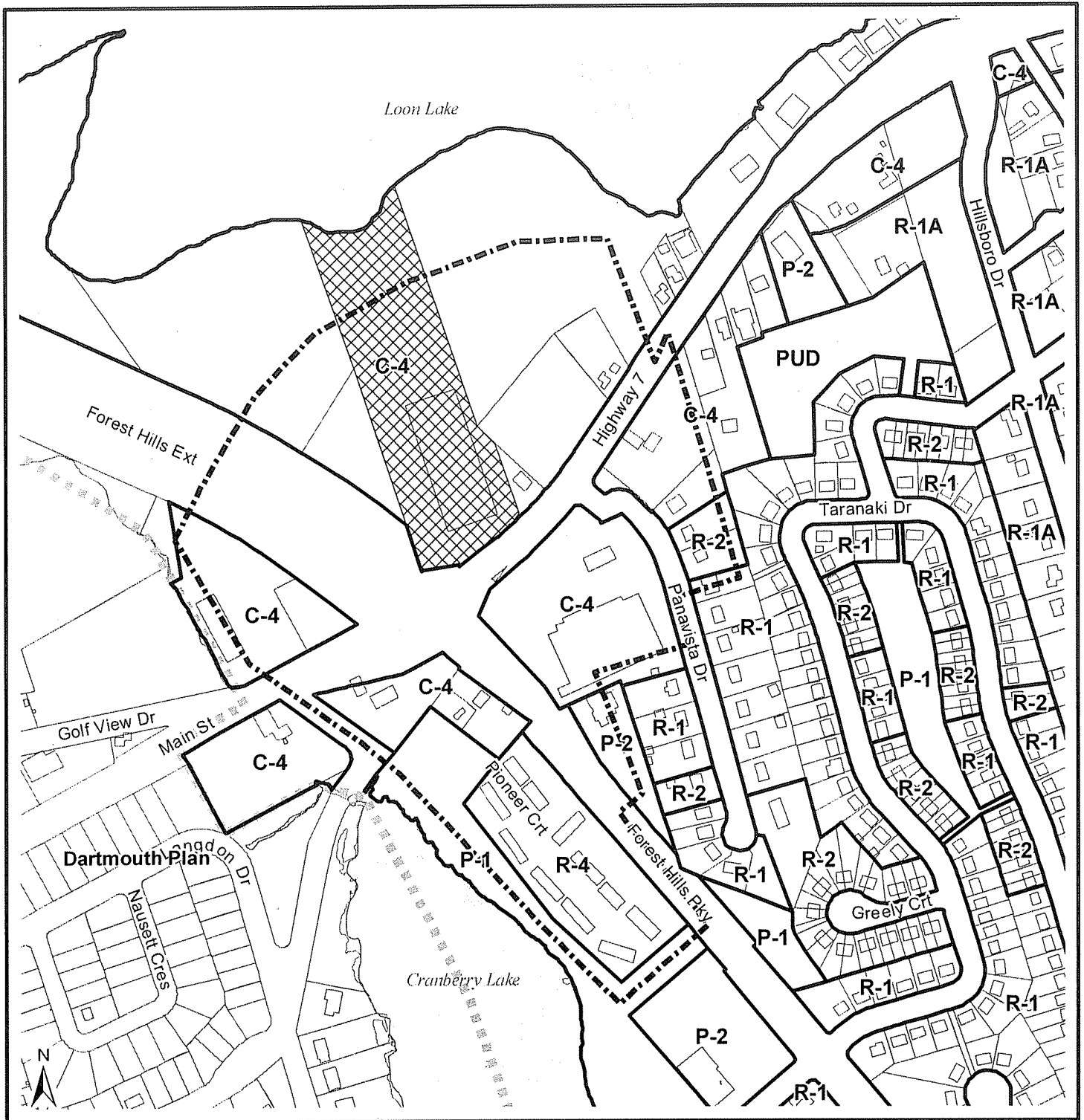
HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 100 200 400 600
Feet

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Cole Harbour/Westphal Plan Area.



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

Cole Harbour/Westphal Plan Area



Map 2 - Zoning and Location

613 Main Street

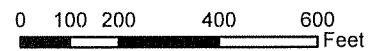
-  Subject Property
-  Plan Area Boundary

Cole Harbour/Westphal Plan Area

Zoning

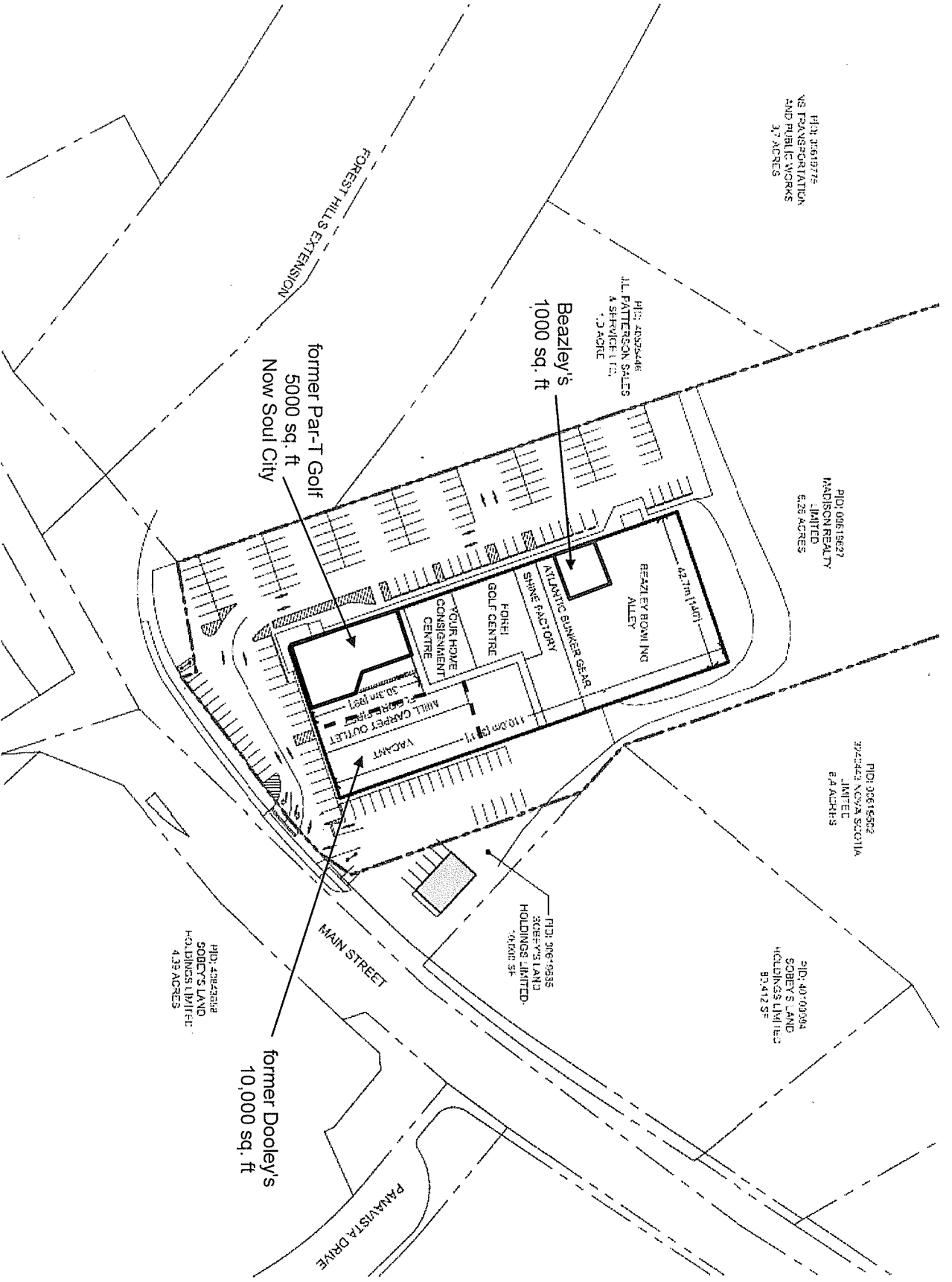
- R-1A Single Unit Dwelling
- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-4 Multiple Unit Dwelling
- C-4 Highway Commercial
- P-1 Open Space
- P-2 Community Facility
- PUD Plan Unit Development

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COMMUNITY DEVELOPMENT
PLANNING SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the Cole Harbour/Westphal Plan Area

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



Map 3 - Licensed Areas

HRM does not guarantee the accuracy of any base information.

July 20 2010

Case 16032

T:\work\planning\Holly\Official_Maps\case_maps\Case_16032\16032 Map3.PDF (HQ)



Attachment A: Proposed Development Agreement

THIS AGREEMENT made this day of [Insert Month], 2010,

BETWEEN:

MADISON REALTY 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 the registered owner of certain lands located at 613 Main Street, Westphal, 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 beverage rooms, lounges and eating establishments (with liquor service) to a maximum 10,000 square feet of the total gross floor area of the building on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy HC-5 of the Cole Harbour/Westphal Municipal Planning Strategy;

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on [Insert - Date], referenced as Municipal Case Number 16032;

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 Cole Harbour/Westphal 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 or Lot Owner 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: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 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 in the Halifax Regional Municipality as Case Number 16032:

Schedule A	Legal Description of the Lands
Schedule B	Schedule B

3.2 Requirements Prior to Approval

Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the building or the Lands for any of the uses permitted by this Agreement, except for legal tenants at the date of the 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.

3.3 General Description of Land Use

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

- (a) Beverage rooms, lounges and eating establishments (with liquor service) may be operated within the existing building and patios as per Schedule B. The total floor area of licensed premises within the building shall not exceed 10,000 square feet. Cabaret uses and adult entertainment uses shall not be permitted on the Lands;
- (b) The parking spaces along the east side of the building may be used for an outdoor display court for automobiles; and
- (c) Any use permitted within the C-4 Zone, subject to the provisions contained within the Land Use By-law for Cole Harbour/Westphal.

3.3.2 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the Cole Harbour/Westphal Land Use By-law, as amended from time to time.

3.4 PARKING, CIRCULATION AND ACCESS

3.4.1 The parking area shall be sited as shown on Schedule B.

3.4.2 The parking area shall provide a minimum of 164 parking spaces. Those parking spaces located on the eastern side of the building may be used for an outdoor display court for automobiles.

3.4.3 The parking area shall be surfaced with asphalt.

3.4.4 The parking spaces located on the south side of the building shall be separated from the walkway by curbing.

3.4.5 The location of the access and egress point to the Lands shall be as illustrated on Schedule B.

3.5 OUTDOOR LIGHTING

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

3.6 LANDSCAPING

3.6.1 The planter boxes for the existing free standing signs on the Lands shall be planted with a combination of deciduous and coniferous shrubs and small trees.

3.6.2 The existing planter boxes on the western side of the building shall be maintained.

3.6.3 Wooden planter boxes shall be located by all doorways on the south side of the building and shall be planted with a coniferous shrub not less than two feet in height. The planter boxes shall not exceed 30 inches in height and shall be 24 inches in width per side.

3.7 MAINTENANCE

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.

3.8 SIGNS

- 3.8.1 The existing awning on the Main Street facade of the building shall be extended across the remaining length of that building facade.
- 3.8.2 The three existing freestanding signs and the associated planter boxes shall be permitted to remain on the lands.
- 3.8.3 Notwithstanding Section 3.8.2, if the freestanding sign at the southwest corner of the Lands is replaced it shall be located wholly on the Lands.

3.9 HOURS OF OPERATION

- 3.9.1 Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 6:00 a.m. and 6:00 p.m..
- 3.9.2 Hours of operation shall conform with all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.

PART 4: STREETS AND MUNICIPAL SERVICES

Solid Waste Facilities

- 4.1 Refuse containers and recycling materials shall be confined to the loading areas of the building, and shall be screened from public view where necessary by means of opaque fencing.

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 signage as detailed in Section 3.8;
- (b) An increase of up to 30% of total floor area of licensed premises beyond what is permitted by this Agreement;
- (c) New commercial uses other than those permitted under the existing C-4 zone; and
- (d) The granting of an extension to the date of commencement of development as identified in Section 6.3 of this Agreement.

5.2 Substantive Amendments

Amendments to any matters not identified under Section 5.1 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 1 year 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 for the dance floor and stage for the establishment currently known as Soul City.

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 6.3, 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 Cole Harbour Westphal, 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 3 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 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 _____, 2010.

SIGNED, SEALED AND DELIVERED in the presence of:

SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

MADISON REALTY LIMITED

Per: _____

Per: _____

=====

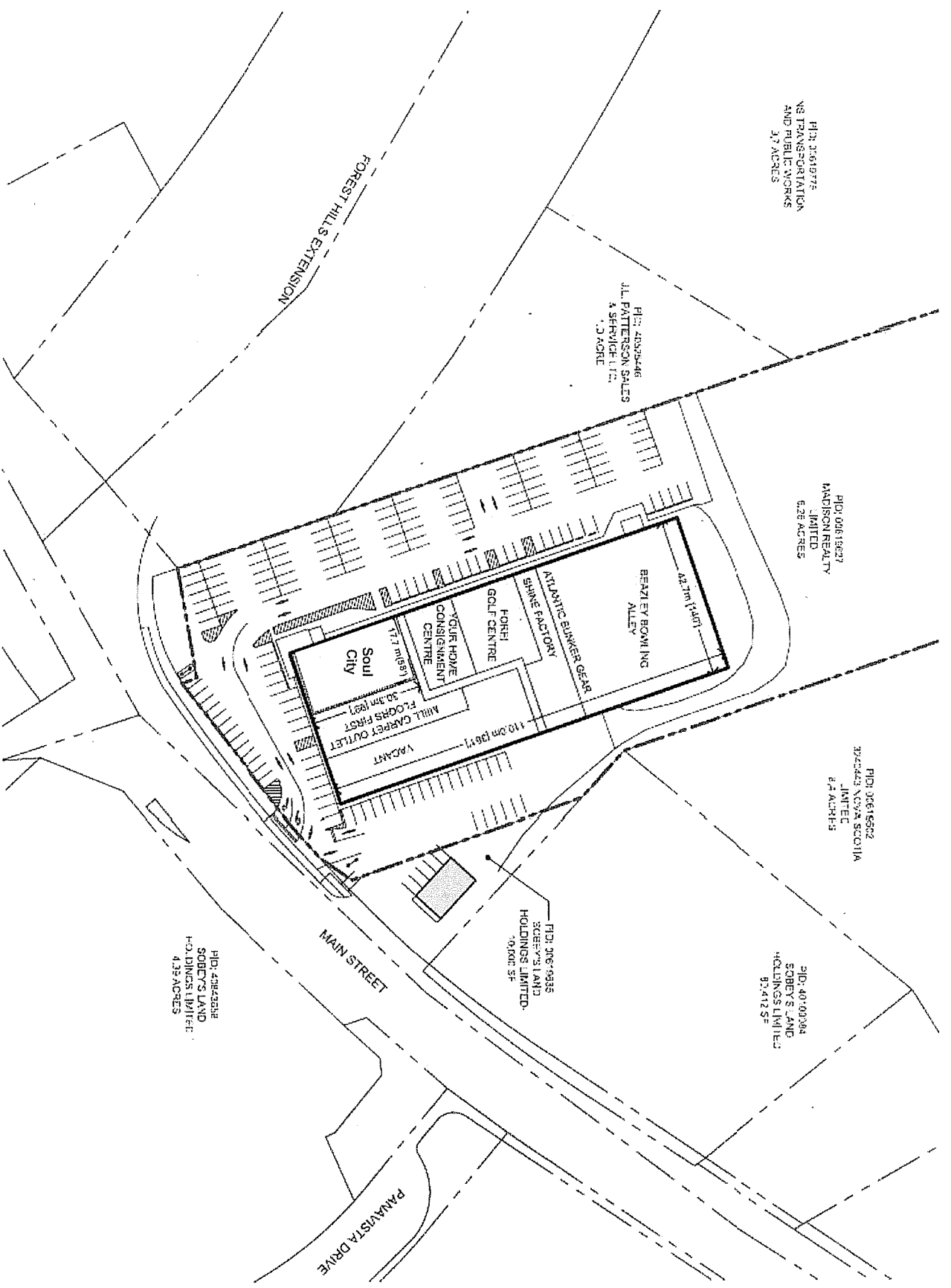
HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor

Per: _____

Municipal Clerk



PI: 3619775
 NS TRANSPORTATION
 AND PUBLIC WORKS
 3.7 ACRES

PI: 4059446
 J.L. PATTERSON SALES
 4 SPRUCE LN
 1.3 ACRES

PI: 00616927
 AMERSON REALTY
 LIMITED
 6.28 ACRES

PI: 30616922
 NOVA SCOTIA
 LIMITED
 8.2 ACRES

PI: 40700384
 SOBET'S LAND
 HOLDINGS LIMITED
 97,412 SF

PI: 30679935
 SOBET'S LAND
 HOLDINGS LIMITED
 70,000 SF

PI: 42823518
 SOBET'S LAND
 HOLDINGS LIMITED
 4.39 ACRES

Schedule B Site Plan

HRM does not guarantee the accuracy of any base information.

July 20, 2010

Case 16032

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Attachment B: Discharging Agreement (Sandtrap Amusements)

THIS DISCHARGING AGREEMENT made this day of , 2010,

BETWEEN:

MADISON REALTY 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 the registered owner of certain lands located at 613 Main Street, Westphal, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Municipality entered into a Development Agreement with Realcorp Properties Limited to allow for location and operation of a lounge on the Lands which was registered at Registry of Deeds in Halifax as Document Number 2183, in Book 5517, at Page 781 (hereinafter called the "Existing Agreement");

AND WHEREAS the Municipality entered into an amendment to the Existing Agreement with the Developer which was registered at the Registry of Deeds in Halifax as Document Number 625 in Book 6168, at Pages 471-478 (hereinafter called the "Amending Agreement");

AND WHEREAS the Developer has requested that the Existing and Amending Agreements be discharged;

AND WHEREAS, pursuant to the procedures and requirements contained in the *Halifax Regional Municipality Charter*, the Harbour East Community Council of the Municipality approved this request by resolution at a meeting held on [INSERT - date], referenced as Municipal Case Number 16032;

WITNESS that it is agreed that the Lands is hereby discharged from the Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2010.

SIGNED, SEALED AND DELIVERED in the presence of:

SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

MADISON REALTY LIMITED

Per: _____

Per: _____

=====

HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor

Per: _____

Municipal Clerk

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2010.

SIGNED, SEALED AND DELIVERED in the presence of:

=====

SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

MADISON REALTY LIMITED

Per: _____

Per: _____

=====

HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor

Per: _____

Municipal Clerk

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2010.

SIGNED, SEALED AND DELIVERED in the presence of:

=====

SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

MADISON REALTY LIMITED

Per: _____

Per: _____

=====

HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor

Per: _____

Municipal Clerk

Attachment E: Excerpts from Cole Harbour/Westphal Municipal Planning Strategy

HC-3 Notwithstanding Policy HC-2, in order to accommodate adjacent commercial and residential uses, it shall be the intention of Council to only consider commercial uses in excess of ten thousand (10,000) square feet and to a maximum of fifty thousand (50,000) square feet of gross floor area, according to the development agreement provisions of the Planning Act. When considering such an agreement, Council shall regard to the following:

- (a) vehicular access to the site;
- (b) separation from residential uses;
- (c) storm drainage;
- (d) site design including open storage and outdoor display area parking and loading spaces and landscaping; and
- (e) the provisions of Policy IM-11.

HC-5 Notwithstanding Policies CC-2 and HC-2, within the Community Commercial and Highway Designations, it shall be the intention of Council to permit beverage room and other entertainment uses only in commercial structures having greater than ten thousand (10,000) square feet, according to the development agreement provisions of the Planning Act. In considering such developments, Council shall have regard to the following:

- (a) separations from residential uses;
- (b) vehicular access and egress;
- (c) the location and extent of open storage and/or display;
- (d) the location of parking and loading areas;
- (e) drainage both on and off the site;
- (f) any landscaping of such uses; and
- (g) the provisions of Policy IM-11.

Attachment F: Excerpts from Cole Harbour/Westphal Land Use By-law

PART 18: C-4 (HIGHWAY COMMERCIAL) ZONE18.1 C-4 USES PERMITTED

No development permit shall be issued in any C-4 (Highway Commercial) Zone except for the following:

Commercial Uses

Retail stores;
 Food stores;
 Service and personal service shops;
 Banks and financial institutions;
 Restaurants;
 Outdoor display courts;
 Hotels, motels and motor inns;
 Indoor commercial recreation uses;
 Funeral establishments;
 Service stations;
 Taxi and bus depots;
 Parking lots;
 Greenhouses and nurseries;
 Veterinary hospitals and kennels;
 Re-cycling depots.

Community Uses

Open space uses;
 Institutional uses;
 Fraternal centres and halls.

Residential Uses

Existing dwellings

18.2 C-4 ZONE REQUIREMENTS: COMMERCIAL USES

In any C-4 Zone, where uses are permitted as Commercial Uses, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	central services	10,000 square feet (929.0 m ²)
	on-site services	20,000 square feet (1858.1 m ²)
Minimum Frontage:	150 feet (45.7 m)	

Minimum Front or Flankage Yard	30 feet (9.1 m)
Minimum Rear or Side Yard	15 feet (4.6 m)
Maximum Height of Main Building	35 feet (10.7 m)
Maximum Lot Coverage	50 percent

18.3 OTHER REQUIREMENTS: COMMERCIAL FLOOR AREA

Notwithstanding the provisions of Section 18.1, no commercial building in any C-4 Zone shall exceed ten thousand (10,000) square feet (929 m²) of gross floor area.

18.4 OTHER REQUIREMENTS: OPEN STORAGE AND DISPLAY

Where any portion of any lot in any C-4 Zone is to be used for open storage or outdoor display, the following shall apply:

- (a) Any area devoted to open storage may not exceed fifty (50) per cent of the lot area.
- (b) No open storage shall be permitted within any required front yard.
- (c) No open storage or outdoor display shall be permitted in any required yard within any C-4 Zone where the required yard abuts any residential zone or community uses zone, except where a fence or other visual barrier is provided.

18.5 OTHER REQUIREMENTS: SERVICE STATIONS

Notwithstanding the provisions of Sections 18.2 and 18.7, where a service station is erected in any C-4 Zone, the following shall apply:

Minimum Lot Area: 30,000 square feet (2787.0 m²)

Minimum Frontage: 150 feet (45.7 m)

No portion of a pump island shall be located closer than: 20 feet (6.1 m) from any street line

Minimum distance between ramps or driveways 30 feet (9.1 m)

Minimum distance from a ramp or driveway to a road intersection 50 feet (15.2 m)

Minimum angle of intersection of a ramp to a road line 45 degrees

Width of a ramp:	minimum	20 feet (6.1 m)
	maximum	26 feet (7.9 m)

18.6 C-4 ZONE REQUIREMENTS: COMMUNITY USES

In any C-4 Zone, where uses are permitted as community uses, no development permit shall be issued except in conformity with the provisions of Part 21 as are applicable.

18.7 OTHER REQUIREMENTS: COMMERCIAL ACCESS

Unless otherwise required by the Provincial Department of Transportation and Communications, all uses which are permitted uses in any C-4 Zone with the exception of service stations, shall be permitted not more than one (1) access onto Provincial Highway No. 7 for each lot.

18.8 EXISTING MULTIPLE UNIT DWELLINGS

Notwithstanding Section 18.1, existing multiple unit dwellings shall be a permitted use within the C-4 Zone. Subject to the requirements of Section 18.2 and the maximum number of units permitted within the identified existing multiple unit dwellings shall be as follows:

<u>Civic Address</u>	<u>LRIS No.</u>	<u>Maximum Number of Dwelling Units</u>
662 Preston Road	619171	3

18.9 OTHER REQUIREMENTS: BUFFERING AND SCREENING

- (a) In any C-4 Zone where commercial uses, including buildings, parking, outdoor display, or open storage are to be expanded, constructed or located on a lot which is adjacent to property that is zoned or used for residential or community uses, a buffer shall be provided. The buffer shall consist of a grassed landscaped area that is:
- (i) a minimum of twenty (20) feet in depth running the entire length of the adjacent property line and shall contain a vegetation screen consisting of at least two staggered rows of coniferous trees which are at least six (6) feet in height and at a maximum spacing of eight (8) feet on centre;
 - (ii) notwithstanding Subsection 18.9(a) (i), the grassed landscaped area may be reduced to ten (10) feet where an opaque fence of at least six (6) feet in height is provided along the common property boundary and the grassed landscaped area shall contain of a mix of nursery-stock trees at a maximum spacing of ten (10) feet on centre, or a mix of shrubs at a spacing of six (6) feet on centre, or a combination of nursery-stock trees and shrubs at the required spacing;

- (iii) the landscaped area shall be properly maintained and kept free of litter; and
 - (iv) no structures, parking, storage or open display shall be permitted within the grassed landscaped area.
- (b) Notwithstanding Subsection 18.9(a), for any expansion or construction of a C-4 Zone use which is located adjacent to Loon Lake, the buffer shall consist of a grassed landscaped area that is:
 - (i) a minimum of ten (10) feet in depth beginning at the normal high water mark, and running the entire length of the water's edge and shall contain either a mix of balled and burlapped shrubs that are a minimum of 40 cm in height and planted at a maximum spacing of four (4) feet on centre, or a single row of coniferous trees which are at least four (4) feet in height and at a maximum spacing of eight (8) feet on centre, or a combination of coniferous trees and shrubs at the required spacing;
 - (ii) the landscaped area shall be properly maintained and kept free of litter; and
 - (iii) no structures, parking, storage or open display shall be permitted within the grassed landscaped area.
- (c) Notwithstanding Subsection 18.9(a) and (b), for any expansion or construction of a C-4 Zone use which is located on lands identified as PID 00638460, PID 00619775, PID 00619627, and PID 00619502 which are adjacent to Loon Lake, the buffer shall consist of the retention of existing vegetation that is:
 - (i) a minimum of fifty (50) feet in depth beginning at the normal high water mark, and running the entire length of the water's edge;
 - (ii) no structures, parking, storage or open display shall be permitted within the buffer area.
- (d) Notwithstanding Subsection 18.9(a) or (b), a buffer shall not be required under the following conditions:
 - (i) where a change in occupancy does not increase the amount of parking, or open storage, or outdoor display within the commercial lot; or
 - (ii) where an addition to a commercial building does not increase its square footage more than five (5) percent of the total gross floor area, and provided there is no increase in the amount of parking, or open storage, or outdoor display within the commercial lot as a result of this addition.
(C-Oct 30/97;E-Nov 29/97)