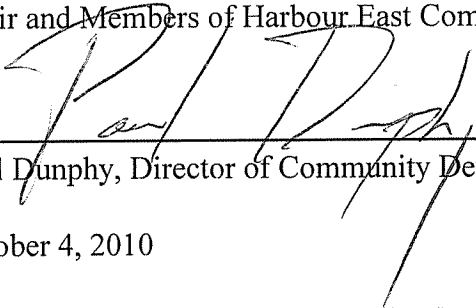


Harbour East Community Council
October 19, 2010

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: October 4, 2010

SUBJECT: Case 16480 - Founders Corner Condominiums, Downtown Dartmouth

ORIGIN

Application by Addenda Capital to amend the development agreement for Founders' Square project, at the corner of Ochterloney and Wentworth Streets in Downtown Dartmouth, to reflect the inclusion of additional land area with the development site.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give Notice of Motion to consider the proposed amending development agreement as set out in Attachment A of this report and schedule a public hearing;
2. Approve the amendment to the existing development agreement for 66/70 Ochterloney Street and 37/41 Wentworth St, as set out in Attachment A of this report, to reflect the inclusion of additional land area to the site; 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 original development agreement for Founders Corner was approved in 2006, with an amendment regarding architectural design made in 2007. This enabled the construction of a seven storey building consisting of 38 residential units over ground floor commercial space, with all parking underground.

Recently it was found that the project, now completed, had several small encroachments over the public sidewalk, owned by HRM. If the building was to contain rental units only, HRM could have approved encroachment licenses and there would be no concerns. However, as the project is for condominiums, Provincial legislation requires the building to be wholly contained on its own property.

To overcome this issue and allow condominium registration, the encroachments either had to be removed or portions of the sidewalk added to the development. Regional Council therefore approved a street closure on the affected portions of the sidewalk, and approved the sale of 215 square feet to the property owner. To ensure full compliance with the terms of the development agreement, an amendment to the property description is required.

DISCUSSION

The project is essentially complete, and other than the encroachments is in compliance with the terms of the existing development agreement. The only amendment required is to change the property's legal description as set out in Schedule A of the existing agreement. There are no issues or concerns with doing so, as Council has agreed to sell the portion of the sidewalks that was subject to encroachments, and the requested amendment is consistent with MPS policy. However, if an amendment to the agreement is not approved, then the project will technically remain in violation of the existing development agreement. Therefore, staff recommend approval of the amending agreement, as provided in Attachment A to this report.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of HRM's Community Engagement Strategy. The public information meeting was waived by the area councillor. The development has previously been the subject of a public meeting and a public hearing. The proposed amendment has no possible impacts on nearby properties given that the amendment only addresses the land parcel on which the existing completed project is built. However, a further public hearing has to be held by Council to consider approval of the revised development agreement. Should Council decide to schedule a public hearing, public notification will be given through public notices to 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 amending 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 amending 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 amending development agreement, and in doing so, must provide reasons based on a conflict with MPS policies.


ATTACHMENTS

Attachment A: Proposed Amending Development Agreement

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

Report Prepared by: Mitch Dickey, Planner, 490-5719

Report Approved by:



Kurt Pyle, Acting Manager, Planning Services, 490-7066

Attachment "A"
Proposed Amending Development Agreement

THIS AGREEMENT made this ____ day of _____, 2010,

BETWEEN:

ADDENDA CAPITAL INC.

a body corporate, 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 66 & 70 Ochterloney Street and 37 & 41 Wentworth Street in Downtown Dartmouth, and which said lands are more particularly described in Schedule A hereto (hereinafter called "the Lands");

AND WHEREAS the Harbour East Community Council of the Municipality granted approval on June 29, 2006 of a development agreement for the Lands to enable construction of a seven storey, mixed residential/commercial building under Municipal Case 00869, which was recorded at the Registry of Deeds in Halifax as Document Number 85958164 (hereinafter called the "Existing Agreement");

AND WHEREAS amendments to the Existing Agreement were approved by the Harbour East Community Council of the Municipality on September 7, 2006 to alter the architectural design of the building under Municipal Case 00945, which were recorded at the Registry of Deeds as Document Number 87779642 (hereinafter called the Amending Agreement);

AND WHEREAS the Developer has requested that the Municipality further amend the Existing Agreement, to amend the legal description of the Lands in order to reflect the addition of former Municipal street right of way to the development, pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to the Municipal Planning Strategy for Downtown Dartmouth;

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on _____, referenced as Municipal Case Number 16480;

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

1. "Schedule A - Legal Description of the Lands" as referenced in Section 2.1 of the Existing Agreement is hereby deleted and replaced with "Schedule A - Revised Legal Description of the Lands".

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:

(Insert Registered Owner Name)

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