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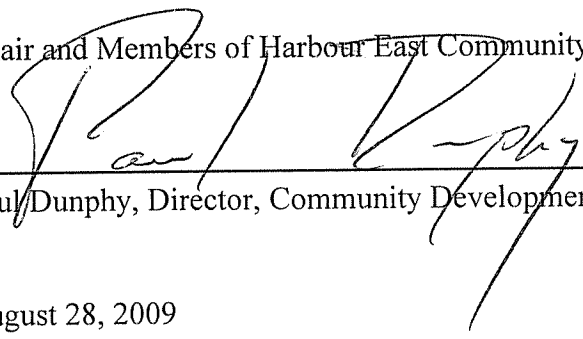


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
September 10, 2009

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:


Paul Dunphy, Director, Community Development

DATE: August 28, 2009

SUBJECT: **Case 01270: Amendments to Eastern Passage/Cow Bay LUB and Discharge of Heritage Hills Development Agreement**

ORIGIN

Motion of Harbour East Community Council on March 5, 2009:

“Moved by Councillor Barkhouse, seconded by Councillor McCluskey, that Planning be requested to initiate a planning process to address the issues outlined in the information report dated February 3, 2009 for the Heritage Hills development agreement.”

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give First Reading to consider amendments to the Land Use By-law for Eastern Passage / Cow Bay, as shown on Map 1 and in Attachment A, and schedule a public hearing;
2. Approve the proposed amendments to the Land Use By-law for Eastern Passage / Cow Bay, as shown on Map 1 and in Attachment A; and
3. Following the appeal period for the Land Use By-law amendments, discharge by resolution of Community Council, the development agreement for Heritage Hills.

BACKGROUND

The Heritage Hills development agreement was originally approved by the former Halifax County Municipality, under a Comprehensive Development District (CDD) Zone. The original approval was for 618 units, consisting of single and two unit dwellings on a variety of lot sizes. With a series of amendments for lot size and layout, and the construction of the junior high school, the final number of dwellings approved was 577. The development is now completed. In addition, HRM approved an amendment to the development agreement by which the developer proved that sewage flows were much less than originally projected, enabling the construction of 120 units at Morris Lake Estates in Cole Harbour. Attachment B contains a chronology of the development from the original approval to its current layout.

Proposal:

The issue that has given rise to this application is setback requirements for decks under the existing development agreement. Current requirements are that a deck can be built no closer to the property line than the house. However, an initial survey conducted by HRM Development Services earlier this year indicates that there are more than 100 properties where decks have been built within the required yards.

Developer's Obligations:

Under the conditions of the Heritage Hills development agreement, the developer has met its obligations:

- All parkland has been deeded to HRM with required improvements and cash contributions;
- Trail construction has been completed;
- All streets, services and associated infrastructure are complete and accepted by HRM;
- There are no outstanding items or bonds;
- Sewage flow monitoring is no longer required, and no additional sewer capacity exists.

DISCUSSION

Harbour East Community Council passed a motion directing staff to review existing land use requirements under the Heritage Hills agreement. To achieve Council's motion, staff investigated either amending the existing development agreement or amending the land use by-law and discharging the development agreement.

Amending vs. Discharging the Development Agreement:

The Heritage Hills development is now fully built and all parties have fulfilled their obligations. It would be impractical to amend the development agreement at this stage because an amending agreement would have to be signed by each affected property owner. Further, maintaining the agreement serves no effect if a less cumbersome mechanism can be put in place. Regulating an existing development is best done through the land use by-law, therefore discharge of the agreement and application of the applicable zones is the appropriate course of action.

Section 14.3 of the development agreement provides that:

“This Agreement may be discharged in whole upon satisfactory completion of all requirements of this Agreement and upon the provisions of the Land Use By-law being amended to provide for appropriate zoning for the property comprising the CDD.”

The Municipal Planning Strategy for Eastern Passage/Cow Bay provides for the establishment of single unit dwelling (R-1) and two unit dwelling (R-2) zones within the Urban Residential Designation without specifying requirements for such a zone. Adding special requirements for the unique lot sizes in Heritage Hills under these zones is therefore consistent with the current MPS. New requirements in the R-1 and R-2 zones can implement all relevant sections of the development agreement.

Process for Discharging the Development Agreement:

When considering ending a development agreement, appropriate standards need to be in the land use by-law to provide for what was permitted to be developed. If appropriate amendments are not put in place, the development and buildings may become non-conforming. The process for Community Council to follow in this case is:

- Approve amendments to the land use by-law which apply appropriate zones to Heritage Hills instead of the CDD (Comprehensive Development District) zone;
- Amend the R-1 and R-2 zone standards to reflect the standards contained within the development agreement in terms of lot sizes and site and building development;
- Upon the end of the appeal period for the Land Use By-law amendments, Council would discharge the development agreement by resolution.

Recommended Rezonings:

To incorporate the Heritage Hills Agreement within the Eastern Passage /Cow Bay Land Use By-law a number of rezonings are required as follows:

Land Use	Proposed Zoning
Single unit dwelling lots	R-1 Zone
Two unit dwelling lots	R-2 Zone
HRM-owned park parcels	P-1 (Park) Zone
Natural/wetland areas	EC (Environmental Conservation) Zone
School Property	P-2 (Community Facility) Zone

Of the rezonings required, the owner of the school, Scotia Learning Centres, has requested that the property continue to have the CDD zone. This request is based on the long term possibility that the school would no longer be needed as such, and the site would be redeveloped under CDD policy. Staff feels however that the P-2 zone is most appropriate as the school is needed for the foreseeable future. If the CDD zoning is retained, any future change to the building (ie

additions) would require a development agreement. The MPS's underlying Urban Residential designation shall remain on the site, and the designation would allow Scotia Learning to simultaneously rezone back to CDD as part of a new development agreement process, subject to Council approval.

Lot Sizes and Site Standards:

The proposed amendments to the land use by-law implement the current requirements of the development agreement. All of the standards for lot area, lot frontage, building setbacks, lot coverage, and building height will therefore be carried forward and inserted within the applicable zone (Attachment A).

Current Deck Standards:

Current setback requirements allow a deck to be built no closer to a property line than the main building. Decks that are less than 2 feet above grade are considered patios, which are exempt and can be built to the property line. Stairways and landings to side doors within these yards are permissible, however there can be no link to any rear deck.

Existing Setback Requirements for Decks

Lot Class & Width	Minimum Side Yard	Minimum Rear Yard
For Single Units:		
Class A & B lots (74' & 60' wide)	8'	8'
Class C & D lots (54' & 40' wide)	2' on one side and 10' on the other	8'
Class G lots (35' wide)	3' on one side and 10' on the other	8'
For Two Units:		
Class E & F lots (35' & 32' /unit)	10'	8'

These requirements pose a problem for many homeowners as it impacts how they can access their main decks. Staff feel that the requirements are outdated and do not reflect the needs or desires of homeowners, nor do they reflect current home and yard design principles. This position was supported by residents at the public meeting. Therefore the standards should be amended.

Proposed Setback Requirements for Decks

Deck Height	Proposed Setback	Screening Requirement
Less than 2' above grade	0'	None
Between 2' and 4' above grade	2'	Minimum 5' high privacy fence
More than 4' above grade	4'	Minimum 5' high privacy fence

Setbacks for Accessory Buildings:

The issue of setback requirements for sheds and garages arose at the public meeting. It was felt that the current side and rear yard standard of 4' was excessive, especially on the narrow lots. There was support for reducing this requirement to 2', which is reflected in the attached amendments.

Conclusion:

The development agreement for Heritage Hills has served its purpose in allowing the project to proceed from planning through to construction. With full build out achieved, it should be discharged, and the CDD zoning replaced with appropriate residential and park zoning. At the same time, Council can address the issue of appropriate setback standards for decks. Staff therefore recommend approval of the amendments as shown on Map 1 and in Attachment A of this report. Once these amendments are effective, then the development agreement can be discharged.

Public Participation/Area of Notification

A public information meeting was held on July 6, 2009. There was clear consensus that the requirements for decks and sheds should be changed. The minutes of the meeting are included as Attachment C to this report. Should Community Council decide to hold a public hearing, in addition to published newspaper advertisements, property owners in the area shown on Map 1 will be sent written notification.

BUDGET IMPLICATIONS

The costs to process this planning application can be accommodated within the approved operating budget for C310.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

1. Council may choose to approve the proposed Land Use By-law amendments, and subsequently discharge the development agreement. This is the recommended alternative.
2. Council may choose to approve only some of the Land Use By-law amendments proposed in Attachment A.
3. Council may choose to refuse the proposed Land Use By-law amendments and maintain the current development agreement, and in doing so, must provide reasons based on a conflict with the MPS policies.

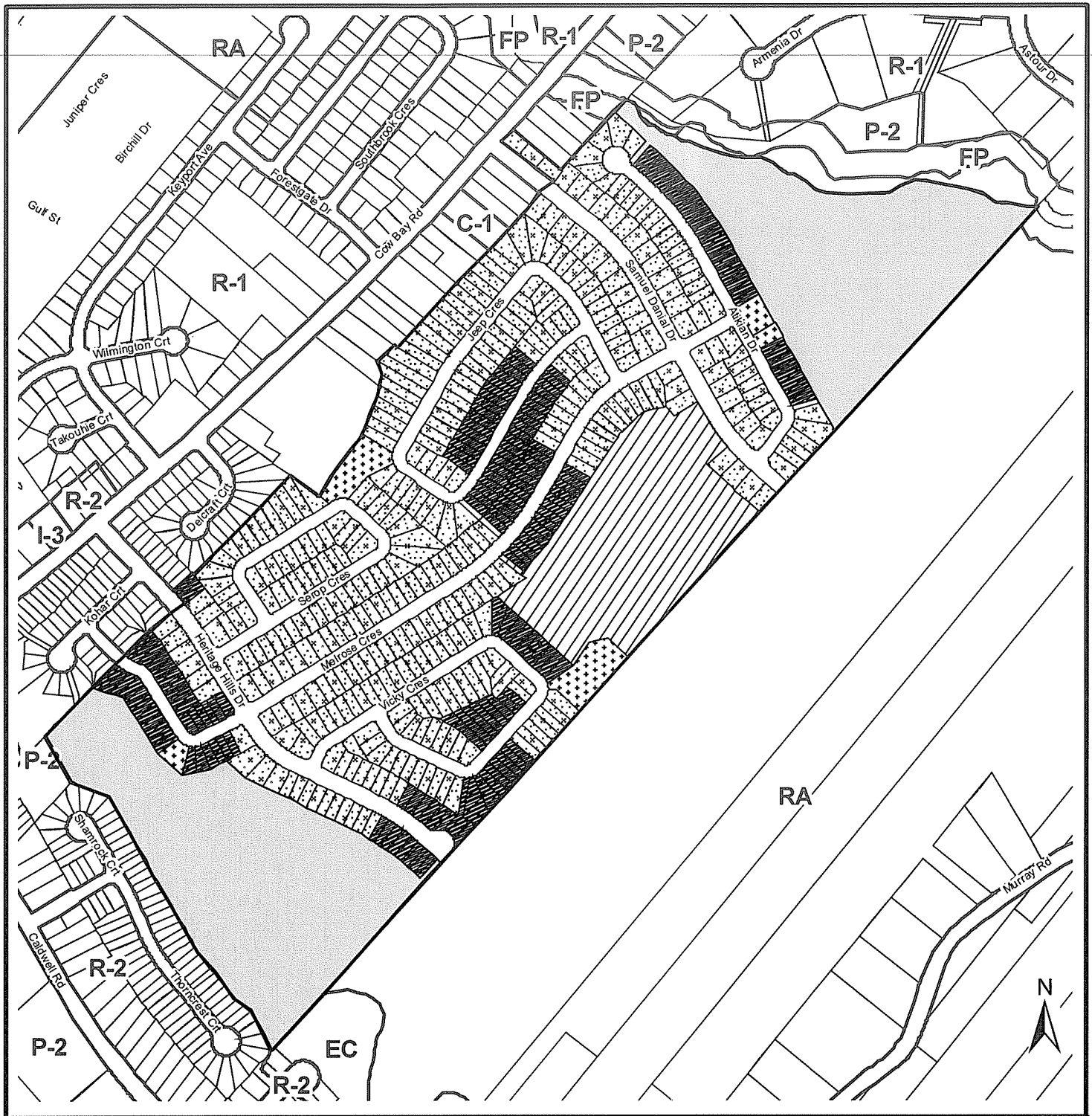
ATTACHMENTS

Map 1	Areas to be rezoned
Attachment A	Amendments to the Land Use By-law for Eastern Passage / Cow Bay
Attachment B	Chronology of the Heritage Hills Development
Attachment C	Public information meeting minutes

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 : Mitch Dickey, Planner I, Community Development, 490-5719

Report Approved by: 
Kurt Pyle, Acting Manager, Planning Services, 490-7066








Map 1 Areas to be Rezoned

Heritage Hills,
Eastern Passage

 Notification Area

Eastern Passage/Cow Bay Plan Area

Zone

-  R-1 Single Unit Dwelling
-  R-2 Two Unit Dwelling
-  P-1 Community Facility
-  P-2 Community Facility
-  EC Environmental Conservation

HALIFAX
REGIONAL MUNICIPALITY

COMMUNITY DEVELOPMENT
PLANNING SERVICES

60 30 0 60 120 180
Meters

This map is an unofficial reproduction of a portion of the Eastern Passage/Cow Bay Plan Area.

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

Attachment A
Proposed Amendments to the Land Use By-law
for Eastern Passage/Cow Bay

BE IT ENACTED by the Harbour East Community Council of the Halifax Regional Municipality that the Land Use By-law for Eastern Passage/Cow Bay, which was adopted by the Council of the former Halifax County Municipality on the 22nd day of June 1992, as amended, is hereby amended as follows:

1. By adding the following text to Section 4.11 (a) (ii) 1:

“, except that within the Heritage Hills development as shown on Schedule A-1, the required setback shall be 2 feet (0.61m).”

2. By adding the following text to Section 4.11. (a) (iii):

“, except on properties within the Heritage Hills development as shown on Schedule A-1 where lots are identified as being of classification D, E, F and G, on which lots the maximum height shall be 12 feet (3.7m), the maximum floor area shall be 350 square feet (32.5 square metres), and only one accessory building shall be permitted per lot.”

3. By adding the following to section 4.21 (a) immediately following the word ‘patio’:

“which are less than two feet (0.61 m) above grade”

4. By adding the following new subsection to section 4.21:

“(f) Uncovered decks in residential zones shall be permitted to be constructed closer to a side or rear property line than the main building, provided that:

(i) decks between 2' (0.61m) and 4' (1.2 m) above grade shall not be located closer than 2' (0.61 m) to any side or rear property line,

(ii) decks over 4' (1.2 m) above grade shall not be located closer than 4' (1.2 m) to any side or rear property line,

(iii) such decks include a privacy wall, along the side nearest to an abutting property, which shall be at least 5'(1.5 m) in height, and shall consist of solid boards and/or privacy lattice.”

5. By adding the following text to Section 6.1 immediately following “Home business uses”:

“, except on Class G lots within Heritage Hills as shown on Schedule A-1 where only Home Offices shall be permitted. ”

6. By replacing section 6.2 with the following:

“In any R-1 zone, where uses are permitted as Residential Uses, no development permit shall be issued except in accordance with the following:

Minimum Lot Area

Central Sewer & Water Services	6000 square feet (557.4 square metres)
Heritage Hills (as shown on Schedule A-1)	
Class A and B lots	5800 square feet (538.8 square metres)
Class C lots	5200 square feet (483 square metres)
Class D lots	3800 square feet (353 square metres)
Class G lots	3400 square feet (315.9 square metres)
Onsite Sewer & Water Services	30,000 square feet (2787 square metres)

Minimum Lot Frontage

Central Sewer & Water Services	60 feet (18.3 m)
Heritage Hills (as shown on Schedule A-1)	
Class A and B lots	60 feet (18.3 m)
Class C lots	54 feet (16.5 m)
Class D lots	40 feet (12.2 m)
Class G lots	35 feet (10.7 m)
Onsite Sewer & Water Services	125 feet (38.1 m)

Minimum Front or Flankage Yard 20 feet (6.1 m) except on Jeep Crescent, Serop Crescent and Vicky Crescent where the requirement is 15 feet (4.6 m)

Minimum Rear Yard 8 feet (2.4 m)

Minimum Side Yard

All areas except Heritage Hills	8 feet (2.4 m)
Heritage Hills (as shown on Schedule A-1)	
Class A and B lots	8 feet (2.4 m)
Class C and D lots	2 feet (0.61 m) on one side, 10 feet (3.05 m) on the other side
Class G lots	10 feet (3.05 m) on one side, 3 feet (0.91 m) on the other side

Maximum Lot Coverage **35 percent**

**Maximum Height of
Main Building** **35 feet (10.7 m), except within Heritage Hills as shown
on Schedule A-1 where the maximum height on Class D
and G lots shall be 30 feet (9.1 m)**

Minimum Width of Main Building 20 feet (6.1 m)”

7. By inserting the following new text in section 8.3 (a) immediately following the phrase ‘any developed R-2 zoned lands’:

“and for properties located in Heritage Hills and identified as Class E and F lots on Schedule A-1,”

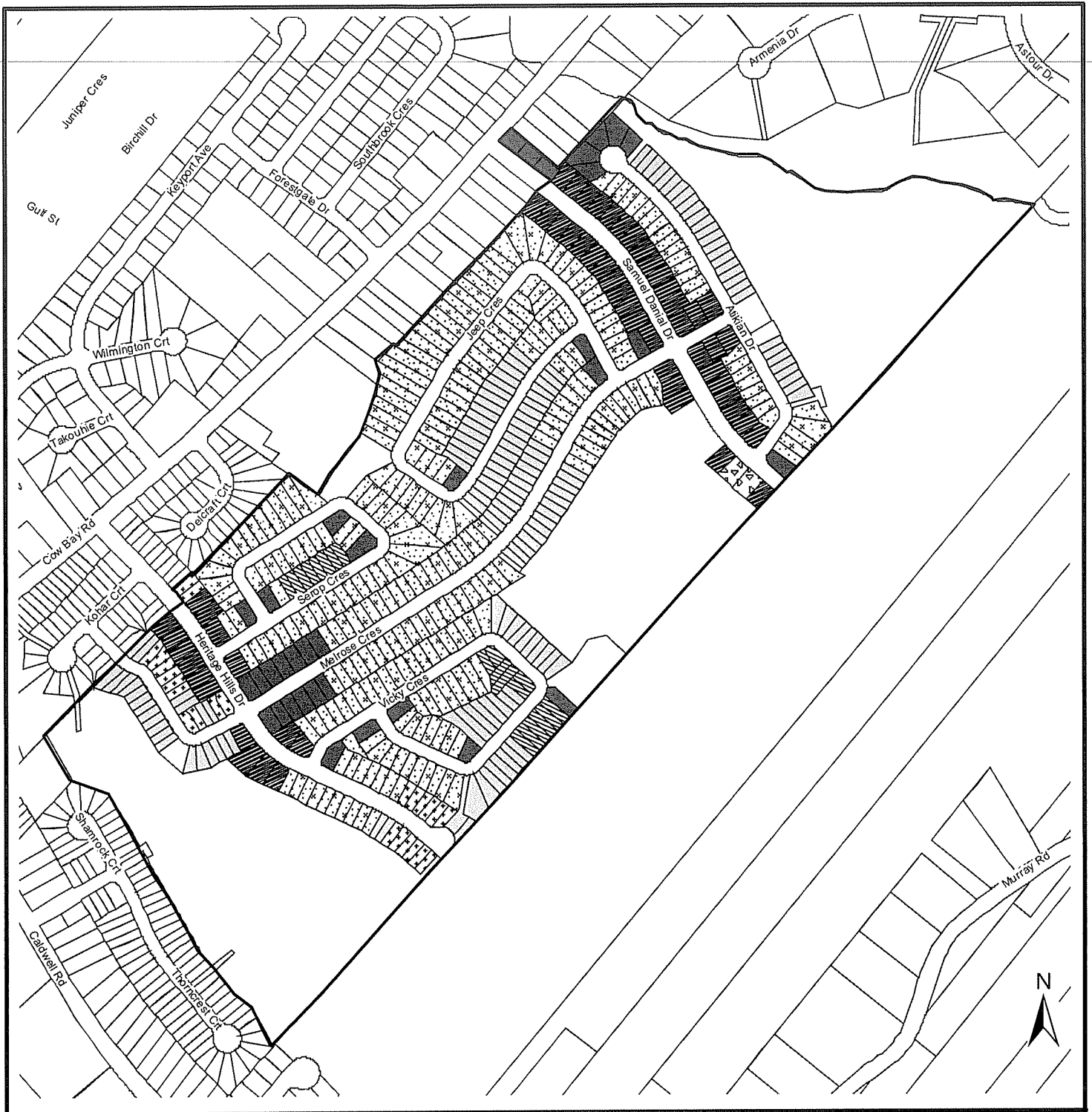
8. By adopting changes to Schedule A (Zoning Map) as shown on Map 1.

9. By adopting Schedule A-1 as attached to this report.

I HEREBY CERTIFY that the amendments to the Land Use By-law for Eastern Passage / Cow Bay, as set out above, was passed by a majority vote of the Regional Council of the Halifax Regional Municipality at a meeting held on the ____ day of _____, 2009.


GIVEN under the hands of the Municipal Clerk and Under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2009.

Municipal Clerk










Schedule A-1

Heritage Hills,
Eastern Passage

 Former CDD Comprehensive
Development District

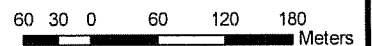
Eastern Passage/Cow Bay Plan Area

Lot Classification

	A	75' Single		E	70' Two Family
	B	60' Single		F	64' Two Family
	C	54' Single		G	35' Single
	D	40' Single			



COMMUNITY DEVELOPMENT
PLANNING SERVICES



This map is an unofficial reproduction of a portion of the Eastern Passage/Cow Bay Plan Area.

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

Attachment B
Brief Chronology of the Heritage Hills Development

- 1994 The original Heritage Hills agreement was approved for 618 units, consisting of single and two unit dwellings on a variety of lot sizes.
- 1996 Increase in the “Conservation Lands” area (3.23 acres) in exchange for a provision to enable additional lots with lesser frontages in the central area of the development.
- 1997 Amendment which allowed the developer to prove that sewage flows generated by the development were much less than originally projected, enabling the construction of 120 units at Morris Lake Estates in Cole Harbour.
- 1999 The construction of a public-private partnership (P-3) school, which displaced Neighbourhood 5 of the subdivision, comprising 96 lots. The removal of this phase reduced the permitted number of units to 522. This occurred without an amendment to the development agreement as the Province deemed the school construction to be exempt from municipal regulations.
- 2003 A proposal for a townhouse development on Heritage Hills Drive was refused by Council, a decision upheld by the Nova Scotia Utility & Review Board.
- 2003 Reclassification of eight single detached dwelling lots to eight semi-detached dwelling unit lots.
- 2004 Conversion of 3.23 acres of proposed conservation land back to residential use, and lot size modifications in the final phase, allowing an additional 55 units, bringing the total units to 577.
- 2006 Amendments to require the developer to provide additional developed park infrastructure and trails.
- 2008 Final build-out of the project is complete, with all 577 units constructed.

Attachment C
Minutes of Public Information Meeting

PUBLIC INFORMATION MEETING
CASE NO.01270 - LUB Amendment for Heritage Hills

7:00 p.m.
Monday, July 6, 2009
Eastern Passage Fire Hall

STAFF IN

ATTENDANCE: Mitch Dickey, Planner, HRM Planning Services
Marc Ouellet, HRM Development Technician
Holly Kent, Planning Technician, HRM Planning Services
Jennifer Little, Planning Controller, HRM Planning Services

ALSO IN

ATTENDANCE: Councillor Jackie Barkhouse, District 8

PUBLIC IN

ATTENDANCE: 17

The meeting commenced at approximately 7:02 p.m.

1. Opening remarks/Introductions

Councillor Barkhouse welcomed and thanked the residents for attending tonight's public information meeting. She explained that the main focus of the meeting is to discuss decks.

Mr. Mitch Dickey introduced himself as the planner guiding this application through the process; he introduced Marc Ouellet, Development Technician, HRM Development Services; Holly Kent, Planning Technician, HRM Planning Services and Jennifer Little, Planning Controller, HRM Planning Services.

2. Overview of proposal and planning process

This application was put forward by Harbour East Community Council to discharge the 1993 Heritage Hills development agreement and to remove CDD zoning. Mr. Dickey explained that this agreement sets the overall framework and rules for the development which regulates building placement, decks, sheds, and driveways.

Mr. Dickey explained that the purpose of this application is to potentially apply R-1 & R-2 zones to the properties in Heritage Hills. No additional housing units will be allowed. Also, new standards for decks may also be included. The existing setback requirements for decks vary based on lot width, not allowing a deck to be located any closer to a side lot line than the house can; decks and landings cannot be joined if within the required setbacks however, stairs and small landings to side doors are ok. Mr. Dickey reviewed a slide of the current lot sizes comparing to what it will look like with the new zoning.

Reviewing the location of where decks are currently allowed, Mr. Dickey instructed the residents to keep the following questions in mind:

- What issues are there with decks now?
- How close to lot lines should they be allowed?
- Are there issues with shed placement?
- Are there any other land use issues?

3. Questions/Comments

A gentleman from the residents asked for more clarification regarding the purpose of the meeting.

Mr. Dickey explained that there has been some complaints received by HRM regarding decks in Heritage Hills.

Councillor Barkhouse explained that once staff looked into these complaints, it was recognized that the residents in that area were not in compliance.

A gentleman from the residents noted concerns with his garage not fitting the requirements and asked the height requirements for a garage.

Mr. Dickey explained that the current height restrictions for a garage is 15 feet.

Mr. Jackson Boye, Vicky Crescent explained that his property is not large enough to build a shed under the requirements.

Mr. Savoie Chas Rene, Vicky Crescent expressed concern with not having property lines to show where they should properly measure from.

Mr. Dickey recommended a surveyor.

Mr. Robert Brosko, Serop Crescent asked if there would be an issue with his current layout of his deck and explained the layout and measurements.

Mr. Dickey asked about the closest points to the property line and answered 'no'.

A lady from the residents asked about the regulations for fencing.

Mr. Dickey explained that HRM does not regulate fences. They do not need a permit unless over 6 feet in height.

Ms. Paulette Francis, Melrose Crescent explained that when she bought her property the lawyer said that there were covenants in place regarding fencing.

Mr. Mark Ouellet explained that covenants are a private matter between the developer and the purchaser of the property. HRM does not and cannot enforce these.

Ms. Francis asked if current sheds and decks do not meet the requirements, will the property owner be asked to move it.

Mr. Ouellet explained that this would be determined on a case by case basis. HRM only investigates issues when a resident calls in a complaint. He explained that it may be reviewed by how large and long the structure has been in place. For example., If there is a complaint and the structure is easily to be moved, the owner may be asked to do so.

A gentleman from the residence expressed concern that his deck is on his property line.

Mr. Chea Savoie, Vicky Crescent asked if a property owner could build a fence and then build a shed up against it.

Mr. Ouellet explained that decks and sheds must meet the setback requirements regardless of fencing.

Mr. Dickey explained that the shed could not have an overhang that would hang over the abutting property.

Councillor Barkhouse explained that they could relax the setback standards.

Ms. Brigitte Baker, noted that currently non compliance issues are only specific to complaint driven cases. When the properties are rezoned, if it continues to be complaint driven, what is the difference?

Mr. Dickey explained that there is no difference, just that Harbour East Community Council wanted to address the issue. He added that the issue would be best addressed with an R1 zone vs. amending the old Heritage Hills development agreement.

Ms. Baker asked what the mandates are now.

Mr. Dickey explained that there is a section in the Eastern Passage Land Use By-Law that has "permitted encroachments" this list things that are allowed in a required yard. He added that decks are not one of them.

Mr. Glen Merrick, Atikian Drive, asked if he would need a permit to build a shed.

Mr. Ouellet explained that anything under 150 square feet a building permit is not needed but that a development permit is required. The setback requirement of 4' can be changed.

Mr. Savoie asked if the rezoning will increase property taxes.

Mr. Dickey explained that rezoning these properties will not increase the current property taxes. The tax calculation is based on the assessed value of the property and zoning plays no role for developed properties.

Mr. Savoie asked what rules are in place regarding sidewalks. Mr. Dickey explained that for all new street construction, it is required that sidewalks are generally put in on both sides of the street which is a change from when Heritage Hills was first approved.

Mr. Merrick explained that there are no sidewalks going into the new properties by the Sobeys in Russell Lake. He expressed concern with pedestrians.

Mr. Dickey explained that there could be some deficiencies with the private developers/commercial developers. This has been improving over the past 10 years.

Ms. Kim Armsworthy, Melrose Court, asked how quickly the properties will be rezoned and expressed concern with the stairs to her deck being on the property line.

Mr. Dickey explained that a staff report will be brought forward to Community Council in September with the Public Hearing potentially being in October 2009.

A gentleman of the residents asked what a RA zone is.

Mr. Dickey explained that it is a Rural Area zone and is outside the municipal service boundary. It is a holding zone into which sewer and water systems may be expanded.

Mr. Merrick asked the difference between a P1 and P2 zone is.

Mr. Dickey explained that P1 zoning is Parkland and the P2 zoning is a building of some kind such as a school or a church.

Mr. Merrick noted that the church is currently zoned institutional and asked if HRM would be rezoning the church as well.

Reviewing a picture of the area, Mr. Dickey showed the area to be rezoned and noted that the church would not be included in this application.

Alana MacQuade, Melrose Court explained that she has put in a number of applications to build a deck and had been rejected. She expressed satisfaction that this rezoning will be taking place and has hope that her application will be accepted for safety reasons.

Mr. Steve Joyce, Vickey Crescent explained that there are no playgrounds in the area and feels that the children in the neighbourhood should have somewhere to play other than the street.

Mr. Dickey agreed that this is a concern with some older subdivisions. Parkland areas have come a long way since 1993.

Councillor Barkhouse agreed and explained that new subdivisions now all need to have land designated to play areas.

Ms. Melrose asked why go through the application if compliance issues will both be governed by HRM's by-laws the same way before and after the rezoning?

Mr. Dickey explained that Council wants to amend the requirements for decks. Therefore, the development agreement could be amended or they could rezone. He also explained that with the current development agreement in place, when selling, it makes it more difficult as a development agreement is a burden against the property.

Ms. Melrose asked if changing the zone would relax some of the requirements.

Mr. Dickey agreed. He explained that the recommendations to Council would be to lower the setback requirements for decks and sheds to an appropriate standard. This recommendation will be reviewed and researched to make similar to other residential standards withing HRM.

4. Closing comments

Mr. Dickey thanked everyone for coming to the meeting and expressing their comments and concerns. He explained that the public also has an opportunity to express their opinions during the Public Hearing or by contacting him.

5. Adjournment

The meeting adjourned at approximately 7:57 p.m.