

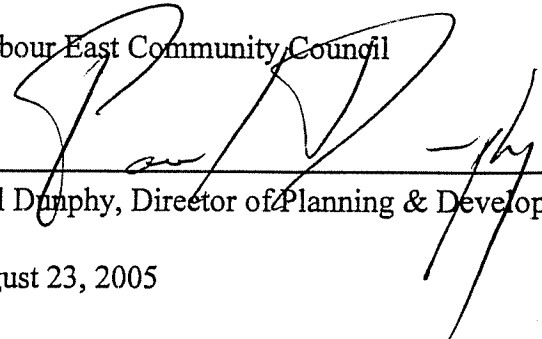
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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
September 8, 2005

TO: Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Planning & Development Services

DATE: August 23, 2005

SUBJECT: Case 00749: Development Agreement - 101 & 103 Albro Lake Road and 250 Victoria Road, Dartmouth

SUPPLEMENTARY REPORT

ORIGIN

- Approval by Regional Council on August 9, 2005, of amendments to the Dartmouth MPS and LUB to permit one new 8 unit multiple residential dwelling and to recognize two existing multiple unit dwellings at 250 Victoria Road, and 101 & 103 Albro Lake Road, Dartmouth (PID numbers 00057497, 00057489 and 00057471), by way of a development agreement.
- Request by Applicant on August 22, 2005, for a revision to the proposed Development Agreement.

RECOMMENDATIONS

It is recommended that Harbour East Community Council:

- 1 Approve the attached Development Agreement, as contained in Attachment "A", to permit one new 8 unit multiple residential dwelling and to recognize two existing multiple unit dwellings at 250 Victoria Road, and 101 & 103 Albro Lake Road, Dartmouth, with an amendment to the proposed Development Agreement to delete Section 3.5;
- 2 Require that the Development 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/DISCUSSION

On August 9, 2005, Regional Council approved amendments to the Dartmouth Municipal Planning Strategy (MPS) and Land Use By-law (LUB) to permit one new 8 unit multiple residential dwelling and to recognize two existing multiple unit dwellings at 250 Victoria Road, and 101 & 103 Albro Lake Road, Dartmouth. The amendments have been reviewed by the Nova Scotia Department of Housing and Municipal Affairs as per Section 208 of the Municipal Government Act. These amendments became effective on August 20, 2005. Therefore it is now appropriate for Council to consider approval of the attached draft Development Agreement which is scheduled for a public hearing on September 8, 2005.

On August 22, 2005, the Applicant requested a revision to Part 3 of the Agreement as it was considered non applicable to their development. Staff agrees that clause 3.5 which is intended to deal with multi-lot subdivisions under development agreement is intended for a different context.

3.5 Notwithstanding Section 3.4 or any transfer of title to a lot, the Developer shall continue to be responsible for the fulfilment of the Developer's covenants under this Agreement and any Subdivision Agreement entered pursuant to this Agreement.

While the Municipality would not reasonably seek to enforce such a clause, staff has agreed to remove it as per the Applicant's request.

BUDGET IMPLICATIONS

There are no budget implications at this time.

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. Outlined in staff report dated May 19, 2005.

ATTACHMENTS

Attachment "A" Draft Development 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: Shayne Vipond, Planner (902) 490-4335

ATTACHMENT A

PROPOSED DEVELOPMENT AGREEMENT

THIS AMENDING AGREEMENT made this day of , 2005,

BETWEEN:

ADSUM ASSOCIATION FOR WOMEN & CHILDREN

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 at Dartmouth and which said lands are more particularly described in Schedule "A" to this Agreement (hereinafter called the “Lands”);

AND WHEREAS, the Developer has requested that the Municipality enter into a new development agreement to permit a multi-unit residential building on the Lands pursuant to the provisions of the Municipal Government Act and the Municipal Planning Strategy and Land Use By-law for Dartmouth:

AND WHEREAS the Harbour East Community Council approved this request at a meeting held on , 2005, referenced as Municipal Case Number 00749.

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 The Developer agrees that the Lands shall be subdivided, developed and used only accordance with and subject to the terms and conditions of this Agreement.
- 1.2 Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Dartmouth Land Use By-law, as may be amended from time to time.
- 1.3 Except as otherwise provided for herein, the subdivision of the Lands shall comply with the requirements of the Dartmouth Subdivision By-law, as may be amended from time to time.
- 1.4 Pursuant to Sections 1.2 and 1.3, 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 and Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Province of Nova Scotia, and the Developer or lot owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.
- 1.5 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 and Subdivision 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.
- 1.6 The Developer or lot owner 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 regulations, by-laws or codes applicable to any lands owned by the Developer or lot owner.
- 1.7 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 AND DEVELOPMENT PROVISIONS

2.1 Schedules

The Developer shall develop and use the Lands substantially in conformance with the site plans, design drawings, and guidelines, attached as the following Schedules to this Agreement:

Schedule "A" - Legal Descriptions of the Lands

Schedule "B" - Concept Plan
Schedule "C" - Building Elevation Drawings

2.2 Permitted Uses

2.2.1 The uses of the Lands permitted by this Agreement, subject to its terms and as generally illustrated on the Schedules attached hereto, are as follows:

1. Three 8 unit multiple residential dwellings (two existing, one proposed) for a total of 24 residential dwelling units;
2. Vehicular parking and circulation areas; and
3. Open space, landscaping, walkways.

2.2.2 The developer agrees to consolidate through the subdivision process the lands at 250 Victoria Street, 101 Albro Lake Road and 103 Albro Lake Road into one parcel prior to issuance of an occupancy permit.

2.2.3 No outdoor storage shall be permitted on the Lands. Refuse containers located outside the apartment building shall be screened from adjacent properties and from streets by means of opaque fencing, masonry walls and/or suitable landscaping.

2.3 Buildings/Architectural Design

2.3.1 The Developer shall construct a building on the Lands which, in the opinion of the Development Officer, is substantially in conformance with Schedules B, and C and attached hereto, including their its location, size, height, number of units, and architectural design, including facade features and type of exterior materials.

2.3.2 The Developer agrees that the height of any new building shall not exceed 35 feet.

2.3.3 The Developer agrees that within the new 8-unit building, 6 dwelling units shall be approximately 450 square feet in area and 2 dwelling units shall be approximately 600 square feet in area.

2.3.4 Pursuant to Sections 2.3.1 and 2.3.2, the Development Officer may approve modifications to the location, and size as well as the architectural design of the buildings including facade features, provided such modifications are minor in nature and, in the opinion of the Development Officer, further enhance the appearance of the building and Lands.

2.4 Parking and Circulation (Vehicular and Pedestrian)

- 2.4.1 The number and layout of parking spaces on the Lands shall be as generally illustrated on Schedule "B". The size of parking spaces shall be as specified in the Land Use By-Law, and parking for the disabled shall be as required by the Building Code Act, including the provision of applicable above ground signage.
- 2.4.2 The developer agrees to construct all parking areas and circulation aisles in hard surface covered by gravel. The driveway to the parking area shall be constructed in accordance with the Municipal Services Specifications guidelines driveway ramp detail. Concrete ramp work shall be completed under a Streets and Services permit and in accordance with the requirements of Section 2.5.5 of this agreement.
- 2.4.3 Internal pedestrian pathways shall be provided as generally illustrated on Schedule 'B' and shall be constructed of crusher dust.
- 2.4.4 The Development Officer may approve changes to the parking and circulation layout as illustrated on Schedule "B" provided such changes further the intent of this Agreement.

2.5 Streets and Municipal Services

- 2.5.1 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. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies and regulations of HRM and other approval agencies, except as provided for herein. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer.
- 2.5.2 The Developer agrees to install a Backflow Prevention Device for the municipal water service as required by the Halifax Regional Water Commission prior to the issuance of a development permit.
- 2.5.3 The new building shall connect to the municipal sewer and water system. The design, installation and cost associated with the provision of services, included but not limited to, water supply, sanitary sewers, storm sewer and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer, and no development permit shall be issued by the Development Officer until written approval from the Development Engineer and any other applicable authorities with respect to the design of all systems has been received.
- 2.5.4 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, 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 Engineer.

2.5.5 Pursuant to this Section (Section 2.5.1), no occupancy permit shall be issued for the building on the Lands until all street improvements, municipal servicing systems and utilities have been completed in accordance with the Streets By-law S-300.

2.6 Landscaping

2.6.1 Landscaping on the Lands shall be carried out by the Developer substantially in conformance with Schedule "B".

2.6.2 The Developer shall prepare a detailed landscaping plan for the Lands, which are satisfactory to the Development Officer, prior to the issuing of Development permit.

2.6.3 The Development Officer, on the advice of the Manager of Parks and Open Space, may approve modifications to the species of plant stock, and the number, size and location of plant stock, provided such modifications, in the opinion of the Development Officer, enhance the attractiveness and visual appearance of the Lands.

2.6.4 The Developer agrees to complete all landscaping, in accordance with the approved landscaping plan within 18 months of an occupancy permit. In the event that the Developer has not completed the appropriate landscaping of the subject property to the satisfaction of the Development Officer within that time period, the Development Officer may issue a written 30 day notification requiring that the landscaping work be completed. If the Developer has not complied to the satisfaction of the Development Officer at the end of the notification period, the Developer shall be penalized in the amount of 120% of the total cost of the landscaping as determined by the Halifax Regional Municipality.

2.6.5 Fuel storage tanks and electrical transformers shall be located and secured in accordance with the applicable approval agencies. These facilities shall be screened by means of opaque fencing, masonry walls and/or suitable landscaping.

2.6.6 All lighting on the Lands shall be designed, installed and maintained to supply adequate area lighting and provide adequate security. Lighting shall be directed to all driveways, parking areas, loading areas, building entrances and walkways and away from streets and abutting properties.

2.6.7 The Developer agrees, at its own expense, to ensure the placement of recyclable containers and organic composters (i.e green carts) are not visible from street frontage by means of either (a) including provisions in the Protective Covenants to ensure recyclable containers and organic composters shall be contained within the dwelling or (b) constructing a corral area of lattice wood (or acceptable equivalent) and shrubs.

2.6.8 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of buildings, 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 removal/salting of walkways and driveways.

2.7 Signs

2.7.1 No mobile/ moveable signs or billboards shall be permitted on the Lands.

2.8 Maintenance

2.8.1 The Developer shall maintain and keep in good repair all portions of the development and lands, including but not limited to, the interior and exterior of the buildings, retaining walls and fencing, lighting, walkways, parking areas and driveways, including the maintenance of all landscaping, the replacement of damaged or dead plant stock, trimming and litter control, and snow removal/salting of walkways, driveways and parking areas and clean-out of any stormwater treatment facilities.

2.9 Environmental Matters

2.9.1 The Developer shall submit to the Development Officer a detailed Site Grading and Drainage Plan prepared by a professional engineer prior to commencing any site works on the Lands. Such Plan shall require the approval of the Development Officer, on the advice of the Development Engineer. Modifications to the site grading and finished elevations, as indicated on the Plan, may be approved, provided such modifications further the intent of this Agreement.

2.9.2 The Developer agrees that, prior to the commencement of any work on any of the Lands, or associated off-site works, a detailed Site Disturbance Plan of the affected area shall be submitted to the Development Officer, indicating the sequence of construction, the areas to be disturbed, and all proposed detailed erosion and sedimentation control measures and stormwater management measures to be put in place and maintained prior to and during development. These measures shall not be removed until permanent stabilization has occurred. The plans shall be reviewed by, and require the approval of the Development Officer, acting on the advice of the Development Engineer and any other applicable agencies, prior to any site works being undertaken.

2.9.3 No occupancy permit for any building constructed upon the Lands shall be issued until all infrastructure applicable to the building is complete, including but not limited to, parking areas, driveways, walkways, municipal services and landscaping, subject to the applicable Sections of this agreement.

PART 3: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

- 3.1 A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and the Developer shall pay or reimburse the Municipality for the registration cost incurred in recording such documents.
- 3.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assignees, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.
- 3.3 Notwithstanding any subdivision approvals granted pursuant to this Agreement or any transfer or conveyance of any lot or of all or any portion of the Property, this Agreement shall continue to apply to and bind the Developer, the Property and each lot and the Developer shall continue to be bound by all terms and conditions of this Agreement.
- 3.4 Upon the transfer of title of any lot, the owner thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.
- ~~3.5 Notwithstanding Section 3.4 or any transfer of title to a lot, the Developer shall continue to be responsible for the fulfilment of the Developer's covenants under this Agreement and any Subdivision Agreement entered pursuant to this Agreement.~~
- 3.5 In the event that construction on the Lands has not commenced within 2 (two) years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purposes of this section, "commencement of construction" shall mean the pouring of the footings for the foundation for the building.
- 3.6 Upon the completion of all development on the Lands, or portions thereof, or after 5 (five) years from the date of registration of this Agreement at the Registry of Deeds, whichever time period is less, 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 on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law, as may be amended.

PART 4: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

- 4.1 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 one day of receiving such a request.
- 4.2 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, 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 defence based upon the allegation that damages would be an adequate remedy;
 - (b) the Municipality may enter onto the Property and perform any of the covenants contained in this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Property 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; and/or
 - (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

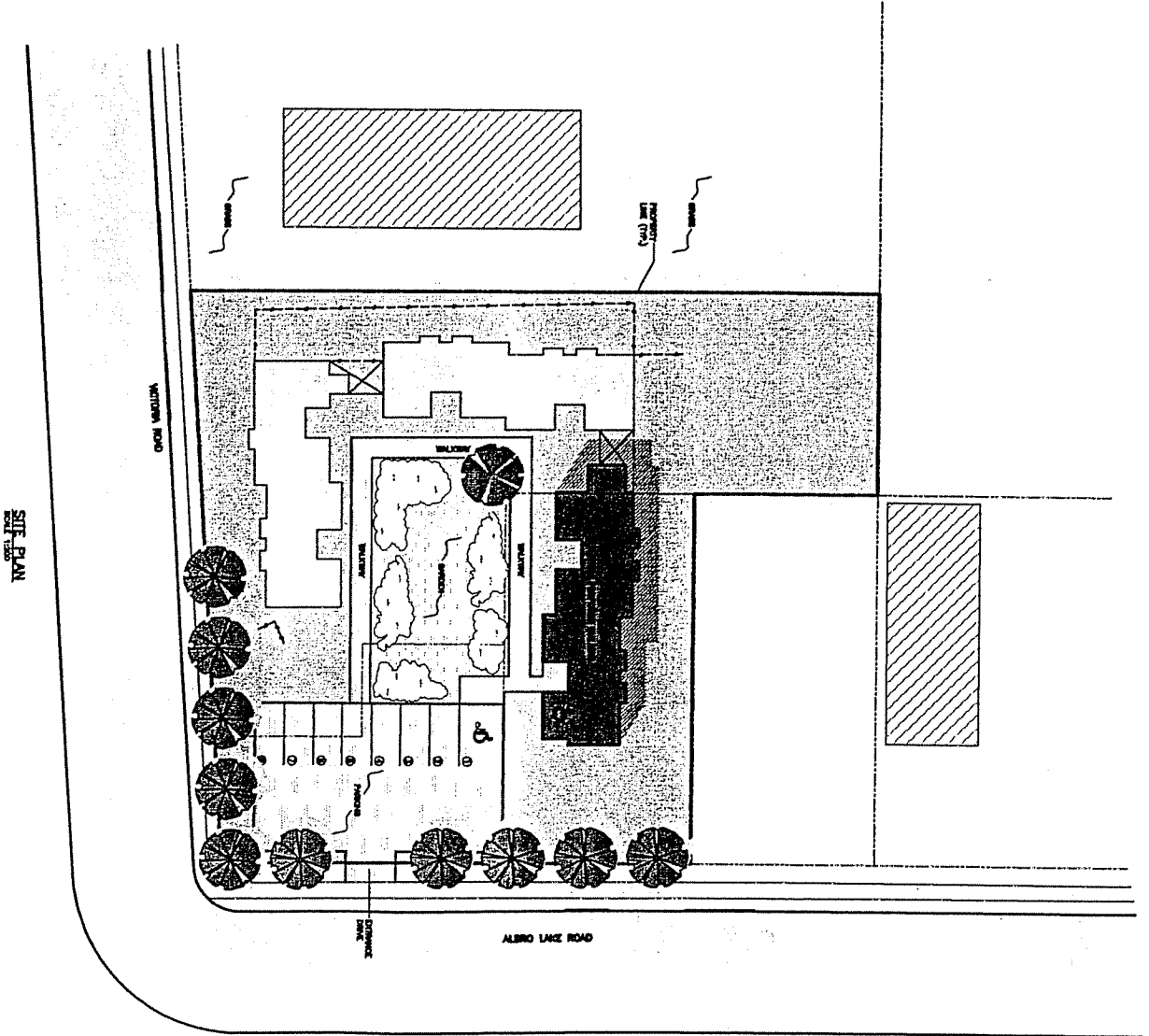
IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

)	ADSUM ASSOCIATION FOR WOMEN & CHILDREN
)	
per: _____)	per: _____
)	

Sealed, Delivered and Attested by the proper signing officers of Halifax Regional Municipality duly authorized on that behalf in the presence of:)	HALIFAX REGIONAL MUNICIPALITY
)	
)	per: _____
)	MAYOR
)	
per: _____)	per: _____
)	MUNICIPAL CLERK

Schedule "B" - Concept Plan



SITE PLAN

THE COURT EXTENSION
O'NEILL'S CORP.
ARCHITECTS AND ENGINEERS
ANN ARBOR, MICHIGAN

DATE: 10/15/01

Schedule "C" - Building Elevations

