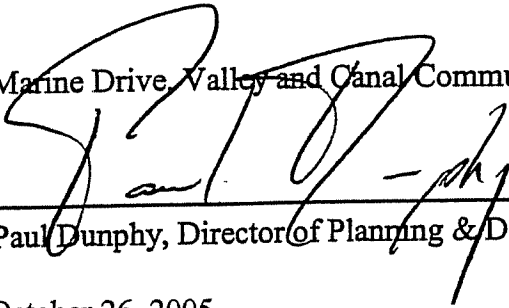




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Marine Drive, Valley & Canal Community Council
November 8, 2005

TO: Marine Drive, Valley and Canal Community Council

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

DATE: October 26, 2005

SUBJECT: Case 00428: Development Agreement for Paddy Excavation, Waverley

ORIGIN

Application by 2338685 Nova Scotia Limited to enter into a development agreement to permit an expansion of an existing contracting yard.

RECOMMENDATION

It is recommended that Marine Drive Valley & Canal Community Council:

1. Move Notice of Motion to consider the development agreement and schedule a public hearing.
2. Repeal the existing development agreement (Attachment "E") which is registered as Document Number (45782) in Book Number (5645) at Pages (84 to 95) in the Registry of Deeds for Halifax subject to the signing of the attached agreement (Attachment "F").
3. Approve the development agreement as set out in Attachment "F".
4. 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, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Synopsis of Proposed Development: In 2002, 2338685 Nova Scotia Limited expanded the contracting yard for Paddy Excavations in Waverley without seeking appropriate permits from the Municipality. Consequently, the expansion is in contravention of their existing development agreement, Attachment "E", and the Land Use By-law. Once notified, the land owner requested an amendment to the existing development agreement to permit the following:

- enlargement of the area dedicated to the storage/parking of contracting equipment onto an adjacent property;
- permit a small outbuilding for the storage of salt;
- permit a fuelling station for heavy equipment; and
- maintain most of the previous development agreement terms.

The properties comprise approximately 8114 square metres (2 acres) and generally slope from east to west with a gradual slope toward an adjacent swampy area.

Location, Designation and Zoning: The subject properties are situated between Sawler's Road and Cobequid Road in Waverley (Map 1). The area under consideration includes two properties: PID#'s 40607194 and 40607186, otherwise known as 1 Sawlers Road, 5 Sawlers Road and 1495 Cobequid Road and is:

- subject to the policies and provisions of the Municipal Planning Strategy and Land Use By-law for Planning Districts 14 and 17 (Shubenacadie Lakes);
- located within the Community Centre Designation (Map 1), which is intended to promote a variety of retail service uses, offices, residential uses and community uses;
- zoned C-2 (Community Commercial) Zone (Map 2), which permits retail service uses, offices, residential uses and community uses.

Surrounding Land Uses: Lands located immediately east, west and south of this site are zoned C-2 (Community Commercial) Zone, however a number of these properties are developed as residential single unit homes. Lands to the north are developed as single unit dwellings and zoned R-1b (Suburban Residential). The broader area contains a mix of residential, institutional, commercial and industrial land uses.

Enabling Policy: Policies P-100 of the Municipal Planning Strategy (MPS) enables Council to consider a development agreement for an expansion to existing commercial or industrial uses not otherwise permitted by the Land Use By-law.

Public Information Meeting: Public information meetings were held on June 10, 2002 and February 12, 2004 for this application. In addition to a newspaper advertisement, written notification

of the meetings was sent by regular mail to properties identified on Map 3. Should Council agree to hold a public hearing on this application, a similar process of notification will be undertaken.

Approximately 15 members of the public attended each of the public information meetings. A number of issues were raised and discussed during the meeting. These will be addressed in the discussion section of this report. Minutes from these meetings are attached as Attachment "A" and "B".

Site Visit: Several site visits were made to the site between February 2002 and October 2005 to assess site issues.

Halifax Watershed Advisory Board: The application was reviewed by the Halifax Watershed Advisory Board as the property is immediately adjacent to a watercourse. A report from the Advisory Board is attached as Attachment "C".

DISCUSSION

The following is an evaluation of the proposal for the subject lands in relation to applicable policies of the MPS (refer to Attachment "D"):

Policy Intent: The "Community Centre" land use designation constitutes the primary areas where commercial and offices uses are encouraged. The MPS permits the expansion or change in use of existing heavy commercial or industrial uses provided there are controls in place to mitigate any negative impacts of such activities in accordance with Policy P-100.

Issues Identified

In reviewing the proposed development against criteria established within the MPS and consideration of the comments made at the public information meetings, staff have identified the following areas for more detailed discussion:

Environmental Issues relating to the Adjacent Watercourse: The Halifax Waters Advisory Board raised several issues in its review of the proposed development. As a result, the applicant has agreed to include the following measures in the proposed development agreement.

- The construction of an impervious surface to prevent soil contamination and groundwater infiltration from the proposed salt shed.
- The creation of a vegetated berm near the boundary of the vehicle storage area to protect the adjacent watercourse.
- The construction of a settling pond to allow sediment to settle out of runoff before it enters the watercourse.

- The construction of an impervious apron adjacent to the service buildings and the installation of an oil and grit separator prior to remove oil and sediment from runoff prior to discharge into the environment.
- The inclusion of a provision to allow the Municipality to request septic tank maintenance records.

Based on the proposed measures, it is the opinion of staff that all environmental concerns are adequately addressed in the proposed agreement.

Traffic Issues: Members of the public expressed concern with the safety of the proposed second access to the site in the form of a new driveway located off Cobequid Road. The driveway would be gated and located at the western end of the site's road frontage on Cobequid Road. Staff offer the following comments:

- the driveway meets sight distance requirements for a commercial driveway.
- it is not anticipated that the new driveway will increase site-generated traffic on Cobequid Road.
- it is anticipated that the operation of the new driveway will reduce truck traffic through the Cobequid Road and Rocky Lake Road intersection.
- the development agreement will restrict use of the access point to normal business hours.
- as an increase in truck traffic is not anticipated, there should be no increased risk to children using Cobequid Road as a walking route to school.

Based on the above analysis, the request for a new driveway access on Cobequid Road is supported.

Compatibility with adjacent Residential Uses : Concerns about hours of operation, noise and the aesthetics of the development were raised by local residents. The following comments are offered on these issues:

- Hours of operation and noise are linked to after hour activities on the site related to the use of equipment for snow plowing or a response to an environmental emergency. These activities are outside those permitted by the current development agreement and the proposed amendments. The developer is subject to the penalties of the Noise By-law under the current and proposed development agreements.
- The proposed development agreement requires the construction of a landscaped area adjacent to Cobequid Road which should, over time, minimize the visual impact of the contracting yard from Cobequid Road.
- Open storage is controlled through the development agreement.

Removal of Encroachments from the Sawler's Road right-of-way: The review process identified minor encroachments by the contracting yard on unused portions of HRM's right of way adjacent to Sawler's Road. The proposed agreement includes provisions to remove the encroachments.

Conclusion

Staff have reviewed the identified issues related to the proposed development and are satisfied that the proposal is reasonably consistent with the applicable policies of the Municipal Planning Strategy (Attachment "D"). It is recommended that Marine Drive, Valley and Canal Community Council approve the proposed application and enter into a development agreement attached as Attachment "F", to permit an expanded contracting yard at 1495 Cobequid Road and 1 and 5 Sawler's Road and discharge the existing development agreement.

BUDGET IMPLICATIONS

There are no immediate budget implications associated with this proposal.

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 development agreement. This is the recommended course of action.
2. Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff is satisfied that both the proposed rezoning and development agreement are consistent with the policies and intent of the MPS. Council is advised that if this application is refused, staff will follow-up on the violations noted in the background section of the report.
3. Council may choose to alter the terms of the development agreement. This may necessitate further negotiations with the applicant and additional report(s) In the event substantive revisions are requested subsequent to advertising for a public hearing, an additional public hearing may be required .

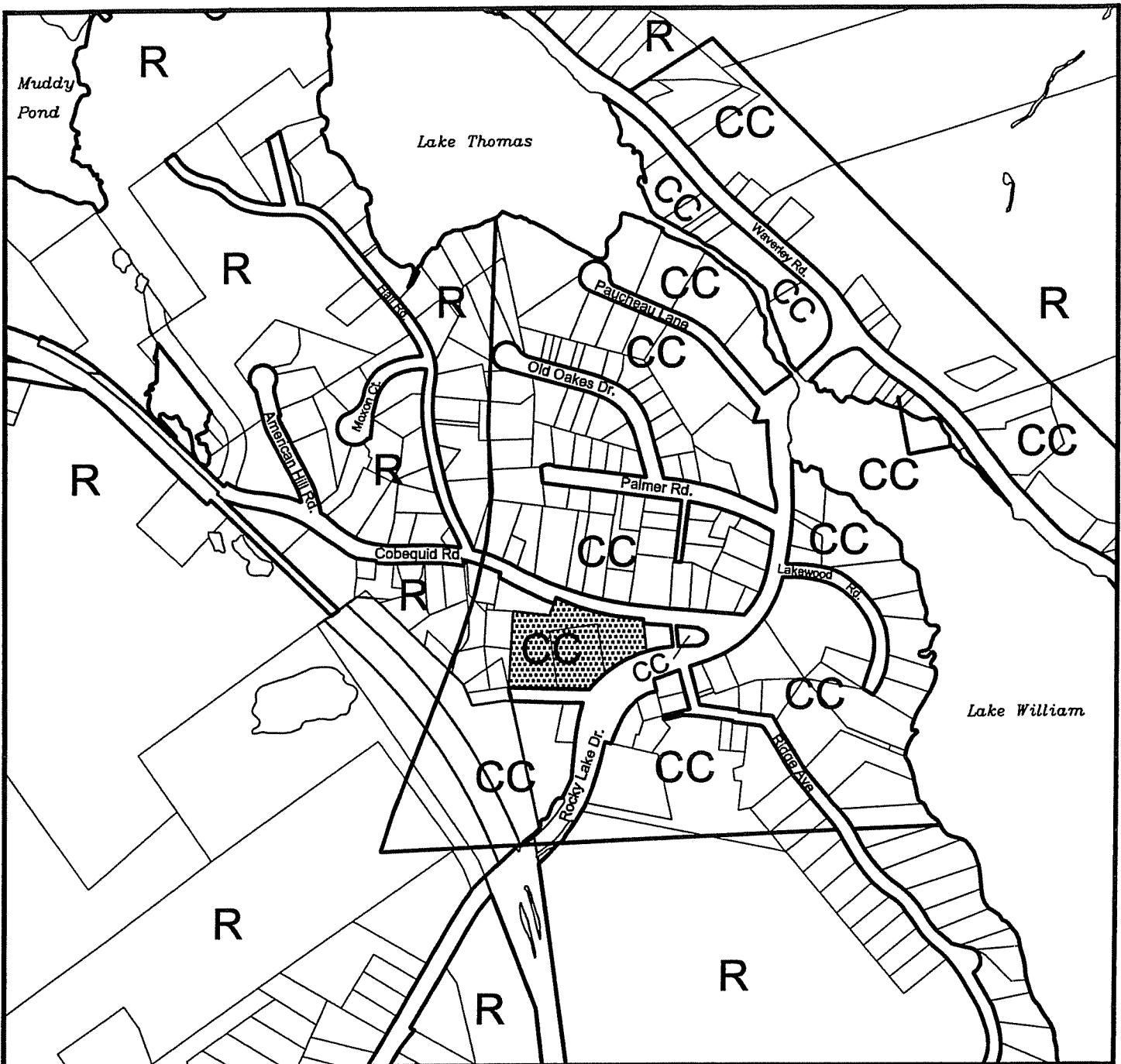
ATTACHMENTS

Map 1	Generalized Future Land Use Map
Map 2	Zoning Map
Map 3	Notification Map
Attachment "A"	Minutes from Public Information Meeting (June 10, 2002)
Attachment "B"	Minutes from Public Information Meeting (February 12, 2004)
Attachment "C"	Halifax Waters Advisory Board Recommendation
Attachment "D"	Relevant MPS Policy

Attachment "E" Existing Development Agreement
Attachment "F" Proposed 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: Andrew Bone, Planner 1, Planning and Development Services, 869-4226

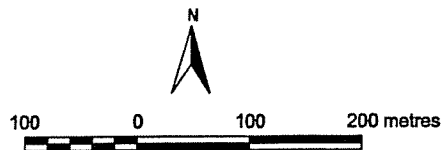


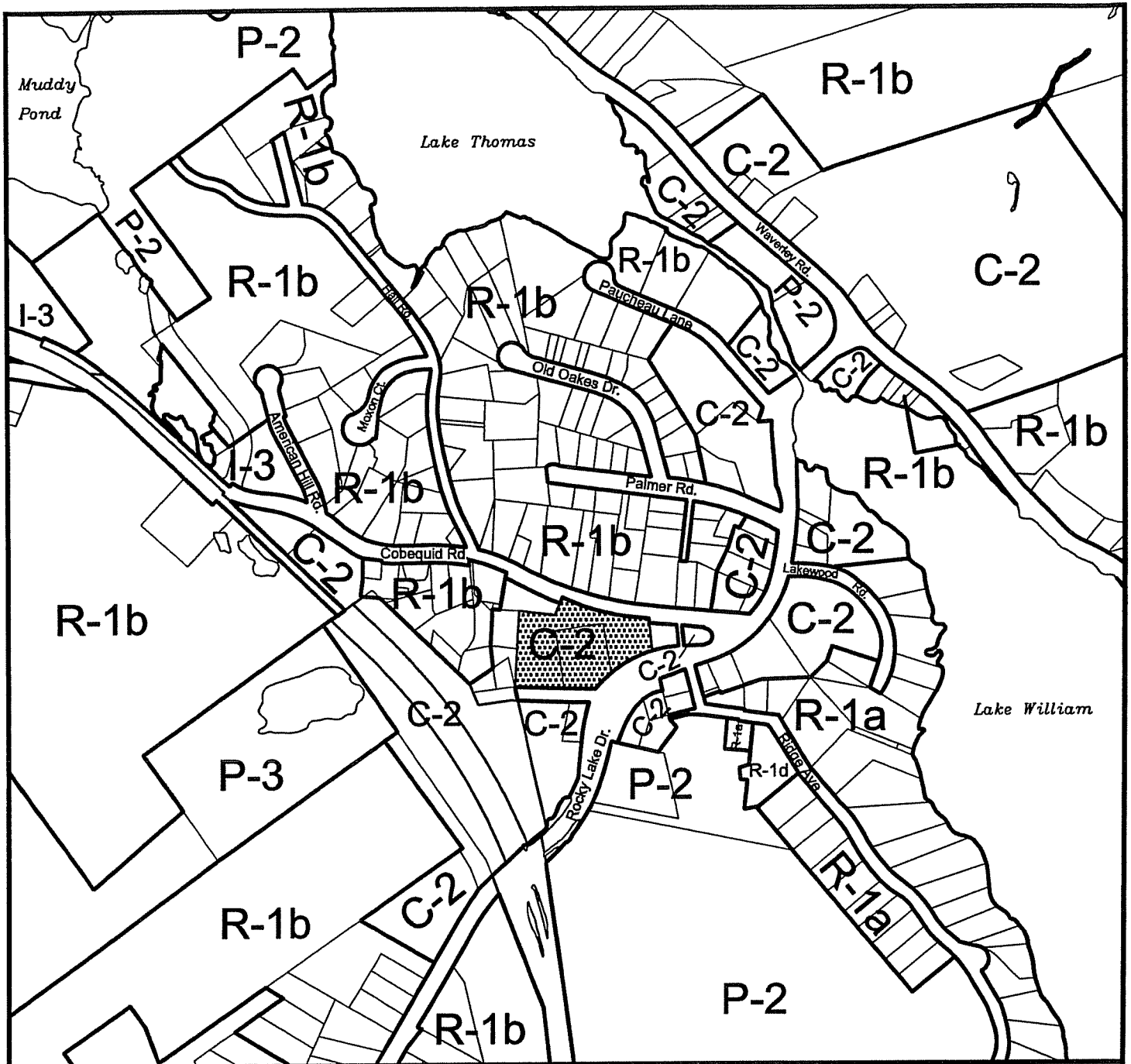
**Map 1
Generalized Future Land Use**



- R Residential Designation
- CC Community Centre

 Subject Properties





**Map 2
Zoning**

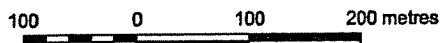


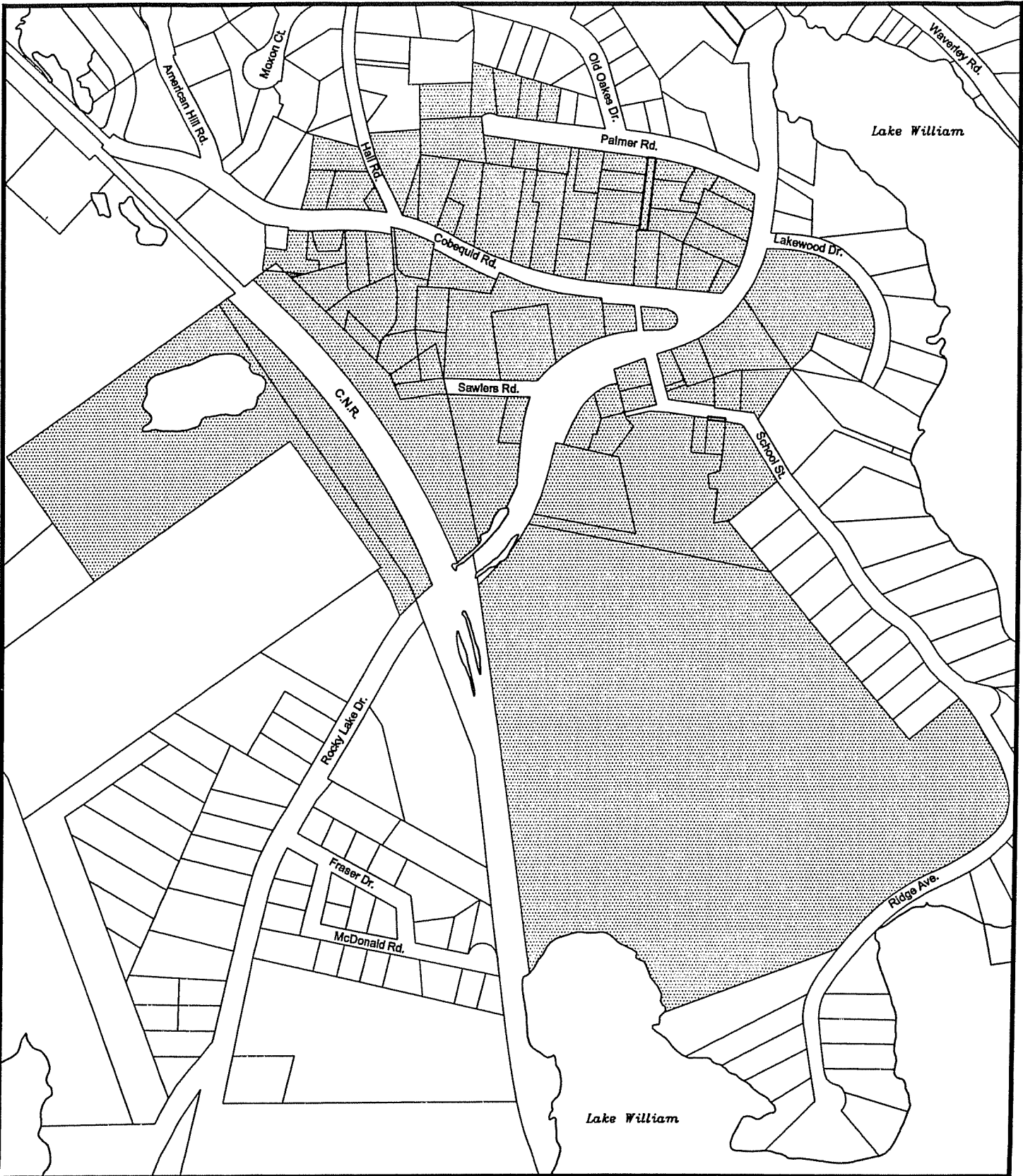
Subject Properties



- R-1a Single Unit Dwelling Zone
- R-1b Mobile Dwelling Zone
- R-1d Mobile Home Park Zone

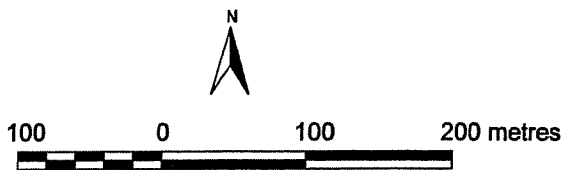
- C-2 General Business Zone
- I-3 Comprehensive Development District
- P-2 Mixed Industrial Zone





Map 3

 Notification Area



HALIFAX
REGIONAL MUNICIPALITY
PLANNING SERVICES

Attachment "A"
Minutes from Public Information Meeting -June 10, 2002

HALIFAX REGIONAL MUNICIPALITY
PLANNING SERVICES - SACKVILLE OFFICE
PUBLIC INFORMATION MEETING
CASE NO. 00428 - PADDY EXCAVATIONS LIMITED

7:00 p.m.
Monday, June 10, 2002
Waverley Volunteer Fire Department

STAFF: Andrew Bone, Planner
Cara McFarlane, Administrative Support

APPLICANT: Paddy Hilchie, Paddy Excavations Limited

OTHER: Councillor Hines

MEMBERS OF
THE PUBLIC:15

The meeting commenced at approximately 7:10 p.m.

INTRODUCTIONS - ANDREW BONE, PLANNING SERVICES

Andrew Bone introduced himself, the planner for this application; myself, Cara McFarlane, taking the minutes for the meeting; Paddy Hilchie, the owner of the property; and Councillor Gary Hines. The reason for the public information meeting is to discuss an application by Paddy Excavations Limited to expand their existing general contracting yard at Cobequid Road, Rocky Lake Road and Sawler Road.

The property was highlighted in orange on an overhead that was shown to the public. It backs onto Cobequid Road, Rocky Lake Road, and Sawler Road. Currently there is a development agreement for the center portion of property (shown on overhead) which allows for a general contracting yard on this particular parcel. Since the development agreement was initially approved back in 1994, the applicant has acquired the property around the outside of the parcel.

About last winter the applicant constructed, in this location, an office building to house most of their office uses. The office was permitted as-of-right and is a permitted use in the zone. The property is zoned C-2 which basically permits retail, offices, etc., basically small scale commercial uses which are similar to the existing businesses there in the Village of Waverley.

The current property in the center (shown on overhead) houses a number of buildings, some storage and parking areas, and some general open construction yard for construction related activities. There is a Quonset hut over on the adjacent parcel, which the developer owns, and the new office building (shown on overhead). The developer would like to expand the yard, provide some fencing and use the back area of this property for circulation. There is a fueling station (shown on overhead) for the vehicles and they would like to be able to circulate around the site as well as provide some customer and/or staff parking.

The Municipal Planning Strategy, the guiding document for planning in the area, basically says that existing Commercial/Industrial Uses in the area primarily should remain as is. They are not permitted to expand by right so the applicant has to negotiate a contract with the Municipality to permit whatever use they wish to obtain on the site.

In 1995, Paddy Excavations Limited came in and negotiated an agreement with the Municipality to expand their operations. They have to meet the terms of that agreement. Today, they would like to change that agreement and that is why they are applying to amend the agreement. Policy P-100 is the enabling policy which basically lays out some criteria for what type of uses and what can happen on the property. It is our understanding that the proposed uses do not conflict with any term here. The main one would be subsection (c).

Staff has not written a report on this proposal yet. We are here tonight to see what the community concerns are with this site particularly with noise, outdoor storage, and scale intensity of operation.

The applicant has constructed a fence on the property. The Municipality contacted them and said that they would be in violation of their existing agreement if they were to use that property. As a result, the developer fenced off the property back to the original property line until the completion of this process and until we determine what Council's decision on this project would be. If Council determined they would be against the agreement, the developer would not be allowed to use this yard and they would be required to reinstate any requirements of the existing agreement such as landscaping and fencing around the property as per their original agreement.

The applicant is proposing a fueling station and some vehicular circulation.

QUESTIONS AND COMMENTS

Ms. Langille asked how far up Cobequid Road towards Windsor Junction is planned to be filled. Is it just the area outlined in orange?

Mr. Bone explained that the area outlined in orange is the property. The development agreement would apply to the whole property, but relate to a specific site plan that would be attached to the agreement and would specifically identify what areas are to be used for specific activities. The existing agreement covers this interior parcel (shown on overhead) and the proposed amendment is to cover the additional orange area (shown on overhead).

Ms. Langille asked how far up behind the existing houses is the developer planning to go.

Mr. Bone believes that the confines of the application are where the new fence is that was built. The applicant's intentions are to stay within the fences.

Paddy Hilchie asked if Ms. Langille was concerned about him filling in the property. He explained that they just want to use what you see on the overhead.

Ms. Langille complimented Mr. Hilchie on a job well done so far. She also asked if there has been any environmental studies done. Will it affect the wetland behind there? Does it at all?

Mr. Hilchie answered no, there hasn't been a study done.

Mr. Bone explained that the application is to deal with the area shown on the overhead. It is his understanding that there isn't any filling proposed. It is just for use.

Ms. Langille expressed one of the main concerns that people are having are the noise levels.

Dave Clarke, 19 Sawler Road, mentioned that the equipment noise is really loud at times. Hours of operation seem to go on throughout the night. He thinks Paddy has done a fine job with his business (building it up and keeping it clean), but the noise level is his concern. Mr. Clarke handed out a letter to the public as they walked into the meeting regarding the level of noise coming from the business.

Mr. Bone asked Mr. Clarke if it is the loudness of noise or the hours of operation that were a concern.

Mr. Clarke said that the noise is periodically 24 hours a day. He realizes that it is because of the type of business. He believes it was not a good thing putting the business there. It has expanded to a size that the equipment shouldn't be there.

Mr. Bone asked Mr. Clarke if the tailgates are banging at night or in the winter months. Any time specifically?

Mr. Clarke said it was all throughout the year, at night and all hours of the night. They are always working in and out of there. Snow removal and stuff like that.

Bill Lockhart, 148 Ridge Avenue, wanted to ensure that the development agreement that was drawn up in 1994 referred to the inside orange piece of property shown on the overhead. Was it not drawn up on the whole area?

Mr. Bone explained that in 1994, Mr. Hilchie only had control of a portion of parcel. The outside parcel was controlled by a relative and they may have had a long-standing reciprocal agreement to use the property, but the development agreement specifically applied to the center property.

Mr. Lockhart asked if the development agreement has been amended to cover the rest of the property that Mr. Hilchie has now.

Mr. Bone said that an amendment would have to happen in order for the expansion to take place.

Mr. Lockhart wanted to make sure that the expansion on the back to the Cobequid Road will trigger a development agreement for the rest of the property.

Mr. Bone explained that the existing development agreement will be amended to cover the whole site through a site plan. The site plan will show the whole site with both areas specifically outlined with what land uses can occur and the general provisions. Every time they want to modify the use on the property, if it doesn't meet the terms of the existing agreement, they would have to amend the agreement.

Mr. Lockhart asked if these development agreements are going to be consistent as far as hours of operation and usage.

Mr. Bone said that where there is an existing agreement, unless there is a specific issue with the hours, we would probably carry over the hours. At any point, if Mr. Hilchie wishes to do something on the property that is not permitted by the land use by-law or the development agreement, he would have to come back and make an application to go through the same process.

Mr. Lockhart asked if Mr. Bone had researched whether or not the restrictions and conditions of the original development agreement were being followed.

Mr. Bone explained that at the present time the Municipality knows of a couple of violations. Most of them originate from Paddy Excavations Limited building the fence and the reason the Municipality is not prosecuting is because once the applicant was notified that he was in violation an application was made. There was also a requirement for a vegetation barrier and that was removed, but are looking at changing the whole agreement.

Don Parnell, 1483 Cobequid Road, wanted to be clear about the proposal.

Mr. Bone went over the proposal again.

Mr. Parnell would like to know if the number of heavy equipment would increase. He is concerned about all the fumes from the diesel. There is a school right across the way. Is there a limit to the number of heavy equipment permitted.

Mr. Bone explained that he is allowed to store heavy equipment. The existing agreement does not have a limit. It does permit the use of heavy equipment on the site.

Mr. Parnell would like to see a write up on this proposal. He wonders if things will change down the road.

There haven't been any details negotiated at this time. Mr. Bone explained that there is another opportunity to voice opinions. At that time, there will be a full staff report with a full site plan and discussion of all the issues related to the site. Included with that would be the minutes from tonight's meeting. Based on that, Council will make their decision.

Barry Irvine, 40 Palmer Road, is concerned about what might happen if the property is sold. Are these measures in place to stop further development?

Mr. Bone explained that the development agreement applies to any future land owner. It is registered on the deed of the property and any future owner is required to live by its terms. The future land owner is permitted to apply to amend the agreement, but they would have to go through this same process.

Colin Clarke, 107 Rocky Lake Road, commented that Paddy does keep a clean business there. Do they plan to go in off the Cobequid Road?

Mr. Bone said that the original request was to have a gate there. From the Planning Department perspective there may be a bit of an issue with that. Cobequid Road is not believed to be a truck route. There are specifics with truck routes as to where you are supposed to travel. That will have to be explored further. This will have to be forwarded to the Traffic Department for their recommendations.

Mr. C. Clarke is concerned about fuel spillage into the swamps and lakes. He has also heard the equipment at the business at 2:00 a.m. banging. He realizes that the back up signals are a requirement, but is there a possibility that they can be toned down a bit. He would also like to know when all the expansions stop.

Mr. Bone explained that the Municipality does not have a legal right to limit the applicant from applying to amend his agreement. He has current rights on the property. We are not aware of any environmental issues on the site. There are some environmental issues in Waverley that apply to a lot of properties, but not aware of any specific issues to this particular site.

Mr. Lockhart would like to know who monitors the properties to make sure people are living up to the conditions of their agreements.

HRM, at this time, does not have the amount of staff needed for enforcement. An annual visit is usually done to investigate the major things. If there are complaints, a by-law enforcement officer would be sent out to investigate. Of the existing agreement, Paddy Excavations Limited is in violation of a few things, the landscaping strip that should be on the property is gone and a fueling station is being operated that is not shown on the site plan.

Bill Fraser, 1498 Cobequid Road, had some concerns about the Municipal operations.

Tom Mader, 1331 Rocky Lake Drive, asked if the existing use of the property are within the C-2 Zone.

Mr. Bone explained that the reason they have a development agreement is because they are an existing operation that was there prior to the zoning coming into affect. The use is grandfathered. The Municipal Planning Strategy states that if one of these uses wishes to expand they have to initiate a development agreement or contract with the Municipality to allow for that.

Mr. Mader asked that assuming the grandfather clause applied to the initial parcel of land, does that clause apply to the new parcel of land.

Mr. Bone said that the application for this development was made some time ago. One of the things that had to be established was that there were similar land uses on this parcel prior to Paddy Excavations Limited acquiring it. It was established, through legal affidavit, that the surrounding lands (used to be owned by Paul Hilchie, Paddy Hilchie's cousin) had a similar type of business on there and there was a reciprocal agreement between the two to mutually use each other's lands and that agreement was never abandoned. Establishing through a legal affidavit is a standard procedure when a land use is not permitted in a zone and we have to establish its history. By doing so we are able to come forward and have a public meeting and proceed as he generally meets the requirements of the policy.

In 1994, Mr. Hilchie could operate his business until he wanted to expand. As soon as he wanted the expansion he had to negotiate a development agreement.

Mr. Mader's main concern is the truck traffic and from what he understands there is no authority in this development application to restrict traffic flow.

Mr. Bone said that in the development agreement we have the power to discuss and limit where he accesses the road. Once he accesses the road he is in the confines of the truck route by-law.

Bob MacDonald, believes that Paddy Hilchie has contributed a great deal to the Village granted there are a few things that people are concerned about. He doubts very much that this would cause anymore traffic on the Cobequid Road. He agrees the business creates noise, but there is a lot of other noise in the area.

Carol O'Reilly asked what the noise by-laws are.

Mr. Bone explained that the noise by-laws are consistent throughout HRM. He didn't have the by-law with him, but believes from the last time he viewed it that it mentions any noise that is loud enough to bother you between 7:00 p.m. and 7:00 a.m. is in violation of the by-law.

Councillor Hines stated that when Paddy first went to this site, he spoke at Council in favor of him. He believes that Paddy is a good corporate citizen. The fire department has made a request to Paddy

and to Councillor Hines that the gate on his property be made available to them in case of an emergency where the Cobequid Road is blocked off. Paddy is willing to do this.

Paddy Hilchie indicated also if the emergency vehicles need fuel that they would have access to his gasoline and diesel pumps. The tanks are double walled which are environmentally sound.

Susan Moore, 1449 Cobequid Road, wanted to make sure that nothing different than what was explained at this meeting would be done.

Paddy is willing to work with the residents of the community.

A gentleman asked about work on Sundays.

Paddy explained that unfortunately he is in the environmental business and that is the reason for all the noise and the weekend work. The biggest concern seems to be the noise. He mentioned that he would try to give the community Saturday afternoons and Sundays unless there was an emergency call.

Gwendalyn Vickery, 7 Hall Road, is concerned about the children that walk that road as there aren't any sidewalks. Are there going to be two accesses if this is approved?

Paddy said that there would be. There would be equal amounts of vehicles using both accesses.

Councillor Hines reminded the residents that if Paddy is allowed to expand the equipment that has to fuel up would be able to circulate on the property and wouldn't have to use their backup signals as often.

Mr. Bone explained what the following steps would be. The minutes would be transcribed. He would review the minutes to see what the concerns are. He would then sit down with Paddy to see if there is anything that can be done to address the concerns through the development agreement. This proposal will be forwarded to all appropriate HRM Departments, primarily Traffic. Development Services will review what is being proposed and identify any issues. The issues will be addressed in the staff report and recommendations made. If need be, he'll go back to Paddy and negotiate even further to address the comments of HRM staff. There will be a public hearing where the staff report is presented to Council. The public hearing will be advertised in the paper. At the meeting a presentation will be given on the proposal, the negotiated development agreement and the appropriate Municipal policy. The Councillors then determine if they agree or disagree with staff. There is a two week appeal period. Normally the process takes four to six months.

ADJOURNMENT

The meeting adjourned at approximately 8:25 p.m.

Attachment B
Public Information Meeting Minutes -February 12, 2004

HALIFAX REGIONAL MUNICIPALITY
PLANNING SERVICES - SACKVILLE OFFICE
SECOND PUBLIC INFORMATION MEETING
CASE NO. 00428 - PADDY EXCAVATIONS LIMITED

7:00 p.m.
Thursday, February 12, 2004
Royal Canadian Legion - Waverley Detachment

STAFF: Andrew Bone, Planner
Cara McFarlane, Administrative Support

APPLICANT: Paddy Hilchie, Paddy Excavations Limited

REGRETS: Councillor Snow

MEMBERS OF
THE PUBLIC: 12

The meeting commenced at approximately 7:04 p.m.

INTRODUCTIONS - ANDREW BONE, PLANNING SERVICES

Andrew Bone introduced himself, the planner for this application; myself, Paddy Hilchie, the applicant and owner of the property; and Cara McFarlane, taking the minutes for the meeting. Councillor Krista Snow was absent and sent her regards. Mr. Bone explained this application was brought back and this is actually the second public information meeting. The reason for the public information meeting is to discuss an application by Paddy Excavations Limited to expand their existing general contracting yard at Cobequid Road, Rocky Lake Road and Sawler Road. Also, to update the community on where the application stands and to hear any comments and/or concerns from the public.

A number of years ago Paddy Excavation expanded their yard and at the time, they were told they needed to amend the existing development agreement. A contracting yard in the area is not permitted as of right. However, the activities on site predate the municipal plan and therefore, they are grand-fathered and the existing uses are permitted. Mr. Bone explained what a development agreement is.

Mr. Bone showed the piece of property on the overhead (highlighted in orange). The property is situated on the Cobequid Road, near the intersection of Cobequid and Rocky Lake Road. The size

is approximately two acres. The original development agreement was negotiated about ten or twelve years ago for the center portion. A number of years later, Paddy Excavation acquired the adjacent property and two years ago they slightly expanded their yard. The process we are going through is to expand the development agreement to cover the other portions of the property.

Mr. Bone showed a closeup of the site on overhead. There are currently four buildings on site. There were some changes made in the grade, the fence was moved out a bit to expand the yard, and a gated access to Cobequid Road was constructed.

There are not a lot of changes being proposed to the site. One question that came up at the last meeting referenced the access gate on Cobequid Road. Since this application has started, it was suggested that they keep it closed until it is decided they are allowed to have the access there. Traffic Services have reviewed the access on Cobequid Road and it does meet the engineering requirements. They consider it safe and has good visibility.

QUESTIONS AND COMMENTS

A member of the public mentioned the access on Cobequid Road is better in the short term than what is there now. The intersection at Cobequid Road and Rocky Lake Drive is very dangerous. Mr. Bone explained having the access on the Cobequid Road is a much safer egress. There was a concern at the first meeting that traffic on the Cobequid Road may increase, but he does not see that happening. A member of the public mentioned maybe HRM could put up some mirrors or flashing lights for oncoming traffic. Mr. Bone is going to forward the request to Traffic Services.

Fran Sheehan-Ward, Shirley Lane, mentioned her property is directly across the entrance to the new access on Cobequid Road and totally disagrees with it. The heavy equipment is coming out of there while pedestrians and school children are walking in the area. She has seen trucks coming out of the access just a couple of weeks previous to the meeting. The noise level is also a problem. At one time, there were trees on the site, not sure if the trees were damaged from Hurricane Juan. Overall, there is more equipment and noise, the safety issue with the gated access, and the esthetic value decreases. She feels a border of trees would help with the noise and the esthetics of the site. Mr. Bone explained he plans to negotiate landscaping in the development agreement with Paddy Hilchie. Landscaping with visual barrier. In the short term, maybe six foot trees and in the long term, hopefully they will grow and filter some of the noise. Additionally, opening up the back area of the site will allow for circulation of the vehicles and decrease the need for backing up.

Bill Lockhart, Ridge Avenue, asked if all the original conditions from the existing development agreement are going to stay with the amended agreement. Mr. Bone explained there is enough policy and documentation provided relating to the outer parcel. The original agreement allows substantial storage of materials on the site. Discussions are being made with Mr. Hilchie to see if all those need to stay in the development agreement. Presently, they mainly store salt on the property with the rest being vehicle storage.

Mr. Lockhart said the sports park that is in future development plans is going to increase traffic.

There was a proposal that the Cobequid Road may be cut off part way down and the traffic rerouted behind NS Highway Services. He asked if this would be considered when deciding whether or not to let an access gate on Cobequid Road. Mr. Bone was not aware of the proposal. Mr. Lockhart said this would give trucks from Paddy Excavating more room to move around without the traffic. Mr. Bone said it would help the traffic situation, but not necessarily the movement of trucks.

Ms. Sheehan-Ward said before the sports park was a sure thing, there was a proposal put forth that the Cobequid Road would be a dead end before or just at Hall Road. Mr. Bone said he is not aware of any such proposal. Ms. Sheehan-Ward mentioned at the same time there was a proposal for sidewalks for the Cobequid Road. Mr. Bone will forward her comment to Councillor Snow and ask the Public Works Department if there is anything on the books for sidewalks in the area.

Greg Boyd, Lakeview Road, asked what the zoning of the property is. Mr. Bone said it is zoned C-2. He read the uses for the C-2 Zone. Mr. Boyd asked which one Mr. Hilchie fell under. Mr. Bone explained Mr. Hilchie's established his company on the property in 1985; therefore, it falls under the grand-father clause. Mr. Boyd wonders if Mr. Hilchie could expand in the future to the end of the C-2 Zone. Mr. Bone wouldn't expect as Environment would not allow it because of the swamp area. Mr. Boyd asked if the zoning should be I-3. With a new development, he believes there would have to be a thirty foot buffer. Would the development agreement allow for that? Mr. Bone explained that the policy attempts to come to some sort of acceptable level of compatibility between uses. The general intent is C-2 Zone; however, for existing businesses there is a policy which will allow them to expand further. This policy is not necessarily as strict as the I-3 Zone.

Ms. Sheehan-Ward would like to see some recommendations for some type of assurance to help with noise, safety and traffic. Mr. Bone explained the traffic concerns are forwarded to Traffic Services and use the HRM standard testing along with different factors in the area to ensure safety of the community. We have to rely on their comments as they are the professionals in that area. As this is an issue, there will be a discussion about traffic and safety in the staff report as well as very specific things.

Mr. Boyd asked if the existing development agreement, with the exception of the expansion, has been followed. Mr. Bone said there have not been any major violations of the development agreement.

A member of the public asked if the development agreement remains in place when the property changes hands. Mr. Bone said the development agreement that is in place at the time of sale is the one the new property owner has to follow.

ADJOURNMENT

The meeting adjourned at approximately 7:55 p.m.

Attachment "C"
Halifax Waters Advisory Board Recommendation

TO: Marine Drive, Valley and Canal Community Council

SUBMITTED BY: _____
Ellinor Williams, Vice-Chair, Halifax Watershed Advisory Board

DATE: 22 July, 2004.

SUBJECT: **Case 00428: Application by Paddy Excavations Limited to amend an existing development agreement to permit the expansion of the existing contracting yard at Civic 1 and 5 Sawlers Road, 1495 Cobequid Road, Waverley.**

INFORMATION REPORT

ORIGIN:

On 19th May, 2004, an application by Paddy Excavations Limited, Waverley, was reviewed by the Halifax Watershed Advisory Board. The proposal provided a description of the expansion of an existing contracting yard; but the expansion had been completed without approval of an amendment to the original development agreement. The proposal indicated the enlargement of an area used to store heavy equipment and the construction of a temporary salt shed. The developer, who had been unaware that an amendment was required, submitted the proposal to rectify the situation.

BOARD RECOMMENDATIONS:

The Watershed Advisory Board appreciates this opportunity to review the Paddy Excavations Limited Application and to make the following recommendations which are related specifically to the protection of the watershed and the natural environment. In this instance, the Board is particularly concerned with the proximity of the operational site to the wetland; this emphasizes the need for containment of potential contaminants.

- a) The applicant proposes to construct a permanent salt storage shed to replace the current temporary structure. The Board recommends that the permanent structure be placed on an impervious surface to prevent soil contamination and groundwater infiltration.

- b) The Board's guidelines include a 20 metre buffer zone adjacent to all watercourses and waterbodies. The Board would like a 20 metre buffer to exist between the vehicle storage area and the wetland area to mitigate impacts. Currently no such buffer exists; if a buffer of this width is not feasible, the Board recommends the creation of a vegetated berm near the boundary of the vehicle storage area to protect the watercourse.
- c) The Board recommends that run-off from the site is directed to a settling pond to allow sediment to settle out before it enters the watercourse.
- d) The Board recommends that the area where vehicles are serviced be paved with an impervious surface and that any discharge from this area be directed to an oil and grit separator prior to discharge into the environment.
- e) The Board recommends that the above ground fuel tanks be brought up to current standards (i.e. doubled walled) and placed on an impervious surface with containment in case of a spill. The Board also endorses the proposal for a concrete containment pad for refueling.
- f) The Board recommends that septic tanks be pumped every three years, and that proof of the pumping (i.e. invoices) be submitted to HRM and the Board.
- g) The Board recommends that the proponent be made aware of the *1991 Shubenacadie Headwaters Watershed Control Study*

BACKGROUND:

The site lies between the Cobequid Road to the North and by Sawlers Road to the south and Rocky Lake Drive to the east. With the approval of the N.S. Department of Environment & Labour, the applicant previously altered the grade of the lot. It now slopes gently down to the West and then drops off steeply to an extensive, well-vegetated wetland area which eventually drains into Lake William. There is a fence along the western border of the property adjacent to the wetland, but there is no real separation between the area used for the storage of heavy equipment and the wetland.

Attachment "D"
Relevant MPS Policy

- P-94 It shall be the intention of Council to establish the Community Centre Designation as shown on the Generalized Future Land Use Map (Map #1). Lands within the Designation are intended to provide a commercial and service focus for the Plan Area.
- P-95 Within the Community Centre Designation, it shall be the intention of Council to establish a community commercial zone which permits a variety of retail service uses, existing service stations, offices, residential uses and community uses. Limitations on the size of commercial uses as well as regulations with respect to outdoor storage and display related to commercial uses will be established as will provisions related to buffering from adjacent residential and community facility zones, the alteration of parking standards and front yard setbacks, and road access to public streets.

Until recently, Highway #2 was the principle highway joining the metropolitan area to Truro and beyond. Over the years, prior to the construction of the 100 series highway network, a number of larger scale commercial and/or industrial uses were established, some of which are located within the Community Centre Designation. While those which are occupied by smaller scale commercial, warehousing, and/or wholesaling uses will be accommodated in the land use by-law, those occupied by heavier commercial or industrial uses require specific attention.

P-100 Notwithstanding Policy P-95, within the Community Centre Designation, it shall be the intention of Council to provide for the continued use of existing commercial and industrial uses which would not otherwise be permitted, to the extent they existed on the effective date of this plan. It shall be the intention of Council to consider either a change of use or an expansion of the existing use according to the provisions of Sections 55, 66, and 67 of the Planning Act. In considering such an agreement, Council shall have regard to the following.

- (a) that the use is entirely enclosed within a structure and does not involve the processing or production of hazardous, toxic or dangerous materials;
- (b) that the expansion or change of use be accommodated on the existing site;
- (c) that the expansion or change of use maintains an acceptable level of compatibility with surrounding lands in terms of traffic generation, noise, outdoor storage, scale and intensity of operation;
- (d) the provision of adequate measures for the long-term maintenance of the use; and
- (e) the provisions of Policy P-155.

P-154 The following uses shall only be considered subject to the entering into of a development agreement according to the Provisions of Section 55, 66 and 67 of the Planning Act.

- (d) within the Community Centre Designation:
 - (iii) the change of use or expansion of existing industrial and heavy commercial uses according to Policy P-100; and

P-155 In considering development agreements and amendments to the land use by-law, in addition to all other criteria as set out in various policies of this Plan, Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this Plan and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of central or on-site sewerage and water services;
 - (iii) the adequacy or proximity of school, recreation or other community facilities;
 - (iv) the adequacy of road networks leading or adjacent to or within the development; and
 - (v) potential for damage to or for destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility or flooding.
- (e) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy P-64F", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-July 2/02; Effective-Aug 17/02)

P-156 In considering amendments to the land use by-law or development agreements, Council shall hold a public hearing according to the provisions of Section 60 of the Planning Act.

THIS AGREEMENT MADE THIS 27th DAY OF October A.D.,
1994

BETWEEN: 45782

PADDY EXCAVATIONS LIMITED, a body corporate (the
"Developer")

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OF THE FIRST PART

- and -

HALIFAX COUNTY MUNICIPALITY, (the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of lands situated on the corner of Sawlor Road and the Old Highway No.2 off Highway No. 2 in Waverley, which lands are more particularly described in Schedule "A" of this Agreement (the "Property");

AND WHEREAS the Developer has requested to enter into a development agreement to allow for the construction of a new building on the Property and the continuation of the use of the Property as a Storage Yard for construction materials and a maintenance facility for construction equipment pursuant to the provisions of the Planning Act and the Municipal Planning Strategy and Land Use By-law for Planning Districts 14 and 17;

AND WHEREAS in accordance with the procedures contained in the Planning Act, Council for the Municipality approved this request at a meeting held on Sept. 26, 1994;

WITNESS that in consideration of the mutual agreements herein contained and the sum of one dollar (\$1.00) now paid by the Developer to the Municipality (the receipt of which is hereby acknowledged), the parties agree as follows:

PART 1: DEFINITIONS/AGREEMENT

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Council" means Council of the Municipality;
- (b) "Developer" means Paddy Excavations Limited and its successors, and assigns;
- (c) "development" includes any erection, construction, alteration, replacement or relocation of or addition to any building or other structure and any change or alteration in the use made of land or a building or other structure;
- (d) "Development Officer" means a person appointed by the Municipality under the provisions of the Planning Act to administer and enforce the Subdivision By-law and the Land Use By-Law of the Municipality;
- (e) "Elevation Plan" means the building elevation drawings for the New Building attached to this Agreement as Schedule "D";

- (f) "Existing Building" means the building existing on the Property as of the date of this Agreement which is indicated on the Site Plan as "Existing Building";
- (g) "Floor Plan" shall mean the floor plan for the New Building attached to this Agreement as Schedule "C";
- (h) "Land Use By-Law" means the Municipality's Land Use By-law for Planning Districts 14 and 17 as amended from time to time;
- (i) "Maintenance Facilities" means a building and equipment use for the purpose of maintaining and repairing vehicles and equipment owned by the Developer and used in connection with the Developer's construction/excavation business;
- (j) "New Building" means the proposed new building to be constructed on the Property pursuant to this Agreement;
- (k) "Site Plan" means the plan showing the existing and proposed development on the Property which is attached to this Agreement as Schedule "B".

1.2 All other words defined under Part 2 of the Land Use By-law and used herein shall have the meaning ascribed thereto in the Land Use By-Law.

1.3 The following schedules shall form part of this Agreement:

Schedule "A" -	Property Description
Schedule "B" -	Site Plan
Schedule "C" -	Floor Plan of the New Building
Schedule "D" -	Elevation Drawing of the New Building

PART 2: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGES

- 2.1 A copy of this Agreement, and every amendment and discharge or partial 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 costs incurred in recording such documents.
- 2.2 Notwithstanding any subdivision, transfer or conveyance of the Property or any portion thereof, this Agreement shall continue to apply to and bind the Developer and the Property and every part thereof and the Developer and every owner from time to time of the Property, or any part thereof, shall be bound by all terms and conditions of this Agreement until this Agreement is discharged by the Municipality.
- 2.3 In the event that the Development Officer has not received an application for a municipal development permit for the construction of the New Building on the Property within five (5) years after the date of approval of this Agreement by the Municipality, then the Municipality may, by resolution of Council, discharge this Agreement whereupon this Agreement shall have no further force or effect.
- 2.4 Notwithstanding the Planning Act or the Subdivision By-law, the Developer agrees that the Property shall not be subdivided and the Development Officer shall be under no obligation to accept any application to subdivide the Property unless this Agreement is amended by mutual agreement of the parties so as to allow for the subdivision of the Property and such amendment has been approved by Council pursuant to Part 12 of this Agreement.

PART 3: GENERAL REQUIREMENTS AND ADMINISTRATION

- 3.1 Except as otherwise provided for herein, the development and use of the Property shall comply with the requirements of the Land Use By-Law.
- 3.2 Nothing in this Agreement shall exempt or be taken to exempt the Developer or any other person from complying with the requirements of any by-law of the Municipality (other than the Land Use By-law to the extent varied by this Agreement) or any statute or regulation of the Province of

Nova Scotia and the Developer agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Property.

- 3.3 Where the provisions of this Agreement conflict with those of any by-law of the Municipality (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 provisions or requirements shall prevail.
- 3.4 The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the provisions of this Agreement and all federal, provincial and municipal laws, regulations, by-laws and codes applicable to the Property.
- 3.5 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.
- 3.6 This Agreement shall be administered on behalf of the Municipality by the Development Officer.

PART 4: REQUIRED APPROVALS

- 4.1 No development shall be undertaken on the Property unless and until a municipal development permit therefor has been granted by the Development Officer and a Building Permit for any construction or renovation has been issued by the Municipality's Building Inspector.
- 4.2 The Development Officer shall not issue a Municipal Development Permit and the Building Inspector shall not issue a Building Permit for the construction of the New Building on the Property until:
 - (a) the Developer has been issued an "On-Site Sewage Disposal System" Permit by the provincial Department of Health and a copy has been provided to the Development Officer;
 - (b) the Developer shall indicate on the Site Plan, attached to the Agreement as Schedule "B", the precise location and dimension of the system prior to the issuance of a building permit for the proposed building;
 - (c) the Developer has been issued a "Commercial Access" Permit by the provincial Department of Transportation and Communications and a copy has been provided to the Development Officer;
 - (d) the proposed design, specifications and location of the New Building conform to the requirements of section 5.3; and
 - (e) all applicable requirements of the Municipality's Building By-law, the Land Use By-law (except to the extent varied by this Agreement) and this Agreement have been satisfied.
- 4.3 The New Building shall not be occupied or used until an Occupancy Permit has been issued by the Municipality and no occupancy permit shall be issued unless:
 - (a) the construction of the New Building conforms to all of the applicable requirements of this Agreement, including article 5.3, the Municipality's Building By-law and all other applicable by-laws of the Municipality;
 - (b) an on-site sewage disposal system has been constructed in accordance with the permit issued by the Department of Health as required under paragraph 4.2(a) and such system has been approved by the Department of Health; and
 - (c) the parking spaces and barriers required under the provisions of articles 8.1, 8.2 and 8.5 and the landscaping required under article 9.1 have all been completed.

PART 5: PERMITTED USES AND RESTRICTIONS

- 5.1 In addition to the uses permitted under Section 13.1 of the Land Use By-Law, the Property may be used for storage of construction equipment and materials and for the operation of Maintenance Facilities subject, however, to compliance with all of the provisions of this Agreement.
- 5.2 Notwithstanding Section 5.1, the Developer shall not process or produce any materials or waste that are defined as "dangerous goods" or "hazardous waste" under the "Dangerous Goods and Hazardous Waste Management Regulations".
- 5.3 The Developer shall not alter the location or size of the Existing Building, as illustrated on the Site Plan, unless this Agreement is amended in accordance with the provisions of Part 12 so as to allow such alteration.
- 5.4 The Developer shall be permitted to construct the New Building on the Property subject to and in accordance with the following conditions:
- (a) the New Building shall be located substantially as illustrated on the Site Plan;
 - (b) the New Building shall be constructed substantially as illustrated on the Floor Plan;
 - (c) the exterior appearance of the New Building shall be substantially as illustrated on the Elevation Plan; and
 - (d) the New Building shall be constructed of pre-fabricated metal components and siding that will make the New Building similar in outward appearance, colour and linear pattern to the Existing Building.
- 5.5 Prior to occupying or using the New Building, the Developer shall construct an on-site sewage disposal system on the Property at the location approved by the provincial Department of Health.
- 5.6 The Developer shall be permitted to perform maintenance and repair work on the Property only on equipment and vehicles that are owned by the Developer and are used in connection with the Developer's construction/excavation business.

PART 6: HOURS OF OPERATION

- 6.1 Subject to Section 6.2, no activity related to the operation of the Developer's business, the construction storage yard or Maintenance Facility shall be conducted on the Property except between the hours of 8:00 a.m. to 8:00 p.m. Monday to Saturday inclusive.
- 6.2 Notwithstanding Section 6.1, the Developer may conduct internal office administration and perform maintenance and repair work on the Developer's equipment and vehicles beyond the permitted hours of operation specified in Section 6.1 provided that any such activity is conducted within the New Building or the Existing Building and does not cause any noise or any nuisance, disturbance or annoyance to any other person.

PART 7: OUTDOOR STORAGE

- 7.1 The Developer shall store all materials and equipment used in connection with the operation of the Developer's construction/excavation business only within the New Building and the Existing Building except that the Developer shall be permitted to stockpile sand and gravel and park motor vehicles used in connection with the Developer's construction and excavation business (herein referred to as "Construction Vehicles") outside of the Buildings on the Property subject to and in accordance with the following conditions:
- (a) the Developer shall stockpile sand and gravel on the Property only in the area illustrated on the Site Plan as "Stockpile Storage Area";

- (b) the Developer shall park Construction Vehicles only in the area illustrated on the Site Plan as "Vehicle Storage Area";
 - (c) without limiting the restrictions contained in paragraphs (a) and (b), the total area devoted to outside storage of sand and gravel and Construction Vehicles shall not exceed sixty (60) percent of the area of the Property;
 - (d) the Developer shall not stockpile any sand and gravel on the Property higher than ten (10) feet above ground level;
 - (e) all stockpiles of sand and gravel on the Property shall be set back a minimum of eight (8) feet from any property line; and
 - (f) the Developer shall not store any materials or equipment on or in any Construction Vehicle parked on the Property except during the hours of operation specified in Part 6 of this Agreement.
- 7.2 The Developer shall cover the ground comprising the "Vehicle Storage Area", "Customer Parking Area", and "Construction Yard" as illustrated on the Site Plan, with gravel, and apply appropriate dust control measures to those areas and to the stockpiles of sand and gravel.

PART 8: PARKING AND ACCESS

- 8.1 The Developer shall construct eight (8) parking spaces on the Property at the location illustrated on the Site Plan as "Customer Parking Area" in accordance with the requirements of Section 4.26 of the Land Use By-law.
- 8.2 The Developer shall construct a curb barrier, "parking stop" or other marker secured permanently to the ground at the end of each parking space sufficient to define the location of each of the individual parking spaces.
- 8.3 The Developer shall complete the work required under Section 8.1 and Section 8.2 within one (1) month after the date of execution of this Agreement unless such work can not be completed within such time period due to inclement weather conditions, in which case the work shall be completed as soon as practicable but in any event not later than sixty (60) days after the Developer receives notice in writing from the Development Officer requiring such work to be completed.
- 8.4 The existing driveway on the Property shall not be changed and no additional access driveways to the Property shall be permitted unless this Agreement is amended pursuant to Part 12 so as to permit such change or additional access.
- 8.5 The Developer shall construct a permanent barrier around the on-site septic system area, as illustrated on the Site Plan, sufficient to prevent vehicles and equipment from traversing across such area.

PART 9: LANDSCAPING

- 9.1 The Developer shall landscape the areas along the north, west, and south boundaries of the Property illustrated on the Site Plan as "Landscaping Strips," in accordance with the following requirements:
- (a) shrubs, trees, bushes and other vegetation of sufficient height and density so as to obstruct from view, at all times of the year, the buildings, structures, equipment and materials placed, stored or erected on the Property shall be planted and maintained;
 - (b) any such vegetation when planted, shall be at least three and one half (3.5) feet in height; and
 - (c) no vegetation in those areas shall be cut below a height of six (6) feet above ground level.

- 9.2 The Developer shall maintain the existing shrubs, trees, bushes and other vegetation on the Property along the Old Cobequid Road in the area illustrated on the Site Plan as "Existing Vegetation."

PART 10: SIGNAGE

- 10.1 The Developer shall be permitted to erect and maintain one facial wall sign on the New Building which shall be located as illustrated on the Elevation Plan. No other signs shall be permitted on the New Building or the Existing Building.
- 10.2 The Developer shall be permitted to erect one ground sign on the Property at the location illustrated on the Site Plan as "Ground Sign" subject to compliance with the requirements of the Land Use By-law relating to ground signs.

PART 11: MAINTENANCE

- 11.1 The Developer shall at all times keep the Property free of rubbish and debris.
- 11.2 The Developer shall maintain the ground comprising the "Vehicle Storage Area", "Customer Parking Area" and "Construction Yard" with a layer of gravel as required under Section 7.2. The Developer shall also apply additional gravel and adopt appropriate dust control measures when requested by the Development Officer.
- 11.3 The Developer shall at all times maintain the structure and all exterior portions of the New Building and the Existing Building in good condition and repair.
- 11.4 All vegetation required under Part 9 shall be maintained in a healthy condition and whenever necessary replaced with new plant materials to ensure continued compliance with the landscaping requirements contained in Sections 9.1 and 9.2.
- 11.5 The Developer shall maintain the stockpiles of sand and gravel on the Property in a stable and safe condition.

PART 12: AMENDMENTS

- 12.1 Subject to Section 12.2, no amendment of this Agreement of a substantial nature shall be made except in accordance with the applicable provisions of the Planning Act.
- 12.2 For the purposes of this Agreement, the provisions of this Agreement relating to the following matters are identified as and shall be deemed to be not substantial and may, subject to Section 12.3, be amended by resolution of Council:
- (a) an enlargement of the buildings on the Property to a combined maximum floor area of 5,000 square feet;
 - (b) provisions for signage;
 - (c) relocation of the access driveway further west on Sawlor Road;
 - (d) hours of operation; and
 - (e) the subdivision of the Property.
- 12.3 Prior to passing any resolution under the provisions of Section 12.2, the Council shall send a notice in writing (by ordinary mail posted at least ten (10) days prior to the meeting of the Community Council to consider the resolution) to the owners, according to the assessment records maintained by the Province of Nova Scotia, of all properties located within five hundred (500) feet of the Property, according to the records maintained by the Nova Scotia Department of Municipal Affairs, notifying such owners

that they shall be permitted to present written or oral submissions to Council at the meeting to consider the resolutions to amend this Agreement under Section 12.2.

PART 13: RIGHTS AND REMEDIES ON DEFAULT

13.1 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer fourteen (14) days written notice of the failure or default, then in each such case, and in addition to any other rights or remedies available to the Municipality hereunder, at law or in equity:

- (a) the Developer shall pay to the Municipality forthwith after demand the sum of one hundred (\$100.00) dollars per day for each day such default continues as liquidated damages for the breach of this contract and not as a penalty and the Developer hereby acknowledges and agrees that such sum represents a genuine estimate of the damages which are expected to be sustained by the Municipality by reason of the breach of this Agreement by the Developer;
- (b) 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; and/or
- (c) the Municipality may upon breach of this Agreement, after thirty (30) days notice in writing, 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.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this 27th day of October, A.D., 1994.

SIGNED, SEALED AND DELIVERED
in the presence of
Leslie Clathorne

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

PADDY EXCAVATIONS LIMITED
per [Signature]
PAT HILCHIE

=====

HALIFAX COUNTY MUNICIPALITY

per [Signature]
MAYOR

per [Signature]
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX)

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ON THIS 26th day of October, A.D. 1994, before me, the subscriber, personally came and appeared Leslie Crathorne, a subscribing witness to the foregoing Indenture, who having been by me duly sworn, made oath and said that, Pat Hiltz, one of the parties thereto, caused the same to be executed in its name and in its behalf and at the same time caused its corporate seal to be thereunto affixed in her presence.

Marie Hiltz
COMMISSIONER OF THE SUPREME
COURT OF NOVA SCOTIA
MARIE HILTZ
A Commissioner of the Supreme
Court of Nova Scotia

PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX)

ON THIS 27th day of October, A.D. 1994, before me, the subscriber, personally came and appeared Connie Bush, a subscribing witness to the foregoing Indenture, who having been by me duly sworn, made oath and said that HALIFAX COUNTY MUNICIPALITY, one of the parties thereto, caused the same to be executed in its name and on its behalf, and its corporate seal to be thereinto affixed by the hands of Randy Bell its Mayor and Nancy Dempsey ^{Cr. Man.} its Municipal Clerk, the proper officers duly authorized in that behalf and in h presence.

Marie Hiltz
COMMISSIONER OF THE SUPREME
COURT OF NOVA SCOTIA

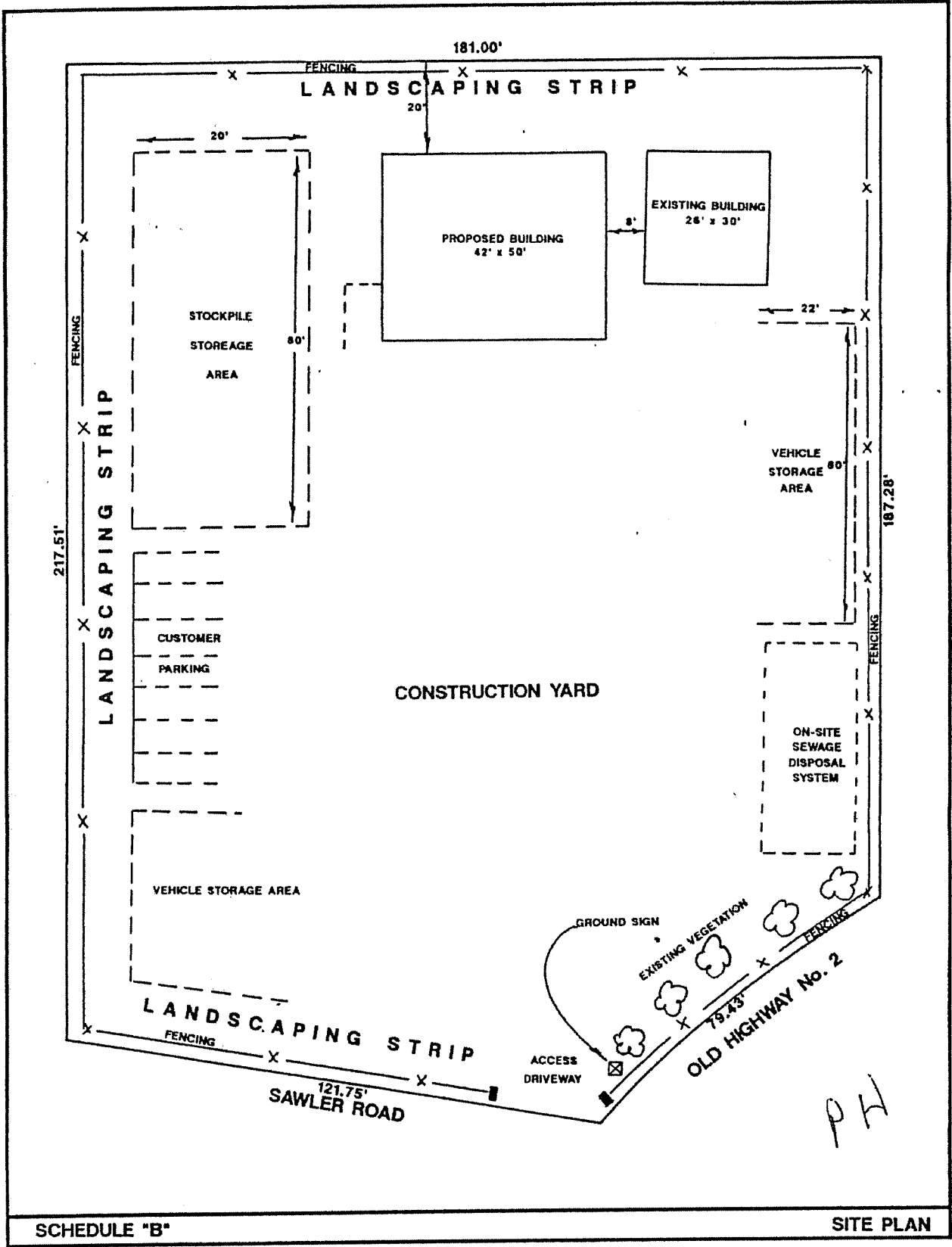
MARIE HILTZ
A Commissioner of the Supreme
Court of Nova Scotia

Province of Nova Scotia
County of Halifax

I hereby certify that the within instrument was recorded in the Registry of Deeds Office at Halifax in the County of Halifax, N. S., at 10:43 o'clock 9 A. M., on the 31 day of Oct A.D., 1994 in Book No 5644 at Pages 84-95 as Document Number 45782

Allen Sampson
Registrar of Deeds for the Registration
District of Halifax County

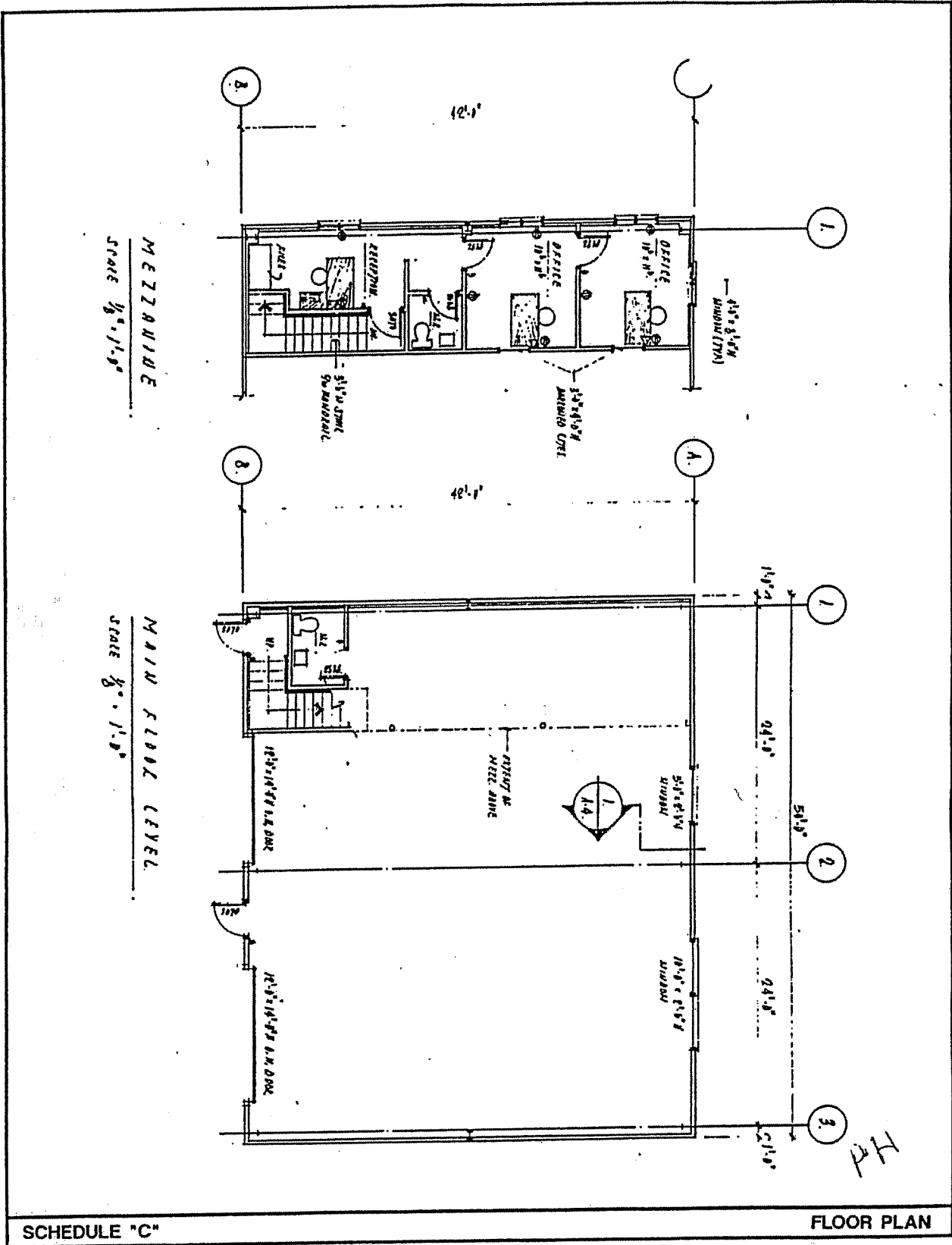
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SCHEDULE "B"

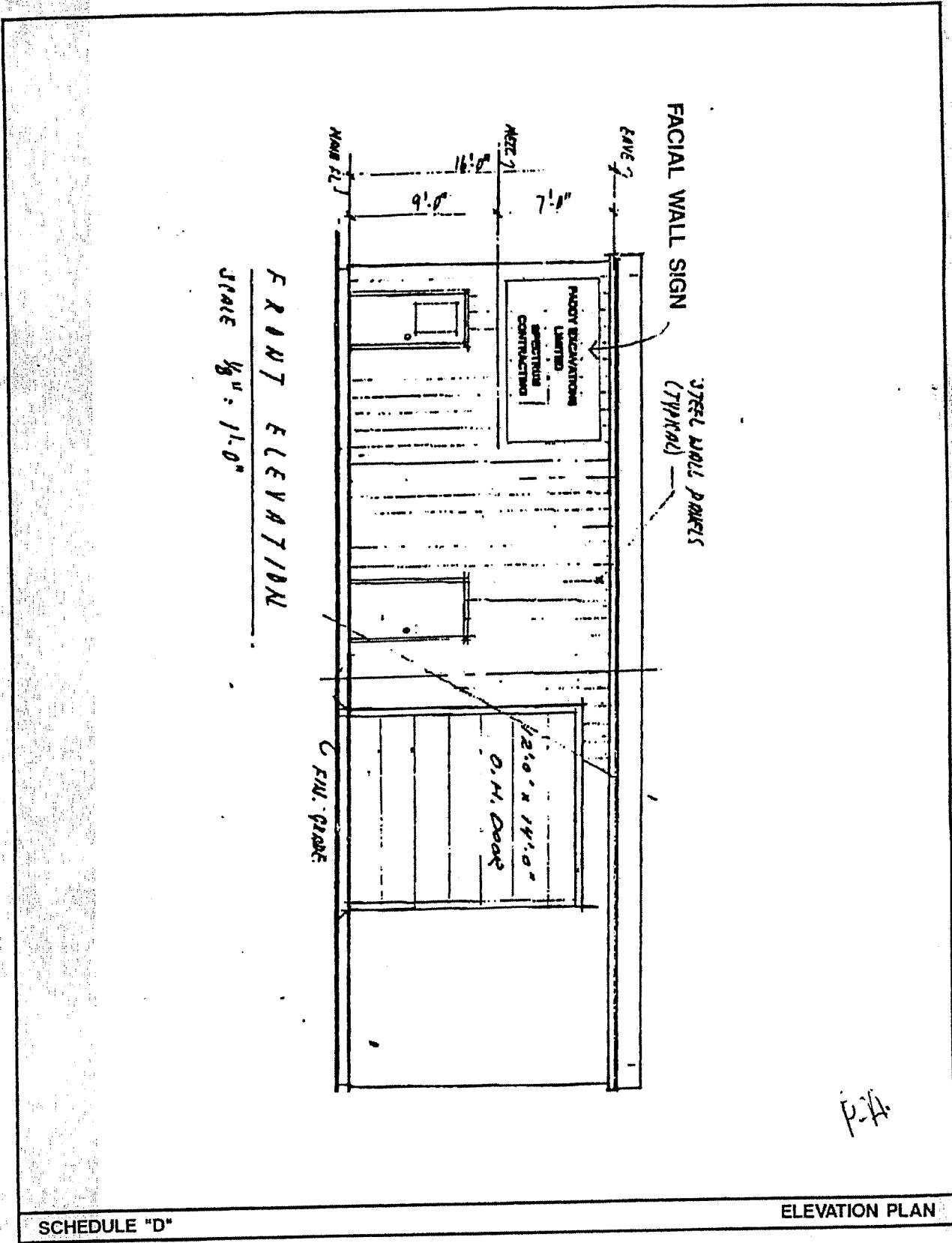
SITE PLAN

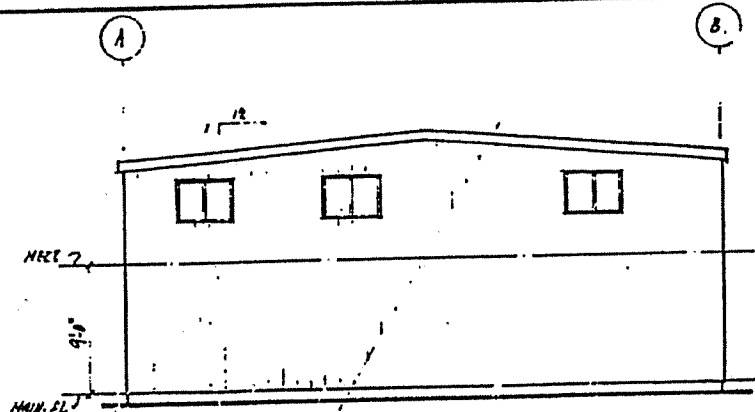
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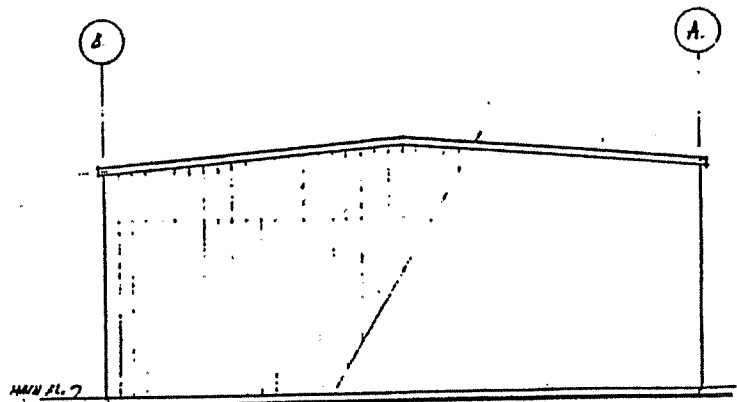
SCHEDULE "C"

FLOOR PLAN

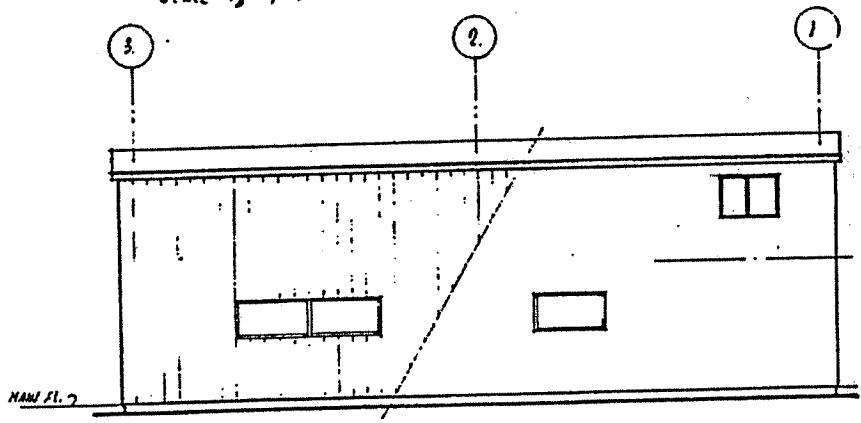




LEFT ELEVATION
SCALE 1/8" = 1'-0"



RIGHT ELEVATION
SCALE 1/8" = 1'-0"



REAR ELEVATION
SCALE 1/8" = 1'-0"

P-A

Attachment "F" - Proposed Development Agreement

THIS AGREEMENT made this day of , 2005,
BETWEEN:

2338685 NOVA SCOTIA LIMITED.
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located between Cobequid Road , Sawlers Road and Old Highway 2 in Waverley and which said lands are more particularly described in Schedule "A" to this Agreement (hereinafter called the "Lands") and;

AND WHEREAS the Municipal Council of Halifax County Municipality approved an application by the Developer to enter into a development agreement to allow for the construction of a new building and the continuation of the use of the property as a Storage Yard for construction materials and a maintenance facility for construction equipment on the Lands, which said development agreement was registered at the Registry of Deeds in Halifax as Document Number (45782) in Book Number (5645) at Pages (84 to 95) (hereinafter called the "Previous Agreement");

AND WHEREAS the Developer has requested an amendment to the provisions of the Agreement to allow for an expansion to the storage yard and maintenance facility on the Lands pursuant to the provisions of the Municipal Government Act and the Municipal Planning Strategy and Land Use By-law for District 14 and 17;(hereinafter called the "Proposed Agreement");

AND WHEREAS the Marine Drive, Valley and Canal Community Council for the Municipality approved this request at a meeting held on November, XX, 2005, referenced as Municipal Case Number 00428;

AND WHEREAS the Marine Drive, Valley and Canal Community Council for the Municipality approved discharged the Previous Agreement at a meeting held on November, XX, 2005;

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 in 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 Land Use By-law of Planning Districts 14 and 17, 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 Subdivision By-law of Halifax County Municipality, as may be amended from time to time.
- 1.4 Pursuant to Section 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 and 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 in conformance with the site plans, design drawings, renderings and supporting technical documents, attached as the following Schedules to this Agreement:

- | | |
|--------------|---|
| Schedule "A" | Legal Description of the Lands of 2338685 Nova Scotia Limited, identified as Lot C-1(PID#40607194) and Lot C-2 (PID#40607186). |
| Schedule "B" | Site Plan |
| Schedule "C" | Erosion and Sedimentation Control Guidelines |

2.2 Land Use

The use of the Lands permitted by this Agreement, subject to its terms and as generally illustrated on Schedule "B", are the following:

- a) C-2 uses permitted under the Planning Districts 14 and 17 Land Use By-law, as amended from time to time.
- b) Storage of construction equipment and materials and for the operation of Maintenance Facilities subject to the terms of this agreement.

2.3 Detailed Land Use Provisions

2.3.1 Building Alterations

The Developer shall not alter the location or size of the Existing Buildings, as illustrated on Schedule "B", unless permitted by the Land Use By-law or this Agreement is amended in accordance with the provisions of Part 3 so as to allow such alteration.

2.3.2 Scope of Work

The Developer shall be permitted to perform maintenance and repair work on equipment and vehicles which are owned, leased or rented by the Developer and are used in connection with the Developer's construction/excavation business.

2.3.4 Hours of Operation

- a) No activity related to the operation of the Developer's business, the construction storage yard or Maintenance Facility shall be conducted on the Property except between the hours of 7:00 a.m. to 8:00 p.m., Monday to Saturday inclusive.

- b) Notwithstanding Section 2.3.4 a), the Developer may conduct internal office administration work and perform maintenance and repair work on the Developer's equipment and vehicles within the buildings located on the lands beyond the permitted hours of operation. All maintenance building doors shall be closed during such maintenance. Any work on site shall conform with all other applicable by-laws.

2.3.5 Outdoor Storage

The Developer shall store all materials and equipment used in connection with the operation of the Developer's construction/excavation business only within the Existing Buildings or accessory buildings except that the Developer shall be permitted the following:

- a) Vehicles used in connection with the Developer's construction and excavation business (herein referred to as "Construction Vehicles") shall be permitted to be stored outside of the Buildings on the Property subject to and in accordance with the following conditions:
 - i) The Developer shall park Construction Vehicles only in the area illustrated on the Site Plan as "Vehicle Storage Area";
 - ii) The Developer may store materials such as soil, sand, gravel or other similar material on or in any construction vehicle parked on the Property.
 - iii) Non-operating or derelict vehicles or vehicle parts, shall not be permitted to be stored, kept or placed on any part of the property.
- b) The developer may store corrugated or ribbed plastic pipe in the location identified on the Site Plan provided the material is not stored on a septic field.
- c) The developer shall be permitted to store salt within the existing salt storage shed provided an impervious surface of concrete or asphalt be provided.

2.3.6 Parking and Access

The Developer shall provide safe access and adequate parking on the Property at the locations generally illustrated on the Site Plan and as follows:

- a) The Parking shall meet the following requirements:
 - i) The number of parking spaces shall be in accordance with the requirements of the Land Use By-law.
 - ii) The parking lots shall be hard surfaced or gravelled, and treated to prevent the rising of dust or loose particles when necessary .
- b) All areas not identified for vehicle storage or access may be used for circulation or temporary parking.
- c) The following access points may be permitted to the site:
 - i) The existing driveway near the intersection of Sawlers Road and Old Scott Road.

- ii) The existing driveways on Cobequid Road adjacent to the existing office building..
- iii) A new access on Cobequid Road at the existing gate subject to the approval of the Development Engineer. The developer shall not operate this access outside the hours identified in Section 2.3.4a). Outside the identified hours, the gate shall be closed and locked.
- d) No additional access driveways to the Property shall be permitted unless this Agreement is amended pursuant to Part 3 so as to permit such change or additional access.

2.3.7 Landscaping

The Developer shall landscape the areas along the north, west, and south boundaries of the Property illustrated on the Site Plan as "Landscaped Buffer," in accordance with the following requirements:

- a) all existing trees and vegetation along the shall be maintained along the west and south boundaries.
- b) a new landscaped buffer shall be planted adjacent to Cobequid Road. This vegetation shall be comprised of a mixture of coniferous trees of the Canadian Hemlock (33%), White Spruce(33%) and Norway Spruce (33%) varieties . The trees shall be planted 8 feet on center and staggered. Notwithstanding the specified tree varieties, the Development Officer may permit other coniferous varieties in consultation with the Urban Forester.
- c) any such vegetation when planted, shall be at least 200 cm in height; and,
- d) no vegetation in these areas shall be cut below a height of six (6) feet above ground level.
- e) No Municipal Development Permit shall be issued until security is provided to Halifax Regional Municipality in the amount of 110 per cent of the estimated cost of completion of all landscaping as detailed in this agreement. The security shall be in favour of Halifax Regional Municipality and may be in the form of a certified cheque or irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the landscaping as determined by the Development Officer.
- f) All landscaping (listed above) shall be completed within one (1) year of the date of registration of this agreement with the N.S. Registry of Deeds.

2.3.8 Signs

The Developer shall be permitted to erect the following signs:

- a) one facial wall sign on the Existing Building "B" which shall be located as illustrated on the Elevation Plan. No other signs shall be permitted on the Existing Building (A,B and C).

- b) one ground sign, except mobile and moveable signs, on the Property subject to compliance with the requirements of the Land Use by-law relating to ground signs.
- c) Notwithstanding Section 2.3.8 a) and b), the Developer shall be permitted signage in association with other land uses permitted under the Land Use By-law, such as the Existing Office, subject to the provisions of the Land Use By-law.

2.3.10 Lighting

The Developer may provide exterior lighting subject to the following:

- a) Lighting shall be directed to driveways, parking areas, building entrances, walkways and common areas and shall be arranged so that substantially all directly emitted light falls within the property line.
- b) All lighting not required for safety and security, shall be extinguished within one hour after the end of the business day and remain extinguished until one hour prior to the commencement of the next business day.
- c) No lighting may be used in any manner that could interfere with the safe movement of motor vehicles on public streets, including:
 - i) Any fixed light not designed for roadway illumination that produces incident or reflected light that could be disturbing to the operator of a motor vehicle;
 - ii) Any light that may be confused with or construed as a traffic control device except as authorized by the Traffic Authority.
 - iii) Any blinking, flashing, or changing intensity lights, except for temporary holiday displays.

2.3.11 Accessory Structures

- a) The Developer shall be permitted to construct new accessory structures which meet the requirements of the C-2 zone and the Land Use By-law. Such structures shall be permitted provided they do not interfere with vehicular circulation on the site and are not located adjacent to Cobequid Road.
- b) The existing salt shed shall be permitted to remain subject to the following requirements:
 - i) the Developer obtains permits for existing salt shed.
 - ii) the salt shed is located on an impervious surface of asphalt or concrete.
 - iii) that the salt shed has doors which can be closed when not in use.
 - iv) the salt shed shall be sided with either wood plank, clapboard or vinyl siding.
 - v) the shed is located on the Lands that are subject to this agreement.

2.4 Streets and Municipal Services

- (a) Where water service is required, buildings shall be connected to the existing municipal water supply system. 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 Halifax Regional Water Commission and any other applicable authorities, with respect to the design of all systems, has been received, if applicable. All plans shall be in compliance with municipal specifications and standards.
- (b) The design, installation and costs associated with the provision of services, including but not limited to, water supply, septic fields, storm sewer and utilities shall be the responsibility of the Developer.
- (c) Prior to any excavation or the placement of fill material on the Lands, the Developer shall submit detailed engineering plans which are certified by a Professional Engineer, including but not limited to a servicing plan, a stormwater management plan, and a lot grading plan.
- (d) Any disturbance to existing on-site and off-site infrastructure resulting from the development shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer in consultation with the Development Engineer.
- (e) Plans shall demonstrate sufficient capacity to accommodate the proposed systems. The plans shall generally indicate proposed and finished grades on the site and the effects of development on the surface drainage of abutting properties. The plan shall demonstrate all surface water is managed within the confines of the subject lands and no surface water is discharged into public street or onto adjacent properties.
- (f) All plans shall be in compliance with municipal specifications and standards, unless otherwise determined by the Development Engineer.
- (g) The Developer shall provide a 6 m(20 ft) easement in favour of HRM for maintenance of the storm drainage culvert adjacent to Cobequid Road . The easement must meet the requirements of the Development Engineer.
- (h) The developer shall, within 120 days, remove any encroachments from the HRM controlled right-of-way of Sawlers Road / Old Scotts Road. These encroachments generally include fencing, portable buildings and equipment. Subsequent to the removal of such encroachments, the Developer shall erect a chain link fence on the property adjacent to the right-of-way.

2.5 Environmental Protection

- a) The Developer agrees to observe and comply with the provisions of the Topsoil By-law, and further agrees not to commence any disturbance or removal of topsoil, trees or vegetation, excavation, grading or other site work on the Lands, until a permit has been issued by the Development Engineer. Prior to any clearing, excavation or the placement of fill material on the Property, the Developer shall submit a Grading and Drainage Plan indicating existing and proposed finished grades on the site and the

effects of site drainage on the surface drainage of abutting properties and downstream receiving systems. The drainage plan shall receive written approval by the Municipal Development Engineer prior to commencement of the work. All costs and all work associated with the stormwater drainage system shall be the responsibility of the Developer.

- b) Prior to any grubbing, excavation or the placement of fill materials on the Property, the Developer agrees to have prepared by a Professional Engineer and submitted to the Municipality for review by the Municipal Engineer and the Department of Environment (if applicable), as part of the Developer's application for a municipal development permit, an Erosion and Sedimentation Control Plan for the Lands. The plan shall comply with the Erosion and Sedimentation Control Handbook for Construction Sites as amended from time to time by the Nova Scotia Department of Environment and generally reflects (Schedule "C"). Specifically, this plan should outline the temporary erosion and sedimentation control measures (vegetative and mechanical) to be used during active construction of the project with an emphasis on minimizing the amount of soil disturbed and the duration of exposed soil. The plan shall be reviewed by the Municipal Development Engineer and N.S.D.E.L prior to commencement of the work. All costs and all work associated with the implementation of the plan shall be the responsibility of the Developer.
- c) Pursuant to Section 3.5(b), all earthworks and construction on the Property shall comply with the requirements of Schedule "C". Conformance to this Schedule shall be a condition of any development permit, and the Development Officer shall require the Developer to post security in the amount of five thousand dollars (\$5,000.00) to ensure the environmental protection measures are properly implemented and maintained according to the terms of this Agreement. The security shall be in favour of HRM and may be in a form of certified cheque or irrevocable letter of credit issued by a chartered bank. The security may be used by the Municipality to complete any outstanding deficiencies and the remainder shall be returned to the Developer upon the total completion of the development.
- d) The Developer agrees to construct at its own expense, a Stormwater Management System on the Lands which conforms to the design accepted by the Development Engineer which includes the following:
 - i) a vegetated berm along the boundary of the adjacent wetland with all drainage directed to a sediment basin appropriately sized to adequately remove sediment from the runoff.
 - ii) the construction of a concrete or asphalt apron adjacent to maintenance facilities which directs drainage to an oil and grit separator prior to discharge.
 - iii) certification from a Professional Engineer that the systems have been constructed in accordance with the approved design and the manufacturer's specifications.
- e) The Developer agrees to undertake, at its own expense, a regular maintenance program on the stormwater management system components in accordance to the manufacturer's specifications.

- (f) The Developer shall maintain the Non-disturbance Zone as indicated on the site plan. No fill shall be placed in this area and the Developer shall not develop this area for any land use.
- g) The Developer shall not process or produce any materials or waste that are defined as “dangerous goods” or “hazardous waste” under the “Dangerous Goods and Hazardous Waste Management Regulations.
- h) Construction materials and other wastes shall not be burned, buried, or discarded on the Property.
- i) The Developer shall construct a permanent barrier around the on-site septic system areas, as illustrated on the Site Plan, sufficient to prevent vehicles and equipment from traversing across the system.

2.6 Maintenance

- a) The Developer shall maintain and keep in good repair all portions of the development, including but not limited to, the interior and exterior of the buildings, fencing, retaining walls, parking areas, driveways and walkways, and the maintenance of all landscaping and buffer areas including the replacement of dead plant stock, trimming and litter control, and snow removal from driveways, parking areas and walkways.
- b) The Developer shall adopt appropriate dust control measures to minimize dust rising from the site and as required by the Development Officer.

2.7 Approvals/Permits

- (a) The Developer shall not commence construction until a municipal development permit has been issued by the Municipality. In addition to complying with all other terms and conditions of this Agreement, and any applicable provisions of the Land Use By-law, issuance of a municipal development permit is conditional upon the Developer obtaining and providing to the Development Officer a copy of each of the following:
 - i) A Topsoil Removal permit granted by the Municipal Development Engineer pursuant to the Topsoil By-law, in accordance with the terms and conditions of this Agreement;
 - ii) An Erosion and Sediment Control Plan in compliance with the NSDOE Guidelines and Servicing and Grading Plan which have been approved by the Development Engineer for the entire Property and the Municipality has received the required security for such a plan;
 - iii) A Street and Services permit required for the new access to Cobequid Road.

- iv) Security has been received by the Development Officer as required for Landscaping.
- v) The Developer has provided HRM a maintenance easement for the drainage culvert adjacent to Cobequid Road.
- vi) Permits for the salt shed if it is to remain on the lands.

PART 3: AMENDMENTS

- 3.1 The provisions of this Agreement relating to the following matters are identified as and shall be deemed to be not substantive and may be amended by resolution of the Community Council in accordance with the Municipal Government Act:
- (a) an enlargement of Buildings A and B to a combined maximum floor area of 5,500 square feet;
 - (b) provisions for signage;
 - (c) relocation of the access driveways;
 - (d) hours of operation; and,
 - (e) the subdivision of the Property.
- 3.2 Amendments to any matters not identified under Section 4.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.
- 3.3 Prior to passing any resolution under the provisions of Section 4.2, the Council shall send a notice in writing (by ordinary mail posted at least ten (10) days prior to the meeting of the Community Council to consider the resolution) to the owners, according to the assessment records maintained by the Province of Nova Scotia, of all properties located within five hundred (500) feet of the Property, according to the records maintained by the Nova Scotia Department of Municipal Affairs, notifying such owners that they shall be permitted to present written or oral submissions to Council at the meeting to consider the resolutions to amend this Agreement under Section 4.2.

PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

- 4.1 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.
- 4.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, 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.

- 4.3 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 Lands, this Agreement shall continue to apply to and bind the Developer, the Lands and each lot and, subject to Section 4.4, the Developer shall continue to be bound by all terms and conditions of this Agreement until discharged by the Council.
- 4.4 Upon the transfer of title to any lot, the owner thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.
- 4.5 Notwithstanding Section 4.4 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.
- 4.6 In the event that construction of the project has not commenced within 1 years from the date of registry of this Agreement with the Registry of Deeds, 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 construction of stormwater management systems.
- 4.7 Upon the completion of the development or portions thereof, or within three years from the date of approval of this Agreement, 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 5: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

- 5.1 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.
- 5.2 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 or take such remedial action as is considered necessary to correct a breach of the development 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 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:

per: _____

Sealed, Delivered and Attested
by the proper signing officers of
Halifax Regional Municipality
duly authorized on that behalf
in the presence of

per: _____

) 2338685 Nova Scotia Limited
)
)
)

) per: _____
)
)

) Halifax Regional Municipality
)
)

) per: _____
) MAYOR
)

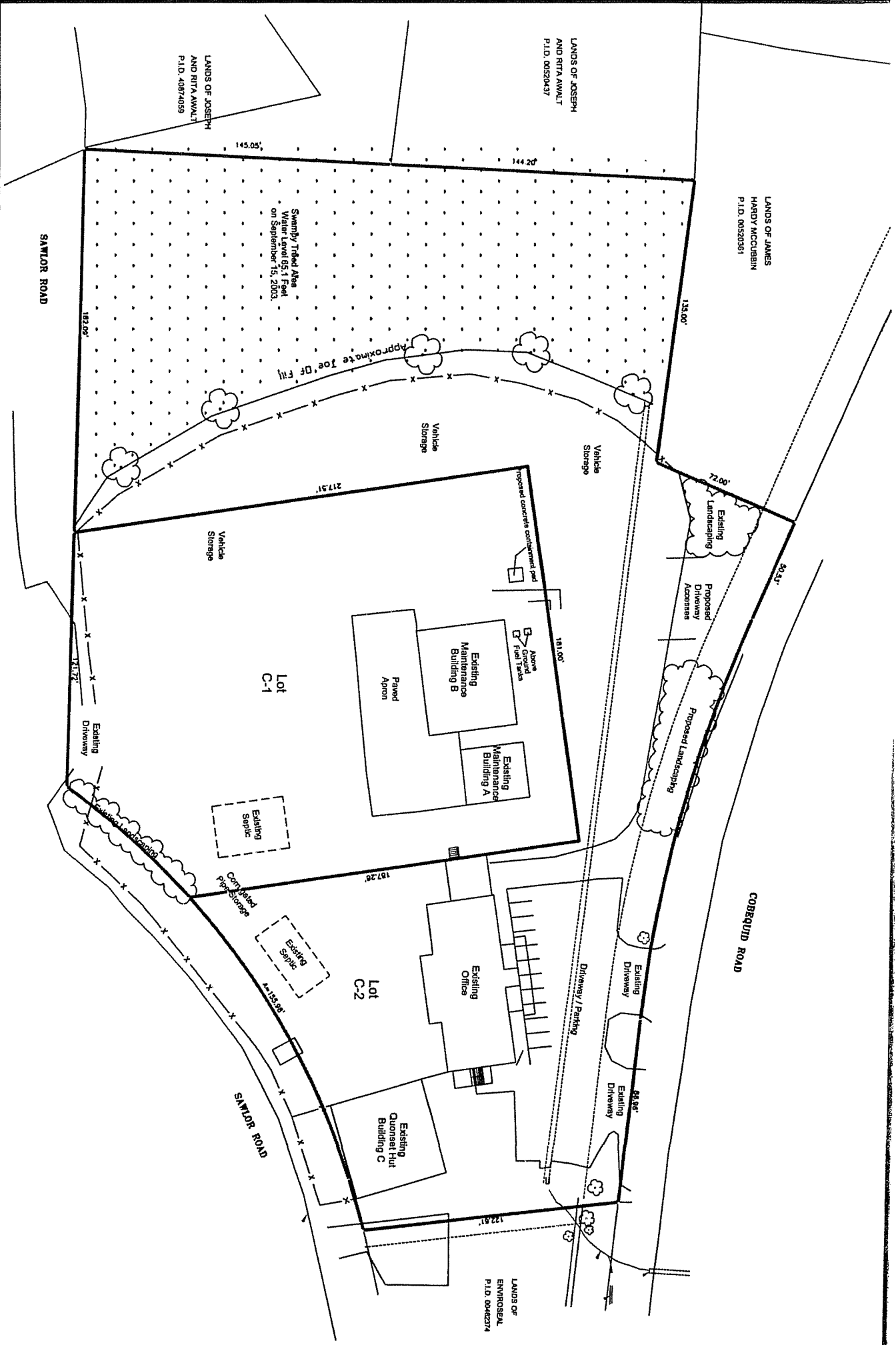
) per: _____
) MUNICIPAL CLERK
)

Schedule "B"
Site Plan

Sept. 15, 2005

HRM does not guarantee the accuracy of any base map information on this map.

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Schedule "C"
Erosion and Sedimentation Control Guidelines

EROSION AND SEDIMENTATION CONTROL ON CONSTRUCTION PROJECTS

A very important first step in reducing sedimentation of receiving water bodies is to develop a plan for controlling erosion before any earth-moving equipment disturbs a construction site. This plan is an integral part of the total site development plan and prescribes all the steps necessary, including scheduling, to assure erosion and sediment control during all phases of construction.

A knowledge of factors affecting erosion, as explained in Appendix B, provides the basis for technical erosion and sediment control principles. These principles can be utilized by the project planner in the design stage or readily implemented by a construction foreman in the field. Practical combinations of the five principles outlined on the following pages should be utilized to the maximum extent possible on all construction projects.

2.1 ACCEPTED PRINCIPLES AND PRACTICES FOR REDUCING EROSION AND SEDIMENTATION

1. FIT THE ACTIVITY TO THE TOPOGRAPHY, SOILS, WATERWAYS, AND NATURAL VEGETATION OF A SITE.

- a) Costs for erosion control and maintenance can be minimized if a site is selected for a specific activity rather than attempting to modify the site to conform to the proposed activity.
- b) Detailed planning will assure that roadways, buildings and other permanent features related to the activity conform to the natural characteristics of the site.
 - Locate large graded areas on the most level portion of the site.
 - Avoid areas subject to flooding and make every effort to preserve all features of natural channels. **Note that any channel alterations require a permit from the Department of the Environment.**
 - Areas of steep slopes, erodible soils and soils with severe limitations for the intended uses should not be utilized without first overcoming the limitations through sound engineering practices.
 - limit the length and steepness of the designed slopes to reduce runoff volumes and velocities. Long, steep slopes should be broken by benching, terracing or constructing diversion structures.

2. EXPOSE THE SMALLEST PRACTICAL AREA OF LAND FOR THE SHORTEST POSSIBLE TIME.

- a) Earth changes and the removal of natural vegetation leave an area susceptible to erosion and sedimentation; the larger the disturbed area and the longer it is left unstabilized, the more serious the problem becomes.
 - Plan the phases or stages of development so that only the areas which are actively being developed are exposed. All other areas should have a good cover of temporary or permanent vegetation or mulch.
- b) Complete grading as soon as possible after it is begun. Then, immediately after grading is complete, establish permanent vegetation and surface cover such as gravel, and erosion controls in the area.
 - Revegetate the slopes as work progresses - for example, as cut slopes are made, or as fill slopes are brought up to grade. This process is known as staged seeding.
 - Minimize grading of large or critical areas during the season of maximum erosion potential.

3. APPLY "SOIL EROSION" CONTROL PRACTICES AS A FIRST LINE OF DEFENSE AGAINST ON-SITE DAMAGE

- a) Applying erosion control practices on a site will prevent excessive sediment from being produced.
 - Keep soil covered as much as possible with temporary or permanent vegetation or with various mulch materials. Even project materials such as brush, logs and chippings can serve as mulch and help to control erosion.
 - Use special grading methods such as roughening a slope on the contour or tracking with a cleated dozer.
 - Roll and compact soil to make it less erodible.
 - Incorporate other practices such as diversion structures to divert surface runoff from exposed soils, and grade stabilization structures to control surface water.
- Effective erosion control and sediment reduction depends upon judicious selection of conservation practices, adequate design, accurate installation in a timely fashion, and sufficient maintenance to ensure the intended results.
- c) Prevent "gross" erosion in the form of gullies.
- d) **When erosion is not adequately controlled, sediment control is more difficult and expensive.**

4. APPLY "SEDIMENT CONTROL" PRACTICES AS A PERIMETER PROTECTION TO PREVENT OFF-SITE DAMAGE.

- a) The second line of defence is to control runoff and prevent sediment from getting off-site. Generally, this is done by either filtering runoff as it flows through an area or impounding the sediment-laden runoff for a period of time so that the soil particles settle out.
- Berms, sedimentation basins, sediment traps, and vegetative filters are some examples of practices used to control sediment and protect watercourses.
 - Vegetative and structural sediment control measures can be classified as either temporary or permanent depending on whether or not they will remain in use after development is complete.
- b) **The best way to control sediment, however, is to prevent erosion at its source.**

5. IMPLEMENT A THOROUGH MAINTENANCE AND FOLLOW-UP OPERATION.

This fifth principle is vital to the success of the four others. A site cannot be effectively controlled without thorough, periodic checks of the erosion and sediment control practices. These practices must be maintained just as construction equipment must be maintained, and materials checked and inventoried.

- Start a routine "end of day check" to make sure that all control practices are working properly.
- Check the weather forecast daily and be prepared if rain is predicted.
- Throughout construction keep an adequate inventory on hand of materials such as straw bales, polyethylene, gravel, or rock riprap, and scout the area for other sources of useful materials like hay, bark or sawdust for mulching.

Usually these five principles are integrated into an overall plan of vegetative and structural measures and management techniques aimed at preventing erosion and controlling sediment, as demonstrated by the flow chart, Figure 3. In most cases, a combination of limited grading, limited time of exposure and a judicious selection of erosion control practices and sediment trapping facilities will prove to be the most practical method of controlling erosion and the associated production and transport of sediment.

PREPARE EROSION AND SEDIMENTATION CONTROL PLAN

Consists if a written document and drawings based an accepted principles and practices and reducing erosion and sedimentation.

- Carry out a thorough soils analysis
- Fit the activity to the natural site featured particularly waterways
- Include a stormwater management plan
- Expose the smallest area for the shortest practical time
- Plan for erosion control materials and the time to apply them
- Plan the location for sedimentation control measures
- Prepare for contingencies - maintenance is very important

IMPLEMENT TEMPORARY EROSION AND SEDIMENTATION CONTROLS DURING CONSTRUCTION

SURFACE STABILIZATION (TEMPORARY)		DRAINAGE CONTROL (TEMPORARY)		
VEGETATIVE (1.5) BUFFER STRIPS	NONVEGATIVE RIPRAP (1.1)	CHANNELS (DITCHES) (2.1)(2.2)	GRADING PRACTICES (1.0)	SEDIMENTATION PONDS (2.10) (TEMPORARY/ PERMANENT)
MULCHING	GABION BASKETS(1.2)	CHECK DAMS BRUSH (2.7A)		FILTER BARRIERS STRAW (2.8)
HYDROSEEDING	GEOTEXTILE FILTER FABRIC(1.3)	ROCK (2.7B)		FILTER FABRIC (2.9)
MATTING (1.4)	MATTING (1.4)			

IMPLEMENT MAINTENANCE PROGRAM THROUGHOUT CONSTRUCTION

DAILY ROUTINE CHECKS REPAIRS REPLACEMENTS INVENTORY OF CONTROL MATERIALS

PERMANENT EROSION CONTROL FOR FINISHED SITE

SURFACE STABILIZATION (PERMANENT)		DRAINAGE CONTROL (PERMANENT)		
VEGETATIVE (1.5) SEEDING	NONVEGATIVE RIPRAP (1.1)	CHANNELS (DITCHES) (2.1)(2.2)	STORM DRAIN OUTLET PROTECTION (2.4)	CHECK DAMS ROCK (2.7B)
SODDING	GABION BASKETS (1.2)	BERMS TERRACES, FINAL GRADING (1.0)	SEEPAGE DRAINS (2.6)	EARTH SODDED (2.7 E)
MATTING (1.4)	GRAVELING PAVING	GRASSED WATERWAYS (2.3)	CHUTES AND DOWNDRAINS (2.5)	GABIONS (2.7C)
				WOODEN PLANKS (2.7B)
				SANDBAGS (2.7F)
				SEDIMENTATION PONDS (2.10)

MAINTAIN PERMANENT EROSION CONTROL

MAINTENANCE PROGRAM

ROUTINE CHECKS REPAIRS REPLACEMENTS INVENTORY OF CONTROL MATERIALS

FIGURE 3
STEPS TO FOLLOW IN PREPARING AN EROSION AND SEDIMENTATION CONTROL PROGRAM FOR CONSTRUCTION PROJECTS.
NOTE: NUMBERS IN BRACKETS REFER TO FACTSHEETS, SECTION 2.3