


TO: Chair and Members of Western Region Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: May 28, 2007

SUBJECT: Case 01040 - Amending Agreement - Westgate Community,
Timberlea

ORIGIN

Application by Nine Mile River Investments Ltd.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Give Notice of Motion to consider the proposed amending agreement, presented as Attachment A to this report;
2. Approve the amending agreement, presented as Attachment A to this report; and
3. Require the amending agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval of said agreement by Council and any other bodies as necessary, whichever is later, including applicable appeal periods; otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

In December 2001, the Western Region Community Council approved a development agreement with Nine Mile River Investments Ltd. to allow for a new mixed use project in Timberlea. Known as "Westgate", the project would incorporate a golf course among residential, commercial and institutional developments over 500 acres of land extending from Hwy. 103 to the St. Margarets Bay Road on both sides of the Timberlea Village Parkway.

Several amendments to the agreement have been approved since that time and a limited amount of residential development has been constructed. The project, however, has largely been on hold pending a resolution of sewage treatment issues. A study prepared for the Municipality, concluded that the Nine Mile River had very limited capacity to assimilate further sewage effluent discharged from the Municipality's sewage treatment plant in Timberlea.

The N.S. Department of the Environment consequently advised the Municipality that no further expansions of the treatment plant would be permitted. Planned expansions had been contemplated to allow for Westgate to proceed to build out, as well as accommodate other developments within the service boundary established under the Municipal Planning Strategy for the communities of Timberlea, Lakeside and Beechville.

The approved development agreement limited development to a maximum of 900 dwelling units unless a resolution and method of funding sewage treatment could be found. In March of 2004, an amendment to the agreement increased the number of permitted units to 911. In November 2004, the Province notified HRM that an expansion to the plant would not be allowed, and in March of 2005 confirmed that only 180 lots from Westgate could be approved.

This matter has come before Regional Council on a number of occasions. In May of 2006, Regional Council endorsed a proposal to divert a portion of the sewage generated within the Timberlea/Lakeside/Beechville Service Boundary to the Halifax sewer system. In April of 2007 Council included the infrastructure necessary for the diversion as part of the "Regional Wastewater System" which would allow Council to consider funding the project in whole or in part from revenue generated by the new Regional Wastewater Capital Cost Charge. Correspondence from Dan English to Glen Dexter of Nine Mile River Investments Ltd. confirms that HRM is committed to providing wastewater services in the Timberlea/Lakeside/Beechville Service Area. The correspondence, approved by Council at the May 29, 2007 meeting of Regional Council and is presented as Attachment B.

DISCUSSION

Nine Mile River Developments has requested that the restrictions placed on development due to sewage capacity constraints, as contained in Sections 2.5.11 and 2.5.12 of the development

agreement, be deleted. The company has also requested that Section 4.6 which allows the Community Council to review the agreement after ten years from the date of registry of the original agreement (February 14, 2002) be amended to reference the date of registry of the requested amending agreement.

Given that Regional Council has committed to resolving the sewage issue and that considerable time has lapsed since the original agreement was first approved, the amendments requested are justified. Staff would therefore recommend that the amending agreement, presented as Attachment A to this report, be approved.

Public Information Meeting / Area of Notification

There was no public information meeting held on this application. Should Community Council decide to hold a public hearing, in addition to published newspaper advertisement, property owners in the area shown on Map 1 will be sent written notification.

BUDGET IMPLICATIONS

None

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. Community Council could approve the proposed amending agreement. This is the staff recommendation.
2. The Community Council could reject any of the requested amendments. Staff can see no reason why these amendments should not be approved.

ATTACHMENTS

Map 1 Zoning

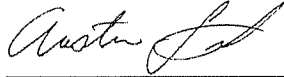
Attachment A Draft Amending Agreement

Attachment B Correspondence from Dan English, Chief Administrative Officer for Halifax Regional Municipality, to Glen Dexter of Nine Mile River Investments Ltd.

Attachment C: Extracts from the Westgate Community Development Agreement

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

Report Prepared by : Paul Morgan, Planner, Community & Regional Planning, tel: 490-4482





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



Map 1 - Location

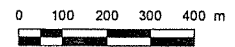
**Westgate
Timberlea**

 Area under development agreement to be amended

 Area of notification

Timberlea/Lakeside/Beechville Plan Area

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the Timberlea/Lakeside/Beechville Plan Area

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

AND WHEREAS the Developer requested further amendments to the Agreement (municipal file number 1040) which were approved by the Community Council on (enter date of decision);

THEREFORE in consideration of the benefits from the covenants contained herein, the Parties agree that the Agreement, as previously amended ("the Amended Agreement"), is further amended as follows:

1. Sections 2.5.11 and 2.5.12 are deleted.
2. Replacing the words "the date of registry of this Agreement" in the first sentence of Section 4.6 of the Amended Agreement with the words "the dated of registry of this Amending Agreement".
3. All other terms and condition of the Amended Agreement shall remain in effect.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2007.

SIGNED, SEALED AND DELIVERED) NINE MILE RIVERS INVESTMENTS LTD.
 in the presence of)
) Per: _____
 _____)
)
)
)

SEALED, DELIVERED AND)
 ATTESTED to by the proper)
 signing officers of Halifax Regional) HALIFAX REGIONAL MUNICIPALITY
 Municipality duly authorized)
 in that behalf in the presence) Per: _____
 of) MAYOR
 _____)
) Per: _____
) MUNICIPAL CLERK

Attachment B

May 16, 2007

Glen V. Dexter
Nine Mile River Investments Limited
Suite 1300
2000 Barrington Street
Halifax, NS B3J 3K1

Dear Mr.Dexter:

Re: Westgate Community Development Agreement

As you are aware the Development Agreement with Nine Mile River Investments for "Westgate" limits development to 911 units. It also anticipates that development could continue when plans to expand the wastewater treatment plant were developed.

In November, 2004, the Nova Scotia Department of Environment and Labour informed HRM that the Province would not support plans to expand the treatment plant. This position was due primarily to the adverse impacts on the river that were anticipated during periods in the summer and early autumn when flows in the river are at their lowest. Discussions began immediately between Provincial and HRM staff, and in March, 2005 the Province clarified their position regarding approving additional development within the existing service boundary. The Province agreed to allow connection of new buildings that were located on existing lots, as well as those lots that were in various stages of subdivision approval. This level of development, which is not expected to exceed the design flow to the treatment plants, only accommodates approximately 180 lots from Westgate.

Westgate is within the Timberlea/Lakeside/Beechville Service Area. In May, 2006 Council endorsed a concept to divert some of the Timberlea/Lakeside/Beechville service area to the Halifax sewer system, and allow development to continue without exceeding the current design capacity of the wastewater treatment plant. HRM commits to provide wastewater treatment services in the Timberlea/Lakeside/Beechville Service Area in accordance with our usual practices. This means that HRM commits to Nine Mile River Investments Limited that it will have access when required in accordance with our usual practices to provide municipal sewage treatment. With respect to Westgate this is a commitment to provide municipal wastewater treatment contemplated by the Development Agreement, including 3200 residential units, the golf course and commercial development.

As we discussed, on April 24, 2007 Council adopted a Regional Capital Cost Charges By-law, which collects a charge that helps fund the growth related share of wastewater treatment capital costs. The charge is collected at the building permit stage of development from all serviced

development in HRM. This fulfills any capital cost contributions for wastewater treatment infrastructure that are contained in the development agreement.

The plan to divert effluent to Halifax, as well as the adoption of the by-law make the limit on approvals of 900 lots no longer applicable. This letter constitutes confirmation pursuant to section 2.5.12 of the Development Agreement of both capacity and funding for sewage treatment for the entire development. For clarity, staff will support an amendment to the Development Agreement to remove the conditions imposed in sections 2.5.11 and 2.5.12. Staff as well support an amendment to the Development Agreement to extend the effective date of the agreement. Staff will recommend to Council that the process to make these amendments be commenced immediately.

If you have any questions concerning the contents of this letter, please do not hesitate to contact me at your convenience.

Sincerely

Dan English
Chief Administrative Officer

Attachment C: Extracts from the Westgate Community Development Agreement

- 2.5.11** Residential development on the Lands shall initially be limited to a maximum of 900 dwelling units due to capacity constraints at the sewage treatment plant at the time of this Agreement being approved. Additional units will be permitted based on the diversion of treated effluent from the sewage treatment plant for irrigation purposes on the Lands, subject to approval by the Nova Scotia Department of Environment.
- 2.5.12** Notwithstanding the previous section, further development of the Lands shall be permitted upon confirmation of both method of funding for treatment plant expansion and confirmation of sewage treatment plant capacity. It is agreed that the Developer is not waiving any legal rights it may have by entering this Agreement.
- 4.6** Upon the completion of all Phases of the development or portions thereof, or after 10 years from the date of registry of this Agreement with the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement;
 - (c) discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developers 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.