

10.3.1(ii)



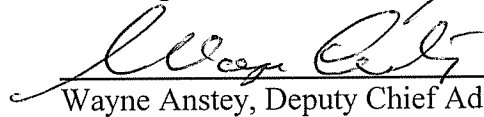
PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Halifax Regional Council  
June 20, 2006

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

  
\_\_\_\_\_  
Dan English, Chief Administrative Officer

  
\_\_\_\_\_  
Wayne Anstey, Deputy Chief Administrative Officer

DATE: June 13, 2006

SUBJECT: **Case 00839: Halifax MPS and LUB Amendments, Development Agreement - 6273 Quinpool Road**  
\_\_\_\_\_

### SUPPLEMENTARY REPORT

#### ORIGIN

Peninsula Community Council meeting of June 12, 2006.

#### RECOMMENDATION

It is recommended that **Regional Council**:

1. Give First Reading to the proposed amendments to the Halifax Municipal Planning Strategy and the Halifax Peninsula Land Use Bylaw as provided in Attachments "A" and "B" of the staff report dated May 19, 2006, and schedule a joint public hearing with Peninsula Community Council.
2. Approve the proposed amendments to the Halifax Municipal Planning Strategy and the Halifax Peninsula Land Use Bylaw as described in Attachment "A" and "B" of the staff report dated May 19, 2006.

Contingent upon the adoption by Regional Council of the above Municipal Planning Strategy and Land Use Bylaw amendments and those becoming effective under the *Municipal Government Act*, it is further recommended that **Peninsula Community Council**:

1. Approve the revised development agreement, as contained in Attachment "C" of this report. (Staff will bring this matter back to Peninsula Community Council for a decision at the appropriate time.)
2. Require that the development agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

On June 12, 2006, the Peninsula Community Council considered a proposed development agreement (Attachment "C" of the May 19, 2006, staff report). In adopting a motion to consider the proposed development agreement, two slight changes were incorporated as follows:

**1. Change to Section 2.3 (Detailed Provisions for Land Use) by adding:**

(d) Adult entertainment uses shall not be permitted on the premises.

**2. Change to Section 2.5 (Hours of Operation) by replacing the wording of 2.5.2 with the following:**

2.5.2 Notwithstanding 2.5.1, the hours of operation of the lounge shall be limited to the hours of operation of the restaurant, but shall not occur earlier than 11 a.m. and no later than 12 a.m.

## **DISCUSSION**

The purpose of this Supplementary Report is to ensure that the proposed development agreement, with the changes outlined above, are appropriately referenced. They have been incorporated into the revised development agreement, as found in Attachment "C" of this report.

Following the joint public hearing, Regional Council will be considering the MPS and LUB amendments, while Peninsula Community Council will be considering the development agreement. The subject of this report, the amendments to the development agreement, will be a decision of Community Council.

## **BUDGET IMPLICATIONS**

There are no budget implications.

## **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**

The following alternatives are identified in conjunction with this report for consideration by Regional Council:

1. Regional Council may choose to approve the amendments provided in Attachments "A" and "B" of the May 19, 2006, staff report. This is the staff recommendation.
2. Regional Council may choose not to approve the amendments provided in Attachments "A" and "B" of the May 19, 2006, staff report; or,

3. Regional Council may choose to either adopt certain amendments but not others outlined in Attachments "A" and "B" of the May 19, 2006, staff report, or alternatively request that additional amendments not identified in the May 19, 2006, staff report be made in which case an additional staff report(s) may be required.

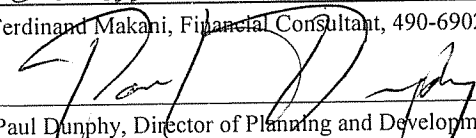
**ATTACHMENTS**

Attachment "C"                      Revised Development Agreement

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

Report Prepared by:                      Luc Ouellet, Planner I, Planning Applications, 490-3689

Financial Review:                        
Ferdinand Makani, Financial Consultant, 490-6902

Report Approved by:                        
Paul Dunphy, Director of Planning and Development Services, 490-4933

Attachment C (Revised)

THIS AGREEMENT made this      day of                      , 2006,

BETWEEN:

ENERGETIC FOODS RESTAURANT INCORPORATED  
a body corporate, in the Halifax Regional Municipality,  
Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,  
a municipal body corporate,  
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 6273 Quinpool Road, Halifax (PID 00177055) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for a lounge use on the Lands pursuant to the provisions of the Municipal Government Act and pursuant to Policies 2.8 and 2.8.1 of the Halifax Municipal Planning Strategy and Section 98A of the Halifax Peninsula Land Use Bylaw;

AND WHEREAS the Peninsula Community Council approved this request at a meeting held on [INSERT - Date], referenced as Municipal Case Number 00839;

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 Applicability of Agreement**

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

## **1.2 Applicability of Land Use By-law and Subdivision By-law**

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Subdivision By-law, as may be amended from time to time.

## **1.3 Applicability of Other By-laws, Statutes and Regulations**

Further to Section 1.2, 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 to the extent varied by this Agreement), or any statute or regulation of the Province of Nova Scotia or of the Government of Canada, 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.

## **1.4 Conflict**

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 to the extent varied by this Agreement), or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

## **1.5 Costs, Expenses, Liabilities and Obligations**

The Developer 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 the Lands.

## **1.6 Provisions Severable**

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 the Lands in a manner, which, in the opinion of the Development Officer, is substantially in conformance with the Schedule attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 00839:

Schedule 'A' Legal Description of the Lands

## 2.2 General Description of Land Use

The uses of the Lands permitted by this Agreement are the following:

- (a) A lounge subject to Section 2.3; and,
- (b) Any use permitted within the C-2C (Minor Commercial - Quinpool Road) Zone, subject to the provisions contained within the Land Use By-law for Halifax Peninsula.

## 2.3 Detailed Provisions for Land Use

A lounge shall be permitted within the building permitted on the Lands provided that:

- (a) The lounge use is secondary to a restaurant use;
- (b) The maximum floor area dedicated to the lounge use shall be 55.74 square metres (600 square feet), or 50% of the total seating area of the combined restaurant/lounge establishment, whichever is less; and,
- (c) Video gambling machines and video lottery terminals shall not be permitted on the premises.
- (d) Adult entertainment uses shall not be permitted on the premises.

## 2.4 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the building, fencing, walkways, parking areas and driveways, and the maintenance of all landscaping and litter control, garbage removal and snow removal/salting of walkways and driveways.

## 2.5 Hours of Operation

- 2.5.1 Hours of operation of the lounge use shall conform with all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.
- 2.5.2 Notwithstanding 2.5.1, the hours of operation of the lounge use shall be limited to the hours of operation of the restaurant, but shall not occur earlier than 11 a.m. and no later than 12 a.m.

## **2.6 Required Approvals**

Prior to the issuance of an Occupancy Permit for the operation of a lounge, the required approval from the Nova Scotia Alcohol and Gaming Authority must be submitted to the Development Officer.

## **PART 3: AMENDMENTS**

### **3.1 Substantive Amendments**

Amendments to any matter not identified under Section 3.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

### **3.2 Non-Substantive Amendments**

The following item is considered by both parties to be not substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

## **PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **4.1 Registration**

A copy of this Agreement and every amendment and/or discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.

### **4.2 Subsequent Owners**

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 Completion of Development**

In the event that an Occupancy Permit for the operation of the lounge has not been obtained within two (2) years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of completion of development.

### **4.4 Discharge**

After five (5) years from the date of registration of this Agreement with the Registry of Deeds, 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; or,
- (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 Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law, as may be amended from time to time.

## **PART 5: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **5.1 Access**

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 Failure or Default**

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 Lands 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 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 the Lands 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,



- (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.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2006.

SIGNED, SEALED AND DELIVERED )

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

in the presence of

\_\_\_\_\_

Per: \_\_\_\_\_

ROBERT MCKELVIE

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

\_\_\_\_\_

Per: \_\_\_\_\_

MAYOR

Per: \_\_\_\_\_

MUNICIPAL CLERK