


Item No. 11.1.8
Halifax Regional Council
May 20, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: May 7, 2014

SUBJECT: **Case 18465: Bonus Zoning Agreement - Mixed-use Development at
Birmingham Street and Spring Garden Road, Halifax**

ORIGIN

- May 9, 2013 Design Review Committee approval of the qualitative elements of the substantive site plan application for the mixed-use development at the corner of Birmingham Street and Spring Garden Road, Halifax (Westwood Development Limited); and
- Construction Permit application No. 136743.

LEGISLATIVE AUTHORITY

- *HRM Charter:*
245A (1) Where a municipal planning strategy so provides, a land-use by-law may provide for incentive or bonus zoning agreements respecting the HRM by Design Downtown Plan Area.

245B (1) The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement.

245C (1) An incentive agreement or bonus zoning agreement is in effect until discharged by the Council.
- Downtown Halifax Land Use By-law (Attachment B)

RECOMMENDATION

It is recommended that Halifax Regional Council adopt, by resolution, the bonus zoning agreement as provided in “Attachment A” of this report for the mixed-used development at the southwest corner of Birmingham Street and Spring Garden Road in Halifax.

BACKGROUND

The subject property is the site of a 7 storey mixed-use commercial/residential development that was approved through the site plan approval process in May 2013. The existing building, known as the former location of Winsby’s Shoes, is in the process of being demolished. The following highlights the major elements of the approved development for the site:

- approximately 14,300 square feet of commercial floor space;
- access to the commercial areas will be primarily from Spring Garden Road with secondary and elevator access from Birmingham Street; and
- above the second floor, 5 residential floors are proposed (access primarily from Birmingham Street).

Proposed Public Benefit (Bonus Zoning)

Within the Downtown Halifax Plan Area, maximum permitted building heights may only be attained when a developer provides a public benefit. Where a public benefit is not provided, the developer may only build to a lower building height. This approach is often referred to as “density bonusing” but is enabled under the *HRM Charter* as “bonus zoning.”

As the project exceeds the maximum pre-bonus height limitation within the Downtown Halifax Land Use By-law (LUB), a public benefit is required to be provided by the developer. A list of eligible public benefits is found in section 12(7) of the LUB (Attachment B).

The LUB establishes the value of a public benefit based on the equivalent of \$4.00 for every 0.1 metre of gross floor area created by extending above the pre-bonus height. This figure is adjusted annually in accordance with the Statistics Canada, Province of Nova Scotia Consumer Price Index, on the anniversary of the adoption of the By-law.

Of the eligible public benefit categories contained within the LUB, the developer proposed that the public benefit contribution be in the form of exemplary sustainable building practices.

Role of Design Review Committee, Development Officer & Council

Under Section 4(13)(c) of the LUB, the Design Review Committee (DRC) is responsible to provide the Development Officer with advice on matters pertaining to bonus zoning in relation to substantive site plan approvals. The DRC’s advice is provided in the form of a recommendation on the public benefit category for the development at the time the Committee makes its decision on the application.

The Development Officer is responsible for determining if a proposal meets the land use and built form requirements of the LUB. Section 12(9) of the LUB requires that prior to the issuance of a development permit requiring a public benefit, the developer must enter into an agreement with the Municipality to specify the terms and conditions by which the public benefit is to be provided.

The *HRM Charter* requires Council approval of the adoption of a bonus zoning (public benefit) agreement. This report seeks to obtain Council's approval of the agreement.

DISCUSSION

The Downtown Halifax Land Use By-law requires projects that exceed the maximum pre-bonus height limitations provide a public benefit as part of the project. In this case, the developer proposes that the public benefit contribution be in the form of exemplary sustainable building practices.

However, the Design Review Committee recommended that the Development Officer accept the provision of publicly accessible amenity or open space as the public benefit for the project. Specifically, their motion in this regard is as follows:

“MOVED by Ms. Sinclair, seconded by Ms. Sirrs that the Design Review Committee recommend the Development Officer accept the provisions of publicly accessible amenity or open space (public benefit category, such as a financial contribution or sponsorship to the Halifax Public Gardens or other nearby public open space) MOTION PUT AND PASSED”

As stated above, the DRC's role is limited to providing advice to the Development Officer. The decision on the public benefit category rests with the Development Officer. Staff has considered the DRC recommendation and determined that the Committee's recommendation is not in keeping with the provisions of the Land Use By-law. The LUB provides that the provision of publicly accessible amenity space, where a deficiency in such spaces exists, is a category of public benefit. Staff advises that this provision is intended to allow for the creation of additional publicly accessible amenity or open space and not to financially support existing public open space areas. Additionally, the public benefit requirements of the LUB do not provide authority for the Municipality to accept a financial contribution or sponsorship for a public benefit. Therefore, the Development Officer has approved the public benefit contribution for the project in the form of exemplary sustainable building practices subject to Council's approval of the bonus zoning agreement.

Value of the Public Benefit

The Developer has proposed to provide exemplary sustainable building practices in the form of energy and water savings strategies. The proposed building was compared against the LEED (Leadership in Energy and Environmental Design) silver standard and an energy model was prepared by M & R Engineering. Strategies were determined to achieve an energy savings of 38% and 133 tonnes of greenhouse gas savings for the entire building each year. These measurements include energy efficiency lighting, occupancy sensors for lighting control,

variable refrigerant flow heat pump systems, heat recovery for ventilation air, EC motors on fans, and upgraded building envelope (R-30 roof and R-20 walls). Strategies for water savings include low flow toilets (4.8Lpf) and low flow kitchen sink and bathroom faucets (5.7L/min). Compared to standard practices, these measures reduce water consumption by an estimated 500,000L per year for the residential component of the building. Incremental costs of these measures are estimated to be in excess of \$55,000.

The maximum pre-bonus height for the proposal is 22 metres and the maximum post-bonus height is 28 metres. The proposal is approximately 25 metres in height and the gross floor area to be gained is approximately 289 square metres. Therefore, the required cost of the public benefit is \$12,716.00, based on the LUB requirement of \$4.40¹ per 0.1 square metre of gross floor area.

The proposal from the developer to provide \$55,000 in value relative to exemplary sustainable building practices exceeds the LUB's minimum public benefit requirement. Based on the foregoing, it is recommended that Regional Council adopt, by resolution, the bonus zoning agreement as provided in Attachment "A" of this report for the mixed-use development located at the southwest corner of Birmingham Street and Spring Garden Road in Halifax.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this application can be accommodated within the approved operating budget for C420 Subdivision & Land Use.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to the public benefit contribution component of the site plan approval process.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVE

Regional Council may choose not to enter into an agreement for exemplary sustainable building practices as the public benefit. This would delay construction of the project as scheduled, necessitate further submissions by the applicant, and require advisement by the Design Review Committee, as well as a supplementary report from staff.

ATTACHMENTS

Attachment A	Bonus Zoning Agreement
Attachment B	Section 12(7) of the LUB - Public Benefit Categories

¹ Amount adjusted in 2014 as per the Statistics Canada, Province of Nova Scotia Consumer Price Index

A copy of this report can be obtained online at <http://www.halifax.ca/boardscom/DesignReviewCommittee-HRM.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: Sean Audas, Development Officer, 490-4402

Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 490-4800

Report Approved by: _____
Brad Anguish, Director, Community & Recreation Services, 490-4393

Report Approved by: _____
Derk Slaunwhite, Senior Solicitor, Legal, Insurance and Risk Management
Services, 490-4226

Attachment A – Bonus Zoning Agreement

THIS AGREEMENT made this ____ day of _____, A.D., 2014.

BETWEEN:

WESTWOOD DEVELOPMENTS LIMITED, a body corporate,

(hereinafter called the “Developer”)

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY, a body corporate,

(hereinafter called the “Municipality”)

OF THE SECOND PART

WHEREAS the Developer is the owner of the Property and has proposed a Development related that exceeds the maximum pre-bonus height identified on Map 4 of the *Downtown Halifax Land Use By-law*;

AND WHEREAS Section 12 of the *Land Use By-law* requires that a Public Benefit be provided on the Property being developed for all or part of any storey above the Pre-Bonus Height;

AND WHEREAS it is feasible to provide the Public Benefit required by the *Land Use By-law* on the Property being developed;

AND WHEREAS on May 9, 2013 the Design Review Committee approved the Development and recommended to the Development Officer of the Municipality the acceptance of the provisions of publicly accessible amenity or open space as the Public Benefit for the Development;

AND WHEREAS the Developer has considered the recommendation of the Design Review Committee but has instead selected to provide exemplary sustainable building practices to satisfy the Public Benefit required by the *Land Use By-law*;

AND WHEREAS the Developer will provide exemplary sustainable building practices in the form of energy efficiency, reduction of greenhouse gases, and water savings strategies;

AND WHEREAS by approving this Agreement, the Council of the Municipality has accepted the exemplary sustainable building practices as the Public Benefit for the Development;

WITNESS THAT in consideration of the benefits accrued to each Party from the mutual promises and covenants herein contained and the sum of \$1.00 now paid by the Developer to the

Municipality (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto agree as follows;

Definitions

1. In this Agreement all words shall carry their ordinary meaning except those defined in the *Downtown Halifax Land Use By-law* and, unless the context otherwise requires, the following words shall have the following meanings:

- (a) “Council” means the Council of the Municipality;
- (b) “Development” means a seven (7) storey mixed use residential building on the Property;
- (c) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (d) “Incentive or bonus zoning” means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest, as specified in the requirements;
- (e) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;
- (f) “Municipality” means the Halifax Regional Municipality;
- (g) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being 1488 Birmingham Street (Residential Entrance), 5506 Spring Garden Road (Commercial entrance main level), 5508 Spring Garden Road (Commercial Entrance second floor), Halifax, Nova Scotia, known as P.I.D. # 00077859 the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality as Document Number 100583484 and is more particularly set out in Schedule “A” attached hereto; and
- (h) “Public Benefit” means:
 - (a) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
 - (b) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that sustainable building practices in the form of providing energy efficiency lighting, occupancy sensors for lighting control, variable refrigerant flow heat pump systems, heat recovery for ventilation air, EC motors on fans, upgraded building envelope (R-30 roof and R-20 walls), low flow toilets, low flow kitchen sink and bathroom faucets, is the Public Benefit required under subsections 12(1) and 12(7) of the *Land Use By-law* for the Property.

Term of Agreement

3. This Agreement is in effect until discharged by the Council.

Reporting of Public Benefit

4. Prior to the issuance of the Occupancy Permit, the Developer agrees to provide a report to a Development Officer of the Municipality confirming that the Public Benefit has been completed.

Construction of Public Benefit

5. The Developer agrees:

(a) to install and construct the Public Benefit:

- (i) at its own cost;
- (ii) in a good and workmanlike manner;
- (iii) in accordance with all the Drawings;
- (iv) as sustainable building practises; and
- (v) in compliance with all Applicable Laws; and

(b) to complete construction of the Public Benefit which shall be completed at the time of the issuance of the first Occupancy Permit on the Property pursuant to the *Building By-law* (HRM By-law B-201).

Restoration of Public Benefit During The Term of the Agreement

6. If, at any time during the term of this Agreement,:

- (a) any of the Public Benefit fails to function or fails to function properly, in whole or in part, or
- (b) the Development Officer determines that any repairs to the Public Benefit are required to ensure that the Public Benefit does and will continue to function properly,

the Developer shall, within thirty (30) calendar days after receipt of notice, in writing, from the Development Officer, make such repairs or alterations as may be required, and if the Developer fails to do so, the Municipality may make such repairs or alterations.

7. If the Municipality undertakes any repairs or alterations, the Developer shall be responsible for the whole and entire cost thereof and the Developer shall reimburse the amount expended by the Municipality within fourteen (14) calendar days after a demand therefor by the Municipality.

Release and Indemnity

8. The Developer hereby agrees to assume, and does hereby assume, any and all liability and to indemnify, protect and save and keep harmless the Municipality and its Employees from and against any and all liabilities, obligations, losses, damages, penalties, proceeding, claims, actions (including negligence and wrongful death), suits, costs and expenses (including legal expenses) of whatsoever kind and nature imposed or assumed by, incurred by or asserted against the Municipality, or its Employees, in any way relating to or arising out of the failure by the Developer to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained in this Agreement to be observed, fulfilled or

performed by the Developer, is required by the Municipality, or resulting from the breach of any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained herein on the part of the Developer.

GENERAL PROVISIONS

Costs, Expenses, Liabilities and Obligations

9. 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 laws, by-laws, regulations and codes applicable to the Property.

Applicability of Laws

10. This Agreement shall be construed pursuant to the laws of the Province of Nova Scotia.

11. 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 Property or any statute or regulation of the Provincial or Federal Government and the Developer or lot owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

Schedules

12. The following Schedule shall form part of this Agreement:

Schedule "A" - Legal Description of the Property

Amendments

13. This Agreement may only be amended with the mutual consent of the Developer and the Council of the Municipality.

Conflict

14. Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

15. Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

Provisions Severable

16. 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.

Registration and Subsequent Owners

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

18. This Agreement shall run with the land and be binding upon the Parties hereto, their heirs, administrators, executors, successors, assigns, mortgagees, lessees and all subsequent owners.

19. Upon the transfer of title to any part of the Property, the subsequent owner(s) thereof shall observe and perform all the terms and conditions of this Agreement to the extent applicable to the transferred part of the Property.

Discharge of Agreement

20. If the Developer fails to complete the Development after **three (3)** years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, 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.

21. Council may, at any time, review this Agreement, in whole or in part, and may:

- (a) negotiate a new Agreement; or
- (b) discharge this Agreement.

Breach of Agreement and Failure to Comply

22. The Developer agrees that:

- (a) any Employee appointed by the Municipality to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer; and
- (b) upon receiving written notification from an Employee to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

23. If the Developer fails to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty of this Agreement after the Municipality has given the Developer thirty (30) calendar days written notice of the failure or default, 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 agreement, condition, covenant, obligation, promise, provision, representation, or warranty contained in this Agreement or take such remedial action as is considered necessary to correct a breach of this Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the agreement, condition, covenant,

obligation, promise, provision, representation or warranty, or any other remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the *Assessment Act*; and

(c) in addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

Time

24. Time shall be the essence in this Agreement.

THE REST OF THIS PAGE IS BLANK.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in

the presence of

Witness

**WESTWOOD
DEVELOPMENTS LIMITED**

Per: :_____

Name:

Office held:

Per:_____

Name:

Office held:

SEALED, DELIVERED AND

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

Witness

Witness

**HALIFAX REGIONAL
MUNICIPALITY**

Per:_____

Mayor

Per:_____

Clerk

SCHEDULE “A”

ALL that certain lot, piece of parcel of land situate, lying and being on the West side of Birmingham Street, in the City of Halifax, Province of Nova Scotia, being more particularly described as follows:

BEGINNING at a point in the West side of the said Birmingham Street distant Sixty one point six seven Feet (61.67 feet) from the South side of Spring Garden Road as shown on a certain plan prepared by Spencer Ball, dated the 20th day of August, 1958, being attached as Schedule B to a Deed recorded at the Registry of Deeds for Halifax in Book 2873, at Page 294;

THENCE in a southerly direction along the West side of Birmingham Street Forty Feet (40 feet) to an iron pin;

THENCE Westerly along the Northern sideline of lands shown on the said Plan to be owned by Manuel I. Zive, a distance of Fifty one point Seven Feet (51.7 feet) to an iron pin;

THENCE Northerly Forty Feet (40 feet), more or less, to the Southwest corner of certain lands owned by Hopgood & Sons Limited at the corner of Spring Garden Road and Birmingham Street as shown on the said Plan;

THENCE Northerly, bounded on the West by property of the Estate Bauer and there measuring Sixty Feet (60 feet);

THENCE Easterly, bounded on the North by Spring Garden Road and there measuring Fifty Feet (50 feet);

THENCE Southerly, bounded on the East by Birmingham Street and there measuring Sixty Feet (60 feet) to the place of beginning;

THE above described lands being and intended to be those lands conveyed to 3052517 Nova Scotia Limited, by indenture filed at the Halifax County Land Registration Office in Book 6694, Page 629.

Attachment B
Section 12(7) of the LUB - Public Benefit Categories

- (7) Subject to meeting all applicable requirements of this By-law, development pursuant to subsection (1) shall be permitted where the developer provides one or a combination of the following public benefits:
- (a) where the development includes a registered heritage property which is to be maintained, the preservation or enhancement of the heritage resource;
 - (b) the provision of publicly accessible amenity or open space, where a deficiency in such spaces exists;
 - (c) the provision of residential units at a subsidized cost to contribute to housing affordability in the Downtown Halifax Secondary Municipal Planning Strategy plan area;
 - (d) the provision of 3 and 4 bedroom units with direct access to outdoor amenity space;
 - (e) the provision of rental commercial space made available at a subsidized cost for arts or cultural uses;
 - (f) the provision of public art;
 - (g) the provision of public parking facilities, where a deficiency in such facilities exists;
 - (h) investment in public transit or active transportation infrastructure;
 - (i) the provision of exemplary sustainable building practices.
 - (j) the undergrounding of overhead electrical and communication distribution systems.
(RC-Dec 13/11;E-Mar 10/12)**