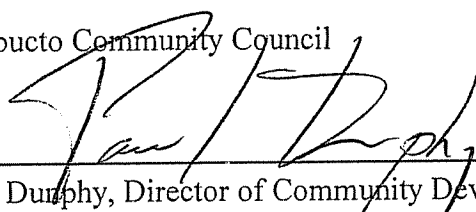




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
February 4, 2008

TO: Chebucto Community Council

SUBMITTED BY: 
Paul Murphy, Director of Community Development

DATE: January 29, 2008

SUBJECT: **Case 01013: Amending Agreements - Lots MC-1 and MC-2 on Masthead Court, Royale Hemlocks, Halifax.**

SUPPLEMENTARY REPORT

ORIGIN

- Approval of the Stage I amending agreement on January 7, 2008, and conclusion of the appeal period on January 28, 2008, allowing consideration of the Stage II amending development agreement to proceed.

RECOMMENDATION

It is recommended that Chebucto Community Council:

1. Approve the proposed fourth amending Stage II Development Agreement for Royale Hemlocks, Phases 1B and 3 to 9, presented as Attachment B to this report, to allow the two previously approved four storey 65 unit multiple residential buildings to be redesigned and increased in height to six storeys; and
2. Require the Amending Agreement for Stage II, Phases 1B and 3 to 9, be signed and delivered within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval of said agreements 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

The subject lands comprise two lots (MC-1 and MC-2) with a total lot area of approximately five acres. The lands are designated Residential Environments in the Halifax Municipal Planning Strategy and are zoned Schedule "K" in the Mainland Halifax Land Use By-law (see Map 1). Schedule "K" requires a two stage approval by Council. The first stage (Stage I) involves Council approval for a concept plan and development agreement and a Public Hearing is required. The second stage requires more detailed plans and development agreements for individual phases of the development. Stage II development agreements are to be consistent with the Stage I agreement. Council approval is required for the Stage II agreement but no Public Hearing is necessary.

The Stage I Development Agreement for Royale Hemlocks was first approved by Chebucto Community Council on July 6, 1998 and amended three times, the last time being January 5, 2004. The Stage II, Phases 1B, 3 to 9, Development Agreement was approved by Chebucto Community Council on March 5, 2001 and amended three times, the last time being June 27, 2005.

DISCUSSION

The Stage I agreement encompasses the entire subdivision and as such represents a masterplan for the area which sets out the road network, development parcels and land uses. A very similar previous amendment was for a change in height for apartment buildings in Phase 1A. On January 7, 2008, Chebucto Community Council approved a fourth Stage I amendment to the Development Agreement for Phases 1B and 3 to 9 of the Royale Hemlocks Subdivision to allow the two previously approved four storey residential buildings to be increased in height to six storeys. The expiration on January 28, 2008, of the 14 day appeal period allows the Stage I amending agreement to come into effect and the Stage II amendment to be considered for approval. The proposed Stage II amendment to the Development Agreement for Phases 1B and 3 to 9 of the Royale Hemlocks Subdivision is to allow the two previously approved four storey, 65 unit multiple residential buildings on lots MC-1 and MC-2 to be redesigned and increased in height to six storeys.

The changes to the Stage II, Phases 1B and 3 to 9 agreement are:

- Inclusion of revised Schedules: a Site Plan for lots MC-1 and MC-2 in Phase 9, Elevations for Building 1 on MC-1 and Building 2 on MC-2 and a Landscape Plan for both lots;
- Increasing the allowed building height for Building 1 and Building 2 from four to six storeys;
- Requiring that the landscaping conform to Schedule "L" and require a letter from a Landscape Architect certifying that the landscaping complies with the agreement prior to the issuance of a full occupancy permit;
- An allowance for the Municipality to use securities for the completion of landscape works;
- A reinstatement requirement for damaged areas;
- Requiring building materials to substantively conform to what is shown on the schedules;
- Inclusion of requirements for the parking areas, driveways and walkways;
- Specifications for the plant material and sod with an allowance for minor modifications;
- A minimum requirement for sod on the landscaped podium;

- A clause requiring on-going property maintenance;
- Prior to Building Permit issuance, the submission of a construction detail for the proposed retaining wall and fence certified by a Professional Engineer; and
- Requiring certification from an Architect that the development conforms to the agreement.

Staff is satisfied that the proposal and the changes reflected in the amending agreement for the Stage II, Phases 1B and 3 to 9 development agreement (Attachment A) have been prepared to be consistent with the Stage I development agreement and to reflect adjustments related to the revised building design and increased landscaping that will be beneficial to the community.

BUDGET IMPLICATIONS

There are no budget implications. The Developers will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the agreement can be carried out within the approved budget with existing resources.

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 draft Stage II amending agreement. This is the recommended course of action.
2. Council may choose to refuse the draft Stage II amending agreement. This is not recommended, because the Stage II amending agreement is consistent with the Stage I development agreement.

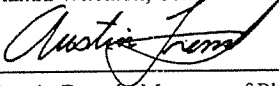
ATTACHMENTS

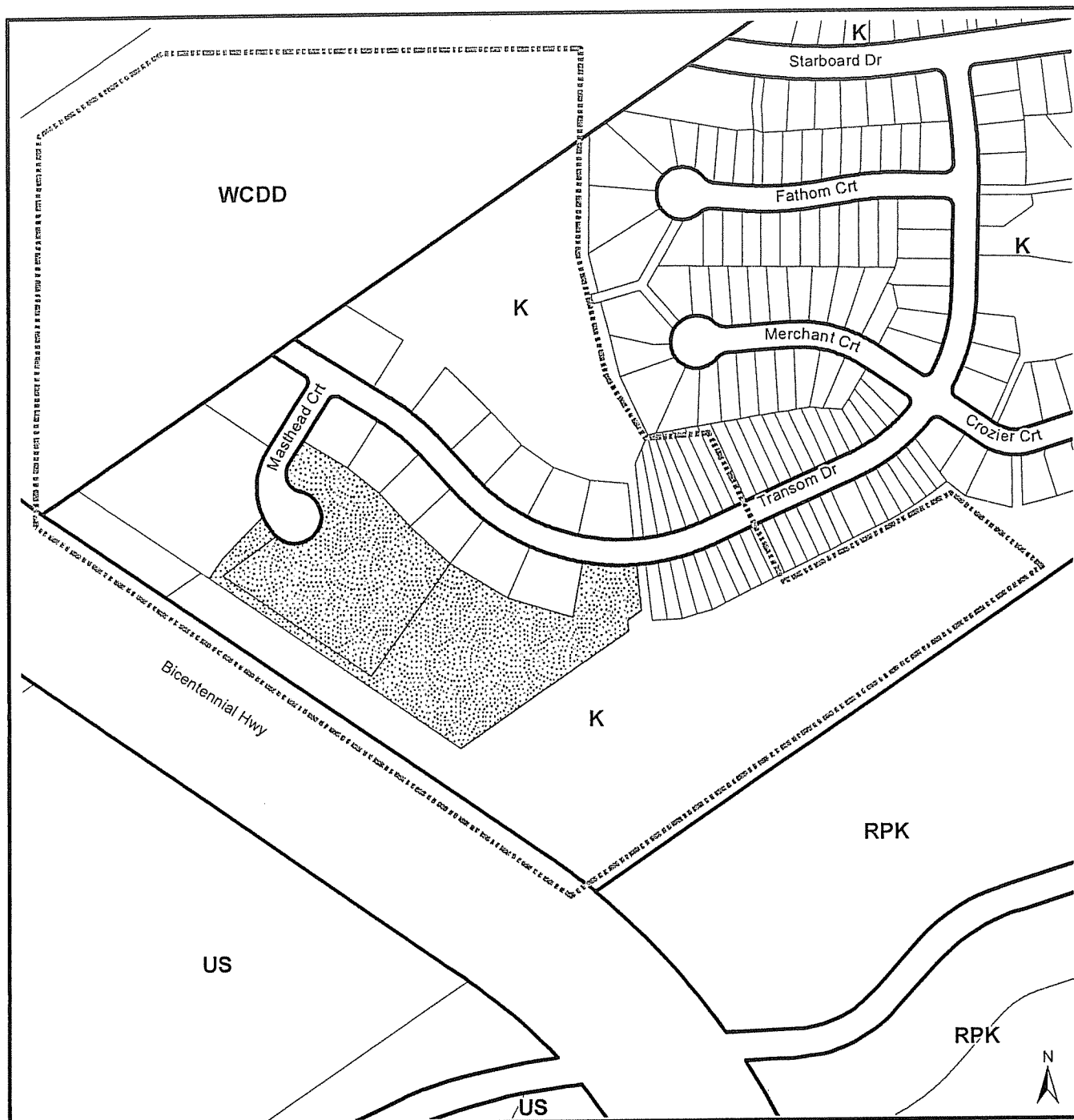
Map 1: Location and Zoning map
Attachment A: Proposed Stage II Amending Agreement for Phases 1B and 3 to 9

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: Randa Wheaton, Senior Planner 490-4499



Report Approved by:


Austin French, Manager of Planning Services, 490-6717



Map 1 - Location and Zoning

**Masthead Court
Halifax**

-  Subject area
-  Area of notification
- Halifax Mainland
Land Use By-Law Area

Zone	
K	Schedule K
WCDD	Wentworth Comprehensive Dev. District
US	Urban Settlement
RPK	Regional Park

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES



This map is an unofficial reproduction of a portion of the Halifax Mainland Land Use By-Law area

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

THIS AMENDING AGREEMENT made this day of , 2008,

BETWEEN:

KIMBERLY-LLOYD DEVELOPMENTS LIMITED,
a body corporate, in the Halifax Regional Municipality,
Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

PRIMO PROPERTIES LIMITED,
a body corporate, in the Halifax Regional Municipality,
Province of Nova Scotia (hereinafter called the "Developer")

OF THE SECOND PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate, Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE THIRD PART

WHEREAS the Developer of the first part, Kimberly-Lloyd Developments Limited, and the Developer of the second part, PRIMO Properties Limited, are the registered owners of certain undeveloped lands on Masthead Court, Halifax, (PID # 41235060 and # 41235136) and which said lands are more particularly described in Schedule "A" hereto (hereinafter called the "Lands");

AND WHEREAS, the Chebucto Community Council of Halifax Regional Municipality granted approval of an application (Case 7620) by the Developer of the first part to enter into a Stage I Development Agreement to allow for conceptual approval of the Royale Hemlock Subdivision on the lands, which said development agreement was recorded on November 20, 1998, at the Registry of Deeds at Halifax County as Document Number 37344 in Book Number 6308 at Pages 596 to 618 and which was subsequently amended (hereinafter is called “the Existing Stage I Agreement as amended”);

AND WHEREAS the Chebucto Community Council of Municipality granted approval of an application (Case 00262) by the Developer of the first part to enter into a Stage II development agreement for Phases 1B and 3 to 9, of the Royale Hemlock Subdivision, which said development agreement was registered at the Registry of Deeds in Halifax County on May 7, 2001 as Document Number 14534 in Book Number 6751 at Pages 1030 to 1059 (hereinafter called the "Existing Stage II Agreement");

AND WHEREAS the Chebucto Community Council of the Municipality granted approval of an application (Case 00402) by the Developer of the first part to amend the Stage II development agreement for Phases 1B and 3 to 9, of the Royale Hemlock Subdivision which said development agreement was registered at the Registry of Deeds in Halifax County on May 29, 2002 as Document Number 21066 in Book Number 7050 at Pages 132 to 139 (hereinafter called the "First Amending Agreement")

AND WHEREAS the Chebucto Community Council of the Municipality granted approval of an application (Case 00454) by the Developer of the first part to amend the Stage II development agreement for Phases 1B and 3 to 9, of the Royale Hemlock Subdivision which said development agreement was registered at the Registry of Deeds in Halifax County on August 15, 2003 as Document Number 35311 in Book Number 7446 at Pages 915 to 928 (hereinafter called the "Second Amending Agreement");

AND WHEREAS the Chebucto Community Council of the Municipality granted approval of an application (Case 00761) by the Developer of the first part to amend the Stage II development agreement for Phases 1B and 3 to 9, of the Royale Hemlock Subdivision which said development agreement was registered at the Registry of Deeds in Halifax County on September 1, 2005 as Document Number 82892556 (hereinafter called the "Third Amending Agreement");

AND WHEREAS the Developers have requested an amendment to the provisions of the Stage II, Phases 1B and 3 to 9, agreement;

AND WHEREAS the Chebucto Community Council for the Halifax Regional Municipality approved this request at a meeting held on the day of , 2008, subject to the registered owners of the Lands entering into this agreement referenced as Municipal Case Number 01013;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

The existing Stage II agreement, as amended, shall be further amended as follows:

- a) Section 1.1 of the Second Amending Agreement shall be amended by replacing the Schedule "I" attachment with a new Schedule "I" attachment dated October 12, 2007 and numbered 01013-0017.

- b) Section 1.1 of the Second Amending Agreement shall be amended by deleting the words "Schedule "J": Architectural Renderings for Multiple Unit Building, Phase 9" and replacing it with "Schedule "J": Front and End Elevations for Buildings 1 and 2, Masthead Court, Phase 9" and replacing the Schedule "J" attachment with a new Schedule "J" attachment dated June 27, 2007 and numbered 01013-0019.
- c) Section 1.1 of the Second Amending Agreement shall be amended by adding "Schedule "K": Rear and End Elevations for Buildings 1 and 2, Masthead Court, Phase 9" and adding a Schedule "K" attachment dated June 27, 2007 and numbered 01013-0020.
- d) Section 1.1 of the Second Amending Agreement shall be amended by adding "Schedule "L": Landscape Plan, Masthead Court, Phase 9" and adding a Schedule "L" attachment dated October 22, 2007 and numbered 01013-0018.
- e) Section 5.1 (g) shall be deleted and replaced as follows:
 - (g) The development of the "multi-family" site shown on Schedule "B" as Phase 9 shall substantially conform with the Site Plan and Architectural Renderings presented in Schedules "I", "J" *and "K"* and shall otherwise conform with the applicable requirements of the R-4 Zone of the Land Use By-law, provided the number of units on the site shall not exceed sixty (130), in total, and the height shall not exceed *six (6)* habitable storeys. ***Landscaping shall conform to the Landscape Plan presented in Schedule "L".***
 - 1. The number of units per building may vary, however the total units on the site shall not exceed one hundred and thirty (130);
 - 2. The Developers shall provide an area designated for the storage of recyclables, organics and refuse, and the collection and loading of the same. Sufficient space shall be provided in a common area of the property (interior or exterior) for containers to store recyclables (i.e. food and beverage containers), paper materials, organics (i.e. food and leaf and yard waste), and refuse (materials not included in other categories). The area used for the collecting and loading of recyclables, paper, organics and refuse shall:
 - (a) be of adequate size for separate bin(s) for each type of material (i.e. recyclables, paper, organics and refuse;
 - (b) be accessible and convenient for tenants and waste haulers;
 - (c) be adjacent to each other where ever feasible;
 - (d) be clearly identified by signage and clearly identify the type of materials accepted therein.
 - 3. All rooftop mechanical equipment shall be positioned, screened or both in order to not be visible from any public street right-of-way and any adjacent property. Screening shall be provided by either rooftop screening or ground level vegetation. Rooftop screening shall be the same as or compatible to the principal building in

terms of design, colour, texture, quality and materials. The use of parapets for such a purpose is encouraged;

4. All elevator penthouses shall be the same as or compatible to the principal building in terms of design, colour, texture, quality and materials;
5. The layout of the site shall generally be consistent with Site Plan attached as Schedule "I";
6. The Development Officer may approve minor changes to the layout of the site, building footprint size, shape and orientation of buildings shown in Schedule "I" provided the integrity of the design is maintained or enhanced, and furthers the intent of this Agreement.
7. *Prior to issuance of the full Occupancy Permit the Developers shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Development Agreement. Occupancy permits may, at the discretion of the Development Officer, be issued subject to security being provided to the Municipality in the amount of 110 per cent of the estimated cost of completion, as provided by the Developers, of all outstanding work. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or irrevocable letter of credit, with automatic renewal, issued by a chartered bank. The security shall be returned to the Developers only upon completion of all work, as described herein and illustrated on the Schedules, and as approved by the Municipality. Should the Developers not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this Section of the agreement. The Developers shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developers upon completion of the work and its certification.*
8. *Building materials shall substantively conform to those identified on Schedules "J" and "K" and the Developers shall be entitled to minor modifications to the architectural requirements shown on the schedules provided the changes are minor in nature, in the opinion of the Development Officer and comply with the intent to this agreement.*
9. *The internal driveway layout and the number and layout of parking spaces on the Lands shall be as generally illustrated on Schedule "I". The Developers agree that the parking on the Lands shall comply with the following:*
 - (a) *All parking areas, driveways, circulation aisles and walkways shall have a finished hard surface such as asphalt, concrete, paving blocks or an acceptable*

- equivalent in the opinion of the Development Officer. Notwithstanding, walkways shall not be finished with asphalt.*
- (b) Where parking lots are to be delineated by curbing, such curbing shall not be asphalt.*
- (c) Walkways should be designed to be barrier free where possible.*
- 10. All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.*
- 11. The Development Officer may approve minor modifications to the species, size and location of plant stock, provided such modifications, in the opinion of the Development Officer, enhance the attractiveness and visual appearance of the Lands.*
- 12. A minimum of 15 cm (6 inches) of drainage gravel or equivalent over the extent of the landscape podium plus an additional 40 cm (16 inches) of topsoil for sod shall be provided. It is the responsibility of the Developers to ensure that the underground parking structures or other structures are capable of supporting loads from all landscaping as well as the anticipated mature weight of the plant material on any landscape podium.*
- 13. All retaining wall systems are to be identified including the height (top of wall and bottom of wall elevations) and type of safety fencing proposed in conjunction with it. A construction detail of any fence and wall combination shall be provided and certified by a Professional Engineer prior to building permit issuance.*
- 14. The Developers 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, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal/salting of walkways and driveways.*
- 15. All disturbed areas shall be reinstated to original condition or better.*
6. Section 5.5 shall be deleted and replaced as follows:
- 5.5 No occupancy permit shall be granted for any apartment building unless certification has been received from a professional architect that the development conforms with requirements of Clauses 5.1(f) *and* 5.1(g).

All other terms and conditions of the Existing Stage II Agreement for Phases 1B and 3 to 9, as amended, shall remain in full force and effect.

Time shall be of the essence of this Fourth Amending Stage II Agreement.

This Fourth Stage II Amending Agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

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) **KIMBERLY-LLOYD DEVELOPMENTS LIMITED**
in the presence of:)

_____) Per: _____

_____) **PRIMO PROPERTIES LIMITED**

_____) Per: _____

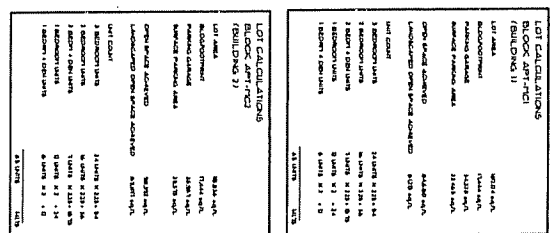
SEALED, DELIVERED AND
ATTESTED to by the proper
signing officers of Halifax Regional
Municipality duly authorized
in that behalf in the presence
of

_____) **HALIFAX REGIONAL MUNICIPALITY**

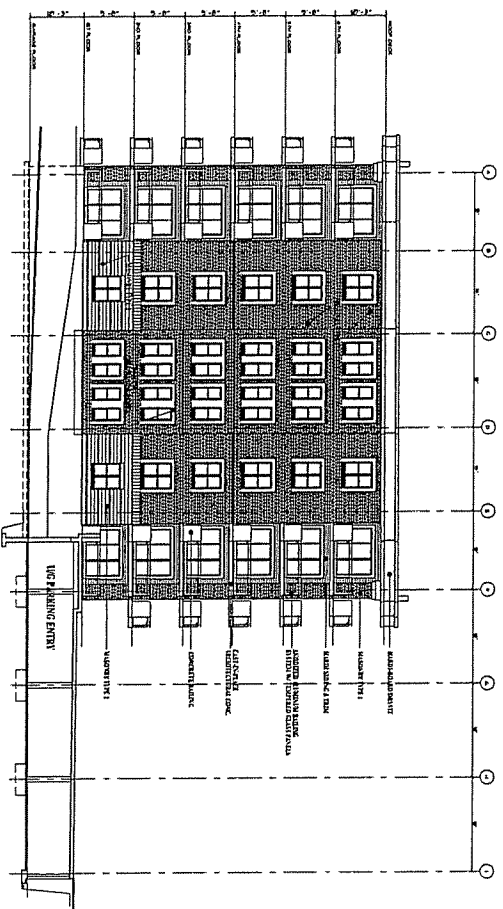
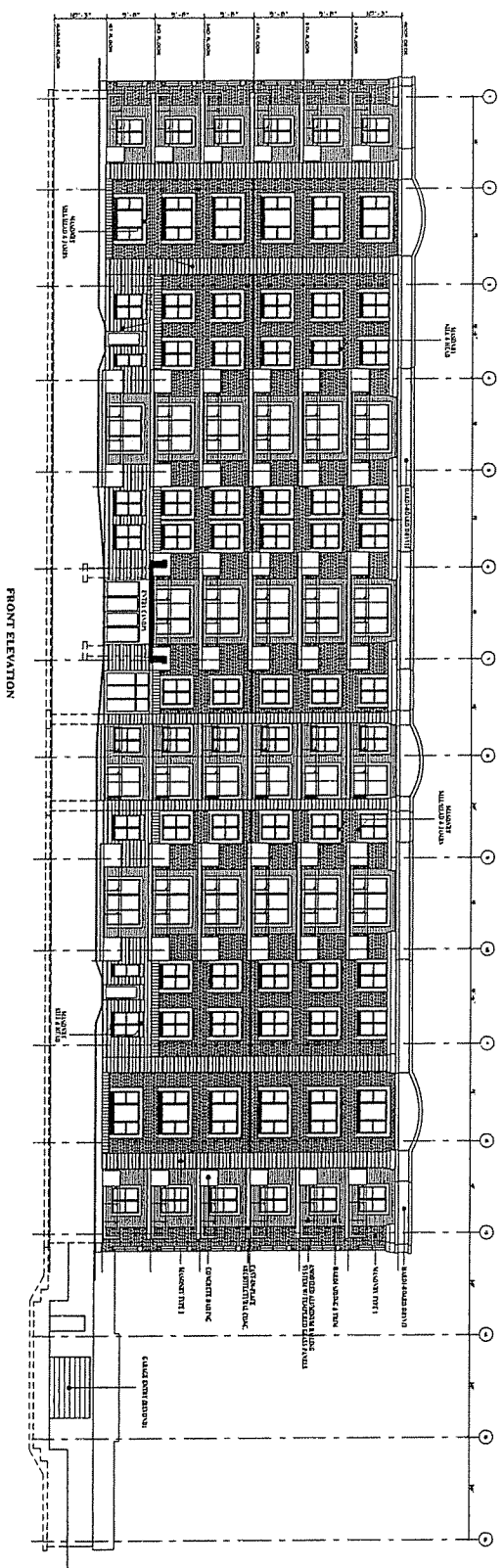
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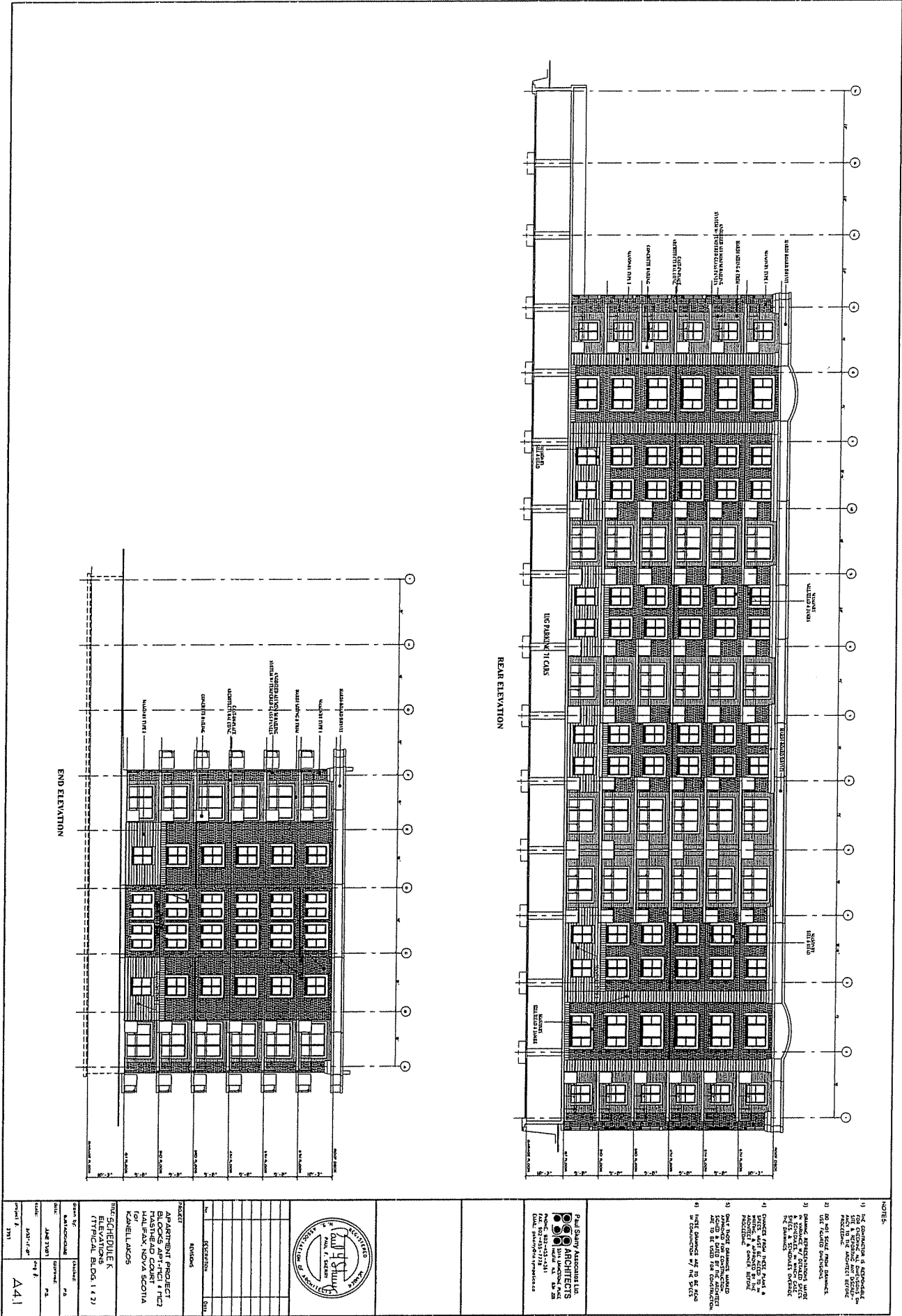
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NOTES:	
1)	NO CONSTRUCTION AT NEARBY RESIDENTIAL DEVELOPMENT SITES. NO CONSTRUCTION AT EXISTING RESIDENTIAL DEVELOPMENT.
2)	NO SET BACK DISTANCE.
3)	NO FLOOD HAZARD.
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