P.O. Box 1749 Halifax, Nova Scotia B3J 3A5 Canada

Chebucto Community Council June 6, 2011

TO:

Chair and Members of Chebucto Community Council

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SUBMITTED BY:

For Paul Dunphy, Director, Community Development

DATE: May 11, 2011

SUBJECT: Case 16678 – Amending Agreement - 368 Lacewood Drive, Halifax

<u>ORIGIN</u>

Application by Sunrose Land Use Consulting

RECOMMENDATION

It is recommended that Chebucto Community Council

- 1. Give Notice of Motion to consider an application by Sunrose Land Use Consulting to further amend the development agreement for the property at 368 Lacewood, Halifax and schedule a public hearing.
- 2. Require that the Development Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

The subject property, 368 Lacewood Drive, is located on the corner of Lacewood Drive where it intersects with Highway 102. The subject property is zoned schedule K under the Halifax Mainland Land Use Bylaw. The schedule K zone requires a Stage I and Stage II development agreement before a property can be developed. The Stage I Agreement provides a concept for development and includes the layout of the properties and the types of uses to be permitted. The Stage II agreement requires more detailed plans and addresses the specific location and design of buildings and structures.

In 1999, a Stage I development agreement was approved by Chebucto Community Council for a mixed commercial / residential development on both sides of Lacewood Drive to the east of the Bicentennial Highway (Highway 102). Since then, the Stage I agreement has been amended several times. Additional lands were added for multiple unit dwellings in 2001, 2002 and 2003, a licenced lounge was permitted in conjunction with the Swiss Chalet restaurant in 2001, and most recently in 2010 the Home Depot was permitted to have additional outdoor storage.

Proposal

The current proposal is to further amend the existing Stage I agreement to create an additional lot for a commercial use. Should Council approve the proposed amending agreement, pending no successful appeals, staff will return to Council with proposed amendments to the Stage II agreement to enable the development of the site. The approval of the Stage II agreement requires a resolution of Council, but not a public hearing.

Enabling Policy

Policies 3.3 and 3.4 of Section II of the Halifax MPS specifically discuss land use on the area on the south-east quadrant of Lacewood Drive, east of Highway 102. Refer to Attachment B for a detailed policy review.

DISCUSSION

City wide policies 3.3 and 3.4 of Section II of the Halifax Mainland Land Use Bylaw discuss the development of mixed commercial / residential uses on the commercially designated property east of Highway 102. The policies envision a broad mix of commercial uses. Retail uses of a scale and character designed to serve the regional consumer market are to be confined to the south-east quadrant of the area, where the Home Depot is currently located.

Policies 3.3 and 3.4 discuss the importance of creating a high quality and attractive commercial area. As a result, the existing Stage I Agreement includes design criteria, such as a brick façade, with which the buildings and structures must comply. The design of the proposed building will be further discussed through the Stage II agreement.

Mr. Lube

As part of the application the proposed lot is to be developed for a Mr. Lube. Mr. Lube is a chain auto service franchise that specializes in oil changes. The existing stage I agreement includes auto service uses (service stations) as a use to be considered for commercial properties,

but does not make specific reference to a proposed site. In January 2004, a Stage II agreement was approved by Chebucto Community Council to permit a service station at the corner of Lacewood Drive and Fairfax Drive using the provisions within the existing Stage I agreement.

Establishing an auto service use in the south-eastern quadrant of the area is ideal as it is adjacent to the Highway and Lacewood Drive and otherwise surrounded by commercial uses including Home Depot. Access to the lot will not be permitted directly off Lacewood Drive. Alternatively, the lot will be accessed through an easement on the Home Depot property from Fairfax Drive.

BUDGET IMPLICATIONS

There are no budget implications. The Developer 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, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. A public information was held on January 26, 2011. Residents were invited to express any concerns regarding the proposed development agreement. Information concerning the application has also been made available on the HRM website.

ALTERNATIVES

- 1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report. This is the recommended course of action.
- 2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant.
- 3. 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 for the reasons stated within this report.

ATTACHMENTS

Map 1:	Zoning Map and Notification Area
Attachment A:	Proposed Development Agreement
Attachment B:	Excerpts from the MPS for Halifax
Attachment C:	Excerpts from the LUB for Halifax Mainland – Schedule K
Attachment D:	Review of Relevant Policies from the MPS for Halifax

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 :

Jillian MacLellan, Planner 490-4423

Justin French, Manager, Planning Services 490-6717

Report Approved by:

<u>Attachment A:</u> Proposed Development Agreement

THIS AMENDING AGREEMENT made this day of , 201[#],

BETWEEN:

[INSERT DEVELOPER NAME]

a body corporate, in the Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 368 Lacewood Drive, PID 40884082, Halifax and which said lands, Block BC-7, are more particularly described in Schedule A hereto (hereinafter called the"Lands");

AND WHEREAS the Chebucto Community Council of the Municipality approved an application by Clayton Developments Ltd and the Shaw Group Ltd to enter into a Stage I Development Agreement to allow for a mixed commercial / residential development on February 23, 2000 (Municipal Case 00122) on the Lands, which said Development Agreement was registered at the Halifax County Land Registration Office as Document Number 5656 (hereinafter called the "Existing Stage I Agreement");

AND WHEREAS the Chebucto Community Council of the Municipality approved an application by Clayton Developments Ltd and the Shaw Group Ltd to enter into an amending Stage I Development Agreement to allow for multiple unit dwelling and park uses on May 28, 2001 (Municipal Case 00358) on the Lands, which said Development Agreement was registered at the Halifax County Land Registration Office as Document Number 17295 (hereinafter called the "First Amending Stage I Agreement");

AND WHEREAS the Chebucto Community Council of the Municipality approved an application by Pacrim Developments to enter into an amending Stage I Development Agreement to allow for a licensed lounge in conjunction with an existing restaurant Lot BC-5 on November 7, 2001 (Municipal Case 00337) on the Lands, which said Development Agreement was registered at the Halifax County Land Registration Office as Document Number 44063 (hereinafter called the "Second Amending Stage I Agreement");

AND WHEREAS the Chebucto Community Council of the Municipality approved an application by Clayton Developments Ltd and the Shaw Group Ltd to enter into an amending

Stage I Development Agreement to allow for residential multiple use buildings on Parcels BC-9B, BC-9C, H-1 and H-2 on March 22, 2002 (Municipal Case 00399) on the Lands, which said Development Agreement was registered at the Halifax County Land Registration Office as Document Number 11995, (hereinafter called the "Third Amending Stage I Agreement");

AND WHEREAS the Chebucto Community Council of the Municipality approved an application by Clayton Developments Ltd and the Shaw Group Ltd to enter into an amending Stage I Development Agreement to allow for residential multiple use buildings on Parcel Z on January 20, 2005 (Municipal Case 00691) on the Lands, which said Development Agreement was registered at the Halifax County Land Registration Office as Document Number 81302797 (hereinafter called the "Fourth Amending Stage I Agreement");

AND WHEREAS the Chebucto Community Council of the Municipality approved an application by Clayton Developments Ltd and the Shaw Group Ltd to enter into an amending Stage I Development Agreement to allow for additional outdoor storage and display on March 1, 2010 (Municipal Case 01317) on the Lands, which said Development Agreement was registered at the Halifax County Land Registration Office as Document Number 96165874 (hereinafter called the "Fifth Amending Stage I Agreement");

AND WHEREAS the Developer has requested an amendment to the provisions of the Existing Stage I Agreement to enable the creation of Parcel BC-7A and the remainder Parcel BC-7R;

AND WHEREAS the Chebucto Community Council for the Municipality approved this request at a meeting held on **[INSERT-Date]**, referenced as Municipal Case Number 16678;

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

- 1. The Existing Agreement is further amended by replacing all references to BC-7 in the existing agreement and all amending agreements to BC-7R.
- 2. The Existing Agreement is further amended by adding the following after section 2C:

Part 2D (Parcel BC-7A)

2D.1 Schedules

The Developer shall develop and use the Lands identified on Parcel BC-7A in conformance with the terms of the Stage I agreement and the following Schedules to this Agreement:

Schedule "A-4"	Legal Description of the Lands (known as the "Lands")
Schedule "B-4"	Land Use Plan
Schedule "C-4"	Land Use and Development Chart

2D.2 Planning and Design Guidelines

- 2D.2.1 The parties agree that Schedules "B-4", "C-4" and all existing Schedules of this Agreement contain the proposed land uses, preliminary design schematics and guidelines for development of the Lands and further agree that the aforementioned uses, schematics and guidelines shall form the basis for negotiation and approval of any Stage II Development Agreement.
- 2D.2.2 Notwithstanding Section 2D.2.1 the Parties agree that variations to the development of the Lands presented in Schedules "B-4", "C-4" and "D" may be considered by Council under any proposed Stage II Agreement provided that any such variations conform with the design guidelines presented in Schedule "D" and with all applicable policies of the Municipal Planning Strategy in place at the time of entering into the Stage II Agreement.

2D.3 Land Use Controls

- 2D.3.1 Any proposed building or structure located 60 meters from Highway 102 must receive approval from the Nova Scotia Department of Transportation and Infrastructure Renewal before a permit to construct can be issued.
- 2D.3.2 No permit for construction for Parcel BC-7A shall be granted until an approval of subdivision has been endorsed by the Municipality and is registered with the Nova Scotia Land Registration Office.

2.D.4 Streets (Vehicular and Pedestrian Traffic) and Services

- 2D.4.1 All municipal servicing systems shall be designed and constructed in accordance with all applicable regulations and specifications of the Municipality and the Halifax Water, or as otherwise approved by the Development Engineer, and any other approval agency.
- 2D4.2 An easement across Parcel BC-7R shall be required to provide vehicular access to Parcel BC-7A. Direct access to Parcel BC-7A from Lacewood Drive or Highway 102 will not be permitted.

2D.5 Parks/Open Space

- 2D.5.1 The Developer and Municipality agree that a combination of on-site and off-site open space dedication for these lands under the parkland dedication land bank for Clayton Park West has been provided.
- 3. Schedule "D" of the Existing Stage I Agreement as amended is further amended by replacing the sentence:

"Only parcel BC#7, adjacent to the Bayer's Lake Business Park and the highway interchange shall be used for a large format retailer, and commercial uses will be limited to parcels BC#2a, BC#3a, BC#4, BC#5, BC#7, BC#8 and the northern portion of BC#9";

found in the second paragraph under the heading "develop a clear context for varied uses" of Part 2, with the following sentence:

"Only parcel BC-7R, adjacent to the Bayer's Lake Business Park and the highway interchange shall be used for a large format retailer, and commercial uses will be limited to parcels BC-2a, BC-3a, BC-4, BC-5, BC-7R, BC-7A, BC-8 and the northern portion of BC-9".

4. Schedule "D" of the Existing Stage I Agreement as amended is further amended by replacing the sentence:

"Pylon sign locations will be limited to the Highway 102 and Lacewood Corridor, with a maximum of 2 pylons (total) for parcels, BC#4, BC#5, BC#7 and BC#8, and 1 pylon for parcel BC#3a";

found in the first paragraph under the heading "*introduce unifying elements*" of Part 2, with the following sentence:

"Pylon sign locations will be limited to the Highway 102 and Lacewood Corridor, with a maximum of 2 pylons (total) for parcels, BC-4, BC-5, BC-7R, BC-7A and BC-8, and 1 pylon for parcel BC-3a";

- 5. All other terms of the Existing Stage I Agreement as amended shall remain in full force and effect.
- 6. This Sixth Amending Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgages, lessees and all subsequent owners, and shall run with the Lands which is the subject of the Sixth Amending Stage I Agreement until it is discharged by Council.

WITNESS that this Amending Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 201[#].

SIGNED, SEALED AND DELIVERED in the presence of per) (INSERT - REGISTERED) OWNERS NAME)) per:
per))) per:
F)

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

)) HALIFAX REGIONAL MUNICIPALITY

per) per:	
r)	MAYOR
)	
per) per:	
)	MUNICIPAL CLERK

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Schedule C-4 Land Use and Development Chart

Schedule "C-4"

CPWest Phase 4 Clayton Development Ltd. Lands

Phase 4 – Balance of Stage 1

Southside of Lacewood

Parcel	Intended Land Use	Alternative Uses	Acreage	Approx. Sq. Ft.	Approx. Units	Comments
BC-7A	Auto Service (Mr. Lube)		0.66	108		

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<u>Attachment B:</u> Excerpts from the Halifax MPS

Section II – City Wide Policies

- 3.3 For the commercially designated area in the east side of Bicentennial Drive at the Bayers Lake Interchange, development of Mixed Commercial/Residential uses shall be by development agreement. Boundaries and phases of the development shall be determined through the agreement.
- 3.3.1 The overall objectives to be achieved through the development agreement are:
 - a. to create a high quality, attractive and efficient mix of commercial and residential development through sound land use planning; and
 - b. to encourage imaginative and innovative planning.
- 3.3.2 It is envisioned that commercial enterprises that generally do not require the business interdependencies associated with the Central Business District will be the dominant form of commercial use. Uses to be encouraged include:
 - a. service commercial including processing and assembly, communications, research and institutional;
 - b. retail;
 - c. office and;
 - d. residential.
- 3.3.2.1 It is envisioned that the broadest mix of uses will occur in eastern quadrants of the Bicentennial Drive and Parkland Drive intersection. Any retail use of a scale and character designed to serve the regional consumer market, such as large-format outlets, shall be confined to the south-east quadrant of the Parkland Drive/Bicentennial Drive interchange.
- 3.3.2.2 No use shall entail an unacceptable nuisance such as odour or noise.
- 3.3.3 In establishing the type and density of development to be permitted in any agreement, the Municipality will have regard to traffic, parking, public transportation, sewer, storm sewer and water capacities.
- 3.4 The overall character shall be of a prestigious mix of commercial and residential development. This shall be encouraged through consideration of the following:
 - a. a high quality standard of building design and streetscape;
 - b. signage, landscaping, parking and utilities standards consistent with the intended prestigious image of the area;
 - c. harmonious relationships between proposed commercial existing or proposed residential uses and between differing forms of commercial uses, through effective urban design and landscape treatment;
 - d. development practices which take advantage of the natural features of the site by integrating existing vegetation and topographical features wherever appropriate;

- An interesting and varied entrance corridor that provides a signature for the area on both private and public lands fronting Lacewood Drive; and a transportation system allowing for convenient automobile, transit and pedestrian e.
- f. circulation.

<u>Attachment C:</u> Excerpts from the Halifax Mainland LUB – Schedule K

SCHEDULE "K"

- 68(1) Any area of land shown as Schedule "K" shall be a Comprehensive Development District.
- 68(2) No development permit shall be issued for a development in a Schedule "K" unless the proposed development has been approved by a resolution of Council.
- 68(3) (a) The purpose for which land within a Schedule "K" area is to be developed shall be primarily residential, and an emphasis shall be placed on a mix of housing types; shall include provision for local commercial uses that are intended to serve the residents of the immediate area, and community facilities for the use of residents in the immediate area; and shall include provision for automobile, transit, and pedestrian circulation; and an emphasis on conservation of natural environment features including lakes and waterways, mature trees, and natural topographic features. In addition to the above, Council may consider provision for commercial uses in accordance with the policies of the Municipal Planning Strategy.
- 68(3) (b) Notwithstanding clause (a), pursuant to Section II, Policy 3.3 of the Municipal Development Plan, the lands designated commercial on the east of Bicentennial Drive at the Bayers Lake Interchange shall be developed primarily as a mixed commercial/residential area.
- 68(4) For greater certainty, but without limiting the general powers of Subsection 68(3) above, the following uses may be permitted;
 - (a) detached one family dwellings;
 - (b) semi-detached dwellings;
 - (c) duplex dwellings;
 - (d) apartment houses
 - (e) attached houses;
 - (f) public park or playground;
 - (g) commercial uses;
 - (h) local commercial uses intended for the use of residents of the immediate area;
 - (i) a community centre;
 - (j) golf course;
 - (k) notwithstanding Section (h) above, regional scale retail uses, including large format outlets, shall only be permitted on those lands situated at the south-east quadrant of the Lacewood Drive/Bicentennial Drive interchange.
 - (1) uses accessory to any of the foregoing uses

- 68(5) An application for a development permit in any Schedule "K" area shall be submitted in two stages, the first stage of which shall be a tentative plan that shall include the following information for the entire area of land owned by the applicant which is designated as Schedule "K":
 - (a) A plan to a scale of 1'' = 100', or 1'' = 40', showing the following information:
 - (i) The location of the various uses and their areas;
 - (ii) Delineation of the various residential areas indicating for each such area its size and location, number of dwelling units (including number of bedrooms for each unit), types of dwelling units (i.e., townhouse, apartments, single family dwellings), parking layout and population density;
 - (iii) The location, size, shape, and surface treatment of public and private open spaces;
 - (iv) The proposed interior roadway system and connection to existing roadways including location of bus bays;
 - (v) Topography of the area showing contour intervals of not more than five feet of elevation, as well as an indication of soil coverage of the site;
 - (vi) All existing and proposed rights-of-way and easements, either public or private, within the area;
 - (vii) Description, size and location of the proposed community cultural facilities, community centres, etc.;
 - (viii) Description, size and location of proposed local commercial uses intended for the use of residents of the immediate area;
 - (ix) The uses and ownership of land abutting the area in question;
 - (x) A key plan with a scale between 1'' = 200' and 1'' = 1,320' showing the location of the site in relation to the surrounding communities;
 - (xi) General indication of how the phasing and scheduling is to proceed, if phasing is intended for the project.

(b) A plan to a scale of 1'' = 100' and 1'' = 40' showing an outline of the existing and proposed:

- (i) roadways, walkways, rights-of-way and easements;
- (ii) sanitary sewer system;
- (iii) storm sewer system;
- (iv) water system;
- (v) surface drainage and means of disposal of the water;
- (vi) street and walkway lighting;
- (vii) telecommunication system;
- (viii) electrical distribution system.

(c) A plan showing the overall drainage areas contributing to the flows of the area in question.

- 68(6) After holding a public hearing and considering the plan proposal submitted under Subsection 68(5), Council shall determine whether the applicant may proceed to final approval and on what conditions, if any, Council may refuse the proposal where, in the opinion of Council, the proposal is inconsistent with the purposes of Schedule "K" or Section 5 of this by-law.
- 68(7) In the event that Council does not refuse the application, the applicant shall provide:

(a) such information as required by Sections 63 and 64 of the by-law for that portion of the proposal for which the applicant is applying for a development permit;

(b) such additional information (final servicing plans, survey plan, etc.) as may be required by the Development Officer;

- (c) the terms of the proposed agreement pursuant to Subsection (8).
- 68(8) Approval by Council under Section 68(6) shall only be granted subject to the condition that the registered owner of the land upon which the development is to occur shall enter into an agreement with Council containing such terms and conditions as Council may direct.
- 68(9) Council shall consider the application for final approval and shall either approve the development or notify the applicant of the objectionable features of the final plan.

<u>Attachment D:</u> <u>Review of Relevant Policies from the Halifax MPS</u>

Policy Criteria	Staff Comment
 Section II – City Wide Policies 3.3 For the commercially designated area in the east side of Bicentennial Drive at the Bayers Lake Interchange, development of Mixed Commercial/Residential uses shall be by development agreement. Boundaries and phases of the development shall be determined through the agreement. 3.3.1 The overall objectives to be achieved through the development agreement are: a. to create a high quality, attractive and efficient mix of commercial and residential development through sound land use planning; and 	The application proposes varying the Stage I agreement to show the boundaries for the proposed additional lot. The application also proposes to amend the Stage II agreement to permit an auto service use.
b. to encourage imaginative and innovative planning.	the design criteria outlined in the existing Stage I agreement. The planning process envisioned through the initial agreement will not be amended.
3.3.2 It is envisioned that commercial enterprises that generally do not require the business interdependencies associated with the Central Business District will be the dominant form of commercial use. Uses to be encouraged include: a. service commercial including processing and assembly, communications, research and institutional; b. retail; c. office and; d. residential.	The proposed use to be located on the additional lot is an auto service use (service commercial). This type of use is already considered within the Stage I agreement.
3.3.2.1 It is envisioned that the broadest mix of uses will occur in eastern quadrants of the Bicentennial Drive and Parkland Drive intersection. Any retail use of a scale and character designed to serve the regional consumer market, such as large-format outlets, shall be confined to the south-east quadrant of the Parkland Drive/Bicentennial Drive interchange.	The proposed lot will be located in the south- eastern quadrant of the Bicentennial Drive and Parkland Drive intersection. The proposed use is appropriate for this location.
3.3.2.2 No use shall entail an unacceptable nuisance such as odour or noise.	It has been determined though the original Stage I agreement that an auto service use will not entail an unacceptable nuisance. The

	activities associated with the use will take place inside a building.
3.3.3 In establishing the type and density of development to be permitted in any agreement, the Municipality will have regard to traffic, parking, public transportation, sewer, storm sewer and water capacities.	The application has been reviewed by the HRM Development Engineering and Halifax Water. Direct access from Lacewood is not permitted. Access to the property must be through the existing access for Home Depot. Service laterals shall be connected to the respective main and shall not be connected to neighbouring laterals. These issues are addressed in the Development Agreement.
3.4 The overall character shall be of a prestigious mix of commercial and residential development. This shall be encouraged through consideration of the following:	
a. a high quality standard of building design and streetscape;	The existing development agreement outlines design criteria to which the proposed development will need to adhere.
b. signage, landscaping, parking and utilities standards consistent with the intended prestigious image of the area;	The existing development agreement outlines design criteria to which the proposed development will need to adhere.
 c. harmonious relationships between proposed commercial existing or proposed residential uses and between differing forms of commercial uses, through effective urban design and landscape treatment; d. development practices which take advantage of the natural features of the site by integrating 	The immediate surrounding uses are all commercial, one of which is a large format retailer. A harmonious relationship will be maintained through the design criteria already outlined in the existing agreement. The proposed development will not disturb existing vegetation.
existing vegetation and topographical features wherever appropriate;e. An interesting and varied entrance corridor	The additional building will provide a more
that provides a signature for the area on both private and public lands fronting Lacewood Drive; and	defined entrance to the commercial area.
f. a transportation system allowing for convenient automobile, transit and pedestrian circulation.	The proposed parcel will share the same access currently used for the Home Depot and should not effect automobile, transit and pedestrian circulation.



