

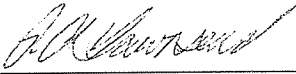


P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

12.1

**Chebucto Community Council**  
**February 6, 2012**

**TO:** Chair and Members of Chebucto Community Council

**SUBMITTED BY:**   
Phillip Townsend, Director, Planning and Infrastructure

**DATE:** December 29, 2011

**SUBJECT:** **Case 17123, Amending Stage 1 Development Agreement - Clayton Park West Phase 5**

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**ORIGIN**

- Application by Clayton Developments Ltd.

**RECOMMENDATION**

It is recommended that the Chebucto Community Council:

1. Move Notice of Motion to consider approval of the proposed amending development agreement, presented as Attachment A, and schedule a public hearing;
2. Approve the proposed amending development agreement, presented as Attachment A; and
3. Require the amending 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 will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

### **Policy Context**

Clayton Park West Phase 5 lands are outlined on Map 1 of this report. These lands are designated Residential Environments by the Municipal Planning Strategy for Halifax (MPS) and are identified as Schedule K by the Land Use By-Law for Halifax Mainland (LUB) (Map 1). The MPS requires development in Schedule K areas to proceed in two stages and by agreements, which require the Chebucto Community Council (CCC) approval. The first stage, regulated by Stage I development agreements, provide a concept for development and include details related to such elements as: street layouts, types of land uses, and scale of buildings. The second phase, which is regulated by Stage II development agreements, require detailed plans to address specific matters including the location and design of buildings and the nature in which a site is both laid out and protected.

### **Phase 5 – General Details**

The Stage I development agreement for Clayton Park West Phase 5 was approved by the Chebucto Community Council on January 4, 2010. The Stage I agreement allows for a mixed use development including multiple residential, townhouse, commercial, institutional and park uses. The Stage I Agreement divides the area into eight large blocks; Blocks A, B, C and D are to be developed for residential, commercial or institutional uses while Block G is to be deeded to the Municipality for park uses. Block E is to remain under the ownership of Halifax Water and is not for development. Block F will remain under the ownership of Halifax Water and be used for water utility purposes. Block H will remain under the ownership of the Municipality and is not for development.

### **Phase 5 – Density**

Density in Phase 5 is limited to 30 persons per acre and a total of 1,866 people. Density is regulated based on conditions in the Stage I development agreement, which assigns a specific number of persons for each type of residential unit. For example, 1 person is assigned for a bachelor unit, 2 people for a one bedroom unit, 2.25 people for any other type of apartment unit (i.e. - two bedrooms or larger), and 3.35 people per townhouse unit.

### **Phase 5 – Number of Apartment Units**

The Stage I development agreement also assigns a maximum number of apartment units per development block. For example, Block A is assigned a maximum of 200 apartment units, Block B - a maximum of 400 apartment units, Block C - a maximum of 340 apartment units, and Block D - a maximum of 200 apartment units.

### **Proposal**

The applicant would like to remove specific reference to the maximum number of apartment units per development block in favour of assigning a maximum population for each development block.

## **DISCUSSION**

### **Current Distribution of Density**

The Stage I development agreement provides an overall density cap for Phase 5 but does not assign a density cap for each development block. The applicant has requested a density cap be assigned to each development block. This approach will clarify the intensity of development for each section of Phase 5.

### **Removing the Maximum Number of Apartment Units per Block**

The Stage I development agreement encourages each apartment building to incorporate a variety of unit types by assigning a maximum number of apartment units per development block. For example, based on the size of Block A (approximately 13 acres), the Stage I development agreement would permit roughly 390 persons (30 persons per acre). Further, the Stage I agreement would allow a development block to exceed 30 persons per acre provided the maximum population for all of Phase 5 does not exceed 1,866 people. However, as Block A is capped at 200 apartment units, a proposal of 200 bachelor units would yield a population of 200 for Block A which is significantly less than the permitted density.

In order to develop at permitted densities, more than just bachelor units would need to be provided on each development block. This approach is consistent with the intent of the Halifax Municipal Planning Strategy which places an emphasis on providing a mix of housing types (Attachment B). Removing reference to the maximum number of apartment units per block is not recommended as the current approach encourages apartment buildings to incorporate a variety of unit types.

### **Varying the Maximum Number of Apartment Units per Block**

As discussed, assigning a maximum population for each development block will provide up-front clarity regarding the distribution of density in Phase 5. However, in order to ensure a mix of housing types within each development block, removing the maximum number of apartment units per development block is not recommended. It is important to note that past Stage I development agreements in Clayton Park have provided the ability to vary the maximum number of apartment units per development block by 20%. Adopting this approach for Phase 5, while at the same time assigning a maximum population for each block, would provide a reasonable level of flexibility while also protecting any given development block from being developed with only bachelor type apartment units.

### **Proposed Population Distribution**

The applicant has requested the following population distribution:

- Block A - 450 people;
- Block B - 810 people;
- Block C - 117.25 people; and
- Block D - 488.75 people.

The requested population distribution is consistent with the overall Phase 5 density of 1,866 persons. As the Stage I development agreement assigns a specific number of persons for each type of residential unit, including 2.25 people for larger apartment units and 3.35 people per townhouse unit, the requested population distribution in some cases is represented using decimal numbers.

### **Clarifying the Existing Approval Process**

As noted, development in a Schedule K area has been regulated through Stage I and Stage II development agreements. Traditionally, the Municipality has treated Stage II development agreements as non-substantive amendments to Stage I development agreements. As such, Council has approved past Stage II development agreements without holding a public hearing. This approach is reasonably consistent with the MPS, which requires development details be approved by resolution of Council and under an agreement with Council, prior to a permit being issued.

The *Halifax Regional Municipality Charter* sets forth the conditions by which a Municipality may enter into or amend a development agreement. The *Charter* provides that development agreements are to be considered by Council after holding a public hearing and only non-substantive amendments to an existing development agreement may be considered without a public hearing. In order to ensure the Municipality's approval process for Phase 5 is consistent with the *Charter*, the Stage I development agreement has been amended to identify any Stage II development agreement are a non-substantive matter (Attachment A).

### **Legal Review**

Consistent with the Chebucto Community Council's motion of October 5, 2009, the proposed amending development agreement has been reviewed by HRM's Legal Services and its content has been approved.

### **Conclusion**

The proposed amending development agreement is consistent with applicable policies of the Halifax MPS and aligns the Municipality's approval process under the *Halifax Regional Municipality Charter*. As such, it is recommended that the Chebucto Community Council approve the proposed amending development agreement presented as Attachment A.

### **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 incorporated with this case is consistent with the intent of the HRM Community Engagement Strategy. Community engagement included public consultation, which was facilitated through a public information notice distributed to property owners within the notification area shown on Map 1. A sign was also placed on the property to notify residents of the application, while information relative to the proposal was also posted on the HRM website. A public hearing must be held by CCC before they can consider approval of the proposed amending development agreement.

Should CCC decide to proceed with a public hearing for this case, in addition to the published newspaper advertisements, property owners within the notification area (shown on Map 1) will receive a mailed notification. The HRM website will also be updated to indicate notice of the public hearing.

## **ALTERNATIVES**

1. Chebucto Community Council may choose to approve the proposed amending development agreement provided as Attachment A of this report. This is the staff recommendation.
2. Chebucto Community Council may choose to propose modifications to the proposed amending development agreement. Such modifications may require further negotiations with the Developer, and may require a supplementary report and/or a public hearing.
3. Chebucto Community Council may choose to refuse the proposed development agreement. Pursuant to the *Halifax Regional Municipality Charter*, Council must provide reasons for this refusal based on the policies of the MPS.

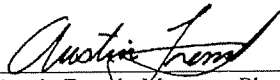
## **ATTACHMENTS**

Map 1:	Location and Zoning
Attachment A:	Proposed Stage I Amending Development Agreement
Attachment B:	Excerpts from the MPS and LUB

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: Miles Agar, Planner 1, Planning Services, 490-4495

Report Approved by:





Austin French, Manager, Planning Services, 490-6717

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### Map 1 - Location and Zoning

Greenpark Close area  
Halifax

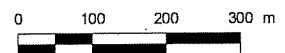
-  Subject area
-  Area of notification

Halifax Mainland  
Land Use By-Law Area

#### Zone

- R-1 Single Family Dwelling
- R-2 Two Family Dwelling
- R-4 Multiple Dwelling
- C-2 General Business
- I-2 Radio Transmitter
- I-3 General Industrial
- K Schedule K
- P Park and Institutional

**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT  
PLANNING SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Mainland Land Use By-Law Area.

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

**Case 17123 Attachment A**  
**Proposed Amending Development Agreement**

THIS AMENDING STAGE 1 AGREEMENT made this      day of **[Insert Month]**, 20\_\_,

BETWEEN:

**[Insert Name of Corporation/Business LTD.]**  
a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

**[Insert Name of Corporation/Business LTD.]**  
a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE SECOND PART

- and -

**[Insert Name of Corporation/Business LTD.]**  
a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE THIRD PART

- and -

**[Insert Name of Corporation/Business LTD.]**  
a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FOURTH PART

- and -

**HALIFAX REGIONAL WATER COMMISSION**  
a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Halifax Water")

OF THE FIFTH PART

- and -

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

OF THE SIXTH PART



WHEREAS the Chebucto Community Council of Municipality approved a Stage I Development Agreement with Clayton Developments Limited and The Shaw Group Limited and Halifax Regional Water Commission to allow for the primary design and planning of a mixed commercial / residential development (Clayton Park West Phase 5) on January 4, 2010 (Municipal Case No. 01304), which said Development Agreement was registered at the Halifax County Land Registration Office as Document No. 95611076 (hereinafter called the "Existing Stage I Agreement");

AND WHEREAS the Developer is the registered owners of certain lands located at Greenpark Close [being Block GP04A and GP04B) and Washmill Lake Drive (being Block B, Block C, and Block D), Halifax and which said lands form a portion Clayton Park West Phase 5 and are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer wishes to amend the Existing Stage I Agreement by assigning a maximum population for each of the development blocks on the Lands and by introducing flexibility relative to the maximum number of multiple units permitted per development block on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 3.3 of the Halifax Municipal Planning Strategy and Section 68 of the Land Use By-law for Halifax Mainland;

AND WHEREAS the Chebucto Community Council for the Municipality approved this request at a meeting held on [**Insert - Date**], referenced as Municipal Case Number 17123

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

1. The Existing Stage I Agreement shall be amended by replacing Section 3.4.4 with a revised Section 3.4.4 as follows:

3.4.4 Individual Stage II Development Agreements may develop at higher densities than 30 persons per acre, provided that the overall limit of 1866 persons as specified in Section 3.4.1 is not exceeded and provided the limit of persons per Block as specified below are not exceeded.

Block A – 450 persons

Block B – 810 persons

Block C – 117.25 persons

Block D – 488.75 persons

2. The Existing Stage I Agreement shall be amended by inserting the following Section immediately after Section 3.4.5:

3.4.6 Notwithstanding Section 3.1.2 and Section 3.3.1, the maximum number of multiple units per Block shown on Schedule B may vary by twenty (20) percent provided the limit of persons per Block and the overall limit of 1866 persons are not exceeded.

3. The Existing Stage I Agreement shall be amended by adding the following clause to Section 6.2.1:

(g) Stage II Development Agreements consistent with this Agreement.

4. All other terms and conditions of the Existing Stage I Agreement shall remain in full force and effect.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

\_\_\_\_\_

**(Insert Registered Owner Name)**

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

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

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

\_\_\_\_\_

**(Insert Registered Owner Name)**

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

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

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

\_\_\_\_\_

**(Insert Registered Owner Name)**

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

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

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

\_\_\_\_\_

**(Insert Registered Owner Name)**

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

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

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

=====

**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 WATER  
COMMISSION**

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

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

**HALIFAX REGIONAL  
MUNICIPALITY**

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

Mayor

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

Municipal Clerk

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that \_\_\_\_\_, \_\_\_\_\_ of the parties thereto, signed, sealed and delivered the same in h presence.

---

A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that \_\_\_\_\_, Mayor and \_\_\_\_\_, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in h presence.

---

A Commissioner of the Supreme Court  
of Nova Scotia

**Case 17123 Attachment B**  
**Excerpt of Most Relevant Policies and Land Use By-law Sections**

**Halifax Municipal Planning Strategy**

**Section II – City-Wide Objectives and Policies**

***Residential Environments***

Objective      The provision and maintenance of diverse and high quality housing in adequate amounts, in safe residential environments, at prices which residents can afford.

- 2.1      Residential development to accommodate future growth in the City should occur both on the Peninsula and on the Mainland, and should be related to the adequacy of existing or presently budgeted services.
- 2.1.2      On the Mainland, residential development should be encouraged to create sound neighbourhoods through the application of a planned unit development process and this shall be accomplished by Implementation Policy 3.3. It is the intention of the City to prepare and adopt a planned unit development zone subsequent to the adoption of this Plan.
- 2.4      Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.

**Implementation Policies**

***Zoning***

- 3.1.1      The City shall review all applications to amend the zoning by-laws or the zoning map in such areas for conformity with the policies of this Plan with particular regard in residential areas to Section II, Policy 2.4.
- 3.3      For the residentially designated undeveloped areas of Mainland North, the City shall, pursuant to Section 38(2)(p) of the Planning Act, establish such development regulations as are necessary to implement the policies of this Plan.
- 3.3.1      Further to Policy 3.3 above, these areas shall be identified on the zoning map and within such areas no development permit shall be issued unless the proposed development has

been approved by a resolution of Council, and further, except under an agreement with Council pursuant to Section 34(1) of the Planning Act.

- 3.3.2 Further to Policy 3.3.1 above, the purpose for which land within these areas 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 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, City Council may consider provision for minor commercial uses in accordance with Policy 3.1.2 in Section II, provided that such uses are consistent with the policies of this Plan, are compatible in design form and function with comprehensively planned development and with development adjacent to a comprehensively planned development, and that such uses are located in such manner as to be in accord with Policy 2.4.1 of Section II, as the principles of said policy may apply to areas of vacant land.
- 3.3.3 The City shall prepare and adopt plans for major public facilities including the location of collector roadways, schools and major community open space in the residentially designated undeveloped areas of the City.
- 3.3.4 In entering into agreements pursuant to Policy 3.3.1 above, Council shall be guided by the policies contained in Section II of this Plan, and shall not enter into agreements which are inconsistent with the policies of this Plan.
- 3.3.5 Prior to entering into any agreements pursuant to Policy 3.3.1, Council shall advertise its intention to do so and shall hold a public hearing at which time any objections shall be heard.

### **Halifax Mainland Land Use By-law**

#### **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.
- (l) 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.