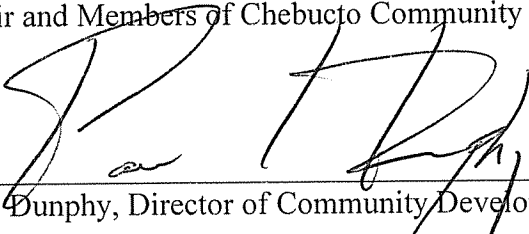




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
April 7, 2008

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: March 20, 2008

SUBJECT: **Case 01004: Development Agreement, Former BC Silver School, Halifax (Spryfield)**

SUPPLEMENTARY REPORT

ORIGIN

- Request by Kimberly-Lloyd Developments Limited to amend the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) to permit a residential subdivision development upon the former BC Silver School Site, Theakston Avenue, Halifax;
- February 19, 2008 approval by Regional Council of amendments to the Halifax MPS and Halifax Mainland Land Use By-law.

RECOMMENDATION

It is recommended that Chebucto Community Council:

1. Approve the proposed development agreement as presented in Attachment A; and
2. Require the development agreement be signed within 120 days, or any extension thereof granted by the Chebucto Community Council on request of the applicant, from the date of the final approval of said agreement by the Community 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

On February 19, 2008 following a public hearing held jointly with Chebucto Community Council, Regional Council approved amendments to the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) to permit a 40 unit single family residential development. The amendments have been reviewed by Service Nova Scotia and Municipal Relations as per Section 208 of the Municipal Government Act. These amendments became effective on March 29, 2008.

Kimberly-Lloyd Developments Limited purchased the former BC Silver School site from HRM in 2006. Since obtaining it, Kimberly-Lloyd has demolished the building and proposes to develop a residential subdivision, which is to include:

- a new street that is to extend from the intersection of Pinegrove Drive and Theakston Avenue to a new cul-de-sac, serving up to 40 single detached dwellings;
- a new section of road that is to extend from Levis Street and end with a new turning circle, serving up to four, new single detached dwellings;
- a walkway and emergency access between the two cul-de-sacs; and
- new trails alongside the McIntosh Run that will connect to a recently re-established bridge.

DISCUSSION

As noted in the December 20, 2007 report, this matter returns to Chebucto Community Council for a decision on the development agreement upon the MPS and LUB amendments becoming effective. Council may now consider the proposed development agreement ([Attachment A](#)).

Staff have reviewed Kimberly-Lloyd's draft final subdivision plan against the proposed development agreement. To provide additional clarity regarding the reduced frontage requirements for lots located on a curve, a clause (see Section 3.3.2.1 in Attachment A) has been added to the draft agreement.

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 and the work 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 proposed development agreement presented in Attachment A to permit the proposed residential development. This is the recommended course of action.
2. Council may choose to refer the case back to staff with specific changes to modify the development agreement.
3. Council may choose to refuse the proposed development agreement. This is not recommended for the reasons cited above. Reasons must be provided for a refusal.

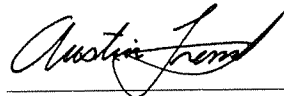
ATTACHMENTS

Attachment A Draft Development Agreement

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

Report Prepared by: Brian White, Planner I, 490-4793

Report Approved by:



Austin French, Manager of Planning Services, 490-6717

Attachment A

THIS AGREEMENT made this day of , 2008,

BETWEEN:

KIMBERLY-LLOYD DEVELOPMENTS LIMITED
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

HALIFAX REGIONAL MUNICIPALITY
A body corporate, in the County of
Halifax, Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 1 Theakston Avenue, PID 00332056, Halifax (Spryfield) and which said lands are more particularly described in Schedule "A" to this Agreement (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for a subdivision comprised of single detached dwellings on the Lands pursuant to the provisions of the Municipal Government Act and the Halifax Municipal Planning Strategy and Halifax Mainland Land Use By-law;

AND WHEREAS the Chebucto Community Council approved this request at a meeting held on _____, referenced as Municipal Case Number 01004;

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

PART 1: DEFINITIONS

“Community Council” means the Chebucto Community Council of the Municipality or any subsequent body established by the Municipality under the provisions of the Municipal Government Act .

“Development Officer” means a person appointed by the Municipality to administer the Municipality’s Subdivision By-law or Land Use By-law.

“Land Use By-law” means the Halifax Mainland Land Use By-law, as amended from time to time.

“Municipal Engineer” means a professional engineer employed by the Municipality to administer engineering guidelines, standards and by-laws adopted by the Municipality and to administer terms of this Agreement.

“Municipal Planning Strategy” means the Halifax Municipal Planning Strategy, as amended from time to time.

“Municipal Service Systems” means the manual adopted by the Municipality which provides standards for the construction of infrastructure, as amended from time to time.

“Subdivision By-law” means the Regional Subdivision By-law for Halifax Regional Municipality, as amended from time to time.

All words unless otherwise specifically defined herein shall be as defined in the Halifax Mainland Land Use By-law and the Subdivision By-law, as applicable.

PART 2: GENERAL REQUIREMENTS AND ADMINISTRATION

2.1 Relationship with By-laws and Regulations

- 2.1.1 The Developer agrees that the Lands shall be subdivided, developed, and used only in accordance with and subject to the terms and conditions of this Agreement.
- 2.1.2 Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Halifax Mainland Land Use By-law, as may be amended from time to time.
- 2.1.3 Except as otherwise provided for herein, the subdivision of the Lands shall comply with the requirements of the Regional Subdivision By-law of the Halifax Regional Municipality, as may be amended from time to time.

- 2.1.4 Pursuant to clauses 2.1.2 and 2.1.3, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner, or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law and Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Province of Nova Scotia, and the Developer or lot owner agrees to observe and comply with all such laws, by-laws, and regulations in connection with the development and use of the Lands.
- 2.1.5 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law and Subdivision By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 2.1.6 The Developer and each lot owner shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all federal, provincial, and municipal regulations, by-laws, or codes applicable to any lands owned by the Developer or lot owner.
- 2.1.7 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules

- 3.1.1 The Developer shall develop and use the Lands in reasonable conformance, as determined by the Development Officer, with the site plans, design drawings, renderings, and supporting technical documents, attached as the following Schedules to this Agreement:

Schedule "A"	Legal Description of the Lands of Kimberly-Lloyd, identified as PID 00332056
Schedule "B"	Site Plan

- 3.1.2 In the case of a conflict between the site plan and the written requirements of this Agreement, the written requirements shall prevail.

3.2 Land Uses

- 3.2.1 The land uses permitted by this Agreement, subject to its terms and as generally illustrated on Schedule “B”, shall be the following:
- (a) single unit dwellings;
 - (b) office of a professional person located in a dwelling used by such professional person as their private residence;
 - (c) home occupations; and
 - (d) uses accessory to any of the foregoing uses.

3.3 Requirements

- 3.3.1 The development shall be in substantial conformance with Schedule “B” with a maximum of 44 single unit dwellings, provided that the terms of this Agreement are met.
- 3.3.2 Notwithstanding Schedule “B”, buildings erected, altered or used for the land uses specified by clause 3.3.1 shall comply with the following requirements:

Minimum lot area	3,200 square feet*
Minimum lot frontage	32 feet
Maximum lot coverage	35 percent
Maximum height	35 feet
Minimum side yard setback	a) one side 10 feet b) other side 2 feet
Minimum separation distance	There shall be a minimum separation distance of 12 feet between any dwellings.
Minimum front yard setback	15 feet
Minimum rear yard setback	20 feet
Watercourse setback	Buildings shall be located a minimum of 100 feet from the ordinary high water line of McIntosh Run
* See 3.9.1 for permitted lot area reductions	

- 3.3.2.1 Notwithstanding the minimum lot frontage requirements of Section 3.3.2, where a lot is located on a curve, the lot frontage may be measured along a line joining points on the side lines of the lot which points are 15 feet from the street.

3.3.3 Notwithstanding 3.3.2, those structural elements of a dwelling (not an accessory building) listed below shall be permitted to project into a setback and the separation distance requirement specified in 3.3.2 as follows:

Structural Element	Yard in which Projection is Permitted	Maximum Encroachment into Prescribed Minimum Setback
Sills, cornices, eaves, gutters, and chimneys	Any yard	1.5 feet
Window bays	Front and rear yards	3 feet
Decks	Any yard other than the 2 foot side yard	4 feet
Open, roofed porches not exceeding 1 storey in height	Front and rear yards	4 feet
Steps and stairs	Any yard other than the 2 foot side yard	4 feet

3.3.4 Accessory buildings shall be:

- (a) located in rear yards;
- (b) a maximum of 10 feet in height;
- (c) a minimum of 1 foot from any lot boundary; and
- (d) a minimum of 6 feet from any dwelling.

3.3.5 Fences shall be:

- (a) a maximum of 6.5 feet in height; and
- (b) located in rear yards or in a yard that abuts a walkway right-of-way.

3.3.6 Driveways shall be:

- (a) a maximum of 12 feet in width; and
- (b) located within front and side yards.

3.3.7 There shall be a minimum of one parking space per detached single unit dwelling and all parking spaces shall be located within the bounds of a driveway.

- 3.3.8 No utility elements, such as power metres and oil tanks shall be installed upon the front elevation of a dwelling or within a front yard.
- 3.3.9 The minimum distance between the dwelling on Lot 41 of Schedule "B" and the boundary of the lot identified on said Site Plan as "PID 00333468 Sharon Benoit" shall be 10 feet.
- 3.3.10 No buildings shall be situated within the bounds of the municipal sanitary sewer pipe easements or other easement unless otherwise agreed to by the Municipality.

3.4 Maintenance Easements

- 3.4.1 With the exception of Lot 41 pursuant to clause 3.3.9, for each lot, within the "10 foot side yard" specified in 3.3.2, there shall be an easement conveyed in favour of the abutting property owner that enables periodic maintenance and repair to be undertaken upon their house and property. This easement shall extend a minimum distance of four feet from the subject property boundary.
- 3.4.2 Deed descriptions with the specified easements shall be provided to the Development Officer with the final plan of subdivision.

3.5 Park Dedication

- 3.5.1 With the approval of the final plan of subdivision, the Developer shall provide an "equivalent value" park dedication to the Municipality in the form of:
 - (a) trail improvements pursuant to Section 3.7 of this Agreement; and
 - (b) "cash" pursuant to Section 82 of the Subdivision By-law.
- 3.5.2 Pursuant to Section 3.7, the Developer shall provide construction drawings and cost estimates for the trail improvements, from a Qualified Professional, with the final plan of subdivision.

3.6 Streets and Walkway

- 3.6.1 The section of Levis Street, identified on Schedule "B", shall be reconstructed and extended. The existing portion of the street shall be repaved and widened to the fullest extent possible within the existing right-of-way. The extended portion shall maintain the existing right-of-way width and include a proportionately sized cul-de-sac adequate for snow storage. All design and construction shall meet the standards in the Municipality's Municipal Service Systems manual (Red Book) as determined and approved by the Municipal Engineer, however, such primary and secondary services as are unnecessary for

the proper development of the subdivision may be waived in consultation and with the approval of the Municipal Engineer.

- 3.6.2 The sub-base and base of the walkway, suitable to allow for the passage of pedestrians and emergency vehicles shall be classified as “Primary Services” and the remaining requirements of the specified walkway shall be classified as “Secondary Services”, pursuant to the Subdivision By-law.

3.7 Trails and Active Transportation

- 3.7.1 The Developer shall establish two sections of trails, that are to be located in reasonable conformance with Schedule “B” and, unless otherwise varied by the Development Officer and Municipal Engineer, designed and constructed to the following specifications:

Primary Trail: Between the Bridge and Levis Street

3.7.1.1 The Primary Trail shall consist of:

- (a) a travelled way (actual trail) that has:
 - i) a minimum width of 3.5 metres, the centre of which is located at the centre of the right-of-way;
 - ii) an asphalt surface and gravel subgrade as specified by the Municipal Service Systems manual (Red Book) pursuant to Figure 8.02630.01;
 - iii) a maximum slope of 8 percent along its length and maximum slope of 4 percent across its width;
- (b) a vegetative buffer that is a minimum 5 metres between the edge of the travelled way (actual trail) and the property boundary of any house lot, except between Lot 44, where the buffer shall be as shown on the Site Plan;
- (c) post and rail fencing along the sides of portions of the travelled way (actual trail) that are next to 2:1 slopes; and
- (d) chain link fences along the edge of the trail right-of-ways, where such right-of-ways abut the property boundary of a house lot, constructed in conformance with the specification for a Type II Boundary Fence within the Municipality’s Municipal Service Systems manual (Red Book).

Secondary Trail: Between the Bridge and the Intersection of Pinegrove Drive and Theakston Avenue

3.7.1.2 The Secondary trail shall consist of:

- (a) a travelled way (actual trail) that has:

- i) a minimum width of 2 metres, the centre of which is located at the centre of the right-of-way;
- ii) a 150 mm base of Type 1A gravel on compacted subgrade that is topped with 50 mm of compacted crusher dust;
- iii) maximum slope of 8 percent along its length and maximum slope of 4 percent across its width;
- (b) a vegetative buffer that is a minimum 5 metres between the edge of the travelled way (actual trail) and the property boundary of any house lot;
- (c) post and rail fencing along the sides of portions of the travelled way (actual trail) that are next to 2:1 slopes; and
- (d) chain link fences along the edge of the trail right-of-ways, where such right-of-ways abut the property boundary of a house lot, constructed in conformance with the specification for a Type II Boundary Fence within the Municipality's Municipal Service Systems manual (Red Book).

3.7.2 The sub-base and base of the trails, suitable to allow for the passage of pedestrians shall be classified as "Primary Services" and the remaining requirements of the specified walkway shall be classified as "Secondary Services", pursuant to the Subdivision By-law.

3.7.3 Pursuant to clause 3.7.1, the Developer shall consult with the Development Officer and Parkland Planner about the final location and other details of the trails prior to preparation of construction drawings.

3.8 Vegetation and Parcel E-2

3.8.1 Existing trees and other vegetation between the trails and McIntosh Run, as shown on Schedule "B", shall be retained unless otherwise required by this Agreement, or as approved by the Development Officer.

3.8.2 With the approval of the final plan of subdivision, the Developer shall transfer ownership of Parcel E-2, as reasonably shown on Schedule "B", to the Municipality.

3.9 Encroachments

3.9.1 Where there are encroachments upon the lands, the Developer may transfer ownership of such land and in such instances, minimum specified lot area requirements shall not apply, provided that all other requirements and terms of this Agreement are met.

- 3.9.2 Transferred land, pursuant to 3.9.1, shall be subject to provisions of the R-2P Zone of the Halifax Mainland Land Use By-law.

3.10 Municipal Service

- 3.10.1 Any development permitted by this Agreement shall be subject to confirmation that there is a sufficient capacity of Municipal services, such as sanitary sewage services and water, to accommodate the development and such services shall be installed pursuant to the requirements of the Municipality.

3.11 Environmental Protection

- 3.11.1 The Developer is required to submit a storm water management plan as part of the application process which must address erosion and sediment control, balancing of pre and post development flows, and disbursement of run off.
- 3.11.2 Nothing in this Agreement shall exempt or imply an exemption from the requirements of the Municipality or other level of government with regard to environmental protection requirements. Further to this, the Developer recognizes that any such requirements, which may include storm water settlement ponds and other features, may result in a reduction of the number of lots shown on Schedule "B."
- 3.11.3 The Developer agrees investigate the installation oil/grit separators and other measures associated with any stormwater management plan.

3.12 Land Alteration Prior to Subdivision Approval

- 3.12.1 Provided the Developer complies with all other requirements of this Agreement, the Municipality agrees that the Developer may commence clearing, excavation, and blasting activities required for the installation of municipal services prior to the Developer receiving final subdivision approval provided that engineering design plans, including the erosion and sedimentation control plans, have been approved by the Development Engineer and the Nova Scotia Department of the Environment and Labour, as required.

PART 4: AMENDMENTS

4.1 Substantial and Non-substantial Amendments

- 4.1.1 Amendments to this Agreement shall be deemed substantial and may only be amended in accordance with the approval requirements of the Municipal Government Act.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1.1 Application

- 5.1.1 A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia, and the Developer shall pay or reimburse the Municipality for the registration cost incurred in recording such documents.
- 5.1.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, leasees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.
- 5.1.3 Notwithstanding any subdivision approvals granted pursuant to this Agreement or any transfer or conveyance of any lot or of all or any portion of the Lands, this Agreement shall continue to apply to and bind the Developer, the Lands and each lot and, subject to 5.1.4, the Developer shall continue to be bound by all terms and conditions of this Agreement until discharged by the Council.
- 5.1.4 Upon the transfer of title to any lot, the owner thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.
- 5.1.5 Notwithstanding 5.1.4 or any transfer of title to a lot, the Developer shall continue to be responsible for the fulfilment of the Developer's covenants under this Agreement and any Subdivision Agreement entered pursuant to this Agreement.
- 5.1.6 In the event that construction of the project has not commenced within 5 years from the date of approval of this Agreement by the Municipality, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purposes of this section, "commencement of construction" shall mean the construction of primary and secondary services for the subdivision.
- 5.1.7 Upon the completion of the development or portions thereof, or within 7 years from the date of approval of this Agreement, whichever time period is less, 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; and

- (c) discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law, as may be amended.

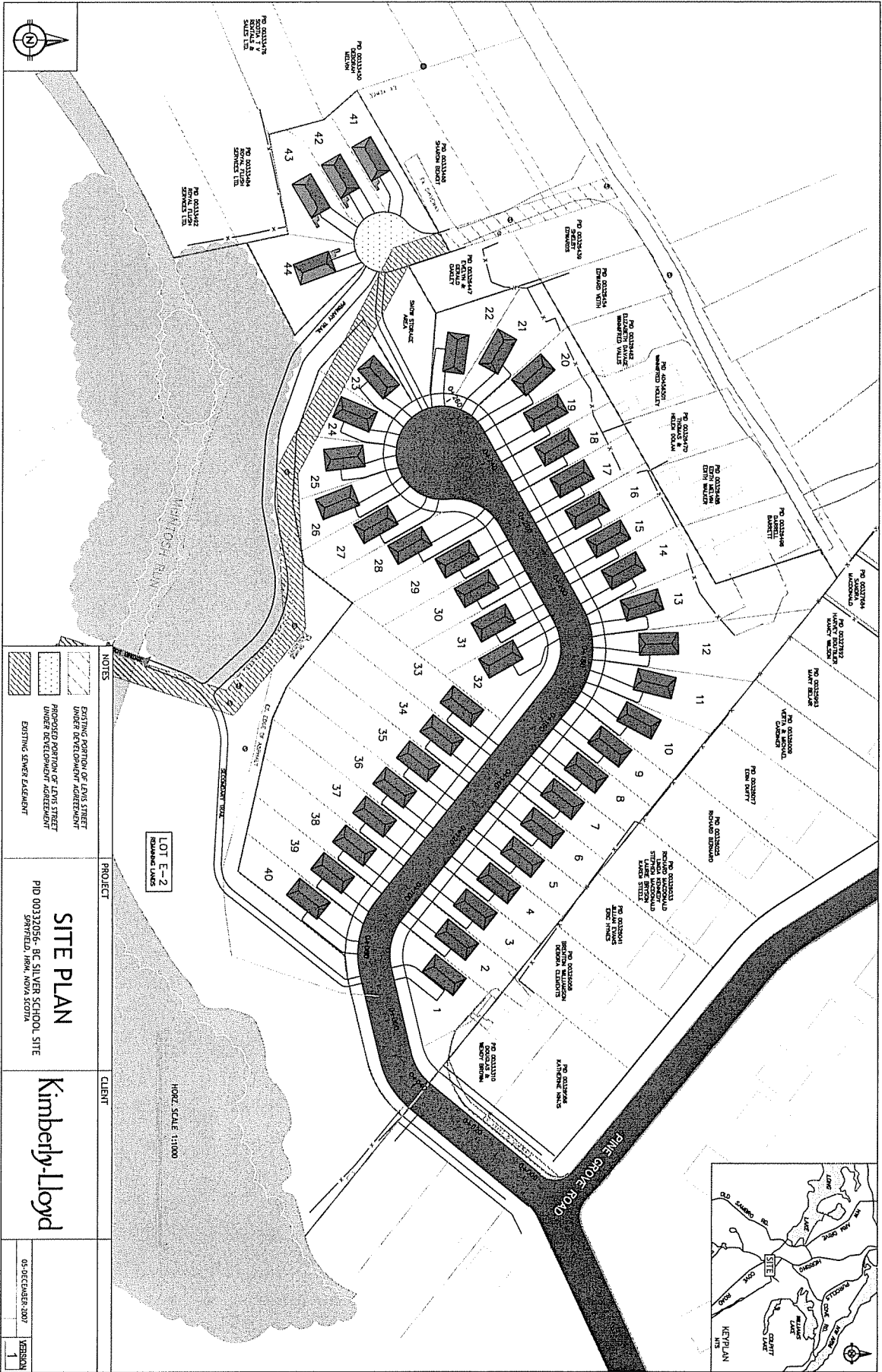
PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Enforcement and Rights

- 6.1.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer.
- 6.1.2 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, 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 covenants contained in this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Property and be shown on any tax certificate issued under the Assessment Act;
 - (c) the Municipality may, by resolution, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or
 - (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

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: _____)	per: _____
)	
)	
Sealed, Delivered and Attested)	Halifax Regional Municipality
by the proper signing officers of)	
Halifax Regional Municipality)	
duly authorized on that behalf)	per: _____
in the presence of)	MAYOR
)	
per: _____)	per: _____
)	MUNICIPAL CLERK



Schedule B - Site Plan