HALIFAX
REGIONAL MUNICIPALITY

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

Harbour East-Marine Drive Community Council
February 7, 2013

TO: Chair and Members of Harbour East - Marine Drive Community Council

Original Signed

SUBMITTED BY: _____
Brad Anguish, Director of Community & Recreation Services

DATE: January 17, 2013

SUBJECT: **Case 17673: Development Agreement for 385 Caldwell Road, Cole Harbour**

ORIGIN

Application by Gladys Simmons.

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Harbour East-Marine Drive Community Council:

1. Give Notice of Motion to consider approval of the proposed development agreement to permit a health products store at 385 Caldwell Road, Cole Harbour, as set out in Attachment A of this report, and schedule a Public Hearing;

2. Approve the proposed development agreement, as provided in Attachment A of this report, to allow a health products store at 385 Caldwell Road, Cole Harbour; and

3. Require the 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

The property at 385 Caldwell Road, Cole Harbour, contains a single storey building that was constructed as a church with an accessory apartment in 1989. The building is no longer being used as a church and the applicant, Gladys Simmons, wishes to utilize the building for a health products store and maintain an apartment unit. The current P-2 (Community Facility) Zoning on the lands does not permit the proposed commercial use, which is considered a neighbourhood business use. Policy UR-18 of the Cole Harbour/Westphal Municipal Planning Strategy (MPS) allows consideration of neighbourhood business use through the development agreement process.

Location, Designation and Zoning

The subject property is:

- located at 385 Caldwell Road in Cole Harbour;
- approximately 30,000 square feet (2,787 square metres) in total area with frontage along Caldwell Road;
- designated Urban Residential under the Cole Harbour/Westphal Municipal Planning Strategy (MPS) (Map 1) and Urban Settlement under the Regional Municipal Planning Strategy;
- zoned P-2 (Community Facility) Zone and C-1 (Neighbourhood Business) Zone under the Cole Harbour/Westphal Land Use By-law (LUB) (Map 2);
- a one storey building recently used as a church with two residential apartment units. Only one of the apartment units is authorized under the LUB;
- mostly covered by a gravel parking lot with minimal landscaping; and
- in an area predominantly comprised of single unit dwellings with R-1 (Single Unit Dwelling) Zoning except for a restaurant and two convenience stores (Maps 1 and 2).

Proposal

The applicant is seeking approval to operate a health products store on the property. This use primarily involves the sale of health supplements and vitamins and related products including books, with an area devoted to health food. In accordance with the LUB, this land use is a "neighbourhood business use" and may only be considered by development agreement. The proposed store would comprise approximately 1,700 square feet (158 square metres) of the existing building; no change to the exterior of the building is proposed. The remainder of the building would accommodate an accessory dwelling unit.

Enabling Policy

The site is located in the Urban Residential Designation, which is intended to be a priority area for residential uses and uses which support residential neighbourhoods. While larger scale commercial uses are intended to be located on Cole Harbour Road and Highway 7, the MPS recognizes that smaller commercial uses oriented to a neighbourhood or local area may be appropriate within the designation. Policy UR-18 allows Council to consider new neighbourhood business uses through the development agreement process. Policy IM-11 is also applicable as it contains the general implementation criteria that apply to all development agreements. Both policies are included in Attachment C.

DISCUSSION

It is the opinion of staff that the development agreement provided as Attachment A satisfies the intent of the enabling MPS policy UR-18 and implementation policy IM-11 (Attachment C). While the proposed development agreement is consistent with the intent of these applicable policies, staff has identified the following issues for specific discussion.

Use

The proposed health products store is a neighbourhood-oriented use in that it is intended to serve the immediate and local area. To ensure the store remains a neighbourhood business use, the proposed development agreement (Attachment A) defines the use and limits the scope of the commercial use. Specifically, the store is limited to 1,200 square feet (111.4 square metres) of retail area plus accessory office and storage space of 500 square feet (46.5 square metres). This results in 1,700 gross square feet (157.9 square metres) of commercial space, which is below the 2,000 square feet limit imposed by enabling policy UR-18.

The development agreement also ensures the health products store will be entirely within the building and no additions to the building are permitted. A single apartment unit is also proposed and is permitted by the development agreement under the enabling policy UR-18. The existing unauthorized second apartment unit will be removed and this space is to be used as office and storage space.

Hours of Operation

The proposed development agreement limits store hours to be from 9 a.m. until 9 p.m. on weekdays, 9 a.m. until 6 p.m. on Saturdays, and 12 noon until 5 p.m. on Sundays. This will help to reduce the potential for conflicts with nearby residential dwellings. Changes to the hours of operation are permitted as a non-substantive amendment under the proposed development agreement by resolution of Community Council.

Alternate Uses

The proposed development agreement allows the building and property to be used for most P-2 Zone uses without any additional consultation or approval from Council (see Attachment B for list of uses) given these uses are permitted as-of-right under current zoning. However, two uses within the P-2 Zone may require further consideration. These are day cares and medical clinics, for which the potential traffic impacts are not known. Therefore, the proposed development agreement allows either use to be considered as a non-substantive amendment to the proposed development agreement. This gives Council a greater degree of oversight on such a conversion and allows a review of traffic impacts for either of these uses. If different neighbourhood commercial uses such as a café, bakery or convenience store were to be proposed for the site, this would require a substantive amendment to the development and therefore further public consultation.

Building, Signage and Landscaping

The proposal involves the reuse of an existing building with no exterior modifications to the building. Small scale signage is permitted in the form of a fascia sign and a non-illuminated changeable letter planter box sign. Changes to the signage are permitted as a non-substantive

amendment to the development agreement. Existing grassed areas are to be maintained. Additional landscaping is required along the Caldwell Road frontage in order to enhance the appearance of the property adjacent to the sidewalk.

Traffic & Site Access

Policy UR-18 requires neighbourhood business uses to have direct access to a major or minor road. Access to the site is from an existing single driveway off Caldwell Road. The policy also gives preference to sites located at the intersection of collector roads. Under the Cole Harbour/Westphal MPS, Caldwell Road is considered a minor collector road and the site is in close proximity to the intersection of Astral Drive which is also a minor collector road. It is the opinion of staff that this policy criteria is met by the proposed development.

Of the public feedback received on this application, the most common concern expressed was with traffic generation and the existing transportation system. A Traffic Impact Statement (TIS), which was submitted in support of this application, has been reviewed by HRM Traffic and Right-of-Way Services and HRM Development Engineering. Based on the findings of the TIS and its review by HRM staff, it is staff's opinion that the proposal complies with the traffic provisions of the policy. Specifically, the TIS concluded the area road network can accommodate traffic to and from the property for this proposed use and the existing driveway requires no modifications. The development agreement requires an existing laneway along the north boundary of the property which currently accesses both the subject site and a 28 acre parcel to the rear of the subject property to be blocked. This ensures that access to the property will only be from the existing driveway from Caldwell Road as shown on Map 3.

Parking

The existing parking lot, as shown on Map 3, provides for more parking than required by the LUB for a neighbourhood business use. The development agreement prohibits further expansion of the parking lot to maximize landscaping on the property. However, the existing gravel lot does not conform to the current LUB requirements which require lots with more than four spaces to be paved. Given the proposal represents a re-use of the existing building and existing parking lot, the development agreement does not require paving for the health products store; however, any further change in use will require the lot to be paved.

Public Consultation - Survey Results

In lieu of the standard public information meeting, staff conducted a survey of nearby property owners to seek their feedback (notification area illustrated on Map 2). This approach was chosen in consultation with the local Councillor as it provides detailed information to the public on the proposed development and allows for feedback without attending a public meeting. Attachment D contains a copy of the survey sent out to the public. Attachment E contains the general comments received in response to the surveys. Traffic concerns comprise the vast majority of the comments, followed by land use. The proposed development agreement addresses both of these concerns by limiting access to the property and the types of uses permitted on the property.

Conclusion
It is staff`s opinion that the proposed health products store satisfies the criteria of Policy UR-18 for neighbourhood business use and is an acceptable reuse of the existing building. There are no concerns relative to road or piped infrastructure. The proposed development agreement minimizes the effects of the proposed use by limiting the use and floor area, and restricting site and building alterations. Staff recommend approval of the proposed development agreement as provided in Attachment A.

FINANCIAL IMPLICATIONS

There are no financial 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 2012/13 budget with existing resources.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement was consultation, achieved through a survey that was sent to 44 abutting and nearby property owners. The response rate to the survey was 43%. Attachments D and E contain a copy of the survey and the comments received.

A public hearing has to be held by Council before they can consider approval of the development agreement. Should Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 1 will be notified of the hearing by regular mail.

The proposed development agreement will potentially impact local residents and property owners on Caldwell Road and Nova Terrace.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant environmental policies contained in the MPS. Please refer to Attachment C of this report for further information.

ALTERNATIVES

1. Approve the proposed development agreement, as contained in Attachment A. This is the staff recommendation.

2. Approve the terms of the development agreement, as contained in Attachment A, with modifications or conditions. Some modification or conditions may require additional negotiation with the developer and a second public hearing.

3. Refuse the proposed development agreement. Pursuant to Section 245 (6) of the Halifax Regional Municipality Charter, Council must provide reasons to the applicant justifying this refusal, based on policies of the Cole Harbour/Westphal MPS.

ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Location and Zoning
Map 3: Site Plan and Floor Plan

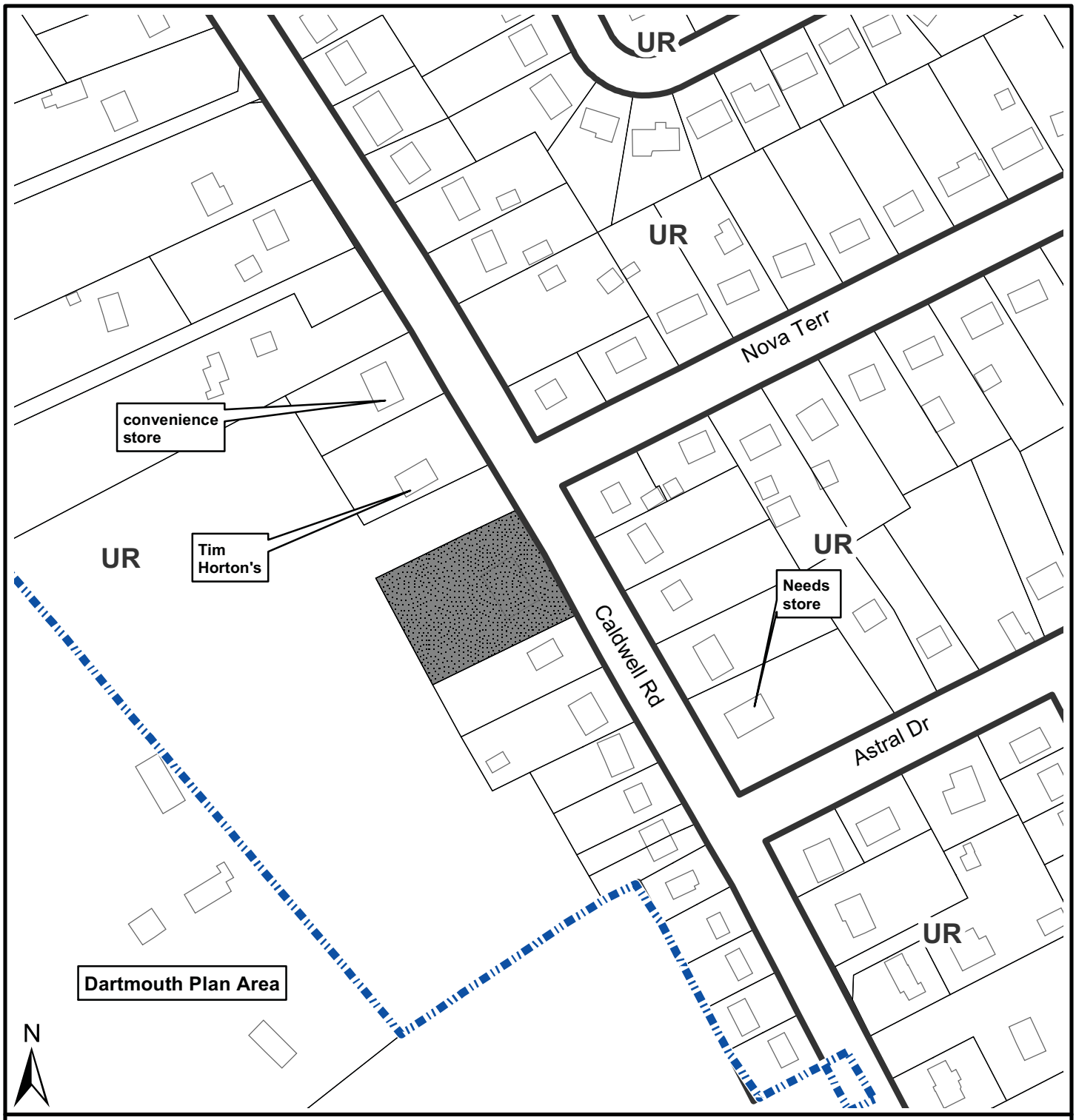
Attachment A: Proposed Development Agreement
Attachment B: List of Permitted Uses in P-2 (Community Facility) Zone
Attachment C: Applicable MPS Policy and Additional Policy Evaluation
Attachment D: Survey
Attachment E: Summary of Public Comments Received

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: Mitch Dickey, Planner, 490-5719

Original Signed

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



Map 1 - Generalized Future Land Use

385 Caldwell Road
Cole Harbour

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS
PLANNING SERVICES

Subject property

Plan area boundary

0 30 60 m

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

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

Designation

UR Urban Residential

Cole Harbour/Westphal Plan Area

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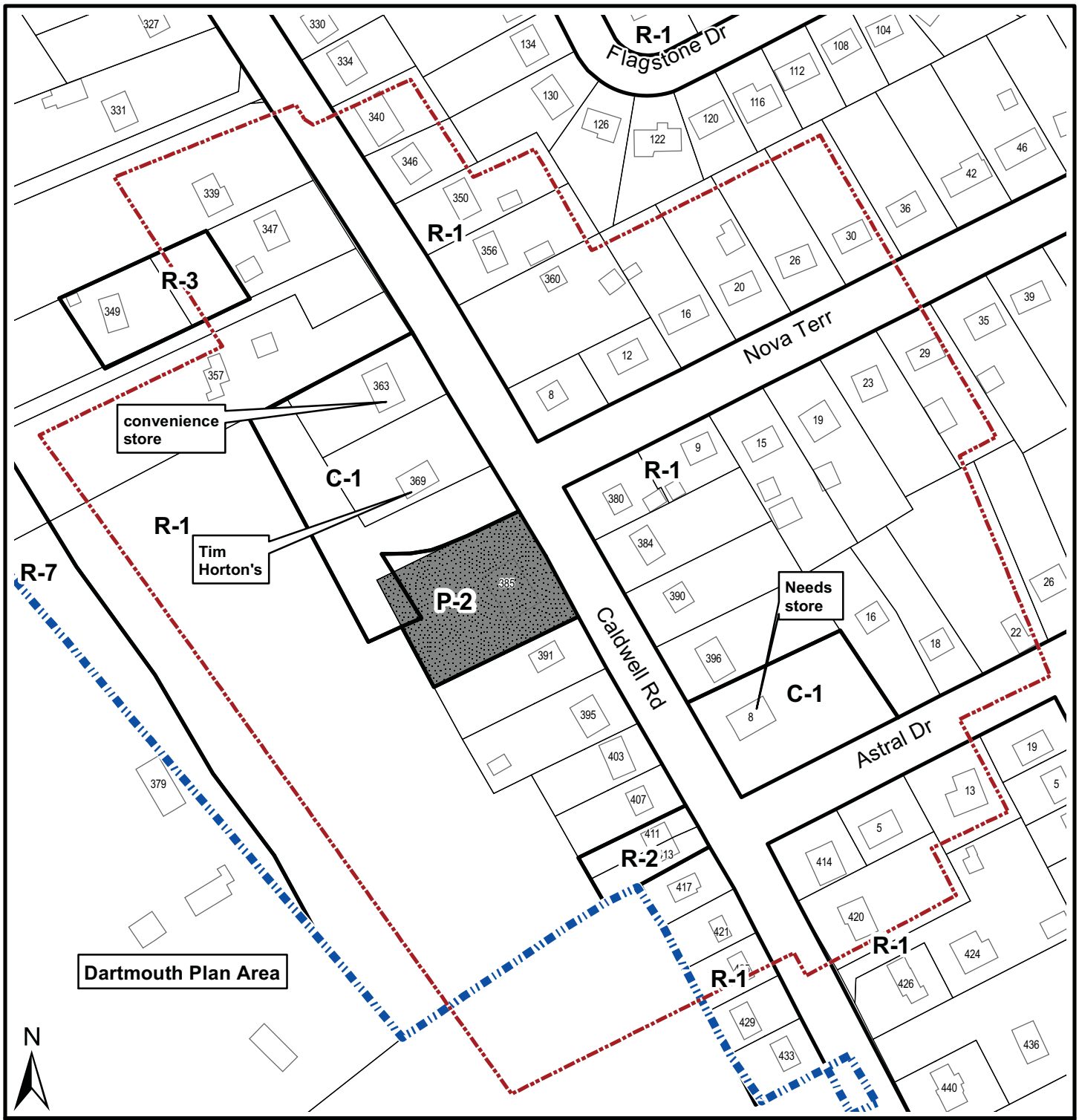

Map 2 - Zoning and Location

385 Caldwell Road
Cole Harbour

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS
PLANNING SERVICES

Subject property

Plan area boundary

Area of notification

Cole Harbour/Westphal Plan Area

Zone

R-1	Single Unit Dwelling
R-2	Two Unit Dwelling
R-3	Mobile Dwelling
R-7	Rural Estate
C-1	Neighbourhood Business
P-2	Community Facility

0 30 60 m

This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

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

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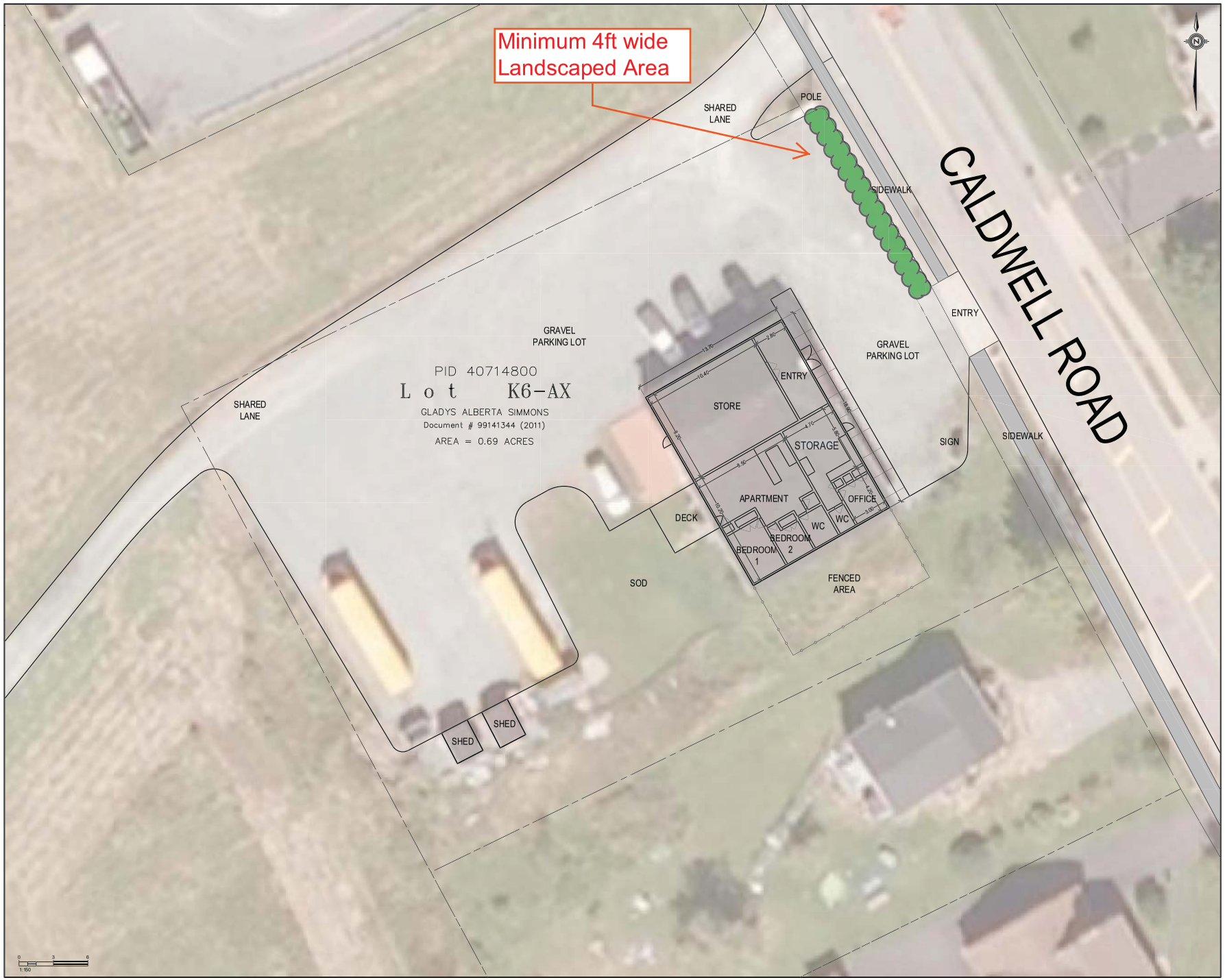
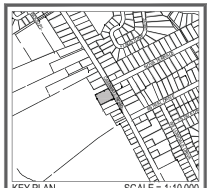




EKISTICS PLANNING & DESIGN
1 STARR LANE, DARTMOUTH, NOVA SCOTIA
T: (902) 461-2525 W: WWW.EKISTICS.NET

Landscape Architecture
Engineering
Environmental Planning
Visual Impact Assessment
Golf Architecture

Case 17673
Map 3
Site Plan
and Floor Plan

NO.	REVISION	DATE
1	ISSUED FOR REVIEW	2012/05/04

CLIENT
GLADYS ALBERTA SIMMONS

PROJECT
SIMMONS PROPERTY
COLE HARBOUR, DATMOUTH
NOVA SCOTIA

DRAWING
SITE PLAN

SCALE	DATE
1:150	2012/05/07

DRAWN BY	CHECKED	REVIEWED
AJB/DJH	AJB	

APPROVED
DEPT. APPROVAL

SEAL
DATE 12-05-07
A.J. BROWN
8892
REGISTERED PROFESSIONAL ENGINEER
PROVINCE OF NOVA SCOTIA

SEAL

DEPT. PROJECT NO.
CONSULTANT'S NO.
TENDER NO.

DRAWING NO.
1 of 1

May 7, 2012

Attachment A
Proposed Development Agreement

THIS AGREEMENT made this day of , 2013

BETWEEN:

[INSERT Name of Corporation/Business]
Of Halifax Regional Municipality
(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 385 Caldwell Road and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a health products store on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies UR-18 and IM-11 of the Cole Harbour/Westphal Municipal Planning Strategy;

AND WHEREAS the Harbour East and Marine Drive Community Council for the Municipality approved this request at a meeting held on [**Insert - Date**], referenced as Municipal Case Number 17673;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Cole Harbour/Westphal Land Use By-law and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, 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 to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 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 to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

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

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

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 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

2.1.1 All words unless otherwise specifically defined herein shall be as defined in the Cole Harbour/Westphal Land Use By-law and Regional Subdivision By-law, if not defined in these documents their customary meaning shall apply.

2.1.2 For the purposes of this Agreement, "health products store" is defined as follows:

Health products store means a retail store where products related to personal health, including but not limited to items such as vitamins and other nutritional and dietary supplements, personal care products, and published materials related to personal health and well-being are offered for sale directly to the public at retail value. A health products store may also include an area, not exceeding 25% of the gross floor area, which is devoted to health food items.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms to the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 17673:

Schedule A Legal Description of the Lands
Schedule B Site Plan
Schedule C Floor Plan

3.2 General Description of Land Use

3.2.1 The use(s) of the Lands permitted by this Agreement are as follows:

(a) A Health Products Store not exceeding 1,200 square feet in gross floor area, in the area marked "Store" as shown on Schedule C, with up to an additional 500 square feet of space for accessory office and storage use as shown on Schedule C;
(b) A single residential apartment unit; and
(c) As an alternative to the Health Products Store, uses permitted by the P-2 (Community Facility) Zone excepting day cares and medical clinics.

3.2.2 The hours of operation for the health products store use are limited to 9 am to 9 pm Monday to Friday, 9 am to 6 pm Saturdays, and 12 noon to 5 pm on Sundays.

3.2.3 No commercial use may take place outside of the building on the Lands, and no outdoor storage or display shall be permitted.

3.2.4 The Development Officer may approve unenclosed structures attached to a main building such as verandas, decks and porches and steps, barrier free ramps, to be located within the minimum front, side and rear yards provided the provisions of the Cole Harbour/Westphal Land Use By-law as amended from time to time for such structures are adhered to.

3.3 Requirements Prior to Approval

3.3.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless all necessary approvals have been issued by the Municipality.

3.4 Siting and Architectural Requirements

3.4.1 No additions may be made to either enlarge or alter the existing footprint of the building as shown on Schedule B.

3.5 Parking, Circulation and Access

3.5.1 Access to the Lands shall be directly from the Caldwell Road driveway, as shown on Schedule B as “Entry”.

3.5.2 Vehicular access to the Lands from the shared lane, as shown on Schedule B, shall be blocked by physical means such as a curb, fence, landscaping or a combination thereof, as may be determined by the Development Officer. Should a public street be constructed to replace the shared laneway, driveway access will be permitted pursuant to the requirements of By-law S-300, as amended from time to time.

3.5.3 The Developer shall maintain the parking lot areas as shown on Schedule B in good order. No expansion to the parking areas is permitted. Any change in use of the Lands from a health products store will require the parking lot areas to be paved with asphalt, edged with curbing, and parking spaces demarcated in accordance with the Land Use By-law.

3.6 Outdoor Lighting

The Developer agrees that all exterior lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.7 Landscaping

All grassed areas shown as "Sod" on Schedule B shall be maintained as landscaped areas. An additional landscaped area measuring a minimum of 4 feet (1.2 m) in width shall be provided between the parking lot and the sidewalk as shown on Schedule B. In addition to grass, this landscaped area shall include a minimum of two trees and may also include other plant material, planting beds or decorative elements deemed acceptable by the Development Officer. Ornamental plants shall also be provided in association with a sign provided under Section 3.9.2.

3.8 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, 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 and ice control, salting of walkways and driveways.

3.9 Signs

3.9.1 One fascia sign not exceeding 24 square feet (2.2 square metres) shall be permitted. No ground signs are permitted.

3.9.2 A non-illuminated changeable letter planter box sign shall be permitted pursuant to By-law S-800, in the location as shown on Schedule B. Ornamental plants shall be planted and maintained inside the base of the sign as part of the required landscaping.

PART 4: OFF-SITE DISTURBANCE

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

PART 5: AMENDMENTS

5.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

(a) Changes to the hours of operation outlined in Section 3.2.2,
(b) Conversion of any part of the building to a day care or medical clinic,
(c) Changes to the signage requirements outlined in Section 3.9,
(d) The granting of an extension to the date of commencement of development as identified in Section 6.3 of this Agreement; and
(e) The granting of an extension to the length of time for the completion of the development as identified in Section 6.4 of this Agreement.

5.2 Substantive Amendments

Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

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

6.2 Subsequent Owners

6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.

6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

6.3 Commencement of Development

6.3.1 In the event that development on the Lands has not commenced within six months from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the 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.

6.3.2 For the purpose of this section, commencement of development shall mean application for a Development Permit.

6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1 if the

Municipality receives a written request from the Developer at least thirty (30) calendar days prior to the expiry of the commencement of development time period.

6.4 Completion of Development

6.4.1 Upon the completion of the whole development 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;
(c) discharge this Agreement; or
(d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Cole Harbour/Westphal as may be amended from time to time.

6.4.2 For the purpose of this section, completion of development shall mean issuance of an Occupancy Permit.

6.5 Discharge of Agreement

6.5.1 If the Developer fails to complete the development after 2 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

(a) retain the Agreement in its present form;
(b) negotiate a new Agreement; or
(c) discharge this Agreement.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

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. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) calendar days written notice of the failure or default, then in each such case:

(a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;

(b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands 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; or

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

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2013.

SIGNED, SEALED AND DELIVERED in the presence of:

_____

_____

==========

(Insert Owners Names)

Per:_____

Per:_____

==========

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

_____

_____

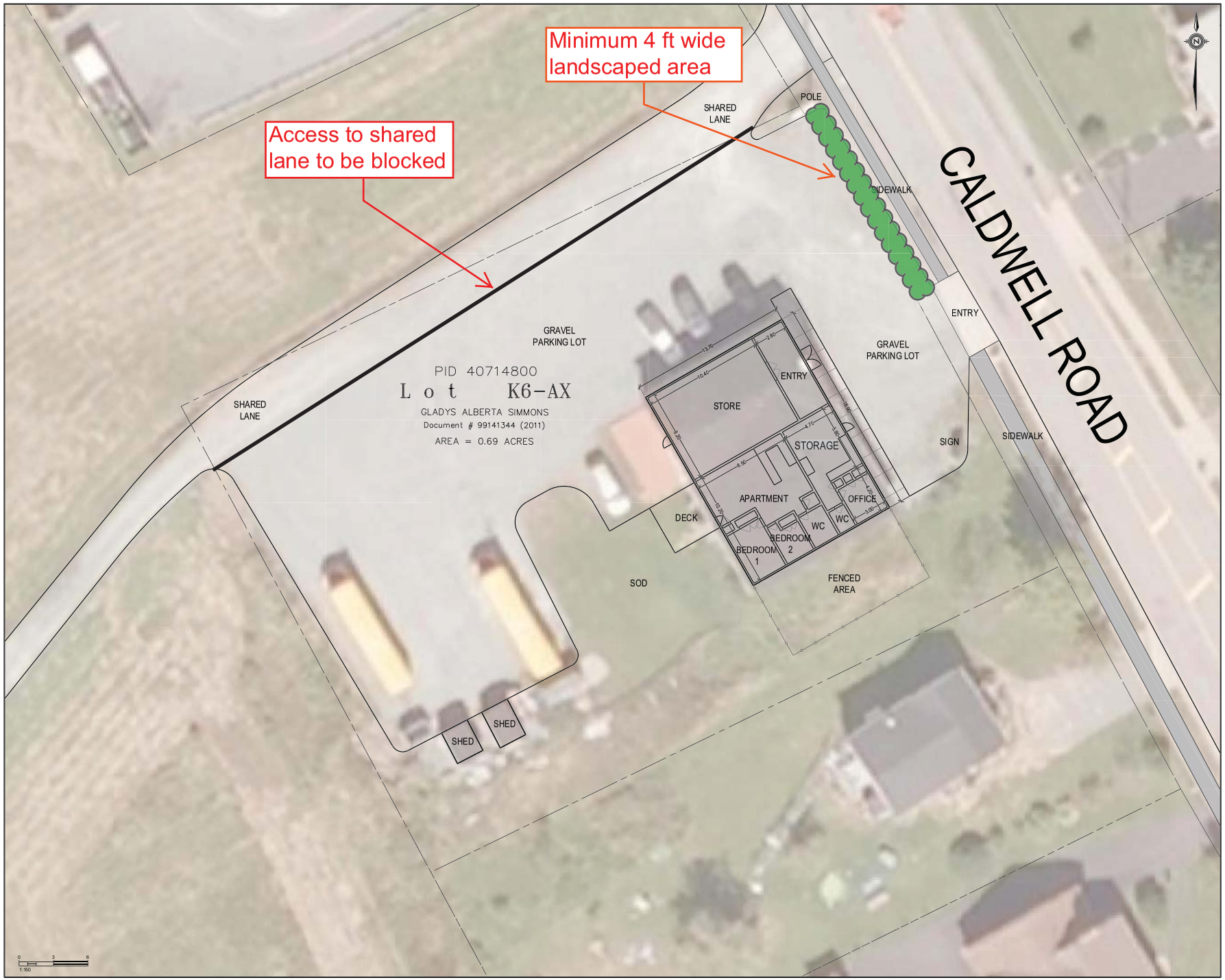
HALIFAX REGIONAL MUNICIPALITY

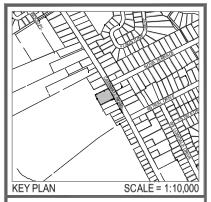
Per:_____

Mayor

Per:_____

Municipal Clerk





EKISTICS PLANNING & DESIGN
1 STARR LANE, DARTMOUTH, NOVA SCOTIA
T: (902) 461-2525 W: WWW.EKISTICS.NET

Landscape Architecture
Engineering
Environmental Planning
Visual Impact Assessment
Golf Architecture

Schedule B
Site Plan

NO.	REVISION	DATE
1	ISSUED FOR REVIEW	2012/05/04

CLIENT
GLADYS ALBERTA SIMMONS

PROJECT
SIMMONS PROPERTY
COLE HARBOUR, DATMOUTH
NOVA SCOTIA

DRAWING
SITE PLAN

SCALE	DATE
1:150	2012/05/07

DRAWN BY	CHECKED	REVIEWED
AJB/DJH	AJB	

APPROVED	DEPT. APPROVAL

SEAL

DATE 12-05-07
A.J. BROWN
8892
REGISTERED PROFESSIONAL ENGINEER
PROVINCE OF NOVA SCOTIA

SEAL

DEPT. PROJECT NO.

CONSULTANT'S NO.

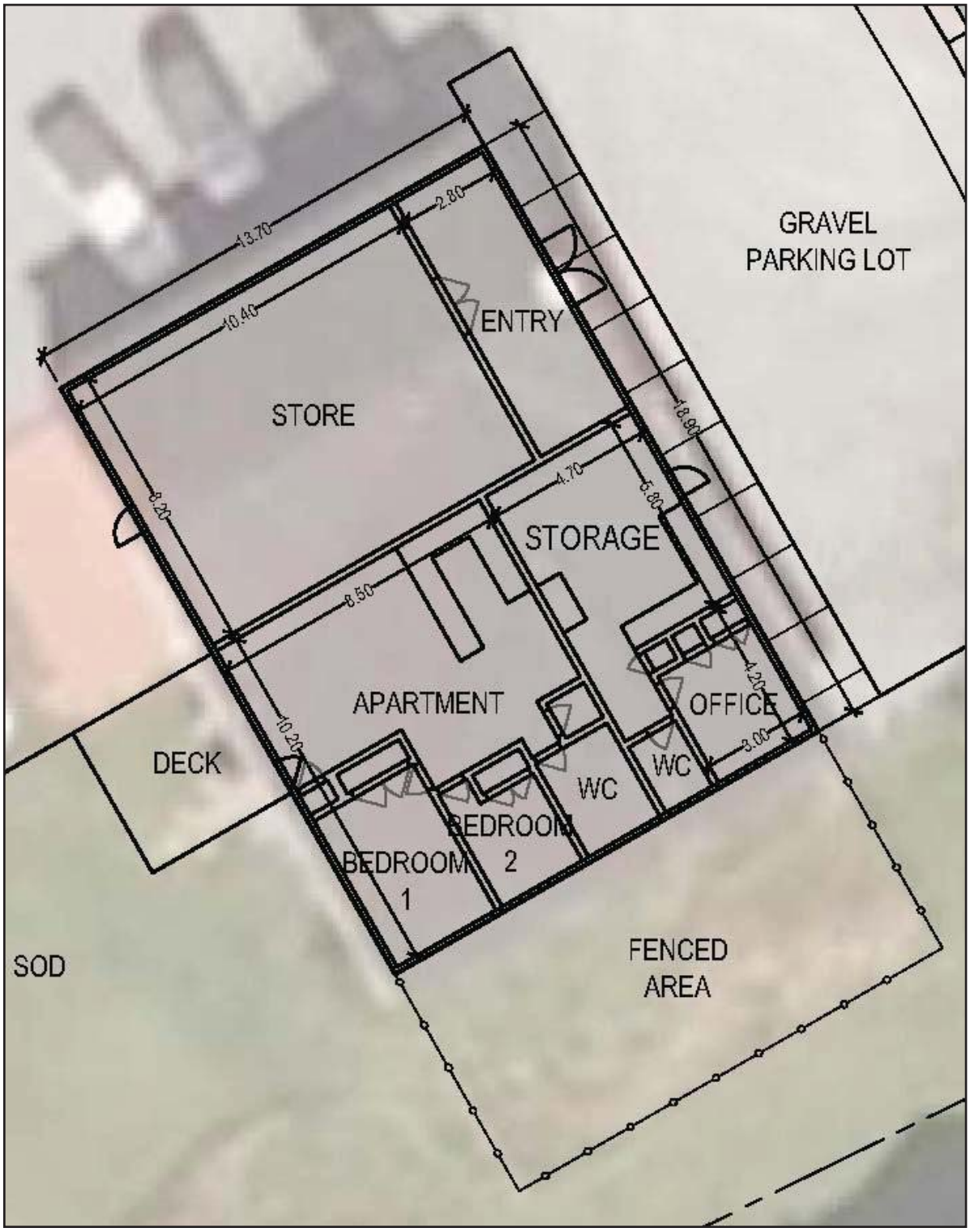
TENDER NO.

DRAWING NO.
1 of 1

May 7, 2012

Schedule C

Floor Plan



Attachment B
List of Permitted Uses in the P-2 (Community Facility) Zone

Institutional Uses:

Educational institutions and uses;
Denominational institutions and uses;
Day care facilities;
A single dwelling unit in conjunction with a denominational institution or day care facility;
Fire and police stations;
Government offices and public works;
Hospitals and medical clinics;
Public libraries, museums and galleries;
Community centres and halls;
Recreation uses;
Funeral establishments in conjunction with a cemetery; and
Existing residential care facilities.

Open Space Uses:

Public and private parks and playgrounds;
Cemeteries; and
Historic sites and monuments.

Attachment C
Applicable MPS Policy and Additional Policy Evaluation

Policy UR-18 Notwithstanding Policies UR-2 and UR-17, within the Urban Residential Designation, it shall be the intention of Council to consider new neighbourhood business uses, and to provide for the expansion of, and/or consideration of additional uses, at an existing neighbourhood convenience store at 272 Auburn Drive, according to the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following:	
(a) neighbourhood business uses shall be limited to uses that are primarily intended to serve the local neighbourhood;	The proposed health products store is a locally oriented use and is considered to be a neighbourhood business use.
(b) the proposed development does not exceed a maximum gross floor area of two thousand (2,000) square feet, exclusive of any area devoted to an accessory dwelling unit;	The proposed commercial floor area comprises 1700 square feet which does not exceed the maximum threshold. There is no limit on floor area for the permitted accessory dwelling unit except that no additions to the building are permitted.
(c) the architectural design is compatible with the predominant roof styles, window styles and exterior materials used in the surrounding residential neighbourhood;	As the proposal is for reuse of an existing building and no external alterations are proposed. The existing architectural design of the building is acceptable.
(d) the height, bulk and lot coverage of any building is compatible with adjacent land uses and with the character of the surrounding residential neighbourhood;	As the proposal involves internal reuse of an existing building, there are no concerns in this regard. The development agreement does not allow any additions.
(e) open storage or outdoor display shall not be permitted;	The development agreement precludes these uses.
(f) site design features, including signage, landscaping, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent developments;	The existing parking area is sufficient to accommodate the proposed use, as well as permitted alternate uses. The development agreement prevents any expansion to the existing parking. The existing driveway to Caldwell Road is sufficient to accommodate commercial traffic to the site. Existing landscaping is to be maintained and additional plantings provided along Caldwell Road. A small scale fascia sign is permitted, as is a non-illuminated changeable letter planter box sign
(g) there is direct access to a minor or major collector as identified on Map 3 - Transportation, with preference given to commercial sites which are located at the intersection of major and minor collectors;	The site has direct frontage to a minor collector road (Caldwell Road) and is in close proximity to an intersection with another minor collector, Astral Drive.

(h) the impact on traffic circulation and, in particular, the suitability of access to and from the site;	There are no traffic concerns associated with the change of use on this property. A traffic impact statement concluded that the area road network can accommodate traffic for this use and the existing driveway requires no modifications.
(i) maintenance of the development;	The development agreement includes requirements for maintenance.
(j) hours of operation; and	The development agreement limits hours of operation of the health products store to common retail hours. These hours may be altered as a non-substantial amendment to the development agreement.
(k) the provisions of Policy IM-11.	See below.

Policy IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:	
(a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;	
(b)that the proposal is not premature or inappropriate by reason of: *(i) the financial capability of the Municipality to absorb any costs relating to the development;* *(ii) the adequacy of sewer/water services;* *(iii) the adequacy or proximity of school, recreation and other community facilities;* *(iv) the adequacy of road networks leading or adjacent to or within the development; and* *(v) the potential for damage to or destruction of designated historic buildings and sites.*	(i) The proposal does not necessitate any municipal expenditure. (ii) Existing infrastructure can accommodate the proposal. (iii) No impact on school attendance is anticipated. There are existing parklands and community facilities in the area. (iv) The proposal would generate little traffic and would have minimal impact on the road network. (v) There are no designated historic buildings or sites that could be affected.
(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of: *(i) type of use;* *(ii) height, bulk and lot coverage of any proposed building;* *(iii) traffic generation, access to and egress from the site, and parking;*	(i) In order to limit potential conflicts, the development agreement limits commercial use to the neighbourhood health products store, and certain institutional uses allowed by the P-2 Zone. (ii) As the proposal involves reuse of an existing building, and the development agreement precludes any additions therefore

(iv) open storage; *(v) signs; and* *(vi) any other relevant matter of planning concern.*	no conflicts are anticipated. (iii) Traffic generation from the proposal is minimal and will use the existing driveway. No expansion of the parking area is permitted in order to ensure landscaping is provided. (iv) There is no open storage. (v) Only small scale signage is permitted consisting of a small scale fascia sign and a single planter box sign. (vi) No other concerns have been identified.
(d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and	There are no physical characteristics that make the site unsuitable for development.
(e) any other relevant matter of planning concern.	No other matters are identified.
(f) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS.	Not applicable.

Attachment D
Survey

Survey - Consideration of Commercial Use at 385 Caldwell Road

The former church site at 385 Caldwell Road in Cole Harbour is proposed to be used for a health products store, with a single apartment unit. The use would consist of the sale of natural health supplements, books and related products. Existing zoning on the site is P-2 Community Facility. This zone permits institutional uses such as churches and public and private schools, as well as large scale day cares and medical clinics.

The Municipal Planning Strategy for Cole Harbour/Westphal allows neighbourhood commercial uses such as that proposed to be considered by Community Council in residential areas through the development agreement process. A development agreement can also limit the types of uses allowed on the property. Community engagement is a required part of the development agreement process. To obtain neighbourhood feedback on the proposal, a brief survey has been developed. Your feedback will be used in preparing an evaluation of the proposal for consideration by Harbour East Community Council. The proposal may then be forwarded to a public hearing where residents can provide further comment. Final decisions regarding commercial use of this property will be made by the Harbour East Community Council.

Please return your responses in the enclosed stamped envelope to Mitch Dickey, Community & Recreation Services, P O Box 1749, Halifax, Nova Scotia, B3J 3A5

Survey:

1. How long have you lived in the neighbourhood? (please circle)

1 to 5 years	6 to 10 years	11 to 15 years	16 to 20 years	Over 21 years

2. Do you have any specific concerns related to the use of this property as a health products store?

Yes ☐ No ☐

If Yes, Explain:

3. On a scale of 1 to 5 (1 being least preferred 5 being most preferred) rank your preferred land uses for the site, below.

Day care _____
Convenience store _____
Health products store _____
Café/bakery _____
Professional offices _____

4. What issues or concerns do you have with any of these uses?

5. Do you have any additional comments?

"In accordance with Section 485 of the Municipal Government Act, any personal information collected on this form will only be used for purposes relating to the consideration of commercial use at 385 Caldwell Road, and the responses to these questions will not be presented or compiled in a manner that could potentially identify any responded. If you have any questions about the collection and use of this information, please contact HRM's Access and Privacy Officer at 490-4390 or dempsen@halifax.ca "

Thank you for taking time to fill out the survey. For more information contact Mitch Dickey, Planner, Planning Applications at 490-5719 or dickeym@halifax.ca

HALIFAX
REGIONAL MUNICIPALITY

Attachment E
Summary of Public Comments Received

Question 2 – Do you have any specific concerns related to the use of this property as a health products store?

- There is enough traffic on Caldwell Road as it is now.

- I have no concerns other than it cannot at a later date be converted to other business.

- Traffic flow on this section of Caldwell Road – from Nova Terrace to Astral Drive is extremely high with traffic traveling from both of these side streets onto Caldwell – makes it sometimes a five minute wait while trying to exit our driveway. Add Shearwater traffic at peak weekdays and its almost impossible!

- It is already hard to exit our street because of Tim Hortons'

Question 4 - What issues or concerns do you have with any of these uses?

- Day cares – this is a busy street with no play area, but a day care is needed in the area.
- Already 2 convenience stores nearby.
- Health products store –closest one is on Cole Harbour Road by KFC
- Café/bakery – Tim Hortons next door
- Professional offices – doesn't bother me.
- Traffic and congestion. It is already bad enough with Tim Hortons. Screeching tires due to near accidents.
- Additional traffic congestion! Tim Hortons causes traffic/road rage, every weekday morning. Sometimes the traffic backup can happen at any time if the Tims staff is slow at serving their customers.
- Convenience stores are places of high traffic for most of the day (6am to 11 pm) and tend to attract crowds of people who "hang out" to drink and/or use drugs in the later hours.
- I don't know why we need any more stores in our area.
- Additional traffic in area.
- Already a coffee shop and store in area.
- We do not need more traffic in this area.
- The only issue I would have is day care due to high volume traffic.
- Traffic congestion in the area. It is bad enough with the Tim Horton's on the street.
- Too much traffic for day care.
- Convenience store and cafes make for traffic jams.
- Health products store and offices ok.
- Additional traffic congestion on this section of Caldwell Road. Currently a lot of congestion at high peak traffic times i.e morning and supper rush hours especially with Tim Hortons on same side of road.

- There is already a health products store on Cole Harbour Road that has seen 3 or 4 owners. We have a Needs store. That's enough. I could invite all councillors to come and station

themselves between 6 and 9:30 am and 3 and 7 pm or later to see what traffic is happening on this road.

Question 5 – Do you have any additional comments?

- No, unless they are considering a crosswalk from Nova Terrace to Tim's. Such a bust street and good distance for children to walk before a crosswalk.

- I do not think you folks realize that Nova Terrace is almost as busy as Astral as an entry/exit to Caldwell. Lots of congestion in a one block area.

- Also needed in this area is a turning lane into Tim Horton's as traffic gets backed up in the mornings and weekends.

- A health food store would certainly be a welcome addition to this area.

- We need to create some turning lanes to side streets to help traffic move at the two busy times of the day.

- There are currently 2 apartment units one in the front of the building and one in the back.

- I don't know who in their right mind would okay another facility on Caldwell Road that would create more traffic. It is extremely hard for residents to get out of their driveway now and the traffic is always tied up going and coming out of Tim Hortons. We just recently learned that the Sawlor property was rezoned to include apartments and condos. Will those residents exit on Caldwell Road or Portland Estates? There seems to be little consideration to the people – traffic wise and safety wise.