



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

**Item No. 10.1.2**  
**Harbour East-Marine Drive Community Council**  
**September 11, 2014**

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

**SUBMITTED BY:** *Original signed*  
For: Brad Anguish, Director of Community and Recreation Services

**DATE:** August 14, 2014

**SUBJECT:** **Case 18992: Rezoning and Development Agreement for Erindale Estates, Eastern Passage.**

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**SUPPLEMENTARY REPORT**

**ORIGIN**

- Application by Armco Capital Inc.
- On July 14, 2014, Harbour East-Marine Drive Community Council approved the proposed amendment to Schedule 1 of the Eastern Passage/ Cow Bay Land Use By-law to rezone lands at Caldwell Road and Cow Bay Road from the R-1 and R-2 Zones to the CDD (Comprehensive Development District) Zone.

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter, Part VIII, Planning and Development*

**RECOMMENDATION**

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

1. Approve the proposed development agreement, presented as Attachment A to this report; and
2. 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/DISCUSSION**

On July 14, 2014 Harbour East-Marine Drive Community Council held a public hearing to consider proposed amendments to the Land Use By-law for Eastern Passage/Cow Bay for an area of land located between Caldwell Road and Cow Bay Road in Eastern Passage, (as shown on Map 1 of the May 30, 2014 staff report) as well as a proposed development agreement for reduced lot frontages and areas for single unit dwellings. There was discussion by Community Council relative to the ensured protection of the wetlands on the subject lands. Subsequently, Community Council requested that staff provide additional provisions within the proposed development agreement requiring the wetlands not be developed in the future. Such wording has been added to proposed development agreement as contained in Attachment A of this report (see Section 3.4.7). While the proposed development agreement was part of the public hearing process, it could not be approved by Community Council until the LUB amendments (rezoning from R-1 and R-2 Zones to the CDD (Comprehensive Development District) Zone) became effective.

The amendments (rezoning) to the Eastern Passage/Cow Bay Land Use By-law became effective on August 2, 2014. Accordingly, it is now appropriate for Harbour East-Marine Drive Community Council to consider the proposed development agreement, as contained in Attachment A of this report.

## **FINANCIAL IMPLICATIONS**

There are no financial implications. The developer will be responsible for all costs, expenses, liabilities and obligations imposed under or occurred 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.

## **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 public information meeting held on December 9, 2013 and a FAQ (Frequently Asked Questions) link was posted to the Active Planning Applications web page at halifax.ca.

A public hearing was held on July 14, 2014 by Harbour East-Marine Drive Community Council. Notices of the public hearing, in addition to the published newspaper advertisements, were posted on the HRM website and mailed to property owners within the notification area shown on Map 2 of the May 30, 2014 staff report.

## **ENVIRONMENTAL IMPLICATIONS**

The proposal meets all applicable environmental policies contained in the MPS. No additional concerns were identified beyond those discussed in the May 30, 2014 staff report.

## **ALTERNATIVES**

1. Harbour East-Marine Drive Community Council may choose to propose modifications to the proposed development agreement. Such modifications may require further negotiations with the Developer and may require a supplementary staff report and/or additional public hearing.
2. Harbour East-Marine Drive Community Council may choose to refuse the proposed development agreement and, in doing so, must provide reasons why the agreement does not reasonably carry out

the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.


**ATTACHMENTS**

Attachment A: Proposed Development Agreement  
Original Staff Report: <http://www.halifax.ca/Commcoun/east/documents/140612HEMDCC1012.pdf>

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> 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: Darrell Joudrey, Planner 1, 490.4181

Report Approved by: *Original signed*  
  
Kelly Denty, Manager of Development Approvals, 490.4800

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**ATTACHMENT A**  
**PROPOSED DEVELOPMENT AGREEMENT**

THIS AGREEMENT made this      day of **[Insert Month]**, 2014,

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 -

**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 Caldwell Road and Cow Bay Road in Eastern Passage and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested the Municipality enter into a Development Agreement to allow reduced lot frontages and areas for single unit dwellings on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies UR-5 and UR-13 of the Eastern Passage/Cow Bay Municipal Planning Strategy and Section 26 of the Eastern Passage/Cow Bay Land Use By-law;

AND WHEREAS the Harbour East-Marine Drive Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 18992;

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

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**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 Land Use By-law for Eastern Passage/Cow Bay 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**

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

## **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 with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 18992:

Schedule A	Legal Description of the Lands
Schedule B	Concept Plan
Schedule C	Alternate Concept Plan

### **3.2 Requirements Prior to Approval**

3.2.1 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 an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.2.2 This Agreement shall be deemed to meet the requirements of the Regional Subdivision By-law with respect to Concept Plan Approval. As per Section 99 of the Regional Subdivision By-law, a tentative application is optional.

### **3.3 General Description of Land Use**

3.3.1 The permitted uses of the Lands are the following:

- (a) A maximum of 122 single unit dwellings (with reduced frontages) and a maximum of 38 two unit dwellings as illustrated on Schedule B; or
- (b) A maximum of 87 single unit dwellings and a maximum of 34 two unit dwellings as illustrated on Schedule C, subject to the R-1 and R-2 zoning provisions contained within the Land Use By-law for Eastern Passage/Cow Bay, as amended from time to time;
- (c) Uses accessory to the foregoing, as per the requirements of the Land Use By-law for Eastern Passage/Cow Bay, as amended from time to time; and
- (d) Home business uses, as per the requirements of the Land Use By-law for Eastern Passage/Cow Bay, as amended from time to time.

3.3.2 The Development Officer may permit the area identified as 35 ft. Semi-Detached on Schedule B to be converted to 35 ft. Single Unit Dwellings provided all other provisions as this agreement are met.

### **3.4 Detailed Provisions for Land Use**

3.4.1 No subdivision approval or development permit shall be issued for any single unit dwelling located on a designated 35 feet reduced frontage lot on Schedule B except in accordance with the following provisions:

- (a) Minimum lot frontage: 10.66 metres (35 feet)
- (b) Minimum lot area: 315.9 square metres (3400 square feet)
- (c) Minimum front yard: 6.10 metres (20 feet)
- (d) Minimum rear yard: 6.10 metres (20 feet)
- (e) Minimum side yard: 1.83 metres (6 feet)
- (f) Minimum flankage yard: 4.57 metres (15 feet)
- (g) Minimum separation between buildings: 3.66 metres (12 feet)
- (h) Maximum lot coverage: 35%
- (i) Maximum building height: 9.14 metres (30 feet)
- (j) Maximum driveway width: 3.66 metres (12 feet)

3.4.2 No subdivision approval or development permit shall be issued for any single unit dwelling located on a designated 40 foot reduced frontage lot on Schedule B except in accordance with the following provisions:

- (a) Minimum lot frontage: 12.19 metres (40 feet)
- (b) Minimum lot area: 371.6 square metres (4000 square feet)
- (c) Minimum front yard: 6.10 metres (20 feet)
- (d) Minimum rear yard: 6.10 metres (20 feet)
- (e) Minimum side yard: 1.83 metres (6 feet)
- (f) Minimum flankage yard: 4.57 metres (15 feet)
- (g) Minimum separation between buildings: 3.66 metres (12 feet)
- (h) Maximum lot coverage: 35%

- (i) Maximum building height: 9.14 metres (30 feet)
- (j) Maximum driveway width: 3.66 metres (12 feet)

3.4.3 No subdivision approval or development permit shall be issued for any single unit dwelling located on a designated 50 feet reduced frontage lot on Schedule B except in accordance with the following provisions:

- (a) Minimum lot frontage: 15.24 metres (50 feet)
- (b) Minimum lot area: 464.5 square metres (5000 square feet)
- (c) Minimum front yard: 6.10 metres (20 feet)
- (d) Minimum rear yard: 6.10 metres (20 feet)
- (e) Minimum side yard: 1.83 metres (6 feet)
- (f) Minimum flankage yard: 4.57 metres (15 feet)
- (g) Minimum separation between buildings: 3.66 metres (12 feet)
- (h) Maximum lot coverage: 35%
- (i) Maximum building height: 9.14 metres (30 feet)
- (j) Maximum driveway width: 3.66 metres (12 feet)

3.4.4 No subdivision approval or development permit shall be issued for any two unit semi-detached) dwelling lot on Schedule B except in accordance with the requirements of the R-2 Zone as contained within the Land Use By-law for Eastern Passage/Cow Bay, as amended from time to time.

3.4.5 Each dwelling shall be served with a hard surface driveway that extends from the street curb to the front façade of the building and a parking space for a vehicle measuring not less than 3.05 metres (10 feet) in width and 5.49 (18 feet) in length.

3.4.6 Encroachments may be permitted in accordance with and subject to Part 4.21 of the Eastern Passage/Cow Bay Land Use By-law, as may be amended from time to time. For the purposes of this section, the Lands shall be considered to be located within a residential zone.

#### *Wetlands*

3.4.7 The Developer agrees that the existing wetlands as identified on Schedule B of this Agreement shall be retained and protected from any future development on the Lands.

### **3.5 PARKLAND**

3.5.1 The Parkland Dedication shall substantially conform with the location and dimensions illustrated on Schedule B including a 1735 square metre Neighbourhood Park at the Kerri Lea Lane/Castlebridge Lane intersection and a 702 square metres linear park parcel creating a public pedestrian connection between the existing Briarwood Drive road right-of-way and the proposed Kerri Lea Lane road right-of-way. All parkland identified in this Section shall meet the HRM Regional Subdivision By-Law definition of “usable land” and Parkland Quality of Land Criteria and Parkland Dedication requirements. The land



shall be free of legal, environmental or physical encumbrances. “Encumbrances” mean, for the purposes of park dedication, legal, environmental or physical constraints on the lands that may limit its intended use and management or present an unreasonable development or remediation cost to the Municipality. The Development Officer may permit variations to parkland site configuration provided appropriate access and road frontage is maintained, the total area of land is not reduced and the proposed parkland meets the requirements of the Municipality.

- 3.5.2 The Developer agrees the Parkland Dedication illustrated on Schedule B does not fully satisfy the Parkland Dedication requirement for the Subdivision. The Developer will provide land, cash or equivalent value or a combination of land, cash and equivalent value for the remaining dedication, as per the requirements of the Regional Subdivision By-law.

### **3.6 SIGNS**

#### *Community Signs*

A maximum of one ground sign shall be permitted at each entrance to the subdivision or phase or street to denote the community or subdivision name. The locations of such signs shall be completely on private property and require the approval of the Development Officer and Development Engineer. The maximum height of any such sign inclusive of support structures shall not exceed 10 feet (3.05 m) and the face area of any sign shall not exceed 50 square feet (4.65 sq. m.). All such signs shall be constructed of natural materials such as wood, stone, brick, enhanced concrete or masonry. The only illumination permitted shall be low wattage, shielded exterior fixtures.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

#### *General Provisions*

- 4.1 All design and construction of primary and secondary service systems shall conform to the most current edition of the HRM Municipal Design Guideline and Halifax Water’s Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.

#### *Off-Site Disturbance*

- 4.2 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 detailed provisions for Land Use as detailed in Section 3.4 a) which, in the opinion of the Development Officer, do not conform to Schedule B;
- (b) Consideration of two unit dwellings within the identified areas on Schedule B (Optional Area for Two Unit Dwellings) provided the ratio of 70:30 is achieved and all other provisions of this agreement are adhered to;
- (c) The granting of an extension to the date of commencement of construction as identified in this Agreement; or
- (d) The length of time for the completion of the development as identified in 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 3 years 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 issuance of 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 5.1, if the Municipality receives a written request from the Developer at least sixty (60) 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 Eastern Passage/Cow Bay, as may be amended from time to time.

6.4.2 For the purpose of this section, completion of the whole development shall mean issuance of the last occupancy permit.

#### **6.5 Discharge of Agreement**

6.5.1 If the Developer fails to complete the development after 7 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**

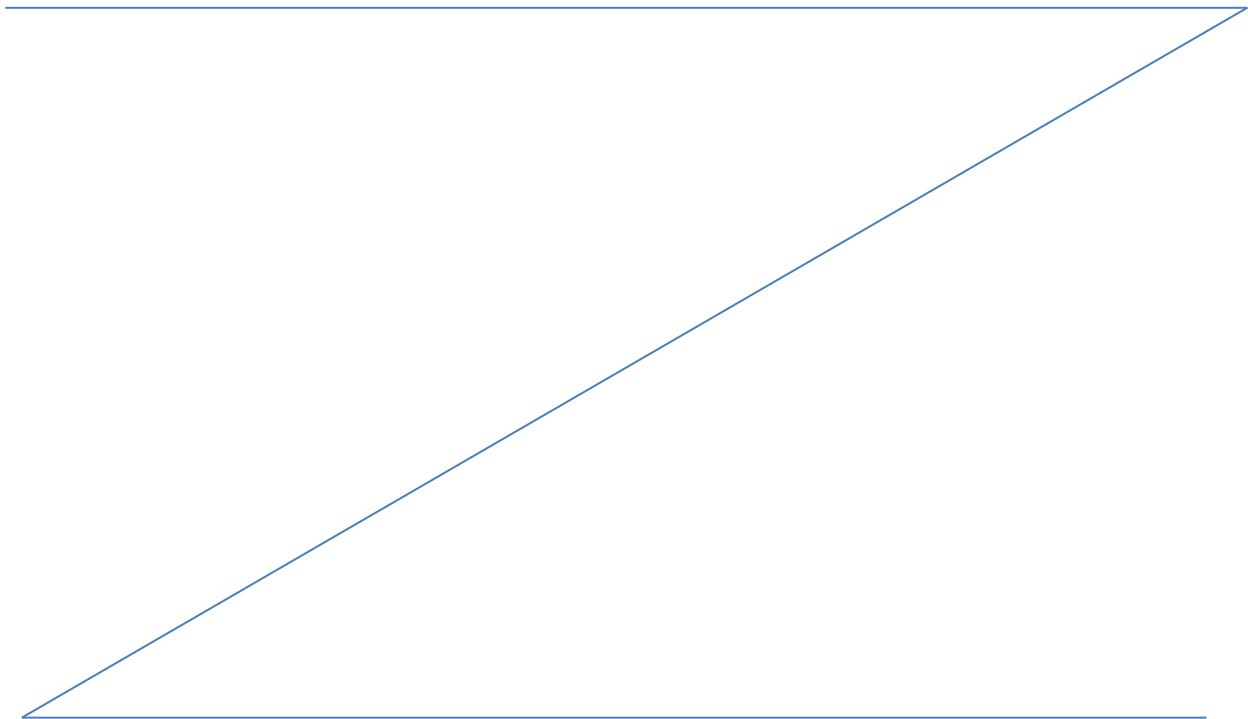
#### **7.1 Enforcement**

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 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 defense 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.



**IN WITNESS WHEREAS** the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

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

**(Insert Registered Owner Name)**

\_\_\_\_\_  
Witness

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

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

**HALIFAX REGIONAL MUNICIPALITY**

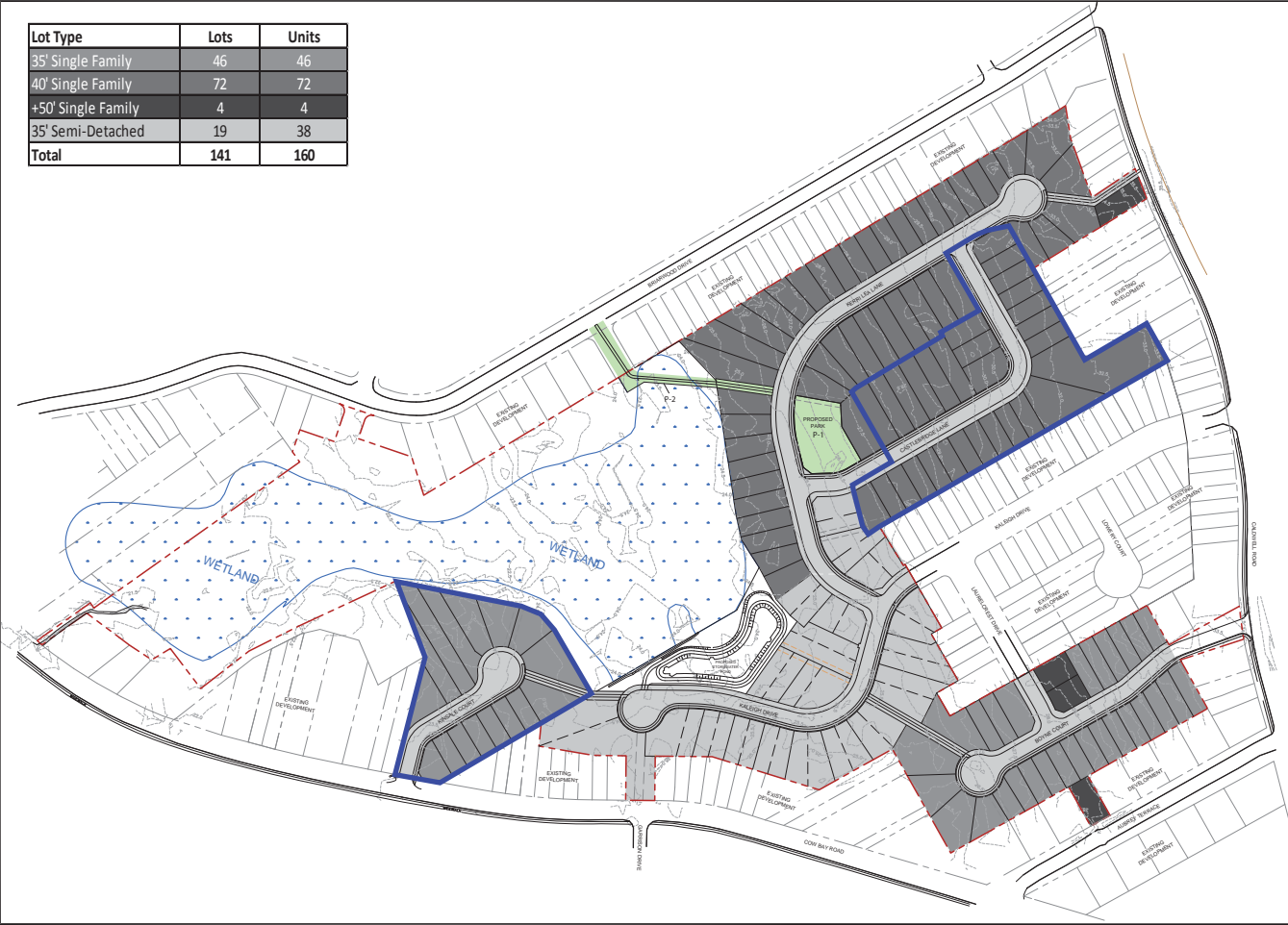
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Witness

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

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
MUNICIPAL CLERK

Lot Type	Lots	Units
35' Single Family	46	46
40' Single Family	72	72
+50' Single Family	4	4
35' Semi-Detached	19	38
<b>Total</b>	<b>141</b>	<b>160</b>



**LEGEND**

- - - Site Boundary
- - - Adjacent Lot Line (Red)
- - - Proposed Lot Line
- - - Proposed Lot Line - Two Bedroom
- - - Modified Lot
- - - Proposed Easement (Proprietary Only)
- - - Wetland
- - - Wetland
- - - Optional two unit dwelling area

**SITE SUMMARY:**

- Land Area: 40.5 Acres (16.4 ha)
- Existing Zoning: R-1 & R-2
- Proposed Zoning: CDD

**SOURCES:**

© 2014 Scott Rock Development Ltd. East Peak Engineering Ltd.  
 Construction Plan received from Armco Capital March 5, 2014

**Design:** Steven Stone

**Client:** Steven Stone

**BRINDALE ESTATES  
 CONCEPT PLAN  
 DARTMOUTH, NOVA SCOTIA**

**ARMCO CAPITAL INC**  
 May 12, 2014

**SCALE** **NORTH**

Schedule B

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Schedule C - Alternate Concept Plan



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