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Item No. 13.1.4

**Harbour East – Marine Drive Community Council
October 6, 2016**

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

SUBMITTED BY: ORIGINAL SIGNED

Bob Bjerke, Chief Planner and Director of Planning and Development

DATE: September 26, 2016

SUBJECT: **Case 20192: Development Agreement Amendment, 721 Windmill Road,
Dartmouth**

SUPPLEMENTARY REPORT

ORIGIN

- Application by 3030558 NS Limited
- August 4th, 2016 Public Hearing by Harbour East – Marine Drive Community Council
- August 4th, 2016, Motion of Harbour East – Marine Drive Community Council requesting Supplementary Report

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

RECOMMENDATION

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

1. Approve the proposed amending development agreement which shall be substantially of the same form set out in the August 4th, 2016 staff report; and
2. Require the amending development agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

On August 4th 2016, Harbour East – Marine Drive Community Council held a public hearing to consider an amendment to a development agreement to remove certain buffering and screening requirements for an existing residential apartment building at 721 Windmill Road, Dartmouth. Community Council deferred consideration of the proposed development agreement amendment and requested a supplementary report regarding the following matters:

- clarification of the screening requirements under the existing agreement;
- the possible provision of a shorter fence to block pedestrian access from the apartment building onto Basinview Drive;
- the provision of an opaque buffer along Basinview Drive; and
- clarification of Halifax Transit's future plans for a bus stop located at the intersection of Basinview Drive and Windmill Road, as well as for a planned new transit terminal east along Windmill Road.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement is detailed in the previous staff report dated August 4, 2016. Additional feedback from the public was brought forward at the public hearing held on August 4, 2016 by Harbour East – Marine Drive Community Council.

DISCUSSION

Staff have reviewed the matters brought forward at the public hearing, and offer the following comments in response to Community Council's motion.

1. Clarification of the screening requirements under the existing agreement

An excerpt from the existing agreement containing the buffering and screening requirements is included in Attachment A. Generally, the existing agreement requires the installation of a six foot tall wooden opaque fence in a north-south orientation along:

- a) the property boundary that is common with Basinview Drive;
- b) the eastern edge of the access driveway for 20 Basinview Drive; and
- c) along the eastern property boundary of 20 Basinview Drive that is common with the apartment building site.

The agreement allows that a combination of fence and coniferous vegetation may be used provided the vegetation is sufficient to form a six foot tall opaque screen and that a wooden fence is provided along the eastern boundary of 20 Basinview Drive.

During the public hearing, the applicant pointed out a possible conflict between the development agreement concept plan and the written requirements of the existing agreement pertaining to screening requirements. This notwithstanding, it should be noted that as per section 1.4.2 of the existing agreement, the text of the agreement shall prevail in the event of any conflict with the Schedules. Any discrepancy between the written text of the agreement and the concept plan does not release the Developer from the obligations established by the text which have the effect of requiring the fence and/or vegetative screen as described above.

2. the possible provision of a shorter fence to block pedestrian access from the apartment building onto Basinview Drive

Community Council identified a concern at the public hearing related to residents from the apartment building using Basinview Drive to access Windmill Road. To address this, it was suggested by Council that screening in the form of a fence could be retained as a requirement for a portion of the property where a landscaped area and a parking lot abut the adjacent Basinview Drive.

Staff discussed alternative amendments to the agreement with the applicant to require the installation of a chain link fence with opaque mesh screen along the portion of the property boundary that is common with Basinview Drive. While the applicant has indicated their agreement with the installation such a fence they have also indicated that they do not agree with the requirement to maintain the fence. In all development agreements approved by the Municipality, to ensure the continued performance of the approved project, the requirement for maintenance is a standard condition. As such, it is non-negotiable and the applicant's disagreement with this condition means that this further amendment to the agreement is not possible.

3. the provision of an opaque buffer along Basinview Drive

As noted above, the existing agreement allows for a combination of wooden fencing and opaque coniferous screening to make up the length of the entire screen. The original intent of the provision in the existing agreement was to prevent residents of the apartment building from accessing Basinview Drive and adjacent properties and to provide a visual screen at ground level. A combination of fencing and vegetation can be aesthetically pleasing and serve as an effective means of impeding pedestrian thoroughfare. However, it should be noted that the use of vegetation for an opaque buffer can be of limited effectiveness until such time as it reaches a mature state of growth.

4. Transit Access

During the public hearing on August 4th, the usage of a bus stop at the entrance to Basinview Drive from Windmill Road became a point of discussion. It was noted in the previous staff report that residents of the Riviera apartment building walk along Basinview Drive to access this bus stop. Staff were directed by Community Council to investigate whether Halifax Transit has any plans to relocate this bus stop.

Halifax Transit's draft "Moving Forward Together" plan designates Wright's Cove as a planned location for a future transit Terminal. The terminal is proposed to be located on Bancroft Lane, approximately 600 metres from the subject property along Windmill Road. Halifax Transit currently has no plans to relocate any of the bus stops between the subject property and the planned location of the new terminal.

Several local routes will connect the existing bus stop at the head of Basinview Drive to the proposed Wright's Cove Terminal. While the bus stop will continue its service, given that the new transit terminal would offer higher frequency service via some corridor and link routes, and a greater level of amenities for riders waiting to catch a bus, it is reasonable to expect that some residents of the apartment building would walk to the terminal rather than use the bus stop. Pedestrian access from the subject property to the bus stop along Basinview Drive may therefore be less of a concern moving following the opening of the transit terminal.

Conclusion

A fence adjacent to Basinview Drive would help to impede pedestrian access in this area, however, the applicant does not agree with the Municipality's requirement for them to maintain the fence. As the requirement for maintenance is non-negotiable, staff cannot recommend approval of this further amendment.

The relevant MPS policies require consideration of screening. As stated in the August 4th staff report, visual screening in this area serves little practical purpose due to the scale of the existing building, the topography of the site, and the proximity of the building to Basinview Drive. The apartment building is

suitably separated from the adjacent residential properties, thus staff advises that the removal of the buffering and screening provisions of the agreement is appropriate. Therefore, it is recommended that Community Council approve the amending development agreement as set out in Attachment A of the August 4th, 2016 staff report.

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 2016/2017 budget with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendation contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Harbour East – Marine Drive Community Council may choose to approve the proposed amending development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East – Marine Drive Community Council may choose to refuse the proposed amending development agreement, and in doing so, must provide reasons why the proposed 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 Excerpts from Existing Agreement

The August 4th, 2016 staff report can be found at:

<http://www.halifax.ca/Commcoun/east/documents/160804HEMDCC1012.pdf>

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Nathan Hall, Planning Intern, 902-490-4726

Report Approved by: ORIGINAL SIGNED

Kelly Denty, Manager of Current Planning, 902-490-4800

Attachment A
Excerpts from Existing Agreement

3.9 Buffering and Screening

- 3.9.1 The Developer agrees to provide a minimum 6 foot tall opaque wood fence on the Lands, along the boundary of Basinview Drive, the abutting residential property at PID 00099754 and the access driveway for PIDs 00099754, 0 0099747 and 00099838, as generally illustrated on Schedule B. Provided that the height of the opaque screen is a minimum of six (6) feet, it may consist of a combination of fence and coniferous vegetation provided that an opaque wooden fence of a minimum height of 6 feet is provided along the boundary of Basinview Drive and PID 00099754.
- 3.9.2 If coniferous vegetation is utilized to partially satisfy the requirements of subsection 3.9.1 of this Agreement, the species, location and spacing of the trees shall be sufficient to form a 6 foot tall opaque screen, in the opinion of the Landscape Architect that prepares the Landscaping Plan required pursuant to subsection 3.8.2. As an alternative, the Developer may construct a 6 foot tall opaque fence comprised of solid wood boards, or an acceptable equivalent in the opinion of the Development Officer.
- 3.9.3 The Developer agrees to provide a minimum 6 foot tall opaque wooden fence along the boundary of the commercial properties at PIDS 00099713 and 00099697.
- 3.9.4 Maintenance of the opaque screens required pursuant to subsections 3.9.1, 3.9.2, and 3.9.3 shall be the responsibility of the Developer.
- 3.9.5 No tree or plant required pursuant to Section 3.9 of this Agreement may be removed unless the Development Officer is satisfied that the tree is dead or in severe decline or poses a risk to human safety or property. The Development Officer may require the opinion of a professional qualified to make such a conclusion prior to authorizing the removal of the vegetation. The Municipality shall not be responsible for the cost of retaining this professional assessment and opinion. Furthermore, no vegetation shall be removed unless it is replaced to the satisfaction of the Development Officer.
- 3.9.6 Existing trees on the Lands may be retained in lieu of new trees provided that they are clearly illustrated on the Landscaping Plan and the Landscape Architect that prepares the Plan is of the opinion that the trees to be retained would survive and thrive following development and removal of some of the surrounding vegetation.
- 3.9.7 Notwithstanding any other provision of this Agreement, the opaque screen required pursuant to section 3.9 of this Agreement shall not impede any access, easement or right of way that is created or established in accordance with clause 3.2.1 of this Agreement.

4.6 No Access to Basinview Drive

There shall be no vehicular or pedestrian access or connection established from the Lands to Basinview Drive with the exception of the access over the Lands for the benefit of adjacent properties as set out in clause 3.2.1 of this Agreement.