

Harbour East Community Council
June 14, 2012

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:



Brad Anguish, Director, Community & Recreation Services

DATE: June 4, 2012

SUBJECT: Case 17688, Non-substantial amendment to Portland Hills CDD
(Commercial Site), Dartmouth

ORIGIN

Application by Blue Basin Investments Ltd.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Approve, by resolution, the non-substantial amendment to the Portland Hills Comprehensive Development District agreement, as provided in Attachment A of this report, to allow eating establishments with accessory lounge areas at the Portland Hills Centre site as shown on Schedule B of the amending agreement; and
2. Require that the amending agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

In 2000, Harbour East Community Council approved a Comprehensive Development District (CDD) development agreement between HRM and Clayton Developments for the Portland Hills subdivision. This agreement enabled the construction of a mixed use development on 93 acres of land in the Morris Lake area, including land for commercial development located at the corner of Portland Street and Portland Hills Drive (Map 1). The CDD agreement permits a broad range of commercial uses in this area including various forms of restaurants, both licensed and unlicensed establishments, where the purchasing of food is required when buying alcohol (Attachment B). Blue Basin Investments Ltd. wishes to amend the CDD agreement to allow for restaurants with an accessory lounge area, where customers may order alcohol with or without purchasing food.

Commercial Designated Area

Under the CDD agreement, 10 acres of land is designated for the construction of up to 100,000 square feet of mixed commercial space. However, a portion of the commercial site was acquired by HRM for the Portland Hills Transit Terminal. The remaining lands have been subdivided into two parcels of land as shown on Map 1. The land located on the corner of Portland Street and Portland Hills Drive has been developed as a pet store and veterinary clinic, while the second parcel is owned by the applicant and contains two buildings of 2 storeys each at 635 and 639 Portland Hills Drive. The building footprints are 5,000 square feet and comprise a total floor area of 20,000 square feet. The upper floors are intended mainly for office space while the lower floors are designed for local commercial and a range of restaurant uses. The remaining portion of the lands has been cleared and graded but is currently undeveloped. The applicant intends to build one additional two storey building of similar size to the existing buildings, and one smaller building on the lands.

Permitted Commercial Uses

The CDD agreement permits various forms of restaurants, both licensed and unlicensed establishments, where the purchasing of food is required when buying alcohol (Attachment B). However, the agreement does not permit "drinking establishments" which is not defined by the agreement but determined by the Development Officer to encompass uses whose primary business is the service of alcohol, with or without food, and which may include video lottery terminals, a dance floor and live entertainment. The existing agreement does not recognize or provide for restaurants which have a small portion of their floor area dedicated for customers who wish to order alcohol with or without food. Under Section 3.1 (b) of the CDD agreement Community Council can consider, by non-substantive amendment, adding additional permitted commercial uses to the agreement.

Proposal

The applicant has designed the ground floor space of each of the existing buildings to attract restaurants and has a prospective tenant who wishes to establish a 106 seat restaurant in the building located closest to Portland Hills Drive (635 Portland Hills Drive). The proposed restaurant would include a holding/lounge area with 20 seats which would serve the dual purpose of providing an area for customers waiting for a table, as well as for those who wish to order alcohol with or without food. Therefore, the applicant is requesting a non-substantial amendment

to the CDD agreement to allow such a restaurant in the building at 635 Portland Hills Drive and other buildings on his property.

Provincial Licensing Requirements

The Province, through the Alcohol and Gaming Division of Service Nova Scotia, must issue approval for the service of any alcoholic beverage in any type of establishment. The agency first consults with local government to determine if the current zoning permits the establishment and under what conditions or what restrictions are in place through a development agreement. Once approval is given by a municipality, the agency can undertake its own public consultation process and grant a license.

In terms of licensed restaurants, the Province would issue an “eating establishment” license. A licensed restaurant which consists of an area where customers can wait for a table and for customers who wish to order alcohol with or without food requires a separate “lounge” license for this area.

DISCUSSION

Within the Dartmouth MPS, Policy H-3B (Attachment C) regulates land uses in any CDD area. Subsection (j) of the policy broadly enables licensed restaurants while prohibiting drinking establishments and this intent was incorporated into the 2000 Portland Hills CDD agreement. The term “drinking establishment” is not defined under the CDD agreement but staff interpret it to encompass those establishments whose primary business is the service of alcohol. These would include beverage rooms, cabarets, and unrestricted lounges which could have video lottery terminals, live entertainment, dance floors and unrestricted hours of operation. Restaurant accessory lounges, which represent a small proportion of a restaurant’s total floor area, were not intended to be prohibited if the primary business is the sale of food.

Under the CDD Agreement, a variety of restaurant uses were intended to locate in this commercial area to service the growing local population. Many licensed restaurants today have a small lounge area to serve as a holding area for those customers who are waiting for a table in the restaurant and for those customers who wish to purchase alcohol with or without food. It is staff’s opinion that the existing development agreement would allow a holding area for the restaurant, where alcohol could be served to those waiting for a table. However, a lounge license to accommodate customers who only wish to purchase alcohol is not possible under the existing agreement. This is due to the lack of a definition for “drinking establishment”. Staff must take the strictest interpretation and consider all forms of lounge to be the same as a beverage room or cabaret even if it represents only a small portion of a larger restaurant use. The owner has therefore applied for a non-substantial amendment to the development agreement, to add “eating establishment with accessory lounge” as a permitted use. This type of restaurant is consistent with MPS policy and the CDD agreement as it continues to prohibit businesses whose primary function would be alcohol sales.

Controls on Accessory Lounge Areas

The Development Officer is given some discretion to consider additional uses as shown in Attachment B. Although a licensed restaurant is already a permitted use, staff feels that the CDD

agreement should be amended to accommodate accessory lounges that also act as a holding bar. The existing agreement allows the addition of further commercial uses to those already permitted as a non-substantial amendment as per Section 3.1 (b).

Therefore, Council may consider the change without a public hearing. Several restrictions are appropriate to severely limit the commercial scope of a lounge use. These include:

- limiting the seating area in a lounge area to a maximum of 20% of floor area, to a maximum of 20 seats;
- limiting the hours of operation to match the hours of the restaurant, and no later than 11 pm Sunday-Thursday and 11:45 pm Friday and Saturday;
- prohibiting video lottery terminals, dance floors, and amplified live entertainment; and
- prohibiting the playing of music on any outdoor seating area.

Conclusion

The proposed amendments provide greater clarity as to the extent of restaurant uses to be permitted and are consistent with MPS policy and the CDD agreement to prohibit uses whose primary business is the service of alcohol. Further, the amendments will reinforce the site as a commercial neighbourhood node as originally intended under the CDD Agreement. These amendments apply only to the applicant's lands on Portland Hills Drive.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

Extensive community engagement was undertaken during the MPS amendment and CDD agreement process. This led to the adoption of site specific policies and the existing agreement. The existing development agreement provides for the addition of other commercial uses as a non-substantive amendment therefore further community engagement is not required.

ENVIRONMENTAL IMPLICATIONS

No implications were identified.

ALTERNATIVES

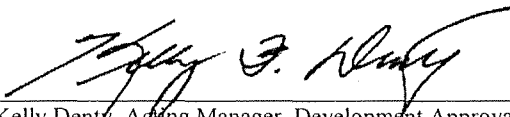
1. Council may choose to approve the proposed amending CDD agreement as set out in Attachment A of this report. This is the recommended course of action for reasons set out above.
2. Council may choose to approve the proposed amending CDD agreement subject to modifications. This may necessitate further negotiation with the applicant.
3. Council may choose to refuse the proposed amending CDD agreement and in doing so, must provide reasons based on a conflict with MPS policies and the existing development agreements.

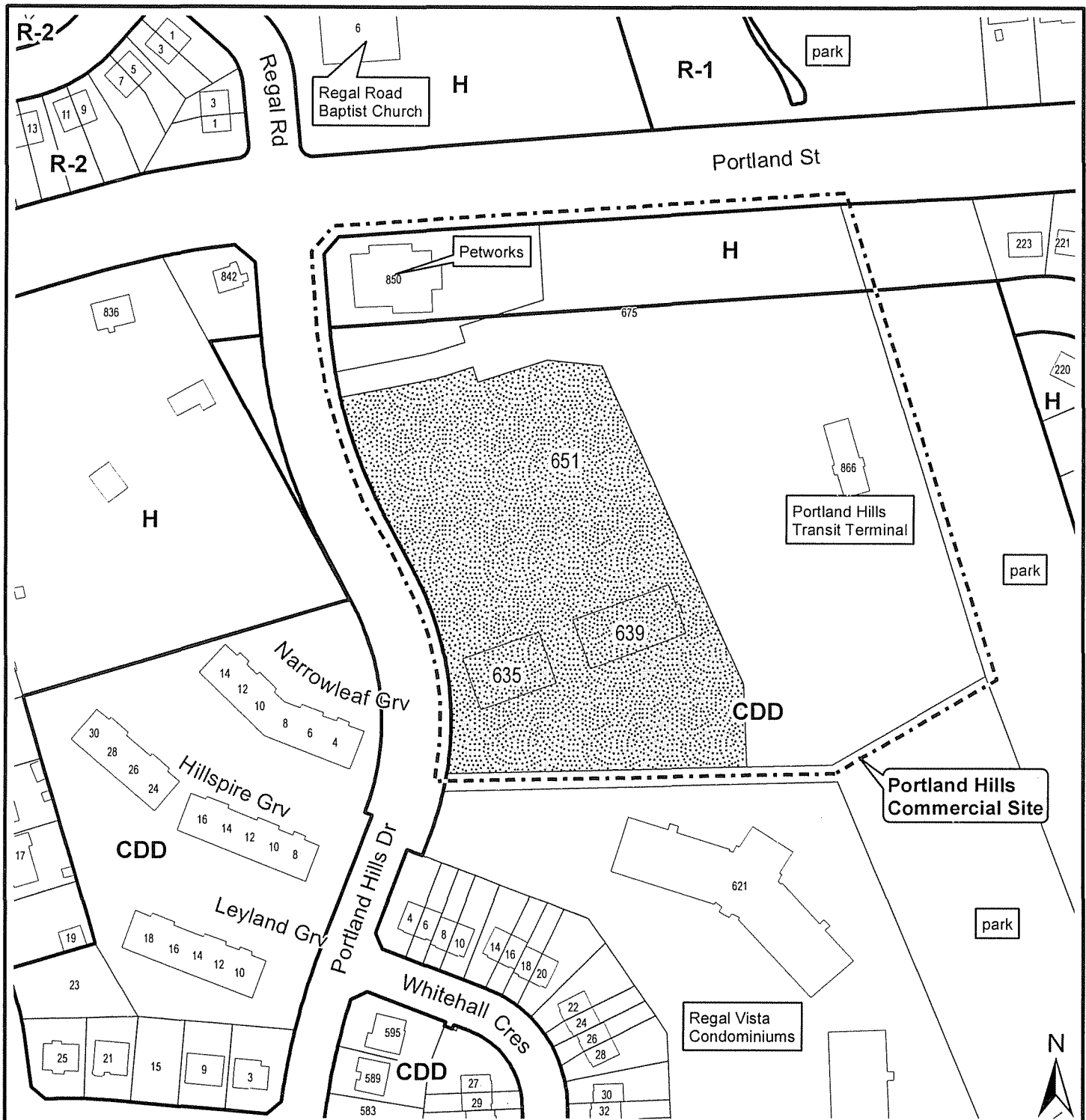
ATTACHMENTS

Map 1:	Location and Zoning
Attachment A:	Amending CDD Development Agreement
Attachment B:	List of Permitted Uses on Portland Hills Commercial Site
Attachment C:	Excerpts of MPS Policy

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

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



Map 1 - Location and Zoning

635-651 Portland Hills Drive
Dartmouth

 Subject area

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- H Holding
- CDD Comprehensive Development District

Dartmouth Plan Area

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

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

Attachment A
Amending CDD Agreement

THIS AMENDING AGREEMENT made this day of , 2012

BETWEEN:

[INSERT Name of Corporation/Business]
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 635, 639 and 651 Portland Hills Drive, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Harbour East Community Council of the Municipality approved an application by Clayton Developments Limited to enter into a Development Agreement to allow for the construction of a mixed use development on a larger site which includes the Lands, which said Development Agreement was registered at the Registry of Deeds in Halifax as Document Number 26019 in Book 6615, at Pages 657-695 (hereinafter called the "Existing Agreement");

AND WHEREAS the Harbour East Community of the Municipality previously amended the Existing Agreement by entering into an Amending Agreement with Clayton Developments Limited on February 27, 2004 as Municipal Case Number 00554, said Agreement was registered at Registry of Deeds in Halifax as Document Number 00122 in Book 7633, at Pages 384-390 (hereinafter called the "First Amending Agreement");

AND WHEREAS the Harbour East Community Council further amended the Existing Agreement by entering into an Amending Agreement with Blue Basin Investments Limited on May 6, 2010 as Municipal Case Number 15925, said Agreement was registered at Registry of Deeds in Halifax as Document Number 96513982 (hereinafter called the "Second Amending Agreement");

AND WHEREAS the Developer wishes to further amend the Existing Agreement to allow for Eating Establishments with Accessory Lounge areas within the commercial area on the Lands

pursuant to the provisions of the Halifax Regional Municipality Charter and the Municipal Planning Strategy for Dartmouth, (hereinafter called the "Third Amending Agreement");

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on _____, referenced as Municipal Case Number 17688;

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

1. Except where specifically varied by this Third Amending Agreement, all other terms, conditions and provisions of the Existing Agreement, First Amending Agreement, and Second Amending Agreement shall remain in effect.
2. 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 17688:

Schedule A: Legal Description of the Lands

Schedule B: Location of the lands of Portland Hills Centre

3. Amend Schedule "G" of the Existing Agreement by adding the following to the list of permitted uses under the heading "Portland Hills Commercial Uses" following the words, "Restaurants, including fast food restaurants.....":

"Eating establishments with an accessory lounge area on lands located at the Portland Hills Centre site as highlighted on Schedule B of the Third Amending Agreement. [This use is defined as an establishment whose primary business is the service of food, where the accessory lounge area does not exceed 20% of the total floor area (to a maximum of 20 seats) and which has no video lottery terminals, no music to be played outside on patio areas, no amplified live entertainment, and no dance floor. The hours of operation for an accessory lounge area shall be the same as for the restaurant, but shall close no later than 11 pm Sunday to Thursday and 11:45 pm Friday and Saturday.]"

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2012.

SIGNED, SEALED AND DELIVERED in
the presence of:

(Insert Owners Names)

Per: _____

Per: _____

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

=====

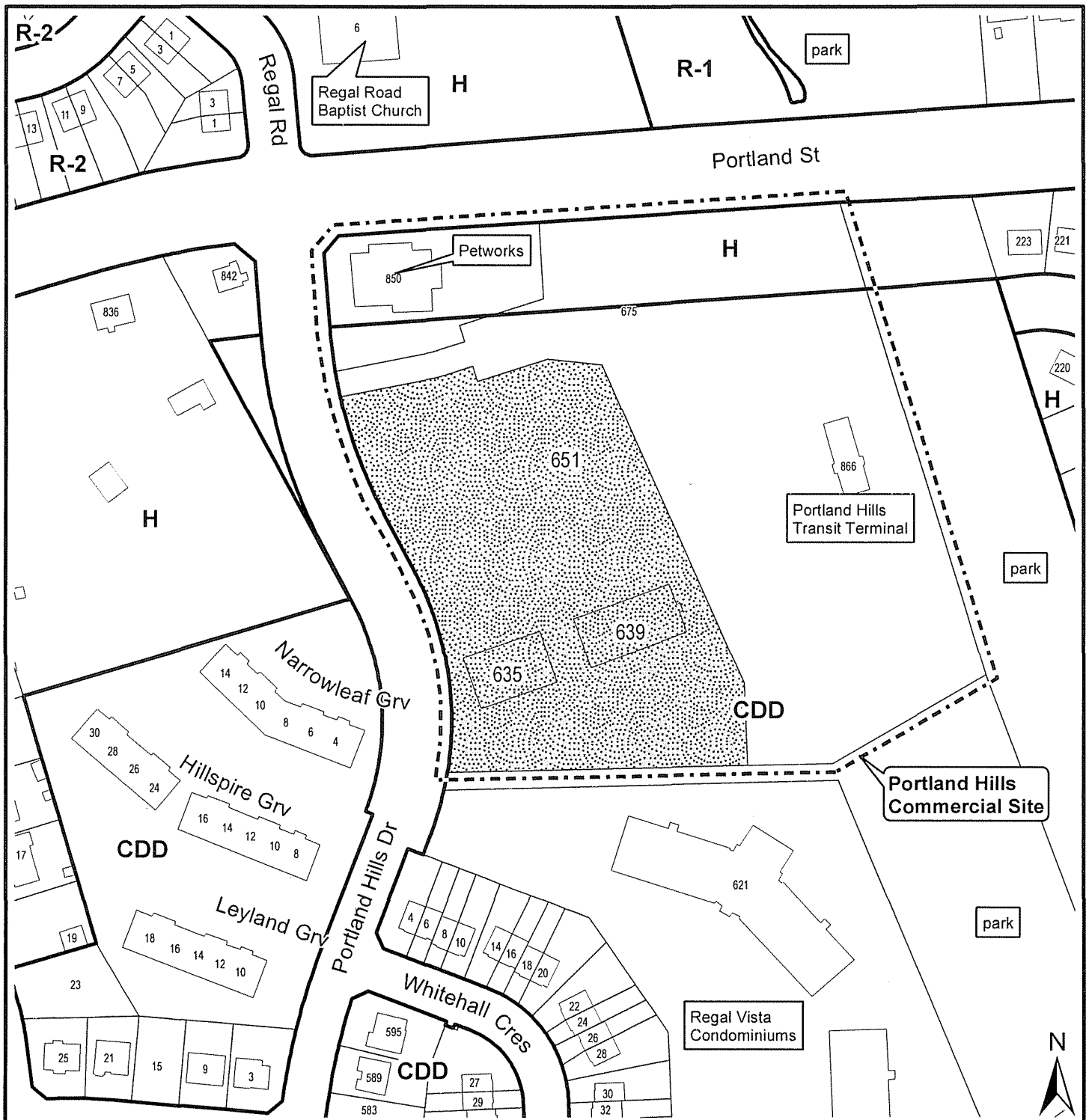
HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor


Per: _____

Municipal Clerk



Schedule B

Portland Hills Centre Site
Dartmouth

 Subject area

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- H Holding
- CDD Comprehensive Development District

Dartmouth Plan Area

HALIFAX
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DEVELOPMENT APPROVALS

0 30 60 m

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

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Attachment B
List of Permitted Uses on Portland Hills Commercial Site
- Schedule G -

PORTLAND HILLS COMMERCIAL USES

The following are intended to serve as a guide in determining the type of commercial uses to be permitted, as described in policy H-3B of the MPS. This list is not intended to be all-inclusive, and represents typical uses. The development Officer may permit additional uses provided such uses, in the opinion of the Development Officer, maintain or further the intent of the development agreement in this regard:

- Convenience Store
- Food Stores (less than 20, 000 sq. ft. in gross floor area)
- Hair Salon
- Restaurants, including fast food restaurants and licenced restaurants, but excluding drive-throughs
- Financial Institutions
- Drug Stores
- Dry Cleaners
- Veterinary Clinics
- Health/Fitness Clubs
- Laundromats
- Bakeries
- Delicatessens
- Photography Studios
- Travel Agencies
- Florists
- Video Stores
- Tailors/Shoe Repair
- Health Food Stores
- Books/Magazines
- Telephone/Computer Sales and Service
- Gas Bars

- Medical/Dental Clinics or Offices
- Insurance, Real Estate, Financial
- Lawyers Offices
- Other Professional Offices

Specific Uses Not Permitted include:

- Department Stores
- Home Improvement Centres

- Drinking Establishments
- Adult entertainment Uses

Attachment C
Excerpts of MPS Policy

Policy H-3B In addition to the provisions of Policy H-3A, Council shall consider the following prior to approving any agreement within a CDD:

- (a) the adequacy of the mix of residential uses to provide a range of housing options in terms of lot characteristics, building and dwelling type and design;
- (b) the general guide that the maximum number of apartment units shall not exceed 40% of the total actual number of units within the CDD. Such figure may be increased to a maximum of 50% provided clear advantages are gained within the CDD by means of increased parkland or open space, increased areas of undisturbed terrain and vegetation, decreased amount of impermeable surfaces and/or improved environmental protection or an improved transportation system. (RC- Mar 22/05;E-Apr 23/05)
- (c) the location and concentration or dispersal of multi-unit residential buildings with respect to impacts on street networks, abutting uses and the physical environment;
- (d) the general guide of a maximum residential density of 8 units per gross acre, excluding acreage devoted to commercial use;
- (e) the compatibility of various land uses, within and adjacent to the development, and measures proposed to integrate and buffer uses. Compatibility refers to the type of land use, dwelling (housing) type and size and height of the development. Buffering refers to measures that mitigate impacts on adjacent uses, such as adequate separation distances, retention of existing vegetation and the installation of suitable screening features such as new vegetation, berms and or fencing;
- (f) the adequacy of measures to minimize disruption of existing terrain, vegetation, watercourses and other physical features and to mitigate against the potential effects of disruption;
- (g) the hours of operation of non-residential uses, including business uses located in dwellings;
- (h) the safety and efficiency of all transportation systems, including the effects of driveways to and traffic from abutting uses to streets and walkways including the adequacy of pedestrian facilities (sidewalks/walkways);
- (i) the general guide that street frontage for single detached development not be less than forty (40) feet and that the total number of single detached lots having street frontage less than the minimum requirement as prescribed by the land use by-law and/or the subdivision by-law (RC-Jan 29/02;E-Mar 2/02) not exceed twenty-five percent of the total number of single detached units within the CDD;
- (j) that the size and type of commercial uses be designed to serve the shopping needs of residents within the local area, rather than the community or the region. Commercial uses to be considered are to be compatible with and sympathetic to the character of the surrounding residential community in terms of location, use, scale, design and traffic impacts. Uses to be considered may include, but not limited to, offices, financial institutions, convenience shops, drug stores, personal service outlets (dry cleaning depot, laundry mats, hair salons, tailors and so on), small food stores, gas bars, and restaurants (excluding drive-throughs). Uses not to be

considered include, but are not limited to department stores, home improvement centres, drinking establishments, adult entertainment uses and large grocery stores;

(k) Notwithstanding criteria “j”, larger commercial development containing a wider range of uses may be considered for lands adjacent Highway 111 at the proposed Woodside interchange;

(l) within the Morris-Russell Lake area, all new development shall adhere to the Morris Lake Watershed Management policies as contained in Policies ML-1 to ML-23 as applicable;

(m) the impact the proposed development may have on the quality of life of existing neighbourhoods, and notwithstanding criteria (b),(d),(i),and (j), Council may reduce the maximum allowable under each criteria in order to protect the quality of life of residents within existing neighbourhoods;

(n) any and all other matters applicable to the subdivision and servicing of the lands, the provision of parkland and the effects of the development on community services as set out in policy IP- 1(c) and, for specific uses which are otherwise subject to development agreements, the specific considerations required by the text and policies of this Plan.