

Harbour East Community Council
May 5, 2011

TO: Chair and Members of Harbour East Community Council



SUBMITTED BY: _____ *for* _____
Paul Dunphy, Director, Community Development

DATE: April 18, 2011

SUBJECT: **Case 16507: Development Agreement for Apartment Building,
Dartmouth**

ORIGIN

Application by Paul Connors, for lands of Sunset Towers Apartments Ltd., to enter into a development agreement to permit an apartment building use in an existing building on lands at 341 Portland Street, Dartmouth.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give notice of Motion to consider the proposed development agreement as set out in Attachment A of this report and schedule a public hearing;
2. Approve the proposed development agreement as set out in Attachment A of this report to permit a residential apartment building use within the existing building on lands as highlighted on Map 1 of this report on Portland Street, Dartmouth;
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 subject building and property at 341 Portland Street is owned by Sunset Towers Apartments Limited (Sunset Towers) and is currently used as an apartment building. Prior to its current use, Sunset Towers only had approval for a 15-unit lodging house with commercial use on the ground floor of the building. In November of 2008, the building was damaged by fire and when Sunset Towers applied for building permits to rebuild the information submitted was for apartment units and not the permitted lodging house. Sunset Towers was advised to keep the building vacant until the land use issue was addressed. However, Sunset Towers proceeded with the construction of the units and rented the units. The purpose of this application is to legalize the apartment building use by proceeding through the development agreement process.

Proposal

Paul Connors has submitted an application to enter into a development agreement for the lands of Sunset Towers Apartments Limited to permit a 16 unit apartment residential use and the expansion of the first floor commercial use within the existing building at 341 Portland Street (Map 3). There are no changes proposed to the building footprint. Some changes to the Portland Street facade are proposed as existing porches will be enclosed to create additional commercial space. The abutting vacant lot, PID 40878340, and the existing lot and dwelling at 345 Portland are also to be considered under the development agreement to provide sufficient land area required per dwelling unit.

Location, Designation, Zoning and Surrounding Land Uses

The lands are:

- located on the north side of Portland Street, about 120 feet from the intersection with Brenton Street;
- approximately 22,075 square feet in area (3 lots combined) extending northerly to Maynard Lake Park;
- designated Commercial under Dartmouth Municipal Planning Strategy;
- zoned C-2 (General Business) under Dartmouth Land Use By-law; and
- surrounding land uses are zoned C-2 which permits a mix of commercial and residential uses.

Land Use By-law Provisions

The Dartmouth Land Use By-law provides for lodging houses as a permitted use under the C-2 (General Business) zone that allows R-3 uses (Attachment C). A lodging house is a building or part of a building where sleeping accommodation is provided for remuneration with or without meals. This does not include a hotel or licensed institution under any Provincial Act. Because the subject property is zoned C-2 the commercial use is permitted by as-of-right but the apartment building use is permitted only by development agreement that is enabled by policy.

Enabling Policy

Under the Dartmouth Municipal Planning Strategy (MPS) Implementation Policy IP-5 requires apartment buildings in the C-2 (General Business) zone to be considered by development agreement and provides relevant evaluative criteria (Attachment B). Implementation Policy IP-1(c) of the MPS provides Council with general evaluative criteria for developments agreements

(Attachment B). Also Policy C-7 of the MPS allows local office uses to occur within commercially zoned areas at a scale which is consistent with the neighbourhood being served (Attachment B).

DISCUSSION

Staff have reviewed the proposal based on all applicable policies of the Dartmouth MPS, which are included in Attachment B of this report, and issues raised at the public information meeting. Staff are of the opinion that the proposal is consistent with all applicable policies of the Dartmouth MPS. The following issues have been identified for more detailed discussion.

Land Use Conflicts

The existing commercial and residential building on the lands at 341 Portland Street is located in an established commercial area with limited surrounding residential uses. To minimize impacts of the proposed use on adjacent land uses the draft development agreement:

- Requires the site to be maintained in good repair;
- The proposed enclosed porches and related façade changes will remain compatible with the street character;
- Allows no occupancy permit to be issued until all LUB and National Building Code requirements are met;
- Requires lighting to be directed away from streets, neighbouring properties and buildings; and
- Allows egress only from 345 Portland Street.

Density

When considering acceptable densities for apartment building proposals by development agreement in the Dartmouth plan area the R-3 zone standard (Attachment 3) is used as a guideline for medium density applications. In order to provide sufficient area for the required number of dwelling units the lands at PID 40878340 (vacant lot) and 345 Portland Street have been included under the agreement coverage.

Fencing and Buffering

To address the issue of pedestrian shortcutting through an abutting lot, 16 Brenton Street, to the apartment building the draft development agreement requires the developer to install a solid board fence between the subject property and the rear lot line of 16 Brenton Street. The draft agreement also requires the rear parking spaces to be bordered by a board fence for the length of the parking area along Maynard Lake Park. The wood fence must be between 5 and 6 feet in height and is required to have a perennial planting bed at the base on the side of the subject property.

Parking and Access

The draft development agreement requires on-site parking to be consistent with the site plan (Map 3) of the development agreement. The site plan shows 19 parking spaces, three spaces less than would be required under the Dartmouth Land Use By-law. Staff believe that because the building is located on a major transportation corridor and bus route and is close to downtown that the actual parking requirements will be less than those set out in the LUB.

To address safety concerns regarding traffic accessing and egressing the site the proposed agreement allows access and egress from 341 Portland Street but egress only from 345 Portland Street. The draft Agreement requires a "Do Not Enter" sign to be posted at 345 Portland Street. Grade changes are required to address the current steep slope at 345 Portland Street. This has necessitated regarding of adjacent slopes, some private tree removal and placement of a catchbasin in the driveway.

Landscaping

The draft agreement requires that the landscape plan submitted as part of the application be adhered to. Any disturbances to the site as a result of regarding the egress point at 345 Portland Street, building the required fence or provision of parking must be restored or replanted to original condition or better.

Conclusion

Staff is of the opinion that the proposed development agreement as set out in Attachment A is consistent with the intent of the MPS for residential apartment building uses within the Commercial designation. Therefore, staff recommend that Harbour East Community Council approve the proposed development agreement, included as Attachment A to this report.

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 proposed 2011/12 operating budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the proposed 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

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 January 5, 2011. Approximately 9 members of the public were in attendance at this meeting. A public hearing has to be held by Council before they can consider approval of any applications.

For the Public Information Meeting, notices were posted on the HRM website, in the newspaper and mailed to property owners within the notification area as shown on Map 2. 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 will be notified as shown on Map 2.

The proposed development agreement will potentially impact the following stakeholders: local residents and property owners.

ALTERNATIVES

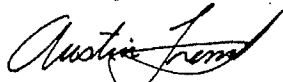
1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant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

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification
Map 3	Site Plan
Attachment A	Proposed Development Agreement
Attachment B	Relevant Excerpts from Dartmouth Municipal Planning Strategy
Attachment C	Relevant Excerpts from Dartmouth Land Use By-law
Attachment D	Minutes from the Public Information Meeting

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 : Darrell Joudrey, Planner 1, 490-4181



Report Approved by: Austin French, Manager, Planning Services, 490-6717

Attachment A: Proposed Development Agreement

THIS AGREEMENT made this ____ day of _____, 2011,

BETWEEN:

Insert Name of Property Owner

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 341, *insert vacant lot PID* and 345 Portland Street, Dartmouth 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 multi residential and commercial uses on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies IP-5 and IP-1(c) of the Dartmouth Municipal Planning Strategy;

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on _____, referenced as Municipal Case Number 16507;

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 Land Use By-law for Dartmouth 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 to the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 16507:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Landscaping Plan
Schedule D	Front and Side Elevations

3.2 Requirements Prior to Approval

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.

3.3 General Description of Land Use

3.3.1 The uses of the Lands permitted by this Agreement are as follows:

- (a) 16 unit apartment building at 341 Portland Street;
- (b) First floor C-2 commercial uses at 341 Portland Street; and
- (c) 2 unit residential dwelling at 345 Portland Street.

3.3.2 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the Dartmouth Land Use By-law as amended from time to time.

3.4 PARKING, CIRCULATION AND ACCESS

- 3.4.1 The parking areas shall be sited as shown on Schedule B.
- 3.4.2 A minimum of 19 parking spaces shall be provided.
- 3.4.3 The parking areas and driveways shall be surfaced with asphalt.
- 3.4.4 The limits of the parking area shall be defined by landscaping.
- 3.4.5 Signage shall be located indicating one way direction of driveway, that connects to the main lot behind the building, with a "Do Not Enter" sign at 345 Portland Street egress.

3.5 OUTDOOR LIGHTING

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.

3.6 LANDSCAPING

- 3.6.1 Landscaping of the Lands shall be in accordance with the Landscaping Plan as shown in Schedule C.
- 3.6.2 Any sodded areas disturbed during the regarding of the driveway extending over insert vacant lot PID and 345 Portland Street shall be resodded.
- 3.6.3 The Developer shall provide solid board fencing, a minimum of five feet in height but no greater than six and one half feet in height, between the proposed apartment use and the residential property to the west of the apartment building as identified on Schedule C.
- 3.6.4 The Developer shall provide solid board fencing, a minimum of five feet in height but no greater than six and one half feet in height, between the parking area at the rear of the lands and the lands of Maynard Lake Park for the length of the parking area as identified on Schedule C.
- 3.6.5 All fencing shall have a landscaped bed of perennial plantings and mulch on the side of the fence facing the Lands.
- 3.6.6 All disturbed areas shall be reinstated to original condition or better.

3.7 MAINTENANCE

- 3.7.1 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, recreational amenities, parking areas and driveways. The Developer is responsible for

maintenance of all landscaped areas including the replacement of damaged or dead plant stock, trimming and for litter control, garbage removal and snow and ice control, salting of walkways and driveways.

3.8 SIGNS

3.8.1 The sign requirements shall be in accordance with the Dartmouth Land Use By-law and the Temporary Signs By-law S-800 as amended from time to time.

3.8.2 Signs shall only be externally illuminated.

3.9 ARCHITECTURAL REQUIREMENTS

The building entrance and enclosed commercial space on the façade facing Portland Street shall be constructed and detailed as illustrated on Schedule D.

3.10 HOURS OF OPERATION

Commercial uses shall be permitted to operate on the Lands between the hours of 7:00 a.m. and 11:00 p.m. Monday through Sunday.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 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. The following items are to be constructed and detailed as identified below:

- (a) PVC pipe from catch basin at 345 Portland Street egress to existing pipe within Portland Street must meet Halifax Water specifications; and
- (b) Close the existing concrete driveway ramp at 345 Portland Street and construct a new ramp in accordance with HRM requirements.

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 parking areas as detailed in Section 3.4;
- (b) Changes to the planting or fencing on the Landscaping Plan as shown on Schedule C;
- (c) The granting of an extension to the date of commencement of

- development as identified in Section 6.3 of this Agreement; and
- (c) The length of time for the completion of the development as identified in Section 6.5 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 (6) 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 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

Upon the completion of the whole development or complete phases of the 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 Dartmouth, as may be amended from time to time.

6.5 Discharge of Agreement

6.5.1 If the Developer fails to complete the development after 1 year 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 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 _____, 2011.

SIGNED, SEALED AND DELIVERED
in the presence of:

Name of Property Owner

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

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20 ____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20 ____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that _____, Mayor and _____, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in h presence.

A Commissioner of the Supreme Court
of Nova Scotia

Attachment B: Relevant Excerpts from Dartmouth Municipal Planning Strategy

Policy C-7 It shall be the intention of City Council to allow the local office function to occur within commercially zoned areas and at a scale which is consistent with the neighbourhood being served.

Policy IP-5 It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access & egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building. In considering the approval of such Agreements, Council shall consider the following criteria:

- (a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;
- (b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building;
 - (ii) traffic generation, access to and egress from the site; and
 - (iii) parking;
- (c) adequacy or proximity of schools, recreation areas and other community facilities;
- (d) adequacy of transportation networks in, adjacent to, and leading to the development;
- (e) adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing;
- (f) that mature trees and other natural site features are preserved where possible;
- (g) adequacy of buffering from abutting land uses;
- (h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and
- (v) the Land Use By-law amendment criteria as set out in Policy IP-1(c). (As amended by By-law C-692, Dec. 4, 1991).

Policy IP-1(c)

In considering zoning amendments and contract zoning, Council shall have regard to the following:

- (1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan
- (2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal

- (3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries
- (4) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the City is to absorb any costs relating to the development
 - (ii) the adequacy of sewer and water services and public utilities
 - (iii) the adequacy and proximity of schools, recreation and other public facilities
 - (iv) the adequacy of transportation networks in adjacent to or leading to the development
 - (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas
 - (vi) preventing public access to the shorelines or the waterfront
 - (vii) the presence of natural, historical features, buildings or sites
 - (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized
 - (ix) the detrimental economic or social effect that it may have on other areas of the City.
- (5) that the proposal is not an obnoxious use
- (6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:
 - (i) type of use, density, and phasing
 - (ii) emissions including air, water, noise
 - (iii) traffic generation, access to and egress from the site, and parking
 - (iv) open storage and landscaping
 - (v) provisions for pedestrian movement and safety
 - (vi) management of open space, parks, walkways
 - (vii) drainage both natural and sub-surface and soil-stability
 - (viii) performance bonds.
- (7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors
- (8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council
- (9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:
 - (i) Council with a clear indication of the nature of proposed development, and
 - (ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community

- (10) 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.
(RC-Jul 2/02;E-Aug 17/02)

Attachment C: Relevant Excerpts from the Dartmouth Land Use By-law

PART 4: R-3 (MULTIPLE FAMILY RESIDENTIAL) ZONE - MEDIUM DENSITY

34(1) The following uses only shall be permitted in an R-3 Zone:

- (a) R-1, R-2 and TH uses as herein set out,
- (b) apartment buildings,
- (c) uses accessory to any of the foregoing uses.
- (d) lodging houses (As amended by By-law C-657, Feb 2/89)

34(2) Buildings used for R-1, R-2 and TH uses in an R-3 Zone shall comply with the requirements of an R-1, R-2 or TH Zone respectfully.

34(3) Buildings used for R-3 uses in an R-3 Zone shall comply with the following requirements:

- (a) Lot coverage, maximum - 25%
- (b) Area of site required per dwelling unit:

Type of dwelling unit	Area of site required per dwelling unit
One bedroom and bedsitting room	1,300 sq. ft.
Two or more bedrooms	1,800 sq. ft.

Provided that where the site area is greater than one acre, the area of the site required per dwelling unit shall be:

Type of dwelling unit	Area of site required per dwelling unit
One bedroom and bedsitting room	1,000 sq. ft.
Two or more bedrooms	1,350 sq. ft.

- (c) On all buildings a minimum side and rear yard clearance of 15 feet shall be maintained and if the building is more than fifty feet high on its highest side the sideyards and rearyards shall have a minimum clearance of not less than one half the height of the adjacent side of the building.
- (d) The yard area located between the street line and the minimum setback line shall be landscaped, and the entire site and all buildings maintained in a neat, tidy manner including the trimming and upkeep of landscaped areas.
- (e) Height Maximum -35 feet on all parcels of land situated within the "Lake Banook Canoe Course Area" as identified on Schedule "W". (RC-Feb 8/05;E-Apr 23/05)

PART 9: C-2 (GENERAL BUSINESS) ZONE

39(1) The following uses only shall be permitted in a C-2 Zone:

- (a) R-1, R-2, R-3, C-1 and TH uses as herein set out;

- (b) Business or commercial enterprises except:
 - (i) obnoxious uses and uses creating a hazard to the public and
 - (ii) offices other than those permitted in the C-1 Zone
 - (iii) *except Adult Entertainment uses (RC-Jan 31/06;E-Mar 16/06)*
 - (iv) **cabarets (HECC- Dec 4/08;E-Dec 27/08)**
 - (v) **pawn shops**
 - (c) Uses accessory to the foregoing uses.
- 39(2) Buildings used for R-1, R-2, R-3, C-1 and TH uses in a C-2 Zone shall comply with the requirements of an R-1, R-2, R-3, C-1 or TH Zone respectively.
- 39(3) Buildings used for C-2 uses in a C-2 Zone shall comply with the following requirements:
- (a) Lot area minimum - 5,000 sq. ft.
 - (b) Height maximum - 3 storeys for a building with an office function as its primary function.
 - (c) Maximum Lot coverage - 100% if the requirements for 100% lot coverage in the Building Bylaws of the City of Dartmouth are met, except that a motel building or buildings shall occupy surface area of not more than one-third of the total area of the building lot.
 - (d) If lot coverage is not 100%, side and rear yards shall be provided on each side and at the rear of buildings as provided by the Building Bylaws of the City of Dartmouth.
 - (e) *Additional Height Maximum -35 feet on all parcels of land situated within the "Lake Banook Canoe Course Area" as identified on Schedule "W". (RC-Feb 8/05;E-Apr 23/05)*

Attachment D: Minutes from Public Information Meeting

**HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 16507 - 341 PORTLAND STREET, DARTMOUTH**

7:00 p.m.
Wednesday, January 5, 2011
Alderney Gate Library, Helen Creighton Room,
60 Alderney Drive, Dartmouth

STAFF IN

ATTENDANCE: Darrell Joudrey, Planner, Planning Applications
Hilary Campbell, Planning Technician
Jennifer Little, Planning Controller

ALSO IN

ATTENDANCE: Alan Silverman, Property Owner
Paul Connors, Consultant
Councillor Gloria McCluskey, District 5

PUBLIC IN

ATTENDANCE: 9

The meeting commenced at approximately 7:08 p.m.

Opening remarks/Introductions/Purpose of meeting

Mr. Darrell Joudrey, Planner, Planning Applications, called the meeting to order at approximately 7:08 p.m. in the Alderney Gate Library, 60 Alderney Drive, Dartmouth. He introduced himself as the planner guiding this application through the process and also introduced Councillor Gloria McCluskey, Hilary Campbell, Planning Technician, HRM Planning Services and Jennifer Little, Planning Controller, HRM Planning Services.

Mr. Joudrey advised that the application is to enter into a development agreement for a multiple unit residential use within an existing building for lands at 341 Portland Street, Dartmouth.

Mr. Joudrey reviewed the application process, noting that the public information meeting is an initial step, whereby HRM reviews and identifies the scope of the application and seeks input from the neighborhood. The application will then be brought forward to Harbour East Community Council which will hold a public hearing at a later date, prior to making a decision on the proposed development.

Presentation on Application

Mr. Joudrey explained that Paul Connors has submitted an application for the lands of Sunset Towers to enter into a development agreement to allow for the existing apartment building. The building use was changed from a 15 unit lodging house to apartments without going through the DA process. Reviewing a slide of the area, Mr. Joudrey explained that the site is designated and zoned commercial which permits most commercial uses and medium density residential housing but must be permitted by a Development Agreement as it is beyond 3 units. The Dartmouth Municipal Planning Strategy, Policy IP-5 allows Council to consider apartment buildings by Development Agreement providing Council requirements and criteria are met. The applicant is required to submit a site plan, building elevations and drawings showing the size of the building, access, landscaping amenity space and parking. Main criteria for this approval is that the architectural design ensures building compatibility with nearby residential uses in terms of height, scale and bulk and that potential conflicts with adjacent lands are reduced in terms of building compatibility and traffic impact, explaining that a traffic impact study has been prepared. He named other concerns regarding matters such as parking, adequacy of amenity space, buffering and landscaping, as well as overall site design are to be given regard to by Council.

Paul Connors, Consultant thanked the residents for coming to the meeting and explained that this building was a boarding house built in the 1980's. Since then the boarding house was converted into apartment units adding that there have been some previous problems with the client. However, Mr. Silverman now owns the property and has been upgrading these units. He referred to a diagram of the proposed site, providing an overview of the proposal and explained that there is not enough parking to accommodate the sixteen one bedroom units, he added that the request is to include all three properties into the development agreement. He listed items that have been upgraded within the last two years to meet the building code, reviewed the layout of the parking area, and explained that there will be up to twenty spaces that have been designed - added with minimal removal of private trees. He explained that the offices in the building will be expanded, However, this will cause no visible change to the exterior view. Mr. Connors explained that they will be placing a sign on the front of the building with the name of the building to dress up the building and will look better in the neighborhood.

Questions and Answers

Mr. Josh Gallard, Dartmouth, wanted confirmation that the structure was going to remain the same and asked what the commercial use is for.

Mr. Connors explained that Mr. Silverman's currently uses it as his own office use.

Mr. Gallard asked what will happen to the structure at 345 Portland Street.

Mr. Connors explained that it will remain as is.

Mr. Joudrey explained that this property was included within this application because the density requirements on the lands needs the land area to equal what is required in the R3 zone. Therefore, they are using the square footage of this lot to meet those land area requirements.

Mr. Gallard expressed concern with the current parking issues, explaining that when cars are parked on both sides of the street (Brenton Street), it is very hard to drive through.

Mr. Joudrey explained that the driveway will be regraded and also widened at the access point on Portland Street to meet current HRM requirements.

Some discussion was held regarding the current side road parking issues.

Wanda Roach, Dartmouth, explained that at a previous meeting regarding this property, the developer at that time spoke on how they were going to improve the site, making it a nicer building that would attract better clientele. She explained that the current building doesn't cause any problems but, has concern with changing the zoning.

Mr. Joudrey explained that this application is not for a rezoning, and assured that the zoning would not change. This application allows the zone use within the development agreement but, the zoning itself will not change. If at any time the development agreement is resended or removed by Council, the C2 zoning is still in place. He added that the development agreement is attached to the land, and if sold it would remain the same unless written request from the owner or by Council is received.

Ms. Robena Dogger, Dartmouth, asked what defines a residential zone and expressed concern with this building acting more like a short term rental property and more like a hotel.

Mr. Joudrey explained that this is considered a multi-unit apartment building because it has self contained units where tenants have their own kitchens and bathrooms. In a lodging house or a boarding house, tenants share these amenities. He explained that HRM have no control over the length of tenancy.

Ms. Dogger explained that at the back of the property where it connects with the City Park, that there is a lot of mess and spills. She asked if there is a requirement to have a fence in place separating the two properties.

Mr. Joudrey explained that the development agreement will require that the property owner must meet all municipal by-laws.

Ms. Linda Langille, Dartmouth, expressed concern with the mess currently at the back of the property (located on Brenton Street). She also addressed concern with people walking through her property to get to this property and also parking their cars in front of her driveway. She explained that her property has been vandalized and broken into, and suggested that a fence separating the properties would be very helpful.

Mr. Joudrey explained that through the development agreement, they will look at some type of buffering or fencing along the perimeter of Sunset Towers lands. HRM Park Services believes that there is already a fence in place behind the property.

Ms. Langille explained that there hasn't been one there in 15 years.

Some discussion was held on the residents concerns regarding the side-street parking and the lack of.

Ms. Susan Gannett, Dartmouth, expressed concern with the long term result and if this application may result in one long development along all of Mr. Silverman's properties on the whole stretch.

Mr. Joudrey explained that the intent of this development agreement is to allow the existing use. There were no previous permits to the property changing it from a lodging house to an apartment building therefore, Mr. Silverman has to go through this development agreement in order to legalize it. This development agreement will only allow for the existing use. Any changes to be made to the property will have to be submitted to staff and get approval from Council.

Ms. Gannett expressed concern with an inappropriate commercial use at a particular property (not the subject property) and the increased level of traffic it generates and asked if there were some kind of mechanism in place to ensure that no inappropriate commercial practice takes place.

Mr. Joudrey explained that under the Dartmouth Land Use By-Law the (R1) residential zone only permits home occupations. Any concerns can be reported with HRM's Compliance or By-Law Enforcement Departments.

Ms. Roach expressed concern with someone being able to modify the permitted use without a permit and now making the permit the actual use.

Mr. Connors explained that the current use is better than the lodging house that was currently there, adding that it has improved the situation.

Some discussion was had regarding a sign on the property stating "rent by the week".

Mr. Joudrey added that the building will be completely up to code to meet the commercial requirements.

Ms. Dogger expressed concern that the only reason this application is taken place is because of the fire and that what is being presented at this meeting will not be what the end result will be. She expressed concern with the staircase being on the other property.

Mr. Joudrey explained that the Building Official has approved this.

Ms. Dogger asked if there will be a large grading difference when the new driveway is put in and asked if there will be a retaining wall put in.

Mr. Connors reviewed the slide and showed where most of the grade will take place. He explained that there are already some retaining walls in place and reviewed the area with greatest slope, explaining that there will be some shrubs placed there and that it will also be sodded.

A gentleman asked what assurances will be put in place that the building will stay as is. He addressed concern that if the property is not decent, with decent tenants, it will drop the property value to the abutting housing.

Mr. Joudrey explained that there is a clause in the development agreement that addresses the maintenance of the property. It is the responsibility of the Development Officer to ensure that it is upheld. He explained that if the property starts to deteriorate, to contact the Development Officer, and he/she would make a site visit.

Ms. Dogger asked if HRM had any long-term visions for Maynard Lake Park.

Councillor McCluskey explained that HRM owns lands around it except for one area.

Mr. Bernie Bulter, Dartmouth, asked where the application stands in the process of approval

Mr. Joudrey explained the next steps, explaining that staff had already held the review team meeting with Engineering, Development Services, Fire Protection Services and Halifax Water. Following this public information meeting, a staff report will be prepared and sent to Harbour East Community Council for a Public Hearing. He added that the draft development agreement will be placed online for the public to review, if there are any further questions, public is welcome to attend the Harbour East Community Council Meeting for more clarification and to express any further comments or concerns at that time. Following the Public Hearing, there will be a two week appeal period with the Utility and Review Board. He explained that Public Hearing notices will be sent out to those who had previously received notice of the Public Information Meeting and/or those who attended tonight's meeting who left their address.

Councillor McCluskey asked if staff will follow up on the concerns received by the public at tonight's meeting and incorporate comments into the staff report.

Mr. Joudrey explained that staff will identify things received from this meeting and speak with the property owner and consultant to negotiate what will be included within the contract (development agreement).

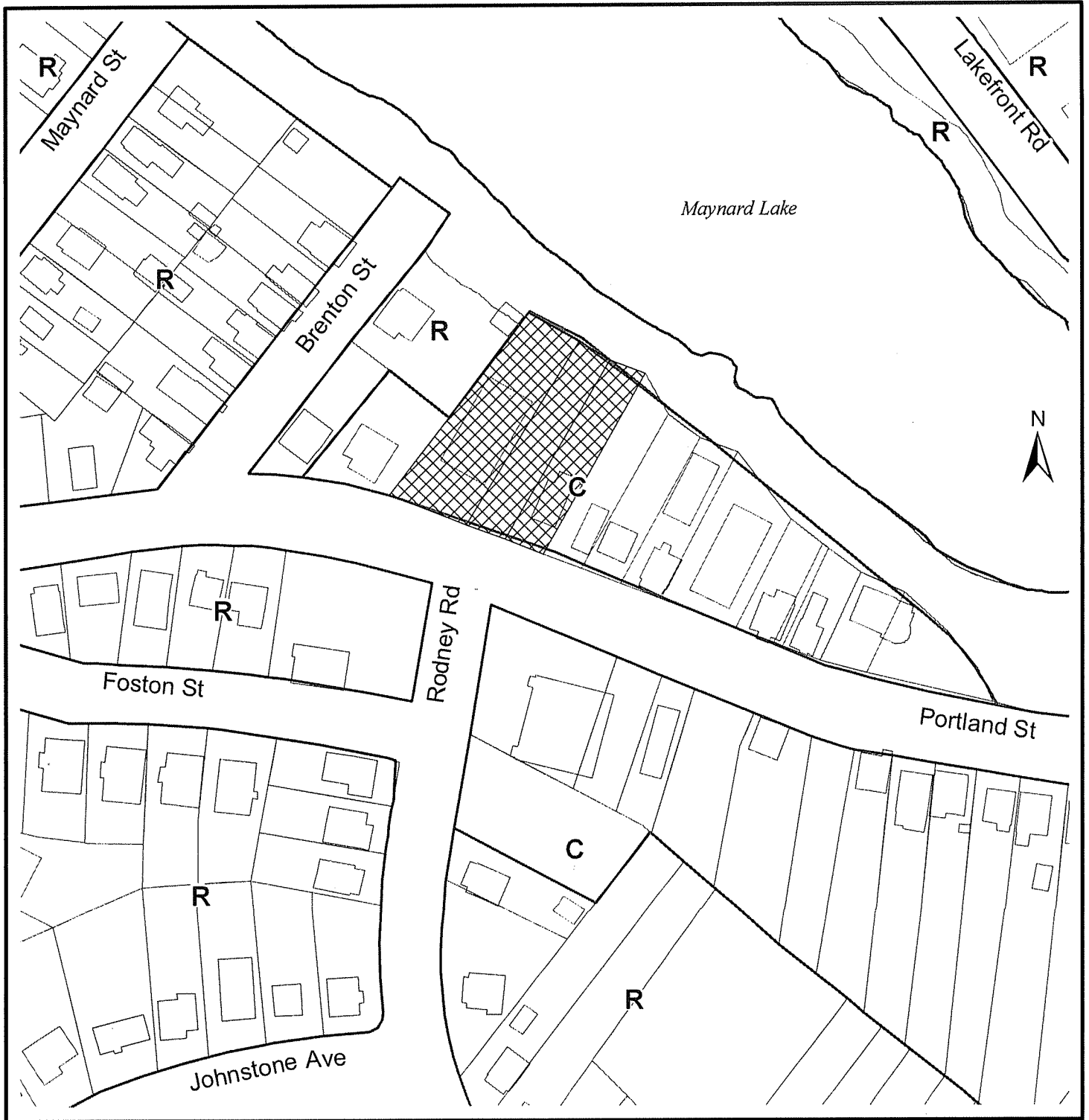
It was asked that the fence that has partially fallen down be fixed.

Closing Comments

Mr. Joudrey thanked everyone for attending. He encouraged anyone with further questions or comments to contact him.


Adjournment

The meeting adjourned at approximately 8:15 p.m.



Map 1 - Generalized Future Land Use

PIDs 00220863, 40878340, & 00220871


 Subject Property

Designation

R Residential
C Commercial

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

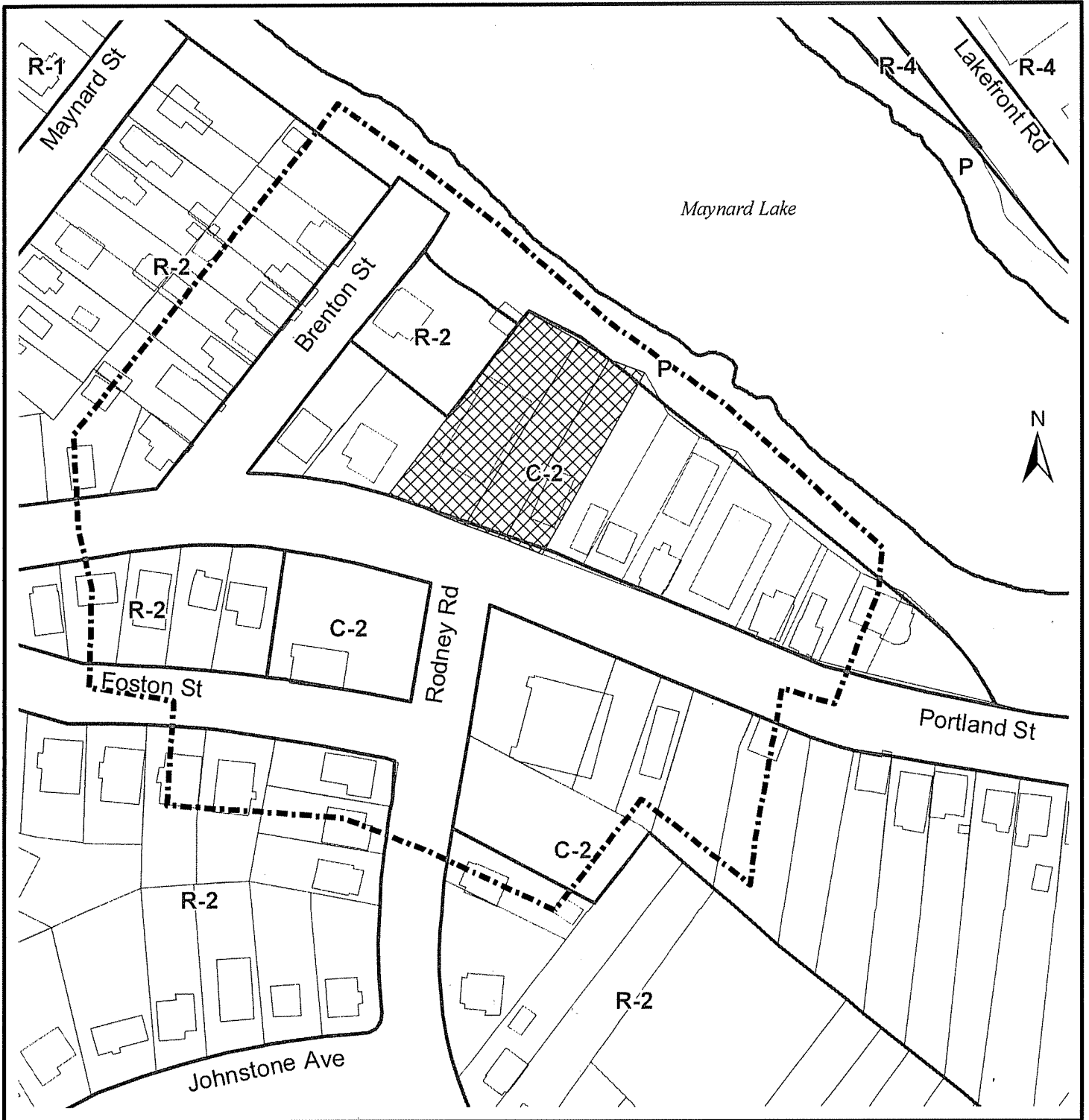
0 30 60 120 180 Feet



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Dartmouth Plan Area.



Dartmouth Plan Area

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



Map 2 - Zoning and Location

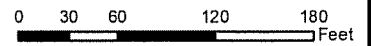
PIDs 00220863, 40878340, & 00220871

-  Subject Properties
-  Notification Area

Dartmouth Plan Area

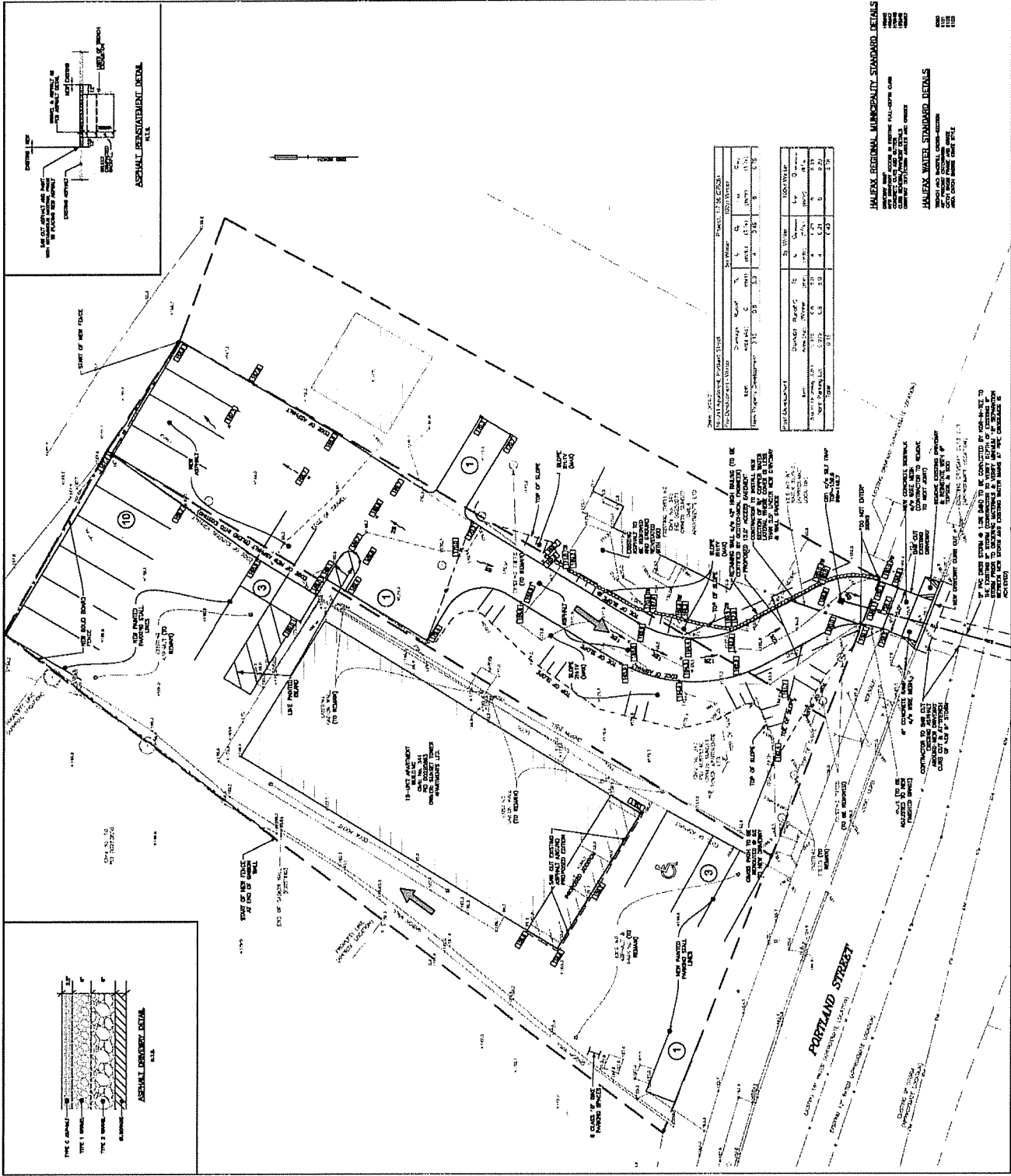
Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- R-4 Multiple Family Residential (High Density)
- C-2 General Business
- P Park



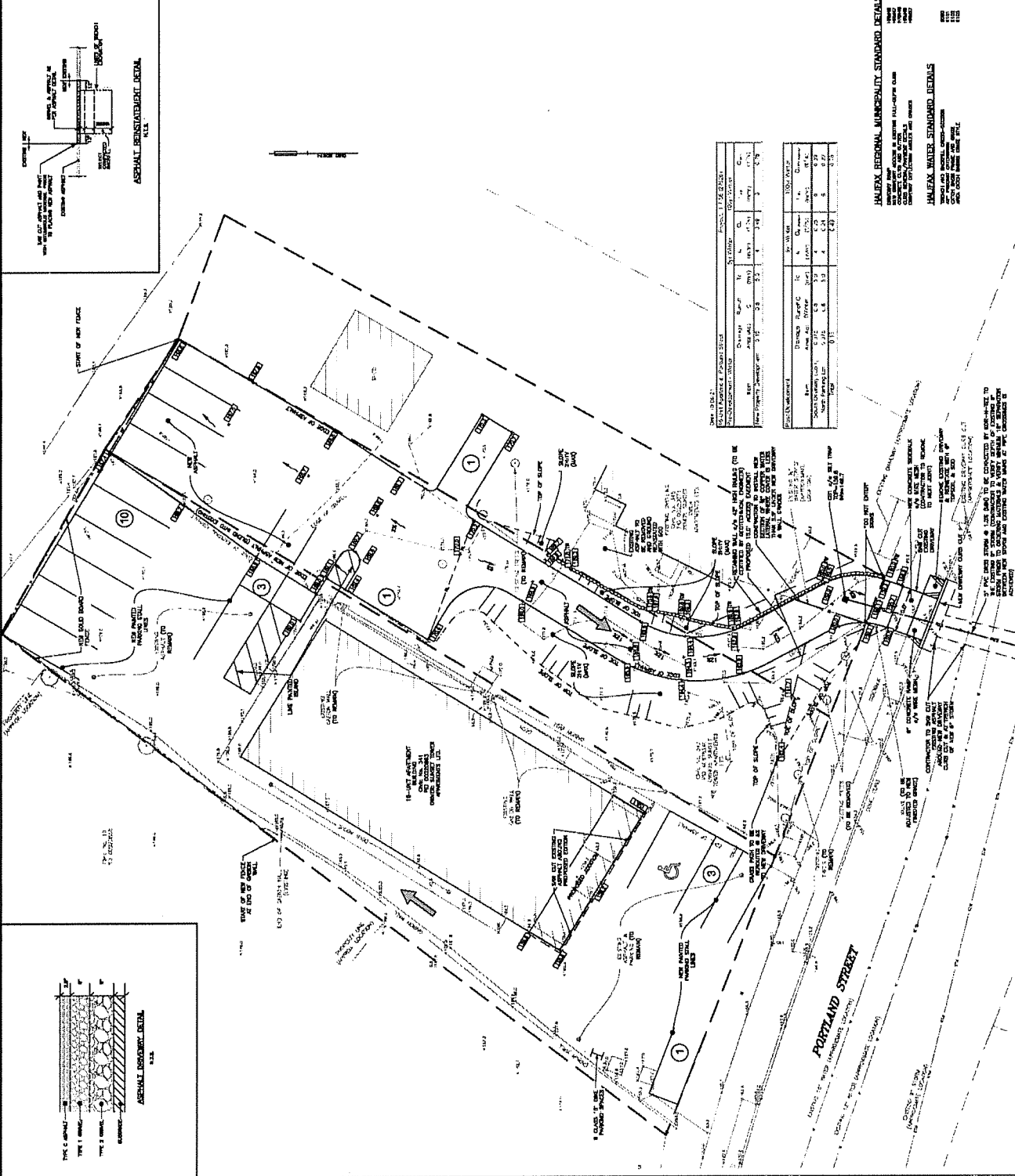
This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Dartmouth Plan Area

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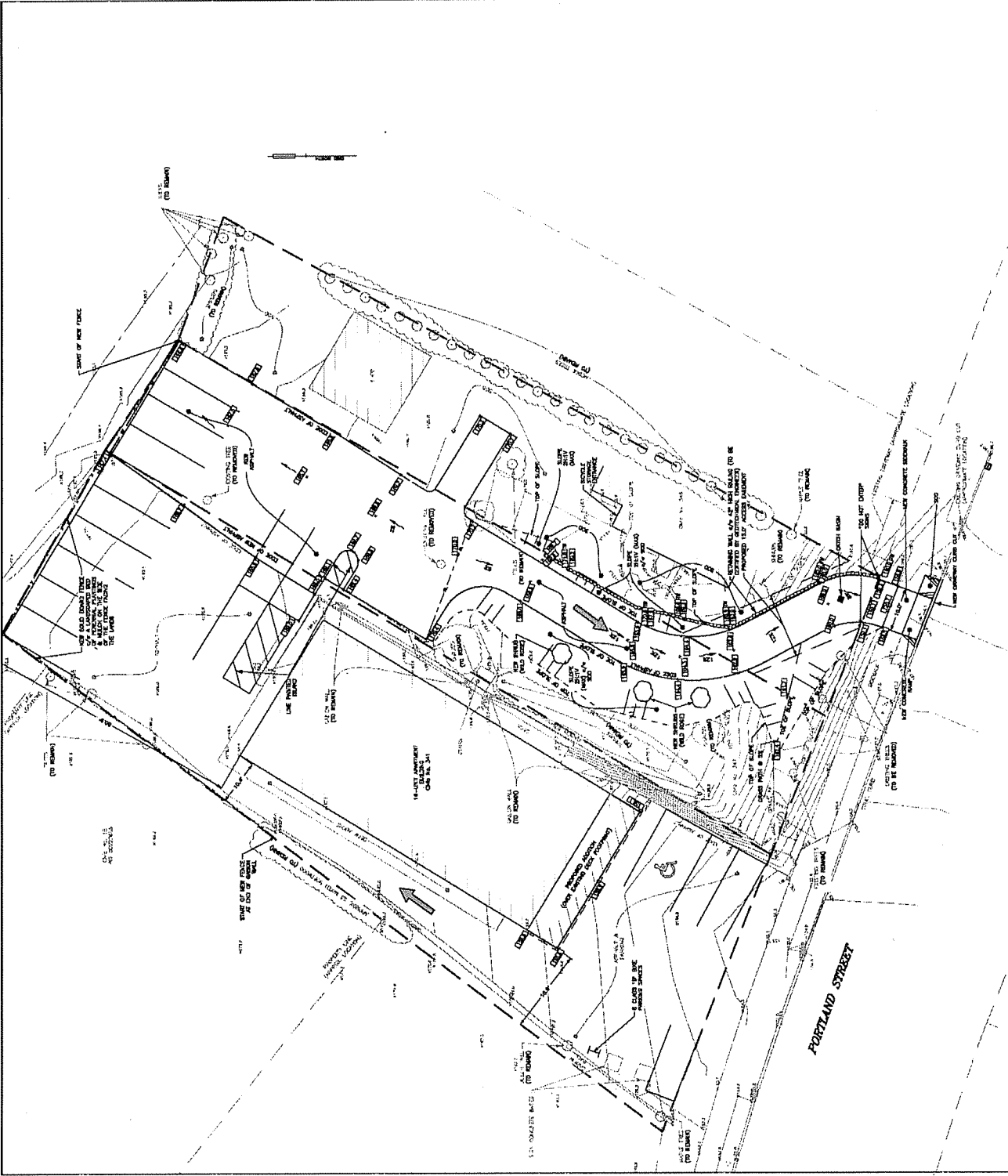


Map 3 Site Plan

HRM does not guarantee the accuracy of any base information.

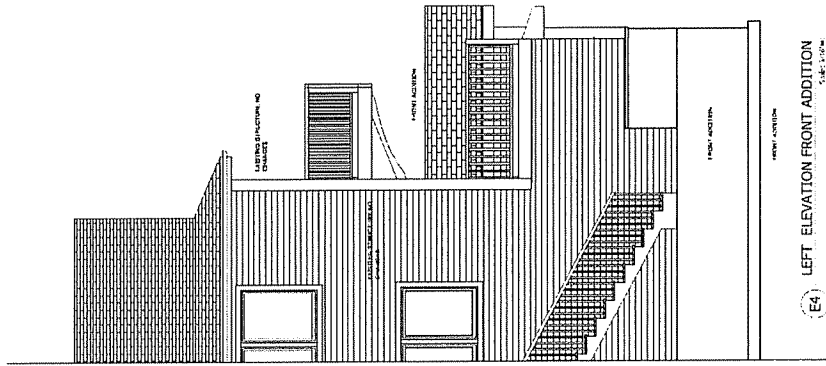


HRM does not guarantee the accuracy of any base information.

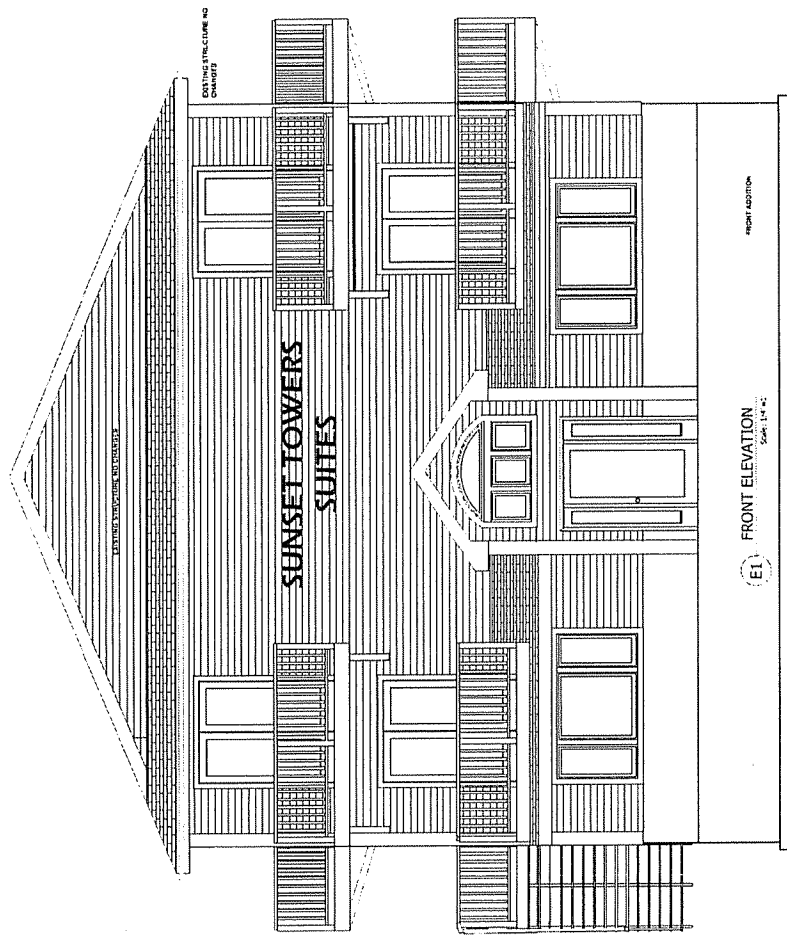


Schedule C Landscaping Plan

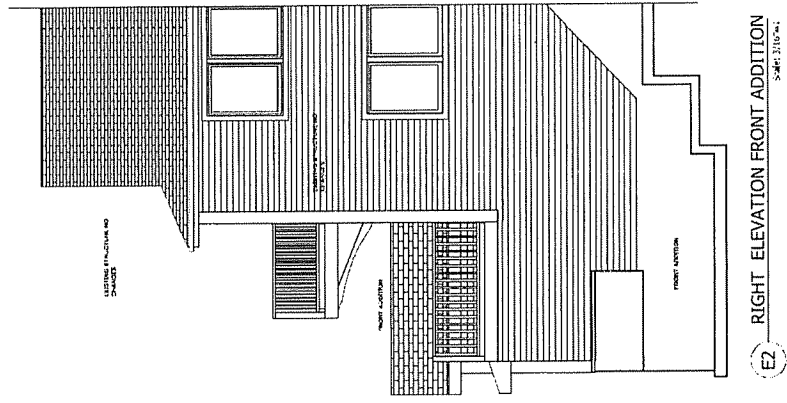
HRM does not guarantee the accuracy of any base information.



LEFT ELEVATION FRONT ADDITION
SHP: 2/10/11



FRONT ELEVATION
SHP: 2/10/11



RIGHT ELEVATION FRONT ADDITION
SHP: 2/10/11

Schedule D Front and Side Elevations

HRM does not guarantee the accuracy of any base information.

