

**Harbour East Community Council**  
**October 23, 2012**

**TO:** Chair and Members of Harbour East Community Council

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

**DATE:** October 15, 2012

**SUBJECT:** **Case 17224: MPS & LUB Amendments and Development Agreement  
for 1968 Shore Road, Eastern Passage**

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**SUPPLEMENTARY REPORT**

**ORIGIN**

- Application by Robert McCoombs
- September 11, 2012 Regional Council approval of amendments to the Eastern Passage/Cow Bay Municipal Planning Strategy (MPS) and Land Use By-law (LUB)

**RECOMMENDATION**

It is recommended that Harbour East Community Council:

1. Approve the proposed development agreement for 1968 Shore Road as contained in Attachment A of this report; and
2. Require the agreement be signed by the property owner within 240 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 September 11, 2012, Regional Council and Harbour East Community Council held a joint public hearing to consider amendments to the Eastern Passage/Cow Bay Municipal Planning Strategy (MPS) and Land Use By-law (LUB), as well as a proposed development agreement to permit the development of two unit dwellings by development agreement at 1968 Shore Road, Eastern Passage. Subsequent to the joint public hearing, Regional Council gave its approval to the amendments to the Eastern Passage/Cow Bay MPS and LUB. While the proposed development agreement was part of the public hearing process, it could not be approved by Community Council until the MPS and LUB amendments took effect.

The amendments have since been reviewed by the Provincial Department of Service Nova Scotia and Municipal Relations as per Section 223 of the *Halifax Regional Municipality Charter*. These amendments became effective on October 6, 2012.

Since the public hearing, staff received a request to extend the signing timeframe of the development agreement to accommodate a potential land sale by the applicant. The June staff report did not contemplate this situation. Typically, 120 days is allotted for the signing of a development agreement, however, in this instance 240 days is now being requested. To date, no land transactions have been initiated but, to ensure that any property transfer occurring within the signing timeframe is completed prior to the development agreement being executed, an extension of 120 days (for a total 240 days) is recommended.

As noted in the June 12, 2012 report, staff was to bring the matter back to Harbour East Community Council for a decision on the proposed development agreement once the MPS and LUB amendments took effect. It is now appropriate for Community Council to consider the attached proposed development agreement.

### **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 2012/13 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**

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 February 1, 2012 (see Attachment E of June 12, 2012 staff report for minutes) and a Joint Public Hearing with Regional Council and Harbour East Community Council on September 11, 2012. Notices of the Public Information Meeting and Joint Public Hearing were posted on the HRM Website, in the newspaper and mailed to property owners within the Notification Area as shown on Map 2 of the June 12, 2012 staff report.

The proposed development agreement will potentially impact local residents and property owners on Chater Street, Peter Street and adjacent residential uses.

## **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 application and the need to hold a second public hearing.
3. Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended, for the reasons stated in the June 12, 2012 staff report.

## **ATTACHMENTS**

Attachment A          Proposed Development Agreement

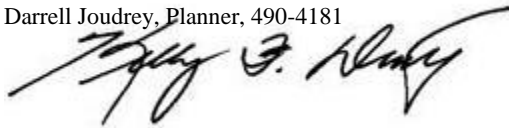
Available upon request

Staff Report for Case 17224 dated June 12, 2012

[www.halifax.ca/commcoun/hecc/documents/Case172241948ShoreRoadEasternPassage.pdf](http://www.halifax.ca/commcoun/hecc/documents/Case172241948ShoreRoadEasternPassage.pdf)

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, 490-4181



Report Approved by: 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]**, 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 1948 Shore Road, Eastern Passage 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 permit the development of two unit dwellings on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies UR-7(a) and IM-11 of the Eastern Passage Municipal Planning Strategy;

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 17224;

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 and 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 17224:

Schedule A    Legal Description of the Lands  
Schedule B    Concept Plan

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

3.2.1 Prior to the issuance of any municipal Permits, the Developer shall complete the subdivision of the Lands, as shown on Schedule B, to create 5 new lots.

3.2.2 Prior to the issuance of the first Occupancy Permit the Developer shall provide the necessary inspections and acceptance of work completed, including but not limited to:

- (a) Certification from a Professional Engineer indicating that the Developer has complied with the Erosion and Sedimentation Control Plan required pursuant to Section 5.1 of this Agreement.
- 3.2.3 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 residential dwellings, generally located on the lots shown on Schedule B, comprised of the following:
  - (a) The creation of a maximum of 5 new lots which may be subdivided to place each semi-detached dwelling unit on its own lot;
  - (b) A walkway connecting Shore Road to proposed cul-de-sac on Chater Street, as generally shown on Schedule B; and
  - (c) All uses permitted under the R-2 Zone.

### **3.4 Land Use Requirements**

All buildings and structures, including associated elements shall meet the requirements of the Eastern Passage/Cow Bay Land Use By-law.

### **3.5 Parking**

- 3.5.1 The surface parking area shall be hard surfaced with asphalt, concrete or concrete pavers and shall be defined by landscaping or curb.

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

- 4.1 All design and construction of primary and secondary service systems shall satisfy Municipal Design Guidelines unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.
- 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.



- 4.3 All secondary or primary (as applicable) electrical, telephone and cable service to the building shall be underground installation.

## **PART 5: ENVIRONMENTAL PROTECTION MEASURES**

- 5.1 Prior to the commencement of any onsite works on the Lands, a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer shall be submitted to the Municipality. The plans shall comply with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented.
- 5.2 No Occupancy Permit shall be issued unless a Professional Engineer certifies that the entire lot is stabilized in accordance with all applicable standards and regulations of the Province of Nova Scotia and with the terms of this Agreement. Any temporary stabilization of the Lands shall be replaced with final landscaping within six (6) months of the issuance of the Occupancy Permit. The owner of the Lands shall be responsible for ensuring that any temporary stabilization materials are replaced and/or maintained on an as-required basis to ensure that exposed soil is adequately stabilized at all times.
- 5.3 If the Developer fails at any time during any site work or construction to fully conform to the requirements set out under Part 5 of this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Officer, in consultation with the Development Engineer, to ensure compliance with the environmental protection plans.

## **PART 6: AMENDMENTS**

### **6.1 Non-Substantive Amendments**

The following items are considered by both parties to be non-substantive and may be amended by resolution of Council.

- (a) The granting of an extension to the date of commencement of construction as identified in Section 7.3 of this Agreement; and
- (b) The length of time for the completion of the development as identified in Section 7.5 of this Agreement.

## **6.2 Substantive Amendments**

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

## **PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **7.1 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.

### **7.2 Subsequent Owners**

7.2.1 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.

7.2.2 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).

### **7.3 Commencement of Development**

7.3.1 In the event that development on the Lands has not commenced within 1 year 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.

7.3.2 For the purpose of this section, commencement of development shall mean the execution of the subdivision agreement for the installation of the primary and secondary services required to service the subdivision.

7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1 if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

### **7.4 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 Downtown Dartmouth as may be amended from time to time.

### **7.5 Discharge of Agreement**

If the Developer fails to complete the development after 3 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 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **8.1 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.

### **8.2 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 \_\_\_\_\_, 20\_\_\_\_.

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

**(Insert Registered Owner Name)**

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:

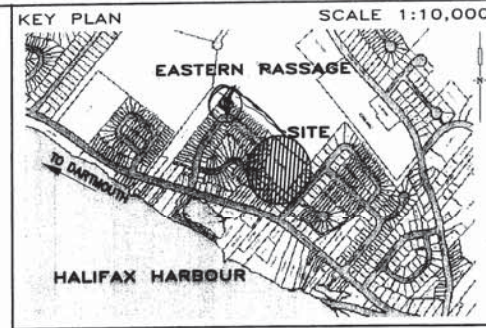
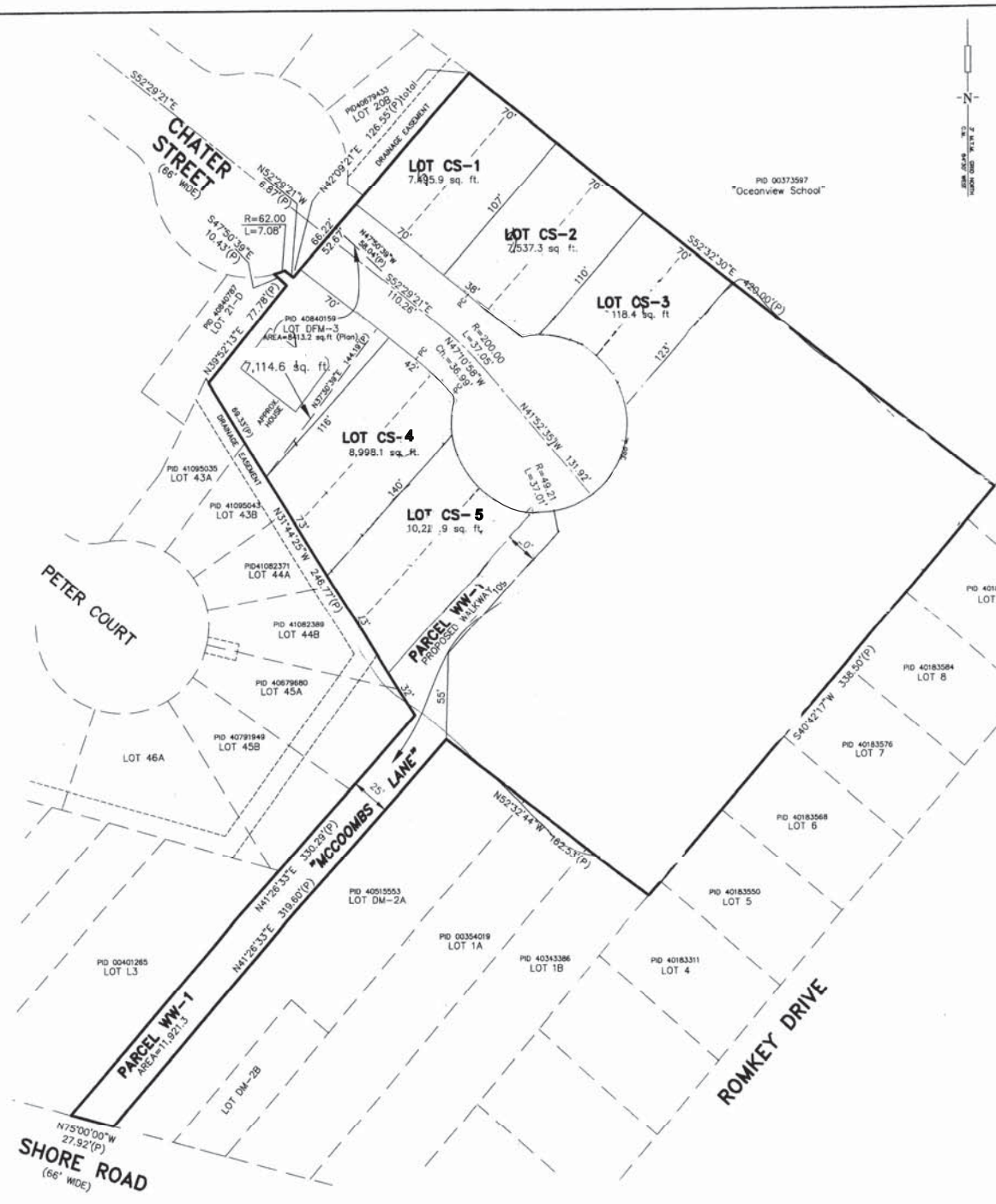
**HALIFAX REGIONAL  
MUNICIPALITY**

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

Mayor

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

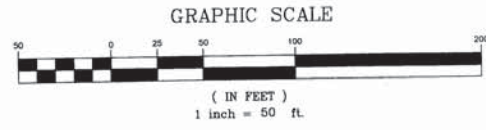
Municipal Clerk



**NOTES:**  
 TOTAL AREA OF PARENT PARCELS= 149,185 sq.ft  
 TOTAL ROAD AREA= 21,256.5 sq.ft  
 TOTAL LOT AREA= 115,987 sq.ft  
 WALKWAY AREA= 11,921 sq.ft

Case 17224  
 Schedule B

PROPOSED SUBDIVISION & CONSOLIDATION OF  
 PID # 40840159, LANDS OF ROBERT DOUGLAS  
 MCCOOMB'S  
 & PID #00400960, LANDS OF ROBERT  
 DOUGLAS MCCOOMB'S & FLORENCE AUBREY  
 MCCOOMB'S  
 CHATER STREET & SHORE ROAD  
 EASTERN PASSAGE, HALIFAX COUNTY, N.S.



DATE: 3 SEPTEMBER 2010