

North West Community Council
April 23, 2009

TO: Chair and Members of North West Community Council

SUBMITTED BY:


Paul Dunphy, Director of Community Development

DATE: April 13, 2009

SUBJECT: Case 01226: Amending Agreements - Bedford South

SUPPLEMENTARY REPORT

ORIGIN

- An application by Clayton Developments Ltd. for non-substantive and substantive amendments to the development agreement for Neighbourhood B of Bedford South (Case 00624) as it relates to a specific commercial property located at the corner of Southgate Drive and Larry Uteck Boulevard.
- On March 26, 2009 North West Community Council (NWCC) approved the proposed non-substantive amendments and held a Public Hearing regarding the proposed substantive amendments. However, because the substantive amendments are contingent upon approval of the non-substantive matters, Council could not make a decision on the substantive matters until the appeal period for the non-substantive matters expired.
- On April 13, 2009 the appeal period for the non-substantive amendments expired and Council is now in a position to consider the proposed development agreement for substantive matters, as set out in Attachment A of this report.

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve the proposed amending development agreement set out in Attachment A of this report; and
2. Require the agreement be signed and delivered within 120 days, or any extension thereof granted by North West Community Council on request of the applicant, from the date of final approval of said agreement by North West Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND/DISCUSSION

The subject property is located at the corner of Larry Uteck Boulevard and Southgate Drive in Bedford South (Map 1). Clayton Developments Ltd. proposed both non-substantive and substantive amendments to the existing development agreement. On March 26, 2009 NWCC approved the following non-substantive amendments by resolution:

Proposed Non-Substantive Amendments

- Changes to the siting and location of buildings; and
- Enhanced landscaping and site design requirements.

Council also held a Public Hearing for the following proposed substantive amendments:

Proposed Substantive Amendments

- Changes to the signage requirements to permit the general commercial signage provisions for Bedford;
- Permit drive-in and take out restaurants; and
- A reduced parking requirement for drive-in and take-out restaurants.

Council's approval of the non-substantive amendments became effective on April 13, 2009 following the expiration of the 14 day appeal period required pursuant to the *Halifax Regional Municipality Charter*. Council is now in a position to make a decision on the proposed substantive amendments, as set out in Attachment A and illustrated on Map 3.

Conclusion

Staff are of the opinion that the proposed amending development agreement is consistent with the intent of the MPS for development of Community Commercial sites within Bedford South. Staff recommend that NWCC approve the proposed amending development agreement as set out in Attachment A of 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 approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

1. Council may choose to approve the proposed amending 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 amending 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 amending development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff are satisfied that the proposed development agreement is consistent with the policies and intent of the MPS.

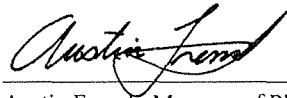
ATTACHMENTS

Map 1	Generalized Future Land Use Map
Map 2	Zoning and Notification Map
Map 3	Concept Plan
Attachment A	Proposed Development Agreement
Attachment B	MPS Policies
Attachment C	Public Information Meeting Minutes

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 : Joseph Driscoll, Senior Planner, 490-3991

Report Approved by:



Austin French, Manager of Planning Services, 490-6717



Map 1
Generalized Future Land Use



Subject Property



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Community Development
Planning Services

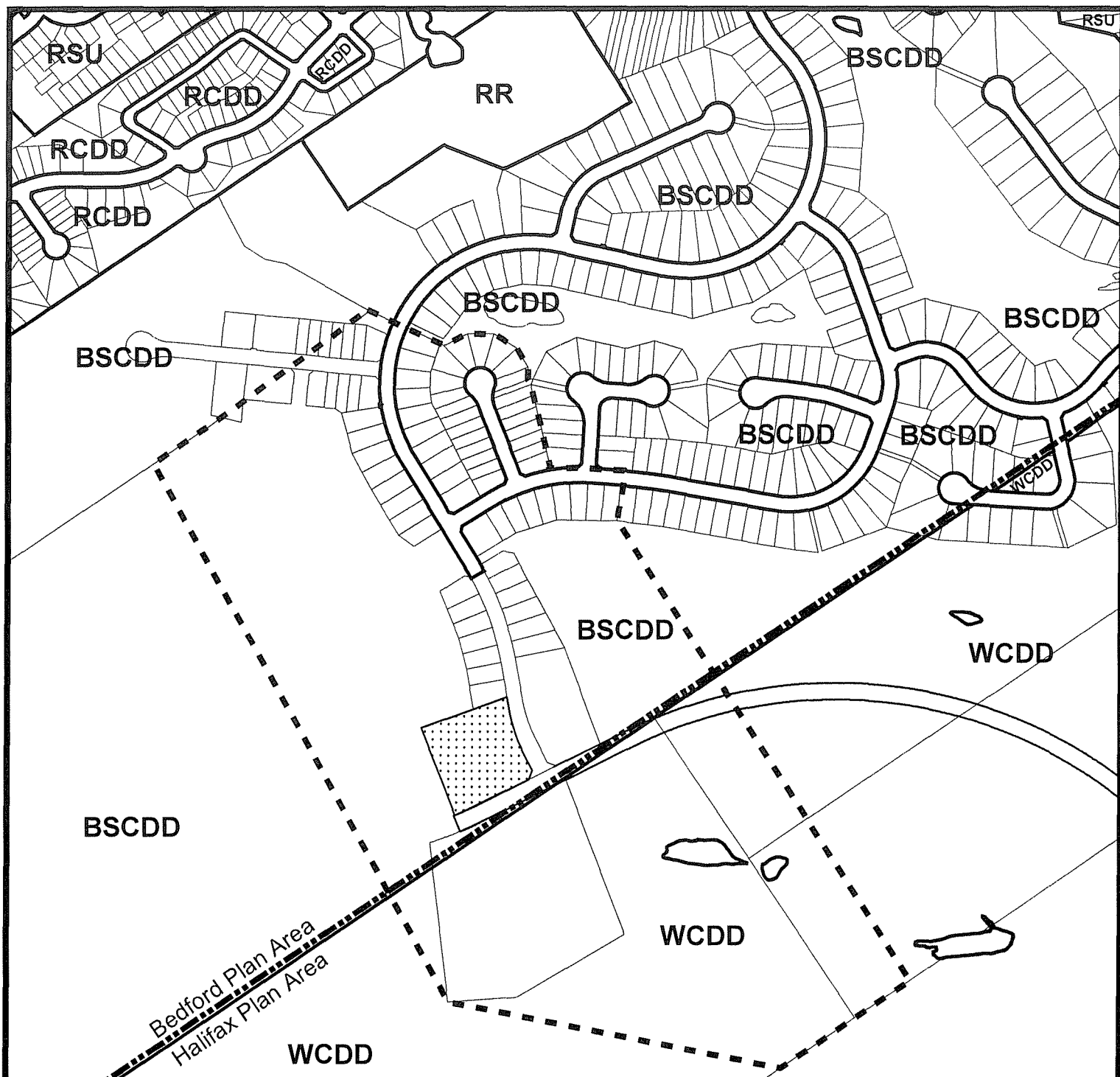
Bedford Plan Area Designations

R	Residential Designation
RR	Residential Reserve Designation
RCDD	Residential Comprehensive Development District
BSSPS	Bedford South Secondary Planning Strategy

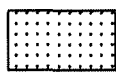
Halifax Plan Area Designations

WCDD	Wentworth Comprehensive Development District
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Map 2 Zoning



Subject Property



Notification Area



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Planning Services

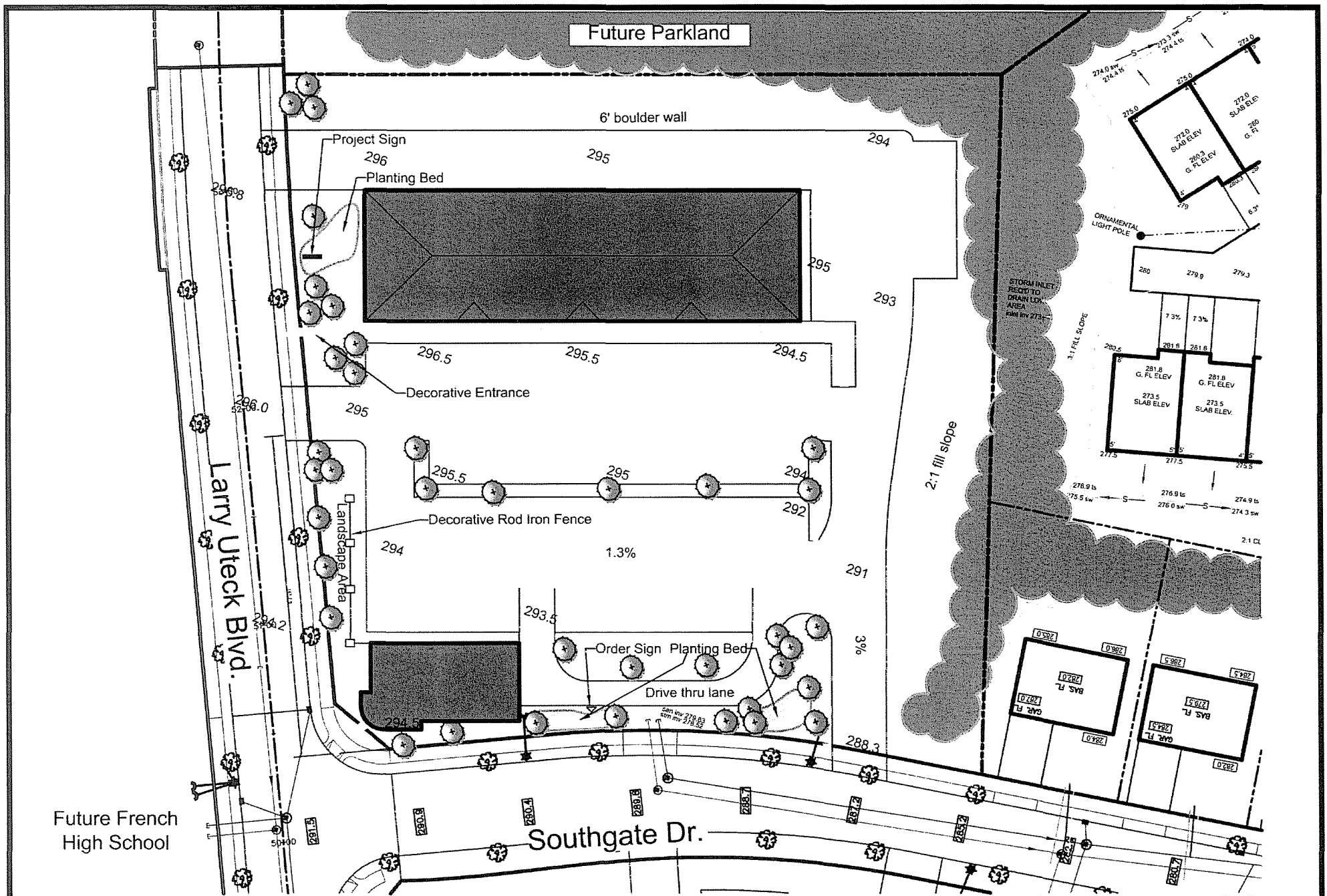
Bedford Plan Area Zones

RSU Single Dwelling Unit Zone
RR Residential Reserve Zone
RCDD Residential Comprehensive Development District
BSCDD Bedford South Comprehensive Development District

Halifax Plan Area Zones

WCDD Wentworth Comprehensive Development District





Map 3
Concept Plan - Substantive Amendments

Attachment A: Proposed Amending Development Agreement

THIS AMENDING AGREEMENT made this day of , 2009,

BETWEEN:

CLAYTON DEVELOPMENTS LTD.

a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at the corner of Larry Uteck Boulevard and Southgate Drive, PID 41278656, Bedford and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the North West Community Council and the Chebucto Community Council of the Halifax Regional Municipality approved an application by the Developer to enter into a Development Agreement to allow for commercial or institutional development on the Lands, which said Development Agreement was registered at the Land Registry Office in Halifax as Document Number 88868600 and referenced as Municipal Case Number 00624 (hereinafter called the "Existing Agreement");

AND WHEREAS the North West Community Council approved a non-substantive amendment to the Existing Agreement on January 22, 2009, referenced as Municipal Case Number 01223, to permit construction of 136 dwelling units within 2 multi-unit buildings prior to the construction of the interchange at Highway 102 and its connection to Larry Uteck Boulevard, said agreement being recorded at the Land Registry Office in Halifax as Document Number **[Insert Document Number when available]** and referenced as Municipal Case Number 01223 (hereinafter called the "First Amending Agreement");

AND WHEREAS the North West Community Council approved a non-substantive amendment to the Existing Agreement on March 26, 2009 referenced as Municipal Case Number 01226, to permit changes to the siting and location of buildings and to establish specifications for landscaping, said agreement being recorded at the land Registry Office in Halifax as Document Number **[Insert Document Number when Available]** referenced as Municipal Case Number 01226 (hereinafter called the "Second Amending Agreement");

AND WHEREAS the Developer has requested a substantive amendment to the provisions of the Existing Agreement to enable drive-in and take-out restaurants, reduce the parking requirement for a drive-in or take-out restaurant, and revise the signage provisions;

AND WHEREAS the North West Community Council for the Municipality approved this request at a meeting held on [INSERT-Date], referenced as Municipal Case Number 01226;

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

1. The Existing Agreement shall be amended such that the Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conform with the Schedules attached to this amending Agreement and the plans filed in the Halifax Regional Municipality as Case Number 01226.

The schedules are:

Schedule A: Legal Description of the Lands

Schedule B: Concept Plan

2. Drive-In and Take-Out restaurants shall be permitted on the Lands provided the following conditions are met in the opinion of the Development Officer:
 - (a) Prior to the issuance of any permit to enable development or construction of a drive-in restaurant, the Developer shall submit a plan and written analysis, prepared by a Professional Engineer, certifying that the length and design of the proposed drive-in lane will be sufficient to ensure no negative impact on or interference with any public street as well as reasonably ensure no negative impact on the parking area on the Lands;
 - (b) No drive-in restaurant shall be permitted on the Lands unless the plan and analysis referenced in clause 2 (a) has been reviewed and approved by the Development Engineer; and
 - (c) The plan and analysis identified in clause 2 (a) of this Agreement shall include a description of the assumptions and methodology used in its preparation.
3. The parking requirement for one (1) drive-in or take out restaurant on the Lands shall be 8 parking spaces per 1000 square feet of floor area. For any additional drive-in or take-out restaurant on the Lands, the applicable parking requirement set out in the LUB shall apply.

Notwithstanding the above, the Development Officer, in consultation with the Development Engineer, may authorize a reduced parking standard as low as 8 parking spaces per 1000 square feet of floor area for an additional drive-in or take-out restaurant(s) provided that the Developer submits a parking plan and analysis, prepared by a Professional Engineer. The plan shall indicate that the proposed parking area is sufficient to serve the restaurant and will have no negative impact on any public street. The submission shall include a description of any assumptions and methodology used in its preparation.

4. Prior to receiving any authorization, permits or approvals to construct the proposed vehicular entrance on Larry Uteck Boulevard located closest to the intersection with Southgate Drive, the Developer shall have a Professional Engineer prepare an analysis that identifies any negative impact on the road network and the intersection of Larry Uteck Boulevard and Southgate Drive that would result from the proposed access. The analysis shall include a description of the assumptions and methodology used to reach any conclusions and shall identify the need for directional or access/egress controls (such as "right-out" only for example) if applicable. The analysis shall be submitted for the review of the Development Engineer and no construction for this proposed access shall be permitted unless approved by the Development Engineer.
5. Signage shall conform with the general requirements of the Land Use By-law.
6. Except where specifically identified herein, all other requirements of the Existing Agreement and all previous amending agreements shall remain in effect.

WITNESS that this Amending Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2009.

SIGNED, SEALED AND DELIVERED) **CLAYTON DEVELOPMENTS LTD.**
in the presence of)
per _____) per: _____

)
)
per _____) per: _____

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

per _____) per: _____
MAYOR

)
per _____) per: _____
MUNICIPAL CLERK

Attachment B: Excerpts from the Bedford MPS

Policy MCP-1:

The Community Concept Plan, presented as Schedule I, shall form the framework for land use allocation within the master plan area and all policies and actions taken by the Municipality shall conform with the intent of this plan. A comprehensive development district zone shall be applied to all lands within the master plan area and any development of the land shall be subject to approval of a development agreement.

Policy CCI-1:

A range of community commercial, institutional, and recreational uses may be permitted within the Community Commercial/Institutional Designation subject to consideration of the following matters:

- no parking or loading areas are located between a public street and a building and any buildings with commercial occupancies shall be located in close proximity to the street line;
- parking areas are designed so as not to appear obtrusive from a public street or dominate the streetscape, provide safe and convenient pedestrian access to the buildings they are intended to serve;
- provisions are made for the storage of bicycles;
- exterior materials, street furniture; trees, lighting and landscaping measures are incorporated in buildings to foster an interesting and secure environment;
- the windows, exterior features and materials and signs employed in any building create a sense of interest from public streets;
- no building height exceeds six stories in height and no residential uses are permitted on the ground floor of any building within fifty (50) feet of a public street;
- the proposal conforms with all applicable provisions and requirements adopted under this Secondary Planning Strategy regarding environmental protection, the community transportation system and municipal services.

Attachment C: Public Information Meeting Minutes

**HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 01226 - Neighbourhood B, Bedford South**

7:00 p.m.

Monday, January 12, 2009

Basinview Drive Community Elementary School

STAFF IN

ATTENDANCE: Joseph Driscoll, Planner, HRM Planning Services
Kurt Pyle, Supervisor, HRM Planning Services
Alden Thurston, Planning Technician, HRM Planning Services
Cara McFarlane, Planning Controller, HRM Planning Services

ALSO IN

ATTENDANCE: Councillor Tim Outhit, District 21
Kevin Neatt, Clayton Developments Limited
Peter Greenwood, Clayton Developments Limited

PUBLIC IN

ATTENDANCE: Approximately 15

The meeting commenced at approximately 7:03 p.m.

1. Opening Remarks/Introductions/Purpose of Meeting - Joseph Driscoll

Mr. Driscoll introduced himself as the Planner taking the application through the planning process; Councillor Tim Outhit, District 21; Kevin Neatt, Clayton Developments Limited; and Kurt Pyle, Alden Thurston and Cara McFarlane, HRM Planning Services.

The agenda and purpose of the meeting were reviewed.

2. Overview of Planning Process

This is an application to amend an existing development agreement for Neighbourhood B of Bedford South.

3. Presentation of Proposal - Joseph Driscoll

A context map of the greater Bedford South area was shown. This represents existing as well as future development.

Some of this development, especially off of Southgate Drive, is currently constructed. Some of the other development coming up from Larry Uteck Boulevard has not been built.

The subject property (shown on map) is directly at the corner of Southgate Drive and Larry Uteck Boulevard (commercial site) and located directly across Larry Uteck Boulevard from the future

french high school, adjacent to a future HRM owned park and some residential development located on Southgate Drive.

The property is approximately 2.2 acres and approved as a commercial site under the existing development agreement for Neighborhood B which predominately is a neighbourhood of future multi-unit buildings. There are also a couple of commercial sites and a school site. At the corner of Southgate Drive and Larry Uteck Boulevard, council designated those lands as prime spots for Community Commercial and Institutional development.

One resident asked if there will be a set of lights at that intersection to which Mr. Driscoll said it would be a signalized intersection.

In the case of Bedford South, any type of land use has to proceed by development agreement and be approved by council.

Mr. Driscoll defined a development agreement and explained the public process. There is an existing development agreement on the site and Clayton Developments is proposing to make some changes which require the approval of council.

The subject site and surrounding areas are designated Community Commercial and Institutional with the intent of permitting a wide range of commercial and institutional uses in a strategic location in this future community.

The intent of this designation is to provide an environment that is friendly to pedestrians. It has smaller community scale commercial uses. The buildings are to be located closer to the street than a traditional commercial site and parking should not appear obtrusive from the street. This can be accomplished through site design features. The site design should foster an interesting and secure environment.

The existing development agreement permits a number of commercial uses including full-service restaurants. There are landscaping requirements as set out in the Land Use By-law. There are provisions regarding parking, lighting around the site and building design.

The existing site plan approved under the existing development agreement was shown on the screen (the corner of Southgate Drive and Larry Uteck Boulevard). There is a commercial building parallel to the corner and some landscaping detail in the front yards between the building and street with most of the parking in the rear. The development agreement does not place specific limits on the size of the building. It indicates that the commercial building can be up to 50% of the lot coverage and be as high as three floors.

An overview of the amendments to the development agreement was shown. The developer would like to be able to permit takeout and drive-thru functions in a restaurant that may be built on the site and reduce the parking requirement. The policies are striving for a pedestrian feel; therefore, staff believes the reduction in parking can be considered. This is a location in close proximity to a future municipal trail system. There are well over 1,000 units within walking distance of the site. The developer is also looking to change the layout and location of the buildings. To establish more stringent details for landscaping, site design, and walkways. The existing development agreement

does not prescribe detailed controls on those features. Also proposed are non-substantive (relatively minor) and substantive amendments to the existing development agreement.

A preliminary site plan prepared by Clayton Developments was shown. A 2,600 square foot building is located directly at the corner (the building intended to house a future restaurant) with a 12,000 square foot building located at the back of the site. Both one storey buildings. There is more detailed landscaping: location of planting beds and some additional trees around the site. The idea of the trees is to make it more natural looking but not take away from the safety factor. The potential drive-thru area was shown. There is a decorative wrought iron fence proposed adjacent to Larry Uteck Boulevard. There are pedestrian connections proposed across the site from Southgate Drive and Larry Uteck Boulevard.

Presentation of Proposal - Kevin Neatt, Clayton Developments Limited

There are 3,800 people in Neighbourhoods A and C. Having a community commercial use on the corner will eliminate traffic trips for daily convenience needs. The corner building could be a coffee shop, bank or something similar with a drive-thru for example which increase the safety and convenience of some residents. It is meant for people to be able to walk to the site and focus on the pedestrian movement within the commercial area and to avoid the sea of parking. There are a few things the developer needs in order to make this happen. A takeout restaurant is being proposed as well as a different layout. Some of the benefits with this new layout would be the pedestrian access, decorative fencing, focus on landscaping, and maintaining more trees and green next to the residential sites.

3. Questions/Comments

Ross Landers, Haystead Ridge, asked what is across the street on Southgate Drive. Mr. Driscoll said there is another commercial building under the existing development agreement and the rest are multi-unit dwellings.

Mr. Landers asked how the number of cars going through the drive-thru would be controlled. Mr. Neatt said upon the time of building permits, the developer would submit a traffic impact study and an engineer would sign off on the cue line depending on what type of business.

Mr. Landers is concerned about the audio issue with automated ordering systems. Mr. Driscoll mentioned that the developer would like to maintain a lot of trees to create a buffer which would keep the noise down. Mr. Landers suggested putting the drive-thru at the back of the property. Mr. Neatt mentioned that the drive-thru is a fair distance away from residential units. With the layout and maintaining some trees will help alleviate the noise. There is also an elevation difference which will help.

Mr. Landers asked if there is a limit on permitted uses for the bigger buildings. Mr. Driscoll read the list of permitted uses from the existing development agreement.

Davena Davis, Fernleigh Park, has attended a couple of meetings about Larry Uteck Boulevard regarding the traffic circles just above the proposed site plan and a future school site across the street. These changes will create a lot of traffic and potential problems. Are there going to be sidewalks on both sides? Mr. Driscoll mentioned that the advantage of having commercial development amongst residential is that in some ways it actually cuts down on car trips. The streets are designed for a

certain amount of cars in the run of a day. The engineers will review the plan to make sure that anything being proposed is within the realm of what was envisioned and approved by council under the existing agreement; therefore, there shouldn't be much of an increase in traffic due to the amendments. There are a couple of entrances proposed and the locations would have to be approved by traffic services. Mr. Driscoll said there will be sidewalks on both sides of Larry Uteck Boulevard.

Mr. Landers asked about the reduction of parking spots from the original development agreement. Mr. Driscoll explained that the applicant is proposing to reduce the parking standard to eight spaces per 1,000 square feet for the restaurant only. This may give the opportunity for more sidewalks and landscaping on the site as it is intended to be pedestrian friendly. The parking standard for everything else would remain the same. Under the original development agreement the total parking spaces would be a ratio based on the building's square footage.

Mr. Landers asked if different configurations for the drive-thru were entertained. Mr. Neatt said the applicant spent several hours looking at different configurations and layouts but the topography worked against them. Mr. Landers mentioned that it would not be ideal for cars from the drive-thru to be out on the street or filling up the parking lot. Also, the noise has to be properly addressed as it is out of character with the community. Mr. Driscoll mentioned that the site was always intended for commercial use so some degree of noise would occur in any case.

Justin Smith, Haystead Ridge, asked when this development could start if it is approved. Mr. Driscoll said that the decision of council would be some time later in the Spring. Mr. Neatt said the earliest for ground breaking would be the Fall. The developer may want to wait until Larry Uteck Boulevard is built through to the future interchange. Mr. Landers asked about the interchange. Councillor Outhit said there was announcement just before Christmas and it should be complete late 2010. Mr. Driscoll said as Bedford South has been developing, HRM has been building a fund from charges that Clayton Developments has been paying per lot. Combined with the Provincial and Federal governments funding, the interchange is ready to begin.

Mr. Landers mentioned that the site across Southgate Drive is approved for commercial as well. He would object to another drive-thru on that site. Mr. Driscoll indicated that if the applicant were to go that route, another application would have to be submitted, another public process held and the application would have to be approved by council.

Ms. Davis is concerned the development will be very peace meal. She would like to see some integrated controls on what is being developed so a balance will be created. Mr. Driscoll mentioned that this site across the street will still be governed by the existing agreement. Mr. Landers can visualize the same thing happening across the street. Mr. Driscoll said that staff has to review the application based on planning documents already approved by council. Mr. Neatt mentioned that Clayton Developments deals with a lot of the quality control on their own. There is a certain level of expectation that will be withheld throughout the project. Mr. Driscoll mentioned that there has been a large amount of public consultation that has gone into Bedford South long before this stage so it is a comprehensively planned community. Inevitably, with a development this size there will be proposed changes that will come up in time.

4. Closing Comments

Mr. Driscoll thanked everyone for coming to the meeting to share their comments and concerns.

5. Adjournment

The meeting adjourned at approximately 7:58 p.m.