

Peninsula Community Council
February 8, 2010

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY:


Paul Dunphy, Director, Community Development

DATE: January 20, 2010

SUBJECT: **Case 01248: Amendments to the Halifax Municipal Planning Strategy
/ Development Agreement, Cedar Street In-fill, Halifax**

ORIGIN

- Application by M & Buddy Company Limited
- Initiation of Municipal Planning Strategy amendments by Regional Council, April 28, 2009

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Move Notice of Motion to consider approval of the proposed Development Agreement contained in Attachment A to allow for a development comprised of a two unit dwelling, a townhouse style residential dwelling, and a parking lot for surrounding residents, and schedule a joint public hearing with Regional Council.
2. Recommend that Regional Council give First Reading to the proposed amendments to the Halifax Municipal Planning Strategy as contained in Attachment B and schedule a joint public hearing with Peninsula Community Council.
3. Recommend that Regional approve the proposed amendments to the Halifax Municipal Planning Strategy as contained in Attachment B.

BACKGROUND

Proposal

M & Buddy Company Limited owns a property that is approximately 29,000 square feet in area and located at the interior of a block that is bounded by Cedar Street, Robie Street, Jubilee Road, and Henry Street. Compared to its surroundings, the property is relatively large and only has a three dwelling unit house upon it, located along Cedar Street. Although some of the surrounding property owners use part of the lands to access their rear yards, through an easement, the land is largely unused. This situation has existed since the surrounding area was subdivided and developed, in the 1920's. The potential development of the lands has been a contentious matter for a number of years.

The property is located within the R-2 (General Residential) Zone and is designated Medium Density Residential on the Generalized Future Land Use Map for the Peninsula Centre Detailed Area Plan. Although the property is located in the R-2 Zone, there are special policies (Attachment C) and regulations specifically for it that limit its future development. Proposals, other than the establishment of a detached one-family dwelling house, need to meet the requirements of the R-2 Zone and be approved by development agreement (Attachment A).

M & Buddy Company Limited propose:

- a 4 unit townhouse style dwelling on the vacant part of the site;
- an addition to the existing house, while at the same time reducing its current number of dwelling units from three to two units; and
- a parking lot for surrounding residents.

The townhouse style dwelling and the parking lot for the surrounding residents are not permitted within the R-2 Zone. Therefore, M & Buddy have applied to amend the Halifax Municipal Planning Strategy to allow for its proposal by development agreement.

Approval Process

The approval process for this application has two major steps:

1. Regional Council will consider and if deemed appropriate, adopt new Municipal Planning Strategy amendments to provide a framework for the consideration of a development agreement proposal for the Lands (Attachment B); and
2. Provided that Regional Council approves the amendments, Peninsula Community Council will consider the proposed development agreement for M & Buddy's proposal (Attachment A).

The public hearing for both the proposed Municipal Planning Strategy and Land Use By-law amendments and the proposed development agreement can be held as a joint public hearing of Regional and Peninsula Community Council. However, only Peninsula Community Council may render a decision concerning the proposed agreement. Community Council will consider these approvals at a meeting following the approval of the MPS and LUB amendments by Regional Council and the Province.

MPS amendments are not subject to appeal to the Nova Scotia Utility and Review Board (NSUARB). However, an appeal mechanism to the NSUARB does exist for any decision of Community Council regarding development agreements.

DISCUSSION

Recommended Policies and Regulations

Through this application, new Municipal Planning Strategy policies are recommended. If adopted, they will be the framework for considering M & Buddy's proposal or any other future proposal should M & Buddy not proceed with its project. They are specific to the form of development that is currently envisioned, specifying matters that are important considerations for the site and its surroundings (see Attachment B).

The Peninsula Land Use By-law will continue to specify that only a single detached dwelling is permitted "as-of-right," and that other proposals need to be approved by development agreement. Amendments to the By-law are therefore unnecessary.

Proposed Development Agreement

In keeping with the proposed Halifax Municipal Planning Strategy policies, the development agreement specifies matters including:

- the location of the various features including the new dwellings, the driveways and parking areas, and landscaped areas;
- the appearance and size of the new development;
- that the house along Cedar Street is to be of a size that is consistent with the site plan, but is to undergo a reduction in its number of dwelling units from three to two dwelling units;
- that certain parts of the lands may be subdivided, including the house along Cedar Street, which may be placed upon its own lot, and a part of the lands that have been encroached upon, that may be added to two Jubilee Road properties; and
- that utility wiring is not to be located on the front of the townhouse style dwellings.

Public Participation/Area of Notification

A public information meeting (PIM) for the proposal was held on June 11, 2009, and minutes are included as Attachment D. If Council decides to schedule a public hearing, property owners within the notification area shown on Map 1 will be notified of the hearing by mail, as well as anyone who signed up at the PIM. Public notices will be posted in the local newspaper and on the HRM website.

Conclusion

The proposed amendments to the Halifax Municipal Planning Strategy provide an appropriate framework for M & Buddy's project. If the subject lands are developed in the manner that is contemplated by the Company, and specified in the proposed development agreement, a longstanding issue within the local area will be suitably addressed.

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

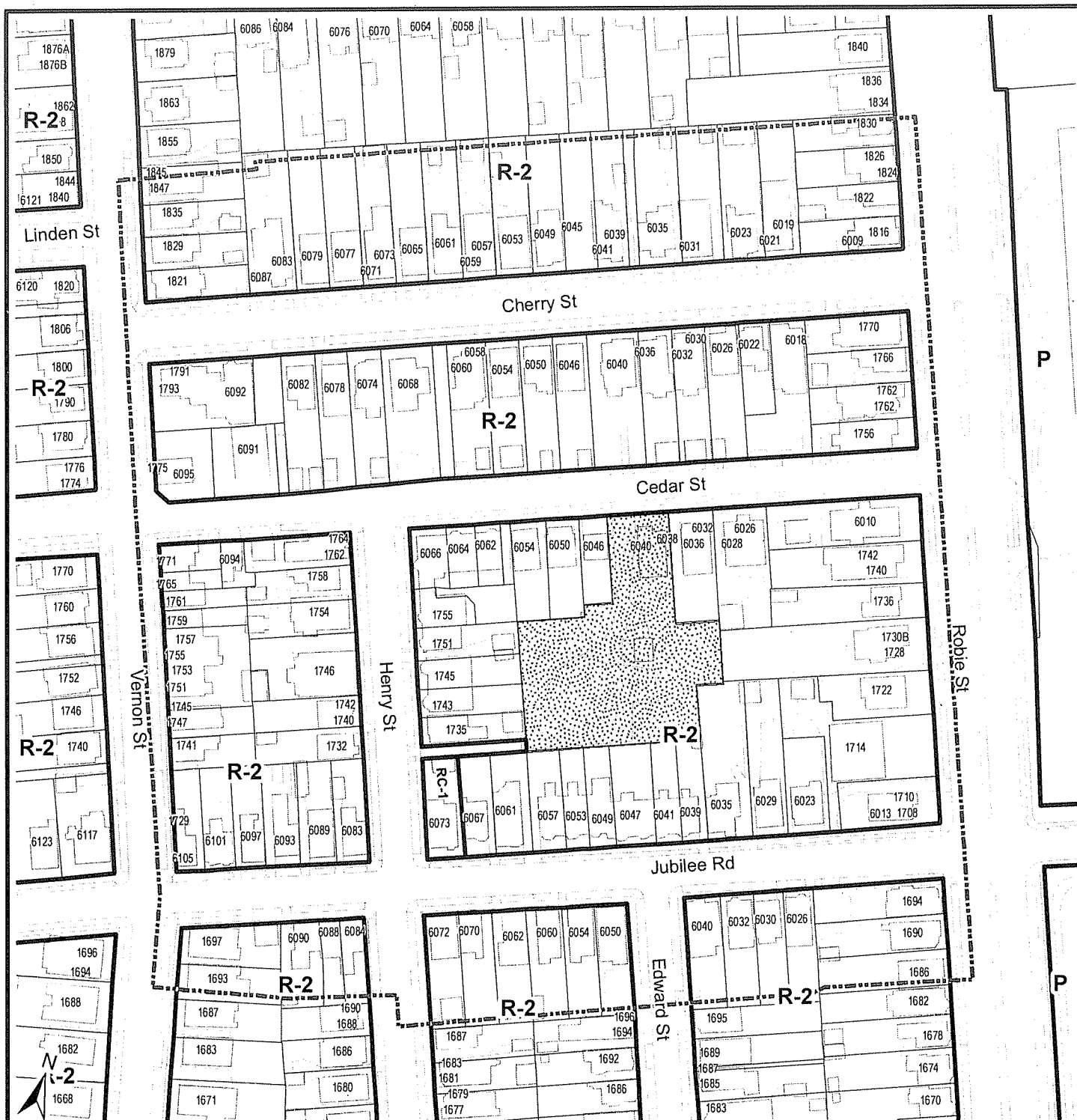
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council may approve the attached amendments to the Halifax MPS and Halifax Peninsula Land Use By-law. This is the recommended course of action.
2. Council may refuse to amend the Halifax MPS and Halifax Peninsula Land Use By-law.



ATTACHMENTS

Map 1	Location and Zoning
Attachment A	Proposed Development Agreement
Attachment B	Proposed Amendments to the Halifax Municipal Planning Strategy
Attachment C	Existing Halifax Municipal Planning Strategy Context



Map 1 - Location and Zoning

Vacant lot with block bounded by
Cedar, Henry, Jubilee, and Robie Streets
Halifax


 Subject area
 Area of notification

Halifax Peninsula
Land Use By-Law Area

Zone

R-2 General Residential
P Park and Institutional

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 20 40 m


This map is an unofficial reproduction of a
portion of the Zoning Map for the Halifax
Peninsula Land Use By-Law Area

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

- 1.1.1 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

- 1.2.1 Except as otherwise provided for herein, the development, subdivision, and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law 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 and Federal Governments and the Developer and/or lot owner agree to observe and comply with all such laws, by-laws and regulations 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 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

- 1.5.1 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

- 1.6.1 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

- 2.1.1 All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law.

2.2 Definitions Specific to this Agreement

- 2.2.1 The following words used in this Agreement shall be defined as follows:

- (a) "Development" means the development of the Lands pursuant to this Agreement.
- (b) "Height" means, the vertical distance of the highest point of the roof above the mean grade of the finished ground adjoining the building.
- (c) "Townhouse Style Residential Dwelling" means an apartment house that is similar in appearance to a townhouse building but which is not capable of being subdivided so that each unit is on its own lot.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

- 3.1.1 The Developer shall develop and use the Lands in a manner, which, in the opinion of the Development Officer, conforms with the Schedules attached to this Agreement, unless further specified under the Agreement, and filed in the Halifax Regional Municipality as Case Number 01248:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Subdivision Plan
Schedule D	Building Elevations

3.2 Permitted Land Uses

- 3.2.1 The following uses shall be permitted on the lands:
- (a) A dwelling, identified on Schedule B as “6038/6040 Cedar Street”, comprised of a maximum of two dwelling units and a maximum of six bedrooms within the whole of the dwelling;
 - (b) A Townhouse Style Residential Dwelling, identified on Schedule B as “Attached Dwellings”, comprised of four dwelling units and a maximum of four bedrooms within each dwelling; and
 - (c) A parking lot, as identified on Schedule B as “Parking Lot.”

3.3 Land Use Requirements

- 3.3.1 Except to the extent varied by this Agreement, 6038/6040 Cedar Street shall be subject to the requirements of the Halifax Peninsula Land Use By-law.
- 3.3.2 The Developer agrees to undertake modifications to 6038/6040 Cedar Street that will result in it containing a maximum of two dwelling units.
- 3.3.4 An Occupancy Permit pursuant to 3.3.2 shall be obtained prior to the issuance of an Occupancy Permit for the last unit of the Townhouse Style Residential Dwelling.

- 3.6.3 Parking spaces shall be a minimum of 9 feet in width by 18 feet in length and upon application of the asphalt paving, pursuant to 3.6.1, they shall be demarcated by surface paint.
- 3.6.4 Except as otherwise shown on Schedule B, the minimum width of a driveway shall be 20 feet.

3.7 Landscaping

- 3.7.1 Prior to issuance of the Occupancy Permit for the first unit of Townhouse Style Residential Dwelling, the Developer shall have established the landscaping upon the areas identified on Schedule B as "Landscaped Area."
- 3.7.2 Notwithstanding clause 3.7.1, the first Occupancy Permit may be issued provided the weather and time of year does not allow the completion of the outstanding landscaping and that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping, certified by a Landscape Architect. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein, and as approved by the Development Officer. Should the Developer not complete the landscaping within 12 months of issuance of the first Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this Section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work.

3.8 Lighting

- 3.8.1 Any lighting of the parking lot, grounds, and buildings shall be directed away from surrounding properties including municipal right-of-ways.

3.9 Outdoor Storage and Display

- 3.9.1 No outdoor storage or outdoor display shall be permitted.

3.10 Accessory Buildings

- 3.10.1 Accessory buildings, subject to the requirements of the Land Use By-law, shall be permitted within the areas identified on Schedule B.

- 3.3.5 The Developer is not required to construct the Addition to 6038/6040 Cedar Street, shown on Schedule B.
- 3.3.6 6038/6040 Cedar Street shall be subject to the requirements of the R-2 Zone of the Land Use By-law, except as otherwise provided for by this Agreement.
- 3.3.7 6038/6040 Cedar Street shall not be subject to the Gross Floor Area Requirements of the Land Use By-law.
- 3.3.8 Nothing in this Agreement shall preclude the removal of 6038/6040 Cedar Street as it exists at the time of the approval of this Agreement by Council and the construction of a new dwelling, subject to the requirements of this Agreement.
- 3.3.9 The maximum height of the each of the Townhouse Style Residential Dwelling shall be 30 feet.
- 3.3.10 The Parking Lot shown on Schedule B shall be restricted in use as parking exclusively for the residents of the Development and residents of dwellings on Cedar Street, Henry Street, or Jubilee Road, Halifax.

3.4 Fences

- 3.4.1 Fences, to a maximum of six feet in height, may be erected upon the Lands.

3.5 Utility Wiring

- 3.5.1 In the case of above ground utility wiring, there shall be no service entrances, including power meters, upon the front (Front Elevation Schedule D) of the Townhouse Style Residential Dwelling or 6038/6040 Cedar Street.

3.6 Parking and Driveways

- 3.6.1 Driveways and parking lots shall be comprised of asphalt paving with concrete curbs.
- 3.6.2 Prior to the issuance of an Occupancy Permit for the last unit of the Townhouse Style Residential Dwelling, the asphalt paving and concrete curbs pursuant to 3.6.1 shall be installed.

3.11 Subdivision

- 3.11.1 The Lands may be subdivided, as shown on Schedule C, as follows:
- (a) The subdivision of the Lands to form Parcel A1; and
 - (b) The subdivision of the Lands to consolidate Parcel A2 with PID 00137406, a lot fronting upon Jubilee Road;
 - (c) The subdivision of the Lands to consolidate Parcel A3 with PID 00137398, a lot fronting upon Jubilee Road.
- 3.11.2 The subdivision of the Lands, pursuant 3.11.1, shall be permitted but is not a requirement of this Agreement.
- 3.11.3 The park dedication requirements of the Subdivision By-law, as applicable, shall apply to the Lands.”
- 3.11.4 The Townhouse Style Residential Dwelling shall be owned and maintained by a single legal entity such as a condominium corporation or equivalent. The Municipality shall be relieved of any and all responsibility respecting services, driveway and parking lot maintenance, solid waste collection and snow and ice removal on the Lands.

3.12 Construction/Sales Structure

- 3.12.1 A temporary structure shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development. The structure shall be removed from the Lands prior to the issuance of the Occupancy Permit for the first unit of the Townhouse Style Residential Dwelling.

3.13 Maintenance

- 3.13.1 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, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal/salting of walkways and driveways.

3.14 Requirements Prior to Approval

- 3.14.1 Unless otherwise agreed to or required by the Municipality pursuant to a separate regulation or by-law, prior to the application for any municipal permits for the building, the Developer shall complete the MICI (Multi-unit/Industrial/Commercial/Institutional) process, as outlined by the Municipality.
- 3.14.2 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, licences, and approvals required to be obtained by the Developer pursuant to this Agreement.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

- 4.1.1 All construction shall conform to the *Municipal Service Systems Specifications* unless otherwise varied by this Agreement and shall receive written approval from the Development Engineer prior to undertaking any work.
- 4.1.2 Any disturbance to existing off-site infrastructure resulting from the development, including 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 Municipal Engineer.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Archaeological Monitoring and Protection

- 5.1.1 The Lands fall within the High Potential Zone for Archaeological Sites identified by the Province of Nova Scotia. The Developer agrees to contact the Curator of Special Places, Heritage Division, Tourism, Culture, and Heritage prior to any disturbance of the site and to comply with the requirements set forth by the Province of Nova Scotia in this regard.

5.2 Sulphide Bearing Materials

- 5.2.1 The Developer agrees to comply with the legislation and regulations of the Province of Nova Scotia with regards to the handling, removal, and disposal of sulphide bearing materials, which may be found on the Lands.

PART 6: AMENDMENTS

6.1 Substantive Amendments

- 6.1.1 Amendments to any matters not identified under Section 6.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

6.2 Non-substantive Amendments

- 6.1.2 The following items are considered by both Parties to be non-substantive and may be amended by resolution of Council:
- (a) Changes to materials associated with the parking lot, driveways, and curbs, pursuant to Section 3.6;
 - (b) Changes to subdivision provisions pursuant to clause 3.11;
 - (c) Changes to the date of commencement of development specified in Section 8.3; and
 - (d) Changes to the date of completion of development specified in Section 8.4.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

- 7.1.1 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 (24) hours of receiving such a request.

7.2 Failure to Comply

7.2.1 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, 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 defense 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; and/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.

PART 8: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

8.1 Registration

8.1.1 A copy of this Agreement and every amendment and/or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office for Halifax County, Nova Scotia and the Developer shall incur all cost in recording such documents.

8.2 Subsequent Owners

8.2.1 This Agreement shall be binding upon the Parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is the subject of this Agreement until this Agreement is discharged by Council.

8.2.2 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.

8.3 Commencement of Development

8.3.1 In the event that development on the Lands has not commenced within 3 years 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.

8.3.2 For the purposes of Subsection 8.3.1, commencement of development shall mean the installation of the foundation for the Townhouse Style Residential Dwelling on the Schedules.

8.3.3 For the purpose of Subsection 8.3.1, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.2(e), if the Municipality receives a written request from the Developer at least 60 calendar days prior to the expiry of the commencement of development time period.

8.4 Completion of Development

8.4.1 Upon the completion of the development or portions thereof, or after 6 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office for Halifax County, Nova Scotia, whichever time period is less, 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 on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law, as may be amended from time to time.

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

SIGNED, SEALED AND DELIVERED
in the presence of

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

) [INSERT DEVELOPER NAME],

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) Per: _____

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HALIFAX REGIONAL MUNICIPALITY

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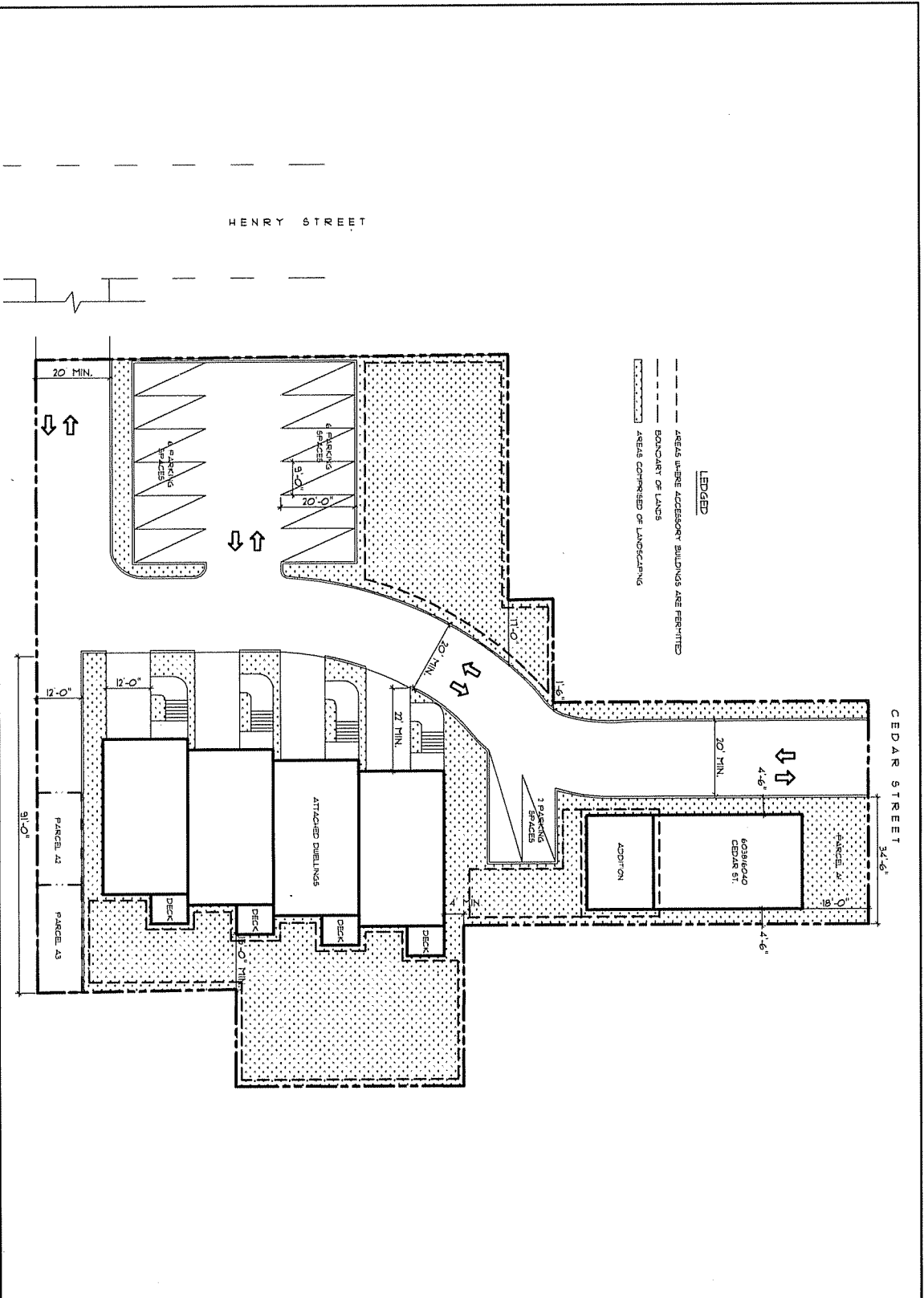
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MUNICIPAL CLERK



WMFARES GROUP ARCHITECTS / ENGINEERS / PLANNERS 1000 10th Avenue, Suite 100 San Francisco, CA 94103 Tel: (415) 441-4444 Fax: (415) 441-4444 www.wmfares.com	
PROJECT:	6036 Cedar Street
TITLE:	SITE DEVELOPMENT PLAN
SCALE:	NTS
DATE:	JULY 25, 2008
PROJECT:	2007-14
SHEET:	SD1

Schedule D - Building Elevations

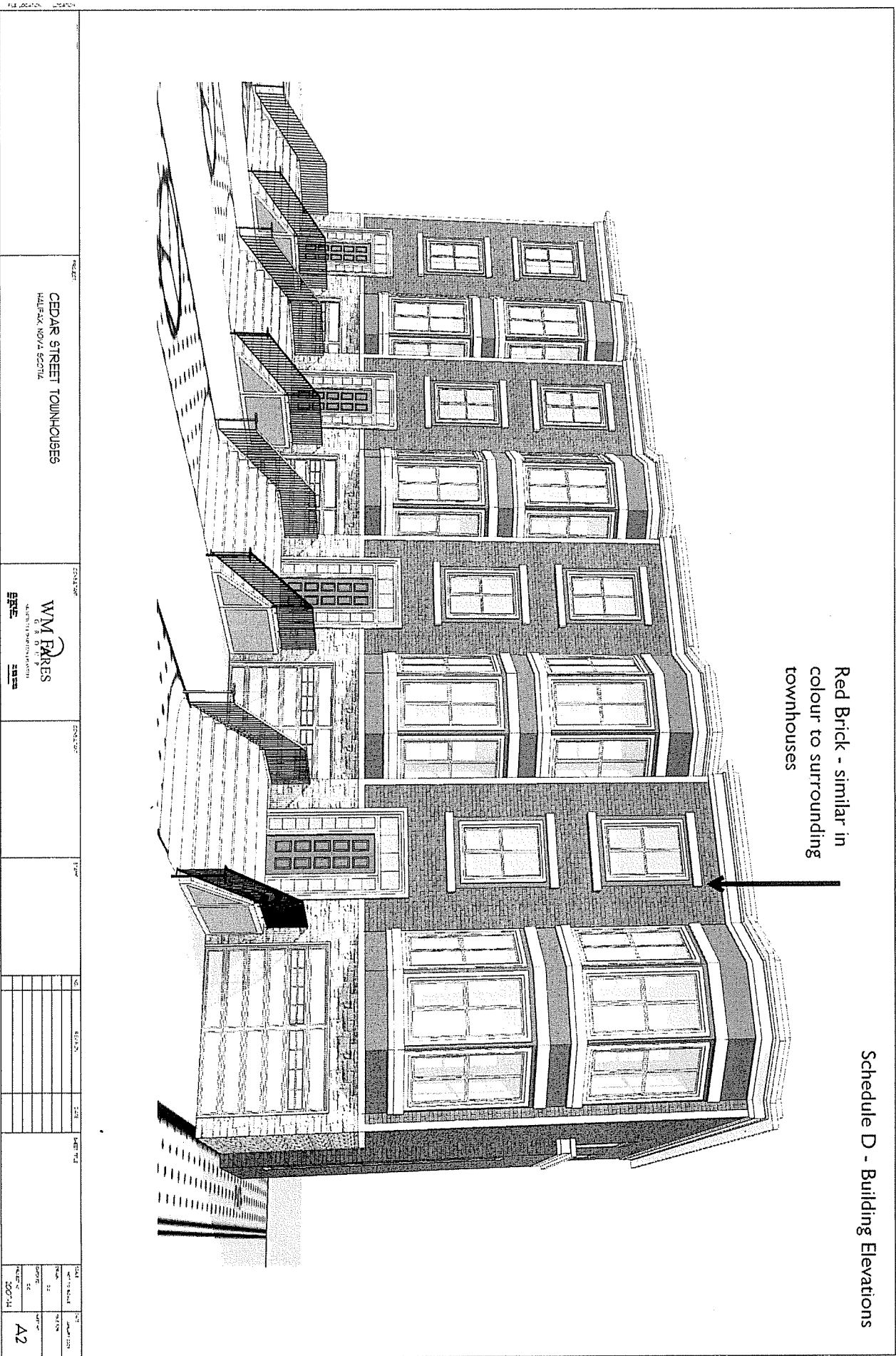
Red Brick - similar in colour to surrounding townhouses



Front Elevation

[illegible]

Red Brick - similar in colour to surrounding townhouses

[illegible]

Schedule D - Building Elevations

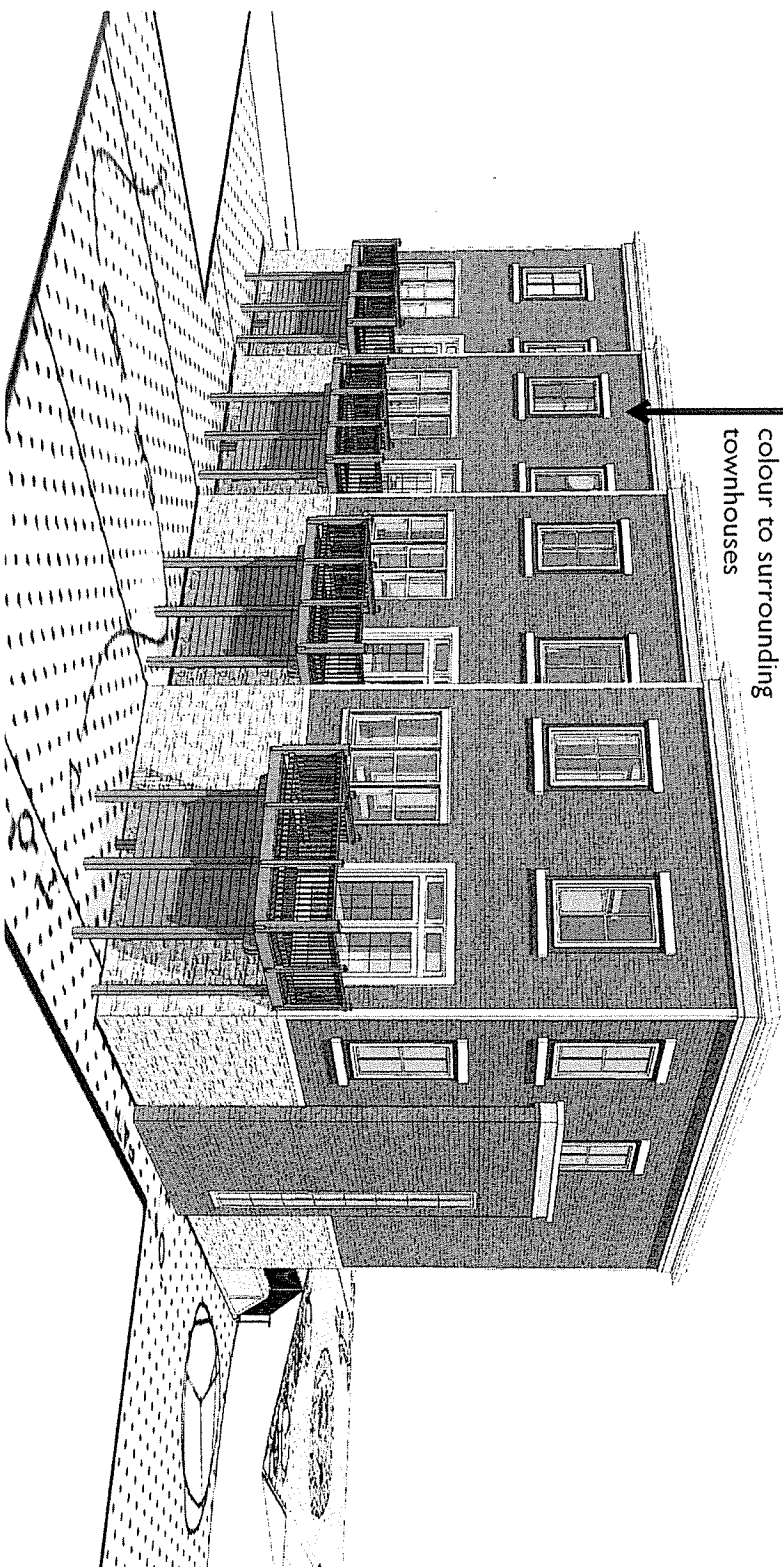
Red Brick - similar in colour to surrounding townhouses



<p>  WM PAKES <small>COOK PAPER</small> <small>AMERICAN MANUFACTURING</small>  </p>	<p> CEGAR STREET TOWNHOUSES HALESX NOVA SCOTIA </p>	<p> 142-101 </p>	<p> 200-14 </p>	<p> A3 </p>
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Schedule D - Building Elevations

Red Brick - similar in colour to surrounding townhouses

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Attachment B - Proposed Amendments to the Halifax Municipal Planning Strategy

1. Policy 1.5.5.1, of the Halifax Municipal Planning Strategy shall replaced by the following:

“Any development permitted pursuant to Policy 1.5.5 shall:

- (a) be limited to the development of one townhouse style dwelling containing a maximum of four dwelling units to be located within the middle area of the lands and one dwelling fronting onto Cedar Street, containing a maximum of two dwelling units;
- (b) allow for a parking lot for residences in the surrounding area; and
- (c) be compatible with the surrounding area and this shall be achieved by attention to a variety of factors for which conditions may be set out in the development agreement, such as but not limited to:
 - (i) land use;
 - (ii) architectural design;
 - (iii) scale, height and massing of the building;
 - (iv) population density;
 - (v) lot size, lot frontage, setback, lot coverage and open space;
 - (vi) adequacy of the servicing capacity
 - (vii) the location and amount of parking provided;
 - (viii) accesses to the site and building;
 - (ix) site landscaping including buffering; and
 - (x) exterior building materials”

Attachment C - Existing Halifax Municipal Planning Strategy Context

- 1.5.5 Because of the unique configuration of the property designated medium-density on the Future Land Use Map of this Plan and identified as P.I.D. 00137273 Cedar Street and its relationship to abutting properties, no development, other than a detached single unit dwelling, shall be permitted, except by development agreement.
- 1.5.5.1 Any development permitted pursuant to Policy 1.5.5 shall:
- (a) be limited to those uses permitted by the R-2 General Residential Zone;
 - (b) meet the provisions of the R-2 General Residential Zone of the land use by law; and
 - (c) be compatible with the surrounding area and this shall be achieved by attention to a variety of factors for which conditions may be set out in the development agreement, such as but not limited to:
 - (i) land use;
 - (ii) architectural design;
 - (iii) scale, height and massing of the building;
 - (iv) population density;
 - (v) lot size, lot frontage, setback, lot coverage and open space;
 - (vi) adequacy of the servicing capacity
 - (vii) the location and amount of parking provided;
 - (viii) accesses to the site and building;
 - (ix) site landscaping including buffering; and
 - (x) building materials

**Attachment D - Public Information Meeting Minutes
Case 01248
June 11, 2009**

In attendance: Richard Harvey, Senior Planner
Shanan Pictou, Planning Technician
Gail Harnish, Planning Services
Cesar Saleh, W.M. Fares
Councillor Watts

Regrets: Councillor Uteck

Call to order/Purpose of meeting

Mr. Richard Harvey called the public information meeting (PIM) to order at approximately 7:00 p.m. in Halifax Hall. We are considering changes to the plan policies and regulations regarding the subject property off of Cedar Street. A copy of an excerpt from the Halifax Municipal Planning Strategy (MPS) relating to the rules governing the subject property was circulated. As part of this process, we are also going to consider a proposed development. We are here this evening to hear some comments and input from members of the public.

Overview of planning process

Mr. Harvey provided an overview of the planning process, noting we are at the beginning of the process:

- we are now at the public information meeting
- staff will prepare proposed amendments to the MPS and negotiate a draft development agreement
- staff will prepare a staff report which is tabled with Peninsula Community Council
- Community Council will consider the report and will make a recommendation to Regional Council
- Regional Council will decide whether or not it wants to schedule a joint public hearing with Community Council
- if they proceed, the public hearing is held
- Regional Council will make a decision on the proposed amendments and, if they are approved, the amendments are forwarded to the Province for review
- Community Council will make a decision on the development agreement
- there is an appeal process for the development agreement

Mr. Harvey displayed a map of the area, pointing out the subject property, as well as some photographs. The subject property is in the center of the block bounded by Cedar Street, Robie

Street, Jubilee Road, and Henry Street. The property has a longstanding history and contentious zoning issues. The property is zoned R-2, as is the surrounding area. There have been numerous controversial amendments and different proposals for the site. The last one resulted in the policy in front of us which is very restrictive. If anyone wants to do anything more than a single dwelling unit on the property, then it has to be done by development agreement.

Mr. Harvey referenced the handout containing the excerpt from the MPS for the subject property, noting any development of this site has to meet the provisions of the R-2 zone of the land use by-law (LUB). Anything more than single family housing has to be considered by development agreement. Townhouses are not permitted under the R-2 zone, which is why we are here looking at changing the plan policy which governs this particular site to possibly enable this proposed development. With any proposal under the current policy, a development agreement is envisioned. A development agreement is a contract between a property owner and the Municipality that spells out how the property is to be developed. It is a very formal agreement which has schedules, a site plan, and building elevations attached to it which need to be adhered to if the project moves forward.

Presentation of proposal

Mr. Cesar Saleh advised they are the planners and designers for the proposed development. He provided examples of projects done by their company. He confirmed the owner is Elias Metlej.

Mr. Saleh displayed a proposed drawing of the site. The site is bounded by Henry Street, Cedar Street, Robie Street, and Jubilee Road. The site is 29,300 sq.ft. and currently has a dwelling with three residential units in it.

Mr. Saleh indicated some of the site plan and design considerations they took into consideration while planning for the site were:

- the location itself
- the planning and development history. This site has extensive planning history.
- setbacks from existing dwellings
- compatibility with the adjacent neighbourhood

Mr. Saleh advised they held a public meeting in February of 2008 which is not part of the normal process but they wanted to meet with the adjacent residents on the streets immediately bordering the site to discuss the concept. They had proposed six townhouses in blocks of two; one to the left and one to the right, and an addition to the existing two unit dwelling. Some of the concerns raised at the meeting were:

- the site was too congested
- the one block of townhouses was too close to the backyards on Henry Street
- the parking which has taken place on the site
- access

Mr. Saleh said they went back and contemplated several proposals since then, and they have made a formal application to HRM to engage in a development agreement process which they will present tonight.

Mr. Saleh advised they are proposing a block of four townhouses to be located at the right hand side of the property. The existing three unit house will undergo renovations with an addition on the back to make it two units instead of three, and also they are proposing four townhouses.

Mr. Saleh reviewed details of the proposed development:

- the site is 29,300 sq.ft.
- the townhouses are 23' x 40'
- lots of land has been left for open space
- the access to the site will remain as it is now. They have an existing entrance on Henry Street and Cedar Street.
- the flow of pedestrian access to the site will remain as is
- they have very generous setbacks from all the adjacent dwellings, specifically the backyards on Henry Street and Robie Street. The lots on Robie Street are very deep lots.
- they have shown four townhouses on the site in an optimum orientation to keep maximum buffer and setbacks from existing dwellings, as well as to provide some additional parking to meet some of the existing parking needs. Some residents adjacent to the property have parked there for a long time and they have been working with those residents. There will be parking for them on the site.

Mr. Saleh displayed a plan of the site in context of its surroundings to illustrate there are maximum setbacks from all existing adjacent dwellings. There is 184' between this townhouse (pointed out) and houses on Robie Street. There is a 75' setback from the townhouses and the houses on Jubilee Road. There are ample setbacks from any direction, complemented with landscaping. He pointed out the landscaped areas and the proposed parking.

Mr. Saleh presented plans showing:

- the front elevation of the townhouses, noting:
 - the exterior materials are of superior quality
 - they will have traditional brick
 - they will have traditional stone with aluminum or iron stair railings
 - there will be hardi-plank panels around the windows
 - there will be Azek trim which is one of the highest quality trim work you can buy today
- side elevations:
 - the building materials around the front, side and back of all the buildings are of the same quality construction materials
- rear elevations
- a three dimensional rendering
 - the townhouses are staggered which helps break the facade apart

Mr. Saleh presented the merits of the proposal as they saw them:

- the proposed residential townhouse use is compatible with the neighbourhood. You can see similar townhouses in the area, especially on Jubilee Road
- the proposed architectural design is simple and elegant
- the building materials are of superior quality
- their proposal provides for a maximum setback from existing dwellings and there is landscaped open space

Mr. Saleh stated they have strived to present a good development option for the future development owner and the neighbourhood, taking into consideration the concern of the adjacent property owners.

Mr. Harvey noted he has spoken to a few of the residents on the phone. It is important to hear the resident's responses, especially where this is an extremely localized planning issue. We have essentially said to Council this looks like an opportunity to resolve a longstanding issue and it is worthwhile to consider.

Mr. Harvey noted the first thing to discuss is the merits of the proposal. What do the people think about the merits of the townhouse development as a form of development, and then we will get to the details of the development agreement. Is this the right time and a development that makes sense for you and the surrounding area?

Questions and comments

Mr. Steve Fudge advised he and his wife lived on Henry Street and about the project on the Henry Street side. He stated this is the best proposal he has seen for this space in twenty years. From a broad perspective, he and his wife supported this development.

Ms. Mary Burke said she felt the four townhouses are a little heavy. She thought she would be looking at a brick wall from her house on Jubilee Road. Other than that, and if the parking is satisfactory, she thought it would be a good development.

Ms. Cheryl Harawitz noted they are presenting the concept itself but wondered how solid the whole concept is. She felt positive about this proposal and the townhouses but she liked to feel there is an opportunity for them to reconfigure based on other concerns in terms of the design of the parking. Are they in the process of just commenting on this proposal or is there an opportunity to redesign part of it?

Mr. Saleh responded in terms of the architectural details and the quality of the townhouses, whatever they agree on is what will go into the development agreement and is what will happen on the site no matter who the future owner is. If they want to change that quality, they have to come back and start from scratch. As for the parking and the flexibility of arranging it, that is still

possible. The details of the site drawings would happen over the next several months. There will be further discussions on the best orientation of the parking.

Ms. Ann Louise King noted the townhouses look as though they are built on slab with no basements.

Mr. Saleh responded that is correct. It is on grade. You drive up to your garage and go up steps to your first level. The height still meets the 35' height restriction, which is the typical height of a single family dwelling.

Mr. Emmerson King questioned if there was any possibility of lowering the height of the townhouses.

Mr. Saleh responded that would be looked at in the detailed design. Lowering the townhouses would mean more excavation.

Chris... said his property backed onto Cedar Street. He questioned whether it would be a paved road in the parking area.

Mr. Saleh responded it would be paved.

Chris ... questioned whether an increase in traffic was anticipated. Is it a gathering area for people living there to park or will it be a more attractive route for people to cut through? Cedar Street is already a busy and narrow street, so an increased traffic flow would be problematic. His parking was on Cedar Street and wondered if the proposed development would have an effect on the busyness of that street. An improved surface might make it attractive for people to zip through.

Mr. Harvey advised that would be looked at in more detail and addressed.

Mr. Saleh indicated these will be condominium townhouses. This road will be designed and constructed as a local private road. They will make note of the comment and see if they can make it less welcome for cars.

Mr. Howard Harawitz said he agreed the proposal is a good idea but was wondering what he was agreeing to. He agreed this is generally a good idea but he would like to see the layout of the parking lot or the roadway discussed.

Mr. Harvey indicated it would be terrific to receive some constructive ideas for desirable changes. In terms of the process, he knew that Mr. Metlej has met with many of them and would continue to do so. This is not a fait accompli. Later on a development agreement will be developed. If there is something you did not like, you would still have the ability to say to Council that you did not like it. In terms of parking, there is an organized parking lot near Henry Street. If there was another proposal, then we would like to hear about it.

An individual commented different comments have been made by different people so she started to think about what would work. She came up with an idea to put green space in the middle rather than the corner and have parking right up against people's houses. She sketched out something to see if it was feasible to have a green space in the middle where there would be a buffer and also parking close to their house could be accommodated.

Mr. Saleh noted they would take a look at that. There will still be communication after this meeting. Towards the end, there will be a clear agreement between all the participants and all the property owners.

Ms. Susan Wood said they look out over that space and did not see cars cutting through, but there is lots of pedestrian traffic, probably students going to Dalhousie.

Ms. Judith Fingard stated she was concerned about traffic. She would like to concur in principle with this proposal. If the four townhouses are ultimately approved, does the by-law change to say there is a development agreement or it is an area restricted to townhouses? Maybe some day somebody will come along and try to build two more townhouses along the other side. Does it protect them as much as the single family provision?

Mr. Harvey advised the wording in the MPS would be tweaked to very precisely say four townhouses. The actual development agreement would go forward at the same time as the policy amendment.

Ms. Kathy Attis said she liked the idea of being able to park behind her house and suggested an alternative.

Mr. Harvey summarized she was proposing to have the access on Cedar Street and individual parking behind here (pointed out) with access through the shared driveway extending up to Cedar Street.

Mr. Saleh pointed out this access might be required under the National Building Code for emergency access.

Ms. Attis commented there are other neighbourhoods which do not have two access points.

Ms. King noted that although the driveway shows there is two way traffic, those laneways are only wide enough for one car at a time. She questioned if there is enough room on Cedar Street for a car to come in and out at the same time.

Mr. Harvey responded his sense was we are trying to indicate that traffic can go either way. It is possibly just wide enough to accommodate one vehicle at a time.

Mr. Saleh stated it will be a private driveway maintained by the owners. It will not be a public street. He thought the width was 18' but that would be confirmed.

Mr. Hugh Owens said he presumed he would still have access through his back gate to his property. People are suggesting blocking off Henry Street but they have to consider that will drive all the Jubilee Road traffic, including service vehicles, through to Cedar Street, which is a fairly narrow street. The individual next to him has a similar gate.

Mr. Saleh stated people will have a right-of-way access to their backyards. On the survey, they would put a 3'-4' wide pedestrian access in their favour to their backyard.

Mr. Harvey questioned whether Mr. Owens had a need for service delivery in the back.

Mr. Owens advised his service delivery happens from Cedar Street but they often move furniture through his backyard. They have a basement apartment and their tenants move in that way.

An individual stated she did not agree with the suggestion to cut off access to Cedar Street. That was her access and it was very important to her.

An individual commented given the last couple of comments, she would like to speak against the proposal. She chose not to have a gate but she had to get in and needed access to maintain her property. Do not completely privatize the lane.

Mr. Harvey said he did not think this will be a major thoroughfare but we will take a closer look at it.

Mr. Owens questioned where the garbage collection for these townhouses would be.

An individual stated mail delivery is another consideration. Will the post office come in or will the mailboxes be out in the street?

An individual questioned whether the heating would be oil.

Mr. Saleh advised they are not yet at that level of detail. The detailed design has not yet taken place.

Ms. Harawitz asked what type of street lighting would be installed.

Mr. Saleh questioned whether she was concerned from a safety point of view.

Ms. Heratwitz responded more the opposite. She did not want her backyard lit up.

Mr. Saleh stated that is a design requirement. Any proposed lighting cannot dissipate on adjacent properties.

Mr. Jack Baig said there appears to be two parking spaces, one after the other, and questioned whether they were intended for the two units.

Mr. Saleh responded yes.

Mr. Baig indicated in his deed, beside the property, there is a 16' right-of-way and the full depth of the property is 185'. Those two parking spots appear to be inside that right-of-way which he did not think was allowed. That was brought to Mr. Metlej's attention.

Mr. Saleh pointed out another area with two parking spaces, so there would be a solution to that.

Mr. Baig indicated the purpose of the right-of-way is to allow access to the backyard of 6046.

An individual stated they have been involved in all this history. It has never been violent but has been controversial over the years. This is the best approach they have seen and the most considerate thus far of what they would need as adjacent property owners.

Mr. Fudge noted he brought this up with Mr. Metlej last week. This site has a history of flooding and there is no drainage or pipes. His property is a bit below the grade of that site. The previous owner raised the grade of the whole back area so in fact some of the backyards adjacent to it are lower than the whole area. During some thaws, they had extensive flooding and intrusion of water into their house. The Kings had the same issue. It does not occur every year but it does occur. The site itself needs to be drained.

Mr. Saleh indicated one of the advantages of developing the site is that it can be engineered. Water has to be collected in the right place. There will be a stormwater and drainage plan so that is probably one of the positive things from developing this site. The surface drainage would be improved from what they see right now.

Mr. Harvey pointed out there might be an opportunity to make it better.

Ms. Helena Bilsbury stated flooding is her main concern. She has lived there for over twenty years. That is one of the big concerns at 1751 Henry Street as well. She was also concerned about the trees. She questioned whether the trees in the corner would stay.

Mr. Saleh responded absolutely.

Ms. Bilsbury said she was interested in the parking. She used to park a car in back but she had lots of trouble now. She asked if it would be possible for the owner to sell the property after they got the permits, which would mean somebody else could build something different.

Mr. Harvey advised the contract would be entered into between the property owner and the Municipality, and would include details such as a site plan. There would be no ability on a whim to change the site plan.

Ms. Bilsbury stated parking is extremely important.

An individual questioned what happens if they agree to this and 90% of why the community supports this is because they are decent people. Is there some way to tie this to this particular situation?

Mr. Harvey responded there is no way to tie that. The development agreement runs with the property. If it is not going to be this developer, then any future developer would have to buy into the contract.

Mr. Saleh stated he has worked with hundreds of these over the past fifteen years. A development agreement is a binding contract which the property owner has to abide by. As a result of the restrictions approved by Council a few years ago, you have certain controls over what goes on that property. This is providing a good option.

An individual asked if there are timelines around the agreement.

Mr. Harvey responded there would typically be a date in which the development has to be started and completed and when the landscaping needs to be completed. If it is in the middle of winter, there can be bonding for the completion of the landscaping. If somebody, for instance, wanted to put an addition onto the townhouses, there would have to be an amendment to the development agreement.

Mr. King noted there is an injunction in force now for the people who have been using this area for parking for years. Presumably Mr. Metlej would want the people holding that injunction to drop it or else he could not go ahead with this project. If they came to some agreement and gave up that injunction and then the development did not proceed, what position would they be in?

Mr. Harvey indicated there is relationship in terms of easements between the property owners. In terms of the Municipality's role, all we look for is adherence to the development agreement. If there is a compliance issue, we have land use enforcement staff which take action on a daily basis. If something does not comply with the development agreement, we will take action. If you felt there was something improper in terms of easements, that is something the property owners would take action on.

Mr. King commented a number of things would have to happen. What happens if they give up their injunction?

Mr. Saleh commented the reason they are here today is because there is a level of trust. Elias has lived in this area all his life. His reputation and name is very important to him. He did not foresee any issues from that end.

Mr. King stated they have been fighting this for thirty-two years and wanted it to be over.

Ms. Attis questioned what the amendment process is if one of townhouses decided they would like to put an addition on the back.

Mr. Harvey advised there are certain things that can be specified in a development agreement as a non-substantive amendment. It involves Community Council approval. There are not many things that could be envisaged as a non-substantial amendment but they would look at that upfront. If it did require an amendment to the development agreement, then it would be reviewed by staff and there would be an opportunity for public input.

Mr. Saleh commented the amendment process is onerous. It is not something anybody would want to go through for a small addition to their house.

An individual said she only lived in her house for four years. She questioned if everybody has a right-of-way from Cedar Street. She was only aware of the one on Henry Street.

Mr. Baig responded he understood it was intended for the property owners of the whole area.

Mr. Saleh clarified we are talking about an access right-of-way to their backyard. These townhouses would have a 5' easement access from their backyard. He would assume all the people bordering these lots would have access to their backyard.

Mr. Baig suggested the two parking spaces he mentioned could be located next door for the proposed two units. The right-of-way he had in conjunction with the right-of-way to the main lot would be free for everybody.

An individual commented he understood there are a number of households along Jubilee Road that have access to that Henry Street right-of-way written into their deeds.

The meeting adjourned at approximately 8:20 p.m.