

Peninsula Community Council
September 14, 2009

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: Heather Ternoway
Heather Ternoway, Chair
District 12 Planning Advisory Committee

DATE: September 1, 2009

SUBJECT: **Case 01246 - Development Agreement, 5280-82 South Street and 5279 Tobin Street, Halifax**

ORIGIN

District 12 Planning Advisory Committee meeting - August 31, 2009

RECOMMENDATION

The District 12 Planning Advisory Committee recommend that Peninsula Community Council:

1. Approve the proposed development agreement as contained in Attachment A of the report dated August 11, 2009, to allow for the subdivision of property at 5280-82 South Street and 5279 Tobin Street, Halifax; and
2. Require the agreement be signed and delivered within 120 days from the date of delivery of documentation to the applicant for execution, or any extension thereof granted by Council on request of the Applicant, from the date of final approval of said agreement by Council and any other bodies as necessary, whichever is later, including any applicable appeal periods; otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

ATTACHMENT

Staff report dated August 11, 2009

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

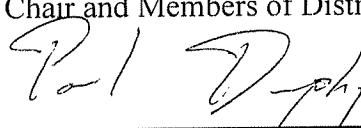
Report prepared by: Gail Harnish, Admin/PAC Coordinator, 490-4937



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

District 12 Planning Advisory Committee
August 31, 2009

TO: Chair and Members of District 12 Planning Advisory Committee

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: August 11, 2009

SUBJECT: **Case 01246 - Development Agreement, 5280-82 South Street and 5279 Tobin Street, Halifax**

ORIGIN

Application by Deborah and Jeffrey Conrad for a development agreement to allow for the subdivision of the property so that each existing residential building is on its own lot.

RECOMMENDATION

It is recommended that District 12 Planning Advisory Committee recommend that Peninsula Community Council:

1. Approve the proposed development agreement as contained in Attachment A to allow for the subdivision of property at 5280-82 South Street and 5279 Tobin Street, Halifax; and
2. Require the agreement be signed and delivered within 120 days from the date of delivery of documentation to the applicant for execution, or any extension thereof granted by Council on request of the Applicant, from the date of final approval of said agreement by Council and any other bodies as necessary, whichever is later, including any applicable appeal periods; otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

The subject property is a “through-lot” on the block bounded by South, Barrington, Tobin and Queen Streets and has frontage on both South and Tobin Streets. The lot includes two buildings each of which front on the respective streets and contain three dwelling units. The building at 5280-82 South Street has been occupied as a three-unit dwelling since 1981. A carport previously existed off Tobin Street. Variances were granted in 1988 and 1990 to replace the carport fronting Tobin Street with a new three-unit dwelling. An occupancy permit was issued for that building in March 2002.

Although the Land Use By-law does not currently permit more than one building which contains dwelling units to be located on a single property within the R-2A Zone, it did at the time of the variance approvals. However, the current LUB does not allow for the as-of-right subdivision of the property except in cases where each of the buildings existed prior to 1982. As this is not the case here and there is insufficient lot area to meet the zone requirements, the property cannot be subdivided as-of-right.

Proposal:

The proposal is to subdivide the property so that each existing residential building may be located on its own lot and, therefore, be owned separately (refer to Schedule B of Attachment A).

Zoning and Enabling Policy:

The property lies within Area 6 of the South End Detailed Area Plan of the Halifax MPS. The subject site is designated Medium Density Residential (MDR) and zoned R-2A (General Residential Conversion) (refer to Maps 1 and 2). Implementation Policy 4.6 and Section 99(5) of the Land Use By-law allow Council to be able to consider the proposal through the development agreement process (refer to Attachments A and B).

DISCUSSION

Staff have reviewed the proposal against the objectives and policies of the Halifax MPS (refer to Attachment B). As the property is currently developed with two residential buildings, it is reasonable to provide a mechanism to allow for the subdivision of the parcel. The draft development agreement (Attachment A) allows only for the subdivision of the parcel and does not provide any ability to further increase the size of the buildings or the number of dwelling units. As such, it is recommended that Council approve the draft development agreement.

Public Comment:

In consultation with the district Councillor, a public information meeting was not held. Instead, notification was sent to property owners within the area illustrated on Map 1 providing an opportunity for comments. No written comments were received.

BUDGET IMPLICATIONS

There are no budget implications associated with the processing of the Development Agreement. 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 proposed development agreement (Attachment A). This is the recommended course of action.
2. Council may refer the case back to staff with specific changes to modify the development agreement.
3. Council may refuse the proposed development agreement. Reasons must be provided for a refusal.

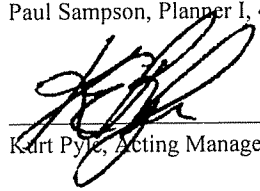
ATTACHMENTS

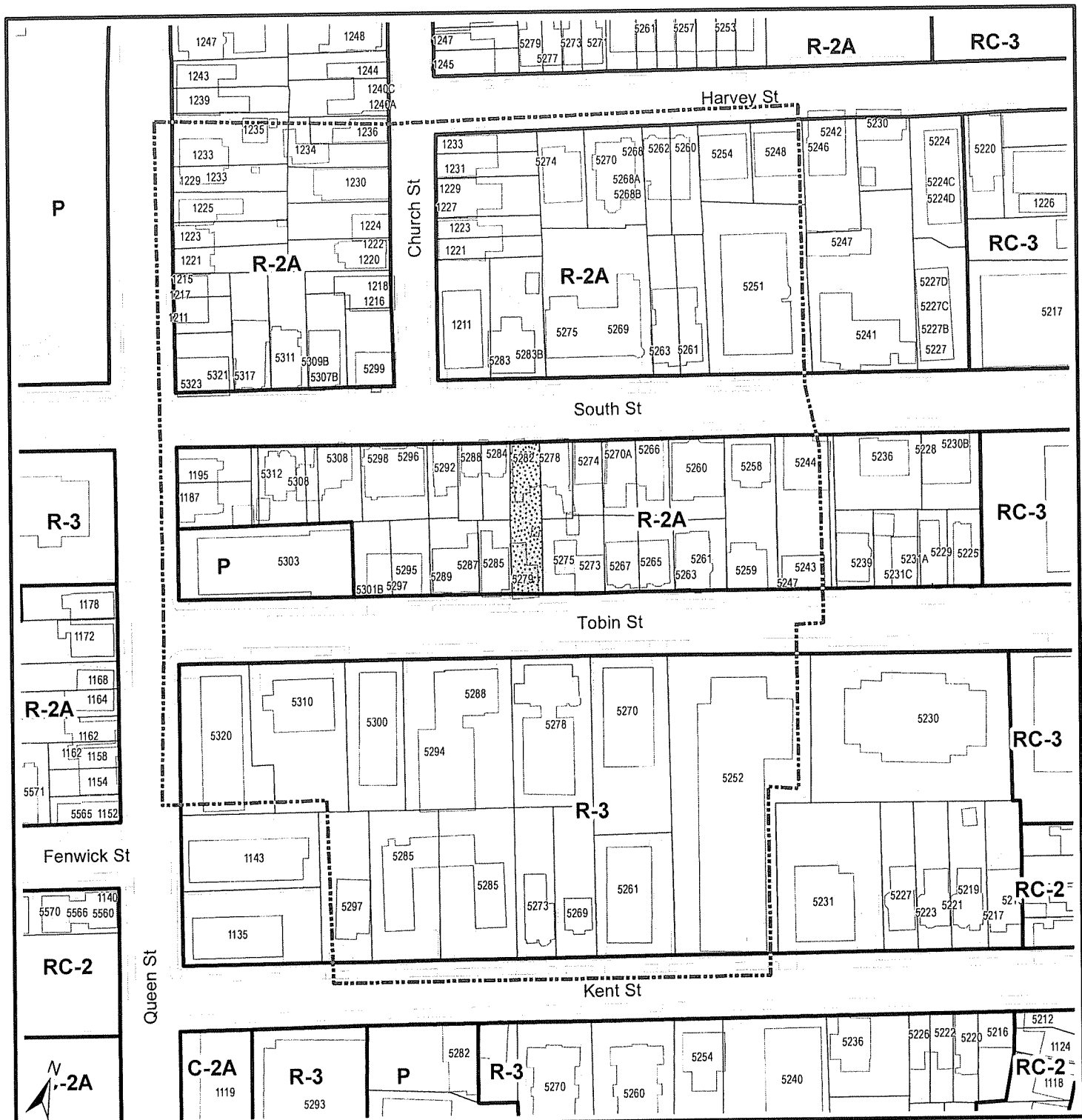
Map 1	Zoning and Notification Area
Map 2	Generalized Future Land Use
Attachment A	Draft Development Agreement with Schedules
Attachment B	Review of Relevant MPS Policies

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Paul Sampson, Planner I, 490-6259

Report Approved by:


Kurt Pyle, Acting Manager, Planning Services, 490-7066



Map 1 - Location and Zoning

5280-82 South Street
5279 Tobin Street
Halifax

- Subject area
- Area of notification

Halifax Peninsula
Land Use By-Law Area

Zone

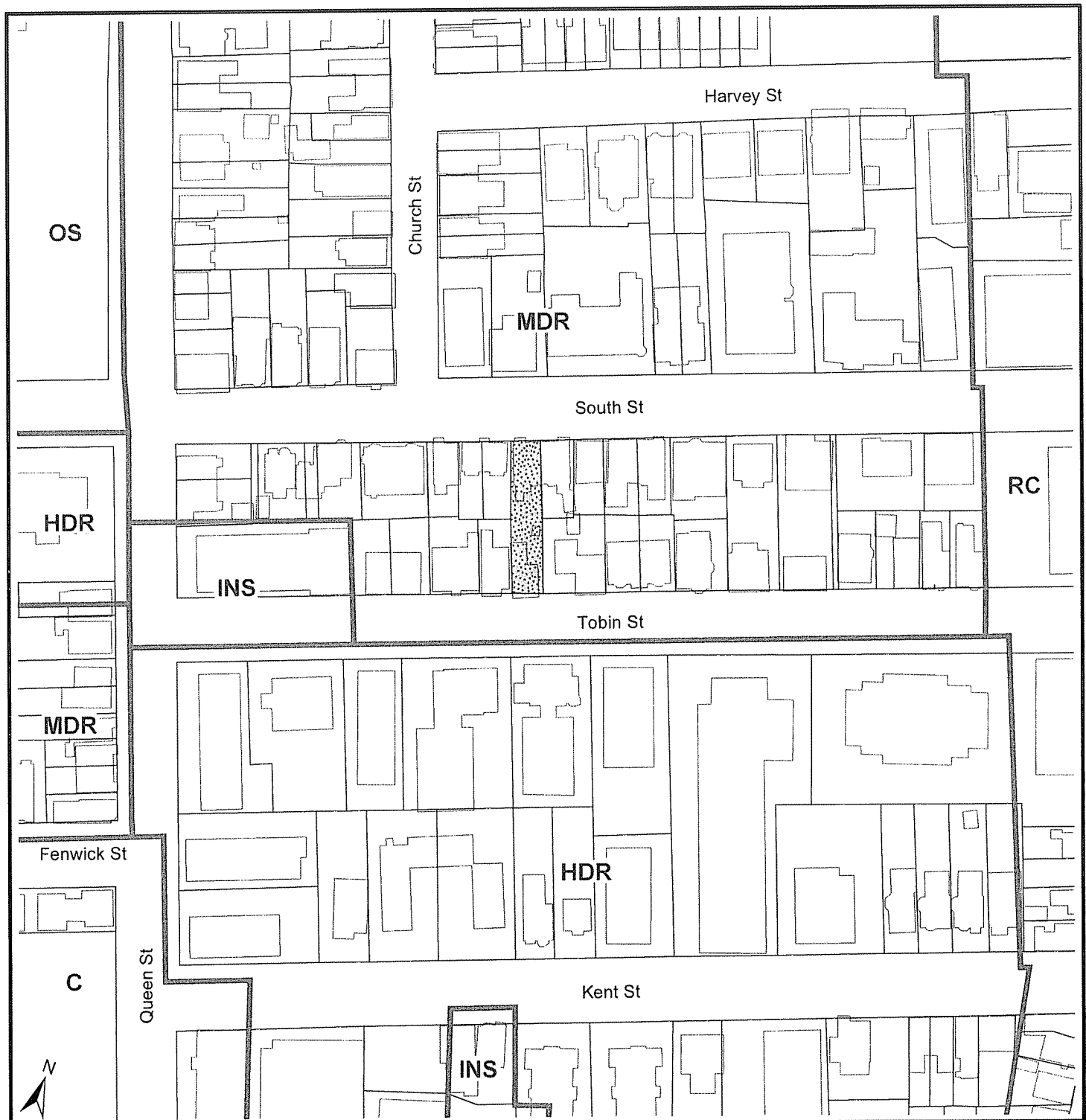
- R-2A General Residential Conversion
- R-3 Multiple Dwelling
- RC-2 Residential Minor Commercial
- RC-3 High Density Res. Minor Commercial
- C-2A Minor Commercial
- P Park and Institutional

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



Map 2 - Generalized Future Land Use

5280-82 South Street
5279 Tobin Street
Halifax

 Subject area


Halifax Plan Area

Designation

MDR Medium Density Residential
HDR High Density Residential
RC Residential Commercial Mix
C Commercial
INS Institutional
OS Open Space

HALIFAX
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COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 20 40 m



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

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

ATTACHMENT A

THIS AGREEMENT made this day of , 2009,

BETWEEN:

**DEBORAH LYNN CONRAD AND
JEFFREY GERRARD CONRAD,**
in the Halifax Regional Municipality,
Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 5280-82 South Street and 5279 Tobin Street, Halifax (PID # 00103176) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for the subdivision of the Lands pursuant to the provisions of the *HRM Charter* and pursuant to the provisions of the Halifax Municipal Planning Strategy and the Halifax Peninsula Land Use By-law;

AND WHEREAS the Halifax Peninsula Community Council, at a meeting held on _____, 2009, approved the said Agreement to allow for the subdivision of the Lands (referenced as Municipal Case Number 01246) subject to the registered owner of the Lands described herein entering into this Agreement;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

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 and the Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

1.4 Conflict

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 and the Subdivision 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.

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 regulations, by-laws or codes applicable to any 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 All words unless otherwise specifically defined herein shall be as defined in the Halifax Peninsula Land Use By-law and Subdivision By-law.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer agrees to develop and use the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with Schedule B attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 01246.

The Schedules are:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan (Plan #01246-001)

3.2 General Description of Land Use

The use(s) of the Lands permitted by this Agreement are the following:

- (a) Two existing residential buildings each containing up to three dwelling units, as illustrated on Schedule B and set out in this Agreement; and
- (b) Any R-1 zone use permitted within the existing zone applied to the Lands subject to the provisions contained within the Halifax Peninsula Land Use By-law as amended from time to time.

3.3 Detailed Provisions for Land Use

- 3.3.1 Notwithstanding the requirements of the Peninsula Land Use By-law and the Subdivision By-law:

- a) the Lands may be subdivided as generally shown on Schedule B so that each dwelling may be located on its own property; and
- b) the above noted subdivision of the Lands shall be exempt from the park dedication requirements of the Subdivision By-law.

- 3.3.2 No additions or renovations to either residential building which would result in an increase in the gross floor area and/ or an increase in the number of dwelling units shall be permitted.

4.0 AMENDMENTS

4.1 Substantive Amendments

Amendments to any matters not identified under Section 4.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *HRM Charter*.

4.2 Non-Substantive Amendments

The following items are considered by both parties to be non-substantial matters and may be amended by resolution of Regional Council:

- (a) the granting of an extension to the date of commencement of development as identified in Section 6.3.1 of this Agreement;
- (b) the length of time for the completion of development as identified in Section 6.3.3 of this Agreement;

5.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

5.1 Enforcement

The Developer agree 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 allow for such an inspection during any reasonable hour within one day of receiving such a request.

5.2 Failure to Comply

If the Developer fail 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; or
- (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 development 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 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 use 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 remediation under the *HRM Charter* or Common Law in order to ensure compliance with this Agreement.

6.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

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

6.2 Subsequent Owners

- 6.2.1 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 the Council.
- 6.2.2 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.

6.3 Commencement of Development

- 6.3.1 In the event that the subdivision of the Lands has not commenced within two years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of subdivision of the land.
- 6.3.2 For the purposes of this section, commencement shall mean the endorsement of final subdivision approval by the Development Officer.

6.4 Completion of Development

Upon the completion of the development or portions thereof, or within/after ten years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, 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;
- (c) discharge this Agreement, on the condition that for those portions of the land use that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Halifax Peninsula, 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

DEBORAH LYNN CONRAD AND
JEFFREY GERRARD CONRAD

Per: _____

Per: _____

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

=====

HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor

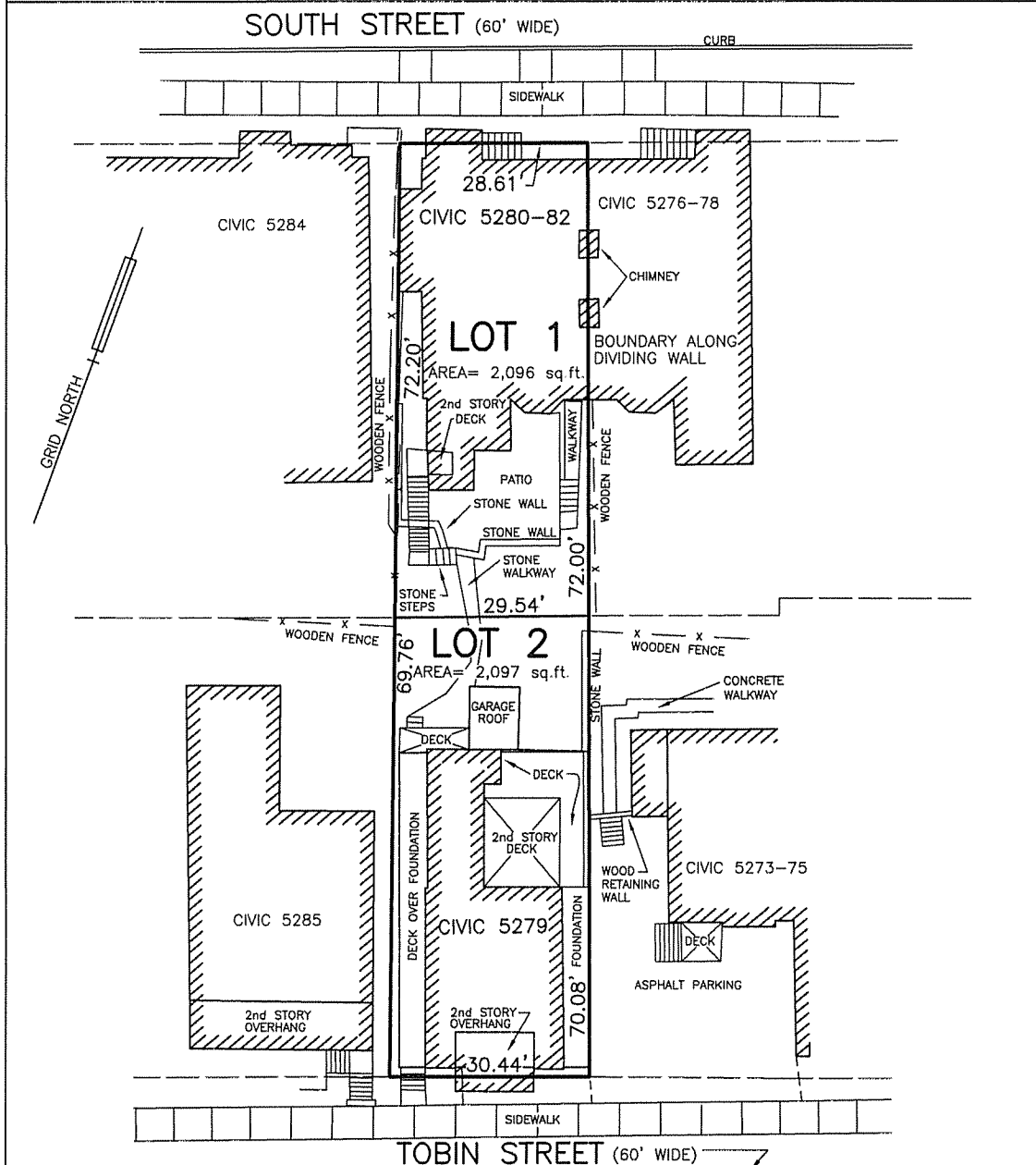
Per: _____

Municipal Clerk

SITE PLAN
PROPOSED SUBDIVISION
OF
PID No. 00103176
LAND REGISTERED TO
**JEFFREY GERARD CONRAD
& DEBORAH LYNN CONRAD**
TO FORM LOT 1 AND LOT 2

Case 01246
Schedule B
Plan #01246-001

5279 TOBIN STREET AND 5280-82 SOUTH STREET, HALIFAX



Scale : 1"=20'
Drawn By : GA
Date : DECEMBER 9, 2008

3656\3656-SKETCH DWG

WHYTE, MCELMON & ASSOCIATES LIMITED
NOVA SCOTIA LAND SURVEYORS
DEVELOPMENT CONSULTANTS

HALIFAX

NOVA SCOTIA

ATTACHMENT B

Review of Most Relevant Municipal Planning Strategy Policies

IMPLEMENTATION POLICIES

Policy	Comment
4.6 For any proposed development, the City may permit modification of the yard or lot area or width provisions of the Peninsula and Mainland Zoning By-laws under the authority of Section 33(2)(b) of the Planning Act. A decision of the Council of the City of Halifax to permit such modification may be preceded by a public hearing if deemed necessary and such modification shall be granted provided that:	The proposal involves modification of the lot area requirement. Previous variance approvals have dealt with other LUB provisions.
(a) the amenity, convenience, character and value of neighbouring properties will not be adversely affected;	The lot is currently developed with two residential buildings. The proposed subdivision of the lot will not impact on neighbouring properties.
(b) conditions necessitating such modification are unique to the lot and have not been created by either the owner of such lot or the applicant;	The conditions/ circumstances are unique to the lot.
(c) the modification is necessary to secure an appropriate development of the lot where such lot is of such restricted area that it cannot be appropriately developed without such modification;	Subdivision of land is one aspect of the development process. As the lot is currently developed with two residential buildings, it is appropriate to allow for the subdivision of the lot to place each building on its own lot.
(d) the modification is consistent with Section II of this Plan; and (e) the registered owner of the land for which the modification is sought shall enter into an agreement with Council pursuant to Section 34(1) of the Planning Act.	The proposed subdivision is consistent with the MPS. The applicant has reviewed the agreement and intends to endorse it in the event Council grants approval.

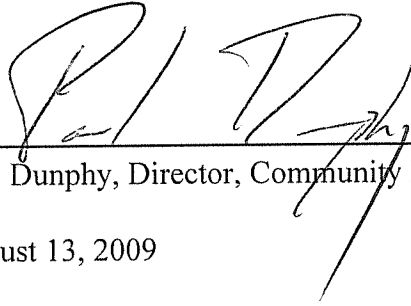


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
September 14, 2009

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY:


Paul Dunphy, Director, Community Development

DATE: August 13, 2009

SUBJECT: Accessory Buildings along the North West Arm, Halifax

INFORMATION REPORT

ORIGIN

May 11, 2009 Motion of Peninsula Community Council:

"MOVED by Councillor Uteck, seconded by Councillor Blumenthal that staff conduct a review of accessory buildings on the Northwest Arm with respect to height, setback, size and function. Staff may also wish to consider design as part of the public process. As part of the review, a public information meeting is to be held in the future as part of the process. MOTION PUT AND PASSED."

BACKGROUND

The Peninsula Community Council's motion originates in part as a result of the construction of a particular boathouse along the North West Arm that violates the maximum accessory building height requirements of the Halifax Land Use By-law. The By-law requires accessory buildings to be a maximum of 14 feet in height; the boathouse is approximately 20 feet tall. Council's motion also indicates a desire to allow accessory buildings on the North West Arm to be used as dwellings, which is not permitted under the Halifax Land Use By-law.

At the May 11, 2009 meeting, Councillor Uteck "advised that the reason for her request is that the current regulations cannot accommodate a variance for height or building use (i.e. guest boat house); and with further controls implemented on subdivision of waterfront lots in 2007, a review of accessory buildings is now timely." In 2007, Regional Council adopted amendments to the Peninsula Land Use By-law and the Mainland Land Use By-law to prevent buildings from being constructed upon in-fill lands within the North West Arm.

DISCUSSION

There are a variety of ways in which policies and regulations may be devised to allow for future accessory building proposals that exceed the current Land Use By-law requirements. These may range from:

- expanding the current as-of-right requirements to simply permit taller accessory buildings and human habitation; to
- devising discretionary criteria that require approval by Council based upon certain criteria.

Regardless of the mechanism that may be selected, there are two fundamental questions that arise from Council's motion:

1. Is it desirable to allow for larger accessory buildings than those which are currently permitted and accessory buildings containing dwelling units along the North West Arm?
and
2. If changes to the Land Use By-law are desirable, under what circumstances would larger accessory buildings and dwelling units within them be suitable?

At this time, staff recommend that Council not pursue a project to consider expanding the accessory building allowances along the North West Arm. Based on our interpretation of the citizen feedback in 2007, we suggest that there is considerable concern about development within the North West Arm that likely runs contrary to the notion of relaxing the current accessory building requirements. Although the subject matter at that time was development following water lot in-fill, there were many general comments made about the protection of the Arm from additional buildings.

However, if Peninsula Community Council wishes to proceed with a review of the current accessory building regulations, staff would require direction on the two questions raised above. Further, Chebucto Community Council would need to be informed of this initiative so that it may determine if it wishes the project to include both sides of the Arm (the west side of the Arm is under the Chebucto Community Council jurisdiction).

BUDGET IMPLICATIONS

None.

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.

ATTACHMENTS

None.

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 : Richard Harvey, Senior Planner, 490-5637

Report Approved by: 
Kurt Pyle, Acting Manager, Planning Services, 490-7066