

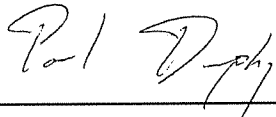


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

10.1.1

Peninsula Community Council
November 8, 2010

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: October 29, 2010

SUBJECT: Case 01356: MPS Amendment & Development Agreement – 2579 Windsor Street, Halifax

SUPPLEMENTARY REPORT

ORIGIN

September 14, 2010	Joint public hearing; Regional Council approval of Halifax MPS / Halifax Peninsula LUB amendments
October 25, 2010	Provincial ministerial review and approval of MPS & LUB amendments
October 30, 2010	MPS & LUB amendments in effect

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Approve the development agreement contained in Attachment A of this report to allow for an office at 2579 Windsor Street, Halifax; and
2. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND / DISCUSSION

On September 14, 2010, Regional Council and Peninsula Community Council held a joint public hearing to consider amendments to the Halifax Municipal Planning Strategy (MPS) and the Halifax Peninsula Land Use By-law (LUB) to enable the alteration, replacement or expansion of existing structures in the area designated Medium Density Residential on the north side of Windsor Street between North and Willow Streets for office and residential uses by development agreement, as well as to consider a proposed development agreement for an office at 2579 Windsor Street, Halifax.

After the public hearing, Regional Council approved the amendments to the Halifax MPS and the Halifax Peninsula LUB. While the proposed development agreement was also part of the public hearing process, it could not be approved by Peninsula Community Council until the MPS and LUB amendments took effect.

The amendments have since been reviewed by the Provincial Department of Service Nova Scotia and Municipal Relations as per Section 223 of the *Halifax Regional Municipality Charter*. The MPS and LUB amendments came into effect on Saturday, October 30, 2010.

As noted in the previous staff report dated May 19, 2010, once the MPS and LUB amendments took effect, staff would bring the case back to Peninsula Community Council for a decision on the proposed development agreement. Staff recommend that Council approve the proposed development agreement contained 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 proposed budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a public information meeting held on April 7, 2010, as well as a joint public hearing held by Regional Council and Peninsula Community Council.

**Attachment A:
Development Agreement**

THIS AGREEMENT made this _____ day of _____, 2010,

BETWEEN:

<INSERT DEVELOPER'S NAME>

an individual, in the Halifax Regional Municipality,
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 2579 Windsor Street, Halifax 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 an office on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 10.4 of the Peninsula North Secondary Planning Strategy of the Halifax Municipal Planning Strategy and Section 98(1)(c) of the Halifax Peninsula Land Use By-law;

AND WHEREAS the Peninsula Community Council for the Municipality approved this request at a meeting held on <INSERT DATE>, referenced as Municipal Case Number 01356;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

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

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

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the 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 / Federal Government, and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law; if not defined in these documents, their customary meaning shall apply.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 01356:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan

3.2 Requirements Prior to Approval

Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

The uses of the Lands permitted by this Agreement are the following:

- (a) offices, subject to the provisions contained within this Agreement;
- (b) any use permitted in the R-2 (General Residential) Zone, subject to the provisions contained within the Halifax Peninsula Land Use By-law.

3.4 Building

- 3.4.1 Any alterations to the exterior of the building shall retain the residential character of the building and shall be subject to the requirements of the R-2 (General Residential) Zone.
- 3.4.2 Nothing in this Agreement shall prevent the installation of a ramp for barrier-free access.

3.5 Parking and Access

- 3.5.1 The parking area for offices shall be sited as shown on Schedule B.
- 3.5.2 The parking area for offices shall provide a minimum of three (3) separately accessible parking spaces at least nine (9) feet wide and twenty (20) feet long.
- 3.5.3 The Developer shall provide an opaque wooden fence at least five (5) feet in height but no greater than six (6) feet in height between the parking area and the adjacent residential property at 2581-83 Windsor Street.

3.6 Signage

- 3.6.1 Signage for an office shall be limited to one non-illuminated sign not exceeding six (6) square feet in area.
- 3.6.2 Temporary signs, as defined by the Temporary Sign By-law, are not permitted.

3.7 Outdoor Lighting

Outdoor lighting shall be directed to driveways, parking areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.8 Maintenance

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, 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 and ice control, salting of walkways and driveways.

PART 4: AMENDMENTS

4.1 Non-Substantive Amendments

The following item is considered by both parties to be not substantive and may be amended by

resolution of Council:

- (a) The granting of an extension to the date of commencement as identified in Section 5.3 of this Agreement.

4.2 Substantive Amendments

Amendments to any matters not identified under Section 3.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1 Registration

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

5.2 Subsequent Owners

- 5.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 5.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

5.3 Commencement of Development

- 5.3.1 In the event that development on the Lands has not commenced within three 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.
- 5.3.2 For the purpose of this section, commencement shall mean issuance of an Occupancy Permit for an office.
- 5.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 4.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

5.4. Completion of Development

Upon the completion of the development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

5.5 Discharge of Agreement

If the Developer fails to complete the development after five years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

6.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any 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; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2010.

SIGNED, SEALED AND DELIVERED in the presence of:

<INSERT DEVELOPER’S NAME>

Per: _____

Per: _____

=====

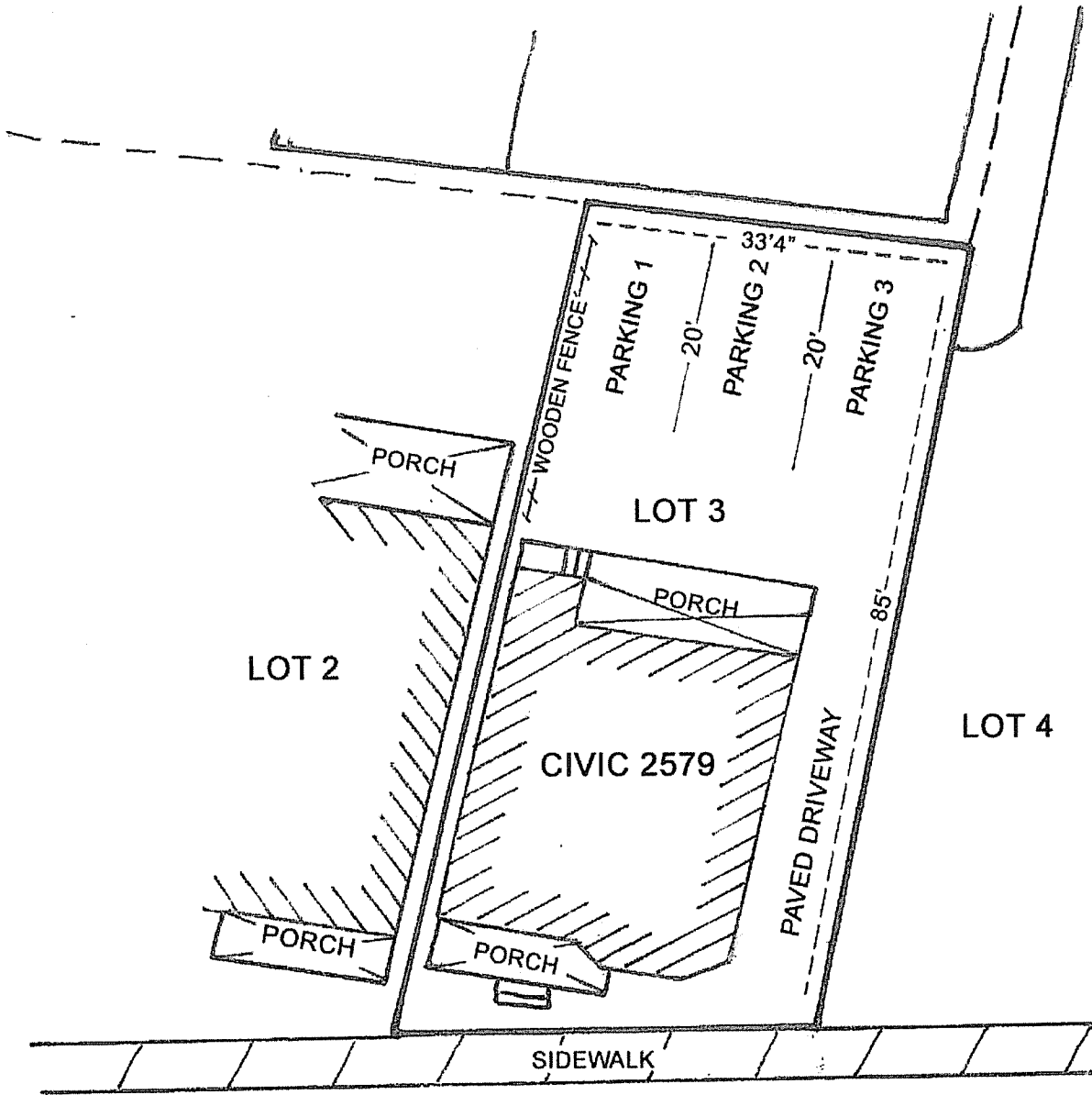
SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

HALIFAX REGIONAL MUNICIPALITY

Per: _____
Mayor

Per: _____
Municipal Clerk

Case 01356
Schedule B - Site Plan





WINDSOR STREET



Map 1 - Location and Zoning

North side of Windsor Street
between Willow and North Streets
Halifax

-  Area to be considered for office uses by development agreement
-  Area of notification

Halifax Peninsula Land Use By-Law Area

Zone

- R-1 Single Family Dwelling
- R-2 General Residential
- R-3 Multiple Dwelling
- C-1 Local Business
- C-2 General Business
- C-2A Minor Commercial
- P Park and Institutional



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated

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