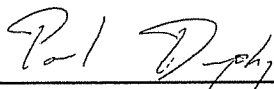




PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**North West Planning Advisory Committee  
June 6, 2007**

**TO:** Chairperson and Members of North West Planning Advisory Committee

**SUBMITTED BY:**   
Paul Dunphy, Director, Community Development

**DATE:** May 18, 2007

**SUBJECT:** **Case 00955: Rezoning and Development Agreements, Cobequid Road  
and Glendale Drive, Sackville**

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**ORIGIN**

Application by 3051129 Nova Scotia Limited.

**RECOMMENDATION**

It is recommended that North West Community Council:

1. Move First Reading and Notice of Motion to consider the proposed rezoning and development agreements, as provided in Attachment A, B and C and schedule a public hearing;
2. Approve the rezoning of PID#00361493 and a portion of PID#00637652 from P-1 (Community Facility) Zone to C-2 (Community Commercial) Zone as provided in Attachment "A";
3. Approve the development agreements as set out in Attachment "B" to permit the establishment of a gas station on a portion of the property, and Attachment "C" to permit the establishment of a commercial building, subject to the sale of HRM lands and the creation of Lots 1 and 2 through the subdivision process. (The development agreement cannot be approved until the rezoning is in effect.)
4. Require that the development agreement be signed and registered within 365 days, or any extension thereof granted by Council on request of the developer, from the date of final approval by Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **EXECUTIVE SUMMARY**

The proposed development consists of:

- a gas station with a convenience store and attached car wash; and
- a two storey commercial building.

This development is modest in scale. It has been reviewed in relation to the applicable policies of the Sackville Municipal Planning Strategy (MPS) (Attachment D) and it has been determined to be consistent with the MPS.

Although the development itself is not very complex, a number of procedural steps are involved to enable the project due to a convergence of as-of-right regulations and policies for rezoning and development agreements. Portions of the site allow the development as-of-right, while the remaining portions require a rezoning and two development agreements.

This site was subject to a previous application for a similar proposal (Case 00674) which was rejected by Council in 2006. The decision on this matter was appealed to the Nova Scotia Utility and Review Board, but the hearing was placed on hold by the developer, pending the outcome of this case.

After a review of this revised proposal, staff recommend approval of the rezoning and the draft development agreements attached to this report. A proposed site plan is attached as Map 3.

## **BACKGROUND**

**Previous Application:** Prior to the receipt of this application, a similar proposal (Case 00674) was reviewed by North West Community Council. The decision of Council was to reject the proposal due to incompatibility. The revised application includes additional measures to increase neighbourhood compatibility including the following:

- gas storage tanks relocated as far away as possible from the adjacent Caudle Park subdivision;
- development of adjacent parkland as a pocket park;
- revised architectural standards to improve the compatibility of the commercial building adjacent to the existing residential properties;
- increased fencing height adjacent to the existing residential properties;
- measures to ensure adequate lighting for video surveillance; and
- submission of an engineering study relating to possible traffic short-cutting through the Caudle Park subdivision.

**Location, Designation and Zoning:** The subject properties are situated at the northwest intersection of Glendale Drive and Cobequid Road and include 220, 228 and 232 Cobequid Road. The site is:

- subject to the policies and provisions of the Sackville MPS and Land Use By-law (LUB);
- located partially within the Urban Residential designation, which is intended to support urban development and located partially within the Community Commercial designation, which is intended to support commercial development (Map 1);
- partially zoned P-1 (Community Facility) Zone, which permits park and institutional uses, partially zoned C-2 (Community Commercial) Zone, which permits general commercial uses, and partially zoned R-2 (Two Unit) Zone, which permits single and two unit residential uses (Map 2);
- approximately 1.5 acres in size (0.9 acres for the gas station, 0.56 acres for the commercial building) and slopes gradually from the north towards Cobequid Road;
- comprised of a number of parcels which will be consolidated and subdivided into two lots;
- contains three existing buildings, two commercial (one occupied and one vacant) and one residential (vacant). All buildings are proposed to be removed; and
- contains land partially owned by HRM and subject to a purchase and sale agreement with the developer.

**Surrounding Land Uses:** Lands located immediately to the west and north of this site are zoned R-2 and developed as two unit dwellings. The site is immediately adjacent three residential properties. Lands to the east and south are zoned BP (Business Park) Zone and developed as multi-tenant commercial and mixed use buildings.

**Enabling Policy:** Policy UR-24 of the Sackville MPS enables Council to consider development agreements for C-2 (Community Commercial) uses on properties located north of Glendale Drive on Cobequid Road. The subject properties identified on Map 4 allow Council to consider two separate development agreements; one for a commercial building and one for a gas station.

Relative to the rezoning from P-1 to C-2, Policy CC-2 applies which establishes the C-2 Zone as the base zone of the Community Commercial (CC) designation. There is no specific MPS policy which provides criteria for Council to consider when rezoning lands from the P-1 Zone to the C-2 Zone in the CC designation. However, due to a previous decision by the Nova Scotia Utility and Review Board in *Lewis vs. Northwest Community Council* (Attachment G), Council may consider rezoning lands within the CC designation to the C-2 Zone without explicit enabling policy. This decision was based on the premise that because the C-2 Zone is the base zone for the CC designation, rezoning lands to that zone carries out the intent of the MPS and does not violate its intent. The relevant MPS policies are included in Attachment "D".

## DISCUSSION

The following is an evaluation of the proposal for a gas station and commercial building under applicable policies of the Sackville MPS (Attachment "D").

**Gas station - Policy Intent**

Subject to the proposed rezoning, the majority of the gas station site is to be zoned C-2, thus permitting most of the proposed gas station as-of-right. A small portion of the site (8%) which is currently zoned P-1 can only be developed by development agreement because it is located within the Urban Residential designation. Another portion of the property is eligible for consideration for a rezoning from P-1 to C-2. Thus, most of the site can be developed as-of-right based upon the C-2 regulations. The development agreement will apply to the remaining 8% of the site (Map 4) but it will generally set out that the property be developed consistent with the regulations of the C-2 Zone.

Staff have attached a draft development agreement for the proposal (Attachment "B").

**Commercial Building - Policy Intent**

Approximately 20% of the commercial building site is zoned C-2 which permits the proposed land use as-of-right. The remainder of the site can be developed with C-2 Zone uses by development agreement. As the majority of the proposal is located within the development agreement area (Map 4), the development agreement will regulate most aspects of this development.

Staff have attached a draft development agreement for the proposed commercial building (Attachment "C").

**Issues Identified**

Staff have identified the following areas for a more detailed discussion:

**Where should Gas Stations be located?** Ideally gas stations should be located adjacent major roadways and in locations where they do not direct traffic on to adjacent residential streets. Where possible, the site should be adjacent commercial uses to minimize impacts on other adjacent uses. The proposed site is located in an area where uses such as gas stations are encouraged by the MPS and at the cross roads of two major streets; Glendale Drive and Cobequid Road. The proposed development does not access any local roads and the site is not immediately adjacent residential properties.

**Where should C-2 (Community Commercial) uses be located?** Commercial uses typically need high visibility and access to higher volume roads to be successful. Ideally, the uses should be distanced from residential to aid in compatibility. In this instance, the MPS allows Council to consider the conversion of existing residential uses to C-2 (Community Commercial) uses through a development agreement process.

**Compatibility of the Uses with Surrounding Residential Area:** The property line of the gas station is located more than 125 feet from the closest residential property in the Caudle Park subdivision. Given the layout of the site, separation distances, the surrounding vegetation (HRM Parkland) and the features of the proposed gas station, it is the opinion of staff that the proposed gas

station is reasonably compatible with the surrounding properties. The gas station is subject to the HRM Noise By-law and its penalties.

The commercial building is located closer to the adjacent residential properties and thus the development agreement includes the requirement for opaque fencing along this property line. This fencing has been upgraded at the request of one of the adjacent property owners and varies from 1.8 m in height adjacent Cobequid Road to 3m in height adjacent to 10 Nelson Drive. Fencing is also now required along the rear property line of the proposed commercial building. Fencing adjacent to properties on Nelson Drive is required to be installed prior to the construction of the commercial building.

In addition, the relocation of an HRM service easement (Map 3) will result in the building being setback approximately 20 feet from the property line.

The design of the building incorporates a hipped roof design which is consistent with a residential character. Further, the building is oriented towards Glendale Drive and Cobequid Road and away from adjacent residential properties. Staff have included the following additional measures in the proposed development agreement to ensure compatibility:

- locating refuse containers away from adjacent residential uses and requiring screening;
- lighting directed away from residential properties;
- adequate lighting for video surveillance; and
- controls on the placement of mechanical equipment.

Staff are satisfied that the design of the building including its orientation and aesthetics are reasonably compatible with the surrounding properties.

**Environment:** The proposed developments are not adjacent to a watercourse, however, environmental conditions, specifically during development are a concern. The development agreement for the gas station requires measures that would be required through the as-of-right permitting process as there is anticipated to be little development on the actual portion of the site which requires a development agreement.

The development agreement for the commercial building includes requirements for the following:

- erosion and sedimentation control plan;
- grading and drainage plans;
- protective catchment devices for any heating fuel; and
- oil water separator.

**Health Impacts of Gas Stations:** During the previous planning case for this site (00674) issues relating to potential health hazards of gas stations were raised, based primarily on the suggestion that benzene fumes from gasoline is hazardous. The Government of Canada has legislation which has,

over the years, reduced the amount of benzene vapours in gasoline. A limited number of other jurisdictions have implemented vapour recovery systems which minimize the amount of vapour released from gas stations. These systems typically involve capital improvements throughout the supply system and are not practical to implement on a site by site basis. As a result of the proposed concern by the local residents, the developer is proposing to relocate the tanks as far as possible from the adjacent homes on Nelson Drive.

**Traffic:** A traffic statement submitted previously (Case 00674) indicate that the development is not expected to have a noticeable impact on the traffic operations at the adjacent intersection. Further, as a result of concerns identified during the previous application relating to concerns about possible short cutting through the adjacent Caudle Park subdivision, the developer commissioned an additional traffic study. This study concluded that there currently is not a short-cutting problem through the adjacent subdivision and that one is not anticipated with the proposal.

Fast food drive-thrus are not proposed for either site.

**Relocation of Infrastructure:** The proposed development will require the relocation of an HRM service easement and underground sewer and water infrastructure at the developer's cost.

**Development of Adjacent Parkland:** The sale of a small piece of HRM Parkland is part of the proposal for the gas station site. Staff have reviewed the request to sell this property and, due to its size (approximately 12,000 square feet) and location, it was determined that this small strip of land provided little value as parkland and as such may be declared surplus and sold. As a result, local residents are concerned about the protection of the adjacent parkland. The sale or disposal of HRM Parkland is subject to a separate Council approval process and public hearing which will occur at a later date.

The developer has offered to make a \$10,000 contribution towards the development of the remaining adjacent parkland and the development agreement includes a section which addresses this provision.

**Conditional Approval:** The development agreements proposed for these sites cannot be signed prior to the creation of Lots 1 or 2. As a result, staff have extended the amount of time the developer has to sign the proposed development agreements to 365 days.

**Public Information Meeting:** A public information meeting was held on November 22, 2006. Minutes of the meeting are provided as Attachment E. The public concerns focussed on traffic, aesthetics, lighting and fencing. A discussion of these public concerns is contained above. Should Community Council decide to proceed with a public hearing on this application, in addition to published newspaper advertisements, property owners in the immediate area will be individually notified as shown on Map 2. This is the notification area which was also used for the Public Information Meeting.

**Summary:** It is the opinion of staff that the proposed rezoning and development agreement for the proposed gas station furthers the intent of the Municipal Planning Strategy by permitting this use to locate in an area where it is encouraged.

Similarly, the proposed development agreement for the commercial building furthers the intent of the Municipal Planning Strategy by being designed in an architecturally sensitive manner. Further, the development agreement contains extensive measures requested by adjacent residents which are designed to improve compatibility over the previous application (Case 00674) made for a similar development. Both proposed sites are suitable for these developments and are reasonably compatible with the surrounding land uses.

### **BUDGET IMPLICATIONS**

There are no immediate budget implications associated with this proposal.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

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

### **ALTERNATIVES**

1. Council may choose to approve the proposed rezoning and development agreements. This is the recommended course of action.
2. Council may choose to refuse the proposed rezoning and development agreements, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff is satisfied that both the proposed rezoning and development agreement are consistent with the policies and intent of the MPS.
3. Council may choose to alter the terms of the proposed agreements. This may necessitate further negotiations with the developer and additional report(s) In the event substantive revisions are requested subsequent to advertising for a public hearing, an additional public hearing may be required .

### **ATTACHMENTS**

Map 1	Generalized Future Land Use Map
Map 2	Zoning
Map 3	Proposed Site Plan
Map 4	Area Proposed to be Rezoned

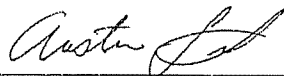
Attachment "A"	Amendments to the Sackville Land Use By-law
Attachment "B"	Development Agreement - Gas Station
Attachment "C"	Development Agreement - Commercial Building
Attachment "D"	Relevant MPS Policy
Attachment "E"	Relevant LUB Excerpts -C-2 (Community Commercial) Zone
Attachment "F"	Minutes from Public Information Meeting (November 22, 2006)
Attachment "G"	Lewis vs. North West Community Council

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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.

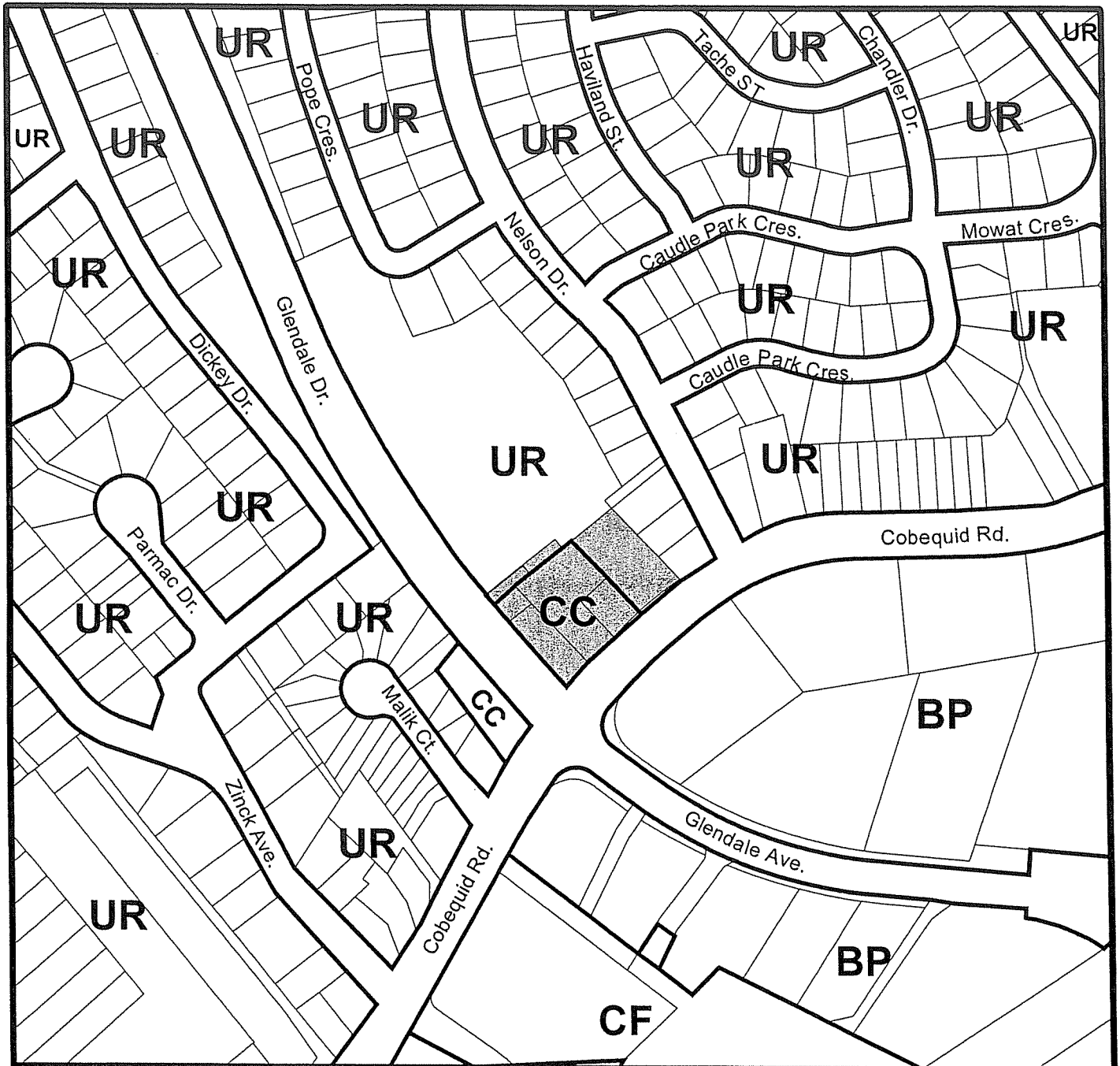
Report Prepared by: Andrew Bone, Senior Planner, 869-4226

Report Approved by:



Austin French, Manager of Planning Services, 490-6717





Map 1  
Generalized Future Land Use

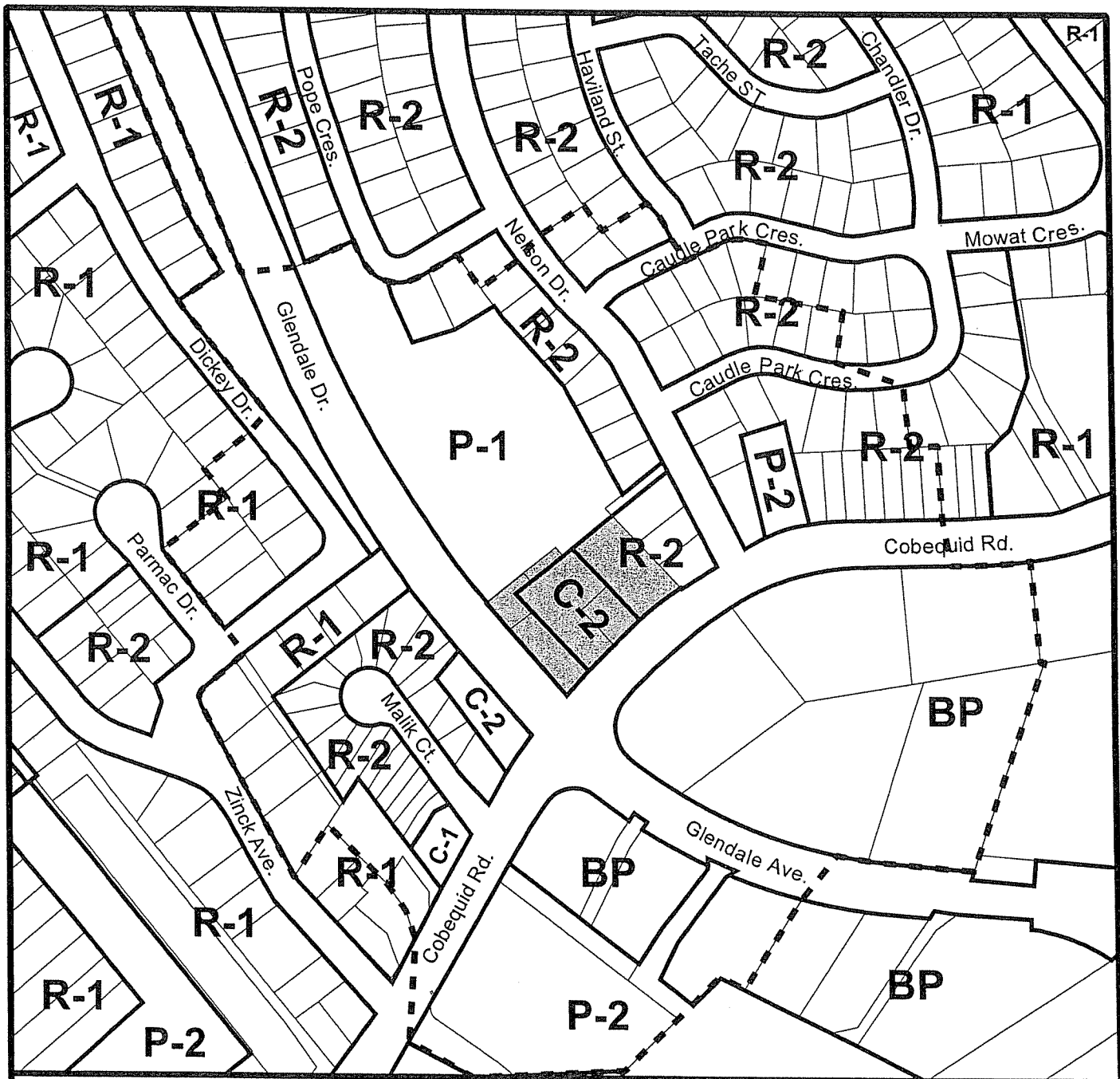


Subject Area



- UR Urban Residential Designation
- CC Community Commercial Designation
- CF Community Facility Designation
- BP Business Park Designation





**Map 2  
Zoning**



Subject Area

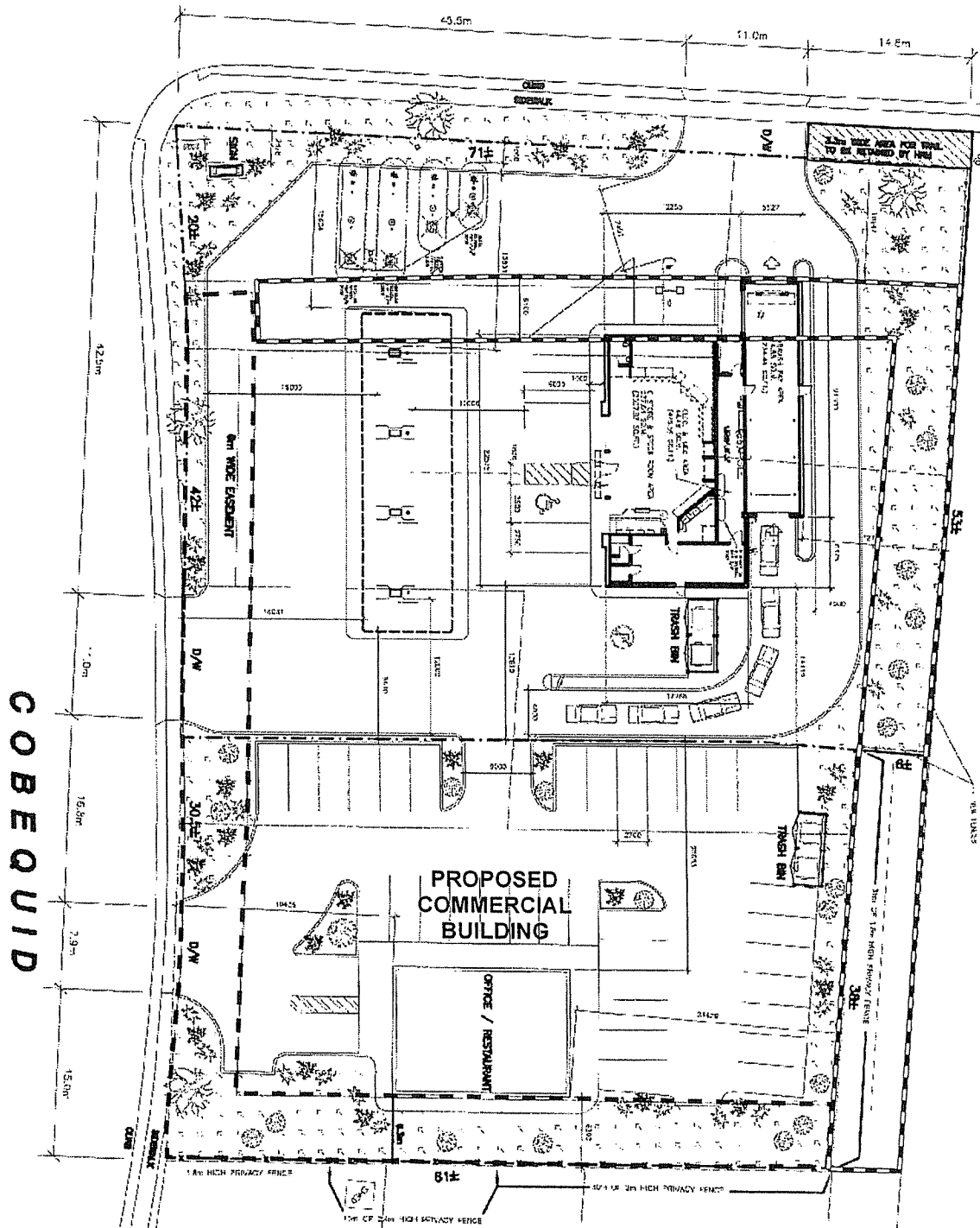
- R-1 Single Family Dwelling Zone
- R-2 Two Unit Dwelling Zone
- C-1 Local Business Zone
- C-2 Community Commercial Zone

- P-1 Open Space Zone
- P-2 Community Facility Zone
- BP Business Park Zone



--- Notification Area



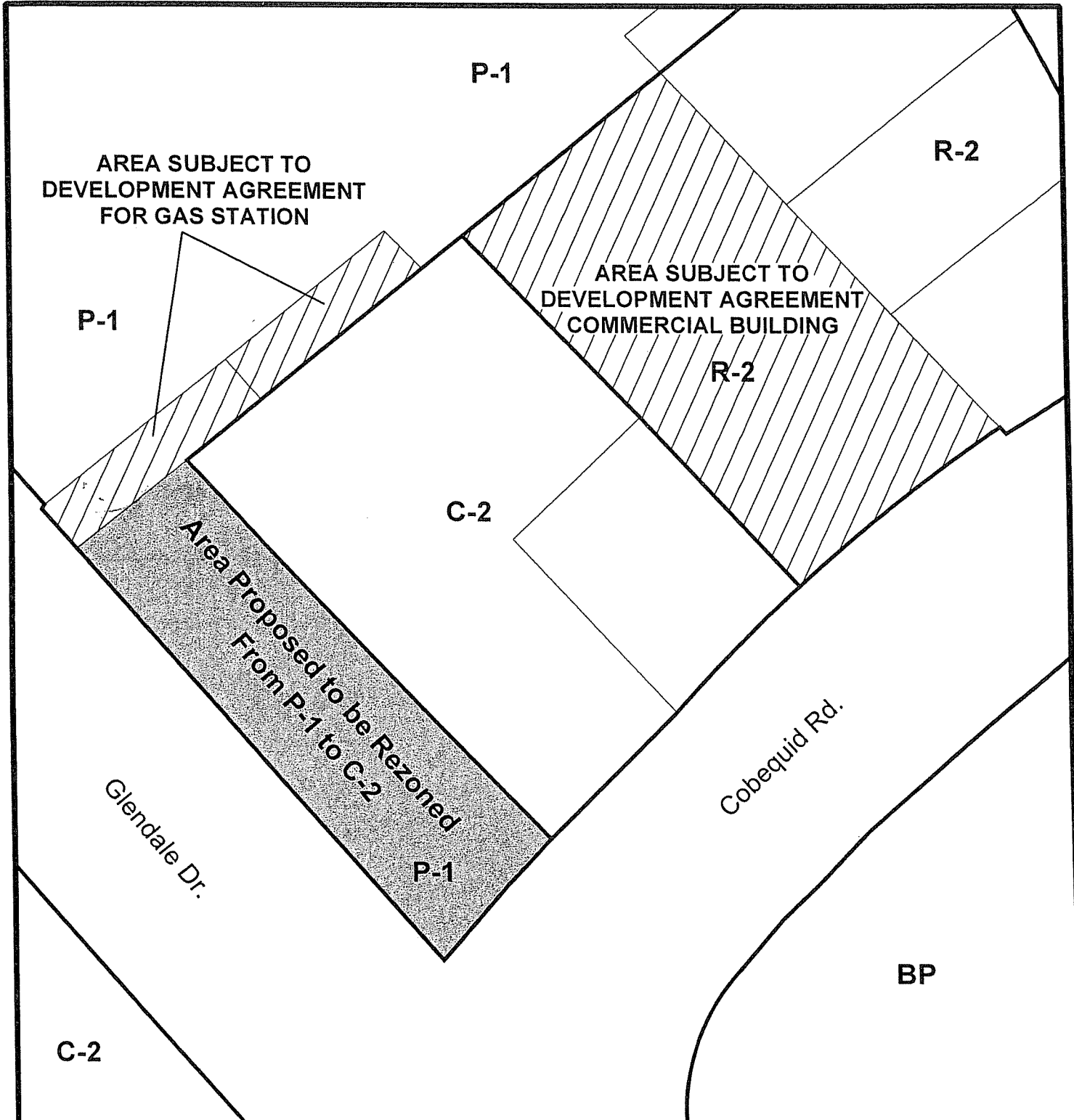
# GLENDALE




Map 3

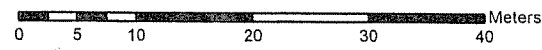
-  New Sewer and Water Services and Easement to be Provided
-  Existing Sewer and Water Services to be Relocated





Map 4

 Area Proposed to be Rezoned from P-1 to C-2



**Attachment A  
Amendments to the Land Use By-law for  
Sackville**

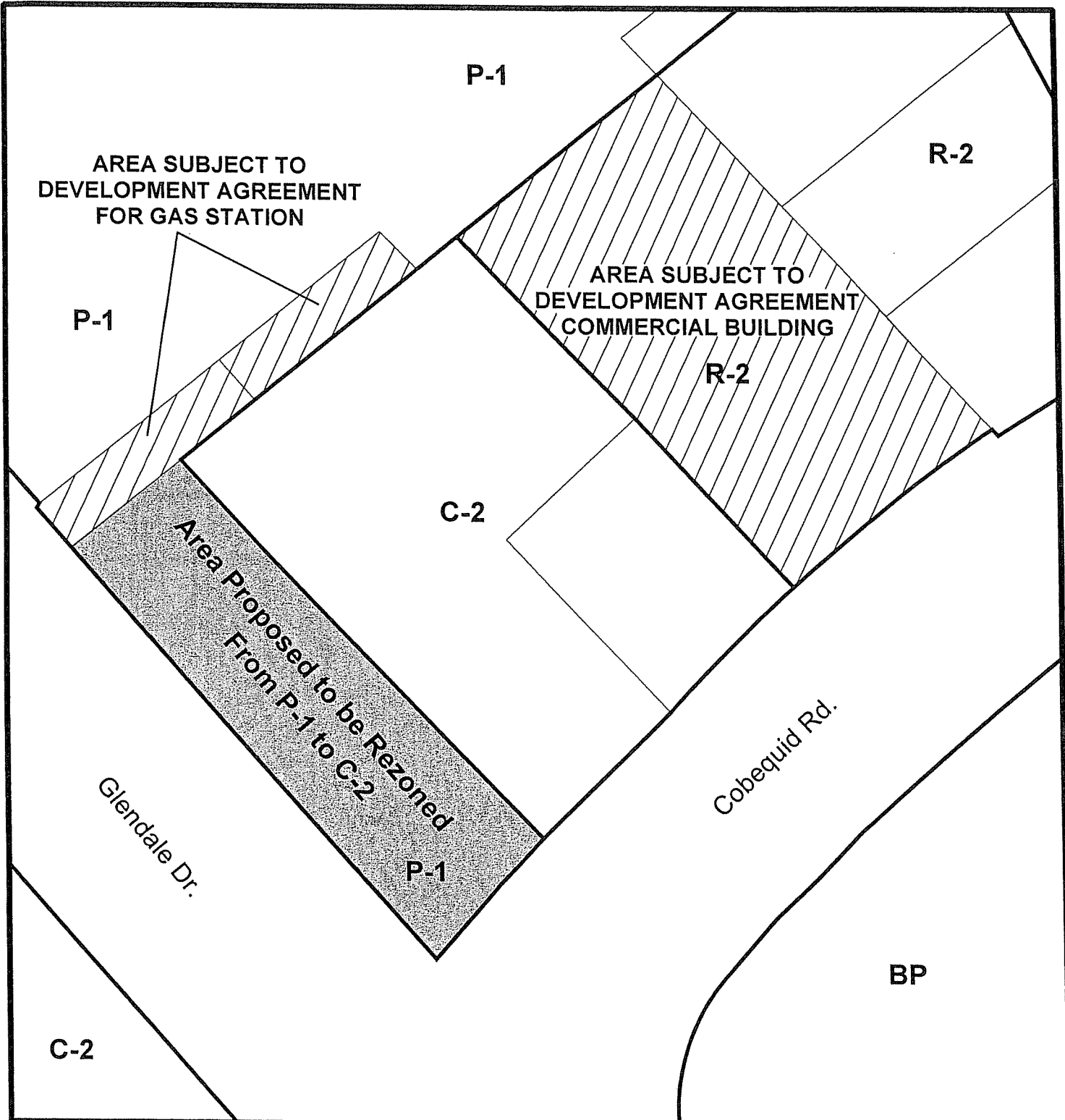
BE IT ENACTED by the North West Community Council of the Halifax Regional Municipality that the Land Use Bylaw of Sackville as enacted by the former Halifax County Municipality on the 5<sup>th</sup> day of April 1994 which includes all amendments thereto which have been approved by the Municipality and are in effect as of the 16<sup>th</sup> day of June, 1994, is hereby further amended as follows:

1. Schedule A, Sackville Zoning Map shall be amended as shown in the attached Schedule A.


I HEREBY CERTIFY that the amendment to the Land Use By-law for Sackville as set out above, was passed by a majority vote of the North West Community Council of the Halifax Regional Municipality at a meeting held on the \_\_\_\_ day of \_\_\_\_, 2007.

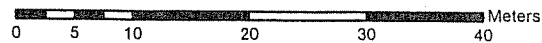
GIVEN under the hands of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Jan Gibson  
Municipal Clerk



Schedule A

 Area Proposed to be Rezoned from P-1 to C-2



**Attachment "B"**  
**Development Agreement for Gas Station, Car Wash and Convenience Store**

**THIS AGREEMENT** made this      day of                      , 2007

BETWEEN:

**HAMTON HOLDINGS LIMITED,**  
a body corporate, in the County of Halifax,  
Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

**HALIFAX REGIONAL MUNICIPALITY,**  
a body corporate, in the County of  
Halifax, Province of Nova Scotia  
(hereinafter called the "Municipality")

OF THE SECOND PART

**WHEREAS** Hamton Holdings are the registered owner of the lands located on Cobequid Road and Glendale Drive of Lower Sackville and more particularly described in Schedule "A", the said Agreement (hereinafter called the "Lands").

**AND WHEREAS** Hamton Holdings Limited has requested that the Municipality enter into a development agreement to allow for community commercial uses, specifically a portion of a gas station, a portion of a car wash and landscaping on the Lands pursuant to the provisions of the *Municipal Government Act* and the *Municipal Planning Strategy and Land Use By-law for Sackville*.

**AND WHEREAS** the North West Community Council of Halifax Regional Municipality at its meeting on \_\_\_\_ the day of \_\_\_\_\_, 2007, approved the requested amendment, referenced as Case 00955.

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

## **1.0 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 Sackville 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 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.

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 HRM 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.

### **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 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.

## **2.0 USE OF LANDS AND DEVELOPMENT PROVISIONS**

### **2.1 Schedules**

The Developer shall develop and use the Lands in conformance with the Schedules attached to this Agreement:

Schedule "A" Legal Description of the Land - Lot 1  
Schedule "B" Area Subject to Development Agreement

### **2.2 Requirements Prior to Approval**

Prior to the issuance of any municipal Permits, the Developer shall follow the MICI (Multi-unit/Industrial/Commercial/Institutional/Commercial) permit process.

### **2.3 General Description of Land Use**

The following uses are permitted on the lands:

Any use permitted within the C-2 (Community Commercial) Zone, subject to the provisions contained within the Land Use By-law for Sackville, as amended from time to time.

### **2.4 Maintenance**

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and 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.

### 3.0 STREETS AND MUNICIPAL SERVICES

- 3.1 All construction shall satisfy Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work. The Development Officer, in consultation with the Development Engineer, may give consideration to minor changes to the street network, provided the modifications serve to maintain or enhance the intent of this Agreement.
- 3.2 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.
- 3.3 The water distribution system shall conform with the design and construction requirements of the Halifax Regional Water Commission.
- 3.4 The sanitary sewer system shall conform with the design and construction standards of the Municipal Service Systems Manual, unless otherwise acceptable to the Development Engineer.
- 3.5 The developer shall provide a service easement in favour of the Halifax Regional Water Commission and the Municipality for the proposed relocation of the public water, sanitary and storm system from Area A-1. The service easement is subject to compliance with Halifax Regional Water Commission and HRM operation and maintenance requirements. This easement shall be a minimum of six (6) metres (19.68 feet) in width. The easement shall be located as previously determined and as generally illustrated on Schedule "C".
- 3.6 Further to section 3.5, these easements shall be included on the plan of subdivision which is certified by a Nova Scotia Land Surveyor. The granting of easements as required above shall take place prior to the issuance of any building or development permits for the proposed development of the gas station, convenience store or car wash buildings.
- 3.7 A Municipal Service Agreement shall be required for the public sanitary and storm system; construction cost estimate and inspection fees will be required for the public sanitary and storm system.
- 3.8 Prior to the issuance of a development permit, a water services agreement between the developer and the Halifax Regional Water Commission shall be required. In addition, construction cost estimates and inspection fees will be required for the public water system.

3.9 All proposed buildings shall have separate water service laterals from the water main to the buildings.

#### 4.0 ENVIRONMENTAL PROTECTION MEASURES

4.1 Prior to the commencement of any onsite works on the Lands, including earth movement and/or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall:

- (a) submit a detailed a Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
- (b) submit a detailed Erosion and Sedimentation Control Plan in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by the Nova Scotia Department of the Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented. The Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during development; and
- (c) submit a detailed final Site Grading and Stormwater Management Plan which shall include an appropriate storm water collection and treatment system.

4.2 Prior to the issuance of a Development Permit, the Developer shall post security in the as required for the Lot Grading Permit. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable, automatically renewable letter of credit issued by a chartered bank. The security shall be returned to the Developer at the time of issuance of the final occupancy permit or release of Landscaping security bond whichever is later, provided that all disturbed surfaces have been permanently reinstated, and that all landscaping has become established.

4.3 The Developer agrees to construct at its own expense the Stormwater Management System which conforms to the requirements of the Development Engineer pursuant to this section. The Developer shall provide certification from a Professional Engineer that the system, or any phase thereof, has been constructed in accordance with the approved design.

4.4 If the Developer fails at any time to fully conform to the approved plans as required under Section 4.1, the Municipality shall require that all site and construction works cease, except for works which may be necessary to ensure public safety.

4.5 The design, installation and cost associated with the provision of services, included but not limited to, water supply, sanitary sewers, storm sewer and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer, and no development permit shall be issued by the Development

Officer until written approval from the Municipal Engineer, Halifax Regional Water Commission staff and any other applicable authorities with respect to the design of all systems has been received.

## 5.0: AMENDMENTS

Amendments to any matters shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

## 6.0 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 allow for such an inspection during any reasonable hour within one day of receiving such a request.

### 6.2 Failure to Comply

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty 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:

- (1) 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; and/or
- (2) 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*.
- (3) 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

- (4) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the *Municipal Government Act* or Common Law in order to ensure compliance with this Agreement; and/or

## **7.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **7.1 Registration**

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

### **7.2 Subsequent Owners**

- 7.2.1 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.
- 7.2.2 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.

### **7.3 Commencement of Development**

- 7.3.1 In the event that construction has not commenced within five years from the date of registration of this Agreement at the Land Registry 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 construction.
- 7.3.2 For the purposes of this section, commencement shall mean the issuance of a Construction Permit.
- 7.3.3 If the Developer(s) fails to complete the development, after seven years from the date of registration of this Agreement at the Land Registry 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.

### **7.4 Completion of development**

Upon the completion of the development or portions thereof, or after five years from the date of registration of this Agreement with the Registry of Deeds, 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 development 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 Sackville as may be amended from time to time.

**7.5 Issuance of Permits**

Prior to the issuance of a Construction Permit, an agreement between HRM, the Halifax Regional Water Commission and the Developer outlining the terms for the relocation of municipal infrastructure as required by this agreement, must be submitted to the Development Officer:

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

Signed, sealed and delivered	)	Hamton Holdings Limited
in the presence of:	)	
	)	
	)	
per: _____	)	per: _____
	)	
	)	
	)	
Sealed, Delivered and Attested	)	Halifax Regional Municipality
by the proper signing officers of	)	
Halifax Regional Municipality	)	
duly authorized on that behalf	)	per: _____
in the presence of	)	MAYOR
	)	
	)	
_____	)	per: _____
	)	MUNICIPAL CLERK







## **1.0 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 Sackville 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 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.

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 HRM 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.

### **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 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.

## 2.0 USE OF LANDS AND DEVELOPMENT PROVISIONS

### 2.1 Schedules

The Developer shall develop the lands in a manner, which, in the opinion of the Development Officer are generally in conformance with the Schedules attached to this agreement and the plans filed in the Halifax Regional Municipality as Case Number 00955:

- Schedule "A" Legal Description of the Land
- Schedule "B" Areas Subject to Development Agreement
- Schedule "C" Site and Landscape Plan

### 2.3 Requirements Prior to Approval

- 2.3.1 Prior to the issuance of any municipal Permits, the Developer shall complete the MICI (Multi-unit/Industrial/Commercial/Institutional/Commercial) permit process.
- 2.3.2 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise stated by the Municipality:
  - (a) Post securities in accordance with this agreement;
  - (b) Plan of Survey of approval Lot Consolidation of PID's 00356840, 00356857 and 00357012. This Plan of Survey shall comply with this agreement; and
  - (c) Demolition Permit for the removal of the subject buildings.
- 2.3.3 Prior to the issuance of a Construction Permit, the Developer shall provide the following to the Development Officer, unless otherwise stated by the Municipality:
  - (a) Lighting Plan in accordance with this agreement;

- (b) Landscaping Plan in accordance with this agreement;
  - (c) Erosion and Sedimentation Control Plan in accordance with this agreement; and
  - (d) Stormwater Management Plan in accordance with this agreement.
- 2.3.4 Prior to the issuance of the first Municipal Occupancy permit on the lands, the Developer shall provide the following to the Development Officer, unless otherwise stated by the Municipality:
- (a) Certification from a qualified professional engineer that the Developer has complied with the required Erosion and Sedimentation Control Plan as required pursuant to this Agreement;
  - (b) Certification from a qualified professional engineer indicating that the Developer has complied with the Stormwater Management Plan required pursuant to this Agreement;
  - (c) Certification from a qualified professional indicating that the Developer has complied with the Landscaping Plan required pursuant to this Agreement; and
  - (d) Certification from a qualified professional indicating that the Developer has complied with the Lighting Plan required pursuant to this Agreement.
- 2.3.5 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.
- 2.3.6 Where the written text of this agreement conflicts with information provided in the attached Schedules, the written text of this agreement shall prevail.

## 2.4 GENERAL DESCRIPTION OF LAND USE

The following uses are permitted on the lands:

Uses permitted by the C-2 (Community Commercial) Zone of the Sackville Land Use By-law, as amended from time to time, subject to the terms of this agreement and as generally illustrated on Schedule "B" and Schedule "C".

## **2.5 DETAILED PROVISIONS FOR LAND USE**

### **2.5.1 SITING REQUIREMENTS**

- (a) The proposed buildings shall be sited as generally illustrated on Schedule "C".
- (b) The Development Officer, may approve minor changes to the re-location of the building(s) provided the relocation meets the intent and specific provisions of this Agreement and the building is not located within 20 feet of a property line.
- (c) Accessory buildings shall be limited to a maximum footprint of seven hundred and fifty square feet and shall not exceed fifteen feet in height. The Development Officer shall determine height and setbacks as per the requirements of the Land Use By-law for Sackville.
- (d) Notwithstanding the requirements of sub-section (c) no accessory building shall be sited in the area defined in the agreement as landscaped as illustrated on Schedule "C".

### **2.5.2 BUILDING SIZE**

- (a) The footprint of the office/restaurant structure shall not exceed 186 square metres (2000 square feet) as generally illustrated on Schedule "C" and the total gross floor area shall not exceed 557 square metres (6000 square feet ) including a basement of 186 square metres (2000 square feet) . Notwithstanding the previous statement and Section 2.4, the basement area shall not be used for any other use than storage accessory to uses permitted within the structure.
- (b) Notwithstanding sub-section (a), the Development Officer, may permit a 5% increase of the permitted footprint of the buildings provided the intent and all provisions of this agreement have been adhered to. However, this clause shall not be applicable to any accessory buildings.

### **2.5.3 BUILDING HEIGHT**

- (a) No building shall exceed 35 feet in height.
- (b) The Development Officer shall determine the height of the structure as per the requirements of the Land Use By-law for Sackville.

#### 2.5.4 ARCHITECTURAL DESIGN

- (a) The total window area per building face of the commercial building shall not exceed fifty (50) percent.
- (b) The exterior facade of the commercial building shall be comprised of brick and vinyl siding or equivalent.
- (c) The building shall have a hipped roof which shall be shingled with asphalt shingles or equivalent.
- (d) The location of windows shall be such that they shall not directly overlook adjacent residential properties.
- (e) The orientation of the building shall be towards Glendale Drive and Cobequid Road as generally shown on Schedule "C".

#### 2.6 SIGNAGE

- (a) Signs shall be limited to those which identify the business and limited to:
  - (i) fascia signs located on the building elevations facing Glendale Drive and Cobequid Road; and
  - (ii) one ground sign on the property.
- (b) The front elevation fascia sign shall meet the requirements of the Sackville Land Use By-law. The final design and location of the sign shall be approved by the Development Officer. The right elevation fascia sign shall not exceed 60 square feet in size nor extend above the top or project beyond the extremities of the wall to which it is attached. The final design and location of the sign shall be approved by the Development Officer as per the requirements of the Land Use Bylaw for Sackville. Notwithstanding the previous statement, the Development Officer may permit minor changes to the right fascia sign provided it furthers the intent of this agreement.
- (c) A ground sign shall shall meet the requirements of the Sackville Land Use By-law, as amended from time to time.

#### 2.7 PARKING AND ACCESS

- (a) A parking area shall be provided with a minimum of thirty (30) spaces and the location of the spaces shall be as generally illustrated on Schedule "C". Each parking space shall be a minimum of one hundred and sixty (160) square feet (15

sq. m) measuring eight (8) feet (2.4 m) by twenty (20) feet (6.1 m). Parking shall be permitted on the subject property and any adjoining lands.

- (b) A minimum of two parking spaces shall be reserved for the mobility impaired.
- (c) The driveway access shall be located off Cobequid Road and as generally illustrated on Schedule "C".
- (d) The Developer shall obtain a Streets and Services Permit in conjunction with any Construction Permit.

## 2.8 LANDSCAPING REQUIREMENTS

- (a) Prior to the issuance of a Construction Permit, the Developer agrees to provide a Landscape Plan which complies with the provisions of this section and generally conforms with the overall intentions of the Preliminary Landscape Plan shown on Schedule "C". The Landscape Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) and comply with all provisions of this section.
- (b) The Developer shall provide landscaped areas as generally shown on Schedule "C". A landscaped area is defined as covered by vegetation comprising any combination of trees, hedges, shrubs, flowers, grass or other horticultural elements, or by a combination of vegetation and decorative elements such as but not limited to stonework, brick, unit pavers or wood. Furthermore, any area which is not used for vehicular movement or parking shall be landscaped. Notwithstanding Schedule "C", the Development Officer may permit minor changes to landscaping provided it furthers the intent of the agreement.
- (c) The developer shall provide a solid board wood privacy fencing between the commercial building and the adjacent residential properties as identified on Schedule "C". This fencing shall be installed immediately after the relocation of infrastructure indicated in Section 2.4 and prior to construction of the commercial building. Fencing shall be located outside of any easements where possible. Where the fence is greater than 6,5 feet in height, the Developer shall submit construction details of the proposed fence designed by a Professional Engineer.
- (d) Prior to issuance of the first Occupancy Permit the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Development Agreement.

- (e) Notwithstanding the above, the Occupancy Permit may be issued provided the Developer supplies a security deposit in the amount of 110 per cent of the estimated cost to complete the landscaping. 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 illustrated on the Schedules, and as approved by the Development Officer. Should the developer not complete the landscaping within twelve months of issuance of the 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 and its certification..

## 2.9 BUILDING AND SITE LIGHTING

- (a) Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings. All lighting shall be fully shielded.
- (b) Lighting shall be sufficient to be capable of video surveillance.
- (c) Prior to the issuance of a Development Permit, the Developer shall prepare a lighting plan and submit it to the Development Officer for review to determine compliance with this agreement. The lighting plan shall contain, but shall not be limited to, the following:
- (i) Plans indicating the location on the premises, and the type of illuminating devices, fixtures, lamps, supports, other devices.
  - (ii) Description of the illuminating devices, fixtures, lamps, supports and other devices. This description may include, but is not limited to, manufacturers' catalog cuts and drawings including sections where required.
  - (iii) The lighting plan and description shall be sufficient to enable the Development Officer to ensure compliance with the requirements of this section will be secured. If such plan and description cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the developer shall submit evidence of compliance by qualified person.
  - (iv) Should the Developer desire to substitute outdoor light fixtures or lamps and install them on the lands after a permit has been issued, the Developer shall submit all changes to the Development Officer for approval, with adequate information to assure compliance with this section.

## 2.10 MAINTENANCE

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and 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.

## 2.11 CONSTRUCTION/SALES TRAILER

A temporary construction trailer 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 in accordance with this agreement. The construction trailer shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

## 2.12 HOURS OF OPERATION

- (a) Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 7:00am and 10:00pm.
- (b) Hours of operation shall conform with all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.

## 2.13 MECHANICAL EQUIPMENT

- (a) Mechanical equipment shall be permitted on the roof provided the equipment is screened and incorporated in to the architectural treatments and roof structure.
- (b) Any mechanical equipment placed on the ground shall be screened from view with a combination of fencing and landscaping or building elements.
- (c) All mechanical equipment shall be sited in a manner as to minimize the disturbance to adjacent residential properties. Furthermore no mechanical equipment shall be located between the commercial building and the adjacent residential properties and no exhaust fans shall be permitted to face the adjacent residential properties.

## 2.14 PARK DEVELOPMENT

- (a) The Developer agrees to provide a minimum of \$10,000, or \$10,000 of in-kind contributions, for the development of a pocket park on the adjacent HRM owned park (PID 00356790).



- (b) The decision whether to provide \$10,000, or \$10,000 of in-kind contributions, for the development of a pocket park at PID 00356790 shall be made by HRM staff at the time of implementation of this agreement.
- (c) At the request of the Developer, the pocket park, being constructed from these funds or in-kind contributions, shall be:
  - 1. designed by HRM staff in consultation with the local community;
  - 2. completed under the direction of HRM staff; and,
  - 3. constructed at the same time as the commercial building.

### **3.0 STREETS AND MUNICIPAL SERVICES**

- 3.1 All construction shall satisfy Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work. The Development Officer, in consultation with the Development Engineer, may give consideration to minor changes to the street network, provided the modifications serve to maintain or enhance the intent of this Agreement.
- 3.2 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

#### *Municipal Water Distribution and Sanitary Sewers:*

- 3.3.1 The water distribution system shall conform with the design and construction requirements of the Halifax Regional Water Commission.
- 3.3.2 The sanitary sewer system shall conform with the design and construction standards of the Municipal Service Systems Manual, unless otherwise acceptable to the Development Engineer.
- 3.3.3 The Developer shall provide a service easement in favour of the Halifax Regional Water Commission and HRM for the proposed relocation of the public water and sanitary systems. The service easement is subject to compliance with the Halifax Regional Water Commission and HRM operation and maintenance requirements. This easement shall be a minimum of six (6) metres (19.68 feet) in width and be located on the southern property line and along the eastern property line as generally illustrated on Schedule "C". This easement shall be in favour of the Halifax Regional Municipality and the Halifax Regional Water Commission.

- 3.3.4 Further to section 3.3.3 these easements shall be included on the plan of subdivision which is certified by a Nova Scotia Land Surveyor. The granting of easements as required above shall take place prior to the issuance of an occupancy permit for the proposed development of the restaurant and office space.
- 3.3.5 A Municipal Service Agreement shall be required for the public sanitary and storm system; construction cost estimate and inspection fees will be required for the public sanitary and storm system.
- 3.3.6 Prior to the issuance of a development permit, a water services agreement between the developer and the Halifax Regional Water Commission shall be required. In addition, construction cost estimates and inspection fees will be required for the public water system.

#### *Solid Waste Facilities*

- 3.4.1 Refuse containers and waste compactors shall be confined to the loading areas and rear yard of the building, and shall be screened from public view where necessary by means of opaque fencing/masonry walls with suitable landscaping.
- 3.4.2 Refuse containers shall not encroach in the landscaped area as illustrated on Schedule "C". Further the refuse container shall be located as far away as possible from residential properties on Nelson Drive.

#### *Blasting*

- 3.5 Blasting shall not be permitted on the site.

### **4.0 ENVIRONMENTAL PROTECTION MEASURES**

#### *Stormwater Management Plans and Erosion and Sedimentation Control Plans:*

- 4.1.1 Prior to the commencement of any works on the Lands, including earth movement and/or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall:
- (a) submit a detailed a Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
  - (b) submit a detailed Erosion and Sedimentation Control Plan in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by the Nova Scotia Department of the Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented. The

- Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during development; and
- (c) submit a detailed final Site Grading and Stormwater Management Plan which shall include an appropriate storm water collection and treatment system.
- 4.1.2 Prior to the issuance of a Development Permit, the Developer shall post security as required for the Lot Grading Permit. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable, automatically renewable letter of credit issued by a chartered bank. The security shall be returned to the Developer at the time of issuance of the final occupancy permit or release of Landscaping security bond whichever is later, provided all disturbed surfaces have been permanently reinstated, and that all landscaping has become established.
- 4.1.3 The Developer agrees to construct at its own expense the Stormwater Management System which conforms to the concept design reviewed by the Development Engineer. The Developer shall provide certification from a Professional Engineer that the system, or any phase thereof, has been constructed in accordance with the approved design.
- Stormwater Treatment Chambers or Devices*
- 4.2.1 The Developer agrees, at its own expense, where any stormwater treatment chambers or devices are provided, such devices shall be maintained in accordance with the manufacturer's specifications until or unless such time as the warranty period expires and such devices are the ownership of the Municipality.
- 4.2.2 Prior to installing any stormwater treatment chambers or devices on the site, which is to be privately maintained, the Developer shall submit a schedule of future inspection and cleaning prepared by a professional engineer based on the manufacturer specifications. When approved by the Development Officer this schedule shall be undertaken for as long as this agreement is in force.
- 4.2.3 All removed contaminants shall be disposed of according to all applicable guidelines and regulations of the Nova Scotia Department of Environment and Labour. The Developer shall submit to the Development Officer certification that the work has been done following each inspection/clean-out.
- 4.2.4 An oil/water separator or equivalent stormwater treatment chamber shall be provided to treat all stormwater from the parking areas and driveway. The developer shall maintain the separator according to the manufacturer's requirements. .

*Failure to conform to Plans*

- 4.3.1 If the Developer fails at any time during any site work or construction to fully conform to the approved plans as required under this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Engineer to ensure compliance with the environmental protection measures.

*Other Measures*

- 4.4.1 The Developer shall follow the Sulphide Bearing Material Disposal Regulations should pyretic slate be found on the property.
- 4.4.2 Any fuel stored on site (including any adjoining lands) for the purpose of heating shall have a protective catchment device.
- 4.4.3 Construction materials wastes shall not be burned, buried or discarded on the Land.

**5.0 AMENDMENTS**

Amendments to any matters shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

**6.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

**6.1 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.

**6.2 Failure to Comply**

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty 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:

- (1) 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; and/or

- (2) 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*.
- (3) 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
- (4) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the *Municipal Government Act* or Common Law in order to ensure compliance with this Agreement; and/or

## **7.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **7.1 Registration**

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

### **7.2 Subsequent Owners**

- 7.2.1 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.
- 7.2.2 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.

### **7.3 Commencement of Development**

- 7.3.1 In the event that construction on the lands, has not commenced (or deemed complete) within five years from the date of registration of this Agreement at the Land Registry 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 construction.

- 7.3.2 For the purposes of this section, commencement shall means the issuance of a Construction Permit
- 7.3.3 If the Developer(s) fails to complete the development, or after seven years from the date of registration of this Agreement at the Land Registry 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.

**7.4 Completion of development**

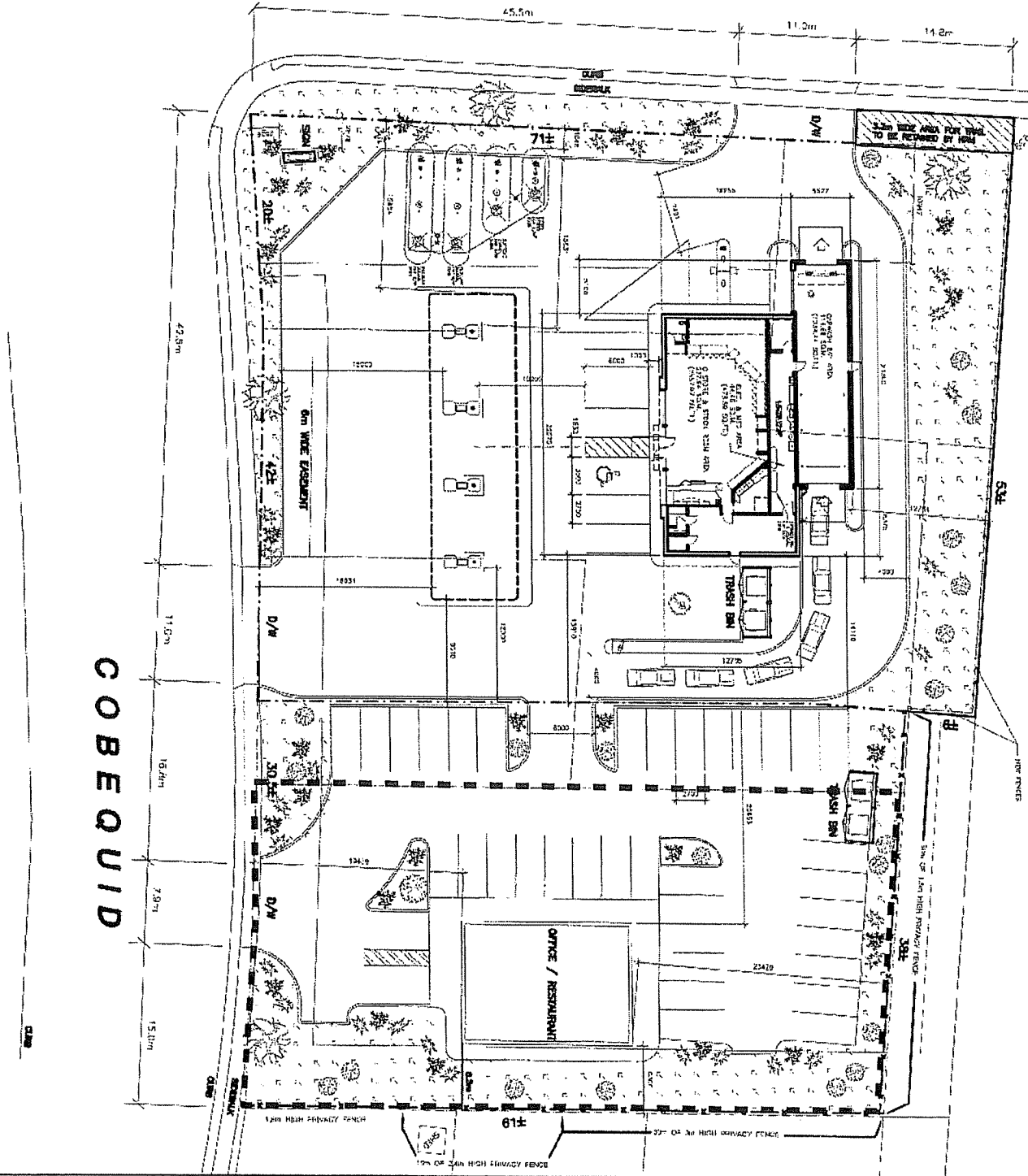
Upon the completion of the development or portions thereof, and after seven years from the date of registration of this Agreement with the Land Registry Office, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- (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 development 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 Sackville, as may be amended from time to time.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

Signed, sealed and delivered in the presence of:	)	Hamton Holdings Limited
	)	
per: _____	)	per: _____
	)	
	)	
	)	
Sealed, Delivered and Attested by the proper signing officers of Halifax Regional Municipality duly authorized on that behalf in the presence of	)	Halifax Regional Municipality
	)	
	)	per: _____
	)	MAYOR
	)	
_____	)	per: _____
	)	MUNICIPAL CLERK

# GLENDALE



## Schedule B

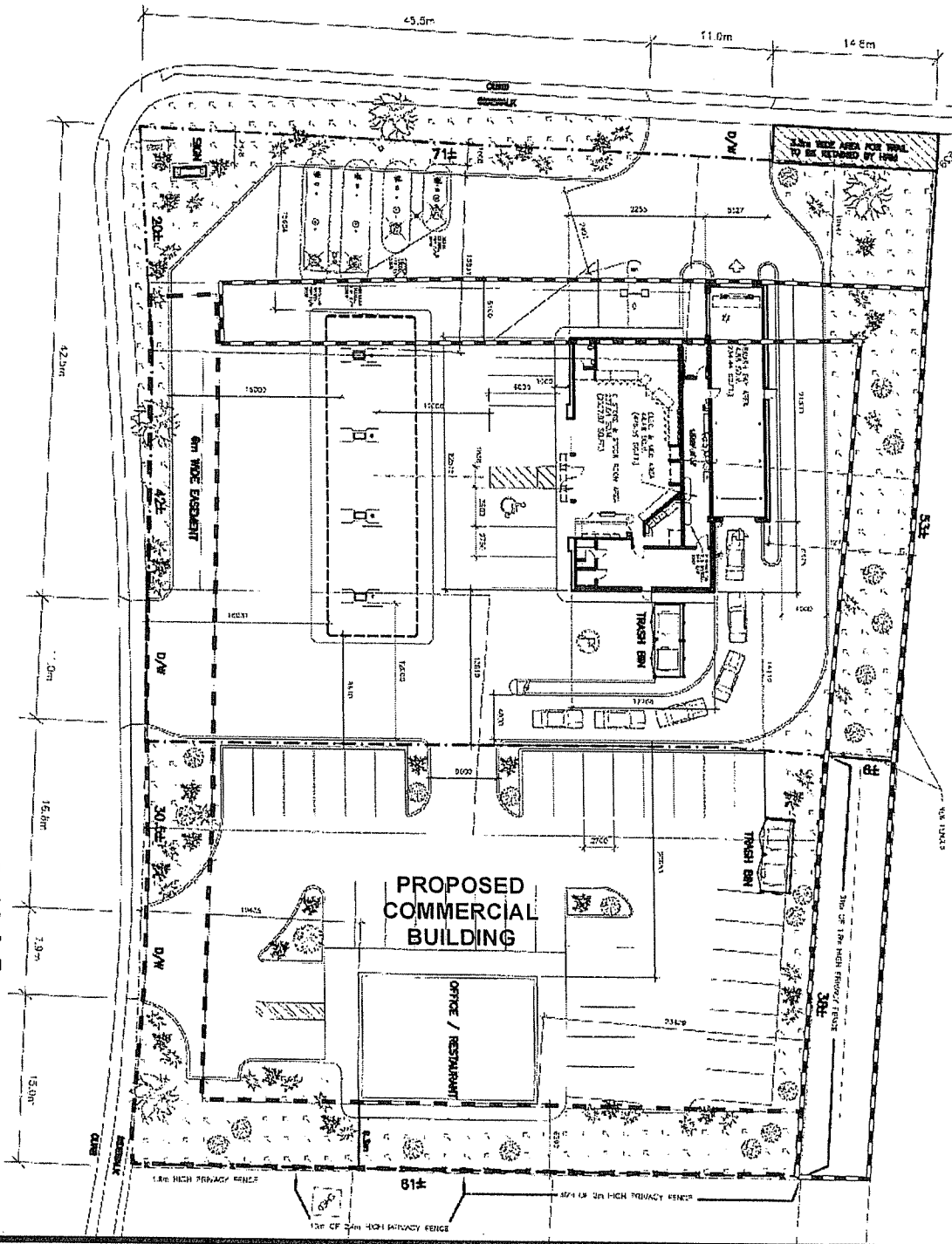


Area Subject to Development Agreement



**HALIFAX**  
REGIONAL MUNICIPALITY  
Planning Services

# GLENDALE

# COBEQUID



## Schedule C

-  New Sewer and Water Services and Easement to be Provided
-  Existing Sewer and Water Services to be Relocated

**HALIFAX**  
REGIONAL MUNICIPALITY  
Planning Services



**Attachment "D"**  
**Relevant MPS Policies**

URBAN RESIDENTIAL DESIGNATION

- UR-1 In recognition of the established residential community and the need to provide for a variety of residential opportunities as the community continues to grow and evolve, it shall be the intention of Council to establish the Urban Residential Designation, as shown on the Map 1 - Generalized Future Land Use. The designation shall constitute the priority area for continuing residential development and for those uses which are supportive of residential environments.
- UR-4 Notwithstanding Policy UR-2, within the Urban Residential Designation, it shall be the intention of Council to establish a residential zone which permits two unit dwellings in addition to all uses permitted in the single unit dwelling zone. Council shall only consider new two unit dwellings by amendment to the land use by-law and with regard to the following:
- (a) that where a vacant lot or parcel of land to be rezoned abuts or is immediately adjacent to properties with single unit dwelling zoning, a buffer of single unit dwelling zoned lots, as shown on a tentative or final plan of subdivision, shall be maintained between existing and proposed development;
  - (b) that streets are not considered to constitute part of the buffer and, except for individual lot infill, parkland with an area of less than one acre and a depth of less than one hundred (100) feet shall not constitute part of the buffer;
  - (c) that municipal central services are available and capable of supporting the development;
  - (d) where new roads are being proposed as part of the development, an evaluation of the proposed road layout and the impacts on traffic circulation in the surrounding area; and
  - (e) the provisions of Policy IM-13.
- UR-24 Notwithstanding Policies UR-2 and RR-2, within the Urban and Rural Residential Designations, Council may consider permitting community commercial zone uses on properties along the Cobequid Road, between Sackville Drive and First Lake Drive, according to the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following:
- (a) that no proposal shall be considered on lands along the northwest side of Cobequid Road, south of Glendale Drive;
  - (b) that the site has frontage on and direct access to Cobequid Road;
  - (c) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
  - (d) that adequate provision is made for buffering and screening from adjacent residential properties;

- (e) that site design features, including landscaping, signage, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent development and to provide for the needs of users of the development;
- (f) that appropriate controls are established to address environmental concerns, including stormwater runoff;
- (g) hours of operation;
- (h) maintenance of the development; and
- (I) the provisions of Policy IM-13.

### COMMUNITY COMMERCIAL DESIGNATION

- CC-1 It shall be the intention to establish a Community Commercial Designation as shown on the Map 1 - Generalized Future Land Use. Within this designation, it shall be the intention of Council to support and promote a secondary level of commercial development in the specific designated areas within the community. These areas are intended to provide commercial services to residents of surrounding areas.
- CC-2 Within the Community Commercial Designation it shall be the intention of Council to establish a community commercial zone which permits a range of commercial and office uses, community facility uses and existing **deletion - June 16,1994**) dwellings. Controls on maximum size, outdoor storage and display, parking and loading areas, landscaping and signage will be established in order to promote well-designed commercial development and to address compatibility concerns with adjacent residential and community facility development. When considering amendments to the land use by-law to permit new commercial uses within the Community Commercial Designation, Council shall have regard to the following:
- (a) the impact of the proposed use on traffic circulation, and in particular, sighting distances and entrance to and exit from the site;
  - (b) the potential impact of the proposed use on adjacent residential and community facility use; and
  - (c) the provisions of Policy IM-13.

### IMPLEMENTATION

- IM-7 Notwithstanding the provisions of Policy IM-6:
- (a) no community commercial zone shall be considered by amendment to the land use by-law except within the Community Commercial Designation; and **(RC-May 7, 2002; Effective-June 29, 2002)**
- IM-8 It is not intended that all land shall be rezoned for specific uses. Rather, in order to give the Sackville Community Council a greater degree of control, this planning strategy provides that

certain land uses shall be considered only as amendments to the land use by-law or in certain instances by development agreement as provided for by the Planning Act. Such amendments and agreements shall be considered only if they meet the policies found within the planning strategy.

IM-10 The following uses shall only be considered subject to the entering into of a development agreement.

(a) Within the Urban Residential Designation:

- (ix) community commercial uses on properties along the Cobequid Road between Sackville Drive and First Lake Drive, according to Policy UR-24;

IM-13 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, the Sackville Community Council shall have appropriate regard to the following matters:

(a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;

(b) that the proposal is not premature or inappropriate by reason of:

- (I) the financial capability of the Municipality to absorb any costs relating to the development;
- (ii) the adequacy of sewer and water services;
- (iii) the adequacy or proximity of school, recreation and other community facilities;
- (iv) the adequacy of road networks leading or adjacent to, or within the development; and
- (v) the potential for damage to or for destruction of designated historic buildings and sites.

(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:

- (I) type of use;
- (ii) height, bulk and lot coverage of any proposed building;
- (iii) traffic generation, access to and egress from the site, and parking;
- (iv) open storage;
- (v) signs; and
- (vi) any other relevant matter of planning concern.

(d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding;

(e) any other relevant matter of planning concern; and

**(f) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS.**

- IM-14 In considering amendments to the land use by-law or development agreements, the Sackville Community Council shall hold a Public Hearing according to the provisions of the Planning Act.
- IM-15 It shall be the intention of Council to refer all proposed amendments to the Municipal Planning Strategy and/or the standards of the Land Use By-law for Sackville to the Sackville Community Council.
- IM-16 It shall be the intention of Council to post notice of public hearing for any amendments being considered to this planning strategy or the standards of the land use by-law in a prominent location, normally at Municipal Offices, 506 Sackville Drive, Sackville and any other place so directed by resolution of Council. In addition, the land use by-law shall provide for the notification of affected property owners of any public hearing to consider amendments to the zoning schedule of the by-law, proposed development agreements or amendments thereof.

**Attachment "E"**  
**Land Use By-law Requirements - C-2 (Community Commercial) Zone**

**PART 15: C-2 (COMMUNITY COMMERCIAL) ZONE**

**15.1 C-2 USES PERMITTED**

No development permit shall be issued in any C-2 (Community Commercial) Zone except for the following:

**Commercial Uses**

Retail stores  
Food stores  
Service and personal service shops  
Offices  
Commercial schools  
Banks and financial institutions  
Restaurants and drive-in and take-out restaurants  
Outdoor display courts  
Shopping plazas and malls  
Motels and hostels  
Commercial recreation uses  
Service stations  
Taxi and bus depots  
Parking lots  
Greenhouses and nurseries  
Veterinary hospitals and kennels  
Welding, plumbing and heating, electrical and other special trade contracting services and shops  
Local fuel distribution facilities  
Re-cycling depots within wholly enclosed buildings  
Automotive repair outlets  
Funeral parlours and undertaker establishments  
Existing auto body shops  
Existing transport facilities and maintenance yards  
Existing construction yards and maintenance facilities

**Residential Uses**

Existing dwellings  
Existing multiple unit dwellings  
Boarding and rooming houses

Community Uses

Open space uses  
Institutional uses

15.2 C-2 ZONE REQUIREMENTS: COMMERCIAL AND RESIDENTIAL USES

In any C-2 Zone, where uses are permitted as Commercial Uses or Residential Uses, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	central services	6,000 square feet (558 m <sup>2</sup> )
	on-site services	20,000 square feet (1,858 m <sup>2</sup> )
Minimum Frontage:	central services	60 feet (18.3 m)
	on-site services	100 feet (30.5 m)
Minimum Front or Flankage Yard		30 feet (9.1 m)
Minimum Rear or Side Yard		15 feet (4.6 m)
Maximum Lot Coverage		50 per cent
Maximum Height of Main Building		35 feet (10.7 m)

15.3 OTHER REQUIREMENTS: SERVICE STATIONS

Notwithstanding the provisions of Section 13.2, where any service station is erected in any C-2 Zone the following shall apply:

- (a) Minimum Lot Area 30,000 square feet (2,787 m<sup>2</sup>)
- (b) Minimum Frontage 150 feet (45.7 m)
- (c) No portion of any pump island shall be located closer than twenty (20) feet (6.1 m) from any street line.
- (d) The minimum distance between ramps or driveways shall not be less than thirty (30) feet (9.1 m).
- (e) The minimum distance from a ramp or driveway to a road intersection shall be fifty (50) feet (15.2 m).

- (f) The minimum angle of intersection of a ramp to a road line shall be forty-five (45) degrees.
- (g) The width of a ramp shall be a minimum of twenty (20) feet (6.1 m) and a maximum of twenty-six (26) feet (7.9 m).

15.4 OTHER REQUIREMENTS: COMMERCIAL FLOOR AREA

- (a) The gross floor area of all commercial buildings on a lot in any C-2 Zone shall not exceed ten thousand (10,000) square feet (929 m<sup>2</sup>).
- (b) Notwithstanding the provisions of Subsection 13.4(a), where welding, plumbing and heating, electrical and other special trades contracting services and shops are permitted in any C-2 Zone, no such shop shall exceed thirty-five hundred (3,500) square feet (325 m<sup>2</sup>) of gross floor area.
- (c) Notwithstanding the provisions of Subsection 13.4(a), where offices are permitted in any C-2 Zone, no office building shall exceed five thousand (5,000) square feet (465 m<sup>2</sup>) of gross floor area.

15.5 OTHER REQUIREMENTS: OPEN STORAGE AND OUTDOOR DISPLAY

Where any portion of any lot in any C-2 Zone is to be used for open storage or outdoor display, the following shall apply:

- (a) Any area devoted to open storage shall not exceed fifty (50) per cent of the lot area.
- (b) No open storage shall be permitted within any required front yard.
- (c) No outdoor display shall be located within ten (10) feet (3 m) of any front lot line.
- (d) No open storage or outdoor display shall be permitted within any yard in a C-2 Zone where such yard abuts any Residential or Community Uses Zone, except where a fence or other visual and physical barrier is provided within the abutting yard.

15.6 OTHER REQUIREMENTS: PARKING LOTS

Where parking lots are permitted in any C-2 Zone, whether in conjunction with other uses or as a separate use of land, the following shall apply:

- (a) Where any C-2 Zone abuts any Residential or Community Uses Zone, no portion of any parking space within the C-2 Zone shall be permitted within ten (10) feet (3 m) of any side or rear lot line.

(b) No portion of any parking space within any C-2 Zone shall be located within ten (10) feet (3 m) of any front lot line.

15.7 C-2 ZONE REQUIREMENTS: COMMUNITY USES

In any C-2 Zone, where uses are permitted as Community Uses, no development permit shall be issued except in conformity with the provisions of Part 19 and Part 20 as are applicable.

15.8 OTHER REQUIREMENTS: EXISTING USES

Existing uses which are in excess of the maximum gross floor area requirements of Section 15.4 shall be permitted as existing uses. Any expansion to such existing uses may only be considered by development agreement.

15.9 OTHER REQUIREMENTS: SACKVILLE TOWN CENTRE

Notwithstanding the provisions of Section 15.1, and 15.4, the existing Sackville Town Centre Shopping Centre, located on the lot identified by LRIS Number 362442, may be used for any **of the uses listed below**. In conformity with Section 15.8, expansion of the Shopping Centre may only be considered by development agreement. (RC-May 7, 2002; Effective-June 29, 2002)

Commercial Uses

**Retail stores**

**Food stores**

**Service and personal service shops**

**Offices**

**Commercial schools**

**Banks and financial institutions**

**Restaurants and drive-in and take-out restaurants**

**Outdoor display courts**

**Shopping plazas and malls**

**Theatres and cinemas**

**Entertainment uses**

**Motels, hotels and hostels**

**Commercial recreation uses**

**Service stations**

**Taxi and bus depots**

**Parking lots**

**Greenhouses and nurseries**

**Veterinary hospitals and kennels**

**Welding, plumbing and heating, electrical and other special trade contracting services and shops**

**Local fuel distribution facilities**

**Re-cycling depots**

**Automotive repair outlets**



Funeral Parlours and undertaker establishments  
Wholesale bakeries  
Printing and publishing establishments  
Existing auto body shops  
Existing transport facilities and maintenance yards

Residential Uses

Up to two (2) dwelling units in conjunction with commercial uses  
Existing dwellings  
Boarding and rooming houses

Community Uses

Open space uses  
Institutional uses (RC-May 7, 2002; Effective-June 29, 2002)

Attachment "F"  
Minutes from Public Information Meeting (November 22, 2006)

HALIFAX REGIONAL MUNICIPALITY  
PUBLIC INFORMATION MEETING  
CASE NO. 00955 - Cobequid Road/Glendale Drive

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7:00 p.m.  
Wednesday, November 22, 2006  
Sackville Library, Fenerty Room

**IN ATTENDANCE:** Andrew Bone, Planner I, HRM Planning Services  
Cara McFarlane, Administrative Support, HRM Planning Services

**ALSO PRESENT:** Ralph Hamilton, Applicant  
Tara Hill, Applicant  
Warren Maynard, Applicant  
Councillor Bob Harvey, District 20

**PUBLIC IN ATTENDANCE:** Approximately 11

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The meeting commenced at approximately 7:05 p.m.

1. **Opening remarks/Introductions/Purpose of meeting** - Andrew Bone

Mr. Bone introduced himself as the planner taking the application through the planning process; Bob Harvey, Councillor for District 20; Ralph Hamilton, representing the applicant; Warren Maynard, Ultramar; Tara Hill, owner of Subway; and Cara McFarlane, Administrative Assistant.

An agenda for the meeting was shown.

The purpose of a public information meeting is to identify that HRM has received an application, to identify the scope of the development and to receive feedback on the issues and concerns.

2. **Overview of planning process** - Andrew Bone

This application has two planning process running parallel, a rezoning and a development agreement. The rezoning is to change the zone on a small portion of what would be the gas station site (shown on screen), and is currently owned by HRM, to C-2 Zone which permits commercial uses. The development agreement is on the parcel of land that is currently zoned R-2. There is policy that allows Council to consider a change to commercial uses through development agreement. If the application is approved and the development agreement is signed by the developer, those rules carry on to any future property owner until the development agreement is discharged by Council or amended by the property owner.

Mr. Bone reviewed the rezoning and development agreement process.

### 3. Presentation of Proposal - Andrew Bone

There was a previous application for a similar development on this land. The application was reviewed by North West Community Council earlier this year and a decision was rendered to reject the proposal at that time. The decision was appealed to the Nova Scotia Utility and Review Board (NSURB). To date, the NSURB has not rendered a decision as they have been asked to hold reviewing that appeal until the outcome of this application is known.

The application is a proposal to rezone a portion of the property on Cobequid Road from P-1 (Open Space) Zone to C-2 (Community Commercial) Zone to permit a gas bar, convenience store and car wash and to enter into a development agreement to permit a two storey commercial building.

The location of the site is at the corner of Glendale Drive and Cobequid Road that encompasses six parcels of land. Three of those parcels of land are owned by HRM. The applicant has an Agreement of Purchase and Sale with HRM subject to a successful outcome of this process.

The portion of land owned by HRM is currently zoned for public/private parks and playgrounds, etc. HRM Parks and Real Estate have reviewed that piece of land and has determined that HRM does not require that small piece of land for future recreation uses.

The C-2 Zone permits a broad variety of commercial uses and are currently permitted on the existing Subway site. Mr. Bone showed the permitted uses on screen.

There have been a number of changes brought forward since the original application.

The site was shown on the screen. The site is approximately 1.5 acres in size. The proposal is for a gas station on the corner of Glendale Drive and Cobequid Road with a pump island, car wash and convenience store (locations shown on screen). In the previous application, the car wash and convenience store were separate. Shell was the previous gas station, it is now Ultramar; therefore, there will be a slightly different building design. The gas tanks will also be relocated further away from the residential area. A two storey commercial building is being proposed with some minor changes from the original proposal. There is now privacy fencing proposed along the back of the property with increased height along the residential area (eastern property line) and tapering down to a six foot height towards the road. There are some changes to the proposed design of the commercial building. Originally it had a flat roof which has been changed to a hip roof (shown on screen) with each floor being approximately 2,000 square feet.

There were a number of changes requested by one of the adjacent property owners. HRM and the applicant will sit down with the property owner to make sure the issues have been satisfactorily resolved. Any other requests from this meeting will be taken into account as well.

One issue brought to staff's attention previously was that the HRM owned property that was to remain P-1 Zone not be sold in the future for development and that there be a way to preserve it. Typically, the best way to preserve it is to have the P-1 Zone on it. There has been discussions with the applicant

to make sure it is not used for other uses than parkland in the future. The best way to preserve it would be to use the land as an active parkland. There will be discussions with HRM Parks staff and the applicant on whether there is some opportunity to do small scale development (possibly trail and park sign). This issue will be resolved by the time the application goes before Council.

Gas station lighting was an issue brought up with the original application. Since that time, Council has put forth a request to have specific gas station lighting requirements within the land use by-law. HRM is in the process of this and the goal is to have it in place prior to a decision on this application.

#### **4. Questions and Comments**

Linda Mosher, Nelson Drive, remembers a strong opposition to the original application and there is nothing presented this evening that would change her mind. Mr. Bone explained that after three months an applicant can make another application and have it reviewed by Council. The development agreement for this application will address a lot of the issues made from the residents with the original application. There was some discussion between the applicant and one of the affected neighbours and they came to a point where they could overcome some of the issues; therefore, the applicant put forth a new application.

Alice Clarke, Cobequid Road, is concerned that it is the community as a whole that does not want this process. Three months down the road the community will be going through the same thing with a different numbered company. Mr. Bone explained that the NSURB determines if Council's decision is consistent with the MPS.

Ms. Clarke asked who the owner is of the C-2 and R-2 Zoned property. Mr. Bone said Tara Hill owns the Subway property.

Ms. Clarke asked why the two applications are together if they are separate properties and the intent is to do two separate things. Mr. Bone said in this case the gas station will be located on the Subway property and the Subway will be relocated to the Hamton Holdings property; therefore, approval is needed for both before the development can happen.

Walter Regan, member of Sackville River Association and North West Planning Advisory Committee, is not against the proposal but does have a number of concerns. He would like see an oil/grit separator installed for both sites. Mr. Bone said the intent is that one would be installed as part of the gas station. There is not a municipal requirement for it, but it was shown in the previous proposal.

Mr. Regan mentioned that he would like to see more landscaping and tree planting.

Mr. Regan would like to see the proposal follow a theme (eg. Sackville Streetscape Plan).

Mr. Regan asked that stormwater be retained on site as much as possible.

Mr. Regan's biggest complaint is sewage overflow during major rainfalls. Is there any way that sewage could be retained on site until after the peak time to reduce the overflow into the Sackville River.

Mr. Regan asked if there will be alarms on the oil collection sites in case there is a spill or leak. Mr. Bone said the new regulations are such that most sites have double wall fibreglass tanks with internal alarms built into the system that are monitored both remotely and at the station.

Mr. Regan asked if the lights on the site would be on 24/7. Warren Maynard said the intention is to operate the gas station and convenience store on a 24 hours basis. Mr. Bone said the process will ensure that light is directed to areas where it is needed and not directed onto adjacent properties and into the street right of way.

Mr. Regan asked if there will be garbage receptacles and recycle bins on the lot so the public can take advantage of them. Mr. Bone said on the Subway site, through the development agreement, HRM can ensure that there is adequate bins on site. The gas station is an as of right process and there aren't any by-law requirements to regulate that.

Mr. Regan asked if it is possible to upgrade a path that many children use to shortcut through the area. Mr. Bone will look into the matter. He believes there is an easement there as well.

Mr. Regan asked if there will be only right turns in and out of the site. Mr. Bone said there will be full access driveways, an access on Glendale Drive and one on Cobequid Road. All accesses have been reviewed by traffic in the past, which were approved, and they will be reviewed again.

Mr. Regan asked if there will be anything to stop shortcutting through the parking lot. Mr. Bone said the applicant was asked to provide some comment on that issue as it was brought up at the meeting for the previous application. The applicant commissioned a traffic consultant to review that matter. The consultant's opinion was that there would be no need for shortcutting, and it's not very likely shortcutting would occur, as full access driveways will be provided.

Mr. Regan asked if all the residue from the car wash would go to the sanitary sewer or the stormwater drainage. Mr. Bone believes it is the sanitary sewer as required and the applicant is required to put an oil/water separator on that system. Mr. Regan mentioned that it would be helpful if the asphalt was porous for water retention. Mr. Bone said the porous asphalt contradicts the desire for an oil/water separator; therefore, it wouldn't work on a site like this.

Mr. Regan asked if the number of parking spaces could be reduced. Mr. Bone said according to the previous review the number provided was the minimum the site can have. Through a review this time, it may be possible to reduce the number of spaces specifically on the Subway site. He will look into this matter.

Mr. Regan asked how the sites would be heated. Mr. Maynard said electric heat would be preferred. Mr. Bone said the last agreement contained a clause stating that the Subway site may use oil because there was a protective catchment.

Mr. Regan asked if the eroded storm drain could be fixed. Mr. Bone said that will be looked into.

Doug Peck, Pope Crescent, feels that if this application is approved this intersection will fit into the category of one of the most dangerous in HRM. He feels it is already dangerous.

Jim Murphy, Old Sackville Road, commented on the aesthetics of the area. He considers the Cobequid Road an extension of Sackville Drive and would like to see the streetscape plan implemented. Maybe the plan should be revised. Mr. Bone explained that the lands on the Tim Horton's side of Cobequid Road are zoned Light Industrial and permit a wide variety of uses without much aesthetic control. There are some controls on the subject property once the development agreement is in place.

Ms. Clarke is concerned about the other major developments in that particular area that will cause traffic to increase tremendously. What is the long term plan of the municipality for the area? Mr. Bone explained that the Bedford and Sackville MPS indicate the lands from Northgate to Cobequid Road be zoned Light Industrial which permits commercial. The Northgate site will cause the traffic patterns to change dramatically. There are no plans for any changes to the intersection at that site but Mr. Bone will check with Traffic Services. The Northgate development was known by Traffic Services when this intersection was reviewed.

Ms. Mosher finds walking that intersection is a challenge now. Two more driveways will make it more dangerous. Another gas station, car wash and convenience store is not needed in the area.

Kris O'Reilly, Nelson Drive, asked for explanation about the applicant and what a numbered company meant. Mr. Bone explained that the application is by the same owner but under a different name.

Ms. O'Reilly asked if a developer could do anything on the Subway property where is it zoned commercial. Mr. Bone said they could do any of the C-2 Zone permitted uses, without a public process, as long as all of the requirements are met.

Ms. O'Reilly was opposed to the original application and has traffic and pedestrian concerns but since then has met with the developer to discuss many concerns and issues. Her point is that a gas station could go on that property as long as regulations are met, but this developer is willing to work with the public's concerns.

Tara Hill, owner of Subway, explained that the driveway for the Subway will move up the street a bit and be of standard size making a safer entrance/exit onto the site. The building will be far more architecturally appealing and will be facing the gas station. The backside of the building will have no windows and the upstairs will house commercial tenants.

Mr. Maynard said the site will be similar to the site built with Hamton Holdings in Spryfield. The traffic study showed that the gas station would not increase traffic but take advantage of the ones that are already there.

Mr. Murphy asked if the sewer from the Rocky Lake development is coming to Sackville. Mr. Bone is not sure but water is definitely being supplied by Sackville. Councillor Harvey was not sure but will check into it. HRM would not allow sewer to come to Sackville if it was going to further impair the system's capacity. The sewer coming down the Cobequid Road is an issue with connecting further up in terms of capacity.

Mr. Bone thanked everyone for coming and expressing their comments and concerns.

5. Adjournment

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

Attachment "G"  
Lewis vs. North West Community Council

DECISION NSUARB-PL-00-10

12001 NSUARB 58

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by MARSHALL LEWIS from a decision of the NORTH WEST COMMUNITY COUNCIL OF THE HALIFAX REGIONAL MUNICIPALITY made March 30, 2000 refusing to rezone property located at 30 Old Sackville Road, Lower Sackville from Single Unit Dwelling (R-1) Zone to Commercial Corridor (C-3) Zone to allow for construction of an automotive centre.

BEFORE: Linda D. Garber

COUNSEL: MARSHALL LEWIS

Jack A. Innes, Q.C.

NORTH WEST COMMUNITY COUNCIL

Jocelyn Campbell, LL.B.

HEARING DATE: July 18, 2001

DECISION DATE: August 8, 2001

DECISION: **Appeal allowed**

[1] Marshall Lewis, the Appellant, filed an appeal with the Nova Scotia Utility and Review Board (Board) from a decision of the North West Community Council of the Halifax Regional Municipality made March 30, 2000, refusing to rezone property located at 30 Old Sackville Road, Lower Sackville from Single Unit Dwelling (R-1) Zone to Commercial Corridor (C-3) Zone to allow for construction of an automotive centre.

[2] The Board heard the appeal in July 2000 and issued a decision on September 7, 2000, confirming Community Council's decision. Mr. Lewis appealed the Board's decision to the Nova Scotia Court of Appeal. In its decision of June 15, 2001, *Lewis v. North West Community Council of Halifax Regional Municipality*, 2001 NSCA 98 (CanLII), 2001 NSCA 98, the Court found that the Board had erred in dismissing the appeal and remitted the matter to the Board. On July 18, 2001, the Board reconvened and counsel for the parties presented their views on the Court of Appeal's decision and on how the Board should proceed.



[3] The Appellant's plan is to subdivide the subject property and build four buildings to house automotive related businesses. He wants to restore and use the existing house for his own business. The drawing of the proposal, attached to the Planner's Report, shows four buildings each with their own parking area and two entrances from Old Sackville Road.

[4] The subject property is approximately 1.2 acres and lies between Highway No. 101 and Old Sackville Road. It does not adjoin any other property and appears as an island on planning maps. Once past the property, heading west, Old Sackville Road becomes an overpass across Highway No. 101. A short distance to the east, Old Sackville Road intersects with Sackville Drive and Cobequid Road.

[5] The subject property is within the area designated Commercial Corridor on the Generalized Future Land Use Map which is part of the Municipal Planning Strategy (M.P.S.) and is zoned R-1 (Single Unit Dwelling) Zone on the Zoning Map, part of the Land Use By-law (L.U.B.). M.P.S. Policy COR-2 established a commercial corridor zone (C-3), which permits a number of commercial uses as well as existing residential uses within the zone. It appears that the subject property could or should have been zoned C-3 (Commercial Corridor) Zone when the L.U.B. Zoning Map was adopted. A careful review of the L.U.B. Zoning Map reveals that all the properties within the Commercial Corridor Designation are zoned C-3, C-3/R-4, P-1 or P-2. The subject property is the only one within the designation which is zoned R-1. This fact was not noted at the time of the first hearing.

[6] At the original Board hearing, counsel for the Halifax Regional Municipality raised as an alternative argument that there was no policy in the M.P.S. which would permit the subject property to be rezoned from R-1 to C-3 Zone. The Board essentially based its decision on this argument. At page 10 of its decision, the Board made the following comment: "The Commercial Corridor section of the M.P.S. has a number of policies but there is no policy specifically dealing with rezoning property from R-1 to C-3." In its concluding paragraph the Board stated:

" While the Board believes that it was intended that the subject property could be rezoned C-3 when the M.P.S. and L.U.B. were adopted, there is no policy which specifically provides for the rezoning at this time. The Board is not entitled to overturn Council's decision if it is reasonably consistent with the intent of the M.P.S. In the absence of a specific policy permitting the rezoning, Council's decision refusing to rezone is reasonably consistent. The Board confirms the decision of the North West Community Council of the Halifax Regional Municipality Council."

[7] The Board approached this case in the same manner as it has other rezoning appeals. It looked to the M.P.S. to find a policy which in effect stated that Council could entertain the kind of rezoning which was being sought and which set out the criteria Council was to consider. In this case it was looking for a policy in the M.P.S. which provided that Council could consider a rezoning from R-1 to C-3 for property located in the Commercial Corridor Designation. The Sackville M.P.S. contains many such policies, setting out the criteria for Council to consider on a rezoning: e.g. Policy UR-5 - permitting rezoning from R-1 to the Townhouse Zone; Policy UR-28 - permitting rezoning from R-1 to the Mobile Home Zone; Policy COR-6 - permitting rezoning from C-3 to the Comprehensive Development District Zone. Each of these policies permits Council to rezone property and sets out criteria for Council to consider on the rezoning application. These criteria are in addition to the general criteria in Implementation Policy IM-13.

[8] The Board was looking for a similar policy to permit Council to consider a rezoning within the Commercial Corridor designation from R-1 to C-3. However, such a policy does not exist and the Board concluded that in the absence of a specific policy permitting the rezoning, Council's decision was reasonably consistent with the intent of the M.P.S.

[9] Where the Court of Appeal differed from the Board was with respect to the need to find specific policies within the M.P.S. specifying the kinds of land-use by-law amendment or rezoning that are permitted and the criteria to be applied. The Court of Appeal refers to s. 527(3) of the Municipal Government Act [MGA], which gives authority to a community council to amend a land-use by-law "if the amendment carries out the intent of any municipal planning strategy." The Court stated:

"To the extent that it [the Board] concluded that the absence of a specific provision explicitly referring to the proposed amendment in the M.P.S. meant that the proposed rezoning was not permitted, it gave the M.P.S. a meaning which it cannot reasonably bear."

[10] This statement appears to suggest that a L.U.B. rezoning amendment is permitted under the M.P.S. unless expressly prohibited, notwithstanding that in such cases, the M.P.S. gives no guidance as to the specific criteria that are to be considered by council when considering the proposed rezoning amendment. It is not clear how interested parties and the Board are to determine the intent of the M.P.S. (as called for in s. 527(3)) absent any policy guidance in the M.P.S.

[11] The Board now believes that the lack of a specific policy permitting rezoning from R-1 to C-3 in the Commercial Corridor Designation is the result of an error on the part of the drafters of the M.P.S. and L.U.B. There appears to be an inconsistency between the Generalized Future Land Use Map and the Zoning Map. No properties within the Commercial Corridor designation, except the subject property, were zoned R-1 on the Zoning Map. Most of the properties were zoned C-3 or the dual zone C-3/R-4. [The Board notes that the dual C-3/R-4 Zone only applied to certain properties under Policy COR-11 and does not include the subject property.] Policy COR-2 provides for a commercial corridor zone permitting a variety of uses including existing residential uses. The C-3 (Commercial Corridor) Zone includes among its permitted uses, R-1 uses. Policy COR-2 states:

COR-2 Within the Commercial Corridor Designation, it shall be the intention of Council to establish a commercial corridor zone which permits a mixture of retail and comparison shopping, government and general offices, open space and community facility uses as well as financial, entertainment, and cultural facilities. Existing residential uses, rooming and boarding houses and apartments containing up to two dwelling units in conjunction with commercial uses shall also be permitted. Controls on open storage and outdoor display, as well as parking and loading areas, will be established to promote an attractive, well-designed commercial corridor. Specific access requirements shall be established for service stations and size limitations will be applied to special trade uses. No height limitation will be established within this zone.

[12] It now appears to the Board that there is no policy in the M.P.S. dealing with a rezoning from R-1 to C-3 for property within the Commercial Corridor designation because all residential property was supposed to be zoned C-3 or C-3/R-4 and not R-1 at the time that the M.P.S. and L.U.B. were adopted. That would explain the inconsistency between the Commercial Corridor designation on the Generalized Future Land Use Map in the M.P.S. and the R-1 Zone on the Zoning Map in the L.U.B.

[13] The M.P.S. has been considered the guiding document. The L.U.B. is the document by which Council carries out the M.P.S. policies. At the time that the M.P.S. and L.U.B. were adopted the Planning Act, R.S.N.S. 1989, c. 346, was in effect. Section 51 required Council to adopt a L.U.B. to carry out the intent of the M.P.S, at the time it adopted the M.P.S. There is a similar requirement in s. 219 of the MGA.

[14] A Department of Municipal Affairs document, Guidelines for Writing Municipal Planning Strategies and Land Use By-laws discusses zoning maps and future land use maps at page 22 as follows:

"The Zoning Map must be based upon the Future Land Use Map, although they will differ in certain ways. For example, Future Land Use Map designations may be quite general while zones on the Zoning Map will be very specific. Where map discrepancies exist (such as in certain future land use designated areas where existing uses are zoned according to their use but the area is designated for another type of development in the long term) they should be explained in the Strategy. Similarly, where a future land use designation permits a number of different zones, the range of possible zones should be identified in the text and policies of the Strategy."

[15] In this case there is no explanation in the M.P.S. for the R-1 Zone in the Commercial Corridor designation. The L.U.B. Zoning Map is inconsistent with the M.P.S.

[16] The Court of Appeal has directed the Board to reconsider the merits of the appeal. The test set out in s. 251(2) is whether Council's decision reasonably carries out the intent of the M.P.S.

[17] Ms. Campbell asked the Board to again consider the reasons given by the two councillors for refusing to rezone the property. The Board dealt with this issue in the first decision and concluded that the concerns which were raised had been dealt with in the planner's report. The Board continues to be of that opinion. The Board notes the comment of the Court of Appeal at paragraph 9: "In this Court, it was not suggested that Council's decision [to deny the application] could be supported by any of the reasons given by the councillors."

[18] After considering all the evidence and the directions of the Court of Appeal, the Board determines that Council's decision refusing to rezone the subject property does not reasonably carry out the intent of the M.P.S. Therefore, the appeal is allowed and Community Council is ordered to amend the L.U.B. by rezoning 30 Old Sackville Road, Lower Sackville from Single Unit Dwelling (R-1) Zone to Commercial Corridor (C-3) Zone.

[19] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 8th day of August, 2001.

Linda D. Garber

