

**North West Planning Advisory Committee
November 7, 2012**

TO: Chair and Members of North West Planning Advisory Committee

SUBMITTED BY: 
Brad Anguish, Director of Community & Recreation Services

DATE: October 22, 2012

SUBJECT: **Case 18101: Time Extension to Development Agreement for a Mixed Use Development at the Southern Corner of Bedford Highway and Moirs Mill Road, Bedford**

ORIGIN

Application by United Gulf Developments Limited.

RECOMMENDATION

It is recommended that the North West Planning Advisory Committee recommend that Halifax Regional Council:

1. Approve, by resolution, the proposed Amending Agreement as contained in Attachment A of this report to extend the construction commencement date for the development at the southern corner of Bedford Highway and Moirs Mill Road, Bedford, by an additional two years to December 6, 2014; and
2. Require the Amending Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

In 2006, North West Community Council approved an application to enter into a development agreement (Case 00723) to allow a mixed use (commercial/residential) development at the southern corner of Bedford Highway and Moirs Mill Road in Bedford (Maps 1 and 2). The proposal enabled the development of a multi-level commercial/residential building as a means of promoting development on lands in close proximity to commercial nodes and the Bedford Waterfront (Map 3).

The development agreement contains a five year time limit for the commencement of construction which expires on December 6, 2012. Commencement of construction is defined within the development agreement as the issuance of a construction permit. An amendment to the commencement date is listed as a non-substantive matter in the development agreement and may be approved through a resolution of Council without a public hearing.

To date, a construction permit has not been issued. The developer has been in discussions with HRM staff concerning the construction permit approval process but will not be able to obtain a construction permit by December 6, 2012. Therefore, the developer has requested a 2 year extension for the construction commencement date.

DISCUSSION

The existing development agreement, approved by Community Council on September 28, 2006, is enabled through Policy C-4(a) of Bedford Municipal Planning Strategy. This policy enables mixed use commercial/residential at the southern corner of the Bedford Highway and Moirs Mill Road to be considered through the development agreement process.

The existing development agreement contains a commencement date to encourage the timely development and completion of the project. If the developer has not proceeded or commenced within the allotted time, Council may grant an extension, at the request of the owner, in cases where it is felt that the development is still appropriate. In this instance, the request is for a 2 year extension to the commencement of construction deadline. The 2 year extension provides the developer with adequate time to obtain the necessary permits and commence construction of the project. The developer has also discussed several architectural changes to the approved building with staff who have advised that such changes are substantive amendments to the existing development agreement. A 2 year extension would also enable the consideration of the architectural changes and the consideration of such changes by Council in the future. It is not possible to consider the architectural changes through the required planning process (substantive amendment process) prior to December 6, 2012 deadline.

Should Council grant the 2 year extension, all development rights under the existing agreement will remain. If the request for a time extension is denied, the owner will have until December 6, 2012 to acquire a construction permit for the proposed development. If a construction permit is not acquired by December 6, 2012, Council has the option to discharge the existing development

agreement. Any future development of the property could only be in accordance with the Commercial General Business (CGB) Zone or through the consideration of a new development agreement for mixed use commercial/residential development.

Further, it should be noted that the existing development agreement permits a ten year time frame for the completion of the entire development (December 6, 2017). A change to the date of completion is considered a substantive amendment. The applicant has not made application to amend the date of completion. The 2 year extension of the commencement of construction would result in a three year time frame for the construction of the entire development which is considered reasonable.

Conclusion

It is the opinion of staff that the request to extend the commencement of construction by 2 years is reasonable. Attachment A contains the proposed amendment to the existing development agreement to extend the time limit for commencement of construction. Staff recommend approval of the requested extension as the development proposal is still appropriate in the area and meets the intent of applicable Policy C-4(a) and Z-3.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement was information sharing, achieved through a sign on the site and information on the HRM website. Public information meetings and public hearings are not required for non-substantive amendments to a development agreement. The decision to grant a non-substantive amendment is made by resolution of Council.

In addition, in accordance with Section 6.2.2 of the existing development agreement, property owners within 152m (500 ft) of the site were informed by mail at least 10 days in advance of the proposed non substantive amendment being considered by Council.

The proposed development agreement will potentially impact (but not be limited to) the following stakeholders: local residents and property owners.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant, environmental policies contained in the Bedford MPS and LUB.

ALTERNATIVES

North West Planning Advisory Committee may recommend that Halifax Regional Council:

1. Approve the proposed amending agreement, as contained in Attachment A thereby extending the commencement of construction for an additional two years. This is the recommended course of action for reasons outlined in this report.
2. Approve the proposed amending agreement, as contained in Attachment A, with modifications or conditions respecting the commencement of construction. A shorter deadline is not recommended by staff on the basis that the two year extension is reasonable. Some modification or conditions may require additional negotiation with the developer.
3. Refuse to grant the time extension, thus not extending the commencement date and effectively discharging the agreement if a construction permit is not secured by December 6, 2012. This is not recommended for the reasons outlined in this report.

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning
Map 3	Approved Development
Attachment A	Amending Agreement - Time Extension
Attachment B	Relevant Sections of Existing Development Agreement

Available upon request

Staff Report for Case 00723

www.halifax.ca/commcoun/nwcc/documents/0609074431_001.pdf

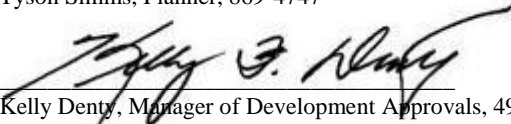
Supplementary Report for Case 00723

www.halifax.ca/commcoun/nwcc/documents/10.1.2.pdf

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

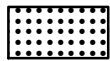
Report Prepared by: Tyson Simms, Planner, 869-4747

Report Approved by:


Kelly Denty, Manager of Development Approvals, 490-4800



Map 1
Generalized Future Land Use



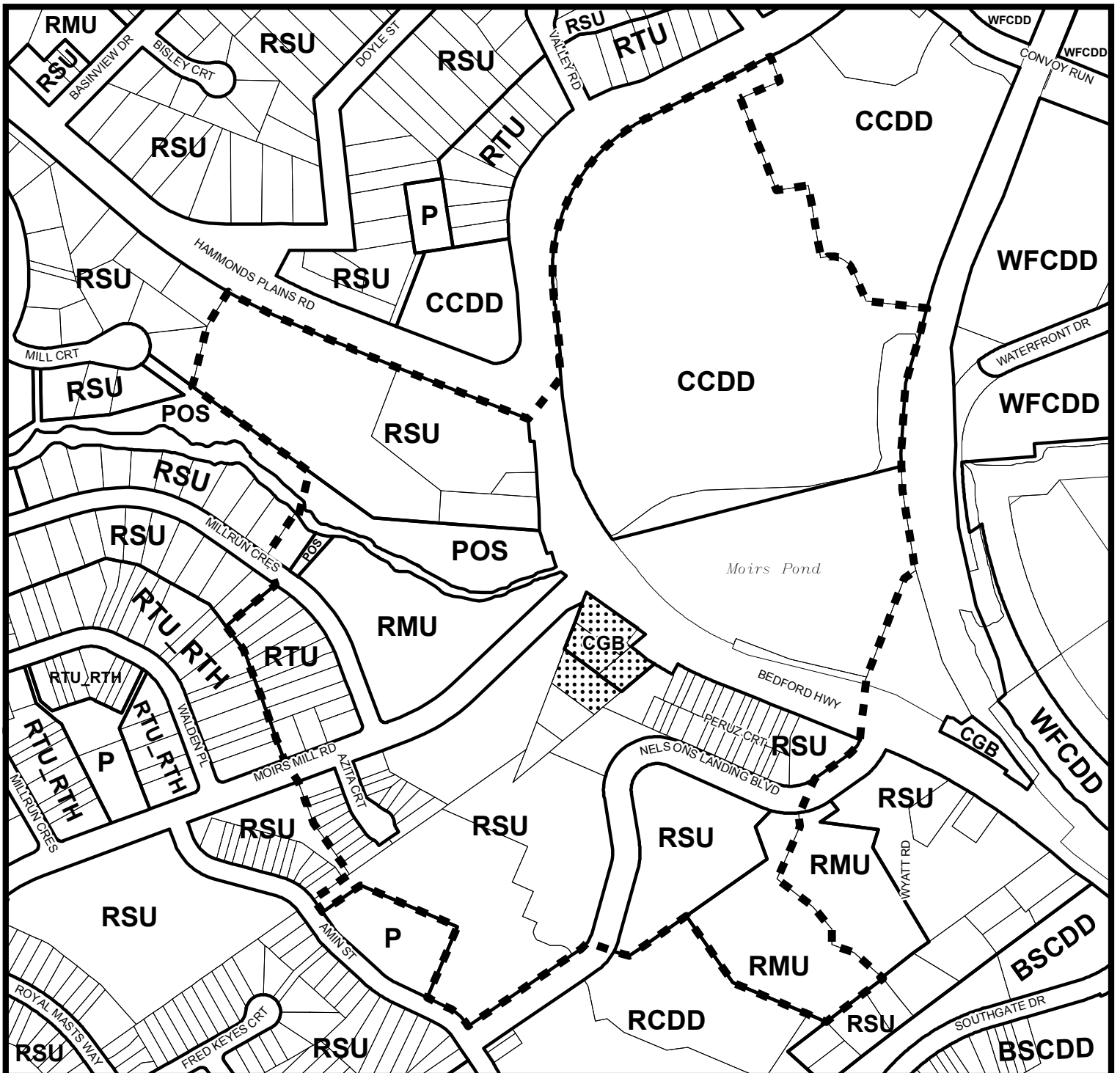
Area subject to Development Agreement



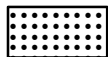
- R Residential Designation
- C Commercial Designation
- P Park Designation
- RCDD Residential Comprehensive Development District

- CCDD Commercial Comprehensive Development District
- WFCDD Waterfront Comprehensive Development District
- BSSPS Bedford South Secondary Planning Strategy





**Map 2
Zoning**



Area subject to Development Agreement

■ ■ ■ Notification Area



- RSU Single Dwelling Unit Zone
- RMU Multiple Dwelling Unit Zone
- RTU Two Dwelling Unit Zone
- RTH Townhouse Zone
- CGB General Business District Zone

- P Park Zone
- POS Park Open Space Zone
- CCDD Commercial Comprehensive Development District
- RCDD Residential Comprehensive Development District
- WFCDD Waterfront Comprehensive Development District
- BSCDD Bedford South Comprehensive Development District





Proposed Building Design 910 Bedford Hwy.

Map 3
Approved Development



HALIFAX
REGIONAL MUNICIPALITY

Attachment A
Proposed Amending Development Agreement

THIS AMENDING AGREEMENT made this day of , 2012
BETWEEN:

<INSERT DEVELOPER NAME>,
a body corporate, in the Province of Nova Scotia

OF THE FIRST PART

- and -

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

OF THE SECOND PART

WHEREAS the Developer, **<INSERT DEVELOPER NAME>**, and the Halifax Regional Municipality previously entered into an agreement to allow for development of a mixed use development at the south corner of Bedford Highway and Moirs Mill Road, Bedford, the said Agreement being recorded at the Registry of Deeds at Halifax as Document 89487459 (hereinafter called the "Existing Agreement") referenced as Municipal Case Number 00723;

AND WHEREAS the Developer has requested an amendment to the provisions of the Existing Agreement to permit a time extension for the commencement of construction by entering into this Amending Agreement (hereinafter called the First Amending Agreement) referenced as Municipal Case Number 18101; and

AND WHEREAS the Halifax Regional Council of Halifax Regional Municipality, at its meeting on the ___the day of ____, 2012, approved this request, referenced as Municipal Case Number 18101);

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree to the following amendment to the Existing Agreement:

The Existing Agreement shall be amended by amending Clause 8.3.1 by replacing the text "5 years", located in the first sentence, with the text "7 years".

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2012.

SIGNED, SEALED AND DELIVERED
in the presence of:

<ENTER NAME OF DEVELOPER>

per: _____

per: _____

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

HALIFAX REGIONAL MUNICIPALITY

per: _____

MAYOR

per: _____

per: _____

MUNICIPAL CLERK

Attachment B
Relevant Sections of Existing Development Agreement

PART 6 AMENDMENTS

Amendments to any matters not identified under Section 6.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

6.2 Non-Substantive Amendments

6.2.1 The following items are considered by both parties to be not substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act:

- (a) increase in the number of residential units provided the overall number of bedrooms does not exceed 60. For the purposes of determining bedrooms, one bedroom plus den/office units shall be considered to be a two-bedroom unit, two bedroom plus den/office units shall be considered to be a three-bedroom unit and so on.;
- (b) permit Commercial Uses which are not listed in Section 3.4.2 of this agreement provided the commercial uses are appropriate with mixed use developments;
- (c) an increase to the licensed area of the pub or lounge in accordance with Section 3.4.3 of this agreement;
- (d) granting of an extension to the date of commencement of construction as identified in Section 8.3 of this agreement;
- (e) changes to the exterior architectural appearance of the buildings or the design, layout and positioning of the buildings, provided that plans are submitted for any changes to the building design and that such changes, in the opinion of Council, are minor in nature;
- (f) changes to the landscaping measures as detailed in Section 3.9 which, in the opinion of Council, are minor in nature;
- (g) reduction in the parking space requirements;

6.2.2 In considering the approval of a non-substantive amendment under Section 7.2, property owners within 152m (500 ft) of the site shall be informed by mail at least 10 days in advance of the proposed amendment being considered by Council.

PART 8 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

8.1 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.

8.2 Subsequent Owners

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

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

8.3 Commencement of Development

8.3.1 In the event that a Construction Permit has not been issued within 5 years from the date of registration of this Agreement at the Registry of Deeds, 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.

8.3.2 If the Developer(s) fails to complete the development, or after 10 years from the date of registration of this Agreement at 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.

8.4 Completion of development

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

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (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 Bedford, as may be amended from time to time.