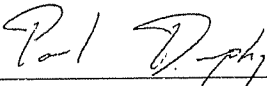


Harbour East Community Council
February 3, 2011

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director, Community Development

DATE: January 18, 2011

SUBJECT: Development Agreements: Commencement and Completion Times

INFORMATION REPORT

ORIGIN

At the December 2, 2010 Harbour East Community Council meeting (Item 12.2) it was:

“Moved by Councillor Karsten, seconded by Councillor Fisher, that Harbour East Community Council request a staff report on the amount of time being approved, under development agreements, for the “Commencement of Development” and “Completion of Development” with an emphasis on reducing the amount of time provided.”

BACKGROUND

Under the *HRM Charter* development agreements may provide specified time periods for the commencement and completion of a development. A development agreement may further provide that where the development does not commence or is not completed within the time specified in the development agreement, the agreement or portions of it may be discharged by Council with or without the concurrence of the property owner. Recently prepared development agreements within the Harbour East Community Council (HECC) jurisdiction provide commencement and completion time periods. HECC is concerned that the length of the time periods are allowing developments to be delayed and agreements are not being discharged. In response to this concern Council has requested that staff prepare a report on the amount of time being approved in development agreements with a view to providing reduced time periods.

DISCUSSION

Within all new development agreements, there are standard clauses regarding “commencement” and “completion” time periods to:

- i) ensure a project is started and completed in a reasonable amount of time;
- ii) address market conditions relative to the development; and
- iii) ensure development is consistent with changes in policy in the future.

Commencement time is used by the developer to prepare detailed plans and satisfy certain terms and conditions of the agreement before HRM permits may be issued. Attachment A contains the standard wording for both clauses which generally state:

Commencement of Development: If the development has not commenced within [**Insert number**] years from the date of registration the Agreement shall have no further force or effect. Commencement of development shall mean (ie. the installation of the footings and foundation for the proposed building or issuance of a Construction Permit)

Completion of development: If the Developer fails to complete the development after [**Insert #**] years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may retain, re-negotiate or discharge the agreement. Upon completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may retain, re-negotiate or discharge the agreement.

Evolution of Commencement and Completion (Discharge) Times

Commencement and Completion clauses are not found in all development agreements approved by either HRM or the former municipalities. A random sampling of approved development agreements shows the evolution of commencement and completion (discharge) times below:

Time Period	Commencement or Completion Times
Mid to late 1980s	no commencement or completion times
Early 1990s	some DAs have completion times (from time of permit issuance); majority have discharge or termination clause (wherein both parties agree to discharge DA)
Mid to late 1990s	some DAs have commencement time; most have completion times (times start from the issuance of the permit); majority have discharge or termination clause
Early 2000s to c. 2005	majority of DAs have both commencement and completion times (completion times are approximately 7 to 10 years) from time of registration; all have discharge clause

Time Period	Commencement or Completion Times
C. 2005 to c. 2008	all DAs have commencement and completion times and the times were consistently 5 years from time of registration for both; all have discharge clauses.
C. 2008 to present	all DAs have commencement and completion times consisting of 3 and 5 years respectively from time of registration. Major developments have a completion time of 7 to 10 years. All have discharge clauses.

The review indicated that those development agreements approved prior to 2005 had longer time periods or not at all. As a result, some of the developments remain undeveloped or incomplete. The development agreement process does not allow Council to amend or discharge the agreement without the consent of the owner which is unlikely. Further, HRM needs to better enforce its development agreements which include the discharge of agreements when developments are completed. Since 2005, staff has shortened time periods and Council now has the ability to discharge agreements without the consent of the property owner. However, failure to meet commencement or completion times as specified within an agreement does not constitute a breach of the agreement as the developer may request a modification of times pursuant to the non-substantive amendment clause of the agreement. If the developer demonstrates there is good cause to modify these dates Council can approve the requested modification.

Survey of Recent Development Agreement Time Periods

Staff has reviewed recent development agreements within HECC's jurisdiction that provide time periods for commencement and completion and have compiled them in Attachment B of this report. The results illustrate generally the following time periods:

Type of Development	Commencement Times	Completion Times
Minor development projects	3 years	5 years
Major developments projects	5 years	7 to 10 years
Existing Situations (minor exterior changes)	1 year	1 to 3 years

Upon review of the results, staff believes the time periods currently being utilized are a reasonable balance between HRM's desire for a project to proceed and the ability of the developer to begin and complete construction under market conditions. If HECC wishes to reduce time periods further, Council needs to consider the impact of the change relative to market demand and the frequency in which MPS policy is amended. A change in time periods for commencement and completion should be applied to all development agreements in order to provide clear and consistent time periods. However, staff or Council could recommend or approve, respectively, a reduction or an increase in the time periods for unique situations.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

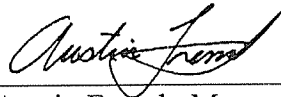
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

ATTACHMENTS

Attachment A Standard DA Wording for Commencement & Completion Time Periods
Attachment B Table of Commencement/Completion Times

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: Darrell Joudrey, Planner 1, 490-4181



Report Approved by: Austin French, Manager, Planning Services, 490-6717

Attachment A
Standard DA Template Wording for
Commencement and Completion of Development

7.3 Commencement of Development

- 7.3.1 In the event that development on the Lands has not commenced within **[Insert-number]** years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 7.3.2 For the purpose of this section, commencement of development shall mean **[Insert-threshold for commencement such as installation of the footings and foundation for the proposed building or issuance of a Construction Permit]**
- 7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section **[Insert non-substantive amendment section #]**, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

7.4. Completion of Development

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

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for **[Insert-plan area]**, as may be amended from time to time.

7.5 Discharge of Agreement

- 7.5.1 If the Developer fails to complete the development after **[Insert #]** years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or
 - (c) discharge this Agreement.

**Attachment B:
Table of Commencement/Completion Times**

Case #	Date Approved	Location	Description	Commencement Time	Completion Time
15863	2010	185 Windmill Road	5 apartment units	3 years	5 years
01315	2009	47 East Jeddore Rd	Conversion of surplus school to commercial use	3 years	5 years
01271	2009	95 Montebello Rd.	Expansion to existing commercial building	3 years	5 years
15991	2010	1956 Shore Road	Allow 3 rd residential unit in former two unit building	1 year	1 year
16032	2010	613 Main Street	Allow a dance floor and stage; combine 3 DAs into 1	1 year	3 years
15952	2010	Basinview Drive, Wrights Cove, Windmill Road area	70 unit residential building	5 years	7 years
01355	2009	Kings Wharf	Stage II Agreement, Phase I Kings Wharf	5 years	7 years
00898	2009	Beaverbank	Phases 5-10 of 218 lot subdivision		25 years*
01230	2009	249/251 Windmill Road	12 storey 103 unit residential building	5 years	10 years

*DA only allows for 15 lots per year until BB Bypass is built.