



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Heritage Advisory Committee
June 22, 2016

TO: Chair and Members of the Heritage Advisory Committee

SUBMITTED BY: Original Signed by

Bob Bjerke, Chief Planning and Director, Planning & Development Services

DATE: May 25, 2016

SUBJECT: Request to waive a right of first refusal for 1260 Blenheim Terrace, Halifax

ORIGIN

Request by owner Ms. Dianna Higgs

LEGISLATIVE AUTHORITY

The *Heritage Property Act*, R.S.N.S. 1989, c. 199

Section 20

- (1) The Minister may enter into an agreement with the owner of a provincial heritage property, and the council may enter into an agreement with the owner of a municipal heritage property or property located in a heritage conservation district, whereby the owner grants to the Minister or the council a right or incurs an obligation respecting the use, preservation or protection of the heritage property or property located in a heritage conservation district.
- (2) An agreement entered into pursuant to subsection (1) shall be deposited in the registry of deeds for the registration district within which the heritage property or property located in a heritage conservation district is situate.
- (3) Where an agreement is deposited in the registry of deeds, the right or obligation given by the owner becomes an encumbrance upon and runs with the property, and the Minister, in respect of provincial heritage property, and the municipality, in respect of municipal heritage property or property located in a heritage conservation district, may enforce the right or obligation against the property and against the owner or any subsequent owners of the property.
- (4) A right or obligation created by an agreement made pursuant to subsection (1) may be waived or discharged by the Governor in Council in respect of provincial heritage property and by the municipality in respect of municipal heritage property or property located in a heritage conservation district.

RECOMMENDATION

It is recommended that the Heritage Advisory Committee recommend that Regional Council:

1. Retain the existing heritage agreement but consent to a waiver of the right of first refusal for lot 2E-1 granted to the Halifax Regional Municipality by Diana Joyce Higgs in sections 3(e) and 4 of an amended Heritage Agreement for the Sir Sandford Fleming Lodge (1260 Blenheim Terrace, Halifax) dated June 2, 1998; and
2. Authorize the Mayor and Clerk to execute the necessary release on behalf of the municipality to effect the waiver as outlined in recommendation #1.

BACKGROUND

A request has been made by property owner Dianna Higgs to amend an existing heritage agreement for a municipal heritage property located at 1260 Blenheim Terrace, Halifax (Map1). The subject property was registered as a municipal heritage property by the former City of Halifax following a Council meeting on December 11, 1981. The property is also subject to a heritage agreement executed filed at the Registry of Deeds on June 4, 1998 (document 16388, book 6226, page 151-155 Attachment A), and subsequently amended. Also see attachment B, 1998 plan of survey clearly showing 1260 Blenheim Terrace (lot 2E-1).

Sandford Fleming was born in Kirkcaldy, Scotland in 1827. He arrived in Canada in 1845, trained as a civil engineer, and became the chief engineer for the both Intercolonial Railway from Quebec to Halifax, and the Canadian Pacific Railway from St. John to Vancouver. Fleming also played a key role in the development of a worldwide system of keeping time, which would become known as Standard Time, and was later knighted for this work.

The Lodge was built in 1871 by William Duffus, who sold it to Fleming in 1874. The house, which Fleming named 'Summerholme', was built on lands previously part of the Oland Estate. Duffus built "a unique house for his bride. Twenty-two little gabled windows dotted the sloping roofs, lighting the nine bedrooms within, and giving the house a delightful air of fantasy"¹. The house was designed in a highly ornamented Second Empire style and surrounded by large, well-groomed grounds. The Lodge has significant heritage value for its associations with Sir Sandford Fleming, but also for its impressive architectural style.

Heritage Property Act

Section 20 of the *Heritage Property Act* (HPA) provides that a Council may enter into an agreement with the owner of a municipal heritage property whereby the owner grants the Council a right or incurs an obligation respecting the use, preservation or protection of the heritage property. This section also states that any right or obligation created by an agreement may be waived or discharged by the municipality.

Section 20A allows for the appeal of the entering into, or waiving or discharging of, heritage agreements to the Nova Scotia Utility and Review Board.

Heritage Agreement

In 1996 Council approved a heritage agreement for the subject property permitting the subdivision of the property into 4 new single family dwelling lots, and one remainder lot for the Sir Sandford Fleming Lodge. The agreement includes design criteria for the new dwellings, a tree retention plan, and height limits for the new residential building lots. Additionally, the heritage agreement contains clauses providing permanent protection of the Sir Sandford Fleming Lodge, requiring the owners to permanently waive Section 18 (Application to Alter or Demolish) of the *Heritage Property Act*, and the owner is "obligated to maintain the exterior of the main lodge as may be reasonable required".

¹ Watts, Heather and Raymond, Michele. *Halifax's Northwest Arm: An Illustrated History*. Halifax: Formac Publishing Co., 2003.

Subsequently, three amending agreements were approved by Regional Council. These amendments permitted the reconfiguration and number of new single family dwellings resulting in 5 new single family dwelling lots and one remainder for the heritage building. In addition to permitting the subdivision of the land, the agreement required the municipality to de-register each of the single family lots once they had been built upon: on February 24, 2015, Regional Council approved the de-registration of the last of the new single family lots.

DISCUSSION

The subject heritage property is approximately 1 acre in size, and has access to Thornvale Avenue to the north and to Blenheim Terrace (deeded access) to the south. The property is zoned R-1 (Single Family Zone) under the Halifax Peninsula Land Use Bylaw. Current photographs of the property can be found in Attachment C of this report.

The existing heritage agreement allowed for appropriate redevelopment/subdivision of the property, and it continues to provide significant protections to the heritage property. The agreement contains provisions which require regular maintenance of the Lodge, restrict any further subdivision of the property, and require that the owners “completely and unconditionally” waive their rights to section 18 of the *Heritage Property Act* regulating demolition and substantial alteration of the property without Council’s approval (Attachment A).

The agreement also gives HRM a right of first refusal on any sale of lot 2E-1 (Attachment B), the Sir Sanford Fleming Lodge. The owner believes that this right of first refusal for any sale of the property is having a negative impact on the saleability of the property, and has therefore requested that HRM waive its right of first refusal. The relevant sections of the agreement are:

- Section 3(e) states:

The Developer agrees that the Halifax Regional Municipality has the right of first refusal, on any sale of lot 2E-1, which includes the Historic Sir Sandford Fleming Lodge, as described in Schedule “A” forming part of this Agreement.

- Section 4 states:

In further consideration of the approval contained in clause 3(e) hereof, the Developer covenants and agrees with the Region as follows:

- (a) If the Developer receives a bona fide offer to purchase that part of the property shown in Schedule “A” as Lot 2E-1 or any part thereof which includes the Historic Sir Sandford Fleming Lodge (hereinafter referred to as the “Purchase Offer”) the Developer agrees to first offer the lands for sale to the Region on the same terms and conditions as are contained in the purchase offer.*
- (b) The offer to sell the lands to the Region shall be communicated to the Region in writing and shall be irrevocable until midnight of the fifteenth day following the delivery of the same to the Region...and if not accepted by that time, the offer to sell shall be null and void and the Developer shall in that event be free to accept the Purchase Offer.*

The heritage agreement provides significant protection to the heritage property, and therefore a full discharge of the agreement is not warranted. It is unclear the reason for the inclusion of the sections of the agreement listed above providing the municipality the right to purchase the Sir Sandford Fleming Lodge. Based on information in the heritage file, it appears that a substantial alteration, heritage agreement and de-registration were all presented to the property owners in 1991. A heritage agreement was suggested as a mechanism for future changes to the property which would respect the City’s heritage policies and procedures, that would be developed jointly by the property owner and the City.

The 2016 (residential taxable) assessed value of the property is \$1,593,400 and the property was recently listed for sale in early 2016 for \$1,695,000. Other typical property acquisition costs HRM would assume are outlined in the table below:

| Cost Description | Amount |
|---|--------------------|
| Purchase Price for the property | \$1,695,000 |
| Deed Transfer Tax (1.5% Purchase Price) | HRM is Exempt |
| Demolition (Approximate) | N.A. |
| Deed Registration | \$100 |
| Due Diligence/Administrative* | \$15,000 |
| Subtotal | \$1,710,100 |
| 5% Contingency | \$95,505 |
| Total | \$1,805,605 |

Due diligence could include, but not limited to, building assessment, environmental site assessment, Legal fees. The right of first refusal requires the Region to respond to the purchase offer within fifteen days of receipt. This presents practical challenges within the municipality's current administrative processes, as presenting any such offer to Council within that time frame could be difficult without calling a special meeting of Council.

There is presently no formal internal process set up to determine if there is a strategic need for acquisition of the property; therefore, staff have utilized a technical review committee set up under Administrative Order 50 (Disposal of Surplus Real Property) to provide preliminary comments regarding departmental needs. Contact with HRM departments included: Transportation & Public Works (Right of Way Services and Municipal Operations), Finance (Grants and Contributions), Planning & Development (Planning and Development Approvals), Transit, Parks and Recreation, and Police. None of these departments have raised any potential rational for property acquisition.

In conclusion, it is heritage staff's opinion that the protection of the heritage values of the Sir Sandford Fleming Lodge will not be affected by removing the sections of the existing heritage agreement providing the municipality the right of first refusal. The property will remain a registered heritage property, and the heritage agreement will remain in effect. Should the property change ownership the remaining clauses in the agreement will continue to provide adequate protection to the heritage property. Heritage staff support the request for Council to waive its right of first refusal and recommend approval.

FINANCIAL IMPLICATIONS

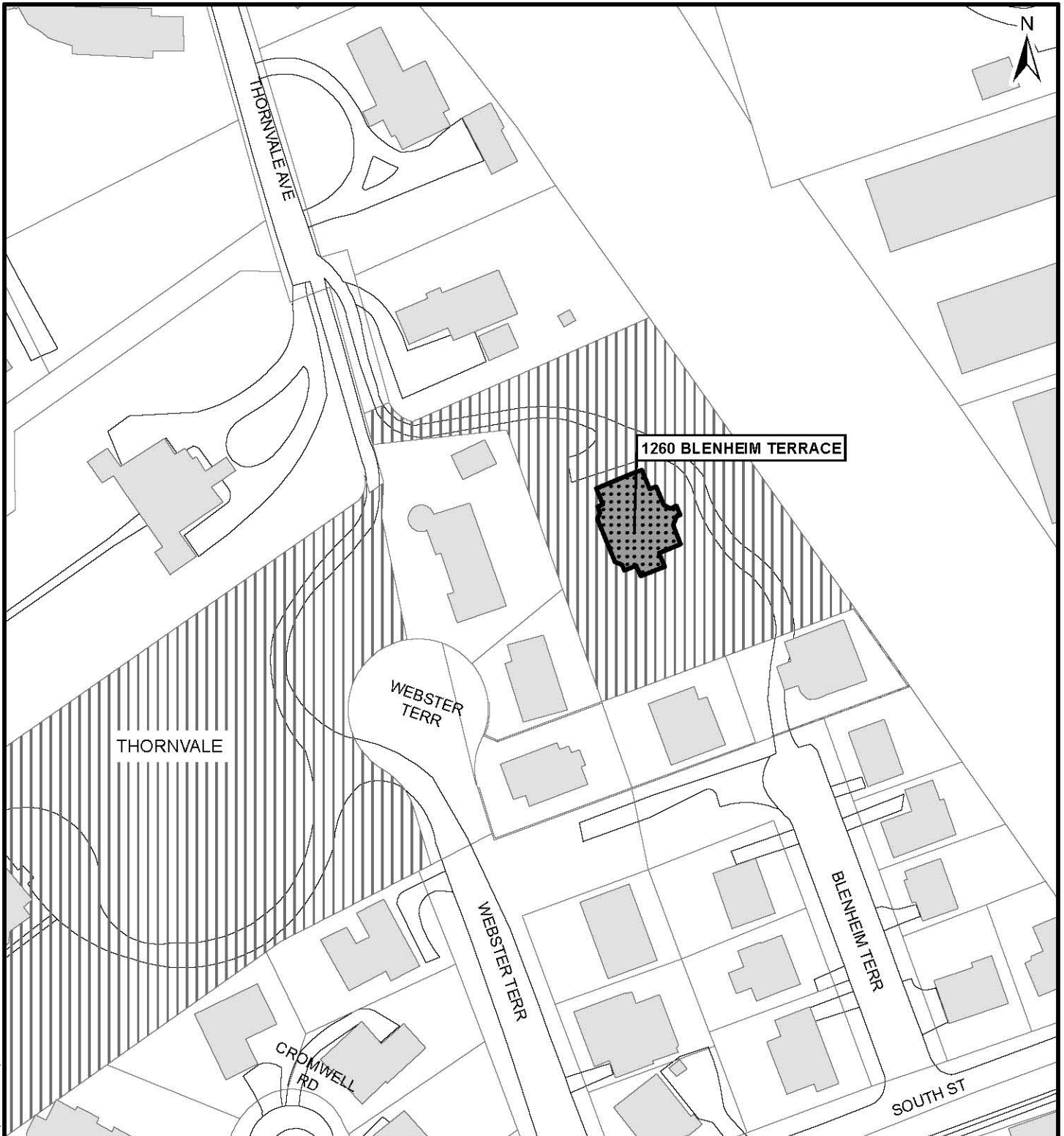
The HRM costs associated with advertising and processing this application can be accommodated within the approved 2016/17 operating budget for C002 Urban Design.

COMMUNITY ENGAGEMENT

The Heritage Property Act provides for appeals to the Nova Scotia Utility and Review Board when entering into, or waiving/discharging of a right or condition in a heritage agreement. This level of community engagement is consistent with the intent of the HRM Community Engagement Strategy.

ALTERNATIVES

1. The Heritage Advisory Committee may recommend that Council refuse the request to waive the right of first refusal for 1260 Blenheim Terrace as outlined in this report.

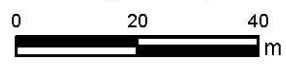


C:\Users\williams\Desktop\Location Map\

Map 1 - Location Map

HALIFAX
 Planning & Development

-  Application Location
-  Existing Municipally Registered Heritage Property
-  Building
-  Property Parcel



Scale 1: 1,250

Attachment A 1998 Heritage Agreement

| | | | |
|---|------------|------|-------------|
| HALIFAX COUNTY REGISTRY OF DEEDS | 16388 | 6226 | 151-155 |
| I certify that this document was registered as shown here. | Document # | Book | Page |
| | JUN 9 1998 | | 235 |
| | DBL COPY | | 7/1998 1998 |

151

THIS AGREEMENT

BETWEEN

DIANA JOYCE HIGGS of Halifax, in the County of Halifax and Province of Nova Scotia (herein referred to as the "Developer")

and

HALIFAX REGIONAL MUNICIPALITY, a municipal body corporate (herein referred to as the "Region")

APPROVED
AS TO FORM

Municipal Solicitor

WHEREAS the Developer is the registered owner of a property situated at civic number 1260 Blenheim Terrace located in the community of Halifax, (the Historic Sir Sandford Fleming Lodge), (herein referred to as the "property");

AND WHEREAS the property is registered as a municipal heritage property pursuant to the Heritage Property Act, R.S.N.S. 1989, c.199;

AND WHEREAS the Developer has an as-of-right potential under the Land Use By-law to legally subdivide the registered historic property into six single family lots;

AND WHEREAS the Developer wishes to substantially alter the property at a later date, by constructing five new single family dwellings;

AND WHEREAS any such alteration to the existing property requires the approval of the Council of the Region pursuant to Section 17 of the Heritage Property Act;

AND WHEREAS the Region may enter into an Agreement with the owner of a registered municipal heritage property whereby the owner may grant to the Region specified rights or incur specified obligations respecting the use, preservation or protection of the heritage property pursuant to Section 20 of the said Act;

AND WHEREAS after receiving a written report and recommendation from the Heritage Advisory Committee, the Council of the Region by resolution adopted the 26th day of May 1998, approved the proposed alterations to the property and the entering into this Agreement by the Region;

NOW THEREFORE in consideration of the premises and of the mutual agreements and covenants herein contained the parties hereto agree as follows:

1. The Region approves the application of the Developer to substantially alter the property by legally subdividing the property into six single family lots, for the purpose of constructing five new single family dwellings and protecting the historic Sir Sanford Fleming Lodge, provided that:
 - (a) any and all such alterations are generally in keeping with the Victorian styles of architecture found in Halifax, particularly those compatible with the historic Sir Sandford Fleming Lodge, more specifically described in the attached Design Guidelines, attached hereto as Schedule "C", forming part of this Agreement;
 - (b) natural vegetation and mature trees are retained in accordance with the Plot Plan dated August 1, 1996 attached hereto as Schedule "B", forming part of this Agreement;
 - (c) the dwellings located on Lots 2A-1, 2B-1, 2CD are constructed with basement and first floor elevations that reflect the existing grades shown on the Plot Plan dated August 1, 1996 attached hereto as Schedule "B", forming part of this Agreement;
 - (d) the dwellings located on Lots 2A-1, 2B-1, 2CD are constructed with a maximum dwelling height to the ridge of the roof that is within 10% of an elevation of 110 feet above sea level;
2. The Region shall de-register each of the five single family lots described as Lots 2A-1, 2B-1, 2-CD, 2-E2 and 2E-3 in the Attached Schedule "A" (individually the "Lot") as a Heritage Property upon completion of each of the following:
 - (a) execution of this Agreement by the developer;
 - (b) approval by the Region of the design of each individual house;
 - (c) issuance of a building permit in respect of the respective Lot; and
 - (d) construction of a home on the respective Lot to roof-tight condition (the intent being that the interior of the home, landscaping, decks and balconies need not be complete).

3. In consideration of the approval contained in Clause 1 hereof, the Developer covenants and agrees with the Region as follows:
- (a) The alterations to the property are restricted to the development envelopes within lots 2A-1, 2B-1, 2CD, 2E-2 and 2E-3 described in the attached Schedule "A"; the Tree Retention Plan attached hereto as Schedule "B"; and the Design Guidelines attached hereto as Schedule "C", forming part of this Agreement.
 - (b) That the owner be obligated to maintain the exterior of the main lodge as may be reasonably necessary, through consultation with the municipality and the Heritage Advisory Committee.
 - (c) Fully understanding the rights of the owner of the property pursuant to Section 18 of the Heritage Property Act, the Developer agrees to completely and unconditionally waive these rights, in order to retain and protect the "historic property" unless and until this Agreement is discharged by the Region.
 - (d) That the "historic property" will be considered to be Lot 2E-1 and include the main lodge itself and a surrounding area of not less than 43,560 square feet (one acre) be protected under the Heritage Property Act as described in Schedule "A", forming part of this Agreement;
 - (e) The Developer agrees that the Halifax Regional Municipality has the right of first refusal, on any sale of lot 2E-1, which includes the Historic Sir Sandford Fleming Lodge, as described in Schedule "A", forming part of this Agreement.
4. In further consideration of the approval contained in Clause 3(e) hereof, the Developer covenants and agrees with the Region as follows:
- (a) If the Developer receives a bona fide offer to purchase that part of the property shown in Schedule "A" as Lot 2E-1 or any part thereof which includes the Historic Sir Sandford Fleming Lodge (hereinafter referred to as the "Purchase Offer") the Developer agrees to first offer the lands for sale to the Region on the same terms and conditions as are contained in the purchase offer.
 - (b) The offer to sell the lands to the Region shall be communicated to the Region in writing and shall be irrevocable until midnight of the fifteenth day following the delivery of the same to the Region not including the day of delivery and, if not accepted by that time, the offer to sell shall be null and void and the Developer shall in that event be free to accept the Purchase Offer.

5. Any notices which may be given under the provisions of this Agreement shall be sufficiently given if mailed by registered, or certified, mail postage prepaid:

(a) in the case of the Region, addressed to:

Municipal Clerk
P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5

(b) in the case of the Developer, addressed to:

Diana Joyce Higgs
1260 Blenheim Terrace
Halifax, Nova Scotia

or to such other address as either party may notify the other in writing.

6. The Region acknowledges that the Developer or a subsequent owner may, from time to time, apply to the Region to have this Agreement or any provision hereof altered or waived as many be reasonable in the circumstances, and the Region shall give reasonable consideration to such application.

7. This Agreement shall be binding upon the parties thereto, their successors and assigns, and in the case of the Developer, the owner or owners from time to time of the property.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

SIGNED, SEALED AND DELIVERED)
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)
)
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)
)
)
)

Diana Higgs

Mayor

Municipal Clerk

PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY

ON THIS 2nd day of JUNE A.D., 1998, before me, the subscriber personally came and appeared C. NOVELLI, a subscribing witness to the foregoing Agreement, who having been by me duly sworn, made oath and said that the DIANA HIGGS, one of the parties thereto, signed, sealed and delivered the same in his/her presence.

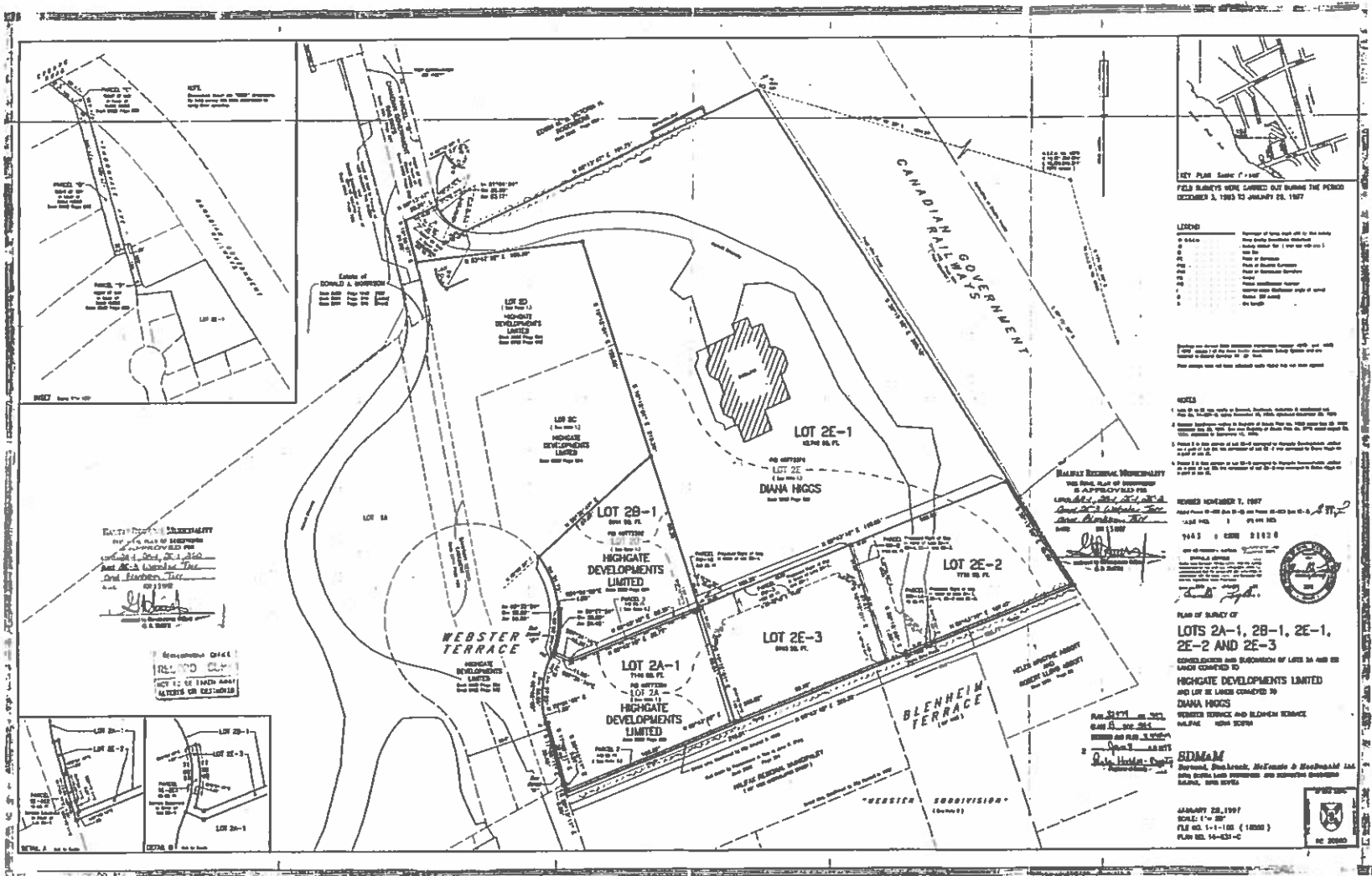
A Commissioner of the Supreme
Court of Nova Scotia
HARRY D. THOMPSON, Q.C.

ROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY

ON THIS 3 day of June A.D., 1998, personally came and appeared before me, the subscribing witness to the foregoing Indenture, who having been by me duly sworn made oath and said that the Halifax Regional Municipality, by its officer, Mayor Walter Fitzgerald and Vi Carmichael, Clerk, signed, sealed and delivered the same in his/her presence.

JANE G. BAUS
A Commissioner of the Supreme
Court of Nova Scotia

Attachment B: 1998 Plan of Survey



KEY PLAN SHEET 1 OF 2
 FIELD SURVEYS WERE CARRIED OUT DURING THE PERIOD
 DECEMBER 3, 1993 TO JANUARY 23, 1997

LEGEND

| | |
|--------|-------------|
| Symbol | Description |
| ... | ... |

Notes on survey methods and accuracy.

- NOTES
- 1. This plan is a true and correct copy of the original...
- 2. All measurements were taken with a total station...
- 3. The area of each lot is as shown on this plan...
- 4. The area of the Webster Subdivision is as shown...

RECEIVED NOVEMBER 1, 1997
 REGISTERED PROFESSIONAL SURVEYOR
 LINDA J. BROWN, F.S.S.
 7442 6 8286 2182 8

PLAN OF SURVEY OF
 LOTS 2A-1, 2B-1, 2C-1,
 2E-2 AND 2E-3
 CONVEYED AND SUBDIVISION OF LOTS 2A AND 2B
 UNDER COMPLETION TO
 HIGHGATE DEVELOPMENTS LIMITED
 AND LOT 2E UNDER COMPLETION TO
 DIANA HIGGS
 REGISTERED SURVEYOR AND BLENHEIM SURVEY
 1994/95

RDNAM
 Donald, Dick, McKee & MacDonald Ltd.
 2000
 JANUARY 28, 1997
 SCALE: 1" = 80'
 FILE NO. 1-1-100 (1:8000)
 PLAN NO. 14-631-C

30X 32479

Attachment C: Current Photographs



1260 Blenheim Terrace, Halifax.

