

St. Margaret's Bay Coastal Planning Advisory Committee
April 24, 2013

TO: Chair and Members of the St. Margaret's Bay Coastal Planning Advisory Committee

Original Signage

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

DATE: April 3, 2013

SUBJECT: **Case 18079: Development Agreement for a Two Unit Tourist Accommodation, Indian Harbour**

ORIGIN

Application by Judy Dauphinee

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning & Development

RECOMMENDATION

It is recommended that St. Margaret's Bay Coastal Planning Advisory Committee recommend that North West Community Council:

1. Give Notice of Motion to consider the proposed development agreement as provided in Attachment A to allow a two unit tourist accommodation at 27 Johnson Loop Road, Indian Harbour, and schedule a public hearing;
2. Approve the proposed development agreement as set out in Attachment A of this report to permit a two unit tourist accommodation at 27 Johnson Loop Road, Indian Harbour; and
3. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The owner of 27 Johnson Loop Road in Indian Harbour wishes to operate a tourist accommodation containing two units. Currently Section 4.30 of the Land Use By-law (LUB) for Planning Districts 1 and 3 (St. Margaret's Bay) permits one unit per lot to be used for tourist accommodation purposes (short term rental). Any additional units for this purpose may only be considered subject to the development agreement process as per 3.6(b) of the LUB and Policy MU-9 of the Municipal Planning Strategy (MPS) for Planning Districts 1 and 3.

The Proposal:

An application has been received by Judy Dauphinee to permit two tourist accommodation units at 27 Johnson Loop, Indian Harbour. The subject property presently contains an existing two unit dwelling; one unit is currently used for tourist accommodation purposes. The proposal is to enable the remaining unit to also be used for tourist accommodation. This proposal deals strictly with a change in use of the property; no renovations or expansions are planned for the existing dwelling/building.

The Property:

The subject property is generally described as follows:

- located on Johnson Loop Road off the Peggy's Cove Road (Maps 1 & 2);
- approximately 3,345 m² (36,000 ft²) in area;
- approximately 33.5 m (109.8 ft.) of public road frontage;
- serviced by an on-site well and septic system;
- designated Mixed Use "A" under the MPS for Planning Districts 1 and 3 (Map 1);
- zoned Mixed Use-1 (MU-1) under the LUB for Planning Districts 1 and 3 (Map 2); and
- designated Rural Commuter under the Regional Plan.

Tourist Accommodation:

Generally, tourist accommodations take a variety of forms (hotels, motels, bed and breakfasts, cabins, recreational vehicles, tents, etc.). However, for the purposes of administering the LUB for Planning Districts 1 and 3, the Development Officer has classified the proposed tourist accommodation use, described above, as a tourist cabin due to the scope and small scale of the operation. Tourist cabins fall within the definition of "campground" under the LUB and may be considered by development agreement.

This issue of small scale tourist accommodations was explored previously in this plan area under case number 00616 when a request was made in 2003 to rent a single unit dwelling to the travelling public on a weekly basis. The result of that application was the approval of Section 4.30 (Attachment B) of the LUB which permits no more than one unit per lot to be used for tourist accommodation purposes. Accordingly, two units per lot are not permitted as-of-right but may be considered through the development agreement process in accordance with Policy MU-9.

DISCUSSION

Policy Intent:

The MPS enables the consideration of tourist cabins (campgrounds) in the Mixed Use A and B designations through the development agreement process, subject to Policy MU-9 and Policy IM-9. The development agreement process is intended to ensure that such a proposal will not create disruption to neighbouring uses. It is the opinion of staff that the development agreement provided in Attachment A of this report satisfies the intent of relevant MPS policies (Attachment C). While the proposal is consistent with the intent of the MPS, staff has identified the following issues for specific discussion:

Uses Permitted under the Development Agreement:

Section 3.3.1 of the proposed development agreement enables a two unit tourist accommodation use to operate on the property. It also permits any other use permitted by the applied zoning of the property. The MU-1 Zone is relatively permissive, establishing uses that are prohibited rather than a complete list of permitted uses. A copy of the MU-1 Zone can be found in Attachment B.

Compatibility:

While the approval of this application would allow the use of the property to change from a residential/commercial property to strictly a commercial property, the intensity resulting from this change in use is not expected to increase.

The land uses surrounding the subject property include single unit dwellings to the west on Johnson Loop Road, another tourist accommodation use (the Whales Back Guest House) immediately to the east, a gift shop (the Whales Back Gift Shop) at the eastern intersection of Johnson Loop Road and the Peggy's Cove Road, and the Peggy's Cove Preservation Area (as identified by PCPA on Map 2) surrounding the area at the north, east and south. It is not expected that an additional tourist accommodation unit will have any compatibility concerns with any of the land uses identified above.

Signs:

Section 3.8 of the proposed development agreement provided in Attachment A relates to signage. No signage has been proposed for the tourist accommodation; however, staff felt it would be appropriate to permit one sign for way-finding and advertising purposes. The requirements of the sign are in keeping with signage permitted in the plan area for home occupation uses which limit the size to four square feet in area.

Existing Septic System:

The subject property is serviced with an on-site septic system which is regulated by Nova Scotia Environment. Some concern has been expressed by a nearby resident (Attachment D) regarding the age of the system. Staff understand that the system is currently operating properly, however, the owner is aware that should the system malfunction in the future, she will be responsible for undertaking any necessary repairs.

Conclusion:

MPS policy recognized the plan area's reliance on the tourist industry and seeks to ensure that proposals do not create disruption to neighbouring uses. In the opinion of staff, the proposed development agreement (Attachment A) reasonably satisfies the applicable policies of the MPS. Therefore, staff recommend approval of the proposed development agreement as contained in Attachment A of this report.

FINANCIAL IMPLICATIONS

There are no financial 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.

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 property and information on the HRM website). Consultation was invited through an online survey which was accessible in February of 2013 for property owners identified within the notification area as shown on Map 2. No property owners completed and returned the survey; however, a written letter was received through regular mail (Attachment D).

A public hearing must be held by Council before they can consider approval of this application. Should Council decide to proceed with a Public Hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 2.

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 MPS and LUB for Planning Districts 1 and 3.

ALTERNATIVES

The St. Margaret's Bay Coastal Planning Advisory Committee could recommend that North West Community Council:

1. Approve the proposed development agreement as contained in Attachment A. This is the staff recommendation.

2. Approve the proposed development agreement, as contained in Attachment A, with modifications or conditions. This may necessitate further negotiation with the applicant and may require an additional public hearing.
3. Refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies.

ATTACHMENTS

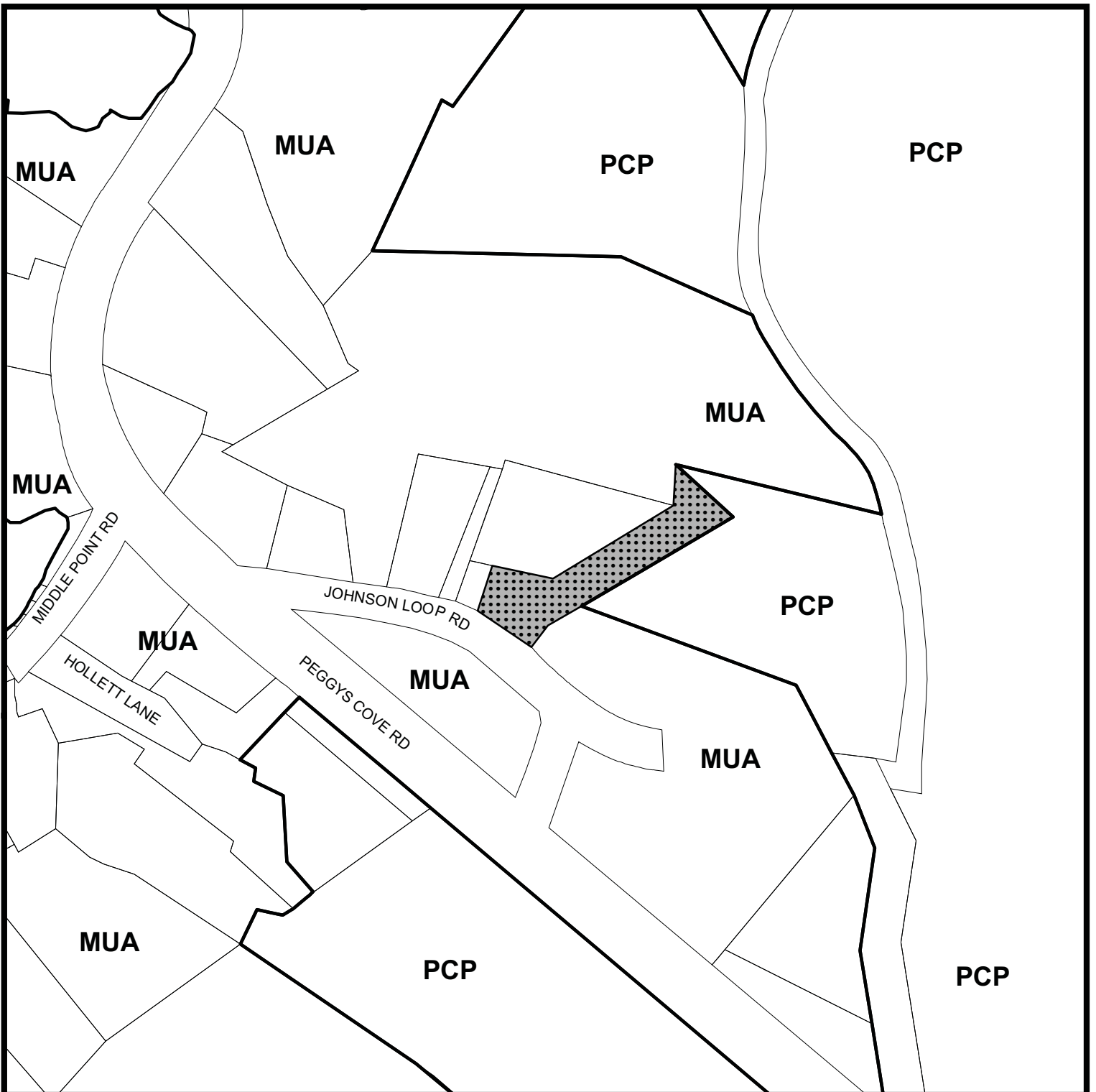
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|---------------|--|
| Map 1 | Generalized Future Land Use |
| Map 2 | Zoning and Notification |
| Attachment A: | Proposed Development Agreement |
| Attachment B: | Excerpts from the Land Use By-law for Planning Districts 1 and 3 |
| Attachment C: | Excerpts from the Municipal Planning Strategy for Planning Districts 1 and 3 & Policy Review |
| Attachment D: | Comment Received from the Public |

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: Jacqueline Belisle, Planner, 869-4262

Original Signed

Report Approved by: Kelly Denry, Manager of Development Approvals, 490-4800



Map 1 - Generalized Future Land Use

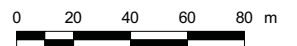
27 Johnson Loop Road
Indian Harbour



 Subject Property

Designation

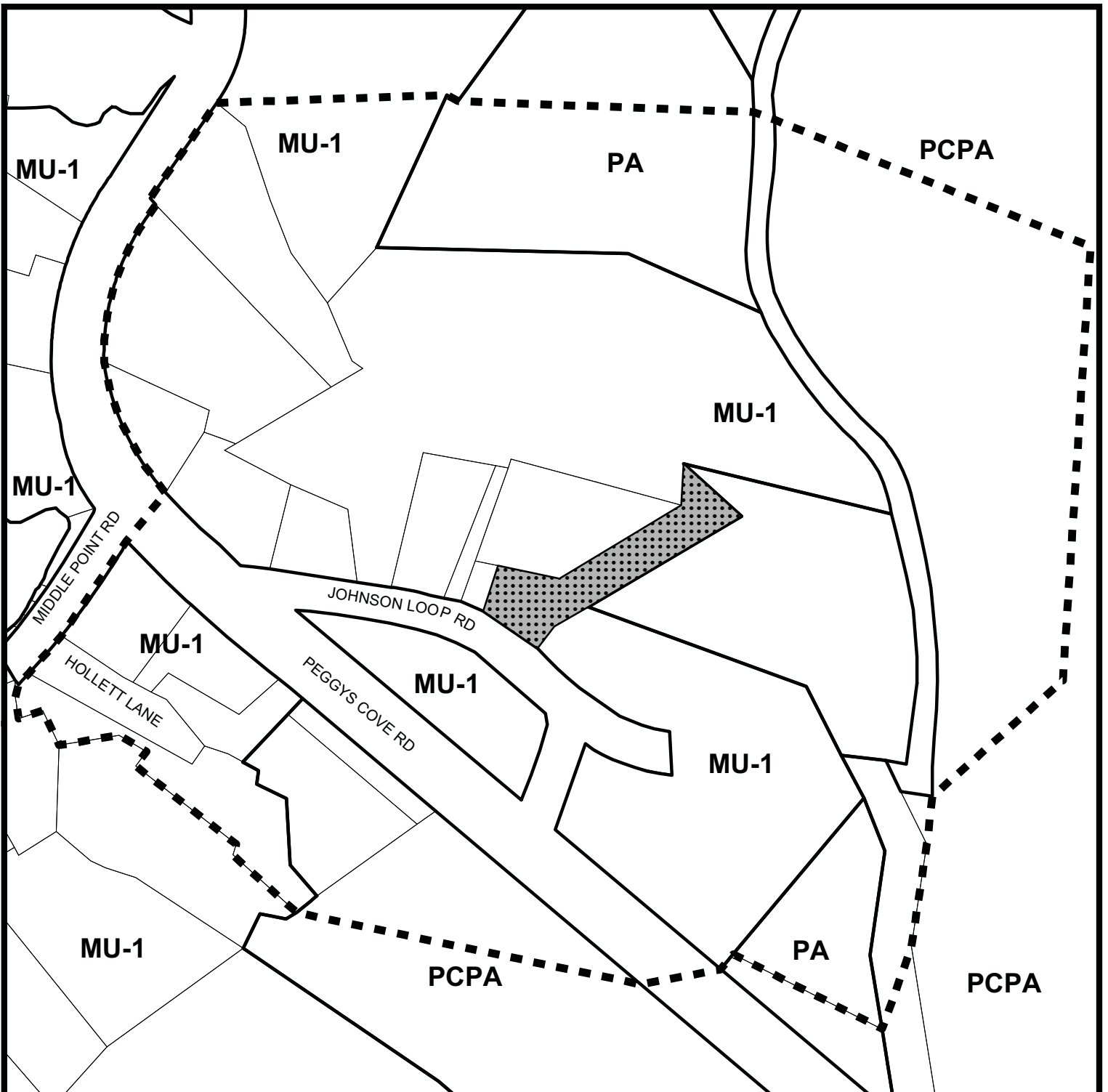
MUA Mixed Use A Designation
PCP Peggys Cove Preservation Area



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

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



Planning District 1 & 3
(St Margarets Bay) Plan Area



Map 2 - Zoning and Notification

27 Johnson Loop Road
Indian Harbour



-  Subject Property
-  Area of notification

- Zone
- MU-1 Mixed Use 1 Zone
 - PA Protected Area Zone
 - PCPA Peggys Cove Preservation Area



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

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

Planning District 1 & 3
(St Margarets Bay) Plan Area

Attachment A
Proposed Development Agreement

THIS AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

Insert Individual's name

an individual, in the Halifax Regional Municipality in the Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia (hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 27 Johnson Loop Road, Indian Harbour and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a two unit tourist accommodation (campground) use on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy MU-9 of the Municipal Planning Strategy for Planning Districts 1 and 3 and Section 3.6(b) of the Land Use By-law for Planning Districts 1 and 3;

AND WHEREAS the North West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 18079;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

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

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

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Planning Districts 1 and 3 and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

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

1.4 Conflict

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

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

1.5 Costs, Expenses, Liabilities and Obligations

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

1.6 Provisions Severable

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

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

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

2.2 Definitions Specific to this Agreement

The following words used in this Agreement shall be defined as follows:

- (a) “Tourist Accommodation Use” means a dwelling used as accommodation for the travelling public, on a daily, weekly, or monthly basis, for gain or profit.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Requirements Prior to Approval

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

3.2 General Description of Land Use

3.2.1 The use(s) of the Lands permitted by this Agreement are the following:

- (a) A two unit dwelling which includes tourist accommodation use in each unit;
- (b) Any uses permitted within the existing zone applied to the Lands subject to the provisions contained within the Land Use By-law for Planning Districts 1 and 3, as amended from time to time.

3.3 Detailed Provisions for Land Use

Any modifications to or additions to the main building or accessory buildings on the property, or any new building developed on the property, shall be in conformance with the applicable zone

requirements, as amended from time to time.

3.4 Subdivision of the Lands

Any subdivision of the Lands shall be in accordance with the Regional Subdivision By-law and Land Use By-law for Planning Districts 1 and 3, as amended from time to time.

3.5 Parking, Circulation and Access

The parking requirement for the tourist accommodation use shall be as per the requirement for parking for a two unit dwelling in accordance with the Land Use By-law for Planning Districts 1 and 3, as amended from time to time.

3.6 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, 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 and ice control, salting of walkways and driveways.

3.7 Signs

No more than one sign shall be permitted on the property to advertise the tourist accommodation use, and no such sign shall exceed four (4) square feet (.37 m²) in area and shall not exceed four (4) feet (1.2 m) in any one dimension.

PART 4: STREETS AND MUNICIPAL SERVICES

Off-Site Disturbance

4.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, ditches, 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.

4.2 Any further development on the site, including but not limited to, building permits, site grading, or resurfacing may require engineering drawings or detailed information provided.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Should further development occur and require site modification, any and all private storm water facilities that are constructed shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) The granting of an extension to the date of commencement of construction as identified in Section 7.3.1 of this Agreement;
- (b) The length of time for the completion of the development as identified in Section 7.5.1 of this Agreement;

6.2 Substantive Amendments

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

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

7.2 Subsequent Owners

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

7.3 Commencement of Development

- 7.3.1 In the event that development on the Lands has not commenced within three (3) 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 the submission of an application to the Municipality by the Developer for a Development Permit for the two unit tourist accommodation use.
- 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 7.3.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

7.4 Completion of Development

- 7.4.1 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 Planning Districts 1 and 3, as may be amended from time to time.
- 7.4.2 For the purpose of this section, completion of development shall mean the issuance of a Development Permit for the two unit tourist accommodation use.

7.5 Discharge of Agreement

- 7.5.1 If the Developer fails to complete the development after three (3) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or
 - (c) discharge this Agreement.

PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 Enforcement

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

8.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in
the presence of:

(Insert Registered Owner Name)

Witness

HALIFAX REGIONAL MUNICIPALITY

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

MAYOR

Witness

Witness

MUNICIPAL CLERK

Attachment B
Excerpts from the Land Use By-law for Planning Districts 1 and 3

PART 2: DEFINITIONS

In this By-law the word "shall" is mandatory and not permissive. Words used in the present tense shall include the future; words used in the singular number shall include the plural and words used in the plural number shall include the singular. The word "used" shall include "intended to be used", "arranged" and "designed". All other words shall carry their customary meaning except for those defined hereinafter:

- 2.11 CAMPGROUND means the commercial, institutional or non-profit use of land on which accommodations for temporary occupancy are located or may be placed, including tents, tourist cabins, camper trailers, and recreational vehicles, and which is primarily seasonal in operation.

PART 3: ZONES AND ZONING MAP

3.6 USES CONSIDERED BY DEVELOPMENT AGREEMENT

Notwithstanding Section 3.5 above, certain uses which may not be uses permitted in any zone may be considered in accordance with the development agreement provisions of the Planning Act. As provided for by the Municipal Planning Strategy for Planning Districts 1 and 3, such uses are as follows:

- (b) Campgrounds in the Resource, Mixed Rural Residential and Mixed Use A and B Designations;

PART 4: GENERAL PROVISIONS FOR ALL ZONES

4.27 PARKING REQUIREMENTS

- (a) For every building or structure to be erected or enlarged, or any change of use, off-street parking located within the same zone as the use and having unobstructed access to a public street or private road shall be provided and maintained in conformity with the following schedule, except where any parking requirement is specifically included elsewhere in this By-law. Where the total required spaces for any use is not a whole number, the total spaces required by this Section or by other specific sections shall be the next largest whole number.

USE
Any dwelling except as specified
below

PARKING REQUIREMENT
1 space per dwelling unit

4.30 TOURIST ACCOMMODATIONS

One dwelling unit per lot may be used as an accommodation for the travelling public, on a daily, weekly, or monthly basis, for gain or profit, pending all other requirements of the Land Use By-law are met. (WRCC-Jan 26/04;E-Feb 15/04)

PART 12: MU-1 (MIXED USE 1) ZONE

12.1 MU-1 USES PERMITTED

A development permit may be issued for all uses in any MU-1 (Mixed Use) Zone, except for the following:

Residential Uses Not Permitted

Mobile home parks
Multi-unit dwellings
Senior citizen housing over 20 units

Commercial Uses Not Permitted

Commercial entertainment uses
Campgrounds
Marinas
All commercial development or expansions with a combined gross floor area greater than 697 square metres (7500 square feet). (RC -Feb 24/09;E-Apr 25/09)

Resource Uses Not Permitted

Agricultural uses, Intensive
Extractive facilities
Sawmills and industrial mills related to forestry over 3,000 square feet

Industrial Uses Not Permitted

Industrial uses but excepting traditional uses and service industries
Salvage yards
All industrial development or expansions with a combined gross floor area greater than 697 square metres (7500 square feet). (RC-Feb 24/09;E-Apr 25/09)

Construction and Demolition Materials Operations Not Permitted

C&D Materials Transfer Stations
C&D Materials Processing Facilities
C&D Materials Disposal Sites (RC-Sep 10/02;E-Nov 9/02)

12.2 MU-1 ZONE REQUIREMENTS

EXCEPT AS OTHERWISE PROVIDED FOR IN THIS PART, no development permit shall be issued in any MU-1 Zone except in conformity with the following

| | |
|---------------------------------|---|
| Minimum Lot Area | 20,000 square feet (1858 m ²) |
| Minimum Frontage | 100 feet (30.5 m) |
| Minimum Front or Flankage Yard | 20 feet (6.1 m) |
| Minimum Rear or Side Yard | 8 feet (2.4 m) |
| Maximum Lot Coverage | 35 per cent |
| Maximum Height of Main Building | 35 feet (10.7 m) |

12.3 OTHER REQUIREMENTS: COMMERCIAL USES INCLUDING COMMERCIAL USES ASSOCIATED WITH A RESIDENTIAL USE.

Where uses are permitted as Commercial Uses in any MU-1 Zone, the following shall apply:

- (a) No portion of any lot shall be used for the collection and storage of refuse unless the refuse containers are screened.
- (b) No portion of any parking space within the MU-1 Zone shall be permitted within any required side or rear yard, except where a fence or other visual and physical barrier is erected.

Attachment C
Excerpts from the Municipal Planning Strategy for Planning Districts 1 and 3
& Policy Review

Two uses that could find the designation attractive to locate in but bring with them potential negative side effects are campgrounds and marinas. Such uses are recognized, given the Plan Area's reliance on the tourist industry. However, residents are anxious to ensure that when they are developed they will not create disruption to neighbouring uses. Therefore, campgrounds and marinas shall only be considered by development agreement.

| | |
|---|---|
| <p>MU-9 Notwithstanding Policy MU-2, within the Mixed Use "A" and "B" Designations, Council shall only consider campgrounds and marinas according to the development agreement provisions of the <u>Planning Act</u>. When considering such development agreements, Council shall have regard to the following:</p> | |
| Policy Criteria | Staff Comment |
| <p>(a) <i>that the site exhibits characteristics which make the location particularly suitable for the proposed use;</i></p> | <p>The property is located in close proximity to the Peggy's Cove which is a popular tourist destination.</p> |
| <p>(b) <i>the potential for adversely affecting existing residential and community facility development in the area by virtue of noise, visual intrusion and traffic generation;</i></p> | <p>Small scale tourist accommodation uses generally operate in a manner similar to residential uses. Therefore, noise, visual intrusion and traffic generation is anticipated to be minimal.</p> |
| <p>(c) <i>the provision of landscaping or buffering from adjacent development and the public road to which it has access in order to reduce the impact of the proposed development;</i></p> | <p>As this development utilizes an existing two unit residence it is the opinion of staff the use will not require any additional screening or buffering.</p> |
| <p>(d) <i>the impact on traffic circulation and, in particular, sighting distances and entrances to and exits from the site;</i></p> | <p>From a traffic circulation perspective the change in use from a residential dwelling unit to a commercial tourist accommodation unit has no affect. The existing sighting distance and entrances to and exit from the site are adequate.</p> |
| <p>(e) <i>the layout and design of the facility and public safety regarding the operation of boats;</i></p> | <p>NA</p> |
| <p>(f) <i>the general maintenance of the facility;</i></p> | <p>Section 3.7 of the proposed development agreement addresses maintenance of the property.</p> |

| | |
|---|--|
| <p>(g) <i>the means by which solid and liquid waste will be treated;</i></p> | <p>The property is serviced by municipal solid waste collection.</p> <p>The property is serviced with an existing on-site septic system which is under the jurisdiction of NS Environment.</p> |
| <p>(h) <i>the provision of sewage pump-out facilities for marine craft;</i></p> | <p>N/A</p> |
| <p>(i) <i>that provisions for storage of marine craft require all masts and rigging be removed;</i></p> | <p>N/A</p> |
| <p>(j) <i>that the architectural design and scale of any buildings are compatible with nearby uses;</i></p> | <p>The existing two unit residence meets the zoning requirements of the applied MU-1 zone. There are no proposed changes to the existing building.</p> |
| <p>(k) <i>the ability to meet any applicable Provincial requirements;</i></p> | <p>The Province of Nova Scotia licenses tourist accommodations under the <i>Tourist Accommodation Act</i>. There does not appear to be any provision contained within the Act which would preclude this proposed two unit accommodation use from being considered for a license.</p> |
| <p>(l) <i>the effects of the use on the natural environment as contained in a report from the appropriate Provincial or Federal government authority;</i></p> | <p>N/A</p> |
| <p>(m) <i>hours of operation; and</i></p> | <p>Small scale tourist accommodation uses such as the one being proposed generally do not require hours of operation as they function similarly to a permanent dwelling.</p> |
| <p>(n) <i>the provisions of Policy IM-9.</i></p> | <p>See Table Below</p> |

| IM-9 In considering development agreements and amendments to the land use by-law, in addition to all other criteria as set out in various policies of this strategy, Council shall have appropriate regard to the following matters: | |
|--|---|
| Policy Criteria | Staff Comment |
| (a) <i>that the proposal is in conformity with the intent of this strategy and with the requirements of all other municipal by-laws and regulations;</i> | The proposal meets the requirements of Policy MU-9 (see table above). |
| (b) <i>that the proposal is not premature or inappropriate by reason of:</i> | ... |
| (i) <i>the financial capability of the Municipality to absorb any costs relating to the development;</i> | There is no anticipated cost to the municipality relating to the development. |
| (ii) <i>the adequacy of on-site sewerage and water services;</i> | The property is serviced with an on-site septic system and well. |
| (iii) <i>the adequacy or proximity of school, recreation or other community facilities;</i> | This proposal would not result in an increase to school age population nor is it anticipated to affect community recreation facilities. |
| (iv) <i>the adequacy of road networks leading or adjacent to or within the development; and</i> | Johnsons Loop Road and the Peggy's Cove Road are adequate to support the proposal. |
| (v) <i>the potential for damage to destruction of designated historic buildings and sites.</i> | No historical buildings or sites have been identified. |
| (c) <i>that in development agreement controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i> | ... |
| (i) <i>type of use;</i> | Small scale tourist accommodation uses are generally considered compatible with residential development. |
| (ii) <i>height, bulk and lot coverage of any proposed building;</i> | The proposal seeks to utilize the existing building on the lot. The existing building meets the requirements of the MU-1 zone. |
| (iii) <i>traffic generation, access to and</i> | Traffic generated from proposed change in use |

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| <p><i>egress from the site, and parking;</i></p> | <p>is expected to be negligible. Parking required under Section 3.6 of the proposed development agreement is one parking space per unit.</p> |
| <p><i>(iv) open storage;</i></p> | <p>No open storage has been proposed.</p> |
| <p><i>(v) signs; and</i></p> | <p>No signage has been proposed, although Section 3.8 of the proposed development agreement limits signage to one sign, no greater than four (4) square feet in area. This is consistent with the signage provisions contained within the LUB.</p> |
| <p><i>(vi) any other relevant matter of planning concern.</i></p> | <p>No other planning issues have been identified.</p> |
| <p><i>(d) that the proposed site is suitable with respect to the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding; and</i></p> | <p>None of the natural features listed have been identified.</p> |
| <p><i>(e) any other relevant matter of planning concern.</i></p> | <p>No other planning issues have been identified.</p> |
| <p><i>(f) Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy p-79F”, 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. (RC-Jul 2/02;E-Aug 17/02)</i></p> | <p>No holding zone has been established and no additional lots are proposed in conjunction with this application.</p> |

Dec 19, 2012

Concerning the Permit for 27 Johnson loop
Rd. Indian Harbour. Case #18079.

my greatest concern is the septic tank
it was put in 50 or more years ago by George
Baker who owned the land at that time, on
his death it was sold to a Mrs Archibald,
on her death it was sold to Jack Cambell,
now his wife owns it Judy Douphinee,
It has never been replaced and the last
time a family of five lived there the
sewage came up through the ground
of neighbours, there is a small swamp
in this area.

Please, Please have this inspected
before it is rented out again, there
are dug wells in the area.

a concerned neighbour,