

St. Margaret's Bay Coastal Planning Advisory Committee
May 29, 2013

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

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

DATE: May 24, 2013

SUBJECT: **Case 18044: Amendment to Development Agreement for Shining Water Marine at 146 Nautical Way, Tantallon**

ORIGIN

Application by Shining Water's Marine Ltd

LEGISLATIVE AUTHORITY

HRM Charter, Part VIII, Planning & Development

RECOMMENDATION

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

1. Give Notice of Motion to consider approval of the proposed amending agreement to expand the existing marina operations at 146 Nautical Way as presented in Attachment A, and schedule a Public Hearing;
2. Approve the proposed amending agreement, presented as Attachment A; and
3. 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

Shining Waters Marine is located at 148 Nautical Way in Tantallon (Map 1). In 1991, a development agreement was approved to allow a marina in accordance with policy MU-9 of the Municipal Planning Strategy (MPS) for Planning Districts 1 and 3. Shining Waters Marine now has new owners who have acquired and consolidated the adjacent property with the marina site. The new owners wish to expand the marina operations to the adjacent property by adding additional outdoor boat storage as well as office and retail space and a licensed lounge within the existing building. The proposed development may only be considered as a substantive amendment to the existing development agreement in accordance with policies MU-6, MU-9 and IM-9 of the MPS (Attachment B).

Subject Properties and Surrounding Land Uses

The subject property is generally described as follows:

- located off Peggy's Cove Road on a private drive identified as 148 Nautical Way in Tantallon (Map 1);
- located directly on Longard's Cove to the west and St. Margaret's Bay to the north (Map 1);
- approximately 11.7 acres (4 ha) in size;
- contains an existing marina that has been in operation since 1991 which includes a multi-use facility and support buildings for boat repair and storage;
- immediately adjacent one single unit dwelling to the east (Map 1); and
- within 10 kilometres of the Upper Tantallon commercial centre which includes the Atlantic Superstore and Canadian Tire.

Existing Marina Operations under Development Agreement

The existing operation for Shining Waters Marine includes the following:

<i>Multi-Purpose Building</i>	<i>Remainder of the Site</i>
<ul style="list-style-type: none"> • 12,500 sq.ft. (8,500 sq.ft of finished floor space and 4,000 sq.ft. of unfinished floor space) 	<ul style="list-style-type: none"> • dedicated parking area
<ul style="list-style-type: none"> • a full service and take out restaurant 	<ul style="list-style-type: none"> • separate outdoor storage building (approximately 1100ft² or 102.1 m²)
<ul style="list-style-type: none"> • commercial retail for marine activities 	<ul style="list-style-type: none"> • separate maintenance/boat repair building
<ul style="list-style-type: none"> • office space 	<ul style="list-style-type: none"> • outdoor boat storage areas
<ul style="list-style-type: none"> • washrooms and showers 	<ul style="list-style-type: none"> • marine docking and boating slips

Designation, Zoning and Enabling Policy

The subject site is designated Mixed Use B under the MPS for Planning Districts 1 and 3 and zoned MU-2 (Mixed Use 2) in the Land Use By-law (LUB) for Planning Districts 1 and 3 (Maps 1 and 2). Policy MU-6 of the MPS permits the consideration of the licensed lounge by way of a development agreement, and Policy MU-9 enables the consideration of the expansion to the existing marina by way of a development agreement.

Proposal

Shining Waters Marine is requesting amendments to their existing development agreement to permit the following (Attachment A):

- an expansion of the existing outdoor boat storage areas;
- a licensed lounge within the dining room and outdoor patio;
- an internal conversion of floor area to accommodate additional administrative office and commercial retail uses;
- a new ground sign to replace the existing sign at the entrance of the marina along St. Margaret's Bay Road; and
- new tree plantings to screen marina operations from neighbouring properties.

DISCUSSION

Policies MU-6 and MU-9 and IM-9 are most relevant to the amendment request. Specifically, Policy MU-9 requires an evaluation of the proposed marina expansion and its relevance to marina operations. Policy MU-6 evaluates the proposed licensed lounge operations with particular reference to impact mitigation to neighbouring properties. Policy IM-9 is the general implementation policy for all development agreements within this plan area. These general implementation policies contain impact mitigation and other evaluative criteria for Council when considering a proposal of this nature. Attachment B provides an evaluation of the proposal and a proposed amendment to the existing development agreement in relation to these applicable policies. The following issues are being highlighted for more detailed discussion.

Office/ Retail Space

An additional 4,000ft² (371.6 m²) of office and retail space is proposed on the lower level of the existing building (Attachment A-Schedule D). The proposed additional office/retail space would result from an internal conversion of the existing space and does not entail any expansion to the volume of the existing building. Office and retail uses are common in marina operations throughout the Municipality and it is the opinion of staff such land uses are incidental and accessory to the operation. Further, the marina has been operational for a considerable amount of time and the proposed retail and office space is to support the existing members and clientele.

Outdoor Boat Storage

As a means of maximizing the marina operation and existing space, the marina has an outdoor boat storage area primarily for off season months. The applicant has requested the outdoor boat storage area be permitted over much of the site (Schedule B-1, Area A). Policy MU-9(e) requires that all masts be removed during storage to reduce noise to neighbouring properties. Staff acknowledges that marina operations will always produce noise impacts to varying degrees. Shining Waters does have a noise reduction program coincident with boat storage as a part of their regular operations and this is in accordance with the existing development agreement. However, HRM's Noise By-law has come into effect since the approval of the development agreement. Accordingly, it is staff's view the requirement in the existing development agreement, combined with the Noise By-law (By-law N-200) are sufficient to meet the intent of the policy to help mitigate sound impact to neighbouring properties.

Proposed Lounge

As the marina does not currently have a permanent liquor license, they are required to obtain a separate Special Events Permit for weddings and other special occasions from the Province for each event. Limitations on the Special Events Permits are considered cumbersome and costly. To address this matter, the marina is seeking to establish a lounge (a permanent liquor license) as an adjunct to dining room operations. In doing so, it is believed the marina can offer a higher level of service, stream-line operations and reduce costs. Policy MU-6 establishes criteria to be considered to mitigate impacts to neighbouring residential uses from commercial entertainment uses such as a lounge. Therefore, to ensure that impacts are reduced restrictions are appropriate to limit the commercial scope of a lounge use through amendments to the existing agreement. These include:

- limiting the hours of operation to coincide with the hours of the dine-in restaurant, and
- prohibit the playing of live electronic music in any outdoor seating area.

It is staff's opinion the marina's isolated location reduces the likelihood that the licensed lounge would become a destination point and would function independently of the other marina operations. It is also staff's position that a lounge at the marina site would essentially reflect a continuation of the existing operations there. To date, there has been minimal conflict with neighbouring property owners given the isolated location of the marina property. This is in part due to the natural grade separations to adjacent properties, the natural vegetation, and the waterways that separate the marina site from neighbouring residential properties.

Parking

With the proposed changes (additional office, retail space and a lounge) additional demands will be placed on existing parking. Currently, there are 32 parking spaces on site as approved through the existing development agreement. The LUB parking requirement results in excess of 160 spaces due to the combination of uses. However, there are mitigating factors that lead staff to consider reducing the parking requirement to the more practical level of 52 spaces (two of which are barrier free) as shown on Schedules B and B-1).

The rationale for considering these parking levels is based on the specific needs of this seasonal operation. Staff believe there is sufficient parking during the peak season because the boats are not onsite which allows for overflow parking. Temporary parking along the main driveway can manage overflow parking in unforeseen circumstances. Staff does not foresee demand for increased parking over the winter months.

Policy MU-9(c) requires that parking be sufficient so as not to conflict with neighbouring property owners. A substantial grade is located along the north east boundaries of the site which provides a natural separation and impact mitigation to the properties there. Along the southeast edge of the property, the existing agreement requires that tree plantings screen marina operations from neighbours on the other side of Longard's Cove (Schedules B and B-1). The amending agreement further strengthens this provision by requiring that evergreen trees be planted along the southeast boundary to mitigate the visual impact of marine operations.

New Signage

A new ground sign is proposed to replace the existing ground sign as shown in Attachment A. The new sign location has been reviewed by the Nova Scotia Department of Transportation and Infrastructure Renewal, relative to its location in relation to the public highway, and has been deemed suitable (Map 3).

Waters Advisory Board

The Halifax Watershed Advisory Board (HWAB) reviewed this application on February 20, 2013 and passed a motion recommending that the tree planting program for trees proposed to be planted along the southwest portion of the property adjacent to Longard's Cove be comprised of native species if possible (see separate HWAB report). Accordingly, the proposed amendments require evergreen trees be planted along the south east boundary to mitigate the visual impact of marine operations (Schedules B and B-1) and that the trees be native species, where possible.

Conclusion

The proposed development is consistent with the applicable policies of the MPS (Attachment B). The proposed development seeks to intensify uses that currently operate on-site. Accordingly, staff view the application as an expansion of an existing condition which warrants retaining the originally approved development agreement. It is recommended that the St. Margaret's Bay Coastal Planning Advisory Committee recommend that the North West Community Council approve the proposed amending agreement presented as Attachment A.

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 2013/14 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 consultation, achieved through a Public Information Meeting held on October 11, 2012 (see Attachment C for minutes). Notices of the Public Information Meeting were posted on the HRM Website, in the newspaper, and mailed to property owners in within the notification area as shown on Map 2.

A Public Hearing has to be held by Council before they can consider approval of a development agreement. 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 shown on Map 2 will be notified of the hearing by regular mail.

The proposed development agreement will potentially impact local residents and property owners.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all applicable environmental policies contained in the Planning District 1 and 3 MPS.

ALTERNATIVES

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

1. Approve the proposed amending development agreement as provided in Attachment A. This is the staff recommendation. A decision of Council to approve this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Approve the proposed amending development agreement in Attachment A, with modifications and conditions. This may necessitate further negotiation with the applicant and may require an additional public hearing.
3. Refuse the proposed amending development agreement and, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. A decision of Council to reject this amending agreement, with or without a public hearing, is appealable to the N.S. Utility & Review board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification
Attachment A	Proposed Amending Agreement
Attachment B	Policy Review – Excerpt from the Planning Districts 1 and 3 MPS
Attachment C	Minutes from the Public Information Meeting

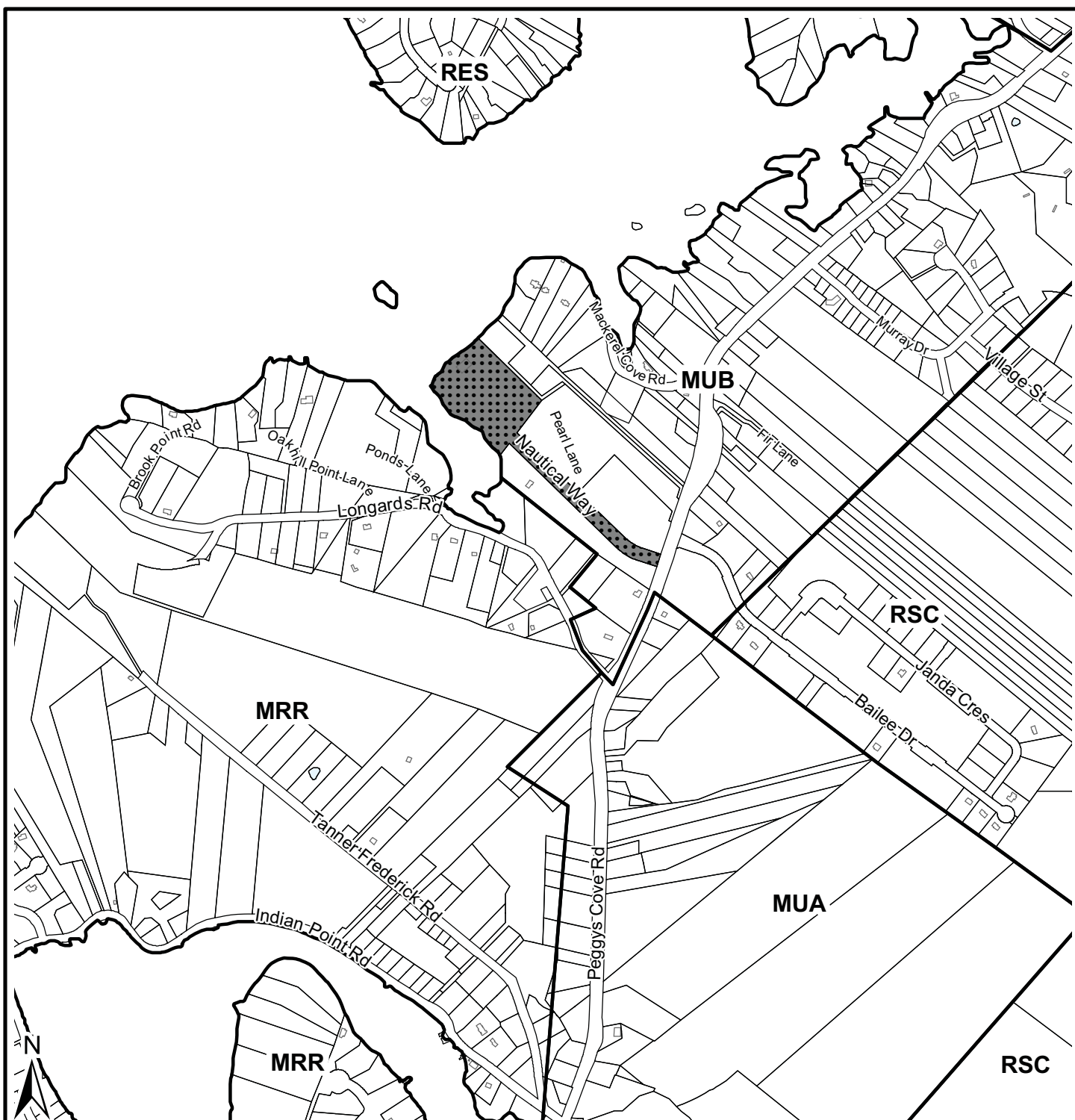
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate North West Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Shayne Vipond, Senior Planner, Planning Applications, 490-4335

Original Signed


Report Approved by:


Kelly Denty, Manager, Development Approvals, 490-4800



Map 1 - Generalized Future Land Use

148 Nautical Way
Tantallon

 Subject area

Designation

RES	Residential
MRR	Mixed Rural Residential
MUA	Mixed Use A
MUB	Mixed Use B
RSC	Resource

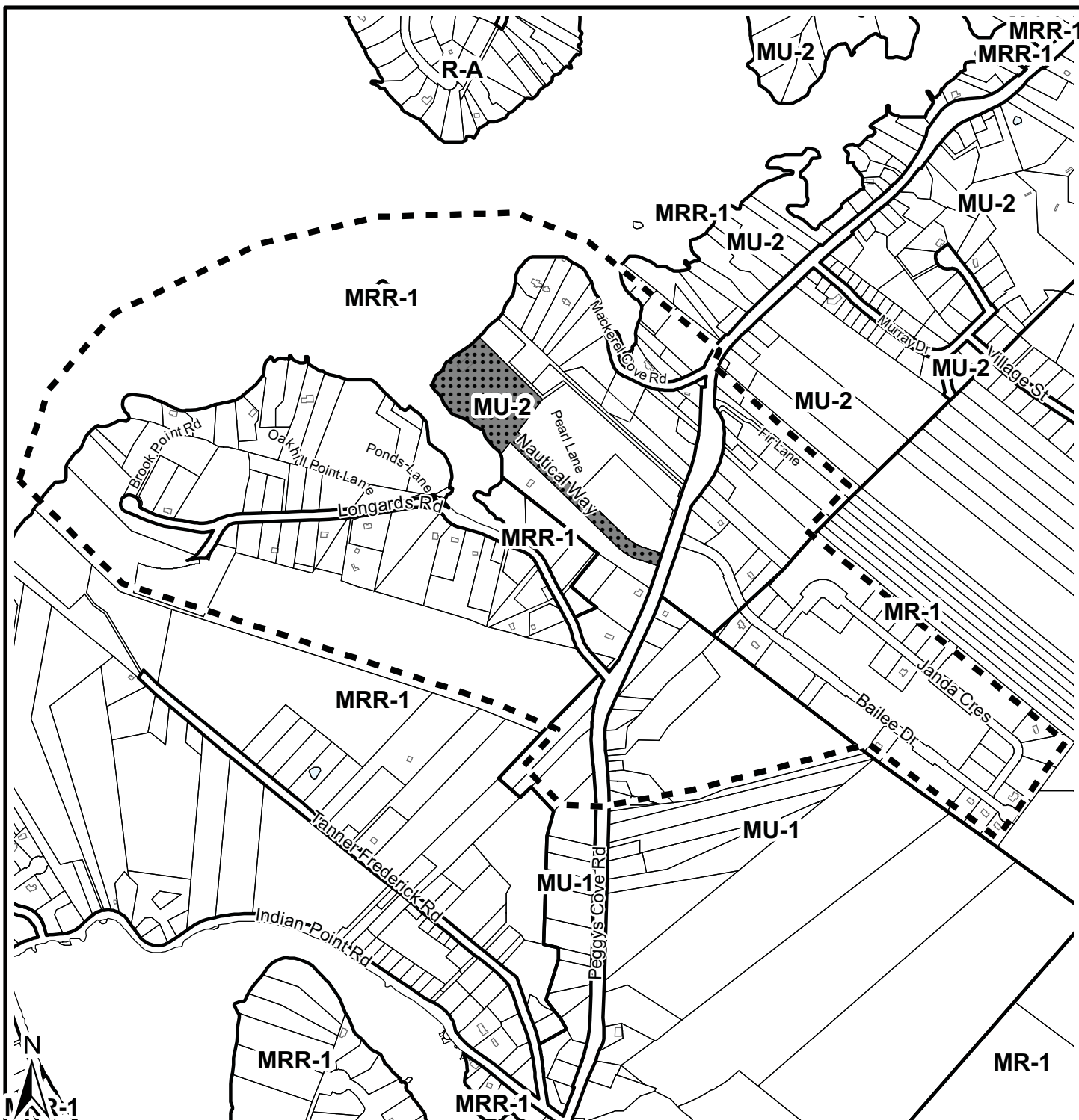
Planning District 1 & 3
(St Margarets Bay) Plan Area

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS
PLANNING SERVICES

0 100 200 300 400 m

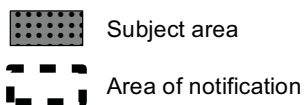

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

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



Map 2 - Zoning and Notification

148 Nautical Way
Tantallon



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

Zone

R-A	Residential
MRR-1	Mixed Rural Residential
MU-1	Mixed Use
MU-2	Mixed Use
MR-1	Mixed Resource

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS
PLANNING SERVICES



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.

Attachment A:
Amending Agreement

THIS AMENDING AGREEMENT made this _____ day of _____, 2013,

BETWEEN:

<INSERT PROPERTY OWNERS NAME>,
a body corporate, 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 148 Nautical Way (Parcel 93-2), St. Margaret’s Bay, and which said lands are more particularly described in Schedule A hereto (hereinafter called the “Lands”);

AND WHEREAS the Municipality of the County of Halifax approved an application to enter into a Development Agreement to allow for a marina development on a portion of the Lands (Municipal Case Number 00565), which said Development Agreement was registered at the Registry of Deeds in Halifax as Document Number 40004 in Book 5137 at Pages 838 (hereinafter the “Existing Agreement”);

AND WHEREAS the Developer has requested an amendment to the provisions of the Existing Agreement to allow for the expansion of the marina operation which includes additional uses within the existing building including a lounge, office and retail space, the expansion of the outdoor boat storage area and a new ground sign as part of the marina operations on the Lands;

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 18044;

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

The Existing Agreement is amended as follows:

1. Remove “Schedule “A” from the Existing Agreement and replace it with “Schedule A” in this Amending Agreement.

2. Add a new “PART 1A” which follows PART 1: DEFINITIONS and is above PART 2: GENERAL REQUIREMENTS as follows:

“PART 1A: SCHEDULES

“1A The following Schedules shall form part of this amending agreement:

- a. Schedule B – Concept Site Plan
Schedule B-1 – Detailed Concept Site Plan;
- b. Schedule C – Main Level Floor Plan of Multi Use Facility;
- c. Schedule D – Lower Level Floor Plan of Multi Use Facility; and,
- d. Schedule E – New Ground Sign.”

3. Delete PART 2.1 and replace it with a new PART 2.1 as follows:

“2.1 The provisions of this Amending Agreement shall apply to that portion of the property so identified in “Schedule B – Site Plan and Schedule B-1 – Detailed Site Plan”.”

4. Delete PART 3.1 and replace it with a new PART 3.1 as follows:

“3.1 The use of the Buildings and Property identified in “Schedule B – Site Plan and Schedule B-1- Detailed Site Plan” of this Amending Agreement shall be restricted to a Marina and related business, including all functions normally incidental to such activities.”

5. Delete PART 5.1 and replace it with a new PART 5.1 as follows:

“5.1 The Multi-Use Facility shall be constructed on the Property as generally illustrated in “Schedule B – Site Plan and Schedule B -1 – Detailed Site Plan” of this Agreement and shall not exceed twelve thousand five hundred (12,500) square feet (1161.3sq.m) of gross floor area.”

6. Delete PART 5.3 and replace it with a new PART 5.3 as follows:

“5.3 The Multi-Use facility may include a take-out restaurant not exceeding one thousand five hundred (1,500sq.ft) (139.35sq.m), a restaurant/licensed lounge area not exceeding approximately three thousand (3,000) square feet (278.7sq.m) of dining and lounge space in addition to the outside deck area as shown on Schedule C; offices; meeting rooms; retail facilities; a laundry room, storage rooms; and washrooms and showers as shown generally on Schedules C and D.”

7. Add a new subsection 5.3 a) to PART 5.3 and above PART 5.4 as follows:

“5.3a) Pursuant to PART 5.3 no electronic live music shall be permitted to be played in outdoor patio areas.”

8. Delete PART 5.5 and replace it with a new PART 5.5 as follows:

“5.5 A Boat Storage Barn and the Maintenance Facility may be constructed on the Property as generally illustrated by “Schedule B – Site Plan and Schedule B-1 – Detailed Site Plan” and shall not exceed fifteen thousand (15,000) square feet (1393.5sq.m) of combined base floor area.”

- a) Pursuant to PART 5.5 the combined base floor area of 15,000sq.ft may be built upon lands designated for outdoor boat storage provided that the new boat storage area is pinned and marked in each corner prior to the Development Officer issuing a Development Permit.”

9. Delete PART 6.1 and replace it with a new PART 6.1 as follows:

“6.1 The Developer shall construct and maintain in good repair a parking area on the Property as identified in “Schedule B – Site Plan and Schedule B-1 – Detailed Site Plan” of this Agreement. It is agreed that the parking area shall be surfaced with loose gravel or asphalt and shall be of a size and dimensions to adequately accommodate a minimum of fifty two (52) motor vehicles inclusive of two parking spaces for the physically challenged. Each parking space shall measure at least (8) feet (2.4m) in width by twenty (20) feet (6 m) in depth, and each parking space for the physically challenged shall measure at least twelve (12) feet (3.6 m) in width by twenty (20) feet (6 m) in depth. Parking spaces for the physically challenged shall be marked by a parking sign incorporating a wheelchair symbol.”

10. Delete PART 6.5.

11. By Adding a new “PART 6A – SIGNS” immediately after PART 6.4 and above PART 7: BOAT STORAGE AND MOORINGS as follows:

“6A.1 A maximum of one ground sign shall be permitted at the Marina entrance to denote the business logo and operations. The location of the sign shall require the approval of the Development Officer and shall be place generally in the location as shown on Schedule B.

- (a) The maximum height of any such sign inclusive of support structures shall not exceed 30 feet (9.15 m) and the face area of any sign shall not exceed 100sq.ft (9.3sq.m).
- (b) Illumination shall be permitted by low wattage, shielded exterior fixtures.
- (c) The general appearance of the sign shall be in accordance with Schedule E of this Agreement.”

12. Delete PART 7.1 and replace it with a new PART 7.1 as follows:

- “7.1 The Developer shall only be permitted to store boats on the Property in the area identified as Area “A”, which area shall be marked with metal pins in each corner as shown in “Schedule B-1 – Detailed Site Plan” before the Development Officer issues any development permits to store boats on the Property.”
13. Delete PART 8.5 and replace it with a new PART 8.5 as follows:
- “8.5 The Developer agrees that the Marina shall be subject to the following daily hours of operation:
- | | | |
|------------------------------------|---|------------------------|
| (a) Gasoline Service | – | 8:00 a.m. – 10:00 p.m. |
| (b) Restaurant and Licensed Lounge | – | 8:00 a.m. – 2:00 a.m. |
| (c) Boat Maintenance Services | – | 8:00 a.m. – 6:00 p.m. |
| (d) Retail Service | – | 8:00 a.m. – 10:00 p.m. |
| (e) Boat Hauling | – | 8:00 a.m. – 8:00 p.m. |
14. Delete PART 8.6 and replace it with a new PART 8.6 as follows:
- “8.6 The Developer agrees to maintain the existing apple orchard as a visual buffer as well as to plant and maintain a buffer of evergreen trees along the southwest boundary of the property in the manner shown on “Schedule B – Site Plan and Schedule B-1 – Detailed Site Plan”. All landscaping shall be completed within one (1) year from the date of the signing of this Agreement.
- a) Pursuant to PART 8.6 the evergreen trees required for new Tree Plantings shall consist of:
- native species where possible, and,
 - a minimum of two lines of trees.”
15. Delete PART 9.2.2
16. Delete PART 9.3
17. Delete PART 10.1
18. This Amending Agreement shall be binding upon the Parties hereto and their heirs, successors and assigns.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2013.

SIGNED, SEALED AND DELIVERED
in the presence of:

=====

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

(Insert Registered Owner Name)

Per: _____

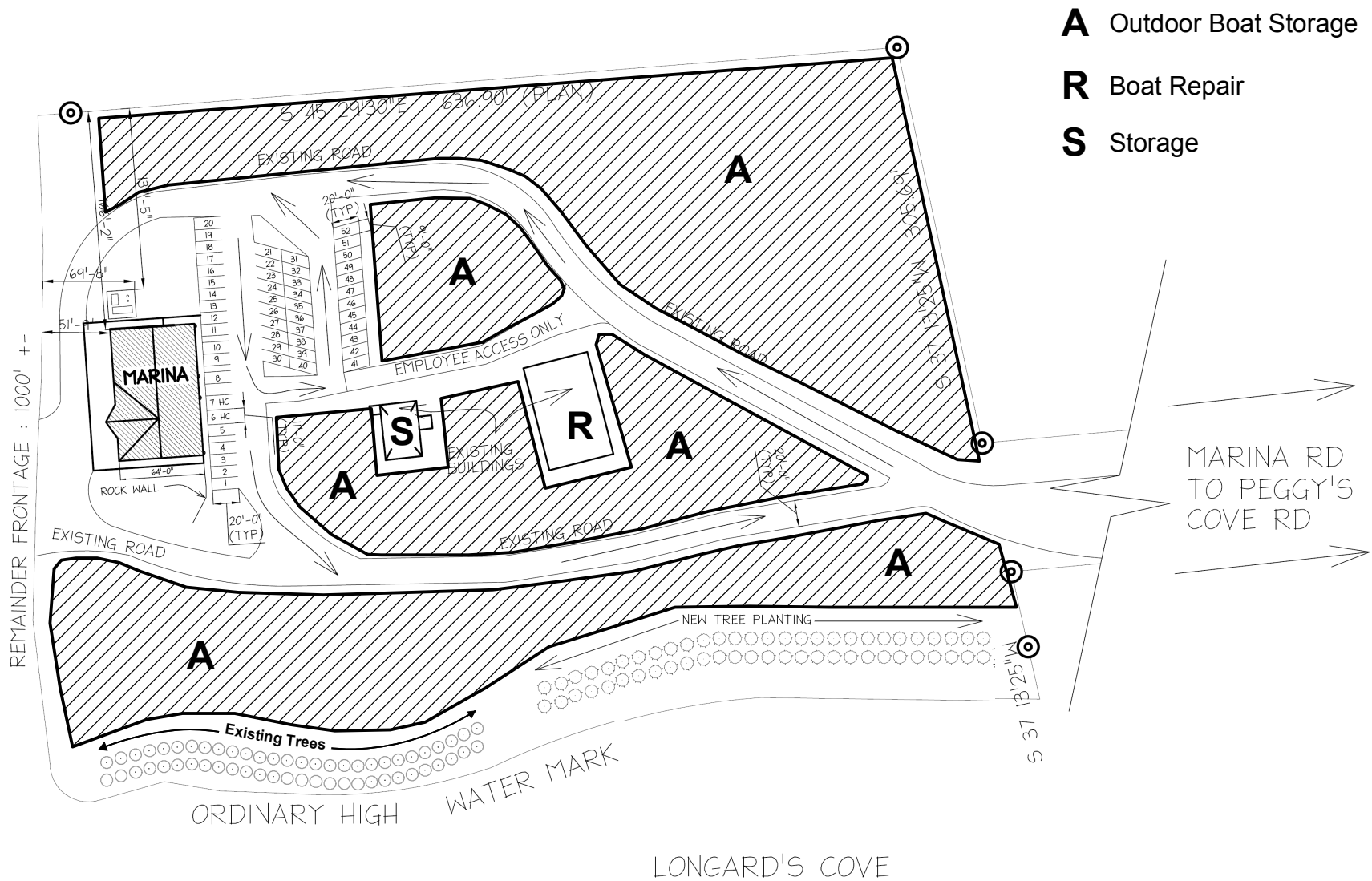
Per: _____

=====

**HALIFAX REGIONAL
MUNICIPALITY**

Mayor

Municipal Clerk

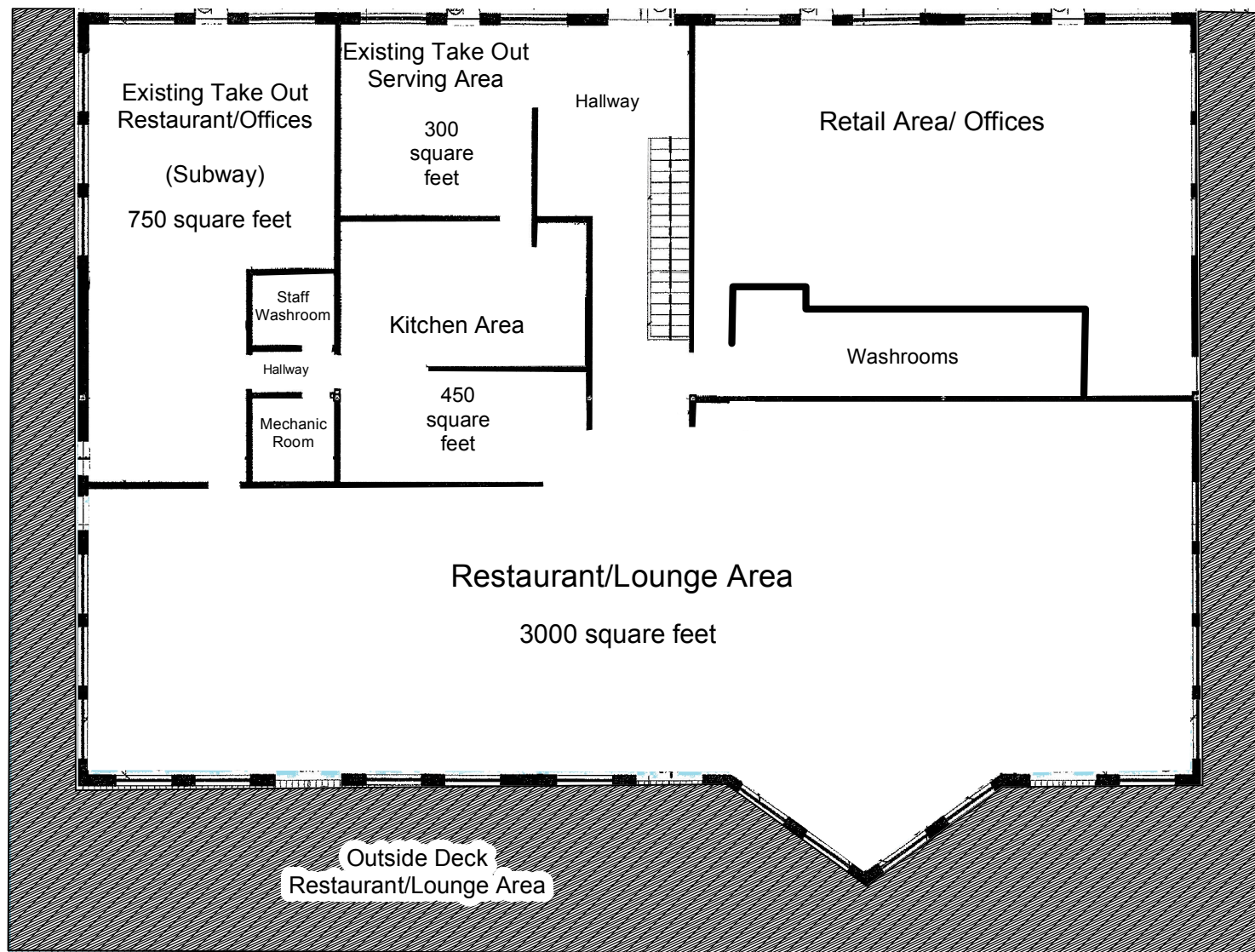


Schedule B-1 Detailed Concept Site Plan

148 Nautical Way
Tantallon

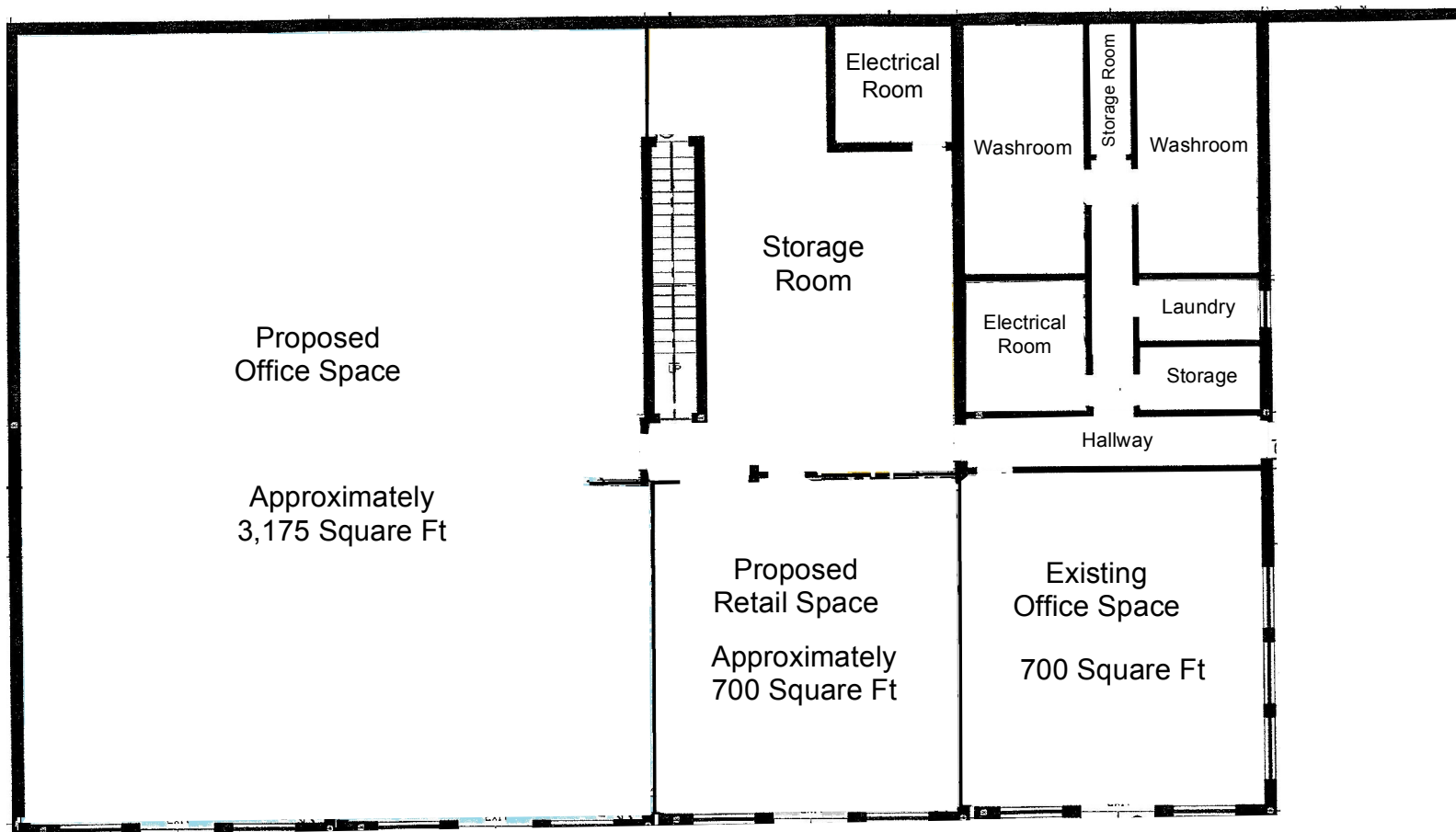
HRM does not guarantee the accuracy of any base information.

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS



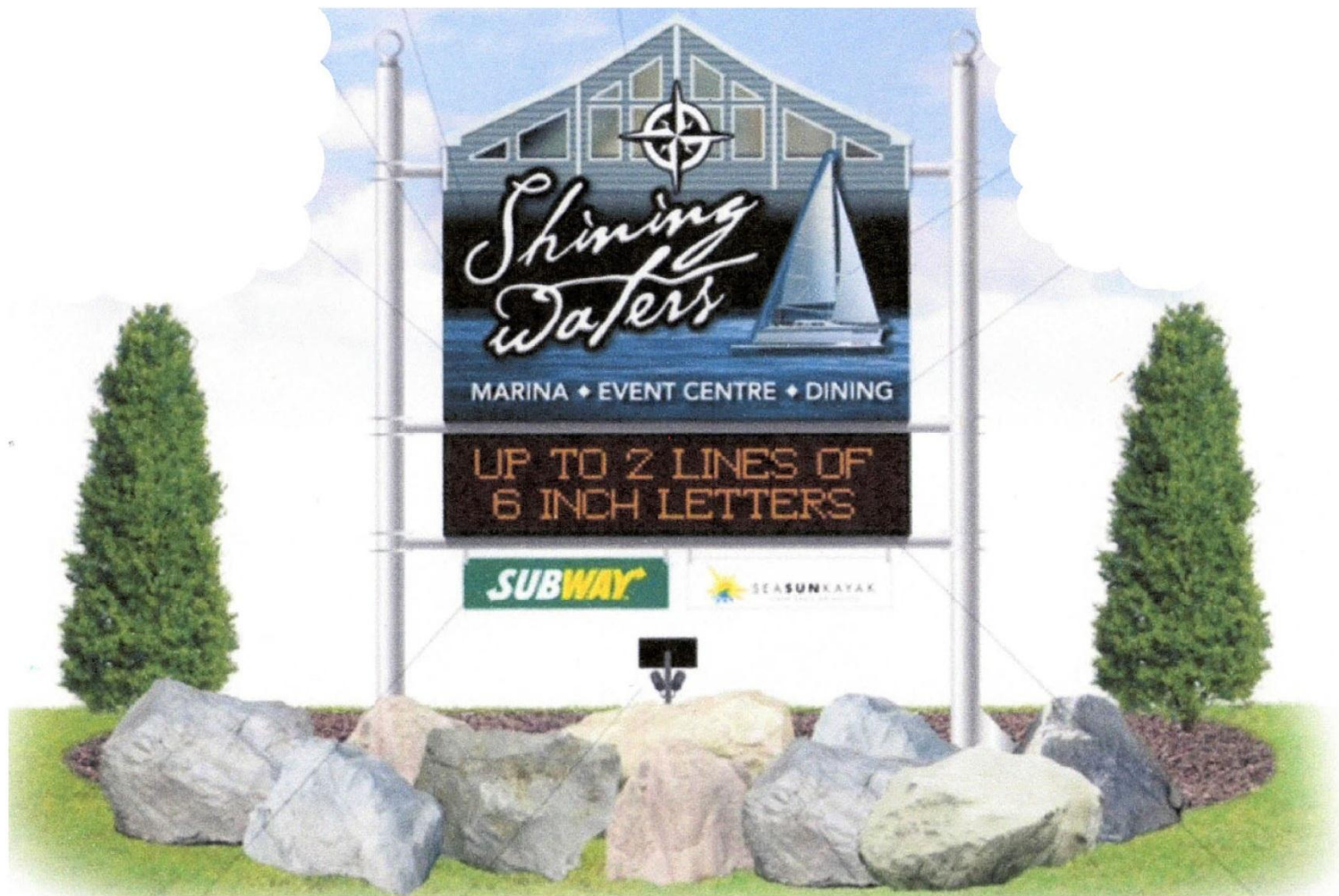
Schedule C Main Floor Plan of Multi Use Facility

HRM does not guarantee the accuracy of any base information.



Schedule D Lower Level Floor Plan of Multi Use Facility

HRM does not guarantee the accuracy of any base information.



Schedule E – New Ground Sign
148 Nautical Way
Tantallon

HRM does not guarantee the accuracy of any base information.



Attachment B – Policy Review
Excerpt from the MPS for Planning Districts 1 and 3

Policy Criteria	Staff Comment
<p><u>Preamble</u></p> <p><u>Land Use Intent: Mixed Use "A" and "B" Designations</u></p> <p>Although most commercial uses will be permitted by right, certain operations will be restricted due to the nature of the operation or concerns over noise or hours of operation.</p> <p>Commercial entertainment uses such as beverage rooms, nightclubs and cabarets are one such category of use. There are a few such establishments within the Plan Area most of which are connected to hotels or motels.</p> <p>There is concern, however, that licensed operations can bring about increased traffic, noise and related problems to an area. In order to ensure public input into the location of these types of uses, they will be permitted to proceed only through the development agreement process and be restricted to one such use per lot.</p>	
<p><i>MU-6 Notwithstanding Policy MU-2, within the Mixed Use "A" and "B" Designations, Council shall only consider commercial entertainment uses according to development agreement provisions of the Planning Act. When considering such agreements, Council shall have regard for the following:</i></p>	
<p><i>(a) the potential for adversely affecting nearby residential and community facility development;</i></p>	<p>Residential uses are screened and/or separated by grades, distance, vegetation and water (Longard's Cove). Impacts for the proposed lounge are not anticipated to increase beyond existing levels. There is no community facility within proximity to the site.</p>
<p><i>(b) the impact of the entertainment use on traffic circulation and, in particular, sighting distances and entrances to and exits from the site;</i></p>	<p>A traffic statement was reviewed by Nova Scotia Transportation and Infrastructure Renewal (NSTIR) as part of this application. NSTIR indicated no concerns with the additional capacity on the existing access as a result of this proposal.</p>
<p><i>(c) proximity of a residential environment;</i></p>	<p>See (a)</p>
<p><i>(d) the provision of landscaping or buffering from adjacent development;</i></p>	<p>The lounge is proposed to be contained within the existing building. No visual impacts are anticipated.</p>
<p><i>(e) the general maintenance of the developments; and</i></p>	<p>The existing Agreement contains provisions for general maintenance of the development.</p>

Policy Criteria	Staff Comment
<i>(f) the provisions of Policy IM-9.</i>	As seen below.
Preamble 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.	
<i>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:</i>	
<i>(a) that the site exhibits characteristics which make the location particularly suitable for the proposed use;</i>	The site is 11.7 acres (4 ha) in size and is relatively remote, located directly on St. Margaret's Bay with direct access to Peggy's Cove Road making the site accessible by land and water. Natural grade separations and vegetation exist on the site which serves to minimize impact to adjacent properties. The site is well suited for marina operations.
<i>(b) the potential for adversely affecting existing residential and community facility development in the area by virtue of noise, visual intrusion and traffic generation;</i>	Noise levels, visual intrusions are not anticipated to increase beyond existing levels as the proposed operations will not substantially intensify existing operations. A traffic statement was reviewed by Nova Scotia Transportation and Infrastructure Renewal (NSTIR) as part of this application. NSTIR indicated no concerns with the additional capacity on the existing access as a result of this proposal.
<i>(c) 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>	A substantial grade is located along the north east boundaries of the site which provides a natural separation and impact mitigation to the properties there. Along the south-east edge of the property the existing agreement requires that tree plantings screen marina operations from neighbours on the other side of Longard's Cove (Schedules B and B-1). The amending agreement further strengthens this provision by require evergreen trees be planted along the south east boundary to mitigate the visual impact of marine operations.

Policy Criteria	Staff Comment
<i>(d) the impact on traffic circulation and, in particular, sighting distances and entrances to and exits from the site;</i>	See above - MU-6 a) and b)
<i>(e) the layout and design of the facility and public safety regarding the operation of boats;</i>	Provided for in existing Agreement
<i>(f) the general maintenance of the facility;</i>	Provided for in existing Agreement
<i>(g) the means by which solid and liquid waste will be treated;</i>	Provided for in existing Agreement
<i>(h) the provision of sewage pump-out facilities for marine craft;</i>	Provided for in existing Agreement
<i>(i) that provisions for storage of marine craft require all masts and rigging be removed;</i>	The Marina is operating under an existing agreement. Mast and rigging can be removed at the owner's discretion.
<i>(j) that the architectural design and scale of any buildings are compatible with nearby uses;</i>	Provided for in existing Agreement
<i>(k) the ability to meet any applicable Provincial requirements;</i>	Provided for in existing Agreement
<i>(l) the effects of the use on the natural environment as contained in a report from the appropriate Provincial or Federal government authority;</i>	Provided for in existing Agreement
<i>(m) hours of operation; and</i>	Provided for in existing Agreement
<i>(n) the provisions of Policy IM-9.</i>	See below
IM-9 <i>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:</i>	
<i>(a) 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 intent of the MPS. The proposed agreement requires conformity with all other municipal by-laws and regulations.
<i>(b) that the proposal is not premature or inappropriate by reason of:</i> <i>(i) the financial capability of the Municipality to absorb any costs</i>	There are no costs to the Municipality. The developer is responsible for all costs associated with the proposed development.

Policy Criteria	Staff Comment
<p><i>relating to the development;</i></p> <p><i>(ii) the adequacy of on-site sewerage and water services;</i></p> <p><i>(iii) the adequacy or proximity of school, recreation or other community facilities;</i></p> <p><i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i></p> <p><i>(v) the potential for damage to destruction of designated historic buildings and sites.</i></p>	<p>The application was circulated to the Nova Scotia Environment (NSE) requesting comments regarding onsite sewage and water system. NSE has indicated no concerns with the proposal.</p> <p>The proposed development is commercial in nature and will have no impacts on schools, recreation or other community facilities.</p> <p>A traffic statement was reviewed by Nova Scotia Transportation and Infrastructure Renewal (NSTIR) as PART of this application. NSTIR indicated no concerns with the additional capacity on the existing access as a result of this proposal.</p> <p>There are no designated historic buildings and sites abutting or adjacent to the subject properties.</p>
<p><i>(c) 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></p> <p><i>(i) type of use;</i></p> <p><i>(ii) height, bulk and lot coverage of any proposed building;</i></p> <p><i>(iii) traffic generation, access to and egress from the site, and parking;</i></p> <p><i>(iv) open storage;</i></p> <p><i>(v) signs; and</i></p> <p><i>(vi) any other relevant matter of planning concern.</i></p>	<p>The land uses which are abutting or adjacent to the subject properties are residential, but are separated by sufficient grade and vegetation to mitigate impacts from the subject property. The existing agreement and proposed amending agreement limits the type of uses to commercial uses and places requirements on the size of buildings, signage, lighting, landscaping, outdoor boat storage, and parking and circulation.</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>The proposed site is considered suitable.</p>
<p><i>(e) any other relevant matter of planning concern.</i></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-July 2,2002 / E-17 August 2002)</i>	N/A
--	-----

Attachment C - Minutes from the Public Information Meeting

HALIFAX REGIONAL MUNICIPALITY

Public Information Meeting

Case No. 18044

Thursday, October 11, 2012

7:00 p.m.

Tantallon Public Library

STAFF IN

ATTENDANCE: Shayne Vipond, Planner, HRM Planning Applications
Alden Thurston, Planning Technician, HRM Planning Applications
Cara McFarlane, Planning Controller, HRM Planning Applications

ALSO IN

ATTENDANCE: Peter Vokey, Applicant/Owner
Jeremy White, Alcohol and Gaming
Jennifer Price-Hudson, Alcohol and Gaming
Councillor Peter Lund, District 23

PUBLIC IN

ATTENDANCE: Approximately 26

1. Call to order, purpose of meeting – Shayne Vipond

Mr. Vipond introduced himself as the planner facilitating the application through the planning process; Councillor Peter Lund, District 23; Jeremy White, Director of Licensing, Alcohol and Gaming; Jennifer Price-Hudson, Manager of Licensing, Alcohol and Gaming; Peter Vokey, applicant and property owner; and Cara McFarlane and Alden Thurston, HRM Planning Applications.

The Public Information Meeting (PIM) agenda was reviewed.

The purpose of the PIM is to present the application to the community and receive any feedback they may have. There are no decisions made at the PIM.

2. Presentation of Proposal – Shayne Vipond

This application is for an amendment to an existing development agreement for Shining Waters Marina. The location of the property is within the Mixed Use B designation area and is zoned Mixed Use 2. The existing development agreement on the property has been in place since the early 1990's (there was some question as to the exact date).

Mr. Vokey is seeking to amend the development agreement to intensify the site effectively. The amendments would include addition boat storage; to operate a lounge and serve alcohol permanently (currently special events are held); additional service retail under the first floor; and new signage at the entrance of the site.

The site plan was shown. Under the first development agreement, most storage was permitted within the areas shown. In order to accomplish additional boat storage there would be no means of site remediation or ground disturbance. Doing this would intensify the amount of storage and more activity on the site. In addition to the other requests, it is quite clear that Mr. Vokey is seeking to intensify his operation.

In terms of the lounge provision, Mr. Vokey is seeking to apply for a liquor license to the entire dining and patio section which means it would effectively become a lounge.

In terms of the additional service retail, the applicant is seeking to utilize 4,500 ft² of undeveloped space (shown in blue) under the first floor.

In terms of signage, the applicant is requesting to downgrade what is existing as it is bigger than the current by-law and development agreement allows. A proposed sign was shown. The sign will also be illuminated from the ground up.

When evaluating a proposal, criteria stated in the Municipal Planning Strategy (MPS) for the area, in this case, Planning Districts 1 and 3, is considered. The criteria was shown. Mr. Vipond pointed out a couple including the impact on neighbouring development and the fact that marine crafts are required to have their masts and rigging removed when in storage.

3. Overview of planning process – Shayne Vipond

The planning process was reviewed. Feedback received tonight will formulate part of the staff report which is presented to community council; therefore, this becomes part of the public record. This gives the Councillors an idea of any community concerns before voting on the proposal. The development agreement is drafted and also included in the staff report to council. In the staff report, Mr. Vipond will formulate a recommendation for approval, refusal or deferral of the application. The staff report would be circulated to internal/external staff to gain feedback and look into any type of research that may be pertinent to a particular issue. The process takes approximately six to eight months. The public has an opportunity to speak to community council when and if a decision is made on this particular proposal.

4. Questions and Comments

Julie Stover, Glen Haven – Is an adjacent landowner. She asked for clarification on the location of existing boat storage. There currently seems to be boats already stored in the proposed areas. Mr. Vokey does not want to expand anymore land, but wants to maximize what is already available for storage.

Ms. Stover – Would the rigging now be coming down? **Mr. Vipond** said that is a criterion that needs to be evaluated. Is the separation distance to adjacent property owners adequate? We have to make sure there is not a great deal of impact. He will use his discretion when evaluating these types of issues.

Ms. Stover – Would there be hour limitations with the lounge license? **Mr. Vipond** said that is one of the key criteria that he will be looking at. **Ms. Stover** asked if there are limitations on hours of operation for the current special occasions permit. **Mr. Vokey** said that the special occasion license extends to the hours requested. He is not looking to open up the lounge as a pub. It would mainly be for meetings and facility driven events.

Howard Eisenhower, Longards Road – Will there be anything in the way of noise mitigation? If the patio doors open, the noise drifts out. **Mr. Vokey** said they try to limit the noise to inside as best they can.

Mr. Eisenhower – He believes PART of the original development agreement stated that there would be a buffer of trees planted along the coast side of Lot D. When it was expanded, it came further in along the coast but no additional trees were planted. The tree buffer is not adequate. **Mr. Vokey** said they did plant trees there. **Mr. Eisenhower** mentioned that the trees that were planted have grown nicely but there is nothing towards the left end of Lot D.

Rollie Swim, west side of Longards Cove – Has been very pleased with the progress on this site; however, there are growing pains. He too mentioned the tree line and would like to see a second row of trees on the right of Lot D (referred to the red line on the screen). **Mr. Vokey** has moved some of the boats from Lot D to Lot A but the request for an expansion of boat storage obviously means that more boats will be going in and numbers will be multiplying especially in the wintertime. What further steps will be taken to overcome that noise nuisance? **Mr. Vokey** will take the comments into consideration.

Mr. Swim – In the last few years, the marina activities have become a healthy lifestyle theme which is a good direction to go and it's what the community wants and needs. He doesn't agree with increasing the amount of alcohol on the premises. The problems would outweigh the financial benefit. **Mr. Vokey** should ask the community to see what else they might offer.

Doug Poulton, Glen Haven – Wondered why the process takes six to eight months to complete.

Mr. Vipond reiterated the planning process and informed the public that this is the initial public meeting. There are a number of stages the application has to go through. It would depend on whether there are any complexities that arise as a result of the distribution or circulation. If there is an issue, that has to be explored. Every development agreement goes through the same process.

Heather Cochrane, Glen Haven – She is with the St. Margaret's Bay Senior's Association and they appreciate all the support Shining Waters provides. The marina hosts monthly meetings and have been generally supportive all around. The Association gives their support.

Lee Myhaugen, Mason's Point - This is the only marina in St. Margaret's Bay. He has had a boat on the property for several years (Lot D). If Shining Waters didn't exist, he would have to go to either Mahone Bay or Halifax to have his boat hauled. Furthermore, if you look at the development from Halifax to here, both sides of Highway 103, there are a lot of families that don't have access to the water. Shining Waters is one of the few facilities that offers facilities by

way of launching boats into the water. He was impressed that Mr. Vokey has held true to his word and his sincerity for opening something for the public. This service has promoted an incredible way of life for many people.

Mr. Myhaugen – The trees that were planted and have grown have blocked the entire view of the lagoon that exists in the area.

Mr. Myhaugen – Problems with liquor do not come from extending the liquor license, it is the people that consume the liquor that is the problem. In the past, he has strongly recommended that Shining Waters develop a pub-style atmosphere in addition to what they have been trying to do with offering meals and various events. He does not believe extending the liquor license will promote dangerous and reckless driving.

Mr. Myhaugen – Feels that all boat owners should remove their masts during dry storage. If it is decided to keep the masts in, there are a lot of ways to tie the ropes off to avoid the halliard noise. It is a matter of getting the boaters to comply.

Mr. Myhaugen - Explained that due to the geography of the site, the noise is directed out to the water. There is a hill behind and the water in front. There is a natural barrier of geography to protect against noise. The doors of the main functions and the lounge itself open to the water directly.

Mr. Myhaugen - In closing, it may have been easier for Mr. Vokey to sell the property to a developer to build condos instead of storing boats. It is a place of choice and should also be a place of choice to go for evening entertainment whether it be dinner, pub night out, boating, or family night out.

Cora Swinamer, Masons Point – A long-time customer of Shining Waters and asked for clarification on the different types of liquor licenses. That might impact how people feel.

Mr. Vokey explained that there isn't any license that would fit exactly what Shining Waters wants to do, which is host events, business meetings, social events, fundraisers, and be able to legally serve the public drinks. Outside security is brought in. Yes, there are many kinds of licenses. The applicant has been working with Alcohol and Gaming to try to figure out some options.

Ms. Swinamer – She benefits by being on the other side of Shining Waters because they are able to enjoy the events (eg. fireworks, the laughing and the team building seminars) because they do hear everything but have no complaints. Everything is quiet by a reasonable time. If there is a liquor license that lets the facility continue but in a more efficient manner, she thinks that is reasonable.

Ms. Swinamer - As a sailboat owner, she signed an agreement with Shining Waters which stated that the boat's halliards must be tied. That agreement needs to be enforced.

Ms. Stover – She reiterated that noise is a concern for her family.

Matt Whitman, Hammonds Plains – Wanted to show his support for Shining Waters. He has been part of many events at Shining Waters and feels that there are not a lot of venues in the area that could host such events. If this is something that would help them do even better, to stay in business and be more successful, he thinks that this is a good thing to support.

Councillor Peter Lund, District 23 – He asked for clarification as to whether the noise from the halyards is something that can be addressed in the development agreement. **Mr. Vipond** expressed that the development agreement provides us with the authority to remove the masts and the rigging. In this case, it is a matter of interpretation because it is policy. The question is, do we employ that in the conservative way and request that all of the masts come down or is there some middle ground? He needs to explore that through this process. **Councillor Lund** believes there is bit of a grey area. **Mr. Vipond** could get an interpretation but believes the policy is quite clear. **Councillor Lund** asked if the development agreement process will allow any amendments to the development agreement to address that issue other than what is said in policy now. **Mr. Vipond** asked if he was referring to a non-substantial amendment. He believes that it defeats the purpose and intent of the criteria.

Councillor Lund – Does the process take six to eight months from now or when the application was submitted? **Mr. Vipond** said when the application was deemed a complete submission. Currently, we are about 30 days into the process but at the beginning of the process.

Councillor Lund suggested anyone with further questions or comments to contact Mr. Vipond before the public hearing.

Ms. Cochrane – She stores their boat at Shining Waters. It is not practical or possible for the mast to be taken down. It's an old boat and it won't work. She is happy to work with whatever agreement is in place to quiet the rigging and tie it down. She asked Mr. Vipond to please bear this in mind when evaluating this proposal.

Mr. Swim – He does not find the existing signage offensive and applauds them on their sign.

Mr. Swim – He cannot imagine anyone being offended by the additional retail/office space as it will not be noticed from the outside. **Mr. Vipond** clarified that the building footprint would not be altered. It is undeveloped space within the building that the applicant wishes to redevelop.

Mr. Eisenhauer – He is concerned that the lounge liquor license may lead to a full lounge if the property changes hands. **Mr. Vipond** explained that from a land use perspective, through the development agreement, HRM would not put constraints on that. The development agreement itself transfers with the land or stays with the land and is transferred to the new land owner so they are constrained or have to abide by the development agreement. **Mr. Vokey** mentioned that as the land owners, they can request Alcohol and Gaming put restrictions in the license. **Mr. Eisenhauer** asked what kind of restrictions they would be looking at. **Mr. Vokey** mentioned adult entertainment and VLT machines. Shining Waters' slogan is safe, secure, family fun and they don't intend to change it. **Jeremy White, Alcohol and Gaming** explained that any liquor license in the Province, once it is issued, if it is interfering with the quiet enjoyment of the neighbouring communities, anyone can complain at any point. The property owner can lose their

liquor license indefinitely and that property may never have a license again. This happens time and time again. Usually, we try to work with both parties to find some middle ground that will work. Certainly once a license is in place, there are some options.

Rick Whalley, Tantallon – Is there an opportunity to put in a written question or comment? **Mr. Vipond** mentioned that anyone can send them to him at any time before the public hearing.

Councillor Lund – Informed the public that he can be contacted as well with any questions, comments or concerns. He would like to know of concerns in advance of the public hearing so they may be addressed beforehand.

5. Closing Comments

Mr. Vipond thanked everyone for coming and expressing their comments.

6. Adjournment

The meeting adjourned at approximately 8:00 p.m.