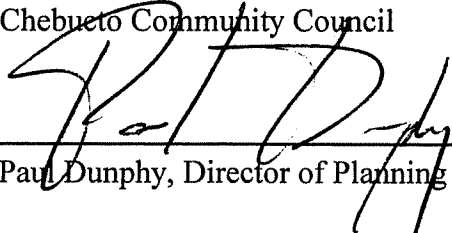




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
June 12, 2006

TO: Chebucto Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Planning & Development Services

DATE: May 31, 2006

SUBJECT: **Case 00911: Extension to Development Agreement Time Limit, Lot abutting Civic #89 Purcell's Cove Road, Halifax**

ORIGIN

- Request from the Estate of George Sotiropoulos, dated May 30, 2006, for a 2-year extension to the development agreement time-frame to construct a single family dwelling.

RECOMMENDATION

It is recommended that Chebucto Community Council amend the development agreement with George and Maria Sotiropoulos, recorded on June 19, 2003 at the Registry of Deeds at Halifax in Book 7377, Pages 805-815, to extend the date for commencement of construction to June 19, 2008.

BACKGROUND

On November 4, 2002, Council approved an application by George and Maria Sotiropoulos to enter into a development agreement to construct a single family dwelling on a vacant parcel of land next to their existing dwelling at civic #89 Purcells Cove Road (PID #40047250). The agreement was required because the property does not have frontage on Purcell's Cove Road but fronts on an easement which runs off it. The agreement contained a three-year time limit for commencement of construction and expires on June 19, 2006.

In order to resolve legal issues with regard to the use of the easement in front of the property, the applicant decided to acquire the easement. The transaction closed during the summer of 2005. Mr. Sotiropoulos passed away in 2005 and the family has required additional time to conclude estate business. The applicant now intends to sell the property, with the development agreement rights attached to it, if Council grants an extension.

DISCUSSION

Development agreements contain an expiry date so that projects which have been approved but not constructed can be brought to a conclusion. If the applicant has not proceeded within the allotted time council may grant an extension, at the request of the applicant, in cases where it is felt that the development is still appropriate.

Staff have revised the clause in the existing agreement (Section 3.3) which relates to the time-frame for commencement to require physical commencement of construction, including site excavation and the placement of the footing and foundation, by June 19, 2008 (refer to Attachment A).

A decision to extend the time-frame does not require a public hearing. Staff has no objection to granting the requested time extension. A draft amending agreement is included as Attachment A.

BUDGET IMPLICATIONS

None

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

1. Council may approve the amending development agreement (Attachment A). This is the recommended course of action.

2. Council could refuse the extension, in which case the Development Agreement would become null and void, and the property could no longer be developed for single family dwelling purposes. This alternative is not recommended by staff.

ATTACHMENTS

Attachment A	Amending Development Agreement
Attachment B	Staff Report dated September 4, 2002

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by :	Paul Sampson, Planner I	490-6259
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date of commencement of construction. For the purpose of this section, commencement shall mean the issuance by the Municipality of a building permit for construction of the dwelling, site excavation and the placement of the footing and foundation. If the development has not commenced by the applicable time, this agreement will terminate unless specifically extended upon request of the applicant and all rights shall be at an end.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:


Signed, sealed and delivered)	MARIA SOTIROPOULOS
in the presence of:)	
)	
per: _____)	per: _____
)	
)	
Sealed, Delivered and Attested)	HALIFAX REGIONAL MUNICIPALITY
by the proper signing officers of)	
Halifax Regional Municipality)	
duly authorized on that behalf)	per: _____
in the presence of)	MAYOR
)	
per: _____)	per: _____
)	MUNICIPAL CLERK


HALIFAX
REGIONAL MUNICIPALITY

Chebucto Community Council
September 9, 2002

To: Members of Chebucto Community Council

Submitted by:


Paul Dunphy, Director of Planning & Development Services


Paul Sampson, Planner I

Date: September 4, 2002

Subject: Case #00465: Application for Development Agreement, Lot abutting Civic #89 Purcell's Cove Road, Halifax

ORIGIN:

Request by George Sotiropoulos to enter into a development agreement to allow for a single unit dwelling on a lot which does not have public street frontage.

RECOMMENDATION:

It is recommended that Chebucto Community Council:

- 1. Give Notice of Motion to consider an application by George Sotiropoulos for a development agreement on his property abutting 89 Purcell's Cove Road, Halifax and to schedule a public hearing for October 7, 2002;**
- 2. Approve the development agreement, presented as Attachment II to this report, to permit a single unit dwelling on a lot which does not have public street frontage.**
- 3. Require that the development agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval by Community Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.**

PLEASE RETAIN REPORT FOR PUBLIC HEARING

BACKGROUND:

The subject property is located between civic numbers 87 ½ and 89 Purcell's Cove Road (see Attachment I). The lot does not have road frontage on Purcell's Cove Road but fronts on an existing 20 foot wide travelled right-of-way. The property is approximately 8,000 square feet in area, approximately 50 feet wide and has a average depth of 164 feet. The applicant also owns the abutting property at civic 89.

The Proposal:

The applicant/owner wishes to construct a single family dwelling on the property (refer to Schedules B through E of Attachment II). Development of the site would comply with the Land Use Bylaw requirements, with the exception of the lot frontage requirement.

Zoning and Enabling Policy:

The property is zoned R-1 (Single Family Dwelling) and is designated Low Density Residential (LDR) under the Mainland South Secondary Planning Strategy (Section X of the Halifax Municipal Planning Strategy).

This application is made pursuant to Policy 2.12 of Section II of the Halifax MPS which enables section 71(1) of the Halifax Mainland Land Use Bylaw to apply. This gives Council the ability to consider development of lots which do not have public street frontage by development agreement.

Public Comment:

In consultation with the district councillor and the applicant, a public information meeting concerning this proposal was not held. Instead, letters were mailed to property owners in the area advising them of the proposal and requesting their comments. Comments were received from one property owner. A second letter was sent to property owners advising of the date and time of the public hearing.

DISCUSSION:

The following is an evaluation of the proposed development agreement for the subject lands in relation to applicable policies of the Halifax Municipal Planning Strategy (refer to Attachment III):

- Single family dwellings are permitted in the R-1 zone and the development will comply with all aspects of the Land Use Bylaw with the exception of lot frontage. Existing MPS policies allow for a reduction in lot frontage, lot area, setbacks, and lot coverage.

- Municipal sewer and water services are available along Purcell's Cove Road. It will be the applicant's responsibility to construct the lateral services from the new building to the existing mains and to provide an easement over either the 20 foot right-of-way or the abutting property at civic 89.
- The existing travelled way which abuts the property is adequate for motor vehicle passage and access to the site. The right-of-way is currently used by the adjacent dwellings at civic no. 87 ½ and 85 ½. The lot is also within close proximity to Purcell's Cove Road.
- The location of dwelling does not create any adverse effects on adjacent uses. As a result of concerns from an abutting property owner at civic 87 ½, the applicant has agreed to locate the proposed building 11 feet from the right side property line abutting civic 87 ½ instead of 8 feet which is the minimum required by the Land Use Bylaw.

Conclusion:

The proposal satisfies the policies in the Halifax Municipal Planning Strategy. For the reasons contained in this report, Staff recommend approval of the proposed development agreement.

BUDGET IMPLICATIONS:

None.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN:

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

ALTERNATIVES:

1. Approve the attached development agreement. This is the recommended alternative.
2. Council may choose to propose modifications to the development agreement. Such modifications may require further negotiations with the developer. This alternative is not recommended for the reasons described above.
3. Council may refuse to enter into the development agreement, and in doing so, must provide reasons based on conflict with existing Plan Policy. Staff does not recommend this alternative, based on the policy analysis contained in this report.

ATTACHMENTS

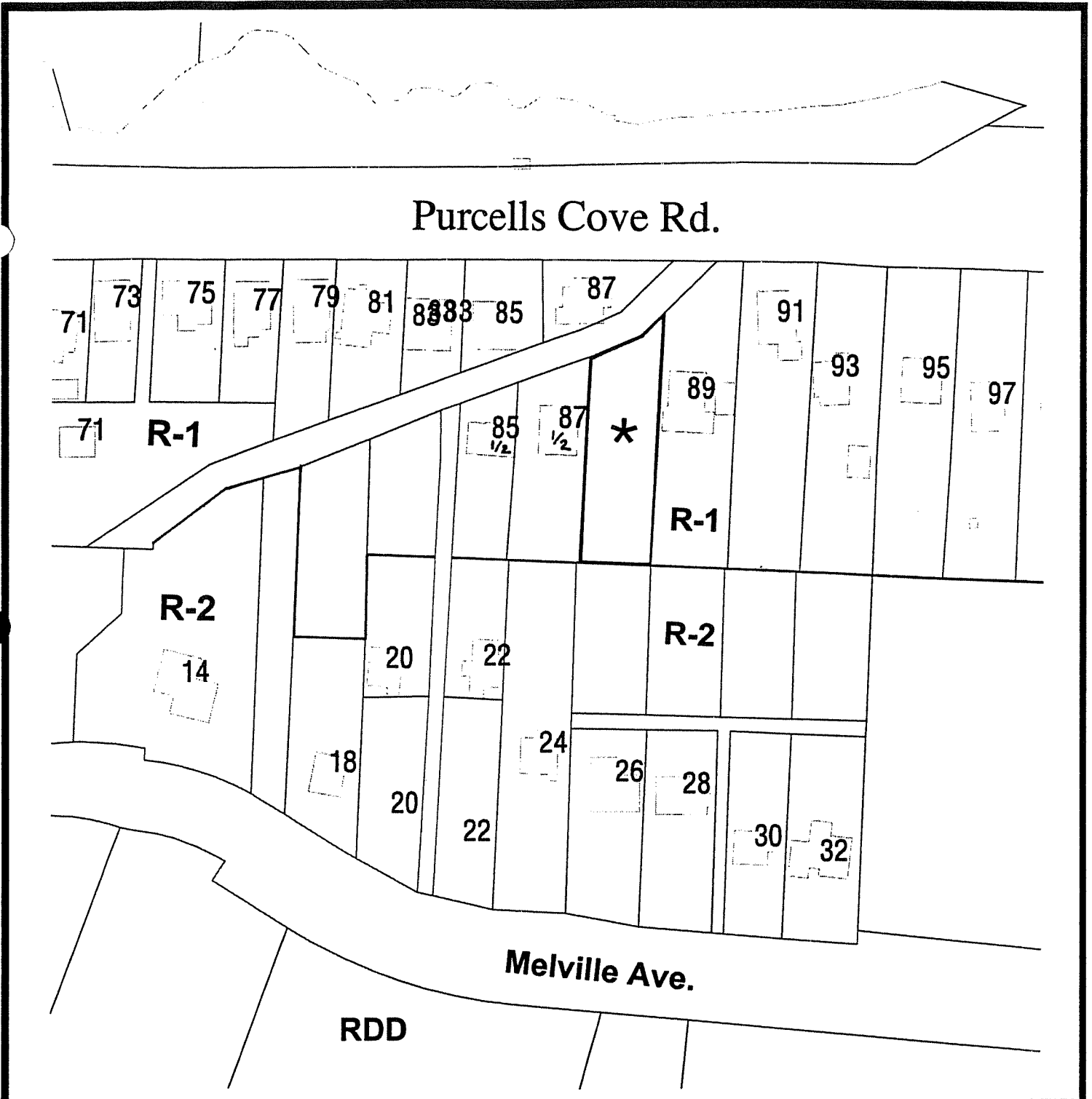
- I - Location and Zoning Map

- II - Draft Development Agreement with:
 - Schedule "A" Legal Description of the Lands
 - Schedule "B" Site Plan
 - Schedule "C" Elevations
 - Schedule "D" Ground Floor Plan
 - Schedule "E" First Floor Plan

- III - Relevant Municipal Planning Strategy Policies

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210 (tel) or 490-4208 (fax).

Report prepared by Paul Sampson, Planner, Planning Services (ph. 490-6259)



Attachment 1
Location and Zoning Map

- R-1 Single Family Dwelling Zone
- R-2 Two Family Dwelling Zone
- RDD Residential Development District



HALIFAX
REGIONAL MUNICIPALITY
Planning and Development Services

Attachment II

THIS AGREEMENT made this day of , 2002
BETWEEN:

GEORGE AND SAM SOTIROPOULOS,
of Halifax, Province of Nova Scotia,
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of lands located between civic numbers 87 ½ and 89 Purcell's Cove Road in Mainland Halifax and which said lands are more particularly described in Schedule "A" to this Agreement ("the Lands");

AND WHEREAS, pursuant to Section 71(1) of the Halifax Mainland Land Use Bylaw and Section II, Policy 2.12 of the Municipal Planning Strategy, the developer wishes to obtain permission to construct a single unit dwelling on the Lands;

AND WHEREAS a condition of the granting of approval of Council is that the Developer enter into an agreement with the Halifax Regional Municipality (Municipal Case No. 00465);

AND WHEREAS the Chebucto Community Council of Halifax Regional Municipality, at its meeting on the day of October, 2002, approved the said agreement to allow for development of a single unit dwelling on the Lands;

THEREFORE in consideration of the benefits accrued to each party from 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 bylaw and subdivision bylaw

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Halifax Mainland Land Use By-law as may be amended from time to time.

1.3 Applicability of other bylaws, statutes and regulations

Pursuant 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 Province of Nova Scotia, and the Developer or lot owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

1.4 Conflict

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.

1.5 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 regulations, by-laws or codes applicable to any lands owned by the Developer.

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: USE OF LANDS AND DEVELOPMENT PROVISIONS**2.1 Schedules**

The following are attached as Schedules to this Agreement:

Schedule "A"	Legal Description of the Lands
Schedule "B"	Site Plan
Schedule "C"	Elevations
Schedule "D"	Ground Floor Plan
Schedule "E"	First Floor Plan

2.2 Use of Lands and Development Provisions

- a) The Developer shall not develop or use the lands for any purpose other than a single unit dwelling which is substantially in conformance with Schedules B through E of this agreement.
- b) Notwithstanding Section 2.2(a) of this agreement, nothing in this agreement shall prevent the developer from using the lands for other uses permitted by the land use bylaw, including but not limited to accessory uses and home occupations, provided that all requirements of the land use by law are met.
- c) Development on the Lands shall conform to the R-1 (Single Family Dwelling) zone of the Land Use Bylaw, with the exception of the lot frontage requirement. Furthermore, the single unit dwelling shall have a minimum right side yard of 11 feet (abutting Civic No. 87 ½).
- d) Notwithstanding Section 2.2(a) of this agreement, the Development Officer may approve changes to the building and site plans (Schedules B through E attached) provided that the changes are in conformance with Sections 2.2 (b) and (c).

PART 3: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**3.1 Registration**

A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and the Developer shall pay for the registration cost incurred in recording such documents.

3.2 Subsequent Owners

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

3.3 Commencement of Development

In the event that construction of the project has not commenced within three years from the date of registration of this Agreement at the Registry of Deeds, the Municipality may, by resolution of Council, either discharge this Agreement whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purpose of this section, commencement shall mean the issuance by the Municipality of a building permit for construction of the dwelling.

3.4 Issuance of Permits

The Municipality shall issue the necessary permits for the development upon the expiration of the fourteen day appeal period under Section 249 of the Municipal Government Act, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken.

PART 4: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

4.1 Access

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 seven (7) days of receiving such a request.

4.2 Failure or default

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, 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 Property and perform any of the covenants contained in this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Property 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; and/or
- d. In addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

SIGNED, SEALED AND DELIVERED) **GEORGE AND SAM SOTIROPOULOS**

)
)
) Per _____

)
)
) Per _____

)
)
) **HALIFAX REGIONAL MUNICIPALITY,**

)
)
) Per _____
) Mayor

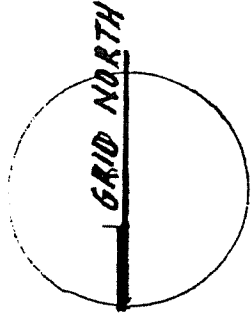
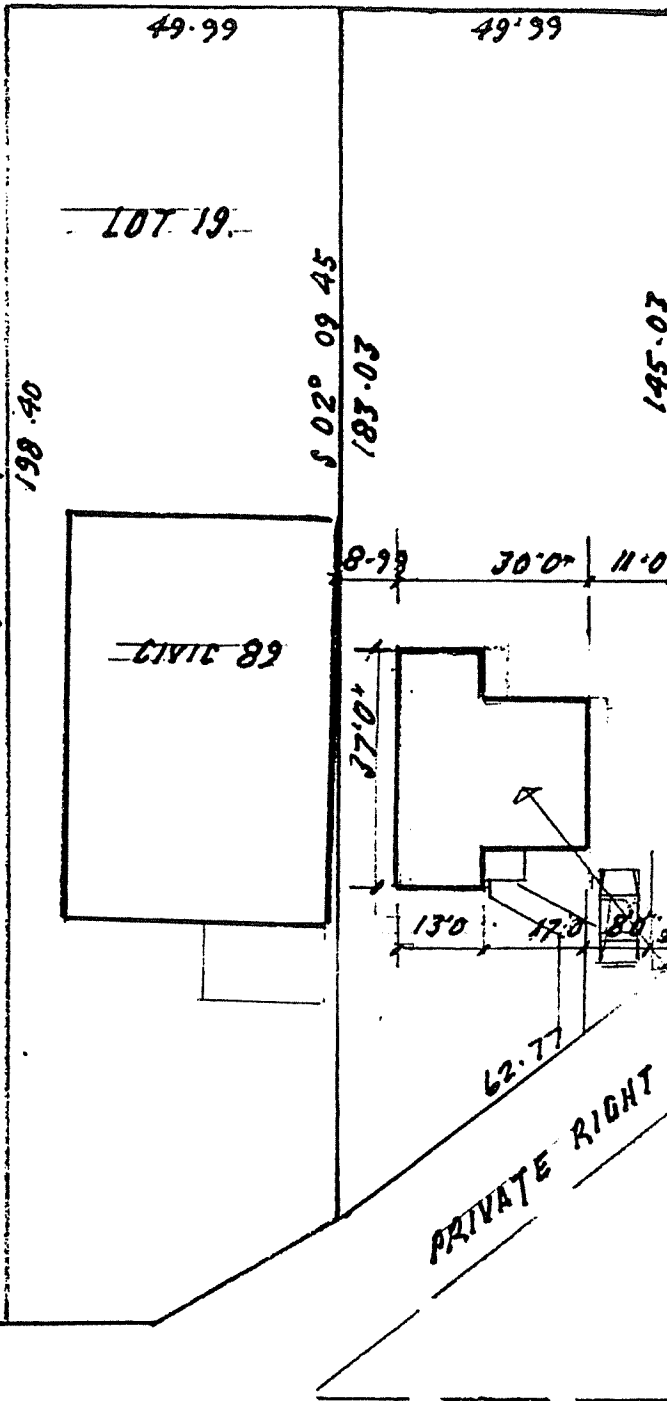
)
) Per _____
) Municipal Clerk

PROPERTY OWNED BY
GEORGE & SAM SOTIROPOULDS.

Schedule B

LOT 20

N 02° 09' 45" E
198.40



15th SA. CON. PURCELLS COVE ROAD.

WATER LINE

SITE PLAN
SCALE 1" = 30'0"

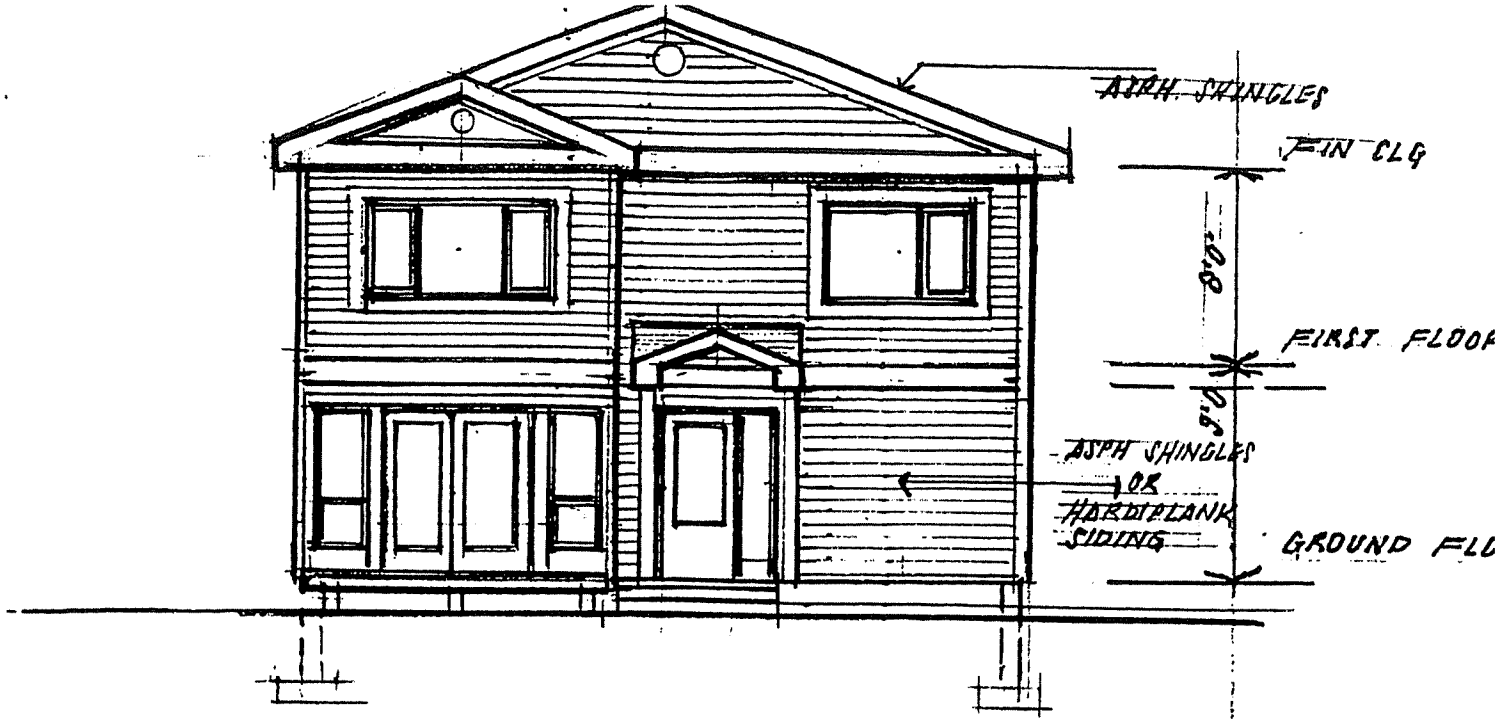
REVISED SITE DIMS.
8-99 FROM LOT 89
11-00 " LOT 87 1/2

SURVEY INFORMATION TAKEN
FROM SURVEY BY
THOMPSON & PURCELL
SURVEYING LTD. DEC 18, 1986

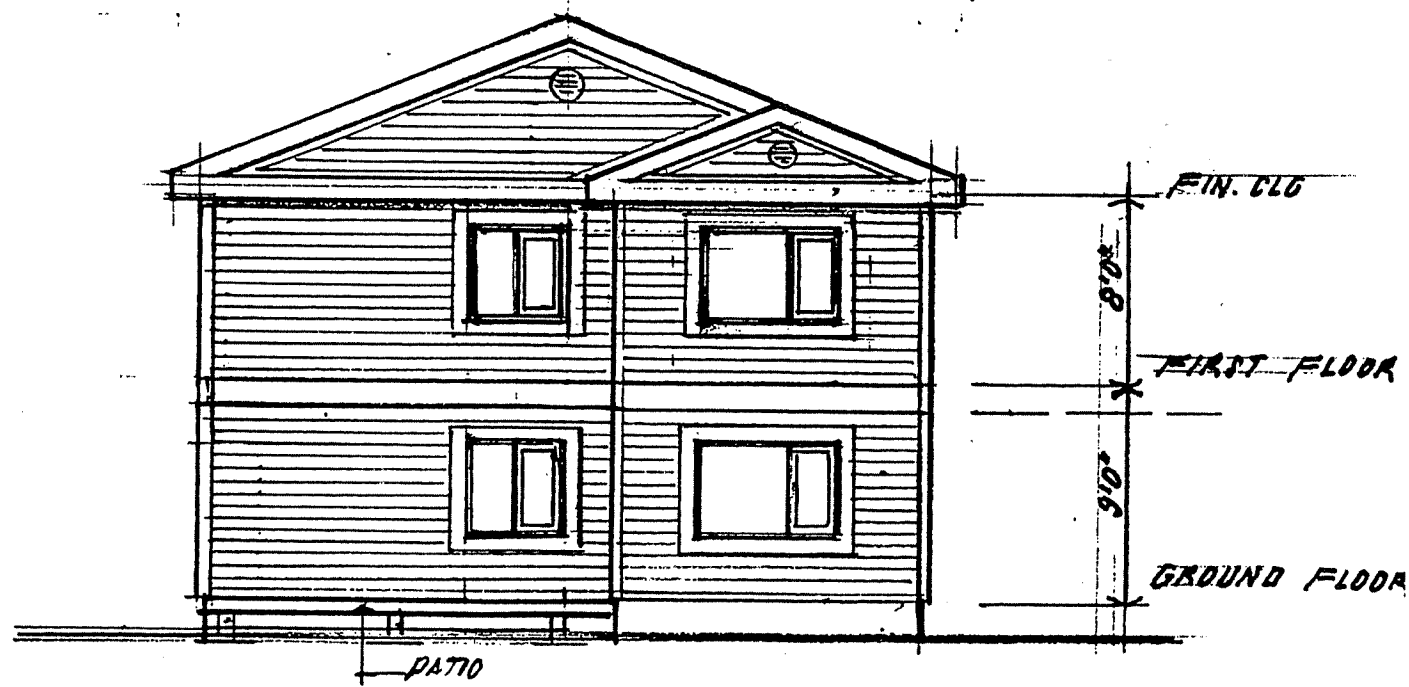
LUFTSPAN PLANNING LTD.

Peter LeClaire MNSAA, ARIBA
7 Bakers Drive, Halifax, NS
Tel: 477-6459 Fax: 477-6656





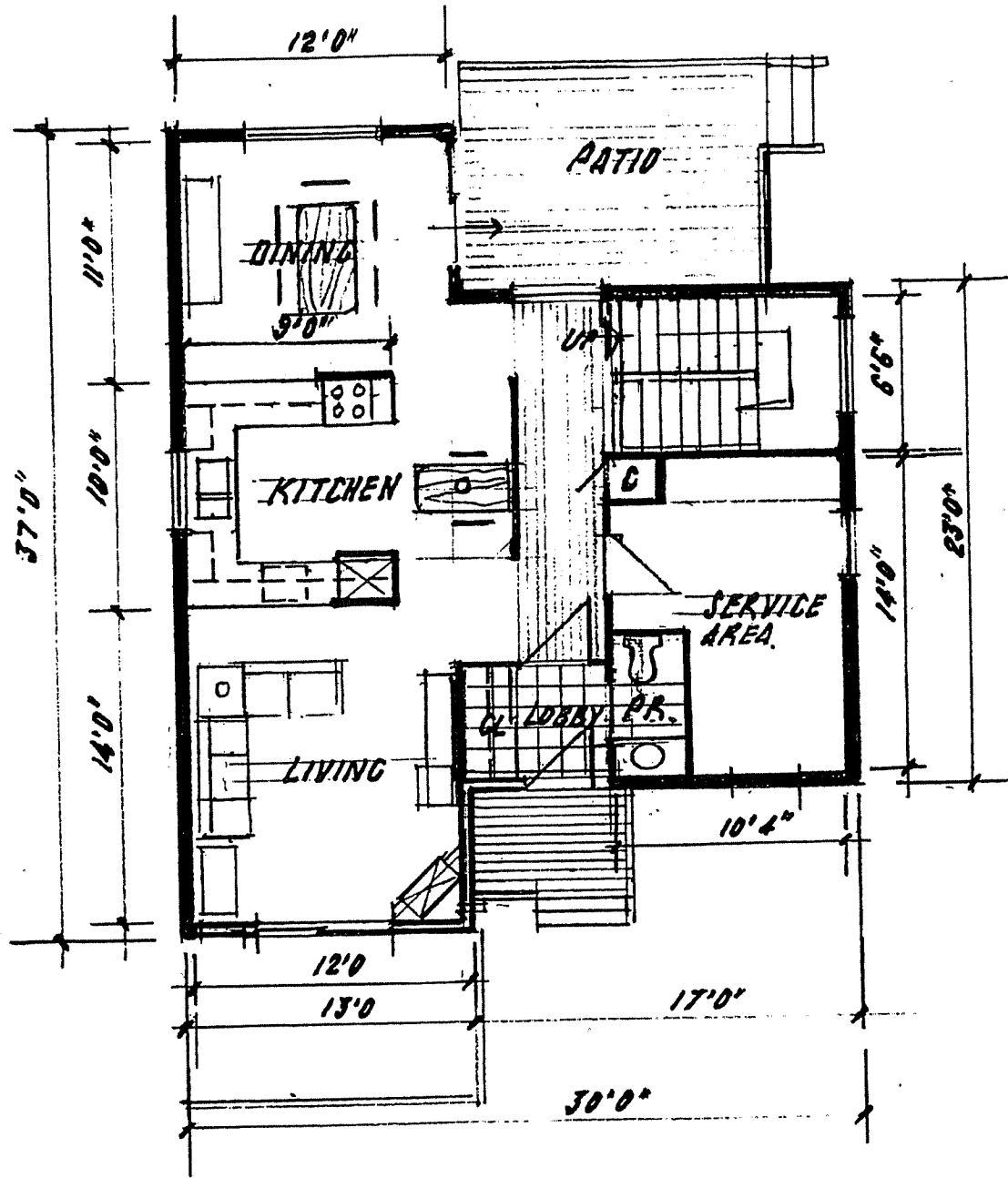
FRONT ELEVATION
 SCALE 1/8" TO 1'0"



REAR ELEVATION.

Schedule C

LUFTSPAN PLANNING LTD.
 Peter LeClaire MNSAA, ARIBA
 7 Bakers Drive, Halifax, NS
 TEL: 477-5455 FAX: 477-6555

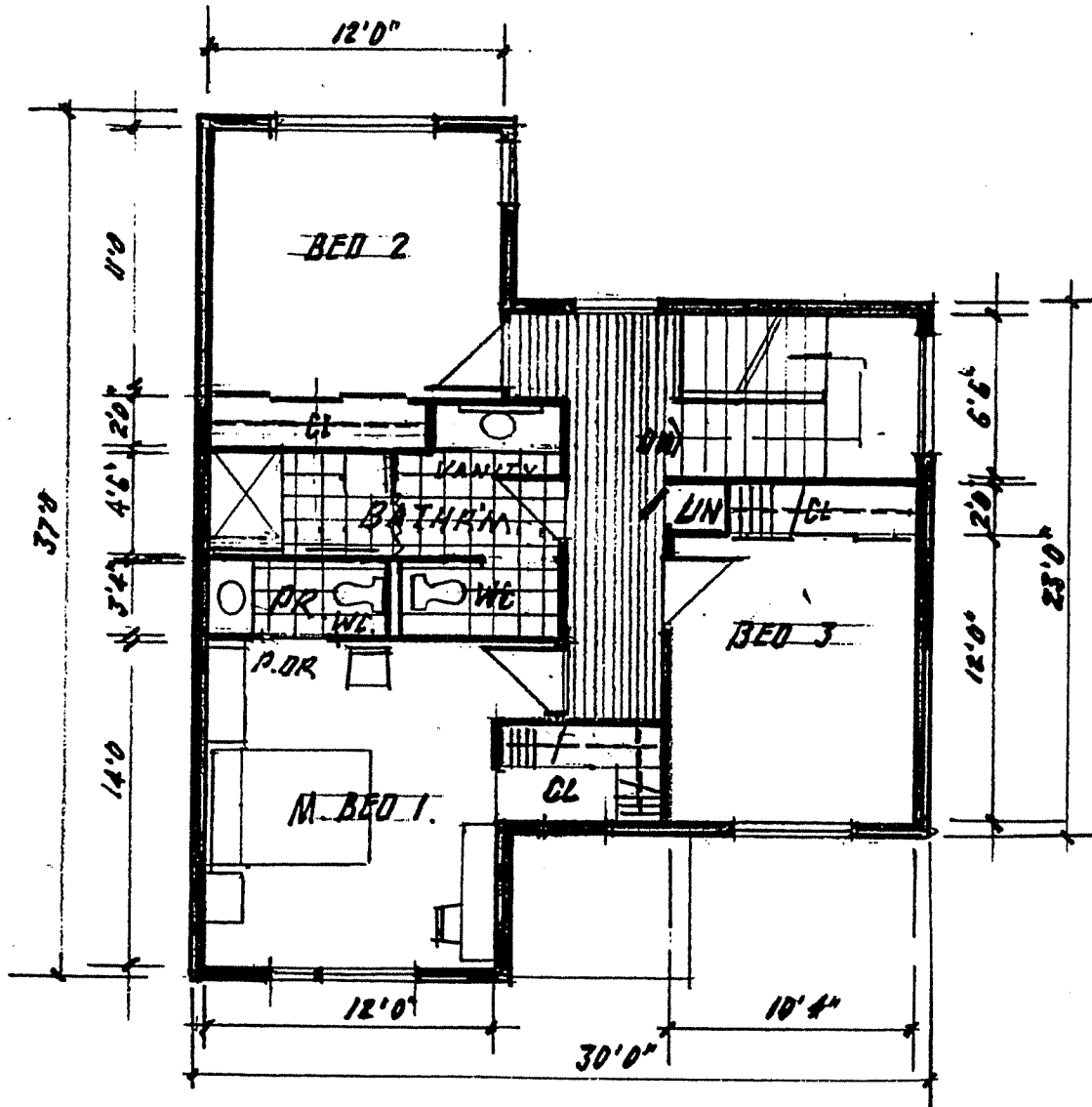


GROUND FLOOR PLAN
 SCALE 1/8" TO 1'0"

Schedule D

PROPOSED RESIDENCE 89 PURCELLS COVE
FOR MR. & MRS. SOTIROPOULOS.

LUFTSPAN PLANNING LTD.
 Peter LeClaire MNSAA, ARIBA
 7 Bakers Drive, Halifax, NS
 Tel: 477-6459 Fax: 477-6656



FIRST FLOOR PLAN
SCALE 1/8" TO 1'0"

Schedule E

LUFTSPAN PLANNING LTD.

Peter LeClaire MNSAA, ARIBA
 7 Bakers Drive, Halifax, NS
 Tel: 477-6459 Fax: 477-6656



Attachment III

Relevant Municipal Planning Strategy Policies:**(Section II - City-Wide Policies)**

- 2.12 Council may permit, by development agreement, new residential uses on lots which do not abut a city owned or maintained street. In considering such proposals, Council shall not approve such a development unless:
- (i) the proposed use is permitted by the zoning bylaw;
 - (ii) the lot was in existence prior to the adoption of this provision;
 - (iii) the lot can be adequately serviced by municipal water or sewer or, where permitted by the bylaw, an acceptable well and septic system;
 - (iv) the development complies with all other requirements of the bylaw with the exception that Council may consider modification to the frontage, area, setback and coverage requirements in accordance with the policies of the plan;
 - (v) the lot abuts an existing recognized travelled way and that the said travelled way provides reasonable passage of motor vehicles, especially emergency apparatus and police protection;
 - (vi) the location and setback of the proposed dwelling does not adversely affect adjacent uses or watercourses, including the North West Arm.