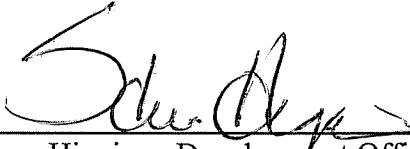


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**Chebucto Community Council**  
**September 12, 2005**

**TO:** Chairman and Members of Chebucto Community Council

**SUBMITTED BY:**   
\_\_\_\_\_  
Steven Higgins - Development Officer

**DATE:** September 12, 2005

**SUBJECT:** Appeal of the Development Officer's decision to approve an application for a variance - 8, 10, 12 Twin Oaks Road, Halifax

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to approve an application for a variance from the requirements of the land use bylaw for property at 8, 10, 12 Twin Oaks Road, Halifax.

**RECOMMENDATION**

It is recommended that Council uphold the Development Officer's decision to approve this variance.

**BACKGROUND**

The subject lot is located on the north side of Twin Oaks Drive at the intersection with Circle Drive (see location plan - attachment 1). This property is zoned R-3, General Residential and Low Rise Apartment Zone under the Halifax Mainland Land Use Bylaw. The property was originally developed in the 1970's and currently contains three low rise apartment buildings containing a total of thirteen (13) units.

The applicant proposes to construct a fourth apartment building similar size and scale to the buildings that currently exist. The proposal meets all of the requirements of the land use bylaw with the exception of the angle control restrictions as they apply to the North (left) wall of the building. The bylaw requires a minimum sideyard of 10 feet and the application of the 80 degree horizontal angle from the adjacent property line. Attachment 2 shows a plan view of the proposed building illustrating the impact of the bylaw requirements.

The applicant has proposed a variance from the bylaw to allow the construction of a building that is similar to those already existing on the property. This application was considered and approved. As

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required by the Municipal Government Act, all owners within 30 metres of the subject lot were notified and given the option to appeal this decision. Appeal letters were received from owners at ????????. Those letters are attached at attachment 3.

### **DISCUSSION**

The *Municipal Government Act* (MGA) sets out guidelines under which the Development Officer may not consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

- “A variance may not be granted where the
- (a) variance violates the intent of the land use bylaw;
  - (b) difficulty experienced is general to the properties in the area;
  - (c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”

In order to be approved, the proposed variance must not conflict with any of the above statutory guidelines. An assessment of the proposal relative to these stipulations is set out below.

#### **Does the proposed variance violate the intent of the land use bylaw ?**

An apartment building is a permitted use on the property in question. The bylaw contains restrictions that impact the design and require setbacks from the adjacent property lines. These guidelines sometimes present difficult design and siting challenges in the case of smaller scale buildings. In this case, the proposed building is consistent with the character of the development on the remainder of the property and not out of character in size and scope with the general area. Conformance with the bylaw requirements in question, would result in a building design that would not represent a substantive functional or esthetic improvement over the proposed structure. Staff do not consider the proposal to violate the intent of the bylaw to an extent that requires refusal.

#### **Is the difficulty experienced general to the properties in the area?**

There is a range of zoning and lot configuration in the general area. In addition, there are a number of apartment structures in the immediate area that were constructed prior to the current regulations and without application of the angle control requirements of the land use bylaw. Under these circumstances, staff do not considered the difficulty to be general to the properties in the area.

#### **Is the difficulty experienced a result of an intentional disregard for the requirements of the land use bylaw?**

As the applicant has entered into the variance process in good faith and no construction has been undertaken to date, intentional disregard has not been a consideration in this review.

In summary, staff carefully reviewed all the relevant information in this case. The use of the property for an apartment building is not in question. What is currently being considered is the location relative to the adjacent property boundary (10 feet vs 6.5 feet) and the shape of the north wall of the building (application of the 80 degree angle control). Given the current situation, staff believe the request is relatively minor and reasonable. Staff see no obvious departure from the requirements of the MGA and therefore the application was approved and forwarded to the community for consideration through the appeal process.

### **BUDGET IMPLICATIONS**

There are no implications on the Capital Budget associated with this report.

### **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 could uphold the decision of the Development Officer to approve the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance.

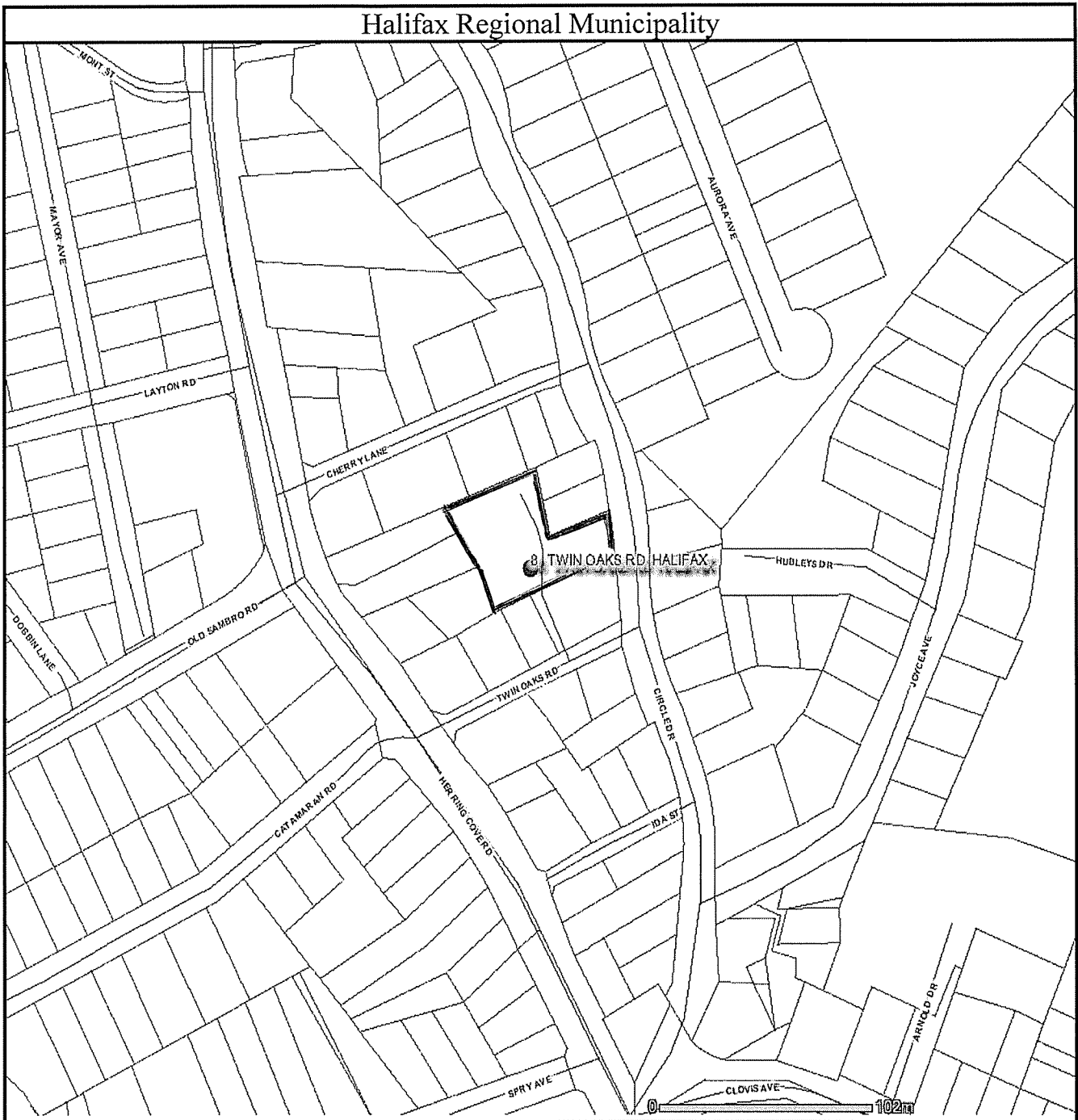
### **ATTACHMENTS**

1. Location plan
2. Site plan
3. Appeal letters

### **INFORMATION BLOCK**

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: Steven Higgins - Development Officer

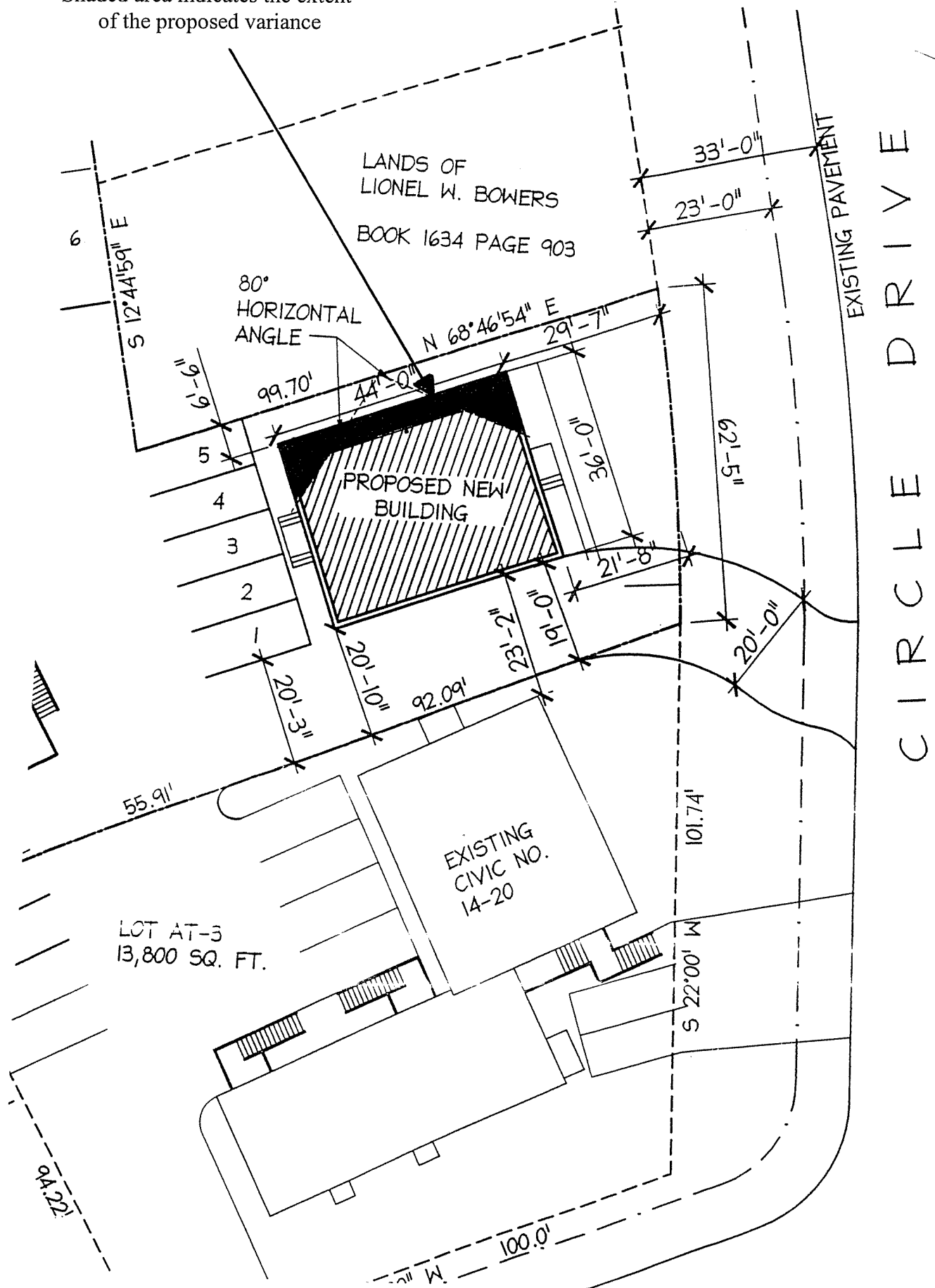


Legend  
 ~ Streets      □ Parcels

This map was prepared for the internal use of Halifax Regional Municipality(HRM) HRM takes no responsibility for errors or omissions For further information on Street Name or Community(GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca Date of map is not indicative of the date of data creation.

### Attachment 1

Shaded area indicates the extent of the proposed variance



HALIFAX REGIONAL  
MUNICIPALITY

AUG 11 2005

MUNICIPAL CLERK

CC: Chris Newson

Mary M. Durnford  
31 Circle Drive  
Halifax, NS B3J 3P9

August 4, 2005

Municipal Clerk  
c/o Steven Higgins, Development Officer  
Halifax Regional Municipality  
Development Services - Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5

Dear Mayor and Councillors:

Re: Case No. 12045 - Variance at Civic No. 8, 10, 12 Twin Oaks Road, Herring Cove Road

As a resident who lives directly across the street from the proposed development, I most strongly oppose this variance. This is a residential neighbourhood. A building of this size will tower over all of the existing single homes around it. A variance of any size should not be granted to a structure of this height and size. The quality of our enjoyment of our home and that of our neighbours will definitely suffer as a result of this building. Please do not compound it by allowing it to infringe even more on what is already a very narrow permissible setback.

Thank you for your consideration of this objection.

Sincerely,



Mary Durnford

cc. Jan Gibson, Municipal Clerk  
Stephen Adams, Councillor, District 18

HALIFAX REGIONAL  
MUNICIPALITY

AUG 11 2005

Kern

MUNICIPAL CLERK

cc: Chris Newson

22 Circle Drive  
Halifax, Nova Scotia  
B3P 1K1

August 10<sup>th</sup>, 2005

Municipal Clerk  
c/o Steven Higgins, Development Officer  
Halifax Regional Municipality  
Development Services – Western Region  
P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5

Dear Sir/Madam:

**RE: Case Number 12045 Variance at Civic No. 8, 10, 12 Twin Oaks Road, Herring Cove Road**

This letter will serve as notification of my right to appeal the decision to change the setback for the construction of the new apartment building.

The current owner also owns the apartment building behind me. The construction of these buildings has caused a severe water problem in my backyard, which has affected the value and has created flooding in my basement. It has also seriously reduced the value of my property. Please refer to the pictures below and the location plan attached.



The proposed apartment building is to be located to the right of the stonewall in the picture above. The closeness of this building will affect the value of my property as well as make the water problem even worse.

The stonewall is also of great concern. I have spent a lot of time and effort in restoring the wall and know it will not withstand excavation this close.

When I purchased this property in July 2004, I reviewed the vacant lot and assumed that nothing of significant size could be built on this lot due to the setback requirements.



The picture above shows the back of my property and the water problems I have related to the apartment building behind me. There are no catch basins on his property and all of the water drains onto my property. It runs into my basement and along the side to the street.

Proper curbing and catch basins are required to direct this water to the city storm drain on Twin Oaks Road.

I would assume that the City Planner would take into consideration the ratio of apartment buildings to single family homes. This ratio already appears to be high. There are 7 apartment buildings visible from my yard.



I would appreciate my appeal being considered and that I be contacted by you on this matter.

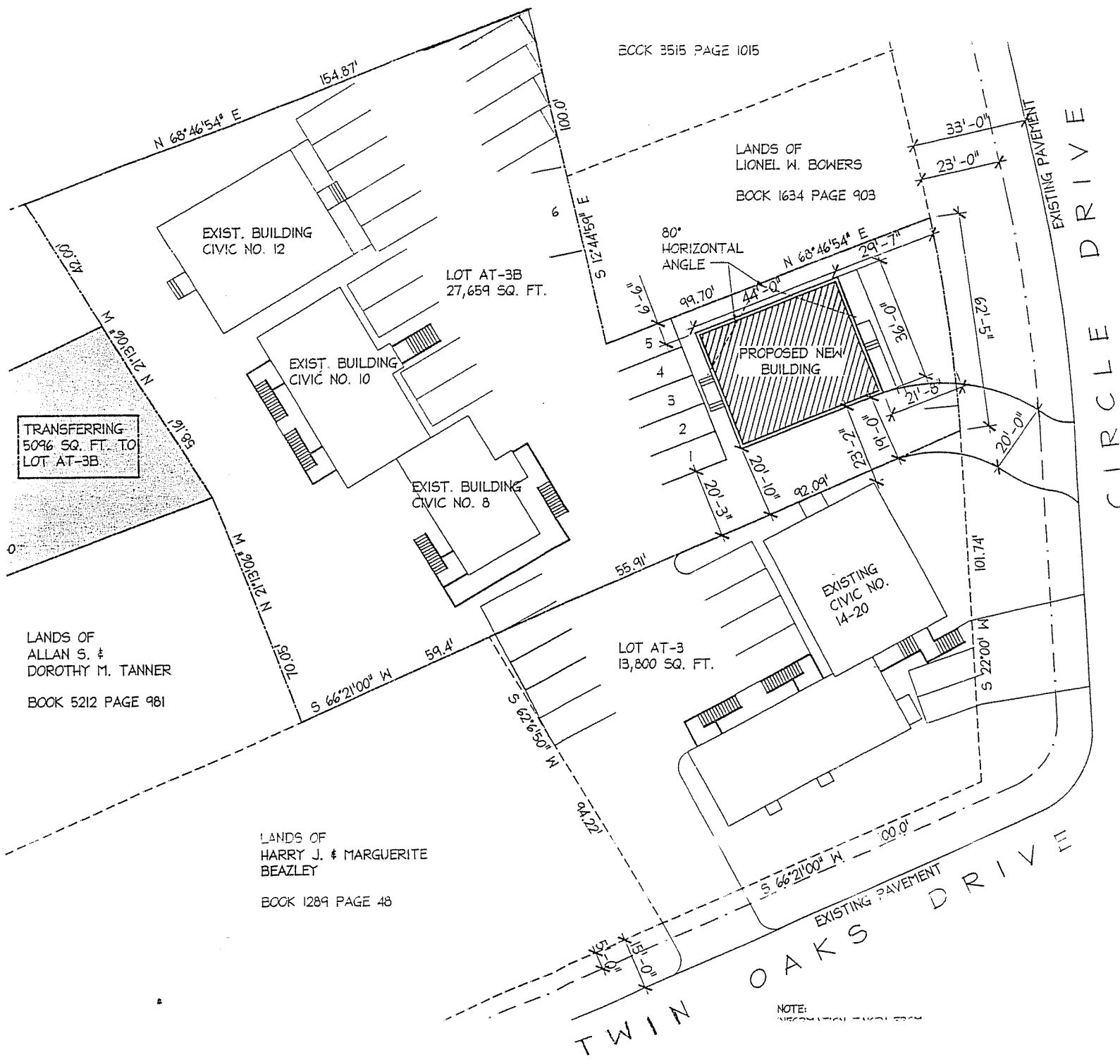
Yours truly,

A handwritten signature in black ink, appearing to read "Chris Ingram". The signature is fluid and cursive, with a prominent initial "C" and a long, sweeping tail.

Chris Ingram  
Homeowner  
478-3217

Atc. Location Plan

cc: Jan Gibson, Municipal Clerk ✓  
Councillor Steven Adams, District 18



BOOK 3515 PAGE 1015

LANDS OF  
LIONEL W. BOWERS  
BOOK 1634 PAGE 903

LOT AT-3B  
27,659 SQ. FT.

TRANSFERRING  
5096 SQ. FT. TO  
LOT AT-3B

LANDS OF  
ALLAN S. &  
DOROTHY M. TANNER  
BOOK 5212 PAGE 981

LANDS OF  
HARRY J. & MARGUERITE  
BEAZLEY  
BOOK 1289 PAGE 48

LOT AT-3  
13,800 SQ. FT.

EXISTING  
CIVIC NO.  
14-20

NOTE:  
[Illegible text]

CIRCLE DRIVE  
EXISTING PAVEMENT

OAKS DRIVE  
EXISTING PAVEMENT  
TWIN