

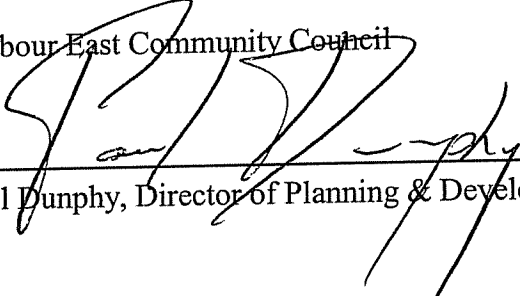
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P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
July 7, 2005

TO: Harbour East Community Council

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

DATE: June 17, 2005

SUBJECT: Case # 00777: Driveway Changes in Morris Lake Estates

ORIGIN

Motion of Harbour East Community Council at their meeting of February 3, 2004 that staff prepare a report regarding amendments to the CDD for Morris Lake Estates with respect to allowing more flexibility in area of driveway widths.

RECOMMENDATIONS

It is recommended that Harbour East Community Council:

1. Move first reading of the proposed Land Use By-law amendment for Cole Harbour/Westphal and set a public hearing date;
2. Approve the proposed Land Use By-law amendment for Cole Harbour/Westphal as shown in Attachment A, and;
3. Following the appeal period for the LUB amendment, discharge by resolution of Community Council, Part 2 of the development agreement for Morris Lake Estates.

BACKGROUND

Morris Lake Estates subdivision was created by Armco Capital Corp. through a development agreement (DA). When the DA was signed in 1997 the developer intended to build small lot housing (40' frontages) along Southampton Drive, a minor collector. To permit small lot singles along a minor collector, HRM's engineering services and the developer came to an agreement that shared driveways would minimize the number of access points and allow a more efficient flow of traffic. Furthermore, the maximum width of any driveway in the subdivision was set at 10'. Both of these requirements were firmly incorporated as clauses 2.6 & 2.7 and Schedule 'C' of the development agreement (Attachment B).

At the time of subdivision however, the Developer chose to create fewer small-lot singles than originally planned. While Westfield Crescent was developed with 40' lots, almost all of Southampton and Morris Lake Drives were developed with 52' + wide lots (Map 1). In 2003, the Developer made application to amend the DA to change the driveway provisions and given the increased lot widths, staff was willing to consider wider, separated driveways. Unfortunately, the Developer withdrew their application and the DA was never amended.

Although homeowners should have been aware of these restrictions when they purchased their homes, a group of residents approached their Councillor in 2004 with concerns about the DA restrictions on driveway width and location. Some of these residents were experiencing friction with neighbours over the shared driveways, while others were frustrated by the lack of alignment of the curb cut with their garage. Others had a 10' wide driveway leading to an attached double garage. Staff was asked to look into the matter to see if anything could be done.

A Public Information Meeting was held on March 30, 2005 and all residents of Westfield, Southampton and Morris Lake Drive were invited by mail to attend. The minutes of the meeting are attached to this report (Attachment C). Based on the outcome of this meeting and discussions with residents who phoned because they could not attend, it is apparent that residents support some form of change that would permit more flexibility with respect to their driveways.

DISCUSSION

One concern with allowing driveways to be adjusted at this time is that cutting and patching of relatively new curb and asphalt would be required, possibly decreasing the expected maintenance-free life of the infrastructure. Furthermore, driveway locations are based on minimum permitted distances from fire hydrants, utility poles, and other elements fixed in the right of way. They are also located to avoid underground service laterals. Even if driveway restrictions were lifted in the DA, all residents wishing to make alterations would not necessarily be permitted due to these constraints. Residents would also be required to obtain a Streets and Services Permit from Development Services prior to altering any elements in the Right of Way. This would only be granted if the proposed driveway alteration met certain criteria, as described above. Residents would be responsible for all permit fees, the full cost of the work to be done, including proper reinstatement of any public infrastructure disturbed (e.g. sidewalk, curb, roadway). This was clearly explained to all residents who attended the public information meeting or phoned Planning Services for more information.

Given that:

1. The original rationale for requiring shared driveways along Southampton is no longer an issue (40' lots along a minor collector);
2. Residents appear to generally support relaxed restrictions on driveway layout and width, and;
3. The financial impact on the Municipality would be minimal.

Staff generally support the relaxation of restrictions regarding driveway layout and width in the Morris Lake Estates subdivision.

However, it would be completely impractical to *amend* the agreement at this stage because an amending agreement would have to be signed by each affected property owner. If Council wishes to proceed, then the agreement will have to be discharged, either in full or in part. It would be premature to discharge in full because the developer still has obligations under the agreement (e.g. Sanitary Sewerage Flow Monitoring, described in Schedule "G" of the agreement). Therefore, discharging in part is the most appropriate way to proceed at this time.

According to Clause 8.6 of the agreement, the DA may be discharged by resolution of Council:

"upon the issuance of an occupancy permit for any structure on any lot pursuant to the terms of this agreement, and upon the Municipality **amending the land use by-law** so as to establish provisions regulating the use and development of the lot in place of the provisions of this agreement".

Since most occupancy permits in this subdivision are issued, the next steps would be:

1. Amend the Land Use By-law (LUB) and zoning map for Cole Harbour/Westphal by adding the land use provisions from Part 2 of the development agreement to the R-1 zone as shown in Attachment A. The provisions respecting shared driveways and driveway widths have been excluded while other provisions have been modified to simply enforcement. Amending the LUB requires a public hearing.
2. Discharge the land use provisions from the development agreement. This can be done by resolution of Community Council, once the LUB is amended, and appeal period has lapsed.

The Municipal Planning Strategy for Cole Harbour/Westphal provides for the establishment of a single unit dwelling zone within the Urban Residential Designation without specifying requirements for such a zone. Adding special requirements for Morris Lake Estates under the R-1 zone is therefore consistent with the current MPS. Furthermore, in considering amendments to the Land Use By-law, the MPS directs Community Council to have appropriate regard for criteria listed under Policy IM-11 (Attachment D). This amendment is consistent with these criteria.

The portion of parkland (now owned by HRM) in the agreement area is proposed to be rezoned to from CDD to P-1 (open space zone) so that HECC may discharge the remaining portions of the agreement by resolution at such time in the future that it may become appropriate to do so.

BUDGET IMPLICATIONS:

There are no known budget implications.

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 amend the LUB for Cole Harbour/Westphal and discharge a part of the Morris Lake Estates development agreement. This is the recommended course of action.
2. Alternatively, Council may choose not to proceed. This is not recommended. Should Council choose not to, reasons for the rejection must be provided, based on MPS policies.

ATTACHMENTS

Attachment A: Proposed Amendments to the Land Use By-law and Zoning Map for Cole Harbour/Westphal
Attachment B: Development Agreement for Morris Lake Estates
Attachment C: Minutes of Public Information Meeting, March 30, 2005
Attachment D: Municipal Planning Strategy for Cole Harbour/Westphal, Policy IM-11
Map 1: Morris Lake Estates
Development Agreement for Morris Lake Estates (available upon request)

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: Hanita Koblents, Planner, 490-4181

Attachment A

Amendments to the Land Use By-law for Cole Harbour/Westphal

The Land Use By-law for Cole Harbour/Westphal is hereby amended by:

1. Adding the following new requirements to *Part 7: R-1 (Single Unit Dwelling) Zone*:

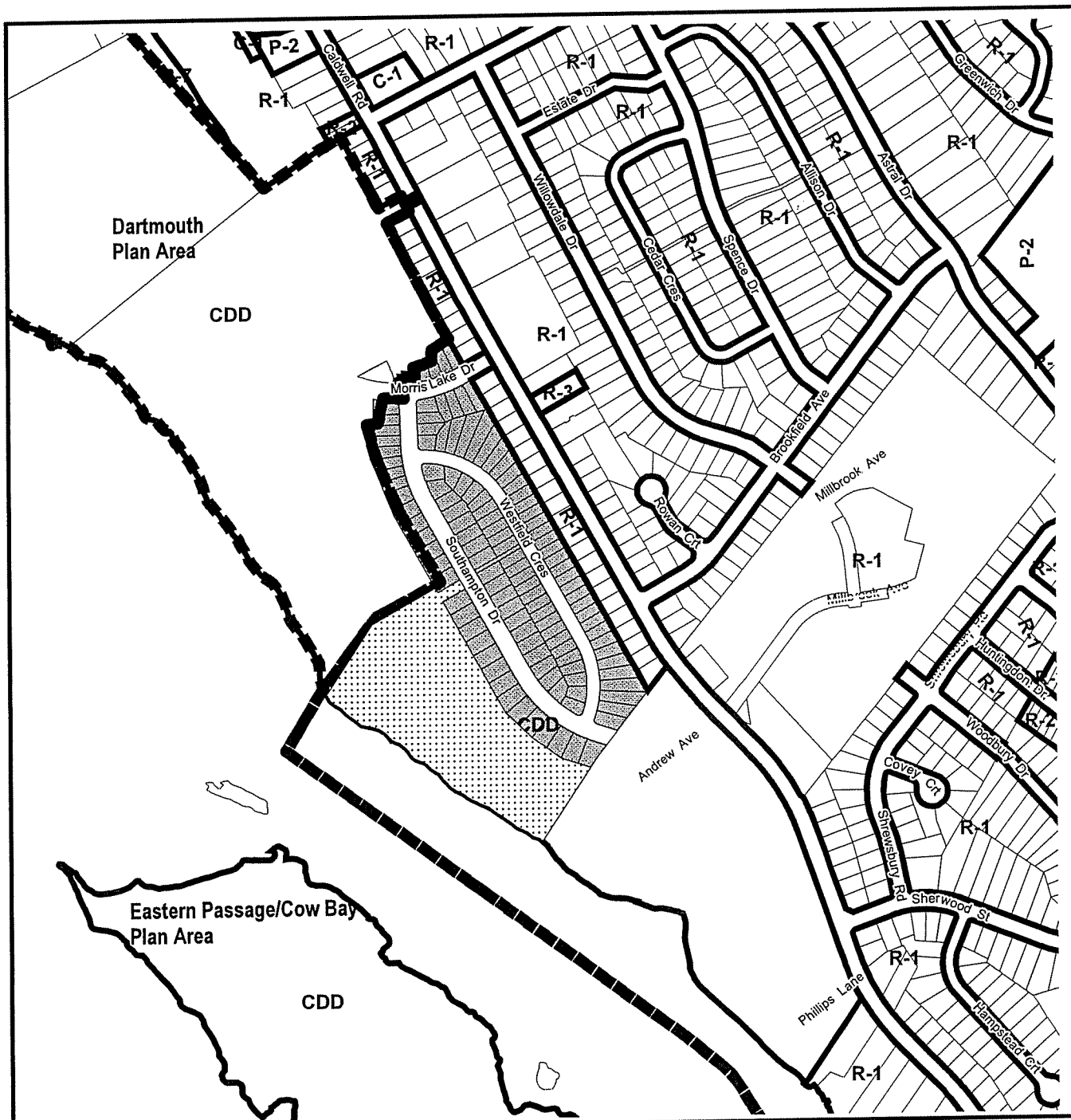
7.6 R-1 ZONE REQUIREMENTS - MORRIS LAKE ESTATES

- (a) For houses located in Morris Lake Estates on the zoning map, where uses are permitted as Residential Uses, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	4,000 square feet (372m ²)
Minimum Frontage:	40 feet (12.2m)
Minimum Front Yard	15 feet (4.6m) on Westfield Cres. and 20 feet (6.1m) on Southampton and Morris Lake Estates Drives.
Minimum Rear Yard	15 feet (4.6m)
Minimum Side Yard	4 feet (1.2m) on one side and 10 feet (3m) on opposite side subject to 7.6b
Minimum Flankage Yard	15 feet (4.6m)
Maximum Lot Coverage	35 percent
Max. Height of Main Building	30 feet (9.1m), as measured from established grade on front facade



- (b) Where a dwelling includes an attached garage, both minimum side yards may be reduced to 4 feet (1.2m).
- (c) Architectural design of the dwellings shall be varied. Similar house plans, (those with similar roof lines, facade articulation, fenestration, primary exterior wall and roof colour) shall not be repeated within a three lot radius on the same side of the street.
- (d) The front facade of all dwellings shall contain trim detailing including minimum 6 inch corner boards and 4 inch window moldings.
- (e) All house designs shall include a covered verandah or porch (minimum depth from building wall to outside edge of decking: 5 feet) on the front facade, with railings extending the full length of the facade. The Development Officer may approve a shorter verandah or porch if the such length is deemed to conflict with other architectural features.

- (f) The elevation of the front entrance to any dwelling shall be a maximum of 2 feet 6 inches above finished grade, unless otherwise permitted in writing by the Development Officer.**
- (g) Accessory buildings shall not exceed 300 square feet in floor area and 15 feet in height. They shall not be permitted in the front or flankage yard nor shall they be situated less than 4 feet from side or rear lot lines, nor less than 8 feet from the dwelling unit.**



Attachment 1

Morris Lake Estates

-  Area to be rezoned to R-1(M.L.E.)
Single Unit Dwelling Zone (Morris Lake Estates)
-  Area to be rezoned to P-1
(Open Space Zone)

Cole Harbour Land Use By-Law Area

Zone

- R-1 Single Unit Dwelling Zone
- R-2 Two Unit Dwelling Zone
- R-3 Mobile Dwelling Zone
- C-1 Local Business Zone
- P-2 Community Facility Zone
- CDD Comprehensive Development District



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PLANNING AND
DEVELOPMENT SERVICES

200 100 0 200 400 600
Feet

This map is an unofficial reproduction of a portion of the Zoning Map for the Cole Harbour Westphal Land Use By-Law area

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

Part 2 of the Development Agreement for Morris Lake Estates

PART 2: LAND USE AND DEVELOPMENT CONTROLS

- 2.1 The uses of the lands permitted by this agreement, subject to its terms, and generally illustrated by Schedule "B", are as follows:
- (a) a maximum of 120 single detached dwelling units;
 - (b) home office uses, as per the requirements of Sections 2.27A and 8.3 of the Land Use By-law;
 - (c) parkland, tot lot and walkway;
 - (d) uses accessory to the foregoing.
- 2.2 No development permit shall be issued for a single detached dwelling unit except in conformance with the following:
- | | |
|------------------------------------|---|
| Minimum lot frontage | 40 feet |
| Minimum lot area | 4,000 square feet |
| Minimum front yard | Refer to section 2.3 |
| Minimum rear yard | 15 feet |
| Minimum side yard | 4 feet on one side and 10 feet on opposite side, subject to Section 2.4 |
| Minimum flankage yard | 15 feet |
| Maximum lot coverage | 35 percent |
| Maximum height of primary building | 30 feet, as measured from the established grade on the front facade |
- 2.3 Minimum front yards shall be as typically illustrated by Schedule "C". On Roads "B" and "C" such yards shall range from a minimum of 20 feet to a maximum of 25 feet and on Road "D" from a minimum of 15 feet to a maximum of 20 feet, provided that in no case shall any portion of the structure be closer than 5 feet from the street line pursuant to Section 2.12. In all cases, no more than 3 contiguous dwellings shall have a similar set back from the street line, as measured to the nearest wall of the building. The variation in set backs shall take place in intervals of not less than 2 feet and not greater than 5 feet.
- 2.4 Pursuant to the minimum side yard requirement of Section 2.2, where a dwelling includes an attached garage, both minimum side yards may be 4 feet.
- 2.5 On all lots where there is no attached garage, the driveway shall extend into the side yard of the lot a minimum of 15 feet beyond the front wall of the dwelling.
- 2.6 There shall be only one driveway per lot (as illustrated by Schedule "C"), the maximum width of which shall not exceed 10 feet, and no other portion of the front yard shall be used for vehicular parking.

- 2.7 All lots fronting on Streets "B" and "C" shall have shared driveways, as typically illustrated by Schedule "C". The maximum curb cut for the shared driveway shall be 20 feet. The maximum curb cut for all other driveways shall be 10 feet.
- 2.8 The Developer agrees that an objective of this development is to provide an aesthetically pleasing streetscape which exhibits a complementary variety of house types and architectural designs. In this regard, a suitable mixture of house types including, but not limited to, bungalows (including basement walk-outs), two-storeys and split-entries shall be constructed, in a dispersed rather than concentrated pattern.
- 2.9 The architectural design of the dwellings, particularly with respect to the front elevation design, shall be varied. In this regard, a similar house plan, having similar roof lines (planes), facade articulation (projections/recesses), fenestration, primary exterior wall colour and roof colour, shall not be repeated within a three-lot radius on the same side of the street.
- 2.10 The front facade of all dwellings shall contain accentuated trim detailing, including minimum 6 inch corner boards and 4 inch window moldings. Other specialized trim features shall also be encouraged where appropriate, in order to add variety to the streetscape appearance, including front entry detailing, cornice treatment, barge boards decorative window moldings, shutters, and so on.
- 2.11 All house designs shall contain a covered verandah or porch on the front facade, complete with railings. The minimum depth of the verandah or porch shall be 5 feet (from building wall to outside edge of decking). The verandah shall extend the full length of the facade unless, because of roof lines, facade articulation or other similar design features, such length is deemed inappropriate, as determined by the Development Officer.
- 2.12 The elevation of the front entrance to any dwelling shall be a maximum of 2 feet 6 inches above finished grade unless otherwise permitted in writing by the Development Officer and any increase in this dimension shall be permitted only where the associated architectural features of the front facade as described herein result in an overall design that furthers the intent of this agreement. In this regard the decision of the Development Officer shall be final.
- 2.13 Fuel storage tanks, heat pumps/air exchangers and other similar objects shall be located only in the rear yard of the lot.
- 2.14 No electrical service mounts (house connection, conduit, meter) shall be permitted on the front facade of the dwelling.
- 2.15 Accessory buildings shall not exceed 300 square feet in floor area and 15 feet in height. Such buildings shall not be permitted in the front yard or the flankage yard and shall not be situated closer than 4 feet from the side or rear lot lines, nor closer than 8 feet from the dwelling unit.

Attachment C

Minutes of Public Information Meeting, March 30, 2005.

**HALIFAX REGIONAL MUNICIPALITY
PLANNING SERVICES - ALDERNEY GATE OFFICE
PUBLIC INFORMATION MEETING
CASE 00777 MORRIS LAKE ESTATES - DRIVEWAY LAYOUTS**

7:00 p.m.

March 30, 2005

Astral Drive Elementary School, Gymnasium

STAFF: Hanita Koblents, Planner
Kenda MacKenzie, Development Engineer
Samantha Charron, Administrative Support

OTHER: Councillor, Bill Karsten

**MEMBERS OF
THE PUBLIC:** approx 10 ppl

The meeting commenced at approximately 7:10 p.m.

1. INTRODUCTIONS/OPENING COMMENTS

Hanita Koblents welcomed residents to the meeting and thanked them for attending. She introduced Councillor Bill Karsten and development engineer Kenda MacKenzie.

Hanita explained the purpose of this meeting as an opportunity to discuss the Morris Lake Estates development agreement (DA) that governs some aspects of the use of the residents properties, in particular the location and width of their driveways. Hanita indicated that a few residents brought the issue of driveway layouts to their councillor, who made a motion at the Harbour East Community Council to direct staff to investigate the driveway problem, and if possible, come up with a solution.

Hanita explained the public information meeting is an opportunity for staff to gauge the level of support by residents for potential changes to the agreement. It is also an opportunity for staff to inform residents of approximate time lines for a process of this nature and it gives residents the chance to fully understand the implications of potential changes.

Hanita explained what a DA was (a contract between the landowner and the Municipality that governs the use of the land) and provided copies of the DA for Morris Lake Estates for attendees to review. She pointed out sections of the DA that related to residents driveways. She explained how changes can be made to this DA. HRM must first amend the land use by-law (LUB) for Cole Harbour/Westphal to establish provisions regulating the use and development of the land in place

of the agreement. Then Community Council can discharge all or part of the DA. Hanita then explained the process to amend a LUB. She continued with a description of engineering criteria that would need to be met before residents would be able to alter their driveway location/width.

Hanita opened the floor for questions at this point.

2. QUESTIONS AND COMMENTS

Tony Johnstone asked staff to explain the rationale behind Planning and Developments' thinking when they approved such small driveways. He explained the garages are located on both sides of the driveway, which forces residents to turn a corner after entering their driveway just to get into their garage.

Kenda stated the subdivision was developed with the shared driveways and this was stated in the development agreement. Kenda suggested when the lots were sold to a builder or you the resident, the houses should have been built to suit the configuration of the driveways. Kenda indicated staff realizes this did not happen, and that is what brought us here. We would like to find a solution to this problem.

Tony Johnstone asked how this problem could have been avoided? He suggested by moving the houses closer together.

Kenda replied that could have been a solution. Kenda indicated this issue should have been addressed by the home builder. Kenda went on to explain once the sub-division lots are created and the road is taken over by the Municipality through the subdivision process, the lot and driveway access is already established. She suggested what the resident is starting with at this point is a blank road with services dictating where your service connections and driveway access will be. Kenda explained the curb and gutter have to be in place as part of the drainage system, also driveway openings have to be established. She stated at this point it is up to the builder to build to suit that lot.

Tony Johnstone asked why approval would be given for such small driveways?

Kenda MacKenzie indicated when the plan and development agreement were submitted originally, to the Municipality for review, the lots were small singles (40' wide lots).

Jane Harnish suggested Planning and Development dropped the ball when it came to the follow-up in this particular case. She asked how the planning and development department along with engineering did not notice a change like this. She cannot understand how staff could approve a larger home without adjusting all components of the lot at the same time.

Kenda stated when the concept plan was submitted originally, it showed small lot singles. There is a schedule attached to the development agreement which was a concept plan, that indicated small lot singles and it showed 40' wide lots with shared driveways. Kenda stated this was done in two phases, she explained the concept plan is in place for the development agreement to be signed. When

the developer comes in to start construction, that is when the detailed drawings and lot specifications are submitted. The first phase was constructed to the original concept plan, whereas the second phase for the remainder of South Hampton the plans were submitted with 52' wide lots with shared driveways. She stated at this time there was no request for a change and from an engineering standpoint, it would be better to retain the shared driveways because the road is considered a minor collector. Kenda indicated that staff does not have set criteria for lot width on a minor collector and that Planning and Development Services processed the detailed design drawings based on the DA in place, anticipating that the builder would come in with homes to suit the lots.

Jane Harnish suggested the houses were approved individually on each lot after the lot sizes had been altered and questioned how this could have happened.

Hanita explained the 40' lot wide requirement is just a minimum requirement in the DA and it was adequate to come back with wider lots. The development agreement only spelled out a minimum, and that along South Hampton the driveways must be shared. So when the bigger lots came through it was not an issue, it met the minimum.

Kenda added as far as the construction of the homes is concerned, when the plans come in for review of the architectural requirements that are in the DA, we are not looking at this level of detail and criteria. It's up to the builder to build something they think people will want to buy.

Michelle Oliver asked if staff had ever foreseen that an invisible line in driveways would cause an issue such as this?

Kenda MacKenzie indicated throughout the Municipality there are other shared driveway communities that do not have the issues the residents of Morris Lake Estates do.

Hanita gave examples of builders requesting shared driveways in new construction to reduce the amount of asphalt in the community and increase the amount of on street parking.

Michelle Oliver stated she spoke with one of the builders in the area who told her the builders were aware of what they were selling and the residents knew what they were buying. She suggested residents did know but had this issue been picked up by the Municipality earlier, would it have then been rectified by the Municipality? Michelle would like to know at this point who is responsible to rectify the problem?

Jane Harnish asked who approved the second phase of development and why didn't they look at the size of the homes that could be built on specific lots? She also asked when plans are submitted by the home owner, shouldn't the size of the house, lot and driveway all be reviewed?

Kenda replied at this stage of development, staff assumes this is the choice the home owner has made when they purchased the home and created the plans. She suggested for planning and development to go back to every property owner who submits plans and double check the specifics, to make sure this is in fact what the home owner requested, is not part of our procedure and would be impossible.

Kenda stated when you submit you application, staff is trusting you have approved all aspects of the home and property layout.

Michelle Oliver asked if the developer or HRM has any responsibility or liability for any of this?

Kenda indicated that neither the developer nor HRM are not responsible. Kenda explained when HRM took over the street, it met all of our standards and criteria as well as the DA. Kenda indicated at this point the developer sold the lots to the builders who met all the national building code criteria, then the properties were sold to the home owners.

Orlando Fantini asked if the number of driveways will change automatically now that the lots are 52' wide compared to 40'.

Kenda replied the number of driveway openings and the number of houses only affect one criteria in the development agreement, that is the requirements for sewage flow monitoring. She reiterated the developer was responsible to submit a minimum of 40' wide lots, and when they submitted their plans they showed the larger lot with shared driveway access. Kenda stated when engineering reviewed the plans, the clause in the DA did not state if the developer went with a larger 40' lots they could have separated driveways.

Bernie Jurcina asked Kenda if this is something that will be reviewed in the future after seeing the result of this development?

Kenda MacKenzie suggested if another similar development agreement comes through on a minor collector such as this one, then yes, it may be something we look at in the future.

Norton Adderley asked if HRM was responsible to make changes to the curb cuts?

Kenda stated that two summers ago, staff did have a request by the developer to change the driveway widths. Staff proceeded through our normal review and in the end the developer withdrew the request for amendments. Kenda suggested this decision was based on timing and pending lot sales as they needed to start construction and they didn't want to continue through the process. Kenda indicated when an application is withdrawn staff does not continue with the process.

Tony Johnstone asked for Kenda to explain how the street was designated a minor collector?

Kenda suggested at this point it is hard to understand as the street only has 30 homes. She said the minor collectors primary function is traffic flow and if one day this street is extended, the least amount of driveway openings for motorists to be concerned with, the better. Kenda indicated there is nothing that can be done to change the minor collector status of the street.

Tony Johnstone agreed with the rational of staff and stated driving down a street with 15 openings opposed to 30 is undoubtedly less distracting.

Bernie Jurcina asked staff to explain the purpose of the meeting this evening?

Hanita stated the first purpose is to see if residents are interested in a change. She suggested Council needs to know if residents support this. It is also an opportunity to explain to residents the time lines and procedures for a public process of this nature.

Bernie Jurcina asked staff, if residents do not comply with Halifax Regional Municipality's criteria and/or regulations, is there a fine or consequences to be faced?

Kenda indicated residents would be in violation of the streets by-law and would be fined accordingly.

Jane Harnish asked if residents with adjoining properties would be allowed to apply for one permit to make alterations to driveway and sidewalk openings.

Kenda stated this would not be possible, properties have to be reviewed on an individual basis. Staff must ensure each property has valid and reasonable access to the property.

Jane Harnish asked if creating a separation between driveways with a fence or grassed medium would be acceptable?

Hanita indicated reinstating a separation between driveways without actually separating the curb cuts is acceptable.

Jane Harnish asked, in staff's opinion, which way would be most economical?

Hanita suggested a grassed area would be most economical and within the rights of the resident. She stated it may provide the resident with an area for snow piling in the winter.

Michelle Oliver asked where the property line is from the sidewalk? She asked if it began right at the edge of the sidewalk?

Kenda stated this would have to be determined from the individual lot survey plans. She explained the utility easement is for NS Power not HRM.

Hanita suggested anyone who is interested in grassing a separation between driveways has to take into consideration the lot grading.

Group discussion followed regarding easements and right-of-way for resident's clarification.

Michelle Oliver asked who is responsible for sidewalk repair?

Kenda indicated it is the responsibility of HRM. She suggested to residents if repairs need to be done along the street, she would wait until house construction is complete for the entire street.

Michelle Oliver questioned whether sidewalks that are in need of repair could be removed by HRM, at the same time the new driveway openings would be constructed. She suggested this may give an option to cost share with the resident and the Municipality to rectify the driveway issue?

Kenda stated she didn't know of any way that could happen, but would examine the matter further.

Norton Adderley asked Kenda what the process for street/sidewalk repair is?

Kenda indicated there are two processes. The first is when the developer comes in to build the street/sidewalk and ask for the lots to be created, at this time the Municipality goes through and identifies issues such as missing street trees, gutters and cracked sidewalks. The developer at this time must repair the inadequacies or give the Municipality a deficiency deposit. Once the repairs are complete or the deficiency deposits are paid the developer then gives a maintenance security, which the Municipality holds for one year after the lots are created. Staff will then do a second inspection to ensure all damages will be repaired before the developer is no longer responsible. She stated the Municipality then takes over responsibility for the street.

Norton Adderley asked who is responsible for the damage now?

Kenda indicated it is the Municipality's responsibility to ensure the street repairs are completed now.

Hanita asked the residents at this time if they were aware they could erect a fence or build a grassy medium to divide their driveways? Hanita then asked the residents in attendance if they think this solution would be acceptable, or do they see value in following through with the amendments and discharge of a portion of the DA. Hanita suggested following through with the process may allow a greater flexibility in the future for residents.

The consensus from the residents in attendance was that having the option to separate driveways would be best.

Anne Jurcina asked for clarification of the separated driveway opening dimensions.

Kenda indicated residents can have max 16' access.

Ann Jurcina asked if the opening will be separated by a portion of curb?

Kenda stated each resident could have up to a 16' driveway opening with approximately a 4' curb separating them.

Michelle Oliver asked if the 4' curb separation would have to be constructed or could the residents decide if they would like to keep the attached driveway openings free of any curb?

Hanita indicated once the driveways are widened, they are considered separate. She stated policy would not support a driveway opening that size and there would have to be a curb constructed between them.

Michelle Oliver asked if staff knew the cost to separate and construct the 4' curb?

Kenda suggested she was unsure of the cost and would have to look into this.

Group discussion followed to clarify policy relating to driveway openings.

Michelle Oliver asked if the costs for splitting the driveways and new curb being constructed would be split equally by neighbors sharing driveway access?

Kenda suggested this is something that would have to be agreed upon by both parties. She also suggested getting a cost share in writing would probably be a good idea.

Hanita indicated it might be possible for one resident to move their driveway over enough to get the new curb constructed in front of their property if the adjacent neighbor is not willing to make modifications to their driveway.

Kenda stated if the consensus of the meeting tonight is to proceed with discharging portions of the DA, to give residents the freedom to make their own driveway layout decisions in the future, staff will proceed with this amendment.

An unknown speaker asked if the whole DA was going to be discharged or just the part relating driveway requirements?

Hanita explained if staff were going to go through the process of amending the Land use by-law, then they were going to have to create a separate section under the R-1 zone for the Morris Lake Estates Subdivision. Hanita suggested if the Land use by-law is going to be amended, the more provisions that can be discharged, in her opinion the better. Hanita then explained there are parts of the development agreement that cannot be discharged.

Kenda gave a brief history of the sewage treatment in the area and the reasons why this part of the development agreement can not be discharged.

Hanita indicated staff is doing a full review of the development agreement to ensure all aspects that may potentially be looked at to change in the future will be taken into consideration at this time.

Michelle Oliver asked about a half completed trail leading down to the lake, she wanted to know if this was the responsibility of the developer or the Municipality to finish.

Kenda indicated she was unsure of the answer and would have to look into the matter further.

Tony Johnstone stated Armco began the trail and never finished the work.

Kenda stated she did not know if in the original agreement the developer or Municipality was responsible to finish the trail.

Tony Johnstone asked if the Municipality would ever sell the parkland in that area for development?

Kenda suggested the Municipality is not interested in parting with it's parkland and residents do not have to worry about that. She indicated parkland sale would have to go through public process.

Hanita explained the area is zoned CDD now, it is possible when the LUB is amended, for staff to apply the R-1 zone to the houses and the P zone to the Parkland.

Kenda indicated there is a portion of land still owned by the developer that leads down to the lake. She stated there has been no future development plans submitted by them at this time.

Residents had a brief discussion regarding the DA stating, for most, this is the first time they have ever seen the development agreement.

Kenda stated their lawyers should have been required to show this document to you, at the time of purchasing the home. She indicated a DA is tied to your deed.

Ann Juricna asked staff to clarify which parts of the DA are being considered for discharge?

Kenda went over all the portions that were under consideration to be discharged and continued her explanation with the portions of the DA that could not be discharged and followed up with an explanation as to why this was the case.

Hanita in closing gave a summary of her understanding of residents views (that is was preferable to amend the LUB and discharge parts of the DA)

Residents were in agreement with her understanding.

Bernie Juricna suggested the small turn out of residents should be considered when decisions are made regarding these changes. In his opinion he feels if changes were made many more residents would be concerned and would want their concerns to be heard.

Councillor Karsten indicated there will be a public hearing before any decisions are made. He stated if there are residents that wish to speak to this issue they may do so formally at the public hearing.

Hanita added that residents will be notified by mail in advance of the public hearing as well as newspaper ads that run two consecutive Saturdays before the hearing will be held. She again described the procedure remaining to amend the LUB and approximate time lines.

Hanita thanked everyone for their time and closed the meeting.

3. **ADJOURNMENT**

Meeting adjourned at approximately 9 p.m.

Attachment D

Cole Harbour/Westphal MPS, Policy IM-11

Criteria to Consider When Amending the Land Use By-law

IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of sewer and water services;
 - (iii) the adequacy or proximity of school, recreation and other community facilities;
 - (iv) the adequacy of road networks leading or adjacent to or within the development; and
 - (v) the potential for damage to or destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and
- (e) any other relevant matter of planning concern.

Attachment C

Minutes of Public Information Meeting, March 30, 2005.

**HALIFAX REGIONAL MUNICIPALITY
PLANNING SERVICES - ALDERNEY GATE OFFICE
PUBLIC INFORMATION MEETING
CASE 00777 MORRIS LAKE ESTATES - DRIVEWAY LAYOUTS**

7:00 p.m.

March 30, 2005

Astral Drive Elementary School, Gymnasium

STAFF: Hanita Koblents, Planner
Kenda MacKenzie, Development Engineer
Samantha Charron, Administrative Support

OTHER: Councillor, Bill Karsten

**MEMBERS OF
THE PUBLIC:** approx 10 ppl

The meeting commenced at approximately 7:10 p.m.

1. INTRODUCTIONS/OPENING COMMENTS

Hanita Koblents welcomed residents to the meeting and thanked them for attending. She introduced Councillor Bill Karsten and development engineer Kenda MacKenzie.

Hanita explained the purpose of this meeting as an opportunity to discuss the Morris Lake Estates development agreement (DA) that governs some aspects of the use of the residents properties, in particular the location and width of their driveways. Hanita indicated that a few residents brought the issue of driveway layouts to their councillor, who made a motion at the Harbour East Community Council to direct staff to investigate the driveway problem, and if possible, come up with a solution.

Hanita explained the public information meeting is an opportunity for staff to gauge the level of support by residents for potential changes to the agreement. It is also an opportunity for staff to inform residents of approximate time lines for a process of this nature and it gives residents the chance to fully understand the implications of potential changes.

Hanita explained what a DA was (a contract between the landowner and the Municipality that governs the use of the land) and provided copies of the DA for Morris Lake Estates for attendees to review. She pointed out sections of the DA that related to residents driveways. She explained how changes can be made to this DA. HRM must first amend the land use by-law (LUB) for Cole Harbour/Westphal to establish provisions regulating the use and development of the land in place

of the agreement. Then Community Council can discharge all or part of the DA. Hanita then explained the process to amend a LUB. She continued with a description of engineering criteria that would need to be met before residents would be able to alter their driveway location/width.

Hanita opened the floor for questions at this point.

2. QUESTIONS AND COMMENTS

Tony Johnstone asked staff to explain the rationale behind Planning and Developments' thinking when they approved such small driveways. He explained the garages are located on both sides of the driveway, which forces residents to turn a corner after entering their driveway just to get into their garage.

Kenda stated the subdivision was developed with the shared driveways and this was stated in the development agreement. Kenda suggested when the lots were sold to a builder or you the resident, the houses should have been built to suit the configuration of the driveways. Kenda indicated staff realizes this did not happen, and that is what brought us here. We would like to find a solution to this problem.

Tony Johnstone asked how this problem could have been avoided? He suggested by moving the houses closer together.

Kenda replied that could have been a solution. Kenda indicated this issue should have been addressed by the home builder. Kenda went on to explain once the sub-division lots are created and the road is taken over by the Municipality through the subdivision process, the lot and driveway access is already established. She suggested what the resident is starting with at this point is a blank road with services dictating where your service connections and driveway access will be. Kenda explained the curb and gutter have to be in place as part of the drainage system, also driveway openings have to be established. She stated at this point it is up to the builder to build to suit that lot.

Tony Johnstone asked why approval would be given for such small driveways?

Kenda MacKenzie indicated when the plan and development agreement were submitted originally, to the Municipality for review, the lots were small singles (40' wide lots).

Jane Harnish suggested Planning and Development dropped the ball when it came to the follow-up in this particular case. She asked how the planning and development department along with engineering did not notice a change like this. She cannot understand how staff could approve a larger home without adjusting all components of the lot at the same time.

Kenda stated when the concept plan was submitted originally, it showed small lot singles. There is a schedule attached to the development agreement which was a concept plan, that indicated small lot singles and it showed 40' wide lots with shared driveways. Kenda stated this was done in two phases, she explained the concept plan is in place for the development agreement to be signed. When

the developer comes in to start construction, that is when the detailed drawings and lot specifications are submitted. The first phase was constructed to the original concept plan, whereas the second phase for the remainder of South Hampton the plans were submitted with 52' wide lots with shared driveways. She stated at this time there was no request for a change and from an engineering standpoint, it would be better to retain the shared driveways because the road is considered a minor collector. Kenda indicated that staff does not have set criteria for lot width on a minor collector and that Planning and Development Services processed the detailed design drawings based on the DA in place, anticipating that the builder would come in with homes to suit the lots.

Jane Harnish suggested the houses were approved individually on each lot after the lot sizes had been altered and questioned how this could have happened.

Hanita explained the 40' lot wide requirement is just a minimum requirement in the DA and it was adequate to come back with wider lots. The development agreement only spelled out a minimum, and that along South Hampton the driveways must be shared. So when the bigger lots came through it was not an issue, it met the minimum.

Kenda added as far as the construction of the homes is concerned, when the plans come in for review of the architectural requirements that are in the DA, we are not looking at this level of detail and criteria. It's up to the builder to build something they think people will want to buy.

Michelle Oliver asked if staff had ever foreseen that an invisible line in driveways would cause an issue such as this?

Kenda MacKenzie indicated throughout the Municipality there are other shared driveway communities that do not have the issues the residents of Morris Lake Estates do.

Hanita gave examples of builders requesting shared driveways in new construction to reduce the amount of asphalt in the community and increase the amount of on street parking.

Michelle Oliver stated she spoke with one of the builders in the area who told her the builders were aware of what they were selling and the residents knew what they were buying. She suggested residents did know but had this issue been picked up by the Municipality earlier, would it have then been rectified by the Municipality? Michelle would like to know at this point who is responsible to rectify the problem?

Jane Harnish asked who approved the second phase of development and why didn't they look at the size of the homes that could be built on specific lots? She also asked when plans are submitted by the home owner, shouldn't the size of the house, lot and driveway all be reviewed?

Kenda replied at this stage of development, staff assumes this is the choice the home owner has made when they purchased the home and created the plans. She suggested for planning and development to go back to every property owner who submits plans and double check the specifics, to make sure this is in fact what the home owner requested, is not part of our procedure and would be impossible.

Kenda stated when you submit you application, staff is trusting you have approved all aspects of the home and property layout.

Michelle Oliver asked if the developer or HRM has any responsibility or liability for any of this?

Kenda indicated that neither the developer nor HRM are not responsible. Kenda explained when HRM took over the street, it met all of our standards and criteria as well as the DA. Kenda indicated at this point the developer sold the lots to the builders who met all the national building code criteria, then the properties were sold to the home owners.

Orlando Fantini asked if the number of driveways will change automatically now that the lots are 52' wide compared to 40'.

Kenda replied the number of driveway openings and the number of houses only affect one criteria in the development agreement, that is the requirements for sewage flow monitoring. She reiterated the developer was responsible to submit a minimum of 40' wide lots, and when they submitted their plans they showed the larger lot with shared driveway access. Kenda stated when engineering reviewed the plans, the clause in the DA did not state if the developer went with a larger 40' lots they could have seperated driveways.

Bernie Jurcina asked Kenda if this is something that will be reviewed in the future after seeing the result of this development?

Kenda MacKenzie suggested if another similar development agreement comes through on a minor collector such as this one, then yes, it may be something we look at in the future.

Norton Adderley asked if HRM was responsible to make changes to the curb cuts?

Kenda stated that two summers ago, staff did have a request by the developer to change the driveway widths. Staff proceeded through our normal review and in the end the developer withdrew the request for amendments. Kenda suggested this decision was based on timing and pending lot sales as they needed to start construction and they didn't want to continue through the process. Kenda indicated when an application is withdrawn staff does not continue with the process.

Tony Johnstone asked for Kenda to explain how the street was designated a minor collector?

Kenda suggested at this point it is hard to understand as the street only has 30 homes. She said the minor collectors primary function is traffic flow and if one day this street is extended, the least amount of driveway openings for motorists to be concerned with, the better. Kenda indicated there is nothing that can be done to change the minor collector status of the street.

Tony Johnstone agreed with the rational of staff and stated driving down a street with 15 openings opposed to 30 is undoubtedly less distracting.

Bernie Jurcina asked staff to explain the purpose of the meeting this evening?

Hanita stated the first purpose is to see if residents are interested in a change. She suggested Council needs to know if residents support this. It is also an opportunity to explain to residents the time lines and procedures for a public process of this nature.

Bernie Jurcina asked staff, if residents do not comply with Halifax Regional Municipality's criteria and/or regulations, is there a fine or consequences to be faced?

Kenda indicated residents would be in violation of the streets by-law and would be fined accordingly.

Jane Harnish asked if residents with adjoining properties would be allowed to apply for one permit to make alterations to driveway and sidewalk openings.

Kenda stated this would not be possible, properties have to be reviewed on an individual basis. Staff must ensure each property has valid and reasonable access to the property.

Jane Harnish asked if creating a separation between driveways with a fence or grassed medium would be acceptable?

Hanita indicated reinstating a separation between driveways without actually separating the curb cuts is acceptable.

Jane Harnish asked, in staff's opinion, which way would be most economical?

Hanita suggested a grassed area would be most economical and within the rights of the resident. She stated it may provide the resident with an area for snow piling in the winter.

Michelle Oliver asked where the property line is from the sidewalk? She asked if it began right at the edge of the sidewalk?

Kenda stated this would have to be determined from the individual lot survey plans. She explained the utility easement is for NS Power not HRM.

Hanita suggested anyone who is interested in grassing a separation between driveways has to take into consideration the lot grading.

Group discussion followed regarding easements and right-of-way for resident's clarification.

Michelle Oliver asked who is responsible for sidewalk repair?

Kenda indicated it is the responsibility of HRM. She suggested to residents if repairs need to be done along the street, she would wait until house construction is complete for the entire street.

Michelle Oliver questioned whether sidewalks that are in need of repair could be removed by HRM, at the same time the new driveway openings would be constructed. She suggested this may give an option to cost share with the resident and the Municipality to rectify the driveway issue?

Kenda stated she didn't know of any way that could happen, but would examine the matter further.

Norton Adderley asked Kenda what the process for street/sidewalk repair is?

Kenda indicated there are two processes. The first is when the developer comes in to build the street/sidewalk and ask for the lots to be created, at this time the Municipality goes through and identifies issues such as missing street trees, gutters and cracked sidewalks. The developer at this time must repair the inadequacies or give the Municipality a deficiency deposit. Once the repairs are complete or the deficiency deposits are paid the developer then gives a maintenance security, which the Municipality holds for one year after the lots are created. Staff will then do a second inspection to ensure all damages will be repaired before the developer is no longer responsible. She stated the Municipality then takes over responsibility for the street.

Norton Adderley asked who is responsible for the damage now?

Kenda indicated it is the Municipality's responsibility to ensure the street repairs are completed now.

Hanita asked the residents at this time if they were aware they could erect a fence or build a grassy medium to divide their driveways? Hanita then asked the residents in attendance if they think this solution would be acceptable, or do they see value in following through with the amendments and discharge of a portion of the DA. Hanita suggested following through with the process may allow a greater flexibility in the future for residents.

The consensus from the residents in attendance was that having the option to separate driveways would be best.

Anne Jurcina asked for clarification of the separated driveway opening dimensions.

Kenda indicated residents can have max 16' access.

Ann Jurcina asked if the opening will be separated by a portion of curb?

Kenda stated each resident could have up to a 16' driveway opening with approximately a 4' curb separating them.

Michelle Oliver asked if the 4' curb separation would have to be constructed or could the residents decide if they would like to keep the attached driveway openings free of any curb?

Hanita indicated once the driveways are widened, they are considered separate. She stated policy would not support a driveway opening that size and there would have to be a curb constructed between them.

Michelle Oliver asked if staff knew the cost to separate and construct the 4' curb?

Kenda suggested she was unsure of the cost and would have to look into this.

Group discussion followed to clarify policy relating to driveway openings.

Michelle Oliver asked if the costs for splitting the driveways and new curb being constructed would be split equally by neighbors sharing driveway access?

Kenda suggested this is something that would have to be agreed upon by both parties. She also suggested getting a cost share in writing would probably be a good idea.

Hanita indicated it might be possible for one resident to move their driveway over enough to get the new curb constructed in front of their property if the adjacent neighbor is not willing to make modifications to their driveway.

Kenda stated if the consensus of the meeting tonight is to proceed with discharging portions of the DA, to give residents the freedom to make their own driveway layout decisions in the future, staff will proceed with this amendment.

An unknown speaker asked if the whole DA was going to be discharged or just the part relating driveway requirements?

Hanita explained if staff were going to go through the process of amending the Land use by-law, then they were going to have to create a separate section under the R-1 zone for the Morris Lake Estates Subdivision. Hanita suggested if the Land use by-law is going to be amended, the more provisions that can be discharged, in her opinion the better. Hanita then explained there are parts of the development agreement that cannot be discharged.

Kenda gave a brief history of the sewage treatment in the area and the reasons why this part of the development agreement can not be discharged.

Hanita indicated staff is doing a full review of the development agreement to ensure all aspects that may potentially be looked at to change in the future will be taken into consideration at this time.

Michelle Oliver asked about a half completed trail leading down to the lake, she wanted to know if this was the responsibility of the developer or the Municipality to finish.

Kenda indicated she was unsure of the answer and would have to look into the matter further.

Tony Johnstone stated Armco began the trail and never finished the work.

Kenda stated she did not know if in the original agreement the developer or Municipality was responsible to finish the trail.

Tony Johnstone asked if the Municipality would ever sell the parkland in that area for development?

Kenda suggested the Municipality is not interested in parting with it's parkland and residents do not have to worry about that. She indicated parkland sale would have to go through public process.

Hanita explained the area is zoned CDD now, it is possible when the LUB is amended, for staff to apply the R-1 zone to the houses and the P zone to the Parkland.

Kenda indicated there is a portion of land still owned by the developer that leads down to the lake. She stated there has been no future development plans submitted by them at this time.

Residents had a brief discussion regarding the DA stating, for most, this is the first time they have ever seen the development agreement.

Kenda stated their lawyers should have been required to show this document to you, at the time of purchasing the home. She indicated a DA is tied to your deed.

Ann Juricna asked staff to clarify which parts of the DA are being considered for discharge?

Kenda went over all the portions that were under consideration to be discharged and continued her explanation with the portions of the DA that could not be discharged and followed up with an explanation as to why this was the case.

Hanita in closing gave a summary of her understanding of residents views (that is was preferable to amend the LUB and discharge parts of the DA)

Residents were in agreement with her understanding.

Bernie Juricna suggested the small turn out of residents should be considered when decisions are made regarding these changes. In his opinion he feels if changes were made many more residents would be concerned and would want their concerns to be heard.

Councillor Karsten indicated there will be a public hearing before any decisions are made. He stated if there are residents that wish to speak to this issue they may do so formally at the public hearing.

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Hanita thanked everyone for their time and closed the meeting.

3. **ADJOURNMENT**

Meeting adjourned at approximately 9 p.m.

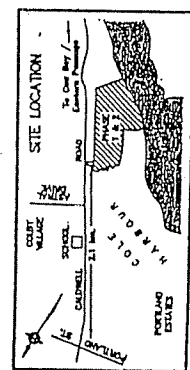
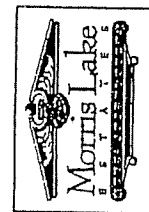
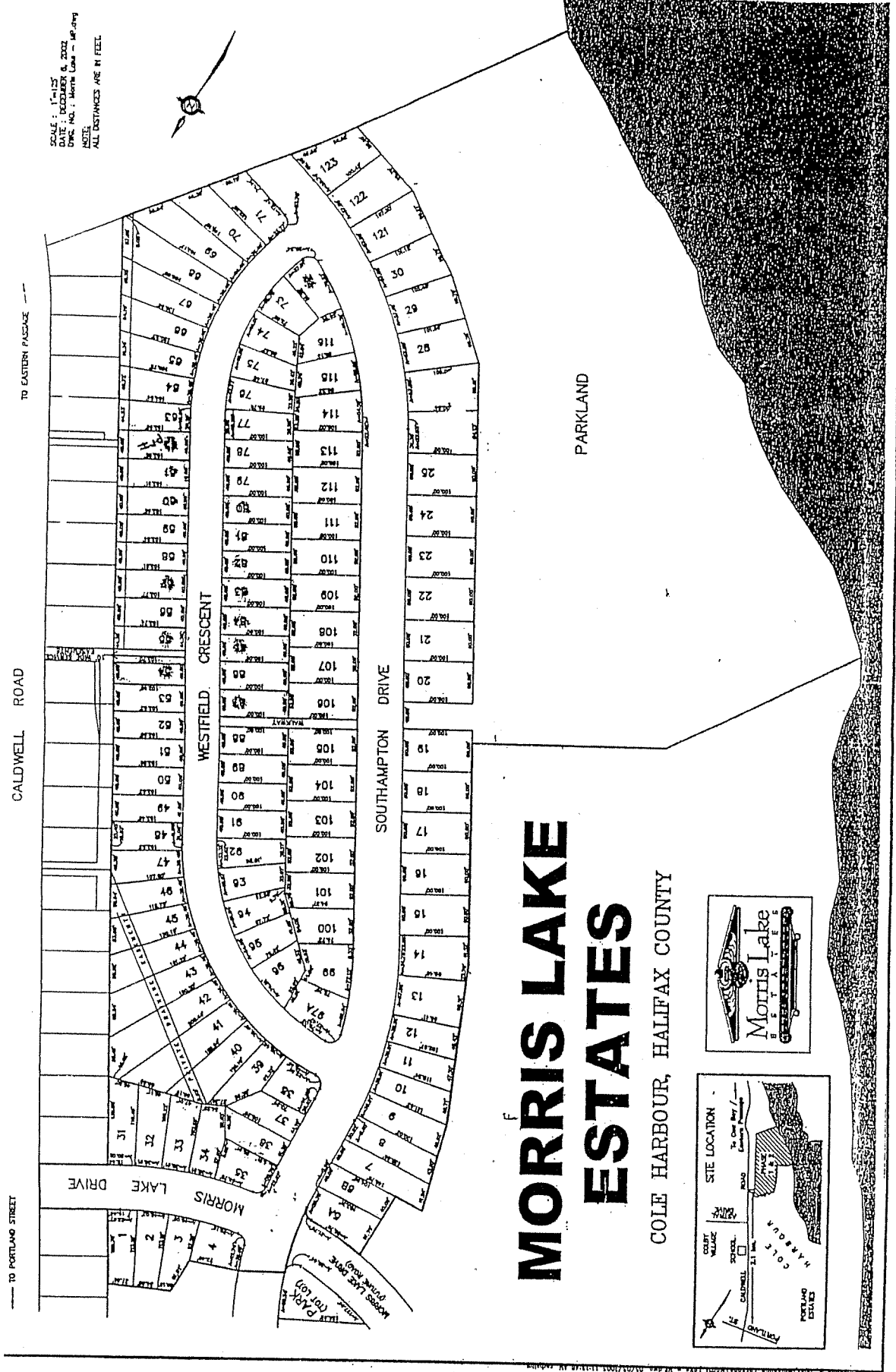
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Case # 00777

Map 1