

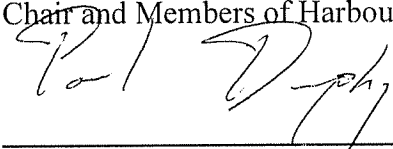


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
December 4, 2008

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:



Paul Dunphy, Director of Community Development

DATE: November 17, 2008

SUBJECT: Case 01202: Amending Agreement - Portland Hills

ORIGIN

An application by 4340973 Canada Inc. for a substantial amendment to the initial Portland Hills development agreement (Case 00251).

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give Notice of Motion to consider the proposed amending agreement set out in Attachment A of this report and schedule a public hearing;
2. Approve the proposed amending agreement to increase the number of multi-unit dwelling units permitted under the development agreement for Phase 1 of Portland Hills from 280 to 285 in order to permit 43 dwelling units at 74 Bellbrook Crescent, as set out in Attachment A of this report; and
3. Require the agreement be signed and delivered within 120 days, or any extension thereof granted by Harbour East Community Council on request of the applicant, from the date of final approval of said agreement by Harbour East Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

During the review for this application it was identified that, as a result of an administrative oversight, HRM had issued permits for 284 multi-unit dwelling units within Phase 1 of Portland Hills even though the development agreement permitted a maximum of 280 multi-unit dwelling units.

The subject lands are located within the Portland Hills Comprehensive Development District (CDD). Development of the subject phase of Portland Hills was enabled by development agreement (Cases 00251 and 00554). Amendments to the existing development agreement require a public hearing and must be approved by Council in accordance with the *Municipal Government Act*.

Location, Designation, and Zoning

- Portland Hills is located in Dartmouth and is generally bounded by Portland Street, Portland Estates, Morris Lake and the Innishowen Subdivision (Map 1);
- 74 Bellbrook Crescent is designated Residential and zoned Comprehensive Development District (CDD) under the Dartmouth Municipal Planning Strategy (MPS) and Land Use By-law (LUB) (Maps 2 and 3);
- As a CDD zoned area, all development in Portland Hills must be approved by Council through the development agreement process; and
- 74 Bellbrook Crescent (PID 41224924) contains an apartment building that was permitted to contain a maximum of 42 dwelling units and 1 overnight guest suite. The guest suite has been converted to a dwelling unit so that the building now contains 43 dwelling units.

Enabling Policy

Policy H-3 of the Dartmouth MPS establishes the CDD Zone and enables Council to consider applications for a mixed residential development by development agreement. The main intent of the policy is to enable large areas of undeveloped land within the Residential designation to be developed in a comprehensive manner.

Proposal and Previous Application

An application by Edgewater Investments to increase the number of units permitted at 74 Bellbrook Crescent from 40 to 41 was approved by Council on September 10, 2008. However, Edgewater Investments sold the property to 4340973 Canada Inc. shortly after submitting the application and the new owner did not authorize Edgewater to act on their behalf. In addition, the original submission contained inaccurate information regarding the number of dwelling units in the building. While the application indicated that the building contained 41 units, HRM had already issued permits for a 42 unit building with a guest suite. The guest suite has since been converted to a dwelling unit, bringing the total number of units in the building to 43. As a result, the previous amending agreement has not been entered into by either party.

A new application on behalf of the current land owner, 4340973 Canada Inc. was submitted to amend the development agreement to authorize the existing 43 dwelling units within the existing multi-unit building at 74 Bellbrook Crescent. Upon review of the application it was identified that permits had been issued for 284 multi-unit dwelling units within Phase 1 even though the

development agreement permits a maximum of 280 units. The 4 extra units are in addition to the guest suite that the Developer has applied to recognize as a dwelling unit. As a result, the proposed amending development agreement set out in Attachment A would increase the maximum number of multi-unit dwelling units permitted in this phase of Portland Hills from 280 to 285.

DISCUSSION

Staff have reviewed the application based on all applicable policies of the Dartmouth MPS, which are included as Attachment B to this report. The following issues have been identified for more detailed discussion.

Housing Mix and Density: The original development agreement for Phase 1 of Portland Hills enabled a variety of dwelling types, including a maximum of 200 multi-unit dwelling units. The agreement was previously amended in 2003 (Case 00554) to increase the number of multi-unit dwelling units permitted in Phase 1 of Portland Hills from 200 to 280. Policy H-3B of the Dartmouth MPS indicates that apartments should not exceed 40%-50% of the total number of units within a CDD and that residential density should generally not exceed 8 units per acre. Including the additional 5 units proposed under this application, apartments would constitute approximately 36% of the total of 783 dwelling units subject to the first development agreement for Portland Hills and the residential density would be 6 units per acre, both within the guidelines established under Policy H-3B.

Given that the full range of dwelling types are permitted within the development, and the building in question is already developed, staff are of the opinion that the addition of 5 dwelling units is consistent with the intent of the MPS and the housing mixture as contained in the existing development agreement. Furthermore, with the addition of these units the development would still comply with the guidelines for density and total apartment units as set out in the Dartmouth MPS.

Compatibility: The proposed amending agreement requires that no alterations to the size, height and appearance of the existing multi-unit buildings shall be permitted in relation to the proposed increase in multiple-unit dwelling units. Given that there would be no change in the appearance of the buildings and the proposed development agreement requires that all provisions related to parking, landscaping, amenity space, etc. required pursuant to the existing development agreement and the Dartmouth Land Use By-law be met, staff are of the opinion that the proposed amending agreement ensures no discernable impact, either visually or functionally, to the surrounding area.

Conclusion: It is the opinion of Staff that the proposed amendment to the Portland Hills development agreement set out in Attachment A is consistent with the intent of the MPS for residential development within the master plan area and with the existing development agreement. The full range of housing types are permitted within Portland Hills under the existing development agreement.

The addition of the proposed dwelling units should not impact upon the surrounding properties and would maintain the existing exterior of the multi-unit buildings. Therefore, staff recommend that Harbour East Community Council approve the proposed amending development agreement, included as Attachment A of this report.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities, and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the agreement can be carried out within the approved budget with existing resources.

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

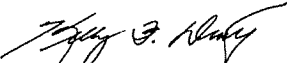
1. Council may choose to approve the proposed amending development agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed amending development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require a second public hearing.
3. Council may choose to refuse the proposed amending development agreement, and in doing so, must provide reasons based on a conflict with MPS policies.

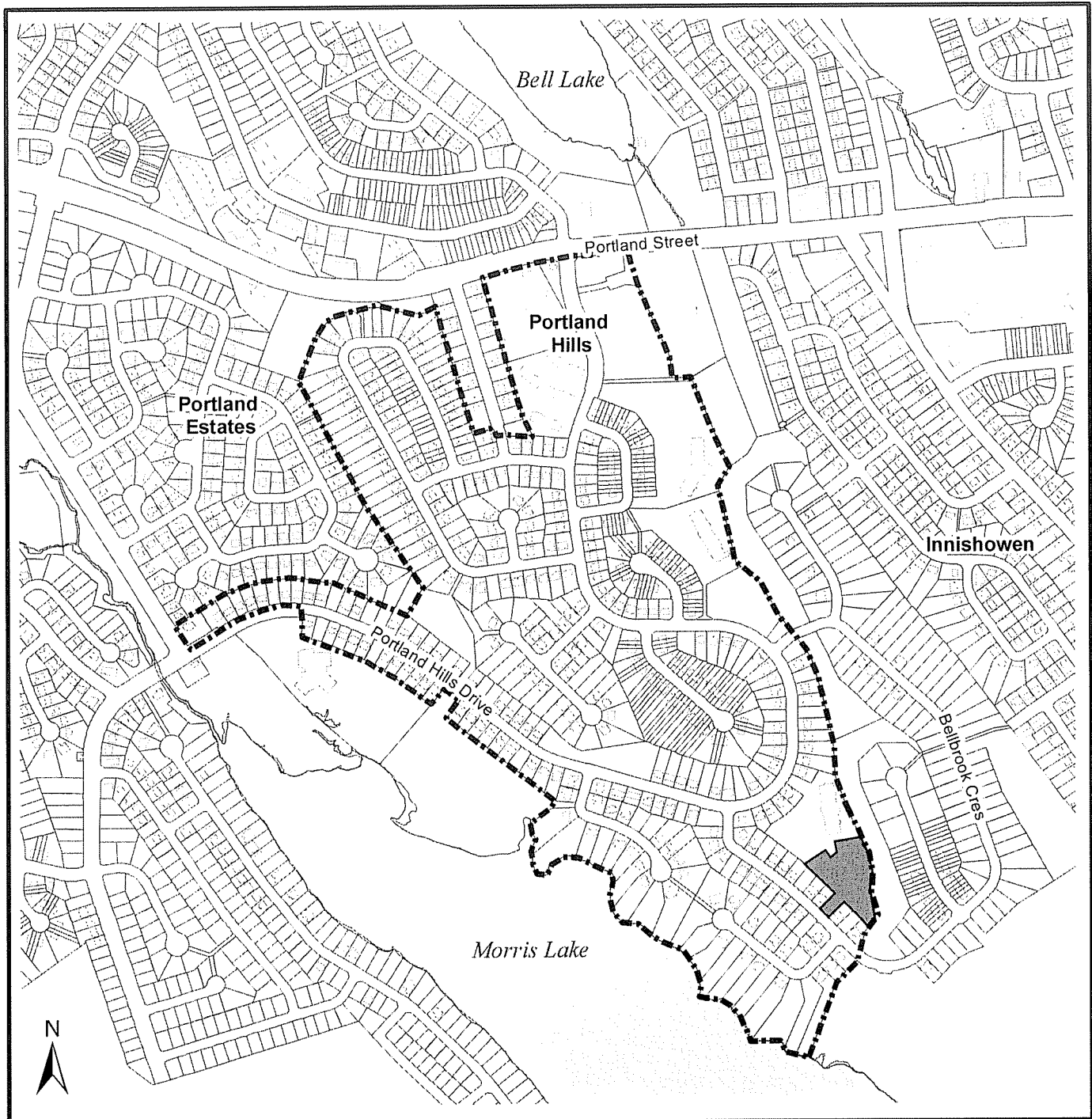
ATTACHMENTS

Map 1	Subject Area Map - Portland Hills Phase 1
Map 2	Zoning and Notification Map
Map 3	Generalized Future Land Use Map
Attachment A	Proposed Amending Development Agreement
Attachment B	Excerpts from the Dartmouth MPS


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


Report Prepared by : Joseph Driscoll, Planner, 490-3991

Report Approved by: 
Kelly Denty, Acting Manager of Planning Services, 490-6011



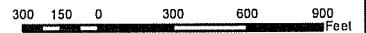
Map 1 Subject Area Map: Portland Hills Phase 1

 Subject Property

 Portland Hills Phase 1

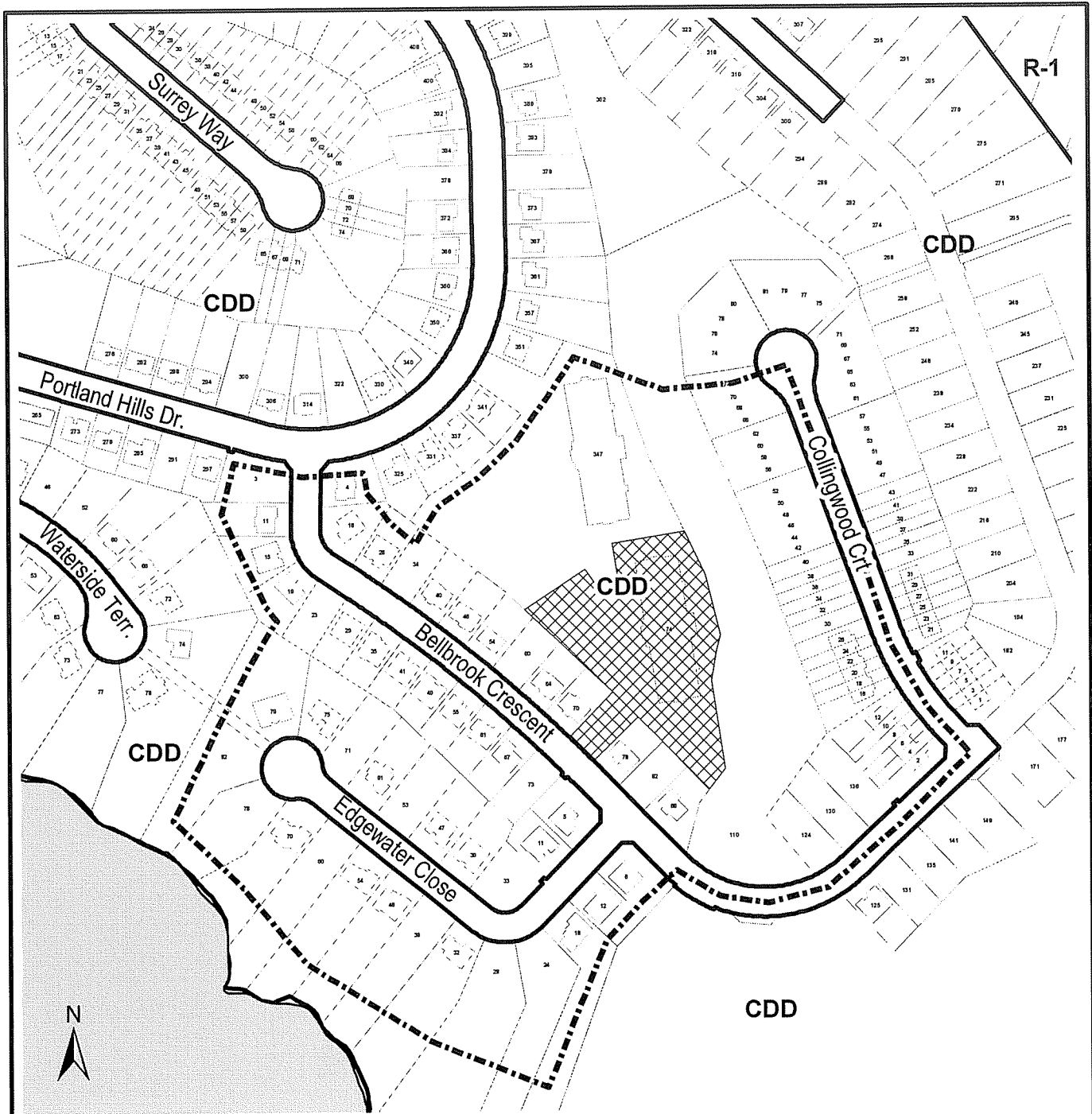
Dartmouth & Cole Harbour/
Westphal Plan Areas

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COMMUNITY DEVELOPMENT
PLANNING SERVICES





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

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



Map 2 Location and Zoning

74 Bellbrook Crescent

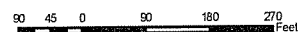
-  Subject Property
-  Proposed Notification Boundary

Dartmouth Plan Area

Zone

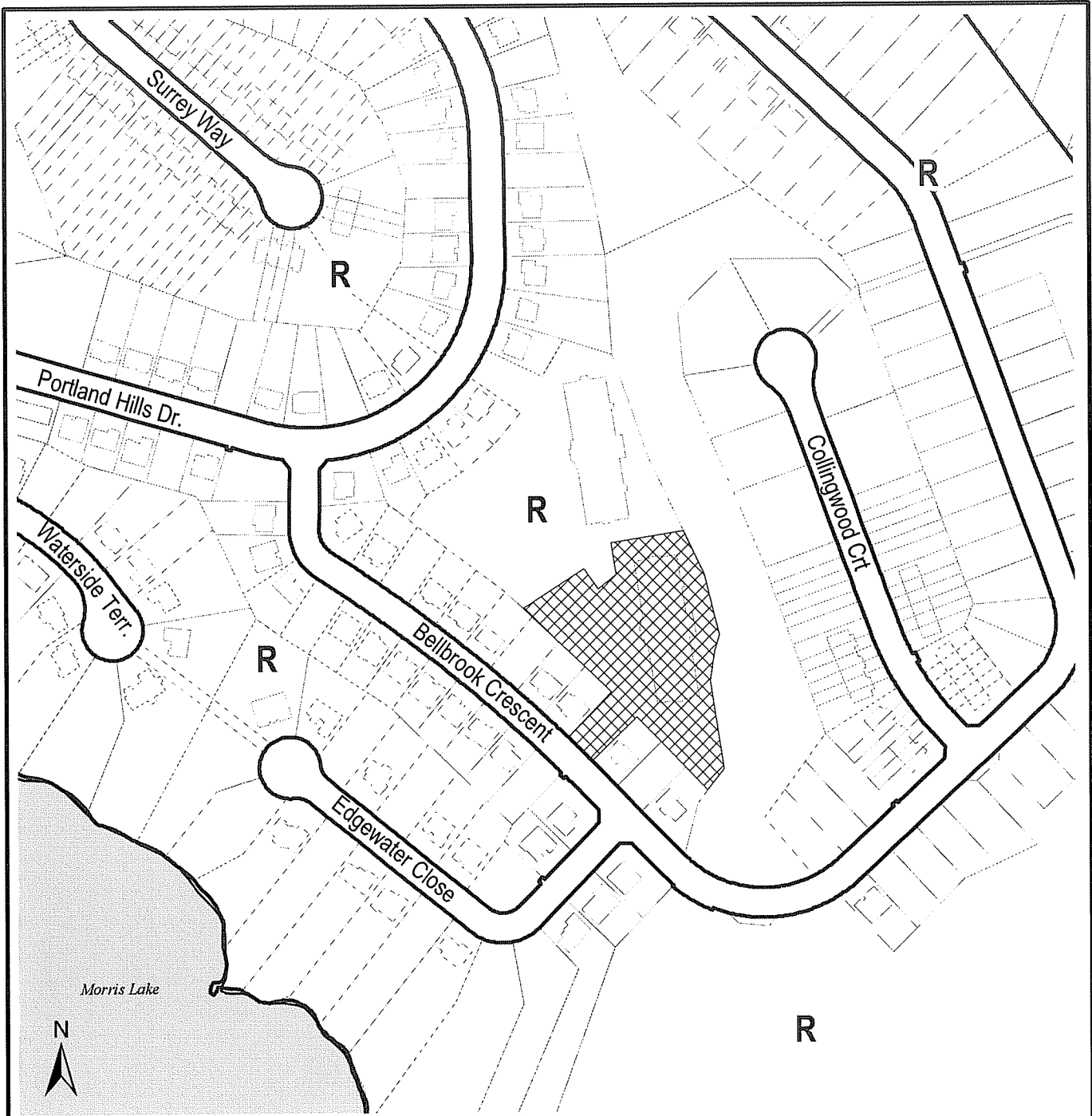
- R-1 Single Family Residential
- CDD Comprehensive Development District

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PLANNING SERVICES




This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Land Use By-law area.

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Map 3 Generalized Future Land Use

74 Bellbrook Crescent

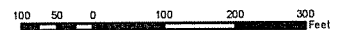
 Subject Property

Designation

R Residential

Dartmouth Plan Area

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This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Dartmouth Plan area

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

Attachment A: Proposed Amending Development Agreement

THIS AMENDING AGREEMENT made this day of , 2008,

BETWEEN:

4340973 CANADA INC.

a body corporate, in the Halifax Regional Municipality,
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 certain lands located at 74 Bellbrook Crescent, Dartmouth (PID 41224924) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Harbour East Community Council approved an application by Clayton Developments Ltd. to enter into a development agreement to permit a mixed residential development known as Portland Hills, and which includes the Lands subject to this amending agreement, which said development agreement was registered at the Registry of Deeds in Halifax as Document Number 26019 in Book 6615 at Pages 657 - 695 and referenced as Municipal Case Number 00251 (hereinafter called the "Existing Agreement");

AND WHEREAS Halifax Regional Municipality previously amended the Existing Agreement by entering to an amending agreement with Clayton Developments Ltd. on February 27, 2004, referenced as Municipal Case Number 00554 to permit an increase in the number of apartment units permitted on the Lands and to enable modifications to the phasing schedule, said agreement being recorded at the Registry of Deeds at Halifax as Document Number 10022 in Book 7633 at Pages 384 - 390 (hereinafter called the "First Amending Agreement");

AND WHEREAS the Developer wishes to further amend the Existing Agreement to permit increase the number of multi-unit dwelling units permitted under the Existing Agreement to 285 in order to permit 43 dwelling units in the existing building located at 74 Bellbrook Crescent, which is located within the "Lands" governed by the Existing and First Amending Agreements, pursuant to the provisions of the Municipal Government Act, (hereinafter called the "Second Amending Agreement");

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on _____, 2008, referenced as Municipal Case Number 01202;

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

-
1. The Existing Agreement be amended to increase the maximum number of multi-unit dwelling units permitted within Phase 1 of Portland Hills from 280 to 285 in order to permit 43 dwelling units at 74 Bellbrook Crescent, provided that the following conditions are met, to the satisfaction of the Development Officer:
 - (a) No more than 43 dwelling units shall be permitted on the Lands;
 - (b) The exterior appearance, size, and height of the existing building at 74 Bellbrook Crescent shall not be modified to enable development of the additional dwelling units;
 - (c) Any modifications relating to elements such as, but not limited to, parking, landscaping, and amenity space required pursuant to the Existing Agreement, First Amending Agreement and the Dartmouth Land Use By-law and resulting from the additional dwelling unit shall be met to the satisfaction of the Development Officer; and
 - (d) All other terms and conditions of the Existing Agreement and the First Amending Agreement shall remain in effect, except where specifically varied by this Second Amending Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2008.

SIGNED, SEALED AND DELIVERED) **4340973 CANADA INC.**
 in the presence of)
) Per: _____
 _____)
)

SEALED, DELIVERED AND)
 ATTESTED to by the proper)
 signing officers of Halifax Regional) **HALIFAX REGIONAL MUNICIPALITY**
 Municipality duly authorized)
 in that behalf in the presence) Per: _____
 of) **MAYOR**
 _____)
) Per: _____
) **MUNICIPAL CLERK**

Attachment B: Excerpts from the Dartmouth MPS

- Policy H-3 It shall be the intention of Council to establish a comprehensive development district (CDD) within the land use by-law. A CDD may be applied to vacant lands which have a minimum area of ten acres and which are located within the development boundary. It is the intention that a CDD shall be primarily a residential development and shall provide a mix of residential uses. Within the CDD, Council may consider permitting any residential use and institutional, commercial and recreational facilities to serve the area.
- Policy H-3B In addition to the provisions of Policy H-3A, Council shall consider the following prior to approving any agreement within a CDD:
- (a) the adequacy of the mix of residential uses to provide a range of housing options in terms of lot characteristics, building and dwelling type and design;
 - (b) the general guide that the maximum number of apartment units shall not exceed 40% of the total actual number of units within the CDD. Such figure may be increased to a maximum of 50% provided clear advantages are gained within the CDD by means of increased parkland or open space, increased areas of undisturbed terrain and vegetation, decreased amount of impermeable surfaces and/or improved environmental protection or an improved transportation system. (RC - March 22, 2005 E - April 23, 2005)
 - (c) the location and concentration or dispersal of multi-unit residential buildings with respect to impacts on street networks, abutting uses and the physical environment;
 - (d) the general guide of a maximum residential density of 8 units per gross acre, excluding acreage devoted to commercial use;
 - (e) the compatibility of various land uses, within and adjacent to the development, and measures proposed to integrate and buffer uses. Compatibility refers to the type of land use, dwelling (housing) type and size and height of the development. Buffering refers to measures that mitigate impacts on adjacent uses, such as adequate separation distances, retention of existing vegetation and the installation of suitable screening features such as new vegetation, berms and or fencing;
 - (f) the adequacy of measures to minimize disruption of existing terrain, vegetation, watercourses and other physical features and to mitigate against the potential effects of disruption;
 - (g) the hours of operation of non-residential uses, including business uses located in dwellings;
 - (h) the safety and efficiency of all transportation systems, including the effects of driveways to and traffic from abutting uses to streets and walkways including the adequacy of pedestrian facilities (sidewalks/walkways);

- (i) the general guide that street frontage for single detached development not be less than forty (40) feet and that the total number of single detached lots having street frontage less than the minimum requirement as prescribed by the land use by-law and/or the subdivision by-law (Regional Council-January 29, 2002, Effective-March 2, 2002) not exceed twenty-five percent of the total number of single detached units within the CDD;
- (j) that the size and type of commercial uses be designed to serve the shopping needs of residents within the local area, rather than the community or the region. Commercial uses to be considered are to be compatible with and sympathetic to the character of the surrounding residential community in terms of location, use, scale, design and traffic impacts. Uses to be considered may include, but not limited to, offices, financial institutions, convenience shops, drug stores, personal service outlets (dry cleaning depot, laundry mats, hair salons, tailors and so on), small food stores, gas bars, and restaurants (excluding drive-throughs). Uses not to be considered include, but are not limited to department stores, home improvement centres, drinking establishments, adult entertainment uses and large grocery stores;
- (k) Notwithstanding criteria “j”, larger commercial development containing a wider range of uses may be considered for lands adjacent Highway 111 at the proposed Woodside interchange;
- (l) within the Morris-Russell Lake area, all new development shall adhere to the Morris Lake Watershed Management policies as contained in Policies ML-1 to ML-23 as applicable;
- (m) the impact the proposed development may have on the quality of life of existing neighbourhoods, and notwithstanding criteria (b),(d),(i),and (j), Council may reduce the maximum allowable under each criteria in order to protect the quality of life of residents within existing neighbourhoods;
- (n) any and all other matters applicable to the subdivision and servicing of the lands, the provision of parkland and the effects of the development on community services as set out in policy IP- 1(c) and, for specific uses which are otherwise subject to development agreements, the specific considerations required by the text and policies of this Plan; and