

**TO:** Chair and Members of Harbour East Community Council

**SUBMITTED BY:**

  
\_\_\_\_\_  
Paul Dunphy, Director of Community Development

**DATE:** December 9, 2008

**SUBJECT:** **Case 01174: Amendment to Sheppard's Island Development Agreement, Dartmouth**

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**ORIGIN**

- May 29, 2008, application by Harbour Isle Halifax Incorporated for non-substantive amendments to Sheppard's Island Development Agreement (now known as Harbour Isle) situated at 675 Windmill Road, Dartmouth.
- Staff Report prepared, dated July 25, 2008, on the non-substantive amendments
- August 7, 2008, Harbour East Community Council (HECC) approved the requested non-substantive amendments
- In November 2008, HRM Legal advised HECC that the approved Amending Agreement can not be signed
- December 5, 2008, the application is revised to consider previous changes as substantive amendments to Sheppard's Island Development Agreement.

**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 as set out in Attachment A of this report to permit changes (site plan and exterior elevations) to Building "A"; 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**

On April 5, 2007 Harbour East Community Council entered into the Sheppard's Island development agreement to allow for a residential condominium development. The Agreement provided for three condominium apartment buildings ranging from 6 to 12 storeys in height and containing a total of 255 dwelling units (Figures 1, 2 & 3). At present, no construction activity has occurred on the lands.

Harbour Isle Halifax Incorporated have requested amendments to the Sheppard's Island development agreement to allow for changes to the site plan and exterior elevations for Building "A" of the development (Attachment A Schedules).

### **Proposed Amendments**

Harbour Isle Halifax Incorporated has requested substantive amendments to their existing development agreement to enable changes to Building "A". The requested changes are as follows:

- i) Site Development Plan: reduction in the building foot print and the number of units
- ii) Landscaping Plan: additional landscaping and expanded broadwalk
- iii) Building Elevations/Design: re-design of the building to a modern glass structure that contains two (2) additional storeys.

The following table compares the proposed changes to Building "A" relative to the building permitted under the existing development agreement:

***Table 1: Comparison of Design Criteria for Building "A"***

<b>Criteria</b>	<b>Building "A"</b>	<b>Proposed Building "A"</b>
<b>Design Style</b>	Traditional: masonry finished exterior	Post-Modern: mirrored glass exterior
<b># of Buildings</b>	3	3
<b># of Storeys</b>	7	9
<b>Height</b>	95 feet	115 feet
<b>Roof Type</b>	pitched roof	flat roof
<b># of Units</b>	135	110
<b>Footprint</b>	45,100 sq. feet	12, 800 sq. feet
<b>Landscaping</b>	vegetation, walkways, broadwalk	vegetation, walkways, expanded broadwalk

**Location/Designation/Zoning**

- The lands encompass three properties owned by Harbour Isle Halifax Incorporated
- Lands extend southward from the intersection of Windmill Road and Ralston Avenue to Wright's Cove in the Bedford Basin (see Map 1)
- Size: 10.6 acres: two mainland lots: 8.8 acres of which 3.2 acres are water lots  
Sheppard's Island: 1.8 acres
- Designation: Residential
- Zoning: R-3 (Multiple Family Residential) Zone (Medium Density)

**Existing Development Agreement**

Under the Sheppard's Island development agreement, Building "A" will be constructed as a 7 storey traditional masonry apartment building containing 135 units surrounded by landscaping and a broadwalk (Figure 1).

*Non-Substantive Matters:* The development agreement outlines what issues can be considered as non-substantive matters which may be approved by resolution of Council. Non-substantive matters are those matters deemed to be of a non-contentious nature and within the reasonable interpretation of staff and Council without requiring consultation with the public.

Specifically, sub-section 5.1(1) indicates that minor changes to the Site Development Plan, the exterior design of the buildings, and the Landscaping Plan can be considered by Council (Attachment B). However, HRM Legal Services have determined that sub-section 5.1(1) is invalid as it is inconsistent with provisions of the *Municipal Government Act*. Therefore, the requested changes proposed by Harbour Isle Halifax Incorporated in the July 25, 2008 staff report as a non-substantive matter (under sub-section 5.1(1)) and approved by Council must now be considered as a substantive change to the agreement and requires a public hearing. HRM Legal Services is in the process of preparing a separate report that will provide more detail on the issue and the status of Council's previous motion relative to the requested amendments.

**Enabling Policy**

Under the Residential designation, Council can consider the proposed amending agreement in accordance with Policy H-21, as shown in Attachment C. Policy H-21 is a site specific policy which allows for multi-unit residential projects by development agreement. In addition to Policy H-21, such projects must also comply with policies IP-5 (evaluation criteria for all multi unit developments) and IP-1(c) (general evaluation criteria).

**DISCUSSION**

Staff have reviewed this application relative to applicable plan policy and determined that it is consistent with the intent of the Dartmouth MPS (Attachment D). The following issues have been identified for more detailed discussion.

**Site Development /Landscaping Plans:**

The proposed amendments to the existing Site Development /Landscaping Plans are considered by staff as enhancements to the provisions of development agreement. The amendments will enhance the impact of the development while maintaining the intent of the agreement by:

- reducing the building foot print by 32,300 sqft., however, the developer has indicated that they plan to redevelop this area in the future which will require Council's approval;
- reducing the number of units from 135 to 110 (25 units);
- increasing landscaping measures around Building "A"; and
- expanding upon the broadwalk system along the edge of Halifax Harbour.

**Building Elevations/Design:**

The proposed amendments to the building elevations for Building "A" and the impact of the change on the overall design of the development is significant. The proposed Building "A" is a curvilinear glass design that contains good architectural design features (Attachment A Schedules). The building will be taller (20 feet), flat roofed (not pitched), and contain 2 additional storeys which staff are of the opinion should not impact adjacent developments.

The proposed changes significantly deviate from the comprehensive design of the development as outlined in the existing agreement. The Sheppard's Island agreement allows for three multi-unit buildings on the lands subject to a comprehensive design approach based upon buildings that are more traditional (rectangular) in design and finished with masonry.

Despite the significant design change for Building "A", plan policy does not require all buildings within the development to be of the same architectural design, only to consider noise mitigation and compatibility issues with existing residential development. The amending agreement does not exempt the revised Building "A" from complying with the existing noise mitigation measures and the development does not abut any residential development.

**Site Redevelopment:**

In additions to the amendments to the development proposed under this application, Harbour Isle Halifax Incorporated is considering, via a pre-application, further changes to their development such as the design/architecture of buildings, type of uses, and layout (including the lands not required for the revised Building "A"). The developer is also considering the inclusion of additional lands to the site.

**Public Information Meeting /Area of Notification:**

The public information meeting was waived by the local Councillor. Should Council decide to hold a public hearing, in addition to published newspaper advertisements, property owners in the area shown on Map 1 will be sent written notification.

**Summary:**

The proposed changes to the Sheppard's Island development are consistent with plan policy and should not negatively impact the proposed development on site nor adjacent development. Therefore, Staff recommend that Council approve the attached amending agreement.

**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 the 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 requested amending agreement. This is the recommended course of action for the reasons outlined above.
2. Council may choose to approve the proposed amending 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 agreement. Pursuant to the *Municipal Government Act*, Council is required to provide reasons to the applicant justifying this refusal, based on policies of the MPS.

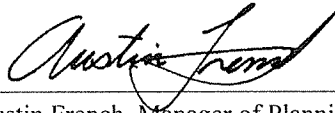
**ATTACHMENTS**

Map 1	Zoning & Location
Figure 1	Existing Development Agreement Site Plan
Figure 2	Existing Development Agreement Building A Conceptual Elevation
Figure 3	Existing Development Agreement Building A, B and C Elevations
Figure 4	Existing and Proposed Site Plans for Building "A"
Figure 5	Existing and Proposed Elevation and Plan View Building "A"
Attachment A	Proposed Amending Development Agreement

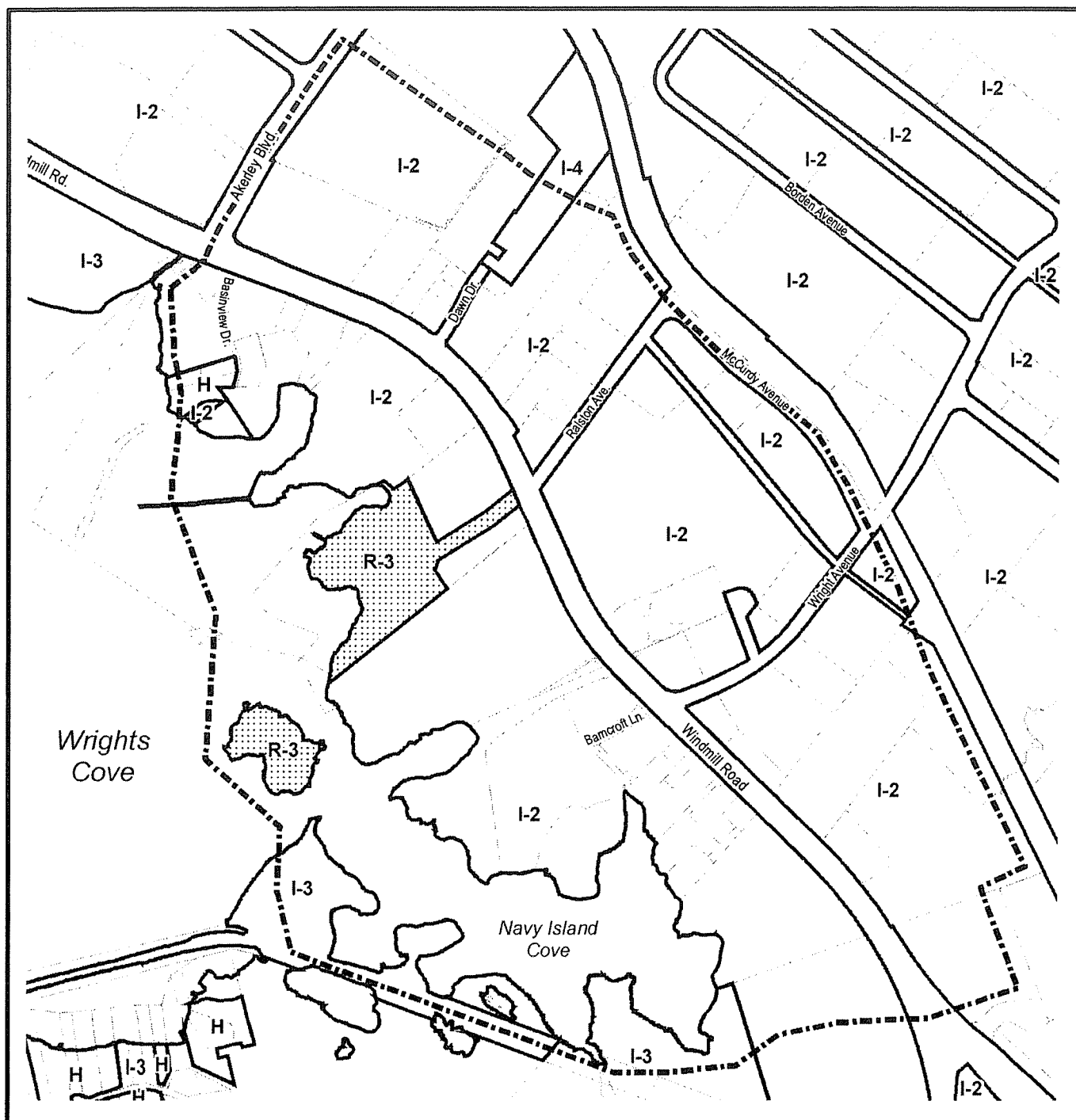
Attachment B	Textual Excerpts from Existing Development Agreement
Attachment C	Excerpts of the Dartmouth Municipal Planning Strategy
Attachment D	Dartmouth Municipal Planning Strategy Policy Criteria Evaluation

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 : David Lane, Senior Planner, 490-5719





Report Approved by: Austin French, Manager of Planning Services, 490-6717



## Map 1 Zoning & Location

Harbour Isle

 Subject Properties

 Notification Area

Dartmouth Plan Area

### ZONE

- R-3 Multiple Family Residential
- H Holding Zone
- I-2 General Industrial Zone
- I-3 Light Industrial Zone
- I-4 Salvage Zone

**HALIFAX**  
REGIONAL MUNICIPALITY

Community Development  
Planning Services

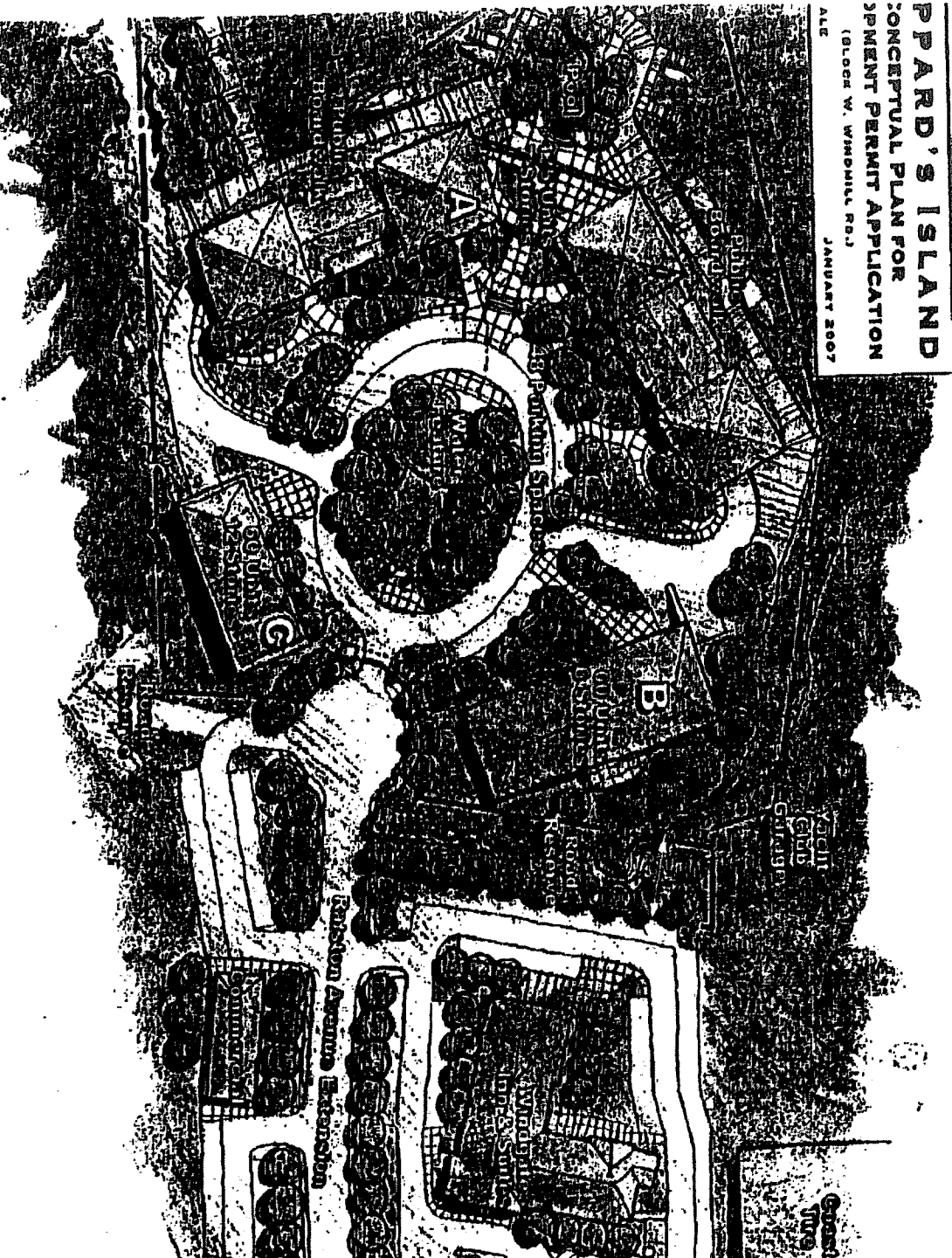
0 145 290 580 870 Feet

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

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

**PARADISE ISLAND**  
**CONCEPTUAL PLAN FOR**  
**PERMIT APPLICATION**  
 (BLOCK W. WINDMILL RD.)

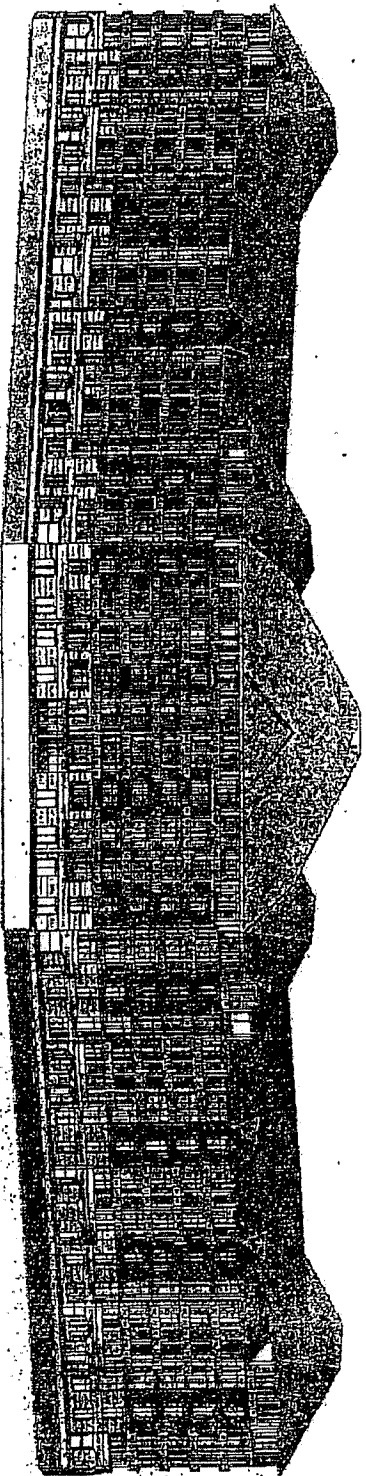
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**Figure 1 Existing Development Agreement Site Plan**

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**Figure 2 Existing Development Agreement Building "A" Conceptual Elevation**

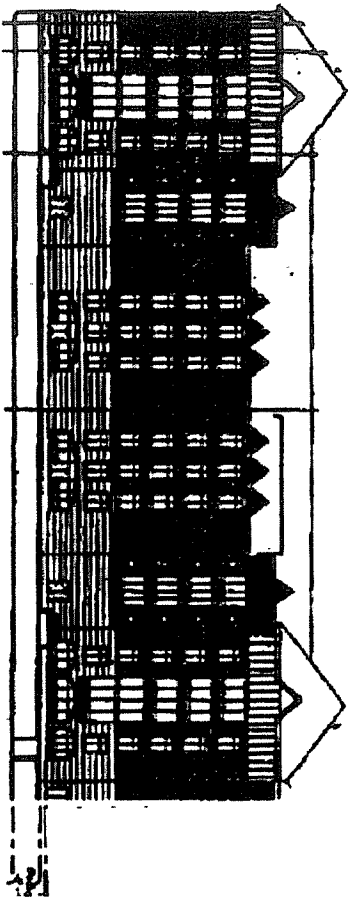
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Dec. 9, 2008

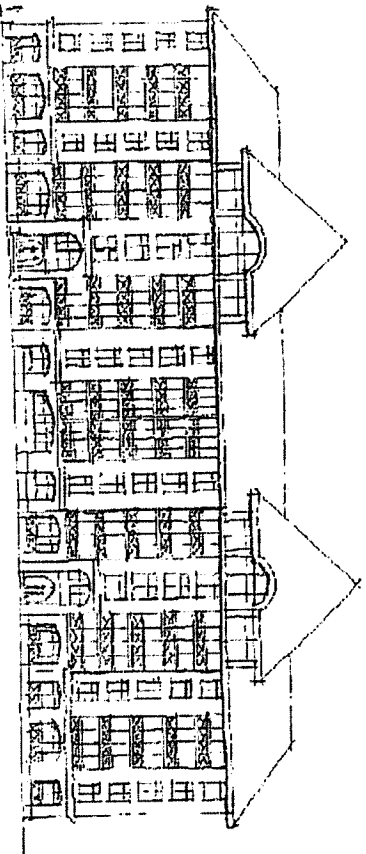
Case 01174

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Building "A"



Building "B"



Building "C"

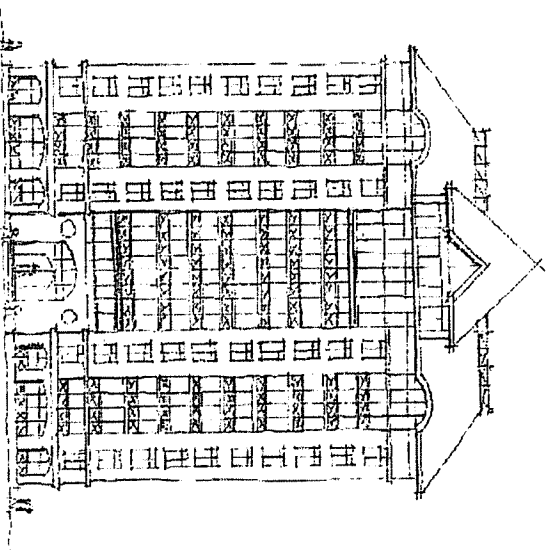


Figure 3

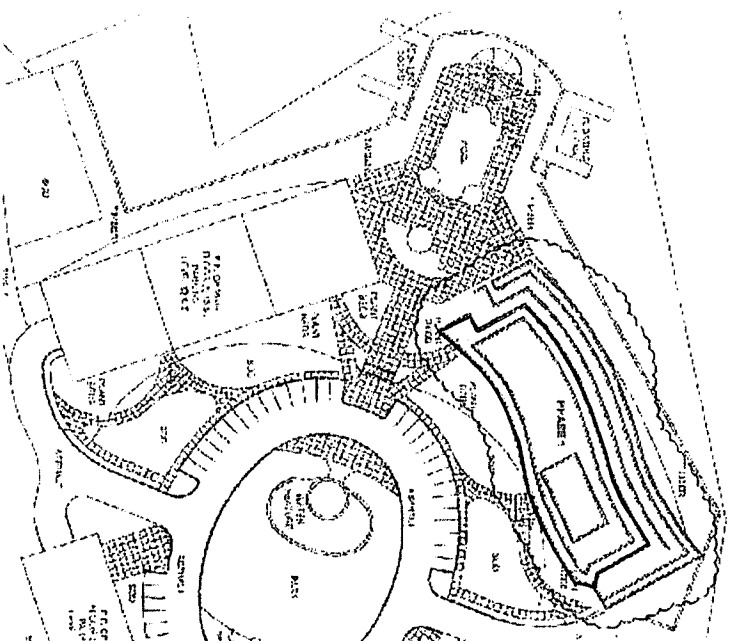
Existing Development Agreement "A", "B", and "C" Elevations

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# Existing



# Proposed



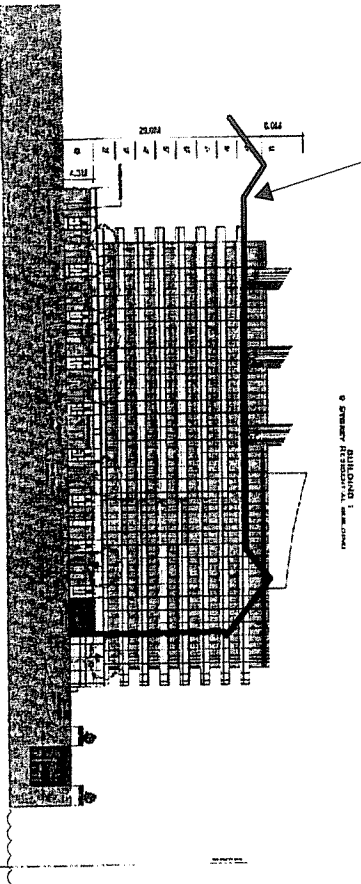
**Figure 4 Existing and Proposed Site Plans for Building "A"**

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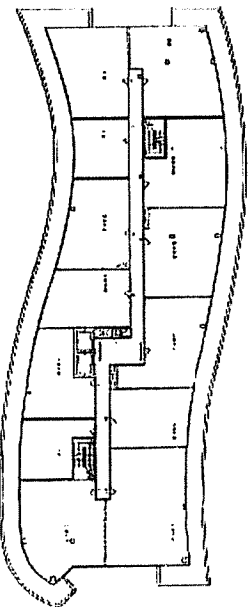
# Existing



## Outline of Existing Building



## Proposed



**Figure 5 Existing and Proposed Elevation and Plan View**  
**Building "A"**

HRM does not guarantee the accuracy of any base map information on this map.



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

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1. The Agreement be amended by adding the attached Schedules F-1 and F-2 to Schedule F and thereby providing for changes to Building "A" on the Site Plan.
2. The Agreement be amended by replacing Schedule G with the attached Schedules G-1, G-2 and G-3 and thereby providing for changes to the exterior of Building "A".
3. The Agreement be amended by adding a new section immediately following subsection 4.1(5) as follows:

"4.1(5a) Notwithstanding subsection 4.1.(5), the exterior of Building "A" shall consist predominantly of pre-cast concrete, steel and glass. The construction details shall incorporate adequate soundproofing measures to the satisfaction of the Development Officer including, as a minimum, double glazed windows and central air conditioning."
4. The Agreement be amended by adding a new sub-section immediately following Sub-section 4.1(8) as follows:

4.1(8a) The Developer shall provide a revised Schedule J "Planting (Landscaping Plan)" to the Development Officer for approval prior to the issuance of a Construction Permit for Building "A".
5. The Agreement be amended by deleting sub-section 5.1.1

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009.

SIGNED, SEALED AND DELIVERED	)	HARBOUR ISLE HALIFAX INCORPORATED
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







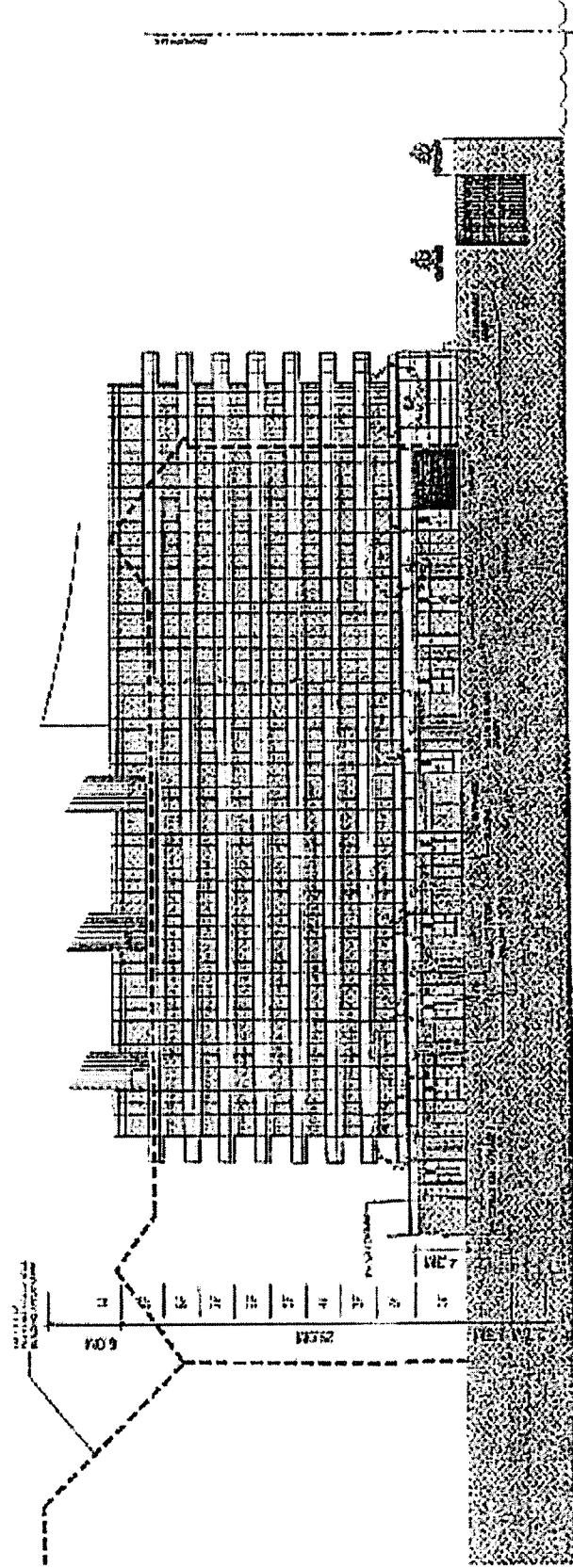
**HALIFAX**  
REGIONAL MUNICIPALITY  
COMMUNITY DEVELOPMENT  
PLANNING SERVICES

July 23, 2008

Case 01174

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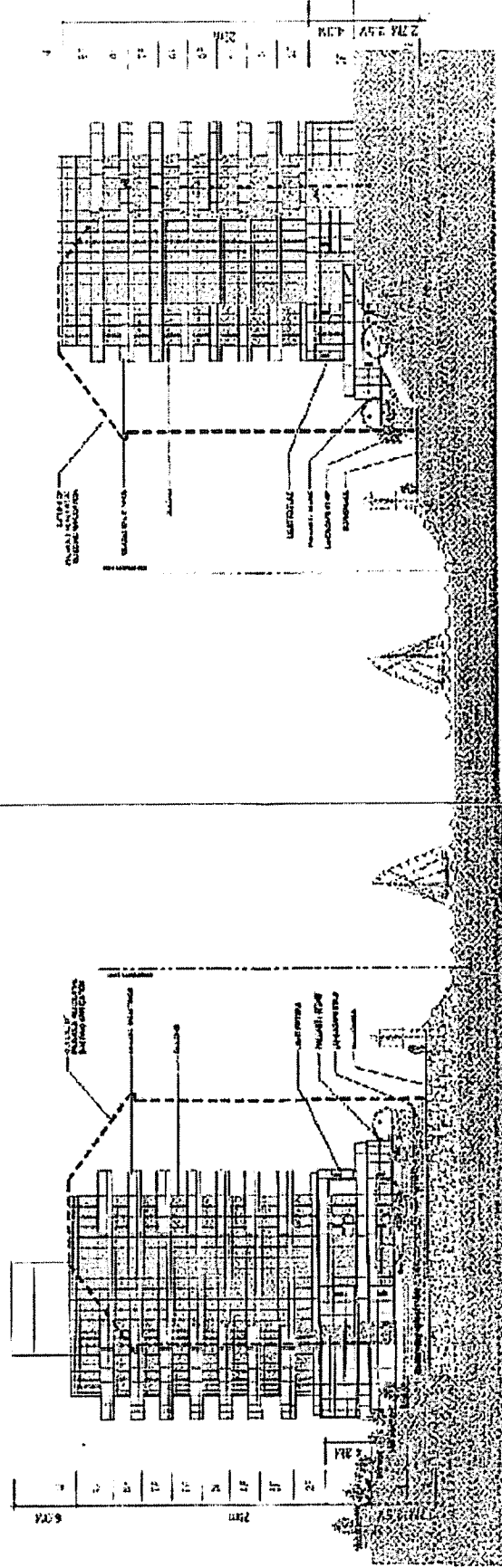
BUILDING 1  
2 STORY RESIDENTIAL - BUILDING



## Schedule G-1 East Elevation

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BUILDING 1  
9 STOREY RESIDENTIAL BUILDING



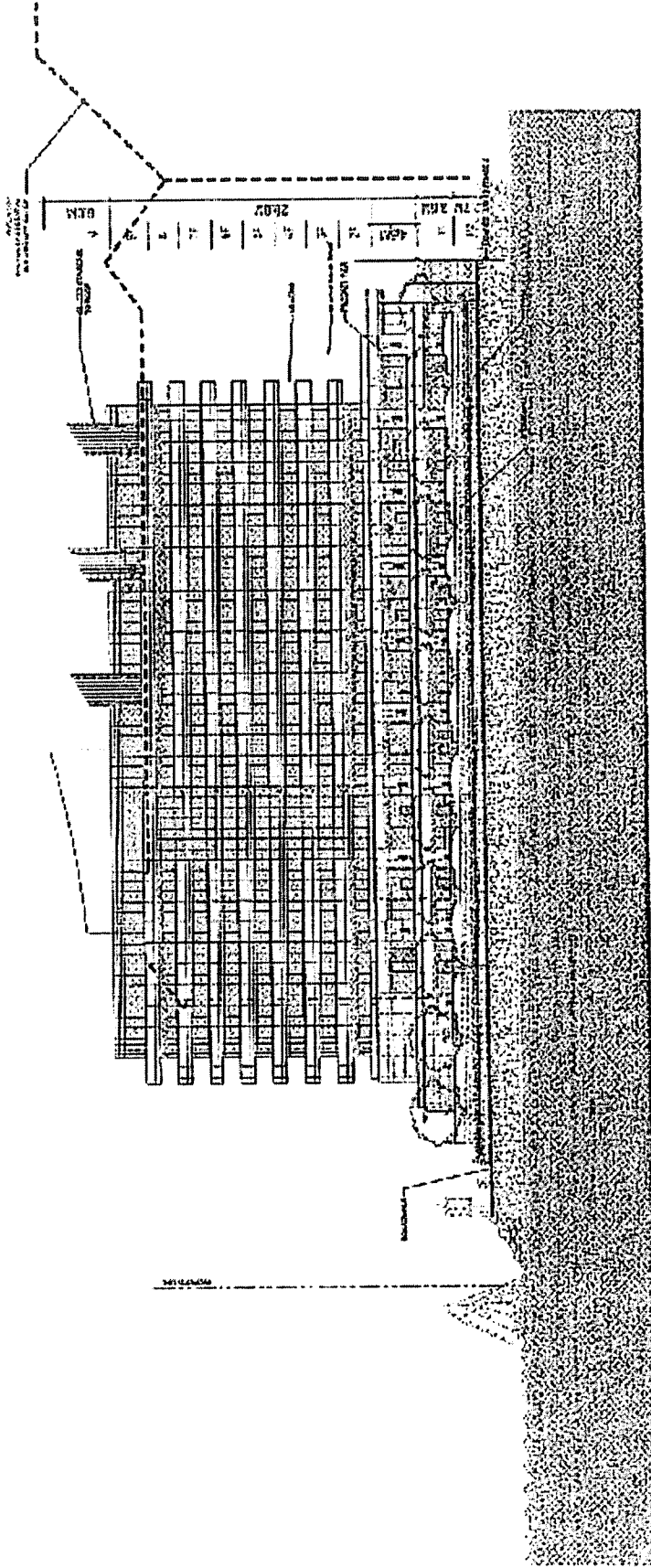
North

South

## Schedule G-2 North and South Elevations

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BUILDING  
V STOREY RESIDENTIAL BUILDING



## Schedule G-3 West Elevation

HRM does not guarantee the accuracy of any base map information on this map.

**Attachment B  
Textual Excerpts from Existing Development Agreement**

- 4.1 The Municipality agrees that the developer shall be permitted to develop three buildings on the Lands for residential occupancies provided that:
- (4) the dimensions and external appearance of the buildings substantially conform with the dimensions and external appearance presented on Schedules G, H and I;
  - (5) each building shall be constructed with exterior masonry with a minimum thickness of four (4) inches, double glazed windows and central air conditioning.
- 5.1 The following matters shall be deemed non-substantive and may, at the request of the Developer, be amended by resolution of the Community Council:
- (1) changes to the Site Development Plan presented as Schedule F; the exterior design of the buildings presented as Schedules G, H and I; or the Landscaping Plan presented in Schedule J which, in the opinion of the Community Council are minor;
  - (2) a maximum increase of five (5) percent to the number of dwelling units allowed within each building as shown on Schedule F;
  - (3) a redistribution of some or all of the units within buildings B and C, as presented on Schedule F;

**Attachment C**  
**Excerpts of the Dartmouth Municipal Planning Strategy**

- Policy H-21** The properties identified by PIN. Numbers 41209131 (Lot W3), 41224148 (Parcel PK-WL1A) and 0099572 (Sheppard's Island) shall be zoned for medium density residential development under the Land Use By-law and permitted subject to approval of a development agreement. The following matters shall be considered in any agreement:
- (a) any development contemplated on Sheppard's Island covers no more than twenty-five percent (25%) of the area of the island and the trees on the remaining area are retained so as to screen development on the island and mainland from harbour related industrial activities in the outer cove;
  - (b) measures are taken in the building design to mitigate noise;
  - (c) provision is made for the extension of a future public trail across the lands; and
  - (d) the criteria of policy IP-5.

**Policy IP-5**

It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access & egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building.

In considering the approval of such Agreements, Council shall consider the following criteria:

- (a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;
- (b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:
  - (i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building;
  - (ii) traffic generation, access to and egress from the site; and
  - (iii) parking;
- (c) adequacy or proximity of schools, recreation areas and other community facilities;
- (d) adequacy of transportation networks in, adjacent to, and leading to the development;
- (e) adequacy of useable amenity space and attractive landscaping such that the

needs of a variety of household types are addressed and the development is aesthetically pleasing;

- (f) that mature trees and other natural site features are preserved where possible;
- (g) adequacy of buffering from abutting land uses;
- (h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and
- (i) the Land Use By-law amendment criteria as set out in Policy IP-1(c).  
(As amended by By-law C-692, Dec. 4, 1991).

**Policy IP-1(c)**

In considering zoning amendments and contract zoning, Council shall have regard to the following:

- (1) that the proposal is in conformance with the policies and intents of the Municipal Development Plan
- (2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal
- (3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries
- (4) that the proposal is not premature or inappropriate by reason of:
  - (i) the financial capability of the City is to absorb any costs relating to the development
  - (ii) the adequacy of sewer and water services and public utilities
  - (iii) the adequacy and proximity of schools, recreation and other public facilities
  - (iv) the adequacy of transportation networks in adjacent to or leading to the development
  - (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas
  - (vi) preventing public access to the shorelines or the waterfront
  - (vii) the presence of natural, historical features, buildings or sites
  - (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized
  - (ix) the detrimental economic or social effect that it may have on other areas of the City.
- (5) that the proposal is not an obnoxious use
- (6) that controls by way of agreements or other legal devices are placed on proposed

developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:

- (i) type of use, density, and phasing
- (ii) emissions including air, water, noise
- (iii) traffic generation, access to and egress from the site, and parking
- (iv) open storage and landscaping
- (v) provisions for pedestrian movement and safety
- (vi) management of open space, parks, walkways
- (vii) drainage both natural and sub-surface and soil-stability
- (viii) performance bonds.



**Attachment D**  
**Dartmouth Municipal Planning Strategy Policy Criteria Evaluation**

In considering zoning amendments and contract zoning, Council shall have regard to the following:

<b>Policy Criteria</b>	<b>Requested Agreement</b>
<b>Policy H-21</b>	
(a) any development contemplated on Sheppard's Island covers no more than twenty-five percent (25%) of the area of the island and the trees on the remaining area are retained so as to screen development on the island and mainland from harbour related industrial activities in the outer cove;	Addressed under the previous planning application for the existing Agreement
(b) measures are taken in the building design to mitigate noise;	Addressed under the previous planning application for the existing Agreement
(c) provision is made for the extension of a future public trail across the lands; and	Amending Agreement enhances proposed boardwalk along Harbour
(d) the criteria of policy IP-5	see applicable section
<b>Policy Criteria IP-5</b>	
(a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;	Proposed amendments should not negatively impact abutting or adjacent developments
(b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of: (i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building; (ii) traffic generation, access to and egress from the site; and (iii) parking;	Existing Agreement and proposed Amending Agreement adequately control the issues raised
(c) adequacy or proximity of schools, recreation areas and other community facilities;	see IP-1(c) 4(iii)
(d) adequacy of transportation networks in, adjacent to, and leading to the development;	see IP-1(c)4(iv)

(e) adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing;	Adequate measures have been incorporated within the Existing Agreement and Proposed Amending Agreement
(f) that mature trees and other natural site features are preserved where possible;	Addressed under Existing Development Agreement
(g) adequacy of buffering from abutting land uses;	Addressed under Existing Development Agreement
(h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and	Addressed under Existing Development Agreement
(i) the Land Use By-law amendment criteria as set out in Policy IP-1(c).	See IP-1(c)
<b>Policy Criteria IP-1(c)</b>	
(1) that the proposal is in conformance with the policies and intents of the Municipal Development Plan	Amendments are consistent with applicable Plan policy
(2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal	Proposal changes are compatible and consistent with adjacent development
(3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries	Addressed under existing Agreement
(4) that the proposal is not premature or inappropriate by reason of: (i) the financial capability of the City is to absorb any costs relating to the development	Any development related costs are to be borne by the Developer. The required infrastructure services to enable development of the lands are existing.
(ii) the adequacy of sewer and water services and public utilities	The existing piped services and public utility capacities can accommodate the requested development.
(iii) the adequacy and proximity of schools, recreation and other public facilities	The site is located within reasonable proximity of adequate public utilities and amenities to accommodate the requested resultant development.
(iv) the adequacy of transportation networks in, adjacent to or leading to the development	Transportation network can handle the reduced traffic volumes from original development
(v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas	Existing Agreement has provisions to address this issue.

(vi) preventing public access to the shorelines or the waterfront	Public access will be provided.
(vii) the presence of natural, historical features, buildings or sites	Not Applicable
(viii) create a scattered development pattern requiring extensions to trunk facilities and public services while other such facilities remain under utilized	Development is considered an in-fill development
(ix) the detrimental economic or social effect that it may have on other areas of the City.	Not Applicable
(5) that the proposal is not an obnoxious use	Not applicable
(6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following: (i) type of use, density, and phasing (ii) emissions including air, water, noise (iii) traffic generation, access to and egress from the site, and parking (iv) open storage and landscaping (v) provisions for pedestrian movement and safety (vi) management of open space, parks, walkways (vii) drainage both natural and sub-surface and soil-stability (viii) performance bonds.	Existing Agreement addresses noted issues plus proposed amendments enhance existing landscaping measures and extend boardwalk
(7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors	Siting concerns were addressed under the previous planning application for the existing Agreement
(8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council	No Public information meeting (PIM) was held
(9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide: (i) Council with a clear indication of the nature of proposed development, and (ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community	Staff received the required information from the Applicant to evaluate the requested Agreement.

### Council Report Sign-Off Sheet

**Subject:** Case 01074 Harbour Isle - Development Agreement Amendment

Meeting Date: December 18, 200 ☐ Regular Council ☐ In Camera ☐ Information Report  
☒ Community Council ☐ Board/Committee

Prepared by: David Lane, Community Development

Date: December 9, 2008

√	Stakeholder - Internal	Reviewed By	Date/Time	Time Spent on Report	Initial/Signature
	Not Required (unique to originating BU)				
	BPIM				
	CD				
	Finance - FinTrack - Accounts - Financial Consultants - Procurement - Manager	<i>G. Roussel</i> <i>[Signature]</i>	Dec 11/08		
	Fire				
	HR				
	IAM				
	Legal - By-Laws - Admin Orders - Other				
	Police				
	TPW				
	Library				
	Halifax Water				
	Councillor(s)				
	Regional Youth Advisory Committee (RYAC)				
	<b>Stakeholder - External</b>				

Revised: December 2008