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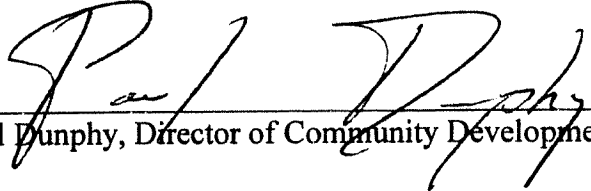


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
January 4, 2007

TO: Harbour East Community Council

SUBMITTED BY:


Paul Dunphy, Director of Community Development

DATE: December 20, 2006

SUBJECT: Case 00988 - Amendment to Russell Lake West Development Agreement

ORIGIN

Request by Clayton Developments Ltd.

RECOMMENDATION

It is recommended that the Municipality enter into the amending agreement, presented as Attachment A to this report, which would:

1. grant Clayton Developments Ltd. an extension from October 31, 2006 until December 31, 2006 to July 1, 2007 to complete all other required work associated with this road extension in accordance with the terms of the Russell Lake West development agreement provided that financial security for completion of the work is provided in a form and amount acceptable to the Development Officer;
2. require the amending agreement be signed within 120 days or any extension thereof granted by Council on request of the applicant from the date of final approval by Council and any other bodies as necessary whichever approval is later, including applicable appeal periods, otherwise, this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

At the November 2, 2006 meeting, Harbour East Community Council approved a request by Clayton Developments to extend the time frame for completing an extension of Baker Drive. Under the original development agreement for Russell Lake West, Clayton Developments was to complete all work associated with the extension of Baker Drive and a portion of the Mount Hope Avenue Extension to the new interchange on the Circumferential Highway by October 31, 2006.

The amending agreement allowed for the completion of primary service associated with the roadway (road sub-base, curb and gutter and first lift of asphalt) by December 31st of this year and completion of all remaining work (second lift of asphalt, sidewalks, street lights, sodding and street trees) by July 1st, 2007. The applicant's justification for the amendments and the staff evaluation against the policies for the Russell Lake West Secondary Plan Area are presented in the staff report dated October 27, 2006 (Attachment B to this report).

Clayton Developments is requesting that the requirement for the completion of primary services (December 31, 2006) in the extension of Baker Drive and Mount Hope Extension be extended. If this request is approved, all work associated (primary and secondary services) will be finished at the same time the secondary services were originally anticipated to be completed on July 1st, 2007. In support of this request, Clayton has stated that completion of the new interchange was, until recently, targeted for the end of 2006. If the primary services were finished before the end of 2006, the interchange would have been operational.

The Province has recently advised HRM that there are construction deficiencies associated with the interchange. The contractor is in the process of correcting the deficiencies, however they are not expected to be completed until June of next year. Clayton feels that completing primary services by the end of this year will serve no useful purpose because the road would have to be barricaded to prevent travel over the interchange.

DISCUSSION

The Morris-Russell Lake Secondary Planning Strategy stipulates by policy that "no development shall be permitted within the Morris - Russell Lake Secondary Plan Area unless a new interchange is constructed on Highway 111 and Baker Drive is connected to the interchange or financing for these projects secured and a time frame for completion established".¹

The Municipality subsequently secured financing for the interchange with assistance from the Provincial and Federal governments and construction is near completion. The time frame granted for the completion of Baker Drive under the Russell Lake West development agreement was intended to coincide with the completion of the interchange so that an alternative to the Portland Street access to this development could be established as soon as possible.

¹ Excerpted from policy ML-2 of the Dartmouth Municipal Planning Strategy.

There is also a provision in the development agreement which restricts the number of occupancy permits that may be issued. The total number of occupancy permits that may be issued before the interchange is functional is 326 units. There has been, to date, Construction Permits issued for 380 units. These permits were only issued after the financing had been secured for the interchange and Baker Drive. Currently, only 16 occupancy permits have been granted, mainly for townhouse dwellings.

In light of the delays in completing the interchange, the requested amendment by Clayton Developments would be consistent with the policy intent. Staff would therefore recommend that the amending agreement presented as Attachment A be approved.

BUDGET IMPLICATIONS

Not applicable.

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. The Community Council could deny the request. For the reason cited in the report, staff feel that the requested time frame extension is justified and would not thwart the intent of the policies made under the Secondary Planning Strategy. This course of action is therefore not recommended.
2. The Community Council direct staff to negotiate a different time frame for completion of Baker Drive than that requested by the applicant. Consideration would have to be given to the fact that completion of work may be more difficult, if not impractical, during winter months. The planting of street trees is an example.

ATTACHMENTS

- A Draft Amending Agreement
- B Staff Report to Harbour East Community Council, dated October 27, 2006 re: Amendment to Russell Lake West Development Agreement

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

Report Prepared by: Paul Morgan, Planner, Community Development, 490-4482
Report Approved by: Roger Wells, Acting Manager, Planning Services, 490-4373

Attachment A

THIS AMENDING AGREEMENT made this day of, 2006,

BETWEEN:

CLAYTON DEVELOPMENTS LIMITED
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

HALIFAX REGIONAL MUNICIPALITY,
a body corporate, in the County of
Halifax, Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located between Russell Lake and Highway No. 111 in Dartmouth, Nova Scotia, and which said lands are generally illustrated as Sub Areas 1 and 2 of Schedule 1 of this Agreement and which are more particularly described in Schedule "1-A" to this Agreement ("the Lands");

AND WHEREAS the Developer entered into a development agreement with the Municipality to allow for the development of a mixed use development, consisting of residential and commercial uses on the Lands which was registered at the Registry of Deeds for Halifax County on December 9, 2005 as Document No. 83812249 ("the Agreement");

AND WHEREAS the Developer has requested a non-substantial amendment to the Agreement pursuant to the provisions of clause (d) of Section 5.1. of the Agreement;

AND WHEREAS the Harbour East Community Council approved this request at a meeting held on January 4, 2007, referenced as Municipal Case #00966;

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

1. The October 31, 2006 deadline specified for competing all work associated with the extension of Baker Drive under clause 3.1 (aa) of the Agreement is replaced with a new deadline of July 1, 2007.

2. All other terms and conditions of the Agreement shall remain in effect.

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

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

)	CLAYTON DEVELOPMENTS LIMITED
)	
)	
per: _____)	per: _____
)	
)	
per: _____)	per: _____

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

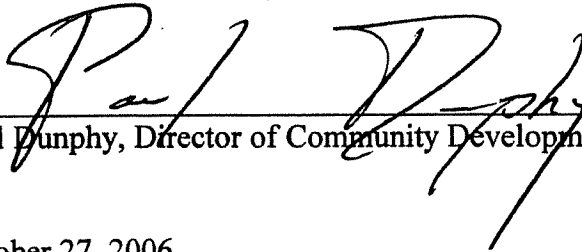


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
November 2, 2006

TO: Harbour East Community Council

SUBMITTED BY:


Paul Dunphy, Director of Community Development

DATE: October 27, 2006

SUBJECT: Case 00966 - Amendment to Russell Lake West Development Agreement

ORIGIN

Request by Clayton Developments Ltd.

RECOMMENDATION

It is recommended that the Municipality enter into the amending agreement, presented as Attachment A to this report, which would:

1. grant Clayton Developments Ltd. an extension from October 31, 2006 until December 31, 2006 to complete primary services associated with the extension of Baker Drive to the new interchange at Mount Hope Avenue and Highway 111 (the Circumferential Highway);
2. give the company until July 1, 2007 to complete all other required work associated with this road extension in accordance with the terms of the Russell Lake West development agreement provided that financial security for completion of the work is provided in a form and amount acceptable to the Development Officer;
3. require the amending agreement be signed within 120 days or any extension thereof granted by Council on request of the applicant from the date of final approval by Council and any other bodies as necessary whichever approval is later, including applicable appeal periods, otherwise, this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Last year, Harbour East Community Council approved a development agreement with Clayton Developments Ltd. to allow for a new community between Highway 111 (the Circumferential Hwy.) and Russell Lake pursuant to the provisions of the Morris - Russell Lake Secondary Planning Strategy. Commonly known as “Russell Lake West”, the community was to contain a mixture of housing and commercial developments which would have road access from Baker Drive which would extend from the existing street to a new interchange on the Circumferential Hwy.

Under the terms of the agreement, Clayton Developments was to have completed the Baker Drive extension to the new interchange at Mount Hope Avenue by October 31, 2006 unless an extension of the time frame is granted by the Community Council on request by the developer. The agreement provided that a certain number of construction and occupancy permits could be granted while work on the road extension was being undertaken. Any extension to this time frame can be considered by the Community Council as a non-substantial amendment which does not require a public hearing. The specifics of the agreement pertaining to the time lines are found in Attachment B.

Clayton Developments has requested an extension of the time frame for completion under this provision. In defence of this request, Clayton Developments has advised that:

- While the enabling Development Agreement for Russell Lake West was approved by Harbour East Community Council in April, 2005, the requisite Capital Cost Charge was not approved by Regional Council until September, 2005 (both staff and the Developer were originally targeting July). This resulted in a delay of the project by approximately 3 months.
- Although an environmental assessment for infilling of a wetland south of Mount Hope Avenue had received Ministerial approval last December, final approval to begin work was not received until October 23, 2006.
- the area experienced an unusual number of wet weather days which has delayed construction activities.
- negotiations with Nova Scotia Power Inc. for the relocation of power distribution structures and with Heritage Gas for the location of gas distribution mains took longer than anticipated.

DISCUSSION

The Morris-Russell Lake Secondary Planning Strategy stipulates by policy that “no development shall be permitted within the Morris - Russell Lake Secondary Plan Area unless a new interchange is constructed on Highway 111 and Baker Drive is connected to the interchange or financing for these projects secured and a time frame for completion established”.¹

¹ Excerpted from policy ML-2 of the Dartmouth Municipal Planning Strategy.

The Municipality subsequently secured financing for the interchange with assistance from the Provincial and Federal governments and construction is near completion. The time frame granted for the completion of Baker Drive under the Russell Lake West development agreement was intended to coincide with the completion of the interchange so that an alternative to the Portland Street access to this development could be established as soon as possible.

Staff do not foresee any difficulties presented with the requested extension. Primary services include the construction of the road sub-base, curb and gutter and first lift of asphalt which would allow for vehicular travel upon completion. The requested timing for completion of primary services is expected to coincide with the opening of the interchange. The remaining elements of the road to be constructed (known as "secondary services" under the Municipality's Subdivision By-law) includes a second lift of asphalt, sidewalks, street lights, sodding and street trees. The request to allow for completion by the beginning of next July is not anticipated to cause any hardships or safety concerns as the population base established for this community would remain quite small and these services would not be well utilized over the winter months.

BUDGET IMPLICATIONS

Not applicable.

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. The Community Council could deny the request. For the reason cited in the report, staff feel that the requested time frame extension is justified and would not thwart the intent of the policies made under the Secondary Planning Strategy. This course of action is therefore not recommended.
2. The Community Council direct staff to negotiate a different time frame for completion of Baker Drive than that requested by the applicant. Consideration would have to be given to the fact that completion of work may be more difficult, if not impractical, during winter months. The planting of street trees is an example.

ATTACHMENTS

- A Draft Amending Agreement
- B Excerpt from the Russell Lake West development agreement pertaining to phasing of the Baker Drive extension.

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

Report Prepared by: Paul Morgan, Planner, Community Development, 490-4482

Report Approved by: Austin French, Manager of Planning Services, 490-4482

Attachment A

THIS AMENDING AGREEMENT made this day of, 2006,

BETWEEN:

CLAYTON DEVELOPMENTS LIMITED
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

HALIFAX REGIONAL MUNICIPALITY,
a body corporate, in the County of
Halifax, Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located between Russell Lake and Highway No. 111 in Dartmouth, Nova Scotia, and which said lands are generally illustrated as Sub Areas 1 and 2 of Schedule 1 of this Agreement and which are more particularly described in Schedule "1-A" to this Agreement ("the Lands");

AND WHEREAS the Developer entered into a development agreement with the Municipality to allow for the development of a mixed use development, consisting of residential and commercial uses on the Lands which was registered at the Registry of Deeds for Halifax County on December 9, 2005 as Document No. 83812249 ("the Agreement");

AND WHEREAS the Developer has requested a non-substantial amendment to the Agreement pursuant to the provisions of clause (d) of Section 5.1. of the Agreement;

AND WHEREAS the Harbour East Community Council approved this request at a meeting held on November 2, 2006, referenced as Municipal Case #00966;

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

- The Developer is granted an extension until December 31, 2006 to complete primary services associated with the extension of Baker Drive to the new interchange at Mount Hope Avenue and Highway 111 (the Circumferential Highway) and;

- 2. the Developer shall complete all other required work associated with this road extension by July 1, 2007 in accordance with the terms of the Russell Lake West development agreement provided that financial security for completion of the work is provided in a form and amount acceptable to the Development Officer.
- 3. All other terms and conditions of the Agreement shall remain in effect.

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

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

CLAYTON DEVELOPMENTS LIMITED

)

)

per: _____)per: _____

)

)

per: _____)per: _____

Sealed, Delivered and Attested) **HALIFAX REGIONAL MUNICIPALITY**

by the proper signing officers of)

Halifax Regional Municipality)

duly authorized on that behalf)

in the presence of:)

per: _____)per: _____

) **MAYOR**

)

per: _____)per: _____

MUNICIPAL CLERK

Attachment B: Excerpt from the Russell Lake West Development Agreement Pertaining to the Baker Drive Extension

Section 3.1:

Phasing and Capital Cost Contribution:

- (aa) *In accordance with Policy ML-2 of the Dartmouth Municipal Planning Strategy, as amended from time to time, no subdivision approvals shall be granted unless a contract to construct the new interchange at Highway 111 has been awarded by Regional Council. The Developer agrees to construct Baker Drive from the existing section of Baker Drive to the intersection of the urban arterial road, shown on Schedule II, and the urban arterial road from the intersection of Baker Drive to the new interchange at Highway 111 (where for the purposes of this clause, construct includes installation of all required traffic signals, turning lanes and sidewalks) by October 31, 2006 or any extension thereof granted by the Community Council on request of the applicant from the date of final approval by the Community Council of this agreement and any other bodies as necessary whichever approval is later, including applicable appeal periods. The Municipality acknowledges that a portion of the construction costs of these streets is eligible for cost-sharing in accordance with the Municipality's capital cost contribution policies and the Developer will be compensated for the amount determined to be attributable to the Municipality;*
- (bb) *No subdivision approvals shall be granted unless:*
- (i) *infrastructure charges to be applied to the Lands have been approved by Regional Council and are adopted under the Subdivision By-law and the required charges have been paid by the Developer to the Municipality; or*
 - (ii) *an infrastructure charge agreement has been approved by Regional Council and entered into between the Municipality and the Developer; and*
 - (iii) *a municipal service agreement between the Parties has been executed;*
- (cc) *Provided that financing has been secured and a time frame for completion agreed upon by the Parties for the completion of the road work specified under clause (z), the Municipality agrees that the following approvals may be granted:*
- (i) *municipal development permits, building permits and occupancy permits for a senior citizen complex containing not more than one hundred and fifty (150) dwelling units;*

- (ii) municipal development permits, building permits and occupancy permits for a maximum of one hundred and twenty (120) dwelling units within multiple unit dwelling buildings;*
- (iii) municipal development permits, building permits and occupancy permits for a maximum of thirty-eight (38) townhouse dwelling units;*
- (iv) municipal development permits, building permits and occupancy permits for a maximum of eighteen (18) single unit dwellings; and*
- (v) municipal development permits and building permits for any other development permitted by this agreement provided that no occupancy permits are granted;*

5.1 The provisions of this Agreement relating to the following matters are identified as and shall be deemed to be not substantial and may be approved by resolution of the Community Council:

- (c) an extension to the time frame stipulated under clause (aa) of Section 3.1.*