

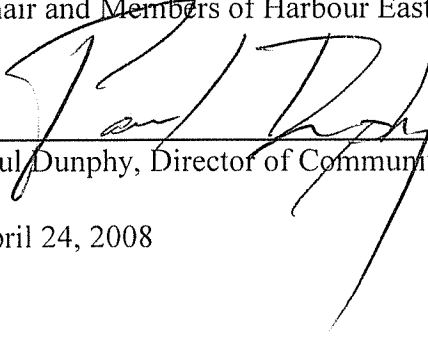
Item 10.1.2



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
July 3, 2008

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: April 24, 2008

SUBJECT: **Case 01144: Discharge Agreement/Rezoning - 20 Baker Drive, Dartmouth**

ORIGIN

Application by Terrain Group to discharge a development agreement and rezone 20 Baker Drive from CDD (Comprehensive Development District) to C-3 (General Business) Zone, Dartmouth.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give First Reading for the rezoning of 20 Baker Drive, Dartmouth, as shown on Map 1 and schedule a public hearing;
2. Approve the rezoning of that portion of 20 Baker Drive, as shown on Map 1, from CDD (Comprehensive Development District) to C-3 (General Business Zone); and
3. Approve the discharge agreement for 20 Baker Drive Dartmouth as set out in Attachment "A" of this report.

BACKGROUND

The subject property is located on 20 Baker Drive, as shown on Map 1, and is currently used for vehicle storage as part of a car dealership. The property is approximately 4 acres in size.

The dealership was enabled by a development agreement that was approved by the former Dartmouth City Council on October 14, 1986. The development agreement only permits a car dealership and accessory uses, as shown in Attachment “B”, provided there is a 50 foot buffer along the southern boundary of the lands. Terrain Group, on behalf of Forbes Group Leasing LTD, has made application to discharge the existing development agreement and to apply a C-3 zone on this property to continue it’s current use.

History

In the 1980's the Dartmouth Municipal Planing Strategy (MPS) envisioned that the surrounding lands would be developed for residential purposes. Consequently, plan policy at that time allowed Council to consider commercial uses by development agreement. The development agreement enabled the Municipality to protect future residential properties from the nuisances associated with a car dealership by requiring a 50 ft buffer (Attachment “B”). However, twenty years later the northern section of Baker Drive did not develop in a residential manner, but is, instead a significant commercial area which contains many car dealerships as well as a strip mall development with a variety of businesses.

Designation/ Zoning

The property is situated within the Commercial designation of the Dartmouth MPS, as shown on Map 2. The intent of the commercial designation is to develop lands for commercial uses. Despite being designated commercial, the property is zoned CDD and is subject to an existing development agreement which restricts the use of the property to a car dealership.

Enabling Policy

Under the Commercial designation, Council can consider the proposed rezoning in accordance with Policy IP-1(c), as shown in Attachment “C”. The proposed discharge of the existing development agreement can be considered by Council in accordance with the provisions of the Municipal Government Act.

DISCUSSION

Staff have reviewed this application relative to applicable plan policy and determined that it is consistent with the intent of Dartmouth’s MPS for the property to be used in a commercial manner. The following issues have been identified for more detailed discussion.

Buffering

Under the existing development agreement, buffering was required to protect the adjacent lands, which were expected to develop as residential properties, from the impacts of living next to a car dealership. However, instead of residential development, the land has been developed for

commercial use and is also currently used as a car dealership. There is little need to buffer a car dealership from the impacts of another car dealership. Due to the nature of the surrounding development, a 50 foot buffer is no longer required for this property.

Morris/ Russell Lake Master Plan

The subject property abuts the Morris/ Russell Lake Master Plan area within Dartmouth. During the adoption of new policies and zoning for this area, the subject property was redesignated to commercial to reflect its use. The property was also rezoned CDD despite policy ML-1 stating that the CDD zone “shall be applied to certain *undeveloped* lands within the Morris Russell Lake Secondary Plan”. Further, the CDD Zone was only to be applied to lots exceeding 10 acres in size and CDD policies were designed for the development of large (mainly residential) subdivisions by development agreement, not individual small scale commercial properties. Therefore, the CDD zone applied to the property is not appropriate due to the nature of the surrounding developments and the continued use of the property in a commercial manner.

Compatibility

The lands that surround the site constitute a significant commercial node in Dartmouth. This area consists of several car dealerships as well as a variety of retail, restaurant and other service uses. The properties to the north of the site have a C-3 zone while the properties to the south have a CDD zone and are subject to a development agreement (Attachment “D”). Therefore, rezoning the property to C-3 would be consistent and compatible with the zones and uses in the immediate area.

Public Information Meeting/Notification Area

The public information meeting was waived by the local Community Councillor. Should Community 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.

BUDGET IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved operating budget for C310.

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 rezoning and discharge of the development agreement. This is the recommended course of action for the reasons outlined above.
2. Council may choose to refuse the proposed rezoning and refuse to discharge the development agreement. Pursuant to the *Municipal Government Act*, Council is required

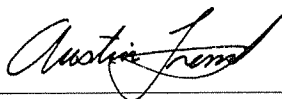
to provide reasons to the applicant justifying this refusal, based on policies of the Dartmouth Municipal Planning Strategy.

ATTACHMENTS

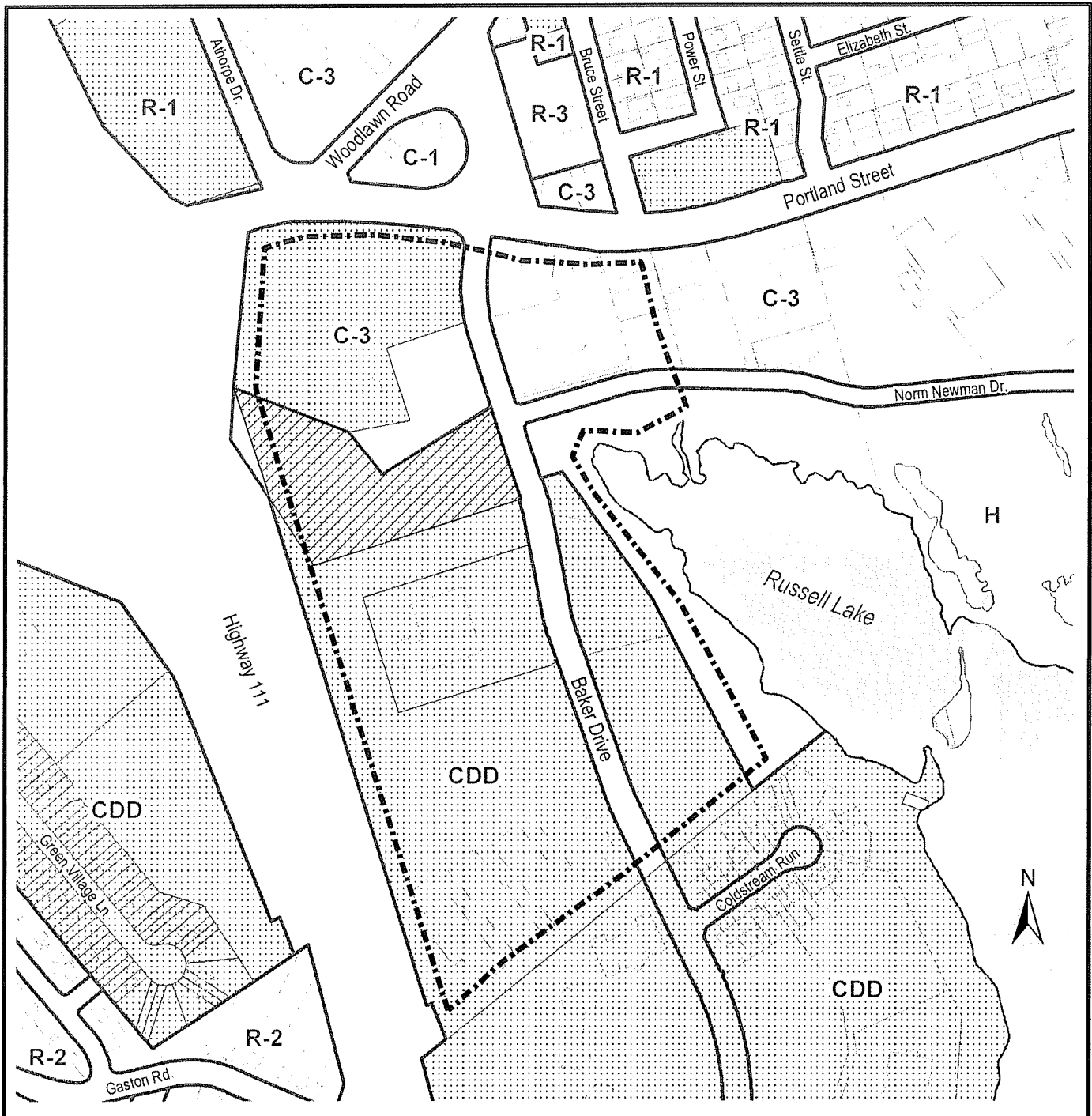
Map 1: Zoning Map
Map 2: Generalized Future Land Use Map
Attachment A: Discharge Agreement
Attachment B: Excerpts from the Existing Agreement
Attachment C: Excerpts From The Dartmouth Municipal Planning Strategy
Attachment D: Excerpts From The Dartmouth Land Use By-law

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 : Jennifer Chapman, Planner 490-3999






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



Map 1 Location and Zoning

20 Baker Drive

-  Parcel to be discharged from DA & Rezoned from CDD to C-3
-  Parcels Subject to Development Agreement
-  Notification Boundary

Dartmouth Plan Area

Zone

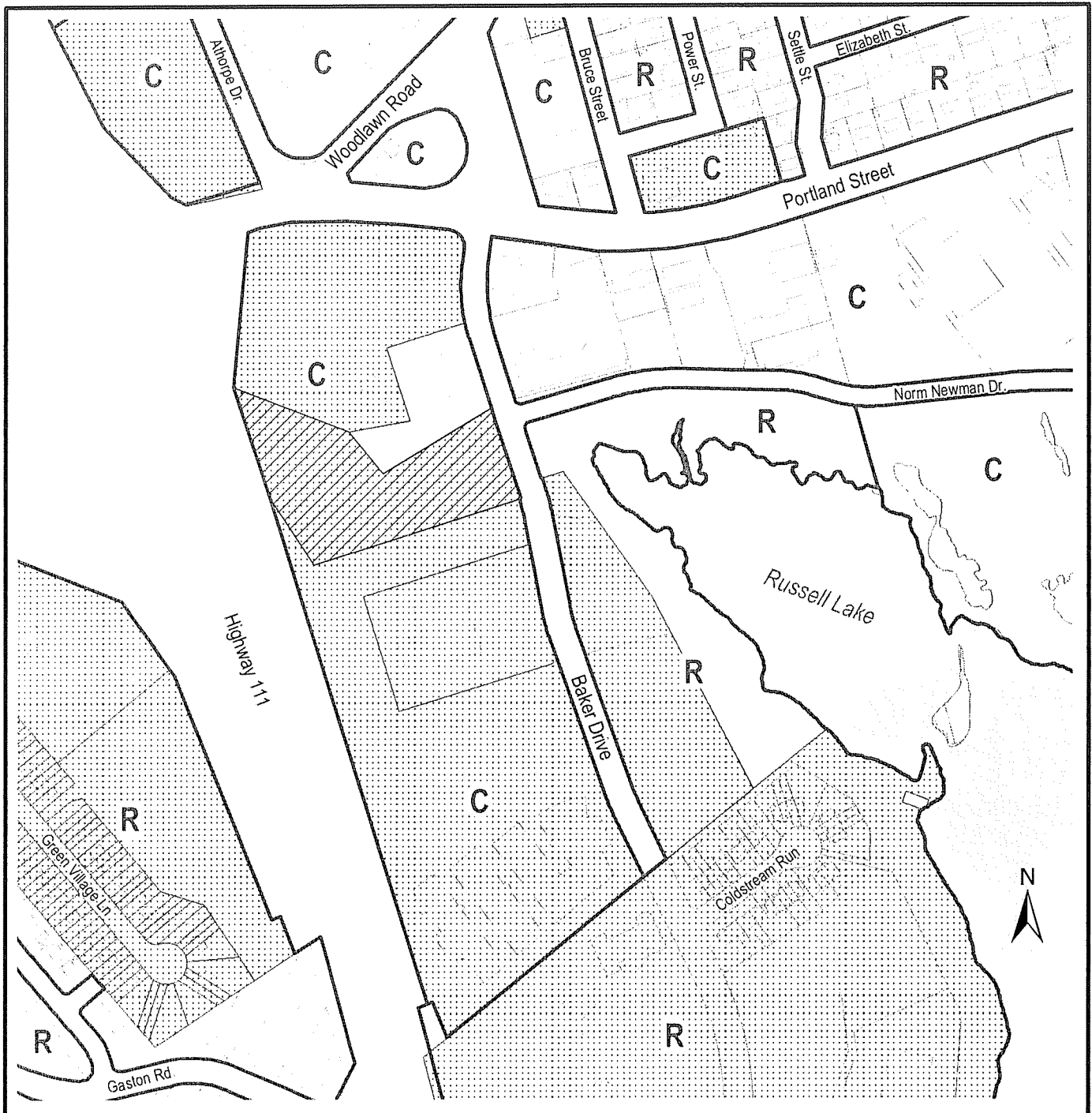
- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential
- C-1 Local Business
- C-3 General Business
- H Holding
- CDD Comprehensive Development District

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES





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



Map 2 Generalized Future Land Use

20 Baker Drive

-  Parcel to be discharged from DA & Rezoned from CDD to C-3
-  Parcels Subject to Development Agreement

Dartmouth Plan Area

Designation

- R Residential
- C Commercial



COMMUNITY DEVELOPMENT
PLANNING SERVICES



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"
Discharge Agreement

THIS DISCHARGING AGREEMENT made this day of , 2008,

BETWEEN:

FORBES GROUP LEASING LIMITED
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 20 Baker Drive, PID 40740631, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Municipality entered into a development agreement with Forbes Chevrolet Oldsmobile Limited to allow for an automobile dealership which was recorded at the Registry of Deeds in Halifax as Document Number 78910 in Book 4294 at Pages 395 (hereinafter called the "Agreement");

AND WHEREAS the Developer has requested that the Agreement be discharged;

AND WHEREAS, pursuant to the procedures and requirements contained in the Municipal Government Act, Harbour East Community Council approved this request by resolution at a meeting held on _____, 2008;

WITNESS that it is agreed that the Property is hereby discharged from the Agreement.

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

SIGNED, SEALED AND DELIVERED) FORBES GROUP LEASING LIMITED
in the presence of)
) Per: _____
)
_____)

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

) Per: _____
)
) ACTING MUNICIPAL CLERK

Attachment "B"
Excerpts from the Existing Agreement

2. The Developer shall develop the lands as a new car dealership and accessory uses, and shall not develop or use the lands for any other purpose than a new car dealership and accessory uses.

7. A fifty (50) foot buffer strip shall be preserved along the southern boundary of the lands, from Baker Drive to the Circumferential Highway. When commercial development on the lands is two hundred (200) feet from the outermost boundary of the buffer strip, the buffer strip shall be landscaped according to the terms of the agreement signed by the Developer and the City. To ensure compliance with the landscaping agreement, security shall be given to the City by the Developer.

Attachment "C"
Excerpts From The Dartmouth Municipal Planning Strategy and Land Use By-law

Policy IP1-(c)

Zoning By-law

The Zoning By-law is the principal mechanism by which land use policies shall be implemented. It shall set out zones, permitted uses and development standards which shall reflect the policies of the Municipal Development Plan as per Section 33 (3) of the Planning Act.

Notwithstanding the above, it shall be the intention of Council not to pre-zone lands outside the development boundary as shown on the Generalized Land Use Plan: Map 9; Map 9b, 9c, 9d, 9e, 9g, 9h,9i (By-law 633), 9i (By-law 724), 9j, 9q, 9m, 9o, 9p (Portland St), 9p (Craigwood) and 9r (As amended by By-law C-475, Sept. 20, 1983 and By-law C-493, Dec.9, 1983 and By-law C-511, July 6, 1984).

It shall recognize that certain areas are premature for specific zoning classifications by reason of lack of services, public facilities or other constraints. Council shall use the H-zone (Holding Zone). In the H Zone the permitted types of uses shall be limited in accordance with the Reserve classification in Table 4 (As amended by By-law C-475, Sept. 20, 1983). In this manner, Council can maintain a comparatively high degree of control, and major development proposals contemplated for such areas shall be processed as zoning amendments.

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"
Excerpts from the Dartmouth Land Use By-law

CDD (COMPREHENSIVE DEVELOPMENT DISTRICT) ZONE

- 53(A) (a) The following uses only shall be permitted in a CDD:
- (i) residential uses;
 - (ii) commercial, institutional and recreational uses.
 - (iii) All equipment, structures and buildings associated with extracting water from Morris Lake in association with an existing oil refinery operation. (RC-Mar 22/05;E-Apr 23/05)
- (b) No development permit shall be issued except in conformity with an agreement pursuant to Section 56(3) of the Planning Act.

(As amended by By-law C-698, June 18/93)

C-3 (GENERAL BUSINESS) ZONE

- 40(1) The following uses only shall be permitted in a C-3 Zone:
- (a) C-2 uses as herein set out, excepting therefrom any residential uses;
 - (i) except Adult Entertainment uses **(RC-Jan 31/06;E-Mar 16/06)**
 - (b) warehousing and distribution
- 40(2) Buildings used for C-3 uses in a C-3 Zone shall comply with the following requirements:
- (a) Lot area minimum - 5,000 square feet
 - (b) Height maximum - 3 storeys for a building with an office function as its primary function.
 - (c) Maximum Lot coverage - 100% if the requirements for 100% lot coverage in the Building By-laws of the City of Dartmouth are met, except that a motel building or buildings shall occupy surface area of not more than one-third of the total area of the building lot.
 - (d) If lot coverage is not 100%, side and rear yards shall be provided on each side and at the rear of buildings as provided by the Building By-laws of the City of Dartmouth.
 - (e) Additional Height Maximum - 35 feet on all parcels of land situated within the "Lake Banook Canoe Course Area" as identified on Schedule "W". **(RC-Feb 8/05;E-Apr 23/05)**

Council Report Sign-Off Sheet

Subject: Case 01144: Discharge Agreement/Rezoning - 20 Baker Drive, Dartmouth

Meeting Date: July 3/08 Regular Council In Camera Information Report
 Community Council Board/Committee

Prepared by: Jennifer Chapman, Community Development Date:
 Name and Business Unit

√	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 Hamel</i>	<i>28 June 2008</i>		
	Fire				
	HR				
	IAM				
	Legal - By-Laws - Admin Orders - Other				
	Police				
	TPW				
	Library				
	Halifax Water				
	Councillor(s)				
	Regional Youth Advisory Committee (RYAC)				
	Stakeholder - External				

From: Gordon Roussel
To: FinTrack (Finance Report Tracking)
Date: Tue, Jun 24, 2008 1:44 pm
Subject: Re: Fwd: July 3rd HECC - Case 01144 - Discharge Agreement/Rezoning - 20 Baker Drive

I confirm there are no budget implications

>>> FinTrack (Finance Report Tracking) 24/06/2008 12:27 pm >>>
Good afternoon, please review the attached NBI report.

Thank you,

Sue

FinTrack - Finance Report Tracking Team
Duke Tower, 3rd floor
phone: 490-8928
fax: 490-6238

>>> Gail Harnish 06/24/08 11:12 am >>>
The attached report is for your review.

CC: Gail Harnish; Kathy Smith

From: Gail Harnish
To: Sandra Riley
Date: 24/06/2008 2:25 pm
Subject: HECC - Baker Drive report

I have okay from fintrack and the director so I'm going to courier the report to fintrack for formal processing. You should hopefully have it from them later tomorrow.