

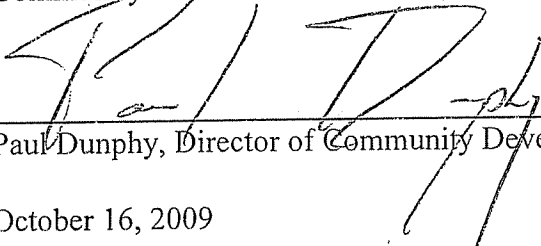


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Marine Drive, Valley & Canal Community Council
October 28, 2009

TO: Chair and Members of Marine Drive, Valley and Canal
Community Council

SUBMITTED BY:


Paul Dunphy, Director of Community Development

DATE: October 16, 2009

SUBJECT: Case 01315: Development Agreement - 47 East Jeddore Road,
Jeddore

ORIGIN

An application by Shore Print Inc to enter into a development agreement to permit the conversion of a former school to a commercial use.

RECOMMENDATION

It is recommended that Marine Drive, Valley and Canal Community Council:

1. Give Notice of Motion to consider the proposed development agreement as set out in Attachment A of this report and schedule a public hearing;
2. Approve the proposed development agreement as set out in Attachment A of this report to permit use of the entire former school at 47 East Jeddore Road as a commercial building;
3. Require the 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, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Site Description:

The single storey, 10,000 square foot Jeddore-Lakeville Elementary School was recently closed and the site was deemed to be surplus to municipal needs. The site, as shown on Map 1, is designated and zoned Mixed Use, as is the entire community under the Eastern Shore (West) plan area. This zoning permits commercial buildings up to 5000 square feet in floor area. The property consists of 1.3 acres, with approximately 250 feet of street frontage as shown on Map 2. The property was marketed by HRM Real Estate Services, and an agreement of purchase and sale has been entered into with Shore Print Inc.

The Proposal:

Shore Print has now relocated to the building and occupies about 2000 square feet for its printing business. The remaining square footage will be available for small business rental, as well as community and service organization uses. However, the MU (Mixed Use) Zone which is applied to the property allows only 5000 square feet of commercial floor area. Policy MU-7 of the Municipal Planning Strategy for Eastern Shore (West) requires that any development occupying more than 5000 square feet of floor area be considered through the development agreement process.

DISCUSSION

Staff have reviewed the proposal in accordance with Policies MU-7 and IM-10 of the MPS (Attachment B). The proposal is, in the opinion of staff, consistent with plan policy. Staff therefore recommend that HRM enter into a development agreement with Shore Print, as shown in Attachment A. This report highlights the key aspects of the policy as they relate to this development:

Architectural Design, Building Scale, & Compatibility:

As a former school, the building is well established in the community and is part of the existing neighbourhood character and fabric. The building is well buffered from nearby properties by forest, both on this site and abutting properties. No additions are contemplated, however, the agreement does provide flexibility for minor additions up to an additional 1000 square feet. In terms of appearance, the proposed development agreement requires that the building and property be maintained and kept in good repair. Portions of the front facade are badly weathered and need repainting, which is required by the development agreement.

Traffic and Road Impacts:

The East Jeddore Road is owned and maintained by the Province. Staff from the Department of Transportation and Infrastructure Renewal have evaluated the existing driveways which access a looped driveway and parking area in front of the building as shown on Map 2. The south driveway access meets standard requirements. Modifications are needed for the north driveway. The proposed development agreement requires compliance with these provincial requirements before a development permit can be issued for conversion of more than 5000 square feet of the building to commercial use.

On-Site Services:

There is already a septic system in place for the school. Anticipated loads on the system are less for the proposed uses than those generated by the former school. The proposed development agreement requires compliance with any Provincial Department of Environment requirements.

Permitted Uses:

The draft agreement allows all uses permitted in the MU Zone, with the exception of commercial entertainment and automotive related uses. This means that beverage rooms and lounges are not permitted, nor are vehicle sales or service uses. Otherwise, a full range of commercial, retail, office and service uses are permitted along with the full range of institutional and community uses.

Layout and Site Design:

The existing building, as shown on Map 2, is set back over 100' from the road. There is a gravel looped driveway in front of the building which accommodates ample parking as well as access. A landscaped area is centrally situated on the property between the looped driveway and the road; this is required to be maintained. No changes to the site are proposed, however, the development agreement does provide for new signage to replace the school sign, as well as small additions of no more than 1000 square feet in total.

Public Information Meeting:

The public information meeting requirement was waived by the area 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.

Conclusion:

The proposal is a good example of adaptive re-use of a surplus building. The project will provide business and community groups with well-located, quality space, and furthers economic development goals for the Eastern Shore. Therefore, staff recommend that Community Council approve the proposed 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 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 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 development agreement, and in doing so, must provide reasons for the refusal based upon a conflict with MPS policies.

ATTACHMENTS

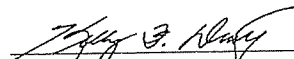
Map 1 Location, Land Use Designation & Zoning Map
Map 2 Site Plan

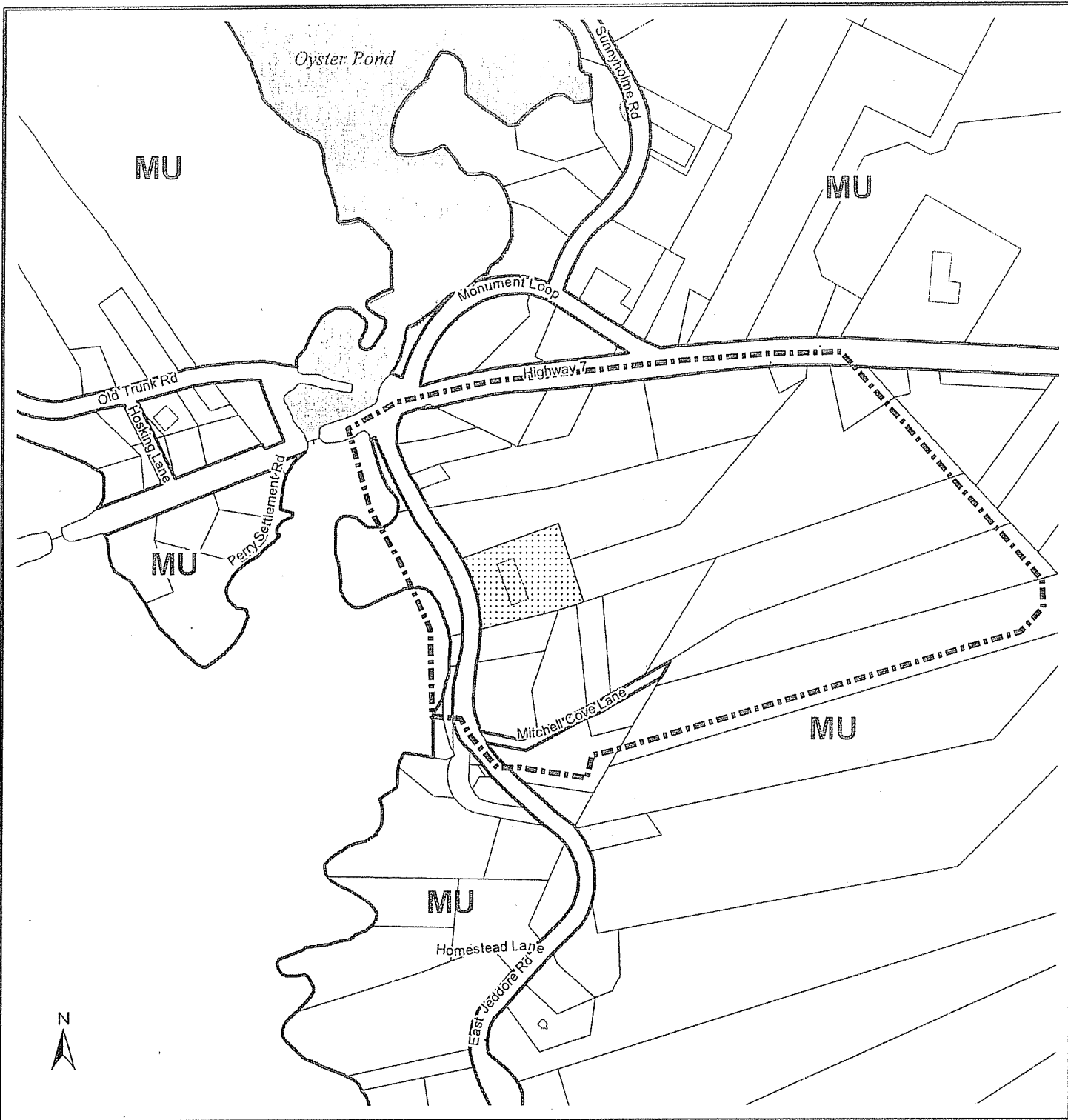
Attachment A Proposed Development Agreement
Attachment B Excerpts from the Eastern Shore (West) Municipal Planning Strategy

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 : Mitch Dickey, Planner, 490-5719

Report Approved by:




Kelly Denty, Acting Manager of Planning Services, 490-6011



Map 1 - Location, Land Use Designation and Zoning

PID 00625855

HALIFAX
 REGIONAL MUNICIPALITY
 COMMUNITY DEVELOPMENT
 PLANNING SERVICES

-  Subject Property
-  Notification Area

Designation / Zone

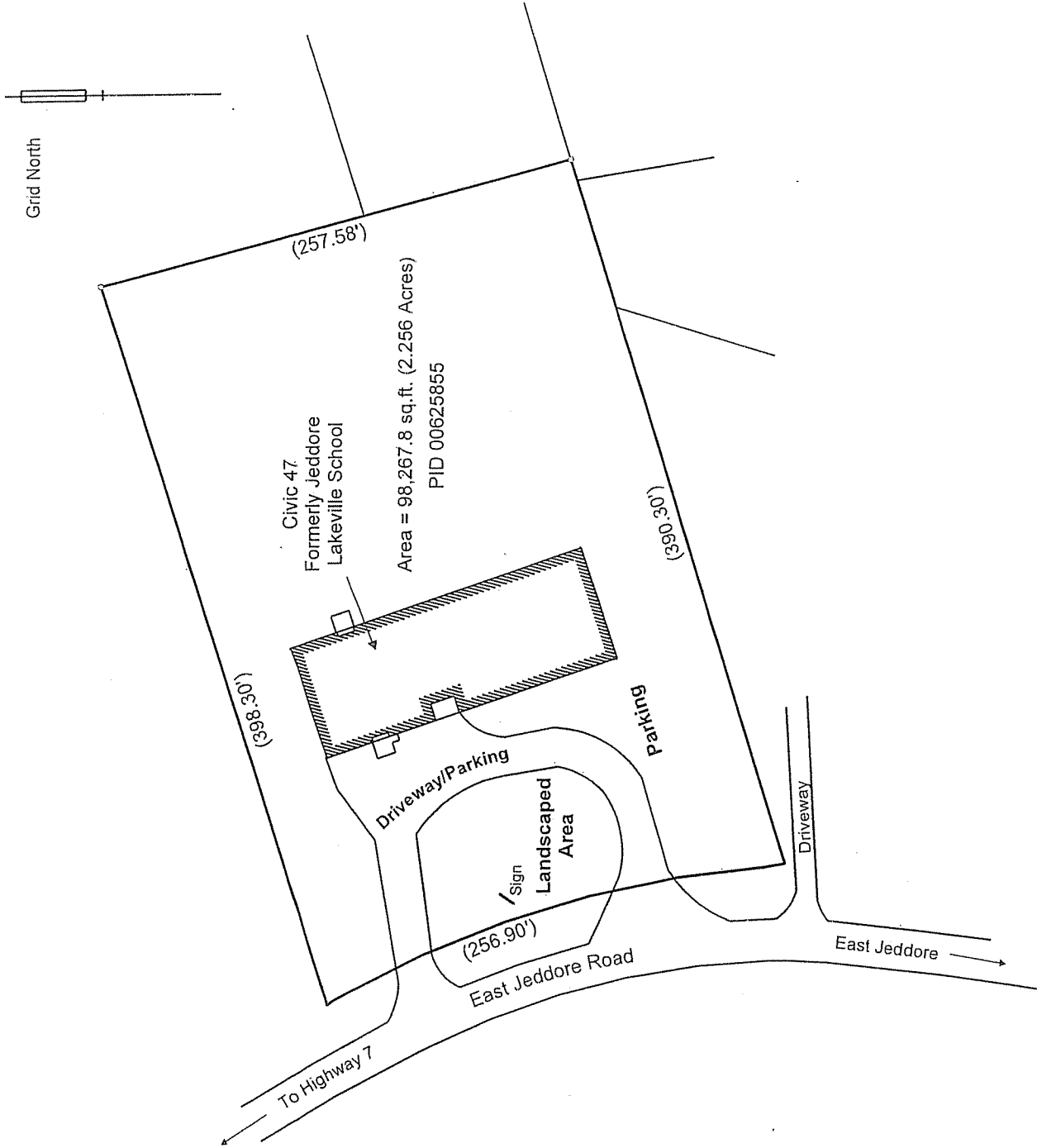
MU Mixed Use



This map is an unofficial reproduction of a portion of the Zoning Map for the Eastern Shore West Plan Area.

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

Eastern Shore West Plan



Map 2 Site Plan

HRM does not guarantee the accuracy of any base information.

October 5, 2009

Case 01315

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Attachment A
Proposed Development Agreement

THIS AGREEMENT made this day of , 2009,

BETWEEN:

SHORE PRINT INCORPORATED
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 47 East Jeddore Road, PID 00625855, Eastern Shore (West), and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for the total conversion of the former school building on the Lands to commercial use pursuant to the provisions of the *Halifax Regional Municipality Charter* and Policies MU-7 and IM-10 of the Eastern Shore (West) Municipal Planning Strategy;

AND WHEREAS the Marine Drive, Valley and Canal Community Council approved this request at a meeting held on , 2009, referenced as Municipal Case Number 01315;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 **Applicability of Land Use By-law and Regional Subdivision By-law**

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Eastern Shore (West) Land Use By-law, as may be amended from time to time.

1.3 **Applicability of Other By-laws, Statutes and Regulations**

Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of HRM and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer.

1.4 **Conflict**

Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 **Costs, Expenses, Liabilities and Obligations**

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all federal, provincial and municipal regulations, by-laws or codes applicable to any lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

- 2.1 All words unless otherwise specifically defined herein shall be as defined in the Eastern Shore (West) Land Use By-law.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the Schedules attached to this Agreement and the plans filed in the Halifax Regional Municipality as Case Number 01315.

The schedules are:

- Schedule A: Legal Description of the Lands
- Schedule B: Site Plan

3.2 General Description of Land Use

- 3.2.1 The use of the Lands permitted by this Agreement is a multi-tenant commercial and community use building consisting of a maximum of 11,000 square feet of gross floor area. Permitted uses are those listed under the MU zone, exclusive of commercial entertainment uses, automotive repair outlets, and vehicle sales uses.

3.3 Requirements Prior to Approval

- 3.3.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the building for any of the uses permitted by this Agreement unless development permits have been issued by the Municipality. No such permits shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.4 Detailed Provisions for Land Use

3.4.1 Notwithstanding the floor area limitations of the MU Zone as set out in the Eastern Shore (West) Land Use By-law, a maximum 11,000 square feet conversion of the former school as illustrated on Schedule B shall be permitted pursuant to this Agreement.

3.5 Parking and Lighting

3.5.1 The layout of the access points and parking lot on the Lands shall be as generally illustrated on Schedule B.

3.5.2 All parking and access areas may have a gravel surface. Such areas shall meet the setback requirements of the Land Use By-law.

3.5.3 The Development Officer may approve changes to the parking and circulation layout illustrated on Schedule B provided that such changes are minor in nature and consistent with the intent of this Agreement, in the opinion of the Development Officer.

3.5.4 The Developer agrees that any lighting shall be directed to parking areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.6 Landscaping

3.6.1 The area shown on Schedule B as "Landscaped Area" shall be maintained with grass, or a combination of grass and other plantings.

3.6.2 Areas not used for parking shall be maintained as landscaped space, consisting of trees, grass, shrubs, flower beds or a combination thereof.

3.6.3 Refuse containers located outside the building shall be fully screened from streets and abutting residential uses.

3.7 Signage

3.7.1 All signage shall be permitted in accordance with the Eastern Shore (West) Land Use By-law except where specifically varied by this Agreement.

3.7.2 Any fascia signs shall be non-illuminated.

3.7.3 A permanent ground sign with two faces not exceeding 24 square feet in area per side shall be permitted, as shown on Schedule B. An integrated changeable letter sign shall also be permitted as part of the sign to a maximum area of 16 square feet per face. The maximum height of the sign structure shall be 10 feet.

3.8 Outdoor Storage and Display

3.8.1 No outdoor storage shall be permitted on the Lands.

3.9 Hours of Operation

3.9.1 Any food service or retail uses shall be permitted to operate between the hours of 6:00 a.m. and 12:00 midnight., seven days a week.

3.9.2 A print shop may operate at any time within the building provided that, outside of the hours of operation noted in section 3.9.1, no printing equipment may be heard beyond any boundary of the Lands.

3.9.3 Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 7:00 am and 8:00 pm, Monday to Friday.

3.10 Maintenance

3.10.1 The Developer shall repaint all weathered areas of the front facade of the building, in particular the wood panels below the windows.

3.10.2 The Developer further agrees to maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the buildings, fencing, walkways, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal/salting of walkways and driveways. Maintenance of the development shall be the responsibility of the property owner and the Developer shall ensure that future property owners are aware of their obligations to maintain and keep in good repair all portions of the development.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 Driveway Access

All driveways and access to East Jeddore Road shall, prior to issuance of a development permit for use of more than 5000 square feet of the building for commercial use, conform

to the requirements of the Nova Scotia Department of Transportation and Infrastructure Renewal.

4.2 On-Site Septic System

The Developer agrees to maintain, upgrade or replace the on-site wastewater disposal system as may be required by the Nova Scotia Department of Environment for uses permitted within the building.

PART 5: AMENDMENTS

5.1 Substantive Amendments

Amendments to any matters not identified under Section 5.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

5.2 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of the Council.

- (a) The addition of more than 1000 square feet of floor area to the building;
- (b) Hours of operation;
- (c) Construction of a sign larger than that permitted under Section 3.7;
- (d) The granting of an extension to the date of commencement of development as identified in Section 7.3.1 of this Agreement; and
- (e) The granting of an extension to the length of time for the completion of the development as identified in Section 7.3.3 of this Agreement.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving

written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within one (1) day of receiving such a request.

6.2 Failure to Comply

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer ten (10) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the development agreement, whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the Assessment Act;
- (c) The Municipality may, by resolution, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and
- (d) In addition to the above remedies the Municipality reserves the right to pursue any other remediation under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the office of the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.

7.2 Subsequent Owners

- 7.2.1 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is the subject of this Agreement until this Agreement is discharged by Council.
- 7.2.2 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.

7.3 Commencement of Development

- 7.3.1 In the event that development has not commenced within three (3) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.
- 7.3.2 For the purposes of this section, development shall mean application for a development permit to occupy the building for commercial use.
- 7.3.3 If the Developer(s) fails to complete the development, or after five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, whichever time period is less, Council may review this Agreement, in whole or in part, and may:
- (a) Retain the Agreement in its present form;
 - (b) Negotiate a new Agreement; or
 - (c) Discharge this Agreement.

7.4 Completion of Development

Upon the completion of the development or portions thereof, or within/after five (5) years from the date of registration of this Agreement with the Registry of Deeds or Land Registry Office, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

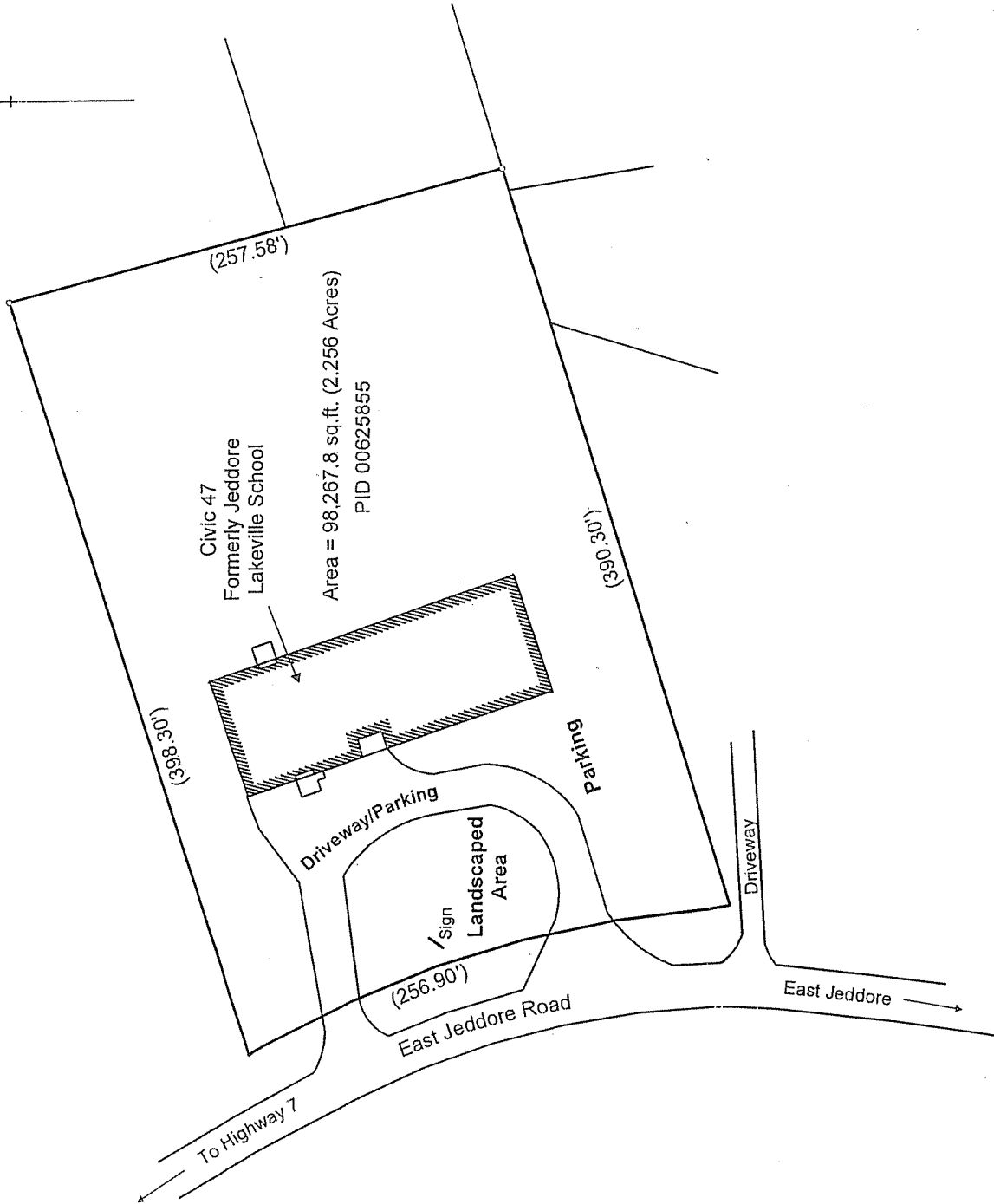
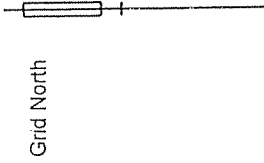
- (a) Retain the Agreement in its present form;

- (b) Negotiate a new Agreement; or
- (c) Discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Eastern Shore (West), as amended from time to time.

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

SIGNED, SEALED AND DELIVERED) Shore Print 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



Schedule B Site Plan

HRM does not guarantee the accuracy of any base information.

Attachment B
Excerpts from the Municipal Planning Strategy for Eastern Shore (West)

- MU-7 Notwithstanding Policy MU-2, it shall be the intention of Council to consider permitting commercial uses with a building footprint greater than five thousand (5,000) square feet in accordance with the development agreement provisions of the Planning Act. In considering such an agreement, Council shall have regard to the following:
- (a) that the architectural design and scale of any building is compatible with nearby uses;
 - (b) the impact of the proposed use on traffic volume and the local road network, as well as traffic circulation in general, sighting distances, and the entrance to and exit from the site;
 - (c) the means by which solid and liquid wastes are treated;
 - (d) the overall layout and design of the site, including all buildings, parking areas, landscaped areas, refuse collection areas and signage; and
 - (e) the provisions of Policy IM-10.
- IM-10 In considering development agreements and amendments to the land use by-law, in addition to all other criteria as set out in various policies of this Strategy, Council shall have appropriate regard to the following matters:
- (a) that the proposal is in conformity with the intent of this Strategy and with the requirements of all other municipal by-laws and regulations.
 - (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of central or on-site sewerage and water services;
 - (iii) the adequacy or proximity of school, recreation or other community facilities;
 - (iv) the adequacy of road networks leading or adjacent to or within the development; and
 - (v) the potential for damage to or for destruction of designated historic buildings and sites.
 - (c) That controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage; and
 - (v) signs.
 - (d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding; and
 - (e) any other relevant matter of planning concern.
 - (f) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC - July 2, 2002, Eff.- August 17, 2002.