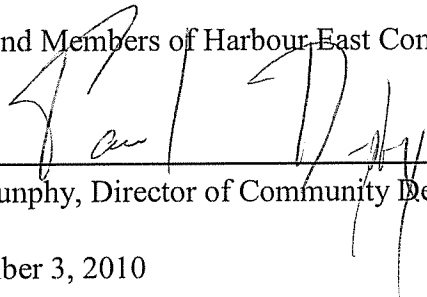




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Marine Drive, Valley & Canal Community Council
November 22, 2010

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: November 3, 2010

SUBJECT: Case 16235 - Amending Agreement - Lobster World, Oyster Pond

ORIGIN

Application by Lobster World Inc to amend the existing development agreement for their facility at 10320 Highway 7, Oyster Pond.

RECOMMENDATION

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

1. Give Notice of Motion to consider the proposed amending agreement as set out in Attachment A of this report and schedule a public hearing;
2. Approve the proposed amending agreement for 10320 Highway 7, as set out in Attachment A of this report, to permit construction of an addition; and
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

Proposal

The lands, located as shown on Map 1, are currently subject to a development agreement, which was first approved in 2001 and then amended in 2002. This existing agreement reflects the intentions of the previous owner, Superior Seafood Ltd, who intended to build a freezer facility in front of the existing building, facing Highway 7.

The new property owner, Lobster World Inc, instead intends to build an addition to the rear of the existing building. This expansion would consist of three segments, each with a floor area of 3000 square feet - a lobster holding tank, a freezer, and a fishing gear storage/maintenance shed.

Zoning and Land Use

The subject site is located on Highway 7 in Oyster Pond and backs onto Jeddore Harbour. The site currently contains the Lobster World processing and storage facility, which has a floor area of about 11,000 square feet. A former restaurant in the same building is now closed. The site is designated and zoned Mixed Use under the MPS and LUB for Eastern Shore (West). This designation and zoning permit a broad range of residential, commercial, service, and industrial uses. For commercial uses there is a maximum floor area limitation of 5000 square feet.

Enabling Policy

Policy MU-7 requires that any commercial project with a gross floor area of more than 5000 square feet go through the development process. The purpose of this is to address the potential impacts of any larger scale developments. In addition, policy IM-10 provides general implementation criteria for consideration by Council.

DISCUSSION

Staff have reviewed the applicable sections of the MPS and are of the opinion that the proposal is consistent with the plan's intent regarding larger commercial developments and fisheries-related development. The following key issues have been identified for more detailed discussion.

Site Design

The existing building is as close as 10 feet to Jeddore Harbour, while the additions are proposed to be located approximately 15-20 feet from the high water mark. Although the standard watercourse setback/natural buffer requirement for most developments is 66 feet, the land use bylaw contains exemptions for fisheries and marine related uses and allows them to be built to the water line. Both the existing building and the proposed additions are therefore exempted from watercourse setbacks. The setback for the additions as proposed therefore exceeds the minimum requirement. The

amending agreement provides for flexibility in the location of the additions, in two ways. The development officer may approve minor shifts to the location and floor area of the additions, provided that they are no closer to the water, that the gross floor area of the addition does not exceed 9000 square feet, and that they do not extend in front of the existing building. Council can consider more substantial changes to the location of buildings as a minor amendment, which would require a decision of Council but not necessitate a further public hearing.

Compatibility

The existing 11,000 square foot building has long been established in the community. It is highly visible both from Highway 7, and from several properties across the highway. The proposed building addition's height of 24 feet is less than that of the existing building, which is 30 feet high, making it less obtrusive. The proposed new site plan, with the additional 9,000 square feet of floor area, further minimizes visual impacts through the use of the existing building as a screen. Provisions of the existing agreement, which will carry forward, require the additions to be built with siding which matches the existing building.

Traffic and Parking

The NS Department of Transportation & Infrastructure Renewal, which has jurisdiction over Highway 7 as a provincial highway, has advised that there are no concerns with the proposed revisions to the development agreement. There is ample parking to meet the requirements of the land use bylaw.

Halifax/Halifax County Watershed Advisory Board

The existing development agreement contains, as previously recommended by the Board in 2001, requirements for erosion and sedimentation control during construction along with the provision of a \$10,000 bond to ensure compliance. The board has reviewed the revised proposal and recommends that:

- standards should be included in the agreement regarding the treatment and disposal of wastewater from the lobster storage and processing operation as well as from building floor drains;
- additional safety protection for oil storage tanks; and
- increased setbacks from the harbour for a new septic system.

These matters, however, fall outside of municipal jurisdiction and staff do not recommend the inclusion of any clauses pertaining to them. Appropriate federal, provincial, and building code regulations address these matters sufficiently. The existing requirement for watercourse protection during construction, and the associated bonding will, however, remain as part of the agreement.

Conclusion

The proposal meets the intent of MPS policy, which is to enable a diverse rural environment with the ability for resource-based industries to respond to increased economic opportunities. Site and general design issues have been addressed. Staff therefore recommend approval of the application.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The public information meeting was waived by the area councillor as the proposal represents an alteration to an existing approved development, which has previously been the subject of two public meetings and two public hearings. A further public hearing has to be held by Council to consider approval of the development agreement. Should Council decide to schedule a public hearing, property owners within the notification area shown on Map 1 will be notified of the hearing by mail. Public notices will also be posted in the local newspaper and on the HRM website.

The proposed development agreement will potentially impact the following stakeholders: local residents and property owners.

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 proposed Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council may choose to approve the proposed amending development agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed amending development agreement subject to modifications. This may necessitate further negotiation with the applicant, or an additional public hearing.

3. Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies.

ATTACHMENTS

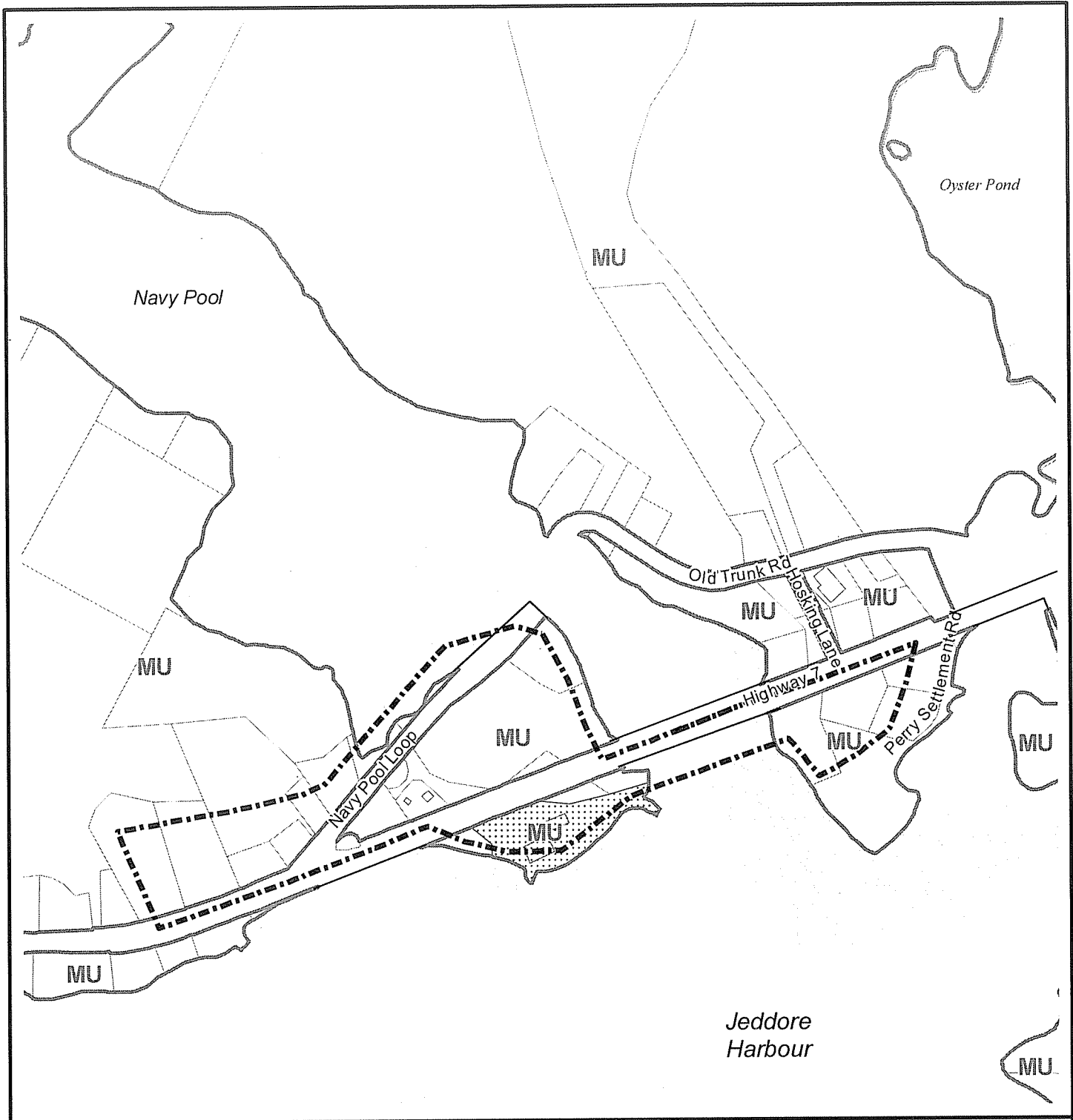
Map 1: Location and Zoning
Attachment A: Proposed Amending Development Agreement
Attachment B: MPS Policy MU-7 Regarding Larger Commercial Uses

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: Mitch Dickey, Planner, 490-5719





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



Map 1 - Location, Land Use Designation and Zoning

PID 40515512

 Subject Property

 Notification Area

Eastern Shore West Plan Area

Zoning

MU Mixed Use

Designation

MU Mixed Use

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 125 250 500 750
Feet

This map is an unofficial reproduction of a portion of the Zoning and Generalized Future Land Use Map for the Eastern Shore West Plan Area

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

Attachment "A"
Proposed Amending Agreement

THIS AGREEMENT made this ____ day of _____, 2010,

BETWEEN:

LOBSTER WORLD INC.,
a body corporate, in the Halifax Regional Municipality,
in the Province of Nova Scotia,

(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate, in the Province of Nova Scotia

(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 10320 Highway No. 7, Oyster Pond, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Marine Drive, Valley & Canal Community Council of the Municipality granted approval on March 19, 2001 of a development agreement for the Lands, which was recorded at the Registry of Deeds in Halifax as Document Number 24306 in Book 6805, Page 662-674 (hereinafter called the "Existing Agreement");

AND WHEREAS amendments to the Existing Agreement were approved by the Marine Drive, Valley & Canal Community Council of the Municipality on March 13, 2002, which were recorded at the Registry of Deeds as Document Number 15847 in Book 7021, Pages 217-221 (hereinafter called the "First Amending Agreement");

AND WHEREAS the Developer has requested that the Municipality further amend the Existing Agreement, to allow for a revised site plan with an alternate building configuration on the Lands, pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy MU-7 of the Municipal Planning Strategy for Eastern Shore (West);

AND WHEREAS the Marine Drive, Valley & Canal Community Council for the Municipality approved this request at a meeting held on _____, referenced as Municipal Case Number 16235;

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

1. Schedule B of the First Amending Agreement as referenced by clause 2.1.1 is hereby superceded by a new Schedule B dated March 2010 as attached.

2. Schedule C of the First Amending Agreement as referenced by clause 2.1.1 is hereby superceded by a new Schedule C dated March 2010 as attached.

3. Clause 2.3.2 is amended by adding:

“The location of the additions behind the existing building may be varied provided that they are built no closer to Jeddore Harbour than shown on Schedule B, and that they do not extend in front of the existing building. The proportion of floor area devoted to the various uses shown on Schedule B may also change, provided that the gross floor area of the addition does not exceed 9000 square feet.”

4. Clause 2.4.1 is deleted and replaced by the following:

“Parking shall be provided pursuant to the Land Use Bylaw.”

5. Clause 2.4.2 is deleted.

6. Clause 3.1 of the Existing Agreement is amended by adding:

“3.1 (e) Changes to the location or floor area of additions which are not provided for under section 2.3.2, provided that the gross square footage on the Lands does not exceed 20,000 square feet, and that the setback from Highway 7 is equal to or greater than that for the existing building.”

WITNESS that this Agreement, made in triplicate, was properly executed by the
respective Parties on this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in
the presence of:

Per: _____

Per: _____

=====

**SEALED, DELIVERED AND
ATTESTED** to by the proper signing
officers of Halifax Regional Municipality,
duly authorized in that behalf, in the
presence of:

**HALIFAX REGIONAL
MUNICIPALITY**

Per: _____

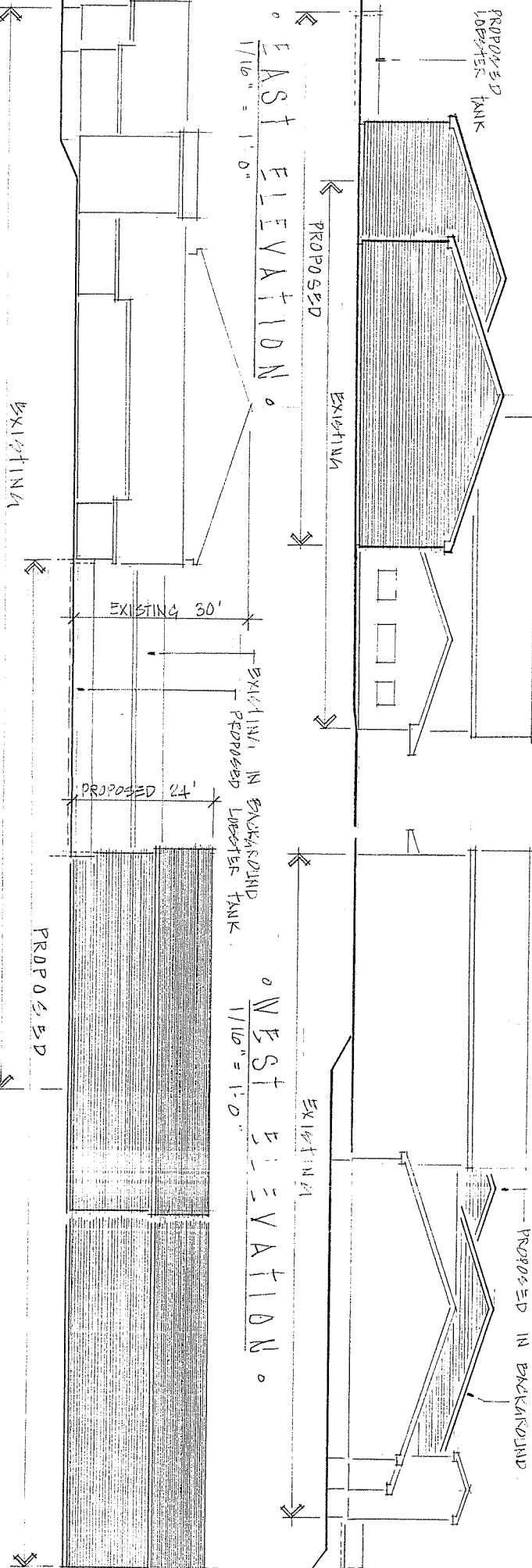
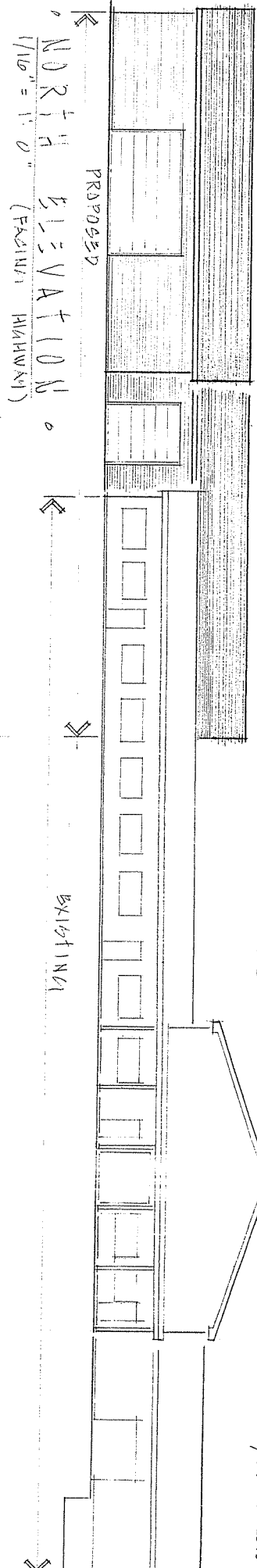
Mayor

Per: _____

Municipal Clerk

SCHEDULE C - ELEVATION DRAWING

DWG. No 507-5 / MARCH 2010



◦ SOUTH ELEVATION ◦ (FACING HARBOUR)
1/16" = 1'-0"

LOBSTER WORLD

PROPOSED BUILDING AND TANK
CIVIC # 10320 - HWY # 7 OYSTER POND / P.I.D. # 40515512

Attachment B

MPS Policy MU-7 Regarding Larger Commercial Uses

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.