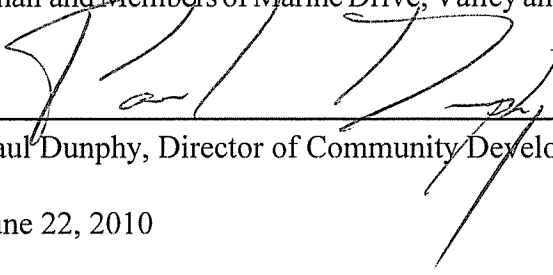




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Marine Drive, Valley and Canal Community Council
August 3, 2010

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

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: June 22, 2010

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

SUPPLEMENTARY REPORT

ORIGIN

- On December 10, 2009, Marine Drive, Valley and Canal Community Council approved a development agreement request by Shore Print allowing conversion of the former Jeddore-Lakeville Elementary School to commercial use. A requirement of approval is that the agreement be signed within 120 days of approval.
- An additional time extension of 120 days for signing the development has been requested.

RECOMMENDATION

It is recommended that Marine Drive, Valley and Canal Community Council require the development agreement (Attachment A) for the former school at 47 East Jeddore Road, Jeddore, be signed within 120 days of the date of this granted extension, or any additional extension thereof granted by Council on request of the Applicant; otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND & DISCUSSION

On December 10, 2009, Marine Drive, Valley and Canal Community Council approved a development agreement request by Shore Print Inc. The request was to permit conversion of the 10,000 square foot former school on the site at 47 East Jeddore Road to commercial use. The development agreement was required pursuant to policy in the area municipal planning strategy, which requires such a process for commercial uses of more than 5,000 square feet of floor area. As a standard condition of approval, Council required that the development agreement be signed within 120 days following the expiry of the appeal period. Although the applicant did sign within that time, HRM was unable to execute the agreement within the 120 days. This was largely due to delays in closing on the sale of the property. As a result, an extension is necessary to allow the agreement to be signed and properly executed by HRM. To avoid a similar situation in the future, Planning has worked with Legal Services on revised working to clarify that the 120 day signing period is only intended for the property owner.

Staff are of the opinion that the requested extension is reasonable. The sale of the property has closed, and there are no other obstacles to HRM executing the agreement.

COMMUNITY ENGAGEMENT

The community engagement process for this application was consistent with the intent of the HRM Community Engagement Strategy. A public hearing was held by Community Council to consider approval of the development agreement, which enabled public review and input. For the public hearing, notices were posted on the HRM website, in the newspaper and mailed to property owners within a defined notification area. Following the approval of the development agreement, public newspaper ads were placed advising of council's decision, and the right of appeal was explained.

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 approved 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

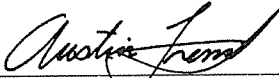
1. Community Council may choose to approve the requested time extension for signing the development agreement by 120 days. This is the recommended course of action.
2. Community Council may choose to not approve the requested time extension for signing the development agreement, which would render the agreement null and void. This is not recommended.

ATTACHMENTS

Attachment A Proposed Development Agreement

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: 
Austin French, Manager of Planning Services, 490-6717

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:

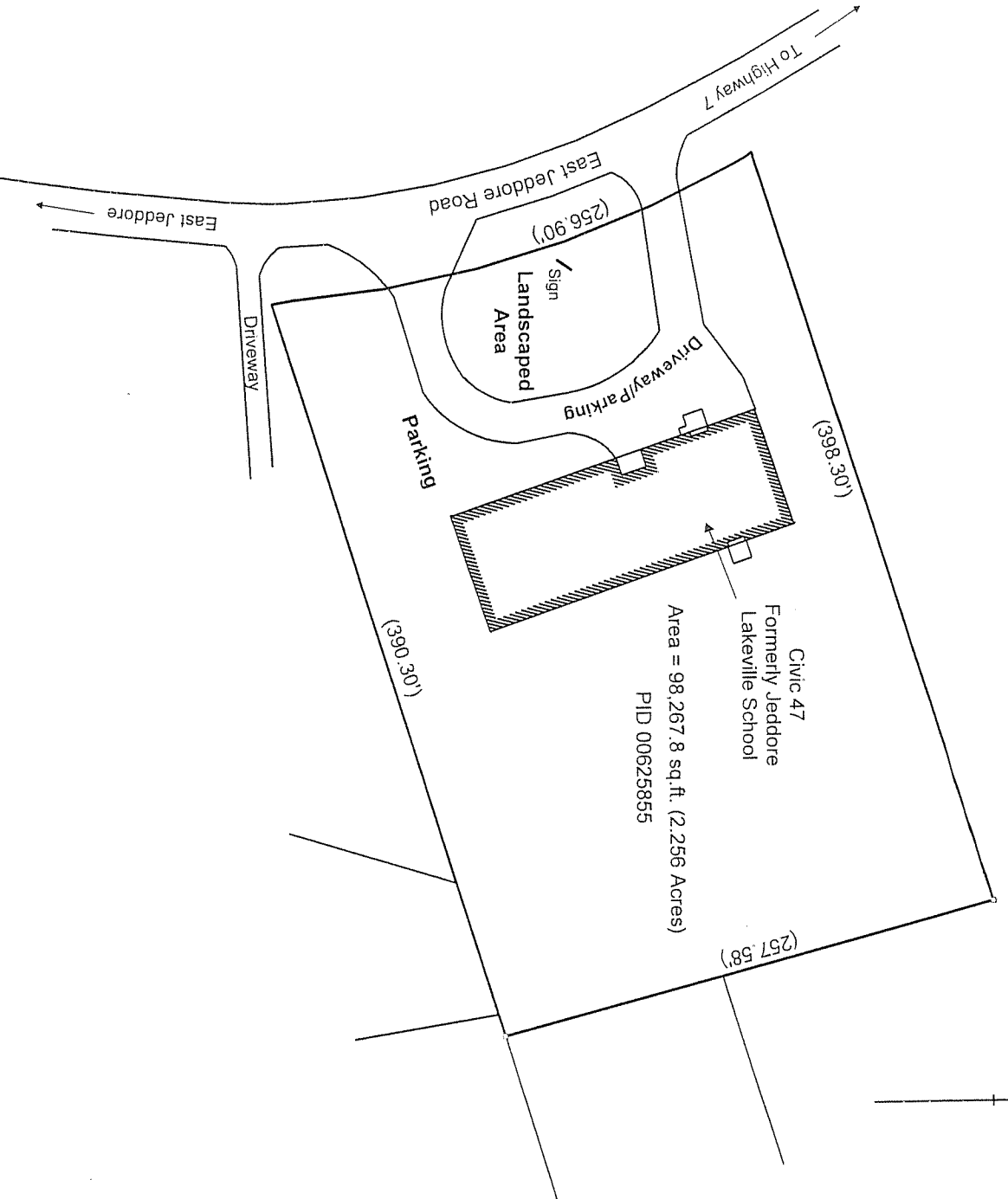
- (a) Retain the Agreement in its present form;

- (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 _____, 2010.

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

Grid North



Schedule B Site Plan

HRM does not guarantee the accuracy of any base information.

October 5, 2009

Case 01315

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