

PO Box 1749 Halifax, Nova Scotia B3J 3A5 Canada

Peninsula Community Council January 14, 2008

TO:

Chair and Members of Peninsula Community Council

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SUBMITTED BY:

Sharon Bond, Acting Director of Community Development

DATE: December 11, 2007

SUBJECT: Case 00870: Development Agreement - 5784 Charles Street, Halifax

SUPPLEMENTARY REPORT

<u>ORIGIN</u>

- Request by Studioworks International Inc., on behalf of Dave's Bottle Exchange Ltd., to amend the Halifax MPS and LUB to permit a multiple-unit residential building with commercial space at 5784 Charles Street, Halifax, by development agreement;
- November 13, 2007 approval by Regional Council of amendments to the Halifax MPS and Halifax Peninsula LUB.

RECOMMENDATION

It is recommended that Peninsula Community Council:

- 1. Approve the proposed development agreement as contained in Attachment A to allow for a multiple-unit residential building with commercial space;
- 2. Require that the development agreement be signed and returned within 120 days, or any extension thereof granted by Community Council on request of the Applicant, from the date of final approval by Community Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

On November 13, 2007, following a public hearing held jointly with Peninsula Community Council, Regional Council approved amendments to the Halifax Municipal Planning Strategy (MPS) and Halifax Peninsula Land Use By-law (LUB) to permit a multiple-unit residential building with commercial space at 5784 Charles Street, Halifax. The amendments have been reviewed by Service Nova Scotia and Municipal Relations as per Section 208 of the Municipal Government Act. These amendments became effective on December 15, 2007.

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The site is located at the northern end of the block bounded by Agricola, Charles, John and West Streets, Halifax and has been operated as a bottle exchange and transport facility since 1970. The proposal is to demolish the existing building, consolidate all four properties and construct a multiple-unit residential building containing 15 dwelling units with a small, 2-level commercial space fronting on Agricola Street.

DISCUSSION

As noted in the September 6, 2007 report, staff was to bring this matter back to Peninsula Community Council for a decision on the development agreement once the MPS and LUB amendments took effect. Council may now consider the draft development agreement (Attachment <u>A</u>).

The District 12 Planning Advisory Committee recommended an amendment to the agreement with regard to exterior balconies. Clause 2.5.6 of the agreement has been amended to reflect the PAC recommendation.

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 and the work 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 <u>approve</u> the proposed development agreement appended as Attachment A to permit the multiple-unit residential building with commercial space. This is the recommended course of action.

- 2. Council may choose to refer the case back to staff with specific changes to modify the development agreement.
- 3. Council may choose to refuse the proposed development agreement. This is not recommended for the reasons cited above. Reasons must be provided for a refusal.

ATTACHMENTS

Attachment A Draft Development Agreement

A copy of this report can be obtained online at <u>http://www.halifax.ca/council/agendasc/cagenda.html</u> 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 Sampson, Planner I, 490-6259

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Report Approved by:

Austin French, Manager of Planning Services, 490-6717

Attachment A

THIS AGREEMENT made this day of

, 2007,

BETWEEN:

<u>DAVE'S BOTTLE EXCHANGE LIMITED</u> 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")

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OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 5784 Charles Street, Halifax (PIDs # 00151431, 00151449, 00151662, 00151670) 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 a multiple-unit residential apartment building and commercial uses on the Lands pursuant to the provisions of the Municipal Government Act and pursuant to the provisions of the Halifax Municipal Planning Strategy of the Halifax Peninsula Land Use By-law;

AND WHEREAS the Peninsula Community Council approved this request at a meeting held on , 2008, referenced as Municipal Case Number 00870;

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.

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

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Subdivision 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: USE OF LANDS AND DEVELOPMENT PROVISIONS

2.1 Schedules

The Developer shall develop the lands for a multiple-unit residential apartment building with associated commercial uses in a manner, which, in the opinion of the Development Officer, is generally in conformance with Schedules B to J inclusive attached to this agreement and the plans numbered 00870-001 to 00870-009 inclusive filed in the Halifax Regional Municipality as Case Number 00870.

The schedules are:

Schedule A	Legal Description of the Lands	
Schedule B	Parking Level Floor Plan	Plan # 00870-001
Schedule C	Main Floor Plan	Plan # 00870-002
Schedule D	Second Floor Plan	Plan # 00870-003
Schedule E	Third Floor Plan	Plan # 00870-004
Schedule F	Fourth Floor Plan	Plan # 00870-005
Schedule G	Site Plan / Project Calculations	Plan # 00870-006
Schedule H	North Elevation	Plan # 00870-007
Schedule I	East and West Elevations	Plan # 00870-008
Schedule J	South Elevation	Plan # 00870-009

2.2 **Requirements Prior to Approval**

- 2.2.1 Prior to the issuance of a Construction Permit, the Developer shall provide to the Development Officer, unless otherwise stated by the Municipality, a Landscaping Plan in accordance with Section 2.6 of this agreement.
- 2.2.2 Prior to the issuance of any Municipal Occupancy permit, the Developer shall provide to the Development Officer, unless otherwise stated by the Municipality, Certification from a qualified professional indicating that the Developer has complied with the Landscaping Plan required pursuant to this Agreement.

2.2.3 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an occupancy permit has been issued by the Municipality. No Occupancy Permit 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.

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2.3 General Description of Land Use

- 2.3.1 The use of the Lands permitted by this Agreement, subject to its terms and as generally illustrated on the Schedules attached hereto, are as follows:
 - A multiple-unit residential building, including open spaces and underground parking; and
 - Commercial space fronting on Agricola Street .

2.4 **Detailed Provisions for Land Use**

- 2.4.1 The proposed development shall comply with the requirements of the Land Use By-law for Halifax Peninsula with the exception of the requirements for vehicular parking (Section 6), minimum lot size [47(1)], setbacks / angle controls [47(2) through 47(5)] and open space/landscape open space [48(2)].
- 2.4.2 Commercial uses within the space fronting on Agricola Street, as shown on the attached Schedules, shall be permitted subject to the provisions of the General Business (C-2) Zone, Land Use By-law for Halifax Peninsula.
- 2.4.3 The Development Officer may approve minor modifications to the building, including the architectural design of the building such as facade features and the type of exterior materials, provided such modifications are minor in nature and, in the opinion of the Development Officer, further enhance the appearance of the building and lands.
- 2.4.4 The Developer shall be entitled to modify the internal floor plans and the number of residential units provided the exterior appearance of the building is not affected.
- 2.4.5 The underground parking area shall be generally as illustrated on Schedule B (Plan # 00870-001). A minimum of 8 bicycle parking spaces shall be provided.

2.5 Architectural Requirements

2.5.1 Exterior building materials shall resemble or include an expression of traditional painted wood vernacular. This may include the use of Hardie board planks / panels or an acceptable equivalent in the opinion of the Development Officer. The exterior shall not include vinyl siding or exposed treated lumber. Stone cladding may include cut or random stone, stone tile or veneer with exposed face to simulate natural stone.

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- 2.5.2 Exterior colors shall be of or similar to the "Historical Colours of Newfoundland" palettes of the Heritage Foundation of Newfoundland and Labrador (as found in Municipal Case #00870 or <u>http://www.heritagefoundation.ca/docs/historic_paint.pdf</u>, accessed Sept. 11, 2007). The use of multiple colours shall be implemented to provide the appearance of multiple buildings and to relate to the surrounding context. This shall be achieved by altering the colour of the facade in increments of no greater than 40 feet in width so that the building facade on Charles Street contains, at a minimum, 4 separately distinct colours, exclusive of the colours of architectural detailing.
- 2.5.3 Architectural detailing shall include corner boards, frieze and water table boards generally as shown on the elevation drawings. This architectural treatment shall be continued around all sides of the building. This detailing shall be painted a different colour or hue than that of the adjacent surface colour.
- 2.5.4 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.
- 2.5.5 All roof mounted mechanical and/or telecommunication equipment shall be visually integrated into the roof design and/or screened from public view.
- 2.5.6 The roof top and balcony fencing/handrails shall be of decorative metal complementary to the building. The underside of private balconies shall be enclosed and finished.

2.6 Landscaping

2.6.1 A detailed Landscape Plan prepared by a Landscape Architect (that is a full member, in good standing, of Canadian Society of Landscape Architects) shall be submitted with the application for Development Permit. The landscape plan shall provide details of the rooftop landscaped open areas and "garden" open spaces as shown on the attached Schedules C, E and F. The plan shall specify all model numbers, quantities and manufacturers of site furnishings as well as construction details of landscaping features (benches, etc.) and details with regard to all landscaping/plant materials.

- 2.6.2 The Developer shall provide a minimum of 4 decorative benches, 4 decorative planters or pots of sufficient size to each accommodate a small decorative tree, 4 deciduous and/or coniferous trees and one decorative garbage receptacle on each level containing open space (Schedules C, E and F). Landscaping features and site furnishings shall be either permanently affixed to the structure or suitably weighted to ensure their permanence.
- 2.6.3 It is the responsibility of the Developer to ensure that the building is designed to be capable of supporting loads from the weight of the decorative planters/pots, including the anticipated mature weight of the plant material, as well as all other landscaping features.
- 2.6.4 Prior to issuance of the first Occupancy Permit the Developer shall submit to the Development Officer a letter certifying that all landscaping has been completed according to the terms of this Development Agreement.
- 2.6.5 Notwithstanding the above the Occupancy Permit may be issued provided the Developer supplies security in the amount of 110 per cent of the estimated cost to complete the landscaping. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the security to complete the landscaping as set out in this Section of the agreement. The Developer shall be responsible for all costs in this regard exceeding the security. The security or any unused portion thereof shall be returned to the Developer upon completion of the work and its certification.

2.7 Maintenance

The Developer shall 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 building, fencing, recreational amenities, 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.

2.8 Archaeological Monitoring and Protection

The lands fall within the High Potential Zone for Archeological Sites identified by the Province. The Developer shall contact the Curator of Special Places with Heritage Division of the Department of Tourism, Culture and Heritage of the Province of Nova Scotia prior to any disturbance of the site and the Developer shall comply with requirements set forth by the Province in this regard.

2.9 Environmental Remediation

The Developer agrees to comply with the legislation, regulations and guidelines of the Province of Nova Scotia with regard to the management of contaminated sites and environmental remediation of the lands.

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3.0 STREETS AND MUNICIPAL SERVICES

3.1 General Provisions

- 3.1.1 All construction shall satisfy the Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.
- 3.1.2 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.
- 3.1.3 The building shall include designated internal space for three stream (refuse, recycling and composting) source separation services. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with Solid Waste Resources.

4.0 AMENDMENTS

4.1 Substantive Amendments

Amendments to any matters not identified under Section 4.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

4.2 Non-Substantive Amendments

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

- (a) The granting of an extension to the date of commencement of construction as identified in Section 6.3.1 of this agreement;
- (b) The length of time for the completion of the development as identified in Section 6.3.3 of this agreement;

- (c) Changes to the architectural requirements/details and/or changes to the exterior architectural appearance of the building, as shown on the attached schedules or as detailed in Section 2.5 provided that plans are submitted for any changes to the building design and that such changes, in the opinion of Council, are minor in nature;
- (d) Changes to the landscaping as shown on the schedules or as detailed in Section 2.6 which, in the opinion of Council, are minor in nature.

5.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

5.1 Enforcement

The Developer agree 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 allow for such an inspection during any reasonable hour within one day of receiving such a request.

5.2 Failure to Comply

If the Developer fail to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) 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; and/or
- (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 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/or
- (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement; and/or

6.0 **REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

6.1 **Registration**

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

6.2 Subsequent Owners

- 6.2.1 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 the Council.
- 6.2.2 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.

6.3 **Commencement of Development**

- 6.3.1 In the event that construction on the Lands has not commenced within three years from the date of registration of this Agreement at the Registry of Deeds or Land Registration 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.
- 6.3.2 For the purposes of this section, commencement shall mean the issuance of a Construction Permit.
- 6.3.3 If the Developer fails to complete the development, or after five years from the date of registration of this Agreement at the Registry of Deeds or Land Registration 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;
 - (c) discharge this Agreement.

6.4 **Completion of development**

Upon the completion of the development or portions thereof, or within/after five years from the date of registration of this Agreement with the Registry of Deeds or Land Registration 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;

(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 Halifax Peninsula, as may be amended from time to time.

WITNESS	that this Agreement, made i	n triplicate,	was properly	executed by the	e
respective Parties on this	day of		, A.D., 20	08.	

SIGNED, SEALED AND DELIVERED in the presence of) DAVE'S BOTTLE EXCHANGE LIMITED)) Per:
) Per:
SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality duly authorized in that behalf in the presence))) HALIFAX REGIONAL MUNICIPALITY)) Per:
of) MAYOR
)) Per: MUNICIPAL CLERK

















