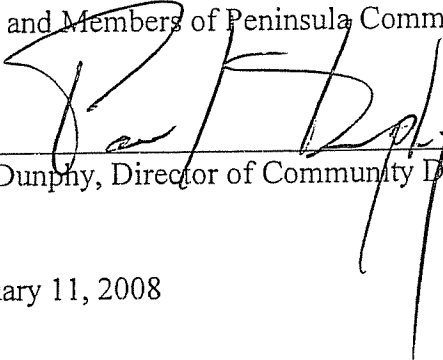




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
March 3, 2008

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: February 11, 2008

SUBJECT: Case 01078: Rezoning from P to R-1 - Harbourview Drive, Halifax

ORIGIN

- July 8, 2002 - Peninsula Community Council turned down a request to rezone this property from P (Park and Institutional) to R-1 (Single Family Dwelling).
- A new application has been received by Provident Development Inc. to rezone the same property at Harbourview Drive (PID 40795155) from the P (Park and Institutional) Zone to the R-1 (Single Family Dwelling) Zone.

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Give First Reading of the proposed rezoning and schedule a public hearing.
2. Approve the rezoning of a parcel of land at Harbourview Drive (PID # 40795155), as shown on Map 1, from P (Park and Institutional) to R-1 (Single Family Dwelling).

BACKGROUND

The subject parcel (PID # 40795155) is located within the P (Park and Institutional) Zone (see Map 1) and is designated Low Density Residential (LDR) under the Generalized Future Land Use Map for the South End Area Plan. The property is located on the north side of Harbourview Drive and has a total area of 26,667 square feet. The parcel is relatively flat with the exception of the steep embankment of the railway cut at the rear. A power line and a power easement are located along the back of the property within which there are to be no buildings constructed.

The current proposal is to rezone the property on Harbourview Drive from P to R-1 and subdivide it to accommodate the construction of five, new single unit detached houses as shown on Attachment A.

In 2002, Provident Developments made an identical application to rezone this property from P to R-1. The Peninsula Community Council rejected the application at First Reading. The only policy / regulatory change since that time has been the adoption of the Gross Floor Area (Ratio) requirements under the Halifax Peninsula Land Use By-law, which limit the size of dwellings that can be constructed based on the size of the lot.

Provident Development purchased this land at Harbourview Drive, as well as land on Southwood Drive, in 1997 from Canadian National Railways (CN). The land fronting Southwood Drive was zoned R-1 (Single Family Dwelling). It was subdivided, and ten single family detached dwellings have been constructed.

There are plans to develop a multi-use trail in the street right of way along the front of this property as part of the Halifax Urban Greenway project. Although there were previous discussions about the benefits of having the trail at the rear of the property, or over the entire parcel of land, the current plan is for the trail to run along the front of the property within HRM's street right-of-way.

DISCUSSION

Municipal Planning Strategy Policies

The Halifax Municipal Planning Strategy sets out the policy related to the subject parcel and these policies must be considered in relation to the proposed rezoning. The proposal is supported by MPS policy for this area as follows:

- The Generalized Future Land Use Map of the Municipal Planning Strategy (South End Area Plan) designates the subject property as Low Density Residential (LDR), which gives a clear indication of intent to allow these lands to be used for residential purposes if and when they become surplus to CN's needs. The only type of housing permitted in this designation is detached, single-family dwellings. The proposed rezoning of the subject parcel from P to R-1 for the purpose of building detached single family dwellings is consistent with this designation and policy.

- The provision of well located, infill housing of various types and densities on the Peninsula is an important goal of Section V of the Halifax MPS (South End Area Plan) as well as of the Regional Municipal Planning Strategy. This application supports these policies by providing infill housing opportunities.
- Existing policies require that new development be compatible with the surrounding residential neighbourhood. The subject parcel is surrounded by single family detached housing on the east and south. This application to rezone to allow single family dwellings is compatible with the existing residential environment.
- Research of the zoning history of these lands indicates that they were zoned P to control development of the lands and allow Council an opportunity to review the compatibility of proposed development with existing neighbourhoods. There is no evidence to suggest that the P Zone was applied for the purpose of reserving this land for park purposes.

Public Information Meeting / Area of Notification

A Public Information Meeting for this application was held on November 14, 2007. Minutes of this meeting are provided as Attachment C of this report. Some concerns identified at the public meeting include:

- compatibility of the quality and character of the proposed dwellings with existing houses,
- number of lots/dwellings that are proposed,
- size and use of institutional building(s) that could be developed as-of-right.

Unfortunately, there is no ability under the Municipal Government Act for Council to address design or number of potential dwellings in the course of a rezoning process.

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.

CN Concerns/Position

Under the previous application in 2002, CN stated their objection to the rezoning because it did not meet their guidelines for minimum distances between new residential development and railyards. However, the Harbourview Drive property and the Southwood Drive land was sold by CN to Provident Development in 1997. CN has recently indicated that they still object to the proposed rezoning but would be somewhat less concerned with an institutional use on the property (see Attachment E). Park and institutional uses are permitted as-of-right in the existing P zone (See Attachment B, Park and Institutional Zone) and the applicant has indicated its intent to proceed with developing the site for an institutional use if Council refuses this application. However, any decision by Council should be based on the MPS policies applicable to the lands in question.

To address some of the potential conflicts between uses on the Southwood Drive lots, gabion walls were constructed at the rear of some lots to stabilize the embankment edge and suitable fencing was placed at the back of all lots. The fences are required through a restrictive covenant placed on the

deeds for the lands sold to Provident Development by CN (See Attachment D). Also, for noise protection, sound proof boards and special windows were used at the back of the Southwood Drive houses. HRM cannot require that any of these measures are carried out, but Provident has indicated its intent to develop these lots in the same manner as those along Southwood Drive. Although CN is objecting to the rezoning, it should be noted that their covenants with Provident specify that it “will not object to the use of the adjacent lands for railway purposes or to any noise or vibration or odors associated with such use”; and agrees to “obtain a similar undertaking from each subsequent purchaser who shall be bound by the same terms and conditions”.

Conclusion

Staff believe that the proposal satisfies the applicable policies of the Municipal Planning Strategy (Attachment B). As such, it is recommended that Peninsula Community Council approve the application to rezone the property on Harbourview Drive (PID 40795155) from the P (Park and Institutional) Zone to the R-1 (Single Family Dwelling) Zone.

BUDGET IMPLICATIONS

None. The HRM costs to process this application can be accommodated within the approved C310 operating budget.

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 approve the application to rezone the property on Harbourview Drive. This is the recommended course of action.
2. Alternatively, Council may choose to reject the proposed rezoning for Harbourview Drive. Pursuant to Section 210(5) of the Municipal Government Act, Council must provide reasons for this refusal, based on the policies of the MPS. This alternative is not recommended as staff is satisfied that the proposed rezoning is consistent with the policies and intent of the MPS.

ATTACHMENTS

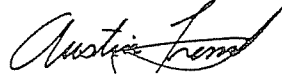
Map 1	Zoning and Location
Attachment “A”	Proposed Site Plan
Attachment “B”	Excerpts from Halifax MPS and LUB
Attachment “C”	Minutes from the November 14, 2007 Public Information Meeting

Attachment "D"
Attachment "E"

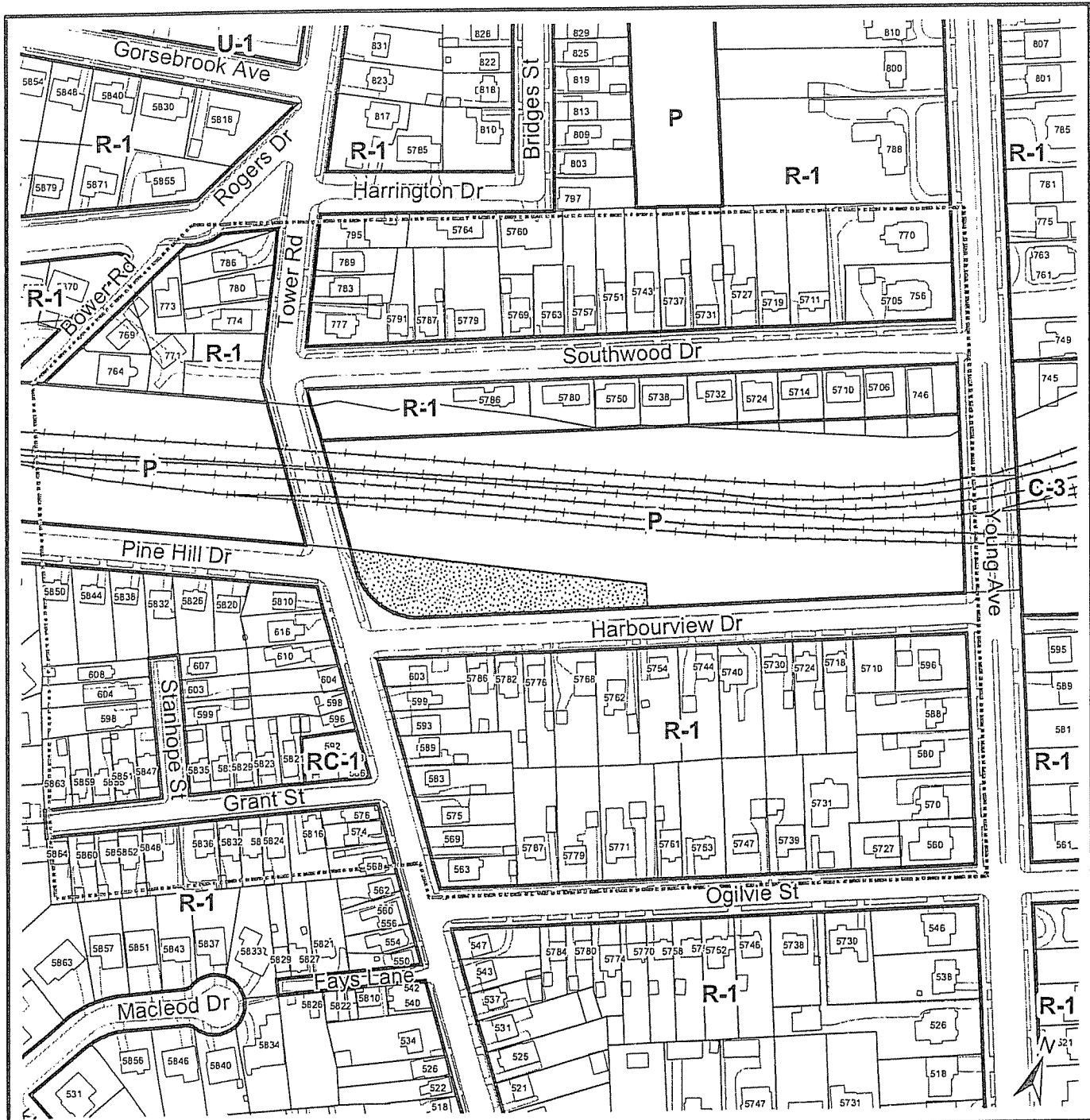
Covenants on lands purchased from CNR
Correspondence from CNR

A copy of this report can be obtained online at <http://www.halifax.ca/commcounc/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: Patricia Hughes, Planner I, 490-1948
Paul Sampson, Planner I, 490-6259





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



Map 1: Zoning and Location

Harbourview Drive
Halifax

 Area proposed to be rezoned from P (Park and Institutional) to R-1 (Single Family Dwelling)

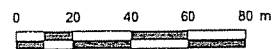
 Area of notification

Halifax Peninsula
Land Use By-Law Area

Zone

- R-1 Single Family Dwelling
- RC-1 Neighbourhood Commercial
- C-3 General Industrial
- P Park and Institutional
- U-1 Low-Density University

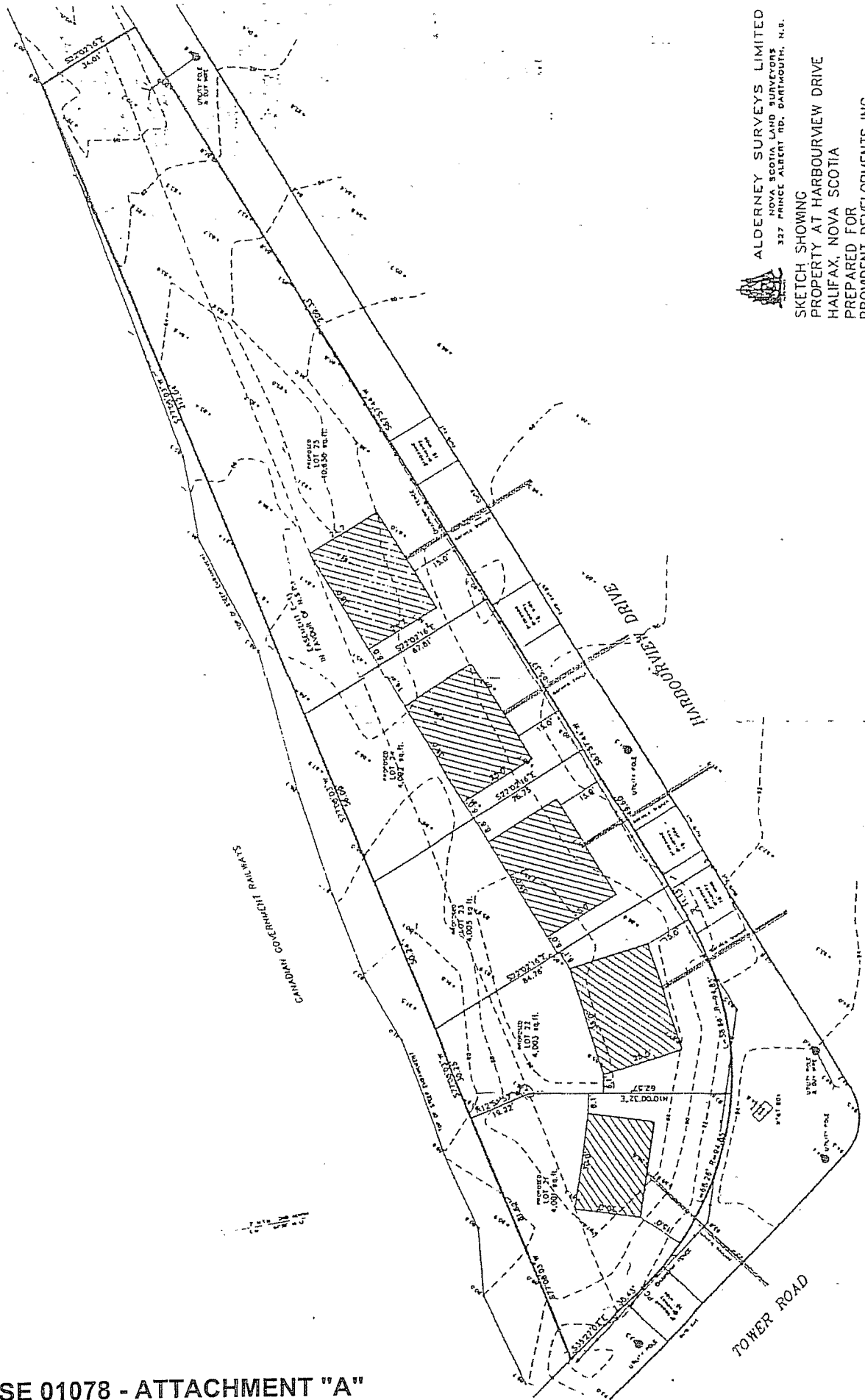
HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES




This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Peninsula Land Use By-Law Area.

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

CASE 01078 - ATTACHMENT "A"



**ALDERNEY SURVEYS LIMITED**
NOVA SCOTIA LAND SURVEYORS
327 PRINCE ALBERT RD, BARTMOUTH, N.S.
SKETCH SHOWING
PROPERTY AT HARBOURVIEW DRIVE
HALIFAX, NOVA SCOTIA
PREPARED FOR
PROVIDENT DEVELOPMENTS INC

NOT TO SCALE

ISSUED FEBRUARY 8, 2000 BY BUSH
AND ASSOCIATES INC. 1000 UNIVERSITY AVENUE, HALIFAX, NS B3H 2R6

DRAWN BY: J.P.C. (1/11/00)
DATE: FEBRUARY 8, 2000 1 inch = 20 ft O12400-A

Excerpts from Halifax MPS

Policy 1.1 (Part II, Section V South End Area Plan Policies):

Residential neighbourhoods shall be maintained and expanded by encouraging retention and rehabilitation of existing structures and units and by permitting new stock through infill and complementary redevelopment.

Policy 1.1.1 (Part II, Section V South End Area Plan Policies):

Several forms of infill housing shall be encouraged by the City as appropriate to the diverse physical characteristics of the individual districts and neighbourhoods.

Policy 1.1.1.1 (Part II, Section V South End Area Plan Policies):

Forms of infill housing which shall be permitted in the South End include:

- © *building on vacant lots in the forms prescribed by this Section of the Plan;*

Policy 1.2 (Part II, Section V South End Area Plan Policies):

Residential uses should be buffered from non-residential uses which are inappropriate to a stable, healthy, enjoyable living environment.

Policy 1.3 (Part II, Section V South End Area Plan Policies):

The City shall encourage the retention and creation of family-type housing accommodation in the South End.

Policy 1.4.1 (Part II, Section V South End Area Plan Policies):

Areas shown as "Low-Density Residential" on the Future Land Use Map (Map 2) of this Plan shall be regarded as areas for family-type housing accommodation. All new residential developments in these areas shall be detached single-family dwellings.

Policy 6.2.1 (Part II, Section V South End Area Plan Policies):

The City shall endeavour to provide additional open-space through such means as the conversion of publicly-owned land to open space; the conversion of institutionally-owned land to open space through leasing arrangements or purchase; and provision of funds in the City's budget for land acquisition.

Policy 9.1 (Part II, Section V South End Area Plan Policies):

The Generalized Future Land Use Map (Map 2) shall be considered as the expression of intent of the City of Halifax for a future land use pattern based on the policies outlined in this Plan.

Policy 2.1 (Part II, Section II City-Wide Policies):

Residential development to accommodate future growth in the City should occur both on the Peninsula and on the Mainland, and should be related to the adequacy of existing or presently budgeted services.

Policy 2.1.1 (Part II, Section II City-Wide Policies):

On the Peninsula, residential development should be encouraged through retention, rehabilitation and infill compatible with existing neighbourhoods; and the City shall develop the means to do this through the detailed area planning process.

Policy 2.4 (Part II, Section II City-Wide Policies):

Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.

Policy 2.5.1 (Part II, Section II City-Wide Policies):

The City views the neighbourhood as the foundation for detailed area planning. In the process of detailed area planning, residents shall be encouraged to determine what they consider to be their neighbourhoods, and to work with City Council and staff in arriving at an acceptable definition of their neighbourhood and a neighbourhood plan.

Policy 2.6 (Part II, Section II City-Wide Policies):

The development of vacant land, or of land no longer used for industrial or institutional purposes within existing residential neighbourhoods shall be at a scale and for uses compatible with these neighbourhoods, in accordance with this Plan and this shall be accomplished by Implementation Policies 3.1 and 3.2 as appropriate.

Policy 3.1.1 (Part II, Implementation Policies):

The City shall review all applications to amend the zoning by-laws or the zoning map in such areas for conformity with the policies of this Plan with particular regard in residential areas to Section II, Policy 2.4.

ATTACHMENT "C"

MINUTES: HRM PUBLIC INFORMATION MEETING
CASE NO.01078 Provident Development Limited

7:00 p.m.
Wednesday, November 14, 2007
Gorsebrook Jr. High

IN ATTENDANCE: Paul Sampson, Planner, HRM Planning Services
Sharlene Seaman, Administrative Support, HRM Planning Services

ALSO IN
ATTENDANCE: Councillor Sue Uteck, District 14
David Hilchey, Developer, Provident Development Limited

PUBLIC IN
ATTENDANCE: Approximately 17

The meeting commenced at approximately 7:05 p.m.

1. Opening remarks/Introductions/Purpose of meeting - Paul Sampson/ Councillor Uteck

Mr. Sampson introduced himself as the Planner taking this application through the process and introduced David Hilchey as the developer. He then turned the floor over to Councillor Sue Uteck.

Councillor Uteck advised that since the last meeting a number of residents have approached her to look at the possibilities of the drawing posted on Tower Road (and the other on Harbourview), wondering if it could actually be developed. Her answer was "yes", it can be developed under a Park and Institutional Use.

The second question was, if the applicant went for a down zoning, how many houses would he be allowed to build? She states that the applicant would be allowed to have up to five houses. Everyone is wondering "Is this going to be another Southwood"? No, there are new regulations that would limit the size of the houses and she advises that it is up to the residents.

She states that the reason she wanted this to come forward at this meeting is to get a solution one way or another from the residents. She has had calls and she has already done this application in 2000 where she soundly stood up and told the previous applicant to go away. It was of no interest.

She thinks that it is hard as a Peninsula collective but the Development community is interested and this is an application that has her concerned. She does not know if this building will be built but she has had calls from developers, from daycare centers, etc. checking into the legitimacy of this application.

She states that this application is not going to go away and she needs feedback from her residents as to which way they will go. She then introduced Sharlene Seaman, Administrative Support and again, the Developer, David Hilchey. The agenda was reviewed.

2. Overview of planning process/ Presentation of Proposal - Paul Sampson

Paul Sampson advised of the sign up sheet and notification. He advised of the maps and rezoning agenda, as well, the fact sheet available. He then advised of the rezoning process. At this point they are at the Public Information Meeting stage and following this meeting there will be a detailed review by staff of the proposal and the report prepared to Community Council.

It takes a little while and his estimate was that it may be late winter or spring before this report actually goes to council for a Public Hearing. When the first staff report arrives at Council, they can make a decision on a proposal right then and there or they can set a date for a Public Hearing. Then make a decision on the proposal following the hearing. Chances are the decision will be in spring.

He advised that five years ago there was a proposal which was almost identical to this one; five single family lots and dwellings. The only change that he is aware of since then is that there are Floor Area Requirements(FAR) in the Land Use By-law(LUB) that limit the size of dwellings. He uses the example of a lot size of 4000 square feet. The maximum floor area of a dwelling is 2800 square feet.

There is a chart in the LUB that indicates the larger the lot size, the larger the dwelling that can go on a property. That includes basements that are over a height of six and a half or seven feet. The Building Code actually determines what is habitable or not. In terms of FAR, most basements are included. That is the only change.

Councillor Uteck advises that GFAR stands for Gross Floor Area Ratio and it is a new application she has put in to limit the number of habitable rooms. She stated that one of the concerns she has heard five years ago and again two years ago for this application is "What are going to be the size of these houses in relation to the other homes on the street"? The GFAR will determine the number of bedrooms in the house. That determines the square footage in the house and how that house can be built.

She passed the floor back to Mr. Sampson. He read some definitions that are in the By-law. He gave the definition for Gross Floor Area; the aggregate of the area of all floors in a residential building, whether at above or below grade, measured from the exterior faces of the exterior wall. It is from the outside walls or from the center line of the common wall separating two buildings, including the basement floor area where the basement ceiling height is 1.95 meters or higher. Excluding any open porch, veranda or unfinished attic that is accessed by means other than a fixed staircase and area used for a private garage, parking and loading. The Floor Area Ratio itself is the ratio of that floor area to that lot size.

The reason he used that 4000 square foot example is because that is the minimum size of a lot that the R-1 zone requires. He continued with other examples of FAR. After some confusion he again stated: The larger the lot size, the larger dwelling you can have on the lot.

Councillor Uteck asked how this development would affect the Halifax Urban Green Way Association and the proposed trail, "The Green Way Trail".

Mr. Sampson stated the Halifax Urban Greenway Trail was to be constructed within an HRM right of way on the railway side of Harbourview and there is quite a distance between the street and the property line. HRM does own quite a bit of land before you actually hit land that is owned by Provident.

Councillor Uteck questioned if CN was notified and Paul responded that he is not sure if they were notified; he will look into it.

Mr. Sampson passed the floor to David Hilchey, the applicant, to go over the proposal.

3. Presentation - David Hilchey

Mr. Hilchey starts by addressing the CN issue as it will have no impact on this development. He doesn't believe it has a whole lot of value. He states that nothing has changed since April. That it is basically the same five lots and 26,000 feet.

He advised that the residents are all aware of what was proposed. He then stated that Councillor Uteck already went over the GFAR. He thought that the house sizes were never an issue. He advised that these houses will not exceed 2,800 feet. He advised that the values on these houses will be about \$650,000 to \$700,000 by the time they are built. It isn't his goal to build anything which is low quality.

He advises that the expectations and standards have changed in terms of quality. There were some concerns about having vinyl siding and advises that they will be looking at finishes such as hardy plank and aggregate stone driveways. He states that they wouldn't be using any vinyl. He refers to the first display which is a picture of a house that they will be envisioning towards. He states that this type of house is soft and they can't get too imposing with this GFAR because you are using the basement and you can only climb so high, so you get a low profile size house which he feels fits well in the neighbourhood.

He referred to "Bill" in the matter of compression; small lots and compressing the houses to give a look that may be inconsistent with the street. When you look across the street and look at the lots you will find 5-6 houses that are sitting between 40-50 feet wide. They are longer and narrower. They are very consistent with the type of housing the developer has in mind. They have fifty foot wide lots, four feet of side yard and between thirty-two and forty foot wide housing, which is consistent with the houses across the street. The set backs are the same, twenty feet; four feet on the side and

the widths are more consistent with the houses across the street. The scale is going to be pretty well the same. The difference is that the houses across the street are much longer.

Councillor Uteck asks about the set backs and Mr. Sampson advised that the side yard set backs are a six foot maximum but it is ten percent of the lot width.

Councillor Uteck then opens the floor for questions advising people to state their names and addresses for the record. Paul Sampson advises that everyone should speak one person at a time.

4. Questions/Comments

John Moorehouse, Harbourview Drive asks about the set backs from the street.

Mr. Sampson advised that there is a minimum of a fifteen foot front yard set back in the R-1 zone. He advises that the back yard set back will be limited due to the Nova Scotia Power right of way.

Councillor Uteck follows up by adding that HRM owns from the curb, eight feet in and then fifteen feet back would be the start of the houses. Total of twenty-three feet back.

Michael Bishop, Harbourview Drive advises that the set backs are a debatable issue. He questions if people can skateboard in front of these houses. David Hilchey advises that it isn't relevant.

Councillor Uteck advises that the trail is an issue for another day.

Bill Mahoady, Harbourview Drive asks if the zoning changes are the extent of this initial application.

David Hilchey stated that it was the extent of the initial application.

Mr. Mahoady questioned if the house on the diagram will be the same as the houses that will be built.

Mr. Hilchey advised that the home will be something like the diagram but the meeting isn't about a Development Agreement, it is about Rezoning.

Mr. Mahoady asked if Provident will be discussing a DA tonight and Mr. Hilchey stated "no".

Unidentified speaker asked what is Mr. Hilchey's position at Provident. Mr Hilchey advised that he was a developer.

Councillor Uteck advises that the residents need a comfort level on the street scape and the quality of homes. She refers to problems with her own property. She asks about the vinyl siding.

Mr. Hilchey agrees that there will not be any vinyl siding. He also advises that he can't be sure that the houses are compatible with the mixture of houses. He states that it is in the developer's and the residents best interest to maintain a consistency of design that looks like the diagram with maybe minor modifications in terms of features. The actual look wouldn't deviate a whole lot from the diagram. The idea is to create this soft look that runs in five houses. He believes that it is better for value wise to be consistent in that kind of genre.

Janice Wiscombe, Harbourview Drive, wonders about him selling two lots to one owner and them building one big house. He advises her that they, the developer, will not be doing that.

Councillor Uteck asks was the developer building the houses and selling the street or are they selling the street.

Mr. Hilchey stated that they are building houses and then selling the street.

Joel Jollimore, Southwood Drive, wonders if the lots can be combined. Mr. Hilchey advises again that they cannot. They would not combine as it would compromise the lots remaining.

Unidentified speaker asks Mr. Hilchey if he is prepared to put something in writing at the meeting that states the developer will have five lots and they will put certain covenants (no vinyl siding) to assure the residents that these will be small single family homes of a certain quality and character.

Mr Hilchey states that this would be fair as it is in the best interest of the developer. It would make it easier to sell. People like consistency. Provident likes to maintain a certain genre. He states that they are building a house to sell.

Allen Clark, Southwood Drive expressed concern about the back of the buildings. He asked if they were going to hang over the cliff.

Mr. Hilchey stated that "no" they would not.

Mr. Clark questioned the cut down trees

Mr. Hilchey advised that the tree cutting had taken place for the purpose of the view for the office building that they were thinking about putting there. He showed the cutting on the diagram. Mr. Sampson advised that there is a Nova Scotia Power easement.

Michael Bishop asked if the cables will be buried as he believes they should be for the sake of the residents safety.

Councillor Uteck stated that she had spoken in the past with Nova Scotia Power about the underground wiring. They advised her that it is too expensive for them to do.

Mr. Bishop states that he does not buy the idea that NS Power will not do anything as they can be told what to do. He thinks that it won't cost a cent. He also is concerned about the impact on the quality of lives for people.

Councillor Uteck advised that it is quite expensive. Mr. Hilchey states that it is insignificant.

Mr. Sampson advised that HRM sends a report to NS Power for review. It is really a private matter with each home owner.

Dorin Donovan, Harbourview drive wonders if this meeting is the place to object to this proposal.

Councillor Uteck advises that it is as that is the reason they are here. She states that some residents say yes to 3 lots being developed but the developer will probably get all five lots. Some residents want nothing at all on the development area. The community does not want one large building. Those people within 100 feet like to have a vested interest in there surrounding community. She has heard a lot of requests from Tower Road and Young Avenue that the residents do not want this building and they do not want to be here. Also she has heard this from the residents as well. This is why we are here. To get feedback. She advises the residents to tell her what they want her to do and she will try to make the best decision in their interest.

Mr. Sampson advises that besides the comments at the meeting, he can be contacted by email and anyone can make comments at any stage.

David Hilchey advises that his company will be agreeable to adopting certain restricted covenants to protect the housing. He asks the residents how he could do that.

Unidentified speaker states that maybe there should be certain quality for the houses, example: no vinyl siding.

Bill Mahoady, Harbourview Drive asks if traditionally, the way the city would deal with this is to enter into a development agreement.

Mr. Sampson advises him that, no development agreements which involve single family neighbourhoods are usually in place in new subdivisions so primarily in suburban settings. The City also has DAs quite often for urban sites that are mixed-use, commercial or residential accommodations, residential commercial or industrial but not typically for single family homes. That is not to say it can't be done but in order for that to happen an application would have to be made to Regional Council where they would initiate a process to amend the Planning Strategy and that would be site specific. It would have to be amended to state that this site can be developed only by development agreement.

Unidentified speaker states that the developer could just enter into a development agreement with the residents of Harbourview drive if he would do certain things.

David Hilchey states that the speakers neighbour next door could at any time change the features on his house and the neighbours cannot say anything about it.

Bill Mahoady, Harbourview Drive, advises Mr. Hilchey that with all due respect, he will never be their neighbour. Provident is going to build these houses and then Mr. Hilchey is not going to be there.

Mr. Hilchey advises that all he was stating is that you can't control your neighbours

Mr. Bill Mahoady believes that if Mr. Hilchey could put some things in writing to the residents it might help the residents feel more comfortable.

Mr. Hilchey asks what the major concerns are here.

Councillor Uteck states that the quality and the character of the houses are the peoples concerns. The biggest concern is that Harbourview might be like Southwood (beige box with low quality windows). She advises the residents that it will not be like that as there are regulations in place so the developer cannot build that size of house. She again refers to her home and her problems with those homes around her. She is concerned about the buffer zone. If the trees go down, what is going to be the noise level.

Mr. Hilchey states that they are not going to cut the trees down.

Jake Clark, Southwood Drive, states that they already have cut down trees. He wants to know what ever happened to the idea of the one big building.

Mr. Hilchey states that he was asked to come back to this meeting. He had spoken with Goeff Keddy, an architect and asked him what they could do with the maximum base plate under the R-3 guidelines and he came up with the building on the sign which is about 13-14,000 base plate on three floors which gives about 43,000 square feet over three floors. They sent the idea off to different institutions that were interested in looking into the building. The company did not have anything in mind after that.

Unidentified speaker stated that Mr, Hilchey was trying to intimidate the residents.

Councillor Uteck stated that she had asked Mr. Hilchey to come back because neighbours sometimes want to talk to neighbours and come to an agreement but don't really want to say to their neighbours "What is with this building". She states that she was seriously unhappy. She feels that there is a difference between 2000 and 2007. When they said walk away in 2000 she had no problem but now she was called by Saint Mary's, Dalhousie and a Daycare to ask if this is real.

It seems to her that land is on a prime on the Peninsula and there are private daycare facilities and private schools that are interested because it is a really quite street, in a really great neighbourhood

and in a really great location. She feels that it is different from 2000. She advises them that something is going to be built here. She asks the residents to tell her what they want built because something will be built there. She had asked the applicant to come back.

Mr. Hilchey advised that a large church had come to them as they had outgrown the congregation but he had not entertained that idea.

Joel Jollimore sensed that it was a nice tactic that Mr. Hilchey was in fact saying originally he wanted it rezoned so he will show the residents what he could build there but then again Mr. Jollimore feels like the company has to do something with it. He feels that it is a bit softer for him now after he had more information.

Mr. Hilchey advises that he could have said they will take the trees down on their own property

Councillor Uteck again clarifies that the majority of people want only 3 houses but as the Councillor, she cannot say that as she cannot control that if he rezones. She also states that she cannot control his designs but only ask him on good faith.

Joel Jollimore states that in all fairness, the residents can't expect Mr. Hilchey to do anything different then anybody else has the right to do.

David Hilchey advised that he did not want to compromise and they want to maintain integrity.

Janice Wiscombe asks if he will build houses and not just sell lots.

Mr. Hilchey advises her that he will build only.

Joel Jollimore refers to Southwood set backs and the set backs for Harbourview.

Mr. Hilchey advises that what you see is what you get. The set backs are as he stated and they will meet the guide lines.

Michael April, Grand Street, believes that the residents are very lucky to have the developers there today. The developer and the neighbours are on the same page. He stated that the purpose of a Public Information Meeting is for the staff to ascertain the level of public support. He states that the developer appears to be extremely willing to impose upon themselves certain restrictions that would go quite some distance to satisfy the valid concerns that residents may have. They are well protected. Harbourview Drive residents have to form and meet with the developers and have restricted covenants put together that will satisfy the concerns and will not limit the developers ability to come through with what they are proposing to do. Those restrictive covenants brought with the land so the residents are stuck with the fact that the City really can't impose anything by virtue of the restrictive covenants of the rezoning application. The support of this group could be assured by virtue of the Developer and the residents association.

Janice Wiscombe questions the rock foundation and the blasting.

Councillor Uteck states that if blasting was necessary, anyone within three hundred meters is given notification and then the wider area has a pre-blast inspection of your house is done so if you request it, the applicant has to put in a set of parameters on the blasting and when it is going to be done. You can request an inspector come to your house. They will survey it before and after for cracks and damages, etc, if that it deemed to be necessary.

Dorin Donovan lives directly across from the development site and wonders about the compromises for five lots in an area where across the street there are three homes.

Mr. Hilchey advises that there are six houses across from the lot, including the corner on Tower Road. He explained that the lot sizes are different. He then refers to the diagram and explains.

Paul Sampson advised of the area proposed.

Michael Bishop asks if the developer has given consideration to four houses

Mr. Hilchey advises that they have not considered that as they would have reasons for not wanting to reduce the lots and increasing the house sizes. It would then increase the price to a million dollars. They feel that they would move more easily at 650,000.

Joel Jollimore inquires about rezoning after and asks about the last lots on the street.

Mr. Hilchey advises that it is owned by CN.

Mr. Sampson and Councillor Uteck confirmed that information.

Dorin Donovan questions the process and the building time limit.

Councillor Uteck states that Mr. Sampson will explain the process.

3. Closing comments

Mr. Sampson advises of the process. The City is probably looking at spring for this to go to council for a Public Hearing and depending on what Council decides, there is always an appeal period. It is up to the developer.

Councillor Uteck advised that she thought it would be in May rather than the spring. She also stated that the May Community Council meets the first Monday of every month. Community Council is a subsidiary of Regional Council. It is made up of the four Peninsula Councillors; Councillor Sloane, Councillor Fougere, Councillor Murphy and herself, Councillor Uteck. They deal with

variances and planning applications. On this type of rezoning they would make this decision on Monday night.

The applicant does have an appeal period with the Utility and Review Board (URB) if Community Council turns down the application. It doesn't go against the Planning Strategy. The appeals to the URB are about a year. The best maximum would be a May decision from Council and a June construction start. The developer can sit on the property forever and a day.

Allen Clark wonders about the DA after rezoning. Mr. Hilchey advises that it is a staff issue, it doesn't go through Council.

Councillor Uteck asked Mr. Sampson if CN was aware of this application because in 2000 CN came in as an intervener. She would like something officially from CN. She advises that she has realized that something has to be built there and it takes the support of the community. The next step is a Public Hearing and she will need the community to help her make a decision.

Unidentified speaker asks about the inquires for the one large building idea.

She advised that she has had three emails of interest for the one large building to be on the corner but is not able to give further information because of confidentiality with HRM. She will go back to the proponents and ask if they would like to share the information. She has asked one of the proponents if they would allow her to disclose the information as it would have been helpful for the meeting and they declined. She has heard from a private school and she believes that there may be some legitimacy for the one large building. That why she wants the residents to hear the developers ideas.

Mr. Hilchey advises that if there is no support he would move on.

Janice Wiscombe asks if it is Mr. Hilchey's plan to commence building as soon as possible. Mr Hilchey states that they will subdivide the lots and put up a home and continue to work one house at a time.

Councillor Uteck advises that the community will get formal notification of the next formal Public Hearing in the spring. She states that it is a difficult application and she will represent the residents. She thanks everyone for coming out. She lastly states that the covenants should be fair to both the residents and the developer.

Mr. Sampson asks if there are any more questions, thanked everyone for coming to the meeting and expressing their comments and concerns.

4. Adjournment

The meeting adjourned at approximately 8:25 p.m.

ATTACHMENT D

SCHEDULE "A"

NOISE/VIBRATION/ODOURS FROM ADJACENT RAILWAY LANDS

The Buyer for itself, its successors and assigns, acknowledges that the adjacent lands which include railway yards or transportation corridors, or both, are used for railway purposes abutting or adjacent to the lands being sold herein. The Buyer covenants, agrees and accepts that it will not object to the use of the adjacent lands for railway purposes or to any noise or vibration or odours associated with such use.

FENCING

The Buyer shall, at the Buyer's own cost, risk and expense, erect and thereafter maintain to the satisfaction of Canadian National Railway, fencing of a size and design satisfactory to CNR, on the property line along the track side of the herein conveyed lands, leaving no access to CNR's property. The fence shall be erected in such a way that it will constitute a reasonable obstacle against encroachment of CNR's property, as is necessary considering the site and its particular circumstances.

The Buyer releases and forever discharges the Seller and CNR, its successors and assigns, from all liens, actions and causes of actions that it has ever had, now has or in the future may have against the Seller and CNR or any of its successors and assigns, relating to or arising from any matter referred to herein.

The Buyer hereby agrees that it shall for the benefit of the Seller herein, its successors and assigns, obtain a similar undertaking from each subsequent purchaser who shall be bound by the same terms and conditions as herein contained.

CASE 01078 ATTACHMENT E

From: Nick Coleman
To: Paul Sampson
Date: Tuesday, February 19, 2008 1:57 PM
Subject: Re: Proposed rezoning, Halifax
Attachments:

Paul, to clarify, CN would object to any form of residential use closer than 300 metres to the property line of the railway yard. This is because yard noise is measured as a stationary source having different criteria than for pass by noise, due to its inherently more intrusive nature and the attendant difficulty in its attenuation. I have provided some links to some documentation, admittedly from Ontario, that you might find of assistance in understanding the issues associated with stationary noise sources.

There are several MOE documents that can provide guidance, some of which include LU-131, NPC-205, D-1, D-6, NPC-103, NPC-104 and perhaps NPC-233:

<http://www.ene.gov.on.ca/en/publications/forms/index.php#Noise>
<http://www.ene.gov.on.ca/en/publications/forms/index.php#LandUse>

CMHC also has a document known as "Canadian Mortgage and Housing Corporation (CMHC) Road and Rail Noise: Effects on Housing (1981)". I'm not sure if it is still readily available for download from the internet, but I don't believe that it has been superseded.

Residents endeavouring to sleep or experience quiet in their backyards in the vicinity of 24 hour rail yard operations that for example emit screeches, and impulse banging from car coupling and switching activities, will be very disenfranchised with the purchase of their new homes. Typically this results in rate payer organizations lobbying local councillors, MPP's, MP's and the Canadian Transportation Agency with the express expectation to successfully force the railway to restrict its existing operations. Presumably, this could also have a significant impact on service to the port.

It would appear to be to the overall benefit of all concerned, including the municipality, CN and potential future disgruntled residents, if the request for rezoning that would create a situation of incompatible land use, was not approved.

The same situation is not as likely with institutional types of uses, where they are typically daytime operations, don't have quiet outdoor amenity areas, and where patrons aren't trying to get a good night's sleep. I have attached the principal main line requirements for new residential uses near railway corridors (not railway yards), and would recommend they also be applied to sensitive institutional uses.

I note from the information you previously provided that the tracks are in a substantial cut at this location. This could be a useful topographic feature from a safety and noise point of view, when applying the standards. Typically a safety setback of 30 metres from the railway property line, in conjunction with a 2.5 metre high safety berm is required. Where the railway is in a cut of more than 4.5 metres in depth, such as the purported case here, the setback can be measured from the toe of slope of the embankment on railway property up along the surface of the ground to the rear wall of the occupied building. The cut obviates the need for the safety berm, and provides a significant reduction to the setback requirement.

The Bedford Subdivision (CN's track that runs from Halifax to Truro) is classified as a principal main line,

I hope this is of assistance in your deliberations,