



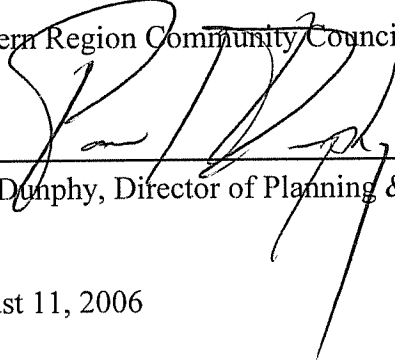
PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Western Region Community Council
August 28, 2006

TO:

Western Region Community Council

SUBMITTED BY:


Paul Dunphy, Director of Planning & Development Services

DATE:

August 11, 2006

SUBJECT:

**Case 00921: Discharge of Development Agreement - 1918-1922 St.
Margarets Bay Road, Timberlea**

ORIGIN

Application by Elias Toulany, on behalf of Jean Toulany, to discharge the existing development agreement at 1918-1922 St. Margarets Bay Road, Timberlea.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Approve the discharging agreement, presented as Attachment "A" to this report, for lands located at 1918-1922 St. Margarets Bay Road.
2. Require that the discharging agreement be signed 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 and any other bodies as necessary, whichever is later, otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The subject property is designated Urban Residential and is zoned C-2 (General Business) under the Timberlea/Lakeside/Beechville Municipal Planning Strategy (MPS) and Land Use By-law (LUB). An existing development agreement signed on December 18, 1989 binds the property to a mixed commercial and multiple-unit residential development.

More specifically, the existing development agreement limits the use of the lands to a specific building design and footprint containing the following uses:

- (a) The ground floor of the building is restricted to commercial and community uses identified under the C-2 Zone.
- (b) The second storey of the building is restricted to four (4) dwelling units.

The existing development agreement was entered into to allow for two additional dwelling units above and beyond what is permitted under the C-2 Zone.

The applicant now wants to expand the ground floor of the existing building to establish additional storage space for the C-2 uses occurring on the property. However, the proposed expansion cannot be accommodated under the existing development agreement. Moreover, since the property is no longer contained within the Commercial Core designation, there is no policy support to allow for an amendment to the existing agreement. The applicant has therefore requested that the development agreement be discharged to allow the lands to be reverted back to the land use regulations under the C-2 (General Business) Zone.

DISCUSSION

Non-conforming Use: Under the discharge scenario, the two extra dwelling units would become non-conforming uses in a structure. Paragraph 241(1)(a) of the *Municipal Government Act* states that where there is a nonconforming use in a structure, the structure may not be expanded or altered so as to increase the volume of the structure capable of being occupied, except as required by another Act of the Legislature. Therefore, if Council was to discharge the existing development agreement, the applicant would not be able to expand the ground floor of the building until the two additional dwelling units were removed. The applicant is aware of the need to remove the two additional dwelling units prior to receiving HRM approval for an expansion of the building.

Potential Impacts on the Lakeside/Timberlea STP: The Lakeside/Timberlea sewage treatment plant is currently over capacity. Reverting the property to the existing C-2 zoning would allow for a broader range of uses than those permitted by the development agreement. Some of the uses allowed in C-2 Zone, if ever developed at this property, could lead to a net increase in the amount of sewage.

Staff do not normally support applications that may result in a sewage increase to the Lakeside/Timberlea treatment plant. However, in this situation, we suggest that the potential for an increase in sewage must be balanced with the applicant's request to discharge a development agreement that no longer serves its original purpose.

Public Information Meeting: No public information meeting was held. Such meetings are not typically convened for development agreement discharge applications.

Conclusion: Staff is recommending Council to approve the application to discharge the existing development agreement at 1918-1922 St. Margarets Bay Road.

BUDGET IMPLICATIONS

There are no budgetary implications.

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

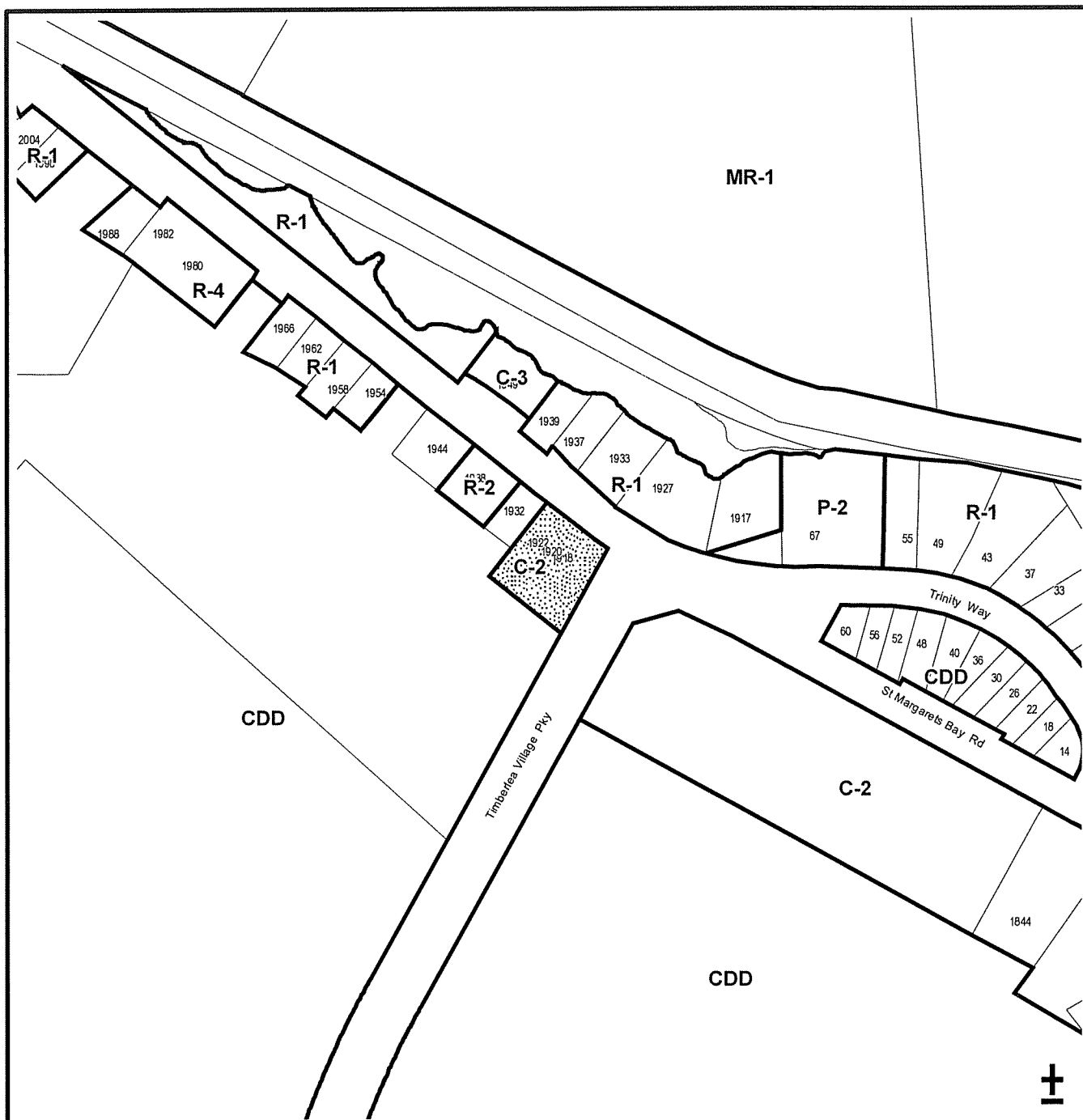
1. Council could accept to enter into a discharging agreement and allow the lands to revert back to the C-2 (General Business) Zone. This is the recommended alternative.
2. Council could refuse to enter into a discharging agreement and the existing use would be retained as the only permitted use. This is not recommended for the reasons outlined above.

ATTACHMENTS

Map 1	Location and Zoning
Attachment "A"	Draft Discharging Agreement


Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Luc Ouellet, Planner I, Planning & Development Services, 490-3689



Map 1 - Location and Zoning

1918-22 St. Margarets Bay Road
Timberlea

 Subject property

Timberlea/Lakeside/Beechville Plan Area

Zone

R-1	Single Unit Dwelling
R-2	Two Unit Dwelling
R-4	Multi-unit Dwelling
C-2	General Business
C-3	Service Business
MR-1	Mixed Resource
P-2	Community Facility Zone
CDD	Comprehensive Development District

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DEVELOPMENT SERVICES



This map is an unofficial reproduction
of a portion of the Zoning Map for the
Timberlea/Lakeside/Beechville Plan area.

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

Attachment A

THIS DISCHARGING AGREEMENT made this day of , 2006,

BETWEEN:

JEAN TOULANY
of the Halifax Regional Municipality,
Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS Elais Toulany entered into a development agreement with the Municipality of the County of Halifax, December 18, 1989, to allow for a mixed commercial and multiple unit residential development, and which agreement was recorded at the Registry of Deeds in Halifax in Book No. 4858 at Pages 881-885 (hereinafter called the "Agreement");

AND WHEREAS Elais Toulany transferred his interest in the lands to Jean Toulany (hereinafter called the "Developer");

AND WHEREAS the Developer is now the registered owner of certain lands located at 1918-1922 St. Margarets Bay Road (PID #40845992), Timberlea and which said lands are more particularly described in Schedule A attached hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Agreement be discharged;

AND WHEREAS in accordance with the requirements of the Municipal Government Act, the Western Region Community Council approved this request at a meeting held on _____, 2006, referenced as Municipal Case Number 00921;

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

- WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2006.

JEAN TOULANY

[illegible]

HALIFAX REGIONAL MUNICIPALITY

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Per: _____

MUNICIPAL CLERK