



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

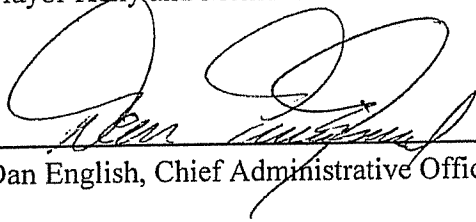
REVISED

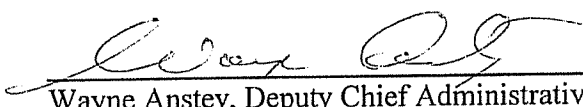
11.1.8

Halifax Regional Council
May 15, 2007

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


Dan English, Chief Administrative Officer


Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: May 8, 2007

SUBJECT: **Encroachment Agreement -Ultramar**
Water Line, Carlisle Drive

ORIGIN

Application by Barwil Developments on behalf of Ultramar Canada Inc.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the attached Encroachment Agreement to allow Ultramar Canada Inc. to maintain use and access of their waterline located in the extension of Carlisle Drive for the purpose of supplying process water to their facility.

BACKGROUND

The Encroachment By-law (By-law E-200) requires that any proposed encroachments outside of those listed in the by-law be approved by Regional Council. The crossing of an HRM owned street by a privately owned pipe is one type of encroachment which requires an encroachment agreement and Regional Council approval.

The development of Pearl Park Subdivision, by Barwil Developments, involved the extension of the existing Carlisle Drive in Cole Harbour. The road extension crossed over an existing waterline and lands belonging to Ultramar Canada Inc. The waterline supplies process water to Ultramar's facility. The impacted portions of Carlisle Drive are Parcels A1 and D1 (Attachment B), with the deeds for these parcels being held in escrow by Barwil's attorney. To complete the subdivision process for Pearl Park, allowing HRM to officially assume ownership of the above Parcels of Carlisle Drive, Ultramar agreed to transfer the deeds to HRM, should Council agree to issue the encroachment license for their waterline.

DISCUSSION

The crossing will occupy a trench area of 1.3 metres by 20 metres for a total 26 square metres. In accordance with By-law E-200, the waterline will therefore be subject to an annual encroachment fee of \$260 (\$10. per square metre).

The attached draft encroachment agreement also includes the following:

1. The waterline must be relocated within the street if requested by HRM. Such a relocation would be at the expense of Ultramar Canada. Should Ultramar Canada wish to relocate the waterline, it shall be done only upon receipt of written consent of HRM, such consent shall not be unreasonably withheld and said relocation shall be at the expense of Ultramar Canada.
2. Maintenance and any relocation of the waterline must comply with Streets By-law S-300.
3. Record information will be provided in paper and electronic format.

The encroachment agreement would be effective concurrently with the transfer of deeds for Carlisle Drive. The deeds for Carlisle Street are being held in escrow and would be transferred to HRM, should Regional Council approve the encroachment agreement.

BUDGET IMPLICATIONS

The annual fee of \$260 will be a new revenue source for HRM.

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

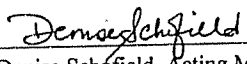
1. Council could approve the encroachment agreement as proposed. Staff recommend this option.
2. Council could choose not to approve the proposed encroachment agreement. Staff does not recommend this alternative as the waterline is existing and there is no alternative location for the pipe.

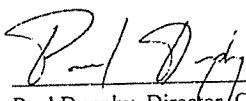
ATTACHMENTS


Attachment A: Draft Encroachment Agreement
Attachment B: Survey Plan of Parcels A1 & D1
Attachment C: Profile of Carlisle Drive showing Ultramar waterline

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Kenda Mackenzie, Development Engineer, 490-4907

Report Approved by: 
Denise Schofield, Acting Manager, Development Engineering, 490-6252

Report Approved by: 
Paul Dunphy, Director, Community Development

Financial Approval by: 
Catherine Sanderson, Senior Manager, Financial Services, 490-1562

This **Encroachment License Agreement** made this day of , 2007

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

Of the One Part

and

Ultramar Canada Inc.

Of the Other Part

Recitals

1. (1) Whereas Ultramar Canada Inc. wishes to maintain access to and use of their waterline which is located under the recently extended Carlisle Drive in Cole Harbour ;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2007, the Halifax Regional Municipality agreed to give Ultramar Canada an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality Bylaw E-200, being the Encroachment Bylaw, and as contained in this license agreement.

Definitions

2. In this agreement, unless the context otherwise requires:

(a) "HRM" means the Halifax Regional Municipality

(b) "Engineer" means the Engineer as defined by the Halifax Regional Municipality Act.

(c) "Ultramar Canada" means Ultramar Canada Inc.

License

3 Subject to the terms of this encroachment license agreement, HRM hereby grants to Ultramar Canada the non-exclusive right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of Carlisle Drive, Cole Harbour identified on Schedule "A" to maintain a waterline used for processes in their refinery.

Relocation

4 The waterline must be relocated within the street if requested by HRM. Such a relocation will be at the expense of Ultramar Canada. Should Ultramar Canada wish to relocate the waterline, it shall be done only upon receipt of the written consent of HRM, which consent shall not be unreasonably withheld and said relocation shall be at the expense of Ultramar Canada. The pipe shall be placed a minimum of 1.5 m below the surface of the street.

Permits

5 Ultramar Canada agrees to comply with all municipal bylaws including the Streets Bylaw, S-300 for the all maintenance work which involves the excavation of the street.

Record Drawings

6. Ultramar Canada shall provide a copy of the record drawings of the completed work and immediately upon completion of any relocation, both in hard copy and electronic format.

Indemnity

7. Ultramar Canada agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the waterline however caused, except to the extent that the loss arises out of the gross negligence of HRM.

Fees

8. Ultramar Canada, agrees to pay the fees set out in Encroachment Bylaw E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the line is 26 square metres, at a rate of \$1.00 per 0.1 square metres, resulting in an annual fee of \$260.00 to be paid by March 1st annually.

Occupational Health & Safety Act

9. Ultramar Canada agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically Ultramar Canada agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

Termination

10. (1) Either party may terminate this license agreement at any time.

(2) Upon termination of the license agreement, Ultramar Canada shall at HRM's option either:

(a) remove the waterline and restore the surface of Carlisle Drive

(b) abandon all claim to title in the waterline to HRM.

May 15, 2007

Notices

11. Any written notice or communication relating to the administration of this agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
Director of Public Works and Transportation
PO Box 1749
Halifax, N.S. B3J 3A5

and

Ultramar Canada Inc.

Legal notices in respect of HRM must given in compliance with the Municipal Government Act

12. This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this License agreement as of the day and year first above written.

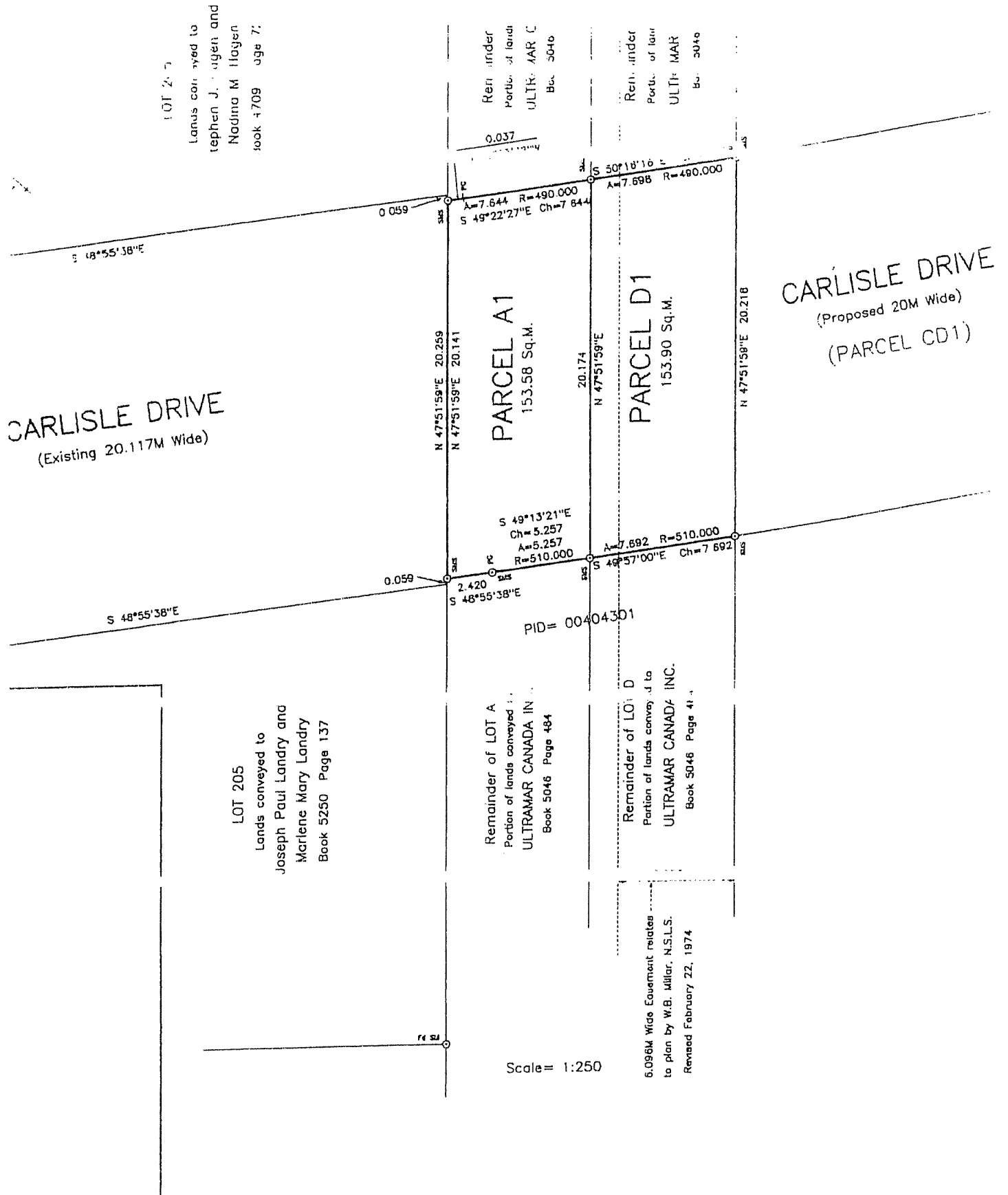
HALIFAX REGIONAL MUNICIPALITY

Mayor Peter Kelly

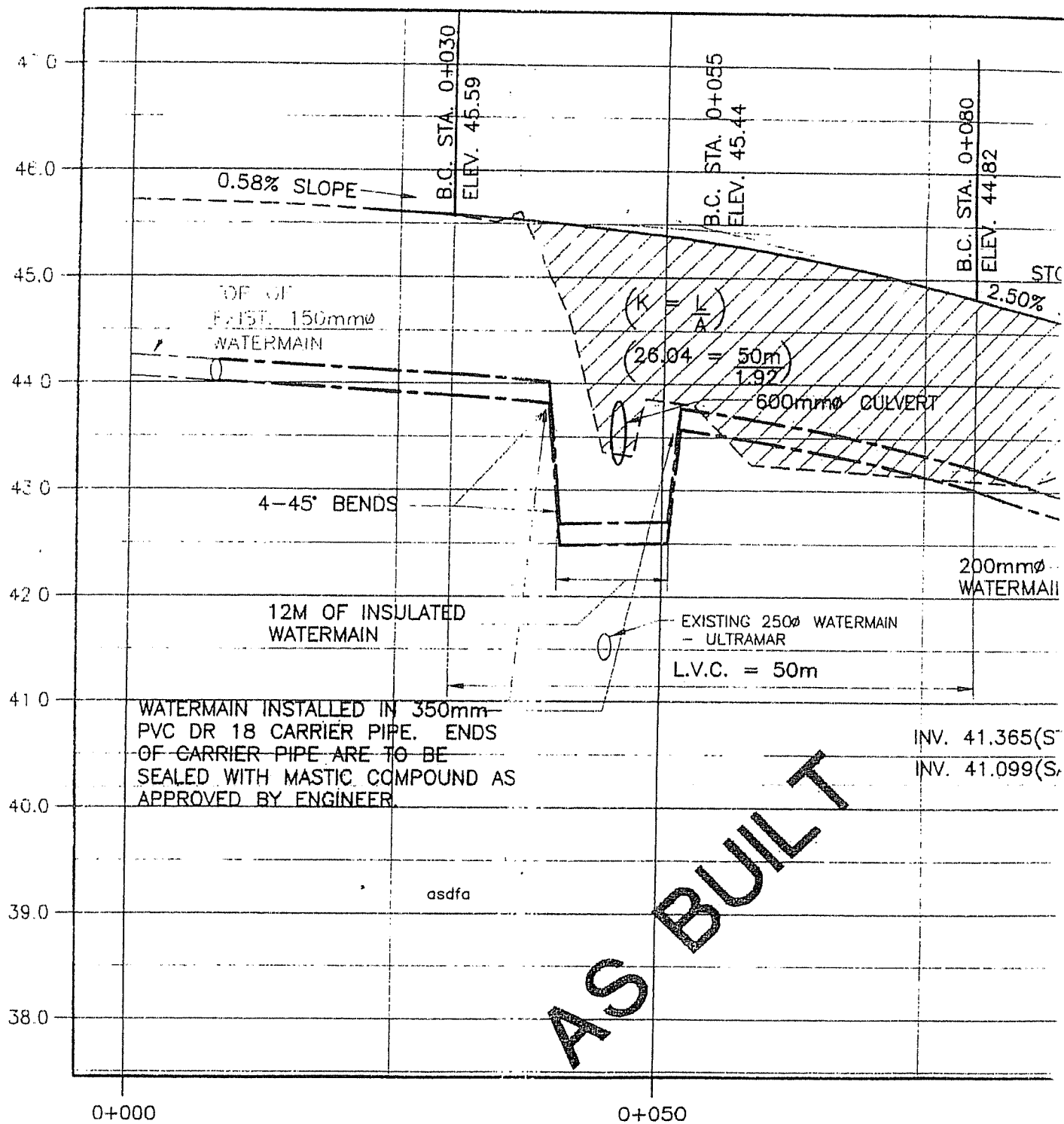
Regional Clerk, Jan Gibson

Ultramar Canada Inc.

Attachment B: Survey Plan of Parcels A1 & D1



Attachment C: Profile of Carlisle Drive showing Ultramar waterline



PROFILE STA 0+000 TO STA 0+200

HORIZ. SCALE 1:500

VERT. SCALE 1:50