



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5, Canada

**Item No. 10.1.6**  
**Halifax Regional Council**  
**September 14, 2010**  
**September 21, 2010**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:** Original Signed by   
\_\_\_\_\_  
Wayne Anstey, Acting Chief Administrative Officer

Original Signed by   
\_\_\_\_\_  
Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** August 30, 2010

**SUBJECT:** Founders Corner Condominium Project , Wentworth & Ochterloney  
Streets, Dartmouth

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**ORIGIN**

This report originates with a request by Councillor McCluskey for a staff report to review the request by the Developer-Owner of the Founders Corner Condominium Project in Dartmouth to consider selling a portion of the street Right-of-ways for Ochterloney and Wentworth Streets to address the issue of building encroachments.

**RECOMMENDATION**

It is recommended that Halifax Regional Council **not** consider the sale of the portions of the street right-of-ways as they contain functioning sidewalk and the lands in question can not be deemed surplus under the current guidelines and policy of Traffic and Right of Way Services.

## **BACKGROUND**

Founders Corner is a multi-use development that was constructed at the corner of Wentworth and Ochterloney Streets in Downtown Dartmouth. This project was conceived by local developers and was constructed under a Development Agreement in accordance with the requirements of the Downtown Business District (DB) zone of the Dartmouth Land Use By-Law and the Downtown Dartmouth Secondary Plan. The Development Agreement was approved by Harbour East Community Council on June 29, 2006.

The project went into receivership and has recently been acquired by the major financial lender Addenda Capital Inc. Addenda is investing capital into finishing the building and preparing the remaining units for sale. When Addenda had a final site survey prepared for the project to accompany the condominium registration documents to the Provincial Registrar, several building encroachments were noted. The current Provincial Condominium Act will not permit any building to be registered as a condominium if any property encroachments exist. This includes the specific encroachments in this case which include above ground architectural treatments such as window trims and cornices, vents and light fixtures. In the spring of 2009, staff met with the Provincial Registrar of the Condominium Act and they have advised that there is no flexibility in these rules. The condominium corporation must have fee simple ownership of the entire structure.

## **DISCUSSION**

Staff was approached by the Developer's representative in early July with the above noted issue and staff subsequently advised them to obtain a detailed survey so the encroachments could be reviewed and the area of lands that would be impacted could be better assessed from an operational point of view. The survey was provided and indicated various encroachments ranging from 0.3 feet to 1.5 feet (see Attachment A). The items involved are architectural features such as column reveals and window cornice treatments which form part of the approved Development Agreement. In addition, items such as vents, pipes and light fixtures also protrude into the existing street right-of-way. The owner of this project requested HRM's consideration in purchasing the portion of the right-of-way that contains the encroachments in order to permit the Condominium Registration to proceed.

Traffic and ROW Services have reviewed the request and noted that the lands in question contain a portion of the sidewalk that was rebuilt as part of this building project. HRM standards require that sidewalks and buffer areas have 3.5 meters (11.48 ft.) in width. This would include the provision of a sodded green space between the curb and sidewalk. There is currently no green buffer between the curb and sidewalk in this area. The current sidewalk on Wentworth is 8.9 feet wide and the sidewalk located on Ochterloney varies from 8.7 feet to 9.7 feet along the building frontage. The standard right-of-way width for the two streets would be 16 meters (52.5 ft.), at present, Wentworth has the required standard at 52.5 feet and Ochterloney has a width of 53.0 feet. HRM standards would be challenged if the sale of the requested lands was to proceed.

The inflexibility of the Condominium Corporation and the Provincial Legislation is effectively pressuring HRM into giving up public right-of-way for private interest. Several cases of such encroachments in the past few years have been brought forward for consideration by HRM and the importance of maintaining street right-of-way for current and future needs must be made clear. This pressure resulting from the position of the section of the Provincial Department of Municipal Affairs, which should be protecting municipal interests, needs to be reviewed. Staff has already met with the Condominium Registrar (Spring 2009), however, no further action on this issue has been taken by Provincial staff.

At present, sales of the units in this development are being held up as the final registration under the Condominium Act cannot be completed. If the development can be registered, sales can be completed, the units in the building can be fully marketed and eventually an owner occupied Condo Corporation can be formed. This project has met with great acceptance by the local community and has respected the neighborhood desires through a well established Municipal Development Agreement.

Although HRM policy does not support the closure of the street right-of-way in this instance, Council can consider the Alternative section of this report.

### **BUDGET IMPLICATIONS**

As the Staff recommendation is to not proceed with this sale there are no budget implications at this time. However should Council decide to pursue the Alternative in this report and move forward on a sale the proceeds from such a transaction will be credited to the Sale of Land Reserve - Q101. Applicable adjustments to the Purchase Price include, but are not limited to, appraisal, survey, easements, environmental management, legal, marketing, and administrative costs.

### **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.

### **COMMUNITY ENGAGEMENT**

The actual condominium project was built under a fully reviewed HRM Development Agreement. The approval of this Development Agreement went through all required public meetings and was duly endorsed by Community Council. If Council proceeds with the Alternative within this report and moves forward on the sale, an official road closure will be required. Although the potential value of this sale does not require an advertized public hearing and the fact that the public can still travel the roadway and sidewalk, Council must duly move the street closure in open Council through Notice one week and read into record the Administrative Order the following week.

**ALTERNATIVES**

Regional Council could choose to approve the closure of the right-of-way and sale of the requested lands which would require the following approval by Council:

1. That HRM Council deem the 1 foot wide strip along the frontage of Founders Corner Development (total area of approx. 214.17 sq.ft.) to be surplus and authorize the conveyance to the new owner of Founders Corner, Addenda Corporation Inc.
2. Regional Council also Authorize the official closure of the portion of the street right-of-way for Wentworth and Ochterloney Streets as shown in red on Attachment B, subject to the approval of Administrative Order SC-61 ( Attachment C).
3. Regional Council further Authorize the Mayor and Clerk to execute any required Purchase and Sale Agreement required for this transaction at a market value of \$21,115.02<sup>1</sup> with HRM retaining an easement over these lands for street purposes at no cost to HRM. Furthermore, all required legal survey work, subdivision approval and legal costs should be borne by the purchaser.

**ATTACHMENTS**

Attachment A - Encroachment Survey Plan  
Attachment B- Proposed Subdivision Plan  
Attachment C- Administrative Order SC-61

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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: Glen Boone, Senior Real Estate Officer, Real Estate and Facility Services, TPW 490-5704  
Phil Francis, Manager Right of Way Engineering, Traffic and Right of Way Services, TPW

Report Approved by: \_\_\_\_\_  
Peter Stickings, Manager, Real Estate & Facility Services, TPW, 490-7129

Financial Approval by: \_\_\_\_\_  
Cathie O'Toole, CGA, Director of Finance, 490-6308

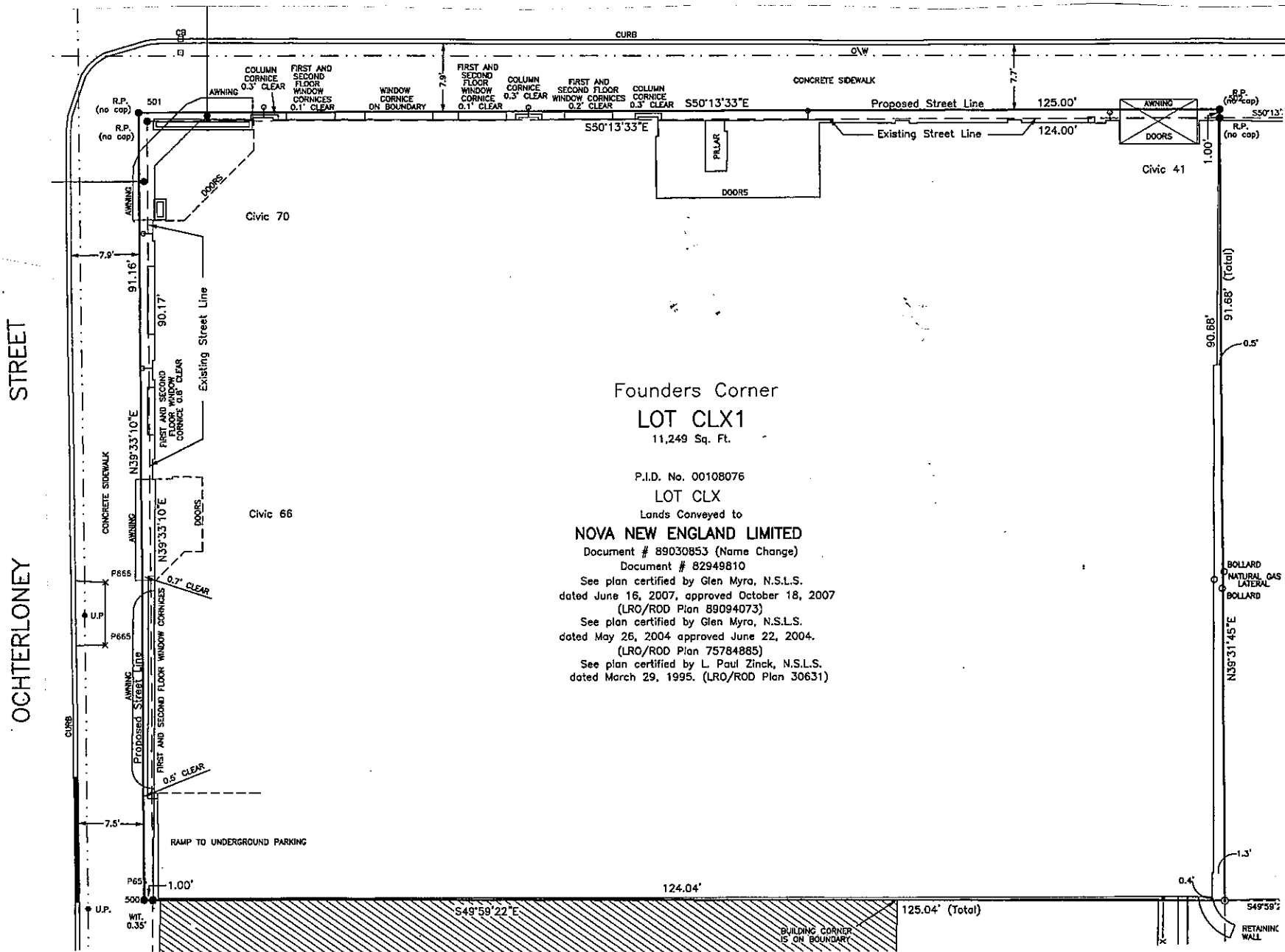
Report Approved by: \_\_\_\_\_  
Ken Reashor, P.Eng., Acting Director, Transportation & Public Works, 490-4855

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<sup>1</sup> Appraisal report by Colliers International yielded a land value of \$98.59 psf



WENTWORTH STREET



Founders Corner  
**LOT CLX1**  
 11,249 Sq. Ft.

P.I.D. No. 00108076  
**LOT CLX**  
 Lands Conveyed to  
**NOVA NEW ENGLAND LIMITED**  
 Document # 89030853 (Name Change)  
 Document # 82949810  
 See plan certified by Glen Myra, N.S.L.S.  
 dated June 16, 2007, approved October 18, 2007  
 (LRO/ROD Plan 89094073)  
 See plan certified by Glen Myra, N.S.L.S.  
 dated May 26, 2004 approved June 22, 2004.  
 (LRO/ROD Plan 75784885)  
 See plan certified by L. Paul Zinck, N.S.L.S.  
 dated March 29, 1995. (LRO/ROD Plan 30631)

**ATTACHMENT "B"**  
**Founders Corner, Wentworth & Ochterloney Streets, Dartmouth**  
**Proposed Subdivision Plan**



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**HALIFAX REGIONAL MUNICIPALITY**

**ADMINISTRATIVE ORDER NUMBER SC-61**

**RESPECTING CLOSURE OF A PORTION OF**

**Wentworth & Ochterloney Streets**

**BE IT RESOLVED AS AN ADMINISTRATIVE ORDER** of Council of the Halifax Regional Municipality pursuant to Section 325 of the Halifax Regional Municipality Charter as follows:

1. A portion of Wentworth & Ochterloney Streets, Dartmouth, Nova Scotia more particularly described in Attachment "A" is hereby closed.

**I HEREBY CERTIFY THAT** the foregoing Administrative Order was duly adopted by Halifax Regional Council, the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Municipal Clerk

I, Cathy Mellett, Municipal Clerk of Halifax Regional Municipality, hereby certify that the above-noted Administrative Order was passed at a meeting of Halifax Regional Council held on