


**Item No.10.1.6**  
**Halifax Regional Council**  
**July 30, 2013**

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

Original signed by 

**SUBMITTED BY:** \_\_\_\_\_  
Richard Butts, Chief Administrative Officer

Original Signed by 

\_\_\_\_\_  
Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** July 17, 2013

**SUBJECT:** **Case 18006: Bonus Zoning Agreement - Mixed-use Development at Queen, Clyde and Birmingham Streets, Halifax**

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**ORIGIN**

- September 13, 2012 Design Review Committee approval of the qualitative elements of the substantive site plan application for the mixed-use development of the “Mary-Ann” site bounded by Queen, Clyde and Birmingham Streets, Halifax (W. M. Fares Group on behalf of Clyde Street Developments Ltd.)
- July 11, 2013 Design Review Committee recommendation of the acceptance of public parking facilities as the public benefit contribution for the development
- HRM Construction Permit application No. 129335

**LEGISLATIVE AUTHORITY**

*HRM Charter*; Part VIII, Planning & Development  
Downtown Halifax Land Use By-law

**RECOMMENDATION**

It is recommended that Regional Council adopt, by resolution, the bonus zoning agreement as provided in “Attachment A” of this report for the mixed-used development bounded by Queen, Clyde and Birmingham Streets in Halifax.

## **BACKGROUND**

The subject property is the site of a 9-storey mixed-use commercial/residential development that was approved through the site plan approval process in September 2012. Previously, the property was owned by HRM and the subject of a 2011 Request for Proposals for redevelopment. The subject property is the first of the three “Sister Sites”, in which the RFP was awarded and one of two lots known as the “Clyde Street parking lots.”

### **Proposed Public Benefit (Bonus Zoning)**

Within Downtown Halifax, maximum permitted building heights may only be attained when a developer provides a public benefit. Where a public benefit is not provided, the developer may only build to a lower building height. This approach is often referred to as “density bonusing” but is enabled under the *HRM Charter* as “bonus zoning.”

As the project exceeds the maximum pre-bonus height limitation within the Downtown Halifax Land Use By-law (LUB), a public benefit is required to be provided by the developer. A list of eligible public benefits is found in section 12(7) of the LUB.

Originally, the developer intended to provide the public benefit in the form of affordable housing. However, as explained in staff’s July 2013 report to the Design Review Committee (Attachment B), the developer now wishes to provide the benefit required by the LUB in the form of public parking. It should be noted that Planning and Infrastructure staff are aware of the matter outlined in Attachment B and will seek to address this item in future amendments to the Downtown Halifax LUB.

### **Council’s Role**

Following the site plan approval in 2012, the Design Review Committee recommended that the Development Officer accept public parking facilities as the required public benefit for the development on July 11, 2013. The Land Use By-law requires that a public benefit agreement be executed by the Municipality prior to the issuance of the development permit and the *HRM Charter* requires Council approval of the adoption of a bonus zoning (public benefit) agreement. This report seeks to obtain Council’s approval of the agreement.

## **DISCUSSION**

The Land Use By-law requires a minimum of 210 parking spaces be provided in any re-development of the two “Clyde Street parking lots” sites. Additionally, the HRM agreement of purchase and sale for this property requires the provision of a minimum of 216 parking spaces over the two parking lot sites.

The same developer, Clyde Street Developments Ltd., has been awarded the contract from HRM to develop both sites. A total of 429 spaces are to be provided between the two buildings for both public and private usage. The developer has indicated that levels P1 and P2 in both buildings will be used for public parking; this will comprise a total of 287 public parking spaces. When compared to the requirements of the purchase and sale agreement, a surplus of 71 public parking

spaces will be provided over the two sites. Within the subject site, a total of 121 parking spaces will be allocated for public parking.

The required cost of the public benefit is \$147, 479.80, based on the Land Use By-Law requirement of \$4.33<sup>1</sup> per 0.1 square metre of gross floor area. The approximate cost of a parking space is between \$22,000 and \$25,000. Accordingly, the amount of the benefit to be provided will result in the provision of between 5 and 7 parking spaces.

The proposal from the developer to provide an additional 71 spaces over the two sites far exceeds the LUB's minimum public benefit requirement which would account for a total of between 5 and 7 spaces. Based on the foregoing, it is recommended that Regional Council adopt, by resolution, the bonus zoning agreement as provided in "Attachment A" of this report for the mixed-used development bounded by Queen, Clyde and Birmingham Streets in Halifax.

### **FINANCIAL IMPLICATIONS**

The HRM costs associated with processing this application can be accommodated within the approved operating budget for C420 Subdivision & Land Use.

### **COMMUNITY ENGAGEMENT**

Community Engagement as described by the Community Engagement Strategy is not applicable to the public benefit contribution component of the site plan approval process.

### **ENVIRONMENTAL IMPLICATIONS**

None identified.

### **ALTERNATIVES**

1. Regional Council could choose to enter into agreement for public parking as public benefit, as set out in this report. This is the recommended course of action.
2. Regional Council could choose not to enter into agreement for public parking as public benefit. This would necessitate further submissions by the applicant for an alternate public benefit, advisement by the Design Review Committee, as well as a supplementary report from staff.

### **ATTACHMENTS**

Attachment A            Public Benefit Agreement  
Attachment B            Report to Design Review Committee dated July 2, 2013

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<sup>1</sup> Amount adjusted in 2012 as per the Statistics Canada, Province of Nova Scotia Consumer Price Index

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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: Erin MacIntyre, Development Technician, 490-4338

Report Approved by: Kelly Denty, Manager, Development Approvals, 490-4800

Report Approved by: Brad Anguish, Director, Community & Recreation Services, 490-4393

Report Approved by: Derk Slaunwhite, Senior Solicitor, Legal, Insurance and Risk Management Services, 490-4226

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Original Signed

**Attachment A – Bonus Zoning Agreement**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, A.D., 2013.

**BETWEEN:**

**CLYDE STREET DEVELOPMENTS LTD., a body corporate,**

(hereinafter called the “Developer”)

OF THE FIRST PART

- and -

**HALIFAX REGIONAL MUNICIPALITY, a body corporate,**

(hereinafter called the “Municipality”)

OF THE SECOND PART

**WHEREAS** the Developer is the owner of the Property and has proposed a Development related to RFP-11-001 that exceeds the maximum pre-bonus height identified on Map 4 of the *Downtown Halifax Land Use By-law*;

**AND WHEREAS** Section 12 of the *Land Use By-law* requires that a Public Benefit be provided on the Property being developed for all or part of any storey above the Pre-Bonus Height;

**AND WHEREAS** it is feasible to provide the Public Benefit required by the *Land Use By-law* on the Property being developed;

**AND WHEREAS** the Developer has selected to provide public parking facilities to satisfy the Public Benefit required by the *Land Use By-law*;

**AND WHEREAS** Council has recognized there is a deficiency of public parking facilities on Clyde Street, as set out in Policy 32 of *Downtown Halifax Municipal Planning Strategy*, and subsection 11(4) of the *Land Use By-law*;

**AND WHEREAS** Policy 32(c) of the *Downtown Halifax Municipal Planning Strategy* requires public parking in support of Spring Garden Road to be incorporated within the redevelopment of this Property and the adjacent Property at 1447 Dresden Row P.I.D. 00077875 (“Dresden Property”);

**AND WHEREAS** subsection 11(4) of *Land Use By-law* requires a minimum of 210 public parking spaces in total between the Property and the Dresden Property;

**AND WHEREAS** on September 12, 2012 the Design Review Committee approved the Development;

**AND WHEREAS** the Developer will provide one hundred and twenty-one (121) public parking spaces on this Property and one hundred and sixty-six (166) public parking spaces on the

Dresden Property for a combined total of 287 public parking spaces on both the properties;

**AND WHEREAS** on July 11, 2013 the Design Review Committee recommended to the Developer Officer of the Municipality acceptance of the Public Benefit, and by approving this Agreement, the Council of the Municipality has accepted the public parking facilities as the Public Benefit for the Development;

**WITNESS THAT** in consideration of the benefits accrued to each Party from the mutual promises and covenants herein contained and the sum of \$1.00 now paid by the Developer to the Municipality (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto agree as follows;

**Definitions**

1. In this Agreement all words shall carry their ordinary meaning except those defined in the *Downtown Halifax Land Use By-law* and, unless the context otherwise requires, the following words shall have the following meanings:

- (a) “Council” means the Council of the Municipality;
- (b) “Drawings” means the drawings submitted to the Municipality by the Developer in respect of the Public Benefit prepared by W. M. Fares Group and as listed below:
  - (i) Mary Ann Site- Clyde/Birmingham/Queen Street, Level P1 Floor Plan- Upper Underground Parking, prepared by W.M. Fares, dated June 2011, revised Feb. 02, 2013
  - (ii) Mary Ann Site- Clyde/Birmingham/Queen Street, Level P2 Floor Plan- Middle Underground Parking, prepared by W.M. Fares, dated June 2011, revised Feb. 02, 2013
  - (iii) Mary Ann Site- Clyde/Birmingham/Queen Street, Level P3 Floor Plan- Lower Underground Parking, prepared by W.M. Fares, dated June 2011, revised Feb. 02, 2013
- (c) “Development” means a nine (9) storey mixed use residential building on the Property;
- (d) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (e) “Final Record Drawings” means the Drawings to scale showing the actual constructed Public Benefit, in a form acceptable to the Development Officer, and shall include floor plans and elevations;
- (f) “Incentive or bonus zoning” means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other

action, in the public interest, as specified in the requirements;

(g) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;

(h) “Municipality” means the Halifax Regional Municipality;

(i) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being Parcel SP-6, 5481 Clyde Street, Halifax, Nova Scotia, known as P.I.D. # 00077438, the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality as Document Number 99239072 and is more particularly set out in Schedule “A” attached hereto; and

(j) “Public Benefit” means:

(a) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and

(b) as agreed to by the Parties pursuant to section 2 of this Agreement.

### **Public Benefit**

2. The Parties agree that public parking facilities consisting of fifty-nine (59) public parking spaces on level P-1 of the Property and sixty-two (62) public parking spaces on level P-2 of the Property, for a combined total of one hundred and twenty-one (121) public parking spaces on the Property, is the Public Benefit required under subsections 12(1) and 12(7) of the *Land Use By-law* for the Property.

3. The Developer agrees to provide the Public Benefit in accordance with Schedule “C” in exchange for exceeding the Maximum Pre-Bonus Height for the Property.

### **Term of Agreement**

4. This Agreement is in effect until discharged by the Council.

### **Reporting of Public Benefit**

5. During the term of this Agreement, the Developer agrees to provide an annual report, in writing, to a Development Officer of the Municipality by January 30<sup>th</sup> of each year confirming that the Public Benefit is still being provided by the Developer to the public.

### **Construction of Public Benefit**

6. The Developer agrees:

(a) to install and construct the Public Benefit:

(i) at its own cost;

- (ii) in a good and workmanlike manner;
  - (iii) in accordance with all the Drawings;
  - (iv) for use by the public as parking; and
  - (v) in compliance with all Applicable Laws;
- (b) to complete construction of the Public Benefit within eighteen (18) months from the date of registration of this Agreement, or as otherwise agreed in writing between the Developer and the Municipality; and
- (c) the Public Benefit shall be completed at the time of the issuance of the first Occupancy Permit on the Property pursuant to the *Building By-law* (HRM By-law B-201).

**Restoration of Public Benefit During The Term of the Agreement**

7. If, at any time during the term of this Agreement, :

- (a) any of the Public Benefit fails to function or fails to function properly, in whole or in part, or
- (b) the Development Officer determines that any repairs or to the Public Benefit are required to ensure that the Public Benefit does and will continue to function properly,

the Developer shall, within thirty (30) calendar days after receipt of notice, in writing, from the Development Officer, make such repairs or alterations as may be required, and if the Developer fails to do so, the Municipality may make such repairs or alterations.

8. If the Municipality undertakes any repairs or alterations, the Developer shall be responsible for the whole and entire cost thereof and the Developer shall reimburse the amount expended by the Municipality within fourteen (14) calendar days after a demand therefor by the Municipality.

**Release and Indemnity**

9. The Developer hereby agrees to assume, and does hereby assume, any and all liability and to indemnify, protect and save and keep harmless the Municipality and its Employees from and against any and all liabilities, obligations, losses, damages, penalties, proceeding, claims, actions (including negligence and wrongful death), suits, costs and expenses (including legal expenses) of whatsoever kind and nature imposed or assumed by, incurred by or asserted against the Municipality, or its Employees, in any way relating to or arising out of the failure by the Developer to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained in this Agreement to be observed, fulfilled or performed by the Developer, is required by the Municipality, or resulting from the breach of any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained herein on the part of the Developer.



## **GENERAL PROVISIONS**

### **Costs, Expenses, Liabilities and Obligations**

10. 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 laws, by-laws, regulations and codes applicable to the Property.

### **Applicability of Laws**

11. This Agreement shall be construed pursuant to the laws of the Province of Nova Scotia.

12. 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 Property or any statute or regulation of the Provincial or Federal Government and the Developer or lot owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

### **Schedules**

13. The following Schedules shall form part of this Agreement:

Schedule "A" - Description of the Property;

Schedule "B" - Underground Parking Drawings

### **Amendments**

14. This Agreement may only be amended with the mutual consent of the Developer and the Council of the Municipality.

### **Conflict**

15. Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

16. 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.

### **Provisions Severable**

17. 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.

### **Registration and Subsequent Owners**

18. A copy of this Agreement and every amendment or discharge of this Agreement shall be

recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

19. This Agreement shall run with the land and be binding upon upon the Parties hereto, their heirs, administrators, executors, successors, assigns, mortgagees, lessees and all subsequent owners.

20. Upon the transfer of title to any part of the Property, the subsequent owner(s) thereof shall observe and perform all the terms and conditions of this Agreement to the extent applicable to the transferred part of the Property.

### **Discharge of Agreement**

21. If the Developer fails to complete the Development after **three (3)** years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office 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; or
- (c) discharge this Agreement.

22. Council may, at any time, review this Agreement, in whole or in part, and may:

- (a) negotiate a new Agreement; or
- (b) discharge this Agreement.

### **Breach of Agreement and Failure to Comply**

23. The Developer agrees that:

- (a) any Employee appointed by the Municipality to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer;
- (b) upon receiving written notification from an Employee to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

24. If the Developer fails to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty of this Agreement after the Municipality has given the Developer thirty (30) calendar days written notice of the failure or default, 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 defence based upon the allegation that damages would be an adequate remedy;

(b) the Municipality may enter onto the Property and perform any of the agreement, condition, covenant, obligation, promise, provision, representation, or warranty contained in this Agreement or take such remedial action as is considered necessary to correct a breach of this Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the agreement, condition, covenant, obligation, promise, provision, representation or warranty, or any other remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the *Assessment Act*; and

(c) in addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

**Time**

25. Time shall be the essence in this Agreement.

**THE REST OF THIS PAGE IS BLANK.**

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

**SIGNED, SEALED AND DELIVERED** in

**CLYDE STREET  
DEVELOPMENTS LTD.**

the presence of:

Per: \_\_\_\_\_  
Name:  
Office held:

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Name:  
Office held:

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**SEALED, DELIVERED AND  
ATTESTED** to by the proper signing  
officers of Halifax Regional Municipality,  
duly authorized in that behalf, in the  
presence of:

**HALIFAX REGIONAL  
MUNICIPALITY**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Clerk

## SCHEDULE A

All that certain parcel of land situate, lying and being bounded on the west by Birmingham Street, on the south by Clyde Street, and on the east by Queen Street, Halifax, Halifax County, Nova Scotia; being Parcel SP-6 as shown on a plan title Plan Showing Lands of The City of Halifax North of Clyde Street between Brenton Street and Queen Street - for Development Purposes, certified by A. A. White, N.S.L.S., dated June 15, 1987, recorded in the Office of the Director of Infrastructure and Asset Management, Design & Construction Services as former City of Halifax Plan No. TT-39-29162; said Parcel SP-6 being more particularly described as follows:

BEGINNING at the point of intersection of the northern boundary of Clyde Street with the western Boundary of Queen Street, as shown on the above noted plan;

THENCE South 69 degrees 00 minutes 25 seconds West along said northern boundary of Clyde Street, a distance of 201.18 feet to the eastern boundary of Birmingham Street;

THENCE North 20 degrees 32 minutes 48 seconds West along said eastern boundary of Birmingham Street, a distance of 163.43 feet to the southwestern corner of lands now or formerly owned by Nora V. Zinn;

THENCE North 68 degrees 32 minutes 27 seconds East along the southern boundary of said lands now or formerly owned by Nora V. Zinn, a distance of 98.88 feet to the southeastern corner of said lands now or formerly owned by Nora V. Zinn;

THENCE North 20 degrees 42 minutes 51 seconds West along the eastern boundary of said lands now or formerly owned by Nora V. Zinn, a distance of 9.82 feet to the southwestern corner of lands now or formerly owned by Robert E. Fredrickson;

THENCE North 68 degrees 32 minutes 27 seconds East along a southern boundary of said lands now or formerly owned by Robert E. Fredrickson, a distance of 56.85 feet to a deflection therein;

THENCE South 20 degrees 42 minutes 32 seconds East along a western boundary of said lands now or formerly owned by Robert E. Fredrickson, a distance of 3.00 feet to a deflection therein;

THENCE North 68 degrees 32 minutes 27 seconds East along a southern boundary of said lands now or formerly owned by Robert E. Fredrickson, a distance of 45.00 feet to the said western boundary of Queen Street;

THENCE South 20 degrees 42 minutes 27 seconds East along said western boundary of Queen Street, a distance of 171.88 feet to the point of Beginning.

Parcel SP-6 contains an area of 33,869 square feet

BEARINGS are grid, based on Zone 5, Central Meridian 64 degrees 30 minutes west, of the Nova Scotia 3 degree Modified Transverse Mercator projection.

SUBJECT TO height restrictions with respect to View Plane No. 9 and View Plane No. 10 as shown on the above noted plan.

TOGETHER WITH an easement/right of way over PID 77420 and recorded as document number 27598 in book 2414 at page 685.

\*\*\* Municipal Government Act, Part IX Compliance \*\*\*

Exemption:

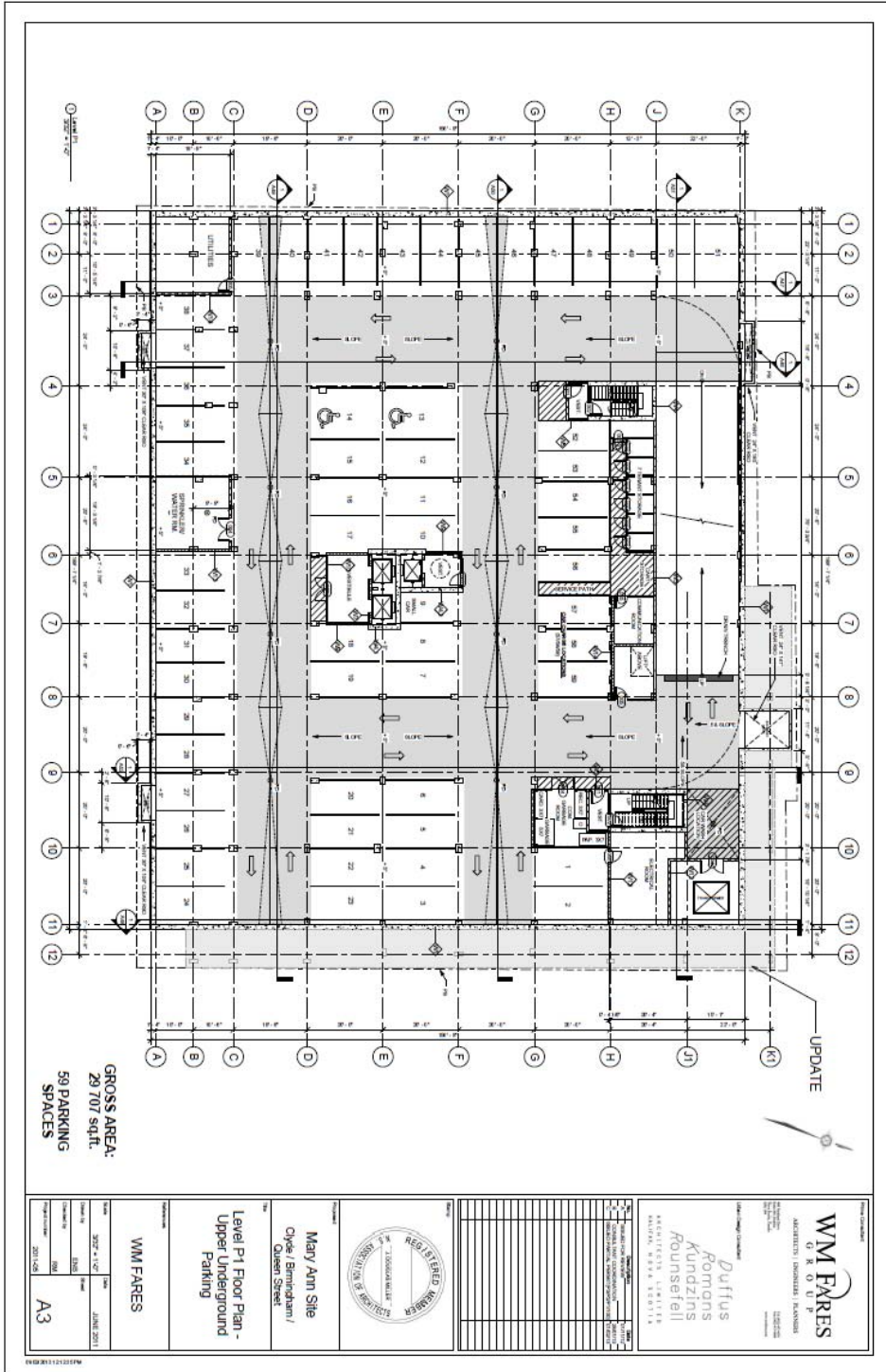
The parcel is exempted from subdivision approval under the Municipal Government Act because the parcel was created by a subdivision

Reason for exemption:

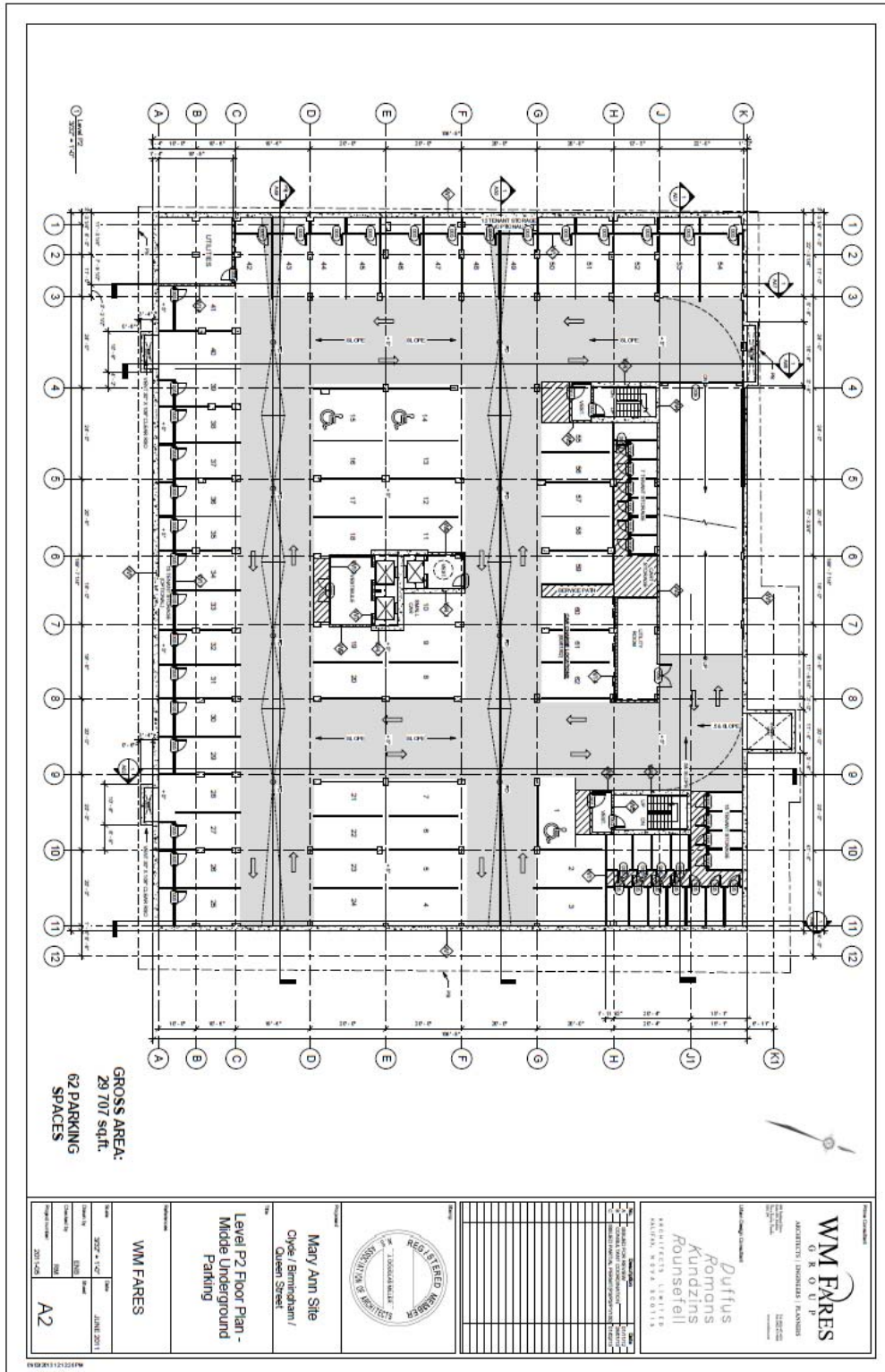
Section 268A that is a Deemed Consolidation - (De Facto Consolidation).

SECTION 268A THAT IS A DEEMED CONSOLIDATION - (DE FACTO CONSOLIDATION)

# SCHEDULE B - Underground Parking Drawings



## SCHEDULE B - Underground Parking Drawings







P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Attachment B

**Design Review Committee  
July 11, 2013**

**TO:** Chair and Members of Design Review Committee

**SUBMITTED BY:** original signed  
**for:** Brad Anguish, Director, Community and Recreation Services

**DATE:** July 2, 2013

**SUBJECT:** **Case 18006: Substantive Site Plan Approval – Mixed-use Development,  
Queen, Clyde and Birmingham Streets, Halifax**

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**ORIGIN**

September 13, 2012 approval of the qualitative elements of the substantive site plan application for the mixed-use development of the “Mary-Ann” site bounded by Queen, Clyde and Birmingham Street, Halifax (W. M. Fares Group on behalf of Clyde Street Developments Ltd.)

**LEGISLATIVE AUTHORITY**

*HRM Charter*; Part VIII, Planning & Development  
Downtown Halifax Land Use By-law

**RECOMMENDATION**

It is recommended that the Design Review Committee:

1. Recommend that the Development Officer accept, as the post-bonus height public benefit for the development, the provision of public parking facilities.

## **BACKGROUND**

This application for substantive site plan approval is for a mixed-use development of the southern portion of the block bound by Queen, Clyde and Birmingham Streets, and south of Spring Garden Road, known as the “Mary Ann” site. The site was owned by HRM until September of 2011 and was the subject of a Request for Proposals for its redevelopment in early 2011. It is the first of the three “Sister Sites”, in which the RFP was awarded and one of two lots known as the “Clyde Street parking lots.”

On September 13, 2012, the Design Review Committee (DRC) passed the following motion relative to this development:

“MOVED by Ms. Sinclair, seconded by Ms. Saul that the Design Review Committee:

- Approve the qualitative elements of the substantive site plan approval application for the mixed-use development of the of the “Mary-Ann” site bound by Queen, Clyde and Birmingham Streets, Halifax, as shown on Attachment A;
- Accept the findings of the qualitative wind impact assessment as found in Attachment D; and
- Recommend that the Development Officer accept, as the post-bonus height public benefit for the development, the provision of residential units at a subsidized cost to contribute to housing affordability.

With the following conditions;

- the area on the building between L3 and L6 on drawing A-22, that currently shows concrete masonry painted in light orange, be changed to carry around the brick shown on the sides of the building; and
- the area shown on A-22 that currently indicates concrete masonry painted in light grey be changed to precast panel.

MOTION PUT AND PASSED.”

The approved development for the site comprises a 9-storey mixed-use development with commercial uses on the ground floor and multi-unit residential above, with underground parking. The following highlights the major elements of the proposal:

- Approximately 23,000 square feet of commercial floor space at street level with pedestrian access points along each street and separate residential lobby area;
- approximately 133 residential units on 8 storeys;
- three underground parking levels containing 180 parking spaces;
- residential driveway access to underground parking off Birmingham Street and a service entrance off Queen Street.

With the approval of the DRC last September, the developer has been proceeding with excavation activity on the site in advance of securing construction permits since no permits are required for excavation activity.

## Proposed Public Benefit

As the project exceeds the maximum pre-bonus height limitations within the Downtown Halifax Land Use By-law (LUB), a public benefit is required to be provided by the developer. A list of eligible public benefits is found in section 12(7) of the LUB and from that list, the developer proposed that “the provision of residential units at a subsidized cost to contribute to housing affordability in the Downtown Halifax Secondary Municipal Planning Strategy plan area” be the benefit contribution. The LUB contains the following definition:

**“2(am) Housing Affordability** means all types of housing **whereby the provincial government provides some form of subsidy or rent assistance**, including public, non-profit and co-operative housing, as well as rent supplements for people living in private market housing.” [Emphasis added]

A calculation of the value of the required public benefit is approximately \$147,480. The developer has been working with the Nova Scotia Department of Community Services for a number of months to establish a program which would meet the LUB definition. However, despite their best efforts, it is now clear that such a program is not possible, due to:

- a) the LUB definition of “Housing Affordability” does not align with an existing provincial affordable housing program; and
- b) to create a program that would satisfy the needs of the province, the developer would need to provide security to meet the province’s requirements, which would far exceed the value requirement of the LUB.

HRM’s requirements relative to the value of the public benefit is not congruent with the needs of the province in relation to the level of performance security they require to guarantee the housing program. The province requires security equal to the value of the additional floor space resulting from the bonus height. HRM’s public benefit cost of \$4.33<sup>1</sup> per 0.1 square metre is rather nominal when compared to the province’s requirements. The developer wishes to provide the value of the benefit required by the LUB.

Where the developer is not able to meet the definition of “Housing Affordability” in the Land Use By-Law, they have requested an alternative public benefit category as per Section 12(7)(g); the provision of public parking facilities, where a deficiency in such facilities exists.

## Role of the Design Review Committee

Section 4(2) of the LUB requires that the Design Review Committee advise the Development Officer on matters pertaining to bonus zoning in relation to substantive site plan approvals. As the public benefit is proposed to be changed from what was presented to the Committee for design approval last September, the matter is being referred to the DRC for recommendation to the Development Officer.

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<sup>1</sup> This represents the annual adjustment to the initial rate of \$4.00 per 0.1 square metre in accordance with the Statistics Canada, Province of Nova Scotia Consumer Price Index.

## DISCUSSION

The developer has been attempting in earnest for several months to secure approval from the province relative to the housing affordability matter. It is important to note that this relates only to the public benefit element, as the developer is committed to the requirements outlined in the HRM purchase and sale agreement which requires 10% of the units to be provided at 20% below market value for a period of 15 years.

The developer would like to proceed with changing the public benefit required by the Land Use By-law as this would be the most feasible and expeditious means of achieving a solution to the matter. The rationale for the change is due to the in-congruency between the requirements of HRM and the province. The developer has proposed that a new public benefit be considered; the provision of public parking facilities, where a deficiency in such facilities exists. An overview of the proposal is included in Attachment A of this report.

The Land Use By-law requires that a minimum of 210 parking spaces be provided for the two properties. In addition, the agreement of purchase and sale for this property required the provision of 216 parking spaces. As noted in the proposal, a total of 429 spaces are being provided between two buildings for both public and private usage. The developer has indicated that levels P1 and P2 in both buildings would be used for public parking, resulting in a total of 287 parking spaces. When compared to the requirements of the purchase and sale agreement, a surplus of 71 public parking spaces for the two sites would be provided.

In determining whether a public parking deficiency exists, reference is made to the LUB where a specific provision exists requiring 210 parking spaces be provided for the two properties. There is no requirement in the LUB for parking facilities to be provided, except for these sites. For years, the Sister Sites have housed surface parking to serve the local commercial area. To ensure that no loss of existing parking facilities occurs as a result of the development of the two properties, specific provision was included in the LUB to maintain the existing parking spaces on the sites. This is supported in the Downtown Halifax MPS through Policy 32 which states that, "...public parking in support of Spring Garden Road shall be incorporated within the redevelopment, which at minimum replaces the public parking spaces currently provided on these sites."

The required amount for the public benefit equals \$147, 479.80, based on the requirements outlined in the Land Use By-Law of \$4.33 per 0.1 square metre of gross floor area.

The approximate cost of a parking space is between \$22,000 to \$25,000, based on the required public benefit of \$147,480, which would account for between 5 and 7 parking spaces. The proposal from the developer to provide the additional 71 spaces would far exceed the minimum public benefit requirement. Accordingly, it is recommended that the Design Review Committee recommend that the Development Officer accept the revised public benefit contribution as outlined in this report.

## **FINANCIAL IMPLICATIONS**

The HRM costs associated with processing this application can be accommodated within the approved operating budget for C420 Subdivision & Land Use.

## **COMMUNITY ENGAGEMENT**

Community Engagement as described by the Community Engagement Strategy is not applicable to the public benefit contribution component of the site plan approval process.

## **ALTERNATIVES**

1. The Design Review Committee may choose to recommend the alternative post bonus height for public parking, as submitted. This is the recommended course of action.
2. The Design Review Committee may choose to recommend an alternative post bonus height category. This may necessitate further submissions by the applicant, as well as a supplementary report from staff.

## **ATTACHMENTS**

Attachment A                      Developer's Overview of Post-Bonus Height Public Benefit

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A copy of this report can be obtained online at <http://www.halifax.ca/boardscom/DesignReviewCommittee-HRM.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:                      Erin MacIntyre, Development Technician, 490-4338  
Sean Audas, Development Officer, 490-4402  
original signed

Report Approved by:                      Kelly Denty, Manager, Development Approvals, 490-4800

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May 27, 2013

**Clyde Street – Marianne Site  
Post-Bonus Height Public Benefit**

In response to the Post Bonus Height Public Benefit requirement as stipulated under section 12 of the Downtown Halifax Land Use Bylaw, the developer has opted to utilize the provision of public parking (section 12(7)(g)).

The following outlines our understanding and proposed approach:

- The gross floor area that has been gained as a result of the post bonus height option is 3406 square meters;
- The value of the public benefit that is required as established under section 12 of the Halifax Land Use Bylaw is \$136,240.00;
- The Land Use Bylaw mandates that the developer of the Sister Sites on Clyde Street known as the Marianne and Margareta sites provide a total of 210 public parking spots between both sites;
- The proposed post-bonus height public benefit will be met by providing public parking which is above and beyond the required 210 parking spots;
- The total number of parking spots to be provided within the 2 buildings is 429 and is broken down as following (see attached parking plans):
  - Mariane Site: 180 parking spots
    - Level P1: 59
    - Level P2: 62
    - Level P3: 59
  - Margareta Site: 249 parking spots
    - Level P1: 82
    - Level P2: 84
    - Level P3: 83

## Attachment A

- The proposed direction by the developer is to provide levels P1 and P2 within both buildings as public parking. This will include a total of 287 parking spots, which exceeds the requirement of the land use bylaw by 77;
- The cost to the developer to create the 77 under-ground public parking spots is \$1,925,000. This is based on a conservative cost of \$25,000/spot. Please note that at a minimum, the required post bonus height public benefit value of 136,240.00 could be achieved by providing 5 additional public spots within the Marianne site.

By providing additional public parking spaces in the Halifax downtown core, we believe that our proposed public benefit meets the requirements of the land use bylaw.

Yours truly,

original signed

Cesar Saleh, P.Eng  
VP Planning and Design.  
W. M. Fares Group

Print Cover/Sheet



Urban Design Consultant  
Duffus  
Romans  
Kundzins  
Rounsefell  
ARCHITECTS | LIMITED  
HALIFAX, NOVA SCOTIA

No.	Description	Date
A	ISSUED FOR REVIEW	04/11/12
B	ISSUED FOR PERMIT	05/02/12
C	ISSUED PARTIAL PERMIT (PART 1/10)	05/02/12



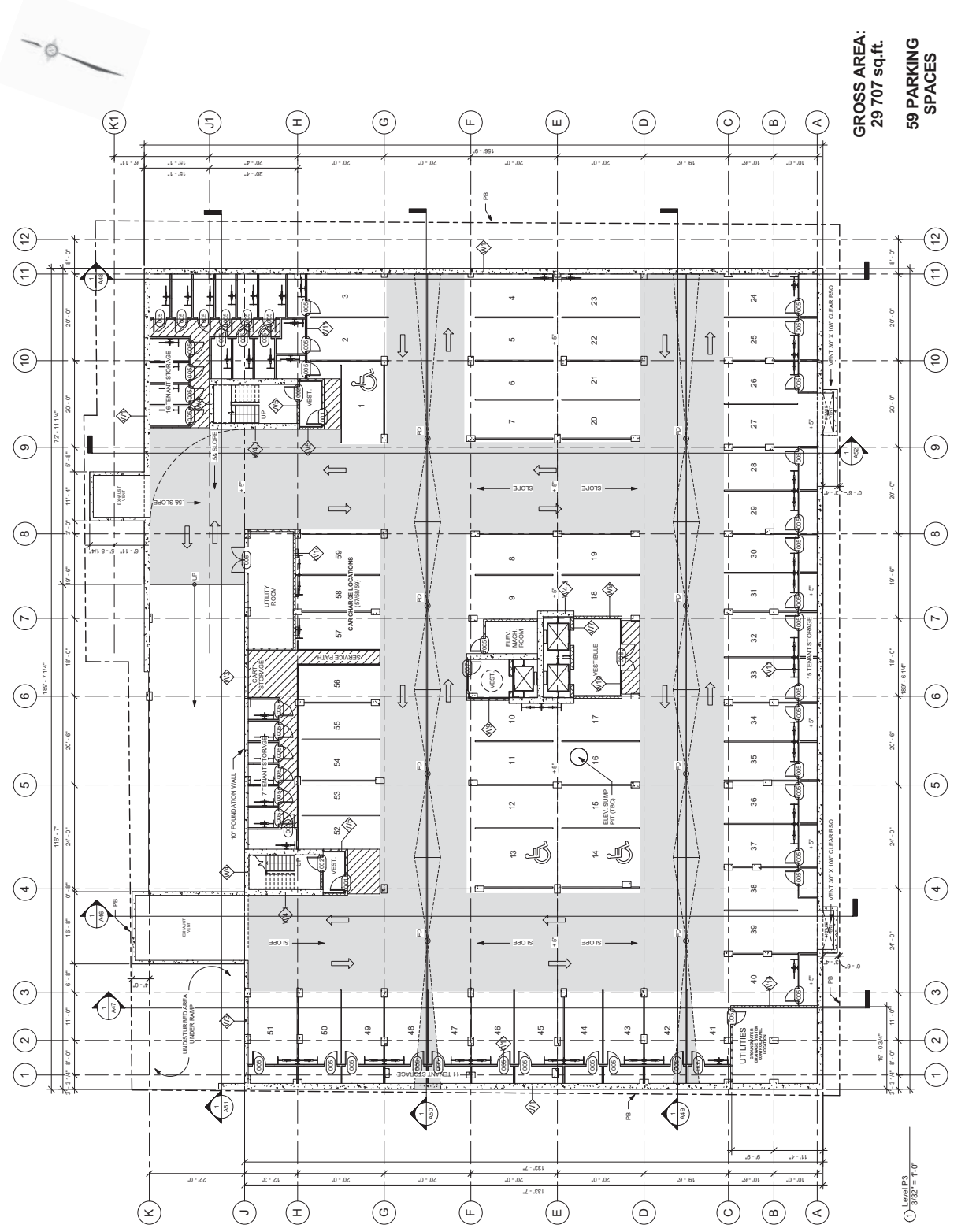
Proposed  
Mary Ann Site  
Clyde / Birmingham /  
Queen Street

Title  
Level P3 Floor Plan -  
Lower Underground  
Parking

References  
WM FARES

Scale	3/32" = 1'-0"	Date	JUNE 2011
Drawn by	ENB	Sheet	
Checked by	RM		
Project number	2011-05		

A1



GROSS AREA:  
29 707 sq.ft.  
59 PARKING  
SPACES

1 Level P3  
3/32" = 1'-0"



Print Consultant



Urban Design Consultant  
Duffus  
Romans  
Kundzins  
Rounsefell  
ARCHITECTS LIMITED  
HALIFAX, NOVA SCOTIA

No.	Description	Date
A	ISSUED FOR REVIEW	01/11/12
B	ISSUED FOR PERMIT	01/11/12
C	ISSUED PARTIAL PERMIT (PARTIAL)	10/02/13



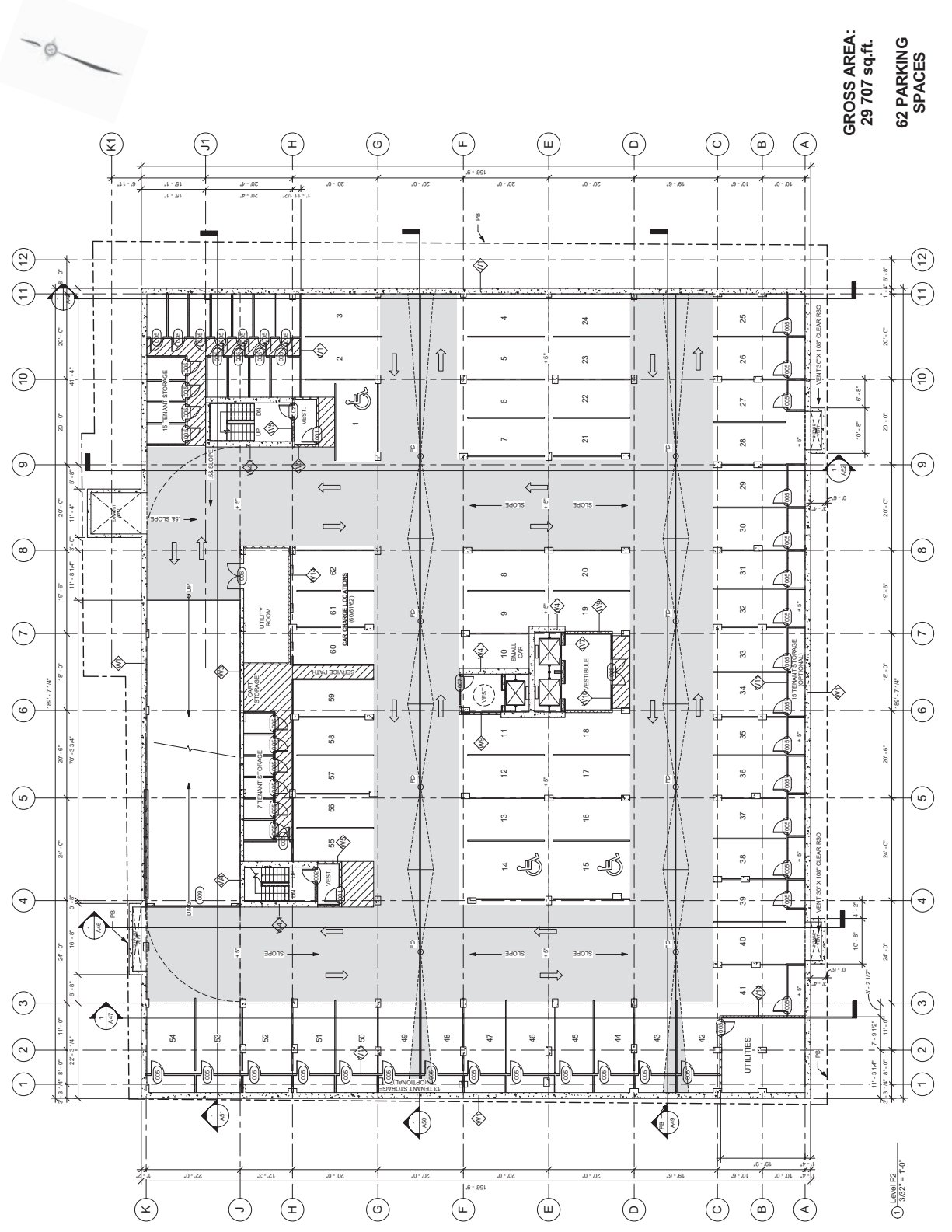
Proposed  
Mary Ann Site  
Clyde / Birmingham /  
Queen Street

Title  
Level P2 Floor Plan -  
Middle Underground  
Parking

References  
WM FARES

Scale	3/32" = 1'-0"	Date	JUNE 2011
Drawn by	ENB	Sheet	
Checked by	RM		
Project number	2011-05		

A2



GROSS AREA:  
29 707 sq.ft.  
62 PARKING  
SPACES

① Level P2  
3/32" = 1'-0"

Prime Consultant



Urban Design Consultant  
Duffus  
Romans  
Kundzins  
Rounsefell  
ARCHITECTS | LIMITED  
HALIFAX, NOVA SCOTIA

No.	Description	Date
A	ISSUED FOR REVIEW	01/11/12
B	ISSUED FOR PERMIT	02/21/12
C	ISSUED PARTIAL PERMIT (PARTIAL)	10/02/13



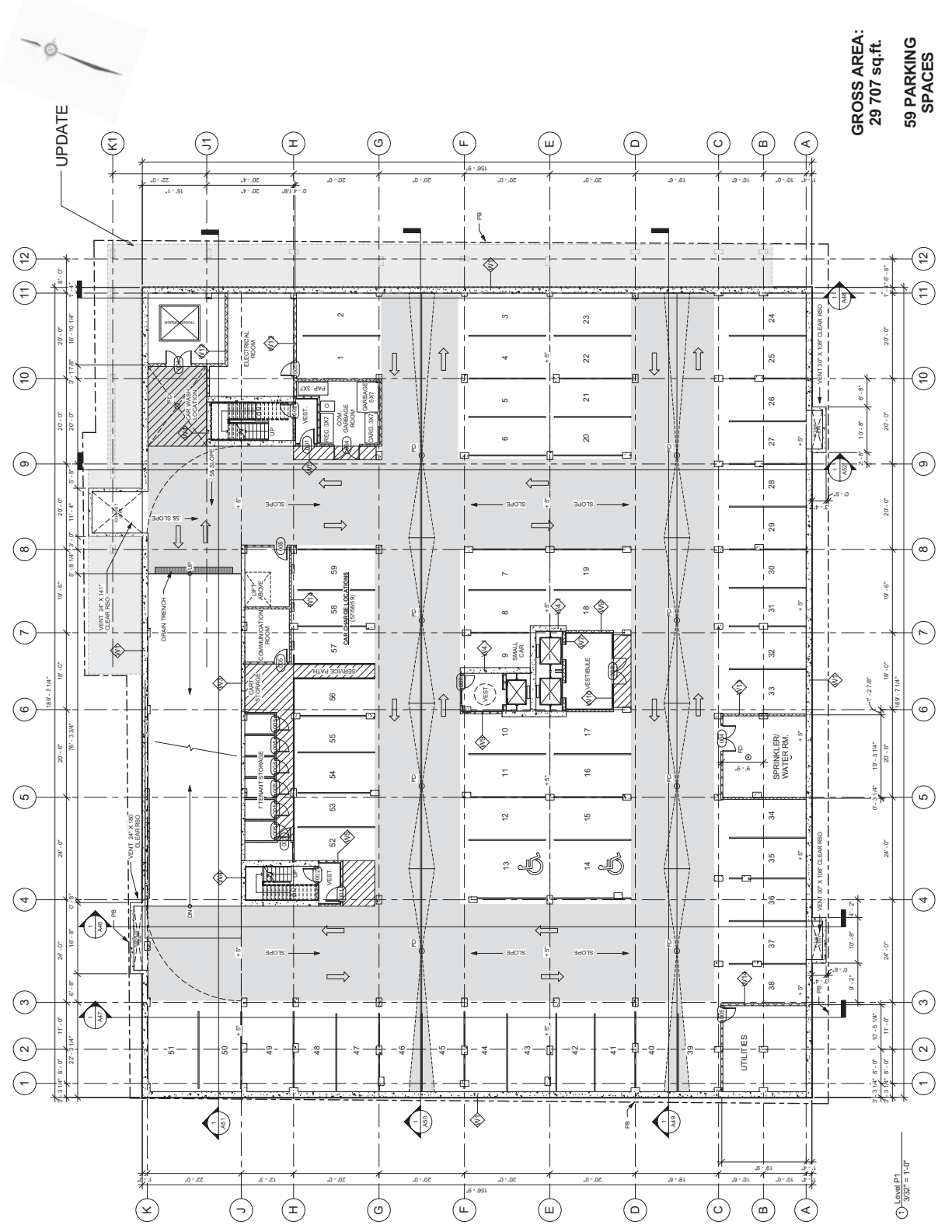
Proposed  
Mary Ann Site  
Clyde / Birmingham /  
Queen Street

Title  
Level P1 Floor Plan -  
Upper Underground  
Parking

References  
WM FARES

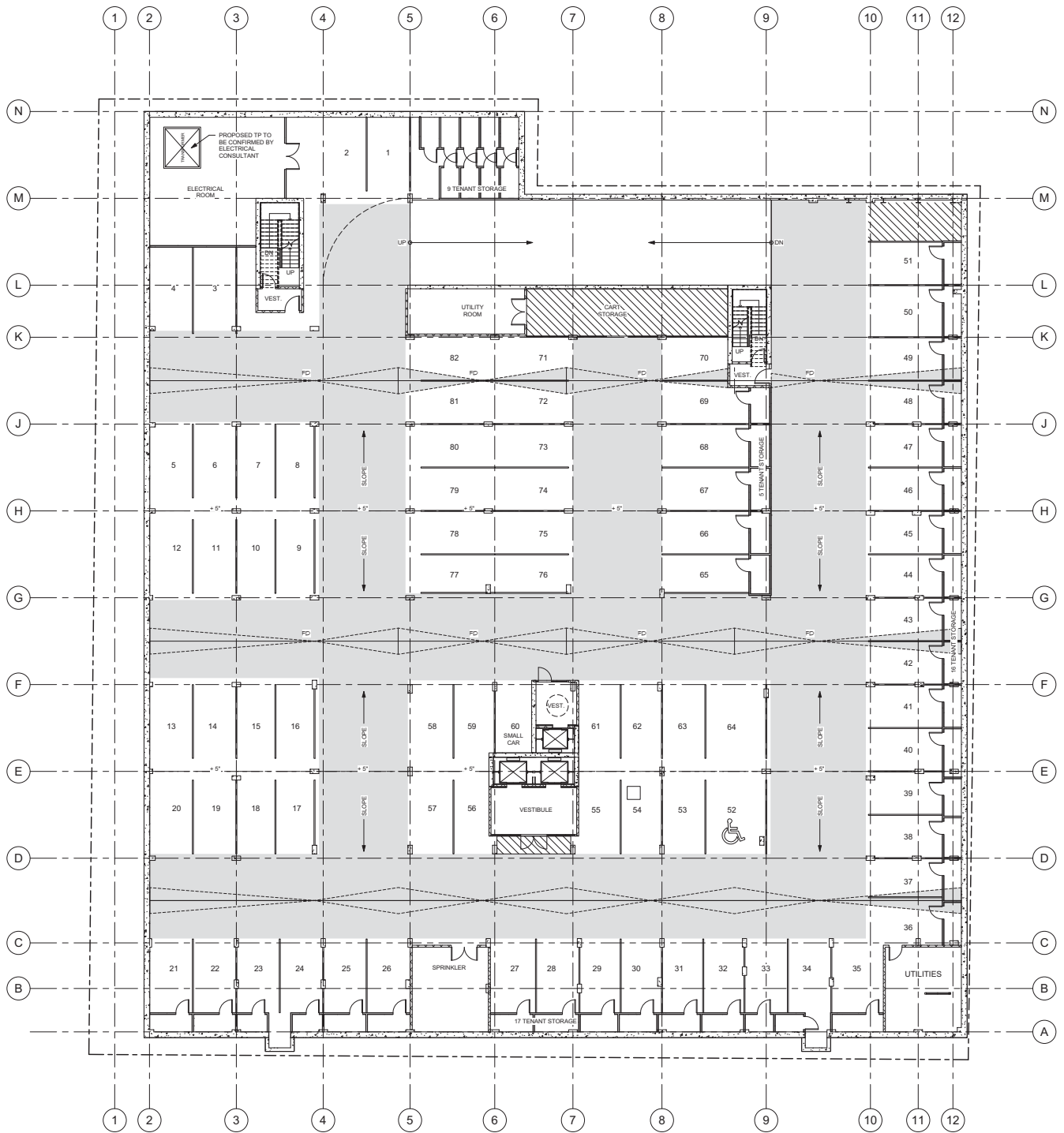
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Checked by	RM		
Project number	2011-05		

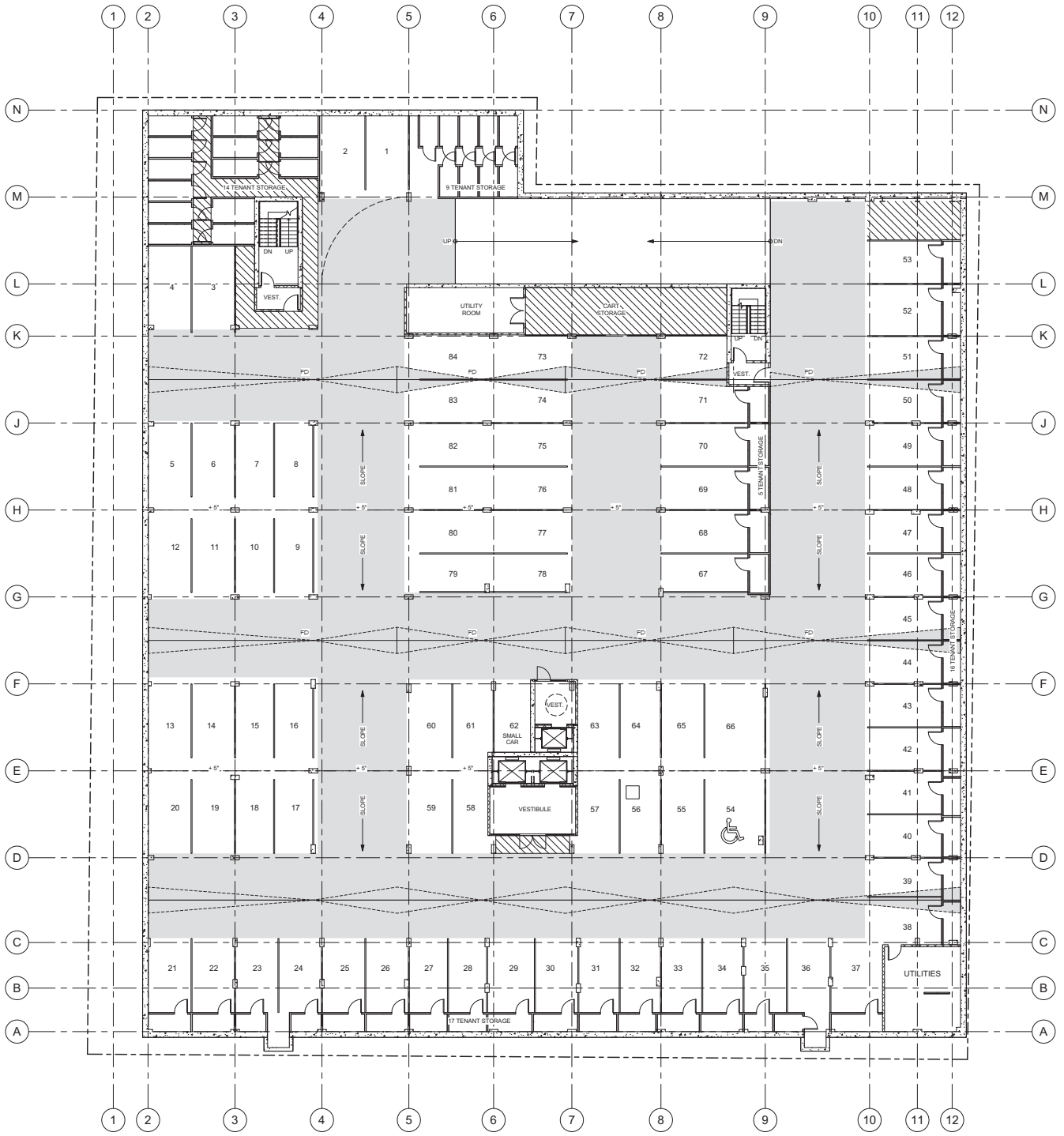
A3



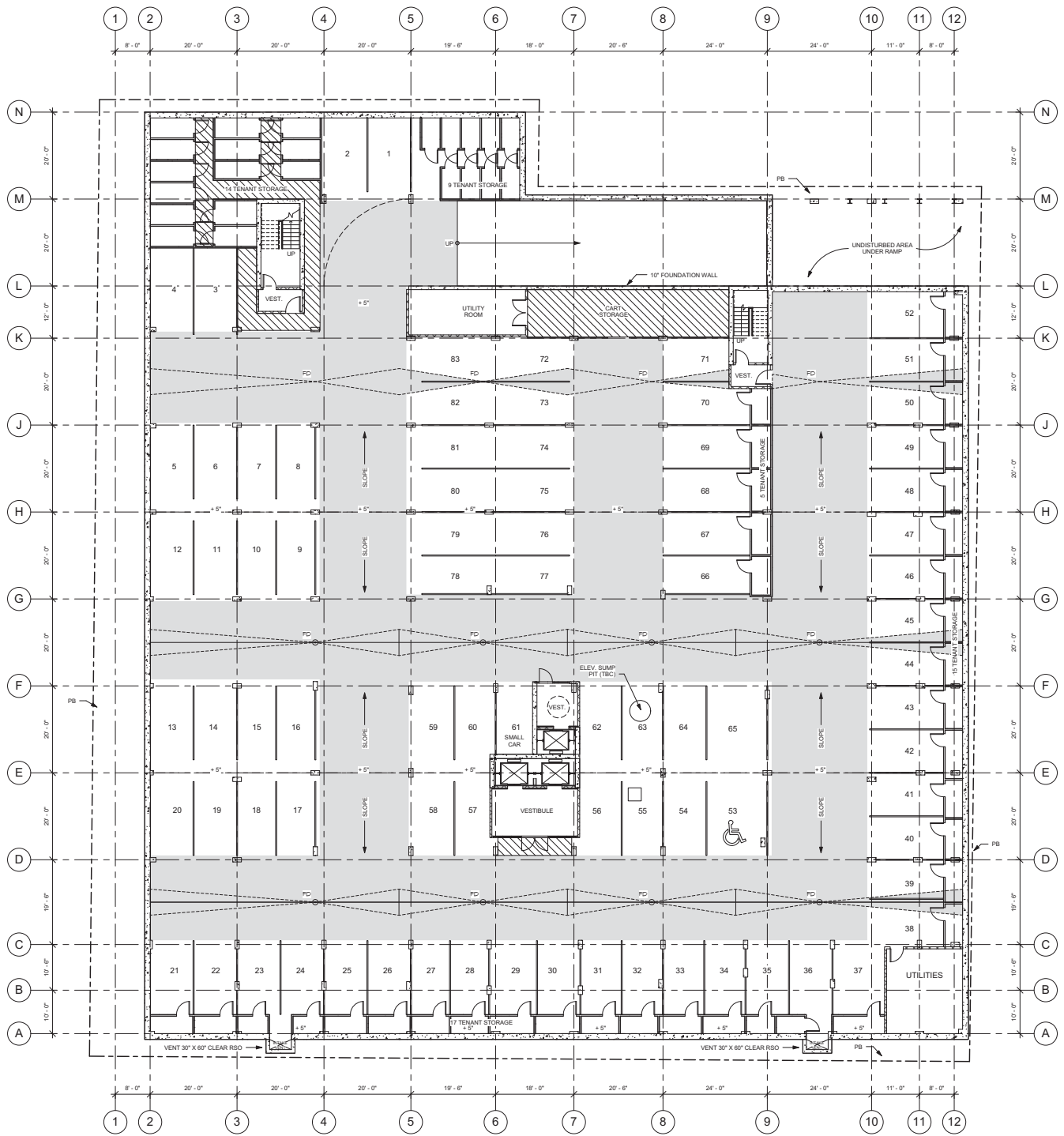
GROSS AREA:  
29 707 sq.ft.  
59 PARKING  
SPACES

1 Level P1  
3/32" = 1'-0"





CLYDE STREET - Margareta Site  
 Level P2: Proposed Parking Plan  
 84 Parking Spots  
 May 27, 2013



CLYDE STREET - Margareta Site  
 Level P3: Proposed Parking Plan  
 83 Parking Spots  
 May 27, 2013