


Item No. 11.1.2

Halifax Regional Council


October 29, 2013

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: October 9, 2013

SUBJECT: **Case 18120: MPS & LUB Amendment for 348 Purcell's Cove Road,
Halifax**

ORIGIN

Application by Sunrose Land Use Consulting

LEGISLATIVE AUTHORITY

HRM Charter, Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Halifax Regional Council **not initiate** the process to consider amending the Halifax Municipal Planning Strategy and the Halifax Mainland Land Use By-law to allow for a dental office, single unit dwelling, and accessory buildings at 348 Purcell's Cove Road, Halifax.

BACKGROUND

Sunrose Land Use Consulting, on behalf of the property owner Paulette Jensen, has submitted an application for a site-specific amendment to the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) to permit a single unit dwelling, an existing office building (former dental office) and accessory buildings at 348 Purcell's Cove Road, Halifax (Maps 1, 2, 3 and Attachment A). The purpose of this request is to enable the existing buildings and land uses which have occupied the properties in the absence of the necessary HRM permits, to be exempted from certain municipal land use by-law requirements.

This application was submitted in response to a 2008 land use by-law compliance case (#92162). The case was taken to Provincial Court for a trial date in March of 2012, however, prior to the trial, the property owner plead guilty to one charge (of allowing a building that is less than 8 feet from the rear lot line) and, subsequently, paid a fine of \$8,000.00 on July 17, 2012. However, there continues to be various issues of non-compliance with the Land Use By-law, including the continual use of the dwelling, which the property owner wishes to resolve through amendments to the Halifax MPS and Mainland LUB.

Site Description, History and Surrounding Land Uses

Site Description

The area under discussion consists of three properties as shown on Maps 1, 2, and 3. Two are owned by Paulette Jensen and the third, a water lot, is owned by the Halifax Port Authority (HPA). These properties are:

- Lot G1, which has a total area of approximately 53,000 square feet, a total street frontage of 75 feet and contains a building which includes former dental offices, two detached garages and a well;
- Lot G2, which has a total area of approximately 5,300 square feet, has water frontage on the Northwest Arm and contains a residential dwelling, shed and on-site sewage disposal system for lots G1 and G2; and
- A post-confederation water lot, owned by the HPA, which has a total area of approximately 2.9 acres and within which a portion of the dwelling and dock are located. The HPA and Paulette Jensen entered into a license agreement on April 1, 2012 to allow for the existing dwelling and deck overhang and concrete piles within the water lot. This license agreement is valid for only three years but is subject to renewal.

Additionally, HRM owns a narrow parcel of land which separates lots G1 and G2 and which is intended to be developed as a public pathway but which has not been fully constructed nor maintained for this purpose.

Lot History

Lots G1 and G2 were approved by the former Halifax City Council in August of 1975 as part of a larger subdivision carried out by Pinecrest Realties Limited (lots A1 to G1 and A2 to G2) as shown on (Maps 1 and 2). Percolation tests were carried out by the Department of Public Health on the larger, roadside lots (A1 to G1) which abutted Purcell's Cove Road, in order to assess their suitability for the installation of on-site sewage disposal systems. The waterside lots were

much smaller in area than the roadside lots and were not intended to be occupied with residential dwellings and, therefore, were not assessed for their suitability to contain on-site sewage disposal systems. The waterside lots and the larger roadside lots are separated by a proposed public pathway which was deeded to the City as a condition of subdivision approval to satisfy part of the open space dedication requirements under the former City of Halifax Subdivision By-law.

Surrounding Land Uses

The surrounding area includes mainly low-density residential development, as shown on Map 1. The Saraguay Club and the Royal N.S. Yacht Squadron are located along Purcell's Cove Road to the southeast.

Designation and Zoning

The subject properties are designated Low Density Residential on the Generalized Future Land Use Map and are located within the Mainland South Secondary Planning Strategy (Section X) of the Halifax Municipal Planning Strategy (Map 1). The properties are zoned H (Holding) and WA (Water Access) as shown on Map 2. The H (Holding) Zone permits single unit dwellings and the offices of a professional person (dentist/orthodontist) located within dwellings which contain on-site sewage disposal and water services and which abut a public street. The WA (Water Access) Zone does not permit the development of dwellings.

1982 Development Agreement

In late 1982, the former City of Halifax and Dr. Gene Jensen entered into a development agreement to allow a single unit dwelling and accessory uses on lot G1 and a non-habitable boathouse and storage shed on lot G2 (Attachment B). The development agreement application began as a result of a complaint that sheds were being built without permits on the waterside lot (G2). In response, Dr. Jensen was fined for failing to obtain permits. The staff report to Council at that time indicated that the sheds would be relocated to an area near the proposed dwelling site on lot G1 once construction began on the non-habitable boathouse. The agreement did not allow for a dwelling on lot G2, and required that the future dwelling (on lot G1) meet Land Use By-law requirements including setbacks from property lines. It also required the approval of other government departments before any municipal permits would be granted. The agreement process was required at the time for the development of lots which were not serviced with central sewer and water services. The agreement did not include an expiry date, which was common at the time, and is, therefore, still in force and effect.

Municipal Permits and Other Approvals

There is no record of municipal Development or Building permits for the dwelling, dental office or detached garages/sheds. The applicant has submitted preliminary engineering reports with regards to the structural adequacy of buildings and the on-site sewage disposal system (Attachment A), which would require further investigation in the event that Council initiates the MPS/LUB amendment process. However, the applicant has not included with their submission any approvals from other government departments or agencies.

Proposal

The applicant has requested that the Halifax MPS be amended to create site-specific policy to enable changes to the Mainland LUB for this particular site only in order to permit the existing

buildings and uses to remain on the site in their present locations. Additionally, it is requested that the existing development agreement on the site be discharged as the policy used to establish it no longer exists.

Required Amendments & Regional Council

The proposal involves consideration by Regional Council only, as opposed to Community Council, since the request is for site-specific amendments to the Halifax MPS and resultant amendments to the Halifax Mainland LUB which would carry out or implement the MPS policy amendments. The required amendments would need to address the following:

Lot G1:

- Permit an independent office use (dentist/ orthodontist) on lot G1, which is not a permitted use within the H (Holding) Zone;
- Permit the dental office to have off-site sewage disposal. The dental office is connected to the sewage disposal system on lot G2 via pipes constructed beneath the HRM-owned pathway;
- Permit the dental office building to be located less than the required 8 feet from the side and rear yard property lines, contrary to the H (Holding) Zone; and
- Permit an accessory building on lot G1 to be located less than the required 4 feet from the side/rear yard property lines, contrary to the H (Holding) Zone.

Lot G2:

- Permit the existing single unit dwelling, which was built over the high water mark, within the WA (Water Access) Zone (which does not currently permit any dwellings or other buildings,) or move the boundary of the WA zone;
- Permit the dwelling to be located on a lot which does not contain public street frontage; and
- Permit the dwelling to be located on a lot which does not contain both on-site sewage disposal and water services on the same lot. Lot G2 currently contains on-site sewage holding tank and disposal field, but the well is located on lot G1.

In addition to the above amendments, HRM will also need to grant an easement for the disposal system pipes constructed beneath the HRM-owned public pathway. This was discussed in the original staff report in 1982 (see Attachment B).

Additional Approvals

It is important to note that if Council agrees to initiate the process to amend the MPS and LUB, additional information will be required from the applicant and the approval of other government agencies will be required prior to the issuance of any municipal permits. These may include:

- Traffic Impact Statement for the commercial use (dental office);
- N.S. Environment approval for the on-site sewage disposal system/ treatment facility;
- N.S. Natural Resources;
- Fisheries and Oceans Canada (fish habitat); and
- Transport Canada (navigable waters).

At this time, it is not known whether these approvals will be granted and how long the process will take to obtain such approvals. Municipal permit applications will be required in order to ensure compliance with building code and land use by-law requirements. As such, the existing buildings may have to be altered at the expense of the owner in order to conform to these requirements.

DISCUSSION

Amendments to an MPS are generally not considered unless it can be shown that circumstances have changed since the document was adopted to the extent that the original land use policy is no longer appropriate. Site specific MPS amendment requests, in particular, require significant justification to be considered.

Applicant's Justification for Amendments

To support the request to amend the MPS and LUB in this case, Sunrose Land Use Consulting has prepared a written submission, which is included as Attachment A to this report. Following is a brief summary of the applicant's rationale for the proposed amendments:

- The site has unique topographical features. A detailed environmental analysis was conducted during site development which found that grades and soil conditions, particularly a steep shale cliff, were not suitable for building a residential home on lot G1, so the accessory building on lot G2 was converted into a dwelling;
- It was not practical to locate the dental office ("office of a professional person") on lot G2 within the dwelling, as patients would find it difficult to navigate stairs and cross the fenced HRM walkway, so it was located within a separate building on lot G1;
- On-site sewage disposal services received approval from the appropriate agencies at the time of their installation;
- Buildings and services on the properties have been well built and maintained over approximately 30 years. Building architecture compliments the shoreline and blends with the landscape;
- In some cases in HRM, certain land uses and existing building setbacks have been "grandfathered" by the MPS and LUB that applies to a particular site. This is a reasonable solution in this case;
- The property owner plead guilty to a LUB offence in Provincial Court, paid a fine and now wishes to obtain compliance with the MPS/LUB.

Staff's Position on Proposed Amendments

In staff's opinion, there is not sufficient justification to warrant a site-specific amendment to the MPS and LUB for the subject lands. The applicant was aware of municipal requirements prior to construction due to the establishment of a development agreement on the site and past enforcement issues. In addition to past events, staff also provides the following rationale:

- The subject site is similar to other properties in the immediate area. There are no apparent site features which make the properties unique and, therefore, different from surrounding properties which conform with the MPS and LUB. There is no readily apparent reason why a dwelling and other buildings could not have been located on the site in compliance with the development agreement and zoning requirements;

- The applicant's submission contains no documentation, detailed environmental analysis, or approvals from other agencies to confirm its assertion that the buildings and septic tank/field had to be located where they are. Additionally, if site conditions warranted such, the owner could have applied for an amendment to the agreement or sought some other form of approval from the former City of Halifax at the time;
- Had the dwelling been located on lot G1, pursuant to the approved development agreement, then the dental office could have been located within it, thus meeting the intent of the agreement and zoning requirements. Further, to allow lot G1 to be used only for commercial purposes is inconsistent with MPS policy within a Low Density residential area;
- Historically, the "grandfathering" of existing land uses and buildings occur when there is a proposed change in regulations and the longstanding use or building was legally permitted at the time of its construction. That is not the case here, as the buildings were constructed without the benefit of the permitting process. Amending the MPS and LUB to authorize illegal development should be carefully considered by Council, as doing so could demonstrate to others in similar situations that this approach is a viable alternative to compliance with HRM by-laws.

Conclusion

Staff does not support initiation of the MPS amendment process for the subject proposal. Considering past events, including the entering into of the original development agreement in 1982 and the initial fine for not obtaining municipal permits for sheds at that time, the property owner was aware of the requirement to apply for municipal permits and other approvals prior to building construction. Regardless of the time period which has lapsed, the failure to apply for permits and comply with the development agreement and municipal requirements shows a disregard for municipal requirements which should not be supported by amendments to the MPS and LUB. Therefore, staff recommends that Council not initiate the requested amendment process.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved 2013/2014 operating budget for C310 Planning & Applications.

COMMUNITY ENGAGEMENT

Should Council choose to initiate the MPS amendment process for this proposal or to enable an alternate proposal, the *HRM Charter* requires that Regional Council approve a public participation program when considering any amendment to an MPS. In February of 1997, Regional Council approved a public participation resolution which outlines the process to be undertaken for proposed MPS amendments which are considered to be local in nature. This requires a public meeting be held, at a minimum, and any other measures deemed necessary to obtain public opinion.

The proposed level of community engagement would be consultation, achieved through a public meeting and online forum early in the review process, as well as a public hearing before Regional Council could consider approval of any amendments.

Amendments to the MPS and LUB would potentially impact the following stakeholders: local residents, property owners, community or neighbourhood organizations, other HRM business units, and other levels of government.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

ALTERNATIVES

1. Council may choose to refuse to initiate the MPS amendment process for this proposal. This is the staff recommendation.
2. Council may choose to initiate the MPS amendment process for the proposal. This is not recommended for the reasons discussed above. Should Council choose to initiate the MPS amendment process, they should request staff to follow the public participation program for the MPS amendment process as approved by Council in February 1997.
3. Council may choose to initiate MPS amendments that would differ from that requested by the applicant's proposal. Should Council choose to initiate the MPS amendment process, they should request staff to follow the public participation program for the MPS amendment process as approved by Council in February 1997.

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning
Map 3	Excerpt of Surveyor's Location Certificate
Attachment A	Submission by Sunrose Land Use Consulting
Attachment B	Existing Development Agreement and Staff Report from 1982
Attachment C	Relevant Excerpts from the Halifax Mainland Land Use By-law

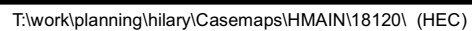
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

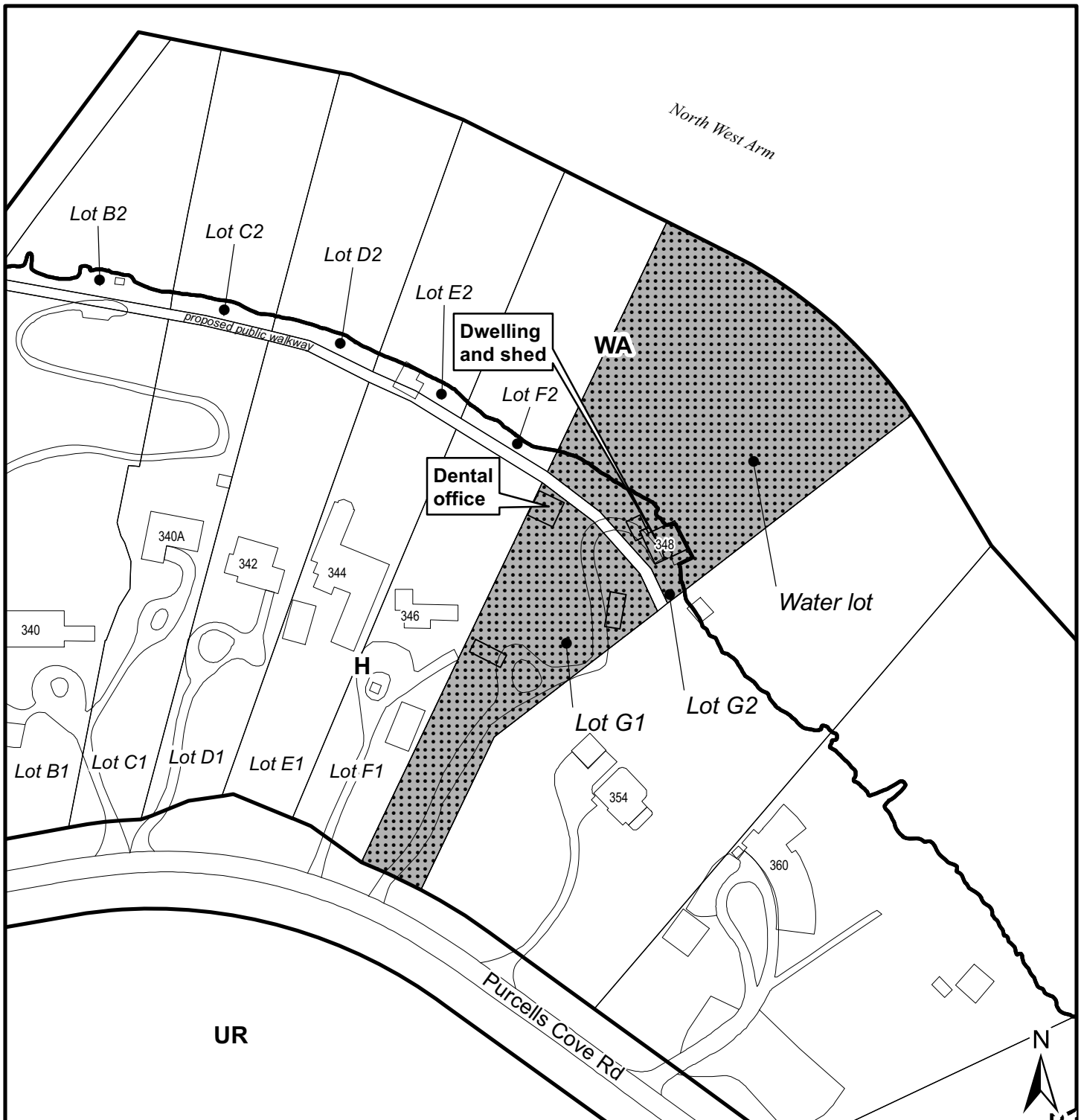
Report Prepared by: Paul Sampson, LPP, Planner, 490-6259

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

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

Report Approved by: Brad Anguish, Director of Community & Recreation Services, 490-4933







Attachment A
Submission by Sunrose Land Use Consulting

July 16, 2012

Paul Sampson, Planner
Halifax Regional Municipality
Western Region Office – Bayers Road
7071 Bayers Road, Suite 2005
Halifax, Nova Scotia
B3L 2C2

Dear Paul:

RE: 348 Purcell's Cove Road, Halifax (PIDs 00270975, 41158452) – Development Agreement registered as document 51401 pages 273 – 277.

On behalf of my Client, Paulette Jensen, please consider this an application for an amendment to the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) to identify the land uses and structures on the above-noted properties as permitted in the current zone, the Holding (H) Zone. The two properties (Lot G1 and Lot G2) are divided by an HRM easement, but function as one residential property, (see attached survey plan).

The current uses on the properties consist of a residential dwelling and three accessory buildings, one of which formally contained a part-time dental office. The land uses and the structures have developed over time under a development agreement and some do not meet all of the requirements of the Land Use By-law. Due to the unusual 30 year history of these properties, this MPS amendment application is the most reasonable alternative for bringing the land uses and structures into compliance with current regulations.

Lot G1 (the lot with road frontage) contains three accessory buildings but no "main building" as defined in the Land Use By-law. Some of the accessory buildings do not meet current setbacks requirements. As well, one of the accessory buildings formerly contained "an office of a professional person" – a use that is permitted in the zone within a residential dwelling. In this case the office was contained within an accessory building because that is the most logical location given the site conditions. It is not practical to put an office of a professional person in the residential dwelling because the residential dwelling is situated on Lot G2 (the lot that fronts on the Northwest Arm) and would require patients to cross the fenced portion of the HRM easement and navigate stairs.

Lot G2 (the lot that fronts on the Northwest Arm) contains the residential dwelling. A portion of the dwelling overhangs the water, which has been allowed by the Port Authority, but HRM's Water Access Zone does not allow it. The HRM regulations also do not allow a dwelling on a lot that does not have street frontage. However, this is the most appropriate location for a residential dwelling because Lot G1 contains a very steep and unstable shale rock cliff that is not conducive for residential dwelling.

Because both the residence and one of the accessory buildings share the well and septic services, connections are made with piping that traverses under the HRM-owned easement. These services received approvals from appropriate agencies at the time they were installed, but today's regulations require them to be contained on the same lot that they service.

I. BACKGROUND

Paulette Jensen is the registered owner of the properties (which comprise approximately two acres). The properties are subject to a 1982 Development Agreement between Gene Jensen (Paulette's husband) and the former City of Halifax. The Development Agreement applies to two lots located at 348 Purcell's Cove Road: Lot G1 and Lot G2. Lots G1 and G2 are severed by an HRM-owned easement (also referred to as the "HRM trail" in this letter) with access to each lot provided by one driveway. The residence and the 1.5 storey accessory building are serviced with on-site well and septic systems. Some of the piping for these systems runs under the HRM trail.

When the Development Agreement was approved by Halifax City Council in 1982, detailed topographic surveys and environmental studies were not part of the required submission documents. The Development Agreement allowed for a residence and boathouse on the property; however, the plans detailing the exact placement of these structures are missing. Lot G1 has a large, very unstable, steep 91-foot-high, shale rock cliff that extends across the property north to south from one side to the other. During the development of the property, a detailed environmental analysis was commissioned and it was found that the grades and soil conditions of the property were not conducive to building a residential home on Lot G1. Options for the placement of buildings, the well and the septic system were limited. A boathouse was built on Lot G2 and later converted into a dwelling approximately 30 years ago. The dwelling has been used as a residence since its completion.

The HRM trail that divides Lots G1 and G2 ends at the southeastern edge of the property. The portion of the trail that runs through the Jensen property has been built, fenced, and maintained in a passable and safe condition by the Jensens. However, the extension of the trail that crosses five properties to the northwest consists of a neglected and dangerous residual trail that is not maintained and, in fact, in some places has fallen away into the Northwest Arm and is virtually impassable.

The buildings and services on the Jensen property have been well-built and carefully maintained for over 30 years. (See attached report on Structural Adequacy by George Brandys, P. Eng. and On-site Sewage Disposal System Assessment by Able). Considerable clean up of over 200 trees and the construction of retaining walls were required after Hurricane Juan devastated the property in 2003. The Jensens have maintained the property and the HRM trail consistently and have developed the property to a high standard, with an emphasis on safety and aesthetics that complement the surrounding area.

In 2010, HRM filed charges against the Jensens for Land Use By-law violations. That case was resolved by plea agreement in Provincial Court earlier this year. With this concluded, the Jensens wish to continue working with HRM to bring their residential property into compliance with HRM regulations.



Since the former MPS policies that enabled the Development Agreement in 1982 no longer exist and new regulations are more stringent, the properties present certain compliance challenges. Of particular note, Lot G2 does not have frontage on a public street and some buildings do not meet current setbacks. The current zone allows "an office of a professional person" in the dwelling but not in an accessory building, and the well and septic systems cross the HRM walkway, which although anticipated at the time, may need special consideration under the current LUB.

II. PROPOSAL

Several options have been considered for bringing the properties into compliance, such as: 1) create new MPS policy that would enable an amendment to the Development Agreement, 2) move the buildings to meet setbacks, or 3) create site-specific MPS policy that recognizes the unusual circumstances of the site and lists the properties as permitted in the Zone.

The first option to amend the Development Agreement would require new policy since the former policies no longer exist. However, this approach would have to consider its applicability to other residential areas similar in nature, which could involve lengthy research and public consultation.

The second option of moving the buildings to meet current setbacks would require the demolition and re-development of the buildings and infrastructure which would involve significant expense, time, effort and disturbance to the area. In this case, the adjacent lots are very large with significant tree cover with their buildings located several hundred feet away from the property lines. Setbacks are intended to provide privacy and buffers between land uses, however, in this case, there is plenty of privacy and buffer between the Jensen property and the adjacent properties. A demolition of the Jensen buildings would be a significant over-correction to the situation.

The third option is what is being requested here, which is relatively common in instances where Council chooses to allow a long-standing land use that does not meet current regulations, and is deemed appropriate and reasonable at its location.

The Jensen property, consisting of a residential dwelling, three accessory buildings and an office of a professional person, deals with residential land uses and structures that do not have negative impacts to the area in terms of land use, traffic, noise, or other land use by-law matters.

III. PLANNING RATIONALE

There are several MPS/LUBs in HRM that have used the proposed approach to allow for land uses that do not meet the requirements of the zone, but are deemed to be appropriate and reasonable at their location.

The Halifax Mainland MPS/LUB has been amended to allow exceptions for two areas along Purcell's Cove Road. The Royal Nova Scotia Yacht Squadron and Saraguay Club, (which are only one property away from the Jensen property), are exempt from



certain setback requirements. Also on Purcell's Cove Road is a Tree Works demolition company with a fleet of trucks, cars, and machinery just a few hundred metres north of the Jensen property. The LUB in this area also exempts specific properties from a minimum lot area requirement. The MPS/LUB permits an existing apartment building on Alma Crescent to exceed the maximum units specified in the LUB.

The Sackville MPS/LUB identifies specific multiple unit dwellings that are located in residential neighbourhoods and lists them as permitted in the R1 zone. The Sackville MPS/LUB also recognizes and accommodates two existing commercial uses in the residential designation and has created special MPS policy for Atlantic Gardens.

The Beaverbank/Hammonds Plains/Upper Sackville MPS/LUB recognize existing home based businesses that do not meet the requirements of their residential zone and it allows limited expansion of a non-conforming commercial operation of a printing press.

Planning Districts 1 & 3, the St. Margaret's Bay MPS/LUB, allows exceptions for an accounting business as well as a marina in Hackett's Cove.

The Preston/Lake Major MPS/LUB has an Appendix C that identifies land uses to be permitted in their zones although they do not meet the zone requirements.

IV. PLANNING CONSIDERATIONS:

Shoreline

The planning considerations that Municipalities often review in allowing a residential dwelling to be situated on the edge of the shoreline include adequacy of on-site water and sewer services, quality of architectural design, and analysis of any impact to the shoreline.

The residence on Lot G2 and the 1.5 storey accessory building on Lot G1 are both serviced with an on-site sanitary system that involves a multi-lined tank that is designed to withstand corrosion. The sewage is pumped to a septic field on the property and the tank has been pumped out on a regular basis. The system is functioning well and has been regularly maintained by a local company (Hilchie Environmental Services). At no time was there any insufficient sewage system on this property in past 30 years. The Development Agreement requires that the on-site services meet the requirements of the Department of Health, which they do. Water to the property is provided by a well, which is located on Lot G1 and meets environmental and health requirements.

The residence is well-built and structurally sound. It has been engineer-certified and is designed with a nautical theme that complements the shoreline along the Northwest Arm. One corner of the building overhangs the edge of the shoreline, but it does not impede the natural ocean currents or flow. The Jensens have secured a license from the Port Authority for the residential dwelling to overhang the water (see attached).

Frontage

Planning by-laws usually require residential dwellings to be located on properties that have public street frontage. This is to ensure that dwellings have vehicular and



pedestrian access. In this case, the driveway comes from Purcell's Cove Road, through Lot G1 and stops at the HRM trail. The residence on Lot G2 has pedestrian access from Lot G1 across the HRM trail. When the Development Agreement was approved, it was recognized that access to Lot G2 would come from Lot G1 and would have to cross the HRM trail.

Community Considerations

The Jensen properties are located in a residential area of HRM. The residence is not visible from the road nor is it visible from the adjacent properties. The residence is visible from the Northwest Arm, and its architectural design complements the shoreline and blends into the surrounding landscape. The structure meets all building codes, is safe and of the highest quality. It also fits the character of the area and is often complimented as one of the most attractive homes on the Arm.

Properties in this area are large with significant separation between neighbouring buildings. The accessory dental office is not visible from the road, does not generate noise, and involves very little traffic. There are other, more intense commercial uses in the area, including the Royal Nova Scotian Yacht Squadron, the Saraquay Club, the Tree Works company, the Purcell's Cove Road Theatre, and the Purcell's Cove Social Club.

Taxes

The Jensens have been under the impression that they owned the water lot that is a portion of Lot G2 upon which the dwelling overhangs. For over 30 years the Jensens have been paying property taxes on the water lot (see attached tax information). Recently, the Port Authority claimed that they own the water lot and in the recent months, the Port Authority granted a license to the Jensens' to continue their residential use on the water lot.

Occupancy Permit

By virtue of the Building By-Law B-201, an occupancy permit is not needed for buildings or occupancies in existence prior to April 1, 1987 as shown on the assessment roll. The residence on Lot G2 was occupied prior to 1987 (see attached assessment information). This exemption, therefore, applies to the residence on Lot G2.

V. SUMMARY

It was not known that topographical site constraints would prevent development as envisioned under the Development Agreement dated 1982. The length of time that has passed and the incomplete plans also make it difficult to determine exactly what was envisioned in 1982. We do know that amendments are required in order to bring the properties into compliance with today's regulations.

Recognizing the land uses and structures on the properties as permitted uses in the zone is a reasonable solution to the unusual circumstances. It is the appropriate solution given the Jensens' historical use of the property and the context of the surrounding area.



The residential use with an office of a professional person is consistent with the land uses permitted in the zone. The Jensens have lived on the property for the past 30 years. The added benefit of the construction and maintenance of the HRM-owned trail to a fenced walkway standard indicates the high level of care and commitment that the Jensens apply to their properties. When Hurricane Juan struck in 2003, much time, effort and resources were expended to clean up the property which had taken on the appearance of a war-zone. Their care and commitment is also evidenced by the recent resolution of the court case and by this request to Council for a constructive approach to compliance.

Please do not hesitate to contact me if you require any additional information. We thank you for your consideration to this request and look forward to hearing from you.

Sincerely:

Original Signed

Benifer Tsang, MCIP



Sunrose LAND USE CONSULTING

June 25, 2010

REPORT ON STRUCTURAL ADEQUACY OF EXISTING BUILDINGS
JENSENS RESIDENCE – AT 348 PURCELL'S COVE RD, HALIFAX, NS

The undersigned carried out an extensive inspection of the existing buildings, including the boathouse garage, the dwelling, the accessory building and the small garage at the property entrance.

The two garage buildings are simple, wood frame, one storey structures, consisting of pre-engineered wood roof trusses, post, beam and wood stud exterior bearing walls. Foundations are round concrete column footings and grade beams. These exposed structures were checked and found to be quite adequate.

The dwelling, including a small change cabin, is a one and one half storey wood frame structure. It is supported in part by wood beams above high tide level, resting on concrete footings along the shoreline. These were built by Waterworks Construction Ltd. as shown on the enclosed drawing. At higher elevations - on land, the building is supported by conventional concrete footings. The exposed structural framing was checked and found to be safe and sound. Where the structure was not accessible, detailed visual inspection was made. This inspection did not indicate any weaknesses, which would demonstrate themselves in form of cracks, deflections, floor springiness etc. No anomalies were reported by construction personnel that worked on this building.

The accessory building is a two storey and low attic, mostly wood framed building, except for steel framed front wall, steel monorail beam at ridge, steel stairs, steel framed lower lean-to roof containing skylights and steel reinforced attic floor wood joists. The wood frame elements were checked and found more than adequate. The structural steel framing was designed and supervised during construction by Tom Parsons – a qualified structural engineer, as confirmed by his enclosed letter – please refer to the enclosed drawing's for detailed information.

CONCLUSIONS:

All four existing bldg's were thoroughly inspected visually and analyzed structurally, where appropriate. The above four bldgs were found to be more than adequate in terms of supporting the intended loading, and in compliance with the applicable building codes and safety factors. In general, both the materials and workmanship were found to be of exceptionally good quality.

ENCLOSURES:

Accessory Bldg Page 1 to 11 incl
Dwelling Bldg Page 1 to 5 incl

Respectfully Submitted;

Original Signed

George Brandys. P. ENG
Consulting Structural Engineer





50 Queen Street
P.O. Box 959
Chester, NS, B0J 1J0

Phone: (902) 273-3050
Fax: (902) 273-3072
Email: paul@ableinc.ca

December 16, 2010

Mr. Marc Beaubien
Cox & Palmer
Purdy's Wharf Tower I,
1100-1959 Upper Water Street
Halifax NS

**Re: On-Site Sewage Disposal System Assessment, Lot G2,
348 Purcell's Cove Road, Halifax, NS, PID #41158452**

Dear Mr. Beaubien,

I visited the above mentioned property on June 18, 2010 and performed a visual walk around site inspection, and provide the following comments:

The property is located on the shore of the Northwest Arm in Purcell's Cove, on a small narrow strip of land known as Lot G2, PID 41158452.

Based on owner supplied information, the septic tanks and disposal field are located entirely on Lot G2. The septic tank and pump tank are located under the existing dwelling and pump up to the existing disposal field located to the west on the narrow strip of land. (see attached sketch CSK-1)

The auxiliary building located on Lot G1 has a convenience washroom that is connected to the existing septic tank located under the existing dwelling.

Based on my visual inspection of this property the septic system appeared to be functioning with no visible signs of malfunction.

Please feel free to contact me if you have questions or concerns.

Yours truly,

Original Signed

Paul JK Kundzins, P. Eng

Cc Dr. Gene and Paulette Jensen

Attachment B
Existing Development Agreement and Staff Report from 1982

51407

273

1982

THIS AGREEMENT made this *25th* day of *November*,

BETWEEN:

DR. GENE JENSEN, of Halifax, County of
Halifax and Province of Nova Scotia
(Hereinafter called the "Developer")

APPROVED
AS TO FORM
[Signature]
City Solicitor

OF THE ONE PART

- and -

CITY OF HALIFAX, a municipal body corporate
(Hereinafter called the "City")

OF THE OTHER PART

WHEREAS the Developer wishes to obtain permission to construct a single family dwelling and boathouse in the City, pursuant to Section 66 of the Mainland part of the Zoning Bylaw;

AND WHEREAS a condition of the granting of approval of Council is that the Developer enter into an agreement with the City;

AND WHEREAS the Council of the City, at its meeting on the 28 day of October, 1982, approved the said contract development and boathouse, subject to the registered owner of the lands described herein entering into this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the City of the contract development requested by the Developer, the Developer agrees as follows:

1. The Developer is the registered owner of the lands known as Lots G-1 and G-2, Purcell's Cove Road, in the City of Halifax, described in Schedule "A" hereto (hereinafter called the "lands").
2. The Developer shall construct on the lands a building, which in the opinion of the Building Inspector, is substantially in conformance with Plans No. P200/11119-21 and 11582-87, filed in the City of Halifax Development Department as Case No. 4170 and shall not develop or use the lands for any other purpose than a single family dwelling, a boathouse, storage shed and accessory uses.
3. The boathouse and storage shed shall not be used as a dwelling.
4. The on-site services shall be designed and constructed in accordance with the requirements of the Nova Scotia Department of Health.
5. No building or development permits for any structure in the water lot shall be issued until approval is granted by the Federal Department of Transport.
6. The dwelling shall be located in accordance with siting requirements of the Zoning Bylaw.

7. Notwithstanding any other provision of this agreement, the Developer shall not undertake or carry out any development on the lands which does not comply with all City of Halifax laws, including, without restricting the generality of the foregoing, the Building Code Ordinance and the Fire Prevention Ordinance, and no permit shall be issued for any such development.

8. The City shall issue the necessary permits for the development upon the expiration of the thirty (30) day appeal period under Section 35 of the Planning Act, Stats., N.S. 1969 c. 16 as the same may be amended from time to time or upon the withdrawal or dismissal of any appeal which may be taken; provided; however, that the City shall not issue any occupancy permit for the development unless and until the development specified in the plans referred to in No. 2 hereof has been completed substantially in accordance with the said plans and the requirements of this have been met.

This agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

SIGNED, SEALED & DELIVERED)
in the presence of)

Original Signed)

Original Signed)

Original Signed

DR. GENE JENSEN

CITY OF HALIFAX

Original Signed

Mayor

Original Signed

City Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

ON this 23rd day of November, 1982, before me, the subscriber personally came and appeared Concepcion Crawford, subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that Dr. Gene Jensen one of the parties thereto, signed, sealed and delivered the same in her presence.

Original Signed

A Barrister of the Supreme
Court of Nova Scotia

PETER J. McDONOUGH

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

ON this 21st day of November, 1982, before me, the subscriber personally came and appeared PAM NEWTON, subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that the City of Halifax, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of Ronald Wallace, its Mayor and Gladys Blennerhassett, its City Clerk, its duly authorized officers, in her presence.

Original Signed

A Barrister of the Supreme
Court of Nova Scotia

WAYNE AUSTEY

SCHEDULE "A"

All that certain lot, piece or parcel of land situate, lying and being in the City of Halifax, County of Halifax, Province of Nova Scotia and marked Lot G1 on "Plan Showing Lots A1 to G1 and A2 to G2 Pinecrest Realities Ltd." dated 25 Sept. 1973, revised to 26 June, 1974, and signed by R. J. Donovan, Nova Scotia Land Surveyor, said Lot G1 being more particularly described as follows:

Beginning at a point on the northeast sideline of Purcell's Cove Road at the most southerly corner of Lot F1;

Thence North twenty-five degrees fifteen minutes forty-four seconds East (N 25° 15' 44" E) along Lot F1 a distance of four hundred eighty-nine sixty-six hundredths (489.66) feet to Parcel X;

Thence South fifty-three degrees eighteen minutes eleven seconds East (S 53° 18' 11" E) along Parcel X a distance of sixty-four and twenty-four hundredths (64.24) feet;

Thence South forty-two degrees ten minutes eleven seconds East (S 42° 10' 11" E) along Parcel X a distance of eighty-one and four hundredths (81.04) feet;

Thence South twenty-seven degrees and one minute East (27° 01' E) along Parcel X sixty and ninety-three hundredths (60.93) feet to land of Morley G. Taylor;

Thence South twenty-two degrees thirty-six minutes forty-nine seconds West (S 22° 36' 49" W) along land of Morley G. Taylor a distance of two hundred forty-one twenty-two hundredths (241.22) feet;

Thence South twenty-five degrees twenty-one minutes forty-nine seconds West (S 25° 21' 49" W) along land of Morley G. Taylor a distance of one hundred ninety-five (195) feet to the Purcell's Cove Road;

Thence Northwestwardly following a curve to the left of Radius six hundred twenty-three and seven tenths (623.7) feet to a distance of seventy-five (75) feet to the point of beginning.

And Also All that certain lot, piece or parcel of land situate, lying and being in the City of Halifax, County of Halifax and Province of Nova Scotia, and marked Lot G2 on "Plan Showing Lots A1 to G1 and A2 to G2 Pinecrest Realities Ltd." dated 25 Sept. 1973, revised to 26 June, 1974, and signed by R. J. Donovan, Nova Scotia Land Surveyor, said Lot G2 being more particularly described as follows:

Beginning at a point on the high-water mark at the waters of the Northwest Arm at the northeast corner of Lot F2;

Thence Southeastwardly along said high-water mark a distance of two hundred thirty-four and sixty-eight hundredths (234.68) feet more or less, to land of Morley G. Taylor;

Thence South fifty-two degrees thirty-six minutes forty-nine seconds West (S 52° 36' 49" W) along land of Morley G. Taylor a distance of twenty and thirteen hundredths (20.13) feet to Parcel X;

Thence North twenty-seven degrees one minute West (N 27° 01' W) along Parcel X a distance of sixty and thirty-one hundredths (60.31) feet;

SCHEDULE "A" CONT'D

Thence North forty-two degrees ten minutes eleven seconds West (N 42° 10' 11" W) along Parcel X a distance of eighty-three and seventy-nine hundredths (83.79) feet;

Thence North fifty-three degrees eighteen minutes and eleven seconds West (N 53° 18' 11" W) along Parcel X a distance of sixty-seven and eighty-five hundredths (67.85) feet;

Thence North twenty-five degrees fifteen minutes forty-four seconds East (N 25° 15' 44" E) along Lot F2 a distance of twenty-five and thirty-one hundredths (25.31) feet to the point of beginning.

Together with all the right, title and interest which Pinecrest Realities Limited, the Grantor, has over a twelve foot wide right-of-way described as Lot G3 on the said plan, subject however to a conveyance by Pinecrest Realities Limited, as Grantor to the City of Halifax by deed dated the 30th day of April, 1974 and recorded in the Registry of Deeds at Halifax in Book 2792 at page 878.

And Also All that certain lot, piecer or parcel of land, situate, lying and being in the City of Halifax, County of Halifax, Province of Nova Scotia, and being the lot covered with water abutting Lot G2 as shown on "Plan Showing Lots A1 to G1 and A2 to G2 Pinecrest Realities Ltd." dated 25 Sept. 1973 and revised 26 June, 1974 and signed by R. J. Donovan, Nova Scotia Land Surveyor, said lot covered with water being more particularly described as follows:

Beginning at a point on the high-water mark of the waters of the Northwest Arm at the northeast corner of Lot F2;

Thence North twenty-five degrees fifteen minutes and forty-four seconds East (N 25° 15' 44" E) along the northward prolongation of the west boundary of Lot G2 a distance of three hundred (300) feet more or less;

Thence eastwardly and southeastwardly parallel to and distant three hundred (300) feet from said high-water mark of Lot G2 and unto the northeastward prolongation of the southeast boundary of Lot G2;

Thence South fifty-two degrees thirty-six minutes and forty-nine seconds West (S 52° 36' 49" W) along the northeastward prolongation of the southeast boundary of Lot G2 a distance of three hundred (300) feet, more or less, to said high-water mark;

Thence northwestwardly and westwardly following the various courses of the high-water mark of Lot G2 a distance of two hundred thirty-four and sixty-eight hundredths (234.68) feet, more or less, to the point of beginning.

OFFICE OF THE REGISTRAR
County of Halifax

I hereby certify that the within instrument
was recorded in the Registry of Deeds Office
at Halifax, in the County of Halifax, N.S.
at 9:41 o'clock A. M. on
the 7th day of December
A.D. 1982 in Book Number 3633
at Pages 273-277.

Original Signed

Registrar of Deeds for the County of Halifax

DESCRIPTION
CHECKED
tam

- Deputy

TO: His Worship the Mayor
and Members of Council

FROM: B. G. Smith, Acting City Manager

DATE: September 2, 1982

SUBJECT: Contract Development - Lots G-1 and G-2, Purcell's Cove Road.

APPLICATION

An application has been received for a contract development to permit the construction of a single family dwelling, a boathouse and a storage shed on unserviced Lots G-1 and G-2, Purcell's Cove Road. Lots G-1 and G-2 (approved August 14, 1975) are separated by a walkway which was deeded to the City as part of the open space dedication when the lots were approved in 1975 (see Sketches 1 and 2).

The lot presently contains two recently constructed storage sheds (joined together) which are protected by a 7 foot high wood fence with barbed wire. The sheds are wood construction, completely insulated, wired and finished inside. The applicant has stated that they will be heated and used for the storage of building materials for the boathouse and boating equipment (sails, etc.). The boathouse is proposed to be built in the same location as the sheds (see Sketch 3), following relocation of the sheds to an area near the dwelling site.

The applicant has revised the original application (for a dwelling and boathouse) to include the shed after construction of these sheds were nearly complete. As the shed and fence were constructed without building permits, the City is proceeding with prosecution under Ordinance 131, Section 1.4.

The property is located on the east side of Purcell's Cove Road, approximately 200 feet north of the Saraguay Club in an R-1 Zone and within the bounds of Schedule "D". The lot is not serviced with City sewer and water, therefore, cannot be built on as-of-right. However, as it is located within Schedule "D", Council has the authority, under Section 66 of the Zoning Bylaw, Mainland area, to permit any specific development requested, provided it is consistent with the Municipal Development Plan (MDP).

INFORMATION

At the time when Lot G-1 was approved, developments on approved lots were controlled through Regional Development Permits. The City was advised in 1975 that a Regional Development Permit would be issued for this site and that the site would be suitable for the installation of a private on-site sewer disposal system.

The lot has 75 feet of frontage on Purcell's Cove Road, 235 feet on the Northwest Arm, is approximately 500 feet deep and contains 60,300 sq.ft. The owner has already constructed the storage sheds and fence. The boathouse (2 storey) and the dwelling will be constructed in the future. The sheds will have no washroom facilities but the boathouse will, if approved by the Department of Health. Depending on the location of the septic tank and disposal field, an easement over the walkway may have to be granted by the City.

In an effort to expedite matters, staff prepared this report without knowledge of whether or not the proposed dwelling will meet the requirements of the Zoning Bylaw, if the lot will accommodate on-site services (recommended for approval in 1975 by the Department of Public Health), or if approval has been granted by the Department of Transportation and the National Harbours Board. The attached draft agreement stipulates that building and development permits will not be issued until the above items are dealt with to staff's satisfaction.

The Department of the Environment has no objections to the proposal. Although the lot is within the alignment of the proposed Arm bridge, the Province of Nova Scotia does not oppose the development, as the status of the bridge remains uncertain.

Lot G-1 is one of 7 lots A-1 to G-1, with frontage on the Purcell's Cove Road, which were formerly the Lynch Estate. Five (5) of these lots presently contain dwellings. Of these, only one (1) required Council's approval via a contract development (Case No. 3705 - approved by Council on May 17, 1979), as it was applied for after the adoption of the MDP.

COMMENTS

The proposal conforms with the MDP Residential Environments designation and the R-1 Zoning with respect to land use. It is understood that the boathouse will not be used as a dwelling or sleeping quarters and the draft contract reflects that.

With respect to services, staff is of the opinion that, in this situation, where the lot was approved prior to adoption of the MDP and present Zoning Bylaw, no new lots are being created, and where the owner will have to receive approval from the Department of Health and Environment before a building permit can be issued, approval of the proposal is warranted.

RECOMMENDATION

Therefore, it is recommended that the contract development application under Section 66 of the Zoning Bylaw, Mainland area, to permit the construction of a single family dwelling, a boathouse and a storage shed on Lots G-1 and G-2, Purcell's Cove Road, respectively, be approved by Council.

Should Council wish to entertain this request, a Public Hearing is mandatory prior to approval under Section 66 of the Zoning Bylaw, Mainland area. Attached Sketch 4 indicates a suggested area of notification for Council's consideration. Also attached for Council's information is a ~~draft~~ agreement.

Original Signed

GEF/jep
Attachs.

Prepared by:
G. Fleming, Sr. Planning Tech.

Approved by:
R.B. Grant, Director *RG*
Development Department

B. G. Smith,
Acting City Manager

Mr. B. Mizerit
1569 Dresden Row
Third Floor
B3H 2K4

THIS AGREEMENT made this day of
19

BETWEEN:

DR. GENE JENSEN
County of Halifax, Province of N.S.
(hereinafter called the "Developer")

OF THE ONE PART

- and -

CITY OF HALIFAX, a body corporate,
(hereinafter called the "City")

OF THE OTHER PART

WHEREAS the Developer wishes to obtain permission to construct a single family dwelling and boathouse in the City, pursuant to Section 66 of the Mainland part of the Zoning Bylaw;

AND WHEREAS a condition of the granting of approval of Council is that the developer enter an agreement with the City;

AND WHEREAS the Council of the City, at its meeting on the day of , 198 , approved the said contract development to permit construction of a single family dwelling and boathouse, subject to the registered owner of the lands described herein entering into this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the City of the contract development requested by the developer, the developer agrees as follows:

1. The developer is the registered owner of the lands known as Lots G-1 and G-2, Purcell's Cove Road, in the City of Halifax, described in Schedule "A" hereto (hereinafter called the "lands").

2. The developer shall construct on the lands a building, which, in the opinion of the Development Office, is substantially in conformance with Plans No. P200/ , filed in the City of Halifax Development Department as Case No. 4170, and shall not develop or use the lands for any other purpose than a single family dwelling, a boathouse and accessory uses.

3. The boathouse and storage shed shall not be used as a dwelling.

4. The on-site services shall be designed and constructed in accordance with the requirements of the Nova Scotia Department of Health.

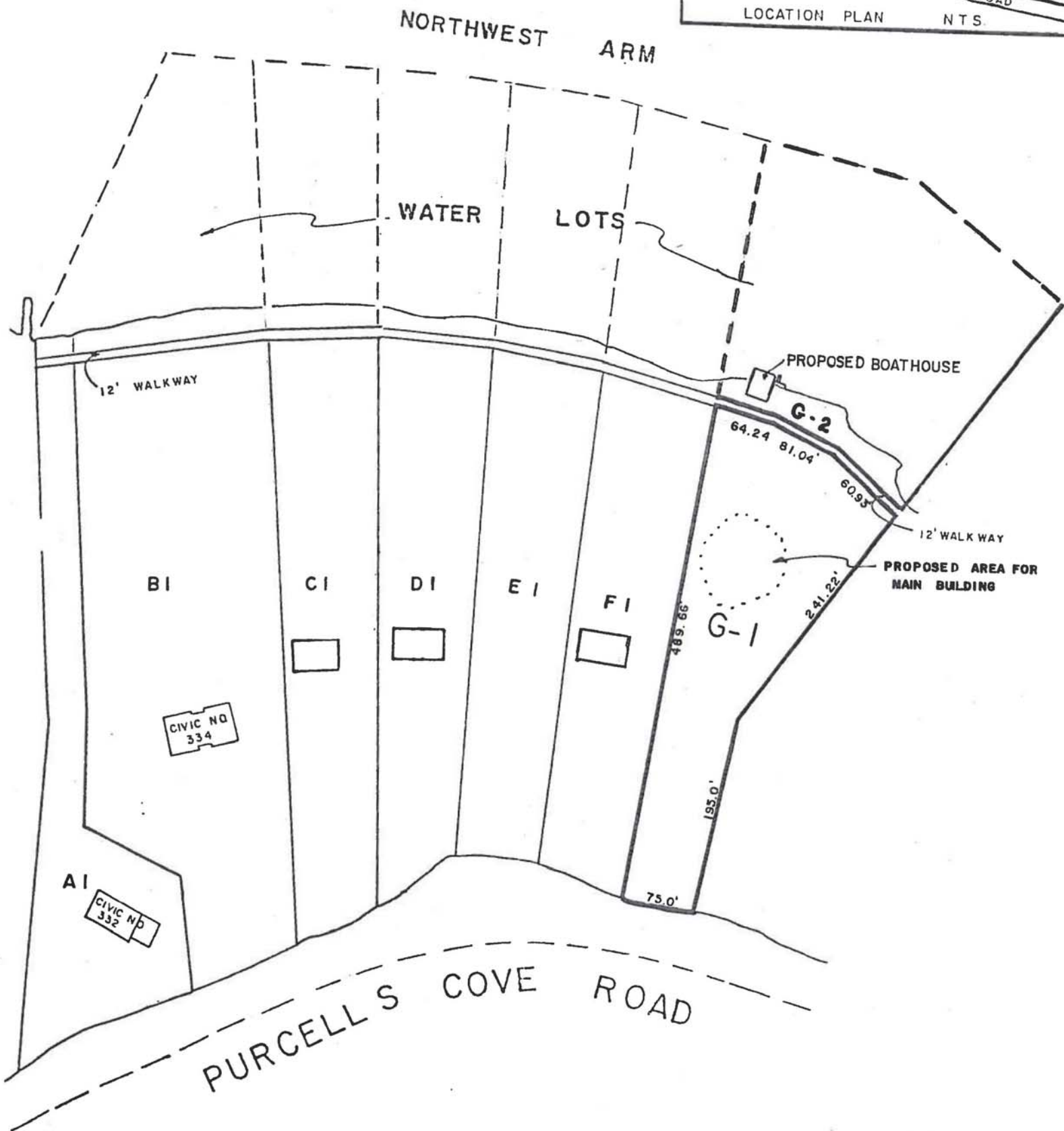
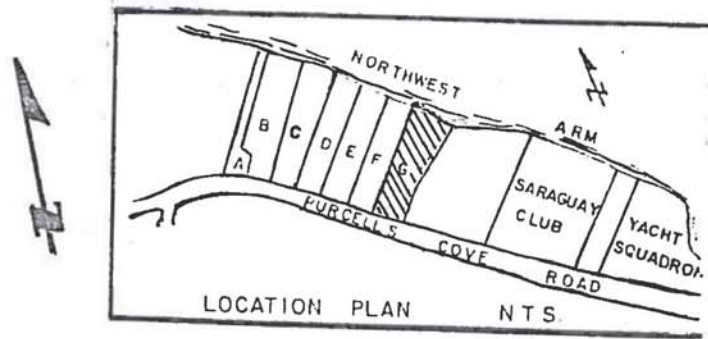
5. No building or development permits for any structure in the water lot shall be issued until approval is granted by the Federal Department of Transport.

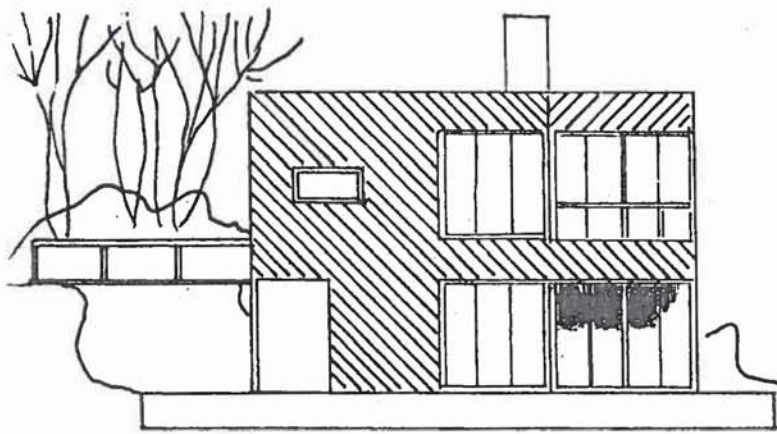
7. Notwithstanding any other provision of this agreement, the Developer shall not undertake or carry out any development on the lands which does not comply with all City of Halifax laws, including, without restricting, the generality of the foregoing, the Building Code Ordinance and the Fire Prevention Ordinance, and no permits shall be issued for any such development.

This agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

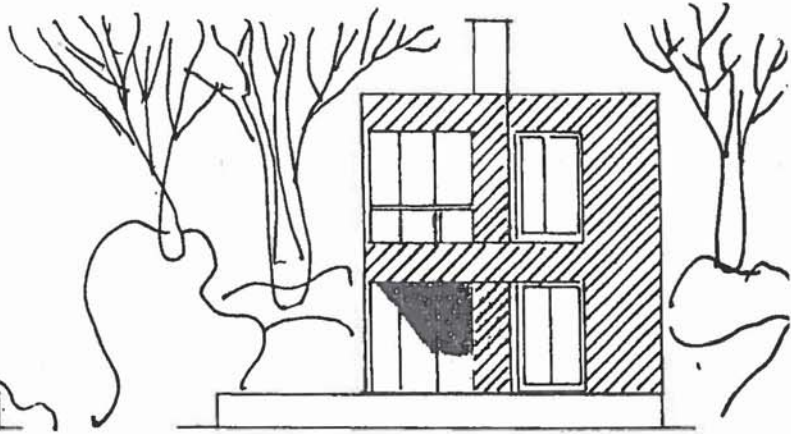
SIGNED, SEALED AND DELIVERED)
in the presence of)

Dr. Gene Jensen

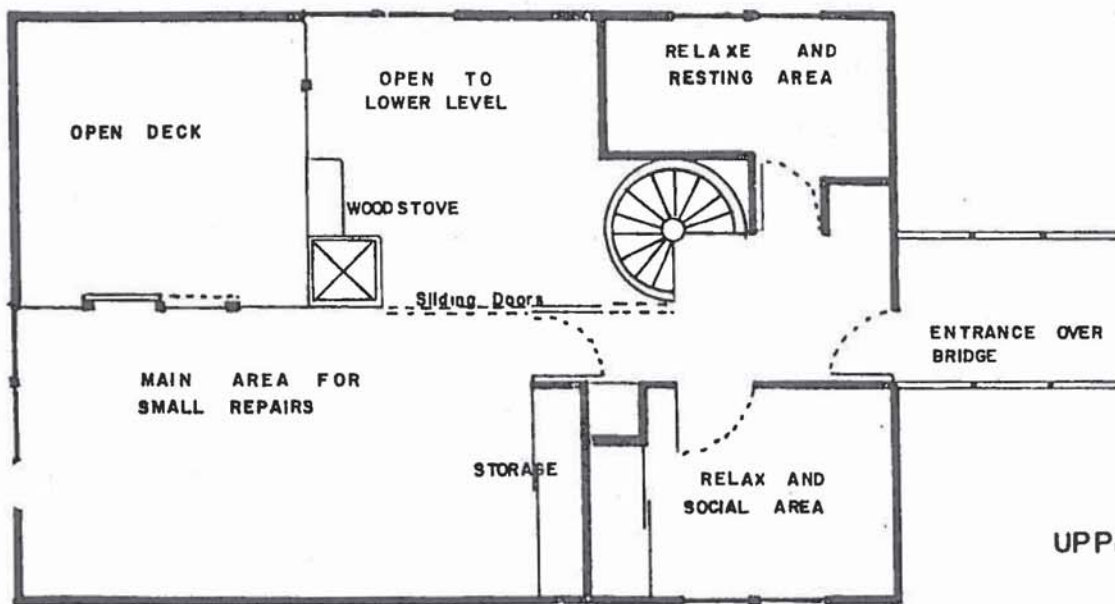




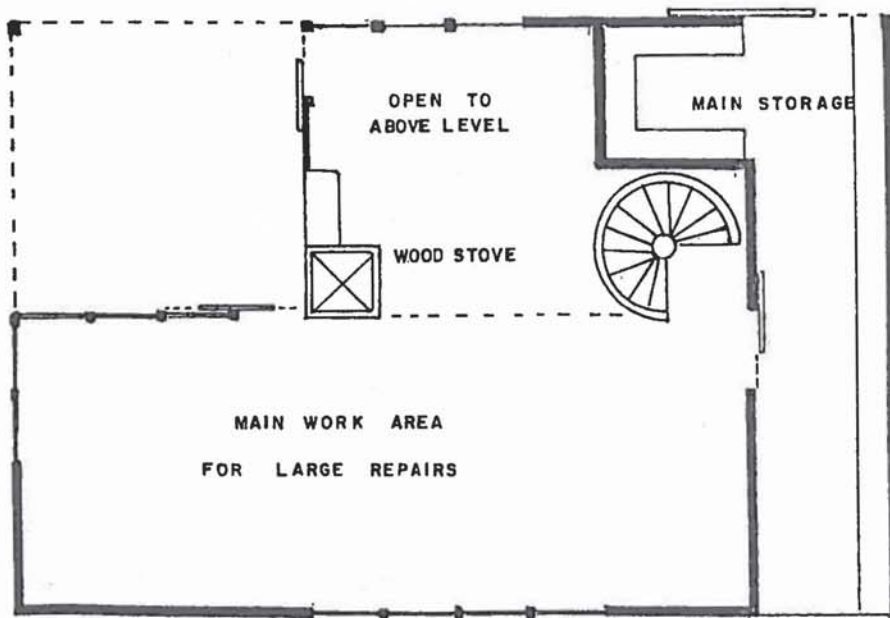
SOUTH ELEVATION



EAST ELEVATION

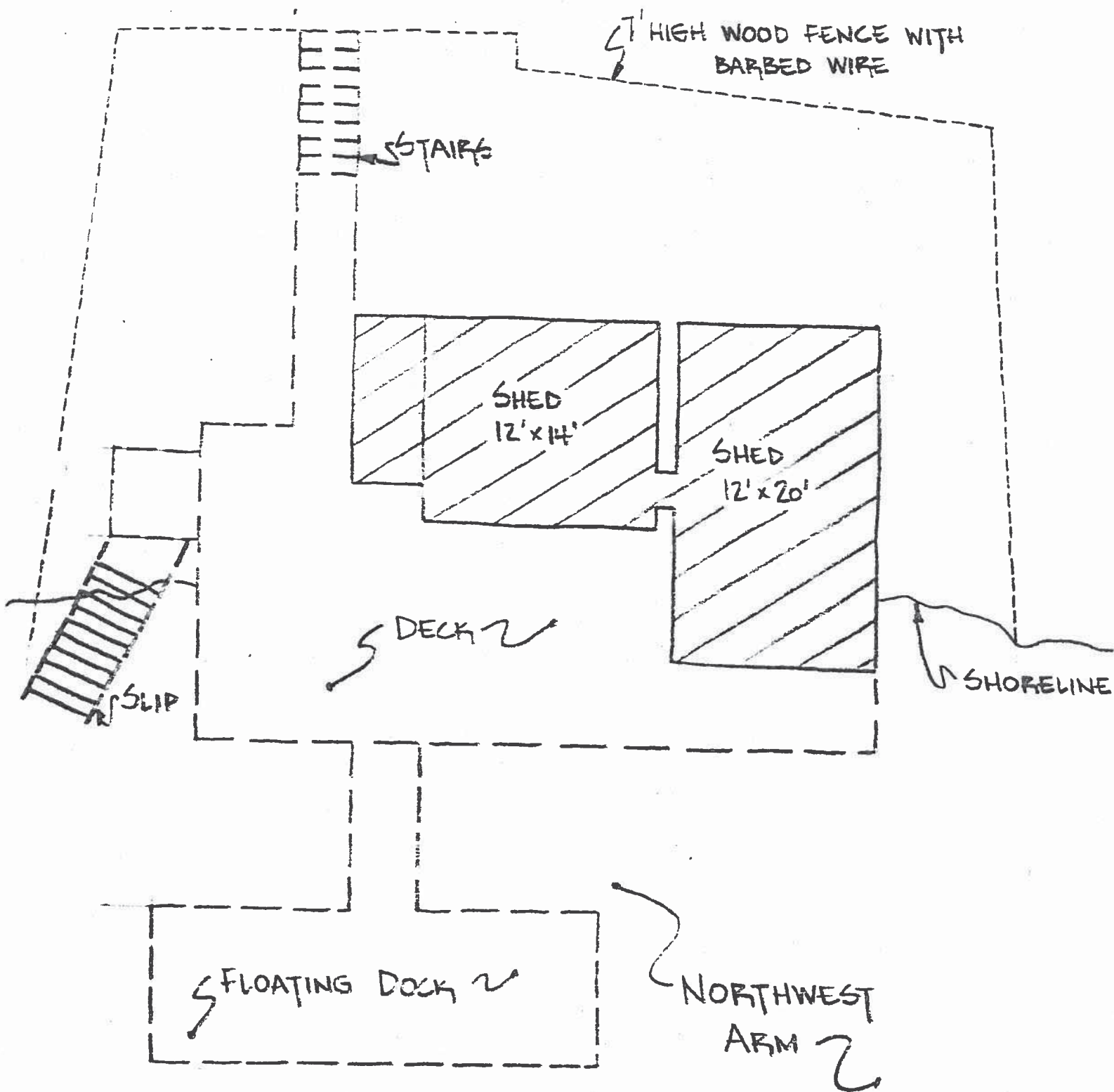


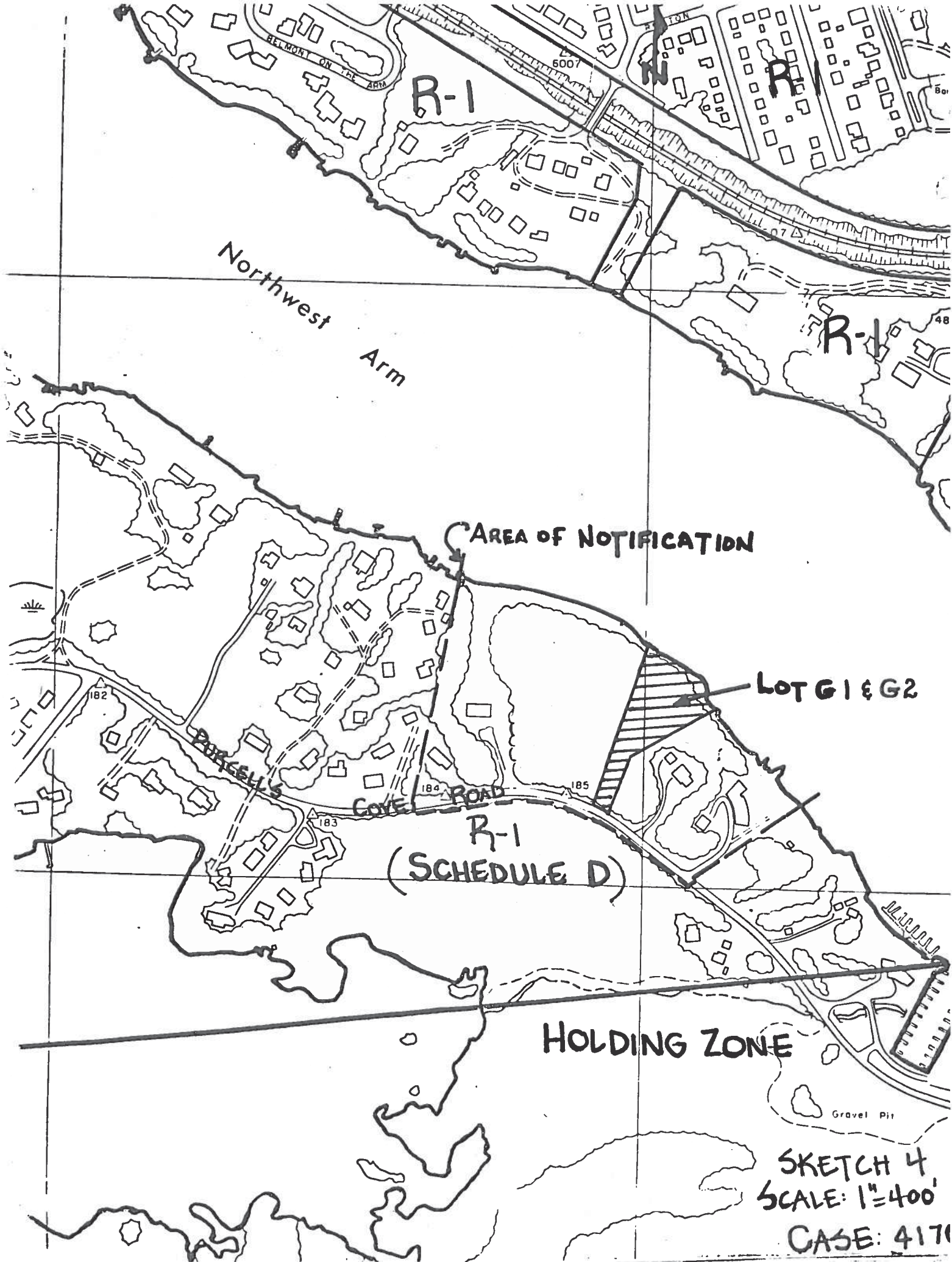
UPPER LEVEL



GROUND LEVEL

SKETCH NO. 2
CASE NO. 4170





SKETCH 4
SCALE: 1"=400'
CASE: 4170

Attachment C
Relevant Excerpts from the Halifax Mainland Land Use By-law

H ZONE

HOLDING ZONE

- 61(1) The following uses shall be permitted in any H Zone:
- (a) a detached one-family dwelling, provided that on-site sewage disposal and water services are provided on the lot on which the dwelling is proposed to be located;
 - (b) a public park or playground;
 - (c) a public recreational centre, provided that sewer and water service connections for the centre are made to the existing city services;
 - (d) the office of a professional person located in the dwelling house used by such professional person as his private residence;
 - (e) any use, other than a privy, accessory to any of the uses in (a), (b), (c) and (d).
- 61(2) No person shall in any H Zone carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsection (1).
- 61(3) No person shall in any H Zone use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1).

REQUIREMENTS FOR SFD IN HOLDING ZONE

- 61(4) Buildings erected, altered or used as single family residences in a Holding Zone shall comply with the "Single Family Dwelling Zone" requirements as contained in Section 21(a) and (c) through (h) inclusive of this by-law.

WA (WATER ACCESS) ZONE (RC-Jan 11/11;E-Mar 12/11)

- 62EE (1) The following uses shall be permitted in any WA Zone:
- (a) wharves and docks;
 - (b) municipal, provincial and national historic sites and monuments;
 - (c) passive recreation uses; and,
 - (d) public works and utilities.

- 62EE (2) No person shall in any WA Zone carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsections (1), (5) or (6).**
- 62EE (3) No person shall in any WA Zone use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsections (1), (5) or (6).**
- 62EE (4) No person shall in any WA Zone construct or erect a building, with the exception of public works, public utilities, a multi-use trail system and associated facilities and ferry terminal facilities, on a wharf, on pillars, on piles, or on any other type of structural support located on or over a water lot.**

NORTHWEST ARM

- 62EE (5) Ferry Terminal Facilities shall be permitted within the Northwest Arm Water Access Zone.**

WESTERN SHORE OF THE BEDFORD BASIN

- 62EE (6) A multi-use trail system and associated parking facilities shall be permitted within the Western Shore of the Bedford Basin Water Access Zone.**