




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

Item No. 14.1
Halifax Regional Council
February 3, 2015

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: January 30, 2015

SUBJECT: **Case 19148: Bonus Zoning Agreement - Mixed-Use Development at 1583 Hollis Street, Halifax**

ORIGIN

- April 10th, 2014 Design Review Committee approval of the qualitative elements of the substantive site plan application for the mixed-use development at the corner of Hollis Street and Sackville Street, Halifax (Southwest Properties); and
- Construction Permit application No. 139677.

LEGISLATIVE AUTHORITY

- *HRM Charter:*
 - 245A (1) Where a municipal planning strategy so provides, a land-use by-law may provide for incentive or bonus zoning agreements respecting the HRM by Design Downtown Plan Area;
 - 245B (1) The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement; and
 - 245C (1) An incentive agreement or bonus zoning agreement is in effect until discharged by the Council.
- Downtown Halifax Land Use By-law (Attachment B)

RECOMMENDATION

It is recommended that Halifax Regional Council adopt, by resolution, the bonus zoning agreement as provided in "Attachment A" of this report for the mixed-used development at 1583 Hollis Street in Halifax and authorize the Mayor and Clerk to enter into and execute an agreement with the property owner regarding exemplary sustainable building practises as a LEED Gold Project.

BACKGROUND

The subject property is the site of a proposed 21-storey mixed residential and commercial development by Southwest Properties Limited at 1583 Hollis Street, Halifax. The development was approved through the site plan approval process on April 10, 2014. The buildings that formerly occupied the site have been demolished and extensive excavation work is in progress.

The following highlights the major elements of the approved development for the property:

- Approximately 15,400 square feet of commercial floor space at street level with pedestrian access points along each street and separate residential lobby area;
- Approximately 281 residential units on 20 storeys above the ground floor;
- The building has a total height of 72.5 metres, measured from the average grade to the top of the penthouse. A variance was approved at the Design and Review Committee to exceed the maximum post-bonus height of 66 metres which allows HRM to consider the proposal roof;
- Four underground parking levels containing approximately 253 vehicle parking spaces and 145 bicycle spaces;
- Residential driveway access to underground parking will be off Sackville Street; and
- Landscaped areas, including through-block walkways between the three streets, upper level roof terrace, residential terraces and balconies and rooftop low-maintenance landscaping.

Proposed Public Benefit

Within the Downtown Halifax Plan Area, 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 subsection 12(7) of the LUB (Attachment B).

The LUB establishes the value of a public benefit based on the equivalent of \$4.00 for every 0.1 metre of gross floor area created by extending above the pre-bonus height. This figure is adjusted annually in accordance with the Statistics Canada and the Province of Nova Scotia Consumer Price Index, on the anniversary of the adoption of the By-law.

Of the eligible public benefit categories contained within the LUB, the developer proposed that the public benefit contribution be in the form exemplary sustainable building practices.

Role of Design Review Committee, Development Officer & Council

Under clause 4(13)(c) of the LUB, the Design Review Committee (DRC) is responsible to provide the Development Officer with advice on matters pertaining to bonus zoning in relation to substantive site plan approvals. The DRC’s advice is provided in the form of a recommendation on the public benefit category for the development at the time the Committee makes its decision on the application.

The Development Officer is responsible for determining if a proposal meets the land use and built form requirements of the LUB. Subsection 12(9) of the LUB requires that prior to the issuance of a development permit requiring a public benefit; the developer must enter into an agreement with the Municipality to specify the terms and conditions by which the public benefit is to be provided.

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 Downtown Halifax LUB requires projects that exceed the maximum pre-bonus height limitations provide a public benefit as part of the project. In this case, the developer proposes that the public benefit contribution be in the form of publicly accessible amenity and open space or exemplary sustainable building practices. Either contribution alone can satisfy the public benefit requirement of the LUB. The DRC's recommendation to the Development Officer provided their acceptance of both options as the public benefit for the project. Specifically, their motion in this regard is as follows:

"MOVED by Ms. Black, seconded by Mr. Fowler that the Design Review Committee Recommends that the Development Officer accept, as the post-bonus height public benefit for the development: a) the provision of publically accessible amenity or open space in the form of through-block walkways between Hollis, Sackville and Lower Water Streets and the granting of an easement/ right-of-way to HRM; and, b) exemplary sustainable building practices through pursuit of a LEED Gold level. MOTION PUT AND PASSED".

Value of the Public Benefit

The proposed post-bonus height public benefit for this project was initially the provision of mid-block pedestrian walkways between Hollis, Sackville, and Lower Water Streets as publically accessible amenity or open space. However, due to real property transaction details there have been delays in bringing forward the agreement and the easement necessary to establish the publically accessible walkway. Due to time constraints, the developer would like to move forward with the project with a public benefit of exemplary sustainable building practises through pursuit of a LEED Gold level. The agreement will contain the specifics of the public benefit including cost estimates and expenditures in order to achieve LEED Gold Certification

The maximum pre-bonus height for this property is 51 metres and the maximum post-bonus height is 66 metres. The gross floor area to be gained is approximately 4,468 square metres. Therefore, the required cost of the public benefit is \$196,592.00 based on the LUB requirement of \$4.40¹ per 0.1 square metre of gross floor area.

The proposal from the developer to provide \$225,000 in value relative to exemplary sustainable building practices exceeds the LUB's minimum public benefit requirement. Therefore, staff recommends that Regional Council adopt, by resolution, the bonus zoning agreement as provided in Attachment "A" of this report for the mixed-use development located at 1583 Hollis Street 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.

¹ Amount adjusted in 2014 as per the Statistics Canada, Province of Nova Scotia Consumer Price Index

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.

ALTERNATIVE

1. Regional Council may choose to enter into a Public Benefit Agreement for publicly accessible amenity and open space as the public benefit. This would delay construction of the project, as scheduled, necessitate the preparation of a new Agreement and require further submissions by the developer.
2. Regional Council may choose not to approve the public benefit as exemplary sustainable building practices through pursuit of a LEED Gold level. This would delay construction of the project as scheduled, necessitate further submissions by the developer, and may require advisement by the Design Review Committee, as well as a supplementary report from staff.

ATTACHMENTS

Attachment A	Bonus Zoning Agreement
Attachment B	Section 12 (7) of the LUB – Public Benefit Categories

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Sean Audas, Development Officer, 902.490.4402

Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 902.490.4800

Report Approved by: _____
John, Traves, Q.C., Director, Legal, Insurance & Risk Management Services, 490-4219

Report Approved by: _____
Bob Bjerke, Chief Planner & Director, Planning and Development, 902.490.1627

Attachment A – Bonus Zoning Agreement

THIS AGREEMENT made this ____ day of _____, A.D., 2015.

BETWEEN:

_____, 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 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 on April 10th, 2014 the Design Review Committee approved the Development and recommended to the Development Officer of the Municipality the acceptance of the provisions of publicly accessible amenity or open space or the provision of exemplary sustainable building practises through LEED Gold Certification as the Public Benefit for the Development;

AND WHEREAS by approving this Agreement, the Council of the Municipality has accepted exemplary sustainable building practises through pursuit of a LEED Gold level- 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) “Development” means a twenty one (21) storey mixed use residential building on the Property;
- (c) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (d) “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;
- (e) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;
- (f) “Municipality” means the Halifax Regional Municipality;
- (g) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being 1583 Hollis Street, Halifax, Nova Scotia, known as P.I.D. # 00003673 the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality as Document Number 89061106 and is more particularly set out in Schedule “A” attached hereto; and
- (h) “Public Benefit” means:
 - (i) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
 - (ii) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that the Developer will provide the provision of exemplary sustainable building practises through LEED Gold Certification consisting of LEED Consulting and Certification, Energy Modeling and Enhanced Envelope, LEED Commissioning and Verification and LEED Construction Management and Documentation as 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 “B” 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. Prior to the issuance of the Occupancy Permit, the Developer agrees to provide a report to a Development Officer of the Municipality confirming that the Public Benefit has been completed.

Construction of Public Benefit

6. The Developer agrees:
- (a) to install, construct and maintain the Public Benefit:
 - (i) at its own cost;
 - (ii) in a good and workmanlike manner;
 - (iii) in accordance with all the Drawings;
 - (iv) as sustainable building practises; and
 - (v) in compliance with all Applicable Laws; and
 - (b) to complete construction of the Public Benefit which 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 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" - Legal Description of the Property

Schedule "B" - Cost Estimates

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 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; and

(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

DEVELOPER

the presence of

Per: : _____

Name:

Office held:

Witness

Per: _____

Name:

Office held:

SEALED, DELIVERED AND

**HALIFAX REGIONAL
MUNICIPALITY**

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

Witness

Per: _____

Mayor

Witness

Per: _____

Clerk

PARCEL DESCRIPTION REPORT

2015-01-29 09:09:40

PID: 3673
CURRENT STATUS: ACTIVE
EFFECTIVE DATE/TIME: 2014-02-07 13:11:10

Registration County: HALIFAX COUNTY
Street/Place Name: HOLLIS STREET /HALIFAX
Title of Plan: PLAN OF SURVEY OF LOT HS-5 S/D AND CONSOLIDATION OF LOTS A-1, A-2, A-3, A-4 & BLOCK C-5 LANDS CONVEYED TO SUMMER WIND PARTNERS II LIMITED 3127091 NOVA SCOTIA LIMITED & HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA
Designation of Parcel on Plan: LOT HS-5
Registration Number of Plan: 104574836
Registration Date of Plan: 2014-02-06 11:17:38

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

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act
Registration District: HALIFAX COUNTY
Registration Year: 2014
Plan or Document Number: 104574836

External Comments:

Description Change Details:**Reason:****Author of New or****Changed Description:****Name:****Registered Instruments:****Comments:**



Southwest Properties Limited

1583 Hollis Street — Site Plan Application — Proposed Public Benefit Contribution

Attention: Sean Audus

Date: January 27, 2015

Re: Proposed Public Benefit Contribution

We are proposing to construct the 1583 Hollis Street project to the post-bonus height of 66 metres. This represents an additional gross square footage of 4468m² when compared to the pre-bonus height of 51 metres (4 additional floors 4 @ 1117m²=4468m²).

The LUB references a required public benefit of \$4.376 for each .1 square metre of gross floor area, which in this instance would equate to \$195,520.

For your reference, the consulting and certification costs for the development of the project pertaining LEED certification, measurement and verification will exceed this amount before consideration of any capital investments required to achieve the LEED Gold Certification.

A partial list of these expenditures are as follows:

LEED Consulting and Certification	\$ 44,000
Energy Modeling and Enhanced Envelope	\$ 75,000
LEED Commissioning and Verification	\$ 31,000
LEED Construction Management and Documentation	<u>\$ 75,000</u>
Total	\$ 225,000

We are proposing that this benefit will be provided in consideration for exemplary sustainable building practices, as the project will be designed and constructed as a

LEED Gold Project. In fact, when completed, it will be only the second - the first being Southwest's Grainery Project- and the largest LEED Gold Certified multi-residential building in the region.

Regards,



Eric Burchill
Vice President — Planning & Development
Southwest Properties Limited

Attachment B

Section 12(7) of the LUB - Public Benefit Categories

(7) Subject to meeting all applicable requirements of this By-law, development pursuant to subsection (1) shall be permitted where the developer provides one or a combination of the following public benefits:

- (a) where the development includes a registered heritage property which is to be maintained, the reservation or enhancement of the heritage resource;
- (b) the provision of publicly accessible amenity or open space, where a deficiency in such spaces exists;
- (c) the provision of residential units at a subsidized cost to contribute to housing affordability in the Downtown Halifax Secondary Municipal Planning Strategy plan area;
- (d) the provision of 3 and 4 bedroom units with direct access to outdoor amenity space;
- (e) the provision of rental commercial space made available at a subsidized cost for arts or cultural uses;
- (f) the provision of public art;
- (g) the provision of public parking facilities, where a deficiency in such facilities exists;
- (h) investment in public transit or active transportation infrastructure;
- (i) the provision of exemplary sustainable building practices.**
- (j) the undergrounding of overhead electrical and communication distribution systems.

(RC-Dec 13/11;E-Mar 10/12)