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HALIFAX
REGIONAL MUNICIPALITY
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Halifax Regional Council
December 2, 2003

To: Mayor Kelly and Members of Regional Council

Submitted by:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Officer

Date: November 26, 2003

Subject: Case 00614: Halifax MPS and LUB Amendment - 5620 South Street.

ORIGIN:

Request by Steve Tsimiklis to amend the Municipal Planning Strategy and Land Use By-law for Halifax to enable a development agreement at 5620 South Street.

RECOMMENDATION:

It is recommended that Halifax Regional Council:

1. instruct staff to initiate a process to consider amending the Halifax Municipal Planning Strategy and Land Use Bylaw to enable a development agreement to permit an apartment building at 5620 South Street; and
2. that public participation be undertaken in accordance with the Public Participation Resolution adopted by Regional Council on February 25, 1997.

BACKGROUND:

Zoning

The property at 5620 South Street is zoned R-3 (Multiple Dwelling Zone) and R-3V (Multiple Dwelling Zone within a view plane) (see Maps 1 and 2). The R-3 portion of the property is subject to a 100-foot height precinct, while the R-3V portion is subject to a 190-foot height precinct. The property is located in an area where the permitted density is 250 persons per acre, giving this site an "as of right" possibility of 211 persons (i.e., habitable rooms¹). The site is currently vacant, being previously occupied by a service station.

History

The following is a chronology of events relating to the property under current application.

- April 26, 2000 Development Permit issued for 85 unit apartment building (11 floors).
- September 7, 2000 Development Permit issued for 133 unit apartment building (11 floors).
- January 3, 2001 Development Permit issued for 152 unit apartment building (11 floors).
- March 9, 2001 Development Permit issued for 186 unit apartment building (11 floors).
- July 16, 2001 Peninsula Community Council approved an increase in height precinct from 100' to 190' in order to permit a 19 storey +/- building.
- February 25, 2002 Utility and Review Board overturns Council's decision.
- May 13, 2002 Variance granted to allow 211 unit apartment building.
- August 9, 2002 Development Permit issued for 211 unit apartment building subject to lot consolidation (11/12 floors).
- February 26, 2003 Nova Scotia Court of Appeal reinstates Council's decision.

Proposal

The owner initially proposed to construct a 200-unit apartment building comprising two towers of 9 and 13 storeys (400 habitable rooms) at 5620 South Street which does not comply with the provisions of the R-3 zone. In order to do so, he requested that the Halifax Municipal Planning Strategy and peninsula land use by-law be amended to enable consideration of a development agreement for this site. Because of the severe degree to which this proposal did not meet the R-3 regulations, staff was not prepared to recommend initiation of an amendment to the Municipal Planning Strategy for this site.

However, because of the public's concern over the possibility of a 190 foot high building and the proponent's willingness to negotiate something lower, staff met with the proponent on November 25, 2003. As a result, it was agreed that, provided the 200-unit apartment building was not part of the request, an amendment to the Municipal Planning Strategy could be initiated for 5620 South Street to enable a development agreement for an apartment building on this site which:

- is acceptable in scale (height, bulk, site coverage)
- is acceptable in appearance (building materials, landscaping)

¹ **"Habitable Room"** means any room in a dwelling house, multiple dwelling, or dwelling unit, with the exception of bathrooms, storage spaces with no windows, or kitchens with a floor area of less than one hundred square feet. Combined or undivided living spaces with floor areas greater than four hundred square feet shall be deemed to be two habitable rooms.

- provides an appropriate unit mix
- provides security to ensure that concerns with respect to neighbourhood disturbance, should they arise, can be addressed.

DISCUSSION:

The policies of the Municipal Planning Strategy are adopted only after consultation with the community to which they apply and reflect the views of the majority of the community at the time of adoption. Requests to change the Municipal Planning Strategy by individuals are generally not supported by staff unless it can be shown that circumstances have changed since adoption which make the current designation or policy no longer appropriate. Site specific amendments to the MPS are not routine applications as is the case with rezoning and development agreement applications. The Municipal Government Act contemplates applications for rezoning and development agreements and sets out a procedure for a municipality to follow including an appeal period. While there is an ability for Council to amend its MPS, it is under no obligation to do so and there is no appeal on its decision to amend or not amend.

The property at 5620 South Street has the as of right potential for a 190 foot high apartment building containing a total of 211 habitable rooms. The public has indicated that this height is not acceptable and the owner of 5620 South Street has expressed a willingness to build a lower building provided that the project is still viable. He has indicated that concessions to the R-3 requirements (more density, less open space, non compliance with angle controls, etc.) will be required to achieve this. Staff is prepared to consider *some* concessions in order to allow a building which is acceptable to the community and supports the concept that the owner should not be disadvantaged by changes to his proposal required to gain community acceptance. Whether the resulting building will be acceptable to the owner will be determined through this process.

As there is community support for a change to the Municipal Planning Strategy, such support may be considered a change in circumstance on which consideration of an amendment to the Municipal Planning Strategy can be based.

BUDGET IMPLICATIONS:

None

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN:

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating Reserves, as well as any relevant legislation.

ALTERNATIVES:

1. Staff be instructed to initiate a process to consider amending the Halifax Municipal Planning Strategy and Land Use Bylaw to enable a development agreement at 5620 South Street. This is the recommended alternative.

2. Refuse the requested amendment. A request to amend its Municipal Planning Strategy is completely at the discretion of Council. A decision not to amend the MPS cannot be appealed.
3. Instruct staff to initiate a process to amend the Halifax Municipal Planning Strategy and Land Use By-law to enable consideration of a 200-unit apartment building at 5620 South Street by development agreement and that public participation be undertaken in accordance with the Public Participation Resolution adopted by Regional Council on February 25, 1997. This alternative is not recommended as staff feels that there is no merit in proceeding with amendments to the Halifax Municipal Planning Strategy which would achieve this. A decision not to amend the MPS cannot be appealed.
4. Instruct staff to review the open space, angle control and density requirements of the land use by-law, and consider such alternative control mechanisms as lot coverage, ratio of floor area to site area, and setback requirements for siting of apartment buildings, provided that the intents of the Municipal Planning Strategy will be furthered. This is not recommended as there is no evidence that the current requirements are no longer appropriate.

ATTACHMENTS:

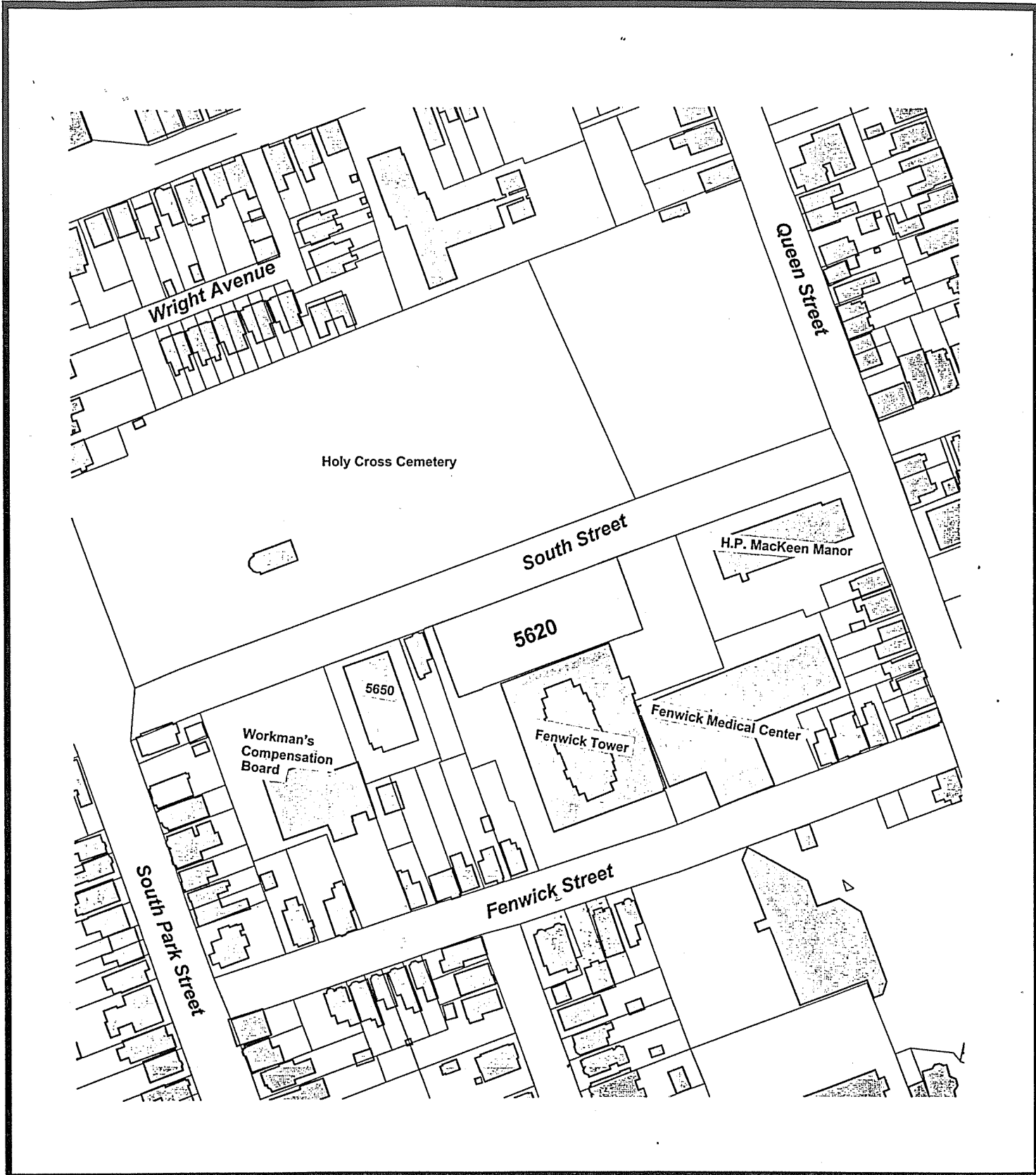
Map 1 Area Plan

Map 2 5620 South Street

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Approved by: 
Paul Dunphy, Director, Planning & Development Services

Report Prepared by: Gary Porter, Planner II, 490-4403

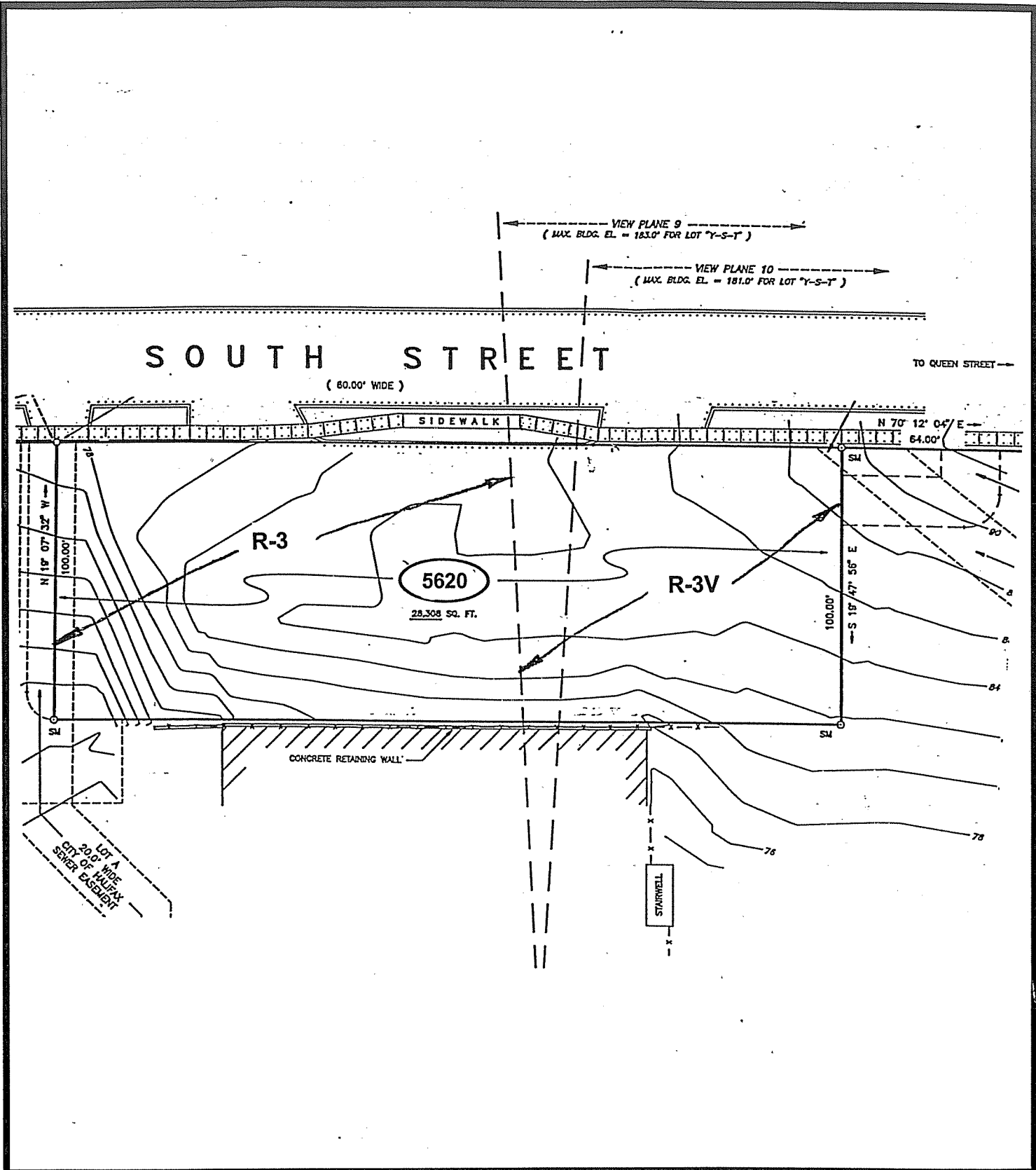


Map 1
Area Plan



Planning and Development Services

Case 00614



Map 2
5620 South Street

HALIFAX
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