

HALIFAX

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

Item No. 14.1.13
Halifax Regional Council
August 15, 2017

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by



SUBMITTED BY: Brad Anguish, A/Chief Administrative Officer

DATE: August 2, 2017

SUBJECT: **Case 21145: Incentive or Bonus Zoning Agreement – Mixed-Use Development at 1363 Hollis Street, Halifax (Bishop) – PID #00003897**

ORIGIN

- June 29, 2017 Design Review Committee approval of the qualitative elements of the substantive site plan approval application for the mixed use development at 1363 Hollis Street, Halifax
- Construction Permit Application No. 161197.

LEGISLATIVE AUTHORITY

Original Signed

- *Halifax Regional Municipality Charter.*
 - Section 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;
 - Section 245B(1): The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement; and
 - Section 245C(1): An incentive or bonus zoning agreement is in effect until discharged by the Council.
- Section 12, Downtown Halifax Land Use By-law (LUB) (Attachment A)

RECOMMENDATION

It is recommended that Halifax Regional Council adopt, and authorize the Mayor and Clerk to enter into and execute, the Incentive or Bonus Zoning Agreement as provided in "Attachment B" of this report for the mixed-used development at 1363 Hollis Street, Halifax.

BACKGROUND

The developer, Dixel Developments, on behalf of the property owner, Ollive Properties Ltd., proposes to develop an 8-storey mixed-use building (43 residential units with commercial) located on the southeast corner of Hollis Street and Bishop Street. The proposed 8-storey mixed-use building will include the following:

- Two partially underground levels containing 12 parking spaces, four residential units with direct access to Bishop Street, a bike room, building storage rooms, and mechanical space;
- Shared underground parking access with the neighbouring property to the south, the Waterford;
- Level 1 (ground floor) contains a private landscaped courtyard, fitness and amenity rooms, and commercial space fronting on Hollis Street (95 square metres);
- A total of 38 residential units on levels 1 to 7, and a single penthouse unit within levels 8 and 9;
- Landscaped open space is located on levels 1, 2, and 8 in the form of common landscaped terraces; and
- Prominent exterior building materials include transparent and lightly coloured glass, sandstone or manufactured stone cladding, and small portions of granite cladding at street level. Charcoal metal shroud is also used to accentuate openings.

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 *Halifax Regional Municipality Charter* as “bonus zoning.” A list of eligible public benefits is found in subsection 12(7) of the LUB (Attachment A).

The site is under two height precincts, a 22 metre pre-bonus precinct and 26 metre pre-bonus precinct. Only the 26 metre pre-bonus precinct allows for the post-bonus height of 34 metres. The proposed project exceeds the pre-bonus height of 26 metres for a portion of the building which is within the post-bonus height of 34 metres; therefore, a public benefit contribution is required. The proposed public benefit includes the provision of publicly accessible amenity space, and the provision of public art.

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 substantive site plan 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 *Halifax Regional Municipality Charter* requires Council approval of the adoption of an incentive or bonus zoning (public benefit) agreement. This report seeks to obtain Council’s approval of the agreement.

DISCUSSION

The LUB requires projects that exceed the maximum pre-bonus height limitations provide a public benefit as part of the project. The developer proposes that the public benefit contribution be in multiple forms in the categories of publicly accessible amenity space, and public art. The DRC recommended that the Development Officer accept the public benefit as proposed and specifically, their motion in this regard is as follows:

*“MOVED BY Matt Neville, seconded by Malcolm Pinto, that the Design Review Committee:
4. Recommend that the Development Officer accept public art and publicly accessible amenity space
as the post-bonus height public benefit for the development. MOTION PUT AND PASSED”*

Public Benefit Details

The LUB lists the required public benefit categories, and establishes a public benefit value that is the equivalent of \$4.54 for every 0.1 square metres of gross floor area created by extending above the pre-bonus height. The maximum pre-bonus height for the proposal is 26 metres while the post-bonus height is 34 metres. The gross floor area to be gained is approximately 285 square metres. A calculation of the value of the required public benefit is approximately \$12,939.

The proposal from the developer to provide approximately \$52,380 in value relative to the public benefit categories by providing publicly accessible amenity space, and public art exceeds the LUB's minimum public benefit requirement.

Therefore, staff recommend that Regional Council adopt, by resolution, the Incentive or Bonus Zoning Agreement as provided in Attachment “B” of this report for the mixed-use development located at 1363 Hollis Street, Halifax.

FINANCIAL IMPLICATIONS

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

RISK CONSIDERATIONS

There are no risks associated with the recommendation contained within this report.

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

Regional Council may choose not to enter into the Incentive or Bonus Zoning Agreement as provided in “Attachment B” of this report. This would delay construction of the project as scheduled, necessitate further submissions by the developer, and require advisement by the Design Review Committee, as well as a supplementary report from staff.

ATTACHMENTS

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

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Sean Audas, Development Officer/Principal Planner, 902.476.9553

Report Approved by: Original Signed

Kelly Denty, Manager, Current Planning, 902.490.4800

Original Signed by Director

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

Attachment A

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)**

Attachment B

THIS AGREEMENT made this ____ day of _____, A.D., 2017.

BETWEEN:

OLLIVE PROPERTIES LIMITED., 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 bonus height is available on that portion of the Property that is located within the 26 metre pre-bonus height precinct;

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

AND WHEREAS the Developer has selected to provide publicly accessible amenity space, and the provision of public art to satisfy the Public Benefit required by the *Land Use By-law*;

AND WHEREAS on June 29, 2017 the Design Review Committee approved the Development;

AND WHEREAS the Developer will provide publicly accessible amenity space, and the provision of public art as the Public Benefit for the Development;

AND WHEREAS on June 29, 2017 the Design Review Committee recommended to the Developer Officer of the Municipality acceptance of the Public Benefit, and by approving this Agreement, the Council of the Municipality has accepted the publicly accessible amenity space, and the provision of public art 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 an eight (8) 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 1363 Hollis Street, Halifax, Nova Scotia, known as P.I.D. # 00003897 the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality as Document Number 110730786 and is more particularly set out in Schedule “A” attached hereto; and
- (h) “Public Benefit” means:
 - (a) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
 - (b) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that the Developer will provide publicly accessible amenity space, and the provision of public art, as the Public Benefit required under subsections 12(1) and 12(7) of the *Land Use By-law* for the Property and as more particularly described in Schedule B.

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 confirming that the Public Benefit has been completed.

Construction of Public Benefit

6. The Developer agrees:

(a) to install and construct the Public Benefit:

- (i) at its own cost;
- (ii) in a good and workmanlike manner;
- (iii) in accordance with all the Drawings;
- (iv) as sustainable building practices; and
- (v) in compliance with all Applicable Laws;

(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 or to the Public Benefit are required to ensure that the Public Benefit does and will continue to function properly,

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

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

Release and Indemnity

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

GENERAL PROVISIONS

Costs, Expenses, Liabilities and Obligations

10. The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Property.

Applicability of Laws

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

12. Nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Property or any statute or regulation of the Provincial or Federal Government and the Developer or lot owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

Schedules

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

- Schedule "A" - Description of the Property;
- Schedule "B" - Post Bonus Cost Estimates with Photo Renditions

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;

(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
the presence of

Witness

OLLIVE PROPERTIES LIMITED
Per: _____

Name:
Office held:

Per: _____
Name:
Office held:

SEALED, DELIVERED AND

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

Witness

Witness

**HALIFAX REGIONAL
MUNICIPALITY**

Per: _____
Mayor

Per: _____
Clerk

SCHEDULE "A"

PID 00003897

Registration County: HALIFAX COUNTY
Street/Place Name: HOLLIS STREET /HALIFAX
Title of Plan: PLAN OF SURVEY OF LOT OP-1234, BEING A
CONSOLIDATION OF LOT OP-1, LOT OP-2, LOT OP-3
AND LOT OP-4, LANDS OF OLLIVE PROPERTIES
LIMITED

Designation of Parcel on Plan: PARCEL OP-1234
Registration Number of Plan: 110730786
Registration Date of Plan: 2017-05-10 14:21:52

*** 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: 2017
Plan or Document Number: 110730786

Schedule B



1245 BARRINGTON STREET
 W SUITES HALIFAX, NS B3J 1Y3 T.
 902.446.9916 F. 902.444.6609
 E.dexel@eastlink.ca

Halifax Regional Municipality
 7071 Bayers Road Center
 Halifax, NS
 B3J 3A5

ATTN: Development Approvals, Ms. Melissa Eavis

March 23, 2017

RE: HRM case number 20796- Requested Public Benefit cost estimate breakdown.

Subsequent to HRM Development officer comment letter received on March 9, 2017 and in response to the comment regarding "Cost estimates of the proposed public benefit are required to be submitted, with a details breakdown on materials, installation and labour costs to substantiate the construction costs"; Please find enclosed the below table with requested cost breakdown for Public benefit Element 1 and 2.

BISHOP - SPA case #20796- Public Benefit Cost Breakdown			
56	Description	Estimate Cost per m2	Total Cost
Public Benefit Element #1	Architectural Design		\$5,000
	Ventilated RVR5 Façade: Porcelain Tiles C/W Engineered Aluminum Cladding System	\$192	\$10,752
	Plexiglass- front face of public art wall	\$134	\$2,546
	LED Lighting to Light wall Cavity		\$6,088
	Estimated Labour to install assembly	\$269	\$15,064
Public Benefit Element #2	Estimated Interpretive Sign based on VIC sign cost		\$5,500
	Planting around sign		\$2,430
	Project Management		\$5,000
Estimated Total Cost			\$52,380

The above is an estimated cost based on preliminary quotes received from various suppliers. Those quotes are available for submittal upon request.

Should you have any questions or require further information, please do not hesitate to contact me.

Regards,

Project Architect
(902)446 9916 ext 304 marianne@dexel.ca

Reference Images:



Figure 1. Residential Entrance- Public Benefit Element #1



Figure 10. Corner Foundation- Public Benefit # 2

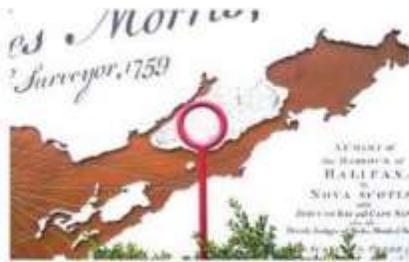


Figure 11. Interpretive Art Installation: Reference Image



Figure 12. Existing Building Foundations

Figure 2. Corner Foundation and Interpretive Art Installation- Public Benefit Element #2