



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

Item No. 13.1.3
Harbour East – Marine Drive Community Council
May 3, 2018

TO: Chair and Members of Harbour East – Marine Drive Community Council

SUBMITTED BY: **ORIGINAL SIGNED**

Kelly Denty, Acting Director, Planning and Development
ORIGINAL SIGNED

Jacques Dubé, Chief Administrative Officer

DATE: April 4, 2018

SUBJECT: **Case 20653: Non-substantive development agreement amendments, Civic 1 Horizon Court, Dartmouth**

ORIGIN

Application by Harvey Architecture Limited to amend the development agreement for lands at 1 Horizon Court, Dartmouth regarding project commencement and completion dates.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.

RECOMMENDATION

It is recommended that Harbour East – Marine Drive Community Council:

1. Approve, by resolution, the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report, to extend the commencement and completion dates contained within the existing development agreement at 1 Horizon Court, Dartmouth; and
2. Require the amending development agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later, otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Harvey Architecture Limited has applied, on behalf of Can-Euro Investments Limited, to extend the dates of project commencement and completion for the property at 1 Horizon Court, Dartmouth. The existing development agreement permits a 27-storey, residential/ commercial mixed-use building with underground and surface parking and exterior landscaped areas. The agreement was approved by Harbour East Community Council on July 5, 2012, appealed to the Nova Scotia Utility and Review Board and was registered on July 18, 2013 following the withdrawal of the appeal. The applicant initially requested an extension to the date of commencement for the project in late February of 2016. However, the applicant was also contemplating building design changes and the request was placed on hold pending submission of an alternate proposal. The owner now wishes to only proceed with the time extension and may consider an alternate proposal at a later date.

The existing development agreement was registered on a larger parcel of land (Lot P-234X) which contains an existing 18-storey residential building at 10 Horizon Court. The agreement stipulated that before any municipal construction permits could be issued for the new 27-storey building, the land parcel had to be subdivided into Lots “P-A” and “P-B” with the new building being located on Lot P-B. The land was subdivided in July of 2016 and the existing agreement was removed from Lot P-A which contains the existing 18-storey building.

Subject Site	Civic 1 and 10 Horizon Court (private right-of-way), Dartmouth
Location	Intersection of Mic Mac Boulevard and Horizon Court
Regional Plan Designation	US (Urban Settlement)
Community Plan Designation (Map 1)	Residential, Dartmouth Municipal Planning Strategy (MPS)
Zoning (Map 2)	R-3 Zone (Multiple Family Residential – Medium Density) under the Dartmouth Land Use By-law (LUB)
Size of Site	Approximately 4.35 hectares (10.74 acres) in total area
Street Frontage	Approximately 77.1 metres (253 feet) of street frontage on Mic Mac Boulevard
Current Land Use(s)	Lot P-A (Civic #10): 18-storey residential / Lot P-B (Civic #1): vacant
Surrounding Use(s)	The surrounding area includes a mix of commercial and residential uses: <ul style="list-style-type: none"> • Abutting the subject property to the north is the Avonhurst Gardens apartments; • Across Horizon Court to the east are Kent Building supplies and Mic Mac Mall commercial developments; • Across Mic Mac Boulevard to the south are Kings Wood apartments; and • To the west and south is the Maybank Field Park.

Proposal Details

The existing development agreement requires commencement of the development within three years of registration of the agreement (in this case, by July 18, 2016). The developer has requested that both the date of commencement and subsequent completion date be extended by between three to five years (from July 18, 2016). The requested time-extension results from the 2013 death of one of the land owners and the subsequent time needed to deal with extensive estate processes.

The draft amending agreement (Attachment A) proposes an extension of the commencement date by four years from July 18, 2016. This timeframe would require the developer to obtain construction permits by July 18, 2020. The requested amendments would also result in the entire project being required to be completed by July 18, 2024.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. Public information meetings and public hearings are not required for non-substantive amendments to a development agreement. The decision to grant a non-substantive amendment is made by resolution of Community Council. In the event Community Council approves the proposed amending development agreement, a notice will be placed in the local newspaper setting out the right to appeal.

The proposal will potentially impact local residents and property owners.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the MPS.

The existing development agreement is enabled through Policies H-17, IP-1(c) and IP-5 of the Dartmouth Municipal Planning Strategy (Attachment B). These policies allow for the consideration of multi-unit residential developments with associated commercial uses. The matter of a time extension is listed as a non-substantive amendment in Section 6.1 of the existing development agreement and can be considered by resolution of Community Council.

The existing development agreement (Attachment C) contains deadlines to encourage timely development and completion of the project. One of the reasons that development agreements contain commencement and completion dates is to allow projects that have been approved but not constructed to be reconsidered by Council if circumstances change. This may include changes to a site or its surroundings and/or changes to relevant MPS policies.

Site conditions and surroundings have not materially changed in this area since the original approval and the policies that enabled the original approval continue to exist. Under these circumstances, staff support an extension to the construction commencement and completion dates.

Proposed Amending Development Agreement

Attachment A contains the proposed amending development agreement for the subject site that provides a four-year extension to both the dates for commencement and completion of the development. Should Community Council grant the extension, all development rights and requirements under the existing agreement would remain in effect but the commencement date would be extended to July 18, 2020. If the request for a time extension is denied, a development permit cannot be issued for the proposed development. Therefore, a new agreement would need to be negotiated pursuant to the aforementioned policies.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the MPS. The request for an extension to the dates of commencement and completion is reasonable given the circumstances in this case. Therefore, staff recommend that the Harbour East – Marine Drive Community Council approve the proposed amending development agreement.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of the proposed amending development agreement. The administration of the proposed agreement can be carried out within the approved 2018-2019 operating budget for C310 Urban and Rural Planning Applications with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amending development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Harbour East – Marine Drive Community Council may choose to approve the proposed amending development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East - Marine Drive Community Council may choose to refuse the proposed amending development agreement and choose instead to discharge the existing agreement, and, in doing so, must provide reasons why the proposed amendments do not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

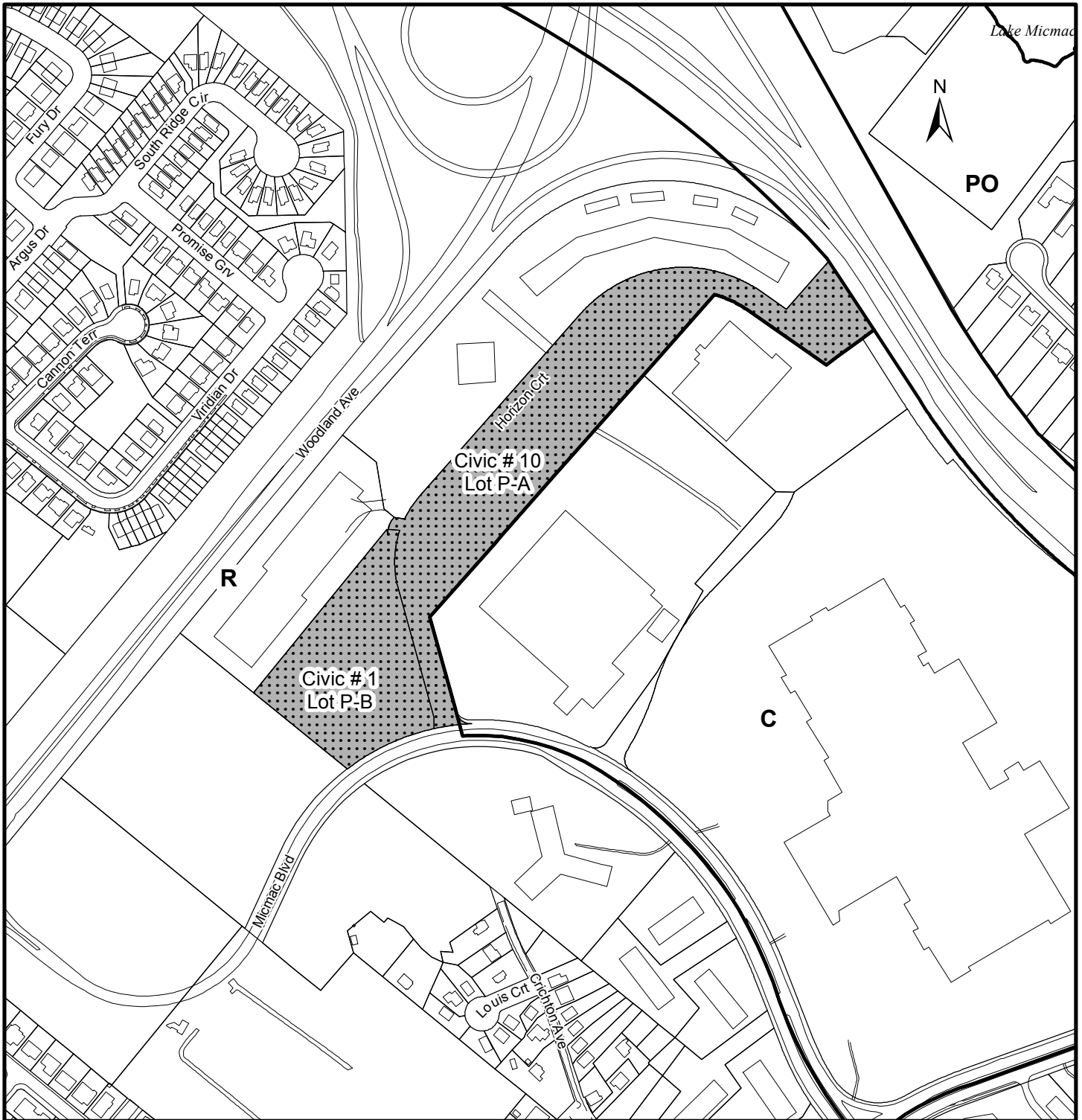
Map 1:	Generalized Future Land Use
Map 2:	Zoning
Attachment A	Proposed Amending Development Agreement
Attachment B	Applicable Policies from the Dartmouth Municipal Planning Strategy
Attachment C	Relevant Sections and Schedules of the Existing Development Agreement

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: Paul Sampson, Planner II, 902.490.6259

ORIGINAL SIGNED


Report Approved by: _____
Maggie Holm, Principal Planner, 902-293-9496.



Map 1 - Generalized Future Land Use

1 Horizon Court
Dartmouth



 Subject Properties

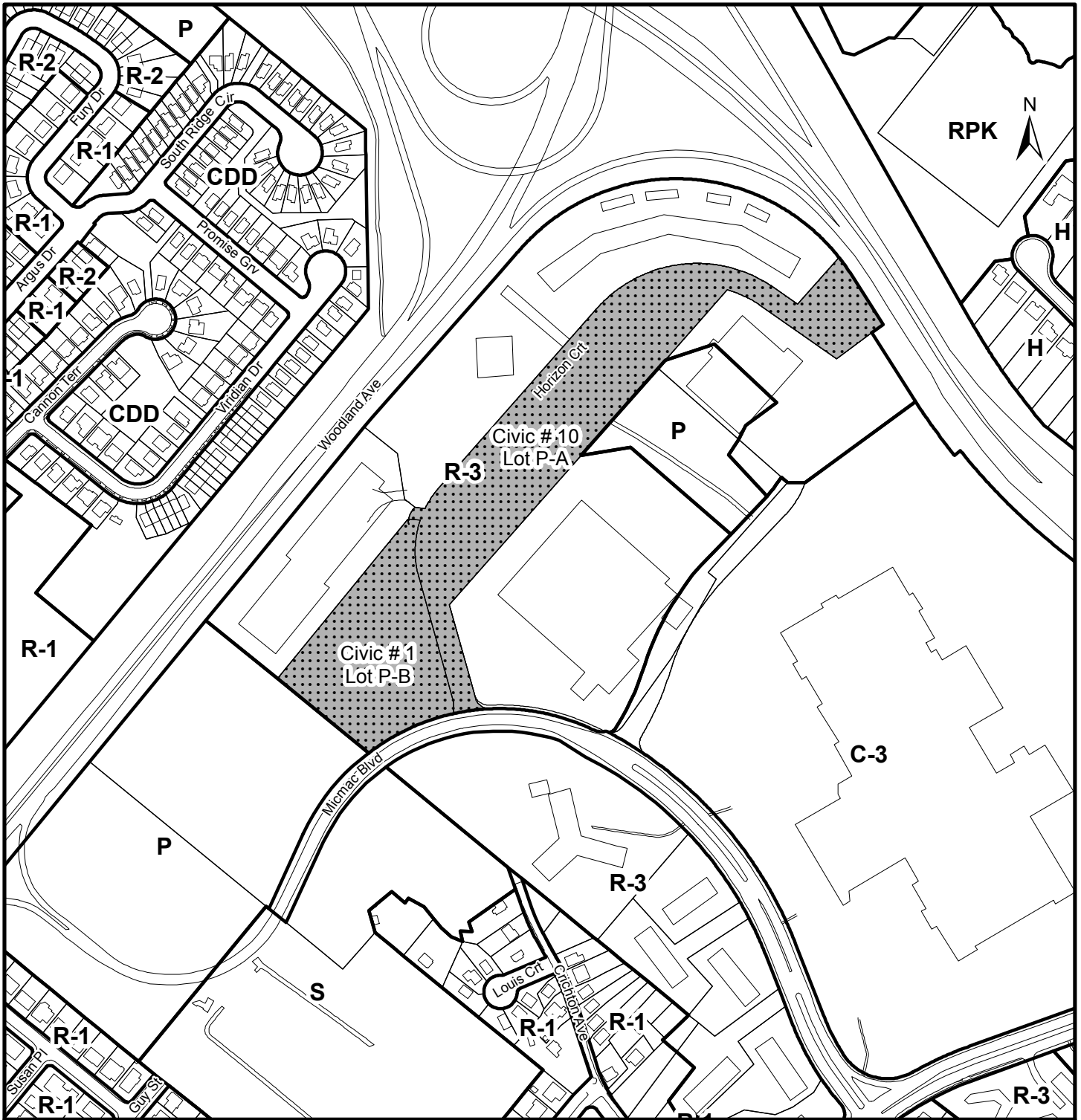
Designation
 R Residential
 C Commercial
 PO Park & Open Space



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Dartmouth
Plan Area



Map 2 - Zoning

1 Horizon Court
Dartmouth

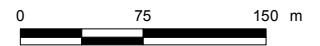
 Subject Properties

Dartmouth
Land Use By-Law Area

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential
- C-3 General Business
- I-2 General Industrial
- P Park
- RPK Regional Park
- S Institutional
- H Holding
- CDD Comprehensive Development District

HALIFAX



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

3. Schedule A of the Existing Agreement, and all references thereto, shall be deleted and replaced with Schedule A1 attached hereto.
4. Except where specifically varied by this Amending Development Agreement, all other, conditions and provisions of the Existing Agreement as amended shall remain in effect.
5. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Amending Development Agreement, and the Existing Agreement.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND 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: _____

MUNICIPAL CLERK

Attachment B

Applicable Policies from the Dartmouth Municipal Planning Strategy

Housing:

(12) - Can-Euro Investments Limited Lands - Horizon Court

The remaining lands of Can-Euro Investments Limited form a transitional area between the regional commercial centre of Mic Mac Mall and the medium/high density residential area of Horizon Court. The location of these lands has a fairly high profile from Woodland Avenue/Highway 111 and presents an opportunity for additional medium/high density residential development, in addition to office-commercial development which may benefit from this particular location.

The Original "Mic Mac Village Plan" created in 1963, identified an area for community park land partially in the area which is now owned by Can-Euro. The rezoning of this park land through the 2000/01 Woodland Avenue East Planning Process for future residential development displaced a portion of the original "park zoned" lands. As future development of the Can-Euro lands continues, it is necessary to recover suitable park land area to better serve the needs of this developing multiple unit residential area. While active parkland is available in the nearby Maybank field and Trans Canada Trail, playground areas combined with rest and relaxation areas for older residents are needed.

Policy H-17 *The continued development of the Can-Euro land at Horizon Court (PID # 40661589, #40698490, #40661571) for multiple unit residential use shall be subject to the requirements of Policy IP-5. Notwithstanding the Residential Designation and R-3 zoning, office development with associated retail uses, including but not limited to small restaurants, pharmacy and/or convenience store, may also be considered by development agreement pursuant to the provisions of Policy IP-1(c). Council shall have particular regard for applicable provisions in addressing the recovery of park land displaced through the rezoning of "P" zoned lands as a part of the Woodland Ave East Planning Process.*

Implementation Policy IP-1 (o) - Apartment Building Development

Careful consideration should be given to the construction of apartment buildings throughout the City. Recently, concerns have been expressed about the exterior design, density, concentration, site treatment, massing and traffic issues as they relate to apartment development. These issues could be addressed by the Development Agreement process and would also permit public involvement in the evaluation of the proposed development.

Policy IP-5 *It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access & egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building.*

In considering the approval of such Agreements, Council shall consider the following criteria:

- (a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;*
- (b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building;*
 - (ii) traffic generation, access to and egress from the site; and*
 - (iii) parking;**
- (c) adequacy or proximity of schools, recreation areas and other community facilities;*
- (d) adequacy of transportation networks in, adjacent to, and leading to the development;*
- (e) adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing;*
- (f) that mature trees and other natural site features are preserved where possible;*
- (g) adequacy of buffering from abutting land uses;*
- (h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and*
- (i) the Land Use By-law amendment criteria as set out in Policy IP-1(c). (As amended by By-law C-692, Dec. 4, 1991)*

Policy IP-1(c) - Zoning By-law

The Zoning By-law is the principal mechanism by which land use policies shall be implemented. It shall set out zones, permitted uses and development standards which shall reflect the policies of the Municipal Development Plan as per Section 33 (3) of the Planning Act. The zoning by-law may use site plan approval as a mechanism to regulate various uses. (RC-Sep 8/09;E-Nov 14/09)

Notwithstanding the above, it shall be the intention of Council not to pre-zone lands outside the development boundary as shown on the Generalized Land Use Plan: Map 9;

Map 9b, 9c, 9d, 9e, 9g, 9h,9i (By-law 633), 9i (By-law 724), 9j, 9q, 9m, 9o, 9p (Portland St), 9p (Craigwood) and 9r (As amended by By-law C-475, Sept. 20, 1983 and By-law C-493, Dec.9, 1983 and By-law C-511, July 6, 1984).

It shall recognize that certain areas are premature for specific zoning classifications by reason of lack of services, public facilities or other constraints. Council shall use the H-zone (Holding Zone). In the H Zone the permitted types of uses shall be limited in accordance with the Reserve classification in Table 4 (As amended by By-law C-475, Sept. 20, 1983). In this manner, Council can maintain a comparatively high degree of control, and major development proposals contemplated for such areas shall be processed as zoning amendments.

In considering zoning amendments and contract zoning, Council shall have regard to the following:

(1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan

(2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal

(3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries

(4) that the proposal is not premature or inappropriate by reason of:

- (i) the financial capability of the City is to absorb any costs relating to the development*
- (ii) the adequacy of sewer and water services and public utilities*
- (iii) the adequacy and proximity of schools, recreation and other public facilities*
- (iv) the adequacy of transportation networks in adjacent to or leading to the development*
- (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas*
- (vi) preventing public access to the shorelines or the waterfront*
- (vii) the presence of natural, historical features, buildings or sites*
- (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized*
- (ix) the detrimental economic or social effect that it may have on other areas of the City.*

(5) that the proposal is not an obnoxious use

(6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:

- (i) type of use, density, and phasing*
- (ii) emissions including air, water, noise*
- (iii) traffic generation, access to and egress from the site, and parking*
- (iv) open storage and landscaping*
- (v) provisions for pedestrian movement and safety*
- (vi) management of open space, parks, walkways*
- (vii) drainage both natural and sub-surface and soil-stability*

(viii) performance bonds.

(7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors

(8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council

(9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:

(i) Council with a clear indication of the nature of proposed development, and

(ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community

(10) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)

Attachment C

Relevant Sections and Schedules of the Existing Development Agreement

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

The following items are considered by both parties to be non substantive and may be amended by resolution of Council.

- (a) Minor changes to the exterior materials of the building;
- (b) Minor changes to the location and layout of the private park or parking areas as illustrated on Schedule B;
- (c) An increase in the square footage of office or retail space permitted on the Lands as specified in this Agreement;
- (d) An increase in the number of 1 bedroom units permitted in the multi-unit building provided that the overall number of dwelling units within the building does not exceed 216;
- (e) The granting of an extension to the date of commencement of construction as identified in Subsection 7.3.1 of this Agreement; and
- (f) The length of time for the completion of the development as identified in Section 7.4 of this Agreement.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.3 Commencement of Development

- 7.3.1 In the event that development on the Lands has not commenced within 3 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 7.3.2 For the purpose of this section, commencement of development shall mean installation of the footings and foundation for the proposed building.
- 7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

7.4. Completion of Development

Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

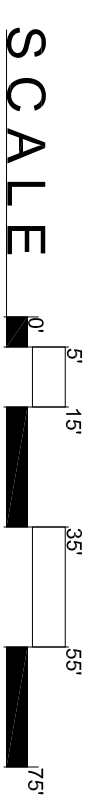
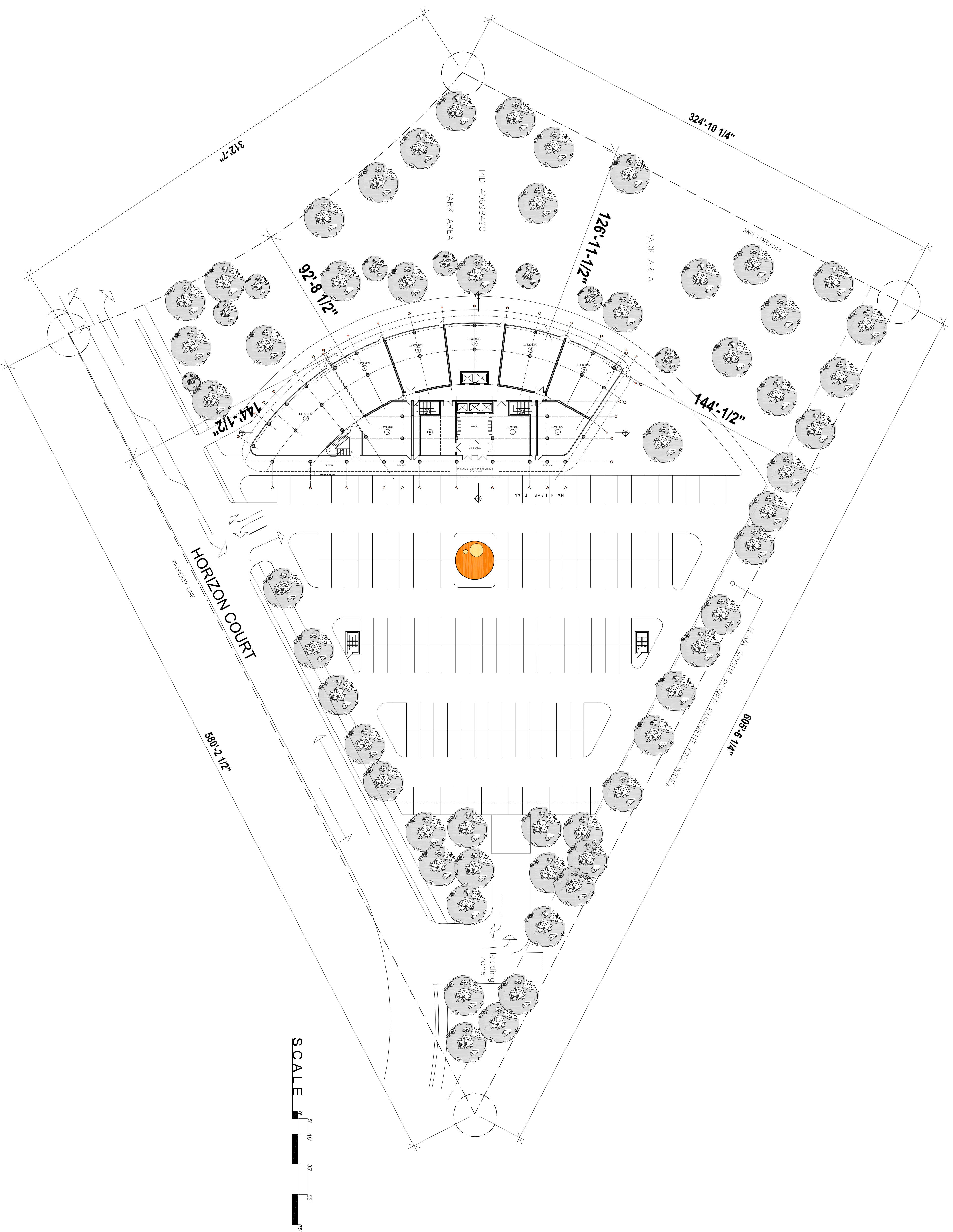
- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By law for Dartmouth, as may be amended from time to time.

7.5 Discharge of Agreement

If the Developer fails to complete the development after 7 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.

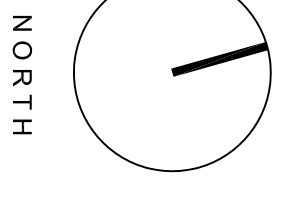
Case 17143 Schedule B: Site Plan



not for construction

HORIZON CRT
CAN-EURO INVESTMENTS LTD.
DARTMOUTH, NS

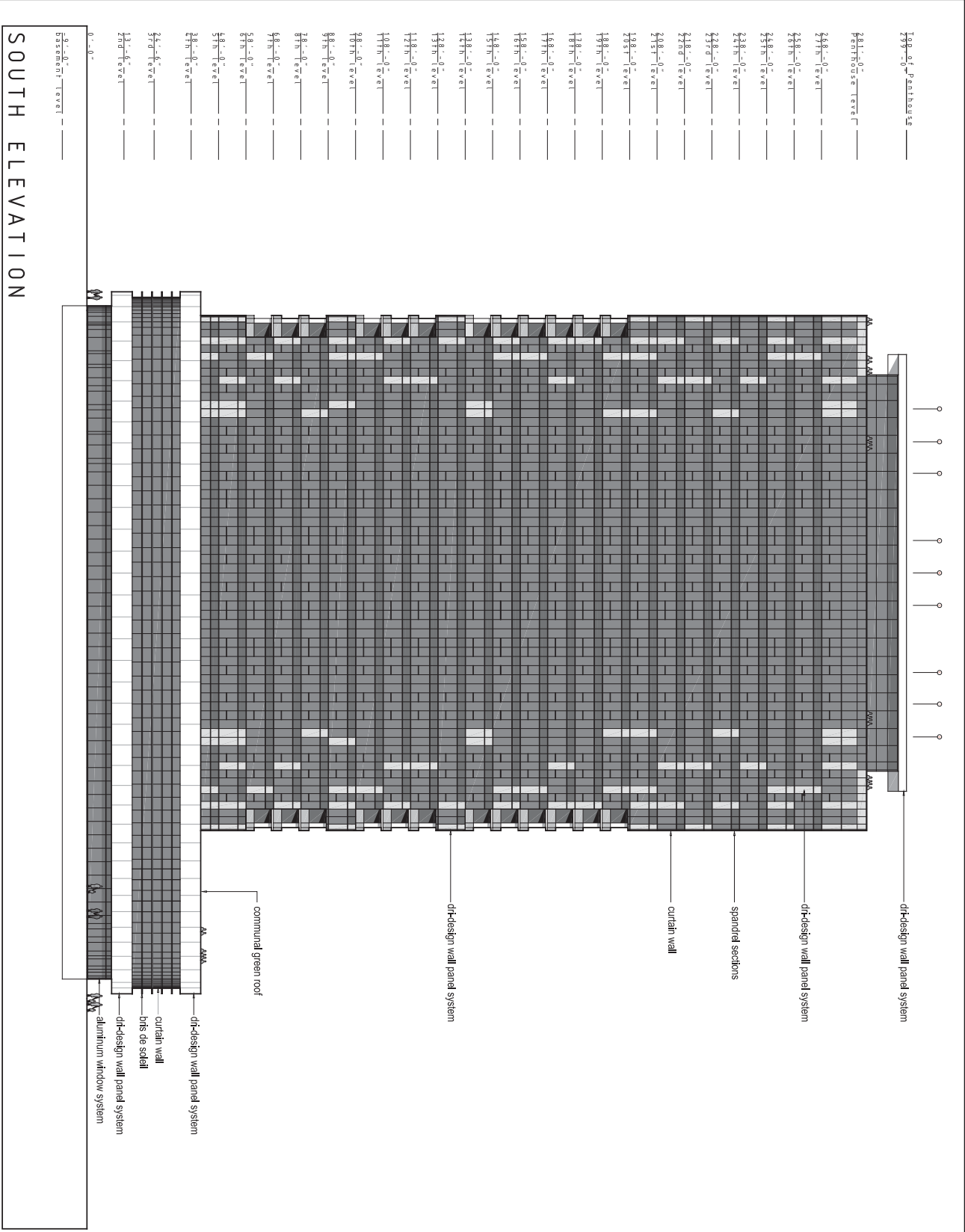
Geoff Keddy Architects and Associates Ltd.
5357 Inglis Street
Halifax, Nova Scotia B3H 1J4
902.420.9400
902.406.6056



SITE PLAN
scale: 1/32" = 1'-0"

date: 09/03/12
drawn by: ml/sa
checked by: GK

A100



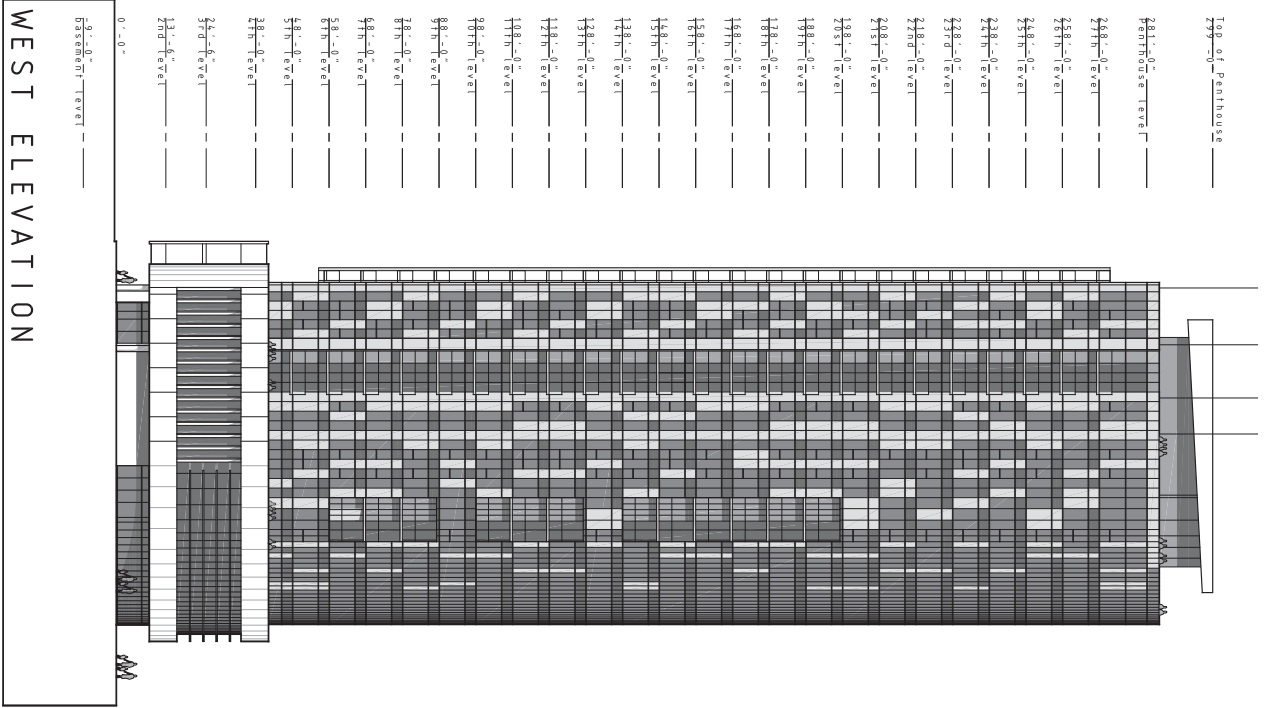
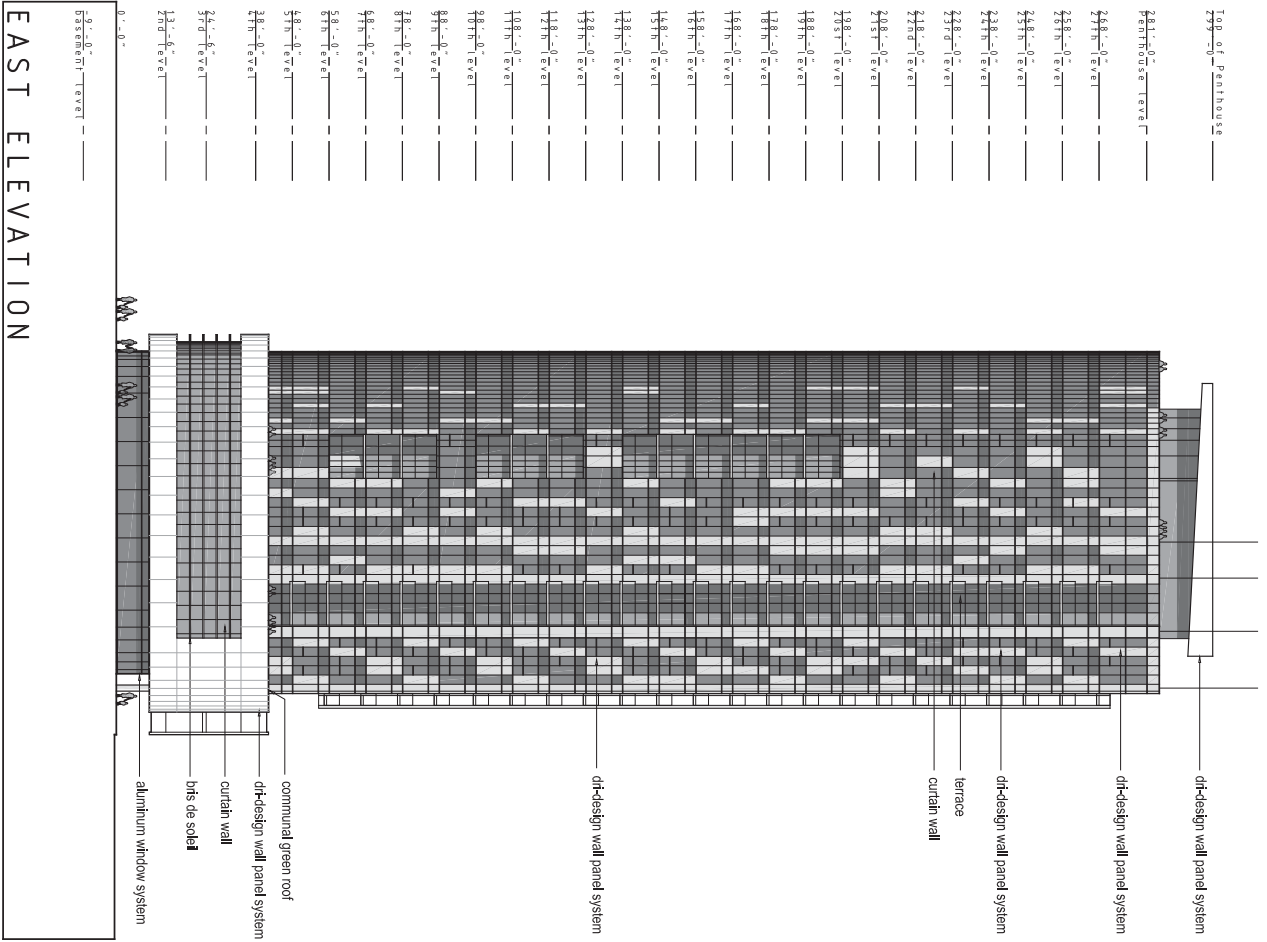
not for construction

HORIZON CRT
CAN-EURO INVESTMENTS LTD.
DARTMOUTH, NS

Gaof Keady Architect
and Associates Ltd.
5527 HURON STREET
HALIFAX, NS B3H 1J4
902.430.9400
902.408.0058

SOUTH ELEVATION
scale: 1/16"=1'-0"

A301



not for construction

I HORIZON CRT
CAN-EURO INVESTMENTS LTD.
DARTMOUTH, NS

Gavin Keady Architect
and Associates Inc.
5527 HURON STREET
HALIFAX, NS B3H 1J4
902 430 9400
902 408 0058

EAST / WEST ELEVATIONS
scale: 1/16"=1'-0"

A302

