



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

**Item No. 13.1.3**  
**Harbour East-Marine Drive Community Council**  
**August 4, 2016**

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

**SUBMITTED BY:** Original Signed  
Bob Bjerke, Chief Planner and Director of Planning and Development

**DATE:** July 7, 2016

**SUBJECT:** Case 20260: Non-Substantive Amendments to the Evergreen Drive Development Agreement, Cole Harbour

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**ORIGIN**

Application by EastPoint Engineering Ltd.

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter, Part VIII, Planning & Development*

**RECOMMENDATION**

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

1. Approve, by resolution, the proposed Second Amending Agreement as contained in Attachment A of this report to enable an extension of the date of commencement of development and allow the development of the 8 Townhouse units in Phase 2 to occur without the need for a non-substantive amendment at Evergreen Drive, Cole Harbour; and
2. Require the Second Amending 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 late, otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

In 2008, the Municipality entered into a development agreement (Case 01145) with B.A.E. Development Ltd. to enable a residential development consisting of 16 townhouse units to be constructed in 2 phases at Evergreen Drive in Cole Harbour (Map 1 and Map 2). The agreement enabled the development of these townhouses within the Urban Residential Designation of the Cole Harbour/Westphal Municipal Planning Strategy (MPS).

The existing development agreement contains a five year time limit for the commencement of development. This time limit first expired on March 20, 2014. The developer subsequently submitted a planning application which requested that the date of commencement of development be extended in 2014 (Case 19485). Council approved an extension ending in January 2016.

## **Location, Designation, Zoning and Surrounding Land Use**

<b>Subject Site</b>	Evergreen Drive
<b>Location</b>	East of Hugh Allen Drive, south of Evergreen Drive
<b>Size of Site</b>	5,639.5 square metres (60,705 square feet)
<b>Regional Plan Designation</b>	Urban Settlement
<b>Community Plan Designation (Map 1)</b>	Urban Residential (UR) in the Cole Harbour/Westphal MPS
<b>Zoning (Map 2)</b>	Single Unit Dwelling (R-1) in the Cole Harbour/Westphal LUB
<b>Size of Site</b>	5,639.5 square metres (60,705 square feet)
<b>Street Frontage</b>	38.84 metres (127.43 feet)
<b>Site Conditions</b>	Tree covered with slight negative slope to east
<b>Current Use of Subject Property</b>	Vacant
<b>Surrounding Land Uses</b>	The surrounding land uses are comprised mainly of residential, commercial and institutional uses. <ul style="list-style-type: none"><li>• South – low density residential dwellings</li><li>• East - retail store and the Cole Harbour Shopping Centre</li><li>• North - Church, residential care facility, Junior High School</li><li>• West – low density residential development</li></ul>

## **Proposal Details**

EastPoint Engineering Ltd. has applied for two non-substantive amendments to the existing agreement: (1) to allow the construction commencement provision to be extended by three (3) years; and (2) to allow the development of the 8 Townhouse units in Phase 2 without the need for a non-substantive amendment.

Within the existing agreement, commencement must have occurred by January, 2016. Since the time Council approved the first time extension of approximately 2 years in 2014, a new property owner has assumed ownership of the project following acquisition of the lands from the original developer.

In addition to the time extension, the applicant is also requesting that the existing agreement be amended to permit the construction of the 16 townhouses in two timely phases, within the requested extension, without returning to Council for a non-substantive amendment. Approval to develop up to eight (8) additional townhouses in a second phase was originally identified in the agreement as a non-substantive amendment, subject to approval of sewer capacity by Halifax Water. It has since been determined that sewer capacity is available, therefore Halifax Water has no concerns relative to the development of the 8 townhouse units in Phase 2.

Given that development has not commenced, Council may by resolution:

- Discharge the agreement, whereupon the agreement shall have no force or effect; or
- Upon written request of the developer, grant an extension to the date of commencement of development.

Amendments extending the date of commencement of development are identified as non-substantive matters in Section 6.2 of the development agreement and may be approved through a resolution of Council, without a public hearing.

### **Enabling Policy**

Policy UR-8 of the MPS allows for the development of townhouses without individual access to a public street through the application of a development agreement. This is the policy framework under which the agreement was considered and approved.

## **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved prior to approval of the agreement through a Public Information Meeting (held on June 2, 2008) and a Public Hearing (held on November 6, 2008). Given the agreement identifies construction commencement and a request for up to eight (8) additional townhouse units as non-substantive matters, a public hearing is not required. The decision is made by resolution of Council. In the event Council approves the proposed amending development agreement, a notice will be placed in the Chronicle Herald setting out the right to appeal.

The proposed amending development agreement will potentially impact the following stakeholders: local residents and property owners.

## **DISCUSSION**

The existing agreement was reviewed by staff in 2014, and again for this application, and determined to be reasonably consistent with the relevant policies contained within the MPS. Given the requested changes relate only to construction commencement and removal of the ability to phase the development, provisions of the agreement which regulate the form of development will remain unchanged. Further, as the MPS policies which enabled the agreement have not changed since originally being considered by Council, the dates for construction commencement may be extended. Halifax Water has reviewed the request to proceed with the development in a single phase and confirm there is capacity available. Therefore, it is recommended that the proposed amending development agreement (Attachment A) be approved.

## **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 this Agreement. The administration of the Agreement can be carried out within the approved 2016/17 budget and 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 concerns were identified.

### **ALTERNATIVES**

1. Harbour East–Marine Drive Community Council may choose to propose modifications to the proposed amending development agreement. Such modifications may require further negotiations with the Developer, and may require a supplementary report and/or a public hearing. A decision of Council to approve the proposed amending 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, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed amending 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 Agreement

2008 Staff Report: <http://www.halifax.ca/commcoun/hecc/documents/Case01145.pdf>

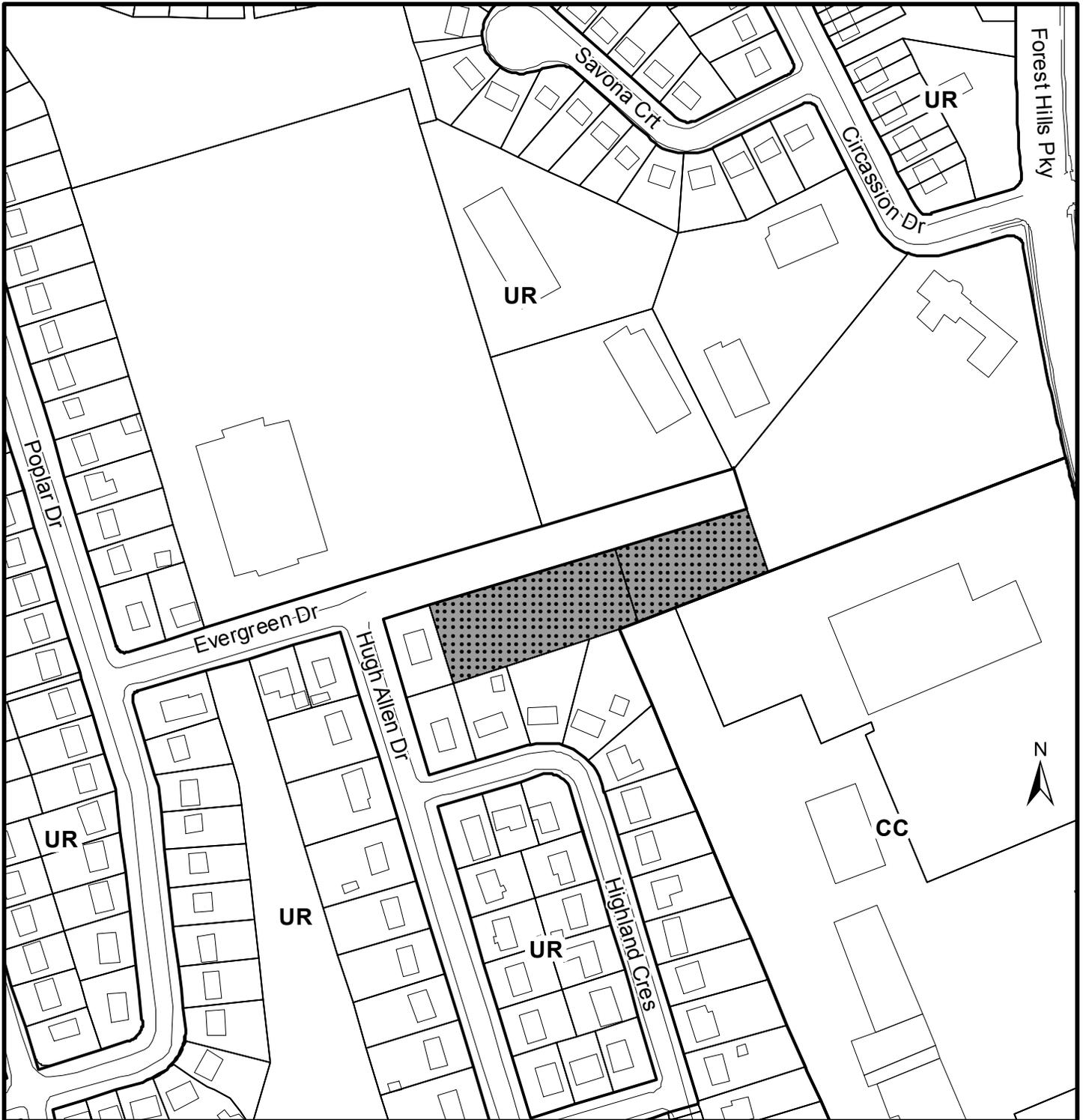
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A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Darrell Joudrey, Planner II, Current Planning, 902.490.4181

Original Signed

Report Approved by: \_\_\_\_\_  
Kelly Denty, Manager, Current Planning, 902.490.4800



**Map 1 - Generalized Future Land Use**

PID 00398552  
and 40414633

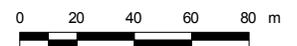
**HALIFAX**

 Existing Development Agreement

**Designation**

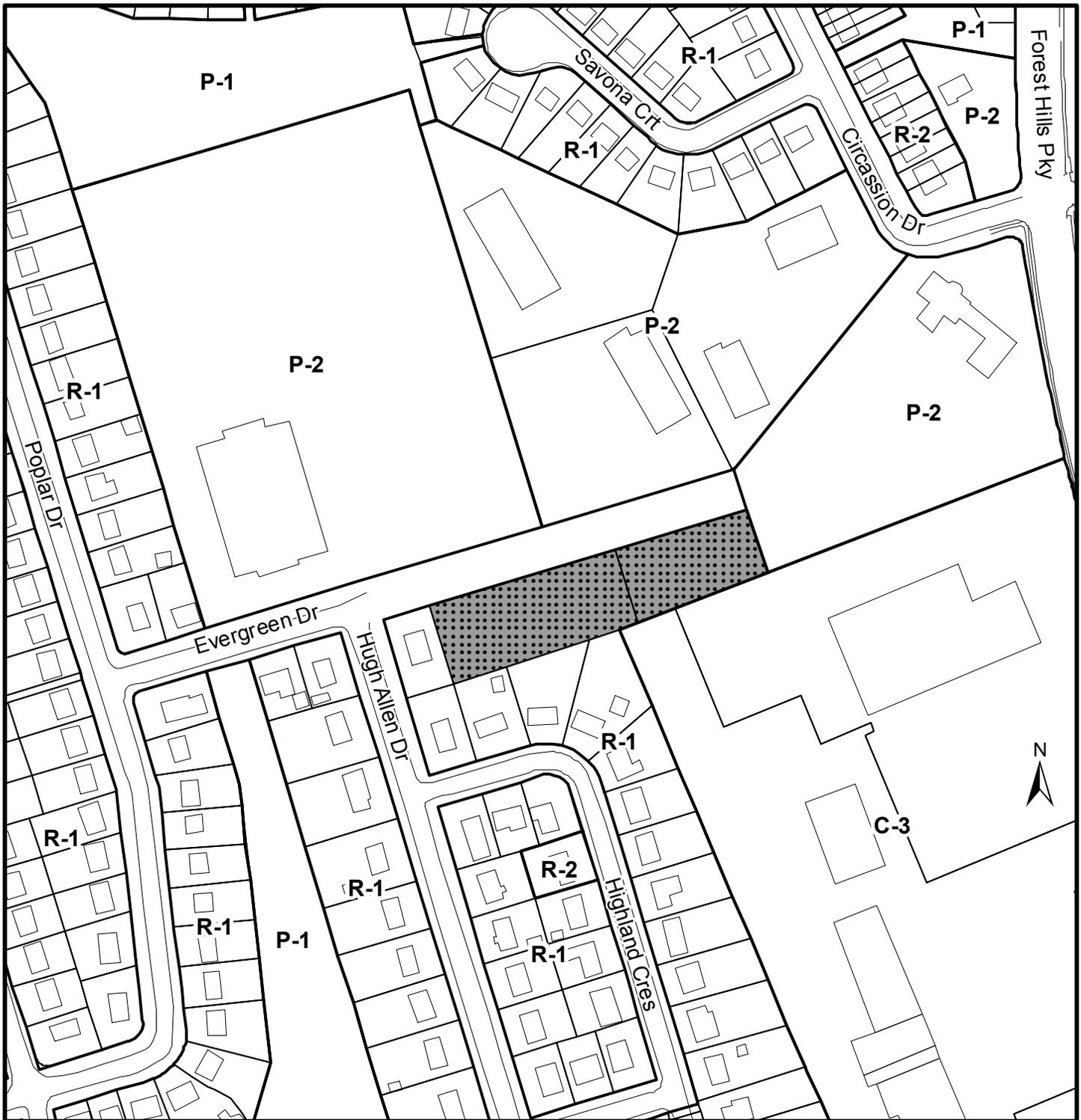
UR Urban Residential  
CC Community Commercial

Cole Harbour/Westphal  
Plan Area



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.



**Map 2 - Zoning**

PID 00398552  
and 40414633

**HALIFAX**

 Existing Development Agreement

**Zone**

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- C-3 Shopping Centre
- P-1 Open Space
- P-2 Community Facility



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.

Cole Harbour/Westphal  
Plan Area



AND WHEREAS the Harbour East-Marine Drive Community Council for the Halifax Regional Municipality approved this request at a meeting held on \_\_\_\_\_, referenced as Municipal Case Number 20260;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree to the following amendments to the Existing Agreement:

1. The Existing Agreement shall be amended by deleting Section 3.2.5.
2. The Existing Agreement shall be amended by adding the following clause “and a maximum of 8 additional dwelling units within the area identified on Schedule “B“ as “Phase 2” to clause 3.3(a).
3. The Existing Agreement shall be amended by deleting sections 3.3(b) and 3.3(c).
4. The Existing Agreement shall be amended by deleting the words “shared private driveway that meets” in Section 3.4.2(b) and replaced with the new words “Shared private driveways shall meet”.
5. The Existing Agreement shall be amended by deleting Section 6.2(c).
6. The Existing Agreement shall be amended by deleting the word and number “five (5)” from Section 8.3.1 and replacing it with the new word and number “nine (9)”.

**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 Owners Names)**

\_\_\_\_\_

Per: \_\_\_\_\_

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

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**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_

Per: \_\_\_\_\_

Mayor

\_\_\_\_\_

Per: \_\_\_\_\_

Municipal Clerk