



P.O. Box 1749  
Halifax, Nova Scotia  
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**Item No. 10.1.1**  
**Harbour East – Marine Drive Community Council**  
**February 6, 2020**  
**March 5, 2020**

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

***-Original Signed-***

**SUBMITTED BY:**

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Kelly Denty, Director of Planning and Development

**DATE:** January 7, 2020

**SUBJECT:** **Case #21856: Development Agreement for #8005 Highway 7, Musquodoboit Harbour**

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**ORIGIN**

Application by Kendar Enterprises Ltd.

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

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

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A, to permit a mixed-use residential and commercial building containing five (5) dwelling units at #8005 Highway 7, Musquodoboit Harbour and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Require the agreement be signed by the property owners within 240 days, or any extension thereof granted by Council on request of a 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**

Kendar Enterprises Ltd. is applying to enter into a development agreement to convert an existing mixed-use building located at #8005 Highway 7, Musquodoboit Harbour into a five-unit residential building. The existing building at #8005 Highway 7 is accessed by a private easement over the abutting property at #8001 and #8003 Highway 7. Therefore, both properties are subject to this application.

<b>Subject Site</b>	#8001 and #8003 Highway 7, Musquodoboit Harbour (PID 40192338) (called "Lot AX") #8005 Highway 7, Musquodoboit Harbour (PID 00593038) (called the "Lands")
<b>Location</b>	East of Memory Road and southwest of Musquodoboit River
<b>Regional Plan Designation</b>	RC (Rural Commuter)
<b>Community Plan Designation (Map 1)</b>	MU (Mixed Use) under the Eastern Shore (West) Municipal Planning Strategy (MPS)
<b>Zoning (Map 2)</b>	MU (Mixed Use) under the Eastern Shore (West) Land Use By-law
<b>Size of Site</b>	Lot AX – 4,879 square metres (52,518 square feet) The Lands – 2,819.8 square metres (30,353 square feet)
<b>Street Frontage</b>	Lot AX – 37.8 metres (124 feet) of frontage along Highway 7 and 39.67 metres (130.14 feet) of frontage along Memory Road The Lands – 98.2 metres (152.14 feet) along Highway 7
<b>Current Land Use(s)</b>	Two mixed-use buildings exist on the subject properties with commercial uses on the ground floor and two residential units above in each building.
<b>Surrounding Use(s)</b>	A mixture of land uses exist in the area, including: <ul style="list-style-type: none"><li>• neighbourhood commercial uses</li><li>• institutional uses (churches, community centre)</li><li>• single unit dwellings</li><li>• HRM Parkland (Peace Park)</li></ul>

## **Proposal Details**

The applicant proposes to enter into a development agreement to enable conversion of vacant commercial space on the ground floor of the existing building at #8005 Highway 7, Musquodoboit Harbour to residential use and to enable a five-unit dwelling within the existing building. The applicant has expressed that there is no demand for commercial space in the area, but there is demand for apartment units which is an appropriate adaptive reuse of the existing building.

The current zoning allows a range of commercial uses but only permits two residential units in the building. The existing building is currently occupied by two residential units. A building with three or more residential units is considered a multiple unit dwelling and is only enabled through the development agreement process. While the current proposal is for a multiple unit dwelling, the applicant requests that the agreement allows limited compatible commercial uses on the ground level of the existing building if the market changes in the future.

## **History**

The existing building at #8005 Highway 7 was constructed prior to 1991. A history of the use of the building is as follows:

- 1991 - The building was used for a medical clinic.
- May 2013 - The building was no longer used as a medical clinic and a permit was issued for renovations for a daycare and office on the main level, and two residential units above.
- October 2018 - Staff became aware that renovations to convert the commercial ground floor space to residential units were underway without a permit. A compliance case was opened soon after,

and a development agreement application was submitted to legalise five residential units within the existing building.

During the Public Participation portion of the March 7, 2013 Harbour East-Marine Drive Community Council meeting, Ken Brunt and Shawn Martin of Kendar Enterprises Ltd. spoke about a need for more opportunities to allow mixed-use developments in Polling District 2 with up to six residential units. Harbour East-Marine Drive Community Council (HEMDCC) requested a staff report outlining what amendments would be required to allow mixed-use zoning with the intent of rural densification in District 2. A staff information report was provided to HEMDCC on January 9, 2014, advising that consideration of multiple unit dwellings with three or more units was enabled for most lands in Polling District 2 through the development agreement process. Development agreements were considered an appropriate mechanism as they ensure the design conforms to the surrounding area, maintains rural character and that the offsite impacts of larger developments are properly assessed and mitigated. There was no further discussion on this matter subsequent to the provision of the staff information report.

### **Enabling Policy and LUB Context**

The subject properties are located within the Musquodoboit Harbour Rural District Growth Centre under the Regional Plan. Low to medium densities and alternative housing forms are generally encouraged. At the community plan level, the subject site is designated Mixed Use under the Eastern Shore (West) MPS. This designation intends to support the continuation of the existing rural land use pattern, providing for a wide range of residential, commercial, resource, traditional and community facility uses. This application can be considered in accordance with Policy MU-3 of the MPS, which enables Council to consider multiple unit dwellings through the development agreement process.

The subject property is zoned MU (Mixed Use) under the Eastern Shore (West) Land Use By-law (LUB). This zone permits residential development under three dwelling units and a wide range of commercial, resource, traditional and community uses.

### **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 through providing information and seeking comments through the HRM website, signage posted on the subject site, and letters mailed to property owners within the notification area (Map 2). No comments or concerns were raised by the public about the proposal.

A public hearing must be held by Harbour East-Marine Drive Community Council before they can consider approval of the proposed development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail. The proposal will potentially impact local residents and property owners.

### **DISCUSSION**

Staff have reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the MPS. Attachment B provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

### **Proposed Development Agreement**

Attachment A contains the proposed development agreement for the subject site and the conditions under which the development may occur. The proposed development agreement permits the internal conversion of the existing commercial-residential mixed-use building to a five-unit dwelling while allowing limited ground floor commercial uses, if there is market demand in the future. Of the matters addressed by the proposed

development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

#### Compatibility of Architectural Design and Scale

The proposed multiple unit dwelling involves an internal conversion only. No change is proposed to the architectural design or scale of the building and staff advise that the existing building is compatible with nearby uses. Buildings within the Musquodoboit Harbour Village Core are generally one or two storeys in height, are visible from the street, and have parking within the front yard. They typically have pitched roofs and brick or wooden facades. Immediately abutting the existing building at #8005 Highway 7 is a two-storey residential-commercial mixed-use building with a flat roof and wooden siding. Across the street, south west of the intersection of Highway 7 and Clairmont Lane is a two-storey market and café with a pitched roof and wooden shingles. The existing building at #8005 Highway 7 is also two storeys in height but is setback further from Highway 7 and buffered from the street and adjacent properties by a treed area. The building has a flat roof and brick façade. Parking is proposed in the existing parking lot in front of the building and additional parking is proposed behind the building.

Lands surrounding the subject property are also zoned and designated Mixed Use (MU) under the Eastern Shore (West) LUB and MPS, respectively. The MU policies support a wide variety of land uses as-of-right including a range of commercial uses. Staff advise that the proposed residential units within the existing building are compatible with the range of uses enabled on adjacent properties. However, staff advise that some of the commercial uses permitted as-of-right are not compatible with residential dwelling units within a mixed-use building. Therefore, the proposed development agreement permits limited commercial uses on the ground floor of the existing building to those that are felt to be compatible with residential units above.

#### Separation from Low Density Residential Uses

The proposed multiple unit dwelling is within a building that has been in existence prior to 1991. Low density residential uses surrounding the subject property are predominantly single unit dwellings, the majority of which are situated along side streets that intersect Highway 7 and east of the subject property along Highway 7. An area of mature trees exists between the subject building and Highway 7, and between the building and abutting low-density residential uses. The existing treed areas mitigate any visual impacts between the proposed multiple unit dwelling, the street and adjacent low-density residential uses. The proposed development agreement includes provisions to retain the treed areas.

#### Changing Market Demand and Adaptive Reuse

Limited options for alternative housing exist in the Musquodoboit Harbour community. The applicant has expressed that there is more demand for apartment units than commercial space in the community today. The proposed multiple unit dwelling supports the changing needs of the community that are not currently met by the existing housing stock. Staff advise that converting the existing building to a multiple unit dwelling is an appropriate adaptive reuse of the building. However, staff support limited commercial uses on the ground floor that are compatible with residential units above.

#### Traffic Impacts and Access

The subject property fronts a Provincially owned and maintained road. Nova Scotia Transportation and Infrastructure Renewal (NSTIR) have not raised any concerns regarding the impact of the proposed use on the existing transportation network.

Driveway access is provided through a private easement across the abutting property at #8001 and #8003 Highway 7. Consequently, the property owner of these lands is also subject to the proposed development agreement. Typically, 120 days are allocated for signing a development agreement but staff recommend 240 days for signing in this case given that the abutting property owner is also subject to the agreement and resides out of province.

#### Shared Water Supply

While on-site services are regulated by Nova Scotia Environment (NSE), it is important to note that the private well located at #8005 Highway 7 is shared with the abutting property at #8001 and 8003 Highway

7. The applicant has indicated that the proposed conversion of the commercial space within the existing building to three additional residential units would draw less water from the well than the daycare and office uses that were previously approved by NSE.

### **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 proposed multiple unit dwelling with limited ground floor commercial uses is located within a Rural Growth Centre and is in proximity to the Village Core where a variety of services and amenities are readily available. The proposed multiple unit dwelling is of an appropriate scale, is compatible with adjacent uses, and responds to the housing needs of the community. For these reasons, staff recommend that the Harbour East-Marine Drive Community Council approve the proposed 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 this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2019-2020 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 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 development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. 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 development agreement, and in doing so, must provide reasons why the proposed agreement does 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 and Notification Area

Attachment A: Proposed Development Agreement  
Attachment B: Review of Relevant Policies from the Eastern Shore (West) MPS

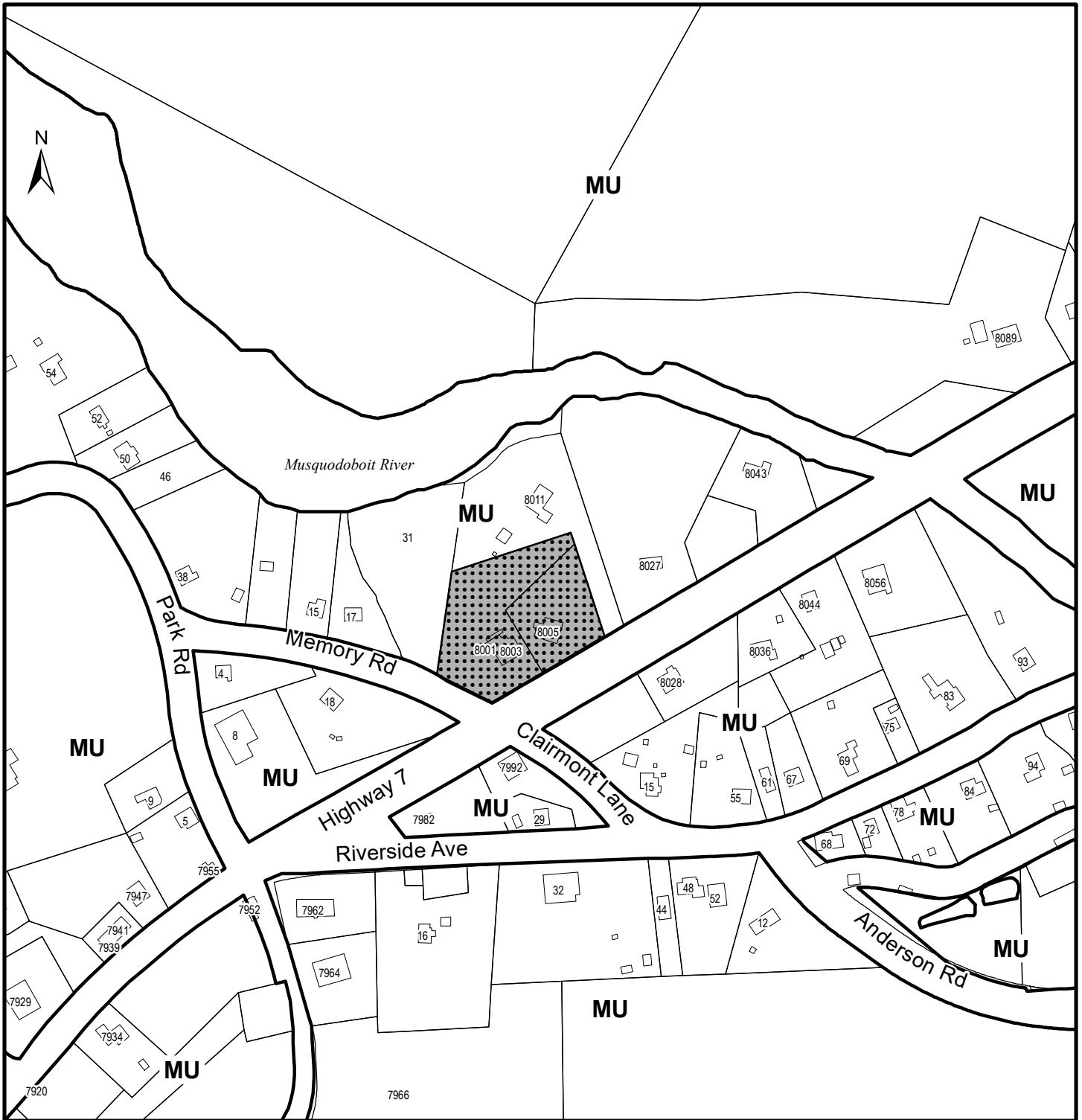
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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Stephanie Salloum, Planner III, 902.490.4223

Report Approved by: Steven Higgins, Manager Current Planning, 902.490.4382


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**Map 1 - Generalized Future Land Use**

8005 Highway 7,  
Musquodoboit Harbour

**HALIFAX**

 Area of Proposed Development Agreement

**Designation**

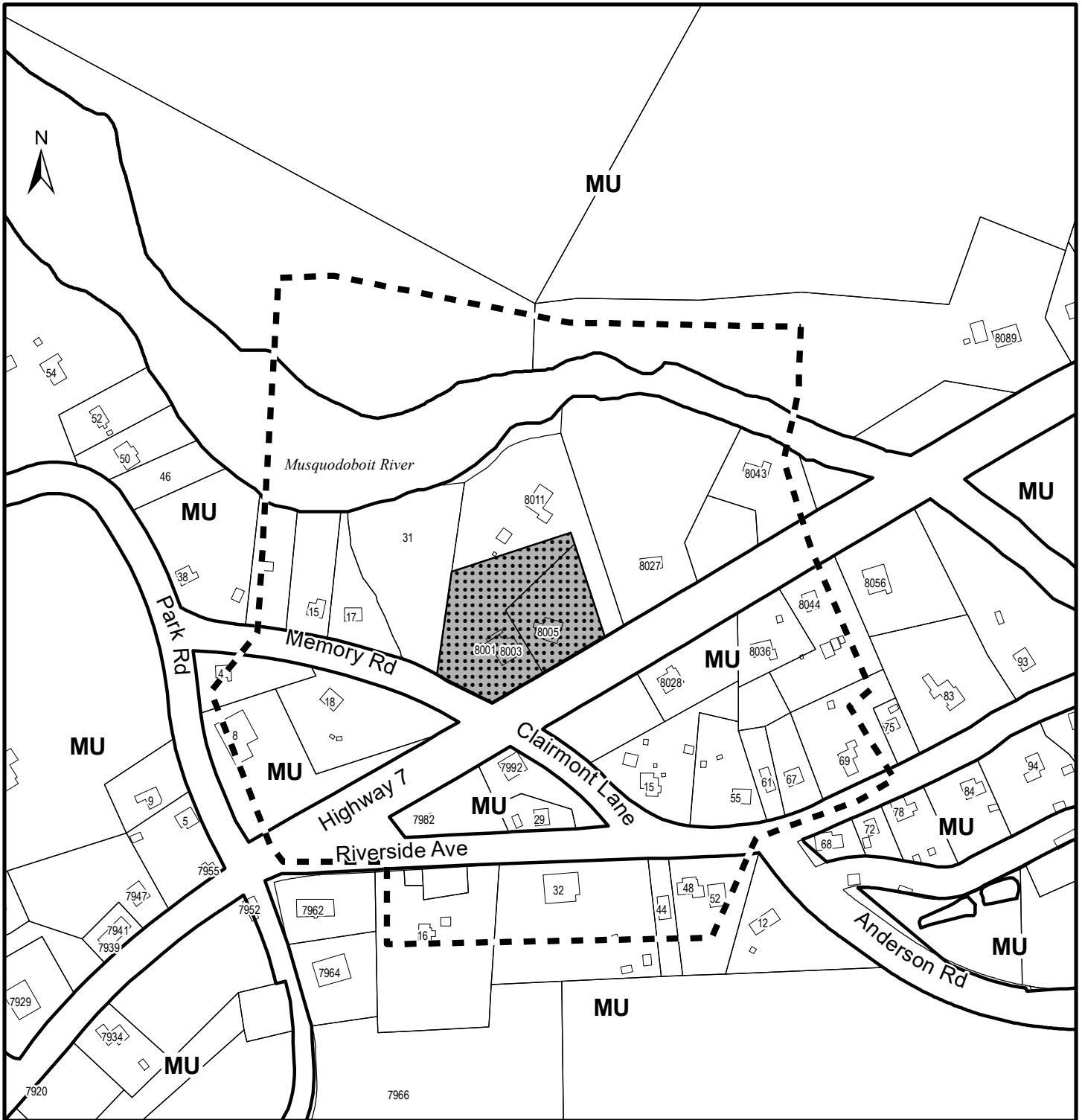
MU Mixed Use



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.


Eastern Shore (West)  
Plan Area




**Map 2 - Zoning and Notification**

8005 Highway 7,  
Musquodoboit Harbour

**HALIFAX**

 Area of Proposed Development Agreement

 Area of Notification

**Zone**

MU Mixed Use



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.

Eastern Shore (West)  
Plan Area



# ATTACHMENT A

THIS AGREEMENT made this      day of **[Insert Month]**, 20\_\_,

BETWEEN:

**KENDAR ENTERPRISES LTD.**

a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

**TOP LINE PROPERTIES INC.**

a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Lot AX Owner")

OF THE SECOND PART

- and -

**HALIFAX REGIONAL MUNICIPALITY**

a municipal body corporate, in the Province of Nova Scotia  
(hereinafter called the "Municipality")

OF THE THIRD PART

WHEREAS the Developer is the registered owner of certain lands located at #8005 Highway 7, Musquodoboit Harbour and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Lot AX Owner is the registered owner of certain lands located at #8001 and #8003 Highway 7, Musquodoboit Harbour, which said lands are more particularly described in Schedule A hereto (hereinafter called "Lot AX");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement on the Lands to allow for the conversion of the existing mixed use building to permit a multiple unit dwelling on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy MU-3 of the Eastern Shore (West) Municipal Planning Strategy (hereinafter called the "Development");

AND WHEREAS access to the Lands from Memory Road is by a private access easement over Lot AX;

AND WHEREAS the Harbour East-Marine Drive Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 21856;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

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## **PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION**

### **1.1 Applicability of Agreement**

- 1.1.1 The Parties agree that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

### **1.2 Applicability of Land Use By-law and Subdivision By-law**

- 1.2.1 Except as otherwise provided for herein, the development, use and subdivision of the Lands and Lot AX shall comply with the requirements of the applicable Land Use By-law and the Regional Subdivision By-law, as may be amended from time to time.
- 1.2.2 Variances to the requirements of the Land Use By-law shall be permitted in accordance with the *Halifax Regional Municipality Charter* on the Lands as shown on Schedule B.

### **1.3 Applicability of Other By-laws, Statutes and Regulations**

- 1.3.1 Further to Section 1.2, 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 Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer and Lot AX 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 Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the Development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities for the Development shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

### **1.4 Conflict**

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 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.

### **1.5 Costs, Expenses, Liabilities and Obligations**

- 1.5.1 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 Lands for the Development.

### **1.6 Provisions Severable**

- 1.6.1 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 provisions.

## **PART 2: DEFINITIONS**

### **2.1 Words Not Defined under this Agreement**

- 2.1.1 All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

## **PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS**

### **3.1 Schedules**

- 3.1.1 The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 21856:

Schedule A	Legal Description of the Lands and Lot AX
Schedule B	Site Plan

### **3.2 Requirements Prior to Approval**

- 3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

### **3.3 General Description of Land Use**

- 3.3.1 The uses of the Lands permitted by this Agreement are the following:

- (a) Multiple unit dwelling with a maximum of five (5) units;
- (b) Home business uses in conjunction with permitted dwelling units;
- (c) Commercial uses as listed below:
  - i. Craft Shops;
  - ii. Personal Service Shops;
  - iii. Medical clinics; and
  - iv. Offices; and
- (d) Accessory uses to the foregoing.

- 3.3.2 The uses of Lot AX, as shown on Schedule B, permitted by this Agreement are the following:

- (a) Access for the Development; and
- (b) Uses permitted in the applicable Land Use By-law, as amended from time to time.

- 3.3.3 The uses listed in Section 3.3.1 (a), (b) and (c) shall only be permitted within the existing building located on the Lands.
- 3.3.4 The uses listed in Section 3.3.1 shall be subject to the requirements of the Land Use By-law, except that home businesses shall be wholly contained within the dwelling unit which is the principal residence of the operator of the business and no one who is not a resident of the dwelling shall be employed in the home business.
- 3.3.5 Notwithstanding provisions of the applicable Land Use By-law, only one main building shall be permitted on the Lands.
- 3.3.6 Accessory buildings and structures shall meet the requirements of the applicable Land Use By-law.
- 3.3.7 The Development Officer may permit additions to the existing building on the Lands incidental to renovations required by Building Code to complete the internal conversion of the existing structure as shown on Schedule B, with confirmation from the HRM Building Official that another alternative is not reasonable. Any additions shall be in accordance with the provisions contained in the Mixed Use Zone of the Land Use By-law for Eastern Shore (West), as amended from time to time.
- 3.3.8 The Development Officer may permit encroachments within the required minimum front, side and rear yards on the Lands in conformance with the provisions of the applicable Land Use By-law.
- 3.3.9 Commercial uses shall only be located on the main floor of the existing building on the Lands.

#### **3.4 Parking, Circulation and Access**

- 3.4.1 The Parking Area shall be generally sited as shown on Schedule B.
- 3.4.2 Parking requirements shall be in accordance with the Land Use By-law, as may be amended from time to time.
- 3.4.3 The Development on the Lands will gain vehicular access from Memory Road by traversing over Lot AX, as shown on Schedule B.
- 3.4.4 The Development Officer may approve changes to the parking and circulation layout as shown on Schedule B if approval is granted from Nova Scotia Transportation and Infrastructure Renewal to install a vehicular access point directly from the Lands to Highway 7.

#### **3.5 Landscaping and Amenity Area**

- 3.5.1 The Fenced in Area, as generally shown on Schedule B, shall be retained as amenity space for residential tenants.
- 3.5.2 The Treed Area, as generally shown on Schedule B, shall be retained as a visual buffer from the surrounding low density residential uses. No tree removal or grade alteration shall be permitted within the Treed Area except where approved in writing by the Development Officer for the following:
  - (a) to remove fallen timber and dead debris where a fire or safety risk is present; or
  - (b) to remove a tree that is dead, dying or in decline and which represents a danger to private property, public infrastructure or other natural trees and vegetation.

### **3.6 Maintenance**

- 3.6.1 The Developer shall maintain and keep in good repair all portions of the Development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.
- 3.6.2 All disturbed areas of the Lands shall be reinstated to original condition or better.

### **3.7 Signs**

- 3.7.1 Signs shall meet the requirements of the Land Use By-law as amended from time to time.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

### **4.1 Off-Site Disturbance**

- 4.1.1 Any disturbance to existing off-site infrastructure resulting from the Development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

### **4.2 On-Site Water System**

- 4.2.1 The Lands shall be serviced through a privately operated on-site water distribution system.

### **4.3 On-Site Sanitary System**

- 4.3.1 The Lands shall be serviced through privately owned and operated sewer systems and treatment facilities. The Developer agrees to have prepared by a qualified professional and submitted to the Municipality, the NS Department of the Environment and Labour and any other relevant agency, a design for all private sewer systems. No Development Permit shall be issued prior to the Development Officer receiving a copy of all permits, licences, and approvals required by the NS Department of the Environment and Labour respecting the design, installation, construction of the on-site sewer system.

### **4.4 Solid Waste Facilities**

- 4.4.1 All refuse and recycling materials shall be contained within a building, or within suitable containers which are fully screened from view from any street or sidewalk.
- 4.4.2 All refuse and recycling containers shall be screened from view by means of opaque fencing, masonry walls and/or suitable landscaping.

## **PART 5: ENVIRONMENTAL PROTECTION MEASURES**

### **5.1 Stormwater Management Plans and Erosion and Sedimentation Control Plan**

- 5.1.1 Prior to the commencement of any grade alteration or modifications to the existing parking area on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:
- (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
  - (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other sections of this Agreement, no work is permitted on the Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction; and,
  - (c) Submit to the Development Officer a detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer.

## **PART 6: AMENDMENTS**

### **6.1 Non-Substantive Amendments**

- 6.1.1 The following items are considered by the Parties to be not substantive and may be amended by resolution of Council.
- (a) The addition of one dwelling unit within the existing building footprint on the Lands;
  - (b) The granting of an extension to the date of commencement of construction of the Development as identified in Section 7.3 of this Agreement; and,
  - (c) The length of time for the completion of the Development as identified in Section 7.5 of this Agreement.

### **6.2 Substantive Amendments**

- 6.2.1 Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

## **PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **7.1 Registration**

- 7.1.1 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.

### **7.2 Subsequent Owners**

- 7.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with Lot AX and the Lands which are the subject of this Agreement until this Agreement is discharged by Council.

7.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

### **7.3 Commencement of Development**

7.3.1 In the event that the Development on the Lands has not commenced within one (1) year 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 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 the issuance of a Building Permit for a dwelling unit.

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**

7.4.1 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; or
- (c) discharge this Agreement.
- (d) for those portions of the Development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the applicable Municipal Planning Strategy and Land Use By-law, as amended from time to time.

### **7.5 Discharge of Agreement**

7.5.1 If the Developer fails to complete the Development, or phases of this Development, after five (5) years from the date of registration of this Agreement at the 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;
- (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 applicable Municipal Planning Strategy and Land Use By-law, as amended from time to time.

## **PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **8.1 Enforcement**

8.1.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the

Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

## **8.2 Failure to Comply**

8.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty 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 Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth, development of the Lands shall conform with the provisions of the Land Use By-law; or
- (d) 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.



**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:

**KENDAR ENTERPRISES LTD.**

\_\_\_\_\_  
Witness

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

**TOP LINE PROPERTIES INC.**

\_\_\_\_\_  
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:

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

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
MUNICIPAL CLERK

\_\_\_\_\_  
Witness

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that \_\_\_\_\_, \_\_\_\_\_ of the parties thereto, signed, sealed and delivered the same in his/her presence.

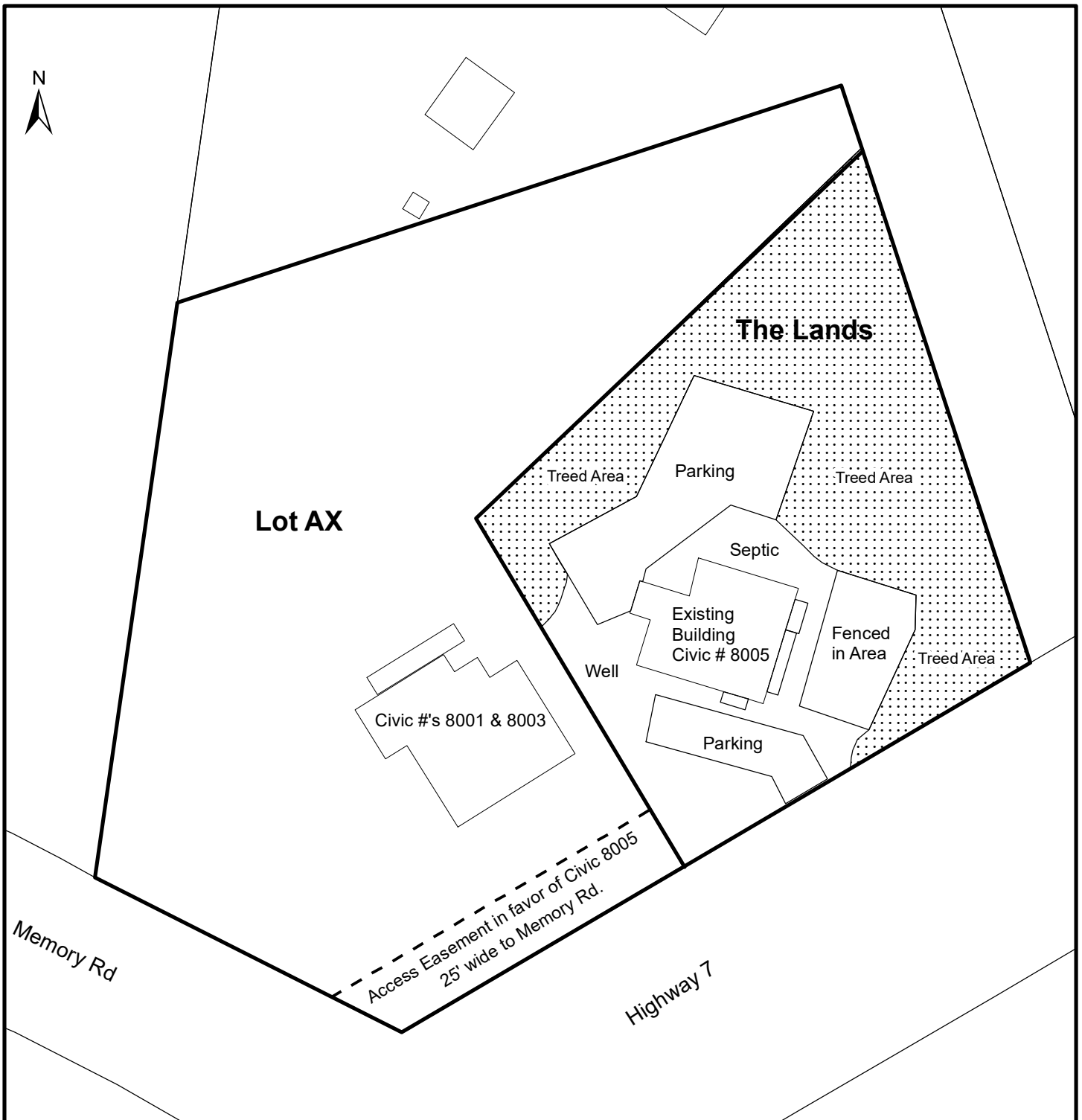
\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Cathy Mellett, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

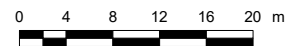
Schedule B - Site Plan



**Schedule B - Site Plan**

8005 Highway 7,  
Musquodoboit Harbour

**HALIFAX**



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

Eastern Shore (West)  
Plan Area

## ATTACHMENT B

### Review of Relevant Policies from the Eastern Shore (West) MPS

<b>Policy</b>	<b>Comment</b>
<p><b>MU-3</b> Notwithstanding Policy MU-2, it shall be the intention of Council to consider permitting multiple unit dwellings in accordance with the development agreement provisions of the Planning Act. In considering such an agreement, Council shall have regard to the following:</p>	
<p>(a) that the architectural design and scale of the building is compatible with nearby uses;</p>	<p><b>Satisfied.</b> The proposed development only involves internal conversion of building that existed prior to 1991. No changes to the architectural design or scale of the existing building are proposed. However, unenclosed structures and minor additions incidental to Building Code requirements may be considered under the proposed development agreement. The existing building is two storeys in height. Surrounding buildings are generally one or two storeys in height. A two-storey mixed commercial-residential building immediately abuts the subject property and treed areas buffer the two-storey development from adjacent low-density residential uses. Staff advise that the design and scale of the existing building is compatible with nearby uses.</p>
<p>(b) that adequate separation distances are maintained from low density residential developments and that landscaping measures are carried out to reduce the visual effects of the proposed use;</p>	<p><b>Satisfied.</b> The proposed development is an internal conversion of a former commercial building which is expected to have minimal impact on surrounding uses, specifically low-density residential uses. Existing building setbacks are maintained. Existing vegetation in the rear and eastern side yard (shown as "Treed Area" on the site plan, Schedule B of Attachment A) and along Highway 7 is to be retained.</p>
<p>(c) that open space and parking areas are adequate to meet the needs of residents;</p>	<p><b>Satisfied.</b> The internal conversion of the existing building does not involve reducing open space on the property. The proposed development agreement requires that the treed areas surrounding the building are retained. The applicant intends to use the existing parking lot, which contains 19 spaces. Parking requirements will be in accordance with the Eastern Shore (West) Land Use By-law and confirmed at the permit stage.</p>
<p>(d) the means by which solid and liquid wastes will be treated;</p>	<p><b>Satisfied.</b> Existing on-site services have been capable of servicing the existing 2 dwelling units, office space and a daycare for 22 children, therefore it is expected that it will be able to support the uses proposed. It shall be confirmed that the necessary servicing regulations are satisfied at the permit stage.</p>
<p>(e) the impact of the proposed use on traffic volume and the local road network, and the adequacy of sighting distances from the entrance and exit of the site; and</p>	<p><b>Satisfied.</b> The subject site is located on a Provincially owned and maintained road. It was staff's opinion that a traffic statement was not required for this application as the conversion of commercial space to three residential units</p>

	represents a change to a less intensive use. NSTIR and HRM staff have reviewed the application and have not identified any concerns with traffic volume and the local road network, and the adequacy of sighting distances from the entrance and exit of the site. Access to the site is currently provided through the abutting property at #8001 and 8003 Highway 7 off Memory Road. The property at #8005 Highway 7 has frontage along Highway 7. If the property owner wished to have direct access to Highway 7, a request for a new driveway would be reviewed by NSTIR and would have to meet NSTIR standards.
<i>(f) the provisions of Policy IM-10.</i>	<b>Satisfied.</b> It is staff's opinion that the proposal is reasonably consistent with all provisions of Policy IM-10. See below.

<b>Policy</b>	<b>Comment</b>
<b>IM-10</b> <i>In considering development agreements and amendments to the land use bylaw, in addition to all other criteria as set out in various policies of this Strategy, Council shall have appropriate regard to the following matters:</i>	
<i>(a) that the proposal is in conformity with the intent of this Strategy and with the requirements of all other municipal by-laws and regulations.</i>	<b>Satisfied.</b> The Regional Plan suggests that higher densities should be considered where infrastructure and amenities are readily available and identifies strategic areas where growth should occur in rural parts of the Municipality. The subject property is within the Musquodoboit Harbour Rural Growth Centre. Therefore, staff advise that a multiple unit dwelling at the subject location is in conformity with the Regional Plan. Policy MU-3 of the Easter Shore (West) plan allows for the consideration of multiple unit dwellings within the mixed-use designation, through the Development Agreement process. The criteria listed in Policy MU-3 (see above) exist to reduce the impacts that multiple unit dwellings have on the existing neighbourhood. It is staff's opinion that the proposed conversion of the existing building is in conformity with the intent of the MPS.
<i>(b) that the proposal is not premature or inappropriate by reason of:</i>	
<i>(i) the financial capability of the Municipality to absorb any costs relating to the development;</i>	<b>Satisfied.</b> The proposed development does not impose any costs to the Municipality.
<i>(ii) the adequacy of central or on-site sewerage and water services;</i>	<b>Satisfied.</b> Refer to comments for Policy MU-3(d).
<i>(iii) the adequacy or proximity of school, recreation or other community facilities;</i>	<b>Satisfied.</b> The proposal would permit an additional 3 dwelling units if approved, which staff does not expect to pose significant demand for surrounding community facilities and schools.
<i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i>	<b>Satisfied.</b> Refer to comments for Policy MU-3(e).

<i>(v) the potential for damage to or for destruction of designated historic buildings and sites.</i>	<b>N/A</b>
<i>(c) That controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i>	
<i>(i) type of use;</i>	<b>Satisfied.</b> The proposal is to permit an additional three residential units within an existing mixed-use building containing two dwelling units today. The subject property is in proximity to the Village Core area which comprises of a variety of residential, commercial, institutional and recreational uses. Staff advise that the conversion of commercial uses on the ground floor of the existing building to residential use does not impose conflict with nearby uses.
<i>(ii) height, bulk and lot coverage of any proposed building;</i>	<b>Satisfied.</b> Refer to comments for Policy MU-3(a).
<i>(iii) traffic generation, access to and egress from the site, and parking;</i>	<b>Satisfied.</b> Refer to comments for Policy MU-3(e).
<i>(iv) open storage; and</i>	<b>Satisfied.</b> No open storage has been proposed as part of this application but in the future any open storage shall be in accordance with the Eastern Shore (West) Land Use By-law requirements.
<i>(v) signs.</i>	<b>Satisfied.</b> No signage has been proposed as part of this application, but in the future any signage shall be in accordance with the Eastern Shore (West) Land Use By-law requirements.
<i>(d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding; and</i>	<b>Satisfied.</b> Staff have reviewed the application and have not identified any concerns with the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding. Existing vegetation on the site mitigates the visual impact of and screens the development from nearby low-density residential uses.  The development agreement contains provisions that will require an erosion and sedimentation plan to be prepared and reviewed by staff should the applicant want to make changes to their existing parking area and driveway.
<i>(e) any other relevant matter of planning concern.</i>	No other planning matters have been identified.
<i>(f) 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,</i>	<b>N/A</b>

*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)*