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Item No. 13.1.1
North West Community Council
July 12, 2021

TO: Chair and Members of North West Community Council

SUBMITTED BY: - Original Signed -
Kelly Denty, Executive Director of Planning and Development

- Original Signed -
Jacques Dubé, Chief Administrative Officer

DATE: June 2, 2021

SUBJECT: **Case 23247: Measurement of Building Height under the Sackville Drive Land Use By-law**

ORIGIN

On November 9, 2020, the following motion of North West Community Council was put and passed:

“That North West Community request a staff report for an amendment to the Sackville Land Use Bylaw, Part 6, section 27(a) to allow for the height of a building to be based on the mean grade of the building, not the lowest grade of the curb.”

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that North West Community Council:

1. Direct staff to commence the planning process to amend the Sackville Drive Land Use By-law to allow for the height of a building to be based on the mean grade of the building, not the lowest grade of the curb.

BACKGROUND

Motion

Council's motion of November 9, 2020 directed staff to prepare a report and recommendations with respect to amending the Sackville Land Use By-law Part 6, Section 27(a) to allow for the height of a building to be based on the mean grade of the building, not the lowest grade of the curb. However, confirmation with the area Councillor later confirmed that there was an error in the written motion, and the request was for an amendment to the Sackville Drive Land Use By-law, not the Sackville Land Use By-law. As such, this report speaks to the regulations applicable to the Sackville Drive plan area.

History

Prior to the adoption of the Sackville Drive Secondary Planning Strategy (SPS) and Land Use By-law (LUB), land use and development on Sackville Drive was regulated through the Sackville Municipal Planning Strategy (MPS). The Sackville MPS contained no restrictions on the maximum height of buildings within the C-3 (Commercial Corridor) Zone which was applicable to the majority of properties along Sackville Drive.

In May of 2002, when the Sackville Drive SPS and LUB were adopted, a similar approach of not restricting building heights was taken. Upon adoption of these new rules, staff indicated that a future review of the planning documents may be needed to address any inconsistencies, omissions, or housekeeping matters within the documents. Following the submission of the first development permits under these new rules, it prompted staff to re-evaluate the approach of not regulating building height.

In March 2005, staff presented Regional Council with a report that included a review of the Sackville Drive SPS and LUB. In this report, staff recommended Regional Council approve amendments for policy and by-law provisions to limit the height of all main commercial buildings and multiple unit dwellings to a maximum of 3 storeys up to a maximum height of 45 feet measured from established grade. The 2005 report indicated that limitations to building height were proposed as an interim measure until a more detailed review could be conducted.

On July 20, 2006, staff presented North West Community Council with a report (Case 00808) that recommended Council adopt proposed amendments to the Sackville Drive SPS and LUB. Staff had re-evaluated height restrictions along Sackville Drive and undertaken public engagement. Staff recommended policy to permit buildings to a maximum of three storeys or 45 feet from established grade as-of-right, or to a maximum of six storeys with the incorporation of building step-backs from the street above a height of three storeys. Staff identified that building height must be compatible with surrounding buildings and community character. The report recommended transitional measures, massing controls, and setbacks be required to reinforce human scale. The incorporation of building step-backs or transitions above three storeys was recommended to reduce the visual impact of the buildings' height and mass in relation to the surrounding built form.

On September 5, 2006, Regional Council held a public hearing and adopted amendments to the Sackville Drive SPS and LUB. One of the proposed amendments enabled a maximum building height of 50 feet as measured from grade at the front property line, and that buildings greater than 50 feet (measured from grade at the front property line) could only be considered by development agreement. The LUB amendments can be found in Policy SS-4(a) of the Sackville Drive SPS, and Section 27(a) of the Sackville Drive LUB as they are numbered and written today.

Current Policy and LUB Context

As a result of the amendments in 2005 and 2006, there are regulations in both the Sackville Drive SPS and LUB which regulate building heights along Sackville Drive. The Sackville Drive LUB regulates building height under *Part 6 General Provisions for all Zones*, as follows:

27 (a) The height of a building in all zones shall be not more than 50ft (15.24m) in height measured from the established grade at front property line.

On corner lots where there is a difference in established grade on each lot frontage at the street line, the height requirement shall be measured from the street frontage with the lower grade.

On lots where there is a difference in established grade, the height requirement shall be measured from the lower grade.

Notwithstanding the aforementioned, chimneys, antennae, flag poles, bell towers, spires, steeples, vents or other roof or building appurtenances extending from the surface of a roof shall not be measured in calculating building height; however, such appurtenances shall not:

- 1) be habitable living space,**
- 2) extend more than ten (10) feet above the building height.**

Further, any such building appurtenance shall be integrated with the architectural treatments of the buildings and roof structure. (RC-Sep 5/06;E-Oct 7/06)

The Sackville Drive LUB further requires that any building over 50 feet in height, within any designation, be considered by development agreement. Additionally, Part 2, Definitions of the Sackville Drive LUB defines both height and established grade (see Attachment E).

The Sackville Drive SPS provides policy SS-4(a) for Council to consider development agreements within all designations for buildings over 50 feet in height above established grade (see Attachment D).

DISCUSSION

Staff have evaluated Community Council's motion to amend the Sackville Drive Land Use By-law Part 6, Section 27(a) to allow for the height of a building to be based on the mean grade of the building, not the lowest grade of the curb, and recommend that additional research and public consultation is warranted.

Background of Existing Policy

In 2005, staff researched the impacts of height along Sackville Drive and consulted the community in a workshop hosted by North West Planning Advisory Committee (PAC) on December 5, 2005, and a PAC-led workshop on June 12, 2006. Staff also consulted with the Sackville Drive Business Association and business owners along Sackville Drive.

The natural elevations of Sackville Drive result in a condition where the north side of the street is significantly higher than the south side. Low-density residential development exists to the rear of many properties fronting Sackville Drive on both the north and south sides. Staff evaluated the impacts of building heights on both sides of Sackville Drive, and concluded that a lack of building height regulations would result in inconsistent building heights, which was not the intent or vision of the Sackville Drive SPS. The elevation change from one side of Sackville Drive to the other would result in buildings on the north side of the street being materially taller than buildings on the south side. Additionally, concern existed that taller buildings along high side of Sackville Drive that abut lower scale residential developments at the rear would visually intrude on the existing neighborhood.

Staff identified that restricting building height for all buildings to a maximum of 45 feet from the established grade (or up to six storeys if step-backs were incorporated past the third storey) would effectively control

building height inconsistency and minimize impacts on adjacent existing lower-density residential developments. Considerations were made for lots with differences in existing grade, enabling height to be measured from the lower grade.

In recognition of property owners' interest in building higher than six storeys without step-backs, staff identified other traditional development control tools that could be used to minimize impacts and improve compatibility of buildings over 45 feet in height such as regulating massing, setbacks, and transitions. This option notwithstanding, it is important to note that these would need to be evaluated on a site by site basis to ensure they are implemented correctly. This led staff to recommend the creation of policy SS-4(a) of the Sackville Drive SPS, for Council to consider development agreements for buildings over six storeys in height.

At the public hearing, on September 5, 2006, Regional Council approved the majority of policy amendments outlined above. Regional Council made a motion to enable a maximum building height of 50ft. (measured from grade at front property line) and buildings greater than 50ft. (measured from grade at front property line) by development agreement. Councillors expressed concern with the quality of development that could take place as-of-right and that a development agreement option would give the community and Council an additional level of oversight. Councillors supported the motion noting that the businesses have a sense of pride and wanted to improve the area, therefore they would not be in favour of development that was not compatible. Councillors believed the amendment put forward best represented the desires of the community at the time.

The motion was passed by Regional Council, and the approved wording in the Sackville Drive Land Use By-law reads: "*The height of a building in all zones shall be not more than 50ft (15.24m) in height measured from the established grade at front property line.*" This policy remains in place today.

Existing Policy in Action

Staff have reviewed current policy and existing developed and undeveloped sites along Sackville Drive to begin to determine impacts of amending the LUB regulation as per Council's motion on November 9, 2020. To help aid in visually representing the existing policy in action, staff compiled information on sites within the Sackville Drive SPS area that had recently been granted building permits for both as-of-right development and development through a development agreement.

Three sites within the Sackville Drive SPS area, as provided in the table below, have been chosen to illustrate policy visually, as they have acquired building permits within the past ten years under current SPS and LUB policy. Two of these sites are located on the high (north) side of Sackville Drive, and one is located on the low (south) side of Sackville Drive.

Civic Address	Date	Unit Count	Building Height/Storeys	DA/As-of-Right
249 Sackville Drive (north)	2015	72	60 feet/4 storeys	DA
24 Sackville Cross Road (south)	2016	36	5 storeys	As-of-Right
30 Baxter Drive (north)	2020	54	50 feet/5 storeys	As-of-Right

Each of these buildings were constructed to roughly five storeys under the current SPS and LUB policy, without creating building incompatibilities from the north to the south sides of the street or causing detriment to lower-density residential developments. The policies demonstrate the achievement of uniformity of building height from one side (north) of Sackville Drive to another (south).

The first site (Attachment A) is 30 Baxter Drive, located on the high (north) side of Sackville Drive, and has frontage on Sackville Drive. A building permit was issued in 2020 to construct a new multi unit dwelling with 54 residential units as-of-right under the Sackville Drive LUB provisions. The building is currently under construction and was approved at 50 feet which is 5 storeys total inclusive of underground parking.

The second site (Attachment B) is 249 Sackville Drive also located on the high (north) side of Sackville Drive. A building permit was issued in 2015 to construct a multi unit building with 72 residential units. The building was constructed under the provisions of a development agreement (Case 16416). The development agreement regulates the building height to a maximum of 60 feet and no more than four storeys. There are no step-backs required in the development agreement, however there are provisions for buffering and screening. The building on site today is four storeys high with a level of underground parking.

The third site (Attachment C) is 24 Sackville Cross Road, located on the low (south) side of Sackville Drive. A building permit was issued in 2016 to construct a multi unit building with 36 residential units. The building was constructed as-of-right under the Sackville Drive LUB provisions. The building on the site today is four storeys high with a level of underground parking and no building setbacks.

Action Required in This Planning Process

Staff advise that more work is required to fully understand the implications of removing the wording “*at front property line*” from Section 27(a) of the Sackville Drive LUB:

27 (a) The height of a building in all zones shall be not more than 50ft (15.24m) in height measured from the established grade at front property line.

If the reference point for height calculations was altered from the grade at the front property boundary to the grade at the building face, application of the established grade definition would result in higher building forms along the high (north) side of Sackville Drive which could contribute to building heights that are out of proportion from development found on the south side. The extent of how much higher or more intrusive to adjacent existing residential developments would be determined through the course of the planning process.

It should also be noted that basing height calculations on the established grade at the front property line creates certainty with respect to overall building height because the grade at that location can not be materially altered during the development process. Basing building height calculation on finished grade at the perimeter of the building is a valid method of regulating height but it does introduce some capacity to manipulate grades which can result in additional building height that may not be otherwise achievable.

If Council directs staff to proceed with the by-law amendments outlined in this report, staff would work to determine the impact of the proposed LUB amendment to remove the height measurement from the front property line with a goal of representing this impact visually. Mapping would be prepared to identify the following:

- Properties within the SPS area that would be affected by the LUB amendment;
- Proximity of affected sites to existing low density residential development; and
- The maximum height buildout of specific sites based on existing contour mapping.

In addition to this research, engagement with the public and Planning Advisory Committee would also be warranted to gather feedback to the findings. As such, staff recommend that an amendment of this nature go through the formal planning application process which would identify to Community Council:

- If there has been a change in the area to warrant the amendment; and
- If the amendment would create conflict with other existing policy, or the surrounding community.

Conclusion

Staff advise that amendments to the Sackville Drive Land Use By-law should be based on a planning review involving evidence-based research and public engagement to ensure changes reflect the needs of the community, existing policy direction, and best planning practice. Therefore, staff recommend that the North West Community Council direct staff to begin a planning application for an amendment to the Sackville

Drive Land Use By-law to allow for the height of a building to be based on the mean grade of the building, not the lowest grade of the curb.

COMMUNITY ENGAGEMENT

At this time, no community engagement has been undertaken on the subject of an amendment to the Sackville Land Use Bylaw to allow for the height of a building to be based on the mean grade of the building, not the lowest grade of the curb. Future engagement is a recommendation of this report, which would include a recommendation from the North West Planning Advisory Committee.

A public hearing would be required before Council could consider approval of any proposed LUB amendments. Changes to the land use by-law will potentially impact local residents, property owners, and business owners.

FINANCIAL IMPLICATIONS

Where this is a Council initiated application, the Municipality will be responsible for costs associated with its processing. A planning application fee will not be received, and newspaper advertisements / mail out notifications for any required engagement events or public hearings will need to be paid for by the Municipality. When combining the lost application fee revenue with the notification costs, it is anticipated that this application will cost the Municipality approximately \$8,000. All costs will be paid for within the approved 2021-2022 budget for C310 Planning Applications and using 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 LUB amendment are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

1. North West Community Council may choose to not direct staff to review a formal planning application an amendment to the Sackville Drive Land Use By-law, to allow for the height of a building to be based on the mean grade of the building, not the lowest grade of the curb.
2. North West Community Council may choose to direct staff in a manner not identified in this report. In selecting this option, Council should be as specific as possible regarding the nature of change they are seeking to the existing policies.

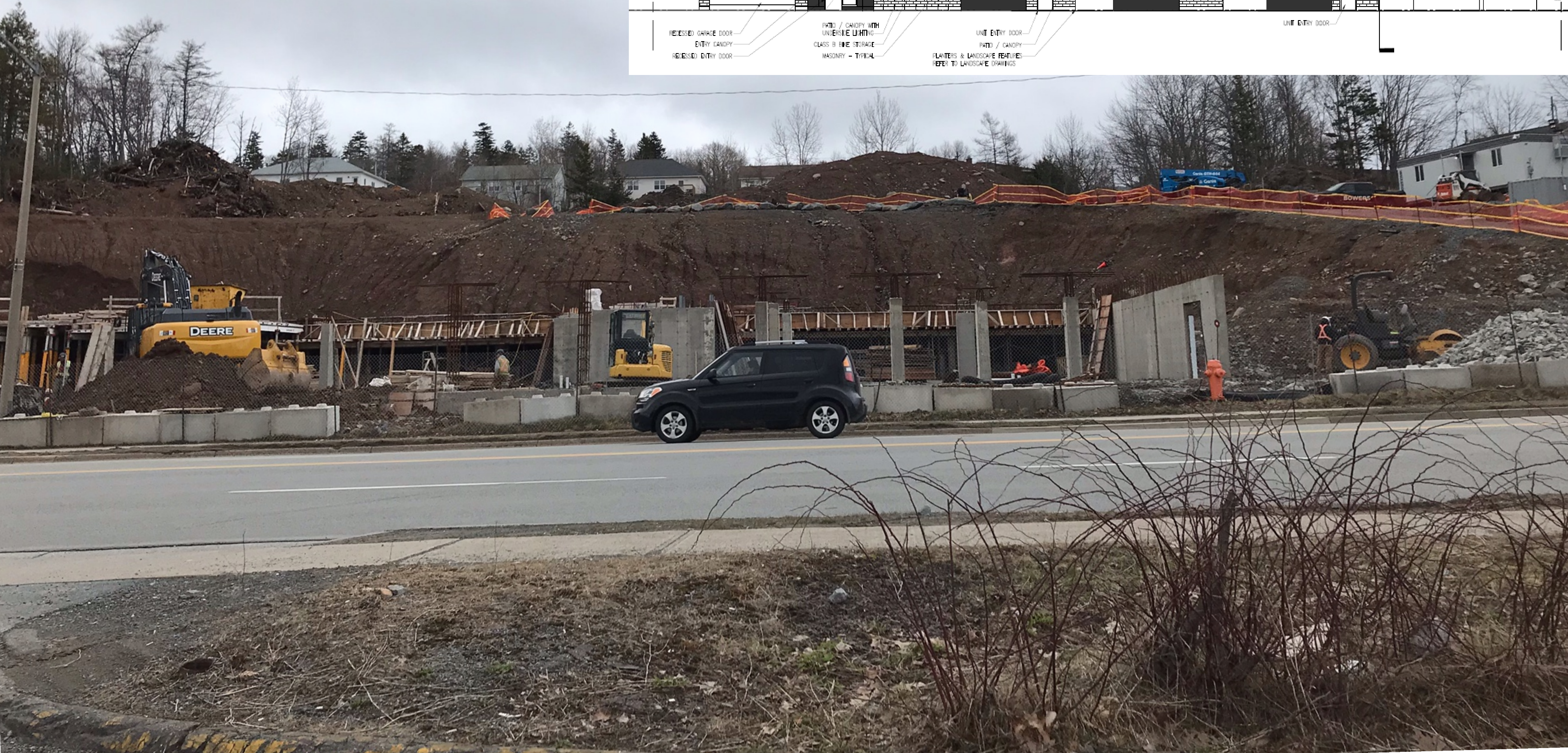
ATTACHMENTS

Attachment A: Image of 30 Baxter Drive, Lower Sackville
Attachment B: Google Image of 249 Sackville Drive, Lower Sackville
Attachment C: Google Image of 24 Sackville Cross Road
Attachment D: Relevant Excerpts from Sackville Drive Secondary Planning Strategy
Attachment E: Relevant Excerpts from Sackville Drive Land Use By-law

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: Brittney MacLean, Planner II, 902.223.6154

Attachment A: Image of 30 Baxter Drive, Lower Sackville



Attachment B: Google Image of 249 Sackville Drive, Lower Sackville



Attachment C: Google Image of 24 Sackville Cross Road



Policy SS-4 (a)

Within all designations, buildings over 50ft (15.24m) in height above established grade shall only be considered by development agreement in accordance with the provisions of the Municipal Government Act. In considering any such agreement, Council shall have regard to the following:

- (a) Building shall be oriented to the street and transit services and primary entrances shall be orientated to the sidewalk and primary pedestrian ways;**
- (b) in a multiple unit dwelling compatible commercial use may be required at street level and adequate recreation and amenity space shall be provided;**
- (c) compatibility and impact on the surrounding built form, lands uses and residential areas;**
- (d) microclimate issues such as wind, solar orientation, and shadowing;**
- (e) pedestrian street level activity shall be encouraged through, but not limited to, the incorporation of outdoor cafes and ground floor uses. Consideration shall be given to weather protection for pedestrians;**
- (f) incorporation of building setbacks at various levels to reduce the visual impact of the height and mass in relation to the surrounding built form;**
- (g) landscaping complements shall reinforce circulation paths, highlight entrances, provide shade, and add seasonal interest and designed for appreciation by pedestrians, bicyclists and motorists. Adequate landscaping features and/or street trees should be provided around the perimeter and throughout the site of the development to enhance the aesthetics of the site;**
- (h) incorporation of streetscape elements and furniture;**
- (i) traffic circulation and access to and from the site should be designed to minimize adverse impacts on the adjacent residential uses and street network;**
- (j) significant natural and cultural features on the site should be identified and protected where appropriate;**
- (k) lighting shall be designed to provide security, safety, and visual appeal for both pedestrians and vehicles while ensuring minimal impact on adjacent properties;**
- (l) the provisions of Policy I-5 be met.**

(RC-Sep 5/06;E-Oct 7/06)

PART 2: DEFINITIONS

Established Grade means with reference to a building, the average elevation of the finished surface of the ground where it meets the exterior of such building, and when used with reference to a structure, shall mean the average elevation of the finished grade of the ground immediately surrounding such structures, exclusive in both cases of any artificial embankment or entrenchment and when used with reference to a street, road or highway means the elevation of the street, road or highway established by the Municipality or other designated authority.

Height as applied to any building means the vertical distance of the highest point of the roof above the mean grade of the curbs of all streets adjoining the building or the mean grade of the natural ground so adjoining, if such grade of the ground is not below the grade of the curb.

PART 5: USES PERMITTED BY DEVELOPMENT AGREEMENT

1. Notwithstanding Part 4, the following buildings or uses may be permitted by development agreement, in accordance with the development agreement provisions of the Municipal Government Act and as provided for by Policy I-4 of the Secondary Planning Strategy for Sackville Drive:

Within any Designation

- (10) **buildings over 50ft (15.24m) in height in accordance with Policy SS-4(a) (RC-Sep 5/06;E-Oct 7/06)**

PART 6: GENERAL PROVISIONS FOR ALL ZONES

Height Regulations

27. The height regulations of this Bylaw shall not apply to church spires, water tanks, elevator enclosures, silos, flagpoles, television or radio antennae, solar panels, ventilators, skylights, chimneys or clock towers and other architectural elements.
- 27 (a) **The height of a building in all zones shall be not more than 50ft (15.24m) in height measured from the established grade at front property line.**

On corner lots where there is a difference in established grade on each lot frontage at the street line, the height requirement shall be measured from the street frontage with the lower grade.

On lots where there is a difference in established grade, the height requirement shall be measured from the lower grade.

Notwithstanding the aforementioned, chimneys, antennae, flag poles, belltowers, spires, steeples, vents or other roof or building appurtenances extending from the surface of a roof shall not be measured in calculating building height; however, such appurtenances shall not:

- 1) be habitable living space,**
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Further, any such building appurtenance shall be integrated with the architectural treatments of the buildings and roof structure. (RC-Sep 5/06;E-Oct 7/06)