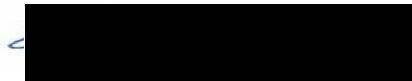


TO: Chair and Members of North West Community Council



SUBMITTED BY:

Eric Lucic, Acting Executive Director of Planning and Development

DATE: July 26, 2023

SUBJECT: Case 23293: Development Agreement, Beaver Bank Road, Beaver Bank

SUPPLEMENTARY REPORT

ORIGIN

- Application by WM Fares Architects, on behalf of property owners AG Property Holdings Limited and 4378018 Nova Scotia Limited;
- On January 16, 2023, North West Community Council refused the proposed development agreement to permit a 46-unit four-storey apartment building at Beaver Bank Road, near the intersection with Windgate Drive, Beaver Bank (PID 40117236);
- On February 2, 2023 AG Property Holdings Limited and 4378018 Nova Scotia Limited filed an appeal of Council's decision to refuse the development agreement to the Nova Scotia Utility and Review Board;
- On May 26, 2023, the Nova Scotia Utility and Review Board held a Hearing to consider the appeal of Council's decision; and
- On July 21, 2023, the Nova Scotia Utility and Review Board directed that North West Community Council approve the development agreement for a 46-unit four-storey apartment building at Beaver Bank Road, near the intersection with Windgate Drive, Beaver Bank (PID 40117236).

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of the staff report dated November 21, 2022.

BACKGROUND / DISCUSSION

On January 16, 2023, North West Community Council held a public hearing to consider an application for a development agreement for lands at Beaver Bank Road, near the intersection with Windgate Drive, in Beaver Bank. The proposed development agreement would allow for a 46-unit 4-storey residential apartment building. Policy UR-8, subject to Policy IM-13, of the Sackville Municipal Planning Strategy (MPS) enables multiple unit dwellings beyond 6 units through the development agreement process.

North West Community Council refused to approve the development agreement, expressing concerns with the lack of traffic infrastructure to support the development, with emphasis on the Beaver Bank Road and Windgate Drive intersection; lack of available medical facilities, schools and other needed community amenities; that the development does not fit the community landscape and there are potential environmental implications and issues surrounding storm water. North West Community Council discussed the impact that the proposed residential project on the subject lands would have on the current traffic infrastructure and the local school system. North West Community Council did not agree with the recommendation of the North West Planning Advisory Committee to approve the application.

Proposal Details

The applicant proposed a development agreement for the subject lands at Beaver Bank Road, near the intersection with Windgate Drive, to allow for a 46-unit, 4-storey apartment building, 68 parking spaces (36 below grade, 32 surface-level), landscaped areas, buffer screening, approximately 104 square metres of interior amenity space for residents and single driveway access located at Beaver Bank Road.

For more information, please see the staff report (Attachment A), which was tabled at North West Community Council on January 16, 2023.

Appeal, UARB Decision and Order

Through their process, the Board must not interfere with the decision of Council unless it determines Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy (MPS). If the appellant can show, on the balance of probabilities, that Council's decision does not reasonably carry out the intent of the MPS, the Board must reverse Council's decision to refuse the development agreement. If, however, the appellant fails to meet this standard of proof, the Board must defer to the decision of Council.

The refusal of the development agreement was subsequently appealed by the land owners to the Nova Scotia Utility and Review Board (the Board). Pursuant to section 22(1) of the *Utility and Review Board Act*, and section 262 of the *HRM Charter*, the Board has exclusive jurisdiction to hear appeals from decisions of Council relating to approval or denial of development agreements.

The Board heard the appeal on May 26, 2023 (2023 NSUARB 136 – M10974). In this instance, the Board found Council's refusal did not reasonably carry out the intent of the MPS and ordered that the development agreement be approved by Council (Attachment B). Details of the Board's decision can be found in Attachment C of this supplementary report. Consequently, North West Community Council has been directed to approve the development agreement by Order of the Board.

FINANCIAL IMPLICATIONS

There are no financial implications. The HRM costs associated with processing this planning application can be accommodated with the approved 2023-2024 operating budget for C310 (Urban and Rural Planning Applications).

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This report is as a result of the Order of the Nova Scotia Utility and Review Board. Information concerning risks and other implications of adopting the proposed development agreement are contained within the Discussion section of the previous report provided to North West Community Council as contained in Attachment A.

COMMUNITY ENGAGEMENT

The community engagement process relative to the original application was consistent with the intent of the HRM Community Engagement Strategy. Community engagement was achieved through providing information and seeking comments through the HRM website (receiving 1261 unique views), signage posted on the subject site, letters mailed to 450 property owners within the notification area and a virtual public information meeting held on March 9, 2022. A public hearing was held on January 16, 2023. No further engagement has been performed subsequent to the Board Order. An action order provided by the Board is not appealable to the Board.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

None. The Board has ordered that the Council approve the development agreement as prescribed by their Order and as such there are no alternatives in this case.

ATTACHMENTS

Attachment A: Staff Report and Development Agreement
Attachment B: Nova Scotia Utility and Review Board Order of July 21, 2023
Attachment C: Nova Scotia Utility and Review Board Decision of July 21, 2023

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: Darrell Joudrey, Planner II, Current Planning, 902.225.630



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

Item No. 10.1.1
North West Community Council
December 12, 2022
January 16, 2023

TO: Chair and Members of North West Community Council

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

DATE: November 21, 2022

SUBJECT: **Case 23293: Development Agreement at Beaver Bank Road and Windgate Drive, Beaver Bank**

ORIGIN

Application by WM Fares Architects

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that North West Community Council:

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A, to permit a four-storey, 46-unit apartment building on lands near the intersection of Beaver Bank Road and Windgate Drive, Beaver Bank 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 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

WM Fares Architects, on behalf of Holy Trinity Pastoral Unit, is applying for a development agreement to permit a four-storey apartment building containing 46 units near the intersection of Beaver Bank Road and Windgate Drive in Beaver Bank. The area has established infrastructure but relatively low density residential development surrounding it, and has potential to accommodate an increase in residential intensity. The proposed development agreement seeks to allow development to occur in a way that responds to local context without significant change in the area's character.

Subject Site	PID 40117236
Location	East side of Beaver Bank Road between Windgate Drive and Stokil Drive, Beaver Bank
Regional Plan Designation	Urban Settlement (UR) and Rural Commuter (RC) designations under the Regional Municipal Planning Strategy
Community Plan Designation (see Map 1)	Urban Residential (UR) designation under the Sackville Municipal Planning Strategy (MPS)
Zoning (see Map 2)	R-6 (Rural Residential) zone under the Sackville Land Use By-law (LUB)
Size of Site	6342.3 sq. m. (68,298 sq. ft.)
Street Frontage	138.68 m (455 ft.)
Current Land Use(s)	undeveloped
Surrounding Use(s)	The surrounding area is mostly low density residential development with some commercial properties near the subject lands. On the west side of Beaver Bank Road, opposite the subject lands, is Barrett Firewood and Barrett Lumber Company. To the north and east are vacant lands including a disused HRM road parcel. To the immediate west is a single unit dwelling. To the south is vacant land with a low density residential community beyond that.

Proposal Details

The applicant proposes to develop a residential apartment building. The major aspects of the proposal are as follows:

- 4 storeys (23 metres) in height;
- 46 units; minimum 50% of which must be 2 bedrooms;
- driveway access from Beaver Bank Road;
- 36 below grade parking spaces and 32 surface parking spaces;
- 104 square metres interior amenity space;
- light and medium toned vertical siding with dark tone spandrel panels;
- roof materials of the same light and medium tones as exterior walls; and
- steeply pitched gable-end forms and clear balcony panels to reduce perception of massing.

Enabling Policy and LUB Context

Policy UR-8 of the Sackville MPS enables Community Council to consider multiple unit buildings with more than 6 units by development agreement. The development agreement approach will provide site-specific controls intended to ensure that community concerns such as appropriate density and scale of development, landscaping, site design, and separation from low density residential development are adequately addressed.

The R-6 (Rural Residential) zoning under the Sackville LUB is currently applied to the subject site as the zone supports some areas where services are available. The R-6 Zone is intended to support a semi-rural environment, but it also recognizes there are areas where new suburban-type residential development is taking place. In areas where transition to suburban, higher density, residential development has occurred, appropriate levels of protection are provided through a development

agreement, as enabled under Policy UR-8, to ensure compatibility with the surrounding residential context.

The range of land uses that would be permitted as-of-right includes single unit dwellings, day care facilities, bed and breakfasts, business uses, pet care facility, agriculture uses, forestry uses, fishing and fishing related uses, open space uses and limited institutional uses.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. Community engagement was achieved through providing information and seeking comments through the HRM website (receiving 1261 unique views), signage posted on the subject site, letters mailed to 450 property owners within the notification area and a virtual public information meeting held on March 9, 2022. Attachment C contains a copy of a summary from the meeting. The public comments included the following topics:

- This development is not in keeping with the character of the community (i.e., losing sense of nature, big city “look” and feel);
- Traffic is a concern;
- Availability of amenities such as schools;
- Privacy for nearby residents;
- Would like to see three-bedroom units; and
- No apartments to rent in the area so this would be a welcome addition.

A public hearing must be held by North West Community Council before they may 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.

North West Planning Advisory Committee

On April 6, 2022, the North West Planning Advisory Committee (PAC) recommended that the application be approved with consideration given to reviewing the location of the driveway and installing traffic lights at the intersection of Windgate Drive and Beaver Bank Road.

The location of the driveway shown at Schedule B of the proposed development agreement was reviewed by HRM Development Engineering and meets both the minimum and turning sight distance as required under HRM's *Municipal Design Guidelines (2013)*. Off-site benefits such as installation of traffic lights at the intersection of Windgate Drive and Beaver Bank Road are beyond the consideration of the proposed development agreement.

It should be noted that this application was reviewed by the PAC in advance of changes to the *Halifax Regional Municipality Charter* in April which prohibited Council from seeking the recommendations of this committee prior to deciding on a planning application. New applications received today would not be considered by the PAC.

DISCUSSION

Staff has 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 which sets out the conditions under which the development may occur. The proposed development agreement addresses the following matters:

- Site development details;
- Architectural requirements;
- Parking provisions for motor vehicles;
- Landscaping provisions, including requirement for landscape plan to be prepared;
- Requirements relative to maintenance; and
- Matters able to be considered in future as non-substantive change to the agreement, such as the landscaping requirements; and extensions to the commencement and completion times.

The attached development agreement will permit a four storey 46-unit apartment building, subject to the conditions identified above. 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.

Community Character

Policies UR-8 and IM-13 both direct Council to ensure controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses in regards to height, bulk and lot coverage of the proposed building. To reduce the visual perception of bulk, the roof line introduces a stepping form that varies in height. The lower portions of the stepped roof have corresponding recessed sidewalls that articulate the building and break up the overall mass. The proposed building uses traditional character forms of gable-ended roofs which are predominant in the area; the pitched roof and the stepped height respect local forms and styles.

The proposed development will be set within an area containing lot sizes and layouts of inconsistent character. This is likely due to the acute intersection of Beaver Bank Road and Windgate Road and a remnant of the Old Beaver Bank Road (that edges the interior of the subject site) in addition to the historic location of the railway. The proposed lot coverage of 25% is less than other residential lot coverage requirements under the LUB. Typical requirements are set at 35% for single detached, semi-detached and townhouses and 50% for multiple unit buildings, but because of the varied site characteristics surrounding the subject site, the difference will likely be unnoticeable.

Traffic

A Traffic Impact Statement (TIS), submitted by the applicant is in support of the application for the proposed building, was reviewed and accepted by HRM Development Engineering. The study was required to review stopping and turning sight distances, number of trips generated by the proposal and the impact on surrounding streets. The minimum stopping sight distance and minimum turning sight distance are anticipated to meet the requirements of the Transportation Association of Canada's (TAC) *Geometric Design Guide for Canadian Roads*.

The TIS shows the minimum stopping and turning sight distance requirements for the two-laned Beaver Bank Road with a design speed of 50 km/h is met in both directions at the access point (proposed driveway). The Statement also noted that on a typical weekday, the proposed development is expected to generate 33 vehicle trips in the morning peak hour and 40 vehicle trips in the afternoon peak hour. The trip generation estimates indicate that the proposed development will generate less than 25 vehicle trips in either direction on Beaver Bank Road during the peak hours. It is anticipated that the new vehicle trips associated with the proposed development can be accommodated with a negligible impact on traffic operations.

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 four-storey development reads as a contemporary building while working with traditional character forms – gable end buildings set in a stepped height - that are locally predominant to address height and bulk. The site development plan of the proposed agreement shows a buffer screen along the abutting bounds of the nearby single unit dwelling to the west with a 6 feet high opaque fence and a row of coniferous trees. Any further buffering and development of outdoor amenities may be captured under the required landscape plan of the agreement. Traffic concerns regarding stopping and turning sight distances, the volume of new trips generated by the proposed development and impact on surrounding street system have been responded to by a traffic statement showing technical requirements have been met and the increased number of vehicle trips will have negligible impact on existing streets. Therefore, staff recommend that the North West 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 2022-2023 operating budget for Planning and Development.

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. North West 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 and Review Board as per Section 262 of the *HRM Charter*.
2. North West 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 and Review Board as per Section 262 of the *HRM Charter*.

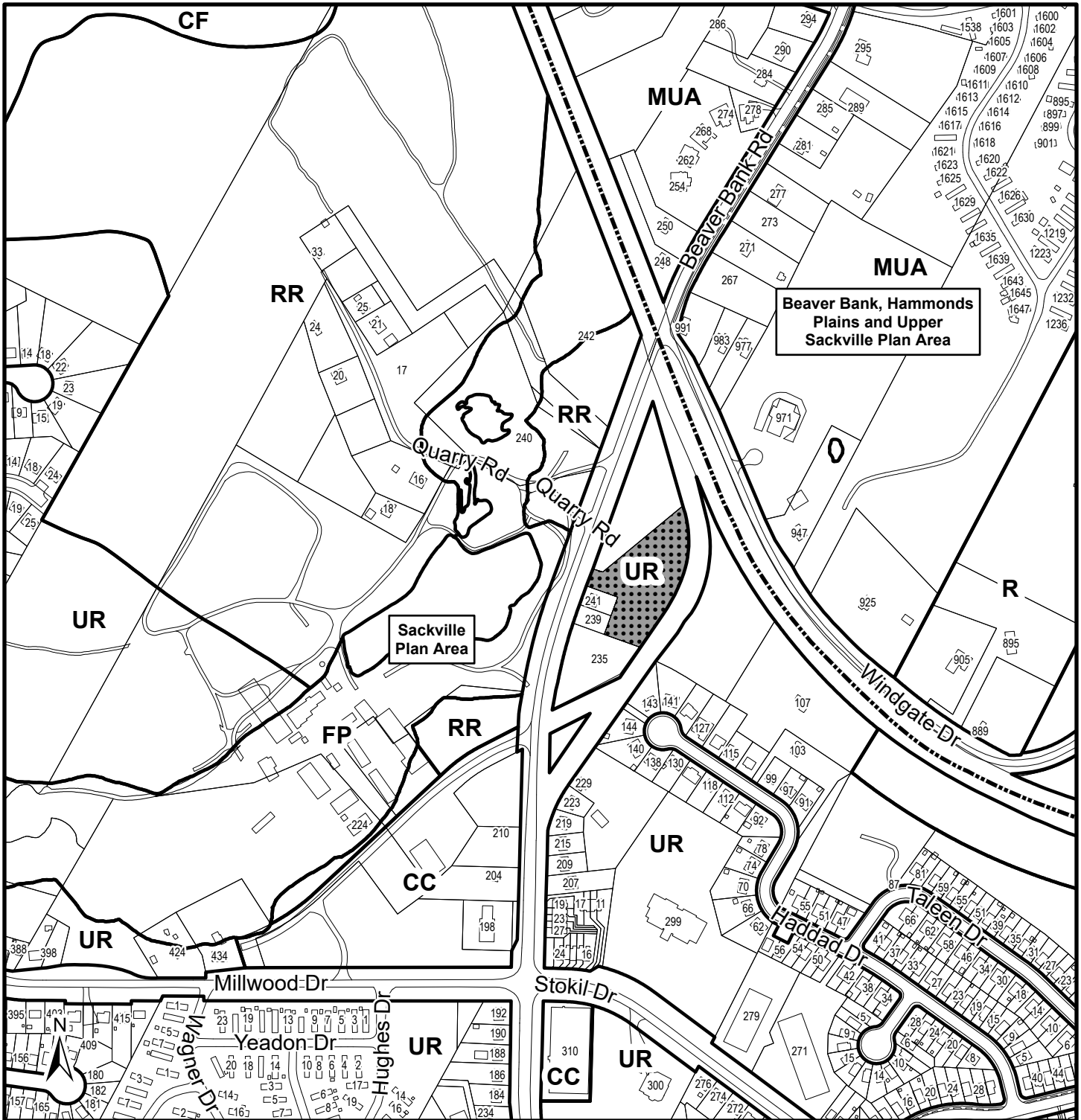
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area

Attachment A: Proposed Development Agreement
Attachment B: Review of Relevant MPS Policies
Attachment C: Public Information Meeting Summary

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: Darrell Joudrey, Planner II, 902.225.8630




**Beaver Bank, Hammonds
Plains and Upper
Sackville Plan Area**

**Sackville
Plan Area**

Map 1 - Generalized Future Land Use

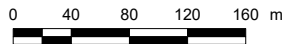
Beaver Bank Rd.,
Beaver Bank

 Subject Property

Sackville Plan Area
Beaver Bank, Hammonds Plains and
Upper Sackville Plan Area

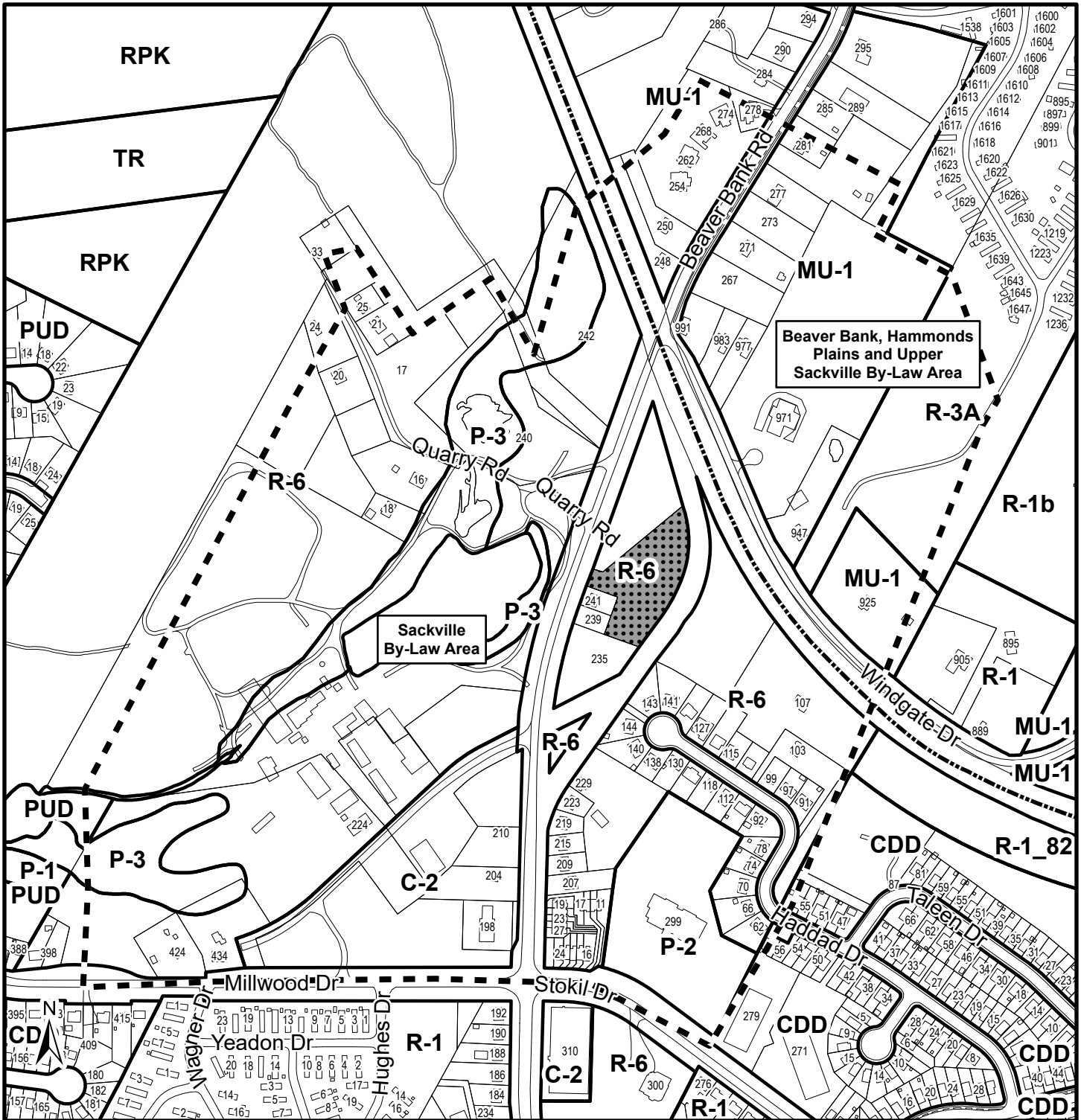
Designation

- | | | |
|-------|-----|----------------------|
| SACKV | CC | Community Commercial |
| | CF | Community Facility |
| | FP | Floodplain |
| | RR | Rural Residential |
| | UR | Urban Residential |
| HPSBB | MUA | Mixed Use A |
| | R | Residential |



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.





Beaver Bank, Hammonds
Plains and Upper
Sackville By-Law Area

Sackville
By-Law Area

Map 2 - Zoning and Notification Area

Beaver Bank Rd.,
Beaver Bank

-  Subject Property
-  Area of Notification

Sackville By-Law Area
Beaver Bank, Hammonds Plains and
Upper Sackville By-Law Area

Zone

- SACK
- C-2 Community Commercial
- CDD Comprehensive Development District
- P-2 Community Facility
- P-3 Floodplain
- PUD Planned Unit Development
- P-1 Open Space
- R-1 Single Unit Dwelling
- R-1_82 Single Unit Dwelling (Under the 1982 Land Use By-law)

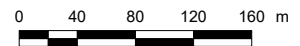
SACK

- R-6 Rural Residential
- RPK Regional Park
- TR Transportation Reserve

HPSBB

- MU-1 Mixed Use 1
- R-1 Single Unit Dwelling
- R-1b Auxiliary Dwelling with Home Business
- R-3A Mobile Home Park

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.

Attachment A: Proposed Development Agreement

THIS AGREEMENT made this day of **[Insert Month]**, 20__.

BETWEEN:

[Insert Name of Corporation/Business LTD.]
a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at Beaver Bank Road, Beaver Bank (PID 40117236) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow a four storey 46-unit apartment building on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies UR-8 and IM-13 of the Sackville Municipal Planning Strategy and Parts 4 and 12 of the Sackville Land Use By-law;

AND WHEREAS the North West Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as municipal case 23293;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

- 1.1.1 The Developer agrees 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 shall comply with the requirements of the Sackville 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 Sackville Land Use By-law shall not be permitted. Variances enabled under Section 250 of the *Halifax Regional Municipality Charter* shall not be permitted.

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 Sackville Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree 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 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 Sackville 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.

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 provision.

1.7 Lands

- 1.7.1 The Developer hereby represents and warrants to the Municipality that the Developer is the owner of the Lands and that all owners of the Lands have entered into this Agreement.

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 Sackville Land Use By-law and Regional 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 municipal case 23293:

Schedule A	Legal Description of the Lands
Schedule B	Site Development Plan
Schedule C	Level P1 - Parking
Schedule D	North and South Elevation
Schedule E	East and West Elevation

3.2 Requirements Prior to Approval

- 3.2.1 Prior to any site work or the issuance of a Grade Alteration Permit the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
- (a) In accordance with By-law G-200 a Grade Alteration Plan and Stormwater Management Plan.
- 3.2.2 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
- (a) A detailed Landscape Plan in accordance with Section 3.8 of this Agreement.
- 3.2.3 Prior to the issuance of the first Occupancy Permit for the building, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
- (a) Written confirmation from a qualified professional that the Development Officer may accept as sufficient record of compliance with the detailed Landscape Plan required pursuant to Section 3.8 of this Agreement, or the posting of Security in accordance with Subsection 3.8.4 of this Agreement;
- 3.2.4 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 Sackville 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 use of the Lands permitted by this Agreement is a four-storey residential building containing a maximum of 46 dwelling units.
- 3.3.2 The Development Officer may permit unenclosed structures attached to the main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the Sackville Land Use By-law, as amended from time to time.

3.4 Building Siting

- 3.4.1 The building's siting, bulk and scale shall comply to the following:
 - (a) lot coverage shall not exceed 25%;
 - (b) the building shall be a minimum of 6.1 metres from the front lot line;
 - (c) the maximum height of the building shall not exceed 23 metres measured from the first level parking floor surface to the top of the roof ridge; and
 - (d) the Development Officer may permit a 5% increase to the provision identified in clause 3.4.1(c) provided the intent and all other specific provisions of this Agreement have been adhered to.

3.5 Architectural Requirements

- 3.5.1 The main entrances to the building shall be emphasized by detailing, changes in materials, and architectural devices such as, but not limited to, lintels, pediments, pilasters, columns, porticos, overhangs, cornerboards, fascia boards or an acceptable equivalent approved by the Development Officer. The primary entry door to the building's lobby shall face Old Beaver Bank Road. Service entrances, including the parking entry door, shall be integrated into the design of the building and shall not be a predominant feature.
- 3.5.2 The building façade facing Old Beaver Bank Road shall be designed and detailed as the primary façade. Further, architectural treatment shall be continued around all sides of the building as identified on the Schedules.
- 3.5.3 Large blank walls or areas of walls shall not be permitted. The scale of large walls shall be tempered by the introduction of architectural detail to create shadow lines (implied windows, surface articulation, cornice lines or offsets in the vertical plane) as identified on the Schedules.
- 3.5.4 Any exposed foundation in excess of 0.2 metres in height and 2 square metres in total area shall be architecturally detailed, veneered with stone or brick or treated in an equivalent manner acceptable to the Development Officer.
- 3.5.5 Exterior building materials shall not include vinyl siding, EIFS (Exterior Insulation and Finish System) or stucco (real or synthetic).
- 3.5.6 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall match the colour of the adjacent surface, except where used expressly as an accent feature.

- 3.5.7 The building shall be designed such that the mechanical systems (HVAC, exhaust fans, etc.) are not visible from the Beaver Bank Road or abutting residential properties. Furthermore, no mechanical equipment or exhaust fans shall be located between the building and the adjacent residential properties unless screened as an integral part of the building design and noise reduction measures are implemented. This shall exclude individual residential mechanical systems.
- 3.5.8 All windows shall be vertically proportioned and in orientation. Windows should be framed with prefinished metal or vinyl.
- 3.5.9 All roof mounted mechanical systems or telecommunication equipment shall be visually integrated into the roof design to minimize impact to public view.

3.6 Parking, Circulation and Access

- 3.6.1 The parking area shall be sited as shown on Schedule B. The parking area shall remain within the property lines as shown on Schedule B.
- 3.6.2 The underground parking level shall provide a minimum of 36 parking spaces and the surface parking area shall provide a minimum of 32 parking spaces.
- 3.6.3 The parking area shall be hard surfaced and the limits of the parking area shall be defined by fencing, plantings or curbing.

3.7 Outdoor Lighting

- 3.7.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.8 Landscaping

- 3.8.1 All plant material shall conform to the Canadian Nursery Landscape Association's *Canadian Nursery Stock Standard 9th Edition* (2017).
- 3.8.2 An opaque wood board fence, measuring six feet in height, shall be located at the adjacent western property boundaries parallel to the site driveway and continuing along the back bounds of both properties: the fencing shall be supplemented by a row of conifer trees as shown on Schedule B.
- 3.8.3 Prior to the issuance of a Development Permit, the Developer agrees to provide a Landscape Plan which complies with the provisions of this section. The Plan shall generally conform with the overall intentions of the Site Development Plan to retain existing vegetation, locate a fence with conifer screen at a portion of the property bounds and locate a sidewalk from the site access to the primary entry door and secondary door as shown on Schedule B. Any amenity space for the use of the residents developed on the subject site under the Landscape Plan shall feature both hardscape and softscape elements. The Landscape Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects).
- 3.8.4 Prior to issuance of the first Occupancy Permit the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Development Agreement.
- 3.8.5 Notwithstanding Subsection 3.8.4 where the weather and time of year do not allow the completion of the outstanding landscape works prior to the issuance of the Occupancy Permit, the Developer

may supply a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

3.9 Amenity Space

- 3.9.1 A minimum of 104 square metres of indoor amenity space shall be provided. This space shall be in addition to individual dwelling unit balcony spaces.
- 3.9.2 A minimum of 425 square metres is to be provided as outdoor amenity space developed as part of the Landscape Plan (3.8.3 above).
- 3.9.3 All outdoor amenity space shall be designed to have both soft and hard landscaping elements, as defined in the Land Use By-law.

3.10 Maintenance

- 3.10.1 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.

3.11 Signs

- 3.11.1 The sign requirements shall be accordance with the Sackville Land Use By-law as amended from time to time.
- 3.11.2 Signs depicting the name or corporate logo of the Developer shall be permitted while a sales office is located on the site.
- 3.11.3 Signs shall only be externally illuminated.
- 3.11.4 A maximum of one ground sign shall be permitted at each entrance to the subdivision or phase or street to denote the community or subdivision name. The locations of such signs shall require the approval of the Development Officer and Development Engineer. The maximum height of any such sign inclusive of support structures shall not exceed 3.05 metres and the face area of any sign shall not exceed 4.65 square metres. All such signs shall be constructed of natural materials such as wood, stone, brick, enhanced concrete or masonry. The only illumination permitted shall be low wattage, shielded exterior fixtures.
- 3.11.5 Ornamental plants shall be planted and maintained around the entire base of a ground sign as part of the required landscaping.

3.12 Temporary Construction Building

3.12.1 A building shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. The construction building shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

3.13 Screening

3.13.1 Refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing or masonry walls with suitable landscaping.

3.13.2 Propane tanks and electrical transformers shall be located on the site in such a way to ensure minimal visual impact from the Beaver Bank Road and residential properties along the western property line. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing or masonry walls with suitable landscaping.

3.13.3 Mechanical equipment shall be permitted on the roof provided the equipment is integrated into the architectural treatments and roof structure and not visible from the Beaver Bank Road and adjacent residential properties.

3.13.4 Any ground located mechanical equipment shall be screened from view from Beaver Bank Road and adjacent residential properties with details such as a combination of fencing and landscaping.

3.14 Hours of Operation

3.14.1 Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 7:00am and 10:00pm.

3.15 Reinstatement

3.15.1 All disturbed areas shall be reinstated to original condition or better.

3.16 Backyard and Secondary Suites

3.16.1 Secondary Suites and Backyard Suites shall not be permitted.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

4.1.1 All design and construction of primary and secondary service systems shall satisfy the most current edition of the Municipal Design Guidelines and Halifax Water Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineering prior to undertaking the work.

4.2 Off-Site Disturbance

4.2.1 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.

4.3 Undergrounding Services

- 4.3.1 All secondary or primary (as applicable) electrical, telephone and cable service to the building shall be underground installation.

4.4 Solid Waste Facilities

- 4.4.1 The building shall include designated space for five stream commercial waste containers (1. Garbage, 2. Blue Bag Recyclables, 3. Paper, 4. Corrugated Cardboard, and 5. Organics) to accommodate source separation program in accordance with By-law S-600 as amended from time to time. This designated space for five (5) waste containers shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with HRM Solid Waste Resources.
- 4.4.2 Refuse containers and waste compactors shall be confined to the loading areas of each building, and shall be screened from public view where necessary by means of opaque fencing or masonry walls with suitable landscaping.
- 4.4.3 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. Further, consideration shall be given to locating of all refuse and recycling material to ensure minimal effect on abutting property owners by means of opaque fencing or masonry walls with suitable landscaping.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Private Storm Water Facilities

- 5.1.1 All private storm water facilities shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

5.2 Stormwater Management Plans and Erosion and Sedimentation Control Plan

- 5.2.1 Prior to the commencement of any site work 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) Have been issued a Grade Alteration Permit in accordance with By-law G-200 Respecting Grade Alteration and Stormwater Management Associated with Land Development, as amended from time to time.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

- 6.1.1 The following items are considered by both parties to be not substantive and may be amended in a manner consistent with the *Halifax Regional Municipality Charter*:
- (a) Changes to the Building Siting as detailed in Section 3.4 or which, in the opinion of the Development Officer, do not conform with Schedule B;
- (b) Changes to the Architectural Requirements as detailed in Section 3.5 or which, in the opinion of the Development Officer, do not conform with Schedules E or F;
- (c) Changes to the Parking, Circulation and Access as detailed in Section 3.6 or which, in the opinion of the Development Officer, do not conform with Schedule B;
- (d) Changes to the sign provisions as detailed in Section 3.10;

- (e) The granting of an extension to the date of commencement of construction as identified in Section 7.3.1 of this Agreement; and
- (f) The granting of an extension to the date of completion of construction as identified in Section 7.4.4 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 the Lands which are the subject of this Agreement until this Agreement is discharged by the Chief Administrative Officer for the Municipality.
- 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 development on the Lands has not commenced within three (3) years from the date of registration of this Agreement at the Land Registry Office in Halifax, as indicated herein, the Lands shall conform with the provisions of the Sackville 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, the Municipality 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.

7.4 Completion of Development

- 7.4.1 Upon the completion of the whole development, or completed in phases of the development, the Municipality 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.
- 7.4.2 For the purpose of this section, completion of development shall mean issuance of an Occupancy Permit.

7.4.3 In the event that development on the Lands has not been completed within six (6) years from the date of registration of this Agreement at the Land Registry Office in Halifax, as indicated herein, the Lands shall conform with the provisions of the Sackville Land Use By-law.

7.5 Discharge of Agreement

7.5.1 If the Developer fails to complete the development after six (6) years from the date of registration of this Agreement at the Land Registration Office in Halifax, the Municipality 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.

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 24 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 30 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 the 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:

(Insert Registered Owner Name)

Witness

Per: _____

Print Name: _____

Print Position: _____

Date Signed: _____

=====

=====

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

HALIFAX REGIONAL MUNICIPALITY

Witness

Per: _____
MAYOR

Date Signed: _____

Witness

Per: _____
MUNICIPAL CLERK

Date signed: _____

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 Iain MacLean, 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 Development Plan

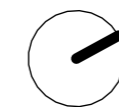


PROPOSED BUILDING	
LOT AREA	68 196sf (6 336m ²)
LOT COVERAGE	25%
# OF UNITS	46
MIN 50% 2 BEDROOM UNITS	
# OF U/G PARKING	36
# OF SURFACE PARKING	32
# OF FLOORS	4

Beaver Bank
Beaver Bank Rd. Sackville, NS

SITE DEVELOPMENT PLAN

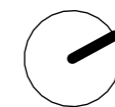
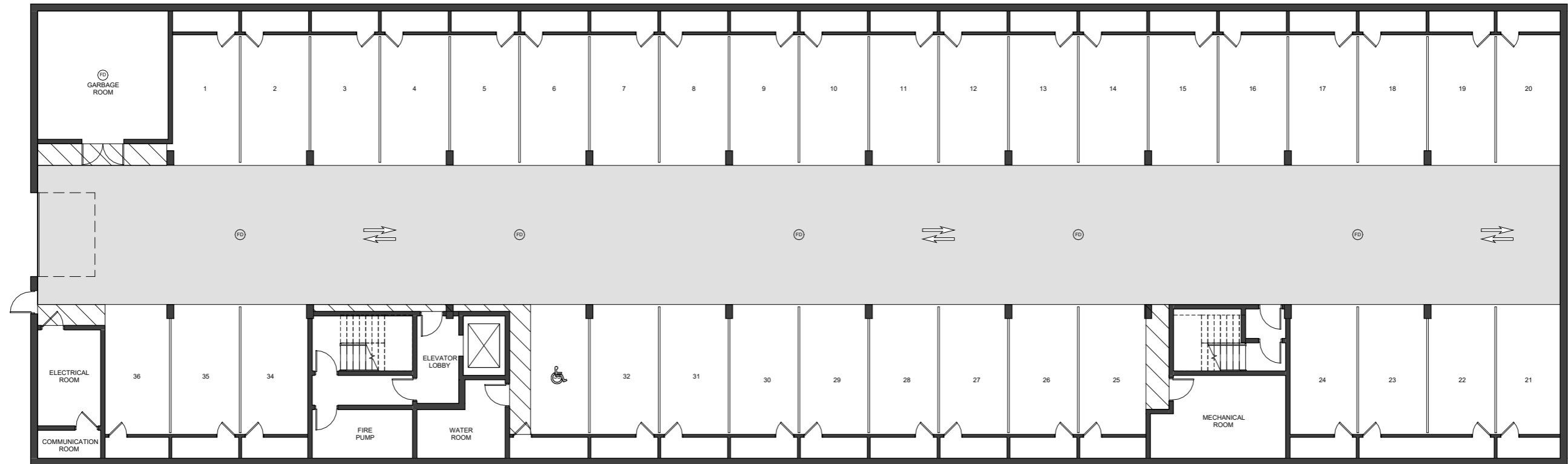
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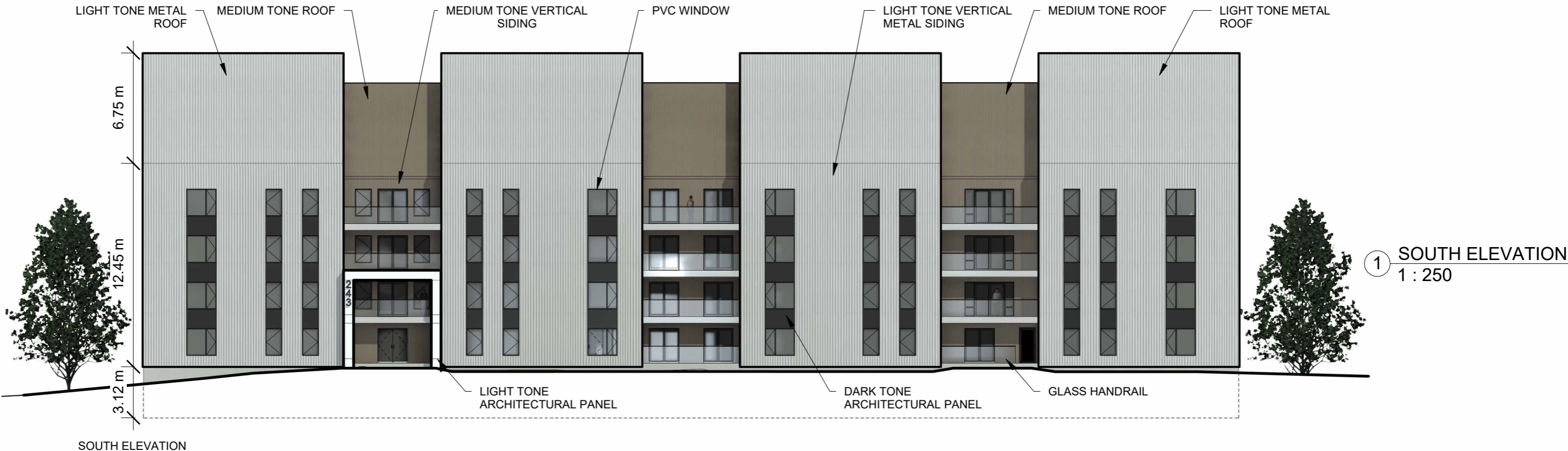
WM FARES
ARCHITECTS

D1

Schedule C: Level P1 - Parking



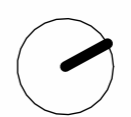
Schedule D: North and South Elevations



Beaver Bank
Beaver Bank Rd. Sackville, NS

NORTH + SOUTH ELEVATION

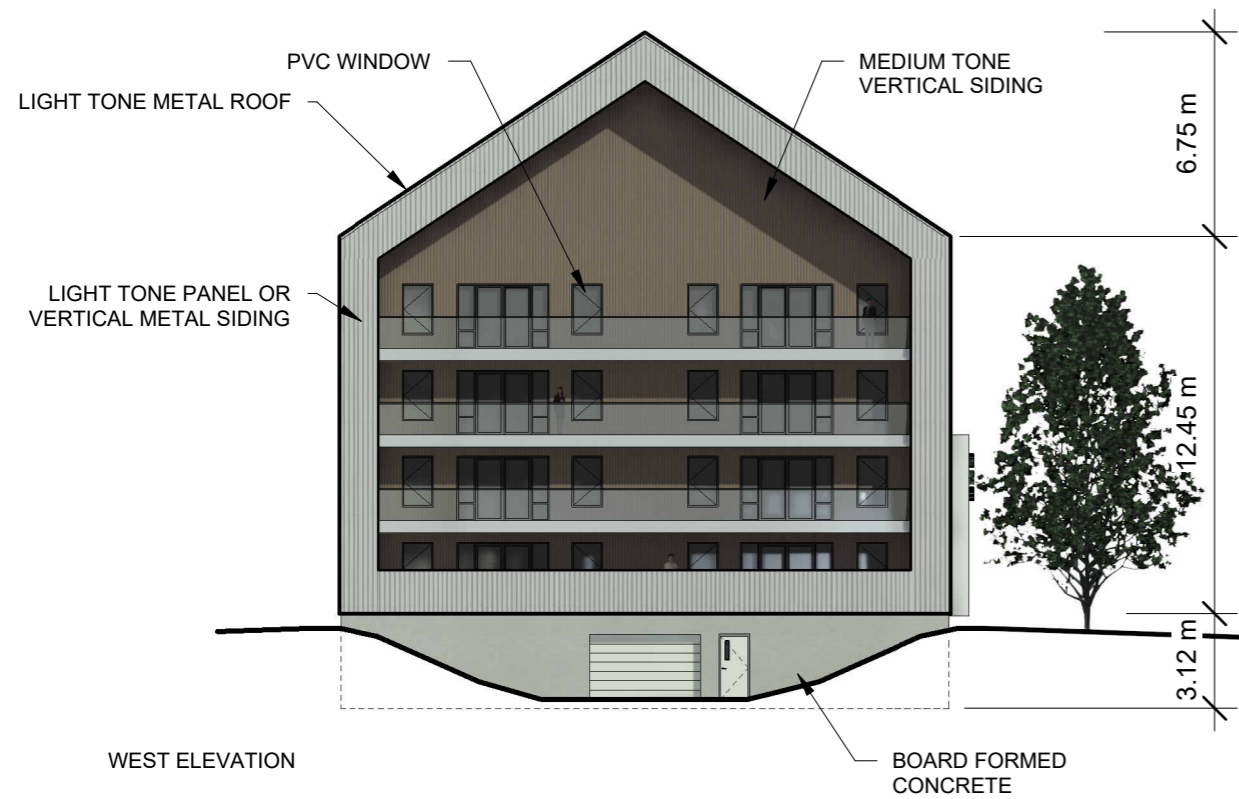
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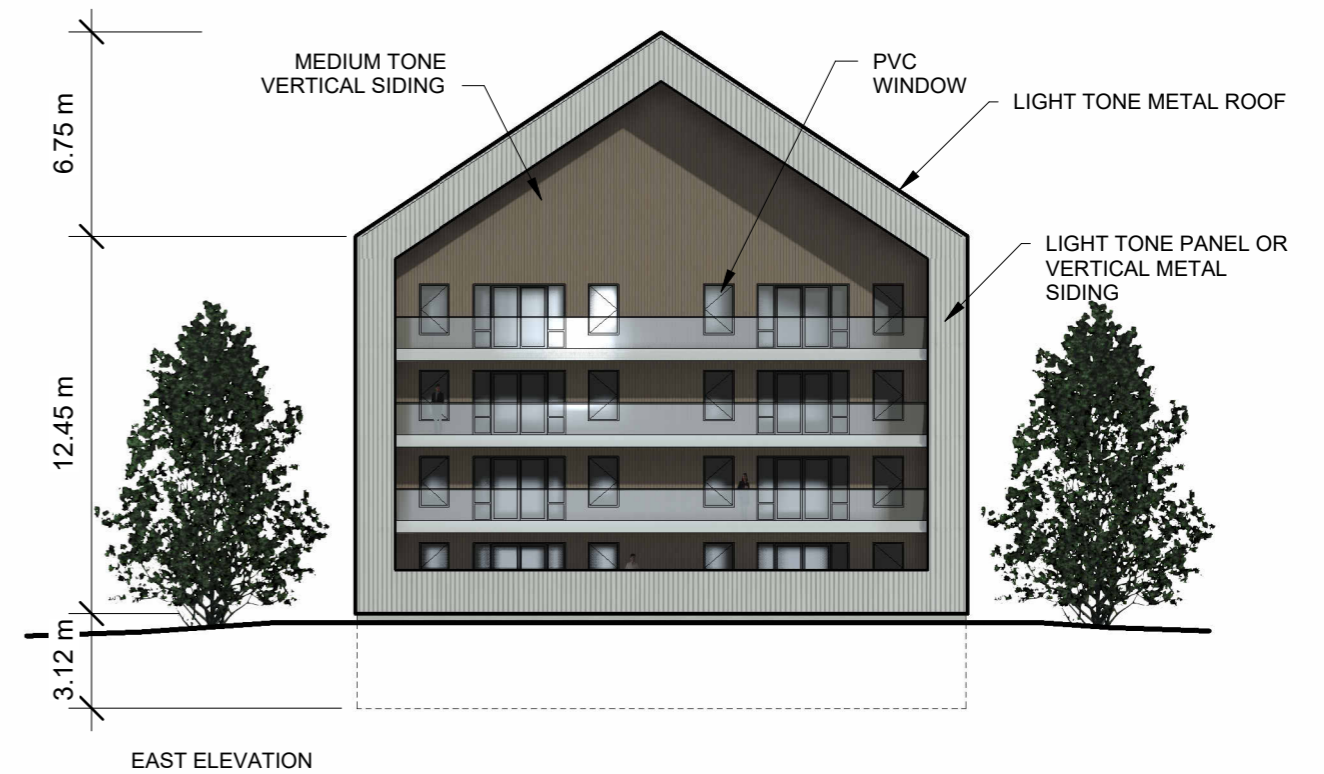
WM FARES
ARCHITECTS

D13

Schedule E: East and West Elevations



① WEST ELEVATION
1 : 250



② EAST ELEVATION
1 : 250

Attachment B: Review of Relevant MPS Policies

Sackville Municipal Planning Strategy	
Policy	Staff Comment
<p>Policy SU-2 HRM shall establish an Urban Service Area under the Regional Subdivision By-law to designate those areas within the Urban Settlement Designation and the Harbour Designation where municipal wastewater collection and water distribution systems are to be provided. The Area shall initially include all lands within existing service boundaries established under secondary planning strategies at the time of adoption of this Plan. Lands within the Urban Service Area shall only be developed with municipal wastewater collection and water distribution systems. Any service boundary established under existing secondary planning strategies shall be replaced by the Urban Service Area boundary in the Regional Subdivision By-law.</p>	<p>The subject property is only partially located within the Urban Service Area. That portion of the site that abuts the Old Beaver Bank Road is located within the Urban Service Area and the rear portion of the site is only serviced by municipal water. Past practice has been to allow development of properties partially within the service boundary provided 50% or more of the building footprint is within the service boundary. Revisions to plans demonstrate compliance with this practice.</p>

Policy SU-4

When considering any expansion of the Urban Service Area, HRM shall have regard to the following:

- (a) that a Secondary Planning Strategy for the lands to be included within the Urban Service Area has been adopted by HRM except that this requirement may be waived where, in the opinion of HRM, the proposed extension represents a minor adjustment to the Area;
- (b) the financial ability of HRM to absorb any costs relating to the extension;
- (c) if required, a watershed or sub-watershed study has been completed in accordance with Policy E-23;
- (d) that, if required to pay for growth-related municipal infrastructure costs, a municipal infrastructure charge area has been established or is adopted concurrently with the boundary amendment;
- (e) the need to oversize the water, wastewater or stormwater systems to allow for future development within an Urban Settlement or Urban Reserve designation; and
- (f) a charge needed to pay for growth related improvements to the water, wastewater or stormwater systems has, where required, been approved by the Review Board.

(a) This would not be considered an expansion provided that 50% of the building footprint was located within the service boundary. Revisions meet this policy.

(b) The costs for installing services to the remainder of the site would be the responsibility of the developer. Services are already located at the public street frontage.

(c) Since the service boundary is not being altered at this time, no further studies would be required.

(d) Growth related municipal infrastructure charges are not required at this time.

(e) Not applicable as no new services are being installed.

(f) Not applicable as the service boundary is not being expanded.

Policy UR-8

Notwithstanding Policies UR-2 and UR-7, within the Urban Residential Designation, it shall be the intention of Council to consider multiple unit dwellings over six (6) dwelling units, according to the development agreement provisions of the Planning Act. In considering such an agreement, Council shall have regard to the following:

(a) the adequacy of separation distances from low density residential developments;

Low density residential uses are located to the south and west of the proposed development: the retained existing vegetation aids in supplementing the horizontal separation distance. There is an existing Single Family Dwelling located to the immediate west of the subject site and this is proposed to be adequately buffered with a six foot high opaque fence and a row of coniferous trees (species to be determined).

(b) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;

There are a variety of housing types in close proximity to the subject site including:

- A four storey multiple unit dwelling is located to the west at the intersection of Beaver Bank Road and Stokil Drive.
- A townhouse development at Stokil Drive
- Single family dwellings to the south
- Industrial/Commercial uses across Beaver Bank Road
- A development agreement allowing a 2.5 storey retail/office building recently approved on an abutting site to the south (Case 20757)

Considering the variety of uses and building forms of the surrounding area, with adequate separation distances and buffering, the proposed buildings will be compatible with adjacent land uses. See IM-13(c)ii below.

<p>(c) that site design features, including landscaping, amenity areas, parking areas and driveways, are of an adequate size and design to address potential impacts on adjacent development and to provide for the residential needs of the development.</p>	<p>Applicant has provided a site development plan demonstrating compliance with this policy. There is a significant amount of open space within the site. The applicant should consider the addition of walkways and seating areas to provide outdoor amenity space for the residents when the required landscape plan is developed. Parking areas have been provided with 1.5 spaces per unit.</p>
<p>(d) preference for a site in close proximity to community facilities such as schools, recreation areas and transit routes;</p>	<p>Initial research has determined the following:</p> <ol style="list-style-type: none"> 1. The site is serviced by the following schools: <ul style="list-style-type: none"> Elementary (PP-5): Beaver Bank/Monarch Drive Elementary School (2.4km) Junior (6-8): Harold T. Barrett Junior High (3.8km) Senior (9-12): Lockview High School (10.9km, however Millwood is significantly closer – under investigation) 2. Nearby community facilities include: <ul style="list-style-type: none"> Millwood Common Park and Sackville Lakes Provincial Park. Armcrest Park is located to the southeast of the subject site. 3. The subject site is located within the Urban Transit Service Boundary and there are weekday routes transit stops located 300m north and 400m south of the of the proposal.

<p>(e) that municipal central services are available and capable of supporting the development;</p>	<p>The proposal complies with the current practice to allow development of properties partially within the service boundary provided 50% or more of the building footprint is within the service boundary.</p> <p>Proposal is acceptable to Halifax Water. A capacity analysis indicating that there is sufficient capacity has been provided however this will be confirmed at the building permit stage.</p>
<p>(f) that appropriate controls are established to address environmental concerns, including stormwater controls, based on a report from the appropriate Municipal, Provincial, and/or Federal Government authority;</p>	<p>The development agreement will require a stormwater management plan, erosion and sediment control plan, and a site disturbance plan to be submitted prior to commencement of any site work to ensure all municipal and provincial standards are met at permitting, including the adherence to the watercourse buffer requirements of the Regional Plan.</p>
<p>(g) that the proposed development has direct access to a local street, minor collector or major collector as defined in Map 3 - Transportation;</p>	<p>The proposed site access is on Beaver Bank Road which is identified as a Major Collector. The applicant has submitted a Traffic Impact Statement (TIS) in support of the proposal. The trip generation estimate findings indicate that the proposed development will generate less than 25 vehicle trips in the peak direction of traffic on Beaver Bank Road during the peak hours. The minimum stopping sight distance meets the requirements in both directions and the minimum turning sight distance meets the requirements for the access point in accordance with the Transportation Association of Canada's (TAC) <i>Geometric Design Guide for Canadian Roads</i>. It is anticipated that the new vehicle trips associated with the proposed development can be accommodated with a negligible impact on traffic operations. Development Engineering has reviewed and accepted the submitted TIS.</p>

<p>(h) that it is not being considered on lands which are presently zoned and developed for either single or two unit dwelling purposes nor where it is intended to replace a single or two unit dwelling which has been demolished, removed or destroyed by fire;</p>	<p>The site is currently zoned R-6 which allows for single family dwellings. The subject lots were created in 1987 and 2015 and have been vacant since that date.</p>
<p>(i) the impact on traffic circulation and, in particular, sighting distances and entrances and exits to the site;</p>	<p>The TIS submitted in support of the application has been accepted by Development Engineering (see UR-8(g) above).</p>
<p>(j) general maintenance of the development; and</p>	<p>The agreement will require the site be maintained according to provincial and municipal safety and environmental standards throughout the construction process and will require the site to be kept in good repair upon completion.</p>
<p>(k) the provisions of Policy IM-13.</p>	<p>See below.</p>

<p>Policy IM-13</p> <p>In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, the Sackville Community Council shall have appropriate regard to the following matters:</p>	
<p>(a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by laws and regulations;</p>	<p>See comments throughout this review.</p>
<p>(b) that the proposal is not premature or inappropriate by reason of:</p>	

<p>(i) the financial capability of the Municipality is to absorb any costs relating to the development;</p>	<p>No costs to the municipality associated with the development have been identified.</p>
<p>(ii) the adequacy of sewer and water services and public utilities;</p>	<p>The applicant has provided acceptable studies that there is available capacity which will be confirmed by Halifax Water at permit stage.</p>
<p>(iii) the adequacy and proximity of schools, recreation and other public facilities;</p>	<p>See UR-8(d) above.</p>
<p>(iv) the adequacy of road networks leading or adjacent to, or within the development; and</p>	<p>A TIS submitted in support of the application has been reviewed and accepted by Development Engineering (see UR-8(g) above).</p>
<p>(v) the potential for damage to or for destruction of designated historic buildings and sites.</p>	<p>No historic buildings or sites have been identified.</p>
<p>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</p>	
<p>(i) type of use;</p>	<p>The type of use, a multi-unit building, is an appropriate use provided appropriate measures are taken to mitigate impacts to nearby properties. See UR-8 (a), (b), and (c) for further information</p>
<p>(ii) height, bulk and lot coverage of any proposed building;</p>	<p>The proposed building is four stories in height with 46 units. To reduce the visual perception of bulk the roof line introduces a stepping form. The proposed building uses traditional character forms of gable ended buildings predominant in the area; the pitched roof and the stepped height respect local forms and styles. The proposed lot coverage of 25% is dis-similar to other residential lot coverage requirements under the Sackville Land Use By-law of 35% for</p>

	single detached, semi-detached and townhouses and 50% for multiple unit buildings in the plan area but because of the varied site characteristics surrounding the subject site the proportional difference will likely be visually unnoticeable.
(iii) traffic generation, access to and egress from the site, and parking;	See UR-8(g) above.
(iv) open storage;	No open storage has been proposed.
(v) signs; and	Regulations regarding signage will be included within the proposed DA.
(vi) any other relevant matter of planning concern.	n. a.
(d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding;	The site is relatively flat. Final construction and site development will require compliance with standards outlined in the Development Agreement, applicable standards of the LUB, the Building By-law and other applicable codes to ensure the permitted uses are deemed safe and are not detrimental to the site or adjacent uses. An erosion and sedimentation plan, a site disturbance plan, and a detailed stormwater management plan will be a requirement of the development agreement.
(e) any other relevant matter of planning concern; and	n. a.

(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, except in accordance with the development agreement provisions of the MGA and the Infrastructure Charges Policies of this MPS.

Subdivision is not proposed within this application.



Attachment C: Public Information Meeting Summary

Virtual Public Information Meeting Case 23293

The following does not represent a verbatim record of the proceedings of this meeting.

Wednesday, March 9, 2022
6 p.m.
Virtual

STAFF IN

ATTENDANCE: Melissa Eavis, Planner, Planner II, HRM Planning
Tara Couvrette, Planning Controller, HRM Planning

ALSO IN

ATTENDANCE: Cesar Saleh – Applicant, WM Fares Inc.
Lisa Blackburn (District 14) - Councillor for Middle/Upper Sackville – Beaver Bank - Lucasville

PUBLIC IN

ATTENDANCE: Approximately: 5

1. Call to order and Introductions – Melissa Eavis, Planner

Case 23293: Application by WM Fares Architects, on behalf of the property owner, to develop a multi-unit residential building near the intersection of Beaver Bank Road and Windgate Drive, Beaver Bank (PID 40117236).

Ms. Eavis introduced herself as the Planner and Facilitator guiding WM Fares application through the planning process. They also introduced other staff members, and the presenter for this application. The area Councillor for District 14, Lisa Blackburn, was also in attendance online.

2. Presentations

2a) Presentation by HRM Staff – Melissa Eavis

Ms. Eavis's presentation included information on the following:

- (a) the purpose of the meeting including to share information and collect public feedback about the proposal - no decisions were made at this meeting;
- (b) the role of HRM staff through the planning process;
- (c) a brief description of the application including application history, application proposal, site context, proposal, planning policies & what a development agreement is;
- (d) and status of the application.

2b) Presentation by Cesar Saleh – Applicant

Mr. Saleh presented details about WM Fares proposal including project location, context plan, site plan, building plans, building elevations and 3D views (renderings).

3. Questions and Comments

Ms. Eavis welcomed attendees to ask questions to staff and the presenters and provide their feedback, including what they liked and disliked about the proposal. Attendees that were connected via Teams webcast were called upon to provide their comments and questions.

(1) Questions from people connected via MS Teams

(i) **Lisa Dowe, Beaver Bank Rd:**

Bought house in 2021 (the one house right by this development) and wasn't told of any developments in this area in the disclosure when they purchased the house. Wondering from a HRM standpoint – what can a real estate agent do to find out if there are any developments in the area? Disappointed to find out that this development is happening. Feels like the big city is creeping into this community and the community is not ready for this much development. Feels the community is losing its sense of nature. Concerns – #1 – traffic – not just light vehicle traffic, heavy truck traffic constantly. Lights at Stokil Dr. and Windgate Dr. - thought that was supposed to happen, would like the TIS to consider not only the type of traffic but the weight of the traffic going through that area, also feels they are adding more traffic without updating the infrastructure on this road, #2 - availability of amenities for schools. The schools are already overloaded., #3 – privacy – being right next door to a 4-storey building.

Melissa Eavis – Real Estate agents can call planning (311) and a planner can let them know what development is currently going on in the area. Schools – We do circulate to the school board when new development is going to be happening. Explained the family of school's children would go to. Traffic – TIS (Traffic Impact Statement) is reviewed by our traffic management department and they had no concerns. Privacy – policy speaks to setbacks etc. and the development agreement will have those provisions included.

Cesar Salih – Explained how the TIS is done. Spoke to elevating conflict with driveways being close to each other.

(ii) **Councillor Blackburn:**

What happened to the Guardian Pharmacy that was supposed to go there? What family of schools would somebody in this building be attending? How many people were advised about this meeting? Spoke to intersection of Windgate Dr. and Beaver Bank Rd./lights and CN Rail concerns.

Melissa Eavis – Will investigate Guardian Pharmacy, schools – explained what schools are in the area, captured 450 people in the notifications that were sent out.

(iii) **Councillor Blackburn** thanked everyone for their participation.

4. Closing Comments

Ms. Eavis thanked everyone for their participation in the meeting.

5. Adjournment

The meeting adjourned at approximately 6:40 p.m.

ORDER

M10974

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **AG PROPERTY HOLDINGS LIMITED** and **4378018 NOVA SCOTIA LIMITED** from a Decision of the North West Community Council refusing a Development Agreement for property located at Beaver Bank Road, near the intersection with Windgate Drive, in Beaver Bank, Nova Scotia

BEFORE:




Poland A. Deveau, K.C., Vice Chair
Julia E. Clark, LL.B., Member
Kathleen McManus, K.C., Ph.D., Member

ORDER

The Board issued its decision on **July 21, 2023**.

The Board allows the appeal and orders North West Community Council to approve the Development Agreement.

DATED at Halifax, Nova Scotia, this 21st day of July, 2023.



Chief Clerk of the Board

DECISION

**2023 NSUARB 136
M10974**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **AG PROPERTY HOLDINGS LIMITED** and **4378018 NOVA SCOTIA LIMITED** from a Decision of the North West Community Council refusing a Development Agreement for property located at Beaver Bank Road, near the intersection with Windgate Drive, in Beaver Bank, Nova Scotia

BEFORE: Roland A. Deveau, K.C., Panel Chair
Julia E. Clark, LL.B., Member
M. Kathleen McManus, K.C., Ph.D., Member

APPELLANT: **AG PROPERTY HOLDINGS LIMITED**
4378018 NOVA SCOTIA LIMITED
Nancy G. Rubin, K.C.

RESPONDENT: **HALIFAX REGIONAL MUNICIPALITY**
Meg MacDougall, Counsel
Justin Luddington, Counsel

WRITTEN BRIEFS: May 26, 2023

DECISION DATE: **July 21, 2023**

DECISION: **Appeal allowed.**

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I SUMMARY

[1] AG Property Holdings Limited and 4378018 Nova Scotia Limited appealed to the Board from the decision of North West Community Council refusing a development agreement to build a 46-unit four-storey apartment building on property located on Beaver Bank Road, near the intersection with Windgate Drive, in Beaver Bank, Halifax Regional Municipality (HRM), Nova Scotia.

[2] Under s. 267(2) of the *Halifax Regional Municipality Charter*, the Board can only allow the appeal if the decision of Community Council approving the development agreement failed to reasonably carry out the intent of the Municipal Planning Strategy (MPS).

[3] As required in all planning appeals, HRM filed an Appeal Record containing a complete record of the proposed development as it worked its way through the municipal planning process, from the initial application, through the public consultation process, the filing of planning reports and other departmental reviews and studies, as well as Community Council's decision on the application. Counsel for the developer and for HRM advised the Board that they would not be filing any further evidence, nor calling witnesses. The parties indicated they would simply file written submissions for the Board's consideration. As a result, no in person hearing was held, except an evening session in which two members of the public made presentations.

[4] The HRM Staff Report recommended Community Council approve the development agreement. Policy UR-8 of the Sackville MPS enables Community Council to consider multiple unit buildings with more than six units by development agreement. In staff's opinion, the development agreement addressed all relevant policy matters in the

MPS, including required consideration of the development's compatibility with nearby properties, the height and bulk of the proposed development, buffering, traffic, the availability of community amenities and facilities, and issues raised about stormwater.

[5] Having reviewed the evidence and submissions, the Board concludes that Community Council's decision does not reasonably comply with the intent of the MPS. Accordingly, the appeal is allowed and the Board orders Community Council to approve the development agreement.

II INTRODUCTION

[6] AG Property Holdings Limited and 4378018 Nova Scotia Limited (Appellants) appealed to the Board from the decision of North West Community Council refusing a development agreement to build a 46-unit four-storey apartment building on property located at Beaver Bank Road, near the intersection with Windgate Drive, in Beaver Bank, Halifax Regional Municipality, Nova Scotia.

[7] The appeal is made under s. 262(2) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39 (*HRM Charter*). Ultimately, the Board must determine in this appeal whether the North West Community Council's refusal to approve the development agreement reasonably complies with the Sackville MPS. In a preliminary decision, the Board decided that Lyle Mailman was not an "aggrieved person" under the *HRM Charter* and denied his request to have formal standing to participate as a formal intervenor in this appeal: 2023 NSUARB 49.

[8] The Appellants were represented in this matter by Nancy G. Rubin, K.C., while North West Community Council was represented by its counsel, Meg MacDougall, LL.B., and Justin Luddington, LL.B.

[9] Consistent with its normal practice, the Board held a preliminary conference immediately following the filing of the appeal to discuss procedural matters with the parties about the conduct of the hearing. At that time, counsel indicated that they had previously discussed the evidentiary filings and both the Appellants and HRM would likely be relying solely on the Appeal Record filed with the Board and neither party would be filing any further evidence, nor calling witnesses. In that event, the parties submitted that the hearing itself would not be required and they intended to simply file written submissions for the Board's consideration. Ms. Rubin confirmed this understanding in a letter dated March 17, 2023:

Counsel for the Appellant and HRM have had discussions with a view to simplifying the remaining procedures. Counsel agree that the matter can be determined based upon the evidentiary Record before the Board as filed by HRM and, accordingly, the remaining scheduled pre-hearing steps are unnecessary.

[Rubin letter, March 17, 2023]

[10] Accordingly, in a letter dated April 14, 2023, the Board confirmed that the scheduled hearing itself during the daytime hours of May 25, 2023, would not take place and was cancelled. The Board noted that the evening session would proceed on that day with two registered speakers: Lisa Dowe and Lyle Mailman. The parties agreed that written submissions would be filed on May 18, 2023, and rebuttal submissions, if any, would be filed following the evening session.

[11] HRM did not actively oppose the appeal. In its submissions, counsel noted that municipal councils are not bound by the recommendations of planning staff when considering planning applications. They also submitted that the fact a request for a

development agreement is consistent with a municipal planning strategy does not automatically mean that a municipal council's refusal to approve the development agreement is inconsistent with the municipal planning strategy (i.e., there can be multiple reasonable interpretations of a municipal planning strategy). HRM stated:

HRM has not filed any evidence on this Appeal and does not advance any arguments contrary to the Staff Report.

The Board can only allow this appeal if it finds that the decision of council is not reasonably consistent with the Development Agreement or the MPS. The outcome of this appeal will be determined based on the Board's review of the Appeal Record and the applicable planning documents. HRM is confident that the Board will undertake their task as set out in the legislation and in accordance with the guidance provided our Court of Appeal.

[HRM Submissions, May 18, 2023, p. 2]

[12] Mr. Mailman reiterated his objections to the development and adopted the comments he previously made at the preliminary hearing about his standing as an aggrieved person. Mr. Mailman's [REDACTED] from the intersection of Windgate Drive and Beaver Bank Road. He is a longtime resident and community volunteer in Beaver Bank. He assisted the Board by pointing out relevant landmarks and roads on a map of the area surrounding the proposed development.

[13] Mr. Mailman said Beaver Bank Road has operated at or above its traffic capacity since the early 1980's. He was concerned that the traffic studies provided with the Appeal Record refer to sight lines, but do not address the overcapacity of the roads and intersections. He said the studies should have considered new developments in the area and truck traffic from local quarries. Mr. Mailman said that, in the late 1990's, the property was planned to be expropriated to facilitate the proposed "Beaver Bank Bypass" infrastructure project. He explained that the Bypass was, at one time, intended to establish another route into the HRM core to reduce congestion on the Beaver Bank Road.

[14] Mr. Mailman faulted the lack of a comprehensive growth plan for Beaver Bank for “unrestrained growth” and multi-unit residential projects in the area, including as-of-right developments. He lamented the lack of public consultation on some projects. Mr. Mailman also supported Community Council’s reasons for denying the application on the basis that the character of Beaver Bank is primarily single-unit dwellings, with few, or no, properties higher than three storeys.

[15] Lisa Dowe [REDACTED]
[REDACTED]. [REDACTED]. [REDACTED].
[REDACTED]. She also stated that she did not realize until after the time passed that she could have applied to be an intervenor in this appeal.

[16] Ms. Dowe spoke of the impact of the proposed development in three stages: before; during; and, after construction. She stated that the construction will likely take 18 months during which she, her older mother who lives with her and her two dogs will be disturbed by the builder’s noise, traffic, dust and garbage. Ms. Dowe said the traffic report considered only the traffic from the proposed development but did not address the traffic from all the new development in the area. She stated that traffic backs up at Stokil Drive and at Windgate Drive, noting there are no lights at the intersection of Wingate Drive and Beaver Bank Road. Finally, she said there is a pull-over area across from her house where 18-wheel trucks stop and vendors use on the weekend. There is a daycare up the street and the children walk on the one available sidewalk. Ms. Dowe stated with all this traffic there is “an accident waiting to happen.”

[17] Ms. Dowe stated that she will lose her privacy with this proposed development. [REDACTED]

property, [REDACTED] [REDACTED]

[REDACTED] She said she knew there would be construction near her house, as there is vacant land, but expected it to be houses or duplexes. She did not expect a 46-unit building. She was aware of the need for affordable housing, but stated this development will not help as these will be expensive units renting for fair market value.

[18] Ms. Dowe said her best-case scenario is that the Board puts this development on hold until an assessment is made of how traffic will be impacted from various developments approved in the area.

[19] The Board's *Municipal Government Act Rules* require the respondent municipality or town in every planning appeal to file an Appeal Record with the Board:

26 (1) Pursuant to s. 250A(1) of the Act or s. 266(1) of the Charter, the municipality which is responsible for the decision which is the subject of the appeal shall, within 14 business days of being notified by the Board of the filing of the Notice of Appeal, file with the Clerk and with any other party, the complete electronic and hard copy of the Appeal Record and an electronic copy of the relevant Municipal Planning Strategy, Land Use By-law, Zoning By-law, Subdivision By-law or Subdivision Regulations.

(2) An Appeal Record shall consist of the following:

- (a) a table of contents;
- (b) the application;
- (c) the decision under appeal;
- (d) a copy of the advertisements for any public hearing held relating to the subject of the appeal;
- (e) a copy of the minutes of any public hearing respecting the subject of the appeal;
- (f) a copy of the minutes of any council meeting at which the subject of the appeal was discussed;
- (g) copy of any report, letter, submission, recommendation or other matter respecting the subject of the appeal which was submitted

to or was considered by council or the Development Officer, excluding any legal opinion prepared for the municipality for which privilege is claimed; and

- (h) copy of the publication of the notice of the decision; or a copy of the written notice which was sent to the applicant.

[20] As a result, the Appeal Record, including the one filed in the present appeal, contains a complete record of the proposed development as it works its way through the municipal planning process, from the initial application, through the public consultation process, the filing of planning reports and other departmental reviews and studies, council's consideration of the matter, and its ultimate decision on the rezoning or development agreement application.

III BOARD JURISDICTION

[21] The Board notes that the *HRM Charter* establishes that the Municipality has the primary authority for planning (s. 208). Under s. 30 of the *HRM Charter*, a community council stands in the place of HRM Council when considering rezoning applications, and Part VIII - Planning and Development - of the *Charter* applies to decisions of a community council.

[22] An applicant for the approval of a development agreement may appeal the refusal by a council to the Board (s. 262(1)). The grounds of an appeal of a council's refusal of a development agreement are set out in s. 265(1)(b) of the *HRM Charter*:

Restrictions on appeals

265 (1) An aggrieved person or an applicant may only appeal

...

(b) the approval or refusal of a development agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy; [Emphasis added]

[23] The Board's remedial powers, and the restrictions on the exercise of these powers, are prescribed by s. 267 of the *HRM Charter* which provides:

Powers of Board on appeal

267 (1) The Board may

(a) confirm the decision appealed from;

(b) allow the appeal by reversing the decision of the Council to amend the land-use by-law or to approve or amend a development agreement;

(c) allow the appeal and order the Council to amend the land-use by-law in the manner prescribed by the Board or order the Council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

...

(2) The Board may not allow an appeal unless it determines that the decision of the Council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law. [Emphasis added]

[24] Thus, the Board must not interfere with the decision of council unless the Board determines that the decision does not reasonably carry out the intent of the MPS.

[25] In appeals under the *HRM Charter*, the burden of proof is on the appellant. To be successful, the appellant must establish, on the balance of probabilities, that the decision of council does not reasonably carry out the intent of the MPS. If the appellant fails, the Board must defer to the decision of council.

[26] In municipal planning appeals, the Board follows statutory requirements and guiding principles identified in various Nova Scotia Court of Appeal decisions. The Court summarized the principles in *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27 and, more recently, *Heritage Trust of Nova Scotia v. AMK Barrett Investments Inc.*, 2021 NSCA 42:

[23] I will start by summarizing the roles of Council, in assessing a prospective development agreement, and the Board on a planning appeal.

[24] In *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. No. 50, 1994 NSCA 11 [*Heritage Trust*, 1994], Justice Hallett set out the governing principles:

[99] ... A plan is the framework within which municipal councils make decisions. The Board is reviewing a particular decision; it does not interpret the relevant policies or by-laws in a vacuum. In my opinion the proper approach of the Board to the interpretation of planning policies is to ascertain if the municipal council interpreted and applied the policies in a manner that the language of the policies can reasonably bear. ... There may be more than one meaning that a policy is reasonably capable of bearing. This is such a case. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact on the decision. ... This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions. ...

[100] ... Ascertaining the intent of a municipal planning strategy is inherently a very difficult task. Presumably that is why the Legislature limited the scope of the Board's review.... The various policies set out in the Plan must be interpreted as part of the whole Plan. The Board, in its interpretation of various policies, must be guided, of course, by the words used in the policies. The words ought to be given a liberal and purposive interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are made. ...

...

[163] ... Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact on such decisions. ... Neither the Board nor this Court should embark on their review duties in a narrow legalistic manner as that would be contrary to the intent of the planning legislation. Policies are to be interpreted reasonably so as to give effect to their intent; there is not necessarily one correct interpretation. This is implicit in the scheme of the *Planning Act* and in particular in the limitation on the Board's power to interfere with a decision of a municipal council to enter into development agreements.

[25] These principles, enunciated under the former *Planning Act*, continue with the planning scheme under the *HRM Charter*. *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, para. 24, summarized a series of planning rulings by this Court since *Heritage Trust*, 1994:

[24] ... I will summarize my view of the applicable principles:

(1) ... The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.

(2) The appellant to the Board bears the onus to prove facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.

(3) The premise, stated in s. 190(b) of the *MGA*, [*Municipal Government Act*] for the formulation and application of planning policies is that the municipality be the primary steward of planning, through municipal planning strategies and land use by-laws.

(4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. ...

(5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.

(6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.

(7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. ...

(8) The intent of the MPS is ascertained primarily from the wording of the written strategy. ...

[27] Clearly, the Board is not permitted to substitute its own decision for that of council but must review the decision of council to determine if the decision of council can be said to reasonably carry out the intent of the MPS. In determining the intent of the MPS, the Board considers it should apply the principles of statutory interpretation which have been adopted by the Court of Appeal, as well as the provisions of s. 9(1) and s. 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235.

IV PROPOSED DEVELOPMENT AND HRM PROCESS

[28] A Planning Staff report (Staff Report) dated November 21, 2022, described the proposal as an application for a development agreement to permit a four-storey apartment building containing 46 units near the intersection of Beaver Bank Road and Windgate Drive in Beaver Bank. The development would be located on the east side of Beaver Bank Road between Windgate Drive and Stokil Drive, with driveway access from Beaver Bank Road. The proposed site has unique characteristics, given the presence of existing and former transportation rights-of-way, including a former railway bed. The proposed development will be set within an area containing lot sizes and layouts of inconsistent character. This is due to the acute angle of the intersection of Beaver Bank Road and Windgate Drive and a remnant of the Old Beaver Bank Road (that edges the interior of the subject site), in addition to the location of the former railway right of way.

[29] The lot which contains the proposed development has the Urban Settlement (UR) and Rural Commuter (RC) designations under the Regional Municipal Planning Strategy. Specifically, it is designated as Urban Residential (UR) under the Sackville MPS, as depicted on the Generalized Future Land Use map (see Exhibit A-2, Appeal Record, p. 160). Further, it is zoned as R-6 Zone (Rural Residential) under the Sackville Land Use By-law (LUB). The Zoning map of the area is reproduced below. The map also shows the notification area used by HRM to provide notice to the neighbouring properties about the proposed development:



[Staff Report, Exhibit A-2, p. 161]

[30] The HRM Planning Staff reviewed the application in the context of the MPS policies and included its analysis in the Staff Report. Planning Staff noted that Policy UR-8 of the Sackville MPS enables Community Council to consider multiple unit buildings with more than six units by development agreement. Policy UR-8 provides:

- UR-8 Notwithstanding Policies UR-2 and UR-7, within the Urban Residential Designation, it shall be the intention of Council to consider multiple unit dwellings over six (6) dwelling units, according to the development agreement provisions of the Planning Act. In considering such an agreement, Council shall have regard to the following:
 - (a) the adequacy of separation distances from low density residential developments;

- (b) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
- (c) that site design features, including landscaping, amenity areas, parking areas and driveways, are of an adequate size and design to address potential impacts on adjacent development and to provide for the needs of residential of the development;
- (d) preference for a site in close proximity to community facilities such as schools, recreation areas and transit routes;
- (e) that municipal central services are available and capable of supporting the development;
- (f) that appropriate controls are established to address environmental concerns, including stormwater controls, based on a report from the appropriate Municipal, Provincial, and/or Federal Government authority;
- (g) that the proposed development has direct access to a local street, minor collector or major collector as defined in Map 3 - Transportation;
- (h) that it is not being considered on lands which are presently zoned and developed for either single or two unit dwelling purposes nor where it is intended to replace a single or two unit dwelling which has been demolished, removed or destroyed by fire;
- (i) the impact on traffic circulation and, in particular, sighting distances and entrances and exits to the site;
- (j) general maintenance of the development; and
- (k) the provisions of Policy IM-13.

[Exhibit A-3, p. 53]

[31] Implementation Policy IM-13 provides as follows:

IM-13 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, the Sackville Community Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of sewer and water services;
 - (iii) the adequacy or proximity of school, recreation and other community facilities;
 - (iv) the adequacy of road networks leading or adjacent to, or within the development; and
 - (v) the potential for damage to or for destruction of designated historic buildings and sites.
- (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) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding;
- (e) any other relevant matter of planning concern; and

- (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, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. [Emphasis in original]**

[Exhibit A-3, pp. 87-88]

[32] Planning Staff also identified MPS Policy SU-2, which provides that “HRM shall establish an Urban Service Area under the Regional Subdivision By-law to designate those areas within the Urban Settlement Designation and the Harbour Designation where municipal wastewater collection and water distribution systems are to be provided.” In their report, Planning Staff noted that the portion of the site that abuts the Old Beaver Bank Road is within the Urban Service Area, but the rear portion of the site is only serviced by municipal water. Planning Staff noted that past practice has allowed development of properties partially within the service boundary provided 50% or more of the building footprint is within the service boundary. To comply with this requirement, the developer revised its proposal by reducing the development from two buildings to one building and siting its footprint on the serviced area.

[33] The Staff Report contained a detailed analysis of the MPS policies that are relevant to the proposed development agreement, which is attached as Appendix A to this decision. After conducting its review, Planning Staff recommended the approval of the proposed development agreement:

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 four-storey development reads as a contemporary building while working with traditional character forms – gable end buildings set in a stepped height - that are locally predominant to address height and bulk. The site development plan of the proposed agreement shows a buffer screen along the abutting bounds of the nearby single unit dwelling to the west with a 6 feet high opaque fence and a row of coniferous trees. Any further buffering and development of outdoor amenities may be captured under the required landscape plan of the agreement. Traffic concerns regarding stopping and turning sight distances, the volume of new trips generated by the proposed development and impact on surrounding street

system have been responded to by a traffic statement showing technical requirements have been met and the increased number of vehicle trips will have negligible impact on existing streets. Therefore, staff recommend that the North West Community Council approve the proposed development agreement.

[Exhibit A-2, p. 146]

[34] The matter was considered by North West Community Council following a public hearing held on January 16, 2023, at the Kinsac Community Centre, on Beaver Bank Road. Various members of the public filed letters of comment and spoke at the hearing in opposition to the proposed development. Cesar Saleh, an architect for the developer, gave a presentation and responded to questions of clarification from the Community Council. The Community Council also had the Staff Report before it. Ultimately, Community Council refused to approve the proposed development agreement.

[35] The Court of Appeal's judgment in *Archibald*, discussed earlier in this decision, emphasizes the importance of Community Council's written reasons for the refusal in providing a framework for the Board in exercising its appellate jurisdiction (although the Board is not confined to these written reasons in deciding this case). Community Council's written reasons were set out in a letter dated January 17, 2023, from HRM's Municipal Clerk:

Re: Case 23293: Development Agreement at Beaver Bank Road and Windgate Drive, Beaver Bank

Dear C. Saleh:

This is to advise of the outcome of Case 23293 that was before North West Community Council on Monday, January 16, 2023. As stated in the motion below, the application for a Development Agreement at PID 40117236 on the Beaver Bank Road, Beaver Bank was denied by North West Community Council for the following reasons; the proposed Development Agreement does not reasonably carry out the intent of the Municipal Planning Strategy under the following policy criteria:

- Lack of traffic infrastructure to support the development with emphasis on the Beaver Bank Road and Windgate Drive intersection;
- Lack of available medical facilities, schools and other needed community amenities; and

- It was noted that the development does not fit the community landscape and there are potential environmental implications and issues surrounding storm water.

MOVED by Councillor Blackburn, seconded by Councillor Lovelace

THAT North West Community Council:

- 1. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of the staff report dated November 21, 2022; and**
- 2. Require the 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.**

MOTION PUT AND DEFEATED.

Pursuant to Section 262(2) and 264(d) of the *Halifax Regional Municipality Charter*, you may appeal a decision of Council to the Nova Scotia Utility and Review Board. An appeal must be served within fourteen days after the date of written notice of Council's decision to refuse the application. Please feel free to contact me with any questions, or for further information.

[Exhibit A-2, Appeal Record, pp. 243-244]

[36] The developer appealed the Community Council's refusal to the Board on February 2, 2023.

[37] The Board notes its comments in *Armco Capital Inc. (Re)*, 2021 NSUARB 147:

[41] The Board recognizes that municipal councils are not bound by the recommendations of planning staff when considering planning applications and has repeatedly confirmed this in past decisions. The Board also recognizes the fact that a development is consistent with a municipal planning strategy does not automatically mean that a municipal council's refusal to approve the development is inconsistent with the strategy. As discussed above, the principles derived from Court of Appeal decisions confirm that there may be more than one conclusion that reasonably carries out the intent of a municipality's planning strategy.

[42] However, a municipal council should not arbitrarily dismiss the recommendations of its planning staff. When a municipal council disagrees with its professional planners, there should be good planning reasons to do so and these reasons must be rooted in the municipality's planning strategy (see *Re Bona Investments Limited*, 2009 NSUARB 58 at para. 75; *Re Griff Construction Limited*, 2011 NSUARB 51 at para. 146; *Re Rodgers*, 2013 NSUARB 131 at para.109; *Re Abruzzi Properties Incorporated*, 2017 NSUARB 111 at para. 116; and *Re MacNeil*, 2021 NSUARB 78 at para. 59).

[43] Bearing these principles in mind, the Board will now consider the reasons provided by the Community Council for rejecting the application in this case.

[*Armco*, paras. 41-43]

V ANALYSIS AND FINDINGS

[38] The Board will address the issues raised by Community Council in its refusal of the proposed development.

(i) Traffic Infrastructure

[39] Community Council's first reason for denying AG Property's application was:

- Lack of traffic infrastructure to support the development with emphasis on the Beaver Bank Road and Windgate Drive intersection;

[Exhibit A-1, p. 3]

[40] The Board finds no objective basis for this reasoning in the evidence that was before Community Council and the Board in this matter. Community Council was not required to, and did not specify in its reasons, any policies it relied upon in making this determination.

[41] As discussed in the written submissions of AG Property, Policy UR-8 and Implementation Policy IM-13 are relevant to the issue of potential traffic generated by the proposed development. The Staff Report also refers to these policies and the Board identifies no other applicable policies.

[42] Policy UR-8 (i) requires consideration of “the impact on traffic circulation and, in particular, sighting distances and entrances and exits to the site”. Further, Implementation Policy IM-13(b) requires that the “proposal not be premature by reason of ... (iv) the adequacy of road networks leading to or adjacent to, or within the development...”.

[43] The Appellants hired Harbourside Transportation Consultants to prepare a Traffic Impact Study (TIS) for the original proposed development of two buildings, for a total of 92 units. The scope of the study dated October 31, 2020, included a review of

sight distance for stopping and turning in both directions, the existing transportation network, as well as a calculation of trips to be generated by the development and the estimated distribution of trips into the transportation network. It also analysed how new trip volumes would affect the level of service of the existing transportation network.

[44] The TIS concluded the new vehicle trips associated with the proposed development of two buildings, for a total of 92 units, would have a negligible impact on traffic volume. The TIS estimated the proposed development would generate less than 25 vehicle trips in the peak direction of traffic on Beaver Bank Road during the peak hours. As indicated in the Staff Report dated November 21, 2022, before Council, Development Engineering reviewed, considered and accepted the TIS in addressing Policy UR-8(g) and (i) and Implementation IM-13(b)(iv). Development Engineering accepted that:

The proposed site access is on Beaver Bank Road which is identified as a Major Collector. The applicant has submitted a Traffic Impact Statement (TIS) in support of the proposal. The trip generation estimate findings indicate that the proposed development will generate less than 25 vehicle trips in the peak direction of traffic on Beaver Bank Road during the peak hours. The minimum stopping sight distance meets the requirements in both directions and the minimum turning sight distance meets the requirements for the access point in accordance with the Transportation Association of Canada's (*TAC Geometric Design Guide for Canadian Roads*). It is anticipated that the new vehicle trips associated with the proposed development can be accommodated with a negligible impact on traffic operations. Development Engineering has reviewed and accepted the submitted TIS.
[Emphasis added]

[Exhibit A-2, p. 182]

[45] The minutes of Community Council dated January 16, 2023, indicate 12 individuals spoke at the meeting which considered AG Property's proposal. The speakers included the architect for AG Property, Cesar Saleh; the Planner, Darrell Joudrey; and, members of the public. Nine members of the public expressed concern about the volume of traffic on Beaver Bank Road. Their comments included that there should be a moratorium on development until traffic issues were fixed. Some suggested the insertion of traffic lights at the intersection of Windgate Drive and Beaver Bank Road and the

widening of Windgate Drive. Others inquired whether the plans for AG Property included possibly moving ahead with the previously abandoned "Beaver Bank By-Pass".

[46] In a subsequent letter of comment filed with the Board, a member of the public expressed the view that a traffic light would not address the volume of traffic and the property should be used as a roundabout.

[47] In response to questions of clarification from the Council and the public at the January 2023 meeting, Mr. Joudrey stated "that a traffic impact study was conducted as required by HRM design guidelines for future developments, which passed the requirements." He added that "there had been no mention of new traffic infrastructure for the Beaver Bank and Windgate Drive intersection or the Beaver Bank Bypass." Finally, Mr. Joudrey stated that "there were no moratoriums in this planning area" and the "Regional Plan would be coming under review." [Exhibit A-2, pp. 237-238]

[48] As they did before Council on January 16, 2023, Ms. Dowe and Mr. Mailman spoke about their traffic concerns at the evening session before the Board.

[49] The Board finds that Council's decision to refuse AG Property's application because of the "lack of infrastructure" does not reasonably carry out the intent of the MPS. The TIS Report determined that the impact on local traffic was negligible, even when its proposal was for two buildings comprising a total of 92 units. HRM engineering reviewed and accepted the TIS. AG Property's proposal has since changed to one building for 46 units, half the number of units considered in the TIS. The Staff Report before Council indicated that Staff reviewed all relevant policy criteria for traffic and found that the proposal was reasonably consistent with the intent of the MPS. Finally, at the Council

Meeting, Mr. Joudrey stated that the TIS was conducted as required by HRM design guidelines for future developments.

[50] The Board finds that there was no requirement for the TIS to consider new infrastructure for the Beaver Bank Road and Windgate Drive intersection or the Beaver Bank Bypass. The Board concludes that Council's first reason for refusing the development agreement was not supported by the evidence and did not reasonably carry out the intent of the MPS.

(ii) **Availability of community amenities and facilities**

[51] Community Council's second reason for denying AG Property's application was:

- Lack of available medical facilities, schools and other needed community amenities;

The Board finds no objective basis for this reasoning in the evidence that was before Community Council and the Board in this matter.

[52] Community Council, in its written reasons, is not required to refer to the specific policies it may have relied on in its decision. It did not do so in this case. The developer's submissions drew the Board's attention to Policies UR-8 and IM-13, which are addressed in the Staff Report and set out in full earlier in this decision. Neither the Staff Report nor the Board's review of the HRM Planning Documents identified other policies in which Council could have reasonably grounded this part of its decision.

[53] Policy UR-8(d) addresses the requirements when Community Council is considering a development agreement for multiple unit dwellings with more than six dwelling units within the Urban Residential Designation. UR-8(d) directs Community

Council to “give preference for a site in close proximity to community facilities such as schools, recreation areas and transit routes”.

[54] The Staff Report addresses Policy UR-8(d), by setting out information on the local schools, community facilities and transit options, as follows:

Initial research has determined the following:

1. The site is serviced by the following schools:

Elementary (PP-5): Beaver Bank/Monarch Drive Elementary School (2.4km)

Junior (6-8): Harold T. Barrett Junior High (3.8km)

Senior (9-12): Lockview High School (10.9km, however Millwood is significantly closer – under investigation)

2. Nearby community facilities include:

Millwood Common Park and Sackville Lakes Provincial Park. Armcrest Park is located to the southeast of the subject site.

3. The subject site is located within the Urban Transit Service Boundary and there are weekday routes transit stops located 300m north and 400m south of the proposal.

[Exhibit A-2, p. 181]

[55] Policy IM-13 establishes the general criteria Community Council must “have appropriate regard for” in considering amendments to the LUB or development agreements. For the purposes of the “community amenities” issue, the relevant subsection of the policy is IM-13(b)(iii):

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

...

(iii) the adequacy or proximity of schools, recreation and other public facilities;

[Exhibit A-3, pp. 87-88]

Policy IM-13(b)(iii) is addressed in the Staff Report with reference to the staff analysis for Policy UR-8(d), i.e., the same information about local schools, parks, and transit options.

[56] The Appeal Record includes an email submission from a member of the public with a complaint about overcrowding at schools in Beaver Bank [Exhibit A-2, page 130]. At the Virtual Public Information Meeting held March 9, 2022, Ms. Dowe also raised her concern about availability of amenities like schools, which she said are already overcrowded [Exhibit A-2, pages 140 and 188]. The minutes from the Public Hearing, on January 16, 2023, reflect that two participants spoke to their concerns about local school capacity, among other issues [Exhibit A-2, pp. 236-237].

[57] The Board agrees with the developer's characterization of the evidence about overcrowding at local schools as "anecdotal comments." As the Appellants' submissions noted, the *Education Act*, S.N.S. 2018, c.1, Sch. A, provides a right for every person over the age of five years and under age 21 years to attend a public school serving the school region in which that person resides (s. 6). The *Education (CSAP) Act*, 1995-96 R.S.N.S., c. 1 provides the same right to French-first language education programs for persons entitled to minority language education under the *Canadian Charter of Rights and Freedoms (1982)*. The Province and, in this case, the Halifax Regional Centre for Education, and the CSAP, are responsible for the operational decisions needed to accommodate all students in the catchment areas for its public schools.

[58] The evidence shows that there are public schools in proximity to the development. Two elementary schools are identified on the Project Location Map provided in the presentation to Council [Exhibit A-3, p. 209]. The staff analysis identifies that schools at the Elementary, Junior and High School level are at a reasonable distance. There is no objective evidence that the number of potential public school students

forecasted to live in the development cannot be adequately accommodated in existing schools.

[59] The developer argues that there is no basis in the MPS for Council to reject a development agreement for a lack of proximity to “medical facilities”. Neither policy UR-8 nor IM-13 refers to “medical facilities”, as referred to by Community Council in its reasons. The Board agrees that it would be inappropriate, under this MPS, to ground a refusal of this development only and specifically due to a lack of proximity to medical facilities. However, the lack of an explicit reference to “medical facility” in Policy UR-8 or IR-13 does not mean that Council was wrong in considering that issue as part of its analysis. In the Board’s view, the policies are broad enough for Council to consider medical facilities, among others, within the more general category of “community facilities” in review of UR-8, or “public facilities”, which is the terminology used in IM-13(b)(iii).

[60] The Board notes that Policy UR-14, which applies to the Urban Residential Designation under the Sackville MPS, indicates Council’s intention “to establish a community facility zone which permits a variety of community-related uses such as schools, churches, hospitals, government offices, community centres and recreation uses.” Medical facilities such as clinics or hospitals, schools and community centres or recreation uses are clearly contemplated uses within an Urban Residential Designation.

[61] Nevertheless, the Board finds the evidence before Community Council did not support its finding about a lack of “community facilities” in the area. Map 2 – Zoning and Notification Area [Exhibit A-2, p. 161], shows a P-2 Community Facility Zone already located to the northeast of the intersection of Beaver Bank Road and Stokil Drive. The Staff Report identifies three local parks as nearby community facilities. Several churches

and a day care facility, referenced by Mr. Mailman in his statements, are identified on the Project Location Map [Exhibit A-2, p. 121] and the Context Plan [Exhibit A-2, p. 122].

[62] The Staff Report indicates that the policy criteria addressing the adequacy and proximity of schools and community, or public, facilities were met by the application. The Board concludes that Council's second reason for denial of the development agreement was not supported by the evidence and did not reasonably carry out the intent of the MPS.

(iii) **Compatibility**

[63] Community Council noted in its refusal letter that the "development does not fit the community landscape".

[64] MPS Policy UR-8 provides that Council shall have regard to the "adequacy of separation distances from low density residential developments" [UR-8(a)] and that "the height, bulk, lot coverage and appearance of [the proposed development] is compatible with adjacent land uses" [UR-8(b)]. In terms of "controls", Policy UR-8(c) directs Council to have regard that "site design features, including landscaping, amenity areas, parking areas and driveways, are of an adequate size and design to address potential impacts on adjacent development and to provide for the needs of residents of the development".

[65] Policy IM-13(c) also provides that Council must have regard to putting controls in place on the proposed development to reduce conflict with any adjacent or nearby land uses due to the type of use and the "height, bulk and lot coverage" of the development.

[66] The Appellants' written submissions described how the Staff Report highlighted for Community Council the range of uses in the vicinity of the proposed development and the controls imposed on the design of the proposed development:

80. With respect to Policy UR-8(b), the Staff Report noted that there were a variety of residential uses, including multi-unit residential, in the neighborhood as well as industrial and commercial uses:

There are a variety of housing types in close proximity to the subject site including:

- *A four storey multiple unit dwelling is located to the west at the intersection of Beaver Bank Road and Stokil Drive.*
- *A townhouse development at Stokil Drive*
- *Single family dwellings to the south*
- *Industrial/Commercial uses across Beaver Bank Road*
- *A development agreement allowing a 2.5 storey retail/office building recently approved on an abutting site to the south (Case 20757)*

Considering the variety of uses and building forms of the surrounding area, with adequate separation distances and buffering, the proposed buildings will be compatible with adjacent land uses. See IM-13(c)ii below.

81. The Staff Report stated that the following controls were in place with respect to the design of the proposed development:

- (a) The roof line introduces a stepping form that varies in height and reduces the visual perception of bulk;
- (b) It uses traditional character forms of gable-ended roofs which are predominant in the area;
- (c) The pitched roof and the stepped height respect local forms and styles;
- (d) The lower portions of the stepped roof have corresponding recessed sidewalls that articulate the building and break up the overall mass; and
- (e) The proposed lot coverage of 25% is less than other residential lot coverage requirements under the LUB. [Emphasis added in original]

[Appellant's Written Submissions, paras. 80-81]

[67] Moreover, the Board notes that the development agreement specifically imposes controls on the proposed development in the form of size and setbacks (s. 3.4.1), landscaping (s. 3.2.2), parking areas (s. 3.6.1), a six-foot opaque privacy fence and tree buffer (s. 3.8.2), and outdoor lighting (s. 3.7.1). Further, in the application process with the applicant developer, HRM planning staff secured a single 46-unit building instead of

two buildings, and the building was sited on the lot in a different location to move the parking to the rear of the building.

[68] Finally, the Staff Report highlighted many of the “compatibility” and “control” measures outlined above in concluding that the proposed development was reasonably consistent with the MPS and recommended that Community Council approve the development agreement. While the Report’s conclusion was quoted earlier in this decision, its emphasis on “compatibility” and “controls” bears repeating:

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 four-storey development reads as a contemporary building while working with traditional character forms – gable end buildings set in a stepped height - that are locally predominant to address height and bulk. The site development plan of the proposed agreement shows a buffer screen along the abutting bounds of the nearby single unit dwelling to the west with a 6 feet high opaque fence and a row of coniferous trees. Any further buffering and development of outdoor amenities may be captured under the required landscape plan of the agreement. Traffic concerns regarding stopping and turning sight distances, the volume of new trips generated by the proposed development and impact on surrounding street system have been responded to by a traffic statement showing technical requirements have been met and the increased number of vehicle trips will have negligible impact on existing streets. Therefore, staff recommend that the North West Community Council approve the proposed development agreement. [Emphasis added]

[Exhibit A-2, p. 146]

[69] The Board finds that there is no reasonable basis upon which Community Council could find that the proposed development is not compatible with adjacent or nearby land uses. Further, the Board is satisfied that the development agreement reasonably addresses site and building design control features to further compatibility. In refusing the proposed development for its lack of compatibility, the Board concludes that Community Council’s decision was not reasonably consistent with the MPS.

(iv) **Environmental issues about stormwater**

[70] In its refusal letter, Community Council noted that “there are potential environmental implications and issues surrounding storm water”.

[71] Policy UR-8(f), requires “controls” to address environmental concerns. Moreover, Policies IM-13(b)(ii) and (d) provide that Community Council shall have “appropriate regard to the following matters”:

- IM-13 (b) that the proposal is not premature or inappropriate by reason of:
 - ... (ii) the adequacy of sewer and water services;
 - ... (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding;

[72] The proposed development agreement recommended by HRM Planning Staff contains the following provisions about stormwater and other potential environmental issues:

- 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 Sackville Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree 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 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.
- 3.2.1 Prior to any site work or the issuance of a Grade Alteration Permit the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
 - (a) In accordance with By-law G-200 a Grade Alteration Plan and Stormwater Management Plan.

[Exhibit A-2, pp. 149-150]

[73] It is clear from the above provisions in the proposed development agreement that stormwater and other potential environmental issues have been addressed. There were various references in the Appeal Record in which Planning Staff noted the various requirements that would have to be met by the developer to address HRM's bylaws, policies and regulations, including:

- HRM Engineering noted that the pre-development and post-development stormwater discharge values should balance and will be reviewed at the building permit stage [p. 66];
- Halifax Water advised that all water, wastewater and stormwater design must conform with Halifax Water Design Specifications and that multi-unit buildings require monitoring access points for both wastewater and stormwater connections [p. 67];
- The development agreement will require a stormwater management plan, erosion and sediment control plan, and a site disturbance plan to be submitted prior to commencement of any site work to ensure all municipal and provincial standards are met at permitting, including the adherence to the watercourse buffer requirements of the Regional Plan [pp. 71-72]; and
- Halifax Water did not raise any concerns with respect to stormwater and accepted the Revision 1 – Building Plan proposal. The Sanitary Sewer Analysis completed by SDMM dated April 14, 2021, stated that the downstream sewer system has sufficient capacity [p. 44].

[74] As noted in various decisions of the Board and the Courts, Councils are entitled to rely on municipal, provincial and federal authorities for compliance with various potential environmental issues, including but not limited to water, wastewater, stormwater, soil erosion, grade, etc., see, for example, *Bennett v. Kynock*, (1994) 1994 NSCA 114; *Fryday et al. v. Halifax Regional Municipality*, 2007 NSUARB 97; *Cameron (Re)*, 2021 NSUARB 8; and *Tawil (Re)*, 2022 NSUARB 95.

[75] The Appeal Record shows that the issue of stormwater specifically referred to by Community Council was satisfactorily addressed in the proposed development

agreement and in the analysis conducted by HRM staff, as well as Halifax Water. In refusing to approve the development agreement due to concerns about stormwater, the Board finds that Community Council's decision did not reasonably carry out the intent of the MPS.

VI CONCLUSION

[76] The Board concludes that Community Council's decision does not reasonably comply with the intent of the MPS. The appeal is allowed and the Board orders North West Community Council to approve the development agreement.

[77] An Order will issue accordingly.

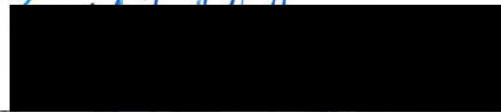
DATED at Halifax, Nova Scotia, this 21st day of July, 2023.



Roland A. Deveau



Julia E. Clark



M. Kathleen McManus

Appendix A

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Attachment B: Review of Relevant MPS Policies

Sackville Municipal Planning Strategy	
Policy	Staff Comment
<p>Policy SU-2 HRM shall establish an Urban Service Area under the Regional Subdivision By-law to designate those areas within the Urban Settlement Designation and the Harbour Designation where municipal wastewater collection and water distribution systems are to be provided. The Area shall initially include all lands within existing service boundaries established under secondary planning strategies at the time of adoption of this Plan. Lands within the Urban Service Area shall only be developed with municipal wastewater collection and water distribution systems. Any service boundary established under existing secondary planning strategies shall be replaced by the Urban Service Area boundary in the Regional Subdivision By-law.</p>	<p>The subject property is only partially located within the Urban Service Area. That portion of the site that abuts the Old Beaver Bank Road is located within the Urban Service Area and the rear portion of the site is only serviced by municipal water. Past practice has been to allow development of properties partially within the service boundary provided 50% or more of the building footprint is within the service boundary. Revisions to plans demonstrate compliance with this practice.</p>

<p>Policy SU-4 When considering any expansion of the Urban Service Area, HRM shall have regard to the following:</p> <ul style="list-style-type: none">(a) that a Secondary Planning Strategy for the lands to be included within the Urban Service Area has been adopted by HRM except that this requirement may be waived where, in the opinion of HRM, the proposed extension represents a minor adjustment to the Area;(b) the financial ability of HRM to absorb any costs relating to the extension;(c) if required, a watershed or sub-watershed study has been completed in accordance with Policy E-23;(d) that, if required to pay for growth-related municipal infrastructure costs, a municipal infrastructure charge area has been established or is adopted concurrently with the boundary amendment;(e) the need to oversize the water, wastewater or stormwater systems to allow for future development within an Urban Settlement or Urban Reserve designation; and(f) a charge needed to pay for growth related improvements to the water, wastewater or stormwater systems has, where required, been approved by the Review Board.	<ul style="list-style-type: none">(a) This would not be considered an expansion provided that 50% of the building footprint was located within the service boundary. Revisions meet this policy.(b) The costs for installing services to the remainder of the site would be the responsibility of the developer. Services are already located at the public street frontage.(c) Since the service boundary is not being altered at this time, no further studies would be required.(d) Growth related municipal infrastructure charges are not required at this time.(e) Not applicable as no new services are being installed.(f) Not applicable as the service boundary is not being expanded.
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<p>Policy UR-8 Notwithstanding Policies UR-2 and UR-7, within the Urban Residential Designation, it shall be the intention of Council to consider multiple unit dwellings over six (6) dwelling units, according to the development agreement provisions of the Planning Act. In considering such an agreement, Council shall have regard to the following:</p>	
<p>(a) the adequacy of separation distances from low density residential developments;</p>	<p>Low density residential uses are located to the south and west of the proposed development: the retained existing vegetation aids in supplementing the horizontal separation distance. There is an existing Single Family Dwelling located to the immediate west of the subject site and this is proposed to be adequately buffered with a six foot high opaque fence and a row of coniferous trees (species to be determined).</p>
<p>(b) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;</p>	<p>There are a variety of housing types in close proximity to the subject site including:</p> <ul style="list-style-type: none"> - A four storey multiple unit dwelling is located to the west at the intersection of Beaver Bank Road and Stokil Drive. - A townhouse development at Stokil Drive - Single family dwellings to the south - Industrial/Commercial uses across Beaver Bank Road - A development agreement allowing a 2.5 storey retail/office building recently approved on an abutting site to the south (Case 20757) <p>Considering the variety of uses and building forms of the surrounding area, with adequate separation distances and buffering, the proposed buildings will be compatible with adjacent land uses. See IM-13(c)ii below.</p>

<p>(c) that site design features, including landscaping, amenity areas, parking areas and driveways, are of an adequate size and design to address potential impacts on adjacent development and to provide for the residential needs of the development.</p>	<p>Applicant has provided a site development plan demonstrating compliance with this policy. There is a significant amount of open space within the site. The applicant should consider the addition of walkways and seating areas to provide outdoor amenity space for the residents when the required landscape plan is developed. Parking areas have been provided with 1.5 spaces per unit.</p>
<p>(d) preference for a site in close proximity to community facilities such as schools, recreation areas and transit routes;</p>	<p>Initial research has determined the following:</p> <ol style="list-style-type: none"> 1. The site is serviced by the following schools: <ul style="list-style-type: none"> Elementary (PP-5): Beaver Bank/Monarch Drive Elementary School (2.4km) Junior (6-8): Harold T. Barrett Junior High (3.8km) Senior (9-12): Lockview High School (10.9km, however Millwood is significantly closer – under investigation) 2. Nearby community facilities include: <ul style="list-style-type: none"> Millwood Common Park and Sackville Lakes Provincial Park. Armcrest Park is located to the southeast of the subject site. 3. The subject site is located within the Urban Transit Service Boundary and there are weekday routes transit stops located 300m north and 400m south of the of the proposal.

<p>(e) that municipal central services are available and capable of supporting the development;</p>	<p>The proposal complies with the current practice to allow development of properties partially within the service boundary provided 50% or more of the building footprint is within the service boundary.</p> <p>Proposal is acceptable to Halifax Water. A capacity analysis indicating that there is sufficient capacity has been provided however this will be confirmed at the building permit stage.</p>
<p>(f) that appropriate controls are established to address environmental concerns, including stormwater controls, based on a report from the appropriate Municipal, Provincial, and/or Federal Government authority;</p>	<p>The development agreement will require a stormwater management plan, erosion and sediment control plan, and a site disturbance plan to be submitted prior to commencement of any site work to ensure all municipal and provincial standards are met at permitting, including the adherence to the watercourse buffer requirements of the Regional Plan.</p>
<p>(g) that the proposed development has direct access to a local street, minor collector or major collector as defined in Map 3 - Transportation;</p>	<p>The proposed site access is on Beaver Bank Road which is identified as a Major Collector. The applicant has submitted a Traffic Impact Statement (TIS) in support of the proposal. The trip generation estimate findings indicate that the proposed development will generate less than 25 vehicle trips in the peak direction of traffic on Beaver Bank Road during the peak hours. The minimum stopping sight distance meets the requirements in both directions and the minimum turning sight distance meets the requirements for the access point in accordance with the Transportation Association of Canada's (TAC) <i>Geometric Design Guide for Canadian Roads</i>. It is anticipated that the new vehicle trips associated with the proposed development can be accommodated with a negligible impact on traffic operations. Development Engineering has reviewed and accepted the submitted TIS.</p>

<p>(h) that it is not being considered on lands which are presently zoned and developed for either single or two unit dwelling purposes nor where it is intended to replace a single or two unit dwelling which has been demolished, removed or destroyed by fire;</p>	<p>The site is currently zoned R-6 which allows for single family dwellings. The subject lots were created in 1987 and 2015 and have been vacant since that date.</p>
<p>(i) the impact on traffic circulation and, in particular, sighting distances and entrances and exits to the site;</p>	<p>The TIS submitted in support of the application has been accepted by Development Engineering (see UR-8(g) above).</p>
<p>(j) general maintenance of the development; and</p>	<p>The agreement will require the site be maintained according to provincial and municipal safety and environmental standards throughout the construction process and will require the site to be kept in good repair upon completion.</p>
<p>(k) the provisions of Policy IM-13.</p>	<p>See below.</p>

<p>Policy IM-13</p> <p>In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, the Sackville Community Council shall have appropriate regard to the following matters:</p>	
<p>(a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by laws and regulations;</p>	<p>See comments throughout this review.</p>
<p>(b) that the proposal is not premature or inappropriate by reason of:</p>	

<p>(i) the financial capability of the Municipality is to absorb any costs relating to the development;</p>	<p>No costs to the municipality associated with the development have been identified.</p>
<p>(ii) the adequacy of sewer and water services and public utilities;</p>	<p>The applicant has provided acceptable studies that there is available capacity which will be confirmed by Halifax Water at permit stage.</p>
<p>(iii) the adequacy and proximity of schools, recreation and other public facilities;</p>	<p>See UR-8(d) above.</p>
<p>(iv) the adequacy of road networks leading or adjacent to, or within the development; and</p>	<p>A TIS submitted in support of the application has been reviewed and accepted by Development Engineering (see UR-8(g) above).</p>
<p>(v) the potential for damage to or for destruction of designated historic buildings and sites.</p>	<p>No historic buildings or sites have been identified.</p>
<p>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</p>	
<p>(i) type of use;</p>	<p>The type of use, a multi-unit building, is an appropriate use provided appropriate measures are taken to mitigate impacts to nearby properties. See UR-8 (a), (b), and (c) for further information</p>
<p>(ii) height, bulk and lot coverage of any proposed building;</p>	<p>The proposed building is four stories in height with 46 units. To reduce the visual perception of bulk the roof line introduces a stepping form. The proposed building uses traditional character forms of gable ended buildings predominant in the area; the pitched roof and the stepped height respect local forms and styles. The proposed lot coverage of 25% is dis-similar to other residential lot coverage requirements under the Sackville Land Use By-law of 35% for</p>

	single detached, semi-detached and townhouses and 50% for multiple unit buildings in the plan area but because of the varied site characteristics surrounding the subject site the proportional difference will likely be visually unnoticeable.
(iii) traffic generation, access to and egress from the site, and parking;	See UR-8(g) above.
(iv) open storage;	No open storage has been proposed.
(v) signs; and	Regulations regarding signage will be included within the proposed DA.
(vi) any other relevant matter of planning concern.	n. a.
(d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding;	The site is relatively flat. Final construction and site development will require compliance with standards outlined in the Development Agreement, applicable standards of the LUB, the Building By-law and other applicable codes to ensure the permitted uses are deemed safe and are not detrimental to the site or adjacent uses. An erosion and sedimentation plan, a site disturbance plan, and a detailed stormwater management plan will be a requirement of the development agreement.
(e) any other relevant matter of planning concern; and	n. a.

<p>(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, except in accordance with the development agreement provisions of the MGA and the Infrastructure Charges Policies of this MPS.</p>	<p>Subdivision is not proposed within this application.</p>
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