

HALIFAX

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

Item No. 15.1.6
Halifax Regional Council
October 5, 2021

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: September 24, 2021

SUBJECT: **Case 23726: Incentive or Bonus Zoning Agreement - Mixed-Use Development at 1470 Queen Street, Halifax**

ORIGIN

September 9, 2021 Design Review Committee approval of the qualitative elements of the substantive site plan application for an eight-storey, mixed-use building. The Committee recommended that the Development Officer accept the undergrounding of electrical and communication distribution systems (underground vault for utilities) as the post-bonus public benefit category.

LEGISLATIVE AUTHORITY

- *Halifax Regional Municipality Charter:*
 - Section 245A(1): Where a municipal planning strategy so provides, a land-use by-law may provide for incentive or bonus zoning agreements respecting the HRM by Design Downtown Plan Area;
 - Section 245B(1): The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement; and
 - Section 245C(1): An incentive or bonus zoning agreement is in effect until discharged by the Council.
- Section 12(7), Downtown Halifax Land Use By-law (LUB) (Attachment A)

RECOMMENDATION

It is recommended that Halifax Regional Council adopt and authorize the Mayor and Clerk to enter into and execute the Incentive or Bonus Zoning Agreement, which shall be substantially of the same form as set out in Attachment B of this report, for the eight-storey, mixed-use building on the lands at 1470 Queen Street, Halifax (PID 00077461).

BACKGROUND

On September 9, 2021, HRM's Design Review Committee (DRC) approved an application for substantive site plan approval for an 8-storey, mixed use building on lands at 1470 Queen Street which are bounded by Queen Street, Spring Garden Road, and Birmingham Street. The applicant has already demolished the existing buildings on site.

The following highlights the major elements of the proposal:

- ~25.8m in height;
- 216 dwelling units, of which 72 will be 2-bedroom units;
- Ground floor commercial space (~2,267 sq. metres / 24,400 sq.ft.); and
- A pedestrian promenade (mid-block connection) linking Queen Street and Birmingham Street, to be lined with restaurant patio spaces and townhouse-style units.

Proposed Public Benefit

Within the Downtown Halifax Plan Area, maximum permitted building heights may only be attained when a developer provides a public benefit. The list of eligible public benefit categories is set out in subsection 12(7) of the LUB (Attachment A). Where a public benefit is not provided, the developer may only build to a lower building height. This approach is often referred to as "density bonusing" but is enabled under the *Halifax Regional Municipality Charter* as "incentive or bonus zoning."

The applicant proposes the public benefit to be in the form of the undergrounding of electrical and communication distribution systems (underground vault for utilities).

Role of Design Review Committee, Development Officer & Council

Under clause 4(13)(c) of the LUB, the Design Review Committee is responsible to provide the Development Officer with advice on matters pertaining to bonus zoning in relation to substantive site plan approvals. The DRC's advice is provided in the form of a recommendation on the public benefit category given at the time the Committee makes its decision on the substantive site plan application.

The Development Officer is responsible for determining if a proposal meets the land use and built form requirements of the LUB. Subsection 12(9) of the LUB requires that prior to the issuance of a development permit requiring a public benefit, the developer must enter into an agreement with the Municipality to specify the terms and conditions by which the public benefit is to be provided.

At the September 9, 2021 Design Review Committee meeting it was recommended that the public benefit be in the form of the undergrounding of electrical and communication distribution systems. The *Halifax Regional Municipality Charter* requires Council approval of an incentive or bonus zoning (public benefit) agreement. This report seeks to obtain Council's approval of the agreement.

DISCUSSION

DRC Approval

The LUB requires developments that exceed the maximum pre-bonus height limitations provide a public benefit as part of the project. In this case, DRC recommended approval of the developer's proposal of the public benefit category of the undergrounding of overhead electrical and communication distribution systems. Specifically, DRC's motion in this regard is as follows:

“MOVED by Charlotte Fouquet, seconded by Nathan Guy

THAT the Design Review Committee recommend that the Development Officer accept the undergrounding of electrical and communication distribution systems (underground vault for utilities) as the post-bonus public benefit category.

MOTION PUT AND PASSED.”

Public Benefit Value

The value of the required public benefit is calculated in accordance with a formula set out in the Downtown Halifax LUB. The By-law determines the extent of the required public benefit by assigning a value to any proposed floor area beyond the maximum pre-bonus floor area ratio. For every 0.1 square metres of floor area that exceeds the pre-bonus maximum, \$4.98¹ of public benefit value is required. For this project, the maximum pre-bonus allowance is exceeded by 4,001 square metres, resulting in a minimum public benefit value contribution of \$199,249.80.

The applicant has proposed to provide a Community Vault to house the electrical underground for the Spring Garden Road streetscape. While detailed costs for this remain to be calculated, they are estimated to be in the order of \$300,000 as noted in Attachment C.

As the proposed public benefit exceeds the minimum required benefit, staff recommend that Regional Council adopt, by resolution, the Incentive or Bonus Zoning Agreement as provided in Attachment B of this report for the development located at 1470 Queen Street.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this application can be accommodated within the approved operating budget for C420 Land Development and Subdivision. The vault is required to house electrical undergrounding for the Spring Garden Streetscaping project. Should Council choose not to approve the public benefit, HRM will have to compensate the developer for the value associated with aspects of the vault construction, in the amount of \$67,300.

RISK CONSIDERATION

There are no risks associated with the recommendation contained within this report.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to the public benefit contribution component of the site plan approval process.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

¹ Amount adjusted in 2021 as per the Statistics Canada, Province of Nova Scotia Consumer Price Index

ALTERNATIVES

Regional Council may defeat the staff motion recommending the Incentive or Bonus Zoning Agreement substantially of the same form as set out in Attachment B of this report.

This would delay construction of the project as scheduled, necessitate further submissions by the developer, and require additional advisement by the Design Review Committee, as well as a supplementary report from staff. As outlined in this report, HRM would be required to compensate the developer for costs associated with the vault, as it's required to support the Spring Garden Streetscaping project.

ATTACHMENTS

Attachment A	Section 12(7) of the LUB- Public Benefit Categories
Attachment B	Incentive or Bonus Zoning Agreement
Attachment C	Details of Proposed Public Benefit

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: Andrew Faulkner, Principal Planner & Development Officer, 902.476.2982

Attachment A
Section 12(7) of the LUB- Public Benefit Categories

- 12(7) Subject to meeting all applicable requirements of this By-law, development pursuant to subsection (1) shall be permitted where the developer provides one or a combination of the following public benefits:
- (a) where the development includes a registered heritage property which is to be maintained, the reservation or enhancement of the heritage resource;
 - (b) the provision of publicly accessible amenity or open space, where a deficiency in such spaces exists;
 - (c) the provision of residential units at a subsidized cost to contribute to housing affordability in the Downtown Halifax Secondary Municipal Planning Strategy plan area;
 - (d) the provision of 3 and 4 bedroom units with direct access to outdoor amenity space;
 - (e) the provision of rental commercial space made available at a subsidized cost for arts or cultural uses;
 - (f) the provision of public art;
 - (g) the provision of public parking facilities, where a deficiency in such facilities exists;
 - (h) investment in public transit or active transportation infrastructure;
 - (i) the provision of exemplary sustainable building practices.
 - (j) the undergrounding of overhead electrical and communication distribution systems.

Attachment B: Incentive or Bonus Zoning Agreement

THIS AGREEMENT made this ____ day of _____, A.D., 2021.

BETWEEN:

MILLS COMPANY HOLDINGS LIMITED, a body corporate,
(hereinafter called the “Developer”)

-and-

HALIFAX REGIONAL MUNICIPALITY, a body corporate,
(hereinafter called the “Municipality”)

WHEREAS the Developer is the owner of the Property and has proposed a Development that exceeds the maximum pre-bonus height identified on Map 4 of the Downtown Halifax Land Use By-law;

AND WHEREAS Section 12 of the *Land Use By-law* requires that a Public Benefit be provided on the Property being developed for all or part of any storey above the Pre-Bonus Height;

AND WHEREAS it is feasible to provide the Public Benefit required by the *Land Use By-law* on the Property being developed;

AND WHEREAS on September 9, 2021 the HRM Design Review Committee approved the Development and recommended to the Development Officer of the Municipality the acceptance of the undergrounding of electrical and communication distribution systems as the Public Benefit for the Development;

AND WHEREAS by approving this Agreement, the Council of the Municipality has accepted undergrounding of overhead electrical and communication distribution systems as the Public Benefit for the Development;

WITNESS THAT in consideration of the benefits accrued to each Party from the mutual promises and covenants herein contained and the sum of \$1.00 now paid by the Developer to the Municipality (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto agree as follows;

Definitions

1. In this Agreement all words shall carry their ordinary meaning except those defined in the *Downtown Halifax Land Use By-law* and, unless the context otherwise requires, the following words shall have the following meanings:

- (a) “Council” means the Council of the Municipality;
- (b) “Development” means an eight (8) storey mixed-use residential/commercial building on the Property;
- (c) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (d) “Incentive or bonus zoning” means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest, as specified in the requirements;
- (e) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;
- (f) “Municipality” means the Halifax Regional Municipality;
- (g) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being 1470 Queen Street, Halifax, Nova Scotia, known as PID 00077461 the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality and is more particularly set out in Schedule “A” attached hereto; and
- (h) “Public Benefit” means:
 - (a) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
 - (b) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that the Developer will provide undergrounding of overhead electrical and communication distribution systems as the Public Benefit required under subsections 12(1) and 12(7) of the *Land Use By-law* for the Property and as more particularly described in Schedule B.

3. The Developer agrees to provide the Public Benefit in accordance with Schedule B in exchange for exceeding the Maximum Pre-Bonus Height for the Property.

Term of Agreement

4. This Agreement is in effect until discharged by the Council.

Reporting of Public Benefit

5. Prior to the issuance of the Occupancy Permit the Developer agrees to provide a report to a Development Officer of the Municipality confirming that the Public Benefit has been completed.

Construction of Public Benefit

6. The Developer agrees:

(a) to install and construct the Public Benefit:

- (i) at its own cost;
- (ii) in a good and workmanlike manner;
- (iii) in accordance with Schedule B;
- (iv) as sustainable building practices; and
- (v) in compliance with all Applicable Laws;

(b) to complete construction of the Public Benefit by the time of the issuance of the first Occupancy Permit on the Property pursuant to the *Building By-law* (HRM By-law B-201).

Restoration of Public Benefit During The Term of the Agreement

7. If, at any time during the term of this Agreement:

(a) any of the Public Benefit fails to function or fails to function properly, in whole or in part, or

(b) the Development Officer determines that any repairs or to the Public Benefit are required to ensure that the Public Benefit does and will continue to function properly,

the Developer shall, within thirty (30) calendar days after receipt of notice, in writing, from the Development Officer, make such repairs or alterations as may be required, and if the Developer fails to do so, the Municipality may make such repairs or alterations.

8. If the Municipality undertakes any repairs or alterations, the Developer shall be responsible for the whole and entire cost thereof and the Developer shall reimburse the amount expended by the Municipality within fourteen (14) calendar days after a demand therefor by the Municipality.

Release and Indemnity

9. The Developer hereby agrees to assume, and does hereby assume, any and all liability and to indemnify, protect and save and keep harmless the Municipality and its Employees from and against any and all liabilities, obligations, losses, damages, penalties, proceeding, claims, actions (including negligence and wrongful death), suits, costs and expenses (including legal expenses) of whatsoever kind and nature imposed or assumed by, incurred by or asserted against the Municipality, or its Employees, in any way relating to or arising out of the failure by the Developer to observe, fulfill or perform any agreement, condition, covenant, obligation, promise,

provision, representation or warranty contained in this Agreement to be observed, fulfilled or performed by the Developer, is required by the Municipality, or resulting from the breach of any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained herein on the part of the Developer.

GENERAL PROVISIONS

Costs, Expenses, Liabilities and Obligations

10. 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 Property.

Applicability of Laws

11. This Agreement shall be construed pursuant to the laws of the Province of Nova Scotia.

12. 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 Property or any statute or regulation of the Provincial or Federal Government and the Developer or lot owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

Schedules

13. The following Schedules shall form part of this Agreement:

Schedule "A" - Legal Description of the Property;

Schedule "B" - Post Bonus Cost Estimates

Amendments

14. This Agreement may only be amended with the mutual consent of the Developer and the Council of the Municipality.

Conflict

15. Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

16. 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.

Provisions Severable

17. 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.

Registration and Subsequent Owners

18. 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.

19. This Agreement shall run with the land and be binding upon the Parties hereto, their heirs, administrators, executors, successors, assigns, mortgagees, lessees and all subsequent owners.

20. Upon the transfer of title to any part of the Property, the subsequent owner(s) thereof shall observe and perform all the terms and conditions of this Agreement to the extent applicable to the transferred part of the Property.

Discharge of Agreement

21. If the Developer fails to complete the Development after **three (3)** years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

22. Council may, at any time, review this Agreement, in whole or in part, and may:

- (a) negotiate a new Agreement; or
- (b) discharge this Agreement.

Breach of Agreement and Failure to Comply

23. The Developer agrees that:

- (a) any Employee appointed by the Municipality to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer;
- (b) upon receiving written notification from an Employee to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

24. If the Developer fails to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty of this Agreement after the

Municipality has given the Developer thirty (30) calendar 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 Property and perform any of the agreement, condition, covenant, obligation, promise, provision, representation, or warranty contained in this Agreement or take such remedial action as is considered necessary to correct a breach of this Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the agreement, condition, covenant, obligation, promise, provision, representation or warranty, or any other remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the *Assessment Act*; and
- (c) 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.

Time

25. Time shall be the essence in this Agreement.

THE REST OF THIS PAGE IS BLANK.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in

MILLS COMPANY HOLDINGS LIMITED

the presence of

Witness

Per: : _____

Name:
Office held:

Witness

Per: _____

Name:
Office held:

SEALED, DELIVERED AND

HALIFAX REGIONAL MUNICIPALITY

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

Witness

Per: _____

Mayor

Witness

Per: _____

Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 21_____, 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, NOVA SCOTIA

On this _____ of _____, A.D. 21 _____, 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, Municipal 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 A

1470 Queen Street

PID 00077461

Municipality/County: Halifax Regional Municipality/Halifax County

Designation of Parcel on Plan: LOT MS

Title of Plan: PLAN OF SURVEY OF LOT MS, CONSOLIDATION OF LANDS REGISTERED TO MILLS COMPANY HOLDINGS LIMITED, STORME PROPERTIES LIMITED, WESTWOOD DEVELOPMENTS LIMITED, CALNEN PHOTOGRAPHIC IMAGES LIMITED & MICCO COMPANIES LIMITED, SPRING GARDEN ROAD, QUEEN STREET & BIRMINGHAM STREET HALIFAX, HALIFAX COUNTY

Registration Number of Plan: 119015601

Registration Date of Plan: 2021-07-28 14:13:57

Approval Date of Plan: 2021-07-22

SUBJECT TO the limit of View Plane Numbers 9 and 10 as shown Plan Number 1119015601 in favour of Halifax Regional Municipality.

*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: HALIFAX COUNTY

Registration Year: 2021

Plan or Document Number: 119015601

SCHEDULE B- Post Bonus Cost Estimates



Westwood Construction Limited

5881 Spring Garden Road
Suite 100
Halifax, NS B3H 4S3

T 902.425.7500
F 902.425.6988
westwoodgroup.ca

April 16th, 2021

Halifax Regional Municipality

Halifax, NS B3J 3A5

Attention: HANITA KOBLENTS (STRATEGIC TRANSPORTATION PLANNING)

Dear Hanita,

RE: MILLS BLOCK/SGR Streetscape

A portion of our Mills Development extends into the pre-bonus height limit. The area of protrusion for level 7 and 8 are approximately 23,350SQFT (2169SM) and 19,720SQFT (1832 SM), respectively. The total area of protrusion through the pre-bonus limit is 43070SQFT (4001SQM).

In accordance with LUB 12(1), a protrusion of 4001SQM requires an offsetting public benefit valued at \$199,249.80. (\$4.98 / 0.1sm). Sentence 12(7) (j) identifies the undergrounding of overhead electrical and telecommunication distribution systems as an acceptable public benefit.

As part of this proposed development, Westwood Construction will assure to provide HRM with a Community Vault meeting Nova Scotia Power requirements to help house the electrical underground for Spring Garden Road streetscape. The Community Vault room is valued at \$300,000, but Westwood will accept offset of the community vault for the public benefit valued at \$199,249.80.

Below is a complete break for the total underground work valued at \$300,000:

- Electrical Work (to meet Nova Scotia Power's requirement) - \$30,000
- Membrane exterior wall for sleeves and core drilling: \$8,000
- Value of losing a parking stall to accommodate a larger community vault: \$85,000
- Redesign structural retaining wall and Parking level 1 slab to allow for early backfill to meet HRMs schedule on Spring Garden Road - \$150,000
- Management fee = \$ 27,000

Westwood Construction agrees to have the vault substantially completed by October 4th 2021.

Sincerely yours,

A black rectangular box redacting the signature of Jamie Haddad.

Jamie Haddad, P.Eng.
Project Manager

Schedule C- Details of Proposed Public Benefit



Westwood Construction Limited

5881 Spring Garden Road
Suite 100
Halifax, NS B3H 4S3

T 902.425.7500
F 902.425.6988
westwoodgroup.ca

April 16th, 2021

Halifax Regional Municipality
Halifax, NS B3J 3A5

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original signed

Jamie Haddad, P.Eng.
Project Manager