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Halifax, Nova Scotia
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Item No. 15.1.8
Halifax Regional Council
February 7, 2023

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: February 2, 2023

SUBJECT: **Penhorn Lake Park – Opalridge Drive – Partial Park to Street Conversion**

ORIGIN

Request from Penhorn Residential Holdings GP Limited to purchase a portion of Penhorn Lake Park for construction of a street and retaining wall, in support of its proposed 905-unit subdivision and streets.

LEGISLATIVE AUTHORITY

- Administrative Order Number 50 Respecting the Disposal of Surplus Real Property.
- *Halifax Regional Municipality Charter* (HRM Charter), Part VIII, Planning & Development
- *Housing in the Halifax Regional Municipality Act*
- The *Halifax Regional Municipality Charter*, S.N.S. 2008, c.39, subsections 19(1), (2)(a), 61(3), 61(5)(b) provide:

Open meetings and exceptions

19 (1) Except as otherwise provided in this Section, Council meetings and meetings of committees appointed by the Council are open to the public.

(2) The Council or any committee appointed by the Council may meet in closed session to discuss matters relating to

(a) acquisition, sale, lease and security of municipal property.

Powers of Municipality regarding property

61 (3) The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.

RECOMMENDATIONS ON PAGE 3

- (5) The Municipality may
- (b) sell property at market value when the property is no longer required for the purposes of the Municipality;

Administrative Order Number 50, the Disposal of Surplus Real Property Administrative Order:

POLICY STATEMENT AND CATEGORIZATION

2. (1) The Municipality can acquire and sell real estate within its legislative provisions. Real estate holdings can be a “corporate” asset necessary for municipal functions and purposes of the business units or may be held for particular use of inhabitants of HRM for example, parks and institutional uses. Corporate assets are subject to corporate review by the Asset Owner Business Unit for continuing requirement. Where the business units of HRM have determined that properties no longer serve an operational requirement of the corporation or otherwise appear to be surplus to the needs of the Municipality, then the policy of disposal to be followed in all cases, excepting municipal property which requires particular process through statute or common law or property available in the Municipal Business Parks, is as directed by this policy of Council.

(2) The Municipality will dispose of real property Council determines is no longer required for the purposes of the Municipality. Staff will identify surplus properties by the following categories:

Economic Development

(a) Strategic properties having Economic Development potential ought be sold to:

- (i) maximize use or value;
- (ii) achieve the attraction of targeted industries and employment or the regeneration of neighborhoods;
- (iii) to advance development opportunities; and
- (iv) to generate financial return to the Municipality.

DISPOSAL METHODS

4. (1) Following Council approvals under Part 2, staff shall proceed to dispose of the properties as determined by category.

Economic Development Properties

(d) These properties viewed by Council to be strategic may be disposed through individually recommended processes contained in the Surplus Properties Report, and may include referral to a special committee or task force of HRM created for the purpose of overseeing the strategic use and disposal of a property.

Properties under this category are required by the HRM Charter to be sold at market value and can include partnership models between private developers and non-profits and municipally defined public use or service delivery components.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Declare the portion of the Penhorn Lake Park, Dartmouth, shown as Parcel OD-3 in Attachment “A”, surplus to municipal requirements, and categorize as ‘Economic Development’, as per Administrative Order 50 (2)(e).
2. Subject to the approval of the above recommendation:
 - a) approve the sale of Parcel OD-3 to Penhorn Residential Holdings GP Limited at market value and on terms and conditions to be negotiated by the Chief Administrative Officer; and,
 - b) authorize the Chief Administrative Officer to direct the Mayor and Municipal Clerk to execute a Warranty Deed, the agreement of purchase and sale, and such other agreements, pursuant to Administrative Order 2018-004-ADM Respecting Real Property Transactions, as may be necessary, including HRWC stormwater easements and temporary construction agreements with the Developer

BACKGROUND

On March 24, 2022, the Province designated nine Special Planning Areas within the Halifax Regional Municipality, where development proposals would be approved by the Minister of Municipal Affairs and Housing for the Province of Nova Scotia, with advice from an Executive Panel on Housing. This was done to accelerate the establishment of housing in HRM. One of the Special Planning Areas is the former Penhorn Mall land (now known as Opal Ridge) located at 549-569 Portland Street, Dartmouth, which adjoins Penhorn Lake Park (Attachment B). In accordance with the *Housing in the Halifax Regional Municipality Act*, within a Provincially designated Special Planning Area the Minister of Housing has authority to act in place of Council relative to consideration of plan policies and decisions over development agreements. However, the Minister of Housing does not have authority over disposal of HRM real estate holdings.

In early summer 2022, a development agreement for a mixed-use development with up to 905 dwelling units was submitted to the Executive Panel and subsequently approved by the Minister on June 8, 2022 (Attachment C). This approval has enabled Clayton Developments on behalf of Penhorn Residential Holdings GP Limited (the Developer) to apply for subdivision and development approvals from HRM staff pursuant to the terms of the development agreement and other municipal development standards and regulations.

Through the review of the subdivision plan that was designed and submitted by Penhorn Residential Holdings GP Limited, it became clear that a portion of Penhorn Lake Park was required for a portion of a proposed road (referred to as Opalridge Drive), approximately 221.7 square metres in area, to enable development of Phase 2 of the development (Attachment D). Rather than redesigning the road layout within the development, Penhorn Residential Holdings GP has asked HRM to subdivide and convey the portion of the parkland it desires to use for a road and a retaining wall. The Developer has identified this request as time-sensitive, as other parts of the development have been approved by HRM staff and are under construction.

An additional request has been made to grant a formal easement over a longstanding stormwater outfall from the Opal Ridge lands into Penhorn Lake, through Penhorn Lake Park. The Developer agreed to upgrade the current drainage channels for which staff recommends that the Municipality grant a temporary construction easement. A permanent stormwater easement should be granted to Halifax Regional Water Commission as the stormwater infrastructure is to be owned and maintained by the utility. These easements

may be negotiated and granted under the delegated authority of Administrative Order 2018-004-ADM, the Respecting Real Property Transactions.

DISCUSSION

During the review of the development agreement, HRM identified challenges between the proposed road alignment along Opalridge Drive and the location of the two intersections of Morado Lane, the proposed crescent street to the rear of the property within Phase 1C. Several design iterations were considered before HRM approved a site-specific variance to the engineering design standards, which supported an acceptable horizontal curve radii which allows for appropriate visibility of pedestrians by drivers and the inclusion of traffic calming measures. However, the approved new alignment required shifting the easternmost curve along the Opalridge Drive right-of-way outwards into the parkland. This relocation requires an encroachment of 221.7 square metres of the HRM-owned land, known as Penhorn Lake Park, which in future would become part of the public street.

Penhorn Lake Park is highly utilized for recreation activities. The eastern side of Penhorn Lake includes a lawn and beach, which is popular for swimming and is supported with amenities such as a recently completed washroom with outdoor showers. There is also an active transportation (AT) trail along the eastern side of the lake. The western side of the park, between the lake and Opalridge Drive, is a forested area of mixed tree stands, excepting steeply sloped lands that immediately adjoin Opalridge Drive, which is largely comprised of low-lying vegetation and individual trees. In 2022, with coordination from HRM, a local community group constructed a recreational trail along the western shore of the lake, which meanders through the forested area and connects with the AT pathway.

As proposed, Opalridge Drive, most of which would be located outside the Park, would need a retaining wall of 4-5 m in height to support the road infrastructure (Attachment E) and a portion of land that would encroach upon the Park. The retaining wall will be the notable visual impact upon the park land and will be immediately apparent from the newly constructed trail, contributing to changes in the natural setting of this area (Attachment F).

Based on the lack of other practical options to enable the development to proceed in its proposed form, as envisioned and approved through the development agreement, it is recommended that Regional Council approve the transfer of the identified area of Penhorn Lake Park for fair market value.

The Regional Centre Municipal Planning Strategy (MPS) has policies to evaluate development agreement proposals for the Penhorn Mall lands, including those related to the adequacy of setbacks from Penhorn Lake Park. However, no amendments to the development agreement are needed for the change to the road alignment. The prospective land transfer should be considered based on the parkland implications.

Under the HRM Charter, the Municipality may sell property at market value when it is no longer required for the purposes of the Municipality. Although this property would no longer be part of the Park, it would become part of the street which will be conveyed to the Municipality after it is constructed by the Developer. The street construction will permit the advancement of the Opal Ridge development, which includes the construction of several multiple unit residential buildings which will create financial returns for the Municipality including deed transfer tax and property tax.

To proceed with the land transfer for the road, the area of Penhorn Lake Park shown as Parcel OD-3 in Attachment A, would need to be declared surplus to municipal requirements and be categorized as 'Economic Development' pursuant to Administrative Order 50 and subdivided. The market value transaction will be the subject of a separate approval report, per the delegated authority of Administrative Order 2018-004-ADM, the Real Property Transactions Policy.

FINANCIAL IMPLICATIONS

No financial implications are identified at this time. If the recommendations of this report are approved, financial implications will be reported in subsequent approval reports to the delegated authorities.

RISK CONSIDERATION

No risk considerations were identified.

COMMUNITY ENGAGEMENT

As per Administrative Order 50, the area Councillor was advised of the recommendation to surplus the subject property with the Economic Development categorization. Notification of the partial park closure is not required, as the lands were not dedicated to the municipality through parkland dedication requirements of the Subdivision By-law.

ENVIRONMENTAL IMPLICATIONS

No implications identified. There are no environmental implications relating to the staff recommendation.

ALTERNATIVES

Halifax Regional Council could instruct staff to *not* declare the subject property as surplus under Administrative Order Number 50, and to retain ownership for parkland purposes. This is not recommended due to the lack of other practical options to enable the development to proceed as envisioned and approved through the development agreement.

ATTACHMENTS

Attachment 'A' - Parcel OD-3 Cutsheet
Attachment 'B' - Former Penhorn Mall Special Planning Area
Attachment 'C' - Approved Concept Plan
Attachment 'D' - Road Alignment Sketch
Attachment 'E' - Retaining Wall Sketch
Attachment 'F' - Site Photographs

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:

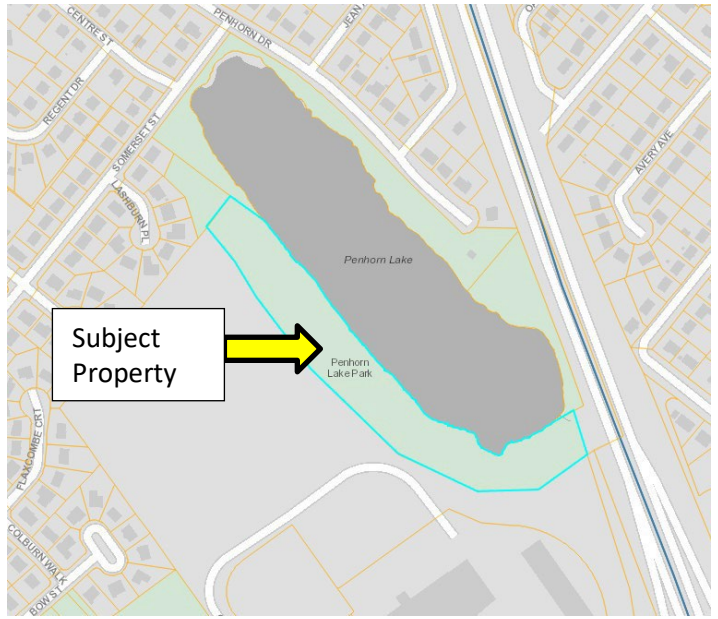
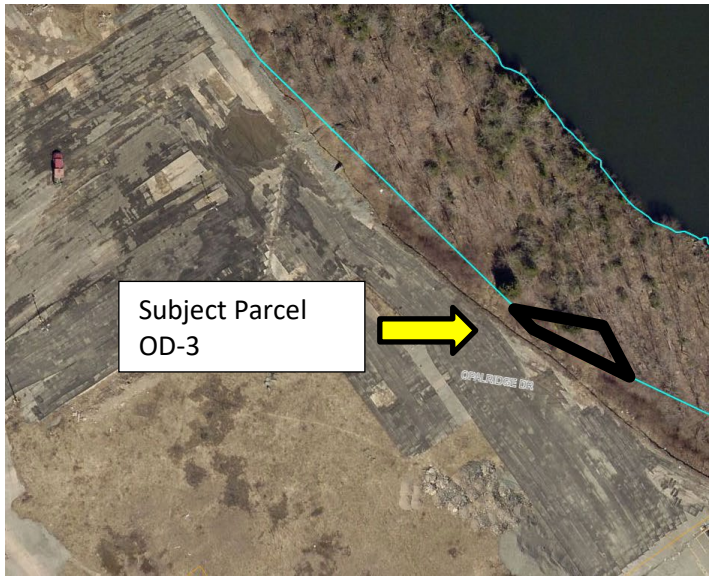
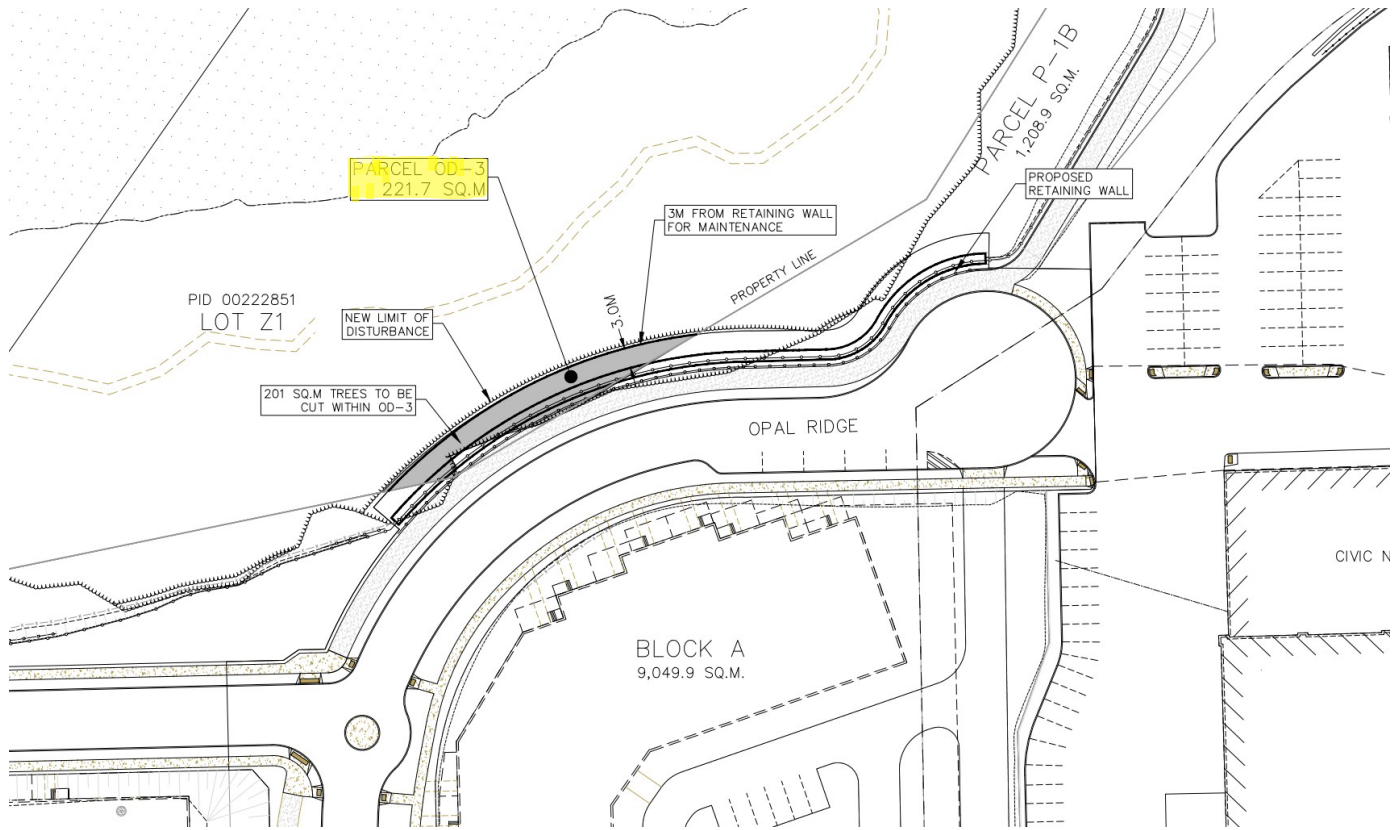
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A Portion of PID 00222851, Proposed Parcel OD-3

District 5 - Councillor Sam Austin

Current Use: Parkland

Economic
Development



Portion of PID 00222851, Proposed Parcel OD-3			
Date Request Received	September 13, 2022	Real Estate Staff	Mike Cowper
Surplus Category <small>(proposed)</small>	Economic Development	District / Councillor	5 - Councillor Sam Austin
Current Asset Use	Park	Current Land Area <small>(Parent)</small>	± 4.3 acres
Building Area	N/A	Land Area for Disposal <small>(proposed)</small>	± 2386 square feet (221.7 square metres)
Building Condition	N/A		
Interim Management	Parks and Recreation	Operating Costs	None
Land Use Bylaw	Regional Centre	PVSC Assessment	\$412,500 (2023 Residential Exempt) Note: this is the assessed value for the entire lot.
Zone <small>(hyperlink)</small>	PCF Park and Community Facility	Deed on File	Deed Registered on NS Property Online (1973)
Environmental Risk	<p><i>There are no contaminated site files for this location.</i></p> <p>Note: Prospective purchasers are urged to conduct their own due diligence.</p>		
Background	<p>The subject property was acquired by the former City of Dartmouth in 1972 during the development of the Penhorn Mall. Penhorn Lake Park is comprised of heavily wooded areas, a multi-use pathway, beach and washroom facility.</p> <p>The subject parcel (OD-3) is comprised of a moderate slope and light forest cover and does not contain any HRM assets, aside from the trees.</p> <p>The developer's intent is to use the parcel to construct a public street. Development Engineering has applied several variances to the street design in order to minimize the encroachment into the park.</p> <p>Once constructed, the parcel will contain a portion of the street, including a retaining wall to support the street and an access road to provide maintenance to the wall. Once the street has been completed the intent is for it to be conveyed to the municipality as part of the new street network.</p>		

ATTACHMENT B FORMER PENHORN MALL SPECIAL PLANNING AREA



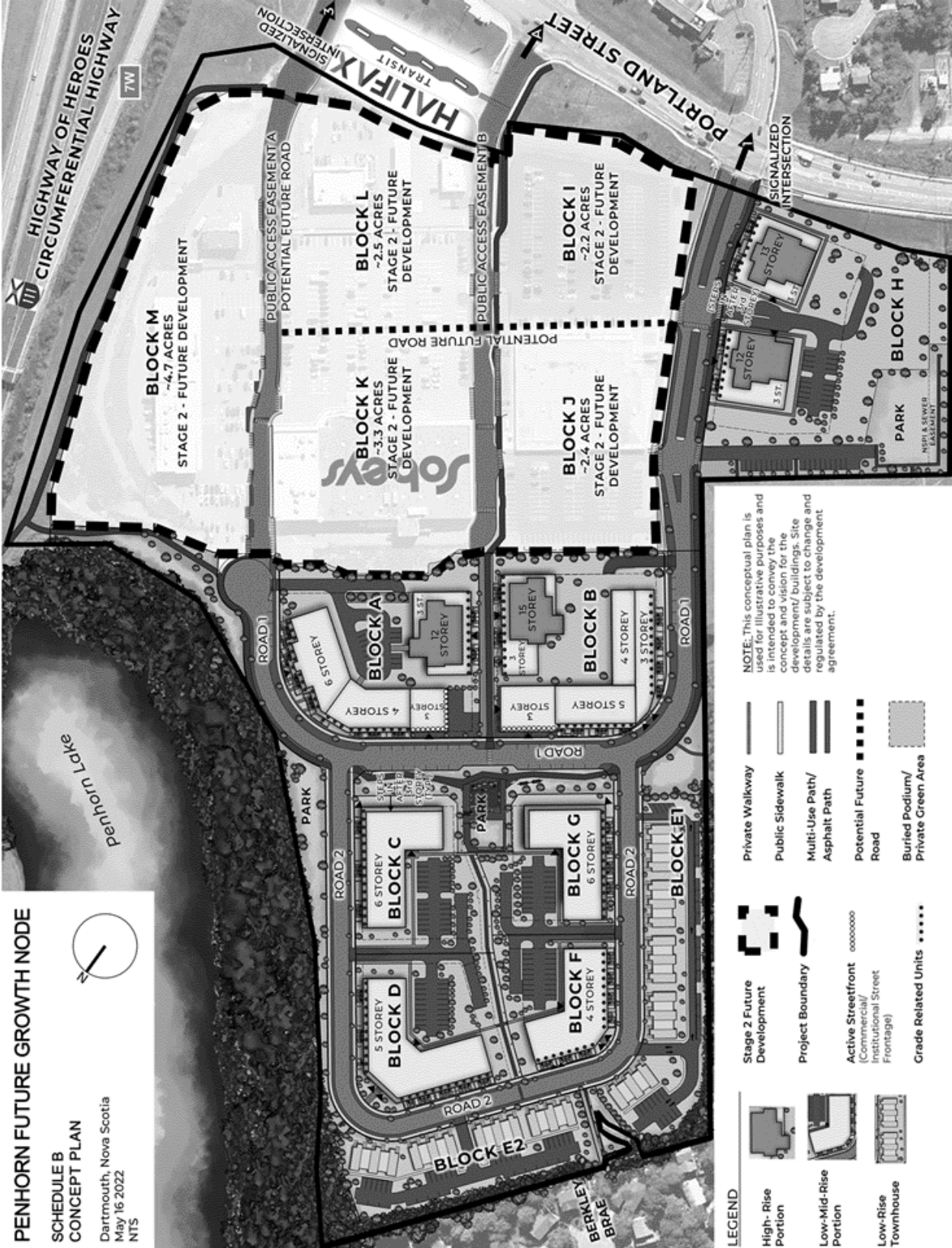
Schedule A - Former Penhorn Mall Area (Dartmouth)

 Special Planning Area



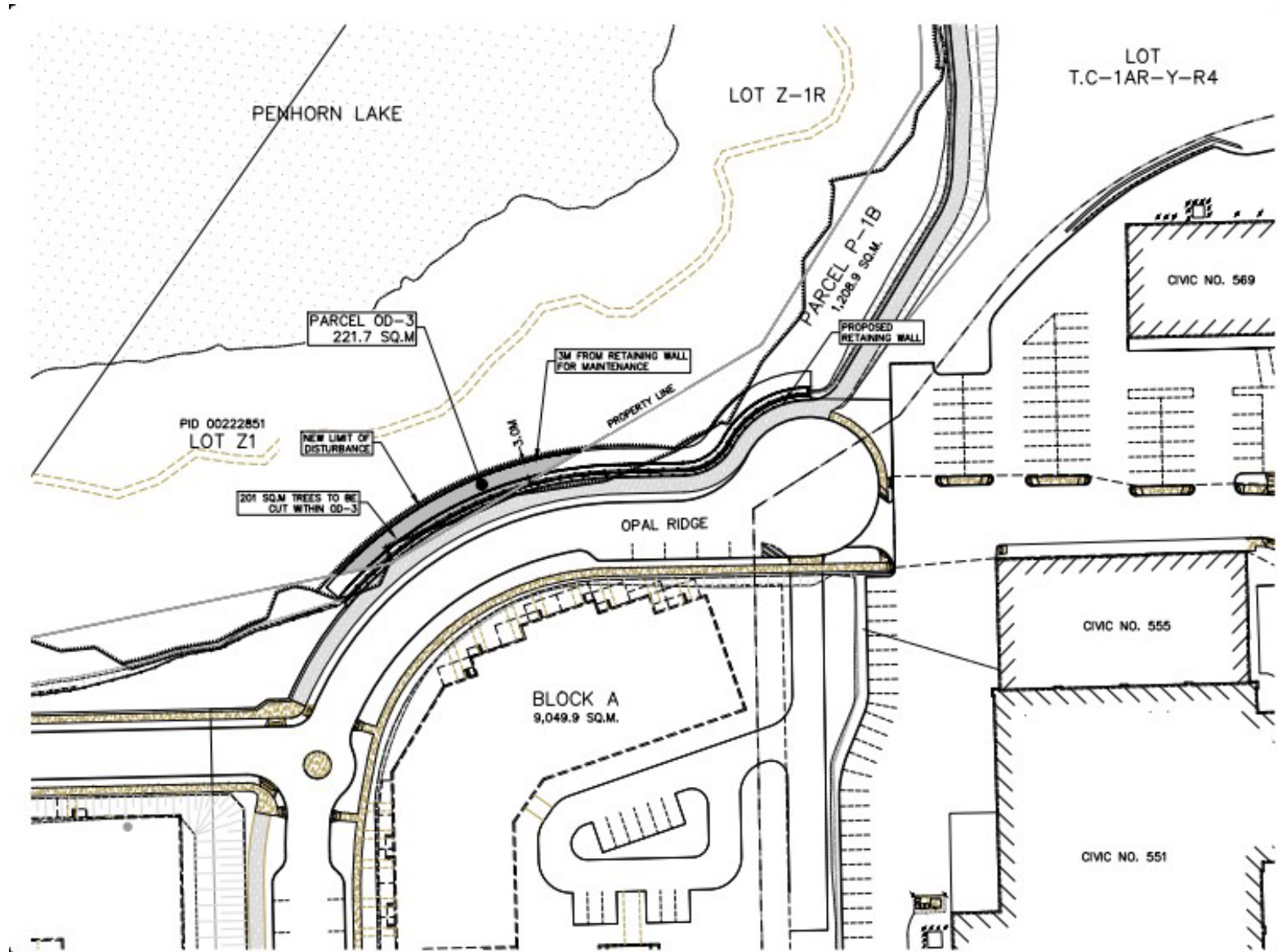
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ATTACHMENT 'C' Approved Concept Plan



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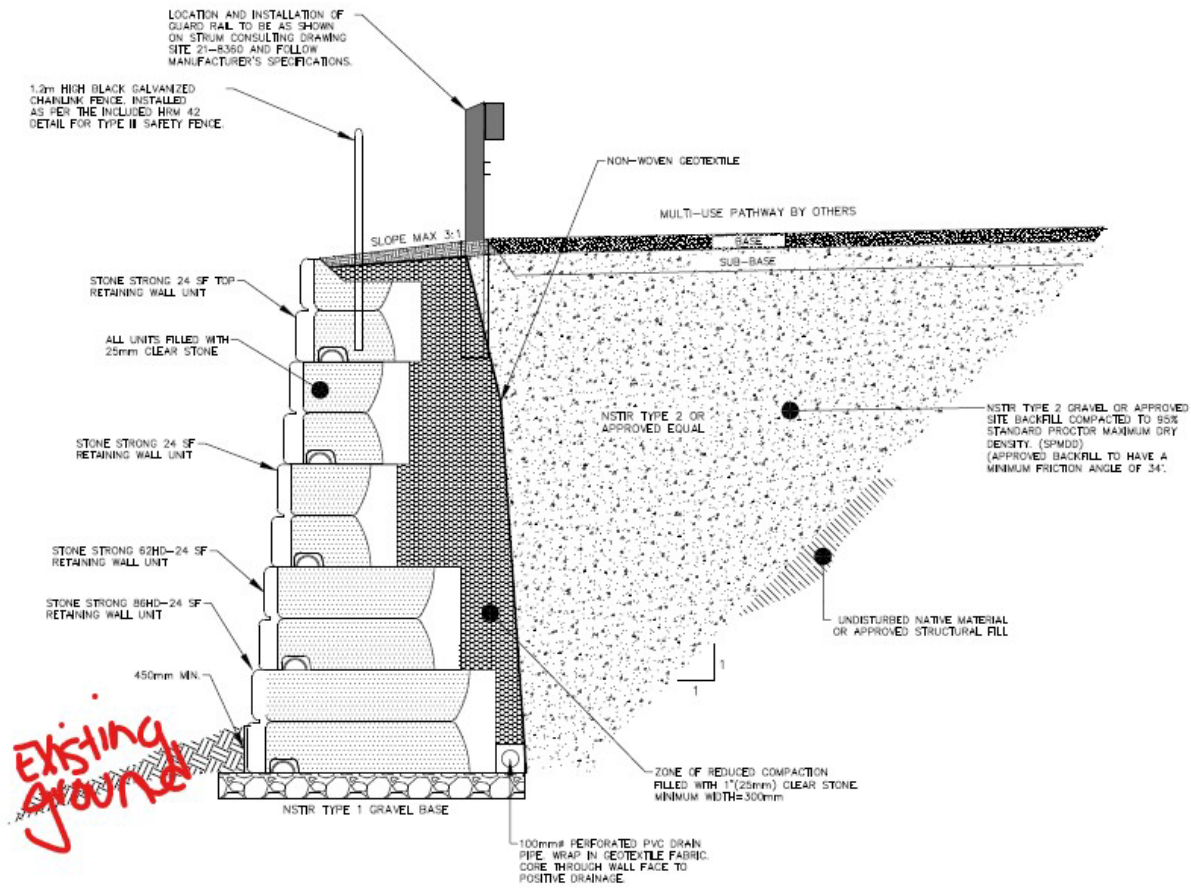
ATTACHMENT 'D' ROAD ALIGNMENT SKETCH



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ATTACHMENT 'E' RETAINING WALL SKETCH

(A) TYPICAL WALL BASE CROSS SECTION



ATTACHMENT "F"

Penhorn Lake Park / Opal Ridge Photographs



West side of Penhorn Lake Park with trail in the foreground and slope rising to Opal Ridge



West side of Penhorn Lake Park from Opal Ridge