

To: **Antigonish County Planning Advisory Committee**
Antigonish County Council

From: **Planning Staff (EDPC)**

Date: **January 08, 2024**

Reference: **File No. AT-DA2022-006 Application to enter into a Development Agreement for 3 Multi-unit Apartment Buildings providing 17 Units on Lot 2A, PID 10079572, Appleseed Drive, Post Road, Antigonish County**

Staff Recommendation:

Staff recommend that the Antigonish County Planning Advisory Committee forward the following recommendations: That Municipal Council enter into a Development Agreement for 3 multi-unit apartment buildings providing 17 units on Lot 2A, PID 10079572, Appleseed Drive, Post Road, Antigonish County; and that Municipal Council give First Reading and schedule a Public Hearing.

Background Information:

On November 7th, 2023, the Eastern District Planning Commission (EDPC) received an application from the Antigonish Affordable Housing Society seeking a Development Agreement for Lot 2A, PID 10079572, Appleseed Drive to allow for 3 multi-unit apartment buildings providing seventeen (17) units. On November 8th, 2023, payment for the advertising deposit was received by Staff. On October 9th, 2023, additional required information was received from the Applicant by Staff.

Description	
Designation:	Residential
Current Zoning:	Residential (R-1)
Heritage Property:	No
Request:	Development Agreement
Identification No:	PID 10079572
Total Lot Area:	1.46 Acres
Site Visit:	November 16 th , 2023

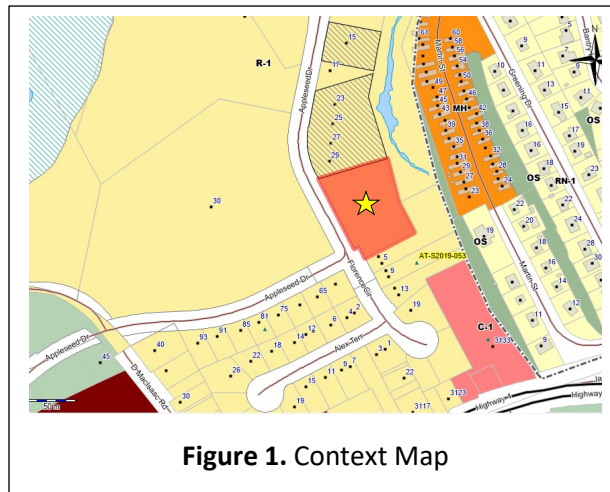


Figure 1. Context Map

Currently the property is zoned as Residential (R-1) under the West River Antigonish Harbour Plan Area in the Municipality of Antigonish County. While not permitted directly under this zoning, the West River Antigonish Harbour Land Use By-law permits “multiple unit residential uses with six

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(6) or more dwelling units Policy L-2.12” by development agreement under Part 5.1 (d), West River Antigonish Harbour Land Use Bylaws [LUB] and West River Antigonish Harbour Municipal Planning Strategy [MPS]).

Part 5.1 of the West River Antigonish Land Use By-Law states: *“The following developments shall be permitted only by development agreement, in accordance with the Municipal Government Act and the Municipal Planning Strategy: (d) multiple unit residential uses with six (6) or more dwelling units Policy L-2.12”*

The Antigonish Affordable Housing Society has requested to enter into a development agreement to build 3 multi-unit apartment buildings providing seventeen (17) affordable housing units. Along the north property line of the subject property, PID 10079572, the Antigonish Affordable Housing Society has already constructed “Phase I” of their Appleseed Drive project via a similar DA. The project currently being proposed is a continuation of their Appleseed Drive Project, which would be “Phase II”.

It is recommended that Municipal Council approve the proposed development agreement attached to this staff report between the Antigonish Affordable Housing Society and the Municipality of Antigonish County with respect to the construction of 3 multi-unit apartment buildings providing 17 units on Lot 2A, PID 10079572, Appleseed Drive.

Site Visit:

The subject property, PID 10079572, is approximately located at the intersection of Appleseed Drive and Florence Circle (Figure 1). The lot has not yet been cleared or leveled with gravel/fill and is currently vacant as shown in Figure 2.

The site has a notable eastern facing slope with the lower elevation at the rear of the property inclining to the front of the property seen in Figure 3. There are no trees or natural buffering of the property from adjacent properties. The property does have natural vegetation of grass, bushes and brush.

The property along the north property line abutting PID 10079572 is owned by the Antigonish Affordable Housing Society and is their “Phase I” of their Appleseed Drive project. One of the properties abutting the rear of the subject property is owned by the Town of Antigonish and contains a watercourse/water body seen in Figure 3. The final property abutting PID 10079572 along the southeast property lines is owned by Greener Project Development Inc. and currently has a boarding house located on the lot.



All adjacent properties are residential properties zoned as Residential (R-1). Due to Policy L-2.12 of the West River Antigonish Harbour Municipal Planning Strategy, the development must meet the Multiple Unit Residential (R-2) Zone requirements. The zoning requirements in the West River Antigonish Harbour Land Use By-Laws (LUB) for the Multiple Unit Residential (R-2) Zone state:

“Landscaping

14.6. *A visual barrier comprised of shrubs or opaque fencing of no less than 1.5 metres (5 feet) high must be established and maintained in perpetuity along any R-2 boundary that abuts an existing residential use in either the Residential (R-1) or the Rural General (RG-1) Zone.”*

Therefore, the Developer is required to establish a visual barrier along these property lines, which will help buffer those properties from the development. In the proposed Development Agreement, there is a requirement to establish a proper visual barrier along the southeast property line abutting PID 10079572 which is owned by Greener Project Development Inc.



Figure 3 . Photo showing elevation & waterbody

Staff are of the opinion that there will be minimum impact on abutting properties since the scale and density of the development are similar. The development helps create a community offering a mix of different housing types and densities which is in line with the West River Antigonish Harbour MPS reflected in the paragraph below taken from Section 3.2.4, Page 26-27:

“Changing demographics particularly an aging population, may bring on a greater demand for a variety of housing types to meet changing needs, such as an increase in the number of residents wishing to remain independent in their communities, but in smaller, clustered accommodations with shared amenities. Higher-density residential uses are also more efficient in terms of land, water and sewer service consumption. Council is supportive of multiple-unit residential developments and will establish the Residential Multi-Unit Zone within the Residential Designation in order to accommodate new and future developments.”

Additionally, the proposed development is in line with the Statements of Provincial Interest (SPI), specifically the Statement of Provincial Interest for Housing.

Analysis:

Development Agreements allow a municipality to review and consider a development proposal for certain uses that are not otherwise be permitted by the Land Use By-law. A development agreement is a legal contract that is negotiated between Municipal Council and the applicant. The

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agreement is registered and runs with the title of the land. Subsequent owners of the property are bound by the terms of the development agreement.

Policy L-2.12 of the West River Antigonish Harbour Municipal Planning Strategy (MPS) [pg 28] sets out that:

“It shall be the policy of Council to consider approval of grouped dwellings and multiple-unit dwellings, townhouses, and converted dwellings within the Residential Designation according to the development agreement provisions of the Municipal Government Act”

As such, the proposed use proceeds by way of the development agreement approval process.

The Developer, as per section “2.5 Cost, Expenses, Liabilities, and Obligations” of the Development agreement, is liable and obligated to meet all Federal, Provincial, and Municipal laws, by-laws, regulations, and codes applicable to the Property. This includes the fire protection requirements of the Municipality and the National Building Code. These requirements shall be met prior to the issuance of a building permit.

Policy L-2.12 and Policy I-1.12 (West River Antigonish Harbour MPS) set out criteria to which Council shall have regard to in its consideration of a development agreement. Please refer to Appendix A for a summary of Policy L-2.12 and Policy I-1.12.

Council shall consider whether the proposal is premature or inappropriate by reason of Policy I-1.12 (b) i) the financial capability of the Municipality to absorb any costs relating to the development, ii) the adequacy of sewer and water services to support the proposed development, iii) the adequacy and proximity of school, recreation and other community facilities, iv) adequacy of road networks adjacent to, or leading to the development and v) the potential for the contamination of watercourses or the creation of erosion and sedimentation. Staff solicited input on the proposal for Policy I.1.12 i) the financial capability of the Municipality to absorb any costs relating to the development, ii) the adequacy of sewer and water services to support the proposed development, and iv) adequacy of road networks adjacent to, or leading to the development.

The property fronts on “Appleseed Drive” which is a municipally owned road. On November 14, 2023, Staff received comment from the Antigonish County Department of Public Works. The Municipal Department of Public Works has stated the road network adjacent to or leading to the proposed development is adequate and does not require any upgrades due to the development. Based on the comment received, the proposal satisfies the criteria for Policy I.1.12 (b) iv) adequacy of road networks adjacent to, or leading to the development.

Policy I.1.12 (b) ii) refers to the adequacy of sewer and water services to support the proposed development. Staff obtained comment on November 14, 2023, from the Antigonish County Department of Public Works. The Municipal Department of Public Works stated that municipal sewer and water services were adequate to support the proposed development. The municipal

water services will require an extension of an existing watermain currently serving Appleseed Phase I, however the Municipal Department of Public Works has no concerns. The Municipal Department of Public Works also noted that municipal water was adequate for fire protection regarding the development. The proposal therefore complies with Policy I.1.12 (b) ii.

On November 20, 2023, Staff received input from the Municipality of Antigonish County's Department of finance regarding Policy I-1.12 (b) i) the financial capability of the Municipality to absorb any costs relating to the development. In the official letter received, the Director of Finance confirmed that this proposal is not premature or inappropriate by reason of the financial capability of the Municipality to absorb any cost relating to the development. They noted specifically that the property owner/applicant is responsible for any and all costs associated with this development. The proposed development meets Policy I-1.12 (b) i based on the above comment received.

Regarding Policy I-1.12 (b) iii) the adequacy and proximity of school, recreation and other community facilities, the adequacy and proximity of school(s), the area and proposal appears to provide ample recreation opportunities and community facilities. The Development itself is located directly across from the Antigonish Education Centre and the St. Andrew Junior Highschool. The development is located in a highly walkable area, about a 20-to-30-minute walk to James Street, the Walmart and Superstore and Main Street. Residents of the development will have access to the adjacent (Appleseed Phase I) Marion Sheridan Community Building. The building provides a meeting location for the residents as well as comfort station with back up electric generator during power outage or emergency situations. Residents will also have access to the Antigonish Affordable Housing Society Community Navigator whose job is to assist tenants in accessing community resources. Staff believe that residents will have access to ample and adequate recreation opportunities and other community facilities nearby thus meeting Policy I-1.12 (b) iii. Policy I-2.12 (e), whether there is adequate on-site amenity space suitable in extent and design to the nature of the development, is also satisfied for the reasons listed in this paragraph.

Policy I-1.12 (b) v references the potential for the contamination of watercourses or the creation of erosion and sedimentation. The Developer will be required to follow the Erosion and Sedimentation Control section of the Development Agreement. In accordance with Policy I.1.12 (d) An erosion and sedimentation control plan prepared by a qualified individual or company and (e) A storm water management plan prepared by a qualified individual or company, there are provisions within the Development Agreement requiring these plans before a Development Permit can be granted. For these reasons the proposal complies with Policy I-1.12 (b) v.

Policy I.1.12 (c) Whether the development has potential for damage to or destruction of historical buildings and sites, is not applicable to this development. Since the proposal complies with all of Policy I.1.12, the proposal also meets Policy L-2.12 (f), whether the proposal is consistent with

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the criteria for development agreements found in Policy I-1.12.

Policy L-2.12 states Council shall have regard to (a) whether the proposal meets R-2 zone requirements; (c) whether consideration has been given to building design and the provision of barriers, berms, fences and/or landscaping as part of the residential development to minimize the effects on adjacent land uses; and (d) whether the parking area proposed on the site is of a sufficient size to satisfy the needs of the particular development, is well designed, and is properly related to any buildings, landscaped areas and adjacent public streets.

The proposed development provides one (1) parking space per unit for a total of 17 parking spaces matching the 17 units. 4 of these parking spaces shall be barrier free. The West River Antigonish Harbour Land Use By-law requires 1.5 parking space for every dwelling unit, which means 25.5 parking spaces would be required, 26 because Staff round up. Given that the development is intended to provide affordable housing and is located in a highly walkable part of Town, it is likely that the need for vehicles and parking spaces will be lower than other multiunit developments.

Aside from the landscaping/visual barrier requirement, the proposal does meet the R-2 zone requirements. Policy 14.6 under Part 14: Multiple Unit Residential (R-2) Zone in the West River Antigonish Harbour Land Use By-law requires “a visual barrier comprised of shrubs or opaque fencing of no less than 1.5 metres (5 feet) high must be established and maintained in perpetuity along any R-2 boundary that abuts an existing residential use in either the Residential (R-1) or the Rural General (RG-1) Zone.

One of the properties is owned by the Antigonish Affordable Housing Society and houses “Phase I” of their Appleseed Drive project. The properties abutting the rear of the subject property is owned by the Town of Antigonish and contains a watercourse/water body seen in Figure 3. The final property abutting PID 10079572 along the southeast property lines is owned by Greener Project Development Inc. and currently has a boarding house located on the lot. Given the three abutting properties to the development, Staff do not believe this provision is applicable as 1) all properties are zoned as Residential (R-1), 2) all abutting properties with developments are those of a similar density, 3) one of the abutting properties is a vacant lot and another one is owned by the developer.

As evidenced above, Staff believe this the proposed development constitutes considerate and well thought building/site design which satisfies Policy L-2.12 (a), (c) and (d).

Policy L-2.12 refers to (b) whether the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses. Abutting the north side of the subject property is Appleseed Drive Phase I, shown in Figure 4, owned by the Antigonish Affordable Housing Society. Appleseed Phase I is 12 units spread across 4 buildings. To the south of the subject property are three two story boarding houses. Further up from Appleseed Phase I is a three story 12 unit apartment building. Most of the building in the area are two stories and right across from the development is the Antigonish Education Centre and the St. Andrew Junior Highschool. This development would provide more variety in terms of housing as well as more affordable housing units. The West River Antigonish Harbour Municipal Planning Strategy supports providing a variety of housing needs. The proposal, for the above reasons, fulfills Policy L-2.12 (b).



Figure 4 . Photo of Appleseed Drive Phase I

Statements of Provincial Interest:

The purpose of the Statements of Provincial Interest (SPI) is to protect the common public interest and encourage sustainable development in municipalities. The SPI are policy statements adopted by the provincial government under the powers of the Municipal Government Act (MGA s.193). They are set out in Schedule “B” of the MGA and came into effect on April 1, 1999. Legislation requires that municipal planning documents are “reasonably consistent” with the SPI. As such, the following comments are offered with respect to consistency of the proposal with the SPI:

1. Drinking Water: The proposed development does not impact the provision of drinking water. The property is not located within a well field or an area covered by a Source Water Protection Plan.
2. Flood Risk Areas: Not in an identified flood risk area.
3. Agricultural Land: Not considered agricultural land or impacting agricultural lands.
4. Infrastructure: Makes use of existing municipal sewer services but requires an extension of an existing 200mm diameter watermain currently serving the neighboring property.
5. Housing: This proposed development would provide notable additional affordable housing. There are no residential units removed as a result of this proposal.

The proposed development is reasonably consistent with the SPI.

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Conclusion:

Analysis of the site and proposal completed through a review of relevant policies of the Municipal Planning Strategy indicate that the draft development agreement is in keeping with the intent of policy as set by the Municipality of Antigonish County for the West River Antigonish Harbour Plan Area. After consideration, the Eastern District Planning Commission staff are advising that the Municipality enter into a development agreement to develop 3 multi-unit apartment buildings providing 17 units on Lot 2A, PID 10079572, Appleseed Drive, Post Road, Antigonish County.

Proposed Motions for the Planning Advisory Committee:

Based upon the staff recommendation, the proposed motions for PAC are:

- 1. That the Planning Advisory Committee recommend that Municipal Council enter into a Development Agreement for 3 multi-unit apartment buildings providing 17 units on Lot 2A, PID 10079572, Appleseed Drive, Post Road, Antigonish County; and
That Municipal Council give First Reading and schedule a Public Hearing.*

Proposed Motions for Council:

Based upon a positive recommendation from the PAC, the proposed motions for Council are:

FIRST READING AND SETTING A PUBLIC HEARING DATE:

DEVELOPMENT AGREEMENT:

- 1. That Municipal Council give First Reading and schedule a Public Hearing regarding entering into a Development Agreement 3 multi-unit apartment buildings providing 17 units on Lot 2A, PID 10079572, Appleseed Drive, Post Road, Antigonish County.*

SECOND READING AND APPROVAL:

- 1. That Municipal Council give Second Reading and approve entering into the Development Agreement 3 multi-unit apartment buildings providing 17 units on Lot 2A, PID 10079572, Appleseed Drive, Post Road, Antigonish County.*

Appendices:

Appendix A: Summary of Policies

Appendix B: Proposed Development Agreement

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Appendix A: Summary of Policies

Policy L-2.12 It shall be the policy of Council to consider approval of grouped dwellings and multiple unit dwellings, townhouses, and converted dwellings within the Residential Designation according to the development agreement provisions of the Municipal Government Act. In considering such an agreement, Council shall have regard to the following:	
(a) whether the proposal meets R-2 zone requirements;	Complies – See Staff Report
(b) whether the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;	Complies – See Staff Report
(c) whether consideration has been given to building design and the provision of barriers, berms, fences and/or landscaping as part of the residential development to minimize the effects on adjacent land uses;	Complies – See Staff Report
(d) whether the parking area proposed on the site is of a sufficient size to satisfy the needs of the particular development, is well designed, and is properly related to any buildings, landscaped areas and adjacent public streets;	Complies – See Staff Report
(e) whether there is adequate on-site amenity space, suitable in extent and design to the nature of the development; and	Complies – See Staff Report
(f) whether the proposal is consistent with the criteria for development agreements, found in Policy I-1.12.	Complies – See Table Below

Policy I.1.12	
... In considering Development Agreements (DA), in addition to all other criteria as set out in various policies of this planning strategy, Council shall have regard to the following matters:	
(a) Whether the proposal is in conformance with the intent of this Strategy and with the requirements of all other applicable municipal by-laws and regulations;	Complies – See Staff Report
(b) Whether the proposal is premature or inappropriate by reason of:	
i) the financial capability of the Municipality to absorb any costs relating to the development;	Complies – See Staff Report
ii) the adequacy of sewer and water services to support the proposed development;	Complies – See Staff Report
iii) the adequacy and proximity of school, recreation and other community facilities;	Complies – See Staff Report
iv) adequacy of road networks adjacent to, or leading to the development;	Complies – See Staff Report
v) the potential for the contamination of watercourses or the creation of erosion and sedimentation; and	Complies – See Staff Report
(c) Whether the development has potential for damage to or destruction of historical buildings and sites.	N/A
(d) An erosion and sedimentation control plan prepared by a qualified individual or company;	Complies – See Staff Report Provisions in DA
(e) A storm water management plan prepared by a qualified individual or company.	Complies – See Staff Report Provisions in DA

*DA: Development Agreement

*LUB : West River Antigonish Harbour Plan Area Land Use By-law

This is to certify that the resolution to adopt this development agreement, of which this is a true copy, was passed at a duly called meeting of the Municipal Council of the Municipality of the County of Antigonish:

_____ day of _____ 2024.

Given under the hand of the Chief Administrative Officer and under the corporate seal of the Municipality this:

_____ day of _____ 2024.

Mr. Glenn Horne,
Chief Administrative Officer

THIS DEVELOPMENT AGREEMENT made this _____ day of _____ AD 2024, BETWEEN:

Antigonish Affordable Housing Society, a body corporate, with registered offices in Antigonish, the Town of Antigonish, Province of Nova Scotia (hereinafter called the "Developer").

OF THE FIRST PART

-and-

MUNICIPALITY OF THE COUNTY OF ANTIGONISH, a body corporate, in the County of Antigonish, Province of Nova Scotia (hereinafter call the "Municipality").

OF THE SECOND PART

WHEREAS the Developer has good title to lands known as 10079572 located on Appleseed Drive, Post Road in the Municipality of the County of Antigonish, Nova Scotia, and which said lands (hereinafter called the "Property") are more particularly described in Schedule "A" of this Agreement; and

WHEREAS the Developer has requested permission to develop 3 multi-unit apartment buildings that will provide 17 units by Development Agreement on the Property;

WHEREAS the Property is situated within an area designated Residential on the Generalized Future Land Use Map of the West River Antigonish Harbour Plan Area, and Residential (R-1) Zone on the West River Antigonish Harbour Land Use By-law Zoning Map; and

WHEREAS Policy L-2.12 and I-1.11 (c) of the West River Antigonish Harbour Municipal Planning Strategy and Part 5.2.d. of the West River Antigonish Harbour Land Use By-law provide that the proposed use may be developed only if authorized by development agreement; and

WHEREAS the Developer has requested that the Municipality of the County of Antigonish enter into this development agreement pursuant to Section 255 of the *Municipal Government Act* so that the Developer may develop and use the Property in the manner specified;

WITNESS that in consideration of the sum of One Dollar (\$1.00) now paid by the Developer to the Municipality (the receipt of which is hereby acknowledged) the request to change the use of the Property is agreed upon by the Developer and the Municipality subject to the following:

PART 1: DEFINITIONS

1.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the *West River Antigonish Harbour Land Use By-law of the Municipality of the County of Antigonish*, as amended from time to time. If a term is not defined in this document, its customary meaning shall apply.

1.2 Definitions Specific to this Agreement

Notwithstanding Section 1.1, the following words used in this Agreement shall be defined as follows:

Amenity Space shall refer to indoor or outdoor spaces designed for passive or active recreational activity for shared or communal use of the residents of the proposed buildings. Such space may include but is not limited to; balconies, patios, community gardens, lobbies, restaurants, fitness areas, game rooms, social

or communal areas and other similar features, but does not include indoor laundry or locker facilities, hallways or stairwells;

PART 2: GENERAL REQUIREMENTS

2.1 Applicability of Agreement

2.2.1 The Developer agrees that the area of the Property shown on Schedule B shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

2.2 Applicability of the Land Use By-law

Except as otherwise stipulated by this Agreement, the development of the Property shall comply with the West River Antigonish Harbour Land Use By-law of the Municipality of the County of Antigonish and the Land Use By-law for the Municipality of the County of Antigonish (Concerning the Regulation of Wind Turbine Development).

2.3 Applicability of Other By-laws, Statutes, and Regulations

2.3.1 Subject to the provisions of this Agreement, the Developer shall be bound by all By-laws and regulations of the Municipality as well as by any applicable statutes and regulations of the Province of Nova Scotia and the Government of Canada;

2.3.2 Further to Subsection 2.3.1, the Developer shall receive any necessary approvals from the Municipal Department of Public Works with respect to access to the site prior to any development or building permits being issued;

2.4 Conflict

2.4.1 Where the provisions of this Agreement conflict with those of any other applicable Municipal by-law (other than the *Subdivision or 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.

2.4.2 Where the written text of this Agreement conflict with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

2.5 Cost, Expenses, Liabilities, and Obligations

2.5.1 The Developer shall be responsible for all cost, 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.

2.5.2 The Developer shall be responsible for all cost, expenses, liabilities, and obligations necessary to meet the fire protection requirements of the National Building Code.

2.6 Provisions Severable

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.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Property in a manner, which, in the opinion of the Development Officer, conforms to this agreement and the following Schedules attached to this Agreement.

- Schedule A Parcel Description
- Schedule B Site Plan
- Schedule C Apartment Building Elevations

3.2 Future Subdivision of Land

No alterations to the Property are permitted without a substantive amendment to this Agreement except lands not occupied by uses enabled in this Agreement may be subdivided, subject to the requirements of the Land Use By-law, the Subdivision By-law, and *Municipal Government Act* relating to the notice of intent to discharge the Agreement (for a portion of the lands).

3.3 Requirements Prior to Approval

3.3.1 No development permit shall be granted for the development unless:

- a) The Developer has provided proof that all requirements of Schedule(s) B and C were complied with, except for modifications authorized in Subsections 3.4.6;
- b) Detailed signage and lighting plans as per Section 3.5 are submitted;
- c) Erosion and sedimentation control measures as per Section 4.2 were implemented; and
- d) A copy of the ‘Storm Water Management Plan’ prepared by a qualified professional as per Section 4.3.1 is submitted.

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

3.4 General Description of Land Use

3.4.1 The use of the Property permitted by this Agreement shall be apartment buildings.

3.4.2 The number of multi-unit multi-story apartment buildings on the property in the area identified in subsection 2.2.1 shall not exceed three (3).

3.4.3 Ground mounted solar collector systems shall be located in the rear yard and shall be a minimum of 0.6 metres (2 feet) from any lot line.

3.4.3 The apartment buildings shall not exceed a maximum of 10.7 metres or 35 feet in height.

3.4.4 The minimum setbacks from the apartment buildings to the property lines are as follows:

Front Yard Setback	7.6 m (25ft)
Side Yard Setback	1.2 m (4 ft)
Rear Yard Setback	7.6 m (25ft)

3.4.6 The location of Building A and driveways shall be governed by Schedule B. Minor alterations to driveways that do not result in traffic circulation outside of the area subject to the development agreement shall be accepted by the Development Officer and do not require an amendment to

this Agreement.

3.5 Commercial Site Lighting, Signage, Storage, Landscaping & Fencing

- 3.5.1 Lighting, signage and storage shall adhere to the requirements of the *West River Antigonish Harbour Land Use By-law of the Municipality of the County of Antigonish*.
- 3.5.2 The Developer shall include lighting details on the detailed plans submitted for Development Permits when submitted to the Development Officer for review to determine compliance with this Agreement.
- 3.5.3 The Developer shall provide signage details on the detailed plans submitted for Development Permits when submitted to the Development Officer for review to determine compliance with this Agreement.
- 3.5.5 The Developer shall add vegetation, shrubs and trees in accordance with the submitted Site Plan attached as Schedule B.

3.6 Maintenance

- 3.6.1 The Developer shall maintain and keep in good repair all portions of the development on the Property, 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, snow and ice control, and the salting of walkways and driveways.

3.7 Hours of Operation

Hours of operation shall be 24 hours a day, seven days a week.

PART 4: STREETS, MUNICIPAL SERVICES, AND ENVIRONMENTAL PROTECTION

4.1 Off-Site Disturbance

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

4.2 Erosion and Sedimentation Control

- 4.2.1 An Erosion and Sedimentation Control plan designed for the development by a professional engineer must be prepared before and implemented during construction;
 - (a) exposed soils must be stabilized by such measures as covering soil stockpiles with hay/straw, and;
 - (b) any water pumped or drained from the excavation must have a Suspended Solid (SS) concentration below 25 mg/l (ppm) before it crosses a lot line.
- 4.2.2 During the commencement of on-site works, the Developer shall comply with the *Erosion and Sedimentation Control Handbook for Construction Sites* as prepared and revised from time to time by Nova Scotia Environment.

4.3 Storm Water Management

- 4.3.1 The Developer shall prepare a 'Storm Water Management Plan' that is prepared by an adequately qualified professional.
- 4.3.2 All private storm water facilities shall be maintained in good order to maintain full storage capacity by the owner of the lot on which they are situated.
- 4.3.3 Where private storm systems cross multiple properties, the Developer shall provide easements in favour of the affected properties to permit the flow of storm water.

PART 5: AMENDMENTS

5.1 Non-Substantive Amendments

- 5.1.1 The following item is considered by both parties to be non-substantive and may be amended by resolution of Council:
 - a) The granting of an extension to the date of commencement or completion of construction as identified in Section 6.3 of this Agreement;

5.2 Substantive Amendments

Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

5.3 Discharge

Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council without a public hearing.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES, AND DISCHARGE

6.1 Registration

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.

6.2 Subsequent Owners

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees, and all subsequent owners, and shall run with the Property that is the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 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).

6.3 Commencement of Development

- 6.3.1 This agreement or portions of it may be discharged at the discretion of the Municipality with or without the concurrence of the property owner if construction has not commenced within two (2) years and/or construction has not been completed within five (5) years of the registration of the agreement.
- 6.3.2 For the purpose of this section, Council may consider granting an extension of the commencement or completion of development time period through a resolution under Section 5.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior

to the expiry of the commencement of development time period.

6.4 Completion of Development

This agreement may be discharged at the discretion of the Municipality upon the completion of the project and the satisfactory fulfillment of the terms of the Agreement.

PART 7: COMPLIANCE AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

The Developer agrees that any officer 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.

7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (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 injunction 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 defense based upon the allegation that damages would be an adequate remedy;
- b) The Municipality may enter onto the Property and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a break of the Agreement, whereupon all reasonable expenses, whether arising out of the entry onto the Property or from the performance of the covenants or remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the Assessment Act; or,
- 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 Property shall conform with the provisions of the Land Use By-law.

7.3 Municipal Responsibility

The Municipality does not make any representation to the Developer about the suitability of the Property for the development proposed by this Agreement. The Developer assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the development.

7.4 Warranties by the Developer

The Developer warrants as follows:

- a) The Developer has good title in fee simple to the Property or good beneficial title subject to normal financing encumbrance or is the sole holder of a Registered Interest in the Property. No other entity has an interest in the Property which would require their signature on this Agreement to validly bind the Property or Developer has obtained the approval of every other entity which has an interest in the Property whose authorization is required for the Developers to sign the Agreement to validly bind the Property.
- b) The Developer has taken all steps necessary to, and it has full authority to, enter the Agreement.

7.5 Onus for Compliance on Developer

Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in the Agreement shall not be deemed a waiver of any subsequent breach or default in the conditions or requirement contained in this Agreement.

7.6 Costs

The Developer is responsible for all costs associated with recording this Agreement in the Registry of Deeds or Land Registration Office, as applicable, and all costs of advertising for and recording any amendments.

7.7 Full Agreement

The Agreement constitutes the entire agreement and contract entered into by the Municipality and the Developer. No other agreement or representation, oral or written, shall be binding.

7.8 Interpretation

- 7.8.1 Where context requires, the singular shall include the plural, and the use of words in one gender shall include the masculine, feminine, and neutral genders as circumstances warrant;
- 7.8.2 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.
- 7.8.3 References to particular sections of statutes and by-laws shall be deemed to the references to any successor legislation and by-laws even if the content has been amended, unless the context otherwise requires.

SCHEDULE "A"

PID 10079572

ALL and singular that certain lot or parcel of land situate, lying and being near Highland Drive Extension, County of Antigonish, Nova Scotia, and being shown as Lot 2A on Plan 5867-1A3 by C.J. MacLellan and Associates and being more particularly described as follows;

BEGINNING at a point indicated by a survey marker, denoted on said plan as SM(fd) number 5, in the southeast corner of lands of Her Majesty the Queen in The Right of Province of Nova Scotia, as described in book 292, page 165, Registry of Deeds, said point being on an azimuth of 268 degrees 54 minutes 40 seconds for a distance of 2315.05 feet from Nova Scotia Coordinate Monument 499;

THENCE along lands of the Town of Antigonish on an azimuth of 166 degrees 40 minutes 51 seconds for a distance of 158.03 feet to a point indicated by a survey marker;

THENCE along lands of Aloma Hawley on an azimuth of 153 degrees 25 minutes 10 seconds for a distance of 115,18 feet to a point indicated by a survey marker;

THENCE along other lands of Her Majesty the Queen in the right of the Province of Nova Scotia on an azimuth of 243 degrees 25 minutes 10 seconds for a distance of 190.39 feet to a point indicated by a survey marker;

THENCE on an azimuth of 333 degrees 52 minutes 40 seconds for a distance of 46.78 feet to a point indicated by a survey marker;

THENCE on an azimuth of 243 degrees 52 minutes 40 seconds for a distance of 19.00 feet to a point indicated by a survey marker;

THENCE along a proposed street on an azimuth of 333 degrees 52 minutes 46 seconds for a distance of 269.04 feet to a point indicated by a survey marker;

THENCE continuing along lands of Her Majesty the Queen in the right of the Province of Nova Scotia on an azimuth of 74 degrees 21 minutes 20 seconds for a distance of 247.61 feet to the point of BEGINNING;

CONTAINING an area of 1.461 acres;

BEING a portion of lands described in Book 349, page 314, Registry of Deeds, Antigonish, Nova Scotia; SUBJECT to an easement for water and sewage services, being, twenty feet in favour of the County of Antigonish, by deed dated Oct.7, 1980 (not recorded) as contained in a Deed recorded August 6, 1999 in Book 349 at Page 314.

BEGINNING at a point on an azimuth of 243 degrees 25 minutes 10 seconds for a distance of 66.79 feet from a survey marker at the south east corner of the above described lot;

THENCE along lands of Her Majesty the Queen in the Right of the Province of Nova Scotia on an azimuth of 243 degrees 25 minutes 10 seconds for a distance of 20.00 feet

THENCE on an azimuth of 333 degrees 52 minutes 40 seconds for a distance of 292.33 feet;

THENCE along lands of Her Majesty the Queen in the Right of the Province of Nova Scotia on an azimuth of 74 degrees 21 minutes 20 seconds for a distance of 20.34 feet;

THENCE on an azimuth of 153 degrees 52 minutes 40 seconds for a distance of 288.47 feet to the point of BEGINNING;

SUBJECT to an easement for surface water drainage from the proposed road as contained in a Deed recorded in Book 391 at Page 332 and being more particularly described as follows;

BEGINNING at a point, indicated by a survey marker, denoted on said plan as SM(pl) number 2, in the southeast corner of the above lot, said point being on an azimuth of 262 degrees 18 minutes 26 seconds for a distance of 2246.91 feet from NSCM 499;

THENCE along other lands of Her Majesty the Queen in the right of the Province of Nova Scotia on an azimuth of 243 degrees 25 minutes 10 seconds for a distance of 190.39 feet to a point indicated by a survey marker;

THENCE along a proposed street on an azimuth of 333 degrees 52 minutes 40 seconds for a distance of 25.00 feet;

THENCE on an azimuth of 63 degrees 25 minutes 10 seconds for a distance of 123.60 feet;

THENCE on an azimuth of 357 degrees 29 minutes 32 seconds for a distance of 101.95 feet;

THENCE on an azimuth of 346 degrees 40 minutes 51 seconds for a distance of 27.91 feet;

THENCE on an azimuth of 76 degrees 40 minutes 51 seconds for a distance of 25.00 feet;

THENCE on an azimuth of 166 degrees 40 minutes 51 seconds for a distance of 25.00 feet to a point indicated by a survey marker;

THENCE on an azimuth of 153 degrees 25 minutes 10 seconds for a distance of 115.18 feet to the point of BEGINNING;

DIRECTIONS are referenced to the Nova Scotia Coordinate System.

TOGETHER WITH a Right-of-Way and Service Easement for the benefit of the above described lands over the "Proposed Street" shown on the above referred to Plan running from Highland Drive Extension to MacIsaac Road as contained in a Deed recorded in Book 391 at Page 332.

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

Exemption:

The parcel is exempted from subdivision approval under the Municipal Government Act because the parcel was created by a subdivision

Reason for exemption:

Clause 268(2)(c) resulting from an acquisition or disposition of land by Her Majesty the Queen in right of the Province or in right of Canada or by an agency of Her Majesty.