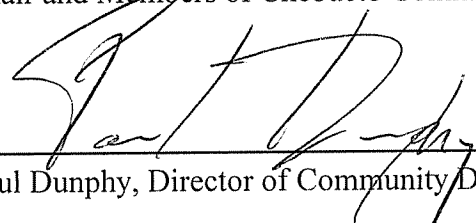




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
April 7, 2008

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: March 17, 2008

SUBJECT: **Case 01123: Extension to Development Agreement Time Frames**
339 Lacewood Drive, Halifax

ORIGIN

Request by Alderwoods Group Canada Inc. for a one (1) year extension to the existing Development Agreement to construct a funeral home at 339 Lacewood Drive, Halifax.

RECOMMENDATION

It is recommended that Chebucto Community Council:

1. By resolution amend Section 4.5 of the existing Development Agreement to extend the time limit for the completion of the agreement until January 11, 2009 (a public hearing is not required);
2. Approve the Amending Agreement as shown in Attachment "A" of this report; and
3. Require that the Amending Agreement be signed within 120 days or any extension thereof granted by Council on request of the applicant from the date of the motion approved by Council and any other bodies as necessary whichever approval is later, otherwise, this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The subject property, 339 Lacewood Drive (PID 40722894), is a vacant parcel of land located at the northwest corner of Lacewood Drive and Stratford Way in Halifax (see Map 1). The site is included in the Stage I Development Agreement for Clayton Park West, Phase II. The Stage I Development Agreement requires construction of Phase II to be complete by 2013.

In 1993, Halifax City Council approved a Stage II Development Agreement for Phase II of Clayton Park West. The Stage II Development Agreement required completion by August 19, 1998.

In 1996, Halifax City Council approved amendments to the Stage I and Stage II agreements to permit a funeral home on the subject parcel.

In 1998, Chebucto Community Council approved a one year extension to the Stage II Development Agreement to allow the funeral home to proceed.

In 1999, Chebucto Community Council refused a request for a two year extension to the Stage II Development Agreement as the applicant could not confirm that the funeral home would be constructed in the two year time frame. The Stage II Development Agreement expired in 1999.

In 2005, Chebucto Community Council approved a second Stage II Development Agreement to construct a funeral home at 339 Lacewood Drive. The Stage II Development Agreement required commencement of construction by January 11, 2008. The applicant has again requested a one year extension to this Development Agreement. No change to the site plan or building architecture has been requested.

DISCUSSION

Development agreements contain an expiry date so that projects which have been approved but not constructed can be brought to a conclusion within a reasonable time frame. If the applicant has not proceeded within the allotted time council may grant an extension, at the request of the applicant, in cases where it is felt that the development is still appropriate.

The applicant company has undergone three separate changes to corporate structure since the initial application in 1996, which have contributed to the delay in construction. Although this project has been extended previously, the applicant has now made application for a building permit, and intends to commence construction within thirty (30) days of approval. They have advised that construction should take approximately ten (10) months.

Staff have revised the clause in the existing agreement (Section 4.5 - refer to Attachment "B") which relates to the time limit for commencement to require physical commencement of construction, including site excavation and the placement of the footings and foundation, by January 11, 2009 (refer to Attachment "A").

A decision to extend the time-frame does not require a public hearing. Staff has no objection to granting the requested time extension. An amending agreement is included as Attachment "A".

If no extension is granted, the Stage I Development Agreement will remain in effect until 2013. To construct a funeral home on the site, the applicant would be required to apply for a new Stage II Development Agreement. To use the site for any other purpose, an amendment to the Stage I agreement would be required before entering into a Stage II Development Agreement.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities, and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council may approve the amending Development Agreement (Attachment "A"). This is the recommended course of action.
2. Council could refuse the extension, in which case the existing Development Agreement would become null and void, and the property could no longer be developed without approval of a new development agreement. This alternative is not recommended by staff.

ATTACHMENTS

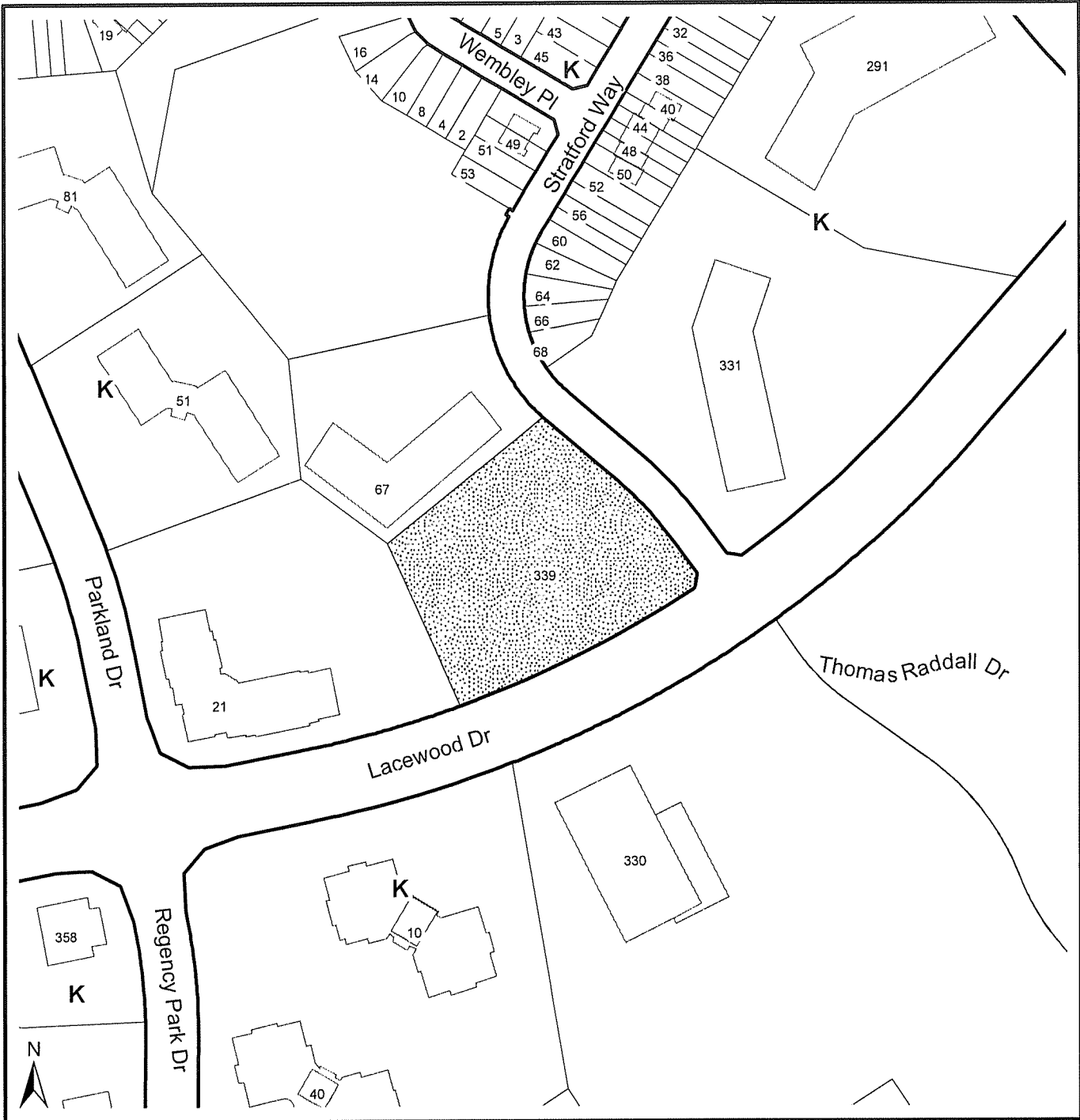
Map 1	Zoning and Location
Attachment A	Amending Development Agreement
Attachment B	Excerpts from Existing Development Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Patricia Hughes, Planner I, 490-1948

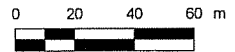



Report Approved by: Austin French, Manager of Planning Services, 490-6717



Map 1 - Location and Zoning

339 Lacewood Drive
Halifax



 Area of development agreement

This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Mainland Land Use By-Law Area

HRM does not guarantee the accuracy of any representation on this plan.

Halifax Mainland
Land Use By-Law Area

Zone

K Schedule K

Attachment A

THIS AMENDING AGREEMENT made this day of , 2008
BETWEEN:

ALDERWOODS GROUP CANADA INCORPORATED,
of Halifax, Province of Nova Scotia,
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at the corner of Lacewood Drive and Stratford Way, Parcel "C-1", 339 Lacewood Drive, and which said lands are more particularly described in Schedule "A" to this Agreement (herein after called the "Lands");

AND WHEREAS the Council of the City of Halifax granted approval of a Stage I Development Agreement pertaining to preliminary subdivision and development of the Lands on April 20, 1988 as Municipal Case Number 5006 which said agreement is recorded at the Registry of Deeds at Halifax as Document Number 64849 in Book No. 4658 at Pages 760;

AND WHEREAS Council of the City of Halifax previously amended the Stage I Agreement by entering to an amending agreement on March 20, 1996 as Municipal Case Number 7289 to allow a funeral home on the Lands which said agreement is recorded at the Registry of Deeds at Halifax as Document Number 14046 in Book No. 5865 at Pages 1-3;

AND WHEREAS the Chebucto Community Council of the Halifax Regional Municipality granted approval of a Stage II Development Agreement to allow a funeral home on the Lands on November 7, 2005 as Municipal Case Number 00797 which said agreement is recorded at the Registry of Deeds at Halifax as Document Number 84183699 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested an amendment to the Existing Agreement by extending the time limit for commencement as set out in Clause 4.5 of the Existing Agreement.

AND WHEREAS the Chebucto Community Council of Halifax Regional Municipality, at its meeting on the day of 2008, approved the requested amendment (referenced as Municipal Case Number 01123);

NOW THEREFORE THIS Amending Agreement WITNESSETH THAT in consideration to the granting by the Municipality of this Amending Agreement requested by the Developer, the Developer agrees as follows:

Clause 4.5 of the Existing Agreement is replaced with the following:

4.5 In the event that construction of the project has not commenced by January 11, 2009, the Municipality may, by resolution of Council, upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purpose of this section, commencement of construction shall mean the issuance by the Municipality of a building permit for construction of the building, site excavation and the placement of the footing and foundation. If the development has not commenced by the applicable time, this agreement will terminate unless specifically extended upon request of the applicant and all rights shall be at an end.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

Signed, sealed and delivered in the presence of:

per: _____
=====

Sealed, Delivered and Attested by the proper signing officers of Halifax Regional Municipality duly authorized on that behalf in the presence of

per: _____

**ALDERWOODS GROUP CANADA
INCORPORATED**

per: _____
=====

HALIFAX REGIONAL MUNICIPALITY

per: _____
MAYOR

per: _____
CLERK

Attachment B
Excerpts from Existing Development Agreement

PART4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

- 4.1 A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia, and the Developer shall pay or reimburse the Municipality for the registration cost incurred in recording such documents.
- 4.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, leasees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.
- 4.3 Upon the transfer of title to any lot, the owner thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.
- 4.4 Notwithstanding Section 4.3 or any transfer of title to a lot, the Developer shall continue to be responsible for the fulfilment of the Developer's covenants under this Agreement.
- 4.5 In the event that construction of the project has not commenced within two (2) years from the date of approval of this Agreement by the Municipality, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purposes of this section, "commencement of construction" shall mean completion of the footings for the proposed building.**
- 4.6 Anytime after the completion of the development, or portions thereof, or after the expiration of four (4) years from the date of approval of this Agreement, 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;
 - (c) discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law, as may be amended.