


HALIFAX

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

Item No.14.1.14
Halifax Regional Council
April 25, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: April 7, 2017

SUBJECT: **Case 20227: Incentive or Bonus Zoning Agreement - Mixed-Use Development at 5515 Clyde Street, Halifax**

ORIGIN

- December 10, 2015; Design Review Committee approval of the qualitative elements of the substantive site plan application for the mixed-use development on the “Margaretta” site bounded by Dresden Row, Clyde Street and Birmingham Street; and
- Construction Permit application no. 158160.

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, Downtown Halifax Land Use By-law (LUB) (Attachment B)

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 as provided in “Attachment A” of this report for the mixed-used development at 5515 Clyde Street, Halifax.

BACKGROUND

The developer, Clyde Street Developments Ltd., proposes to develop a 9-storey mixed use building at 5515 Clyde Street, Halifax, known as the “Margaretta” site. The subject site is approximately 3,968 square metres (42,705 square feet) in area and has been used as a commercial parking lot for approximately the past four decades. It is one of two former HRM-owned parking lots on Clyde Street that were the subject of a Request for Proposals and subsequently sold in 2011. It is one of three development parcels that have been branded as the “Sister Sites” in reference to the three daughters of the Schmidt family, who lived in the Schmidville neighbourhood 140 years ago. The “Mary Ann” site is located at the adjacent block, bounded by Queen, Clyde and Birmingham Streets, the construction of which has recently been completed. The third site, the “Rosina”, is located on Queen Street (the site of the former Halifax Infirmary hospital) and remains undeveloped.

The following major elements of the proposal have been specifically highlighted by the developer:

- Approximately 2,611 square metres (28,105 square feet) of commercial floor space at ground level with pedestrian access points along all streets and a separate residential lobby area;
- 8 storeys of residential use totaling 147 units;
- three underground parking levels containing 260 parking spaces;
- driveway access to underground parking area is off Birmingham Street and a delivery entrance is off Dresden Row;
- landscaped areas, including a plaza in front of the building off Clyde Street, a second level roof terrace, and residential terraces, balconies and rooftop; and
- exterior cladding materials which include granite, brick and architectural stone, glass, aluminum frames, precast, composite panels, glass canopies and glass/composite balconies with metal railings.

Proposed Public Benefit

Within the Downtown Halifax Plan Area, maximum permitted building heights may only be attained when a developer provides a public benefit. 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 “bonus zoning.” A list of eligible public benefits is found in subsection 12(7) of the LUB (Attachment B). The proposed project exceeds the pre-bonus height of 22 metres, therefore a post-bonus height agreement is required.

The LUB requires that, for the development of the two Clyde Street parking lots (the Mary Ann and the Margaretta), a minimum of 210 parking spaces be retained for public use over both lots, in addition to any parking required for the new developments. Both projects are being undertaken by the same developer and the recently completed Mary Ann site contains 114 of the 210 public use parking spaces while the Margaretta will include the remaining 96 spaces that must be retained.

The proposed public benefit includes the provision of additional public parking facilities as well as public art.

Role of Design Review Committee, Development Officer & Council

Under clause 4(13)(c) of the LUB, the Design Review Committee (DRC) 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 for the development 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.

The *Halifax Regional Municipality Charter* requires Council approval of the adoption of an incentive or bonus zoning (public benefit) agreement. This report seeks to obtain Council's approval of the agreement.

DISCUSSION

The LUB requires developments that exceed the maximum pre-bonus height limitations provide a public benefit as part of the project. Subsection 4(13) of the LUB requires that the Design Review Committee "advise the Development Officer on matters pertaining to bonus zoning in relation to substantive site plan approvals." The recommendation report that went to the DRC on December 10, 2015 recommended the provision of public parking facilities as the public benefit. In making its decision on the site plan application, the DRC recommended that the Development Officer accept the provision of public art as the public benefit for the development, instead of the provision of public parking facilities. Specifically, their motions in this regard are as follows:

"MOVED by Mr. Murphy seconded by Ms. Sampson

THAT the Design Review Committee:

4. Recommend that the Development Officer accept, as the Post-Bonus Height Public Benefit for the development, the provision of public parking facilities. MOTION PUT AND DEFEATED.

MOVED by Ms. Sampson, seconded by Mr. Murphy

THAT the Development Officer accept, as the Post-Bonus Height Public Benefit for the development, the provision of public art. MOTION PUT AND PASSED."

In this case, the developer is proposing that the public benefit contribution be a combination of public parking facilities and public art.

Public Benefit Details

The LUB lists the required public benefit categories, and establishes a public benefit value that is the equivalent of \$4.47¹ for every 0.1 square metres of gross floor area created by extending above the pre-bonus height. The maximum pre-bonus height for the project is 22 metres and the maximum post-bonus height is 28 metres. The gross floor area to be gained with this increase is approximately 4,452.7 square metres. A calculation of the value of the required public benefit is approximately \$199,035.69.

In order to achieve this, the developer is proposing to provide the public benefit contribution through a combination of public parking facilities and public art. The developer has indicated that the cost of providing 5 additional public parking spaces within the development is \$215,769.25, based on the cost of \$43,153.85 per space. The balance of the contribution will be composed of \$25,000 in public art to equal a total contribution of \$240,769.25.

¹ Amount adjusted in 2015 as per the Statistics Canada, Province of Nova Scotia Consumer Price Index

Conclusion

In reviewing the proposal, section 12(7) of the Downtown Halifax Land Use By-law provides that the developer may provide the public benefit contribution in one or a combination of the listed categories. While the developer had initially indicated that they proposed to provide the contribution in the form of public parking facilities, the DRC has stated a preference toward the provision of public art. To balance their initial request along with the recommendation of the DRC, the developer is now proposing that the dedication be provided as a combination of public parking facilities and public art.

Staff recommends that Regional Council adopt, by resolution, the Incentive or Bonus Zoning Agreement as provided in Attachment "A" of this report for the mixed-use development located 5515 Clyde Street, Halifax.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this application can be accommodated within the approved operating budget for C420 Subdivision & Land Use.

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

None identified.

ALTERNATIVE

1. Regional Council may choose not to enter into the Incentive or Bonus Zoning Agreement as provided in Attachment A of this report. This would delay construction of the project as scheduled, necessitate further submissions by the developer, and require advisement by the Design Review Committee, as well as a supplementary report from staff.

ATTACHMENTS

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

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Sean Audas, Development Officer/Principal Planner, 902.490.4402

Original Signed

Report Approved by: _____
Kelly Denty, Manager, Current Planning, 902.490.4800

Original Signed by Director

Report Approved by: _____
Bob Bjerke, Chief Planner & Director, Planning and Development, 902.490.1627

Attachment A – Incentive or Bonus Zoning Agreement

THIS AGREEMENT made this ____ day of _____, A.D., 2017.

BETWEEN:

CLYDE STREET DEVELOPMENTS LTD., a body corporate,

(hereinafter called the “Developer”)

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY, a body corporate,

(hereinafter called the “Municipality”)

OF THE SECOND PART

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 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 of the Development 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 Council has recognized there is a deficiency of public parking facilities on Clyde Street, as set out in Policy 32 of *Downtown Halifax Municipal Planning Strategy*, and subsection 11(4) of the *Land Use By-law*;

AND WHEREAS Policy 32(c) of the *Downtown Halifax Municipal Planning Strategy* requires public parking in support of Spring Garden Road to be incorporated within the redevelopment of this Property and the adjacent property at 5481 Clyde Street P.I.D. 00077438 (“Clyde Street Property”);

AND WHEREAS subsection 11(4) of *Land Use By-law* requires a minimum of 210 public parking spaces in total between the Property and the Clyde Street Property;

AND WHEREAS the Clyde Street Property contains 114 of the 210 public use parking spaces while the Property will contain the remaining 96 parking spaces;

AND WHEREAS on December 10, 2015 the Design Review Committee approved the Development and recommended to the Development Officer of the Municipality the acceptance of Public Art as the Public Benefit for the Development;

AND WHEREAS by approving this Agreement, the Council of the Municipality has accepted the provision of Public parking and Public Art 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 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 a 9-storey mixed use residential building on the Property;
- (c) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (d) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;
- (f) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being 5515 Clyde Street, Halifax, Nova Scotia, known as PID 00077875 more particularly set out in Schedule “A” attached hereto; and
- (g) “Public Benefit” means:
 - (i) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the Land Use By-law; and
 - (ii) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that the Developer will provide five (5) additional public parking spaces on level P-1 of the Property, for a total of 201 public parking spaces on the Property, and public art as the Public Benefit required under subsections 12(1) and 12(7) of the Land Use By-law for the Property. Prior to its installation, the public art location, design and construction shall be approved by the Development Officer.

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 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.

Benefit

6. The Developer agrees:
 - (a) to install, construct and maintain the Public Benefit:
 - (i) at its own cost;
 - (ii) in a good and workmanlike manner;
 - (iii) in accordance with all the drawings, attached as Schedule "C";
 - (iv) as sustainable building practises; and
 - (v) in compliance with all applicable laws; and
 - (b) to complete construction of the Public Benefit which shall be completed at 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 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 agrees 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, 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, the owner of the Property 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
- Schedule "C" - Drawings

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; and
- (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 of 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

**CLYDE STREET
DEVELOPMENTS LTD**

the presence of

Per: _____

Name:

Office held:

Per: _____

Name:

Office held:

Witness

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:

Per: _____

Mayor

Witness

Per: _____

Clerk

Witness

SCHEDULE A - Legal Description of the Property

PARCEL SP-4

CLYDE STREET

HALIFAX COUNTY, NOVA SCOTIA

ALL that certain parcel of land situate, lying and being bounded on the west by Dresden Row, on the south by Clyde Street, and on the east by Birmingham Street, Halifax, Halifax County, Nova Scotia; being PARCEL SP-4 as shown on a plan title Plan Showing Lands of The City of Halifax North of Clyde Street between Brenton Street and Queen Street - for Development Purposes -, certified by A. A. White, N.S.L.S., dated June 15, 1987, recorded in the Office of the Director of Infrastructure and Asset Management, Design & Construction Services as former City of Halifax Plan No. TT-39-29162; said Parcel SP-4 being more particularly described as follows:

BEGINNING at the point of intersection of the northern boundary of Clyde Street with the western boundary of Birmingham Street, as shown on the above noted plan;

THENCE South 69 degrees 00 minutes 25 seconds West along said northern boundary of Clyde Street, a distance of 202.36 feet to the eastern boundary of Dresden Row;

THENCE North 20 degrees 44 minutes 54 seconds West along said eastern boundary of Dresden Row, a distance of 220.08 feet to the southwestern corner of lands now or formerly owned by Winchester Investments Limited;

THENCE North 68 degrees 39 minutes 50 seconds East along the southern boundary of said lands now or formerly owned by Winchester Investments Limited, a distance of 101.12 feet to a deflection therein;

THENCE South 20 degrees 36 minutes 00 seconds East along a western boundary of said lands now or formerly owned by Winchester Investments Limited, a distance of 20.00 feet to a southwestern corner of said lands now or formerly owned by Winchester Investments Limited;

THENCE North 68 degrees 39 minutes 50 seconds East along the southern boundary of said lands now or formerly owned by Winchester Investments Limited, a distance of 102.01 feet to said western boundary of Birmingham Street;

THENCE South 20 degrees 32 minutes 48 seconds East along said western boundary of Birmingham Street, a distance of 201.30 feet to the point of BEGINNING.

PARCEL SP-4 contains an area of 42,702 square feet.

BEARINGS are grid, based on Zone 5, Central Meridian 64 degrees 30 minutes West, of the

Nova Scotia 3 degree Modified Transverse Mercator projection.

SUBJECT TO height restrictions with respect to View Plane No. 9 as shown on the above noted plan.

SUBJECT TO height restrictions with respect to View Plane No. 10 as shown on the above noted plan.



March 14th, 2017

Halifax Regional Municipality
Halifax, NS, B3J 3A5

Attention: Sean Audas, Development Officer, Development Services

Re: MargarettA – Public Benefit Agreement Cost Considerations

Dear Mr. Audas,

The Land Use By Law section 12(1) lists the required public benefit categories and establishes a public benefit value equivalent of \$4.47 for every 0.1 square metres of gross floor area created by extending above the pre-bonus height. The maximum pre-bonus height limit for this project is 22 metres and the maximum post-bonus height is 28 metres.

There is 48,000 square feet of post bonus height limit floor area requiring public benefit contribution. Converted to square metres, this total equates to 4,452.7 square metres. At a rate of 4.47 for every 0.1 square metre, the public contribution required is \$199,035.69.

Section 12(7) (g) indicates that public parking is a permissible public benefit, as well as section 12(7)(f) provision of public art. As part of the proposed development, Clyde Street Developments Ltd. is prepared to offer (5) underground parking spaces totaling a value of \$215,769.25 or \$43,153.85 per spot for public benefit and \$25,000.00 in the form of (f), public art.


The breakdown of the parking cost of this, is as follows:

- Overall land cost: \$7,800,000. Proportionate share based on square footage, attributable to underground parkade: 120,000sf Parkade / Total Gross Floor Area including parkade: 370,000 = 32% of land cost = \$2,340,000
- Total value of excavation: \$4,500,000.00 for total parkade
- Total value of concrete in parkade \$1,990,000.00 broken out as follows:
 - a) Formwork cost: \$960,000
 - b) Concrete Cost: \$530,000
 - c) Rebar Cost: \$500,000
- Ventilation Cost of CO Fans, Ductwork and Controls: \$95,000
- Electrical \$70,000
- Elevator portion: \$200,000
- Underground Plumbing: \$35,000

Continued on next page.....

The total cost attributable to the underground parkade is \$11,220,000. There are 260 parking spots in the three levels of underground parkade. Therefore, each spot costs \$43,153.85.

Sincerely,


Original Signed


Alex Halef
Vice President
Clyde Street Developments Ltd.

Attachment B

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

- (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.**
(RC-Dec 13/11;E-Mar 10/12)