

1.0 Recommendation

That the Planning Advisory Committee recommends that Council consider, and if deemed advisable, enter into a Development Agreement with the owners of 236 Water Street (PID# 90334103) to allow for a total of (a) fifty-six (56) units to be used as dwelling units, contained wholly within two (2) buildings located on the subject property (b) any use permitted within the underlying zone of the Town of Yarmouth Land Use By-law (LUB) for the property at 236 Water Street (PID# 90334103) and (c) schedule a Public Hearing.

2.0 Report / Document

An application was submitted in April 2023 by C+D Community Design, on behalf of Mirza Holdings Inc. (the property owner) to develop the property located at 236 Water Street (PID# 90334103) to develop fifty-six (56) dwelling units within two (2) buildings. The following features have been proposed as part of the Development Agreement Application:

- The development is to be completed over two (2) phases. Phase 1 is proposed to include a four (4) storey multiple-unit dwelling, located adjacent to Water Street, containing a total of twenty-four (24) units. Phase 2 is proposed to be located behind Phase 1 and adjacent to the waterfront and includes a four (4) storey building, containing up to a maximum of thirty-two (32) units.
- Both buildings are currently proposed to be slab-on-grade foundation systems.
- The developer has indicated as part of the application that the intention is to maintain five (5) units within Phase 1 as affordable units.
- Access is proposed off Water Street. Initially, a secondary, emergency access was to be required prior to the issuance of a development and building permit within the Development Agreement; however, after discussions with the fire chief, it was determined this access was not required. However, the building code requires that both buildings are sprinklered.
- As part of the development, a one-to-one parking ratio is required on the subject property which includes 5 barrier-free parking stalls and 3 visitor parking stalls. The developer is also proposing to include outdoor bicycle parking and has indicated that they would consider indoor bicycle parking for residents in the future.
- Several architectural controls are listed within the Development Agreement of which the developer must include a minimum of three within the final design.
- Each building is required to contain its own garbage/refuse area. Staff has indicated to the applicant that as part of the Development Agreement, it will be required that the garbage/refuse area be a fully enclosed/fenced area including a lid for refuse bins. Based on

the location of the site and proximity to the waterfront, the intention is to reduce nuisance animals in the garbage/refuse area.

- As the adjacent land uses are existing industrial sites, the developer has indicated that they intend to provide noise-reducing features within the proposed buildings which may include, sound attenuation between floors and walls of the units.
- A condition of the Development Agreement requires the developer to acknowledge the development is located in an area of Industrial Use(s).
- Section 37 of the LUB requires that the building grade elevation of the subject site be a minimum of 4.8m (15'9") or be equal to or greater than the elevation directly abutting Water Street. Section 37 further indicates that the higher or more stringent requirement shall prevail. The proposed development will satisfy Section 37 of the LUB, and a requirement will be included within the Development Agreement with language to this extent.
- The developer has proposed a ground sign for the future residential development located near the entrance to the site off Water Street. The size, location, and design of the sign is regulated by the Development Agreement.
- Several plans and/or documents, as a condition of the Development Agreement, are required to be provided to the Town prior to the issuance of a development and building permit(s). These include but are not limited to the following:
 - Stormwater Management Plan;
 - Environmental Site Assessment (ESA), to reflect the proposed residential use on the subject site;
 - Record of Site Condition stating that the subject site is suitable for Residential use completed by a qualified site professional within the province of Nova Scotia as defined within Section 5 of the Contaminated Site Regulations;
 - Geo-Technical Soil Bearing Capacity Test; and

Enabling MPS Policy and LUB Regulations

Criteria required to be taken into consideration as part of this application are contained within Policy 6.18 of the MPS and include:

- *It shall be the intention of Council to designate an area at the northern end of Water Street as Waterfront Mixed Use on the Generalized Land Use Map. This area will be zoned Waterfront Comprehensive Development Zone (WCD). Council intends that this area may be developed by Development Agreement process which allows for input from stakeholders and members of the public to ensure key concerns can be addressed. The land may subsequently be rezoned to match the eventual use.*

A Public Participation Meeting (PPM) occurred on October 3rd, 2023, enabling members of the public to comment and seek clarification on the proposed residential development in advance of proceeding to Planning Advisory Committee for recommendation, meets the intent of Policy 6.18,

which allows for input from stakeholders and members of the public to ensure key concerns are addressed.

Part 3 of the MPS: Statements of Community Interest, include areas of interest which are intended to simplify the development process and direct development towards a common community goal. One of the statements which directly impact the subject site is Statement of Interest: Waterfront Mixed Use Area. Within this Statement of Interest, the following is noted:

- *The Town sees the lands of Water Street North as having powerful development potential for mixed use development, ranging from housing through to compatible light industrial and some community uses. Towards this end Council wishes to work closely with the YWDC and the development community to stimulate investment in the area. The Land Use policies for this area must be flexible and enabling, while they protect existing development in the surrounding area. This area will be referred to as the Waterfront Comprehensive Development Zone. Council recognizes that specific policies must evolve within this broad framework as development proposals are brought forward.*

The Development Agreement Application for the subject site satisfies the Statement of Interest for the Waterfront Mixed Use Area as the statement of interest encourages the lands to be developed as mixed-use, including, residential developments. This application will be the first residential development along the waterfront in Yarmouth. The draft Development Agreement has been written in a manner that promotes the harmonious integration of residential development within an area of the Town that has traditionally been utilized for non-residential land uses.

Section 27.4(2) of the LUB is the regulation that permits the proposed residential development through a Development Agreement Application. The regulation indicates:

- *Notwithstanding the permitted uses in 27.1 the following uses shall be considered by Development Agreement provided the development is in keeping with the Statement of Interest for the Waterfront Mixed Use Area outlined in the Municipal Planning Strategy:*
 - *(2) Residential uses containing more than eight (8) dwelling units per lot may be considered for development in the Waterfront Comprehensive Development (WCD) Zone only by Development Agreement pursuant to Section 225 of the Municipal Government Act and subject to general conformity with criteria contained in Implementation Policy 10.8. The alteration of, renovation to or change in use within any existing building shall be exempt from this requirement and there shall be no limit on the number of dwelling units permitted.*

As the proposed residential development exceeds eight (8) dwelling units on the subject site, the proposed development is supported through Section 27.4(2) of the LUB and requires the property owner to make a Development Agreement Application to the Town, which has been completed.

On August 3, 2023, Planning Advisory Committee passed a motion to change the Town's Public Participation Program. The change to the Town's Public Participation Program removed the previous approach of holding one (1) joint meeting for a Planning Advisory Committee recommendation and Public Participation. This change allows for Staff and the Planner to recommend that Planning Advisory Committee hold a second Public Participation Meeting (PPM) to enable members of the public to comment on the proposed development. In these situations, a third Planning Advisory Committee meeting will be scheduled following the Public Participation Meeting for Planning Advisory Committee to make a recommendation to Council. However, in situations where Staff and the Planner feel a Public Participation Meeting is not warranted, the Planner can recommend to Planning Advisory Committee to make a motion for a recommendation to Council and schedule a public hearing.

As the first application for residential development along Yarmouth's waterfront, Staff and the Planner agreed a PPM was warranted to enable the public the opportunity to comment and seek clarification from the applicant on the proposed development. The PPM occurred on October 3rd, 2023.

3.0 Key Concept/Issue Defined

A Development Agreement application is required to permit the proposed residential development on the subject site. A PPM was held to enable public comment on the proposed development. Feedback provided by members of the public was used, in part, to form the terms and conditions within the draft Development Agreement and in formulating recommendation to Council.

As noted within Sections 2.0 and 4.0 of this report, MPS Policy and LUB Regulations are in place to support residential development at the subject site.

4.0 Relevant Policy

Policy 6.18 of the MPS and Section 27.4(2) of the LUB permit residential uses containing more than eight (8) dwelling units per lot by Development Agreement. The MPS notes general criteria to consider before entering into a Development Agreement (Implementation Policy 10.8 and 10.9). A summary of the proposed development in relation to MPS Policy 6.18 and LUB Section 27.4(2) is discussed in Section 2.0 of this report. Policy 10.8 is general and relates to the adequacy of the physical characteristics of the proposed site and the Town's infrastructure and services to support the proposed use. Criteria in Implementation Policy 10.9 refers to the context of the Development Agreement such as buffering and landscaping, open storage, signage, size, and use

of buildings which has been taken into consideration in the drafting of the Development Agreement.

5.0 Strategic Relevance

The MPS indicates several Statements of Interest that are intended to simplify the development process and direct development toward a common community goal. One (1) of the Statements of Interest is the Waterfront Mixed Use Area, which includes the subject property. This particular Statement of Interest notes, *“the Town sees the lands of Water Street North as having powerful development potential for mixed use development, ranging from housing through to compatible light industrial and some community uses.”*

6.0 Desired Outcomes

That the Planning Advisory Committee recommends that Council approve the agreement and enter into a Development Agreement as drafted, save for minor differences in form.

7.0 Response

- a. Approve
- b. Reject
- c. Refer back to staff with direction for more information

8.0 General Implications of Recommendation

If Planning Advisory Committee recommends that Council approve the agreement and enter into a Development Agreement as drafted, save for minor differences in form, the proposed agreement will proceed to Council for First Reading and a Public Hearing will be scheduled.

9.0 Financial Implications

No anticipated financial impact beyond typical costs associated with application administration.

10.0 Follow-Up Actions

Notification advertising the Public Hearing will be required via Get Involved and social media.

11.0 Communication

The proposed application details, this report, and advertisement for the upcoming Public Participation Meeting at the Planning Advisory Committee will be advertised via Get Involved and social media.

Prepared By:

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Attachments

Attachment 1 – Draft Development Agreement

Attachment 2 – Public Participation Meeting Notes

Attachment 3 – Questions and Answers Submitted Via Town of Yarmouth's Get Involved Portal

THIS DEVELOPMENT AGREEMENT made this ____ day of _____, A.D., 2023,

BETWEEN;

MIRZA HOLDINGS INCORPORATED, a body corporate in the Province of Nova Scotia,

(herein called the “Developer”)

OF THE PART

- and –

The Town of Yarmouth; an incorporated Town

(herein called the “Town”)

OF THE OTHER PART

WHEREAS the Developer is the registered owner of certain lands located at 236 Water Street (PID# 90334103), Yarmouth, and which said lands are more particularly described in Schedule “A” hereto (herein called the “Subject Property”).

AND WHEREAS the Developer has made an application to the Town for a Development Agreement to permit a residential development with a maximum of two (2) main buildings with a maximum of 56 units dwelling units, (herein called the “Development”), which Development is more particularly described in Schedule “B” (Site Plan).

AND WHEREAS the Developer has agreed to enter into this Agreement with the Town pursuant to Section 225 and Section 230 of the Municipal Government Act and Policy 6.18 and Implementation Policy 10.8 and 10.9 of the Town of Yarmouth’s Municipal Planning Strategy and Section 27.4 of the Land Use By-law.

AND WHEREAS Council approved said application at a meeting held on [Insert – Date].

NOW THIS AGREEMENT WITNESSETH the parties hereto mutually covenant and agree to the Development subject to the following terms and conditions.

1. General Requirements and Administration

1.1. The Developer agrees that the Subject Property shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2. Applicability of Land Use By-law:

- a. Except as otherwise provided for herein, the Development and use of the Subject Property shall comply with the requirements of the Town of Yarmouth's Land Use By-law, as may be amended from time to time.

1.3. Applicability of Other By-laws, Statutes and Regulations:

- a. Further to Section 1.2(a), nothing in this Agreement shall exempt or be taken to exempt the Developer, property owner or any other person from complying with the requirements of any by-law of the Town applicable to the Subject Property (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/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 Subject Property.

1.4. Applicability of Other By-laws, Statutes and Regulations:

- a. Where the provisions of this Agreement conflict with those of any by-law of the Town applicable to the Subject Property (other than the 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.
- b. The Schedules to this Agreement form part of this Agreement and are binding upon the Developers. Where a provision of a Schedule conflicts with the body of this Agreement, the body of this Agreement shall prevail.

1.5. Costs, Expenses, Liabilities and Obligations:

- a. 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 Subject Property.

2. Use of Lands and Development Provisions:

- 2.1.** The Developer shall develop the Subject Property in a manner, which, in the opinion of the Development Officer, generally conforms with the following Schedules attached to this Agreement:

Schedule "A"	Legal Description of the Subject Property
Schedule "B"	Site Plan
Schedule "C"	Cross Section Plan
Schedule "D"	Definitions

- a. Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Subject Property for any of the uses permitted by this Agreement unless a Development Permit has been issued by the Town. No Development Permit shall be issued by the Town 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.

2.2. Permitted Uses

- a. That the use of the Subject Property shall be limited to:
 - i. A maximum of fifty-six (56) dwelling units as defined in Schedule "D" (Definitions), contained within two (2) buildings constructed to a maximum height of four (4) stories.
 - ii. Home-based businesses, subject to Section 2.10 of this Agreement;
 - iii. Accessory buildings and structures shall be limited to accessory uses to the main buildings and shall be subject to Section 2.4 of this Agreement; and
 - iv. Any use permitted in the underlying zone as per the requirements of the Town of Yarmouth's Land Use By-law, as amended from time to time.

2.3. Size and Location of Main Building

- a. The number of main buildings permitted on the Subject Property shall be limited to two (2) and be located as generally shown on Schedule "B" (Site Plan).
- b. Additions or renovations to the existing main buildings as identified on Schedule "B" (Site Plan) that would increase the height, bulk, scale, or lot coverage (footprint) shall be strictly prohibited. The in-filling of any porch, veranda, roof overhang or other similar structures altering the location of any exterior wall of the main building whether heated or not shall be strictly prohibited.
- c. Notwithstanding Section 2.3(b) of this Agreement, the exterior of the main building may be renovated to provide any exterior staircase, landings, decks, roof structure, or similar structures to encroach into any existing yard setbacks for a maximum distance of no more than 2.44 m (8 ft.)

2.4. Size and Location of Accessory Buildings

- a. A maximum of one (1) accessory building may be developed, erected or placed on the Subject Property as identified on Schedule "B" (Site Plan) provided they:
 - i. shall not be used for human habitation;
 - ii. shall not be located in the front yard;

- iii. shall not be located in the flanking yard;
- iv. shall not be located closer than 3.6m (12ft.) to any side lot line;
- v. shall not be located closer than 3.6m (12ft.) to any rear lot line;
- vi. shall not exceed 4.6m (15ft.) in height;
- vii. shall not exceed a floor area of 46.45 m² (500 ft²) in gross floor area;
- viii. shall not be located within 1.2 m (4 ft.) of any main building; and
- ix. shall not have any building elevation more than twice the length of its shortest building elevation.

2.5. Access, Egress, and On-site Parking

- a. Parking shall be provided at a minimum rate of one (1) parking space per unit and shall be located on the same lot as the associated use and have unobstructed access to a public street.
- b. Access shall be limited to the one (1) driveway as shown on Schedule “B” (Site Plan). The existing driveway accessing Water Street shall not be altered in any significant fashion or otherwise may be altered closer to compliance with the provisions of the Town of Yarmouth's Land Use By-law and any amendments thereto.
- c. Each standard (90-degree) parking space shall not be less than 2.44 m by 6.1 m (8 ft. by 20 ft.) in keeping with Schedule “B” (Site Plan) of this Agreement. The parking lot configuration (design) may be altered at any time provided the minimum on-site parking spaces required by this Agreement are satisfied.
- d. Notwithstanding Section 2.5 (c), the parking spaces immediately adjacent to the Northern property boundary may be reduced to “small vehicle” and/or “motorcycle” parking to facilitate adequate separation between vehicle parking/movement and pedestrian access. For greater clarity, the width of these parking spaces shall be no less than 1.5m (4.92ft.).
- e. The Town retains the right to use at its sole discretion all portions of Water Street right-of-way as the Town deems appropriate from time to time. This shall include, but not be limited to, the removal of any parking area along the southern side of Water Street, and the Town may at any time, widen the width of the travelling surface of Water Street and install curb, gutters, sidewalks, and similar public infrastructure such as storm sewer, water and sewerage lines as and when deemed appropriate by the Town of Yarmouth.
- f. Any lights used to illuminate the building, driveway or parking area shall be so arranged as to divert the light away from streets, adjacent lots and buildings and shall comply with the Dark Sky lighting provisions for high-density residential uses as per the Town’s Land Use By-law, as amended from time to time, and shall comply with Section 2.8 (b).

- g. The Parking lot configuration may be altered provided the minimum on-site parking spaces required by this Agreement are satisfied.

2.6. Architectural Controls

- a. At a minimum, three of the following architectural elements shall be incorporated in all walls facing a public street, public access trail, or containing the main entrance to the building.
 - i. Canopies or porticos;
 - ii. Awnings;
 - iii. Overhanging rooflines;
 - iv. Raised corniced parapets over the main entrance doors;
 - v. Peaked roof forms;
 - vi. Outdoor patios;
 - vii. Architectural details such as moldings or stone;
 - viii. Planters; and/or
 - ix. Any other similar architectural treatments as deemed by the Development Officer to be an acceptable architectural treatment.

2.7. Climate Change Adaptation

- a. The development shall comply with all applicable policy requirements contained in Section 11 of the Municipal Planning Strategy and corresponding regulations within the Town of Yarmouth's Land Use By-law pertaining to climate change adaptation. For greater clarity all information noted on Schedule "B" – (Site Plan) and on Schedule "C" – Cross Section Plan, shall contain matching CGVD datum as the Town of Yarmouth's Land Use By-law.

2.8. Landscaping and Lighting

- a. The "landscaped area" (areas excluding the building's footprint, driveways, and parking areas) shall be maintained with a variety of vegetation. New vegetation shall be encouraged where feasible and practical to maintain an aesthetically pleasing landscape.
- b. Exterior lighting shall comply with the Dark Sky lighting requirements for high-density residential uses as per the Town of Yarmouth's Land Use By-law, as amended from time to time.

2.9. Outdoor Storage or Display

- a. No open storage or outdoor displays, notwithstanding those permitted in Section 2.6 of the Land Use By-law, shall be permitted on the Subject Property as identified in Schedule "B" (Site Plan) of this Agreement.
- b. All garbage, compost and/or recycling containers or similar devices shall be screened, with affixed lids or wholly enclosed, and located within proximity to the area denoted on Schedule "B", (Site Plan). For greater clarity, any wholly enclosed structure for the purpose of storing garbage, compost, and/or recycling shall not be considered an accessory building.

2.10. Signage

- a. Any sign not explicitly enabled by this Agreement shall be strictly prohibited.
- b. The Subject Property shall be limited to a maximum of one (1) building identification free-standing sign and such sign shall:
 - i. not have more than two (2) sign faces and shall not exceed 1.1m² (12 ft.²) of sign area per single face;
 - ii. not exceed a height of 3m (10ft.) from the grade level to the highest part of the sign;
 - iii. not be located closer than 1m (3.3ft) to any public street right-of-way;
 - iv. not have any advertisement for any business, development or use, other than the uses permitted via Section 2.2 (a.i.) of this agreement. For greater clarity this shall include the name and civic number of the main buildings only. The sign shall not include any home based businesses;
 - v. comply with the terms of Section 5.60 of the Land Use By-Law, *Reduction of Light Pollution for the Dark Sky*; and
 - vi. be located in proximity to the location of the sign as shown on Schedule "B", (Site Plan).

2.11. Home Based Businesses: Non-Residential Uses

- a. The following non-residential uses shall be permitted as Home Based Businesses within the residential dwelling unit:
 - i. Domestic and Household Arts;
 - ii. Home Based Offices;
 - iii. Mobile Home Based Businesses;

- iv. Internet, Web Site Development or other digital services such as a video editing, sound editing, or other similar uses.
- b. The following general requirements shall apply to the operation of non-residential uses:
 - i. A dwelling must be occupied as a residence by the owner-operator, only two (2) non-residential uses per dwelling unit may be established and only one (1) assistant, who is not a resident of the dwelling may be employed, per home based business;
 - ii. Not more than twenty-five (25%) percent of the total floor area of the dwelling unit shall be devoted to the non-residential use;
 - iii. No additional on-site parking spaces shall be required;
 - iv. No mechanical equipment shall be used except that which is reasonably consistent with the use of the dwelling or for use by a professional person; and
 - v. No objectionable noise, vibration, glare, fumes, odors, dust, air pollutants, traffic generation, or electrical interference shall be permitted.
- c. Signage for Home Based Businesses shall be prohibited.

2.12. Operation and Maintenance

- a. All buildings and lands shall be maintained and kept in a tidy and safe condition.
- b. The Developer shall be responsible for maintaining the site to comply with all Town By-laws and Provincial regulations and to ensure that garbage collection and debris collection and removal are undertaken on a regular basis to ensure the site is maintained in a safe and clean condition.

2.13. Other By-Law Regulation Compliance

- a. Changes to the Site Plan that are required to comply with any By-law, building code requirements, provincial regulations, or at the discretion of the Development Officer shall be permitted without an amendment to this agreement.

3. Amendments to the Agreement:

3.1. Non-Substantive Amendments

- a. Amendments considered non-substantive in this Agreement include the following:
 - i. Changes to landscaping as detailed in Section 2.7 and Section 2.8;
 - ii. Changes to timing detailed in Section 4.5 and 4.6; and

- b. All other matters shall be considered substantial and be amended only after a Public Hearing process pursuant to Section 230 of the *Municipal Government Act* and any amendments thereto.

3.2. Discharge of this Agreement

- a. Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this agreement may be discharged by Council, or at the request of the Property Owner, without a public hearing.

4. Registration, Compliance, and Effect of Conveyances:

4.1. Registry of Deeds

- a. This Agreement shall be recorded and filed by the Town in the Land Registration Office.

4.2. Costs Associated with the Agreement

- a. The Developer shall be responsible for all the costs associated with this Agreement including the cost of recording and filing all the documents in connection with this Agreement.

4.3. Binding

- a. This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees, and all subsequent owners, and shall run with the Subject Property which are the subject of this Agreement until this Agreement is discharged by the Town.

4.4. Municipal Responsibility

- a. The Municipality does not make any representations to the Property Owner about the suitability of the Property for the development proposed by this Agreement. The Property owner assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws and regulations pertaining to the development.

4.5. Signing of Development Agreement

- a. This Agreement shall be signed by the Developer within ninety (90) days from the date the appeal period pursuant to Section 228 of the Municipal Government Act has elapsed and no appeal has been commenced, otherwise this Agreement shall be considered null and void and shall not be implemented.

4.6. Warranties by the Developer

- a. The Developer has good title in fee simple to the Lands or good beneficial title subject to a normal financing encumbrance or is the sole holder of a Registered Interest in the Lands. No other entity has an interest in the Lands which would require their signature

on this Development Agreement to validly bind the Lands or the Developer has obtained the approval of every other entity which has an interest in the Lands whose authorization is required for the Developer to sign the Development Agreement to validly bind the Lands.

- b. The Developer has taken all steps necessary to, and it has full authority to, enter into this Development Agreement.

4.7. Relevant Permits, Studies, and Reports:

- a. The Developer shall apply for, and obtain, the necessary Development, Building and/or Occupancy permits for the Development of:
 - i. The first building within three (3) years of entering into this Agreement. Should the necessary permits have not been applied for, and obtained, the Development Agreement shall become null and void.
- b. Prior to the issuance of all necessary Development, Building and/or Occupancy permits, the Developer shall satisfy to the Town all required outstanding studies and reports including, but not necessarily limited to the following:
 - i. Environmental Assessment
 - ii. Condition of Site Report
 - iii. Geo-technical Report
 - iv. Any other study or report that, in the opinion of the Town, is required prior to the issuance of the necessary Development, Building and/or Occupancy permits for the Development.

5. Matters Incidental to the Agreement:

- 5.1.** The Developer hereby agrees that any officer appointed by the Town to enforce this agreement shall be granted access onto the lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees to allow an officer of the Town to inspect the interior of any building located on the lands during any reasonable hour upon receiving advanced written notification, as per the requirements of the *Municipal Government Act*.
- 5.2.** If the Developer fails to observe or perform any covenant or condition of this Agreement after the Town has given them thirty (30) days written notice of the failure or default, then in each such case:
 - a. The Town 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 defense based on the allegation that damages would be an adequate remedy;

- b. The Town may enter onto the Subject Property and perform any of the covenants contained in this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Subject Property and be shown on any tax certificate issued under the Assessment Act;
- c. The Town may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the lands shall conform with the provisions of the Town's Land Use By-law; and/or,
- d. In addition to the above remedies the Town reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

6. Acknowledgement of Industrial Practices

- 6.1.** The property owner acknowledges that the subject property is located within an area of active industrial practices, which may generate traffic, noise, particulates, and odors. The Property Owner recognizes the right of surrounding landowners, land lessees, and businesses to carry on activities normally associated with industrial uses and related business.

7. Enforcement

- 7.1.** The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforcement of any provisions.

SIGNED, SEALED, AND DELIVERED

In the Presence of:

Witness

Witness

Witness

per:

Developer

**MIRZA HOLDINGS
INCORPORATED**

The Town of Yarmouth

per:

Mayor

per:

Town Clerk & Treasurer

Schedule A - Property Description

Registration County: YARMOUTH COUNTY

Street/Place Name: WATER STREET /YARMOUTH

Title of Plan: FINAL PLAN OF S/D & CONSOLIDATION SHOWING LOT YC-1, LOT YC-2, LOT YC-3, LOT TY-1C, LOT 3A & LOT 4B LOT 2 (PID #90193715), LANDS & LANDS COVERED BY WATER OF YARMOUTH AREA INDUSTRIAL COMMISSION LOT 3 (PID #90020041), LANDS OF TRI-STAR CHARTERS INC. LOT 4 (PID #90193731), LANDS OF GERMAIN MECHANICAL & ELECTRICAL LTD LOT TY-1 (PID #90193749) LANDS OF TOWN OF YARMOUTH [LOT 2 (PID #90193715) SUBDIVIDED TO CREATE LOT YC-1, LOT YC-2, LOT YC-3, PARCEL A, PARCEL B & PARCEL C. PARCEL A CONSOLIDATED TO LOT

Designation of Parcel on Plan: LOT YC-2

Registration Number of Plan: 113527551

Registration Date of Plan: 2018-11-05 10:18:48

Together with the benefit of an easement set out in the Agreement recorded June 4, 1973 at Book IO, Page 258.

Together with the benefit of the covenants set out in the Deed recorded February 7, 1995 at Book 528, Page 621.

Together with the benefit of the covenants set out in the Deed recorded October 13, 1995 at Book 536, Page 35.

Together with the benefit of the covenants set out in the Deed recorded October 13, 1995 at Book 536, Page 110.

Subject to the covenants set out in the Deed recorded February 7, 1995 at Book 528, Page 621.

Subject to the covenants set out in the Deed recorded October 13, 1995 at Book 536, Page 35.

Subject to the covenants set out in the Deed recorded October 13, 1995 at Book 536, Page 110.

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

Compliance:

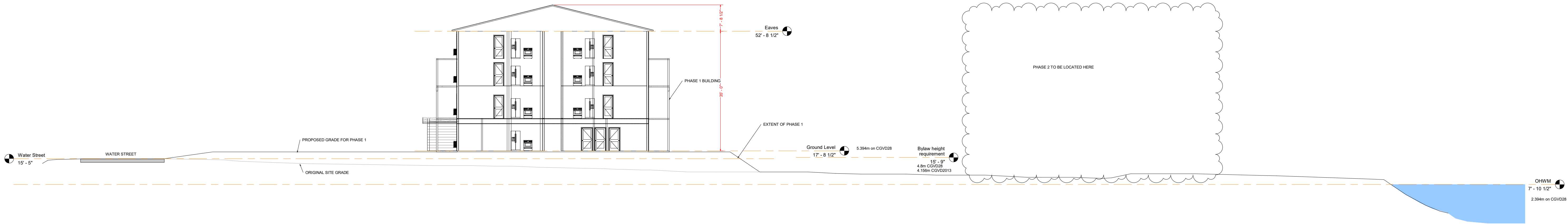
The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: YARMOUTH COUNTY

Registration Year: 2018

Plan or Document Number: 113527551

[illegible]



Schedule D - Definitions

Definitions

For the Purpose of this Agreement, the following terms are specifically defined, all other words shall carry their customary meaning except those defined under PART 38 of the Town of Yarmouth Land Use By-law, as may be amended from time to time.

Dwelling Unit means one or more habitable rooms designed or intended for use by one or more individuals as an independent and separate housekeeping establishment in which separate kitchen and sanitary facilities are provided for the exclusive use of such individual or individuals, with a private entrance from outside the building or from a common hallway or stairway inside the building. Nothing in this definition shall exclude multiple kitchens or sanitary facilities in a dwelling unit.

Attachment 2 - Yarmouth Planning Advisory Committee – Notes: 3 October 2023

Public Participation Meeting: 236 Water Street

- Robert Cunningham – Tech Vac Canada
 - Re-zoning, didn't know this had happened.
 - In industrial part of town. Should stay that way. Runs 24hrs/day. Currently have issues with water Street traffic
 - Concerned with increase traffic.
 - Currently exhaust equipment onto Water Street. This will impact their operations. Conflict of land uses with their current operations.
 - See this as a conflict of land uses for those who want to live along the waterfront. Not convinced this is the best fit.
- Novatec Braid Civil Engineer -
 - Implanting residential land uses amongst industrial not a good fit
 - Height – complying with LUB?
 - GFA – complying?
 - Geotech
 - Water/Septic services need to be looked into. - will this development impact other areas?
 - Access
 - Is property for sale for \$350,000? What's the deal?
 - Novatech Braid is planning to expand their building. Will block views of new development. How is this going to impact the new development.
- Martha Cassidy – Capri Lodge on Herbert Street resident
 - Consider building the project on the old school site or on the field that bordered the golf course and curling rink.
 - Homes and industry don't mix.
 - Bitter cold of Capri Lodge due to westward winds
 - Helicopter sounds 24/7
 - Water Street floods.
 - New legislation will permit 2-4 whalers on Water Street
 - Herbert Street traffic is loud. Water Street risks this. Traffic already constant with 18-wheelers. Children and people should not be expected to live amongst this truck route.
 - Preserve the water/shoreline.
 - Not the right time or the right place.
- Neal Prescott – Managing Director of Novatec Braids
 - Been here since 1991. Came to Yarmouth because of the skilled labour and available industrial space.
 - Machinery and traffic will be conflicting.
 - Messaging to Nova Tech should this go forward is that the Town doesn't want for the company to succeed and expand.
 - Odd to put residential units in this area that are surrounding by factories.
- G Brar – Mortgage Broker
 - Housing crisis is real and seen.

- Mixed use examples can be drawn on from all over Canada.
- Pros: is on the waterfront and owned currently by the applicant, it is downtown (services available).
- Support anyone who wants to build. Housing crisis outweighs the potential conflict of use.
- Need to progress as quickly as possible. Not moving fast enough.
- Need a comprehensive housing development. Understand the business' concerns.
- Traffic and Noise in a mixed use development is inevitable for those that live there. We're limited on space so we need to get creative and deal with the cons as they come.
- Population is growing. Need to accommodate that.
- Frank Doucette – Novatech Braids civil engineer.
 - They had to bring the foundation level.
- Nick Cottreau – Representing the applicant. Answering questions.
 - Flooding occurs towards the north of the site.
 - Intending to raise the property above and beyond what the Town requires.
 - Will require variances to height and building mass.
 - Water/Sewage - information would be provided to Town prior to going too far into design.
 - Noise concerns – This will be mixed use. Modern buildings and modern construction method for noise mitigation.
 - Snow drifts – far enough away from the property line to account for snow drifts.
- Caroline – representing applicant.
 - Traffic – town engineering
 - Noise
- Dr. Nasir – owner
 - Used to live across the street from the property.
 - Residential is permitted as per by-law.
 - Bought the land to improve vacant land use and improvements to water street
 - Aging population needs housing who need access to hospital and services in Town.
 - Could have done residential as-of-right under 8 units. Given the housing crisis, is pursuing the DA option to provide as many units as possible
 - Lives across from the street from NovaTech – does not experience noise.
 - People need housing, seniors need housing. Will be built as a community.
 - Willing to do due diligence with Nova Tech and work with them.
- Neal Prescott
 - Town's visioning statement envisions a walkway along the shore. Novatech is required to consider sea level rise of 3m. Is the town planning to build that.
- Nick: will be higher than the prescribed 3m. The whole lot will be raised above 4.8m.
- Francis Doucette: NovaTec Braids
 - Looking for clarity on height and GFA. Why is this getting considered variances and we are not?
 - Needs some follow up on differences between this application v. the NovaTech application.

- PAC in discussion:
 - Elevations – what happens if Phase 1 is built at 4.8 and then future requirements for Phase 2 might change to be higher
 - Flight path from airport over the site

Attachment 3 – getinvolvedyarmouth.ca Questions and Answers – 236 WaterStreet, Yarmouth



This is an industrial/commercial area with trailer trucks coming and going, RCMP, etc.
Why would anyone want to live there? Or do you plan on changing the whole area?



Kelkel asked, about 1 month ago

The area where the subject property is located is designated as Mixed Use in the the Town's Municipal Planning Strategy. This area has been deemed suitable for a wide range of land uses, owing to the unique features which enable creative development opportunities. The terms and conditions within the Development Agreement, along with public input, can help ensure that any potential conflicts in contrasting land uses are controlled and mitigated.



Will a study be conducted as to the historical significance of the property and the
recovery of artifacts of cultural significance?



Gary Melanson asked, about 1 month ago

Given the subject site is not located within a heritage conservation district, zoned architecturally sensitive (A-S), nor a registered heritage property there are no requirements as part of the Municipality's Development Agreement approval process for the applicant to conduct a heritage assessment with regard to the historical significance of the property as part of the ongoing planning application.