



Rothesay Planning Advisory Committee
Regular Meeting Monday, December 5, 2022
Town Hall Common Room
5:30 p.m.

- 1. Approval of the Agenda**
- 2. Approval of Minutes**
 - 2.1. Regular Meeting of November 7, 2022
- 3. Declaration of Conflict of Interest**
- 4. New Business**

N/A
- 5. Old Business**

TABLED ITEMS

Tabled February 5, 2018 – *no action at this time*

5.1 Subdivision Approval - 7 Lots off Appleby Drive (PID 30175467)

Tabled September 8, 2020 – *no action at this time*

5.2 Removal of PAC conditions and variance – 59 Dolan Road (PID 00094938)

Tabled October 3, 2022 – *no action at this time*

5.3 School Avenue (PIDs 30146708 & 30146674) – Rezoning & Subdivision Agreement

Tabled November 7, 2022 – *Remove from table*

5.4 50 Hampton Road (PID 00255984) – Rezoning (1 apartment building – 27 units)

- 6. Correspondence for Information**

N/A

- 7. Date of Next Meeting**

PAC Meeting Date
TUESDAY, January 3, 2023

Submission Deadline
December 15, 2022

Location
Town Hall

- 8. Adjournment**



ROTHESAY

PLANNING ADVISORY COMMITTEE MEETING
Rothesay Town Hall Common Room
Monday, November 7, 2022 at 5:30 p.m.



2.1

DRAFT

PRESENT: ANDREW MCMACKIN, CHAIRPERSON
KELLY ADAMS
TRACIE BRITTAIN, VICE-CHAIRPERSON
MATTHEW GRAHAM
COUNCILLOR DON SHEA
CHRISTIANE VAILLANCOURT

TOWN MANAGER JOHN JARVIE (*arrived at 5:35 p.m.*)
TOWN CLERK MARY JANE BANKS
DIRECTOR OF PLANNING/DEVELOPMENT (DPDS) BRIAN WHITE
RECORDING SECRETARY LIZ HAZLETT

ABSENT: JOHN BUCHANAN
COUNCILLOR TIFFANY MACKAY FRENCH

Chairperson McMackin called the meeting to order at 5:30 p.m.

1. APPROVAL OF THE AGENDA

MOVED by Counc. Shea and seconded by M. Graham the agenda be approved.

CARRIED.

2. ADOPTION OF MINUTES

2.1 Regular Meeting of October 3, 2022

MOVED by T. Brittain and seconded by K. Adams the Minutes of October 3, 2022 be adopted as circulated.

CARRIED.

3. DECLARATION OF CONFLICT OF INTEREST N/A

4. NEW BUSINESS N/A

5. OLD BUSINESS

TABLED ITEMS

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5.3 School Avenue (PIDs 30146708 & 30146674) – Rezoning & Subdivision Agreement

5.4 50 Hampton Road

Andrew McKay

OWNER:

Glynn Johnston

PID:

00255984

PROPOSAL:

Rezoning (1 apartment building – 27 units)

MOVED by Counc. Shea and seconded by M. Graham the rezoning application for 50 Hampton Road be removed from the table.

CARRIED.

Mr. Joe Bent was in attendance on behalf of the applicant, Andrew McKay. DPDS White advised the request is to permit a three story 27-unit apartment building at 50 Hampton Road.

Town Manager Jarvie arrived at the meeting.

DPDS White noted the application was originally tabled pending polling, and creation of the draft by-law and development agreement. Notifications were sent to adjacent property owners, including residents of the condominium buildings next door – ten responses were received. Draft By-law 2-10-33 and a draft development agreement were attached to the staff report. He identified an error in the report, noting it shows a photograph of the Hampton Road/Highland Avenue crosswalk, and mentions pedestrian crossing signals will be relocated for use near Arthur Miller Fields. He advised the statement is correct, however the equipment removed from the Grove Avenue/Hampton Road intersection – currently in storage – will be used. He added 20% of the cost (up to a maximum of \$10,000) will be borne by the developer to relocate the equipment. When questioned, he confirmed that the signalized crossing near Rothesay High School will remain.

DPDS White continued by highlighting the following: Andrew McKay is the applicant, not A.E. Builders Limited; the location, size, zoning, and designation of the property; alignment with the Municipal Plan (location is a “bookend” for high density along Hampton Road); the entrance/driveway; underground (32 spaces) and surface parking; elevation (3 story building with pitched roof); materials (gray faux cedar shake shingles) and white trim; landscaping plan (berm similar to 52-54 Hampton Road); a traffic study by Englobe which indicates a negligible impact on traffic, and no recommendations for additional measures; despite the Englobe report, staff believe a crosswalk is warranted; location of the driveway is suitable; twenty-two units are permitted – a density bonus of five units is possible subject to ten units designed as affordable (3) or universal barrier-free (7) units (included in development agreement); the exact location of the crosswalk has not been determined but will be near Arthur Miller Fields; and polling identified concerns related to property values, traffic congestion and public safety, neighbourhood character, and density.

The Committee inquired about the following: the distance from the building to Hampton Road and 52-54 Hampton Road; balconies; the traffic study; overall impact of apartment buildings on property values; a shadow study; affordable units (rent per month); timeframe (start and end) with suggestion for a completion clause; sidewalk; signage to advertise rental units; stormwater management; and consideration of the blind knoll when discussing placement of the crosswalk.

DPDS White responded with the following: setback distances adhere to by-law requirements, and landscaping will be used as privacy screening between the property and 52-54 Hampton Road; the angle of the condominium buildings is mimicked in the apartment building design; tenants will be able to utilize the balconies; the developer was responsible for commissioning a traffic study to be reviewed by the Town; these studies are conducted by professional engineers and are based on traffic volume thresholds; the traffic study suggests the impact of one apartment building is negligible; the Town has not conducted a study on the impact of apartment buildings on property values; typically, negative impacts of multi-unit housing are overestimated, but should be considered on a case-by-case basis; a shadow study was conducted identifying no impact to surrounding properties; rent for the affordable units would be roughly \$1700 per month; a clause in the development agreement stipulates that the project must begin within 5 years; staff will investigate best practices for possible inclusion of a completion clause; sidewalk exists in front of the property but ends at Arthur Miller Fields; it is unclear if the applicant plans to use signage to advertise rental units, but this is not a typical problem for the Town; a letter of intent was provided from Don-More Surveys & Engineering Ltd. which indicates a detailed stormwater management plan is forthcoming; it is anticipated the proposed site will employ similar methods for stormwater retention as 52-54 Hampton Road (by-laws require a net-zero plan); and the Town Engineer reviewed potential placement of the crosswalk and did not raise concerns with respect to visibility.

Mr. Bent relayed Mr. McKay regrets that he could not attend the meeting. He noted Mr. McKay intends to own the building, and start the project as soon as possible – construction may begin in the spring if approval is granted. DPDS White asked if Mr. McKay would be agreeable to a fixed timeline for completion. Mr. Bent suggested this be discussed with Mr. McKay. He spoke of current trends of labour and supply chain issues, beyond a developer's control, that can impact construction projects. With respect to signage, Mr. Bent noted advertising is usually conducted online or in the newspaper. He added some of Mr. McKay's recent projects have not required advertising at all, instead potential tenants have reached out resulting in a waiting list.

Chairperson McMackin invited comments from the public.

The following people spoke: Bill Todd, condominium resident of 52-54 Hampton Road; Valerie Mason, condominium resident of 52-54 Hampton Road; and Doug Mason, condominium resident of 52-54 Hampton Road. They raised concerns with respect to: shadows (height of the building); distance from the apartment building to the condominium buildings; the undesirable/unfinished state of the retention pond at 52-54 Hampton Road which may occur with the proposed project; insufficient space to provide an adequate landscaped privacy screen; disagreement with the predicted negligible impact on traffic; the flat roof; the impact on property values of condominium owners; and the developer's reputation for lengthy/incomplete projects (the Town should protect its residents).

DPDS White advised: the shadow study does not anticipate an impact to 52-54 Hampton Road; there is a distance of 40+ feet between the apartment building car port and closest condominium building; and the roof is not flat but pitched – similar to, but not exactly like, the condominium buildings.

Mr. Bent was asked if he could address the public's concerns. Mr. Bent suggested the concerns pertain to completion, or prior projects, and would be better addressed by Mr. McKay at the Public Hearing.

ROTHESAY

Planning Advisory Committee
Minutes

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7 November 2022

C. Vaillancourt mentioned the driveway appears narrower than the driveway at Arthur Miller Fields. DPDS White advised it is – the driveway is not uniform in width but permits two lanes and turning movements. C. Vaillancourt asked about the distance of the opening for the driveway and the faux cedar shake shingles. DPDS White advised it is 28 feet across the sidewalk. The proposed siding is a good quality building material – intended for longevity and easy maintenance – that can be found on single family homes. It was noted the cost is similar to cedar shake shingles with a lower cost for installation.

When questioned, DPDS White advised the concerns about the retention pond at 52-54 Hampton Road are a responsibility of the Condominium Association, not the Town.

There was further discussion regarding a potential clause, in development agreements, to ensure projects are completed in a timely manner. DPDS White advised an investigation is required to explore options, best practices, enforcement etc.

MOVED by C. Vaillancourt and seconded by T. Brittain the Planning Advisory Committee hereby recommends that Council schedule a Public Hearing to consider the application from Mr. Andrew McKay to develop a multi-unit apartment building at 50 Hampton Road (PID 00255984).

CARRIED.

MOVED by Counc. Shea and seconded by M. Graham the Planning Advisory Committee table Zoning By-law 2-10-33 and the draft development agreement, for the land located at 50 Hampton Road (PID 00255984).

NAY vote recorded from T. Brittain.

CARRIED.

Counc. Shea requested clarification on whether a further motion was required. Town Clerk Banks advised the By-law and development agreement are interrelated and can be tabled in one motion. M. Graham asked if it is likely the Public Hearing will be scheduled before the next PAC meeting. Town Clerk Banks advised the Community Planning Act requires a minimum notice of 21 days for advertising once a date has been set, so the earliest the Public Hearing could be held is December 5th, which is the same date of the next PAC meeting. Council will set the date at the Council meeting on Monday, November 14.

6. CORRESPONDENCE FOR INFORMATION

N/A

7. DATE OF NEXT MEETING(S)

The next meeting will be held on **Monday, December 5, 2022.**

8. ADJOURNMENT

MOVED by T. Brittain and seconded by Counc. Shea the meeting be adjourned.

CARRIED.

The meeting adjourned at 6:33 p.m.

CHAIRPERSON

RECORDING SECRETARY



To: Chair and Members of Rothesay Planning Advisory Committee
From: Brian L. White, MCIP, RPP
Director of Planning and Development Services
Date: Wednesday, November 30, 2022
Subject: Rezoning 50 Hampton Road – Apartment Building

Applicant:	Andrew McKay	Property Owner:	Glynn Johnston
Mailing Address:	308 Model Farm Road Quispamsis, NB E2G 1L8	Mailing Address:	50 Hampton Road Rothesay, NB E2E 5L2
Property Location:	50 Hampton Road	PID:	00255984
Plan Designation:	High Density Residential	Zone:	RIA – Single Family
Application For:	Rezoning (1 apartment building – 27 units)		
Input from Other Sources:			

RECOMMENDATION

PAC HEREBY removes from the TABLE the rezoning application for 50 Hampton Road.

ORIGIN

At the November 7th, 2022 meeting PAC TABLED the rezoning application from Mr. Andrew McKay to develop a three story 27-unit apartment building at 50 Hampton Road pending the receipt of a supplemental staff report to address a potential amendments to the draft development agreement, to ensure the project is completed in a timely manner.

BACKGROUND:

As noted, Staff were requested by PAC to review and develop an amendment to the development agreement, to ensure the construction of the apartment building would be completed in a timely manner. Staff reviewed several options and have engaged the Town's solicitor to review the development agreement and determine what appropriate measures might be recommended to address the concern.

Staff also discussed the concern with the developer and agreed to amendments that would require the development to begin construction within 3 years and to be completed within 24 months from commencement of construction. This changes the agreement significantly in that previous agreements give developers 5 years to begin construction of their projects with no fixed date for FINAL COMPLETION¹ of those projects.

Staff have attached the revised DRAFT development agreement and note the following revisions to clauses 40 and 41 of the agreement.

TERMINATION

40. The Town reserves the right and the Developer agrees that the Town has the right to terminate this Agreement without compensation to the Developer if the

¹ Final Completion meaning verified by the development officer, that construction of the project is finally complete and is ready for building occupancy.

specific proposal has not commenced construction on or before **INSERT DATE** being a date 3 years (36 months) from the date of Council's decision to enter into this Agreement. Accordingly, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform to the provisions of the Rothesay Zoning By-law.

41. The Developer agrees that once construction has commenced, to continue through to completion as continuously and expeditiously as deemed reasonable of all building construction, siteworks, landscaping, paving, curbing, and stormwater management infrastructure to achieve Final Completion within 24 months.

Staff also note that previous development agreements allow the developer to occupy a building by posting a Bond even though sitework, such as landscaping, and stormwater management infrastructure is not finished. Staff propose that this clause be eliminated thereby reinforcing the deadline for Final Completion within 24 months once construction has commenced. The attached Draft Agreement strikes out Section 44 as follows:

- ~~44. Notwithstanding Schedule D and E of this Agreement, the Town agrees that the Occupancy Permit may be issued provided the Developer supplies a security deposit in the amount of one hundred and twenty percent (120%) of the estimated cost to complete the required storm water management and landscaping. The security deposit shall comply with the following conditions:~~
- ~~a. security in the form of an automatically renewing, irrevocable letter of credit issued by a chartered bank dispensed to and in favour of Rothesay;~~
 - ~~b. Rothesay may use the security to complete the work as set out in Schedule D and E of this Agreement including landscaping or storm water works not completed within a period not exceeding six (6) months from the date of issuance of the Occupancy Permit;~~
 - ~~c. all costs exceeding the security necessary to complete the work as set out in Schedule D and E this Agreement shall be reimbursed to Rothesay; and~~
 - ~~d. any unused portion of the security shall be returned to the Developer upon certification that the work has been completed and acceptable to the Development Officer.~~

Staff note the changes from the previous draft agreement (November 2022 PAC) to the draft development agreement attached as follows:

- A. Project must start within 36 months;
- B. Once started the project must be completed within 24 months; and
- C. No occupancy will be permitted unless the project is complete.

Relief from these conditions can not be afforded by the development officer and would require Council intervention.

RECOMMENDATIONS:

Staff recommend the Planning Advisory Committee consider the following MOTION(s):

- A. PAC HEREBY recommends that Council enact BY-LAW 2-10-33 to rezone land located at 50 Hampton Road (PID 00255984) to the Multi- Unit Residential Zone [R4] for a multi-unit apartment building, subject to the execution of a Development Agreement.
- B. PAC HEREBY recommends that Council authorize the Mayor and Clerk to enter into an agreement, to allow for the development a multi-unit apartment building on land located at 50 Hampton Road (PID 00255984).



Report Prepared by: Brian L. White, MCIP, RPP

Date: Wednesday, November 30, 2022

ATTACHMENTS

ATTACHMENT A

Draft By-Law

ATTACHMENT B

Draft Development Agreement



**BY-LAW 2-10-33
A BY-LAW TO AMEND THE ZONING BY-LAW
(No.2-10 Rothesay)**

The Council of the town of Rothesay, under authority vested in it by the Community Planning Act, and amendments thereto, hereby amends By-Law 2-10 "Rothesay Zoning By-law" and enacts as follows:

That Schedule A, entitled "Zoning" as attached to By-Law 2-10 "ROTHESAY ZONING BY-LAW" is hereby amended, as identified on the attached sketch, identified as Attachment "2-10-33".

The purpose of the amendment is to rezone land off Hampton Road from Single Family Residential – Large Serviced Zone [R1a] to the Multi-Unit Residential Zone [R4]) subject to the execution of a Development Agreement to allow a multi-unit apartment building on (PID 00255984) in accordance with the Community Planning Act, supra.

FIRST READING BY TITLE :

SECOND READING BY TITLE :

READ IN ENTIRETY :

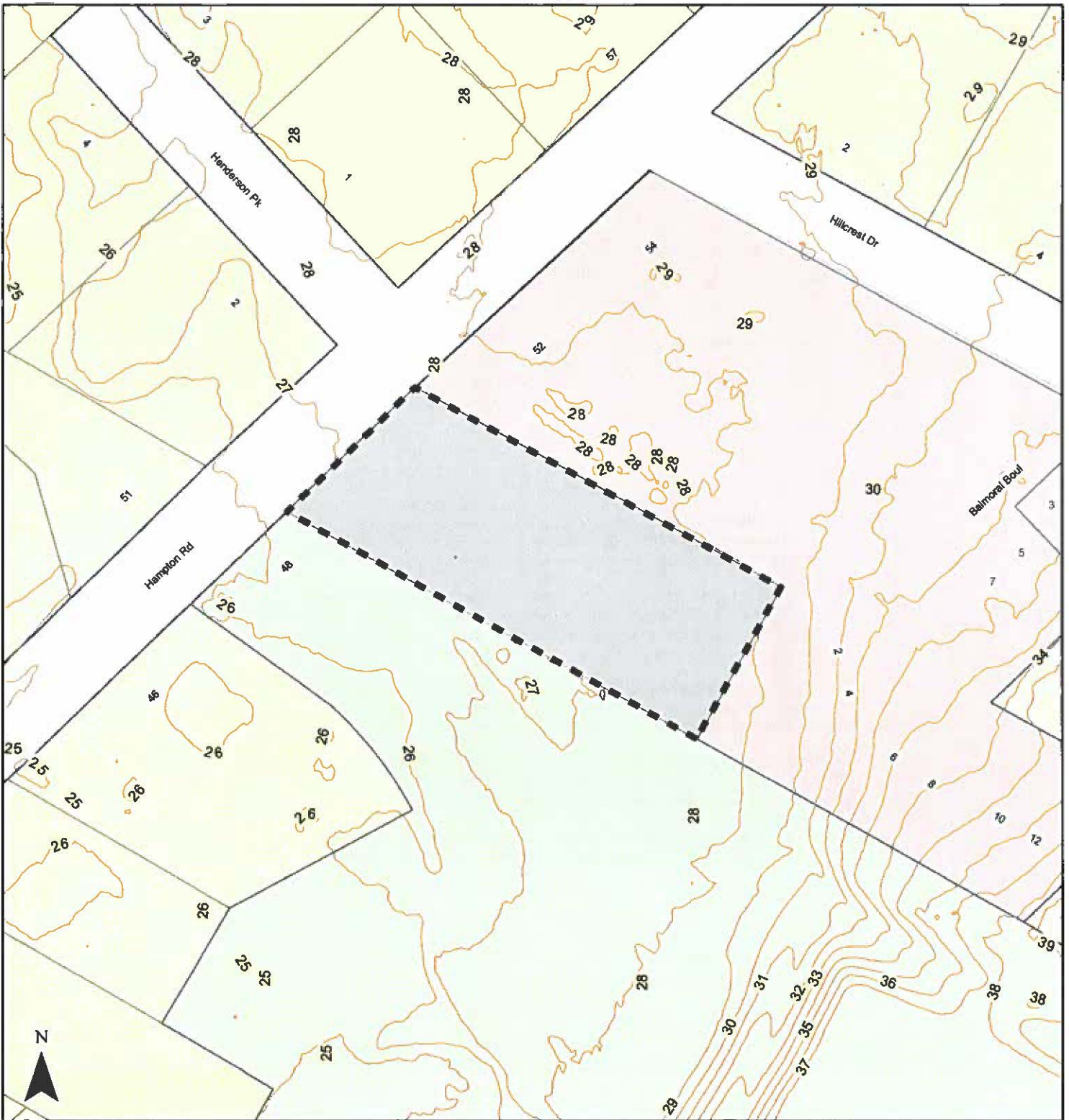
THIRD READING BY TITLE
AND ENACTED :

MAYOR

CLERK

Attachment - Bylaw 2-10-33

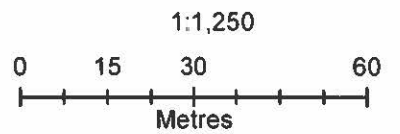
PID 00255984



2022-10-27, 2:55:39 PM

Zoning

- INSma
- R1A
- R4
- Property Boundary



The Town of Rothesay does not warrant the accuracy or completeness of the information, text, graphics, links or other items contained within the material

Rothsay

DEVELOPMENT AGREEMENT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.24

Parcel Identifier of Parcel Burdened by Agreement: 00255984

Owner of Land Parcels: **Andrew McKay**
308 Model Farm Road
Quispamsis, New Brunswick
E2G 1L8 (Hereinafter called the "Developer")

Agreement with **Rothsay**
70 Hampton Road
Rothsay, New Brunswick
E2E 5L5 (Hereinafter called the "Town")

a body corporate under and by virtue of the Local Governance Act, RSNB 2017, Chapter 18, located in the County of Kings and Province of New Brunswick

WHEREAS the Developer is the registered owner of certain lands located at 50 Hampton Road (PID 00255984) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer is now desirous of entering into a development agreement to allow for the development of a twenty-seven (27) unit Multi-Unit Residential building with underground parking on the Lands as described in Schedules B through D. (herein after called the "Project")

AND WHEREAS Rothsay Council did, on **INSERT DATE**, authorize the Mayor and Clerk to enter into a Development Agreement with Andrew McKay to develop a multi-unit residential apartment building on the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in the consideration of the mutual covenants and agreements herein expressed and contained, the parties hereto covenant and agree as follows:

1. The Developer agrees that the number of residential units situated on the Lands shall not exceed twenty-seven (27) Multi-Unit Residential Units.

Schedules

2. The Developer agrees to develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following Schedules attached to this Agreement:
 - a. Schedule A Legal Description of Parcels
 - b. Schedule B Site Plan Location of Buildings
 - c. Schedule C Building Elevations (4)
 - d. Schedule D Landscape Plan
 - e. Schedule E Stormwater Plan

Site Development

3. The Developer agrees that the total number of units shall not exceed twenty-two (22) excepting for the addition of 5 units as per density bonusing provisions requiring a total of 10 units to be designated either affordable or meeting the Universal Design Barrier Free as further described herein.
4. The Developer agrees to develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with

Schedules B, C, D and E.

5. The Developer agrees to improve, remove or demolish the existing building on the property in compliance with the Dilapidated Structures provisions of Rothesay Zoning By-law No. 02-10 as amended from time to time.

Affordable Housing Units

6. The Developer agrees to maintain for a period of twenty (20) years, adjusted by the Consumer Price Index based upon initial occupancy at the first day of building occupancy, no fewer than three (3) affordable rental housing units. The affordable housing units are to be 2 (two) bedroom units constructed with similar finishes for flooring, trim, bathrooms, paint and kitchen cabinets as the market rate housing units, with a Base Monthly Rental Rate at or below 30% of \$69,000 being the Median total income of one-parent economic families for 2020 in Rothesay as stated by Statistic Canada.
7. The Developer further agrees that once the base rents for the Affordable Housing Units are established in the first year of occupancy, they shall only be raised by a maximum of the Consumer Price Index (CPI), annual average not seasonally adjusted for Saint John, N.B.
8. The Developer agrees to provide to Rothesay an annual audit or legal affidavit signed by a licensed member in good standing of the Chartered Professional Accountants of New Brunswick that provides reasonable assurance that the rents of the affordable units comply with this agreement
9. The Developer agrees to bear all costs associated with the annual audit or legal affidavit referenced in the preceding paragraph (8) above and to fully cooperate with Rothesay relating to such audit monitoring and evaluation
10. The Developer agrees that during the full Term of this Agreement, that any failure by the Developer to maintain the affordability provisions as set out in the preceding paragraphs above (6 to 9) or any other violation of any material term of the affordability principles shall constitute a default under this Agreement.
11. The Developer agrees that upon any such default, Rothesay may demand, and the Developer agrees to pay to Rothesay an amount equal to twice the difference of the actual rent received and the maximum amount of rent permitted under clause 7. The Developer agrees to pay interest on any balance in arrears at the rate of 1.25% percent per month compounded monthly.
12. Rothesay and the Developer agree to defer monitoring of the affordable housing aspects of this Agreement should the development become subject to or be monitored under a Federal or Provincial recognized affordable housing program that provides governance, regulation, and monitoring. For clarity, this includes CMHC financing that supports affordable housing. Where no such program is in effect, this agreement shall prevail.
13. Rothesay and the Developer agree that nothing contained in this agreement shall make or be construed to make any tenant or resident of the Project the responsibility of Rothesay.

Universal Design Barrier-Free Units

14. The Developer agrees to construct seven (7) Universal Design Barrier Free units utilizing Universal Design principles to achieve an accessible barrier-free standard to the satisfaction of the Development Officer in consultation with the Town's Building Inspector.
15. The Developer agrees that the building occupancy permit shall not be granted by Rothesay until the requirements set out in the preceding

paragraph above (14) are substantially completed and approved by Rothesay.

Architectural Guidelines

16. The Developer agrees that an objective of this development is to provide a high quality and visually attractive development, which exhibits an architectural design that reinforces the community character and that is generally consistent with the existing styles of housing in Rothesay. The Developer agrees to ensure the following:
 - a. The architectural design of the building shall be, in the opinion of the Development Officer, generally in conformance with Schedule C.
 - b. All exterior mounted ventilation and related mechanical equipment, including roof mechanical units, shall be concealed by screening in a manner to reduce clutter and negative impacts on the architectural character of the building.

Sidewalk Street Crossing – Cost Contribution

17. The Developer agrees to pay to Rothesay upon receipt of an invoice an amount not exceeding twenty percent (20%) to a maximum amount not exceeding \$10,000.00 of the actual cost incurred and expended by Rothesay for pedestrian crosswalk signalization at the intersection of Hampton Road and the entrance to Arthur Miller Fields including the poles, controllers, accessories, electrical equipment, paint and appurtenances necessary for the installation and operation of overhead mounted pedestrian crossover signs.

Storm Water

18. The Developer shall carry out, subject to inspection and approval by Town representatives, the installation of a storm water system as per Schedule E of this agreement. The Developer agrees to accept responsibility for all costs associated such installation including the following:
 - a. Construction, to Town standards, of a storm water system including pipes, fittings, precast sections for manholes and catch basins capable of removing surface water from the entire developed portion of the lands to a predetermined location selected by the Developer's Engineer and approved by the Town Engineer,
 - b. topsoil and hydro-seeding of shoulders of roadways.
19. The Developer agrees to submit for approval by the Town, prior to commencing any work on the storm water system such plans, as required by the Town, that shall conform with the design schematics and construction standards of the Town, unless otherwise acceptable to the Town Engineer.
20. The Developer agrees that all roof leaders, down spouts, and other storm water drains from the building, parking lot and landscape features shall not be directed or otherwise connected or discharged directly to the Town's storm water or sanitary collection system.
21. The Developer agrees to provide to the Town Engineer written certification of a Professional Engineer, licensed to practice in New Brunswick that the storm water system has been satisfactorily completed and constructed in accordance with the Town specifications.

Water Supply

22. The Developer agrees to connect to the Town's nearest and existing water system at a point to be determined by the Town Engineer and utilizing methods of connection approved by the Town Engineer.
23. The Town agrees to supply potable water for the purposes and for those purposes only for a maximum of twenty-seven (27) residential dwellings

and for minor and accessory purposes incidental thereto and for no other purposes whatsoever.

24. The Developer agrees to pay the Town a fee for connection of the building to the Town water system including sprinkler feed to the Town water system calculated in the manner set out in By-law 1-18, Rothesay Water By-law as amended from time to time, to be paid to the Town twelve (12) months following the issuance of the building permit.
25. The Developer agrees that the Town does not guarantee and nothing in this Agreement shall be deemed a guarantee of an uninterrupted supply or of a sufficient or uniform water pressure or a defined quality of water. The Town shall not be liable to the Developer or to any person, firm or corporation for any damage or injury caused by the interruption of the supply of water, the lack of uniform pressure thereof or the quality of water.
26. The Developer agrees that all connections to the Town water mains shall be approved and inspected by the Town Engineer or such other person as is designated by the Town prior to backfilling and that the operation of water system valves is the sole responsibility of the Town.
27. The Developer agrees to comply with the Town's Water By-law and furthermore that a separate water meter shall be installed, at their expense, for each residential connection made to the Town's water system.
28. The Developer agrees that the Town may terminate the Developer's connection to the Town water system in the event that the Town determines that the Developer is drawing water for an unauthorized purpose or for any other use that the Town deems in its absolute discretion or if an invoice for water service is more than 90 days in arrears.
29. The Developer agrees to provide, prior to the occupation of any buildings or portions thereof, written certification of a Professional Engineer, licensed to practice in New Brunswick that the connection of service laterals and the connection to the existing Town water system have been satisfactorily completed and constructed in accordance with the Town specifications.

Sanitary Sewer

30. The Developer agrees to connect to the existing sanitary sewer system at a point to be determined by the Town Engineer and utilizing methods of connection approved by the Town Engineer.
31. The Developer agrees to pay the Town a fee for connection to the Town sewer system calculated in the manner set out in By-law 1-15 Rothesay Sewage By-law, as amended from time to time, to be paid to the Town twelve (12) months following the issuance of the building permit.
32. The Developer agrees to carry out subject to inspection and approval by Town representatives and pay for the entire actual costs of Engineering design, supply, installation, inspection and construction of all service lateral(s) necessary to connect to the existing sanitary sewer system inclusive of all pipes, laterals, fittings, and precast concrete units.
33. The Developer agrees to submit for approval by the Town, prior to commencing any work to connect to the sanitary sewer system, any plans required by the Town, with each such plan meeting the requirements as described in the Town specifications for such development.
34. The Developer agrees that all connections to the Town sanitary sewer system shall be supervised by the Developer's engineer and inspected by the Town Engineer or such other person as is designated by the Town prior to backfilling and shall occur at the sole expense of the Developer.

Retaining Walls

35. The Developer agrees that dry-stacked segmental concrete (masonry

block) gravity walls shall be the preferred method of retaining wall construction for the purpose of erosion control or slope stability on the Lands and furthermore that the use of metal wire basket cages filled with rock (gabions) is not an acceptable method of retaining wall construction.

36. The Developer agrees to obtain from the Town a Building Permit for any retaining wall, as required on the Lands, more than 1.2 meters in height and that such retaining walls will be designed by a Professional Engineer, licensed to practice in New Brunswick.

Indemnification

37. The Developer does hereby indemnify and save harmless the Town from all manner of claims or actions by third parties arising out of the work performed hereunder, and the Developer shall file with the Town prior to the commencement of any work hereunder a certificate of insurance naming the Town as co-insured evidencing a policy of comprehensive general liability coverage on "an occurrence basis" and containing a cross-liability clause which policy has a limit of not less than Two Million Dollars (\$2,000,000.00) including a project wrap-up liability policy (with no less than 24 months coverage after project completion). The aforesaid certificate must provide that the coverage shall stay in force and not be amended, canceled, or allowed to lapse within thirty (30) days prior to notice in writing being given to the Town. The aforesaid insurance coverage must remain in full force and effect during the period available to the Developer pursuant to this agreement to complete the work set out as described in this Agreement.

Notice

38. Any notice or advice which is to be given under this Agreement shall be deemed to have been satisfactorily given to the Developer if delivered personally or by prepaid mail addressed to Mr. Andrew McKay, 308 MODEL FARM ROAD, QUISPAMIS, NEW BRUNSWICK, E2G 1L8 and to the Town if delivered personally or by prepaid mail addressed to **ROTHESAY, 70 HAMPTON ROAD, ROTHESAY, NEW BRUNSWICK, E2E 5L5**. In the event of notice by prepaid mail, the notice will be deemed to have been received four (4) days following its posting.

By-laws

39. The Developer agrees to be bound by and to act in accordance with the By-laws of the Town as amended from time to time and such other laws and regulations that apply or that may apply in the future to the site and to activities carried out thereon.

Termination

40. The Town reserves the right and the Developer agrees that the Town has the right to terminate this Agreement without compensation to the Developer if the specific proposal has not commenced construction on or before INSERT DATE being a date 3 years (36 months) from the date of Council's decision to enter into this Agreement. Accordingly, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform to the provisions of the **Rothesay Zoning By-law**.
41. The Developer agrees, that once construction has commenced, to continue through to completion as continuously and expeditiously as deemed reasonable of all building construction, siteworks, landscaping, paving, curbing, and stormwater management infrastructure to achieve **Final Completion** within 24 months.
42. The Developer agrees that should the Town terminate this Agreement the Town may call the Letter of Credit described herein and apply the proceeds to the cost of completing the work or portions thereof as outlined in this Agreement. If there are amounts remaining after the completion of the work

in accordance with this Agreement, the remainder of the proceeds shall be returned to the Institution issuing the Letter of Credit. If the proceeds of the Letter of Credit are insufficient to compensate the Town for the costs of completing the work mentioned in this Agreement, the Developer shall promptly on receipt of an invoice pay to the Town the full amount owing as required to complete the work.

Security & Occupancy

43. The Town and Developer agree that Final Occupancy of the proposed building(s), as required in the Building By-law, shall not occur until all conditions above have been met to the satisfaction of the Development Officer and an Occupancy Permit has been issued.

~~44. Notwithstanding Schedule D and E of this Agreement, the Town agrees that the Occupancy Permit may be issued provided the Developer supplies a security deposit in the amount of one hundred and twenty percent (120%) of the estimated cost to complete the required storm water management and landscaping. The security deposit shall comply with the following conditions:~~

- ~~a. security in the form of an automatically renewing, irrevocable letter of credit issued by a chartered bank dispensed to and in favour of Rothesay;~~
- ~~b. Rothesay may use the security to complete the work as set out in Schedule D and E of this Agreement including landscaping or storm water works not completed within a period not exceeding six (6) months from the date of issuance of the Occupancy Permit;~~
- ~~c. all costs exceeding the security necessary to complete the work as set out in Schedule D and E of this Agreement shall be reimbursed to Rothesay; and~~
- ~~d. any unused portion of the security shall be returned to the Developer upon certification that the work has been completed and acceptable to the Development Officer.~~

Failure to Comply

45. The Developer agrees that after sixty (60) days written notice by the Town regarding the failure of the Developer to observe or perform any covenant or condition of this Agreement, 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 upon the allegation that damages would be an adequate remedy;
- (b) The Town may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the Assessment Act;
- (c) The Town may, by resolution of Council, 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 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 *Community Planning Act* or Common Law in order to ensure compliance with this Agreement.

Entire Agreement

46. This Agreement contains the whole agreement between the parties hereto

and supersedes any prior agreement as regards the lands outlined in the plan hereto annexed.

Severability

47. If any paragraph or part of this agreement is found to be beyond the powers of the Town Council to execute, such paragraph or part or item shall be deemed to be severable, and all other paragraphs or parts of this agreement shall be deemed to be separate and independent therefrom and to be agreed as such.

Reasonableness

48. Both parties agree to act reasonably in connection with any matter, action, decision, comment or approval required or contemplated under this Agreement.

This Agreement shall be binding upon and endure to the benefit of the Parties hereto and their respective heirs, administrators, successors and assigns.

IN WITNESS WHEREOF, each of the parties set out below has caused this Agreement, made in duplicate, to be duly executed by its respective, duly authorized officer(s) as of _____, 2022.

Witness:

Andrew McKay

Witness:

Rothsay

Nancy E. Grant, Mayor

Mary Jane E. Banks, Clerk

SCHEDULE A

PID: 00255984



PROPOSED 27 UNIT APARTMENT
50 HAMPTON ROAD, ROTHESAY N.B.



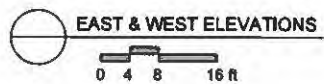
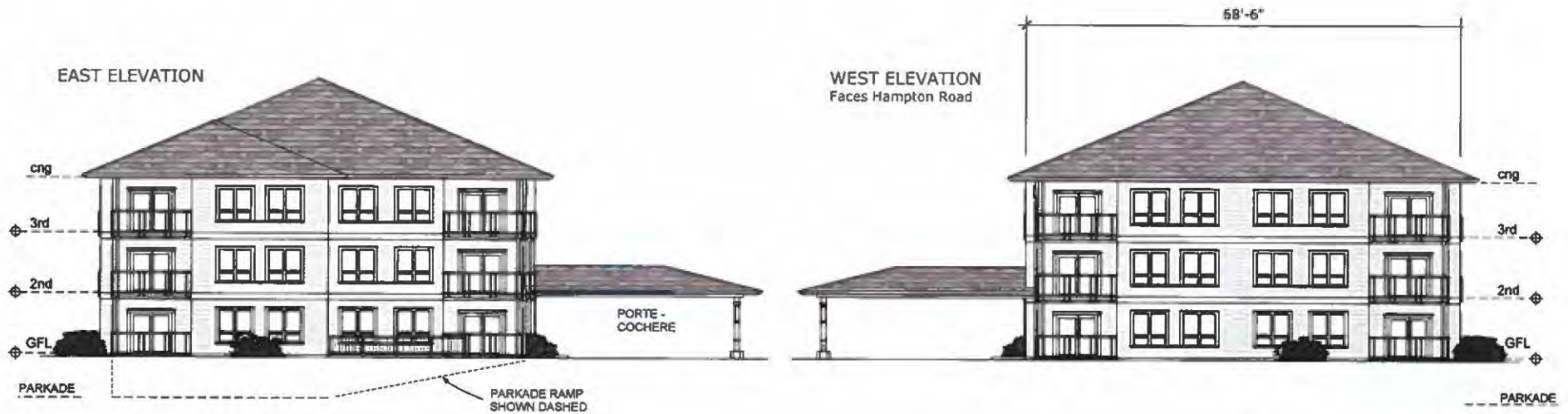
OCT. 2022



PROPOSED 27 UNIT APARTMENT
50 HAMPTON ROAD, ROTHESAY N.B.



OCT. 2022



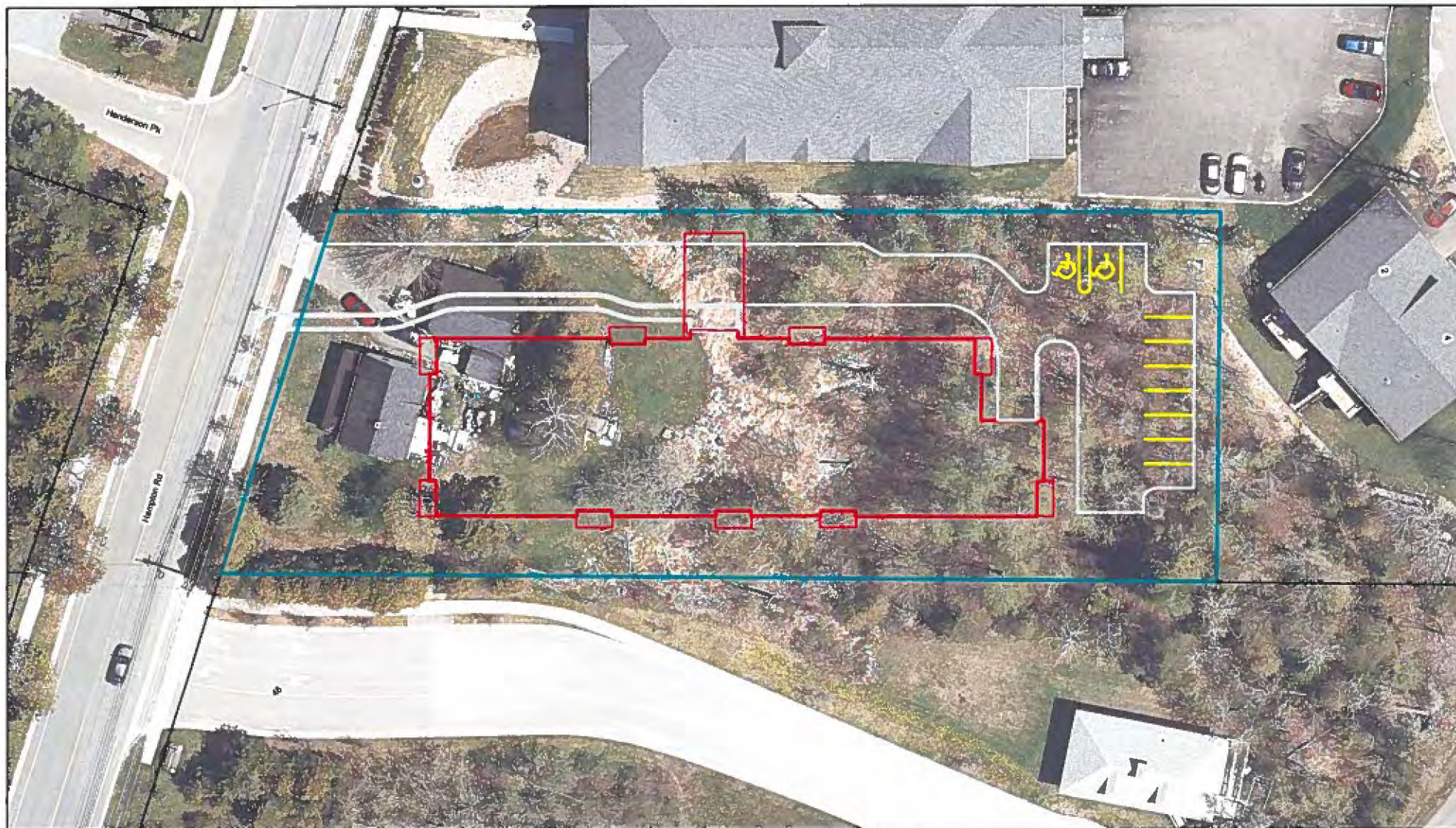
PROPOSED 27 UNIT APARTMENT
50 HAMPTON ROAD, ROTHESAY N.B.



Conseau MacKenzie
Architects

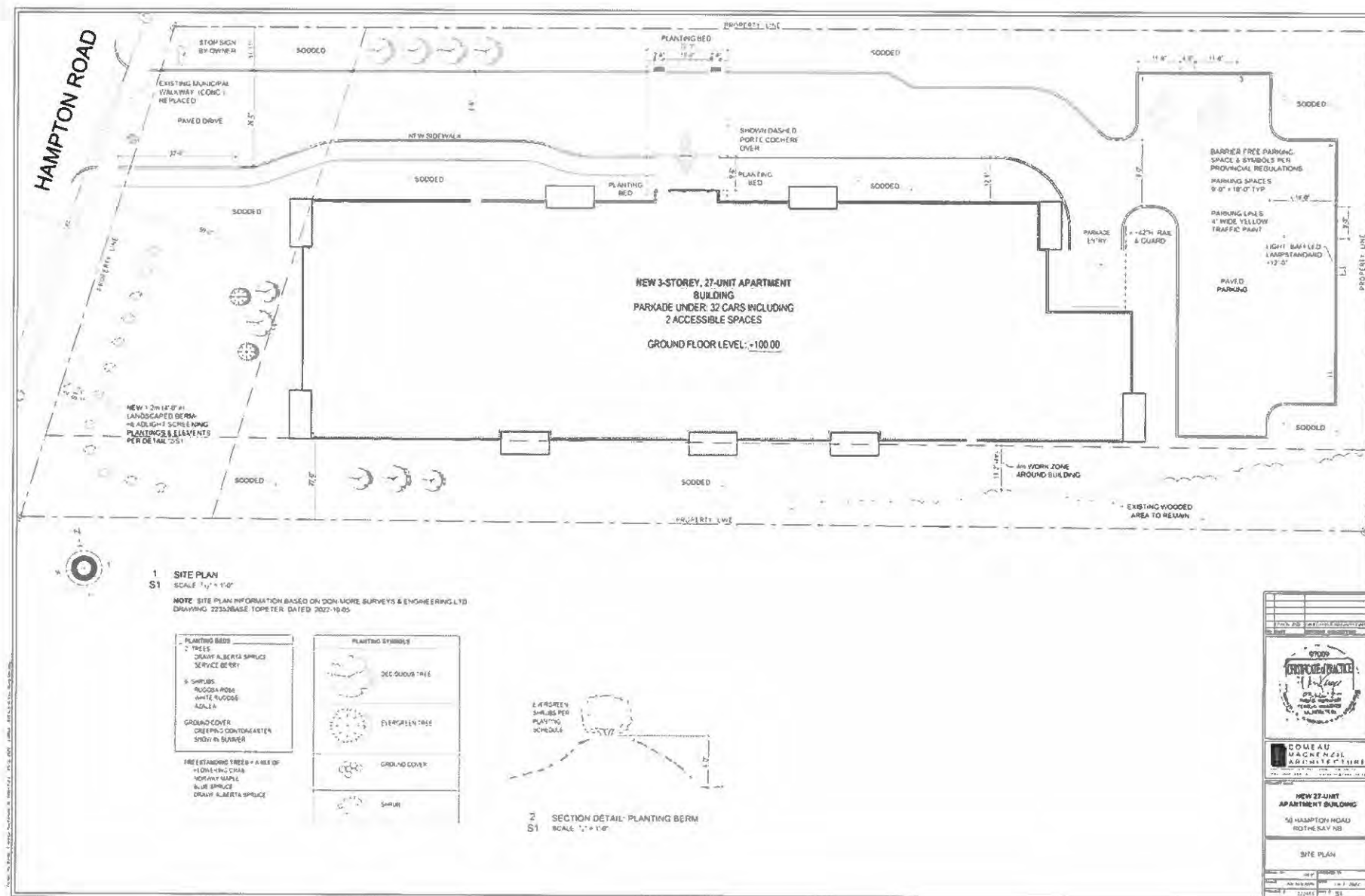


OCT. 2022



50 Hampton Rd

0 5 10 20 30 40
Meters



506.433.4427 (Sussex)
506.652.1522 (Saint John)
info@dmse.ca
www.dmse.ca



November 30, 2022

Brian White
Town of Rothesay,
70 Hampton Road,
Rothesay, NB E2E 5Y2

VIA E-Mail: BrianWhite@rothesay.ca

Re: 22352ESP1 - 50 Hampton Road - PID 00255984

This property is currently a single family home adjacent to the entrance to the Arthur Miller Fields on the south, and a condominium development on the north.

The applicant would like to rezone the property to allow the creation of a new 27 unit building complete with underground parking. The construction standards and finishes of the new building would be very similar to those of the existing condominium building.

The development would be accessed by a private driveway from Hampton Road.

The new building would be serviced with municipal sanitary and water. A detailed analysis of the existing sanitary and water systems has not been undertaken at this point, but this development would access the new infrastructure installed by the developer as part of the upgrades to allow the two 24 unit buildings adjacent to this development.

The new site would be designed to perform stormwater management to limit peak flows to pre development levels. Water draining from the parking areas would be directed to a hydrodynamic separator to provide treatment of water quality.

Storage of stormwater would be provided to offset peak flows to pre-development levels. There are a number of different options that would be assessed relative to on-site storage or detention of stormwater to reduce peak flows to pre development levels. The primary method that would be employed is to create parking lot ponds. This is done through enclosing the site in cast in place curbs, and directing surface runoff to a series of catch basins within the parking lot. Inside the catch basins, the outlet pipes are equipped with Inlet Control Devices (ICD's) which restrict the flow of water from the catch basin. These ICD's are sized to cause ponding of water on the parking area in intense rain events. Ponding is limited to safe depths so as not to cause injury or damage by grading spill over paths from one drainage area into another lower drainage area.

Following the design of the parking lot complete with parking lot ponds, we are likely to still require some attenuation of peak flows. There are two additional measures that would then be assessed. One option is a traditional stormwater management pond similar to what is next door in front of the condominium building. These are typically designed as a shallow swale or pond. These are designed as a dry pond such that in intense rain events water flows into the pond. The pond would be equipped with an outlet from the bottom of the pond but again the

outlet would be sized to reduce the peak flow of water from the pond. This results in the pond retaining water for short periods of time during the intense portions of heavy rain events. Typically these ponds are designed to a depth of about 1.2 meters, but an emergency spillway is provided such that peak depths within the pond can not exceed 900mm. Ponds are typically designed with gentle slopes into the pond to promote the growth of vegetation and allow a natural looking landscaped area.

The third option to be reviewed would be underground storage. This can take the form of preformed storage chambers or rock voids in areas of infill where shot rock has been used in place of fill.

As we proceed through detailed design these various measures would be reviewed and the most appropriate combination of options would be chosen for this site.

Closing

We trust this is sufficient for your present needs. Please feel free to contact the undersigned at 506.636.2136 or at at@dmse.ca for any additional information or clarification.

Yours truly,

Don-More Surveys & Engineering Ltd.

Andrew Toole

Andrew Toole, NBLs, P.Eng.

Form 43

AFFIDAVIT OF EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Subscribing Witness:

Address:

Persons Who Executed
the Instrument:

Andrew McKay

Place of Execution:

Rothesay, New Brunswick

Date of Execution:

I, the subscribing witness, make oath and say:

1. That I was personally present and saw the attached instrument duly executed by the party specified and that I am the subscribing witness;
2. That the person who executed the instrument is known to me or the person's identity has been proved to my satisfaction;
3. That the instrument was executed at the place and on the date specified above;
4. That at the time of execution of the instrument I was of the full age of sixteen years; and
5. That the person who executed the instrument is, in my belief, of the age of majority.

DECLARED to at town of Rothesay)
 In the County of Kings and)
 and Province of New Brunswick,)
 on the _____)
 day of _____ 2022)

BEFORE ME:

Commissioner of Oaths_____
Subscribing Witness

Form 45

AFFIDAVIT OF CORPORATE EXECUTION

*Land Titles Act, S.N.B. 1981, c.L-1.1, s.55*Deponent: **MARY JANE E. BANKS**

Rothsay
 70 Hampton Road
 Rothsay, N.B.
 E2E 5L5

Office Held by Deponent: Clerk

Corporation: **Rothsay**Other Officer Who Executed the Instrument: **NANCY E. GRANT**

Rothsay
 70 Hampton Road
 Rothsay, N.B.
 E2E 5L5

Office Held by Other Officer Who Executed the Instrument: Mayor

Place of Execution: Rothsay, Province of New Brunswick.

Date of Execution: _____, 2022

I, **MARY JANE E. BANKS**, the deponent, make oath and say:

- 1 That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
- 2 That the attached instrument was executed by me and **NANCY E. GRANT**, the other officer specified above, as the officer(s) duly authorized to execute the instrument on behalf of the corporation;
- 3 The signature "**NANCY E. GRANT**" subscribed to the within instrument is the signature of Nancy E. Grant, who is the Mayor of the town of Rothsay, and the signature "**Mary Jane E. Banks**" subscribed to the within instrument as Clerk is the signature of me and is in the proper handwriting of me, this deponent, and was hereto subscribed pursuant to resolution of the Council of the said Town to and for the uses and purposes therein expressed and contained;
- 4 The Seal affixed to the foregoing indenture is the official seal of the said Town and was so affixed by order of the Council of the said Town, to and for the uses and purposes therein expressed and contained;
- 5 That the instrument was executed at the place and on the date specified above;

DECLARED TO at town of
 Rothsay, in the County of Kings,)
 and Province of New Brunswick,)
 This ___ day of _____, 2022)

BEFORE ME:

Commissioner of Oaths_____
MARY JANE E. BANKS



ROTHESAY
BY-LAW NO. 1- 06
Schedule A



COMMITTEE MEMBER CLAIM FOR HONORARIUM

Name of Committee Member: _____

Name of Committee: _____

Date/Time of Committee Meeting: _____

Date Claim Made: _____

Signature – Committee Member

OFFICE USE

Date Claim Received: _____

Verification of Attendance (initial): _____

Method of Verification: _____

Claim Amount: \$ _____ **Approved** _____ **Not Approved** _____

Cheque issued: _____ **Cheque #:** _____

Authorizing Signature:
(Treasurer or Clerk) _____