
PLANNING ADVISORY COMMITTEE



The City of Saint John

May 23, 2019

His Worship Mayor Don Darling and
Members of Common Council

Your Worship and Councillors:

**SUBJECT: Municipal Plan Amendment, Zoning By-Law Text Amendment,
Rezoning and Section 59 Amendment
40, 85-89 and 310 Retail Drive**

On April 8, 2019 Common Council referred the above matter to the Planning Advisory Committee for a report and recommendation. The Committee considered the attached report at its May 22, 2019 meeting.

Mr. John Wheatley, representing the applicant Horizon Management Limited, appeared before the Committee and was in agreement with the Staff recommendation. Mr. Wheatley noted they would like to seek a variance to the standards of the proposed new zone to allow for ground floor residential units in the proposed development. In response to the request for the variance, Staff noted this could be requested through the Committee at a later date once additional market research and design have been completed by the applicant. It was also noted that a slight increase to the building floor area was requested above that recommended in the staff report to provide the developer with additional flexibility as the project is built out.

The applicant responded to questions from the Committee related to the Rothesay Avenue/retail Drive/Ashburn Lake Road intersections, traffic and pedestrian circulation and landscaping within the proposed development. The applicant noted traffic flow in the area has improved as a result of traffic signal improvements made by the City and that the applicant is open to discussions with the City regarding improvements to the Ashburn Lake Road / Retail Drive/Rothesay Avenue intersection. He also noted that the proposed limit of 200 dwelling units in the Staff Recommendation would manage the traffic impacts of future development. Mr. Wheatley noted that should approval be granted by Common Council, additional market studies and architectural design

will be completed but the dwelling units would be rental units and the building design would be comparable to the existing commercial development within East Point incorporating features such as sidewalks along the front of the buildings. Mr. Wheatley also noted that transit routing currently goes through the development site and that the residential land uses will build on the existing commercial services available within the development. Staff noted conditions imposed on the original rezoning for the site require Development Officer approval of building and site plans which would incorporate features such as building design elements, landscaping and pedestrian and traffic circulation. Staff noted that any proposed driveway access for development on PIDs 55122212 and 55196166 will require a traffic impact review with respect to new driveways.

Committee members questioned the amount of parking provided for the residents with the applicant noting there would be some dedicated spaces for residents of the building and a degree of shared parking when activity at the commercial establishments on the site peaks.

Steve Carson, of Develop Saint John, spoke in support of the application noting the East Point development has raised the bar with respect to building design and landscaping for commercial developments. Mr. Carson noted a recent residential market study completed for Develop Saint John noted strong demand for multiple unit dwellings noting the vacancy rate has fallen from 11.3% to 3.7% with buildings constructed within the past 20 years having a vacancy rate of 1.1%. Specifically on the east side of the city a 0% vacancy rate exists in buildings 20 years old or newer. With respect to the Retail Drive / Rothesay Avenue / Ashburn Lake Road intersection, this project ties into the proposed interchange at Ashburn Lake Road and Develop Saint John is taking the lead on this file as it benefits other areas of the City, such as Tucker Park, in addition to the retail are on the east side of the City.

Mr. Keith Osborne of 300 Westmorland Road appeared before the Committee enquiring if the existing gravel access road between 300 and 308 Westmorland Road would be paved or utilized for access to the site. Mr. Wheatley responded that the application does not involve lands along the top of the embankment along the southwestern edge of the East Point site and that the applicant does not own the land where this access road is located.

In response to a question from the Committee, Staff noted the development would not require the provisions of Land for Public Purposes as no subdivision of the site is currently being proposed and that some developments, such as Dartmouth Crossing have incorporated amenities such as playgrounds, maintained by the developer, as a site amenity.

No other persons appeared before the Committee and no letters were received regarding the application.

Committee members expressed concern with traffic operations at the Retail Drive / Rothesay Avenue / Ashburn Lake Road intersection, noting the proposed interchange construction does not appear to be in the foreseeable future and that drivers at this location currently experience a perceived high degree of delay and intersection capacity issues when travelling through this location during peak hours. Staff noted that instead of a specific recommendation with respect to improvements at this location as a condition of the proposed development, the Committee could include discussion in the recommendation letter to Common Council noting the importance of improvements at this location. Given this, the Committee notes that improvements to the Retail Drive / Rothesay Avenue / Ashburn Lake Road are an important component of continued development of the Rothesay Avenue and East Point areas and that the City should continue to work towards completing transportation improvements at this location.

Upon considering the Staff report, comments made by the applicant and the area landowner, the Committee adopted an amended Staff Recommendation which incorporates an increase in the floor area limit of the site to 58,064 square metres (625,000 square feet) and inclusion of the new Regional Commercial Residential Zone (Regional Commercial (CR)-R) in Table 11.1 of the Zoning By-law. The amended recommendation is provided below for Common Council's consideration.

RECOMMENDATION:

1. That Common Council adopt the attached by-law amendment entitled "By-Law Number C.P. 106-XX A Law to Amend the Municipal Plan By-Law."
2. That Common Council adopt the attached by-law amendment entitled "By-law No. C.P. 111-XX, A Law to Amend the Zoning By-Law of the City of Saint John."
3. That Common Council authorize the Mayor and Common Clerk to execute an amending agreement pursuant to the provisions of Section 59 of the *Community Planning Act* (SNB 2017, c.19), which would amend the agreement dated the 16th day of September 2006 between East Point Inc. as developer, and the City of Saint John, respecting portions of the property identified in the said agreement and which agreement was made pursuant to the provisions of Section 39 of the *Community Planning Act* in effect at that time (RSNB 1973 as amended); And Further Be It Resolved

that Common Council hereby imposes pursuant to the provisions of Section 59 of the Community Planning Act the following conditions upon the use of a portion of the Property identified in said agreement having an area of 13.15 hectares, located at 11,15 and 41 Fashion Drive, 11,10,36,40 and 44 East Point Way and 40 Retail Drive, 85-89 Retail Drive and 310 Retail Drive , also identified as PIDs 55186001, 55195317, 55230445, 55230544, 55122212 and 55196166:

- a) namely that its use be restricted a development of a shopping centre which may incorporate residential development subject to the provisions of the Regional Commercial Residential (CR-R) zone, with the total of floor area of development in this area limited to 58,064 square metres (625,000 square feet) which may include up to 200 dwelling units on PID numbers 55230544, 55196166 and 55122212;
- b) Any improvements or signalization to existing driveways along Retail Drive be supported by a traffic impact study completed by the developer and approved by the City with the improvements completed at the developer's expense.
- c) Any additional driveway access to Westmorland Road is prohibited.
- d) For the proposed development site involving 200 residential units, the developer's engineering consultant provided a theoretical peak domestic sewage flow rate for the proposed development. Where necessary the City calculated the theoretical peak domestic sewage flow rates for all properties on the contributing East Point development site. Using the provided and calculated theoretical flow rates it indicates a potential capacity constraint downstream from the proposed development on Retail Drive, within a section of approximately 45 m of existing 200 mm sanitary sewer main, infrastructure that was previously installed by the developer. In order to determine if there is a capacity constraint, the developer may, prior to undertaking any downstream improvements, perform flow monitoring (wet & dry weather monitoring) on the wastewater system, under the direction of the City, to determine actual measurements in the system and confirm capacity. Upon review of the submitted flow monitoring results, should the City confirm sufficient capacity exists, the identified downstream infrastructure upgrade will not be required by the developer. Should the flow monitoring determine there is a capacity constraint as the City's initial review indicated, the developer shall be required, at the

developer's expense to undertake the engineering review to determine the nature of the constraint and provide the analysis to the City for review. Should system improvements be required, the full design and construction of these improvements shall be subject to the approval by the City and shall be the full cost responsibility of the developer. If any of the required work and infrastructure improvements can be phased to accommodate the proposed development, this will be supported by the City.

Respectfully submitted,



Eric Falkjar
Chair

Attachments



The City of Saint John

Date: May 17, 2019

To: Planning Advisory Committee

From: Growth & Community Planning
Growth & Community Development Services

For: **Meeting of Wednesday, May 22, 2019**

SUBJECT

Applicant: Horizon Management Limited

Owner: East Point Inc.

Location: 40, 85-89 and 310 Retail Drive

PID: 55186001, 55195317, 55230445, 55230544, 55122212 and 55196166

Plan Designation: Regional Retail Centre

Existing Zoning: Regional Commercial (CR) and Mini-Home Park Residential (RP)

Proposed Zoning: Regional Commercial Residential (CR-R)

Application Type: Municipal Plan Text Amendment, Zoning By-Law Text Amendment, Rezoning and Section 59 Amendment

Jurisdiction: The *Community Planning Act* authorizes the Planning Advisory Committee to give its views to Common Council concerning proposed amendments to the Municipal Development Plan, Zoning By-law and amendments to the Section 59 conditions of the subject property. The Committee recommendation will be considered by Common Council at a public hearing on **Monday, June 3, 2019**.

SUMMARY

The applicant is proposing to introduce multiple unit residential development within the East Point development site. Current Municipal Plan policies relating to Regional Retail Centres do not permit residential uses in order to ensure the viability of these areas for commercial use. The approach towards mixed use development in larger-scale commercial areas is an emerging planning principle utilized in other jurisdictions to respond to the evolving nature of retail developments. On-line shopping and other changes have caused a demand for less “bricks and mortar” retail developments, causing these sites and development concepts to evolve to include residential uses.

Staff are recommending approval of a Municipal Plan Amendment to provide for this approach for lands within the Regional Retail Centre land use designation through a rezoning process. Staff are also proposing a new, more broader, commercial zone that incorporates multiple unit residential development in addition to the uses currently permitted in the Regional Commercial zone.

RECOMMENDATION

1. That Common Council adopt the attached by-law amendment entitled “By-Law Number C.P. 106-Xx A Law To Amend The Municipal Plan By-Law.”
2. That Common Council adopt the attached by-law amendment entitled “By-law No. C.P. 111-XX, A Law to Amend the Zoning By-Law of The City of Saint John.”
3. That Common Council authorize the Mayor and Common Clerk to execute an amending agreement pursuant to the provisions of Section 59 of the *Community Planning Act* (SNB 2017, c.19), which would amend the agreement dated the 16th day of September 2006 between East Point Inc. as developer, and the City of Saint John, respecting portions of the property identified in the said agreement and which agreement was made pursuant to the provisions of Section 39 of the *Community Planning Act* in effect at that time (RSNB 1973 as amended); And Further Be It Resolved that Common Council hereby imposes pursuant to the provisions of Section 59 of the *Community Planning Act* the following conditions upon the use of a portion of the Property identified in said agreement having an area of 13.15 hectares, located at 11,15 and 41 Fashion Drive, 11,10,36,40 and 44 East Point Way and 40 Retail Drive, 85-89 Retail Drive and 310 Retail Drive , also identified as PIDs 55186001, 55195317, 55230445, 55230544, 55122212 and 55196166:
 - a) namely that its use be restricted a development of a shopping centre which may incorporate residential development subject to the provisions of the Regional Commercial Residential (CR-R) zone, with the total of floor area of

development in this area limited to 56,438 square metres (607,500 square feet) which may include up to 200 dwelling units on PID numbers 55230544, 55196166 and 55122212;

- b) Any improvements or signalization to existing driveways along Retail Drive be supported by a traffic impact study completed by the developer and approved by the City with the improvements completed at the developer's expense.
- c) Any additional driveway access to Westmorland Road is prohibited.
- d) For the proposed development site involving 200 residential units, the developer's engineering consultant provided a theoretical peak domestic sewage flow rate for the proposed development. Where necessary the City calculated the theoretical peak domestic sewage flow rates for all properties on the contributing East Point development site. Using the provided and calculated theoretical flow rates it indicates a potential capacity constraint downstream from the proposed development on Retail Drive, within a section of approximately 45 m of existing 200 mm sanitary sewer main, infrastructure that was previously installed by the developer. In order to determine if there is a capacity constraint, the developer may, prior to undertaking any downstream improvements, perform flow monitoring (wet & dry weather monitoring) on the wastewater system, under the direction of the City, to determine actual measurements in the system and confirm capacity. Upon review of the submitted flow monitoring results, should the City confirm sufficient capacity exists, the identified downstream infrastructure upgrade will not be required by the developer. Should the flow monitoring determine there is a capacity constraint as the City's initial review indicated, the developer shall be required, at the developer's expense to undertake the engineering review to determine the nature of the constraint and provide the analysis to the City for review. Should system improvements be required, the full design and construction of these improvements shall be subject to the approval by the City and shall be the full cost responsibility of the developer. If any of the required work and infrastructure improvements can be phased to accommodate the proposed development, this will be supported by the City.

DECISION HISTORY

On April 10, 2006, Common Council redesignated an approximately 53-acre parcel of land at 336 Westmorland Road from Low Density Residential to Regional Centre. At the same time, Council rezoned the same area from "RS-2" One and Two Family Suburban Residential, "R-2" One and Two Family Residential and former unzoned street areas to "SC" Shopping Centre. The rezoning was adopted subject to an agreement, pursuant to Section 39 (now 59) of the *Community Planning Act*, setting out detailed conditions covering such matters as the maximum

size of the development, excavation, trunk service installations, site and street work improvements and approval of detailed plans with respect to grading, drainage and site development. The Planning Advisory Committee had recommended, at its March 21, 2006 meeting, that the proposed Municipal Plan amendment and rezoning not be approved.

On July 4, 2006, Common Council redesignated and rezoned an additional 1.9-acre parcel of land, located at 310 Westmorland Road, subject to the same conditions as are applicable to the area that was redesignated and rezoned on April 10 to provide for the development of the Hampton Inn and Suites hotel.

On July 11, 2006, the Committee approved the street name Retail Drive and recommended that Common Council assent to the subdivision of the shopping centre with respect to the proposed creation of Retail Drive as a public street, as well as any required municipal services easements and public utility easements. Common Council adopted the Committee's recommendation on July 17, 2006.

ANALYSIS

Proposal

The applicant is proposing to incorporate residential opportunities into the existing East Point Development. As currently proposed by the developer, this would occur in the form of buildings having retail on the ground floor and dwelling units on upper floors. Plans submitted by the applicant propose an initial phase of three buildings with 200 residential units with a combined footprint of approximately 4100 square metres. These buildings would be located in the area bounded by Retail Drive, East Point Way, Indigo Way and Fashion Drive. Future buildings are planned on two sites along Retail Drive to the northeast and on the opposite side of Costco. The applicant has also requested that the 55,742 square metre (600,000 square foot) limit on building floor area in the development be increased to 76,180 square metres (820,000 square feet) to account for the proposed mixed-use buildings and future commercial development.

Site and Neighbourhood

Lands that are the subject of the application include three parcels of land generally described as follows:

- 40 Retail Drive (PID 55196166) - a 0.36 ha parcel located at the intersection of Oakland Street and Retail Drive that is currently zoned Regional Commercial (CR).
- 85-89 Retail Drive (PID 55122212) - a 0.26 ha parcel located along the east side of Retail Drive adjacent to the Clearview Mobile Home Park that is currently zoned Mini-Home Park Residential (RP).
- 310 Retail Drive (PID 55230544) - a 3.99 ha parcel located fronting on the west side of Retail Drive generally located between the lot containing Sobeys/NB Liquor retail outlets and the lot containing the Indigo outlet. This lot is currently zoned Regional Commercial (CR).

The sites are part of the East Point Retail Development located along Retail Drive. This area is generally bounded to the north by retail development and a manufactured housing development and to the south by a mix of commercial and residential development, an electrical substation and undeveloped land. An area of residential development is located to the west along Oakland Street with Westmorland Road bordering the lands to the east.

Municipal Plan

Municipal Plan policies relating to Regional Retail Centres note that these areas should not contain residential uses. Increasingly, due to changes in the retail landscape, commercial shopping areas are transitioning to mixed use centre to re-position these areas into more walkable transit oriented centres. With changes to shopping habits due to on-line shopping, traditional “bricks and mortar” retail developments are evolving to incorporate new land uses. There are precedents in Canada such as the Yorkville Mall and The Shops at Don Mills in Toronto and the Dalhousie Co-Op redevelopment in Calgary where traditional retail developments have evolved to include residential uses. More local examples include Dartmouth Crossing, which is planning a residential component and within New Brunswick, a greenfield development in eastern Dieppe (Village on Dieppe Boulevard) has incorporated a mixed use approach since its inception.

Conformance with Municipal Plan Goals and Directions

Although not currently acknowledged as a land use option in the Municipal Plan, the applicant's proposal meets the broader intent and goals established including the overall City Structure and Land Use framework. Conformance with the overall goals and direction include:

- Utilization of land more effectively through mixed use development which incorporates a residential land use into an existing commercial area.
- Limiting sprawl through supporting continued development of a site located within the Primary Development Area.
- Supporting continued development within the City's Intensification Areas, which are areas where the Plan seeks to have the majority of new development occur. The Plan also envisions these areas developing with an integrated mix of land uses within walking distance of each other in Intensification Areas, including places to live, work, shop, learn and play. The proposal conforms to this goal through the introduction of residential uses into an existing commercial area.
- Develop a compact built form that supports both a healthy lifestyle and efficient, convenient and viable alternative transportation choices, including transit, walking and cycling through the introduction of residential land use into an existing commercial area.
- Provide greater housing choice and affordability across the City and within individual neighbourhoods through an additional area for “suburban” multiple unit residential development.
- Fostering complete communities at densities which support public transportation and active transportation and a range of services, employment, leisure and recreational choices to provide people with greater opportunities to live, work, play and learn in their neighbourhoods. The area is currently served by transit and active transportation

infrastructure and the increased population from the residential development will provide additional users for these services.

- Provide improved housing choice, quality and affordability throughout the City to meet the needs of the changing population. This provides an additional location for multiple unit residential development within the City's Intensification Areas.

The Municipal Plan provides limited areas for higher-density residential development in the Suburban Intensification Areas in the eastern and western areas of the City. In the eastern portion of the City, approval of the recent proposal from Calabria Developments on Mountain View Drive will provide some higher density opportunities, but uptake in other areas has been somewhat limited. Most of the recent rezoning applications for multiple unit developments have generally been located in Stable Residential areas in Millidgeville or East Saint John. Staff note that the approach of providing a supportive policy direction to redevelopment of Regional Retail areas with a residential component would enable this type of development along the Fairville Boulevard Corridor as well, building on the Main Street West mixed use centre Intensification Area established in the Municipal Plan.

Conformance with Municipal Plan Policies

In addition to the overall goals, intent and direction of the Municipal Plan, the applicant's proposal also conforms to key policies relating to land use and development within the Regional Retail Centres. A detailed assessment of conformance with Municipal Plan policies is provided in Appendix C.

Staff are proposing amendments to sections of the Municipal Plan that provide the framework for development within Regional Retail Centres at both the City Structure and the specific Regional Retail Centre Land Use Designation (Policy LU-61) levels. These amendments will enable residential development in the Regional Retail Centres through a rezoning process. An additional policy is recommended to the Municipal Plan to provide a framework for allowing residential development within the Regional Retail Centre Designation. This is the same approach provided for in the Municipal Plan for development of multiple unit residential uses in Stable Residential areas. The proposed policy and an assessment of how the applicant's proposal conforms to the existing and proposed policy framework is provided in Appendix C. Based on the analysis the proposed development meets the intent of the Municipal Plan.

Rezoning

A range of options were evaluated with respect to providing an appropriate zone to accommodate residential development within the retail area ranging from amending the Regional Commercial (CR) zone to permit multiple unit dwellings as-of-right to rezoning to a zone that provides for multiple unit dwellings. Based on this review a new commercial (mixed use) zone (Regional Commercial – Residential (CR-R)) is proposed. This zone is based on the Regional Commercial (CR) zone and includes a multiple unit dwelling as a permitted use.

The proposed new zone has the same zone standards as the Regional Commercial (CR) zone with the exception of a maximum height of 24 metres and no minimum floor area requirement.

The proposed zone also includes design standards requiring the buildings to have a prominent entrance facing a Public Street or internal access and limiting dwelling units to the upper floors of buildings. Consistent with the provisions of the *Community Planning Act* these design standards can be varied by the Committee at a later date should a development proposal require a building having dwelling units on the ground floor. This provides flexibility to the development community in adapting this new development concept in the Saint John market.

Section 59 conditions

The original rezoning in 2006 was adopted subject to an agreement, pursuant to Section 59 (formerly Section 39) of the *Community Planning Act*, setting out the a series of conditions including: limits to floor area, proposed uses, preparation of site and building plans, blasting, landscaping, infrastructure improvements to be undertaken by the developer, and cost-sharing with the City.

The agreement limits the floor area on lands along the east side of Retail Drive to 55,742 square metres (600,000 square feet) that includes approximately 36,232 square metres (390,000 square feet) that has been constructed including Costco, Sobeys, Indigo, TD Bank, Hampton Inn and Suites and other multi-tenant commercial buildings. The applicant has requested that this floor area cap be increased from 55,742 square metres (600,000 square feet) to 76,180 square metres (820,000 square feet). This increased floor area accounts for the fact that the mixed-use buildings will be multi-storey buildings and the addition of PID 55122212, located on the west side of Retail Drive, to the proposed development as the site for a proposed building.

The 76,180 square metre value includes two developments, Costco and Hampton Inn and Suites that have been constructed on lands that are no longer controlled by the applicant. To account for this in the revised limit, a Section 59 amendment is recommended for the remaining parcels of land under the control of the applicant (55186001, 55195317, 55230445, 55230544, 55122212 and 55196166) limiting the floor area to 56,438 square metres (607,500 square feet)¹. As the existing conditions on this portion of the East Point site will limit the use to a shopping centre, Staff propose a condition for these sites providing for a mixed-use commercial and residential development.

The applicant has provided a traffic impact study and information on water and sanitary sewer flows from the development, which the City reviewed with respect to capacity. The results of these assessments can be summarized as follows:

Water Supply and Sanitary Sewer

- The developer's engineering consultant has confirmed that private water boosters will be required by the developer in the buildings to provide the necessary water pressures for the development.

¹ 607,500 square feet is the proposed 820,000 square feet cap less the square footage of Costco (136,000 sq.ft.) and Hampton Suites (76,500 sq.ft.).

- The City has undertaken a preliminary sewer model analysis to determine impacts downstream of the development. The modelling indicates there is an existing section of sanitary sewer (approximately 45 m of 200 mm diameter sanitary sewer) on Retail Drive that will not support the expansion due to the current grade of the pipe. The modelling analysis indicates upgrades to this section of pipe are required in order to add any more flow from the proposed development. From a preliminary analysis of existing sewer grades in the area it appears this can be achieved. There are existing additional hydraulic capacity concerns downstream that will require upgrades to facilitate full build out of the proposed mixed-use development. These upgrades will be the responsibility of the City.

As the City's modelling of the sanitary sewer system utilized theoretical flows, Staff are recommending that either improvements to this section of sewer be made or an additional review of the downstream sanitary sewer system be completed by a consultant engaged by the developer for review by the City. Should this analysis determine that improvements are required to downstream sections of sanitary sewer, these will be the responsibility of the developer and completed before the issuance of the any building permit for any of the proposed residential units.

Traffic Impact Study

Study area intersections can accommodate Phase 1 of the proposed development (92 residential units and 5,577 square metres of commercial development) without any major traffic impacts. The study notes delays and capacity issues exist and are projected to exist in the future at the Rothesay Avenue / Retail Drive / Ashburn Lake Road without the development and that operations at this intersection will be exacerbated with the additional traffic volumes in Phase 1.

The report notes that limiting the residential development to 200 units will result in the overall intersection operations at Rothesay Avenue/Retail Drive generally operating the same as it would in the 2021 and 2028 horizon years without the development.

With Phase 2 of the development, which includes an additional 308 dwelling units (400 total) and an additional 5,871 square metres of retail development, impacts will occur at the following locations:

- East Point Way at Retail Drive – the left turn from retail Drive onto West Point Way is forecast to operate at 96% of capacity compared to 74% of capacity without the development.
- Retail Drive at Westmorland Road – This intersection is projected to experience operational issues in 2018 with completion of the development and background traffic. A recommended improvement is to reconfigure the Retail Drive approach to provide for a dual left turn movement from Retail Drive to Westmorland Road.

- Rothesay Avenue/ Retail Drive / Ashburn Lake Road – At this intersection the projected delays and volume-to-capacity ratios will increase beyond those forecast for the 2028 horizon year without the development.

Based on the results of the traffic impact study, Staff recommend that the proposed residential component be limited to 200 units given the operational considerations at the Rothesay Avenue/ Retail Drive / Ashburn Lake Road intersection. This intersection requires major improvements to traffic flow, which require a realignment of the Ashburn Lake Road, and Retail Drive approaches from the current configuration.

The traffic impact study also notes that only one signalized intersection, the East Point Way/ Retail Drive intersection provides direct signalized access from the development site to the study area roadway network. Since the original planning approvals were granted, additional driveways have been provided from the site onto Retail Drive and Westmorland Road. Staff recommend a Section 59 condition prohibiting any additional access to the development site to/from Westmorland Road and a condition requiring that any improvements or signalization to existing driveways along Retail Drive be at the developer's expense and supported by a traffic impact study.

Conclusion

The proposal will allow the East Point development to evolve into a mixed-use residential and commercial concept responding to the broader goals and policy direction of the Municipal Plan. The proposal conforms to the Municipal Plan and Staff are recommending approval of the application with supporting amendments to the Municipal Plan and Zoning By-law to provide for this type of development in other Regional Retail areas within the City. The policy framework established in the proposed amendments to the Municipal Plan will enable this rezoning approach to be considered more broadly and streamline the process for consideration of proposals for multiple unit dwellings in other Regional Retail areas.

Site specific Section 59 conditions are recommended to respond to issues related to infrastructure capacity and an increase in the permitted floor area.

ALTERNATIVES AND OTHER CONSIDERATIONS

Alternatives and other considerations

No other alternatives were considered.

ENGAGEMENT

Public

In accordance with the Committee's Rules of Procedure, notification of the proposal was sent to landowners within 100 metres of the subject property on May 9, 2019. The public presentation for the Municipal Plan Amendment was advertised on the City's website beginning on February

15, 2019. The public hearing for the rezoning was advertised on the City's website beginning on May 10, 2019.

SIGNATURES AND CONTACT

Prepared:



Mark Reade, P.Eng., MCIP, RPP
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Reviewed:



Kenneth Melanson BA, MCIP, RPP
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Approved:



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APPENDIX

Appendix A: **Proposed Municipal Plan Amendment**
Appendix B: **Proposed Zoning By-Law Amendment**
Appendix C: **Municipal Plan Policy Review**
Appendix D: **Existing Section 39 Agreement**
Map 1: **Site Location**
Map 2: **Municipal Plan**
Map 2a: **Regional Retail Centre East Saint John**
Map 2b: **Regional Retail Centre West Saint John**
Map 3: **Zoning**
Map 4: **Aerial Photography**
Map 5: **Site Photography**
Submission 1: **Site Plan**

**BY-LAW NUMBER C.P. 106-XX
A LAW TO AMEND THE
MUNICIPAL PLAN BY-LAW**

Be it enacted by The City of Saint John in Common Council convened, as follows:

The Municipal Plan By-law of The City of Saint John enacted on the 30th day of January, A.D. 2012 is amended by:

- 1** Deleting Subsection 2.3.2 Employment Areas and replacing it with the following:

““Stimulating and sustaining economic activity is an underpinning to successful urban areas. The City’s future growth and development will largely be dictated by the community’s ability to retain existing employment and create new employment opportunities. As the first step to supporting the evolving needs of businesses in a wide variety of industries, the City must ensure there is ample supply of well located, high quality employment lands available to accommodate investment needs. The Employment Areas are described as Primary Centres, Regional Retail Centre and Employment Areas:

Primary Centres, previously identified as the Uptown Primary Centre and the UNBSJ Plateau / Regional Hospital Primary Centre, are intended to attract and serve people from all over the City and the wider region. They contain the highest densities and most complex and concentrated mix of land uses in the City, including employment uses, and are intended to develop at the highest densities in the City, with complementary uses.

Regional Retail Centres of McAllister Centre and Fairville Centre provide large format retail and service uses at a scale and range to serve the city and regional population. These Centres are also intended to complement rather than compete with uses in the Uptown Primary Centre. Although the main focus of these areas are retail and service based commercial land uses, limited residential uses may be permitted in these areas through mixed-use development proposals. Regional Retail Centres are not intended for residential use nor are they intended to undermine the function of

**ARRÊTÉ N° C.P. 106-XX
ARRÊTÉ MODIFIANT L'ARRÊTÉ
RELATIF AU PLAN MUNICIPAL**

Le conseil communal de The City of Saint John, étant réuni, édicte ce qui suit :

L'Arrêté concernant le plan municipal de The City of Saint John, édicté le 30 janvier 2012, est ainsi modifié :

- 1** La sous-section 2.3.2 Secteurs d'emploi est supprimée et remplacée par ce qui suit :

La stimulation et le soutien de l'activité économique sont les piliers de la réussite des secteurs urbains. La croissance et le développement futurs de Saint John seront déterminés en grande partie par la capacité de la collectivité de retenir les emplois existants et de créer de nouvelles possibilités d'emploi. Comme première mesure pour répondre aux besoins en évolution des entreprises dans une grande variété d'industries, la Ville doit assurer la présence d'un grand nombre de terrains bien situés et de haute qualité destinés à l'emploi pour satisfaire aux besoins d'investissement. Les secteurs d'emploi sont respectivement appelés centres principaux, centres régionaux de commerce de détail et secteurs d'emploi :

Les centres principaux, désignés ci-dessus comme étant le centre principal du centre-ville et le centre principal du plateau de l'Université du Nouveau-Brunswick à Saint John et de l'hôpital régional, sont destinés à attirer et à servir des gens de toute la municipalité et de la grande région. Ils contiennent les plus fortes densités et la variété la plus complexe et la plus concentrée d'utilisations des sols dans la municipalité, y compris des utilisations génératrices d'emploi, et sont censés connaître le développement à plus forte densité dans la municipalité, avec des utilisations complémentaires.

Les centres régionaux de commerce de détail du centre McAllister et du centre Fairville offrent des utilisations de commerces de détail et de services à grande surface dont la gamme et l'étendue permettent de servir la population de Saint John et de la région. Ces centres également sont censés compléter plutôt

Local Centres or Primary Centres.

Employment Areas are comprised of existing Industrial Parks, other existing industrial areas, Business Centres, and two areas of primarily undeveloped lands identified for new industrial and employment uses in Spruce Lake Industrial Park and McAllister Industrial Park. Employment Areas will generally not allow residential uses; these areas are generally single purpose industrial or business park uses, not appropriate in proximity to residential uses. Development will occur at lower densities as these uses generally require more land.”

que concurrencer les utilisations du centre principal du centre-ville. Bien que ces secteurs visent surtout les utilisations commerciales de vente au détail et de service à la clientèle, des utilisations résidentielles limitées peuvent être permises dans ces secteurs en réponse à des propositions d’aménagement à utilisations mixtes. Les centres régionaux de commerce de détail ne sont pas censés compromettre les fonctions des centres locaux ou des centres principaux.

Les secteurs d’emploi sont composés des parcs industriels existants, d’autres secteurs industriels existants, des centres d’affaires et de deux secteurs de terrains généralement non bâtis, désignés pour de nouvelles utilisations industrielles et génératrices d’emploi, soit le parc industriel de Spruce Lake et le parc industriel McAllister. Les utilisations résidentielles ne sont généralement pas permises dans les secteurs d’emploi; d’ordinaire, ces secteurs sont à fin unique et servent à des parcs industriels ou commerciaux, lesquels sont inappropriés à proximité des secteurs résidentiels. Le développement s’y fait à faible densité, car ces utilisations exigent généralement plus de terrain.

2 Deleting Policy LU-61 and replacing it with the following:

2 Le principe LU-61 est supprimé et remplacé par ce qui suit :

Policy LU-61 When considering development in the Regional Retail Centres:

Principe LU-61 Lorsqu’il envisage l’aménagement dans les centres régionaux de commerce de détail :

- a. Ensure the specific land uses established in the Regional Retail Centre are appropriate and strengthen the role of the City’s Primary Centres;
- b. Strongly discourage new major professional offices to locate;
- c. Encourage quality urban design and where possible, more intense land use and development;
- d. Require development applicants to demonstrate consideration of transit and pedestrian connectivity to the street and between retail locations;
- e. Ensure development contributes to a

- a. s’assurer que les utilisations spécifiques des sols qui sont prescrites pour le centre régional de commerce de détail sont appropriées et renforcent le rôle des centres principaux de la municipalité;
- b. dissuader fortement les nouveaux grands cabinets professionnels de s’y établir;
- c. encourager la qualité de l’aménagement urbain et, si possible, une utilisation des sols et un aménagement plus denses;
- d. exiger que les auteurs de demandes d’aménagement démontrent qu’ils ont tenu compte des liens piétonniers et de transport en commun vers la rue et entre les établissements de vente au détail;

more pedestrian-oriented atmosphere by minimizing surface parking lots, encouraging shared parking, increasing landscaping and improving sidewalks and streetscaping; and

f. Ensure infrastructure improvements made necessary by a development are generally the financial responsibility of the developer.

3 Adding the following as Policy LU-61.1 immediately following Policy LU-61:

“Policy LU-61.1 Consider proposals to establish higher-density residential or mixed use development in the Regional Retail Centre designation through a rezoning process. Proposals must demonstrate conformance with the following requirements:

a. The property is located on a collector or arterial street as illustrated on the Transportation map (Schedule C) of the Municipal Plan or on an appropriate site supported by the findings of a traffic impact study;

b. The property is located in close proximity to a public transit route and is easily accessible by a range of transportation modes;

c. The development is in a location where all necessary water and wastewater services, parks and recreation services, schools, public transit and other community facilities and protective services can readily and adequately be provided;

d. The proposal is compatible with surrounding land uses;

e. Site design features that address such matters as safe access, buffering and landscaping, site grading and stormwater management are incorporated;

f. A high quality exterior building design is provided that is consistent with

e. s’assurer que l’aménagement contribue à une ambiance plus accueillante pour les piétons en réduisant au minimum les parcs de stationnement de surface, en encourageant l’aménagement de places de stationnement communes, en intensifiant l’aménagement paysager et en améliorant les trottoirs et le paysage de rue;

f. s’assurer que la responsabilité financière des améliorations d’infrastructures qui s’imposent du fait d’un aménagement est assumée en général par le promoteur.

3 Le nouveau principe LU-61.1 qui suit est inséré immédiatement après le principe LU-61 :

Principe LU-61.1 Étudier les propositions visant à réaliser des aménagements résidentiels à plus forte densité ou des aménagements à utilisations mixtes dans les secteurs désignés centres régionaux de commerce de détail dans le cadre d’un processus de rezonage. Les propositions doivent démontrer qu’elles sont conformes aux exigences suivantes :

a. la propriété donne sur une rue collectrice ou une artère illustrées sur la carte des transports (annexe C) du plan municipal ou se trouve à un emplacement supporté par les résultats d'une étude d'impact sur le trafic;

b. la propriété est à faible distance d’un circuit de transport en commun et est facilement accessible par divers moyens de transport;

c. l’aménagement se trouve à un endroit où tous les services nécessaires d’alimentation en eau et d’évacuation des eaux usées, les parcs et les services de loisirs, les écoles, le transport en commun, les autres établissements communautaires et les services de protection peuvent être offerts facilement et de façon suffisante;

d. la proposition est compatible avec les utilisations des sols environnants;

e. des caractéristiques de conception sont incluses pour veiller à des

the Urban Design Principles in the
Municipal Plan; and

g. The proposal does not detract
from the City’s intention to direct the
majority of new residential development
to the Primary Centres, Local Centres, and
Intensification Areas.”

aspects tels que la sécurité
d’accès, les zones tampons et
l’aménagement paysager, le
nivellement des terrains et la
gestion des eaux de ruissellement;

f. la conception de l’extérieur des
bâtiments est de haute qualité et
conforme aux principes
d’aménagement urbain du plan
municipal;

g. la proposition n’est pas contraire à
l’intention de la Ville de diriger la
plupart des nouveaux
aménagements résidentiels vers
les centres principaux, les centres
locaux et les secteurs de
densification.

- all as shown on the plans attached hereto
and forming part of this by-law.

- toutes les modifications sont indiquées sur
les plans ci-joints qui font partie du présent
arrêté.

IN WITNESS WHEREOF The City of
Saint John has caused the Corporate
Common Seal of the said City to be affixed
to this by-law the * day of *, A.D. 2019
and signed by:

EN FOI DE QUOI, The City of Saint John
a fait apposer son sceau communal sur le
présent arrêté le 2019, avec les
signatures suivantes :

Mayor

Common Clerk/Greffier communal

First Reading -
Second Reading -
Third Reading -

Première lecture -
Deuxième lecture -
Troisième lecture -

**BY-LAW NUMBER C.P. 111-
A LAW TO AMEND
THE ZONING BY-LAW
OF THE CITY OF SAINT JOHN**

Be it enacted by The City of Saint John in Common Council convened, as follows:

The Zoning By-law of The City of Saint John enacted on the fifteenth day of December, A.D. 2014, is amended by:

1. Adding the following to the list of Commercial zones in Section 2.2:
“Regional Commercial Residential Zone (CR-R)”

2. Adding the following as Section 11.12:

“11.12 Regional Commercial Residential Zone (CR-R)

Municipal Plan Context

The Regional Commercial Residential (CR-R) zone accommodates large format, vehicle oriented, commercial development and associated entertainment uses with residential uses incorporated into a mixed use development proposal.

The Regional Commercial Residential (CR-R) zone is intended for land inside of the Primary Development Area that is designated Regional Retail Centre. However, land in other appropriate designations could be zoned Regional Commercial Residential (CR-R).

11.12(1) Permitted Uses

Any land, building, or structure may be used for the purposes of, and for no other purpose than, the following:

- Accommodation;
- Dwelling Group;
- Dwelling, Multiple, subject to paragraph 11.12(3)(f);;
- Sales Centre, Model Home;
- Service Station, subject to paragraph 11.12(3)(a);
- Transit Terminal;
- Vehicle Rental;
- Vehicle Repair Garage, subject to paragraph 11.12(3)(b);
- Vehicle Sales and Leasing;
- Regional Commercial Centre,

**ARRÊTÉ N^o C.P. 111-
ARRÊTÉ MODIFIANT L'ARRÊTÉ DE
ZONAGE DE THE CITY OF SAINT
JOHN**

Le conseil communal de The City of Saint John, étant réuni, édicte ce qui suit :

L'Arrêté de zonage de The City of Saint John, édicté le 15 décembre 2014, est ainsi modifié :

1. L'article 2.2 est modifié par adjonction de la zone suivante à la liste de zones commerciales :

Zone commerciale régionale résidentielle (CR-R)

2. L'article 11.12 qui suit est ajouté :

11.12 Zone commerciale régionale résidentielle (CR-R)

Mise en contexte

La zone commerciale régionale résidentielle (CR-R) accueille de grands aménagements commerciaux axés sur le déplacement en véhicule et les usages de divertissement connexes ainsi que des usages résidentiels prévus dans une proposition d'aménagement à usages mixtes.

La zone commerciale régionale résidentielle (CR-R) est destinée aux terrains situés à l'intérieur du principal secteur de développement qui sont désignés centre régional de commerce de détail. Cependant, des terrains situés dans d'autres désignations qui conviennent pourraient être désignés zone commerciale régionale résidentielle (CR-R).

11.12(1) Usages permis

Les terrains, bâtiments et constructions ne peuvent être affectés qu'aux fins suivantes :

- centre commercial régional, y compris les usages suivants :
 - bacs de recyclage;
 - bar, salon-bar ou boîte de nuit, sous réserve du paragraphe 11.12(3)c);
 - ;
 - bibliothèque;
 - boulangerie;
 - bureau d'affaires, sous réserve du paragraphe 11.12(3)d);

including the following uses:

- Artist or Craftsperson Studio;
- Bakery;
- Bar, Lounge, or Nightclub, subject to paragraph 11.12(3)(c);
- Business Office, subject to paragraph 11.12(3)(d);
- Commercial Entertainment;
- Community Centre;
- Community Policing Office;
- Day Care Centre;
- Financial Service;
- Funeral Service;
- Grocery Store;
- Health and Fitness Facility;
- Library;
- Medical Clinic;
- Personal Service;
- Pet Grooming;
- Recycling Bins;
- Restaurant;
- Retail General;
- Retail Warehouse;
- Service and Repair, Household;
- Technical or Vocational School;
- Veterinary Clinic;
- The existing use described in Schedule E: Exceptions, of each lot respectively, identified therein as being located in the Regional Commercial Residential (CR-R) zone.

11.12(2) Conditional Uses

Any land, building, or structure may be used for the purposes of, and for no other purpose than, the following subject to such terms and conditions as may be imposed by the Committee:

- Parking Lot, Commercial, subject to paragraph 11.12(3)(e);
- Parking Structure.

11.12 (3) Conditions of Use

(a) A Service Station permitted in subsection 11.12(1) shall be subject to the following:

- (i) The lot where the Service Station is located shall have a minimum frontage of 30 metres;
- (ii) Any vehicle access for the

- bureau de police communautaire;
- centre communautaire;
- centre de santé et de conditionnement physique;
- clinique médicale;
- clinique vétérinaire;
- divertissement à des fins commerciales;
- école de formation technique ou professionnelle;
- entrepôt de vente au détail;
- entreprise d'entretien et de réparation d'articles ménagers;
- épicerie;
- garderie;
- institution financière;
- restaurant;
- salon funéraire;
- service personnel;
- studio d'artiste ou d'artisan;
- studio de toilettage d'animaux familiers;
- vente au détail générale;
- centre de ventes par maisons-témoins;
- complexe d'habitations;
- garage de réparation de véhicules, sous réserve de l'alinéa 11.12(3)b);
- gare routière;
- habitation multifamiliale, sous réserve du paragraphe 11.12(3)f);
- hébergement;
- location de véhicules;
- l'usage existant décrit à l'annexe E : Exceptions exercé sur chaque lot qui est indiqué dans cette annexe comme étant situé dans la zone commerciale régionale résidentielle (CR-R);
- station-service, sous réserve du paragraphe 11.12(3)a);
- vente et location de véhicules.

11.12(2) Usages conditionnels

Les terrains, bâtiments et constructions ne peuvent être affectés qu'aux fins suivantes, sous réserve des conditions imposées par le comité, le cas échéant :

- garage de stationnement;
- parc de stationnement commercial, sous réserve du paragraphe 11.12(3)e).

- Service Station shall not be closer than 30 metres from an access for a main building in a Community Facility or Residential zone;
- (iii) The fuel pump island shall not be located closer than 7.5 metres to a front or flankage lot line; and
 - (iv) The lot where the Service Station is located shall not be adjacent to a lot zoned Residential and on the same street.
- (b) A Vehicle Repair Garage permitted in subsection 11.12(1) shall not be located adjacent to a Residential zone.
 - (c) A building containing a Bar, Lounge, or Nightclub permitted in subsection 11.12(1) shall not be located within 60 metres of a Residential zone.
 - (d) A Business Office permitted in subsection 11.12(1) shall not exceed 3,000 square metres in gross floor area.
 - (e) A Commercial Parking Lot permitted in subsection 11.12(2) shall not be developed on a lot located in the Uptown Parking Exemption Area, as defined by Schedule C of this By-law, which contained a main building on the date this By-law was enacted.

11.12(4) Zone Standards

- (a) Minimum Lot Area
4,000 square metres
- (b) Minimum Lot Frontage
60 metres
- (c) Minimum Lot Depth
30 metres
- (d) Minimum Front Yard
6 metres
- (e) Minimum Rear Yard:
Abutting a Residential zone
15 metres
Other 6 metres
- (f) Minimum Side Yard:
Abutting a Residential zone
15 metres

11.12(3) Conditions régissant les usages

- a) Les stations-service permises par le paragraphe 11.12(1) sont subordonnées aux conditions suivantes :
 - (i) le lot sur lequel se trouve une station-service a une façade minimale de 30 mètres;
 - (ii) les accès à la station-service destinés aux véhicules ne peuvent être situés à moins de 30 mètres d'un accès à un bâtiment principal situé dans une zone d'installations communautaires ou dans une zone résidentielle;
 - (iii) l'îlot de distribution d'essence ne peut être situé à moins de 7,5 mètres de la limite avant du lot ou d'une limite de flanc du lot;
 - (iv) le lot sur lequel se trouve la station-service ne peut être adjacent à un lot situé dans une zone résidentielle sur la même rue.
- b) Les garages de réparation de véhicules permis par le paragraphe 11.12(1) ne peuvent être attenants à une zone résidentielle.
- c) Un bâtiment comportant un bar, un salon-bar ou une boîte de nuit permis par le paragraphe 11.12(1) ne peut être situé à moins de 60 mètres d'une zone résidentielle.
- d) L'aire de plancher brute des bureaux d'affaires permis par le paragraphe 11.12(1) ne peut être supérieure à 3 000 mètres carrés.
- e) Les parcs de stationnement commerciaux permis par le paragraphe 11.12(2) ne peuvent être aménagés sur un lot situé dans le secteur du centre-ville non subordonné aux obligations en matière de stationnement, secteur illustré à l'annexe C du présent arrêté, qui comportait un bâtiment principal à la date de l'adoption du présent arrêté.

11.12(4) Normes applicables à la zone

- a) Superficie de lot minimale
4 000 mètres carrés
- b) Façade de lot minimale

Other 6 metres	60 mètres
(g) Minimum Flankage Yard 6 metres	c) Profondeur de lot minimale 30 mètres
(h) Maximum Building Height: 24 metres	d) Cour avant minimale 6 mètres
(i) No parking or outdoor display area shall be permitted within a required setback.	e) Cour arrière minimale Lot donnant sur une zone résidentielle 15 mètres Autre 6 mètres
(j) Maximum Lot Occupancy 40 percent	f) Cour latérale minimale Lot donnant sur une zone résidentielle 15 mètres Autre 6 mètres
(k) Buildings shall have a prominent entrance oriented towards a public street or internal access.	g) Cour de flanc minimale 6 mètres
(l) A Dwelling Unit permitted in subsection 11.12(1) shall not be located below the second storey of a building.	h) Hauteur des bâtiments maximale 24 mètres
(m) Other Requirements In accordance with the General Provisions, Parts 4-9 where this zone shall be considered a Regional Commercial (CR) zone.	i) Aucune aire de stationnement ni aire d'exposition extérieure n'est permise dans une marge de retrait obligatoire. j) Coefficient maximal d'occupation du lot 40 pour cent k) Les bâtiments doivent comporter une entrée bien en vue faisant face à une rue publique ou un accès interne. l) Les logements permis par le paragraphe 11.12(1) ne peuvent être situés à un niveau inférieur au deuxième étage du bâtiment; m) Autres exigences Conformément aux dispositions générales énoncées aux parties 4 à 9, et la zone en question doit être considérée en tant que zone commerciale régionale (CR).

3. Amending Schedule “A”, the Zoning Map of The City of Saint John, by re-zoning a parcel of land having an area of approximately 3.99 hectares, located at 310 Retail Drive, also identified as being PID No. 55230544, from Regional Commercial (CR) to Regional Commercial Residential (CR-R).

3. L’annexe A, Carte de zonage de The City of Saint John, est modifiée par rezonage d’une parcelle d’une superficie d’environ 3,99 hectares, située au 310, promenade Retail, et portant le NID 55230544, de zone commerciale régionale (CR) à zone commerciale régionale résidentielle (CR-R).

4.

Amending Schedule “A”, the Zoning Map of The City of Saint John, by re-zoning a parcel of land having an area of approximately 0.36 hectares, located at 40 Retail Drive, also identified as being PID No. 55196166, from Regional Commercial (CR) to Regional Commercial Residential (CR-R).

5.

Amending Schedule “A”, the Zoning Map of The City of Saint John, by re-zoning a parcel of land having an area of approximately 0.36 hectares, located at 85-89 Retail Drive, also identified as being PID No. 55122212, from Mini-Home Park Residential (RP) to Regional Commercial Residential (CR-R).

6.

Section 11 is amended by adding the Regional Commercial Residential (CR-R) zone to Table 11-1
4.

L’annexe A, Carte de zonage de The City of Saint John, est modifiée par rezonage d’une parcelle d’une superficie d’environ 0,36 hectare, située au 40, promenade Retail, et portant le NID 55196166, de zone commerciale régionale (CR) à zone commerciale régionale résidentielle (CR-R).

5.

L’annexe A, Carte de zonage de The City of Saint John, est modifiée par rezonage d’une parcelle d’une superficie d’environ 0,36 hectare, située au 85-89, promenade Retail, et portant le NID 55122212, de zone résidentielle – Parcs de mini-maisons (RP) à zone commerciale régionale résidentielle (CR-R).

6.

L’article 11 est modifié par adjonction, au tableau 11-1, le zone commerciale régionale résidentielle (CR-R).

- all as shown on the plan attached hereto and forming part of this by-law.

- toutes les modifications sont indiquées sur la carte ci-jointe qui fait partie du présent arrêté.

IN WITNESS WHEREOF The City of Saint John has caused the Corporate Common Seal of the said City to be affixed to this by-law the * day of *, A.D. 2019 and signed by:

EN FOI DE QUOI, The City of Saint John a fait apposer son sceau communal sur le présent arrêté le 2019, avec les signatures suivantes :

Mayor/Maire

Common Clerk/Greffier communal

First Reading -

Première lecture -

Second Reading -

Deuxième lecture -

Third Reading -

Troisième lecture -

Appendix C- Municipal Plan Policy review

Policy LU-2 of the Plan seeks to provide a sufficient supply of land to accommodate the projected demands for development over the horizon of the Municipal Plan. The addition of residential development within Regional Retail Centres to create mixed-use developments meets this policy in that it will provide for additional land for multiple-unit residential development, while still allowing for the larger-scale commercial development.

Policy LU-2 also seeks to provide for a limited range of compatible uses to occur within the land use designations of the Plan. Multiple unit residential development is a compatible use to a Regional Retail area as this brings residents closer to their shopping needs, working towards the goal of mixed-use development. This approach will be managed through requiring a rezoning for the introduction of these residential uses on a case-by-case basis in the Regional Retail Centres through a rezoning process.

Municipal Plan policy LU-60 also acknowledges the different roles the McAllister and Fairville Boulevard Regional Retail Centres play in the overall retail hierarchy of the Saint John Region. As the Staff Recommendation provides for a new zone, to be implemented through site-specific rezonings, which retains the scope of commercial uses provided for in the existing Regional Commercial (CR) zone, this policy is met. This approach provides a land use policy and zoning framework allowing for these areas to continue to function with their intent in the overall retail hierarchy of the Greater Saint John and broader southwest New Brunswick region.

Specifically with respect to the McAllister Regional Retail Centre, Policy LU-62 of the Municipal Plan requires the preparation of a comprehensive stormwater management plan that addresses flooding and stormwater management issues prior to major new development. The initial stormwater design of the East Point Development provides a stormwater flow that can leave the site and be accommodated by the City's downstream stormwater infrastructure. This flow cannot be exceeded and will have to be respected in the design of the remaining phases of the development. Given this, development on the East Point site meets the intent of Policy LU-62.

Conditions imposed on the original rezoning of the site require Development Officer approval of detailed site plans for the development. This provides a mechanism to review the detailed design of the proposed buildings with the intent of the Urban Design policies of the Municipal Plan.

Policy LU-61 outlines criteria for development within the Regional Retail Centres and "strongly discourages new major professional offices and residential uses to locate" in these areas. Staff are recommending the policy be amended to remove the specific reference to discouraging new residential uses within Regional Retail Centres.

Staff recommend the following polict be added to the Municipal plan to provide a framework for residential development within the Regional Retail Centres:

Policy LU-61.1 Consider proposals to establish higher-density residential or mixed use development in the Regional Retail Centre designation through a rezoning process. Proposals must demonstrate conformance with the following requirements:

- a. The property is located on a collector or arterial street as illustrated on the Transportation map (Schedule C) of the Municipal Plan or an appropriate site supported by the findings of a traffic impact study;*
- b. The property is located in close proximity to a public transit route and is easily accessible by a range of transportation modes;*
- c. The development is in a location where all necessary water and wastewater services, parks and recreation services, schools, public transit and other community facilities and protective services can readily and adequately be provided;*
- d. The proposal is compatible with surrounding land uses in terms of scale and land use;*
- e. Site design features that address such matters as safe access, buffering and landscaping, site grading and stormwater management are incorporated;*
- f. A high quality exterior building design is provided that is consistent with the Urban Design Principles in the Municipal Plan; and*
- g. The proposal does not detract from the City's intention to direct the majority of new residential development to the Primary Centres, Local Centres, and Intensification Areas.*

Criteria	Staff Comments
The property is located on a collector or arterial street as illustrated on the Transportation map (Schedule C) of the Municipal Plan or an appropriate site supported by the findings of a traffic impact study.	The sites are located on Retail Drive, which is designated a collector street in the Municipal Plan.
The property is located in close proximity to a public transit route and is easily accessible by a range of transportation modes.	Transit service is provided along Retail Drive and within the East Point site, with sidewalks currently provided along Retail Drive and East Point Way.
The development is in a location where all necessary water and wastewater services, parks and recreation services, schools, public transit and other community facilities and protective services can readily and adequately be provided.	The applicant has provided a traffic impact assessment and water and sanitary sewer analysis that reviews infrastructure impacts associated with the proposed residential uses. Section 59 conditions are recommended to address capacity issues identified in the reports.

The proposal is compatible with surrounding land uses.	The surrounding area generally contains a mix of larger format commercial land uses.
Site design features that address such matters as safe access, buffering and landscaping, site grading and stormwater management are incorporated.	<p>The initial stormwater design of the East Point Development provides a stormwater flow that can leave the site and be accommodated by the City's downstream stormwater infrastructure. This flow cannot be exceeded and will have to be respected in the design of the remaining phases of the development.</p> <p>Conditions imposed on the original rezoning of the site require Development Officer approval of detailed site plans for the development.</p>
A high quality exterior building design is provided that is consistent with the Urban Design Principles in the Municipal Plan.	Conditions imposed on the original rezoning of the site require Development Officer approval of detailed site and building elevation plans. This allows for a review of the development with the Municipal Plan's Urban design principles.
The proposal does not detract from the City's intention to direct the majority of new residential development to the Primary Centres, Local Centres, and Intensification Areas.	Given the location of the Regional Retail Centres in more suburban areas of the City, it is expected that this may have the potential to draw residential development from Stable Residential areas and other suburban areas. As a result it is not expected to impact the intention to direct the majority of residential development to the Primary Centres and Intensification areas.

'B' (w)

AGREEMENT

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

Parcel Identifier: 55183222, 304535, 55182463, 55182448 and 55182455

Developer: **East Point Inc.**
479 Rothesay Ave
Rothesay, New Brunswick
E2L 4G7

City: **The City of Saint John .**
8th Floor, City Hall Building
5 Market Square PO Box 1971
Saint John, New Brunswick
E2L 4L1

Buckley: **Buckley, Rowland Goarl**
50 Highcliff Court
Rothesay, NB
E2H 2T8

WHEREAS an application was submitted to the Common Council of the City seeking the redesignation and rezoning of lands located at 336 Westmorland Road identified as PID Numbers 55183222, 304535, 55182463, 55182448 and 55182455 comprising an area of approximately twenty-one (21) hectares (53 acres) in the City of Saint John, hereinafter referred to as "the Lands" and which are shown on the plan annexed hereto and forming a part hereof as Schedule "A", from "RS-2" One and Two Family Suburban Residential, "R-2" One and Two Family Residential, and unzoned former street areas to "SC" Shopping Centre Classification; and

WHEREAS the application referred to in the immediately preceding recital set out a specific proposal that the Lands be used for major commercial development consisting of freestanding buildings with individual exterior entrances to the stores and thus being an extension of the format of the current commercial development existing on lands adjacent to the northeast; and

WHEREAS the said Common Council pursuant to the provisions of the *Community Planning Act*, Chapter C-13, R.S.N.B. 1973 as amended, gave third reading to the requested rezoning at its open session meeting held on the 10th day of April, 2006; and

WHEREAS pursuant to the provisions of Section 39 of the said *Community Planning Act*, terms and conditions were imposed by the Common Council in connection with the rezoning, which rezoning shall become effective upon the filing of a certified copy thereof in the Saint John County Registry Office; and

WHEREAS Common Council at its meetings of April 10, 2006 and July 18, 2006, authorized the execution of these presents to assure compliance with the terms and conditions imposed; and

WHEREAS these presents shall be recorded in the Saint John County Registry Office pursuant to the provisions of Section 39(4) of the said *Community Planning Act* and thereby bind subsequent owners of the Lands to the provisions hereof;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Developer for and in consideration of the City's amending its Zoning and Municipal Development Plan By-Laws as described in the recitals hereof, and of the City's entering into this Agreement as well as other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, agrees as follows:

1. That the Developer hereby warrants and represents that it is the owner of the fee simple interest in the Lands, other than Property Identification Numbers 304535, 55182463, 55182448 and 55182455 as identified in the first recital hereof.

2. INTENTIONALLY DELETED

3. That Buckley hereby warrants and represents that he is the owner of the fee simple interest in the lands having Property Identification Numbers 304535, 55182463, 55182448 and 55182455.

4. That the Developer shall undertake development of the Lands only for the purpose of a shopping centre having a maximum floor area of 55,740 m² (600,000 ft²) located in one or more buildings situate on one or more separate lots.

5. That the Developer must neither undertake nor permit the undertaking of any development or excavation upon the Lands unless and until in each such instance it first prepares a detailed site grading and drainage plan relating to such development or excavation and has also first obtained the Chief City Engineer's written approval thereof.

6. That the Developer must not undertake the construction of a building or other structure upon the Lands unless and until it has first:

- i. prepared a detailed site plan and detailed building elevation plan relating to such construction, with specificity of information satisfactory to the Development Officer for the City acting reasonably; and
- ii. obtained the Development Officer's written approval thereof the said approval not to be unreasonably withheld.

7. That without limiting the generality of the foregoing the aforesaid, detailed site plan and detailed elevation plans shall indicate the location of all buildings, parking areas, driveways, loading areas, signs, exterior lighting, exterior building materials and finishes, landscaped areas and other site features.

8. That in each instance of the submission of a building permit application for the development of or excavation upon the Lands, the Developer must provide with such application a complete copy of the relevant site grading and drainage plan together with the written approval thereof by the Chief City Engineer, as well as a detailed site plan and detailed building elevation plan together with the written approval thereof by the City's Development Officer. It is expressly agreed and understood that notwithstanding any by-law, statutory or other provision to the contrary, the Building Inspector of the City shall not process a building permit application described in this provision which is not accompanied by the aforesaid plans.

9. That the Developer must complete all work, with the exception of landscaping, described in the relevant approved detailed site plan and detailed building elevation plans prior to any enterprise upon the Lands opening for business. The Developer must complete all landscaping described in the aforesaid plans not later than 365 days following the issuance of the initial building permit related to the work described in the aforesaid and relevant detailed site and detailed building elevation plans.

10. That the Developer must pave all parking areas, loading areas, maneuvering areas and driveways with asphalt and must enclose them with cast in place concrete curbs to protect the landscaped areas and to facilitate proper drainage.

11. That the Developer must provide, and install at its sole cost and expense, all utilities infrastructure in an underground configuration, including without limiting the generality of the foregoing, the connections between the utilities located within a street right of way and any building or structure upon the Lands which they service.

12. That the Developer must landscape all disturbed areas of each lot which might be established by subdivision of the Lands and which are not or are not going to be occupied by buildings, driveways, walkways, parking or loading areas, or are identified as being for the purpose of constructing buildings, driveways, walkways, parking or loading areas, including a minimum of six (6) meters inside the front property line of each lot, and further must landscape

the portion of the City right of way lying between the front boundary line of each lot and the edge of the City curb/sidewalk.

13. That the Developer must widen Westmorland Road to four lanes between the end of the existing four lane section to the intersection of Westmorland Road with the proposed Retail Drive as shown on Schedule "A-2", including curb and sidewalk installation, storm sewer extension, any necessary relocation of utility lines and traffic light standards, and provision of a dedicated left-turn lane for east bound traffic on Westmorland Road at Retail Drive, all in accordance with detailed engineering plans to be prepared by the Developer, such plans to be in conformity with the General Specifications of the City applicable at the date approval is sought and for which the Developer must obtain the written approval of the Chief City Engineer prior to undertaking any such widening or related work, the consideration of said approval being carried out in a timely manner and the approval not to be unreasonably withheld. The Developer or the contractor carrying out the work described herein must provide the City with a Certificate of Insurance evidencing liability coverage of the nature and extent required by the City pursuant to Section 6.7.01 of the City's General Specifications (copy attached as Schedule "B"), and which certification must without limiting the generality of the foregoing, add the City as an Additional Insured respecting the work referred to in this paragraph. The Developer must also promptly reimburse the City any expense or costs which it may incur in having vacated any Mechanics' Lien affecting City property that may be filed or registered with respect to such work.

14. That the Developer must install at its sole cost and expense traffic signals at the intersection of Westmorland Road and the proposed Retail Drive in accordance with specifications which the Developer must obtain from the City's Chief Engineer, which will be provided by the City's Chief Engineer in a timely manner.

15. That notwithstanding anything to the contrary herein contained, no development of the Lands, except development of Sites 2 and 3 shown on Schedule "A" annexed hereto and forming a part hereof, and to a maximum combined size of 16,700 m² (180,000 ft²) of commercial space, shall occur unless and until:

- i. the Developer has had the proposed Retail Drive shown on the said Schedule "A-2" constructed so as to connect with Marlborough Avenue and Retail Drive has vested in the City as a public street; and
- ii. the Developer has reconstructed Marlborough Avenue as a four lane street including the provision of a school bus stop situate clear of the travel lanes of Marlborough Avenue, and
- iii. the Chief City Engineer has certified in writing that the aforesaid work has been satisfactorily completed in compliance with the General Specifications of the City of Saint John applicable at the time of such work said certification being considered in a timely manner and not unreasonably withheld.

16. That the Developer must assure that at no time, whether before, during or after construction, is vehicular access available to any portion of the Lands from Oakland Street, Rockwood Avenue or Highland Street.

17. That in the event the Developer intends to use Marlborough Avenue for access and egress to and from the Lands during site preparation and construction, then prior to such use commencing the Developer must first at its sole cost and expense construct a school bus stop as referred to in paragraph 15 hereof.

Excavation

18. (a) That the Developer, or the Contractor engaged by the Developer to carry out the blasting activity, must ensure that no explosives are delivered to the Lands more than twenty-four (24) hours prior to their use thereon;

(b) That the Developer must, prior to any blasting activity occurring on the Lands

- ii. deliver to the City a Certificate of Insurance evidencing a comprehensive general liability policy providing coverage against liability for bodily and property damage which may arise with respect to blasting upon the Lands. The coverage must be on "an occurrence" basis and must have inclusive limits of not

less than Two Million (\$2,000,000.00) Dollars, must identify the City as an Additional Insured with respect to the blasting operations associated with the development of the Lands, must include a cross-liability clause, a contractual liability endorsement respecting this agreement and must expressly stipulate that the coverage will remain in full force and not be amended, cancelled or allowed to lapse without written notice being delivered to the City thirty (30) days in advance of such action; and

ii. obtain the written confirmation from the City's Insurance and Claims Officer that such Certificate is satisfactory, consideration of said confirmation to be carried out in a timely manner and not unreasonably withheld.

(c) That the Developer hereby accepts sole responsibility for any damage or injury caused to utilities, properties, structures, wells, or persons as a result of blasting operations on the Lands;

(d) That the Developer must prior to each event of blasting strip the area of grubbing;

(e) That prior to any blasting on the Lands taking place, the Developer must deliver to the City's Building Inspector a written plan of blasting operations and sequences. Such plan shall conform to the following requirements:

i. Pre-blast Surveys

(A) pre-blast surveys are to be conducted by an appropriately qualified blasting consultant retained by the Developer, on all properties within the radius specified by the Developer's blasting consultant after consultation with the blaster or powder man. The pre-blast survey radius shall be defined by the Developer's blasting consultant and shall reflect the blasting design identified by the Developer's contractor in conjunction with the City's Building Inspector;

(B) within the radius mentioned in (A) herein, the Developer's blasting consultant will distribute a copy of the pre-blast survey to the owner of each property covered by the survey;

(C) the Developer's blasting consultant will perform at the Developer's cost and expense post blast surveys as requested by the Developer's contractor or a neighbouring property owner;

(D) in the event of damage or injuries suffered allegedly as a result of blasting activity upon the Lands, the Developer shall use its best efforts to have the contractor retained by it to undertake the blasting, resolve any such claims in a diligent and timely manner;

(E) the Developer's contractor will respond to all valid concerns of the neighbouring property owners during construction operations.

ii. Blast Design

(A) the Developer must not implement a Blast Plan or any part thereof relating to the Lands without first having had the Plan reviewed and approved by the Developer's independent blasting consultant (i.e. independent of the blasting contractor), and having provided the City's Building Inspector with a copy of such Plan and the blasting consultant's approval thereof. Additionally, if the City's Building Inspector requires the placement of blasting mats in a more extensive configuration than identified in the relevant Blast Plan, then no blasting shall occur until the requirement of the City's Building Inspector has been satisfied by the Developer;

(B) that the Developer must arrange for its independent blasting consultant to consider rock composition, proximity to structures and the potential risk associated with damage to those structures as well as any and all other factors which in the consultant's opinion are relevant, in determining whether to approve each Blast Plan proposed for the Lands;

(C) that the Developer will clearly identify on a plan of the Lands, the location and extent of each area upon which it will require blasting mats. Notwithstanding the approval of a Blasting Plan by the Developer's independent blasting consultant, the

City's Building Inspector may require more extensive use of blasting mats as he identifies and the Developer must ensure compliance with any such requirement;

(D) that the Developer must, prior to each drill hole being loaded with explosives, provide to the Developer's blasting consultant the maximum explosive per delay proposed and obtain the written approval of the blasting consultant thereto and a copy of such approval must be delivered to the City's Building Inspector on the day of the blast in question;

(E) that the Developer shall assure that the recommendations of the United States Bureau of Mines for Blasting Limits as they exist at the time of a blast shall be adhered to during the blasting operations upon the Lands.

- iii. (A) that each blast performed on the Lands will be monitored by the Developer's independent blasting consultant, using the information provided by three seismographs, each measuring peak particle velocity and over pressure. The placement of said seismographs shall be as determined by the Developer's independent blasting consultant.

iv. **Community Relations and Site Control**

(A) the Developer's contractor for development of the Lands shall make every effort to communicate the Blast Plan to all property owners in the area surrounding the construction site;

(B) the Developer must, prior to commencement of blasting operations upon the Lands hold a meeting chaired by its representative to provide a community orientation session. The purpose of this session will be to inform the public of potential hazards as well as the protocol associated with blasting operations on the Lands. The Developer must arrange that notice of such meeting, its date, time and location, shall be given at least four (4) days in advance by voice mail message to property owners within the pre-blast survey area and by such other means as would reasonably operate to provide public notice of the meeting;

(C) the Developer's contractor must communicate the proposed weekly blasting schedule to all property owners in the surrounding communities. The method of communication will be voice mail;

(D) the Developer or its contractor responsible for blasting will communicate the daily blasting schedule to all property owners by voice mail;

(E) the Developer must ensure that blast sirens will be positioned on both the Westmorland Road and the Rothesay Avenue side of the Lands to warn the public and all workers that a blast is to be set off and to indicate the "all clear" after the blast has taken place. Three (3) medium soundings of the siren two (2) minutes before detonation of a blast shall be used for warning and protection, followed by one (1) long sounding of the siren immediately before detonation blast and one (1) long, seven (7) second sounding of the sirens shall be used to communicate the "all clear" signal following the blast;

(F) the Developer must ensure that the handling and use of explosives shall be carried out by a person who holds a valid certificate of qualification in the blaster occupation or powder man trade issued under the *Apprenticeship and Occupational Certification Act* and shall be in compliance with the *Occupational Health and Safety Act* and Regulations under that Act;

(G) the Developer shall assure that the control, general safety, handling, record keeping and conducting of blasting operations upon the Lands shall be carried out in accordance with the latest edition of New Brunswick Regulation 91-191 under the *Occupational Health and Safety Act*;

(H) the Developer shall assure that immediately prior to each blast, the blasting area shall be cleared of all persons, as well as vehicular and pedestrian traffic and that flagmen shall be posted at each road entering the blasting area who shall stop all traffic and prevent such traffic from entering into the area until the "all clear" signal has sounded.

19. That the Developer must provide a sloped landscaped area lying along the full width of the northwesterly side of the Lands and having a minimum dimension of 49 meters (160 feet) measured from the rear property lines of the lots fronting on the southeast side of Oakland Street, in accordance with the detailed Landscaping Plan to be prepared by the Developer and for which the Developer must obtain the written approval of the City's Development Officer.

20. That the Developer shall neither construct nor permit the construction of any building, structure or driveway or parking area within the landscaped area mentioned in paragraph 19 hereof.

21. That the Developer must not commence any site preparation work on any portion of Development Sites 4, 5 and 6 illustrated on the said Schedule "A" that are within sixty (60) meters (200 feet) of the rear property lines of the lots fronting on Oakland Street, prior to obtaining the Development Officer's written approval of the detailed landscaping plan referred to in paragraph 19 hereof, said approval not to be unreasonably withheld and having also provided to the City security in the form of cash, certified cheque or an irrevocable standby letter of credit, in an amount to be determined by the City's Development Officer in order to assure completion of the landscaping illustrated on the detailed landscaping plan referred to in paragraph 19, all within one year of the commencement of the preparation work for the said Sites, 4, 5 and 6.

22. That upon the rezoning of the Lands, the Lands and any building or structure thereon must be developed and used in conformity with the Proposal described and the conditions identified herein.

Retail Drive

23. The Developer must:

- a) prepare Detailed Engineering Plans of Retail Drive so-called, including the street identified as Marlborough Avenue, both being located generally as shown on Schedule "A-2", such plans to be in conformity with the General Specifications of The City of Saint John applicable at the date approval is sought, pursuant to (b) hereof;
- b) obtain the Chief City Engineer's written approval of the plans referred to in (a) hereof, said approval not to be unreasonably withheld;
- c) enter into a contract which incorporates the Approved Detailed Engineering Plans referred to in 23(b) hereof and requires that the construction of Retail Drive be completed in full compliance with the said Approved Detailed Engineering Plans;
- d) execute to the satisfaction of the Chief City Engineer the Westmorland Road portion of the work identified in the said Approved Detailed Engineering Plans, not later than October 30, 2006 except as otherwise expressly provided herein;
- e) subject to the provisions of paragraph 25(1), execute to the satisfaction of the Chief City Engineer, the remainder of the work identified in the said Approved Detailed Engineering Plans, not later than December 31, 2006; and
- f) promptly reimburse the City any expense or cost which it may incur in having vacated any Mechanics' Lien affecting the City's property that may be filed or registered with respect to the construction of Retail Drive.

24. The Developer must pay the entire costs of executing the entirety of the work identified on the said Approved Detailed Engineering Plans, subject to the contribution of the City as set out in paragraph 25 hereof.

Retail Drive Cost Contribution

25. (1) The Developer shall, except as otherwise expressly provided herein, proceed with and totally complete the construction of Retail Drive so-called by November 30, 2006 and substantially in accordance with the Progress Schedule set out on the "Projected Retail Drive Cash Flow" statement attached hereto and forming a part hereof as Schedule "C". Notwithstanding the foregoing, if the Chief City Engineer and/or the Developer determine that the final coat of asphalt or some landscaping work cannot be completed on Retail Drive in 2006, then the City shall nonetheless deliver to the Developer an amount

being the City's contribution to the cost of the work performed in the month of November 2006 provided that the Developer is otherwise in compliance with the terms hereof.

(2)(a) Subject to the provisions of subparagraphs (3), (4), (5) and (6) hereof and subject as well to the City's contribution hereunder not exceeding in total Three Million Five Hundred Thousand (\$3,500,000.00) Dollars, the City shall contribute to the cost of the construction of Retail Drive as follows:

- i. on September 22, 2006 the City shall deliver to the Developer (or at the Developer's option to the Developer's solicitors the firm of Patterson Palmer) a cheque payable to the Developer which shall be equal to the City's contribution for the work done to July 31, 2006 as certified in accordance with paragraph 25(4)(a) of this agreement (less the applicable holdback on the City's contribution) plus HST;
- ii. on October 2, 2006 the City shall deliver to the Developer (or at the Developer's option to the Developer's solicitors the firm of Patterson Palmer) a cheque payable to the Developer which shall be equal to the City's contribution for the work done to August 31, 2006 as certified in accordance with paragraph 25(4)(a) of this agreement (less the applicable holdback on the City's contribution) plus HST,;
- iii. on October 31, 2006 the City shall deliver to the Developer (or at the Developer's option to the Developer's solicitors the firm of Patterson Palmer) a cheque payable to the Developer which shall be equal to the City's contribution for the work done to September 30, 2006 as certified in accordance with paragraph 25(4)(a) of this agreement (less the applicable holdback on the City's contribution) plus HST,;
- iv. on November 30, 2006 the City shall deliver to the Developer (or at the Developer's option to the Developer's solicitors the firm of Patterson Palmer) a cheque payable to the Developer which shall be equal to the City's contribution for the work done to October 31, 2006 as certified in accordance with paragraph 25(4)(a) of this agreement (less the applicable holdback on the City's contribution) plus HST,; and
- v. subject to the provisions of subparagraph 2(b) hereof, on December 30, 2006 the City shall deliver to the Developer (or at the Developer's option to the Developer's solicitors the firm of Patterson Palmer) a cheque payable to the Developer for the work done to November 30, 2006 as certified in accordance with paragraph 25(4)(a) of this agreement (less the applicable holdback on the City's contribution) plus HST.

(b) The December 2006 payment referred to in subparagraph 2(a)(v) hereof shall be reduced by the value of the work outstanding as certified by the Developer's engineering consultant at the time of substantial completion of Retail Drive (substantial completion being achieved when the Developer's consulting engineer certifies in writing that the construction of Retail Drive has been substantially completed and that such work has passed any final test required under the contract for its construction and further that the Developer has given a written undertaking to complete any outstanding work expeditiously).

(c) The amount withheld by the City from each contribution hereunder shall be delivered by cheque payable to the Developer within five (5) business days of the Developer's providing:

- i. proof satisfactory to the City that the entirety of any holdback from the contractor (except that held to satisfy deficiencies) has been appropriately released to the contractor;
- ii. a certified copy of a Statutory Declaration to the effect that all expenses incurred by the contractor in carrying out the construction of Retail Drive have been paid;

- iii. a certificate issued to the City of Saint John by a lawyer who is in good standing with the Law Society of New Brunswick wherein the lawyer certifies that there are no Mechanics Liens which have been filed in the Registry Office with respect to the work associated with the construction of Retail Drive and/or the land to form the right of way of Retail Drive as shown on the Subdivision Plan referred to in subparagraph 3(a)(i) herein which remain outstanding sixty one (61) days after the issuance of the Certificate of Substantial Completion (substantial completion being achieved when the Developer's consulting engineer certifies in writing that the construction of Retail Drive has been substantially completed and that such work has passed any final tests required under the contract for its construction and further that the contractor has given a written undertaking to complete any outstanding work expeditiously); and
- iv. a certified Clearance Certificate from the Workplace Health Safety and Compensation Commission.

(d) If delivery is made to the Developer's solicitors pursuant to paragraph 2(a) hereof, it shall be delivered to be held in escrow until the invoice to which it relates has been paid in full (less any applicable holdback) by the Developer, at which time it may be released to the Developer.

3.(a) Notwithstanding anything to the contrary herein contained, no contribution shall be made by the City to the Developer pursuant to this Agreement unless and until:

- i. the Developer has transferred to the City the unencumbered fee simple title to the parcel which will become the right of way for Retail Drive, which parcel is to be shown on a subdivision plan to be prepared by and at the Developer's expense and for which the Developer must obtain the written approval of the Chief City Engineer;

(b) The Developer has retained a reputable engineering firm acceptable to the Chief City Engineer to:

- i. monitor, inspect and report upon the progress of work by the Developer's contractor respecting the construction of Retail Drive; and
- ii. has had the said engineering firm, within two (2) working days of the Developer's executing this Agreement, deliver to the City a letter the text of which is attached hereto and forms a part hereof as Schedule "D".

4. Notwithstanding anything to the contrary herein contained no contribution shall be made by the City to the Developer pursuant to this Agreement unless and until:

- a) the Developer has provided written confirmation addressed to the City from the Developer's engineering consultants, referred to in paragraph 3(b) hereof, confirming:
 - i. that the work for which each certificate has been issued respectively has been satisfactorily completed in accordance with the detailed engineering plans of Retail Drive which have been approved by the Chief City Engineer pursuant to paragraph 23(b) and in conformity with the provisions of the City of Saint John General Specifications in effect at the time of said approval;
 - ii. that the amount of the certificate is an accurate reflection of the work to which it relates and is in accordance with the detailed engineering plans hereinbefore referred to.

5. Notwithstanding anything to the contrary herein contained, no contribution shall be made by the City to the Developer pursuant to this Agreement unless the Developer has delivered to the City prior to any work in connection with the construction of Retail Dr. or the widening of Marlborough Ave. occurring on City lands, a Certificate of Insurance naming the City as an additional insured, evidencing a policy of commercial general liability coverage on an "an occurrence" basis and containing a cross-liability clause, which policy must have an inclusive limit of not less than Two Million

(\$2,000,000.00) dollars. The aforesaid Certificate must provide that the coverage shall stay in force and not be amended, cancelled or allowed to lapse without thirty (30) days prior notice in writing being given to the City. The aforesaid insurance coverage must remain in full force and effect until the work described in this subparagraph has been completed to the satisfaction of the chief City Engineer. "

6. Notwithstanding anything of the contrary herein contained no contribution shall be made by the City to the Developer pursuant to this Agreement unless and until the City has been provided with a Statutory Declaration signed by an officer of the Developer confirming that the Developer has paid his contractor in full, less a fifteen percent (15%) holdback, for the work to which each Certificate provided pursuant to Paragraph 25(4) applies respectively.

26. The Developer must repay to the City **Six Hundred Fifty Thousand (\$650,000.00) Dollars** as follows:

- a) subject to (b) hereof the Developer must repay the said amount to the City at the rate of \$2.03 per square foot of retail space in excess of 180,000 square feet constructed upon the Lands within thirty (30) days of each retail space being open for business. To further clarify, by way of example, if a twenty thousand square foot retail store opens for business then the Developer shall pay the sum of Forty Thousand and Sixty Hundred Dollars (\$40,600.00) within thirty days (30) of the said retail space opening for business;
- b) the balance of the **Six Hundred Fifty Thousand (\$650,000.00) Dollars** shall be repaid to the City within thirty (30) days of the total retail space constructed upon the Lands and open for business reaching 400,000 square feet.

27. The Developer hereby indemnifies and saves harmless the City from all manner of claims or actions by whomsoever made or brought arising out of the execution of the Work identified on the aforesaid Approved Detailed Engineering Plans and any additional work subsequently approved by the Chief City Engineer, excepting those caused by the negligence of the City or its employees.

Access to Lands

28. That the Developer must provide the Chief City Engineer and/or his designates unimpeded access at all reasonable times to the Lands for the purpose of monitoring, inspecting or conducting tests that he or they deem appropriate in order to assure that work is undertaken in conformity with the Approved Detailed Engineering Plans and General Specifications referred to herein.

Notice

29. All notices and approvals required or permitted by this Agreement shall be in writing and delivered personally or by courier or sent by telecopier to each of the parties at their respective New Brunswick addresses as follows:

- (a) In the case of the City at:

The City of Saint John
8th Floor, City Hall, 15 Market Square
P. O. Box 1971
Saint John, NB E2L 4L1

Attention: J. Patrick Woods
Common Clerk
Fax Number: 506-674-4214

- (b) In the case of the Developer at:

479 Rothesay Avenue
Saint John, NB
E2L 4G7

Fax Number: 506-634-2236 with a copy to

Patterson Palmer
Suite 1500, One Brunswick Square
Saint John, N.B. E2L 4H8

Attention: William H. Teed, Q.C.
Fax Number: 506-632-8809

(c) In the case of Buckley at:

479 Rothesay Avenue
Saint John, NB
E2L 4G7

Fax Number: 506-634-2236

or at such other address or fax number of which the addressee may from time to time have notified the addressor. A notice shall be deemed to have been sent and received on the day it is delivered personally or by courier or on the day on which transmission is confirmed, if telecopied. If such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be deemed to have been sent and received on the next Business Day.

ENTIRE AGREEMENT

30. This Agreement constitutes the entire agreement among the parties with respect to the matters herein and supercedes all prior or collateral agreements and understandings, whether oral or written, between the parties or their respective representatives. This agreement shall not be modified, amended or assigned except with the consent in writing of the parties hereto.

GOVERNING LAW

31. This Agreement shall be construed and interpreted in accordance with the laws of the Province of New Brunswick.

Dated at the City of Saint John this 16th day of September, 2006

This agreement shall enure to the benefit of and be binding upon the parties hereto their successors and assigns respectively.

IN WITNESS WHEREOF the parties hereto have duly executed these presents the day and year first above written.

SIGNED, SEALED & DELIVERED

In the presence of:

EAST POINT INC.

Per: Troy Northrup

THE CITY OF SAINT JOHN

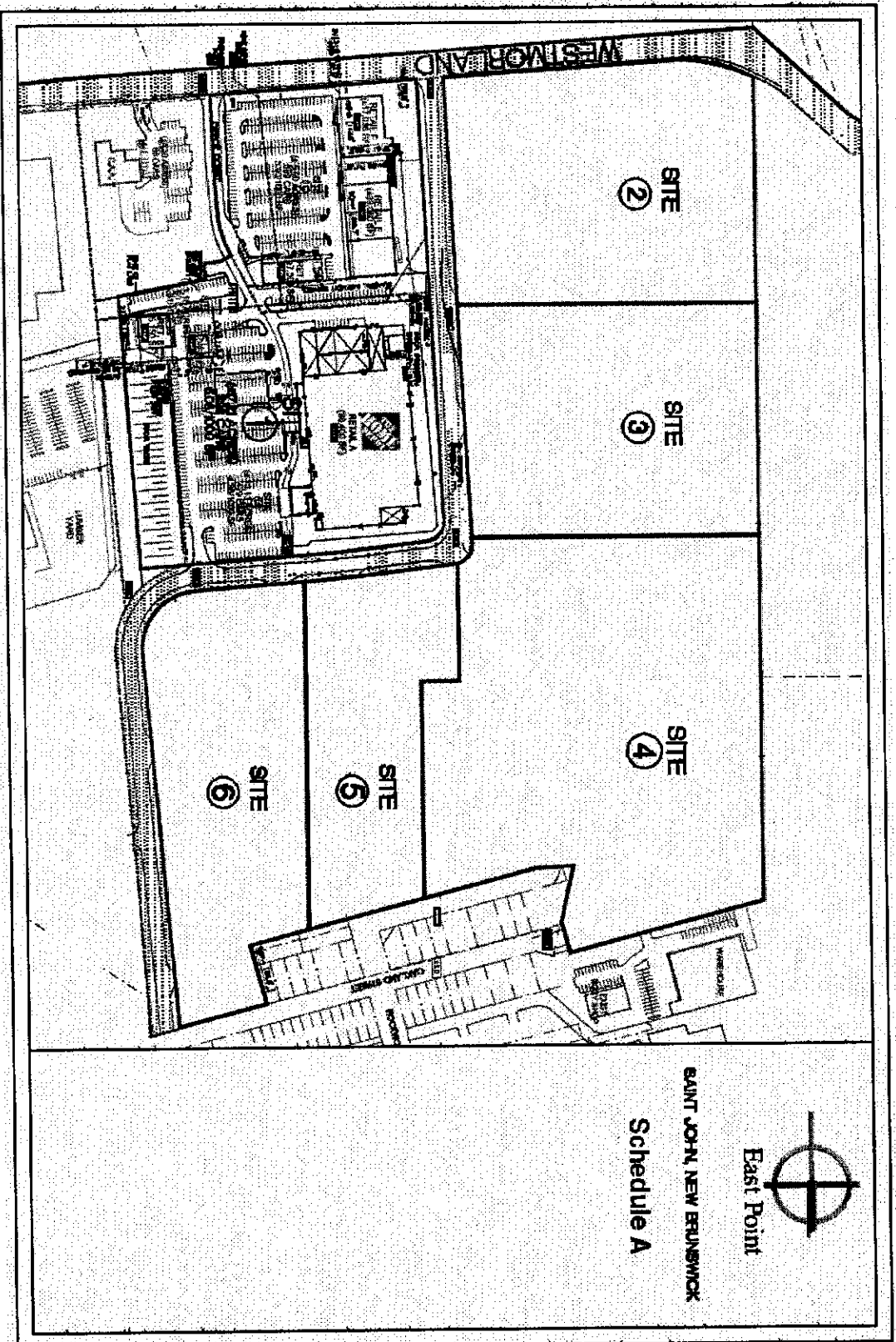
N.M. McFarlane, Mayor

J. Patrick Woods, Common Clerk

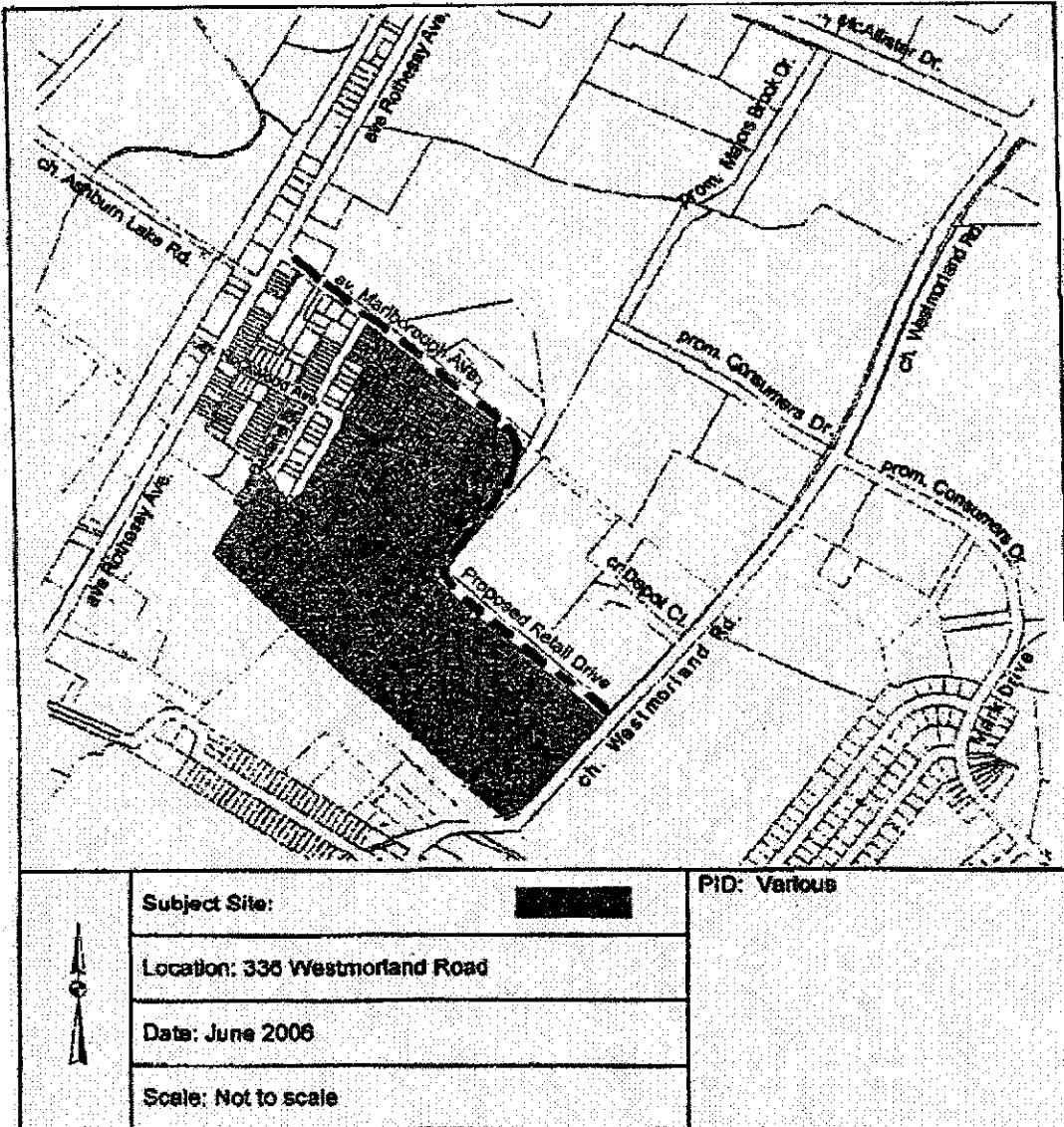
Common Council Resolutions:
April 10, 2006.
July 18, 2006

~~ROWLAND GOARL BUCKLEY~~

Schedule "A"
The Lands



Schedule "A-2"



Schedule "B"
Section 6.7.01-City's General Specifications

6.7 Insurance

6.7.01 Liability Insurance

The Contractor shall supply and keep in force for the full term of this Contract, a Comprehensive General Liability policy against liability for bodily and property damage that may arise with respect to the Work being performed under this Contract. This policy shall include;

- (a) Inclusive limits of at least two million dollars (\$2,000,000) unless otherwise specified;
- (b) The City of Saint John added as an Additional Insured with respect to the operations of the Contractor;
- (c) Contractual Liability with respect to this Contract;
- (d) A Cross Liability Clause;
- (s) Contingent Employers Liability;
- (f) Non-Owned Automobile Liability
- (g) Completed Operations that shall remain in force for twelve (12) months from the date of the issuance of the Certificate of Final Completion by the Engineer; and
- (h) Thirty (30) days written notice shall be given to the City of Saint John in the event of the Cancellation, or a Material Change, of this policy.

A separate policy endorsement shall be provided if any blasting is to be carried out under the Contract.

Agreement to Indemnity and Hold Harmless;

The Contractor agrees to indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against all claims, demands, actions, suits, or proceedings, and all costs and expenses incurred in connection therewith, arising out of or in connection with the Work and the requirements as set out in this Contract.

Schedule "C"
Projected Retail Drive Cash Flow

Item	Category	City Contribution	Progress to July 30/06	Projected Progress to Aug 30/06	Projected Progress to Sept 30/06	Projected Progress to Oct 30/06	Projected Progress to Nov 30/06	Totals
1	Clearing & Grubbing	\$ 14,130.00	\$ 9,326.00	\$ 4,804.00	\$ 258,693.00	\$ 83,449.00		\$ 14,130.00
2	Earthwork @ Roadway (23M width)	\$ 834,492.00	\$ 275,382.00	\$ 216,968.00		\$ 114,840.00	\$ 101,840.00	\$ 834,492.00
3	Asphalt	\$ 216,680.00				\$ 54,551.00	\$ 36,368.00	\$ 216,680.00
4	Concrete Walks	\$ 90,919.00				\$ 41,815.00	\$ 11,794.00	\$ 90,919.00
5	Concrete Curb	\$ 53,609.00				\$ 9,900.00		\$ 53,609.00
6	Landscaping	\$ 32,970.00				\$ 13,657.00	\$ 33,313.00	\$ 32,970.00
7	Electrical	\$ 195,960.00					\$ 42,390.00	\$ 195,960.00
8	Guard Rail	\$ 42,390.00						\$ 42,390.00
9	Trench Rock	\$ 61,819.00		\$ 43,273.00	\$ 18,546.00	\$ 61,321.00		\$ 61,819.00
10	Storm	\$ 191,933.00		\$ 50,000.00	\$ 80,612.00	\$ 50,018.00		\$ 191,933.00
11	Sanitary	\$ 104,020.00			\$ 54,001.00	\$ 90,232.00		\$ 104,020.00
12	Water	\$ 180,464.00			\$ 90,232.00	\$ 90,232.00		\$ 180,464.00
13	GC's/Fee	\$ 308,505.00	\$ 89,466.00	\$ 70,650.00	\$ 61,230.00	\$ 70,650.00	\$ 16,509.00	\$ 308,505.00
14	Design Fees	\$ 80,070.00	\$ 64,056.00	\$ 12,010.00	\$ 4,004.00	\$ 10,880.00	\$ 6,171.00	\$ 80,070.00
15	Soils Testing	\$ 51,810.00	\$ 4,710.00	\$ 12,434.00	\$ 17,615.00	\$ 9,316.00		\$ 51,810.00
16	Services Testing	\$ 21,666.00		\$ 3,250.00	\$ 8,100.00			\$ 21,666.00
17	Erosion Control	\$ 56,520.00	\$ 14,130.00	\$ 23,738.00	\$ 18,652.00			\$ 56,520.00
18	Permits	\$ 16,721.00		\$ 18,721.00				\$ 16,721.00
19	Bonds/Insurance	\$ 41,213.00	\$ 41,213.00					\$ 41,213.00
20	Contingency	\$ 317,714.00		\$ 82,661.00	\$ 69,944.00	\$ 82,661.00	\$ 82,448.00	\$ 317,714.00
21	Traffic Lights	\$ 82,425.00			\$ 24,092.00	\$ 58,333.00		\$ 82,425.00
22	Watermain to Sunnyside	\$ 117,750.00			\$ 117,750.00			\$ 117,750.00
23	Widen Westmorland	\$ 306,150.00		\$ 40,829.00	\$ 165,321.00	\$ 100,000.00		\$ 306,150.00
24	Bus Stop @ Marlborough	\$ 7,536.00		\$ 4,710.00	\$ 2,826.00			\$ 7,536.00
25	Services from HD Easement	\$ 72,534.00		\$ 27,318.00	\$ 45,216.00			\$ 72,534.00
	Progress to Date	\$ 3,500,000.00	\$ 498,283.00	\$ 609,366.00	\$ 1,109,894.00	\$ 951,624.00	\$ 330,833.00	\$ 3,500,000.00

Schedule "D"
Developer's Engineering Consultant's Letter

The City of Saint John
P.O. Box 1971
Saint John, NB E2L 4L1

Attention: Chief City Engineer

Dear Sir:

Re Inspection Services — Retail Drive

This letter is written to confirm that we have been retained by Milestone Construction and Development Inc. to provide inspection services with respect to all aspects of the work to be executed under the contract between East Point Inc. and Milestone Development and Construction Inc. for the construction of Retail Drive so-called running between Westmorland Road and Rothesay Avenue in accordance with Detailed Engineering Plans referred to in paragraph 23(a), in an Agreement between East Point Inc., Rowland Buckley, and The City of Saint John dated September 15, 2006.

Further we confirm that we shall provide The City of Saint John with a copy of all advice or reports arising from our inspection services as that advice is given or reports prepared, which copies shall be addressed to the City of Saint John. We also acknowledge that The City of Saint John will rely upon such advice or reports in determining whether or to what extent it shall deliver to East Point Inc. contributions respecting the cost of the said Retail Drive.

Yours truly,

Form 45

AFFIDAVIT OF CORPORATE EXECUTION

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

Deponent: Troy D. Northrup
477 Rothesay Avenue
Saint John, NB
E2L 4G7

Office Held by Deponent: Secretary

Corporation: East Point Inc.
Place of Execution: Saint John, New Brunswick


Date of Execution: September 16, 2006

I, Troy D. Northrup, the deponent, make oath and say:

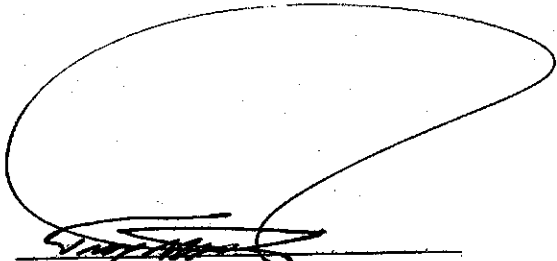
1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me as the officer duly authorized to execute the instrument on behalf of the corporation;
3. That the seal of the corporation was affixed to the instrument by order of the Board of Directors of the corporation;
4. That the instrument was executed at the place and on the date specified above;
5. That the ownership of a share of the corporation does not entitle the owner thereof to occupy the parcel described in the attached instrument as a marital home.

SWORN TO at Saint John,
in the County of Saint John and
Province of New Brunswick, on
the 16 day of September, 2006.

BEFORE ME:



William H. Teed, Q.C.
A Commissioner of Oaths
Being a Solicitor



Troy D. Northrup

Form 44

CERTIFICATE OF EXECUTION

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

Notary Public: William H. Teed, Q.C.
Patterson Palmer
One Brunswick Square, Suite 1500
PO Box 1324
Saint John, New Brunswick
E2L 4H8

Jurisdiction: New Brunswick

Place of Residence
of Notary Public: Saint John, New Brunswick.

Persons Who Executed
the Instrument: Rowland Goarl Buckley

Place of Execution: Saint John, New Brunswick

Date of Execution: September _____, 2006

I, William H. Teed, Q.C., a Notary Public in and for the jurisdiction specified above and residing at the place of residence specified above, do hereby certify:

1. That the person who executed the attached instrument personally appeared before me;
2. That the person is known to me;
3. That I explained to the person the contents of the attached instrument to the best of my professional abilities;
4. That, after receiving the explanation, the person executed the attached instrument voluntarily at the place and on the date specified above;
5. That the person acknowledged that he is of the age of majority;
6. That I have ascertained that the name by which the person is identified in the attached instrument is the person's names in accordance with the *Naming Conventions Regulation* under the *Land Titles Act*; and
7. That I have signed the attached instrument next to the signature of the person for whom this Certificate of Execution has been prepared, with my name printed legibly underneath my signature.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal.

Place: Saint John, New Brunswick

Date: September 13, 2006

Notary Public:


William H. Teed, Q.C.

Form 45

AFFIDAVIT OF CORPORATE EXECUTION
Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Deponent: J. Patrick Woods
City of Saint John
P.O. Box 1971
Saint John, NB E2L 4L1

Office Held by Deponent: Common Clerk

Corporation: The City of Saint John

(Other Officer Who Executed
the Instrument) N.M. McFarlane
City of Saint John
P.O. Box 1971
Saint John, NB E2L 4L1

Office Held by Other Officer
Who Executed the Instrument: Mayor

Place of Execution: City of Saint John

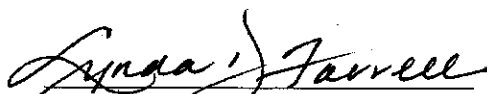
Date of Execution: September ^{19th}, 2006.

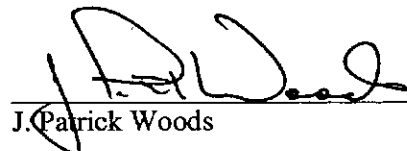
I, J. Patrick Woods, the deponent, make oath and say:

1. That I hold the office specified 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 the other officers specified above, as the officers duly authorized to execute the instrument on behalf of the corporation;
3. That the seal of the corporation was affixed to the instrument by order of the Common Council of The City of Saint John;
4. That the instrument was executed at the place and on the date specified above.
5. The corporation has no shareholders.

SWORN TO at the City of)
Saint John, in the County of)
Saint John, Province of New)
Brunswick on the 19th)
day of September, 2006.)

BEFORE ME:)


Lynda D. Farrell)
Commissioner of Oaths)
Being a Solicitor)


J. Patrick Woods

CERTIFICATE OF EFFECT

Parcel Identifier: 55183222,

Owner: East Point Inc.
479 Rothesay Ave
Rothesay, New Brunswick
E2L 4G7

Parcel Identifier: 304535, 55182463, 55182448 and 55182455

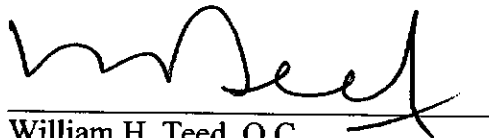
Owner: Buckley, Rowland Goarl
50 Highcliff Court
Rothesay, NB
E2H 2T8

THIS IS TO CERTIFY THAT the intended effect of the registration of the attached Amendment to the Zoning By-Law for the City of Saint John and the Agreement which is a part thereof on the current Certificates of Registered Ownership for the specified parcels is as follows:

Addition: to add an encumbrance: City of Saint John
Instrument: Amendment to the Zoning By-Law and
Agreement re Use of Land

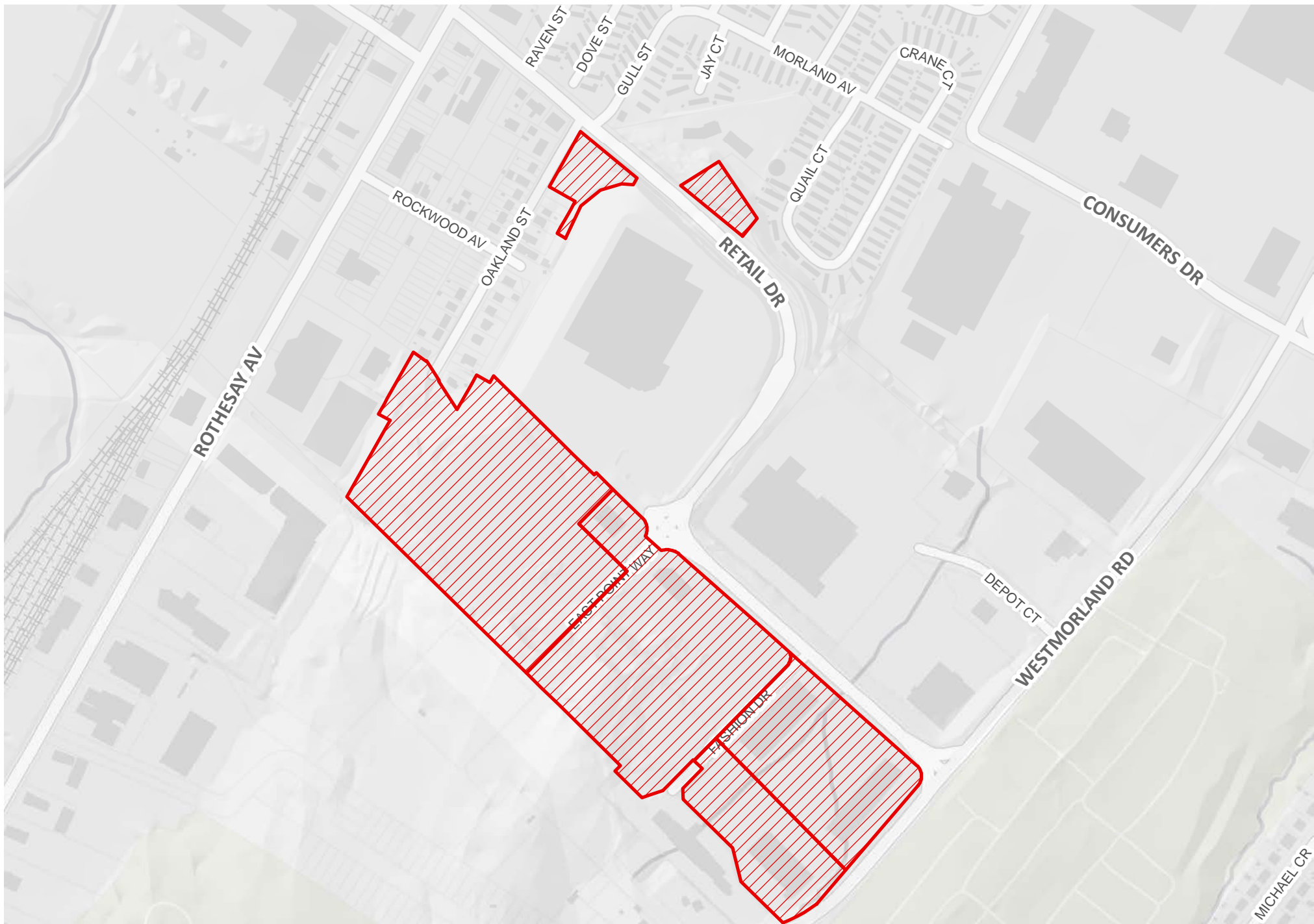
Date: September 19, 2006

Subscriber:



William H. Teed, Q.C.
Patterson Palmer
One Brunswick Square, Suite 1500
Saint John, New Brunswick
E2L 4H8

Our File No: 106/18/1522



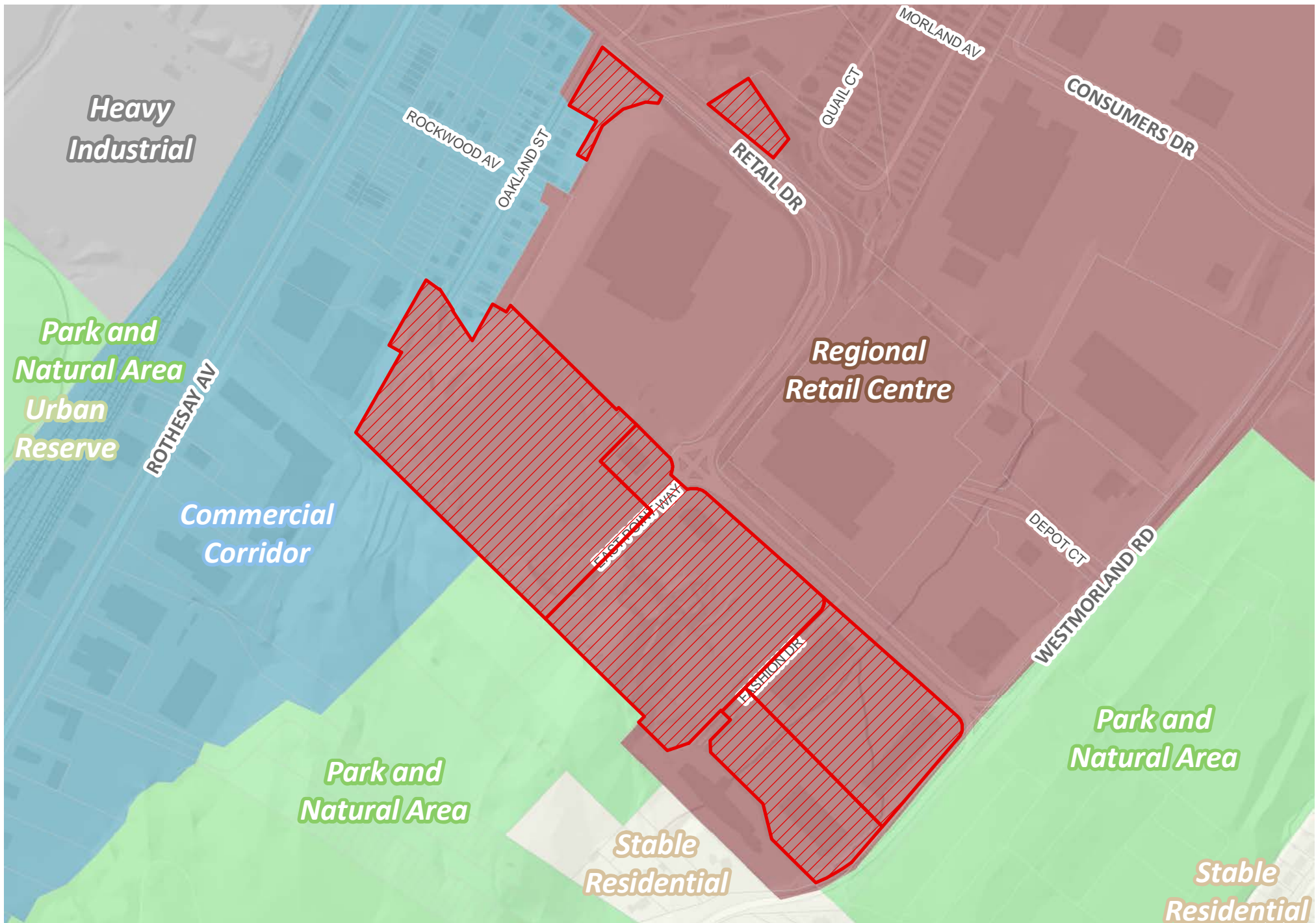
Map 1 - Site Location

Horizon Management Ltd. - Retail Drive Area

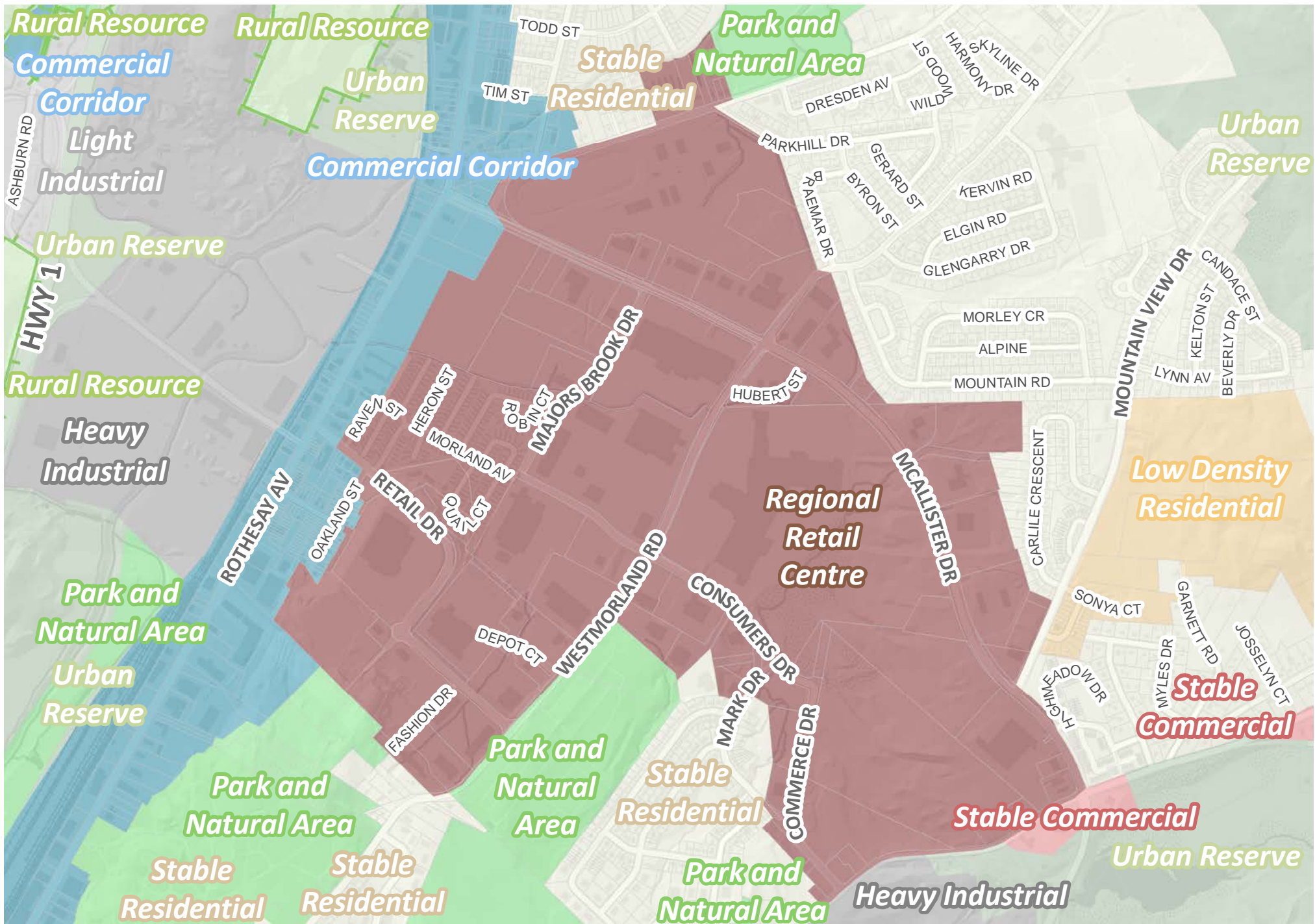
The City of Saint John
Date: May-13-19

0 100





Map 2 - Future Land Use
 Horizon Management Ltd. - Retail Drive Area

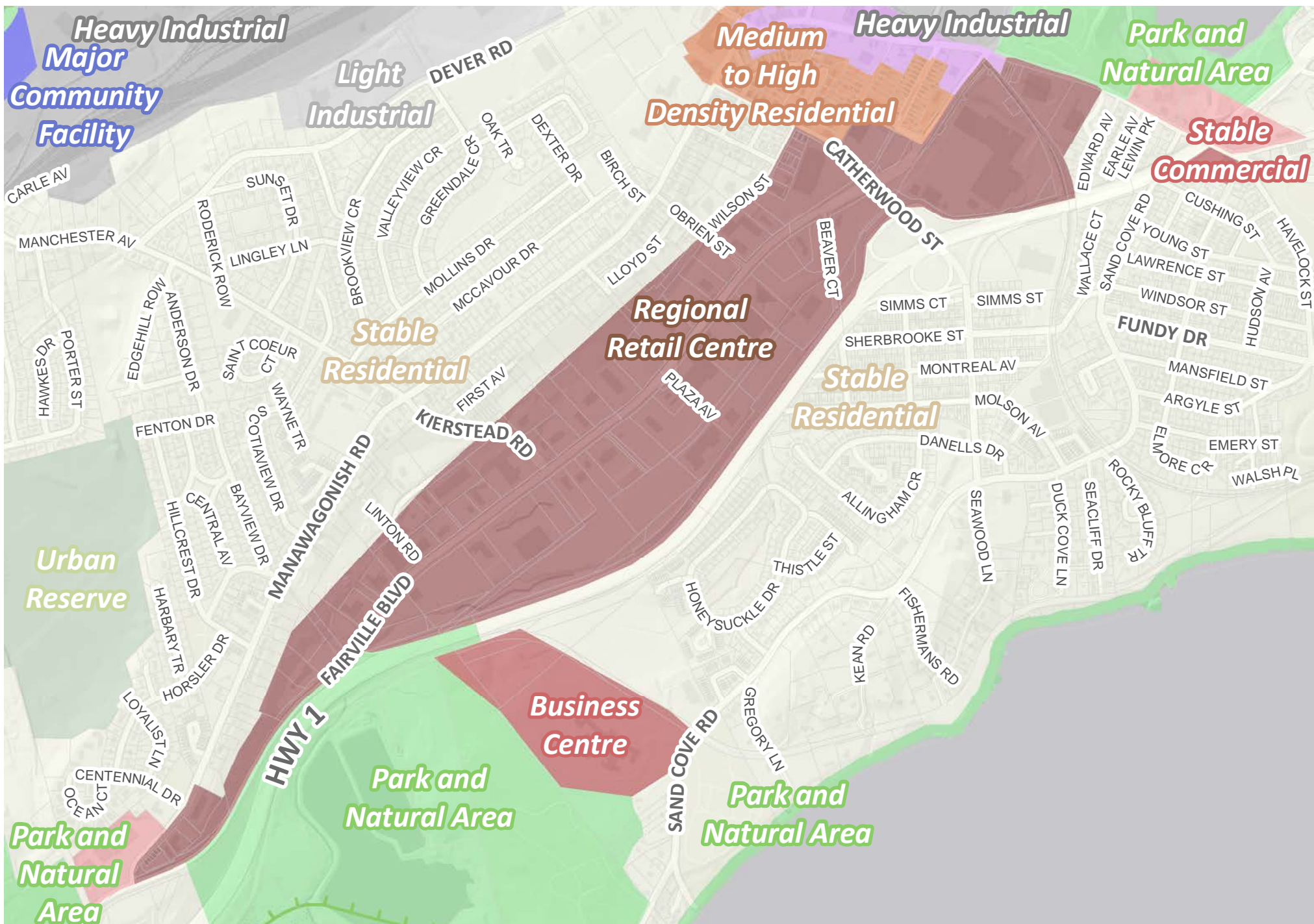


Map 2a - Regional Retail Centre East Saint John

Horizon Management Ltd. - Retail Drive Area

The City of Saint John
Date: April-24-19



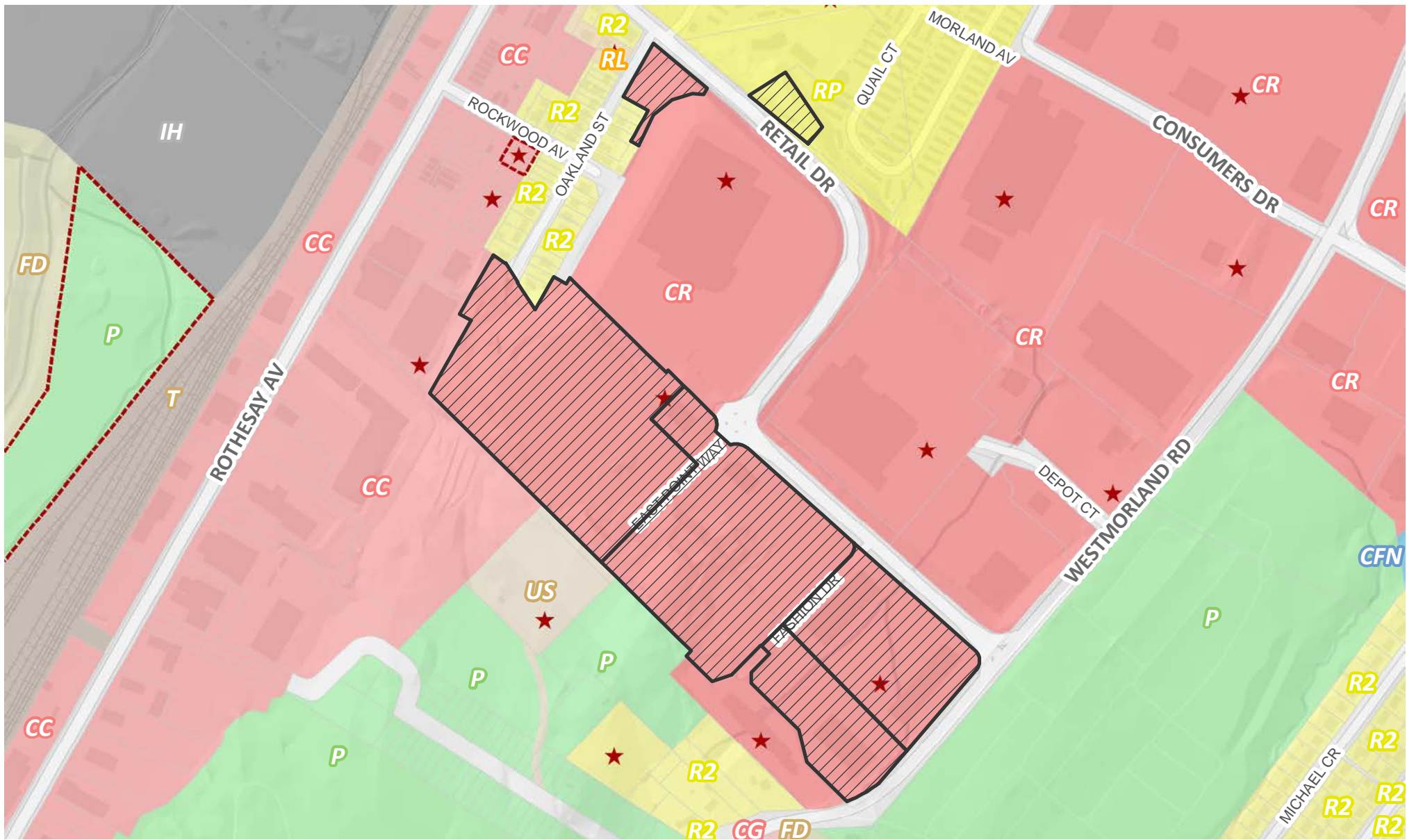


Map 2b - Regional Retail Centre West Saint John

Horizon Management Ltd. - Retail Drive Area

The City of Saint John
Date: April-24-19





- | | | |
|--|---------------------------------|----------------------|
| (CC) Corridor Commercial | (IH) Heavy Industrial | (T) Transportation |
| (CFN) Neighbourhood Community Facility | (P) Park | (US) Utility Service |
| (CG) General Commercial | (R2) Two-Unit Residential | |
| (CR) Regional Commercial | (RL) Low-Rise Residential | |
| (FD) Future Development | (RP) Mini-Home Park Residential | |

★ Section 59 Conditions

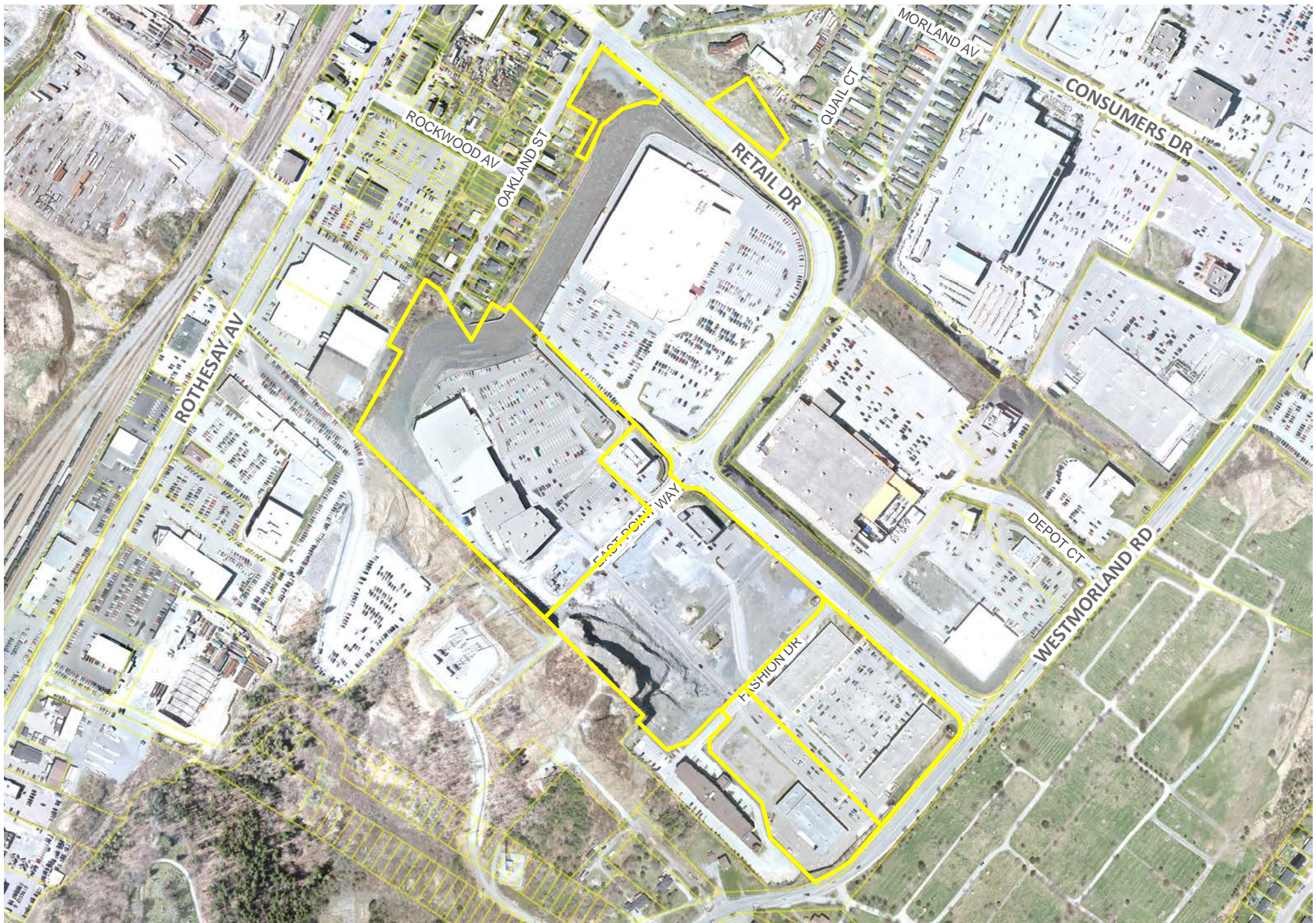
Map 3 - Zoning

Horizon Management Ltd. - Retail Drive Area

The City of Saint John
Date: May-13-19

0 100 m





Map 4 - Aerial Photography
Horizon Management Ltd. - Retail Drive Area

The City of Saint John
Date: May-13-19

0 125 m





View of 40 Retail Drive



View from Costco parking area of 85-89 Retail Drive



View of 310 Retail Drive



View of 310 Retail Drive



SAINT JOHN, NEW BRUNSWICK
05.110
SITE PLAN

DWG #: A1-612
2019-01-30
SCALE = 1 : 2500



SITE 3 STATISTICS	
TOTAL SITE 3 AREA	±9.97 ACRES
TOTAL RETAIL AREA SITE 3	±33,890 S.F.
TOTAL HOTEL AREA SITE 3	±99,000 S.F.
TOTAL RESIDENTIAL AREA SITE 3	±226,500 S.F.
TOTAL GFA	±359,390 S.F.
TOTAL RESIDENTIAL UNITS	196 UNITS
TOTAL HOTEL UNITS	100 UNITS

PARKING PROVIDED	
RESIDENTIAL	196 CARS
	1.00 CARS/UNIT
RETAIL	133 CARS
	3.92/1000 S.F.
HOTEL	100 CARS
	1.00 CARS/UNIT
TOTAL PARKING	429 CARS

TOTAL GROUND FLOOR AREA SITE 3	±80,830 S.F.
COVERAGE	18.6%

NOTES:
VISITORS WILL USE RETAIL PARKING

2 RES. K.1 2ND-6TH TYP. PLAN
A1-612.1 1 : 1000

3 RES. K.4-5 2ND-5TH TYP. PLAN
A1-612.1 1 : 1000

1 SITE 3 ENLARGED PLAN
A1-612.1 1 : 1000



EAST POINT CENTRE

SAINT JOHN, NEW BRUNSWICK
05.110
ENLARGED PLANS

PRELIMINARY

DWG #: A1-612.1
2019-01-30
SCALE = 1 : 1000

