

**City of Nanaimo  
REPORT TO COUNCIL**

DATE OF MEETING: 2013-MAR-11

AUTHORED BY: SHEILA HERRERA, PLANNER, PLANNING & DESIGN SECTION

RE: RA308 – COVENANT AMENDMENT – 72 TWELFTH STREET

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STAFF RECOMMENDATION:

That Council:

1. receive this report pertaining to a covenant amendment application to amend an existing restrictive use covenant, wherein the applicant proposes to change the phasing of the development permitted on the subject property; and
2. direct Staff to forward the item to the next scheduled Public Hearing, as per Council's policy.

PURPOSE:

The purpose of this report is to provide Council with background information regarding a covenant amendment application for the property located at 72 Twelfth Street to change the phasing of the development permitted on the site.

BACKGROUND:

***Subject Property and Surrounding Area***

A covenant amendment application for 72 Twelfth Street has been submitted by Urban Design Group Architects Ltd., on behalf of Chase River Properties Inc. The subject property is located on the west side of the Island Highway at the Twelfth Street intersection, which provides a 'right-in only' entrance off the highway. The site can also be accessed from Eleventh Street (Attachment A – Location Plan). The site is approximately 1.79 ha (4.4 acres) in area and is occupied by Country Grocer. The abutting properties contain a mix of uses including various commercial uses, single dwellings, and a mobile home park.

***Existing Covenant Restrictions***

Through rezoning application RA158, restrictive covenants were placed on title to the subject property under charge #FA82416 (see Attachment B – copy of covenant). The covenant section that relates to the phasing of the development specifies which buildings can be constructed in Phase 1 and Phase 2:

<b>PHASE 1</b>	Building A – Food Store, including parking lot and landscaping.
<b>PHASE 2</b>	Building B – Mixed Use, including 8 residential units on the second floor. Building C – Commercial.  In order for any other use to be permitted in Phase 2, the residential units must be constructed and maintained on site. In essence, the covenant requires Building B to be constructed prior to Building C.

Attachment C – Site Plan, shows the siting of all three buildings.

**Proposed Covenant Amendment**

The applicant proposes to amend the covenant in order to change the restriction on the phasing of the development. The applicant would like to construct Building C as the next phase of the development, which would provide for additional commercial space only, leaving Building B – Mixed Use (with the 8 residential units) to a later date. The applicant has stated that since 2007 when Country Grocer was constructed, there has been no interest or demand for a residential use on this site, and that obtaining financing for the residential component at this time is difficult. In addition, the applicant has stated that there is a high demand from other retail tenants to locate on this site; and when market conditions are more conducive, the residential component would be completed as the final stage of development.

**Staff Comments**

The covenant requiring residential units was originally put in place as part of the rezoning to meet the broader goals of the OCP and the long term concept for the Town Centre in the Chase River Neighbourhood Plan. As the proposed change only relates to phasing of the development and does not remove or reduce the residential component, Staff is supportive of the covenant amendment. More specifically, Staff recommends that the covenant be amended to specify that Building C be permitted as Phase 2 and Building B be permitted as Phase 3.

Respectfully submitted,

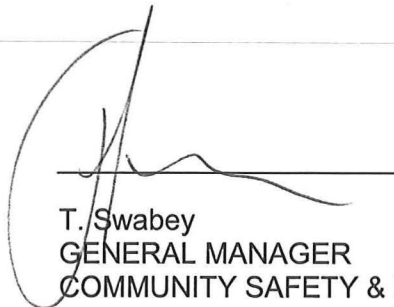


B. Anderson, MCIP  
MANAGER  
PLANNING & DESIGN

Concurrence by:



A. Tucker, MCIP  
DIRECTOR  
PLANNING

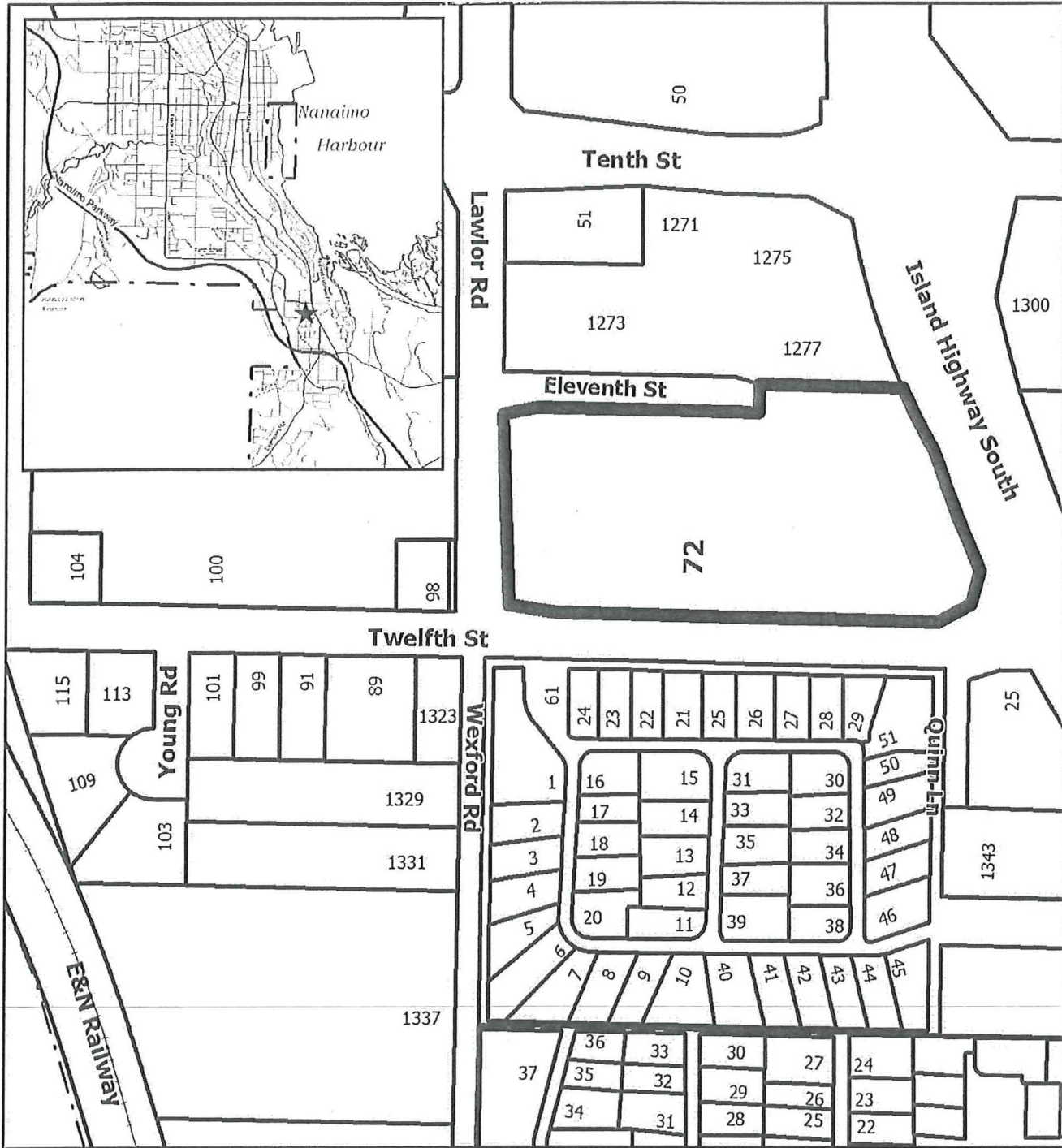


T. Swabey  
GENERAL MANAGER  
COMMUNITY SAFETY & DEVELOPMENT

CITY MANAGER COMMENT:

I concur with the staff recommendation.

# Attachment A



REZONING APPLICATION NO. RA000308

## LOCATION PLAN

Civic: 72 Twelfth Street

 Subject Property





## Attachment B

Page 6

4. The Grantee acknowledges that the requirement of subparagraph 3(b) is contingent on the Ministry approving the deceleration lane. If, after best efforts by the Grantor to secure such approval, the Ministry refuses to approve the deceleration lane, or fails to respond to the Grantor's request for such approval within a period of eighteen (18) months from the Grantee's adoption of Zoning Bylaw Amendment Bylaw 2006, No 4000.390, this requirement will no longer apply.

### **Additional Restrictions (No Use) regarding Gateway Trail SRW**

5. Notwithstanding greater or broader uses, density or other regulations of the Zoning Bylaw and paragraph 2 above, the Grantor further covenants and agrees that the Land shall not be used for any use until such time that the Grantor has, at its sole cost, registered a Statutory Right of Way to the benefit and the reasonable satisfaction of the Grantee regarding the public use of the 1.5 metre wide pedestrian trail identified on the Landscape Plan ("Trail").
6. The Grantor agrees that prior to the issuance of an occupancy certificate and prior to the Grantor making any use of a building on the Land, the Grantor shall construct, install and plant the Trail in general compliance with the standards outlined in the Landscape Plan, to the reasonable satisfaction of the Grantee's General Manager of Development Services.

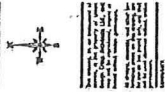


### **Additional Restrictions (Limited Use) regarding Phasing and Residential Dwellings**

7. Notwithstanding greater or broader uses, density or other regulations of the Zoning Bylaw and paragraph 2 above, the Grantor further covenants and agrees that:
  - (a) Phase 1 of the Lands may only be used for a retail store use once all required landscaping and parking is provided, the latter in accordance with the City's Parking Bylaw No. 7013 as amended or relaxed by variance for this development, to the satisfaction of the Grantee; and
  - (b) the Land shall not be used for any use other than the retail store in Phase 1 until such time that eight (8) residential dwelling units are constructed on the Land. For certainty, once constructed, the residential dwelling units shall be perpetually maintained and must not be converted to another use; the Grantor expressly agrees that any other use would not be legally non-conforming given that those uses in Phase 2 are only permitted in conjunction with the eight (8) residential dwelling units. In the event of the destruction of the residential dwelling units, the Grantor shall have twenty-four (24) months to complete construction of the replacement residential dwelling units calculated from the date of destruction.

Attachment C

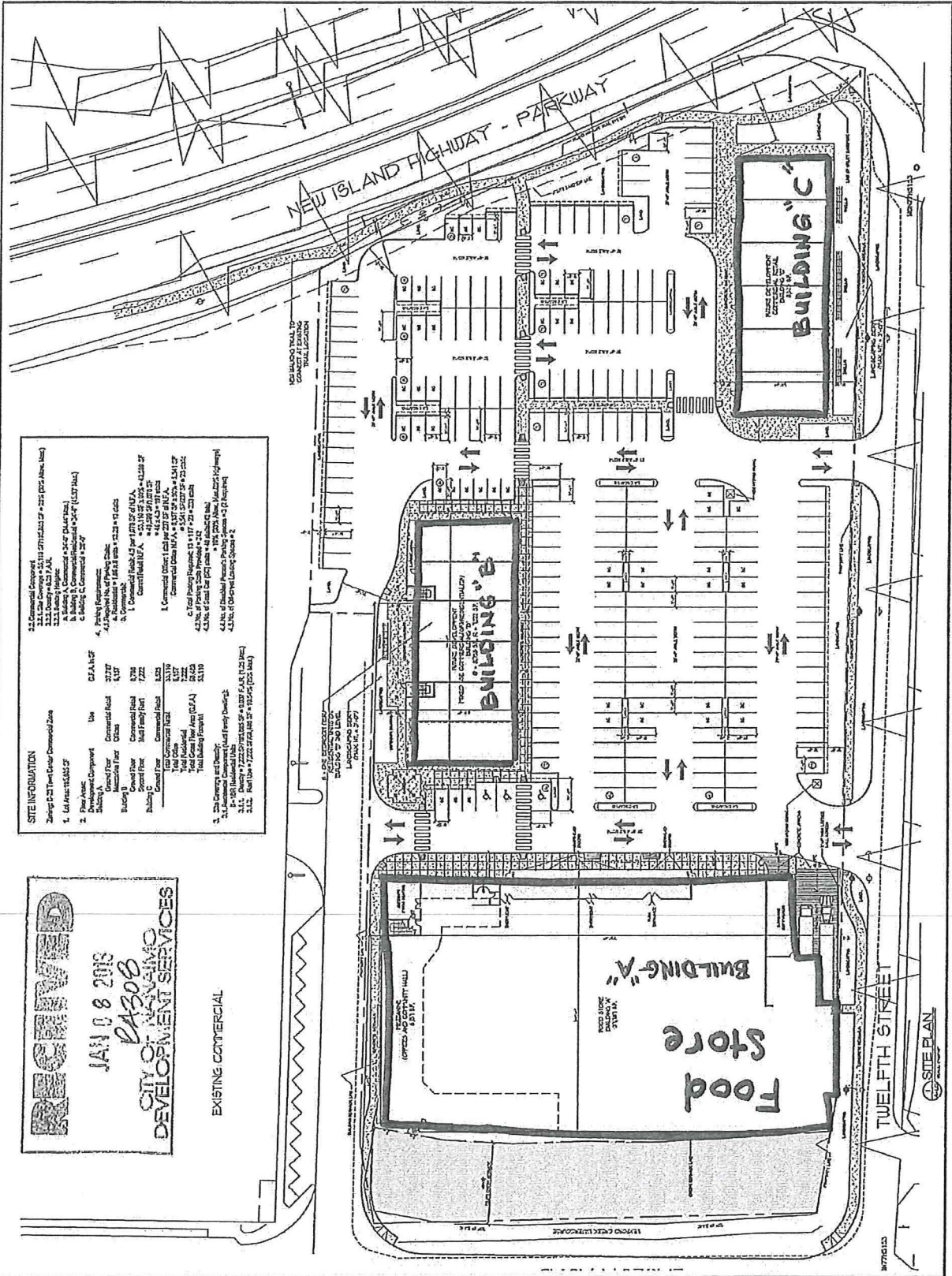
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MIXED-USE DEVELOPMENT  
SOUTH NAMAHO, B.C.  
for CHASE RIVER PROPERTIES

**USP** architects inc.  
1000 West 10th Street  
Vancouver, BC V6H 2G6  
TEL: 604-681-1111  
WWW.USPARCHITECTS.COM

**SITE PLAN**  
257  
A10



**SITE INFORMATION**

Zone: C-2 (Town Center) Commercial Zone  
1. Lot Area: 15,645 SF  
2. Area: 15,645 SF  
3. Use: Commercial  
4. Density: 1.00 SF/100 SF  
5. Height: 35 FT  
6. Setbacks: 10 FT (Front), 5 FT (Side), 5 FT (Rear)

**1. Lot Area: 15,645 SF**

**2. Area: 15,645 SF**

**3. Use: Commercial**

**4. Density: 1.00 SF/100 SF**

**5. Height: 35 FT**

**6. Setbacks: 10 FT (Front), 5 FT (Side), 5 FT (Rear)**

**7. Total Parking Spaces: 232**

**8. Total Building Footprint: 15,645 SF**

**9. Total Building Area: 15,645 SF**

**10. Total Building Volume: 547,575 SF**

**11. Total Building Floor Area: 15,645 SF**

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**RECEIVED**  
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24308  
CITY OF NAMAHO  
DEVELOPMENT SERVICES

EXISTING COMMERCIAL

SITE PLAN