

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

> Item No. 10.1.3 North West Community Council June 15, 2015

Original Signed

SUBMITTED BY:

Bob Bjerke, Chief Planner and Director, Planning and Development

**DATE:** May 21, 2015

SUBJECT: Case 19430: Development Agreement, 215 Conrad's Road, Hubbards

## **ORIGIN**

Application by Iain Jack and Peter Bojanic

#### **LEGISLATIVE AUTHORITY**

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

#### **RECOMMENDATION**

It is recommended that North West Community Council:

- Give Notice of Motion to consider the proposed development agreement, as contained in Attachment
  A of this report, to permit a home business use within an accessory building at 215 Conrad's Road,
  Hubbards, and schedule a public hearing;
- 2. Approve the proposed Development Agreement, as contained in Attachment A of this report; and
- 3. Require the Development Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

#### **BACKGROUND**

An application has been received from lain Jack and Peter Bojanic to enter into a development agreement to operate a home business use within an accessory building on their residential property at 215 Conrad's Road, Hubbards (Map 1). The land use by-law provides that larger home business uses may be considered through the development agreement process.

#### Location, Surrounding Area, Designation and Zoning

The subject property:

- has a lot area of 0.91 hectares (2.25 acres), with approximately 57 metres (188 feet) of frontage on Conrad's Road:
- is surrounded by vacant lots to the west and north, and a single detached dwelling to the south which is buffered by a significant amount of forest cover;
- is designated Residential under the Municipal Planning Strategy for Planning Districts 1&3 (MPS)(Map 1); and
- is zoned R-2 (Two Unit Dwelling) Zone under the Land Use By-law for Planning Districts 1&3 (LUB)(Map 2).

#### **Proposal**

The applicants currently operate a small-scale plant nursery business from a sunroom within their residence, growing and selling plant products (ferns) primarily through a mail-order system. The applicants have proposed to construct a greenhouse of approximately 130 square metres (1,400 square feet), including an attached potting shed, for the continued operation and expansion of the business.

#### **Enabling Policy**

This proposal is being considered under Policy RD-5, which allows Council to permit, by development agreement, larger home business uses which may include the use of an accessory building. The current zoning allows home business uses, provided they are "wholly contained within the dwelling" and limited to 28 square metres (300 square feet) in area. Under Policy RD-5, Council may consider larger home business uses within a dwelling and/or within an accessory building by development agreement (Attachment B).

#### **DISCUSSION**

Staff have reviewed the proposal relative to all relevant policies and advise that it is consistent with the MPS. Attachment C provides an evaluation of the proposed development agreement in relation to the relevant MPS policies. The following outlines matters which have been identified for more detailed discussion.

#### Land Use Compatibility

The preamble to Policy RD-5 states:

"Given the relatively large lot sizes in residential areas and the distances between dwellings, there are instances where less stringent controls on a home business, either in a dwelling or an accessory building, would be appropriate and could be accommodated without interfering with neighbouring uses."

The proposed development agreement (Attachment A) includes the same requirements for a home business use as exist under the existing zoning, while allowing the construction and operation of the greenhouse separate from the residential dwelling.

The applicant's plant nursery business is small in scale and unobtrusive. The use is consistent with a residential environment, as the greenhouse is of a suitable scale for personal use. The large size of the lot, significant setbacks from property lines and buffering in the form of existing forest cover will limit the impact of the proposed greenhouse on adjacent properties (Schedule B of Attachment A). Furthermore, the proposed greenhouse is well within the allowable size for accessory buildings under the Land Use Bylaw. The total lot coverage, including the existing dwelling, existing accessory buildings and proposed accessory building, is well below the 35% maximum permitted.

There are no proposed changes to existing driveways or parking on the property. As the business will involve primarily mail-order sales and there will be little or no retail sales on-site. Accordingly, the NS Dept. of Transportation & Infrastructure Renewal (NSTIR) does not anticipate the proposed greenhouse will impact traffic circulation in the area as result of the development.

#### **Planning Advisory Committee Review**

The proposal was reviewed by the St. Margaret's Bay Coastal Planning Advisory Committee on March 26, 2015 and the Committee passed a motion to recommend approval of the application without conditions. The Committee will submit a separate report to Community Council on the matter

#### Conclusion

The proposed development agreement is consistent with the policies of the MPS. Therefore, staff recommends that Community Council approve the proposed development agreement as contained in Attachment A.

#### FINANCIAL IMPLICATIONS

There are no financial implications. The property owner will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

#### **COMMUNITY ENGAGEMENT**

The community engagement process was consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through notices posted on the HRM website, and mailed to property owners within the notification area as shown on Map 2. Written comments received from the public are provided in Attachment C.

A public hearing must be held by North West Community Council before they can consider approval of the development agreement. Should North West Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will continue to be notified as shown on Map 2. The HRM website will also be updated to indicate notice of the public hearing.

#### **ENVIRONMENTAL IMPLICATIONS**

The proposal meets all applicable environmental policies as contained in the Planning Districts 1&3 MPS. No additional items have been identified.

#### **ALTERNATIVES**

- North West Community Council may choose to approve the proposed development agreement with modifications. This may necessitate further negotiation with the applicant and the preparation of a supplementary staff report and an additional public hearing. A decision of Community Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the HRM Charter.
- 2. North West Community Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons why the agreement is not reasonably consistent with the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

#### **ATTACHMENTS**

Map 1 Generalized Future Land Use Map 2 Zoning and Notification

Attachment A Proposed Development Agreement

Attachment B Review of Relevant Policies of the MPS for Planning Districts 1 & 3

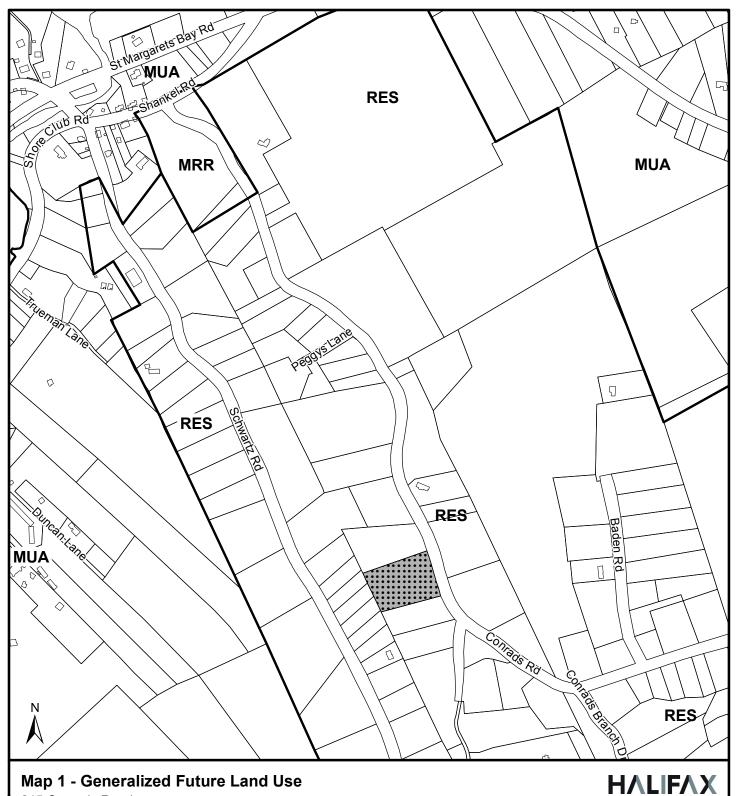
Attachment C Public Comments

A copy of this report can be obtained online at http://www.halifax.ca/commcoun/index.php then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Paul Sampson, LPP, Planner, 902.490.6259

**Original Signed** 

Report Approved by: Kelly Denty, Manager of Development Approvals, 902-490-4800



## Map 1 - Generalized Future Land Use

215 Conrads Road Hubbards



Subject Property

**Designations** 

MUA Mixed Use A

MRR Mixed Rural Residential

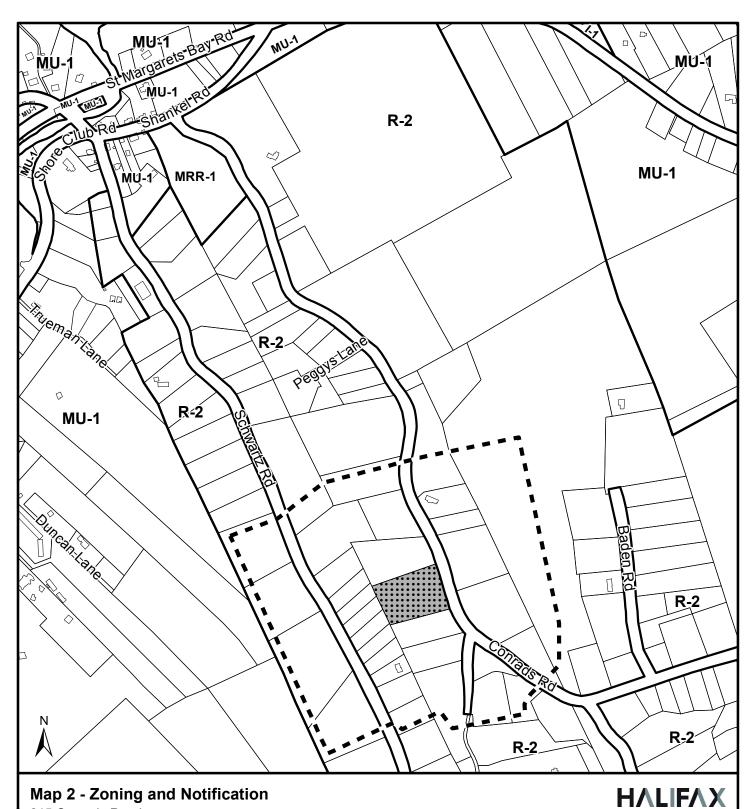
**RES** Residential

180 m

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Planning District 1 & 3 (St Margarets Bay) Plan Area



# Map 2 - Zoning and Notification

215 Conrads Road Hubbards



Subject Property



Area of notification

Planning District 1 & 3 (St Margarets Bay) Land Use By-Law Area

#### Zones

R-2 Two Unit Dwelling MU-1 Mixed Use 1 MRR-1 Mixed Rural Residential I-1 General Industrial



This map is an unofficial reproduction of a portion of the Zoning Map for the plan  $\,$ area indicated.

The accuracy of any representation on this plan is not guaranteed.

6 October 2014

Case 19430

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# ATTACHMENT A PROPOSED DEVELOPMENT AGREEMENT

THIS AGREEMENT made this	day of [Insert Month], 20,

**BETWEEN:** 

## [Insert Name of Corporation/Business LTD.],

individuals, in the Halifax Regional Municipality, in the Province of Nova Scotia, (hereinafter called the "Developer")

OF THE FIRST PART

- and -

## **HALIFAX REGIONAL MUNICIPALITY**,

a municipal body corporate, in the Province of Nova Scotia (hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 215 Conrad's Road, Hubbards, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a larger home business use on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy RD-5 of the Planning Districts 1 & 3 Municipal Planning Strategy and Section 3.6 of the Planning Districts 1 & 3 Land Use By-law;

AND WHERE	AS the North West Community Council for the Municipality approved this request at a
meeting held on	, referenced as Municipal Case Number 19430;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

#### PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

#### 1.1 Applicability of Agreement

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

## 1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Planning Districts 1& 3 and the Regional Subdivision By-law, as may be amended from time to time.

## 1.3 Applicability of Other By-laws, Statutes and Regulations

- 1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

#### 1.4 Conflict

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

## 1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

#### 1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

#### **PART 2: DEFINITIONS**

## 2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

#### PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

#### 3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 19430:

Schedule A Legal Description of the Lands(s)

Schedule B Site Plan

## 3.2 General Description of Land Use

- 3.2.1 The use(s) of the Lands permitted by this Agreement are the following:
  - (a) Any uses permitted within the existing zone applied to the Lands subject to the provisions contained within the Land Use By-law for Planning Districts 1&3 as amended from time to time; and
  - (b) A plant nursery, operated as a home business use, within the existing dwelling and an accessory building shown as "proposed greenhouse" on Schedule B and as set out in this Agreement.

#### 3.3 Detailed Provisions for Land Use

3.3.1 The Developer's use of the Land as a plant nursery shall be limited to the accessory building ("proposed greenhouse") as shown on Schedule B and a space wholly contained within the dwelling. The plant nursery shall be considered a business use as defined by the Land Use By-law and, as such, the dwelling on the Lands shall be the principal residence of the operator of the business.

## 3.3.2 The plant nursery shall not exceed:

- (a) an area of 27.9 square metres (300 sq. ft.) within the existing dwelling; and
- (b) an area of 148.6 square metres (1,600 sq. ft.) within the accessory building ("proposed greenhouse").
- 3.3.3 The proposed greenhouse devoted to the plant nursery shall be located in the rear yard, as shown on Schedule B, and shall not exceed 7.6m (25 feet) in height. Additional accessory buildings not devoted to the plant nursery may be located on the Lands subject to the provisions contained within the Land Use By-law for Planning Districts 1&3, as amended from time to time.
- 3.3.4 No open storage or outdoor display shall be permitted.
- 3.3.5 No more than one (1) sign shall be permitted for the plant nursery, and such sign shall not exceed 0.37 m<sup>2</sup> (4 sq. ft.) in area and shall not exceed 1.2m (4 feet) in any one dimension.

#### 3.4 Maintenance

3.4.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

#### **PART 4: AMENDMENTS**

#### 4.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) The granting of an extension to the date of commencement of construction as identified in Section 5.3 of this Agreement;
- (b) The length of time for the completion of the development as identified in Section 5.5 of this Agreement; and
- (c) Changes to the location of the proposed greenhouse which, in the opinion of the Development Officer, does not conform with Schedule B.

#### 4.2 Substantive Amendments

Amendments to any matters not identified under Section 4.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

#### PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

### 5.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

### 5.2 Subsequent Owners

- 5.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 5.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

## 5.3 Commencement of Development

- 5.3.1 In the event that development on the Lands has not commenced within two years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 5.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Development Permit for the accessory building ("proposed greenhouse") devoted to the plant nursery.
- 5.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 4.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

#### 5.4 Completion of Development

Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Planning Districts 1 & 3, as may be amended from time to time.

## 5.5 Discharge of Agreement

- 5.5.1 If the Developer fails to complete the development after three years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:
  - (a) retain the Agreement in its present form;
  - (b) negotiate a new Agreement; or
  - (c) discharge this Agreement.

#### PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

## 6.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

### 6.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the Assessment Act;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

# Attachment B Review of Relevant Policies of the MPS for Planning Districts 1 & 3

RD-5 Notwithstanding Policies RD-2 and RD-3, within the Residential Designation, Council shall only consider permitting larger home business uses in a dwelling and/or an accessory building according to the development agreement provisions of the Planning Act. In considering such an agreement, Council shall have regard to the following:

Policy Criteria	Staff Comments
(a) that the property which is being used for the home business purpose contains the principal residence of the operator of the business;	The applicant/property owner is the principal resident and sole owner/operator of the business.
(b) that no mechanical equipment is used except that which is reasonably consistent with the use of a dwelling and which does not create a nuisance by virtue of noise, vibration, glare or odour;	No mechanical equipment will be used in the operation of the proposed greenhouse/nursery. No nuisance will be created by virtue of noise, vibration, glare or odour.
(c) that there is no open storage or outdoor display;	There is no open storage or outdoor display proposed. The business will be conducted entirely within the greenhouse and the existing residence.
(d) the provision of adequate parking facilities;	At least two off-street parking spaces are provided in accordance with the requirements of the Land Use Bylaw.
(e) signage; and	No signage has been proposed; however, the development agreement allows for one small sign (4 square feet) to identify the business.
(f) the provisions of Policy IM-9.	See below.

IM-9 In considering development agreements and amendments to the land use by-law, in addition to all other criteria as set out in various policies of this strategy, Council shall have appropriate regard to the following matters:

Policy Criteria	Staff Comments
(a) that the proposal is in conformity with the intent of this strategy and with the requirements of all other municipal by-laws and regulations	The proposal conforms with the intent of the Municipal Planning Strategy to limit the effects of business uses in residential zones. The proposed home business use is limited in scale, on a large lot with considerable buffering between the proposed greenhouse and adjacent properties.
<ul><li>(b) that the proposal is not premature or inappropriate by reason of:</li><li>(i) the financial capability of the Municipality to absorb any costs relating to the development;</li></ul>	(i) The property owner will be responsible for any costs relating to the development.
(ii) the adequacy of on-site sewerage and water services;	(ii) The greenhouse irrigation system will use water drawn from the property's existing well. A capillary mat watering system is sealed, not allowing fertilizer to enter the ground, thereby reducing water usage and eliminating runoff.

(iii) the adequacy or proximity of school, recreation or other community facilities;	(iii) The proposal will have no impact on school, recreation or community facilities.
(iv) the adequacy of road networks leading or adjacent to or within the development; and	(iv) Nova Scotia Transportation and Infrastructure Renewal has reviewed the proposal and indicated that there are no concerns for traffic impacts regarding this proposal.
(v) the potential for damage to destruction of designated historic buildings and sites.	(v) No historic buildings or sites will be impacted by this proposal.
(c) that in development agreement controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land	
uses by reason of: (i) type of use;	(i) The applicant's plant nursery business is small in scale and unobtrusive. The use is consistent with a residential environment, as the greenhouse does not exceed what might be expected for a garden for personal use.
(ii) height, bulk and lot coverage of any proposed building;	(ii) The proposed accessory building (greenhouse and potting shed) is well within the allowable size for accessory buildings under the Land Use Bylaw. The total lot coverage, including the existing dwelling, existing accessory buildings and proposed accessory building, is well below the 35% permitted.
(iii) traffic generation, access to and egress from the site, and parking;	(iii) There are no proposed changes to existing driveways on the site or parking. As there is no associated retail component proposed, there is not expected to be an impact on traffic generation as result of the development.
(iv) open storage;	(iv) No open storage is permitted.
(v) signs; and (vi) any other relevant matter of planning concern.	(v) A small business sign will be permitted under the development agreement. (vi) N/A.
(d) that the proposed site is suitable with respect to the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding; and	(d) The site is suitable for the proposed greenhouse. The applicant has proposed environmental methods of operation and no negative impacts on the site are expected.
(e) any other relevant matter of planning concern.	N/A
(f) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy p-79F", Subdivision Approval shall be subject to the provisions of the Subdivision Bylaw respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS.	N/A

## Perrin, Leah

From:

Jim Breeze

Sent:

October-22-14 1:59 PM

To:

Perrin, Leah

Subject:

Case 19430

Hi Leah,

Further to your letter of October 21<sup>st</sup> in regards to case 19430, the proposal looks fine to us – the applicant is not going to have any retail sales and the development is taking place well off the road.

We know the applicant and they've done a nice job of keeping up their property – an asset to the neighbourhood, really.

We're certainly in favour of them preceding with what they want to do.

Debbie & Jim Breeze

Debbie & Jim Breeze Hubbards, Nova Scotia

## Perrin, Leah

From:

Sent:

November-07-14 5:44 PM

To:

Perrin, Leah

Subject:

Case # 19430

Hi Leah,

We have no problem with the application to build a greenhouse at 215 Conrad's Rd in Hubbards.

Paul Morash

**Sherry Morash** 

## Perrin, Leah

From:

Shirley Johns

Sent:

October-23-14 9:54 AM

To:

Perrin, Leah

**Subject:** 

Fw: home business 215 Conrad Rd.

---- Original Message -----

From: Shirley Johns
To: perrini@halifax.ca

Sent: Wednesday, October 22, 2014 8:22 PM Subject: home business 215 Conrad Rd.

Thank you for the information regarding the construction and operation of a greenhouse for a home business at 215 Conrad Rd. Hubbards. I have no problem with this development as it appears to be a well planned arrangement and does not interfere with other properties in the area. In fact, the greenhouse building is so well concealed that it could never be detrimental to the area. An operation such as this would certainly boost the economy. It is good to have innovative folks in the area. I like the idea and the plan is great. Sincerely yours, Shirley Johns.