

4.1.1



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
July 7, 2009

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY:


for Paul Dunphy, Director of Community Development

DATE: June 23, 2009

SUBJECT: **Case 01095 - Development Agreement, Pet Care Facility, 6430 Oak Street, Halifax**

SUPPLEMENTARY REPORT

ORIGIN

- April 21, 2009 approval by Regional Council of amendments to the Halifax Municipal Planning Strategy (MPS) and Peninsula Land Use By-law (LUB) to allow for a pet care facility at 6430 Oak Street, Halifax by development agreement
- Provincial ministerial review of amendments to the Halifax MPS and Halifax Peninsula LUB.

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Approve the proposed development agreement as contained in Attachment A to allow for a pet care facility at 6430 Oak Street, Halifax;
2. Require that the development agreement be signed and returned within 120 days, or any extension thereof granted by Community Council on request of the Applicant, from the date of final approval by Community Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

On April 21, 2009, following a public hearing held jointly with Peninsula Community Council, Regional Council approved amendments to the Halifax Municipal Planning Strategy (MPS) and Halifax Peninsula Land Use By-law (LUB) to permit a pet care facility at 6430 Oak Street, Halifax. The amendments have been reviewed by Service Nova Scotia and Municipal Relations as per Section 232 of the *Halifax Regional Municipality Charter*. These amendments became effective on June 20, 2009.

DISCUSSION

As noted in the March 30, 2009 supplementary report, staff was to bring this matter back to Peninsula Community Council for a decision on the development agreement once the MPS and LUB amendments took effect. Council may now consider the draft development agreement (Attachment A).

BUDGET IMPLICATIONS

There are no budget implications associated with the processing of the Development Agreement. The Developer 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.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council may approve the proposed development agreement appended as Attachment A to permit the subject pet care facility. This is the recommended course of action.
2. Council may refer the case back to staff with specific changes to modify the development agreement.
3. Council may refuse the proposed development agreement. Reasons must be provided for a refusal.

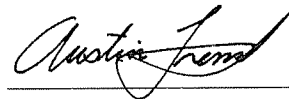
ATTACHMENTS

Attachment A Draft Development Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Paul Sampson, Planner I, 490-6259

Report Approved by:



Austin French, Manager, Planning Services, 490-6717

BETWEEN:

OF THE FIRST PART

- and -

OF THE SECOND PART

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 and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

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 and the Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

1.4 Conflict

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 and the Subdivision 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.

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 regulations, by-laws or codes applicable to any 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 All words unless otherwise specifically defined herein shall be as defined in the Halifax Peninsula Land Use By-law and Subdivision By-law.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer agrees to develop and use the lands for a detached one family dwelling house and residential pet care facility in a manner, which, in the opinion of the Development Officer, is generally in conformance with Schedule B attached to this agreement and filed in the Halifax Regional Municipality as Case Number 01095.

The Schedules are:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan

3.2 General Description of Land Use

The use(s) of the Lands permitted by this Agreement are the following:

- (a) A Residential Pet Care Facility (for dogs), as illustrated on Schedule B and set out in this Agreement; and
- (b) Any use permitted within the existing zone applied to the Lands subject to the provisions contained within the Halifax Peninsula Land Use By-law as amended from time to time.

3.3 Detailed Provisions for Land Use

- 3.3.1 Notwithstanding Section 16B, clauses 1, 3, 4, 6, 7 and 11 of the Peninsula Land Use By-law, the developer agrees that the residential pet care facility shall comply with the following:

- a) the number of pets (dogs) being cared for shall not exceed twelve, excluding those under the personal ownership of the developer;
- b) the hours of operation for pet drop-off and pick-up shall be limited to between 7:00am and 9:30am and between 4:00pm and 6:30pm;
- c) outdoor activity (dog socialization/play) shall be prohibited between the hours of 11:00pm and 7:00am;

- d) the facility shall occupy no more than 850 square feet of gross floor area of the dwelling and shall be confined to one storey of the dwelling. This storey may be the basement. Accessory buildings may be used for storage purposes for the facility;
- e) a maximum of one employee, in addition to the operator of the facility, may be permitted. The facility shall be staffed at all times with either the operator or employee on-site during all periods that dogs are being boarded on the Lands;
- f) the outdoor activity area (for dog socialization/play) shall be fully enclosed by a minimum 6 foot high solid view-obstructing fence with secure gates. Such outdoor activity area shall only be permitted in the rear yard;
- g) one non-illuminated advertising sign shall be permitted up to one square foot in area indicating the name of the facility;
- h) the facility shall otherwise comply with the provisions of Section 16B (Home Occupations) of the Land Use By-law.

3.3.2 Development Permit

The Developer agrees to obtain a Development Permit with the Municipality in accordance with Section 6.3.

4.0 AMENDMENTS

4.1 Substantive Amendments

Amendments to any matters not identified under Section 4.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

4.2 Non-Substantive Amendments

The following items are considered by both parties to be non-substantial matters and may be amended by resolution of Regional Council:

- (a) the granting of an extension to the date of commencement of the land use (pet care facility) as identified in Section 6.3.1 of this agreement;
- (b) the length of time for the completion of the use as identified in Section 6.3.3 of this agreement;

5.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

5.1 Enforcement

The Developer agree 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 allow for such an inspection during any reasonable hour within one day of receiving such a request.

5.2 Failure to Comply

If the Developer fail to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, 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; and/or
- (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 development 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 Lands and be shown on any tax certificate issued under the *Assessment Act*.
- © the Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the use of the Lands shall conform with the provisions of the Land Use By-law; and/or
- (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the *Municipal Government Act* or Common Law in order to ensure compliance with this Agreement.

6.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

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

6.2 Subsequent Owners

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

6.3 Commencement of Use

- 6.3.1 In the event that the use (pet care facility) on the Lands has not commenced within two years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of the land use.
- 6.3.2 For the purposes of this section, commencement shall mean the issuance of a Development Permit for the Residential Pet Care Facility.

6.4 Completion of Use

Upon the completion of the land use or portions thereof, or within/after ten years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, whichever time period is less, 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;
- © discharge this Agreement, on the condition that for those portions of the land use that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Halifax Peninsula, as may be amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2009.

SIGNED, SEALED AND DELIVERED in
the presence of

JANET WILMA CHERNIN

Per: _____

Per: _____

SEALED, DELIVERED AND ATTESTED
to by the proper signing officers of Halifax
Regional Municipality duly authorized in that
behalf in the presence of

=====

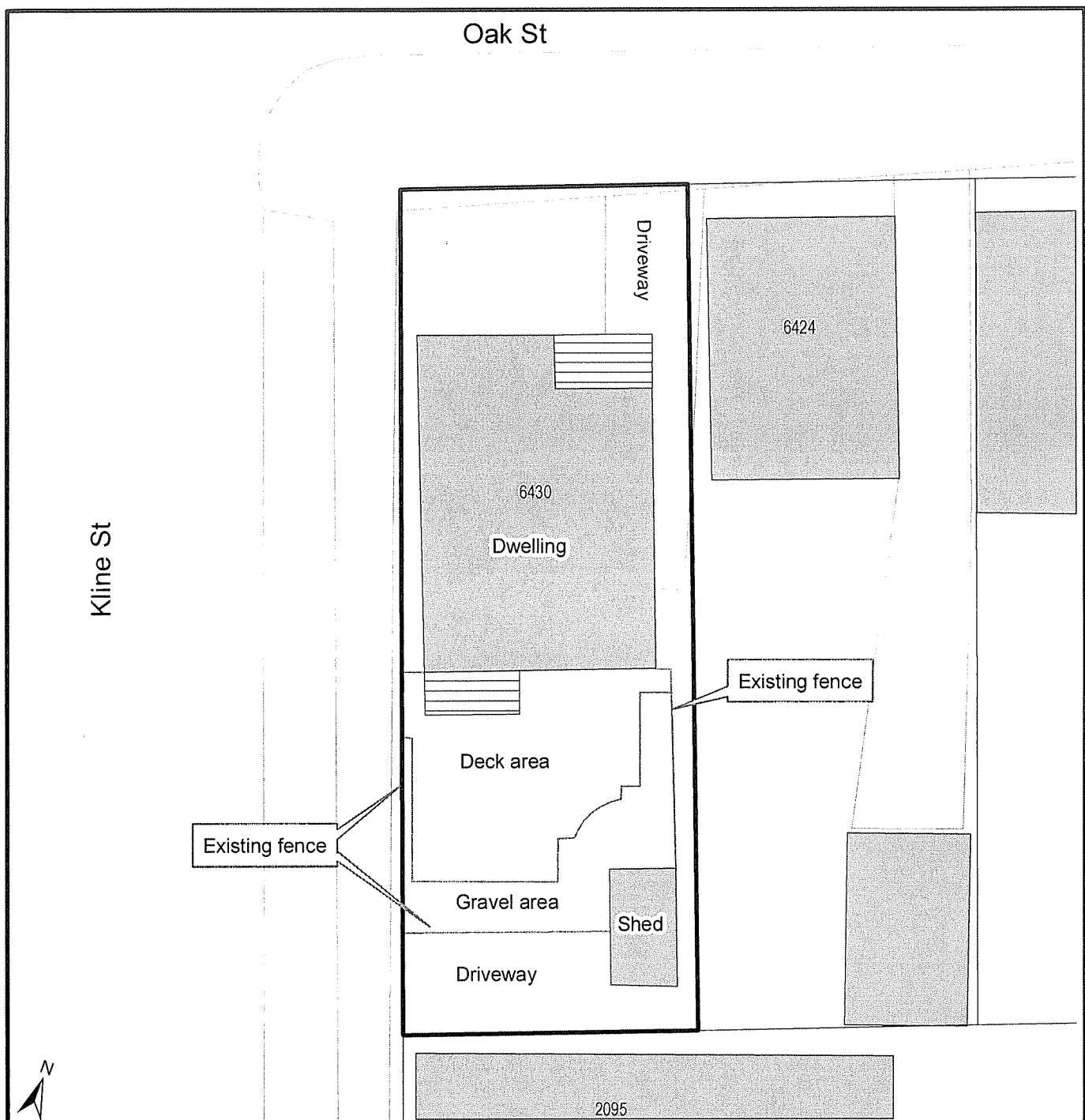
HALIFAX REGIONAL MUNICIPALITY

Per: _____

Mayor

Per: _____


Municipal Clerk



Schedule B - Site Plan

6430 Oak Street
Halifax

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

 Subject property

0 20 ft


Halifax Peninsula
Land Use By-Law Area

HRM does not guarantee the accuracy of
any representation on this plan.