

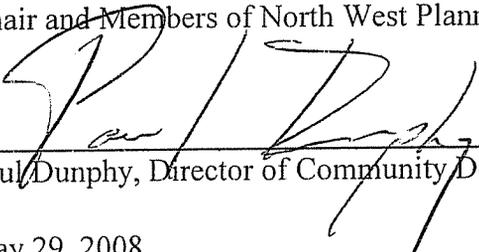


PO Box 1749  
Halifax, Nova Scotia  
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Marine Drive, Valley and Canal Community Council - July 9, 2008 ✨  
Western Region Community Council - June 23, 2008 ✨  
North West Planning Advisory Committee - July 2, 2008 ✨

**TO:** Chair and Members of Marine Drive, Valley and Canal Community Council  
Chair and Members of Western Region Community Council  
Chair and Members of North West Planning Advisory Committee

**SUBMITTED BY:**

  
Paul Dunphy, Director of Community Development

**DATE:** May 29, 2008

**SUBJECT:** Case 01076: MPS Amendments - Beaver Bank, Hammonds Plains and Upper Sackville and Development Agreement - 1725 Hammonds Plains Road

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## ORIGIN

An application by Delbert Clarke and Wendy Gillespie to amend the Municipal Planning Strategy (MPS) for Beaver Bank, Hammonds Plains and Upper Sackville to enable Council to consider kennels within the Mixed Use A, B, and C designations by development agreement; and to enter into a development agreement to permit the existing kennel at 1725 Hammonds Plains Road to continue to operate.

## RECOMMENDATION

It is recommended that Marine Drive, Valley and Canal Community Council, Western Region Community Council and North West Community Council:

1. **Recommend that Regional Council** give First Reading to the proposed amendments to the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy and Land Use By-law as provided in Attachments A and B, and schedule a joint public hearing with Western Region Community Council;
2. **Recommend that Regional Council** approve the proposed amendments to the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy and Land Use By-law as provided in Attachments A and B;

It is recommended that Western Region Community Council:

1. **Give Notice of Motion** to consider the proposed development agreement as provided in Attachment C and schedule a joint public hearing with Regional Council.

**Contingent upon the adoption by Regional Council of the above Municipal Planning Strategy and Land Use By-law amendments, and those amendments becoming effective under the *Municipal Government Act*, it is further recommended that Western Region Community Council:**

1. **Approve** the proposed development agreement as set out in Attachment C; and
2. **Require** the development agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval of said agreement by Council and any other bodies as necessary, whichever is later, including applicable appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

### **EXECUTIVE SUMMARY**

Keeping more than two dogs for the purposes of commercial breeding, showing or boarding is defined as a “kennel” use in the Beaver Bank, Hammonds Plains and Upper Sackville plan area. The applicants operate an existing kennel which is not permitted under the current Mixed Use -1 Zone applied to the property. In order to enable the continued operation of the existing illegal kennel facility, the applicants have applied to amend the MPS to allow kennels within the Mixed Use designation by development agreement, and to enter into a development agreement to permit the continued operation of their kennel at 1725 Hammonds Plains Road.

The Mixed Use designations are intended to permit a wider variety of land uses than elsewhere in the plan area and many commercial uses are already permitted as-of-right in the mixed use zones. Given that the demand for kennels has increased across HRM in recent years and there is a limited amount of land to accommodate new kennels in the plan area, Staff recommend that Regional Council adopt the proposed policy included as Attachment A, to enable consideration of kennels by development agreement in areas designated and zoned for mixed use. Further, staff also recommend that Western Region Community Council approve the proposed development agreement, as set out in Attachment C, to enable the continuation of the existing kennel at 1725 Hammonds Plains Road.

### **BACKGROUND**

#### **Proposal**

Wendy Gillespie and Del Clarke are the owners of Pampered Paws Inn, a pet oriented business operated in conjunction with a dwelling, located at 1725 Hammonds Plains Road. The subject property is designated Mixed Use B (MU-B) under the MPS and is zoned Mixed Use 1 (MU-1) under the LUB which permits a variety of business and residential uses. Staff issued a permit for the Inn, in accordance with the LUB, to permit a bed and breakfast that caters to individuals

travelling with their pets. The permit issued for the Inn does not permit the keeping of dogs overnight, except in association with the Inn. However, in addition to the inn, the owners now operate a dog care facility which offers both day and overnight care of dogs and falls under the definition of a kennel.

In June 2007, as a result of a complaint received by staff, a Notice to Comply to cease the kennel facility was issued by HRM. In response, Ms. Gillespie and Mr. Clarke submitted a proposal to amend the MPS and LUB to establish a definition for “pet care facilities” and enable consideration of this new use by development agreement. Regional Council initiated the process to consider amendments to the MPS and LUB on February 5, 2008.

### **Other Current Applications Involving Kennels**

On January 8, 2008 Regional Council initiated a process to consider amending the Halifax MPS and Peninsula LUB to enable consideration of dog care facilities in conjunction with residential dwellings by development agreement (Case 01095). During the discussion for the initiation of Case 01095, staff identified that other similar cases may come forward in the future and suggested it may be appropriate to consider the issue comprehensively through a region wide approach. However, Council noted that because many plan areas can accommodate the use now it was not necessary to undertake a region wide initiative and amendments should be considered for specific plan areas only. Recently, staff have also opened Case 01155 at the request of MDVCCC to consider amendments to where and how kennels are permitted in Planning Districts 14 and 17, Planning Districts 8 and 9, and Lawrencetown plan areas.

### **DISCUSSION**

Generally, MPS amendments should only be considered where factors related to MPS policies have changed significantly. Ms. Gillespie and Mr. Clarke contend that the MPS did not envision the growth in the popularity of dog care facilities or the evolution of the industry from a focus on kennelling dogs in enclosures for extended periods, to the more recent and popular focus on supervised socialization of dogs in a less confined environment. Further, the owners believe that the growing demand for the service would be most appropriately accommodated through the development agreement process in areas zoned for mixed use development.

### **Policy Intent for the Mixed Use Designations**

With the exception of many residential subdivisions, the majority of developed land in the plan area falls under one of the three mixed use designations: Mixed Use A (Beaver Bank and Windsor Junction), Mixed Use B (Hammonds Plains and Lucasville) and Mixed Use C (Upper Sackville).

The Mixed Use designations permit a range of residential, commercial, light industrial and resource development. Commercial uses that are permitted as-of-right in the MU-1 Zone applied to the applicants property include full service restaurants, banks, cinemas, welding shops and trucking and excavation services. The MPS identifies a desire to permit a greater diversity of land uses within the Mixed Use designations than elsewhere within the plan area while also reducing the potential for land use conflicts between this range of uses.

**Is there a Demand for Kennels in the Plan Area?**

In addition to the subject property, several other kennel facilities have opened in HRM within the last few years. The majority of kennels in HRM are located in either urban commercial/industrial areas or less densely populated rural or mixed use areas. Staff are unaware of any other kennel facility within the plan area.

**Is there an Adequate Supply of Lands for Kennels in the Plan Area?**

The applicant's property is zoned MU-1 which does not permit kennels. Indoor kennels are permitted within the Highway Commercial (C-4) and Mixed Use 2 (MU-2) Zones and kennels are permitted within the Mixed Resource (MR-1) and General Use (GU-1) Zones. There are only 20 properties within the plan area that are zoned C-4 and while there are a significantly greater number of MU-2 zoned properties, these are almost exclusively located in Upper Sackville, not Hammonds Plains.

The MR-1 and GU-1 Zones are primarily applied to large properties in the Upper Hammonds Plains area and are intended to accommodate resource uses that are unsuitable for more developed portions of the plan area. There has been some residential development on GU-1 and MR-1 zoned lands in the White Hills subdivision but restrictive deed covenants are applied to these residential lots to prevent their use for any business purpose.

Staff are of the opinion that there is a limited amount of land available in the plan area to accommodate kennel facilities. This is complicated further by the range of other commercial uses that are permitted on lands zoned for commercial and mixed use development which renders these lands attractive to other types of businesses.

**Is There a Need to Differentiate Between Kennels and Dog Care Facilities?**

The applicants propose that HRM establish a new use and definition for "dog care facilities". Most HRM land use by-laws, including the Beaver Bank, Hammonds Plains and Upper Sackville LUB, define kennels as buildings used for commercial breeding, boarding and/or showing of 2 or more dogs.

The applicants contend that the nature of their operation provides a more social and dog oriented focus that differs significantly from traditional kennels and is more accurately depicted as a pet care facility. However, staff are of the opinion that while the applicants operation may provide a level of service that differs from traditional kennels, the land use characteristics and potential impacts are not substantially different to warrant establishment of a separate definition from a municipal land use perspective.

Although Council did initiate the process to consider establishing a new definition for "residential dog care facilities" under Case 01095, the Peninsula LUB does not already contain a specific definition for kennel. Since the subject property in that case is designated and zoned for residential use, a new, carefully defined definition for the use may be warranted. If Council feels

that a new definition is warranted, staff suggest that the existing description for “kennel” is adequate and the word kennel could be replaced with the term “dog care facility”.

### **Proposed MPS Amendment**

While the MPS does enable rezoning applications to the C-4 Zone, which does permit kennels, the rezoning process cannot address potential land use conflicts to the same degree or on such a site specific basis as the development agreement process. Furthermore, the C-4 Zone permits a wide range of intensive commercial uses. Therefore, staff are of the opinion that the development agreement process would be a more effective approach for managing the potential land use impacts associated with kennels. The development agreement approach would allow Council to establish eligibility and evaluation criteria for kennel operations and consider applications on a site by site basis.

Staff are of the opinion that the most appropriate locations for kennels are within the mixed use designations and zones. A variety of commercial uses are already permitted in these areas and the plan expresses an intention to permit a diversity of land uses in these areas in order to serve the needs of the residents of the plan area. Therefore, staff are recommending that Council adopt the proposed policy set out in Attachment A, which would enable the Community Councils which have jurisdiction in the plan area to consider applications for kennels, within the Mixed Use A, B, and C designations by development agreement.

The proposed policy recognizes the potential for land use conflicts resulting from kennels, and includes evaluation criteria relative to matters such as fencing, property maintenance, hours of operation, site lighting, and the scale and design of commercial buildings in order to reduce the potential for compatibility issues between kennels and other uses.

### **Proposed Development Agreement**

A proposed development agreement for the applicant’s property at 1725 Hammonds Plains Road is included as Attachment C. Staff are of the opinion that the proposed agreement conforms with the intent of the proposed policy outlined in Attachment A. The development agreement limits the size of the kennel to the existing buildings and establishes requirements for fencing, maintenance of the property, collection and removal of animal waste, and sets limits relative to periods during which dogs may be outside. Staff are of the opinion that the proposed development agreement conforms with the proposed policy set out in Attachment A.

### **Public Participation Meeting**

A public meeting regarding this application was held at the Hammonds Plains Community Centre on April 23, 2008. Minutes from the meeting are included as Attachment E of this report. Residents at the meeting expressed support for the applicant’s proposal and their kennel operation. It was also noted that demand for this type of use is continuing to grow in the community and across HRM.

## **Conclusion**

In order to accommodate the existing and future demand for kennel services in the plan area while minimizing the potential for associated land use impacts, staff recommend that Regional Council approve the proposed amendments to the MPS to enable applications for kennels within the Mixed Use A, B and C designations through the development agreement process as set out in Attachment A. Furthermore, staff recommend that Western Region Community Council approve the proposed development agreement to permit continuation of the applicant's existing kennel at 1725 Hammonds Plains Road, as set out in Attachment C.

## **BUDGET IMPLICATIONS**

There are no budget implications. 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. Regional Council may approve the proposed amendments to the MPS and LUB, as contained in Attachment A and B, to enable Council to consider kennels within the Mixed Use A, B and C Designations by development agreement; and WRCC may approve the proposed development agreement to permit a kennel at 1725 Hammonds Plains Road as contained in Attachment C. This is the recommended course of action.
2. Regional Council may approve the proposed policy set out in Attachment A to enable WRCC to consider a kennel by development agreement at 1725 Hammonds Plains Road only. This is not recommended as site specific plan amendments are not generally desirable and staff feel there is merit at looking at a plan amendment that would enable consideration of kennels within the mixed use designations in other portions of the plan area.
3. Regional Council may refuse the requested amendment. A request to amend the MPS is at the discretion of Council. A decision not to amend the MPS cannot be appealed. This alternative is not recommended as staff feel that there is merit in proceeding with amendments to the MPS and LUB.

**ATTACHMENTS**

Map 1	Generalized Future Land Use Map
Map 2	Zoning and Notification Map
Map 3	Site Plan
Attachment A	Proposed MPS Amendments
Attachment B	Proposed LUB Amendments
Attachment C	Proposed Development Agreement
Attachment D	LUB Provisions - MU-1 Zone
Attachment E	Public Meeting Minutes, April 23, 2008

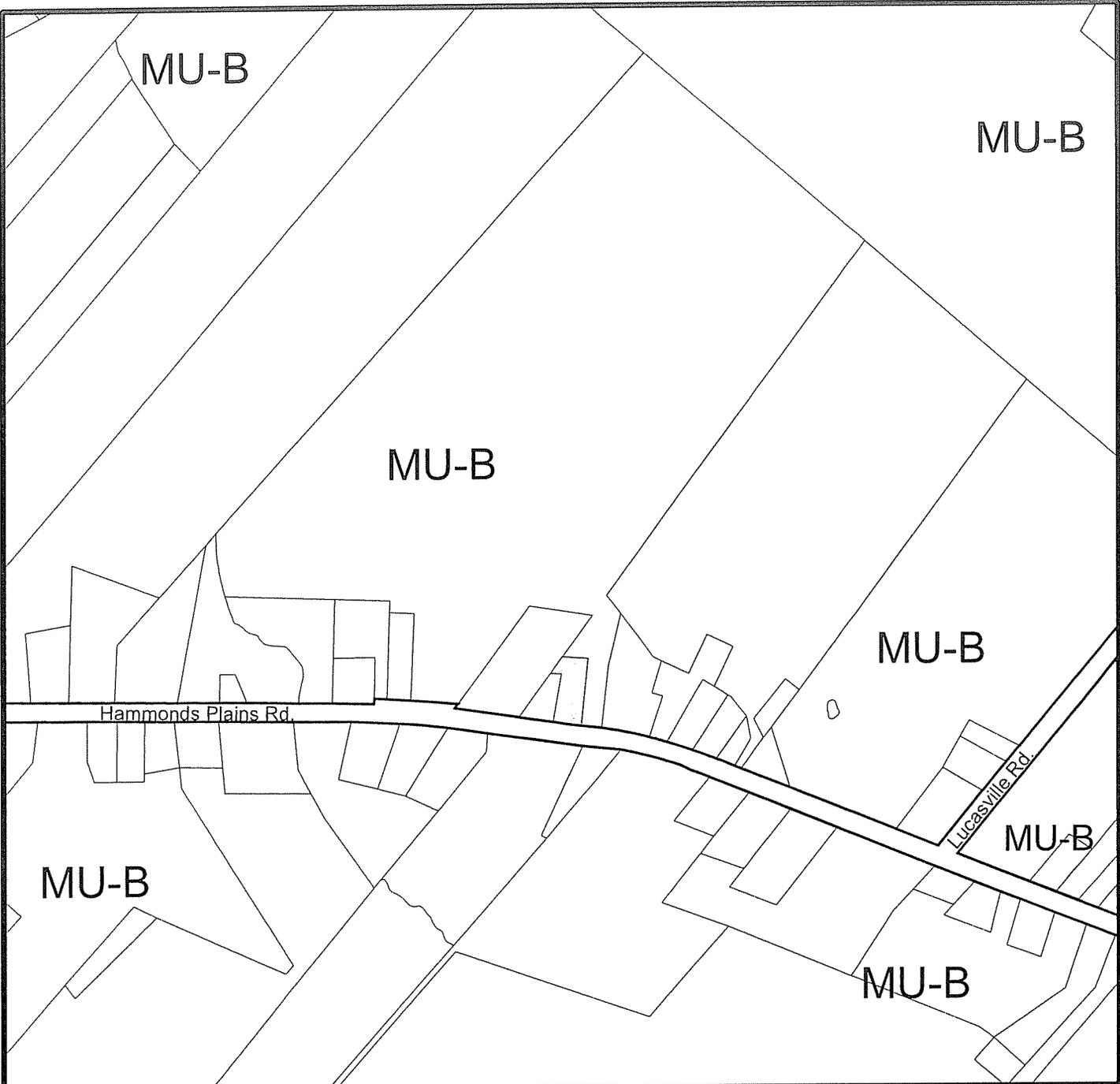
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Joseph Driscoll, Planner, 490-3991

Report Approved by:



Austin French, Manager of Planning Services, 490-6717



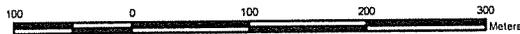
Map 1  
Generalized Future Land Use



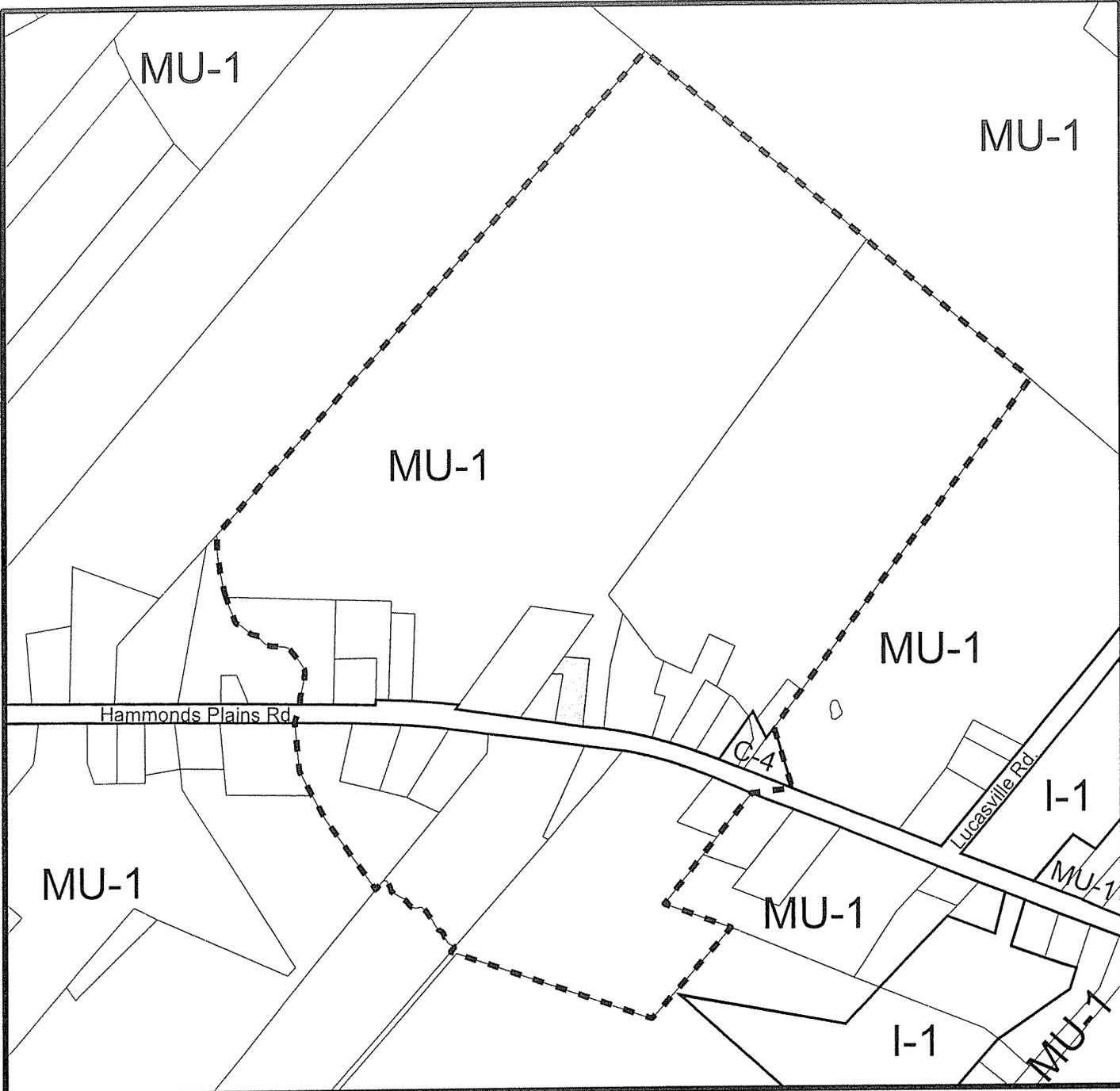
Subject Property

**HALIFAX**  
REGIONAL MUNICIPALITY  
Community Development  
Planning Services

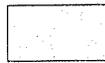
MU-B Mixed Use B Designation







**Map 2  
Zoning**

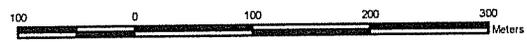
 Subject Property

**HALIFAX**  
REGIONAL MUNICIPALITY  
Community Development  
Planning Services

- MU-1 Mixed Use 1 Zone
- I-1 Mixed Industrial Zone
- C-4 Highway Commercial



 Notification Area





Attachment A: Proposed MPS Amendments

BE IT ENACTED by the Halifax Regional Council that the Municipal Planning Strategy for Beaver Bank, Hammonds Plains and Upper Sackville as enacted by Halifax Regional Council on the 9<sup>th</sup> day of November, 1999, as amended, is hereby further amended as follows:

1. Add the following text, identified in bold, after of Policy P-26:

**Kennels - Mixed Use A, B and C Designations**

**While there is an intention to permit some commercial uses “by right” in the Mixed Use Designations there is also a need to accommodate other uses which, by nature of their size or characteristics, require additional scrutiny and site evaluation through the development agreement process.**

**It is expected that the demand for kennel facilities will increase along with the growing residential population within the plan area. However, the potential land use impacts associated with kennels, such as noise, traffic and the collection and storage of animal waste are most appropriately considered on a detailed and site specific manner. In order to accommodate the existing and future demand for dog care services in the plan area while minimizing the potential for associated land use impacts, proposals for kennels will be considered by development agreement.**

**P-26A Within the Mixed Use A, B and C Designations, it shall be the intention of Council to consider permitting kennels by development agreement in accordance with the applicable provisions of the Municipal Government Act and having regard to the following:**

- (a) the subject property is not located within a residential zone;**
- (b) the size and appearance of all buildings or structures related to the use are compatible with the surrounding area in terms of scale, design, materials and signage;**
- (c) that sufficient off-street parking is provided;**
- (d) that all outdoor areas for dog play/socialization and waste are completely fenced and setback a minimum of 20 feet (6 metres) from any property line;**
- (e) the hours of operation, including limitations on outdoor dog play/socialization;**
- (f) provisions related to the collection, storage and disposal of animal waste;**
- (g) the impact of the proposed development on traffic circulation and the road network;**
- (h) general maintenance of the facility;**
- (i) the provisions of Policy P-137.**

2. Add the following text after Policy P-135 (a) (v):

**(vi) kennels and expansions to existing kennels according to Policy P-26A**

I HEREBY CERTIFY that the amendments to the Municipal Planning Strategy for Beaver Bank, Hammonds Plains and Upper Sackville as set out above, were passed by a majority vote of the Halifax Regional Council a meeting held on the \_\_\_ day of \_\_\_\_\_, 2008.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this \_\_\_ day of \_\_\_\_\_, 2008.

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Julia Horncastle  
Acting Municipal Clerk

**Attachment B: Proposed LUB Amendments**

BE IT ENACTED by the Halifax Regional Council that the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville as enacted by Halifax Regional Council on the 9<sup>th</sup> day of November, 1999, as amended, is hereby further amended as follows:

1. Insert the following text, identified in bold, immediately after "Policies P-18, P-19" and immediately before "Policy P-27":

**P-26A**

2. Insert the following text, identified in bold, to the end of subsection 3.6 (a) immediately before clause 3.6 (b):

**kennels and expansions to existing kennels**

I HEREBY CERTIFY that the amendments to the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville as set out above, were passed by a majority vote of the Halifax Regional Council a meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2008.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Julia Horncastle  
Acting Municipal Clerk



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## **PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION**

### **1.1 Applicability of Agreement**

The Developers agree 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 Beaver Bank, Hammonds Plains and Upper Sackville 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 Developers, 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 Developers 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.

The Developers 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 HRM 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.

### **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 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 Developers 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 Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law and Subdivision By-law.

## **PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS**

### 3.1 **Schedules**

The Developers agree to develop the Lands in a manner, which, in the opinion of the Development Officer, generally conform with the Schedules attached to this Agreement and the plans filed in the Halifax Regional Municipality as Case Number 01076.

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 kennel, as illustrated on Schedule B and set out in this Agreement;
- (b) Any use legally existing on the Lands and for which a Development Permit has been issued prior to both parties entering into this Agreement; and
- (c) Any use permitted within the existing zone applied to the Lands subject to the provisions contained within the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville as amended from time to time.



### **3.3 Detailed Provisions for Land Use**

- 3.3.1 The Developers agree that the use of the Lands as a kennel shall be limited to the existing outdoor dog pens, as illustrated on Schedule B, and within the existing footprint of the Pampered Paws Inn main building, located at 1725 Hammonds Plains Road.
- 3.3.2 The Developers agree that expansion or addition to any structure on the Lands shall conform with the all applicable requirements of the Land Use By-law, except where varied by this Agreement, and shall receive written approval by the Development Officer where applicable.
- 3.3.3 The Development Officer may approve minor modifications to the exterior of the buildings and/or structures on the Lands and the layout of elements such as fencing, parking and outdoor dog pens, provided that such modifications do not enable expansion of the kennel use and are, in the opinion of the Development Officer, minor in nature and consistent with the intent of this Agreement.
- 3.3.4 The Developers agree that the kennel shall be staffed at all times with at least one (1) kennel employee on-site during all periods that dogs are being boarded on the Lands.
- 3.3.5 Except when being transported between the clients vehicles and the kennel, any outdoor activity associated with the kennel use shall take place within the fenced dog pens and all outdoor dog play and socialization shall be conducted under the supervision of the Developers or their employees. Notwithstanding the forgoing, dogs shall be permitted outside of the dog pens if leashed and under the direct control of the dog's owner or an employee of the kennel operation.
- 3.3.6 The Developers agree that fencing, a minimum of 4 feet in height, shall be provided around all areas dedicated to outdoor dog socialization, play areas and bathroom relief.
- 3.3.7 The Developers agree that, except for supervised bathroom breaks, dogs shall not be permitted outside of the main building between the hours of 9:00 PM and 7:00 AM.
- 3.3.8 The Developers agree that dog waste shall be collected at least once a day and stored at a location and in a container which, in the opinion of the Development Officer, is sufficient to ensure limited impact of odor and/or insects on adjacent properties. Furthermore, the Developers agree to remove the dog waste from the property all together on a reasonable basis and in accordance with all applicable standards and requirements of HRM and the Province of Nova Scotia.

### **3.4 Parking, Circulation and Access**

- 3.4.1 The Developers agree that access to the Lands, the internal driveway layout and the layout of parking areas on the Lands shall be as generally illustrated on Schedule B. The Development Officer may, in consultation with the Development Engineer, approve modifications to the internal driveway and parking layout, provided the number of

parking spaces are not reduced and the changes are minor in the opinion of the Development Officer.

- 3.4.2 The parking area shall be graveled or hard surfaced with asphalt, concrete or an acceptable equivalent in the opinion of the Development Officer.

### **3.5 Building and Site Lighting**

- 3.5.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances outdoor dog pens and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

- 3.5.2 If, in the opinion of the Development Officer, conformance to the requirements of subsection 3.5.1 are in question, submit information to the Development Officer regarding the location on the premises, and the type of illuminating devices, fixtures, lamps, supports, other devices sufficient to enable the Development Officer to ensure compliance with the requirements of this article will be secured. If such plan and description cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the Developers shall submit evidence of compliance by certified test reports as performed by a recognized testing lab.

### **3.6 Landscaping**

- 3.6.1 The Developers agree that appropriate vegetative cover shall be provided in all areas not dedicated to buildings, parking areas, driveways and walkways.

- 3.6.2 Further to subsection 3.6.1, landscaped areas shall be grassed or include landscape features such as mulch, stone, water features, perennials, annuals, shrubs or other vegetation and features deemed acceptable by the Development Officer.

### **3.7 Maintenance**

The Developers agree to maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the building, fencing, walkways, 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 removal/salting of walkways and driveways.

### **3.8 Signs**

The sign requirements shall be in accordance with the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law as amended from time to time.

### **3.9 Outdoor Storage and Display**

No outdoor storage or display shall be permitted on the Lands. Refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing/masonry walls with suitable landscaping.

## **4.0 STREETS AND MUNICIPAL SERVICES**

### **4.1 General Provisions**

Any construction or use on the Lands shall conform with the Municipal Service Systems Design Guidelines where applicable, unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work. The Development Officer, in consultation with the Development Engineer, may give consideration to minor changes to the parking layout and accesses, provided the modifications serve to maintain or enhance the intent of this Agreement.

### **4.2 Off-Site Disturbance**

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

## **5.0 AMENDMENTS**

### **5.1 Substantive Amendments**

Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

### **5.2 Non-Substantive Amendments**

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

- (a) The granting of an extension to the date of commencement of development as identified in Section 7.3 of this Agreement;
- (b) The length of time for the completion of the development as identified in Section 7.4 of this Agreement;
- (c) Changes to the exterior appearance of the building(s) which are, in the opinion of the Development Officer, not minor in nature, but which would not increase the footprint of the building(s).

In considering the approval of a non-substantive amendment under subsection 5.2, property owners within 500 feet of the site shall be informed by mail at least 10 days in advance of the proposed amendment being considered by Council.

## **6.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **6.1 Enforcement**

The Developers 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 Developers. 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.

### **6.2 Failure to Comply**

If the Developers 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 Developers from continuing such default and the Developers 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 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;
- (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; and
- (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.

## **7.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **7.1 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 at Halifax, Nova Scotia and the Developers shall incur all cost in recording such documents.

## **7.2 Subsequent Owners**

7.2.1 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.

7.2.2 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.

## **7.3 Commencement of Development**

In the event that a Development Permit for the kennel use has not been granted within two (2) years from the date of registration of this Agreement at the Registry of Deeds, 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 construction.

## **7.4 Completion of Development**

Upon the completion of the development or portions thereof, or within/after ten (10) years from the date of registration of this Agreement with the Registry of Deeds, 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; or
- (c) discharge this Agreement on the condition that for those portions of the development 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 Beaver Bank, Hammonds Plains and Upper Sackville, 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., 2008.

SIGNED, SEALED AND DELIVERED  
in the presence of

\_\_\_\_\_

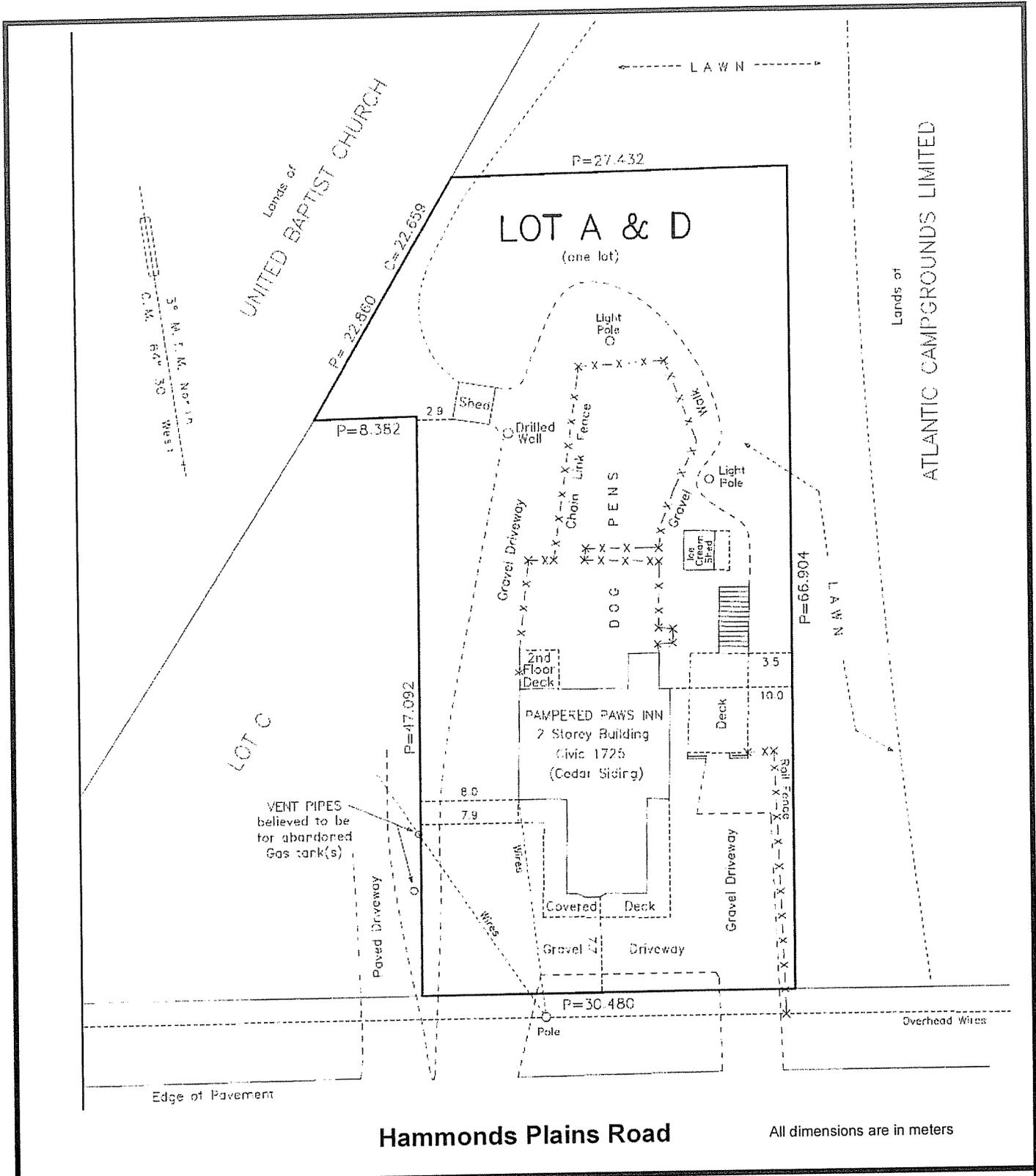
)  
)  
) Per: \_\_\_\_\_  
) WENDY GILLESPIE

)  
)  
) Per: \_\_\_\_\_  
) DELBERT CLARKE

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: \_\_\_\_\_  
) ACTING MUNICIPAL CLERK



Hammonds Plains Road

All dimensions are in meters

Schedule B  
Site Plan



Attachment D: LUB Provisions - MU-1 Zone

PART 13: MU-1 (MIXED USE) 1 ZONE

13.1 MU-1 USES PERMITTED

No development permit shall be issued in any MU-1 (Mixed Use) Zone except for the following:

Residential Uses

- Single unit dwellings
- Two unit dwellings
- Boarding and rooming houses
- Bed and Breakfast
- Senior citizens housing
- Existing mobile dwellings
- Existing multiple unit dwellings
- Day care facilities for not more than fourteen (14) children and in conjunction with permitted dwellings
- Business uses in conjunction with permitted dwellings

Other Uses

- Institutional uses, except fire and police stations
- Open space uses
- Commercial uses permitted in the C-2 (General Business) Zone
- Trucking, landscaping, excavating and paving services
- Agriculture uses
- Forestry uses and wooden furniture manufacturing
- Composting operations (see section 4.29)

13.2 MU-1 ZONE REQUIREMENTS: RESIDENTIAL USES

In any MU-1 Zone, no development permit shall be issued for residential uses except in conformity with the provisions of Section 11.2.

13.3 MU-1 ZONE REQUIREMENTS: OTHER USES

In any MU-1 Zone, no development permit shall be issued except in conformity with the following:

Minimum Lot Area	29,064 square feet (2700 m <sup>2</sup> )
Minimum Frontage	100 feet (30.5 m)
Minimum Front or Flankage Yard	30 feet (9.1 m)
Minimum Rear or Side Yard	15 feet (4.6 m)
Maximum Lot Coverage for Structures and Storage	50 per cent



Maximum Height of Main Building

35 feet (10.7 m)

### 13.5 OTHER REQUIREMENTS: COMMERCIAL USES

Where commercial uses are permitted in any MU-1 Zone, the following shall apply:

- (a) The gross floor area devoted to all commercial uses on any lot shall not exceed two thousand (2,000) square feet.
- (b) No open storage or outdoor display shall be permitted.
- (c) The parking lot shall be demarcated and paved or otherwise maintained with a stable surface which is treated in a manner to prevent the raising of dust and loose particles.
- (d) Except where any commercial use abuts another commercial use in an MU-1 Zone, no portion of any parking space shall be located within any required side yard.
- (e) Where any commercial use abuts another commercial use in the MU-1 Zone, the abutting side yard requirement shall be eight (8) feet.

### 13.6 OTHER REQUIREMENTS: AGRICULTURE USES

- (a) Notwithstanding the provisions of Section 13.3, where any barn, stable or other building intended for the keeping of more than fifty (50) domestic fowl or ten (10) other animals is erected in any MU-1 Zone, no structure shall:
  - (i) be less than fifty (50) feet from any side lot line;
  - (ii) be less than one hundred (100) feet from any dwelling or potable water supply except a dwelling or supply on the same lot or directly related to the agricultural use;
  - (iii) be less than three hundred (300) feet from any watercourse or water body;
  - (iv) be less than five hundred (500) feet from any residential (R-1, RR-1) zone.
- (b) No more than two thousand (2,000) square feet of floor area of all structures on any lot shall be used for a retail use accessory to agriculture uses.

### 13.8 OTHER REQUIREMENTS: INSTITUTIONAL USES

Where institutional uses are permitted in any MU-1 Zone, the provisions of Part 22 shall apply.

### 13.9 OTHER REQUIREMENTS: TRUCKING, LANDSCAPING, EXCAVATING AND PAVING SERVICES

Where trucking, landscaping, excavating and paving services are permitted in a MU-1 Zone, the following shall apply:

- (a) No development permit shall be issued for any use unless a dwelling is located on the lot.
- (b) The total gross floor area of all structures on any lot devoted to the above uses shall not exceed two thousand (2000) square feet.

- (c) No materials or mechanical equipment which is obnoxious or which creates a nuisance by virtue of noise, vibration, smell or glare shall be used on the lot.
- (d) With the exception of aggregate resources, any materials associated with the above uses shall be contained within a building or otherwise enclosed by a fence, vegetation, or other means which provide a visual and physical barrier.
- (e) Any area devoted to open storage shall not be permitted within any required front or side yard line and shall not exceed twenty-five (25) per cent of the lot area.
- (f) One off street parking space, other than that required for the dwelling shall be provided for every three hundred (300) square feet of floor area used by the above use.
- (g) No product stockpile or processing activity associated with the above uses shall be located within one hundred (100) feet of a watercourse.

**Attachment E: Public Meeting Minutes, April 23, 2008**

**HALIFAX REGIONAL MUNICIPALITY  
PUBLIC MEETING  
CASE NO. 01076 - Dog Kennels**

**7:00 p.m.**

**Wednesday, April 23, 2008**

**Hammonds Plains Community Centre**

**STAFF IN**

**ATTENDANCE:**

Leticia Smillie, Planner, HRM Planning Services  
Tim Burns, Planning Technician, HRM Regional Planning  
Cara McFarlane, Planning Controller, HRM Planning Services

**ALSO IN**

**ATTENDANCE:**

Councillor Gary Meade, District 23  
Wendy Gillespie, Pampered Paws Inn  
Del Clarke, Pampered Paws Inn

**PUBLIC IN**

**ATTENDANCE:**

Approximately 38

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The meeting commenced at approximately 7:03 p.m.

**1. Opening Remarks/Introductions/Purpose of Meeting - Leticia Smillie**

Ms. Smillie introduced herself and explained that she was facilitating tonight's meeting on behalf of Joseph Driscoll who is the planner carrying this application through the planning process; Councillor Gary Meade, District 23; Wendy Gillespie and Del Clarke, Pampered Paws Inn; and Tim Burns and Cara McFarlane, HRM Planning Services.

The public meeting is to discuss changing the Municipal Planning Strategy (MPS) for Beaver Bank, Hammonds Plains and Upper Sackville to consider increasing the opportunities for locating kennels within this plan area.

The meeting's agenda and purpose was reviewed.

**2. Overview of Planning Process - Leticia Smillie**

Tonight's meeting is the beginning step in the planning process. This application contains two steps: 1) To amend the MPS and Land Use By-law (LUB) if Council wishes to increase the opportunities for kennels in this plan area. The plan amendment would allow kennels by development agreement within designated areas. 2) To enter into a development agreement to allow a dog kennel (dog daycare) at 1725 Hammonds Plains Road.

The changes to the MPS and LUB will have to be implemented before Western Region Community Council (WRCC) will be able to consider the second step of this application.

A development agreement was explained to the public.

The process for a plan amendment was explained then the development agreement process.

### **3. Presentation of Proposal - Leticia Smillie**

Pampered Paws Inn is located at 1725 Hammonds Plains Road situated on a 15,000 square foot lot. The property is designated Mixed Use B which envisions a wide range of residential, commercial, light industrial and resource uses. Kennels are not considered for these properties. The property is zoned MU-1 (Mixed Use 1) which allows for commercial uses such as the existing bed and breakfast, trucking and excavation services, restaurants, etc., but not for kennels.

The property is currently developed with a bed and breakfast, a home, an ice cream stand and a dog care facility with dog pens at the rear of the building.

A site plan of the business was shown. If Regional Council chooses to approve the plan amendment, this site plan could become part of the development agreement.

In order to consider amending the MPS, proof has to be shown that circumstances have changed from when the MPS was originally adopted. The level of care and programs that are associated with today's dog daycares may be quite different from the kennel standards of the time when the MPS was adopted. Under the current regulations, kennels are only permitted in the C-4 (Highway Commercial) Zone which is only found on a limited number of properties. Kennels are also permitted in MU-2 Zones (mainly found in the Upper Sackville area). The Mixed Use designation applies to the majority of Beaver Bank, Hammonds Plains and Upper Sackville and is applied to the areas where the majority of current residential growth is occurring. Staff is proposing to look at allowing kennels under the Mixed Use Designation (A, B and C) through the development agreement process.

The impact on a community has to be considered when contemplating a plan amendment. The current zoning allows uses such as restaurants, institutions and agriculture. It is unlikely that a dog daycare would have a greater impact than these uses. Staff is suggesting using the development agreement process because it would allow the community and council to introduce some measures to control some of the issues that are considered nuisances which would then limit the impact of kennels on a neighbourhood.

Under the development agreement there could possibly be requirements for fencing, a maximum number of dogs permitted at one time, restrictions on hours of operation, perhaps restricting overnight boarding, etc.

#### 4. Questions/Comments

Bob Miller, Hammonds Plains, asked for an explanation on the process to which Ms. Smillie explained.

Ms. Smillie explained to Del Clarke, Pampered Paws Inn, that the application was initiated at Regional Council who in turn gave HRM staff direction to initiate the case to amend the Beaver Bank, Hammonds Plains and Upper Sackville MPS. There was no decision to make the change but to open an application and look at an amendment.

One resident asked how long the process takes. Ms. Smillie explained that once the review period is complete, Joseph Driscoll, the planner, will then take the information from this meeting and the review team meeting and draft a development agreement. If the development agreement is fine, it will become part of the staff report which will go before Regional Council. Regional Council will then make a decision to either approve or deny the plan amendment. The application will then go before WRCC for a decision on the development agreement.

Joyce Evans, Hammonds Plains, feels a business like Pampered Paws Inn should be encouraged. Ms. Evans was on the Plan Review Committee for Beaver Bank, Hammonds Plains and Upper Sackville Plan Area. She doesn't recall if kennels were discussed during that review.

Sandi Findlay, Halifax, drives out of her way to take her dog to Pampered Paws Inn. This is the best doggy daycare she has seen. The staff give impeccable care to the dogs. The business has school aged children working at the facility. She feels there are larger issues besides kennels that should be addressed. The property has been updated from the eyesore that it was. Employment and much needed services are provided for the area. She feels that it is ridiculous and a waste of taxpayers' money that the meeting is being held and that the application should have been rubber stamped and moved forward. Ms. Smillie explained the reason a two-step process is being done is that anytime a land use is changed on a property and the zone regulations cannot be met, a rezoning or zone amendment has to take place. In order for that to happen, there needs to be policy within the MPS. In this case, the MPS clearly says that kennels are not permitted in this area. Therefore, the reason for the MPS amendment is to create a new policy that will allow the next step to create the development agreement.

Dawn Ross, Halifax, also drives out of her way to take her dog to Pampered Paws Inn solely for the care that is provided by the staff. She agrees with Ms. Findlay regarding the reasoning for this whole process as there are kennels and a farm across the street from the subject property. It is important to realize that when the by-laws were established years ago there was a different reality than now. Things have changed. Without doggie daycares there would be problems. She feels this is a vital service that is offered and is individualized, compassionate, safe, clean and competent and has a concern with the use of the word "kennel". She hopes this is considered in the MPS. She also feels that taxpayers' dollars should not be wasted on issues similar to this. This is a wonderful small business that provides employment, has volunteer programs associated with it, and does a lot of fundraising and charitable work in the community. She understands the need for the process but feels it should be simplified.

Deborah Brunt, Stillwater Lake, feels that Pampered Paws Inn is a safe solution for dogs that are left alone all day. An excellent facility with quality fencing and most importantly, very clean. A solution that allows dog socialization and allows daily exercise. She is interested to know how many calls HRM receives about barking dogs. There are many commercial businesses located all along Highway 213. Pampered Paws is centrally located on Hammonds Plains Road making it convenient. A main street is exactly where this type of business should be. She hopes it is allowed to stay. She doesn't understand the reason for the meeting and feels that HRM needs a new way to deal with issues such as this to avoid wasting money.

Angie McLeod, Purcells Cove, brings her dog to the daycare twice a week and has a great impact on the community (gas, groceries, etc.). You don't know there are dogs on the property until one goes around to the back of the building. The dogs are rarely heard. The staff and community are wonderful.

Wally Peers, Bedford, feels that the business does not reflect the word "kennel". He suggests a different definition be incorporated into the by-law. The daycare is a home away from home for the dogs. He feels the city does not understand the modern dog owner. More businesses like this should be encouraged in Halifax to attract tourists.

Roland White, Hammonds Plains, lives across the street from Pampered Paws Inn and has no problems with the business operation.

Mr. Miller is confused with the separation of the two processes. He feels the second portion of the application is a non-issue as there is plenty of community support. He understands the process but wondered how the public can give staff direction on what they think should happen. Ms. Smillie said that staff is looking at a way to get a development agreement option for Pampered Paws Inn. Therefore, staff would like to open it up under the mixed use designation to be able to consider this type of use. The terminology and definition will be looked at. This process will also open it up for other areas within the Beaver Bank, Hammonds Plains and Upper Sackville plan area. At the same time, a development agreement would have to be entered into. This includes a public process and has to be approved on a community council level.

One resident wondered if it would help to do a petition. Would it make a difference? Will the business remain open in the interim? Ms. Smillie said the business will be allowed to operate while the application is in progress. The resident wondered if there was anything that could be done to move the process along quicker. Ms. Smillie mentioned that there are a number of steps that prevent this from proceeding any faster.

Mr. Miller asked if the public should show for the public hearing for the plan amendment when it goes before Regional Council. Ms. Smillie indicated that they are public hearings and will be open for public comment. The minutes from this meeting will be part of the staff report that goes to Regional Council. One resident asked if Regional Council has access to the e-mails and correspondence that have been sent throughout this process to which Ms. Smillie agreed.

One resident asked if anyone from the community has complained about Pampered Paws Inn. Ms. Smillie is not sure of the origin of the complaint but there was a complaint that had to be investigated and has brought us to this stage.

One resident asked who will have the final say in the approval. Ms. Smillie said that Regional Council makes the decision on the plan amendment (first stage) and WRCC decides on the development agreement (second stage). The resident asked if community support influences Council's vote. Ms. Smillie explained that community support is factored into the decision. Ms. Evans suggests the public go to every public hearing.

Ms. Brunt wants it made clear to Council that the public does not want to see "dog kennels" start up. This business is a dog daycare and Council needs to be made aware of that. This is a first class doggie daycare that is clean and the dogs are respected. Ms. Smillie said the planner will definitely be looking at the definition of kennels versus maybe an alternate definition. Ms. Brunt is disappointed that the planner is not available for the meeting and that the meeting is held on the same night as parent/teacher interviews for the school.

Mr. Miller asked if this issue solves complaints of other dog daycares in the area. He is concerned that problems in other areas may drag this daycare down if the decision is made based on all dog daycares. Ms. Smillie said this is based solely on the Beaver Bank, Hammonds Plains and Upper Sackville plan area. MPSs are based on community comment that were originated from the community; therefore, each plan area has individual needs and desires of what they want to see developed in their community.

Councillor Meade explained that this MPS covers Hammonds Plains as well as Beaver Bank and Upper Sackville. People in other communities may not want a dog daycare in their area and if the plan amendment is not approved, the second phase will not happen. He advised the attendees to go to the public hearing and voice their opinions.

One resident asked if anyone could apply for the same use once the first phase is approved. Ms. Smillie explained that each application would have to go through a development agreement which would require a public process.

An employee of Pampered Paws Inn said this is the only establishment in the metro area that she would apply to. All the dogs are treated like children.

A member from the Halifax Kennel Club wanted to make sure that Ms. Gillespie is not fighting for other kennels to open up in the area. The rules and regulations are changing because they no longer have kennel licenses and dogs are being licensed illegally. Therefore, breeders and kennels are scrambling for places to set up businesses. She wants it made clear that everyone in favor of the application is fighting for Ms. Gillespie and not just any kennel to be set up. Kevin Toal, Springfield Lake, asked if this would be addressed through the development agreement as all kennels would only be permitted through development agreement and therefore would have to go through a public process. Ms. Smillie agreed and mentioned that some controls can be placed within the development agreement as to how the business looks (ie. site plan).

One resident said we should be able to distinguish between kennels and pet care facilities through separate definitions. She is afraid of opening the door for any kennels. New terminology needs to be created. Ms. Smillie said that definition and use under each definition will definitely be looked at as part of this process.

Mr. Clarke mentioned that under the existing Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law (LUB) a kennel is permitted, as of right, on any commercial zoned property.

One resident asked if the current LUB does not state kennels as a permitted use. Ms. Smillie said that they are not mentioned; therefore, not allowed.

One resident asked if it would be easier to apply for a rezoning. Ms. Smillie said there is no policy within the MPS to allow a rezoning.

One resident is concerned about how Council's personal opinions will affect the outcome of the application.

Kim Cole, Truro, works for Bark Busters and her clients consist of modern dog owners. She explained that some dogs need daily care and the dog business will increase in the near future. The residents of HRM have proven that services like hers and Pampered Paws is needed.

The member from the Halifax Kennel Club mentioned that Ms. Gillespie and Mr. Clarke held fundraisers for the IWK and SPCA. A brunch was held for the community and all the proceeds went to other communities within HRM. They are outstanding people in our community.

## **5. Closing Comments**

Ms. Smillie thanked everyone for coming to the meeting and sharing their comments and concerns regarding this application.

## **6. Adjournment**

The meeting adjourned at approximately 8:25 p.m.