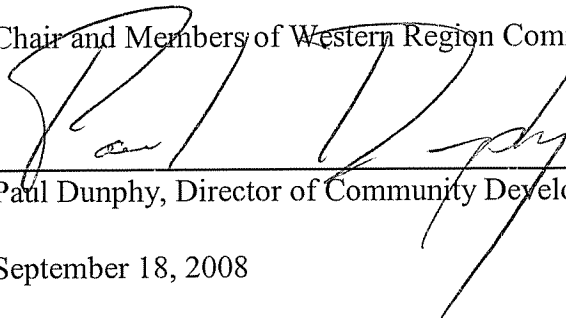




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Western Region Community Council
October 27, 2008

TO: Chair and Members of Western Region Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: September 18, 2008

SUBJECT: **Case 01076: Development Agreement - Pampered Paws Inn, 1725
Hammonds Plains Road**

SUPPLEMENTARY REPORT

ORIGIN

An application by Wendy Gillespie and Delbert Clarke to amend the Municipal Planning Strategy (MPS) and Land Use By-law (LUB) for Beaver Bank, Hammond Plains and Upper Sackville and enter into a development agreement to enable a kennel at 1725 Hammonds Plains Road.

On September 16, 2008, Regional Council and Western Region Community Council (WRCC) held a joint public hearing regarding the requested MPS amendments and development agreement proposal. At that meeting Regional Council approved the proposed amendments to the MPS and LUB.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Approve the proposed development agreement to permit a kennel at 1725 Hammonds Plains Road as set out in Attachment A of this report; and
2. Require the agreement be signed and delivered within 120 days, or any extension thereof granted by Western Region Community Council on request of the applicant, from the date of final approval of said agreement by Western Region Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND/DISCUSSION

On September 16, 2008 Regional Council and WRCC held a joint public hearing to consider amendments to the Beaver Bank, Hammonds Plains and Upper Sackville MPS and LUB and a proposal to enable a kennel at 1725 Hammond Plains Road by development agreement.

Regional Council approved the proposed MPS and LUB amendments set out in the Staff Report dated July 18, 2008. The proposed development agreement set out in the Staff Report dated May 29, 2008 was part of the public hearing process and is included as Attachment A of this report. However, WRCC could not consider the development agreement until the MPS and LUB amendments became effective as set out under the *Municipal Government Act* (MGA).

The MPS and LUB amendments have been reviewed by Service Nova Scotia and Municipal Relations as set out in section 208 of the MGA. As a result, the amendments are now in effect and WRCC is in a position to consider the proposed development agreement.

Staff are of the opinion that the proposed development agreement is consistent with the intent of the MPS amendments adopted by Regional Council on September 16, 2008 and recommend that WRCC approve the proposed development agreement as set out in Attachment A of this report.

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. Council may choose to approve the proposed development agreement set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require a second public hearing.

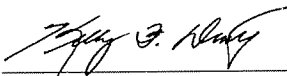
3. Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff are satisfied that the proposed agreement is consistent with the policies and intent of the MPS.

ATTACHMENTS

Attachment A Proposed Development Agreement

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: 
Kelly Denty, Co-Manager, Planning Services, 490-6011

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

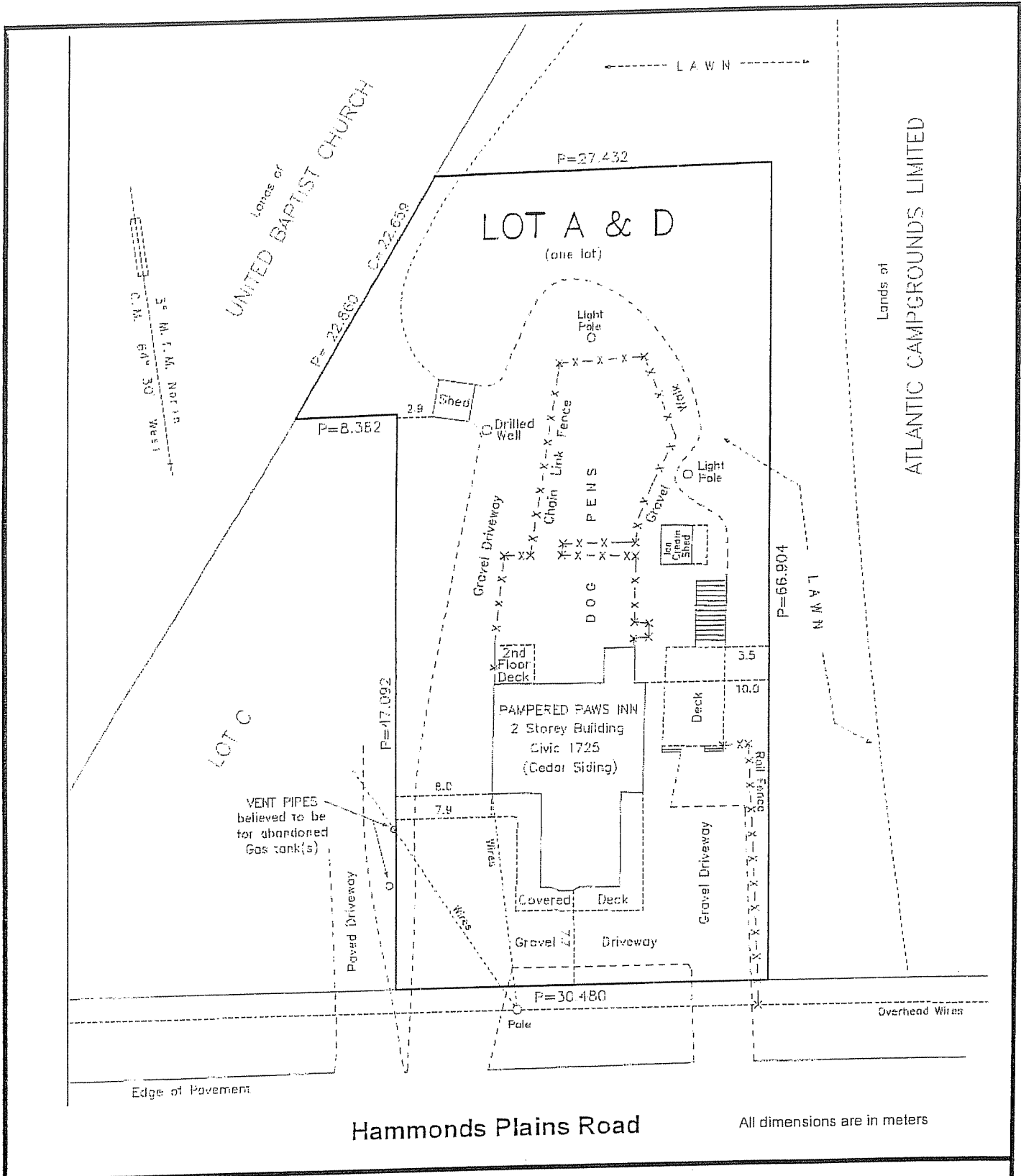
) Per: _____
DELBERT CLARKE

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



Schedule B
Site Plan



Council Report Sign-Off Sheet

Subject: Case 01076 - Supp. Report to WRCC

Meeting Date: _____ Regular Council In Camera Information Report
 Community Council Board/Committee

Prepared by: Joseph Driscoll, Community Development Date: September 18, 2008
Name and Business Unit

√	Stakeholder - Internal	Reviewed By	Date/Time	Time Spent on Report	Initial/Signature
	Not Required (unique to originating BU)				
	BPIM				
	CD				
	Finance - FinTrack - Accounts - Financial Consultants - Procurement - Manager				
	Fire				
	HR				
	IAM				
	Legal - By-Laws - Admin Orders - Other				
	Police				
	TPW				
	Library				
	Halifax Water				
	Councillor(s)				
	Regional Youth Advisory Committee (RYAC)				
	Stakeholder - External				

From: Gordon Roussel
To: FinTrack (Finance Report Tracking)
Date: 06/10/2008 4:15 pm
Subject: Re: October 27th - WRCC - Case 01076, 1725 Hammonds Plains Rd. NBI

CC: Gail Harnish; Joseph Driscoll
Financial implications are sufficiently described

>>> FinTrack (Finance Report Tracking) 06/10/2008 3:28:20 pm >>>
Good afternoon,

Please find attached the above noted report for your review.

Thanks.

Carolyn

FinTrack - Finance Report Tracking Team
Duke Tower, 3rd floor
phone: 490-8928
fax: 490-6238