



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 9.1**

**Halifax Regional Council  
April 21, 2009**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**

Dan English, Chief Administrative Officer

Wayne Anstey, Deputy Chief Administrative Officer - Operations

**DATE:** March 30, 2009

**SUBJECT:** **Case 01095 - MPS & LUB Amendments and Development Agreement,  
Pet Care Facility, 6430 Oak Street, Halifax**

### **SUPPLEMENTARY REPORT**

#### **ORIGIN**

- January 8, 2008 decision by Regional Council to initiate amendments to MPS/LUB;
- Public meeting of May 8, 2008;
- Staff report dated December 15, 2008;
- District 12 Planning Advisory Committee report dated February 27, 2009;
- Peninsula Community Council report dated March 13, 2009;
- Regional Council motion of March 24, 2009 to give First Reading and schedule a public hearing to consider site-specific MPS/LUB amendments to allow for a pet care facility at 6430 Oak Street, Halifax by development agreement.

#### **RECOMMENDATION**

Further to the direction provided by Regional Council at their March 24, 2009 meeting, and if deemed advisable, it is recommended that Regional Council:

Approve the amendments to the Halifax Municipal Planning Strategy and Peninsula Land Use By-law, as contained in Attachment A of this report, to allow for a pet care facility at 6430 Oak Street, Halifax, by development agreement.

## **BACKGROUND**

On March 24, 2009, Council passed a motion to give first reading and set a date for a public hearing (jointly with Peninsula Community Council) to consider site-specific amendments to the Halifax MPS and Peninsula LUB to permit a pet care facility at 6430 Oak Street, Halifax by development agreement. The December 15, 2008 staff report provided a detailed chronology of events for this case as well as the previous application to amend the Peninsula Land Use By-law (Case #00918). However, the following provides a abbreviated summary of events:

- October 2006: Public Information Meeting held re: Land Use By-law amendment application by Janet Chernin (Case #00918);
- July 2007: Peninsula Community Council refuses to amend the LUB and recommends that Regional Council initiate amendments to the MPS/LUB to enable development agreement;
- January 2008 decision by Regional Council to initiate Peninsula-wide amendments to MPS/LUB (Case #01095);
- Public meeting held May 2008;
- February 2009: District 12 Planning Advisory Committee recommends refusal;
- March 2009: Peninsula Community Council recommends approval of site-specific MPS/LUB amendment and development agreement.

## **DISCUSSION**

As a result of Council's direction to consider site-specific amendments to the MPS and LUB which would affect only the subject property at 6430 Oak Street, the concerns raised in the staff report dated December 15, 2008 are substantially reduced, as the proposed amendments would no longer affect the entire Peninsula and a future development agreement would only apply to this property. It should be noted that the rights afforded under the agreement will apply to any future property owner in the event of a sale of the property.

As per Council's instructions, the proposed MPS and LUB amendments included in Attachment A of this report have been revised to reflect the change from Peninsula-wide to site-specific in nature for Council's consideration and possible adoption. The proposed development agreement has not changed and is included as Attachment B.

The approval process for this application has two steps:

1. Regional Council will consider and if deemed advisable, adopt the proposed amendments to the Municipal Planning Strategy and Land Use By-law that enable the policies under which a development agreement may be considered and approved; and
2. Provided that Regional Council approves the amendments, Peninsula Community Council will consider the approval of the proposed development agreement.

Staff do not advocate a site-specific amendment for the property in question as there are no unique characteristics regarding the subject building and property or any change in land use planning circumstances related to the property or surrounding area. However, as per Council's direction, the

proposed MPS and LUB amendments and development agreement are provided should Council wish to approve the proposal.

### **BUDGET IMPLICATIONS**

The HRM costs associated with processing this planning application can be accommodated within the proposed operating budget for C310.

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**

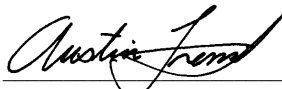
1. Approve the site-specific amendments to the Halifax MPS and Peninsula LUB (Attachment A). Upon the amendments becoming effective pursuant to the requirements of the *HRM Charter*, Peninsula Community Council may approve the proposed development agreement (Attachment B). This is the recommended course of action.
2. Refuse the requested amendments to the Halifax MPS and Peninsula LUB, as contained in Attachment A. Regional Council is under no obligation to consider a request to amend its MPS and a decision not to amend the MPS cannot be appealed.
3. Approve the proposed MPS and LUB amendments with changes. This may require further negotiations between staff and the Developer.


### **ATTACHMENTS**

Attachment A	Proposed MPS and LUB Amendments
Attachment B	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

Report Approved by:   
Paul Dunphy, Director, Community Development

ATTACHMENT A

**PROPOSED AMENDMENTS TO THE HALIFAX MPS AND LUB**

**HALIFAX REGIONAL MUNICIPALITY  
A BY-LAW TO AMEND THE HALIFAX MUNICIPAL PLANNING STRATEGY  
CASE #01095**

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Municipal Planning Strategy of Halifax as enacted by City Council of the City of Halifax on the 30<sup>th</sup> day of March, 1978 and approved by the Minister of Municipal Affairs on the 11<sup>th</sup> day of August 1978 as amended, is hereby amended as follows:

1. Add the following Policies immediately following policy 2.16 in Section II:
  - 2.17 For the property at 6430 Oak Street, Halifax and further to Policies 2.4, 2.4.1, 2.4.2 and 2.4.2.1 of Section II of this Plan, the City may permit, by development agreement, the establishment of a residential pet care facility within a detached one family dwelling house.
    - 2.17.1 In considering approval of such development agreement for a residential pet care facility, Council shall consider the following:
      - a) that limitations be placed on the number of pets (dogs, cats) permitted within the facility, and in no case shall the number of pets exceed twelve, exclusive of those of the operator;
      - b) the hours of operation (for pet drop-off / pick-up and outdoor socialization/play) shall be such that adverse impacts of noise and traffic movements on adjacent residential uses are minimized;
      - c) that limitations are placed on the floor area devoted to the pet care facility within the dwelling;
      - d) the lot on which such facility may be operated shall be of a size which allows for adequate separation distance between the facility and abutting properties;
      - e) that any outdoor activity area associated with such facility be restricted to dogs only, be located within the rear yard, be enclosed by a solid, view-obstructing fence and be adequately set back from abutting residential properties;

- f) a maximum of one employee, in addition to the operator of the facility, may be permitted;
- g) signs for the facility shall be of a size, design and placement on the lot which reduces impacts on adjacent residential uses;
- h) all other relevant policies of the municipal planning strategy with particular reference to the Residential Environments section.

THIS IS TO CERTIFY that the amendments to the Halifax Municipal Planning Strategy, as set out above, were passed by a majority vote of Halifax Regional Council at a duly called meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

GIVEN under the hands of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

ATTACHMENT A (cont')

**HALIFAX REGIONAL MUNICIPALITY  
A BY-LAW TO AMEND THE HALIFAX PENINSULA LAND USE BY-LAW  
CASE #01095**

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Peninsula Area Land Use By-law of Halifax as enacted by City Council of the City of Halifax on the 30<sup>th</sup> day of March, 1978 and approved by the Minister of Municipal Affairs on the 11<sup>th</sup> day of August 1978 as amended, is hereby amended as follows:

1. Add the following new definition, in alphabetical order, to Section 1:

**“Residential Pet Care Facility”** means a home occupation within a detached one family dwelling house, which is the principal residence of the operator of such facility, for the temporary care or boarding of not more than twelve dogs or cats for gain or profit, but shall not include the breeding or sale of such animals.”

2. Add section 99(13) to the Halifax Peninsula Land Use By-law as follows:

**“99(13) Residential Pet Care Facility, 6430 Oak Street**

Council may, by development agreement, pursuant to Section II of the Municipal Planning Strategy, permit a residential pet care facility in accordance with Policies 2.17 and 2.17.1”





## **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*.
- (c) 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;
- (c) 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

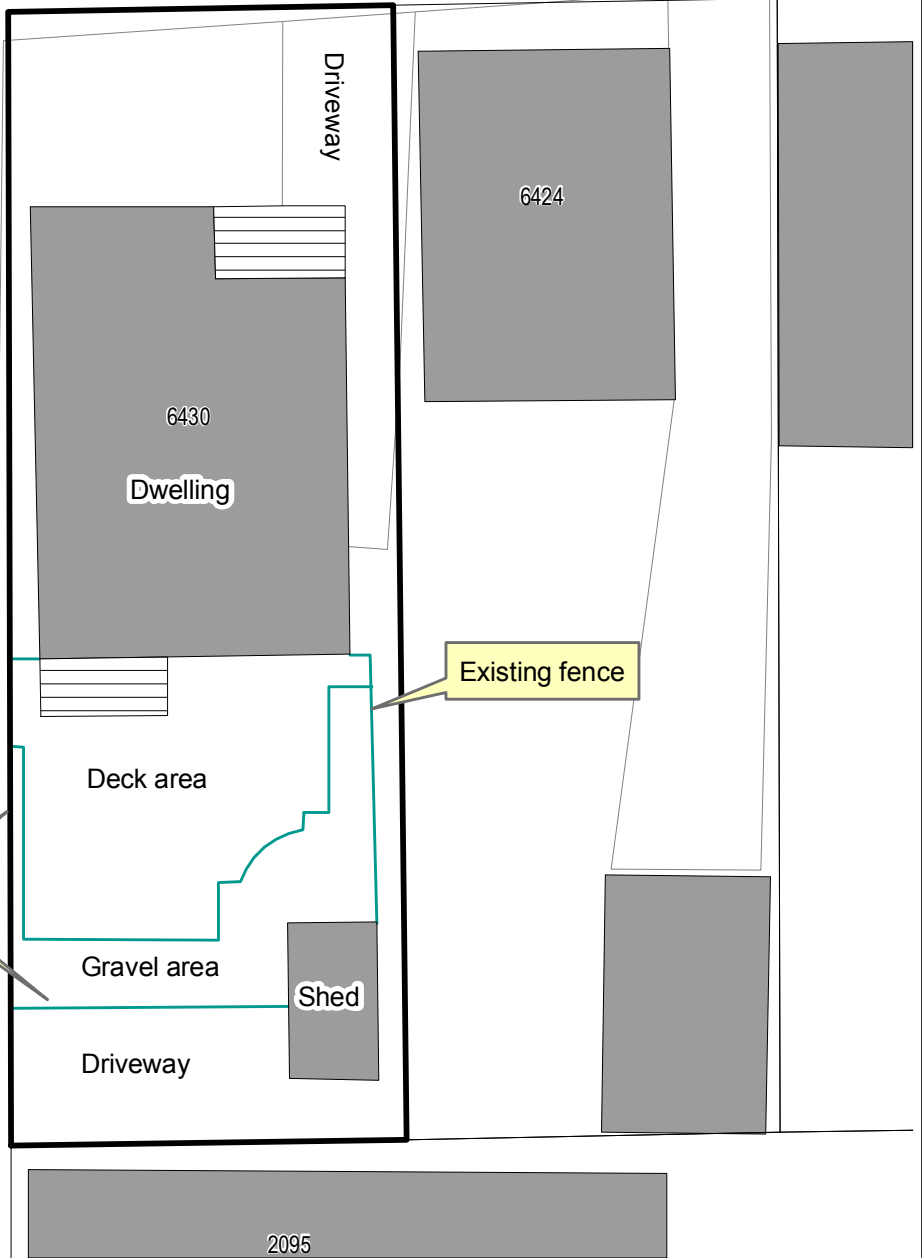
\_\_\_\_\_

Per: \_\_\_\_\_

Municipal Clerk

Oak St

Kline St



Existing fence


Existing fence



### Schedule B - Site Plan

6430 Oak Street  
Halifax



 Subject property

Halifax Peninsula  
Land Use By-Law Area

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