



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation <input checked="" type="checkbox"/>	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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To: Mayor Zebian and Members of West Hants Regional Municipality Council

Submitted by: _____

Sara Poirier, Director of Planning and Development

Date: 2023-02-28

Subject: Development Agreement: 4190 Hwy 1, Garlands Crossing PID 45003357; File #22-30 C

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

Should Council wish to approve the development agreement following the Public Hearing, the following motion would be in order:

...that Council gives Second Reading to and approves entering into a development agreement to permit a four (4) storey apartment building containing 21 apartment units, roof top recreation space and up to 3,000 sq. ft. of commercial space on PID 45003357 in Garlands Crossing in a manner substantively the same as the draft set out in Appendix A of the report File #22-30 B to Council dated January 24, 2023.

...that Council requires that the development agreement with Jean Alphonse of Jovana Construction Limited for PID 45003357 in Garlands Crossing be signed within 120 days from the date of final approval by Council or the date that any appeals have been disposed of; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Property <input checked="" type="checkbox"/>	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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A completed application was received on November 7, 2022, from Monica Sweetapple of Nuvo Architecture and Interiors on behalf of the property owner Jean Alphonse of Jovana Construction Limited. The application is to consider permitting a four (4) storey apartment building containing 21 apartment units, roof top recreation space and up to 3,000 sq. ft. (278.71 sq. m.) of commercial space on PID 45003357 in Garlands Crossing. The lot is currently occupied by the Gold House Chinese Restaurant and is owned by Jovana Construction Limited; Mr. Alphonse is the President of that company. The existing building would be demolished to accommodate the proposed development.

A Public Information Meeting was held on December 8, 2022.

On January 12, 2023 staff presented a recommendation report to the Planning and Heritage Advisory Committee (PAC/HAC). PAC/HAC passed the following motion on January 12, 2023:

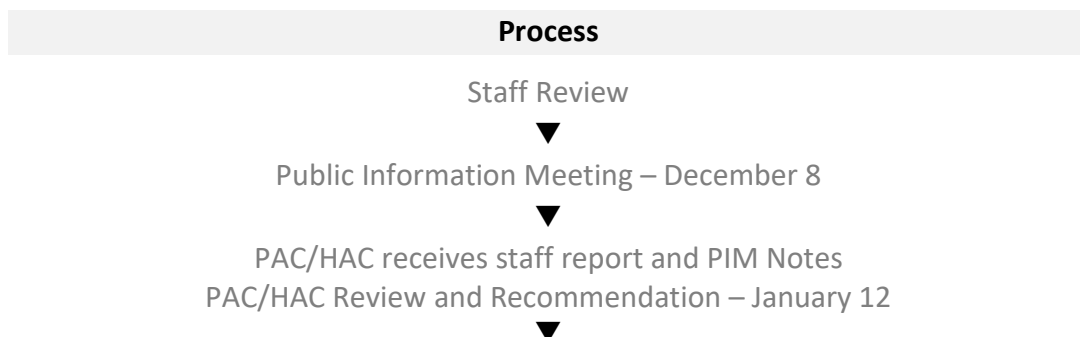
...that PAC/HAC recommends that Council gives First Reading and will hold a Public Hearing to consider entering into a development agreement to permit a four (4) storey apartment building containing 21 apartment units, roof top recreation space and up to 3,000 sq. ft. of commercial space on PID 45003357 in Garlands Crossing, provided there is no through traffic to neighbouring lots particularly the gas station, in a manner substantively the same as the draft set out in Attachment C of the report File #22-30 to the Planning and Heritage Advisory Committee dated January 12, 2023.

A clause requiring the parking spaces along the lot lines to be constructed in a manner which prohibits through traffic to abutting properties was added to Section 2.5 (a) of the development agreement.

Council held first reading on January 24, 2023 (Appendix A).

NEXT STEPS

The process for this application is as follows:



Regional Council First Reading – January 24



Public Hearing & Second Reading – February 28



Notice of Approval in Local Paper



14-Day Appeal Period

APPENDICIES

Appendix A 2023-01-24 PAC/HAC Recommendation to Council - Development Agreement:
4190 Hwy 1, Garlands Crossing PID 45003357; File #22-30 B

CHIEF ADMINISTRATIVE OFFICER REVIEW

I support the recommendation.

Report Prepared by: _____

Sara Poirier, Director of Planning and Development

Report Approved by:  _____

Mark Phillips, Chief Administrative Officer



Appendix A

WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation <input checked="" type="checkbox"/>	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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To: Mayor Zebian and Members of West Hants Regional Municipality Council

Submitted by: _____

Sara Poirier, Senior Planner

Date: 2023-01-24

Subject: Development Agreement: 4190 Hwy 1, Garlands Crossing PID 45003357; File #22-30 B

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

Should Council wish to proceed to Public Hearing, the following motion would be in order:

...that Council gives First Reading and will hold a Public Hearing to consider entering into a development agreement to permit a four (4) storey apartment building containing 21 apartment units, roof top recreation space and up to 3,000 sq. ft. of commercial space on PID 45003357 in Garlands Crossing in a manner substantively the same as the draft set out in Appendix A of the report File #22-30 B to Council dated January 24, 2023.

...that Council requires that the development agreement with Jean Alphonse of Jovana Construction Limited for PID 45003357 in Garlands Crossing be signed within 120 days from the date of final approval by Council or the date that any appeals have been disposed of; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Property <input checked="" type="checkbox"/>	Public	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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	Opinion <input type="checkbox"/>				
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A completed application was received on November 7, 2022, from Monica Sweetapple of Nuvo Architecture and Interiors on behalf of the property owner Jean Alphonse of Jovana Construction Limited. The application is to consider permitting a four (4) storey apartment building containing 21 apartment units, roof top recreation space and up to 3,000 sq. ft. (278.71 sq. m.) of commercial space on PID 45003357 in Garlands Crossing. The lot is currently occupied by the Gold House Chinese Restaurant and is owned by Jovana Construction Limited; Mr. Alphonse is the President of that company. The existing building would be demolished to accommodate the proposed development.

DISCUSSION

A Public Information Meeting was held on December 8, 2022.

On January 12, 2023 staff presented a recommendation report to the Planning and Heritage Advisory Committee (PAC/HAC) (Appendix A). The Committee discussed a few details of the application including the proposed accessible units, recreational space, parking spaces, and required geotechnical study. The Committee discussed the site plan and requested an additional clause be added to the draft development agreement to ensure the parking spaces surrounding the new building were constructed in a way to prohibit through traffic to abutting properties. PAC/HAC passed the following motion on January 12, 2023:

...that PAC/HAC recommends that Council gives First Reading and will hold a Public Hearing to consider entering into a development agreement to permit a four (4) storey apartment building containing 21 apartment units, roof top recreation space and up to 3,000 sq. ft. of commercial space on PID 45003357 in Garlands Crossing, provided there is no through traffic to neighbouring lots particularly the gas station, in a manner substantively the same as the draft set out in Attachment C of the report File #22-30 to the Planning and Heritage Advisory Committee dated January 12, 2023.

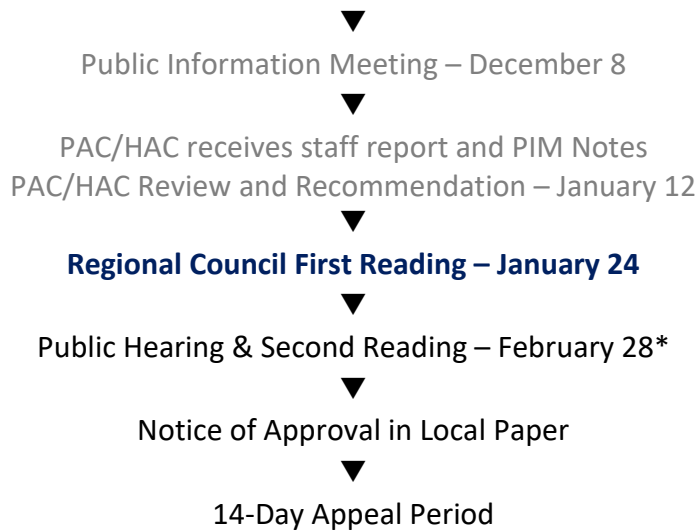
A clause requiring the parking spaces along the lot lines to be constructed in a manner which prohibits through traffic to abutting properties has been added to Section 2.5 (a) of the development agreement attached to this report as Appendix A.

NEXT STEPS

The process for this application is as follows:

Process

Staff Review



*anticipated dates; final dates set by Council

FINANCIAL IMPLICATIONS

There are no anticipated costs to the Municipality in regard to this development.

ALTERNATIVES

In response to the application, Council may decide to:

- hold First Reading and authorize a Public Hearing to approve the development agreement as drafted or as specifically revised by direction of Council;
- provide alternative direction such as requesting further information on a specific topic.

APPENDICIES

Appendix A Revised Draft Development Agreement

Appendix B 2023-01-12 Staff Report Development Agreement: 4190 Hwy 1, Garlands Crossing
PID 45003357; File #22-30

CHIEF ADMINISTRATIVE OFFICER REVIEW

The report and draft Development (DA) highlight the redevelopment of a prominent site in the Three Mile Plains Growth Center which will include a four (4) storey building with ground level commercial space.

The DA comments on several matters influencing the construction and ongoing operational standards for the development. The only component I would raise for Council to reflect upon is the hours of operation for the commercial component. The current language would restrict all potential commercial uses or tenant to operate or be open from 7am to 9pm. While considering the potential commercial uses of the ground level space having a “closing time” of 9pm may be restrictive. If a commercial activity such as a licensed restaurant wanted to stay open past 9pm they would have to apply for an amendment to the DA.

I support the recommendation with the suggestion Council reflect upon the hours of use for the commercial component.

Report Prepared by: _____

Sara Poirier, Senior Planner

Report Reviewed by: _____

Madelyn LeMay, Director of Planning and Development

Report Approved by:  _____

Mark Phillips, Chief Administrative Officer

Appendix A



DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2023.

BETWEEN:

WEST HANTS REGIONAL MUNICIPALITY, a body corporate pursuant to the *Municipal Government Act*, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

JOVANA CONSTRUCTION LIMITED a body corporate, with a head office at 6123 Lady Hammond Road, in the County of Halifax, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered owner of a parcel of land located at 4190 Highway 1, Garlands Crossing (PID 45003357) hereinafter referred to as the “Property”, which lands are more particularly described in Schedule A attached hereto; and

WHEREAS the Property is designated Commercial Core on the Generalized Future Land Use Map of the West Hants Municipal Planning Strategy (the “Municipal Planning Strategy”) and zoned Highway Commercial (HC) on the Zoning Map of the West Hants Land Use By-law (the “Land Use By-law”), and is within the Commercial Development District and the Three Mile Plains Growth Centre; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit a four (4) storey apartment building containing up to 21 apartment units and up to 3,000 sq. ft. (278.71 sq. m.) of commercial space on the Property (the “Development”); and

WHEREAS Policy 5.3.8 of the Municipal Planning Strategy and Section 6.1 (c) of the Land Use By-law enable Council to consider entering into a development agreement to allow multiple unit residential development greater than three storeys in height in the Three Mile Plains Growth Centre; and

WHEREAS the Council of the Municipality, at a meeting held on **Month Date, 2023** approved this request and adopted this Agreement by policy, subject to the execution of this development agreement by the parties hereto and the other conditions herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Definitions

In this Agreement, all words or phrases used shall carry their customary meaning unless otherwise set out in the Land Use Bylaw, except those as defined as follows:

- (a) “Qualified site professionals” includes professional engineers, architects and/or hazardous materials professionals.

1.2 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

1.3 Municipal Planning Strategy, Land Use By-law and Subdivision By-law

- (a) *Municipal Planning Strategy* means the Municipal Planning Strategy of the Municipality of the District of West Hants, effective on June 26, 2008, as amended, or successor By-laws;
- (b) *Land Use By-law* means the Land Use By-law of the Municipality of the District of West Hants, effective on June 26, 2008, as amended, or successor By-laws;
- (c) *Subdivision By-law* means the Subdivision By-law of the Municipality of the District of West Hants, approved on June 26, 2008, as amended, or successor By-laws.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

- (a) The Parties agree that uses on the Property shall be limited to the following:
- (i) those uses permitted by the underlying zoning in the Land Use By-law; and
 - (ii) an apartment building containing 21 apartment units, roof top recreation space, and up to 3,000 sq. ft. (278.71 sq. m.) gross floor area on the ground floor for commercial uses which shall be limited to the following commercial uses:
 - Arts and crafts studios including photography
 - Banks and financial institutions
 - Clubs and community organizations
 - Commercial schools
 - Day care centres, licensed or non-licensed
 - Dry cleaning and laundry establishments
 - Entertainment, recreation and assembly uses within a wholly enclosed building
 - Licensed liquor establishments
 - Offices
 - Post offices and postal outlets
 - Repair and rental establishments
 - Restaurants, excluding drive-through restaurants
 - Retail stores
 - Service and personal service shops
 - Veterinary clinics and animal hospitals

Except as otherwise provided in this Agreement, the provisions of the Land Use By-law and Subdivision By-law apply to any development undertaken pursuant to this Agreement.

2.2 Development Location and Design

- (a) Prior to the construction of the new building as shown on Schedule B, all existing buildings shall be demolished, and the materials disposed of in accordance with the law and under direction of qualified site professionals.
- (b) The Development location and design shall be generally consistent with the Site Plan shown in Schedule B.

- (c) No buildings shall be developed on the easement in favour of the Municipality as shown on the Site Plan in Schedule B. Balconies or other building features shall not be permitted to project into the area of the lot subject to the easement unless otherwise approved in writing by the Municipal Department of Public Works.
- (d) The Development Officer may approve in writing minor changes to the location of the Building or other aspects of the Site Plan provided the side yards are not decreased and no building is proposed to be constructed on the Municipal easement. Changes to the Site Plan may also be approved in writing in accordance with reports generated in Section 2.3 (e) and 2.8, *Site Drainage*, of this Agreement provided the side yards are not decreased and no building is proposed to be constructed on the Municipal easement.

2.3 Site Requirements

- (a) The Building shall conform to the following requirements:

Minimum Front Yard	25 ft. (7.62 m.)
Minimum Rear Yard	25 ft. (7.62 m.)
Minimum Side Yard	15 ft. (4.57 m.) or one-half the height of the building whichever is greater
Maximum Storey of Main Building	4 storeys
Maximum Building Height	50 ft. (15.24 m.)
Maximum Height of Accessory Building	15 ft. (4.57 m.)

- (b) Accessory buildings are permitted in accordance with Section 5.1 of the Land Use By-law, *Accessory Buildings and Structures*.
- (c) A minimum of 4,500 sq. ft. (418.06 sq. m.) of usable recreation space as outlined in Section 2.7, *Recreational Space*, shall be required.
- (d) The Owner shall keep all undeveloped areas of the Property landscaped.
- (e) No development permit shall be issued until the Owner provides to the Development Officer a geotechnical study prepared by a qualified site professional that outlines the geotechnical investigations conducted on site, confirms the suitability of the site for the proposed development and provides recommendations to the Owner on how to construct the building based on the site conditions.

2.4 Access and Egress

- (a) The Owner shall develop, construct, and maintain the driveway in the Development in general conformance with the driveway shown on Schedule B.

- (b) The driveway shown on Schedule B shall provide a maximum width of 26 ft. (8 m.) and shall have a minimum paved surface width of 20 ft. (6.09 m.), unless otherwise approved in writing by the Provincial Department of Public Works. The vehicular entrance and exit shall be clearly demarcated.

2.5 Parking

- (a) All parking spaces for vehicles using the Property shall be located on the lot and shall be generally located as shown on Schedule B. Parking spaces located along the lot line shall be constructed in a manner which prohibits through traffic to abutting properties.
- (b) The Owner shall provide a minimum of one (1) parking space per dwelling unit on the Property and a minimum of one (1) parking space for every 360 sq. ft (33.45 sq. m.) gross floor area dedicated to commercial uses on the Property.
- (c) Parking aisles and spaces shall be constructed so as to create a stable surface for vehicle traffic and be clearly demarcated and lined by the Owner. They may be constructed using permeable construction materials to assist with stormwater retention.
- (d) Each parking space shall be a minimum of 9 ft. by 20 ft. (2.7 m. by 6.1 m.) exclusive of driveways and manoeuvring aisles. Parking aisles shall be a minimum of 20 ft. (6.1 m) wide.
- (e) No parking spaces, driveways or parking aisles shall be located within 16.4 ft. (5 m.) of the front lot line unless otherwise approved in writing by the Provincial Department of Public Works.
- (f) The number, location and arrangement of parking spaces may be varied in writing by the Development Officer in accordance with Section 2.13, *Variance*, of this Agreement.

2.6 Fire Safety

- (a) No development permit shall be issued until the location and connection design of any fire hydrant(s) to the municipal water supply has been approved by the water utility, in consultation with the district Fire Chief.
- (b) All curbs shall be designed to be mountable by emergency services vehicles.
- (c) All access routes shall be kept clear of overhead obstructions and wires and be maintained by the Owner to allow unimpeded access to the Property by emergency services vehicles, unless otherwise agreed to in writing by the Fire Chief.

2.7 Recreational Space

- (a) A minimum of 4,500 sq. ft. (418.06 sq. m.) of private recreational space shall be provided on the Property and may include:
 - (a) individual balconies;
 - (b) roof top recreation space; and
 - (c) common use landscaped areas.

2.8 Site Drainage

- (a) No development permit shall be issued until the Owner provides to the Development Officer a stormwater management plan that satisfies the Municipal Engineer that historical flooding patterns and area drainage systems have been considered and that storm water discharge will balance pre- and post-construction flows to ensure there is no negative impact on downstream properties. If the stormwater management plan provided by the Owner does not in fact balance pre-and post-construction flows to ensure the absence of such impacts the Owner shall undertake such remediation as the Municipal Engineer may reasonably require.
- (b) The Owner shall undertake all construction activities in accordance with an erosion and sedimentation control plan prepared by a Professional Engineer, unless otherwise directed by Nova Scotia Environment, and also agrees to assume sole responsibility for compliance with all regulations of Nova Scotia Environment.

2.9 Servicing

(a) Waste Collection

- (i) No Municipal garbage collection will be provided to the Development. The Owner shall have sole responsibility for collecting, storing and disposing of garbage and other recycling or waste items from the Development.
- (ii) The Owner shall keep any outdoor storage of garbage in an enclosed structure or in some way adequately screened so as not to be visible from or cause a nuisance to nearby properties and abutting roads and it shall not be located closer than 10 ft. (3.05 m.) to an abutting property.

(b) Water and Sewer Services

- (i) The Building shall be serviced with water and sewer services provided by West Hants Regional Municipality authorized by the Municipal Engineer. Detailed design plans of the water and sewer servicing connections and

layout shall be in accordance with the Municipal Services Specifications Manual and shall be submitted to the Municipal Engineer for approval prior to construction.

- (ii) The Owner shall be responsible for constructing, installing and maintaining the water and sewer services on the Property, except the Municipal owned infrastructure within the Municipal easement as shown on the Site Plan in Schedule B.

(c) Snow Plowing

The Owner shall have sole responsibility for snow plowing within the Development.

2.10 Maintenance

- (a) The Owner shall keep the Property and Buildings and any portion thereof clean and in good repair. Any driveways, fences, lawns, trees, shrubs, walkways and other landscaping elements shall be regularly maintained and kept in a tidy state and free from unkempt materials or matter of any kind.
- (b) The Owner shall maintain the driveway to a standard adequate to allow for access by emergency services vehicles.

2.11 Signs and Lighting

Signage and illumination shall be regulated under Sections 5.18 and 7.0 of the Land Use By-law, *Illumination* and *Signs*, which control lighting, size, location, and number of signs. Exterior lighting for driveways, parking areas, signs or structures shall be shielded and directed downward to ensure there is no light spilling, glare or light cast over neighbouring properties or the street.

2.12 Hours of Operation

The hours of operation for the commercial uses within this Development shall be limited to between 7:00 a.m. and 9:00 p.m. daily, inclusive.

2.13 Variance

In accordance with Section 5.48 of the Land Use By-law, *Variance*, the Development Officer may grant a variance for one or more of the following requirements subject to the requirements of the *Municipal Government Act*:

- (i) minimum required yard dimensions except side yard requirements as required in Section 2.2 (c) of this Agreement;
- (ii) number of parking spaces required; and

- (iii) floor area occupied by a home-based business; and
- (iv) height and area of a sign.

PART 3 CHANGES AND DISCHARGE

3.1 The Owner shall not vary or change the use of the Property from that provided for in Section 2.1 of this Agreement, *Use*, unless a new agreement is entered into with the Municipality or this Agreement is amended.

3.2 Any matters in this Agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed with the written consent of Council without a public hearing provided that Council determines that the changes do not significantly alter the intended effect of these aspects of this Agreement.

3.3 The following matters are substantive matters:

- (a) the uses permitted on the Property as listed in Section 2.1, *Use*;
- (b) subject to Section 2.13, the minimum side yard requirements and maximum building height as listed in Section 2.3 (c);
- (c) the geotechnical study requirements as listed in Section 2.3 (e);
- (d) the fire safety requirements as listed in Section 2.6, *Fire Safety*;
- (e) the stormwater management plan requirements as listed in Section 2.8, *Site Drainage*; and
- (f) hours of operation for the commercial uses as listed in Section 2.12, *Hours of Operation*.

3.4 Upon conveyance of land by the Owner to either:

- (a) the road authority for the purpose of creating or expanding a public street over the Property; or
- (b) the Municipality for the purpose of creating or expanding any municipally owned facility over the Property,

registration of the deed reflecting the conveyance shall be conclusive evidence that this Agreement shall be discharged as it relates to the public street or public facility, as the case may be, as of the date of registration with the Land Registry Office, but this Agreement shall remain in full force and effect for all remaining portions of the Property.

3.5 Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter, and this Agreement may be discharged by Council without a public hearing.

3.6 Notice of Intent to Discharge this Agreement may be given by the Municipality to the Owner following a resolution of Council to give such Notice:

- (a) as provided for in Section 4.1, *Commencement of Development*, of this Agreement; or
- (b) at the discretion of the Municipality, with or without the concurrence of the Owner, where the Development has, in the reasonable opinion of Council on advice from the Development Officer, ceased operation for a period of at least twenty-four (24) months; or
- (c) at any time upon the written request of the Owner, provided the use of the Property is in accordance with the applicable Land Use By-law or a new agreement has been entered into.

3.7 Council may discharge this Agreement 30 days after a Notice of Intent to Discharge has been given.

PART 4 IMPLEMENTATION

4.1 Commencement of Development

- (a) The Owner may not commence any construction or use on the Property until the Municipality has issued any development permit, building permit and/or occupancy permit that may be required.
- (b) Development as provided in Part 2 of this Agreement shall commence not later than twenty-four (24) months from the date this Agreement is signed. If, in the opinion of the Development Officer, this time limit has not been met, this Agreement may be discharged at the option of the Municipality by resolution of Council in accordance with Section 229 of the Municipal Government Act, 30 days after giving Notice of Intent to Discharge to the Owners. Upon the written request of the Owners, the Municipality, by resolution of Council, may grant an extension to the date of commencement of development without such an extension being deemed to be an amendment to this Agreement.
- (c) If the Owners are bona fide delayed from commencing the development for reasons which are beyond the Owners' control, the determination of which shall be at the sole discretion of the Development Officer, then performance by the Owners is excused for the period of the delay and the time period for the Owners to perform their obligations shall be extended by the Development Officer in writing for an equivalent period, without such an extension being deemed to be an amendment to this Agreement.

4.2 Material to be Provided

- (a) The Owner shall provide record drawings to the Development Officer for any portion of the Development for which an engineered design is required within ten (10) days of completion of any work which requires the engineered design.
- (b) The Owner shall, upon written request, provide the Municipality with copies of any documentation, permits or approvals required by Provincial or Federal governments or agencies.

PART 5 ADMINISTRATION and COMPLIANCE

5.1 Compliance with other By-laws and Regulations

- (a) Nothing in this Agreement shall exempt the Owner from complying with Federal, Provincial and Municipal laws, by-laws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority, or approval required thereunder.
- (b) Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property (other than the Land Use By-laws to the extent varied by this Agreement) or any statute or regulation, the higher or more stringent requirements shall prevail.

5.2 Severability of Provisions

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.

5.3 Interpretation

- (a) Where the context requires, the singular shall include the plural and the masculine gender shall include the feminine and neutral gender.
- (b) 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.
- (c) References to particular sections of statutes and by-laws shall be deemed to be references to any successor legislation and by-laws even if the content has been amended, unless the context otherwise requires.

5.4 Municipal Responsibility

- (a) The Municipality does not make any representations to the Owner about the suitability of the Property for the Development proposed by this Agreement. The

Owner assumes all risks and must ensure that any proposed Development complies with this Agreement and all other laws pertaining to the Development.

- (b) Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Municipality may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.

5.5 Breach of Terms or Conditions

Upon breach of any term or condition of this Agreement, the Municipality may notify the Owner in writing. In the event that the Owner has not cured any such breach or entered into arrangements with the Municipality related to such breach to the Municipality's satisfaction, acting reasonably, within six (6) months of such notice, then the Municipality may rely upon the remedies contained in Section 264 of the *Municipal Government Act* and may enter the land and perform any of the terms contained in the Development Agreement, or take such remedial action as is considered necessary to correct a breach of the Agreement, including the removal or destruction of anything that contravenes the terms of the Agreement and including decommissioning the site. It is agreed that all reasonable expenses, whether arising out of the entry on the land or from the performance of the terms are a first lien on the land that is the subject of the Development Agreement.

5.6 Costs

The Owner shall pay all costs associated with registering this Agreement and all costs associated with any amendment thereof.

5.7 Development Agreement Bound to Land

This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Municipality in accordance with Section 229 of the *Municipal Government Act*.

5.8 Assignment of Agreement

The Owner may, at any time and from time to time, transfer or assign this Agreement and its rights hereunder and may delegate its obligations hereunder to an assign, successor, heir, or purchaser of the land bound by this Agreement.

5.9 Written Notice

- (a) The Municipality may serve notice on the Owner personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to Jean Alphonse, 6123 Lady Hammond Road, Halifax, Nova Scotia, B3K 0H6, or at any other address provided by the Owner.
- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided by the Municipality to the Owner.

5.10 Full Agreement

This Agreement constitutes the entire Agreement and contract entered into by the Municipality and the Owner. No other agreement or representation, oral or written, shall be binding.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness

Witness

) **WEST HANTS REGIONAL
MUNICIPALITY**

)
)
)

Per: _____

) Abraham Zebian, Mayor

)

) Per: _____

) Deanna Snair, Municipal Clerk

)

)

)

) **JOVANA CONSTRUCTION LIMITED**

)

)

Per: _____

) Jean Alphonse, President

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2023, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2023, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2023, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that, **Jean Alphonse**, one of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court of Nova Scotia

AFFIDAVIT OF CLERK

WEST HANTS REGIONAL MUNICIPALITY

I, Deanna Snair of _____, Hants County, Nova Scotia make oath and swear that:

1. I am the Clerk of the West Hants Regional Municipality (the “Municipality”) and I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. The Municipality is a body corporate pursuant to the *Municipal Government Act*, S.N.S. 1988, c.18, as amended.
3. I acknowledge that the Municipality executed the attached Instrument by its proper designates duly authorized in that regard under seal on the date of this Affidavit pursuant to subsection 13(3) of the *Municipal Government Act*, S.N.S. 1988, c.18, as amended. This acknowledgement is made pursuant to subsection 31(a) of the Registry Act, R.S.N.S. 1989, c.392 and/or clause 79(1)(a) of the Land Registry Act, S.N.S. 2001, c.6, as amended, for the purpose of registering or recording the Instrument.
4. The Municipality is resident in Canada for the purposes of the Income Tax Act (Canada).

I certify that on this _____, 2023
the Municipal Clerk, Deanna Snair came before me, made oath,
and swore the foregoing affidavit at
_____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

Deanna Snair, Clerk

Canada
Province of Nova Scotia

AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)

I, Jean Alphonse, Nova Scotia, make oath and say that:

1. I Jean Alphonse of JOVANA CONSTRUCTION LIMITED the “Corporation”. Except as otherwise stated I have personal knowledge of the matters to which I have sworn in this Affidavit.

2. I acknowledge that I executed the foregoing instrument on behalf of the Corporation on the date of this affidavit; this acknowledgment is made for the purpose of registering such instrument pursuant to s.31(a) of the Registry Act, R.S.N.S. 1989, c.392 or ss.79 and 83 of the Land Registration Act as the case may be.

3. I verify that I have the authority to execute the foregoing instrument on behalf of the corporation and thereby bind the Corporation.

4. The Corporation is a resident of Canada under the Income Tax Act (Canada).

5. The ownership of a share or an interest in a share of the Corporation does not entitle the owner of such share or interest in such share to occupy a dwelling owned by the Corporation.

I certify that on this _____, 2023
the Deponents came before me, made oath,
and swore the foregoing affidavit at
_____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

JEAN ALPHONSE, President

Schedule A
Legal Description

ALL that lot of land situate at Garlands Crossing, in the County of Hants and Province of Nova Scotia, known as Lot CA shown and delineated on a plan of survey entitled Plan of Subdivision Parcel B Lands Conveyed to 2559464 Nova Scotia Limited Danny Chows Restaurant Parcel A Lands Conveyed to 3032149 Nova Scotia Limited, prepared by Bruce Lake, N.S.L.S., dated August 30th, 2003, approved by the Municipality of West Hants under Plan No. 31-03 on October 28th, 2003 and filed at the Office of the Registry of Deeds for the Registration District of Hants as Plan Number 8897 and being more particularly bounded and described as follows:

BEGINNING at a point on the western side of the Halifax to Windsor Highway, said point being the southeastern corner of lands of Irving Oil Company Limited, said point being also the northeastern corner of the lands herein described;

THENCE on a bearing North 79 degrees 17 minutes West a distance of 150 feet to an iron pipe set in the ground;

THENCE South 40 degrees 59 minutes 16 seconds West (Grid North) a distance of 74.81 feet to a survey marker;

THENCE South 35 degrees 27 minutes 20 seconds East (Grid North) a distance of 108.34 feet to a survey marker;

THENCE on a bearing North 86 degrees 39 minutes East a distance of 189 feet, more or less, to the Halifax to Windsor Highway aforesaid;

THENCE in a northerly direction along the western side of said Halifax to Windsor Highway a distance of 100 feet, more or less, to the point of beginning.

SUBJECT TO a right-of-way described in Deed recorded at the Registry of Deeds for Hants County on September 11th, 1996, in Book 788 at pages 402-405 inclusive, as document number 5378.

ALSO SUBJECT TO an easement record at the Registry of Deeds for Hants County in Book 341 at page 249, as document number 500861311.

The parcel originates with an approved plan of subdivision that has been filed under the Registry Act or registered under the Land Registration Act at the Land Registration Office for the registration district of Hants County as plan number 8897.

Appendix B



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation <input checked="" type="checkbox"/>	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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To: Members of Planning and Heritage Advisory Committee (PAC/HAC)

Submitted by: _____
Sara Poirier, Senior Planner

Date: 2023-01-12

Subject: Development Agreement: 4190 Hwy 1, Garlands Crossing PID 45003357; File #22-30

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

Staff recommends that the PAC/HAC forward a positive recommendation by passing the following motion:

...that PAC/HAC recommends that Council give First Reading and hold a Public Hearing to consider entering into a development agreement to allow a four (4) storey apartment building containing 21 apartment units, roof top recreation space and up to 3,000 sq. ft. of commercial space on PID 45003357 in Garlands Crossing which is substantively the same as the draft set out in Attachment C of the report File #22-30 to the Planning and Heritage Advisory Committee dated January 12, 2023.

...that PAC/HAC recommends that Council require that the development agreement with Jean Alphonse of Jovana Construction Limited for PID 45003357 in Garlands Crossing be signed within 120 days from the date of final approval by Council or the date that any appeals have been disposed of; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Property <input checked="" type="checkbox"/>	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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A completed application was received on November 7, 2022, from Monica Sweetapple of Nuvo Architecture and Interiors on behalf of the property owner Jean Alphonse of Jovana Construction Limited. The application is to consider a four (4) storey apartment building containing 21 apartment units, roof top recreation space and up to 3,000 sq. ft. (278.71 sq. m.) of commercial space on PID 45003357 in Garlands Crossing. The lot is currently occupied by the Gold House Chinese Restaurant and is owned by Jovana Construction Limited; Mr. Alphonse is the President of that company. The existing building would be demolished to accommodate the proposed development.

DISCUSSION

PID 45003357 is approximately 24,018 sq. ft. (2,231.35 sq. m.) in size. The lot is designated Commercial Core on the Generalized Future Land Use Map of the West Hants Municipal Planning Strategy (WHMPS) (Figure 1) and is within the Commercial Development District and Three Mile Plains Growth Centre. Part 5.5 of the WHMPS contains the overall intention for properties designated Commercial Core in the Three Mile Plains Growth Centre.

The lot is zoned Highway Commercial (HC) on the Zoning Map of the West Hants Land Use By-law (WHLUB) (Figure 2). Residential uses are permitted in the same building as commercial uses in the Highway Commercial (HC) zone. However, residential uses are restricted to two-thirds (66 percent) or less of the total floor area of the building, and the maximum height of main buildings permitted in the Highway Commercial (HC) zone is 35 ft (10.67 m).

The subject lot abuts properties zoned Highway Commercial (HC) and General Commercial (GC) and designated Commercial Core. These properties are within the Commercial Development District and Three Mile Plains Growth Centre.

Development Agreement

A development agreement is a contract between an owner of land and the Municipality to allow Council to consider a use that is not a listed permitted use within a zone on a specific lot. The ability for Council to consider a development agreement must be stated in the Land Use By-law and the Municipal Planning Strategy must identify the kinds of uses Council may consider in each area. Uses which Council may consider are those which Council has determined may have sufficient impact on an area that a negotiated process is required to ensure the potential impact

is minimized. In the Municipal Planning Strategy Council usually identifies both specific and general criteria which must be considered when making decisions regarding a development agreement.

A proposal being considered must be measured against only the specific and general criteria for the proposal in the Municipal Planning Strategy and not any other criteria.

West Hants Land Use By-law

Section 6.1 of the WHLUB, Development Agreements, states that “The following developments may be considered only by development agreement in accordance with the Municipal Government Act and the Municipal Planning Strategy:

- (c) multiple unit residential development greater than three storeys in height in the Three Mile Plains Growth Centre in accordance with Policy 5.3.8 of the Municipal Planning Strategy;

Proposed Development Agreement

The property owner would like to demolish the existing building on site and construct a new four (4) storey apartment building containing 21 apartment units, roof top recreation space, and up to 3,000 sq. ft. (278.71 sq. m.) of commercial space. The permitted uses on the lot are outlined in Section 2.1, *Use*, of the draft development agreement (Attachment C). The permitted commercial uses are specifically listed to ensure they will be compatible with the proposed residential uses.

As depicted on the site plan in Schedule B of the draft development agreement, there is an easement on the lot in favour of the Municipality. The Municipal Public Works Department confirmed that there is an existing 10-inch sewer main that runs from Tonge Hill to Highway 1 located within the easement. Section 2.2 (c) of the draft development agreement states that no buildings shall be located on the area of the lot identified within the easement. The Manager of Operations brought forward concerns about the potential for balconies in the proposed development overhanging the area within the easement which would limit the swing of an excavator if the sewer main needed repaired or replaced. Due to this concern, Section 2.2 (c) also states that no balconies or other building features may project into the area of the lot subject to the easement unless written consent is received from the Municipal Department of Public Works.

In response to an inquiry the Manager of Building and Fire Officials noted that “Looking at the plans, this will need to be sprinklered and a full Engineer design will be required. This will also include Geotechnical review and sign off. I have watched the existing building on the lot sink, not sure if this lot will support a 4 storey building (this will be approved by the Engineers).” Based on these comments, a geotechnical study is required to be provided to the Development Officer prior to a development permit being issued for the proposed development (Section 2.3 (e)).

The Multiple Residential (R-3) zone of the WHLUB outlines required recreation space for dwellings with three or more units. It states that 200 sq. ft. (18.58 sq. m.) of recreation space is required for a 1-bedroom unit, and 250 sq. ft. (23.22 sq. m.) is required for a 2-bedroom unit. Using these requirements as a guide for this proposed development, 4,350 sq. ft. (404.13 sq. m.) of recreation space would be required. Staff have increased this to 4,500 sq. ft. (418 sq. m.) due to the limited public recreation sites within walking distance (Section 2.7). The proposed development includes a plan for 5,240 sq. ft. (486.81 sq. m.) of rooftop recreation space, which would exceed the required amount in the draft development agreement.

The main access for the apartment building will be from Highway 1. The Nova Scotia Department of Public Works commented that they do “not anticipate a substantial change in traffic on Highway 1 with this development” however “the proximity of the existing commercial access to the Hwy 1 / Trunk 14 (intersection) is of concern. The determination of the need for a traffic impact study is dependent on the use of the 2600 sq. ft. of commercial space”. The need for a traffic study would be determined when the owner applies for development permits for the proposed commercial use. The Nova Scotia Department of Public Works went on to state “The property will require closure of its open frontage prior to receiving department approval. The property will be permitted a single access onto Highway 1, no greater than 8 m. wide.” Based on this comment, the driveway width is limited to a maximum of 26 ft. (8 m.) in Section 2.4, *Access and Egress*, of the draft development agreement. The Nova Scotia Department of Public Works concluded by stating that “structures, including parking stalls, are not permitted within the 5-metre setback of the Highway 1 right-of-way.” The property owner has amended the site plan for the proposed development to ensure no parking spaces or driveways within 16.4 ft. (5 m.) of the front lot line. A clause has also been added to Section 2.5 (e) of the draft development agreement which states that no parking spaces, driveways or parking aisles shall be located within 16.4 ft. (5 m.) of the front lot line unless otherwise approved in writing by the Provincial Department of Public Works.

The WHLUB currently requires 1.5 parking spaces per dwelling unit at a size of 10 ft. by 20 ft. (3.05 sq. m. x 6.1 sq. m.) and 1 parking space for every 300 sq. ft. (27.87 sq. m.) of commercial space. Due to the location of the lot in a Growth Centre and the proximity of the lot to surrounding services, staff determined that it would be appropriate to reduce the amount of parking required per dwelling unit. As outlined in Section 2.5, *Parking*, of the draft development agreement, a minimum of one (1) parking space will be required per dwelling unit and one (1) parking space for every 360 sq. ft. (33.45 sq. m.) of gross floor area dedicated to commercial uses. The minimum size of each parking space will be 9 ft. x 20 ft. (2.7 m. x 6.1 m.).

The criteria in Policy 5.3.8 (a) requires the side yards to be at least one half of the building height. This is required in Section 2.3 (a) of the draft development agreement. The WHLUB requirements for signs and lighting will be used to regulate signs and illumination on the subject lot, as outlined in Section 2.11, *Signs and Lighting*, of the draft development agreement. Commercial uses within the development will be permitted to operate only between the hours of 7:00 a.m. and 9:00 p.m. daily, as outlined in Section 2.12.

In response to an inquiry, the Municipal Project Engineer commented that “as this is a proposed commercial and multi-unit use, all services such as garbage collection (exceeding single unit curbside quota’s) and snow clearing would be the responsibility of the property owner”. These responsibilities are outlined in Section 2.10 (a) and (c) of the draft development agreement. Section 2.9 (a) also outlines that the owner will keep outdoor storage of garbage enclosed or screened from nearby properties and abutting roads.

As per the draft development agreement the developer will be required to provide the following items prior to being issued a development permit:

- a geotechnical study prepared by a qualified professional that outlines the geotechnical investigations conducted on site, confirms the suitability of the site for the proposed development and provides recommendations to the Owner on how to construct the building based on the site conditions as outlined in Section 2.3 (e), *Site Requirements*;
- a stormwater management plan for the site that satisfies the Municipal Engineer that historical flooding patterns and area drainage systems have been considered and that storm water discharge will not have a negative impact on downstream properties as outlined in Section 2.8, *Site Drainage*; and
- design plans of the water and sewer servicing connections and layout including location and connection design of any fire hydrant(s) as outlined in the 2.9 (b), *Water and Sewer Services*, and 2.6 (a), *Fire Safety*.

Section 3.3 of the draft development agreement outlines substantive matters of the development agreement. Substantive matters are any items that Council has determined that would significantly alter the intended effect of the development agreement if changed. If a request is received from the developer to change a substantive matter outlined in a development agreement, the request must go through the entire development agreement process including Public Hearing before Council prior to Council making a final decision on the proposed amendment. Staff have determined the following items in this draft development agreement are substantive matters:

- the uses permitted on the Property as listed in Section 2.1, Use;
- subject to Section 2.13, the minimum side yard requirements and maximum building height as listed in Section 2.3 (c);
- the geotechnical study requirements as listed in Section 2.3 (e);
- the fire safety requirements as listed in Section 2.6, Fire Safety;
- the stormwater management plan requirements as listed in Section 2.8, Site Drainage; and
- hours of operation for the commercial uses as listed in Section 2.12, Hours of Operation.

Other items such as engineered building design, accessible parking, sprinkler systems, and barrier free units will be required by the Manager of Building and Fire Inspection Services as per the National Building Code requirements. A full review of the building plans will be conducted when the property owner applies for development and building permits. These items are not listed in the draft development agreement as the National Building Code would take precedence over the development agreement as outlined in Section 5.1, *Compliance with other By-laws and Regulations*, in the draft development agreement.

West Hants Municipal Planning Strategy

Part 5.0 of the WHMPS contains the overall intention for Growth Centres in West Hants; Section 5.5 of the WHMPS contains the overall intention for properties designated Commercial Core in the Three Mile Plains Growth Centre. The Commercial Cores of the Growth Centres were designated due to the access to municipal services, access to Highway 101 and the central location. They were also designated to ensure there was sufficient space in the former Municipality of the District of West Hants for commercial development. This was reinforced when Council designated the Commercial Core areas of the Falmouth and Three Mile Plains Growth Centres as the Commercial Development District where commercial uses will be incentivized.

This proposal includes commercial uses on the street frontage of the ground floor of the building. The proposal application shows up to 2,934 sq. ft. (272.58 sq. m.) of commercial space which will replace the existing 2,960 sq. ft. (275 sq. m.) of commercial space on the property. As the proposal includes the demolition of an existing commercial property to enhance the property with a similarly sized commercial component and residential units, the proposal would still be consistent with the intent of the Commercial Development District and the overall policies for the Growth Centres.

Section 5.3 outlines the residential policies for the Three Mile Plains Growth Centre. Policy 5.3.8 establishes Council's intention to consider "multiple unit residential development greater than three storeys in height in the Three Mile Plains Growth Centre by development agreement".

WHMPS Specific Criteria

Policy 5.3.8 outlines the specific criteria to be considered by Council, which are examined in detail in Attachment A.

In summary, the criteria are met since:

- the side yards will be at least one-half the height of the building;
- the development has frontage on an arterial road;
- the lot is serviced with municipal water and sewer; and
- adequate recreational space and on-site parking will be provided.

WHMPS General Criteria

The proposed development meets the general criteria for development agreements set out in the WHMPS Policy 16.3.1. These criteria are examined in detail in Attachment B. In summary:

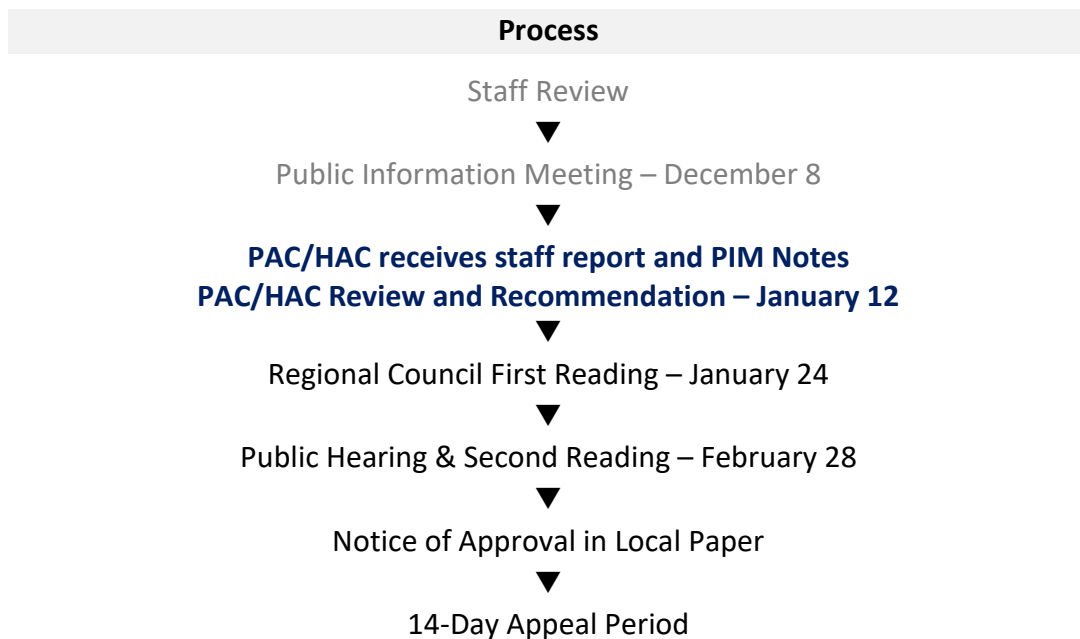
- the proposal is not premature or inappropriate for the area;
- no municipal costs related to the proposal are anticipated; and
- the Fire Chief, Development Officer, Manager of Building and Fire Inspection Services, Municipal Project Engineer, and Provincial Department of Public Works have no concerns which have not been addressed in the report and development agreement.

MUNICIPAL CLIMATE CHANGE ACTION PLAN

The Municipal Climate Change Action Plan (MCCAP) Inland Flooding and Coastal Flooding maps do not show any risks of either inland or coastal flooding on the property. The subject lot was not included in the Three Mile Plains Flood Risk Assessment Study. Property owners are responsible for ensuring that their lot is suitable for the proposed uses.

NEXT STEPS

As noted above, the draft development agreement has been considered within the context of both the specific and general policies of the WHMPS, and is consistent with the intent, objectives, policies and criteria of the WHMPS. As a result, it is reasonable to consider permitting a four (4) storey apartment building containing 21 apartment units, rooftop recreation space and up to 3,000 sq. ft. (278.71 sq. m.) of commercial space on PID 45003357 in Garlands Crossing by development agreement.



*anticipated dates; final dates set by Council

FINANCIAL IMPLICATIONS

There are no anticipated costs to the Municipality in regard to this development.

ALTERNATIVES

In response to the application, PAC/HAC may recommend that Council:

- hold First Reading and authorize a Public Hearing to approve the development agreement as drafted or as specifically revised by direction of PAC/HAC;
- provide alternative direction such as requesting further information on a specific topic.

ATTACHMENTS

Figure 1	GFLUM Extract
Figure 2	Zoning Map Extract
Attachment A	Specific Criteria for Development Agreement
Attachment B	General Criteria for Development Agreement
Attachment C	Draft Development Agreement
Attachment D	Public Information Meeting Notes

Report Prepared by: _____
Sara Poirier, Senior Planner

Report Reviewed by: _____
Madelyn LeMay, Director of Planning and Development

Figure 1
GFLUM Extract

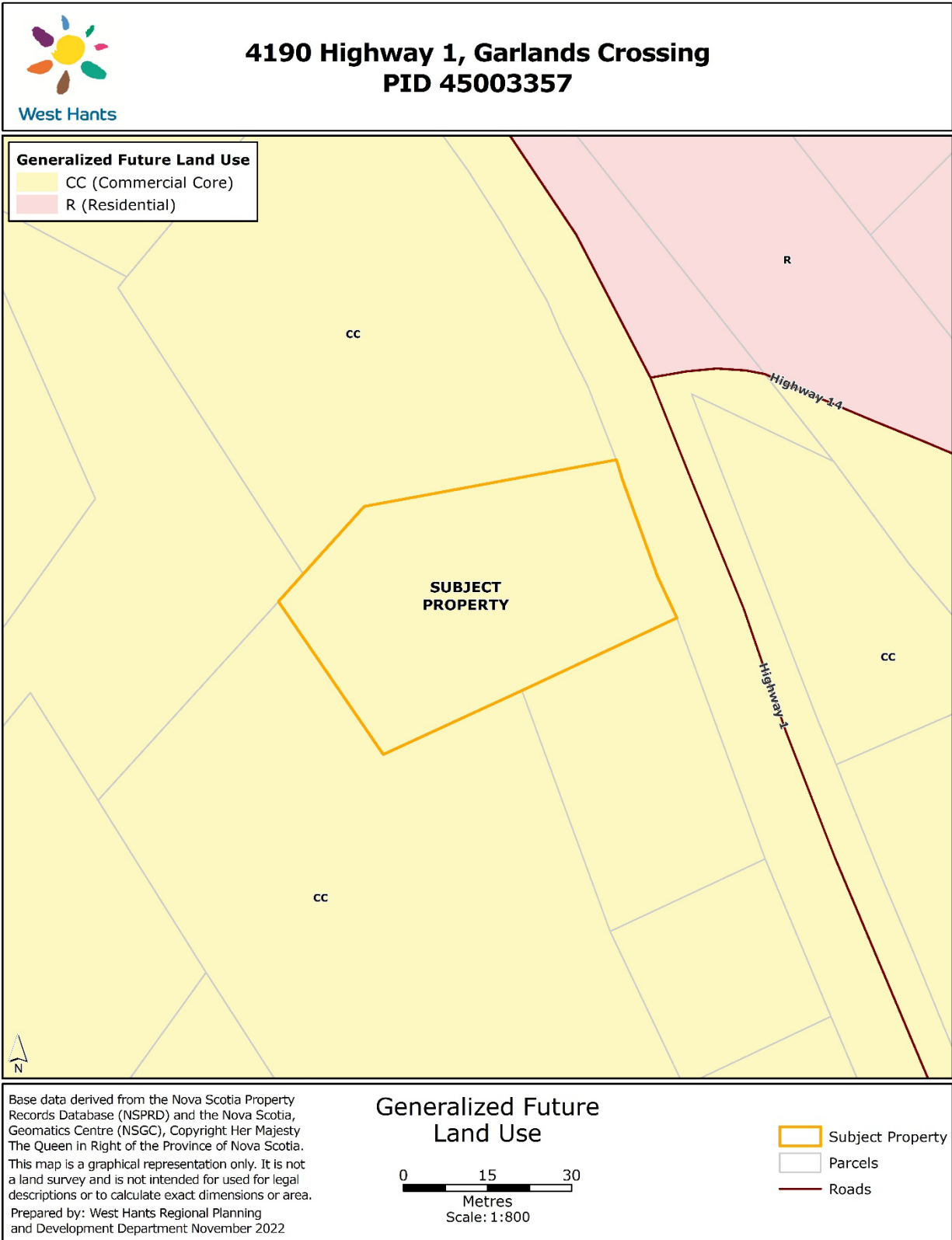
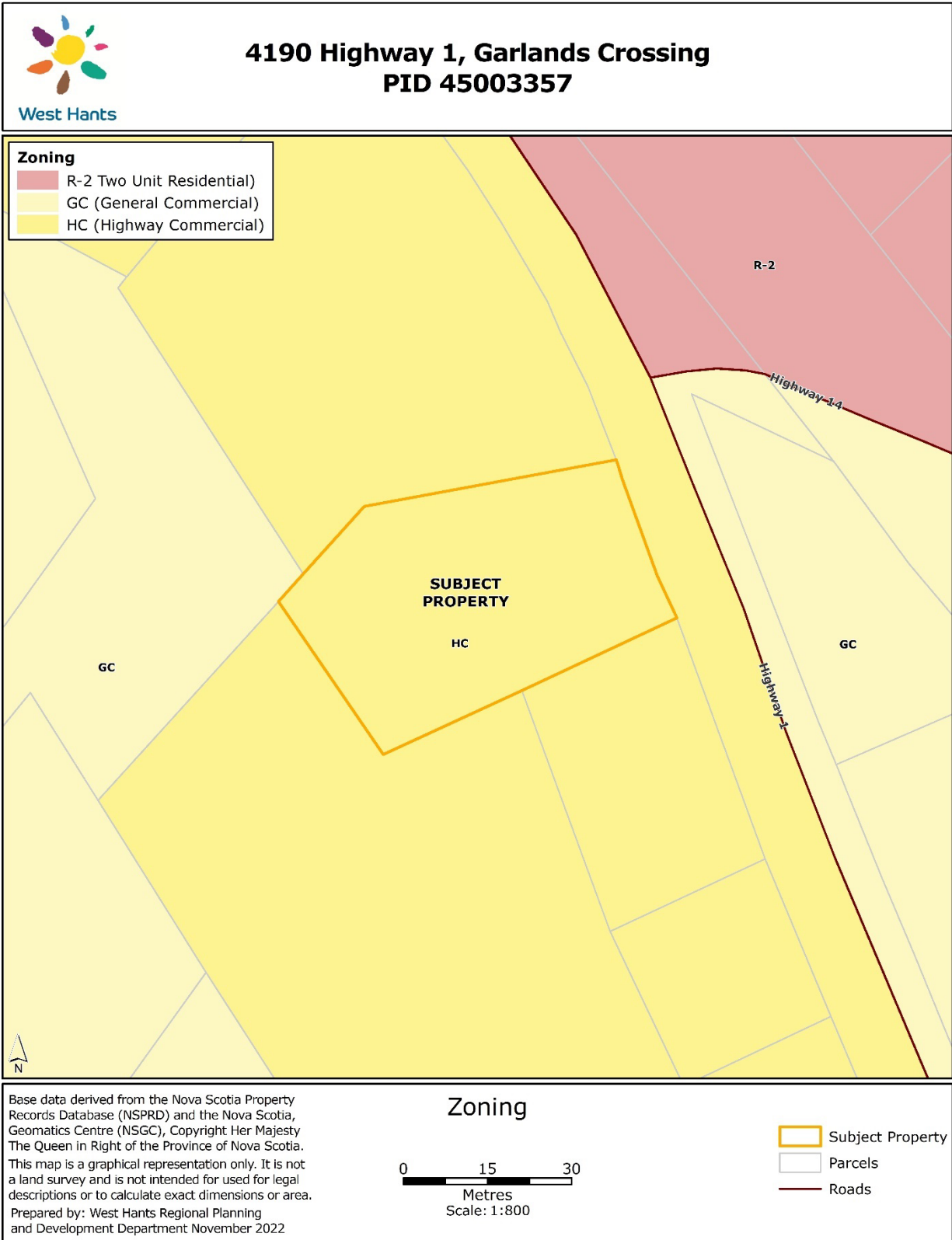


Figure 2
Zoning Map Extract



Attachment A
Specific Criteria for Development Agreement

West Hants Municipal Planning Strategy

Policy 5.3.8 It shall be the policy of Council to consider multiple unit residential development greater than three storeys in height in the Three Mile Plains Growth Centre by development agreement subject to the following:

CRITERIA	COMMENT
(a) the side yards are at least one-half the height of the building;	Section 2.2 (a) requires the side yards of the buildings to be one-half the height of the building or 15 ft. (4.57 m.) whichever is greater.
(b) adequate landscaping, screening and buffering is provided to minimize the impact of building height on adjacent properties;	The proposal is located within a commercial area where surrounding uses are mainly General Commercial (GC) or Highway Commercial (HC) in nature. There are no residential properties abutting the lot that may be impacted by the proposed 4 storey apartment building. The site plan for the proposed development shows landscaping along the north and east lot line. Staff consider this adequate to provide a visual break to minimize the impact of height on abutting properties.
(c) the specific requirements for multiple unit development set out in Policy 5.3.7;	See below.
(d) any other matter which may be addressed in a development agreement; and	All other matters are addressed elsewhere in this report.
(e) Policy 16.3.1.	Please see Attachment B for further details

Policy 5.3.7 It shall be the policy of Council to consider rezoning land within the Three Mile Plains Growth Centre to R-3 subject to the following:

CRITERIA	COMMENT
(a) the development has frontage on an arterial or collector street designated on the Transportation Map (Map 2) if it consists of 12 or more units;	The lot has frontage on Highway 1. Highway 1 is designated an arterial road on the Transportation Map (Map 2) of the West Hants Municipal Planning Strategy.

<p>(b) the lot is serviced, or is capable of being serviced, with municipal water and sewer; (Amendment WHMPS 14-01 Effective January 22, 2015)</p>	<p>The Municipal Project Engineer confirmed that “the location is currently served with municipal water and municipal sewer services.”</p>
<p>(c) the development is compatible with the character of the area with respect to building scale and design, traffic generation, population density and similar matters;</p>	<p>Garlands Crossing is mainly comprised of single-unit dwellings. This specific lot is in a commercial area of the Municipality however is close to the Crossing development and the community of Windsor where population density is 522 people per sq. km. (Statistics Canada Census for 2021). The Municipal Development Officer responded that “the dimensions and shape of the proposed development including setbacks from property lines are adequate.” They added that the commercial/residential pattern of development is compatible with the surrounding area.</p> <p>The Nova Scotia Department of Public Works commented that they do “not anticipate a substantial change in traffic on Highway 1 with this development”.</p>
<p>(d) existing and proposed streets are adequate to support the development and existing streets will not require major infrastructure improvements as a result of the development; a traffic impact study may be required in accordance with Section 14.6 of this Strategy;</p>	<p>The Nova Scotia Department of Public Works stated that existing streets are adequate to support the development and will not require major infrastructure improvements as a result of this development.</p> <p>They did note that “the proximity of the existing commercial access to the Hwy 1 / Trunk 14 (intersection) is of concern. The determination of the need for a traffic impact study is dependent on the use of the 2600 sq. ft. of commercial space”. The need for a traffic study would be determined when the owner applies for development permits for the proposed commercial use.</p> <p>The Nova Scotia Department of Public Works went on to state “The property will require</p>

	<p>closure of its open frontage prior to receiving department approval. The property will be permitted a single access onto Highway 1, no greater than 8 m. wide.” Based on this comment, the driveway width is limited to a maximum of 26 ft. (8 m.) in Section 2.4, <i>Access and Egress</i>, of the draft development agreement. The Nova Scotia Department of Public Works concluded by stating that “structures, including parking stalls, are not permitted within the 5-metre setback of the Highway 1 right-of-way.” The property owner has amended the site plan for the proposed development to ensure no parking spaces or driveways within 16.4 ft. (5 m.) of the front lot line.</p>
<p>(e) adequate open space or recreational space is provided;</p>	<p>The Municipal Development Officer stated that the proposed recreational space of 5,240 sq. ft. (486.81 sq. m.) “exceeds our normal requirement.” The recreation space proposed would be adequate to support this development.</p>
<p>(f) adequate on-site parking is provided;</p>	<p>The applicant proposes to provide one (1) parking space per dwelling unit and seven (7) parking spaces for the proposed 2,934 sq. ft. (272.58 sq. m.) of commercial space. The Municipal Development Officer stated that providing this parking “for a total of 28 on-site parking spaces is adequate for this type of development.”</p>
<p>(g) any other matter which may be addressed in a Land Use By-law; and</p>	<p>All other matters are addressed elsewhere in this report.</p>
<p>(h) Policy 16.3.1.</p>	<p>Please see Attachment B for further details</p>

Attachment B
General Criteria for Development Agreement

Policy 16.3.1 In considering development agreements and amendments to the West Hants Land Use By-law, in addition to the criteria set out in various policies of this Strategy, Council shall consider:

CRITERIA	COMMENT
(a) whether the proposal is considered premature or inappropriate in terms of:	
(i) the adequacy of sewer and water services;	The Municipal Project Engineer stated "the proposed uses are not considered premature or inappropriate in terms of adequacy of services."
(ii) the adequacy of school facilities;	No impact on school facilities is anticipated.
(iii) the adequacy of fire protection and other emergency services;	In response to an inquiry, the Manager of Building and Fire Inspection Services stated that they "don't see any issues with this development on a quick review. Looking at the plans, this will need to be sprinklered and a full Engineer design will be required." The local Fire Chief confirmed that the proposal is not considered premature or inappropriate in terms of the adequacy of fire protection and emergency response.
(iv) the adequacy of road networks adjacent to, or leading to the development; and	The Nova Scotia Department of Public Works stated that existing streets are adequate to support the development and will not require major infrastructure improvements as a result of this development.
(v) the financial capacity of the Municipality to absorb any costs relating to the development.	There are no anticipated costs to the Municipality regarding this development.
(b) whether the development is serviced, or capable of being serviced, by a potable water supply and either central sewer or an approved on-site sewage disposal system;	As noted in 5.3.7 (b) the Municipal Project Engineer confirmed that "the location is currently served with municipal water and municipal sewer services."
(c) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;	As noted in 5.3.7 (d) the Nova Scotia Department of Public Works has stated that the developer may have to provide a traffic

	<p>study depending on the commercial use proposed within the building. The owner will provide a this at the development permit application stage if required by the Provincial Department of Public Works. The Provincial Department of Public works is also requiring a single driveway to a maximum of 26 ft. (8 m.) for the proposed development. This is required in Section 2.4, <i>Access and Egress</i>, of the draft development agreement. Finally, the Nova Scotia Department of Public Works stated that “structures, including parking stalls, are not permitted within the 5-metre setback of the Highway 1 right-of-way.” The property owner has amended the site plan for the proposed development to ensure this requirement is met.</p> <p>There is no active rail line in the area. Highway 1 does not have sidewalks in this area. It is anticipated that most people will drive to access the proposed commercial and residential uses on the property.</p>
<p>(d) the adequacy of the dimensions and shape of the lot for the intended use;</p>	<p>The property is approximately 24,018 sq. ft. (2,231.35 sq. m.) and is pentagonal in shape. The Development Officer commented that “the dimensions and shape of the proposed development including setbacks from property lines is adequate.”</p>
<p>(e) the pattern of development which the proposal might create;</p>	<p>The surrounding area is already established with commercial uses along this portion of Highway 1 and residential uses along Tonge Hill and Trunk 14. The proposal for this lot includes both commercial and residential uses within the same building and is not anticipated to create a pattern of development unusual for the area. The Development Officer stated that this commercial/residential pattern of</p>

	development is compatible with the surrounding area.
(f) the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses or wetlands, and susceptibility of flooding;	<p>The Municipal Climate Change Action Plan (MCCAP) Inland Flooding and Coastal Flooding maps do not show any risks of either inland or coastal flooding on the property. The subject lot was not included in the Three Mile Plains Flood Risk Assessment Study.</p> <p>In response to an inquiry, the Manager of Building and Fire Inspection Services noted that the proposed building will need a geotechnical review and sign off prior to receiving building permits due to concerns with the current stability of the site. They stated, "I have watched the existing building on the lot sink, not sure if this lot will support a 4-storey building (this will be approved by the Engineers)." Based on these comments, a geotechnical study is a requirement prior to a development permit being issued, as outlined in Section 2.3 (e).</p> <p>The property owner is responsible for ensuring that the lot is suitable for the proposed uses.</p>
(g) whether the proposal meets the requirements of the appropriate provincial or federal agencies as well as whether it conforms to all other relevant municipal by-laws and regulations; and	All Municipal, Provincial and Federal regulations will have to be met.
(h) any other matter required by relevant policies of this Strategy.	There are no other relevant policies of this Strategy.

Attachment C



DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2023.

BETWEEN:

WEST HANTS REGIONAL MUNICIPALITY, a body corporate pursuant to the *Municipal Government Act*, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

JOVANA CONSTRUCTION LIMITED a body corporate, with a head office at 6123 Lady Hammond Road, in the County of Halifax, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered owner of a parcel of land located at 4190 Highway 1, Garlands Crossing (PID 45003357) hereinafter referred to as the “Property”, which lands are more particularly described in Schedule A attached hereto; and

WHEREAS the Property is designated Commercial Core on the Generalized Future Land Use Map of the West Hants Municipal Planning Strategy (the “Municipal Planning Strategy”) and zoned Highway Commercial (HC) on the Zoning Map of the West Hants Land Use By-law (the “Land Use By-law”), and is within the Commercial Development District and the Three Mile Plains Growth Centre; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit a four (4) storey apartment building containing up to 21 apartment units and up to 3,000 sq. ft. (278.71 sq. m.) of commercial space on the Property (the “Development”); and

WHEREAS Policy 5.3.8 of the Municipal Planning Strategy and Section 6.1 (c) of the Land Use By-law enable Council to consider entering into a development agreement to allow multiple unit residential development greater than three storeys in height in the Three Mile Plains Growth Centre; and

WHEREAS the Council of the Municipality, at a meeting held on **Month Date, 2023** approved this request and adopted this Agreement by policy, subject to the execution of this development agreement by the parties hereto and the other conditions herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Definitions

In this Agreement, all words or phrases used shall carry their customary meaning unless otherwise set out in the Land Use Bylaw, except those as defined as follows:

- (a) “Qualified site professionals” includes professional engineers, architects and/or hazardous materials professionals.

1.2 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

1.3 Municipal Planning Strategy, Land Use By-law and Subdivision By-law

- (a) *Municipal Planning Strategy* means the Municipal Planning Strategy of the Municipality of the District of West Hants, effective on June 26, 2008, as amended, or successor By-laws;
- (b) *Land Use By-law* means the Land Use By-law of the Municipality of the District of West Hants, effective on June 26, 2008, as amended, or successor By-laws;
- (c) *Subdivision By-law* means the Subdivision By-law of the Municipality of the District of West Hants, approved on June 26, 2008, as amended, or successor By-laws.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

- (a) The Parties agree that uses on the Property shall be limited to the following:
- (i) those uses permitted by the underlying zoning in the Land Use By-law; and
 - (ii) an apartment building containing 21 apartment units, roof top recreation space, and up to 3,000 sq. ft. (278.71 sq. m.) gross floor area on the ground floor for commercial uses which shall be limited to the following commercial uses:
 - Arts and crafts studios including photography
 - Banks and financial institutions
 - Clubs and community organizations
 - Commercial schools
 - Day care centres, licensed or non-licensed
 - Dry cleaning and laundry establishments
 - Entertainment, recreation and assembly uses within a wholly enclosed building
 - Licensed liquor establishments
 - Offices
 - Post offices and postal outlets
 - Repair and rental establishments
 - Restaurants, excluding drive-through restaurants
 - Retail stores
 - Service and personal service shops
 - Veterinary clinics and animal hospitals

Except as otherwise provided in this Agreement, the provisions of the Land Use By-law and Subdivision By-law apply to any development undertaken pursuant to this Agreement.

2.2 Development Location and Design

- (a) Prior to the construction of the new building as shown on Schedule B, all existing buildings shall be demolished, and the materials disposed of in accordance with the law and under direction of qualified site professionals.
- (b) The Development location and design shall be generally consistent with the Site Plan shown in Schedule B.

- (c) No buildings shall be developed on the easement in favour of the Municipality as shown on the Site Plan in Schedule B. Balconies or other building features shall not be permitted to project into the area of the lot subject to the easement unless otherwise approved in writing by the Municipal Department of Public Works.
- (d) The Development Officer may approve in writing minor changes to the location of the Building or other aspects of the Site Plan provided the side yards are not decreased and no building is proposed to be constructed on the Municipal easement. Changes to the Site Plan may also be approved in writing in accordance with reports generated in Section 2.3 (e) and 2.8, *Site Drainage*, of this Agreement provided the side yards are not decreased and no building is proposed to be constructed on the Municipal easement.

2.3 Site Requirements

- (a) The Building shall conform to the following requirements:

Minimum Front Yard	25 ft. (7.62 m.)
Minimum Rear Yard	25 ft. (7.62 m.)
Minimum Side Yard	15 ft. (4.57 m.) or one-half the height of the building whichever is greater
Maximum Storey of Main Building	4 storeys
Maximum Building Height	50 ft. (15.24 m.)
Maximum Height of Accessory Building	15 ft. (4.57 m.)

- (b) Accessory buildings are permitted in accordance with Section 5.1 of the Land Use By-law, *Accessory Buildings and Structures*.
- (c) A minimum of 4,500 sq. ft. (418.06 sq. m.) of usable recreation space as outlined in Section 2.7, *Recreational Space*, shall be required.
- (d) The Owner shall keep all undeveloped areas of the Property landscaped.
- (e) No development permit shall be issued until the Owner provides to the Development Officer a geotechnical study prepared by a qualified site professional that outlines the geotechnical investigations conducted on site, confirms the suitability of the site for the proposed development and provides recommendations to the Owner on how to construct the building based on the site conditions.

2.4 Access and Egress

- (a) The Owner shall develop, construct, and maintain the driveway in the Development in general conformance with the driveway shown on Schedule B.

- (b) The driveway shown on Schedule B shall provide a maximum width of 26 ft. (8 m.) and shall have a minimum paved surface width of 20 ft. (6.09 m.), unless otherwise approved in writing by the Provincial Department of Public Works. The vehicular entrance and exit shall be clearly demarcated.

2.5 Parking

- (a) All parking spaces for vehicles using the Property shall be located on the lot and shall be generally located as shown on Schedule B.
- (b) The Owner shall provide a minimum of one (1) parking space per dwelling unit on the Property and a minimum of one (1) parking space for every 360 sq. ft (33.45 sq. m.) gross floor area dedicated to commercial uses on the Property.
- (c) Parking aisles and spaces shall be constructed so as to create a stable surface for vehicle traffic and be clearly demarcated and lined by the Owner. They may be constructed using permeable construction materials to assist with stormwater retention.
- (d) Each parking space shall be a minimum of 9 ft. by 20 ft. (2.7 m. by 6.1 m.) exclusive of driveways and manoeuvring aisles. Parking aisles shall be a minimum of 20 ft. (6.1 m) wide.
- (e) No parking spaces, driveways or parking aisles shall be located within 16.4 ft. (5 m.) of the front lot line unless otherwise approved in writing by the Provincial Department of Public Works.
- (f) The number, location and arrangement of parking spaces may be varied in writing by the Development Officer in accordance with Section 2.13, *Variance*, of this Agreement.

2.6 Fire Safety

- (a) No development permit shall be issued until the location and connection design of any fire hydrant(s) to the municipal water supply has been approved by the water utility, in consultation with the district Fire Chief.
- (b) All curbs shall be designed to be mountable by emergency services vehicles.
- (c) All access routes shall be kept clear of overhead obstructions and wires and be maintained by the Owner to allow unimpeded access to the Property by emergency services vehicles, unless otherwise agreed to in writing by the Fire Chief.

2.7 Recreational Space

- (a) A minimum of 4,500 sq. ft. (418.06 sq. m.) of private recreational space shall be provided on the Property and may include:
 - (a) individual balconies;
 - (b) roof top recreation space; and
 - (c) common use landscaped areas.

2.8 Site Drainage

- (a) No development permit shall be issued until the Owner provides to the Development Officer a stormwater management plan that satisfies the Municipal Engineer that historical flooding patterns and area drainage systems have been considered and that storm water discharge will balance pre- and post-construction flows to ensure there is no negative impact on downstream properties. If the stormwater management plan provided by the Owner does not in fact balance pre-and post-construction flows to ensure the absence of such impacts the Owner shall undertake such remediation as the Municipal Engineer may reasonably require.
- (b) The Owner shall undertake all construction activities in accordance with an erosion and sedimentation control plan prepared by a Professional Engineer, unless otherwise directed by Nova Scotia Environment, and also agrees to assume sole responsibility for compliance with all regulations of Nova Scotia Environment.

2.9 Servicing

(a) Waste Collection

- (i) No Municipal garbage collection will be provided to the Development. The Owner shall have sole responsibility for collecting, storing and disposing of garbage and other recycling or waste items from the Development.
- (ii) The Owner shall keep any outdoor storage of garbage in an enclosed structure or in some way adequately screened so as not to be visible from or cause a nuisance to nearby properties and abutting roads and it shall not be located closer than 10 ft. (3.05 m.) to an abutting property.

(b) Water and Sewer Services

- (i) The Building shall be serviced with water and sewer services provided by West Hants Regional Municipality authorized by the Municipal Engineer. Detailed design plans of the water and sewer servicing connections and layout shall be in accordance with the Municipal Services Specifications

Manual and shall be submitted to the Municipal Engineer for approval prior to construction.

- (ii) The Owner shall be responsible for constructing, installing and maintaining the water and sewer services on the Property, except the Municipal owned infrastructure within the Municipal easement as shown on the Site Plan in Schedule B.

(c) Snow Plowing

The Owner shall have sole responsibility for snow plowing within the Development.

2.10 Maintenance

- (a) The Owner shall keep the Property and Buildings and any portion thereof clean and in good repair. Any driveways, fences, lawns, trees, shrubs, walkways and other landscaping elements shall be regularly maintained and kept in a tidy state and free from unkempt materials or matter of any kind.
- (b) The Owner shall maintain the driveway to a standard adequate to allow for access by emergency services vehicles.

2.11 Signs and Lighting

Signage and illumination shall be regulated under Sections 5.18 and 7.0 of the Land Use By-law, *Illumination* and *Signs*, which control lighting, size, location, and number of signs. Exterior lighting for driveways, parking areas, signs or structures shall be shielded and directed downward to ensure there is no light spilling, glare or light cast over neighbouring properties or the street.

2.12 Hours of Operation

The hours of operation for the commercial uses within this Development shall be limited to between 7:00 a.m. and 9:00 p.m. daily, inclusive.

2.13 Variance

In accordance with Section 5.48 of the Land Use By-law, *Variance*, the Development Officer may grant a variance for one or more of the following requirements subject to the requirements of the *Municipal Government Act*:

- (i) minimum required yard dimensions except side yard requirements as required in Section 2.2 (c) of this Agreement;
- (ii) number of parking spaces required; and
- (iii) floor area occupied by a home-based business; and

- (iv) height and area of a sign.

PART 3 CHANGES AND DISCHARGE

3.1 The Owner shall not vary or change the use of the Property from that provided for in Section 2.1 of this Agreement, *Use*, unless a new agreement is entered into with the Municipality or this Agreement is amended.

3.2 Any matters in this Agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed with the written consent of Council without a public hearing provided that Council determines that the changes do not significantly alter the intended effect of these aspects of this Agreement.

3.3 The following matters are substantive matters:

- (a) the uses permitted on the Property as listed in Section 2.1, *Use*;
- (b) subject to Section 2.13, the minimum side yard requirements and maximum building height as listed in Section 2.3 (c);
- (c) the geotechnical study requirements as listed in Section 2.3 (e);
- (d) the fire safety requirements as listed in Section 2.6, *Fire Safety*;
- (e) the stormwater management plan requirements as listed in Section 2.8, *Site Drainage*; and
- (f) hours of operation for the commercial uses as listed in Section 2.12, *Hours of Operation*.

3.4 Upon conveyance of land by the Owner to either:

- (a) the road authority for the purpose of creating or expanding a public street over the Property; or
- (b) the Municipality for the purpose of creating or expanding any municipally owned facility over the Property,

registration of the deed reflecting the conveyance shall be conclusive evidence that this Agreement shall be discharged as it relates to the public street or public facility, as the case may be, as of the date of registration with the Land Registry Office, but this Agreement shall remain in full force and effect for all remaining portions of the Property.

3.5 Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter, and this Agreement may be discharged by Council without a public hearing.

3.6 Notice of Intent to Discharge this Agreement may be given by the Municipality to the Owner following a resolution of Council to give such Notice:

- (a) as provided for in Section 4.1, *Commencement of Development*, of this Agreement;
or
- (b) at the discretion of the Municipality, with or without the concurrence of the Owner, where the Development has, in the reasonable opinion of Council on advice from the Development Officer, ceased operation for a period of at least twenty-four (24) months; or
- (c) at any time upon the written request of the Owner, provided the use of the Property is in accordance with the applicable Land Use By-law or a new agreement has been entered into.

3.7 Council may discharge this Agreement 30 days after a Notice of Intent to Discharge has been given.

PART 4 IMPLEMENTATION

4.1 Commencement of Development

- (a) The Owner may not commence any construction or use on the Property until the Municipality has issued any development permit, building permit and/or occupancy permit that may be required.
- (b) Development as provided in Part 2 of this Agreement shall commence not later than twenty-four (24) months from the date this Agreement is signed. If, in the opinion of the Development Officer, this time limit has not been met, this Agreement may be discharged at the option of the Municipality by resolution of Council in accordance with Section 229 of the Municipal Government Act, 30 days after giving Notice of Intent to Discharge to the Owners. Upon the written request of the Owners, the Municipality, by resolution of Council, may grant an extension to the date of commencement of development without such an extension being deemed to be an amendment to this Agreement.
- (c) If the Owners are bona fide delayed from commencing the development for reasons which are beyond the Owners' control, the determination of which shall be at the sole discretion of the Development Officer, then performance by the Owners is excused for the period of the delay and the time period for the Owners to perform their obligations shall be extended by the Development Officer in writing for an equivalent period, without such an extension being deemed to be an amendment to this Agreement.

4.2 Material to be Provided

- (a) The Owner shall provide record drawings to the Development Officer for any portion of the Development for which an engineered design is required within ten (10) days of completion of any work which requires the engineered design.
- (b) The Owner shall, upon written request, provide the Municipality with copies of any documentation, permits or approvals required by Provincial or Federal governments or agencies.

PART 5 ADMINISTRATION and COMPLIANCE

5.1 Compliance with other By-laws and Regulations

- (a) Nothing in this Agreement shall exempt the Owner from complying with Federal, Provincial and Municipal laws, by-laws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority, or approval required thereunder.
- (b) Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property (other than the Land Use By-laws to the extent varied by this Agreement) or any statute or regulation, the higher or more stringent requirements shall prevail.

5.2 Severability of Provisions

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.

5.3 Interpretation

- (a) Where the context requires, the singular shall include the plural and the masculine gender shall include the feminine and neutral gender.
- (b) 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.
- (c) References to particular sections of statutes and by-laws shall be deemed to be references to any successor legislation and by-laws even if the content has been amended, unless the context otherwise requires.

5.4 Municipal Responsibility

- (a) The Municipality does not make any representations to the Owner about the suitability of the Property for the Development proposed by this Agreement. The

Owner assumes all risks and must ensure that any proposed Development complies with this Agreement and all other laws pertaining to the Development.

- (b) Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Municipality may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.

5.5 Breach of Terms or Conditions

Upon breach of any term or condition of this Agreement, the Municipality may notify the Owner in writing. In the event that the Owner has not cured any such breach or entered into arrangements with the Municipality related to such breach to the Municipality's satisfaction, acting reasonably, within six (6) months of such notice, then the Municipality may rely upon the remedies contained in Section 264 of the *Municipal Government Act* and may enter the land and perform any of the terms contained in the Development Agreement, or take such remedial action as is considered necessary to correct a breach of the Agreement, including the removal or destruction of anything that contravenes the terms of the Agreement and including decommissioning the site. It is agreed that all reasonable expenses, whether arising out of the entry on the land or from the performance of the terms are a first lien on the land that is the subject of the Development Agreement.

5.6 Costs

The Owner shall pay all costs associated with registering this Agreement and all costs associated with any amendment thereof.

5.7 Development Agreement Bound to Land

This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Municipality in accordance with Section 229 of the *Municipal Government Act*.

5.8 Assignment of Agreement

The Owner may, at any time and from time to time, transfer or assign this Agreement and its rights hereunder and may delegate its obligations hereunder to an assign, successor, heir, or purchaser of the land bound by this Agreement.

5.9 Written Notice

- (a) The Municipality may serve notice on the Owner personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to Jean Alphonse, 6123 Lady Hammond Road, Halifax, Nova Scotia, B3K 0H6, or at any other address provided by the Owner.
- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided by the Municipality to the Owner.

5.10 Full Agreement

This Agreement constitutes the entire Agreement and contract entered into by the Municipality and the Owner. No other agreement or representation, oral or written, shall be binding.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness

Witness

**) WEST HANTS REGIONAL
) MUNICIPALITY**

)
)
)

Per: _____

) Abraham Zebian, Mayor

)

) Per: _____

) Deanna Snair, Municipal Clerk

)

)

)

) JOVANA CONSTRUCTION LIMITED

)

)

Per: _____

) Jean Alphonse, President

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2023, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2023, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2023, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that, **Jean Alphonse**, one of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court of Nova Scotia

AFFIDAVIT OF CLERK

WEST HANTS REGIONAL MUNICIPALITY

I, Deanna Snair of _____, Hants County, Nova Scotia make oath and swear that:

1. I am the Clerk of the West Hants Regional Municipality (the “Municipality”) and I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. The Municipality is a body corporate pursuant to the *Municipal Government Act*, S.N.S. 1988, c.18, as amended.
3. I acknowledge that the Municipality executed the attached Instrument by its proper designates duly authorized in that regard under seal on the date of this Affidavit pursuant to subsection 13(3) of the *Municipal Government Act*, S.N.S. 1988, c.18, as amended. This acknowledgement is made pursuant to subsection 31(a) of the Registry Act, R.S.N.S. 1989, c.392 and/or clause 79(1)(a) of the Land Registry Act, S.N.S. 2001, c.6, as amended, for the purpose of registering or recording the Instrument.
4. The Municipality is resident in Canada for the purposes of the Income Tax Act (Canada).

I certify that on this _____, 2023
the Municipal Clerk, Deanna Snair came before me, made oath,
and swore the foregoing affidavit at
_____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

Deanna Snair, Clerk

Canada
Province of Nova Scotia

AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)

I, Jean Alphonse, Nova Scotia, make oath and say that:

1. I Jean Alphonse of JOVANA CONSTRUCTION LIMITED the “Corporation”. Except as otherwise stated I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. I acknowledge that I executed the foregoing instrument on behalf of the Corporation on the date of this affidavit; this acknowledgment is made for the purpose of registering such instrument pursuant to s.31(a) of the Registry Act, R.S.N.S. 1989, c.392 or ss.79 and 83 of the Land Registration Act as the case may be.
3. I verify that I have the authority to execute the foregoing instrument on behalf of the corporation and thereby bind the Corporation.
4. The Corporation is a resident of Canada under the Income Tax Act (Canada).
5. The ownership of a share or an interest in a share of the Corporation does not entitle the owner of such share or interest in such share to occupy a dwelling owned by the Corporation.

I certify that on this _____, 2023
the Deponents came before me, made oath,
and swore the foregoing affidavit at
_____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

JEAN ALPHONSE, President

Schedule A
Legal Description

ALL that lot of land situate at Garlands Crossing, in the County of Hants and Province of Nova Scotia, known as Lot CA shown and delineated on a plan of survey entitled Plan of Subdivision Parcel B Lands Conveyed to 2559464 Nova Scotia Limited Danny Chows Restaurant Parcel A Lands Conveyed to 3032149 Nova Scotia Limited, prepared by Bruce Lake, N.S.L.S., dated August 30th, 2003, approved by the Municipality of West Hants under Plan No. 31-03 on October 28th, 2003 and filed at the Office of the Registry of Deeds for the Registration District of Hants as Plan Number 8897 and being more particularly bounded and described as follows:

BEGINNING at a point on the western side of the Halifax to Windsor Highway, said point being the southeastern corner of lands of Irving Oil Company Limited, said point being also the northeastern corner of the lands herein described;

THENCE on a bearing North 79 degrees 17 minutes West a distance of 150 feet to an iron pipe set in the ground;

THENCE South 40 degrees 59 minutes 16 seconds West (Grid North) a distance of 74.81 feet to a survey marker;

THENCE South 35 degrees 27 minutes 20 seconds East (Grid North) a distance of 108.34 feet to a survey marker;

THENCE on a bearing North 86 degrees 39 minutes East a distance of 189 feet, more or less, to the Halifax to Windsor Highway aforesaid;

THENCE in a northerly direction along the western side of said Halifax to Windsor Highway a distance of 100 feet, more or less, to the point of beginning.

SUBJECT TO a right-of-way described in Deed recorded at the Registry of Deeds for Hants County on September 11th, 1996, in Book 788 at pages 402-405 inclusive, as document number 5378.

ALSO SUBJECT TO an easement record at the Registry of Deeds for Hants County in Book 341 at page 249, as document number 500861311.

The parcel originates with an approved plan of subdivision that has been filed under the Registry Act or registered under the Land Registration Act at the Land Registration Office for the registration district of Hants County as plan number 8897.

Attachment D
Public Information Meeting Notes
December 8 – 22, 2022
File 22-29

4190 Hwy 1, Garlands Crossing; PID 45003357

Meeting date and time	A Public Information Meeting was held on December 8, 2022 beginning at 6:08 p.m. The meeting was live broadcast on the Municipal Facebook page.
Attending	<p>In attendance:</p> <p>Seven (7) PAC/HAC members:</p> <ul style="list-style-type: none"> • Jennifer Nicholls (Chair) • Mayor Abraham Zebian • Councillor Laurie Murley • Councillor Jim Ivey • Jane Davis • Stefan Palios • Lisa Bland <p>Four (4) members of staff:</p> <ul style="list-style-type: none"> • Planner Poirier • Planner Dunphy • Director LeMay • Meeting Secretary Lake
<p>Applicant Monica Sweetapple on behalf of Jean Alphonse of Jovana Construction Limited</p> <p>Property 4190 Hwy 1, Garlands Crossing; PID 45003357</p>	<p>Planner Poirier outlined the development agreement application to permit a four (4) storey apartment building containing 21 apartment units and up to 2,600 sq. ft. of commercial space on 4190 Hwy 1, Garlands Crossing PID 45003357.</p> <p>Monica Sweetapple made a formal presentation.</p>
Comments	<p>Comments from the public could be submitted to Planner Poirier by mail, e-mail and telephone between December 8 – 22, 2022.</p> <p>1 member of the public spoke at the Public Information Meeting. No comments or questions were received via mail, email or phone. The questions and comments from the public are summarized below. Staff and applicant responses are included in purple.</p>

	<p>At the Public Information Meeting the following comments were made:</p> <ul style="list-style-type: none">• Ian Larrett wanted clarification on the size of the units, parking spaces provided as he wants to make sure people are parking on the lot for the proposed uses, the total height of the building, and who the proposed clientele is. <p>Monica Sweetapple responded the units will be between 610 – 893 sq. ft. in size. There are 29 parking spaces proposed on the lot. The total height to the roof surface is 41 ft. plus a 1 ft. parapet and 3 ft. glass railing for a total of 45 ft. The units will be advertised at market value.</p>
Adjournment	The meeting was adjourned at 6:28 p.m.