



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation X	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--------------------------------------	------------------	---	--

To: Mayor Zebian and Members of West Hants Regional Municipality Council

Submitted by: _____
Alex Dunphy, Senior Planner

Date: November 26, 2024

Subject: Development Agreement: 1809 Highway 1, Falmouth (PID 45026820);
File #24-17B

LEGISLATIVE AUTHORITY

Municipal Government Act Section 230

RECOMMENDATION

To allow the requested development, staff and PAC/HAC recommend that the Council forward a positive recommendation by passing the following motion:

...that Council gives Second Reading and approves entering into a development agreement to allow a restaurant within a portion of the existing residential dwelling on PID 45026820 at 1809 Highway 1 in Falmouth which is substantively the same as the draft set out in Attachment B of the report File #24-17 to the Planning and Heritage Advisory Committee dated September 12, 2024.

...that Council requires that the development agreement with Alma Crnalic which permits a restaurant within a portion of the existing residential dwelling on PID 45026820 at 1809 Highway 1 in Falmouth 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 X	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
------------	--	--------------------------------------	---------------------------------	-----------------------------------	---

A completed application was received from Alma and Dinko Cernalic on June 17, 2024. The application is to permit a take-out café within a portion of the existing residential dwelling on the subject lot.

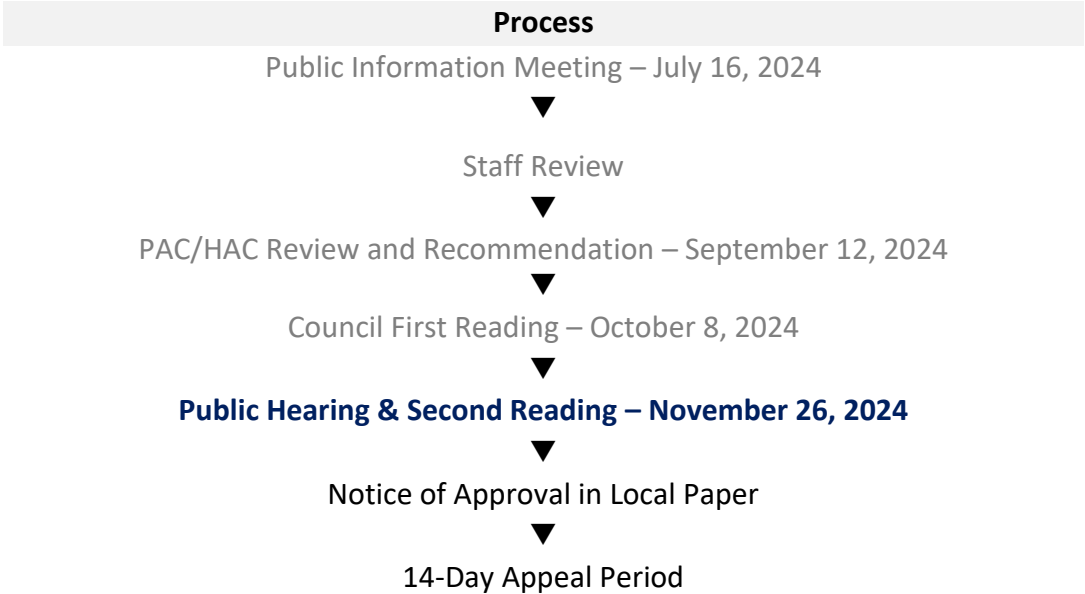
A Public Information Meeting was held on July 16, 2024. No comments or questions from the public were received during the comment period.

On September 12, 2024, staff presented a recommendation report to the Planning and Heritage Advisory Committee (PAC/HAC). The Committee discussed the intended offerings of the proposed business, accessibility criteria for access and egress, as well as the site layout of seating. During the meeting the PAC/HAC recommended in favour the application.

On October 8, 2024, staff presented a recommendation report to Council (Appendix A). During the meeting, Council recommended in favour of the application.

NEXT STEPS

The anticipated process for this application is as follows:



FINANCIAL IMPLICATIONS

There are no financial implications to the Municipality or residents with regard to the filing of this report.

ALTERNATIVES

In response to this application, Council may:

- approve the development agreement as drafted or as specifically revised by direction of Council;
- refuse the development agreement as drafted, citing the criteria that Council consider not to be met; or
- provide alternative direction such as requesting further information on a specific topic.

APPENDIX

Appendix A 2024-09-24 Staff Report - Development Agreement: 1809 Highway 1,
Falmouth (PID 45026820); File #24-17A

CHIEF ADMINISTRATIVE OFFICER REVIEW

The application has been measured against the specific and general criteria within the Municipal Planning Strategy and Land Use Bylaw. Further, the appropriate Provincial sign-off has been received.

Should Council wish to amend or deny the terms of the current DA draft Council is reminded to reflect on the components of the DA that are more subjective in nature vs matters that the municipality or other jurisdictions have specific policy or technical requirements as it relates to the application. I encourage Council to reflect upon Planner Dunphy's September 12, 2024 report to PAC/HAC and specifically "Attachment A – Policy Summary for Development Agreement" for policy references.

I support the recommendation.

Report Prepared by: _____

Alex Dunphy, Senior Planner

Report Approved by: _____

Sara Poirier, Director of Planning and Development

Kari Fougere, Manager of Planning

Report Approved by:  _____

Mark Phillips, Chief Administrative Officer

**Appendix A – 2024-09-24 Staff Report - Development Agreement:
1809 Highway 1, Falmouth (PID 45026820); File #24-17A**



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation X	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--------------------------------------	------------------	---	--

To: Mayor Zebian and Members of West Hants Regional Municipality Council

Submitted by: _____
Alex Dunphy, Senior Planner

Date: September 24, 2024

Subject: Development Agreement: 1809 Highway 1, Falmouth (PID 45026820);
File #24-17A

LEGISLATIVE AUTHORITY

Municipal Government Act Section 230

RECOMMENDATION

To allow the requested development, staff recommend that the Council forward a positive recommendation by passing the following motion:

...that Council gives First Reading and will hold a Public Hearing to consider entering into a development agreement to allow a restaurant within a portion of the existing residential dwelling on PID 45026820 at 1809 Highway 1 in Falmouth which is substantively the same as the draft set out in Attachment B of the report File #24-17 to the Planning and Heritage Advisory Committee dated September 12, 2024.

...that Council requires that the development agreement with Alma Crnalic which permits a restaurant within a portion of the existing residential dwelling on PID 45026820 at 1809 Highway 1 in Falmouth 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 X	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
------------	--	--------------------------------------	---------------------------------	-----------------------------------	---

A completed application was received from Alma and Dinko Crnalic on June 17, 2024. The application is to permit a take-out café within a portion of the existing residential dwelling on the subject lot.

While the application refers to a take-out café, staff define the proposed use as a restaurant, as take-out cafés are not defined in the West Hants Land Use By-law (WHLUB). A restaurant is defined in the WHLUB as:

“a building or part thereof where food and drink is prepared and served to the public for consumption within the building or for take out but not for consumption in parking areas appurtenant to the building”

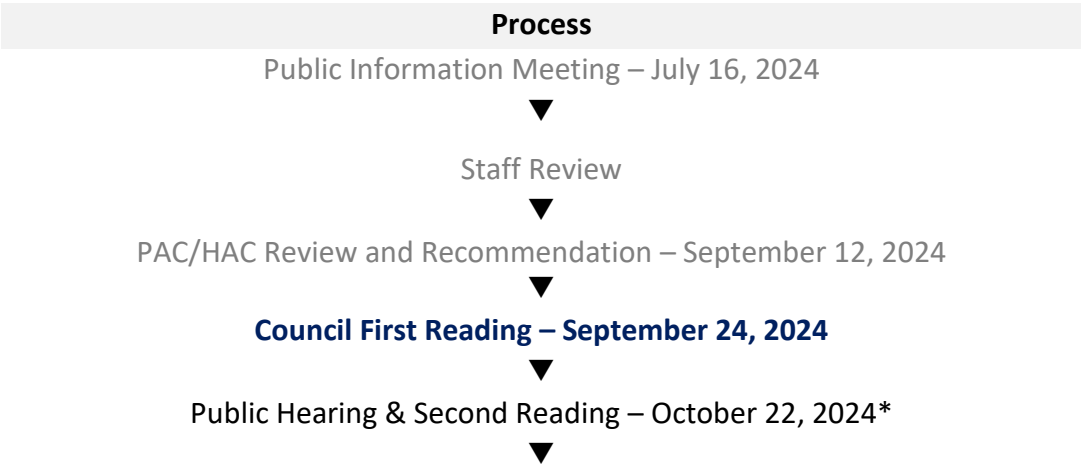
DISCUSSION

A Public Information Meeting was held on July 16, 2024. No comments or questions from the public were received during the comment period.

On September 12, 2024, staff presented a recommendation report to the Planning and Heritage Advisory Committee (PAC/HAC) (Appendix A). The Committee discussed the intended offerings of the proposed business, accessibility criteria for access and egress, as well as the site layout of seating. During the meeting the PAC/HAC recommended in favour the application.

NEXT STEPS

The anticipated process for this application is as follows:



Notice of Approval in Local Paper



14-Day Appeal Period

*anticipated dates; final dates set by Council

FINANCIAL IMPLICATIONS

There are no financial implications to the Municipality or residents with regard to the filing of this report.

ALTERNATIVES

In response to this application, Council may:

- hold First Reading and authorize a Public Hearing to approve the development agreement as drafted or as specifically revised by direction of Council;
- hold First Reading and authorize a Public Hearing to refuse the development agreement as drafted, citing the criteria that Council consider not to be met; or
- provide alternative direction, such as requesting further information on a specific topic.

APPENDIX

Appendix A 2024-09-12 Staff Report - Development Agreement: 1809 Highway 1, Falmouth (PID 45026820); File #24-17

CHIEF ADMINISTRATIVE OFFICER REVIEW

I support the recommendation which will allow the process to proceed to Public Hearing and encourage further public feedback regarding the application for Council’s consideration.

Report Prepared by: _____

Alex Dunphy, Senior Planner

Report Approved by: _____

Sara Poirier, Director of Planning and Development

Kari Fougere, Manager of Planning

Report Approved by:  _____

Mark Phillips, Chief Administrative Officer

**Appendix A – 2024-09-12 Staff Report - Development Agreement:
1809 Highway 1, Falmouth (PID 45026820); File #24-17**



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation X	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--------------------------------------	------------------	---	--

To: Members of Planning and Heritage Advisory Committee (PAC/HAC)

Submitted by: _____
Alex Dunphy, Senior Planner

Date: September 12, 2024

Subject: Development Agreement: 1809 Highway 1, Falmouth (PID 45026820);
File #24-17

LEGISLATIVE AUTHORITY

Municipal Government Act Section 230

RECOMMENDATION

Staff recommend that the PAC/HAC forward a positive recommendation by passing the following motions:

...that PAC/HAC recommends that Council give First Reading and hold a Public Hearing to consider entering into a development agreement to allow a restaurant within a portion of the existing residential dwelling on PID 45026820 at 1809 Highway 1 in Falmouth which is substantively the same as the draft set out in Attachment B of the report File #24-17 to the Planning and Heritage Advisory Committee dated September 12, 2024.

...that PAC/HAC recommends that Council require that the development agreement with Alma Crnalic which permits a restaurant within a portion of the existing residential dwelling on PID 45026820 at 1809 Highway 1 in Falmouth 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 X	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
------------	--	--------------------------------------	---------------------------------	-----------------------------------	---

A completed application was received from Alma and Dinko Crnalic on June 17, 2024. The application is to permit a take-out café within a portion of the existing residential dwelling on the subject lot.

While the application refers to a take-out café, staff define the proposed use as a restaurant, as take-out cafés are not defined in the West Hants Land Use By-law (WHLUB). A restaurant is defined in the WHLUB as:

“a building or part thereof where food and drink is prepared and served to the public for consumption within the building or for take out but not for consumption in parking areas appurtenant to the building”

DISCUSSION

The subject lot is 1.5 acres in size, it is designated Residential and is included within the Falmouth Growth Centre on the Generalized Future Land Use Map (GFLUM) of the West Hants Municipal Planning Strategy (WHMPS) (Figure 1). The subject lot is zoned Single Unit Residential (R-1) on the Zoning Map of the WHLUB (Figure 2). All of the surrounding properties are within the Falmouth Growth Centre and are designated Residential. The majority of properties to the north and east of the subject lot are zoned Agricultural Priority Three (AR-3), properties to the south and west are zoned Single Unit Residential (R-1) and there is a single property abutting the subject lot to the southeast which is zoned Highway Commercial (HC).

West Hants Municipal Planning Strategy

Policy 5.6.4 of the WHMPS is the primary enabling policy to be considered for this application. This policy provides Council with the ability to consider new local commercial uses in Growth Centres outside of the Commercial designation by development agreement. The full list of specific criteria is included in Attachment A. In summary, the proposal meets the criteria as:

- the adjacent residential area will not be adversely affected by the proposed use;
- the draft development agreement requires sufficient parking and buffering;
- the draft development agreement requires all necessary maintenance for the proposed use.

Policy 16.3.1 establishes the general criteria that must be considered for all development agreements. The full list of criteria is included in Attachment A. In summary, the proposal meets the criteria as:

- the proposal is not considered 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, Area Manager of the Provincial Public Works Department, and the Public Works Engineering Division have no concerns which have not been otherwise addressed in this report.

MUNICIPAL CLIMATE CHANGE ACTION PLAN

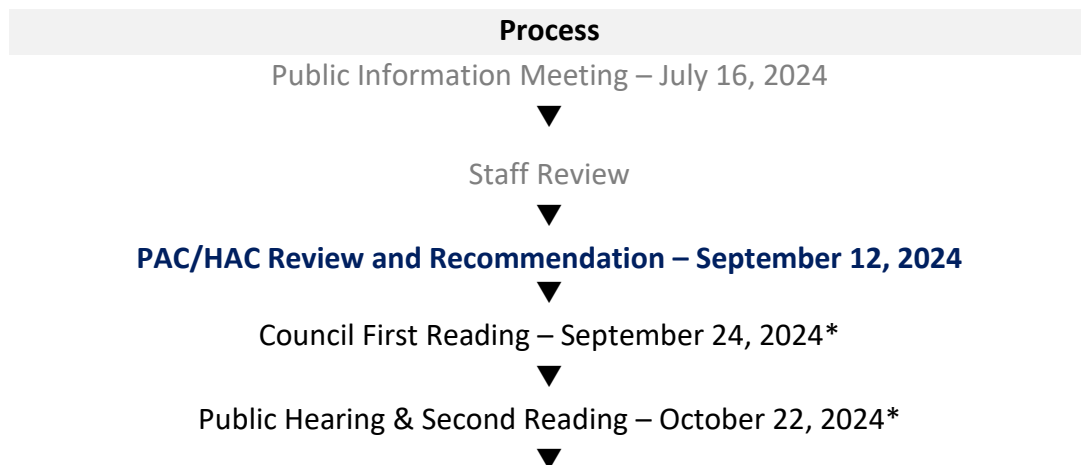
The Municipal Climate Change Action Plan (MCCAP) Inland Flooding Map does not show any risk of inland flooding on the subject property. The MCCAP Sea Level Rise Modeling for Falmouth and Windsor (2013) highlights two simulated flooding scenarios. The first scenario is based on a storm surge that occurred in 1997, which shows the expected damage is to occur along the coastline. The second scenario shows the simulated flooding extent for probable maximum flood due to climate change. Under this scenario most of the community of Windsor and a large amount of Falmouth will experience extensive flooding, including the subject lot.

As the proposal is intended to be contained within existing buildings, no impact to the flow of stormwater from the subject lot is expected.

Property owners are responsible for ensuring that their lot is suitable for the proposed uses.

NEXT STEPS

As noted above, the proposed development agreement has been considered within the context of the 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 enter into a development agreement to allow a restaurant within a portion of the existing residential dwelling on PID 45026820 at 1809 Highway 1 in Falmouth.



Notice of Approval in Local Paper



14-Day Appeal Period

*anticipated dates; final dates set by Council

FINANCIAL IMPLICATIONS

There are no financial implications to the Municipality or residents with regard to the filing of this report.

ALTERNATIVES

In response to this application, the 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;
- hold First Reading and authorize a Public Hearing to refuse the development agreement as drafted, citing the criteria that PAC/HAC consider not to be met; or
- provide alternative direction, such as requesting further information on a specific topic.

ATTACHMENTS

Figure 1	West Hants GFLUM Map Extract
Figure 2	West Hants Zoning Map Extract
Attachment A	Policy Summary for Development Agreement
Attachment B	Draft Development Agreement
Attachment C	Public Information Meeting Notes

Report Prepared by: _____

Alex Dunphy, Senior Planner

Report Approved by: _____

Sara Poirier, Director of Planning and Development

Figure 1 – West Hants GFLUM Map Extract

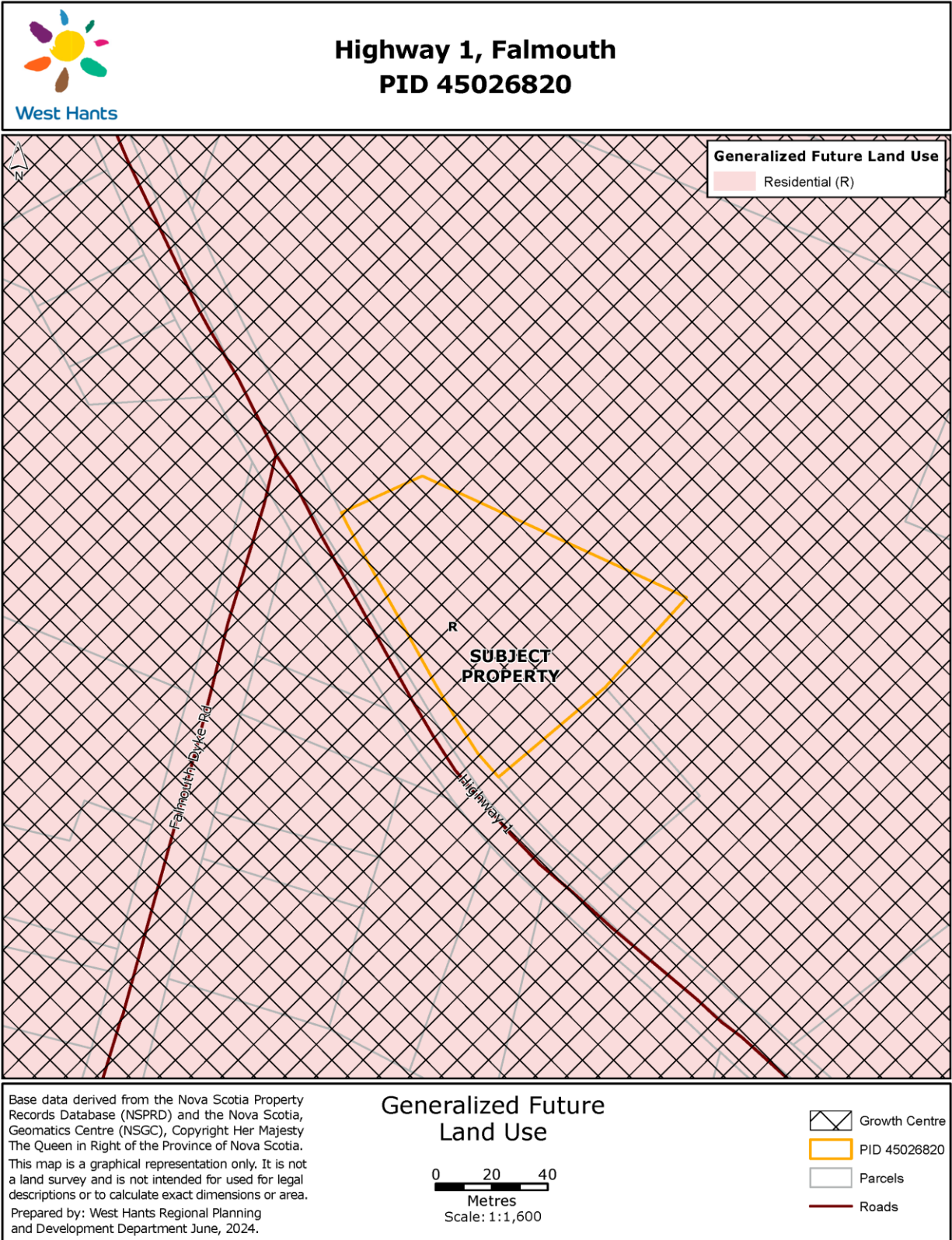
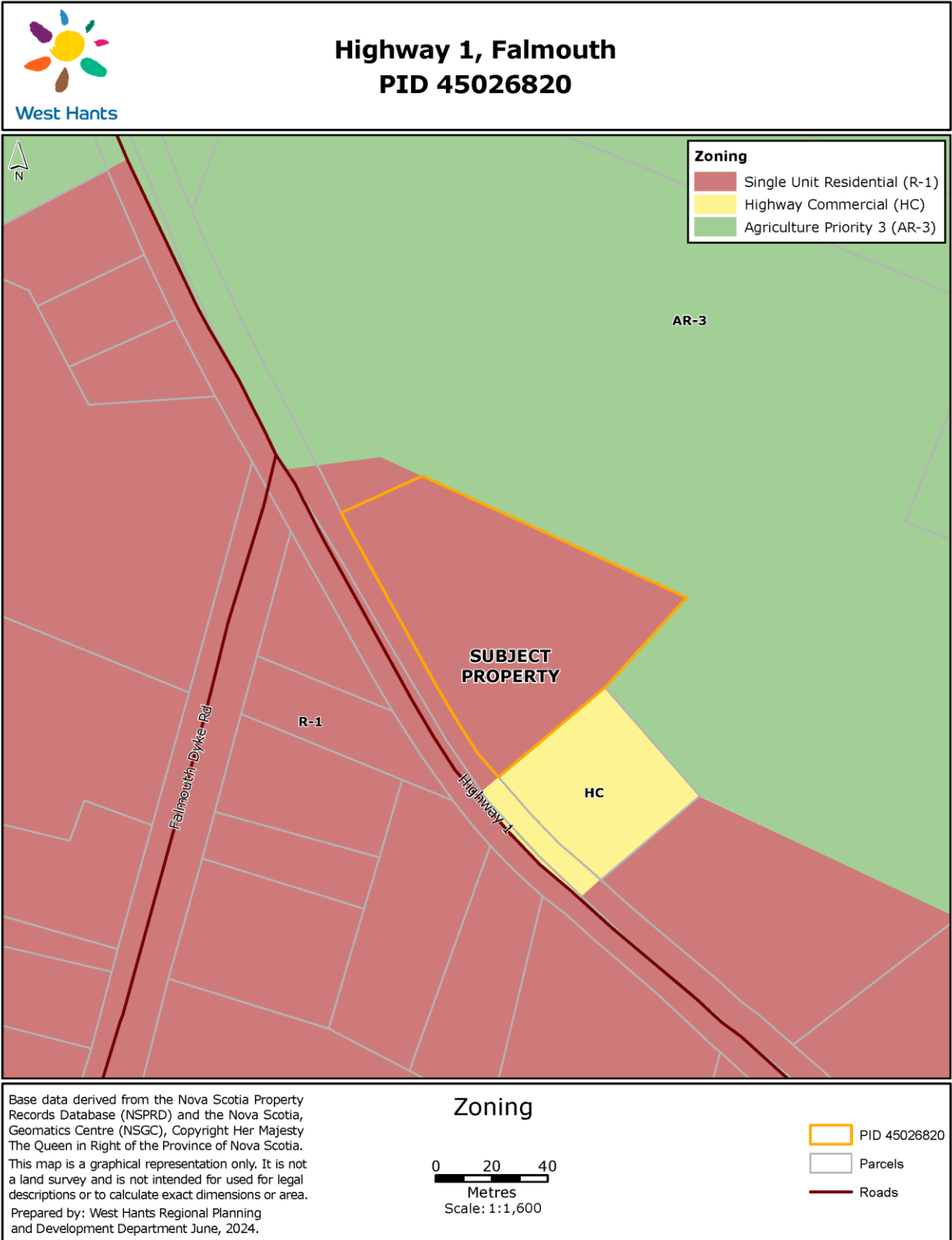


Figure 2 – West Hants Zoning Map Extract



Attachment A – Policy Summary for Development Agreement

<p>Policy 5.6.4 <i>It shall be the policy of Council to consider new local commercial uses in Growth Centres outside the Commercial designation by development agreement subject to the following provisions:</i></p>	
<p><i>(a) the adjacent residential area will not be adversely affected with respect to:</i></p>	
<p><i>(i) traffic generation and traffic safety;</i></p>	<p>The Area Manager of the Provincial Public Works Department commented that they had no concerns regarding traffic generation or the safety of traffic from the proposed use.</p>
<p><i>(ii) signage;</i></p>	<p>The Development Officer commented that the proposed signage for the restaurant would be permitted in accordance with the regulations in the West Hants Land Use By-law. The draft development agreement outlines that any signage or illumination must follow the regulations of the Land Use By-law.</p>
<p><i>(iii) hours of operation;</i></p>	<p>The applicants expect their hours of operation to be from 10 a.m. to 8 p.m., Tuesday through Saturday. To allow for flexibility, the draft development agreement outlines permitted hours of operation to be from 8 a.m. to 9 p.m., daily. This range of hours is reflective of the standard hours of operation used in other development agreements for commercial uses located near residential uses.</p>
<p><i>(iv) size of building(s); and</i></p>	<p>Not applicable, as there is no new building construction being proposed. The restaurant will be located within the existing residential building with some outdoor seating and garbage receptacles.</p>
<p><i>(v) pedestrian circulation and safety;</i></p>	<p>The Development Officer commented that they had no concerns regarding pedestrian circulation and safety. The draft development</p>

	agreement requires pedestrian access to the restaurant entrance.
<i>(b) adequate on-site parking is provided;</i>	The Development Officer commented that the proposed use would require 6 total parking spaces and this has been included as a requirement in the draft development agreement. There appears to be sufficient area on the subject lot to accommodate the required parking spaces.
<i>(c) adequate buffering or screening, setbacks and yards are provided;</i>	The draft development agreement outlines the requirement to screen the outdoor parking from abutting properties. The applicant intends to achieve this through hedges or other foliage.
<i>(d) maintenance of the proposed use will be satisfactory;</i>	The draft development agreement outlines the requirement to keep the subject lot and building clean and in good repair.
<i>(e) any other matter which may be addressed by a development agreement; and</i>	All relevant matters have been addressed in this report.
<i>(f) Policy 16.3.1.</i>	See Policy 16.3.1 below.

Policy 16.3.1	
<i>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:</i>	
<i>(a) whether the proposal is considered appropriate in terms of:</i>	
<i>(i) the adequacy of sewer and water services;</i>	The Public Works Engineering Division commented that they had no concerns regarding sewer or water servicing capacity for the proposed use.
<i>(ii) the adequacy of school facilities;</i>	Not applicable, as the proposed use is not a residential development.
<i>(iii) the adequacy of fire protection and other emergency services;</i>	The Manager of Building and Fire Inspection Services commented that the proposed use will require a fire

	<p>separation between the proposed commercial use and the existing residential use. The applicants have been made aware of this and do not foresee and any issues in carrying out the required work.</p>
<p><i>(iv) the adequacy of road networks adjacent to, or leading to the development; and</i></p>	<p>The Area Manager of the Provincial Public Works Department commented that they had no concerns regarding the adequacy of the road networks adjacent to or leading to the subject lot.</p>
<p><i>(v) the financial capacity of the Municipality to absorb any costs relating to the development.</i></p>	<p>There are no anticipated costs to the Municipality regarding this development.</p>
<p><i>(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;</i></p>	<p>The Public Works Engineering Division commented that the subject lot is serviced and that there were no concerns regarding Municipal servicing capacity.</p>
<p><i>(c) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;</i></p>	<p>The Area Manager of the Provincial Public Works Department commented that they had no concerns regarding automobile traffic. As the proposed use is intended to be accessed primarily by vehicle, pedestrian movement is managed within the draft development agreement by requiring pedestrian access to the restaurant entrance from the parking area. There is no active rail line near the subject lot.</p>
<p><i>(d) the adequacy of the dimensions and shape of the lot for the intended use;</i></p>	<p>The Development Officer commented that they did not have any concerns regarding the adequacy of the dimensions and shape of the lot for the proposed use. The 1.5-acre lot is large</p>

	enough to accommodate all the requirements for the restaurant.
<i>(e) the pattern of development which the proposal might create;</i>	The Development Officer commented that they did not have any concerns regarding the pattern of development that the proposal may create. There is another commercial use directly abutting the subject lot.
<i>(f) the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses, marshes or bogs and susceptibility of flooding;</i>	As the proposed use is intended to be contained within the existing building, no impact to the suitability in terms of grade, soil, geological conditions, water bodies, or flooding of the subject lot is expected. Regardless, the site appears relatively flat and is elevated in comparison to the southeast property.
<i>(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;</i>	All Municipal, Provincial, and Federal regulations will have to be met.
<i>(h) any other matter required by relevant policies of this Strategy.</i>	All relevant matters have been addressed in this report.

Attachment B – Draft Development Agreement



West Hants

DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2024.

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 -

ALMA CRNALIC, of PID 45026820, 1809 Highway 1, Falmouth, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered owner of the parcel of land located at PID 45026820 at 1809 Highway 1 in Falmouth hereinafter referred to as the “Property”, which lands are more particularly described in Schedule A attached hereto; and

WHEREAS the Property is designated Residential and is within the Falmouth Growth Centre on the Generalized Future Land Use Map of the Municipal Planning Strategy and is zoned Single Unit Residential (R-1) on the Zoning Map of the Land Use By-law; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit a restaurant within the existing residential building on the Property (the “Development”); and

WHEREAS Policy 5.6.4 of the Municipal Planning Strategy and Section 6.1 (h) of the Land Use By-law enables Council to consider local commercial uses outside the Commercial designation of Growth Centres by development agreement; and

WHEREAS the Council of the Municipality, at a meeting held on **MONTH DAY, YEAR**, 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 By-law.

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, effective on June 26, 2008, as amended, or successor by-laws.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

The Parties agree that uses on the Properties shall be limited to the following:

- (a) those uses permitted by the underlying zoning in the Land Use By-law; and
- (b) a restaurant.

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

2.2 Development Location and Design

- (a) The Development location and design shall be consistent with the Site Plan shown in Schedule B.
- (b) The Development Officer may approve in writing minor changes to the location of the restaurant within the existing building or other aspects of the Site Plan, provided that the total floor area of the restaurant does not exceed 1,000 sq. ft. (92.9 sq. m.).
- (c) Accessory buildings are permitted in accordance with Section 5.1 of the Land Use By-law.

2.3 Access and Egress

- (a) The Owner shall maintain the driveways in the Development in general conformance with the driveways shown on Schedule B.
- (b) The driveways shown on Schedule B shall be maintained to create a stable surface for vehicle traffic and be clearly demarcated by the Owner.
- (c) Pedestrian access to the restaurant entrance must be clear from any obstructions.

2.4 Parking

- (a) All parking spaces shall be located on the lot and shall be generally located as shown on Schedule B.
- (b) A minimum of six parking spaces shall be provided for the Development.
- (c) Outside parking aisles and spaces shall be constructed 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.
- (e) In accordance with Section 5.40 of the Land Use By-law, the number of parking spaces may be varied by the Development Officer subject to the requirements of the *Municipal Government Act*.

2.5 Buffering

Outdoor parking shall be screened from abutting properties, through the use of:

- (a) a mix of local species of coniferous trees. At planting, each tree shall have a diameter of at least 2 in. measured at 4.5 ft. above the surrounding grade and a minimum height of 5 ft.; or
- (b) a hedge of a variety of coniferous shrubs each of which will reach over 6 ft. in height at maturity; or
- (c) a wall or an opaque fence which is a minimum of 5 ft. in height and of sufficient height to provide a visual buffer to the abutting property; or

any combination of the above, all arranged to form a dense or opaque screen, and maintained for as long as the buffer is required.

2.6 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 controls 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.

2.7 Maintenance

- (a) The Owner shall keep the Property and building 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 driveways to a level adequate to allow for access by emergency services vehicles.

2.8 Servicing

(a) Waste Collection

- (i) Municipal garbage collection will be provided to the Development from Highway 1.

- (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 and 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.

(c) Snow Plowing

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

2.9 Fire Safety

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.

2.10 Hours of Operation

The hours of operation for the Development shall be limited to between 8:00 a.m. and 9:00 p.m. daily, inclusive.

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 approved in writing by the Development Officer without a public hearing, in accordance with Section 230 of the *Municipal Government Act*, provided that the Development Officer determines that the changes do not significantly alter the intended effect 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*; and
- (b) an increase in the total floor area of the restaurant to exceed 1,000 sq. ft. (92.9 sq. m.) as listed in Section 2.2, *Development Location and Design*.

3.4 Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter, and this Agreement may be discharged by the Chief Administrative Officer in accordance with Section 229 of the *Municipal Government Act*.

3.5 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 Properties is in accordance with the Land Use By-law or a new Agreement has been entered into.

3.6 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) The Development 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 Owner. Upon the written request of the Owner, 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 Owner is bona fide delayed from commencing the Development for reasons which are beyond the Owner's control, the determination of which shall be at the sole discretion of the Development Officer, then performance by the Owner is excused for the period of the delay and the time period for the Owner 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 Bylaws 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-law 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 neutral gender shall include the masculine and feminine.
- (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 Alma Crnalic, 1809 Highway 1, Falmouth, Nova Scotia, B0P 1P0, or at any other address provided by the Owner in writing.
- (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 in writing.

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

) **WEST HANTS REGIONAL**

) **MUNICIPALITY**

)

)

)

Per: _____

) Abraham Zebian, Mayor

)

)

) Per: _____

) Deanna Snair, Municipal Clerk

)

)

) **ALMA CRNALIC**

Witness

)
)
Per: _____
) Alma Crnalic

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2024, 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 **THE 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 presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2024, 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, **Alma Crnalic**, one of the parties thereto, signed, sealed and delivered the same in 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 _____, 2024
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
Print name/affix seal

Deanna Snair, Clerk

CANADA
PROVINCE OF NOVA SCOTIA
HANTS COUNTY

AFFIDAVIT & PROOF OF EXECUTION (INDIVIDUAL)

I, Alma Crnalic, the “Deponent”, make oath and swear that:

1. I acknowledge that I executed the foregoing instrument on the date of this affidavit; this acknowledgement 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 s.79(1)(a) of the *Land Registration Act* as the case may be.
2. I am nineteen years of age or older and am a resident of Canada under the *Income Tax Act* (Canada).
3. For the purpose of this affidavit “spouse” means an individual who is married to another individual; is married to another individual by a marriage that is voidable and has not been voided by a declaration of nullity; has gone through a form of marriage with an individual, in good faith, that is void and they are cohabiting or have cohabited within the preceding year; or is a party to a registered domestic-partner declaration made in accordance with Section 53 of the *Vital Statistics Act* as amended, but does not include an individual who becomes a former domestic partner pursuant to section 55(1) of the Act.
4. I am not a spouse and, with respect to the within property, I have no former domestic partner with the rights contemplated by section 55 of the Vital Statistics Act, nor any former spouse with rights in the within property under the Matrimonial Property Act, as amended.

I certify that on this _____, 2024
the Deponent came before me, made oath,
and swore the foregoing affidavit at
_____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

Alma Crnalic

Schedule A
Legal Description – PID 45026820

All that lot of land at Falmouth, in the County of Hants, shown on a plan of lands of Mrs. Evelyn Armstrong, made by S.E. MacPhee, PLS, dated October 17, 1973, said lot being described as follows:

Beginning on the eastern boundary of Trunk Highway No. 1 leading from Windsor to Hantsport at the northeast corner of lands of Avon Datsun Limited;

Thence in a northerly direction along the eastern boundary of the said highway to the southwest corner of lands of Harry B. Armstrong, said point being distant in a straight line 365.1 feet from the place of beginning;

Thence north 84 degrees 44 minutes and 30 seconds east 99.8 feet;

Thence south (north) 49 degrees 50 minutes 45 seconds east 120.85 feet;

Thence south 09 degrees 48 minutes 30 seconds east 222.2 feet;

Thence south 64 degrees 20 minutes 20 seconds west, 150 feet to the place of beginning.

All of the above noted bearings being Magnetic.

Being and intended to be that lot of land conveyed by Evelyn Armstrong, Lawrence A. Armstrong, and Sharon Armstrong to George W. Nelson and Marion R. Nelson by deed recorded July 3, 1974 in Book 327 at Page 330.

AND ALSO:

All that certain lot, piece or parcel of land situate, lying and being at Falmouth, in the County of Hants, Province of Nova Scotia, shown and delineated as Lot D on a plan of survey entitled Plan Showing Lot D a Subdivision of Land of Elsie Armstrong, Falmouth, Hants County, Nova Scotia made by John L Lyon, NSLS, dated September 22, 1979 and approved by the Municipality of West Hants as an addition to the lands of Nelson to Plan No. 087/79 on October 30, 1989 and recorded at the Registry of Deeds for Hants County on October 30, 1979 as Plan 2782A, which said Lot D may be more particularly bounded and described as follows:

Beginning at a survey set in the northeast corner of said Lot D which said survey marker is on a bearing south 03 degrees 28 minutes 10 seconds west, a distance of 1,870.28 feet from Nova Scotia Coordinate Monument No 8641;

Thence south 41 degrees 59 minutes 35 seconds west a distance of 151.29 feet along other lands of Elsie Armstrong, to a survey marker found at the northernmost corner of land now or formerly of Bill Smith Sales Limited;

Thence north 26 degrees 51 minutes 30 seconds west a distance of 222.08 feet along lands of George W. Nelson and Marion R. Nelson to a survey marker found;

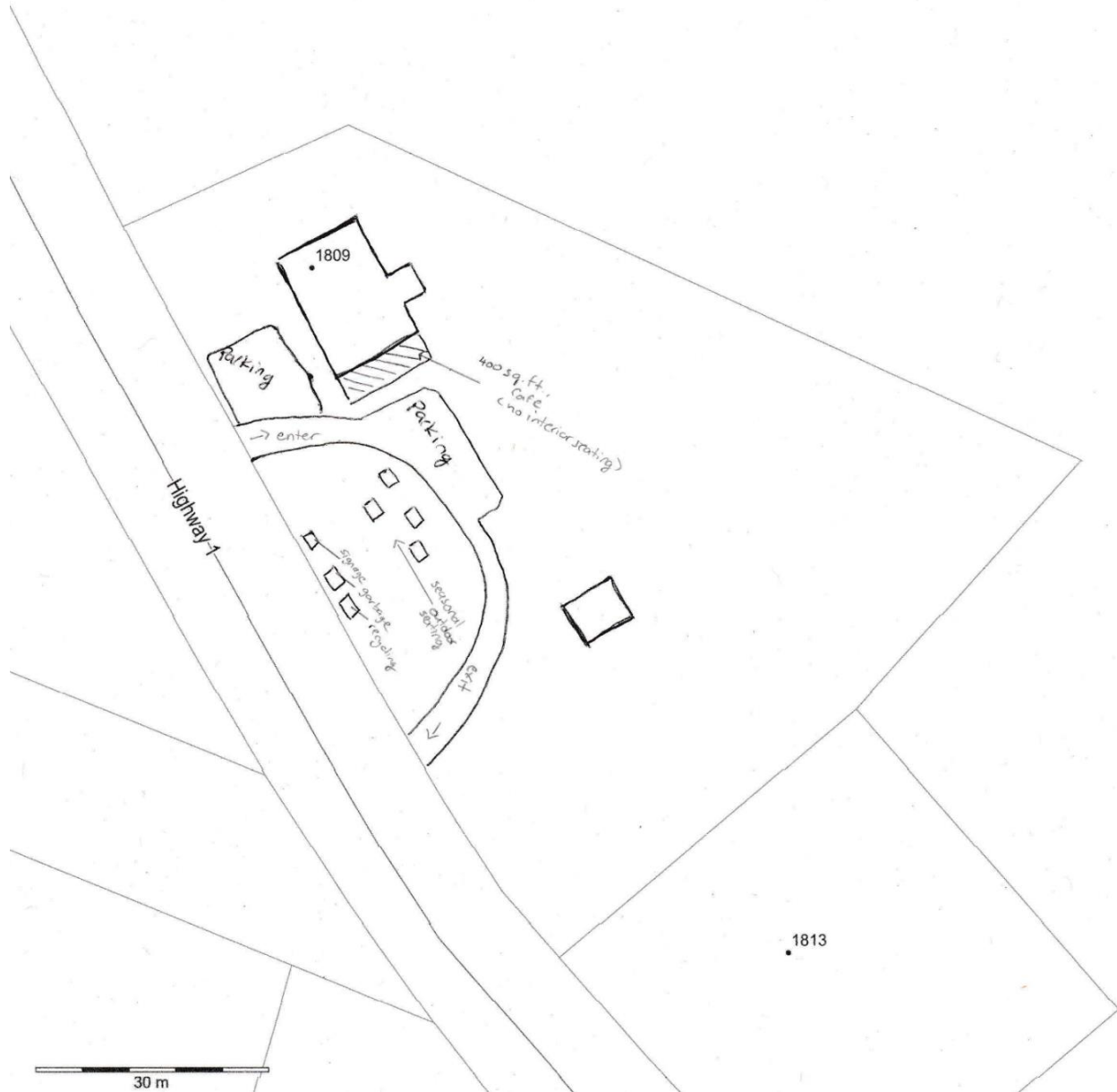
Thence south 66 degrees 58 minutes 10 seconds east a distance of 219.01 feet along other lands of Elsie Armstrong to the place of beginning.

Being a triangular lot of land containing in all 15,688 square feet, more or less.

All of the above noted bearings for Lot D being Grid.

Lot D being and intended to be a portion of those lands conveyed to Elsie Armstrong by Harry Armstrong by deed dated December 16, 1976 and recorded in Book 362 at Page 764.

Schedule B
Site Plan



Attachment C – Public Information Meeting Notes

July 16 – 30, 2024

Development Agreement: 1809 Highway 1, Falmouth (PID 45026820); File #24-17

Meeting date and time	A Public Information Meeting was held on July 16, 2024 beginning at 6:00 p.m. The meeting was broadcast live on the Municipal Facebook page.
Attending	In attendance for the meeting: One (1) Chair: <ul style="list-style-type: none">• Councillor Smith Four (4) members of staff: <ul style="list-style-type: none">• Director Poirier• Senior Planner Dunphy• Planner Hong• Planning Assistant Lake One (1) member of PAC/HAC: <ul style="list-style-type: none">• Mark Kehoe No members of the public were in attendance.
Applicants Alma and Dinko Crnalic Property 1809 Highway 1, Falmouth (PID 45026820)	Planner Dunphy outlined the application to allow a take-out café within an existing residential dwelling on the subject lot through the development agreement process. The applicants provided a presentation on the proposal, describing the style of restaurant and the products intended on being offered.
Comments	Comments from the public could be submitted by mail, e-mail and telephone between July 16-30, 2024. No correspondence was received for this application.
Adjournment	The Public Information Meeting was adjourned at approximately 6:13 p.m.