



WEST HANTS REGIONAL MUNICIPALITY REPORT

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

Submitted by: _____
Sara Poirier, Planner

Date: 2021-07-27

Subject: File # 21-02 D: Development Agreement: 101 Three Mile Plains Cross Rd., PID 45197456

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

POSSIBLE MOTION

Should Council wish to approve the development agreement to permit an automotive repair shop at 101 Three Mile Plains Cross Road following completion of the Public Hearing, the following motion would be in order:

...that Council gives Second Reading to and approves entering into a development agreement to allow an automotive repair shop at 101 Three Mile Plains Cross Rd., Three Mile Plains (PID 45197456) which is substantively the same as the draft set out in Attachment C of the report to the Planning Advisory Committee dated June 10, 2021.

BACKGROUND

An application was received from Mr. Geoff Lunn, with authorization from property owner Brian Lunn, to permit an automotive repair shop by development agreement at 101 Three Mile Plains Cross Road, Three Mile Plains.

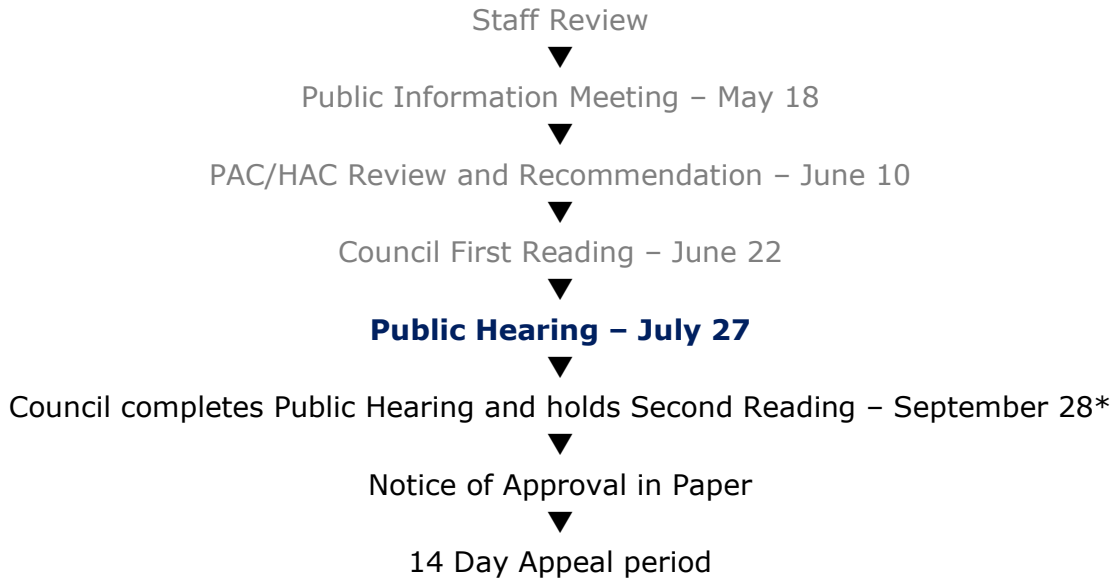
A Public Information Meeting (PIM) was held virtually and broadcast live on the Municipal Facebook page on May 18, 2021 to consider the requested development agreement (Appendix A).

On June 10, 2021 staff presented a recommendation report to the Planning Advisory

Committee / Heritage Advisory Committee (PAC/HAC) (Appendix B). The PAC/HAC recommended in favour of the development agreement.

Council held first reading on June 22, 2021.

NEXT STEPS



*anticipated dates; final dates will be set by Council

APPENDICIES

Appendix A 2021-05-18 Public Information Meeting Notes – File 21-02 A

Appendix B 2021-06-10 Staff Report – Development Agreement: 101 Three Mile Plains Cross Rd. PID 45197456; File 21-02 B

Report Prepared by: _____
Sara Poirier, Planner

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

Report Approved by:  _____
Mark Phillips, CAO

Appendix A
Public Information Meeting Notes
May 18, 2021 – June 1, 2021
File 21-02 A

101 Three Mile Plains Cross Road, Three Mile Plains; PID 45197456

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| Meeting date and time | A virtual Public Information Meeting was held on May 18, 2021 beginning at 6 p.m. The meeting was live broadcast on the Municipal Facebook page. |
| Attending | <p>In attendance:</p> <ul style="list-style-type: none"> • Mayor Zebian • Councillor Francis (Chair) • Planner Poirier • Meeting Secretary Lake <p>As this meeting was held virtually there were no members of the public present.</p> |
| Applicant name and site location (Civic address and PID) | Planner Poirier outlined the request from Geoff Lunn to permit an automotive repair shop on the property at 101 Three Mile Plains Cross Road, Three Mile Plains (PID 45197456) by development agreement. |
| Comments | <p>Comments from the public could be submitted to Planner Poirier by mail, e-mail and telephone between May 18 and June 1, 2021.</p> <p>One verbal comment was received from Richard Dauphinee, a resident of Three Mile Plains, in favour of the application.</p> |
| Adjournment | The meeting was adjourned at 6:06 p.m. |

Appendix B



WEST HANTS REGIONAL MUNICIPALITY REPORT

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| 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 the Planning and Heritage Advisory Committee (PAC/HAC)

Submitted by: _____
Sara Poirier, Planner

Date: 2021-06-10

Subject: Development Agreement: 101 Three Mile Plains Cross Rd. PID 45197456; File 21-02 B

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

To allow the requested development, staff recommends that the Planning and Heritage Advisory Committee (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 an automotive repair shop at 101 Three Mile Plains Cross Rd., Three Mile Plains (PID 45197456) which is substantively the same as the draft set out in Attachment C of the report to the Planning Advisory Committee dated June 10, 2021.

BACKGROUND

An application was received on January 15, 2021 from Geoff Lunn, with authorization from property owner Brian Lunn, to permit an automotive repair shop at 101 Three Mile Plains Cross Rd., Three Mile Plains. All necessary material for the application was submitted on January 18, 2021.

DISCUSSION

The approximately 14,500 ft² lot is designated Residential on the Generalized Future Land Use Map of the West Hants Municipal Planning Strategy (WHMPS) (Figure 1) and is within the Three Mile Plains Growth Centre. Part 5.3 of the WHMPS contains the overall intention for properties designated Residential in the Three Mile Plains Growth Centre.

The lot is zoned Two-Unit Residential (R-2) on the Zoning Map of the West Hants Land Use By-law (WHLUB) (Figure 2). An automotive repair shop is not permitted as-of-right in the Two-Unit Residential (R-2) zone.

The subject lot directly abuts properties with a variety of different zoning including Two Unit Residential (R-2), Local Industrial (LI), Resource Industrial (M-1), and Multiple Residential (R-3) (Figure 2). These properties are all designated Residential within the Three Mile Plains Growth Centre (Figure 1).

Development Agreements

A development agreement is a legal 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 Bylaw (LUB) and the Municipal Planning Strategy (MPS) 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 MPS Council usually identifies both specific and general criteria which must be considered when making decisions regarding a development agreement.

The draft development agreement can be found in Attachment C.

Proposed Development Agreement

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:*

- (i) Resource Industrial (M-1) uses in the Growth Centres in accordance with Policy 5.7.2 of the Municipal Planning Strategy;*

Although there is no specific definition for a Resource Industrial (M-1) use, the best basis for determining what is considered a Resource Industrial (M-1) use is the list of permitted uses in the Resource Industrial (M-1) zone in the WHLUB. Any activity connected with the automobile trade other than an automobile scrap yard or automobile related commercial recreation establishment is a listed permitted use in the Resource Industrial (M-1) zone which would include an automotive repair shop.

Part 5 of the WHMPS contains the overall intention for Growth Centres in West Hants; Section 5.7 indicates the intention of Council to allow certain industrial development in the Growth Centres. Policy 5.7.2 establishes Council’s intention to “*consider new resource-related industrial uses in the Growth Centres by development agreement*”. The criteria for Policy 5.7.2 have been evaluated by staff in Attachment A.

Specific Requirements/Requests

The applicant submitted a rough site plan indicating the size of the proposed building for the automotive repair shop and the intended location for the building. Policy 5.7.2 (g) requires adequate buffering or screening, setbacks and yards to minimize potential land use conflicts with adjacent properties. Two (2) of the properties adjacent to the subject lot to the north and south, 97 and 107 Three Mile Plains Cross Rd., and the subject lot at 101 Three Mile Plains Cross Rd., are all owned by Brian Lunn. Staff recommend not requiring buffering, screening, setbacks, or yards on the subject lot where they are adjacent to the properties owned by the same property owner, Brian Lunn. However, for the abutting property to the east that has different ownership a planting strip consisting of a continuous row of trees or hedge of evergreens or shrubs arranged in such a way to form a dense or opaque screen will be required on the subject lot with a minimum width of 5 ft (1.52 m). This is similar to the existing WHLUB requirements for commercial businesses that abut residential uses.

For the hours of operation, the applicant has stated they intend to operate the business full-time, during daytime hours. The development agreement permits the automotive repair shop to operate between the hours of 8:00 a.m. and 5:00 p.m. daily.

Staff discussed parking requirements with the applicant and determined that six (6) parking spaces for the automotive repair shop would be sufficient. In terms of signage, the number of signs permitted in the WHLUB is adequate for the applicant.

In terms of access to the property, there is an existing driveway shared between 97 and 101 Three Mile Plains Cross Rd. that the applicant intends to use for the automotive repair shop. The Department of Transportation and Active Transit (DTAT) found the existing access to be suitable for the proposed use and suggested an agreement be established to ensure the driveway could be used for the automotive repair shop, particularly if there is ever a change in ownership of 97 Three Mile Plains Cross Rd. This has been incorporated into Clause 2.3, *Access and Egress*, in the proposed development agreement. The owner of 101 Three Mile Palins Cross Road will need to provide proof to the Development Officer of an easement agreement with any new owner of 97 Three Mile Plains Cross Rd. to ensure access can be maintained or a new access can be created contingent on approval from DTAT. The applicant found this requirement suitable and intends to make it a requirement of sale if the abutting property is ever sold.

When the Director of Public Works was asked to comment on the adequacy of water and sewer services for policy 16.3.1 (a) (i) they stated oil and petroleum products would need to be stored appropriately and not disposed of in the Three Mile Plains sewer system. Staff spoke with the applicant about their intentions for these products. The applicant mentioned an on-site oil heater would use some oil products and that all other oil and petroleum products would be recycled following Nova Scotia requirements, *Solid Waste-Resource Management Regulations made under Section 102 of the Environment Act. Clause 2.7, Water and Sewer Services*, of the proposed development agreement addresses storage and disposal of oil and petroleum products ensuring the

property owner is responsible and that these substances do not enter the Three Mile Plains sewer system.

Policy 5.7.2 (h) requires that open storage be limited to the rear yard. The applicant has indicated that they do not intend to have any open storage and may apply for permits for accessory buildings such as a shed for storage at a later date. Clause 2.5, *Storage*, of the development agreement prohibits open storage and permits accessory buildings for the automotive repair shop in accordance with Section 5.1 of the WLUB.

WHMPS Specific Criteria

Policy 5.7.2 of the WHMPS establishes Council's intention to consider new resource-related industrial uses in the Growth Centres by development agreement. The above policy establishes the criteria to be considered by Council, which are examined in detail in Attachment A.

In summary, the remaining criteria are met since:

- the use is permitted in the Resource Industrial (M-1) zone;
- the development will not adversely affect adjacent land uses as the hours of operation are regulated to daytime hours and the expected noise is minimal as it will be contained within a new building; and
- the development has frontage on a collector street.

WHMPS General Criteria

Policy 16.3.1 of the WHMPS states general criteria for any development agreement considered in West Hants. 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, Manager of Building and Fire Inspection Services, Director of Public Works and Department of Transportation and Active Transit have no major concerns that have not been addressed in the development agreement.

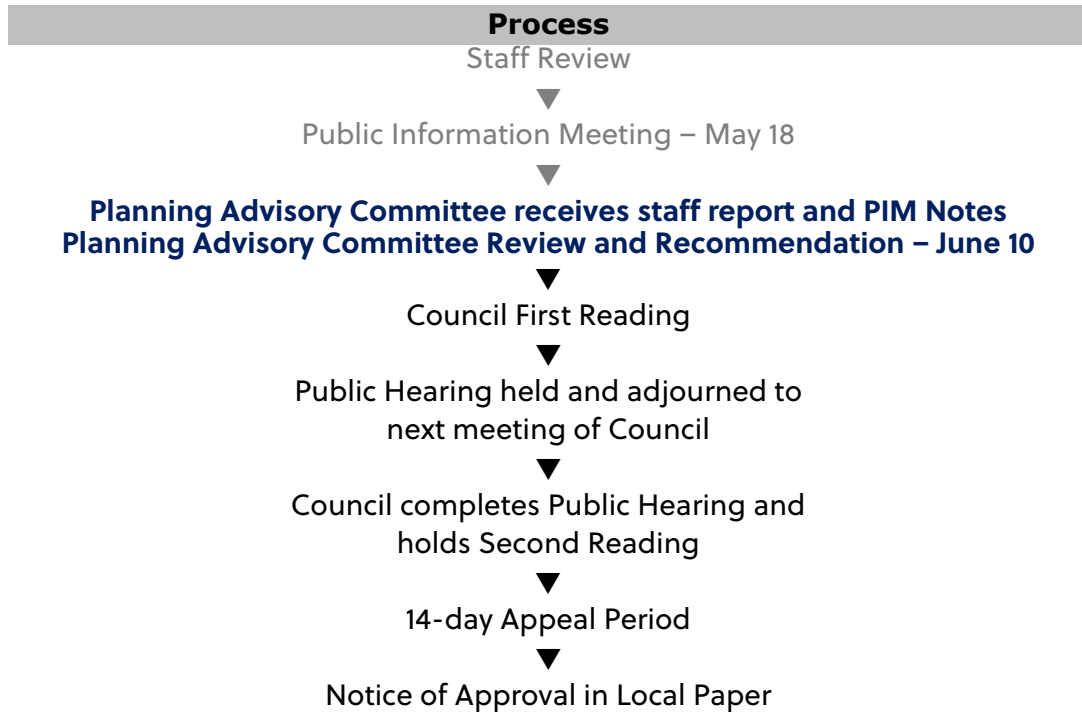
MCCAP

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 Three Mile Plains Flood Risk Assessment Study does not identify the site as an area vulnerable to flooding.

NEXT STEPS

As noted above, the proposed 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, and policies of the WHMPS. The amendment meets the specific and general criteria for a development agreement. As a result, it is reasonable to

consider permitting an automotive repair shop at 101 Three Mile Plains Cross Rd. by development agreement.



FINANCIAL IMPLICATIONS

There are no financial implications associated with this application.

ALTERNATIVES

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

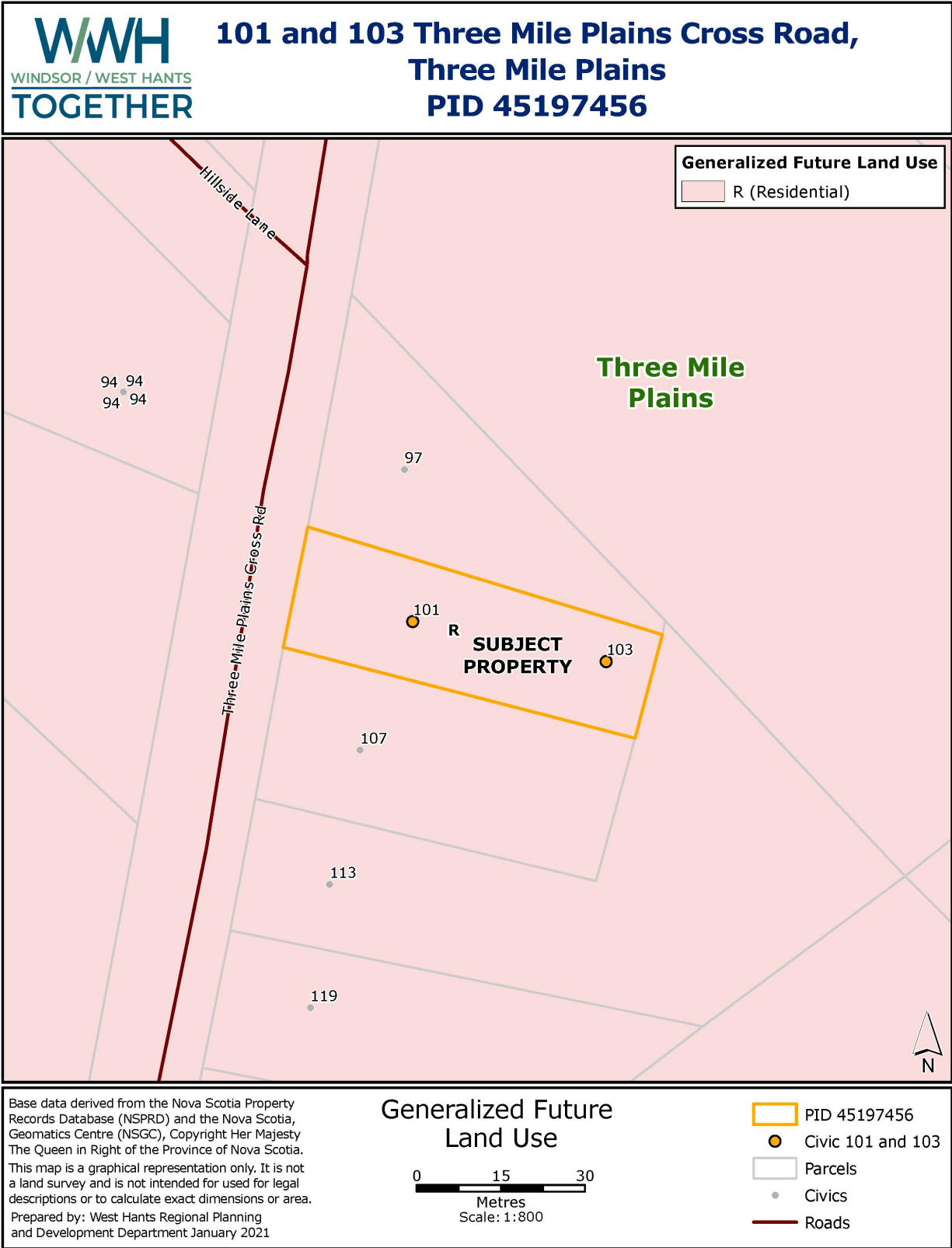
- recommend that Council hold First Reading and authorize a Public Hearing to approve the Development Agreement as drafted or as specifically revised by direction of PAC/HAC;
- provide alternative direction such as requesting further information on a specific topic.

ATTACHMENTS

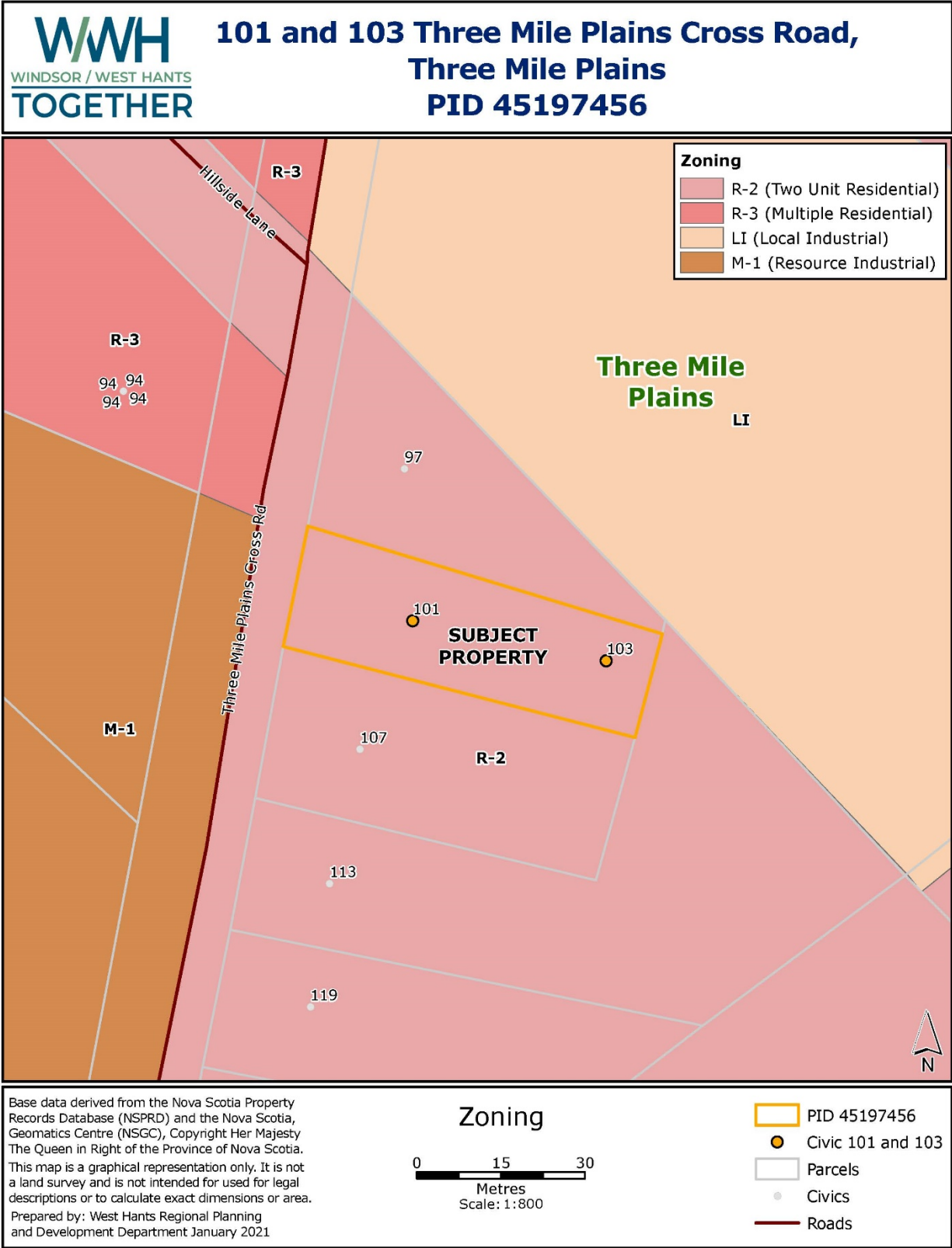
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| Figure 1 | Generalized Future Land Use Map Excerpt |
| Figure 2 | Zoning Map Excerpt |
| Attachment A | Specific Criteria for Development Agreement |
| Attachment B | General Criteria for Development Agreement |
| Attachment C | Draft Development Agreement |

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

**Figure 1
Generalized Future Land Use Map Excerpt**



**Figure 2
Zoning Map Excerpt**



Attachment A

Specific Criteria for Development Agreement

Policy 5.7.2

It shall be the policy of Council to consider new resource-related industrial uses in the Growth Centres by development agreement subject to the following:

| CRITERIA | COMMENT |
|--|---|
| <i>(a) the use is permitted in the Resource Industrial (M-1) zone;</i> | Any activity connected with the automobile trade other than an automobile scrap yard or automobile related commercial recreation establishment is permitted in the Resource Industrial (M-1) zone. The draft development agreement defines the propose use as an "automotive repair shop" which means "a commercial establishment for the repair or replacement of parts in automotive, farm or forestry vehicles, machinery or equipment". |
| <i>(b) the use is not considered obnoxious by virtue of noise, odours, dust, fumes or other emissions;</i> | The automotive repair shop will be contained within a new proposed building. The applicant has stated the building will be well insulated and they plan on having air conditioning in the building so the doors of the shop will be closed most of the time. The building will have an exhaust fan with a filter to prevent dust and odours from escaping. |
| <i>(c) the development will not adversely affect adjacent land uses with respect to:</i> | |
| <i>(i) traffic generation and traffic safety;</i> | The Department of Transportation and Active Transit (DTAT) have stated they do not anticipate a negative impact to traffic generation and safety with the proposed use. DTAT would not consider approving any widening of the existing access currently shared by 97 and 101 Three Mile Plains Cross Rd. but suggested an agreement be put in place to ensure continued access for the automotive use if there is ever a change in ownership of 97 Three Mile Plains Cross Rd. Both properties are currently owned by the same owner and will not require an agreement for access at this time, as the property |

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| | owner cannot enter into an agreement with himself. However, if 97 Three Mile Plains Cross Rd. is sold to a new owner Clause 2.3 of the proposed development agreement requires the property owner to provide proof of an agreement with the new property owner to the Development Officer to ensure access for the automotive repair business can be maintained or the applicant will have to create a new access that is acceptable to DTAT. |
| <i>(ii) hours of operation;</i> | The hours of operation are regulated in Clause 2.9 of the proposed development agreement as 8 a.m. – 5 p.m. daily. |
| <i>(iii) noise; and</i> | Please see 5.7.2 (b) for further details. |
| <i>(iv) size of building.</i> | The size of the building is outlined in the site layout attached to the proposed development agreement. The size of the building is not unusual for the area and a planting strip is required between the abutting property to the east to reduce potential land use conflicts. |
| <i>(d) the development has frontage on an arterial or collector street;</i> | The lot has frontage on Three Mile Plains Cross Rd. which is a collector street. |
| <i>(e) safe and efficient roadway access can be provided;</i> | Please see 5.7.2 (i) for further details. |
| <i>(f) adequate parking and loading areas can be provided;</i> | Clause 2.4 of the proposed development agreement ensures a maximum of six (6) parking spaces are permitted for the automotive repair shop in the development agreement and an adequate parking area is outlined on the site layout. |
| <i>(g) adequate buffering or screening, setbacks and yards are provided to minimize potential land use conflicts with adjacent properties;</i> | The subject lot and property abutting the subject lot to the north (97) and south (107) are all owned by the same owner. Staff will not requiring buffering, screening, setbacks, and yard from these abutting properties as they have the same owner. |

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| | There is one (1) abutting property to the east that has a different owner. Clause 2.8 in the draft development agreement requires a planting strip between the subject lot and this property to ensure adequate buffering. |
| <i>(h) open storage and display areas are adequately fenced or screened and limited to the rear yard where there is potential for conflict with adjacent non-industrial uses;</i> | Clause 2.5 of the proposed development agreement does not permit open storage or display areas. Accessory buildings associated with the automotive repair shop are permitted in accordance with Section 5.1 of the WHLUB. |
| <i>(i) any other matter which may be addressed in a development agreement;</i> | No other matters have been raised. |
| <i>(j) Policy 16.3.1.</i> | See Attachment B. |

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 |
|---|--|
| <i>(a) whether the proposal is considered premature or inappropriate in terms of:</i> | |
| <i>(i) the adequacy of sewer and water services;</i> | The Director of Public Works stated that the property is capable of being serviced by municipal water and sewer. They have stated that oil and petroleum products will need to be properly stored and disposed of to ensure these products do not enter the Three Mile Plains sewer system. The applicant has been informed and intends to use oil for an on-site heater or dispose of these products through the provincial recycling programs. Clause 2.7 of the proposed development agreement addresses these concerns and ensures the property owner is responsible for the safe storage and disposal of these products. |
| <i>(ii) the adequacy of school facilities;</i> | No impact on school facilities is anticipated. |
| <i>(iii) the adequacy of fire protection and other emergency services;</i> | The Manager of Building and Fire Inspection Services and the local Fire Chief have no concerns with regards to fire protection and emergency services. The Manager of Building and Fire Inspection Services has noted that the applicant purchased a steel structural (non-combustible) building. This will help with the close proximity of the structure to the property lines under the National Building Code. The Fire Chief stated that this is located on a well-maintained road and has a fire hydrant in the area. The adjacent properties appear to be well spread apart from this building if a fire were to occur. |

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| <p><i>(iv) the adequacy of road networks adjacent to, or leading to the development; and</i></p> | <p>Please see 8.9.4 (f) for further details.</p> |
| <p><i>(v) the financial capacity of the Municipality to absorb any costs relating to the development.</i></p> | <p>No municipal costs related to this amendment are anticipated.</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>As noted above in 16.3.1 (a) (i), the property is capable of being serviced by municipal water and sewer.</p> |
| <p><i>(c) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;</i></p> | <p>Please see 8.9.4 (f) for further details.</p> |
| <p><i>(d) the adequacy of the dimensions and shape of the lot for the intended use;</i></p> | <p>The property is 14,451ft² in area and has sufficient space for the intended use based on the building materials required in the National Building Code. As abutting properties to the north and south are within the same ownership, no setbacks and yards have been required.</p> |
| <p><i>(e) the pattern of development which the proposal might create;</i></p> | <p>The use permitted by the development agreement will not create a pattern of development that is unusual for the area.</p> |
| <p><i>(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;</i></p> | <p>Based on a preliminary site visit the lot is fairly flat and there are no evident concerns in terms of steepness of grade, soil and geological conditions, location of water courses or wetlands, and susceptibility of flooding. The Municipal Climate Change Action Plan (MCCAP) Inland and Coastal Flooding maps and Three Mile Plains Flood Risk Assessment do not show any risks of either inland or coastal flooding on the property. The applicant will be responsible if any issues arise in terms of the suitability of the area for the proposed uses.</p> |

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| <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; and</i> | The proposed amendment meets all relevant municipal, provincial and federal regulations. |
| <i>(h) any other matter required by relevant policies of this Strategy.</i> | Please see Attachment A for further details. |

**Attachment C
Draft Development Agreement**



DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2021.

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 -

Brian C. Lunn and Joleen Ann Lunn, of 107 Three Mile Plains Cross Road, Three Mile Plains, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the "Owners")

OF THE SECOND PART

WHEREAS the Owners are the registered owners of a parcel of land located at 101 Three Mile Plains Cross Road (PID 45197456) hereinafter referred to as the "Property", which lands are more particularly described in Schedule A attached hereto; and

WHEREAS the Property is designated Residential on the Generalized Future Land Use Map of the West Hants Municipal Planning Strategy (June 26, 2008) (the "Municipal Planning Strategy") and zoned Two-Unit Residential (R-2) on the Zoning Map of the West Hants Land Use By-law (June 26, 2008) (the "Land Use By-law") and is in Three Mile Plains Growth Centre; and

WHEREAS the applicant on behalf of the Owners has requested that the Municipality enter into a development agreement to permit an Automotive Repair Shop on the Property (the "Development") and Section 6.1 (i) of the Land Use By-law enables Council to consider a development agreement for any activity connected with the automobile trade other than an automobile scrap yard or automobile related commercial recreation establishment as it is a listed permitted use in the Resource Industrial (M-1) zone; and

WHEREAS the Council of the Municipality, at a meeting held on (DATE), approved this request and adopted this Agreement by policy;

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, except those defined as follows:

"Automotive Repair Shop" means a commercial establishment for the repair or replacement of parts in automotive, farm or forestry vehicles, machinery or equipment.

1.2 Schedules

The following attached schedules shall form part of this agreement:

- Schedule A - Legal Description
- Schedule B –Site Layout

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

- (a) *Municipal Planning Strategy* means the West Hants Municipal Planning Strategy, approved on May 13, 2008, as amended, or successor By-laws;
- (b) *Land Use By-law* means the West Hants Land Use By-law, approved on May 13, 2008, as amended, or successor By-laws;
- (c) *Subdivision By-law* means the West Hants Subdivision By-law, approved on May 13, 2008, as amended, or successor By-laws.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

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

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

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

The proposed Automotive Repair Shop shall be located entirely within the proposed building located at 101 Three Mile Plains Cross Road identified as "Shop" on the Site Layout, Schedule B.

2.3 Access and Egress

The Owners shall use the driveway access shown on the Site Layout for the Automotive Repair Shop. The driveway access is shared with PID 45002912 which is owned by Brian C. Lunn. If PID 45002912 is sold to someone who is not one of the Owners in this agreement, the Owners shall within 90 days provide the Development Officer either proof of an easement agreement with the new property owner to use the existing driveway access for the Automotive Repair Shop or proof of approval to create a new access to the Property that meets Department of Transportation and Active Transit requirements. Upon written request of the Owners, the Development Officer may grant an extension for the Owners to provide the proof at a later date without such an extension being deemed to be an amendment to this Agreement. The Development Officer, after consultation with the Municipal Engineer, may in their sole discretion approve minor incidental changes to the layout of the driveway.

2.4 Parking

A maximum of six (6) parking spaces may be used as part of the Automotive Repair Shop. The parking shall be located approximately as shown on Schedule B.

2.5 Storage

No open storage or display areas shall be permitted. Accessory buildings for the Automotive Repair Shop shall be permitted in accordance with section 5.1 of the Land Use By-law.

2.6 Signs and Lighting

Signage and illumination shall be in accordance with sections 5.18 and 7.0 of the Land Use By-law 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 minimize light spilling, glare or light cast over neighbouring properties or the street.

2.7 Water and Sewer Services

The Property is capable of being serviced by municipal water and sewer. Oil and petroleum products must be stored and disposed of entirely at the Owners' responsibility and expense in a manner that ensures these products do not enter the Three Mile Plains Sewer System.

2.8 Landscaping

The part of the Property directly adjoining PID 45002904 and within 5 ft (1.52 m) shall not be used for any purpose other than a planting strip consisting of a continuous row of trees or hedge of evergreens or shrubs arranged in such a way to form a dense or opaque screen and having a minimum width of 5 ft (1.52 m) measured perpendicular to the lot line.

2.9 Hours of Operation

The hours of operation for the Automotive Repair Shop shall be limited to between 8:00 a.m. and 5:00 p.m. daily, Monday to Sunday, inclusive.

2.10 Maintenance

- (a) The Owners 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 Owners shall maintain the driveway to a level adequate to allow for access by emergency service vehicles.

PART 3 CHANGES and DISCHARGE

- 3.1** The Owners 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* of this Agreement; and
 - (b) the location of the shop, parking, and driveway shown on Schedule B of this agreement.
- 3.4** Notwithstanding the foregoing, discharge of this agreement is not a substantive matter and this agreement may be discharged by Council without a public hearing.
- 3.5** Notice of Intent to Discharge this Agreement may be given by the Municipality to the Owners 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 Owners, 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 Owners, provided the use of the Property 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 Owners 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 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 Owners shall provide record drawings to the Development Officer for any portion of the development for which an engineered design is required, within ten days of completion of any work which requires the engineered design.
- (b) The Owners 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 Owners 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 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.

5.4 Municipal Responsibility

- (a) The Municipality does not make any representations to the Owners about the suitability of the Property for the development proposed by this agreement. The Owners assume 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 Owners in writing. In the event that the Owners have 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 Owners shall pay all costs associated with the advertising required for this Agreement, the costs of 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 Owners 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 Owners personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to Brian C. Lunn and Joleen Ann Lunn, 107 Cross Road, Windsor, NS, B0N 2T0 or at any other address provided by the Owners.
- (b) The Owners 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.

5.10 Full Agreement

This agreement constitutes the entire agreement and contract entered into by the Municipality and the Owners. 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:

) **WEST HANTS REGIONAL**
) **MUNICIPALITY**

)
)
)
)
)

Per: _____

Witness

) Abraham Zebian, Mayor
)

) Per: _____

Witness

) _____, Municipal Clerk
)
)
)
)
)
)
)
)
)

Per: _____

Witness

) Brian C. Lunn
)
)

Per: _____

Witness

) Joleen Ann Lunn
)

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2021, 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 h presence.

A Commissioner of the Supreme Court of Nova Scotia

ON THIS day of , A.D. 2021, 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 h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2021, 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, **Brian C. Lunn**, one of the parties thereto, signed, sealed and delivered the same 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. 2021, 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, **Joleen Ann Lunn**, 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
THE REGION OF WINDSOR AND WEST HANTS MUNICIPALITY

I, _____ 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).

Sworn before me at _____, Nova Scotia,
this _____, 2021.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

, Municipal Clerk

I CERTIFY that on this date _____ personally came before me and swore under oath the foregoing Affidavit.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

CANADA
PROVINCE OF NOVA SCOTIA
HANTS COUNTY

AFFIDAVIT & PROOF OF EXECUTION (INDIVIDUAL)

We, Brian C. Lunn and Joleen Ann Lunn, the "Deponents", make oath and swear that:

1. **We acknowledge that we 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. We are nineteen years of age or older and are residents 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. We are the spouses of each other. Neither of us has any other spouse nor, with respect to the within property, any former domestic partner with the rights contemplated by Section 55 of the *Vital Statistics Act*, or any former spouse with rights under the *Matrimonial Property Act*. We consent to this disposition.

I certify that on this _____, 2021
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

Brian C. Lunn

Joleen Ann Lunn

Schedule A
Legal Description – PID 45197456

All that lot of land at Three Mile Plains, in the County of Hants shown as Lot 2 on a plan of lands of Cedric K. and Ruth M. Lunn made by Robert S. Redden, N.S.L.S., dated May 14, 1980 and revised on May 16, 1980, approved on June 4, 1980 by the Municipality of West Hants and filed at the Registry of Deeds at Windsor as plan number P 2952, and said lot being described as follows:

Beginning on the South east boundary of the Cross Road at Three mile Plains, at a survey market driven in the ground distant 205 feet more or less in a direction South 30 degrees 40 minutes 0 seconds West from the Northwestern corner of lands of Robert Lockhart;

Thence South 54 degrees 49 minutes 0 seconds East 211.96 feet to a survey marker driven in the ground;

Thence South 34 degrees 12 minutes and 40 seconds West 66.97 feet to a survey marker;

Thence North 55 degrees 52 minutes and 20 seconds West 207.54 feet to the Southeast boundary of the Cross Road;

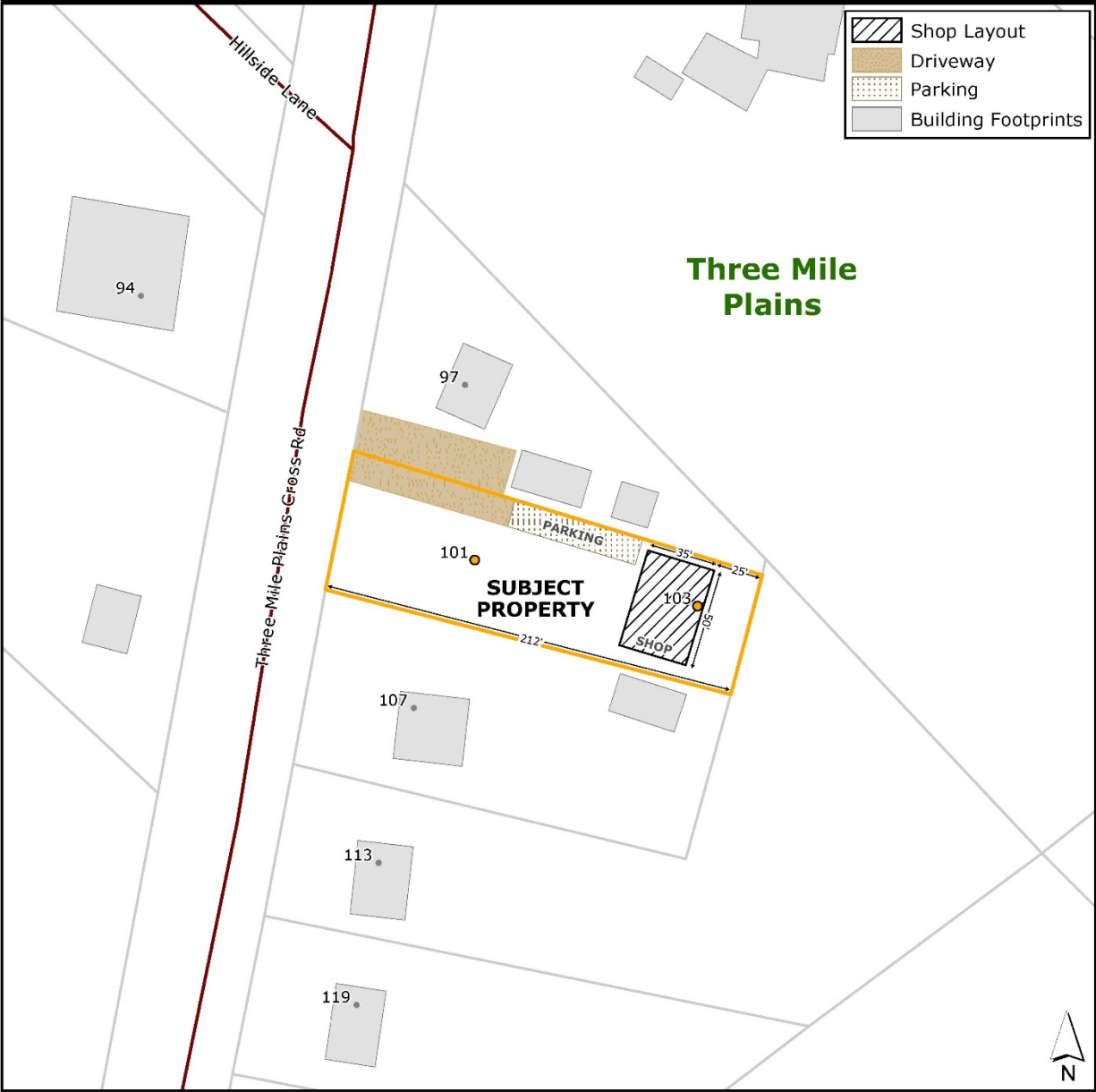
Thence North 30 degrees 40 minutes and 0 seconds East along the Southeast boundary of the Cross Road 71 feet to the place of beginning, containing an area of 14,451 square feet.

Together with the rights of the Mortgagor/Grantor under an agreement dated May 1, 1998 and registered at the said Registry of Deeds in Book 832, page 762, Document number 1642.

Schedule B
Site Layout

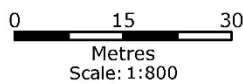


103 Three Mile Plains Cross Road,
Three Mile Plains
PID 45197456



Base data derived from the Nova Scotia Property Records Database (NSPRD) and the Nova Scotia, Geomatics Centre (NSGC), Copyright Her Majesty The Queen in Right of the Province of Nova Scotia. This map is a graphical representation only. It is not a land survey and is not intended for used for legal descriptions or to calculate exact dimensions or area. Prepared by: West Hants Regional Planning and Development Department February 2021

Site Layout



- PID 45197456
- Civic 101 and 103
- Parcels
- Civics
- Roads