



WEST HANTS REGIONAL MUNICIPALITY REPORT

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

Submitted by: _____
Alex Dunphy, Planner

Date: December 16th, 2021

Subject: Development Agreement: Fairfield Court, Windsor; PID 45383742;
File# 20-25A

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

...that Council give Second Reading and approve entering into a development agreement to permit a one storey residential building containing three dwelling units at PID 45383742 on Fairfield Court, Windsor, in a manner substantively the same as the draft set out in Appendix A to the report #20-25 to Mayor Zebian and the Members of West Hants Regional Municipality Council dated November 23rd, 2021.

BACKGROUND

Property <input checked="" type="checkbox"/>	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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An application was received from David Howell on April 30th, 2021 to consider a one-storey triplex through development agreement at the property listed as PID 45383742, Fairfield Court, Windsor.

The property is just over 16 000 sq. ft. (0.14 acres) in area and is currently vacant.

DISCUSSION

A Public Information Meeting was held on October 14th, 2021.

On November 8th, 2021, staff presented a recommendation report to the Planning and Heritage Advisory Committee (PAC/HAC) (Appendix B).

PAC/HAC recommended in favour of the development agreement on November 8th, 2021.

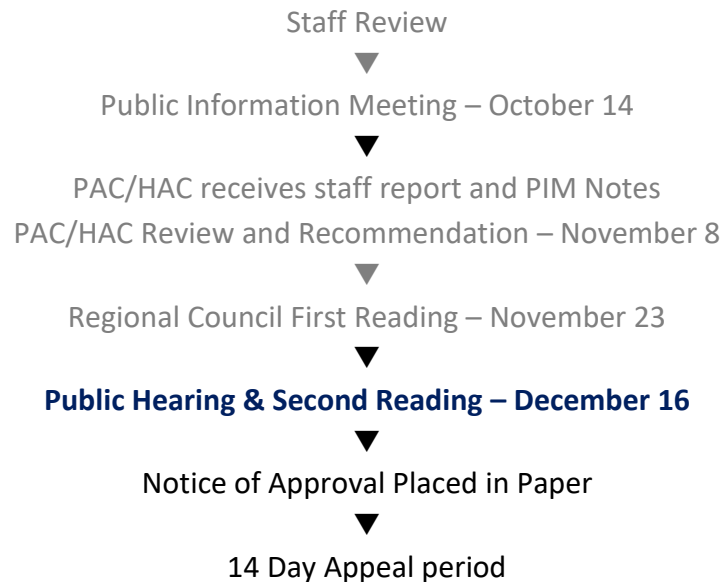
One addition to the development agreement was requested by Chrystal Fuller, acting as agent for the developer, on November 9th, 2021. The request is a clause in Section 2.2 (b), *Development Location and Design*, which would allow minor changes to the location of the main building on the site plan in accordance with the report required through Section 2.8 (c), *Environmental Study*. Staff support the request as it would allow the developer to follow the guidance provided by the environmental study without having to amend the development agreement. The development will still be required to meet the setbacks listed in Section 2.3, *Site Requirements*.

Council held first reading on November 23rd, 2021 (Appendix A).

NEXT STEPS

Process

The process for this application is as follows:



APPENDICIES

Appendix A 2021-11-23 Council Package – Development Agreement: Fairfield Court, Windsor, PID 45383742; File #20-25

CHIEF ADMINISTRATIVE OFFICER REVIEW

I support the recommendation.

Report Prepared by: _____
Alex Dunphy, Planner

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

Report Approved by:  _____
Mark Phillips, Chief Administrative Officer

**Attachment A - 2021-11-23 Council Package – Development Agreement: Fairfield Court,
Windsor, PID 45383742; File #20-25**



WEST HANTS REGIONAL MUNICIPALITY REPORT

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

Submitted by: _____
Alex Dunphy, Planner

Date: November 23rd, 2021

Subject: Development Agreement: Fairfield Court, Windsor; PID 45383742; File# 20-25

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

...that Council give First Reading and hold a Public Hearing to consider entering into a development agreement to permit a one storey residential building containing three dwelling units at PID 45383742 on Fairfield Court, Windsor, in a manner substantively the same as the draft set out in Appendix A to the report #20-25 to Mayor Zebian and the Members of West Hants Regional Municipality Council dated November 23rd, 2021.

BACKGROUND

Property <input checked="" type="checkbox"/>	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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An application was received from David Howell on April 30th, 2021. The application was made to permit a one-storey triplex through development agreement at the property listed as PID 45383742, Fairfield Court, Windsor.

The property is just over 16 000 sq ft (0.14 acres) in area and is currently vacant.

DISCUSSION

A Public Information Meeting was held on October 14th, 2021.

On November 8th, 2021, staff presented a recommendation report to the Planning and Heritage Advisory Committee (PAC/HAC) (Appendix B).

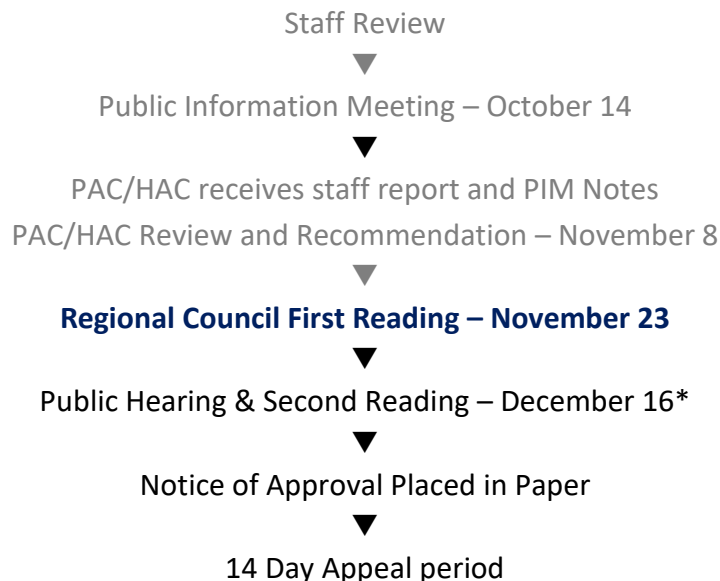
PAC/HAC recommended in favour of the development agreement on November 8th, 2021.

One addition to the development agreement was requested by Chrystal Fuller, acting as agent for the developer, on November 9th, 2021. The request is a clause in Section 2.2 (b), *Development Location and Design*, which would allow minor changes to the location of the main building on the site plan in accordance with the report required through Section 2.8 (c), *Environmental Study*. Staff support the request as it would allow for the developer to follow the guidance provided by the environmental study without having to amend the development agreement. The development will still be required to meet the setbacks listed in Section 2.3, *Site Requirements*. The revised development agreement is attached as Appendix A, with the requested change highlighted in Section 2.2 (b).

NEXT STEPS

Process

The process for this application is as follows:



*anticipated dates; final dates set by Council

FINANCIAL IMPLICATIONS

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

ALTERNATIVES

In response to the application, Council may decide to:

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

APPENDICIES

Appendix A Revised Draft Development Agreement
Appendix B 2021-11-08 Staff Report – Development Agreement: Fairfield Court,
 Windsor, PID 45383742; File #20-25

CHIEF ADMINISTRATIVE OFFICER REVIEW

This proposal is another positive development addressing the housing needs in the community.

I support the recommendation.

Report Prepared by: _____
 Alex Dunphy, Planner

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

Report Approved by:  _____
 Mark Phillips, Chief Administrative Officer

Appendix A – Revised Draft Development Agreement



DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 202_.

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 -

GATEWAY INVESTMENTS INCORPORATED, a body corporate, with a head office at 258 King Street, Windsor, 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 a parcel of land located on Fairfield Court, PID 45383742, 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 Windsor Municipal Planning Strategy and zoned General Commercial (GC) on the Zoning Map of the Windsor Land Use By-law and is in the Environmental Constraints overlay; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit a single storey residential building containing three (3) dwelling units on the Property (the “Development”); and

WHEREAS Policy 5.4.6 of the Municipal Planning Strategy and Section 6.1 (b) of the Land Use By-law enable Council to consider entering into a development agreement to allow new multiple unit residential development consisting of three or more units in the Residential designation; and

WHEREAS the Council of the Municipality, at a meeting held on **(DATE)**, approved this request and adopted this Agreement by policy, subject to the execution of this development agreement by the parties hereto;

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 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

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

- (a) *Municipal Planning Strategy* means the Municipal Planning Strategy of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;
- (b) *Land Use By-law* means the Land Use By-law of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;
- (c) *Subdivision By-law* means the Subdivision By-law of the Town of Windsor, approved on January 24, 2012, 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) a single storey residential building containing three (3) dwelling units.

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 generally consistent with the layout shown on Schedule B.
- (b) The Development Officer may approve minor changes to the location of the main buildings or other aspects of the site plan provided that setbacks listed in Section 2.3, *Site Requirements*, of this agreement are met. Changes to the site plan may also be approved in accordance with reports generated in response to Section 2.8, (c), *Environmental Study*, of this agreement provided that the setbacks listed in Section 2.3, *Site Requirements*, of this agreement are met.

2.3 Site Requirements

- (a) The residential building shall conform to the following site requirements:

Minimum Lot Area		3,000 ft ² (278.70 m ²) for each dwelling unit
Minimum Lot Frontage		100 ft (30.48 m)
Minimum Front Yard		25 ft (7.62 m)
Minimum Rear Yard		25 ft (7.62 m)
Minimum Side Yard	Payzant Drive side	15 ft (4.57 m)
	Other side	5 ft (1.52 m)
Maximum Height of Main Building		35 ft (10.67 m)
Maximum Height of Accessory Building		15 ft (4.57 m)

- (b) Accessory buildings are permitted in accordance with Section 5.1 of the Windsor Land Use By-law, *Accessory Buildings and Structures*.
- (c) Fences shall be permitted on the Property provided that:
 - (i) the Owner gets a development permit for the fence;
 - (ii) opaque fences in a required front yard shall not exceed a height of 3 ft (0.91 m);
 - (iii) no fence in a rear or side yard shall exceed a height of 8 ft (2.44 m);
 - (iv) a fence must conform to Section 5.41 of the Windsor Land Use By-law, *Visibility at Street Intersections*; and

- (v) no permanent fence, or part thereof, shall be constructed of sheet metal, corrugated fibreglass or metal panels, chicken wire, snow fencing or rubber tires.

2.4 Access and Egress

- (a) The Property is limited to a maximum of two (2) driveways onto Fairfield Court.
- (b) The driveway(s) must:
 - (i) provide access/egress from Fairfield Court, and
 - (ii) the nearest edge of each driveway must be constructed at least 50 ft (15.24 m) from the closest point of the intersection of Fairfield Court and Payzant Drive.

2.5 Parking

The Owner shall provide a minimum of 1.5 parking spaces per dwelling unit for a total of 5 parking spaces on the Property, each a minimum of 10 by 20 feet exclusive of driveways and manoeuvring aisles. Parking shall be located approximately as shown in Schedule B. The number, location and arrangement of parking spaces, aisles and driveways may be varied by the Development Officer.

2.6 Signs and Lighting

Signage and illumination shall be regulated under Sections 5.18 and 7.0 of the Windsor 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 minimize light spilling, glare or light cast over neighbouring properties or the street.

2.7 Maintenance

The Owner shall keep the Property and buildings and any portion thereof clean and in good repair. Any driveways, fences, lawns, trees, shrubs, walkways and other landscaping elements shall be regularly maintained and kept in a tidy state and free from unkempt materials or matter of any kind.

2.8 Servicing

(a) Waste Collection

The Owner shall make provision for municipal waste collection for the Property at the intersection of the private driveway and Fairfield Court as shown in Schedule B.

(b) Water and Sewer Services

The development must connect to Municipal Water and Sewer service.

(c) Environmental Study

- (i) In accordance with Policy 12.0.2 of the Windsor Municipal Planning Strategy, prior to a development permit being issued for development on the Property, the Owner shall submit an environmental study conducted by a qualified person which identifies constraints to construction at the site. Without limiting the generality of the foregoing, the study will describe the susceptibility to flooding, drainage problems, and the bearing capacity and suitability for construction of soils at the site, and will identify suitable construction methods, including flood proofing measures, to overcome the constraints which are found to exist at the site.
- (ii) In accordance with Section 27.3 of the Windsor Land Use By-law, where a building has been constructed using flood proofing measures or other construction methods in accordance with an environmental study required in Section 2.8 (c)(i) in this development agreement, any future alterations or additions shall also follow the construction methods set out in the environmental study.

2.9 Variance

In accordance with Section 5.40 of the Windsor Land Use By-law, *Variance*, the Development Officer may grant a variance for one or more of the following requirements subject to the requirements of the *Municipal Government Act*:

- (i) minimum site requirements established in 2.3 (a);
- (ii) number of parking spaces required; and
- (iii) floor area occupied by a home-based business.

PART 3 CHANGES AND DISCHARGE

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

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

3.3 The following matter is a substantive matter:

- (a) the uses permitted on the Property as listed in Section 2.1 of this Agreement, *Use*.

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 Owner following a resolution of Council to give such Notice:

- (a) as provided for in Section 4.1, *Commencement of Development*, of this Agreement; or
- (b) at the discretion of the Municipality, with or without the concurrence of the Owner, where the Development has, in the reasonable opinion of Council on advice from the Development Officer, ceased operation for a period of at least twenty-four (24) months; or
- (c) at any time upon the written request of the Owner, provided the use of the Property is in accordance with the 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) Development as provided in Part 2 of this Agreement shall commence not later than twenty-four (24) months from the date this Agreement is signed. If, in the opinion of the Development Officer, this time limit has not been met, this Agreement may be discharged at the option of the Municipality by resolution of Council in accordance with Section 229 of the *Municipal Government Act* 30 days after giving Notice of Intent to Discharge to the 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 By-laws and Regulations

- (a) Nothing in this Agreement shall exempt the Owner from complying with Federal, Provincial and Municipal laws, by-laws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority, or approval required thereunder.
- (b) Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property (other than the Land Use By-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.
- (c) References to particular sections of statutes and bylaws shall be deemed to be references to any successor legislation and bylaws 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 258 King Street P.O. Box 2018 Windsor, NS, CA B0N 2T0, or at any other address provided by the Owner.

- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided by the Municipality to the Owner.

5.10 Full Agreement

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

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

SIGNED, SEALED AND DELIVERED

In the presence of:

) **WEST HANTS REGIONAL**

) **MUNICIPALITY**

)

)

)

)

)

)

) Per: _____

Witness

) Abraham Zebian, Mayor

)

) Per: _____

Witness

) Deanna Snair, Municipal Clerk

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)

)

)

)

)

) **Gateway Investments Incorporated**

)

)

)

) Per: _____

Witness

) David Howell, President

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 202_ , before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 202_ , 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, one of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**AFFIDAVIT OF CLERK
WEST HANTS REGIONAL MUNICIPALITY**

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

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

Sworn before me at _____, Nova Scotia,
this _____, 20__.

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

Deanna Snair, Clerk

I CERTIFY that on this date Deanna Snair 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

AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)

I, David Howell, Nova Scotia, make oath and say that:

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

I certify that on this _____, 20__ 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
Print name/affix seal

DAVID HOWELL

Schedule A
Legal Description – PID 45383742

Registration County: HANTS COUNTY

Street/Place Name: PAYZANT DRIVE /WINDSOR

Title of Plan: PLAN OF SURVEY OF LOT C-1 TO C4 INC, BEING A S/D OF LOT 2-W-1, LANDS OF BRISON DEVEL LTD, PAYZANT DR, WINDSOR

Designation of Parcel on Plan: LOT C-1

Registration Number of Plan: 97677786

Registration Date of Plan: 2011-01-31 11:40:07

*** Municipal Government Act, Part IX Compliance ***

Compliance:

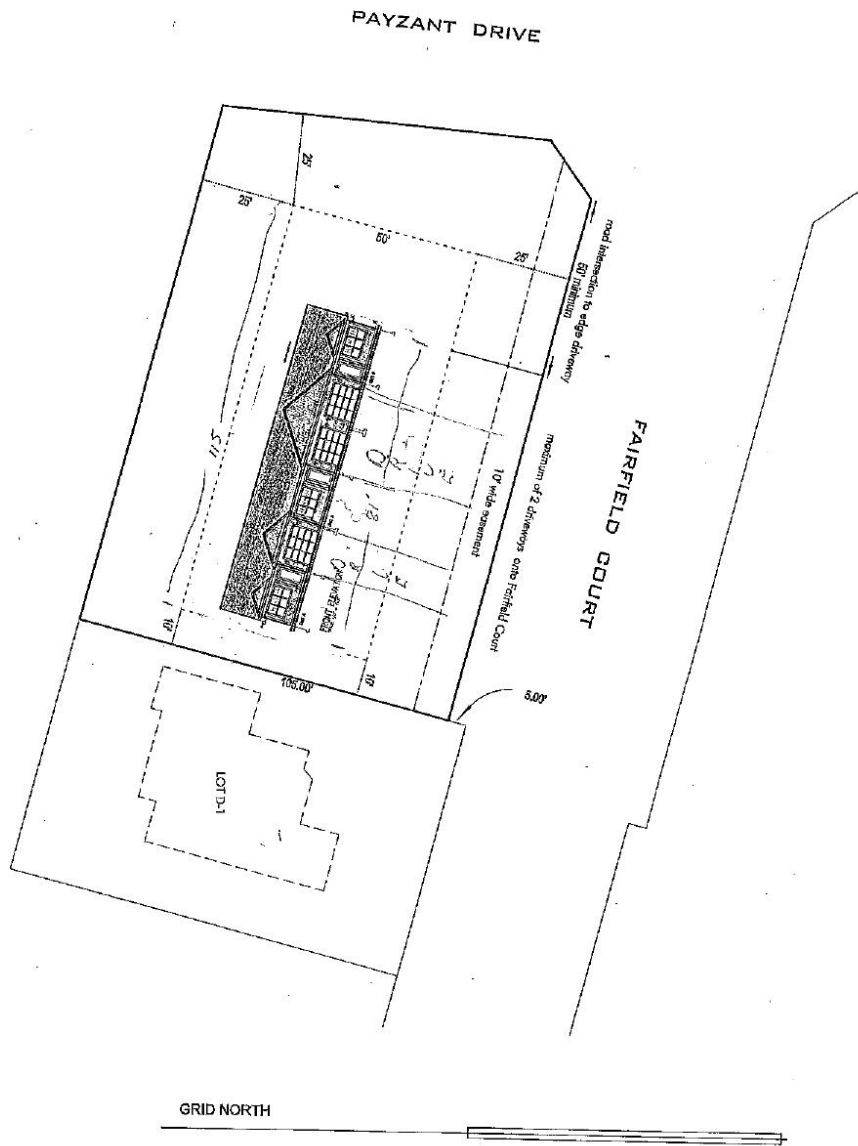
The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: HANTS COUNTY

Registration Year: 2011

Plan or Document Number: 97677786

**Schedule B
Site Plan**



**Appendix B – 2021-11-08 Staff Report – Development Agreement: Fairfield Court, Windsor,
PID 45383742; File #20-25**



WEST HANTS REGIONAL MUNICIPALITY REPORT

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

Submitted by: _____
Alex Dunphy, Planner

Date: November 8th, 2021

Subject: Development Agreement: Fairfield Court, Windsor; PID 45383742;
File# 20-25

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION or DECISION REQUEST

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

...that PAC recommends that Council give First Reading and hold a Public Hearing to consider entering into a development agreement to permit a one storey residential building containing three dwelling units at PID 45383742 on Fairfield Court, Windsor, in a manner substantively the same as the draft set out in Attachment B to the report #20-25 to the Planning and Heritage Advisory Committee dated November 8, 2021.

BACKGROUND

An application was received from David Howell on April 30th, 2021. The application was made to permit a one-storey triplex through development agreement at the property listed as PID 45383742, Fairfield Court, Windsor.

The property is just over 16 000 sq ft (0.14 acres) in area and is currently vacant.

Previous Uses

The property was rezoned from Two Unit Residential (R-2) to General Commercial (GC) in 2009 by the Town of Windsor after receiving an application from Brison Development Ltd. The application was to rezone the front portion of the larger lot along Payzant Drive to General Commercial (GC) to permit a variety of commercial uses. The application was approved and four lots along Payzant Drive are now zoned General Commercial (GC). Two of these lots have been developed as the Windsor Physiotherapy Clinic and the Windsor Vision Centre. The other two, including the subject lot, remain vacant.

DISCUSSION

As noted above, the property is zoned General Commercial (GC) and also falls within the Environmental Constraints Area on Schedule A of the Windsor Land Use By-law (WLUB) (Figure 1). Permitted uses in this zone consist of a variety of commercial uses, as well as existing residential uses and residential uses located above commercial uses.

The property is designated Residential on the Generalized Future Land Use Map (GFLUM) of the Windsor Municipal Planning Strategy (WMPS) (Figure 2). This designation displays the intention for residential development on the property, which matches the proposed development.

The property is located within the Environmental Constraints Area, which is dykeland designated under the *Agricultural Marshland Conservation Act*. New main buildings or accessory buildings larger than 800 sq ft in total floor area for a use permitted in the underlying zone require an environmental study (Policy 12.0.2). The property has also been identified as marshland, specifically within the Tregothic Marsh. The *Windsor Dykelands Background Report* (2001) specifies the property as part of the properties exempted by the Province from the requirements of Section 41 of the *Agricultural Marshland Conservation Act*. Exemption from Section 41 of the Act means that the owner does not have to apply for permission from the Marsh Body to allow construction.

The applicant requested permission from Council to rezone the lot to allow development of a single storey building consisting of three (3) dwelling units. Policies in the WMPS prohibit rezoning to the Medium Density Residential (R-3) (Policy 5.3.3) and High Density Residential (R-4) (Policy 5.4.3), which both permit this use. Although the rezoning is not possible, the application can be considered by development agreement pursuant to Policy 5.4.6.

Development Agreements

A development agreement is a contract between an owner of land and the Municipality to allow Council to consider a use that is not a listed, permitted use within a zone on a specific lot. A development agreement is binding upon a property until the agreement is discharged by Council. 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.

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

The draft development agreement can be found in Attachment C.

Surrounding Neighbourhood

The subject lot directly abuts lots zoned General Commercial (GC) to the north, Two Unit Residential (R-2) to the east, Institutional (I) to the south, and Agriculture (AG) to the west.

Table 1: Use Abutting Subject Lot by Direction

North	Windsor Physiotherapy Clinic and the Windsor Vision Centre are zoned General Commercial (GC).
East	Single unit dwellings and two-unit dwellings all zoned Two Unit Residential (R-2).
South	The Hants County Community Hospital property is zoned Institutional (I).
West	A vacant lot zoned Agriculture (AG) is adjacent to the subject lot on the west side of Payzant Drive.

Proposed Uses

The property owner is proposing a new single storey residential building with three (3) dwelling units on the currently vacant lot.

Payzant Drive is a major collector road from the corner of Wentworth Road to Underwood Drive as shown on the Transportation Map (Map 2) of the WMPS. Fairfield Court is not shown on the Transportation Map but would meet the description of a local road in the WLUB. The Municipal Traffic Authority stated they had no concerns in regard to the movement of auto, rail and pedestrian traffic as long as the driveways enter Fairfield Court and not Payzant Drive.

The Development Officer has no concerns about the proposed three (3) unit single storey dwellings being able to locate in this area providing that the driveway access to the property is a minimum of fifty (50) feet from the intersection of Fairfield Court and Payzant Drive, the development is built according to the recommendations in the Environment Assessment, and the required parking and open space is provided.

DOCUMENT REVIEW

Land Use By-law

Section 6.1 of the WLUB allows multiple unit residential developments consisting of three (3) or more units in a Residential designation to be considered by development agreement in accordance with MPS policy 5.4.6.

Municipal Planning Strategy

The specific criteria related to this proposal to be considered by Council are contained in Policy 5.4.6.

Policy 5.4.6 establishes criteria which applies to specifically new multiple unit residential development consisting of three or more units. The criteria are examined in further detail in Attachment A. The proposal meets the criteria since:

- The proposal meets the High Density Residential (R-4) zone standards;
- The proposal is compatible with the residential character of the area; and
- The proposal meets the general provisions of policy 16.3.1 of the WMPS.

Policy 16.3.1 establishes the general criteria that all development agreements and amendments. The criteria are examined in further detail in Attachment A. The proposal meets the criteria since:

- The proposal is not considered premature or inappropriate;
- There are no anticipated costs to the Municipality related to the proposal; and
- The Fire Chief, Development Officer, Senior Building and Fire Official, Director of Public Works and Traffic Authority have no concerns.

Municipal Climate Change Action Plan

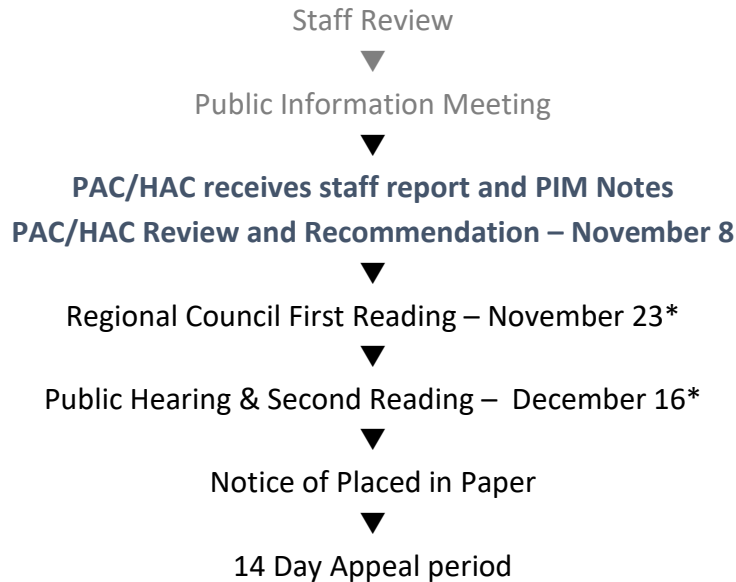
The *Simulated Flooding Extent for Observed 1997 Storm Surge (8.6 m O.D.)* of the *Windsor Municipal Climate Change Action Plan (MCCAP)* does not indicate that there will be any effect of inland flooding on this lot. The map describes the most likely scenario that the community of Windsor will face, based on a 1997 flooding event where the high-water mark reached 8.6 m.

Another scenario described in the MCCAP is a worst-case scenario where the high-water mark would reach an elevation of 9.4 m, due to a 100-year storm. This scenario is shown as the *Simulated Flooding Extent for Probable Maximum Flood due to Climate Change* map. On this map, the subject lot is shown to experience flooding, as along with a significant portion of the properties in Windsor. This property is within the boundary of the Tregothic Marsh and the Environmental Constraints overlay. As previously discussed, the developer will be required to provide the Development Officer an environmental study which identifies constraints to construction at the site prior to the issuance of a development permit.

NEXT STEPS

The proposed development agreement has been considered based on both the specific and general policies of the WMPS and has proven consistent with the intent, objectives, and policies of WMPS. As a result, it is reasonable to consider entering into the development agreement to permit a one storey, residential building with three (3) dwelling units at Fairfield Court, Windsor (PID 45383742).

Process



*anticipated dates; final dates set by Council

FINANCIAL IMPLICATIONS

There are no anticipated costs to the Municipality associated with this development.

ALTERNATIVES

In response to the application, PAC/HAC may:

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

ATTACHMENTS

Figure 1	Windsor GFLUM Extract
Figure 2	Windsor Zoning Map Extract
Figure 3	Windsor Environmental Constraints 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, Planner

Report Reviewed by: _____

Madelyn LeMay, Director of Planning and Development

Figure 1 – Windsor GFLUM Extract

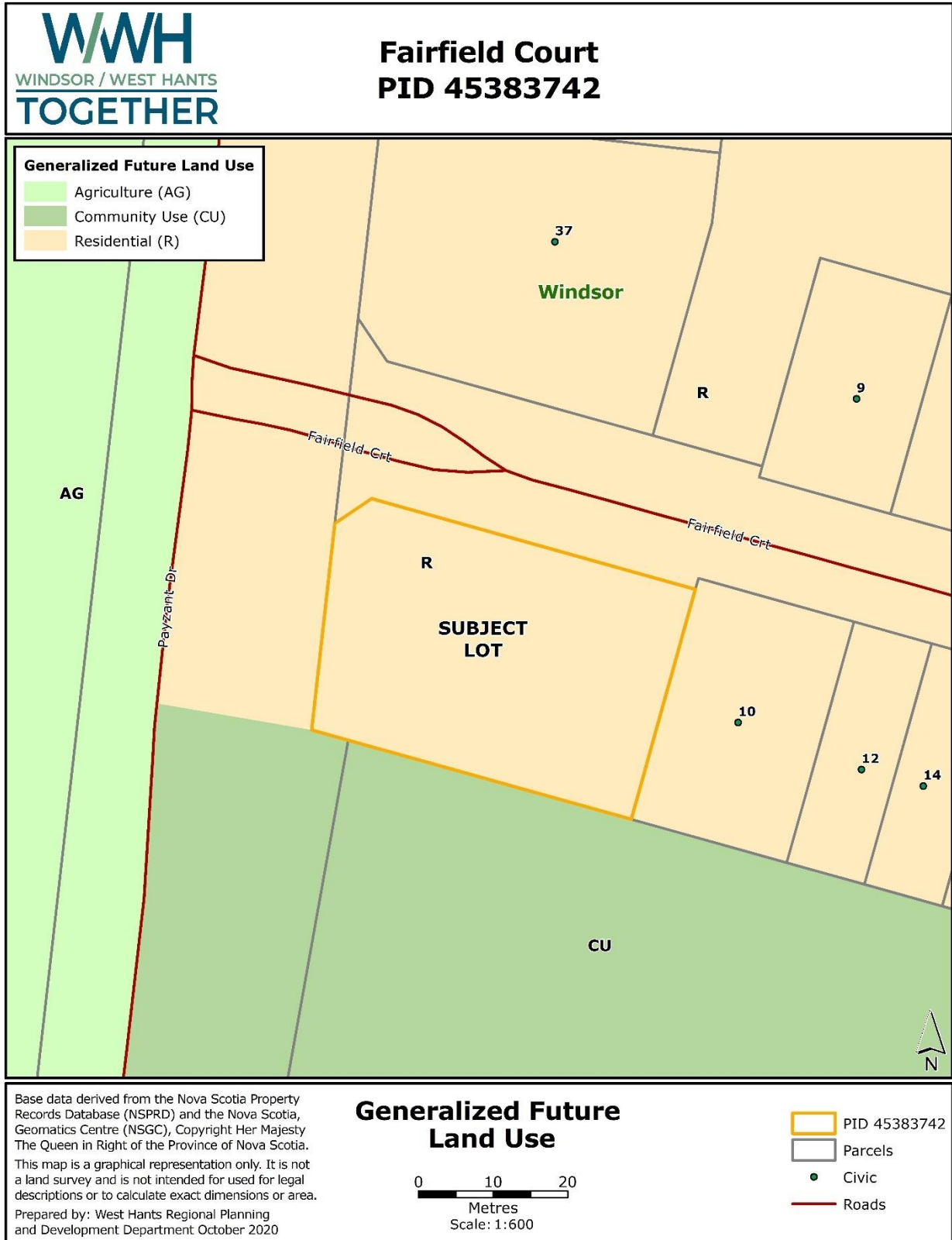


Figure 2 – Windsor Zoning Map Extract

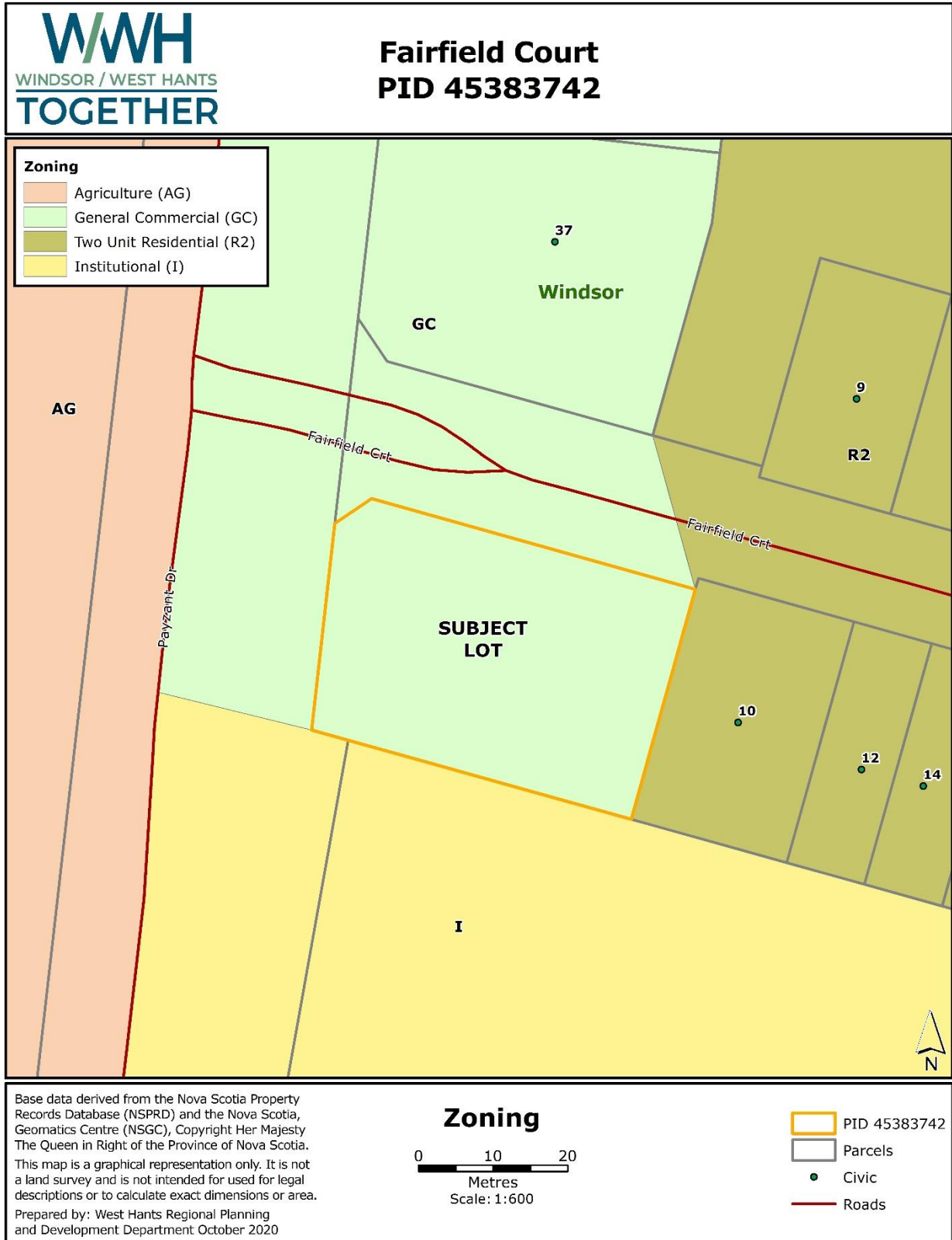
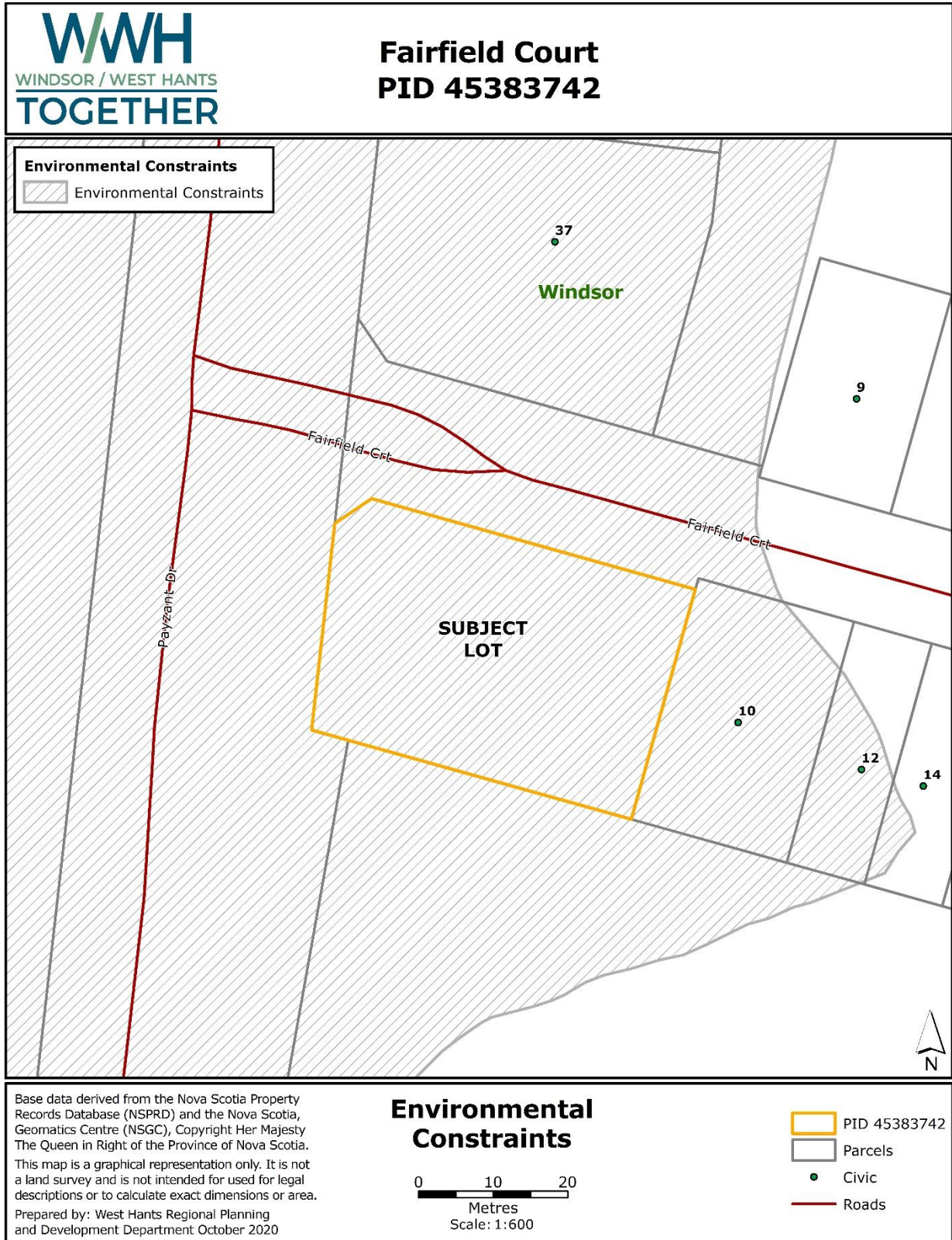


Figure 3 – Windsor Environmental Constraints Map Extract



Attachment A – Policy Summary for Development Agreement

<p>Policy 5.4.6 <i>It shall be the policy of Council to consider entering into a development agreement to allow, in the Residential designation, new multiple unit residential development consisting of three or more units, grouped dwellings, boarding houses and residential care facilities, as well as the conversion of existing buildings to three or more units, subject to the following:</i></p>	
<p><i>(a) the proposed use meets one of the following:</i></p>	
<p><i>(i) in the case of a new building or the conversion of an existing non-residential building, that the development is generally consistent with the High Density Residential (R-4) zone standards; or</i></p>	<p>The development is generally consistent with the High Density Residential (R-4) zone standards, with exception that the front and rear yard setbacks have been reduced to accommodate for the higher density in a single storey building.</p>
<p><i>(ii) in the case of a conversion of an existing residential building, that any addition or enlargement to the building meets the setback requirements of the zone in which it is located, or that any undersized setbacks are not further reduced by the addition or enlargement;</i></p>	<p>Not applicable</p>
<p><i>(b) the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;</i></p>	<p>The development will be compatible with adjacent land uses. The proposal is intended to match the height and exterior appearance of surrounding one and two unit dwellings, while only slightly increasing density.</p>
<p><i>(c) the development is considered compatible with the residential character of the area with respect to traffic generation and population density;</i></p>	<p>The Municipal Traffic Authority commented that the development is compatible and there are no concerns regarding traffic generation.</p>
<p><i>(d) consideration is given to the provision of fences and/or landscaping as part of the residential development to minimize effects on adjacent land uses;</i></p>	<p>The development will have a relatively low impact on the neighbouring properties. The development agreement will permit fences, subject to the WLUB requirements for fences in residential zones. Landscaping is not required as the proposal is compatible with the surrounding land uses.</p>
<p><i>(e) adequate on-site parking is provided and parking areas are well designed;</i></p>	<p>The development agreement includes parking requirements in accordance with section 5.25 of the WLUB.</p>
<p><i>(f) there is adequate on-site recreational open space suitable in extent and design to the nature of the</i></p>	<p>The recreational space provided by the rear yard, which meets the requirements</p>

<i>development; for conversion of existing buildings, nearby public parks may be deemed sufficient;</i>	of the High Density Residential (R-4) zone will be sufficient for the proposed units.
<i>(g) the development abuts an arterial or collector street as shown on the Transportation Map (Map 2), if the development consists of 12 or more units;</i>	Not applicable
<i>(h) the architectural design of the development is reasonably consistent with the provisions of the Architectural Design Manual if the proposed development is located in an Architectural Control District;</i>	Not applicable as the lot is not within Architectural Control District.
<i>(i) in the case of the conversion of an existing structure, renovations can be made to ensure the safety of residents in case of fire;</i>	Not applicable
<i>(j) any other matter which may be addressed in a development agreement; and</i>	All necessary matters have been addressed.
<i>(k) the provisions of Policy 16.3.1 of the Municipal Planning Strategy.</i>	See below

Policy 16.3.1	
<i>In considering development agreements and amendments to the Town of Windsor 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 premature or inappropriate in terms of:</i>	
<i>(i) the adequacy of sewer and water services;</i>	The Director of Public Works commented that the property has access to adequate water and sewer services for the proposed use.
<i>(ii) the adequacy of school facilities;</i>	
<i>(iii) the adequacy of fire protection;</i>	The local Fire Chief and Manager of Building and Fire Inspection Services have stated that there is adequate fire protection for the building.
<i>(iv) the adequacy of road networks adjacent to, or leading to the development; and</i>	Fairfield Court is not shown on the Transportation Map because it was developed following the creation of the map. Fairfield Court meets the description of a local road in the WLUB and the Traffic Authority has no concerns regarding the adequacy of road networks leading to the development.

<p><i>(v) the financial capacity of the Town 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) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;</i></p>	<p>The Traffic Authority commented that they do not have any concerns regarding movement, provided the driveway enters Fairfield Court.</p>
<p><i>(c) the adequacy of the dimensions and shape of the lot for the intended use;</i></p>	<p>The Development Officer commented that the lot has adequate area and frontage for the proposed use. There are no further concerns about the intended use providing parking, access, and recreational space.</p>
<p><i>(d) the pattern of development which the proposal might create;</i></p>	<p>The lot is designated Residential and is intended to be developed in a manner similar to the proposal. The Development Officer has no concerns about the pattern of the development.</p>
<p><i>(e) 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></p>	<p>The lot appears to be flat and dry, there were no concerns recorded during the site visit.</p>
<p><i>(f) 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></p>	<p>All Municipal, Provincial, and Federal regulations will have to be met.</p>
<p><i>(g) any other matter required by relevant policies of this Strategy.</i></p>	<p>All relevant matters have been addressed in this report.</p>

Attachment B – Draft Development Agreement



West Hants

DEVELOPMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 202_.

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 -

GATEWAY INVESTMENTS INCORPORATED, a body corporate, with a head office at 258 King Street, Windsor, 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 a parcel of land located on Fairfield Court, PID 45383742, 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 Windsor Municipal Planning Strategy and zoned General Commercial (GC) on the Zoning Map of the Windsor Land Use By-law and is in the Environmental Constraints overlay; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit a single storey residential building containing three (3) dwelling units on the Property (the “Development”); and

WHEREAS Policy 5.4.6 of the Municipal Planning Strategy and Section 6.1 (b) of the Land Use By-law enable Council to consider entering into a development agreement to allow new multiple unit residential development consisting of three or more units in the Residential designation; and

WHEREAS the Council of the Municipality, at a meeting held on **(DATE)**, approved this request and adopted this Agreement by policy, subject to the execution of this development agreement by the parties hereto;

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 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

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

(a) *Municipal Planning Strategy* means the Municipal Planning Strategy of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;

(b) *Land Use By-law* means the Land Use By-law of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;

(c) *Subdivision By-law* means the Subdivision By-law of the Town of Windsor, approved on January 24, 2012, 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) a single storey residential building containing three (3) dwelling units.

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 development location and design shall be generally consistent with the layout shown on Schedule B.

2.3 Site Requirements

- (a) The residential building shall conform to the following site requirements:

Minimum Lot Area		3,000 ft ² (278.70 m ²) for each dwelling unit
Minimum Lot Frontage		100 ft (30.48 m)
Minimum Front Yard		25 ft (7.62 m)
Minimum Rear Yard		25 ft (7.62 m)
Minimum Side Yard	Payzant Drive side	15 ft (4.57 m)
	Other side	5 ft (1.52 m)
Maximum Height of Main Building		35 ft (10.67 m)
Maximum Height of Accessory Building		15 ft (4.57 m)

- (b) Accessory buildings are permitted in accordance with Section 5.1 of the Windsor Land Use By-law, *Accessory Buildings and Structures*.
- (c) Fences shall be permitted on the Property provided that:

- (i) the Owner gets a development permit for the fence;
- (ii) opaque fences in a required front yard shall not exceed a height of 3 ft (0.91 m);
- (iii) no fence in a rear or side yard shall exceed a height of 8 ft (2.44 m);
- (iv) a fence must conform to Section 5.41 of the Windsor Land Use By-law, *Visibility at Street Intersections*; and
- (v) no permanent fence, or part thereof, shall be constructed of sheet metal, corrugated fibreglass or metal panels, chicken wire, snow fencing or rubber tires.

2.4 Access and Egress

- (a) The Property is limited to a maximum of two (2) driveways onto Fairfield Court.
- (b) The driveway(s) must:
 - (i) provide access/egress from Fairfield Court, and
 - (ii) the nearest edge of each driveway must be constructed at least 50 ft (15.24 m) from the closest point of the intersection of Fairfield Court and Payzant Drive.

2.5 Parking

The Owner shall provide a minimum of 1.5 parking spaces per dwelling unit for a total of 5 parking spaces on the Property, each a minimum of 10 by 20 feet exclusive of driveways and manoeuvring aisles. Parking shall be located approximately as shown in Schedule B. The number, location and arrangement of parking spaces, aisles and driveways may be varied by the Development Officer.

2.6 Signs and Lighting

Signage and illumination shall be regulated under Sections 5.18 and 7.0 of the Windsor 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 minimize light spilling, glare or light cast over neighbouring properties or the street.

2.7 Maintenance

The Owner shall keep the Property and buildings and any portion thereof clean and in good repair. Any driveways, fences, lawns, trees,

shrubs, walkways and other landscaping elements shall be regularly maintained and kept in a tidy state and free from unkempt materials or matter of any kind.

2.8 Servicing

(a) Waste Collection

The Owner shall make provision for municipal waste collection for the Property at the intersection of the private driveway and Fairfield Court as shown in Schedule B.

(b) Water and Sewer Services

The development must connect to Municipal Water and Sewer service.

(c) Environmental Study

- (i) In accordance with Policy 12.0.2 of the Windsor Municipal Planning Strategy, prior to a development permit being issued for development on the Property, the Owner shall submit an environmental study conducted by a qualified person which identifies constraints to construction at the site. Without limiting the generality of the foregoing, the study will describe the susceptibility to flooding, drainage problems, and the bearing capacity and suitability for construction of soils at the site, and will identify suitable construction methods, including flood proofing measures, to overcome the constraints which are found to exist at the site.
- (ii) In accordance with Section 27.3 of the Windsor Land Use By-law, where a building has been constructed using flood proofing measures or other construction methods in accordance with an environmental study required in Section 2.8 (c)(i) in this development agreement, any future alterations or additions shall also follow the construction methods set out in the environmental study.

2.9 Variance

In accordance with Section 5.40 of the Windsor Land Use By-law, *Variance*, the Development Officer may grant a variance for one or more of the following requirements subject to the requirements of the *Municipal Government Act*:

- (iv) minimum site requirements established in 2.3 (a);

- (v) number of parking spaces required; and
- (vi) floor area occupied by a home-based business.

PART 3 CHANGES AND DISCHARGE

- 3.1** The Owner shall not vary or change the use of the Property from that provided for in Section 2.1 of this Agreement, *Use*, unless a new agreement is entered into with the Municipality or this agreement is amended.
- 3.2** Any matters in this agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed with the written consent of Council without a public hearing provided that Council determines that the changes do not significantly alter the intended effect of these aspects of this agreement.
- 3.3** The following matter is a substantive matter:
- (b) the uses permitted on the Property as listed in Section 2.1 of this agreement, *Use*.
- 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 Owner following a resolution of Council to give such Notice:
- (a) as provided for in Section 4.1, *Commencement of Development*, of this Agreement; or
 - (b) at the discretion of the Municipality, with or without the concurrence of the Owner, where the Development has, in the reasonable opinion of Council on advice from the Development Officer, ceased operation for a period of at least twenty-four (24) months; or
 - (c) at any time upon the written request of the Owner, provided the use of the Property is in accordance with the 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) Development as provided in Part 2 of this Agreement shall commence not later than twenty-four (24) months from the date this Agreement is signed. If, in the opinion of the Development Officer, this time limit has not been met, this Agreement may be discharged at the option of the Municipality by resolution of Council in accordance with Section 229 of the *Municipal Government Act* 30 days after giving Notice of Intent to Discharge to the 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 By-laws and Regulations

- (a) Nothing in this Agreement shall exempt the Owner from complying with Federal, Provincial and Municipal laws, by-laws and regulations in force or from obtaining any Federal,

Provincial, or Municipal license, permission, permit, authority, or approval required thereunder.

- (b) Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property (other than the Land Use By-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.
- (c) References to particular sections of statutes and bylaws shall be deemed to be references to any successor legislation and bylaws 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 258 King Street P.O. Box 2018 Windsor, NS, CA B0N 2T0, or at any other address provided by the Owner.
- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants

Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided by the Municipality to the Owner.

5.10 Full Agreement

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

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

SIGNED, SEALED AND DELIVERED) **WEST HANTS REGIONAL**
In the presence of:) **MUNICIPALITY**

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)
)

) Per:

Witness

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)

Abraham Zebian, Mayor

) Per:

Witness

)
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)
)
)
)
)

Deanna Snair, Municipal Clerk

Incorporated

) **Gateway Investments**

)
)
)

Per: _____

)

Witness

)

David Howell, President

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 202__, before me, the
subscriber, personally came and appeared
, a subscribing witness to the foregoing Indenture, who, having been by me
duly sworn, made oath and said that **WEST HANTS REGIONAL
MUNICIPALITY**, one of the parties thereto, caused the same to be
executed in its name and on its behalf and its corporate seal to be thereunto
affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 202__, 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, one of the parties thereto, signed,
sealed and delivered the same in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**AFFIDAVIT OF CLERK
WEST HANTS REGIONAL MUNICIPALITY**

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

5. 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.
6. The Municipality is a body corporate pursuant to the *Municipal Government Act*, S.N.S. 1988, c.18, as amended.
7. 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.
8. The Municipality is resident in Canada for the purposes of the Income Tax Act (Canada).

Sworn before me at _____, Nova Scotia,
this _____, 20__.

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

Deanna Snair, Clerk

I CERTIFY that on this date Deanna Snair 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

AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)

I, David Howell, Nova Scotia, make oath and say that:

6. I am David Howell of Gateway Investments Incorporated, the "Corporation". Except as otherwise stated I have personal knowledge of the matters to which I have sworn in this Affidavit.
7. I acknowledge that I executed the foregoing instrument on behalf of the Corporation on the date of this affidavit; this acknowledgment is made for the purpose of registering such instrument pursuant to s.31(a) of the Registry Act, R.S.N.S. 1989, c.392 or ss.79 and 83 of the Land Registration Act as the case may be.
8. I verify that I have the authority to execute the foregoing instrument on behalf of the corporation and thereby bind the Corporation.
9. The Corporation is a resident of Canada under the Income Tax Act (Canada).
10. The ownership of a share or an interest in a share of the Corporation does not entitle the owner of such share or interest in such share to occupy a dwelling owned by the Corporation.

I certify that on this _____, 20__ 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
Print name/affix seal

DAVID HOWELL

Schedule A
Legal Description – PID 45383742

Registration County: HANTS COUNTY
Street/Place Name: PAYZANT DRIVE /WINDSOR
Title of Plan: PLAN OF SURVEY OF LOT C-1 TO C4 INC, BEING A S/D OF LOT
2-W-1, LANDS OF BRISON DEVEL LTD, PAYZANT DR, WINDSOR
Designation of Parcel on Plan: LOT C-1
Registration Number of Plan: 97677786
Registration Date of Plan: 2011-01-31 11:40:07

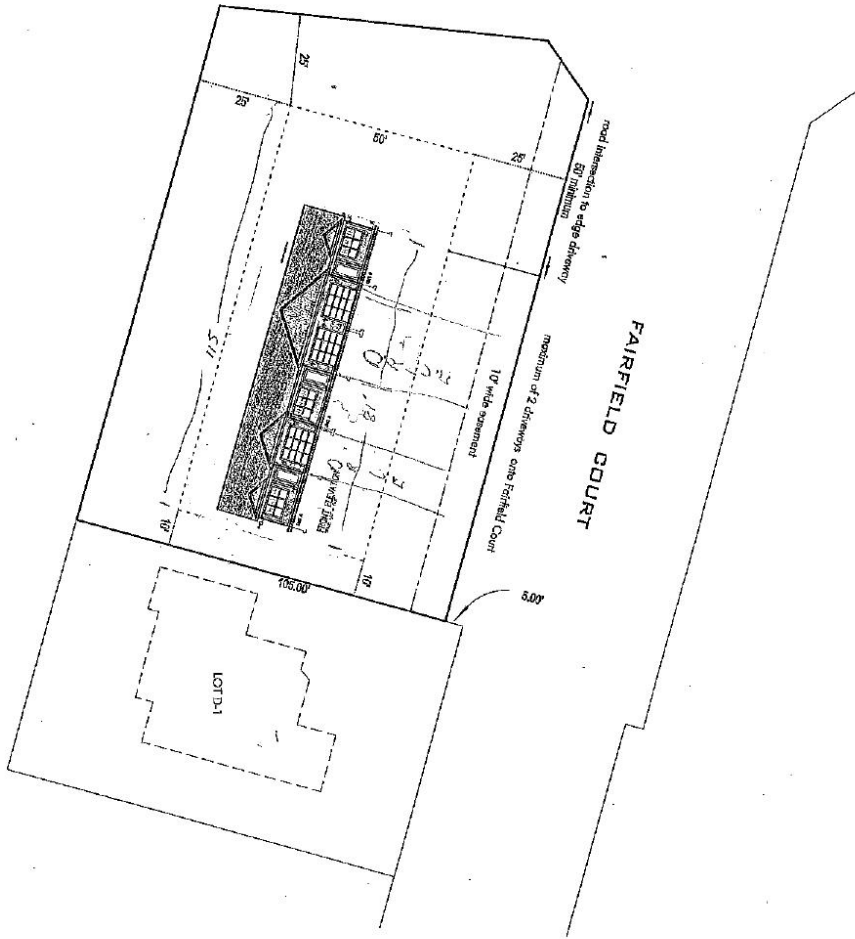
*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act
Registration District: HANTS COUNTY
Registration Year: 2011
Plan or Document Number: 97677786

**Schedule B
Site Plan**

PAYZANT DRIVE



GRID NORTH



Attachment C – Public Information Meeting Notes

Public Information Meeting Notes
October 14, 2021- October 29, 2021
File 21-08A
Fairfield Court PID # 45383742

Meeting date and time	A public information meeting was held on October 14, 2021 beginning at 6 p.m. The meeting was broadcast live on the Municipal Facebook page.
File Number	20-25
Attending	<p>One (1) Councillor:</p> <ul style="list-style-type: none"> • Councillor Jim Ivey, PIM Chair <p>Five (5) Staff Members:</p> <ul style="list-style-type: none"> • Madelyn LeMay, Director, Planning and Development • Sara Poirier, Senior Planner • Alex Dunphy, Planner • Vanessa Lake, Meeting Secretary • Mark Phillips, CAO <p>Applicant:</p> <ul style="list-style-type: none"> • David Howell • Chrystal Fuller <p>As this meeting was held virtually there were no members of the public present.</p>
Applicant David Howell Gateway Investments Incorporated David Howell (President)	<p>Mr. Dunphy outlined the application for a development agreement to permit a one storey, three unit residential dwelling, PID 45383742.</p> <p>A presentation was not made by the applicant.</p>
Comments	<p>Comments from the public could be submitted to Alex Dunphy by mail, e-mail and telephone between October 14 – October 29, 2021.</p> <p>No written or verbal comments were received from the public.</p>
Adjournment	The presentation portion of the PIM ended at approximately 6:15 p.m