



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation X	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: June 13, 2024

Subject: Development Agreement: Windsor Back Road, Three Mile Plains PID 45402831; File #22-33

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

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

...that PAC/HAC recommends that Council give First Reading and hold a Public Hearing to consider entering into a development agreement to allow grouped multi-unit buildings on PID 45402831 in Three Mile Plains which is substantively the same as the draft set out in Attachment C of the report File #22-33 to the Planning and Heritage Advisory Committee dated June 13, 2024.

...that PAC/HAC recommends that Council require that the development agreement with Jeff Marchand of Marchand Developments Ltd. for PID 45402831 in Three Mile Plains be signed within 120 days from the date of final approval by Council or the date that any appeals have been disposed of; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Property X	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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A complete application was received on October 4, 2023, from Chrystal Fuller of Brighter Community Planning & Consulting on behalf of the property owner Marchand Developments Ltd. The application seeks approval for a grouped dwelling arrangement with 3 buildings, each containing 29 units and including underground and surface parking. The units would be a mixture of one-, two- and three-bedroom units. The development would total 87 units and the buildings would not exceed three storeys in height. The application describes a central open space and landscape buffering surround the buildings to help separate the buildings from existing lower density development in the area.

DISCUSSION

The subject lot PID 45402831 is approximately 3.9 acres (15,874 sq. m.) in size and arranged in a flag lot shape, with approximately 21.5 m. (70.5 ft.) of road frontage. The subject lot is designated Residential on the Generalized Future Land Use Map (GFLUM) of the West Hants Municipal Planning Strategy (WHMPS) (Figure 1). The subject lot is zoned Two-Unit Residential (R-2) on the Zoning Map of the West Hants Land Use By-law (WHLUB) (Figure 2) and is located within the Three Mile Plains Growth Centre where central sewer and water services are provided.

Grouped dwellings are not permitted as-of-right in the Two-Unit Residential (R-2) zone but can be considered by development agreement in accordance with Policy 5.3.10.

Part 5.3 of the WHMPS contains the overall intention for properties designated Residential in the Three Mile Plains Growth Centre. This community is intended to accommodate a variety of residential developments with multiple housing types.

The subject lot directly abuts other properties designated Residential and zoned Two Unit Residential (R-2). These properties are all within the Three Mile Plains Growth Centre and include existing residential uses, forested land, and some agricultural uses.

Development Agreement

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

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

Proposed Development Agreement

During the inquiry process of the proposal, the Development Officers indicated that there was a watercourse present on the mapping for the subject lot. Under normal circumstances, this would require a 50 ft. setback from any identified watercourse. In response to this concern, the applicant submitted a Watercourse Assessment and Species at Risk Screening letter (Attachment D) to staff. This document outlined recommendations to the developer to avoid potential impacts on wildlife and a professional opinion that the drainage ditch located on the subject lot does not meet the requirements of a watercourse. Following receiving this letter, staff contacted the Nova Scotia Department of Environment and Climate Change (NSECC) for confirmation of the finding within the letter provided. A representative of NSECC responded and conducted a site visit to the subject property. The NSECC representative confirmed the findings of the Watercourse Assessment and Species at Risk Screening letter and provided a verbal report to staff. After waiting for written confirmation from NSECC for a number of months with no reply, the applicant requested that staff move forward with the application based on the submitted Watercourse Assessment and Species at Risk Screening letter prepared by a qualified person. After discussing internally, staff determined that the submitted letter and a verbal confirmation from the NSECC was sufficient evidence to proceed with the application and conclude that there is no watercourse present on the subject lot.

West Hants Land Use By-law

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

- (c) grouped dwellings consisting of six or more dwelling units in the Three Mile Plains Growth Centre in accordance with Policy 5.3.10 of the Municipal Planning Strategy;*

West Hants Municipal Planning Strategy

Part 5.0 of the WHMPS contains the overall intention for Growth Centres in West Hants; Section 5.3 outlines the residential policies for the Three Mile Plains Growth Centre. Policy 5.3.10 establishes Council’s intention to consider “*development of grouped dwellings consisting of six or more dwelling units in the Three Mile Plains Growth Centre by development agreement*” and the specific criteria to be considered by Council, which are examined in detail in Attachment A.

In summary, the criteria are met since:

- road frontage on a public street is required in the development agreement;
- buildings are grouped and located to conserve the existing natural features of the site;
- the development is reasonably compatible with the character of the area with respect to building scale and traffic generation; and

- clauses (b) to (h) of Policy 5.3.7 are considered met.

WHMPS General Criteria

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

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

Municipal Climate Change Action Plan

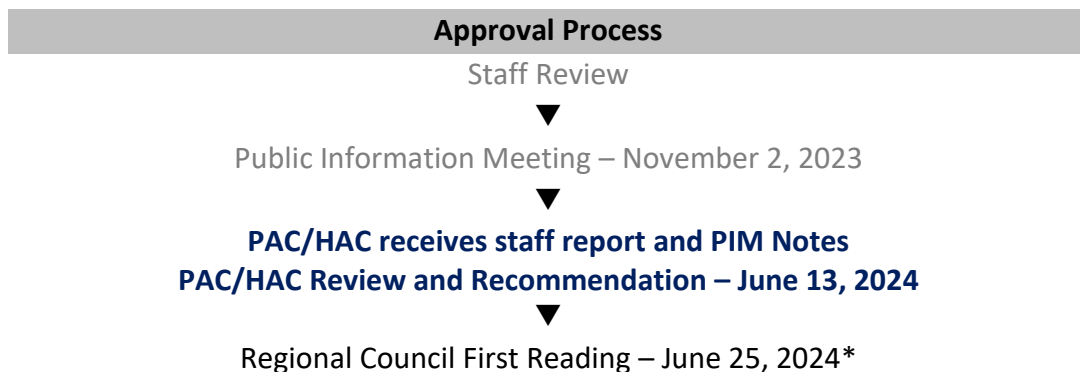
The subject lot is pictured on the Municipal Climate Change Action Plan (MCCAP) Inland Flooding map as having a small portion within both the 0-0.10m and 0.11-0.50m Depth to Water Table metrics. Due to this, a stormwater management plan was requested to provide assurance that the pre- and post-development flows of surface water would be maintained at neutral or better.

The MCCAP Coastal Flooding map did not show any risks of coastal flooding on the property.

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

NEXT STEPS

As noted above, the proposed development agreement has been considered within the context of both the specific and general policies of the WHMPS and is consistent with the intent, objectives and policies of the WHMPS. As a result, it is reasonable to consider permitting the proposed grouped multi-unit buildings on Windsor Back Road.



▼
Public Hearing & Second Reading – July 23, 2024*

▼
Notice of Approval in Local Paper

▼
14-Day Appeal Period

FINANCIAL IMPLICATIONS

The Public Works Engineering Division commented that they would cover the cost of the SCADA panel upgrade, as this upgrade would benefit not only the proposed development, but also surrounding properties which utilize municipal services. This panel upgrade is necessary to support the monitoring and control of the systems which provide municipal services. The developer would be responsible for any other required upgrades.

ALTERNATIVES

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

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

ATTACHMENTS

Figure 1	GFLUM Extract
Figure 2	Zoning Map Extract
Attachment A	Specific Criteria for Development Agreement
Attachment B	General Criteria for Development Agreement
Attachment C	Draft Development Agreement
Attachment D	Watercourse Assessment and Species at Risk Screening Letter
Attachment E	Public Information Meeting Notes

Report Prepared by: _____
Alex Dunphy, Planner

Report Reviewed by: _____
Sara Poirier, Director of Planning and Development

Figure 1
GFLUM Extract

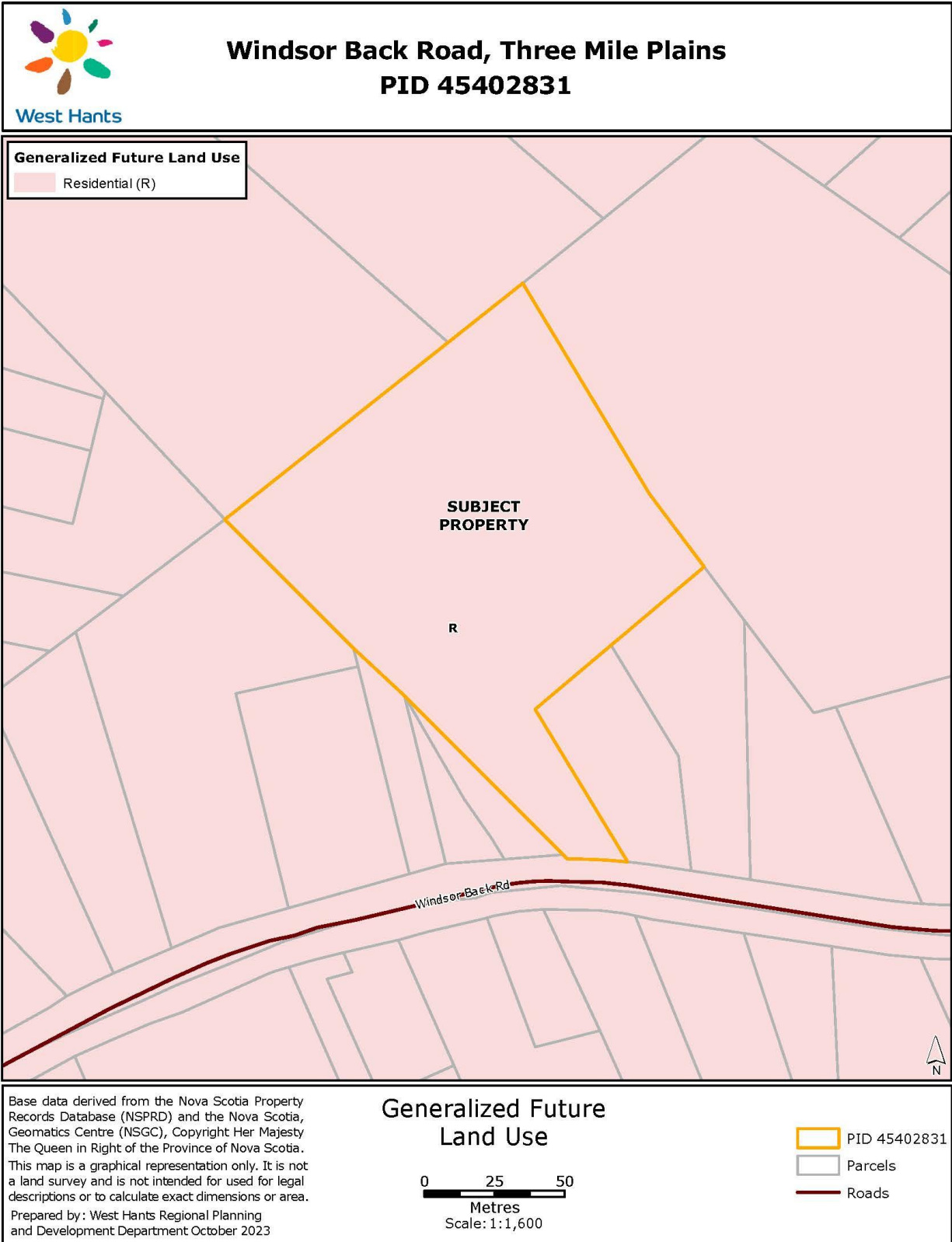
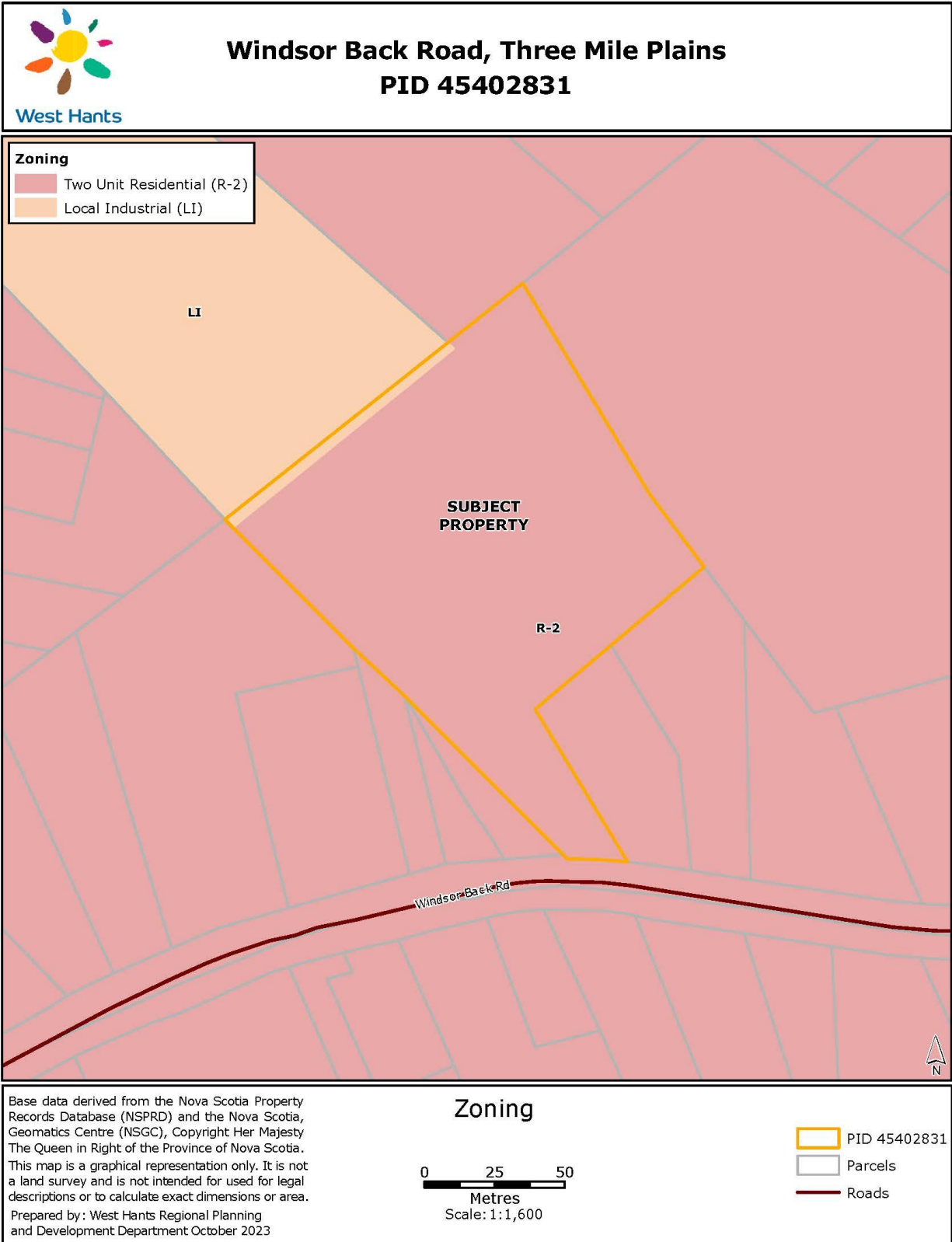


Figure 2
Zoning Map Extract



Attachment A
Specific Criteria for Development Agreement

West Hants Municipal Planning Strategy

Policy 5.3.10 It shall be the policy of Council to consider development of grouped dwellings consisting of six or more dwelling units in the Three Mile Plains Growth Centre by development agreement subject to the following:

CRITERIA	COMMENT
(a) the development has frontage on:	
(i) a public street; or	The proposed development will have frontage on the Windsor Back Road which is a public street.
(ii) a right-of-way clearly granted by deed or easement, unrestricted	Not applicable as the development will have frontage on a public street.
(b) where access to the development is by a right-of-way as specified in clause (a)(ii), the street along such right-of-way shall be designed by a professional engineer, who is a member in good standing of the Association of Professional Engineers of Nova Scotia and who carries appropriate professional liability insurance, who will certify that the design and construction of the street are adequate to accommodate the traffic generated by the development and access by emergency protection vehicles. Street design and construction plans shall be subject to review by the Municipal Engineer;	Not applicable as the development will have frontage on a public street.
(c) building clusters are located so as to conserve existing natural features of the site;	The proposed buildings are located in a ring around the centre of the lot, which allows the majority of the perimeter of the subject lot and the central garden to be landscaped. Approximately 46% of the subject lot would be provided as green space.
(d) the specific requirements for multiple unit development set out in clauses (b) to (h) of Policy 5.3.7;	See below for review of criteria (b) to (h) of Policy 5.3.7.

(e) the application is accompanied by:	
(i) a site plan drawn to scale showing the proposed number, location and type of buildings, lot coverage, parking areas, vehicular and pedestrian circulation systems within the development, access to the site and open space and recreational areas;	A site plan was submitted and was deemed acceptable to staff. This site plan is included as Schedule A in the draft development agreement.
(ii) other supporting maps showing the topography of the lot including contours at five meter intervals, and significant natural features such as watercourses, wetlands and unique habitat or vegetation; and	A topographic map was submitted and was deemed acceptable to staff.
(iii) photo examples, plans or drawings showing the exterior design of the proposed buildings;	Elevation drawings were submitted and were deemed acceptable to staff.
(f) any other matter which may be addressed in a development agreement; and	All other relevant matters are addressed elsewhere in this report.
(g) Policy 16.3.1.	Please see Attachment B for further details

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

CRITERIA	COMMENT
(b) the lot is serviced, or is capable of being serviced, with municipal water and sewer; (Amendment WHMPS 14-01 Effective January 22, 2015)	The Public Works Engineering Division stated that the lot is capable of being served with Municipal sewer and water. However, the sewer infrastructure will require two upgrades including a generator hook up for a lift station to be able to operate both pumps with full backup power and an upgrade to the existing SCADA panel to allow for a number of system monitoring functions (ie. generator run status, power source status, and level transmitter). These upgrades have been included as a requirement of the draft development

	<p>agreement. The developer will be required to cover the cost of the generator hookup and the Municipality will cover the cost of the SCADA panel upgrade.</p>
<p>(c) the development is compatible with the character of the area with respect to building scale and design, traffic generation, population density and similar matters;</p>	<p>The proposed development is similar in scale to the area, as it is within a designated Growth Centre and the proposal is similar in height to the allowable permitted height in the underlying Two Unit Residential (R-2) zone. The density and style of housing is different than the existing single- and two-unit dwellings in the area.</p> <p>However, the Growth Centre designation shows Council’s intent for increased residential development in the area.</p> <p>A Traffic Impact Study (TIS) was submitted to the Municipality and the Provincial Public Works Department (NSDPW). Comments received from the NSDPW indicated that they had no concerns regarding traffic generation based on the submitted TIS.</p>
<p>(d) existing and proposed streets are adequate to support the development and existing streets will not require major infrastructure improvements as a result of the development; a traffic impact study may be required in accordance with Section 14.6 of this Strategy;</p>	<p>NSDPW indicated that the existing streets would be adequate to support the proposal and they have no concerns regarding major infrastructure upgrades. The traffic impact study submitted by the developer was deemed acceptable to the Provincial Public Works Department.</p>
<p>(e) adequate open space or recreational space is provided;</p>	<p>The Development Officer commented that there is adequate open space being provided. This is a requirement in the draft development agreement.</p>
<p>(f) adequate on-site parking is provided;</p>	<p>The Development Officer commented that there is adequate parking being provided. The draft development agreement sets out a requirement of 1.3 parking spaces per dwelling unit.</p>

(g) any other matter which may be addressed in a Land Use By-law; and	All other matters are addressed elsewhere in this report.
(h) Policy 16.3.1.	Please see Attachment B for further details.

Attachment B
General Criteria for Development Agreement

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

CRITERIA	COMMENT
(a) whether the proposal is considered premature or inappropriate in terms of:	
(i) the adequacy of sewer and water services;	See Policy Criteria 5.3.7 (b) above.
(ii) the adequacy of school facilities;	The Director of Operations for the Annapolis Valley Regional Centre for Education commented that the proposal may impact enrollment within the Avon View school catchment area. However, the projected student enrollment data through 2034 indicates sufficient capacity for additional enrollment at all schools in the catchment area. There was also an announcement for a new pre-primary to grade 5 school to consolidate the Three Mile Plains District School and the Windsor Forks District School. Opening is expected in 2029 and the proposal would be within the catchment area of that new school.
(iii) the adequacy of fire protection and other emergency services;	The Manager of Building and Fire Inspection Services commented that the buildings will be required to have a sprinkler system and that they had no concerns for the proposal regarding the National Building Code of Canada at this time. The local Fire Chief commented that they would prefer not to have electric vehicle parking in the underground parking area, if any was proposed and that the developer take into consideration the Fire Smart Canada program when planning the landscape plants and garden types. Staff have relayed this information to the developer. The local Fire

	<p>Chief also commented that they would need to review the driveway and parking area to analyze fire apparatus maneuvering. Staff have included all of the regular fire safety requirements in the draft development agreement, including the location and design of fire hydrants requiring consultation with the Fire Chief, that the curbs be designed to be mountable by emergency vehicles, and access routes being kept clear of overhead obstructions.</p>
<p>(iv) the adequacy of road networks adjacent to, or leading to the development; and</p>	<p>The Provincial Public Works Department indicated that the road network would be adequate to support the proposal. A traffic impact study was deemed acceptable to the Provincial Public Works Department.</p>
<p>(v) the financial capacity of the Municipality to absorb any costs relating to the development.</p>	<p>The Public Works Engineering Division commented that they would cover the cost of the SCADA panel upgrade, as this upgrade would benefit not only the proposed development, but also surrounding properties which utilize municipal services. This panel upgrade is necessary to support the monitoring and control of the systems which provide municipal services. The developer would be responsible for any other required upgrades.</p>
<p>(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;</p>	<p>The Public Works Engineering Division stated that the lot is capable of being served with Municipal sewer and water, provided the previously mentioned upgrades are made.</p>
<p>(c) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;</p>	<p>The Nova Scotia Department of Public Works has stated that they had no concerns regarding the suitability of movement for the proposal.</p> <p>There are no active rail lines in the area. The former rail line represents an opportunity for</p>

	<p>future active transportation connections to better serve the community of Three Mile Plains with surrounding communities.</p> <p>Windsor Back Road does not have sidewalks, and pedestrian traffic was a concern raised by many of the existing residents.</p> <p>Construction of sidewalks on the road network would be under the jurisdiction of the Nova Scotia Department of Public Works.</p>
<p>(d) the adequacy of the dimensions and shape of the lot for the intended use;</p>	<p>The Development Officer commented that they did not have any concern regarding the adequacy of the dimensions or the shape of the lot for the intended use.</p>
<p>(e) the pattern of development which the proposal might create;</p>	<p>The Development Officer commented that they did not have any concern regarding the pattern of development which the proposal might create. The proposal is within the Three Mile Plains Growth Centre designation, in which higher density residential development is promoted.</p>
<p>(f) the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses or wetlands, and susceptibility of flooding;</p>	<p>The subject lot appears relatively flat. The developer has submitted a Watercourse Assessment and Species at Risk Screening report prepared by McCallum Environmental Ltd. This report was prepared in response to concerns from the public regarding the drainage ditch on the property and the potential for species at risk to be present on the subject lot. The report determined that the drainage ditch on the subject lot does not constitute a watercourse, based on the parameters used to identify watercourses by the Nova Scotia Department of Environment and Climate Change. This was confirmed by a staff member through a phone call with the Province. The developer plans to adhere to the recommendations of the report regarding mitigating potential impacts on</p>

	species at risk. A stormwater management plan will be required at the permitting phase of the development.
(g) whether the proposal meets the requirements of the appropriate provincial or federal agencies as well as whether it conforms to all other relevant municipal by-laws and regulations; and	All Municipal, Provincial and Federal regulations will have to be met.
(h) any other matter required by relevant policies of this Strategy.	There are no other relevant policies of this Strategy.

Attachment C

Draft Development Agreement



DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2024.

BETWEEN:

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

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

Marchand Developments Ltd. a body corporate, with a head office at 149 McCabe Lake Drive, Middle Sackville, in the County of Halifax, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered owner of a parcel of land located in Three Mile Plains (PID 45402831) 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 (the “Municipal Planning Strategy”) and zoned Two-Unit Residential (R-2) on the Zoning Map of the West Hants Land Use By-law (the “Land Use By-law”) and is within the Three Mile Plains Growth Centre; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit 87 residential units within three buildings grouped on the Property (the “Development”); and

WHEREAS Policy 5.3.10 of the Municipal Planning Strategy and Section 6.1 (c) of the Land Use By-law enable Council to consider entering into a development agreement to allow grouped dwellings consisting of six or more dwelling units in the Three Mile Plains Growth Centre; and

WHEREAS the Council of the Municipality, at a meeting held on **Month Date, 2024** approved this request and adopted this Agreement by policy, subject to the execution of this development agreement by the parties hereto and the other conditions herein;

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

PART 1 AGREEMENT CONTEXT

1.1 Definitions

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

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

1.2 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

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

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

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

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

- (i) those uses permitted by the underlying zoning in the Land Use By-law; or
- (ii) three (3) grouped multi-unit buildings, not to exceed 29 units in each building.

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

2.2 Development Location and Design

- (a) The Development location and design shall be generally consistent with the Site Plan shown in Schedule B.
- (b) The Development Officer may approve in writing minor changes to the location of the Buildings or other aspects of the Site Plan provided the side yards are not decreased.

2.3 Site Requirements

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

Minimum Road Frontage for the grouped dwellings development	70 ft. (21.33 m.)
Minimum Front, Rear and Side Yard	25 ft. (7.62 m.)
Maximum Storey of Main Building	3 storeys
Maximum Building Height	38 ft. (11.58 m.)
Maximum Height of Accessory Buildings	15 ft. (4.57 m.)

- (b) Accessory buildings are permitted in accordance with Section 5.1 of the Land Use By-law, *Accessory Buildings and Structures*.
- (c) The Owner shall keep all undeveloped areas of the Properties landscaped to provide recreation space or vegetative buffer between the development and the existing abutting uses as described in Section 2.7.

2.4 Access and Egress

- (a) The Owner shall develop, construct, and maintain the driveway in the Development in general conformance with the driveway shown on Schedule B.
- (b) The Owner may provide shared driveway access to the neighboring properties if required by the Provincial Department of Public Works. The Site Plan may be

changed with written consent of the Development Officer without amendment to this Agreement to accommodate the requirements of this paragraph.

- (b) The driveway shown on Schedule B shall provide a minimum paved surface width of 25 ft. (7.62 m.), except to any extent varied by the Provincial Department of Public Works in respect of its connection to the public road. The vehicular entrance and exit shall be clearly demarcated.

2.5 Parking

- (a) All parking spaces for vehicles using the Properties shall be located on the lot and shall be generally located as shown on Schedule B.
- (b) The Owner shall provide a minimum of 1.3 parking spaces per dwelling unit on the Properties.
- (c) Parking aisles and spaces shall be constructed to create a stable surface for vehicle traffic and be clearly demarcated and lined by the Owner. They may be constructed using permeable construction materials to assist with stormwater retention.
- (d) Each parking space shall be a minimum of 10 ft. by 20 ft. (3.05 m. by 6.1 m.) exclusive of driveways and manoeuvring aisles. Parking aisles shall be a minimum of 20 ft. (6.1 m.) wide.
- (e) The number of parking spaces may be varied in writing by the Development Officer in accordance with Section 2.13, *Variance*, of this Agreement.

2.6 Fire Safety

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

2.7 Recreational Space and landscaping

- (a) A minimum of 1.5 acres or 65,340 sq. ft. (6,070 sq. m.) of open space shall be provided on the Property. This area shall contain benches, and other outdoor

amenities in three or more locations, to be used by the residents of the development.

- (b) A landscaping plan shall provide buffering along the side and rear lot lines. These buffers shall be comprised of native trees, grasses, and shrubs and/or other vegetation. A detailed landscaping plan shall be provided at the time of permitting.

2.8 Site Drainage

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

2.9 Servicing

(a) Waste Collection

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

(b) Water and Sewer Services

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

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

(ii) The Owner shall be responsible for constructing, installing and maintaining the water and sewer services on the Properties.

(iii) Except as may be varied by the Municipal Engineer in writing:

- a) The Owner shall Install a generator hookup at the LS407 lift station and provide the Municipality with a fixed on-site generator. The electrical transfer panel must be a permanently dedicated (not portable) emergency generator and will need to be a turn-key package. This system must meet Municipal specifications for full backup power to operate both pumps at full capacity. Installation will include a concrete pad for the generator and control wiring. The generator must be capable of automatically starting during a power interruption and must be connected into the Municipal Supervisory Control and Data Acquisition (SCADA) system. Specifications and shop drawings shall be approved by WHRM before approval.
- b) The Owner shall upgrade the current SCADA panel to allow for additional input and output control including generator run status (on/off), fault indication, status of power source. The level transmitter must be permanently installed in wet well and connected to the Municipal SCADA system. The Department of Public Works will require confirmation of a SCADA connection and availability to connect and communicate with the Municipal system.
- c) All costs of the generator hook up will be the responsibility of the owner. The cost of purchasing the new SCADA panel will be the responsibility of the Municipality. All installation costs associated with these requirements will be the responsibility of the Owner.

(c) Snow Plowing

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

2.10 Maintenance

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

- (b) The Owner shall maintain the driveway to a standard adequate to allow for access by emergency services vehicles.

2.11 Signs and Lighting

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

2.12 Subdivision

- (a) Subdivision of the Property that reduces its lot area shall not be permitted.
- (b) No additional parkland or parkland fees shall be required if consolidation occurs to increase the lot area of the Property.

2.13 Variance

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

- (i) minimum required yard dimensions except side yard requirements as required in Section 2.3 (a) of this Agreement;
- (ii) number of parking spaces required;
- (iii) floor area occupied by a home-based business; and
- (iv) height and area of a sign.

PART 3 CHANGES AND DISCHARGE

- 3.1** The Owner shall not vary or change the use of the Properties 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 Properties as listed in Section 2.1, *Use*;

- (b) subject to Section 2.13, the minimum side yard requirements and maximum building height as listed in Section 2.3 (a);
- (c) the fire safety requirements as listed in Section 2.6, *Fire Safety*;
- (d) the stormwater management plan requirements as listed in Section 2.8, *Site Drainage*; and
- (e) the water and sewer servicing infrastructure as listed in Section 2.9 (b) (iii), *Water and Sewer Services*.

3.4 Upon conveyance of land by the Owner to either:

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

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

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

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

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

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

PART 4 IMPLEMENTATION

4.1 Commencement of Development

- (a) The Owner may not commence any construction or use on the Properties 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 forty-eight (48) 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.
- (d) The Development may occur in phases or be completed at one time. The requirement of 4.1(b) shall be deemed satisfied if one phase for at least one multi-unit building is commenced.

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 prior to the issuance of an occupancy permit.
- (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 Properties (other than the Land Use By-law or Subdivision Bylaw to the extent varied by this Agreement) or any statute or regulation, the higher or more stringent requirements shall prevail.
- (c) Enforcement of this agreement shall be the responsibility of the Municipality. The agreement shall be administered by the Development Officer for the Municipality.

5.2 Severability of Provisions

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

5.3 Interpretation

- (a) Where the context requires, the singular shall include the plural and the masculine gender shall include the feminine and neutral gender.
- (b) Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.
- (c) References to particular sections of statutes and by-laws shall be deemed to be references to any successor legislation and by-laws even if the content has been amended, unless the context otherwise requires.

5.4 Municipal Responsibility

- (a) The Municipality does not make any representations to the Owner about the suitability of the Properties 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 Jeff Marchand, Marchand Developments Ltd., 149 McCabe Lake Drive, Middle Sackville, NS B0N 1Z0 or at any other address provided in writing 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.

DRAFT

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

)

)

)

) **MARCHAND DEVELOPMENTS LTD.**

)

)

Per: _____

Witness

) Jeff Marchand, President

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2024, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2024, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2024, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that, **Jeff Marchand**, one of the parties thereto, signed, sealed and delivered the same in presence.

A Commissioner of the Supreme Court of Nova Scotia

AFFIDAVIT OF CLERK

WEST HANTS REGIONAL MUNICIPALITY

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

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

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

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

Deanna Snair, Clerk

Canada
Province of Nova Scotia

AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)

I, Jeff Marchand, Nova Scotia, make oath and say that:

1. I Jeff Marchand of Marchand Development Ltd. 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 _____, 2024
the Deponents came before me, made oath,
and swore the foregoing affidavit at
_____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

Jeff Marchand, President

**Schedule A
Legal Description**

PID 45402831

Registration County: HANTS COUNTY

Street/Place Name: WINDSOR BACK ROAD /THREE MILE PLAINS

Title of Plan: PLAN OF S/D A SURVEY OF LOT 2A LOT 2B LOT 2C & LOT 2D A S/D OF LOT 2 LANDS
CONVEYED TO KEITH CURTIS COFFILL & TANYA E MORRISON WINDSOR BACK RD THREE MILES
PLAINS

Designation of Parcel on Plan: LOT 2A

Registration Number of Plan: 122840078

Registration Date of Plan: 2023-08-01 11:40:58

Together with an easement/right of way as described in a Deed recorded at the Hants County
Land Registration Office on September 20, 2023 under document no. 123094436.

Together with an easement/right of way as described in a Deed recorded at the Hants County
Land Registration Office on September 28, 2023 under document no. 123137094.

Subject to an easement in favour of PID 45430378 as described in a Deed recorded at the
Halifax County Land Registration Office on September 28, 2023 under document no.
123137094.

*** 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: 2023

Plan or Document Number: 122840078

Attachment D
Watercourse Assessment and Species at Risk Screening Letter



29 November 2023

Trevor Adams

Project Manager, Land Development
Marchand Homes

Via email: trevoradams@marchandhomes.ca

Re: Watercourse Assessment and Species at Risk Screening: PID45402831

McCallum Environmental Ltd. (MEL) was retained by Marchand Homes to complete a watercourse determination and species at risk (SAR) screening in support of the proposed development at PID45402831 (herein referred to as the “Property”). MEL biologist Amber Stoffer completed a site visit on November 15, 2023, to assess an existing drain line along the edge of the property and available habitat to support particular SAR. The methods and results of each survey are provided below, and representative photos are attached.

Watercourse Assessment

A drainage ditch (shown on topographic mapping as a watercourse line) runs adjacent to the eastern Property boundary. The mapped line starts approximately 30 m north of the Property then extends approximately 250 m south to the Windsor Back Road (see Figure 1). The topographic line continues south of this road through a residential property and farm/horse paddock. A watercourse assessment was completed to determine whether this drainage ditch meets the definitions of a watercourse based on provincial regulatory standards.



Figure 1. Provincial topographic watercourse line displayed in blue flowing south along eastern property boundary in pink (property boundary is outdated and has since been subdivided - displayed for locational purposes only).



The Nova Scotia Environment Act (1994-95, c.1, s.1) defines watercourses as the following:

The bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the Province, whether it contains water or not, and all groundwater.

Additional guidance on identifying watercourses is provided from NSECC (2015), which outlines the following parameters used to identify watercourses:

- Presence of a mineral soil channel;
- Presence of sand, gravel and/or cobbles evident in a continuous pattern over a continuous length with little to no vegetation;
- Indication that water has flowed in a path or channel for a length of time and rate sufficient to erode a channel or pathway;
- Presence of pools, riffles or rapids;
- Presence of aquatic animals, insects or fish; and,
- Presence of aquatic plants.

According to the guidance provided by NSECC, any surface feature that meets two of the criteria above meets the definition of a regulated watercourse.

Upon assessment, the ditch was observed to be choked with cattails and other vegetation (Photo 1). There was no clear bed or bank, with water frequently dispersing into the field up to 10 m away from the mapped watercourse line (Photo 2). There was no mineral soil channel, observable flow, or any typical watercourse features (runs, riffles, pools, etc.). Furthermore, the ditch was observed to be completely infilled and dry approximately 190 m north of Windsor Back Road (Photo 3). The ditch drains through a buried culvert under Windsor Back Road. South of the road, the channel starts to pick up some more typical watercourse features such as a clear bed and bank and rocky substrate (Photo 4), but that only seems to be maintained a short while before the channel runs into a horse paddock. Based on this assessment, it is MEL's professional opinion that the ditch does not meet the requirements of a watercourse within the Property boundary.

SAR Assessment

A SAR assessment was completed in response to concerns raised during a public meeting relating to the potential implication of development on four species: barn swallow, bobolink, olive-sided flycatcher, and monarch butterfly. All four species are listed under the federal Species at Risk Act (SARA) and provincial Endangered Species Act (NS ESA). During the site visit, MEL assessed the available habitat on the Property and its capacity to support these species. The SAR, their habitat requirements, and the habitat present within the Property are described below.

Barn Swallow

The barn swallow (*Hirundo rustica*; SARA: Threatened, NS ESA: Endangered) is a medium-sized bird belonging to the passerine bird group. Barn swallows are aerial insectivores, an ecological guild that is declining globally due to a variety of reasons (e.g., habitat loss and human disturbance at roosting sites) (COSEWIC, 2021).

Breeding habitat requires open areas for foraging such as fields, ponds, wetlands, forest clearings, roads, etc. Barn swallows will nest on cliffs, rock overhangs, and in caves but prefer to nest in or on human-made structures (e.g., boats, stables, barns, houses, and bridges). Barn swallows nest individually or in



colonies and require a mud source for nest building material (COSEWIC, 2021).

The Property has foraging habitat available for the barn swallow as it is composed almost entirely of open field. However, it does not contain any nesting habitat (i.e., natural or man-made structures).

Bobolink

The bobolink (*Dolichonyx oryzivorus*; SARA: Threatened; NS ESA: Vulnerable) is a medium-sized songbird with a thick, conical bill. Bobolinks prefer grassland habitat (prairie, peatland, and meadows or grassy margins of bogs, marshes, and riparian areas beside watercourses). Due to habitat loss, fragmentation, and alteration from agriculture and anthropogenic development, modern bobolink habitat consists of non-native grasslands including pastures, hayfields, abandoned fields with tall grasses, cropland, and other developed fields (COSEWIC, 2022). Bobolinks nest primarily in open habitat with taller grasses and sedges and are less likely to be found in agricultural lands that are heavily grazed and harvested or cropland with short vegetation. When bobolinks are observed, it is common to see them perched on a high point such as a fence, sign, branch, or tall vegetation within their habitat (COSEWIC, 2022).

The Property contains preferred bobolink habitat as it composed almost entirely of open field.

Olive-sided Flycatcher

The olive-sided flycatcher (*Contopus cooperi*; SARA: Special Concern; NS ESA: Threatened) is a small insectivore belonging to the “tyrant flycatchers” (Tyrannidae) family, with plumage with deep brownish olive grey above and whitish breast and throat (COSEWIC, 2018). The olive-sided flycatcher is a widespread migratory species, with 53% of its breeding range being encompassed in forested areas in Canada. Olive-sided flycatchers are often found on edges of coniferous or mixed forests with tall trees and snags, along open areas, or in burned forests with standing trees and snags (COSEWIC, 2018).

Along the northern of the property boundary, a thin treed margin provides suitable breeding (i.e., edge) habitat adjacent to the open field. This habitat is limited to approximately 75% (or approximately 90 m) of the linear property boundary and does not extend into the property.

Monarch Butterfly

Monarchs (*Danaus plexippus*; SARA: Special Concern; NS ESA: Endangered) are migratory butterflies, with a range occurring from Central America northward through to southern Canada. Eastern Monarchs breed from Alberta east to Nova Scotia and migrate south to overwinter in the mountains of Central Mexico (COSEWIC, 2010). Monarch larvae feed exclusively on leaves, flowers, and fruits of milkweeds (genus *Asclepias*), and therefore breeding habitat is dependent on the presence of these plants (NSDNR, 2012). Swamp milkweed and common milkweed both occur in Nova Scotia. Swamp milkweed (*Asclepias incarnata*) is a native wetland species growing habitats marshes, fens, and shorelines, whereas common milkweed (*Asclepias syriaca*) occurs in well drained soils.

No milkweed was identified within the Property, and therefore, no suitable breeding habitat is provided.

The NS ESA is the primary provincial legislative tool that can protect habitat for species at risk on non-federal lands. The NS ESA has prohibitions against the destruction of residence such as occupied nests or hibernacula, including dwellings that are anthropogenic structures. The NS ESA also provides the mechanism to protect core habitat (i.e., habitat essential for the long-term survival and recovery of endangered or threatened species) from destruction or disturbance. Core habitat may only be designated on private lands when it is determined that the core habitat on public lands is not sufficient to meet the recovery needs of the species. None of the four species of concern have designated core habitat



protections within the province.

Migratory birds have further protections under the Migratory Birds Convention Act, 1994, and Migratory Birds Regulations, 2022 (MBR). At all times, all migratory bird nests are protected when they contain a live bird or viable egg. The nests of 18 species who re-use their nests listed in Schedule 1 of the MBR 2022 are protected year-round. These 18 species do not include the three species of birds noted above.

The development is unlikely to impact monarch butterflies given the absence of milkweed within the property boundary. However, the property does contain suitable nesting habitat for both bobolink and olive-sided flycatcher.

To avoid potential impacts to nests, it is recommended that any clearing of vegetation and timber occurs outside of the bird breeding season between April 15 – August 30. If construction is required during the breeding window, a nest sweep should be completed by a biologist no more than 7 days prior to construction start and repeated as necessary prior to any disturbance.

If you have any questions, please do not hesitate to contact the undersigned with any questions you might have.

Sincerely,

Amber Stoffer
Aquatic Specialist
McCallum Environmental Ltd.
amber@mccallumenvironmental.com

Meghan Milloy
Vice President
McCallum Environmental Ltd.
meghan@mccallumenvironmental.com



References

- Committee on the Status of Endangered Wildlife in Canada (COSEWIC). 2010. COSEWIC assessment and status report on the Monarch *Danaus plexippus* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. vii + 43 pp. (www.sararegistry.gc.ca/status/status_e.cfm).
- COSEWIC. 2018. COSEWIC assessment and status report on the Olive-sided Flycatcher *Contopus cooperi* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. ix + 52 pp. (<http://www.registrelep-sararegistry.gc.ca/default.asp?lang=en&n=24F7211B-1>).
- COSEWIC. 2021. COSEWIC assessment and status report on the Barn Swallow *Hirundo rustica* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. xii + 60 pp. (<https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry.html>).
- COSEWIC. 2022. COSEWIC assessment and status report on the Bobolink *Dolichonyx oryzivorus* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. xi + 60 pp. (<https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/cosewic-assessments-status-reports/bobolink-2022.html>).
- Nova Scotia Department of Natural Resources and Renewables (NSDNRR). 2021. Recovery Plan for Monarch (*Danaus plexippus*) in Nova Scotia. Nova Scotia Endangered Species Act Recovery Plan Series. 50 pp. (<https://novascotia.ca/natr/wildlife/species-at-risk/docs/MonarchRecoveryPlan.pdf>)
- Nova Scotia Environment (NSE). 2015. Guide to Altering Watercourses. Retrieved from: <https://www.novascotia.ca/nse/watercourse-alteration/>.
- Nova Scotia Environment Act. 1994-95, c.1, s.1. <https://nslegislature.ca/sites/default/files/legc/statutes/environment.pdf>



Photolog: PID45402831



Photo 1: View of ditch looking north from Windsor Back Road.



Photo 2: View of ditch looking north from field showing unconfined water.



Photo 3: Ditch completely infills and dries approximately 190 m north of Windsor Back Road.



Photo 4: Channel looking south from Windsor Back Road.

**Attachment E
Public Information Meeting Notes
November 2 - 16, 2023**

File 22-33 Development Agreement – Windsor Back Road; PID 45402831

Meeting date and time	A public information meeting was held on November 2, 2023 beginning at 6 p.m. in Council Chambers, 76 Morison Drive, Windsor
Attending	In attendance: 3 Councillors: (Jim Ivey, Mayor, Debbie Francis) CAO Mark Phillips Planner Fredericks Director of Planning, Sara Poirier Planning Administrative Assistant Vanessa Lake Approximately 30 members of the public.
Chrystal Fuller / Marchand Homes, Windsor Back Road, Three Mile Plains (PID 45402831)	Planner Fredericks outlined the request from Brighter Community Planning/Marchand Homes to build 3 multi-unit residential buildings on a vacant property on Windsor Back Road, Three Mile Plains.
File Number	23-33
Comments	<p>Chrystal Fuller outlined the owner’s intended development form, setbacks, parking, and other aspects of the development. Chrystal also spoke about the demand for housing in Nova Scotia and how this proposal responded to this growing need.</p> <p>Members of the public present at the meeting raised the wet characteristic of the subject property and how it has been flooded before and could impact the proposed underground parking and adjacent properties.</p> <p>Comments from the public also included the value the community gave to the previous use of this property being farmed and left as open/green space with the ability to support wildlife and native species. One member of the public who was a previous owner of the property also mentioned the site may contain certain bird and insect species of concern.</p>

	<p>Additional Discussion points included:</p> <ul style="list-style-type: none"> • R2 zoning only permits 1- or two-unit dwellings and the proposed development is significantly more than the zoning would typically permit. • Driveway access and road safety were raised by many as the location is reportedly a blind crest and the road can have high speed traffic. The area also does not have any sidewalk infrastructure anywhere in the community, and this was an important aspect when considering increasing the residential density. • The site was considered by several members of the public to be inappropriate and that a location closer to the services and amenities in Windsor would be more appropriate to support higher density development. • Rental rate questions. • Property value impacts. • Hobby farms in the area as potential conflict with new residential development. • Limited community amenities nearby, no corner store or other destinations. • School capacity questions. • Low-income area not reflected in the proposed unit types. • Appreciation of the rural setting, dark sky and quite nature of the community as it is today.
Adjournment	There being no further business, the meeting adjourned at 8:30 p.m.

Public Email Responses Submitted for the Application

October 30, 2023

From Patrick Hatton

To Mark Fredricks

Hi Mark,

My name is Patrick Hatton and I live at [ADDRESS REMOVED] in Three Mile Plains and I'm emailing you about the proposed development at PID 45402831.

I'm wondering if the developer has prepared any site plans or servicing reports and what reports will be required from the developer for this site by the Municipality.

If these have been prepared already, will they be available at the public meeting?

Regards,
Patrick Hatton

Response

Hi Patrick, thank you for your interest. There will be documents available at the meeting with the understanding that these are draft site plans and renderings. There might be changes to building setbacks, buffering and other design aspects, but these documents will provide a general sense of the site layout. Servicing requirements will be part of the development agreement, but the final servicing plan may not be available initially. We do expect to have more information on traffic impacts in the coming weeks.

Let me know if you have any questions and hope you can attend the meeting on Thursday.

Thanks

October 30, 2023

From Shawn Johnson

To Abraham Zebian **CC** Mark Fredricks

Thank you for the response and I will call you this afternoon.

Really hoping to understand the process and how this can occur as my understanding the area is zoned R-2 so wondering about if the first meeting will include discussing the rezoning of the area as well?

Thank you for your time

Shawn Johnson

October 30, 2023

From Nicole Hubley

To Mark Fredricks

Hello Mark,

It was a pleasure meeting with you this evening along with our neighbours. I've attended town hall meetings in Dartmouth and let's just say there was a very big difference throughout (mostly in language used).

I've attached the comments and questions my partner and I had this evening for reference and I hope you can find time to review the CBC article I passed you this evening. A few comments attached I did not bring up as it's nothing we don't already know- we need affordable housing in Nova Scotia and I'm confident that is front of mind. No question.

Stephen and I grew up in Tantallon in HRM, just outside Halifax so we still keep a close watch on developments that happen in Halifax and choices HRM councillors put to vote. I can't tell you how many times I've said over dinner "I am so happy we live in West Hants."

I am hopeful this was an informative evening for you and the other planners and decisions will be made based on what was heard tonight. I appreciated the contrast from the comments for

EcoHomes Proposal vs. Marchand Homes- A perfect example of putting something in the right place with the right support in place can make all the difference.

A few comments I want to address that came from listening to tonight's presentation:

- I am very concerned the developers do not understand the amount of work involved to develop this land. Underground parking proposal was a shock to everyone. It will flood.
- The planner's comments about legal drainage requirements were lovely but the article I provided you this evening shows that the reality may not be so simple.
- Not involving Nova Scotia Power in this development is negligent. The grid cannot support the demand as it is on a cold day. Upgrades are needed.
- If the Province owns this street they need to be part of the discussion from start to finish. Speed limit reduction, sidewalks and street lights need to be implemented before someone is killed. Not after.

I will leave you with one last comment this evening- we have a couple of friends who had homes built by Marchand Homes... If the council approves this build I highly recommend consistent and detailed inspections throughout the process to ensure it stays on track and is done to plan.

Thanks again for your time, we'll see each other again soon.

--

Nicole Hubley

Follow-up CC

From Stephen Elliot

Hello Mark,

Thanks for your reply, I just wanted to add my two cents along with Nicole's points. First off, thank you for listening to our concerns. I trust you've listened intently and will make an informed choice regarding the development.

I wanted to express my concerns and lack of support for this project. We moved here in 2019 because of what the area is now. Quiet, calm, dark and private, with the potential to start a little hobby farm someday... I worry that having up to 250 people in such a small spot will cause issues with ours, and our neighbour's livelihood. Are we going to have to worry about these people complaining about smoke from bonfires going towards their building? What about the cow, chickens and horses in the area making noise all hours of the night? Or some of the smells? These are all things we either enjoy or tolerate knowing these people were here before us and this is the sort of community we chose to live in. (Rural)

I'll be personally contacting certain environmental branches of the government to look into the damage that could be done to the species that live there. Like Craig (the previous owner of the land) said there are quite a few endangered and yellow listed birds that live there through the summer. Along with a large number of bees, butterflies and other such critical species. This alone in my opinion is enough to not make this project happen. I would like to see proper studies done by the province (not a random third-party company) to assess the damage that

would be done to these animals and local environment. It should be done in the summer, like Craig said, as that is when most of these species are present in the area.

As someone pointed out during the meeting, a lot of the flood damage was caused down river. I have attached a photo of a rescue helicopter trying to pull people from their homes and out of trees within walking distance of our house. This was taken out of our living room window. The whole water issue and flood plain situation is another reason why I can't possibly support this. They will be taking a large area of grass, plants and soil normally there to help soak up water and slow it down, and turning it into a slab of roof, concrete, and asphalt. All that water that would normally be soaked into the ground and slowed by the foliage. But will now have a straight shot into the river. Even more so if the underground parking has to be regularly pumped out. Don't let them mess with the river. Nicole has been working in insurance for close to a decade, she's seen what happens when you mess with nature.

I agree with what others have pointed out in regards to infrastructure. There are no sidewalks, no street lights and its at the crest of a hill. Which, is a horrible spot. Despite the studies there have been accidents and near misses since we've been here. The study was over a brief period of time. This is coming from people who have lived there for years and decades. With that said, we don't want any of it. We like the dark, there is no room for sidewalks. and We don't want to see the lights from the apartment and the damage to privacy that will occur. Yes, I know they plan to put up trees and such but none of those will be grown enough to do any good for likely 15+ years. The buildings don't fit the overall aesthetic of the community as well. If any of this is to be installed then Marchand Homes should fit the bill and not us.

In the hopefully unlikely event that this is approved, frequent and stringent inspections should be done during construction. We personally know 3 people who had homes build by Marchand Homes which turned into a horrible experience. I know for that in at least of one them they buried some of construction garbage under ground on the property. The homes had plenty of issues after they were done and Marchand had horrible post-construction service. Just something to consider.

Yes, there is absolutely a need for housing. But specifically affordable housing. This will not be that. It also bothered me at the meeting that they didn't have an idea for the cost of rent. They don't have a budget for this thing? Napkin math would even be good. Max budget times however many units there are. Done. Obviously some units will be more expensive and cheaper but still. Also what about visitor parking? As someone who has lived in many apartment and have friends who still do there is never enough visitor parking. The difference though is in a city you can usually park on the street somewhere. Where are they going to park here? On a road with no shoulders on the crest of a hill?

If a "walking score" was given for this street I'm confident it would be a negative score, or a cross bone and skull symbol.

As a final note, I don't think it was too hard to see there was little love for this project in the community. Just driving around Windsor itself there are plenty of spots to be developed first. Look at how much love there was for what EcoHomes (I think is the name) was doing in town. New, dense units. Affordable controlled rent. In town where facilities already exist. Build up the

town before you come out here. This will be the start of our own urban sprawl and we shouldn't let short-sighted impulsive choices for problems we have now, become the problem of people later on.

Thanks for your time, I'm sure we'll be seeing each other again soon.

Stephen Elliot

Attachments Included at End

November 13, 2023

From Steffen Rapprich

To Mark Fredricks

Dear major and employees of the municipal.

I would first like to apologize for my not so good English.

My family and I bought in April 2020 in the [ADDRESS REMOVED] our new home.

We moved with our dog and horses to the very nice spot.

We are in the third generation a self Employment hardwood flooring company with a German master degree and we work over 40 years on the job sites.

We moved with all what we have from Germany to here.

We live here now over three years and we very like it. Our neighborhood are so friendly and helpful what we don't know it from Germany.

Our choice for Windsor was the country life.

Here nobody minds that the dog barks, the rooster crow's, you on Sunday cut your lawn.

We live in the direct neighborhood where the marchland development will build the multiple houses with over 90 condos.

We have been in the construction industry for over 30 years and nobody can tell me what the apartment units should cost when such a property is planned seams wired then every developer has a roughly number on those costs, if not marchlands build luxury houses near indigo shore and nobody can say how expensive are the condos. That's a joke.

We think that people here from the country cannot afford the apartments and people from the city have no understanding of the circumstances and habits of the current residents of three mile plains.

1. We are totally against this project it doesn't fit in the area.

2. The sewer pump is in the front of our house and we see the the guys from the municipal are so often on the pump station because it works not properly and it is overloaded.

Our front yard was in this time where we live here flooded why the pump station not runs.

There was even a risk that our basement would flood.

We are at the lowest point with our property and who can guarantee us that when the property is built our new home will be safe from flooding be it the ditch or the sewer pump?? ????

3. The same is with the ditch when we have a lot of rain our backyard is flooded too.

4. The site is not suitable for such a large project and it does not fit into the landscape. There is nothing wrong with normal detached houses.

5. Not to mention that at least 200-250 people, mainly from the city, will then live in a small space, which automatically causes problems.

We had the same problem in Germany, which is why we left, it was unbearable to live in the countryside with city guys. City guys usually have no understanding of the habits of people in the countryside.

There are other objections raised by the residents of three mile plains that need to be considered.

We think all the people here in three mile plains and the surrounding area are against this building project and can do everything in our power to say so.

When there is a normal meeting regarding the project, we will attend in person.

It would be nice to hear from you.

Thanks again.

Best regards

Steffen Rappich and family.

November 14, 2023

From Debbie Swinamer

To Mark Fredricks

#1. We are one of the property owners that are in the 500 feet from this project. I spoke at the meeting on November 2nd 2023 briefly voicing our concerns about our property flooding already, and if you build these 3 new apartments we will get more water flooding on our property.

#2. The water and sewer, electrical are all outdated.

#3. The roads are outdated and the speed limit is too high, and they are in poor condition. Blind crest where the people would be exiting.

#4. No anti idling or noise bylaw.

#5. We also feel that if there are any other issues that come up they won't get dealt with because we are already dealing with a development agreement for the last 20 years plus next door. The issues with that development agreement have never been enforced. When we were dealing with this we were told that if that property had a development agreement that the municipality would be able to control what goes on there, but it's never been dealt with and there is no control. So now we still have a junk yard next door and trucks idling for hours at a time, trucks starting up at all hours and idling, operating all hours and even on Sundays and there's supposed to be set hours of operation. We've already had the mayor and the CAO and our councilor out to our property to look at the mess and still nothing has changed. I asked the mayor if he would live next door to this and he shook his head no.

#6. They say it will put our water bill down but if they build these 87 units then the water and sewer would have to be upgraded then that would put our water and sewer up. It's already tripled in the last few years.

#7. So we are voting against these apartments being built.

#8. Be careful what you wish for

From Reid and Debbie Swinamer

November 15, 2023

From Adam Pearce

To Mark Fredricks

Dear Mr. Fredericks,

I am concerned about the proposed development at Windsor Back Road, Three Mile Plains (PID 45215290). I live on Swinamer Drive, adjacent to a municipally owned property PID 45289790. This property is a swampy area that buffers rainwater to reduce flooding. At present the property at PID 45289790 does flood, and it puts my property in danger; most recently during the 22 Jul 23 storm.

I worry that the new hard surfaces that will be installed as part of the proposed development will cause more rain water to flow to my area -- which will be at a lower elevation than the proposed property (after backfilling) -- and overwhelm the capacity of the swampy area at PID 45289790.

Furthermore, the swampy area adjacent to my property does not adequately evacuate rainwater, especially in the winter. There is a small pipe (approx. 8" in diameter) that allows excess water from this swampy area to flow to the Hwy 1 ditch through the property at PID 45289808, 4382 Hwy 1. In my opinion this pipe is much too small, because it can freeze in the winter and block water egress during heavy rainstorms that can occur in February and March. As a result, the swampy area cannot drain to the Hwy 1 ditch. In fact, this small diameter pipe getting blocked caused my basement to flood in Feb 2007. We are concerned similar flooding events are more likely to happen as a result of the new hard surfaces proposed as part of the development.

Will the developer ensure that the rate water flows off the property does not increase as a result of the development? What features will they include in the design to ensure other properties don't risk higher chance of flooding?

Sincerely,

Adam Pearce

November 15, 2023

From Craig Comeau

To Mark Fredricks

Good evening,

Attached in this email is a PDF of a letter we wrote for you in regards to the planning meeting held on 2 Nov 2023 in reference to the 87 unit proposal on Windsor Back Road.

We would encourage you to take the time to watch the videos and open the hyperlinks.

Your time, thoughts and consideration are appreciated on this matter.

With Regards,

Craig and Janet Comeau

Attachments included at End

November 15, 2023

From Donna Harrie

To Mark Fredricks

Good Morning,

I'm sending this email in response to the meeting my husband and I had attended Nov 2/23.

We are residents of Swinamer Dr Three Mile Plains. We prev. lived in the city & searched this area to get away from the noise, traffic and apt. buildings. We've lived here now for almost 20 yrs. and very much enjoy the surroundings, wildlife, quietness and feeling safe. Enjoying the slower pace of living.

Now the Mun. is proposing to add three apt. bldgs. in our back yard. This is very disturbing to say the least. It's not only going to be an "eye sore" but our peace and quiet will be greatly diminished.

The parcel of land proposed is a "catch basin", or as some call it, a "swamp". We were told by the developers spokesperson that the developer wants in have underground parking for the tenants. Well we all know the actual plan is to have above ground parking because the developer knows darn well that there would be continuous flooding if parking were underground. So the actual bldgs. would have to be raised 50' or more and the developer would have to grade the property away from the bldgs. This in turn would avert run off to surrounding properties. No matter how the developer tries to rid the flooding, it can't be done without damaging surrounding properties. Who then pays for damaged property????

There would be an additional 300 people, give or take, and at least 130 plus additional vehicles trying to get out on the back road as there will only be one way in and out of this property. Not to mention the additional traffic on TMP Crossroad which is our only exit from Swinamer Dr.

There aren't any sidewalks on TMP Crossroad or Windsor Back Rd. There are children who have to walk to school and walk to their school bus stop on both roads. This is a safety concern.

We're very concerned about our sewer and water system. Without an upgrade, the system will never be able to handle the additional bldgs. This cost will fall on the already overtaxed residents of this area. We were told our taxes would go down once we started being billed for

sewer on our water bills. Well that hasn't happened!!!! In stead, the cost went up!!!! So we know darn well the residents will foot the bill for the developer!!!!

The spokesperson for the developer was trying to sell us a pretty picture for them. She continued to make comments on how beautiful this development will be, with no inclination of how out of place it will be, noise, crime, water damage, privacy, additional traffic and overcrowding schools more than they are now and much higher taxes. If she and the developer think this is so beautiful, build them in their backyards!!!!

There are plenty vacant lots in the Town of Windsor. These bldgs. would be more suited in the Town where there is proper drainage, sidewalks and st lights.

We will be very disappointed if the Mun. approves this development after knowing how many tax paying residents are against this.

Thank You

Donna and Wayne Harrie

November 15, 2023

From Angie Harding

To Mark Fredricks

Good Evening,

I trust this message finds you well. I am writing to express my deep concerns regarding the proposed development of three buildings on Windsor Back Rd. My residence is situated on Swinamer Drive, adjacent to the proposed site, and I feel compelled to share my apprehensions regarding several aspects of this project.

Having relocated from the city 19 years ago seeking tranquility, proximity to nature, and a rural lifestyle, I fear these qualities will be compromised by the construction of the proposed buildings. One major concern is the potential impact on the water table level and drainage. The current lack of suitable drainage solutions poses a risk of flooding the existing wetlands, with the added threat of contaminating the nearby fishable river if drainage is redirected across the street.

Furthermore, the scale of the project raises apprehensions about its strain on our already aging water supply and sewer system. Given the frequent disruptions caused by broken pipes and the subsequent need for repairs, an expansion of this magnitude could exacerbate the strain, potentially leading to increased taxes to fund essential upgrades.

The proposed building height of 60', contrary to the stated 35' at the meeting, is distressing, particularly considering the impact on the scenic view of the mountain that my community currently enjoys. Having worked as a carpentry subcontractor for 25 years with reputable builders, I have encountered issues related to drainage, noise, and privacy. Once construction concludes, homeowners are left to address concerns with the municipality, often facing challenges in achieving satisfactory resolutions.

The potential strain on local resources extends beyond infrastructure. A surge in population could lead to overcrowded classrooms, worsened traffic conditions on our small loop, and the loss of wildlife habitat. With ongoing expansions like The Crossing and The Woodlands, our local facilities, including the hospital and offices, are struggling to meet existing demands.

I urge the committee to carefully consider the long-term implications of this development on our community's quality of life and environment. Perhaps, a more measured approach, such as a limited development of homes on a cul-de-sac, aligning with the current R-2 zoning, could strike a balance between economic interests and community well-being.

I appreciate your time and attention to these concerns and trust that the committee will exercise due diligence in evaluating the potential impact of this proposed development.

Sincerely,

Kenny & Angie Harding

November 15, 2023

From Tara Warner

To Mark Fredricks

Dear Mr. Fredricks,

I am writing on behalf of my husband and I with concerns about the newly announced potential development at PID 45215290 on the Windsor Back Road. We live on Highway 1, with the back of our property facing the potential new development. We have observed after every heavy rain the flooding that happens on that property. It is the "low area" that water drains too.

During the July floods it looked like an ocean as there was so much water. Our property is also low, and we have dealt with water run off from other surrounding properties frequently. In fact, we had to invest a large sum of money into excavating and installing trenches and drain pipes. I fear that if these large developments are allowed to be built, we will see an increase in water flow our way. I am concerned what I have done to protect my property may not be enough, as it still isn't after a heavy rain.

Do the developers have a plan for proper water drainage as to not affect other properties? I imagine this would potentially affect many, many properties in the area.

Sincerely,

Tara Warner

November 16, 2023

From Lorna Wood

To Mark Fredricks

Hello Mark,

I speak for my family and Many of the people residing on the Windsor back road and in this General vicinity. Many of were not , NOT notified of the public meeting which is very

disappointing. Anyone I have spoken with is definitely not pleased or in favour of the proposed developments for multiple family units/apartments. Also, due to the short amount of time to notify residents of this idea, there were many of us that didn't Or couldn't attend on such late notice.

Please consider this a vote for no to the proposed developments in this rural area. The infrastructure and the drain on a rural area is as you are most likely aware, hopefully completely inappropriate as I'm sure you are aware.

Issues such as Power grid, condition of roads with practically 100 new families travelling in and out every day, or two but examples of reasons why this is an appropriate and should not be Considered. With 100 new families approximately, and I never increasing unemployment rate there will be a tsunami of youngsters with nothing to do, frustrated, walking streets, potential vandalism, noise level increase, pollution from vehicles ... I could go on.

This is a BIG NO...

Lorna wood