



P.O. Box 1749  
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**Item No. 13.1.1**  
**Halifax & West Community Council**  
**July 9, 2019**

**TO:** Chair and Members of Halifax and West Community Council

***-Original Signed-***

**SUBMITTED BY:** \_\_\_\_\_  
Kelly Denty, Director of Planning and Development

**DATE:** May 30, 2019

**SUBJECT:** **Case 21795: Development Agreement for Child Care Centre at 56 Kearney Lake Road, Halifax**

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**ORIGIN**

Application by WM Fares on behalf of LSJ Holdings (Wedgewood's Little School).

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.*

**RECOMMENDATION**

It is recommended that Halifax and West Community Council:

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A, to consider the expansion of an existing child care centre at 56 Kearney Lake Road allowing up to 16 children, and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

WM Fares, on behalf of LSJ Holdings (Wedgewood's Little School), is applying to establish a child care centre by development agreement for up to 16 children at 56 Kearney Lake Road, Halifax.

<b>Subject Site</b>	56 Kearney Lake Road, Halifax
<b>Location</b>	Southeast corner of Kearney Lake Road and Wedgewood Avenue
<b>Regional Plan Designation</b>	Urban Settlement (US)
<b>Community Plan Designation (Map 1)</b>	Residential (RES)
<b>Zoning (Map 2)</b>	Single Family Dwelling Zone (R-1) of the Halifax Mainland Land Use By-law
<b>Size of Site</b>	1,254 square metres (13,500 square feet)
<b>Street Frontage</b>	54 metres (177 feet) along Kearney Lake Road 36.2 metres (119 feet) along Wedgewood Avenue
<b>Current Land Use(s)</b>	A detached single unit home with a non-conforming child care centre with permitted 14 children under care
<b>Surrounding Use(s)</b>	Predominantly residential, low rise, detached homes

### **Proposal Details**

The applicant proposes to enter into a development agreement for a child care centre enabled by Halifax Municipal Planning Strategy (MPS) Implementation Policy 3.20. The major aspects of the proposal are as follows:

- Alter the status of the lands from a non-conforming use to a permitted use by means of development agreement; and
- Increase the number of children under care at the existing facility from 14 to 16.

### **Non-Conforming Use**

Prior to 2009, the Halifax Mainland Land Use By-law permitted child care facilities for up to 14 children in a residential dwelling in the R-1 Zone. In 2009, the bylaw was amended reducing the maximum number of children to eight. This change aligned the Municipality's standards with Provincial licensing requirements.

All existing approved child care facilities providing care to more than eight children became non-conforming uses after the adoption of this zoning change. Any new or expanded child care facilities for more than eight children can be considered by development agreement under the Halifax Municipal Planning Strategy Implementation Policy 3.20.

A child care facility for up to 14 children has lawfully operated at 56 Kearney Lake Road since 2005. This use can continue as currently approved based on the non-conforming provisions of the *Halifax Regional Municipality Charter*. The operators have applied to increase the number of children under care from 14 to 16. A development agreement is required to allow this expansion.

### **Case 21389 (55 Kearney Lake Rd)**

The owner and operator of the child care centre on the subject site also own a child care centre across the street at 55 Kearney Lake Road/4 Grosvenor Avenue. Originally the applicant submitted a single planning application for one development agreement encompassing expansions for both sites.

However, these operations are licensed separately by the Province, the site conditions are materially different and the two locations are separated by Kearney Lake Road. In order to provide Council the flexibility needed to determine the relative merits of each site individually, the applications are being processed as separate development agreements with technical review incorporating both projects where appropriate.

A Traffic Impact Study was submitted for both applications as a combined analysis. These findings were reviewed by HRM Engineering staff and their comments considered in staff's analysis.

### **Original and Revised Proposal**

The applicant's original request included 46 children under care, 4 employees, and 4 parking stalls at 56 Kearney Lake Road. This concept was presented at a public information meeting held jointly with Case 21389.

After considering the input from the public meeting and completing a technical review, staff recommended against an increase to 46 children. The site is not well configured to accommodate increased on site parking and the street frontage along Wedgewood Avenue is insufficient for drop off and pick up activity at an intensity associated with 46 children under care. Public street parking would overflow up Wedgewood Avenue adding to nuisance impacts which are already a concern for local residents. The site lacks a public sidewalk, leading to a potential increase in conflict between pedestrians and vehicles on Wedgewood Avenue. In winter, the presence of snowbanks and low-light conditions further complicate overall traffic safety issues which are not reasonably consistent with multiple subsections of MPS policy 3.20.1.

In response to public engagement and staff's technical review, the applicant modified the proposal and is now requesting substantially reduced intensity in the form of a modest increase of two additional children bringing the total to 16 under care. Staff advise that the addition of two children are not expected to negatively impact the neighbourhood. Existing parking both for employees and parents was deemed acceptable given the modest increase.

### **Enabling Policy and LUB Context**

In the Halifax Mainland Plan Area, the Land Use By-law allows a "Day Care Facility" (or "child care centre" using MPS terminology) for up to eight children in the R-1 Zone in conjunction with a dwelling.

Halifax Municipal Planning Strategy Implementation Policy 3.20.1 enables child care centres providing care to more than eight children to be considered by development agreement:

*In order to encourage the establishment of child care centres in a variety of locations to meet the varied needs of families, and to allow the consideration of the specific circumstances of an individual location, a child care centre which does not meet applicable land use bylaw regulations may be permitted by development agreement.*

This policy includes criteria to be considered and included in the development agreement (Attachment A).

## **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area and a public information meeting held on November 1, 2018. Attachment C contains a copy the meeting summary.

The public information meeting was held in conjunction with Case 21389 due to the proximity of the two applications and common ownership. The application at that time proposed an expansion to accommodate 46 children so Council should note the comments below were received in the context of that relatively intense expansion. Subsequent to that community engagement, the applicant revised the application to reflect an addition of only two children.

The public comments received include the following topics:

- Traffic, especially concerning parents dropping off and picking up children;
- Vehicular and pedestrian safety and nuisance;
- Parking for staff on or off site;
- Street parking in general and use of private driveways for turning around;
- Use of the crosswalk on Kearney Lake Road for small children; and
- Largely in favour of daycares but concerns about location and intensity of use.

Emails and phone calls (11) were also received by staff with most callers attending the PIM and comments received consistent the concerns listed above.

A public hearing must be held by Halifax and West Community Council before they can consider the proposed development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposal will potentially impact local residents and property owners as well as parents in the broader community requiring third party child care.

## **DISCUSSION**

Staff reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the Halifax MPS. Attachment B provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

### **Proposed Development Agreement**

Attachment A contains the proposed development agreement for the subject site and the conditions under which the development may occur. The attached development agreement will permit a child care centre for up to 16 children, and the development agreement addresses the following matters:

- A maximum of 16 children under care permitted;
- R-1 uses are permitted if the child care centre use is no longer operational;
- Outdoor play area is required with safety parameters and screening;
- Hours of operation set for 7:00 a.m. to 6:30 p.m.;
- Parking is set at 3 stalls minimum on site, hard surfaced, with a pedestrian path to the building;
- Minimum standards are set for outdoor lighting, signage, refuse screening, and maintenance to mitigate nuisance; and
- Changes to commencement and completion dates are deemed non-substantive.

Of the matters addressed by the proposed development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

### **Child Care Centre**

R-1 residential dwellings in the Halifax Mainland Plan Area can include child care for up to eight children in conjunction with a dwelling unit. The proposed development agreement allows up to 16 children within a child care centre with or without an associated dwelling unit. The building is large enough for both a residential dwelling and child care use.

### **Traffic, Parking, and Pedestrians**

Community concern expressed through the engagement process was overwhelmingly about traffic, pedestrian activity and the supply of parking. The bulk of staff analysis focused on these aspects of the proposal in consultation with the Development Engineer and Traffic Management staff.

Child care centres rely heavily on pick up and drop off cycles of parents unloading and loading children from vehicles. Pedestrian activity between vehicle and building are a primary safety concern as noted in policy 3.20.1 (e) which states “vehicular access to and egress from the child care centre and pedestrian movement shall be accommodated in a manner which encourages safety.”

The subject site possesses three parking stalls reasonably buffered from the abutting property. The applicant indicates employees will only use a single stall, leaving two stalls for parents or a resident caregiver. It is not anticipated that high numbers of child care staff rely on private vehicles for workplace access and the site is well-served by public transit. There is a single public parking space available in front of the property. This is an acceptable use of the public right-of-way and will not create unacceptable nuisance. Additionally, it is anticipated that some parents may walk their children to the site.

The agreement specifies a dedicated path from the parking areas to the main door of the child care centre. The outdoor play area shall be fenced and screened from the streets. Some of these safety requirements are simultaneously addressed in Provincial licensing criteria.

Hours of operation in the agreement are routine for child care facilities and for a residential neighbourhood in general and should not adversely impact neighbours with vehicular or other activity. The site has been operating since 2005 as a child care centre with 14 children. Operations should be normalized within the community and the additional two children under care should not impact those operations.

#### **Concentration**

Implementation Policy 3.20.1 g. speaks to preventing a “concentration of child care centres within a particular neighbourhood.” As noted above, Case 21389 is immediately across Kearney Lake Road and could be considered to be in the same neighbourhood. However, staff advise that Kearney Lake Road represents a substantial boundary between neighbourhoods. Despite the physical proximity, staff note the functional impacts of these two facilities do not materially overlap and each application can be considered individually without conflicting with 3.20.1 g.

#### **Conclusion**

Staff reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the Halifax MPS. The addition of two children under care will have no significant impact on neighbourhood compatibility or traffic. Authorising the use by development agreement is preferable to the current non-conforming status premised on an outdated version of the Halifax Mainland Land Use By-law. MPS Policy 3.20.1 allows for greater control by development agreement over compatibility, safety, and parking on the subject site. Therefore, staff recommend that the Halifax and West Community Council approve the proposed development agreement.

#### **FINANCIAL IMPLICATIONS**

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2019-2020 budget and with existing resources.

#### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed development agreement are contained within the Discussion section of this report.

## **ENVIRONMENTAL IMPLICATIONS**

No environmental implications have been identified.

## **ALTERNATIVES**

1. Halifax and West Community Council may choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

## **ATTACHMENTS**

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification Area
Attachment A	Proposed Development Agreement
Attachment B	Review of Relevant Halifax MPS Policies
Attachment C	Summary of Public Information Meeting

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Scott Low, Planner II, Current Planning, 902.490.6373

***-Original Signed-***

Report Approved by: \_\_\_\_\_  
Steven Higgins, Manager Current Planning, 902.490.4382



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**Map 1 - Generalized Future Land Use**

56 Kearney Lake Rd,  
Halifax

**HALIFAX**

-  Area of Proposed Development Agreement for Case 21389
-  Area of Proposed Development Agreement for Concurrent Case 27195

**Designation**

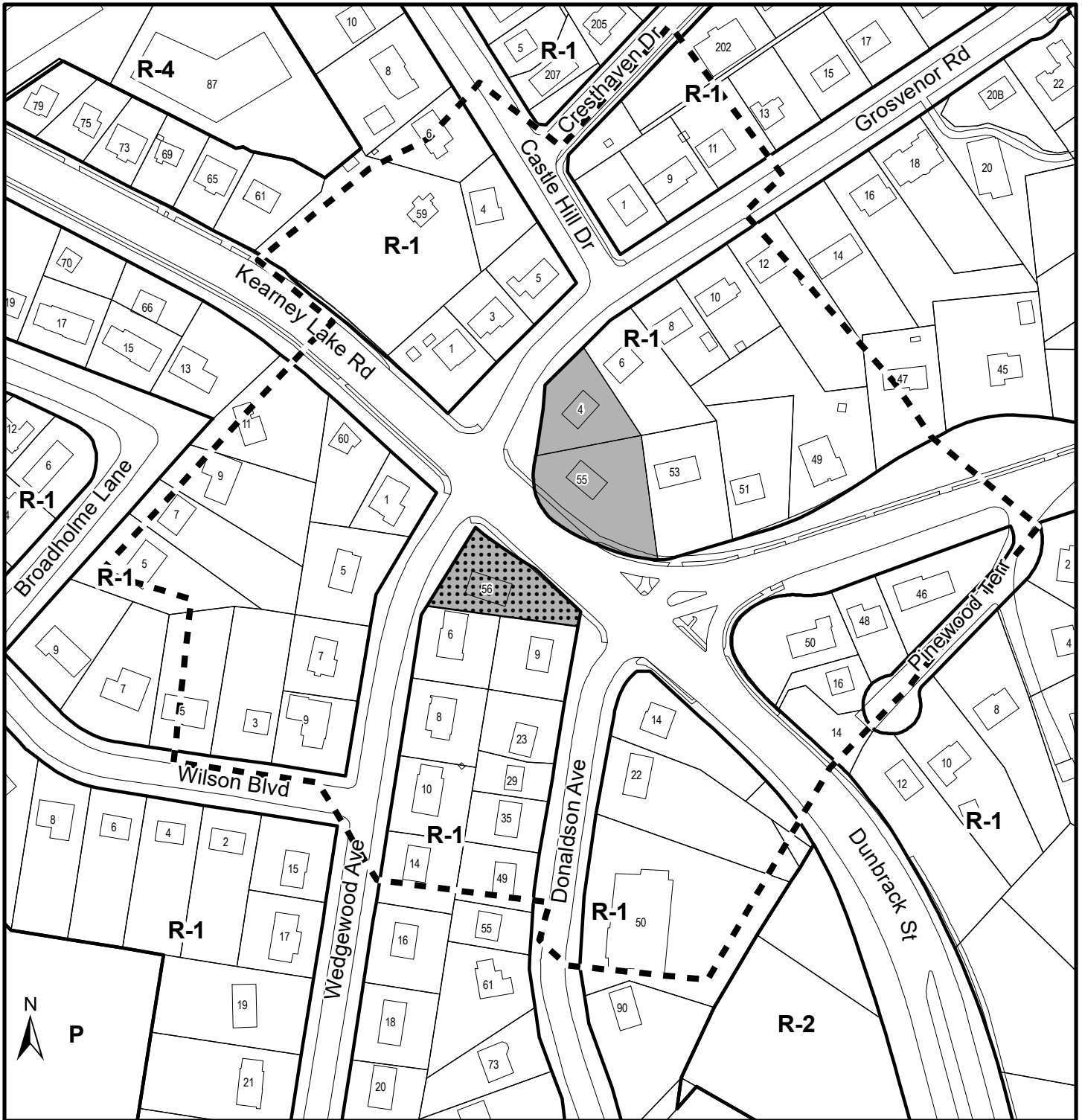
RES Residential Environments



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.




Halifax Plan Area



### Map 2 - Zoning and Notification

56 Kearney Lake Rd,  
Halifax

**HALIFAX**

-  Area of Proposed Development Agreement for Case 21795
-  Area of Proposed Development Agreement for Concurrent Case 21389
-  Area of Notification

- Zone**
- R-1 Single Family Dwelling
  - R-2 Two Family Dwelling
  - R-4 Multiple Dwelling
  - P Park and Institutional



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Halifax Mainland Land Use By-Law Area



**Attachment A: Proposed Development Agreement**

THIS AGREEMENT made this    day of **[Insert Month]**, 2019,

BETWEEN:

**LSJ HOLDINGS LTD.**, a corporation in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

**HALIFAX REGIONAL MUNICIPALITY** a municipal body corporate, in  
the Province of Nova Scotia (hereinafter called the "Municipality")

OF THE SECOND PART

**WHEREAS** the Developer is the registered owner of certain lands located at 56 Kearney Lake Road, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

**AND WHEREAS** the Developer has requested that the Municipality enter into a Development Agreement to allow for a child care centre on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Implementation Policies 3.20 and 3.20.1 of the Halifax Municipal Planning Strategy and Section 71(8) of the Land Use By-law for Halifax Mainland;

**AND WHEREAS** the Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 21795;

**THEREFORE**, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

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## **PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION**

### **1.1 Applicability of Agreement**

- 1.1.1 The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

### **1.2 Applicability of Land Use By-law and Subdivision By-law**

- 1.2.1 Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Halifax Mainland and the Regional Subdivision By-law, as may be amended from time to time.
- 1.2.2 Variances to the requirements of the Land Use By-law for Halifax Mainland shall be permitted in accordance with the *Halifax Regional Municipality Charter*.

### **1.3 Applicability of Other By-laws, Statutes and Regulations**

- 1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

### **1.4 Conflict**

- 1.4.1 Where the provisions of this Agreement conflict with those of any By-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 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.

### **1.5 Costs, Expenses, Liabilities and Obligations**

- 1.5.1 The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, By-laws, regulations and codes applicable to the Lands.

## **1.6 Provisions Severable**

- 1.6.1 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.

## **1.7 Lands**

- 1.7.1 The Developer hereby represents and warrants to the Municipality that the Developer is the owner of the Lands and that all owners of the Lands have entered into this Agreement.

## **PART 2: DEFINITIONS**

### **2.1 Words Not Defined under this Agreement**

- 2.1.1 All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

### **2.2 Definitions Specific to this Agreement**

- 2.2.1 The following words used in this Agreement shall be defined as follows:

- (a) "child care centre" shall have the same definition as in the Land Use By-law for Halifax Mainland (Edition 199) under "Day Care Facility".
- (b) "Existing" means buildings in existence as of the effective date of this Agreement.

## **PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS**

### **3.1 Schedules**

- 3.1.1 The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed with the Halifax Regional Municipality as Case Number 21795:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan

### **3.2 Requirements Prior to Approval**

- 3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

### **3.3 General Description of Land Use**

- 3.3.1 The use(s) of the Lands permitted by this Agreement are the following:

- (a) a child care centre for not more than 16 children occupying the existing building; or

- (b) a child care centre for not more than 16 children occupying the existing building in conjunction with a residential dwelling; or
- (c) any use within the R-1 (Single Family Dwelling) zone, subject to the provisions contained within the Land Use By-law for Halifax Mainland.

3.3.2 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the Land Use By-law for Halifax Mainland, as amended from time to time.

3.3.3 One (1) accessory building, per the requirements of the Land Use By-law for Halifax Mainland, is permitted on the property.

3.3.4 Should the main building be destroyed or demolished, wholly or in part, the following shall apply:

- (a) reconstruction as a detached one-family dwelling within the R-1 Zone is permitted subject to the provisions contained within the Land Use By-law for Halifax Mainland;
- (b) use as a child care centre (day care facility) may continue subject to 3.3.1(a) or (b) in accordance with this agreement; or
- (c) upon granting of an occupancy permit, the new main building shall be deemed the existing building.

### **3.4 Architectural**

3.4.1 The existing building shall retain its residential character as a detached one-family dwelling subject to the R-1 (Single Family Dwelling) Zone as specified within the Land Use By-law for Halifax Mainland 20(1)(a).

3.4.2 Alterations to the exterior of the building shall not be such that the building no longer appears to be residential in nature.

3.4.3 Neither 3.4.1 nor 3.4.2 shall prevent building or property alterations responding to the needs of physically challenged children.

### **3.5 Outdoor Play Area**

3.5.1 The outdoor play area and playground equipment shall be located as generally identified on Schedule B, and playground equipment shall be permitted on the property.

3.5.2 The outdoor play area shall be screened or fenced in a manner to ensure the safety and security of the children under care.

3.5.3 The outdoor play area may be expanded or relocated so long as it is wholly on the lands at no more than 70% of lot coverage excluding the main building floorplate and parking.

3.5.4 The outdoor play area shall not occupy a designated parking space.

### **3.6 Hours of Operation**

3.6.1 The child care centre may operate Monday to Friday between the hours of 7:00 a.m. to 6:30 p.m.

3.6.2 Hours of operation shall conform with all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.

### **3.7 Parking, Circulation and Access**

- 3.7.1 The parking area shall be hard surfaced and generally sited as shown on Schedule B.
- 3.7.2 The parking area shall provide a minimum of 3 parking spaces each of a size compliant with the Halifax Mainland Land Use By-law.
- 3.7.3 A pedestrian walkway shall connect the parking stalls to the main building as generally shown on Schedule B.
- 3.7.4 Pedestrian pathways or gates to an abutting property shall not be permitted.

### **3.8 Outdoor Lighting**

- 3.8.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

### **3.9 Maintenance**

- 3.9.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.
- 3.9.2 All disturbed areas of the Lands shall be reinstated to original condition or better.

### **3.10 Signs**

- 3.10.1 The sign requirements shall be accordance with the R-1 (Single Family Dwelling) zone of the Land Use By-law for Halifax Mainland as amended from time to time.

### **3.11 Screening**

- 3.11.1 Refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing, masonry walls, or foliage.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

### **4.1 General Provisions**

- 4.1.1 All design and construction of primary and secondary service systems shall satisfy the most current edition of the Municipal Design Guidelines and Halifax Water Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineering prior to undertaking the work.

### **4.2 Off-Site Disturbance**

- 4.2.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

## **PART 5: AMENDMENTS**

### **5.1 Non-Substantive Amendments**

- 5.1.1 The following items are considered by both parties to be not substantive and may be amended by resolution of Council:
- (a) The granting of an extension to the date for Commencement of Development as identified in Section 6.3.1 of this Agreement; and
  - (b) The length of time for the Completion of Development as identified in Section 6.4.1 of this Agreement.

### **5.2 Substantive Amendments**

- 5.2.1 Amendments to any matters not identified under Section 5.1.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

## **PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **6.1 Registration**

- 6.1.1 A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

### **6.2 Subsequent Owners**

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

### **6.3 Commencement of Development**

- 6.3.1 In the event that development on the Lands has not commenced within 2 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law for Halifax Mainland.
- 6.3.2 For the purpose of this section, commencement of development shall mean an application for a Development Permit.
- 6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under 5.1.1 if the Municipality receives a written request from the Developer.

### **6.4 Completion of Development**

- 6.4.1 The Development must complete within 2 years of successful application for a Development Permit.

6.4.2 Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Halifax Municipal Planning Strategy and Land Use By-law for Halifax Mainland as may be amended from time to time.

6.4.3 For the purpose of this section, commencement of development shall mean successful application for an Occupancy Permit.

## **6.5 Discharge of Agreement**

6.5.1 If the Developer fails to complete the development, or phases of this development, after 2 years from the date of registration of this Agreement at the Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Halifax Municipal Planning Strategy and Land Use By-law for Halifax Mainland, as may be amended from time to time.

## **PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **7.1 Enforcement**

7.1.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

### **7.2 Failure to Comply**

7.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 90 days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or

- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.



**WITNESS WHEREAS** the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

**SIGNED, SEALED AND DELIVERED** in the presence of:

(INSERT REGISTERED OWNER NAME)

\_\_\_\_\_  
Witness

\_\_\_\_\_

**SIGNED, DELIVERED AND ATTESTED** to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

\_\_\_\_\_

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
MAYOR

Per: \_\_\_\_\_  
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, 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 \_\_\_\_\_, \_\_\_\_\_ of the parties thereto, signed, sealed and delivered the same in his/her presence.

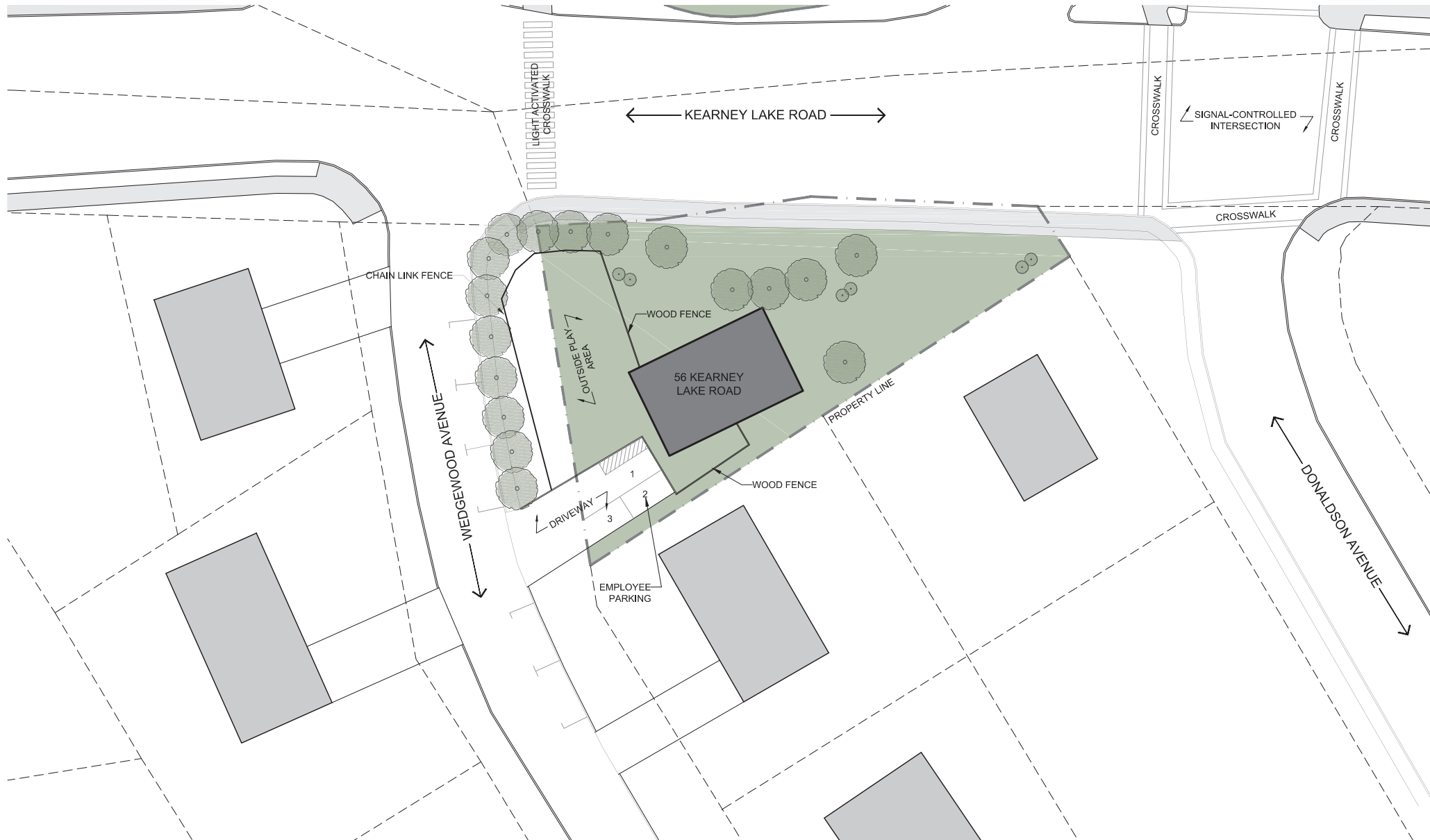
\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Kevin Arjoon, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

# Schedule B — Case 21795



56 KEARNEY LAKE ROAD

HALIFAX, NS

**SITE PLAN**

Project No.: 2018.01  
Scale: 1" = 30'-0"  
Date: 5 Feb 2019



WM FARES  
ARCHITECTS

**A01**

## Attachment B: Review of Relevant Halifax MPS Policies

<b>Halifax Municipal Planning Strategy – Section II: City Wide Objectives and Policies</b>		
<b>Policy #</b>	<b>Policy Statement</b>	<b>Staff Comments</b>
2.1	Residential development to accommodate future growth in the City should occur both on the Peninsula and on the Mainland, and should be related to the adequacy of existing or presently budgeted services.	The subject site is located in Halifax Mainland and in a neighbourhood already developed and fully serviced. The adequacy requirement is met.
2.2	The integrity of existing residential neighbourhoods shall be maintained by requiring that any new development which would differ in use or intensity of use from the present neighbourhood development pattern be related to the needs or characteristics of the neighbourhood and this shall be accomplished by Implementation Policies 3.1 and 3.2 as appropriate.	<p>The proposed use will decrease residential intensity and increase commercial intensity. Day care facilities are a special type of land use, part commercial (fee for service), part residential (children eat, sleep, and play as if in a domestic setting), and part educational (there is a curriculum for care and learning under the Provincial Department of Education license). The current day care facility has been in operation since 2005. The applicants demonstrate community need through an admission wait list. The neighbourhood possesses housing and schools ideal for families with dependant children. The current local schools are over-subscribed indicating high demand. Child care is regulated Provincially as part of the education system.</p> <p>Implementation Policy 3.1 was repealed 1990; Implementation Policy 3.2 does not apply.</p>
2.4.2	In residential neighbourhoods alternative specialized housing such as special care homes; commercial uses such as daycare centres and home occupations; municipal recreation facilities such as parks; and community facilities such as churches shall be permitted. Regulations may be established in the land use by-law to control the intensity of such uses to ensure	Day care facilities are commercial per this clause of the MPS (see policy 2.2 above).

	compatibility to surrounding residential neighbourhoods.	
2.5.1	The City views the neighbourhood as the foundation for detailed area planning. In the process of detailed area planning, residents shall be encouraged to determine what they consider to be their neighbourhoods, and to work with City Council and staff in arriving at an acceptable definition of their neighbourhood and a neighbourhood plan.	Community engagement was by way of webpage, postcard mailout, and a Public Information Meeting, held November 1, 2018 in conjunction with case 21389.
2.10	For low and medium density residential uses, controls for landscaping, parking and driveways shall ensure that the front yard is primarily landscaped. The space devoted to a driveway and parking space shall be regulated to ensure that vehicles do not encroach on sidewalks.	Implementation Policy 3.20 for child care centres (below) adds further clarification and is more applicable as implemented in a development agreement.
<b>Halifax Municipal Planning Strategy – Implementation Policies</b>		
3.20	3.20 In order to encourage the establishment of child care centres in a variety of locations to meet the varied needs of families, and to allow the consideration of the specific circumstances of an individual location, a child care centre which does not meet applicable land use bylaw regulations may be permitted by development agreement.	<p>The current building has been used as a child care facility for over 14 years. reflecting local demand</p> <p>The applicant has made a case for demand given the nearby school is oversubscribed necessitating portables, and a wait list is required for the current child care operations. This indicates the neighbourhood and broader community is made up of families with dependant children in part, and that child care services are a necessity for local families.</p>
3.20.1	In considering approval of such development agreements, Council shall consider the following:	
a.	for a child care centre located within a dwelling, alterations to the exterior of the building shall not be such that the building no longer appears to be residential in nature. This shall not prevent facilities for physically	Provision in the agreement have been made for allowing a child care centre in conjunction with a residential dwelling. The building form must continue to be residential in form, size, and siting, specified in the development agreement.

	challenged children, or playground equipment to be erected on the property.	A play area is required. Accessibility is allowed, and Provincial regulations may supersede.
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b.	the hours of operation shall be such that adverse impacts of noise and traffic movements on adjacent residential uses are reduced.	Child care centre is a type of commercial use and activity is concentrated during commuter peak traffic within the neighbourhood, feeding nearby arterials. Provisions have been made in agreement to define staff parking and seat aside enough stalls for parent pick-up and drop-off.
c.	parking shall be required on the site of the child care centre to accommodate the employees of the centre. Parking areas should, where necessary, be visually buffered from any adjacent residential uses by the use of fences, screening and/or landscaping as appropriate.	The amount of parking will be specified based on staffing levels. Temporary parking for drop-off and pick-up by parents has been described and may utilize limited on street parking and a majority on site parking. The site already possesses adequate buffering.
d.	site design features, including landscaping, outdoor play space, parking areas and driveways shall be designed, sized and located to provide for the needs of the users of the facility, as well as to address potential impacts on adjacent residential uses.	The existing driveway has been used for 14 years in child care operations and is deemed adequate to accommodate the volume of child care activity proposed. Outdoor play space will be fenced for safety and buffering.
e.	vehicular access to and egress from the child care centre and pedestrian movement shall be accommodated in a manner which encourages safety.	The site design shall incorporate a safe pedestrian path from the parking and drop off areas to the building.
f.	signs for the child care centre shall be of a size, design and placement on the lot which reduces impacts on adjacent residential uses.	The R-1 zone of the Halifax Mainland LUB addresses signage and shall apply.
g.	centres shall not be located so as to produce a concentration within a particular neighbourhood. In addition, only one centre with a licensed capacity of more than 14 children shall be permitted on any cul-de-sac.	Since the subject site is on the opposite side of a major arterial roadway from the sister application 21389, there is minimal connection between the two and therefore a concentration is deemed not applicable. The subject site is not located on a cul-de-sac.

h.	all other relevant policies of the municipal planning strategy with particular reference to the Residential Environments section.	See above.
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## Attachment C: Summary of Public Information Meeting

### HALIFAX REGIONAL MUNICIPALITY Public Information Meeting Case 21389 and 21795

*The following does not represent a verbatim record of the proceedings of this meeting.*

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Thursday, November 1, 2018  
7:00 p.m.  
St. Peter's Anglican Church Hall

#### STAFF IN

**ATTENDANCE:** Scott Low, Planner, HRM Planning and Development  
Alden Thurston, Planning Technician, HRM Planning and Development  
Cara McFarlane, Planning Controller, HRM Planning and Development

#### ALSO IN

**ATTENDANCE:** Councillor Russell Walker, District 10  
Councillor Richard Zurawski, District 12  
Cesar Saleh, WM Fares Architects  
Sonia, Jamil and Lyla Hage, Owners of Wedgewood's Little School

#### PUBLIC IN

**ATTENDANCE:** Approximately 20

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The meeting commenced at approximately 7:00 p.m.

#### 1. Call to order, purpose of meeting – Scott Low

**Mr. Low** is the Planner and Facilitator for the application and introduced the area Councillors, the applicant and staff members.

Case 21389 - Application by WM Fares Architects, on behalf of Wedgewood's Little School Ltd., requesting a development agreement to permit a child care centre in 2 buildings at 55 Kearney Lake Road and 4 Grosvenor Road, Halifax with a proposed 76 children under care.

Case 21795 - Application by WM Fares Architects, on behalf of Wedgewood's Little School Ltd., requesting a development agreement to permit a child care centre at 56 Kearney Lake Road, Halifax with a proposed 46 children under care.

The purpose of the Public Information Meeting (PIM) is to:

- Identify the proposal site and highlight the proposal;
- Give the applicant an opportunity to present the proposal; and
- Receive public feedback and input regarding the proposal that will be used to prepare the staff report and go forward with this application.

No decisions are made at the PIM or have been made up to this point.



## 2. Presentation of Proposal – Scott Low

**Mr. Low** provided a proposal fact sheet to the audience and gave a brief presentation of the proposal for the properties at 55 Kearney Lake and 4 Grosvenor Roads, Halifax (Case 21389 – District 10, Councillor Walker) and 56 Kearney Lake Road (Case 21795 – District 12, Councillor Zurawski) outlining the status of the application, the Applicant's request, site context of the subject lands, the relevant planning policies [2.4.2 (Residential Environments-Citywide), 3.20 / 3.20.1 (Implementation Policies)] within the Halifax Municipal Planning Strategy and existing zone [R-1 (Single Family Dwelling) Zone] within the Halifax Mainland Land Use By-law (LUB). The daycare was created before the current by-law came into effect and the Halifax Charter protects the business on the property from future changes of the LUB; therefore, the use is permitted to continue. If approved, the development agreement would essentially supersede the zone allowing the number of children to increase but control the intensity.

### **Presentation of Proposal – Cesar Saleh, Professional Engineer, WM Fares Architects**

**Mr. Saleh** presented the development agreement proposal for the subject properties to allow for child care centres at 55 Kearney Lake and 4 Grosvenor Roads (Case 21389) and 56 Kearney Lake Road (Case 21795) and outlined the site context and site plan (change to allow for vehicles to turn within the parking area but no external change, only internal, to the existing structures). The proposal is only for a change in the number of children which is also governed Provincially.

### **Presentation of Proposal – Sonia Hage, Owner (as well as Jamil Hage and Lyla Hage), Wedgewood's Little School**

**Ms. Hage** presented their background and experience as licensed daycare owners/operators. The daycare at these locations have always been at capacity; therefore, the owners would like to expand the current programs to accommodate toddlers and before/after school students.

## 3. Questions and Comments

**Irene Phinney, Wedgewood Avenue** is fine with the number of children currently at the daycare but is concerned about increased numbers of children at 56 Kearney Lake Road and people parking (including employees) on both sides of the street (is very narrow) to pick up / drop off children as it is so close to the corner. Parents turn around in neighbours' driveways and there are no sidewalks on Wedgewood Avenue. Navigating snow removal / plows and emergency vehicles is very difficult. Wedgewood Avenue and Kearney Lake Road are very busy and dangerous and not safe to take children across that crosswalk. Entering onto Kearney Lake Road by vehicle is also a real challenge.

**Jeff Lawley, Grosvenor Road** respects the business owners but echoes the concerns about safety and the parent drivers who drop off / pick up their children at the daycare. Glad that the driveway is going to be redone and have the vehicles not backing up into the street. Appreciates wanting to expand the business but safety of the children and the residents of the neighbourhood come first. Kearney Lake Road is very dangerous in the winter and will become more and more congested as the top of Larry Uteck Boulevard becomes more developed. **Mr. Low** reiterated that the policy states that safety is the first consideration. Currently, there are 60 children using these three sites and there is no structured use of the street parking. In that respect, the development agreement gives the opportunity to bring some structure even with an increase in intensity of use. **Mr. Lawley** wondered if it would be possible to down-size the proposal and if so, would it come back to a public forum? **Mr. Low** –The development agreement is a negotiation between the Municipality and the property owner(s) and it would depend on the viability of the proposal. The numbers will depend on pedestrian and traffic safety. Another public information session would

be held if there was a material and / or significant change to the proposal.

**Glenn Taylor, Wedgewood Avenue** [REDACTED] was pleased to see in the presentation that pedestrian and traffic safety is the major concern but doesn't feel it is the employees' parking that is the concern but the pick ups and drop offs by parents. Mr. Taylor strongly recommends, due to the amount of traffic, that there only be parking on one side of Wedgewood Avenue at least up past their property because it is so narrow and to consider either moving the community mailboxes that are located there or designate parking spots for that purpose. The parking and traffic between Wedgewood Avenue, Wilson Boulevard and Kearney Lake Road have to be considered. A fire hydrant located on the street also limits parking. **Mr. Low** – Traffic issues are being looked at more than anything else.

**Margaret Whalen, Donaldson Avenue** is concerned about the noise level and age group from the increased number of children as well as the hours of operation. There is another daycare going in further up the Kearney Lake Road which will intensify the amount of daycare available. **Mr. Low** – The Province is in the process of changing the Daycare Act to address demographic issues and considers these centres as partners in early childhood education.

**Al Jamieson, Wedgewood Avenue** does not want to discourage the development as they have had excellent relationship with the past owner(s) and no issues with the current owner(s). The traffic on Kearney Lake Road is unbearably busy and very dangerous. The curvature at Wedgewood Avenue needs some attention as it creates a real problem due to difficulty seeing vehicles on both sides of the road (a signal light or turn arrow would be helpful). Many people use an alternate route to avoid the danger. The proposal is in keeping with the intent of the previous owner of the daycare but the increase in pick ups / drop offs will create problems for parking alongside of Wedgewood Avenue. Mr. Jamieson is also concerned with the duration of construction. What would the timeframe be? **Mr. Low** – At least about three or four months until going before Halifax and West Community Council and maybe six months before the development agreement would be signed / registered.

**Sherry Walsh, Grosvenor Road** echoes many of the previous concerns. Currently, high density creates problems with courtesies when people drop off / pick up children as some are parking illegally but it will be worse with the increase in capacity. The traffic study that was done used research from 2012 and 2016 which stated that there would be no increase in development in the area that would impact the density of the number of vehicles. The statistics on number of vehicles was taken in July when schools are out and parents are home and does not truly represent the actual traffic flow in the area. The already high-density streets are narrow and is worse during the winter. Safety of the children and getting in and out of that very small street are issues of concern. Ms. Walsh does not see it being feasible in this high traffic area.

**Zack Swick, Grosvenor Road** has experience entering in and out of the driveway and echoes previous concerns. There is currently too much traffic along Grosvenor Road and safety is an issue with people stopping and getting out of their cars. Painted lines within the driveway will not improve that. As a parent, registering a child at a daycare of that size would be a concern. The intensity of these uses in the neighbourhood need to be considered when looking at the amounts of children being dropped off / picked up. Mr. Swick did not appreciate some of the false statements (no employee on-street parking) that were part of the original application; therefore, statements for the current application are questionable. Is there any outcome to this process that would negotiate physical changes in the driveways or buildings? **Mr. Low** – The building code may ask for some minor revisions most importantly being egress points (from the existing buildings) and the Province requires a certain amount of natural light which may lead to more windows. A larger driveway could be an outcome.

**Cameron Morrison, Donaldson Avenue** has no objection to the daycare; however, echoes the

previous concerns. Coming down Kearney Lake Road from the lake is a raceway and has a blind hill. A set of lights at the corner of Wedgewood Avenue and Kearney Lake Road would help tremendously. This request has been suggested repeatedly at many different public meetings held in the area.

**Vincente Bonilla, Donaldson Avenue** does not have an issue with the daycare but is concerned for the safety of their children when people turn in their driveway. This will be worse with the increased capacity. There has to be a set of lights and sidewalks. Could a School Zone sign be erected on Kearney Lake Road for the safety of the daycare children? **Mr. Low** – Signs are administered through a separate agency and not determined by Council. It will be brought to attention along with the safety issues.

**John Achenbach, Grosvenor Road** thanked the owners for notifying residents in the area of their intentions. Mr. Achenbach's concerns are mostly with traffic. The ability to park on the side of the street in a safe manner during the winter is very difficult and the snow plow leaves half of the street inaccessible. **Mr. Low** – Curbside snow inventory is considered when looking at curbside parking. HRM is potentially looking at tentatively creating loading zones in front of daycares here as a pilot project.

**Loretta Bennett, Grosvenor Road** – Grosvenor Road was once a dead-end street and Kearney Lake Road a country road. Presently, crossing the road is very unsafe. The amount of traffic that goes down Kearney Lake Road cannot be overstated. The traffic study is not recent and doesn't reflect the true traffic flow. **Mr. Low** – HRM Staff also audits the study and if necessary, it will be revised.

#### **4. Closing Comments – Scott Low**

**Mr. Low** thanked everyone for coming and expressing their comments.

#### **5. Adjournment**

The meeting adjourned at approximately 8:30 p.m.