




P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 10.2.1
North West Community Council
February 8, 2020

TO: Chair and Members of North West Community Council

SUBMITTED BY:  - Original Signed -

Steve Higgins, Manager, Current Planning

DATE: January 26, 2021

SUBJECT: **Case 22841: Appeal of Site Plan Approval – 20 Majesty Court, Hammonds Plains, PID 41165267**

ORIGIN

Appeal of the Development Officer's decision to approve a site plan approval.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) Charter; Part VIII, Planning and Development

- s. 247 (1) A development officer shall approve an application for site plan approval unless
 - a) the matters subject to site-plan approval do not meet the criteria set out in the land-use by-law; or
 - b) the applicant fails to enter into an undertaking to carry out the terms of the site plan.
- (2) Where a development officer approves or refuses to approve a site plan, the process and notification procedures and the rights of appeal are the same as those that apply when a development officer grants or refuses to grant a variance.
- (3) Notwithstanding subsection (2), the Council may require a larger notification distance for site-plan approvals in its land-use by-law if the municipal planning strategy so provides.
- (4) The Council, in hearing an appeal concerning a site-plan approval, may make any decision that the development officer could have made.

RECOMMENDATION

In accordance with Administrative Order One, the following motion shall be placed on the floor:

That the appeal be allowed.

Community Council approval of the appeal will result in refusal of the site plan approval.

Community Council denial of the appeal will result in approval of the site plan approval.

Staff recommend that North West Community Council deny the appeal.

BACKGROUND

A site plan approval application has been submitted to allow construction of a new commercial retail store 'Guy's Frenchys' at 20 Majesty Court in Hammonds Plains (Map 1). Building Permit No. 180657 has also been submitted in support of the project.

Site Details:

Zoning

The property is zoned C-5 (Hammonds Plains Commercial) under the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law (LUB). No development permit can be issued for any use permitted in the C-5 Zone prior to the Development Officer granting site plan approval. The relevant requirements of the LUB for site plan approval are included within Attachment A. The building's site plan and elevation plans are included within Attachments B and C.

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested site plan approval (Attachment D). Five property owners within the notification area have appealed the approval (Attachment E) and matter is now before North West Community Council for decision.

Process for Hearing an Appeal

Administrative Order Number One, the *Procedures of the Council Administrative Order* requires that Council, in hearing any appeal, must place a motion to "allow the appeal" on the floor, even if the motion is in opposition to the staff recommendation. The recommendation section of this report contains the required wording of the appeal motion as well as a staff recommendation.

For the reasons outlined in this report, staff recommend that Community Council deny the appeal and uphold the decision of the Development Officer to approve the request for site plan approval.

DISCUSSION

Development Officer's Assessment of the Site Plan Approval Request:

In hearing an appeal of site plan approval, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*.

The *Charter* sets out the following criteria by which the Development Officer shall approve an application for site plan approval:

"247 (1) A development officer shall approve an application for site plan approval unless
a) the matters subject to site-plan approval do not meet the criteria set out in the land-use by-law; or
b) the applicant fails to enter into an undertaking to carry out the terms of the site plan."

To be approved, any proposed site plan approval must not conflict with any of the requirements of the C-5 Zone of the LUB.

Section 17A.14 of the Beaver Bank, Hammonds Plains and Upper Sackville LUB details the requirements that must be met for a Development Officer to grant site plan approval (Attachment A). The requirements include criteria relating to landscaping, walkways, driveway access, bicycle storage facilities, parking areas and refuse screening.

It is the Development Officer's opinion that this proposal has met all of the criteria for site plan approval.

Appellant's Submission:

While the criteria of the *HRM Charter* limits Council to making any decision that the Development Officer could have made, the appellants have raised certain points in their letters of appeal (Attachment E) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Sample:

Appellant's Appeal Comments	Staff Response
<p>The main complaint is not the approval of the site plan, but rather the lack of planning to install a traffic light at the intersection of Majesty Court, Hammonds Plains Road, and Crestview Street.</p> <p>We are unanimously very concerned that adding another commercial property with a site plan that consists of nearly 100 parking stalls, and an entrance and exit both on Majesty Court without the plan to add a traffic light at the above-mentioned intersection, will have a significant impact on business and residential traffic coming and going from Majesty Court.</p>	<p>The applicant was asked to provide a Traffic Impact Statement (TIS) prepared by a professional engineer in support of the proposal. The TIS did not identify "any potential significant impacts to the existing transportation network" as a result of this development. The TIS was assessed by HRM's Traffic Management and Development Engineering divisions. It was determined that new vehicle trips created by the proposed development are not anticipated to require any upgrades to the existing transportation network.</p> <p>Staff note the minimum requirements for site plan approval and the grounds for appeal are set out in the HRM Charter and the LUB. The grounds for appeal of the site plan approval do not include provisions relative to the installation of traffic signals. Additionally, the appellants have indicated in their appeal submission that they have no objection to the issuance of the site plan approval but instead have utilized the appeal process to raise concerns about the potential traffic impacts at the intersection of Hammonds Plains Road and Majesty Court.</p> <p>Given the above referenced circumstances and noting that the minimum requirements for site plan approval have been satisfied, staff advise that the grounds for appeal are insufficient to overturn the Development Officer's decision to grant the site plan approval.</p>

Conclusion:

Staff have reviewed all the relevant information in this site plan approval proposal. As a result of that review, the site plan approval request was approved as it was determined that the proposal does not conflict with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this site plan approval request. The HRM cost associated with processing this application can be accommodated with the approved 2020/21 operating budget for Cost Centre C420, Land Development and Subdivision.

RISK CONSIDERATION

There are no significant risks associated with the recommendation contained within this report.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. Where a site plan approval is appealed, a hearing is held by Council to provide the opportunity for the applicant, appellants and anyone who can demonstrate that they are specifically affected by the matter, to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

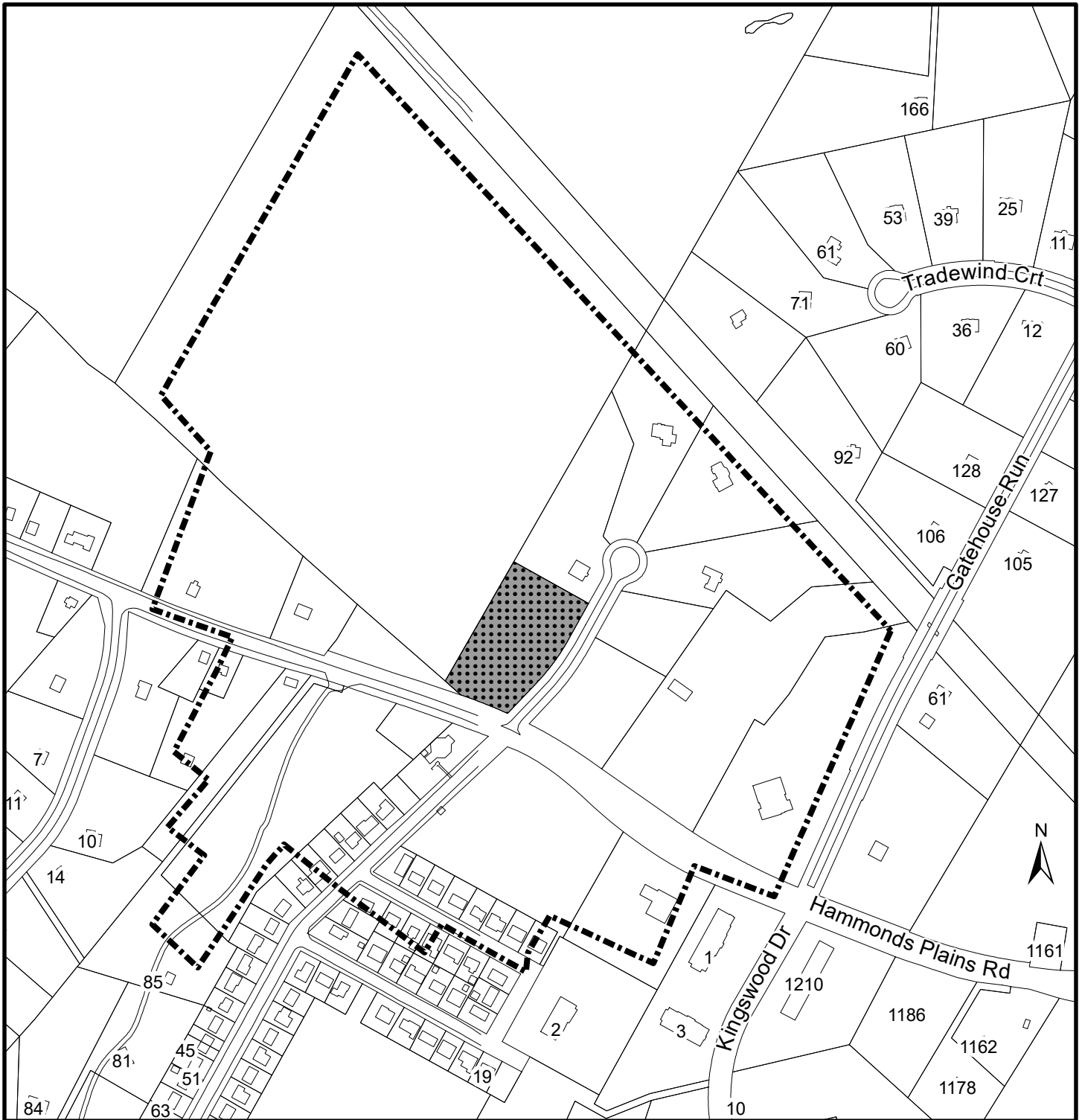
As noted throughout this report, Administrative Order One requires that Community Council consideration of this item must be in the context of a motion to allow the appeal. Council's options are limited to denial or approval of that motion.

1. Denial of the appeal motion would result in the issuance of the site plan approval. This would uphold the Development Officer's decision and this is staff's recommended alternative.
2. Approval of the appeal motion would result in the refusal of the site plan approval. This would overturn the decision of the Development Officer.

ATTACHMENTS


Map 1:	Location and Notification
Attachment A:	C-5 (Hammonds Plains Commercial) Zone of the Beaver Bank, Hammonds Plains and Upper Sackville Land Use Bylaw (LUB)
Attachment B:	Site Plan
Attachment C:	Building Elevations
Attachment D:	Letter of Approval to Applicant
Attachment E:	Letters of Appeal

Report Prepared by: Rachael Groat, Planner I, 902.719.9604
Andrew Faulkner, Development Officer, 902.476.2982



Map 1 - Location and Notification

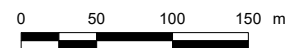
20 Majesty Crt,
Hammonds Plains

 Subject Properties

 Notification Area

Beaver Bank, Hammonds Plains
and Upper Sackville Plan Area

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

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

Attachment A- Site Plan Approval Requirements of the C-5 Zone

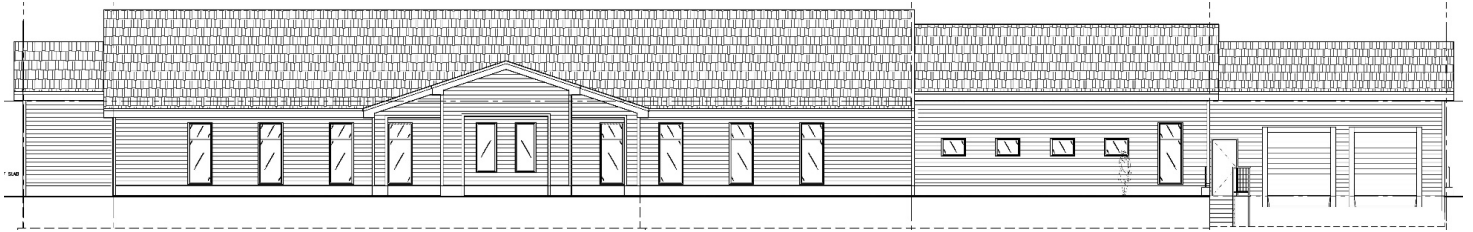
17A.14 OTHER REQUIREMENTS: SITE PLAN APPROVAL

- (a) No development permit shall be issued for any use permitted in the C-5 (Hammonds Plains Commercial) Zone, prior to the Development Officer granting Site Plan Approval. Applications for Site Plan Approval shall be in the form specified in Appendix D. All applications for Site Plan Approval shall be accompanied by a site plan properly drawn to scale and of sufficient detail to address all of matters identified in this Section.
- (b) Notwithstanding the Site Plan Approval notification distance required by the Halifax Regional Municipality Charter, the Development Officer shall give notice in writing of an approved site plan, or the appealed refusal of a site plan, to every assessed owner whose property is within the greater of 200 m (656.2 ft) of the applicant's property.
- (c) Where Site Plan Approval provisions conflict with Part 4 and Part 5, the Site Plan Approval provisions shall prevail.
- (d) The Development Officer shall approve a Site Plan where the following matters have been addressed:
 - (i) landscaping required by the C-5 Zone includes the retention of existing natural vegetation, where feasible;
 - (ii) designated walkways, sidewalks, and other pedestrian connections incorporate a change in colour, texture, or material;
 - (iii) sidewalks are incorporated along the entire front facade of a commercial use building which contains three or more commercial occupancy spaces;
 - (iv) landscape elements such as but not limited to small shrubs, trees, benches, lighting, and planters are provided along the entire front facade of a commercial use building which contains three or more commercial occupancy spaces;
 - (v) designated walkways extend from building entrances to a public street and to any public park or trail system abutting the property, and unless otherwise not possible, do not cross any driveways or parking areas;
 - (vi) a storm water management plan is prepared by a Professional Engineer, which includes consideration of both upstream and downstream properties;
 - (vii) driveway access is located and designed to minimize impacts on adjacent properties;
 - (viii) required non-residential bicycle storage facilities are provided near the main entrances to buildings;
 - (ix) within any required side or rear yard, existing vegetation be retained unless it does not provide for adequate screening from abutting properties or where the existing vegetation conflicts with required parking and loading areas;
 - (x) where parking areas are located within any required side or rear yard abutting a residentially used or zoned property, screening is provided;
 - (xi) loading facilities are only located at the rear or side of the building and screened from any abutting residentially used or zoned property;
 - (xii) all refuse is screened from abutting properties and public streets;
 - (xiii) the Site Plan includes a lighting plan prepared by a lighting specialist, which identifies measures to ensure outdoor lighting is positioned and directed away from adjacent properties;
 - (xiv) a qualified professional has identified how all applicable landscaping requirements will be satisfied;
 - (xv) an active transportation corridor connecting the Uplands Park subdivision and Kingswood Drive that is designed to a standard acceptable by the Municipality, including a travel surface within the corridor that is clearly marked with a paved treatment such as concrete, asphalt, or interlocking brick. The corridor only applies to PID 41185539, but may be incorporated into PID 00422493, and may require the use of fencing or vegetation to clearly identify the corridor and assist in directing

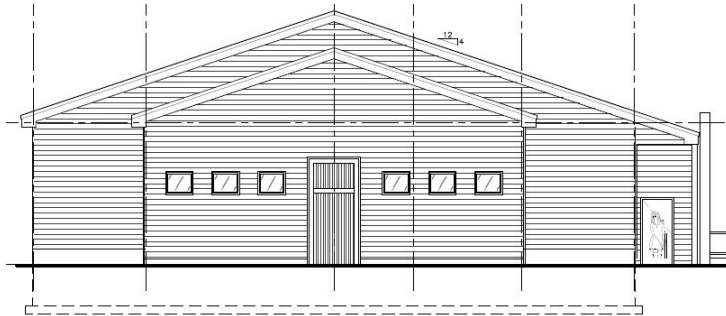
movement. Where the corridor is required, a public access easement in favour of the Municipality shall be established. The minimum width of the public access easement shall be six (6) m (19.7 ft). In the event the corridor is unable to connect to Municipal land, or to a public access easement in favour of the Municipality, development on PID 41185539 shall be designed to facilitate a potential corridor from PID 41185539, across the northern portion of PID 00420927 to Municipal land;

- (xvi) Residential units are connected, where applicable, to commercial buildings on the same lot, public parkland and open space, pedestrian trails and walkways, parking lots, the public right of way, and the intersection of Hammonds Plains Road and Gatehouse Run/Kingswood Drive. Pedestrian connections may be a combination of on-site crosswalks, walkways and sidewalks, or other forms acceptable by the Municipality;
- (xvii) queuing areas for accessory drive-up windows are not located between a building and the public street, and where visible from the public street, screening is provided. Queuing areas are clearly delineated and well-integrated into the site, while all features associated with the drive-up window, including exit areas from the queue and the callbox, are located and designed to minimize impacts with driveway accesses; and
- (xviii) all matters required by site plan approval shall be maintained.

Attachment C- Building Elevations



Proposed Majesty Court Building Elevation



Proposed Hammonds Plains Road Building Elevation

Attachment D- Letter of Approval to Applicant

September 4, 2020

Matt Canning
[REDACTED]

Re: Site Plan Approval Application (#22841) - 20 Majesty Crt. Hammonds Plains, PID 41165267

As the Development Officer for the Halifax Regional Municipality, I have approved your request for site plan approval under Part 17A.14 of the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-Law as follows:

Location: 20 Majesty Crt. Hammonds Plains, NS (PID 41165267)

Project proposal: Commercial Retail Building

Pursuant to Section 247 of the Halifax Regional Municipal Charter, assessed property owners within 200 meters of the property have been notified of this application. Those property owners have the right to appeal and must file their notice, in writing, to the Clerk's Officer on or before **September 21, 2020**.

PERMITS WILL NOT BE ISSUED UNTIL ANY APPEAL HAS BEEN DISPOSED OF OR THE APPEAL PERIOD HAS EXPIRED.

You will be notified once the appeal period has expired as to whether any appeals have been filed. Should no appeals be filed, a development permit shall be issued.

If you have any questions or require clarification of any of the above, please call Rachael Groat at 902-719-9604.

Sincerely,

[REDACTED]
Andrew Faulkner, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Sherryll Murphy - Acting Municipal Clerk
Councillor Matt Whitman

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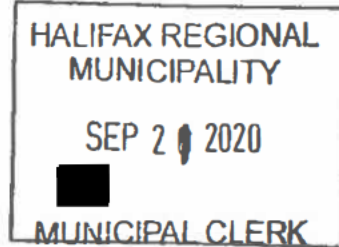
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halifax.ca

Attachment E- Letters of Appeal



PEAK ENERGY
CHIROPRACTIC



Peak Energy Chiropractic

50 Majesty Court
Hammonds Plains, NS B4B 0A7

Phone (902) 446-8100

Fax (902) 446-8099

Email peakenergychiro@eastlink.ca

September 14th, 2020

Dr. Lorna Deveau D.C
Peak Energy Chiropractic
50 Majesty Court
Hammonds Plains, N.S B4B 0A7

Mr. Andrew Faulkner
Municipal Clerk
Halifax Regional Municipality
P.O Box 1749, Halifax, N.S. B3J 3A5

Re: Site Plan Approval Application (#22841) – 20 Majesty Crt, Hammonds Plains, N.S. PID 41165267

Dear Mr. Faulkner,

I am writing to you on behalf of the landowners of Majesty court, Hammonds Plains, N.S. in regards to the site plan that you have approved for 20 Majesty Court, Hammonds Plains, N.S.

We were informed by Rachael Groat, that there have been numerous calls to complain about the proposed site plan. In my discussion with her I explained to her that the main complaint by the landowners was not so much the approval of the site plan, but rather the lack of planning to install a traffic light at the intersection of Majesty court, Hammonds Plains road, and Crestview Street on behalf of Halifax Regional Municipality.

You may or may not be aware, but this street is quite a busy. My professional office, Peak Energy Chiropractic, has been operating out of 50 Majesty Court for almost 14 years. The clinic employs 13 people and on average, sees close to 500 clients visits on a weekly basis. The ability to make a left turn on to Hammonds Plains Road from Majesty court can sometimes take up to 10 minutes depending on the time of day (it has been timed on numerous occasions). It is inconvenient enough that most clients will avoid booking appointments during busy times. Most of the time, landowners and clients will choose to make a right turn on to Hammonds Plains Road, and turn left on St George's Blvd only to turn around and come back, rather than wait. It has

been brought to my attention on numerous occasions that clients fear that while waiting to making a left turn on to Majesty court from Hammonds Plains Road, coming from the direction of Tantallon that they will get rear ended as they are stopped waiting in traffic to turn left while traffic comes up behind them over a blind crest.

Donnie Vincent, also a landowner of Majesty Court, owns and operates a trucking company from his property. This is well within zoning for his property. However, with transfer trailers coming and going it can also be very difficult for his employees to turn on to and off of Hammonds Plains Road.

We are unanimously very concerned that adding a another ommercial property with a site plan that consists of nearly 100 parking stalls, and an entrance and exit both on Majesty court without the plan to add a traffic light at the above-mentioned intersection, will have a significant impact on business and residential traffic coming and going from Majesty Court. We also feel that it significantly increases the risk of motor vehicle accidents and collisions on a road that is already ridden with incidents.

It is not our primary wish to appeal the site plan, but rather to inquire and/or appeal the lack of planning by Halifax Regional Municipality to install a traffic light at this intersection. However, it was brought to our attention that we must appeal the site plan and that we cannot appeal the lack of planning to install a traffic light at this intersection. We hope that this will be brought up to traffic services for further investigation. Therefore, this is a formal appeal on the site plan approval for 20 Majesty Court, Hammonds Plains, N.S. We are hopeful that this issue can be resolved by adding a traffic light at this intersection so that businesses and residents can reside and operate safely in this region.

Sincerely,

The landowners of Majesty Court

Randy and Tanya Deveau,

Donnie Vincent

Lorna Deveau

Jeff and Krista Didychuk



The Estate of Raymond Deveau

