

Councillor Wiseman said she was equally in a quandry. She said in the Sackville area, in all their zoning, every parcel of land and the ownership and existing use of the land was taken into consideration. She has supported Waverley in their efforts to avoid another quarry, but cannot support a complete change in zoning that will cause excess harm to those individuals who own land. She will support the Waverley zoning to the extent that it would exclude what has been previously zoned I-1, but cannot support the change without any representation to the individuals who own the land.

Councillor Poirier expressed concern about what has been happening with the re-zoning. She felt Council has to be very careful how they proceed - they might be open to legal action. Metro Aggregates purchased land with a particular zoning, and put money in it. They have something to lose. She felt the application of the Ratepayers has gone ahead of the MDP process. A great deal of money has been spent for planning by the Municipality, but the people of Waverley are doing their own planning. She felt Council must be very careful what they do with people's property.

Councillor Snow pointed out that the MDP process takes two years to complete. He felt anybody with a concern had plenty of opportunity to express it when maps were up and advertising done in the Waverley process. There were public hearings, open invitations. He does not believe the people who own the land were not properly informed.

Councillor MacKay said his community had overlooked some properties in the MDP process, though they thought they were very careful. He felt the biggest question is the crusher, and if it was to go ahead it would best be controlled through planning unit development.

He believes in the proper agencies to control environmental problems. He felt some of the comments by Councillors McInroy, Wiseman and Poirier raise valid questions and therefore -

It was moved by Councillor MacKay, seconded by Councillor MacDonald:

"THAT the motion be amended to exclude the land of Municipal Spraying/Rocky Lake Quarry, CIL, Tidewater Construction/Metro Aggregates, City of Dartmouth, Watershed area."

Councillor Lichter said he would support the amendment. With regard to Metro Aggregates, Council has no control over whether they will get the Regional Development permit, but if they do receive it they have every right to go ahead with their proposal. In addition all of the owners of lands in the region have rights and he feels Council has an obligation to protect those rights.

He said he was disturbed during the meeting to hear laughter during a statement that individuals have the right during the MDP process to demand that their lands be considered properly.

Councillor Mont found himself in agreement with the amendment. He was concerned that there may be other property owners who should be added. Mrs. Cartledge named the property owners as follows:

CIL

Metro Aggregates/Tidewater Construction

Piercey Investments

Jesuit Fathers of Upper Canada

Municipal Spraying and Contracting

Fundy Construction

The Crown

Estate of Samuel Chittick

Eric Whebby

City of Dartmouth

Land on which they can find no record of ownership

Councillor Wiseman asked if property owners were notified by Registered Mail. Mrs. Cartledge said this was not done because there is no obligation to notify property owners for an amendment to zoning by-laws. Whatever the Ratepayers Association did, is what was done.

General concern was expressed that land owners might not be aware of the re-zoning application.

Following a motion to amend the amendment to exclude all the listed names by Councillor Mont and Wiseman, it was agreed that all of the names be included in the original amendment.

Councillor Poirier was very concerned about such a blanket re-zoning and concerned also that there may be inadvertent omissions. Councillor Larsen reminded Council that CIL have made representations that they want I-P on 1400 feet of land on either side of Highway 2 and the rest of their land they want zoned Commercial. And now they are being excluded. He was concerned about this, and about the procedure in notifying the public about re-zoning application.

Councillor Margeson suggested the Municipal Solicitor could reword the motion to satisfy some of the concerns of the Councillors. Mr. Cragg suggested a revised amendment to the motion as follows -

Deleted from the motion will be all C-1 zoning on the southeast side of Rocky Lake Drive as shown on the proposed zoning map colored in yellow, together with the other lands of CIL on the other side of the highway, together with the lands of the City of Dartmouth shown on the proposed zoning map as MR and shaded in green together with the lands located outside the Lake Major watershed boundary and shown on the proposed zoning map shaded in green and pink.

Councillors MacKay and MacDonald agreed to the rewording of their amendment to the motion. Motion Carried.

The motion as amended was presented to the Council.
Motion Carried.

Adjournment

Upon motion by Councillors DeRoche and Baker, the meeting adjourned at 10:10 p.m.

DECEMBER 12, 1983

PUBLIC HEARING

Present Were: Councillor Poirier
Councillor Larsen
Deputy Warden Adams, Chairman
Councillor Gaudet
Councillor Baker
Councillor Deveaux
Councillor DeRoche
Councillor Gaetz
Councillor Bayers
Councillor Reid
Councillor Lichter
Councillor MacKay
Councillor McInroy
Councillor Eisenhauer
Councillor MacDonald
Councillor Wiseman
Councillor Mont

Secretary: Christine E. Simmons

Deputy Warden called the meeting to order at 7:05 p.m. with The Lord's Prayer and Roll Call.

APPOINTMENT OF RECORDING SECRETARY

It was moved by Councillor Poirier, seconded by Councillor Bayers:

"THAT Christine E. Simmons be appointed Recording Secretary."
Motion Carried.

PUBLIC HEARINGS

Deputy Warden Adams advised that there were two public hearings scheduled tonight. The first one deals with application # RA-24-35-83 which represents a proposed amendment to Zoning By-Law #24 for the purpose of adding a R-5 (Rural Residential Zone).

He further advised for the benefit of people in the gallery the Public Hearing will be conducted as follows: Anyone wishing to speak must come to the microphone in front of the podium and each person will be asked to give his or her name and address. People in favour of the application will be called on first to provide their opinion briefly and concisely and then people opposed to the application will be asked to come forward and provide their opinion in the same manner. Each person will be allowed to speak only once on each application and following County Council hearing all opinions in favour of and opposed to the application, as well as all written submissions, they will try to reach a decision which is fair and impartial.

Deputy Warden called on Mrs. Dorothy Cartledge to outline the first application.

Mrs. Cartledge thanked the Deputy Warden and advised that the first thing we will be doing is conducting a public hearing to determine whether or not we are going to adopt the new R-5 (Rural Residential) Zone for Zoning By-Law # 24. She pointed out this is a staff initiated application as a result of an application by some residents of Glen Margaret, specifically the Moser's Island area, to have some restrictive residential zoning placed in the area to protect their property values against incompatible land uses.

After negotiating with the residents who originally requested R-1 zoning and after having conducted site investigations in the area and determining that there were a number of uses that were not suitable to the R-1 zone, negotiations were carried out with the residents and staff developed the Rural Residential Zone. Even though this zone was initiated by this application in particular, the zone itself is an addition to Zoning By-Law # 24 and as such can be applied to other areas of the County. She stated that the important things to think about when looking at the permitted uses in the zone as well as the requirements of the zone is that the zone is not just for this area but it is a zone that we hope will be useful in other areas of the County as well.

One of the first amendments to the By-Law to be considered is a change in the name of the Board as it appears in the By-Law and that is to have the Board now named the Planning Advisory Committee which is in fact the Committee that deals with planning issues.

Following that is the R-5 Zone and permitted uses in that zone which would include all R-1 and R-2 zone uses. This means single family dwellings, two family dwellings and such uses as churches and recreational uses. With respect to existing mobile homes, one of the things we have had difficulties with in the past with just our R-1 zone is that the R-1 zone excluded mobile homes which meant that in some cases we had to put two zones on properties on which trailers were located, so in an effort to solve that problem we have added existing mobile homes to this zone. This means that existing mobile homes are permitted uses and can stay and can be replaced as well.

The next use would be existing commercial uses in conjunction with permitted dwellings. This is done in an aim to not make non-conforming uses of businesses that are existing at the time of the zone coming into effect. In a strictly R-1 zone business uses are not permitted and those businesses that are in existence when the zone is applied become non-conforming and cannot expand or if destroyed, cannot be rebuilt. Since that places hardship on people and in an effort to solve that problem, existing commercial uses were permitted in conjunction with permitted dwellings. Your house can be used as the base for the operation, your office or whatever, and you would also be permitted to have out buildings from which you operate your business but those are existing commercial uses which means that no additional

commercial uses would be permitted. If they were requested you would have to go through a rezoning to a commercial zone.

Zone requirements are pretty much the same as they are for other zones, including the R-1 zone. The lot sizes, frontage on services which is central sewer and water services--60 feet and on on-site services which would be septic tanks and drain fields and wells--75 feet, lot area 6,000 sq. ft. where you have services and 20,000 sq. ft. minimum where you don't. The set back from streets (front yard)--30 feet for buildings, rear and sideyards--8 feet, carports and garages--4 feet. The coverage of the lot permitted is 35 percent, minimum floor area--900 sq. ft. and distance between buildings such as sheds, garages, houses--12 feet.

A section has been added that deals with commercial uses that were previously shown here tonight. Those commercial uses that are in existence are allowed to stay and in addition a section has been written in that will permit them to be reconstructed and "expansion to or the reconstruction of buildings and structures used for commercial purposes in existence on the effective date of this by-law shall be permitted but no such expansion or reconstruction shall result in an increase of more than 10 percent in the building or structure's gross floor area." That means, if for some reason the use is destroyed it would be possible to not only rebuild it but to expand it by 10 percent and 10 percent is the maximum. The rest is pretty much the same as in all the other zones--the R-1 or R-2 zones. Buildings on a corner lot have to be set back from the corner of the street 30 feet unless the Planning Advisory Committee deems that one of those set backs can be reduced. Buildings located on a street that have an established building lot have to generally conform to that building line.

Another provision that also exists in the other R-1 and R-2 zones is a provision for remodeling large buildings that may be considered to be obsolete, unsuitable or unmarketable for single or two family dwelling purposes in which case the Planning Advisory Committee, after holding a Public Hearing if it chooses, permits that building to be used for more than a single or two family dwelling and makes provision for allowing boarders and lodgers. This again is standard to the R-1 and the R-2 zones.

Deputy Warden then called for questions from Council.

Councillor Larsen raised a question on the 10 percent restriction asking if that was in the by-law or if it were something new.

Mrs. Cartledge advised that if we had not put that in we felt that it might be a bit restricted for existing businesses that we were not making non-conforming, therefore we felt that we should make some provision for them being able to expand slightly. Before they had to rezone, now if they want to rezone to a greater extent than 10 percent then it is felt they should go through a rezoning process to obtain a zone that would be more appropriate to the use they are conducting on the property.

Councillor Larsen suggested that by going for a rezoning application for example to commercial then they would be allowed to expand further and that is all that is intended. He stated that he still had some problems with the R-5 and does not see why we need to have that restriction in place.

Mrs. Cartledge responded that it was felt that a 10 percent increase is not very much which means that if there is an intrusion by that existing commercial use, the 10 percent is not that much more so that it therefore probably would not impact the surrounding properties much more than the business had in the first place.

Councillor Larsen asked if we did not have in place enough controls through the sideyard, rear yard and various other criteria and lot coverage parameters.

Mrs. Cartledge replied that in a rural area where you have mostly the 20,000 square foot lots, 35 percent lot coverage would provide you with a really large building so that might never really apply. That really would not keep the business controlled and that is why we put the 10 percent restriction in. They probably would never get to the point where they would be having 35 percent lot coverage which might be applicable in serviced areas.

Councillor Poirier asked if new commercials would be allowed at all.

Mrs. Cartledge replied that they would not be allowed at all in this new zone. They would be required to apply for rezoning as you are now required in the R-1 and R-2 zones that we have in By-Law # 24. They do not permit any businesses other than day care centres right now. If you are in an R-1 or R-2 zone you have to apply to rezone to a commercial zone if you want to conduct a new business on your property.

Councillor Poirier referred to the Cork and Pickle and the things that make that part of the country so beautiful and adds so much to it. These were able to happen and the people took the inspiration to do this. If people put up something that doesn't work well, it doesn't last anyway. She expressed concern with having people inhibited as it disturbs her greatly.

Councillor Poirier pointed out that the 10 percent stipulation bothered her very much.

Mrs. Cartledge advised that when this zone was developed problems were experienced. A group of residents were looking for protective zoning on a specific area which is Moser's Island and there are uses in the area such as trailers and an art gallery and an autobody repair shop. Those uses are not uses that are normally permitted in an R-1 zone which is what the residents asked for in the first place. In effort to accommodate existing businesses and also to accommodate the residents' request for protection against businesses from just popping up, it was necessary to write it this way and permit existing businesses to stay and expand by 10 percent. It is a compromise for the best of both worlds. Where the R-5 zone is applied is generally a residential

area. There are not that many land uses that are not residential.

Councillor Poirier questioned if Mrs. Cartledge was talking only about Moser's Island as there are four or five R-5's on the plan.

Mrs. Cartledge pointed out the area which the R-5 would apply and stated that it does not involve the Cork and Pickle as it stops at the boundary of Nortel Electronics property and it stops at Moser's Island Road and the location was pointed out on the map displayed. She pointed out the part of the main highway that will be zoned R-5. The only things that exist that are not single family dwellings to the best of the Planning Department's knowledge would be the Church, which is a permitted use in a residential zone and the gallery (art) which we have made provision under the existing business section.

In response to further questioning by Councillor Poirier, Mrs. Cartledge advised that the 10 percent only applies to the R-5 zone.

Councillor Poirier asked if this zoning would apply to other parts of the County.

Mrs. Cartledge responded that the R-5 zone will be added to by-law # 24 and after tonight possibly the only place that zone will exist will be in the area discussed tonight. The zone will be in the by-law for any future residents' groups to choose if they would like to. Right now the only option they have when they are looking for protective zoning is the R-2 zone or the R-1 zone.

R-5 will be a new zone added to the by-law that can be applied to an area if desired. This zone is not being forcibly applied anywhere else.

Councillor Poirier thanked Mrs. Cartledge for the clarification.

Councillor MacKay raised a question with respect to the permitted uses and asked why existing commercial uses in conjunction with permitted dwellings was singled out. Why not existing commercial uses whether they are in an existing dwelling or if they are a separate standing building by itself.

Mrs. Cartledge responded that existing commercial uses in conjunction with commercial dwellings were permitted dwellings because in rural areas generally having a business on your property, in your garage, backyard or whatever is fairly common. We allowed for the use of an office in a house, a telephone or whatever as well as using a building out back for commercial purposes. This would not cover businesses that exist independently on their own properties. If we were to apply this zone to a large area that did include a business on its own property we would either recommend that it be excluded from the application or we would recommend the appropriate zone be applied to it.

Councillor MacKay went on to say that if that were the case and if an R-5 zone is applied to an existing business in a separate structure, he would assume, and Mr. Cragg could respond to this, by definition of

existing commercial uses and in conjunction with permitted dwellings you are legalizing them but they are legal anyway under non-conforming. It is just a matter of designating or singling them out and having them identified. You are almost singling them out and saying it's okay to carry on that business as long as it is in a dwelling but if it is not in a dwelling and is a separate structure then you can not.

Mrs. Cartledge replied that it can go in a separate structure as long as it is on the same lot as an existing dwelling.

Councillor MacKay asked what if it is not on a separate lot and what if somebody in the community has a separate lot and their business is on it and somebody comes along and blanket zones an R-5 zone on it, that means that person does not have a legal business.

Mrs. Cartledge explained that means that person would be non-conforming and the businesses we have been referring to previously, the ones that are existing on lots that have houses, are not going to be non-conforming because they are permitted by this zone. They are further permitted to expand by 10 percent. If you had an independent business on its own property without a house with it, then that business would become non-conforming and would enjoy the permitted features of the Planning Act for non-conforming uses.

Councillor MacKay explained that the only difference is when you come down to reconstruction you can build 100 percent back and under the existing non-conforming use you can only go 50 and under the new proposed Provincial Planning Act you can only go 75. He asked what about an existing business other than in a permitted dwelling and if it burns what happens.

Mrs. Cartledge responded that then it is considered a nonconforming use as per the Planning Act and if it is destroyed by more than its assessed value then it cannot be rebuilt.

Councillor MacKay stated that is where he makes the point that it is discriminating on a legitimate, wholly contained business in a separate structure because this person is not permitted the same latitude as a person in a permitted dwelling.

Mrs. Cartledge advised that was done intentionally because this is a rural residential zone and the important word is "residential" and it is a zone that can be used to protect residential areas. Similar to the R-1 or R-2 zone but just a little less restrictive than the R-1 or the R-2 zone. We would not recommend applying it to full fledged businesses that exist. We would recommend the appropriate zoning category of commercial or we would recommend that it be deleted from an application if we felt that being non-conforming was going to cause undue hardship on an existing business.

Councillor MacKay stated that he assumed that sites specifically will be designated when we deal with the subsequent application.

Mrs. Cartledge confirmed this.

Councillor MacKay questioned further on remodelling of the existing residential dwellings. He pointed out that it states "if prior to granting that such an approval any of the nearby property owners indicating in writing to the Building Inspector that they are opposed to the proposed remodelling" and he asked what radius this referred to and how are they notified that there is an application.

Mrs. Cartledge advised that is a section that comes straight out of the existing R-1 and R-2 zones in By-Law #24 and is there already. She wasn't aware if we have ever used it or of any application ever having gone before the Committee to consider such a use. She suggested that perhaps Mr. Cragg could give us some direction on nearby property owners. We try to keep this zone consistent with the format of zoning By-Law # 24 which granted does have problems and that kind of section may or may not be continued in a more up-to-date Zoning By-Law but we try to keep the format that the existing zones had and we did not try to change them. The MR zone that was passed a couple of months ago was the same.

Councillor MacKay expressed some difficulties with not taking some of the inconsistencies out of our old by-law as we are now incorporating them into our new ones.

He referred to boarders and lodgers and asked for interpretation on this. He stated that under the Provincial Tourism Department they promote what they term "Bed and Breakfast" and if somebody takes someone in overnight and feeds them breakfast the next morning under the tourism program is that considered to be a lodger.

Mrs. Cartledge checked the by-law for definition and discovered it does not specifically address that but it does provide a definition for boarding house which means "a private dwelling in which three but not more than six rooms are offered for rent and tabled for or furnished only to roomers and to which no transients are accommodated."

She further stated that she would imagine that the "Bed and Breakfast" establishments would be comparable to a boarding house in that you probably could not have anymore than three at any one time. To the best of her knowledge there are none of these in the area that will be covered by R-5 zone.

SPEAKERS

MRS. HILDA ALLEN, Moser Island Road, Glen Margaret

Mrs. Allen advised that her short submission is basically for their own public hearing but there is a point which needs to be raised during this hearing.

After addressing those present, she stated that she had with her this evening a number of residents from Glen Margaret and Hacketts Cove,

more specifically, Moser's Island and the immediate surrounding area. All are property owners and are the same people who signed the petition submitted to the Halifax County Planning Department in August, 1983, requesting that their small area be zoned residential in order to protect properties from the future development of anything which would not be compatible with the existing residential nature of the area. Glen Margaret borders on the local fishing communities but is essentially residential and most of the residents either work in the City of Halifax, have local enterprises or are retired. There are no full time fishermen operating out of Glen Margaret.

Following this request for residential zoning a recommendation was received from the County Planning Department with a request to consider a new R-5 Rural Residential zone for this area. After appearing before the Planning Advisory Committee for discussion of the matter, it was agreed at that time to accept the R-5 designation referred to as Appendix C which appears to best suit the needs of the Residential area allowing any commercial uses presently in existence to continue with limited expansion thus eliminating any hardship to these residents.

With reference to Appendix C, Mrs. Allen advised their solicitor was present and wished to raise a couple of legal points with respect to the wording. She stated it would be appreciated if Council would provide time to consider his suggestions. She went on to say the one exception in the zoning package would be a lot of land on Moser's Island for which a building permit was granted for the construction of a fish plant. The residents in the immediate area felt a fish plant would not be compatible with existing land use and in order to protect the interest of property owners, appeals were launched a year ago to the County Building Board and the N. S. Municipal Building Board. Action also has been taken to commence proceedings in the Supreme Court of N. S. These proceedings are not yet complete. This was mentioned only to indicate the sincere wish to the area residents to protect their residential community.

Mrs. Allen stated she had personally attempted for days to reach Miss Karen Westhaver, the owner of the aforementioned lot, by telephone and on two occasions she and Miss Carol Mosher visited her home in Peggy's Cove but with no avail. Before contact was made with her, Miss Westhaver attended a meeting of the Planning Advisory Committee on the day that the residents' application was presented to that committee and at which time the group was not present, therefore no further contact was attempted.

Mrs. Allen stated she did not wish to impose further on Council's time and thanked them for the opportunity to have input into the planning process for their area. She urged Council to consider the wishes of all who signed the petition, some of whom are present and are prepared to give their points of view or answer any questions. She stated these are the property owners whose interests are affected and since it is their wish to have a residential zone established, it is hoped Council will be able to comply with this request.

Mrs. Allen then thanked Council for having afforded her the opportunity to present her views.

Deputy Warden Adams thanked Mrs. Allen and asked if members of Council had any questions.

As there were no questions, Deputy Warden called for any others wishing to speak in favour of adding R-5 Rural Residential Zone.

FRED CROOKS

Mr. Crooks advised he was present on behalf of certain residents of the Glen Margaret area, specifically the Moser's Island area. He advised his comments would be very brief. He referred members of Council to the commercial uses portion of the proposed amendment to the By-Law and in particular, referred to the word "existing" and also on page 2 of the proposal, subsection 3, to the words in the second line "in existence on the effective date of this by-law". To the extent the intention of Council in connection with this proposed amendment would be to ensure buildings, structures or uses actually undertaken and currently in existence are protected, it is respectfully suggested the words "physically existing" or "existing and in actual use" would better implement the intention of Council in that regard. He felt there appeared to be the possibility of some ambiguity about the word "existing" to the extent it appears alone as to the uses and the structures which would be permitted under that text.

He stated those were his comments and advised he and the residents do commend an amendment to the language along those lines to the Council.

Deputy Warden asked if there were any questions for Mr. Crooks.

Councillor Lichter raised the point of when Mr. Crooks was recommending a change to the wording from "existing" to "physically existing" and so on, and asked if he was suggesting something that has been granted in the form of permits, for example, would not be in existence, in the interpretation of Mr. Crooks' wording.

Mr. Crooks advised this was right.

Councillor Lichter stated, in other words, a child is not in existence even though a child was conceived but was not born yet.

Mr. Crooks advised the rationale for the proposed change is to ensure those uses which are in existence of a commercial nature be protected in their continued usage for that purpose and the only point to be suggested is to the extent of the word "existing" leaves that purpose in ambiguity "physically existing" or "existing and in actual use" would better serve the purpose of Council and the intentions of Council if indeed that be the intention. Commenting specifically on Councillor Lichter's remarks, the addition of the words "physically existing" or "existing and in actual use" would preclude the confirmation of any rights or purported rights which may exist under a permit.

Deputy Warden called for any further questions.

Councillor Lichter asked Mr. Crooks if in law he found it acceptable to deny a permit that has been issued because his (Mr. Crook's) argument or suggestion will abort some situations. In other words, if you happen to have a client who has a building permit for a R-1 single family dwelling and for some reason somebody comes forward and says well you issued a permit but take it back, would the case be argued similarly or would it not be felt that the right of the individual has actually been violated.

In response Mr. Crooks stated the policy of the law in the various decisions which the courts have taken on these matters have been the issuance of a permit will not stand the amendment of a zoning by-law. There must be something more done than simply the issuance of a permit but generally at common law the position has been unless some construction has been undertaken or has been commenced then the mere issuance of a permit will not suffice to withstand the operation of an amendment to an applicable zoning by-law.

Councillor Lichter asked Mr. Crooks, as a solicitor running into these cases, if a client came and asked to have a deed searched and it is found a particular lot is an approved lot, would the client be advised it is then safe for him to go ahead because some day he is going to be able to build a home on that particular approved lot or would he be told not to purchase the lot even though it is registered properly and it is an approved lot.

Mr. Crooks advised the practice would be of course to check on applicable regulations, planning laws and by-laws in addition to searching title.

Councillor Lichter asked if the title is clear and it is an approved lot in an R-1 zone, would you assume a building permit could be obtained a year, two years, three years from then.

Mr. Crooks responded he would assume a permit could be obtained for the use to the extent it was consistent with the law that was in force at the time until such time as that law was changed.

Councillor Lichter asked if Mr. Crooks if in his comments to his client would he also add that yes, this is all true you can go ahead and buy it, but even if two years from today you are issued a building permit it doesn't mean anything because somebody can come along and demand your building permit be withdrawn.

Mr. Crooks referred to his previous comments respecting the position at law is, until construction is commenced under a building permit, and this varies from jurisdiction to jurisdiction depending on the legislation, but generally speaking the position is until construction is commenced under a building permit there is no absolute right to

proceed. The right that exists is a prima facie right which if it is proceeded with by way of construction it becomes an absolute right to the extent that is the legal position and it is expected to be the advice a Solicitor would give a client.

Councillor Lichter asked if Mr. Crooks was aware in the total package of how many building permits may have been issued where action has not been taken as yet, in other words, physical actual building has not taken place as yet and he pointed out he is referring to the total rezoning package we will be speaking about later on.

Mr. Crooks asked for clarification on the question.

Councillor Lichter advised the second public hearing is going to be on a specific rezoning specifying certain areas. The question directed at Mr. Crooks was within those areas, is he aware of how many building permits have been issued where physical action has not been taken as yet.

Mr. Crooks responded he was not aware of how many within the area but he is aware there is at least one building permit which has been issued which of course is subject to appeal and in fact is under appeal. He further stated he is aware as well there is no construction undertaken in connection with that permit.

Councillor Lichter confirmed Mr. Crooks is aware of one case only. Councillor Lichter thanked Mr. Crooks.

Councillor DeRoche raised a question to the Municipal Solicitor respecting the wording being suggested. In particular, the aspect of the permit possibly being issued and being subject to the normal period of appeal before it can be acted upon. If we were to implement the wording as suggested by Mr. Crooks could that possibly place us at variance with the new Planning Act in denying legal rights to an applicant.

Mr. Cragg advised it is difficult to give a concise or precise answer to that question but he thought, as Mr. Crooks alluded, specific words in a specific by-law, such as our zoning or building by-laws, generally will withstand the more imprecise wording of a more generalized piece of legislation such as the Planning Act in 1982-83 specifically says use shall be deemed nonconforming if in fact there has been a permit issued for its construction. If, in fact, Council is aware there is such a permit outstanding whether it is subject to appeal or not and yet proceeds with amending the by-law, as Mr. Crooks suggested, it very well may be open to somebody, the possessor of that particular permit or someone else, to say the Council dealt in bad faith. He stated he could not answer that question really but he thought it is an avenue open to the person.

Councillor DeRoche thanked Mr. Cragg.

Deputy Warden asked if there were any more questions.

Hearing none, he thanked Mr. Crooks for his presentation.

Mr. Crooks extended thanks to the Council for hearing his presentation.

Deputy Warden asked if there was anyone else wishing to speak in favour of the application. He called three times for speakers in favour.

There being none, the Deputy Warden then called for those wishing to speak in opposition.

MR. COOPER, Cooper and MacDonald, 1669 Granville Street, Halifax

Mr. Cooper advised he was the lawyer for Ocean Farmers Ltd. which is a company owned by Karen Westhaver who lives in the Glen Margaret area. When she purchased this lot or at least the company did, around October, 1982, Cooper and MacDonald, solicitors for the company, searched the property and checked the zoning by-laws because of what she intended to do with the property and found it was unzoned. Therefore she applied to the County for a building permit, and it was issued by the building inspector last November. She also was issued a Regional Development Permit by the Department of Municipal Affairs. Mr. Cooper advised he believed on the permit it says she was issued a permit to build a fish plant.

Some of the residents got together and appealed the building permit to the Municipal Building Board and a hearing was held in these Council Chambers. The Board ruled in her favour so the residents further appealed it to the Supreme Court of Nova Scotia, Trial Division and this is presently before that Court. He pointed out a hearing has not been held yet, as it has been held in abeyance, pending the outcome of some other things.

Mr. Cooper stated the Regional Development Permit issued was also appealed to the Municipal Board and a meeting was held in the Council Chambers. Half the evidence was heard and the other half is scheduled to be heard January 4, 5 and 6, 1984. So far there have been two hearings and there are still two to go and just how many after that is unknown and depends upon who wins and who loses possibly.

Mr. Cooper felt it would be unjust and unfair for the County at this time to interfere with this court case because no matter what is done here, if this amendment is granted, it will affect and interfere with the outcome of that case.

He stated Miss Westhaver acted in good faith when she applied for the building permit and also the Regional Development Permit and for the County to turn around now and zone her lands R-5 when she is in the middle of these court cases would be highly unfair and unjust. He asked the Council how they would feel if they had been the one who had spent all the money and were granted the building permit by the County and by the Province and then because a few residents did not like what you were going to do there and in the middle of the court cases, the County came in and zoned your lands and placed further restrictions on you.

It was Mr. Cooper's suggestion that the County put this off until the cases which are pending before the courts and the bodies and until all the appeals and cases have been heard and then if, after that point in time, the County wants to do something then fine he would suggest another public hearing be held and at least that will be dealt with. However to do it in the middle of the case is definitely going to prejudice Miss Westhaver and her property rights because if that property is zoned R-5 then of course the first thing that is going to be raised when it comes back before the Municipal Board of the Court is "Oh, the County changed that right in the middle of the case."

He suggested the County would have to live with that and not him. What the repercussions may be, he could not say but he stated he did not think she will roll over and play dead. He felt that was the sole motive behind the application as obviously these people could wait. They could have done this two years ago, three years ago. One of the residents applied to the County and had the lots approved and Miss Westhaver bought one of these lots in good faith. It is lot B-1 and it is the only one outlined in red on the map before Council.

Mr. Cooper advised he had a few problems with that as he had a staff report which was prepared November 7, 1983 and he referred to paragraph two.

Deputy Warden advised that Councillor MacKay wished to speak on a point of order.

Councillor MacKay stated he could appreciate what Mr. Cooper was getting at but he believes we are in the wrong hearing right now. We are just in the specific one dealing with whether we are going to incorporate a new by-law and then Mr. Cooper's presentation would be properly devoted towards the site specific if the first one is successful. He stated we cannot hear the second one until the first one is successful.

Deputy Warden concurred with this.

Councillor Deveaux suggested maybe it should be pointed out to Mr. Cooper if the first request is approved then he can comment on the next application.

Deputy Warden asked if there were any further questions to be directed to Mr. Cooper.

There being none, Deputy Warden thanked Mr. Cooper and advised him he could address the second hearing.

Deputy Warden asked if there was anyone else wishing to speak in opposition to the proposed zone.

He called three times, hearing none, he declared this portion of the public hearing ended and asked Council for their deliberations.

Councillor Larsen advised that he would like to move the staff

recommendation, but he did have one amendment that he would like made to it and that is to change section 3 to read "expansion to or the reconstruction of buildings and structures used for commercial purposes associated with permitted dwellings". He stated the words he would like to have added after the word "purposes" are: "In existence on the effective date of this by-law shall be permitted" with the rest of the paragraph ending at that point.

Councillor MacKay asked to have that section reread as amended.

Councillor Larsen replied "expansions to or the reconstruction of the buildings and structures used for commercial purposes associated with permitted dwellings and in existence on the effective date of this by-law shall be permitted."

Councillor Larsen pointed out the rest concerning the 10 percent expansion would be left out.

Councillor Deveaux, for clarification purposes, stated he understood if this amendment goes through people presently owning commercial uses in conjunction with permitted dwellings will be allowed to expand 100 percent. He questioned if this would be the case.

Deputy Warden asked the Solicitor to comment.

Mr. Cragg stated he would not comment right away on Councillor Deveaux's statement but in going back perhaps Councillor Deveaux would not need an answer.

Mr. Cragg stated he did not think Councillor Larsen's motion is appropriate if he wishes to achieve that end he would have to do so by amendment or some other Councillor would have to attempt to do so by way of amendment. Councillor Larsen's proposal goes too much to the meat of the proposal as a whole and is too much at variance with the matter before Council and which has been advertised. Mr. Cragg thought Councillor Larsen could propose in a main first motion something not as far encompassing as what has been done. If someone else wishes to move the staff report as it is or with some minor changes or alterations, Councillor Larsen then could attempt amendment to the main motion.

Councillor Deveaux referred to 100 percent expansion on a permitted dwelling and stated he would have a bit of a hang up approving and going along with that amendment.

Councillor Deveaux stated he would have to vote against such an amendment.

Councillor DeRoche stated as he understood it the motion has been withdrawn.

Deputy Warden advised not officially.

It was moved by Councillor DeRoche, seconded by Councillor Eisenhauer:

"THAT the Municipal Zoning By-Law # 24 be amended to allow for an R-5 Rural Residential Zone in accordance with the staff recommendation." Motion Carried.

Deputy Warden called for question.

Councillor Lichter advised that he had a bit of difficulty with the advice our Solicitor just gave us and stated he would like some clarification.

Councillor Lichter could not understand if the advertisement ties our hands then the amendment, whether it came right at the time or it comes to us now is not permitted. Either the advertisement does not permit us to go that way or it does.

Mr. Cragg stated he is trying to provide a generalized comment and went on to say we have had some speakers this evening already tell us in so many words the intent of the proposed rewording, which Councillor Larsen attempted, by way of the main motion, would in fact legislate out of existence now or in the future at least one proposal which under the Planning Act has some substance and having had information placed before us he felt the proposal of Councillor Larsen goes too deep to the intent of the proposal staff has placed before us. Therefore, he felt good sense would not allow us to deal with it in that fashion. He suggested we have a simple motion to approve it as put before us and amend it if we wish, but he did not think we could simply in one big motion say we are going to deviate as we have.

Councillor MacKay referred specifically to the amendment because he could see three things happening. One was the same as Councillor Deveaux alluded to, the second is reconstruction and interpretation that would come under the Provincial Planning Act and thirdly, the one the Solicitor just referred to and is doing away with existing commercial structures not associated with a dwelling.

Councillor Poirier stated even after Mr. Cragg's explanation she was still not clear if this amendment can or cannot be put forward.

Mr. Cragg advised we do not have an amendment to the main motion at the present time.

He pointed out the difficulty he had with Councillor Larsen's motion was with the addition of the words "associated with existing dwellings" or "in actual use" or words to that effect. He stated he did not have much difficulty with the deletion as suggested.

Councillor Reid asked for clarification on the permissible uses. This zone would be basically applied to rural areas in the future as he understood it and in most rural areas there are large amounts of land

which are undeveloped and lack any residential development. He felt a lot of people who move to a rural area to live have the idea of establishing a small backyard shop, etc. and with the wording in Appendix C, first page, "existing commercial uses", could mean anybody who builds in an R-5 zone after that would not be allowed to establish a backyard business. He asked if this were correct.

Mr. Meech responded to Councillor Reid's query and stated his observation is correct however there is still the ability to apply for a rezoning to a commercial zone.

Councillor Reid felt this was a fairly expensive proposition and most people who start businesses up that way are trying to do it on a shoestring budget. To apply for a rezoning permit in an area would cost a substantial amount of money.

Councillor Reid stated he would like to amend the by-law and have the "existing" removed and "commercial uses in conjunction with permitted dwellings be permissible" be included.

Mr. Cragg asked Councillor Reid if he were suggesting "in existence on the effective date of this by-law" be deleted.

Councillor Reid replied he was suggesting on the first page, Appendix C, under commercial uses and under the main heading "Permissible Uses" where it states "existing commercial uses in conjunction with permitted dwellings" and his interpretation is if there is a back yard business in existence it is allowed to remain and expand but if someone built a house and built a little garage in their backyard with the intention of setting up a backyard business they would not be allowed to do so. He pointed out he was just trying to allow them to do that.

It was moved by Councillor Reid and seconded by Councillor Baker:

"THAT in Appendix C, first page under main heading of permissible uses that "existing commercial uses in conjunction with permitted dwellings" be deleted."
Motion Defeated.

Councillor Eisenhower spoke against the amendment and stated R-5 acknowledges the fact there are uses in effect that have been so for years. He suggested he would not extend the continued use of a 20,000 square foot lot with a house, domestic garage and then if someone else buys it and decides to start something on the side which means two uses on a septic tank and well it would be very dangerous. Councillor Eisenhower referred to discussion respecting taking out the increase of 10 percent and he indicated he felt this was put in as a protection. He expressed concern for the people living next to these businesses and the impact on the environment.

Mr. Cragg indicated the motion before us now is just dealing with the existing, page 1, Appendix C. He stated if in fact we move on to

another amendment, we may or may not, then it would delete the restriction of the 10 percent but still included is the lot coverage restriction of 35 percent.

Mr. Meech advised it was his understanding what Councillor Reid wanted to achieve was if someone went in and built a new home and wanted to operate a small commercial business in association with it, then it would be a permitted use in that zone.

Mr. Meech felt by removing the word "existing" he did not think that will achieve the object of allowing someone to build a new home with a small commercial operation.

Councillor Reid agreed his intention was a small commercial business or a craft shop in the basement or things similar to that and there is a lot of that in rural areas at the present time.

Mr. Cragg did not think it was the wishes of staff nor the resident's groups.

Councillor MacKay stated it was his impression by looking at commercial uses and deleting the word "existing" it would then just read "commercial uses in conjunction with permitted dwellings". It was his interpretation you could use a dwelling for any type of commercial endeavour as long as it was contained within the dwelling or commercial venture.

He felt Councillor Reid might be more pointed towards something somewhat similar to what we put in the Municipal Development Plan for Sackville where we allowed home occupational services contained within a house up to a maximum of 300 square feet, etc.

Mrs. Cartledge added to Councillor MacKay's comments in areas in Sackville for instance where commercial uses are permitted right in the house there are also other restrictions placed on those businesses. They cannot be more than 300 square feet. She felt if we made the deletion here it would totally change the intent of the zone where we wouldn't have other additional control on the uses nor would we have a definition of the commercial uses permitted.

Councillor MacKay felt this amendment would, and he could not be in favour of it, allow any commercial business, any dwelling.

Councillor DeRoche stated the deletion of the word "existing" allows, in an R-5 zone, unlimited commercial development providing it is in conjunction with a permanent dwelling. We have to keep in mind the term "existing commercial uses" applies to those commercial uses which are in existence and operating at the time of an application for R-5 zoning and he believed Councillor Reid is of the opinion if we adopt R-5 Rural Residential zoning it automatically applies in his district and that is not the case. There would have to be an application by residents for R-5 zone from whatever zone is presently in existence there, if any. Councillor DeRoche suggested in Councillor Reid's

particular district there is possibly little, if any, rezoning so this would not apply generally in his district. Existing commercial uses apply only upon the application of R-5 zoning.

Councillor Larsen felt there is a situation before us where we are trying to tow this fine line between restriction and protection which is what any by-law hopefully tries to obtain and is to protect the rights of the people involved. He did not think the word "existing" should be scratched. If commercial enterprises are going to be developed in an area then this will be through the public hearing process and that is the protection people generally want.

Councillor Deveaux agreed with Councillor DeRoche and suggested Councillor Reid's amendment was well intended but perhaps somewhere down the road if he or some other Councillor decides to opt in to R-5 zoning certain amendments could be made to accommodate the problem which he is concerned about.

Question was then called for and the Deputy Warden advised this was the motion of the amendment to delete the word "existing" on section 1 under permissible uses, commercial uses.

The motion was defeated. (See page for motion).

Question on the main motion called for.

Motion Carried. Main motion of amendment has been carried that R-5 Rural Residential Zone be added to By-Law # 24."

For the record, Deputy Warden advised that the main motion was passed without amendment.

SECOND APPLICATION - REZONING RA-24-36-83-0 REQUEST BY THE RESIDENTS OF MOSER ISLAND AND SURROUNDING AREA TO ZONE AND REZONE CERTAIN LANDS TO R-5 (RURAL RESIDENTIAL ZONE) FROM G (General Building) ZONE AND AN UNZONED STATUS

Mrs. Cartledge reported this application came about as a result of an application from the residents of Moser's Island and surrounding area. The application was received on August 11, 1983 and was composed of a map outlining the area in question to be rezoned as well as a petition signed by some 62 area residents.

During the ensuing months staff negotiated with the Residents Group, specifically with respect to the R-5 zoning which was just discussed in terms of firming up the requirements of that zone and following a Planning Advisory Committee meeting on the 7th of November, the zone that was just approved resulted.

For the purposes of Councillors and people in the gallery, Mrs. Cartledge pointed out the area to be discussed on a map.

She advised there is some existing zoning in the area already.

zoning--Trailer Park zoning is for an existing seasonal campground, other existing zoning in the area is for Nortell Electronics and this is I-1 zone (Industrial General Zone).

As previously stated land use in the area is predominantly residential with a few exceptions such as Mr. Wambolt's auto repair shop, an art gallery and the property of Ocean Farmers Limited for which a building permit has been issued for a fish plant. Other than a few mobile homes, to the best of the Planning Department's knowledge the land use and the rest of the area included within the R-5 zone is comprised of single family dwellings. One of the very important things from a staff and planning point of view when we are considering applications for restrictive residential zoning, are the existing businesses as pointed out.

Through the negotiation of the R-5 zone we were able to accommodate most of the existing land uses with one notable exception, one which has been discussed and that would be the fish plant. While Planning would recommend the R-5 zone be applied to all the areas shown they would also recommend the fish plant property be deleted from the application. There is a valid building permit from the Municipality's point of view has been issued and the fish plant is such, although it does not exist yet. It is felt because the impact of the fish plant cannot really be determined at this point and because in good faith the Municipality issued the building permit for property, it would be against planning principles to zone to a non-conforming status a use or a building which does not even exist yet. The Planning staff recommendation is the application to rezone the lands of Glen Margaret as shown on the map here for which R-5 zoning is requested, be approved with the deletion of the property owned by Ocean Farmers Ltd. which property is identified on Land Registration and Information Services mapping as #403074880.

The Deputy Warden asked if Council had any questions.

Councillor Wiseman asked Mrs. Cartledge if there were any zoning at present on that piece of land.

Mrs. Cartledge advised that no, there is a general building zone which runs along either side of the main highway to a depth of 500 feet and properties further off the highway than 500 feet are unzoned. In terms of permitted uses in the unzoned area and the general building zone it is the same with the difference only in terms.

Councillor Wiseman stated she understood what was being recommended is we would follow through on the R-5 zoning for the whole community with the exceptions of the properties indicated and leave that piece of land for the fisheries operation totally unzoned.

Mrs. Cartledge confirmed the Ocean Farmers area would remain unzoned.

Councillor Wiseman asked what dangers would be present in leaving it unzoned, what kind of expansions can there be, can there be any control imposed at all with an unzoned piece of land.

Mrs. Cartledge stated the only use not permitted on that property would be an industrial use excepting for industrial use, classified as fishing, agricultural, forestry--those uses are permitted without going through a rezoning. Otherwise other industrial uses of a manufacturing nature such as Nortell Electronics would be required to have industrial zoning. You could not have a mobile home park there without having a T zoning and you could not have a salvage and dump yard there without having SD zoning and a couple of other uses would be townhouses or duplexes where you wanted to divide the units and the parts of the property separately and you have to have central services. Those would be the only restrictions in terms of uses on the property, otherwise any residential, commercial or forestry, fishing or agricultural use would be permitted.

Councillor Wiseman questioned if they wanted to set up a plant on property to manufacture cod liver oil could they do it since it is associated with the fishing industry.

Mrs. Cartledge replied that she would imagine yes.

Councillor MacKay put forward a question to Mrs. Cartledge and asked if he were correct in assuming the next large island down on the left hand corner, half is proposed and the other half is not.

Mrs. Cartledge advised it was correct.

Councillor MacKay asked if Route 333 took in the Cork and Pickle and that area.

Mrs. Cartledge advised it stops at Nortell Electronics which is pretty well the boundary between Glen Margaret and Hacketts Cove. The zone would stop here and extend back from the centre line of the highway about 1000 feet up to the existing T zoning, runs along 333 up to Moser's Island Road and then takes in the peninsula of the island of Moser's Island.

Councillor MacKay questioned why only half of the other island was considered.

Mrs. Cartledge understood that was the area the residents contacted the people residing there and it was the area that was most affected by this.

Councillor Baker asked Mrs. Cartledge how many homes were on Moser's Island presently.

Mrs. Cartledge indicated on the plan the homes are indicated by S's. There are not a lot and the nearest houses existing to the fish plant would be two.

Councillor Poirier asked if all the people and landowners have been individually advised of this zone change.

Mrs. Cartledge suggested the spokesperson for the residents could best answer this but she understood extensive work was done in contacting owners as much as possible.

Mrs. Cartledge understood they had contacted just about everybody with the exception of Mrs. Westhaver.

Councillor McInroy asked if the site that is the motivation for all this is still included within the dark heavy line, R-5 stamped on top of it even though we are talking about having it excluded. He asked if there is any reason why the dark line does not go around the site.

Mrs. Cartledge responded the residents' application is to include that property which would render the fish plant, if it is built, to a non-conforming use.

Councillor McInroy referred to the main highway and asked if it could really be considered a residential zone. On scenic tours the main highways commonly contain small commercial enterprises and it is generally not densely populated especially with construction. He stated he did not have any difficulty with an R-5 application in a subdivision such as those on those sideroads but he questioned the need for it on the main road.

Mrs. Cartledge advised the zone is flexible with regard existing commercial uses and there are no others here to be zoned on the main road.

Councillor Eisenhower advised about five or six years ago we had public hearings associated with the camping ground in which there was going to be boat tours. He indicated he was of the impression the zoning requested was on the other side of the road next to the water.

Mrs. Cartledge stated she believed Councillor Eisenhower was referring to another campground.

Councillor Eisenhower made the observation houses on the other island that is being only half recommended R-5 zoning, those houses are certainly in view of proposed fish plant. He further stated the highway was a tourist attraction and certain businesses are there for tourists and local services. He felt there was no difficulty with the R-5 going on the main highway, however we will hear from the public and find out.

Councillor Gaetz questioned the scale of the map.

Mrs. Cartledge advised that 1 inch equals 400 feet.

Deputy Warden asked if there were any further questions from Council. There being none, Deputy Warden requested that the Council deal with the second public hearing.

Deputy Warden called on the members in the gallery who wished to speak in favour of the application.

MRS. HILDA ALLEN - Glen Margaret

She advised she did not have prepared notes for this part because she presented them earlier this evening. She stated that she would just like to comment this is a rural residential area and there are a few businesses. She advised the residents were very happy as a group when the County suggested R-5 because it was not their intention to place any hardships on their neighbours who already have businesses there, therefore this was a perfect solution.

As a result of this permit being granted for a fish plant the residents suddenly became aware they were not zoned. She advised she had never even thought about it before and it has taken all this time to talk to people and to have a petition circulated and to come up with an application for zoning.

She advised they certainly would not be happy to leave that lot unzoned because this would be contrary to what is being asked for as they want to protect their residential area and that is certainly not compatible with what is there now. She stated she did not think it should be exempted from the application.

The reason the point in Hacketts Cove was included was, as one of the Councillors mentioned, these people would be looking directly across at the fish plant and this is definitely a residential point. The land has been subdivided, there are some people there hoping to sell it for nice homes. They have been held up as a result of that and the people on that point definitely would like to have the residential zone as well. It was very difficult to decide on a line when discussions first commenced. Residents did not want to become too ambitious. There was one gentleman who would not sign the petition because he said if we would like to zone all of Glen Margaret that is fine, but he did not approve of spot zoning. If you leave that lot unzoned, you will be doing just the reverse of that, you are going to have a reverse spot zoning because that lot will be left unzoned and the remainder would be zoned residential.

Mrs. Allen asked Council to think about the residents there who have their homes and all worked very hard to achieve them and the small businesses that are there operating do not bother any of the residents. Residents want to leave them protected and have what they would like to have--a nice, residential area. She urged Council to consider the wishes of the area residents.

Deputy Warden asked if there were any questions for Mrs. Allen.

Councillor DeRoche raised questions as to the line that was drawn for this zoning.

Mrs. Allen advised it was just an arbitrary line drawn and if we went any further we would start getting into more businesses such as the Cork and Pickle so rather than go onward we just cut the line across the point. It was difficult to decide.

Deputy Warden thanked Mrs. Allen for her comments.

Deputy Warden asked if anyone else in the gallery would like to speak on the application.

Deputy Warden called three times, and there being none, he called for those wishing to speak in opposition to the application.

TERRY COOPER - 1669 Granville Street, Halifax

Mr. Cooper advised that he could only reiterate what he has said already on behalf of Karen Westhaver and Ocean Farmers Ltd. who own the property. He pointed out he certainly did not have any opposition to leaving the lot unzoned, however the problem is if you zone the properties around it R-5 that is going to prejudice their rights when they go before the Court and therefore, in essence he supposed what you are doing is giving the other side an advantage in the middle of a case which they never had when they went into this matter and thereby putting her at a disadvantage. The way to avoid that would be to put this on hold until the cases are heard and it is finally determined whether the building permit should be granted and the Regional Development Permit allowed to stand.

He stated he just wanted to point out she went in good faith and bought this property and if you do something now in the middle of this case it will definitely prejudice her rights and leave her at a disadvantage.

Mr. Cooper pointed out this is the whole reason residents are making the application for the rezoning.

Deputy Warden asked if there were any questions for Mr. Cooper.

There being no questions, Deputy Warden thanked Mr. Cooper for his presentation.

Deputy Warden asked if there were any others in the gallery who would like to speak in opposition to the application.

He called three times, there being none, the public portion of the public hearing was closed and the next step was to hear Council's deliberations.

Councillor Poirier stated it concerns her Council might be infringing on somebody's right, realizing the people in the gallery, a lot of whom have their properties, and we want to listen and deal with them as best we can, but if there is any danger at all of interfering with a court case by granting this rezoning right now, she felt it would not be a proper thing for this Council to do. She expressed concern this may happen and it may influence the results.

It was moved by Councillor Poirier, seconded by Councillor Lichter:

"THAT this application be deferred until the related court cases are over."

(Motion Withdrawn)

Deputy Warden asked if that deferment was for the whole application of rezoning.

The mover and seconder responded yes.

Mr. Cragg suggested someone make a main motion and then we can discuss it and then have a motion to defer.

Councillor Lichter advised what Councillor Poirier moved and what he seconded was absolutely right. It is paramount to adjourning debate on this application. If somebody puts another motion, as suggested by our Solicitor, we would have to defeat that motion and our intention is not to defeat the rezoning application forever. Our intent, as Councillor Poirier has indicated, is very very simple and that is to defer it so that both the people who appealed to the Supreme Court and to the Municipal Board and the people who have had their permits and still have their permits and until those decisions come down from those two bodies they will have had a chance for a fair hearing and not have this Council interfere with those rights.

Mr. Cragg suggested we bear in mind this is a public hearing and he would not like to see Council, by motion of deferral, immediately attempt to stifle discussion of the public input Council has received and the effect of the motion of deferral would accomplish this because it is not debatable at this point in time.

Councillor Lichter stated the Solicitor ruled perhaps in the last four months that a public hearing was over after we heard from the public and we have the right to adjourn our decision at that particular point and that is what this motion is all about.

Mr. Cragg suggested the best interests of all concerned, Council and the public, would be to have a proper main motion put before it, have it debated and at any point in time put, if deemed appropriate, the motion to defer.

He went on to state it seems fairer to have some discussion by Council if Council wishes to discuss it. They can certainly defer decision on it, there is no problem with that.

Councillor Poirier suggested would it not be in bad taste to discuss this as it is currently before the courts, apart from the public input.

Mr. Cragg advised the application is for a rather large portion of land to be rezoned and it might be the wish of some of you to delete a very small portion of those lands.

Councillor Poirier pointed out to the Solicitor the person who owns that one portion of land has a lot to lose by what happens here tonight and she stated she did not want to be a part of doing something to influence that.

The rezoning is no problem once this is over and she further stated she wanted to protect the interests of the citizens and to ensure the Council does not do something detrimental to the case or influence it in any way.

Mr. Cragg advised Council can help the applicants out to a great extent if the application is dealt with by way of amending it or deleting one small portion of the lands.

Councillor MacKay asked Mr. Cragg how long the Council could hold a motion to defer. He asked if there were anything in the Planning Act stating that a decision must be made within a certain time.

Mr. Cragg stated Council has a duty to deal with an application presented to it expeditiously and in the normal course of events. He did not think it was stated anywhere Council must or must not do something within a certain specified period of time, so long as the application is received and processed at least to the extent it has been advertised and the hearing held. Section 62 deals with applications being deemed to be refused. He did not think this falls into that as we have in fact advertised, had the hearing and heard the public.

If Council does not have information it feels it needs and doesn't have before it, it would be in its best interest to defer it until such time as it gets that information.

It was Mr. Cragg's feeling Council has here this evening a matter which is pending before other Boards, and Council feels it may prejudice one or more of the other parties, it would not be inappropriate or harmful to other party to defer it.

Councillor MacKay stated it would be his impression within all the confines of the land proposed to be rezoned it would freeze any or all applications except what might be permissible under both the old and the new proposed zones. So it would allow residential development which would be permitted under the old zone and the new proposed zone or does it freeze any or all applications for development of any nature.

Mr. Cragg advised he believed Councillor MacKay to be correct in saying it would permit development permissible under the old and proposed zone.

Councillor Mont stated he was concerned about an open ended deferral as he did not want to get into a situation such as the PUD agreement for the Cobequid Industrial Park. Court cases do have a way of dragging on with appeals and with a Municipal Election in two years, he would not want to have a new Council having to deal with a matter when they would not have heard the public hearing.

Councillor Mont questioned if Mr. Cragg had any recommendation.

Mr. Cragg advised in his opinion it would be appropriate to deal with at least the bulk of the application and not leave everything hanging. If there is in fact one piece of property an issue before other bodies we should just delete that one property.

Councillor Eisenhower stated he understood Mr. Cragg had made a ruling from the Chair the motion to defer was out of order because there wasn't any motion on the floor and he concurred with that statement. He felt we should follow the ruling from the Chair and in the event Council agrees with that he was prepared to make a motion.

Deputy Warden stated he would like to have an indication from Council to entertain the motion.

There was no agreement.

Councillor DeRoche stated he did not believe it was within our jurisdiction to reach an agreement when we have a non-debatable motion of deferment before us. That defeats the whole purpose of a motion of deferment.

Deputy Warden asked if the mover was prepared to withdraw the motion.

Councillor Lichter advised he did not want to put the Deputy Warden in a difficult position but he was quite willing to go along with Councillor Poirier if she withdraws the motion providing he be permitted to immediately put a motion of deferral after a main motion is put.

It was moved by Councillor Larsen, seconded by Councillor Eisenhower:

"THAT the staff recommendation that the area be zoned R-5 excluding the lot in question be approved."
(See motion to amend.)

It was moved by Councillor Lichter, seconded by Councillor Poirier:

"THAT this issue be deferred but reopened no later than one month before the next election."
Motion Carried.

Councillor Larsen questioned if the more restrictive zone would be in place during the interim.

Mr. Cragg stated there were two zones and it is the more restrictive one that applies.

Councillor MacKay stated his impression was that the only permits could be issued are ones that are permitted in both--what was allowed previously and what was proposed. In answer to Councillor Larsen's question, it would be the more restrictive zone.