

Mr. DeRoche added that the problem is compounded by the fact that Sunset Acres is zoned R-2, is this is not the only example.

Councillor Morgan asked if the Municipality will continue to allow sloppy connections and development to the point where infiltration will continue to be high. Warden Lichter advised that the Municipality has been trying to control infiltration for years, but it may not be as simple as the Municipality looking after its own trunk line; the situation is complicated by personal household uses, such as the use of sump-pumps, etc.

Councillor Morgan advised that it was his understanding that the Municipality is using higher figures of infiltration than what has been achieved recently, and there is an on-going maintenance, improvement, and inspection program that has been improving the flows assessed to these properties. He asked if it is expected infiltration will worsen. Mr. DeRoche clarified that he was not suggesting that the infiltration problem is continuing unchecked or that the problem is worsening; he suggested that the density is increasing in the developed areas without taking into consideration the areas added in 1988 with the adjustment to the serviceable boundary.

Councillor Morgan stated if infiltration will be reduced, this application is not premature; it is simply responding to improved techniques.

Councillor Bates asked if the suggestion that infill development has not be considered is correct. Warden Lichter advised that Mr. Tam did not indicate that Mr. DeRoche is wrong, but he did indicate that the Porter-Dillon study has taken any logical, further subdivision into consideration. However, the study did not consider the possibility of subdivision as the result of the combined efforts of two, three, or more lots owners via the adjustment of lot lines. However, present development was anticipated based on 18 ppa. Mr. Tam agreed that this was also his understanding of the Porter-Dillon study.

Wes Topple advised he lives in the Lake Loon area of Westphal, and he is representing himself and some of the silent majority who just don't get out and say anything.

Mr. Topple advised that when he was on Council in the 1970's, Sunset Acres had a great pollution problem; as an afterthought, Sunset Acres was included within the serviceable boundary. He informed that he had questioned some of the things which happened in Sunset Acres undeveloped properties and learned from Mr. Gallagher that there was no provision to accommodate any of the vacant lots or any vacant lots along the No. 7 Highway. He advised that one property, adjacent to the City was turned down on that basis, the excuse being that it was included in the boundary in such a hurry that they didn't size anything to accommodate lands that were no developed. Mr. Topple felt this is the way this situation remains.

Mr. Topple expressed concern with the Regional Development Plan. He recalled when it became effective it was his understanding that it would be reviewed every five years. He also recalled that the last time the serviceable boundary was expanded, no further expansion were to be considered. Mr. Topple stated that it was time the county started considering servicing the existing areas presently within the serviceable boundary. He stated they were already told that if Phases 10, 11, and 12 of Forest Hills was to proceed, those areas would

also be services because the Department of Housing would be running a dual line along Highway No. 7. Mr. Topple stated that the Department of Housing will not be running lines to Highway No. 7 because by putting the lines deep enough from the other end of Sunset Acres they can drain south to Cole Harbour, which will save them a lot of money.

Mr. Topple stated he would like to see Humber Park and that area included in the County's main sewer system. He stated the County has maintained the treatment plant in Humber Park at a cost which may increase over the next few years, and this eliminated if the area was serviced by the sewage treatment plant at Eastern Passage.

Mr. Topple informed that when he was councillor, he was concerned about the infiltration in the sewage system, and he had many discussions with Mr. Gallagher in this regard. Domestic and storm sewers were put into Phase 9 of Forest Hills; before any of the houses were built, he personally had the manhole covers removed. Looking into the domestic sewer, he found it running 1/4 full of water without any domestic connections. He stated there was much concern in this regard, and he stated Council must now be concerned about whether or not the system can handle Clayton Development's proposed development. He questioned the infiltration studies, noting that the ground is frozen in January, when the testing was done, and there is not a lot of infiltration during that period. He stated the area does have a lot of infiltration, and if he were a resident of Eastern Passage he would be concerned about the potential effect on the sewage treatment plant there.

In conclusion, Mr. Topple stated he is concerned that the Municipality has never looked ahead to the future and what they will do when the plant reaches full capacity. He also stated that further development will eventually take place along the Eastern Shore, which should also be given consideration.

Questions from Council

Councillor MacKay expressed a difference of opinion on some of the comments made by Mr. Topple. He inquired about the relationship between this application and the comments of Mr. Gallagher with regard to further development at Sunset Acres. Mr. Topple replied that this sewage treatment system was not developed to accommodate every vacant lot in the Sunset Acres area, and this development will permit even more capacity on the sewage treatment plant.

Councillor MacKay advised that the Porter Dillon study took all vacant land into consideration, except where a number of people could consolidate their lands to create an additional lot. Mr. Topple reiterated that Mr. Gallagher told him that the vacant lots on the No. 7 highway were not designed to come into the system. Councillor Mackay advised that Humber Park was already taken into consideration in the Porter Dillon study, and it has no bearing on this application. He stated the question is who will provide the money to provide the services to the sewage treatment plant.

With regard to infiltration, Councillor MacKay stated that the period between November and April is the highest peak flow time. He also questioned if areas like Lawrencetown would ever be hooked into the existing system. He stated these concerns have nothing to do with this application.

Mr. Topple explained that those areas will require services at some time, and rather than continuously extending the serviceable boundary for the Eastern Passage plant, the County should be looking at planning some of those areas into the plant at Lawrencetown because they would fall in the drainage boundary of that area.

It was noted that a majority of the whole of Council is required to pass this application and only those Councillors who have heard a substantial portion of the public hearing can cast a vote. There was some discussion in this regard.

Warden Lichter called for a ten minute recess. The public hearing was recalled to order at 9:40 p.m.

Mr. Harold Northrup, advised that he is a member of the Cole Harbour/Westphal and Area Service Commission, although is not representing the Commission at this meeting. He also advised that he was Co-Chairman of the Planning Committee. He informed that several meetings were held with Clayton Developments, and no stand was taken with regard to this application. He stated the Commission did not ask Mr. DeRoche to represent them regarding this matter, and he asked if Mr. DeRoche was speaking on behalf of the Commission or himself.

From the gallery Mr. DeRoche advised that he spoke as Chairman of the Service Commission representing the majority view of the Service Commission Executive.

Mr. Northrup concluded that he has never been to or heard tell of any meeting where a stand was taken with regard to this application.

Warden Lichter asked Mr. DeRoche if the Service Commission has held any meetings dealing with this issue since he became Chairman. Mr. DeRoche informed that he polled the members of his Executive and received numbers by telephone to substantiate the position represented tonight.

Mr. Northrup advised that not all members of the Service Commission were polled, and such a stand should have been discussed at a meeting.

Warden Lichter suggested that the remainder of this public hearing be heard, at which time it can be adjourned. Before Council makes a decision, written clarification of the position of the Service Commission can be made available to Council Members.

Mr. Jack Thomas, Humber Park, advised that he has followed the meetings with regard to the serviceable boundary for many years. He stated he has been included in the serviceable boundary as a resident, and must oppose this application because it will include excess properties outside of the extended serviceable boundary.

Mr. Thomas stated he is within the serviceable boundary, but he does not have sewer and water services. He stated he has been a County resident for the last 35 years and has paid taxes faithfully. He felt he is entitled to receive these services before anybody else is granted an extension to the boundary, regardless of whether or not this is a good or bad project.

Mr. Thomas quoted from report to Council dated May 5, 1986, page 9 whereby it was indicated that it is desirable to integrate Humber Park into the existing trunk line from Highway No. 7, and there is no requirement to upgrade the pumping station at Memorial Drive. He stated the residents of Humber Park could have received these services in 1986.

Mr. Thomas stated that in January, 1987, the Planning Advisory Committee directed staff to re-assess its recommendations and to give higher priority to servicing existing residents, and an estimated cost of \$83,000 for the Humber Park/Lake Loon area was included. In October, 1986, the by-law was amended, and in 1987 Humber Park was included within the serviceable boundary, and it was indicated that upon completion of the sewage treatment plant expansion at Eastern Passage, this area would be connected to the municipal sewer system. Mr. Thomas informed that he is still waiting.

Mr. Thomas stated Clayton Developments have given fair arguments in support of their proposed expansion to the serviceable boundary, but he stated it makes no difference to him or the residents of his area. He referred to a letter from the President of the Humber Park Ratepayers Association, requesting that they be serviced prior to any further extension.

Mr. Thomas continued that in 1986 a report indicated that consideration for expansion to the serviceable area should include services such as transportation, education, fire protection, etc. He stated these are all costly to him as a ratepayer in the area. This extension is in the further part of the boundary area, and this development of 73 additional acres will require another fire station, which will cost him more money. Mr. Thomas stated he is already taxes too much, and he cannot go any further.

With regard to studies of flows and infiltration, Mr. Thomas stated past experience has indicated that it is better to side with conservation in assigning new capacity than to risk damages. Previous report state it is better to keep flows at 70 gallons per person, per day. All reports to date have indicated 18 ppa is acceptable, and Clayton Developments have informed they only have 13 ppa. Mr. Thomas stated that is there prerogative; if they want to sell expensive properties in larger areas, it is their choice. The total area is bounded by acreage, and it is up to the developer to develop as he sees fit, but existing residents should not be restricted.

Mr. Thomas stated he is not interested in the results of flow tests, but he is interested in getting services within the existing boundaries.

Mr. Thomas referred to a small L-shaped parcel of land which is now included with the application. He advised that all previous reports he has seen did not include this small parcel. Warden Lichter advised that the small parcel was included when the public hearing was scheduled and advertised. Mr. Thomas concluded that there is no reason to extend the serviceable boundary.

Questions from Council

Deputy Warden McInroy clarified that Mr. Thomas does not want any development of undeveloped land within the serviceable boundary until existing development within the boundary is serviced. Mr. Thomas objected. He clarified that he opposes any extension to the boundary until all services are supplied within the boundary.

Deputy Warden McInroy felt this project will not have any impact on what will happen in Humber Park because Humber Park requires funding. He questioned the connection between private funds to service a development and public money required to connect to Humber Park.

Mr. Thomas responded that a staff report of 1986 states that Humber Park will be hooked into the sewage treatment plant. He questioned how long he will have to wait and why Clayton Developments should take precedence over himself, as they have no more rights than he does. He stated he will have to pay the extra taxes if a new fire station is required, as he has had to pay more taxes for all of the new extensions and developments. He stated he lives slightly outside of Humber Park, within the serviceable boundary, and he wants to be serviced. Mr. Thomas stated he is not against Clayton Developments, but he is against anybody who gets precedence over him. He stated he has been a long time taxpayer in Halifax County, and he wants something back for those dollars, as has been promised for the past three years.

Warden Lichter noted that Mr. Thomas had referred to a staff report that indicated Humber Park would be hooked in the Eastern Passage sewage treatment plant when it is complete and operational. He asked if the plant is presently at that stage. Mr. Tam advised that the expansion of forcemains is still in progress, although the treatment plant is complete.

Mr. Thomas stated Humber Park could have been serviced prior to the expansion to the sewage treatment plant by running the lines from Highway No. 7 to Humber Park. Warden Lichter informed that the area was not within the serviceable boundary at that time. He clarified that Council's decision to include Humber Park within the serviceable boundary was at the last public hearing about the serviceable boundary issue.

Heather Robertson, Solicitor Representing Oknah Reality Limited, advised that this application will be setting a bad precedent for the future expansion of the development boundary within Halifax County.

Ms. Robertson informed that Oknah Reality owns 160 acres, six acres of which was inside the serviceable boundary before 1986 and 17 acres of which was admitted during the process of negotiation of the extension of the serviceable boundary in November, 1987. Therefore, Oknah Reality has 23 acres of serviceable land presently being developed, with 15 lots now serviced and for sale.

Ms. Robertson advised that for it was only tonight that she learned that over 50 percent of Clayton Development's lands were developed when the flow monitoring study was prepared between November, 1987 and January, 1988. She

stated she has now been told twice by staff that Oknah Reality can also make such an application once all of their existing lands within the serviceable boundary are developed and flow monitoring studies are provided proving that there is an excess capacity provided by virtue of Oknah's development. She expressed difficulty that the only people who can apply to expand the serviceable boundary within the County are those who have been land holders for a long period of time and have been able to demonstrate through flow studies that there is excess capacity.

Ms. Robertson noted that Clayton had only developed 50 percent of their 125 acres and then attributed only theoretical values to the remainder of the lands. The Porter Dillon study also imposed theoretical values when they referred to 18 ppa and theoretical numbers concerning flow monitoring, infiltration, and sewage flow through the pipes.

Ms. Robertson referred to her correspondence to the PAC in February, 1989, stating that it is Oknah's belief that Clayton Developments present study is not particularly unique. She stated other developers, besides Clayton, have developed lands since 1985 and all have been closely policed by the Engineering & Works Department. She stated there is quite a distinction between lands developed in the mid-1970's and problems of that time and development today; the standards are much higher for all developers. She stated Mr. Tam is ensuring that every developer has on-site, engineering monitoring of installations because he wants as-built drawings for every pipe now laid in the ground from every developer - not just Clayton Developments.

Ms. Robertson stated if the theoretical values referred to by Clayton Developments could be projected to all lands developed since 1985, including those developed by Oknah. Mrs. Robertson advised that Oknah also proposes R-1 development and fewer than 18 ppa. She stated if the premises proposed by Clayton Developments were removed, Council would be questioning if the other lands within the serviceable boundary will be at a lesser density and excess capacity than earlier suggested by Porter Dillon. She stated if there is a question of greater capacity, it would have to be determined how it should be distributed.

Ms. Robertson advised that in 1987 Oknah Realities played the game to compete for land within the serviceable boundary, and they were slightly successful. If the process is to change to give a developer with greater resources and experience precedence over other developers, she questioned if the boundary will be changed for other developers in the same fashion.

She questioned the result of reserves for infill situations, as there appear to be several conflicting views in his regard.

Ms. Robertson questioned if Clayton's previous development is being considered in total isolation with respect to burdening the system. She stated the process of extending the serviceable boundary is of concern to her, stating she does not quite understand what is going on. She suggested she should find other developers with 20-30 acres here and there throughout the area which has been developed since 1985 and try to claim excess capacity for them by reason of better installation of services, smaller numbers of people, etc. She suggested that she could find some willing proponents.

Questions from Council

Warden Lichter commented that Ms. Robertson is not being honest when she stated she does not understand what is going on because everybody knows that anybody has the right to apply for a plan amendment, and that right is now being exercised. It is up to Council to determine whether or not the plan amendment will be approved.

Alf Giles, Cole Harbour, stated he will accept a decision of Council not to accept any more land within the serviceable boundary because it was a decision made some time ago. However, if Council see fit to expand the serviceable boundary, Mr. Giles asked that part of his land also be included.

Warden Lichter clarified that if Council does approve the extension to the serviceable boundary, they could not consider anything more than what was advertised.

Mr. Giles identified his land in relation to the proposed serviceable boundary. He stated he has the moral right to have part of his lands included within the serviceable boundary, as well as Clayton Developments.

Questions from Council

Councillor Deveaux clarified that Council cannot consider Mr. Giles lands at this public hearing, but another application can be made.

Clarence Lucas, 38 Hornes Road, Eastern Passage, advised that he is a director of the Residents and Ratepayers Association in Eastern Passage and a member of the Planning Committee for the area. Mr. Lucas informed that he has attended a number of meetings with regard to the expansion of the sewage treatment plant. Mr. Lucas referred to meetings with Council when it was decided to share 570 acres equally between Cole Harbour and Eastern Passage when the expansion to the plant was complete. However, Clayton Developments is now looking for an additional 73 acres.

Mr. Lucas stated if Council approves this application, the people of Eastern Passage have been given the wrong information to begin with. He stated if Cole Harbour gets this additional 73 acres, Eastern Passage should get another 150 acres included within the serviceable boundary. He questioned when the additions to the serviceable area will end - if it will be when the treatment plant is overflowing again.

Mr. Lucas stated a decision was made a few years ago, and the residents of Eastern Passage accepted it, but they are not willing to take any more from Cole Harbour or anywhere else. He stated the agreement was signed, and the boundary should not be expanded any further; this application should be turned down, as well as any others.

Questions from Council

Councillor Morgan asked if the expanded treatment plant at Eastern Passage is now operational. Warden Lichter advised that the addition to the plant is

complete, but the trunk lines are not yet installed to supply the sewage to the plant. He questioned if the plant is considered to be operational now. Mr. Tam advised that the treatment plant is operational, but the forcemains are still under construction.

Councillor Morgan stated he is trying to clarify if the sewage problems in Eastern Passage are cleared up or if there are still seagulls and odour problems there. Mr. Lucas advised that there are still complaints from Shearwater, and there are still seagulls there. He questioned how many more times the people of Eastern Passage have to come to the County to fight for their rights, and he suggested that Eastern Passage should leave the County.

Tom Harmes, Eastern Passage, advised that he is a member of the Ratepayers Association and the Planning Committee. He referred to a letter sent to the PAC in January, 1989, stating the concerns of the residents, if this development is approved.

Mr. Harmes noted that Clayton Developments claim their lands are developed at 13.9 ppa, and he informed that a Porter Dillon study done in 1985 suggests that Eastern Passage was developed at 7 ppa, but by 1984 the sewage treatment plant was well over capacity. He questioned why the system was overflowing if both Cole Harbour and Eastern Passage were developed at less ppa than assigned.

Mr. Harmes noted that the Porter Dillon report also suggested that Cole Harbour and Eastern Passage developed at a ratio of 5:1. He stated these numbers leave the residents of Eastern Passage concerned that there is little room left in the sewage treatment plant for an additional acreage, and caution should be exercised as opposed to trying to fill the system to capacity. He stated all the residents know is that something was wrong when the area was only developed at 60 percent of the suggested capacity, and the plant was overflowing.

Mr. Harmes asked that Council seriously consider what is suggested as additional capacity. He stated even though there has been an expansion to the sewage treatment plant, if this additional acreage is added to the serviceable boundary, there will be more problems long before the projected time.

Questions from Council

Councillor Morgan asked why the plant was overflowing when both Eastern Passage and Cole Harbour were developing below the assigned levels. Mr. Harmes responded that he was told that infiltration accounted for the overflow, which is not easy to calculate.

Councillor Boutilier asked if Mr. Harmes agrees that Clayton Developments will be developing under the capacity they have already been assigned. Mr. Harmes agreed, but he suggested it is a game with words. He stated the number do not matter when the system is overflowing, and the question is why the plant was overflowing when the area was developing below capacity.

Councillor Boutilier clarified that Clayton Developments plans to develop under the capacity they were allotted when the upgrading of the sewage system was approved. Mr. Harmes agreed that they are not requesting additional capacity, but they are requesting additional acreage within the serviceable boundary to

accommodate the capacity they have not used. He stated the other areas did not use their capacity either, but the system became full.

Councillor Boutilier commented that the Engineering & Works Department are claiming that the plant will accommodate this additional development, but the residents are concerned that it cannot. Mr. Harmes clarified that the expansion to the plant will accommodate the 570 acres recently added to the serviceable boundary, but somebody will be shortchanged if this additional 73 acres is added.

Councillor MacDonald asked if the criteria for existing development in this area was based on ppa rather than capacity. Mr. Tam advised that proposal with an average of 18 ppa were accepted, which amounts to an average of four lots per acre and four persons per home. He stated the density is not the problem, but there is concern about the actual flow generated. He stated if a lateral from a house is full, whether there is four or six people living in the house, the actual amount of additional sewage is small compared to the amount of infiltration. He stated considering density alone does not reflect the true picture; flow should also be considered.

Mr. Tam continued that existing development in Eastern Passage was added to the central sewer in the early 1970's, and there were much larger lots than newer developments, which are on smaller lots, and the density is greater. He informed that CanPlan Consultants designed this plant, and it was mentioned throughout their report that it would not be feasible to fill the plant to capacity for economic reasons. It would be best to build in phases. He stated to fully develop the old serviceable boundary in Eastern Passage and Cole Harbour, a plant with a capacity of approximately 4.5 million gallons per day may be required; the most economical way to duplicate the system would be to double the capacity, which has created excess capacity. He informed that this is how the additional 570 acres was added to the serviceable boundary. Mr. Tam concluded that the treatment plant could have been expanded to handle the existing serviceable boundary only, with no excess capacity. However, when the considered the size of the treatment plant, it was determined that it should be more benefit could be derived from doubling the size of the plant.

Councillor Morgan asked if the approval of this application will directly affect the acreage which has been assigned to Eastern Passage under the expanded serviceable boundary. Mr. Tam replied that it will not.

Bob Horne, Eastern Passage, advised that his concerns are similar to those of the previous speakers. He stated when the plant was originally designed, it could not handle the capacity it was proposed to. He expressed concern that the expanded plant will be over-capacity before the figures proposed. He stated the residents of Eastern Passage are concerned about pollution of their area. He stated there is an odour from the plant on certain days, even though it has been upgraded and expanded. There is also debris still floating in the harbour.

With regard to the development, Mr. Horne stated the initial serviceable boundary should remain until all development within the boundary is complete. He stated the Eastern Passage is suffering to Cole Harbour because Cole Harbour is developing faster than Eastern Passage.

Mr. Horne also expressed concern that if the boundaries continuous expand, Dartmouth will cut off the water supply, and Eastern Passage will be left with no development capabilities.

Questions from Council

None.

Councillor Deveaux stated the principle of this application must be considered, if nothing else. He stated Eastern Passage has accepted the treatment plant and agreed to the expansion a few years ago. During the first phase, Eastern Passage was granted 10 percent capacity, and Cole Harbour was given 90 percent capacity. He stated his residents are concerned about being shortchanged again. He stated he fails to see the fairness and logic of this application because other developers would also like the same privileges, and approval of this application would be precedent-setting in terms of future development and the capacity of the treatment plant.

Councillor Deveaux informed that he will never be convinced that the addition of these 73 acres to the serviceable boundary will not have some adverse impact on the future capacity of the plant, which is a major concern of the residents of Eastern Passage.

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

"THAT the application by Clayton Developments Limited for amendments to the Cole Harbour/Westphal serviceable boundary be rejected by Halifax County Council."

Councillor Morgan expressed opposition to the motion. He stated he has heard much justification for this development, particularly the fact that this development has the potential for generating tax revenue, which will help prevent another large tax increase. He stated Halifax County has an opportunity to benefit from this development without spending any money.

Councillor Morgan advised that he asked if this development would have a direct impact on Eastern Passage, and his response was that it would not. He stated if subsequent developers plan to develop in the new areas at a low density with controlled infiltration, they may also seek an expanded serviceable boundary; if they are good developers, Council will also have justification to approve such an application.

Deputy Warden McInroy also spoke against the motion. He stated Engineering staff and the consultant engineer from UMA have indicated that this development will not impact on the 570 acres already allocated within the serviceable boundary. Also, if this capacity had been identified when staff was determining what capacity was available, the additional capacity would have been 640 acres split between Cole Harbour and Westphal. Deputy Warden McInroy also informed that District 24 will benefit greatly from the road connections proposed.

Councillor Eisenhauer referred to the small L-shaped parcel of land which was questioned by one of the speakers. He informed that it was included in order that the two roads can be connected. He stated there are other matters, besides the serviceable boundary, that will benefit from this development, including the development of road connections, which is why this small parcel was added to the application. Warden Lichter agreed that the small parcel of land is proposed to provide a road connection to the subdivision below.

Councillor Eisenhauer stated that there was no indication from the public as to whether or not they would like to see this road connection. Warden Lichter responded that the road connection can be made whether or not the addition to the serviceable boundary is approved at the expense of the developer.

Deputy Warden McInroy clarified that it was the wish of the people to allow the connection between Astral Drive and Parkway, but the response to having the Department of Transportation build this connection was that it will not be done until the lands are developed. Deputy Warden McInroy suggested the road connection will not be built unless it is in conjunction with development.

There was some discussion with regard to the comments made by Mr. DeRoche and whether or not he was speaking on behalf of the Cole Harbour/Westphal Service Commission or himself. Warden Lichter advised that he had indicated this application can be dealt with at a later date, since the public hearing portion has been closed. Councillor Bates felt the position of the Service Commission should be clarified before a decision is made.

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

"THAT a decision regarding this application by Clayton Developments Limited to amend the Cole Harbour/Westphal serviceable boundary be deferred pending clarification of the position of the Cole Harbour/Westphal Service Commission."
MOTION DEFEATED

There was a brief discussion concerning the vote required for approval of this motion. Mr. Cragg explained that a motion to approve this application requires a majority vote of the whole Council, but a motion to reject this application requires a simple majority vote of those present. It was also clarified that if this application had been deferred, only those present for a substantial portion of the public hearing could vote on the final outcome.

Councillor Cooper expressed agreement with the staff report where it reads that "capacity considerations alone are not sufficient to justify expansion to the service boundary". He stated the whole thrust of this public hearing has been other considerations and not the capacity. He stated 73 acres is only 3 percent of the total acreage involved in the Cole Harbour/Westphal/Eastern Passage area, and he asked Council to consider if approval of this application will hamstring future development and excess capacity of the treatment plant. He stated the intended capacity of the plant was when the additional 570 acres were added to the serviceable boundary, and it has been stated tonight that only one lateral out of place could drastically change flow rates within the system.

Councillor Cooper continued that Caldwell Road is not a good road for additional traffic that will be generated by this development. Another school may also be required, and the development plan for the Westphal/Cole Harbour area require that access to schools and availability of schools be taken into consideration.

Councillor Cooper concluded that Mr. Tam has indicated if the capacity of the plant is reached, development will have to stop. He questioned if development is ceased before the 570 acres within the serviceable boundary is developed, other developers will suffer, and Council will have broken its promise when the serviceable boundary was extended. He agreed that development is good, but the outside areas must be taken into consideration. He concluded that the residents of Humber Park has been informed they will receive these services, and Council owes it to those people to make sure that any excess capacity is designated to them.

MOTION CARRIED 8 FOR
 7 AGAINST

Members of Council agreed to recess for five minutes. Warden Lichter recalled the meeting to order at 11:05 p.m.

ZA-CH/W-13-88; ZA-EP/CB-14-88; ZA-FEN-15-88; ZA-LM-16-88; ZA-1&3-17-88;
ZA-PD5-18-88; ZA-SA-19-88; ZA-TLB-20-88 - AMENDMENT TO GENERAL PROVISIONS OF
THE LAND USE BY-LAW TO REDEFINE COMMERCIAL MOTOR VEHICLES

Mr. Donovan reviewed the staff report, advising that this application is to amend existing by-law provisions applying to the parking of commercial motor vehicles in all residential zones in Cole Harbour/ Westphal; all residential zones in Timberlea/Lakeside/Beechville; a residential zones in Planning Districts 1 and 3; all residential zones in Sackville except the R-6 (Rural Residential) Zone; all residential zones in Eastern Passage/ Cow Bay except the R-6 (Rural Residential) Zone; the residential R-2 (Two Unit Dwelling) Zone in the Lake Major Plan Area; the R-1, R-2, and RR-1 Zones in Planning Districts 15, 18, and 19; and the R-1, R-2, and R-2A Zones in Planning District 5.

Mr. Donovan advised that the proposed amendments are intended to clarify the existing commercial vehicle provisions in these Land Use By-laws. He informed that amendments stem from enforcement difficulties that the Municipality has been experiencing because the present terms of the by-law do not have any commonly accepted interpretations.

Mr. Donovan continued by explaining amended definitions and how they will permit easier enforcement of the by-laws. He informed that the term "registered vehicle weight" will be used where the by-law presently refer to the maximum weight of a permitted commercial vehicle on a residentially zoned lot.

He concluded that the proposed amendments are intended to clarify the existing provisions regarding commercial motor vehicles, enabling the Municipality to better administer the existing regulations; therefore, it is the staff recommendation that these amendments be approved.

Questions from Council

Councillor Morgan advised that some of the residents of his district have lived there since before the more restrictive zones were applied, and several of them drive larger vehicles for a living. He asked if they would be noted and excepted as non-conforming from these regulations or if they would be charged with a by-law violation. Mr. Donovan responded that large truck drivers were not given any special treatment when the original by-law was adopted in 1982, and there is no intent to treat them any differently under these proposed amendments.

Councillor Morgan asked if the Municipality has been attempting to prosecute these people but have not been successful, and these amendments will make prosecution easier. Mr. Donovan informed that is the intent. He stated it is not the intent to make by-law regulations retroactive and apply to those who are legitimately in existence at the effective date of the Land Use By-laws. The onus will be on the owner to provide proof that his use was in existence when the original Land Use By-law was adopted, in order to get special consideration as a non-conforming use.

Councillor Morgan inquired about the difficulty in prosecuting under the existing regulations. Mr. Donovan responded that the difficulty is in the areas more recently zoned for residential purposes. The By-laws specifically indicate that certain trucks cannot be parked in an R-1 zone. He reiterated that where existing operators can substantiate that they were in existence prior to the original by-laws becoming effective, they will be given special consideration as a non-conforming use. The by-law enforcement officer will be forced to recognize all others as non-complying and will initiate prosecution proceedings.

Councillor Morgan questioned what would be accepted as proof that a use existed prior to the implementation of the by-law. Warden Lichter advised that a sworn affidavit has been accepted in the past. Councillor Morgan stated he is concerned for the people who have been long time taxpayers in the County and are being effected by having these amendments imposed upon them.

Councillor Fralick commented that he will not the amendments in District 3 because they will put about ten people out of work. Mr. Donovan responded that the existing plan for Districts 1 and 3 excludes any commercial motor vehicle over five tons within any residential zone. The proposed amendments will only clarify the existing regulations in all by-laws.

Warden Lichter felt that the amendments will ease the regulations somewhat because the existing regulations refers to the actual weight of a commercial vehicle; it does not refer to the registered weight. He stated a loaded truck compared to an empty truck would be two different situations; the intent is that a truck registered under five tons can be parked in the affected zones, and there is no difference if it is loaded, because the regulations refer to the registered weight as opposed to the total weight.

Mr. Donovan advised that his understanding is that the registered weight is the

maximum weight that a vehicle is registered to carry, including its load. He further clarified that the by-law definitions define commercial motor vehicle as any vehicle registered as a commercial vehicle with the Registry of Motor Vehicles. Technically, any size of commercial vehicle, including a small delivery car, is considered such, and a commercial truck parked beside the car would not be permitted because the by-law only permits one commercial vehicle per lot. He stated the proposed definition will clarify the existing definition of commercial motor vehicle to include any commercial motor vehicle with a registered weight or more than three tons; the smaller commercial vehicles will not be regulated out of existence.

Councillor Richards questioned the definition of vehicle weight. He stated it was his understanding from the Planning Advisory Committee that the registered weight is the stated weight on the vehicle permit and not that in capacity of the load. He suggested that Council support the amendments because they are not effectively new changes, but they make the existing laws more enforceable.

Mr. Cragg felt that Mr. Donovan's explanation of the registered weight was correct. He stated the registered weight is that of a vehicle loaded. He advised that prosecution difficulties resulted from different terminology between the Land Use By-laws and the Registry of Motor Vehicles, and these amendments will make prosecution easier by having Registry of Motor Vehicles certificates consistent with the Municipal By-laws.

There was further discussion concerning registered vehicle weight.

Councillor Baker expressed support for the amendments, expressing concern about the noise created by large trucks starting early in the morning.

Speakers in Favour of these Amendments

None.

Speakers in Opposition to these Amendments

Wayne Webb, Owner/Operator of a large truck, advised that until recently he could not afford a personal vehicle, and he used his truck to travel home. He expressed understanding for the concerns of residents, but he felt the amendments will infringe on his right to live where he wants.

Mr. Webb advised that his truck is registered for 13,500 kgs., 26,000 pounds, but empty his truck probably only weight 1 to 1 1/2 tons.

Mr. Webb advised that if did not have a personal vehicle, he would have to take his truck home because he is on call 24 hours per day, and not having access to a vehicle at home would hamper his ability to make a living.

Questions from Council

None.

Harold Webb, advised that he has been in the trucking business for 30 years, and he has lived in Sackville all that time. Mr. Webb advised that he does not

have a personal means of transportation, and he is also on call 24 hours per day. He informed that when he is called out, it is usually on an emergency basis, and when his truck is in his driveway, it is only a matter of minutes from the time he hangs up the phone until he is on the road.

Mr. Webb informed that he would like to own a personal vehicle, but costs does not permit his to purchase a personal vehicle; thus, he is forced to take his truck home.

Questions from Council

Councillor Morgan asked how long Mr. Webb has been taking his vehicle home, and where he lives. Mr. Webb advised that he has taken his truck home every night for the past 30 years, and he lives at Beaumont Drive.

Councillor Morgan asked that Mr. Donovan note Mr. Webb's response because he earlier indicated that such residents would be excluded from the by-law amendments.

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

"THAT amendments to the Land Use By-law for Sackville, related to the parking of commercial motor vehicles in residential zones, as outlined in Appendix "A" of the staff report, be approved by Municipal Council."

MOTION CARRIED

It was moved by Deputy Warden McInroy, seconded by Councillor Cooper:

"THAT amendments to the Land Use By-law for Cole Harbour/Westphal, related to the parking of commercial motor vehicles in residential zones, as outlined in Appendix "B" of the staff report, be approved by Municipal Council."

MOTION CARRIED

It was moved by Deputy Warden McInroy, seconded by Councillor Boutilier:

"THAT amendments to the Land Use By-law for Eastern Passage/Cow Bay, related to the parking of commercial motor vehicles in residential zones, as outlined in Appendix "C" of the staff report, be approved by Municipal Council."

MOTION CARRIED

It was moved by Councillor Fralick, seconded by Councillor Reid:

"THAT amendments to the Land Use By-law for Timberlea/Lakeside/Beechville, related to the parking of commercial motor vehicles in residential zones, as outlined in Appendix "D" of the staff report, be approved by Municipal Council."

MOTION CARRIED

It was moved by Councillor Richards, seconded by Deputy Warden McInroy:

"THAT amendments to the Land Use By-law for the communities of North Preston, Lake Major, Lake Loon/Cherry Brook and East Preston, related to the parking of commercial motor vehicles in residential zones, as outlined in Appendix "E" of the staff report, be approved by Municipal Council."

MOTION CARRIED

It was moved by Deputy Warden McInroy, seconded by Councillor Reid:

"THAT amendments to the Land Use By-law for Planning Districts 1 and 3, related to the parking of commercial motor vehicles in residential zones, as outlined in Appendix "F" of the staff report, be approved by Municipal Council."

MOTION CARRIED

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

"THAT amendments to the Land Use By-law for Planning District 5, related to the parking of commercial motor vehicles in residential zones, as outlined in Appendix "G" of the staff report, be approved by Municipal Council."

MOTION CARRIED

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

"THAT amendments to the Land Use By-law for Planning Districts 15/18/19, related to the parking of commercial motor vehicles in residential zones, as outlined in Appendix "H" of the staff report, be approved by Municipal Council."

MOTION CARRIED

APPLICATION NO. RA-CH/W-18-88-24 - APPLICATION BY MICHAEL COLLINS TO REZONE THE PROPERTY AT 42 NOVA TERRACE, COLE HARBOUR FROM R-1 (SINGLE UNIT DWELLING) ZONE TO R-2 (TWO UNIT DWELLING) ZONE

Mr. Morgan reviewed the staff report, as circulated to Members of Council. He reviewed the analysis of the property in question, recommending that the application be rejected because it is contrary to the intent of the Plan.

Questions from Council

Councillor Boutilier informed that the Planning Advisory Committee has received several requests for a policy related to multi-unit dwellings in R-1 zones, and the PAC is now in the process of agreeing to participate in such a task force. He suggested this application be deferred pending the outcome of the task force. Warden Lichter that this problem was almost resolved two years, so it is unlikely that the task force will have a solution within the next few months. He feared that prosecution will proceed if this application is deferred. He also felt it would not be fair to defer the public hearing.

Mr. Cragg advised prosecution proceedings would not be initiated for matters before Council and pending a decision, although there is nothing to prevent staff from doing so.

Councillor Morgan felt deferral would be better than denying this application and having the applicants prosecuted immediately.

Speakers in Favour of this Application

Terry Collins, 42 Nova Terrace, advised that his mother is 65 years old, and the only means for her to keep her home is for he and his wife to live there. He advised that his father left several months ago taking all of their income. He informed that the house is willed to him, and there is no intention to sell it.

Mr. Collins advised that they wanted to build the second unit legally, and they have spent \$30,000 to prepare the home with the understanding that there would be a solution to the problem two years ago, and they would be permitted to keep the unit under an agreement with the County as to how the unit would be treated.

Mr. Collins stated if this application is denied, he will have to sell his home.

Questions from Council

Councillor Baker asked what would happen to Mr. Collins' mother, if he had to sell his home. Mr. Collins responded that the home is in his mother's and father's names, and the funds from the sale of the house would be split between them. His debt would be paid for constructing the second unit, and they would have to move. He expressed hope that he and his wife could take his mother with them. He stated at this time, they can afford to support his mother, although it is costing him each monthly. If he had to take on a mortgage, he questioned if he would be able to continue to support his mother.

Councillor Baker expressed concern about parents being sent to Homes for Special Care. Mr. Collins stated if there is any possible way, his mother would not be sent to such a home.

Speakers in Opposition to this Application

Kevin Tobin, 90 Astral Drive Cole Harbour, advised that he is a member of the Executive of the Cole Harbour/Westphal Service Commission, and he has been authorized by motion to speak on behalf of the Commission on this matter.

Mr. Tobin advised that the Commission is opposed to this application because they feel such a situation should be handled by contract, rather than rezoning. He stated rezoning is permanent and amounts to nothing less than spot zoning. If the property is sold, there is nothing to stop the next owner from renting out both units to the detriment of the neighbourhood. He stated this rezoning would also set the dangerous precedent of encouraging other such rezonings within the neighbourhood, thus, destroying the integrity of the R-1 neighbourhood.

Mr. Tobin stated the onus is on Halifax County Council to find another solution to this type of problem. He expressed sympathy for the Collins family, but the Commission must oppose this application on the principle of the spot rezoning and the effect on the residential neighbourhood. He asked that Council not consider this application on an emotional basis. He referred to a previous application such as this which was approved by Council; both units are now rented out, and the property is not maintained to a standard within keeping of other neighbourhood properties.

Mr. Tobin concluded by asking Council to reject this application.

Questions from Council

Warden Lichter expressed difficulty with the request for Council not to consider this application based on emotions. He noted that the Service Commission has no objection to having the mother and the couple living in the same home, but they are opposed to spot rezoning. He inquired about Mr. Tobin opinion of the suggestion that this public hearing be adjourned with no decision made until the task force recommendations are approved by Council. Mr. Tobin responded that he cannot speak for the Service Commission, but personally he felt such action would be a way to permit the existing situation. He was concerned that once the task force would find the only option is to rezone, and the implications of such a recommendation.

Warden Lichter stated that at this point Council has two options: reject or approve this application. The chances of the outcome of Council's decision in this regard is 50-50, and the chances will not change if it is determined these are the only options available when the task force recommendations are made. However, in the meantime, a family is permitted to enjoy their home.

Mr. Tobin stated if the rezoning is approved, it could be precedent-setting, and the floodgates for other such applications would be opened. He stated this would eliminate the concept of R-1 zoning.

Warden Lichter responded that Mr. Tobin had indicated he wishes there is a solution, and this is a possible solution, but he is opposed to it.

Councillor Boutilier noted that there is now one appeal before the Municipal Board with regard to a similar application, and he stated until the outcome of that appeal is known, he would be hesitant to support this application. However, human nature and compassion should allow the deferral of a decision in this regard until the task force recommendations are made. He stated he will support the recommendation for deferral.

Councillor Baker stated there must be a solution to this problem. He stated some people do not care about their parents and disabled family members, but Council does care. He stated he is disgusted to hear people express concern about R-1 areas and the ramifications of an R-2 zone in such areas, although they are not concerned about those people trying to maintain their families.

Mr. Tobin responded that he does care, and he may find himself in a similar situation in the future. However, he felt Council has an obligation to protect

the integrity of zones set out in the Municipal Development Plans approved by Council. Otherwise, there is no sense in developing such Plans. He stated Council has the authority to authorize this type of occupancy under contract so once such a property changes hands, the R-2 use will cease to exist, and the contract will not apply to the new property owner. He concluded that this is the only option, and if the Minister of Municipal Affairs rejects such a contract, the County should oppose the Minister and let the courts decide whether or not such contractual occupancy is legal.

Warden Lichter advised that three letters regarding this application have been received and circulated to Members of Council.

Deputy Warden McInroy stated Mr. Collins has been very patient with regard to this application. He stated Council was almost ready to deal with such situation approximately two years ago, and Mr. Collins has been very patient since it was determined that a solution cannot be found. Deputy Warden McInroy agreed that a contractual arrangement should be made and let it be challenged by the courts. He questioned if anybody would take such a matter to court. He expressed agreement to the suggestion of deferral of a decision to permit Mr. Collins to continue in his present living situation until a legal solution to this problem can be found. He agreed that spot rezonings is not the solution because the first one turned down for other reasons will be overturned by the Municipal Board.

It was moved by Councillor Boutilier, seconded by Councillor Baker:

"THAT a decision regarding Application No. RA-CH/W-18-88-24 be deferred until Council can act on a subsequent report from the task force on multiple unit dwellings."

MOTION CARRIED

APPLICATION NO. RA-SA-01-89-20 - APPLICATION BY MR. GREGORY ZACKERNUK OF McCABE MUSIC LIMITED TO REZONE THE PROPERTY AT 228 COBEQUID ROAD, LOWER SACKVILLE, FROM R-1 (SINGLE UNIT DWELLING) ZONE TO C-2 (GENERAL BUSINESS) ZONE

Mr. Morgan reviewed the staff report as circulated to Members of Council, referring to the location of the property in question on maps attached to the report. He advised that it is Mr. Zackernuk's intention to renovate an existing single unit dwelling to accommodate his retail music store and school. He concluded that it is the staff recommendation that Council approve this application.

Questions from Council

None.

Speakers in Favour of this Application

Mr. Gregory Zackernuk advised that he has nothing further to add, but he is available to answer any questions.

Questions from Council

None.

Speakers in Opposition to this Application

None.

It was moved by Councillor Boutilier, seconded by Councillor Fralick:

"THAT the application by Mr. Gregory Zachernuk (McCabe Music Limited) to rezone the property at 228 Cobequid Road, Lower Sackville, from R-1 (Single Unit Dwelling) Zone to C-2 (General Business) Zone, be approved by Municipal Council."
MOTION CARRIED

ADJOURNMENT

It was moved by Councillor Reid, seconded by Councillor Cooper:

"THAT these public hearings adjourn."
MOTION CARRIED

The meeting adjourned at 12:15 a.m.

PUBLIC HEARINGS

MONDAY, MAY 29, 1989

PRESENT WERE: Warden Lichter
Councillor Meade
Councillor Poirier
Councillor Baker
Councillor Ball
Councillor Deveaux
Councillor Bates
Councillor Randall
Councillor Bayers
Councillor Smiley
Councillor Reid
Councillor Horne
Councillor Merrigan
Councillor Snow
Councillor Eisenhower
Councillor MacDonald
Councillor Boutilier
Councillor MacKay
Councillor Sutherland
Councillor Cooper

ALSO PRESENT: Mr. G. J. Kelly, Municipal Clerk
Mr. R. G. Cragg, Municipal Solicitor
Ms. Maureen Ryan, Planner, Policy Division
Mr. Paul Morgan, Planner, Policy Division
Mr. John Bain, Planner, Policy Division
Mr. John Sheppard, Manager of Storm Drainage

SECRETARY: Gail Foisy

Warden Lichter called the public hearings to order at 7:00 p.m. with the Lord's Prayer. Mr. Kelly called the Roll. Warden Lichter then reviewed the procedure for the public hearing.

APPLICATION NO. RA-CH/W-19-88-24

Ms. Ryan reviewed the staff report and showed some slides of the properties and surrounding area.

Ms. Ryan advised that an application was submitted by Mr. Edwin Wile, on behalf of the Apostolic Church in Canada. It is being proposed to construct an approximately 2280 square foot church on the Caldwell Road in the vicinity of Nova Terrace. In order to construct the church, Mr. Wile requires a rezoning of Lot 2 of the Casavechia Subdivision from C-1 (Local Business) Zone and Lot K-6 of the Charles Giles Subdivision from R-1 (Single Unit Dwelling) Zone to P-2 (Community Facility) Zone.

Ms. Ryan advised that there is an existing bungalow located on Lot K-6. If successful, the applicant would like to convert it into kitchen and washroom facilities and construct an extension to locate the sanctuary.

Mr. Ryan indicated that the property is located within the Residential A Designation of the Cole Harbour/Westphal plan. Policy P-29 establishes this area as a priority area for continuing residential development and for uses generally supportive of the residential environment. According to Policy P-37, most community facility uses, including a church, may be considered by amendment to the land use by-law. It is the Department's feeling that the proposed development is generally compatible with the surrounding land uses.

Ms. Ryan advised that the Department of Transportation was contacted and has indicated that the proposed development does not present any specific traffic concerns. As well, the developer proposes to provide sufficient parking.

Ms. Ryan concluded that the proposal is consistent with the intention of the Residential A Designation and it is therefore recommended that the rezoning be approved.

Questions from Council

None.

Speakers in Favour of this Application

None.

Speakers in Opposition to this Application

None.

It was moved by Councillor Cooper, seconded by Councillor Bates:

THAT THE APPLICATION BY MR. WILE TO REZONE LANDS ON THE WEST SIDE OF THE CALDWELL ROAD, ADJACENT TO THE NOVA TERRACE INTERSECTION, FROM C-1 (LOCAL BUSINESS) ZONE AND R-1 (SINGLE UNIT DWELLING) ZONE, TO P-2 (COMMUNITY FACILITY) ZONE, BE APPROVED.

Motion carried unanimously.

FILE NO.'S PA-TLB-29-88 AND ZAP-TLB-29-88

John Bain reviewed the staff report.

Mr. Bain pointed out that this is a plan amendment; therefore, it will apply not to just one property, but rather to a larger area. The recommendation of staff is that the amendments to the Timberlea/Lakeside/Beechville municipal planning strategy and land use by-law to allow consideration of mixed use commercial residential development within the Commercial Designation by development agreement be approved. Mr. Zibara, on behalf of Mr. Leo Toulany, made application to consider allowing mixed use commercial and residential buildings within the commercial core, and was specifically concerned with Timberlea Discount Meats and Grocery.

Mr. Bain showed some slides of Mr. Toulany's property and the surrounding area.

Mr. Bain indicated that the amendments would apply to all the properties within the commercial core. As can be seen from the slides, the bulk of these lands are vacant. The property in question is zoned C-2 and residential development in that Commercial Core Designation is presently restricted to existing dwellings, single or two unit dwellings in conjunction with a permitted use or boarding or rooming houses. With that reading, it is therefore necessary to amend the plan to allow apartment buildings to be built over the top of the structure.

Mr. Bain advised that when Mr. Zibara made application, it was noted that what he was asking for was along the lines of what had been recommended by staff in a number of plan review papers. Some of the things recommended were that (1) the Timberlea/Lakeside/Beechville core area be retained, (2) that multi-unit residential uses be allowed in the core by development agreement, and (3) that the ground floor of commercial establishments be retained for commercial development and apartment buildings only be allowed on the subsequent floors.

Mr. Bain advised that staff recommended approval for a number of reasons. Primarily, it could enhance the viability of the core area. Also, it would probably reduce pressure on the Residential Designation to provide all of this multiple unit development by allowing some within the commercial core. As well, it would probably attract more commercial development to the core. It is not the intention, however, to replace the commercial component of that core by residential.

Mr. Bain noted that the report outlines two options: First, to allow apartment buildings above the first floor by right within the C-2 zone, and secondly, to allow by development agreement. He indicated that the second option has the advantage of being able to monitor the residential growth in the core. Each development agreement would have to have a public hearing. Also, it would allow staff and Council to consider a site specific evaluation.

Mr. Bain concluded that it is for the above reasons, plus that it is consistent with the recommendations made by staff through background reports, that staff recommends Option 2 to consider dwelling units in conjunction with permitted commercial uses by development agreement.

Questions from Council

Councillor Eisenhauer asked if the seventy acres have access to water and sewer services, to which Mr. Bain responded yes.

Councillor Deveaux asked for confirmation that Mr. Toulany's property is located within the Commercial Core Designation, to which Mr. Bain responded yes.

Speakers in Favour of this Application

None.

Speakers in Opposition to this Application

Walter Murray, 1857 St. Margaret's Bay Road

Mr. Murray stated that he lived adjacent to this proposed change and would certainly be effected by it. He indicated that he was speaking for himself and also had a letter from one of the members of the public participation

committee who is also in opposition. He advised that this change was brought to the public participation committee in their area and was rejected as being unsuitable for the community.

Mr. Murray indicated that as said at the Planning Advisory Committee public participation session, there were a number of arguments against having multiple unit dwellings within the commercial core.

Mr. Murray advised that he again spoke with the Lovett's, the owners of the R-1 property abutting Mr. Toulany's property. He indicated that he knew Mr. Toulany and that he is a responsible businessman in the community.

Mr. Murray stated that as far as he was aware, all of the R-1's in the area are opposed to this change in the commercial core to allow multiple unit dwellings. He said that he saw it as poor planning, besides the academic arguments of noise, bright lights, and traffic. He noted that the proposal is to build apartments above commercial establishments, and questioned where the children would play.

Mr. Murray commented that the traffic generated by this is not being dealt with now, and questioned what would happen if the commercial core is opened up to multiple unit dwellings.

Mr. Murray said that it has just been brought to his attention that the property adjacent to his is also in question because the plan that was submitted to the public at the public hearing in 1982 for approval was changed somewhere between the Fire Hall in Lakeside and the Minister of Municipal Affairs. He noted that it has been put down as a discrepancy, but that there is something wrong and the people of District 2 have the right to know who made the change, when it was made, and if the Minister knew. He stated that it is a complete misrepresentation of the community's wishes.

Mr. Murray commented that the seventy acres were bought by Mr. Havill who was handed a commercial core. Also, Mr. Reardon and his associates seem to be handed another piece of property. He expressed concern that at the same time the people who have pioneered and built this community are being put on appendices, with the value of their properties being cut in two.

Mr. Murray concluded that he was opposed to the plan amendment and hoped that Council would turn it down.

Questions from Council

Councillor MacKay asked for confirmation on where Mr. Murray's property was located.

Mr. Murray advised that he abutted the commercial core, which is directly across the street from his home.

Councillor MacKay asked Mr. Murray if he said he was not opposed to having apartment buildings in the C-2 area.

Mr. Murray responded that he was opposed to it.

Councillor MacKay referred to Mr. Murray's comments that something got changed in the plan from the time it left the Fire Hall to the time it went to the Minister, and asked for clarification.

Mr. Murray responded that it is on the map in the report. He referred to the R-1 area adjacent to the lake across from the commercial core, which is shown on the map as all C-2. He pointed out that the discrepancy is noted in the plan review background report #33.

Mr. Bain indicated that the discrepancy being referred to is Map 4 which was signed by the Minister of Municipal Affairs. However, the map shown in the package of the municipal planning strategy for public information shows the area across the road from Mr. Toulany's store as being in the Residential Designation. He pointed out that that discrepancy does not impact on Mr. Toulany's property.

Mrs. June Hutchins

Mr. Kelly read into the record a letter received from Mrs. June Hutchins, member of the review committee in District 2.

Mrs. Anne Fournier

Councillor Poirier advised that she received a phone call from Mrs. Fournier who asked her to relay to Council that she was opposed to the amendment as a member of the public participation committee because it would effect not only this particular property, but the whole Commercial Core Designation. Also, Mrs. Fournier felt that the property as is with two apartments allowed to be built was adequate for the needs of the property.

Councillor Ball moved, seconded by Councillor Baker:

THAT THE AMENDMENTS TO THE TIMBERLEA/LAKESIDE/
BEECHVILLE MUNICIPAL PLANNING STRATEGY AND LAND USE
BY-LAW TO ALLOW CONSIDERATION OF MIXED USE
COMMERCIAL/RESIDENTIAL DEVELOPMENT WITHIN THE
COMMERCIAL DESIGNATION, BY DEVELOPMENT AGREEMENT, BE
APPROVED.

The Warden pointed out that because this is a plan amendment, a majority vote of the whole Council is required for approval.

Motion carried.

APPLICATION NO. RA-SA-03-89-22

Councillor Eisenhauer declared a conflict of interest.

Mr. Morgan reviewed the staff report.

Mr. Morgan advised that an application has been made by Mr. Hanna to rezone portions of Lot 138 of the Beverley Hills Subdivision, Lot X-1 of the lands of Annie Donnahee, and Lot D-3 of the lands of John Donnahee.

Mr. Morgan indicated that the lands to be rezoned are best illustrated by Map 3. According to Council's policy, the applicant is only eligible to apply for rezoning portions of property in the General Commercial Designation (Policy P-102(1)). The area to be rezoned is approximately 0.70 acres and the area presently zoned C-2 has an area of about 1.34 acres. The applicant has stated that it is the intention to consolidate the lots and develop a retail mall on a portion of this site.

Mr. Morgan advised that Mr. Hanna has submitted a site plan showing the approximate structure. Included would be about 23,000 square feet of commercial retail space on the ground floor and 5000 square feet of office space on the second floor. Mr. Hanna has made application to amend the Sackville plan to permit commercial development over the entire site. He has tentatively stated that this would allow for a retail project in the vicinity of 55,000 - 60,000 square feet which would include 20,000 - 25,000 square feet of office space. He pointed out that approval or rejection of the rezoning application has no bearing on the plan amendment and is for information only.

Mr. Morgan noted that the General Commercial Designation presently includes lands at the intersection of Glendale Drive and the Beaverbank Road, lands at the intersection of Glendale Drive and the Cobequid Road, and lands along Sackville Drive between the Beaverbank Road and Florence Street. The plan states that these areas are beyond the commercial core, but recognizes that there is some potential there. However, in looking at undeveloped lands, any further development must be without detracting and also without adversely impacting abutting residential properties.

Mr. Morgan indicated that although there is no specified size in the policy as to what is a maximum size of commercial structure that could be considered within the General Commercial Designation, the plan does state that the designation was applied to existing smaller scale restaurants and small scale convenience stores. Staff has reservations that a development of this magnitude was ever intended for the General Commercial Designation. Staff also question whether the C-2 zone standards can adequately provide control over things such as signage, outdoor storage, and outdoor display. He pointed out that even within the Commercial Core Designation, a development of this magnitude over 25,000 square feet would have to be considered by development agreement. This requirement was to give better control over things such as signage and outdoor display.

Mr. Morgan stated that more importantly is that the area lies within the 1:20 floodplain. He advised that the floodplain mapping was undertaken in a joint agreement between the Provincial and Federal Government to delineate areas of flood potential along the Little Sackville River by consultation. The mapping was approved in 1987. There are two policies of the floodplain; the 1:20 year floodplain and the outer portion called the floodway fringe which defines land between the 1:20 and 1:100. He pointed out that in conjunction with the mapping, those consultants who understood the floodplain mapping study prepared a report warning that uncontrolled development in the floodplain could pose problems with increased flood levels in close proximity to the River. They recommended that the municipality adopt floodplain policies and regulations, and recommended that extreme caution be exercised when considering infilling in the floodplain. Staff has prepared recommended policies and amendments to the plan to incorporate these concepts for the Little Sackville River, which are similar to the policies incorporated for the Sackville River.

Mr. Morgan referred to Policies P-73(a) and P-86. He said that Mr. Hanna has been presented with this information and has proposed to infill it above the 1:100 flood level. He advised that the Department of Engineering & Works has reviewed this proposal and has stated that unless Mr. Hanna or his consultant can provide technical information to demonstrate that this would not cause additional flooding to upstream properties, it is not willing to recommend approval. Also, subsequent to the staff report being presented to the Planning Advisory Committee, staff received a response from the Department of the Environment. It submitted a proposal to the Steering Committee who was

responsible for overseeing the floodplain mapping and it confirms the engineering position that this proposal could cause potential flooding hazards to abutting properties.

Mr. Morgan advised that a proposal has been submitted to the Department of Transportation. In looking at the site plan, it stated that it would not approve the access points shown on the site plan, but would be willing to approve a single access point directly across from the Glendale Avenue intersection where there are already traffic lights. In a further letter subsequent to discussion by the Planning Advisory Committee, it was said that the cost of expanding the synchronization would have to be borne by the applicant, but it is felt that it is possible to locate a commercial development that would not cause any traffic problems.

Mr. Morgan concluded that the two main reasons for staff's recommendation of rejection are (1) that it is a high risk floodplain area that has been identified by the consultant and the comments received from Environment and the Department of Engineering has recommended rejection, and (2) some concerns about the square footage of this proposal and whether the designation was ever intended for a commercial project of this size.

Questions from Council

Councillor MacKay referred to Map 3 and said that it was his understanding that the only thing being applied for this evening is the area outlined with dots in the shaded area. He noted that that area had been infilled some years ago, as well as some just recently, and asked if the mapping took into consideration that with the infilling it is now presently above the floodplain level.

Mr. Morgan advised that the actual physical survey was undertaken in 1985 but that the mapping was not approved until 1987. In the course of the two years, staff is aware that some infilling has taken place; a lot of it was approved by the municipality. At present there is a policy that anything within 100' of the Little Sackville River can be considered by development agreement.

Councillor MacKay indicated that along Sunnyvale Crescent there are a number of dwellings which were approved by development agreement which had plans submitted showing that they would not be flooded and how the properties would be stabilized. He noted that there are a number of properties along Sunnyvale Crescent and Gloria Avenue which would never have gotten built if they had not been approved. He said that to his knowledge none of them have flooded.

Mr. Morgan responded that those on Sunnyvale Crescent were built on fill and might have pushed the floodplain back. At that time, the municipality did not have this information available and was not aware of the dangers that it could impose. The main danger is that the more you impose, the more damage there is to neighbouring properties. In the staff report, towards the Sackville River, it was recognized that there could be discrepancies in the floodlines because of development that has occurred. At the same time, we have to recognize that whatever has occurred could worsen the situation. Now that we have been provided with this information, there should be some safeguard or better review of controlling grade alterations, but with the C-2 zone you do not have that control and staff is not prepared to recommend approval.

Councillor MacKay noted that what is being applied for rezoning is a portion of Lot X-1 and Lot 138, and that most of the land is already zoned C-2. He said that if the person has the zone and meets the criteria, a permit can be issued.

Mr. Morgan pointed out that there is some question as to whether that fill was placed legally. He advised that our Engineering Department has had discussions with Mr. Hanna and is trying to convince him not to place additional fill on his property. He clarified that under the zoning, the portion zoned C-2 has the right to apply for a permit. Staff is saying that because of the flood risk, the municipality should not approve additional C-2 for large scale development.

Councillor MacKay asked for clarification on the intention of the C-2 zone.

Mr. Morgan responded that it was the intention to place the General Commercial Designation over existing commercial development which was beyond the Commercial Core Designation; the Commercial Core Designation being the main designation for which Council wanted to focus commercial development.

Councillor MacKay noted that Mr. Morgan had mentioned that it was the intention of Council just to have small scale commercial development from the Florence Street area down to the Cobequid Road.

Mr. Morgan responded that staff is questioning whether it was ever the intention of the General Commercial Designation to accommodate a proposal this large. He noted that there is no specific numbers in the plan, but pointed out that in the Commercial Core Designation, development over 25,000 square feet can only be considered by development agreement.

Councillor MacKay commented that in the C-3 zone it says that anything over 25,000 square feet immediately abutting a residential designation has the right to develop by development agreement. He said that when the municipal planning strategy was adopted, there was a limitation put on the C-2 area for a maximum of 5000 square feet for office buildings only. The intention was to get the office buildings in the core area so the height restrictions were dropped. He indicated that there was never any thought of limiting the size of any other buildings; there was an incentive to locate other types of commercial development in the other area.

Councillor Sutherland referred to the existing commercial designation line and noted that it does not tie into the property boundaries. He suggested that it would be better if the designation line was to follow the property lines.

Warden Lichter pointed out that there were discussions about how in the earlier plans the land use by-law maps did not follow the property boundaries, and that it was recommended that it would be done for future plans.

Councillor Sutherland referred to the Sunnyvale Subdivision and indicated that there was considerable infilling which undoubtedly created some problems with the floodplain downstream. He said that he had to look back to the beginning when Mr. Hanna said he had the option, but that in order to accommodate that option he had to ask for the line to be pushed back. At that time, Mr. Hanna indicated that he was willing to sign a development agreement, but unfortunately that mechanism was not in place, and therefore would have to go through a rezoning to accommodate the first phase and then apply for a plan amendment.

Councillor Morgan referred to the floodplain map on Page 10, specifically the Beaverbank Road. He noted that it was said the mapping was done in 1985 and that there have been no changes to the elevations of the Beaverbank Road since that time. He questioned why the map still showed parts of the Beaverbank Road under the 1:100.

Mr. Morgan responded that the map shows that the floodplain extends partially on the Beaverbank Road right-of-way.

Councillor Morgan referred to the right-of-way on the Beaverbank Road and said that he was involved in the construction of it just adjacent to the Hanna property, and noted that there was no change on the elevation of that particular property since 1973. The elevation is 9' higher than what is shown on the map.

Mr. Morgan noted that the consultant's report documents various flooding along the Little Sackville River.

Councillor Morgan said that the intention of the map on Page 10 is to show that the Beaverbank Road can flood in the 1:100 which is a pretty significant indication. If in fact it can flood in that area, then the C-2 area immediately across the street has a lower elevation than the one being referenced. He noted that the Beaverbank Road is higher than the C-2 area across the street. Also, that the C-2 across the street was infilled in 1969, which should have been shown under the 1:20 as well.

Councillor Morgan indicated that beyond the Glendale entrance of the Beaverbank Road is a church which used to be a C-2 designated property. He asked if staff could consider transferring that small portion of C-2 designated property lost to the church to the Hanna site, so as to get some commercial assessment back. He asked if staff has recommended other areas for commercial development.

Mr. Morgan responded that he was aware during plan review that the policies are being reviewed and that anything could be considered. Regarding the designation line, the property lines were not followed, and suggested that they went with aerial photographs. Also, that at the time the plan was adopted in 1982, Policy P-102 would have allowed extension of commercial uses into the Residential Designation, but that there was a subsequent amendment made at the request of the area residents who were concerned about commercial encroachment into the residential area.

Councillor Morgan said that he thought there was a lot of concern expressed over the years when people were not sure where commercial development was going. People now realize that you cannot run a municipality on residential development alone. He indicated that he believed in Sackville there was a lot of downzoning commercial to encourage two unit residential dwellings, and that he would like to see some of this changed back to commercial zoning.

Councillor Morgan referred to the last paragraph on page four which indicates that "Policy P-87 requires a development agreement for any development located within 100 feet of the Little Sackville River", and asked if staff would consider this property going by development agreement and if staff would support such a policy.