

Business Park, it tended to flow and then go on to BP-2 to designate types of businesses or potential zones within the Business Park. He said this seemed to be an agreed approach to the development of the Park.

Mr. Mason referred to page 88 - the Business Park extension - and subsequently BP-3 and BP-4, the idea of extending the Business Park uses to a parcel of land that seemed to be isolated from the future Expressway seemed to be a reasonable approach to the use of the land. The general content of the policies tended to fit in with the discussions held over a period of time.

Mr. Mason said that with regard to the Land Use By-law, there were three designations set up within the Business Park zone for development plus an open space category within the zone. He said there then seemed to be some divergence of what was felt to be the direction of the Park. Much of this fell to Schedule B on the back of the Zoning By-law.

Mr. Mason said that there could be drafting errors on Schedule B as it tended to represent an old plan that had been discussed with his client some time ago and which was called Sackville Business Park Conceptual Master Plan done by Davison, Seamone, Rickard, Adams, Architects a couple of years ago. He said following a series of meetings and dated December, 1992 the Department issued a plan which he had in his possession and showed to Council which, he said, was believed to be, by Department representatives and the consultants, the general plan for the development of the Park. He said there was nothing different between the Plan and the MPS policies but there were things which had slipped through the cracks in the use of the old Plan which he felt had been abandoned.

Mr. Mason stated that there had been continued liaison with Department of Transportation on the linkage to the highway. He indicated the differences on the two maps. He indicated the negotiated and agreed position for the connection to Glendale Road and stated this was significant because with the zoning set out in Schedule B, it made even the installation of the agreed road subject to a whole round of rezonings.

Mr. Mason stated that another issue was the relation of the northern boundary - the very parcel of land referred to by Annapolis Basis Pulp and Power Company. He said that an access system of roads had been developed to allow sewer, water, drainage access to occur at a time when those lands might be brought into production. He said that had been agreed upon and this tended to fall into the minor category of adjustments to the Plan. He indicated a road that would be required that would allow development of the lands to the north. He said this would require another whole round of zonings to do the servicing.

Mr. Mason indicated a road set up on Schedule B which would be eliminated through the middle and said this was inconsistent with what was felt to be development of the lands.

Mr. Mason referred to a parcel in the west corner beside Bicentennial Drive which was formally not part of the Park and said it was understood that was reserved for a future interchange. As a result, there had been no attempt to develop the land.

Mr. Mason indicated the location of a high tension power line running from east to west on the map which might be useful for increasing public access in terms of open space. It had been left as a servicing corridor within the Park as opposed to breaking it out as open space which might encourage additional access. He stated there was also another power right of way that did not show on Schedule B which was a necessary part of the Plan. He indicated the location and stated it had been necessary to redesign the layout of the Park as a result of the continued desire by Nova Scotia Power to maintain that right of way. The type of use to be made of that right of way would be in consultation with Nova Scotia Power Corporation.

Mr. Mason referred to an extensive drainage scheme for the area which had been worked out over the years. He indicated designated drainage paths required by Department of Environment and Department of Transportation which had been discussed with Planning Department.

Mr. Mason referred to the fact that open space had been set up in a meandering pattern. The intention of open space was to provide a buffer from one type of use to another. He said the worst thing for Business Park development would be to have a certain lot restricted in depth or width to accommodate a buffer strip.

Mr. Mason stated that within the Business Park to have the extensive open walkway system which would encourage public use would set a number of alleyways and rear yards as being accessible to the public and was perhaps not desirable from the point of security of property. In consideration of this in the zoning, he said where the Plan indicated a general configuration to be used, he feared that the word "general" might well get dropped and minor variation to detail might be the rule of the day.

Mr. Mason indicated an open space at the top and stated it would not serve much purpose. He stated there might be a ridge there. He said in the negotiated plan for the highway location, it would put the open space in the way of the road. This could also mean another round of rezonings.

Mr. Mason stated that there were a number of adjustments that did not influence the intent of the policies and did not affect the Park zone or the designations within the zone. In general terms,

the plan of 1992 tended to represent most of the ideas to carry forward in the implementation of the Park. If the Plan he had indicated was used instead of Schedule B, it would represent all the principles and eliminate the drafting errors, misconceptions and inconveniences that may have gotten in the way of good planning unwittingly.

QUESTIONS FROM COUNCIL

Deputy Mayor Bates asked why this had not been brought forward previously.

Mr. Mason stated that the plan he referred to had been in circulation for some time and from time to time had asked how the Sackville Plan was coming but had not gotten into any detail.

Councillor Brill asked if there had been an error and the wrong map had been put in.

Ms. Corser stated that the map included as Schedule B was not produced by staff. Sackville Community Council had formed a Citizens Sub-Committee to advise them on the plan review process. A business owner in the Business Park initiated preparation of the concept plan and it was reviewed at approximately 10-12 meetings at the community level. Some adjustments were made and policies developed. In early 1992 there was one meeting, and possibly two, where the provincial government did go over the concept plan and it was included. She said she had never seen the one Mr. Mason had but advised that she had been away from the Municipality for an extended period and it could have come forward at that time and not been included. She said she did agree with the comments that this was a matter of clarification. She said what may have happened was that the provincial government redesigned their concept plan in conjunction with changes proposed in highways and so on.

Deputy Mayor Bates asked if the changes were minor changes.

Ms. Corser stated it would be necessary to evaluate how substantive the changes were. There were a number of things brought up and they could be more of a major issue.

Councillor Boutilier suggested deferring this particular area with the intent of Planning staff addressing what was a minor nature. Others considered major would require another Public Hearing.

Mr. Butler stated he was not aware of the process by which this concept plan was prepared.

Mr. Mason left copies of the plan for the information of Council.

Councillor Brill suggested that Planning staff might want to check their files. He said he believed there was a letter on file which

went from Mr. Bill Davis who was chairing the Citizens Sub-Committee at the time.

SPEAKER IN OPPOSITION

Mr. Mike Gray, Crimson Drive provided a chronological overview of information regarding the Little Sackville River floodplain which eventually resulted in a vote of 3-2 against the proposed recommendation - and a decision to maintain the status quo to go forward to Plan Review Committee.

Mr. Gray advised that some of the dates he had quoted in his chronological review referred to specific pieces of correspondence and he read portions for the benefit of Council. He specifically referred to a Memorandum from John Sheppard, Manager of Storm Drainage advising that he did not agree with the decision to maintain the status quo.

Mr. Gray stated he saw no concern from anybody who lived in the floodplain now, or for people coming in. He asked if they would be able to get insurance, mortgages to live in the places. He said there was also no concern on behalf of the proponents to protect the interests of future residents.

Mr. Gray stated that the only change being proposed to the MPS was to exclude accessory buildings - sheds - from a requirement for a Development Agreement. He referred to the fact that there had been 40 Development Agreements and asked if there had been any information obtained regarding what effect those Development Agreements had had on the river over the last ten years.

Mr. Gray stated he personally did not feel that by putting in a floodplain zone the world would come to an end. There were compromises and there could be negotiations.

Mr. Gray referred to a Memorandum to the Executive of the Union of Nova Scotia Municipalities regarding the proposed Environment Act. He highlighted some of the basic principles of the Act and outlined sanctions and penalties. He stated that the Act contained provisions placing responsibilities on municipalities and many more sanctions and penalties for violation of the Act. He said a Councillor or officer of the Municipality, employees and individuals may be subject to prosecution. He asked if, because he was a member of a Sub-Committee, could he be affected. He asked if there was a program in place to protect against environmentally generated liability.

Mr. Gray stated that the document to be presented to the Union of Nova Scotia Municipalities had been sent from A. William Cox, Q.C.

Mr. Gray stated he was currently a member of the Citizens Advisory Sub-Committee on Community Landfill Compensation, Sackville

Community Planning Advisory Committee, Sackville Rivers Association and a number of other organizations.

Mr. Gray stated he was concerned with the ramifications of ignoring all two levels of government, staff and everybody else and maintaining the status quo. He stated there might be a compromise which had been suggested by some of the supporters of maintaining the status quo here tonight. He said he would not argue about not making a floodplain designation if there was a freeze put on all development of the land until the money became available to do the updated mapping of the Little Sackville River floodplain. He said if anybody was sincere, they might go for that.

QUESTIONS FROM COUNCIL

Councillor Merrigan asked if Mr. Gray was speaking against the Plan, then it should be voted down tonight. He said the floodplain could not be put in the Plan tonight.

Mr. Gray stated then, the Plan would have to be voted down.

SPEAKER IN OPPOSITION

Mr. George Armoyan stated he was with the Armoyan Group Limited, a Sackville based company. He said he was not against the Plan and was generally in agreement with the exception of one concern.

Mr. Armoyan stated his concern was with housing mixture - page 45 of the draft Municipal Planning Strategy and the brief note on page 46 with regard to what had taken place in Sackville over the last few years. He noted that the second paragraph said that by 1993 the proportion of single unit dwellings to other forms of housing comprised 65%. During this same period, the proportion of higher density residential units increased from 32% to 35%. He then referred to UR-3 to establish a general objective of 70:30 as a housing mixture ratio between single unit dwellings and other types of residential dwelling units within the Plan area.

Mr. Armoyan stated that actually what was being said was that there should be a moratorium on anything right now because if the intent was to be 70:30 and presently it was 65:35, then nobody would be given the opportunity to come up with a plan as it would be necessary to wait for quite a bit of single development to take place over the next few years until the ratio reached 70:30. He said he was looking for clarification as he hoped that was not the intent. He said there was an implication that semi - R-2 - was high density.

Mr. Armoyan stated that the new Plan was to establish a new zoning By-law for R-1-0 which he did not think could be done as of right but through a CDD Agreement. He said the same density was achieved by an R-2 as an R-1-0. He said he believed that R-2 should be part

of the lower density which would give 80:20 ratio which would make it more reasonable. He noted that anything over six units had to be by Development Agreement; therefore, you could not enter into a Development Agreement because you would already be in violation of something to be passed tonight.

Mr. Armoyan urged changes to the definition, which he considered to be minor.

Mr. Armoyan made reference to two-unit dwellings on page 47 regarding the ratio of low density. He said instead of having a typical 60' R-2, it was increased to 70'. He said he did not think that would achieve what they were trying to do unless there was a controlled specific site plan which could be done under CDD Agreements. He said the people who would most likely buy these types of lots would be first time buyers and what would be accomplished would be to increase the cost of servicing the land and make it more difficult for the person to afford the housing. He said control could be accomplished by entering into a CDD or limiting the amount of land that could be rezoned from R-1 to R-2.

Mr. Armoyan commended staff on a job well done and stated that he considered the changes he was requesting to be minor amendments.

QUESTIONS FROM COUNCIL

Deputy Mayor Bates referred to designating 80:20 instead of 70:30 and asked if this would be a minor amendment.

Ms. Corser stated this was not a minor amendment. In all urban Plan areas, of which there were five, two unit dwellings were treated as a form of high density housing. She said R-1-0 was new to the Municipality and there were a number of projects under way. She said it was clear they were single detached units but were being developed at a density higher than the traditional single detached.

Deputy Mayor Bates stated that going from 70 to 60 was clearly not a minor amendment.

Mr. Armoyan referred to a Memorandum sent to Council from Mr. Butler providing a report on affordable housing prepared in 1992. He said his company was trying to make things more affordable. He stated he believed that Council had more power than it thought; otherwise, what was the sense of having a Public Hearing if it was not possible to make amendments. He said nothing had changed over the years and he had seen Council make amendments previously. He said if Council was not able to make a change, there was no sense in having the Public Hearing and it was not the proper process.

Deputy Mayor Bates stated there was a process that Council had to follow and if there were any major changes to the Municipal

Planning Strategy or Land Use By-Law, it would have to be advertised. It was necessary to abide by the law.

Councillor Brill stated, in his opinion, this was not a minor amendment. He said that over the last two and a half years, the question of density had been questioned and that was why it was the way it was in the Plan.

OTHER

Deputy Mayor Bates read into the record the following letters:

1. Letter dated February 10, 1994 from Ralph W. Spares, Director of Highway Planning, Department of Transportation and Communications.
2. Letter dated February 8, 1994 from Harold Dillon, Manager, Project Management and Planning, Department of Housing and Consumer Affairs.
3. Letter dated February 14, 1994 from E. A. Clarke, Director, Policy, Planning & Development, Department of Housing and Consumer Affairs.

Deputy Mayor Bates referred to the question raised by Ms. Theresa Scratch earlier in the meeting. He advised that Mr. Crooks had had an opportunity to discuss the matter with staff.

Mr. Crooks stated that, as he understood the situation, there was some question about the ownership, whether they were owned by Department of Housing, and if they were as suggested, the intention evidently was that they should be zoned Park as opposed to their current zoning. The information before staff with respect to ownership was not clear or definitive enough that Council could safely move tonight to zone those lands differently than proposed in the draft Municipal Planning Strategy and Land Use By-law. If Council wished to do so, it could investigate or cause to be investigated after tonight, the ownership of those lands and if it turned out the lands were owned by Department of Housing and no major amendment was involved and it was consistent with the policy intent, then it may well be possible to affect the different zoning proposed without a further Public Hearing. If Council wished to have that option available to it, it would be necessary to defer decision tonight on the Municipal Planning Strategy and Land Use By-law, get the report from staff and then deal with the matter once the report was received.

Ms. Scratch said she was somewhat disappointed as she had had conversation with staff, with Councillors, with Department of Housing and LRIS regarding the lands. She said even Department of Housing was prepared to identify the lands as theirs. She said the County had access to LRIS maps and she said she would have hoped

that they would have made the changes. She asked if there would be a further opportunity to comment on the letters received.

Mr. Crooks stated it would be a decision of Council whether or not to conclude the Public Hearing phase of the process, to adjourn the Public Hearing phase of the process. If Council were to approve the draft Municipal Planning Strategy and Land Use By-law as it stood now, then it would be necessary, in order to zone the lands Park, to amend the Land Use By-law in the normal way where there would be an opportunity for the public to comment. He said he did not see a necessity for a strategy amendment.

Deputy Mayor Bates clarified that amendments could be done by Community Council.

DECISION BY COUNCIL

Deputy Mayor Bates pointed out that the floodplain was not included in the Municipal Planning Strategy. There was an opportunity available at a future time to introduce amendments but Council had to deal with what was before them.

Deputy Mayor Bates referred to the concerns expressed by Annapolis Basin Pulp and Power and stated there was nothing that could be given by way of a concrete resolution tonight but he felt they were satisfied that they could make application to amend later on.

Deputy Mayor Bates stated the same thing applied to the Sackville Business Park. Any major changes would not be able to be dealt with.

Councillor Merrigan referred to Mr. Barrett's concerns. Deputy Mayor Bates stated he had not meant to leave out Mr. Barrett; all concerns were going to be considered.

Councillor Harvey said he had hoped tonight to be able to move to Council tomorrow night with a recommendation to proceed to Municipal Affairs; however, a number of substantive matters had been raised tonight. He said the public had some concerns that input from the public had no impact at the final stages. He said the review process had taken 6-7 years and he commended staff for their efforts. He also commended the citizens of the community for making their submissions and the citizens who served on the review committee. He stated that enough of a substantive nature had been raised tonight that Council should take some time to reflect on a decision and have further input from staff.

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

"THAT COUNCIL DEFER DECISION ON THE MUNICIPAL PLANNING STRATEGY AND LAND USE BY-LAW UNTIL SUCH TIME AS STAFF CAN REPORT BACK ON A NUMBER OF ISSUES AND THAT THE

INFORMATION BE AVAILABLE FOR THE MARCH 1, 1994 SESSION OF COUNCIL".

Councillor Peters stated that Barrett Lumber, in her opinion, should be treated as a special situation.

Deputy Mayor Bates said he was sure staff would cover all issues raised.

Councillor Harvey asked if staff would have sufficient time to prepare for the March 1 session of Council.

Mr. Butler stated staff would try their best.

Councillor Brill asked what significant changes would take place between now and March 1.

Mr. Crooks stated that to the extent that there were minor amendments involved - clerical matters, minor discrepancies - once those suggestions were assessed by staff and Council has the benefit of a report, those could be dealt with at that time without further public notice. He said any substantive changes to the Plan would require further advertisement identifying what the proposals for change were. That was the latitude Council had in terms of making changes to the document.

Deputy Mayor Bates requested clarification that the Public Hearing process was now over.

Mr. Crooks stated he understood Councillor Harvey's motion was to defer a decision; therefore, the Public Hearing phase was closed. All that Council could do in terms of amendments based on the Public Hearing process to date, would be the minor items.

MOTION CARRIED.

ADJOURNMENT

Meeting adjourned at 10:45 p.m.

PUBLIC HEARING

February 28, 1994

PRESENT WERE: Mayor Lichter
Councillor Meade
Councillor Rankin
Councillor Fralick
Councillor Mitchell
Councillor Ball
Councillor Deveaux
Deputy Mayor Bates
Councillor Hendsbee
Councillor Randall
Councillor Bayers
Councillor Smiley
Councillor Reid
Councillor Peters
Councillor Merrigan
Councillor Brill
Councillor Giffin
Councillor Barnet
Councillor Harvey
Councillor Sutherland
Councillor Turner
Councillor Cooper

ALSO PRESENT: Dale Reinhardt, Acting Municipal Clerk
Fred Crooks, Municipal Solicitor

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The meeting was called to order at 6:00 p.m. with the Lord's
Prayer. Mr. Reinhardt called roll.

APPOINTMENT OF RECORDING SECRETARY

It was moved by Councillor Sutherland, seconded by Councillor
Giffin:

"THAT JULIA HORNCastle BE APPOINTED AS RECORDING
SECRETARY"

MOTION CARRIED

Mayor Lichter outlined the procedure for a public hearing.

PA-PD5-15-92 & ZAP-PD5-15-92 - APPLICATION BY THE MUNICIPALITY TO
AMEND THE PROVISIONS OF THE MUNICIPAL PLANNING STRATEGY AND LAND
USE BY-LAW FOR PLANNING DISTRICT 5 (CHEBUCTO PENINSULA) IN ORDER
TO ALLOW FOR CONSIDERATION OF HOME BUSINESS USES ON PROPERTIES IN
THE VICINITY OF THE OLD SAMBRO ROAD - WHITEHEAD ROAD

Mr. Morgan said the application is to amend the provisions for home occupations in planning district 5, Chebucto Peninsula. The application was initiated by the municipality in response to a request by the Huszar's who have a property at 1300 Old Sambro Road. The Huszars live on this property and have a garage to the rear of a little over 500 sq. ft. and would like to operate a tool making repair business in the garage. Under the provisions of the Land Use By-law and Planning Strategy this business, as it stands, could not be accommodated. The property is zoned R2 and does allow for businesses within the dwelling of up to 300 sq. ft. There is also provision under the Planning Strategy to apply for an R2A (Home occupation) zone which would allow for home occupations in an accessory building of up to 750 sq. ft. He said if the Huszar's applied for the R2A as it presently stands the application would be inconsistent with the policies. He said the reason for this is that there is a specific prohibition that the Old Sambro Road, between the Whiteshead Road and Sambro, this home occupation zone will not be considered. He said the property is just South of the Whiteshead Road.

In the staff report of October 18, 1993 the issue of home occupations was looked at and staff felt there was a lot of merit in their application. Even though this would involve some equipment that fact that it is in the garage and won't involve any outdoor storage or display of materials. He said it is a well maintained property. He said several proposals were reviewed including provisions for a development agreement and another would be to give everybody the right to have a business in their garage. The one selected, after consultation with members of the public at a public participation session, was to do two things - 1) amend the definition of home occupation zone so as to allow for this type of business and 2) to remove the prohibition against consideration of the rezoning along this stretch of road. These amendments are presented in the staff report of December 17, 1993 as Appendices A and B. Appendix B gives a new definition for home occupation under the land use by-law and it allows for any business, provided you can meet the zone standards, except for a retail use, autobody and repair shop or a restaurant. He said staff is recommending approval of these amendments.

He said when the Huszar's when they initially applied to set the business in the garage he was advised that they had checked the zoning on the property, before they purchased it, and had been advised that it was and R6 zone. He said the zoning schedule was not well drafted and it is possible to believe that someone could have mistakenly thought that this property was zoned R6 which would have permitted this business.

Mayor Lichter said he has checked into the zoning aspect of the application and there was no question that indeed the Huszars were given the wrong information.

Mr. Morgan said he can't say for certain that there was an error or that staff say there was R6 zoning on that property. He said he could not find any written records to that effect. He said he did have Mrs. Huszar say that she had been advised that it was zoned R6. He said her solicitor had also made that representation. He said he looked at the zoning schedule and the way it was drafted was sufficiently unclear that it was believable that one of the staff members had advised them that the property was zoned R6. He said he can't say for any certainty because he was not around when this happened and there are no written records of any statements from staff.

Councillor Sutherland asked for clarification on the three exceptions.

Mr. Morgan said on Appendix B of the December 17th staff report there are three uses excluded. One is a retail use, an auto body or repair shop or a restaurant. Anything else as long as you can meet the standards of the zone and you have to be within 750 sq. ft., no outdoor storage or display, no equipment that would produce a lot of noise.

Councillor Sutherland said this would have to be contained within the structure.

Mr. Morgan said it would have to be in the structure or in the main dwelling. He said that the property could not be rezoned tonight, it would have to come in a separate rezoning application. The rezoning application cannot be entertained until the policy provision is in place. He said a recommendation will be positive.

Councillor Cooper asked what types of equipment was to be used.

Mr. Morgan said the resident has talked about a lathe, drill press and other specialized equipment.

Councillor Cooper said the planning strategy had made reference to not allowing machine shops at one time. He asked if this had been removed.

Mr. Morgan said that under the current definition machine shop of home occupation uses are prohibited. He said this amendment would broaden the definition of home occupation to allow for a business such as this that does allow some equipment in an accessory building. He said staff does not feel that this is unreasonable.

Councillor Cooper asked when a selection of equipment become a machine shop.

Mr. Morgan said that would depend on the intent which it was

being used. Under this definition of home occupation use a machine shop or lathe or other equipment of that nature would be permitted. He said this is a specialized machine shop and it would be permitted under this new definition if these provisions are put in place and the property is rezoned. He said this would be any shop where equipment is kept within the building except an auto body or auto repair shop because they would involve the outdoor storage of vehicles and tend to get messy. He said there was a lot of concern in the community about auto body shops.

Councillor Cooper asked if machine shops would be permitted.

Mr. Morgan said this is correct.

Councillor Cooper asked if machine shops can be noisy and how do you determine if it has gone beyond the limit.

Mr. Morgan said they can be but not necessarily so and as with any type of business the possibility of it being noisy is looked at when looking at the type of business being proposed. He said the proximity of other residences and the potential for being a nuisance. He said there will have to be a judgement call.

Councillor Cooper asked if this was approved would users have to come in and make an application and the equipment would have to be assessed to see if it is a machine shop.

Mr. Morgan said that is correct and staff would advise as to what the equipments intent is and if it has bearing on the decision to approve or not would depend on council.

Councillor Ball said if someone had a garage that was 500 sq. ft. in the back part of his property is it possible for them to have all the pieces of equipment that would entail a machine shop for hobby use.

Mr. Morgan said one of the reasons staff looked at broadening the definition was the fact that a machine shop or a business use that involved equipment, kept inside an accessory building, are not necessarily going to be a nuisance either from an aesthetic point of view or point of view of noise.

Councillor Ball said the only way he would be able to differentiate between the two situations in this circumstance is putting forth a home occupation. The other circumstance is its a hobby but it is possible to have the same pieces of equipment on the property one being treated as a hobby and the one in this circumstance being treated as a machine shop.

Mr. Morgan said that is correct.

SPEAKERS IN FAVOUR

No speakers in favour.

SPEAKERS IN OPPOSITION

No speakers in opposition.

Mayor Lichter informed council that a letter had been received in opposition from Gary and Dianne Boudreau, district 5.

DECISION OF COUNCIL

Councillor Ball said this makes it possible for someone to apply for a home occupation zoning if they are so inclined. Each item will be treated on a case by case basis.

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

"THAT APPENDIX A BE APPROVED"

MOTION CARRIED UNANIMOUSLY

It was moved by Councillor Ball, seconded by Councillor Giffin:

"THAT APPENDIX B BE APPROVED"

MOTION CARRIED

CDD-EP/CB-01-88-06 - APPLICATION BY WALLACE, MACDONALD AND LIVELY ON BEHALF OF ANAHID INVESTMENTS TO ENTER INTO A DEVELOPMENT AGREEMENT PURSUANT TO A CDD FOR A PARCEL OF LAND LOCATED TO THE EAST OF CALDWELL ROAD AND TO THE SOUTH OF THE COW BAY ROAD IN ORDER TO ALLOW FOR DEVELOPMENT OF THESE LANDS BY DEVELOPMENT AGREEMENT

Mr. Jim Donovan made the staff presentation. He brought councils attention to a couple of minor errors in the draft agreement. On page 2 section 1.9 the word owner should be inserted between the words "registered" and "of" in the first line. On page 4 the very last line on that page the words "shall be issued" should be deleted from the draft agreement.

He said on the concept attached to the outline on schedule B on page 14 of the agreement shows a wetland area extending into an adjoining property. He said according to the Department of the Environment that wetland area may not be exactly as illustrated on that concept. Some additional work is called for as part of the development agreement which is the preparation of a storm drainage report which will provide some further details to the Department of the Environment and the Engineering Department in terms of how that wetland area is actually configured and that will have some implications in terms of the overall development and the storm drainage with respect to discharge or not onto

adjoining properties.

He said this application is an application by Anahid Investments Ltd. to enter into a development agreement with the municipality to permit 618 dwelling units as part of the proposed Heritage Hills development in Eastern Passage. The application was first heard by council on November 22 and at that time the decision of council was to defer the application pending the outcome of rezoning two small areas of land that were part of the application. On December 13 a public hearing was held on the rezoning aspect of this application and the rezoning was approved. At the request of the applicant and the area councillor a decision was made at the December 13 to defer the consideration of the development agreement in order to allow the applicant some time to revise the agreement to address certain concerns that were expressed at the November 22 public hearing. The main emphasis was to remove the 36 foot lot component of the proposal. That deferral of council was based on an assumption that a revised agreement could be worked out between staff and the developer, tabled with Planning Advisory Committee on January 10, 1994, submitted to council on January 18, 1994 for public hearing to be held on January 31, 1994.

On January 10th a staff report was submitted to Planning Advisory Committee indicating support of the revised concept which is in the new package as revision 5.4. He said there was some disagreement with respect to various aspects of the development agreement. Planning Advisory Committee referred it back to staff to do some further work on the wording of the agreement and consequently the January 31 date could not be met. On January 24 another draft agreement was submitted to Planning Advisory Committee and the recommendation of the committee at that time was to refer the application to council for the setting of tonight's public hearing subject to resolution of two outstanding items relating to the disposition of parkland and the technical requirements with respect to Engineering Appendices of the agreement. Those two remaining matters were addressed by council on February 1 council session and council set the public hearing subject the applicant withdrawing the initial proposal (revision 5.2). He said Mr. Armojan officially withdrew his previous development agreement application.

The application at this meeting is for a new concept and there is a new development agreement that is with the concept. The essential elements of the project are basically unchanged. The more significant changes to the layout are addressed in a staff report dated January 10. He indicated this was attached to the information package for tonight's meeting. The street layout, the parkland conservation configuration, the design of pedestrian and sidewalk systems are basically the same as the previous proposal. The number of dwelling units remains the same, 618. The ratio of single to two unit dwellings remains the same also at 70/30.

The changes to the design and layout are essentially related to the proportion and distribution of the various lot categories within the project. There is a new lot category for 74 foot wide lots. There are now 22 of those in neighbourhood 6. Formerly there was a range of lot sizes in that neighbourhood unit. He outlined, on a schematic drawing, the different types of lots for council. He said there is a total of 112 lots within the concept which now would meet or exceed the 60 foot minimum lot size for R1 lots in Eastern Passage. Formerly there were 105. The number of R2 or two unit dwelling lots are approximately the same but the number of 70 foot wide semi detached lots has been decreased by 90. He said there are 92 additional 64 foot wide semi detached lots. There is a reversal in the number of those lots. He said from a staff point of view they don't know where or why those lot sizes were changed but they don't really cause any concern because the proportion of two unit dwellings to singles remains the same and staff feels there are adequate controls in the agreement to address two unit dwellings on 64 foot lots more so than there are in the R2 zone elsewhere in Eastern Passage.

Another substantive change is the reduction in the number of 54 foot lots. He said the main concern was they have been removed from the middle of the development along Melrose Drive. There are not 103 accesses as opposed to 85 in the original proposal. He said basically the 54 foot wide lots were removed from that street and replaced with 40 foot wide singles and some additional semi detached lots. The increase in the number of driveways is not considered a positive feature of this new development but they are not increased to the point that they would be a safety concern. He said it is more of a visual aesthetic concern from the staff point of view.

In addition to the changes in the overall proportion the actual distribution of lots has changed significantly from the first proposal which attempted to more evenly distribute the various lot categories through the development whereas in this recent proposal they appear to be more concentrated in certain areas. Neighbourhood 6 has very low density whereas some of the larger neighbourhoods have additional density as a result of more 40 foot wide singles and semi's.

There were some minor revisions to the parkland and conservation component. He said the conservation area along Smelt Brook was decreased and the parkland area was increased. He said other than that there were very minimal changes to the parkland component in the proposal. He said various changes were incorporated into the development agreement to address the new design and to address matters which were raised through further negotiations after the first public hearing. There has been some tightening up of some of the legal aspects of the agreement particularly with respect to the responsibilities of the developer to undertake certain measures within the development

versus the individual owners of lots and their responsibilities. Also how the agreement should address what the requirements of each party should be. He said there has been some clarification of the approval requirement with respect to subdivision and lot grading matters and the permits required under the Department of the Environment and the municipal Topsoil Removal By-law.

One of the more significant changes to this latest agreement versus the previous one was the preparation of a storm drainage report which would address various storm drainage related matters resulting from the development of the site. It was determined that instead of having the report prepared that the terms of reference for that report be prepared and attached to the agreement. He said this is now attached as Appendix C to the agreement. The applicant requested and received approval from the Planning Advisory Committee to reduce the cost or dollar figure, with respect to upgrading Quigley's Corner pumping station indicated in section 7.5 of the agreement, to about \$9,600. in total. Some other more minor matters related to clarification of the terms and conditions with respect to pre subdivision of semi detached dwelling lots were lot grading and site improvements for parkland deeded to the municipality, the technical requirements with respect to the actual preparation of subdivision and lot grading plans. He said a lot of these changes were undertaken at the request of the developer but there was some mutual agreement that some clarification was needed in all of those aspects of the previously drafted agreement.

Staff have reviewed the agreement and have discussed it with the Planning Advisory Committee and although the position of staff is that the concept may not be as good as the previous concept, it is not necessarily bad. He said staff felt that there was nothing wrong with the previous concept and that it represented a more even distribution of the various lot categories than does the revised one. He said there were a number of improvements made to both the design concept and the agreement itself which staff feels are positive particularly with respect to the agreement itself. It should help improve the overall effectiveness and ability to regulate development within the CDD. He said the revised concept does not altar the basic elements of the first proposal or its ability to meet the evaluation criteria outlined in the planning strategy. The analysis provided by the September 27, 1993 remains the same. The rezoning has already occurred so the recommendation of the previous staff report that the development agreement be approved remains.

QUESTIONS FROM COUNCIL

Councillor Deveaux said with respect to Appendix C it is his understanding that the owners adjoining the land have some concerns with future flooding. He said he is concerned that this may cause another delay. He said in speaking with the

Engineering Department and according to Mr. Sheppard the terms of reference, as laid down, are sufficient to ensure that as the project progresses and there comes a time when it is required, the problems will be alleviated and the fears which are being expressed will be allayed with regards to future flooding of adjoining property.

Mr. Donovan said that was one of the objectives of preparing the terms of reference and the storm drainage report. He said Appendix C states "that the primary objective in the design of the storm drainage system shall be to achieve no increase in peak storm runoff; however, the developer may also submit information which will quantify and demonstrate the effects of no appreciable increase in peak storm runoff. The engineer shall have the absolute discretion to approve a storm drainage system which will result in no appreciable increase in storm runoff". He said it seems to him that the objective of the terms of reference was to result in no storm runoff onto adjacent property.

SPEAKERS IN FAVOUR

Mr. Barry Zwicker, Wallace MacDonald Lively, spoke in favour of the application. He said council did approve the rezoning of the two small parcels in December. Those two pieces were advertised and subject to appeal. There were no appeals lodged. He said the entire site is presently zoned CDD and available for the entering into of a development agreement pursuant to that.

He said the last time they were before council the commitment made on behalf of Anahid Investments by Mr. Arroyan was that they would go back and redesign the development to eliminate the smallest of the single family lots which were 36 feet wide and do that by not increasing the total number of units. He said the total number of units stayed at 618, the 36 foot wide lots were eliminated, and a new category of single family lots was introduced (74 ft. wide lots that abut up against the Smelt Brook end of the site). He said one of the other items that was brought up by the public was that they wanted to have more larger lots to provide an opportunity to move from one lot category to another. As a result of that the 74 ft. lot size was introduced backing on an open space.

The ratio of single family lots to semi detached lots has been retained at the 70/30 split with no change. The total area of parkland and open space together has been retained so that there has been no erosion to that. He said what has changed is the ratio of active parkland to conservation area and that was done to resolve some overall parkland issues in the particular area. He said it is also important to note that as a result of this process, between discussions with staff, municipal legal advisor, with the aid of the planning advisory committee, they now have a development agreement that the developer is not here to argue any

of the clauses. He said subject to council's approval the developer is prepared, on behalf of Anahid Investment Ltd., to enter into.

He said one of the areas that has been dealt with quite considerably has to do with the whole issue of storm water drainage and storm water management. There is no doubt that it is a concern with everybody. It is a concern with the people who will ultimately live within the subdivision. It is a concern of the people who are neighbours to the subdivision. He referenced the fourth paragraph of the terms of reference. He said the process is not a normal process or normal requirement in an as of right subdivision to undertake this storm drainage analysis. He said the Appendices that are attached to the agreement are not part of the norm. He said there are a considerable number of things in the agreement that will be done and committed to by the developer that goes beyond the normal requirements for development. He referenced the last two sentences which say "the developer shall satisfy the municipality that both drainage systems constitute continuous natural watercourses and that the capacity of the watercourses will not be exceeded by the development of the CDD lands. Any watercourses shall be shown on report drawings both within the CDD boundaries and throughout the lands and the down stream owners to Cow Bay". He said this is critical because it is saying that there is going to be a lot of analysis undertaken as a result of the entering into of the development agreement before any development. He said they are just as concerned as anybody who is a neighbour to this site that this development is not going to add to a particular situation or problem that may already exist or anticipated to exist with some for uncontrolled discharge of the storm water. There will be a detailed analysis undertaken as outlined in the terms of reference. That report will have to be submitted to the Engineering department of the municipality. They will have to review it and accept it before the development proceeds. He said this part of the project will be undertaken immediately upon the approval of this development agreement and that process will be put in place.

He said there are several consultants involved to ensure that this gets done to the level of satisfaction for everybody involved here. Anahid investments will be undertaking this promptly.

There are concerns with respect to noise from runways. All of the requirements that were in the development agreement back in November are either there or they are strengthened or there has been additional clauses provided in this agreement to ensure that the development is constructed as it is seen on the plan or processes put in place that may allow for alternate changes in the future. The issue with respect to how they have dealt with the housing mix shows that the commitment that was made in

November public hearing has been fulfilled. There has been a little juggling in terms of the size of some of the lots to ensure that the development is still a feasible development to put forward. He said the total area of this site is 130 acres and only 72 acres of that will only be utilized for lots. Within that there are 5.3 acres as active parkland and 32.8 for conservation. He said the total amount of open space associated with this development equates to almost 53% of the area that is being utilized for lots.

QUESTIONS FROM COUNCIL

Councillor Sutherland asked Mr. Zwicker anticipated holding ponds or sediment ponds on the site.

Mr. Zwicker said that is a little premature to state what the solution is until the analysis has been completed. He said the development agreement states that this study must be done and submitted prior to any development taking place.

Councillor Sutherland asked if the eight foot sideyard will still be in the 74 foot R2 lots.

Mr. Zwicker said the 74 foot wide lots are single family and the sideyard requirements for the semi detached is still the same which is found on page 9 of the agreement.

Mr. John Merrick spoke on the application. He said he was speaking on behalf of Canfax Group Ltd. who abut the development. He said they do not support nor oppose the development. He said they are an adjoining land owner who has very serious concerns. He said their concerns relate to the storm water drainage of overflow. He said he is asking council to be sensitive to the concerns of the adjoining land owner and to adopt some applications which they say would be a reasonable balance to the interests between the two.

He said there is serious potential for harm to the adjoining property from storm water runoff. He said he understands that in total there are approximately 725 residential units that are going to go in to the property that adjoins Canfax. He said there is going to be increased runoff that affects the downstream owners which is Canfax. They have already suffered some damage as a result. He said there was a french drain that went over onto their property and as a result caused damage the result of which reduced the assessment value of the property.

He said there has been no analysis of what is going to happen with that storm water runoff. It is acknowledged in the environmental design consultants report that was part of the developers submission that if the rest of this property was to be developed a more complete analysis should be undertaken to

determine the impact of the storm water on the wetland. There is no question but that the proper way to go about this would be to determine in advance the extent of the problem that may affect the down stream owner. There has already been problems as far as understanding what is going on. Those problems are translated into the documents before council this evening. He said the water does not go on a natural watercourse to the Canfax property. There is a natural barrier that runs approximately along the boundary line of the property which means that the bog is completely independent and stands alone of watercourse area. That makes a considerable difference in determining what the impact on water runoff into one bog as opposed to two. He said they don't want that sort of misunderstanding or misapprehensions carried forward with the development of that size. He said the storm water management report would be done in advance of so that council would know. He said it is being done differently in this case so that some development can proceed. He said they have no difficulty with the development proceeding provided the terms of reference are tightened up so that the interest of the adjoining land owner can be protected.

He said there should be no storm water runoff on to an adjoining land unless there has been an agreement reached with that adjoining land owner as to how that is to be accommodated. That is stated in the staff report and has been stated in the correspondence from the developers who say they understand that that is the prime criteria. If that is achieved and managed they will be content.

He said he would ask that the terms of reference be amended in several respects. If you look at schedule C, there is reference in paragraph 2 to the fact that there is to be no appreciable increase in runoff. Paragraph 3 then goes on to slip the word "appreciable" in in several respects. If there is to be no runoff then they would ask that the terms of reference clearly say that. The word appreciable is a word that is stretchable. It can accommodate a whole series of interpretation and meanings.

In determining whether there is any runoff the criteria to be used in designing the storm drainage system shall be the 1:100 year storm events. That is a reasonable and realistic design criteria in these circumstances. He said it should be specified and they would feel more comfortable if it was actually put in the terms of reference.

The terms of reference clearly state that a copy of all information reports and the report itself be provided to the adjoining landowners prior to its approval so that they would have an opportunity to see it and know that they are satisfied with it and there are no areas for criticism.

Until the satisfactory report is received and accepted by the municipal engineer that there be no construction activities undertaken on the development district land which would create or cause water to leave those lands onto the adjacent property owners. He said they say that and ask for that in light of the experience they have already had where there was damage and runoff that occurred down in that corner from phases 1 and 2.

The storm drainage report shall consider not only water from within development district boundary but also the exiting and future construction activities which have resulted in and will result in water draining into the conservation area. He said don't just have the report measure what will come from the development district have it also identify what is already coming in and what is likely to come in from phases 1 and 2. He said there is no point in determining the impact on the watercourse areas unless you have the total. He said you can identify not only what was there originally but what came from phase 1 and 2 and what is coming with the rest of the development district.

In light of the fact that there are two bogs, not one continuous watercourse, in the area noted, that the report be satisfied that there is adequate drainage in that area of the property. He said if the interests of the adjoining land owner are not accommodated then there may be a situation where council has approved, authorized and committed a development to go ahead that has predictable foreseeable harm to an adjoining land owner. He said they would ask that these be inserted with the terms of reference so there is a proper balance between the interests of the development going ahead and adjoining land owners who stand in risk of that water runoff.

Councillor Deveaux asked if costs have been ascertained.

Mr. Merrick said they are not asking that the report be done, that everything be held until the report be done but that those six modifications be made to the terms of reference.

Councillor Deveaux said he would not want problems to be caused to Mr. Merrick's land by this development. He said unless the staff engineers would support this, he would find it difficult to go along with it. He said it is his understanding that the terms of references has plenty of guarantees to ensure that the concerns and fears would be allayed.

Mr. Merrick said that water runs down hill and his lands are down hill. He said they looked at the terms of reference and asked themselves what was the lowest reasonable request they could come to council with. He said they had those six changes which they wanted to be made to the terms of references which should no cause any difficulty if the premise is correct that there is going to be no water runoff. He said they merely asked that they

be added to the terms of reference. He said this does not put any terrible onus on the developer.

Mayor Lichter said that council would be able to make those changes in spite of what was being advertised. He said this would be tightening up on a situation that would improve the comfort level of the neighbours.

Mr. Crooks said the changes that are being requested would not be anything that would adversely affect any other members of the public who might want to attend tonight's meeting to speak to the issues before council. He said the difficulty lies whether the applicant and the developer will find these changes acceptable because it is the developer's application for this development agreement. He said the mayor's analysis is an accurate one.

Councillor Giffin said it looks like a considerable piece of land.

Mr. Merrick said it runs for considerable distance to Smelt Brook.

Councillor Giffin asked Mr. Merrick if he was a developer.

Mr. Merrick said yes somewhere down the road.

Councillor Giffin referenced the map provided and asked Mr. Merrick questions with respect to the location of the lands.

Councillor Harvey asked if there was water running onto Mr. Merrick's land at the present time from the property in question.

Mr. Merrick said it was. He said Canfax had someone from the county come out and take a look at it because of the water overflow from the french drain that had been constructed in that corner. At this point there will be natural drainage on the property that occurs right across the whole boundary line. The amount of runoff that will occur once you put that development in there is going to be increased significantly and has to be controlled.

Councillor Harvey said it is going from a position of natural drainage to no drainage.

Mr. Merrick said that is right as opposed to or at least no increase in the drainage because what will happen is that you have natural drainage, to some extent now, coming across the whole front.

Councillor Harvey said perhaps appreciable means more than natural.

Mr. Merrick said they do not know what it means and they suspect that putting it in is likely to cause more trouble than it's worth. If indeed the position is correct as has been stated that the intent is to prevent any increase in runoff then they would like the word taken out.

SPEAKERS IN OPPOSITION

Mr. Michael Hourihan, 1550 Shore Road, Eastern Passage. He said he is speaking on behalf of the Eastern Passage/Cow Bay Ratepayers and Residents Association. He said they made a presentation on November 22. He said they are in opposition to version 5.2 of the proposal. Their main concern at that time was the introduction to the community of the undersized lot concept where all other serviced areas in Eastern Passage call for either R1 or R2 development. They said that 53% of the project consisted of undersized single family lots and only 24% of the single family lots were close to what they know as R1 lots. Under version 5.4 the 53% becomes 52% and the 24% becomes 26%. He said this is not a very significant improvement. To accomplish this half the duplex lots have been shrunk by six feet. The staff report suggests that this is an inferior development concept to the one presented in November. At the December 13 hearing Councillor Ball questioned whether just getting rid of the 36 foot lots would answer community objections. He said it did not. At their general ratepayers meeting the same opinions and concerns as were related in November resurfaced. Nobody said it was an improvement. The small lots continue to be a sore point within the community and as negotiation has not improved the proposal significantly they ask that council reject the application.

Mr. Guy Spavold, 162 Briarwood Drive, Eastern Passage, spoke in opposition to the application. He said he had spoken on the original application. He said it took a significant amount of time for the people from the community to develop the planning strategy and council should pay careful attention to it in the decision making. He referenced UR-13 and IM-11. He said it requires that council must consider whether or not this proposal will be in conformity with the municipal planning strategy. He said he questions whether or not this proposal conforms with the required 70/30 split contained in the municipal planning strategy. The planning department has taken this to mean a 70/30 split between single family units and duplexes which this proposal has. He said if you carefully read the planning strategy, it is dealing with the density of the lots involved. The MPS sets out a situation where Eastern Passage went from a community that had a 70/30 split of normal size single family units to the present situation where it has approximately a 55% split of semi detached type dwellings. It is that the MPS was adopted in 1992 to deal with. It is the density issue.

The development in question has very dense single family units. Their density is very similar to that of an R2 type lot. He said the majority of these small lots go against the strategy. They are in fact part of what should be making up the 30% of the higher density type of housing. He said council must also consider that this is a comprehensive development district and therefore perhaps looking for R1 type lots is not what is required here. He said there should be something that looks closer to an R1 lot than to the size of a semi detached lot. He said in doing that he does not feel that a forty foot lot would not meet that type of requirement.

He said Mr. Armoynan has made application to the Cole Harbour Community Council to move forty acres of serviced land from Eastern Passage to Cole Harbour. He said this shows that there is a market for R1 type lots but Mr. Armoynan does not wish to put them in Eastern Passage.

Mr. Donald Hudak, Cow Bay, spoke in opposition to the application. He said he feels it is time council and the developers started listening to what the residents want. He said the community knows how it wants to develop. He said they have fought to get the density of this development brought down but to no avail.

Mrs. Quint spoke in opposition to the application. She said one of the reasons given in this proposal is to fulfil the needs for the residents of Eastern Passage. She said with the downsizing of Shearwater and the reduction of up to forty percent of personnel there will be a lot of people leaving Eastern Passage and there will be a lot of real estate up for sale. She said those people may suffer because those are houses that will not be getting the subsidy for new houses and those people are out of luck. She said the R1 houses are the houses that sell. She said she would like to see council turn this proposal down and go for just R1 zoning.

REBUTTAL BY APPLICANT

Mr. Zwicker referred to a comment that it was suggested that in the staff report it indicated that version 5.4 was inferior to 5.2. He said that is not what it says. What it is suggesting on page 4 of the report is that there are a number of changes that were made and because the planning department supported the concept of 36 foot and 40 foot lots in the mixture that was proposed in 5.2. With the removal of 36 foot lots and the variety of options that would be available, they are suggesting that from that point of view it may not be as good as 5.2 but not in any way suggesting that it is necessarily inferior.

The other big issue is the six points that was put forward with respect to the storm drainage report. He said the spirit of what

this terms of reference is trying to portray is much along the lines that he has suggested. He said they would have some concerns in terms of how the actual wording might be generated tonight to deal with those six issues. The last five of the six, as they understand them as they were presented, are embodied within this terms of reference now. If council felt that it was necessary to refine that wording in some fashion to reflect exactly what Mr. Merrick was saying with respect to his last five points then they would have an agreement with that. The concern they have is with the removal of the word appreciable because when you remove that word in essence it means zero and it may, in some fashion, take away rights that may exist now in the event that this is a watercourse. He said what is being talked about here is attempting to control the peak storm runoff that occurs in that watercourse. He said they have submitted information to the Department of the Environment during the course of this process and have not been provided with specific information that would even suggest emphatically that that is the case. They have heard through discussions and through some verbal discussion but have received nothing that would actually ensure or make an absolute statement that that is the case. He said the spirit of the storm drainage report is to cover the areas that Mr. Merrick has reviewed for council. If the last five changes will provide a higher level of comfort to the adjoining property owner that would be acceptable. He said he believes the word appreciable is important in the context dealing with storm water management and peak flows and controlling flows. This analysis that will be undertaken, as a result of the storm drainage report, making all this information available to the abutter as well as to the municipality and the design to the 1:100 year storm, is all part of the process as far as they are concerned. He said he feels that it would be unfair at this point in time to try and deal with the exact wording.

He said the wording of the three page document took in approximately 50 to 60 hours of work to satisfy the concerns of the municipality and the concerns of the developer to adequately address this issue. He said the drafting of the wording of the development agreement itself was significant. He said he understands where Mr. Merrick is coming from, they believe that the terms of reference, as it is presently stated, will address at least five of the six points that he is making. He said the removal of the word appreciable may take away from what this document is trying to do and they are uncertain in terms of what that ultimately might mean as far as the outcome of the study and the rights that may exist now for any land developer putting storm water into a watercourse. He said they understand the concerns but honestly believe that the vast majority of the issues are covered in terms of how it is drafted now.

Mayor Lichter asked Mr. Zwicker if, of the six items that were outlined by Mr. Merrick, the last five meet the spirit.