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Western Region Community Council  
March 26, 2007

**To:** Chairperson and Members of Western Region Community Council

**Submitted by:**   
Paul Dunphy, Director of Community Development

**Date:** January 12, 2007

**SUBJECT:** Commercial Uses Adjacent to Hammonds Plains Road

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## INFORMATION REPORT

### ORIGIN

Motion of Western Region Community Council on November 27, 2006.

### BACKGROUND

**Council Motion:** On November 27, 2006, Western Region Community Council requested an information report in regard to R-1 (Residential Single Unit) zoning on the Hammonds Plains Road. The report is to include information on the current uses permitted as well as future plans to encourage and enhance local business.

**DISCUSSION**

**Scope of Council's Motion:** The R-1 Zone (Attachment A) is applied to a variety of residential subdivisions including Haliburton Hill and Heights, Highland Park, Glen Arbour and Kingswood. The zone is applied to areas designated for low density residential development or through a rezoning process where the land owner has requested the zoning to create a purely residential environment subject to the discretion of Council. The zone permits a variety of uses considered suitable for a residential environment such as single unit dwellings, bed and breakfasts and small scale home based offices.

**Commercial Development in Hammonds Plains, Tantallon and Upper Tantallon:** This area of HRM is regulated by two separate planning documents, the St. Margarets Bay Municipal Planning Strategy (MPS) and Land Use By-law (LUB) and the Beaver Bank, Hammonds Plains, and Upper Sackville MPS and LUB (Map1).

Commercial development along Hammonds Plains Road has been permitted in specific areas as shown on Map 1. These lands are typically located at strategic locations and in areas which are not subject to strict access controls in place along Hammonds Plains Road or where uses were in existence prior to the adoption of the MPS.

Lands in these areas are generally permitted to develop with a variety of commercial uses under MPS policy. These commercial uses are typically restricted to a maximum of 2,000 square feet. Further, MPS policies enable Council to consider zoning changes which would permit larger scale commercial uses up to 10,000 square feet in size, specifically between Pockwock Road and Kingswood Drive.

**Where are commercial uses not permitted:**

Commercial development along Hammonds Plains Road has been strongly influenced by provincial regulations dealing with controlled access highways. Hammonds Plains Road between Yankee Town Road and Upper Tantallon is a controlled access highway<sup>1</sup>. With regard to the impact of this controlled access road the Beaver Bank, Hammonds Plains and Upper Sackville MPS states:

“Of the lands which are presently developed, the major land use is low density residential. Interspersed with this are several business, industrial, resource and community facility uses, many of which are small scale or are located on a residential lot. At the present time, one major constraint on development is the limited access portion of the Hammonds Plains Road, between English Corner and Highway No. 103”

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<sup>1</sup> Relevant sections of the Public Highways Act have been attached for reference (Attachment B).

As identified earlier, areas outside the control of access section of Hammonds Plains Road as well as isolated pockets of land within the control of access area have been permitted to develop with a variety of commercial uses (Map 1) under MPS policy. Lands designated Residential and zoned R-1 are not eligible for similar land uses.

Large scale subdivisions such as Highland Park, Haliburton Hills and St. Margaret's Village have reduced the amount of land with direct access to Hammonds Plains Road. The MPS and LUB have applied appropriate residential zones to these lands. Further, protective covenants which exist for many of these subdivisions may restrict or prohibit the development of commercial uses. These covenants are not enforced by HRM, but the property owner is legally bound to these requirement which are registered on the deed for their property.

**What are the relevant issues if Council were to consider changes to expand commercial development along Hammonds Plains Road.** The addition of commercial land uses along the controlled access portion of Hammonds Plains Road would require detailed consideration of the following issues:

1. Would the N.S. Department of Transportation and Public Works (or HRM after April 1, 2007) issue permits for a change in accesses from residential to commercial uses or permit new driveway access to Hammonds Plains Road in areas of controlled access?
2. Would the residential properties meet the requirements of HRM's standards for commercial driveways?
3. What would the impact be on the surrounding residential properties?
4. Will any land use changes negatively affect the ability of Hammonds Plains Road to handle traffic?
5. Given the existing restrictive covenants applied to many residential subdivisions, would any proposed change have a significant impact?
6. Changes to the LUB may require the initiation of a plan amendment process.
7. Under the policies of the Regional Plan, the Hammonds Plains area has been placed within a residential growth control area due to road capacities in the area. Further expansion of commercial uses may have a negative impact on the adjacent road networks.

**Conclusion:** Given a brief analysis of these issues, staff suggest that there are extensive options for commercial development along portions of Hammonds Plains Road except in residential environments with controlled access. Further there may be negative impacts to allowing residential

properties the ability to develop commercial uses specifically in existing residential subdivisions and on the adjacent road network. Further, a significant number of these residential properties may have protective covenants which are not the jurisdiction of HRM, but may preclude a property owner from developing their lot for commercial uses.

Community Planning will be pursuing a community visioning exercise for the Tantallon Centre area and a possible review of commercial development in Hammonds Plains at an undetermined point in the future which could result in land uses changes in the Hammonds Plains Road area. Time frames for these exercises have not been determined but will be the subject of a report to Regional Council in the fall of 2007.

**BUDGET IMPLICATIONS**

None

**FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

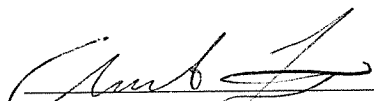
**ATTACHMENTS**

Map 1	Areas that Allow Commercial Uses
Attachment A	R-1 Zone Requirements
Attachment B	Relevant Sections of the Public Highway Act

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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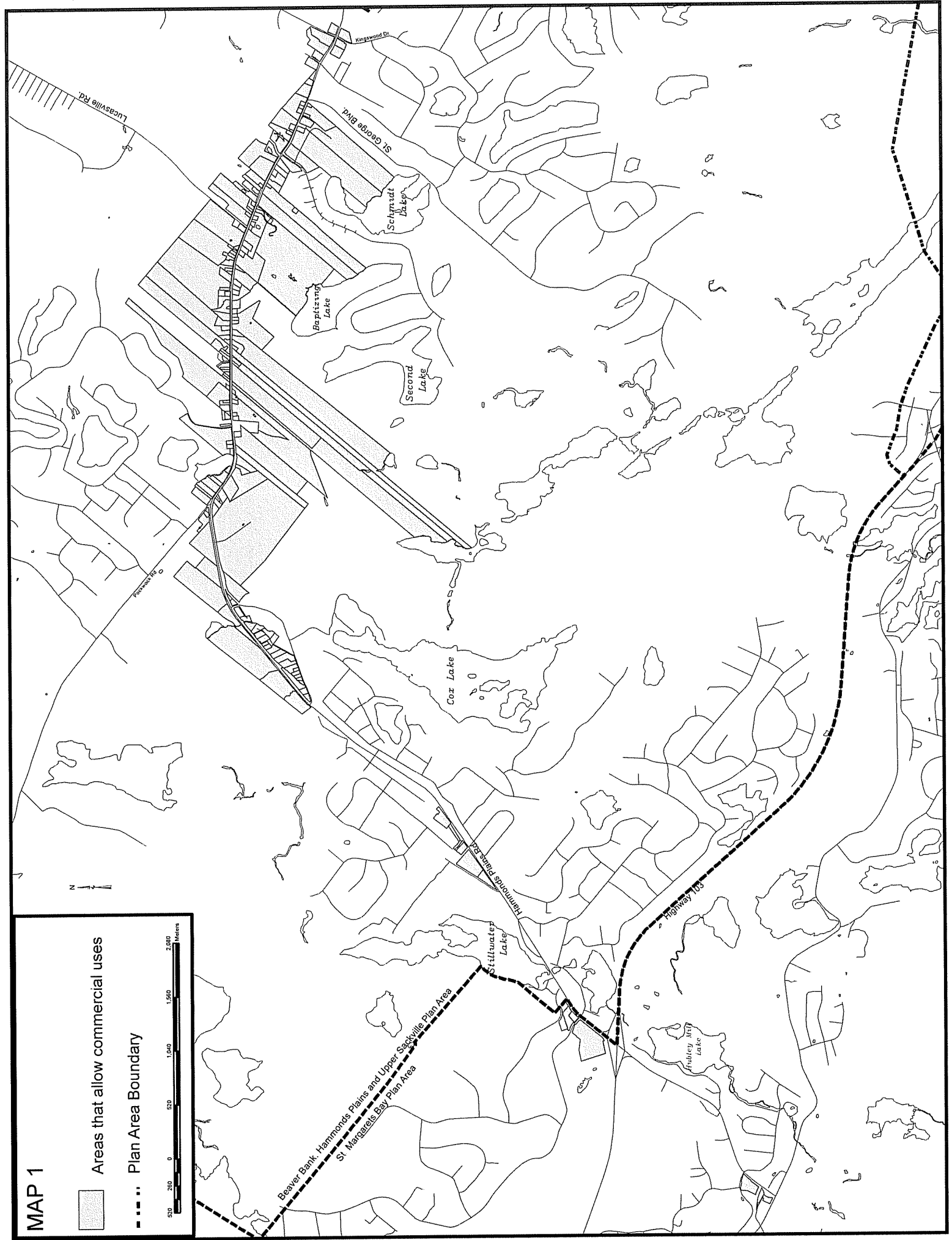
Report Approved by:

  
Austin French, Manager of Planning Services

# MAP 1

Areas that allow commercial uses

Plan Area Boundary



**Attachment A**  
**R-1 Zone Requirements**

PART 6:                    R-1 (SINGLE UNIT DWELLING) ZONE

6.1    R-1 USES PERMITTED

No development permit shall be issued in any R-1 (Single Unit Dwelling) Zone except for the following:

- Single unit dwellings
- Existing two unit dwellings
- Existing mobile dwellings
- Day care facilities for not more than seven (7) children and in conjunction with permitted dwellings
- Offices in conjunction with permitted dwellings
- Bed & Breakfasts
- Open space uses

6.2    R-1 ZONE REQUIREMENTS

In any R-1 Zone, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	on-site services	29,064 square feet (2700 m <sup>2</sup> )
	central water	12,000 square feet (1118 m <sup>2</sup> )
	central sewer	10,000 square feet (929 m <sup>2</sup> )
	Sewer and water services	6,000 square feet
Minimum Frontage:	on-site services	100 feet (30.5 m)
	central sewer	75 feet (23 m)
	Sewer and water services	60 feet
Minimum Front or Flankage Yard		20 feet (6.1 m)
Minimum Side or Rear Yard		8 feet (2.4 m)
Maximum Lot Coverage		35 per cent
Maximum Height of Main Building		35 feet (10.7 m)

**6.3 R-1 ZONE REQUIREMENTS: OPEN SPACE USES**

In any R-1 Zone, where open space uses are permitted, no development permit shall be issued except in conformity with the provisions of Part 22.

**6.4 OTHER REQUIREMENTS: OFFICE USES**

Where offices are permitted in any R-1 Zone, the following shall apply:

- (a) Any office shall be wholly contained within the dwelling which is the principle residence of the operator of the office.
- (b) No individuals who are not residents in the dwelling shall be employed in the office.
- (c) No more than twenty-five (25) per cent of the gross floor area shall be devoted to any office, and in no case shall any office occupy more than three hundred (300) square feet (28 m).
- (d) No open storage or outdoor display shall be permitted.
- (e) No signs shall be permitted.
- (f) One off-street parking space, other than that required for the dwelling, shall be provided for every one hundred and fifty (150) square feet (14 m<sup>2</sup>) of floor area devoted to any office.

**6.5 OTHER REQUIREMENTS: DAY CARE FACILITIES**

Where day care facilities are permitted in any R-1 Zone, the following shall apply:

- (a) With the exception of outdoor play space, any day care facility shall be wholly contained within the dwelling, which is the principle residence of the operator of the facility.
- (b) No open storage or outdoor display shall be permitted.
- (c) No signs shall be permitted.
- (d) One off-street parking space, other than that required for the dwelling, shall be provided.

**6.6 OTHER REQUIREMENTS: BED AND BREAKFASTS**

Where a bed & breakfast is permitted in any R-1 Zone, the following shall apply:

- (a) The bed & breakfast shall be wholly contained within the dwelling which is the principle residence of the operator of the establishment;
- (b) Not more than three (3) rooms may be let;
- (c) No window display and not more than one (1) business sign shall be permitted and no such sign shall exceed two (2) square feet (0.2 m<sup>2</sup>) in area; and

- (d) One off-street parking space in addition to that required for the dwelling shall be provided for each room to be let.

6.7 OTHER REQUIREMENTS: COMMERCIAL MOTOR VEHICLES

In any R-1 Zone, not more than one commercial vehicle shall be kept on any lot and no such commercial motor vehicle shall exceed a registered vehicle weight of five (5) tons nor be kept less than ten (10) feet from any front lot line.

6.8 EXISTING HOME BUSINESS USES

Notwithstanding Section 4.9 and 6.1, the existing home businesses identified in Appendix B shall be permitted to the extent they are in existence at the time the land use by-law is adopted.

6.9 EXISTING TWO UNIT DWELLINGS

Notwithstanding Section 4.9, any existing two unit dwellings shall not be permitted to convert into a multi-unit dwelling.

6.10 SENIOR CITIZENS HOUSING

Notwithstanding Section 6.1, senior citizens housing shall be permitted within the R-1 zone on the property in Uplands Park identified by LIC Property Number 420927.

6.11 FRONTAGE ON A STREET

No development permit shall be issued in an R-1 Zone unless the lot or parcel intended to be used or upon which the building or structure is to be erected abuts and fronts upon a public street or highway.

6.12 SUBDIVISION OF EXISTING TWO UNIT DWELLINGS - UPLANDS PARK

Notwithstanding Section 6.2, the minimum lot area per dwelling unit for existing two unit dwellings on the following properties shall be 3,000 square feet and the minimum lot frontage shall be 30 feet: Patricia Foran, LIC Number 420265; Lawrence Leslie, LIC Number 420224; Sarah Martin, LIC Number 420398.



**Attachment B  
Relevant Section of the Public Highways Act**

**CONTROLLED ACCESS HIGHWAYS  
AND PARKWAY AREAS**

**Designation of controlled access highway**

**21 (1)** The Governor in Council may designate as a controlled access highway

(a) any highway or part thereof in a municipality or any highway or part thereof in a city or town, towards the construction or maintenance of which the Province has contributed or contributes;

(b) any land owned by Her Majesty in right of the Province in a municipality upon which it is planned to construct a highway under this Act, or any land owned by Her Majesty in right of the Province in a city or town upon which it is planned that there be constructed a highway towards the construction or maintenance of which the Province will contribute;

(c) any lands reserved for highway purposes under Section 12.

**Publication and filing and notice of order**

**(2)** A copy of the order of the Governor in Council designating a highway or part thereof or any land as a controlled access highway shall be published in not less than two issues of the Royal Gazette and shall be filed in the registry of deeds for the registration district in which the highway or part thereof or the land is situate, and notice thereof shall be posted by registered letter to the landowner or landowners concerned and displayed in a conspicuous place on the lands affected.

**No notice**

**(3)** Notwithstanding subsection (2), where the Governor in Council has designated, as a controlled access highway, a new highway or land upon which it is planned to construct a highway, it shall not be necessary to give notice of the designation by registered mail to the landowner or landowners concerned. R.S., c. 371, s. 21.

**Prohibited activity**

**22 (1)** Where a highway or portion thereof or any land has been designated as a controlled access highway, no person shall, without a written permit from the Minister,

(a) construct, use or allow the use of, any private road, entrance-way or gate which or part of which is connected with or opens upon the controlled access highway;

(b) sell, or offer or expose for sale, any vegetables, fruit, meat, fish or other produce, or any goods, wares or merchandise upon or within forty-five metres of the limit of the controlled access highway; or

(c) erect, construct or place or cause to be erected, constructed or placed, any building or other structure, or part thereof, or extension or addition thereto upon or within sixty metres of the limit of the controlled access highway.

### **Penalty**

(2) Any person who violates this Section is liable to a penalty of not more than one hundred dollars and in default of payment to imprisonment for not more than one month.

### **Closure of private road or gate**

(3) The Minister or any person acting by or under his authority may at any time close up any private road, entrance-way or gate constructed, opened or used in violation of this Section and, for that purpose, may enter by himself, his servants and agents, by force, if necessary, into and upon any land or part thereof.

### **Removal of structure by Minister**

(4) The Minister or any person acting by or under his authority may remove or demolish any building or other structure, or part thereof, or extension or addition thereto, erected, constructed or placed in violation of this Section and, for that purpose, may enter by himself, his servants and agents, by force, if necessary, into and upon the land or part thereof.

### **"private road" defined**

(5) For the purposes of this Section, the expression "private road" includes a street, road or highway in a city, town or municipality other than a highway to which this Act applies. R.S., c. 371, s. 22.

### **Designation of parkway area**

**23 (1)** The Governor in Council may by regulation declare any area adjoining any highway outside the limits of a city or town to be a parkway area and may by such regulation define the limits of such area.

### **Regulation effective upon registration**

(2) No regulation made under subsection (1) shall be effective until a copy thereof certified by the Minister to be a true copy has been filed in the office of the registrar of deeds for the registration district in which the land or part thereof is situate.

**Notice of regulation**

(3) The Minister shall cause notice of any regulation made under subsection (1) to be given by registered prepaid post to the owner of land within the parkway area or, if the owner is not known to the Minister, by posting such notice in a conspicuous place on the land.

**Prohibited activity**

(4) No person shall, within any such parkway area, without written consent of the Minister,

- (a) erect, construct, alter or reconstruct any building;
- (b) fell or remove any tree, shrub or bush;
- (c) erect any fence, railing, wall or hedge.

**Regulations for parkway area**

(5) The Governor in Council may make regulations

- (a) designating the height, ground area and bulk of buildings erected, constructed, altered or reconstructed in any parkway area;
- (b) prescribing building lines and the depth, size or area of yards, courts or other open spaces to be maintained in any parkway area;
- (c) prescribing the maximum density of population permissible within any parkway area;
- (d) prescribing or controlling the architectural design, character and appearance of any or all buildings proposed to be erected in any parkway area and prohibiting the erection of any building in contravention of such regulation.

**Penalty**

(6) Every person who violates any of the provisions of this Section or any of the regulations made under this Section is liable to a penalty of not more than five hundred dollars and in default of payment to imprisonment for a period of not more than one hundred and twenty-five days.

**Removal of structure or hedge by Minister**

(7) The Minister or any person acting by or under his authority may at any time remove or demolish, or cause to be removed or demolished, any building, structure, fence, railing, wall or hedge constructed or erected in violation of this Section or of any regulations made thereunder and shall, for that purpose, have full power and authority to enter by himself, his servants and

agents, by force if necessary, into and upon any land, building or other structure, or any part thereof. R.S., c. 371, s. 23.

**Compensation for injurious affection**

**24 (1)** Where, pursuant to Section 21 or Section 23 or any regulations made thereunder, property is injuriously affected, the owner thereof, in respect of any matter or thing that has not been the subject of compensation, shall be entitled to compensation for such injury.

**Arbitration Act**

**(2)** Any question as to whether any property is injuriously affected as aforesaid and as to the amount of payment and compensation shall be determined by arbitration and the provisions of the *Arbitration Act* shall apply.

**No compensation for injurious affection**

**(3)** Notwithstanding subsection (1), where pursuant to Section 21 the Governor in Council designates as a controlled access highway

- (a) a new highway or a new portion of a highway;
- (b) any land reserved for highway purposes under Section 12; or
- (c) any land referred to in clause (b) of subsection (1) of Section 21,

the owner of property that adjoins such new highway, new portion of a highway or land shall not be entitled to compensation for injurious affection to that property resulting from the designation. R.S., c. 371, s. 24.