



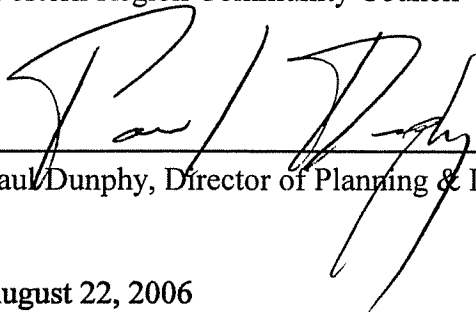
PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

10.1.1

Western Region Community Council
September 25, 2006

TO: Western Region Community Council

SUBMITTED BY:


Paul Dunphy, Director of Planning & Development Services

DATE: August 22, 2006

SUBJECT: Case 00857: Rezoning of 1109 St. Margarets Bay Road

ORIGIN

Application by Contour Excavation & Septic Ltd. to rezone 1109 St. Margarets Bay Road, Beechville (PID 40049835), from R-1 (Single Unit Dwelling) Zone to C-2 (General Business) Zone.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Give First Reading of the proposed rezoning and schedule a public hearing.
2. Approve the rezoning of 1109 St. Margarets Bay Road, Beechville, as shown on Map 1, from R-1 (Single Unit Dwelling) Zone to C-2 (General Business) Zone.

BACKGROUND

The subject property is located within the R-1 (Single Unit Dwelling) Zone (see Map 1), but it has a long history of commercial activity dating from the 1960's. There are currently two commercial uses upon it, an automobile repair garage and an excavation contracting business.

In 2005, HRM received a complaint about the commercial activity occurring on the site.¹ At this time, the R-1 zoning of the property was noted. The property owner has now submitted an application to rezone the property to a C-2 Zone so that the zoning properly reflects the longstanding commercial activity upon the site.

The site is designated Commercial Core under the Generalized Future Land Use Map for Timberlea/Lakeside/Beechville (see Map 2).

DISCUSSION

Municipal Planning Strategy Policies

HRM staff suggest that with the adoption of the Timberlea/Lakeside/Beechville MPS and LUB, the subject property should have been included in the C-2 Zone.

Policy CC-2 specifies the following in terms of zoning within the Commercial Core Designation:

Within the Commercial Core Designation, it shall be the intention of Council to establish a general business zone which permits general commercial uses not exceeding fifty thousand (50,000) square feet of gross floor area, and also permits special trade contracting services and shops not exceeding two thousand (2,000) square feet in gross floor area along with community uses and existing dwellings. This zone shall also permit up to two (2) dwelling units to be used on conjunction with permitted commercial uses, as well as boarding and rooming houses. The zone shall be applied to existing commercial uses in the Residential Designation, subject to the conditions established in Policy UR-21, and within the General Commercial Designation subject to Policy CG-2.

Potential Impacts on the Lakeside/Timberlea Sewage Treatment Plant

The only practical concern that Council might consider is the potential impact on the Lakeside/Timberlea sewage treatment plant. As Council is aware, the Nova Scotia Department of Environment and Labour has indicated that the Lakeside/Timberlea STP is not able to be upgraded to increase beyond the current capacity. As the uses on the property are existing, the sewage from the site is currently accommodated within the sewage treatment plant. While a rezoning to C-2 could

¹It is noteworthy that the basis for the complaint was not with regard to any of the activities on site, but simply with the improper zoning.

allow for a use which results in a net increase in sewage generated from the site, the owner has no such plans. However, if the uses were changed on the site, any potential increase would be negligible relative to the overall flow directed to the sewage treatment plant. As well, staff are currently working on a potential solution to the capacity situation, and anticipate bringing the matter back before Regional Council by the early part of 2007.

Conclusion

Staff feel that the proposal satisfies the applicable policies of the Municipal Planning Strategy (Attachment "A"). As such, it is recommended that Western Region Community Council approve the rezoning application.

Public Information Meeting / Area of Notification

A public information meeting for this application was held on March 30, 2006. Minutes of this meeting are provided as Attachment "B" of this report. Community attendees were divided in their support of the application. Should Community Council decide to hold a public hearing, in addition to published newspaper advertisements, property owners in the area shown on Map 3 will be sent written notification.

BUDGET IMPLICATIONS

There are no budgetary implications.

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.

ALTERNATIVES

1. Council may approve the rezoning application. This is the recommended course of action.
2. Alternatively, Council may choose to reject the proposed rezoning. Pursuant to Section 210(5) of the Municipal Government Act, Council must provide reasons for this refusal, based on the policies of the MPS. This alternative is not recommended as staff is satisfied that the proposed rezoning is consistent with the policies and intent of the MPS.

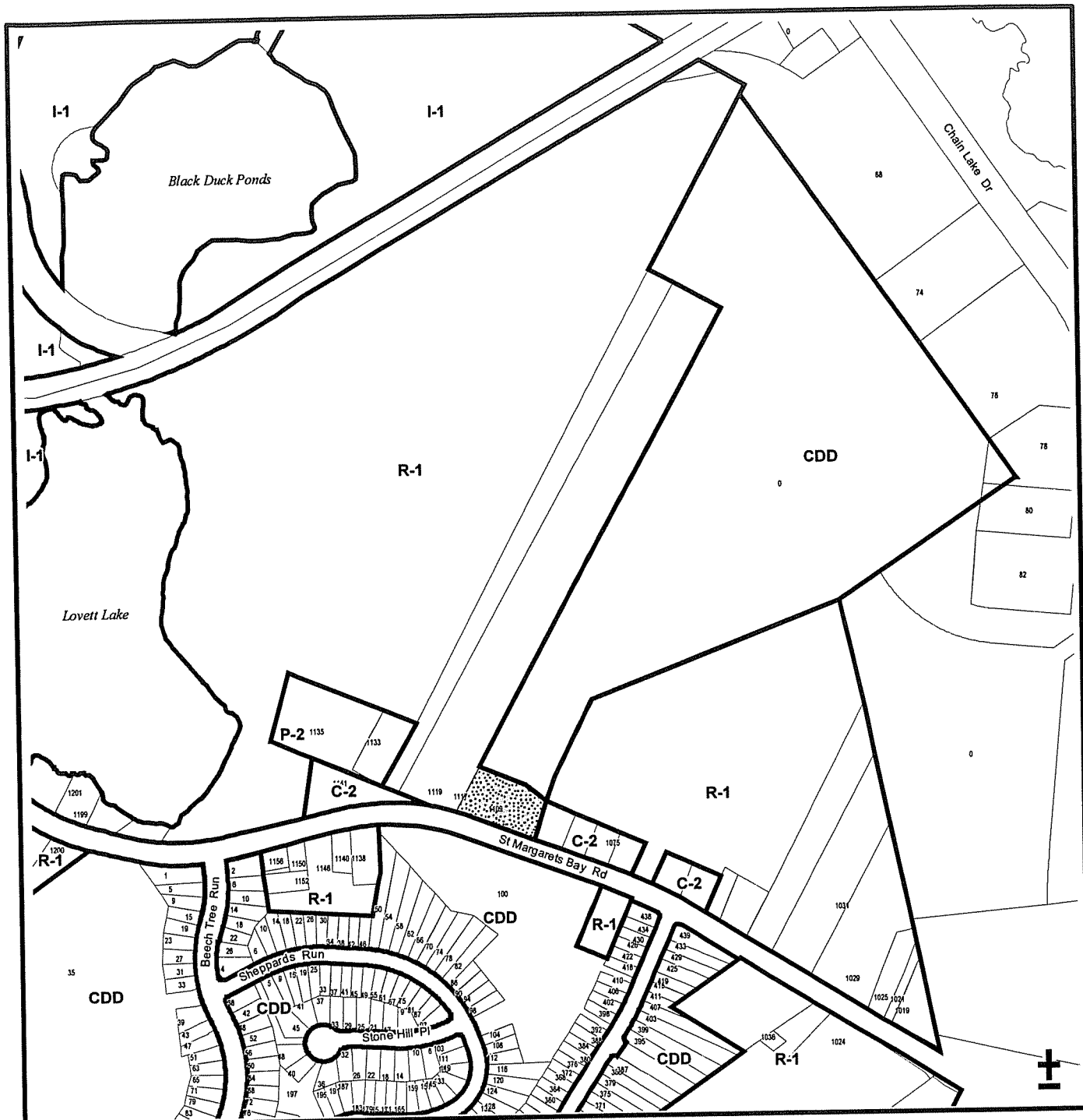
ATTACHMENTS

Map 1	Zoning
Map 2	Generalized Future Land Use

Map 3	Area of Notification
Attachment "A"	Excerpts from the Timberlea/Lakeside/Beechville MPS
Attachment "B"	Minutes from the March 30, 2006, Public Information Meeting

Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Luc Ouellet, Planner I, 490-3689



Map 1 - Zoning

1109 St. Margarets Bay Road
Beechville



Property to be rezoned from
R-1 (Single Unit Dwelling) to
C-2 (General Business)

Timberlea/Lakeside/Beechville Plan Area

Zone

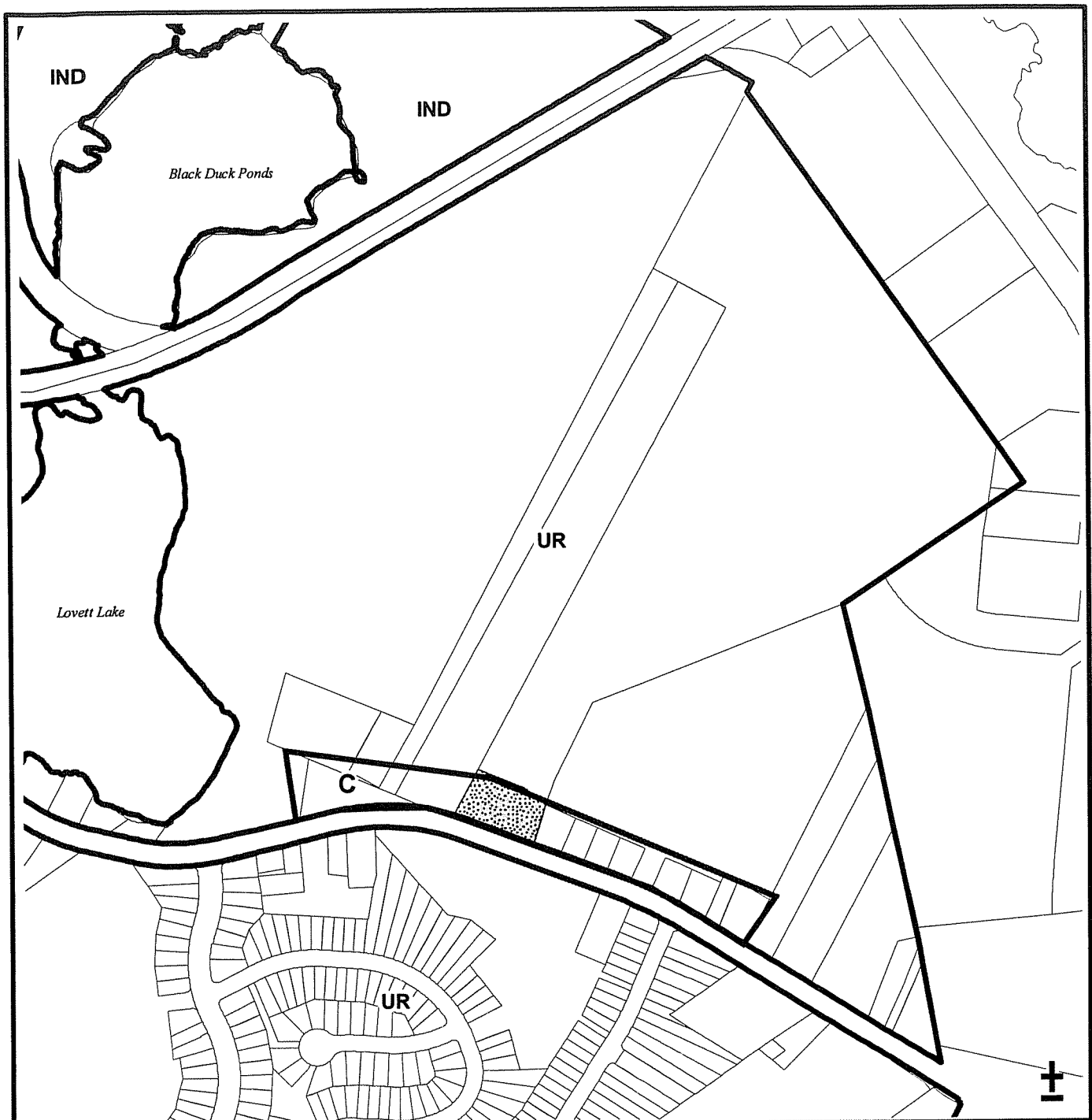
R-1 Single Unit Dwelling
C-2 General Business
P-2 Community Facility
CDD Comprehensive Dev. District

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES


0 50 100 m

This map is an unofficial reproduction
of a portion of the Zoning Map for the
Timberlea/Lakeside/Beechville Plan area.

HRM does not guarantee the accuracy of
any representation on this plan.




Map 2 - Generalized Future Land Use
1109 St. Margarets Bay Road
Beechville

 Property to be rezoned from
R-1 (Single Unit Dwelling) to
C-2 (General Business)

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES

0 50 100 m



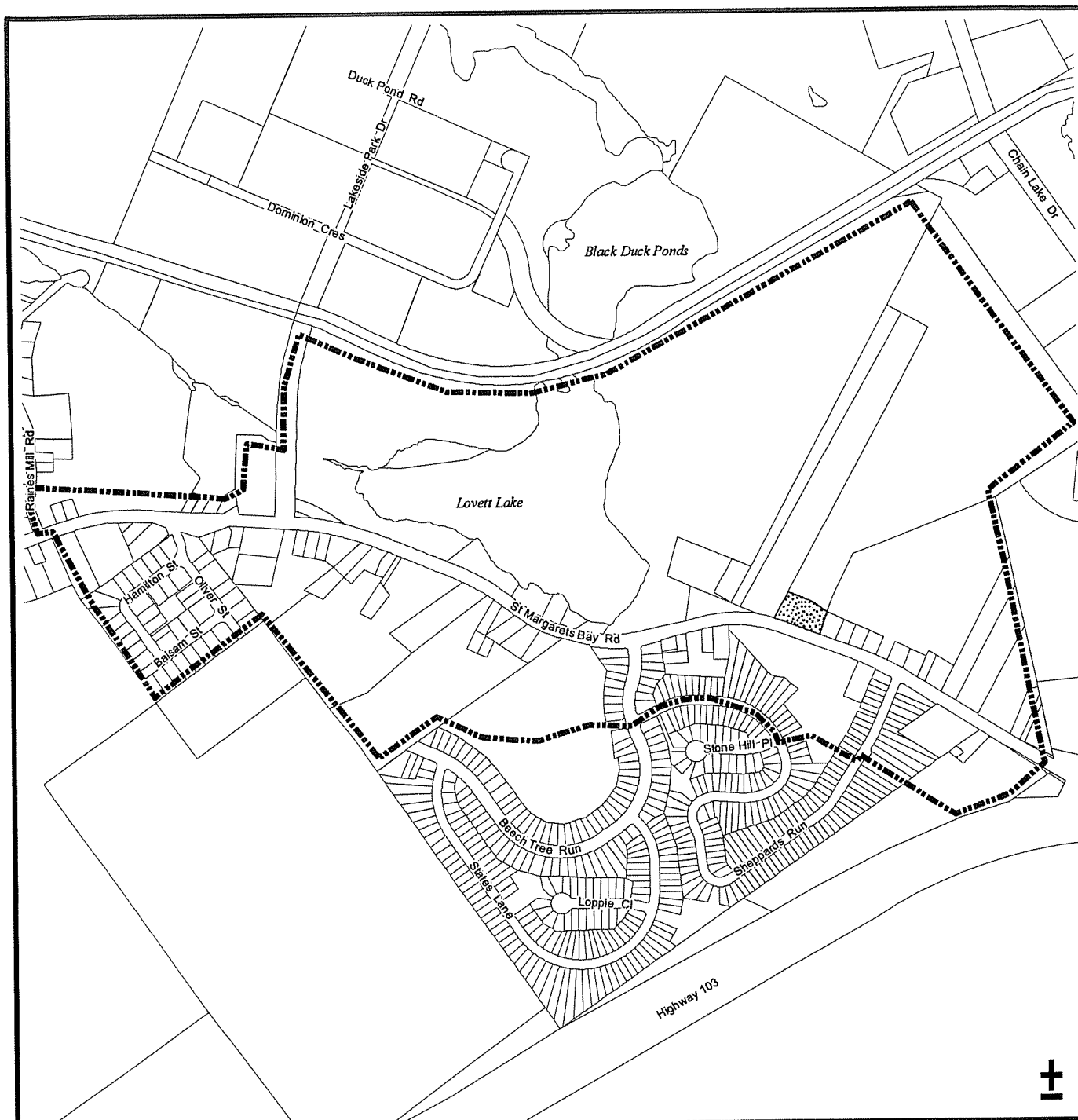
Designation

UR Urban Residential
C Commercial Core
IND Industrial

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Timberlea/Lakeside/Beechville Plan area.


HRM does not guarantee the accuracy of any representation on this plan.


Timberlea/Lakeside/Beechville Plan Area



Map 3 - Notification

1109 St. Margarets Bay Road
Beechville

 Property to be rezoned from
R-1 (Single Unit Dwelling) to
C-2 (General Business)

 Area of notification

Timberlea/Lakeside/Beechville Plan Area

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES

0 100 200 m

HRM does not guarantee the accuracy of
any representation on this plan.

Attachment "A"
Excerpts from the Timberlea/Lakeside/Beechville MPS

COMMERCIAL CORE DESIGNATION

Commercial land use in Timberlea/Lakeside/Beechville is illustrative of an early stage of suburban commercial development. Commercial uses are predominately dispersed along Highway No. 3 and include autobody shops, neighbourhood convenience outlets, highway commercial uses such as gas stations, and business uses found within dwellings. There is also a small shopping centre in Timberlea which contains a grocery store and a pharmacy. Other commercial uses in the general vicinity include a tavern, a doctor's office and a motel.

The previous section on residential land use, particularly Policies UR-20, UR-21 and UR-22, dealt with various commercial activities outside the Commercial Designation.

The location of the commercial core has been chosen primarily on its ability to accept growth with minimum adverse impact on the residential environment. It is sufficiently large to sustain a functional mixture of community facility, recreational, commercial, mixed use commercial/residential developments, cultural, retail and entertainment uses and is located so as to take advantage of existing, as well as potential transportation investment in collector roads, interchanges and public transit.

- CC-1 It shall be the intention of Council to establish the Commercial Core Designation, as shown on Map 1 - Generalized Future Land Use. Lands within the designation are intended to provide a commercial and service focus for the Plan Area.
- CC-2 Within the Commercial Core Designation, it shall be the intention of Council to establish a general business zone which permits general commercial uses not exceeding fifty thousand (50,000) square feet of gross floor area, and also permits special trade contracting services and shops not exceeding two thousand (2,000) square feet in gross floor area along with community uses and existing dwellings. This zone shall also permit up to two (2) dwelling units to be used on conjunction with permitted commercial uses, as well as boarding and rooming houses. The zone shall be applied to existing commercial uses in the Residential Designation, subject to the conditions established in Policy UR-21, and within the General Commercial Designation subject to Policy CG-2.

Attachment B
Public Information Meeting
Case 00857
March 30, 2006

In attendance: Art Schnare, Applicant
Glenn Baker, Applicant
Luc Ouellet, Planner, Planning & Development Services
Gail Harnish, Planning & Development Services

Mr. Luc Ouellet called the public information meeting (PIM) to order at approximately 7:00 p.m. in the Lakeside Community Centre. The application is by Contour Excavation & Septic to rezone 1109 St. Margarets Bay Road, Beechville, from R-1 (Single Unit Dwelling) Zone to C-2 (General Business) Zone.

Mr. Ouellet reviewed the rezoning process, using a flow chart:

- tonight is the PIM - it is an exchange between the applicant, the community, and planning staff
- following tonight's meeting, we will circulate the request to internal and external agencies for review and comment
- a staff report, which will include a recommendation and the minutes from tonight's meeting, is prepared
- the staff report is tabled with the Western Region Community Council
- Community Council will decide whether or not to proceed with the application; if so, they schedule and hold a public hearing
- there is an appeal process.

Mr. Ouellet, referencing the maps in the handout, pointed out the area being proposed to be rezoned. The piece of land is right after the Irving station on the same side of the road. It is the property with the big embankment. There are two buildings there now and some pieces of machinery.

Mr. Art Schnare stated he was semi-retired and worked part time for Contour Excavation & Septic. He provided a brief history of the property:

- the original deed dates back to 1920 when it was used as a local quarry and gravel pit
- it went to Gulf Oil and in 1969 it was transferred to Motts Transfer
- the first building was put up in 1960
- they renovated the first building in 1978 and constructed the second building in behind around 1980 or slightly afterwards
- Lots 2 and A are standard subdivision buildings
- the Irving station opened in 1980
- the water and sewer lines were put in 1981 and they discontinued use of the well

- removal of the septic field was in 1984 and inspected by Mike Kelly

Mr. Schnare provided a brief history of work carried out by Contour Excavation & Septic since acquiring the property:

- a full environmental assessment was carried out
- the land around the buildings was cleaned up from its previous use as a green bin and recycling centre
- they cleaned up around the back of the buildings and re-graded and re-graveled
- on the first floor of Building #2, they cleaned the lunch room and storage room, installed new doors, and painted
- on the second floor of Building #2, they cleaned and repainted the offices, and replaced the old carpet with laminate flooring
- they replaced the overhead doors on Building #2
- they removed some of the excess fill protruding from the bank between the two lots and removed some of the loose fill
- they redid the roof and siding on Building #1 (closest to the highway and used as a tire sales place and automotive repair)
- they insulated the ceiling and replaced sheet rock on Building #1
- they installed a new overhead door on Building #1

Mr. Schnare reviewed the planned uses:

- they wanted to continue leasing Building #1 for tire sales and minor automotive repairs to the people now leasing it
- their company now uses Building #2 - the second floor is used for general office and daily maintenance procedures; the first floor is used for repairs of trucks, excavators, tractors and small equipment; the compound out back is used for storage of materials such as pipe, hoses, panels, etc.; and the yard and adjacent lot is used for parking their trucks, excavators, backhoes and trailers

Mr. Schnare advised they lease property in an industrial area for the storage of sand, fill, topsoil and gravel.

Mr. Schnare reviewed their planned future repairs and improvements:

- for Building #1, they planned to install a second new overhead door and to install new siding on the north and east sides
- for Building #2, they planned to repair or replace siding panels and roof panels as required
- for Buildings #1 and #2, they planned to repaint if necessary
- remove the rest of the excess fill protruding from the bank between the lots
- ditch along the bank and provide proper drainage for both lots
- grade and re-gravel the lots where required

Mr. Ouellet noted the application is to rezone from R-1 (Single Unit Dwelling) Zone to C-2 (General Business) Zone. The tire business was there prior to the Land Use By-law (LUB) coming into effect so it is a legal non-conforming use. The excavation firm came after the by-law and did not make application for permits. If a legal non-conforming use stops for more than six months, then it cannot restart. The trucking firm left and after a period of time, they started this new business. There was a complaint received at our office that an illegal operation was occurring and our office sent them a letter and they subsequently made application to rezone the property.

Mr. Ouellet indicated the designation on the property is Commercial so the MPS policies do allow for consideration of a rezoning. The list of permitted uses for the R-1 and C-2 zones are included as part of the handout.

The meeting was opened to public participation.

Mr. Humphrey Longard questioned whether the business that started there originally was operating illegally.

Mr. Ouellet responded he understood there was no LUB in effect at the time the original business began operation there.

Mr. Longard stated there was General Business zoning all along the Bay Road when the original business started operating. When the LUB came into effect, it was still operating as a business, and questioned what kind of zoning/designation they were given.

Mr. Ouellet responded the property was zoned R-1. If they were there before the LUB came into effect, they were allowed to continue. Our records show that the tire garage use is a continuation of that original type of use and therefore can continue.

Mr. Longard questioned if the garage was put up for the trucking company illegally.

Mr. Ouellet responded the trucking company was legally non-conforming but they stopped operation for more than six months so a similar use could not be brought back in the garage without a rezoning taking place. The property has been zoned R-1 since the LUB came into effect.

Referencing the C-2 zone requirements, Mr. Longard noted the main building can only be 20' wide.

Mr. Ouellet noted the building would become a non-conforming structure which is a bit different. The structure was on the property before the by-law came into effect. The LUB did not effect the structure. It is use we are concerned about. We could not claw back on the size of the building regardless of the current LUB requirements. They would, however, have to meet the requirements of the LUB if they wanted to put up another building.

Mr. Ouellet clarified the maximum width of the main building would be determined by the lot coverage.

Mr. Longard questioned whether all the commercial buildings along the Bay road were non-conforming.

Mr. Ouellet responded there are potentially others but they might be legally non-conforming. Normally we get involved if a complaint is received. If it is illegal, we would send a letter telling them to either apply for a change in zoning or we would prosecute the offence. In this case, they decided to apply for a rezoning.

Mr. Longard stated he had a similar situation. They have been operating a trucking business forever and questioned whether they are non-conforming. He expressed concern that he could lose his status if he stopped business for six months.

Ms. Debbie Awalt questioned whether they owned all the land in behind on the hill.

Mr. Ouellet responded no. Mr. Schnare pointed out the property they own on the map.

Ms. Awalt stated they never wanted commercial property in Beechville. The existing commercial property stayed but they did not want any more commercial because hopefully people will come back and they have no residential property left.

Ms. Awalt commented they knew there was a building there for a tire shop. She expressed concern that there are a ton of things that could be put in that building if the property is rezoned and they would have no control over it. They wanted to have some kind of control over what goes in there. With the CDD zoning, you can have some kind of control. George Armoyn wanted to put in a whole strip of commercial and they said no.

Referencing the Generalized Future Land Use Map, Mr. Ouellet pointed out the area where somebody could apply for a rezoning to commercial. Only lots in the area with the C Designation could apply for a rezoning.

Ms. Awalt stated that once it's zoned commercial, they have no control over what is put in their community.

Mr. Ouellet confirmed they would only have to meet the requirements of the LUB if the land is rezoned. Whatever uses are permitted under the C-2 zone could be permitted on the site if they meet the LUB requirements.

Ms. Awalt noted that right now it is a small trucking company and a small garage which many people in Beechville have used but expressed concern with what could be put on the site in ten years time.

It was commented that it appears the particular lot with the two buildings is the only one not zoned commercial. Irving and the one next to it are zoned commercial.

Mr. Ouellet, referencing the Zoning Map, noted there are a few other sites with commercial zoning along that strip. The first couple of hundred feet could probably be considered for commercial.

Ms. Angela Fife noted it was said there would be grading of property and questioned whether that would help to eliminate erosion of the main road out front.

Mr. Glenn Baker responded they have been dealing with the councillor on that issue because it is HRM property. There is a catch basin there which has collapsed. He has been salting it all winter. They cannot do anything until the catch basin is fixed.

Ms. Fife questioned whether they would be chipping away at the bank.

Mr. Schnare responded only on the point of land which is sticking out. They would like to excavate that back to where the bank is so they can build a ditch.

Ms. Michelle MacLean questioned who they would talk to about the road. That is a major concern.

Mr. Baker responded it would be the councillor and HRM.

Mr. Ouellet advised he would pass along the concern to our Development Engineer.

Mr. Baker stated the catch basin is broken and it is too low. They are trying to get it raised. The water runs over their property and Irving and out onto the road.

Mr. Brian Miller indicated that in 1982 they came through and zoned this area. Beside this site is the Irving which was an outdoor repair place before what it is now, and therefore questioned why they would zone the site R-1.

Mr. Ouellet responded he could not explain why the site was zoned R-1.

Mr. Miller commented they did the same thing all the way down the Bay Road. He referenced Oxners who has been in business forever.

Mr. Ouellet noted that in this case, they zoned the property R-1 but kept it in a Commercial Designation which meant they could consider a commercial use sometime in the future. He could not explain why the property was not given a commercial zone.

Mr. Longard commented there were a few families who wanted the Bay Road strictly residential and wanted to squeeze everything off the Bay Road. It took them ten years but he thought they were better than R-1 non-conforming. Somewhere along the line it got reverted.

Mr. Longard indicated that any business there at the time should have been grandfathered when the new zoning/designation was put on the Bay Road. It was not until they got help from Councillor Rankin that they got some conformance. It appears to have gotten changed after that.

Ms. Awalt commented they have to remember that the community of Beechville did not want to lose all their residential property. In their community, they have the Irving, the tire place, and the Lakeside Industrial Park (which is in the community of Beechville and not Lakeside). She questioned why they have to have more commercial zoning in their community. They were promised ten years ago there would be no more commercial property in Beechville, now they want to change the zoning on a piece of residential property to commercial. It was residential before because most of their relatives lived there.

Ms. Awalt stated it was zoned R-1 because there were four homes there between the Irving lot and the lot they are talking about.

Ms. Awalt indicated that not many people knew about this meeting. People in Munroe Subdivision were not notified.

Mr. Ouellet noted the area of notification is included on the Zoning Map. We usually notify people within at least 500' and then, depending on the size of the project, expand it.

Ms. Fife pointed out that the notification area for the most part only included new people who have not lived in the community for very long. Munroe Subdivision was not included, nor were the other houses in the area of the Lakeside Industrial Park.

Mr. Ouellet advised he would consult with Councillor Rankin on expanding the notification area.

Mr. Longard said he understood this is about making what they want to do legal. He questioned whether they planned on putting up another building.

Mr. Ouellet advised they would be prosecuted if the property is not rezoned. They are trying to make the business legal. If they cannot get approval from Council for the rezoning, they will be prosecuted and will have to cease operations.

Mr. Longard commented the consequences could be an empty building.

Mr. Ouellet indicated there are three uses on the property. One is legal because it has been in operation since before the by-law came into place and the other building with the other use stopped for more than six months so they lost their status.

Mr. Baker commented there was always something there.

Mr. Longard stated there were never any houses there. It started out as a quarry when the road was built. They had a crusher there and it sat idle until the 1960s when the service station bought it and built a service station there. He did not know how the community felt they were being closed in on because it was always a commercial designation there.

Mr. Schnare advised that when the environmental assessment was carried out, according to their data there were two existing buildings. It was always confusing to him how they got to build the second building when it was zoned R-1 and how the empty lot got zoned commercial.

Ms. Fife indicated they lived in one of the houses at the back of Beechville Estates and wondered what was planned for the other R-1 areas.

Mr. Ouellet clarified that the purpose of tonight's meeting was to only deal with the one lot. When the LUB was adopted for the area, Council decided there could be commercial uses there in the future but zoned it R-1.

Mr. Longard stated that vacant lot many years ago, including the Irving station, was a junk yard. It has been commercial for a long time and nobody has lived on it for a long time.

Ms. Awalt requested that more people be notified for the next meeting. People did not know about the meeting and she only found out about it today. She felt that the people who lived in Munroe Subdivision, who lived in what they now call Beechville, should have been notified. She has lived there for twenty years and the property next door did not receive notification.

Mr. Ouellet advised that we would look into expanding the notification area but cautioned he was not sure we could include the whole community.

Mr. Miller questioned whether there was any provision for a non-conforming property to regain its legal non-conforming status if it ceased to operate for more than six months.

Mr. Ouellet responded no.

Mr. Miller questioned whether Contour Excavation could be considered for a legal non-conforming use status.

Mr. Ouellet responded no. The only way they can continue operating is to have the property rezoned.

The meeting adjourned at approximately 8:00 p.m.