

10.2.1



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Halifax Regional Council
Tuesday, December 14, 2004

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: *Linda Moshier*
for Linda Moshier, Chair, Chebucto Community Council

DATE: December 9, 2004

SUBJECT: Case 00485: Amendment to the Halifax Municipal Planning Strategy - Spencer Avenue Area

ORIGIN

Chebucto Community Council meeting of December 6, 2004.

RECOMMENDATION

It is recommended that Regional Council:

Terminate the process to amend the Halifax Municipal Planning Strategy and Land Use By-Law to redesignate and rezone the area generally bounded by the Old Sambro Road, Dentith Road, The Dentith Road/Herring Cove Road Commercial area and Catamaran Pond to Low Density Residential and R-2.

ATTACHMENTS:

1. Staff report dated November 15, 2004.
2. Excerpt of Chebucto Community Council minutes of December 6, 2004

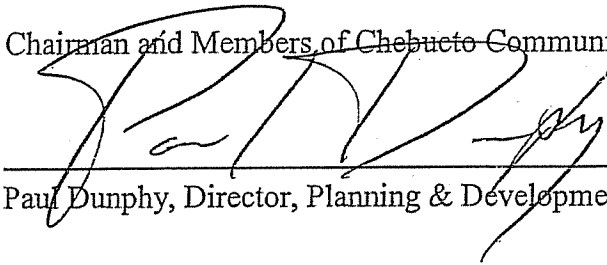


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Attachment 1
11.2

Chebucto Community Council
December 6, 2004

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY: 
Paul Dunphy, Director, Planning & Development Services

DATE: November 15, 2004

SUBJECT: Case 00485: Amendment to the Halifax Municipal Planning Strategy -
Spencer Avenue Area

ORIGIN

1. Instructions from Regional Council on June 11, 2002 to initiate the process to amend the Halifax Municipal Planning Strategy and Land Use Bylaw to redesignate and rezone the area generally bounded by the Old Sambro Road, Dentith Road, the Dentith Road/Herring Cove Road commercial area and Catamaran Pond, currently designated Medium Density Residential, to Low Density Residential and to rezone it to R-2.
2. Public Information meeting of July 29, 2002

RECOMMENDATION

It is recommended that Chebucto Community Council:

Recommend that Regional Council terminate the process to amend the Halifax Municipal Planning Strategy and Land Use Bylaw to redesignate and rezone the area generally bounded by the Old Sambro Road, Dentith Road, the Dentith Road/Herring Cove Road commercial area and Catamaran Pond to Low Density Residential and R-2.

BACKGROUND

At the June 11, 2002 meeting of Halifax Regional Council the following motion was passed:

MOVED by Councillor Adams, seconded by Councillor Goucher, that Council instruct staff to initiate a process to amend the Halifax Municipal Planning Strategy and Land Use By-Law to re-designate the area generally bounded by the Old Sambro Road, Dentith Road, the Dentith Road/Herring Cove Road commercial area and Catamaran Pond, which is now designated Medium Density Residential, to Low Density Residential and to rezone it from R-2P to R-2 to better reflect the land use in this area; and, request that public participation be undertaken in accordance with the Public Participation Resolution adopted by Regional Council on February 25, 1997.

Councillor Adams brought this matter forward in response to six unsightly six unit apartment buildings at 38-48 Spencer Avenue. At that time, these buildings were non-conforming uses as they contained six units whereas the zoning only allowed four. Councillor Adams felt that by beginning this process to change the zoning to R-2 would, if approved, limit the reoccupation of these buildings to two units should the current non-conforming use be discontinued for six months or more, and that this action may encourage the owners of these buildings to clean them up.

A public information meeting was held on July 29, 2002. While there was support for seeing the buildings at 38-48 Spencer Avenue improved, the consequences of rezoning the area to R-2 for owners of other six unit buildings which were being reasonably maintained was of concern. As a result Councillor Adams felt that the proposed rezoning to R-2 be held in abeyance and the situation be monitored.

Since the public information meeting was held, improvements have been made to 40, 42, and 48 Spencer Avenue and the buildings are being occupied. Civic number 44 is also occupied and currently the exterior is being upgraded. The buildings at 38 and 46 Spencer Avenue continue to be vacant and have lost their non-conforming status. These can only be re-occupied as a maximum of four units.

DISCUSSION

As four of the six buildings which prompted this action have been improved and the other two have lost their non-conforming status to be occupied as six units, rezoning the area to R-2 will serve no further purpose. There is no need to proceed with this MPS amendment. As this matter was initiated by Regional Council, it is appropriate for Regional Council to withdraw this initiation.

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.

ALTERNATIVES

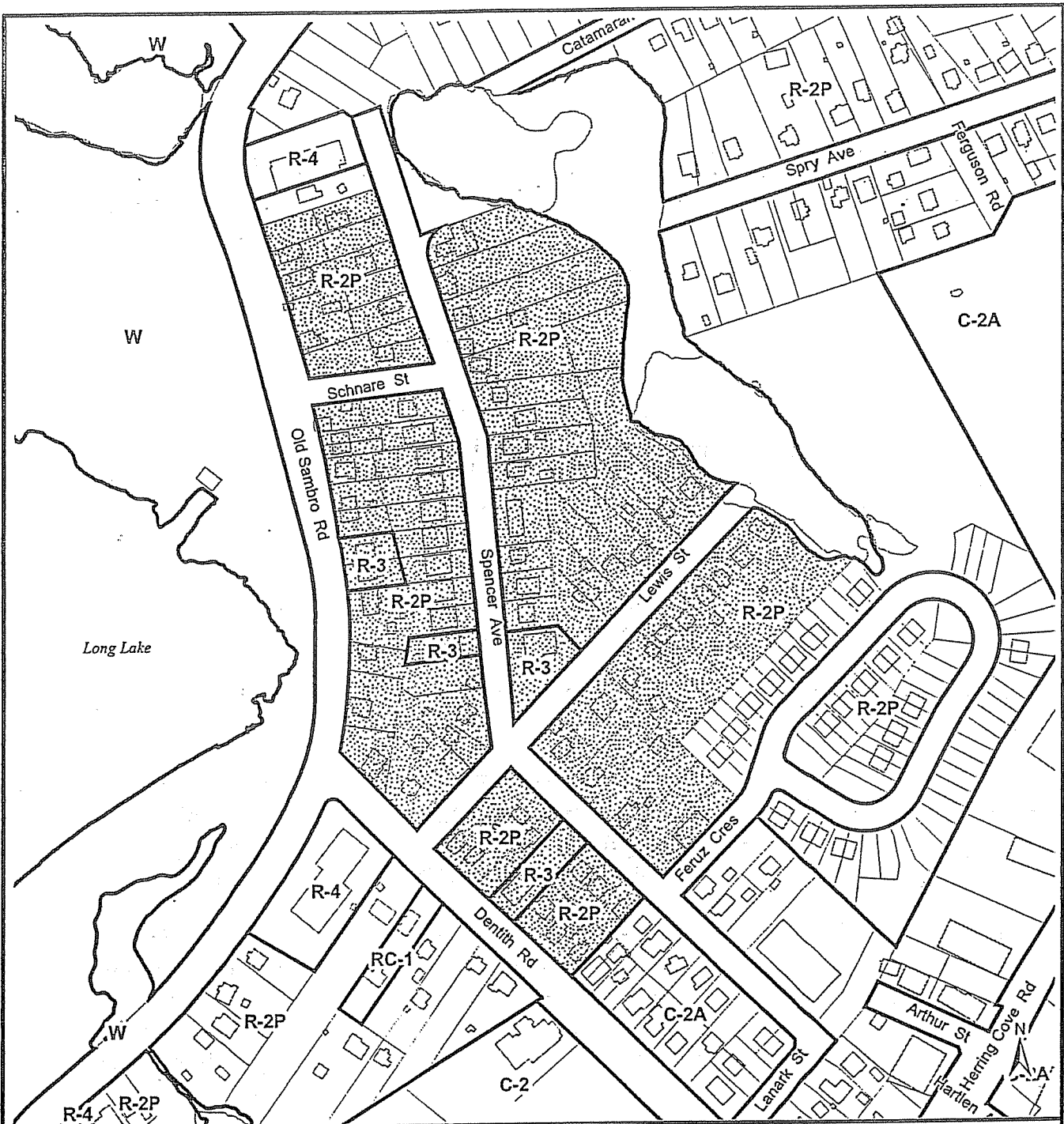
1. Staff be instructed to proceed no further with the process to amend the Halifax Municipal Planning Strategy and Land Use Bylaw to redesignate and rezone the area generally bounded by the Old Sambro Road, Dentith Road, the Dentith Road/Herring Cove Road commercial area and Catamaran Pond, which is now designated Medium Density Residential, to Low Density Residential and to rezone it to R-2. This is the recommended alternative. Amendments to the Municipal Planning Strategy are completely at the discretion of Council. A decision not to amend the MPS cannot be appealed.
2. Staff be instructed to continue with the process to amend the Halifax Municipal Planning Strategy and Land Use Bylaw to redesignate and rezone the area generally bounded by the Old Sambro Road, Dentith Road, the Dentith Road/Herring Cove Road commercial area and Catamaran Pond, which is now designated Medium Density Residential, to Low Density Residential and to rezone it to R-2.

ATTACHMENTS

- Map 1 - Spencer Avenue area
Attachment A - Minutes of the July 29, 2002 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 Angus E. Schaffenburg, Planner II, Development and Planning Services,
490-4495



Map 1 - Location and Zoning

Spencer Avenue/Lewis Street
Halifax

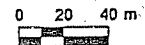
 Subject area

Halifax Mainland By-Law Area

Zone

- R-2P General Residential
- R-3 Low-Rise Apartment
- R-4 Multiple Dwelling
- RC-1 Neighbourhood Commercial
- C-2 General Business
- C-2A Minor Commercial
- W Watershed

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Mainland By-Law area.

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

Attachment A

**Public Information Meeting Minutes
(Case 00485)
July 29, 2002**

In attendance: Councillor Adams
Gary Porter, Planner, Planning Services
Gail Harnish, Planning & Development Services
Steven Higgins, Development Officer, Development Services

Gary Porter called the meeting to order at approximately 7:00 p.m. at the Captain William Spry Centre. He explained that the purpose of the meeting is to discuss a possible amendment to the municipal planning strategy that will allow for the rezoning of the Spencer Avenue area to R-2 (Two-Family Dwelling) Zone. He reviewed the plan amendment process.

Gary Porter pointed out the area in question on a map, noting that it includes most of Spencer Avenue, Lewis Street, Schnare Street, one side of the Old Sambro Road, and one part of Dentith Road. The area is designated Medium Density Residential.

Gary Porter confirmed that the new development at the back of the IGA is outside the area being discussed.

Gary Porter displayed a map showing the land uses. The area being considered for rezoning contains 90 properties: 54 are single family dwellings, 12 are duplexes, two semi-detached dwellings, 13 apartment buildings ranging from 5-12 units, and 7 vacant lots. The proposal is to change the zoning from R-2P (General Residential) to R-2 (Two-Family Dwelling) Zone.

Gary Porter displayed three tables which provided a comparison of R-2 and R-2P requirements for single family dwellings, duplexes, and semi-detached dwellings. The main difference is that the R-2P zone allows for a building that can contain 3-4 apartment units. By changing the zoning from R-2P to R-2 would mean that any possibility of new 3-4 unit apartment buildings would be erased. He noted that there are a couple of differences in terms of the zone standards, such as lot sizes.

Gary Porter explained that there are three things that can happen to the request: (1) do nothing - maintain the status quo; (2) change the zoning to R-2 (would include the four apartment buildings now zoned as permitted uses and make them non-conforming uses if the whole area is rezoned); and (3) leave the apartment buildings zoned as they are and rezone the R-2P portion in which case they would not create any non-conforming uses.

Ms. Lorraine Sullivan, co-owner of six unit apartment building at 43 Spencer Avenue, said it was her understanding that if something was to happen to their apartment building, they would not be able to re-build it to a six unit building unless the zoning was changed again.

Gary Porter clarified that the six unit apartment building is already a non-conforming use, whether the zoning is changed to R-2 or if the zoning is not changed. One of the restrictions that applies to a building with a non-conforming use is that if it burns down more than 75% of its value, it can only be rebuilt in accordance with the zone on the property. He noted that their 100' x 100' lot could be split into two lots with two units on each.

Ms. Sullivan commented that they would be losing two units. She questioned if the six units could be reconsidered if the foundation is still in place.

Steven Higgins advised that the Municipal Government Act talks about 75% of the building value above the foundation. It assumes that the foundation is still there. That is the situation they are in today.

Mr. Gerald Ferguson, 21 Spencer Avenue, noted that land was rezoned from R-4 to R-2 and then Mr. Havill bought land and it was upzoned to allow him to put 75 units across the street.

Gary Porter advised that Stanley Park is zoned RDD which allows R-1 and R-2 units and the ability to apply for a development agreement for more units which was what Mr. Havill did. There was a comprehensive plan approved for the whole neighbourhood.

Ms. Karen Sullivan questioned why the decision was made to retain the R-3 zoning on three lots in the area.

Gary Porter advised that prior to 1985 all of the area was zoned R-4. One part of Dentith Road was zoned R-2. In 1985, Council approved the Mainland South Secondary Planning Strategy which changed the zoning from R-4 to R-2P. In terms of why the zoning for the three R-3 zoned lots was not changed, he could not answer. Sometimes people come forward at public meetings/hearings and ask that their property not be rezoned, which is what may have happened.

Ms. Sullivan questioned whether they could request that their R-2P zoning be maintained. She did not feel it made sense to downzone their property.

Councillor Adams indicated that if the apartment buildings on Spencer Avenue were destroyed by fire more than 75%, then they would only be able to build four units in each building. Tonight we are considering zoning the area R-2 which, if approved, would mean they could only build a semi-detached or duplex on the lot if one of the apartment buildings was destroyed more than 75%. In terms of whether the apartment buildings across the street from Civic #43 were condemned, he did not know.

Mr. Ferguson stated he has been on Spencer Avenue for 60 years and never saw an ad in the newspaper about the big subdivision in the back. He questioned when the matter was raised before Council.

Councillor Adams advised it was not brought before Council. Approval from Council is not required when building a subdivision that is allowed by the zoning.

Mr. Ferguson stated he expected they would have to pay for pavement and sidewalks in order to get a good right-of-way for the big development. Gary Porter advised that the developer is responsible for those costs when building a new subdivision.

Steven Higgins advised that the regulations are contained in the Subdivision By-law and that he would send him a copy. He encouraged that Mr. Ferguson come down to the office to review the appropriate section of the document with him.

Mr. Ferguson commented that when they built the mall years ago, the people on Dentith Road had the same trouble - they wanted to charge them for trees. He stated that he built the road in there and was concerned about the amount of traffic that would be generated from the new development.

Mr. Ferguson questioned why they are considering changing the zoning.

Councillor Adams advised that it started with a phone call from Susan Marriott. They had by-law enforcement come to the area. Those buildings on Spencer Avenue are a mess. The area being considered this evening for the zoning change to R-2 is the area contained within the shaded area on the map - it has nothing to do with that new development. The apartment buildings in question are allowed to have four units. They want to rezone them to R-2 which will maybe lead to them being cleaned up or have them to revert to R-2 zoning. If we can show that they are not being used for apartment buildings and there is no effort to sell or rent them as units, the use can be considered non-existent and the use would have to revert to R-2. It is a way to push those who own those buildings to clean them up. It is a way to make the people who are irresponsible to do something; it has nothing to do with the Armoyan property.

Ms. Sullivan stated that if the zoning is changed to R-2 and the owners of the apartment buildings fix them up to meet standards, then there is nothing the Municipality can do.

Councillor Adams noted they would have to meet the requirements of the National Building Code. Those buildings were not always boarded up and the elements might have gotten to them and weakened the structures.

Steven Higgins stated that regardless of whether the zoning is changed, the properties are non-conforming uses. The non-conforming provisions are set-out in the Municipal Government Act. There is only two ways to get rid of them: (1) if they are destroyed by fire or otherwise more than 75% of their market value or (2) discontinuance. If the discontinuance is for a period of six months, you can only re-use in accordance with the new regulations. Unfortunately in reality, it

is not that simple. These laws are subject to judicial systems. With respect to people's residence, what they think is discontinuance is not the same thing as what the court says. That is the situation we are in with the apartments. What it comes down to is the act of discontinuing the use of the building and the intent of discontinuing. The intent is that it is being replaced by another use or if they can show that the buildings are capable of being occupied and have diligently tried to find tenants or purchasers they will have satisfied that burden of discontinuance. The last contact he had with the property owners was last fall. They had originally asked for a zoning confirmation letter. The owners of the properties provided affidavits and real estate listings and were able to provide that proof. In the event these buildings are destroyed or if the use is discontinued, they can put four units there. If it was rezoned, it would only be two units.

Councillor Adams noted it was the intention to make the zoning consistent with the streets involved so that it does not look like we are picking on anybody.

Ms. Susan Marriott stated that she did not think they would be able to clean up the buildings. She believed they were a health hazard.

It was commented that there are pigeons living there. Also, that the copper piping and the toilets were removed by former tenants when they had to leave.

Ms. Sullivan commented they owned the six unit apartment building across the street and was ashamed when she had to show their units to prospective tenants. The place has been going downhill for 33 years. They should not have to have their property downzoned because of the slums across the street.

Gary Porter noted that he has been speaking with by-law enforcement and they are okay as long as the buildings are kept secure.

It was commented that the people living on Armview Crescent would not tolerate what they get for service (pavement) and felt they should not be treated any differently from them.

Gary Porter advised that he would mention to by-law enforcement that pigeons are living there. He did not think the buildings have been condemned. Also, that he would follow-up in terms of getting updated inspections on the buildings. If all the plumbing is out of the building, that could make a difference. Steven Higgins advised that he would speak to Jim Donovan in terms of the inspections. Presumably they will not get easy access. If so, then they have an issue with dangerous and unsightly.

Ms. Karen Sullivan questioned why they would have to rezone the area in order to get some people to clean-up their property.

Steven Higgins stated the rezoning is more likely to impact what is constructed on the property in the event they are destroyed, removed, or abandoned. If we say these buildings are not capable of being occupied or if they lose their non-conforming status and they do not do anything under the current zoning, somebody could create four units. Under the proposed zoning they can only convert to two units.

Ms. Sullivan noted the owners still have the opportunity today to clean them up. She questioned who stands to gain if the area is rezoned.

Councillor Adams indicated that regardless of what happens with the zoning, a building inspector will be going in to do inspections. The R-2 zoning is for the future and is a way to get the owners to take action.

In response to Mr. Sullivan, Steven Higgins advised that in the highlighted area being looked at this evening, there are 20 pieces of property that would support up to four unit apartment buildings that do not currently have them.

An individual stated that within five years Spencer Avenue would be opened up and have a lot of traffic.

An individual commented that Spencer Avenue could not handle any more traffic. Although she no longer lived there, she did live there for 17 years. She was concerned about the elderly people and the children who have no other way to get to school except for walking in the middle of the road. The road is narrow and is not paved. From Spencer Avenue to Lanark Street there is a blind curve.

In response to a show of hands, 8 people indicated they were in favour of proceeding to the next stage of looking at R-2 zoning while 3 were not in favour.

It was questioned if the motive for changing the zoning was to stop more multiple units on Spencer Avenue because there will be so much traffic coming out on Spencer Avenue because of the new development. It was responded no.

Gary Porter questioned what the owners of 43 Spencer Avenue were concerned about if their property is rezoned.

Ms. Sullivan responded they have six units today. That is their income. If the place burns down as it stands today, the most they can put up is a four unit building. It is being proposed under the new zoning that they only be allowed two units, so they lose the income for four units.

Gary Porter noted that if the property is 10,000 sq.ft, it can be subdivided for two buildings. If the zoning is changed to R-2, they still have the opportunity for four units if it burns down today.

It was questioned whether the owners of the boarded up apartment buildings could use them for tax write-off after five years. Gary Porter indicated he could not respond.

Councillor Adams clarified that the development behind would comprise 37 semi-detached units.

Ms. Mary Martin, 32 Lewis Street, questioned if all the apartment buildings from 34 to 48 Spencer Avenue (on the same side of the street) were owned by the same people.

Gary Porter advised that 38, 40, 42, 44, 46, and 48 Spencer Avenue are owned by ECB Investments. The properties at 34 and 36 Spencer Avenue are each owned by different individuals.

Councillor Adams advised that he would speak with Ann Reid who does the costing for paving and sidewalks to see what it would cost and what can be done.

Concern was expressed about parking and hours of operation, particularly on Sunday, for the development behind them.

Ms. Dempsey indicated their concerns were made known and questioned whether there was anything for them to follow-up on in reference to keeping the R-2P zoning for their property at 43 Spencer Avenue.

Gary Porter advised that a staff report would ultimately go to the Chebucto Community Council, possibly the October meeting.

Ms. Sullivan spoke in favour of them having the opportunity for their building to have six units. Gary Porter clarified that to do that would increase what they currently have.

The meeting adjourned at approximately 8:10 p.m.

11.2 Case 00485: Amendment to the Halifax Municipal Planning Strategy - Spencer Avenue Area

- A report dated November 15, 2004 was before Community Council.

MOVED BY Councillor Adams, seconded by Councillor Hum that Chebucto Community Council recommend that Regional Council:

1. **Terminate the process to amend the Halifax Municipal Planning Strategy and Land Use By-Law to redesignate and rezone the area generally bounded by the Old Sambro Road, Dentith Road, the Dentith Road/Herring Cove Road commercial area and Catamaran Pond to Low Density Residential and R-2.**

MOTION PUT AND PASSED UNANIMOUSLY.