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HALIFAX
REGIONAL MUNICIPALITY

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North West Community Council
July 9, 2009

TO: Chair and Members of North West Community Council

SUBMITTED BY: Paul Dunphy, Director of Community Development

DATE: June 5, 2009

SUBJECT: **345 and 343 Kearney Lake Road - Bedford**

ORIGIN

At the Public Hearing for Case 01193 (February 26, 2009), North West Community Council approved the following:

> *"MOVED BY Councillor Outhit, seconded by Councillor Johns that the North West Community Council request that staff investigate the options and process required to amend the land use regulations for 345 and 343 Kearney Lake Road in Bedford to reflect the institutional use of 345 Kearney Lake Road. MOTION PUT AND PASSED."*

RECOMMENDATION

It is recommended that North West Community Council recommend to Regional Council:

1. Initiate the process to consider amending the Bedford Municipal Planning Strategy and Land Use By-law for 345 and 343 Kearney Lake Road to reflect the institutional use at 345 Kearney Lake Road in Bedford; and

2. Request Staff to follow the public participation program as approved by Council in February 1997.

BACKGROUND

Purpose

This report details the options and process required to amend the land use regulations for 345 and 343 Kearney Lake Road in Bedford (subject properties) to reflect the institutional use of 345 Kearney Lake Road.

General History

345 Kearney Lake Road is owned by the Diman Association of Canada (DAC) - a private community group. The following is a general history of the subject properties related to ownership and land use regulations:

- 1983: The DAC acquired 345 Kearney Lake Road and zoned SDA (Secondary Development Area) under the Bedford Land Use By-law (LUB). The SDA Zone permitted a range of institutional uses, including a private community centre;

- 1991: The Bedford Municipal Planning Strategy (MPS) and LUB was reviewed and amended. Prior to the MPS and LUB amendments coming into effect, the DAC applied for, and was issued, a development permit for a private community centre; As part of the MPS and LUB review, the SDA Zone was removed from the LUB and properties in the area (including the subject properties) were rezoned to RR (Residential Reserve). After the LUB amendments came into effect, the DAC's community centre became a non-conforming use;

- 2003: The DAC acquired 343 Kearney Lake Road.

Detailed History - 345 Kearney Lake Road

Prior to purchasing 345 Kearney Lake Road, the DAC wrote to the former Town of Bedford requesting confirmation that the zoning of the property complied with their plans to build a community centre. The DAC received a response from the Town indicating the zoning permitted institutional uses.

While the MPS was undergoing review in 1990 the DAC was sent a letter from the Town (as a follow-up to a phone conversation) indicating the DAC's proposed use of 345 Kearney Lake Road was permitted by the existing zone, but the proposed Land Use By-law, if adopted by Town Council, would not permit institutional uses. Further, the Town advised the DAC's project could proceed if they acquired a development permit prior to Council announcing its decision to adopt the new Land Use By-law.

The DAC acquired a development permit for a community centre with a caretaker unit in 1991, prior to the adoption of the new MPS and LUB. Subsequently, this development permit was renewed in 1992 and 1993, before a construction permit was issued in 1994 and occupancy issued in 1996.

Potential Illegal Land Use - 343 Kearney Lake Road

In 2003 the DAC acquired the abutting property to the south (343 Kearney Lake Road). Archive information from the former Town of Bedford indicates the permitted use of the property is a single unit dwelling. Further, this information suggests the building contained three apartments in the late 1980s, and possibly four apartments in 1995. Staff advise the use of 343 Kearney Lake Road may be in violation of the Land Use By-law.

Non-conforming Land Uses

The Halifax Regional Municipality Charter (HRMC) includes provisions related to a non-conforming land use. As a non-forming use of land, 345 Kearney Lake Road is regulated by the HRMC (Attachment B). As the DAC's use of subject property is considered to be non-conforming, the existing use of the property is protected under the HRMC. However, this classification also renders the DAC vulnerable in certain scenarios, as well as restricts their ability to expand (Attachment B).

Bedford West - Zoning Error

In 2006 the Bedford West Master Plan was adopted and included as part of the MPS. Policies of the BWMP initiated the rezoning of land holdings west of Highway 102 in Bedford, resulting in the application of the BWCDD (Bedford West Comprehensive Development District) Zone. This zone is designed to enable development through a comprehensive and negotiated process (development agreement).

In error, the BWCDD Zone was applied to a small portion of developed lands along Kearney Lake Road in Bedford, including the subject properties. Case 01193 corrected this zoning error, thereby restoring the RR Zone (Map 2).

During the review of Case 01193, the DAC expressed interest in the possibility of amending the land use provisions for the subject properties that reflected the long standing institutional use of 345 Kearney Lake Road. Staff advised Case 01193 was in process to address the zoning error related to the Bedford West Master Plan.

NWCC's Request

When addressing Case 01193 at their February 26th, 2009 meeting, NWCC also passed a motion requesting staff investigate the options and process required to amend the land use provisions for the subject properties to reflect the DAC's use of 345 Kearney Lake Road.

DISCUSSION

The Bedford West Master Plan

The BWMP established a series of twelve Sub-Areas within "Bedford West". The subject properties are designated BWSPS (Bedford West Secondary Planning Strategy) by the MPS and are located within Sub-Area 10 (Map 1). Polices related to Sub-Area 10 address both developed and undeveloped lands.

Policy Analysis - Undeveloped Lands

The preamble to policy BW-41 states that Sub-Areas 10 and 12 shall maintain current zoning until such time that municipal services can be extended. This area is within the Urban Service area but municipal services have yet to be extended. Further, this preamble explains that when service connections can be made, a comprehensive development district zone shall be applied to all undeveloped lands within the Sub-Area to be serviced (Attachment A).

Policy Analysis - Developed Lands

Policy BW-41 states that *"no municipal services shall be extended to existing developments within sub areas 10 and 12 until consultations have been held with affected properties owners to determine:*
(a) the need for amendments to existing policies under the Municipal Planning Strategy and zoning regulations under the Land Use By-law;
(b) the need for municipal services and the means of finance."

Options and Process

The options and process required to amend the land use provisions for developed lands within Sub-Area 10 of the BWMP, including the subject properties, have been established through Policy BW-41 (Attachment A). According to current policy, the developed lands of Sub-Area 10 must have the ability to receive municipal service connections before amending land use provisions. The timing of municipal service connections is unknown at this time.

The intent of the BWMP was to limit development of Sub-Area 10 to existing rights until time of service extensions. At that time, policy and zoning, as well as the need for municipal services, will be explored through discussions with property owners and HRM.

Alternative

As policy gives no ability to consider amending land use provisions prior to servicing potential, permitting an institutional use (outside the rights established under the HRMC) prior to servicing potential would be treated as a MPS amendment.

Amending the MPS

Generally, a MPS amendment is not a straightforward exercise and requires considerable justification for it to be considered. The general staff position on MPS amendments is that they should only be considered when there has been a change in circumstances or there is a significantly

different situation than what the existing plan policies anticipated. The onus is on the proponent to justify the change, in writing, by:

- explaining why an amendment is necessary and desirable;
- showing how the proposed amendment relates to the objectives and policies of the Municipal Planning Strategy; and
- providing sufficient economic, social and environmental studies and information to assess the request

A MPS amendment request which considers amending the development regulations for both 345 and 343 Kearney Lake Road is not in keeping with the objectives of the MPS. However, based on the history and circumstances of 345 Kearney Lake Road, a MPS amendment that reflects the long standing use of the property may be reasonable to consider.

Conclusion

This report satisfies NWCC's motion for information regarding the options and process required to amend the land use provisions for 345 and 343 Kearney Lake Road in Bedford. Further, staff is recommending that North West Community Council request that Regional Council initiate a MPS and LUB amendments process designed to reflect the long standing institutional use of 345 Kearney Lake Road.

BUDGET IMPLICATIONS

The costs to process this planning application can be accommodated within the approved operating budget for C310. The budget availability has been confirmed by Financial Services.

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:	Generalized Future Land Use Map
Map 2:	Zoning Map
Attachment A:	Applicable MPS Policies
Attachment B:	Excerpts from the Halifax Regional Municipality Charter (HRMC)

A copy of this report can be obtained online at http://www.halifax.ca/commcoun/cc.html then choose the appropriate Community Council and 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, 490-6717

Attachment A
Applicable MPS Policies

Sub-Areas 10 and 12:

These current zoning provisions shall be maintained on these lands until such time as municipal services can be extended. When service extensions can be made, a comprehensive development district zone shall be applied to all undeveloped lands within the Sub-Area to be serviced. Any future residential development shall be guided by the criterion of policy BW-32 and any commercial development shall be guided by policy.

Policy BW-41:

> *No municipal services shall be extended to existing developments within Sub-Areas 10 and 12 until consultations have been held with affected property owners to determine:*
> - *the need for amendments to existing policies under the Municipal Planning Strategy and zoning regulations under the Land Use By-law;*
> - *the need for municipal services and a means of finance.*

Policy BW-42:

> *When municipal services are available for Sub-Areas 10 or 12 , a comprehensive development district zone may be applied to undeveloped properties within the Sub-Area to be serviced. No development agreement application shall be considered for approval unless a public participation program has been undertaken to identify development opportunities and constraints and to facilitate collaboration in the preparation of a conceptual concept design for the entire Sub-Area. Any future residential development shall be guided by policy BW-32 and any commercial development shall be guided by policy BW-33.* (RC-June20/06;E-July 29, 2006)

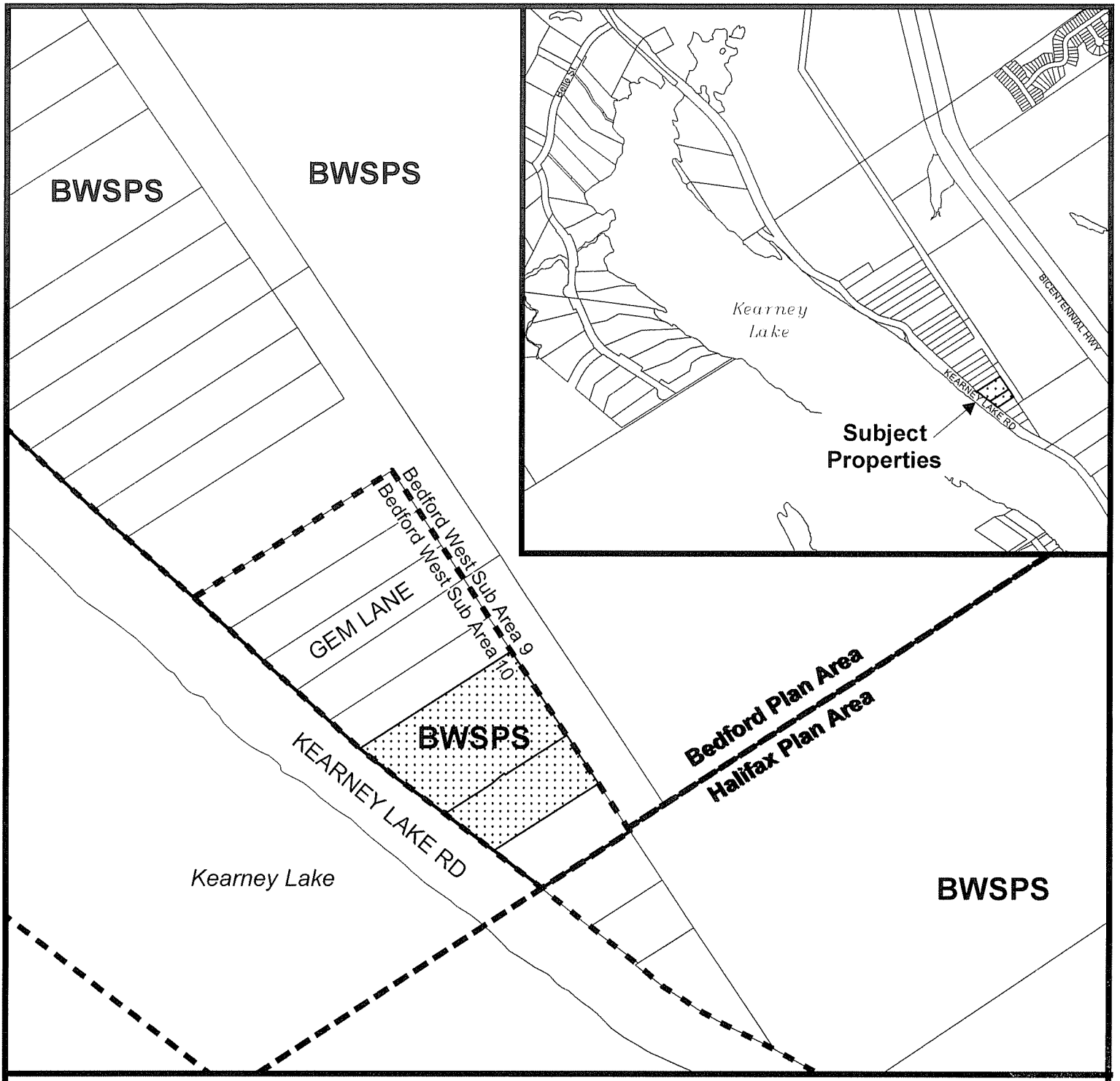
Attachment B
Excerpts from the Halifax Regional Municipality Charter (HRMC)

255 A non-conforming use of land may not be
(a) extended beyond the limits it legally occupies;
(b) changed to any other use except a use permitted in the zone; or
(c) recommenced, if discounted for a continuous period of six months.

256 (1) Where there is a non-conforming use in a structure, the structure may not be
(a) expanded or altered so as to increase the volume of the structure capable of being occupied, except as required by another Act of the Legislature; or
(b) repaired or rebuilt, if destroyed or damaged by fire or otherwise to the extent of more than seventy-five percent of the market value of the building above its foundation, except in accordance with the land use by-law and after the repair or rebuilding it may only be occupied by a use permitted in the zone.

(2) Where there is a non-conforming use in a structure, the non-conforming use may be extended throughout the structure.

(3) Where there is a non-conforming use in a structure, the non-conforming use
(a) may not be changed to any other use except a use permitted in the zone; or
(b) may not be recommenced, if discontinued for a contentious period of six months.



Map 1
Generalized Future Land Use

Subject Properties

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Planning Services

Bedford Plan Area

BWSPS Bedford West Secondary Planning Strategy

Halifax Plan Area

BWSPS Bedford West Secondary Planning Strategy

N

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Meters

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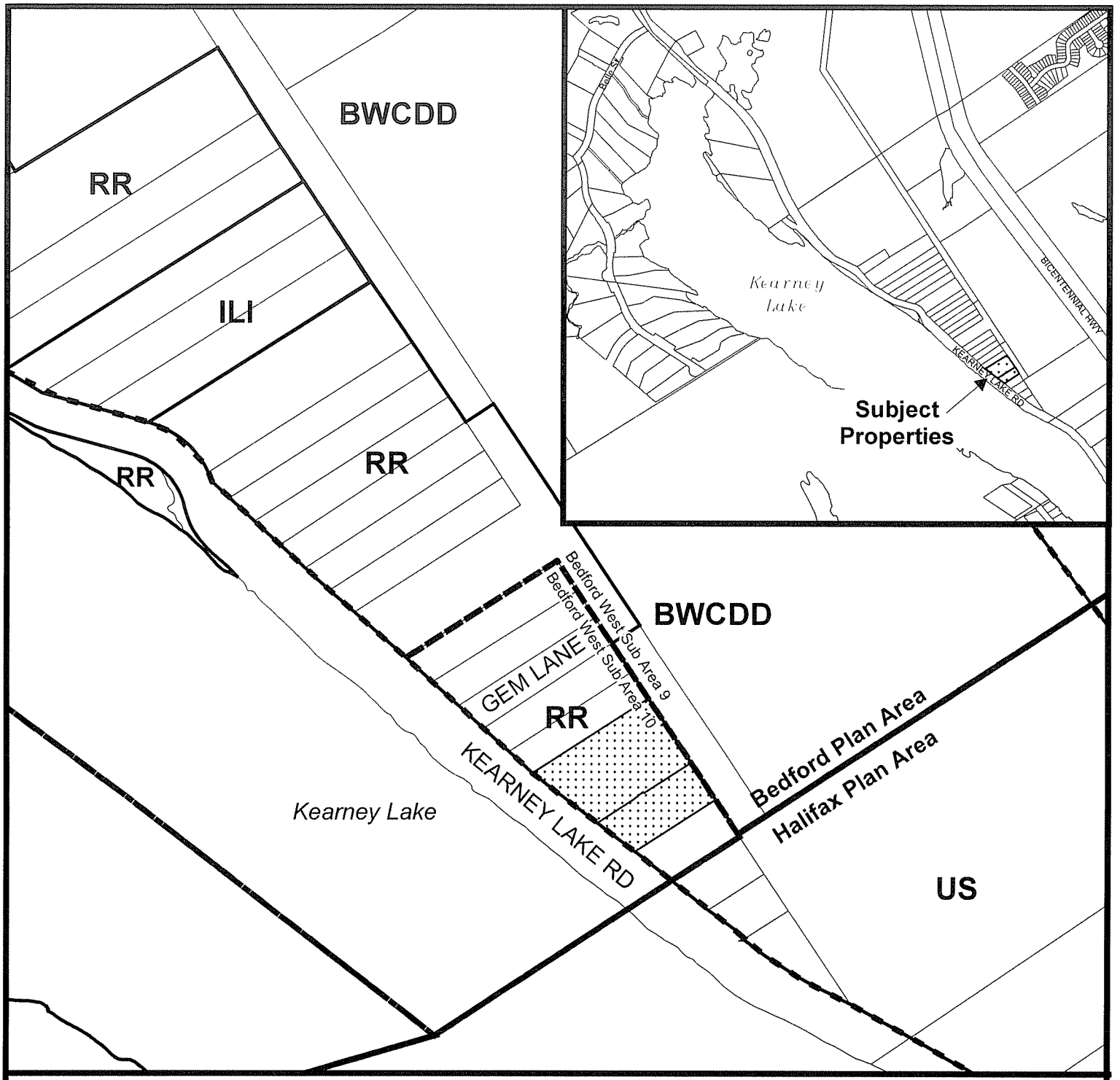

Map 2
Zoning

Subject Properties

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Planning Services

Bedford Plan Area

BWCDD	Bedford West Secondary Planning Strategy
RR	Residential Reserve Zone
ILI	Light Industrial Zone

Halifax Plan Area

US	Urban Settlement Zone

N

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Meters

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