

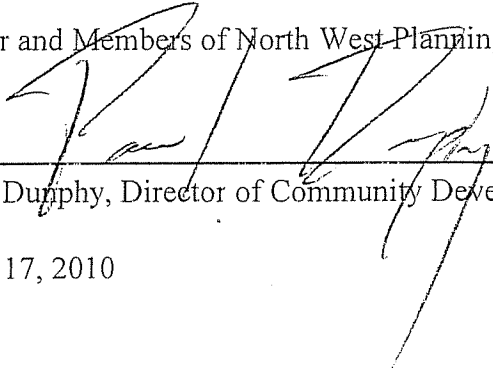


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

North West Planning Advisory Committee
July 7, 2010

TO: Chair and Members of North West Planning Advisory Committee

SUBMITTED BY:


Paul Dupphy, Director of Community Development

DATE: June 17, 2010

SUBJECT: Case 16016: Substantive DA Amendment - 380 Cobequid Road

ORIGIN

Application by James and Karen Bingham.

RECOMMENDATION

It is recommended that North West Planning Advisory Committee recommend that North West Community Council:

1. Give Notice of Motion to consider the proposed amending agreement as set out in Attachment A of this report, and schedule a Public Hearing;
2. Approve the proposed amending agreement, as set out in Attachment A of this report; and
3. Require the proposed amending agreement be signed and delivered within 120 days, or any extension thereof granted by North West Community Council on request of the applicant, from the date of final approval of said agreement by North West Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

In 2004, North West Community Council entered into a development agreement with James and Karen Bingham to enable a commercial retail book store at 380 Cobequid Road, Sackville. James and Karen Bingham are seeking a substantial amendment to the existing development agreement to enable an engraving store. As proposed, the engraving store would be contained within the existing structure and would operate in association with the existing retail book store.

Location, Designation and Zoning

- The property (PID #40459349) is 1012 m² (10,990 ft²) in area and is located on the north west side of the intersection of Judy Ann Court and Cobequid Road.
- The property is known as the Bing's Books property.
- The property is designated UR (Urban Residential) under the Sackville Municipal Planning Strategy (MPS) and zoned R-1 (Single Unit Dwelling) under the Sackville Land Use By-law (LUB) as illustrated on Maps 1 and 2 of this report.

Enabling Policy

Policy UR-24 of the Sackville MPS, included as Attachment B, allows Council to consider Community Commercial (C2 Zone) land uses, included as Attachment C, on properties along Cobequid Road located north of Sackville Drive and south of First Lake Drive. The intent of the policy is to enable commercial development provided it recognizes the concerns of the adjacent residential community and is compatible with adjacent land uses.

Existing Development Agreement

The existing development agreement, approved by North West Community Council in September of 2004, permits the use of a retail book store. A change of use to a bank or financial institution, food store, and office is also provided as non-substantial amendment. The development agreement identifies the existing building footprint of 83 m² (890 ft²) and maintains that no additions to the building shall be permitted which would result in additional floor space.

Proposed Amendments

James and Karen Bingham have made application to add an engraving component to their existing retail book store. As proposed, the engraving store would be incorporated into the existing structure and would operate in conjunction with the existing retail book store. The proposed use would not require an increase to the footprint of the existing building.

The existing development agreement does not contemplate engraving stores or retail stores as a permitted use. Further, the proposed use is not listed as a potential change of use through the non-substantive amendment process. Therefore, the requested amendment to allow an engraving store as a permitted use is identified as a substantial amendment to the development agreement.

DISCUSSION

The existing development agreement identifies retail book store as the sole permitted use on the property. Staff's decision to indicate a sole permitted use in the existing agreement was a reflection of some of the challenges present on the subject property with respect to the total area of the property, access to and from Cobequid Road and the site ability to accommodate traffic, all of which relate to the enabling policy UR-24.

Through the substantial amendment process staff have proposed an amendment to the existing agreement that would allow for the requested uses of a retail book store and engraving store. Further, staff have provided some flexibility in terms of potential land use by including service and personal service uses and offices as permitted uses. These uses typically generate low levels of traffic, can be accommodated on the subject property and further the intent of policy UR-24.

Retail Stores

Staff's original proposal was to include retail stores as a permitted use. Although, through the internal review process, staff identified specific retail uses (i.e. convenience store) that may be less achievable on the subject property due to the challenges identified earlier in this report. Therefore, rather than providing retail stores as a permitted use, staff have listed the use under Section 3.2 as a potential change in use subject to a non-substantial amendment process. This will ensure that any proposed retail uses are reviewed by staff and Council to determine if they are compatible with the subject property and adjacent land uses. Further, uses previously considered in Section 3.2 of the existing development agreement such as food stores, banks and financial institutions have been removed as staff believe these uses would be challenging to accommodate on the subject property and are not appropriate as a non-substantive amendment.

Conclusion

It is the opinion of staff that the proposed amending agreement set out in Attachment A is consistent with the intent of the Sackville MPS for commercial development at this location, specifically policy UR-24. The proposed agreement allows for the requested retail use of an engraving store and provides additional flexibility with regard to future potential land uses that are compatible with the subject property and the adjacent residential community. Therefore, staff recommend that NWCC approve the proposed amending development agreement included as Attachment A of this report.

BUDGET IMPLICATIONS

There are no budget implications. The developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a Public Information Meeting held on June 7, 2010. A public hearing has to be held by Council before they can consider approval of any amendments.

For the Public Information Meeting, notices were posted on the HRM website, in the newspaper and mailed to property owners within the notification area as shown on Map 2. Attachment D contains a copy of the minutes from the meeting. Councillor Harvey of District 20, Lower Sackville, attended the meeting as did the applicants James and Karen Bingham. To date, no comments or correspondence have been received by staff pertaining to this proposal. Should Council decide to proceed with a Public Hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 2.

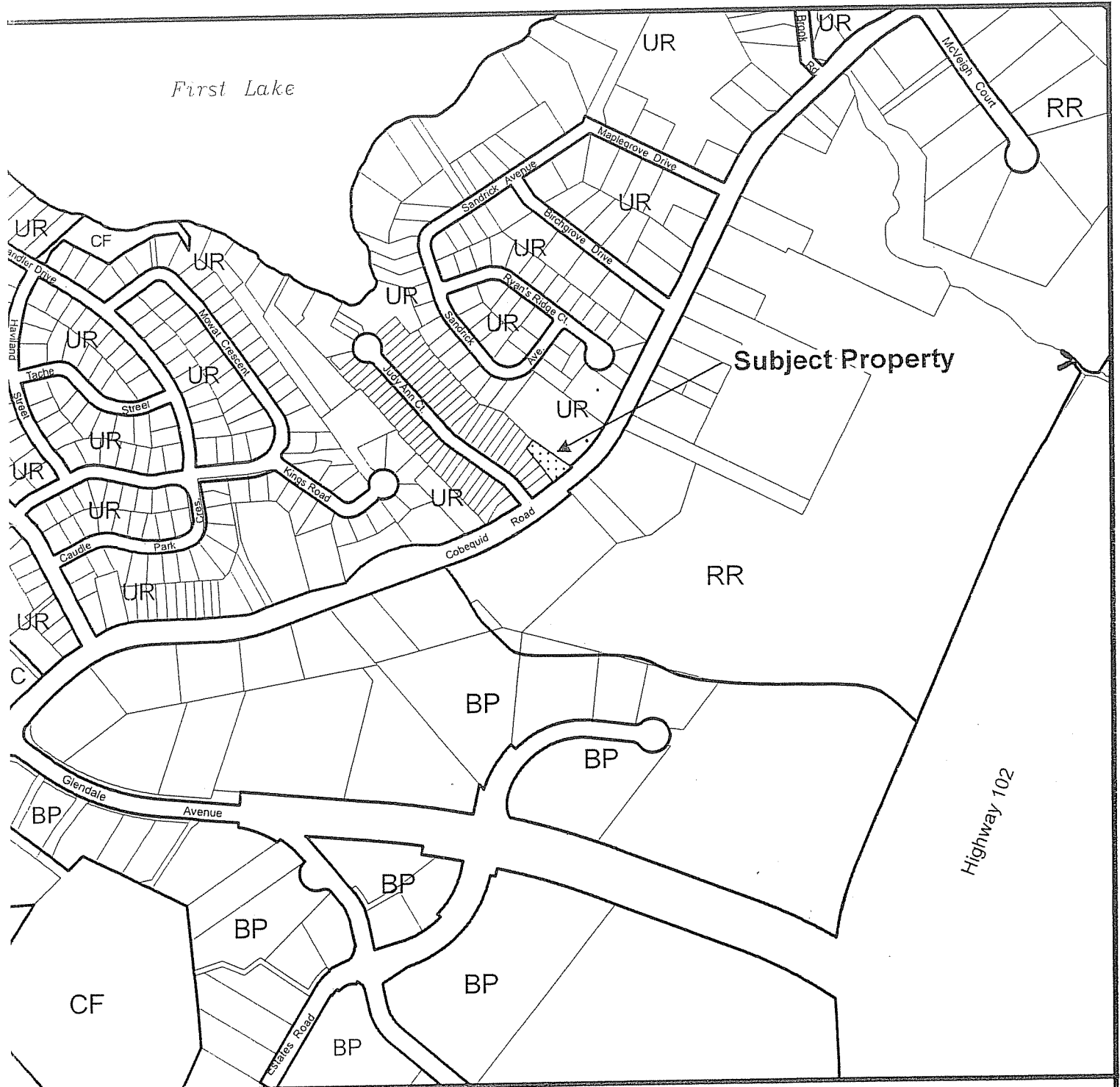
The proposed amending development agreement will potentially impact the following stakeholders: local residents and property owners.

ALTERNATIVES

1. Council may choose to approve the proposed amending agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed amending agreements subject to modifications. This may require further negotiation with the applicant and may require a second public hearing.
3. Council may choose to refuse to approve the proposed amending agreements, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff are satisfied that the proposed amending development agreement is consistent with the policies and intent of the MPS.

ATTACHMENTS

Attachment A	Proposed Amending Development Agreement
Attachment B	Sackville MPS Excerpt
Attachment C	Sackville LUB Excerpt

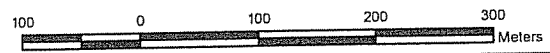


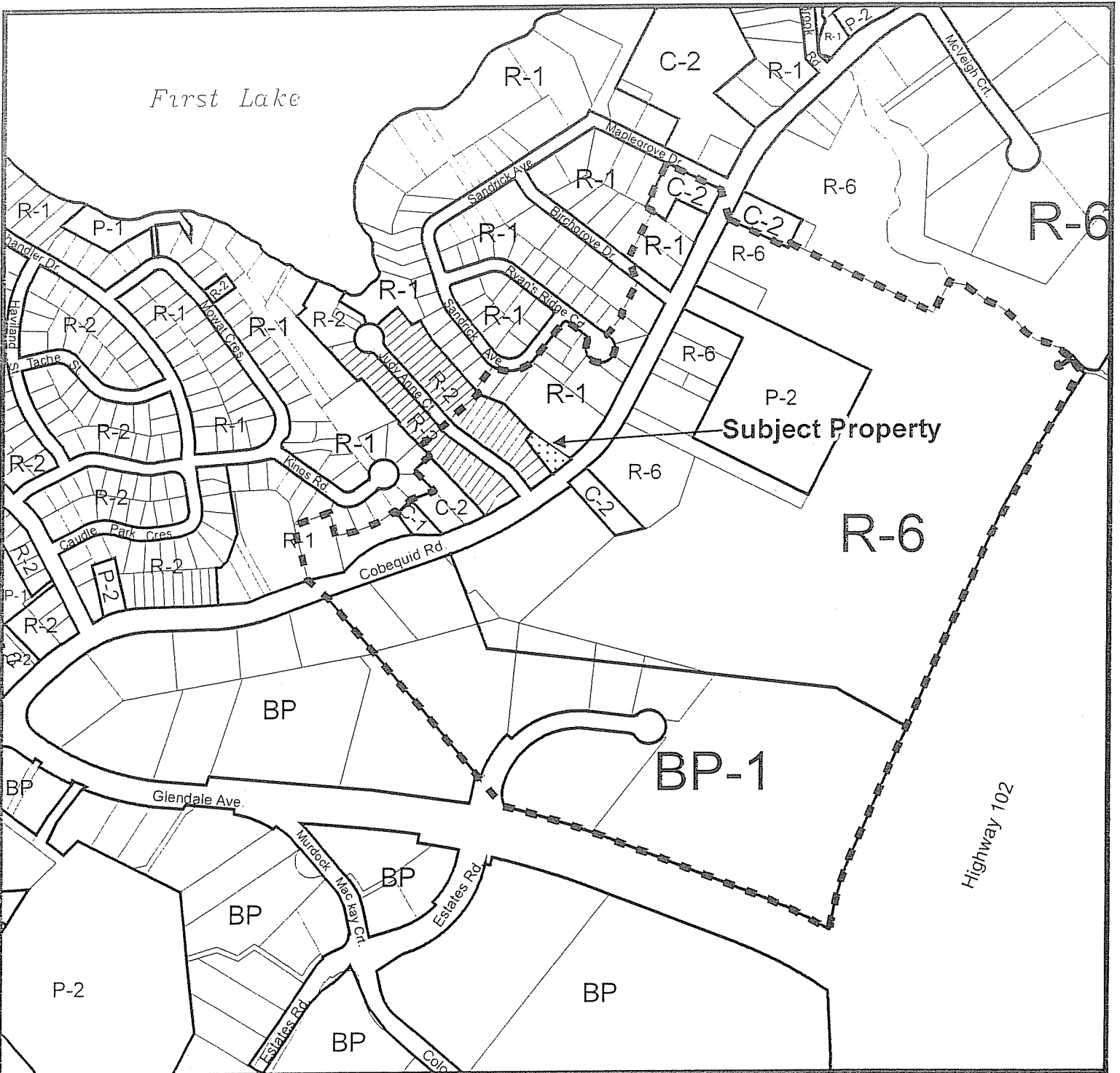
Map 1
Generalized Future Land Use

 Subject Property



- UR Urban Residential Designation
- RR Rural Residential Designation
- C Commercial Corridor Designation
- CF Community Facility Designation
- BP Business Park Designation





Map 2
Zoning



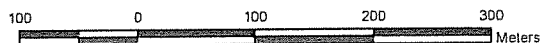
Subject Properties



- R-1 Single Unit Dwelling Zone
- R-2 Two Unit Dwelling Zone
- R-6 Rural Residential Zone
- C-1 Local Business Zone
- C-2 Community Commercial Zone

- P-1 Open Space Zone
- P-2 Community Facility Zone
- BP Business Park Zone
- BP-1 Business Park - 1 Zone

--- Notification Area



THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

- (a) delete clause **Section 2.2 - Land Use** and replace with the following new clause:

The Developer shall develop the lands in a manner, which, in the opinion of the Development Officer, is in conformance with the Schedules attached to this agreement and the plans filed in the Halifax Regional Municipality Planning Services Department as Case #00629. Except where provided under Part 3 of this agreement, the land shall not be used for any use other than a community commercial use which is limited to:

- **Retail Book Store**
- **Engraving Store**
- **Service and Personal Service Uses**
- **Offices**

- (b) delete clause 2.3.2 of **Section 2.3 - Detailed Provisions for Land Use** and replace with the following new clause:

2.3.2 Hours of Operation

The use shall be permitted to operate between the hours of 9:00 am and 9:30 pm daily.

- (c) add the following sentence to the end of clause 2.6.1 following the words "...twelve (12) feet by twenty (20) feet."

This space shall be clearly identified by a ground sign.

- (d) add the word "**signage**" between the words "fencing" and "parking areas" in clause 2.7.

- (e) delete clause 3.2 and replace with the following new clause:

For the purpose of this Agreement, the provisions of this Agreement relating to the following matters are identified as and shall be deemed to be non-substantial and may, subject to Section 3.3, be amended by resolution of Community Council:

- **a change in use, other than those identified in Section 2.2, however limited to Retail Stores.**
- **an increase in the hours of operation**

- (f) replace the words "Section 9.2" with "**Section 3.2**" in clause 3.3.

- 2. Except where specifically varied by this Amending Agreement, all other terms and conditions of the Existing Agreement shall remain in effect.

WITNESS that this Amending Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2010.

WITNESS that this Amending Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2010.

SIGNED, SEALED AND DELIVERED)	JAMES AND KAREN BINGHAM
in the presence of)	
)	
per _____)	per: _____
)	
)	
per _____)	per: _____
)	
SEALED, DELIVERED AND)	
ATTESTED to by the proper)	
signing officers of Halifax Regional)	
Municipality duly authorized)	
in that behalf in the presence)	HALIFAX REGIONAL MUNICIPALITY
)	
per _____)	per: _____
)	MAYOR
)	
per _____)	per: _____
)	MUNICIPAL CLERK

Attachment B
Sackville MPS Excerpt

Prior to completion of one or more of the projects identified in Policy UR-23, provisions will be established to allow consideration of additional commercial development along the Cobequid Road, by development agreement. These provisions are consistent with other planning strategy policies, which recognize the potential for this area to accommodate future commercial and industrial development.

In keeping with the intent of the Urban and Rural Residential Designations, a primary goal in considering additional commercial developments in this area will be the protection of adjacent residential developments. The use of development agreements will ensure that future commercial development occurs in a controlled manner which recognizes the concerns of the adjacent residential community.

UR-24 Notwithstanding Policies UR-2 and RR-2, within the Urban and Rural Residential Designations, Council may consider permitting community commercial zone uses on properties along the Cobequid Road, between Sackville Drive and First Lake Drive, according to the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following:

- (a) that no proposal shall be considered on lands along the northwest side of Cobequid Road, south of Glendale Drive;
- (b) that the site has frontage on and direct access to Cobequid Road;
- (c) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
- (d) that adequate provision is made for buffering and screening from adjacent residential properties;
- (e) that site design features, including landscaping, signage, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent development and to provide for the needs of users of the development;
- (f) that appropriate controls are established to address environmental concerns, including stormwater runoff;
- (g) hours of operation;
- (h) maintenance of the development; and
- (i) the provisions of Policy IM-13.

Attachment C
Sackville LUB Excerpt

PART 15: C-2 (COMMUNITY COMMERCIAL) ZONE

15.1 C-2 USES PERMITTED

No development permit shall be issued in any C-2 (Community Commercial) Zone except for the following:

Commercial Uses

Retail stores
Food stores
Service and Personal Service Uses
Offices
Commercial schools
Banks and financial institutions
Restaurants and drive-in and take-out restaurants
Outdoor display courts
Shopping plazas and malls
Motels and hostels
Commercial recreation uses
Service stations
Taxi and bus depots
Parking lots
Greenhouses and nurseries
Veterinary hospitals and kennels
Welding, plumbing and heating, electrical and other special trade contracting services and shops
Local fuel distribution facilities
Re-cycling depots within wholly enclosed buildings
Automotive repair outlets
Funeral parlours and undertaker establishments
Existing auto body shops
Existing transport facilities and maintenance yards
Existing construction yards and maintenance facilities

Attachment D
Public Information Meeting Minutes

HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 16016 - Bing's Books - 380 Cobequid Road

Monday, June 7, 2010
7:00 p.m.
Sackville Library (Fenerty Room)

STAFF IN

ATTENDANCE: Tyson Simms, Planner, HRM Planning Services
Thea Langille, Planning Supervisor, HRM Planning Services
Alden Thurston, Planning Technician, HRM Planning Services
Cara McFarlane, Planning Controller, HRM Planning Services

ALSO IN

ATTENDANCE: Councillor Bob Harvey, District 20
The Bingham, Applicant

PUBLIC IN

ATTENDANCE: 0

The meeting commenced at approximately 7:10 p.m.

(a) Overview of Planning Process

No one from the public attended the public information meeting.

Mr. Simms explained the planning process to the applicants.

Councillor Harvey asked about a time frame. Mr. Simms would like to have the staff report ready for the next North West Planning Advisory Committee (possibly in July).

(b) Presentation of Proposal

The current development agreement allows specifically for a retail book store as the only permitted use. The propose development agreement would replace retail book store with retail store allowing the applicant to include the engraving business within the book store building. Karen Bingham plana to keep the bookstore but would like an small area of the store to display her husband's engraving.

Staff was going to look into expanding on the provisions in terms of allowing the change of use provisions and possibly include service and personal service uses as another use. The rest of the uses permitted within the C-2 Zone don't fit within the confines of the site.

(c) Questions/Comments

Councillor Harvey mentioned that there are traffic challenges at that location on Cobequid Road but he does not believe that the proposed operation would generate anymore traffic in and out of the site. Although a potential larger retail store by a future owner may cause some traffic issues. Mr. Simms said the development agreement would be registered against the title of the property and would remain there until it was discharged. The definition of retail stores is pretty comprehensive and quite broad. Ms. Langille believes the development agreement speaks to the existing building; therefore, the normal permitting process outside the development agreement would address concerns like traffic.

(d) Adjournment

The meeting adjourned at approximately 7:20 p.m.