

8.1.1



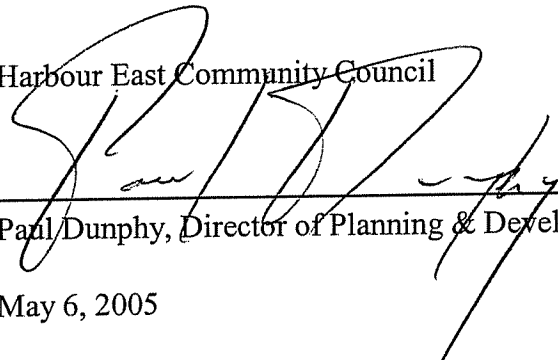
P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
May 25, 2005

TO:

Harbour East Community Council

SUBMITTED BY:


Paul Dunphy, Director of Planning & Development Services

DATE:

May 6, 2005

SUBJECT:

Case 00770 - 10 Springhill Road, Dartmouth

SUPPLEMENTARY REPORT

ORIGIN

Motion of Harbour East Community Council at its meeting of May 5, 2005 requesting that staff forward the request for a rezoning to Regional Council for initiation.

RECOMMENDATION

It is recommended that Harbour East Community Council:

- **Move First Reading of the proposed Rezoning and schedule a Public Hearing for July 7, 2005;**
- **Approve the Rezoning of 10 Springhill Road from R-3 (Multiple Family Residential Zone (Medium Density)) to R-2 (Two Family Residential Zone).**

BACKGROUND

- At its meeting of February 3, 2005, Harbour East Community Council (HECC) approved a motion requesting staff to initiate a process to change the zoning on 10 Springhill Road, Dartmouth, back to R-2.
- Staff presented a report to HECC on May 5, 2006 (Attachment A) recommending against the rezoning.
- HECC passed a motion on May 5, 2005 requesting that staff forward the request for a rezoning to *Regional Council* for initiation.

DISCUSSION

Rezoning is a community issue that is dealt with by Community Council. If HECC wishes to proceed with the rezoning, there is no need to forward the request to Regional Council. HECC may simply move first reading of the rezoning and set a public hearing date. In consultation with Councillor Smith, it was determined that a Public Information Meeting would not be required. Residents will be notified of the public hearing via two published newspaper advertisements. Nearby residents will be notified by mail (Map #1).

BUDGET IMPLICATIONS:

If Council chooses to proceed with the rezoning, approximately \$1150 in advertising fees will have to be borne by the Municipality. If the rezoning is appealed, then additional costs will be incurred. The time and resources of Staff and Council should also be considered.

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.

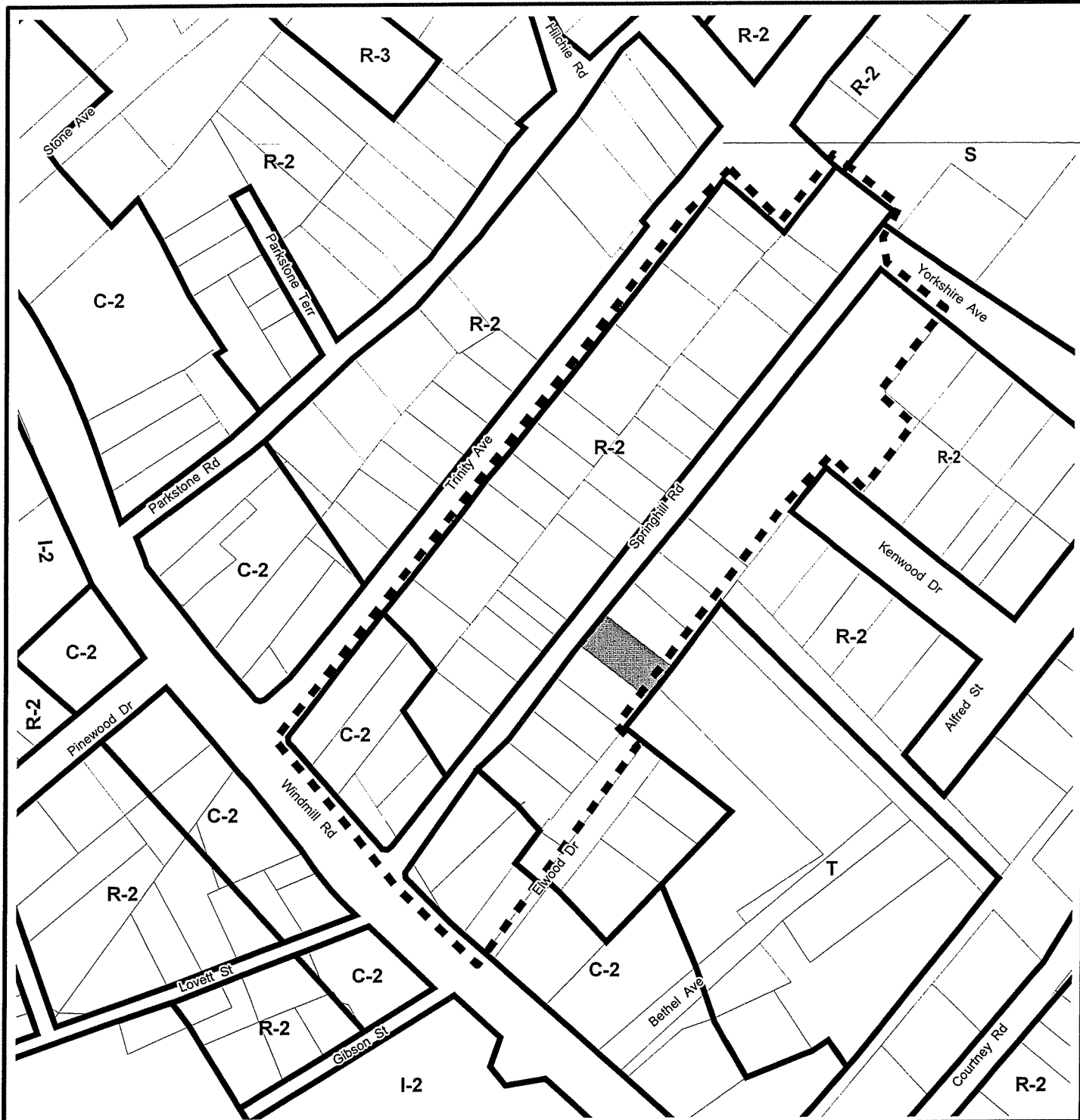
ALTERNATIVES

1. Council may initiate the process to amend the zoning.
2. Council may choose not to initiate the rezoning. This is the recommended course of action.

ATTACHMENTS

Map 1: Location and Notification Area
Attachment A - Staff report dated April 22, 2005

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 Hanita Koblents, Planner 490-4181
--



Map 1

10 Springhill Road

Zone

- R-2 Two Family Residential Zone
- R-3 Multiple Family Residential Zone
- C-2 General Business Zone
- I-2 General Industrial Zone
- S Institutional Zone
- T Mobile Home Zone

Dartmouth Land Use By-Law Area

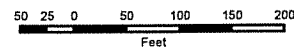


Subject Property

Notification Area



HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES



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

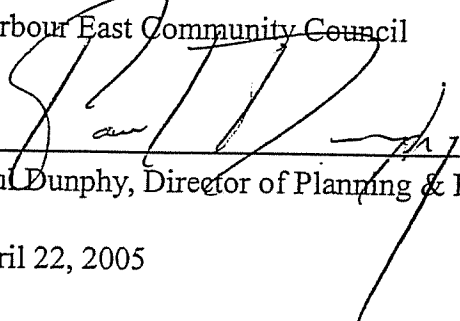
HRM does not guarantee the accuracy of any representation on this plan.



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
May 5, 2005

TO: Harbour East Community Council

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

DATE: April 22, 2005

SUBJECT: Case 00770 - 10 Springhill Road, Dartmouth

ORIGIN

Motion of Harbour East Community Council at its meeting of February 3, 2005 requesting that staff "start the process to change the zoning on 10 Springhill Road, Dartmouth, back to R-2".

RECOMMENDATION

It is recommended that Harbour East Community Council:

- Not initiate a rezoning or request Halifax Regional Council to initiate an MPS amendment.

BACKGROUND

10 Springhill Road is a 13 unit apartment building in Dartmouth. The property is approximately 11,000 square feet in area with 100 feet of frontage on Springhill Road. A review of the property development history is as follows:

- In 1975, the site was zoned R-3 - Multiple Family Residential Zone (Medium Density) and a development permit was issued for an 11 unit apartment building on October 21, 1975 based on the R-3 zone requirements.
- Assessment records from December 1977 indicate the use was a 13 unit apartment building. Therefore, an additional two units were constructed within the building in the two year time frame between 1975 and 1977. These units would not have met the zone requirements and therefore would not have been permitted.
- In 1978, the subject property was down zoned as part of a Neighbourhood Improvement Program (NIP), resulting in the apartment building becoming a nonconforming use recognized as containing eleven units.
- In 1991, Council approved Policy IP-5, requiring apartment building developments to be considered by development agreements in R-3, R-4, C-2, MF-1 and GC Zones.
- In 2002, new owners requested and received a zoning confirmation letter and discovered that only 11 of the 13 units were in compliance with the land use by-law.
- These owners made an application to have the property rezoned to R-3 in order to enable a development agreement to permit the 13 existing units to continue legally. The rezoning was required because the Municipal Planning Strategy (MPS) has no policy to consider apartment building proposals in the R-2 zone.
- Staff recommended, and *Harbour East Community Council approved* the rezoning at its meeting of May 6, 2004.
- This decision was appealed to the Nova Scotia Utility and Review Board (NSURB) and a hearing was held on September 29th and 30, 2004.
- On November 29, 2004 NSURB rendered a decision to dismiss the appeal, and uphold the decision of Council.
- On December 20, 2004, *Harbour East Community Council* approved a development agreement for the subject property.
- ~~At its meeting of February 3, 2005, Council approved a motion requesting staff to initiate a process to change the zoning on 10 Springhill Road, Dartmouth back to R-2.~~

DISCUSSION

Rezoning 10 Springhill Road back to R-2 would have no effect except the appearance of having done something. The development agreement which is currently in effect for this property would continue to apply and supercedes any zoning on the property. The development agreement is a binding contract which cannot be rescinded without the mutual consent of both parties. Rezoning the property back to R-2 may also produce some public expectation of change that cannot be met.

The 1978 downzoning of the Tufts Cove Neighbourhood was successful in limiting the development of additional apartment buildings in the area. There were concerns in the community that the 10 Springhill Road case will set a precedent for further rezonings, but it is staff's opinion that these are unwarranted. Each application for a rezoning is evaluated on its own merits under the policies of the Municipal Planning Strategy. 10 Springhill Road was a unique situation, and is therefore unlikely to set a precedent. Furthermore, the only change that was perceived to be negative as a result of this case, was a change on the zoning map that some residents found objectionable. There was no change in use (the apartment building is nearly thirty years old) and a number of property improvements (balconies, landscaping) were negotiated through the development agreement process that was enabled as a result of the R-3 zoning. The owner received no additional development rights from the rezoning to R-3 other than the ability to enter into a development agreement to permit the existing apartment building.

To avoid seeing more R-3 in this area if a similar case did come forward, staff was asked to evaluate the potential merits of an MPS amendment that would permit the negotiation of a development agreement for existing, legal non conforming, apartment buildings in the R-2 zone. It is the opinion of staff that such an MPS amendment might have the unintended consequence of *facilitating* the development agreement process for owners of existing legal non conforming uses by enabling development agreements in the R-2 zone. Requiring a property owner to first apply for a rezoning allows Council to use its discretion in deciding whether or not to even entertain an application for a development agreement. The purpose of making a use legal non conforming is to restrict further expansion of the use. Enabling a development agreement directly from the R-2 zone will result in some loss of Council's discretionary power and may expose residents to the risk that more owners of legal non-conforming uses will apply for development agreements to expand or modify their uses.

10 Springhill Road was the first application of its type in nearly 30 years. There is no evidence to-date suggesting that more applications of the same type will come forward. The two step process currently required appears to be an effective deterrent to these types of applications. Furthermore, initiating the rezoning will begin a process to reverse a previous decision that was made very recently by Harbour East Community Council; one that was based on existing MPS policies, and upheld by the NS Utility and Review Board.

BUDGET IMPLICATIONS:

If Council chooses to proceed with the rezoning or the MPS amendment, approximately \$1500 in advertising fees will have to be borne by the Municipality. If the rezoning is appealed, then additional costs will be incurred. The time and resources required of Staff and Council should also be considered.

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

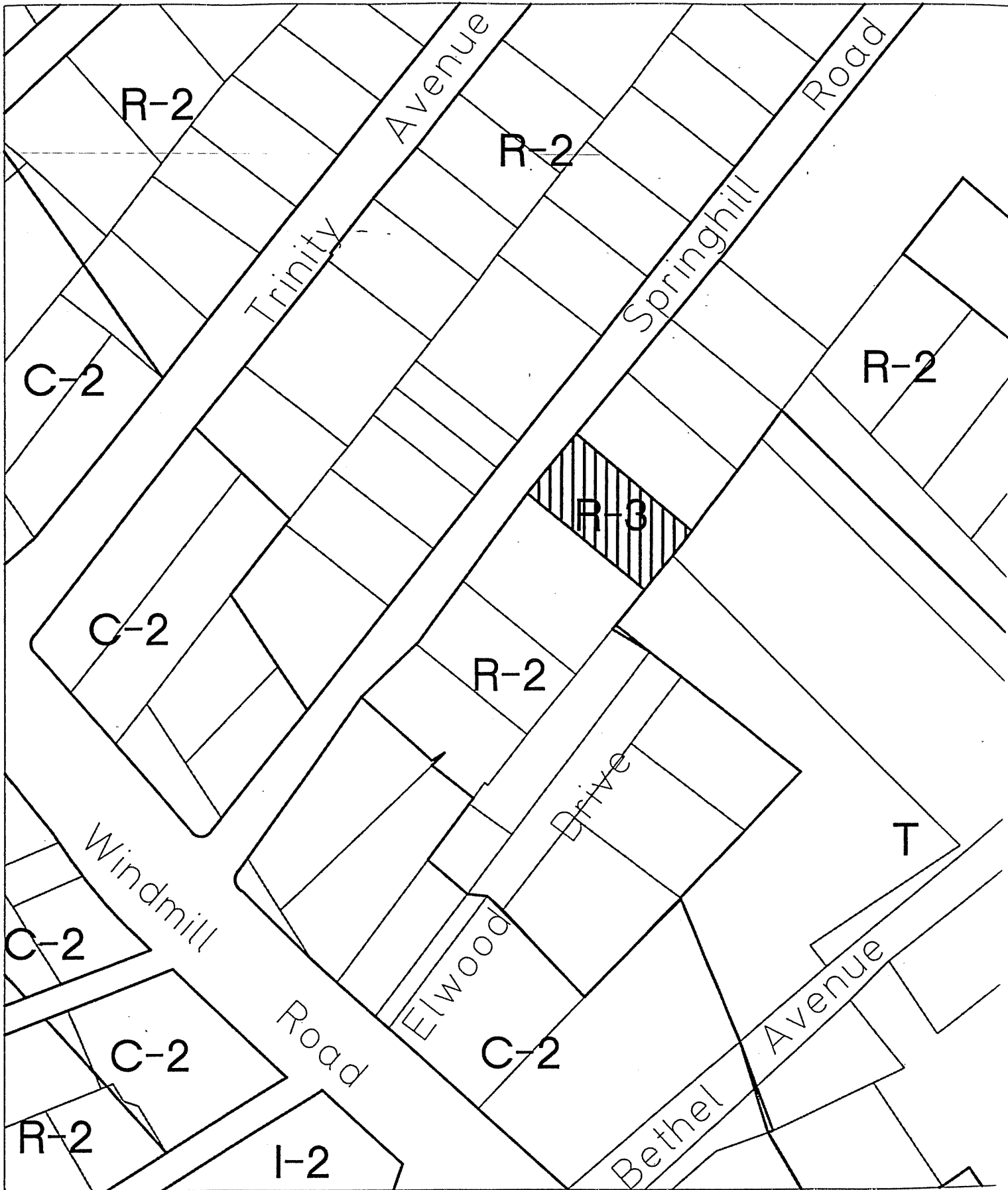
1. Council may choose *not* to initiate the rezoning or request Regional Council to initiate an MPS amendment. This *is* the recommended course of action.
2. Council may initiate the process to amend the zoning. This is not a recommended course of action for reasons noted above.
3. Council may choose to initiate an MPS amendment. This is also not a recommended course of action for reasons noted above.

ATTACHMENTS

Map 1: Zoning Map


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.

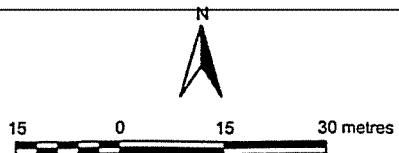
Report Prepared by Hanita Koblents, Planner 490-4181



Map 1
 Zoning Map
 10 Springhill Road

- C-2 General Business Zone
- I-2 General Industrial Zone
- R-2 Two Family Residential Zone
- T Mobile Home Zone

 Subject Property



HALIFAX
 REGIONAL MUNICIPALITY
 PLANNING SERVICES