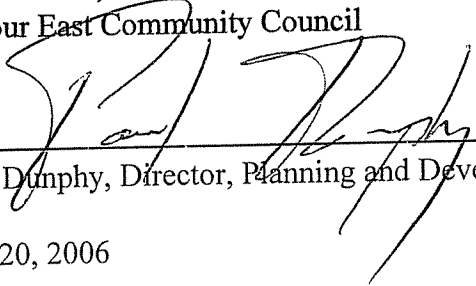




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council - September 7, 2006
Marine Drive, Valley & Canal Community Council - August 23, 2006

TO: Marine Drive, Valley & Canal Community Council
Harbour East Community Council

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

DATE: July 20, 2006

SUBJECT: Case 00844: Land Use By-law Amendment - Accessory Buildings,
Planning Districts 14&17 (Shubenacadie Lakes)

ORIGIN

Application by HRM staff to review accessory building provisions in the Shubenacadie Lakes (Planning Districts 14&17) Land Use By-law.

RECOMMENDATION

It is recommended that Marine Drive Valley & Canal and Harbour East Community Council:

1. Give First Reading to consider the proposed Land Use By-law amendments and schedule a joint public hearing.
2. Approve the proposed Land Use By-law amendments relating to accessory buildings as set out in Attachment "D".

LUB Amendment Accessory Buildings**BACKGROUND**

Staff have identified that changes that may be required to the Land Use By-law (LUB) for Shubenacadie Lakes relating to the calculation of the size of accessory buildings.

Accessory Buildings are permitted to a maximum gross floor area by the LUB. The definition of gross floor area excludes area used for parking. Thus accessory buildings are actually permitted to be constructed larger than the regulations seem to allow.

For example, the LUB permits a maximum gross floor area of 1000 square feet in the R-6 Zone. Based on the current regulations a person could construct a one storey garage used for parking vehicles (three cars- approx 700 square feet) with additional space for other uses (1000 square feet) with a total area of approximately 1700 square feet.

A planning process was undertaken to review the calculation of accessory building size to determine if improvements could be made to the regulations. Additionally staff reviewed all the accessory building provisions.

General changes to the LUB for Shubenacadie Lakes are under the jurisdiction of Marine Drive, Valley and Canal and Harbour East Community Councils (Map 1).

DISCUSSION

Staff have identified the following areas related to accessory building for review:

- calculation of the area;
- useable space within the building envelope;
- side yards;
- building height;
- definition of human habitation; and
- existing agricultural uses in accessory buildings.

Issues:

Calculation of the area. The Shubenacadie Lakes LUB calculates the maximum size of an accessory building based on gross floor area. Gross floor area is defined as:

GROSS FLOOR AREA means the aggregate of the floor areas of a building above and below grade, measured between the exterior faces of the exterior walls of the building at each floor level but excluding car parking areas within the building; and for the purpose of this clause, the walls of an inner court shall be deemed to be exterior walls.

The definitions of gross floor area excludes area used for parking, consequentially accessory buildings are permitted to be constructed larger than the regulations seem to intend as identified above. In addition there is a risk that the accessory building could be larger than the main dwelling.

LUB Amendment Accessory Buildings

Staff is recommending the removal of the calculation of building size based on gross floor area. The proposal would allow the following:

Lot Size	Proposed Max. Accessory Building Footprint	Approximate Capacity of Main Floor	Additional Space on other floors within Building
less than 40,000 sq. ft	750 sq. ft	3 cars	As permitted by building height and dimensions
40,000 square feet or greater	1000 sq. ft.	4 cars	As permitted by building height and dimensions

Useable space within building envelope. Many homeowners require large amounts of space to accommodate such uses as home gyms, non-commercial workshops, recreational vehicles and games rooms. The proposed removal of the reference to gross floor area allows additional space available on other floors of the structure to be used provided the use is permitted by the By-law.

Side yards. The current regulations require a minimum setback of eight feet from property line, which is reduced to four feet for garages in residential zones. Staff feel that the four foot setback may be too small in certain instances especially where taller buildings are permitted.

A method commonly used to determine adequate setbacks is to require that a building is setback half the height of the building. Consequently the proposal requires taller buildings to be setback a greater distance from a property line.

Staff are recommending that for all accessory buildings there be a minimum setback of eight feet except in residential zones where the setback should be half the height of the building. Reductions of the side yard to four feet would be permitted in residential zones where the building is less than 15 feet high and where the building is located on a smaller lot (less than 40,000 square feet).

Building height. Staff are suggesting that there be no change in the maximum accessory building height permitted. However it should be noted that if a property owner requires a four foot setback from a property line, the building cannot exceed 15 feet in height. The current maximum heights are:

Zone	Maximum Permitted Height of Accessory Buildings
R-1A	15 feet (4.6m)
R-1B, R-1C or R-1D	25 feet (7.6m)
R-6, R-7	35 feet (10.7m)

LUB Amendment Accessory Buildings

Definition of Human Habitation. Human habitation in accessory buildings is generally not permitted by the LUB. In order to provide clarity in the LUB, staff are proposing to add a definition of human habitation (Attachment D).

Existing Agricultural Uses. Buildings used for agricultural uses are regulated under specific requirements of the R-6 zone which are different than the requirements for other accessory buildings. A member of the public was concerned that staff may change these regulations. No change is proposed for these requirements.

Public Participation:

A public information meeting was held on December 1, 2005 with one member of the public in attendance. Concerns were expressed regarding any potential change to accessory buildings for agricultural uses. Minutes from this meeting are included as Attachment A of this report. As the proposed review covered the entire plan area, a specific mailing was not arranged and only general newspaper advertizing was done. If Council decides to hold a public hearing on this matter, similar notification will be performed including a mailing to the individual who attended the public information meeting.

Summary:

Staff is proposing amendments (Attachment D) to the accessory building section of the Shubenacadie Lakes (Planning Districts 14/17) Land Use By-law which provide for the following changes:

- excludes buildings higher than fifteen feet and properties greater than 40,000 square feet from a reduced setback of four feet from side and rear property lines.
- new side and rear yards of one-half the height of the building except where excluded.
- redefines the size of accessory buildings based on the area of the footprint of the building.
- variable accessory building size based on lot size.
- add a definition of human habitation

The proposed changes are consistent with the MPS. Staff recommend that the amendments to the Shubenacadie Lakes (Planing Districts 14/17) Land Use By-law provided in Attachment D, be approved by Marine Drive, Valley and Canal and Harbour East Community Councils.

BUDGET IMPLICATIONS

There are no immediate budget implications associated with this proposal.

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

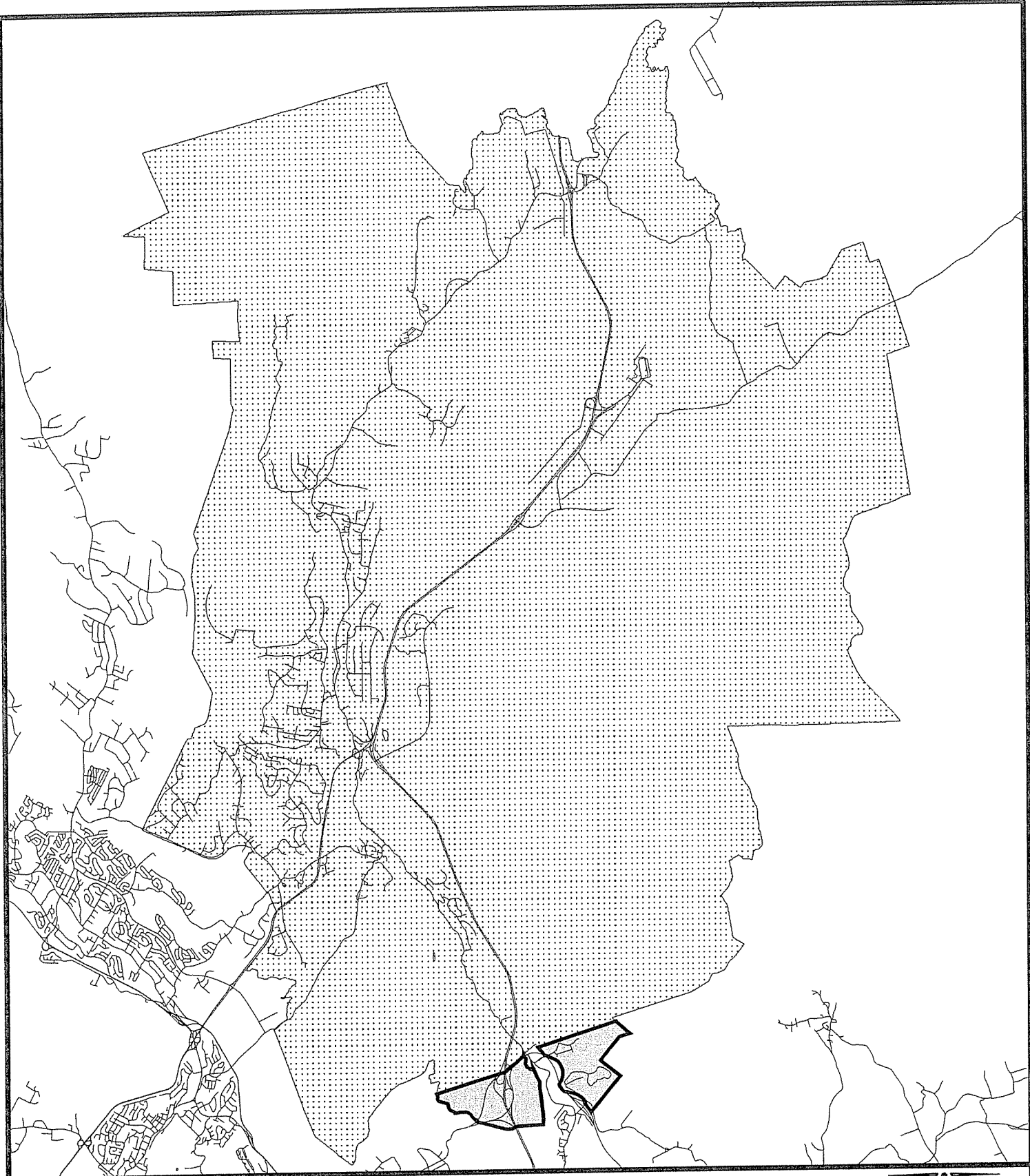
1. Council may choose to approve the proposed Land Use By-law amendments. This is the recommended course of action.
2. Council may choose to refuse the proposed Land Use By-law amendments, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff is satisfied that both the proposed amendments are consistent with the policies and intent of the MPS. Council is advised that if this application is refused, staff will follow-up on the violations noted in the background section of the report.
3. Council may choose to alter the proposed Land Use By-law amendments. In the event substantive revisions are requested subsequent to advertising for a public hearing, an additional public hearing may be required .

ATTACHMENTS



Map 1	Shubenacadie Lakes Plan Area - Council Jurisdictions
Attachment "A"	Minutes from Public Information Meeting (December 1, 2005)
Attachment "B"	Relevant MPS Policy
Attachment "C"	Existing LUB Requirements for Accessory Buildings
Attachment "D"	Proposed Land Use By-law Amendments for Accessory Buildings

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: Andrew Bone, Planner 1, Planning and Development Services, 869-4226



Map 1 Shubenacadie Lakes Plan Area

-  Jurisdiction of Marine Drive, Valley and Canal Community Council
-  Jurisdiction of Harbour East Community Council

HALIFAX
REGIONAL MUNICIPALITY
Planning Services



Attachment "A"

Minutes from Public Information Meeting -December 1, 2005

**HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 00844 - ACCESSORY BUILDINGS CLAUSE IN 14/17**

7:00 P.M.

**Thursday, December 1, 2005
Ash Lee Jefferson, Cafeteria**

IN ATTENDANCE: Andrew Bone, Planner, HRM Planning Services
Cara McFarlane, Administrative Support, HRM Planning Services

REGRETS: Councillor Krista Snow, District 2

PUBLIC IN ATTENDANCE: Approximately 1

The meeting commenced at approximately 7:05 p.m.

Introductions

Andrew Bone introduced himself as the Planner assigned to the application and Cara McFarlane, Recording Secretary. He explained that Krista Snow, Councillor for District 2, sent her regrets for the evening.

Presentation - Andrew Bone

The original request relates to the definition of the Accessory Building clause in relation to gross floor area. Mr. Bone read the definition for Accessory Buildings.

Accessory buildings can have the potential to be quite large. In many zones, Accessory buildings are restricted to 750 square feet (in rural areas). In residential areas they can be up to 1000 square feet. This application is generally looking at regulating accessory building size in the area and looking to see if there is an argument to have larger accessory buildings on lots that are over an acre; therefore, a property owner may be able to go to 1000 square feet or more. These changes have been made in other plan areas.

Mr. Baker said his property is zoned R-1b Agriculture. Mr. Bone explained that his existing use would be non-conforming; therefore, it would be grandfathered. The existing building would also be grandfathered but any new buildings would be subject to what the planning by-law and Municipal Government Act would say regarding accessory buildings.

Mr. Bone will check the zoning on Mr. Baker's property. An accessory building in a R-1b Zone typically cannot exceed 25 feet in height and a total gross floor area of 750 square feet.

Mr. Baker already is allowed 1000 square feet but would like to increase to approximately 1500 to 2000 square feet combined over two floors. He does not want anything that would look commercial. Mr. Bone explained that some people need the extra space to store their possessions.

Mr. Baker said he has two buildings now on his property. One is a barn where he can also park his equipment and the other building is a hen house.

Mr. Bone said they are looking at a way of trying to keep the height of the accessory buildings down. He doesn't want to see two full storeys. There is absolutely no problem with using attic space above the main floor. Creating a maximum side wall height maybe an option. This would create usable space above the main floor and maximize the space on the main floor.

Mr. Baker would like to build his structure so the second level is at ground level and the first level is accessible from the back where hay could be loaded. He was under the impression that the agricultural section of the land use by-law allows for an accessory building to be 1000 square feet but one could add on to the building 10% per year. Mr. Bone does not recall this being in the by-law, but will check through the files and get back to Mr. Baker.

Mr. Bone explained the zone amendment process to Mr. Baker.

Adjournment

The meeting adjourned at approximately 7:33 p.m.

**Attachment B
Relevant MPS Policy**

P-155 In considering development agreements and amendments to the land use by-law, in addition to all other criteria as set out in various policies of this Plan, Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this Plan and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of central or on-site sewerage and water services;
 - (iii) the adequacy or proximity of school, recreation or other community facilities;
 - (iv) the adequacy of road networks leading or adjacent to or within the development; and
 - (v) potential for damage to or for destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility or flooding.
- (e) **Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy P-64F”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. (RC-July 2/02; Effective-Aug 17/02)**

P-156 In considering amendments to the land use by-law or development agreements, Council shall hold a public hearing according to the provisions of Section 60 of the Planning Act.

Attachment "C"**Existing LUB Requirements for Accessory Buildings**

2.1 ACCESSORY BUILDING OR STRUCTURE means a building or structure which is used exclusively for an accessory use and which is not attached in any way to the main building and which conforms with all applicable requirements of this by-law. (MC / SCC - June 26, 1995 / E - July 22, 1995)

2.33 GROSS FLOOR AREA means the aggregate of the floor areas of a building above and below grade, measured between the exterior faces of the exterior walls of the building at each floor level but excluding car parking areas within the building; and for the purpose of this clause, the walls of an inner court shall be deemed to be exterior walls.

4.10 ACCESSORY USES AND BUILDINGS

Provisions made under this by-law to permit uses, buildings, and structures shall, unless otherwise stated by this by-law, also be deemed to include any accessory uses buildings or structures provided that:

- (a) the accessory use, building, or structure is located within the same zone as the principal building or use it is intended to serve or is located within an abutting zone in which the principal use or building is permitted;
- (b) the accessory use building or structure is located on a lot which directly abuts or is directly across a public street or highway, private road or private right-of-way from the lot containing the principal building or use it is intended to serve; and
- (c) all other applicable conditions and requirements of this by-law are satisfied. (MC / SCC - June 26, 1995 / E - July 22, 1995)

4.11 ACCESSORY BUILDINGS

- (a) Accessory uses, buildings and structures shall be permitted in any zone but shall not:
 - (i) be used for human habitation except where a dwelling is a permitted accessory use;
 - (ii) be built closer to the front lot line than the minimum distance required for the main building or be built closer than eight (8) feet (2.4 m) to any other lot line except that:
 - 1. in any Residential Zone, garages which are accessory to dwellings shall be a minimum of four (4) feet (1.2 m) from any side or rear lot line;
 - 2. common semi-detached garages may be centred on the mutual side lot line;

3. boat houses, boat docks and float plane hangars may be built to the lot line when the line corresponds to the high water mark;
 4. accessory buildings and structures in a P-2 (Community Facility) Zone shall not be built closer to any side or rear lot line than ten (10) feet (3.0 m) or one half (½) the height of such building or structure, whichever is the greater; and
 5. accessory structures shall be permitted to be constructed within the front yard of an AE-1 (AeroTech Core) Zone and AE-2 (General Airport) Zone, but shall not be permitted within the minimum required front yard.
- (iii) Exceed a height of:
1. fifteen (15) feet (4.6 m) in any R-1A zone;
 2. twenty five (25) feet (7.6 m) in any R-1B, R-1C, or R-1D zone;
 3. thirty five (35) feet (10.7 m) in any R-6 or R-7 zone;
- (iv) Exceed a gross floor area of:
1. seven hundred and fifty (750) square feet (70 m²) in any R-1A, R-1B, R-1C or R-1D zone; or
 2. one thousand (1,000) square feet in any R-6 or R-1E zone. (C-June 29, 1993 / M-August 6, 1992)
- (v) (deletion - MC-Mar 28/94, SCC-Apr 12/94, E-May 7/94)
- (vi) Be built within eight (8) feet (2.4 m) of the main building within any Residential Zone or twelve (12) feet (3.7 D) in any other zone.
- (vii) be used for the keeping of livestock, except where agriculture is a permitted use. (C-August 27, 1990 / E-September 22, 1990)
- (b) Notwithstanding anything else in this By-law, drop awnings, clothes poles, flag poles, garden trellises, fences end retaining walls shall be exempted from the requirements of Subsection (a).

Attachment D
Proposed Land Use By-law Amendments

BE IT ENACTED by the Harbour East Community Council, and Marine Drive, Valley & Canal Community Council of the Halifax Regional Municipality that the Planning Districts 14 and 17 (Shubenacadie Lakes) Land Use By-law as enacted by the Council of Halifax Municipality on the 2nd day of May 1989, and approved by the Minister of Municipal Affairs on the 19th day of July 1989 as amended, is hereby further amended as follows:

1. Part 2 shall be amended by adding Part 2, Section 2.36A with the following text:

“2.36A Human habitation means the act of occupying a structure or part thereof by persons as a dwelling or sleeping place, whether intermittently or as a residence.”

2. Part 4 shall be amended by deleting Part 4.10 and replacing it with the following text:

“4.10 ACCESSORY USES AND BUILDINGS

Provisions made under this by-law to permit uses, buildings, and structures shall, unless otherwise stated by this by-law, also be deemed to include any accessory uses buildings or structures provided that:

- (a) the accessory use, building, or structure is located within the same zone as the principal building or use it is intended to serve or is located within an abutting zone in which the principal use or building is permitted;
- (b) the accessory use building or structure is located on a lot which directly abuts or is directly across a public street or highway, private road or private right-of-way from the lot containing the principal building or use it is intended to serve; and
- (c) all other applicable conditions and requirements of this by-law are satisfied. (MC / SCC - June 26, 1995 / E - July 22, 1995)

4.11 ACCESSORY BUILDINGS

- (a) Accessory uses, buildings and structures shall be permitted in any zone but shall not:
 - (i) be used for human habitation except where a dwelling is a permitted accessory use;
 - (ii) be built closer to the front lot line than the minimum distance required for the main building or be built closer than eight (8) feet (2.4 m) to any other lot line except that:

1. in any Residential Zone, **where the size of the lot on which the building is located is less than 40,000 square feet (3716 m²)** accessory buildings with a height of 15 feet (4.6m) or less garages ~~which are accessory to dwellings~~ shall be a minimum of four (4) feet (1.2 m) from any side or rear lot line;
 2. **in any Residential Zone, except as permitted by clause 4.11 (1), accessory buildings shall be a minimum of one half (½) the height of the building or a minimum of eight (8) feet (2.4 m), whichever is greater, from any side or rear lot line;**
 3. common semi-detached garages may be centred on the mutual side lot line;
 4. boat houses, boat docks and float plane hangars may be built to the lot line when the line corresponds to the high water mark;
 5. accessory buildings and structures in a P-2 (Community Facility) Zone shall not be built closer to any side or rear lot line than ten (10) feet (3.0 m) or one half (½) the height of such building or structure, whichever is the greater; and
 6. accessory structures shall be permitted to be constructed within the front yard of an AE-1 (AeroTech Core) Zone and AE-2 (General Airport) Zone, but shall not be permitted within the minimum required front yard.
 - (iii) Exceed a height of:
 1. fifteen (15) feet (4.6 m) in any R-1A zone;
 2. twenty five (25) feet (7.6 m) in any R-1B, R-1C, or R-1D zone;
 3. thirty five (35) feet (10.7 m) in any R-6 or R-7 zone;
 - (iv) Exceed a ~~gross floor area~~ of:
 1. seven hundred and fifty (750) square feet (70 m²) in any R-1A, R-1B, R-1C or R-1D zone **where the size of the lot on which the building is located is less than 40,000 square feet (3716 m²);** or
 2. **one thousand (1,000) square feet in any R-1A, R-1B, R-1C or R-1D, zone where the size of the lot on which the building is located is greater than 40,000 square feet (3716 m²);**
 3. one thousand (1,000) square feet in any R-6 or R-1E zone.
 - (v) (deletion - MC-Mar 28/94, SCC-Apr 12/94, E-May 7/94)
 - (vi) Be built within eight (8) feet (2.4 m) of the main building within any Residential Zone or twelve (12) feet (3.7 D) in any other zone.
 - (vii) be used for the keeping of livestock, except where agriculture is a permitted use. (C-August 27, 1990 / E-September 22, 1990)
- (b) Notwithstanding anything else in this By-law, drop awnings, clothes poles, flag poles, garden trellises, fences and retaining walls shall be exempted from the requirements of Subsection (a).”

I HEREBY CERTIFY that the amendment to the Land Use By-law for Planning Districts 14 and 17 (Shubenacadie Lakes) as set out above, was passed by a majority vote of the Harbour East and Marine Drive, Valley and Canal Community Councils of the Halifax Regional Municipality at a meeting held on the ____ day of _____, 2006

GIVEN under the hands of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2006

Jan Gibson
Municipal Clerk