

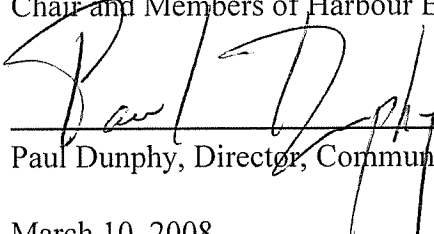


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item 10.1.1

Harbour East Community Council
May 1, 2008

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director, Community Development

DATE: March 10, 2008

SUBJECT: Case 00831: Rezoning 370 Windmill Road from R-2 to C-2

ORIGIN

Application by Maritime Demolition to rezone a portion of 370 Windmill Road from R-2 (Two Family Residential) Zone to C-2 (General Business) Zone to permit an accessory building on the property.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give First Reading for the rezoning of a portion of the subject lands, as shown on Map 1 and schedule a public hearing; and
2. Approve the rezoning of that portion of 370 Windmill Road, as shown on Map 1, from R-2 (Two Family Residential) Zone to C-2 (General Business) Zone to permit an accessory building.

BACKGROUND

The subject property is owned by Maritime Demolition Ltd. and is located at 370 Windmill Road, Dartmouth, as shown on Map 1. The property is situated within the Tuft's Cove community which is a mixed-use community with a variety of residential, commercial and industrial uses. The property is situated between two private roads - Wournell Drive and Stone Avenue. Immediately adjacent the property is vacant land, a single unit dwelling, and commercial uses.

Land Use Designation and Zoning

The property is situated within the Commercial designation of the Dartmouth Municipal Planning Strategy (MPS) and is split zoned: C-2 (General Business) Zone / R-2 (Two Family Residential) Zone (Map 2). The C-2 Zone is applied to the front portion of the property which contains the primary building and storage for Maritime Demolition Ltd. The back portion of the property is zoned R-2, which is the area subject to the rezoning application, contains a garage that is accessory to this business. The R-2 Zone covers approximately 22% of the subject property.

History/Zoning Request

In 2004, Maritime Demolition applied for a building permit to build a garage (ie. accessory building) to the rear of an existing commercial building at 370 Windmill Road. The permit was refused because the garage was to be located on the R-2 portion of the site and it was to be erected across a lot line. Maritime Demolition did address the lot line issue through the subdivision process but did not resolve the zoning issue. In 2005, Maritime Demolition constructed the garage without a municipal development permit on the R-2 portion of the property (Attachment A contains a more detailed permit history of the garage). Consequently, Maritime Demolition has applied to rezone the R-2 portion of the subject property to C-2 Zone to permit the accessory garage. If Council does not support the proposed rezoning, staff will pursue prosecution and seek removal of the garage.

Enabling Policy

Under the Commercial designation, Council can consider the proposed rezoning in accordance with Policy IP 1-(c), as shown in Attachment B.

DISCUSSION

Staff have reviewed this application and determined that it is consistent with the intent of Dartmouth's MPS for the property to develop in a commercial manner. Windmill Road, north-east of Albro Lake Road, is a significant commercial corridor in Dartmouth. The commercial activity becomes more intense as Windmill Road approaches Burnside. The subject property falls within this commercial area and would be an appropriate location for new or expanded C-2 Zone uses.

In regard to the rezoning evaluation criteria of Policy IP-1(c), staff contends that this application satisfies the applicable criteria. The following issues have been identified for more detailed discussion:

Commercial Compatibility

Due to the mix of land uses within the area, the property is designated "Commercial", and Windmill Road (north-east of Albro Lake Road) is a significant commercial corridor in Dartmouth, staff

consider the proposed expansion of the C-2 Zone across the entire property would be compatible with the existing development in the area. Further, the building is consistent with the bulk and scale of other commercial buildings in this area and the garage complies with the C-2 Zone requirements.

Residential Use

The portion of the property that is being evaluated for the rezoning is located at the rear of the property and has access to a private road and Windmill Road. The residential development potential for this portion of the property is low due to the lack of frontage on a public street which prohibits the creation of a residential lot for this area. Due to the condition of the private road, without upgrades to bring it up to public road standards, development of this portion of the property for residential is limited.

Public Information Meeting

A public information meeting was held on February 18, 2008. Four members of the public were in attendance. One individual stated that the R-2 zone needs to be protected in the North End of Dartmouth as shown in Attachment B.

If Council decides to schedule a public hearing for this application, public notices advertising the hearing will be placed in the newspaper and property owners within the notification area illustrated on Map 2 will be contacted individually.

BUDGET IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the operating budget for C310.

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 requested rezoning. This is the recommended course of action for the reasons outlined above.
2. Council may choose to refuse the requested rezoning which will result in staff pursuing prosecution. Pursuant to Section 2.30(6) of the *Municipal Government Act*, Council is required to provide reasons to the applicant justifying this refusal, based upon policies of the MPS. This is not a recommended course of action.

ATTACHMENTS

- Map 1: Location and Zoning
Map 2: Generalized Future Land Use Map

Attachment A: Permitting History

Attachment B: Excerpts from the Dartmouth MPS and Land Use By-law

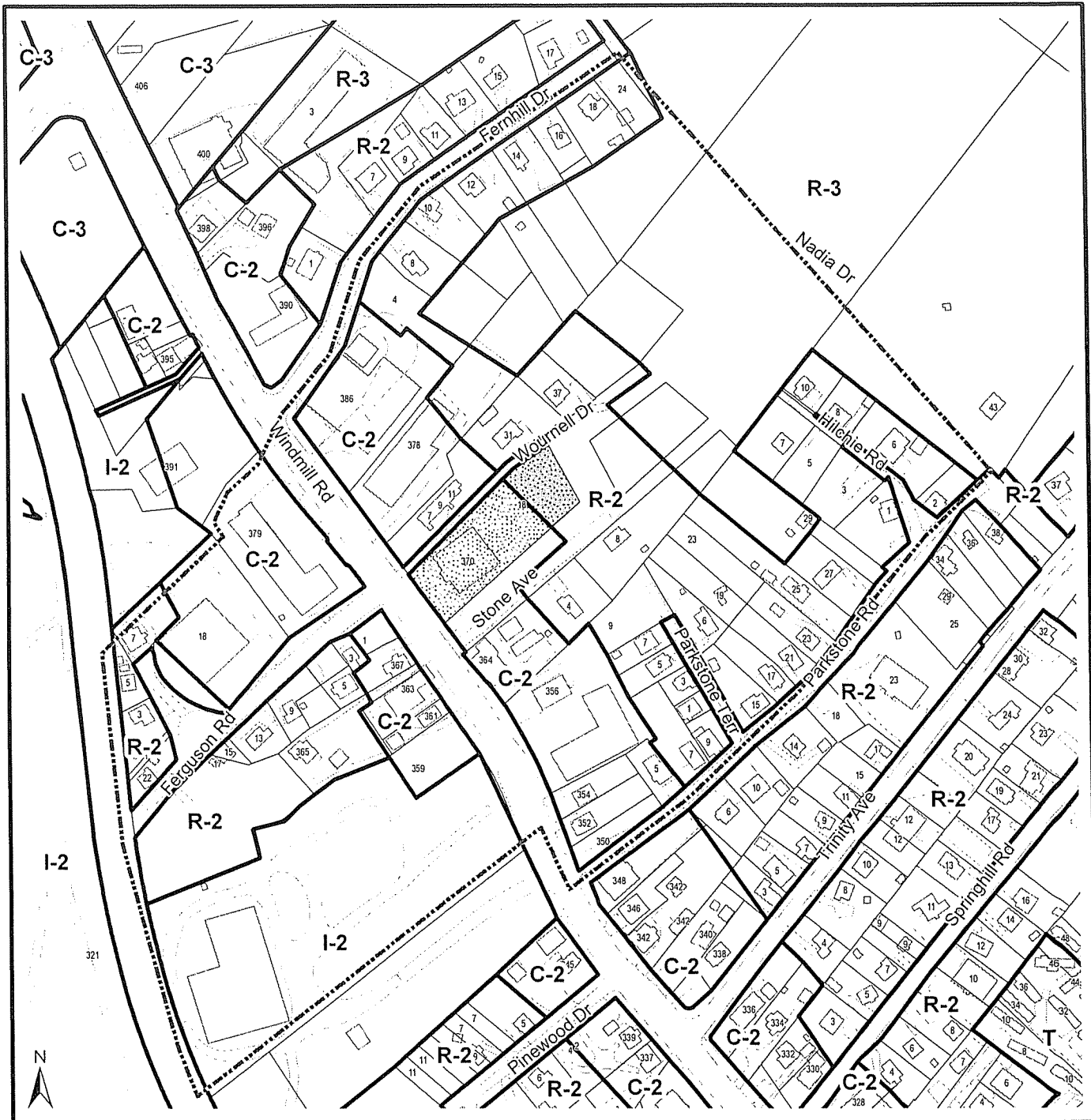
Attachment C: Public Information Meeting Minutes: February 18, 2008

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.

Report Prepared by : Jennifer Chapman, Planner, Planning Applications, 490-3999






Report Approved by: Austin French, Manager, Planning Services 490-6717



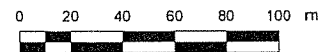
Map 1 - Location and Zoning

370 Windmill Road
Dartmouth



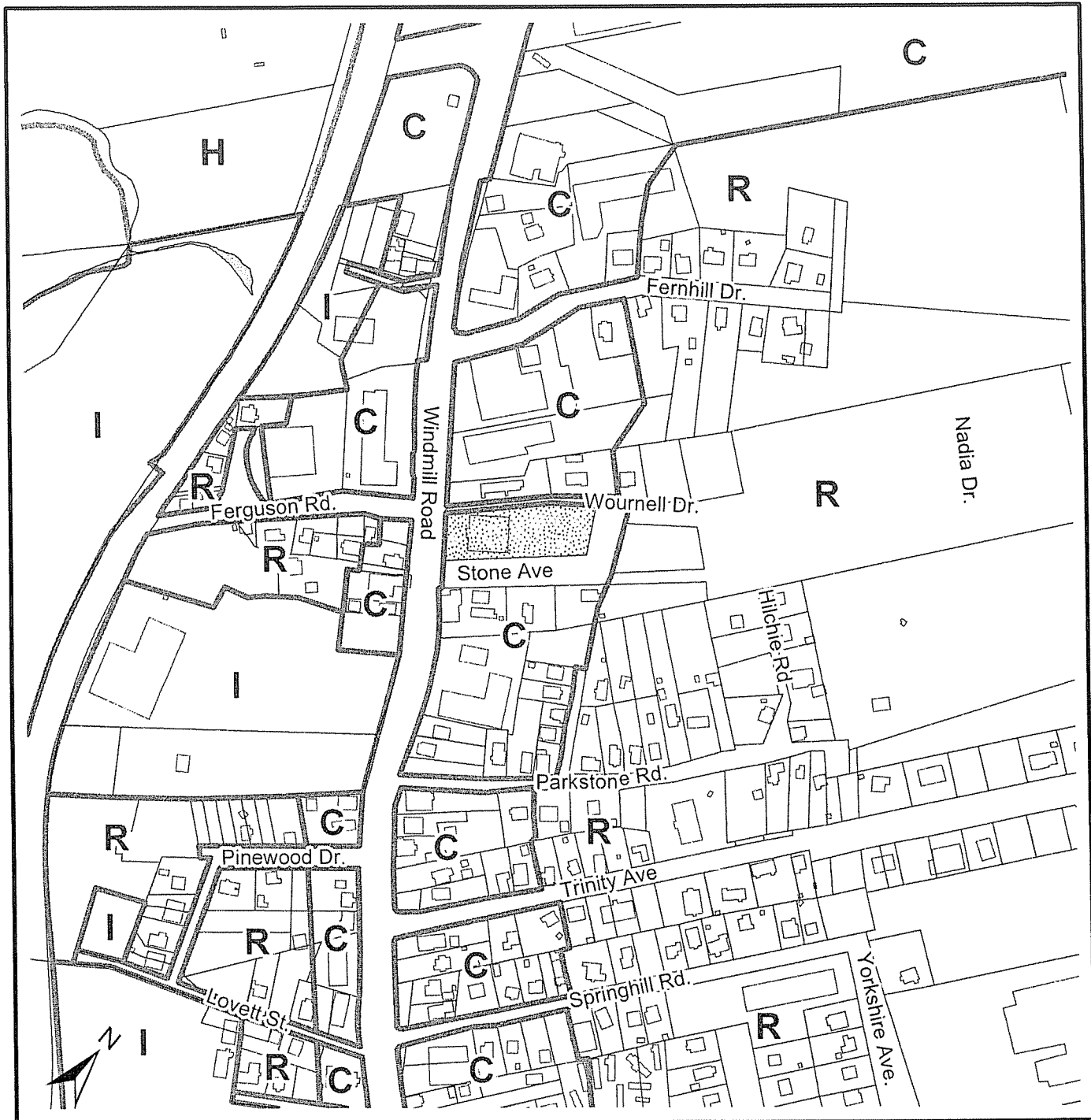
-  Subject property
-  Area to be Rezoned
-  Area of notification

Zone	
R-2	Two Family Residential
R-3	Multiple Family Residential (Medium Density)
C-2	General Business
C-3	General Business
I-2	General Industrial



This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Plan Area


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



Map 2 General Future Land Use Map

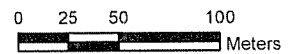
370 Windmill Road
Dartmouth

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

 Subject Property

Designation

- R Residential
- C Commercial
- I Industrial
- H Holding



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Dartmouth Plan Area

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

Dartmouth Plan Area

Attachment A: Permitting History

The proposed rezoning would allow Maritime Demolition to pursue the appropriate building and occupancy permits required in order to legalize the structure. It is important to note that the issue of legality is not a planning issue as it does not relate to land use and, therefore is not grounds for refusal by Council. The history of the site is as follows:

- September 20, 2004: Order to comply issued as construction had begun on the accessory building without a building permit. Stop work order issued.
- September 27, 2004: Application by Maritime Demolition for a building permit (File number: 61496) to construct an accessory building at 370 Windmill Road
- October 18, 2004: Building permit application refused by Development Services as the accessory building is proposed in an R-2 Zone.
- January 5, 2005: Second order to comply issued as accessory building was constructed and occupied without appropriate permits and for a failure to comply with the previous order.
- September 19, 2005: Application received by Planning Applications to rezone a portion of the property from R-2 to C-2.

Attachment B
Excerpts From
Dartmouth's Municipal Planning Strategy and Land Use By-law

Dartmouth Municipal Planning Strategy

Policy IP1-(c)

Zoning By-law

The Zoning By-law is the principal mechanism by which land use policies shall be implemented. It shall set out zones, permitted uses and development standards which shall reflect the policies of the Municipal Development Plan as per Section 33 (3) of the Planning Act.

Notwithstanding the above, it shall be the intention of Council not to pre-zone lands outside the development boundary as shown on the Generalized Land Use Plan: Map 9; Map 9b, 9c, 9d, 9e, 9g, 9h, 9i (By-law 633), 9i (By-law 724), 9j, 9q, 9m, 9o, 9p (Portland St), 9p (Craigwood) and 9r (As amended by By-law C-475, Sept. 20, 1983 and By-law C-493, Dec. 9, 1983 and By-law C-511, July 6, 1984).

It shall recognize that certain areas are premature for specific zoning classifications by reason of lack of services, public facilities or other constraints. Council shall use the H-zone (Holding Zone). In the H Zone the permitted types of uses shall be limited in accordance with the Reserve classification in Table 4 (As amended by By-law C-475, Sept. 20, 1983). In this manner, Council can maintain a comparatively high degree of control, and major development proposals contemplated for such areas shall be processed as zoning amendments.

In considering zoning amendments and contract zoning, Council shall have regard to the following:

- (1) that the proposal is in conformance with the policies and intents of the Municipal Development Plan
- (2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal
- (3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries
- (4) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the City is to absorb any costs relating to the development
 - (ii) the adequacy of sewer and water services and public utilities
 - (iii) the adequacy and proximity of schools, recreation and other public facilities
 - (iv) the adequacy of transportation networks in adjacent to or leading to the development
 - (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas
 - (vi) preventing public access to the shorelines or the waterfront
 - (vii) the presence of natural, historical features, buildings or sites
 - (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized
 - (ix) the detrimental economic or social effect that it may have on other areas of the City.
- (5) that the proposal is not an obnoxious use

- (6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:
- (i) type of use, density, and phasing
 - (ii) emissions including air, water, noise
 - (iii) traffic generation, access to and egress from the site, and parking
 - (iv) open storage and landscaping
 - (v) provisions for pedestrian movement and safety
 - (vi) management of open space, parks, walkways
 - (vii) drainage both natural and sub-surface and soil-stability
 - (viii) performance bonds.
- (7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors

Dartmouth Land Use By-law

R-2 (TWO FAMILY RESIDENTIAL) ZONE

- 33(1) The following uses only shall be permitted in an R-2 Zone:
- (a) R-1 uses as hereinbefore set out,
 - (b) a semi-detached dwelling,
 - (c) a duplex dwelling,
 - (d) basement apartments added to single family dwellings so that each building contains only two families,
 - (e) a dwelling for not more than ten persons, owned or operated by a voluntary non-profit organization,
 - (f) any uses accessory to any of the foregoing uses.
- 33(2) Buildings used for R-1 uses in an R-2 Zone shall comply with the requirements of an R-1 Zone.
- 33(3) Buildings used for R-2 uses in an R-2 Zone shall comply with the following requirements:
- (a) Lot area minimum - 5,000 sq. ft.
 - (b) Lot coverage maximum - 35%
 - (c) Side and rear yards shall be provided on each side and at the rear of a building as specified in the Building By-laws of the City.
 - (d) notwithstanding anything contained in this section, a lot in an R-2 Zone created by the subdivision of a lot containing two semi-detached dwellings shall be permitted, provided that each lot resulting from the subdivision and each individual dwelling unit complies with the following requirements:
 - (i) Lot area minimum - 2,500 square feet
 - (ii) Lot frontage minimum - 25 feet

- (iii) Lot coverage maximum - 35%
- (iv) compliance with the building by-laws of the City.
- (e) Height Maximum -35 feet on all parcels of land situated within the "Lake Banook Canoe Course Area" as identified on Schedule "W". (RC-Feb 8/05;E-Apr 23/05)

33(4) Notwithstanding anything else in this by-law, the following zone requirements shall apply to all new lots that were approved after October 13, 2001:

- (1) Zone Requirements:
 - Minimum Side Yard 8 feet, and the side yard shall be reduced to zero (0) on the side being common with another dwelling unit
 - Minimum Rear Yard 10 feet
- (2) The maximum building eave projection into the minimum required side yard shall be 2 feet (HECC-Nov 1/01;E-Nov 25/01)

C-2 (GENERAL BUSINESS) ZONE

39(1) The following uses only shall be permitted in a C-2 Zone:

- (a) R-1, R-2, R-3, C-1 and TH uses as herein set out;
- (b) Business or commercial enterprises except:
 - (i) obnoxious uses and uses creating a hazard to the public and
 - (ii) offices other than those permitted in the C-1 Zone
 - (iii) except Adult Entertainment uses (RC-Jan 31/06;E-Mar 16/06)
- (c) Uses accessory to the foregoing uses.

39(2) Buildings used for R-1, R-2, R-3, C-1 and TH uses in a C-2 Zone shall comply with the requirements of an R-1, R-2, R-3, C-1 or TH Zone respectively.

39(3) Buildings used for C-2 uses in a C-2 Zone shall comply with the following requirements:

- (a) Lot area minimum - 5,000 sq. ft.
- (b) Height maximum - 3 storeys for a building with an office function as its primary function.
- (c) Maximum Lot coverage - 100% if the requirements for 100% lot coverage in the Building Bylaws of the City of Dartmouth are met, except that a motel building or buildings shall occupy surface area of not more than one-third of the total area of the building lot.
- (d) If lot coverage is not 100%, side and rear yards shall be provided on each side and at the rear of buildings as provided by the Building Bylaws of the City of Dartmouth.
- (e) Additional Height Maximum -35 feet on all parcels of land situated within the "Lake Banook Canoe Course Area" as identified on Schedule "W". (RC-Feb 8/05;E-Apr 23/05)

Attachment C
February 18, 2008: Public Information Meeting Minutes

HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE # 00831 - Maritime Demolition

7:00 p.m.
Wednesday, February 18, 2008
Shannon Park Elementary School

IN ATTENDANCE: Jennifer Chapman, Planner, HRM Planning Services
Sharlene Seaman, Planning Controller, HRM Planning Services

ALSO IN ATTENDANCE: Councillor Jim Smith, District 9

PUBLIC IN ATTENDANCE: Approximately 4

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

1. Opening remarks/Introductions/Purpose of meeting - Jennifer Chapman

Jennifer Chapman introduced herself as the Planner in charge of the application. She explained that the application to rezone a portion of 370 Windmill road. She advised of the site area which is the back area of the site on 370 Windmill road, owned by Maritime Demolition.

Their business is currently located in the front portion of the lot in the C-2 zone. They are applying to rezone the back portion of the lot which is zoned R-2 to change it to a C-2. They had made application to construct the now existing building through Development Services but was denied due to zoning.

The applicant built the building anyway and since made application to rezone this portion of the lot. The neighborhood is a mixed use neighborhood, containing a variety of uses such as I-2, C-2, R-2 and C-3 zoning. The applicants current zoning permits a variety of single unit uses as well as double unit uses, a variety of institutional uses and Parks. The applicant has proposed a C-2 zone which permits quite a wide variety of residential uses as well as Commercial uses.

She advised of the criteria with which Planning reviews these applications. She stated that the Planning department looks at the compatibility of the use with the surrounding area, transportation and traffic into and out of the site and road access. She showed a picture of the garage and advised of the zones relating to the site.

There were questions about fencing of the site and location. Ms. Chapman advised there was a fence and again advised of the site area.

2. Overview of planning process/ Presentation of Proposal - Jennifer Chapman

Ms. Chapman next gave an overview of the planning process. It begins with an application, in this case, from Maritime Demolition. Next there is a technical review by staff for any technical issues and a Public Information Meeting is scheduled. She advised that any comments made at the meeting as well as the comments generated from the staff review will go into a staff report which will guide some recommendation to Council.

Next it will go to Council where they will ultimately make the decision. The decision of Harbour East Community Council is appealable. There is a two week appeal period which anyone can appeal that decision. If the decision is to approve the rezoning and no one appeals, the technical staff would then make the changes and the zone would be changed to C-2.

Ms. Chapman then provided her contact information and opened the floor for questions advising speakers to state their names and address for the minutes, taken by Sharlene Seaman.

3. Questions/Comments

Trevor Zinck, Sea King Drive asked the applicant, Arthur Rhyno, what brought this rezoning about? He wanted to know if the city had denied his application.

Mr. Rhyno advised that the building was an HRM building that his company was paid to take down in Sackville. It was then re-erected in the back lot in question. The building was zoned C-2 which is why he believed there would not be a problem with putting it up.

He advised that the City denied his application but at that time the building was already standing. He questioned the City as to why he was paying so much tax for his property when this section that the building stood on was R-2.

He believes that he should not be paying all C-2 tax if in fact it cannot be rezoned. The city advised him to apply for a rezoning and that's why he started this application.

Gerry Pye (former area resident, former public relations officer for the neighborhood improvement program, former alderman representing the area and former MLA) Baker Drive, had some concerns with respect to building a physical structure on an R-2 piece of land when it is illegal.

He wanted to know why Maritime Demolition went ahead and put this building up in the first place without the application being approved. He believes that if the rezoning is approved, it would be like covering up an illegal activity.

He also felt it would be aiding and abetting by the City and the Planning Department. He stated that there is little residential land in the Tuft's Cove area as it stands. He is against the rezoning. Mr Pye stated that along the Windmill Corridor there was R-2, I-2, C-3 and C-4 Development. He stated that the Planning Department had rezoned the lands to C-2 and C-3 except the lands that were owned by Nova Scotia Power which are I-2. The reason for this was to protect the neighborhood against any type of development. The area is recognized as a gateway to Dartmouth.

He felt that the Tuft's Cove neighborhood improvement program was put into place to clean up the Windmill corridor. With this rezoning he feels that the city wouldn't be sticking to the program.

He referred to Halifax properties that were forced to be torn down as they were built without compliance. He stated that he will be watching this application very closely. He asked if the land area is over 5000 square feet.

Mr. Rhyno advised that it is over 5000 square feet.

Mr Pye stated that the property could be two R-2 lots that families could live on. He referred to the possible neighbourhood changes that the Commonwealth games could have had, if they came here. He stated that it is his hope that a vision for Dartmouth would include beautification and clean up of the Windmill corridor, much like Main Street. He asked how this building was able to go up on the property.

Mr Rhyno stated that the majority of the property is zoned C-2, the building is C-2 and pays taxes under C-2. He wanted to know if the City would be willing to compensate him for taxes paid under the C-2 zone.

Mr Rhyno expressed frustration towards the City as there has not been any team work to resolve this issue. He stated that if he is paying C-2 taxes, he should be able to have this building on his property.

Ms. Chapman stated that the taxes are regulated by the Province so he would have to discuss that with them.

Councillor Smith agreed that the tax issue is a separate issue that should be brought up with the Tax Department. He referred to a site in Burnside. He asked if there was a ever a stop work order and when did it first come to light that this building was being built.

Ms. Chapman advised that Mr. Rhyno made application for a building permit and was refused.

Councillor Smith stated that it is his understanding that the building already had foundation when the building permit was applied for.

Both Mr. Rhyno and Ms. Chapman were unsure of the dates surrounding the events.

Councillor Smith stated that even after the owner was informed he did not have the appropriate zoning, the rest of the building went up.

Mr. Rhyno advised again that he is not aware of the dates but his brother would have more information.

Councillor Smith stated that he has concerns as the area Councillor because right across from this property is a home and there are yellow containers and metal laying around the yard.

Mr. Rhyno stated that can clean up the yard but the building itself is a garage with two garage doors and one man door with no windows.

Mr Pye asked about the application in the Planning Department and questioned how it could be applied for as the building permit was denied.

Ms. Chapman stated that the building permit was refused because he did not have the right zoning. He than made an application to rezone.

Mr. Pye asked who approved the building to be standing now.

Ms. Chapman advised that it was never approved by Halifax Regional Municipality.

Mr. Pye asked Mr. Rhyno if he just took it upon himself to build.

Mr. Rhyno stated that the owner of Maritime Demolition took it upon himself to build it. He stated that he does not know the exact date it was erected. He also said that it was about three or four years ago.

Mr Pye questioned the dimension of the R-2 zone again.

Ms. Chapman advised that she does not have the exact dimensions.

Mr. Pye stated that the public needs to know how many square feet of land is in question.

Mr Rhyno advised that it is about 5000 square feet of land and refers to the chart.

Mr. Pye opined that the lot should stay residential as it is critical to put a commercial boundary line along the Windmill corridor to sustain the residential development of the Tuft's Cove neighborhood. It was the only community that was left within the plan that was salvageable. It needed to be revitalized to reassure there would be some semblance of community left.

He stated that the R-2 lots in the Tuft's Cove area are sacred. This parcel of land will be a loss to the community if it goes to C-2 as it has potential to be built for families. Also, the property may be sold in the future and if rezoned, there can be a multi unit apartment complex.

Ms. Chapman asked for clarification because if an R-3 was built, more people could live in that area.

Mr. Pye stated that he does not want more R-3 zoning as he feels that there is already sixty six percent of R-3 (Multi residential) right now and only around thirty percent of R-2 (home ownership) in the area. He wants the Planning Department to go back and review the intent of the Tuft's Cove neighborhood improvement program and recognize the intent of the plan and to see if it is not possible to salvage all the R-2 property as possible. He does not believe the area in question should be rezoned.

Mr. Rhyno questioned if the area behind his lot is zoned Parkland.

Ms. Chapman advised that it has not been designated yet.

(There was a group discussion about the upkeep and zoning of different areas and roads).

Mr. Pye again stated that he would like the lot in question to remain R-2 and asked again for the Planning Department to review the intent of the Tuft's Cove neighborhood improvement program.

Councillor Smith stated that he would like to see a chronicle of events of when the Planning Department first came to know when the structure was being built and all other events leading up to the building in the staff report .

Mr. Wilfred Ferguson asked if the permit was applied for after the building was built.

Ms. Chapman advised that it was applied for before the building was built but it was refused and the building than went up.

Mr. Rhyno advised that some of the building is sitting on the C-2 zone.

Mr. Pye seconded the Councillors request for some chronological dates leading up to the structure being built and wants info on what city department allowed this building to continue.

Ms. Chapman stated that the City refused the permit and there were no permissions given to build.

Mr. Pye stated that he expects the City to stop any proposed development by issuing a stop work order stating they cannot do that.

Mr. Rhyno advised that if there was ever a stop work order, he has never seen it.

Ms. Chapman commented that there was a stop work order but does not have it or the date it was issued with her.

Councillor Smith asked if the building was built partly in the R-2 and partly in the C-2 zone.

Mr. Rhyno stated that he is correct.

Ms. Chapman advised that the majority of the building is on the R-2 zone. Mr. Rhyno thought that two thirds are on R-2 and one third is C-2. He explains by using the chart.

Mr. Pye stated that he would have said nay to any proposed development, not just the one heard today.

4. Closing comments

Mr Wilfred Ferguson asked about the process after the meeting.

Ms. Chapman advised that she will be writing a staff report. The report will then go to Harbour East Community Council, where they will review it and schedule a Public Hearing. At the Public Hearing the public can give their comments to Council who will then vote for or against the rezoning.

Mr. Ferguson asked how many members there are on this Council.

Ms. Chapman advised that there were 6 members.

Ms. Chapman asked for any further questions. There were none. She then thanked everyone for coming.

5. Adjournment

The meeting adjourned at approximately 7:45 p.m.