

HALIFAX

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Item No. 14.1.9
Halifax Regional Council
November 22, 2016

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY:

Jacques Dubé, Chief Administrative Officer

Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: October 17, 2016

SUBJECT: **Case 20589: MPS amendments to the Musquodoboit Valley/Dutch Settlement Municipal Planning Strategy and Land Use By-law, and the Halifax Regional Subdivision By-law to allow the creation of 6 lots with reduced or no road frontage on the lands of the late Mary Sibley in Meagher's Grant.**

ORIGIN

Application by Lorna Snair

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VII, Planning and Development

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Initiate a process to consider amending the Musquodoboit Valley/Dutch Settlement Municipal Planning Strategy and Land Use By-law, and the Halifax Regional Subdivision By-law to allow the creation of 6 lots with reduced or no road frontage on the lands of Lorna Snair situated on Highway 357, in Meagher's Grant; and
2. Follow the public participation program for municipal planning strategy amendments as approved by Regional Council on February 27, 1997.

BACKGROUND

Lorna Snair is the executor of the estate of her late Mother, Mary Sibley. The late Mrs. Sibley was advised by her legal counsel that she could divide her land in Meagher's Grant into 6 lots without seeking subdivision approval from the Municipality through her will. Her legal counsel was relying on clause 278 (2)(m) of the *Halifax Regional Municipality Charter* which specifies that "subdivision approval is not

required for a subdivision where the subdivision results from a will". Section 278 (2)(m) however, specifies that such a devise of land can only be used where the will was executed on or before January 1, 2000 and Mrs. Sibley's will was dated April 22, 2005.

Subject Site	PID 00474965 - Highway 357 Meagher's Grant
Regional Plan Designation	Agriculture
Community Plan Designation (Map 1)	Village (VIL) Designation
Zoning (Map 2)	Village (VIL) Zone
Size of Site	18.2 ha (45 acres)
Street Frontage	69m (226 ft) non-contiguous frontage, 30m (100 ft) on the east side and 38m (126 ft) on the west side
Current Land Use(s)	Vacant
Surrounding Use(s)	The property is surrounded by single unit dwellings on the east, west, and south sides of the property fronting on Highway 357. The property is surrounded by woodlands on the east, west and north sides beyond a depth of one typical building lot off of Highway 357.

Proposal Details

In order to carry out the will, Lorna Snair is proposing to create 6 lots with limited or no road frontage on a parcel of land in Meagher's Grant (Map 1). Under the Regional Subdivision By-law, the property cannot be subdivided into six lots without 60.9m (200 ft) of contiguous frontage on Highway 357 per lot or 30m (100 ft) of frontage per lot on a public road extending off of Highway 357. The property has 30m (100 ft) of frontage on the east side and 38 m (126 ft) on the west side on Highway 357. Ms. Snair is proposing to subdivide the land into six lots that would be accessed via a private driveway and has no plans to develop the property with a public road.

The parcel of land is located in the Village Designation of the Musquodoboit Valley/Dutch Settlement Municipal Planning Strategy (MPS) which does not permit the creation of more than two lots with reduced or no road frontage as an exemption under the Subdivision By-law. However, a maximum of five lots plus a remainder may be created with limited or no road frontage within the Mixed Use Designation. Ms. Snair is, seeking an amendment to the Musquodoboit Valley/Dutch Settlement Municipal Planning Strategy and the Subdivision By-law to allow her to subdivide the parcel into six lots with reduced or no road frontage to carry out her late Mother's will.

MPS and LUB Context

The Village Designation has been applied to the communities of Dutch Settlement, Middle Musquodoboit, Upper Musquodoboit, and Meagher's Grant. It is intended to recognize the potential service function that these areas may provide to the surrounding communities either now or in the future. It supports the development of low density residential uses while continuing to support the traditional mix of residential, commercial and resource uses that have occurred in the past. Heavy industrial uses and large scale forest processing operations and certain agricultural uses such as intensive livestock operations are not considered appropriate for the Village Designation.

The Mixed Use Designation commences about 457 m (1500 ft) south-east of the subject property (Map 1). It has been applied to the areas surrounding the communities that have been designated Village and it supports the heavy industrial uses and the large scale forest processing operations and intensive livestock operations that the Village Designation does not permit. The Musquodoboit Valley MPS recognizes the need to allow subdivision development with reduced lot frontages due to the presence of elongated lots with narrow frontage that extend into the backlands. Many of the lots have insufficient road frontage to permit subdivision under current regulations. Policy SB-3 was therefore, established to allow the creation of five lots with a minimum of 6 m (20 ft) of road frontage and one remainder lot with no frontage but this only applies to lands within the Mixed Use Designation.

Existing Options

Notwithstanding that the development application as specifically proposed cannot be accommodated within existing policy, there are provisions under the Regional Municipal Planning Strategy, the Musquodoboit Valley MPS and the Regional Subdivision By-law to allow subdivision of the subject property. The available options and limitations to meet Ms. Snair's needs under current policy are outlined below:

Planning Document	Options	Limitations
<i>Regional MPS</i>	Lower Density Classic Conservation Design development pursuant to Policies S-16 and S-17. Will allow consideration of a maximum of 1 unit per hectare of net developable area.	Access to units would have to be through a private driveway constructed to a standard prescribed by HRM. Ms. Snair has no plans to construct a driveway or a road. She wishes to use the existing driveway on the property.
<i>Regional Subdivision By-law</i>	Section 38 allows for the creation of one lot plus a remainder with reduced or no frontage.	Ms. Snair wishes to subdivide the property into 6 lots while Section 38 limits subdivisions to 2.

Over the past few years staff explored several options for Ms. Snair and obtained a better understanding of her wishes and the specifics of her late mother's will. The options described above do not carry out the intent of the will so consequently she has submitted a Plan Amendment application for consideration.

DISCUSSION

The MPS is a strategic policy document that sets out the goals, objectives and direction for long term growth and development in the Municipality. While the MPS provides broad direction, Regional Council may consider MPS amendment requests to enable proposed development that is inconsistent with its policies. Amendments to an MPS are significant undertakings and Council is under no obligation to consider such requests. Amendments should be only considered within the broader planning context and when there is reason to believe that there has been a change to the circumstances since the MPS was adopted, or last reviewed.

Review

Staff has reviewed the request to amend the Municipal Planning Strategy and the Subdivision By-law to allow Ms. Snair to create 6 lots along a private driveway to carry out her late Mother's will. Two options that were explored are outlined below:

Option 1 - Redesignate and Rezone from Village to Mixed Use

One option would be to redesignate and rezone the subject property from a Village to a Mixed Use designation and zone. This would require the redesignation and rezoning of the subject property and the lands east of the property to a Mixed Use Designation and Zone as illustrated on Maps 2 and 3 respectively. This is not advisable since the Village Designation was applied to this area to support and protect the low density environment with a traditional mix of non-conflicting land uses. Redesignation and rezoning the area to Mixed Use would permit the development of heavy industry, forest processing plants, and intensive agricultural uses which would conflict with the low density residential land uses in the area.

Option 2: Allow the Application of the 6 lot exemption to subject property

Another option would be to allow the application of the lot frontage exemption under Policy SB-3 to the subject property. This would require only a text amendment to Policy SB-3 under the Municipal Planning Strategy, the Land Use By-law, and Section 63 of the Subdivision By-law to permit the application of this policy to the subject property without the need for re-designation or rezoning as outlined in Option 1. This

is the recommended option as it would have no impact on the surrounding area and would allow Ms. Snair to execute the will of her later Mother as intended.

Difference from development on rural 25 acre lots

This policy amendment request does not directly conflict with the report coming forward regarding development on rural 25 acre lots, however, there exists a commonality in that both relate to the ability within the HRM Charter to create lots without municipal subdivision approval. As described previously, prior to 2000, the subdivision of lands by will was once exempted from the municipal subdivision approval process through the *HRM Charter* and formerly, the *Municipal Government Act*. The late Mrs. Sibley was advised by her legal counsel that she could divide her land in Meagher's Grant into 6 lots through her will instead of by way of subdivision approval from the Municipality, however, this is only the case for wills executed on or before January 1, 2000. Since Mrs. Sibley's will was executed on April 22, 2005, her land is not eligible for this method of subdivision and the lands remain in their original bulk land form. This notwithstanding, HRM staff has worked with Ms. Snair for several years now to explore ways in which the land could be subdivided to enable her mother's bequests to be carried out.

In order to carry out the will, Ms. Snair is proposing to create 6 lots where some lots have limited public road frontage and others would have no frontage and be accessed via a shared driveway. This configuration would not meet the lot design standards as set out under the under the Regional Subdivision By-law as each lot is required to have a certain minimum amount of frontage on a public road. Key differences between this situation and the 25 acre lot matter include the fact that this proposal benefits from the subject lands having some public road frontage, the length of time that discussions have been ongoing with staff so as to find a solution to the issue, and that to date, none of the lots have been created.

Conclusion

Two options have been presented for Council's consideration. Option 1 requires an amendment to the MPS and the land use by-law to re-designate and rezone the subject property and the adjacent properties to the south-east to the Mixed Use designation. This could potentially allow the development of heavy industrial land uses and intensive livestock operations which would conflict with the surrounding low density residential area.

Option 2 is specific to the subject site without having to re-designate and rezone her property or all of the surrounding properties to the Mixed Use designation. In light of the unique and extenuating circumstances surrounding this case, it is recommended that Council initiate process for amendment as outlined in Option 2. This would allow Ms. Snair to subdivide the property to carry out her later mother's will without any impact on the surrounding area.

COMMUNITY ENGAGEMENT

Should Regional Council choose to initiate the MPS amendment process, the HRM Charter requires that Regional Council approve a public participation program. In February of 1997, Regional Council approved a public participation resolution which outlines the process to be undertaken for proposed MPS amendments which are considered to be local in nature. This requires a public meeting to be held, at a minimum, and any other measures deemed necessary to obtain public opinion.

The proposed level of community engagement is consultation, which can be achieved through a public meeting and a letter to all property owners in the Village Designation early in the review process, as well as a public hearing, before Regional Council can consider approval of any amendments.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the

approved 2016/2017 operating budget for C310 Urban and Rural Planning Applications.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application involves proposed MPS amendments. Such amendments are at the discretion of Regional Council and are not subject to appeal to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amendments are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

There are potential environmental implications should Council initiate amendment to re-designate and rezone a portion of the Village Designation of Meagher's Grant to a Mixed Use Designation and Mixed Use Zone. The Mixed Use Zone permits the development of heavy industrial uses and intensive livestock operations which could adversely affect the natural environment as well as surrounding residential uses.

ALTERNATIVES

1. Regional Council could choose not to initiate an amendment to accommodate this request. This is not recommended since the need for this amendment is arising out of a set of unique and extenuating circumstances causing hardship for this family and an amendment as outlined in Option 2 would have no adverse impact on the surrounding area.
2. Regional Council may choose to initiate the consideration of potential policy that would differ from those outlined in this report. This may require a supplementary report from staff.

ATTACHMENTS

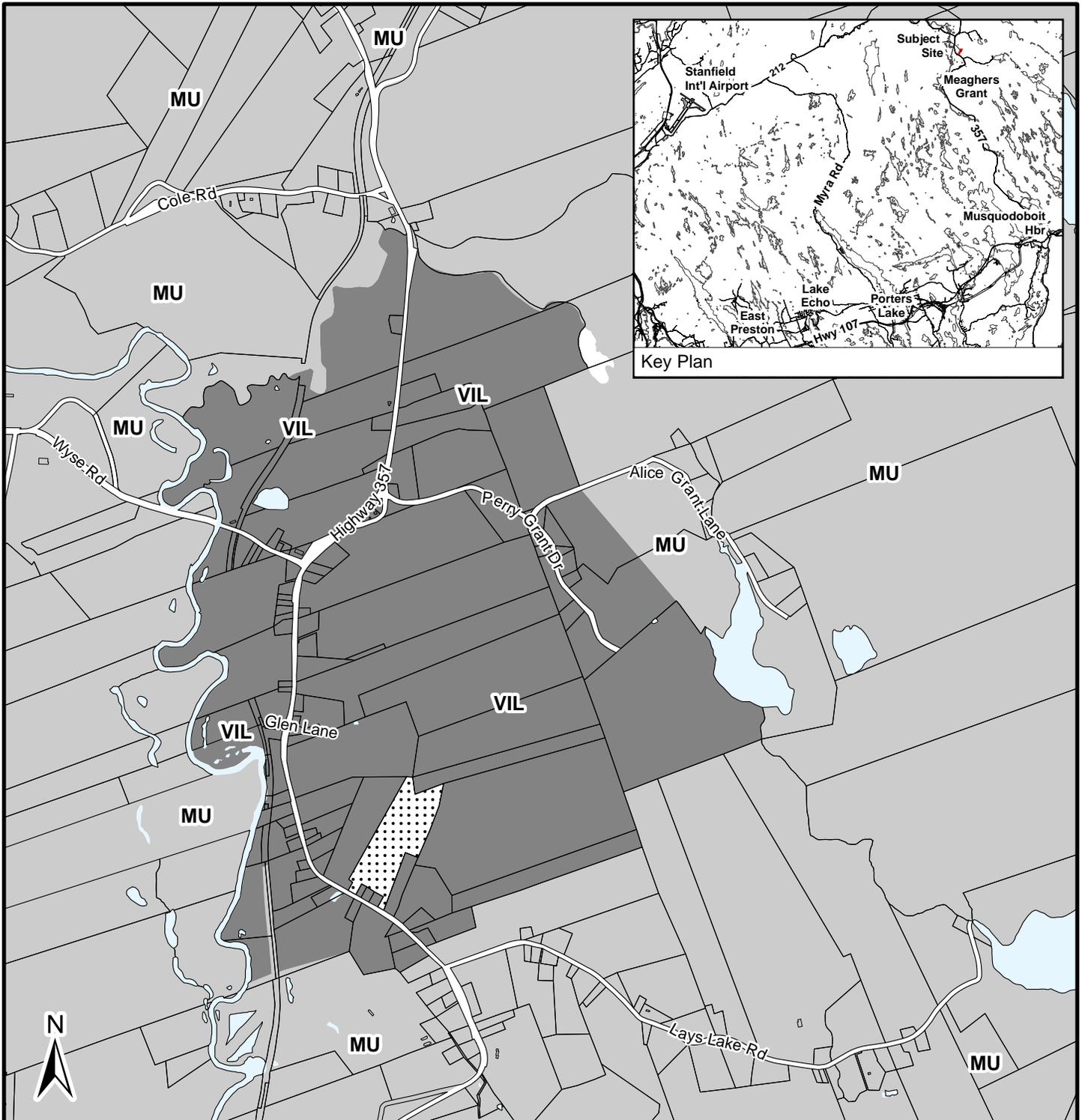
- Map 1: Subject Property in Relation to the Village and Mixed Use designations.
Map 2: Option 1 Amendment – Potential area to be re-designated from Village to Mixed Use in Meagher's Grant
Map 3: Option 1 Amendment – Potential area to be rezoned from Village to Mixed Use in Meagher's Grant

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Map 1 - Generalized Future Land Use & Location

PID # 00474965

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-  Subject Property for Subdivision
-  Village (VIL) Designation
-  Mixed Use (MU) Designation



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Musquodoboit Valley & Dutch Settlement
Land Use By-Law Area



Map 2 - Generalized Future Land Use

HALIFAX

PID # 00474965

-  Subject Property for Subdivision
-  Option 1 Amendment: Potential Area for Redesignation to Mixed Use

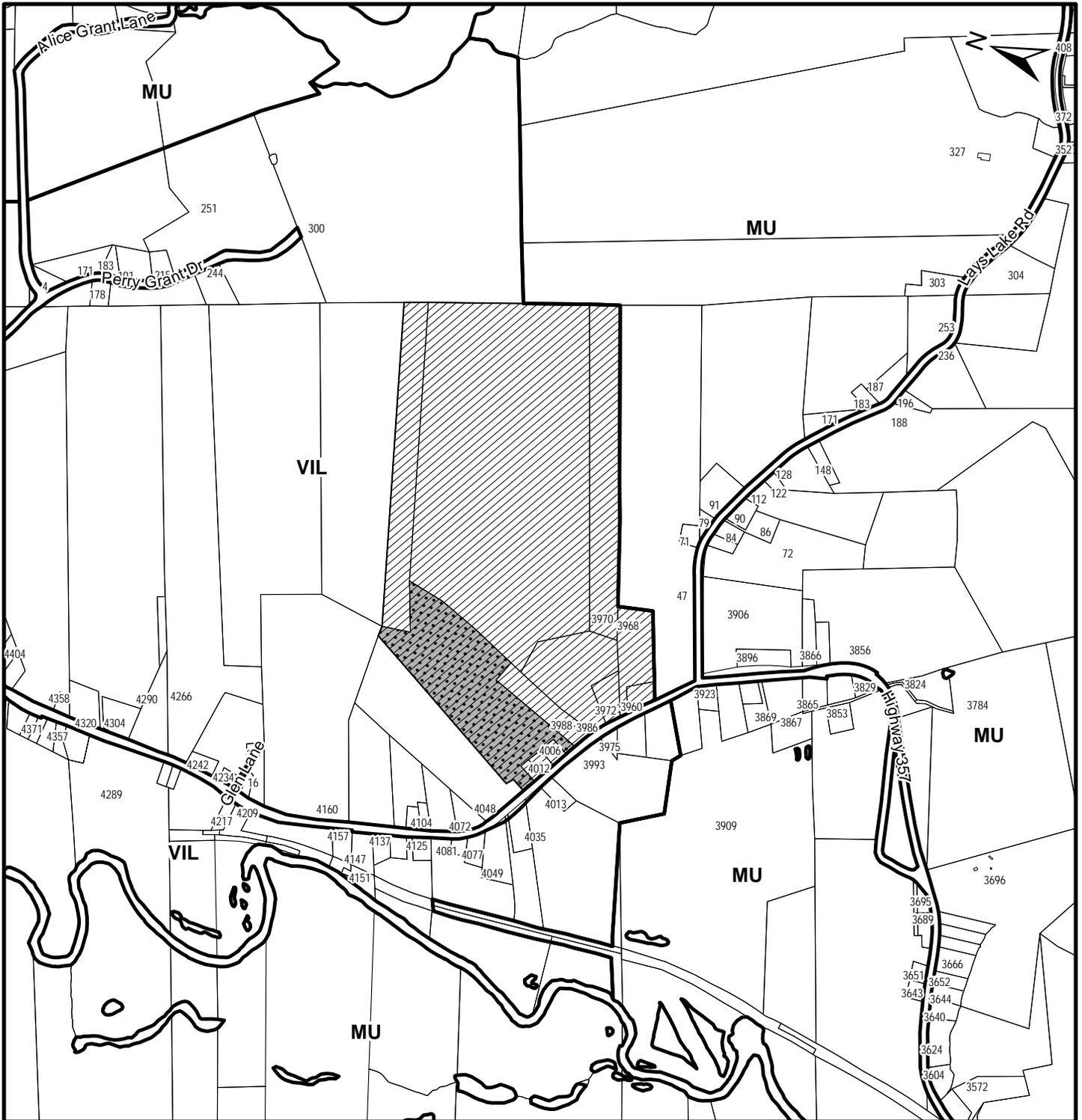
Designation
 MU Mixed Use
 VIL Village



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Musquodoboit Valley & Dutch Settlement
 Land Use By-Law Area



Map 3 - Zoning

PID # 00474965

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Subject Property for Subdivision

Option 1 Amendment: Potential Area for Rezoning to Mixed Use

Zone

MU Mixed Use
VIL Village



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

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

Musquodoboit Valley & Dutch Settlement
Land Use By-Law Area