



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 13.1.2
Harbour East-Marine Drive Community Council
January 13, 2021

TO: Chair and Members of Harbour East-Marine Drive Community Council

-Original Signed-

SUBMITTED BY:

Kelly Denty, Executive Director of Planning and Development

DATE: December 3, 2021

SUBJECT: **Case 22651: Land Use By-Law amendment for lands fronting on Hines Road, Eastern Passage**

SUPPLEMENTARY REPORT

ORIGIN

- Application by Zzap Consulting Inc. on behalf of the property owner, Armco Capital Inc. Planning Application Case 22651;
- On May 20, 2021, Harbour East-Marine Drive Community Council refused the proposed amendment to the Land Use By-law for Eastern Passage/Cow Bay, to rezone portions of the properties identified as PIDs 40103806, 40103780, 40103772, and 40103798 from R-1 (Single Unit Dwelling) Zone to the I-1 (Light Industry) Zone;
- On June 3, 2021 Armco Capital Inc. filed an appeal of Council's decision to refuse the land use by-law amendment to the Nova Scotia Utility and Review Board;
- On October 6, 2021, the Nova Scotia Utility and Review Board held a Hearing to consider the appeal of Council's decision; and
- On December 1, 2021, the Nova Scotia Utility and Review Board directed that Harbour East-Marine Drive Community Council approve the land use by-law amendment for lands fronting Hines Road.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Harbour East-Marine Drive Community Council:

1. Adopt the amendment to the Land Use By-law for Eastern Passage/Cow Bay, as set out in Attachment A of this report.

BACKGROUND / DISCUSSION

On May 20, 2021, Harbour East-Marine Drive Community Council held a virtual public hearing to consider a land use by-law amendment to the Land Use By-law for Eastern Passage/Cow Bay, to rezone portions of the properties identified as PIDs 40103806, 40103780, 40103772, and 40103798 from R-1 (Single Unit Dwelling) Zone to the I-1 (Light Industry) Zone. Policies IND-3, IMD-1, and IM-11 within the Industrial designation of the Eastern Passage/Cow Bay Municipal Planning Strategy (MPS) enable the transition between residential uses and industrial uses within the industrial designation through the consideration and establishment of a light industry zone.

Harbour East-Marine Drive Community Council refused to approve the land use by-law amendment, expressing concerns around compatibility with adjacent residential uses, environmental concerns relating to stormwater and the impact of potential industrial uses on nearby wetlands and watercourses, and traffic congestion and pedestrian safety. Council also expressed uncertainty because the applicant did not specifically say how it intended to use the subject properties, if they were rezoned.

Proposal Details

The applicant has proposed to rezone portions of PIDs 40103806, 40103780, 40103772, and 40103798 from the R-1 (Single Unit Dwelling) Zone to the I-1 (Light Industry) Zone of the Eastern Passage/Cow Bay Land Use By-law. The proposed specified use(s) within the I-1 Zone are not yet known. Site access is proposed off of Hines Road, to the east of the subject properties. The existing Environmental Conservation Zone across the north of the site is not proposed to be changed and will remain as such. The site includes a watercourse buffer, where development activity is prohibited and/or limited by the provisions in the Land Use By-law.

For more information, please see the staff report (Attachment A) which was tabled at Harbour East-Marine Drive Community Council on May 20, 2021.

Appeal, UARB Decision and Order

Through their process, the Board must not interfere with the decision of Council unless it determines Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy (MPS). If the appellant can show, on the balance of probabilities that Council's decision does not reasonably carry out the intent of the MPS, the Board must reverse Council's decision to refuse to approve the land use by-law amendment. If, however, the appellant fails to meet this standard of proof, the Board must defer to the decision of Council.

The refusal of the land use by-law amendment was subsequently appealed by the applicant to the Nova Scotia Utility and Review Board (the Board). Pursuant to section 22(1) of the *Utility and Review Board Act*, and section 262 of the *HRM Charter*, the Board has exclusive jurisdiction to hear appeals from decisions of Council relating to approval or denial of land use by-law amendments.

The Board heard the appeal on October 6, 2021 (2021 NSUARB 147 – M10141). In this instance, the Board found Council's refusal did not reasonably carry out the intent of the MPS and ordered the land use by-law amendment be approved by Council (Attachment B). Details of the Board's decision can be found in Attachment C of this supplementary report. Consequently, Harbour East-Marine Drive Community Council has been directed to approve the land use by-law amendment by the Order of the Board.

FINANCIAL IMPLICATIONS

There are no financial implications. The HRM cost associated with processing this planning application can be accommodated with the approved 2021-2022 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 report is as a result of the Order of the Nova Scotia Utility and Review Board. Information concerning risks and other implications of adopting the proposed land use by-law amendment are contained within the Discussion section of the previous report provided to Harbour East-Marine Drive Community Council as contained in Attachment A.

COMMUNITY ENGAGEMENT

The community engagement process relative to the original application to rezone was consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, 165 postcards mailed to property owners within the notification area, a virtual public information meeting held on Wednesday, December 9, 2020 and a virtual public hearing held on May 20, 2021. No further engagement has been performed subsequent to the Board Order. An action order provided by the Board is not appealable to the Board.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

None. The Board has ordered that the Council approve the land use by-law amendment as prescribed by their Order and as such there are no alternatives in this case.

ATTACHMENTS

Attachment A: Staff Report and Land Use By-law Amendment
Attachment B: Nova Scotia Utility and Review Board Order of December 1, 2021
Attachment C: Nova Scotia Utility and Review Board Decision of December 1, 2021

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Brittney MacLean, Planner II, Current Planning, 902.223.6154



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

Item No. 10.1.1
Harbour East Marine Drive Community Council
Special Meeting
March 4, 2021
May 20, 2021

TO: Chair and Members of Harbour East Marine Drive Community Council

-Original Signed-

SUBMITTED BY: _____
Kelly Denty, Executive Director of Planning and Development

DATE: February 10, 2021

SUBJECT: **Case 22651: Land Use By-Law amendment for lands fronting on Hines Road, Eastern Passage**

ORIGIN

Application by Zzap Consulting Inc. on behalf of the property owner, Armco Capital Inc.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.

RECOMMENDATION

It is recommended that Harbour East Marine Drive Community Council:

1. Give First Reading to consider approval of the proposed amendment to the Land Use By-law for Eastern Passage/Cow Bay, as set out in Attachment A of this report, to rezone portions of the properties identified as PIDs 40103806, 40103780, 40103772, and 40103798 from R-1 (Single Unit Dwelling) Zone to the I-1 (Light Industry) Zone and schedule a public hearing;
2. Adopt the amendment to the Land Use By-law for Eastern Passage/Cow Bay, as set out in Attachment A of this report.

BACKGROUND

Zzap Consulting Inc. on behalf of the property owner, Armco Capital Inc. is requesting to rezone portions of PIDs 40103806, 40103780, 40103772, and 40103798 from R-1 (Single Unit Dwelling) Zone to the I-1 (Light Industry) Zone of the Eastern Passage/Cow Bay Land Use By-law (LUB).

Subject Site	PID's 40103806, 40103780, 40103772, and 40103798
Location	Four parcels which are accessed fronting the east side of Hines Road, bounded by Hines Road and the Shearwater Flyer Trail.
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	Industrial under the Eastern Passage/Cow Bay Municipal Planning Strategy (MPS)
Zoning (Map 2)	R-1 (Single Unit Dwelling) and EC (Environmental Conservation Zone)
Size of Site	The entire site is Approximately 10.08 hectares (24.92 acres), however only approximately 5.6 hectares (13.9 acres) are proposed to be re-zoned.
Street Frontage	Approximately 21.5 metres (70.5 feet) along the east side of Hines Road where access is proposed, and an additional 190.5 metres (625 feet) along the northeast of Hines Road, which is inaccessible due to Environmental Conservation Zoning.
Current Land Use(s)	Undeveloped
Surrounding Use(s)	To the north and northeast of the property is Hines Road. To the west and east of the site are existing single family, mobile, and two-unit style residential homes, and to the South of the property is the Shearwater Flyer trail. Across Hines Road is the Royal Canadian Air Force Base Shearwater.

Proposal Details

The applicant proposes to rezone portions of PIDs 40103806, 40103780, 40103772, and 40103798 from the R-1 (Single Unit Dwelling) Zone to the I-1 (Light Industry) Zone of the Eastern Passage/Cow Bay Land Use By-law. The major aspects of the proposal are as follows:

- Proposed uses for the property as set out in the I-1 Zone are not yet known;
- Site access is proposed off the east of Hines Road;
- The site includes a watercourse buffer, where development activity is prohibited and/or limited by the provisions in the Land Use By-law; and
- The existing Environmental Conservation Zone across the north of the site will remain.

History

There were two previous planning cases on this site for residential development.

In 2009, an MPS amendment application (Case 15790) for a proposed residential development including multi-unit buildings with a total of 254 units, and 74 townhomes was ultimately refused by Regional Council.

In 2014, an MPS amendment application was submitted for residential development including 3 multi-unit buildings, 32 townhome units, 10 semi-detached units, and 8 single family homes (Case 19158).

In November of 2019 the current application under Case 22651 was submitted, proposing an industrial rezoning. In February 2020, the applicant decided to withdraw the previously submitted MPS amendment application (Case 19158) to pursue this rezoning application instead.

Enabling Policy and LUB Context

The subject site is designated Industrial under the Eastern Passage/Cow Bay MPS and zoned R-1 (Single Unit Dwelling) Zone under the Eastern Passage/Cow Bay LUB. The R-1 Zone permits single unit dwellings, home occupations, home daycares, and open space uses. A portion of the site is also zoned EC (Environmental Conservation) Zone under the Eastern Passage/Cow Bay LUB. This EC Zone only permits conservation uses, passive recreation uses, and historic sites and monuments, and specifically restricts infilling, excavation, alteration of grade or removal of vegetation.

The Industrial designation allows for the transition between residential uses and industrial uses within the industrial designation through the consideration and establishment of a light industry zone. Attachment B contains a copy of the relevant policy (IND-3, IMD-1, and IM-11) from the Eastern Passage/Cow Bay MPS as well as a staff assessment as to how this proposal adheres to this policy.

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 providing information and seeking comments through the HRM website, signage posted on the subject site, 165 postcards mailed to property owners within the notification area, and a virtual public information meeting held on Wednesday, December 9, 2020.

Attachment C contains a copy of a summary from the meeting. Nine (9) members of the public attended the virtual public information meeting. HRM received seven (7) phone calls and seven (7) emails from the public over the course of the application, and there were 144 unique pageviews on the webpage, at an average of four (4) minutes spent on the page.

The public comments received include the following topics:

- Concerns regarding potential traffic in terms of volume, but also the size of industrial vehicles. Concern with larger vehicles and turning radius onto Hines Road;
- Concerns about speeding on Hines Road which is currently an issue and will be worse, or more dangerous with larger industrial vehicles;
- Concerns that Hines Road is inadequate in terms of infrastructure. Concerns that it does not have sidewalks for children and that increased volume and industrial traffic could be dangerous for residential families in the area. Concerns it is narrow, has no shoulder and that it has sharp bends;
- Concerns that the industrial use will result in larger trucks that make it more dangerous for members of community to access the Shearwater Flyer Trail off Hines Road;
- Concerns that the applicant has not provided a proposed use within the industrial zone, so the public does not know what to expect within the zone permitted uses. Concerns some of the listed uses seem more intense than others;
- Concerns regarding environmental impact of industrial use on wetland areas and watershed, as well as private drainage and flooding concerns;
- Concerns regarding the potential infill of wetlands;
- Concerns that residents are already surrounded by industrial uses and that more industrial uses will further take away from their sense of community within their neighbourhood;
- Concerns that required screening would not be maintained, and community would prefer to have existing tree buffer to not be removed;
- Concerns about further tree buffering being removed from the Shearwater Flyer Trail; and
- Community feels as though the existing R-1 Zoning is most appropriate and would be beneficial for the current housing crisis in HRM.

A public hearing must be held by Harbour East Marine Drive Community Council before they can consider approval of the proposed LUB amendment. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within

the notification area shown on Map 2 will be notified of the hearing by regular mail. The HRM website will also be updated to indicate notice of the public hearing.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the MPS. Attachment A contains the proposed rezoning that would allow portions of four properties which gain access from Hines Road, to be zoned (I-1) Light Industry, under the Eastern Passage/Cow Bay Land Use By-law.

LUB Amendment Review

Attachment B provides an evaluation of the proposed rezoning in relation to relevant MPS policies. Of the matters reviewed to satisfy the MPS criteria, the following have been identified for more detailed discussion:

Industrial Designation

The Eastern Passage/Cow Bay MPS highlights the importance of industrial lands within the industrial designation, emphasizing that lands within the designation constitute the priority area for the development of general industrial facilities and supporting commercial and transportation uses. The industrial designation is applied to lands which defined the major industries in existence at the time of the adoption of the MPS as well as to those areas which are reasonable areas of expansion. Although the designation is intended to support industrial development, it is also meant to establish an appropriate transition to mitigate the conflict between general industrial development and the existing residential community. For this reason, the extension of general industrial zoning is not permitted outside of the designation. However, the MPS acknowledges that existing residential zoning is located within the industrial designation and references the potential transition of residential use to light industrial. The MPS establishes a light industry zone which allows light industrial uses through rezoning but limits future expansion beyond the boundaries of the Industrial designation.

Comparison of R-1 Zone and I-1 Zone

Under the existing R-1 Zone, the site could be developed with single family dwellings or open space uses.

Under the I-1 Zone, the site could be developed with a variety of light industrial, commercial, and open space uses, including:

- manufacturing, processing, service industries;
- marine, road, rail and pipe transportation uses;
- railway related uses;
- composting operations;
- cannabis production facilities;
- any activity related to the automotive trade except a salvage yard;
- commercial recreation uses;
- outdoor display courts;
- retail and wholesale stores;
- shopping plazas and malls;
- taxi and bus depots;
- parking lots;
- open space uses;
- institutional uses; and,
- assembly or warehousing operations which are not obnoxious which are conducted and wholly contained within a building.

It should be noted that the actual proposed uses for subject property are not yet known. Rezoning the property as proposed will allow any of the permitted uses in the I-1 Zone to be established on the property without any additional Council approval or further community engagement.

The following table provides a comparison of development requirements in the existing R-1 Zone and proposed I-1 Zone:

	R-1 (Single Family) Zone	I-1 (Light Industry) Zone
Lot Coverage Maximum	35%	70%
Maximum Building Height	35 feet	N/A
Front Yard Setback Minimum	20 feet	30 feet
Side Yard Setback Minimum	8 feet	30 feet (50 feet if abutting a residential property)
Rear Yard Setback Minimum	8 feet	30 feet (50 feet if abutting a residential property)
Landscaping Requirement	N/A	Landscaped buffer/fence required along rear/side lot lines abutting residential use. Minimum of twenty-five (25) feet and shall consist of either existing or replanted vegetation.

The I-1 (Light Industry) Zone is more permissive in terms of use, however provisions for building siting are stricter to reduce conflict with adjacent residential development. Main building height is not regulated under the I-1 Zone, maximum lot coverage is higher and outdoor storage is not regulated. However, regulations for additional setbacks and screening from abutting residential use and/or zoned lands are required for main buildings for industrial and/or commercial uses in the zone. For boundary lines of an I-1 zoned site abutting a residential property, the building setback minimum is 50 feet. Additionally, a landscaped buffer is required along rear and side yards abutting a residential use that is to be a minimum of 25 feet wide of existing or new vegetation or visual screening in the form of opaque fencing as a measure to reduce conflict with adjacent residential development. The setback from the boundary line adjacent to Shearwater Flyer Trail would be a minimum of 30 feet.

Wetlands and Site Drainage

The portion of the lands proposed to be re-zoned include an existing wetland and the Eastern Passage/Cow Bay LUB contains wetland buffer provisions which would be applicable to any proposed development on the subject site. This includes a watercourse setback of 30 metres or greater depending on slope, which are applied as a condition of permit approval. Should the developer propose watercourse alteration, permits are required from Nova Scotia Dept. of Environment.

The EC (Environmental Conservation) zoned portion of the lands are to remain zoned as such, and no alteration of wetlands in that zone are permitted under the Land Use By-law provisions.

Stormwater and drainage within and from the development would be subject to the HRM Municipal Design Guidelines and Halifax Water's Design and Construction Specifications. Pre-development and post-development storm water discharge values are required to balance. This would be reviewed at the building permit stage.

Traffic

A traffic study was reviewed by HRM Engineering. Some of the details reviewed included access to the site, existing traffic conditions, trip generation, visibility, driver stopping sight distance, and traffic impacts on surrounding streets. The findings in the traffic study concluded that new trips generated by the proposed re-zoning are expected to have a minimal impact on the existing traffic operations in the Hines Road corridor. HRM Engineering did not identify any issues with the information submitted in the traffic study.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposed rezoning is reasonably consistent with the intent of the MPS. The industrial designation allows the establishment of the Light Industry zone on the subject property as a transition zone between industrial and residential uses.

Furthermore, the LUB includes zoning requirements specifically intended to reduce potential land-use conflicts for any new industrial lands created pursuant to these MPS policies. These provisions include increased setbacks and screening from residential use. Additionally, consideration is given to the protection of watercourses and wetlands within the MPS and LUB. The Environmental Conservation Zone was applied to appropriate areas, and watercourse setbacks are established in the LUB for all other watercourses/wetlands.

Under these circumstances, staff advise the proposed rezoning is reasonably consistent with the intent of the industrial designation. Any use permitted in the zone would be required to meet the LUB provisions as a condition of permit issuance. Therefore, staff recommend that the Harbour East Marine Drive Community Council approve the proposed LUB amendment.

FINANCIAL IMPLICATIONS

There are no financial implications. The HRM cost associated with processing this planning application can be accommodated with the approved 2020-2021 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 may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed LUB amendments are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Harbour East Marine Drive Community Council may choose to refuse the proposed LUB amendment, and in doing so, must provide reasons why the proposed amendment does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East Marine Drive Community Council may choose to approve the proposed LUB amendment subject to modifications, and such modifications may require a supplementary staff report. A decision of Council to approve this proposed LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

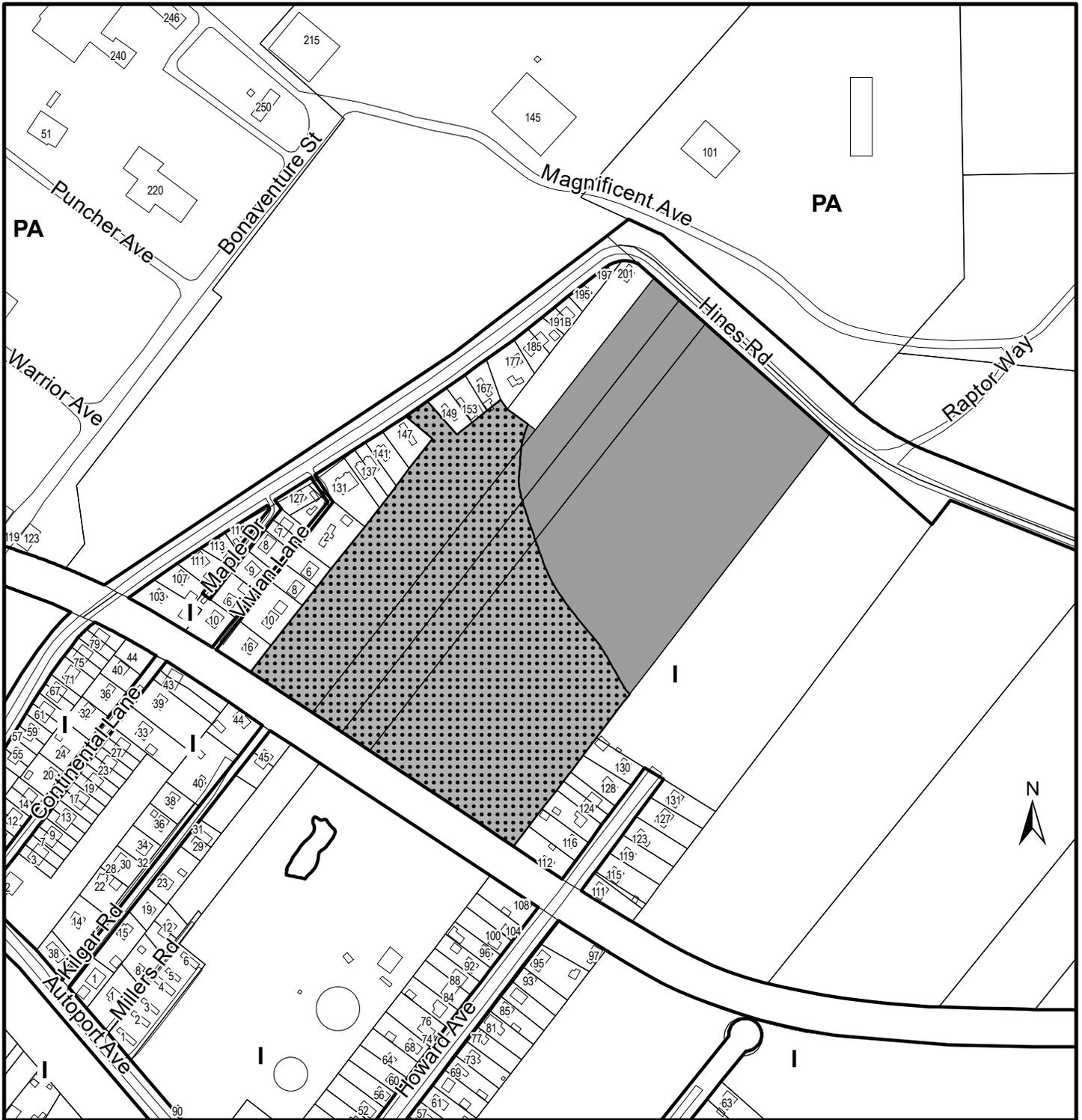
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area

Attachment A: Proposed Amendment to the Land Use By-law for Eastern Passage/Cow Bay
Attachment B: Review of Relevant MPS Policies
Attachment C: Public Information Meeting Summary

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Brittney MacLean, Planner II, 902.223.6154



Map 1 - Generalized Future Land Use

Hines Road,
Eastern Passage

HALIFAX

- Subject Properties
- Area Proposed to be Rezoned

Designation

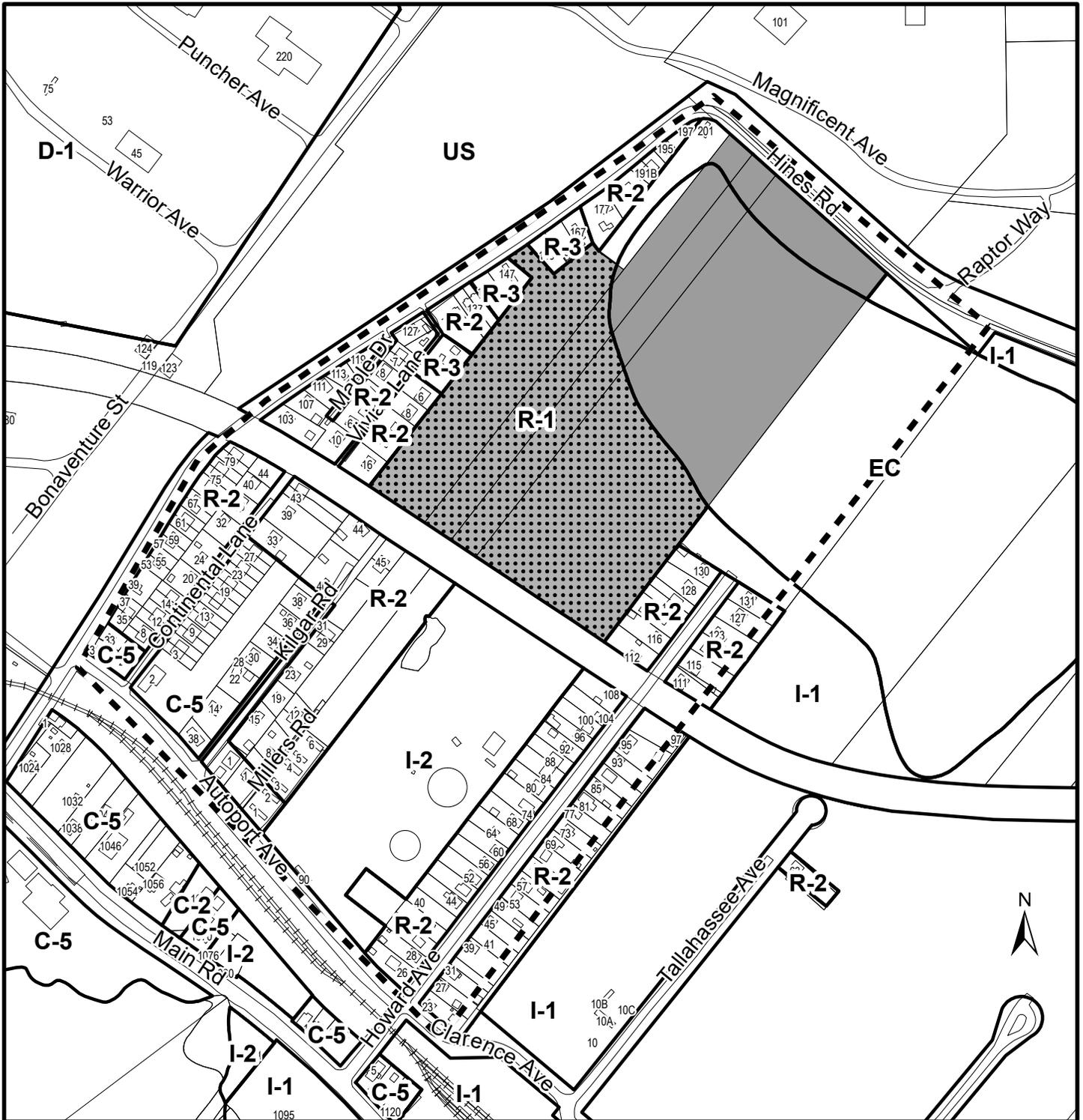
- I Industrial
- PA Plan Amendment



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.

Eastern Passage/Cow Bay
Plan Area



Map 2 - Zoning and Notification

Hines Road,
Eastern Passage

-  Subject Properties
-  Area Proposed to be Rezoned from R-1 to I-1 (Light Industry)
-  Area of Notification

Eastern Passage/Cow Bay
Land Use By-Law Area

Zone

- C-2 General Business
- C-5 Mixed Use
- D-1 DND
- EC Environmental Conservation
- I-1 Light Industry
- I-2 General Industry
- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-3 Mobile Dwelling
- US Urban Settlement

HALIFAX



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

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

ATTACHMENT A

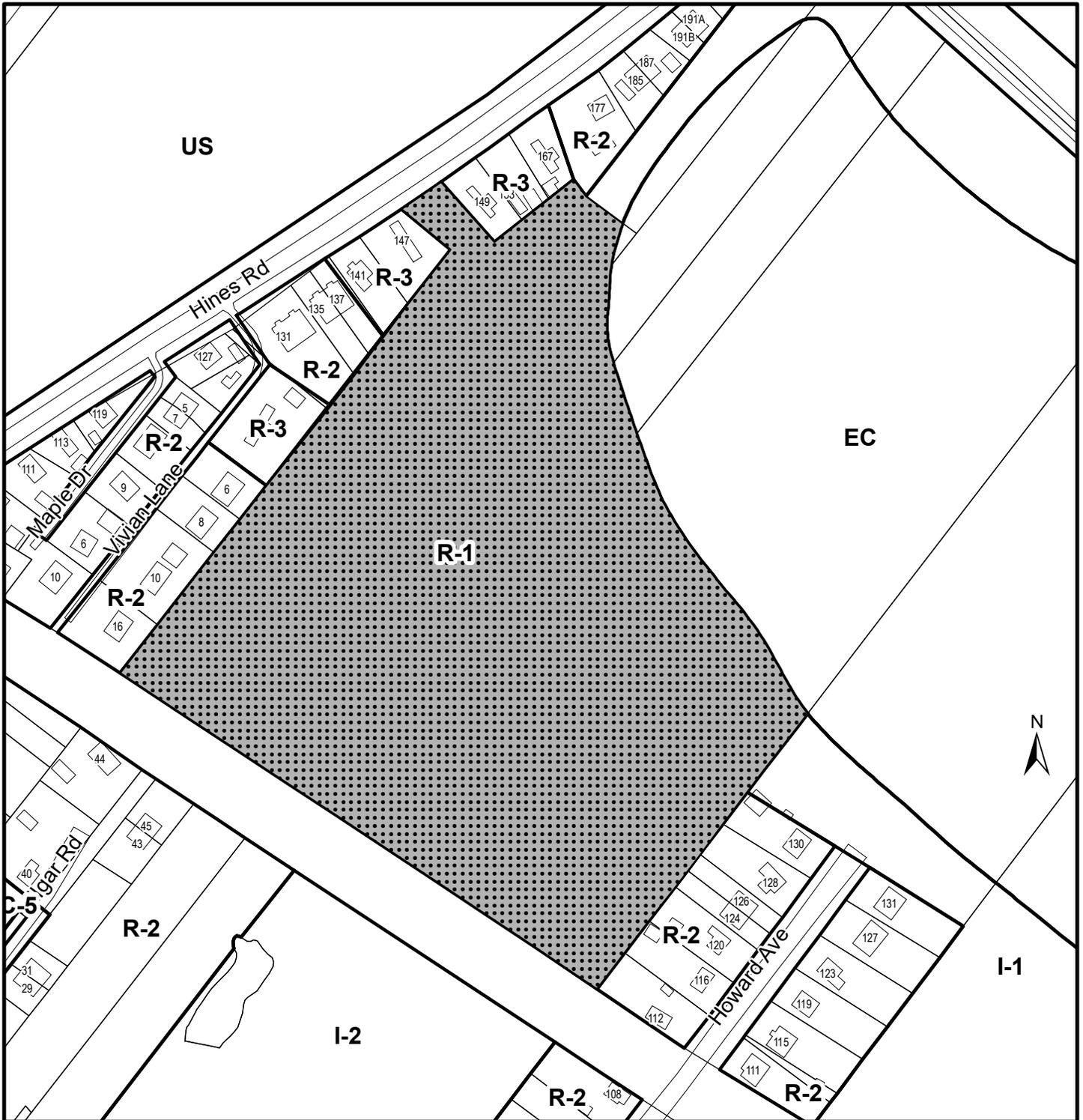
Proposed Amendment to the Land Use By-law for Eastern Passage/Cow Bay

BE IT ENACTED by the Harbour East Marine Drive Community Council of the Halifax Regional Municipality that the Land Use By-law for Eastern Passage/Cow Bay is hereby further amended as follows:

1. Amend Schedule A, the Zoning Map, by rezoning portions of the properties identified as PIDs 40103806, 40103780, 40103772, and 40103798, from the R-1 (Single Unit Dwelling) Zone to the I-1 (Light Industry) Zone, as shown on the attached Schedule A.

I, Iain MacLean, Municipal Clerk for the Halifax Regional Municipality, hereby certify that the above-noted by-law was passed at a meeting of the Harbour East Marine Drive Community Council held on [DATE], 201[#].

Iain MacLean
Municipal Clerk



Schedule A

Hines Road,
Eastern Passage

 Area to be rezoned from R-1
to I-1 (Light Industrial)

Eastern Passage/Cow Bay
Land Use By-Law Area

Zone

- C-5 Mixed Use
- EC Environmental Conservation
- I-1 Light Industry
- I-2 General Industry
- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-3 Mobile Dwelling
- US Urban Settlement

HALIFAX



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

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

Planning Policy Review	
Eastern Passage/ Cow Bay Municipal Planning Strategy	
Policy	Staff Comment
<p>IND-3 <i>In recognition of existing industrial use and the potential transition of residential use within the Industrial Designation, Council shall also establish a light industrial zone which permits the development of light and service industrial, commercial and community facility 2 zone uses, as provided for within Policy IMD-1.</i></p>	<p>The properties are designated industrial and abut both industrial and residential zones. This proposal illustrates a transition of residential use within the industrial designation to which the light industrial uses would be established.</p>
<p>IMD-1 <i>It shall be the intention of Council to establish an Industrial Mix Designation, as shown on Map 1 - Generalized Future Land Use. Within this Designation, Council shall establish a light industrial zone which reflects the intent of the Designation in providing for developments which may require extensive outdoor space, including commercial and for industrial developments which are not obnoxious and relate primarily to warehousing, storage and light manufacturing and service uses. This zone shall also permit community facility 2 zone uses and will contain requirements for increased separation and buffering from any adjacent residential land uses. As well, the zone will also provide for the exemption of rear or side yard requirements when such yards impede the accessibility of transportation related uses.</i></p>	<p>The light industrial zone is permitted within both the Industrial Designation and the Industrial Mixed Designation. A light industrial zone would reflect the intent of both designations. The light industrial zone contains requirements for increased separation and buffering from adjacent residential uses.</p>
<p>IM-11 <i>In considering development agreements and amendments to the land use by-law, in addition to all other</i></p>	<p>(a) See Policies IND-3 and IMD-1 above. Any use permitted in the light industrial zone would be subject to the requirements of the Land Use By-law, which</p>

<p><i>criteria as set out in various policies of this planning strategy, Council shall have appropriate regard to the following matters:</i></p> <p><i>(a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;</i></p>	<p>have been written to be consistent with the intent of the MPS policy.</p>
<p><i>(b) that the proposal is not premature or inappropriate by reason of:</i></p> <p><i>(i) the financial capability of the Municipality to absorb any costs relating to the development;</i></p> <p><i>(ii) the adequacy of sewerage and water services;</i></p> <p><i>(iii) the adequacy or proximity of school, recreation or other community facilities;</i></p> <p><i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i></p> <p><i>(v) the potential for damage to or for destruction of designated historic buildings and sites</i></p>	<p>(i) There is no cost to the Municipality related to this proposed development as all costs will be borne by the developer.</p> <p>(ii) The site is within the HRM servicing boundary. Developments may be required to prove capacity exists in the local wastewater/combined system at the building/development permit stage. The requirement for wastewater capacity analysis is flagged at the pre-application stage to make the applicant aware their development may require upgrades to the local wastewater or combined system.</p> <p>(iii) Schools in the area include Tallahassee Community Elementary School, Seaside Elementary School, Eastern Passage Education Centre, and Island View High School. HRM Recreation Centre is located at the Tallahassee School, as well as recreation fields. However, the proposal is for industrial use, so although there are adequate schools and facilities, the proposal will not generate the need for use of them.</p> <p>(iv) HRM Engineering has not identified any concerns with the adequacy of road networks.</p> <p>(v) N/A</p>
<p><i>(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></p> <p><i>(i) type of use;</i></p> <p><i>(ii) height, bulk and lot coverage of any proposed building;</i></p> <p><i>(iii) traffic generation, access to and egress from the site, and parking;</i></p> <p><i>(iv) open storage;</i></p>	<p>(i) The Light Industry zone regulates the uses permitted consistent with the intended uses per the industrial designation. The type of use has not been confirmed by the applicant. The I-1 zone lists an array of uses including industrial, commercial, and community use types.</p> <p>(ii) The Light Industry Zone regulates the lot coverage at a maximum of 70% and regulated front, rear, and side yard setbacks. Main building height is not regulated under the Zone, however a number of regulations for additional setbacks and screening from abutting residential use and/or zoned lands are required for main buildings in the LUB for industrial and commercial uses in the zone (ie. building setbacks of</p>

<p><i>(v) signs; and</i></p> <p><i>(vi) any other relevant matter of planning concern</i></p>	<p>50 ft from side/rear abutting residential use, and visual screening along side/rear lot lines).</p> <p>(iii) Site parking would be subject to the parking requirements of the LUB, with appropriate requirements depending on the use proposed. A traffic study was reviewed by HRM Engineering, who has not identified any issues with traffic generation, access to the site, or parking.</p> <p>(iv) The LUB does not regulate open storage on the site, however screening is required along all property lines abutting residentially used lots.</p> <p>(v) Signage would be subject to the sign requirements of the LUB, which regulates the number of signs, height, type, and setbacks from property lines to reduce conflict with adjacent properties.</p> <p>(vi) N/A</p>
<p><i>(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 to flooding.</i></p>	<p>The site has watercourses and wetlands. These areas would be subject to the watercourse setbacks and buffers requirements under the LUB through as-of-right applications. Stormwater and drainage within and from the development will be subject to the HRM Municipal Design Guidelines and Halifax Water's Design and Construction Specifications.</p> <p>Pre-development and post-development storm water discharge values are required to balance. This would be reviewed at the building permit stage.</p> <p>The property owner must apply and be granted permits from Nova Scotia Dept of Environment for any alteration to wetlands.</p>



Attachment C: Public Information Meeting Summary

Virtual Public Information Meeting Case 22651

The following does not represent a verbatim record of the proceedings of this meeting.

Wednesday, December 9, 2020
6 p.m.
Virtual

STAFF IN

ATTENDANCE: Brittney MacLean, Planner, Planner II, HRM Planning
Maggie Holm, Principal Planner
Tara Couvrette, Planning Controller, HRM Planning
Councillor Becky Kent

ALSO IN

ATTENDANCE: Chris Markides – Presenter for Applicant, Zap
Jamie Copeland – Traffic Engineer
Laura Masching – Armco
Marc Ouellet - Armco

PUBLIC IN

ATTENDANCE: Approximately: 9

1. Call to order and Introductions – Brittney MacLean, Planner

Case 22651: Application by Zzap Consulting Inc, on behalf of the property owner, to rezone portions of lands fronting on Hines Road (PIDs 40103806, 40103780, 40103772, and 40103798), Eastern Passage, from R-1 (Sing Unit Dwelling) Zone to I-1 (Light Industry) Zone of the Eastern Passage/ Cow Bay Land Use By-law.

Ms. MacLean introduced herself as the Planner and Facilitator guiding ZZap Consulting's' application through the planning process. They also introduced other staff members, and the presenter from ZZap. The area Councillor for District 3, Becky Kent, was also in attendance online.

2. Presentations

2a) Presentation by HRM Staff – Brittney MacLean

Ms. MacLean's presentation included information on the following:

- (a) the purpose of the meeting including to share information and collect public feedback about the proposal - no decisions were made at this meeting;
- (b) the role of HRM staff through the planning process;
- (c) a brief description of the application including site context, proposed site plan, policy overview, zone comparison and, policy consideration;
- (d) and status of the application.

2b) Presentation by Chris Markides – Applicant

Mr. Markides presented details about ZZap's proposal including the proposed area for rezoning, the opportunities for business and growth for the area, and what is being considered for the site.

3. Questions and Comments

Ms. MacLean welcomed attendees to ask questions to staff and the presenters and provide their feedback, including what they liked and disliked about the proposal. There were two ways in which the public could provide comments: (1) some attendees signed up in advance of the meeting to speak and were connected to the meeting via phone; and (2) other attendees that were connected via Teams webcast were then called upon to provide their comments and questions.

(1) Speakers Connected via Phone

Mr. Holms invited the speakers from the public, one at a time, to unmute themselves and provide their comments:

- (i) There was only one person connected via phone and choose not to speak. 

(2) Questions from people connected via MS Teams

Ms. Holm invited the speakers from the public, one at a time, to unmute themselves and provide their comments:

- (i) Dave Phelps, Eastern Passage, Howard Ave: Stated after speaking with local residents the consensus is, they are against this rezoning. Rezoning this area from R1 to light industrial the four properties in question have no access onto the eastern side, I call it a Pines Rd, nor on the western side. The western side is the Trans Canada Trail and Hines Rd. Because you can't come across the RC conservation zone the only access would be through a purchased property facing onto Hines Rd. The four properties in question represent about 9 hectares on total with only 2.8 hectares that could actually be developed. Right now, on the North and South sides there are 30 meters of natural forest that was left by the previous owner. They also placed berms (from grubbed off material) to the North and South sides that are 5 meters high, 10 meters wide and 100 meters long. Now the properties at the far South end have been cleared of the berm and the lots have been graded and are presently being used as overflow for the Auto Port. The biggest concern is that the owner is not making any recommendation as to which of the many uses, they are intending for this property. There is nothing to tell us that this would be done in the best interest of the residents. The available amount of property that is there right now is about 2.2 hectares or 21% of the total area. As for the traffic report the only issue they have is with the main road and the first vertical crest curve having a 50% slope and then you go up to another grade on a 3% slope. When you are at the top of that people are going 70-75 km/h which doesn't leave a lot of space from the proposed access point. There are 2-3 construction companies along Caldwell Rd. which use Hines Rd. to bypass part of Eastern Passage so there is a lot of truck traffic going at high speeds down Hines Rd. and Hines Rd. is anything but a collector Rd. The pavement markings are poor, there are no shoulders, the gutters are deep. If you are going to make it into a collector Rd there is major updating that needs to be done. If there is going to be a processing building put in this location there would have to be suitable water and sewer, as well as access for transit and fire trucks. Because of the 2 – 2.3 hectares of wetland that was drained and filled at the far east end of the property we believe that we should get the allowance of leaving the current 2.2 hectares intact as they are or even extending the EC Zone to cover that land. A full write-up was provided to Brittney of my concerns to be included in the report to council.
- (ii) Rebecca Jamieson, Eastern Passage:
My property abuts the Shearwater Flyer Trail and I would like to voice my opposition this the rezoning. I am mostly concerned about environmental impacts. I have a drainage ditch that comes from the property through mine. Would there be any protection for that sort of thing, and will there be any environmental assessment impact studies done?

Ms. MacLean advised that as far as drainage protection and environmental studies go, they are done at the permitting stage.

Chris Markides stated that as far as storm water management is concerned – the pre and post slows have to be equal. There can't be any increase in storm water runoff.

(iii) Erin Dobson, Eastern Passage, Hines Rd.:

I have lived there for 2.5 years and, have noticed that in those 2.5 years, the increase in traffic and will be greatly affected by the increase in traffic. 25% of the traffic are larger vehicles, it isn't just residential vehicles. This is the biggest concern with light industrial work. The traffic study was done at 11am on a Friday and showed 100 vehicles per hour and they said that was much. As a person who lives on the street, I think 100 vehicles an hour is an extraordinary amount when you are trying to get out of your driveway. When you take into consideration there are no sidewalks on Hines Rd. and our children are walking down to the school bus, this isn't very safe. Mr. Phelps is correct about the condition of the road and the ability of this road to handle that amount of traffic is limited. My biggest concern is not knowing what is going to be there. It makes it hard to consider being positive towards this request.

(iv) Dave Phelps, Eastern Passage:

Regarding large vehicles, this is a concern I heard a lot when speaking with people about this proposal. Also, the point about not knowing what was going to be put there, because the owner has not made any specific recommendations, it is just open ended. Rezoning is not appropriate, and we should reject it out of hand. The watershed has defiantly changed since the owner clear cut the land and took off the berm. Will the screening on the fencing be maintained, if that is what they choose to use as a buffer? The natural vegetation would be preferable, and 5 meters isn't very much, we have 30 meters now of trees and that is really nice. It would be nice if somebody said I want to leave all the trees and the fill and just work with the area that is there now. Also has concerns around traffic and this being used as a collector road, which it is not. How did permits get approved for destroying 2.2 hectares of wetlands and make it into a parking lot?

Ms. MacLean stated that any concerns with screening being maintained, can be dealt with through 311. You would be calling the development department and they are the ones who issue the permits and they would follow up with any of your concerns. As far a clearing of the land unless there is a building permit in there are no permits required for clearing of land until they start construction, Maggie is this correct? Also, has there be changes recently to the lot grading bylaws? As far as the wetlands – you have the EC Zone, Environmental Conservation Zone, and these wetlands cannot be infilled or remediated. The wetlands and other places outside of this zone, an applicant or property owner, goes through an application process with the Department of Environment and they are the ones who would review that permit for infill and we require the applicant to provide this permit from the Department of Environment at the permitting stage.

Ms. Holm – You are pretty close, that would have been the case for anything that happened historically. Recently council has adopted a new bylaw and unfortunately it is so new that I don't have all the specifics yet. It is Bylaw G-200 and you can view the information pertaining to this Bylaw on HRM's website.

(v) Danielle Dill, Eastern Passage, Hines Rd.:

I am in the EC Zone and my neighbour has been here for 50 years and he stated that his backyard is very flooded because of the development in the area. It caused flooding into the wetlands, so the extra water is not being absorbed by the tree roots. There is no draining anywhere and therefore it's causing flooding within the backyards here. Is there anything that can be done to prevent this from happening?

Ms. MacLean stated that when they came in to get there permits, they would be required to provide a stormwater management plan which would be reviewed by the Engineering

Department. If there are issues, then you could call 311 and they would direct any concerns to the Engineering Department, and they would be able to follow up on any kind of flooding concerns.

(vi) Councillor Becky Kent:

Thanked everyone for participating tonight. Wanted to know the December 23rd cut-off, is that for you to be able to draw a line to write up your report?

Ms. MacLean – Yes, Although the cut-off to have your comments/concerns added into the staff report would be December 23, 2020, I am always available to answer any questions/concerns people have ever after that date.

Councillor Becky Kent: asked the applicant what the condition of said lands are now.

Mr. Markides – advised the yellow area in the slide (slide 11) is the cleared lands with berms.

Councillor Becky Kent: Also wanted to know how they build a road with an EC Zone so close on the land.

Ms. MacLean explained where the road would go and that if infilling would be done outside of the EC Zone, they would require a permit from Department of Environment.

Councillor Becky Kent: Watershed concerns in this area or very real. Look carefully at these concerns as they have been here for a very long time. The volume of truck and traffic in this area is significant. Not knowing what the intended use is for this area and the thought of increased traffic, I hope you would take another look at that. Lastly, the residents in this area are heavily surrounded by industrial use and it is not surprising that we are hearing feedback about concerns with this type of development. Traffic going down Hines Rd. and traffic going down Auto Port Rd. is already struggling. We are in a housing crisis in NS and in our community. Can this not be something that is considered as a good use for this area?

Dave Phelps – explained slide 11 – what it shows and where everything is located. As far the residential area, absolutely not. When Armco tried to put in the development in behind us, who would want to live here, it is on the extreme edge of Eastern Passage. If you want to develop it as all R-1 properties go ahead. But not what they were proposing that would have brought in over 1000 people, that is totally unacceptable. Especially over the last few years of development down in Eastern Passage where they didn't put any apartment buildings or condo type of buildings for people to rent.

(vii) Rebecca Jamieson, Eastern Passage:

I would just like to say to the councillors suggestions, I would support a residential development there. As Mr. Phelps said, it would have to be R-1 just because I don't think it is practical to have any sort of dense residential development there where there is no access to shops or services close by. Lots of people would be living in an area that if they didn't have their own transportation, they would have a hard time getting around.

(viii) Erin Dobson, Eastern Passage:

The high density would be very difficult up here and would continue to contribute to the high volumes of traffic that we are already seeing on this road. The first thing we would have to do is put sidewalks out there so that people could get down to Pleasant St. to catch the bus. The road is especially unsafe in the winter with no sidewalks. If it is an R-1 that would be great but there would still be a lot of issues with traffic. The residents of this road cannot handle a high-density development and the number of extra vehicles it would bring. There is very little policing of the speeding that is going in here now so if we added 1000 cars it would be extraordinary. While I would support a certain level of residential homes there would have to be improvements made to the infrastructure.

- (ix) Jamie Copeland, Traffic Engineer:
Spoke to the traffic study that was done.

Councillor Becky Kent: had questions about the former driver from the Auto Port. Was that former driver a shuttle driver and how long ago was this person a driver? If they are a shuttle driver, did you also speak with anyone in the hauler industry who are the large auto transporters. Were they also included in your traffic analysis?

Mr. Copeland: provided insight into this and advised the info was relevant and current that was provided. Also spoke to the large transport trucks.

- (x) Dave Phelps, Eastern Passage:
Stated they believe the stopping sight distance is the proper parameters to use for making judgements about the driveway. However, they suspect that they may have done it using just a standard motor vehicle. They may want to give consideration to stop and sight distance for a fully loaded rig coming from wither side down Hines Rd. All the auto haulers get together at the bottom of Howard Ave. and all go to Tim's at the same time. The auto haulers are mostly an outbound device not and inbound device. Any operation that is in there would have to make allowances for a full-size fire engine.

Jamie Copeland spoke to sight distance

4. Closing Comments

Ms. MacLean thanked everyone for their participation in the meeting.

5. Adjournment

The meeting adjourned at approximately 7:54 p.m.

**AMENDED
ORDER**

M10141

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL] by ARMCO CAPITAL INC. from a Decision of Harbour East Marine Drive Community Council to the refusal to approve a rezoning application for properties identified as PIDS 40103806, 40103780, 40103772, and 40103798, and fronting on Hines Road, Eastern Passage/Cow Bay, Nova Scotia

BEFORE  Stephen T. McGrath, LL. B., Member

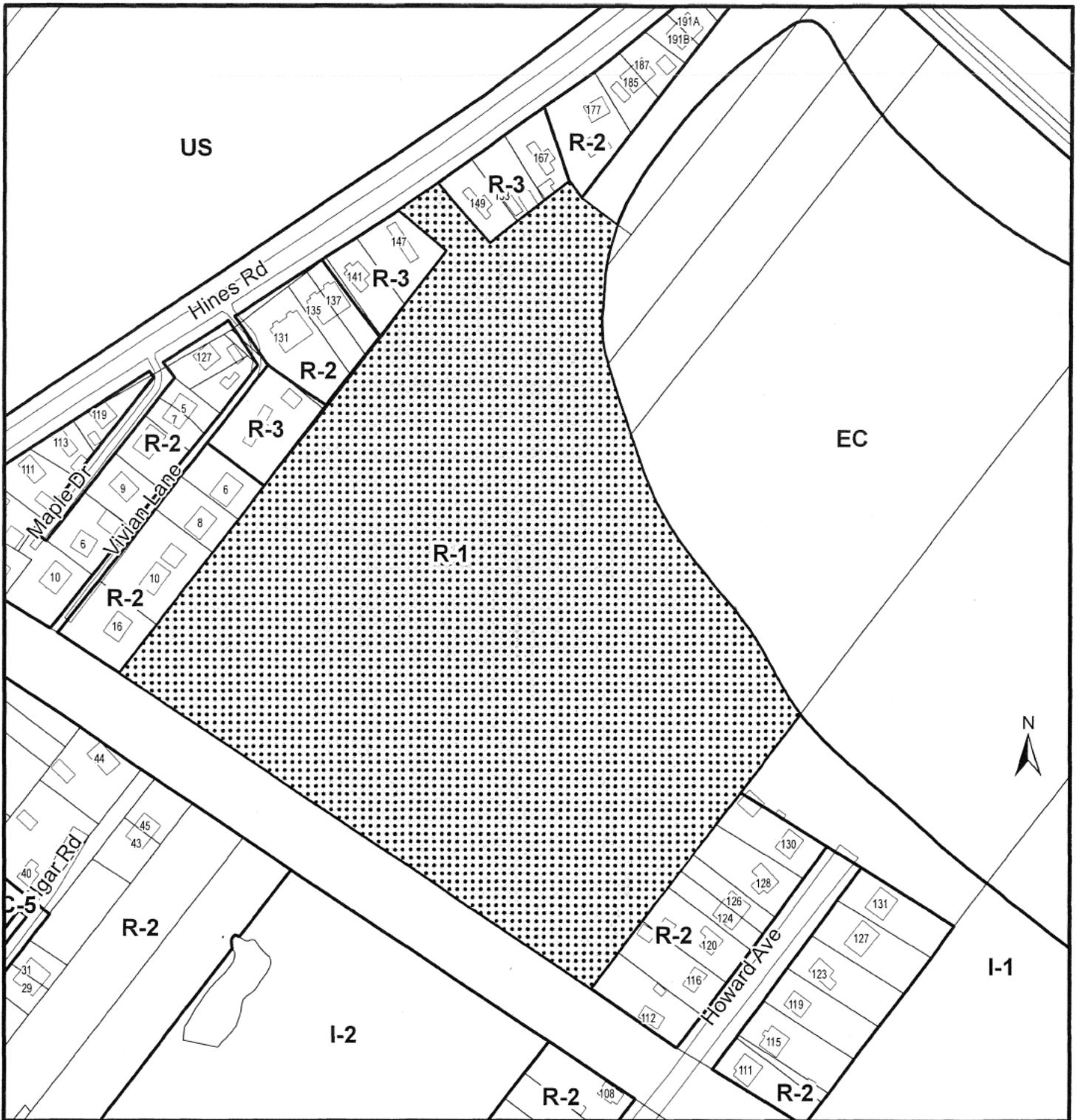
AMENDED ORDER

The Board issued its decision on December 1, 2021.

The Board allows the appeal and orders the Community Council to amend the Land Use By-law for Eastern Passage/Cow Bay by amending the Zoning Map to rezone portions of the properties identified as PIDs 40103806, 40103780, 40103772, and 40103798, from the R-1 (Single Unit Dwelling) Zone to the I-1 (Light Industry) Zone, as shown in the attached Schedule A.

DATED at Halifax, Nova Scotia, this 2ND day of December, 2021.


Clerk of the Board

Schedule A

Hines Road,
Eastern Passage

 Area to be rezoned from R-1
to I-1 (Light Industrial)

Eastern Passage/Cow Bay
Land Use By-Law Area

Zone

- C-5 Mixed Use
- EC Environmental Conservation
- I-1 Light Industry
- I-2 General Industry
- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-3 Mobile Dwelling
- US Urban Settlement

HALIFAX

0 20 40 60 80 m



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

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

DECISION

**2021 NSUARB 147
M10141**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **ARMCO CAPITAL INC.** from a Decision of Harbour East Marine Drive Community Council to the refusal to approve a rezoning application for properties identified as PIDS 40103806, 40103780, 40103772, and 40103798, and fronting on Hines Road, Eastern Passage/Cow Bay, Nova Scotia

BEFORE: Stephen T. McGrath, LL.B., Member

APPLICANT: **ARMCO CAPITAL INC.**
Kevin Latimer, Q.C.
Kelcie N. White, Counsel

RESPONDENT: **HALIFAX REGIONAL MUNICIPALITY**
E. Roxanne MacLaurin, Counsel

**FINAL SUBMISSIONS
DATE:** October 18, 2021

DECISION DATE: **December 1, 2021**

DECISION: **The appeal is allowed**

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I INTRODUCTION

[1] Armco Capital Inc., through its consultant, ZZap Consulting Inc., applied to the Halifax Regional Municipality to rezone certain properties the company owns in Eastern Passage (the Subject Properties). Armco requested that the current R-1 (Single Unit Dwelling) Zone that applies to the Subject Properties be amended to the I-1 (Light Industry) Zone.

[2] HRM's planning staff reviewed Armco's application and prepared a report for the Harbour East-Marine Drive Community Council recommending that the Community Council approve the application. The Community Council, however, denied the application.

[3] The reasons given to Armco for the denial were: the requested rezoning was not compatible with adjacent residential uses; there were environmental concerns relating to stormwater and the impact of potential industrial uses on nearby wetlands and watercourses; there were concerns about traffic congestion and pedestrian safety; and there was uncertainty because Armco did not specifically say how it intended to use the Subject Properties if they were rezoned. Armco appealed the decision to the Nova Scotia Utility and Review Board. The Board finds that the Community Council's decision does not reasonably carry out the intent of its Municipal Planning Strategy.

[4] The Subject Properties are within the Industrial Designation on HRM's Generalized Future Land Use Map in its *Municipal Planning Strategy for Eastern Passage/Cow Bay* (Municipal Planning Strategy). This is a priority area for the development of general industrial facilities and supporting commercial and transportation uses. The Municipal Planning Strategy contemplates existing residential uses within this

designation may eventually be converted to the prioritized uses. It also requires controls to mitigate land-use conflicts between residential and industrial uses, which are found in HRM's *Land Use By-law for Eastern Passage/Cow Bay* (Land-use By-law). There is nothing in the evidence provided to the Board in this appeal to suggest the measures that HRM specifically intended to manage land-use conflicts will be inadequate.

[5] Similarly, HRM's Land-use By-law and other municipal legislation include specific measures to protect wetlands and watercourses from development and to manage stormwater. Provincial legislation also applies. There is nothing in the evidence provided to the Board in this appeal to suggest these measures would be inadequate either.

[6] Regarding the traffic concerns cited by the Community Council, the Board weighed the evidence presented to it in this appeal and finds, on the balance of probabilities, that the proposed rezoning would have minimal impact on commercial and truck traffic, congestion and potential pedestrian safety issues. As such, there was no basis for the Community Council to cite such concerns as a reason for denying the application.

[7] Lastly, there is nothing in the Municipal Planning Strategy that required Armco to specify an intended use for the Subject Properties. Given the nature of a rezoning application, any use allowed in the zone would be open to Armco or any future owner.

[8] The Board allows Armco's appeal.

II ISSUE

[9] The Board must decide whether Armco has shown, on a balance of probabilities, that the Community Council's decision to deny the requested rezoning of the Subject Properties from R-1 (Single Unit Dwelling) to I-1 (Light Industry) does not reasonably carry out the intent of the Municipal Planning Strategy.

III BACKGROUND

1. Board Jurisdiction

[10] Municipalities in the Province of Nova Scotia, through the adoption of municipal planning strategies and land-use by-laws, are the primary authorities for planning within their boundaries. Planning decisions may be appealed to the Board in certain circumstances, but the Board may only allow an appeal from a decision of a municipal council if the Board finds the decision does not reasonably carry out the intent of the municipality's planning strategy.

[11] In the case at hand, Armco is appealing the Community Council's refusal to amend the Land-use By-law. Under s. 30(3) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39, and Administrative Order Number 48, the *Community Council Administrative Order*, the Community Council may amend HRM's Land-use By-law. In doing so, the Community Council stands in the place of HRM Council, and Part VIII of the *HRM Charter*, which deals with planning and development, applies to its decisions.

[12] The Board's authority in this appeal is set out in s. 265(1)(a) of the *HRM*

Charter:

265 (1) An aggrieved person or an applicant may only appeal

(a) an amendment or refusal to amend a land-use by-law, on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy;

...

[13] The Board's remedial powers, and restrictions on the exercise of these powers, are prescribed in s. 267 of the *HRM Charter*:

267 (1) The Board may

(a) confirm the decision appealed from;

(b) allow the appeal by reversing the decision of the Council to amend the land-use by-law or to approve or amend a development agreement;

(c) allow the appeal and order the Council to amend the land-use by-law in the manner prescribed by the Board or order the Council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

...

(2) The Board may not allow an appeal unless it determines that the decision of the Council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.

[14] The principles governing planning appeals have a long history of consideration by the Nova Scotia Court of Appeal. The role of a municipal council when making a planning decision, and the Board when deciding a planning appeal, was succinctly summarized by Fichaud, J. A. in *Heritage Trust of Nova Scotia v. AMK Barrett Investments Inc.*, 2021 NSCA 42:

[23] I will start by summarizing the roles of Council, in assessing a prospective development agreement, and the Board on a planning appeal.

[24] In *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. No. 50, 1994 NSCA 11 [*"Heritage Trust, 1994"*], Justice Hallett set out the governing principles:

[99] ... A plan is the framework within which municipal councils make decisions. The Board is reviewing a particular decision; it does not interpret the relevant policies or by-laws in a vacuum. In my opinion the proper

approach of the Board to the interpretation of planning policies is to ascertain if the municipal council interpreted and applied the policies in a manner that the language of the policies can reasonably bear. ... There may be more than one meaning that a policy is reasonably capable of bearing. This is such a case. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact on the decision. ... This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions. ...

[100] ... Ascertaining the intent of a municipal planning strategy is inherently a very difficult task. Presumably that is why the Legislature limited the scope of the Board's review.... The various policies set out in the Plan must be interpreted as part of the whole Plan. The Board, in its interpretation of various policies, must be guided, of course, by the words used in the policies. The words ought to be given a liberal and purposive interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are made. ...

...

[163] ... Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact on such decisions. ... Neither the Board nor this Court should embark on their review duties in a narrow legalistic manner as that would be contrary to the intent of the planning legislation. Policies are to be interpreted reasonably so as to give effect to their intent; there is not necessarily one correct interpretation. This is implicit in the scheme of the *Planning Act* and in particular in the limitation on the Board's power to interfere with a decision of a municipal council to enter into development agreements.

[25] These principles, enunciated under the former *Planning Act*, continue with the planning scheme under the *HRM Charter*. *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, para. 24, summarized a series of planning rulings by this Court since *Heritage Trust*, 1994:

[24] ... I will summarize my view of the applicable principles:

(1) ... The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.

(2) The appellant to the Board bears the onus to prove facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.

(3) The premise, stated in s. 190(b) of the *MGA* [*Municipal Government Act*], for the formulation and application of planning policies is that the municipality be

the primary steward of planning, through municipal planning strategies and land use by-laws.

(4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. ...

(5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.

(6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.

(7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. ...

(8) The intent of the MPS is ascertained primarily from the wording of the written strategy. ...

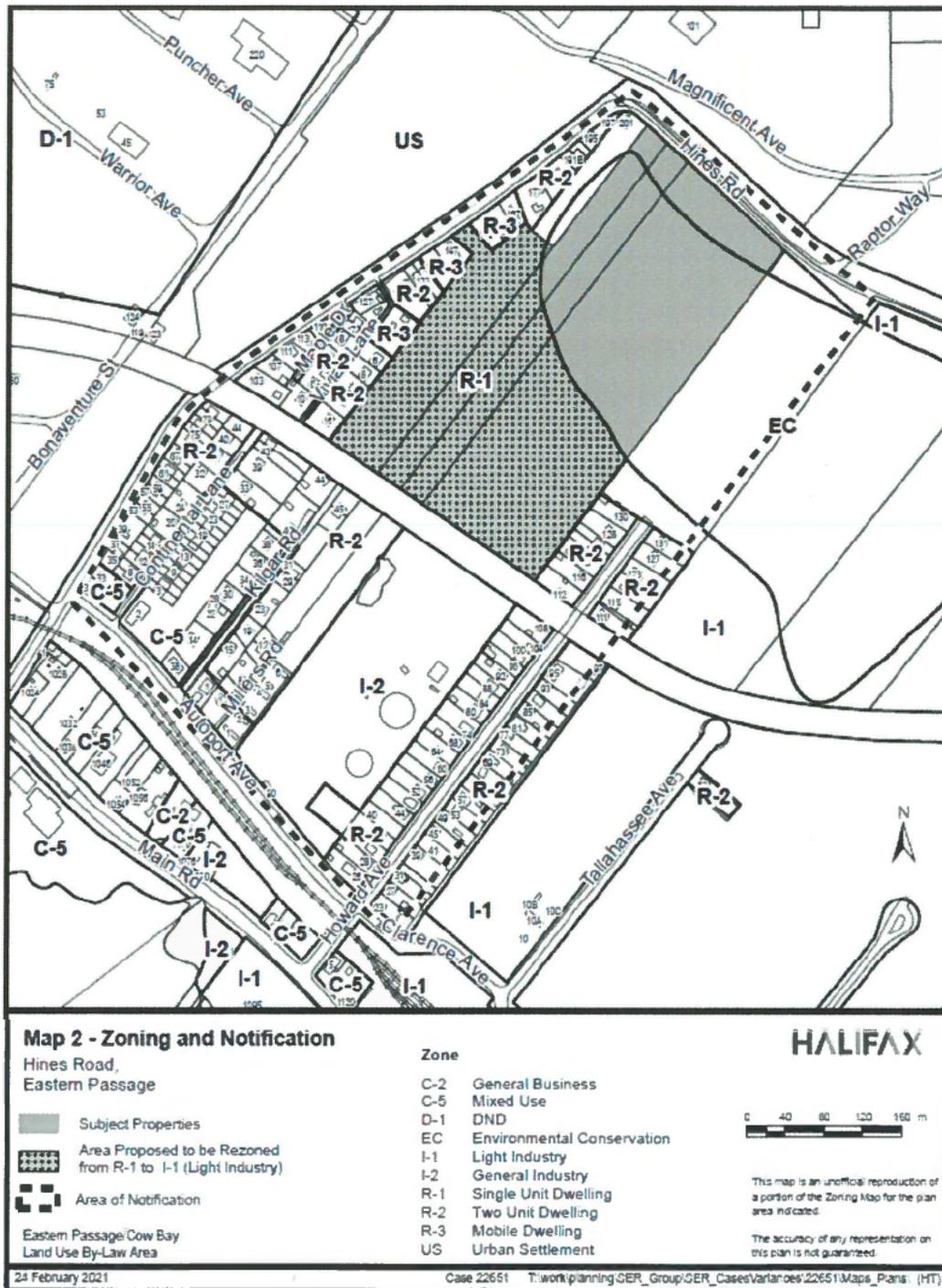
[15] In considering the intent of a municipal planning strategy, the Board applies the principles of statutory interpretation adopted by the Court of Appeal, as well as the provisions of s. 9(1) and s. 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235.

2. Rezoning Application

[16] The Subject Properties in Eastern Passage are comprised of four adjacent legal parcels that have a total area of nearly 25 acres and are laid out in rectangular strips between Hines Road at the northeast end and the Shearwater Flyer Trail at the southwest end.

[17] Three of the parcels run the entire distance between the road and the trail. The remaining parcel is bounded by the trail to the southwest, but its northeastern boundary is set back from Hines Road. An extension of this parcel along its northwest boundary connects it to Hines Road.

[18] The following map from HRM's planning staff report to the Community Council for Armco's application is provided to help understand the configuration of the Subject Properties and surrounding properties. The map shows the Subject Properties in dark grey, as well as the current zoning and the notification area for Armco's application.



[Exhibit A-2, p. 80]

[19] The Subject Properties are currently undeveloped. There are wetlands in the northeastern half. Parts of each parcel are zoned R-1 (Single Unit Dwelling), and parts are zoned EC (Environmental Conservation). The EC Zone restricts development,

limiting those parts of the Subject Properties to passive recreation and conservation uses. The R-1 Zone allows residential uses (single unit dwellings), some day care facilities, certain home service and business uses, and open space uses.

[20] There is residential development along the northwest side of the Subject Properties and the part of the southeast boundary closest to the Shearwater Flyer Trail. These are single family, mobile and two-unit homes.

[21] In its Land-use By-law amendment application, Armco asked HRM to rezone about 14 acres of the land in the R-1 Zone at the southwest end of the Subject Properties to the I-1 (Light Industry) Zone (the dotted area on the map reproduced above). The Light Industry Zone allows the following industrial, commercial and community uses:

Industrial Uses

Any manufacturing, processing, assembly or warehousing operation which is not obnoxious and which is conducted and wholly contained within a building;
Service industries;
Marine, road, rail and pipe transportation uses;
Railway related uses
Composting operations
Cannabis production facilities

Commercial Uses

Any activity related to the automotive trade except a salvage yard;
Commercial recreation uses;
Outdoor display courts;
Retail and wholesale stores;
Shopping plazas and malls;
Taxi and bus depots;
Parking lots.

Community Uses

Open space uses;
Institutional uses.

[Exhibit A-3, p. 208]

[22] Armco's application to HRM did not identify a specific intended use for the Subject Properties. If approved, Armco's application would have allowed the Subject Properties to be used in any way permitted in the Light Industry Zone.

[23] The Subject Properties are within the "Industrial Designation" shown on the Generalized Future Land Use Map in the Municipal Planning Strategy. Policy IND-1 of the Municipal Planning Strategy addresses HRM Council's intention for this designation:

IND-1 It shall be the intention of Council to establish an Industrial Designation, as shown on Map 1 - Generalized Future Land Use. Lands within the Designation shall constitute the priority area for the development of general industrial facilities and supporting commercial and transportation uses.

[Exhibit A-3, p. 109]

[24] Policy IND-3 specifically directs Council to establish a light industrial zone to allow certain uses within the Industrial Designation:

IND-3 In recognition of existing industrial use and the potential transition of residential use within the Industrial Designation, Council shall also establish a light industrial zone which permits the development of light and service industrial, commercial and community facility 2 zone uses, as provided for within Policy IMD-1.

[Exhibit A-3, p. 109]

[25] Policy IMD-1 supplies more details about the uses allowed in the light industrial zone:

IMD-1 It shall be the intention of Council to establish an Industrial Mix Designation, as shown on Map 1 - Generalized Future Land Use. Within this Designation, Council shall establish a light industrial zone which reflects the intent of the Designation in providing for developments which may require extensive outdoor space, including commercial and for industrial developments which are not obnoxious and relate primarily to warehousing, storage and light manufacturing and service uses. This zone shall also permit community facility 2 zone uses and will contain requirements for increased separation and buffering from any adjacent residential land uses. As well, the zone will also provide for the exemption of rear or side yard requirements when such yards impede the accessibility of transportation related uses.

[Exhibit A-3, p. 107]

[26] HRM's planning staff recommended that the Community Council approve Armco's application. In making this recommendation, planning staff considered Policy IND-3 and Policy IMD-1. Planning staff also considered Policy IM-11, which directs the Community Council to think about certain things when considering a development agreement or a Land-use By-law amendment:

IM-11 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 planning strategy, Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this planning strategy 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 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) the 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 to flooding.
- (e) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", 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.

[Exhibit A-3, p. 120]

[27] The staff report also highlighted concerns expressed by the community. Residents expressed concern that more industrial uses in the area would negatively affect their sense of community and neighbourhood. There were also concerns that existing

screening or buffering of the Subject Properties from nearby residences and the Shearwater Flyer Trail would be removed.

[28] Members of the community also expressed concern about environmental issues to HRM's planning staff. There were concerns about the impact of industrial uses on wetland areas and the watershed, as well as private drainage and flooding concerns.

[29] Nearby residents voiced concerns about the volume and speed of traffic on Hines Road and the potential for larger vehicles to be using the road. Residents noted that the configuration of Hines Road in the area included slopes and sharp bends, and that there were no shoulders or sidewalks.

[30] HRM's planning staff also heard concerns about the fact that Armco had not specified an intended use for the Subject Properties. Nearby residents told HRM's planning staff that the existing R-1 Zone was the most appropriate and that the existing zoning would be the most beneficial given the current housing crisis in HRM.

[31] Ultimately, HRM's planning staff determined the proposal was reasonably consistent with the Municipal Planning Strategy. Staff noted that any development of the lands must follow zoning requirements specifically developed to reduce land-use conflicts with adjacent residential uses and to protect watercourses and wetlands. The staff report concluded:

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposed rezoning is reasonably consistent with the intent of the MPS. The industrial designation allows the establishment of the Light Industry zone on the subject property as a transition zone between industrial and residential uses.

Furthermore, the LUB includes zoning requirements specifically intended to reduce potential land-use conflicts for any new industrial lands created pursuant to these MPS policies. These provisions include increased setbacks and screening from residential use. Additionally, consideration is given to the protection of watercourses and wetlands within the MPS and LUB. The Environmental Conservation Zone was applied to appropriate areas, and watercourse setbacks are established in the LUB for all other watercourses/wetlands.

Under these circumstances, staff advise the proposed rezoning is reasonably consistent with the intent of the industrial designation. Any use permitted in the zone would be required to meet the LUB provisions as a condition of permit issuance. Therefore, staff recommend that the Harbour East Marine Drive Community Council approve the proposed LUB amendment.

[Exhibit A-2, p. 77]

[32] At the public hearing for Armco's application, the Community Council received correspondence from community members and heard submissions from a resident, on behalf of himself and other neighbouring property owners, expressing concerns like the community concerns outlined in the HRM planning staff report. After the public hearing closed and the Community Council debated the matter, the motion to adopt the proposed amendment was defeated.

[33] The Community Council's reasons for denying the requested Land-use By-law amendment were set out by HRM's Municipal Clerk in a letter sent to Armco's consultant:

As stated in the motion below, the application to rezone portions of lands fronting on Hines Road (PIDs 40103806, 40103780, 40103772, and 40103798), Eastern Passage, from R-1 (Sing Unit Dwelling) Zone to I-1 (Light Industry) Zone of the Eastern Passage/ Cow Bay Land Use By-law was denied by Harbour East Marine Drive Community Council for the following reasons: the proposed rezoning does not reasonably carry out the intent of the Land Use By-law under the following policy criteria:

- Incompatibility with adjacent residential uses –The subject property is surrounded by R-1 residential uses, Community Council noted that although the Eastern Passage/Cow Bay Municipal Planning Strategy allows for the I-1 designation to be applied, it is out of date, and does not reflect the current community need for housing as opposed to industrial uses which are already prevalent in the area.
- Environmental Impact – Community Council discussed the potential industrial uses on the subject property and the impact on nearby wetlands and watercourses, particularly with respect to stormwater management.
- Traffic – Community Council highlighted an increase in commercial/truck traffic on Hines Road adding congestion and potential pedestrian safety issues.
- No clear proposal for intended use(s) on subject property – Community Council highlighted that there is no clear proposal for the intended uses on site leading to ambiguity within the community as to what type of businesses will operate there. Further, the EC zone located within the subject property poses unique challenges as to what type of light industrial uses can safely and effectively operate on the subject property.

[Exhibit A-2, p. 147]

3. Appeal to the Board

[34] After Armco filed its Notice of Appeal, a Notice of Public Hearing was issued by the Board. The Notice of Public Hearing was published in the Chronicle Herald on June 3, 2021 and mailed to property owners within 500 ft of the Subject Properties (Exhibit A-4). The Board did not receive any requests to speak at the public hearing for the appeal, but it did receive two letters expressing concerns about the proposed rezoning and urging the Board to dismiss the appeal (Exhibit A-5).

[35] As required, HRM filed the appeal record (Exhibit A-2) and a copy of the Municipal Planning Strategy and Land-use By-law (Exhibit A-3) with the Board.

[36] On August 5, 2021, Armco filed its written evidence for the appeal. This consisted of a report prepared by Chris Markides MCIP, LPP, who is an Urban Planner with ZZap Consulting. Mr. Markides is a licenced professional planner of Nova Scotia and holds a Master of Planning Degree from Dalhousie University. Mr. Markides' report included his *curriculum vitae*. Armco asked that Mr. Markides be qualified as an expert in land-use planning, including the interpretation and application of municipal planning strategies and land-use by-laws.

[37] HRM told the Board that the municipality did not object to Mr. Markides' qualifications and did not intend to cross-examine him at the appeal hearing. HRM also said it would not be filing any written or visual evidence and it would not be calling any witnesses at the hearing.

[38] At the request of the parties, the Board convened a preliminary telephone conference to discuss the balance of the proceeding, and, at that time, the Board

determined, with the consent of the parties, that the matter would continue as a paper hearing. Dates were set for submissions from the parties.

[39] Armco filed submissions on October 7, 2021. In its submissions, filed on October 18, 2021, HRM objected to one of the facts in Armco's submissions on the basis that it was really speculation about what may have influenced the Community Council's decision to deny Armco's application. Beyond that, HRM simply confirmed that the relevant provisions of the Municipal Planning Strategy were set out in the report that HRM planning staff prepared for Armco's application. HRM's submissions also noted the Board must consider all the materials before it to decide whether the Community Council's refusal was consistent with the Municipal Planning Strategy.

IV ANALYSIS AND FINDINGS

[40] One of the allegations in Armco's Notice of Appeal was that the Community Council's decision failed to acknowledge that the request to rezone the Subject Properties was consistent with the Municipal Planning Strategy and recommended by HRM's planning staff. A letter of comment, in the form of a memorandum to the Board from David Phelps, on behalf of the "Hines Rd. / Howard Ave. Community Group," expressed concern about this statement. Mr. Phelps said this statement implied that if a project was reasonable, within the intent of, and consistent with, the Municipal Planning Strategy, then it should be approved simply on the recommendation of staff.

[41] The Board recognizes that municipal councils are not bound by the recommendations of planning staff when considering planning applications and has repeatedly confirmed this in past decisions. The Board also recognizes the fact that a development is consistent with a municipal planning strategy does not automatically

mean that a municipal council's refusal to approve the development is inconsistent with the strategy. As discussed above, the principles derived from Court of Appeal decisions confirm that there may be more than one conclusion that reasonably carries out the intent of a municipality's planning strategy.

[42] However, a municipal council should not arbitrarily dismiss the recommendations of its planning staff. When a municipal council disagrees with its professional planners, there should be good planning reasons to do so and these reasons must be rooted in the municipality's planning strategy (see *Re Bona Investments Limited*, 2009 NSUARB 58 at para. 75; *Re Griff Construction Limited*, 2011 NSUARB 51 at para. 146; *Re Rodgers*, 2013 NSUARB 131 at para.109; *Re Abruzzi Properties Incorporated*, 2017 NSUARB 111 at para. 116; and *Re MacNeil*, 2021 NSUARB 78 at para. 59).

[43] Bearing these principles in mind, the Board will now consider the reasons provided by the Community Council for rejecting the application in this case.

1. Incompatibility with Adjacent Residential Uses

[44] The Community Council's reasons for denying Armco's application included that the proposed rezoning does not reasonably carry out the intent of the Land Use By-law because it was incompatible with adjacent residential uses. The Community Council said, "although the Eastern Passage/ Cow Bay Municipal Planning Strategy allows for the I-1 designation to be applied, it is out of date, and does not reflect the current community need for housing as opposed to industrial uses which are already prevalent in the area."

[45] The Board finds the Community Council's reasoning is not consistent with the Municipal Planning Strategy. The Municipal Planning Strategy promotes the development of industrial uses in the Industrial Designation and allows owners to convert

lands zoned for residential uses to further this goal. The Light Industry Zone was designed to facilitate the transition from residential to industrial uses and to mitigate conflict between these uses.

[46] In his expert report, Mr. Markides said the Municipal Planning Strategy clearly indicated “the municipal policy intention to encourage expansion of industrial uses within the industrial designation.” Mr. Markides referred to the description of the Industrial Designation in Section II of the Municipal Planning Strategy, under the heading “Land Use Intent” which reads:

The Industrial Designation reflects locations of existing heavy and service industry in the north end of Eastern Passage, and is intended to provide for their expansion and for the development of complementary industrial and commercial operations. The designation defines a future industrial area and limits further industrial intrusion into the residential community. Where the growth of heavy industry has substantially altered the character of certain portions of the community, opportunities for resident’s alternative use of properties are maximized. [Emphasis added to show the part emphasized by Mr. Markides in his expert report (except for Industrial Designation which is underlined in the Municipal Planning Strategy)]

[Exhibit A-3, p. 58]

[47] Mr. Markides also referred to the following preamble to the policies relating to the Industrial Designation to highlight an intention to leave most decisions about the future of residential and small business uses within the designation to property owners:

That the northern portion of Eastern Passage is now under the command of major industry is a major factor in planning for the community’s future. With this comes certain responsibilities for providing stability within the remaining community, where the potentials for continuing residential growth and supporting commercial developments are evident. This is not to say that homes and small businesses which are still found in the industrial area should not be given the protection available to other parts of the community, however, most decisions about the future of these uses should be left to the individual property owner’s choice.

The Industrial Designation has been applied to those lands which define the major industries at the present time and those which are reasonable areas of expansion. Although the Designation is intended to support industrial development, it is also meant to establish a barrier to future intrusion into the community. For this reason, the extension of general industrial zoning will not be permitted outside of the Designation. [Emphasis added to show the part emphasised by Mr. Markides in his expert report]

[Exhibit A-3, p. 98-99]

[48] The Board is mindful that background information and preamble in the Municipal Planning Strategy may supply context for understanding the policies in the strategy, but it is the policies themselves that guide the Community Council (*Re Cameron*, 2021 NSUARB 8). That said, the Board finds that the passages emphasised by Mr. Markides are consistent with the statement in Policy IND-1 that the Industrial Designation “shall constitute the priority area for the development of general industrial facilities and supporting commercial transportation uses.”

[49] In terms of the compatibility of Light Industry Zone uses with adjacent residential properties, Policy IM-11 directed the Community Council to have appropriate regard to several matters, including that controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses. For the proposed rezoning of the Subject Properties, the I-1 (Light Industrial) Zone in the Land-use By-law (Part 18) supplies such controls.

[50] Policy IND-3 expressly addresses the compatibility of industrial uses with adjacent residential uses and directs Council to establish a light industrial zone with the requirements found in Policy IMD-1 for increased separation and buffering from adjacent residential land uses.

[51] Armco's closing submissions also highlighted Policy IND-7, which requires minimum separation distances for industrial development that abuts other zones:

IND-7 It shall be the intention of Council that, where the general or light industry zone abuts any other zone, except an industrial zone, no development within the general or light industry zone shall be less than fifty (50) feet from the abutting zone, and no bulk fuel storage tank within the general industry zone shall be less than one hundred (100) feet from the abutting zone.

[52] The Land-use By-law for the I-1 (Light Industry) Zone provides for minimum lot area, coverage, frontage, and front, rear and side yard distances. Additionally, s. 18.4 and 18.5 supply specific rules when there is an abutting residential use:

18.4 OTHER REQUIREMENTS: INDUSTRIAL USES

Notwithstanding the provisions of Section 18.2, where industrial or commercial uses permitted within any I-I Zone abut a residential use, the following shall apply:

- (a) No building or structure shall be located within fifty (50) feet (15.2 m) of the rear or the side lot line which abuts the residential use.
- (b) An effective visual screen consisting of either a landscaped buffer or fence shall be provided along the rear or side lot line which abuts the residential use. The said landscaped buffer shall be a minimum of twenty-five (25) feet (7.6 m) and shall consist of either existing or replanted vegetation or a combination thereof, so long as it provides an effective visual screen.
- (c) Where the side or rear lot line of an I-I zoned use is separated from a residential use by a street or highway, the I-I Zone shall be deemed to be abutting the residential use.

18.5 OTHER REQUIREMENTS: CANNABIS PRODUCTION FACILITIES (RCSep18/18; E-Nov 3/18)

- (a) Notwithstanding Section 18.4(a), where a lot containing a cannabis production facility abuts a lot
 - (i) zoned or used for residential purposes, or
 - (ii) that is used for a daycare, community centre, school, religious institution, public park or playground,

such facility, including any building or outdoor area used as a cannabis production facility, shall be set back a minimum 230 feet (70 metres) from the abutting lot line.

[Exhibit A-3, p. 209]

[53] Mr. Markides reviewed the requirements for the Light Industry Zone and concluded they are consistent with Policy IND-3. Mr. Markides' report states:

Policy IND-3 provides guidance to Council to establish the I-1 (Light Industrial) zone in the Land Use Bylaw and that the zone's application is to support expanded industrial uses specifically adjacent to residential uses within the industrial designation.

My review of the I-1 zone requirements identified specific building siting and buffering requirements for industrial uses adjacent to residential uses. These requirements are consistent with policy IND-3.

Council's concern that the I-1 zone is incompatible with the surrounding R-1 zone is contrary to the stated policy direction. The policy context clearly identifies the I-1 zone as the land use tool to address compatibility between Industrial uses and Residential uses.

[Exhibit A-6, p. 5]

[54] The Board also observes that the separation distances from abutting residential uses in s. 18.4 and 18.5 meet or exceed the required distance in Policy IND-7.

[55] Mr. Markides' opinions are consistent with statements made in the report prepared by HRM's planning staff. That report acknowledged that the Industrial Designation supports industrial development and provides for the transition of pre-existing residential uses in the designation to light industrial uses:

Although the designation is intended to support industrial development, it is also meant to establish an appropriate transition to mitigate the conflict between general industrial development and the existing residential community. For this reason, the extension of general industrial zoning is not permitted outside of the designation. However, the MPS acknowledges that existing residential zoning is located within the industrial designation and references the potential transition of residential use to light industrial. The MPS establishes a light industry zone which allows light industrial uses through rezoning but limits future expansion beyond the boundaries of the Industrial designation.

[Exhibit A-2, p. 75]

[56] HRM planning staff also said the Light Industry Zone requirements were designed to reduce conflict with adjacent residential development:

Furthermore, the LUB includes zoning requirements specifically intended to reduce potential land-use conflicts for any new industrial lands created pursuant to these MPS policies. These provisions include increased setbacks and screening from residential use. Additionally, consideration is given to the protection of watercourses and wetlands within the MPS and LUB. The Environmental Conservation Zone was applied to appropriate areas, and watercourse setbacks are established in the LUB for all other watercourses/wetlands.

Under these circumstances, staff advise the proposed rezoning is reasonably consistent with the intent of the industrial designation. Any use permitted in the zone would be required to meet the LUB provisions as a condition of permit issuance. Therefore, staff recommend that the Harbour East Marine Drive Community Council approve the proposed LUB amendment.

[Exhibit A-2, p. 77]

[57] In its closing submissions in this appeal, Armco described the Light Industry Zone this way: "Simply put, the I-1 zone serves as a transition zone between industrial and residential uses." The Board agrees that this is the intent of the Municipal Planning Strategy, and also accepts Mr. Markides' opinion that the Light Industrial Zone was

identified in the Municipal Planning Strategy as the land use tool to address compatibility between industrial and residential uses.

[58] To the extent that Policy IM-11 directs the Community Council to consider that controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses, it may be argued the Community Council is vested with the discretion to consider whether the controls are adequate. To some extent that may be true. However, in the circumstances of this case, the intention of the Municipal Planning Strategy constrains the scope for discretion, as discussed by the Court of Appeal in *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27:

When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. This deference to Council's difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle. As Justice Cromwell said, the "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (Lewis v. North West Community Council of HRM, 2001 NSCA 98, ¶ 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent. [Emphasis added]

[*Archibald*, para. 24]

[59] Having established Light Industry Zone requirements to mitigate conflicts with adjacent residential uses, if there was a principled basis for the Community Council to conclude that these requirements in the Land-use By-law were ill-suited to the purpose for which they were intended, it is not apparent to the Board. No explanation was provided by the Community Council in the reasons it gave Armco. There is also nothing in the appeal record suggesting the existing Land-use By-law was inadequate (indeed the HRM planning report states "...the Land-use By-law includes zoning requirements specifically

intended to reduce potential land-use conflicts for any new industrial lands created pursuant to these MPS policies.”). And lastly, nothing was offered by HRM on this point in evidence or submissions in this appeal.

[60] The Board finds that, in concluding the proposed rezoning of the Subject Properties would be incompatible with adjacent residential uses, the Community Council ignored the policy intention in the Municipal Planning Strategy to prioritize industrial development in this area and the land-use controls in the Light Industry Zone that HRM was directed under the Municipal Planning Strategy to establish to reduce conflicts with any adjacent residential uses. It was not open to the Community Council to simply disregard the priority for industrial development within the Industrial Designation because it was “out of date” and “does not reflect the current community need for housing as opposed to industrial uses which are already prevalent in the area.”

[61] That is not to say that HRM Council does not have the ability to decide that a community’s needs have changed. That is certainly within its purview, and it is a decision that is best left to Council. However, if the Community Council feels the policies in its Municipal Planning Strategy are no longer appropriate, its recourse is for HRM to amend them, following the processes set out in the *HRM Charter*. Until that happens, the Community Council must make decisions that reasonably carry out the intent of the existing Municipal Planning Strategy. Disregarding the policies does not reasonably carry out the intent of the Municipal Planning Strategy and the Board finds the Community Council’s decision, as it relates to compatibility issues, does not reasonably carry out the intent of the Municipal Planning Strategy.

2. Environmental Impact

[62] The Community Council's reasons for denying Armco's application included concerns about the potential impact of industrial uses on the Subject Properties on nearby wetlands and watercourses, particularly with respect to stormwater management. However, development of the Subject Properties must follow the Land-use By-law and other HRM and provincial requirements establishing setbacks from watercourses and wetlands and rules for the management of stormwater. There is no evidence before the Board suggesting these measures will be inadequate. The Board finds that denying the application for these reasons does not reasonably carry out the intent of the Municipal Planning Strategy.

[63] It is important to recognize that HRM is not an environmental regulator. In exercising its planning responsibilities, the Community Council can assume that those tasked with environmental regulation will properly regulate those aspects of a development that are within their authority:

Before considering the environmental issues raised in this appeal, it should be noted when Council considers the approval of a development agreement, it is entitled to assume provincial and federal environmental regulators will properly ascertain any environmental issues within their mandates associated with the proposed development. Although the Municipality has primary responsibility for planning matters in its territory and its Municipal Planning Strategy may direct Council to take environmental matters into consideration, it is not an environmental regulator. The Court of Appeal noted primary responsibility for environmental matters rests with environmental regulators in *Bennett v. Kynock*, (1994) 1994 NSCA 114 (CanLII), 131 N.S.R. (2d) 334:

The legislation of this Province puts the primary responsibility for matters affecting the environment with the Minister of the Environment, not with municipalities, municipal councils, nor with the Nova Scotia Utility and Review Board. That is not to say municipalities shall not have regard for the environment in their planning policies, only that the primary responsibility for the environment is with the Minister of the Environment.

[*Bennett*, para. 34]

[*Re Cameron*, 2021 NSUAR 8, para. 139]

[64] Under the heading “Environmental Implications” in their report to the Community Council, HRM planning staff indicated, “No environmental implications are identified.” From a review of that report, it is clear staff reached this conclusion because any development and use of the Subject Properties would have to adhere to requirements in the Land-use By-law and environmental legislation designed to protect wetlands and watercourses.

[65] HRM’s planning staff specifically addressed wetlands and site drainage in their report to the Community Council:

Wetlands and Site Drainage

The portion of the lands proposed to be re-zoned include an existing wetland and the Eastern Passage/Cow Bay LUB contains wetland buffer provisions which would be applicable to any proposed development on the subject site. This includes a watercourse setback of 30 metres or greater depending on slope, which are applied as a condition of permit approval. Should the developer propose watercourse alteration, permits are required from Nova Scotia Dept. of Environment.

The EC (Environmental Conservation) zoned portion of the lands are to remain zoned as such, and no alteration of wetlands in that zone are permitted under the Land Use By-law provisions.

Stormwater and drainage within and from the development would be subject to the HRM Municipal Design Guidelines and Halifax Water’s Design and Construction Specifications. Pre-development and post-development storm water discharge values are required to balance. This would be reviewed at the building permit stage.

[Exhibit A-2, p.76]

[66] The Board notes that during the review of the application, HRM development staff told Armco that the Land-use By-law allowed driveways within the watercourse buffer. However, any alteration of wetland would require a permit from Nova Scotia Environment and Climate Change before a development permit could be issued (Exhibit A-3, p. 48).

[67] When considering Policy IM-11(d) in particular, which requires Council to consider whether the proposed site is suitable in terms of several factors including

“locations of watercourses, marshes or bogs and susceptibility to flooding,” planning staff reiterated:

The site has watercourses and wetlands. These areas would be subject to the watercourse setbacks and buffers requirements under the LUB through as-of-right applications. Stormwater and drainage within and from the development will be subject to the HRM Municipal Design Guidelines and Halifax Water’s Design and Construction Specifications. Pre-development and post-development storm water discharge values are required to balance. This would be reviewed at the building permit stage. The property owner must apply and be granted permits from Nova Scotia Dept of Environment for any alteration to wetlands.

[Exhibit A-2, p.85]

[68] In his report, Mr. Markides considered Land-use By-law 4.18, which outlines regulations for watercourse setbacks and buffers, and HRM By-law G-200, “Respecting Grade Alteration and Stormwater Management Associated with Land Development.” Mr. Markides also noted that any alteration of a wetland is subject to review and approval by the Nova Scotia Department of Environment (now Environment and Climate Change).

[69] Mr. Markides said that the Land-use By-law required a minimum 30-metre buffer from the high-water mark of all watercourses within which no excavation, infilling, tree stump and other vegetation removal or any alteration of any kind was allowed in relation to development. He also said this was greater than the 20-metre buffer required by the Nova Scotia Department of Environment and Climate Change.

[70] In respect of stormwater management, Mr. Markides said:

Respecting concerns around stormwater management, Bylaw G-200 outlines additional regulations and requirements designed to mitigate the impact of stormwater runoff generated by any use permitted on the site. This bylaw was adopted in September 2020.

Bylaw G-200 requires a Stormwater Management Plan be submitted with any land development application for industrial uses. A Stormwater Management Plan must meet the requirements of this By-law and the Halifax Stormwater Standards to be approved.

It is reasonable to assume that an application that receives approval for a submitted Stormwater Management Plan will sufficiently mitigate stormwater impacts associated with land development.

[Exhibit A-6, p.7]

[71] The existence of wetlands and one or more watercourses will affect the development of the Subject Properties. The portions of the Subject Properties subject to the EC (Environmental Conservation) Zone will not change. Any development on rezoned parts of the properties must adhere to setback requirements in the Land-use By-law. Before industrial development can occur, a Stormwater Management Plan must be prepared and submitted to HRM for approval. Under the plan, pre-development and post-development stormwater discharge values must balance. Additionally, the developer must follow applicable environmental legislation.

[72] As was the case with its concerns about compatibility, the Community Council's concerns about the impacts of the development on wetlands, watercourses, and stormwater management ignore the mandatory controls in its Land-use By-law, other municipal legislation and environmental legislation designed to address such impacts. Nothing in the information provided to the Board in the appeal suggests these requirements are likely to be inadequate. As such, the Board finds the Community Council's decision, as it relates to concerns about wetlands, watercourses and stormwater management, does not reasonably carry out the intent of the Municipal Planning Strategy.

3. Traffic

[73] The Community Council's reasons for denying the application highlighted an increase in commercial and truck traffic on Hines Road adding to congestion and potential pedestrian safety issues. However, the Board finds from the evidence in this appeal that the proposed rezoning of the Subject Properties would likely have minimal

impact on these matters. As such, the Community Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy.

[74] Policy IM-11 directs the Community Council to have appropriate regard to several matters when considering development agreements and amendments to the Land-use By-law. These include that the proposal is not premature or inappropriate by reason of the adequacy of road networks leading or adjacent to or within the development (Policy IM-11(b)(iv)) and that controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of traffic generation, access to and egress from the site, and parking (Policy IM-11(c)(iii)).

[75] In a summary of the public information meeting for the proposed rezoning in their report, HRM planning staff noted concerns from residents living near the Subject Properties. Residents raised similar concerns in correspondence and comments at the Community Council's public hearing for the application. These concerns included pedestrian safety, increased traffic volumes, the larger size of industrial vehicles (and increased turning radius), an ongoing problem with speeding on Hines Road, the narrow width of the road, the absence of sidewalks and shoulders, the road alignment ("sharp bends") and elevation changes, poor line markings and deep gutters.

[76] Armco's rezoning application to HRM included a traffic impact statement prepared by James J. Copeland, P. Eng., Griffin Transportation Group Inc. This traffic report, and an earlier version of it, were in the appeal record filed with the Board for this appeal. The final report was revised to address feedback from HRM Engineering staff about the identification of wetlands and watercourses, the extent of the R-1 area to be rezoned, the zoning of access to the propose I-1 zoned lands, and how the number of

cars that could be parked on the site was determined. The substantive conclusions are the same in both versions of the traffic report.

[77] In preparing the traffic report, Griffin Transportation visited the site to see traffic volumes, driver behaviour, pedestrian activity, existing signage and so forth. Griffin Transportation also gathered two-way traffic volumes on Hines Road near the proposed access point for the Subject Properties to gain an understanding of the existing flow along this roadway.

[78] Mr. Copeland described Hines Road, near the Subject Properties, as a 2-lane rural roadway with very narrow gravel shoulders and open ditches. He noted that the elevation increased travelling northeast on Hines Road past the proposed access point for the Subject Properties. He said there were vertical curves along this section of Hines Road but advised the horizontal alignment was relatively straight in the vicinity of the proposed access.

[79] Mr. Copeland's report considered whether drivers approaching the proposed access point to the Subject Properties could see far enough in front of them to identify a hazard and stop if needed. The report concluded available stopping sight distances exceeded the latest Transportation Association of Canada's minimum design requirements.

[80] The Board notes that Griffin Transportation used an assumed vehicle speed of 70km/h to calculate stopping sight distances, which is higher than the posted 50 km/h speed limit at this location. Griffin Transportation did this because it calculated the 85th percentile vehicle operating speed on Hines Road as 68 km/h (including vehicles traveling

in both directions). That calculation is consistent with the concerns expressed by nearby residents that vehicles on the road often exceeded the posted speed limit.

[81] The traffic report also addressed observed traffic volumes. Based on Griffin Transportation's observations, Mr. Copeland considered that vehicle demand was well below the capacity of the typical 2-lane street during a typical weekday off-peak hour. Mr. Copeland also expected peak hour demand to be well below the capacity of the road. Mr. Copeland's opinion was "there is likely to be a considerable amount of residual peak hour capacity to accommodate future traffic growth along Hines Road."

[82] Mr. Copeland also considered the impact on traffic if the Subject Properties were developed. Although Armco's application to HRM did not specify an intended use for the Subject Properties, Mr. Copeland assumed that the Subject Properties would be used as a parking lot for vehicle storage for the Autoport. Mr. Markides, in the report he filed with the Board in this appeal, explained that "HRM staff requested a traffic impact statement be submitted based on the most intensive traffic generating land use permitted in the I-1 zone, an external parking lot for the nearby Autoport." Based on the assessment in the report, Mr. Copeland considered that development of the site would amount to "a very small increase in the volume [of traffic] in the Hines Road corridor."

[83] Although Mr. Copeland was not offered as a witness in the appeal to the Board, Mr. Markides attached the Griffin Transportation report to his evidence. Mr. Markides referred to that report saying:

While I am not a licensed traffic engineer, my interpretation of the traffic impact statement is that vehicle congestion on the surrounding streets would remain within acceptable operational parameters if there was an increase in traffic generated by an external parking lot for the Autoport (the highest possible traffic generating use permitted in the I-1 zone).

No empirical evidence was presented to Council that there are pedestrian safety concerns within the vicinity of the proposed driveway location and my understanding of the traffic

impact statement is that an Autoport parking lot use would not impact pedestrian safety on the surrounding streets.

[Exhibit A-6, pp. 8-9]

[84] In addressing traffic issues in their report to the Community Council, HRM's planning staff noted that HRM Engineering reviewed the Griffin Transportation traffic study and had no issues with the information in the study:

Traffic

A traffic study was reviewed by HRM Engineering. Some of the details reviewed included access to the site, existing traffic conditions, trip generation, visibility, driver stopping sight distance, and traffic impacts on surrounding streets. The findings in the traffic study concluded that new trips generated by the proposed re-zoning are expected to have a minimal impact on the existing traffic operations in the Hines Road corridor. HRM Engineering did not identify any issues with the information submitted in the traffic study.

[Exhibit A-2, p. 76]

[85] In its analysis of Policy IM-11(b)(iv) in particular, HRM planning staff noted that HRM Engineering did not have any concerns with the adequacy of the road networks.

For Policy IM-11(c)(iii), staff said:

Site parking would be subject to the parking requirements of the LUB, with appropriate requirements depending on the use proposed. A traffic study was reviewed by HRM Engineering, who has not identified any issues with traffic generation, access to the site, or parking.

[Exhibit A-2, p. 85]

[86] As directed by the Court of Appeal, in considering whether the Community Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy, the Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the Municipal Planning Strategy and any applicable Land-use By-law. The appellant bears the onus to prove facts that show, on a balance of probabilities, that the decision does not reasonably carry out the intent of the Municipal Planning Strategy.

[87] In respect of the adequacy of road networks and the need for controls on industrial development on the Subject Properties to reduce conflict with any adjacent or

nearby land uses by reason of traffic generation, access to and egress from the site, and parking, there is conflicting evidence before the Board. On the one hand, the Griffin Transportation report concludes the proposed rezoning is expected to have minimal impact on the traffic operations in the Hines Road corridor, and HRM engineering staff had no concerns with the final report. On the other hand, nearby residents raised many concerns about the existing condition of Hines Road and traffic on it, which they consider would worsen with the proposed rezoning.

[88] The Board also considers there are issues with the weight that it should give to this information. None of it was presented to the Board in a way that could be tested through cross-examination or otherwise. For the most part, it is in the appeal record filed with the Board.

[89] Under the *HRM Charter* (and the *Municipal Government Act* for planning appeals not involving HRM), the municipality must file an appeal record with the Board within 14 business days of being notified of a planning appeal. Given the statutory requirement for an appeal record, the Board concludes it can exercise its discretion to give evidentiary weight to the record.

[90] Regardless, the Board may receive any evidence that may help it in dealing with a matter before it, whether it has been given under oath or may be admissible in a judicial proceeding:

Admissibility of evidence

19 The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.

[*Utility and Review Board Act*, S.N.S. 1992, c. 11, s.19]

[91] However, having the discretion to consider evidence which might not ordinarily be admissible following the rules of evidence, does not mean the Board must accept such evidence. In many cases it might not. The common law rules of evidence developed over time to address, amongst other things, reliability, relevance and fairness. In exercising flexibility to receive evidence, the Board should be aware of these underlying reasons for the rules of evidence.

[92] Bearing the foregoing in mind, the Board finds that the proposed rezoning of the Subject Properties would have minimal impact on the adequacy of road networks and is unlikely to conflict with any adjacent or nearby land uses by reason of traffic generation, access to and egress from the site, and parking. In reaching this conclusion, the Board has placed weight on the Griffin Transportation report even though its author was not proposed as a witness in the proceeding before the Board for the following reasons:

- a. Armco supplied the report to HRM for its rezoning application, and it is clear from a review of the planning staff report that HRM planning staff considered and relied upon the traffic study in recommending to the Community Council that it approve the application.
- b. The traffic study assumed the most traffic-intense use of the Subject Properties allowed under the proposed rezoning and assessed stopping sight distance based on vehicle speed observations instead of using the lower posted speed limit.

- c. HRM engineering staff reviewed the traffic study, and they did not find any issues with the information in the study or with traffic generation, access to the site, or parking.
- d. Mr. Markides, in the report he filed with the Board for this appeal, expressed his professional planning opinion that HRM staff were diligent in their consideration of the traffic impacts associated with the planning application and correct in their recommendation to the Community Council.
- e. Mr. Markides attached the traffic study to his report, and although he conceded he was not a licensed traffic engineer, Mr. Markides referred to the traffic study conclusions and the assessment of the study by HRM planning and engineering staff. In this appeal, HRM did not object to the content of Mr. Markides' report or the attachment of the traffic study to his report, and HRM did not cross-examine Mr. Markides.
- f. After Mr. Markides' report was filed, HRM chose not to file evidence in the appeal.
- g. In addressing the Community Council's traffic related reasons for refusing the rezoning application, Armco's closing submissions in this appeal rely upon the opinion of Armco's traffic engineer and HRM staff's assessment of the traffic study; however, HRM's closing submissions do not address this aspect of the Community Council's reasons (other than to acknowledge, generally, that the Community Council's "decision does not align with the Staff Report or the report of professional planner, Chris Markides").
- h. HRM's closing submissions said "the Board must consider all the materials

before it (including the [Municipal Planning Strategy], [Land-use By-law], Record and Evidence/Submissions) ..." [Emphasis added].

[93] In these circumstances, the Board concludes the traffic study is relevant, that the Board can have some confidence in its reliability, and that it would not be unfair to place weight on the report.

[94] The Board also considered the traffic and safety concerns expressed by nearby residents in their submissions at the planning information meeting and the public hearing before the Community Council, but ultimately placed more weight on the traffic report and the HRM staff review of that because this provided a more objective assessment of the incremental impact of development on the Subject Properties. The Board considered the comments from the residents to be more focused on existing concerns and more speculative about the impact of development.

[95] Having said that, Mr. Copeland's observations of the condition of Hines Road and traffic near the Subject Properties were, in many cases, consistent with the descriptions provided by residents. For example, the references in the report to "very narrow gravel shoulders" and "several vertical curves along this section of Hines Road" are like the descriptions of the road provided by some residents. Significantly, the vehicle operating speed data gathered by Griffin Transportation confirmed the residents' concerns about speeding.

[96] While the Board is not suggesting that vehicles travelling at excessive speeds are not a legitimate concern, the Board finds there will be minimal impact from the proposed rezoning on that problem. The Griffin Transportation report concluded that stopping sight distances at the proposed access point to the Subject Properties exceed

the Transportation Association of Canada's minimum requirements for the higher observed speeds (based on an 85th percentile vehicle speed which Mr. Copeland said many road agencies across North America used to set regulatory speed limits on roadways). The Griffin Transportation report further concluded that added traffic from the Subject Properties, assuming the most intensive use of the Subject Properties allowed in the Light Industrial Zone, would result in only a very small increase in traffic volume in the Hines Road corridor.

[97] Notwithstanding his conclusions, Mr. Copeland recommended:

That HRM Traffic Management holds discussions with the appropriate police agency(s) regarding the vehicle operating speeds within the 50 km/h speed zone along Hines Road. Despite the fact that the existing driver visibility at the proposed access exceeds the minimum SSD requirement for a 70 km/h operating speed, GRIFFIN recommends that a speed management assessment be carried out to ensure that an appropriate solution is implemented - one that considers managing speeds in this corridor given the existing roadway design characteristics and surrounding land uses.

[Exhibit A-2, p27]

[98] In weighing the evidence, the Board considered one more factor. While the ultimate burden is on the appellant to establish, on a balance of probabilities, that the Community Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy, the Board considers that in the circumstances of a case like this, where the Community Council's decision disregards the conclusions in a professional traffic study (which HRM required Armco to provide), the assessment of that study by HRM's own professional engineering staff, and the recommendations of HRM's professional planning staff, there is some evidentiary burden on the Community Council to demonstrate its "good planning reasons" for doing so. In this case, HRM presented no evidence on the appeal, and its submissions did not explicitly connect the Community

Council's decision to anything in the appeal record that might constitute "good planning reasons" either.

[99] Having undertaken a thorough factual analysis to determine the nature of the proposal considering (as HRM submitted) all the materials before it including the Municipal Planning Strategy, Land-use By-law, appeal record, evidence and submissions the Board has concluded, on the balance of probabilities, that the proposed rezoning of the Subject Properties would have minimal impact on the adequacy of road networks and would likely not conflict with any adjacent or nearby land uses by reason of traffic generation, access to and egress from the site, and parking. Based on these determinations, the Board finds that the Community Council's decision to refuse the application because it would increase commercial and truck traffic on Hines Road adding to congestion and potential pedestrian safety issues is not supported by the weight of the evidence and does not reasonably carry out the intent of the Municipal Planning Strategy.

4. **Intended Use**

[100] The Community Council's reasons for denying the application included a concern "that there is no clear proposal for the intended uses on site leading to ambiguity within the community as to what type of businesses will operate there." The Community Council's reasons also noted that the Environmental Conservation Zone covering parts of the Subject Properties posed unique challenges about the type of light industrial uses that can safely and effectively operate there.

[101] The Community Council's environmental concerns have already been addressed in these reasons. The analysis in this part of the decision focuses on the Community Council's concern that Armco had not identified a specific use for the Subject

Properties. The Board finds this is not a precondition for a rezoning application, and as such, the Community Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy.

[102] In recommending that the Community Council approve the proposed rezoning, HRM's planning staff noted that the rezoning would allow any of the permitted uses in the Light Industry Zone. Staff said "[a]ny use permitted in the zone would be required to meet the [Land-use By-law] provisions as a condition of permit issuance."

[103] Practically speaking, these requirements may limit some uses otherwise allowed in the Light Industry Zone. For example, at the meeting where the Community Council considered and refused Armco's proposal, one of HRM's planners said that setback requirements would make it difficult to run a composting or cannabis facility on the Subject Properties.

[104] In his report, Mr. Markides addressed the Community Council's reasoning about the need for a specified use saying:

In this application, as with all rezoning applications, a proposed use is not required for consideration. The uses permitted on the site are identified by the applied zoning (the I-1 zone). Even if a use was proposed with the application, that use could potentially change if it meets the requirements of the I-1 zone. Therefore, the lack of a proposed use for the site is irrelevant in considering the rezoning application.

Industrial uses are not permitted in the EC zone, nor are they proposed by the applicant. Therefore, the concern around the EC zone is also irrelevant as the boundaries of the EC zone would not be impacted by the proposed rezoning. The proposal only contemplates the R-1 portions of the properties and not the EC zoned portions of the properties.

[Exhibit A-6, p9]

[105] In its closing submissions, Armco said there was nothing in the Municipal Planning Strategy requiring it to put forward a proposal for an intended use as part of a rezoning application. Armco emphasised that naming an intended use was not a precondition to rezoning.

[106] HRM did not refer to any policy in the Municipal Planning Strategy requiring Armco to identify a specific intended use for its proposed rezoning. Furthermore, Mr. Markides' evidence highlighted that the requirement for a specified use is somewhat inconsistent with the nature of the application itself. If the rezoning were approved, the property owner (Armco or any later owner) would be legally entitled to use the Subject Properties for any use allowed in the zone. This was not a development agreement application where the Community Council had the flexibility to restrict uses in a way that might be different than the underlying zoning.

[107] The Board accepts Mr. Markides' evidence and finds that by applying an arbitrary and irrelevant precondition for the rezoning application, the Community Council did not reasonably carry out the intent of the Municipal Planning Strategy.

V CONCLUSION

[108] The Community Council's denial of Armco's rezoning application does not reasonably carry out the intent of the Municipal Planning Strategy. The Land-use By-law and other municipal legislation addresses the Community Council's concerns about incompatibility. The same is true for its environmental concerns, which in addition to municipal legislation, are subject to provincial regulation. There is nothing to suggest the existing municipal and provincial legislation would not adequately address the concerns.

[109] Considering the evidence in this appeal, the Board finds that the proposed rezoning would have minimal impact on commercial and truck traffic, congestion and potential pedestrian safety issues. Therefore, there was no factual basis for the Community Council denial because of traffic concerns.

[110] Finally, the Community Council imposed a precondition for approval of the application that Armco identify a specific intended use for the Subject Properties under the proposed rezoning. The Municipal Planning Strategy does not require this, and any use allowed would be subject to the Land-use By-law, and other municipal and provincial legislation, as noted above.

[111] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 1st day of December, 2021.

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Stephen T. McGrath