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Item No. 13.1.2
North West Community Council
April 25, 2022

TO: Chair and Members of North West Community Council

SUBMITTED BY: - Original Signed -
Kelly Denty, Executive Director of Planning and Development

DATE: January 31, 2022

SUBJECT: **Commercial Uses Within the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy**

ORIGIN

On April 12, 2021, the following motion was passed by North West Community Council:

THAT North West Community Council request a staff report to consider amending the Beaver Bank, Hammonds Plains and Upper Sackville Land Use Bylaw under MU-1 zoning to allow for additional uses for children beyond daycare and education. The report should also consider creation of a new category(ies) within the MU-1 zoning to allow for businesses supporting children's developmental activities

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development, Section 235.

RECOMMENDATION

It is recommended that North West Community Council recommend that Regional Council:

1. Direct the Chief Administrative Officer to initiate a process to consider amendments to the Beaver Bank, Hammonds Plains, and Upper Sackville Municipal Planning Strategy and Land Use By-law to proceed with Option 2 as outlined within this staff report to increase the size threshold of commercial use requiring a development agreement; and
2. Follow the public participation program for municipal planning strategy amendments as approved by Regional Council on February 27, 1997.

BACKGROUND

Beaver Bank, Hammonds Plains, and Upper Sackville MPS History

The existing Municipal Planning Strategy (MPS) and corresponding Land Use By-law which applies to the Beaver Bank, Hammonds Plains, and Upper Sackville communities were originally adopted by Council in late 1999, replacing an earlier version of the policy approved in 1987. As stated in the existing MPS, the current iteration of the Plan resulted from a review under the direction of a former Municipal Planning Advisory Committee prior to amalgamation, and after amalgamation, an Area Advisory Committee and North West Planning Advisory Committee. Most of the lands within the Plan area were designated as 'Mixed Use' allowing for a blend of commercial, residential, and institutional uses. This designation recognized the existing predominantly residential areas which already included many commercial / non-residential uses in locations interspersed throughout the area. This mix of uses reflects the tradition of varied uses within the community and is reflective of the desire to maintain some degree of economic self-sufficiency through businesses operating throughout the community.

Mixed use communities are desirable where they provide for flexibility of land use as communities evolve, and provide a diversity of employment, retail, and residential opportunities within a single area. With this said, it must also be acknowledged that diversity in use can also increase the potential for conflict to occur among uses. In an attempt to mitigate these potential conflicts, the MPS divided lands into the more context-specific designations of Mixed Use A, Mixed Use B, and Mixed Use C in addition to applying the Mixed Use 1 (MU-1) and Mixed Use 2 (MU-2) zones. These designations and zones provide a spectrum of allowable uses, differentiating in intensity and size dependent on the context of a given property.

Current Policies

Presently, the Beaver Bank, Hammonds Plains and Upper Sackville Land Use Bylaw does not differentiate between uses intended for children and uses intended for adults. With the possible exception of housing explicitly designed for the use of seniors, the best practice of Land Use By-laws is to regulate the use, instead of the user to ensure equity amongst residents. This practice has been applied within this Land Use By-law area where, as a general rule, commercial uses which are greater than 2,000 square feet require either a rezoning or a development agreement to be applied to the land, first requiring a public hearing and Council approval. Most commercial uses which are less than 2,000 square feet only require conformance to the regulations within the applicable zone and receipt of an as-of-right Development Permit recognizing this conformance. No public hearing or public engagement is required for smaller scale commercial business. The exception to this rule is the Commercial Recreation use, which includes uses such as animal or vehicle racing tracks, rifle ranges, marinas, golf courses, and amusement parks, and which require a development agreement regardless of the size or scale of the proposal, given the potential to impact nearby properties.

Notwithstanding the above, it is important to note that more permissive rules for commercial uses do exist in other zones and designations of the Plan area identified as more suitable for large scale commercial activity. The C-2 Zone of the LUB permits commercial uses up to a maximum of 5,000 square feet where a property has direct access to a collector highway. This decision was made in an effort to concentrate larger and therefore potentially more impactful commercial businesses along busier roads where the likelihood of conflict with low density residential uses would be reduced. In addition to this allowance, a number of uses which support children's development activities are allowed in the C-2 and the MU-1 zones where they can be classified as institutional uses. The MU-1 Zone allows all institutional uses with the exception of fire and police stations, allowing for daycare facilities, community centres, and some recreation uses.

The intent behind the 2,000 square feet threshold before a rezoning or development agreement is required is relatively clear and is consistent with the approach of many Plan areas within the Municipality. Commercial uses which are larger in size have the potential to have an increased impact on surrounding buildings and land uses. Recognizing that the Beaver Bank, Hammonds Plains and Upper Sackville communities value a diversity of uses being allowed in the area, regulations reflect the need to mitigate potential conflicts between commercial uses that may generate volumes of visitors, lights, noises, or smells,

which may be less reflective of a strictly residential community. These impacts could potentially be related to commercial uses intended for children, for adults, or for any other users.

The Development Agreement process is often used in these situations where a context-specific solution is warranted so as to mitigate concerns about a specific use in a specific location. Development Agreements can stipulate the exact location of uses on the site, the design of any buildings containing those uses, in addition to the layout of the site at-large inclusive of parking areas, landscaped areas, buffers, screening, or berms. It is also possible to regulate hours of operation within a development agreement; something not possible within a zone. This process also has the added benefit of increased transparency, where members of the public may comment on the proposal and speak directly to the decision makers at Council in advance of their final decision. Commercial Recreation uses require a Development Agreement in this area as discussed earlier in this report so that some of these impacts can be mitigated. This approach is also reflected in Policy P-133 of the MPS as seen below:

P-133 It is not intended that all lands shall be rezoned for specific uses. Rather, in order to give Council a greater degree of control, the Strategy provides that certain land uses shall be considered only as amendments to the land use by-law or in certain instances by development agreements as provided for by the Municipal Government Act. Such amendments and agreements shall be considered only if they meet the policies found within this Strategy.

Further, the following excerpt can be found in the MPS within the section relating to Land Use Policies for Mixed Use Designated lands:

“The existence of general business use in conjunction with a residential lot is accepted. However, there is concern with the potentially intrusive aspects of such operations, which include scale, noise, smell, outdoor storage, environmental problems and traffic generation. Therefore, businesses will generally be permitted to the extent that they do not take away from the enjoyment of adjacent residential properties. Zone requirements within the land use by-law will address compatibility concerns by controlling maximum floor area related to business use as well as signage, open storage, screening of outdoor display, and parking.”

While MPS policies in this Plan area do not stipulate a specific size threshold that would trigger the need for a rezoning or development agreement, the policy does require that some type of threshold exist so as to regulate these higher impact uses. It is important to keep in mind that all commercial uses must abide by this policy as written. This includes local service commercial uses such as retail outlets, but would also include large scale commercial recreation uses such as amusement parks, commercial horse riding farms, or golf courses.

Abutting Plan Area Policies

As noted earlier in this report, a similar approach to mitigating the potential impact of commercial uses is taken in multiple plan areas of HRM. This is also true for several of the six plan areas which abut the Beaver Bank, Hammonds Plains, and Upper Sackville communities. Two of the MPSs (Planning Districts 14 & 17 and Timberlea, Lakeside, Beechville) are close to or exceeding 30 years in age, in addition to being relatively rural plans in comparison to others in HRM. The rural nature of these plans tends to result in more permissiveness in large uses, where lot sizes are correspondingly larger in rural areas. As such, they have no true mixed use zoning which allows for a blend of significant residential development with commercial uses on the same site.

Commercial uses in Planning Districts 1 & 3, in Sackville, and in Bedford all have size thresholds for commercial uses beyond which a development agreement is required. These thresholds range from 1,500 square feet, up to 10,000 square feet, and change depending on the plan area, the designation, and the specific commercial use for which permission is being sought. While this is a significant range of sizes, it is acknowledged that the existing size limitations on as-of-right commercial uses has been employed as a tool to help ensure these uses were local in nature and support the surrounding neighbourhoods where this

area is subject to growth control policies and one where traffic issues have been an ongoing concern of residents.

DISCUSSION

Staff have reviewed the existing policies and land use regulations in light of Council's recent motion, and have developed the following options for consideration:

Option 1 – Increase the Size Threshold of Commercial Use which Requires a Rezoning or Development Agreement

Council could direct staff to alter the existing requirement that requires a Rezoning or Development Agreement for any commercial use exceeding 2,000 square feet in size. Council could choose to direct staff to consider this change in a blanket approach which would impact all commercial uses equally. Council would have flexibility in either directing staff to change this threshold to a new number of their choosing, or direct staff to engage the public as to what this new threshold should be. It is anticipated that this option would involve a change only to the Land Use By-law, and as such could be decided on exclusively by Community Council.

Option 2 – Change the Size Threshold of Commercial Use Requiring a Rezoning or Development Agreement for a Specified Number of Uses

As an augmentation to Option 1, Council could identify a defined set of specific uses or types of uses for which they would like to retain the threshold which triggers a Rezoning or Development Agreement. As a further option, Council could direct staff to engage the public on this question and return with amendments based on the feedback received. As an example, it may be possible that Council would want to retain a higher degree of control over large and impactful commercial recreation uses like golf courses or amusement parks, while providing more as-of-right abilities for local commercial uses. While staff acknowledge the intent of the original Council resolution, it would not be recommended to create these types of use categories based on the perceived age of their users. Instead, decisions would most appropriately be based on the potential impact these uses could have on surrounding properties and the community at-large. It is likely that this change would require an amendment to the Municipal Planning Strategy so as to provide direction to the corresponding LUB changes to reflect which uses should be more closely regulated via approval by Community Council. Should Community Council select this option, they would need to recommendation this change to Regional Council for their initiation.

Option 3 – Eliminate the Requirement for a Rezoning or Development Agreement to Permit Commercial Uses

Council could direct staff to remove the limitation on as-of-right commercial uses within the Plan area completely, thereby allowing commercial uses of any size to be considered through the Development Permit process. While this would address the concern expressed within the Council motion of reducing barriers to business in the community, it would remove a level of Council oversight on large and potentially impactful uses which has functioned for the past three decades. This option would require an amendment to the Municipal Planning Strategy in addition to the Land Use By-law, and as such, require initiation by Regional Council.

Option 4 – Retain the Existing Policies

Council could choose to take no action and retain the existing policies in their present form. Should Council select this option, staff would still seek commercial use policy consistency between plan areas via the Plan and By-law Simplification process and updates to the Regional Plan as they are completed in the years to come.

Conclusion

Staff have reviewed the relevant policy criteria related to both commercial and children's uses within the Plan area and advise that four options are available to Community Council. Where analysis has shown higher thresholds triggering the requirement for a rezoning or development agreement in other plan areas

which have functioned well over the course of many years, staff advise that increasing that threshold to a size greater than the current 2,000 square feet warrants further investigation and engagement with the community as to their preferences and opinions. Changes of this nature would require an amendment to existing plan policy, thus requiring both a public participation program, in addition to initiation by Regional Council. Therefore, staff recommend that the North West Community Council recommend that Regional Council direct staff to proceed with Option 2 as outlined within this staff report, and complete public engagement as per the 1997 Public Participation Resolution of Council.

COMMUNITY ENGAGEMENT

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

At this time, no community engagement has been undertaken on the subject of amending regulations and as-of-right abilities for commercial uses in this plan area. The recommended engagement approach for future amendments could vary depending on the scope of change Council was interested in making. Should a MPS amendment be necessary to facilitate changes to the Land Use By-law, initiation by Regional Council for the change would first be required, along with their adoption of a Public Participation program. A public hearing would also be required before Council could consider approval of any proposed LUB amendments. In the event of either a plan amendment or an amendment to the Land Use By-law, a presentation to and resolution from the North West Planning Advisory Committee would be required as per their existing terms of reference. Changes to the land use by-law will potentially impact local residents, property owners, business owners, and environmental groups.

FINANCIAL IMPLICATIONS

There are no financial implications. The HRM cost associated with completing this planning work can be accommodated with the approved 2022-2023 operating budget for C310 Urban and Rural Planning Applications.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. Risks will be identified to Community Council in subsequent reports depending on the direction Council directs staff to take. 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 future proposed LUB amendments are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No additional concerns were identified beyond those raised in this report.

ALTERNATIVES

1. North West Community Council may choose to direct staff to proceed with Option 1, 3, or 4 as outlined within this staff report.
2. North West Community Council may choose to direct staff to amend the Municipal Planning Strategy and/or Land Use By-law in an alternative manner not outlined within this report. Such amendments may require further discussion and may require a supplementary report or initiation by Regional Council.

ATTACHMENTS

Map 1: Extent of MU-1 Zone in the Beaver Bank, Hammonds Plains, and Upper Sackville
Land Use By-law

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.

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