



Municipality of the District of West Hants

STAFF REPORT

TO: Planning Advisory Committee

FROM: Lynn Davis, Director of Planning

DATE: February 17, 2011

SUBJECT: **Gordon Swinamer - Request for MPS/LUB Amendment to permit new dwellings on existing undersized lots in GC Zone**

ORIGIN

Application from Gordon Swinamer to amend the *West Hants Municipal Planning Strategy* (MPS) and *Land Use By-law* (LUB) to permit a new dwelling on an existing lot in the General Commercial (GC) zone.

RECOMMENDATION

It is recommended:

That Council amend the *West Hants Municipal Planning Strategy and Land Use By-law*, as specified in Exhibit '1', to permit single unit dwellings or mini homes on existing vacant undersized lots in the General Commercial (GC) zone.

BACKGROUND

Gordon Swinamer owns a vacant 7,934 ft² lot on Tonge Hill Road, Garlands Crossing. The property is within the Commercial Core of the Three Mile Plains Growth Centre and, like the surrounding properties, is zoned General Commercial (GC). The GC zone permits a wide range of commercial uses, along with "existing residential uses" and "residential uses in the same building as the commercial use". New stand-alone residential uses are not permitted (see **Exhibit '2'**, General Commercial (GC) Zone Provisions).

Mr. Swinamer's lot was approved in 1987 when the zoning was Restricted Residential (1982 *Area One Land Use By-law*). After the 1991 Plan Review, the zoning for most of Garlands Crossing was changed to GC, but at that time the GC zone permitted new residential uses as well as commercial uses. As a result of the zone provisions that allowed residential development in a commercial zone, over time a considerable amount of land in Garlands Crossing with potential for commercial development was instead taken up by residential uses. Because of concern that this trend would continue, the GC zone was changed as of the 2008 Plan Review to eliminate new residential uses, making it a more typical commercial zone.

Mr. Swinamer would like to be able to construct a single unit dwelling or mini home on his lot. He feels the size of the lot and its setting on a local street in a residential neighbourhood make it unsuitable for commercial use.

The MPS policies addressing the Commercial Core of the Growth Centres are intended to encourage a concentration of commercial development in this area. They do not allow for

rezoning from a commercial zone to a residential one (please see **Exhibit '3'** for a detailed discussion of the Commercial Core policies). An amendment to the MPS is required, along with a concurrent LUB amendment, should Council wish to consider Mr. Swinamer's request.

PROPERTY LOCATION AND SURROUNDING LAND USES

While the requested amendment involves a general text change rather than a map (zoning) change, looking at the location of Mr. Swinamer's property is helpful to put the request into context.

Tonge Hill Road is about a kilometer in length, intersecting with Highway 1 at its western end near the Town of Windsor boundary, and at its eastern end near the Highway 1 and Highway 14 intersection in Garlands Crossing. The Swinamer lot is situated on the northeast side of Tonge Hill Road between Pemberton Road and Highway 1 (see **Map 'A'**). With the exception of a dental office at the intersection of Tonge Hill Road and Highway 1, all of the properties in this part of Tonge Hill Road are developed residential lots zoned General Commercial (GC). Abutting properties at the rear of the Swinamer lot are zoned GC as well, but are used for residential purposes. On the opposite side of Tonge Hill Road, properties are also residential except for the Whitehead farm—approximately 50 acres zoned Agricultural Priority Three (AR-3). A few parcels near the eastern intersection of Tonge Hill Road and Highway 1 are zoned Two Unit Residential (R-2).

The entire area between Highway 1 and Tonge Hill Road, and extending roughly 900 ft on the south side of Tonge Hill Road, is designated Commercial on the Generalized Future Land Use Map of the West Hants MPS. Most of the existing commercial development in this area, however, is located along Highway 1, and near the eastern and western ends of Tonge Hill Road where they intersect with Highway 1.

PROPOSED AMENDMENTS

As Mr. Swinamer's application cannot be accommodated by rezoning, staff has identified another option that would allow his lot to be developed for residential use without affecting a large number of other properties and potentially compromising the integrity of the Commercial Core area. This option involves amending the Land Use By-law to add a new use to the permitted uses in the General Commercial zone:

“Single unit dwellings or mini homes on existing vacant lots under 10,000 ft² in area, subject to the R-1 zone requirements.”

This change would restore the right of residential development to existing small lots that had that right prior to the 2008 Plan Review. By limiting the provision to vacant lots with less than the GC zone's minimum lot size of 10,000 ft², the change will affect very few properties.

An amendment to the MPS will be required also as the policy establishing the GC zone refers only to commercial uses. The preamble to Policy 5.5.7, which establishes the General Commercial zone, states:

General Commercial uses include businesses commonly seen in downtown commercial districts such as retail stores, offices, banks and restaurants.

Policy 5.5.7 *It shall be the policy of Council to establish a General Commercial (GC) zone that permits a broad range of commercial uses, but does not include*

many of the automobile-related uses and those which require large areas for outdoor display which are more typical of a Highway Commercial zone.

Staff suggests adding the following at the end of Policy 5.5.7:

“Existing residential uses, residential uses in combination with commercial uses, and new dwellings on existing vacant undersized lots also shall be permitted.”

AFFECTED PROPERTIES

The MPS limits the application of the General Commercial zone to the Falmouth and Three Mile Plains Growth Centres, as well as the Village of Brooklyn, although there are no vacant lots in Brooklyn currently zoned GC. In fact, the suggested amendment would affect only four properties in West Hants. Two of the lots, including the Swinamer property, are located within the Commercial Core of the Three Mile Plains Growth Centre (see **Map ‘B’**). The other two lots are in the Falmouth Growth Centre, but not within the Commercial Core area (see **Map ‘C’**). Both of these lots were zoned in as GC during the 2008 Plan Review based on their previous Commercial zoning under the former Falmouth Land Use By-law, but they are located within the Residential designation. Providing them with the option of residential development is consistent with their Residential designation, although their location may make them more suitable for commercial use.

PID	Area (ft ²)	Zone	Location	Comments
45208386	7,934	GC	Tonge Hill Rd., Three Mile Plains Growth Centre	Size and location suitable for residential use
45369220	2,045	GC	Highway 14, Three Mile Plains Growth Centre	Lot too small to be viable for either residential or commercial use
45227733	4,100	GC	Falmouth Back Rd., Falmouth Growth Centre	Could be used for either commercial or residential
45159050	4,800	GC	Falmouth Back Rd., Falmouth Growth Centre	Could be used for either commercial or residential

CONCLUSION

When the permitted uses in the GC zone were changed as of the 2008 Plan Review, existing residential uses were protected, but undeveloped properties lost the right to be developed for residential purposes. The intent was to provide a land base for future commercial development and expansion. Nonetheless, while larger parcels may have potential for commercial development, small lots such as Mr. Swinamer’s are far less suitable for a commercial use that would have to meet commercial zone setbacks, parking and buffering requirements. Planning Staff agrees with Mr. Swinamer that, taken together, both the size and location of his lot make it more appropriate for residential use than commercial. The proposed amendments would restore the right he had prior to the Plan Review to build a dwelling on the lot. As the

amendments would affect a very small number of other lots, they would have no adverse effect on the integrity of the Growth Centre's Commercial Core.

The proposed changes are relatively minor amendments that would address Mr. Swinamer's desire to build a house on his small lot. In considering this application, however, staff identified another option that may merit consideration, perhaps at a later date. Several areas of the Three Mile Plains Commercial Core which are currently zoned GC have developed as residential neighbourhoods. These include the Burgess and Pemberton Road areas. The majority of land in these areas is already developed, but there are a few parcels that could possibly be subdivided to create one or two lots. Given the existing residential character of these neighbourhoods, it is unlikely that small lots here would be in demand for commercial use. Council may wish to consider future amendments to address this.

The Municipality's public participation policy requires that Planning Advisory Committee hold a public information meeting prior to making a recommendation that Council approve a MPS amendment. Should PAC wish to proceed with Mr. Swinamer's application, the public information meeting required for those amendments might provide an opportunity to receive input from the public on the idea of broader amendments as well.

It is important to note that a decision about whether or not to amend the Municipal Planning Strategy is entirely at Council's discretion and cannot be appealed to the Nova Scotia Utility and Review Board. Policy 16.1.1 of the MPS sets out the conditions under which Council may amend the MPS:

Policy 16.1.1 *It shall be the policy of Council to review and make amendments to this Strategy:*

- (a) when there is a requirement to change the Generalized Future Land Use Map (Map 1);*
- (b) to bring the Strategy in line with Provincial Statements of Interest; or*
- (c) when Council deems it necessary because of a change in policy intentions or the development environment.*

The proposed amendment fits under clause (c).

BUDGET IMPLICATIONS

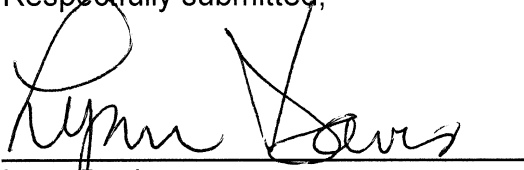
There are no anticipated impacts on the West Hants Budget as a result of the proposed amendments.

ALTERNATIVES

1. PAC could direct staff to proceed with a public information session on the proposed amendments as set out in this report.
2. PAC could direct staff to make changes to the proposed amendments.
3. PAC could direct staff to prepare a report and recommendations on broader amendments affecting the residential areas currently zoned GC and located within the

4. Commercial Core area of the Three Mile Plains Growth Centre.
PAC could recommend that Council refuse Mr. Swinamer's request for MPS and LUB amendments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynn Davis", written over a horizontal line.

Lynn Davis
Director of Planning

Additional copies of this report and information on its status may be obtained by contacting the West Hants Planning Department, 902-798-6900.
Report prepared by Lynn Davis, Director of Planning.

Exhibit '1'

PROPOSED AMENDMENTS

1. Amend Policy 5.5.7 of the *West Hants Municipal Planning Strategy* by adding: “*Existing residential uses, residential uses in combination with commercial uses, and new dwellings on existing vacant undersized lots also shall be permitted*”, so the amended policy reads as follows:

Policy 5.5.7 *It shall be the policy of Council to establish a General Commercial (GC) zone that permits a broad range of commercial uses, but does not include many of the automobile-related uses and those which require large areas for outdoor display which are more typical of a Highway Commercial zone. Existing residential uses, residential uses in combination with commercial uses, and new dwellings on existing vacant undersized lots also shall be permitted.*

2. Amend Section 13.1 of the *West Hants Land Use By-law* by adding the following to the list of Permitted Uses in the General Commercial (GC) zone:

- “• *Single unit dwellings or mini homes on existing vacant lots under 10,000 ft² in area, subject to the R-1 zone requirements*”

13.0 GENERAL COMMERCIAL (GC)

Permitted Uses

13.1 The following uses shall be permitted in the General Commercial (GC) zone:

- Arts and crafts studios including photography
- Banks and financial institutions
- Clubs and community organizations
- Commercial schools
- Country inns
- Day care centres, licensed or non-licensed
- Entertainment, recreation and assembly uses within a wholly enclosed building
- Farm markets
- Garden and nursery sales and supplies
- Licensed liquor establishments
- Local shopping centres containing uses permitted in the GC zone
- Offices
- Parking structures
- Post offices and postal outlets
- Repair and rental establishments
- Residential uses in the same building as the commercial use, subject to Section 13.6
- Restaurants, excluding drive-through restaurants
- Retail stores
- Service and personal service shops
- Veterinary clinics and animal hospitals
- Existing residential uses

GC Zone General Requirements

13.2 In the GC zone, no development permit shall be issued except in conformity with the following:

	with municipal services	with on-site services
Minimum lot area	10,000 ft ² (929.00 m ²)	29,000 ft ² (2,694.10 m ²)
Minimum lot frontage	100 ft (30.48 m)	100 ft (30.48 m)
Minimum front yard	25 ft (7.62 m)	
Minimum rear yard	25 ft (7.62 m)	
Minimum side yard	15 ft (4.57 m)	
Maximum height of main building	35 ft (10.67 m)	
Maximum height of accessory building	15 ft (4.57 m)	

Abutting Zone Requirements

- 13.3 Where a GC zone abuts a lot in a residential zone, the following standards apply:
- (a) the minimum side yard requirement for the commercial use from the abutting lot line shall be 20 ft (6.10 m); and
 - (b) the part of the commercial lot directly adjoining the residential zone shall be used for no purpose other than a planting strip having a minimum width of 5 ft (1.52 m) measured perpendicular to the lot line.

Open Storage

- 13.4 No open storage shall be permitted in the GC zone.

Lot Access

- 13.5 Entrance to and exit from properties zoned GC shall be restricted to not more than two driveways on any street or road. On a corner lot, access shall be restricted to not more than three driveways to the lot. Driveways shall meet Nova Scotia Department of Transportation and Public Works' requirements for commercial access.

Residential Uses

- 13.6 Residential uses as part of the same building as a commercial use are permitted provided the total floor area of the residential use does not exceed two-thirds (66 percent) of the total floor area of the building.

Maximum Commercial Floor Area in the Village Designation

- 13.7 The maximum commercial floor area of a GC use in the Village designation shall not exceed 5,000 ft² (464.50 m²). This restriction shall not apply to existing uses zoned General Commercial. New GC uses with a commercial floor area greater than 5,000 ft² (464.50 m²) in the Village may be considered by development agreement pursuant to Policies 6.3.4 and 6.4.3 of the Municipal Planning Strategy.

Exhibit '3'

DISCUSSION OF MPS POLICIES FOR COMMERCIAL CORE AREAS OF GROWTH CENTRES

Maintaining and enhancing the integrity of the Growth Centre Commercial Core areas is an important aspect of the *West Hants Municipal Planning Strategy* (MPS). The Commercial Core is intended to be an area of concentrated commercial development where new businesses can be established with minimal complications. To that end, much of the land is pre-zoned for commercial use and land not already zoned commercial can be considered for rezoning to either General Commercial (GC) or Highway Commercial (HC). To reinforce the MPS intent that the Commercial Core should be the primary location for commercial development in the Growth Centres, land outside the core cannot be considered for rezoning to a commercial zone except to allow for the expansion of an existing GC or HC use.

Section 5.5 of the MPS provides the rationale for the establishment of Commercial Core areas:

To minimize potential land use conflicts, as well as to promote a focal point for business activity, commercial development will be encouraged to concentrate within designated commercial core areas in the Growth Centres.

Policy 5.5.1 *It shall be the policy of Council to establish a Commercial designation which shall apply to central commercial core areas of the Three Mile Plains and Falmouth Growth Centres.*

Policy 5.5.2 *Within the Three Mile Plains Growth Centre, the designated commercial core area shall centre around the intersection of Highway 1 and Highway 14 at Garlands Crossing and adjacent to Highway 101 as shown on the Generalized Future Land Use Map (Map 1).*

Policy 5.5.3 *Within the Falmouth Growth Centre, the designated commercial core area shall be the area fronting on Highway 1 from the Avon River Bridge to the Highway 101 access road as shown on the Generalized Future Land Use Map (Map 1).*

Three Mile Plains Commercial Core



Falmouth Commercial Core



In Falmouth, the Commercial Core includes a number of commercial uses, including two service stations, a motel, farmer's market, dental office, spa, tack shop and flooring business, as well as developed residential properties.

Commercial uses within the Three Mile Plains core area include a service station, car wash, motel, convenience store, restaurants, farmer's market and building supply store. The MPS notes, "it is anticipated that this will continue to be an area of commercial growth because of its proximity to Highway 101. **The boundaries of the commercial core area also encompass a significant amount of residential development. The intent is to provide for future commercial expansion in a central area.**" [*emphasis added*]

To make it easier for new commercial development to locate within the Commercial Core, much of the land was pre-zoned General Commercial or Highway Commercial. Land not already zoned commercial can be considered for rezoning to either of these two zones.

Policy 5.5.5 *Within the Commercial designation of the Falmouth and Three Mile Plains Growth Centres, the majority of land will be zoned General Commercial to encourage a commercial concentration in the commercial core areas. Existing Highway Commercial uses will be zoned in as well as land in close proximity to Highway 101 and major street intersections where highway commercial development is appropriate. It shall be the policy of Council to allow for rezoning to permit new General Commercial and Highway Commercial uses subject to the criteria set out in Policies 5.5.8 and 5.5.11.*

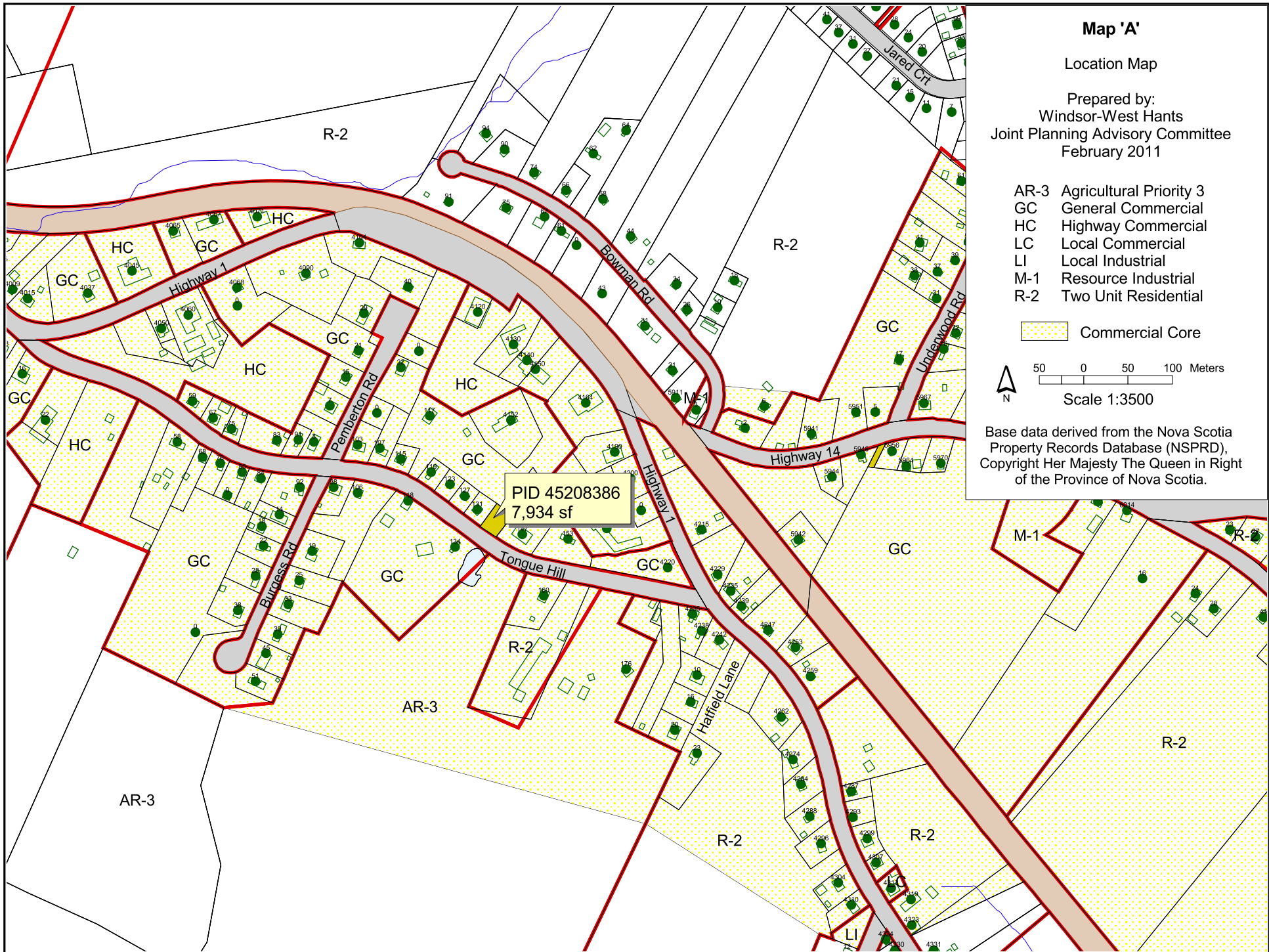
Policy 5.5.6 provides even more support for the role of the commercial core as the main area of commercial development in the Growth Centres by prohibiting the rezoning to GC or HC of land outside the commercial core except to allow for the expansion of an existing GC or HC use.

Policy 5.5.6 *It shall be the policy of Council not to consider requests for rezoning to Highway Commercial or General Commercial outside of the Commercial designation in the Falmouth and Three Mile Plains Growth Centres except to allow for the expansion of an existing Highway Commercial or General Commercial use as specified in Policy 5.6.1.*

The Commercial Core policies do not provide for land that has been zoned commercial to be rezoned back to residential. Although Policy 5.5.9 specifically allows Council to consider Highway Commercial or industrial uses on land zoned GC in the commercial core, there is no mention of residential use.¹ Staff feels the absence of a policy allowing rezoning from commercial to residential is deliberate and supports the intent that the commercial core area should be dedicated to commercial use.

Policy 5.5.9 *It shall be the policy of Council that land zoned General Commercial (GC) within the commercial core areas of the Growth Centres may be considered for Highway Commercial or Industrial uses subject to the relevant policies of this Strategy.*

¹A similar policy exists allowing HC-zoned land to be considered for GC or industrial use (Policy 5.5.12), but there is no reference to residential.



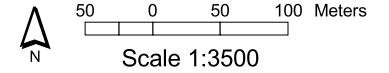
Map 'A'

Location Map

Prepared by:
Windsor-West Hants
Joint Planning Advisory Committee
February 2011

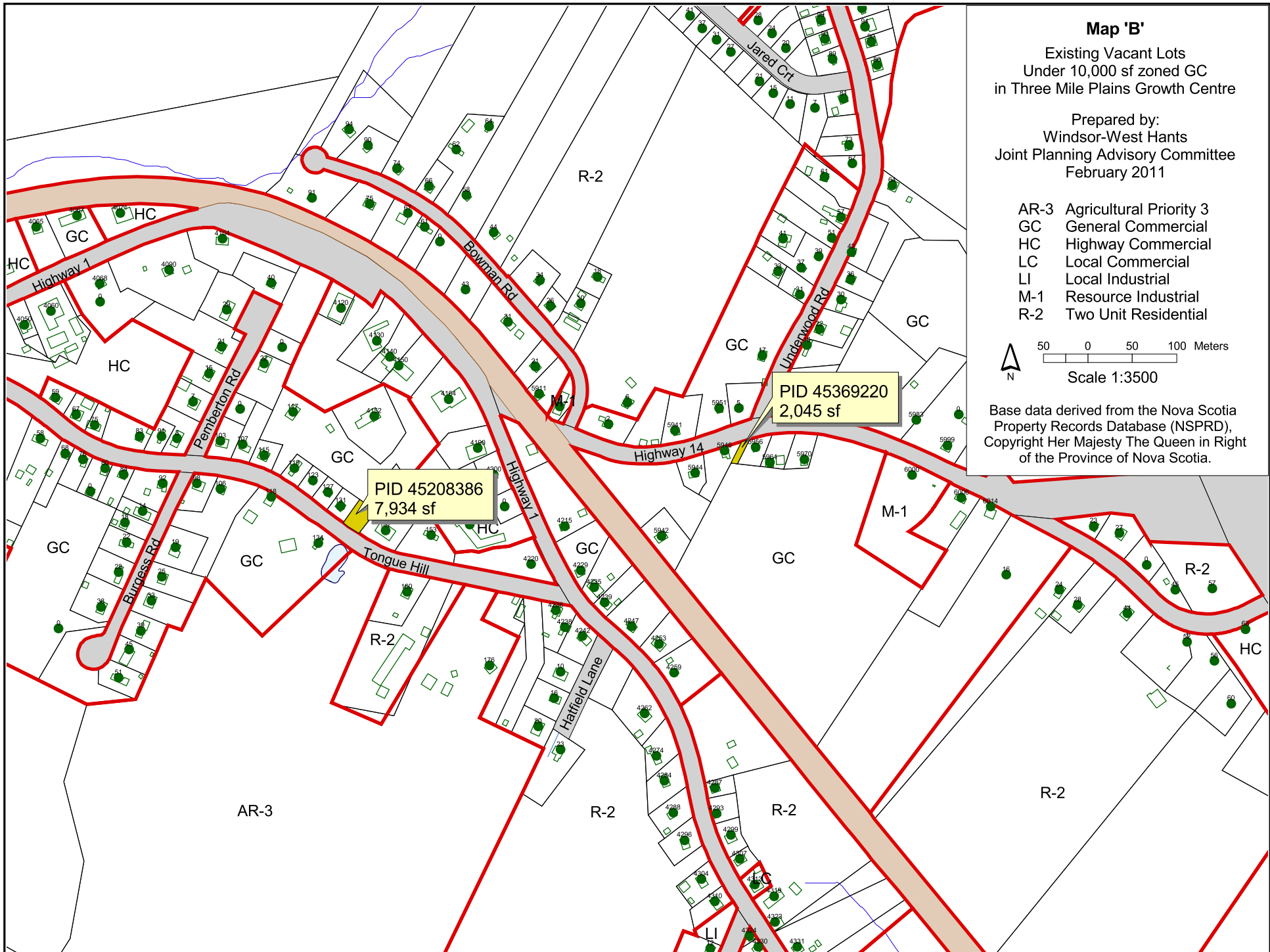
- AR-3 Agricultural Priority 3
- GC General Commercial
- HC Highway Commercial
- LC Local Commercial
- LI Local Industrial
- M-1 Resource Industrial
- R-2 Two Unit Residential

Commercial Core



Base data derived from the Nova Scotia Property Records Database (NSPRD), Copyright Her Majesty The Queen in Right of the Province of Nova Scotia.

PID 45208386
7,934 sf

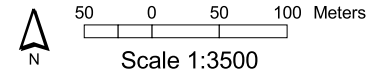


Map 'B'

Existing Vacant Lots
Under 10,000 sf zoned GC
in Three Mile Plains Growth Centre

Prepared by:
Windsor-West Hants
Joint Planning Advisory Committee
February 2011

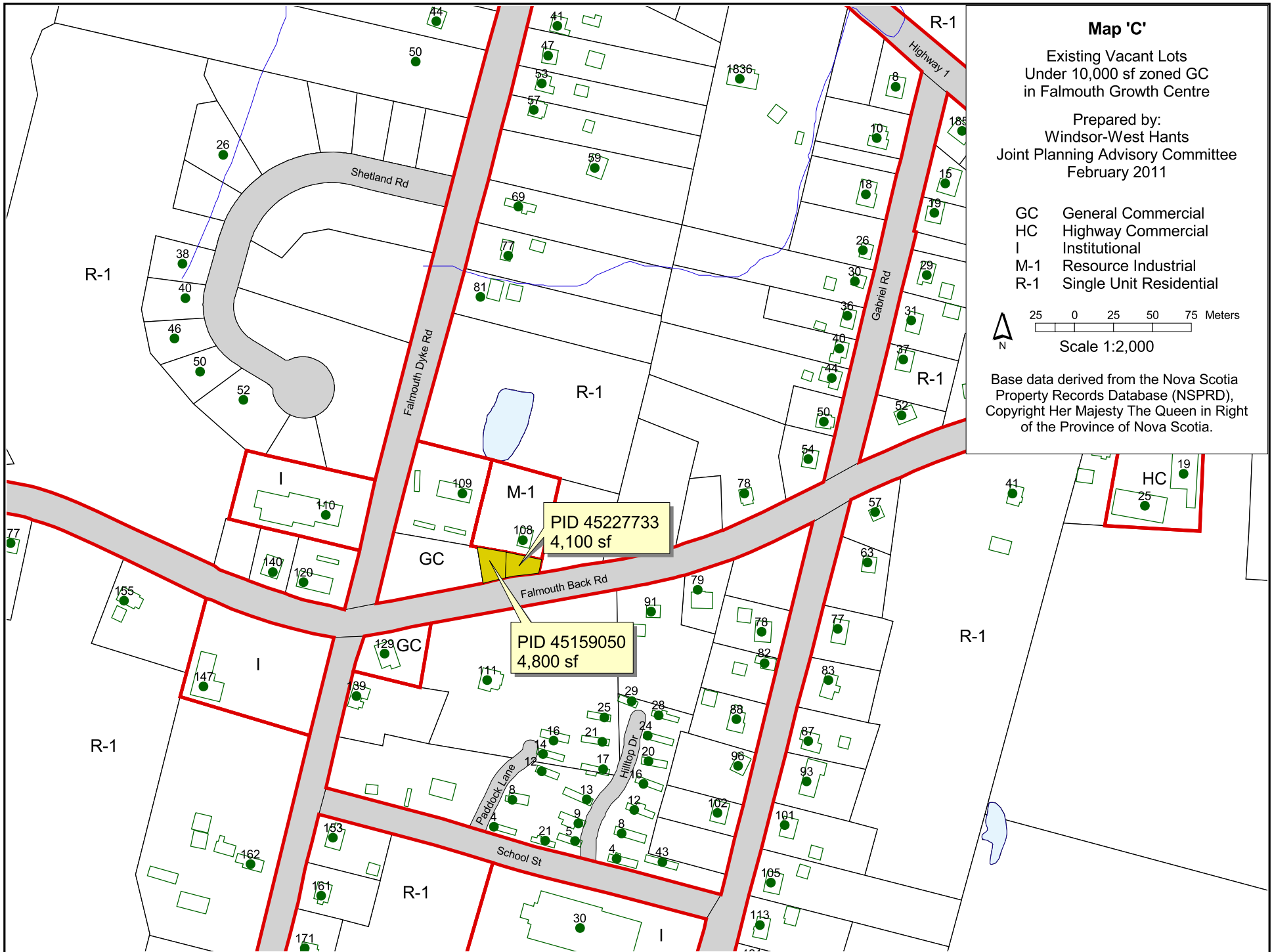
- AR-3 Agricultural Priority 3
- GC General Commercial
- HC Highway Commercial
- LC Local Commercial
- LI Local Industrial
- M-1 Resource Industrial
- R-2 Two Unit Residential



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PID 45208386
7,934 sf

PID 45369220
2,045 sf

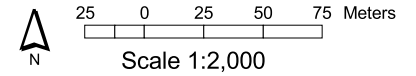


Map 'C'

Existing Vacant Lots
Under 10,000 sf zoned GC
in Falmouth Growth Centre

Prepared by:
Windsor-West Hants
Joint Planning Advisory Committee
February 2011

- GC General Commercial
- HC Highway Commercial
- I Institutional
- M-1 Resource Industrial
- R-1 Single Unit Residential



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PID 45227733
4,100 sf

PID 45159050
4,800 sf