



# Municipality of the District of West Hants

## STAFF REPORT (Revised)<sup>1</sup>

**TO:** Planning Advisory Committee

**FROM:** Jeanne Bourque, Planner

**DATE:** July 19, 2012

**SUBJECT:** **Pothier Real Estate Development Ltd. – Application to Rezone 12.37 Acres from Single Unit Residential (R-1) to Highway Commercial (HC), Falmouth Back Road, Falmouth (PID 45029352).**

### ORIGIN

Application received from John Pothier on behalf of Pothier Real Estate Development Ltd. to rezone 12.37 acres from Single Unit Residential (R-1) to Highway Commercial (HC), Falmouth Back Road, Falmouth (PID 45029352) to permit expansion of existing highway commercial use.

### RECOMMENDATION

It is recommended:

**THAT COUNCIL APPROVE APPLICATION FROM POTHIER REAL ESTATE DEVELOPMENT LTD. TO REZONE 12.37 ACRES FROM SINGLE UNIT RESIDENTIAL (R-1) TO HIGHWAY COMMERCIAL (HC), FALMOUTH BACK ROAD, FALMOUTH (PID 45029352).**



<sup>1</sup> Staff comment on page 6 revised, in reference to Policy 16.3.1 (f), as well as typo in Exhibit 4

## BACKGROUND

The subject property is 12.37 acres located on Falmouth Back Road, Falmouth. (see **Location Map, EXHIBIT 1**). It is owned by Pothier Real Estate Development Ltd., and Mr. Pothier is the company president. The property is currently zoned Single Unit Residential (R-1), and the applicant wishes to construct a new building on this property and consolidate his automobile sales and service business, Pothier Motors, in this location. The business is now located in three buildings on two adjacent properties already zoned Highway Commercial. The applicant proposes to demolish the two buildings on the south side of Falmouth Back Road if the application for rezoning is successful and a new building is constructed on the subject property.

The proposed business is not possible in the R-1 zone which restricts uses to single unit dwellings, accessory apartments, and existing manufactured homes. Automobile sales establishments are permitted in the Highway Commercial (HC) zone. Within the Growth Centre, but outside of the Commercial core designation, the *Municipal Planning Strategy* (MPS) allows Council to consider "...permitting the expansion of an existing Highway Commercial...use onto an adjacent property by rezoning..."

## PROPERTY LOCATION AND SURROUNDING LAND USES

The subject property is located within the Falmouth Growth Centre and is zoned R-1. It is an irregularly shaped lot with approximately 100 feet of road frontage on the south side of Falmouth Back Road (see **Figure 1**). The sales office for Pothier Motors is on the corner of Falmouth Back Road and Highway 1, which is directly across the road from the subject property. The service portion of Pothier Motors has frontage on Falmouth Back Road, and is immediately in front of and adjacent to the subject property.

The subject property is designated Residential on the Generalized Future Land Use Map (GFLUM), and abuts the Falmouth Commercial core (see **EXHIBIT 2**). The two properties containing the existing Pothier Motors are zoned Highway Commercial, designated Residential on the GFLUM, and are also close to the Commercial core. All three of the properties are in close proximity to the Highway 101 Exit 7 interchange, and are approximately 650 ft (200 m) from the Falmouth Connector. There are several properties zoned General Commercial at the intersection of Falmouth Back Road and Falmouth Dyke Road, as well as the Turbine clothing business on Highway 1 directly across from the Pothier Motors sales office. There are several vacant properties immediately adjacent to the Falmouth Connector that are zoned Highway Commercial and Resource Industrial. However, it should be noted that a large portion of these and other properties within the Commercial core are dykelands so development on them is quite restricted (see **EXHIBIT 2**).

There are three single family homes to the north of the subject property, civic numbers 29 and 41 Falmouth Back Road, and 1918 Highway 1. There is a small pond located on the subject property, as well as a small area of dykelands (less than 10,000 ft.<sup>2</sup>). A portion of the subject property immediately adjacent to the Pothier Motors service area on the east and south is used for access and parking for the commercial use (see **Figure 1**).

## MUNICIPAL PLANNING STRATEGY AND LAND USE BY-LAW CONSIDERATIONS

In reviewing an application for rezoning, Council must consider the policies and regulations of the *West Hants Municipal Planning Strategy* (MPS) and *West Hants Land Use By-law* (LUB).

Policies 5.5.6 and 5.6.1 of the MPS are the main policies that allow Council to consider this application. There are general policies in the MPS which Council should bear in mind, and these are contained in **EXHIBIT 3**.

Council must keep in mind that once a parcel of land is rezoned, any of the permitted uses as outlined in **EXHIBIT 4** may locate on the property in the future, provided they meet all other provisions of the Land Use By-law.

## 5.5 Commercial Core Development

The MPS outlines the area that is designated as the commercial core area in the Falmouth Growth Centre. The MPS goes on to say that *“it is the intention of Council to limit the **majority** of new commercial development to this core.”* Therefore, the MPS acknowledges that while the intention is to encourage most of new commercial development to locate in the commercial core, Council also recognizes that there will be some limited commercial development outside of the core. Expansion of existing highway commercial uses is provided for in policy 5.5.6.

*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 subject property is within the Falmouth Growth Centre, but outside of the Commercial designation. The stated exception to this policy allows Council to consider expansion of existing Highway Commercial use outside of the Commercial designation. The number of properties to which this exception applies is small – there are three in Falmouth<sup>2</sup>, and two in Three Mile Plains<sup>3</sup>. New Highway Commercial use will not be permitted to locate anywhere else in the Falmouth Growth Centre outside of the designated commercial core.

## 5.6 Commercial Development Outside the Commercial Core

*Policy 5.6.1 It shall be the policy of Council to zone in existing commercial uses outside the designated Commercial core areas in Growth Centres to make them conforming uses, provided they do not conflict with the surrounding area. **Council may consider permitting the expansion of an existing Highway Commercial** or General Commercial use onto an adjacent property by rezoning subject to the criteria set out in Policies 5.5.8 and 5.5.11. This shall not be regarded as setting a precedent for permitting future General or Highway Commercial uses outside of the designated Commercial core areas.*

This policy allows Council to consider expansion of an existing Highway Commercial use, and defines what criteria to use for assessment. Policy 5.5.8 is relevant to General Commercial, so Council must use the criteria as set out in 5.5.11 for Highway Commercial.

*Policy 5.5.11 It shall be the policy of Council to consider rezoning land within the Commercial designation of the Growth Centres to Highway Commercial (HC) subject to the following:*

*(a) the development has frontage on an arterial or collector street;*

Falmouth Back Road is designated as an arterial street by Policy 14.2.1 of the MPS. The minimum lot frontage required in the Highway Commercial zone is 100 ft (30.48 m), and the subject property has approximately 100 feet of frontage.

*(b) adequate buffering or screening, setbacks and yards are provided to minimize potential land use conflicts with adjacent properties and any open storage and display areas are adequately controlled and screened;*

Any new building constructed on the property will have to meet all buffering, screening, and setbacks provided for in the West Hants LUB (see **EXHIBIT 4**). A Highway Commercial zone abutting a lot in a residential zone must have a minimum side yard of 20 ft. (6.10 m), minimum front and rear yards of 25 ft. (7.62 m), no open storage is permitted in the required abutting side yard, and planting strips are required

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<sup>2</sup> Two are the existing Pothier Motors business, the third is 1813 Highway 1, the Richard Pineo property recently rezoned to expand an existing Highway Commercial use.

<sup>3</sup> These are Nova International at 4449 Highway 1 and West Hants Development Company at 4860 Highway 1.

as outlined in the LUB. Staff feel that the large lot provides adequate room for the required buffers, screening and setbacks.

(c) *traffic flow and pedestrian safety will not be adversely affected;*

Highway commercial uses are typically located in higher traffic areas and at the intersection of major traffic routes. There may be some increased vehicular traffic as business expansion occurs. There is also potential for a new commercial business to be located at the existing sales office if the applicant chooses to sell or lease those premises. If that occurs, a development permit will be required and an assessment requested from Department of Transportation and Infrastructure Renewal (TIR).

Some highway commercial uses could possibly attract pedestrians from the surrounding areas. As with all other areas of West Hants, there are no sidewalks and pedestrians walk along the road shoulders. However, it would not be unreasonable to expect some decrease in local pedestrian movement across Falmouth Back Road as a result of Pothier Motors being consolidated onto one property and the need for staff to move from one building to another is eliminated.

(d) *safe and efficient roadway access is provided;*

Department of Transportation and Infrastructure Renewal (TIR) have assessed the subject property and determined that the existing commercial access to the subject property satisfies their minimum requirements. However, TIR staff have recommended taking this opportunity to improve the existing commercial access. Cars can now access the subject property and adjoining Pothier Motors service bays at virtually any point along the combined frontage which is over 250 feet (76 m), see **Figure 2**.



As part of the regular application process for a building permit, the Development Officer will send the proposal to TIR for comments. TIR has said that they will recommend reducing the access to the business in one of two ways. One option is to have a single driveway 50 feet wide, while a second option is two driveways each 30 feet wide.

*Figure 2*  
*Current frontage on Falmouth Back Road, subject property in foreground.*

(e) *adequate on-site parking is provided;*

The subject property is of sufficient size to accommodate all on-site parking requirements of the LUB, which is one parking space for every 300 ft<sup>2</sup> (27.87m<sup>2</sup>) of commercial space.

(f) *any other matter which may be addressed in a Land Use By law;*

All other matters have been addressed elsewhere in this report.

(g) *Policy 16.3.1.*

## GENERAL POLICY FOR LAND USE BY-LAW AMENDMENTS AND DEVELOPMENT AGREEMENTS

**Policy 16.3.1** *In considering development agreements and amendments to the West Hants Land Use By-law, in addition to the criteria set out in various policies of this Strategy, Council shall consider:*

- (a) *whether the proposal is considered premature or inappropriate in terms of:*
    - (i) *the adequacy of sewer and water services;*
    - (ii) *the adequacy of school facilities;*
    - (iii) *the adequacy of fire protection;*
    - (iv) *the adequacy of road networks adjacent to, or leading to the development; and*
    - (v) *the financial capacity of the Municipality to absorb any costs relating to the development.*
  - (i) The Director of Public Works, Rick Sherrard, confirms that there is enough capacity in existing water and sewer infrastructure to accommodate this development.
  - (ii) There will be no effect on local schools.
  - (iii) The property is in a hydrant-protected area and any new commercial structure will be required to be built in accordance with building and fire codes in effect at the time application is made for a building permit.
  - (iv) All of the roads leading to the development are owned and maintained by NS Dept. of Transportation and Infrastructure Renewal (TIR) and are considered suitable for the use. Access to the development for the majority of traffic will likely be from Highway 101 via Exit 7. From there it is only about 650 ft (200 m) to the subject property. Both Falmouth Back Road and Highway 1 are designated as arterial streets in the MPS.
  - (v) There are no anticipated costs to the Municipality.
- (b) *whether the development is serviced, or capable of being serviced, by a potable water supply and either central sewer or an approved on-site sewage disposal system;*

The property is serviced with municipal water and sewer.

- (c) *the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;*

Auto traffic has been dealt with elsewhere in this report.

Rail traffic is not relevant to this report.

With respect to pedestrian movement, there are a number of amenities in the area, such as the elementary school, the community hall and a convenience store, that are pedestrian destinations or attractions. No sidewalks exist on any of the main streets in West Hants, including Falmouth Back Road, nor are sidewalks required by the *West Hants Subdivision By-law* within new developments. With continued development in the area, the potential for conflicts between automobiles and pedestrians will increase. This is an incremental problem, not one that can be attributed to a particular development. To address this, Council may wish to begin considering ways of providing for safer pedestrian movement along the main streets in both the Falmouth and Three Mile Plains Growth Centres. However, the changes recommended by TIR should make it safer for pedestrians in the immediate vicinity of the subject property.

- (d) *the adequacy of the dimensions and shape of the lot for the intended use;*

The Highway Commercial zone requires a minimum area of 20,000 sq. ft. for fully serviced lots, and 100 ft. frontage on a street. The area subject to rezoning contains 12.7 acres and can easily accommodate these requirements.

(e) *the pattern of development which the proposal might create;*

The MPS is very clear that growth is to be encouraged to occur within the serviceable, designated Growth Centre, thereby helping to protect and preserve valuable agriculture lands and resource areas. The MPS strikes a balance between the desire of residents to control commercial development in Falmouth and the need to allow for commercial growth and expansion, in particular for those businesses already in existence. To accomplish this balance, strict controls and limitations are in place to regulate the type and location of commercial development allowed in the Growth Centre.

The subject property abuts the designated commercial core, is located in a high traffic area in close proximity to a major highway interchange, and is an expansion of an existing highway commercial use. Staff feel that this rezoning would not change the pattern of development so it fulfills the intent of the MPS.

(f) *the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses or wetlands, and susceptibility of flooding;*

There is a small pond located on the subject property, as well as a small portion of land designated dykelands. Nova Scotia Environment regulates matters relating to watercourses and wetlands. The West Hants Land Use By-law places strict limitations on what kind of development can occur on dykelands, and also requires a 50 foot setback from watercourses. There are no other known environmental conditions that would limit the suitability of the area for the proposed use.

(g) *whether the proposal meets the requirements of the appropriate provincial or federal agencies as well as whether it conforms to all other relevant municipal by-laws and regulations;*

If the rezoning is successful, then all municipal, provincial and federal regulations and any other matters covered in the *West Hants Land Use By-law* will have to be met. Planning staff are not aware of any requirement that this proposal cannot meet.

(h) *any other matter required by relevant policies of this Strategy.*

All other matters have been addressed elsewhere in this report.

## **CONCLUSION**

This report has reviewed the application against relevant policies and requirements of the MPS and the LUB, and Planning staff feel that the proposed rezoning reasonably carries out the intent of the MPS and does not conflict with the LUB. Staff therefore recommend that the application be approved.

## **OPTIONS**

PAC could accept the staff recommendation and recommend that Council approve the application for rezoning as presented.

PAC could recommend that Council refuse the application for rezoning. This is not the recommended action for the reasons set out in this report.

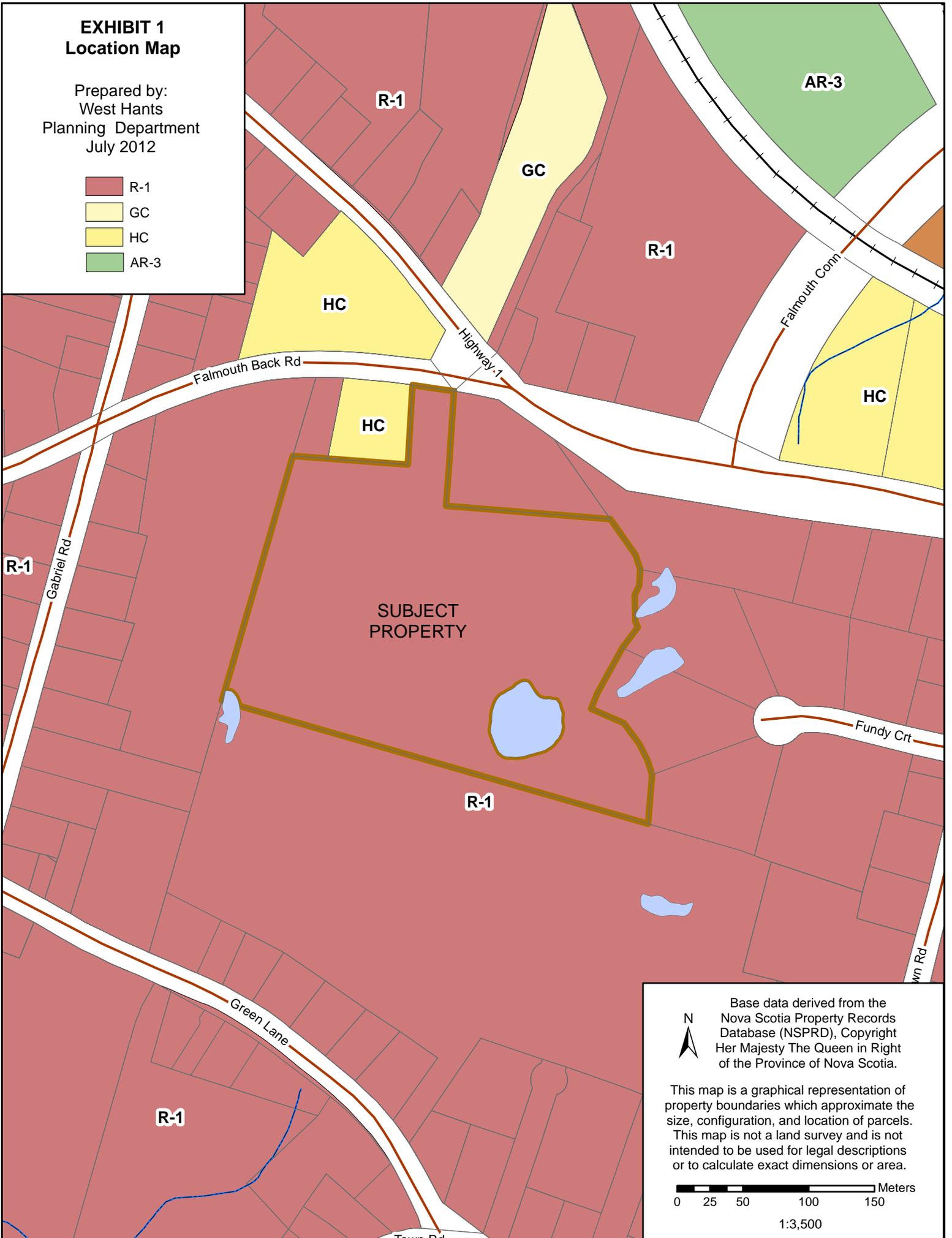
Respectfully submitted,

  
Jeanne Bourque  
Planner

# EXHIBIT 1 Location Map

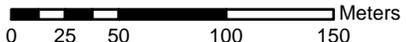
Prepared by:  
West Hants  
Planning Department  
July 2012

-  R-1
-  GC
-  HC
-  AR-3



Base data derived from the  
Nova Scotia Property Records  
Database (NSPRD), Copyright  
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of the Province of Nova Scotia.

This map is a graphical representation of  
property boundaries which approximate the  
size, configuration, and location of parcels.  
This map is not a land survey and is not  
intended to be used for legal descriptions  
or to calculate exact dimensions or area.



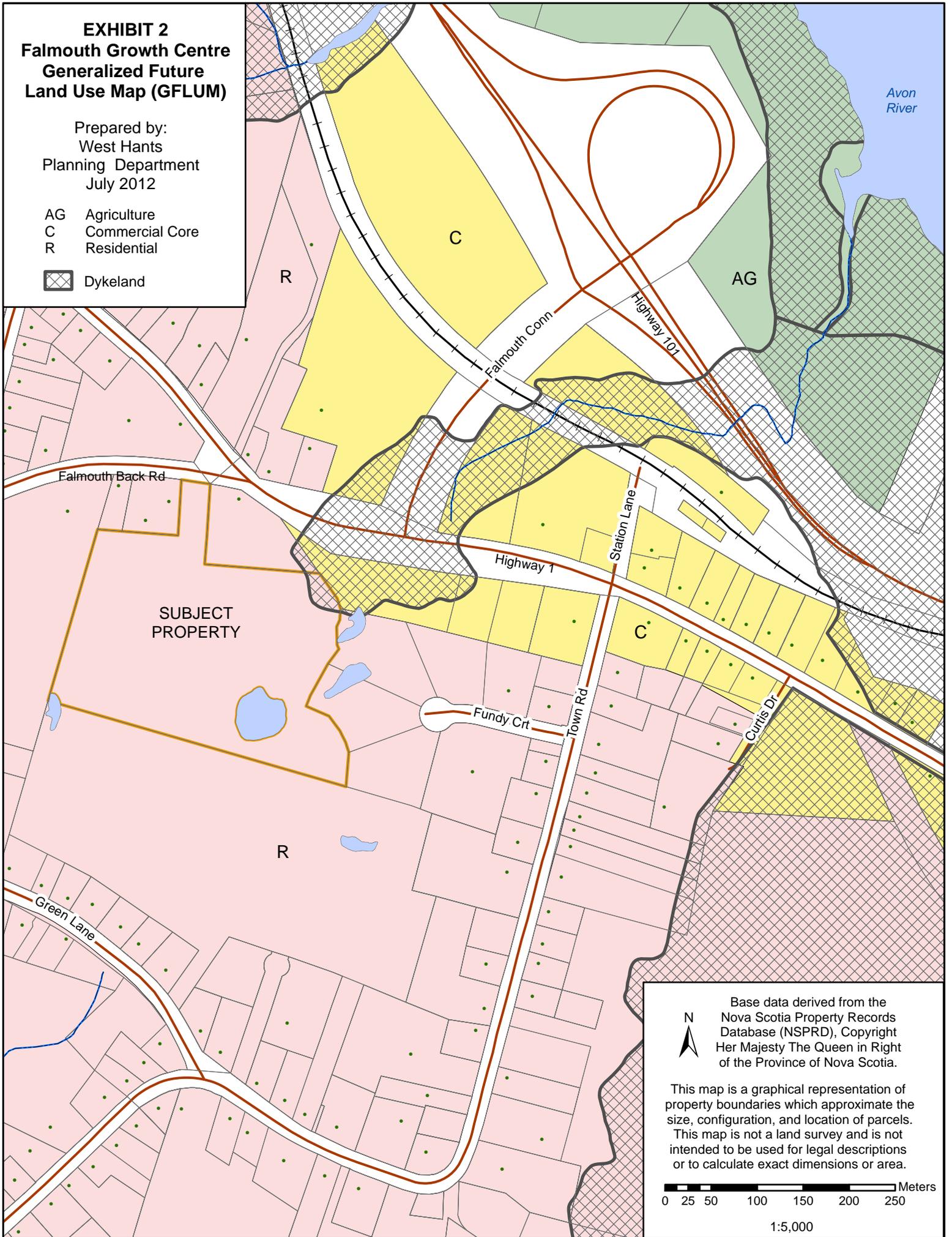
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**EXHIBIT 2  
Falmouth Growth Centre  
Generalized Future  
Land Use Map (GFLUM)**

Prepared by:  
West Hants  
Planning Department  
July 2012

AG Agriculture  
C Commercial Core  
R Residential

 Dykeland



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## EXHIBIT 3

### EXCERPT FROM WEST HANTS MUNICIPAL PLANNING STRATEGY 2008

#### 5.0 Growth Centre

This Strategy encourages most of the future non-rural growth in West Hants to occur in designated Growth Centres where municipal services, particularly water and sewer, can be provided more efficiently and economically. The Growth Centres offer commercial, industrial and institutional services to the surrounding area and have a higher concentration of population. Three Mile Plains and Falmouth have been designated as Growth Centres under this Strategy.

New development in the Falmouth Growth Centre will be mainly residential. Falmouth has a smaller commercial area concentrated on Highway 1 between the Avon River Bridge and the Highway 101 connector. In addition, there are several businesses outside the commercial core.

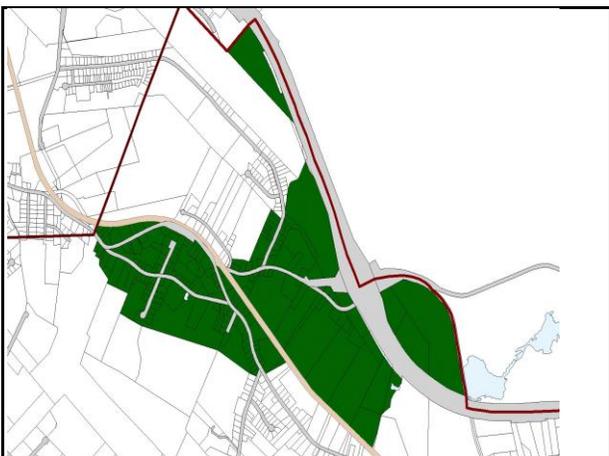
**Policy 5.1.1** *It shall be the policy of Council to encourage more concentrated residential and commercial development in the designated Growth Centres.*

#### 5.5 Commercial Core Development

The majority of new commercial development in West Hants is to be encouraged in Growth Centres which, in addition to being central, are serviced and have easy access to Highway 101. Given the proximity of the Growth Centres to the Town of Windsor, a regional approach to commercial growth should also be considered. Since Falmouth is to develop primarily as a residential Growth Centre, it is intended that most commercial development will occur in the Three Mile Plains Growth Centre.

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.*



The commercial core of the Three Mile Plains Growth Centre is located around the intersection of Highway 1 and Highway 14 at Garlands Crossing, and adjacent to Highway 101. A variety of commercial uses, including a gas station, motel, restaurants, farmer's market and building supply store, are located here. 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.

**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).*

The commercial core of Falmouth is located along Highway 1 between the Avon River Bridge and the Highway 101 access road. Residents have expressed the desire to strictly control commercial development in Falmouth. Therefore, it is the intention of Council to limit the majority of new commercial development to this core.

**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).*

## EXHIBIT 4

### *EXCERPT FROM WEST HANTS LAND USE BY-LAW 2008*

#### **14.0 HIGHWAY COMMERCIAL (HC)**

##### **Permitted Uses**

14.1 The following uses shall be permitted in the Highway Commercial (HC) zone:

- Arts and crafts studios including photography
- Automobile service stations, car washes and repair centres
- Automobile, truck and motorcycle sales, service or rental establishments
- Building supply establishments
- Day care centres, licensed or non-licensed
- Dry cleaning and laundry establishments
- Entertainment, recreation and assembly uses within a wholly enclosed building
- Farm supplies and equipment sales and service
- Farm markets
- Funeral homes
- Garden and nursery sales and supplies
- Heavy equipment sales and service
- Hotels, motels and other tourist accommodations
- Kennels
- Licensed liquor establishments
- Local shopping centres
- Manufactured home sales
- Offices (not on the ground floor)
- Post offices and postal outlets
- Recreational vehicle sales, service and rental establishments
- Recycling depots
- Repair and rental establishments
- Residential uses in the same building as the commercial use, subject to Section 14.5
- Restaurants, including drive-through and take-out establishments
- Retail stores
- Self Storage Operations (Amendment GC1LUB 11-01 Effective October 7, 2011)
- Service and personal service shops
- Taxi, train and bus stations
- Veterinary clinics and animal hospitals
- Wholesaling and wholesale sales
- Existing residential uses

### HC Zone General Requirements

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

	with municipal services	with on-site services
<b>Minimum lot area</b>	20,000 ft <sup>2</sup> (1858.00 m <sup>2</sup> )	29,000 ft <sup>2</sup> (2,694.10 m <sup>2</sup> )
<b>Minimum lot frontage</b>	100 ft (30.48 m)	
<b>Minimum front yard</b>	25 ft (7.62 m)	
<b>Minimum rear yard</b>	25 ft (7.62 m)	
<b>Minimum side yard</b>	15 ft (4.57 m)	
<b>Maximum height of main bldg.</b>	35 ft (10.67 m)	

### Abutting Zone Requirements

14.3 Where a HC 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);
- (b) no open storage or outdoor display shall be permitted in an abutting yard; and
- (c) 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.

### Access

14.4 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

14.5 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

14.6 The maximum commercial floor area of HC uses in the Village designation shall not exceed 5,000 ft<sup>2</sup> (464.50 m<sup>2</sup>). This restriction shall not apply to existing uses zoned Highway Commercial. New HC uses with a commercial floor area greater than 5,000 ft<sup>2</sup> (464.50 m<sup>2</sup>) may be considered by development agreement pursuant to Policies 6.3.4 and 6.4.3 of the Municipal Planning Strategy.