



# Report to Planning Advisory Committee

**To:** Chair and Members, Planning Advisory Committee

**Submitted By:** Jeanne Bourque, Planner (MCIP, LPP)

**Date:** January 21, 2016

**Subject:** **James and Michelle Maynard – Development Agreement to Permit a Home Based Auto Repair Shop at 741 McKay Road, Newport, West Hants (PID 45372224)**

**File No.** WHDA 15-03

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## RECOMMENDATION REPORT

### ORIGIN

An application has been received from James and Michelle Maynard for a development agreement to permit a home based auto repair shop at their residence at 741 McKay Road in McKay Section, Newport, West Hants (PID 45372224).



*Figure 1 – View up driveway 741 McKay Road Newport*

### LEGISLATIVE AUTHORITY

*Municipal Government Act* (Statutes of Nova Scotia 1998) Section VIII, Planning and Development, the West Hants Municipal Planning Strategy (2008), and the West Hants Land Use By-law (2008).

## RECOMMENDATION

It is recommended:

**COUNCIL APPROVE THE APPLICATION OF JAMES AND MICHELLE MAYNARD TO ENTER INTO A DEVELOPMENT AGREEMENT TO ALLOW A HOME BASED AUTO REPAIR SHOP AT 741 MCKAY ROAD, MCKAY SECTION, WEST HANTS (PID 45372224).**

To ensure the development agreement is signed within a reasonable amount of time, Staff also recommends that:

**COUNCIL REQUIRE THAT THE DEVELOPMENT AGREEMENT WITH JAMES AND MICHELLE MAYNARD BE SIGNED WITHIN 120 DAYS FROM THE DATE OF FINAL APPROVAL BY COUNCIL OR THE DATE THAT ANY APPEALS HAVE BEEN DISPOSED OF; OTHER WISE, THIS APPROVAL WILL BE VOID AND OBLIGATIONS ARISING HEREUNDER SHALL BE AT AN END.**

## BACKGROUND

The subject property is owned by James and Michelle Maynard. The Maynards propose to establish a home based auto repair shop, primarily using an existing 30 x 40 foot two bay garage located behind the house (see **Figure 1**). In West Hants, home based businesses are permitted in any zone, but the definition of “home based business” does not include an auto repair shop. However, Council may consider Resource Industrial uses, which include auto repair shops, in the Agricultural Priority Two zone by development agreement.

## DEVELOPMENT AGREEMENTS

A development agreement (DA) is a legal contract between a municipality and a property owner that sets out the type and form of development permitted on a property. It may include requirements such as landscaping, screening, setbacks, hours of operation, building design and location, and whatever other matters are permitted to be considered by Council. Development agreements are more flexible than traditional zoning and may allow Council to authorize a use which otherwise would not be permitted. Development agreements also enable a greater deal of control over the specifics of a development.

Staff are proposing a development agreement that permits a specific Resource Industrial use that will be regulated by provisions found in the Local Commercial and Home Based Business sections of the *West Hants Land Use By-law* (LUB).

## PROPERTY LOCATION AND SURROUNDING LAND USES

The subject property, 741 McKay Road, (see **Exhibit 1**), has about 400 feet of road frontage, and is located in the McKay Section of West Hants. It is 14.6 acres in size and has one single unit dwelling, assorted residential accessory buildings, and a 30 x 40 foot two bay garage. The property is zoned Agricultural Priority Two (AR-2), and designated as Agricultural on the Generalized Future Land Use Map. The land is gently sloped upwards from the road, with the house and garage sitting on top of the first slope. Beyond the house, the property slopes upwards again, and then down to the Meander River which forms the northern property

boundary. On the other side of the river is Smiley's Provincial Park, which is zoned Open Space (OS). Lands abutting the property to the east, west and directly across the McKay Road are also zoned AR-2. Across the road to the south is a large property owned by General Pacific Gypsum Holding Limited which is zoned Mineral Resource (MR). Aerial photos show an old gypsum quarry site on this property.

Abutting land uses are currently primarily residential, with farming activity further along the road in either direction east to west.

## DEVELOPMENT SITE

While a development agreement would be registered on the entire subject property, it may restrict the business development activities to a particular area. This area is referred to as the "development site". It is usually shown drawn on a map (see **Figure 2**), and can be defined in measurements as well (see **Exhibit 2**).

In this case, specifying a development site serves two purposes. First, it restricts the size of the business, which helps to minimize the impact of the business on adjacent residential use. Second, it ensures that only a limited portion of the property which is in close proximity to existing non-farm buildings is used for the business, preserving the remaining agricultural lands for potential agricultural uses.



## MUNICIPAL PLANNING STRATEGY AND LAND USE BY-LAW

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). Policy 8.9.4 is the primary policy which allows Council to consider a Resource Industrial use, in this case an Auto Repair Shop, in the AR-2 zone.

## 8.9 Agricultural Priority Two Zone

The Agricultural Priority Two (AR-2) zone is intended to apply to areas with high capability for agriculture, but where land owners do not want the strict development controls of the Prime Agriculture (P/Ag) zone. The AR-2 zone allows for more flexibility than the P/Ag zone including a wider scope of on-farm businesses by development agreement. Unlike the P/Ag zone, new dwellings are permitted as a main use, although subdivision is limited to two lots per area of land in a calendar year.

### **Non-Farm Development**

More extensive residential development beyond the two lots per calendar year permitted as-of-right may be considered by rezoning, provided the land is proven to be unsuitable for agriculture. Council may also consider non-resource commercial or industrial development in the AR-2 zone by development agreement, subject to a study showing the land is of low agricultural capability.

**Policy 8.9.4** It shall be the intention of Council to consider new non-resource Rural Commercial (RC), Recreation Commercial (RecC), Resource Industrial (M-1) or Open Space (OS) uses in the AR-2 zone by development agreement subject to the following:

(a) the **development site** has been determined to have little or no agricultural capability in accordance with Policy 8.6.1;

This matter has been addressed by the agrologist's study, referred to in more detail further on in this report.

(b) the proposed use will not compromise or adversely affect the operation or integrity of existing agricultural operations;

The proposed business will be limited in size by the development agreement, and permitted on a clearly defined portion of the property which already contains non-farm buildings. This will ensure that the proposed business use does not compromise any existing agricultural operations.

(c) the predominant agricultural character of the area will not be adversely affected;

The development agreement stipulates several parameters common to home based businesses, such as requiring that the owner of the business occupy the single unit dwelling on the property, the number of non-family employees, and other requirements that are intended to maintain the residential character of the property. This is in keeping with the mixture of agricultural and residential uses in the area.

(d) adequate separation distances and buffering between agricultural and non-agricultural uses can be provided;

The subject property is used primarily for residential purposes, as are the two properties to the east and west. The development agreement provides for adequate separation and visual buffers between the business use and adjoining residential uses.

- (e) *the use is not one which, because of its size or nature, would be more appropriately located in a Growth Centre, Village or Hamlet;*

A small auto repair shop is in keeping with the rural nature of much of West Hants, provided that it is restricted in size to reflect home based business use.

- (f) *safe and efficient roadway access is provided;*

McKay Road is a provincial highway and under the jurisdiction of Nova Scotia Transportation and Infrastructure Renewal (NSTIR). NSTIR has provided approval for limited commercial access, specifically a home based auto repair shop (see **Exhibit 3**).

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

The development agreement will limit the overall area that may be used for on-site parking.

- (h) *the development is compatible with adjacent land uses with respect to:*
  - (i) *traffic generation and traffic safety;*
  - (ii) *hours of operation;*
  - (iii) *size and design of building(s);*
  - (iv) *signage; and*
  - (v) *pedestrian circulation and safety;*

Traffic generation will be controlled by limiting the size of the business. Hours of operation will be stipulated in the development agreement, proposed for 7:00 am to 9:00 pm, Monday to Sunday. The size and design of buildings will be limited by setbacks, permitted location – back yard only – and the limitation of the development site, which is approximately 400 feet by 400 feet. Signage is restricted in the development agreement to two small non-illuminated signs. Pedestrian circulation is typical of rural roads where pedestrians must walk on the shoulder of the highway. The existing shoulders are considered adequate for this use.

- (i) *any other matter which may be addressed in a development agreement;*

Lighting, outside storage, and maintenance are addressed in the development agreement.

- (j) *Policy 16.3.1.*

## **8.6 Determination of Agricultural Capability**

*Because of the scale at which it was prepared, the C.L.I. mapping, upon which the Agricultural designation is based, is generalized and there may be pockets of land with higher or lower capability ratings. Council feels it is important to provide an opportunity, through a Land Use By-law amendment or development agreement process, for owners of land with little or no agricultural capability to use their property for certain non-farm development, provided the development will not interfere with adjacent farm activities or negatively affect the viability of the farming area. Property owners will be required to show that the majority of the **development site** is unsuitable for agriculture and the development will not adversely affect other farms in the area.*

**Policy 8.6.1** *It shall be the policy of Council to consider certain non-farm development, pursuant to the relevant specific policies of this Part, on land within the Agricultural designation that has been determined to have little or no agricultural capability. A determination of agricultural capability shall be based on the following:*

- (a) 90 percent or more of the development site is an existing or abandoned resource extraction site such as a sand pit, gravel pit or quarry for which a permit for extraction has been issued by the Province of Nova Scotia. The resource extraction must have been existing or abandoned prior to the effective date of this Strategy; or
- (b) if not a resource extraction site, a study has been prepared by a professional agrologist, at the expense of the applicant, which concludes that the proposed development will not adversely affect the viability of surrounding agricultural operations and:
  - (i) 90 percent or more of the development site has soils defined as Class 4 or lower capability for agriculture; or
  - (ii) the soils have a capability for agriculture rating better than Class 4, but 90 percent or more of the **development site** exhibits severe limitations for agricultural use because of slope, stoniness, salinity, wetness, permeability, depth of soils, size of parcel or proximity to non-farm buildings;
- (c) the study shall:
  - (i) be prepared by a registered full member of the Nova Scotia Institute of Agrologists;
  - (ii) require a site inspection by the agrologist;
  - (iii) specify the method used, consistent with the C.L.I. classification methodology, to determine soil capability for agriculture;
  - (iv) identify any major site features or characteristics which influence or determine soil capability including, but not limited to, slope, soil texture, stoniness, wetness, salinity, permeability, and depth of soils;
  - (v) include a site plan illustrating the area studied and any relevant site features;
  - (vi) identify reasons why the use would be compatible with, or not adversely affect, area farms. Reference should be made to the following where applicable: site and locational constraints; infilling between existing non-farm development; logical extension of existing non-farm development; special use with special locational requirements; current pattern of development; parcel size and shape; surrounding land uses; context within which the parcel fits into the farming area; viability of the parcel and remnant for farming; and existing, past and future use of the parcel and remnant;
  - (vii) indicate the implications of letting the parcel go out of agricultural production; and
  - (viii) indicate the implications of fragmenting the land.

A study is being conducted by a registered agrologist. Because the proposed business use is restricted to an area, referred to here as the “development site”, that has already been taken out of agricultural production, it is not anticipated that there will be any difficulty arising from this study.

- (h) Policy 16.3.1.

## GENERAL POLICY FOR ALL 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.*

The subject property is serviced with on-site services. There will be no impact on school facilities. No formal comment has been received yet from the Brooklyn Fire Department, but it is anticipated that there will be no difficulty in providing fire protection. All of the roads leading to the development are owned and maintained by NS Transportation and Infrastructure Renewal (NSTIR) and they have provided approval for limited commercial access to the property (see **Exhibit 3**). There are no anticipated costs to the Municipality related to this development agreement.

- (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;*

Prior to the issuance of a development permit for change of use, any development must provide documentation that the property is serviced or is capable of being serviced with an adequate potable water supply and on-site sewage disposal system for the proposed use.

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

The proposed development will add minimal traffic on McKay Road. This is a provincially owned and maintained road and NSTIR determines if commercial use can be safely accessed. NSTIR requires that this development be limited in size (see **Exhibit 3**), which is reflected in the development agreement and the constraints place on the size of the proposed business use. Rail traffic is not relevant. As with most rural areas, pedestrians must use the shoulders of the roads. While there will be increased vehicular traffic accompanying the establishment of a new commercial use, planning staff feel that there will be minimal impact on pedestrian circulation and safety.

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

The property is 14.6 acres and is considered adequate to support the proposed use. The development agreement defines a "development site" (see **Exhibit 2**), which is the front portion of the property, 400 feet x 400 feet, about 3.6 acres or 25% of the total property. The proposed home based auto repair shop may only locate on this already developed portion of the overall property

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

Staff feel that the proposed home based auto repair shop fits the typical pattern of limited business use in a rural area. The development agreement will carefully control the size of the business and its ability to expand.

(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;*

Staff are not aware of any environmental conditions that would affect the suitability of the property for the proposed use on the development site. Nova Scotia Environment regulates all matters relating to watercourses and wetlands, including setbacks and erosion and sedimentation controls that must be in place before any new construction begins. The location of the proposed use is not within areas identified to be at risk during storm or flooding events.

(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 development agreement is approved, then all municipal, provincial and federal regulations, including all matters covered in the *West Hants Land Use By-law* and the *West Hants Building Code*, will have to be met. Planning staff are not aware of any requirement that this proposed development cannot meet.

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

All other matters have been addressed elsewhere in this report.

## **PUBLIC PARTICIPATION PROGRAM**

The *Municipal Government Act* requires that Councils adopt public participation programs for the preparation of planning documents, which includes development agreements. West Hants has had such a program since 1988, with the latest revision done in 1999. In 2014, the Planning department recommended a broader interpretation of the program to enable a higher degree of public input earlier in the planning process.

For the Maynard's application, property owners within 300 feet of the subject property received a letter notifying them that the Planning Advisory Committee (PAC) would be reviewing this staff report at its regularly scheduled meeting of January 21, 2016. This report and the draft development agreement have been made available to the public on the municipal website and at the planning office.

If, after hearing initial public input at the January 21<sup>st</sup> meeting, PAC recommends approval of the draft development agreement, a public hearing will be advertised and held. After receiving public input in that forum, the decision typically goes to Council immediately following the hearing. If Council approves the application, then an advertisement is published setting out the public's right of appeal.

## CONCLUSION

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

## ALTERNATIVES

1. PAC could accept the staff report and recommend that Council approve the draft development agreement upon legal review, and pending any changes recommended by the agrologist study, or with any other changes considered appropriate. This recommendation will not go to Council until the outstanding requirements and or approvals are met.
2. PAC could recommend that Council refuse the application. This is not the recommended action based on Staff's review of the relevant provisions of the MPS, MCCAP, and LUB.

## ATTACHMENTS

EXHIBIT 1 – Location Map

EXHIBIT 2 – Development Site

EXHIBIT 3 – NSTIR Letter Re: Commercial Access Approval

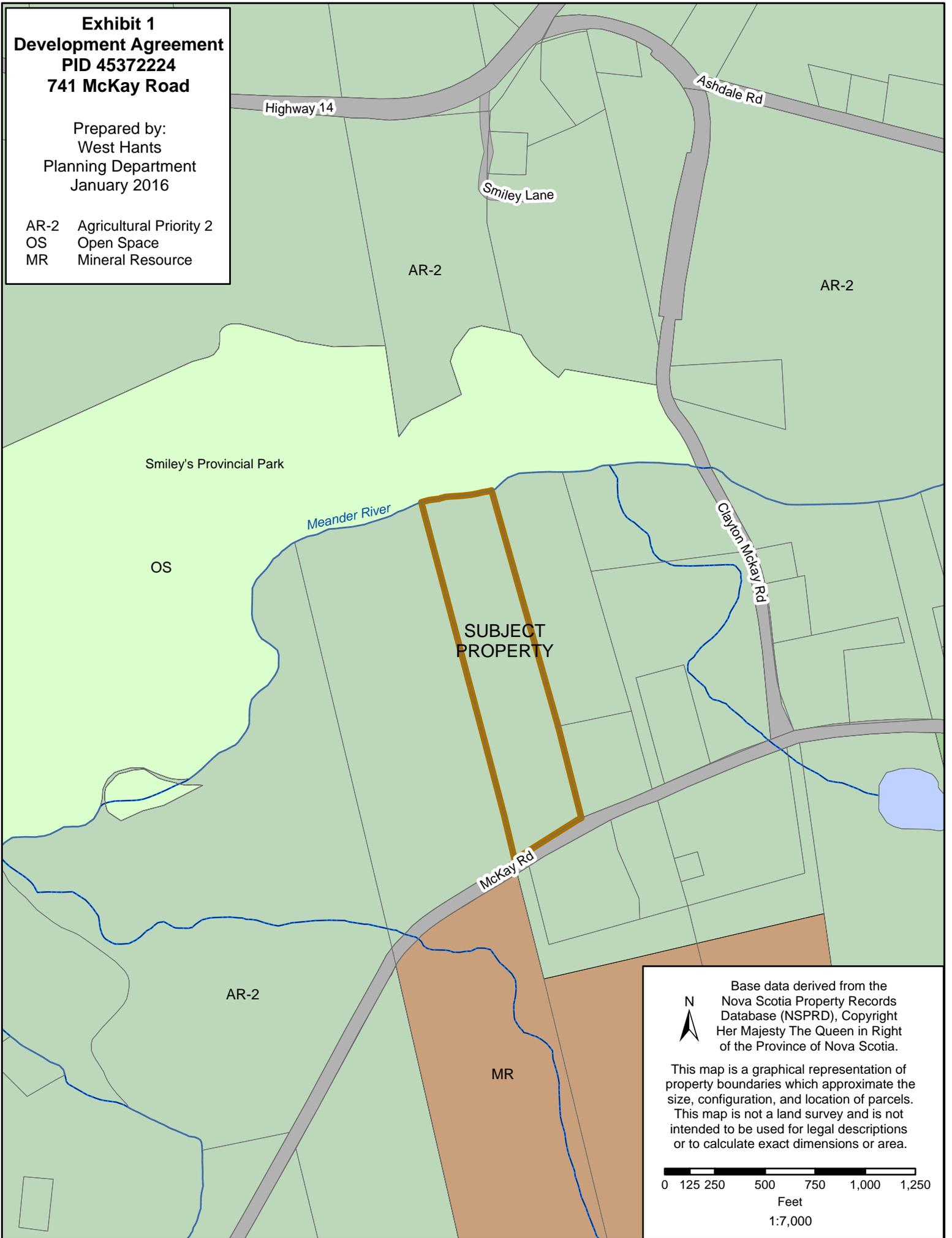
Report Prepared by: \_\_\_\_\_  
Jeanne Bourque, Planner

Report Approved by: \_\_\_\_\_  
Karen Dempsey, Director of Planning

**Exhibit 1  
Development Agreement  
PID 45372224  
741 McKay Road**

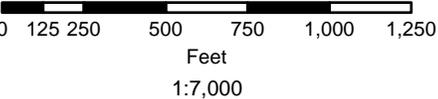
Prepared by:  
West Hants  
Planning Department  
January 2016

AR-2 Agricultural Priority 2  
OS Open Space  
MR Mineral Resource



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

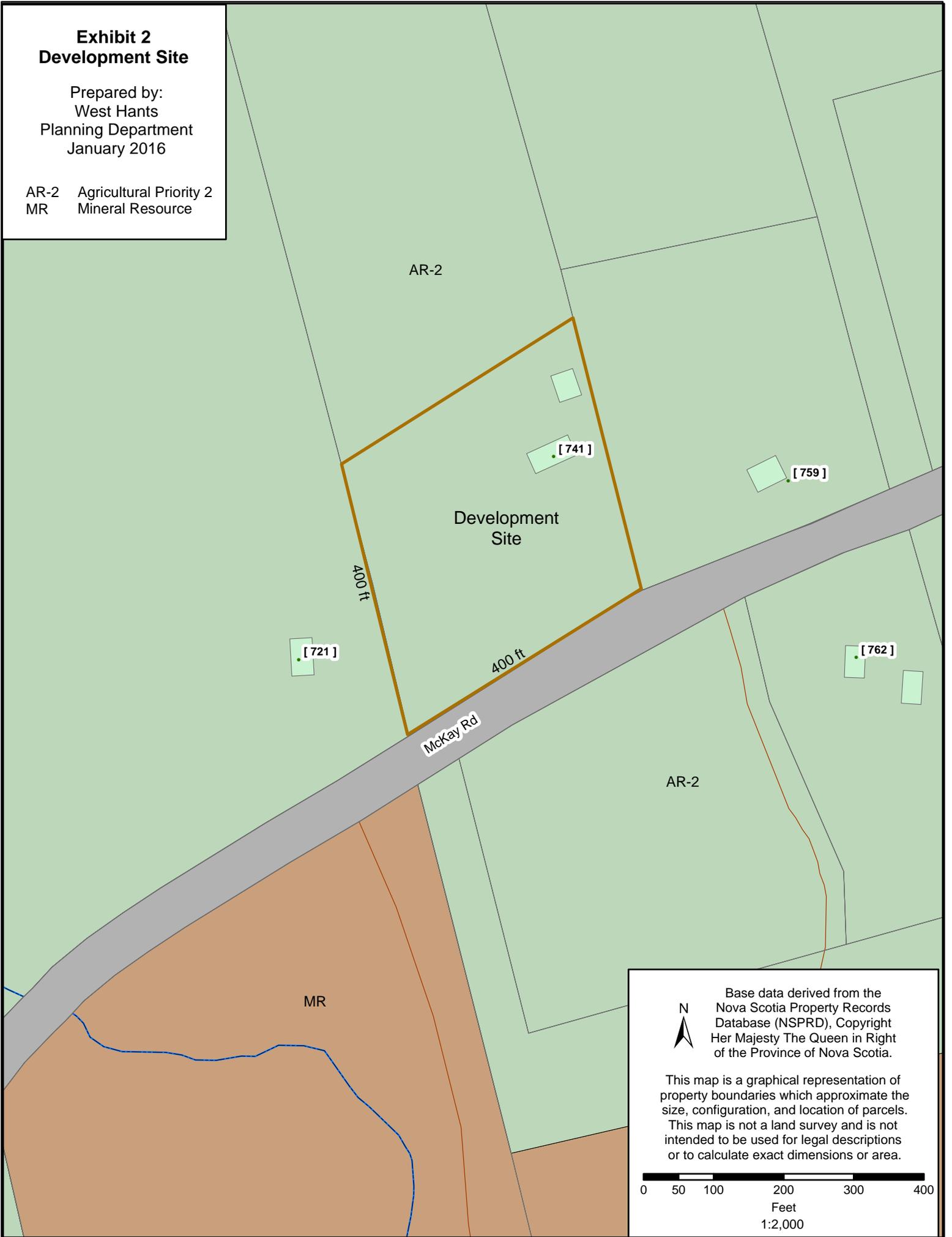
This map is a graphical representation of  
property boundaries which approximate the  
size, configuration, and location of parcels.  
This map is not a land survey and is not  
intended to be used for legal descriptions  
or to calculate exact dimensions or area.



**Exhibit 2  
Development Site**

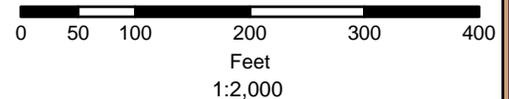
Prepared by:  
West Hants  
Planning Department  
January 2016

AR-2 Agricultural Priority 2  
MR Mineral Resource



Base data derived from the  
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or to calculate exact dimensions or area.



# EXHIBIT 3



*Department of Transportation and Infrastructure  
Renewal  
Hants County*

*4 Ivey Lane  
Windsor/West Hants Ind. Park  
P.O. Box 160  
Windsor, NS  
B0N 2T0*

*Bus: (902) 798-2369  
Fax: (902) 798-2927  
Nova Scotia Gov't Website  
<http://www.gov.ns.ca>*

Jeanne Bourque, Planner  
Municipality of West Hants  
P.O. Box 3000  
Windsor, Nova Scotia B0N 2T0

December 15, 2015

**Re: Commercial access approval for Civic #741 (PID #45372224), McKay Road,  
McKay Section**

Dear Ms. Bourque:

The Department has reviewed the Road Radar Analysis conducted on the above noted existing residential access. Based on the results of the analysis, commercial access for a home – based auto repair shop will be approved at this location. Any future expansion of this business will require a traffic impact study.

Should you have any questions or concerns regarding this approval please contact me at 902-798-2369.

Yours truly,

A handwritten signature in blue ink that reads "Brad MacInnis". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brad MacInnis, P. Eng.  
Area Manager Hants

BM/cas