



Report to Planning Advisory Committee

To: Chair and Members, Planning Advisory Committee

Submitted By: Jeanne Bourque, Planner

Date: April 21, 2016

Subject: West Hants Land Use By-law – Housekeeping Correction to Schedule A: Zoning Map re: PID 45360153, and Text Amendments

File No. **WHLUB 16-01**

Staff Report

ORIGIN

Internal Review By Staff

A query was received from Mark Van Zeumeren of *Sustainable Blue*, the land based closed containment fish farm located in Centre Burlington, who wish to expand their existing commercial use. Staff then became aware that this property (PID 45360153) was rezoned in error during the Plan Review which preceded the adoption of the new Municipal Planning Strategy (MPS) and Land Use By-law (LUB) in 2008. Planning staff are bringing this proposed zoning correction, as well as minor LUB text amendments, to the Planning Advisory Committee for discussion and recommendation.

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 that:

COUNCIL CORRECT SCHEDULE A: ZONING MAP OF THE WEST HANTS LAND USE BY-LAW TO REZONE PID 45360153 FROM AR-2 TO GR, AS SHOWN IN EXHIBIT 1; AND APPROVE LAND USE BY-LAW TEXT AMENDMENTS AS

SHOWN IN EXHIBIT 2; WITH BOTH EXHIBITS BEING ATTACHED TO THE STAFF REPORT OF APRIL 21, 2016.

PROPERTY LOCATION AND SURROUNDING LAND USES

The subject property is approximately 53 acres (see **Exhibit 1**), located in Centre Burlington, off of Red Bank Road which joins Highway 215. It is currently zoned Agricultural Priority Two (AR-2), and is surrounded by properties also zoned AR-2. This zone extends to the Cogmagun River, approximately 1,000 feet to the north. About 500 feet to the west is the Avon River. There are two residential dwellings across from the subject property on Red Bank Road to the north, with other adjacent properties being a mix of low marsh lands, forested areas with some farming activity.



BACKGROUND – ZONING MAP CORRECTION

When land use by-laws are revised, every attempt is made to accommodate existing conforming uses, either by putting the correct zone on the property, or by listing specific existing uses as permitted in the new zone. The current Municipal Planning Strategy and Land Use By-law are the result of almost seven years (2002-2008) of extensive review and consolidation of four separate planning documents. When reviewing zoning maps that encompass over 23,000 separate properties, it is to be expected that some errors will occur. Planning staff have brought a number of corrections and amendments to PAC in recent years.

In 2007, the first of many applications for building permits was received for a commercial business on Red Bank Road. This is a land based closed containment system in which salmon are raised from eggs to market product. Most of the initial

construction was carried out over the years 2007 and 2008. At the time of the first application, the property was zoned General Use (GU), and located in Area 2. The GU zone permitted a wide variety of activities, including commercial uses. Therefore, at the time that the commercial facility was first established in the GU zone, it was a legal and conforming use.

One of the tasks that planning staff undertook during the plan review was to look at agricultural soils and place agricultural zoning on lands that were mostly class 2 and 3 soils.¹ This is why Agricultural Priority Two zoning was placed on the whole area in which the subject property is located, as it contains mostly class 3 soils. It was an oversight to not replace the General Use zone with the General Resource zone on the subject property, which would have acknowledged the existing commercial use. By rezoning from GU to AR-2, the existing permitted commercial use was made a legal non-conforming use.

When the owner of the commercial facility came to planning staff in early 2016, they wished to build a private road that would enable subdivision of the property. The purpose of this subdivision is to facilitate future expansions of the commercial facility by enabling financial investments on specific phases. Private roads for subdivision purposes are only permitted in the General Resource zone. While staff was researching possible options, the question was asked – why was this property rezoned from General Use to Agricultural Priority Two in 2008? Seeking the answer to this question led staff to the realization that when the property was being rezoned during the plan review, the existing commercial use was not considered as it should have been. The proposed correction requires an amendment to Schedule A: Zoning Map of the Land Use By-law (see **Exhibit 1**).

BACKGROUND – LAND USE BY-LAW TEXT AMENDMENTS

West Hants has controlled access on private roads in various ways since the first planning documents were created. The planning documents of 2008 deal with the matter as follows:

Amendment to LUB Section 22.4

Policy 9.1.8 of the MPS states that, "*Development on private roads shall be limited to seasonal dwellings, single unit dwellings, home based businesses and **resource uses.***"

The Land Use By-law carries out the policies set out in the Municipal Planning Strategy. However, the wording in Section 22.4 of the Land Use By-law differs from policy and states that, "*A development permit may be issued for a seasonal*

¹ *The Canada Land Inventory (CLI) Land Capability for Agriculture classification system uses seven categories, with Class 1 applying to the best agricultural land and Class 7 to land with no agricultural value. There is no Class 1 land in Nova Scotia.*

*dwelling, a single unit dwelling **or an agricultural or forestry use** to be located on a lot with frontage on a private road.”* The wording, “*agricultural or forestry use*”, is a significant departure from the policy. Therefore, Planning staff feel that amending the wording in the land use by-law to delete the reference to “*agricultural or forestry uses*” and replace it with the term used in the policy, “*resource*”, would better reflect the intent of the policy.

Municipal Government Act (Statutes of Nova Scotia 1998) Section VIII, Planning and Development, subsection 219 (3) states, “A council shall not adopt or amend a land use by-law except to carry out the intent of a municipal planning strategy.”

*Proposed amendment (see **Exhibit 2**), delete words struck through and add words in bold:*

*Section 22.4 of the Land Use By-law, “A development permit may be issued for a seasonal dwelling, a single unit dwelling ~~or an agricultural or forestry a~~ **resource** use to be located on a lot with frontage on a private road.”*

Amendment to LUB Definition

The land use by-law also contains a number of definitions. The definition of resource use is, “*Resource Use means the use of land for forestry, agriculture or mineral use.*” Planning staff consider that a land based aquaculture system can be regarded as a “resource use” and should be included in the LUB definition.

*Proposed amendment (see **Exhibit 2**), add words in bold:*

*LUB Definition of resource use, “Resource Use means the use of land for forestry, agriculture, **land based aquaculture** or mineral use.”*

DISCUSSION – LUB TEXT AMENDMENTS

Planning staff consider it likely that these minor text amendments would have been done if the existing commercial/resource use had been considered in the final stages of the plan review. Up to now, West Hants has not included the term “aquaculture” in any of its planning documents, so staff will review the use and how to accommodate this growing industry in the upcoming plan review. The interim revisions proposed here will clarify that this existing commercial use is also considered a resource use. This clarification would then enable the owners to build a private road to specifications contained in the West Hants Subdivision By-law, and subdivide the property in the future.

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.

During the previous rounds of text and map corrections, staff advertised in the newspaper and on the municipal website, and made staff reports available to any interested member of the public. This same process will be carried out for this correction as well.

If PAC recommends approval of the housekeeping correction, 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 correction, then an advertisement is published setting out the public's right of appeal.

CONCLUSION

This report has reviewed the proposed zoning map correction and text amendments against relevant policies and requirements of the MPS and the LUB, and Planning staff feel that the proposed correction and amendments reasonably carry out the intent of the MPS, and do not conflict with any other sections of the LUB. Staff therefore recommend that the zoning map correction and text amendments be approved.

ALTERNATIVE

1. PAC could decide to maintain the status quo and take no action on the proposed correction or amendments. This is not the recommended action as the existing commercial facility would continue to be a legal non-conforming use.

ATTACHMENTS

Exhibit 1 – Proposed zoning map correction
Exhibit 2 – Proposed LUB text amendments

Report Prepared by:

Jeanne Bourque, Planner

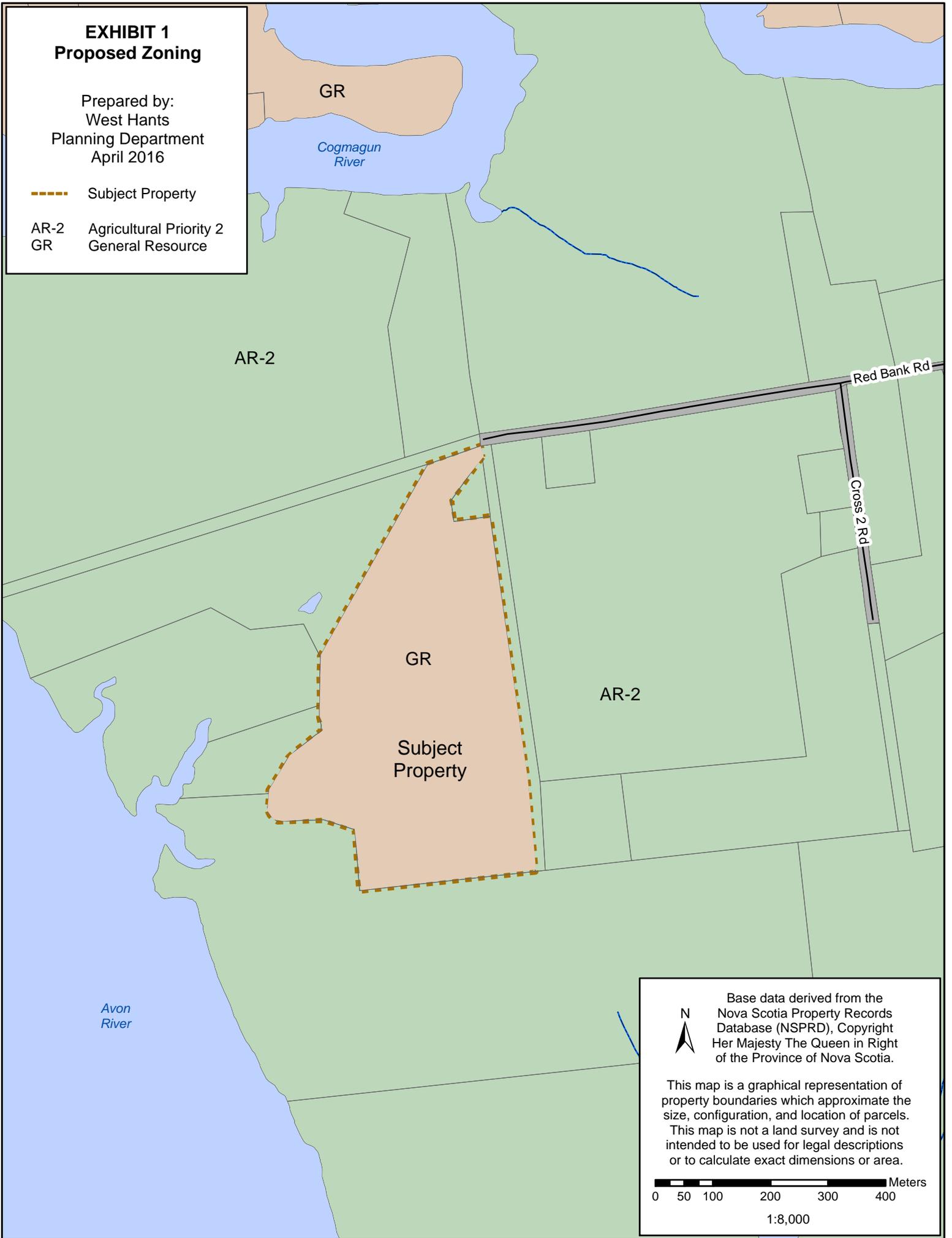
Report Approved by:

Karen Dempsey, Director of Planning

EXHIBIT 1 Proposed Zoning

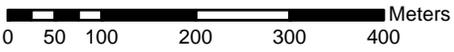
Prepared by:
West Hants
Planning Department
April 2016

- Subject Property
- AR-2 Agricultural Priority 2
- GR General 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.



1:8,000

EXHIBIT 2

PROPOSED LAND USE BY-LAW TEXT AMENDMENTS

Words deleted are ~~struck through~~, words added are **in bold**

Section 22.4 of the Land Use By-law:

A development permit may be issued for a seasonal dwelling, a single unit dwelling or ~~an agricultural or forestry~~ **a resource** use to be located on a lot with frontage on a private road.

LUB Definitions:

Resource Use

"Resource Use means the use of land for forestry, agriculture, **land based aquaculture** or mineral use."