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Item No. 13.1.1
Harbour East - Marine Drive Community Council
Special Meeting
September 10, 2020

TO: Chair and Members of Harbour East – Marine Drive Community Council

SUBMITTED BY: *-Original Signed-*

Kelly Denty, Director of Planning and Development

DATE: July 20, 2020

SUBJECT: Case 21813: Partial Rezoning of PID 41453945, Cow Bay

ORIGIN

Application by Silver Sands Realty Ltd.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Harbour East – Marine Drive Community Council:

1. Give First Reading to the proposed amendment to the Land Use By-law for Eastern Passage / Cow Bay, as set out in Attachment A, to rezone a portion of PID 41453945, Cow Bay from the P-2 (Community Facility) Zone to the RA (Rural Area) Zone and schedule a public hearing; and
2. Adopt the amendments to Schedule A, the zoning map of the Land Use By-law for Eastern Passage / Cow Bay, as set out in Attachment A.
3. Request a staff report identifying issues of increasing environmental concern around the Cow Bay Lake area including the setback regulations of Cow Bay Lake and Barrier Pond, a discussion on the existing P-2 (Community Facility) Zone and the range of permitted uses within the Special Area Designation of the MPS for Eastern Passage/ Cow Bay.

BACKGROUND

Silver Sands Realty Ltd. is applying to rezone a portion of their lands (PID 41453945) on Cow Bay Road, Cow Bay. The subject property contains two zones. The P-2 (Community Facility) Zone is located along Cow Bay Lake and the RA (Rural Area) Zone along Cow Bay Road. The applicant wishes to construct a single unit dwelling in an area of their site that is zoned P-2 and has requested to do so by rezoning a portion of the P-2 zoned lands to RA under Policy SA-10 of the Eastern Passage/Cow Bay Municipal Planning Strategy (Attachment B).

Subject Site	PID 41453945, Cow Bay Rd, Cow Bay
Location	East of Cow Bay Lake, near the intersection of Cow Bay Road and Autumn Drive
Regional Plan Designation	RC (Rural Commuter)
Community Plan Designation (Map 1)	SA (Special Area) under the Eastern Passage / Cow Bay Municipal Planning Strategy (MPS)
Zoning (Map 2)	RA (Rural Area) and P-2 (Community Facility) under the Eastern Passage / Cow Bay Land Use By-law
Size of Site	<ul style="list-style-type: none">total site area is 4.09 hectares (10.11 acres)area proposed for rezoning to P-2 is approximately 7174 square metres (1.8 acres) (Attachment A, Schedule A)
Street Frontage	123.17metres (404.10 feet)
Current Land Use(s)	Vacant
Surrounding Use(s)	Residential, HRM Parkland (Silver Sands Beach Park)

Proposal Details

The applicant proposes to rezone a portion of the subject lot, approximately 1.8 acres, which is currently zoned P-2 (Community Facility) Zone to the RA (Rural Area) Zone to permit the construction of a single unit dwelling (Attachment A). This rezoning will allow a single unit dwelling to be built closer to the shoreline of Cow Bay Lake than what is currently possible based on the present location of the zoning boundary.

The P-2 Zone that currently applies to these lands allows a single dwelling unit in the desired location but only if it is in conjunction with a daycare operation. The applicant does not wish to build or operate a daycare and has therefore requested the rezoning to permit the dwelling without the daycare facility. The applicant's rationale for the rezoning is that the P-2 Zone enables land uses including a single unit dwelling in conjunction with a daycare, therefore the impact to the P-2 zoned lands would be lessened by rezoning to RA to a permit a more sensitive land use such as a single unit dwelling.

As part of this application, staff also considered rezoning the rest of the P-2 Zone to RA (Map 2). This was presented at the Public Information Meeting (PIM) held in January of 2019. Following the PIM, staff withdrew this approach and focused solely on rezoning a portion of the subject property (Attachment A).

Enabling Policy and LUB Context

Special Area Designation and Zoning

The subject property is located within the Special Area (SA) Designation of the Eastern Passage/Cow Bay Municipal Planning Strategy (MPS). Since the 1982 inception of the Plan, the SA designation and the P-2 Zone were applied to the private lands along the shores of Cow Bay Lake adjacent to the Silver Sand Beach area, which includes the subject property. The SA designation seeks to identify important historical and environmentally significant lands within the designation. During the Plan's adoption, two zones were applied to the lands, the R-3 (Mobile Dwelling Zone) along Cow Bay Road and P-2 (Community Facility) Zone along the shores of Cow Bay Lake.

As part of a subsequent Plan review in 1998, the R-3 portion of the site was rezoned to the RA (Rural Area) Zone to support and maintain a high degree of rural character within the Cow Bay area. This was due to land use regulations that permitted the subdivision of smaller lots which had an impact on traditional ribbon-style development desired by the community. The new RA Zone list of permitted uses would be limited to uses that reflect a rural context. It also established larger lot sizes with wider frontages to better reflect the desired rural character of low-density residential development along rural transportation routes. This new zone was then generally applied throughout the unserved areas of Cow Bay and Eastern Passage. It was considered that the application of the RA Zone and the development of lower density land uses with larger lots was consistent with the protection of environmental and historically significant lands.

In 1982, Council adopted MPS policy SA-10 to recognize low density residential development in private ownership as being consistent with the goals of the MPS. The policy remains unchanged and in effect since its inception. Policy SA-10 indicates that "*within the Special Area Designation, Council shall zone lands held in private ownership for the purposes of permitting low density residential development community uses and facilities.*" The purpose of the policy is to permit a desirable rural development pattern while maintaining the environmental and historical significance of the area

The applicant has requested a rezoning based on the language of SA-10 that permits Council to consider rezoning a portion of the property zoned P-2 (Community Facility) to RA (Rural Area) Zone.

Environmental Protection and Watercourse Setbacks

During the 1998 Plan review, environmental concerns were identified by the community suggesting that the provisions in the MPS fell short of providing the desired level of protection to the natural environment. The Plan review resulted in the establishment of the Environmental Protection chapter in the MPS, the creation of Map 4, Environmental Constraints and the establishment of a 61 meter (200 feet) setback from coastal lands including Cow Bay Lake. However, during the adoption of the Regional Plan in 2006, the reference to Cow Bay Lake was inadvertently removed resulting in only a 30.5 meter (100 feet) setback now being applicable to the Cow Bay Lake area.

COMMUNITY ENGAGEMENT

The community engagement process has been consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area (Map 2) and a Public Information Meeting held on January 31, 2019. Attachment C contains a copy of the summary of the meeting. The public comments received include the following topics:

- potential for environmental impacts to Cow Bay Lake and the shoreline given the changing environmental condition of the area;
- concerns with mistakes made to setback regulations in the LUB during the RP adoption that reduced the 61.0 metre (200 feet) setback from Cow Bay Lake to 30.5 m [100 feet];
- concerns that existing mapping fails to accurately show the sensitive environmental features of the site and its relationship to the water;
- concerns the site and surrounding areas tend to flood more frequently than in the past due to the migration and eroding of the Silver Sands Beach barrier;
- concern with all four properties being considered for rezoning from P-2 to RA;
- concerns that no environmental impact study was undertaken as part of the rezoning application;
- concerns with the changing nature of the wetlands and the increasing level of the highwater marks in the area;
- experienced shared indicating that the storm surge goes over Silver Sands Beach every year, not appropriate for building site; and,
- concerns that obtaining Municipal approvals would enable applicant to avoid Provincial approvals for septic.

A public hearing must be held by Harbour East – Marine Drive Community Council before they can consider approval of the proposed LUB amendment. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail. The HRM website will also be updated to indicate notice of the Public Hearing.

The proposal will potentially impact residents and property owners in the area.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it is consistent with the intent of the MPS. Attachment A contains the proposed rezoning of the lands from P-2 to RA. Attachment B provides an evaluation of the proposed rezoning in relation to relevant MPS policies. Of the matters reviewed to satisfy the MPS criteria, the following have been identified for more detailed discussion.

Since the adoption of the MPS, the objectives in the Plan recognize the environmental sensitivities of the area along watercourses. The SA designation’s preamble and policies have remained relatively unchanged since 1982. The area “... *should be protected from indiscriminate development. The designation is intended to recognize that these are sensitive areas, which may provide a focus to the communities and beyond, and which are environmentally and historically significant.*” (Attachment B). The limited application of the proposed rezoning from P-2 to RA recognizes the sensitivity of this area and limits the placement of the proposed single unit dwelling to an area outside the existing established setback of 30.5 metres (100 feet) as well as the beyond the intended setback of 61 metres (200 feet) from the ordinary high-water mark.

Comparing Land Uses in the RA and P-2 Zones

When comparing the list of permitted uses between the RA and P-2 zones, the RA Zone uses are considered less intensive and consistent with the MPS intent to provide protection of these lands given the potential for land disturbance and environmental impact based on proximity to the watercourse. The difference in potential building mass between the two zones is also significant. The RA Zone contains a maximum lot coverage requirement of 35% while the P-2 Zone contains a maximum lot coverage requirement of 50%. The list of permitted uses for both zones are as follows:

RA Zone	P-2 Zone
<ul style="list-style-type: none"> • Single Unit Dwellings; • Existing mobile dwellings; • Mobile dwellings at Silver Court, Cow Bay; • Bed and breakfast establishments in conjunction with permitted dwellings; • Home business uses; • Forestry uses; • Agriculture uses; • Fishing and fishing related uses; and, • Open space uses excluding commercial recreation uses. 	<ul style="list-style-type: none"> • Educational institutions and uses; • Denominational institutions and uses; • Day care facilities; • A single dwelling unit in conjunction with a day-care facility; • Senior citizen housing; • Existing residential care facilities; • Fire and police stations; • Government offices and public works except transportation maintenance yards; • Hospitals and medical clinics; • Public libraries, museums and galleries; • Fraternal centres and halls; • Community centres and halls; • Public and private parks and playgrounds; • Recreation uses excluding golf courses; • Cemeteries except crematoriums; • Day camps; and, • Historic sites and monuments.

Staff acknowledge that the RA Zone was implemented in 1998 after the 1982 adoption of the P-2 Zone and that the 1998 adoption of the RA Zone was to further Council's intent to apply protections to Cow Bay Lake. However, it stands that the proposed rezoning from P-2 to RA to permit the construction of a single unit dwelling (without a daycare), on lands located a distance from Cow Bay Lake that is consistent with MPS Policy, meets the intent of the MPS to protect environmentally and historically significant lands.

Setback Vulnerabilities and the Proposed Rezoning

As noted above, environmental protections within the MPS were adopted in 1998 in the form of setback requirements to Cow Bay Lake. This created a no building, non-disturbance area within 61.0 metres (200 feet) of the ordinary high-water mark. In 2006, this setback was inadvertently reduced to 30.5 metres (100 feet) setback with the adoption of the Regional Plan. However, in the spirit of the original policy intent of a 61 meter (200 foot) setback from the ordinary high-water mark, the applicant is seeking to rezone only the portion of the lands outside of the 61 meters (200 feet) setback (Schedule A). The southernmost extent of the proposed RA Zone boundary is to be located approximately 61 metres (200 feet) from the ordinary high-water mark. Should the rezoning to RA be approved, a new building envelope may be established at the setback requirement identified in MPS policy, despite the diminished setback created through the Regional Plan adoption in 2006. While the remaining P-2 zoned lands would retain their development potential, the likelihood of development under the P-2 regulations would be extremely low.

Staff Rationale to Recommend Approval

The application of the RA Zone and the development of lower density land uses with larger lots is consistent with the protection of environmental and historically significant lands. Staff also views the following as consistent with this intent:

- the list of permitted uses in the RA Zone is less intensive than the P-2 Zone;
- the configuration of the proposed rezoning request if approved, would provide a setback distance for construction of a structure of approximately 61 metres (200 feet) despite the reduction in the setback to 30.5 metres (100 feet) as inadvertently adopted under the 2006 Regional Plan; and,
- the rezoning would vastly reduce the potential for P-2 land uses to be constructed at this location.

Therefore, staff recommend the rezoning of a portion of these lands from P-2 to RA.

Staff Report for Future Planning Process

Coastal Elevations

Staff acknowledge that the coastal elevation requirement does not apply in this instance as the lands are not deemed to be "Coastal" as defined under the LUB. Therefore, regulation controlling the elevation for building a structure cannot be imposed without establishing enabling MPS policy. While the 61 metre (200 feet) distance from the zoning boundary edge maintains the intentional setback that was established in 1982 (and inadvertently reduced in 2006), there may be a need for the developer to create elevation through fill or other means. Any plans to address the elevation would have to be addressed at the permit stage. Conditions such as these cannot be imposed through the rezoning.

HRM's Energy and Environment staff have identified environmental hazards associated with development in the P-2 zoned areas within the Special Area Designation in Cow Bay. Of particular relevance are matters related to climate change such as sea-level rise, flooding, extreme precipitation, and storm surge. They note that overarching guidance with respect to environmental risks can be found within the Regional Plan and the Municipal Planning Strategy for Cow Bay.

Coastal Lands

Certain coastal lands within the plan area contain environmentally sensitive areas, such as salt marshes, steep slopes and rock cliffs and these areas are identified on Map 4 of the MPS. The subject site and the surrounding lands are identified as "Coastal Lands" on Map 4 of the MPS entitled 'Environmental Constraints'. Coastal lands outside of the sheltered area of Halifax Harbour, such as the Silver Sands Beach area, are under constant pressure from ocean wave and wind action and are continually eroding.

These areas present a hazard to development which is located too close to the water/land interface or the top of shoreline. A setback along the coast line has been provided to increase protection for structures from these hazards. This will help to lessen the costs to homeowners and the Municipality to spend future money to fortify the shoreline against the effects of coastal erosion. Further, Cow Bay Lake and Barrier Ponds form part of the buffer system for the Cole Harbour-Lawrencetown Coastal Heritage Park. Portions of the shoreline in these areas are also subject to potential erosion due to their minimal shelter from heavy wave action.

While staff acknowledge that these conditions exist, there is no corresponding enabling MPS policy and implementing regulation that provides Council with discretionary authority to apply restrictions on the basis of environmental protections on the shores of Cow Bay Lake. As mentioned, existing protections such as the setback requirement to Cow Bay Lake have been altered by way of an error in mapping that was created at the time of the 2006 adoption of the Regional Plan.

Therefore, it is recommended that Council direct staff to return to Council with a supplementary report with emphasis on the following:

- a review of P-2 policies to ensure that the P-2 Zone can be implemented without necessitating a rezoning of the RA lands to provide access to Cow Bay Road;
- a review of setback regulations and to fix existing errors regarding the labelling of Cow Bay Lake and Barrier Pond; and,
- a review of the list of permitted uses within P-2 Zone within the Special Area Designation to determine that those uses are appropriate given changing environmental conditions.

Conclusion

Staff recommend that the Harbour East - Marine Drive Community Council approve the proposed LUB amendment to rezone a portion of the subject lands from P-2 to RA, noting the proposal is consistent with the relevant policies in the existing MPS and also consistent with the originally intended 61 m (200 ft) setback. Staff also recommend Council request a separate staff report regarding the review of environmental conditions and existing land use regulations pertaining to the setbacks provision and land uses currently permitted in the P-2 Zone of the Special Area Designation in Cow Bay.

FINANCIAL IMPLICATIONS

The HRM cost associated with processing this planning application can be accommodated with the approved 2020-2021 operating budget for C310 Urban and Rural Planning Applications.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. 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 the proposed LUB amendment are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

Environmental concerns are discussed in the "Staff Report for Future Planning Process" section of this report.

ALTERNATIVES

1. Harbour East – Marine Drive Community Council may choose to refuse the proposed LUB amendment, and in doing so, must provide reasons why the proposed amendment does reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East – Marine Drive Community Council may choose to approve the proposed LUB amendment subject to modifications, and such modifications may require a supplementary report. A decision of Council to approve this proposed LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area

Attachment A: Proposed Amendment to the Land Use By-law for Eastern Passage/ Cow Bay
Attachment B: Excerpts from Eastern Passage/Cow Bay MPS & Eastern Passage/Cow Bay LUB
Attachment C: Minutes from the PIM

A copy of this report can be obtained online at www.halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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