



Subject: *Gail Sloane & Peter MacDougall Proposed MPS & LUB Mapping Amendments*
To: CAO for Planning Advisory Committee, May 18, 2021
Date Prepared: May 11, 2021
Related Motions: PAC20(68) December; C20(380) December; PAC21(19) March; and C21(93) March
Prepared by: Rachel Gilbert, Manager of Planning
Approved by: John Woodford, Director of Planning and Development

Summary

The Municipality has received an application from Gail Sloane and Peter MacDougall to amend the designation and zone on three properties from Agricultural Reserve (AR) to Rural Use (RU). They are selling their property and the Agricultural Reserve (AR) Zone would not allow the buyer to build a non-farm dwelling.

Financial Impact Statement

There is no immediate financial impact from the recommendations in this report. According to PVSC the main property is currently assessed as residential but assessed at a value of \$11,500. The development of the property will increase the value of the property which will in turn increase the tax revenue from the property. The changes to the small areas of the other two properties is unlikely to have much of a financial impact to the municipality.

Recommendation

That the application be refused for the proposed amendments to the designation and zone of the three properties.

Recommended Motion

Planning Advisory Committee recommend that Council:

- *Refuse the application from Gail Sloane and Peter MacDougall to change the designation and zone of 3 properties on Barr Settlement Road from Agricultural Reserve (AR) to Rural Use (RU).*

Alternative Motion

Planning Advisory Committee recommend that Council:

- *Give second reading and approve the proposal from Gail Sloane and Peter MacDougall to change the designation and zone of 3 properties on Barr Settlement Road from Agricultural Reserve (AR) to Rural Use (RU).*

Background

Planning staff received an application from Gail Sloane and Peter MacDougall to amend the designation and zone on 3 properties on Barr Settlement Road. The applicants are selling their property and the potential buyer contacted the municipality to talk about their plans for the property which is to build a non-farm dwelling. The Agricultural Reserve (AR) Zone does not enable non-farm dwellings. In addition to the applicants own property, the request also includes removing the AR designation and zone on two other adjacent properties which are owned by the applicants family members. A letter has been submitted confirming that the owner of the other two properties consent to the proposal moving forward. The applicants suggest that two of the properties may be amalgamated through the subdivision process, including a small sliver of land from the large parcel to sell to the potential buyer as one property.

Plan Review Mailout

The applicant explains that she was unaware of the Agricultural Reserve Zoning on their property. Letters were mailed to all property owners where zoning was proposed to change, with information on the proposed change. The applicant requested to see a copy of the letter but at that time planning staff did not have easy access to the files due to the organizing of old files. Some time has been spent trying to locate the letters and a copy of the letter mailed to the applicant has been located and has been appended to the staff report.

We cannot confirm that the applicant and the owners of the other properties received a letter but letters were mailed out. At this time of the plan review any property owners who had concerns about proposed rezoning were invited to provide comments to Council prior to the plan review completion.

Use of Land

The applicant has explained that the land has been cleared since 1997 with no agricultural activity conducted on the properties. She has mentioned that her father has mowed the properties annually to prevent re-growth. She also explained that some of the land is unsuitable for agricultural due to water accumulation.

At Planning Advisory Committee in December 2020, previous committee member John Van de Riet explained that he had visited the property the same day as the December 2020 PAC meeting. John Van de Riet is himself a farmer and previously was a member of the Agricultural Advisory Committee. He commented that he was not convinced that it was never agriculture. He said that the piece on the right looked like it was a piece of agricultural land and had been farmed. He also said that at the time of his visit heaps of manure were on the property waiting for application. In February 2021, it appeared that manure had recently been spread on the land. Staff cannot determine whether the land is being used as agricultural land or not. Although there appears to be some agricultural activity.

The applicants property is being taxed as residential.

Subject Site

The subject land includes 3 properties. All 3 of these properties are located on Barr Settlement Road in West Indian Road. The property identified as PID 45278769 has AR designation and zoning applied to the whole of the property. The other 2 properties, identified as PID 45402567 and PID 45375433, have only a portion of them applied with AR designation and zoning applied. The remainder of these 2 properties are zoned and designated Rural Use (RU).

The land surrounding the properties are zoned a mixture of Rural Use (RU) and Agricultural Reserve (AR).

Zoning information is provided on the map to the right. The area of land the subject of the application has been outlined. In addition to this, an excerpt of out in-house aerial photography is provided below. Aerial photography provided by PVSC has been included in Appendix A of this staff report.



Development Proposal

The purpose of this application is to allow for a non-farm dwelling. The current zoning for the property would not allow for a dwelling which isn't related to a bona fide farm operation. Farm dwellings may consist of the principal residence of the farm owner; additional farm labour; or family employed on the farm. Under the Land Use Bylaw, the definition of a 'Bona Fide Farm' is an agricultural operation that is actively engaged in farming and earns at least \$5,000 per calendar year from agricultural activities on the farm.

The potential buyer is not a farmer or related to a farming operation and therefore under the Land Use Bylaw a non-farm dwelling would not be permitted.

If approved, the proposed re-designation and rezoning would enable a non-farm dwelling to be constructed.



Policy Analysis

The Planning and Development Department has reviewed the proposal based on the applicable policies contained in the Municipal Planning Strategy. To address potential compatibility issues with neighbouring residences and businesses, and to comply with criteria applied to consideration of this application, Staff requested comments Nova Scotia Department of Agriculture, Fisheries and Aquaculture.

A detailed table of the evaluative criteria from the enabling policies and corresponding comments from staff and reviewing agencies has been included as appendix E to this final report.

Statement of Provincial Interest Regarding Agricultural Land

The statement of provincial interest sets out that planning documents must address the protection of agricultural land. Measures that should be considered include: (a) giving priority to uses such as agricultural,

agricultural related and uses which do not eliminate the possibility of using the land for agricultural purposes in the future. Non-agricultural uses should be balanced against the need to preserve agricultural land.

NS Dept of Agriculture, Fisheries and Aquaculture

Municipal staff sought comments from the NS department of Agriculture, Fisheries and Aquaculture. The respondent stated that *"While the Department of Agriculture does serve as an ex officio member of the Agricultural Advisory Committee, the Department normally serves to advise the Department of Municipal Affairs and Housing on applications by Municipalities to introduce or amend Municipal Planning Strategies. As such, we are unable to offer input on these specific applications outside of our role on the Agricultural Advisory Committee."*

Municipal Planning Strategy

The Municipal Planning Strategy seeks to identify, protect and foster the agricultural industry within the municipality and to minimize conflicts between agricultural operations and other land uses. The Agricultural Reserve (AR) Designation has been applied in accordance with policy AR10 and is based on active agricultural land.

The Agricultural Reserve Designation and Zone was applied to the 3 application properties during the 2016 Plan Review. At that time, planning staff reviewed our own aerial photography; PVSC imagery; Google satellite images and an agricultural land use survey, throughout the zoned area of the municipality to identify any new areas of land which came into agricultural use; moved existing AR zoning boundaries to property boundaries, where appropriate; and in some case's the AR Zoning was removed. In this specific case the AR designation and zoning was applied. Staff are concerned with the impact of approving this redesignation and rezoning on the integrity of the policies which protect the agricultural reserve land and without evidence that this land is not farmed staff are recommending that the application not be approved.

However, staff understand that with this particular application there are arguments which Council may consider important when reviewing the proposal. The applicants purchased the land in 1997 with the intention of building a non-farm dwelling which was permitted at that time. The land is taxed as residential so has been viewed as a residential building lot by the owner. The applicants appear to only own this one parcel (PID # 45278769) of land within East Hants and this land is reasonably small for a farm operation to be run independently of any other land.

The properties identified as PID# 45402567 and PID# 45375433 have only small portions of land designated and zoned as Agricultural Reserve (AR) and whilst staff suggest all active farmland should be protected, the loss of these areas will not significantly impact the overall viability of the Agricultural Reserve land and also the bank of active farmland protected under the AR designation.

Staff have drafted an alternative motion should Council wish to approve the redesignation and rezoning of these three properties.

If Council determines that the proposed amendments are in the best interest of the Municipality there is no right of appeal for amendments to the Municipal Planning Strategy. If approved, the amendments will be reviewed by the NS department of Municipal Affairs and Housing. During their review they will consider the NS Provincial Statements of Interest and in particular the Statement of Provincial Interest Regarding Agricultural Land.

Citizen Engagement

Planning staff have complied with Citizen Engagement Policies of the Municipal Planning Strategy when processing this application. An advertisement outlining the application and indicating that it had been received and is under review by staff was placed in the *Chronicle Herald*.

A Public Information Meeting (PIM) is required for this application and this meeting was held in February 2021. Due to Covid-19 restrictions, the public information meeting was held as a digital meeting that residents can join digitally or call and listen to the presentation. A letter indicating the time and date of the PIM was mailed to all property owners within 300 m of the subject properties indicating the time and date of the meeting. There were no comments from members of the public but the applicant raised some comments. A summary of the Public Information Meeting has been provided in Appendix C.

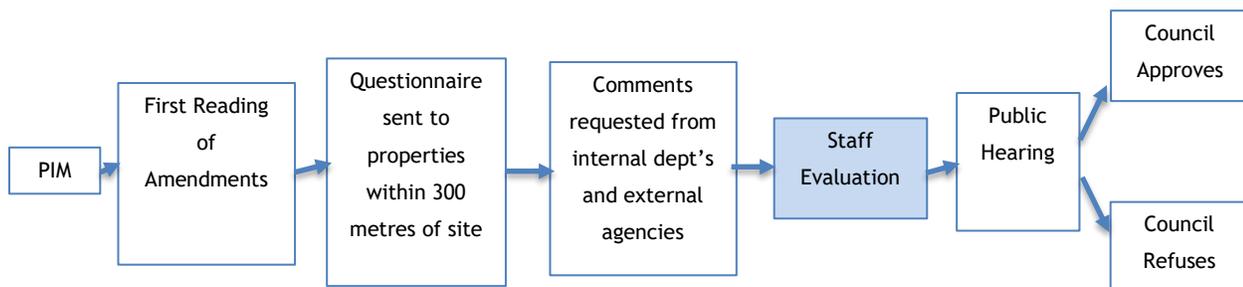
A questionnaire has been mailed to all property owners within 300 metres of the application site asking for their input on the proposal. No questionnaires have been returned from nearby property owners. The applicant forwarded a questionnaire to staff but this was completed by the owner of two of the properties so has not been included as part of the review of public comments.

A notice with details of the public hearing will be placed in the Chronicle Herald and a letter mailed to nearby property owners.

Conclusion

Staff are concerned with the impact of approving this redesignation and rezoning on the integrity of the policies which protect the agricultural reserve land and without evidence that this land is not farmed staff are recommending that the application not be approved.

However, staff understand that with this particular application there are arguments which Council may consider important when reviewing the proposal. The applicants purchased the land in 1997 with the intention of building a non-farm dwelling which was permitted at that time. The applicants appear to only own this one parcel (PID # 45278769) of land within East Hants and this land is reasonably small for a farm operation to be run independently of any other land.



Recommendation

That the application be refused for the proposed amendments to the designation and zone of the three properties.

Appendix A - Aerial Photography provided by PVSC



Appendix B - Draft Proposed Amendments

Amendment Sheet

The Municipality of East Hants
Official Community Plan
Municipal Planning Strategy

Generalized Future Land Use Map 8: Official Community Plan Area

The GFLUM designation of PID 45278769, and a portion of PID 45402567 and PID 45375433, Barr Settlement Road in West Indian Road shown on the Generalized Future Land Use Map 8: has been redesignated from Agricultural Reserve (AR) Designation to Rural Use (RU) Designation.



Amendment Sheet

The Municipality of East Hants
Official Community Plan
Municipal Planning Strategy

Land Use Bylaw Map 8: Official Community Plan Areas

The LUB zone of PID 45278769, and a portion of PID 45402567 and PID 45375433, Barr Settlement Road in West Indian Road, shown on Land Use Bylaw Map 8: Official Community Plan Areas, has been rezoned from Agricultural Reserve (AR) Zone to Rural Use (RU) Zone.



Appendix C - Public Information Meeting Notes

Digital Public Information Meeting - Gail Sloane and Peter MacDougall

(February 10, 2021)

Staff:

Ms. Rachel Gilbert, Manager of Planning
Ms. Debbie Uloth, Project Planner
Ms. Aurora Douthwright, Communications Coordinator
Ms. Sheralee Mitchell-MacEwan, Assistant Municipal Clerk

Applicant:

Gail Sloane and Peter MacDougall

Call to Order:

Ms. Rachel Gilbert, Manager of Planning

Presentation:

Staff Presentation: Ms. Rachel Gilbert, Manager of Planning

Applicant:

Applicant comments made by both Gail Sloane and Peter MacDougall:

- Asked about the rationale for changing the designation and zone
- Suggest that land is worthless as agricultural reserve as its too small
- Land purchased with the intention to build a house
- The zone was changed without knowledge - didn't receive letters confirming change
- The land is too small to generate \$5,000

Public:

- No comments or questions from the public

Appendix D - Copy of letter mailed to applicant

Appended as a separate document

Appendix E - Policy Analysis

Policy	Comments
<p>MPS Amendment Criteria</p> <p>IM12 Council shall consider map amendments to this Strategy when:</p>	
<p>a) A request is received for a zoning amendment that is not consistent with this Strategy's maps, but is consistent with the intent of this Strategy.</p>	<p>The requested zoning amendment is not consistent with the Generalized Future Land Use Map and requires a concurrent amendment to the MPS. Staff are concerned with the impact of approving this redesignation and rezoning on the integrity of the policies which protect the agricultural reserve land and without evidence that this land is not farmed staff are recommending that the application not be approved.</p> <p>However, the applicants purchased the land in 1997 with the intention of building a non-farm dwelling which was permitted at that time. The land is taxed as residential so has been viewed as a residential building lot by the owner. The applicants appear to only own this one parcel (PID # 45278769) of land within East Hants and this land is reasonably small for a farm operation to be run independently of any other land.</p> <p>The properties identified as PID# 45402567 and PID# 45375433 have only small portions of land designated and zoned as Agricultural Reserve (AR) and whilst staff suggest all active farmland should be protected, the loss of these areas will not significantly impact the overall viability of the Agricultural Reserve land and also the bank of active farmland protected under the AR designation.</p>
<p>b) Where the boundaries of the comprehensive planning area are altered.</p>	<p>Not applicable to the proposal.</p>
<p>c) Where a request for a comprehensive development is made and it is not already designated as such; and studies show that intent of the Strategy could be met through said proposal.</p>	<p>Not applicable to the proposal.</p>
<p>d) The boundaries of the planning area are not altered.</p>	<p>Not applicable to the proposed application.</p>
<p>e) Housekeeping amendments are not warranted.</p>	<p>Not applicable to the proposal.</p>
<p>Land Use Bylaw Amendment Criteria</p> <p>IM13 It shall be the policy of Council to consider amendments to the Land Use Bylaw provided the amendment is consistent with the intent of the Municipal Planning Strategy.</p>	<p>The applicant is seeking a mapping amendment to the Municipal Planning Strategy in conjunction with the application to amend the Land Use Bylaw map. If Council approve the MPS amendment then the zoning map change will be consistent with the intent of the MPS.</p>
<p>IM14 It shall be the policy of Council to consider an application for amendment to the Land Use Bylaw</p>	<p>The applicant is requesting the amendments to enable a non-farm dwelling which is permitted on Rural Use (RU) zoned land. There are other non-farm dwellings located in the area of the application site and</p>

	only if the application has identified a proposed use for the property. Council shall give consideration to both the proposed use and to the impact of other uses permitted in the requested zone.	therefore the impact of this use would be appropriate for the general area of the application site.
IM15	It shall be the policy of Council to consider an application for amendment to the Land Use Bylaw only if the site meets all of the lot size and zone standards for the zone sought.	All three properties have the required frontage and lot area for Rural Use (RU) zoned properties.
IM16	Council shall consider the Land Use Bylaw Amendments within the applicable Generalized Future Land Use designation as subject to the policies of this Strategy	This LUB amendment is only possible with a concurrent amendment to the MPS to redesignate the property to Rural Use (RU).
IM17	Council shall, in considering amendments to the Land Use Bylaw, in addition to all other criteria as set out in the policies of this Strategy, have regard for the following matters:	
	a) Whether the proposed development is in conformance with the intent of this Strategy and with the requirements of all other Municipal Bylaws and regulations as applicable matters.	The applicant is seeking a mapping amendment to the Municipal Planning Strategy in conjunction with the application to amend the Land Use Bylaw map. If Council approve the MPS amendment then the zoning map change will be consistent with the intent of the MPS.
	b) Whether Planning Staff have initiated a review of this Strategy, or any of the Official Community Plan documents.	Not applicable.
IM18	Council shall consider if the proposal is premature or inappropriate by reason of:	
	a) The financial capability of the Municipality to absorb any costs relating to the development.	The development of the property will increase the value of the property which will in turn could increase the tax revenue from the property. The changes to the small areas of the other two properties is unlikely to have much of a financial impact to the municipality.
	b) The adequacy of municipally approved water and wastewater services or if services are not provided, the adequacy of physical site conditions for private on-site septic and water system. Council shall consider comments from the Municipal Infrastructure and Operations Department or Nova Scotia Environment as applicable.	The site will require on site services. The site is large in an area with small amounts of development drawing on any groundwater. Staff consider that the site can likely receive adequate water quantity.

<p>c) The adequacy and proximity of school, recreation, and any other community facilities. Council shall consider comments from Municipal departments and the appropriate School Board as applicable.</p>	<p>If the land is developed in the future as a residential use the number of new residents to the area would be minimal and would not warrant a change to the school system or to the use of recreational facilities.</p>
<p>d) The potential for significantly reducing the continuation of agricultural land uses.</p>	<p>Staff are concerned with the impact of approving this redesignation and rezoning on the integrity of the policies which protect the agricultural reserve land and without evidence that this land is not farmed staff are recommending that the application not be approved.</p> <p>However, the applicants purchased the land in 1997 with the intention of building a non-farm dwelling which was permitted at that time. The land is taxed as residential so has been viewed as a residential building lot by the owner. The applicants appear to only own this one parcel (PID # 45278769) of land within East Hants and this land is reasonably small for a farm operation to be run independently of any other land.</p> <p>The properties identified as PID# 45402567 and PID# 45375433 have only small portions of land designated and zoned as Agricultural Reserve (AR) and whilst staff suggest all active farmland should be protected, the loss of these areas will not significantly impact the overall viability of the Agricultural Reserve land and also the bank of active farmland protected under the AR designation.</p>
<p>e) The adequacy of existing or proposed road networks in, adjacent to, or leading to the development and ability of the proposed development to satisfy applicable stopping sight distances. Council shall consider comments from the appropriate Municipal Engineer and/or Nova Scotia Transportation and Infrastructure Renewal.</p>	<p>The existing road network can accommodate any traffic from a non-farm dwelling on the applicants' property.</p>
<p>f) The potential for the contamination of watercourses or the creation of erosion or sedimentation. Council shall consider comments from relevant Provincial Departments as applicable.</p>	<p>No structures are currently proposed for the subject lands. The property owner will be required to comply with any provincial regulations regarding watercourses, erosion or sedimentation.</p>
<p>g) Creating a leap frog, scattered, or ribbon development pattern as opposed to compact and orderly development.</p>	<p>The proposed change will not create a leap frog, scattered or ribbon development pattern.</p>
<p>IM19 Council shall consider if the proposed development is shown on a professionally drawn site plan as being in compliance with the applicable sections of the Subdivision Bylaw, with the following matters of the Land Use Bylaw:</p>	<p>A professionally drawn site plan has not been provided but is not needed to consider this application.</p>

a) Type of use.	Proposed Rural Use (RU) uses.
b) Number of buildings.	No new buildings are currently being proposed.
c) Yard setbacks.	No new structures are being proposed. Any future structures will have to comply with the yard setbacks identified in the LUB for the RU Zone.
d) Height, bulk, stepback requirements, and lot coverage of any proposed structures.	No new structures are being proposed. All future structures will have to meet the minimum requirements of the LUB.
e) External appearance of any structures where design standards are in effect.	No design standards are in effect.
f) Street layout and design.	No new streets are proposed.
g) Access to and egress from the site, parking.	Access new access to property is subject to the approval of NS TAT as Horne Settlement Road is a provincial road.
h) Open storage and outdoor display.	All LUB regulations will have to be met.
i) Signage.	All LUB regulations will have to be met.
j) Similar matters of planning concern.	All LUB regulations will have to be met.
IM20 Council shall consider the suitability of the proposed site in terms of the environmental features of the site, particularly susceptibility to flooding and other nuisance factors, and where applicable, comments from relevant Provincial Departments concerning the suitability of the site for development.	The site is adequate size to accommodate a new non-farm dwelling. Staff are not aware of any environmental features which will limit the development of the property.
IM21 Council shall consider the provision of buffering, screening, and access control to minimize potential incompatibility with adjacent and nearby land uses, rail lines and traffic arteries.	The LUB does not require buffering and screening for residential uses in the RU zone.
IM22 Council shall consider the extent to which the proposed development, where applicable, provides for efficient pedestrian circulation and integrates pedestrian walkways and sidewalks within adjacent developments.	No new roads or walkways are proposed or needed.

<p>IM23 Council shall consider the proposed development is shown to manage stormwater on-site in a manner which does not negatively impact on other properties.</p>	<p>Not applicable.</p>
<p>IM24 Council shall consider massing, and compatibility of the proposed development's external appearance with adjacent buildings by means of design features, roof type, exterior cladding materials, and overall architectural style that is reasonably consistent with the style and character of the community or compliments the character of the community.</p>	<p>No buildings are currently proposed.</p>
<p>IM25 Council shall consider the following matters in Growth Management Areas and other areas where applicable to determine if the proposed development contributes to a favourable community form, and the proposed development's ability to:</p>	
<p>a) Provide for efficient pedestrian movement into, out of, and within the development, especially between commercial and residential neighbourhoods, as well as the ability for pedestrian routes to link with existing sidewalks, active transportation routes and walking trails on abutting lands to provide for a cohesive network of same.</p>	<p>No new roads or walkways are proposed or required.</p>
<p>b) Council shall consider, where appropriate, the impact of the development on the comfort and design of proposed streets and existing street users. This shall include whether the proposed development is humanscaled, is easily accessible to active transportation users, and if it promotes visual variety and interest for active transportation users.</p>	<p>No new streets are proposed or required.</p>