



## STAFF REPORT

### Planning and Development

**Subject:** *Application for a Land Use By-law Amendment to rezone the property at 400 Abbotts Harbour Road from MI to MU.*

**To:** Municipality of Argyle CAO and Planning Advisory Committee for November 1, 2023

**Date Prepared:** October 26, 2023

**Related Motions:** First Reading November 23, 2023

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### Summary

The Municipality of the District of Argyle has received an application for a map amendment to the Land Use By-law to rezone the property at 400 Abbotts Harbour Road (PID 90075474), Middle West Pubnico from the Marine Industrial (MI) zone to the Mixed Use (MU) zone to bring the current use on the subject property, a single-unit residential dwelling, into compliance with the existing Municipal planning documents.

The purpose of this report is to consider the rezoning from a MI zone to a MU zone to bring the current use on the subject property, a single-unit residential dwelling, into compliance with the existing Municipal planning documents.

### Financial Impact Statement

There is no immediate financial impact aside from the standard public engagement process and staffing requirements resulting from the application.

### Recommendation

That Council approve second reading to the Land Use By-law Amendment Application for the subject property, 400 Abbotts Harbour Road (PID 90075474) to permit a rezoning from the Marine Industrial (MI) zone to the Mixed Use (MU) zone to bring the current use on the subject property into compliance with the existing Municipal planning documents.

### Recommended Motion

Municipality of Argyle Public Works Department / Community Development recommends that the Planning Advisory Committee recommend that Council:

- Approve a land use by-law map amendment for the property located at 400 Abbotts Harbour Road (PID 90075474), Middle West Pubnico, to rezone from the Marine Industrial (MI) zone to the Mixed Use (MU) zone as indicated in the planner's report.

#### Subject Property & Background

The subject property is located at 400 Abbots Harbour Road (PID# 90075474) Middle West Pubnico, Nova Scotia. The site is currently being used as a residential use, that (to staff's knowledge) was developed prior to the existing zoning regulations coming into effect. The property has a lot size of 15,300 sq.ft. The lot frontage of the subject property is approximately 97ft. and it is accessed from Abbots Harbour Road via a private driveway.

To the west of the subject property is Abbots Harbour and a wharf, which is used for fishery and marine related uses. Immediately to the east and north of the site is vacant wooded land. Comeau Skipper, a seafood wholesaler is located southeast of the site, on the opposite side of Abbots Harbour Road.



Figure 1: Subject Property, 400 Abbots Harbour Road (PID# 90075474), Middle West Pubnico

The current property owner is seeking to have the subject property rezoned to bring the current land use of the property into compliance with the existing planning documents of the Municipality in order to facilitate the sale of the subject property and ensure that, going forward, the existing land use is permitted.

#### Policy Analysis

WSP and Staff are currently reviewing the application based on the applicable policies contained in the Municipal Planning Strategy (MPS).

Existing policies in the MPS allow Council to consider a rezoning in this case, without requiring amendments to the *Municipal Planning Strategy*. Appendix A contains a preliminary table of the evaluative criteria from the enabling policies within the MPS which relate to this proposal.

#### Discussion

The majority of nearby properties along Abbots Harbour Road are currently zoned Mixed Industrial (MI), with predominantly fishery and marine oriented uses along the wharves and some legal non-conforming residential uses along Abbots Harbour Road. The remainder of the surrounding land is vacant, wooded areas. The current site is occupied by an existing residential dwelling, that to our knowledge was built prior to the existing zoning regulations.

When reviewing and evaluating the suitability of potential Land Use By-law Amendments, one of the most important considerations is the potential impact that a proposed use could have on the existing, predominant uses and if there is a potential for conflict in land uses. Many of the uses permitted within the Marine Industrial (MI) zone are oriented towards the fishery and other marine related industrial uses.

The planning documents of the Municipality currently permit residential dwelling units as accessory uses to permitted uses within the Marine Industrial (MI) zone, with the intention being that the proprietor of industrial/commercial use would occupy the dwelling permitted as an accessory use. In this instance, however, the dwelling located on the subject property is an existing use and has not conflicted with other uses in its proximity. The principal concern with rezoning the site from the Marine Industrial (MI) zone to the Mixed Use

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(MU) zone is the potential impacts cause by the fishery and marine related industrial uses nearby. The result of these industrial uses can cause potential odors, noises, traffic and other negative effects on nearby residential uses, making them incompatible for certain sites. The Land Use By-law includes two types of industrial uses - light industrial use and heavy industrial use. Light industrial uses generally include those that are less impactful to residential or other uses, while those considered heavy industrial uses have the greater ability to generate land use conflicts. While both are permitted within the Marine Industrial (MI) zone, fishery and marine related industrial uses are considered light industrial uses and have historically coexisted with residential uses in proximity.

The proposed rezoning would change the existing zoning from the Marine Industrial (MI) Zone to the Mixed Use (MU) Zone. This change would permit the current use as a residential dwelling to be maintained and would not hinder any future residential development on the subject property as it would be a legal conforming use. The proposed rezoning would not directly cause any incompatibilities between uses as a result. Staff understands that the overall intent of the application is to permit future development of a residential dwelling so that it is not limited by the current zoning regulating the uses on the subject property.

Based on the above information, Staff feels the proposal is sufficiently consistent with the intent of the Municipal Planning Strategy (MPS) to proceed to a public hearing. A review of policies contained in the MPS, is indicated in more detail in Appendix A, and may be subject to modification prior to the final staff report.

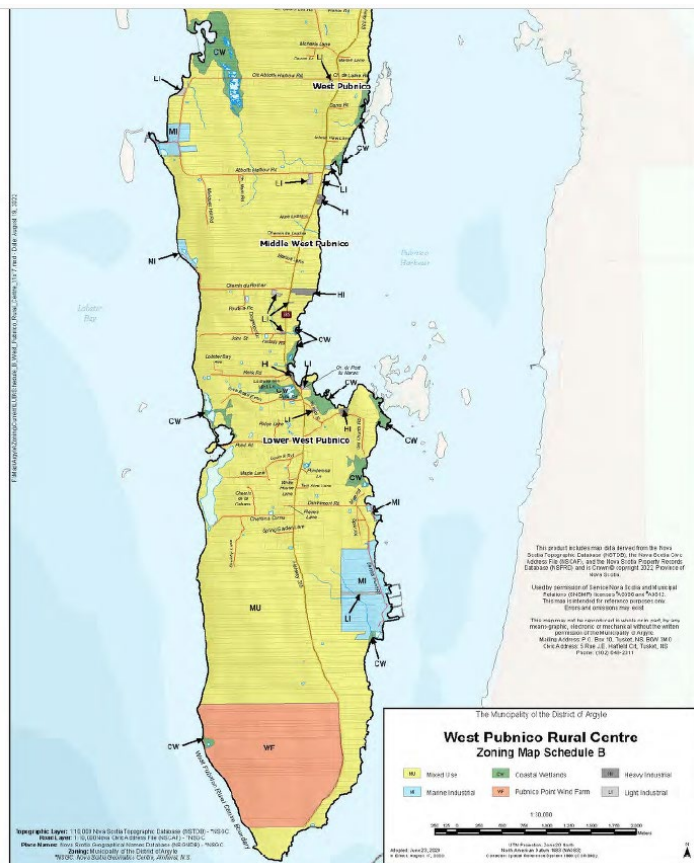


Figure 2: Current Zoning Map for West Pubnico Rural Centre Abbots Harbour Marine Industrial

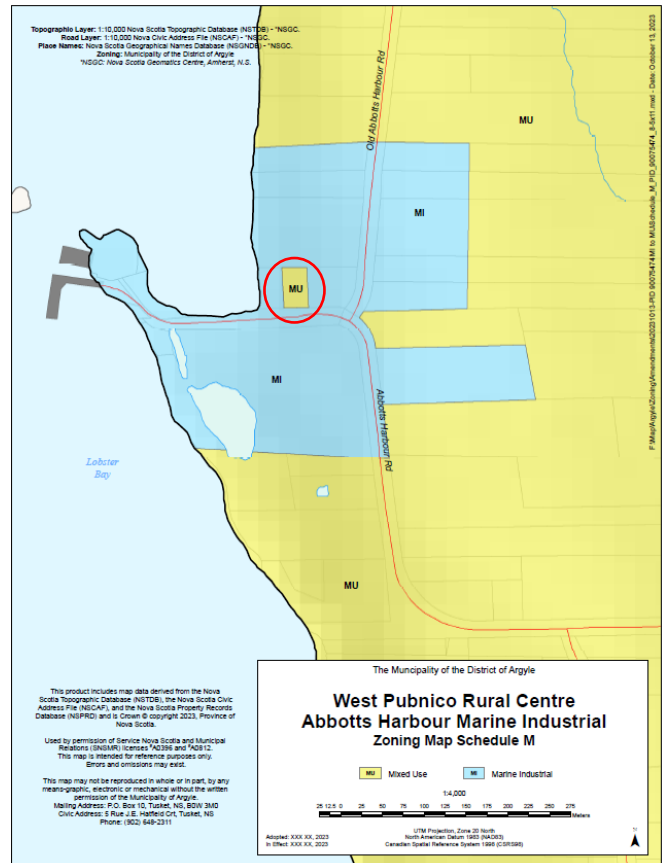


Figure 3: Proposed Zoning Map for West Pubnico Rural Centre Abbots Harbour Marine Industrial, Note the subject property (in red).



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### Public Participation

Staff will comply with Public Participation Policies of the Municipal Planning Strategy when processing this application. As per Section 206 of the *Municipal Government Act*, a public hearing is required when a Land Use By-law Amendment is sought to provide an opportunity for the community to comment on the application at hand.

Figure 4 illustrates the general process followed by the Municipality for a Land Use By-law Amendment application. A newspaper advertisement will be placed in the local newspaper, *Yarmouth Vanguard*, notifying the public of the application and the public hearing two weeks in advance of said hearing. A sign will also be placed on the subject property notifying residents that an application has been received by the Municipality. A notice of the application will also be placed on the municipal website.

Staff will mailout a notice of application to all property owners within 152 meters of the subject property and a public hearing will be held prior to the decision of Council.

The public is encouraged to request additional information and clarification from Staff leading up to the public hearing if they have any questions.

Note that there is a right of appeal option for approval or refusal by Council for the adoption of a Land Use By-Law Amendment, as per the *Municipal Government Act*.

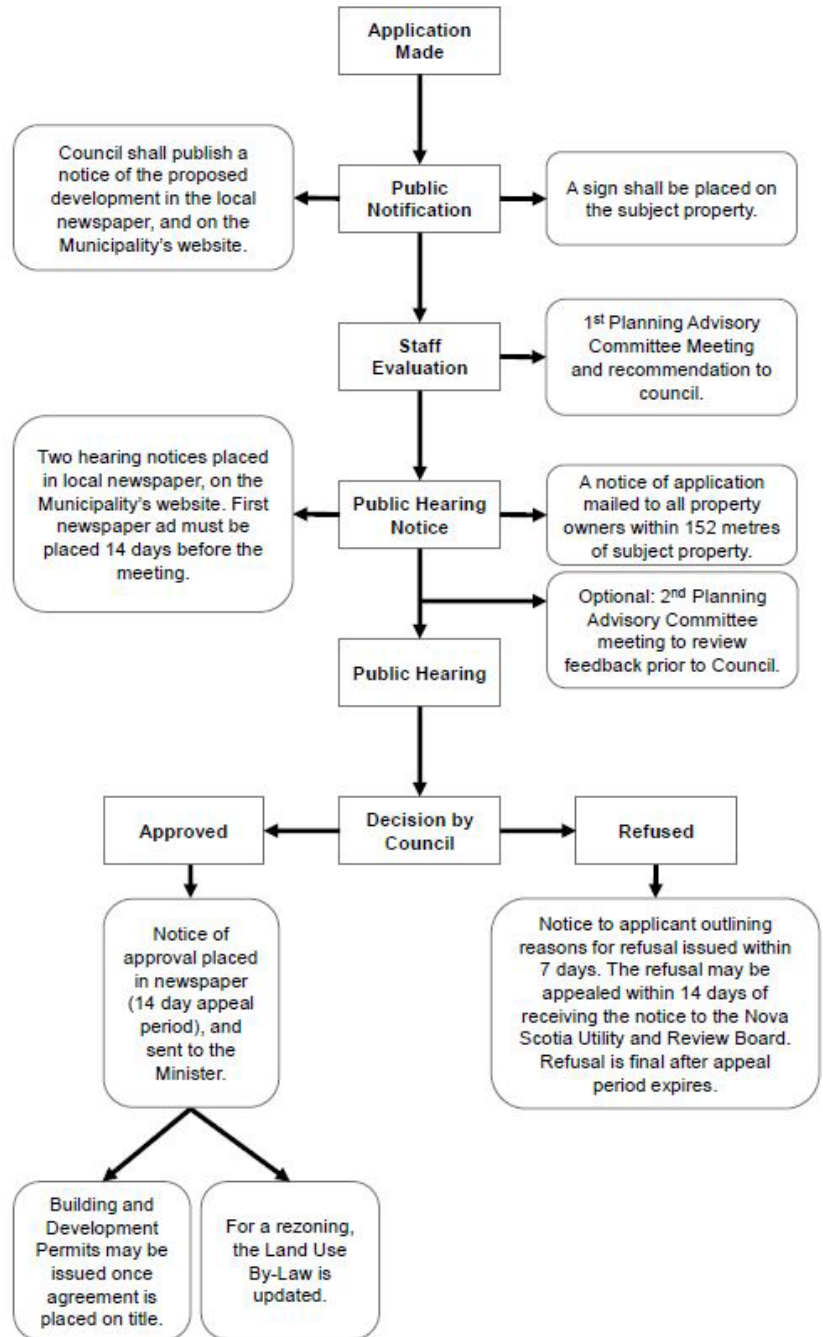


Figure 4: Process Diagram for a Rezoning or Development Agreement Application

### Conclusion

Staff will continue to review the application to apply for a Land Use By-law Amendment application to permit the Land Use By-Law Amendment to rezone the subject property from the Marine Industrial (MI) zone to the Mixed Use (MU) zone to bring the existing residential dwelling into compliance with the existing Municipal Planning documents. The applicant's proposal will be evaluated using all applicable policies in the Municipal Planning Strategy. Staff will make a recommendation to Council in its final staff report.





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#### Recommendation

That Council approves the Land Use By-law Amendment Application for the subject property to enable the rezoning from the Marine Industrial (MI) zone to the Mixed Use (MU) zone to bring the existing dwelling on the subject property into compliance with the existing Municipal planning documents.

#### Alternatives

1. Council could refuse the proposed Land Use By-law Amendment, and **in doing so, must provide reasons why the proposed development does not reasonably carry out the intent of the Municipal Planning Strategy.** A decision of Council to refuse the proposed Land Use By-law Amendment is appealable to the Nova Scotia Utility & Review Board by an aggrieved party.



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#### Appendix A: Policy Evaluation

The proposal may be considered by Council through the following applicable policies of the Municipal Planning Strategy for Argyle (MPS):

Applicable Policies	Staff Comments
<p><b>Policy 4.5.1:</b> It shall be the policy of Council to designate the communities of West Pubnico, Wedgeport and Tusket as Rural Centres (RC) designation on the Generalized Future Land Use Maps to accommodate a wide range of uses in a manner which is flexible and sensitive to the needs of the residents. The existing wind farm Pubnico Point will be excluded from this designation.</p>	<p>The subject site is within the Rural Centres (RC) designation.</p>
<p><b>Policy 4.5.2:</b> It shall be the policy of Council that the intent of the Rural Centres (RC) designation is to accommodate a wide range of residential, institutional, commercial, agricultural, recreational, wind energy, and utility uses.</p>	<p>The subject site is within the Rural Centres (RC) designation. The existing use on the subject property is residential.</p>
<p><b>Policy 4.5.3:</b> It shall be the policy of Council to establish in the Rural Centres (RC) designation the following zones:</p> <ul style="list-style-type: none"> <li>a) Mixed Use (MU) Zone;</li> <li>b) A Light Industrial (LI) zone and a Heavy Industrial (HI) Zone. Existing industrial uses will be zoned according to their operations, either as Light Industrial (LI) zone or Heavy Industrial (HI) zone.</li> <li>c) A Pubnico Point Wind Farm (WF) Zone in the Land Use By-law at the Pubnico Point Wind Farm site.</li> <li>d) A Residential Park (RP) Zone for the western portion of the current and former Municipal lands in Tusket.</li> <li>e) A Marine Industrial (MI) Zone as per the policies of Section 8.9.</li> </ul>	<p>The subject site is proposed to be rezoned to the Mixed Use (MU) zone from the Marine Industrial (MI) zone.</p>
<p><b>Policy 4.5.7:</b> It shall be the policy of Council to exclude from the Rural Centre designation certain agricultural uses, commercial uses, industrial uses and recreational uses deemed not compatible with the fabric of the Rural Centre communities.</p>	<p>Not Applicable. The existing use for the site is residential and therefore, not subject to this policy.</p>
<p><b>Policy 7.2.1:</b> It shall be the policy of Council to support the development of a variety of housing forms suitable for all ages and incomes.</p>	<p>The proposed Land Use By-law Amendment will bring the existing use into compliance with the existing Municipal planning documents.</p>
<p><b>Policy 7.2.2:</b> It shall be the policy of Council to support the development of alternate forms of housing which expand opportunities for residents to continue to live in their rural community throughout their lives.</p>	<p>The proposed Land Use By-law Amendment will permit future property owners/developers to redevelop the property to alternate forms of housing.</p>



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<p><b>Policy 7.2.3:</b> It shall be the policy of Council to support and encourage developers to find innovative, creative and affordable housing solutions utilizing existing municipal housing stock or creating new affordable housing options.</p>	<p>The proposed Land Use By-law Amendment will permit the opportunity for future residential redevelopment that can support new housing options and provide increased housing stock.</p>
<p><b>Policy 7.2.4:</b> It shall be the policy of Council to support and encourage developers to utilize existing municipal infrastructure where possible to maximize housing density and to utilize the capacity of existing infrastructure.</p>	<p>The proposed Land Use By-law Amendment will permit future developers to maximize the residential potential of the site and utilize existing infrastructure based on the uses permitted in the Mixed Use (MU) Zone.</p>
<p><b>Policy 13.11.1</b> It shall be the policy of Council to amend the Land Use By-law provided the amendment reflects the intent of the Municipal Planning Strategy.</p>	<p>Staff believe the proposed Land Use By-law Amendment reflects the intent of the Municipal Planning Strategy.</p>
<p><b>Policy 13.11.2</b> It shall be the policy of Council to consider an application for amendment to the Land Use By-law 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.</p>	<p>The existing use on the subject property is being sought in order to conform with the requirements of the in-effect planning documents of the Municipality. The proposed Mixed Use (MU) zone will bring the residential use into compliance and is in keeping with the intended approach behind the zones and with the surrounding community.</p>
<p><b>Policy 13.11.3</b> It shall be the policy of Council to consider an application for amendment to the Land Use By-law only if the site meets all of the lot size and zone standards for the zone sought, with the following exceptions:</p> <p>13.11.4 A rezoning may be granted for a lot or lots which meet all zone standards but has less than the required frontage or area specified for the zone sought; or</p> <p>13.11.5 A rezoning may be granted for a lot or lots with a building or buildings on it, which meets all other zone requirements except minimum lot area, frontage, setback or yard standards specified for the zone sought. Any proposed addition to such a building or replacement of such a building shall not further reduce the setback or yard standard.</p>	<p>The subject property, and existing dwelling, meet all the lot size and zone standards with the exception of the total lot area; the property is considered existing undersized based on the in-effect lot standards for the proposed Mixed Use (MU) Zone.</p> <p>Under policy 13.11.5 a rezoning may be granted for a lot with a building on it which does not meet the minimum lot area requirements. Any future additions to the existing building shall not further the setback or yard standard.</p>
<p><b>Policy 13.11.6</b> It shall be the policy of Council to notify by direct mail, land owners located within 500 feet (152 metres) of a property requesting rezoning. The costs associated with this notification shall be the responsibility of the applicant.</p>	<p>Following the 1<sup>st</sup> reading, mailouts will be sent out by staff to land owners within 500 feet (152 metres) advertising the public hearing. All statutory requirements of the <i>Municipal Government Act</i> will be met.</p>