

Additional Information – Notes from after the Public Meeting -March 29, 2024

In the spring of 2023, an application was received by Council to rezone all of PID 283325 (1.33 acres) from a combination of General Commercial and Agricultural to Light Industrial; and to rezone a 1.8-acre parcel of PID 658799 to Light Industrial. Council. Frizzell's Autobody is located on PID 283325, which is T shaped, with the center section of the property currently being zoned commercial.

The Municipality's Development [Bylaws](#) outline the procedure for Bylaw Amendments and Public Meetings on page 13-16.

Planning Board held a [public meeting](#) on May 31, 2023, to hear comments on that application. At that meeting, the public was informed that Council expected to be coming back to the public with a recommendation to update the Future Land Use Map in the Official Plan, if the rezoning was to receive further consideration.

Although an autobody is not currently a permitted use in the commercial zone, it was approved when it would have been permitted. This means it is currently designated "non-conforming", which means as it was approved under the bylaws of the time, it is allowed to continue to exist but it cannot legally expand the exterior dimensions (unless required by law), increase the lot area or the floor area, or intensify the use while it is non-conforming. An autobody or "automobile shop" is a permitted use in the Industrial zone.

Most concerns expressed about the property that was the subject of the rezoning request at the Public Meeting in May 2023 involved dust, noise and the appearance of the property. A solution suggested at that meeting was to have the Developer erect a building to allow sand or soda blasting to occur in a confined space. This is not possible under the bylaw, due to the properties' Commercial/ Agricultural zoning and the non-conforming use.

Council asked the Planner to evaluate the application for rezoning. She reviewed the application, Official Plan and Bylaws, comments received and other information to prepare a [report for Council](#). Planning Board, staff, and the other Councillors reviewed the information. The Development Officer met with the Developer. On November 8, 2023, Planning Board recommended to Council, the approval of rezoning for PID 283325 and a 1.8-acre portion of 658799 to Light Industrial (M1) for an autobody shop, with an appropriate Development Agreement to address concerns.

As the procedure to make changes to the Bylaws and Official Plans can be time-consuming and costly. Council, Planning Board, staff and the Planner reviewed the Bylaws and Official Plan to address other areas to be amended since the documents were approved in April of 2022. These amendments, as well as the amendment to the Future Land Use Map in the Official Plan, were presented for comment at the March 19, 2024 meeting.

Municipal planning is guided by the [Official Plan](#) (overriding document) developed through a public planning process with input from residents, council, planning board and created by a professional planner. This provides a vision for how the municipality will develop into the future.

Once the Official Plan has been drafted, [Zoning and Subdivision Bylaws](#) (also called the Development Bylaws) are written to provide the details and regulations as to how this vision will be reached. The development of these also involves a specific public process. Plans are adopted by resolution of Council after a recommendation from Planning Board, and come into effect when the appropriate Provincial Minister signs and approves them. The Province generally reviews the process used to ensure the public has had a chance to participate, and that other requirements are met. The Development Bylaw approval also requires approval from the Planning Board and five separate readings by Council on two different days. Amendments to these documents follow the same process.

Development regulations evolve over time. As new Bylaws are approved, they apply to new applications on a go-forward basis. Applications that were previously approved, which do not meet current standards are considered non-conforming, and are able to continue.

Previous applications received from the Developer for consolidation or rezoning were not able to be approved over the years due to Special Planning Area regulations previously limiting the size of unserviced commercial lots, and because rezoning to non-resource Industrial was not permitted for a time.

The current Official Plan has policies that were considered for the potential rezoning, such as CI-7 *“The Development Bylaw will establish a Light Industrial Zone (M1), which shall be applied in areas where non-resource based industrial uses are already in existence.”* Autobody work has been carried out on property 283325 since 1988.

8.2.1. Non-Resource Commercial and Industrial Land Use Policy notes that *“ It shall be the policy of Council to continue to support existing non-resource commercial and industrial uses within the Rural Municipality and to encourage the reasonable growth of those businesses, while permitting the limited approval of new non-resource commercial and industrial uses in order to minimize the loss of primary resource lands to non-resource commercial and industrial uses in accordance with subsection 63(10) of the Planning Act Subdivision and Development Regulations.”*

Plan Actions: CI-1 The Development Bylaw will only permit the expansion of existing non-resource based commercial and industrial land uses where the proposed development will not involve the loss of existing resource land for a non-resource use.

Miltonvale Park is also within the Charlottetown Special Planning Area, which adds another layer of regulations to be considered in the planning process.

Conflicts, Enforcement and Appeals

The Planning Act notes the following:

24. Enforcement (1) Any bylaw or regulation made pursuant to the powers conferred by this Act or a bylaw made under the Municipal Government Act R.S.P.E.I. 1988, Cap. M-12.1, relating to planning matters may be enforced and the breach thereof may be restrained by application at the instance of the appropriate authority to the Supreme Court.

Enforcement is at the discretion of Council.

The Development Bylaw requires land edges or buffers between different zones to help reduce land use conflicts. Councils can also require development agreements to further address issues which may arise:

Development Agreements are a tool used by Council to include conditions under which a Development is to be carried out by the owner.

Section 3.13 of the Zoning and Subdivision Bylaw addresses Development Agreements

1. The Development Officer may require an Owner to enter into a Development Agreement with Council. This agreement is a contract and shall be binding on both parties.

2. The Development Agreement shall include the conditions under which a Development is to be carried out by the Owner.

3. Failure to comply with a Development Agreement shall constitute an offence under this bylaw.

4. A Development Agreement may address but shall not be limited to the following matters:

- a) Site design;*
- b) The design and construction cost of sidewalks, pathways and other pedestrian access matters;*
- c) Landscaping and screening;*
 - d) Vehicular accesses and exits;*
- e) Signage;*
- f) Security and safety lighting;*
- g) Architectural design;*
- h) Methods of waste disposal;*
- i) Remediation measures;*
- j) Security;*
- k) Hours of operations;*

l) Fencing; and

m) Other matters to ensure the health, safety and convenience of residents or any other person

5. The Development Agreement shall be registered in accordance with the Registry Act, R.S.P.E.I. 1988, c. R-10.

6. A permit issued subject to a Development Agreement shall reference the signed agreement as a condition of the permit.

7. Fees associated with the preparation, registration and enforcement of the Development Agreement shall be paid by the Owner.

Clause 7 has only been included in the Development Bylaws since 2016, and does not apply retroactively to previous Development Agreements.

Council can also now require the posting of a financial guarantee, bond or other security satisfactory to Council. The Province's Planning Act has also recently been amended to include provisions that empower municipalities to appoint enforcement officers who can enter land, conduct tests, and issue orders to secure compliance with municipal bylaws and provisions that increase the fines payable on summary conviction for contraventions of the Planning Act or of certain municipal bylaws. Individuals are now liable to a maximum fine of \$10,000 and corporations are now liable to a maximum fine of \$100,000.

A permit previously issued to the Developer on June 25, 2008 did not include a Development Agreement, rather the permit was issued with conditions.

Staff is continuing to work on a Development Agreement to reduce land use conflict with nearby residents for the application submitted by the owner of PIDs 283325 and 658799, to be used if the amendments are approved.

Please note 3.17 of Miltonvale Park's Development Bylaws is no longer relevant as written, as the Province has amended Part V of the [Planning Act](#) regarding appeals to IRAC. Council is proposing that section of the Bylaws be amended, in the list of [proposed amendments](#).

Clarifications

Mention was made at the March 19, 2024 meeting of over 100 complaints filed with Council from over a half a dozen residents. These complaints were received on Friday afternoon, March 15, 2024. Council was told at the public meeting on March 19, and later by email, that these complaints are not to be considered as comments from the public as part of the public consultation process. Council will respond to them as appropriate, after they have been reviewed by staff. Almost 100 of them are complaints about specific vehicles or storage containers, and some pertain to issues which are not under the authority of the municipality, while others may be about issues which are

currently non-conforming (i.e. allowed at one time, but no longer permitted, but may continue legally). Many of the concerns noted were also raised during the course of the public meeting.

Council would like to respond to the allegation that Councillor Frizzell was in attendance at three meetings while his application was discussed on [September 20, 2023](#), [October 18, 2023](#) and [January 17, 2024](#). During Council meetings, in the Planning Board report, there is a listing of applications in progress which the Development Officer is processing or waiting for information from Developers. There is generally no discussion on the list and Council is not asked for input or to make any decisions on the list. Councillor Frizzell remained in the Council meeting while it was noted that his application, along with many others, was still in progress. At the January meeting, Councillor Frizzell was present during a motion to proceed to a public meeting on the proposed Official Plan and Bylaw Amendments. His attendance during these administrative processes are being reviewed by the municipal solicitor. Council unanimously approved a motion at its meeting on March 20, 2024 affirming that Councillor Frizzell was not present for any portion of a Council meeting since his application for re-zoning was received, when his application for re-zoning was being evaluated or discussed by Council while it was under consideration.

It asked at the March 19, 2024 meeting if the properties shown across the top of the “T” in parcel PID 283325 (which all have the same PID number) were likely to be consolidated, and then combined with the 1.8 parcel from PID658799. PID 283325 was already consolidated in 1992. The Planner’s report recommended if the rezoning was approved that “Undertaking may be needed from applicant that they would go through with the boundary adjustment (severance and consolidation) should the zoning change be approved to ensure that the portion of PID 658799 does not become used for a separate industrial use.”

A speaker noted that she believed while Council had not enforced violations at the Frizzell property, they had quickly slapped a \$7,000 fine on a fill violation. Parcel 283085 had fill placed on it without a permit in the fall of 2021. The municipality had experienced many previous violations of permit conditions, and had extensive history with the property, including IRAC appeals. Council made many attempts to have that developer submit a complete development application to place fill; however, the developer was not cooperative. Council had also received multiple complaints about activity on the property from several neighbours. In the fall of 2023 Council received \$1500 in payment from the developer for placing fill without a permit. This effort (since 2021) has cost approximately \$5,500 in legal fees and took many hours of staff and Council time.

Members of the public can continue to submit comments on the [amendments proposed to the Official Plan and Development Bylaws](#) until noon, Tuesday April 2, 2024 to admin@miltonvalepark.com or delivered to the Council office at the Milton Community Hall. There is a mailbox on the doorstep of the hall.