

To: **Baddeck Area Advisory Committee  
Victoria County Council**

From: **Planning Staff (EDPC)**

Date: **May 9, 2011**

Reference: **Application by Mr. Kurt Johnston to amend the Baddeck Municipal Planning Strategy and Land Use By-law to allow Tourist Commercial Uses (Cottages or Cabins) in the Residential Urban (R-1) Zone in Baddeck.**

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**Recommendation:**

That Council **approve** the proposed amendments to the Baddeck Municipal Planning Strategy and Land Use By-law to permit up to five (5) tourist cabins on a lot in the Residential (R-1) Urban Zone subject to lot size and buffering provisions and more than five (5) by development agreement.

**Description of Site:**

Designation: Residential	Area:	4.22 ha; 10.43 acres
Zoning: Residential (R-1) Urban	Identification:	Highway 105, Baddeck Bay. PID# 85152023
Site Visit: February 10, 2011		

**Information:**

On January 6th, 2011 Planning Staff received an application from Mr. Kurt Johnston to amend the *Baddeck Municipal Planning Strategy* to allow the development of tourist cabins on his property, which is zoned Residential (R-1) Urban. It is Mr. Johnston’s intention to initially construct one tourist cabin, with a possible expansion in the future to four. Mr. Johnston proposes this



**Fig. 1: Hwy 205, near Mr. Johnston's property**

development on a 10 acre lot he owns and which abuts the Bell Bay golf course. While the lot fronts on Highway 105, road access is to Highway 205 through a deeded right-of-way on another property, which is owned by Mr. Johnston and his brother. The lot can be serviced by municipal water; however an on-site septic system would be required for any development.

The subject property is located approximately two kilometres from the edge of the Baddeck village core and forms part of the new land area added to the Baddeck Plan Area following the most recent plan review in 2009.

While the area around Crescent Grove Road and the golf course has somewhat of a tourist character with a number of tourist cabins already in place, this use is not permitted in the R-1 Zone. Existing tourist cabins are considered legal non-conforming uses and subject to the restrictions on expansions covered under the *Municipal Government Act*. Most tourist commercial uses, including cottages and cabins, are only permitted in the Tourist Commercial (C-3) Zone and as the Municipal Planning Strategy does not permit rezoning to C-3, the Strategy as written would not allow a development such as Mr. Johnston's proposal.

**Analysis:**

If Council wishes to allow Mr. Johnston's proposed project and similar ones, Planning Staff suggest three policy mechanisms by which it can happen:

- Including tourist cottages as a permitted use within the Residential (R-1) Zone with special provisions;
- Amending the Municipal Planning Strategy to allow tourist cottages through development agreement in the R-1 (or other) zones; or
- Amending the Municipal Planning Strategy to allow the rezoning of land to the Tourist Commercial (C-3) Zone.

Any proposed amendment to a *Municipal Planning Strategy* (MPS) or *Land Use By-law* (LUB) must be in keeping with the general intent of the document. Currently tourist cottages are permitted only in the Tourist Commercial Zone, which permits a variety of small and large scale tourist accommodation facilities on large lots close to the central business district and along Shore Road. In evaluating an amendment to allow the use elsewhere, Council must consider why tourist cottages are not permitted outside the C-3 Zone in the first place. In Chapter 2, Part B, Section 4, the Strategy emphasizes the importance of tourism to the area and states that existing tourist commercial uses "be maintained for tourist development in a manner which benefits the character of the Village, while ensuring that the capacity and function of existing services are not overburdened." To address the concern of large-scale developments potentially straining the Village's underground services the C-3 Zone is applied to the existing tourist commercial development mostly along Shore Road, while rezoning to C-3 elsewhere are prohibited. New or expanded uses in the zone, depending on their size, may need to proceed through the development agreement process.

The concern over servicing reflects the development already in place within the Tourist Commercial Zone, which includes several motels and resorts, which are large developments that need to be planned carefully. However, the zone also regulates some less intrusive uses which are not permitted in any other zone in the Plan Area, including tourist cabins, spas and tourist guest homes over six units. In other zones, higher impact uses, including hotels and motels (but not resorts) are allowed as of right in the Central Business District Zone, as well as new apartment buildings through rezoning. Any rezoning would need to take into consideration issues such as compatibility, traffic and impact on underground services. The base Residential Urban (R-1) Zone, which comprises almost all of the Plan Area outside the village core also permits a wide variety of uses, some of which, including seniors homes and institutional uses, can have an impact on services. As part of the evaluation of Mr. Johnston’s proposal, Planning Staff contacted the Baddeck Village Commission and they indicated that current municipal sewer and water systems could support tourist cabin developments in the serviceable area.

From a land use planning perspective, issues of conflict and compatibility need to be kept in mind given that new tourist cabins are commercial uses that would generally occur in residential dominant areas. In establishing the R-1 Zone, the MPS expresses the goal that “that the present stability of land use patterns within the community is upheld” and that residential polices will permit only uses that are “prevalent in *or do not represent a significant threat* to the uniformity of the existing neighbourhood”



**Fig. 2: Existing tourist cabins near Bell Bay**

[*emphasis added*]. However, the Plan also states that to date “land use conflicts have, as a result of the introduction of commercial uses in residential neighbourhoods, been non-existent.” For instance, there are presently several tourist commercial developments along Highway 205 in R-1 zoned land which were built before the zone took effect but are located on large lots and set apart from existing residential development. In the opinion of Planning Staff, commercial uses such as tourist cabins, through proper controls and buffering which are outlined in an MPS, can be integrated into residential areas and the MPS would not oppose their responsible development.

As such, it would appear there is support in the Plan for allowing Mr. Johnston’s proposal in addition to other tourist cabin developments outside the C-3 Zone. Of the three options identified earlier, Planning Staff believe that any of them could address any servicing or compatibility concerns which may arise though they key difference between them is the level of control Council would have over the development.

The first option, including tourist commercial uses or cabins **as a permitted use in the R-1 Zone, subject to certain special provisions** can address issues of land use compatibility if, for instance, Council established minimum lot size and setback requirements for tourist cabins. That would essentially force them into the more rural areas where the lots are larger and they would likely have less impact on surrounding uses. For the developer, this is the easiest and most certain approach as each development, provided it meets the requirements, would be permitted and not require a public process. Any new development outside the municipal sewer boundaries would still need Department of Environment approval for septic, and smaller tourist cabin developments within the serviced area are unlikely to have a significant impact on the sewer system. The drawback to this approach is that it is a one size fits all solution that does not take into account the greater impact that larger tourist cabin developments would have on the site in contrast to small developments such as the one being proposed by Mr. Johnston.

Allowing **tourist cabins through rezoning** to Tourist Commercial would address issues of servicing and compatibility since traffic, adequacy of sewers and environmental concerns would need to be evaluated before a rezoning can be approved. A rezoning is also a public process where neighbours will have the opportunity to speak to Council on the proposal. However, once the land is rezoned, a developer can legally construct anything on the lot (subject to lot requirements) that is permitted within that new zone. As such, adopting this option and assuming the C-3 Zone remains as it is, a rezoning would need to be evaluated based on what could be built on the site in addition to what is actually being proposed.

A **development agreement** however binds the developer to build to the scale, use and design which has been negotiated between them and the municipality. The approval process for a development agreement is the same as that for a rezoning (including the public hearing) though development agreements typically give more attention to local considerations, since it applies only to the given site. This provides the opportunity to negotiate issues relating to landscaping, parking and architectural design. While this process gives the municipality the greatest level of control over a proposed tourist cabin development, the process gives less certainty to the developer and may be unnecessarily onerous for small developments of only a few cabins.

#### **Proposed Amendments:**

In evaluating the three options, Planning Staff are recommending that Council adopt a hybrid of the first and third whereby the Municipal Planning Strategy and Land Use By-law are amended to allow a small number of (up to five) tourist cottages as of right in the R-1 zone, subject to lot and buffering provisions and larger tourist cabin developments proceeding only through development agreement. This would necessitate several amendments:

- Text amendment to Chapter 2, Part A, Section 5 of the MPS (“Tourist and Guest Homes”) to rename section “Tourist Homes and Cottages” and to re-word section to include tourist cabins as permitted within the R-1 Zone;
- Insert new Policy 1.19A stating that Council shall permit tourist cabin developments up to 5 cabins in the Residential Urban (R-1) Zone, provided the minimum lot size of the property is 40,000 square feet, there is a 20 foot setback from all lot lines and a site plan is approved by the development officer;
- Amend Policy 1.20 to include tourist cabin developments with 6 or more cabins as uses permitted by development agreement in the R-1 Zone (using same DA requirements as for tourist and guest homes, Policy 1.21);
- In LUB, Part 7, R-1 Zone, add “Tourist cabins” as a permitted use;
- In same part of LUB, amend Section 6 (Site Plan Approval) to include tourist cabins in the list of uses requiring a site plan approval, using the existing criteria;
- In same part of LUB, add a new Section 11 (General provision: Tourist cabins) implementing the lot size, setback and buffer requirements of the new Policy 1.19A;
- Add a definition of “tourist cabins” to the LUB, which includes a maximum indoor floor space of 1,000 square feet to ensure compatibility;
- Amendments to general provisions and implementation sections to make them consistent with above policies: Policy 6.9 of MPS and Part 15 of LUB (development agreements), Part 5, Section 18 of LUB (one main building on a lot),

The amending pages at the end of this document contain the precise locations and wordings of each of these amendments.

**Conclusions:**

It is the opinion of Planning Staff that given that the Baddeck Municipal Planning Strategy supports tourist development in general, the intent of the Plan would not preclude such development in other parts of the Plan Area provided that impacts on neighbours and community infrastructure are not strained. Tourist cabins are a relatively low impact commercial use which currently exist on a legal non-conforming basis in the more rural parts of the Plan Area. The proposed amendments, of which Council is recommended to adopt, recognize this use and seek to balance the benefits of increased tourist commercial development with the necessity to ensure any such development fits in with its surroundings and is not a burden on municipal services. While these amendments would allow Kurt Johnston to build his proposed cabins (subject to site plan and buffering requirements), the amendments would also apply to any R-1 zoned property.

**Appendix “A” BY-LAW TO AMEND THE BADDECK MUNICIPAL PLANNING STRATEGY**

*The Baddeck Municipal Planning Strategy is hereby amended by:*

In Chapter 2, Part ‘A’ Section 5, removing the title “Tourist and Guest Homes” and replacing it with:

**“Tourist Homes and Cottages”**

In Chapter 2, Part ‘A’ Section 5, inserting in the first sentence the following text:

**“Throughout the Planning Area, there are a number of tourist or guest homes and tourist cabins that provide [...].”**

In Chapter 2, Part ‘A’ Section 5, inserting the following new policy:

**Policy 1.19A It shall be the policy of Council to permit Tourist Cottages and Cabins in areas zoned Residential Urban (R-1) provided that the use contains no more than five individual cabins, is located on a lot larger than forty thousand (40,000) square feet, is set back a minimum of twenty (20) feet from all lot lines, meets landscaping requirements where the use abuts an existing residential use and has an approved site plan by the Development Officer, for the proposed development.**

In Chapter 2, Part ‘A’ Section 5, deleting existing Policy 1.20 and inserting:

**Policy 1.20 It shall be the policy of Council to permit by way of a development agreement any Tourist or Guest Home (Bed and Breakfast) use which exceed the limitations stated in Policies 1.18, 1.19 and any tourist cottage and cabin development which exceeds five (5) cabins within any Residential Urban (R-1) zone.**

In Chapter 4, Part ‘C’ Section 3, Policy 6.9, deleting existing subsection (e) and inserting:

- e) Tourist cottage and cabin developments which exceed five (5) total cabins in areas zoned Residential Urban (R-1) as provided in Policies 1.20 and 1.21;**
- f) In the event that buildings or facilities [...]**

**A BY-LAW TO AMEND THE BADDECK LAND USE BY-LAW**

*The Baddeck Land Use By-law is hereby amended by:*

In Part 5, Section 18 “One Main Building on a Lot,” inserting the following subsection:

- (e) **tourist cottages and cabins in the Residential Urban (R-1) Zone.**

In Part 7, Section 1 “Uses Permitted,” inserting the following:

- **Tourist cottages and cabins**

In Part 7, Section 6 “Site Plan Approval,” inserting the following, as represented in bold:

- 6. Notwithstanding Section 4 all **tourist cottage and cabin developments** and Converted Dwellings and/or Bed and Breakfast [...]

In Part 7, inserting a new section immediately after Section 10 “Tourist or Guest Homes”:

**Tourist Cottages and Cabins**

**11. Notwithstanding Section 1, tourist cottages and cabins are permitted provided that:**

- a) **not more than five (5) tourist cabins are on a lot;**
- b) **the minimum lot size for a tourist cabin development shall be forty thousand (40,000) square feet or where applicable meet the requirements of the Provincial *On-site Sewage Disposal Systems Regulations* but in no case be less than forty thousand (40,000) square feet;**
- c) **a setback of twenty (20) feet is maintained between any tourist cottage or cabin and all lot lines; and**
- d) **In the event that a new or expanded tourist cottage or cabin development contains six (6) or more cabins or cottages such a use shall only be permitted by Development Agreement as specified in Policies 1.20 and 1.21 of the Municipal Planning Strategy.**

In Part 15, deleting existing subsection (e) and inserting:

- e) **Tourist cottage and cabin developments which exceed five (5) total cabins in areas zoned Residential Urban (R-1) as provided in Policies 1.20 and 1.21;**
- f) **In the event that buildings or facilities [...]**

In Part 16 “Definitions”, adding the following:

**52A. TOURIST COTTAGE OR CABIN means an establishment providing accommodation for the use of the traveling or vacationing public, a free-standing unit containing less than 93 square metres (1,000 square feet) of livable indoor floor space, which includes a bed, sitting room (linens supplied) and bathroom; may have kitchen facilities.**