DECISION **2017 NSUARB 22**
M07031

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **RUSSELL BRET MINER AND MARJORIE JEAN MINER** to the approval of Kings County Council to amend the Land Use Bylaw map amendment to rezone 410 Ben Jackson Road, Lockhartville, from Forestry (F1) to Highway Commercial (C11) - Municipality of the County of Kings

BEFORE:	Wayne D. Cochrane, Q.C., Member
APPELLANTS:	**RUSSELL BRET MINER and MARJORIE JEAN MINER** Douglas Lutz, LL.B.
RESPONDENT:	**MUNICIPALITY OF THE COUNTY OF KINGS** Jonathan G. Cuming, LL.B.
APPLICANT/ RESPONDENT:	**GLOOSCAP FIRST NATION ECONOMIC DEVELOPMENT CORPORATION** Jason T. Cooke, LL.B. Keith D. Lehwald, Articled Clerk
SUBMISSION DATES:	February 9, 10 and 13, 2017
DECISION DATE:	**February 16, 2017**
PRELIMINARY DECISION:	**Board grants request by Counsel for the Appellants to amend the Notice of Appeal**

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I INTRODUCTION

[1] This decision arises from a dispute among the parties to a municipal planning appeal as to the proper subject of the appeal.

[2] The appeal is by Bret Miner and his mother, Marjorie Miner. Mrs. Miner lives in a farm house in the eastern end of the Annapolis Valley, very near Exit 8A on Highway 101, a high-speed, divided highway running from Halifax into the Valley.

[3] The dispute centres around a highway commercial project, to be called Glooscap Landing, which the Applicant, Glooscap First Nation Economic Development Corporation, proposes to build at Exit 8A. The initial phase which Glooscap proposes would include a gas station with an attached coffee shop and convenience store, a car wash, and two fast-food outlets, all readily accessible to the large volume of traffic flowing on Highway No. 101, which is a divided highway.

[4] On July 30, 2015, Kings County Council approved Glooscap's proposal for Phase I. While the Board will return to this point in more detail, in so approving the project, Council agreed to Glooscap's proposal that the property be rezoned from F1 (Forestry) to C11 (Highway Commercial). Council also agreed to Glooscap's proposal that the range of buildings and uses possible within C11 be, in effect, expanded somewhat. It would expressly provide that commercial buildings, grouped commercial buildings and grouped commercial facilities are allowed in the C11 Zone. The change to the C11 Zone would apply not just at Glooscap's Exit 8A site, but at other properties zoned C11 in the County.

[5] For purposes of brevity, the Board will refer to these two aspects using the language which Counsel for the parties have used repeatedly in their various submissions

to the Board: the first aspect will be referred to as the "rezoning" issue, and the second aspect will be referred to as the "text amendments" issue (the latter term referring to the changes in text of the Land-Use By-Law specifying the uses possible in a C11 Zone).

[6] Counsel for the Appellants filed a Notice of Appeal with the Board on August 17, 2015. In effect, Counsel for the Appellants says that his Notice of Appeal encompasses both the rezoning and the text amendment issues. Counsel for the Respondents (Glooscap and the County) firmly assert that the Notice of Appeal relates only to rezoning and not to the text amendments.

[7] Counsel for the Appellants says that his Notice of Appeal does include the second aspect but, should the Board find that it does not, the Board should make an order which has the effect of amending the Notice to so include it. Counsel for Glooscap and the County oppose any such amendment.

[8] For reasons discussed in this decision, the Board finds the Notice of Appeal drafted by Counsel for the Appellants to be, at best, ambiguous. However, the Board has decided to order that the Notice of Appeal be amended as requested by Counsel for the Appellants.

II FACTS

[9] Given, the – at least in the Board's experience – unusual circumstances of this request for an amendment to the Notice of Appeal, the Board will here recount in some detail how this matter came to be before the Board.

[10] In so doing, the Board expresses its appreciation for the multiple briefs which have been submitted to it by Counsel for the various parties. The efforts of Counsel

have been helpful in illuminating for the Board not just the applicable law, but also the facts.

[11] The Board will first note that it has concluded that while County Council did, as the Respondents assert, approve two motions (one dealing with rezoning and the other with text amendments), the County commonly referred to these two motions as if they were a single entity.

[12] For example, whether in documents used by Council or in notices to the public (such as in newspaper advertisements, or letters delivered to neighbours, such as the Appellants, i.e., Mr. Miner and his mother), the County generally used the singular of the word "application." It did not refer to two applications, one for rezoning, and one for the text amendment.

[13] Further, in its documentation the County frequently summarized the combined effect of the two motions (which the County and Glooscap now argue are entirely separate) in a single sentence.

[14] Thus, in the view of the Board, it would be reasonable for an objective outside observer to, in looking at – for example - the notices which the County provided to the public, conclude that the matter before Council was a single application with two aspects, the first being rezoning, and the second being the text amendments.

[15] While there are numerous such references, the Board will refer to the details of only a few examples.

[16] In so doing, the Board will refer in part to documentation prepared by, or under the direction of, Leanne Jennings, LPP, MCIP, a planner for the County of Kings who oversaw the application by Glooscap to Council. She prepared detailed planning

reports, which were used at various stages in the proceeding, and ultimately led to Council's approval of the project. The Board notes here a point to which it will return later under "Analysis and Findings," below: Ms. Jennings' Reports (whether to the PAC, or subsequently to Council), refer in detail to not just the rezoning issue (which the Respondents, County and Glooscap, agree is properly before the Board), but also to the text amendment issue. Further, her Reports review in detail not simply the factual basis for her in effect (the Board finds) recommending adoption of both the rezoning and the text amendments, but also her analysis of the County's planning documents in which she points to provisions which she feels support not just the rezoning, but also the text amendments.

[17] Her report of June 9, 2015, to the Planning Advisory Committee refers to the "application" in the singular. It is headed:

> Application to Rezone the Land at 410 Ben Jackson Road from Forestry (F1) to Highway Commercial (C11) and housekeeping amendments to the C11 zone requirements and permitted uses.

[18] The Notice of Public Hearing which the County sent to property owners within 500 feet of the proposed development, such as the Appellants, on July 8, 2015 is of similar import. For example, it consistently uses the singular, not the plural, referring to "the application" twice, and to "this application" twice.

[19] It says "the application" (singular) by Glooscap is to:

> to rezone [the subject property]…from Forestry (F1) to Commercial (C11) as well as enabling 'convenience stores' as a permitted use in the C11 Zone.

[20] In the judgment of the Board, in referring to "enabling convenience stores" in the C11 Zone, the County is referring to what the Board has, for the purposes of this

decision, termed "the text amendments." Thus, the reference includes both the rezoning and the text amendments in a single sentence.

[21] The next part of the notice is, in the judgement of the Board, consistent with the one just quoted, i.e., it treats both the rezoning and the text amendments together to C11 together:

> The amendments would permit the development of commercial service centre at interchange 8A off of Hwy 101. Phase I of the proposed development entitled, 'Glooscap landing', includes a gas station, convenience store and coffee outlet.

[22] The Notice of Public Hearing which the County had published in the *Valley Harvester* in June and July 2015 uses different language from the notice sent to the neighbours, but is, in the Board's view, generally consistent with it.

[23] The first paragraph of the advertisement combines, in a single sentence, the two aspects (although in reverse order, using the terms "text and map amendments") which the County now claims – in the present proceeding - are entirely separate:

> It is Council's intention to adopt *the following text and map amendments* to By-law 75. [Emphasis added]

[24] The Notice does then go on, in two enumerated paragraphs, to refer first to "proposed text amendments to enable convenience stores" in C11, and to add the C11 Zone to ss. 6.1.1 and 6.1.2 of the General Provisions for all commercial zones.

[25] In the second enumerated paragraph, it expands on the phrase "map amendment" appearing in the first paragraph to specifically describe the proposed rezoning of 410 Ben Jackson Road.

[26] However, the paragraph inviting persons to express their opinions to Council once again then describes the two aspects in a single sentence:

> Any interested persons who wish to speak on the *proposed text and map amendments* are invited to attend and make their opinions known to Council. [Emphasis added]

[27] On July 30, 2015, Council held a public hearing and, at its subsequent council meeting, immediately after the public hearing, approved the Glooscap proposal.

[28] On July 31, 2015, Planning Services for the Municipality sent a letter to Ms. Peters of Glooscap concerning Council's approval of Glooscap's proposal at its meeting on July 30th. The subject line (or "Re" line) of the letter refers to the text and map amendments, expressly identifying them in the context of Glooscap's development proposal for Exit 8A, which it calls "Glooscap Landing":

> Re: Proposed Land Use Bylaw Text and Map Amendments "Glooscap Landing."

[29] The text of the letter does use two separate sentences to refer to Council's approval of the rezoning and the text amendments. However, it goes on to refer to the public notice, to the appeal period, and to any possible appeal, in the singular:

> We are now *advertising that the amendments* have been passed by Council. A 14-day *appeal period* will begin after the date of the publication of the *Notice of Passing* in the *Valley Harvester* on August 13, 2015. You will be advised when we receive written notification from the Nova Scotia Utility and Review Board as to the status of *the appeal*. [Emphasis added]

[30] Also on July 31, 2015, the same day that the Planning Department sent the letter to Ms. Peters, the Planning Department wrote to the Board advising of Council's decision.

[31] Up to this point, the County had, in numerous different documents, referred, as illustrated by the above examples, to Glooscap having made a single application, albeit one with two aspects.

[32] In writing to the Board, however, the Planning Department for the first time wrote two separate letters, one on rezoning and the other on the text amendment.

[33] Both letters ask the Board to notify the County upon the expiry of the appeal period at midnight on August 27, 2015, if an appeal had been filed or not.

[34] The Board notes that the Presiding Member did not see either of these two letters until one (the one relating to the text amendments) was referred to by Counsel for the County in his written submission to the Board on February 9, 2017.

[35] The rezoning letter, like the text amendment letter, was not included in the Appeal Record or in the material supplied to the Member, and was not seen by him until February 15, 2017.

[36] It is in these two letters that, for the first time in its processing of the Glooscap application, the County actually dealt with the two motions as if they were separate items. In fact, there is no reference to the text amendments in the letter to the Board respecting the rezoning; likewise, there is no reference to the rezoning motion in the letter to the Board respecting the text amendments.

[37] Both letters, however, bear the same file number, 15-07. Thus, in one of the County's letters, it appears that file 15-07 is a text amendment file; in the other letter, it appears that file 15-07 is a rezoning file.

[38] In fact, of course, the County's file 15-07 dealt with both text amendments and rezoning. Counsel for the Appellants in a written submission points explicitly to these two letters to the Board. He argues that the representations made by the County to the Board in them are "inaccurate" and "misleading."

[39] However, the Board, in noting the content of the County's letters to the Board, neither infers nor implies any inappropriate motive to these communications; it merely observes that this is what happened.

[40] On August 13, 2015, the County placed an advertisement in the *Valley Harvester,* to notify the public of its decision to approve Glooscap's project. The statutory appeal period of fourteen days began to run on that day.

[41] The full text of the advertisement ("Notice of Passing") appears as Appendix "A" to this decision. For present purposes, the Board notes that the advertisement - while it does separately enumerate the text amendments and rezoning - once again refers to both in a single sentence, or partial sentence. For example, the notice is headed:

NOTICE OF PASSING

TEXT AMENDMENTS TO THE C11 ZONE AND REZONING
PROPERTY ON THE BEN JACKSON ROAD, LOCKHARTVILLE

The notice goes on to say that County Council had:

> ...approved the following text and map amendments to Bylaw 75...

The Board notes that the "Bylaw 75" referred to in the advertisement is the County of Kings Land-Use By-Law.

[42] The concluding paragraph then identifies those persons who are legally entitled under the *Act* to appeal the "decision" (singular). There is no dispute before the Board in this proceeding that the Appellants (Mr. Miner and his mother) properly qualify as appellants.

[43] Mr. Lutz filed a Notice of Appeal on behalf of the Appellants with the Board on August 17, 2015.

[44] The Notice of Appeal form requires an appellant to either state the decision appealed against or attach a copy of the decision. Mr. Lutz's Notice states "a copy of the decision is attached as Schedule "A"." He attaches as his Schedule "A" a copy of a document (itself headed Schedule "A") prepared by the County's planning staff for

Council's special meeting on July 30, 2015. A copy of that schedule appears as Appendix "B" to this decision.

[45] The Board notes that the Schedule "A" (which, again, was prepared by the County) attached by Mr. Lutz to his Notice of Appeal contains five separate boxes, identified as, respectively, "A," "B," "C," "D," and "E." Items "B," "C," "D," and "E" relate to entirely unrelated matters. Item "A," however, is the Glooscap proposal which is the subject of this appeal, describing it as:

> Application for Land-Use By-Law Amendments to rezone Property at Lockartville from F1 to C11 and housekeeping amendments to the C11 Zone (file 15-07).

[46] In other words, in Item "A," the County once again refers to both the rezoning and the text amendments in a single sentence, and using the singular of the word "application."

[47] It then (again within the box identified as "A") repeats in full the two resolutions approved by Council, the first relating to the rezoning and the second, to the text amendments. In more than one written submission to the Board, Counsel for the Appellants asserts that, in filing his Notice of Appeal, he highlighted in Schedule "A" both the text amendment and the rezoning resolution.

[48] While the Board does not doubt the good faith of Counsel for the Appellants in making this assertion, neither the original of his Notice of Appeal as filed with the Board nor the electronic copies show any indication of such highlighting.

[49] It is also significant, in the view of the Board, that, in responding to the direction in the Notice of Appeal form (to "specify each policy of the MPS which you allege Council has not reasonably carried out the intent of"), Counsel for the Appellants chose

to refer only to the rezoning. For greater certainty, he made no mention of the text amendments in the Notice of Appeal form.

[50] Specifically, he refers in the Notice only to:

> (1) the amendment to the land-use map and rezoning of the subject property does not carry out the stated intention of the Municipality of the County of Kings Municipal Planning Strategy, particulars of which include:
>
> > (a) It offends the Provincial Statement of Interest in Agricultural lands as the lands in question have significant and valuable agricultural potential. (b) It is inconsistent with s. 6.2.2 of the MPS (c) It is inconsistent with s. 1.2.3 of the MPS; and (d) It is inconsistent with s. 1.3 of the MPS.

[51] The Board also notes that Counsel for the Appellants says that his Notice of Appeal "expressly references file no. 15-07." However, in the judgment of the Board, this is not correct. His Notice simply refers to the decision being appealed as "attached as Schedule “A." As the Board has already noted, Schedule "A" refers to five matters, only one of which (in box "A") relates to file no. 15-07.

[52] Just when it might have seemed impossible to imagine that the waters could be muddied any further, it seems the Board also inadvertently added to the confusion. The letter of July 31st from the County to the Board which referred to the text amendments noted that the appeal period would expire on August 27, 2015. On August 28th, the Clerk's office of the Board brought the July 31st letter forward for response. In a letter to the County dated August 28th, the Clerk's office responded to it saying, in part, that "…file no...15-07" (referring in this instance specifically to the text amendment issue) had not been appealed.

[53] Counsel for the County's written submission of February 9, 2017, refers to the letter from the Board of August 28, 2015. He says that the Board's letter advised that:

> ...the decision to approve amendments to the text of the Land-Use By-law (LUB) which clarified permitted uses within the Highway Commercial (C11) Zone had not been appealed.

[54] He goes on to say that, in sending this letter:

> ...the Board treated the rezoning/map amendment as distinct from the text amendments...

[55] The Board notes that it concludes from the various submissions of the parties that Counsel for the Appellants was unaware of the letter from the Clerk of the Board on August 28, 2015, much less of the significance to which Counsel for the Respondent County would attach to it, until the submissions in February of 2017 which led to the present decision.

[56] When Counsel for the Appellants learned – from Counsel for the County's written submission of February 9, 2017 – of the Board's letter of August 28, 2015, he was, not surprisingly, concerned. On February 13, 2017, he made a written submission to the Board about the possible effects of the Board's letter of August 28th. If that letter were allowed to stand, he said, it could be seen as having:

> ...the effect of depriving the Appellants of their right of appeal, and would amount to a gross jurisdictional error on the part of the Board.

[57] Before proceeding further, the Presiding Member sees the August 28, 2015, response of the Board to the County's letter of July 31, 2015, (which he was not aware of until this week) as regrettable. However, in his judgment it has no effect upon, and is irrelevant to, the outcome of the matter presently before the Board.

[58] Lastly, the Board will, simply for completeness, briefly note here the reason this matter is now being dealt with in 2017 instead of the fall of 2015. The issue of the proper scope of the Notice of Appeal, and Mr. Lutz's request that the Board order the Notice of Appeal amended, was before the Board in October of 2015. Indeed, with the agreement of the parties, the Board heard one day of oral evidence (from Mr. Miner, one

of the Appellants, and Mr. Jensen, Counsel for the Appellant's expert planning witness). However, on October 19, 2015, Counsel for the Appellant informed the Board that he intended to make application on behalf of his clients to the Nova Scotia Supreme Court to quash at least a part of the decision of Council of July 30, 2015. With the agreement of the parties, the Board postponed further hearing of the matter, as well as postponed submissions on the question of whether the Notice of Appeal should be amended. Ultimately, Counsel for the Appellants was unsuccessful in both the Supreme Court and the Court of Appeal, the latter Court rendering its decision on January 17, 2017. Thereafter, on January 25, 2017, Counsel for the Appellant informed the Board and Counsel for the Respondents that his clients now wished to proceed with the appeal before the Board.

[59] However, in his judgment it ought properly to have no effect upon, and is irrelevant to, the outcome of the matter presently before the Board.

III ANALYSIS AND FINDINGS

Does the Notice of Appeal Presently Include Both Rezoning and the Text Amendment Issues?

[60] At certain points in his submissions, the Board perceived Counsel for the Appellants as insisting that his notice does include both issues. For example, he said at one point that "the Notice of Appeal is clear."

[61] In certain other parts of his submissions, however, he appeared to tacitly acknowledge (and the Board so finds) that his notice is - at best – ambiguous, and that for the appeal to proceed as he wishes, he needs the Board to order that his Notice of Appeal be amended.

[62] On the matter of ambiguity, the Board does agree with Counsel for the Appellants that he did refer in his Notice (as he emphasizes in his written submissions) to Schedule "A." And, yes, Item "A" in Schedule "A" includes both the rezoning and text issues. But Counsel for the Appellants does not even refer in his notice to Item "A" at all, much less say that he is appealing all its contents.

[63] Further, when asked on the Notice of Appeal form to "specify each policy of the MPS" that Council had failed to reasonably carry out the intent of, he responded with express reference to the rezoning issue only. As the Board noted in "Facts," above, he made no reference to the text amendment issue at all.

Should the Board Amend the Notice of Appeal?

[64] In short, the Board concludes, having taken into account all of the evidence in argument before it, that the Notice of Appeal filed by Mr. Lutz can be termed to be, at best, ambiguous. In the view of the Board, the real issue before it here is whether - whatever the arguable meaning of the Notice of Appeal as worded by Counsel for the Appellants may be - the Board should order that it be amended to expressly include both the rezoning and the text amendment. As the Board has already indicated, it has decided to so order.

[65] In explaining this decision, the Board will first review what it sees as its authority to amend a Notice of Appeal, and second, why it considers the present circumstances to justify such an amendment.

Board's Power to Amend a Notice of Appeal

[66] It is undisputed by the parties that the Board has discretion to amend a notice of appeal. The Board's Rules (see, for example, the *Municipal Government Act*

Rules, ss. 8 and 9) refer to the Board's power to so do, without placing any conditions or limits upon the exercise of that power.

[67] Nevertheless, while no conditions or limits on the Board's exercise of that power appear in the Rules, the Board considers that the exercise of that discretion is one that the Board must approach with great care. In considering the matter, the Board found the decision of MacDonald, A.C.J.S.C. (as he then was) in *Hardman v. Alexander*, 2001 CarswellNS 357, cited by Counsel for the County in his most recent brief, to be of particular benefit.

[68] The Board notes in particular, the reference in *Hardman* to the significance of an applicant "acting in good faith"; also of importance is that Respondents not "be unduly prejudiced" by the amendment.

[69] Certainly, the Board does not see Counsel for the Appellants as acting in bad faith here. The Board also notes, as an aside, that it sees Counsel for the Respondents as likewise acting in good faith in all their dealings with respect to this appeal.

[70] Among other things, Counsel for the Appellants moved expeditiously in bringing this appeal forward, and has continued to do so in his subsequent conduct of it. Having filed a Notice of Appeal on August 17th, 2015, he moved quickly to obtain expert witnesses (Mr. Jensen, a planner, who has already testified, and Mr. Keys, a soil specialist, who has not yet testified).

[71] He submitted their reports to the Board on October 5, 2015. Mr. Jensen's report deals with both the rezoning and text amendment issues, which is consistent with

Counsel for the Appellants' assertion that he intended to, and thought he had, appealed on both aspects.

[72] Also of significance on this point is that Counsel for the Appellants immediately applied to the Board for an amendment to the Notice of Appeal when it became apparent to him in early October 2015, shortly after he filed Mr. Jensen's Report, that the Respondents were arguing that only the rezoning, and not the text amendments, were in issue.

[73] The Board now turns to the question of whether the requested amendment to the Notice of Appeal will "unduly prejudice" (in the words of *Hardman)* the Respondents. This criterion is one which the Board thinks of particular significance. Having reflected on the matter, however, the Board sees little if any significant prejudice to the Respondents' presentation of their case if the Board allows the amendment.

[74] There are at least two important reasons for this conclusion.

[75] First, as noted, Mr. Jensen's report (which refers to both rezoning and the text amendments) has been in the hands of the Respondents for a year and a half. This means that, if the Board now orders that the Notice of Appeal be deemed amended to expressly include the text amendment issue as well as the rezoning, the Respondents are already fully aware of the Appellants' evidence on the second issue. There is no surprise evidence for the Respondents to deal with here. They have known, in detail, not just Mr. Jensen's written evidence, but also his oral evidence, on both issues since October 2015.

[76] Second, while amendments to notices of appeal can sometimes place respondents in the unhappy position of having to develop significant amounts of new

evidence, and even to arrange for new expert witnesses, that is almost certainly not the case here.

[77] Glooscap had already decided not to retain a planning expert of its own, relying instead on the evidence of Ms. Jennings, the County's planner, whom the County is calling as a witness.

[78] Ms. Jennings, as the planner who oversaw Glooscap's application for the County, is already, the Board finds, well prepared to give evidence on both the rezoning and text amendment issues. As the Board noted earlier in "Facts", her Reports to PAC and Council refer in detail to both issues. These reports are already on file with the Board as exhibits, and included in the Appeal Record. The reports explore the factual basis for her supporting the rezoning and the text amendments, and review the provisions in the County's planning documents she feels justify that support.

[79] The Board notes that Counsel for the County does say, correctly, that Ms. Jennings "has not addressed the text amendments" in her Report of October 9, 2015. But the October 9th report is a very brief, special-purpose "Response" report done by her to specifically reply to Mr. Jensen's report. In her Response, she expressly (perhaps on advice from Counsel for the County himself) restricted her comments to the rezoning issue, omitting any reference to the text amendments.

[80] To deal with the latter issue now, however, she may simply turn to existing material in her lengthy Reports to PAC and Council. If she and Counsel for the County wish her to, she could then make an addition to her Response to Mr. Jensen's report on the text amendment issue.

[81] Alternatively, it is also open to the County to simply proceed at the hearing on the merits without amending her Response, and to rely instead on Ms. Jennings' opinions on the text amendments as already expressed in her Reports to PAC and Council.

[82] The Board notes as well that Counsel for both Respondents argue that if the Board allows the amendment, it is allowing the appeal of (as Mr. Cooke puts it) a "separate and distinct" decision by Council.

[83] Mr. Cuming also suggests that if the Board decides to allow the amendment this may have the effect of "circumventing" s. 249 of the *Municipal Government Act*, which requires a decision by Council to be appealed within fourteen days. The amendment requested would, of course, be well outside that time limit.

[84] The Board is unpersuaded by the arguments of either Counsel for the Respondents, ably presented by them though they were.

[85] Instead, the Board notes again that the County itself, at least right up to July 31, 2015 (after Council's decision), repeatedly referred to its handling of the rezoning and text amendments as if they were one matter.

[86] It did so in internal and external correspondence (with the notable exception of its letters to the Board of July 31, 2015, referred to above), in planning reports, in public notices delivered to neighbours, and in newspaper advertisements. Thus, the County repeatedly referred to the "application", to the "decision" and to the possibility of an "appeal," in statements which not just impliedly, but expressly, referred to both the rezoning and the text amendment together, not separately. Ms. Jennings, in her October

2015 "Response" to Mr. Jennings' Report, refers to the rezoning and text amendments as having been dealt with "in concert" by the County.

IV SUMMARY

Notice of Appeal Amended

[87] The Board orders that the Notice of Appeal be amended. For the purposes of this appeal, it will now be deemed to include not just the rezoning issue but the text amendment issue. In the judgment of the Board, it sees little, if any, prejudicial effect upon either the County or Glooscap in making this order. In reaching this decision, it notes, in particular, that the Respondents are fully aware of the Appellants' evidence on the text amendment issue; further, the Respondents already have available to them documentary evidence (being Ms. Jennings' Reports to the Planning Advisory Committee and to County Council) on the text amendment issue, and a witness (Ms. Jennings herself) who is fully briefed on the subject.

Time is Short

[88] The Board also repeats its earlier reference (in its letter of January 23, 2017) to the fact that the Member who has presided over this proceeding since 2015 is subject to mandatory retirement in May. This creates particular time constraints, given other commitments which he has in the remainder of his term.

[89] Accordingly, the Board notes that the final day for the hearing on the merits is presently set down for February 24, 2017. If the present Member is to conduct the hearing on the merits, and render a decision on the Appeal, the hearing on the merits must occur then or very shortly thereafter, i.e., within a week to ten days at most.

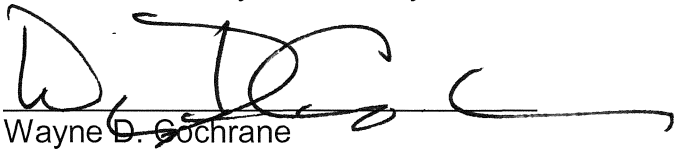
[90] The Member has consulted with the Chair of the Board, who has informed him that if the parties cannot agree on concluding the hearing on the merits within that time frame, he himself will hold a preliminary hearing with the parties, with the intention of assigning a new Member to preside over the appeal. If this occurs, in a worst-case scenario the hearing would have to start over, possibly even with Mr. Jensen's evidence being heard again.

[91] The Presiding Board Member notes, as he has previously, that he is more than willing to expedite conclusion of the matter by sitting for extended hours on the hearing on the merits. He is prepared to sit for whatever times may be convenient to the parties or their witnesses – beginning, for example, as early as 8:30 a.m., and sitting as late as they care to go.

[92] The Board grants the request by Counsel for the Appellants to amend his Notice of Appeal.

[93] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 16th day of February, 2017.



Wayne D. Cochrane

Appendix "A"

THE MUNICIPALITY OF THE COUNTY OF KINGS
87 Cornwallis Street PO Box 100
Kentville NS B4N 3W3

NOTICE OF PASSING

TEXT AMENDMENTS TO THE C11 ZONE AND REZONING PROPERTY ON THE BEN JACKSON ROAD, LOCKHARTVILLE (File 15-07)

TAKE NOTICE that on Thursday, July 30, 2015 the Municipal Council of the Municipality of the County of Kings approved the following text and map amendments to Bylaw 75, the County of Kings Land Use Bylaw, which will affect certain areas of the Municipality:

(1) Housekeeping amendments to the regulations of the Highway Commercial (C11) Zone

Text amendments to enable 'Convenience Stores' as a permitted use in the Highway Commercial (C11) Zone and to add the Highway Commercial (C11) Zone to Sections 6.1.1 and 6.1.2 of the General Provisions For All Commercial Zones.

(2) Rezoning property at 410 Ben Jackson Road, Lockhartville, from F1 to C11

Map amendment to rezone property at 410 Ben Jackson Road, Lockhartville, (PIDs 55234439 and 55234454), from Forestry (F1) to Highway Commercial (C11).

AND FURTHER TAKE NOTICE that in accordance with Sections 247 and 249 of the Municipal Government Act, an aggrieved person, the Provincial Director of Planning, an adjacent municipality or a village in which an affected property is situated may appeal Council's decision to the Nova Scotia Utility and Review Board. Notice of appeal shall be served on the Board within fourteen (14) days after the date of this publication. Inquiries respecting appeal procedures can be made to the Chief Clerk of the Board at 902-424-4448, Ext. 236, or by mail at Box 1692, Unit "M", Halifax NS B3J 3S3.

Please contact Planning Services at 902-690-6139 or by email at planningservices@countyofkings.ca for further information.

Municipal Clerk
municipalclerk@countyofkings.ca

Tel: 902-690-6139 Fax: 902-679-0911
Tel: 1-888-337-2999
www.countyofkings.ca

This notice will appear in the *Valley Harvester* on August 13, 2015

Appeal Period Expires – August 27, 2015 (midnight)

Appendix "B"

SCHEDULE A

THE MUNICIPALITY OF THE COUNTY OF KINGS

REPORT TO SPECIAL COUNCIL

Subject: Planning Items

Date: July 30, 2015

A	**Application for Land Use Bylaw amendments to rezone property in Lockhartville from F1 to C11 and housekeeping amendments to the C11 Zone (File 15-07)**	Be it resolved that **Municipal Council gives Second Reading to the Land Use Bylaw map amendment to rezone 410 Ben Jackson Road, Lockhartville, from Forestry (F1) to Highway Commercial (C11) as described in Appendix D of the report dated June 9, 2015.** Be it resolved that **Municipal Council gives Second Reading to the amendments to the text of the Land Use Bylaw (LUB) which clarify permitted uses and regulations of the Highway Commercial (C11) Zone as described in Appendix E of the report dated June 9, 2015.**
B	**Application for amending development agreement for property at 2181 North River Road (File 15-06)**	Be it resolved that **Municipal Council gives consideration and approval to the amending agreement regarding the removal of the requirement for water sampling to be conducted by a third party in association with a permitted Construction & Demolition debris disposal site located at 2181 North River Road, McGee Lake, which is substantively the same (save for minor differences in form) as that set out in the report dated July 14, 2015.** * Report Attached
C	**Application for New Minas Land Use Bylaw text amendments for corner directional signs (File 15-04)**	Be it resolved that **Municipal Council gives First Reading and will hold a Public Hearing regarding the text amendments to allow larger Corner Directional Signs in the New Minas Land Use Bylaw, as described in Appendix E of the report dated July 6, 2015.** * Report Attached
D	**Lake Monitoring Program**	Be it resolved that **Municipal Council receive the Lake Monitoring Program update for information purposes.** The final report can be found on the Lake Monitoring website found here: Kings Lake Monitoring Final Report 2014 Season
E	**Application for a development agreement for property at 30 Q-8 Road, Lake George (File 15-03)**	Pending PAC's recommendation: Be it resolved that **Municipal Council give Initial Consideration and hold a Public Hearing regarding entering into a development agreement to allow for the expansion of a n on-conforming dwelling at 30 Q8 Road, Lake George, which is substantively the same (save for minor differences in form) as the draft set out in Appendix D of the report dated July 30, 2015.** * Report Attached