DECISION **2021 NSUARB 106**
M08238

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **COREY WHITE** operating a business known as **CANNABIS FOR LIFE** from the decision of the Development Officer for the Municipality of the District of Chester revoking a Development Permit for a medical marijuana dispensary at 4115 Highway #3, Chester Shore Mall, Chester, Nova Scotia

BEFORE:	Roland A. Deveau, Q.C., Vice Chair
APPELLANT:	**COREY WHITE** Did not appear
RESPONDENT:	**MUNICIPALITY OF THE DISTRICT OF CHESTER** Joshua E. Bryson, Counsel
INTERVENOR:	**ATTORNEY GENERAL FOR THE PROVINCE OF NOVA SCOTIA** Edward A. Gores, Q.C.
HEARING DATE:	June 23, 2021
DECISION DATE:	**August 12, 2021**
DECISION:	**Appeal dismissed.**

1.0 SUMMARY

[1] Corey White, operating a business known as Cannabis For Life, appealed to the Board from the decision of the Development Officer for the Municipality of the District of Chester (Municipality) revoking a development permit for a medical marijuana dispensary at 4115 Highway #3, Chester Shore Mall, Chester, Nova Scotia.

[2] Mr. White applied to the Municipality for a development permit to operate a medical marijuana dispensary, which was initially issued by the Development Officer. Almost three months after its issuance, the Development Officer revoked the development permit. The Development Officer had learned that the Health Canada permit held by Mr. White did not allow him to dispense, sell, give or retail marijuana products. The Development Officer also confirmed with Health Canada that all retail or store front dispensaries of medical marijuana are currently illegal.

[3] In addition to Mr. White's appeal of the Development Officer's decision to revoke the development permit, he also raised a preliminary issue under the *Canadian Charter of Rights and Freedoms* respecting the constitutionality of the *Controlled Drugs and Substances Act*, the federal legislation permitting the distribution of cannabis, as well as the related provincial legislation enabling the distribution mechanism in Nova Scotia. With the consent of the Municipality, the Board adjourned the appeal pending the completion of a concurrent criminal proceeding involving Mr. White and the operation of his marijuana dispensary business in the context of the federal legislation. Mr. White was ultimately convicted on the criminal charges.

[4] Thereafter, Mr. White did not respond to various attempts by the Board about his availability for a preliminary hearing to re-schedule the appeal. The Board scheduled a preliminary hearing to be conducted via telephone conference on

Wednesday, June 23, 2021. It advised Mr. White that if he did not appear at the scheduled preliminary hearing, the Board could dismiss the appeal without further notice to him. He did not appear at the preliminary hearing, nor did he contact the Board seeking alternative dates.

[5] Based on its review, the Board concludes that the decision of the Development Officer revoking the development permit did not conflict with the provisions of the Municipality's land-use by-law (LUB). The appeal is dismissed.

2.0 BACKGROUND

[6] Corey White, operating as Cannabis For Life, appealed to the Nova Scotia Utility and Review Board under the *Municipal Government Act*, S.N.S. 1998, c. 18 (*MGA*) from the decision of the Development Officer for the Municipality revoking a development permit. The relevant facts leading to the appeal are not in dispute, except for the grounds upon which the Development Officer based her decision to revoke the development permit (i.e., the legal effect of the Health Canada permit issued to Mr. White).

[7] On May 5, 2017, Mr. White applied to the Municipality for a development permit to operate a medical marijuana dispensary in Chester, Nova Scotia. Accompanying his application, he submitted his business' Certificate of Registration under the *Partnership and Business Names Registration Act,* dated April 7, 2017; his Personal-Use Production License for Dried Marijuana for Medical Purposes, which was issued by Health Canada (Health Canada permit); and photographs and measurements of his proposed signage.

[8] On May 8, 2017, the development permit application was approved by Heather Archibald, a Development Officer with the Municipality. The development permit

was issued to Mr. White, the conditions of which stipulated that it authorized a new marijuana dispensary at 4115 Highway 3, located in the Chester Shore Mall, as well as two window signs. Except for noting that the Chester Shore Mall property is located in the Highway Commercial (HC) Zone and that the Mall property is subject to a development agreement, no other conditions were outlined on the development permit.

[9] Mr. White opened his business, Cannabis For Life, to the public on May 29, 2017, as a tenant in the Mall.

[10] Nearly three months after the issuance of the development permit, the Development Officer wrote a letter to Mr. White dated July 28, 2017, advising that the development permit was revoked. Her letter provided as follows:

> It has come to my attention after the fact that the permit you hold from Health Canada does not permit you to dispense, sell, give or retail marijuana products from 4115 Highway 3, Chester (P1D 60376712) to any person regardless of whether they possess a license for medical marijuana use or not.
>
> I have confirmed with Health Canada that all retail or store front dispensaries of medical marijuana are currently illegal and that they remain so until such time as federal laws change.
>
> Neither a municipal land use by-law or a Development Agreement is permitted to approve uses that are illegal by federal or provincial statues or acts.
>
> A retail use and any associated sign[s] must be a lawful retail use for a development permit to be issued.
>
> Since a medical marijuana dispensary is still illegal in Canada, the development permit application for the medical marijuana dispensary and signage cannot be approved under the land use by-law nor through the development agreement that the property is subject to.
>
> Development Permit CM-DP2017-022 for a new medical marijuana dispensary in Unit 115 and 2 window signs is hereby revoked. The original application is now considered denied.
>
> The use of the property for a medical marijuana dispensary must cease operation and the signage removed within 60 days of the date of this letter
>
> If the use has not ceased the Municipality will seek to enforce the land use by-law through the Municipal Government Act and the Summary Proceedings Act. [Emphasis in original]

[11] The above letter then went on to outline Mr. White's ability to appeal Ms. Archibald's decision to the Board under the *MGA*. It is noted that Ms. Archibald characterized her decision as not only a revocation, but also as a denial of Mr. White's original application.

[12] On August 10, 2017, Mr. White filed his appeal with the Board respecting the Development Officer's decision to revoke the development permit.

[13] In a letter to the parties dated August 16, 2017, the Board raised an issue respecting its jurisdiction to consider the appeal. On its initial review, it noted what appeared to be an absence of authority in the *MGA* for the Board to hear an appeal from the "revocation" of a development permit or, for that matter, for a development officer to revoke a development permit once it is issued.

[14] Following a preliminary hearing, in a decision dated November 22, 2017, the Board concluded that it did have the jurisdiction to consider Mr. White's appeal from the Development Officer's revocation of his development permit: *White (Re)*, 2017 NSUARB 176. As a result, the Board set out a timeline for the filing of pre-filed evidence and scheduled the hearing of the planning appeal for March 14, 2018.

[15] On March 5, 2018, less than 10 days before the scheduled hearing, after the parties had completed the filing of their pre-filed evidence, Robert H. Pineo, LL.B., Mr. White's counsel, requested an adjournment of the hearing in order to prepare a constitutional challenge under the *Canadian Charter of Rights and Freedoms* (*Charter*) respecting the constitutionality of the federal legislation permitting the distribution of cannabis, as well as the related provincial legislation enabling the distribution mechanism in Nova Scotia. In summary, he submitted that the new legislative regime would serve as

an impediment to persons entitled to receive medical marijuana for treatment of an ailment. He also indicated that Mr. White himself might seek "public interest" standing to launch his own *Charter* challenge. Following a preliminary hearing on March 7, 2018, the Board adjourned the hearing on the merits, with the consent of the Municipality. The Board directed Mr. White's counsel to provide notice under the *Constitutional Questions Act*, R.S.N.S. 1989, c. 89, to the federal and provincial Crown. Edward A. Gores, Q.C. intervened in the matter on behalf of the Attorney General of Nova Scotia. Counsel for the Attorney General of Canada indicated it would not be participating in the matter.

[16] Following various unsuccessful requests by the Board to Mr. White for an update on the status of the *Charter* challenge, it scheduled a preliminary hearing on February 1, 2019. Mr. White's counsel requested a further adjournment of the planning appeal to allow Mr. White to deal with similar issues in a concurrent criminal proceeding respecting his business activities at the same location in Chester. Depending on the result in the criminal proceeding, he said the planning appeal might be moot. The Board scheduled a preliminary hearing on April 3, 2019, with all counsel, including counsel for the Attorney General of Nova Scotia. With the consent of the Municipality, the planning appeal was adjourned pending the completion of the criminal proceeding.

[17] On September 12, 2019, Mr. Pineo withdrew as Mr. White's counsel in this planning appeal. The Board periodically sought updates from the parties respecting the status of Mr. White's criminal proceeding and the status of the *Charter* challenge.

[18] By letter dated February 13, 2020, Mr. Bryson, who, coincidentally, was representing the federal Crown in the criminal prosecution, advised the Board that the *Charter* challenge was rejected by the Provincial Court on February 10, 2020, and that

the matter was set down for trial In September 2020. In an email dated February 19, 2020, Mr. White indicated that he did not agree with the Court's disposition of the *Charter* issue and he planned to appeal that judgment to the Nova Scotia Supreme Court.

[19] The onset of the COVID-19 pandemic in March 2020 delayed the criminal proceedings. The trial was held on December 8, 2020. In an email dated December 9, 2020, Mr. Bryson advised the Board that Mr. White's December 8th trial on the *Controlled Drugs and Substances Act* charges concluded in a conviction, with sentencing scheduled for February 3, 2021. Mr. Bryson indicated that he was not aware of any other proceedings that had been commenced by Mr. White regarding an appeal on the *Charter* matter.

[20] The Board asked Mr. White on various occasions to confirm particulars of his appeal from the decision of the Provincial Court on the *Charter* issue. The Board never received any response to its inquiries about a pending appeal on the *Charter* issues. The Chief Clerk of the Board wrote to Mr. White on March 31, 2021, stating:

> In a prior update on this matter, Mr. Bryson advised that on December 8, 2020, your charges under the *Controlled Drugs and Substances Act* concluded with a verdict. Sentencing was scheduled for February 3, 2021. The Board understands that no other proceedings had been commenced by you relating to a *Charter* challenge in the Supreme Court of Nova Scotia.
>
> The Board requests a further update as to your intention of launching such a *Charter* challenge. Unless the Board is notified of such a challenge by April 21, 2021, it will schedule a preliminary hearing with you and the other parties to discuss the setting down of your planning appeal with the Municipality.

[21] Not having received any response from Mr. White, the Chief Clerk of the Board wrote again to Mr. White on May 31, 2021:

> In its correspondence of March 31, 2021, the Board requested an update from you as to your intention of launching a *Charter* challenge in the Supreme Court of NS. The Board requested a response by you no later than April 21, 2021. No reply was received. As indicated, the Board intends to hold a preliminary hearing in this matter on Wednesday, June 23, 2021, at 10:30 AM to discuss the setting down of the planning appeal with the Municipality. Please confirm your participation in writing. Once the parties have confirmed,

> the call-in instructions will be sent to join the teleconference. The Appellant should note that if he does not appear at the preliminary hearing, the Board may dismiss this appeal without further notice to the Appellant.

[22] The Board did not hear from Mr. White by the appointed date, or at any point in the following weeks. Accordingly, on June 18, 2021, the Chief Clerk again wrote to Mr. White by email, and copied the parties:

> Further to the Board's correspondence of May 31, 2021 below, the Board has not yet received your confirmation regarding the scheduled preliminary hearing. Mr. Bryson has confirmed attendance on behalf of the municipality.
>
> It is respectfully requested that you confirm your availability for the preliminary hearing to be conducted via telephone conference on Wednesday, June 23, 2021, at 10:30 AM. Please note that should you, as the appellant, not appear at the scheduled preliminary hearing, the Board may dismiss the appeal without further notice to you.
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> [Emphasis added]

[23] Again, Mr. White did not respond to this email. All prior communication with Mr. White was by email. Until November 18, 2020, Mr. White had responded to previous email correspondence subsequent to his lawyer's withdrawal. In a final attempt to reach Mr. White, the Chief Clerk of the Board, further to the Board's direction, attempted to reach Mr. White by telephone, leaving messages on his answering machine at the phone number he had previously provided. Mr. White did not respond to the messages. The Chief Clerk noted that the recorded message on the answering machine for Mr. White's business referred to "Cannabis for Life Plus". The word "Plus" is not part of the Appellant's business name in this appeal, however the word "Plus" is included in the Cannabis For Life domain name in Mr. White's email address. The Board does not attach any significance to this distinction. It infers the two different business names refer to one, and the same, business. Mr. White did not contact the Board at any point to provide different contact information.

[24] In the circumstances, the Board decided to proceed with the preliminary hearing on Wednesday, June 23, 2021, by teleconference call. It directed the Chief Clerk of the Board to email Mr. White with the dial-in details for the preliminary hearing. Mr. Bryson, representing the Municipality, and Mr. Gores, appearing for the Attorney General of Nova Scotia, participated in the preliminary hearing. Mr. White did not call in to participate, nor to indicate he was not available on the appointed date.

[25] Mr. Bryson made a motion under s. 13(1)(a) of the *Municipal Government Act Rules* to dismiss the appeal, including the alleged *Charter* challenge. His request was supported by Mr. Gores. Section 13(1)(a) of the *MGA Rules* provides:

> **Preliminary hearings**
> **13** **(1)** In any appeal or application, the Board may, on its own initiative or at the request of any party, hold a preliminary hearing to deal with any matter that may aid in the disposition of the hearing, including to
>
> (a) consider any preliminary motion for an order dismissing the appeal or application on the grounds that the Board lacks jurisdiction to hear the appeal or application, that an appellant is not an aggrieved person, that a Notice of Appeal was filed too late, or for other reasons that may appear; …

[26] Mr. Bryson confirmed that Mr. White was convicted in the criminal proceeding relating to the same business activities which are the subject of the present appeal. Mr. Bryson noted that the *Charter* application made by Mr. White in his criminal trial was related to how the search warrant was executed in that matter, not in relation to the cannabis legislation or the legal effect of his Health Canada permit. The *Charter* argument dealt with whether the RCMP were justified in disconnecting surveillance equipment as soon as they entered the business premises. The search warrant was upheld by the Court.

[27] At the request of the Board, Mr. Bryson filed, as an Undertaking, the decision of the Honourable Judge Catherine Benton, J.P.C., dated December 8, 2020

(delivered orally and the subject of a publication ban). On February 3, 2021, Mr. White was sentenced to three years probation, with community service. Mr. Bryson indicated that any appeal periods relating to the criminal charges (including the *Charter* matter) had long since expired, with no appeals filed to his knowledge.

[28] The Board granted Mr. Bryson's motion to dismiss Mr. White's appeal, with its reasons to follow. Those reasons are set out below.

3.0 SCOPE OF REVIEW

[29] The appeal to the Board is made under s. 247(3) of the *MGA*:

> **Appeals to the Board**
> **247 (3)** The refusal by a development officer to
> (a) issue a development permit;
> (b) approve a tentative or final plan of subdivision or a concept plan,
> may be appealed by the applicant to the Board.

[30] As noted earlier in this decision, in a ruling on a preliminary issue in *White (Re)*, the Board concluded it had the jurisdiction to consider an appeal from the Development Officer's decision to revoke the development permit. In effect, the Board concluded that, for the purposes of an appeal under the *MGA*, the revocation of a development permit should be dealt with in the same manner as an appeal from a refusal on the original application for the permit. Ms. Archibald described her own decision as a denial of Mr. White's original application. The Board infers from this that had she known of the nature of the Health Canada permit held by Mr. White, she would have denied the issuance of the development permit on the original application.

[31] There are limited grounds for an appeal by an applicant respecting a development officer's refusal to issue a development permit:

> **Restrictions on appeals**
> **250 (2)** An applicant may only appeal a refusal to issue a development permit on the grounds that the decision of the development officer does not comply with the land-use by-

law, a development agreement, an order establishing an interim planning area or an order regulating or prohibiting development in an interim planning area.

[32] Similarly, the Board has a narrow jurisdiction in its consideration of such an appeal. The powers of the Board are set out in s. 251:

> **Powers of Board on appeal**
> **251 (1)** The Board may
> (a) confirm the decision appealed from;
> (b) allow the appeal by reversing the decision of the council to amend the land-use by-law or to approve or amend a development agreement;
> (c) allow the appeal and order the council to amend the land-use by-law in the manner prescribed by the Board or order the council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;
> (d) allow the appeal and order that the development permit be granted;
> (e) allow the appeal by directing the development officer to approve the tentative or final plan of subdivision or concept plan.
>
> **(2)** The Board shall not allow an appeal unless it determines that the decision of council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law. [Emphasis added]

[33] In short, the test for an applicant to appeal a development officer's decision to refuse (or, in this case, revoke) a development permit is that the decision "does not comply" with the LUB: s. 250(2) of the *MGA*; for the Board to reverse a development officer's decision to refuse (or revoke), it must find that the decision "conflicts with" the LUB: s. 251(2). The Board sees no difficulty arising from this distinction, at least in the circumstances of the present appeal.

[34] The burden of proof in this appeal is on Mr. White, the Appellant, to show, on the balance of probabilities, that the Development Officer's decision to revoke the development permit conflicts with the provisions of the LUB.

[35] In deciding whether a development officer's refusal conflicts with the LUB, the Court of Appeal has, historically, said the Board should apply the standard of correctness; more recently, the "Court has modified that slightly, saying, in essence, the Board should

approach the issue in a manner akin to correctness": see *Tasty Budds Compassion Club Inc. v. Halifax (Regional Municipality)*, 2016 NSUARB 128, paras. 28-32; and *Royal Environmental Inc. v. Halifax (Regional Municipality)*, 2012 NSCA 62, [affirming the Board's decision, 2011 NSUARB 141], at para. 41.

[36] With respect to the evolution of the standard to be applied by the Board, see, for example:

> • *Re Bay Haven Beach Villas Inc.*, 2004 NSCA 59:
>
> …the applicable standard is one of correctness…little deference is owed to the Development Officer's decision.
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> • *Halifax (Regional Municipality) v. United Gulf Developments Ltd.,* 2009 NSCA 78:
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> …the Board was right to apply a correctness standard to the Development Officer's refusal to issue a development permit…given its expertise in planning matters, the Board is well qualified to review decisions of a development officer on a correctness standard.
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> • *Halifax (Regional Municipality) v. Anglican Diocesan Centre Corporation*, 2010 NSCA 38, where the Court refers to the standard of correctness, but then says that the Board, as an administrative tribunal constituted by statute:
>
> …does not immerse itself in *Dunsmuir*'s standard of review analysis that governs a court's judicial review. The Board should just do what the statute tells it to do.
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> The Board said (¶62) that it "may only allow this appeal if it determines that the Development Officer's decision 'conflicts with' or 'does not comply' with the provisions of the Land-Use By-Law". After its analysis, the Board concluded (¶109) that the development officer's "decision to refuse conflicts with, and does not comply with, the LUB", namely s. 67(1)(d) which permits an "other institution of a similar type" in the P Zone. The Board correctly identified its standard of review, i.e., that prescribed by the *HRM Charter*, to the decision of the development officer. [Emphasis added]

[37] However, the case law respecting the standard of review set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, must now be considered in light of the Supreme Court of Canada's recent judgment in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, which established a new basis for Courts reviewing the decision of an administrative decision-maker in a statutory appeal. It is unclear whether the standard of review to be applied in a statutory appeal to an administrative tribunal, such

as the present appeal to the Board under the *MGA*, should be based on appellate standards of review: see, for example, *The Year in Review in Administrative Law* (December 2020), David Phillip Jones, Q.C., presented to the Canadian Bar Association, at p.16. The appellate standards of review were described by the Supreme Court of Canada as follows:

> [36] We have reaffirmed that, to the extent possible, the standard of review analysis requires courts to give effect to the legislature's institutional design choices to delegate authority through statute. In our view, this principled position also requires courts to give effect to the legislature's intent, signalled by the presence of a statutory appeal mechanism from an administrative decision to a court, that the court is to perform an appellate function with respect to that decision. Just as a legislature may, within constitutional limits, insulate administrative decisions from judicial interference, it may also choose to establish a regime "which does not exclude the courts but rather makes them part of the enforcement machinery": *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181, at p. 195. Where a legislature has provided that parties may appeal from an administrative decision to a court, either as of right or with leave, it has subjected the administrative regime to appellate oversight and indicated that it expects the court to scrutinize such administrative decisions on an appellate basis. This expressed intention necessarily rebuts the blanket presumption of reasonableness review, which is premised on giving effect to a legislature's decision to leave certain issues with a body other than a court. This intention should be given effect. As noted by the intervener Attorney General of Quebec in its factum, [translation] "[t]he requirement of deference must not sterilize such an appeal mechanism to the point that it changes the nature of the decision-making process the legislature intended to put in place": para. 2.
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> [37] It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review for those questions is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen*, at paras. 10, 19 and 26-37. Of course, should a legislature intend that a different standard of review apply in a statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute.
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> [38] We acknowledge that giving effect to statutory appeal mechanisms in this way departs from the Court's recent jurisprudence. However, after careful consideration, we are of the view that this shift is necessary in order to bring coherence and conceptual balance to the standard of review analysis and is justified by a weighing of the values of certainty and correctness: *Craig*, at para. 27. ...
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> [Emphasis added]

[38] Applying *Vavilov*, which the Board may be required to do, in a statutory appeal which involves questions of fact or questions of mixed fact and law (which is the case here), the Board would be required to first determine whether the issue considered by the Development Officer involved a "question of mixed fact and law where the legal principle was not readily extricable". If it involved a legal principle that was readily extricable, the appellate standard of review would be "correctness"; if it did not, the appellate standard of review would be "palpable and overriding error", see *Housen v. Nikolaisen*, 2002 SCC 33, paras. 26-37, as reiterated in *Vavilov*. While it could be argued that the Development Officer's review of the legality of Mr. White's medical dispensary business under the *Controlled Drugs and Substances Act* was so central and isolated to her decision as to constitute "a legal principle that was readily extricable", the Board considers that it would have no impact on the result of this appeal. In the circumstances of the present appeal, the Board concludes that its ultimate disposition of this appeal under s. s. 251(2) of the *MGA*, as set out later in this decision, would be identical under either the appellate standards of "correctness" or "palpable and overriding error".

[39] Whatever may be the impact of *Vavilov* on the standard of review the Board must apply in its consideration of a development officer's decision to revoke a development permit, the Board considers that the test it must apply in such cases remains whether the development officer's decision "conflicts" with the provisions of the LUB, as described in s. 251(2) of the *MGA*. As noted by the Court of Appeal in *Anglican Diocesan*, this is "what the statute tells [the Board] to do". The Court added, as described below, that the decision of the development officer commands less deference than that attributed to a municipal council, which is an elected body.

[40] In *Anglican Diocesan,* the Court of Appeal, in reviewing a decision of the Board respecting a decision of a development officer, adopted, and expanded upon, its reasoning in an earlier decision, *Archibald v. Nova Scotia,* 2010 NSCA 27, saying:

> In *Archibald*, ¶ 24, this court summarized the principles that govern the Board in deciding whether an elected municipal council carried out the intent of a municipal planning strategy. Similar principles, but with some adjustment noted below, apply to the Board's appellate role from a decision of a development officer. The authorities for these principles are cited in *Archibald*, ¶ 25.
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> > **(1)** The Board is the first tribunal to hear sworn and tested evidence. So the Board should undertake a thorough factual analysis of the proposal in the context of the LUB. The appellant bears the onus, on the balance of probabilities, to prove the facts that establish the conflict between the development officer's decision and the LUB. Here, the Board (¶ 57, 59) noted that the Church bore the onus on the balance of probabilities, and made determinative factual findings that I will discuss later.
> >
> > **(2)** The legislation expects the Board to interpret the LUB. *The Board should interpret the LUB not formalistically, but pragmatically and purposively, to make the LUB work as a whole.* The Board here (¶ 60) cited the purposive approach.
> >
> > **(3)** Subsections 234(1) and (3) of the *HRM Charter* direct that the LUB "enables" and should "carry out the intent" of the MPS. The MPS does not amend the LUB. But *the LUB's interpretation may be assisted by the MPS, and the Board's purposive approach should encompass the LUB and MPS together*. The Board here (¶ 84) cited the interpretive reflexivity between the MPS and LUB (discussed later ¶ 46-49).
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> > **(4)** The Board's deference to the elected municipal council's difficult choices among vague and intersecting intentions in the MPS, discussed in *Archibald* ¶ 24(7), does not apply to an unelected development officer who applies the LUB. This is apparent from the legislative mandates to the development officer and Board. Section 261(1) of the *HRM Charter* says that a "development permit must be issued if the development meets the requirements of the land-use by-law…" So a development officer with such a compliant application has an executory function. He holds no public hearing of objections as may occur before the council. At the appeal level, the legislation directs the Board to decide whether the council "reasonably carried out the intent of the municipal planning strategy" – a somewhat diffuse standard. But the Board's function with a development officer's decision – to determine whether that decision "conflicts with" the proper interpretation of the LUB – is more pointed. The Board here (¶ 62- 63) noted these principles.
> >
> > **(5)** The Board hears an appeal. It is not an initiating tribunal offering fresh direction on a planning issue. So the Board should focus on the development officer's decision and stated reasons. Section 260(2) of the *HRM Charter* says that, within 30 days from receipt of the application, the development officer "shall grant the development permit or inform the applicant of the reasons for not granting the permit". Then s. 264(e) states that notice of appeal to the Board must be filed within 14 days from the

> development officer's notice. Clearly the statute contemplates that the development officer's written reasons be central to the appeal, meaning the Board's decision should address those reasons. As stated in *Archibald*, ¶ 30, the Board is not confined to those reasons. The ultimate question - whether the development officer's refusal conflicts with the LUB - may involve other issues. But the focus on the development officer's stated reasons prompts the Board to respect its appellate role. [Emphasis added]

[41] The principles of statutory interpretation apply in determining the intent of any particular statute, including in the Board's interpretation of the statutory provisions under the *MGA* to determine the scope of the powers conferred upon the Board, and when interpreting the provisions of a municipal planning strategy (MPS) or LUB.

[42] The Board is mindful of *Verdun v. Toronto Dominion Bank,* [1996] 3 S.C.R. 550, and cases following it (see, for example, *Chartier v. Chartier,* [1998] S.C.J. No. 79; *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27), which make it clear that the Supreme Court of Canada has adopted what it calls the "modern contextual approach" to legislative interpretation, supplanting earlier rules it has supported, such as the "equitable construction approach", the "plain meaning rule", and the "golden rule".

[43] In *Re Rizzo & Rizzo Shoes Ltd.*, Mr. Justice Iacobucci said:

> ...Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p.87, he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[44] On the matter of the purpose of legislation, *Nova Scotia (Crop and Livestock Insurance Commission) v. DeWitt,* [1996] N.S.J. No. 566 (S.C.), is of interest. Goodfellow, J., quotes Driedger (3rd ed.) at pages 38 - 39:

> ... Modern courts do not need an excuse to consider the purpose of legislation. Today purposive analysis is a regular part of interpretation, to be relied on in every case, not just those in which there is ambiguity or absurdity. As Matthews, J.A. recently wrote in *R. v. Moore* [(1985), 67 N.S.R. (2d) 241, at 244 (C.A.)]:

> From a study of the relevant case law up to date, the words of an Act are always to be read in light of the object of that Act. Consideration must be given to both the spirit and the letter of the legislation.

...in *Thomson v. Canada* (Minister of Agriculture), [1992] 1 S.C.R. 385, at 416, where L'Heureux-Dubé, J., wrote:

> [A] judge's fundamental consideration in statutory interpretation is the purpose of legislation.

[45] The Nova Scotia Court of Appeal reiterated the modern principle of statutory interpretation in *Sparks v. Holland*, 2019 NSCA 3. Farrar, J.A., stated:

> [27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that "[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at ¶21).
>
> [28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, Sullivan on the Construction of Statutes, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.
>
> [29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slauenwhite*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:
>
> 1. What is the meaning of the legislative text?
>
> 2. What did the Legislature intend?
>
> 3. What are the consequences of adopting a proposed interpretation?
>
> (Sullivan, pp. 9-10)

[46] The Board must also have regard to the *Interpretation Act*, R.S.N.S. 1989, c. 235, including ss. 9(1) and 9(5):

> **9(1)** The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.
>
> **9(5)** Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
> (a) the occasion and necessity for the enactment;
> (b) the circumstances existing at the time it was passed;
> (c) the mischief to be remedied;
> (d) the object to be attained;
> (e) the former law, including other enactments upon the same or similar subjects;
> (f) the consequences of a particular interpretation; and
> (g) the history of legislation on the subject.

4.0 ANALYSIS AND FINDINGS

[47] While there is no direct reference in the *MGA* to a development officer's authority to revoke a development permit, the development officer does have such authority under s. 2.11A of the Municipality's LUB, which provides:

> **2.11A REVOCATION OF PERMITS**
> The Development Officer may revoke any development permit issued under this Land Use By-law or any previous Land Use By-law where:
> i) the requirements of the permit are not met; or
> ii) the issuance of the permit was based on incorrect information; or
> iii) the permit was issued in error.

[48] The enactment of LUB s. 2.11A is enabled by s. 220(4)(k) of the *MGA*:

> **220(4)** A Land Use Bylaw may
> …
> **(k)** prescribe the form of an Application for a Development Permit, the content of a Development Permit, the period of time for which the permit is valid and any provisions for revoking or renewing the Permit; [Emphasis added]

[49] Thus, the Development Officer had the authority under LUB s. 2.11A to consider a revocation of the development permit. This LUB provision was clearly enabled under s. 220(4)(k) of the *MGA.*

[50] The test to be applied by the Board under s. 251(2) of the *MGA* is whether the decision of the Development Officer "conflicts with the provisions of the land-use by-law". In this appeal, the decision made by the Development Officer to revoke the development permit was indeed taken pursuant to the LUB itself.

[51] Mr. White did not place any evidence or submissions before the Board to advance his position that the legislation violates the *Charter*. The Board accepts the submission of counsel for the Municipality and the Attorney General that the provisions of the *Controlled Drugs and Substances Act* do not offend the *Charter*. Accordingly, the Board dismisses Mr. White's *Charter* challenge.

[52] Further, the Board is satisfied that Mr. White was not permitted to operate a medical marijuana dispensary under the *Controlled Drugs and Substances Act*.

[53] Section 171(2) of the *MGA* provides that a by-law enacted by a municipality shall not be inconsistent with provincial or federal laws:

> **171 (2)** A by-law shall not be inconsistent with an enactment of the Province or of Canada.

[54] Thus, the Board infers that any "permitted uses" for a proposed development within a Zone in the Municipality's LUB must necessarily comply with all provincial and federal Laws.

[55] As noted earlier in this decision, the parties had pre-filed their evidence in advance of the originally scheduled March 2018 hearing on the merits. Those filings included the Municipality's Appeal Record, which contained the MPS and the LUB. The LUB specifically states that any development must comply with all provincial and federal laws. After the issuance of the development permit, the Development Officer learned that Mr. White's Health Canada permit did not allow him to operate a medical marijuana dispensary. Section 2.11A of the LUB provides that the Development Officer may revoke any development permit if the issuance of the permit was based on incorrect information or if the permit was issued in error. Thus, the Development Officer's decision to revoke the development permit was warranted. Taking all of the above into account, the Board is satisfied that the Development Officer's decision to revoke the development permit did not conflict with the provisions of the LUB.

[56] The Board also concludes that the appeal would not have succeeded, based on the test in s. 251(2) of the *MGA*, regardless of Mr. White's failure to appear before the Board to prosecute his appeal. In the circumstances, the Board grants the motion put forward by counsel for the Municipality to dismiss the appeal.

[57] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 12th day of August, 2021.

Roland A. Deveau