

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **OAKFIELD ESTATE LIMITED** from the decision of a development officer to refuse the approval of a tentative subdivision plan for properties located at PIDs 41191230, 41191222, 41191214, 41191206, 41184896, and 41184920 in the County of Halifax, Nova Scotia

BEFORE: Richard J. Melanson, LL.B., Panel Chair
Julia E. Clark, LL.B., Member

Erratum:

[1] On the cover page, page one, the neutral citation number “**2024 NSUARB 18**”, is to be amended to read “**2025 NSUARB 183**”. The remainder of the document is unchanged.

ERRATUM DATED: January 28, 2025

Lisa Wallace

Chief Clerk

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BEFORE: Richard J. Melanson, LL.B., Panel Chair
Julia E. Clark, LL.B., Member

APPELLANT: **OAKFIELD ESTATE LIMITED**
Lloyd Robbins, Counsel

RESPONDENT: **HALIFAX REGIONAL MUNICIPALITY**
Kelsey Nearing, Counsel
Meg MacDougall, Counsel

HEARING DATE(S): May 13-14, 2024

FINAL SUBMISSIONS: November 29, 2024

DECISION DATE: **January 27, 2025**

DECISION: **The appeal is allowed.**

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1.0 INTRODUCTION

[1] The Laurie Family, whose descendants are owners of Oakfield Estate Limited, have a long history in the Grand Lake area. Over the years, large parcels of their extensive former family farm and timberlands were donated by the Family to the Halifax Regional Municipality for recreation areas and parkland. Other remainder lots of the larger estate have been developed or are planned for subdivision and development, including "Phase 3B", which Oakfield hopes to develop into a subdivision of single-family homes off Highway 2 in Grand Lake/Oakfield.

[2] The sole issue in this appeal is whether the Development Officer for Halifax Regional Municipality incorrectly rejected Oakfield's application for a tentative plan of subdivision for its property over several vacant parcels – PID # 41184896, 41184920, 41191206, 41191214, 4119222 and 41191230. The reason given for the Development Officer's rejection was that the application did not comply with Section 104 of the Regional Subdivision By-law, which required the plan to accord with the Engineering Regulations. The Development Officer relied on the findings of HRM Engineers on the interpretation of those requirements (known as the Municipal Design Guidelines, "Guidelines"). HRM found that the layout of the planned streets within the subdivision did not comply with the Guidelines in terms of connectivity and the creation of road reserves.

[3] Oakfield's Notice of Appeal alleges that the Municipality failed to follow its Subdivision By-law because the Development Officer, Trevor Creaser, deferred his authority to the HRM Design Engineers, and refused to approve the application although it met the requirements of the Subdivision By-law. It says that the particular limits on subdivisions in Oakfield mean that the Guidelines should not have been applied, and conflicts with the Guidelines should be resolved in Oakfield's favour.

[4] Section 288(1) of the *Halifax Regional Municipality Charter* stipulates that a development officer must approve an application for subdivision "... if the proposed subdivision is in accordance with the enactments in effect at the time a complete application is received..." Subsection 288(2) lists seven factors that mandate refusal of an application, including that "the proposed subdivision does not meet the requirements of the Subdivision By-law and no variance is granted..." The parties agree that the sole requirement of the Subdivision By-law at issue in this appeal is s. 104, and whether the Development Officer was correct in accepting the Municipal Engineers' opinion that the subdivision plan did not meet the Municipal Design Guidelines, as HRM says is required. HRM conceded in pre-hearing communications that the application otherwise complies with the requirements of the By-law and applicable enactments.

[5] The Board panel members undertook a site visit the day after the oral hearing concluded. The panel members drove along Highway 2 and parked at the Oakfield softball field and playground. We were able to enter the Oakfield Property as described by Murugesu Sooriyakumaran, P.Eng., Oakfield's design engineer. We walked the Old Truro Road to the approximate northern, southern and eastern boundaries of the Oakfield lots, and hiked a cleared forested path south to the Halifax Water protected watershed area and Bennery Lake. Our observations supported the evidence heard about the physical descriptions of the site.

[6] HRM filed an extensive appeal record, and Oakfield filed substantial evidence in support of its appeal. The Board was presented with experts' reports and testimony from Mr. Sooriyakumaran and Thomas Swanson, P. Eng., of CKM Engineering, for Oakfield, along with fact evidence from Mr. Michael Laurie, Oakfield's representative.

Ashley Blissett, P. Eng., Development Engineering Program Manager for HRM, and Matt Covey, P.Eng., Division Chief Fire Prevention, provided HRM's expert reports and testimony. All proposed experts were qualified by the Board according to their accepted qualification statement. There was little disagreement on the facts of this matter. The Board reviewed the entire record, and all the evidence filed. In this decision we will refer only to the elements that are most relevant to our analysis and decision.

[7] After an initial exchange of written submissions, the Board asked Counsel for HRM and the appellant to reconvene on November 29, 2024, to answer the Board's questions on the nature of the conflict, if any, between the language or application of Section 104 of the Subdivision By-law, incorporating the Municipal Design Guidelines, and the requirements of Section 12 of the By-law.

[8] The Board had to grapple with some novel issues in this case. Both parties ably argued their positions. The Board agrees with HRM that the tentative plan of subdivision could not be approved if the plan does not meet the requirements of s. 104 of the Subdivision By-law, including that the plan must comply with the Engineering Regulations/Municipal Design Guidelines. However, in the limited circumstances of this case, the Board has found that, when properly interpreted, the proposed subdivision does comply with the Subdivision By-law and the Engineering Regulations.

[9] The Board finds that the decision of the Development Officer to deny the application conflicts with the Subdivision By-law and directs the Development Officer to approve the tentative plan of subdivision.

2.0 BACKGROUND

2.1 STANDARD OF REVIEW AND PRINCIPLES OF STATUTORY INTERPRETATION

[10] The Board's jurisdiction in an appeal about a tentative plan of subdivision arises from s. 296 of the *HRM Charter*, which says an applicant can appeal a refusal in accordance with Part VIII. Section 265(3) of the *HRM Charter* says the only ground of appeal is that "...the decision of the development officer does not comply with the subdivision by-law." A slightly different formulation is used in s. 267(2) of the *HRM Charter*, which says the Board can only allow an appeal if the development officer's decision "...conflicts with the provisions of the land-use by-law or subdivision by-law." The Board does not see any substantive difference between these two formulations of the test.

[11] The Board, following the principles set out in *Halifax (Regional Municipality) v. Anglican Diocesan Centre Corporation*, 2010 NSCA 38, (Anglican Diocesan) has decided many appeals of development officers' decisions applying land-use by-laws. The language of the *HRM Charter* relating to appeals from refusals by a development officer under the land-use by-law and the subdivision by-law is identical. The Board, therefore, finds that the principles set out in *Anglican Diocesan*, with some modifications, provide guidance when considering subdivision appeals. The development officer is performing an executory function in each case, and a decision under either scenario must "comply with" and not "conflict with" the applicable by-law.

[12] Like a land-use by-law appeal, when considering a subdivision appeal, as discussed in *Anglican Diocesan*, the "...Board is the first tribunal to hear sworn and tested

evidence. The Board should undertake a thorough factual analysis of the proposal.” This will provide context for consideration of the application of the subdivision by-law.

[13] The Board must interpret the subdivision by-law to determine whether the development officer’s decision complies or conflicts with it. The Board is of the view that a pragmatic and purposive analysis is required, as in *Anglican Diocesan*. Determining the meaning of the subdivision by-law is essentially an exercise in statutory interpretation. Pragmatic and purposive analysis is a part of the modern rule of statutory interpretation.

[14] In the end, the modern rule of statutory interpretation guides the interpretation exercise. This concept was most recently reiterated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. [117]:

A court interpreting a statutory provision does so by applying the “modern principle” of statutory interpretation, that is, that the words of a statute must 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.”

[15] In *Vavilov*, at paragraphs 119-120, the Supreme Court of Canada went on to elaborate on this concept in the specific context of administrative tribunals:

[119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.

[120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker’s interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision.

[16] A subdivision by-law does not enable and carry out the intent of a municipal planning strategy in the same direct and comprehensive way as a land-use by-law. Therefore, unlike in *Anglican Diocesan*, a municipal planning strategy may sometimes

offer less assistance in determining what the wording in a subdivision by-law means. That said, a subdivision by-law is part of the comprehensive land management scheme within the municipality. Sometimes, as in this case, a municipal planning strategy provides direction on subdivision issues. Also, a proposed subdivision must comply with the applicable land-use by-law which implements the municipal planning strategy. The Board must determine what council intended by the language used in the by-law. To use the language of *Anglican Diocesan*, the question of whether there is some “reflexivity” between the Regional Subdivision By-Law, the Engineering Regulations, and a municipal planning strategy, can be considered in an appeal about a tentative plan of subdivision if it assists with the interpretation of particular wording. The wording in one of these documents may provide context or help describe the purpose of a wording in another document. This may assist in bringing out the meaning of the wording under consideration.

[17] *Vavilov* reiterates that the purpose of statutory interpretation is not to “reverse-engineer” an outcome a tribunal finds desirable. A tribunal must search for the real intent of the wording. It must not choose an interpretation that, although plausible, is inferior to another, to achieve the result the tribunal prefers.

[18] As discussed in *Anglican Diocesan*, a development officer’s decision is not owed the same deference as an elected body that conducts a public process and makes value judgments about “question-begging” terms, or between often intersecting or conflicting policies. The Board has described the standard of review of a development officer’s decision as correctness or akin to correctness. That said, the Board is tasked with doing what the legislation mandates it to do, which, like in *Anglican Diocesan*, is “...to

determine whether the decision ‘conflicts with’ the proper interpretation” of the subdivision by-law.

2.2 SUBDIVISION PROPOSAL

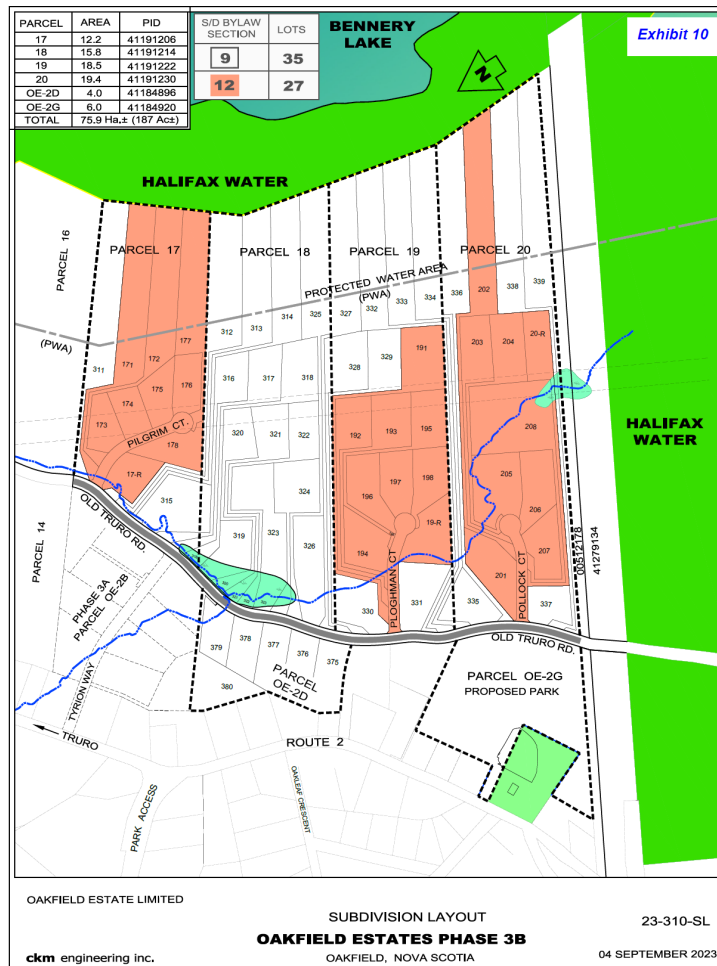
[19] Oakfield’s plan for the residential subdivision “Phase 3B” is part of a broader plan to develop lands it owns around the Old Truro Road, a currently un-serviced provincial road that runs roughly parallel to Highway 2 through Oakfield [Exhibit O-10, “Exhibit 1”, p. 4]. Oakfield received tentative subdivision approval in March 2013 for an earlier “Phase 3” proposal for lands between Highway 2 and Old Truro Road, including lots on Parcels 17, 18 and 19 on the portions of the parcels abutting Old Truro Road. In 2015, Oakfield received final subdivision approval for “Phase 3A”, which would establish a new road, Tyrion Way, connecting Highway 2 with the west side of Old Truro Road. It executed a Subdivision Agreement with HRM for that new street construction and subdivision of Phase 3A in 2020.

[20] Oakfield’s current application proposes to create Phase 3B, a subdivision of 62 residential lots on several parcels along the Old Truro Road, including Parcels 17, 18, 19, 20, which abut the Old Truro Road. These parcels run east of the road to a boundary with lands owned by Halifax Water around Bennery Lake. The Bennery Lake Watershed protection area includes part of the eastern portion of each of the parcels and is not developable. The land also includes Parcel OE-2G, consisting of proposed parkland on the west side of Old Truro Road behind properties and existing community land along Route 2.

[21] The southern edge of the proposed subdivision is bounded by a narrow parcel of land (PID 00512178) owned by an unrelated person. That property also fronts

on Old Truro Road. A parcel identified as “Parcel 16” (PID 41188715) of approximately 36 acres of undeveloped land abuts the northern boundary and also fronts on the Old Truro Road.

[22] Oakfield submitted several versions of a tentative plan of subdivision in an attempt to address the Development Officer and Engineers’ concerns with the proposals. The final version was revised to reduce the number of lots by 8 and eliminate one proposed cul-de-sac from Parcel 18. Oakfield says this and its earlier proposal complied with the Subdivision Bylaw.



[23] As stated, the Subdivision Bylaw limits new construction in the area to lots along existing roads under s. 9 or under limited exceptions including s. 12. The design

layout for the Phase 3B subdivision is primarily based on s. 12. The proposal includes 35 “Section 9 lots” and 27 “Section 12 lots.” The Section 12 lots are proposed for three cul-de-sacs on each of Parcels 17, 19 and 20.

[24] HRM agreed that the proposal meets all of the requirements of the Subdivision Bylaw, other than s. 104. Before the hearing, the parties narrowed the outstanding issues to HRM’s Engineer’s contention that the proposal failed to meet the requirements of s. 4.2 of the Engineering Regulations, in particular the provisions related to street layout in s. 4.2.3.1, 4.2.3.2 and 4.2.3.2. These provisions are primarily about the prolongation of existing streets, efficient traffic flow, neighbourhood connectivity, access to neighbouring properties, encouraging continuous streets and limiting cul-de-sacs.

3.0 ISSUES

[25] In considering whether the Development Officer’s decision conflicts with the Subdivision By-law, the Board has considered the following issues:

- a) The Policy intent of the HRM Regional Plan and the interpretation of the Subdivision By-law and Engineering Regulations;
- b) whether there is a conflict between s. 12 of the Subdivision By-law and the applicable Engineering Regulations;
- c) whether the application conflicts with specific engineering regulations;
and
- d) whether common driveways fulfill the requirements of s. 104 of the Subdivision By-law.

4.0 POLICY INTENT OF THE REGIONAL PLAN AND INTERPRETATION OF THE SUBDIVISION BY-LAW AND ENGINEERING REGULATIONS

[26] As previously stated, the Board has limited jurisdiction on an appeal from the refusal by a development officer to approve a tentative plan of subdivision under s. 262(3) of the *HRM Charter*. The Board must consider whether or not the decision conflicts with the Subdivision By-law:

267(1) The Board may

(a) Confirm the decision appealed from;

[...]

(e) allow the appeal by directing the development officer to approve the tentative or final plan of subdivision or concept plan.

(2) The Board may 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.

[27] Section 265(3) also restricts the scope of an appeal:

(3) An applicant may only appeal a refusal to approve a concept plan or a tentative or final plan of subdivision on the grounds that the decision of the development officer does not comply with the subdivision by-law. [Emphasis added]

[28] HRM's Regional Municipal Planning Strategy (Regional Plan) was adopted by Council in accordance with s. 227 of the *HRM Charter*. The Regional Plan defines objectives that are relevant to the overall vision for future development in HRM and forms the basis and support for the policies, whose purpose is to guide the development and management of the Municipality.

[29] HRM characterizes these policies as providing specific growth management mechanisms within rural areas. The Subdivision By-law is intended to implement these policy objectives. HRM says that the Regional Plan objectives and policies should inform

the Board's interpretation of the legislative scheme surrounding the Subdivision By-law including the relevant provisions of the Engineering Regulations.

[30] The Subdivision By-law generally prohibits the construction of new public streets in rural areas under s. 9, limiting subdivisions to lots fronting on existing public streets or highways, private roads or other designated roads, "except where otherwise provided in this by-law." The relevant clause of the By-law defines "existing" as including all public streets, highways, etc., in existence on August 26, 2006:

9(1) Unless otherwise provided for in sections 10, 11, 12 of this by-law, no subdivision which creates lots for residential uses on new public streets or highways shall be approved within the areas designated on the Generalized Future Land Use Map in the Regional Municipal Planning Strategy as Rural Commuter, [...]

(2) Except where otherwise provided in this by-law, lots shall have frontage on existing public streets or highways, private roads or Schedule "A" roads.

(3) For the purposes of subsection (2) **of this section, ... and Section 17, ...** "existing" includes:

(i) all public streets or highways or public roads or Schedule "A" roads in existence on August 26, 2006;

[...] (Emphasis in original)

[31] Section 12 provides one exception to this general prohibition on new public roads in the Rural Commuter designation, where the requirements of that section are met.

It is the only exception relevant to Oakfield in this case:

12 Within the areas designated on the Generalized Future Land Use Map in the Regional Municipal Planning Strategy as Rural Commuter and Rural Resource, but excluding the area identified as Rural Area Designation under the Municipal Planning Strategy in the Eastern Passage/ Cow Bay plan area, a subdivision which creates lots for residential uses involving new public streets or highways, shall be permitted subject to meeting the following requirements: (RC-Jun 21/16;E-Jul 30/16)

(a) no street shall intersect with the trunk and route highways identified on Schedule "K", except within the areas designated on the Generalized Future Land Use Map in the Regional Municipal Planning Strategy as Rural Resource; **(RC-Jun 21/16;E-Jul 30/16)**

(b) no more than 8 lots plus a Remainder lot shall have frontage on any new public street or highway within any area of land:

- (i) with a minimum of 20 m of frontage on a **public street that existed on April 26, 2006, from which access will be gained; or (RC-Jun 21/16;EJul 30/16)**
- (ia) **with a minimum 20 m frontage on a road reserve owned by NSTIR or the Municipality, that existed on April 26, 2006, that is capable of being upgraded to public street standards; and (RC-Jun 21/16;E-Jul 30/16)**
- (ii) that existed on or before **April 26, 2006; (RC-Jun 21/16;E-Jul 30/16)**
- (ba) **lots proposed to be created pursuant to lot frontage exemptions of this by-law are subject to the requirements of subsection (b), unless the required minimum frontage is achieved on an existing public street or highway; (RCJun 21/16;E-Jul 30/16)**
- (c) the proposed lots must be contiguous and be designed to maximize the lot frontage of the public street or highway based on the applicable minimum required lot frontage; and
- (d) no new public street or highway shall extend beyond the limit of the new lots being created; **and (RC-Jun 21/16;E-Jul 30/16)** [Emphasis in original]
- (e) **For greater certainty, this section shall not apply within areas designated as Rural Commuter under the Regional Municipal Planning Strategy and designated as Rural Area Designation under the Municipal Planning Strategy in the Eastern Passage/Cow Bay plan area. (RC-Jun 21/16; E-Jul 30/16)** (Emphasis in original)

[Exhibit O-22, p.137]

[32] The parties submitted an Agreed Statement of Facts [Exhibit 0-17] setting out their agreement that the application meets “all requirements of the Halifax Regional Subdivision By-law with the exception of s. 104 which remains in contest.” HRM says that the proposed street network set out in Oakfield’s subdivision application is not in accordance with s. 104 of the Subdivision By-law because the proposed street layout results in disconnected or poorly accessible streets. Section 104 of the Subdivision By-law is a provision of general application to all subdivision proposals, setting out the requirements for the schematics that an owner must submit whenever a proposal includes construction of primary or secondary services or private roads. The Section indicates that the Development Officer shall require an applicant to provide “8 copies of schematics,

prepared by a Professional Engineer in accordance with the Engineering Regulations, ...” HRM’s Engineers decided that the proposal did not comply with certain provisions of the Engineering Regulations respecting road networks, and therefore recommended the Development Officer not approve it.

[33] The parties generally agreed that the Board should be guided by the Regional Plan’s goals, objectives, and policies, but disagreed on which to emphasize. HRM relies on the objectives of the Regional Plan, to support its contention that the proposed street layout does not reflect the objectives of the Plan, including the objective to:

Design communities that:

- (a) are attractive, healthy places to live and have access to the goods, services and facilities needed by residents and support complete neighbourhoods as described in 6.2.2 (v) (RC-Sep 18/19;E-Nov 30/19) of this Plan;
- (b) are accessible to all mobility needs and are well connected with other communities;

...

[Regional Plan, Section 1.3 Objectives]

[34] In Oakfield’s submissions, Mr. Robbins argues that this paraphrasing of the Objectives neglects the focus in the “Settlement and Housing” chapter of the Plan, which includes objectives for a balance between the goals of providing housing opportunities and neighbourhood revitalization including:

- (c) promote energy efficiency and sustainable design;
 - (d) protect neighbourhood stability and support neighbourhood revitalization;
- [...]
- (e) provide housing opportunities for a range of social and economic needs and promote aging in place;
 - (f) maintain the character of rural communities.

[35] For its part, Oakfield highlights the focus in s. 3.1(1) of the Regional Plan which it says requires a balance between “property rights and lifestyle opportunities with responsible fiscal and environmental management.” Oakfield argues that the Regional Plan addresses this need in the Rural Commuter designation with the application of “specific growth management mechanisms for rural areas” in policies S-19, S-23:

S-19 Within the Rural Commuter, Rural Resource, Agricultural, Open Space and Natural Resource designations and the Harbour designation outside of the Urban Service Area, HRM shall, through the Regional Subdivision By-law, permit the subdivision of lots fronting existing local roads, including existing private roads, to the extent currently provided for under existing Secondary Planning Strategies, and for those roads shown on completed tentative and final subdivision applications submitted on or before August 26, 2006. Within these designations but outside of Water Service Areas, lots fronting on existing non-local roads shall be permitted with wider frontages

S-23 HRM shall, through the Regional Subdivision By-law establish provisions to allow the approval of a maximum of eight lots on new public streets, per area of land with public street frontage in existence on August 26, 2006:

(a) within the Rural Commuter Designation, where the proposed road intersects with a local road; and

(b) within the Rural Resource Designation, where the proposed road intersects with a local road or non-local road.

[36] Further, s. 3.2.3.1 of the Regional Plan defines the intent for the Rural Commuter designation:

[...] The intent for this designation is to:

- protect the character of rural communities and conserve open space and natural resources by focusing growth within a series of centres, as shown on Settlement and Transportation Map (Map 1);
- support the delivery of convenience services to the surrounding settlement area;
- control the amount and form of development between centres; and
- protect the natural resources base and preserve the natural features that foster the traditional rural community character.

[37] There is essential agreement between the parties that ss. 9 to 12 and other parts of the Subdivision By-law carry out the Regional Plan’s intention to limit growth in

rural areas by focusing on rural centres, ensuring that development is supported by services and preserves the rural character.

[38] The Board agrees that an interpretation that leads to conflict with another provision of a by-law or regulation, or that runs contrary to the purpose of the legislative scheme, should be avoided. Where meaningful questions about the interpretation of a subdivision by-law applies, resolving those questions should include consideration of the purposes and objectives of the applicable legislative scheme. This consideration would include review of relevant policies under the Regional Planning Strategy that may inform subdivision requirements. Because s.265(3) of the *HRM Charter* strictly limits the grounds of appeal of the refusal of a subdivision plan and reflecting the analysis described in *Anglican Diocesan*, however, the Board's principal focus must be on whether the decision complies with the Subdivision By-law.

5.0 CONFLICT BETWEEN ss.12 AND 104 OF THE SUBDIVISION BY-LAW (ENGINEERING REGULATIONS)

[39] As discussed, s. 12 of the Subdivision By-law is an exception to the limitations on development in rural areas set out in s. 9 of this By-law. The tentative plan of subdivision must still comply with the other applicable provisions of the Subdivision By-law, including s. 104. The relevant requirement of s. 104 of the Subdivision By-law stipulates that:

104 Where primary or secondary service or a private road is to be constructed, the Development Office shall require the owner to provide 8 copies of schematics, prepared by a Professional Engineer in accordance with the **Engineering Regulations**, showing the following, in the context of the proposed lots and park land dedication, where applicable:

[...]

(d) the existing and proposed public streets or highways or private roads within the proposed subdivision;

[...]

[40] Section 3(la) of the Subdivision By-law defines the Engineering Regulations as "...the latest edition of the Municipal Design Guidelines...." Section 3A of the Subdivision By-law says, "[t]he Municipal Engineering Regulations 2013 are hereby adopted and ratified by Council." Therefore, the Engineering Regulations and the Municipal Design Guidelines mean the same thing. As discussed, the parties agreed that the only contested issue is whether the tentative plan of subdivision complies with s.104 of the Subdivision By-law and, in particular, three specific guidelines in the Engineering Regulations. The parties agree that the tentative plan of subdivision complies with all other provisions of the Subdivision By-law, including s. 12.

[41] Oakfield's primary position is that the application complies with both s. 12 and the Engineering Regulations referenced in s.104 of the Subdivision By-law, when the Engineering Regulations are properly interpreted and applied. Alternatively, Oakfield submits that if the Board finds there are areas where the tentative plan of subdivision does not meet the requirements of the Engineering Regulations, a conflict is created and s.12 of the Subdivision By-law takes precedence. The appellant submits the conflict arises because this proposed tentative plan of subdivision cannot comply with both s. 12 of the Subdivision By-law and the Engineering Regulations, if HRM's interpretation of the three guidelines in the Engineering Regulations is accepted. Since it is uncontested that the application complies with all other aspects of the Subdivision By-law, including s. 12, the appellant says it follows the application must be approved and this appeal allowed.

[42] The appellant submits the Subdivision By-law takes precedence for four reasons. First, the common law resolves conflicts between legislative provisions based on which one is subordinate to the other. The appellant argues the Engineering Regulations are subordinate to the Subdivision By-law. Second, specific provisions generally take precedence over more general ones that address the same issue. The appellant argues the requirements of s. 12 of the Subdivision By-law are specific to the type of development being considered, while the Engineering Regulations apply to all subdivision applications. Third, the appellant says the Subdivision By-law was adopted after the Engineering Regulations. The common law doctrine of implied repeal would mean any conflict would be resolved in favour of s. 12 of the Subdivision By-law. Finally, the appellant says s. 6 of the Subdivision By-law provides that “[w]here the provisions of this by-law conflict with those of any other municipal or provincial regulation, by-law or code, the higher or more stringent requirements shall prevail...” The only exception is where the conflict is with an applicable land-use by-law. The appellant argues the requirements of s. 12 of the Subdivision By-law are more stringent than the three guidelines in the Engineering Regulations being considered in this matter.

[43] HRM submits that ss. 12 and 104 of the Subdivision By-law are complementary and the appellant's proposal must comply with both. Ms. Nearing says that there is nothing in the wording of s. 12 of the Subdivision By-law that expressly contradicts the guidelines in the Engineering Regulations used as a basis for refusal. What is creating the conflict in this case, according to Ms. Nearing, is that the appellant has chosen to advance a development too large to be able to meet the lot and street configurations required by both s. 12 and s. 104 of the Subdivision By-law. Finally, Ms.

Nearing says that the conflict resolution provision in s. 6 of the Subdivision By-law has no application because s. 12 and s. 104 (and, although not expressly stated in the submission, the Board assumes by extension, the Engineering Regulations) are both part of the Subdivision By-law. Ms. Nearing says s. 6 is only used to resolve conflicts with "other" regulations, by-laws and codes external to the Subdivision By-law.

[44] Ms. Nearing submits "...every part of a provision or set of provisions should be given meaning if possible." Both the appellant and the respondent agree with the proposition that, in the first instance, interpretations that create conflicts should be avoided.

[45] The Board agrees with the characterization of the interplay between s. 12 and s.104 of the Subdivision By-law advanced by the Municipality. This matter deals with two provisions of the same Subdivision By-law. While the Engineering Regulations are contained in a separate document, they were adopted by Council, the same level of government as adopted the Subdivision By-law. The 2013 version of the Engineering Regulations was adopted in the Subdivision By-law. It is expressly incorporated by reference in the definitions section and in s. 104 of this By-law. Therefore, the Board also agrees with Ms. Nearing that s. 6 of the Subdivision By-law does not apply. That provision applies to conflicts with regulations, by-laws or codes external to the Subdivision By-law.

[46] Also, this is not a case where there is a hierarchy between the levels of government enacting legislation that brings paramountcy considerations into play. Further, the Board finds that the doctrine of implied repeal cannot assist in resolving conflicts because the latest versions of ss. 3(la), 3A, and an amendment to s. 104 of the

Subdivision By-law, specifically referencing the defined Engineering Regulations, were enacted in 2016, at the same time as some amendments to s. 12.

[47] Any potential or actual conflict between the Engineering Regulations or s. 12 of the Subdivision By-law will therefore have to be resolved using the common law principles applicable to internal conflicts or inconsistencies.

[48] In this case, the appellant provided a conceptual plan to HRM planning staff and engineers in 2015 [Exhibit N-2, p.24] that apparently complied with the Guidelines, but not s. 12 of the Subdivision By-law. The current proposal complies with s. 12 of the Subdivision By-law but does not, according to HRM, comply with three specific provisions of the Engineering Regulations. This does not, in and of itself, create a conflict between the provisions. In planning matters, whether under a subdivision by-law or a land-use by-law, there are many lot configuration and street network requirements. It may well be that the developer's desired configuration can meet some, but not all, of these requirements. For example, the footprint required for a building of a certain height may meet setback requirements, but not maximum lot coverage requirements. This does not mean the provisions are in conflict. A smaller building may be able to meet all the requirements.

[49] Like many other cases involving development officers, to have a successful application, the applicant must meet all the requirements of a subdivision by-law or a land-use by-law. In this case, it means the appellant must meet the requirements of both ss. 12 and 104 of the Subdivision By-law, the latter provision incorporating by reference the three specific guidelines in the Engineering Regulations at issue. That said, there may be a true operational conflict, whereby compliance with both s. 12 of the Subdivision By-law and the Engineering Regulations is impossible because complying with one prevents

compliance with the other – based on the wording used, not the design choices made, or the particular characteristics of the lands in question. In those cases, such conflicts must be resolved, in the analysis that follows, using the interpretive tools associated with legislation that stands on an equal footing.

6.0 ENGINEERING REGULATIONS

[50] As discussed, the relevant requirement of s. 104 of the Subdivision By-law stipulates that:

104 Where primary or secondary service or a private road is to be constructed, the Development Office shall require the owner to provide 8 copies of schematics, prepared by a Professional Engineer in accordance with the **Engineering Regulations**, showing the following, in the context of the proposed lots and park land dedication, where applicable;

[...]

(d) the existing and proposed public streets or highways or private roads within the proposed subdivision;

[...]

[51] Because Oakfield’s application for the tentative plan of subdivision approval included construction of primary and secondary services, s. 104 applies. The section requires that plan schematics be prepared in accordance with the Engineering Regulations, defined in the Subdivision By-law as “the latest edition of the Municipal Design Guidelines as approved by Council and/or the Halifax Regional Water Commission Design and Construction specifications.” The parties agree that the relevant edition for this application is the 2013 Municipal Design Guidelines. The most recent set of Guidelines came into effect in 2021, after Oakfield started its application.

[52] Oakfield’s plan includes an “existing public street,” the Old Truro Road, which would run roughly north to south across the western boundary of the subdivision

lands. The Old Truro Road is a rough gravel, currently unmaintained provincial road that runs roughly parallel to Highway 2. The expert witnesses agreed that the Old Truro Road meets the definition of an existing public street under the Subdivision By-law, and this conclusion was not contested by HRM. Oakfield's plan also includes three new municipal streets, Pollock Court, Ploughman Court, and Pilgrim Court [Exhibit O-2 pp. 125-136] which are set out as cul-de-sacs, one per each of lots 17, 18 and 19.

[53] Oakfield submitted an earlier application for tentative subdivision approval of Phase 3B, including four cul-de-sacs and additional lots. The request was rejected with the explanation from Ms. Blissett to Trevor Creaser that:

HRM's precedent for road layout is to limit the number of cul-de-sacs and accept road layouts designed for interconnectivity with continuous road and path networks that allows for future connections to adjacent lands. This Tentative Subdivision application will be denied by Development Engineering until an acceptable road layout is proposed demonstrating a continuous road network, road reserves to the adjacent lands, and pedestrian pathways if appropriate.

[Exhibit O-2 p. 15]

[54] On review of the Municipal Design Guidelines against Oakfield's current tentative plan application, in a report from Development Engineer Crysta Cumming, P. Eng., to Mr. Creaser on February 5, 2020, the HRM Engineers declined to recommend approval for similar reasoning. This report identified that Oakfield's submission, in particular, did not comply with the Municipal Design Guidelines, Part A, Section 4, 4.1, 4.2, etc., [Exhibit O-2, p. 17] and referred to a requirement for "suitable access for emergency services" within the road network.

[55] The parties agree, to some extent, that the Design Guidelines are not intended to be applied rigidly or without consideration of location and context. All three expert witnesses agreed that engineers must apply their professional judgment in interpreting the text of the Design Guidelines to evaluate a subdivision design [Exhibit O-

2, p. 30, Exhibit O-4, s. 5.2.1., Exhibit O-16, para 42]. The Board accepts that interpreting a plan proposal against the guidelines requires the exercise of judgment.

[56] However, Oakfield does not agree with HRM's assertion that a Development Engineer has any discretion in the application of the engineering standards. It says that if the specific guidelines are met, then the proposal must be found to be in accordance with the Engineering Regulations and s. 104.

[57] Section 2.2, paragraph 1 of the Design Guidelines sets out their purpose and function, to "[set] minimum design and construction standards for Municipal Service Systems within the Municipality; to list and suggest limiting values for items upon which an evaluation of such designs will be reviewed and to establish uniformity of practice in the Municipality."

[58] That section allows for flexibility for design engineers to propose variations from the document, which may be considered for approval "where the designer can show that alternative approaches will produce the desired results." It goes on to clarify that:

The designer shall in the first instance consider such factors as safety, nuisance, system maintenance, operational costs, life cycle costs, environmental issues, natural topography, configuration of the bulk land, etc. The designer shall provide the Engineer a rationalization of these same factors in considering alternate approaches.

[...]

The Engineer's decision shall be final and binding in matters of design and construction.

[59] The Board accepts that interpreting a plan against the guidelines requires the exercise of professional judgment by the designer and the Municipal Engineer. While there is flexibility allowed in the application of the requirements, the design must be evaluated against the objectives of the Guidelines, "producing the desired results."

[60] The design of municipal roads is governed by s. 4 of the Design Guidelines. As pointed out by both parties, s. 4.1.1 reinforces the principle that every design should be considered on its own merits, in the context of a particular situation. Section 4.1.3 includes “General Principles” for design of streets, and s. 4.1.4 sets out the Objectives for Design of Residential Streets and Walkways.

[61] HRM says that the overall design fails to meet two of the objectives set out in s. 4.1.4, that residential or local-serving streets should:

- Accommodate convenient and efficient pickups and deliveries, emergency access (fire, police, ambulance), and maintenance services, and where densities justify bus or transit services.
- Enhance the overall esthetics of the neighbourhood through well-designed street layout and street landscaping.

[62] These types of “overarching” statements of principles and objectives can provide context and assistance in interpreting the specifications and guidelines that follow in later subsections, including the three specific guidelines on street layout – 4.2.3.1, 4.2.3.2 and 4.2.3.3 which HRM stipulated were the basis for the refusal. In the statutory interpretation analysis, the Board refers to these types of policy statements to provide information where the meaning of a requirement is not clear.

[63] While the review of a plan involves professional judgment, an engineer or a development officer’s “discretion” in the application of a particular provision is limited by the text and the legislative scheme. The Board’s role is to determine whether a development officer’s decision complies or conflicts with the relevant subdivision by-law. In this case, the Development Officer’s decision was driven by the Engineers’ recommendation to deny approval because the application plan did not meet the requirements of the guidelines for the design of residential streets. The Development

Officer was entitled to rely on the expertise of the Engineers in the interpretation of the Engineering Regulations, and therefore, whether the requirements of s. 104 of the By-law were met. However, none of those parties has the discretion to decide not to comply with a requirement under the By-law unless the By-law explicitly authorizes it.

6.1 Section 4.2.3.1

[64] The provisions under s. 4.2.3 set out the design specifications for street layouts. HRM says the interpretation and application of the specific standards is informed by the objectives and general interpretive guidance set out in earlier sections of the Engineering Regulations including 2.2., 4.1.1, 4.1.3. and 4.1.4, discussed earlier. Oakfield says that the specific guidelines provide the definitive rules and if a subdivision application is not “clearly contradictory” it must be approved. The first specific guideline that the parties debated is s. 4.2.3.1, which states:

Guideline 4.2.3.1

Streets must be laid out wherever possible in prolongation of existing streets, either in the same subdivision or in adjacent subdivisions. In a phased development, the minimum length of street which will be considered for approval by the Municipality is 150m, with the exception of cul-de-sacs.

[65] The context of this development site, which builds off a currently unused provincial dirt road, means that Mr. Sooriyakumaran, as design engineer, was not able to provide a plan that laid out new streets by prolonging existing streets. “Street” is defined in the Guidelines as:

Any public road, street or highway owned and maintained by the Municipality or TIR.

[66] The experts agreed that the Old Truro Road meets the definition of a public street, under the Subdivision By-law, as a “road street or highway which has been accepted and maintained by the Municipality or the Province ...” He says that this guideline is met because the only public street within the proposal is the Old Truro Road,

which will be upgraded to run “end to end” in the proposed subdivision [Exhibit O-19, p. 4]. Mr. Swanson also opined that the plan for upgrading that existing road satisfies the requirements of s. 4.2.3.1 [Exhibit O-18, p. 4]. The Old Truro Road will connect with Highway 2 and is planned to eventually provide a connection to other planned streets, but no consensus exists that it would be possible to extend other existing streets given the area's topography and the Subdivision By-law restrictions on development.

[67] Ms. Blissett stated that the intent of this requirement is:

to align [new public streets] with existing streets whenever possible. This alignment can happen within the same subdivision or extending into adjacent subdivisions. This approach aims to maintain a consistent layout to facilitate efficient traffic flow and neighbourhood connectivity.

[Exhibit O-16, para 49]

[68] She says that the proposed cul-de-sacs are dead-end streets which prevent their *future* prolongation or connection with other streets in the subdivision. She also felt that Old Truro Road did not meet the definition as a “street” under the Engineering Regulations because it required upgrading. HRM also relied on the testimony of HRM’s fire safety expert, Matt Covey, who raised concerns about the potential fire risk of a neighbourhood with an uncertain secondary evacuation route. He said this would be a consequence of a lack of connection between the proposed municipal road layout and existing streets. Building “stand-alone” cul-de-sacs with private driveways would create disconnection. HRM linked his evidence to the Design Guideline objective of accommodating emergency services outlined in s. 4.1.4.

[69] Mr. Sooriyakumaran’s expert report [Exhibit O-7] explained how, in 2015, a development concept with a continuous street layout proposing the extension of a street linking to the Brookhill Drive Community was (informally) not recommended by HRM staff because it would not comply with s. 12 of the Subdivision By-law. A “Project/Planning

Review Detail” report dated 25/05/2018 from the Municipality includes a note that “As discussed, lots fronting on the new street must be within the same deed of land” [Exhibit O-2, p. 12]. Mr. Sooriyakumaran's report points out that s. 12(b) limits the number of lots fronting on a new road on any "area of land." Area of land is defined in the by-law:

“Area of land” means any lot or parcel as described by its boundaries, or as otherwise defined in a section of this by-law (RC-Jun 21/16;E-Jul 30/16), but shall not include a private road [Exhibit O-20, p. 6, emphasis added]

Further, s. 12(d) of the Subdivision By-law, stipulates that “No new public street or highway shall extend beyond the limit of the new lots.” Section 12(c) states that the lots created “must be contiguous” and designed to maximize the lot frontage of the public street based on the applicable minimum lot frontage. Oakfield and HRM's Engineers agreed that these provisions operate together to prevent the extension of a continuous road across parcel boundaries such as the approach proposed using the extension of the Brookhill subdivision road “stub.” Oakfield relied on this argument to support its contention it must rely on cul-de-sacs or dead-end streets adjoining the existing Old Truro Road, addressed in later section. Section 12 operates to prevent the prolongation of other existing streets to create the subdivision.

[70] Additionally, the Board notes that s. 28 of the Subdivision By-law states:

28 (1) Where an existing public street or highway in an adjoining subdivision abuts the boundaries of an area of land shown on a plan of subdivision submitted for approval, the proposed public street or highway on the plan submitted shall be laid out and constructed as a prolongation of the existing public street or highway and the existing street shall be connected to the new street.

(2) Where adjacent land is undeveloped, the proposed public streets or highways on the submitted subdivision plan must be laid out and constructed in a manner which, in the opinion of the Development Officer, does not prejudice the development of the adjacent land.

HRM conceded, in the Agreed Statement of Facts, that the subdivision met the requirements of this provision of the By-law.

[71] The intent of the General Design Specifications, as addressed in s. 4.2.1, is to “cover the more common aspects of design encountered with roadway design.” The overall intent and objectives for the Municipal Road/Streets design are set out in s. 4.1, as highlighted by Ms. Blisset and HRM’s arguments on interpretation. The general guidance emphasizes that when “considering developments in areas now undeveloped (in either urban or rural contexts) the emphasis is on creating plans that will keep traffic problems from developing while at the same time providing for convenient access and mobility.” Furthermore, the objectives for design encourage residential streets that: permit “comfortable and safe” pedestrian, bicycle and motor vehicle movements, “Accommodate convenient and efficient pickups and deliveries, emergency access (fire police, ambulance), and maintenance services,” and “Enhance the overall aesthetics of the neighbourhood through well-designed street layout and street landscaping.”

[72] The Board notes the sincerity of Mr. Covey’s concerns over access for fire equipment to private driveways and cul-de-sacs adjoined by one access road without a certain secondary exit from the neighbourhood. In answer, Mr. Swanson’s report and testimony indicated that, in his view, although there were shared driveways extending off the cul-de-sacs, the common shared driveways were designed to achieve the same quality of access from the shared driveway that the Municipal Design Guidelines would otherwise provide for lots fronting a public street [Transcript, p. 170].

[73] In its interpretation exercise, the Board considered the intent of the General Specifications, but must give primary consideration to the enumerated requirements, which form the regulatory framework for development engineers and designers. The language and interpretation of this design specification is not ambiguous in this case.

While the Board considered the safety issues and objectives for design of the road layout guidelines in its review of the statutory scheme, asking whether a different subdivision design would allow safer passage or more efficient service is not the test.

[74] The Board notes that s. 4.2.3.1 does not use compulsory language. It accounts for cul-de-sacs and, as Mr. Robbins argues, identifies the intent and preference (“whenever possible”) for prolongation of *existing* streets (emphasis added). The appellant has joined the subdivision at both ends to the Old Truro Road, which will be upgraded and extended to serve the subdivision and neighbouring subdivisions that have been tentatively approved. The evidence did not demonstrate, on a balance of probabilities, that prolongation of an existing street other than the Old Truro Road could be achieved, or that one was even required, considering the context of this particular area and the limits on development. Section 4.2.3.1 applies the preference to existing streets, and, in the Board’s view, does not require that any new streets in a subdivision be able to be “prolonged” in the future. The Board accepts that the subdivision could not proceed without the upgrading and extension of the Old Truro Road, and there was agreement that it meets the requirements as an “existing public road” under the By-law.

6.2 Section 4.2.3.2

[75] Ms. Blisset points out the intent of s. 4.2.3.2 is “to ensure that when designing subdivision street systems, the layout allows for future extension of the public street network. [...] It is important that new subdivision designs consider the surrounding

lands and allow for future street extension and neighbourhood connectivity." [Exhibit O-16, para. 52].

Guideline 4.2.3.2

An acceptable right-of-way access to adjacent properties must be provided and deeded to HRM. This right-of-way may have to be wider than normal to allow for future construction of road without disturbing adjacent land. These access roads must be located along the boundary and in such a manner as to not prejudice development of adjacent land. The road must be graded to include Type 2 gravels, and services (water, sanitary and storm) if required, must be provided to the property line. A guiderail shall then be installed at the entrance of the road.

The subsequent developer of the adjacent property is then responsible for completing the construction of the entire road, including the portion on adjacent property. This includes the removal of the guiderail, removal of the temporary cul-de-sac (if one exists), installation of the remaining services (sewers, watermain, curbs, etc.), grading the existing surface, and the installation of gravels and asphalt to finish the road.

[76] Mr. Sooriyakumaran indicated that upgrading the Old Truro Road provided the most suitable access to adjacent lands at the north and south boundaries of the lots proposed for subdivision [Exhibit O-7, pp. 32-33]. The Old Truro Road will run along the lower boundary of Parcels 17 to 20, joining the adjacent lots at the north-south boundaries of the subdivision. Otherwise, the proposed new roads within the subdivision are not linked to one another and the plan does not provide for road reserves extending from the cul-de-sacs toward the north, south or east of the parcels, in part because of difficulties with the topography and the boundary with the Halifax Water protected watershed lands to the east. Oakfield argues that a road proposed as part of a planned subdivision (Oakfield's project Phase 3A), called Tyrion Way, would provide access to Highway 2 once approved and deeded to the Municipality. The road is not completed, and no construction has begun on that subdivision, although the plan has been granted final approval. Ms. Cummings concluded in her refusal that the proposed road layout in Phase 3B did not allow for acceptable future connections or right of way to adjacent lands [Exhibit O-2, p. 20]. Ms. Blissett supported that view [Exhibit O-16 at para 54] stating that the Old

Truro Road did not meet the requirements of an “acceptable right of way access to adjacent boundaries along the entire boundary of the subdivision” [Emphasis added].

[77] The Board does not share the appellant’s view that the Board should adopt a blanket interpretation of this guideline and find that “if there is no prejudice [to the immediate development of adjacent land] a road reserve is not required.” This would not be true in all cases. In this case, there is no evidence that the adjacent lands would be prevented from being developed without a road reserve, or that there is any immediate prejudice or harm. The Board accepted Ms. Blisset’s perspective that the intent of this section is to preserve *future* access for when it may be needed. The section clearly contemplates that the Engineer should consider potential future development and “future construction” in their review.

[78] The access road requirement helps to prevent inadvertently “land locking” parcels or creating a patchwork of disconnected road networks, contrary to the purpose of the Subdivision By-law. The Board does not accept that, just because lands are not currently developable, it is absurd for the Municipality to require a developer to build a road reserve to ensure right-of-way access to properties on the boundaries of a new subdivision.

[79] However, the Board also notes that s. 28 of the Subdivision By-law addresses requirements for the street network in relation to adjacent land parcels and subdivisions. On the basis of the Agreed Statement of Facts, and supported by the expert testimony, it is not in question whether the requirements in s. 28 of the Subdivision By-law are met. To recall, under that section, where adjacent land is undeveloped, the

proposed streets must be laid out in such a way that “does not prejudice the development of the adjacent land.”

[80] Mr. Swanson indicated that he is aware of other development proposals where street extensions to development property boundaries were not required, where site-specific issues made it inappropriate. Oakfield points to the five subdivisions it referred to in its documentary evidence – Island Lake Close, Henry Avenue, Shady Vista Drive, Beech Crest Drive and Adelchi Court [Exhibit O-10, p. 34], as well as the plan for phase 3A of Oakfield’s developments, which did not include any road reserves as apparently required by this section of the guidelines.

[81] The Board accepts the testimony and opinion of Mr. Sooriyakumaran and Mr. Swanson that the Old Truro Road will provide access to the properties to the north and south of the subdivision. Failure to include an access road elsewhere in the subdivision would not prejudice development on those parcels. The appellant’s evidence also appears to demonstrate that other subdivision plans proceeding under s.12 of the Subdivision By-law did not include the road reserves that HRM says must be provided under Guideline 4.2.3.2. However, the submitted plans of these developments show that none of the subdivisions are identical in character, location, or features. It is not known what other factors may have weighed in the Engineers’ consideration or determination of an available alternative in those cases. The Board notes that a key objective of the Subdivision By-law is to ensure uniformity of practice within the Municipality. Development staff should ensure that their approach to a contextual and purposive analysis is consistent, however, the nature of that analysis in a particular fact circumstance will not always yield the same result.

[82] Mr. Sooriyakumaran's report sets out the arguments and rationalizations for why road reserves should not be required to connect to the Halifax Water Lands beyond the proposed cul-de-sacs on each parcel. Mr. Swanson and Mr. Sooriyakumaran shared the view that a road reserve to the Halifax Water watershed lands was not "acceptable" for several reasons, which can be summarized as:

- Halifax Water has access to their lands from a public highway;
- Halifax Water and the Bannery Lake Watershed Management Committee reviewed the application and accepted that "no planned roads fall within the PWA or PWS";
- Halifax Water has requested that other subdivisions in the area do not provide roads or road reserves to deter trespass;
- HRM did not require street extension/road reserves off a cul-de-sac on Henry Avenue in Fall River, where Halifax Water was seeking watershed protection land;
- Any suggestion that access must be required in case the lands are transferred or abandon their protected designations is so remote that it is unreasonable. [Exhibit O-23, p. 8-9; O-23, p. 8-9]

HRM did not object to the evidence underpinning these arguments but argued that "Halifax Water's landholdings are not eternal and immutable," and "consideration of future access is relevant even when current land use does not require extension of the road network at the time of application." [HRM Submissions p. 19-20].

[83] Guideline 4.2.3.2 includes mandatory language – "an acceptable right-of-way access to adjacent properties must be provided and deeded to HRM." The Municipal Engineers found that not providing a road reserve to the adjacent properties was not acceptable access, despite the site-specific limitations. Ms. Blissett's revised report explains that:

The intent of this section is to ensure that when designing subdivisions street systems, the layout allows for future extension of the public street network. The access road described

above is commonly referred to as a road reserve in subdivision plans. It is important that new subdivision designs consider the surrounding lands and allow for future street extension and neighbourhood connectivity.

...the MDG requires these road reserves to be constructed as a minimum standard. Once constructed, these road reserves become part of the street network, as well as an asset that is owned and maintained, if deemed necessary, by HRM. The developer of the adjacent subdivision would then complete the construction of the road reserve as part of their development and the continuation of the street network.

[Exhibit O-16, para 52-53]

[84] Mr. Swanson offered his opinion that Section 4.2.3.2. does not apply if its application requires an extension of a “Section 12 road” because of the prohibition in Section 9(1) on the construction of new public streets within the area of the proposed development except under certain circumstances. Section (12(i)) allows for a minimum frontage on a public street that existed on April 26, 2006, from which access will be gained. Section 12(ia) allows for building on a road reserve held by the Municipality or NSTIR that existed on April 26, 2006. No new public street can extend beyond the limits of the new lots being created, under (12(d)). Any road reserve created under Oakfield’s subdivision would be created well beyond the date restriction set out in the By-law and could not be relied on as an “existing street” to facilitate further development under the current By-law. Insisting on building the road reserves would set up access for the development of new roads and extension of the roads beyond the allowed lots, contrary to By-law s. 9.

[85] Mr. Sooriyakumaran, in his Rebuttal to HRM’s Amended Expert Report [Exhibit O-20, p. 5] explained the impact of the requirements of s. 12 on the construction of an access right-of-way at the boundaries of a “Section 12 lot” as follows:

Section 12

In all my reports, I have stated the limitations of Section 12 of the RSBL. Talking about the limitations of s. 12, there are 3 particular sections, they are 12(b), 12(c) and 12(d):

(b) no more than 8 lots plus a Remainder lot shall have frontage on any new public street or highway within any area of land;

(c) the proposed lots must be contiguous and be designed to maximize the lot frontage of the public street or highway based on the applicable maximum required lot frontage; and

The combination of (b) and (c) limits the subdivision to eight lots and a remainder, and requires us to maximize the frontage, [...]

The important criteria being the lots must have minimum frontage so that one cannot extend the road by having lots with frontages in excess of the minimum. In addition Section (b) states that the new street must be within the area of land. Area of land is defined in the bylaw as being a parcel of land. [...]

The additional requirement Section 12(c) states that the lots must be contiguous. This means each lot must have a common boundary. This prevents one from extending the road because where the extension [would be] the lots are on either side and they are not contiguous.

Section (d):

No new public street or highway shall extend beyond the limit of the new lots being created; and

Section 12(d) further limits the length of Section 12 road to the limits of the lots being created.

[86] The current plan of subdivision does not lend itself to allowing for access roads as the Guidelines describe from a design standpoint. However, the Board also accepts the opinions of Mr. Sooriyakumaran, Mr. Swanson and Mr. Creaser that the requirements of s. 12 do not permit the creation of additional “new” streets in the area that extend between parcels established under different deeds. The potential for an unresolved conflict between s. 12 and s. 4.2.3.2 of the Guidelines requiring access roads was acknowledged by Mr. Creaser and Crysta Cummings [Exhibit O-3 p. 97-98]. Mr. Sooriyakumaran’s reports set out his opinion that the requirements cannot operate together.

[87] The Board finds in this case there is a conflict between the provisions of s. 12 and s. 104 (caused particularly by s. 4.2.3.2. of the Engineering Regulations). The evidence before the Board is that Section 12 is the only provision that would allow the

creation of a new public road as of right within the Rural Commuter designation, where the lots are located. The By-law does not allow for new access roads to extend to the boundaries of Oakfield's Parcels to adjacent parcels or subdivisions. Section 12(c) requires that there be no break in the contiguity of the lots on a Parcel, which would be required in order to extend a road stub to the eastern boundary with the Halifax Water lands, in particular.

[88] As discussed, the Board finds that the conflict resolution provision in s. 6 of the Subdivision By-law does not apply in this instance, where there may be an internal conflict within the By-law, rather than an "other regulation or by-law." Even if s. 6 of the By-law was found to apply to resolve the conflict, however, the Board would come to the same conclusion as Oakfield, and considers s. 12 to be the higher and more stringent restriction on development in the Rural Commuter designation.

[89] Applying the common law principles for conflict resolution, the Board considers that s. 12 is the higher, more specific requirement, applying directly to the development of the land under consideration. The By-law sets out the exception to the general restriction on development and the language is clear and direct. The Engineering Regulations apply generally to all subdivision plans. Section 4.2.3.2 calls for acceptable right of way access to adjacent lands and describes the particulars of building and preparing the road reserves to create access for future connections. It can be read down, without significantly altering its meaning and in accordance with its intent to ensure future development is not prejudiced. This can be done by applying the requirement where development of the adjacent parcels *would be prejudiced* without adequate access from the proposed subdivided parcel. In this case, the Board would resolve the conflict in favour

of the requirements of s. 12 but finds that by reading down s. 4.2.3.2 of the Guidelines, the requirements can still operate together. Without prejudice to adjacent properties, the Board finds that proposed plan of subdivision accords with this section and, subject to the analysis of the remaining guideline under s. 4.2.3.3, would therefore comply with s. 104 of the Subdivision by-law.

6.3 Section 4.2.3.3

[90] The third guideline relied on by Ms. Blissett in her revised expert report is s. 4.2.3.3, which addresses the continuity of the street system:

Guideline 4.2.3.3

In general, the use of continuous streets is encouraged, and the number of cul-de-sacs shall be limited where the land can be effectively serviced by the continuous extension of the road system. Where cul-de-sacs are to be provided, they shall end in a cul-de-sac, have a right of way deeded to the Municipality, and not normally have islands. Where islands are necessary, the minimum radius of the island shall be 6m and the minimum width shall be 9m between curbs for urban roads and 6.4m pavement width for rural roads. Islands shall be designed for low maintenance.

[91] The language used in this guideline on the use of continuous streets is not compulsory. The instructive sentence uses “in general” and “encourages” rather than “always” and “required.” While the guideline does not prohibit the use of cul-de-sacs, reading it as a whole, it is clear that the default is that use of cul-de-sacs be limited, where extension of the road system is possible and allows effective service of the lots.

[92] The current application does not provide a secondary option for a continuous street network, either within the proposed subdivision or that allows for street extensions to adjacent lands. Oakfield notes that, upon submitting a prior proposal allowing a continuous road layout for lots 17-19 in 2015, planning staff informed Mr. Sooriyakumaran that the configuration would not comply with ss. 12(b) and 12(d) of the

Subdivision By-law. Section 12 limits development on the lands by limiting the development of new public roads.

[93] As discussed earlier, s. 9(1) of the Subdivision By-law restricts the creation of lots for residential uses on new public streets or highways unless in accordance with ss. 10, 11 or 12 of the By-law. Section 12 is the only provision that, in this case, would allow the creation of a new public road as of right within the Rural Commuter designation, where the lots are located. Oakfield says that other than the Old Truro Road, a continuous road cannot be provided to adjoin the lots.

[94] The language in the Guidelines gives HRM Municipal Engineers some discretion to determine when they may insist on a continuous road network vs. “limited” use of cul-de-sacs. Oakfield points out that it revised an earlier version of the application to reduce the number of proposed cul-de-sacs and include a continuous road network, which was rejected.

[95] Ms. Nearing points to the objectives set out in ss. 1.3 and 3.1 of the Regional Plan and s. 4.1.4 of the Engineering Regulations. She says these direct that street design “...should create and support communities that are attractive, accessible, and well-connected....” This includes effective connectivity for pickups and deliveries and emergency services. She submits cul-de-sacs prevent interconnectivity and their use should be discouraged and limited where “...alternative designs can effectively service the lands.” Ms. Nearing submits there is nothing in s.12 of the Subdivision By-law that requires that a new public street be built as a cul-de-sac.

[96] HRM emphasizes the example of Beechwood Drive [Exhibit O-15, p.1] where a s. 12 subdivision does not end in a cul-de-sac. Ms. Nearing further submits that

examples provided by the appellant at Exhibit O-15, p.2, and O-10, pp. 34,35 and 36 show a limited use of cul-de-sacs, with only one proposed for each development.

[97] HRM submits “[t]here is no evidence that the land in question cannot be effectively serviced, from an engineering perspective, by the continued extension of the road system.” Ms. Nearing submits the appellant’s 2015 design proposal shows that a continuous road network that interconnects with adjacent land was possible, from an engineering design perspective.

[98] The appellant submits that objectives are not enforceable. Mr. Robbins says it is the guidelines established to implement the objectives that create the rules under which a subdivision application is decided. He says a development officer or design engineer must decide whether the application conflicts with a specific guideline, and not whether it carries out the general intent of the Design Guideline or the Regional Plan.

[99] The appellant submits that the evidence is clear that a continuous road network cannot be built because such a road would conflict with s. 12 of the Subdivision By-law. Mr. Robbins says this does not mean the application can be denied on this basis, because s. 4.2.3.3 of the Engineering Regulations only encourages continuous road networks, but does not require them. Also, the appellant submits limitations on cul-de-sacs only apply when a continuous road network is possible, which Mr. Robbins reiterates is not the case with these lands.

[100] The appellant submits that HRM presented no evidence or submissions showing how a continuous road network could be achieved except for the 2015 plan. Mr. Robbins characterized the use of this example as “...quite disturbing in that it is obviously misleading.” He said HRM staff knew a continuous road network could not be built in

accordance with the 2015 plan because it did not comply with s. 12 of the Subdivision By-law. In any event, the appellant submitted that five parcels with three cul-de-sacs is, in fact, a limited number of cul-de-sacs.

[101] The use that can be made of the 2015 plan with a continuous road network in determining whether the tentative plan of subdivision meets the requirements of s. 4.2.3.3 of the Engineering Regulations highlights the essential distinction between the appellant and the respondent's respective positions about the interplay between the Engineering Regulations and the Subdivision By-law.

[102] The Board does not find Ms. Nearing's submission on the 2015 plan disturbing or misleading. It is premised on HRM's primary argument: that the requirements of s.12 of the Subdivision By-law and the Engineering Regulations are complementary, absent a conflict created by the actual language of the applicable provisions in the two sources against which the application is judged. As the Board understands it, Ms. Nearing is saying that from an "engineering perspective," without reference to the Subdivision By-law, a continuous road network can be built.

[103] Ms. Blissett explained what might prohibit a continuous road network from an engineering perspective:

It is desirable for the designer to thoroughly investigate the ability for a connected street network first and only propose a cul de sac if needed due physical limitations of the land and not for preference of design. Cul de sacs could be considered when the surrounding land is already development [sic] and further street extensions to adjacent lands is not feasible, or if the land is surrounded by a body of water, watercourses or wetlands.

[Exhibit O-16 at para 59]

[104] It is true that, viewed only from an engineering lens, a continuous road network can be accomplished. The 2015 plan shows there are no physical limitations that would prevent such a design. As the Board understands it, HRM is saying that if this is

shown, and there is no language in s. 12 of the Subdivision By-law that conflicts with the wording of the Engineering Regulations, as opposed to a conflict created by the particulars of the development, then the HRM Design Engineer was right to use a discretion afforded by the language of the Engineering Regulations to recommend a denial where this promotes the objects of these regulations and the Regional Plan.

[105] Leaving aside the issue that the language about continuous streets is not mandatory, Mr. Robbins submits the Development Officer, and by extension, the HRM Design Engineer, have no discretion. They must apply the provisions of the Engineering Regulations as written, and with a meaning that takes account of the restrictions imposed by s. 12 of the Subdivision By-law. As the Board understands the appellant's position, if the operation of s. 12 of the Subdivision By-law prevents a continuous road network, in the circumstances of this case, as opposed to generally, then a continuous road network is not required, and cul-de-sacs are appropriate under s. 4.2.3.3 of the Engineering Regulations.

[106] The Board is satisfied that HRM told Mr. Sooriyakumaran the 2015 conceptual plan conflicted with s. 12 of the Subdivision By-law. Mr. Robbins asked Mr. Sooriyakumaran about this. He gave the following explanation:

Q. Okay, and to be clear, why are continuous roads not permitted as you have shown it?

A. So for instance, the parcel 18 ... the road in parcel 18 would start from a road in parcel 16 ... 17. So that is not permitted. The road has to be within the parcel and have to intersect with an existing public street.

So what I have shown is we construct one road on parcel 17 and then extend that road onto parcel 18, which violates the section (b) of the by-law.

Q. So the road on parcel 17. Is it a ... if it stopped at 17 is it a section 8 ... section 12 road?

A. It will not be a section 12 road because I have many lots and allowing me to extend beyond eight lots and the remainder.

[Transcript, p. 91]

[107] The Board followed up with Mr. Sooriyakumaran about this explanation:

Q. Did they indicate why at that time?

A. Yes. It's a continuous street because the streets has to intersect on an existing road, always, on an area of land. So in this particular case it is intersecting on a new road. So the roads have to be within each parcel of land and it has to intersect on an existing street that existed before 2006.

It's a very restricted section. Everything was laid out how it should be, and I did realise that it did not meet but wanted to see whether ... because I felt it is a good concept, whether HRM would entertain that. So that is the reason I prepared this document, submitted it.

[Transcript, p. 136]

[108] As the Board understands Mr. Sooriyakumaran's evidence, to comply with s. 12 of the Subdivision By-law, the new public street must intersect with an existing road, in this case the Old Truro Road, and be entirely within an area of land, which means within each parcel being subdivided. This would mean that, leaving aside any lot configuration issues, no tentative plan of subdivision could be approved, including one based on the 2015 conceptual plan, where the new public street crosses over the boundary of the parcel being subdivided into an abutting parcel. If this interpretation is correct, it would mean that s. 12 of the Subdivision By-law effectively prevents a continuous road network going beyond the boundaries of a particular lot being subdivided.

[109] No alternative interpretation was provided in the expert evidence. HRM's submissions did not suggest an alternative interpretation. Ms. Nearing pointed to examples in the evidence where s. 12 subdivisions were approved without the need for cul-de-sacs. She did not suggest that Mr. Sooriyakumaran's interpretation of the limitations on building new public streets in s. 12 of the Subdivision By-law, and in particular, that the new public street had to be within the parcel being subdivided, was wrong.

[110] During the oral submissions, the Board questioned both counsel about why the restriction in s.12(d) of the Subdivision By-law preventing new public streets from extending "...beyond the limits of the new lots being created," would not also consider all the new lots proposed to be created by the tentative plan of subdivision, as opposed to the new public roads being confined to each individual parcel proposed for subdivision.

[111] The Board asked why the eight lots plus a remainder limit within an "area of land" in s. 12(b) of the Subdivision By-law, which likely relates to existing parcels, needs to be incorporated into s. 12(d), where a subdivision including more than one parcel is being considered. Ms. Nearing indicated she had asked herself the same question, but staff advised her this had been the accepted interpretation for some time. HRM did not propose an alternative interpretation. In planning matters involving executory functions, it is important to have consistency in interpretation so that parties have a clear understanding of the criteria that must be met. The uncontroverted opinion of HRM planning staff, along with Mr. Sooriyakumaran's concurring opinion, carry significant weight. The Board is, therefore, satisfied that s. 12(d) of Subdivision By-law prevents a new road that branches off an existing road from crossing the boundary of a parcel proposed for subdivision, even where a number of adjacent parcels are included in the tentative plan of subdivision.

[112] The Board will analyze the interplay between s. 12 of the Subdivision By-law and s. 4.2.3.3 of the Engineering Regulations on the basis that s. 12 does not authorize new public roads that cross the parcel boundaries, even when more than one parcel forms part of the subdivision application. This is consistent with the internal memorandums between HRM staff and the evidence of Mr. Sooriyakumaran on this point.

[113] Also, the oral submissions provided more focus on s.12(c) of the Subdivision By-law. This part of the By-law requires that the newly created lots be contiguous. Contiguous means sharing a common boundary. This is consistent with Mr. Sooriyakumaran's evidence. Mr. Robbins provided a detailed explanation, with the aid of a schematic drawing to illustrate his point, why it was not possible to design contiguous lots with continuous road extensions. Basically, the road extensions break the contiguity of the lots because the road extensions form the boundaries of the lots. Even if the Board had come to a different conclusion on the meaning of s.12(d) of the Subdivision By-law, it would not resolve the issue of the requirement for contiguous lots in s.12(c).

[114] Section 12 of the Subdivision By-law says subdivisions involving new public streets "shall be permitted" if they meet the remaining requirements of this section. The proposed tentative plan of subdivision meets all the mandatory requirements in s. 12 of the Subdivision By-law. When seeking to give meaning to all the parts of the Subdivision By-law and the Engineering Guidelines, a basic common law interpretation tool is that conflict between these provisions should be avoided, if possible. Any potential conflict between s. 12 of the Subdivision By-law and s. 4.2.3.3 of the Engineering Regulations arises not because of the physical characteristics of the lands in question. A potential conflict does not arise because of a choice made by the appellant. The appellant initially wanted a continuous street network. A conflict arises because s.12 of the Subdivision By-law says such a network cannot cross parcel boundaries and the newly created lots must be contiguous.

[115] The Board finds that while s. 12 of the Subdivision By-law and s. 4.2.3.3 of the Regulations look at approvals from different perspectives, they cannot be completely

divorced from each other. Where continuous streets are not allowed by s. 12 of the Subdivision By-law, and only “encouraged”, but not mandated, by the Guidelines, the potential conflict can be readily resolved by not requiring a continuous road network in the circumstances of this case.

[116] The issue of the number of cul-de-sacs can be resolved on the same basis, since in this case the lands cannot be effectively serviced by a continuous road network that is not allowed by s. 12 of the Subdivision By-law. The Board would further comment that where there are physical limitations that limit a continuous road network, it is difficult to understand why allowing cul-de-sacs would be any more desirable, or safer, than if the limitation is created by the operation of the Subdivision By-law.

[117] Ms. Blissett said that every application had to be assessed based on its own characteristics, including one where only one cul-de-sac is proposed. She also said:

If we were looking at one cul-de-sac on one area of land, then section 12 ... then these wouldn't necessarily ... the precedent of reducing cul-de-sacs may not apply.

[Transcript, p.299]

[118] The Board acknowledges that Ms. Blissett said that several cul-de-sacs over “an area of land”: that includes more than one parcel is problematic. However, if an area of land equates to a parcel for the purposes of the limits on new road extensions, it tends to indicate that a single cul-de-sac is a “limited” number of cul-de-sacs in the face of that restriction.

[119] Based on all the foregoing, the Board finds the tentative plan of subdivision application does not conflict with s. 4.2.3.3 of the Guidelines. Finally, recognizing that each application for subdivision turns on its particular circumstances, the Board believes

that because of the way this matter was presented and argued, its findings may well be even more restricted to the circumstances of this case.

6.4 Do Common Driveways Fulfill the Requirements of s.104 of the Subdivision By-law?

[120] Both the appellant and the respondent addressed the fact that common private driveways are not governed by the Engineering Regulations. HRM stressed the fact the existence of the common driveways could not be used to assist the appellant in complying with the Engineering Regulations. Oakfield stressed the point they could not be used as a basis for denial. Oakfield pointed to the degree of access provided by the common driveways. HRM stressed the pragmatic difficulties created by common private driveways because HRM has no mechanism to enforce maintenance standards for them.

[121] The Board appreciates HRM's concerns, because if the homeowners do not maintain the common driveways, they may find themselves without municipal services, including difficulty with emergency responders, such as firefighters. However, because these common driveways are not covered by the Engineering Regulations, they cannot be used as a basis for a denial of the tentative plan of subdivision.

7.0 CONCLUSION


[122] The Board finds that Oakfield's application does not conflict with s. 104 of the Subdivision By-law when the Engineering Regulations are properly interpreted in the context of this tentative plan of subdivision under s. 12.

[123] The Board finds that the decision of the Development Officer to deny the application conflicts with the Subdivision By-law and directs the Development Officer to

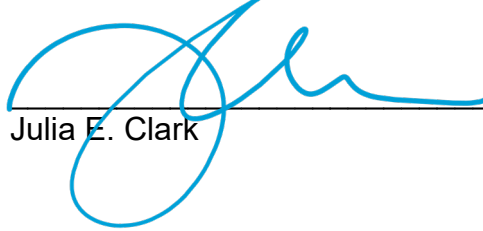
approve the tentative plan of subdivision. The tentative plan of subdivision should accordingly be approved.

[124] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 27th day of January, 2025.



Richard J. Melanson



Julia E. Clark