DECISION **2024 NSUARB 10**
M11251

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **ANNE KNOWLTON** from a decision of Harbour East-Marine Drive Community Council to approve an application by ZZap Consulting on behalf of A.J. Giles Investments Limited for a Development Agreement for property located at 1268 Cole Harbour Road, Cole Harbour (PID 00406702 & 41217431), Nova Scotia (PL-23-15)

BEFORE:	Julia E. Clark, LL.B., Member
APPELLANT:	**ANNE KNOWLTON** Chad Knowlton
RESPONDENT:	**HALIFAX REGIONAL MUNICIPALITY** William Hatfield, Counsel Meg MacDougall, Counsel
APPLICANT:	**A.J. GILES INVESTMENTS LIMITED** Robert Grant, K.C. Folu Adesanya, Counsel
HEARING DATE(S):	November 22, 2023
DECISION DATE:	**January 18, 2024**
DECISION:	**Appeal is denied.**

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1.0 SUMMARY

[1] Anne Knowlton appealed to the Nova Scotia Utility and Review Board to reverse the Harbour-East Marine Drive Community Council's decision to approve a development agreement allowing a mixed-housing development on the property next to her home in Cole Harbour, Nova Scotia. Her essential arguments are that the planned buildings will be too close to her property, too large, and allow for too many residential units for the size of the property.

[2] The owner of the development property, A.J. Giles Investments Limited, applied for the development agreement to construct a 4-storey apartment building with up to 30 dwelling units with underground parking and interior storage and a 3-storey townhouse building of up to 16 units with interior storage. Community Council approved the application on July 6, 2023.

[3] Mrs. Knowlton appealed to the Board under section 262(2) of the *Halifax Regional Municipality Charter,* S.N.S. 2008, c 39 (*HRM Charter*)*,* the legislation that governs municipal planning in the Halifax Regional Municipality (HRM)*.* Her son, Chad Knowlton, gave evidence on her behalf and represented her during the hearing and in written submissions.

[4] The development property consists of two lots (PID 00406702 and 41217431 in the Nova Scotia Land Registry System) with distinct designations and zoning under the Cole Harbour/Westphal Municipal Planning Strategy (MPS) and Land Use By-law (LUB), the planning documents that apply in this area. The property is located at the intersection of Cole Harbour and Bissett Roads, where Cole Harbour Road narrows from four lanes to two going east onto Marine Drive. The north/front portion of the property is

within the Community Commercial designation and zoned C-2 (General Business). The back/south portion is zoned R-2 (Two-unit Dwelling).

[5] The planned buildings have more residential units than would be allowed as of right in the C-2 and R-2 zones under the LUB. However, Community Council may consider multiple-unit buildings of greater capacity in the zones through development agreements, subject to the provisions of applicable MPS policies.

[6] The parties agreed that increased residential development benefitted the community. New housing options are needed in HRM. However, Mrs. Knowlton believes that the number of units and the size and location of the buildings authorized on the lot is not reasonable for that location. Her principal grounds of appeal are that the development agreement fails to carry out the intent of the MPS because of the density of the development, and insufficient controls on lot coverage, height, site design features, and parking. This decision considers the applicable MPS Policies CC-4, UR-10, and Implementation Policy IM-II, which cover the key themes of her arguments.

[7] In municipal planning appeals, the burden of proof is on an appellant to establish, on a balance of probabilities, that the council's decision does not reasonably carry out the intent of a municipal planning strategy. HRM and A.J. Giles Ltd. say that the Appellant failed to meet her burden of proof and the Board must defer to Community Council's decision. They rely on the information that Community Council had to consider and the expert testimony of Paul Sampson, HRM Planner and Connor Wallace, of ZZap Consulting.

[8] The development will result in increased residential density in an area surrounded by low-density dwellings and some commercial buildings. This will inevitably

change the landscape around the Knowltons' property, which they clearly value. However, the land use designations that the current MPS attributes to the property allow for such development under the right conditions.

[9] Development agreements allow Council additional flexibility to facilitate and control land use and development in areas where it may serve the intent of the MPS but is not permitted as of right. The qualitative requirements under the LUB may give insight into the intent of the MPS for a zone, particularly when the documents have been approved together. The requirements can be helpful references for planners and councils in considering what is reasonable and in line with accepted planning standards. However, Council is not required to extrapolate the LUB requirements into a development agreement or use them as a minimum standard.

[10] I find that Council interpreted and applied the applicable MPS policies in a manner the language could reasonably bear in approving the development agreement as drafted. The development agreement includes controls to reduce conflicts with the existing residential area. It addresses issues that Council was required to consider under the relevant policies. There is no evidence that Community Council did not have enough information to arrive at its decision or that it considered irrelevant factors. HRM had an opportunity to hear concerns from neighbouring property owners and to address them in the final agreement. The staff reports support the proposal and justified the planning choices. I am satisfied that, on a balance of probabilities, the development agreement approved by Community Council reasonably carries out the intent of the MPS. I confirm the decision to approve the development agreement for 1268 Cole Harbour Road.

[11] There is one remaining procedural issue not related to the merits of the appeal. Citing fairness and his family's financial circumstances, Mr. Knowlton asked the Board to waive its requirement for the appellant to reimburse the Board for the costs of advertising the notice of proceedings in the local newspaper. I determined I have the authority to entertain this request. Mrs. Knowlton must provide the required documentation to support the request within 60 days of the date of this decision, so that it may be considered by the Board.

[12] Other than reserving a decision and my jurisdiction on that sole procedural issue, the appeal is dismissed.

2.0 ISSUES

[13] The key issue in this appeal is whether the Appellant has proven facts that Community Council's decision to approve the development agreement reasonably carries out the intent of the Cole Harbour/Westphal Municipal Planning Strategy. The primary grounds for Mrs. Knowlton's appeal are that the development agreement's provisions about lot coverage, building height, separation distances, parking and design are not compatible with its location and ignore the requirements of the Land Use By-law. In her view, the proposed density of the development is too intense for its location. The decision reviews the applicable policies and the related evidence from the appeal record produced during this proceeding.

[14] I also considered Mr. Knowlton's argument that Council should be required to consider the applicable policies against any qualitative LUB requirements as a standard.

[15] The Knowltons question whether the north portion of the property at the corner of Cole Harbour and Bissett Roads was zoned improperly when the current planning documents were amended in 1992-93. Mr. Knowlton asked the Board to consider that decision given that the rezoning facilitated the development agreement application. I addressed this issue at the hearing and confirm now that whether Council followed a proper process to change the zoning is beyond my jurisdiction to answer.

[16] The *HRM Charter* does not authorize the Board hear an appeal of a decision to amend a municipal planning strategy. The decision to set the boundaries of the Community Commercial designation was part of the process to amend the Cole Harbour/Westphal Municipal Planning Strategy in 1992. Because the amendment to the Land Use By-law to achieve the rezoning appears to have been undertaken to concurrently carry out the Municipal Planning Strategy amendments, section 263 of the *HRM Charter* would not permit an appeal of that land use by-law amendment.

[17] In any event, even if there was a decision to rezone 1268 Cole Harbour Road that the Board could have entertained at the time, the limitation period to appeal that decision has long passed. I must consider the planning documents as they are currently drafted and apply to this application. All parties agree that the portion of the property fronting on Cole Harbour Road is shown within the Community Commercial Designation in the Generalized Future Land Use Map (Map 1) and zoned as C-2 General Commercial in Map 2, the zoning map in the Cole Harbour/Westphal LUB.

[18] I also considered the implications of the inclusion of site landscaping and certain parking-related criteria as “non-substantive” subjects for the purpose of future amendments to the development agreement.

[19] Finally, I considered an outstanding procedural issue raised by Mr. Knowlton, asking the Board to consider waiving the Appellant's cost of advertising the notice of hearing in the local newspaper.

3.0 ANALYSIS AND FINDINGS

3.1 What are the legal tests and how do they apply to this appeal?

[20] Municipal planning matters, including appeals to the Board, are governed in the Halifax Regional Municipality by the *HRM Charter.*

[21] The parties did not challenge the standing of the Appellant to bring this appeal as an "aggrieved person". Section 65(1)(b) of the *HRM Charter* says that an aggrieved person may only challenge the approval of a development agreement on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy. The Board's jurisdiction is limited under s. 267 of the *HRM Charter*:

> **267** **(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;
> . . .
> **(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.

[22] Therefore, the Board must not interfere with Community Council's decision unless it determines that the decision does not reasonably carry out the intent of the MPS. The burden of proof is on the Appellant to establish the decision of Community Council to approve this development agreement does not reasonably carry out that intent.

[23] The Nova Scotia Court of Appeal has considered the standard by which the Board must review a council's decision in municipal planning matters. The Court says that the Board cannot substitute its decision for that of Community Council even if the Board would have decided differently. The Board's mandate is restricted to the jurisdiction conferred by the *HRM Charter.* The Board must consider the MPS in its entirety and I have no jurisdiction to allow the appeal if Community Council "interpreted and applied the [MPS] in a manner that the language of the policies can reasonably bear". (*Heritage Trust of Nova Scotia et al. v. Nova Scotia Utility and Review Board et al.,* 1994 NSCA 11, at para 99).

[24] The Court of Appeal summarized the principles governing the Board's review in *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, and these were recently confirmed in *Heritage Trust of Nova Scotia v. AMK Barrett Investments Inc.* 2021 NSCA 42. I reviewed and applied these cases in my review, in particular, the full summary of principles from *Archibald* in paragraphs 24-25. The citation of these principles forms part of many past Board decisions. I relied on their guidance.

[25] I approached my review guided by the established modern principle of statutory interpretation described by the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.,* [1988] 1 S.C.R. 27, at para 21:

> 21 […] 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. On 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.

[26] The Nova Scotia Court of Appeal, in *Sparks v. Holland,* 2019 NSCA 3, described the "three questions" the court typically asks when interpreting statutes: what

is the meaning of the legislative text, what did the legislature intend and what are the consequences of adopting a proposed interpretation? The Courts have accepted this approach to interpretation of municipal legislation (e.g. *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, and the Nova Scotia Court of Appeal judgment in *Halifax (Regional Municipality) v. 3230813 Nova Scotia Ltd.*, 2017 NSCA 72).

[27] This principle of interpretation is also consistent with 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 ensure 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.

[28] These principles apply to my analysis of the statutory provisions in the *HRM Charter*, as well as my efforts to interpret the provisions of the MPS and, where applicable, the LUB.

[29] I also considered how much deference I should give to Community Council's interpretation of the relevant provisions before arriving at my conclusions. My task is to interpret the provisions of the MPS that the Appellant says Community Council did not adequately consider. Then, to determine if I think the decision complies with the intent of the MPS, taken as a whole. Because planning appeals are *de novo* hearings, it means that I can consider evidence that Community Council may not have had. The

parties can make other arguments beyond what was presented at the time of the approval.

3.2 Reviewing Council's Decision

[30] The planning provisions in the *HRM Charter* make clear that Council is the primary decision-maker for planning issues. As long as Council exercises its discretion within the reasonable scope of the MPS' intent, it is entitled to deference even if different choices could be more protective of neighbouring interests.

[31] The Board must review the applicable policies and determine if Council interpreted and applied them in a manner that the language of the policies can reasonably bear. It must interpret the relevant documents according to the guidance set out by the Court of Appeal and applicable legislation. If Council's interpretation and application are within the reasonable bounds of the policies, the Board must give deference to those choices.

[32] Council approved the draft development agreement as submitted with the supplementary staff report for the June 15, 2023 meeting. The key aspects of the proposal include a 4-storey, 30-unit residential building on the north portion of the property fronting Cole Harbour Road, with one level of underground parking and interior amenity space for tenants; and a 3-story, 16-unit townhouse-style residential building on the south portion of the property with ground level parking and interior storage space.

[33] Unlike where there is a refusal, Council is not required to give reasons for its approval of a development agreement. Mr. Knowlton pointed out some comments from individual councillors that he felt demonstrated a lack of understanding of the application and problems with their reasoning. I agreed with the objections to introducing fresh

evidence about this commentary. The Board has often said that Council speaks with one voice, and the views of individual councillors are generally not helpful in interpreting a council's intentions in the context of an approval or refusal of an application. Councillors can have many reasons for voting in a particular manner.

[34] In the absence of written reasons, the Board will refer to the available evidence; in particular, the staff reports and draft agreement which formed the framework for council's approval. As stated in *Heritage Trust*, at para. 29, it is not the Board's job to "micromanage a *de novo* planning assessment." It is the outcome that the Board must address, based on the facts in the appeal record and any additional, relevant evidence brought to the Board at the hearing.

3.3 Evidentiary Issues

[35] Two expert witnesses testified at the hearing. Paul Sampson was qualified as an expert in land use planning per his qualification statement filed with the Board [Exhibit K-7 Tab 2]. He provided an expert planning report and testified on behalf of HRM. Mr. Sampson is an employee of HRM and presented the staff recommendation at the Public Hearing to consider this development agreement.

[36] Connor Wallace gave factual evidence on behalf of A.J. Giles Ltd. Mr. Wallace works for ZZap Architecture and Planning, a consulting firm that applied to HRM and stewarded the application on behalf of A.J. Giles. He was the primary contact for discussions with HRM planning staff during the development of the application for Community Council's consideration. Mr. Wallace was also qualified as an expert capable of giving opinion evidence on land use planning matters. It was the first time he was qualified before the Board.

[37] Chad Knowlton testified on behalf of Mrs. Knowlton, and represented her at the hearing, cross-examining the expert witnesses as well as drafting final submissions. Mr. Knowlton's presentations contained a mix of evidence, lay opinion and argument, as is common for self-represented parties and lay witnesses. The Board operates under relaxed rules of evidence under s.19 of the *Utility and Review Board Act* and is used to this approach. Mr. Knowlton's final submissions introduced some issues that were not directly addressed in the hearing and documents that were not previously submitted.

[38] When I considered the Appellant's presentation and written submissions, I did not give any weight to unqualified opinion evidence or statements and documents purporting to be factual that were not available to the other parties at the time of the hearing.

[39] Mr. Knowlton initially objected to Mr. Sampson's and Mr. Wallace's expert witness qualifications based on their employment relationships. The Board invited the parties to provide written submissions on the experts' qualifications in advance of the hearing. Ultimately, Mr. Knowlton waived his objection to the qualification of both experts. He focused on questioning the contents and conclusions in their reports and arguing what weight the Board ought to give to them based on the evidence. I found the testimony of both experts to be credible and fair under cross-examination. Both defended their conclusion that they reasonably addressed all the relevant policy considerations. They did not identify any aspect of the proposal that fell outside the range of acceptable outcomes from a planning perspective.

[40] The Board did not receive any letters of comment or requests to speak at the hearing. With the agreement of the parties, I visited the site on my own time without

the participation of the parties or counsel. I drove east on Cole Harbour Road to the intersection of Bissett Road and beyond, viewing Smith and Parkland Avenue. I identified Mrs. Knowlton's and A.J. Giles' property. I observed the large trees and vegetation at the boundary of their properties, and the large church and parking lot across the street. I was able to observe, as Mr. Knowlton described, the commercial buildings across from the property and an apparent decrease in the density of development in the vicinity of Bissett Road compared with the earlier/westerly sections of Cole Harbour Road.

3.4 Property Zoning

[41] Mr. Knowlton testified about his understanding of the history of the use of the property as well as changes to the zoning of the front portion that occurred around 1992. He understood the back lot was zoned R2 and the front lot previously zoned R3. When Mrs. Knowlton received notice of the development application, the family were not aware that the neighbouring land had been rezoned to C-2. They assumed that the properties abutting theirs were residential.

[42] The Knowltons researched the history and found requests from the former owner of the property to rezone the land to commercial, but otherwise could not determine what process was undertaken to approve the change. Mr. Grant, counsel for A.J. Giles Ltd. objected to the line of evidence because the matter had been decided and the Board did not have jurisdiction to reopen an examination into that process. Mr. Knowlton did not contest the objection about the Board's jurisdiction. He disputed the process and said that the evidence spoke to the issue of whether the development was "uniquely unsuitable for where it is". He believes that section of Cole Harbour Road was never intended to be part of the Community Commercial designation because it is "past Bissett Road", referring to

a text reference on page 89 of the MPS in the explanatory text before the policies, which discusses the location:

> "The Community Commercial Designation extends along both sides of the Cole Harbour Road from the City of Dartmouth boundary to the intersection of the Bissett Road."

[43] Mr. Sampson addressed the prior rezoning issue with Council during the public hearing. He also told the Board that the existing land use designations for the property have been in place since 1992, when the former Halifax County Municipality approved the MPS and LUB for Cole Harbour/Westphal after a public hearing. These are: Community Commercial (CC) in the front lot facing Cole Harbour Road and Urban Residential (UR) in the rear, as well as their respective zoning (C-2, General Business and R-2, Two-unit Dwelling). On questioning from Mr. Knowlton and the Board, Mr. Sampson maintained that proper procedures were followed for the application of the land use designations and zoning by the then-Council.

[44] None of the parties could provide clear documentation about when it was decided to change the designation and rezone the front lot of 1268 Cole Harbour Road to C-2. I cannot say whether there was cause for public objection to a change in the designation and zoning for the property at the time the MPS and LUB were approved. I must take the MPS and LUB documents now as I find them. My review of the Zoning Map (Map 2) and the testimony of witnesses confirms that the property is identified as within the C-2 zone, abutting Cole Harbour Road.

[45] I do not agree with Mr. Knowlton's characterization that the explanatory sections for the Community Commercial policies show a clear intention to impose a strict boundary on the Community Commercial Designation ending at the west side of Bissett Road, just before the property. He said I could rely on that intention when considering the

impact of a new, more intensive use in the residential area. Map 1, the Generalized Future Land Use Map indicates the property within the Community Commercial Designation and, in Map C-2 that the property is zoned C-2. The MPS text on the Land Use Intent refers to the “intersection with the Bissett Road”. The property is located at the southeast corner of that intersection. In addition, properties abutting Cole Harbour Road between John Stewart Drive and Smith Avenue, directly across the road from the intersection with Bissett Road, are also within the CC designation and zoned C-2.

3.5 Does the Approval of the Development Agreement conflict with the intent of applicable MPS Policies for the Land Use Designation?

[46] The Cole Harbour/Westphal area has several land use designations with various criteria applicable to development within them. As previously stated, A.J. Giles Ltd.’s property is divided into two land designations: PID 00406702, fronting Cole Harbour Road, is designated Community Commercial and zoned C-2. The rear portion PID 4121731 is designated as Urban Residential (UR) and zoned R-2.

[47] A.J. Giles Ltd. proposed in early 2020 that the rear portion of the property be rezoned from R-2 to C-2 General Commercial. After discussions with HRM planning staff, A.J. Giles Ltd. ultimately changed the proposal to request a development agreement to allow the type of development they were considering. Mr. Sampson explained that this approach allows greater detail within a proposal and includes site-specific controls on the land use and development requirements.

[48] Under the *HRM Charter,* a municipal planning strategy can authorize a council to consider the development of a property under a development agreement. A development agreement is a legal agreement between a municipal council and a property owner. It establishes site-specific development requirements that may differ from those

in the land use by-law. When a municipal planning strategy permits development agreements, it generally identifies what types of development may be undertaken, the areas where a development agreement may be used, and the matters that the council must consider before approving an agreement.

[49] Community Council must consider the development agreement in light of the intent of the MPS as a whole, which means considering any specific, applicable policies. The core arguments in this case focused on three relevant policies: Policy CC-4, applicable to the consideration of development agreements in the Community Commercial Designation, UR-10, applicable to the consideration of development agreements in the Urban Residential Designation, and Implementation Policy IM-11, which Community Council is required to consider for all development agreement proposals.

[50] A general statement of the intent of the Community Commercial Designation is found within the statements of Land Use Intent in Section III of the MPS. The intent is to “encourage the creation of a community focal area along the Cole Harbour Road…” Further, Policy CC-1 articulates the intention of Council “to encourage the growth of commercial and community developments which serve the local area and create a community focus.”

[51] Policy CC-2 establishes the General Business (C-2) zone, which is generally intended to permit general commercial uses, higher density residential uses containing no more than twelve units (as of right) and community uses including medical and day care.

[52] For properties within the Community Commercial Designation, MPS Policy CC-4 allows the Community Council to consider permitting multiple-unit residential uses with more than twelve units by development agreement. It sets out the factors that Community Council must consider.

[53] Section III of the MPS says that the land use intent of the Urban Residential Designation is to "recognize the existing residential environment while providing for a variety of housing types and densities as the community continues to grow and evolve." [Exhibit K-4, p. 50]. The applicable policies carry this theme. The proposed 16-unit townhouse building to be located on the Urban Residential portion and the associated UR policies were not the subject of much discussion in the proceedings. This was likely because of the closer proximity of the front lot to the appellant's property.

[54] Policy UR-1 says the Urban Residential designation constitutes the priority area for continuing residential development and uses supportive of residential environments. Within the designation, the intention is to maintain the single unit dwelling as the predominant type of housing but to increase the housing mix that meets the needs of all residents. Policy UR-5 enables the "Two Unit Dwelling" zone, permitting two-unit dwellings in residential areas and establishing limits on consideration of new two-unit dwellings through LUB amendments.

[55] Similar to Policy CC-4, Policy UR-10 authorizes Community Council to consider multi-unit residential developments of more than six units under a development agreement within the R-2 zone under the Urban Residential Designation.

[56] Policies CC-4 and UR-10 also require consideration of Policy IM-11, an implementation policy that sets the criteria for Council to consider for any development

agreement. These criteria are in addition to “all other criteria set out in various policies of [the] planning strategy.” The Appellant raised concerns with the application of several of those criteria including whether:

> (c) controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:
> (i) height, bulk and lot coverage of any proposed building;
> (ii) traffic generation access to and egress from the site, and parking;
>
> [Exhibit K-4 p. 108]

[57] Other criteria under the three policies were addressed to some extent in oral testimony, including overall site design and structure, open space access and amenity areas.

[58] In my review of the policies to find their meaning, under the required interpretation analysis, I did not find the text to be ambiguous or find conflicts between or within the applicable policies. Rather, the key question is whether the choices made to address the policy criteria and “reduce conflict” were reasonable. The Appellant’s revised grounds of appeal focus primarily on the adequacy of separation distances, parking and traffic generation, lot coverage and site design elements. The staff reports included a comprehensive analysis of the proposal against each factor listed under the applicable policies. The hearing did not result in a complete discussion about each factor. For ease of understanding, I have grouped the main themes into separation distances; site design elements including lot coverage, height and scale; and parking, access and traffic generation.

3.5.1 Separation Distances

[59] Both Policy CC-4(b) and UR-10(a) require Council to consider separation distances from low-density residential uses. The properties surrounding the development

site are generally low-density residences on Parkland Avenue, Bissett Road, and Cole Harbour Road. As shown on the aerial site plan [Exhibit K-3, p. 37] and described in the staff reports, the surrounding neighbourhood includes low and medium residential uses, a “low rise” apartment buildings, churches, and different commercial uses along both sides the Cole Harbour Road where there is C-2 zoning.

[60] The Knowltons are very concerned about the setback of the 4-storey apartment from the southwest property line that abuts their property. Mr. Knowlton points out that balconies on the upper floors encroach further into the separation, resulting in a further impact on the privacy and enjoyment of neighbouring owners.

[61] The initial staff report [Exhibit K-3, p. 232] reviews the setbacks for each of the buildings. Mr. Sampson explained that, after public feedback, the survey measurements of the property boundaries were reconsidered. This required modifications to the survey plan and site plan. The setback distance of the building wall from the southwest boundary was amended from 5.8m to 5.6m. to reflect the correct boundary. The supplementary staff report [Exhibit K-3, p. 273] identified these changes for Community Council and reflects Mr. Sampson’s opinion this change in the setback did not materially impact neighbouring properties nor change his recommendation that it was reasonable for this development.

[62] The setback of the 4-storey building from the western boundary of the property with the homes on Bissett Road created the most concern for the Appellants. Both staff reports, and the oral testimony of Mr. Sampson and Mr. Wallace, point out that the separation distances provided for in the development agreement are comparable to those required for commercial buildings in the C-2 zone. Mr. Knowlton challenged this

because he said the impact of multi-unit residential buildings on low-density residential zones would require different considerations. He also argued that the possible residential density within the proposed development meant that its impact could not be considered comparable to a twelve-unit, 3-storey apartment, for example.

[63] Mr. Sampson and Mr. Wallace testified that the separation distances along the property boundaries are reasonable for the proposal on the subject site. The development agreement includes wording that protects a section of land (that Mr. Wallace called a “non-disturbance area”) within 10 feet of the Knowlton’s property line. They both also highlight that the separation will be bolstered by privacy measures. As stated in the initial staff report:

> The proposed agreement requires privacy measures, which include opaque fencing (6ft high) or vegetative screening along all side and rear property lines. Along the southwest property line abutting the 4-storey building, where the proposed buildings would be the closest to and have the greatest impact on abutting development, the development agreement requires tree retention measures, fencing along the property line, and privacy screening of balconies such as opaque panels and semi-opaque (frosted) glass panels.
>
> Landscaped areas will include a formal outdoor amenity area in the front northwest corner of the site, which will include hard and soft landscaping elements … There will be a landscaped terrace to the rear of the 4-storey building adjacent to an interior amenity room. Walkways in front of building entrances will allow for pedestrian access to the street. Other unprogrammed green areas around the building perimeter will include a sodded yard space. The proposed agreement requires the developer to submit a landscaping plan at the permitting stage.
>
> [Exhibit K-3, p. 236]

[64] Mr. Wallace advised that separation distances are “relatively consistent with land use by-law setbacks and are consistent with professional standards for buffering between higher density and lower density uses.” [Exhibit K-9, p. 2]. He highlighted the measures to improve visual separation and buffering through landscaping and the opaque fencing bordering the one- and two-unit dwellings, and the choice of privacy screening on the balconies. Mr. Sampson also addressed the explicit requirement for retention of existing trees.

[65] Mr. Knowlton noted restrictions in the LUB against balconies encroaching into a required setback. He questioned why Community Council agreed to include exterior balconies instead of “Juliet” balconies, as suggested by planning staff. That style of balcony allows some outdoor access but would not encroach into the setback to the same extent as an exterior balcony. Mr. Wallace explained that the shape, direction and privacy features of the balconies are intended to be less intrusive into the privacy of neighbouring yards than the large, flat window that would accompany a Juliet balcony.

[66] Mr. Sampson also clarified that during the iterative process of working through an application, a developer may agree with some, but not all of planning staff’s suggestions or recommendations. The developer may find another reasonable alternative to achieve the desired result. Mr. Sampson said that the proposed balcony configuration with frosted glass exteriors added to the private amenity space for tenants while mitigating privacy impacts from the upper-level balconies. Though it wasn’t his first choice, he was satisfied this was a reasonable solution.

[67] At first look, the visual representations and sketches of the buildings do not give a clear perspective that balconies are angled away from neighbouring backyards and screened to impede sightlines between properties. The experts’ explanations about the measures taken to mitigate the impact of the balconies satisfied me that the potential impacts of this decreased separation were not ignored. The height of the existing vegetation and the slope of the property will also reduce visibility between the properties at the southwest boundary. Planning staff were aware of various options for the placement of the building and the features of its balconies and informed Community

Council that the developer's selection was reasonable. There was no reliable contrary evidence on these points, and I have no basis to find otherwise.

3.5.2 Site design elements, lot coverage, bulk and height

[68] Mr. Wallace and Mr. Sampson identified how the development agreement addressed potential concerns about the impact of the higher density, height, bulk and design features. Certain issues required more careful analysis given the property's features and the character of the area. The discussions between HRM and ZZap Consulting achieved a result that both felt appropriately satisfied the relevant criteria.

[69] Mr. Knowlton drew the Board's attention to the criteria for considering amenity space in the MPS policies by referring to the LUB requirements. By his calculations, he believed the allotted amenity space to be insufficient for the expected density of residents occupying the property.

[70] I agree with A.J. Giles' submission that Community Council's consideration of the adequacy of amenity space allowance in a development agreement is not required to exactly match the LUB. The development agreement allows for different standards for different uses than what is required for as of right developments under the LUB.

[71] The development agreement does address requirements for indoor and outdoor amenity space. Section 3.4.9 requires a total of 2,100 sq.feet of useable outdoor and indoor communal amenity space, not including private balconies. However, private balconies, terraces and yards are included in the calculation of the amenity space requirement under the LUB. Mr. Wallace pointed out the areas on the site plan where indoor and outdoor amenity space was planned, (including the private balconies, townhouse terraces, and sodded areas around the buildings) which were not included in

the calculations of the development agreement requirement. He indicated that the total amenity space available (communal and private) would equal or exceed the amount which would have been required under ordinary zoning rules.

[72] Policy IM-11 requires Council to consider the adequacy of controls in the agreement to “reduce conflicts” with neighbouring properties. The policy does not require all conflicts to be eliminated. The provisions of the agreement related to the site and building design elements, landscaping, and privacy-enhancing features, demonstrate that conflict reduction was considered. The evidence does not dispute the planners’ opinions that the controls in the development agreement will be reasonable to reduce conflicts and achieve the desired outcome.

3.5.3 Parking and Traffic

[73] The Appeal Record includes two traffic impact statements. The first, dated February 11, 2020 [Exhibit K-3 pp. 21] was completed by GRIFFIN Transportation for the initial rezoning proposal. A second study was completed on September 14, 2021 [Exhibit K-3 pp. 49], for the revised development agreement proposal. It made similar conclusions. The second traffic impact statement concluded that the proposed development would have a negligible effect on existing traffic operations. It is directly relevant to the proposal and is more current. It noted no concerns with the new site driveway access or egress and concluded that site stopping distances met or exceeded HRM and Transport Association of Canada guidelines.

[74] Mr. Knowlton raised concerns about the quality of the studies, the speed of traffic on Cole Harbour Road and the potential impacts arising from an increase in new residents. However, these assertions were not supported by reliable evidence.

[75] Mr. Knowlton said that the lack of walking or cycling infrastructure in the area meant that it was not suitable for the proposed density and reduced on-site parking allotment. Despite the Urban Residential designation in the MPS, he described the area as suburban, and the area beyond Bissett Road as largely rural in character. He indicated that transit service is limited and not reflective of an “urban” area, which should weigh against reducing parking requirements for residential developments in the area.

[76] Mr. Sampson admitted on questioning by Mr. Knowlton that buses on that section of Cole Harbour Road did not come frequently. However, he said that within walking distance, Forest Hills Parkway had multiple bus routes. Mr. Knowlton challenged Mr. Sampson’s use of the community of Fairview to compare parking allotment requirements. He relied on a Halifax Transit Performance Report [Exhibit K-6, p. 15] to highlight that bus service is much more frequent in Fairview, a more urban neighbourhood. Mr. Sampson explained that the reference to Fairview was intended to give an example to Council rather than a comparison. Because of changes like the approval of the Integrated Mobility Plan, some new developments do not have any on-site parking requirements, including one in Fairview. Based on the area and proximity to transit and on-street parking on neighbouring streets, HRM Parking Services staff were not concerned about approving even fewer than one parking space per unit at the proposed development. Mr. Sampson admitted he was not aware of any developments in the Cole Harbour area that rely on on-street parking, but clarified he felt the plan could serve the parking needs of the development on site.

[77] Although Mr. Knowlton challenged whether the number and location of allotted parking spaces were suitable, the evidence before the Board and Council was

that the parking allowance for the expected number of residents was reasonable. The traffic impact statement noted that the development would provide off-street parking for residents and that, generally, the location of on-site surface parking spaces in relation to the driveway followed good design principles. It recommended certain restrictions on parking spaces to maintain good visibility. The parking plan must comply with the LUB provisions other than a reduced minimum requirement of one space per dwelling unit. While there is no on-street parking available on Cole Harbour Road or Bissett Road Mr. Knowlton and Mr. Sampson agreed that other side streets were available for some street parking.

[78] In looking at the development agreement criteria including factors such as height, bulk and lot coverage, as well as parking requirements, Mr. Knowlton relied on the LUB requirements as a “baseline” for what should be considered reasonable for the new development. Mr. Knowlton pointed out how the proposed development diverged from the established requirements of the LUB– stating, for example, that the setback was 60% of what is required in the LUB, and the density was so high that it would require 1.6 times more land if it were built according to the minimum lot area set out in the LUB.

[79] In the hierarchy of planning documents, the MPS comes first. It provides policy guidance on how a council should exercise its authority to develop and manage the municipality and how the LUB should achieve its objectives. The Cole Harbour/Westphal MPS allows Community Council to approve a different use or intensity of use on a property under a development agreement. The agreement sets the requirements. Section 3.6 of the Land Use By-law incorporates the MPS guidance that

uses which are otherwise not permitted in a zone may be considered in accordance with a development agreement. That section explicitly allows consideration of:

> (b) multiple unit residential uses containing more than six (6) dwelling units within the Urban Residential designation;
> …
> (n) multiple unit residential uses containing more than twelve (12) dwelling units within the Community Commercial designation.

[80] The Appellant's final submissions point out that HRM and the Developer argue, on one hand, that requirements for as-of-right development in the LUB have no place in the analysis of whether the development agreement protections are sufficient to carry out the intent of the MPS. He notes, on the other hand, that planners seem to often rely on comparisons to the LUB to justify a decision with a proposed development. Why are some respected, and others ignored?

[81] Previous Board decisions informed my conclusion that the key to using the requirements of the LUB in reviewing a development agreement is that they may sometimes provide helpful comparisons. However, the context matters. The terms of the LUB cannot be used to tie Community Council's hands in its interpretation of the overarching policies of the MPS when it has adopted other processes to consider types of developments not contemplated within the strict bounds of the LUB.

[82] Section 234 (3) of the *HRM Charter* says that the municipality may only adopt or amend a land use bylaw to "carry out the intent of a municipal planning strategy." In *J & A Investments Ltd. v. Halifax (Regional Municipality)*, [2000] N.S.J. 92 (S.C.), where the meaning of the LUB was in issue, Justice Davison interpreted the equivalent section of the *Municipal Government Act,* s. 219(1) to mean that an MPS may be used to help determine the intent of the LUB.

[83] Similar, but not identical language was used in s. 51(1) of the former *Planning Act*, which required Council to "concurrently" adopt or amend the LUB. The Court of Appeal in *Mahone Bay Heritage & Cultural Society v. 3012543 Nova Scotia Ltd.,* [2000 NSCA 93] considered that section and reasoned that a review of the LUB may help in "throwing light on the intent" of the MPS. The Court used a provision of Mahone Bay's LUB to assist in interpreting the MPS when its meaning wasn't clear:

> A search for the intent of a municipal planning strategy requires a careful review of the strategy represented by the policies of the municipality and, very often, a review of the By-laws implementing the strategy as the by-laws adopted concurrently with the MPS may assist in throwing light on the intent of the strategy. [para. 95]

[84] The Board has followed the reasoning in *Archibald* and the cautions in *Tsmiklis v. Nova Scotia Utility and Review Board et al,* 2003 NSCA 30, that the interplay between an MPS and LUB will have more interpretive value where the two documents are enacted at the same time. In reviewing *Tsmiklis* and *Mahone Bay,* the Board has said that the LUB ought not to "be used to tie council's hand…" (*3034875 Nova Scotia Limited v. Halifax (City)*, 2005 NSUARB 90).

[85] In the present case, it is the intent of the MPS which is the principal issue. Mr. Knowlton addressed aspects of the development proposal that he says significantly depart from the requirements of the LUB. He says this cannot carry out the intent of the MPS. He urged me to rely on the LUB provisions to determine what measurements and requirements Council should have considered reasonable in its review of the development agreement.

[86] HRM planners did rely on comparisons with the LUB and other local developments in some instances to explain and support the proposal before Council. Review of existing requirements is not illogical or outside the scope of consideration for

the Board when weighing Council's choices, when they assist with providing context. However, Mr. Knowlton appeared to take the view that having different requirements was proof that the development agreement was inherently contrary to the intent of the MPS. I would not agree that every divergence from LUB requirements in a development agreement must be justified or mitigated. In some cases, the LUB requirements may be unsatisfactory or too lenient depending on the characteristics of a development and its surrounding area.

[87] Development agreements are intended to provide flexibility for developments that conform to Council's intent for development but do not meet the specific requirements set out in the LUB. I have no basis to find that the qualitative inconsistencies with as-of-right requirements or existing developments mean that this proposal, as a whole, does not carry out the intent of the MPS.

3.6 Non-substantive Amendments to the Development Agreement

[88] Both experts relied on components of the site plan, including landscaping features, site fencing, tree retention and vegetation buffers to support their conclusions about the proposal's compliance with the intent of the MPS policies CC-4 and UR-10 regarding separation distances, the availability of open space, amenity areas and site design features. After reviewing the development agreement and hearing the expert evidence, I asked the parties to make submissions on how I should interpret Part 6 of the development agreement [Exhibit K-3, p. 284], which sets out which subjects can be considered "non-substantive amendments." The inclusion of this part is allowed by Subsection 242(3)(a) of the *HRM Charter*, which states:

> (3) A development agreement may
> (a) identify matters that are not substantive or identify matters that are substantive;

[89] The development agreement describes the “non-substantive amendments” as including:

> (a) Changes to the site landscaping and corresponding changes to the Schedules;
> (b) Changes to the surface parking layout, parking supply, driveway locations and underground parking access and corresponding changes to the schedules;
> (c) The granting of an extension to the date of commencement of construction as identified in Section 7.3.1 of the DA; and
> (d) The length of time for the completion of the development as identified in Section 7.4.1 of the DA.

[90] Recent amendments to the *HRM Charter* (introduced by *An Act to Amend Chapter 39 of the Acts of 2008, the Halifax Regional Municipality Charter, Respecting Housing,* S.N.S. 2022, c. 13*)* amended section 245(3A) of the *HRM Charter* to authorize a development officer to approve non-substantive amendments to a development agreement without a public hearing. Previously that section allowed a Community Council to approve non-substantive amendments in a development agreement without a public hearing.

[91] I asked the parties to address the implications of including clauses (a) and (b) in the development agreement and classifying them as “non-substantive” items. The testimony of the experts and the staff reports had emphasized landscaping features and the site layout as apparently substantive factors that could mitigate the impact of the proposal on neighbouring properties related to the separation distances, height and bulk of the buildings. A.J. Giles Ltd. acknowledged in final submissions that the landscaping plan “is part of the mitigation measures proposed to address building setbacks and privacy concerns.”

[92] Given the importance of landscaping features in relation to available common amenity space, separation and buffering (factors intended to reduce impact on neighbouring properties), I was concerned that amendments to those protections without

the approval of Community Council could undo the calibration Community Council would have made in approving the detailed provisions for on-site landscaping in Section 3.6 of the development agreement and the parking requirements under Section 3.4.3 and 3.4.4. Counsel for A.J. Giles Ltd. indicated the applicant would not object to the Board exercising its authority under section 267(1)(c) to approve the development with changes to clarify this intent, suggesting language to achieve that.

[93] HRM noted that, despite the amendments delegating authority to decide a non-substantive amendment to a development officer, the process for a development officer's consideration of an applicant's request for an amendment would be the same as under the prior version of the legislation. The *HRM Charter* delegates authority to development officers to interpret and apply the MPS and LUB. Mr. Sanford testified that his process considerations would be the same whether he was recommending Council approve a non-substantive amendment or approving it himself. He explained that before any amendment, staff is required to undertake a full policy analysis. While a non-substantive amendment request would not require a staff report to Community Council, the development officer would still consult with planning staff and undertake that analysis.

[94] To summarize HRM's argument, the inclusion of landscaping as a subject in Part 6 of the agreement shows Council's intent to strike a balance between allowing the developer flexibility to modify its prospective plans and continuing to retain features such as trees that reduce impact on neighbours. The presence of the non-substantive amendment clause relating to site landscaping does not establish that Community Council did not have appropriate regard for the MPS policy requirements.

[95] Since the parties submitted their written arguments, the Board released its decision in *Schwartz v. Halifax Regional Municipality*, *et al.* 2023 NSUARB 233. The Board found it did not have jurisdiction to consider an appeal of a "non-substantive" amendment to a development agreement by a development officer. The Board interpreted the interaction of the relevant legislative provisions to mean that only decisions by Council to amend a development agreement could be appealed to the Board, not those of development officers. The Board found that an argument about whether an amendment was a substantive or non-substantive amendment was a question for the Court on judicial review.

[96] The statutory amendments also included a new provision, s. 245(3A), clarifying that a development officer cannot approve amendments to a development agreement that are a combination of substantive and non-substantive amendments. I interpret this section to require an analysis of a requested amendment, to determine whether the whole amendment can be considered non-substantive before an amendment can be undertaken. A development officer must still consider whether the outcome of an amendment would carry out the intent of the MPS.

[97] The MPS requires appropriate regard for the criteria in policies CC-4, UR-10 and IR-11, including separation distances from low-density residential developments, and the impacts of height, bulk, site design and other factors. The proposed development agreement and the commitments of the developer within it address these considerations. HRM planning staff and Mr. Wallace provided Community Council, and the Board, with their opinions that those terms are sufficient to reasonably address the MPS policy requirements. I accept Mr. Sanford's testimony that non-substantive amendments are

intended to address “minor things, minor changes”. The exact character, location or quantitative measure of the landscaping features may be considered non-substantive. However (as articulated by Mr. Wallace) the overall requirement for a non-disturbance buffer that “still achieves that intent between the privacy screening and distances from the building”, is substantive.

[98] I accept as a fact that the intent of HRM and A.J. Giles Ltd. in drafting the agreement was to ensure some flexibility and an efficient process to allow the developer to request to modify certain aspects of their plans if required during the development process. It was not to facilitate an ability to amend the agreement to dispense with the current landscaping requirements or significantly diminish the parking allotment without Community Council’s approval.

[99] If a development agreement was to derogate explicit controls and protections requiring Council’s consideration under the MPS, by classifying them as “non-substantive issues”, I would seriously question whether approving that agreement could be found to reasonably carry out the intent of the MPS. However, in this case, I am guided by the well-established case law that I must not interfere with a decision of Council about a proposed development agreement unless I am convinced on a balance of probabilities.

4.0 PROCEDURAL MATTERS

Advertising Costs

[100] In closing statements, Mr. Knowlton formally asked the Board to waive the costs of advertising the public hearing in the local newspaper. Mr. Knowlton told me, on behalf of his parents, that they are seniors with a low, fixed income. He pointed out that HRM no longer prints the results of Council’s decisions on planning matters in the

newspaper. The *HRM Charter* only requires publication on the Municipality's website. In accordance with the Board's rules and established practice, a Notice of Public Hearing was published in the Chronicle Herald on September 12, 2023.

[101] The *Utility and Review Board Regulations* (s.3(2)) indicate that, unless the Board orders otherwise, the person initiating a planning appeal must give notice of the hearing by advertising in "one or more newspapers circulating in the municipality in which the matter arose." This is the default rule.

[102] The Board does not control the fees charged by newspapers for advertising, which vary depending on the publication and the content of the notice. The Board pays the advertising invoice and seeks reimbursement from the responsible party.

[103] The Board's *Municipal Government Act Rules* require an appellant filing a Notice of Appeal to include a written undertaking agreeing to pay the costs of advertising the Notice of Public Hearing. If the undertaking is not filed, the rules say the Board is not precluded from setting down the appeal for hearing and later recovering the costs of advertisements from the appellant. The Board's processes also allow for flexible repayment arrangements. I previously encouraged the Knowltons to discuss such an arrangement with the Clerk of the Board.

[104] There is no evidence before me that the advertising costs presented a complete barrier to the Appellant's access to justice in pursuing her appeal. At this stage, I do not have any evidence of Mrs. Knowlton's monthly income or financial circumstances, other than Mr. Knowlton's general explanation. However, I find it within my discretion to consider a waiver of costs. The *Utility and Review Board Regulations* authorize me to make an order other than the default rule that the person initiating the appeal is

responsible for advertising. Similarly, the *Municipal Government Act Rules* allow me to "dispense with, amend, vary or supplement" those rules by making a procedural order if I am satisfied that "the special circumstances of the appeal or application so require, or it is in the public interest to do so." I am not required to hold a hearing to make such an order.

[105] For certain costs (e.g. witness appearance fees), the Board adopts the Court's Cost and Fees Tables from the regulations made under the *Costs and Fees Act* (i.e. *Fees and Allowances Under Part I and II of the Act determined under subsection 2(1) of the Costs and Fees Act, R.S.N.S. 1989, c. 104,* N.S. Reg 26/2017). Provisions in those regulations prescribe the circumstances when a fee may be waived, as allowed under subsection 2(1A) of the *Costs and Fees Act*. I find it reasonable to use the *Fees and Allowances* provisions as a guideline to consider the Knowltons' request to waive the advertising costs associated with publishing the Notice of Hearing in this matter.

[106] Mrs. Knowlton may submit a request to the Clerk of the Board for waiver of the advertising costs she incurred, including documentation that would fulfil the requirements for the waiver of fees of the Supreme Court and Court of Appeal as set out in s.(26) to (29) of the *Fees and Allowances Under Part I and II of the (Costs and Fees) Act*. For clarity, to pursue this request Mrs. Knowlton must complete an application that includes the personal information in the form required by the Clerk and attach at least one of the following as evidence of her monthly income: current pay stubs, benefits statement, a copy of her most recent tax return, or copy of her most recent notice of assessment. All required documentation must be submitted within 30 days of the date of the Order in this matter.

[107] As this is a procedural matter that concerns the Board and Mrs. Knowlton only, the documentation submitted in support of the waiver request will be filed confidentially and will not be shared with the other parties.

5.0 CONCLUSION

[108] I find that Community Council exercised its discretion to approve a development agreement that reasonably carries out the intent of the Municipal Planning Strategy, considered as a whole. It had sufficient information upon which to base its decision and did not unduly overlook applicable policy requirements. Where Cole Harbour Road narrows to two lanes, at the intersection of Bissett Road, the community has not seen such an increase in development density as in other areas. However, even in 1992, the MPS Policies for the Community Commercial and Urban Residential designations were crafted to allow for new housing options and more intensive developments in that area.

[109] The Knowltons actively participated in the public hearing process and Community Council had the opportunity to hear their concerns. The evidence shows that the draft agreement was modified to mitigate impacts that neighbouring property owners were concerned about. The expert witnesses agreed that the solutions reflected in the development agreement reasonably addressed specific concerns about the height, bulk, lot coverage and separation distances of the buildings, as well as on-site parking.

[110] The site plan requirements for this development do not all conform to the Land Use By-law requirements. While the requirements can serve as helpful references, they do not bind Community Council in considering what is reasonable for the use to be

allowed under a development agreement. Mr. Knowlton's question of "how much non-conformity is too much" must be decided on a case-by-case basis.

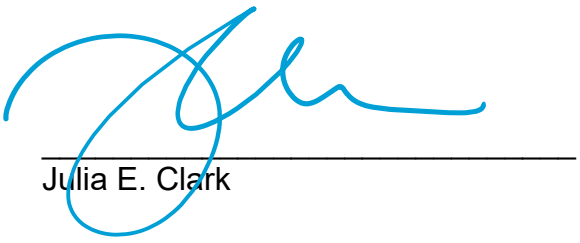
[111] I do not have jurisdiction at this stage to revisit the designation of the front portion of 1268 Cole Harbour Road within the Community Commercial designation, or its rezoning to C-2.

[112] I am not satisfied, on a balance of probabilities, that the issues raised, and evidence presented by the Appellant demonstrate that Community Council's decision to approve the proposed development agreement does not carry out the intent of the Municipal Planning Strategy. The Appellant has not met the legal test that would result in a successful appeal.

[113] I reserve my jurisdiction to decide the procedural issue of whether some or all of the costs of advertising should be waived for the Appellant. She must submit a request for waiver with all required documentation within 30 days of my Order. This documentation will be treated as confidential and will not be shared with the other parties.

[114] The appeal is dismissed. An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 18 day of January 2024.



Julia E. Clark