DECISION **2025 NSUARB 22**
M11971

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **JOSH HAGLE** from a decision of the North West Community Council to approve a development agreement by Clayton Park Developments Limited, to permit a lifestyle community on lands between Larry Uteck Boulevard, Starboard Drive, and Fleetview Drive, Halifax, Nova Scotia (PIDs 41316522, 41316514, 41318049, 41533340, and 41542648)

BEFORE:	Jennifer L. Nicholson, CPA, CA, Member
APPELLANT:	**JOSH HAGLE**
APPLICANT:	**CLAYTON DEVELOPMENTS LIMITED** on behalf of **SHX DEVELOPMENTS LTD.** Robert G. Grant, K.C.
RESPONDENT:	**HALIFAX REGIONAL MUNICIPALITY** Kelsey Nearing, Counsel Meg MacDougall, Counsel
HEARING DATE:	January 17, 2025
DECISION DATE:	**January 30, 2025**
DECISION:	**The Motion is allowed. The Appellant is not an aggrieved person and the appeal is dismissed.**

I INTRODUCTION

[1] On October 1, 2024, North West Community Council approved an application by Clayton Developments Limited, on behalf of SHX Developments Limited (SHX), to amend the Bedford and Halifax Municipal Planning Strategies (MPS) and enter into a new development agreement to permit a lifestyle community on lands between Larry Uteck Boulevard, Starboard Drive, and Fleetview Drive, Bedford. This amendment increases the scale of a development approved in 2009.

[2] The Appellant, Josh Hagle, lives in and owns a single-unit dwelling about 1.5 kilometres away from the subject development, on Oceanview Drive, Bedford, Nova Scotia. Mr. Hagle appealed to the Board on the grounds that the development plans approved by Council will result in an unacceptable increase in traffic in his neighbourhood.

[3] Mr. Hagle stated in his Notice of Appeal that there was no information provided in the staff report to Council about the traffic impact to Oceanview Drive, Nine Mile Drive or the Bedford Highway. He states that the street network in his community remains undeveloped, and his street was designed to meet local needs. He says this development will add hundreds of vehicles to his street each day as Oceanview Drive has now become the optimal route to short-cut between the Bedford Highway and Larry Uteck Boulevard.

[4] At a preliminary hearing held on November 28, 2024, to establish hearing and filing dates, both Halifax Regional Municipality, representing North West Community Council and the Applicant, SHX, submitted motions that the Appellant did not have standing as an aggrieved person to bring the appeal under the *Halifax Regional Municipality Charter*, S.N.S. 2009, c. 39 (*HRM Charter*), and requested a preliminary

hearing to determine this issue. The Board set down the hearing of these preliminary motions for January 17, 2025.

[5] Mr. Hagle testified on his own behalf at the preliminary hearing on standing. He described the location of his property in relation to the proposed development site. He expressed frustration with the current level of traffic on his street and said that this development will increase what is already an unacceptable level of traffic.

[6] Kelsey Nearing and Meg MacDougall, representing Halifax Regional Municipality (HRM), as well as Robert G. Grant, K.C., representing SHX, made arguments on the motions objecting to Mr. Hagle's standing.

[7] Ms. Nearing submitted that the test for an aggrieved person required proof of an objective reasonable basis, as well as a subjective belief, of adverse effect on the Appellant's property by the approved development. HRM accepted that Mr. Hagle had a subjective belief in this adverse effect but argued he had not proven an objective basis for his belief.

[8] Mr. Grant supported HRM's submissions and position on the Appellant's lack of standing. He also argued that the development is for a senior's lifestyle community and accordingly will not result in a significant increase in traffic, especially during peak periods. He highlighted the many services located across the street from the proposed development which will meet residents' needs and limit the amount of driving beyond the immediate area of the development.

[9] At this stage, the Appellant is not required to prove to the Board that he will suffer a loss in value or enjoyment of his property if the development proceeds. He must show his *bona fide* and objective belief that it has such an impact. However, the Board

finds that the Appellant did not demonstrate a reasonable basis to believe there would be a material adverse impact from the development on the value or his reasonable enjoyment of his property. Therefore, he is not an aggrieved person and has no standing to bring this appeal. The appeal is dismissed.

II ISSUE

[10] The only issue to be addressed in this motion is whether the Appellant is an aggrieved person, with standing to bring this appeal.

III ANALYSIS AND FINDINGS

[11] Section 262(2) of the *HRM Charter* limits the parties who may appeal a municipal council's decision to approve a development agreement:

> Appeals to the Board
>
> 262 (2) The approval, or refusal to approve, and the amendment, or refusal to amend, a development agreement may be appealed to the Board by
>
> (a) an aggrieved person;
> (b) the applicant;
> (c) an adjacent municipality;
> (d) the Director.

[12] The Appellant does not fall under any of clauses (b) to (d) and may only bring this appeal if he is an aggrieved person under s. 262(2)(a). HRM urged the Board to dismiss this appeal because it says the Appellant does not meet the definition of an aggrieved person under the *HRM Charter*. The burden of proof is on the Appellant to show that he is an aggrieved person, on a balance of probabilities (*Re Taylor*, 2015 NSUARB 82).

[13] The Board considered, in detail, the question of who qualifies as an aggrieved person in *Re Thompson*, 2020 NSUARB 52. In that case, the Board discussed the historical development of the law around standing to appeal municipal planning decisions.

[14] That history brings us to the current version of the *HRM Charter*, which defines "aggrieved person" in s. 209(aa) as:

> "aggrieved person" includes:
>
> (i) an individual who *bona fide* believes the decision of the council will adversely affect the value, or reasonable enjoyment, of the person's property or the reasonable enjoyment of property occupied by the person,
>
> (ii) an incorporated organization, the objects of which include promoting or protecting the quality of life of persons residing in the neighbourhood affected by the council's decision, or features, structures or sites of the community affected by the council's decision, having significant cultural, architectural or recreational value, and
>
> (iii) an incorporated or unincorporated organization in which the majority of members are individuals referred to in subclause (i).

[15] As the Appellant in this case is an individual, only s. 209(aa)(i) in the definition applies.

[16] The adverse effects of a Council decision mentioned in s. 209(aa)(i) are rooted in the ownership and use of real property. In *Federation of Nova Scotian Heritage v. Peninsula Community Council*, 2004 NSUARB 108, the Board held that s. 191(a)(i) of the *Municipal Government Act*, S.N.S. 1998, c.18, the wording of which is identical to the wording in the *HRM Charter*, referred to "real property and not to intellectual or personal property" (para. 55).

[17] In many past cases, the Board has referred to the Supreme Court of Canada decision in *British Columbia Development Cooperation v. Friedmann (Ombudsman)*, [1984] 2 S.C.R. 447 (e.g., *Re Taylor*, 2015 NSUARB 82, *Re Lunenburg*

Heritage Society, 2010 NSUARB 224 and *Re Johanson*, 2010 NSUARB 123). In *Friedmann*, Justice Dickson said, on behalf of the court, “a party is aggrieved or may be aggrieved when he genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his interest, whether or not a legal right is called into question” (p. 469).

[18] In *Re Taylor* 2015 NSUARB 82 the Board stated: “It is the objective belief which the Board must examine. This does not require expert evidence, in the view of the Board. It does require the Board to find that an appellant has, in relation to the proposed development or zoning amendment, a “unique status” (*Richardson v. Wolfville*, supra), a “particular link” (*Re Northern Construction Enterprises Inc*., 2012 NSUARB 149), or an “intrinsic relationship” *(Re Ollive Properties Ltd*., 2012 NSUARB 186).

[19] In the present case, the Board is reviewing whether Mr. Hagle is an aggrieved person within the statutory scheme of the *HRM Charter.* The test must be derived from this context. This test was considered and applied in past decisions in *Re. Thompson* and *Re. Cameron,* and I followed the same approach.

[20] The *HRM Charter*’s definition of aggrieved person tells us that an appellant’s belief that a decision of council will adversely affect their interests must be *bona fide*. This is an explicit requirement for affected interests under s. 209(aa)(i) and applies to the Board’s consideration of affected interests under the common law as well (*Re Brison*, para. 59).

[21] The Board accepts that a *bona fide* belief has both subjective and objective elements:

> [T]he inclusion of the words “*bona fide*” in front of the word “belief” suggests that there must be some reasonable basis for the belief held by the person claiming to be adversely affected. In other words, there must be an objective aspect to the determination of whether the belief is *bona fide* in addition to the subjective aspect noted by the sincerity with which the belief is held. Otherwise, the belief, no matter how misguided, if sincerely held, would

> qualify a person as an aggrieved person. The Board does not consider the Legislature could have intended such a consequence.
>
> [*Re Ruffman*, [1995] N.S.U.R.B.D. No. 15, pp.5-6]

[22] The Board discussed the nature of the objective assessment of an appellant's belief that a planning decision would affect them in detail in *Ollive.*

[23] That case involved an appeal from a decision to approve a development agreement for a 27-storey mixed-use building. The owner of an adjoining property, which was itself the subject of a development agreement for a proposed seven-storey mixed use building, brought the appeal.

[24] In general, the Board considered it should assess an appellant's belief in a prompt manner. The Board also discussed the facts it should examine to determine whether an appellant was an aggrieved person:

> I find the basic facts to be examined in determining the aggrieved person status are the development, including the type of structure (a dam, waste disposal site, residential, commercial, etc.), its physical characteristics (dimensions, features, etc.), and how it will be used (by whom, numbers, frequency, etc.). It also includes a review of the area affected by the development and the use of the properties within that affected area.
>
> A large dam may affect property owners many kilometers in either direction. At the other extreme is the area affected by a small single family bungalow.
>
> [*Ollive*, paras. 120-121]

[25] This case differs from *Ollive* in that Mr. Hagle lives approximately 1.5 kilometres from the subject property and not adjacent to it as is the case with the appellant in *Ollive*. In *Ollive*, the Board considered that the impact on an aggrieved party must be distinct from that of the general public:

> [153] Considering the facts of this case, the Board generally concurs with Ollive that what makes the adjacent property, sharing the same city block, of particular note in planning appeals is its vulnerability to the effects of the future development. These effects are different or distinct from the general public. Any potential effects of the building such as noise, traffic, wind, shadowing, has the most impact and effect on its adjacent neighbor. I note counsel for the Municipality and Can-Euro were unable to provide any case to the Board where the immediate adjacent landowner, sharing the same city block, was found not to be an aggrieved person under the *Charter*.

> [154] In addition to being the adjacent neighbour, Ollive has a right of way over Can-Euro's privately owned and operated road which every future tenant and visitor/customer must travel to enter/exit the Ollive property, except those traveling by foot over the ball field. Ollive argues that it and Can-Euro are intrinsically tied together and subject to reciprocity, such that the potential impacts of each one's development affects the other.
>
> [155] Based upon the facts of this case, it is reasonable and logical to infer, without specific empirical evidence, that Ollive's enjoyment of its property will be adversely affected by the wind, shadow, traffic and noise from the Can-Euro development. Therefore, the objectivity of its honest beliefs is met.
>
> [*Ollive*, paras.153-155]

Effect of the Proposed Development

[26] In his evidence, Mr. Hagle said he is concerned about the projected 75% of traffic that will travel north from the subject development and potentially use his street, Oceanview Drive, as a short cut. A traffic study performed in January 2024 counted over 4,000 vehicles on Nine Mile Drive, which is connected to Oceanview Drive. He submitted that Oceanview Drive is classified as a local street and that is supposed to have a maximum of 3,000 vehicles a day.

[27] Mr. Hagle stated that the residents of the new Shannex development will not travel on Highway 102 to access the Bedford Highway and popular Bedford destinations such as DeWolfe Park, Sunnyside Mall, Bedford Place Mall, and the Bedford Library when there are public streets that offer alternative routes with negligible time differences. He said that the Shannex development will be much more than a senior's housing complex. It is advertised to offer a mix of retail and dining experiences that are available to the public as well as residents and will therefore draw traffic from other areas.

[28] HRM submitted that the test for an aggrieved person required proof of an objective reasonable basis of adverse effect on Mr. Hagle's property because of the approved development, as well as a subjective belief. HRM accepted that Mr. Hagle had a subjective belief of potential harm from the development but said he had not proven an

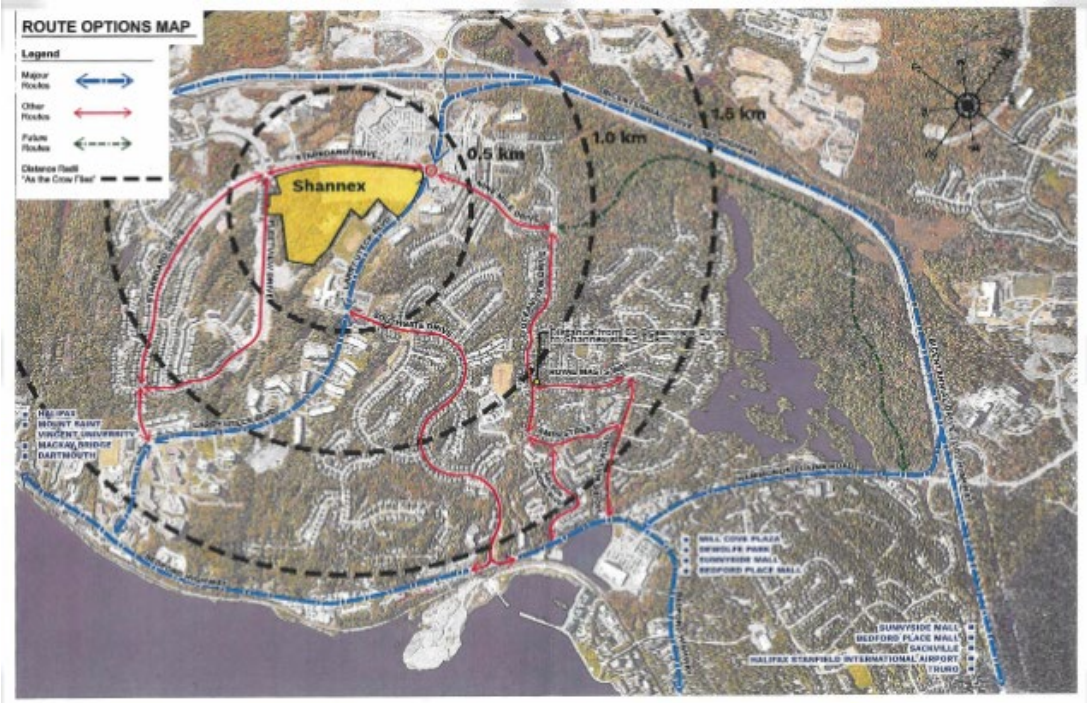
objective basis for this belief. HRM did not dispute that existing development has created significant traffic on Oceanview Drive.

[29] It submitted that the crux of Mr. Hagle's concerns relate to current traffic related to the 2014 construction of Nine Mile Drive to Oceanview Drive which is irrelevant to this matter. HRM said that this matter is not an "audit" of previous decisions. It said that Nine Mile Drive is now a provincial road and there are other more appropriate forums for Mr. Hagle to address his traffic issues.

[30] HRM referred to the traffic study that was completed as part of SHX's development application. That expert report did not highlight any anticipated issues and determined that existing infrastructure can handle any additional traffic related to the subject development.

[31] HRM said that Mr. Hagle's property was outside the notification area of 500 feet for this planning application because his residence is 1.5 kilometres from the subject development. The only reason he received notification was because he had specifically requested it.

[32] The Applicant entirely supported HRM's position and agreed that Mr. Hagle's appeal should be dismissed as he was not an aggrieved person. Mr. Grant submitted a detailed map as Exhibit H-10 which highlighted the location of Mr. Hagle's property in relation to the subject development and reviewed the many routes that could be taken by vehicles coming and going from the subject development. He agreed with HRM that existing traffic in all HRM is a concern for residents due to the population growth in the region but said there was an insufficient connection between Mr. Hagle's concerns and this matter.



[Exhibit H-10, p.2]

[33] Mr. Hagle submitted his property's assessment history from 2015-2021 in his evidence and said that the construction in his area had a negative impact on his property valuation which took five years to recover from. The assessed value started at $297,100, dropped to a low of $287,300 in 2019 and rebounded to $297,400 in 2021.

[34] Mr. Grant also submitted the Property Valuation Services Corporation assessment history for Mr. Hagle's property and the property next door to him as Exhibit H-11. This showed a 2024 assessed value of $539,900 for Mr. Hagle's property and $588,500 for his neighbour's property. Mr. Hagle commented that he had done a renovation which contributed to his increased assessment. When asked by the Board if his neighbour had done any renovations, he replied that he did not know of any.

Aggrieved Person Status in this Case

[35] In the Board's view, Mr. Hagle's concern about increased traffic from the proposed development is not a concern which is unique or personal to him. It is a concern which may be held by others in HRM, regardless of their proximity to the proposed development site.

[36] Although the distance of the property owned or occupied by an appellant from the subject property is not a factor explicitly referred to in s. 209, it is another factor often considered by the Board. See *Re Ollive* discussed earlier in this decision.

[37] In the present matter, Mr. Hagle's residence is located about 1.5 kilometres from the proposed development. There are many shops and services very close to the development which may serve the residents and eliminate the need to travel more than a kilometre from the development. As highlighted by HRM, an expert traffic study indicated that the existing infrastructure is sufficient to manage the potential increased traffic from the subject development. The Board accepts that there are many alternate routes available for vehicles coming and going from the subject development and that most residents and staff would not be travelling at peak times. With respect to traffic, the Board considers that the proposed development will have limited impact upon Mr. Hagle's property, and any impact would be general in nature and shared by users of the surrounding roads.

[38] The Board accepts the Applicant's evidence that Mr. Hagle and his neighbour have experienced significant increases in the value of their properties, as represented through property tax assessments, regardless of the increase in traffic in the area that has already happened over the last number of years.

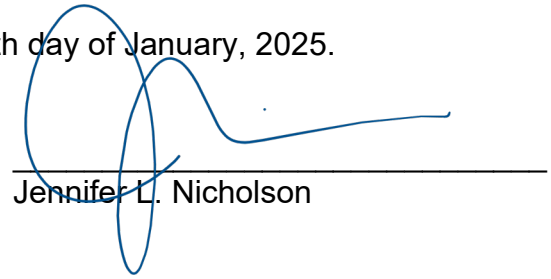
[39] Overall, the Board finds that the Appellant's belief that the value or the enjoyment of his property will be adversely affected by Council's decision is not reasonable on an objective basis. Further, the Board concludes that, in the words of *Friedmann*, the proposed development would cause or threaten "any form of harm prejudicial to his interests." He lives a significant distance from the subject development and has not proven how he will be uniquely or personally impacted by Council's decision. It is apparent that existing traffic is a concern for the Appellant but that is not relevant to this matter. The Board finds that the Appellant is not an aggrieved person under the definition in the *Act* and has no standing to appeal Council's decision to the Board.

IV SUMMARY AND CONCLUSION

[40] The Board finds that the Appellant is not an aggrieved person and the appeal is dismissed.

[41] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 30th day of January, 2025.



Jennifer L. Nicholson