DECISION **2020 NSUARB 115**
M09520

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **PETER THOMPSON** and **MICHELE THOMPSON** of a decision of Cape Breton Regional Municipality to approve an amendment to the Land-use By-law which will permit kennels within the boundaries of the Keltic Drive Business Corridor (KBC) Zone

BEFORE:	Stephen T. McGrath, LL.B., Member
APPELLANTS:	**PETER THOMPSON** and **MICHELE THOMPSON**
RESPONDENT:	**CAPE BRETON REGIONAL MUNICIPALITY** Demetri Kachafanas, Q.C. (Counsel)
INTERVENORS:	**NICOLE CAMPBELL** and **JEREMY CAMPBELL**
HEARING DATE(S):	July 2-3, 2020
FINAL SUBMISSIONS:	August 7, 2020
DECISION DATE:	**September 17, 2020**
DECISION:	**The appeal is dismissed.**

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1.0 INTRODUCTION

[1] This is an appeal of a decision of the Cape Breton Regional Municipal Council to amend the Municipality's Land-use By-law to remove a prohibition against kennels in the part of the Keltic Drive Business Corridor (KBC) Zone that receives municipal water and sewer services. Kennels are already allowed in the rest of the KBC Zone.

[2] The by-law amendment was requested by Nicole and Jeremy Campbell, who operate a "doggy daycare" in the serviced area of the KBC Zone. The amendment would allow them to expand their operation to include the overnight boarding of dogs.

[3] The Appellants, Michele and Peter Thompson, own and operate a dog kennel and rescue kennel. They have operated their rescue kennel for over 10 years and their dog kennel for four years. Their dog kennel is for overnight boarding. They do not provide a "doggy daycare" service.

[4] The Thompsons' property is not in the KBC Zone. It is in another zone in a rural area of the Municipality about 15 kilometres away from the Campbells' business. The Thompsons feel that the Land-use By-law amendment would give the Campbells a competitive advantage. It would allow the Campbells to run a dog kennel in a location the Thompsons believe is more favourable because it is closer to more heavily populated residential areas. This would make it a more convenient choice for families living in those areas who require boarding for their pets. The Thompsons believe that Council's decision to amend the by-law is unfair and was based on incomplete and inappropriate information.

[5] The Thompsons note that, in addition to the municipally serviced portion of the KBC Zone, the CBRM Land-use By-law also explicitly prohibits kennels in other zones. They submit that the existence of this repeated prohibition is not arbitrary. They

believe there must be a reason for it, but that this reason was not presented or explained to Council when it made its decision.

[6] The Thompsons submit that kennels are an agricultural use under the CBRM Municipal Planning Strategy and argue that the strategy does not allow agricultural uses in the serviced portion of the KBC Zone. They also submit that the Municipal Planning Strategy does not permit kennels in urban communities, and that the KBC Zone is defined as such under the strategy.

[7] The Municipality submits that agricultural uses are allowed in the KBC Zone. CBRM also submits that the strategy does not prohibit kennels. Alternatively, CBRM argues that any prohibition against kennels applies only in urban communities, and that the KBC Zone, including the part that receives municipal water and sewer services, is not an urban community.

[8] The Board finds that the Municipal Planning Strategy considers agricultural uses involving kennels an inappropriate type of development within urban communities. However, the Municipality's interpretation of the Municipal Planning Strategy as allowing for agricultural uses throughout the KBC Zone is one that the strategy can reasonably bear. The Municipality's interpretation of the strategy to conclude that the serviced portion of the KBC Zone is not an urban community is also reasonable. As such, this appeal must be dismissed.

2.0 ISSUE

[9] CBRM Council approved an amendment to the Municipality's Land-use By-law removing a prohibition against kennels in the KBC Zone. The issue in this appeal is

whether the removal of this prohibition reasonably carries out the intent of CBRM's Municipal Planning Strategy.

3.0 BACKGROUND

[10] The KBC Zone was established under Part 3, Policy 17, of CBRM's Municipal Planning Strategy, which (including the preamble to Policy 17) states:

> **Keltic Drive business corridor**
>
> Keltic Drive is part of the boundary between the communities of Coxheath and Westmount. Along with Seaview Drive, prior to the opening of Highway 125, it was the primary route linking Sydney with the Northside. It originally developed as a business corridor because of this, and the fact many of the properties fronting along the north side of it had access to the rail line. Although Keltic Drive is no longer the main route connecting Sydney with the Northside, it has continued to thrive as a business corridor, primarily because:
>
> - it is easily accessible to Highway 125 via the Sydport Highway at a pivotal location to serve the region generally and, to access either of the three routes leading out of the CBRM to the Canso Causeway;
> - its proximity to Sydney;
> - the continued rail accessibility; and
> - the level topography.
>
> Today, the Keltic Drive corridor has an aggregate business assessment of approximately 7 million dollars (more than the total business assessment in downtown New Waterford and approximating the total in downtown North Sydney) comprised primarily of regional service, wholesale and warehousing distributors.
>
> This is not a uniformly developed business corridor, however. These businesses are interspersed with low density residential development. Experience tells us that the potential for land use conflict will be high if more obnoxious developments were to be introduced other than the range of business developments now prevalent along the streetscape.
>
> While not fronting along Keltic Drive, Enterprise Cape Breton does own over 1,200 acres of undeveloped property on either side of the Sydport Highway and abutting the north side of the railway east of the Sydport Highway. However, this landholding is entirely within a class 2 agricultural soil area and was originally acquired by the Agricultural Division of DEVCO (the Point Edward experimental farm is included in this landholding). Consequently, this Municipal Planning Strategy does not initially designate these Enterprise Cape Breton lands for business use. Instead, Council intends to enter into discussions with Enterprise Cape Breton to determine the highest and best use for the class 2 soils in the Pt. Edward Peninsula, because of the conflicting potentials due to its central location and high potential for agriculture production.
>
> The lands fronting along the eastern sector of Keltic Drive are designated for regional tertiary service industry facilities (e.g. wholesale, warehousing, general transport/contracting), but not exclusively. In deference to the variety of other land use types found along this corridor, zoning shall respect their legitimacy as well. Any significant expansion of this corridor southward will be curtailed because of the proximity of a large concentration of low density residential development (i.e. Cantley Village Subdivision). Any

significant expansion north across the railway shall be predicated on what transpires with the CBRM's deliberations with Enterprise Cape Breton.

POLICY

17. It shall be a policy of Council to designate the eastern corridor of Keltic Drive, as illustrated on the Municipal Planning Strategy Map, as a diverse corridor where the following land uses are permitted:
    - business service and sales uses;
    - manufacturing uses;
    - recreation, culture, and entertainment uses;
    - transportation service terminals and depots; and
    - rural residential uses.

    As with other secondary regional routes with a large % of business development, lot development requirements will be imposed regarding:
    - building setback;
    - on-site parking provisions; and
    - public street/road access restrictions.

    It shall be zoned the Keltic Drive Business Corridor (KBC) Zone.

    [Exhibit T-4, p. 3.19-3.20]

[11] The permitted uses of land in the KBC Zone are listed in Section 1 of Part 10 of the Land-use By-law:

Section 1 KBC Uses Permitted
Development Permits shall only be issued in the KBC Zone for one or more of the following uses in compliance with any relevant section of the General Provisions Part, and any specific section of this Part devoted to the use.

- **agricultural uses – (all)**
  - kennels are not permitted in areas serviced with both Municipal water and sewer
- **manufacturing – only the following**
  - agricultural products processing
  - alcohol processing
  - assembly
  - building supplies manufacturing
  - mining products manufacture *in compliance with Section 4*
- **recreational – (all) both public and business establishment *except racetracks for motor vehicles and campgrounds***
- **residential development – (all)**
  - apartment buildings *only in areas serviced with both Municipal water and sewer*
  - apartments within a mixed used building *only in areas serviced with both Municipal water and sewer*
  - mobile homes
  - single detached dwellings
  - townhouses *only in areas serviced with both Municipal water and sewer*
  - two-unit dwellings
- **sales – (all)**
- **service *all except***

- recycling facility using outdoor storage licenced and in compliance with the regulations of Nova Scotia Environment *shall only be permitted in compliance with Section 7*
- animal shelters are only permitted in areas not serviced with both Municipal water and sewer

- **transportation – (all)**
  - coal retail distribution facilities in compliance with Section 4

[Exhibit T-5, p. 59. Italics in original. Underlining added for emphasis.]

[12] In 2018, the Campbells applied to CBRM to amend the Municipality's Land-use By-law to allow kennels and animal sitting establishments throughout the KBC Zone. The Campbells wanted to establish a "doggy daycare" and a dog kennel for the overnight boarding of animals. The by-law allowed these uses in the zone, but not in the part of the zone serviced by municipal water and sewer where the Campbells wanted to establish their business.

[13] Council voted on the application at a meeting on June 26, 2018, but the result was a tie. To resolve the deadlock, an alternate motion was advanced to allow animal sitting establishments throughout the KBC Zone, but to continue to prohibit kennels in serviced areas. The motion included a direction to bring the matter back to Council after one year to further consider allowing kennels. Council approved the alternate motion. That amendment to the Land-use By-law was not appealed to the Board.

[14] In 2019, the Campbells, who now operate a "doggy daycare" in the KBC Zone, asked Council to approve the further amendment to the Land-use By-law to remove the prohibition against kennels in the municipally serviced part of the zone. Council approved this amendment on November 19, 2019.

[15] On December 6, 2019, the Thompsons appealed Council's decision. The Thompsons' Notice of Appeal only referred to the Land-use By-law. They subsequently

filed additional information, but this was of limited assistance in identifying the policies in the Municipal Planning Strategy that the Thompsons felt were not reasonably carried out by the amendment to the Land-use By-law. The Municipality and the Campbells asked the Board to dismiss the appeal on the basis that the Thompsons did not have standing to bring this appeal and did not raise any grounds of appeal that were within the Board's jurisdiction.

[16] In a preliminary decision, the Board allowed the Appellants to continue with their appeal [2020 NSUARB 52]. In addressing the grounds of appeal in the proceeding, the Board found:

> [88] In this case, while it is difficult to discern precise grounds of appeal from the information filed by the Thompsons, much of what the Board can discern would be absolutely unsustainable. The Board sees no merit in any argument that kennels should not be allowed in the KBC Zone. They are already allowed in the KBC Zone, just not in areas served by municipal water and sewer. Similarly, the Board also sees no merit in any suggestion that prohibiting kennels from locating in areas served by municipal water and sewer is part of a water management plan that must be maintained. The water used by a dog kennel is not materially different than many of the uses permitted as of right in the zone. Any suggestion that the MPS requires dog kennels to be in rural areas for competitive reasons have no basis in the MPS and are also completely unsustainable.
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> [89] However, the Board cannot conclude that the Thompson's suggestion that kennels are agricultural uses intended to be in rural zones is absolutely unsustainable. Although the Thompsons' have not articulated this ground very well, and have focused most of their comments on this point on what is allowed or not allowed in the various zones in the Bylaw, the Board understands that their fundamental concern is that kennels are required to be in rural areas. Michele Thompson best articulated this point in comments she made at the preliminary hearing:
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> > With the KBC corridor there is a very small section that is the water and sewer and then the rest of the section is… there's a lot of businesses, there are homes on there as well and it goes quite far up the road. It's specific, I think, in the zoning to say that… in saying that they don't want sewer and water there, there's a purpose why they put that in the bylaw because that whole road is what, four or five kilometers…I don't know…it's quite a long road. But, this one piece, the first mile, or mile and a half, is sewer and water and it specifically said they don't want kennels on that property. Specifically, if you go past that, and it's not very far up the road it turns into rural and there is, like I said, a lot of businesses along that property, a lot of homes along that property, but it is rural.
> >
> > [Sound File, 35:06 - 36:03]

> [90] In essence, the Thompsons are saying that, given the consistency with which kennels are specifically excluded from serviced areas throughout the Bylaw, this must have a basis in the MPS.
>
> [91] Without delving too deeply into the matter, a computer word search reveals that the word "kennel" appears in the MPS once, in Part 6 of the MPS, which deals with primary industries in CBRM, including agriculture. Although not specifically referenced by the Thompsons, Policy 1.f in Part 6 may have a bearing on their allegation that kennels are required to be in rural areas:
>
> > It shall be a policy of Council to consider any agricultural livestock operations, however small or the rearing of livestock for recreational purposes, an inappropriate type of development within urban communities, except non-kennel type of agricultural uses on unusually large lots outside of the business development zones and the higher density residential zones, as described in the Land Use By-law. As well, the non-conforming status of any existing agricultural use in urban communities shall be relaxed to permit their extension, enlargement, alteration, or reconstruction. However, rather than regulating such activities solely by means of zoning provisions, Council shall adopt a By-law, pursuant to Section 174 of the Municipal Government Act, to regulate hobby or recreational animal rearing activities in urban areas. The Planning Department and the office of By-law Enforcement shall formulate this draft By-law.
>
> [92] Whether this provision, or any others, actually have a bearing in this appeal cannot be determined at this stage; however, the Board finds that the Thompsons' position that kennels are required to be in rural areas is not absolutely unsustainable.
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> [Exhibit T-4, p. 6.5]

[17] The Board's preliminary decision was released on April 2, 2020, shortly after the Government of Nova Scotia declared a provincial state of emergency to help contain the spread of COVID-19. In a conference call with the parties on April 14, 2020, alternatives to an in-person oral hearing were discussed. Ms. Campbell urged the Board to proceed as expeditiously as possible because she wanted to be able to move forward with the expansion of her business once it was safe to do so. The Municipality also favoured proceeding with the matter. The Municipality and Ms. Campbell were prepared to proceed with a hearing via telephone or video conference.

[18] The Thompsons advised that they did not have the technology to allow them to proceed with a video conference. They also expressed discomfort about conducting the proceeding over the telephone because they would not be able to see witnesses at

the hearing, the other parties or the Board. They also felt that it would be more difficult to follow along on the telephone. The Thompsons felt that the proceeding should be postponed until such time as it could be dealt with in person. Additionally, the Thompsons were concerned that the provincial directives in effect for dealing with the COVID-19 pandemic would prevent them from gathering necessary evidence for their case. The Board adjourned the conference call for a couple of weeks to allow the Thompsons to more specifically identify any evidence they felt they would not be able to produce because of the restrictions imposed by the pandemic.

[19] On May 1, 2020, the Board reconvened the conference call with the parties to consider the nature of the evidence that the Appellants wished to file in the proceeding. At that time, the Board determined that the matter could proceed to a hearing by telephone. Briefly stated, the Board's reasons for doing so were based on the statutory requirements for the expeditious resolution of planning appeals and the Board's understanding of the issues and evidence that would be advanced in the appeal.

[20] In administrative law, it is well settled that a board or tribunal has the right to control its own procedure. In relation to this Board, this principle has been confirmed by the courts on several occasions, most recently by the Court of Appeal in *Chester (District Municipality) v. Certain Ratepayers of Chester (District Municipality)* (2000), 13 M.P.L.R. (3d) 88. In the specific context of a planning matter, the principle was affirmed by Saunders, J., in *Truro Development Corporation Limited v. Nova Scotia Utility and Review Board et al.*, [1997] N.S.J. 338 (S.C.), which involved an application for directions.

[21] There are no statutory directives affecting the Board that would displace this general authority, but the *Municipal Government Act* does call for a timely determination

of planning appeals. The statute sets out strict timelines to govern planning appeals unless the parties agree otherwise, or the Board determines it is necessary to vary these timelines for the interest of justice (s.250A). For example, the hearing is to begin within 45 days after the filing of the Appeal Record (s.250A(2)):

> 250A(2) A hearing must begin within forty-five days from the filing of the appeal record unless the Board determines that it is necessary for the interests of justice for the hearing to begin at some later time or unless all the parties agree that the hearing may begin at some later time.

[22] In this case, there had already been a significant delay because of the preliminary hearing relating to the Appellants' status and the grounds of appeal. As a result, the strict timelines in the *Municipal Government Act* could no longer be achieved.

[23] By the same token, because of the preliminary hearing, the Board was provided with greater insight into the issues and arguments that would be advanced in the appeal. Based on this, it did not appear to the Board that the issues would require extensive factual exploration at the hearing, or that other factors might make a telephone hearing inappropriate. Furthermore, after considering the nature of the evidence the Appellants said that they wished to file in the proceeding, the Board found that the Appellants would be able to provide the evidence they intended for the appeal.

[24] Given the Board's determination that this matter could be appropriately addressed in a telephone hearing, a date for the hearing was set and a timetable to complete the remaining pre-hearing procedures was established. Despite this, the Board directed the parties to contact the Clerk if they experienced any difficulties with the completion of the pre-hearing steps, because of restrictions relating to the pandemic, so that the matter could be addressed. Aside from one brief extension requested by the

Municipality that did not affect the hearing date, all pre-hearing steps were completed in accordance with the timetable established on May 1, 2020.

[25] The hearing of the appeal took place on Thursday, July 2, 2020 and Friday, July 3, 2020. The Thompsons testified on their own behalf. They also subpoenaed CBRM Councillor Steve Gillespie as a witness.

[26] The Municipality called Karen Neville, who is a planner employed in CBRM's planning department. CBRM also called Malcolm Gillis, a former director in the Municipality's planning department. Both Ms. Neville and Mr. Gillis were qualified as expert witnesses in the area of land-use and municipal planning matters, and reports from them had been previously filed with the Board in this proceeding.

[27] The Campbells elected to call no evidence at the hearing. Instead, they relied upon the evidence provided by Ms. Neville and Mr. Gillis. Ms. Campbell confirmed that the information she provided to the Board in advance of the hearing was intended to be submissions, and not evidence in the proceeding.

4.0 SITE VISIT

[28] The Board undertook a site visit on August 4, 2020. The visit commenced at the Cape Breton County Recreation Centre at 305 Keltic Drive, Sydney, Nova Scotia at approximately 10:00 am. The Recreation Centre is at the intersection of Keltic Drive and Coxheath Road. The eastern end of the Keltic Drive Business Corridor Zone begins at that intersection.

[29] At the Recreation Centre, the Board met with Ms. Thompson, Ms. Campbell and Mr. Kachafanas and discussed the various locations to be viewed. These locations included parts of the KBC Zone, and locations in other zones in the Municipality that were

referenced in the evidence at the hearing. Generally, these references were made to compare or contrast the zoning requirements and state of development in those locations with the municipally serviced part of the KBC Zone. Given the distances involved, vehicles were required to move from point to point. The Board and all parties travelled in separate vehicles.

[30] The first site that was visited was the proposed location of a future subdivision extending from Ridgevale Drive. Although this site is in another zone, it is near the eastern end of the KBC Zone that is serviced by municipal water and sewer.

[31] The group then travelled into and through much of the KBC Zone. Approximately 200 meters into the zone, the group stopped at the location of the Campbell's business. The next brief stop was approximately a half kilometre further into the KBC Zone where CBRM staff had marked the road to show the end of the part of the zone that was serviced by municipal water and sewer. This was reasonably consistent with Mr. Gillis' evidence at the hearing that the serviced part of the KBC Zone was the easternmost 650 metres or so of the zone.

[32] The group continued northeast on Keltic Drive to a point approximately three kilometres away from the serviced portion of the KBC Zone. The group paused briefly at this location, which the Board was advised in evidence at the hearing was the location of an existing kennel in the KBC Zone. The Board had also been advised in evidence that this was near the western end of the KBC Zone.

[33] The next area visited was the site of the Thompson's business. This is in the Mira Road area, off Highway 22, east of Highway 125, towards Louisbourg. Consistent with Ms. Thompson's testimony at the hearing, their business is located

approximately 15 kilometres from the KBC Zone. While at this location, the group was briefly joined by Mr. Thompson, who was attending to other matters on the morning of the site visit.

[34] From there, the group travelled to the community of Port Morien. Port Morien is in the Small Urban Communities (UCS) Zone under the Land-use By-law and was referenced in the hearing as another zone where kennels were explicitly prohibited. This was the final stop for the site visit.

[35] In all the locations visited, the Board was able to view the nature of development in each area. This provided some context to the evidence of the various witnesses at the hearing.

5.0 THE BOARD'S JURISDICTION AND STATUTORY INTERPRETATION

5.1 Board's Jurisdiction

[36] The *Municipal Government Act* authorizes the Board to hear appeals from CBRM Council decisions to amend its Land-use By-law, but the Board's authority is limited. Under s. 250(1)(a) of the *Act*, an appellant may only appeal the amendment of a land-use by-law on the grounds that the decision of the council does not reasonably carry out the intent of its municipal planning strategy. Similarly, the Board may only allow an appeal if it determines that the decision does not reasonably carry out the intent of the strategy (s. 251(2)).

[37] The burden of proof is on the Appellants to show, on a balance of probabilities, that Council's decision to amend the Land-use By-law to remove a prohibition against kennels in the municipally serviced area in the KBC Zone does not reasonably carry out the intent of the Municipal Planning Strategy. The Board is not

permitted to substitute Council's decision with its own. The Board's mandate is restricted to the jurisdiction conferred upon it by the *Municipal Government Act*.

[38] The extent of the Board's jurisdiction in planning appeals under predecessor legislation to the *Municipal Government Act* was described in *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, 1994 NSCA 11:

> [99] A plan is the framework within which municipal councils make decisions. The Board is reviewing a particular decision; it does not interpret the relevant policies or bylaws in a vacuum. In my opinion the proper approach of the Board to the interpretation of planning policies is to ascertain if the municipal council interpreted and applied the policies in a manner that the language of the policies can reasonably bear. ...There may be more than one meaning that a policy is reasonably capable of bearing. This is such a case. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact on the decision... This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions...
>
> [100] I turn back to the question of what is the intent of the Plan? There is no single intent. Primarily it is to control development of land. This is done by the establishment of policies, many of which are inherently in conflict… Ascertaining the intent of a municipal planning strategy is inherently a very difficult task. Presumably that is why the Legislature limited the scope of the Board's review of enacting s.78(6) of the *Planning Act.* The various policies set out in the Plan must be interpreted as part of the whole Plan. The Board, in its interpretation of various policies, must be guided, of course, by the words used in the policies. The words ought to be given a liberal and purposive interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are to be made. The Plan must be made to work. A narrow legalistic approach to the meaning of policies would not be consistent with the overall objective of the municipal planning strategy.

[39] The Court of Appeal continued:

> [163] The planning policies contained in the Plan give City Council the necessary flexibility it needs in planning decisions. The policies should be given a pragmatic interpretation so as to achieve the objectives of the policies. The by-laws should be interpreted in a manner consistent with the interpretation of the policies as they are the means to implement the policies. The *Planning Act* imposes on municipalities the primary responsibility in planning matters... In keeping with the intent that municipalities have the primary responsibility in planning matters, the Legislature has permitted only a limited appeal from their decisions (s. 78 of the *Act*). Planning policies address a multitude of planning considerations some of which are in conflict... Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact on such decisions. So long as a decision to enter into a development contract is reasonably consistent with the intent of a municipal planning strategy the Nova Scotia Utility and Review Board has no jurisdiction to interfere with the decision (s. 78(6))...

> Neither the Board nor this Court should embark on their review duties in a narrow legalistic manner as that would be contrary to the intent of the planning legislation. Policies are to be interpreted reasonably so as to give effect to their intent; there is not necessarily one correct interpretation.

[40] The approach to be followed by the Board was also described by the Court of Appeal in *Midtown Tavern & Grill Ltd. v. Nova Scotia (Utility and Review Board),* 2006 NSCA 115. In that decision, the court reviewed several of its decisions on planning appeals (e.g., *Tsimiklis v. Halifax (Regional Municipality),* 2003 NSCA 30; *Kynock v. Bennett et al.* (1994), 131 N.S.R. (2d) 334 (C.A.)*, Mahone Bay Heritage & Cultural Society v. 3012543 Nova Scotia Limited,* 2000 NSCA 93). The court confirmed that the Board cannot impose its own interpretation of a municipal planning strategy; that a municipal council's decision is entitled to deference as long as it reasonably reflects the intention of its strategy; that there may be more than one reasonable interpretation of a strategy; and that the strategy must be looked at as a whole.

[41] The Court of Appeal concluded:

> [50] Thus, in the end, resort inevitably must be had to specific directions contained in the statute. By doing so, the fundamental question therefore becomes: Can it be said that Council's decision does "not reasonably carry out the intent of the MPS [municipal planning strategy]"?
>
> [51] To answer this question, the Board must embark upon a thorough fact-finding mission to determine the exact nature of the proposal in the context of the applicable MPS and corresponding by-laws. As in this case, this may include the reception of evidence as to the intent of the MPS.
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> [52] However the Board should not then take its body of decided facts and use this work product to conclude how it feels the MPS should be interpreted. In this regard, I agree with the developer. Instead, after completing its factual analysis, the Board should go immediately to Council's conclusion. The Board should then ask itself, based on the facts as determined, have the opponents established that Council's decision did not reasonably carry out the intent of the MPS?
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> [53] This would be consistent with the approach taken by this court over the years and as first enunciated by Hallett, J.A. in *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. No. 50…

[42] In Archibald *v. Nova Scotia (Utility and Review Board),* 2010 NSCA 27, Fichaud, J.A., summarized the principles that apply to the Board's review of municipal council decisions in planning appeals:

> [24] The Board then [¶51-62] recounted the provisions of the MGA [*Municipal Government Act*] and passages from decisions of this court that state the principles to govern the Board's treatment of an appealed planning decision. I will summarize my view of the applicable principles:
>
> > (1) The Board usually is the first tribunal to hear sworn testimony with cross-examination respecting the proposal. The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.
> >
> > (2) The appellant to the Board bears the onus to prove the facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.
> >
> > (3) The premise, stated in s. 190(b) of the MGA, for the formulation and application of planning policies is that the municipality be the primary steward of planning, through municipal planning strategies and land use by-laws.
> >
> > (4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. Later (¶ 30) I will elaborate on the treatment of the Council's reasons.
> >
> > (5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.
> >
> > (6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.
> >
> > (7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. This deference to

> Council's difficult choices between conflicting policies is not a license for Council to make ad hoc decisions unguided by principle. As Justice Cromwell said, the "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (Lewis v. North West Community Council of HRM, 2001 NSCA 98 (CanLII), If 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.
>
> (8) The intent of the MPS is ascertained primarily from the wording of the written strategy. The search for intent also may be assisted by the enabling legislation that defines the municipality's mandate in the formulation of planning strategy. For instance, ss. 219(1) and (3) of the MGA direct the municipality to adopt a land use by-law "to carry out the intent of the municipal planning strategy" at "the same time" as the municipality adopts the MPS. The reflexivity between the MPS and a concurrently adopted land use by-law means the contemporaneous land use by-law may assist the Board to deduce the intent of the MPS. A land use by-law enacted after the MPS may offer little to the interpretation of the MPS.
>
> [25] These principles are extracted from the decisions of this court in: *Heritage Trust*, ¶ 77-79, 94-103,164; *Lewis v. North West* ¶19-21; *Midtown Tavern*, ¶ 46-58, 81,85; *Can-Euro Investments,* ¶ 26-28, 88-95; *Kynock v. Bennett* (1994), 1994 CanLII 4008 (NS CA), 131 N.S.R. (2d) 334, ¶ 37-61; *Tsimiklis v. Halifax (Regional Municipality),* 2003 NSCA 30 (CanLII) ¶ 24-27, 54-59, 63-64; 3012543 *Nova Scotia Limited v. Mahone Bay Heritage and Cultural Society*, 2000 NSCA 93 (CanLII), ¶ 9-10, 61-64, 66, 84, 86, 89, 91-97; *Bay Haven Beach Villas Inc. v. Halifax (Regional Municipality),* 2004 NSCA 59 (CanLII), ¶ 26.

[43] The Board's role in discerning the intent of a Municipal Planning Strategy was further canvassed by the Nova Scotia Court of Appeal in *Mahone Bay*. The Court affirmed the principles in *Kynock* and *Heritage Trust*, but cautioned that the principles referred to in *Heritage Trust* "were made in the context of the issues raised by the facts of that appeal," and need not be applied "when the intent of the strategy is clear."

[44] To determine the intent of a municipal planning strategy, the Board must look to the specific policies which apply to the application. Previous decisions of the Court of Appeal and the Board make it clear that the Board must look at the policy provisions and interpret their meaning in a liberal, purposive manner. However, the Board is not to limit itself to specific policies. The Board must consider the entire municipal planning strategy to determine its intent.

5.2 Statutory Interpretation

[45] The interpretation of a municipal planning strategy follows a well-recognized approach described by the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27:

> 21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, Statutory Interpretation (1997); Ruth Sullivan, Driedger on the Construction of Statutes (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, The Interpretation of Legislation in Canada (2nd ed. 1991)), Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament

[46] In a recent judgment, *Sparks v. Holland,* 2019 NSCA 3, the Nova Scotia Court of Appeal affirmed the ongoing use of the modern principle to interpret legislation:

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

[47] The Board applies the modern approach of statutory interpretation outlined in *Rizzo & Rizzo Shoes* when considering municipal planning strategies and land-use by-laws (e.g., *Re Monkman*, 2019 NSUARB 167; *Re Legros*, 2019 NSUARB 148). The use of this approach to interpret municipal legislation has also been accepted in judicial

proceedings (e.g., *J & A Investments Ltd. v. Halifax (Regional Municipality)*, [2000] N.S.J. 92 (S.C.); *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19; *Halifax (Regional Municipality) v. 3230813 Nova Scotia Ltd.*, 2017 NSCA 72).

[48] In considering the context of the policies in a municipal planning strategy, the Board may consider background information frequently found in preambles to the policies. While a municipal council is guided by the policy itself, a preamble to the policy may identify a problem that the policy is intended to solve, as stated by Oland, J.A., in *Can-Euro Investments Ltd. V. Nova Scotia (Utility and Review Board)*, 2008 NSCA 123:

> [47] Moreover, the statement regarding access upon which Can-Euro relies is not found within Policy H-18 itself, but only in its preamble. A preamble to a policy may provide context for understanding the policy; however, it is the policy itself that guides council. In *Kynock v. Bennett*, 1994 NSCA 114 (CanLII), 1994 CanLII 4008 (NS CA), [1994] N.S.J. No. 238 (Q.L.), 131 N.S.R. (2d) 334 (C.A.), the respondent referred to the preamble to a policy in arguing that the Board failed to consider a factor. This Court stated:
>
> > [43] With respect, the council was required to have regard to those matters set out in Policy P-24 in determining whether or not to approve a quarry operation in a mixed use area. The preamble merely identified what problems have given rise to the need for controls but it is Policy P-24 which spells out the matters that Council is to consider. ...
>
> See also *King's (County) v. Lutz*, 2003 NSCA 26 at ¶ 50.
>
> [48] In my view, in determining whether Council's approval of the Agreement reasonably carries out the intent of the MPS, the Board did not commit any error of law in its approach to the weight, if any, to be given to the preamble to Policy H-18.

[49] Planning decision appeals in Nova Scotia have also recognized that reflexivity exists between a municipal planning strategy and a concurrently adopted land-use by-law. In *J & A Investments Ltd.*, where the meaning of a land-use by-law was in issue, Justice Davison reasoned that s. 219(1) of the *Municipal Government Act* means that a municipal planning strategy may be used to help determine the intent of the land-use by-law. Under s. 219, when a municipal council adopts a municipal planning strategy or makes amendments to its strategy involving policies regulating land use and

development, the municipality must, at the same time, also adopt or amend a land-use by-law to implement those policies.

[50] The language of s. 219(1) of the *Municipal Government* Act is similar, but not identical to, s. 51(1) of the *Planning Act*, which requires council to "concurrently" adopt or amend the land-use by-law. Referring to s. 51(1) of the *Planning Act*, the Court of Appeal, in *Mahone Bay*, stated that a review of the land-use by-law may assist in "throwing light on the intent" of the municipal planning strategy and, therefore, used a provision of Mahone Bay's land-use by-law to assist in interpreting its municipal planning strategy:

> 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]

[51] Thus, according to Nova Scotia's present case law, the Board considers one may use a municipal planning strategy to help determine the intent of the land-use by-law (*J & A Investments*), and use the land-use by-law to help determine the intent of the municipal planning strategy (*Mahone Bay*).

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

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

6.0 ANALYSIS AND FINDINGS

6.1 Authority to Amend the Land-use By-law

[53] The Thompsons submit that the proposed amendment to the Land-use By-law does not refine or improve the implementation of policy direction in the Municipal Planning Strategy and should, therefore, not be allowed. However, the Board finds that the assessment of whether the amendment is a refinement or improvement is subjective and best left to Council.

[54] When a municipal council adopts a municipal planning strategy or makes amendments to its strategy involving policies regulating land use and development, it must also adopt or amend a land-use by-law to implement the policies in the strategy. A municipal council may amend its land-use by-law at any time, but it may only adopt or amend a by-law that is consistent with its municipal planning strategy. These matters are addressed in s. 219 of the *Municipal Government Act* which states:

> 219 (1) Where a council adopts a municipal planning strategy or a municipal planning strategy amendment that contains policies about regulating land use and development, the council shall, at the same time, adopt a land-use by-law or land-use by-law amendment that shall enable the policies to be carried out.
>
> (2) A council may amend a land-use by-law in accordance with policies contained in the municipal planning strategy on a motion of council or on application.
>
> (3) A council shall not adopt or amend a land-use by-law except to carry out the intent of a municipal planning strategy.

[55] Part 10 of CBRM's Municipal Planning Strategy also includes specific policies about amending its Land-use By-law:

> **LAND USE BY-LAW**
>
> The Land Use By-law shall be the regulatory instrument intended to implement the policy direction of this Municipal Planning Strategy affecting new development. Council will adopt the Land Use By-law along with, and pursuant to, this Municipal Planning Strategy. The policy direction shall be articulated in this By-law by means of text and maps. The text shall include zones with regulatory and prohibitory provisions specific to particular areas and general provisions in effect throughout the CBRM, as well as supporting definitions and interpretative explanations. The maps shall illustrate the extent of the area affected by each

> zone. Each and every parcel of land in the CBRM shall be within the jurisdiction of a zone. The specific regulatory provisions of each zone shall be as directed by policy in this Municipal Planning Strategy….
>
> **ZONING BOUNDARY AMENDMENTS**
>
> **POLICY**
>
> 17. Areas immediately adjacent to a given land use designation on the Municipal Planning Strategy Map may be considered for rezoning to a use permitted in the given designations without requiring an amendment to this Strategy, provided that the intent of all other policies of the Strategy are satisfied.
>
> **ZONE TEXT AMENDMENTS**
>
> **POLICY**
>
> 18. In order to ensure compliance with the intent of the policy establishing any zone in this Planning Strategy, Council may consider an amendment to the text of a particular zone that would refine or improve the implementation of policy direction.
>
> [Exhibit T-4, pp. 10.10-10.12]

[56] The proposed amendment to the Land-use By-law in this case is a zone text amendment; therefore, Policy 18 applies. In respect of this policy, the Thompsons argue that the existing prohibition against kennels in the Land-use By-law is not ambiguous and reflects the intention of the Municipal Planning Strategy, so the removal of the restriction does not refine or improve the strategy. The Thompsons also submit Council's decision lacks empathy for other kennels in CBRM and for homeowners who would hear the noise from a kennel in the affected part of the KBC Zone. All of this, they say, is evidence that the proposed amendment would not refine or improve the implementation of the policies in the Municipal Planning Strategy.

[57] The primary consideration for an amendment to the Land-use By-law under the *Municipal Government Act* is that it carries out the intention of the Municipal Planning Strategy. Whether the amendment refines or improves the implementation of the policies is a matter of judgment that may require a choice between competing policies and values.

[58] In paragraph 24 in *Archibald* (Principle 7), the Court of Appeal noted that barring an error of fact or principle, a democratically elected municipal council's choices between competing values and conflicting intentions in a municipal planning strategy should be respected by the Board. Alluding to its decision in *Tsimiklis v. Nova Scotia Utility and Review Board et al.*, 2003 NSCA 30, the Court of Appeal also said the Board should defer to subjective assessments made by a municipal council on matters such as whether a development would be "appropriate" or would cause an "undue" impact. In *Tsimiklis*, the Court of Appeal stated:

> Such notions as "appropriate development" and "undue impact" as applied to the appellant's project are primarily for the consideration of Council, not the Board. There is no sharp line of division in these policies as they relate to the appellant's proposal that were crossed by Council.
>
> [*Tsimiklis*, para. 63]

[59] In the Board's view, the words "refine" and "improve" are subjective terms that are similar in nature to "appropriate" and "undue." As such, they are primarily for the consideration of Council, not the Board.

6.2 Process Concerns

[60] The Thompsons are also concerned about the information that was provided to Council when it considered the application for the zoning amendment. The Thompsons feel Council was not provided with relevant or appropriate information to make its decision.

[61] The Thompsons question whether certain factors referenced by municipal councillors and others were appropriately considered by Council or were factors that should have been considered at all. These various factors include things such as municipal tax revenue, local jobs and employment, retaining young entrepreneurs in the

community, and the weight given to public comments, especially in relation to the noise concerns of residential property owners in the area.

[62] While the process concerns raised by Appellants are noted, the Board is mindful that the question it must address is whether Council's decision reasonably carries out the intent of the Municipal Planning Strategy. Council's decision may be consistent with the strategy, even if the information provided to Council was irrelevant or incomplete. The information provided to Council does not, in and of itself, demonstrate that Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy. Similarly, municipal councillors and others may raise factors that are unrelated to the Municipal Planning Strategy. These are not necessarily representative of the views of Council as a whole and, likewise, do not on their own demonstrate that Council's decision does not reasonably carry out the intent of the strategy.

[63] The Thompsons are also critical of CBRM planning staff for not providing Council with an analysis of the policies in the Municipal Planning Strategy. In particular, the Thompsons submit that Council was not provided with any reasons or insight about why kennels were excluded from the part of the KBC Zone that is serviced with municipal water and sewer. The Thompsons also feel that the information provided by planning staff did not emphasize that the requested change would permit a use that was agricultural in nature. They say Council should have placed more emphasis on the impact of such a use on existing low density residential development in the zone and planned residential development in a neighboring subdivision (which the Board notes from evidence presented in this proceeding is in a different zone).

[64] In their submissions and evidence in advance of the hearing the Thompsons stated:

> Karen Nevilles [sic] report to council failed to include:
>
> 1. Offer option for more suitable location
> 2. Address Municipal Water and Sewer restriction
> 3. Explain the definition of dog daycare and boarding kennel in regards to Agriculture in the [Land-use By-law] and subsequent [Municipal Planning Strategy]
> 4. Consider low density residential area within KBC
> 5. Articulate that by definition in the [Land-use By-law] Animal Sitting Establishments are an indoor facility
> 6. Articulate [Municipal Planning Strategy] Policy 17 with regards to Keltic Drive Business corridor – no agriculture permitted
> 7. Failed to provide a written summary to council from the 101 residents public input as requested by council for the November 19, 2018 council meeting
> 8. Staff recommendation made on June 26, 2018 was the same as staff recommendation on November 19, 2019 after receiving further public input.
> 9. Obligation of planner to review all policies and forward to council
>
> These omissions indicate due diligence was not used when presenting the facts to council. It is our submission that on the balance of probabilities the council cannot reasonably carry out the intent of the MPS if they are unaware of the policies or possible conflicts.
>
> [Exhibit T-13, p. 10]

[65] In their post-hearing reply submissions, the Appellants stated:

> Validation of Appeal
>
> 1. Information provided to council by Planning Department (Evidence May 29, 2020 Attachment 1)
>
>   a) The planning department addressed the servicing of municipal water and sewer by stating that since only a small percentage of the area zoned KBC is serviced by municipal water and sewer, the proposed uses would be “as of right” in the majority of the area zoned KBC. Did the planning department explain the prohibition surrounding municipal water and sewer? The answer is no. They did not explain to council why this prohibition was in place. Did the planning department explain to council what constituted making the proposed uses permitted “as of right” in the majority of the area zoned KBC. Again the answer in no.
>
>   b) The planning department further stated to council that the KBC zone serviced by both municipal sewer and water is comprised predominantly of sales and service and it would be reasonable to locate the animal sitting establishment and kennels in a sales and service area away from residential development. Did the evaluation take into consider the low

> density houses in this area of the KBC zone and provide this information to council. The answer is no.
>
> c) The planning department's evaluation stated to council that "in addition to complying with the provisions of the Land Use By-Law, boarding kennels and animal sitting establishments are regulated under the CBRM's Dog By-law and must be licensed in accordance with this by-law." Did the planning department explain to council what provisions in the Land use by-law or regulations under the dog by-law must be complied? The answer is no.
>
> Most importantly the information provided by the planning department to council in their original evaluation or with any reports or issue papers did not provide a copy of the actual MPS policies 3. 17 and 6. 1.f. As such there is no evidence on the record that CBRM's council had before it the actual wording of Policy 3.17 and 6. 1.f without the facts is it not reasonable to state the council's decision, on the balance of probabilities, did not carry out the intent of the MPS.
>
> [Appellant Reply Submissions, pp. 3-4]

[66] Whether or not Council had all relevant information, the Thompsons must demonstrate to the Board that the decision Council made does not reasonably carry out the intent of the Municipal Planning Strategy. It is certainly possible that the decision may do so despite relevant, or even critical, information not being provided to Council.

[67] In *Re Gaudet*, 2019 NSUARB 113, the Board rejected the submission that before it could consider whether a municipal council decision reasonably carried out the intent of its planning strategy, it must first determine that the municipal council actually interpreted and applied the strategy to make the decision. The appellant in that case submitted that there was no evidence before the Board that the municipal council gave any thought to the requirements of its planning strategy.

[68] In *Gaudet*, no planning report or staff opinion was presented to the municipal council. The only report that was provided was from the municipality's chief administrative officer, who was not a planner and had no expertise in that field. The report did not refer to policies in the municipal planning strategy or discuss its application to the proposed development in that case. Additionally, in approving the development

agreement, the municipal council did not provide written reasons showing that it applied its municipal planning strategy in reaching its decision.

[69] In addressing the arguments advanced in *Gaudet*, the Board commented:

> It is an important tenet of administrative law that a decision making body has a duty to provide reasons for its decisions. The absence of such reasons, or the inadequacy of reasons, is generally a factor to be considered in the review of administrative decisions. This is certainly the state of the law with respect to the review of a decision by a statutory delegate: *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 and *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.
>
> However, given the well-established jurisprudence respecting the Board's limited jurisdiction on municipal planning appeals, as outlined earlier in this Decision, the Board does not accept the argument that it should apply a two-step test, as suggested by the Appellants. The Board has reached this conclusion for several reasons.
>
> First, the Board notes that the test it must apply is specifically set out in the statute, i.e., the *MGA*. In the case of an appeal from a decision of council, the test is described in s. 251(2).
>
> Second, as noted by counsel for the Municipality, s. 230(6) of the *MGA* specifically directs a municipal council to provide reasons when a development agreement is refused, but is silent on the need for reasons when the development is approved. Thus, where a development agreement is approved by council, as in the present case, the *MGA* does not require, at least impliedly, that reasons be provided. For the Appellants to suggest that they should succeed on this appeal because Municipal Council has not provided any basis for its decision through its deliberations, or in its failure to provide reasons, on how it interpreted and applied the MPS, would not be consistent with the provisions of the *MGA* that do not require the issuance of any reasons whatsoever for its approval of the development agreement.
>
> Third, as noted in the *MGA*, a municipal council is the body which is provided the authority to make policy choices under an MPS. Section 190 of the *MGA* provides that the purpose of the planning provisions of the *Act* is to "enable municipalities to assume the primary authority for planning within their respective jurisdictions". In that vein, a municipal council makes pure policy choices about development in its municipal unit, provided its decisions reasonably comply with the intent of the MPS. The comments of individual councillors do not form the reasons for a decision by Council. Council speaks through the collective voice of all its councillors as a group, not of the individual councillors. Thus, the actual reasons for a particular decision approving a development agreement may be difficult to discern, as different councillors may have voted for a particular result because of different reasons: see also *Weatherhead v. Halifax Regional Municipality*, 2019 NSUARB 17, paras. 148-151.
>
> Fourth, the Board refers to the guidance of MacDonald, C.J., in *Midtown*, in which he refers to the process to be followed by the Board, after looking at the MPS as a whole, to answer the fundamental question laid out in the *MGA*: "Can it be said that Council's decision does 'not reasonably carry out the intent of the MPS'"? He states:
>
> > [51] To answer this question, the Board must embark upon a thorough fact-finding mission to determine the exact nature of the proposal in the

> context of the applicable MPS and corresponding by-laws. As in this case, this may include the reception of evidence as to the intent of the MPS.
>
> [52] However the Board should not then take its body of decided facts and use this work product to conclude how it feels the MPS should be interpreted. In this regard, I agree with the developer. Instead, after completing its factual analysis, the Board should go immediately to Council's conclusion. The Board should then ask itself, based on the facts as determined, have the opponents established that Council's decision did not reasonably carry out the intent of the MPS? [Emphasis added]
>
> [*Midtown* Decision, paras. 51-52]

On this point, the Board notes that HRM Council initially approved the development agreement in *Midtown*, which decision was on appeal to the Board. There were no reasons given by HRM Council in that instance. Applying the direction of MacDonald, C.J., the Board's task, after reviewing the MPS as a whole and undertaking its fact-finding exercise, was to resort directly to Council's conclusion, without reasons, and to determine if it reasonably complied with the intent of the MPS. Thus, in *Midtown*, the Court of Appeal did not consider the lack or inadequacy of reasons, in and of themselves, to be an impediment to the Board applying the scope of its review as outlined in the *MGA*.

Finally, even where no reasons are given by a Court or other decision maker, recent case law provides that the reviewing Court or tribunal is required to refer to the record in applying the appropriate standard of review to an impugned decision. The lack of reasons or the failure of a decision maker to outline its reasoning process does not prevent the reviewing body from having to consider the entire record in determining the reasonableness of an outcome (i.e., in the case of the reasonableness standard of review). In *Halifax (Regional Municipality) v. Rehberg*, 2019 NSCA 65, the Court stated:

> [49] The Committee gave no reasons for its decision to refuse the requested four-month extension. There is no reasoning path to examine. I interject that the respondent has never suggested he was denied procedural fairness in any aspect of the proceedings, including the absence of reasons by the Committee.
>
> [50] Where there are no reasons, the reviewing court must consider what reasons could be offered in support of the administrative decision. This entitles the reviewing court to examine the record, including submissions before the tribunal and on judicial review for the purpose of assessing the reasonableness of the outcome.
>
> [51] This was most recently affirmed in *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, where the majority wrote:
>
> > [29] Reasonableness review requires "a respectful attention to the reasons offered or *which could be offered* in support of a decision" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (S.C.C.), at para. 48 (emphasis added); see also *Newfoundland and Labrador Nurses' Union. v. Newfoundland & Labrador* (*Treasury Board*), 2011 SCC 62, [2011] 3 S.C.R. 708 (S.C.C.), at para. 11). Reviewing courts "may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome" (*Agraira v. Canada* (*Minister of Public Safety and Emergency Preparedness*),

> 2013 SCC 36, [2013] 2 S.C.R. 559 (S.C.C.), at para. 52, quoting *Newfoundland Nurses*, at para. 15). … [*Emphasis in original*] [Emphasis (underline) added]

> Taking all of the above into account, the Board concludes that, in its review of Council's decision, it should not apply the two-step process submitted by the Appellants. In the view of the Board, its proper scope of review in this appeal is as set out in s. 251(2) of the *MGA*, which states that the "Board shall not allow an appeal unless it determines that the decision of council…does not reasonably carry out the intent of the municipal planning strategy". There is nothing in the case law, or in the Board's prior decisions, including *MacInnis*, which sets out a different test to be applied in this appeal. [Emphasis in original]

[*Re Gaudet*, paras. 108-116]

[70] Ultimately, the role of the Board in a planning appeal is to consider whether the decision of a municipal council reasonably carries out the intent of the municipal planning strategy. The information presented to Council and the comments of individual councillors may have nothing to do with the Municipal Planning Strategy, and yet Council's decision may still reasonably carry out the intent of the strategy. The Board's role in planning appeals is not to sit as a reviewing body to assess the decision-making processes that Council used to arrive at its decision (*Maskine v. Halifax County*, (1992) 118 N.S.R. (2d) 356 at para. 12).

6.3 Part 3, Policy 17: Agriculture in the Serviced Area of the KBC Zone

[71] The Thompsons submit that Policy 17, in Part 3 of the Municipal Planning Strategy, does not allow agricultural uses in the eastern part of the KBC Zone, which is serviced by municipal water and sewer. As such, the Thompsons said that kennels, being an agricultural use, are not allowed in that area. However, the Board finds that a reasonable interpretation of the agricultural policies in the Municipal Planning Strategy permits agricultural uses in the part of the KBC Zone serviced by municipal water and sewer.

[72] Policy 17 (Part 3) is reproduced earlier in this decision, but for convenience, the part most relevant to the analysis of this issue is repeated here:

> 17. It shall be a policy of Council to designate the eastern corridor of Keltic Drive, as illustrated on the Municipal Planning Strategy Map, as a diverse corridor where the following land uses are permitted:
> - business service and sales uses;
> - manufacturing uses;
> - recreation, culture, and entertainment uses;
> - transportation service terminals and depots; and
> - rural residential uses.

[73] The Municipality acknowledges that agricultural uses are not specifically noted in Policy 17, but it submits such uses are permitted under Part 6 of the Municipal Planning Strategy. The Municipality, in its closing submissions, notes that the provisions dealing with agriculture in Part 6.1 of the strategy are not zone-specific, and apply broadly throughout CBRM.

[74] In his expert's report filed in this proceeding (Exhibit T-16, p. 14-16), Mr. Gillis observes that Policy 1.a, in Part 6 of the Municipal Planning Strategy, allows all types of agricultural uses throughout the rural areas of the regional municipality. Mr. Gillis also notes that Policy 1.f gives further direction regulating agricultural uses in urban communities.

[75] If there is any inconsistency between the uses noted in Policy 17 and the agricultural policies in Part 6, a resolution of that conflict is a matter for Council. As such, the Board must defer to the Council's compromises of conflicting intentions in the Municipal Planning Strategy. In this regard, the Board is mindful of the Court of Appeal's comments in *Heritage Trust*:

> … Planning policies address a multitude of planning considerations some of which are in conflict. Most striking are those that relate to economics versus heritage preservation. Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact on such decisions. So long as a decision to enter into a development contract is reasonably consistent with the intent of a municipal

> planning strategy the Nova Scotia Utility and Review Board has no jurisdiction to interfere with the decision (s. 78(6)).
>
> [*Heritage Trust*, para. 164]

[76] Furthermore, the Board has no jurisdiction to allow an appeal if Council "interpreted and applied the [Municipal Planning Strategy] policies in a manner that the language of the policies can reasonably bear" (*Heritage Trust*, para. 99). In this case, interpreting the agricultural policies in a way that is not zone specific is a reasonable interpretation of the Municipal Planning Strategy. Indeed, the concurrently adopted Land-use By-law supports the Municipality's interpretation.

[77] Despite there being no specific reference to agricultural uses in Policy 17, the Land-use By-law currently allows all agricultural uses (except for kennels) everywhere in the KBC Zone. The by-law only prohibits kennels in the portion of the KBC Zone that is serviced by municipal water and sewer.

[78] The Thompsons interpret the reference to the "eastern corridor of Keltic Drive" in Policy 17 as a reference to the eastern portion of the KBC Zone that is serviced by municipal water and sewer. As such, the Thompsons appear to have accepted that the Land-use By-law permits agricultural uses but restricts them to the parts of the KBC Zone outside of the areas serviced by municipal water and sewer.

[79] During cross-examination by Ms. Thompson, Ms. Neville disagreed with the Appellants' interpretation of the application of Policy 17 stating:

> Q. So in looking at that policy 17, it's (unintelligible phone line breaking) is agricultural, even though that zone is agricultural, that policy in the eastern zone, because it's saying the eastern corridor, it's not looking at the full zone, you're just looking at that one area of the zone, which is the eastern so....
>
> A. I would argue that that's not what that policy is saying. It's designating the eastern portion of Keltic Drive and the KBC zone in its entirety. It's not specifically talking about services in that section.
>
> [Transcript, July 2, 2020, p. 194]

[80] The Board concurs with this statement. At the very least, interpreting Policy 17 as a reference to the entire KBC Zone, and not just the part serviced by municipal water and sewer, is an interpretation that the policy can reasonably bear. As such, the Board must defer to the Municipality's interpretation in this instance.

[81] In summary, the Board finds that it is reasonable to interpret Policy 17 as addressing the entire KBC Zone, and not just the part of the zone serviced by municipal water and sewer. Furthermore, it is also reasonable to interpret the polices in Part 6 of the Municipal Planning Strategy as allowing for agricultural uses in the KBC Zone, even though the uses in the zone set out in Policy 17 do not specifically reference agricultural uses.

6.4 Part 3, Policy 17: Range of Business Development in the KBC Zone

[82] The Thompsons emphasize the part of the preamble to Policy 17 that notes that the Keltic Drive business corridor was not a uniformly developed business corridor and is interspersed with low density residential development. In particular, the Thompsons point to the cautionary language in this commentary that notes "the potential for land use conflict will be high if more obnoxious developments were to be introduced other than the range of business developments now prevalent along the streetscape." The Thompsons argue that kennels are outside of the range of business developments in the area. However, the Board finds that a reasonable interpretation of the polices in the Municipal Planning Strategy permits such a use. Indeed, kennels are already allowed in much of the KBC Zone.

[83] The primary basis for the Thompsons' argument is that dog kennels are noisy. Noise associated with such activities was also identified as a concern by Mr. Gillis

in his testimony before the Board at the hearing. The Thompsons identified other uses in the area in their post-hearing reply submissions, such as, the Breton Brewery, a fitness center, a cake shop, sign shops and a sound studio. They say that a dog kennel simply did not “fit” with these other uses because of the noise.

[84] The preamble to Policy 17 does not specifically define obnoxious uses. It also does not provide a detailed description of the “range of business development” in the zone. The policy does, however, provide for a broad range of uses consisting of business service and sales uses; manufacturing uses; recreation, culture, and entertainment uses; transportation service terminals and depots; and rural residential uses.

[85] As kennels are considered to be agricultural uses, they are not included in the range of uses specifically listed in Policy 17, but agricultural uses are permitted, and the policy basis for this is considered in Part 6.3 of this decision. That said, it is reasonable to expect that there would be noise associated with many activities within the range of permitted uses specifically noted in Policy 17.

[86] Based on the evidence in this case, the Board is not satisfied, on a balance of probabilities, that noise associated with kennels falls outside of the range of noise that may be associated with activities within the scope of permitted uses listed in Policy 17. The Board is also not satisfied that the use itself is outside of the range of uses contemplated for the zone. Indeed, kennels are already allowed in the zone, just not in the municipally serviced area, and there is an existing kennel in another part of the zone.

6.5 Part 6, Policy 1.f: Kennels in the Serviced Area of the KBC Zone

[87] The Thompsons submit that Policy 1.f, in Part 6 of the Municipal Planning Strategy, prohibits kennels in urban communities. They argue that the eastern part of the

KBC Zone is an urban community under the strategy because it is serviced by municipal water and sewer. As such, because the proposed amendment removes the prohibition against kennels, the Appellants claim it does not carry out the intent of the Municipal Planning Strategy.

[88] The Board accepts that the Municipal Planning Strategy requires Council to consider kennels to be an inappropriate type of development within urban communities. However, the Municipality's position that characteristics of a community, other than whether it is serviced by municipal water and sewer, may assist in determining whether it is urban is an interpretation that the strategy can reasonably bear. There is also evidence to support the Municipality's interpretation that the serviced area of the KBC Zone is not an urban community for the purposes of the Municipal Planning Strategy.

[89] The central question in this appeal is whether permitting kennels in the part of the KBC Zone that receives municipal water and sewer reasonably carries out the intent of the Municipal Planning Strategy. Under the current Land-use By-law, kennels are prohibited in this part of the KBC Zone. The Thompsons note that kennels are also specifically prohibited in other zones as well. Fundamentally, the Thompsons submit that there must be a reason for that. However, no explanation for the existing prohibition was offered in any of the planning reports provided to Council in this matter. Indeed, no discussion of this appears anywhere in the Appeal Record filed in this proceeding.

[90] The reason the Thompsons advance for the current prohibition in the Land-use By-law is because the Municipal Planning Strategy prohibits kennels in urban communities. This is based on an interpretation of Policy 1.f in Part 6 of the Municipal Planning Strategy. As noted previously, Part 6 of the Municipal Planning Strategy

considers agricultural activities in the Municipality. Policy 1.f discusses agricultural uses in urban communities specifically:

> 1.f It shall be a policy of Council to consider any agricultural livestock operations, however small, or the rearing of livestock for recreational purposes, an inappropriate type of development within urban communities, except non-kennel type of agricultural uses on unusually large lots outside of the business development zones and the higher density residential zones, as described in the Land Use By-law. As well, the non-conforming status of any existing agricultural use in urban communities shall be relaxed to permit their extension, enlargement, alteration, or reconstruction. However, rather than regulating such activities solely by means of zoning provisions, Council shall adopt a By-law, pursuant to Section 174 of the Municipal Government Act, to regulate hobby or recreational animal rearing activities in urban areas. The Planning Department and the office of By-law Enforcement shall formulate this draft By-law. [Emphasis added]
>
> [Exhibit T-4, p. 6.5]

[91] In response to this, the Municipality argued that Policy 1.f does not require Council to consider kennel uses to be inappropriate in urban communities. The Municipality argued that Policy 1.f is about livestock operations and has nothing to do with kennels. In the Board's view, this interpretation simply ignores both the language and structure of Policy 1.f, and the obvious connection between this policy and several existing prohibitions relating to kennels in the concurrently passed Land-use By-law.

[92] Considered grammatically, Policy 1.f in Part 6 of the Municipal Planning Strategy begins with the general proposition that Council must consider any agricultural livestock operation or the rearing of livestock for recreational purposes an inappropriate type of development within urban communities. However, Policy 1.f then continues in the same sentence to carve out an exception where livestock operations or the rearing of livestock for recreational purposes will be appropriate within urban communities. There are three aspects to this exception: (1) it must be a non-kennel type of agricultural use; (2) it must be on an unusually large lot; and, (3) it must not be located in a business development zone or a higher density residential zone.

[93] If, as the Municipality suggests, livestock operations or the rearing of livestock for recreational purposes have nothing to do with kennels, then the first requirement for the exception, that it be a non-kennel type of agricultural use, would be entirely unnecessary. If livestock activities had nothing to do with kennels, then all such activities would be a "non-kennel type of agricultural use" and there would be no point in specifying this as a requirement for allowing some agricultural livestock operations or the rearing of livestock for recreational purposes in urban communities. The Municipality's interpretation ignores the actual words used in the policy.

[94] In response to questions from the Board at the hearing, Mr. Gillis agreed that the exception that is carved out for non-kennel type of agricultural uses implies that there is a prohibition against agricultural uses involving kennels:

> Q. Okay, so the first part of that policy says:
>
> > "It shall be the policy of council to consider any agricultural livestock operations, however small, or the rearing of livestock for recreational purposes, an inappropriate type of development within urban communities."
>
> I'm going to stop there for a second. So just in terms of your opinion, at least so far there, my take from that is generally, the general rule would be no agricultural livestock operations in urban communities. That's the general rule that's being stated; is that correct?
>
> A. Not entirely correct, no. An inappropriate type of development, so in...agricultural livestock operations can be permitted in urban communities...excuse me...if they have substantially large enough acreage...I'm losing my voice. So it's an inappropriate type of development, which doesn't mean it's necessarily banned, but it is stringently regulated.
>
> Q. Okay, and is that what that exception is for? It says it's inappropriate except, and then it goes on to define the circumstances where it will be appropriate?
>
> A. Yeah.
>
> Q. Okay, and those circumstances are if it's a non-kennel type of agricultural use on a large or unusually large lot outside of a business development zone and a higher density residential zone. Isn't that the conditions where it'll be allowed?
>
> A. Yes.
>
> Q. Okay, and so in the exception that says, "except for non-kennel type of agricultural uses", doesn't that imply that there are kennel-type of agricultural uses under agricultural livestock operations? Mr. Gillis?

A. Yeah, I'm there, I'm just reading it. Excuse me. I see what you're getting at, but not necessarily.

Q. And why do you say not necessarily?

A. Mm-hmm, okay. I'd have to consider that. I see your point, Mr. Chairman, but....

Q. So do you have a further answer for that or....

A. I'd like to think about that. I'd like to have a discussion with staff here, if we could. We can't do that?

Q. Well, you really can't at this moment. You're on the stand and you're providing testimony, so you answer to the best of your ability now and, you know, I'm really asking about the opinion that you provided in this proceeding.

A. Yeah. Well, in the opinion that I provided I'm advocating that they aren't considered to be a livestock operation, because they're not defined as such in the Land Use Bylaw.

Q. Alright, and I don't want you to be advocating [for] anyone. You're here to assist me with your expert opinion...

A. Mm-hmm.

Q. ...providing an interpretation of the Municipal Planning Strategy, and so I'm just concentrating now on policy 1(f), and just reading it the way it reads, wouldn't you agree that if there's a general prohibition against agricultural livestock areas in urban communities, except for a non-kennel type of use, doesn't that imply that it's really the kennel type of use that's being prohibited?

A. Yes. Yeah, it does imply that.

[Transcript, pp. 102-104]

[95] As noted in the passage above, Mr. Gillis' opinion that kennels are not considered to be a livestock operation is based on a definition in the Land-use By-law. In his pre-filed report to the Board, Mr. Gillis stated:

> Are kennels a livestock operation? It is only livestock operations that are banned in urban communities. The Land Use Bylaw defines livestock farming as the rearing of animals to produce a commodity. Boarding kennels are essentially a pet babysitting service i.e. nothing is produced. They don't really meet the test of the LUB definition. Breeding kennels could be considered livestock operations because the commodities produced are the puppies for sale. However, although kennels are identified as category of the LUB's definition of agriculture, in that same comprehensive definition they are defined as a separate category from livestock farming. Therefore, I don't believe adding kennels to the list of permitted uses in the KBC Zone is contravening the directive of Policy 1.f of Part 6 as livestock is defined in the LUB.
>
> [Exhibit T-16, pp. 14-15]

[96] Although Mr. Gillis expresses the opinion that breeding kennels could be considered livestock operations, he concludes that the definition of agriculture in the

Land-use By-law separates livestock operations and kennels into different categories. The definition of “agriculture” is set out in Part 100 of the by-law:

> **Agriculture** means the use of land, buildings and structures for the production of crops, or raising and/or caring of livestock as an agricultural commodity or as a draft animal serving in the agricultural operation. For purposes of clarification, processing of agricultural products associated with an agricultural operation shall be considered accessory to the primary agricultural operation. Processing of agricultural products as a main use at a separate site from the primary operation (e.g. milk processing, abattoirs) shall not. As well, retailing of agricultural products on the farm, that are produced on the farm, shall be considered accessory to the primary agricultural operation. Retailing of agricultural products as a main use at a separate site from the primary operation is a sub-category of sales. This By-law divides agriculture into the following categories:
>
> - crop farming means an agricultural operation in which the primary function is the growing and harvesting of vegetables, fruits, berries, nuts, sods, or other similar products.
>
> - kennel means a facility where animals are bred or boarded as a business development intended to generate revenue by charging a fee for purchase or boarding.
>
> - livestock farming means an agricultural operation in which the primary function is the rearing of animals to produce commodities. This category is further divided into livestock stabling and livestock grazing. Livestock grazing is the use of large tracts of land for growing feed which is primarily eaten pre-cut by grazing, untethered livestock.
>
> - mixed farming means an agricultural operation in which none of the other five categories predominates.
>
> - specialized types of agricultural production means greenhouses, nurseries, or the rearing of insects to produce commodities.
>
> - stable means a building designed to house, or breed large draft animals (e.g. horses, cattle, donkeys) either for agricultural, recreational, or business purposes and shall include riding stable businesses.
>
> - The keeping and/or caring of animals at a small scale as a hobby activity is not an agricultural land use, regardless of the type of animal. This By-law respects that there are other enabling provisions in the Municipal Government Act to effectively regulate the keeping of domestic animals and activities in relation to them.
>
> [Exhibit T-5, p. 240]

[97] The subcategories for “livestock farming” and “kennel” in the definition of agriculture do not draw as sharp a distinction as the Municipality suggests. There are several reasons for this.

[98] First, the initial sentence in the definition of “agriculture” makes it clear that agriculture deals with either crops or livestock. Therefore, despite the later division of

agriculture into subcategories, each subcategory should fall under one of these two main branches.

[99] Second, there is an overlap in the language used to describe a “kennel” and “livestock farming.” The language used to define “kennel” addresses the breeding of animals for purchase while the language in the definition of “livestock farming” references the rearing of animals to produce commodities. While different words are used, it is the same concept. The definition of “kennel” also includes boarding, which may suggest a broader scope, but does not change the fact that there are overlapping concepts at play. This was essentially acknowledged by Mr. Gillis in his report when he noted that breeding kennels could be considered livestock operations.

[100] Third, the term “kennel” refers to a facility whereas “livestock farming” is an operation. There is nothing in these two definitions that precludes the use of a kennel for livestock farming. Livestock farming is, however, further divided into “livestock stabling and livestock grazing.” A description of “livestock grazing” is included in the definition, but there is no specific definition for “livestock stabling.” There is a definition for “stable,” but it is specific to “draft animals.” As noted in the first sentence in the definition of agriculture, the raising and caring for livestock can be for purposes of either an “agricultural commodity” or “as a draft animal serving in the agricultural operation”.

[101] Fourth, some of the subcategories under agriculture seem to be defined for no substantive purpose. The term “livestock” is not used anywhere in the Land Use By-law other than within the definition of agriculture. Similarly, the term “stable” only appears in the definition of agriculture and in a list of structures under the definition of “agricultural

building" in Part 100 of the by-law. Neither of the terms "stable" or "livestock stabling" appear anywhere in the Municipal Planning Strategy.

[102] As discussed above, Policy 1.f identifies livestock operations and the rearing of livestock for recreational purposes involving the use of kennels as inappropriate development within an urban community. While referring to the concurrently adopted Land Use By-law may assist in interpreting a Municipal Planning Strategy, there is no shade to be illuminated here. Rather, the Municipality's reference to the poorly drafted definition of "agriculture" in the Land-use By-law seems to be designed to create ambiguity rather than resolve it.

[103] Although the Board finds that the language in Policy 1.f is clear in its grammatical and ordinary sense, if one required support in the Land Use By-law for the proposition that this policy requires Council to consider kennels to be an inappropriate type of development within urban communities, the zoning requirements established in the by-law under Part 18 for the Residential Urban C (RUC) Zone and Part 19 Residential Urban D (RUD) Zone are clear examples.

[104] There are four residential urban zones (A to D) in the Land-use By-law. The RUC and RUD Zones are the lower density residential zones. In both zones, all agricultural uses are permitted "except kennels subject to Section 4." In each zone, there is an identically worded Section 4, which states:

> **Section 4 Agricultural**
>
> a. With the exception of kennels, the use of land, buildings, or structures for the purposes of rearing and caring for animals as agriculture is defined in this By-law shall be permitted on lot parcels or tracts of land comprised of a minimum of 1 acre.
>
> b. Existing agricultural buildings or structures on lot parcels or tracts of land comprised of less than 1 acre may be enlarged or re-constructed.

> c. New agricultural buildings for the purposes of rearing and caring for animals as agriculture is defined in this By-law located within 200 feet from any dwelling other than a dwelling occupied by the owner of the agricultural building shall be setback a minimum of 50 feet from any lot parcel boundary.
>
> [Exhibit T-5, pp. 81-82]

[105] The structure of these provisions is perfectly consistent with Policy 1.f. Except for kennels, these zones allow the rearing and caring for animals as agriculture (i.e., non-kennel type of agricultural uses) on lots that are at least an acre (i.e., "unusually large lots") in these lower density residential zones (i.e., "outside of … the higher density residential zones").

[106] The Municipality also argues that dogs are not livestock. It said the word "livestock" is commonly understood to refer to farm animals and that dogs are typically not described as "livestock" in normal discourse. It also submitted that dogs are the only type of animal dealt with in the kennel industry.

[107] The problem with these submissions is that Policy 1.f requires Council to consider livestock operations involving kennels to be an inappropriate type of development in urban communities. So, either the strategy treats dogs as livestock for the purposes of the Municipality's policies, or kennels for more than just dogs were contemplated. In either case, it is not reasonable for the Municipality to simply interpret away a prohibition against agricultural uses involving kennels in its Municipal Planning Strategy. It may be that the prohibition against kennels in Policy 1.f is not specifically aimed at dog kennels. However, the approved Land Use By-law amendment in this case would remove the prohibition against all forms of agricultural uses involving kennels, not just dog kennels.

[108] Whatever the prohibition against kennels in Policy 1.f was intended to address, it only applies to agricultural uses involving kennels in urban communities. If the

area of the KBC Zone that receives municipal water and sewer services is not an urban community, Policy 1.f does not apply.

[109] The Thompsons submit that the serviced part of the KBC Zone is considered urban under the Municipal Planning Strategy because it receives those services. In particular, the Thompsons refer to the Introduction in Part 1 of the strategy that considers development patterns in urban, suburban and rural areas of the Municipality, which states:

> **Urban, suburban, and rural**
>
> The CBRM covers a large geographic region, as do many regional governments. Traditionally, municipalities governed areas comprising similar built form. However, there are many different types of built form (the massing or combination of development in a community) throughout the CBRM. Words such as Urban, Suburban, and Rural are used throughout this document to describe communities with differing patterns of development, and consequently, different planning needs. The following definitions of CBRM communities, based officially on infrastructure services, are intended to assist interpretation throughout the remainder of this Municipal Planning Strategy. Accompanying definition is subjective characterization of these types of communities.
>
> Urban communities receive both piped water and sanitary sewer service.
>
> They are places that can facilitate more development due to their ability to handle large populations with these services. Development in urban communities is key to rebuilding CBRM Downtowns and providing urban lifestyles with diverse choices in living, working, and shopping. Urban communities are intended to be pedestrian friendly, distances between destinations should be relatively short in comparison with suburban and rural areas, and development should be sensitive to integrate well into existing streetscapes, both functionally and visually.
>
> Suburban communities receive either piped water or sanitary sewer provided by the Regional Municipality. However, some areas of the CBRM are provided with piped water that is far from other suburban and urban communities. These communities receive this service because of extraneous circumstances (e.g. water main in Alder Point to service the fish processing plant) that in no way reflect the character of the landscape and are therefore deemed rural.
>
> Low-density residential housing, shopping centers, and primary accessibility via automobile characterize suburban communities. These communities are expensive to service with infrastructure as minimal population densities are spread out over large geographic areas. They are further from centers of population and require large amounts of land per suburban dweller.
>
> Rural communities are not provided with piped water or sanitary sewer except for the above-mentioned exception.

> Their natural environment characterizes rural communities with relatively little development in comparison to both suburban and urban communities. Summer and full-time residences along with resource extraction sites, tourism, and recreational activities dot the landscape. The communities are prized for their clean environment and should integrate new development in sustainable ways so as to minimize environmental impacts and protect the privacy rural living has to offer.
>
> [Exhibit T-4, pp. 1.4-1.5]

[110] The Municipality submitted that although the availability of sewer and water services in an area is a guiding factor that one must use to determine whether an area is urban, suburban or rural, there are no policies in the Municipal Planning Strategy that specifically say that if an area receives municipal water and sewer services it must be considered to be an urban community. The Municipality emphasizes that a reference to the municipal services that an area receives is "intended to assist interpretation." The Municipality also interprets the language in this part of the Municipal Planning Strategy as requiring that consideration of the services an area receives to be accompanied by a subjective consideration of its other characteristics.

[111] The Board reiterates that the approach that it must follow to interpret the Municipal Planning Strategy is to ascertain if Council interpreted and applied the policies in a manner that the language of the policies can reasonably bear. As was noted in *Heritage Trust*, a policy might be reasonably capable of bearing more than one meaning. While there is some merit in the interpretation advanced by the Thompsons, the Board finds that the interpretation advanced by the Municipality is one that the Municipal Planning Strategy can reasonably bear. As such the Board must defer to the Municipality's interpretation.

[112] In applying this interpretation, CBRM presented evidence that, notwithstanding the receipt of both municipal water and sewer services, this part of the KBC Zone is suburban in nature. In its closing submissions, the Municipality stated:

> 52. It was the evidence of Malcolm Gillis that despite receiving piped water and sewer, he would not consider the serviced corridor of the KBC Zone to be urban in nature. Rather, he would consider the KBC Zone to be at the suburban/rural fringe, with the serviced area being more appropriately considered suburban. The explanatory text regarding suburban zones closely describes the nature of the KBC Zone; despite the presence of a sidewalk along part of the serviced corridor, the larger lot sizes and distance from residential communities mean that the area is primarily accessed by automobile rather than by pedestrian traffic, and is not 'pedestrian friendly'. The area does not serve or connect to an urban downtown core. The area is largely characterized by low-density rural residential housing and businesses, with larger lot sizes than are typical in the urban areas of CBRM and more distanced from the major population centres.
>
> [CBRM Submissions, p. 14]

[113] The description provided in this passage is consistent with the evidence that Mr. Gillis provided in his report and at the hearing. It was also representative of what the Board observed on its site visit.

[114] The Thompsons argue that the existing prohibition against kennels in the eastern portion of the KBC Zone is evidence that the area is considered urban. They also note that the area is enveloped by lands in the Residential Urban C (RUC) Zone that would similarly be considered urban in nature. .

[115] Although the fact that the current Land Use By-law prohibits kennels in the serviced area of the KBC Zone might suggest the area was considered to be urban when the Municipal Planning Strategy and Land Use By-law were developed, there is nothing before the Board to suggest that this was definitively, or exclusively, the reason for the prohibition in this case. Even if it was, the Board considers that it would be open to the Municipality to reassess the circumstances of this area when considering an application to amend the Land-use By-law. It is possible that the characteristics of an area may change over time, or that it may exhibit characteristics that are, at the same time, suggestive of both an urban and rural nature, permitting Council to draw different reasonable conclusions about the nature of the area.

[116] The Thompsons also referenced population figures mentioned in Part 7 of the Municipal Planning Strategy dealing with transportation infrastructure. These figures reproduced Statistics Canada information from the 2001 Census showing urban concentration in CBRM. The Thompsons note that these statistics include residents in the eastern KBC Zone in the urban concentration figures for the Greater Sydney area.

[117] The Board is not satisfied that the inclusion of population information from Statistics Canada in Part 7 of the Municipal Planning Strategy means that the strategy intended that all geographic areas used to develop the statistical information would be considered urban communities under the strategy. Indeed, the Board notes that the paragraph leading into this table in the Municipal Planning Strategy begins with the sentence, “approximately 4/5ths of CBRM’s total population reside in its four largest concentrations of urban/<u>suburban</u> development” (emphasis added).

[118] Based on the evidence submitted in the proceeding, the Board accepts the Municipality’s assertion that the area serviced by municipal water and sewer in the KBC Zone is suburban in nature. The Board finds that the Municipality’s interpretation and application of Policy 1.f to determine whether the serviced area of the KBC Zone is an urban community is reasonable and must stand.

[119] In its post-hearing submissions, the Municipality also argued, in the alternative, that Policy 1.f does not require kennels to be prohibited in its Land-use By-law because the activity is regulated by another by-law:

> 57 …CBRM states that even if the Board considers that Policy 6.l(f) directs Council to deem kennel uses inappropriate in urban communities, this is not the end of the matter. Policy 6.l(f) does not simply end after stating that Council shall consider such uses inappropriate. Rather, it goes on to state that Council shall not regulate such matters by means of zoning by-laws alone, but shall adopt a by-law "to regulate hobby or recreational animal rearing activities in urban areas". In other words, this section does not require Council to prohibit livestock-related land uses in urban areas by way of the Land Use By-Law, but contemplates that such regulation may be implemented by way of other by-laws to be

> created by the Planning Department. If Council is of the view that such activities have been appropriately regulated by other by-laws, Council has discretion not to include regulation of such activities in the LUB.
>
> 58. It was the evidence of Karen Neville that she did not consider Policy 6.I(f) to prohibit kennels in urban communities. Rather, her reading of the policy was that it essentially constituted direction to planning staff to create additional by-laws to regulate hobby or recreational animal rearing activities in urban areas.
>
> 59. In the present case, the fact that CBRM has enacted a Dog By-Law which came into effect subsequent to the MPS was a live issue that was before Council during the hearing of the present application. If, in Council's view, the Dog By-Law provided appropriate regulation of recreational animal rearing activities in the KBC Zone, it was within Council's discretion to decide that prohibition of kennels by way of the Land Use By-Law was no longer necessary. There is nothing in the text of Policy 6.I(f) that would strictly require Council to continue prohibition of kennels in the Land Use By-Law even after other by-laws to regulate dog rearing have been adopted. As a result, CBRM states that Council's decision was well within the discretion afforded to it by Policy 6.I(f) and the MPS generally.

[120] In this proceeding, the information about the dog by-law was very limited. The effective date and scope of the by-law are not clear from the evidence before the Board, and the Thompsons and the Municipality disagreed over whether the dog by-law pre- or post-dated the adoption of the Land-use By-law and Municipal Planning Strategy. Coming as they did, in a brief response to a question on cross-examination, Ms. Neville's comments are also not supported by a written report or analysis.

[121] Given the Board's finding about the reasonableness of the Municipality's interpretation and application of the Municipal Planning Strategy to determine that the serviced part of the KBC Zone is not an urban community, it is not necessary for the Board to resolve the Municipality's argument about the dog by-law. Considering the limited record before the Board in respect of this issue, the Board declines to do so.

6.6 Part 2, Policy 17.e: Protection for Nearby Residential Development

[122] In their evidence at the hearing, the Thompsons raised the possibility that Policy 17.e, in Part 2 of the Municipal Planning Strategy, applied to Council's decision. The Thompsons' argument is not entirely clear, but appears to be based on a position

that allowing dog kennels in the part of the KBC Zone that is serviced by municipal water and sewer would result in noise for which there would not be reasonable protection for nearby residential development. The policy states:

> 17.e Unless there is specific policy direction regarding a type and scale of business development elsewhere in this Municipal Planning Strategy, it shall be a policy of Council to permit all other business developments not allowed by policy statements elsewhere in this Part throughout rural CBRM by zoning amendment, except in neighbourhoods subject to Policy 18 of this Part and planned residential subdivisions.
>
> A site specific, use specific, zone shall be considered for each zoning amendment application. The purpose of the zone shall be to ensure:
>
> • the site itself;
> • the site plan; and
> • management of the business development,
>
> mitigate any adverse affects the development will have on low density residential development in proximity. If zone provisions cannot be established that provide reasonable protection to residential development in proximity, the application shall be denied. More specifically, this means evaluating the proposal from the perspective of:
>
> • visual compatibility;
> • dust or fumes emanating from the site;
> • traffic attracted to, and leading from, the site; and
> • noise emanating from the development.
>
> [Exhibit T-4, p. 2.28]

[123] The Municipality submits that the policy simply does not apply. In CBRM's post-hearing submissions, it stated:

> 9. At the hearing of this matter, the Appellant raised the issue of whether Policy 2.17(e) of the Municipal Planning Strategy applied to the amendment in question. CBRM states that Policy 2.17(e) is inapplicable to the decision of Council in this case. Policy 2.17(e) is a policy that allows developers to make an application to Council for the creation of a site and use specific zone in a rural area of CBRM where there is no other policy direction in the MPS governing the type and scale of business development in question.
>
> 10. In the present case, the Applicant was not requesting that a site-specific zone be created for their business development, but rather were requesting an amendment to the text of the existing KBC Zone. Although the appropriate classification of the serviced business corridor in the KBC Zone is a live issue in this appeal, it is agreed by the parties that it would not be considered a rural area. Policy 2.17(e) does not apply to the application that was before Council, and as such Council was not required to conduct the review of the impact of the applicant's business development on residential properties in proximity as contemplated by that policy.
>
> [Respondent's Post-hearing Submissions, p. 4]

[124] The Board agrees that Policy 17.e has no application in the present circumstances. This is an appeal from a proposed amendment to the Land-use By-law to change the uses permitted in the KBC Zone. It is not an appeal of an application to create a site and use specific zone. Additionally, no party in this appeal took the position that the serviced portion of the KBC Zone was a rural area. Indeed, as noted earlier in this decision, the Thompsons argued that the area was an urban community. The Municipality disagreed but characterized the area as suburban in nature.

6.7 Unfair Competition

[125] The Board understands that the Thompsons initiated and proceeded with this appeal because they are concerned about the continued viability of their business. The Thompsons feel that the by-law amendment will give the Campbells an unfair competitive advantage. It would allow the Campbells to run a dog kennel in what the Thompsons believe is a favourable location closer to more heavily populated residential areas. This may make the location a more convenient choice for families living in those areas who require boarding for their pets.

[126] In their pre-filed evidence in this appeal, the Thompsons stated:

> Pre-existing kennels are throughout other electoral districts of the CBRM although there are not many. We are located in specific areas (Agricultural Rural) that are somewhat isolated due to the impact kennels have. We are operational businesses, provide jobs, service clients and pay taxes but our distance from Sydney is simply a price of doing business. By approving this amendment, the CBRM would be conferring a competitive advantage to the applicant (water, sewer, pivotal location close to Sydney and dense client population) and that is a slight to other kennels who have already sacrificed and worked very hard to establish our businesses. By doing so the CBRM would be working against many other kennels who already employ people. The CBRM should not take such a role. It is not an unreasonable expectation by other kennels to expect council to respect the by-laws and the same rules should apply to every kennel. Clearly the by-laws state kennels are agricultural. We all provide a service but again are located in rural areas. The proponent will be permitted in a business corridor because they are a service. We and other kennels provide that same service and were excluded from urban densely populated areas. That is unfair competition and puts us at an unfair advantage leading to a decline in clients due to “convenience” for the clients and causes undue hardship to our kennel. Our business is seasonal with many closing during winter months. A loss of clients at any time could lead

> to a closure. Lost jobs, lost taxes, and lost availability for pets to have somewhere to stay. These are factors we face every day like most businesses. It is unfair to us to add a new kennel that is not subjected to the same regulations in regards to location. Competition is competition. Unfair competition is just that unfair.
>
> [Exhibit T-13, p. 15 of 30]

[127] While the Board appreciates these concerns, the Thompsons did not identify any policy in the Municipal Planning Strategy touching upon them. The Board's jurisdiction is limited, and it may only interfere with Council's decision if it does not reasonably carry out the intent of the strategy. It may be the case that planning decisions prove to impact certain constituents more than others, but if they reasonably carry out the intent of the Municipal Planning Strategy, such decisions must be left to the Municipality's elected officials.

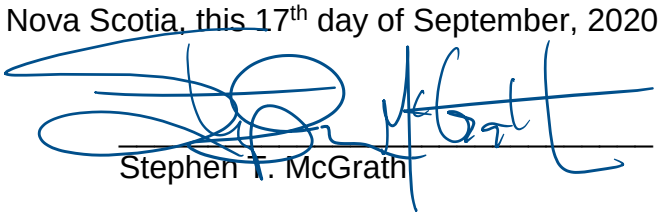
7.0 CONCLUSION

[128] On November 19, 2019, CBRM Council approved an amendment to its Land-use By-law to remove a prohibition against kennels in the part of the Keltic Drive Business Corridor (KBC) Zone that receives municipal water and sewer services. The Board finds Council's decision reasonably carries out the intent of its Municipal Planning Strategy. Although the Municipal Planning Strategy considers agricultural uses involving kennels an inappropriate type of development within urban communities, the Board finds that the Municipality reasonably interpreted and applied its Municipal Planning Strategy to determine that the serviced part of the KBC Zone is not an urban community.

[129] It may be possible to interpret the Municipal Planning Strategy in a way that would have led to a different outcome than what the Municipality decided. However, the choice between different reasonable interpretations is not within the Board's authority and must be left to CBRM Council. The appeal must therefore be dismissed.

[130] An order will issue accordingly.

DATED at Halifax, Nova Scotia, this 17th day of September, 2020.



Stephen T. McGrath