DECISION **2017 NSUARB 153**
M08061

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **FH CONSTRUCTION LIMITED** of a Decision of Halifax and West Community Council on April 18, 2017, which refused to rezone portions of lands from R-1 (Single-Family Dwelling) Zone to R-2 (Two-Family Dwelling) Zone on Herring Cove Road, Parkmoor Avenue and Charlton Avenue, Halifax; and the refusal to rezone a portion of the same lands from the R-2 (Two-Family Dwelling) Zone to R-1 (Single-Family Dwelling) Zone (Halifax Regional Municipality)

BEFORE:	Richard J. Melanson, LL.B., Member
APPELLANT:	**FH CONSTRUCTION LIMITED** Kevin Latimer, Q.C.
RESPONDENT:	**HALIFAX REGIONAL MUNICIPALITY** E. Roxanne MacLaurin, LL.B.
HEARING DATE:	July 26, 2017
DECISION DATE:	**September 22, 2017**
DECISION:	**Appeal is dismissed.**

Table of Contents

I INTRODUCTION

[1] The Appellant is in the property development business, and owns a parcel of land bounded by the Herring Cove Road, Parkmoor Avenue and Charlton Avenue, in the Halifax Regional Municipality (HRM), which is designated as PID00277228, under Nova Scotia's land registration system (Property).

[2] The 27 hectare Property is subject to three different zones under the *Halifax Mainland Land Use By-Law* (LUB). A portion of the Property is zoned R-1 (Single-Family Dwelling). Another portion is zoned R-2 (Two-Family Dwelling) and a third portion is in the H (Holding) zone.

[3] The Appellant filed an application to rezone the Property with HRM. The final version of the proposal, which went before the Halifax & West Community Council (Community Council) for approval on April 18, 2017, sought to rezone a portion of the Property currently zoned R-1, to the R-2 zoning. The proposal also sought to rezone all the portion of the Property currently zoned R-2, to R-1 zoning. No zoning change was proposed with respect to the H (Holding) portion of the Property.

[4] In a report to Community Council dated December 15, 2016, Erin MacIntyre, the planner assigned to the file, advised that the Appellant's proposal was reasonably consistent with the intent of the Municipal Planning Strategy for Halifax (MPS) and the Mainland South Secondary Planning Strategy (MSSPS). At the April 18, 2017, meeting, Ms. MacIntyre advised Community Council that staff recommended approval of the Appellant's proposal.

[5] Community Council rejected the Appellant's application. In a letter dated April 26, 2017, the Appellant was advised the reason for rejecting the proposed rezoning

was that it did not reasonably carry out the intent of Policy 2.4 of the MPS, which will be discussed in more detail later in this Decision.

[6] As a result of Community Council's decision, the Appellant filed an appeal with the Nova Scotia Utility and Review Board (Board), pursuant to s. 262(1)(b) of the *Halifax Regional Municipality Charter,* S.N.S. 2008, c. 39, as amended (*HRM Charter*).

[7] A Notice of Hearing was served in accordance with the Board's Hearing Order and advertised in the Chronicle Herald.

[8] No party sought Intervenor status in the proceeding. The Board received no letters of comment. No persons asked to speak at the proposed public session, which was cancelled accordingly.

[9] The Appellant was represented by Kevin Latimer, Q.C., who was assisted at the hearing on the merits by Kilian Schlemmer, a summer student. E. Roxanne MacLaurin, LL.B., acted for HRM.

[10] Prior to a preliminary hearing set by the Board to establish a timeline for the proceeding, the Board advised counsel that the Board member assigned to the matter wished to bring to counsels' attention that he was aware the Appellant had used the services of his former firm, and in particular, a partner in the firm with whom the Board member had had a professional and business relationship.

[11] The Appellant had never been the Board member's client, and neither the Board member's former firm, nor his former partner, had been involved in the rezoning application which was the subject of this appeal, either before or since the Board member had been appointed and left his former firm.

[12] Neither party raised any concerns with respect to the Board member hearing the matter. The Board member has determined that the foregoing did not disqualify him from hearing the matter, as the circumstances did not raise any reasonable apprehension of bias, and the Board member could objectively and impartially hear and adjudicate the merits of the case.

[13] The Board heard the appeal at its offices in Halifax on July 26, 2017. Counsel for the parties agreed to make oral submissions on that date, after all the evidence had been presented.

II ISSUE

[14] The issue in this Appeal is whether Community Council's decision to reject the Appellant's proposed amendments to the LUB is reasonably consistent with the MPS. For reasons set forth herein, the Board finds that it is, and accordingly dismisses this appeal.

III WITNESSES

[15] The Appellant called Alaa Al-Hammadi, the Appellant's General Manager, to provide details about the Appellant's background in development, the Property, the neighbourhood, and the Appellant's proposal.

[16] The Appellant also called Greg Zwicker, MCIP, LPP, of WSP Canada Inc. (WSP), who had prepared a Professional Planning Opinion dated June 22, 2017 (Zwicker Report), which was filed as Exhibit F-7 in this proceeding.

[17] Mr. Zwicker was qualified as an expert in land use planning, including the interpretation and application of HRM planning strategies and land use by-laws.

[18] HRM called Erin MacIntyre, who is a Senior Planner with HRM. She was the planner assigned to this file and provided an expert report dated July 11, 2017 (MacIntyre Report), which was filed as Exhibit F-9.

[19] Ms. MacIntyre was qualified as an expert in land use planning, capable of giving opinion evidence on land use planning matters, including the interpretation and application of municipal planning strategies and land use by-laws.

IV FACTS

[20] The Appellant is a family-owned business which has been in operation since 2001. It has been engaged in residential property development since 2001. It has built approximately 500 dwellings throughout HRM, as well as a few apartment buildings.

[21] Mr. Al-Hammadi has been with the Appellant, which is owned by his father, for approximately eight years, starting as a Project Manager and working his way to becoming the General Manger of the company. He has a Civil Engineering Degree from Dalhousie University, which was obtained in 2007.

[22] The Appellant retained WSP to assist with the preparation and presentation of a rezoning application for the Property. In May, 2015, as part of the pre-application process, meetings were arranged with various departments of HRM to review the rezoning proposal. According to Mr. Al-Hammadi, HRM staff involved were supportive of the application. As a result, the Appellant decided to proceed with a formal application.

[23] In August, 2015, WSP filed the Appellant's formal rezoning application. It included the required supporting documents, including a traffic impact study, parcel description, concept plan and servicing schematic, an assessment of the service area's pumping station, an approval from Nova Scotia Department of Environment to conduct proposed wetland alterations, and HRM staff's pre-application comments with regard to park and open space allocations.

[24] A diagram representing the originally proposed rezoning is reproduced below:

DISTRICT: District 11 (Spryfield – Sambro Loop – Prospect Road), Councillor Stephen D. Adams

SITE INFORMATION: Parkmoor Avenue, Charlton Avenue, Herring Cove Road, Halifax

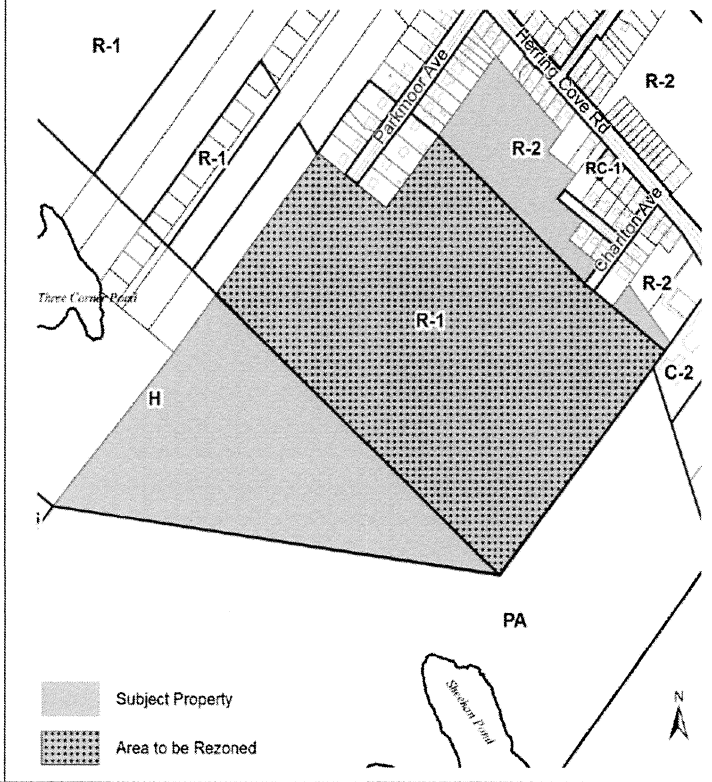
PLAN AREA:
☐ Halifax Mainland

LAND USE DESIGNATION:
☐ LDR – Low Density Residential

CURRENT ZONING:
☐ R-1 (Single Family Dwelling) Zone
☐ H (Holding) Zone
☐ R-2 (Two-Family Dwelling) Zone

PROPERTY DESCRIPTION:
☐ Current use: Vacant

☐ Size: 67 Acres approximate total
40 Acres subject to rezoning



[Exhibit F-4, p. 96]

[25] As can be seen from the diagram, the properties on Parkmoor Avenue, Herring Cove Road and Charlton Avenue, abutting the Property, are zoned R-2, with the

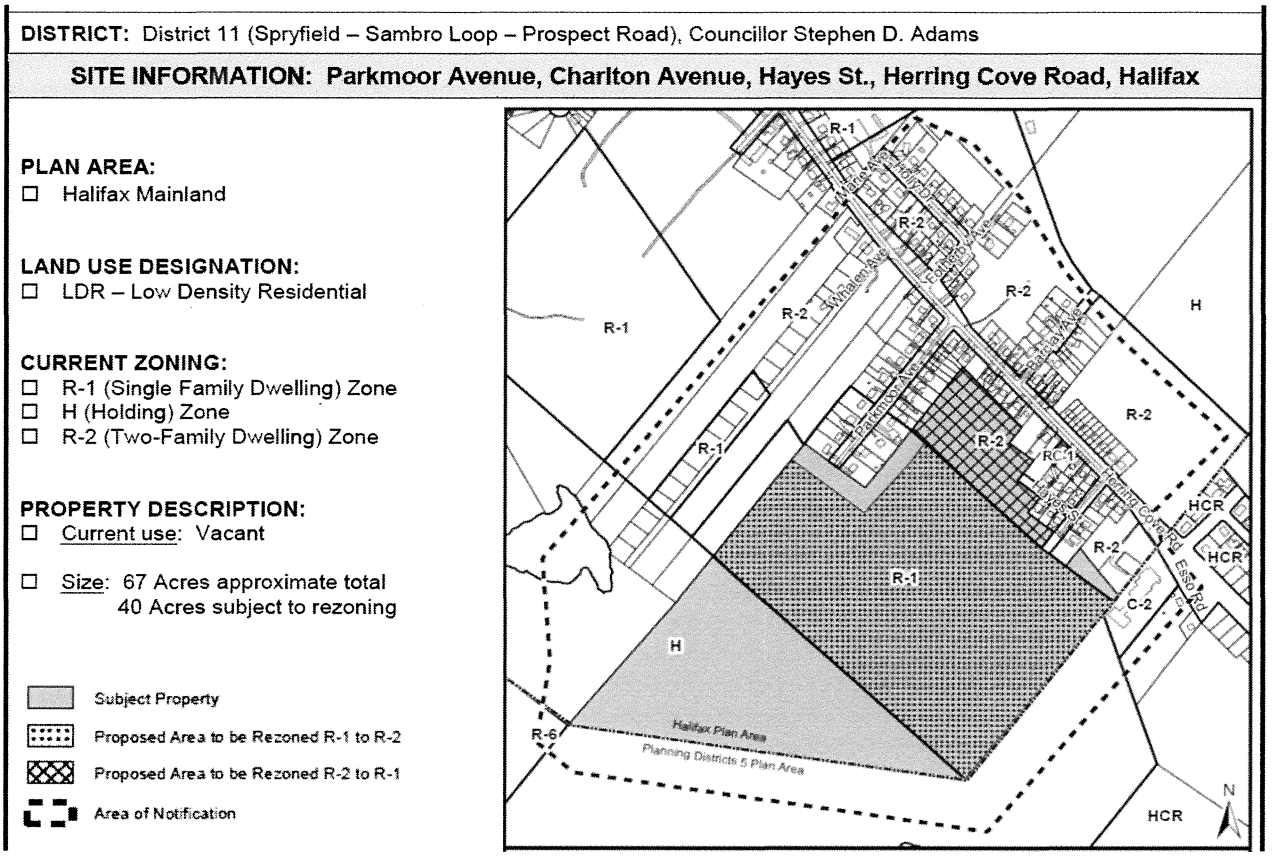
exception of a portion of Parkmoor Avenue, which is zoned R-1. There is also some RC-1 and C-2 zoning on Herring Cove Road in the vicinity of the Property

[26] As a result of the public consultation process, concerns were expressed in relation to the age and capacity of the existing stormwater infrastructure, redirection of overland stormwater to adjacent properties, traffic capacity on Herring Cove Road, potential damage to the natural environment, and concern with the amount of proposed development occurring along Herring Cove Road.

[27] While WSP and the Appellant were of the view the application already addressed these concerns, it was decided to amend the rezoning proposal. The final proposal which went before Community Council sought to leave an L-shaped R-1 buffer zone between the Property and the R-1 zoned properties on Parkmoor Avenue.

[28] As well, the Appellant proposed rezoning the portion of the property zoned R-2, to the R-1 designation, to provide a buffer for the single-family dwellings in the abutting R-2 zone, on Herring Cove Road. While there is some mix of two-family and single-family dwellings in the R-2 zone in the vicinity of the Property, including on Parkmoor Avenue, the predominant existing type of construction in the neighbourhood is single-family dwellings.

[29] A diagram representing the final proposed rezoning is reproduced below:



[Exhibit F-4, p. 98]

[30] Mr. Al-Hammadi said the final proposal would provide a "good fit" for the neighbourhood. It was within HRM's serviceable boundary, so there was no need to extend services, such as water and sewer, in order to build the proposed subdivision. The proposal also allowed for a mix of housing types. The proposed R-2 zoning would allow for housing at different price points, including single-family and two-family dwellings. It also provided buffering and transitioning in relation to existing housing in the area. Mr. Zwicker later confirmed the L-shaped buffer abutting Parkmoor Avenue was to a depth of one lot.

[31] The amendments to the original proposal would result in a maximum number of 309 dwelling units on the Property, down from a maximum of 340 dwelling units under the original rezoning proposal.

[32] Mr. Al-Hammadi confirmed the current zoning was in place at the time the Appellant purchased the Property. The Appellant is permitted to construct 194 dwelling units as-of-right under the existing zoning. Therefore, the rezoning proposal would allow for an additional 115 dwelling units.

[33] Ms. MacIntyre prepared a report for Community Council, in relation to the Appellant's final rezoning proposal, dated December 15, 2016. In her report, she stated the following:

> **DISCUSSION**
>
> Staff has reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the MPS. Attachment A contains the proposed rezoning from R-2 to R-1 for the portion of the property that abuts the existing residential neighbourhood, and from R-1 to R-2 for the larger bulk of the property to the south.
>
> **LUB Amendment Review**
> Attachment B provides an evaluation of the proposed rezoning in relation to relevant MPS policies. Of the matters reviewed to satisfy the MPS criteria, the following issues have been identified for more detailed discussion:
>
> Policy Context
> Both the city-wide policies of the Halifax MPS and those found in the Mainland South SPS promote and encourage residential development, as long as considerations are made regarding servicing and traffic capacities, and that the proposed development is compatible with the character of existing neighbourhoods. The Regional Plan 'Urban Settlement' designation also encourages development, as it in part encompasses undeveloped lands to be considered for serviced development. Growth is somewhat limited along Herring Cove Road by the extents of the servicing boundary and the corresponding Holding Zone, which only allows single unit dwellings on existing lots with on-site services.
>
> Community Concerns
> Through consultation, the community has expressed concern with the sufficiency of services and the traffic capacity of Herring Cove Road. The impact of this proposed rezoning, when considered in the larger context of proposed development along Herring Cove Road, is central to the community's concerns. There is a considerable amount of undeveloped land still available for low density residential development along Herring Cove Road. Several projects have concept stage subdivision approval and some are currently under construction, resulting in a large number of potential units:

Project Name	Status	Approximate number of units
Governor's Brook (Ph. 7 – 12)	Approved, vacant lots	400
Hilden Avenue extension	Approved, unconstructed	28
MacIntosh Run	Approved, unconstructed	325
Green Acres	Concept approval, unconstructed	756
Briarwood Golf Course Lands	Rezoning planning process *(subject to approval under Case 20246)*	380
Parkmoor/Charlton Avenue	Rezoning planning process *(subject to approval under Case 20120)*	309
	TOTAL	**2,198**

With the exception of Governor's Brook, the same criteria for rezoning from R-1 to R-2 would apply to the other five projects, should the owners decide to make application. Notwithstanding the fact that it may not have been the original intent of these policies to facilitate such extensive growth in the area, under existing policies, there is opportunity for more significant growth along Herring Cove Road.

Servicing and Traffic Capacity
While the community's concerns relative to the site's effect on existing infrastructure are noted, no technical constraints were identified with respect to the Municipality's ability to service the future development. Halifax Water indicated that the capacity in the systems is not reserved for any particular project, and that capacity exists in the system for the lands to be developed at the density permitted by the R-1 and R-2 zones. Development Engineering staff have reviewed and accepted the Traffic Impact Statement that was submitted in support of the application. Upgrades to the existing street accesses may be required to support the development, however these costs will be borne by the developer and the design details will be determined through the subdivision approval process.

Conclusion
Staff has reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the MPS. The property is currently able to be developed under the Halifax Mainland Land Use By-law and the Regional Subdivision By-law with new streets, park dedication and single and two unit homes. Policy enables consideration of rezoning to R-2, as long as regard is given to servicing and traffic capacity. No concern relative to servicing have been identified. Therefore, staff recommend that the Halifax and West Community Council approve the proposed rezoning.

[Exhibit F-4, pp. 103-104]

[34] Ms. MacIntyre's report to Community Council set out all the MPS policies she deemed relevant. She indicated all policy issues were addressed by the Appellant's application, and said HRM staff recommended approval.

[35] Ms. MacIntyre prepared the following alternatives for consideration by Council:

1. Halifax and West Community Council may choose to approve the proposed LUB amendment subject to modifications. Such modifications may require further discussion with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve the LUB amendments is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to refuse the proposed LUB amendments, and in doing so, must provide reasons why the proposal does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed LUB amendments is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

[Exhibit F-4, p. 105]

[36] Community Council considered the Appellant's application on April 18, 2017. The minutes of the meeting, and a copy of Ms. MacIntyre's presentation, indicate

she made substantially the same points as in her December 15, 2016 report, and continued to recommend approval of the application. The Board further notes that in her presentation, she corrected the appropriate number of units which would be permissible on the Briarwood Golf Course lands, if its rezoning was approved, to 408.

[37] WSP made a presentation to Community Council addressing concerns raised in the public consultation process. The minutes of the meeting indicate the following:

> - Connor Wallace addressed these concerns, advising that:
>
> - Halifax Water and the Nova Scotia Department of Environment require the developer to match pre-development flows, resulting in no increase in the amount of storm water the system receives before and after development occurs, therefore, resulting in no increase to the downstream water course, and existing drainage boundaries will be maintained.
> - The traffic impact study accepted by staff indicates there would be no significant impact to traffic performance in the areas; also, HRM Engineering is requiring upgrades on Parkmoor Avenue, Charlton Avenue and Hayes Street specifically to accommodate pedestrian connections of the proposed development to Herring Cove Road.
> - Nova Scotia Department of Environment has granted wetland alternation approval, and there is no increased risk of impact on the natural environment resulting from proposed rezoning.
> - The site has no protected environmental areas; the land use zoning supports increased growth of low density residential uses along the Herring Cove Road. The application to rezone complies with current planning policy and HRM staff review has determined servicing capacity exists to accommodate this development
>
> In summary Connor Wallace advised that the original proposal has been revised to have a much more appropriate transition from R-1 to R-2; the proposal increases the area's potential residential population without impacting the established neighbourhoods that abut to the site; the proximity to major transportation, transit routes and recreation facilities supports the requested increase in density; and the servicing capacity is currently available to support to rezoning.
>
> [Exhibit F-4, p. 84]

[38] One member of the public spoke in opposition to the application. He was concerned about increased traffic, the accuracy of the traffic study, the lack of transit service, the impact on the Cowie Hill portion of the Herring Cove Road, the lack of recreational facilities to support the number of housing units, the impact on local schools, and environmental concerns.

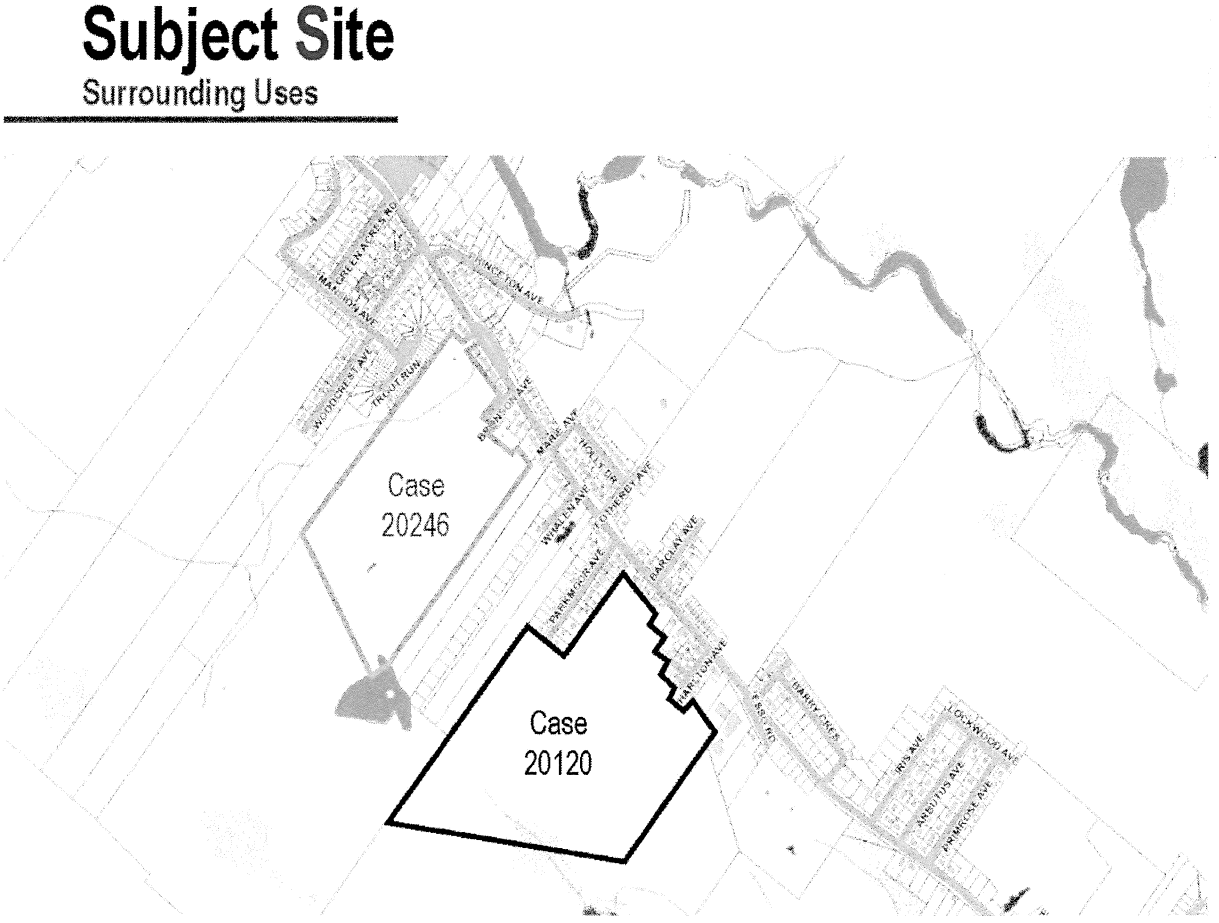
[39] The deliberation of Community Council is summarized in the excerpt from the minutes of the April 18, 2017 meeting reproduced below:

> Councillor Cleary noted concerns with the proposed development:
> - it would be increasing the density to an area that is serviced by one bus route
> - it is lacking amenities like sidewalks, retail, and commercial space
>
> Councillor Zurawski highlighted concerns about the environmental constraints, the burdens on infrastructure, and the increased vehicle traffic.
>
> Councillor Adams stepped down from the Chair to address this issue. Councillor Mason assumed the Chair.
>
> Councillor Adams explained that, currently, the developer can put in 194 units as-of-right; and that the original application was for 334, and following discussion with staff, the number was reduced to 309, a difference of 25. Councillor Adams went on to note that the community is zoned R-1 and R-2, but that primarily 85% of the R-2 homes are single family and that the community is basically a single-family home community. Councillor Adams expressed concern about the impact additional R-2 zoning would have on the Community and requested Community Council turn down the motion, and he would bring forward the alternative motion in the staff report to refuse the application. For the information of the public in attendance Councillor Adams noted that should Community Council turn down this application, it needs to provide reasons based in planning policy. The applicant can appeal the decision to the Nova Scotia Utility and Review Board. In summary Councillor Adams advised that he was asking Community Council to vote against this proposal because of potential issues with school capacity if this development is added to the area; however, the main concern was with consistency with the neighbourhood, highlighting the point that, as-of-right is 194 units, and the applicant is requesting 309 units and the majority of this proposed development will be semi-detached homes, and this does not fit within the neighbourhood
>
> Councillor Cleary concurred that proposed development does not fit the community.
>
> ...
>
> Councillor Adams reiterated reasons for refusing this application, stating that in the immediate neighbourhood, regardless of zoning, the homes are single family homes, and the proposal would flip the zoning and make it far more of an R-2 community than R-1, and this is not consistent with the immediate abutting neighbourhood.
>
> [Exhibit F-4, pp. 85-86]

[40] The Appellant's rezoning application was denied by Community Council.

[41] On the same night as the Appellant's rezoning application was rejected, Community Council considered an application to rezone the lands occupied by the Briarwood Golf Course. It involved rezoning the R-1 Briarwood lands to R-2. The Briarwood lands are located near the Property. The respective locations of the two properties are shown in part of Ms. MacIntyre's presentation to Community Council. The

Property's location is identified as Case 20120, while the Briarwood location is identified as Case 20246, in the mapping reproduced below:



[Exhibit F-4, p. 119]

[42] In approving the Briarwood rezoning application, which shared many features with the Appellant's application, the Community Council minutes attribute the following comments to Councillor Adams:

> In closing, Councillor Adams noted the difference of this application over the previous one was that the immediate neighbourhood for this project abuts R-2 zoning and that the R-1 zoning proposed to be rezoned R-2 does not abut any residential neighbourhoods. The Councillor expressed the view that, if it is zoned R-2, the odds are better that the development will occur as presented this evening; whereas, if it were zoned R-1, a development proposal would not have to come to Community Council. In conclusion, Councillor Adams advised that the R-2 zone creates the possibility of increasing density, increasing services, and mitigating the water issues that have been a problem in the area.
>
> [Exhibit F-4, p. 88]

[43] On April 25, 2017, HRM issued a rejection letter to the Appellant. The reason for denying the application was set out as follows:

> This is to advise of the outcome of Case 20120 that was before Halifax and West Community Council on Tuesday, April 18, 2017. As stated in the motion below, the above-noted rezoning request was denied by Halifax and West Community Council for the following reasons: the proposed rezoning does not reasonably carry out the intent of the Municipal Planning Strategy under the following policy criteria:
>
> **Policy 2.4**: Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.
>
> [Exhibit F-4, p. 92]

V OPINION EVIDENCE

a) Greg Zwicker

[44] Mr. Zwicker was asked by the Appellant to provide expert opinion evidence. He personally visited the area where the Property is located. In his report, he states the following in relation to the neighbourhood:

> 2.2 I visited the subject property and toured the surrounding community on June 16, 2017. Along the Herring Cove Road I observed a mix of residential uses including single family homes, semi-detached homes as well as multi-unit buildings. Directly abutting the subject site, I observed a mix of low density residential uses including single family homes, semi-detached homes and duplex dwellings. There is also a variety of commercial and light industrial uses spread throughout the community.
>
> [Exhibit F-7, p. 1]

[45] Mr. Zwicker was of the opinion the staff report prepared by Ms. MacIntyre provided "a thorough analysis of the FH construction proposal in light of the applicable MPS policy criteria." He was in agreement with her recommendations and conclusions. He further elaborated on the growth and taxation benefits of the proposal.

[46] In addressing the specific policy upon which HRM relied to deny the rezoning request, the Zwicker Report said:

> 3.4 Policy 2.4 of Section II alludes to further planning of residential environments to suitably extend and be compatible with existing settlement patterns.
>
> > *Policy 2.4: Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods*
>
> 3.5 This raises the question, how does the city determine the "existing residential character of a predominantly stable neighbourhood" in order to ensure it is retained? Policy 2.4.1 provides guidance on how stability can be maintained by stating "stability will be maintained by preserving the scale of the neighbourhood".
>
> 3.6 The Generalized Future Land Use Map (GFLUM) found within the MPS designates both the subject site, as well as the surrounding neighbourhood as "Low Density Residential". Subsequently, the Low Density Residential designation includes both R1 and R2 zones in the LUB (refer to **Appendix 2**). When the zoning map (LUB) is compared to the GFLUM (MPS), it is clear that both R-1 and R-2 zones fall within the Low Density Residential Designation, suggesting R-1 and R-2 are considered compatible land uses. Typically, an MPS Designation is used to differentiate between non-compatible uses and ensure a level of protection is provided (i.e. Residential and Industrial). Zones found within a designation can be expected to be similar in scale and form.
>
> 3.7 Furthermore, the list of land uses permitted in the R-2 zone includes several forms of housing including both R-2 (semi-detached dwelling, duplex dwelling) and all R-1 Zone uses with no separation or buffering required. This suggests that the MPS does not perceive conflict between the two uses and suggests they are actually complimentary by allowing them within the same Designation and Zone.
>
> 3.8 The intent of the MPS is that R-1 and R-2 zones are considered a compatible form of Low Density Residential development. Clusters of single family and two family dwellings are found throughout the entire Mainland South Secondary Plan Area, including along Parkmoor Avenue and Herring Cove Road (refer to **Appendix 3**), which are within proximity of the subject site. From my experience, incompatibility between these uses is typically not an issue as they both serve a similar purpose – to house people and families. In order for there to be incompatibility between single family and two family units, it would require there to be a significant impact created as a result in the change in form and function of the residential units. Please refer to **Appendices 4 to 7**. When examined closely the degree of differentiation between these forms is, in my opinion, insignificant. In context to the scale of the proposed development it will have no discernible impact on the surrounding community beyond what would be experienced from a single family residential building form.
>
> 3.9 This is further supported by the regulations in the LUB. The controls for each zone are virtually the same resulting in the same scale and form of any structure, whether created on an R-1 zone or an R-2 zone. In this context I refer to the table below:
>
> [Exhibit F-7, pp. 2-3]

[47] A summary of Mr. Zwicker's conclusions states:

> 4.1 Based on the above review, I am of the opinion that the proposed rezoning from R-1 (Single Family Dwelling) to R-2 (Two-Family Dwelling) and R-2 (Two Family Dwelling) to R-1 (Single Family Dwelling) carries out the MPS intention to encourage growth, development, and housing diversity across the plan area. My opinion is not dissimilar from Community Council's decision regarding a virtually identical rezoning application for the former Briarwood Golf Course (Case 20246). This application was supported by HRM planning staff (refer to **Appendix 9**) and was approved by Community Council during the same council session as the FH Construction case on April 18th, 2017. I am also of the opinion that the rezoning is compatible with the existing surrounding low density residential neighbourhood and meets the compatibility intent of the MPS. In fact, the inclusion of the buffer serves to enhance the interface between the existing neighbourhood and the subject lands. In conclusion, I am of the opinion that the decision by Halifax and West Community Council refusing to rezone the lands in question does not reasonably carry out the intent of the MPS.
>
> [Exhibit F-7, p. 4]

[48] In oral testimony, Mr. Zwicker did not deviate from the conclusions in his report to any material extent. In responding to the MacIntyre Report, Mr. Zwicker testified the example of a provision compelling rezoning identified in that report was a special, unique case. It related to a property which had been down-zoned at the request of the owner for a temporary purpose, with a commitment to return it to its former zoning upon application.

b) Erin MacIntyre

[49] Ms. MacIntyre was called by HRM to provide expert opinion evidence.

[50] The MacIntyre Report addressed some of the points raised by the Zwicker Report, such as the financial implications to HRM of the rezoning. She was of the opinion the impact on the tax base would not be significant, whether or not approval was granted.

[51] Notwithstanding her comments with respect to the Zwicker Report, Ms. MacIntyre remained of the opinion that the Appellant's rezoning application reasonably carried out the intent of the MPS. This position was maintained both in her report and in her oral testimony.

[52] Despite her opinion that the Appellant's application reasonably carried out the intent of the MPS, Ms. MacIntyre was of the opinion the decision of Community Council also reasonably carried out this intent. The basis for her opinion is expressed as follows:

> [30] The relevant policies of the MPS and MSSPS contain statements of consideration. As examples:
>
> Policy 2.1 (Residential Environments), *'.. residential development ... should occur*.
> Policy 2.4 (Residential Environments), *'... the City encourages ... '*
>
> This language requires that Council consider impact of development proposals relative to servicing, stability of existing neighbourhoods and environmental effect. The language of the MPS and MSSPS does not compel Council to approve a rezoning request if the considerations of policy are met.
>
> [31] In other plan areas within HRM, there is compelling language, requiring that Council approve a proposal that conforms to policy. As example, Policy UR-6 of the Cole Harbour/Westphal MPS:
>
> UR-6 *Notwithstanding Policies UR-2 and UR-5, in recognition of previous zoning rights, it shall be the intention of Council to permit the lands of Colby Golf Centre Limited, adjacent to the junction of Cole Harbour Road and Bissett Road (LRIS Na. 403014) to be rezoned to permit two unit dwellings*.
>
> The direction of the MPS in the above example is that Council shall permit the rezoning to enable development of two unit dwellings. This directive language is absent in the Halifax Municipal Planning Strategy. Council can consider rezoning requests, but can retain the existing zoning in the Land Use By-law, as they are not directed by the MPS to proceed, even if the request reasonable [*sic*] conforms to the plan. In a decision made September 27, 2006, the NSUARB overturned a refusal of Council to rezone to R-2, relative to Policy UR-6, above.
>
> [32] Furthermore, if it is accepted that the existing zoning complies with the MPS and MSSPS, the decision of Council to retain the existing zoning of the Land Use By-law must comply with the MPS in its current iteration. A request to rezone may comply with the MPS, and Council can consider that request, or Council may reject the proposal, as the option to retain the existing MPS (and associated Land Use By-law) also remains available.
>
> **Expert Evidence of the Appellant**
>
> [33] In his report of June 22, 2017, Greg Zwicker of WSP Canada Inc. concludes that it is his opinion that the decision of Council does not reasonably conform to the MPS. Generally, it is agreed that the proposal does comply with intent of the MPS. The report concludes that the decision of Council does not reasonably carry out the intent of the MPS, as the MPS provides the policy framework for Council to consider extension of existing settlement patterns. It is agreed that Council can consider the proposal, however, the choice of Council to retain the existing zoning that responds to the existing MPS and Land Use By-law remains available. Council is not compelled to rezone, even if the proposal complies with policy.
>
> [Exhibit F-9, p. 10]

[53] The Board notes the full particulars regarding the history of policy UR-6 are set out in *Re Amber Contracting Limited,* 2006 NSUARB 98 (CanLII).

VI LEGISLATIVE FRAMEWORK AND PLANNING DOCUMENTS

a) Halifax Regional Municipality Charter

[54] The *Halifax Regional Municipality Charter*, S.N.S 2008, c. 39, as amended (*HRM Charter)*, sets out the legal framework for consideration of proposed amendments to the LUB.

[55] The *HRM Charter* provides a broad authority for democratically elected and accountable HRM Council to decide matters coming before it.

[56] The purpose of the *HRM Charter*, as a whole, is set out in s. 2:

> **2** The purpose of this Act is to
>
> (a) give broad authority to the Council, including broad authority to pass by-laws, and respect its right to govern the Municipality in whatever ways the Council considers appropriate within the jurisdiction given to it;
>
> (b) enhance the ability of the Council to respond to present and future issues in the Municipality; and
>
> (c) recognize that the functions of the Municipality are to
>
> (i) provide good government,
>
> (ii) provide services, facilities and other things that, in the opinion of the Council, are necessary or desirable for all or part of the Municipality, and
>
> (iii) develop and maintain safe and viable communities.

[57] With respect to the purpose of Part VIII of the *HRM Charter*, relating to planning and development, s. 208 states:

> **208** The purpose of this Part is to
>
> (a) enable Her Majesty in right of the Province to identify and protect its interests in the use and development of land;
>
> (b) enable the Municipality to assume the primary authority for planning within its jurisdiction, consistent with its urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province;
>
> (c) establish a consultative process to ensure the right of the public to have access to information and to participate in the formulation of planning strategies and by-laws, including the right to be notified and heard before decisions are made pursuant to this Part; and
>
> (d) provide for the fair, reasonable and efficient administration of this Part.

[58] Community Council's power to consider rezoning applications is established pursuant to s. 30 of the *HRM Charter:*

> **30** **(1)** This Section applies to a community council if the Council so provides in the policy establishing the community council.
>
> **(2)** A community council may appoint a planning advisory committee for the community and Part VIII applies with all necessary changes.
>
> **(3)** A community council may amend the land-use by-law of the Municipality applicable to the community with respect to any property in the community if the amendment carries out the intent of any municipal planning strategy of the Municipality applicable to the property and, in doing so, the community council stands in the place and stead of the Council and Part VIII applies with all necessary changes.
>
> **(4)** A community council stands in the place and stead of the Council with respect to variances and site-plan approvals and Part VIII applies with all necessary changes.

[59] The Board notes the Community Council has been provided the authority to consider rezoning applications by Administrative Order, in compliance with s. 30(1).

[60] The process for amending the LUB is set out in s. 225 of the *HRM Charter*. The provisions relevant to this appeal are:

> **(2)** The procedure for the adoption of an amendment to a land-use by-law referred to in subsection (1) is the same as the procedure for the adoption of planning documents, but a public participation program is at the discretion of the Council and the amendment may be adopted by a majority of votes of the Council members present at the public hearing.
>
> ...
>
> **(5)** Within seven days after a decision to refuse to amend a land-use by-law referred to in subsection (1), the Clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

b) MPS and MSSPS

[61] Various MPS policies, including those found in the MSSPS, were addressed in Ms. MacIntyre's report to Community Council dated December 16, 2015. Attachment "B" to the December 16, 2015, report provides a helpful discussion of all these policies and is reproduced for ease of reference:

ATTACHMENT B:
Excerpts from the Halifax Municipal Planning Strategy and the Mainland South Secondary Planning Strategy: Policy Evaluation

Halifax Municipal Planning Strategy (MPS) Section II – City Wide Objectives and Policies	
Applicable Policies	**Staff Comments**
Section 1: Economic Development	
Policy 1.2.2: In considering new development regulations and changes to existing regulations, and development applications, the City shall give consideration of any additional tax revenues or municipal costs that may be generated therefrom.	The effect of the rezoning on the tax base is limited to increased property tax generated by the ability to subdivide any proposed semi-detached dwellings into two independent parcels. Municipal costs are those normally associated with service delivery to residential neighbourhoods.
Section 2: Residential Environments	
Policy 2.1: Residential development to accommodate future growth in the City should occur both on the Peninsula and on the Mainland, and should be related to the adequacy of existing or presently budgeted services.	A service analysis (water, stormwater and sanitary capacity, traffic network impacts, school and recreation facilities, etc) is referenced later in this table.
Policy 2.2: The integrity of existing residential neighbourhoods shall be maintained by requiring that any new development which would differ in use or intensity of use from the present neighbourhood development pattern be related to the needs or characteristics of the neighbourhood and this shall be accomplished by Implementation Policies 3.1 and 3.2 as appropriate.	The existing neighbouring residential community fronting on Parkmoor Ave., Charlton Ave. and Hayes St. and Herring Cove Road is primarily developed with single unit dwellings but is zoned R-2. The exception to this are the 9 properties at the end of Parkmoor Avenue, which are zoned R-1 and are not proposed to be rezoned. Approximately 82% of the units in the neighbourhood are single detached homes. The proposal intends to 'buffer' the proposed R-2 Zone with R-1 zoned lots, in an effort to recognize the character of the existing neighbourhood.
Policy 2.3.2: Ribbon development along principal streets should be prohibited in order to minimize access points required by local traffic.	Herring Cove Road is a principal street, as shown on Map 8 of the MPS. The proposal is near, but does not front on, Herring Cove Road. The access points to Herring Cove Road are existing and will be upgraded.
Policy 2.4: Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.	The existing neighbourhood is primarily (approximately 82%) single unit dwellings. The proposal 'buffers' the proposed R-2 Zone with R-1 zoned lots, in an effort to recognize the character of the existing neighbourhood.

Policy 2.4.1: Stability will be maintained by preserving the scale of the neighbourhood, routing future principal streets around rather than through them, and allowing commercial expansion within definite confines which will not conflict with the character or stability of the neighbourhood, and this shall be accomplished by Implementation Policies 3.1 and 3.2 as appropriate.	The proposal is to zone lands adjacent to the existing neighbourhood as R-1. There are neither proposed principal streets nor commercial expansion of uses. See analysis of Policies 3.1 and 3.2, below.
Section 10: Environmental Health Services	
Policy 10.2: In order to ensure that critical sewer and water problems will not be created within or beyond development areas, the amount of development shall be related to capacity of existing (including potential rehabilitation) and planned sewer, water and pollution control systems, by drainage area, and shall not exceed the capacities of those systems as determined by the standard practises of the City. This shall be accomplished by Implementation Policy 5.	Sanitary and water capacity will be evaluated at the time of subdivision. Halifax Water has provided input on this rezoning request and has not identified any concerns.
Section X - Mainland South Secondary Planning Strategy (MSSPS) **Section 1: Residential Environments**	
Applicable Policies	**Staff Comments**
Policy 1.2: In areas designated "Low-Density Residential" on the Generalized Future Land Use Map, which are predominantly single-family dwellings in character, residential development consisting of detached (single-family) dwellings shall be permitted, and neighbourhood commercial uses may be permitted pursuant to Policies 2.1.1 and 2.1.2 of this Plan.	This area is predominantly single-family dwellings in character. As the proposal buffers the existing neighbourhood with the same use, there is no concern relative to this policy.
Policy 1.2.1: In areas designated "Low-Density Residential" on the Generalized Future Land Use Map, which are predominantly two-family dwellings in character, residential development consisting of detached (single-family) dwellings, semi-detached dwellings and duplex dwellings shall be permitted, and neighbourhood commercial uses may be permitted pursuant to Policies 2.1 and 2.1.2 of this Plan.	Not applicable; the area is not predominantly developed with two-family dwellings.
Policy 7.3 Where development proposals are being considered through rezoning or development agreement, the City shall protect environmentally sensitive areas.	The area between Hayes Street and Parkmoor Avenue is identified as having a significant natural feature (tree cover of greater than 40% and height of over 30 feet). That tree cover is largely intact, however, the land is able to be developed under the current zoning, and there is no increased risk of resulting impact on that feature resulting from the proposed rezoning.
Implementation Policies:	**Staff Comments**
Policy 4.1: The City shall ensure that the proposal would conform to this Plan and to all other City by-laws and regulations.	The development proposal conforms to the plan, and detailed review by staff has not indicated any conflict with other by-laws or regulations. There is no concern relative to this policy.

Policy 4.2: The City shall review the proposal to determine that it is not premature or inappropriate by reason of: i) the fiscal capacity of the City to absorb the costs relating to the development; and ii) the adequacy of all services provided by the City to serve the development.	No Municipal costs are anticipated. No servicing concerns have been identified.
Policy 4.3: More specifically, for those applications for amendments to the zoning bylaw in Mainland South as defined on Map 1, the City shall require an assessment of the proposal by staff with regard to this Plan and the adopted Land Development Distribution Strategy, and that such assessment include the potential impacts of the proposal on: (a) the sewer system (including the budgetary implications); (b) the water system; (c) the transportation system (including transit); (d) existing public schools; (e) existing recreation and community facilities; (f) the provision of police and fire protection services; and any other matter deemed advisable by Council prior to any final approval by City Council.	The Land Development Distribution Strategy was authored in 1976 and is wholly outdated and is not relevant to the current development environment. No concerns have been identified by Halifax Water regarding sewer or water systems, other than to caution that capacity is not reserved. No concern was identified by any review agency relative to the provision of municipal services.

[Exhibit F-4, pp. 110-112]

[62] In his report, Mr. Zwicker also raised the following City-Wide Objectives and Policies (Section II) of the MPS, to provide context to the MPS Policy 1.2.2, referenced by Ms. MacIntyre:

> *Policy 1.1: The City should encourage an economic climate conducive to development and the growth of employment opportunities.*
>
> *Policy 1.2: The City should strive to expand its tax base so that it can maintain its tax rates at levels that are competitive with other municipalities of the region.*
>
> *...*
>
> *Policy 1.5: The City should provide a policy environment within which development can respond to changing market demands, while clarifying the intentions of the City and ensuring that development conforms to a pattern that is cost-effective for the City.*
>
> [Exhibit F-7, p. 2]

c) LUB

[63] The provisions of the R-1 and R-2 zones set out in the LUB were addressed by the parties, and the Board will discuss them in more detail in its analysis and findings. They are attached as Schedule "A" to this Decision.

VII ANALYSIS AND FINDINGS

1. Burden and Standard of Proof

[64] The burden of proof is on the Appellant to show, on a balance of probabilities, that the decision of Community Council is not reasonably consistent with the MPS.

2. Scope of Appeal and Standard of Review of Community Council's decision

[65] The Board's jurisdiction in relation to an appeal of Community Council's decision to refuse an amendment to the LUB is set out in s. 262(1) of the *HRM Charter:*

> **262** **(1)** The approval or refusal by the Council to amend a land-use by-law may be appealed to the Board by
>
> (a) an aggrieved person;
>
> (b) the applicant;
>
> (c) an adjacent municipality;
>
> (d) the Director.

[66] Section 265(1) of the *HRM Charter* limits the scope of an appeal before the Board. It says:

> **265** **(1)** An aggrieved person or an applicant may only appeal
>
> (a) an amendment or refusal to amend a land-use by-law, on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy;

[67] The Board's remedial powers, and the restrictions on the exercise of these powers, are prescribed in ss. 267(1) and 267(2) of the *HRM Charter*, which state:

> **267** **(1)** The Board may
>
> (a) confirm the decision appealed from;
>
> (b) allow the appeal by reversing the decision of the Council to amend the land-use by-law or to approve or amend a development agreement;
>
> (c) allow the appeal and order the Council to amend the land-use by-law in the manner prescribed by the Board or order the Council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

...

> **(2)** The Board may not allow an appeal unless it determines that the decision of the Council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law

[68] The Nova Scotia Court of Appeal has provided direction to the Board on its proper role in a planning appeal.

[69] The Board has determined that a liberal and purposive approach to statutory interpretation applies to the interpretation of the *HRM Charter* and planning documents, see, for example, *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board),* [1994] N.S.J. 150.

[70] This approach is consistent with Section 9(1) of the *Interpretation Act*, R.S.N.S. 1989, c. 235, as amended (*IA)*, which states:

> **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.

[71] In *Heritage Trust*, the Board was directed to defer to Community Council, if Council's decision was within an interpretation the language of the MPS could reasonably bear.

[72] Many of the principles applicable to the exercise of the Board's jurisdiction in planning appeals were summarized in *Archibald v. Nova Scotia (Utility and Review Board),* 2010 NSCA 27 (CanLII), para. 24, where Fichaud, J.A. said:

> **(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), ¶ 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.

[73] In *Midtown Tavern & Grill Ltd. v. Nova Scotia (Utility and Review Board)*, 2006 NSCA 115 (CanLII), the Board was directed not to substitute its own decision for that of Community Council. At para. 51 and 52, the Board's task was described as follows:

> [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?

[74] With the foregoing principles in mind, the Board turns to the specific interpretation and MPS policy issues raised in this appeal.

3. Does the decision of Community Council to refuse the Appellant's rezoning application reasonably carry out the intent of the MPS?

a) HRM's *status quo* argument

[75] HRM's primary argument in this appeal is relatively straightforward. In this case, Community Council is given primary authority in planning matters. The LUB was enacted to carry out the intent of the MPS. Ms. MacLaurin argues it follows that the current zoning of the Property complies with the MPS, and any decision of Community Council which maintains the *status quo* must therefore be reasonably consistent with the intent of the MPS, if there is no policy in the MPS that compels HRM to approve a rezoning application which is also compliant with the MPS. HRM points to the language of UR-6 of the Cole Harbour/Westphal MPS, cited by Ms. MacIntyre, to show such compelling language exists in the MPS.

[76] HRM argues that owners acquire property with knowledge of the existing zoning. There is no right to rezone. The choice of zoning is for Community Council to make and not the landowner. Where both the Appellant's proposal and the *status quo* reasonably carry out the intent of the MPS, Community Council gets to choose which option to adopt. To rule otherwise would be to give the right to choose which properties should be rezoned to the property owner, and not Community Council.

[77] HRM says such an interpretation of the MPS is consistent with Community Council being primarily responsible for planning decisions, and the limited role the Board has in an appeal under the *HRM Charter.*

[78] Ms. MacLaurin cited *Re Mahone Bay Youth Soccer Association*, 2008 NSUARB 54 (CanLII) in support of HRM's submission, and, in particular, para. 123-125:

> [123] For the remainder of the Old School Lands zoned Residential, the Future Land Use map designates these properties as Residential. As noted in Policies 5.1 and 5.2, the LUBs are to be consistent with the MPS. The Board finds that as the MPS designates these lands as Residential, Council's decision to keep these lands zoned Residential and not to zone them Recreational reasonably carries out the intent of the MPS.
>
> [124] Under the circumstances of this case, the Board cannot find that Council's decision has not reasonably carried out the intent of the MPS.
>
> [125] As Ms. Baxter queried "Can they do it?" The Board may only decide *can they do it?* and has no jurisdiction to decide *should they do it?* The answer is: Yes they can.

[79] In response, the Appellant argues that the position advanced by HRM would completely nullify an applicant's right to appeal the refusal of a rezoning decision.

[80] Mr. Latimer pointed to Mr. Zwicker's evidence that the example of compelling or directive language cited by Ms. MacIntyre was very fact specific. The Board notes that while Ms. MacIntyre testified there were other examples, none were entered into evidence. Ms. MacIntyre herself indicated they would not be common, and the Board infers this would be a rare situation.

[81] The Appellant says HRM's position is inconsistent with the duty to provide reasons pursuant to s. 225(5) of the *HRM Charter.*

[82] Mr. Latimer argues, while conceding the Board's appellate powers are limited, that the Board must consider the reasons provided by Community Council, and these reasons, and Community Council's decision, must be grounded in planning principles under the MPS. If they are not, the Board has jurisdiction to grant the appeal.

[83] In response to Board questions concerning the implications of HRM's position in rezoning refusal appeals, Ms. MacLaurin agreed that the task of the Board would be to determine if policies compelling rezoning existed where all other policy criteria had been met by the applicant. If not, the appeal would be dismissed.

[84] While accepting HRM's argument would simplify the Board's task in these types of appeals, the Board finds it is not supported by a purposive, pragmatic and functional approach to statutory interpretation.

[85] Firstly, the Board agrees with Mr. Latimer that Community Council's duty to give reasons, when refusing a rezoning application, must be given meaning and infers that something more than an indication that the current zoning complies with the MPS is required from Community Council.

[86] Secondly, HRM's approach would be inconsistent with the Court of Appeal's directions in *Archibald*, that the Board undertake a thorough factual analysis. The only fact which the Board would have to ascertain, pursuant to HRM's approach, would be whether or not the MPS contained mandatory provisions requiring Council to rezone, if the application were compliant with the MPS.

[87] Thirdly, as exemplified in this case, under HRM's approach, the Board would not have to address Community Council's conclusions and reasons at all. Regardless of Community Council's reasons for rejecting the application, the appeal would fail if no mandatory language was found. This would be at odds with the interpretation of the appellate scheme set out in A*rchibald*, which undertook a pragmatic and purposive analysis, in relation to the statutory appellate provisions related to the approval or rejection of development agreements.

[88] While it is true that *Archibald* involved a development agreement, and not a rezoning application, can it be said that rezoning applications are so different from development agreement applications, such that the *Archibald* principles are inapplicable? The short answer is no.

[89] As with a rezoning application, if a proponent seeks to develop a property by development agreement, in most cases the existing zoning would presumably also be reasonably consistent with the MPS. The Board notes that both in the case of rezoning and development agreements, it is possible, if the MPS is not updated, that developments on the ground could result in this not invariably being the case.

[90] Ms. MacLaurin conceded that development agreement provisions generally are not mandatory. She said they did involve the weighing of policies. She submitted these types of appeals were distinguishable.

[91] The Board notes that *Archibald* considered a development agreement pursuant to the *Municipal Government Act*, S.N.S. 1998, c.18, as amended (MGA) and planning documents applicable to the Town of Truro (Town).

[92] The provision in the Truro planning documents authorizing council to consider the development agreement at issue was set out in para. [7] of *Archibald:*

> [7] The property is zoned R-7 (residential mixed use) and is situated in the Town's Urban Regional Core (URC) within Revitalization Area I on the Future Land Use map. The Town's planning policy URC-33 says:
>
> > It shall be a policy of Council to permit a maximum of four units in a converted dwelling within the Residential/Mixed Use Zone (R7) and consider applications for dwellings greater than four units that constitute a conversion or expansion and new multiple unit residential development only by development agreement.

[93] In the Board's view, this is not compelling language in relation to "considering" a development agreement, where the applicant was seeking to build a dwelling with more than four units.

[94] As well, s. 225(1) of the *MGA*, which authorizes councils subject to that Act to proceed by development agreements, if authorized by the relevant municipal planning strategy, says "council may consider development by development agreement where a municipal planning strategy identifies…". Again, this is not mandatory language.

[95] The appellate scheme under the *MGA* is virtually identical to the appellate scheme under the *HRM Charter.* As well, the appellate scheme for development agreements is virtually identical to the one for rezoning applications in both the *HRM Charter* and the *MGA*, except that for development agreements, there is an additional provision relating to compliance with a development agreement itself, which is not relevant to this analysis.

[96] The Board, therefore, sees a direct relationship between the principles governing development appeals and rezoning appeals. It must consider the operation of the statute as a whole, in light of the purpose to be achieved, and the pragmatic effect a particular interpretation may have. HRM's position would place greater limits on an appellant's right to appeal than are expressed in the *HRM Charter*, and *Archibald.*

[97] The Board notes despite the conclusion rendered in *Mahone Bay*, cited by HRM in support of its position, and which pre-dates *Archibald*, the Board did undertake a factual and policy analysis in that case. The case does not support the proposition that the refusal of a rezoning application, in the absence of the type of compelling language advanced by HRM, will invariably result in a decision which complies with the MPS.

[98] The Board notes Ms. MacIntyre did not suggest maintaining the *status quo* was a policy reason for rejecting the application in her presentation to Community Council. In testimony before the Board, she said she had never made such a

recommendation in any report before Council. She thought this principle was understood. It is also apparent, however, that Community Council was of the view the reasons for rejecting the application had to be based on specific MPS policy considerations.

[99] In the final analysis, Community Council did not reject the Appellant's application on the basis that rejection would leave the property compliant with the MPS. Community Council's decision rejected the Appellant's application on the basis that it did not comply with the Policy 2.4 of Section II of the MPS. It is this decision which the Board must address, after reviewing the policy considerations raised before and by Council, and in the evidence before the Board. In the Board's opinion, the *Archibald* principles are generally applicable to the appeal of a rezoning refusal.

b) MPS Policy 2.4

[100] The Board has already rejected the opinion put forward by Ms. MacIntyre, and the submissions made by HRM, that where *status quo* is maintained in a rezoning application, the decision of Community Council automatically reasonably carries out the intent of the MPS, absent language in the MPS compelling Community Council to rezone where the policy criteria are met. Therefore, the Board must address whether Council's decision does not reasonably carry out the intent of the MPS, as alleged by the Appellant, in accordance with the principles summarized in *Archibald.*

i) Appellant's Submissions

[101] Mr. Latimer argues that in the circumstances of this case, the Board should allow the appeal. He argues that Council's decision, and that of the Board, must be grounded in planning principles and the provisions of the MPS. Mr. Latimer submits

Council's decision was not based on planning principles, or a proper interpretation of the MPS.

[102] The Appellant, supported by Mr. Zwicker's opinion, points to the City-Wide MPS Policies 1.1, 1.2, 1.2.2, and 1.5, which seek to promote economic development and expansion of the tax base. It is submitted the Appellant's proposal responds to these policy objectives.

[103] The Appellant submits the MPS encourages growth, and a residential mix, provided it is compatible with the existing neighbourhood. Mr. Latimer submits the Appellant's proposal meets these policy objectives.

[104] Mr. Latimer argues any concerns about compatibility with the existing character of the neighbourhood are not supported by the facts, given the scale and form permitted in R-1 and R-2 zones are virtually identical. He says the Low Density Residential designation in the MPS allows for both R-1 and R-2 zoning, meaning there is inherent compatibility; and, although arguably not required, the Appellant has provided for an R-1 buffer zone between the existing, predominantly single-family dwellings, and the Property.

[105] The Appellant says the proposed buffer actually enhances compatibility with the existing character of the neighbourhood, given that without the proposed rezoning of the existing R-2 zone on the Property, two-family dwellings could be built immediately behind the dwellings on Herring Cove Road, and a portion of Parkmoor Avenue.

[106] Mr. Latimer argues that this is not a case involving conflicting policies, where Council must make a choice. The policies involved are clear and do not conflict.

[107] The Appellant submits that planning decisions from Community Council, and from this Board, should provide predictable outcomes when projects are assessed against the same policy criteria. Mr. Latimer points to the Briarwood project, where essentially the same criteria were applied, with a different outcome, which allowed for an even higher number of units.

[108] Councillor Adams' comments, as reflected in Council Minutes, distinguished the two projects on the basis that none of the Briarwood lands sought to be rezoned to R-2 abutted neighbouring single-family dwellings. Mr. Latimer stressed the fact that under the Appellant's proposal, because of the L-shaped buffer, this would also be the case. He questioned whether Community Council actually understood the Appellant's proposal.

[109] Mr. Latimer cited the Board's decision in *Bona Investments Limited*, 2009 NSUARB 58 (CanLII) and *Re Scotian Homes*, 2003 NSUARB 119 (CanLII), for the Board's application of principles relating to rezoning refusal from R-1 to R-2 designations, and the compatibility of R-1 and R-2 zones.

[110] In the end, the Appellant took the position the evidence before the Board that the proposed rezoning application reasonably carries out the intent of the MPS was uncontroverted. Council's denial decision did not properly interpret Policy 2.4 in a consistent manner in the two applications before it, was not supported by the MPS wording, and therefore, was not supported by planning principles and inconsistent with the MPS.

ii) HRM's Submissions

[111] In response, as an alternative argument to the one which has now been rejected by the Board, HRM submits that Community Council's decision reasonably carries out the intent of the MPS by virtue of the proper interpretation and application of City-Wide MPS Policy 2.4.

[112] HRM says that the rezoning proposal does not address a concern raised by area residents, and discussed by Council, in relation to intensity or density. In this case, she says Community Council gave more weight to the aspects of MPS Policy 2.4, in relation to density, than to any other policy considerations.

[113] Ms. MacLaurin argues the proposal would increase the density by 50%, and the proposed buffer did nothing to address the density issue, which would also result in more traffic in this neighbourhood. Ms. MacLaurin said this was a change in use, which was supported by the opinion expressed by Ms. MacIntyre, in response to a question she posed to her.

iii) Analysis and Findings

[114] In this case, the evidence of Ms. MacIntyre, both in her staff report before Community Council, and in her expert report before the Board, confirms her opinion that the proposed rezoning is reasonably consistent with the MPS. Mr. Zwicker is also of this opinion. Having reviewed the evidence, the Board agrees that their opinions have merit. Given the direction in *Archibald*, that there may be more than one conclusion that reasonably carries out the intent of the MPS, this does not end the Board's analysis.

[115] The Board must still determine whether Community Council's refusal decision reasonably carries out the intent of the MPS. The Board agrees with the Appellant; this analysis must be based on the MPS, in accordance with planning principles. The issue remains what interpretation Community Council placed on relevant MPS policies, and whether this interpretation is one the language can reasonably bear. If so, the Board must rule in favor of Community Council.

[116] While the Board accepts HRM's submissions that the Board is not bound or restricted to only reviewing Community Council's reasons and decision, in this case no alternative policy was presented as a basis for Community Council's decision. The real area of dispute is the interpretation of MPS Policy 2.4, and what factors should be considered under this Policy.

[117] Council relied on MPS Policy 2.4, which "encourages the retention of the existing residential character of predominately stable neighbourhoods…." The reasons for relying on this policy are not expressed in the letter sent to the Appellants on April 25, 2017.

[118] The Council discussion expressed concerns relating to environmental issues, amenities and infrastructure, increased vehicle traffic, and school capacity.

[119] The evidence before the Board is that the existing infrastructure, including the streets, could accommodate the proposed rezoning. There was no evidence before this Board, or before Community Council for that matter, except for general comments, with respect to school capacity. As well, environmental issues are addressed in Ms. MacIntyre's staff report and the Appellant's application. Therefore, the Board's analysis

will focus on considerations relating to the character of the neighbourhood, which is the expressed reason why Community Council denied the application.

[120] The Board agrees with the opinion expressed by Mr. Zwicker that insofar as scale and form are concerned, there is virtually no difference between R-1 and R-2 designations. The Board also agrees that by including both potential zones in the LDR designation, the MPS expresses a policy direction that these should be compatible zones, in a general sense.

[121] The Board has also considered the *Bona* and *Scotian Homes* decisions, which evaluated the provisions of the East Hants MPS. Theses decisions found the East Hants MPS committed that council to providing a range of housing options, and that both R-1 and R-2 zoning were considered low density residential, and were seen as compatible.

[122] The *Bona* and *Scotian Homes* decisions do not directly address the specific compatibility issue of density, which has been raised by HRM in argument. In *Scotian Homes*, it appears only 15 additional units were authorized. In *Bona,* the density increase was said to be barely perceptible due to the small increase in the number of permitted units.

[123] In both these cases, compatibility, and the character of the neighbourhood were addressed in that Council's Implementation Policies 13.1(e) and (h), as follows:

> e. the provision of buffering, screening, and access control to minimize potential incompatibility with adjacent and nearby land uses and traffic arteries;
>
> …
>
> h. the proposed development incorporates design elements including, but not limited to roof type, exterior cladding materials, and overall architectural style that is reasonably consistent with the style and character of the community or compliments the character of the community.

[124] Therefore, in the East Hants policies, buffering and incompatibility are specifically addressed in the context of land uses. The character of the neighbourhood is addressed by building design. Neither policy has any obvious reference to density. The *Bona* and *Scotian Homes* cases, while of assistance, are not directly on point.

[125] Unlike the situation in East Hants, compatibility with the neighbourhood is not addressed in the Implementation Policies found in the MSSPS. In fact, Implementation Policy 4.3 of the MSSPS, which provides specifics in relation to considerations for Community Council in rezoning matters, is described as "wholly outdated and is not relevant to the current development environment." in Ms. MacIntyre's staff report. There is no evidence before the Board that any of the items listed in Implementation Policy 4.3 would be negatively impacted by the proposed rezoning.

[126] MPS Policy 2.4 is a City-Wide Policy which encourages "…the retention of the existing residential character of predominately stable neighbourhoods…" It directs Community Council to "…seek to ensure that any change it can control will be compatible with these neighbourhoods."

[127] Mr. Zwicker was of the opinion that MSP Policy 2.4.1 provides direction on how to achieve this goal, and focuses on scale and form, and not on density. Ms. MacIntyre agreed with the proposition put to her by Ms. MacLaurin that MPS Policy 2.2 also allows for a focus on intensity, which is analogous to density.

[128] The Board notes that both Policy 2.2 and Policy 2.4.1 indicate their goals shall be accomplished by Implementation Policies 3.1 and 3.2. Implementation Policy 3.1 has been repealed and Implementation Policy 3.2 applies to a different area. However,

the Board finds they can both be utilized to assist in interpreting what is included in the phrase "existing residential character of predominantly stable neighbourhoods."

[129] The Board agrees with the opinion expressed by Ms. MacIntyre that the "existing residential character of the neighbourhood" is based on the existing character of the dwellings in the neighbourhood on the ground, and not primarily derived from the current zoning.

[130] The Board also agrees with Ms. MacIntyre that the concept of neighbourhood is flexible, depending on the circumstances of the case. In this case, while the Board has considered the development patterns on Herring Cove Road, those homes within the notification area which Ms. MacIntyre determined should have received direct notification of the application, as being directly affected by it, forms a reasonable basis for demarcation of the neighbourhood, when considering Policy 2.4 in the circumstances of this appeal.

[131] Having reviewed Policy 2.4, in the context of Policies 2.2 and 2.4.1, and the MPS as a whole, the Board is persuaded that "the existing residential character of the neighbourhood", absent further clarification in the Implementation Policies, includes density, as well as form and scale.

[132] If scale and form were the only issues addressed in Policy 2.4, the Board would be in agreement with the Appellant, and would apply the reasoning in *Bona* and *Scotian Homes*, in determining that Community Council's application of Policy 2.4 was not consistent with the MPS.

[133] Density was not directly addressed in Ms. MacIntyre's staff report to Community Council. In oral testimony, she indicated density was addressed by the

rezoning proposal, in a manner, by the rezoning of the portion of the Property currently zoned R-2. She acknowledged the buffer created by the retention of the L-shaped portion of the R-1 abutting Parkmoor Avenue only addressed the issue to a limited extent.

[134] The Zwicker Report does not focus on density, except to note that the Generalized Future Land Use Map (GFUM) designates the Property and surrounding neighbourhood as "Low Density Residential", which means that both R-1 and R-2 zones are accommodated in this designation, and both zones are low density zones.

[135] MSSPS Policy 1.2 and 1.2.1 make a distinction between one-family and two-family dwellings under the "Low Density Designation." The areas which were predominately single-family dwellings when the LUB was adopted should have been zoned R-1, while those which were predominately two-family dwellings should have been zoned R-2.

[136] It is not apparent why the properties along Herring Cove Road, in the neighbourhood of the Property, and the Briarwood Lands, were zoned R-2, if they were predominantly single-family dwellings. It is possible the character of the neighbourhood has changed since the LUB was enacted, or that a wider area was considered when creating the LUB. Ms. MacIntyre was not in a position to offer any insight or explanation in relation to how the current zoning came to be. In any event, the policies clearly see a distinction between these two zones in this planning area.

[137] The question remains whether the proposed increase in density formed part of Community Council's rationale in denying the application.

[138] While Councillor Adams spoke of "fit", it is clear he was concerned about the proposed increase in the as-of-right dwelling units. It follows that when there is an

increase in the as-of-right units, density for the Property is increased. It is also clear Councillor Cleary raised issues of density. Further, while there were a limited number of public comments, compared to the number of persons who were directly notified of the application, some of the concerns raised related to the density, particularly in light of the number or projects which were being proposed on Herring Cove Road.

[139] While different considerations might apply in other planning areas, a significant increase in density occasioned by a 59% increase in allowed dwelling units, in a relatively sparsely populated neighbourhood immediately abutting the Property, is not insignificant.

[140] The Board finds Community Council could consider a change in density pursuant to MPS Policy 2.4. It is an interpretation of this policy the language can reasonably bear. Neighbourhoods in transition create difficult choices as to the pace and location of change. Community Councils are well placed to make such choices, provided they are grounded in the MPS. While this is not a case of conflicting policies, in the sense discussed in *Archibald*, it is one where Community Council must make a value judgement on which aspects of MPS Policy 2.4, relating to the character of the neighbourhood, should be given priority.

[141] Given the distinction between single-family and two-family dwellings set out in s. 1.2 and 1.2.1 of the MSSPS, and the policy direction this provides, a significant change in density as a rationale for denying a rezoning application is supported by planning principles and the MPS in the context of this planning area. In this case, the buffering proposed by the Appellant did not entirely satisfy Community Council the issue had been addressed.

[142] The Board therefore concludes that despite the expert evidence presented at the hearing, and the recommendations of HRM staff at the public hearing, Community Council's decision to reject the Appellant's rezoning application is not inconsistent with the MPS. Community Council placed greater emphasis on density concerns than both Mr. Zwicker and Ms. MacIntyre. This it was entitled to do.

[143] The Board is conscious of the Appellant's position that matters involving the same application of policy should result in a similar outcome. The Board agrees with this proposition.

[144] In this regard, the Briarwood rezoning application was heard the same night as that of the Appellant. The Board notes that the Briarwood rezoning application was similar, in many respects, to the one brought to Community Council by the Appellant, and involved the consideration of the same policies.

[145] There was, however, a significant difference in the two proposals in relation to percentage increase in allowed dwelling units between the as-of-right scenario and the proposed rezoning.

[146] The net increase in units allowed in the Briarwood application was 133 dwelling units, while approval of the Appellant's application would have resulted in a potential net increase of 115 dwelling units. However, on a percentage basis, the increase in allowed dwelling units on the Briarwood property would be less, given a larger portion of its lands is currently zoned R-2.

[147] As well, the R-1 lands sought to be rezoned to R-2 in the Briarwood case did not abut any R-1 lands. While the Appellant submits this distinction, made by Councillor Adams, indicated Community Council may have not understood the

Appellant's proposal, given the proposed L-shaped buffer zone, it appears Councillor Adams was simply comparing the status of both properties prior to the potential rezoning, and the Board infers he was not swayed by the buffer.

[148] The R-1 Briarwood lands sought to be rezoned are not as close to as many residential properties of any type as the R-1 lands the Appellant sought to rezone.

[149] As well, in the Briarwood application, density was also considered. In that case, density was seen as a positive to attempt to alleviate certain existing water drainage concerns for properties near the former golf course.

[150] Therefore, while the Board can appreciate the Appellant's concern that its rezoning application was rejected, when the Briarwood application was accepted, the Briarwood application is not the subject of this appeal. The Board is satisfied that Community Council's decision in the matter before it is supported by planning principles, and reasonably carries out the intent of the MPS.

VIII CONCLUSION

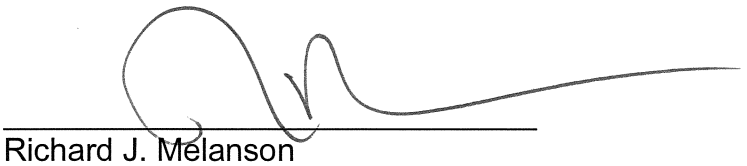
[151] The Appellant sought to rezone certain portions of the Property from R-1 Single-Family designation, to the R-2 Two-Family designation. In response to community concerns, the Appellant sought to create an R-1 buffer between the Property and predominantly single-family dwellings in the neighbourhood.

[152] Community Council refused the application on the basis of MPS Policy 2.4, finding that the proposed rezoning was not compatible with the existing neighbourhood.

[153] The Board has found that the decision of Community Council reasonably carries out the intent of the MPS; and, dismisses the appeal.

[154] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 22nd day of September, 2017.



Richard J. Melanson

Schedule "A"

R-1 ZONE

SINGLE FAMILY DWELLING ZONE

20(1) The following uses shall be permitted in any R-1 Zone:

(a) a detached one-family dwelling;
(b) the office of a professional person located in the dwelling house used by such professional person as his private residence;
(ba) a home occupation;
(c) a public park or playground;
(d) a church and church hall;
(e) a golf course;
(f) a tennis court;
(g) a yacht or boat club;
(h) a public recreational centre;
(i) **a day care facility for not more than 8 children in conjunction with a dwelling (CCC-Apr 6/09;E-Oct 8/09)**
(j) a special care home containing not more than ten persons including resident staff members;
(k) uses accessory to any of the foregoing uses.

20(2) No person shall in any R-1 Zone carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsection (1).

20(3) No person shall in any R-1 Zone use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1).

REQUIREMENTS

21 Buildings erected, altered or used for R-1 uses in an R-1 Zone shall comply with the following requirements:

(a)	lot frontage minimum	50 feet except when a lot faces on the outer side of a curve in the street, in which case the min. frontage may be reduced to 30 feet
(b)	lot area minimum	5,000 square feet
(ba)	Notwithstanding clause (b), the minimum lot area, for lots abutting an inland watercourse in the **"Mainland South Area"**, shall be 6,000 square feet;	
(c)	lot coverage maximum	35 percent
(ca)	height maximum	35 feet
(d)	floor coverage of living	950 square feet space, minimum
(e)	every building shall be at least 12 feet from any other building and at least 8 feet from the rear and both side lines of the lot on which it is situated and at least 20 feet from any street line in front of such building	

ACCESSORY BUILDINGS

(f) notwithstanding the provisions of clause (e), a carport or a detached or attached non-commercial garage may be located not less than 4 feet from the rear and both side lines of the lot on which it is situated and shall be located 8 feet from any other building

(g) notwithstanding the provisions of clause (f), any accessory building shall not require any side or rear yard nor any setback from any other building if such building is located entirely within the rear yard of the lot on which such building is located; provided, however, that such accessory building shall not be closer than 15 feet to any street line.

BUILDINGS ON CORNER LOTS

(h) where a building is situated on a corner lot, it shall be at least 10 feet from the flanking street line abutting such lot.

BOSCOBEL ROAD LOT SIZES

(i) Notwithstanding the minimum lot area requirements specified in Section 21(b) and 21(ba), the minimum lot area requirement for lots abutting or including the wetland area between Boscobel Road and Purcell's Cove Road as specified on Schedule A, shall be one acre, excepting those lots existing on the date of adoption of this Section, and excepting civic number 290 Purcell's Cove Road.

BOARDERS AND LODGERS - BED AND BREAKFAST

22(a) The keeping of not more than three boarders or lodgers in a one family dwelling house shall be permitted, but no window display or sign of any kind in respect to the use permitted by this section shall be allowed.

22(b) The provision of the bed and breakfast accommodation shall not be permitted simultaneously with the keeping of boarders and lodgers.

SIGNS

23 The exterior of any building in an R-1 Zone shall not be used for the purpose of advertising or erecting or maintaining any billboard or sign except the following:

(a) one sign board not exceeding 6 square feet in size pertaining to the sale or rent of the building or lot;

(b) one non-illuminated no-trespassing, safety, or caution sign not exceeding 1 square foot in size;

(c) one non-illuminated sign not exceeding 1 square foot in area, indicating the name and the occupation, profession or trade of the occupant of the building;

(d) one bulletin board for a church;

(e) a sign not exceeding 2 square feet in size for a **day care facility (RC-Mar 3/09;E-Mar 21/09)**;

(f) a non-illuminated sign not to exceed 6 square feet in size for a non-residential building.

(g) One sign not exceeding two square feet in size which can be illuminated only by reflected light, for any bed and breakfast establishment.

DAY CARE FACILITIES

23A Buildings erected, altered or used for a **day care facility (RC-Mar 3/09;E-Mar 21/09)** shall comply with the following requirements:

(a) Except for outdoor play space, any **day care facility (RC-Mar 3/09;E-Mar 21/09)** shall be wholly contained within a dwelling which is the principle residence of the operator of the facility;

(b) One off street parking space, other than that required for the dwelling, shall be provided. The required parking space shall be eight feet wide by sixteen feet long, and be exclusive of the front yard.

(c) The **day care facility (RC-Mar 3/09;E-Mar 21/09)** shall be limited to a maximum of one full storey of the dwelling; this storey may be the basement.

(d) Only one **day care facility (RC-Mar 3/09;E-Mar 21/09)** shall be permitted to be located on any lot.

23B Notwithstanding the provisions of Sections 20(1)(i) and 23A (a-c) a **day care facility (RC-Mar 3/09;E-Mar 21/09)** may be operated as an accessory use to a church, church hall, or public recreation centre. The parking provisions contained in Sections 11(1) and 11 (2) would apply.

23C (Deleted)

SPECIAL CARE HOME

23D Where any building is altered or used as a special care home in an R-1 Zone, such building, in addition to the requirements hereinbefore set out, shall comply with the following requirements:

(i) 100 square feet of landscaped open space shall be provided for each person occupying such home;

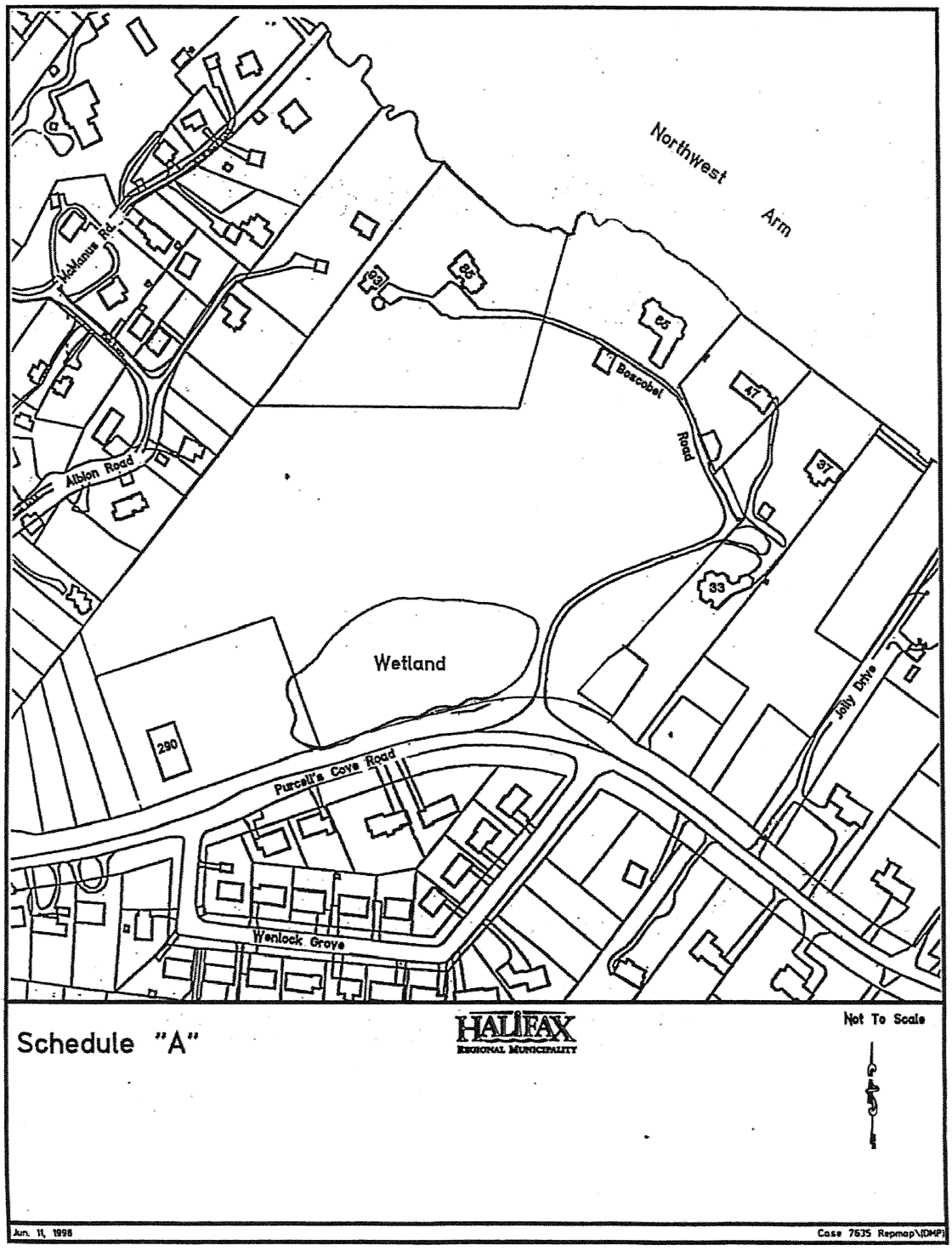
(ii) recreational indoor space may account for 25% of the landscaped open space;

(iii) the building is a minimum of 1,000 feet distant from any other building used for or as a special care home;

(iv) parking requirements as contained in subsections (1) and (2) of Section 11.

Schedule "A" (next page)

Area to which Section 21(i) applies.


Northwest
Arm
McManus Rd.
Albion Road
Boscobel
Road
85
83
47
37
33
Wetland
290
Purcell's Cove Road
Wenlock Grove
Jolly Drive
Schedule "A"
HALIFAX
REGIONAL MUNICIPALITY
Not To Scale
Jun. 11, 1998
Case 7635 Repmap\(DMP)

R-2 ZONE

TWO-FAMILY DWELLING ZONE

24(1) The following uses shall be permitted in any R-2 Zone:

(a) all R-1 Zone uses;
(b) a semi-detached dwelling;
(c) a duplex dwelling;
(ca) a building containing not more than 3 apartments on the 3-unit Dwelling Site identified on ZM-26, subject to the requirements of Section 28C. (RC-Jun 10/14;E-Jul 26/14)
(d) (Deleted)
(e) (Deleted)
(f) in the **"Fairview Area"**, conversions of existing buildings used for institutional purposes to a maximum of 4 units, provided that the height and floor area of the building are not increased.
(g) uses accessory to any of the foregoing uses.

24(2) No person shall, in any R-2 Zone, carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsection (1)

24(3) No person shall, in any R-2 Zone, use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1)

24(4) (Deleted)

R-1 USES IN R-2 ZONE

25 Buildings erected, altered or used for R-1 uses in an R-2 Zone shall comply with the requirements of an R-1 Zone.

25A (Deleted)

REQUIREMENTS

26 Buildings erected, altered or used for R-2 uses in an R-2 Zone shall comply with the following requirements:

(a) Lot frontage minimum 50 feet except when a lot faces on the outer side of a curve in the street, in which case the minimum frontage may be reduced to 30 feet
(b) Lot area minimum 5,000 square feet
(ba) Notwithstanding clause (b), the minimum lot area for lots abutting an inland watercourse in the **"Mainland South Area"**, shall be 6,000 square feet;
(c) Lot coverage maximum 35 percent
(ca) The maximum height shall be 35 feet

(d) Floor coverage of 900 square feet living space, minimum
(e) Every building shall be at least 12 feet from any other building and at least 8 feet from the rear and both side lines of the lot on which it is situated and at least 20 feet from any street line in front of such building;

ACCESSORY BUILDINGS

(f) Notwithstanding the provisions of clause (e), a carport or a detached or attached non-commercial garage may be located not less than 4 feet from the rear and both side lines of the lot on which it is situated and shall be located 8 feet from any other building;
(g) Notwithstanding the provisions of clause (f), any accessory building shall not require any side or rear yard nor any setback from any other building if such building is located entirely within the rear yard of the lot on which such building is located; provided, however, that such accessory building shall not be closer than 15 feet to any street line.

BUILDINGS ON CORNER LOTS

(h) Where a building is situated on a corner lot, it shall be at least 10 feet from the flanking street line abutting such lot;

SEMI-DETACHED DWELLINGS

(i) Notwithstanding the provisions of other requirements:
  (1) For each unit of a semi-detached dwelling, the minimum lot frontage shall be 25 feet, the minimum lot area shall be 2,500 square feet, and the maximum lot coverage shall be not greater than 35 percent.
  (2) Every semi-detached dwelling shall be at least 12 feet from any other building and at least 8 ft. from the rear and side lines of the lot on which it is situated and at least 20 ft. from any street line in front of such dwelling.
  (3) Where a semi-detached dwelling is situated on a corner lot, such dwelling and accessory buildings or uses shall be at least 10 feet from the flanking street line abutting such lot.
  (4) Notwithstanding subsection (2) where a lot containing a semi-detached dwelling is to be or has been subdivided so that each unit is on its own lot, there shall be no setback required from the common lot boundary.

DAY NURSERY

(j) (Deleted)
(k) (Deleted)

BOARDERS AND LODGERS

27 The keeping of not more than three boarders or lodgers in an R-2 Zone shall be permitted, but no window display or sign of any kind in respect to the use permitted by this section shall be allowed.

SIGNS

28 The exterior of any building in an R-2 Zone shall not be used for the purpose of advertising or erecting or maintaining any billboard or sign except the following:

(a) one sign board not exceeding 6 square feet in size pertaining to the sale or rent of the building or lot;
(b) one non-illuminated no-trespassing, safety, or caution sign not exceeding one square foot in size;
(c) one non-illuminated sign not exceeding one square foot in area, indicating the name and the occupation, profession or trade of the occupant of the building;
(d) one bulletin board for a church.
(e) A sign not exceeding two square feet in size for a **day care facility**. **(RC-Mar 3/09;E-Mar 21/09)**

DAY NURSERY - ADDITIONAL CHILDREN PROVISION

28A (Deleted)

28B (Deleted)

28C Notwithstanding Section 26, any building permitted by clause 24(1)(ca) shall comply with the following requirements:

(a) Lot frontage minimum of 45 feet;
(b) Lot area minimum of 4,500 square feet;
(c) Lot coverage maximum of 35 percent;
(d) The maximum height shall be 30 feet;
(e) The maximum number of storeys shall be 2;
(f) The minimum front yard setback shall be 15 feet;
(g) The minimum side yard setback shall be 10 feet; and
(h) The minimum rear yard setback shall be 20 feet.
(RC-Jun 10/14;E-Jul 26/14)