

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **ADI AND DORON FLEISHER** from a decision of North West Community Council to approve a Land Use By-law amendment and enter into a Development Agreement for a stargazing park at 5933 Prospect Road, Big Lake, Halifax Regional Municipality, Nova Scotia

BEFORE: Marc L. Dunning, P.Eng., LL.B., Panel Chair
Richard J. Melanson, LL.B., Member
Darlene Willcott, LL.B., Member

APPELLANTS: **ADI AND DORON FLEISHER**
Jamie Simpson, Counsel

RESPONDENT: **HALIFAX REGIONAL MUNICIPALITY**
Meaghan Carlson, Counsel

APPLICANT: **STARGAZE NOVA SCOTIA**
John Read

INTERVENOR: **F. WILLIAM C. LAURETTE**
Self-represented

HEARING DATE: June 2, 2026

DECISION DATE: September 17, 2026

DECISION: The Board finds that one aspect of the proposed Development Agreement does not reasonably carry out the intent of the Municipal Planning Strategy. The Board requests submissions on the appropriate remedy.

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1.0 INTRODUCTION

[1] Adi and Doron Fleisher (Appellants) appealed a decision of North West Community Council (Council) approving a land use by-law amendment and entering into a development agreement for a stargazing park at 5933 Prospect Road, Halifax Regional Municipality (HRM), Nova Scotia.

[2] The development agreement allows for an observatory, Stargazers Lodge, rental cabins, bunkhouse observatories, tenting sites, look-off decks, an analog research station, café, boathouse, trails, boardwalks, a wharf, and a single-unit dwelling.

[3] The Appellants say that Council's decision does not reasonably carry out the intent of the Planning District 4 (Prospect) Municipal Planning Strategy (MPS) because it mischaracterizes the development as "commercial recreation use"; wrongly applies an MPS policy to allow "commercial recreation use" on the entire property; and fails to properly consider MPS policies including those dealing with the environment, noise, traffic, hours of operation, and impact on nearby land uses.

[4] The Nova Scotia Regulatory and Appeals Board (Board) can only allow the appeal if it finds that Council's decision does not reasonably carry out the intent of the MPS. The Board finds that, with one exception, Council's decision reasonably carries out the intent of the MPS. The Board finds that Council's decision to allow the analog research station (including up to 10 structures) within the development agreement does not reasonably carry out the intent of the MPS. The Board will seek submissions from the parties as to what remedy should be granted based on these findings.

2.0 BACKGROUND

2.1 Application Process

[5] On May 24, 2024, Charles Freeman Architect, on behalf of Stargaze Nova Scotia (Applicant), applied to HRM to develop a stargazing park at 5933 Prospect Road, Big Lake, Nova Scotia (Property). Stargaze Nova Scotia is a sole proprietorship of the Property's owner, John Read.

[6] The Property consists of 26 acres on the west side of Prospect Road. It is bordered by Big Lake to the north, undeveloped woodland to the west, and wetland to the south. The Property currently contains a gravel driveway, parking area and the Abbey Ridge Observatory. The remainder of the Property is a mix of small trees, low-growth vegetation and exposed bedrock.

[7] The Property is dual-zoned. The portion of the Property adjacent to Prospect Road is zoned Residential B-1 (RB-1). The remainder is zoned Rural Residential A-1 (RRA-1).

[8] After addressing issues raised by HRM planning staff about the initial application, the Applicant revised its proposal, including increasing the setback from wetlands and Prospect Road and relocating, removing and reconfiguring certain buildings and structures.

2.2 Staff Report

[9] On November 21, 2025, Erin MacIntyre, HRM's Acting Executive Director of Planning and Development, prepared a report providing staff's review of the revised proposal in the context of the relevant MPS policies (Staff Report). The Staff Report included a draft development agreement (DA). The report provides the opinion that "the

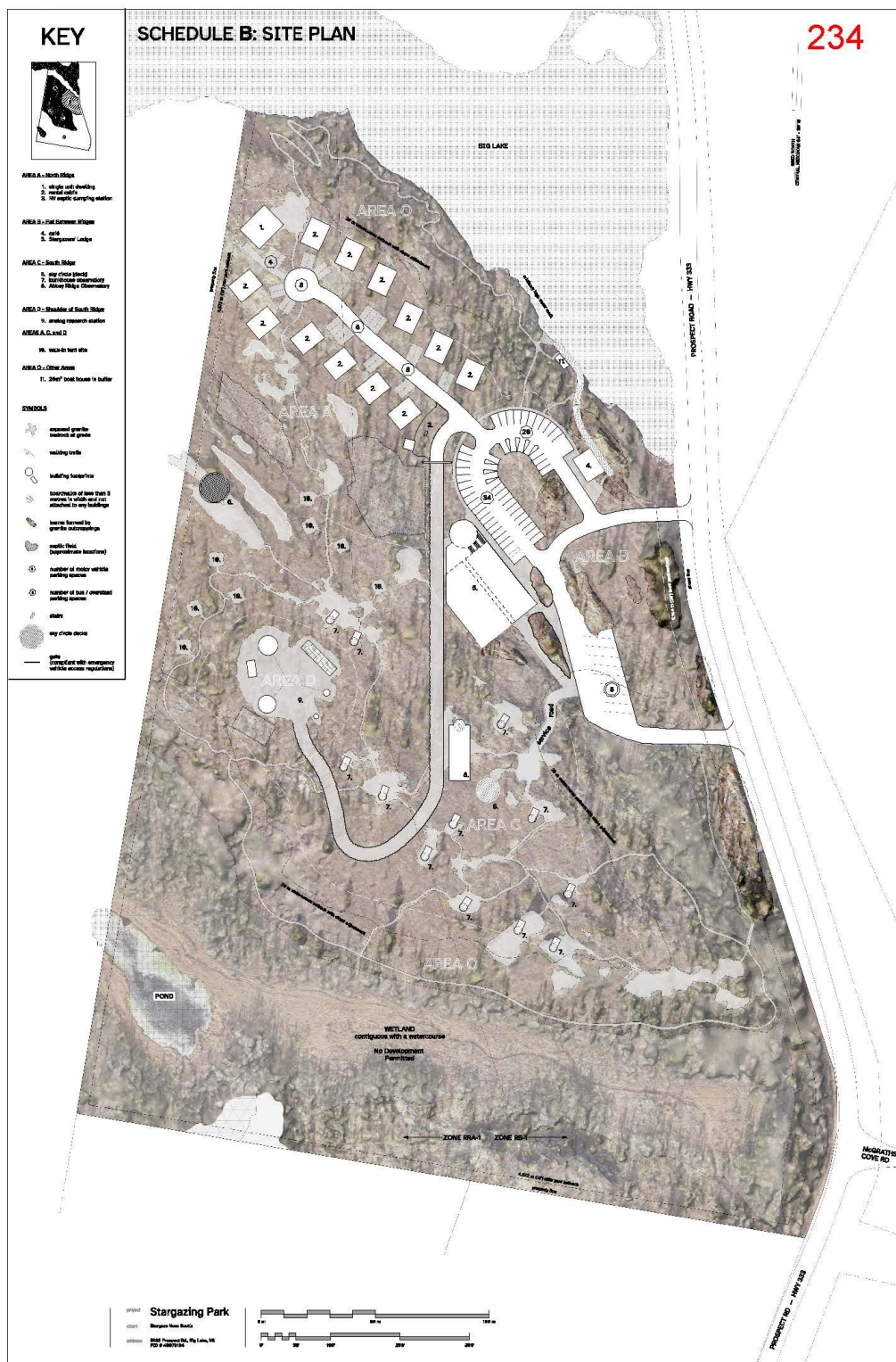
proposal is reasonably consistent with the intent of the MPS” and recommends that, “Council approve the proposed development agreement” [Exhibit F-6, pp. 208 and 211].

[10] The Staff Report notes that, because the Property is dual-zoned, a concurrent amendment to the Land Use By-law for Planning District 4 (Prospect) (LUB) is required to allow for “commercial recreation use” on the part of the Property zoned RRA-1.

2.3 Development Agreement

[11] The DA allows the Property to be used as a stargazing park, consisting of the Abbey Ridge Observatory, which will allow the public to experience stargazing through a professional telescope; Stargazers Lodge, which will act as a visitor centre, providing reception for stargazers and overnight guests, and include a planetarium, museum, washroom and shower facilities, community hall and kitchen for banquets, fairs, symposia, and lectures, as well as a craft shop; up to 12 rental cabins (or 11 cabins and 2 recreational vehicle sites); up to 12 bunkhouse observatories that will allow overnight guests to use a dedicated telescope attached each bunkhouse; up to 20 tenting sites; 2 look-off decks; an analog research station with up to 10 structures where researchers can grow plants and astronauts can train in habitations to simulate the environment on Mars or the moon; a café; boathouse; trails; boardwalks; wharf; one single-unit dwelling; and common parking areas for 54 motor vehicles and 8 buses.

[12] The DA requires that the lands be developed in a manner that conforms with the site plan included in the DA and reproduced below.



[13] The DA restricts the maximum height and floor area of the buildings and requires compliance with specific conditions relating to land use, including architectural requirements, parking, circulation and access, outdoor lighting, landscaping, maintenance, signs, temporary construction, screening, hours of operation, reinstatement, and environmental protection measures.

[14] The maximum height and floor area of the buildings is stipulated in the DA as follows:

Building	Max Floor Area (ft²)	Max Height (ft)
Stargazers Lodge	15,000	40
Analog Research Station	4,000 (all structures combined)	35
Abbey Ridge Observatory	2,000	50
Single-unit Dwelling	2,000	35
Rental Cabins	2,000 each	30
Sky Circle Decks	2,000 each	15
Café	1,200	35
Bunkhouse Observatories	215 each	20
Boathouse	215	30

[Exhibit F-6, p. 223]

[15] The height and floor area may be increased by up to 5% provided the intent and all other provisions of the DA are satisfied.

[16] The DA requires that, before starting any site work, the developer must obtain a Grade Alteration Permit from HRM and provide a detailed Site Grading and Stormwater Management Plan prepared by a professional engineer that has been reviewed and approved by HRM Development Engineering and Nova Scotia Department of Public Works. Prior to issuing the first occupancy permit, the developer must provide a copy of all permits, licenses and approvals required by Nova Scotia Department of Environment and Climate Change with respect to the design, installation and construction of the on-site water and wastewater systems and a letter from a landscape architect

certifying that all landscaping has been completed according to the terms of the DA [Exhibit F-6, pp. 225 and 228].

2.4 Public Hearing

[17] Council held a public hearing on January 12, 2026, following which it passed a motion to amend the LUB to allow “commercial recreation use” on that part of the Property zoned RRA-1, and approved entering into the DA.

2.5 Appeal to the Board

[18] On January 20, 2026, the Appellants filed a Notice of Appeal with the Board, which was later amended. They summarized their grounds of appeal in their closing submissions as follows:

- a. Ground 1: Council mischaracterized the Project as a commercial recreation development; the true nature of the proposed project (institutional and a commercial resort/accommodations development) would not be permitted in this zone (as of right);
- b. Ground 2: Alternatively, Council failed to properly consider the Policy RB-11 factors;
- c. Ground 3: Council failed to have appropriate regard to ... IM-11 factors; and
- d. Ground 4: Council exceeded the intended application of Policy IM-6 by using it to enable a comprehensive redistribution of the development in order to expand the available development footprint and thereby did not implement the policy in a manner consistent with the MPS as a whole.

[Appellants' Closing Submissions, p. 2]

2.6 Pre-Hearing Matters

[19] The Board panel dealt with several preliminary matters raised by the parties in advance of the hearing. William Laurette applied for and was granted intervenor status. The Appellants requested an adjournment that resulted in the Board changing filing and hearing dates. The Appellants asked to amend their Notice of Appeal, which was granted. HRM objected to Mr. Laurette being qualified as an expert witness and the panel

determined that he would not be permitted to provide opinion evidence. The Appellants objected to qualifying HRM's expert, Jessica Harper, as an expert witness. The panel found she was a properly qualified planning expert.

3.0 JURISDICTION AND SCOPE OF REVIEW

[20] Sections 262(1)(a) and (2)(a) of the *Halifax Regional Municipality Charter*, SNS 2008, c 39 (*HRM Charter*) allow an "aggrieved person" to appeal to the Board from a council's decision to amend a land use by-law and enter into a development agreement. None of the parties dispute that the Appellants are "aggrieved persons". Their house is located directly across Big Lake from the proposed development.

[21] An "aggrieved person" can only appeal a council's decision to amend a land use by-law and enter into a development agreement on grounds that the decision does not reasonably carry out the intent of the municipal planning strategy (*HRM Charter*, s. 265(1)(a) and (b)). The Board can only allow an appeal if it finds that council's decision does not reasonably carry out the intent of the municipal planning strategy (*HRM Charter*, s. 267(2)).

[22] In municipal planning appeals, the Board follows the statutory requirements and guiding principles from various Nova Scotia Court of Appeal decisions. The Court of Appeal summarized these principles in *Archibald v Nova Scotia (Utility and Review Board)*, 2010 NSCA 27 (*Archibald*), and more recently in *Heritage Trust of Nova Scotia v AMK Barrett Investments Inc.*, 2021 NSCA 42 (*Heritage Trust*):

[23] I will start by summarizing the roles of Council, in assessing a prospective development agreement, and the Board on a planning appeal.

[24] In *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. No. 50, 1994 NSCA 11 ["*Heritage Trust*, 1994"], Justice Hallett set out the governing principles:

[99] ...A plan is the framework within which municipal councils make decisions. The Board is reviewing a particular decision; it does not interpret the relevant policies or by-laws in a vacuum. In my opinion the proper approach of the Board to the interpretation of planning policies is to ascertain if the municipal council interpreted and applied the policies in a manner that the language of the policies can reasonably bear. ...There may be more than one meaning that a policy is reasonably capable of bearing. This is such a case. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact on the decision. ...This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions.

...

[100] ...Ascertaining the intent of a municipal planning strategy is inherently a very difficult task. Presumably that is why the Legislature limited the scope of the Board's review.... The various policies set out in the Plan must be interpreted as part of the whole Plan. The Board, in its interpretation of various policies, must be guided, of course, by the words used in the policies. The words ought to be given a liberal and purposive interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are made. ...

...

[163] ...Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact on such decisions. ... Neither the Board nor this Court should embark on their review duties in a narrow legalistic manner as that would be contrary to the intent of the planning legislation. Policies are to be interpreted reasonably so as to give effect to their intent; there is not necessarily one correct interpretation. This is implicit in the scheme of the *Planning Act* and in particular in the limitation on the Board's power to interfere with a decision of a municipal council to enter into development agreements.

[25] These principles, enunciated under the former *Planning Act*, continue with the planning scheme under the *HRM Charter*. *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, para. 24, summarized a series of planning rulings by this Court since *Heritage Trust*, 1994:

[24] ...I will summarize my view of the applicable principles:

(1) ...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 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*, [*Municipal Government Act*] 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.

(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, ¶ 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. [Emphasis added]

[23] The Board is required to review council's decision holistically and determine if it interpreted and applied the policies of the municipal planning strategy in a manner they can reasonably bear. Barring an error of fact or principle, the Board should defer to council's value judgments on making choices between conflicting intentions of a municipal planning strategy and with respect to words and terms whose meanings are not clear. Ultimately, the Board's role is to determine whether council's decision does or does not reasonably carry out the intent of the municipal planning strategy.

[24] When considering municipal planning documents, the Board applies the “modern principle” of statutory interpretation, summarized by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*):

[117] A court interpreting a statutory provision does so by applying the “modern principle” of statutory interpretation, that is, that the words of a statute must be read “in their entire context and in their grammatical and ordinary sense harmoniously within the scheme of the Act, the object of the Act, and the intention of parliament”: [...] Parliament and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations.

...

[120] But whatever form the interpretive exercise takes, ***the merits of an administrative decision maker’s interpretation of a statutory provision must be consistent with the text, context and purpose of the provision***. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are “precise and unequivocal”, their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements. [Emphasis in original]

[25] The Board also relies on the *Interpretation Act*, RSNS 1989, c 235, including ss. 9(1) and 9(5), which provides that every enactment must be interpreted according to its spirit, true intent and meaning, and that the consequences of a particular interpretation be considered.

[26] The Board’s interpretation of a municipal planning strategy is also guided by the direction from the Court of Appeal in *Heritage Trust* that “The words ought to be given a liberal and purposive interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are made” (para. 100), and *Archibald* that “The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole” (para. 24).

4.0 ISSUES

[27] There is one issue in this appeal – does Council’s decision to amend the LUB and enter into the DA reasonably carry out the intent of the MPS?

[28] The onus is on the Appellants to prove, on a balance of probabilities, that Council’s decision does not reasonably carry out the intent of the MPS.

5.0 WITNESSES AND EVIDENCE

5.1 Witnesses

[29] For the Appellants, the Board heard from Ms. Fleisher, her spouse, Ori Greenberg, Kevin Schurman, who lives approximately 200 feet from the proposed development, and John Heseltine. Mr. Heseltine was qualified as an expert in municipal planning, capable of giving opinion evidence on the MPS, LUB and development agreements.

[30] Ms. Harper was the only witness who testified for HRM. She was involved in the application process. She was qualified as an expert in the field of municipal planning, capable of giving opinion evidence on the interpretation of municipal planning strategies, including the Regional Municipal Planning Strategy (RMPS) and the MPS, the interpretation of land use by-laws, the drafting and interpretation of development agreements, and whether or not Council’s decision is reasonably consistent with the intent of the applicable municipal planning strategies.

[31] Mr. Read testified on behalf of the Applicant. The intervenor, Mr. Laurette, testified on his own behalf.

[32] Under s. 27 of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A, the Board operates under relaxed rules of evidence. To the extent that witnesses relied on hearsay and offered opinions beyond their qualifications, the Board weighed the evidentiary value of those statements in the normal course. The Board found the evidence of the witnesses helpful and credible, unless stated otherwise.

5.2 Letters of Comment

[33] The Board received 25 letters of comment from members of the public. Fifteen were in favour of the development and 10 were opposed.

[34] Those in favour of the development referred to it as building on the legacy of the late Dr. David Lane; preserving and bringing awareness to the natural environment and protecting the night sky; and providing opportunities for astronomers, educators, and the general public for research and nighttime photography. Concerning potential impacts, the comments noted that the type of development will inherently encourage calm and respectful behaviour and is not conducive to disruptive conduct, and that the DA includes provisions that will sufficiently manage impacts through lighting requirements, building scale, required buffering and permitted uses.

[35] Many of those opposed to the development have lived in the general area of the Property for a significant part of their lives. They referred to the quiet, naturally beautiful, community-minded, friendly, and rural character of the area, which they are concerned will be jeopardised by the development. They raised concerns about wildfires; light pollution; the impact on wildlife and the environment, including garbage, pollution and the absence of an environmental impact assessment. They questioned how a septic system could be installed given the presence of significant bedrock and the impact of

water usage on local wells. Concerns were raised with respect to noise, safety, impact on property values, and whether properties in the area would have to turn their outside lights off at night because of the development. The comments also raised concerns with the notification and public hearing process leading up to Council's decision.

5.3 Public Speakers

[36] No one registered to speak at the hearing.

5.4 Site Visit

[37] The Board panel conducted a site visit on June 3, 2026, at 11:00 a.m. They entered the Property from the driveway and walked from the parking area to the Abbey Ridge Observatory. They returned to the parking area and from there walked in a northerly direction to the shore of Big Lake and back before leaving the site. The panel was able to observe the lay of the land as described in the evidence. The panel was also able to observe the proximity of the Property and the Appellants' property to Prospect Road. The Board was further able to observe what had been described in the evidence about the Appellants' property being cleared to the water's edge. What was formerly a motel on the Appellants' property was visible from the Property, while the Property itself was wooded to the banks of Big Lake. No one accompanied the panel during the site visit.

6.0 ANALYSIS AND FINDINGS

6.1 Council's Approach to the Application

[38] As already mentioned, part of the Property is zoned RB-1, and the other part is zoned RRA-1. The LUB only allows certain residential, open space, and other uses in these zones [Exhibit F-7, Tab 3, pp. 58 and 71], which would permit only some of the

proposed development to be built as-of-right, including the single-unit dwelling and the craft shop.

[39] In order to allow the entire development, Council considered the development to be “commercial recreation use”. It then applied MPS Policy RB-11, which allows “commercial recreation use” in the RB-1 zone by development agreement, to allow that use on that part of the Property zoned RB-1. Council then relied on MPS Policy IM-6, which authorizes LUB amendments to allow uses on one property to extend onto an abutting property. Council applied Policy IM-6 to add s. 3.16(k)(ii) to the LUB to allow for the development of similar uses on properties with abutting designations. It then applied that amendment to extend the “commercial recreation use” allowed on that part of the Property zoned RB-1 to the remainder of the Property.

6.2 Overview of Planning Documents

[40] The RMPS is the overarching planning strategy that sets out planning objectives that apply to the entire municipality. The RMPS was passed on June 25, 2014. The Planning District 4 (Prospect) Municipal Planning Strategy (MPS) is the local planning strategy that applies to the area where the Property is located. The MPS was passed on December 12, 1994, at the same time as the Planning District 4 (Prospect) Land Use By-law (LUB).

[41] The preamble to MPS Policy RB-11 says that commercial recreation uses may be located in the Residential B (RB) designation but, because of their potential size and impact on the surrounding community, are only allowed by development agreement:

Given the vast amount of undeveloped land situated throughout the Residential B. Designation, commercial recreation activities may be suitably located within this designation. These operations, however, can also impact on the surrounding community in terms of noise, dust, litter, traffic and visibility. Given the size and potential impact of

such facilities on the surrounding area, these uses will only be permitted by development agreement.

[Exhibit F-7, Tab 2, p. 52]

[42] Policy RB-11 authorizes Council to allow commercial recreation use in the RB designation by development agreement and “having regard” to various factors:

RB-11 Notwithstanding Policy RB-2 or Policy RB-4, within the Residential B Designation, Council may consider permitting commercial recreation uses in accordance with the development agreement provisions of the Planning Act and having regard to the following:

- (a) the potential impact of the proposed development on the natural environment and in particular, potential effects on watercourses;
- (b) that the proposal will not adversely affect nearby residential or community facility development by virtue of noise, visual intrusion, traffic generation and/or littering;
- (c) the impact of the proposed use on the existing road network in terms of traffic generation and vehicular and pedestrian safety;
- (d) that any rifle ranges, amusement parks, vehicle or animal racing track shall not be located within one thousand six hundred forty (1,640) feet of the nearest residence;
- (e) the layout and design of the facility;
- (f) the general maintenance of the facility;
- (g) the location and level of treatment of any proposed sewage treatment plant;
- (h) the requirement for any applicable provincial approvals;
- (i) the hours of operation; and
- (j) the provisions of Policy IM-11.

[Exhibit F-7, Tab 2, pp. 52-53]

[43] The final factor listed in Policy RB-11(j) refers to MPS Policy IM-11, which requires Council to “have appropriate regard” to various matters when considering development agreements:

IM-11 In considering development agreements or amendments to the land use bylaw, in addition to all other criteria as set out in various policies of this Planning Strategy, Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this Planning Strategy and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of on-site sewerage and water services;
 - (iii) the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;
 - (iv) the adequacy of road networks leading to or within the development; and
 - (v) the potential for damage to or for destruction of designated historic buildings and sites.

- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.
- (e) **Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)**
[Emphasis in original]

[Exhibit F-7, Tab 2, p. 115]

[44] The Board finds that the terms “having regard to” in Policy RB-11 and “have appropriate regard to” in Policy IM-11 direct Council to consider the matters listed and, in the case of Policy IM-11(c), to determine whether or not to include controls in the development agreement addressing type of use; height, bulk and lot coverage of any proposed building; traffic generation, access to and egress from the site, and parking; open storage; signs; and other matters of planning concern. The Board finds that this does not require Council to include specific controls addressing each of these issues in every development agreement. Council has some discretion. Consistent with the Court of Appeal’s direction in *Archibald*, the Board finds that it is appropriate to defer to Council’s choices on whether or not to include such controls in development agreements, and if so what type of controls, provided Council’s decisions are based on interpretations that the MPS can reasonably bear.

[45] MPS Policy IM-6 allows for amendments to the LUB to allow uses on one property to extend onto an abutting property:

IM-6 Providing that the intentions of all other policies are satisfied, Council may, for the purpose of providing for the development of similar uses on properties which abut

one another, consider the following amendments to the land use by-law, for lands which are located where any land use designations abut one another, as shown on Map 1 - Generalized Future Land Use:

- (a) amendments within a designation to provide for the development of uses which are permitted within the abutting designation by rezoning or development agreement, in accordance with the same conditions prescribed within that abutting designation; or
- (b) IM-7 amendments within a designation to provide for the development of uses which are permitted within the zone on the abutting property.

[Exhibit F-7, Tab 2, pp. 111-112]

[46] Council applied this policy to amend s. 3.16(k) of the LUB to add a new subclause, s. 3.16(k)(ii), to allow for the development of similar uses on properties that have abutting designations. The new provision states:

3.16 USES CONSIDERED BY DEVELOPMENT AGREEMENT

Notwithstanding Section 3.15, certain uses which may not be listed as permitted uses in a zone may be considered in accordance with the development agreement provisions of the Planning Act. As provided for by Policies of the Municipal Planning Strategy for Planning District 4, such uses are:

...

(k) Within all Designations (RC-Aug 9/22; E-Sep 15/22)

...

(ii) Pursuant to Policy IM-6, for the purpose of providing for the development of similar uses on properties which abut one another, consider a development agreement for the development of uses which are permitted within the abutting designation. [Emphasis in original]

[Exhibit F-6, Tab 3, p. 235 and Exhibit F-7, Tab 3, pp. 23-24]

6.3 “Commercial Recreation Use”

[47] Whether the proposed development is a “commercial recreation use” is a key issue in this appeal. Council’s decision to approve the LUB amendment and enter into the DA is based on the proposed development being a “commercial recreation use”.

6.3.1 Meaning of “Commercial Recreation Use”

[48] The term “commercial recreation use” is not defined in the MPS. It is defined in the LUB as:

- 2.15 COMMERCIAL RECREATION USE means a building or lot or part of a building or lot used solely for commercial recreation or sport purposes and without limiting the generality of the foregoing, may include animal or vehicle racing tracks, rifle ranges, golf courses, miniature golf courses, amusement parks and centres and may include any use which is accessory to the foregoing.

[Exhibit F-7, Tab 3, p. 3]

[49] Following the Court of Appeal’s direction in *Archibald*, the Board finds that the LUB definition can be used to assist in determining the meaning of “commercial recreation use” in the MPS because the MPS and LUB were enacted at the same time. However, the Board notes that Council deliberately chose not to define the term “commercial recreation use” in the MPS. The MPS sets policy guidance for municipal development. The LUB is the implementing tool for executory decisions by non-elected officials who must make decisions on, for example, whether to grant building permits. This land use by-law function often means land use by-law provisions allow for less discretion and seek to avoid conflicting directions. Conversely, by not strictly defining terms in the MPS, Council is left with some residual discretion when applying the wording to a particular proposal, to make the MPS work as a whole. In any event, in the case of the term “commercial recreation use”, the definition in the LUB itself is not closed.

[50] The LUB defines “commercial recreation use” as all or part of a building or lot used solely for commercial recreation or sport purposes, including racing tracks, rifle ranges, golf courses and uses accessory to those uses. In addition to the examples provided in the definition, the MPS refers to other examples including Granite Springs Golf Course; the golf course facilities being constructed by Barry MacDonald in the Long

Bog area; commercial campgrounds; amusement centres; and exhibition parks, drive-in theatres and bowling allies in the Commercial Recreation 2 Zone that apply to the existing Exhibition Park [Exhibit F-6, Tab 2, pp. 53, 93 and 95].

[51] The part of the definition of “commercial recreation use” that states “without limiting the generality of the foregoing” indicates that “commercial recreation use” can include uses other than those specifically mentioned in the definition.

[52] The part of the definition of “commercial recreation use” that states “and may include any use which is accessory to the foregoing” indicates that “commercial recreation use” can include “any use” [our emphasis] that is accessory to the commercial recreation use.

6.3.2 Meaning of “Accessory Use”

[53] As with the meaning of “commercial recreation use”, the MPS does not define “accessory use”, and the Board has considered the definition from the LUB:

2.2 ACCESSORY USE means a use which is subordinate, normally incidental, and exclusively devoted to a main use or building permitted under the provisions of this by-law and, where residential uses are permitted by this by-law, shall include home occupations ...[Emphasis in original]

[Exhibit F-7, Tab 3, p. 1]

[54] The Board finds this to be a relatively restrictive definition. An “accessory use” must be 1) subordinate to a main use; 2) normally, but not necessarily, incidental to a main use; and 3) exclusively devoted to a main use.

[55] In determining the meaning of “subordinate” and “incidental”, the Board notes that these words are not defined in the MPS or LUB. Part 2 of the LUB states that undefined words “carry their customary meaning” [Exhibit F-7, Tab 3, p. 1].

[56] Considering the customary and usual meaning of these words, the Board finds that “subordinate” means a use that is less important or less significant than a main use, and “incidental” means accompanying, but not being a major part of, a main use. The meaning of “exclusively devoted to a main use” is clear enough from its language and the Board finds that it means existing solely for the purpose of supporting a main use. In applying these definitions to the facts of a case, there is still a subjective element about whether a particular part of the proposed development exists solely for the purpose of supporting the main use.

6.3.3 Is the Stargazing Park a “Commercial Recreation Use”?

[57] The Staff Report refers to the stargazing park as a commercial recreation use but does not explain why it is a commercial recreation use. It says that the proposal is focused on the observatory which will be supported by various other land uses:

The proposal is focused on the Abbey Ridge Observatory which as part of this proposed development is intended to be relocated from its original location at Stillwater Lake in Nova Scotia to the subject property. The Abbey Ridge Observatory is a dome structure that contains a 14-inch telescope that can be used for both day and nighttime tours and for general astronomy purposes. To support the Abbey Ridge Observatory, the developer has proposed several supporting land use activities, including rental cabins, walk-in tent sites, a stargazers lodge complete with a community hall and kitchen facilities and a café, together making up the proposed Stargazing Park. [Emphasis added]

[Exhibit F-6, p. 209]

[58] Mr. Heseltine says that based on the definition of “commercial recreation use” in the LUB, the only clear recreation or sport purpose is the boathouse which, “does not appear to have a commercial purpose and is, at best, an accessory use”. He distinguishes the observatory as a cultural or educational facility, which he says “differs significantly” from the uses listed in the definition. He says “Even if one accepts that the boathouse and/or the observatory are commercial recreation facilities, they are

measurably not the primary uses of the proposed development” and that the “majority of the development is devoted to the accommodation of overnight guests”. He also says “Given that a commercial recreation use must consist *solely* of commercial recreation uses ... Stargazing Park fails to qualify if any one of the multiple uses it incorporates does not satisfy the definition” [Exhibit F-14, pp. 4-7].

6.3.3.1 Findings

[59] The Board finds that interpreting the stargazing park as a “commercial recreation use” is an interpretation that the MPS can reasonably bear.

[60] The nature of the stargazing park’s recreational activity is explained in the DA, which defines “Stargazing Park” as including “daytime recreation uses with educational opportunities and extends these uses into the evening with guided stargazing tours”. These aspects are achieved through the Abbey Ridge Observatory, where the large telescope can be used by patrons or remotely; the bunk house observatories, which include dedicated telescopes; the look-off sites which are specifically intended for stargazing; and the planetarium, museum and community hall in the Stargazers Lodge which will offer information and educational opportunities.

[61] The Board finds that interpreting most of the remainder of the development, specifically the rental cabins, tenting sites, other parts of the Stargazers Lodge, café, single-unit dwelling, boathouse, boardwalk, wharf, and trails, as accessory uses to the main use of stargazing is an interpretation that the MPS can reasonably bear.

[62] To be a valid accessory use, the use must be subordinate, normally incidental, and exclusively devoted to the main use of stargazing.

[63] The rental cabins and tenting sites provide a place for stargazing visitors to spend the night. That is their main purpose. They can also be used for stargazing without a telescope. Although the cabins represent a significantly larger area of the development than the buildings specifically used for stargazing, size is not necessarily a determining factor. The Board finds that the definition of “accessory use” is intended to provide some flexibility to allow, in appropriate circumstances, uses that, as in the case of the rental cabins, may be more significant in size and scale than the main use but are still subordinate and exclusively devoted to that main use.

[64] The other parts of the Stargazers Lodge, specifically the reception area, washroom and commercial kitchen, all support and are exclusively devoted to the main use of stargazing by providing facilities for stargazing guests. The commercial kitchen will help support the “banquets, fairs, symposia and lectures” related to stargazing use that occur in the community hall [Exhibit F-6, p. 221].

[65] The café supports the main use of stargazing by providing food for guests. The boathouse, boardwalk, wharf and trails are available for the recreation of stargazing guests. The single-unit dwelling, which will provide a place for the owner, caretaker or manager of the park to live, and the craft shop are allowed as-of-right under the LUB [Exhibit F-7, Tab 3, pp. 58 and 71].

[66] While it is possible that some users of the park may rent a cabin, tent site or use the above buildings for purposes other than stargazing, it is the stargazing park aspect of the proposal that creates the need for these elements. The Board notes that although the application refers to the development hosting events “such as ... festivals, weddings, school picnics, and corporate retreats”, none of those uses are specifically

permitted by the DA. The DA refers to the community hall and kitchen as being for “banquets, fairs, symposia, and lectures”. Those are the only allowable uses of those parts of the Stargazers Lodge.

[67] The Board has considered whether interpreting the analog research station as an accessory use to the main use of stargazing is an interpretation that the MPS can reasonably bear. The Board finds it is not. An accessory use must be “exclusively” devoted to a main use. The research station is defined in the DA as “a research station where researchers can grow plants and astronauts can train in habitations to simulate the environment on Mars or the Moon”. Based on this definition, the main use of the research station is for growing plants and training astronauts. It is not “exclusively” devoted to the main use of stargazing. Also, although the application states that the research station will “provide hands-on educational opportunities for tourists and other patrons of Stargaze Nova Scotia” [Exhibit F-6, p. 17] and the DA refers to the stargazing park as including “educational opportunities”, the Board finds that the educational use of the research station by stargazing guests would be secondary to its main use of research and training.

6.3.4 Is a Campground “Commercial Recreation Use”?

[68] The Board will address an alternative basis for approval advanced by HRM in this appeal. Ms. Harper says that the main use of the development is a campground, which includes the tent sites, rental cabins and bunk house observatories, with the other buildings being accessory uses:

[24] The main use ... is a campground use (i.e., rental cabins, tenting sites and bunk house observatories) with the Abbey Ridge Observatory being the catalyst that brought the need for a commercial recreation use (i.e., campground) to the subject site. It is standard practice to list under the provisions of a development agreement accessory uses to the main development. Allowing for a café; boathouse with boardwalk access; Stargazing Lodge which will include space for visitors to the campground as well as allow for community events; the Abbey Ridge Observatory for use of visitors to the campground and

the analog research station, in my opinion, would all be accessory to the commercial recreation use.

[Exhibit F-22, p. 8]

[69] Ms. Harper says that while there is no specific definition of “campground”, “it is clear that a commercial recreation use would include commercial campgrounds”.

Referring to the “Resource Designation” section at pages 93 and 95 of the MPS she says:

[29] While no specific definition exists within the MPS, in my opinion it is clear that a commercial recreation use would include commercial campgrounds. The following confirmations are provided for within the MPS:

1. *Recreation uses, parks and open space uses are compatible with resource activity and are supported by the high recreation potential in the designation. Recreation uses, excluding commercial recreation uses such as commercial campgrounds, golf courses and amusement centres, shall be permitted "by right" in the designation.*
2. *By virtue of its large areas and natural features, the Resource Designation is an attractive area for recreational activities. Although some recreational activities, such as hiking trails, do not cause land use conflicts and, in fact, are well-suited to areas such as the Resource Designation, larger scale commercial operations such as golf courses, campgrounds and amusement parks could have significant effects upon the natural environment. The attraction of large number of people to such activities and the associated noise and traffic could also have a negative effect on the Designation. Therefore, such uses will only be permitted by development agreement, which will help to ensure that any commercial recreation development remains compatible with the area. [Emphasis in original]*

[30] While the pre-amble text above is found within the Resource Designation section of the MPS, it confirms that the intent of the MPS is to include a range of use types under the definition of commercial recreation. This includes commercial campgrounds through the provisions of a development agreement. ...

[Exhibit F-22, p. 9]

[70] Ms. Harper provided no opinion evidence on the meaning of the word “campground”.

[71] Mr. Heseltine notes that as an undefined word, “campground” must be given its “customary meaning” as directed by Part 2 of the LUB. After consulting various dictionaries, online dictionaries, legislation and by-laws, he says that “campground” means, “a place where people go for a holiday or recreation and stay in a tent, although

some definitions include recreational vehicles, motor homes, and/or travel trailers”, and that “camping” refers to staying in a “tent or temporary shelter”:

Campgrounds, however, are not described or defined in the MPS or the LUB. Part 2 of the LUB ... begins with a preamble that closes with the statement “All other words [not defined in the section] carry their customary meaning.” The meaning of “campground” ... should therefore be determined from common usage and dictionary definitions. To that end, we Googled “campground definition” and found multiple definitions from online dictionaries as well as many examples from legislation and bylaws. We also looked at dictionary definitions of “camping”.

Definitions of campground generally refer to a place where people go for a holiday or recreation and stay in a tent, although some definitions add recreational vehicles, motor homes, and/or travel trailers. Definitions of camping normally refer to staying in a tent or temporary shelter. We do not consider Stargazing Park to qualify as a campground because the predominant land use is not camping. The site will accommodate 39 structures. The “up to 20 campsites” that may be incorporated are just one of many features and are certainly a less prominent feature of the plan than the 12 tourist cabins that constitute 45.3% of the building space planned or Stargazing Lodge, which comprises 28.3%. [Emphasis added]

[Exhibit F-24, p. 2]

[72] In Mr. Heseltine’s opinion, only the tent sites meet the definition of “campground” but because the main use of the development is not for tenting, the development does not qualify as a “campground”:

We do not consider Stargazing Park to qualify as a campground because the predominant land use is not camping. The site will accommodate 39 structures. The “up to 20 campsites” that may be incorporated are just one of many features and are certainly a less prominent features of the plan than the 12 tourist cabins that constitute 45.3% of the building space planned or Stargazing Lodge, which comprises 28.3%.

[Exhibit F-24, p. 2]

[73] Mr. Heseltine did not address why other temporary accommodations at the stargazing park, i.e., the rental cabins and bunkhouse observatories, do not meet his definition of “campground”.

6.3.4.1 Findings

[74] The Board finds that a campground is a type of commercial recreation use. This is clear from the specific reference to campgrounds as a type of commercial recreation use in the MPS [Exhibit F-7, Tab 2, pp. 93 and 95].

6.3.5 Is the Stargazing Park a “Campground”?

[75] Neither the MPS or LUB suggest a restrictive definition of “campground” or “camping”. The Board does not accept Mr. Heseltine’s opinion that camping refers to staying in a “tent or temporary shelter”, if by “temporary shelter” Mr. Heseltine meant to exclude any permanent structures. This is a very restrictive interpretation of what could be included in a modern campground.

[76] A reasonable interpretation of the ordinary meaning of a campground could include bunkhouse observatories and cabins. Leaving aside dictionary definitions, boathouses, boardwalks, wharfs and trails all appear to be elements that one would ordinarily associate with a campground. A focused stargazing activity for campers associated with the Abbey Ridge Observatory could be seen as an accessory use. However, in this case, while the elements that could be part of a campground comprise more than 50% of the total building area of the development [Exhibit F-14, p. 5], the number of permanent structures, such as cabins and bunkhouse observatories, leads the Board to conclude that this proposed development is more than a campground. Certain components of the Stargazers Lodge, including a planetarium and museum, exceed what the concept of “campground” would usually encompass. While many campgrounds could have large permanent structures where campers gather, the foregoing uses are not normally incidental to a campground.

[77] While the Board must take a broad and purposive approach to interpreting the MPS, the Board finds that, taken as a whole, what is proposed in the development agreement is not a campground. The fact that neither the applicant nor HRM planning staff ever described the development as a campground in the materials before Council

reinforces the Board's finding that the main use of the proposed development is not a campground within any reasonable interpretation of that term.

[78] In any event, even if the Board determined that the proposed development may be defined as a campground, the outcome would be the same. The Board finds that the analog research station is not an accessory use to the main use of a campground. Although it may provide educational opportunities for campground visitors, those opportunities are secondary to its primary purpose of growing plants and training astronauts. To say that the research station is exclusively devoted to the main use of a campground is not an interpretation that the MPS can reasonably bear.

6.4 Policy IM-6

[79] MPS Policy IM-6 allows Council to consider amendments to the LUB for the purpose of providing for the development of similar uses on properties that abut one another. It is repeated here for ease of reference:

IM-6 Providing that the intentions of all other policies are satisfied, Council may, for the purpose of providing for the development of similar uses on properties which abut one another, consider the following amendments to the land use by-law, for lands which are located where any land use designations abut one another, as shown on Map 1 - Generalized Future Land Use:

(a) amendments within a designation to provide for the development of uses which are permitted within the abutting designation by rezoning or development agreement, in accordance with the same conditions prescribed within that abutting designation; or

(b) IM-7 amendments within a designation to provide for the development of uses which are permitted within the zone on the abutting property.

[Exhibit F-7, Tab 2, p. 111]

[80] Mr. Heseltine says that as the policy text clearly states, IM-6 only applies to "properties which abut one another", a condition that does not apply in this case. He says that interpreting this policy to apply to parts of a single property that are in two different

zones “overrides the intention of the MPS that “general commercial development will not be permitted with the Rural Residential A Designation [through which the RRA-1 Zone is implemented]”” and “circumvents the objective of the MPS that the Rural Residential designation should continue to be a low-density rural environment” [Exhibit F-14, p. 7].

[81] Ms. Harper says it is reasonable for the policy to apply to single properties that contain more than one designation to allow for a holistic design of a development across the entirety of the lands, which is consistent with the intent of the MPS. In particular, IM-6 allows for the natural transition and integration of the development of similar uses within designations that abut one another [Exhibit F-7, Tab 2, p. 39]. She says that although the primary intent of the RRA designation is to support the continued development of low-density residential, it is also intended to support the gradual integration of tourist-related commercial uses. The MPS states:

The primary intent of the Rural Residential A Designation is to support the low density residential environment with its associated home businesses and activities, small scale fishery support uses and open space uses. The Rural Residential A Designation shall also provide support for the gradual integration of small scale convenience, commercial and tourist-related commercial uses as well as institutional uses, **shared housing with special care (RC-Aug 9/22; E-Sep 15/22)** and larger scale fisher support uses. [Emphasis in original]

[Exhibit F-7, p. 55]

6.4.1 Findings

[82] Although the stated purpose of Policy IM-6 is to provide for the development of similar uses on “properties” that abut one another, the remainder of that policy says that it applies “where any land use designations” abut one another. Policy IM-6(a) specifically refers to amendments to provide for the development of uses “within the abutting designation”, with no reference to abutting properties, whereas IM-6(b) refers to amendments to provide for uses permitted within the zone on the “abutting property” and makes no reference to abutting designations.

[83] Accepting Mr. Heseltine's position would mean that Policy IM-6 only applies to extend zoning rights where individual parcels of land abut one another. There would be no ability to extend those rights in situations where individual designations abut one another on the same property. Other than the possible limiting language that the purpose of the policy is to provide for the development of similar uses on "properties" that abut one another, the Board finds no good planning reasons why extending zoning rights should be so restrictive, provided the intentions of all other policies are satisfied. Mr. Heseltine says that allowing Policy IM-6 to apply in this case would circumvent the intent that the RRA designation should continue to be a low-density rural environment. However, that position ignores one of the MPS's goals to support the gradual integration of "commercial and tourist-related commercial uses" in that designation.

[84] The word "properties" is not defined in either the MPS or LUB. There is no language to suggest the term should only be interpreted as meaning two separate and distinct parcels of land. If that was the intent of the MPS, clearer language could have been used throughout the policy, for example, by referring to "separate parcels of land that abut one another".

[85] The Board finds that Policy IM-6 includes potentially conflicting intentions, referring both to abutting properties and also abutting designations. For the reasons set out above, the Board finds that interpreting this policy to apply to lands on the same individual parcel of land with different zones or designations is an interpretation the MPS can reasonably bear. The Board also notes this is consistent with taking a broad and purposive interpretation to the policy, as directed by the Court of Appeal in *Heritage Trust*.

6.5 Policies RB-11 and IM-11

[86] The Appellants take issue with several of the RB-11 policies, including RB-11(j) which refers to Policy IM-11. They argue that, despite the MPS specifically acknowledging that commercial recreation use on properties in the RB designation can impact surrounding land uses, the DA essentially imposes the same controls that would apply under the LUB to an as-of-right development, including compliance with municipal by-laws. Mr. Heseltine says:

... Section 1.3.1 literally means Stargazing Park will not be special and will be treated like every other property in HRM. Furthermore, while the noise and solid waste bylaws are important tools to enforce acceptable behaviour by all residents and businesses, the bylaws are normally applied on a complaint basis, which means a party subjected to the nuisance must follow up with the Municipality to see them enforced. One of the key purposes of land use controls, particularly zoning, is to prevent these situations from occurring. We accept that certain uses have deleterious effects and separate them from other uses that may be compromised by those impacts. A heavy industrial plant, to pick an extreme example, is considered likely to produce noise, odours, and emissions, and may be a visual intrusion. It is, consequently, a widespread practice to place industrial uses in specific zones with other industrial uses and, where those uses abut sensitive uses such as residential neighbourhoods, require setbacks, screening, and other measures to mitigate the consequences for their neighbours.

The Planning District 4 MPS is clear that commercial recreation poses exactly this type of threat for residential uses as I have pointed out above and invokes the Development Agreement process as the means to ensure that the impacts are suitably mitigated. Falling back on standard municipal bylaws calls into question the entire land use planning regime. The Development Agreement is the tool provided to HRM planners to avoid land use conflicts before they start, but HRM planners have decided, in this case, to put the tool aside and ignore any potential disruption to the residential environment of the appellants and their neighbours.

[Exhibit F-24, p. 6]

[87] Policy RB-11 allows Council to consider commercial recreation use on RB-designated lands by development agreement “having regard to” various matters. Policy IM-11 provides that in considering development agreements Council shall “have appropriate regard to” similar matters, including controls to reduce conflicts with nearby land uses.

[88] The preamble to Policy RB-11 states that commercial recreation use in the RB designation “can also impact on the surrounding community in terms of noise, dust, litter, traffic and visibility” and because of those potential impacts that use is only permitted by development agreement. This does not mean that every commercial recreation use in the RB designation will impact on the surrounding community and always requires special controls in the development agreement beyond what would otherwise apply as-of-right, only that they can, depending on the proposed development. It is up to Council to consider how, if at all, to address those potential impacts in the development agreement. The Board will not interfere with Council’s decision as long as it is based on an interpretation that the MPS can reasonably bear.

[89] The Board considers the issues raised by the parties under Policies RB-11 and IM-11 using the same general headings used by the Appellants.

6.5.1 Development Scale, Site Design and Layout

[90] Policy RB-11(c) requires Council to have regard to “the layout and design of the facility”. Policy IM-11(c)(ii) requires Council to consider “controls placed on the development so as to reduce conflict with any adjacent land uses by reasons of: ... height, bulk and lot coverage of any proposed buildings”.

[91] Addressing the specific impacts to the Appellants’ property, which is located across Big Lake from the proposed development, Mr. Heseltine states:

In regard to the question of impacts on surrounding property, it is worth noting that Big Lake is a small community in a rural area. Often in rural areas, large properties protect owners and occupants from land use impacts. Distance and natural features such as vegetation and changes in elevation provide inherent protection. This is not, however the case for the appellant whose home is located directly across a narrow arm of Big Lake from 5933 Prospect Road. Her family’s residence faces the proposed development across approximately 175 feet of water. Substantial rock outcroppings rise from both sides of the lake. Ms. Fleisher’s property, which was designed as an eight-unit motel and has several elevated decks, looks directly onto the Stargazing Park property. The Abbey Ridge

Observatory is fully visible from the building from its foundation to the peak of its dome. Because the surface of the land on both properties is largely rock, vegetation is largely scrub that will do little to buffer sound or odours or block the dispersion of dust and debris that may be generated by users of Stargazing Park. The narrow portion of Big Lake between the two properties will also do little to mitigate these effects and may itself be impacted by materials transported to or diffused from the site.

[Exhibit F-24, p. 4]

[92] Mr. Heseltine refers to the maximum building heights for the cabins, Stargazers Lodge and observatory, which can be up to 35, 40 and 50 feet, respectively. He says that the stargazing park would be a major development, “the largest tourist facility in the area around Peggy’s Cove” and is expected to eventually comprise 39 buildings along with extensive parking lots, camping areas, connecting roadways, trails and other features that will alter the land. On the issue of site layout, he says:

With respect to layout, Ms. Harper responds to my observation that the Development Agreement applies no standards that would not be applicable to as-of-right development through the LUB and, in some cases, increases the rights that the developer would otherwise enjoy by asserting that the Development Agreement gives HRM the right to do so (Harper, p. 13, para. 42), with which I agree. The primary adjustments are to permit a height of 45 feet for the observatory, which has been on the site for some time and requires the allowance, and 40 feet for the Stargazing Lodge, both of which exceed the 35-foot limit set in the RB-1 and RRA-1 Zones applied to the property. The Observatory is not just visible from the appellants’ property, from which it can be viewed from the ground level to the top of its dome and for some other locations in the vicinity, most notably from McGraths Cove Road.

[Exhibit F-24, p. 6]

[93] The Staff Report says that the DA addresses these issues by locating the most intense uses in that part of the Property where they are hidden from view from neighbouring properties by way of natural berms; clustering the cabins and single-unit dwelling together; placement of the remaining structures; and addressing signage:

The proposed Stargazing Park use proposes to locate the most intense uses, the Stargazers Lodge, the café and proposed parking area, clustered on the flattest area in the north-eastern portion of the subject property (see Schedule B of the development agreement) where they are hidden from view from Prospect Road and neighbouring properties by means of natural berms. Controls have been placed in the development agreement to reduce conflict by way of height, bulk and lot coverage of all proposed buildings. Buildings have been located so they do not dominate the views. The cabins and single-unit dwelling have been clustered together along a cul-de-sac driveway with associated parking in the northwest corner of the subject property. The Abbey Ridge Observatory, Sky Circle look-off decks, walk-in tent sites and bunk house observatory rentals are located in the southern and western portions of the subject property. The Analog

Research Station will be located near the proposed bunk house observatory rentals and walk-in sites. Signage, with the exception of one ground sign at each entrance and directional, informational or wayfinding signage are permitted as per the regulations of the development agreement and the Planning District 4 (Prospect) LUB.

[Exhibit F-6, p. 213]

[94] The DA also restricts the total lot coverage for the entire development to no more than 30% of the Property [Exhibit F-6, p. 223].

6.5.1.1 Findings

[95] The information in the Staff Report and the conditions of the DA indicate that Council considered the layout and design of the facility and implemented controls to reduce conflict with neighbouring uses based on the height, bulk and lot coverage of the proposed buildings. The structures are required to be sited as shown on the plan attached to the DA. As the Staff Report indicates, these structures have been sited in a manner where the most intense uses are hidden from view by natural berms, located so they do not dominate views and are clustered together where appropriate. The Board notes that Policy IM-11(c) directs Council to “reduce”, not necessarily eliminate, conflict with neighbouring land uses. While the allowable development is large and parts of it will be visible from neighbouring properties, the structures have been sited with a view to reducing potential conflicts with nearby land uses. In addition, the DA requires that outdoor lighting “conform to the Royal Astronomical Society of Canada’s Canadian Guidelines for Outdoor Lighting ... for illumination of buildings and grounds at dark sky preserves” and be directed away from adjacent lots and buildings [Exhibit F-6, pp. 224-225]. The Board finds that Council’s decisions on these issues reasonably carry out the intent of the MPS.

6.5.2 Minimizing Impact on the Natural Environment

[96] Policy RB-11(a) requires Council to have regard to “the potential impact of the proposed development on the natural environment and in particular, potential effects on watercourses”. Policy IM-11(d) requires Council to consider whether “the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding”.

[97] The Staff Report states that these considerations have been addressed by requiring that most land uses, including the larger buildings, be located on the granite barrens to preserve the maximum area of vegetation, and requiring a 20 m watercourse setback buffer:

The applicant is aware of the sensitivity of the natural environment on the subject property and has placed most land uses on the granite barrens for the sake of preserving the maximum area of vegetation. Larger scale uses such as the Stargazing Lodge, Abbey Ridge Observatory, rental cabins or alternative RV sites, and the single-unit dwelling have been located on these granite barrens. The proposed walking trails, walk in tent sites, Sky Circle look-off decks, bunk house observatory rentals and the Analog Research Station have been located to exert minimum burden on the ecosystem. To minimize the negative effects on watercourses located on the subject property, the required 20 metre buffer will be provided along Big Lake on the north side of the site and the large wetland, which is contiguous with a watercourse, on the south side of the site.

Implementation Policy IM-11(d), states that Council shall have appropriate regard that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, location of watercourses, marshes or bogs and susceptibility to flooding. The proposed development aims for highly suitable treatment (materials, construction, design), when it comes to the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs across the site, when locating and developing any proposed structures, including trails and decks by placing the development, where possible, on the granite barrens, and respecting the required 20-metre buffer along Big Lake and identified wetlands and watercourses.

[Exhibit F-6, p. 212]

[98] The DA designates an entire section, Part 5, to “Environmental Protection Measures” that addresses private stormwater facilities, stormwater and erosion and sedimentation control plans, wetland and watercourse buffer, archaeological monitoring and protection, and sulphide bearing materials. The DA requires that before starting any

site work, the developer must obtain a Grade Alteration Permit from HRM and provide a detailed Site Grading and Stormwater Management Plan prepared by a professional engineer that “shall identify structural and vegetative stormwater management measures, ..., and buffers that will minimize adverse impacts on receiving watercourses during and after construction” [Exhibit F-6, p. 228].

[99] Mr. Heseltine says that there is no evidence that the location of structures offers any special protection. He notes that planning staff proposed increasing the buffer to 30 m but that was not accepted and that the 20 m setback in the DA is the same setback required by the LUB. He says that the steep slopes on the Property will accelerate water flow over the buffer surface, and that because it is a hard surface it will limit the ability of the buffer area to absorb water allowing increased stormwater flow to reach watercourses without effective filtering, increasing the probability that hydrocarbons and other materials will contaminate receiving waters [Exhibit F-24, p. 5].

[100] Mr. Heseltine acknowledges that the 20 m buffer appears to have been adjusted for slope as required by s. 4.19(b) of the LUB which states that where the average positive slopes within the 20 m buffer are greater than 20% the buffer shall be increased by 1 m for each additional 2% of slope to a maximum of 60 m [Exhibit F-24, p. 5].

6.5.2.1 Findings

[101] The Board finds that Policy IM-11(a) has been considered by siting structures to reduce impacts to natural vegetation and requiring a 20 m watercourse buffer. Planning staff originally required a 30 m setback specifically for the purpose of aligning with draft HRM Regional Municipal Planning Strategy requirements [Exhibit F-6,

p. 52]. Staff ultimately accepted a 20 m setback, consistent with Policy E-16 of the current RMPS and s. 4.19 of the LUB. Also, although some development will be permitted within the setback, such as the boathouse, wharf, boardwalk and trails, that is consistent with the requirements of the RMPS, MPS and LUB.

[102] The Board also notes that when a municipal council considers the approval of a development agreement, it is entitled to assume that provincial and federal environmental regulators will properly address any environmental issues within their mandates associated with a proposed development. As the Court of Appeal held in *Bennett v Kynock*, 1994 NSCA 114, primary responsibility for environmental matters rests with environmental regulators not municipalities or municipal councils:

34 ... The legislation of this Province puts the primary responsibility for matters affecting the environment with the Minister of the Environment, not with municipalities, municipal councils, nor with the Nova Scotia Utility and Review Board. That is not to say municipalities shall not have regard for the environment in their planning policies, only that the primary responsibility for the environment is with the Minister of the Environment.

6.5.3 Traffic and Transportation Impact

[103] Policy IM-11(c)(iii) requires Council to have appropriate regard “that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of ... traffic generation, access to and egress from the site, and parking”. Policy RB-11(b) requires Council to have regard to whether “the proposal will not adversely affect nearby residential or community facility development by virtue of ... traffic” and Policy RB-11(d) requires consideration of “the impact of the proposed use on the existing road network in terms of traffic generation and vehicular and pedestrian safety”.

[104] As part of its application, Stargaze Nova Scotia commissioned a Traffic Impact Statement from JRL Consulting dated May 2024 (Traffic Study). The Traffic Study

provides an overview of the proposed development including estimates of site-generated traffic and a review of existing traffic counts in the area. The study found that traffic generated by the development will be “relatively minor” and no “significant impacts on the surrounding transportation network” are expected [Exhibit F-6, p. 41].

[105] HRM and the Nova Scotia Department of Public Works both reviewed the Traffic Study and no concerns were identified [Exhibit F-6, p. 56]. The Staff Report states:

... Traffic generation is estimated at 33 new vehicle trips in the AM Peak Hour and 76 new vehicles in the PM Peak Hour as a worst-case scenario outlined in the submitted TIS and is not expected to adversely affect the local traffic network. The timing of site-generated traffic for planned evening activities at the Planetarium and Observatory will vary throughout the year based on sunsets.

[Exhibit F-6, p. 213]

[106] Mr. Heseltine says that the Traffic Study does not explain the basis for trip generation estimates; address the timing of trips from the facility; ignores how traffic peaks will interact with the typical a.m. and p.m. peaks on Prospect Road and that they may occur at unusual times such as weekends when tourist traffic to Peggy’s Cove will reach maximum levels and at night when safe access and egress will be heightened concerns. He also says that based on his interpretation, s. 4.25 of the LUB requires 114 parking spaces, 31 more than the 83 specified in the DA and that this is a “major concession to the developer allowing him to avoid constructing approximately 10,000 square feet of parking area” which will inhibit local traffic movement if visitors cannot find parking on site and park on Prospect Road [Exhibit F-24, pp. 6-7].

6.5.3.1 Findings

[107] The Traffic Study concludes that there is no basis to anticipate any adverse effects to nearby properties as a result of traffic associated with the proposed development. Although Mr. Heseltine raises various issues about the Traffic Study, the

Appellants provided no evidence to contradict its findings. For example, they did not provide a report or opinion from their own traffic expert.

[108] Mr. Heseltine raised concerns about parking and his opinion that the number of parking spaces permitted is less than what the LUB requires, which could lead to parking on Prospect Road which may cause problems for traffic on the road. The Board finds this concern speculative. The Appellants provided no evidence that the DA provides for insufficient parking. In addition, by its very nature, a development agreement can include provisions that do not comply with the land use by-law provided they reasonably carry out the intent of the municipal planning strategy. The LUB requirements for parking are not required to apply to the DA.

6.5.4 Sewer and Water Servicing

[109] Policy RB-11(g) requires Council to consider “the location and level of treatment of any proposed sewage treatment plant”. Policy IM-11(b)(ii) requires that Council have appropriate regard to whether “the proposal is not premature or inappropriate by reasons of ... the adequacy of on-site sewage and water services”.

[110] Mr. Heseltine raises concerns about the feasibility and effectiveness of wastewater disposal on the Property given the site geology and the potential for substantial water demand and wastewater generation based on the number of guests.

[111] The DA requires private, on-site, water and wastewater facilities. It states that no occupancy permit will be issued until HRM is provided with a copy of all permits, licenses and approvals required by Nova Scotia Department of Environment and Climate Change for the design, installation and construction of these systems. The system designs must be prepared by a qualified professional engineer.

6.5.4.1 Findings

[112] The Board finds that the concerns raised by the Appellants are speculative and not based in evidence. They provided no evidence that, for example, sanitary or water systems cannot be installed on the Property or that the installation of these services would negatively impact nearby properties. The DA requires that sewer and water services be designed by a professional engineer and that all licenses and approvals required by Nova Scotia Department of Environment and Climate Change be obtained. The Board finds these to be reasonable controls that will ensure these systems meet appropriate requirements.

6.5.5 General Maintenance

[113] Policy RB-11(f) requires Council to consider “the general maintenance of the facility”. Policy RB-11(b) requires that Council have regard to whether the proposal will “adversely affect nearby residential or community facility development by virtue of ... littering”. Policy IM-11(c)(iv) refers to Council having appropriate regard “that controls be placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reasons of ... open storage”.

[114] Mr. Heseltine says that “The proposed development poses serious concerns for maintenance”. He refers to the 39 buildings plus other structures, and the nature of the waste, including food waste which he says “is unquestionably attractive to a wide variety of animal species in the area”. He also refers to the fact that uses are separated from each other on the Property which will require the establishment of multiple disposal/storage sites with attendant management challenges. He notes that although the DA specifies maintenance requirements, there is no assurance that the facilities will be

maintained or that generated waste streams will be collected regularly. He also says that there will be no municipal oversight, and in most cases municipal response will largely be complaint driven [Exhibit F-14 p.10].

[115] The DA requires the development to be kept in good repair including waste removal. Refuse containers must be within a building or in suitable containers fully screened from view of any street or sidewalk and consideration must be given to the location of all refuse materials to ensure minimal effect on abutting property owners. The solid waste facilities must comply with HRM's solid waste by-law, must be shown on the building plans, and must be approved by a development officer and building inspector in consultation with HRM Solid Waste Resources [Exhibit F-6, pp. 227-228].

6.5.5.1 Findings

[116] The fact that there are specific provisions in the DA addressing solid waste indicates that Council considered this issue. Again, the Board finds the Appellants' concerns are speculative. The DA specifically addresses maintenance including requirements to minimize the effects from refuse storage on abutting properties and comply with existing solid waste by-laws. There is nothing to suggest that the required controls do not reasonably carry out the intent of the MPS.

6.5.6 Hours of Operation and Noise

[117] Policy RB-11(i) requires Council to consider "the hours of operation". The hours of operation also raise noise concerns. Policy RB-11(b) requires Council to have regard to whether "the proposal will not adversely affect nearby residential or community facility development by virtue of noise, ...".

[118] Mr. Heseltine notes that the DA allows the stargazing park to operate 24 hours a day. He says that he expects visits to the observatory and related astronomical sites to increase in the evenings and overnight. He says that the café can be expected to maintain long hours to capture breakfast and late evening needs. He is very concerned with the Stargazers Lodge which he says is proposed to host events, such as weddings, that by their nature often extend into early morning hours. He says that the development involves a variety of activities that are likely to peak after dark on a property near residential homes and that instead of considering that some aspects of the development proposal might be limited or its operations restricted, HRM has eschewed its responsibility to support the low density residential environment, which is the primary intent for both the Residential B and Rural Residential A designations [Exhibit F-24, p. 7].

[119] Mr. Heseltine also says that the 24-hour operation will result in noise concerns:

Perhaps more importantly for adjacent residents, weekend and, particularly, evening/night-time traffic have clear implications for noise. Arrivals and departures from the observatory, Sky Circle decks, and bunkhouse observatories, as well as the cabins and campsites seem likely to be more frequent from dusk into the night and will generate noise that can be expected to carry readily across granite barrens and the narrow lake. Music and crowd noise from events in the Stargazing Lodge will add much more intensive sounds to intermittent traffic noises at levels that may well exceed nuisance levels, but no study was conducted to assess the concern, and no measures have been imposed to mitigate its potential. While noise after dark is likely the foremost concern, it can also be disturbing during daytime, particularly noises generated by events such as weddings and parties in the Stargazing Lodge.

[Exhibit F-14, p. 14]

[120] HRM says the DA addresses noise by limiting deliveries and waste collection to between 7:00 a.m. and 10:00 p.m. as noted earlier in this decision and requiring compliance with HRM's noise by-law.

6.5.6.1 Findings

[121] Stargazing is primarily a nighttime activity. The Board finds Council's decision to allow the park to operate 24 hours a day is reasonable in the circumstances.

[122] On the issue of noise, while the Appellants may genuinely believe they will be adversely affected by noise from the development, they have provided no objective or independent evidence that the controls in the DA that require compliance with HRM's noise by-law, and that deliveries and waste collection be limited to between 7:00 a.m. and 10:00 p.m., are inadequate to the extent that they do not reasonably carry out the intent of the MPS. For example, they provided no evidence that the proposed development is likely to generate noise beyond the limits allowed by the by-law. Also, Mr. Heseltine refers to noise from "weddings and parties in the Stargazing Lodge". As noted earlier, the only allowable uses of the community hall and kitchen in the lodge are for banquets, fairs, symposia and lectures relating to stargazing.

[123] The Board does not find that Council's decision eschews its responsibility to support the low-density residential environment because both the RB and RRA designations are also intended to support the gradual integration of commercial development [Exhibit F-7, Tab 2, pp. 47 and 55].

[124] For these reasons, the Board finds that Council's decision to allow a 24-hour operation and control noise by requiring compliance with the noise bylaw and restricting the times for deliveries and waste collection, reasonably carries out the intent of the MPS.

7.0 CONCLUSION

[125] The Board finds that, with one exception, Council's decision to approve the DA and amend the LUB reasonably carries out the intent of the MPS. The Board finds that Council's decision to allow the research station as part of a commercial recreation development is not based on an interpretation that the MPS can reasonably bear. The analog research station (which may include up to 10 structures) is not a "commercial recreation use" or an "accessory use" as those terms are intended by the MPS and LUB.

[126] Based on its findings that one aspect of the proposed DA does not reasonably carry out the intent of the MPS, the Board must turn to the appropriate remedy. Pursuant to s. 267 of the *HRM Charter*, the Board has the following remedial powers applicable to this case:

- 267 (1)** The Board may
- (a) confirm the decision appealed from;
 - (b) allow the appeal by reversing the decision of the Council to amend 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;

...

[127] In this case, the Board is not confirming Council's decision with respect to one aspect of the DA pursuant to s. 267(a) of the *HRM Charter*. Because the impugned analog research station (with up to 10 structures) appears to be a stand-alone development within the stargazing park, the Board could potentially excise the research station element from the DA if it has jurisdiction and finds it appropriate to do so. However, the issue of allowing the appeal in part, and any consequential remedy that could arise

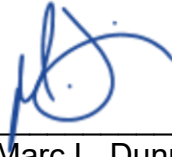
from such determination, has not been raised or argued by the parties. In these circumstances, the Board will seek submissions from the parties on the following issues:

- a) Is the Board's only available remedy to allow the appeal by reversing Council's decision?
- b) Alternatively, at this stage in the proceedings, does the Board have the jurisdiction to allow the appeal, in part, and order Council to amend the DA to remove all references to the research station?
- c) If the Board has the jurisdiction to order Council to amend the DA to remove all references to the research station, is it appropriate to grant such a remedy in the circumstances of this case?
- d) Does the Board have the jurisdiction to confirm the approval of the LUB amendment if it determines that it cannot approve the DA in whole or in part?
- e) What remedy should the Board grant and why?

[128] The Board will direct the Clerk of the Board to establish a timeline for written submissions on these issues. Given the nature of these legal questions, the Board reserves the right to request oral argument once the written submissions are received.

[129] No Order will issue until a final determination has been made on the remedy granted in this appeal.

DATED at Halifax, Nova Scotia, this 17th day of September 2026.



Marc L. Dunning



Richard J. Melanson



Darlene Willcott