

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **CHRISTOPHER CANN** from a decision of the Municipality of the County of Kings Council approving a land use by-law text amendment to enable bed and breakfast operations within residential units in all zones that permit residential units.

BEFORE: Julia E. Clark, LL.B., Vice Chair

APPELLANT: **CHRISTOPHER CANN**

APPLICANT: **TRACY GERHARDT**
(not participating)

RESPONDENT: **MUNICIPALITY OF THE COUNTY OF KINGS**
Peter Rogers, K.C.
Folami Jones

HEARING DATE: April 23, 2025

FINAL SUBMISSIONS: **April 23, 2025**

DECISION DATE: **May 15, 2025**

DECISION: **The Motion contesting standing is granted. The Appeal is dismissed.**

I INTRODUCTION

[1] This decision addresses Christopher Cann's standing under s. 247(1)(a) of the *Municipal Government Act* to appeal a decision of the Council for the Municipality of the County of Kings (Municipality) amending its Land Use By-law. The decision approved changes to the text of the by-law to enable bed and breakfast operations in residential units in all zones that permit residential units in the Municipality. In determining whether Mr. Cann has standing to bring the appeal, the Board considered whether he is an "aggrieved person" under the *Municipal Government Act*.

[2] Mr. Cann lives in the community of Baxter's Harbour, in the Municipality of the County of Kings. Baxter's Harbour has seen new tourist uses and commercial activity in recent years. Mr. Cann takes issue with planning decisions that affect the community and that he claims are unwanted. He is concerned about converting housing into for-profit hospitality. He did not contest the Applicant's request to operate a bed and breakfast at her property, which prompted the Land Use By-law amendment proposal. The Applicant's property is not in Baxter's Harbour.

[3] The text amendment applies throughout the Municipality. However, the evidence shows that bed and breakfasts were already enabled for qualifying residences in Mr. Cann's immediate area. Other than potentially increasing his assessed property value for municipal taxation, Mr. Cann did not identify any adverse effects on himself, or his property related to the text amendment. Rather, he objects to the Municipality's approach to consultation and approval in this instance, and on planning issues generally. He essentially argued that his right to participate in an appeal of a broadly applicable by-law amendment should not be determined based on his individual property rights.

[4] The rights of an individual to appeal are narrowed by the requirement to be “aggrieved” as the law defines that concept. The Board had no reasonable basis to find a *bona fide* belief that Council’s decision to approve the by-law text amendment created any unique or particular harm to Mr. Cann’s interests to satisfy the statutory and common law tests. He did not provide the Board with any objective basis for concluding that Council’s decision to enable bed and breakfasts in more locations would affect his property differently than the current by-law allows. Mr. Cann’s submissions claim harm from a lack of meaningful community engagement, community transition, and conversion of potential housing. These broad public interests are similar to the general “taxpayer” interest that may apply to many, if not all, residents of the Municipality. These disagreements and frustration with the Municipality’s policy and process do not give Mr. Cann status as an aggrieved person.

[5] At the preliminary hearing on standing, the Municipality also asked the Board to quash the appeal on the grounds that it had no chance of success. The finding that Mr. Cann lacks standing in this matter is determinative and the appeal is dismissed. The Board need not determine the second issue and declines to do so in this case.

II BACKGROUND

[6] On February 4, 2025, after a public hearing, the Council for the Municipality of the County of Kings considered and approved an application for text amendments to the Land Use By-law to enable bed and breakfast operations in any residential unit in all zones allowing residential units in the Municipality. Notice of the approval was published on February 5, 2025.

[7] On February 18, 2025, at 7:09 pm, Christopher Cann (Appellant) electronically filed an initial document with the Nova Scotia Utility and Review Board through the Board's online complaint portal [Exhibit C-1], claiming to be aggrieved by Council's decision. The next business day, the Board sought clarification from Mr. Cann on his intention in filing that document. The Board then received a revised filing in the Board's standard Form A - Notice of Planning Appeal, on March 4, 2025, at 9:23 am [Exhibit C-3]. The ground of appeal in the revised filing was that Council failed to properly engage the community in the process of considering the development proposal, failing to reasonably carry out the intent of Policy 5.1.1(a) of the Municipal Planning Strategy (MPS) and By-law 105 of the Municipality. It also stated: "In view of the current housing crisis efforts should be made to secure permanent homes as opposed to inviting property owners to convert housing into hospitality-for-profit."

[8] The Utility and Review Board held a preliminary hearing by telephone on March 28, 2025, to determine whether the Appellant met the initial requirements to proceed with the appeal. In an oral decision, the Board found that the Appellant demonstrated an intent to file his appeal within the statutory limitation period and included a discernible ground of appeal. The Board declined to dismiss the proceedings for the failure to fill out the proper form and for the brief delay in refiling the Notice, which are procedural issues. The Board then suspended the usual filing deadlines to establish a time to hear the Municipality's motions challenging the standing of the Appellant to bring the appeal and asking the Board to quash the proceedings as "frivolous and devoid of merit", arguing that grounds of appeal were clearly unsustainable. The hearing of these preliminary motions was set for April 28, 2025.

[9] On April 1, 2025, before the second preliminary hearing, the Nova Scotia Utility and Review Board was succeeded by the Nova Scotia Regulatory and Appeals Board upon proclamation of the *Energy and Regulatory Boards Act*, 2024 S.N.S. c. 2, Sch. A. The same Board member heard and decided all issues in the ongoing appeal.

[10] With the parties' agreement, the Board held an in-person hearing for the Municipality's challenge to standing and the motion to quash on April 28, 2025, at the Council Chambers of the Municipality of the County of Kings. Mr. Cann testified and represented himself, accompanied by Tyra Innis-Harvie. He filed written submissions that combined some evidence and argument, which he referred to in his oral submissions. Peter Rogers, K.C. and Folami Jones represented the Municipality. The Municipality filed a written pre-hearing brief supporting their motions, as well as the affidavit of Laura Mosher, MCIP, LLP, Manager of Planning and Development Services for the Municipality. Ms. Mosher provided oral evidence at the hearing and was cross-examined on that testimony and her affidavit. The Applicant, Tracy Gerhardt, did not attend either preliminary hearing after advising the Board of her intent not to participate.

[11] The decision that prompted this appeal involves Council's approval of amendments that relax certain requirements in the Land Use By-law for bed and breakfast operations. The changes enable bed and breakfasts as a permitted use within residential units in any zone that allows residential units. The suite of amendments is described in Ms. Mosher's unchallenged affidavit, as well as the attached staff report to the Planning Advisory Committee prepared by Planning and Development Services, dated December 10, 2024, which Ms. Mosher endorsed [Exhibit C-4, p. 2; Ex. B]. As Ms. Mosher describes, the amendment aligns the locations for bed and breakfasts with the rules for residential

care homes and accommodations, including Airbnbs and other short-term rental accommodations. Bed and breakfasts are defined in the Land Use By-law. They must be operated by an owner occupying the residential unit where the accommodations are provided, and meals may only be provided to overnight guests. The amendment limits the number of bedrooms in each residence that can be used for the operation.

[12] The Land Use By-law currently allows bed and breakfast operations as “home-based businesses” within one and two-unit dwellings outside of Growth Centres and in one and two-unit dwellings within Growth Centres that are accessed by collector roads. As a home-based business, bed and breakfasts were subject to other requirements, including frontage on a public road.

[13] After the amendments, bed and breakfast operations would no longer be subject to the same restrictions as home-based businesses and would be a permitted use in any residential unit, subject to the requirements of the underlying zoning. The principal amendment deletes several sections of the Land Use By-law and replaces them with the following alternative:

BY-LAW 106 Land Use By-Law

1. Amend sections 14.3.29, 14.3.3(d), 14.4.29(f), 14.4.4(d), 14.4.4(f) and 14.4.7 of the Land Use By-Law, by deleting the sections and replacing with the following:

14.3.29 Uses Within Residential Units (*Amended October 1, 2024, File # P21-01*)

The use of residential units as residential care homes, **a bed and breakfast operation** or as accommodations shall be permitted within all zones that permit residential units. **Bed and breakfast operations shall be permitted to use up to four (4) bedrooms unless located within the Grand Pré Heritage Conservation District where the use of five (5) bedrooms is permitted.** These uses shall be subject to the requirements of the zone. Any associated signs shall be subject to the requirements of a home-based business sign. [Emphasis in original]

[Exhibit C-4, Ex. B, Appendix A]

III ISSUES

[14] The first issue the Board must decide is whether Mr. Cann has satisfied the legal test to be considered an “aggrieved person,” as defined in the *Municipal Government Act*, or whether the legislation can be interpreted to allow him standing to bring this appeal, applying common law principles.

[15] The second issue raised in the proceedings was whether the appeal should be quashed at the preliminary stage, on the basis that it is “frivolous, or without merit” and so clearly unsustainable that it should be dismissed before a hearing on its merits.

[16] The Board finds, on the evidence presented, that Mr. Cann does not have standing in this appeal. He does not meet the legal criteria. The Municipality’s first motion is granted. This finding is determinative, and the appeal is dismissed. The Board need not determine the second issue and declines to do so in this case.

IV ANALYSIS AND FINDINGS

1. Does Mr. Cann have standing to bring this appeal?

a) Legal Background

[17] As the Board discussed with the parties during the proceeding, the Board’s jurisdiction is limited to hearing the appeals that the applicable legislation allows it to consider. Similarly, only the individuals, or entities, the law authorizes have the right to appeal to the Board. The appealable issues are also determined by the limits of the legislation.

[18] Section 247(1) of the *Municipal Government Act* limits the parties who may appeal a municipal council’s decision to approve an amendment to a land use by-law:

Appeals to the Board

247 (1) The approval or refusal 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) a village in which an affected property is situated;
- (e) the Director.

[19] The list of who may appeal the approval of a land use by-law amendment is discrete. Mr. Cann is not the applicant in this matter and does not fall under any of clauses (c) to (e). He may only bring this appeal if he is an aggrieved person under s. 262(1)(a). The Municipality says that Mr. Cann is not an aggrieved person, so it brought the motion challenging his standing to bring the appeal. However, the burden of proof on such a motion is on a challenged appellant to show that they are an aggrieved person, on a balance of probabilities (*Re Taylor*, 2015 NSUARB 82).

[20] The Board considered, in detail, the question of who may qualify as an aggrieved person in *Re Thompson*, 2020 NSUARB 52. In that case, the Board discussed the historical development of the law around standing to appeal municipal planning decisions and the statutory context, which the Board reviewed and relied on. As recently addressed by the Board in *Re Hagle*, 2025 NSUARB 22 and *Re Peck*, 2025 NSRAB 7, that history brings us to the current version of the *Municipal Government Act*, which defines “aggrieved person” in s. 191(a) as:

191 In this Part and Part IX, unless the context otherwise requires

(a) “aggrieved person” includes:

(i) an individual who *bona fide* believes the decision of the council will adversely affect the value, or reasonable enjoyment, of the person’s property or the reasonable enjoyment of property occupied by the person,

(ii) an incorporated organization, the objects of which include promoting or protecting the quality of life of persons residing in the neighbourhood affected by the council's decision, or features, structures or sites of the community affected by the council's decision, having significant cultural, architectural or recreational value, and

(iii) an incorporated or unincorporated organization in which the majority of members are individuals referred to in subclause (i).

This definition applies to the Planning and Development and Subdivision sections of the *Act* found in Part VIII and Part IX, respectively.

[21] The Board recognizes that the word “includes” in the definition of aggrieved person signals that s. 191(a) is not an exhaustive list of the categories of aggrieved persons. Therefore, in its analysis of the statutory requirements, the Board considers whether the appellant is an aggrieved person based on common law principles.

[22] The Board relies on the Supreme Court of Canada decision in *British Columbia Development Cooperation v. Friedmann (Ombudsman)*, [1984] 2 S.C.R. 447 as an expression of the common law basis under which an appellant can be an aggrieved person (e.g., *Re Taylor*, 2015 NSUARB 82, *Re Lunenburg Heritage Society*, 2010 NSUARB 224 and *Re Johanson*, 2010 NSUARB 123). In *Friedmann*, Justice Dickson said, on behalf of the court, “a party is aggrieved or may be aggrieved when he genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his interest, whether or not a legal right is called into question” (para. 68).

[23] In *Re Taylor*, the Board stated:

It is the objective belief which the Board must examine. This does not require expert evidence, in the view of the Board. It does require the Board to find a “unique status” (*Richardson v. Wolfville, supra*), a “particular link” (*Re Northern Construction Enterprises Inc.*, 2012 NSUARB 149), or an “intrinsic relationship” (*Re Ollive Properties Ltd.*, 2012 NSUARB 186).

[*Re Taylor*, para 41]

In *Re Thompson*, the Board succinctly stated the principle that interests shared with the rest of the public will not be enough to prove one's status as an aggrieved person.

[24] In the present case, the Board is reviewing whether Mr. Cann is an aggrieved person within the statutory scheme of the *Municipal Government Act*. The analysis and test must be derived from that context, including the purpose of that statute. As explained by the Board in *Re Brison*, 2006 NSUARB 113, "[t]he interests therefore that are protected and may cause a person to be aggrieved will be dependent upon the facts of each case, including the MPS, the bylaws or other planning documents at issue in the appeal" (para. 57). The Board considered and applied this method in other decisions like *Re Thompson* and *Re Cameron*, 2020 NSUARB 108, and will follow the same approach in this case.

[25] In reviewing these arguments, the Board was guided by the observation in *Re Brison*, and reiterated in *Re Thompson*, that modern planning legislation developed from limited and narrowly interpreted intrusions on the common law liberties of property owners. It provides modern municipalities with a broadly defined authority over land use planning, subject to the rights of property owners, to ensure that municipal authority is exercised in accordance with publicly developed policies. The purpose of the planning and development section is specified in s. 190 of the *Municipal Government Act*:

Purpose of Part

190 The purpose of this Part is to

(a) enable the Province to identify and protect its interests in the use and development of land;

(b) enable municipalities to assume the primary authority for planning within their respective jurisdictions, consistent with their urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province;

(ba)ensure that every municipality develops and adopts one or more municipal planning strategies to govern planning throughout the municipality and fulfill the minimum planning requirements;

(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 in pursuant to this Part; and

(d) provide for the fair, reasonable and efficient administration of this Part.

[26] This section establishes municipal councils as the primary planning authority, while enabling the Province to identify and protect its interests, and ensuring public participation and contribution to the formulation of the planning framework. It refers to rights of “the public”, though the Board in *Re Brison* interpreted that as protection for property owners, who are obviously among members of the public the legislation intended to capture.

[27] Another explicit purpose of the planning section is to “provide for the fair, reasonable and efficient administration of this Part.” As outlined in *Re Brison*, having created planning documents with public input, councils are not permitted to act in a manner inconsistent with the plan. The provisions allowing appeals to the Board are notably restrictive, engaging a review if the decision “does not reasonably carry out the intent of the MPS.” The appeal provisions identifying the particular categories of appellants who may bring an appeal are imbued with the legislative intent of providing for fair, reasonable and efficient administration of the planning and development regime under the *Municipal Government Act*.

b) Basis of the claim for standing

[28] In a novel argument, Mr. Cann argued that he could meet any of the three categories explicitly including as aggrieved persons in the definition under s. 191(a). He stated that his own property enjoyment may be impacted by changes to his community,

engaging clause (i). He referred to his membership in the Baxter's Harbour Community Association and the Baxter's Harbour Co-op (1977) Ltd., which he said would meet the definition set out in clause 191(a)(ii), of an incorporated organization with the objects of "promoting or protecting the quality of life of persons residing in the neighbourhood affected by the council's decision ...". He also claimed to be in association with a person living in proximity to property that would be affected by the by-law amendment, therefore the majority of that unincorporated group could qualify as aggrieved.

[29] The Municipality says that, because Mr. Cann is a natural person and not an organization (neither incorporated nor unincorporated), the only section that is relevant to the Board's analysis is s. 191(a)(i), i.e. whether Mr. Cann has a *bona fide* belief that the decision will adversely affect the value or reasonable enjoyment of his property or otherwise meets the common law criteria for standing.

c) The Interests Claimed to be Affected by Council's Decision

[30] In this analysis, the Board considers Mr. Cann's appeal against the categories of aggrieved persons set out in s. 191(a), as well as to consider his status as an aggrieved person against the common law principles discussed earlier. The Board reviewed the Appellant's first filing [Exhibit C-1], the revised Notice of Planning Appeal [Exhibit C-3], his written submission [Exhibit C-6] and his oral submissions to consolidate his arguments on these issues.

[31] In his revised Notice of Planning Appeal, filed March 4, 2025 [Exhibit C-3], Mr. Cann references policy 5.1.1(a) of the MPS, which deals with engagement with members of the public, particularly a direction to "exceeding the minimum public consultation requirements of the *Municipal Government Act*." In addition to other commentary, he notes:

In view of the current housing crisis, efforts should be made to secure permanent homes as opposed to inviting property owners to convert housing into hospitality-for-profit.

[Exhibit C-3, p. 1]

After reviewing Mr. Cann's written submission and responses to Respondent's Counsel and the Board's question at the hearing, the Board concluded that these two issues, the potential impacts on individual communities of planning changes, and potential fluctuation in his property value, form the basis of the harms he is alleging.

[32] The possible adverse effects of a Council decision mentioned in s. 191(a)(i) relates to "value" and "reasonable enjoyment" of an individual's property. These are rooted in the ownership and use of real property, although they encompass more than strictly legal interests in property. In *Re Brison*, 2006 NSUARB 113, the Board observed:

The definition of an aggrieved person in the *MGA* only lists two of the potentially protected interests. First, it incorporates the language of the tort of nuisance as noted by Stanley M. Makuch, in *Canadian Municipal and Planning Law*, 2nd ed., Toronto, Ont.: Thomson Carswell, 2004 at p. 190. He states nuisance "exists where a person unreasonably interferes with the use and enjoyment of another's land." "Enjoyment" includes the "use" of one's lands as the term "enjoy" in the *Oxford Dictionary*, *supra*, means: (1) take delight or pleasure in; (2) to the use or benefit of; and (3) experience. Second, it lists a person's interest in the value of his/her property.

[*Re Brison*, para. 56]

[33] An appellant's belief that a decision of council will adversely affect their interests must, in any event, be *bona fide*. This is an explicit requirement for affected interests under s. 191(a)(i) and applies to the Board's consideration of affected interests under the common law as well (*Re Brison*, para. 59).

[34] A *bona fide* belief has both subjective and objective elements:

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

qualify a person as an aggrieved person. The Board does not consider the Legislature could have intended such a consequence.

[*Re Ruffman*, [1995] N.S.U.R.B.D. No. 15, pp. 5-6], quoted in *Re Thompson*, para 23]

[35] The Board discussed the nature of the objective assessment of an appellant's belief that a planning decision would affect them in *Ollive Properties Ltd.*, which it said should be assessed "in a prompt manner." The Board also discussed the facts it should examine to determine whether an appellant was an aggrieved person:

[120] I find the basic facts to be examined in determining the aggrieved person status are the development, including the type of structure (a dam, waste disposal site, residential, commercial, etc.), its physical characteristics (dimensions, features, etc.), and how it will be used (by whom, numbers, frequency, etc.). It also includes a review of the area affected by the development and the use of the properties within that affected area.

[121] A large dam may affect property owners many kilometres in either direction. At the other extreme is the area affected by a small single-family bungalow.

[*Ollive Properties Ltd.*]

[36] In *Ollive Properties Ltd.*, the Board considered that the impact on an aggrieved party must be distinct from that of the general public. In that appellant's case their property was located so close to the proposed development that it was logical to infer that the property would be adversely affected by the development, therefore the objectivity of its honest belief was met. Cases since *Ollive Properties Ltd.* have clarified that distance from a disputed development is an indicator but is not determinative of qualification for standing in a planning appeal.

[37] Mr. Cann acknowledged the location of his property is on a provincial road and not next to or near any private roads where new bed and breakfast operations could be enabled by the by-law changes. Using a map of the area introduced by the Municipality [Exhibit C-7] and referring to "Google Earth" images, he discussed the private right-of-way, Wenega Road, which runs alongside and behind his property. He described this as a gravel driveway leading to residential properties and beyond as a walking path. He said

he was not aware that any of his immediate neighbours had plans to open bed and breakfasts, though he could not speak for them. He said a nearby property was offered as an Airbnb for about five years and “it was fine.”

[38] Mr. Cann was clear that he did not contest Ms. Gerhardt’s application for a bed and breakfast at her Black River property, which prompted planning staff to recommend to Council that the Land Use By-law be amended. He wanted to “save harmless” her application. Mr. Cann indicated the assessed value of his property increased significantly in the years following the development of the nearby Nordic Spa, but that those increases have since levelled out or decreased. However, he did not appear to fear any impacts of bed and breakfast operations on his own interests, other than to the extent his own interests align with broader community interests like impacts on housing and community character. He lamented in his submissions that “The use of PID engenders conflict in neighbourhood politics. Simple geographic distance is hardly a metric of engagement (of a neighbourhood).” [Exhibit C-6, p. 1].

[39] The test for an aggrieved person requires proof of an objectively reasonable basis, as well as a subjective belief, of adverse effect on the appellant’s interests because of the amendments. At this stage, Mr. Cann is not required to prove to the Board that he will suffer a loss in value or enjoyment of his property resulting from the by-law amendment. However, he must show a *bona fide* subjective and reasonable objective belief that it has such an impact.

[40] Ms. Mosher indicated her belief that most impacts of the change would be felt by residents of Growth Centres who do not live on collector roads, as well as residents

living on private roads. Mr. Cann lives on a provincial highway. There is a private right of way adjacent to his property that does not meet the requirements of a private road.

[41] The Municipality presented Exhibit C-7, a map created with information from the Municipality's Geographic Information System in the vicinity of Baxter's Harbour and Mr. Cann's property. The map shows that the nearest locations where any newly constructed bed and breakfasts could be enabled by the text amendment are over a kilometre away from Mr. Cann's residence and appear to be dead ends. The Municipality also clarified that the rules around bed and breakfasts ensure that they must be operated as a home business in a person's residence where the operator resides onsite. In other words, a person cannot vacate a primary residence in favour of operating a bed and breakfast. It is an additional use, not an alternative, to the residential use.

[42] Mr. Cann ultimately acknowledged that the harm he perceives arises from a lack of consultation and does not really relate to his own property value or enjoyment of his land. He fears overall community impacts. On the evidence, the Board finds no subjective belief or reasonable objective basis to find that Mr. Cann's property value or enjoyment of his property will be negatively affected by the changes to the Land Use By-law approved by Council. There is no reasonable basis to conclude that Mr. Cann's property or experience there will face any new risks from new bed and breakfast operations that did not already exist prior to the amendments.

[43] The Board finds that Mr. Cann has a subjective belief that his, and his neighbours' lifestyle and enjoyment of their property may change if their community becomes more commercial or tourism-focused or otherwise changes its character. He is concerned an application for a single bed and breakfast in a different community became

a Municipality-wide proposal that affects Baxter's Harbour. Mr. Cann's interest is in the overall impact of the Municipality's planning decisions on his community which may, to varying degrees, impact his experience there. He disagreed with the process in this and other cases. The process implicates the Municipality's public consultation requirements and how they are interpreted and applied in relation to Policy 5.1.1 of the MPS.

[44] However, Mr. Cann's complaint is not defined or described in terms of any individual right or expectation to be personally consulted prior to Council's consideration of the text amendment. In his initial submission, he indicates his desired resolution is: "All neighbourhoods [all constituents] consulted w/o prejudice/bias. Nor 'Pitched' Consultation not sales..." His appeal documents and arguments are drafted from the perspective of community, neighbourhoods, or citizens' interests, generally. From his comments at the hearing, it is apparent he resists changes imposed "from the outside" and feels the Municipality should reconsider its public engagement policy and processes.

[45] Ms. Mosher described the Municipality's public notice and engagement process, which she said followed the Municipality's standard policy applied to all text amendment proposals [PLAN-09-005 Public Participation Program, Exhibit C-8]. As described in her affidavit:

The process used by the Municipality for the application for the text amendment which is the subject of this putative appeal included the following steps beyond the minimum steps prescribed by Part VIII of the *Municipal Government Act*, SNS, 1998, c. 18:

The Municipality had a Public Information Meeting at the outset of the application, advertised on its website and social media, uploaded an informational presentation to the website and to "YouTube" and kept public comments open until the file went to Planning Advisory Committee.

[Exhibit C-4, p. 1-2]

[46] The amendment proposal was presented at the Planning Advisory Committee and there was a public hearing. The minimum public participation requirement

in the *Municipal Government Act* for a land use by-law amendment is a public hearing, and the public participation program is at the discretion of a council (s. 209). Ms. Mosher explained that for a text amendment, it would be prohibitively expensive to provide notice by mail to neighbours of any affected property (as is done for development agreements or zoning amendments) since this would involve properties across the Municipality.

[47] Mr. Cann did not attend the public meetings discussing this matter until Council's public hearing on February 4, 2025, which he did attend. He did not see the prior notices but heard about the hearing from contacts. Members of the public had the opportunity to speak on the application. He did not speak, though this is not a requirement for him to proceed with an appeal if he was aggrieved. The Board notes these facts only to identify that Mr. Cann was not denied or prevented from participating during the available opportunities in the process.

[48] It appears to the Board that Mr. Cann believes his property enjoyment will diminish if his community changes without sufficient input from residents. In particular, if it changes in ways he and other community members do not support. However, the Board can find no objective basis to find that he is particularly wronged, or evidence that the general impact of new bed and breakfasts on private roads in Baxter's Harbour might adversely impact his overall experience in that community. Mr. Cann wants to be engaged. He wants communities to have a stronger voice in the Municipality's planning processes. Leaving aside the complicated history of the Board's limited jurisdiction over any issues of procedures before a Council decision on planning matters, these interests are too general to sustain an appeal of a single decision on these underlying facts.

[49] Mr. Cann has strong views on how Council should approach consultation and decision-making. However, this perspective does not give him a “unique status” or “intrinsic relationship” to Council’s decision to approve this amendment or the outcome of that decision.

[50] Similarly, Mr. Cann expressed a desire to ensure communities have adequate housing for humans. He does not want residential units to be taken out of available housing stock. He is concerned about homes transitioning to “for-profit hospitality.” Ms. Mosher’s testimony clarified that bed and breakfasts are operated by resident property owners and do not change the residential use. The Municipality points out that Mr. Cann is not seeking housing for himself. His concern is for others, in the manner of an advocate. The Board likens this, and the consultation issue, to the general interest of the “taxpayer.” As explained in *Re Thompson*, a citizen’s interest as a taxpayer is not unique. Other than his opinion, Mr. Cann did not have any contrary evidence to demonstrate a reasonable basis to justify his fears in respect of this application. The Board finds that his concern for housing is not enough to give him status as an aggrieved person.

d) Other Arguments for Standing

[51] Mr. Cann argued that his membership and founding roles in two local community organizations, the Baxter’s Harbour Co-op (1977) Ltd. and Baxter’s Harbour Community Association should qualify him for standing under clause s. 191(a)(ii) of the aggrieved person definition, i.e.:

(ii) an incorporated organization, the objects of which include promoting or protecting the quality of life of persons residing in the neighbourhood affected by council’s decision, or features, structures or sites of the community affected by the council’s decision, having significant cultural, architectural or recreational value;

[*Municipal Government Act*, 191(a)(ii)]

Mr. Cann acknowledged that he did not file his appeal on behalf of any of the organizations referenced in his submissions. He did not mention them until his written filing, which he explained in his oral argument. He feels this was an oversight. He believes his interests in the Baxter's Harbour Community Association, Baxter's Harbour Co-op (1977) Ltd., and his association and shared views with other community members could qualify him for standing under the other included classes of aggrieved persons in s. 191(a) of the *Municipal Government Act*.

[52] The Board agrees with Counsel for the Municipality that the Board has no evidence that either of the Baxter's Harbour organizations intended to appeal Council's decision or have Mr. Cann represent their interests. While he is a member, it does not follow that the organization necessarily shares his perspective or wants to expend the effort to appeal the decision with him.

[53] Mr. Cann also testified that he had communicated with a friend who felt aggrieved because she lived in an area where potentially three new bed and breakfasts were proposed. Mr. Cann argued that, even if his own property's physical location disqualified him, this friend made up 50% of an unincorporated organization, with him, that could meet the criteria for standing in s. 191(a)(iii) as "an incorporated or unincorporated organization in which the majority of members are individuals referred to in subclause (i)", i.e.: who *bona fide* believe that the decision of council would adversely affect the value or reasonable enjoyment, of the person's property.

[54] In *Community for Responsible Development in District 1*, 2023 NSUARB 37, a group of concerned citizens, the majority of whom lived near a planned multi-unit development, formed an informal group to appeal Council's decision to approve the

development agreement to allow it. The group members were identified in initial proceedings and the appeal was brought in the name of the group. Over half of the members lived close to the planned development and claimed it would have adverse impacts. In Mr. Cann's case, his appeal was filed by him, alone. He would not name his friend and did not demonstrate that this friend intended to form an informal organization with him for the purpose of the appeal. The Board accepts Mr. Cann's testimony that his friend shares his displeasure with the amendments, but this assertion does not meet the threshold for the Board to find that either of them is "aggrieved" in the meaning of the *Municipal Government Act* and the common law.

[55] Under any reasonable interpretation of these statutory categories, Mr. Cann, in his personal capacity, cannot qualify for standing as an "organization" without some evidence of his incorporated status, or designation as a representative of a group or organization with an intent to pursue the appeal. However, the Board also considered whether a contextual analysis of the broader statutory scheme and the Municipality's planning documents could support Mr. Cann's contention that he should be considered against the qualifying language applicable to an incorporated organization in s. 191(a)(ii), i.e., having the objects of "promoting or protecting the quality of life of persons residing in the neighbourhood affected by council's decision". Would the context allow an "individual" with those objectives to also bring an appeal as an "aggrieved person"?

[56] The Board accepts that Mr. Cann's objectives in appealing this decision may include protecting the quality of life of persons residing in a neighbourhood affected by the council's decision. Baxter's Harbour has private roads and, therefore, new bed and

breakfasts may be enabled there. His position is that this type of amendment impacts his neighbours and the character of a community as a whole.

[57] However, the Legislature made deliberate choices in setting out a category of individuals having a statutory right of appeal, and the criteria for the other types of appellants that could also exercise that right. The use of “incorporated organizations” in s. 191(a)(ii) but not “individuals” or “unincorporated organizations” shows their deliberate exclusion. There is no basis for public interest standing in this administrative appeal other than for incorporated organizations. The explicit inclusion of individuals from that category of allowed appellants demonstrates an intent not to expand the scope of potential appellants.

[58] The Board considered all submissions and the issues raised. Given the discrete question the Board ultimately decided on, Mr. Cann’s standing to appeal, this decision does not catalogue, or dispose of, every point raised by the parties. To the extent the Board does not explicitly deal with all arguments or nuances of an issue, it can be assumed the Board did not agree, or the point carried insufficient weight to impact the reasons for this decision.

[59] For all of these reasons, the Board finds that the Appellant has not met the burden of demonstrating that he is an aggrieved person for the purpose of appealing Council’s decision of the amendments enabling an expansion of the locations where bed and breakfasts can operate in the Municipality.

2. Motion to Quash

[60] The parties addressed their arguments on the Respondent’s motion to quash the appeal in oral presentations and written submissions. Ms. Mosher provided the

Municipality's supporting evidence related to its argument that the only substantive grounds raised in the Notice of Appeal, on the question of Policy 5.1.1(a) of the MPS, are unsustainable. The Municipality argued that the Board has, in multiple recent decisions, determined that the Municipality's Public Participation policy, as drafted, exceeds the requirements in the *Municipal Government Act*. Ms. Mosher testified that that process was followed in this case.

[61] Because the Appellant does not have standing to bring the appeal, the appeal is dismissed. No determination on the motion to quash is required, and the Board declines to address the arguments further in these circumstances.

V CONCLUSION

[62] The Board finds that the Appellant, Christopher Cann, is not an aggrieved person for the purpose of the decision of Council to amend the text of the Land Use By-law to enable bed and breakfast operations in any residential unit in any zone that allows residential units. Therefore, he does not have standing under s. 247 of the *Municipal Government Act* to appeal that decision to the Board. This finding is determinative, and the appeal is dismissed without a decision on the question of whether the appeal should be quashed for other reasons.

[63] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 15th day of May 2025.



Julia E. Clark