

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **DEVON PARSONS** from a decision of the North West Community Council to approve an application for a Land Use By-law Amendment respecting property located on Lucasville Road, Lucasville, Halifax Regional Municipality (PID: 40306565)

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

APPELLANT: **DEVON PARSONS**

RESPONDENT: **HALIFAX REGIONAL MUNICIPALITY**
William Hatfield, Counsel
Meg MacDougall, Counsel

APPLICANT: **MODE ARCHITECTURE INC.**
Monica Sweetapple

INTERVENOR: **LUCASVILLE COMMUNITY ASSOCIATION**
Stewart Lucas

HEARING DATES: May 19, 2026

FINAL SUBMISSIONS: June 26, 2026

DECISION DATE: **August 24, 2026**

DECISION: **The appeal is denied.**

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1.0 INTRODUCTION

[1] This decision relates to an appeal by Devon Parsons of a decision of the North West Community Council (Council) to approve an amendment to the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law (LUB) impacting property on the Lucasville Road, Lucasville. Lucasville is a historic African Nova Scotian community located in the Beaver Bank, Hammonds Plains and Upper Sackville planning area, for the purpose of the current municipal planning documents.

[2] In 2022-23, the Halifax Regional Municipality (HRM) Regional Council undertook amendments aimed at modernizing and standardizing housing rules across the Municipality. For the Beaver Bank, Hammond Plains and Upper Sackville plan area, the amendments specifically updated permitted uses in the Mixed Use designations and Mixed Use 1 (MU-1) zone, related to shared and supportive housing. The amendments included updated definitions and limits on shared group housing and supportive housing land uses, while temporarily protecting a designated list of multi-unit senior citizens housing projects identified in Appendix A-1 to the LUB that had been previously approved for a development permit up to a total number of dwelling units in accordance with the previous LUB requirements.

[3] There are two properties that are relevant in the context of this appeal, both are zoned MU-1 under the LUB. The land parcel identified as parcel identification numbers (PID) 41464512, which has the civic address 505 Lucasville Road (the development parcel), was the subject of a development permit issued in 2022 to allow for the development of a multi-unit residential complex for housing designated for senior citizens. The second parcel is identified by PID 40306565, a currently vacant property adjacent to 505 Lucasville Road. The decision under appeal amended Appendix A-1 of

the LUB to add PID 40306565 (access parcel) to allow for its use as access for the adjacent development parcel.

[4] The Municipality and the Applicant say that the LUB amendment to facilitate the use of the access parcel to provide a driveway for the development parcel is a housekeeping item. Mr. Parsons and the Intervenor, Lucasville Community Association, say that the decision does not carry out the overall intended development plan for the community. They are concerned that allowing this amendment of the Appendix may create a harmful precedent for revisiting multi-unit residential development, in the form of senior citizens housing, on the Lucasville Road. They fear the decision creates a loophole that may facilitate more multi-unit residential growth in Lucasville, contrary to the intent of the Municipal Planning Strategy (MPS).

2.0 FACTS OF THE MATTER

[5] Lucasville is part of a suburban, semi-rural region of HRM. It is a community of historical significance, as an area of African Nova Scotian settlement from at least the early 1800s to the present. Development in Lucasville is primarily governed by HRM's Beaver Bank, Hammond Plains and Upper Sackville MPS and LUB. Both properties are designated Mixed Use B (MUB) in the MPS and zoned MU-1 in the LUB. This zoning allows a blend of residential, local commercial, institutional and agricultural uses.

[6] The subject property (PID 40306565) is a T-shaped, approximately 5.39-acre flag lot with a narrow strip of land fronting the northwest side of Lucasville Road. It is currently vacant and partially forested. The land borders PID 41464512, which has the civic address 505 Lucasville Road, to the north and west. That adjacent property is the

principal subject of a development only permit No. DEVONLY-2021-15678 for the construction of a multiple unit dwelling for senior citizens housing, issued by HRM on September 26, 2022 (2022 Development Permit). The site plan approved as part of the 2022 Development Permit application identifies the long, narrow strip of PID 40306565 fronting Lucasville Road as the location of the driveway access for the planned development at 505 Lucasville Road. This decision often refers to PID 40306565 as the “access parcel” and PID 41464512 as the “development parcel” or “505 Lucasville Road”, which were the reference terms used throughout the appeal.



[Exhibit P-4, p. 53]

2.1 Relevant Planning History

[7] In 2022-23, Regional Council considered amendments to its planning policies and regulations for Beaver Bank, Hammonds Plains and Upper Sackville, which apply to the community of Lucasville. The purpose was to create policies and regulations for shared housing, “including housing designated for seniors, those in need of support or personal care, those in need of affordable housing options or those seeking a group-

style living arrangement.” [Exhibit H-8, p.5]. On July 12, 2022, Regional Council gave the first reading for these region-wide amendments and passed a motion to allow in-process active development projects for “Senior Citizens Housing” to remain a permitted use in Beaver Bank, Hammonds Plains and Upper Sackville. The amendments resulted in the approval of a new, Policy 9A, to the MPS, and changes to the MU-1 zone to remove “Senior Citizens Housing” as a generally permitted use in the zone, with the addition of Appendix A-1 to the LUB to allowed existing projects for senior citizens housing to proceed as an exception to the new land use restrictions with additional time to commence construction. Appendix A-1 to the LUB lists the properties that were issued development permits for senior citizens housing use prior to first reading of the amendments in July 2022, with the associated number of allowed units, allowing for reissuance of the development permit until May 26, 2026. Its format is a table of PIDs that list the properties identified as existing Senior Citizens Housing use, with the permitted number of dwelling units. Policy 9A in the MPS deemed the properties listed in Appendix A-1 as an existing use and permitted them to continue to operate as existing Senior Citizens Housing use with the same number of dwelling units or less, as listed in the appendix.

[8] On September 15, 2022, Regional Council's adoption of the broader set of policies and regulations for shared housing in the MPS and LUB became effective. The amendments, including Policy 9A of the MPS, changes to the LUB, and the creation of Appendix A-1, to address existing senior citizens housing use became effective on October 15, 2023.

2.2 Rezoning Application and Process

[9] Mode Architecture (Applicant) applied to HRM Planning and Development in May 2025 for an amendment to the entry for PID 41464512 in Appendix A-1 of the LUB. The Applicant initially asked to amend the permitted units associated with that entry from 64 to 118, to reflect the number of units permitted under the 2022 Development Permit, which it said had been mistakenly omitted from the Council-approved version of Appendix A-1. During the application process, HRM staff identified that PID 40306565 was also shown in the site plan that was approved with the 2022 Development Permit. It was identified as providing driveway access to the development parcel.

[10] HRM policy prohibits land from being used to access an adjacent property unless the same use is permitted on the driveway parcel as for the property it is intended to access. Because only the properties listed in Appendix A-1 can be used for senior citizens housing in Lucasville, the Applicant would have been prohibited from relying on its intended access parcel. Staff proposed that the entry in Appendix A-1 be amended to correct the number of units in PID 41464512 and to add PID 40306565 with the qualifier "Access Only" to the row already including PID 41464512. The Applicant later modified its request to change the number of permitted units and indicated its intention to proceed with 64 units only.

[11] In a report drafted by Erin McIntyre and presented by Jess Harper, MCIP, LLP, PMP, as the Principal Planner, Rural Policy and Applications, Development Services for HRM, [Exhibit H-4, pp. 49-64] (Staff Report), HRM Planning staff recommended that Council approve the revised amendment to include the PID for the access parcel in Appendix A-1. The application attracted a lot of interest in the community. Mr. Parsons and other members of the Lucasville Community Association attended the public hearing

and provided letters explaining their concerns with the proposal. Community members involved in the process particularly opposed any further expansion of multi-unit residential uses on the Lucasville Road, especially where they say the promised targeted consultations with African Nova Scotian community elders and organizations did not proceed as expected.

[12] After the public hearing, on February 9, 2026, Council approved the amendment to Appendix A-1 of the LUB to add the PID for the access parcel with the qualifier “access only.” Mr. Parsons appealed to the Board under s. 265 of the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (*HRM Charter*) on February 10, 2026.

2.3 Parties and Witnesses

[13] The Appellant, Mr. Parsons, is a resident of the Lucasville community and member of the Lucasville Visioning Committee and director of the Lucasville Community Association. He provided testified on his own behalf about the Lucasville area, his knowledge of the relevant planning applications and his work in Lucasville on land issues. He called one witness, Melissa Marsman.

[14] Ms. Marsman is a lawyer, an Assistant Professor at the Schulich School of Law, and a seventh-generation African Nova Scotian. She is the chair of the Upper Hammonds Plains Community Land Trust, and a member of the Lucasville Community Development Committee and the Lucasville Community Land Trust. Ms. Marsman testified about the history of planning challenges in Lucasville. She noted that many of the community’s concerns about the potential impact of any land use changes come from a place of mistrust of the municipal planning processes based on past harms to African Nova Scotian communities. Without meaningful consultation and engagement, and with the approval of “uncomplimentary developments” in Lucasville, there may be further

erosion of African Nova Scotians' cultural identity, which is intimately tied to their geographic spaces.

[15] The Board approved the Lucasville Community Association's request to intervene in support of the appeal. The Lucasville Community Association was represented by its director, Stewart Lucas, who also gave a statement on its behalf. Mr. Lucas lives within 200 m of the subject property. The Association shares Mr. Parsons' concerns that the amendment to the LUB was premature, inadequately assessed, and engagement was inconsistent with the community-led planning direction for Lucasville.

[16] Natasha Lucas appeared as the Intervenor's witness. Ms. Lucas is a current resident living within about 100 m of the subject property, and a descendant of the original settlers of Lucasville. She primarily testified about infrastructure issues, including the high speed and density of traffic, lack of public transit and safe pedestrian sidewalks. She also noted that local schools and community facilities are over capacity.

[17] The factual evidence given by Mr. Parsons, Mr. Lucas, Ms. Marsman and Ms. Lucas provided first-person accounts of the community character in Lucasville and the surrounding areas. They have lived experience as members of this historic African Nova Scotian community and provided helpful information, history, and context to the Board. All lay witnesses, to some degree, offered opinions on technical or planning issues for which they had not been qualified to give expert evidence. There were few objections to such statements, or a witness's reliance on hearsay but the Board afforded little evidentiary weight to such opinions or statements in the normal course of considering the evidence.

[18] HRM was represented by its solicitors William Hatfield and Meg MacDougall. Jess Harper provided the expert planning report [Exhibit H-8, p. 2] and testified on the Municipality's behalf as the presenting planner for the staff recommendation on the application (Staff Report), [Exhibit H-4, p. 49]. Ms. Harper was qualified by agreement as an expert in land use planning to give opinion evidence on land use planning matters, including the interpretation and application of the MPS, the Halifax Regional Municipal Planning Strategy, and the LUB. As the lead planner on the application, Ms. Harper also provided background information and helped clarify some of the procedural and factual history relevant to this particular case.

[19] Monica Sweetapple attended the hearing as the representative for the Applicant, Mode Architecture. She provided some brief clarification on the changes from the development permit to the recently approved building permit, and the Applicant's intentions for the access parcel and development parcel.

2.4 Letters of Comment

[20] The Board received eight letters of comment from members of the public, which were added to the record [Exhibit P-10]. Seven of the writers were community members supporting the Appellant's request to overturn the appeal, citing their expectations for negative impacts of large residential developments on density and traffic, and infrastructure deficits on the Lucasville Road. Some community members echoed the Appellant's concern that the amendment creates a loophole that may allow new as-of-right development permissions for the remainder of the property - essentially extending the privileges associated with permitted senior citizens housing use and allowing more multi-unit residential developments.

[21] Steven Adams Consulting Services Inc. provided a letter supporting Council's decision on the basis that the development permit for 505 Lucasville Road had already been approved and contesting the perception that the access property could be developed for senior citizens housing use itself, in addition to its use for access to the development property.

2.5 Site Visit

[22] The Board conducted a site visit after the conclusion of the evidentiary portion of the hearing. By agreement, the parties did not attend. The site visit route included the length of the Lucasville Road from Sackville Drive to the Hammonds Plains Road, with stops to observe the sites and landmarks that were described at the hearing, including the existing driveway leading to 505 Lucasville Road and the Wallace Lucas Community Centre.

3.0 ISSUES

[23] The principal issue in this appeal is whether the decision of Council to approve the amendment to the LUB to add PID 40306565 to the list of properties in Appendix A-1, as "access only" for existing senior citizens housing use, reasonably carries out the intent of the MPS.

4.0 BOARD'S ANALYSIS AND FINDINGS

4.1 Burden of Proof and Scope of Review

[24] The burden of proof in this appeal is on the Appellant to show, on the balance of probabilities, that Council's decision to approve the amendment to Appendix

A-1 to the LUB does not carry out the intent of the MPS. Section 262(1) of the *HRM Charter* gives an “aggrieved person” (among others) the right to appeal a decision by council to amend a land use by-law. The parties did not contest the issue of whether Mr. Parsons met the legal criteria for standing to bring this appeal as an aggrieved person, as an individual with a bona fide belief that the decision will adversely affect the value or the reasonable enjoyment of his property.

[25] The grounds on which an aggrieved person can appeal to the Board is limited to one issue – does Council’s decision to amend the LUB reasonably carry out the intent of the municipal planning strategy? If the Board finds that it does not, the Board can overturn the decision. These authorities come from ss. 265 and 267 of the *HRM Charter*:

Restrictions on appeals

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

Powers of Board on appeal

- 267** (1) The Board may
- (a) confirm the decision appealed from;
 - (b) allow the appeal by reversing the decision of the Council to amend the land-use by-law or to approve to amend a development agreement; [. . .]
- (2) The Board may not allow an appeal unless it determines the decision of the Council or the development officer as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law. [Emphasis added]

[26] The Board must follow and apply the statutory requirements in the *HRM Charter*. The Board’s interpretation of those requirements is informed by the provisions of the *Interpretation Act*, RSNS 1989 c 235, as well as the guiding principles from the Nova Scotia Court of Appeal that apply to the Board’s decisions under the planning sections of the *HRM Charter*. In particular, the principal authority of *Heritage Trust of Nova*

Scotia v Nova Scotia (Utility and Review Board), 1994 NSCA 11, encourages a pragmatic, purposive approach, rather than a strict literal interpretation of the legislation, municipal planning policies, and land use by-laws, as the case may be. The Board must not look simply at the words of a policy in isolation but must consider the whole scheme of the legislation and the policies that impact the decision.

[27] The Court of Appeal, in *Archibald v Nova Scotia (Utility and Review Board)*, 2010 NSCA 27 and, more recently, in *Heritage Trust of Nova Scotia v AMK Barrett Investments Inc.*, 2021 NSCA 42, addressed the Board's task in more detail and summarized the principles the Board must follow in a planning appeal under the *HRM Charter* and its sister legislation, the *Municipal Government Act*, SNS 1998, c 18. These principles are applicable whether assessing a development agreement or a proposed amendment to a land use by-law (see, *Brison (Re)*, 2024 NSUARB 81, at para. 33). The principles have been quoted in nearly every planning decision from the Board and its predecessor since *Archibald's* release and create the framework for the Board's review. They were endorsed and elaborated on more recently by the Court of Appeal in *Cornwallis Farms v Nova Scotia (Attorney General)*, 2025 NSCA 9, at paras 49-51. From *Archibald*:

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

- (1) The Board usually is the first tribunal to hear sworn testimony with cross-examination respecting the proposal. The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.
- (2) The appellant to the Board bears the onus to prove the facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.
- (3) The premise, stated in s. 190(b) of the [*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 compromise of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development and "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, para. 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.

(8) The intent of the MPS is ascertained primarily from the wording of the written strategy. The search for intent also may be assisted by the enabling legislation that defines the municipality's mandate in the formulation of planning strategy. For instance, ss. 219(1) and (3) of the [*Municipal Government Act*] direct the municipality to adopt a land use by-law "to carry out the intent of the municipal planning strategy" at "the same time" as the municipality adopts the MPS. The reflexivity between the MPS and a concurrently adopted land use by-law means the contemporaneous land use by-law may assist the Board to deduce the intent of the MPS. A land use by-law enacted after the MPS may offer little to the interpretation of the MPS.

4.2 Grounds of Appeal

[28] The Appellant submits that the 2022 MPS and LUB amendments and the creation of Appendix A-1 were intended as a limited transitional measure to give properties that had already obtained development permits more time to begin their construction of planned senior citizens housing. It was not intended to create new

development rights or add new properties that were not already assessed through a proper planning (i.e., development permit) process. They say the limited list in the Appendix was intended only to preserve existing permit expectations and should not be expanded to provide property owners an avenue to develop multi-unit residential buildings under senior citizens housing use.

[29] Besides reviewing applicable policies under the MPS, the Appellant and Intervenor alleged procedural issues, gaps and vagueness in the applicable sections the LUB. Their submissions outline the ways they believe the planning scheme had failed to protect the interests of Lucasville residents and the future risks to those interests from this amendment approval. Because the Board's jurisdiction is in planning appeals to only the ground of appeal set out in the legislation, this decision does not address the merits of arguments that fall outside that scope. The following sections explain where and why the Board did not make findings on certain categories of arguments.

4.2.1 Including the access parcel in Appendix A-1 is not required to use the development parcel for Senior Citizens Housing

[30] At the hearing, Mr. Parsons noted that a building permit had been issued subsequent to the filing of the appeal for a multi-unit development for 505 Lucasville Road that does not include the access parcel. HRM confirmed that the building permit application was submitted in December 2025 and issued on March 3, 2026, for the development lot, including an access driveway wholly located on PID 41464512. The Appellant questioned whether the outcome of the appeal was moot given that a building permit was approved that removes the need for the access parcel's association with the development parcel for the purpose of the driveway.

[31] At the opening of the hearing, the Board decided that the question of whether or not a building permit was issued for the development parcel did not impact the Board's jurisdiction to determine whether the LUB amendment, including the access parcel entry in Appendix A-1 carried out the intent of the MPS. Although the Applicant received approval to proceed with the development without relying on the access parcel for its driveway, it does not render the current matter moot.

[32] With the approval of the building permit, the Appellant points out that the planned development at 505 Lucasville Road can still proceed even if the Board allows his appeal. As such, he urged the Board to reverse the amendment because the access parcel is not required to accomplish the intended development of senior citizens housing on the development parcel. In all rezoning matters, however, it is possible that a landowner or developer may decide not to proceed with its initial proposal and may instead undertake another permitted use or development type. Even if the access parcel is not strictly required for the development, the Board must consider Council's decision as it was made at the time, with the benefit of any additional relevant evidence that emerges at the appeal hearing.

[33] The Board's focus is only whether the decision reasonably carries out the intent of the MPS, not whether an amendment is (or is not) necessary to facilitate a particular project. The Board has clear direction from the Court of Appeal that it must not substitute the Board's own judgment for Council's and must not set aside Council's decision simply because the Board would have made a different choice in the same circumstances. Absent an error of "fact or principle", the Board owes deference to a council's decisions, as the elected and principal authority over planning matters in a

municipality, provided they are based on an interpretation of the municipal planning strategy that it can reasonably bear.

4.2.2 Procedural Issues with MPS and LUB Amendments

[34] The initial amendment to the LUB that facilitated the legacy treatment of 505 Lucasville Road for senior citizens housing use was decided by Council on September 12, 2023 (September 2023 amendments). That decision to amend the LUB and include the development property in Appendix A-1 was made at the same time as Council approved the amendment to add Policy 9A of the MPS to allow for existing senior citizens housing on the properties listed in that Appendix. Because the LUB amendments were made to carry out concurrent MPS amendments, s. 263 of the *HRM Charter* dictates that they would not have been subject to appeal before this Board (see *Aikman-Green (Re)*, 2026 NSRAB 71). Even if they had been, the limitation period for an appeal of those amendments has long passed.

[35] The Appellant notes that the development's classification as "housing intended for senior citizens" was the definition upon which it received a development permit and why the development parcel was included in Appendix A-1 as an "Existing Senior Citizens Housing use." There are no remaining definitions or regulations about senior citizens housing use in the land use by-law after the decision was taken to restrict that use in the MU-1 zone. HRM confirmed that it does not enforce age-restricted occupancy. The Appellant also notes that the building permit for 505 Lucasville Road identifies only four accessible units and four accessible parking spaces for the whole development.

[36] Whether the development was initially appropriately classified as existing senior citizens housing use is outside the scope of the Board's jurisdiction. Similarly, the Board has no authority to review building permits or development permit approvals.

[37] In this case, the Board agrees with HRM and the Applicant that the scope of the appeal is narrow. The development of 505 Lucasville Road as a multi-unit building for senior citizens housing can proceed as-of-right, with or without the inclusion of the access parcel in Appendix A-1. While the context of the development at 505 Lucasville Road is relevant, the only reviewable issue in this appeal is Council's decision to add the access parcel to Appendix A-1, identifying it as an existing senior citizens housing use for the purpose of the planning documents.

[38] The Board's understanding from Ms. Harper's testimony is that the regulations applicable to "existing senior citizens housing" uses under the LUB will be those set out in and otherwise applicable to the approved development permits. The limits on future development on either parcel are determined by, and enforceable, under, the policies and regulations in force at the time.

4.2.3 Consultation and Engagement

[39] The Appellant's supporting witnesses referred the Board to the September 2024 direction of Regional Council for the African Nova Scotian Community Action Planning program (ANSCAP) to begin a planning strategy review and develop the Lucasville Community Action Plan. Mr. Parsons explained his understanding that any site-specific amendments to planning documents impacting Lucasville should be referred to Council before proceeding and should meet community consultation requirements. He says that the subject amendment was site-specific and was not referred to Council before it was recommended.

[40] Mr. Parsons submitted an HRM Memorandum from Miles Agar, Principal Planner with ANSCAP responding to his letter to the Mayor requesting a halt on construction of certain parcels in Lucasville before consultations with HRM and Lucasville community members. The memo summarizes September 2024 direction.:

On September 10, 2024, Regional Council directed the Chief Administrative Officer to undertake a Lucasville Planning Strategy Review and a Lucasville Community Action Plan, including

- a) the preparation of a Community Action Plan, including a comprehensive review of all planning documentation that apply in the Lucasville Community and surrounding historical African Nova Scotian settlements in Maroon Hill and Middle Sackville; and
- (b) after the review from 4(a) [sic] returning to Council for the initiation of amendments to the planning documents arising from the review, and
- (c) the preparation of a public participation program in collaboration with the Lucasville Vision Committee to ensure the Lucasville Planning Strategy Review follows a process designed and owned by the Lucasville Community.

[Exhibit P-11, p. 3]

[41] Ms. Marsman provided additional information about the purpose of ANSCAP, which is to work towards recommendations for changes to planning documents for African Nova Scotian Communities, including Lucasville.

[42] It is the Board's understanding that this comprehensive planning and engagement review led by ANSCAP has not yet been completed. Regional Council's directive is an interim measure to begin and integrate this important process and ensure meaningful engagement with different organizations, leaders and community members in establishing plans. Ms. Marsman explained that ANSCAP is pursuing engagement with different organizations, leaders and community members including the Lucasville Community Association, Upper Beaver Bank and Lucasville Land Trusts, and the African Nova Scotian Affairs Integration Offices. However, specific consultation or process

requirements have not yet been incorporated into the municipal planning documents at this stage.

[43] As the Board addressed at the preliminary hearing, some of the grounds set out in the Appellant's Notice of Appeal, like this one, addressed concerns about Council's procedures in its review of both the September 2022 amendments and the subject application. Because of the Board's limited mandate in planning appeals under the *HRM Charter*, the issues involving procedural fairness, and adequacy of consultations and notice requirements that are not addressed in the MPS, have essentially no relevance in the Board's deliberations.

[44] In *Municipal Board Halifax County v Maskine*, 1993 CanLII 2469, the Court of Appeal concluded that a detailed examination of the procedures followed by Council in making its decision was "not relevant to the issue before the Board." The Board has relied on this precedent and has generally been consistent in determining that it simply does not have the jurisdiction to consider complaints about procedural fairness in other planning matters, including land use by-law amendment appeals (see *Blanchard (Re)*, 2023 NSUARB 191, at para 62).

[45] Since the Court of Appeal's decision in *Maskine*, the Board has consistently held it has no jurisdiction to overturn municipal council decisions based on alleged procedural errors. In *Peninsula South Community Association v Chebucto Community Council (Halifax Regional Municipality)*, 2002 NSUARB 7, (appeal allowed on other grounds *sub nom*, *Tsimiklis*, (Re) 2003 NSCA 30), *Community For Responsible Development For District 1*, (Re) 2023 NSUARB 37 (Canning) and, *Cornwallis Farms (cited above)* the Board determined that where procedural public consultation provisions

were embedded in the MPS, the Board could consider whether a council's failure to adequately address them reasonably carried out the intent of the MPS.

[46] Whether or not the ANSCAP consultation and referral process met the requirements of Regional Council's direction is not within the scope of the Board's review because the criteria are not yet incorporated into the planning documents. As the Lucasville Planning Strategy Review process unfolds, this principle may no longer hold true. However, at this stage, the Board finds no basis in the MPS for overturning Council's decision based on the process it followed in this case.

4.3 Applicable MPS Policies

4.3.1 Policy P-9A – Senior Citizens Housing in Mixed Use 1 Zone

[47] Policy P-9A addresses "Senior Citizens Housing" within the MU-1 zone. It allows an exception to the policy direction in Policy P-8 which limits the permitted land uses in the MU-1 zone to "single and two unit dwellings, open space uses, existing mobile dwellings, shared housing uses and short-term bedroom rentals, the limited use of residential properties for business purposes, small scale commercial and resource related activities and most institutional uses. ... Forestry uses and larger-scale agricultural operations ..." [Exhibit P-5, Tab 2, p. 24]. Policy 9A states, as follows:

P-9A Notwithstanding Policy P-8, Senior Citizens Housing use shall be permitted within the MU-1 (Mixed Use 1) zone, on specified parcels of land, as listed in Appendix A-1 of the Land Use By-law. All Senior Citizens Housing uses listed in Appendix A-1 shall be deemed to be an existing use and permitted to continue to operate with the same amount of dwelling units or less, as listed in the Appendix.

[Exhibit P-5, Tab 2, p. 24]

[48] This policy is implemented through Part 13 of the LUB, which defines the uses and requirements of the MU-1 zone. No development permits are allowed in the MU-1 zone except for uses as listed in s. 13.1. The permitted residential uses include

single-unit dwellings, two-unit dwellings, shared housing, existing senior citizens housing on properties listed in Appendix A-1, existing multiple-unit dwellings containing three or four dwelling units within the Urban Service Area, and some others.

[49] Prior to the September 2023 amendments, the permitted uses for the MU-1 zone set out in s. 13.1 included “Senior Citizens Housing.” The amendments removed that permitted use other with the limited exception of “existing” senior citizens housing use “on properties listed in Appendix A-1.” Those amendments also included a new definition for “Existing Seniors Citizens Housing,” in s. 2.25A of the LUB:

2.25A EXISTING SENIOR CITIZENS HOUSING means housing designated for occupation by senior citizens, located on those properties listed in Appendix A-1.

[50] Section 2.25 of the LUB defines the word “existing” as meaning “in existence on the effective date of this By-law.” Regardless, the MPS deems the senior citizens housing uses on the properties listed in Appendix A-1 to be existing uses, permitting them to continue to operate.

[51] The Appellant’s position on the appropriate interpretation of Policy 9A and the corresponding Appendix A-1 in the LUB is succinctly articulated at Part IIA of his final submissions. In summary, the MPS policy enabling the creation of Appendix A-1 in the LUB was intended as a transitional measure to protect a closed list of senior citizens housing projects that already had open development permits under the former LUB scheme. The Appellant says the Appendix was not designed “as an instrument to be incrementally amended to add parcels, expand development footprints, or accommodate planning problems that arise after the fact.”

[52] The Board agrees with the Appellant on this point. The intent of Policy 9A, and the overall intent of the MPS, is to restrict the future development of new senior

citizens housing in Lucasville in the MU-1 zone, except as authorized by Part 13 and Appendix A-1 to the LUB. Multi-unit residential facilities with greater than four bedrooms in the MU-1 zone are regulated under the shared housing policies and regulations introduced in 2022.

[53] The Board agrees that Council's decision to amend the MPS to explicitly remove senior citizens housing use demonstrates a clear intent to restrict that use on other properties in the MU-1 zone going forward. To be clear, the Board finds that the MPS intends for Appendix A-1 to provide a closed list of the properties where senior citizens housing use may be considered as a permissible use based on previously approved development permits. The list essentially closed on July 12, 2022, the date of First Reading of the Appendix, and the remaining development permits could only be reissued for that use until May 23, 2026.

[54] Nevertheless, based on the specific facts of this case, the Board did not come to the same conclusion as the Appellant that Council's decision to amend Appendix A-1 to include the access parcel does not carry out that intent.

[55] HRM's position is that the effect of the amendment is to correct an administrative error in drafting Appendix A-1. Ms. Harper explained that a parcel cannot be used as access for another parcel if the established land use is not permitted on both properties. Ms. Sweetapple explained that if the amendment is not approved, Mode Architecture would simply adjust its development plans to include the driveway on the development parcel. From her perspective, however, this is less desirable because it would result in two driveways close together rather than one shared driveway, and less off-street parking.

[56] Mr. Lucas' submissions note that there was no understanding in the community that PID 40306565 was part of the original development permit approval for 505 Lucasville Road. It was treated and discussed by the community as a completely separate parcel.

[57] The Appellant pointed out several issues with the 2022 Development Permit DEVONLY-2021-15678 [Exhibit P-8, p. 40] issued for 505 Lucasville Road. He says these flaws mean that the document cannot be relied on to show an intent for the access parcel to be approved with the other legacy properties listed in Appendix A-1.

[58] First, the 2022 Development Permit includes a reference on its first page to PID 41464512 and does not list the second PID. It identifies 505 Lucasville Road as the address of the property. Ms. Harper addressed this evidence in her testimony. She notes the access parcel was included and identified in the site plan created by TEAL Architects approved with the 2022 Development Permit, although it was not listed on the face of the permit itself. Given this inclusion in the approved terms, it is unclear why reference to that PID was excluded from the drafting of Appendix A-1 of the LUB. Ms. Harper describes the issue as an administrative oversight.

[59] Second, the Appellant said that the 2022 Development Permit expired on its own terms on September 26, 2023. HRM countered that the approval of Appendix A-1 extended the time for the developments to proceed as a permitted use. Additionally, the Appellant says that the site plan included with the 2022 Development Permit pre-dates a series of material changes to the development, so the most recent proposal should have been given to Council for it to have an accurate depiction of the intended development.

[60] The Board finds that the 2022 Development Permit was the appropriate document for Council (and the Board) to consider in its review of whether including the access parcel within the list of properties where existing senior citizens housing is a permitted use carries out the intent of the MPS.

[61] There was no evidence contradicting the documentary record or the testimony of Ms. Harper that the site plan accompanying the approved 2022 Development Permit included driveway access to the development from the access parcel, with the building, parking, and dwelling units all located on the adjacent development parcel. The Board finds that the 2022 Development Permit was issued prior to the April 27, 2023, publication of notice of the MPS and LUB amendments, including Appendix A-1, removing new seniors citizen housing use from the MU-1 zone. The site plan accompanying the 2022 Development Permit includes the access parcel for the purpose of driveway access. The Board finds that Council's decision to add the access parcel property to Appendix A-1 for the limited purpose of access, while not increasing the housing units or expanding them to the second parcel, reasonably carries out the intent of Policy 9-A.

[62] The Appellant is particularly concerned about the lack of limits and guidance on the interpretation of what "access only" means within Appendix A-1. Further, the LUB does not contain any remaining land use regulations on senior citizens housing use since it was amended to remove it from the permitted uses in the MU-1 zone. The Lucasville Community Association shares the concern that the land use by-law should be clear about what "access only" permits or prohibits, and whether the listing of the access parcel in Appendix A-1 could be relied on in future planning processes to justify different developments or additional density on that property. Mr. Parsons fears that the absence

of a clear definition allows the possibility that developers can exploit the authority to add other multi-unit residential developments that do not protect units for seniors at all. The Board also noted its own concerns that the formatting of the amendment, as shown in the recommended motion in Attachment A to the Staff Report [Exhibit P-4, p. 57], could lead to uncertainty:

BE IT ENACTED by the North West Community Council of the Halifax Regional Municipality that the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville is hereby further amended as follows:

1. Amending APPENDIX A-1: EXISTING SENIOR CITIZENS HOUSING USES, as shown below by adding the text “40306565 – Access Only” below the numbers “41464512” as follows:

USE	PID	Total Number of Dwelling Units
Senior Citizens Housing	41464512 40306565 – Access Only	64

[63] Ms. Harper’s testimony was clear that her interpretation of the intent of the amendment is that the total number of dwelling units be associated with the development parcel PID reference only. She expressed her opinion that including “access only” alongside the access parcel PID number was sufficiently clear to direct a development officer that it may be used for driveway or pedestrian access only.

[64] To avoid any potential uncertainty, the Board wants the following finding to be clear. The Board finds that no dwelling units are associated with the access parcel for the purpose of senior citizens housing use. The reference to the “Total Number of Dwelling Units” (i.e., 64) in the chart in Appendix A-1 applies to the development parcel only. The intent of the MPS is to protect the status quo for senior citizens housing use that was approved for development or in place prior to shared housing amendments in September 2023. The Board finds no intent to allow more senior citizens housing use in the MU-1 zone, beyond the “same amount (sic) of dwelling units or less” on the associated properties designated within the Appendix. When interpreting the language of the LUB,

the Board relies on statutory interpretation principles. The Board finds that the use of “access only” means, as the Municipality’s Expert Witness and Applicant attested, that the parcel can be used for the purpose of access to existing senior citizens housing. The word “only” is limiting. The parcel’s inclusion in Appendix A-1 does not enable development of additional senior citizens housing units on that lot. Its MU-1 zoning means that the property can be developed in accordance with the other permitted uses set out in Part 13 of the LUB and any other applicable regulations in the LUB. The access parcel can have a dual purpose; that is, it could be used as the driveway for 505 Lucasville Road and for any of the alternative permitted as-of-right uses, once it receives the appropriate approvals. However, to be consistent with the Board’s interpretation of Policy 9A, it cannot be developed for senior citizens housing other than for access to the adjacent development lot.

4.3.2 Policy P-137 – General Criteria for LUB Amendments

[65] For all developments and land use by-law amendments, Policy P-137 of the MPS directs Council’s attention to a set of general matters applicable to those discretionary planning decisions. The Appellant alleged that Council did not adequately consider the direction in MPS Policy P-137, in particular P-137(b)(ii-v) and (d):

P-137 In considering development agreements and amendments to the land use by-law, in addition to all other criteria as set out in various policies of this Plan, Council shall have appropriate regard to the following matters: ...

- (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 central or on-site sewage and water services;
 - (iii) the adequacy or proximity of school, recreation or other community facilities;
 - (iv) the adequacy of road networks leading or adjacent to or within the development; and

- (v) the potential for damage to or destruction of designated historic buildings and sites.

...

- (d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.

[66] While the MPS directs that Policy P-137 be considered for any LUB amendment or development agreement proposal, it does not direct the depth of that consideration. Rather, it stipulates that Council must have “appropriate regard” for the listed matters.

[67] Policy P-137(b) directs Council to consider whether the proposal is “premature or inappropriate” having regard to the factors set out in (ii)-(v). P-137(d). It directs Council to consider if the proposed site is “suitable” in terms of its physical characteristics. The Appellant notes that planning staff’s recommendations provide general information rather than specific studies or detailed reviews. The Appellant and Intervenor’s concerns about that review (and their supporting evidence) were principally raised in the context of the development parcel, or the expansion of senior citizens housing use on the access parcel, and the resulting potential impacts of increased density in the area.

[68] Existing senior citizens housing use is already enabled for the development parcel under the LUB. The Applicant can build their intended development for that use, as-of-right, as long as their plans meet the other requirements for a building permit and other required approvals. Similarly, because the access parcel is already zoned MU-1, it is subject to the development controls in that zone. It can be developed for any of the other as-of-right uses for that zone without having to consider the MPS.

[69] However, the addition of the access parcel to Appendix A-1 did not occur at the time of the initial amendment. Senior citizens housing use was not enabled for that property at the same time as the development parcel. Therefore, to carry out the intent of the MPS, Council must consider this change just as it would any other LUB amendment, including, as appropriate, review of the general criteria in Policy P-137. It is, therefore, within the scope of the Board's review to look at the Policy P-137 criteria from the perspective of the expanded use of the parcel as access for a senior citizens housing development.

[70] All witnesses supporting the Appellant, as well as many of the letters of comment to the Board, raised concerns about traffic on Lucasville Road and the impacts of more density and development on vacant parcels before broader infrastructure improvements are completed. These echo concerns raised at the Public Hearing and in letters to Council asking that any further higher intensity development approvals on Lucasville Road be delayed until broader infrastructure studies and improvements are completed, and community perspectives are taken into consideration.

[71] A Traffic Impact Study for the development proposal at 505 Lucasville Road was completed in September 2021 [Exhibit P-8, p. 14], and reviewed by HRM engineering staff for the purpose of the permit process [Exhibit P-4, p. 62]. Planning staff did not request another traffic study for this application, instead relying on the initial study for the development parcel, which considered a higher number of dwelling units (98) that was under consideration at the time. That study showed that the proposed 98-unit development was not expected to have a significant impact on the surrounding transportation network. HRM says it follows that the results would be the same or perhaps

even more favourable in the context of a 64-unit housing development, or a 0-unit driveway development.

[72] Ms. Harper testified about staff's evaluation of the proposal against Policy P-137 and her assessment of the criteria in (b)(ii)-(v) which appear in the Staff Report. She also addressed these issues in her Expert Report at pages 7-8. Her findings, that the criteria had been satisfied for the purpose of Council's considerations, were not meaningfully contested by any of the evidence at the hearing. Further, the evidence before the Board largely repeated the contextual and factual evidence of community members that was available to Council at the Public Hearing.

[73] Policy P-137(d) directs Council to give appropriate regard to the suitability of the site in terms of its physical characteristics and environmental features. Ms. Harper's evidence indicated that the parcel does not appear to contain watercourses, marshes or bogs, and the grade and steepness were suitable for a driveway. She explained that both parcels will be required to obtain permission for stormwater management plans as part of the "Engineering Grade Alteration Permit" and development permit process.

[74] As noted in past decisions of the Board and the Nova Scotia Court of Appeal it is reasonable for Council to defer technical reviews on issues like stormwater control and environmental assessments to future established processes and to rely on other approval processes to ensure technical compliance and appropriate safeguards (see *Bennett v Kynock*, 1994 NSCA 114; *Cameron (Re)*, 2021 NSUARB 8; *Tawil (Re)*, 2022 NSUARB 95; and *Brison Developments Ltd. (Re)*, 2024 NSUARB 81). Ms. Harper says it is common practice in the review of a discretionary planning application to defer more detailed design and technical permit approvals until Council has decided on the rezoning

or development permit. The report notes that staff evaluated the access parcel to ensure it was suitable to accommodate driveway access for the development parcel. She determined that this review, along with the requirement for further approvals, was sufficient for a determination that the intent of Policy P-137(d) was carried out.

[75] The Appellant and Intervenor feel that the review and investigation on the impacts of development on the two parcels was insufficient. The Board finds these concerns are primarily directed at the overall impact of the development at 505 Lucasville Road. The Board has no evidence about any characteristic or factor that would demonstrate the access parcel is unsuitable for use as a driveway for a 64-unit residential development when considering the applicable policies. To the contrary, the only expert opinion evidence reviews each criterion and provides an explanation for how and why they are satisfied.

[76] The case law arising from *Archibald* directs the Board to defer to the municipal council when there are terms that require judgment or balancing of conflicting policies. The Board has previously held that, while *Archibald* directs the Board to defer to Council's judgment on the weight given to a policy where there are conflicts, Council cannot simply ignore a relevant policy altogether (*Steele (Re)*, 2024 NSUARB 12). Council has discretion, guided by the MPS and the specific wording of the policy text, to determine how and to what extent particular policies should be applied. However, that discretion "must be exercised in a manner that the planning strategy's language can reasonably bear" (*Cornwallis Farms Limited (Re)*, 2024 NSUARB 120, at para 53).

[77] The Staff Report addressed the elements of Policy P-137 and found they were satisfied. The Expert Report confirms those findings for the Board. The evidence

shows that the relevant considerations were brought to Council in a manner sufficient for it to give them “appropriate regard.”

[78] It would have been reasonable for Council to determine that proceeding with the amendment was not premature or inappropriate, even without a fulsome review of the current impacts of adding the access parcel. In this case, the intended effect of the 2023 MPS and LUB amendments enabling “existing senior citizens housing use” was to capture the status quo of approved development permit applications while limiting future expansion of that use. In this respect, the amendment was overdue, rather than premature.

5.0 CONCLUSION

[79] As required by MPS Policy 9A, Appendix A-1 of the LUB sets out the limited number of properties approved as “existing senior citizens housing use”, enabling their development in the MU-1 zone subject to the limits of the total number of dwelling units approved in development permits effective at the time the new shared housing planning rules were introduced in 2023.

[80] The evidence demonstrates that PID 40306565 formed part of the Development Permit approved for 505 Lucasville Road on September 26, 2022. It is identified on the site plan as facilitating access to the development parcel via a driveway. The LUB amendment to Appendix A-1 permits the use of PID 40306565 to access the senior citizens housing use on PID 41464512, the adjacent development parcel. It does not enable development of additional dwelling units for senior citizens housing use on the access parcel.

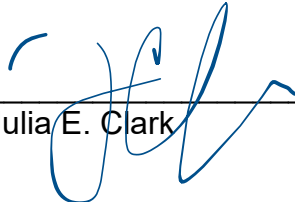
[81] Despite planning staff's characterization of the amendment as "housekeeping" or the correction of an administrative oversight, staff did review the proposal in terms of the relevant policy criteria in the MPS, including the general criteria for LUB amendments in Policy P-137, and other relevant policies. The Board finds Council had sufficient information on which to base its decision to approve the amendments. The Board found no overriding errors of fact or principle in its own review and defers to Council's discretion in weighing the relevant policy criteria.

[82] The Board was not convinced on a balance of probabilities that the decision of Council to approve the amendment to Appendix A-1: Existing Senior Citizens Housing Uses of the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law, did not reasonably carry out the intent of the MPS.

[83] The appeal is dismissed.

[84] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 24th day of August 2026.



Julia E. Clark