

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **GEORGE HARALABAKOS** from a decision of Council of the Municipality of the District of Chester refusing a rezoning request and development agreement affecting property at Highway 3, Simms Settlement (PID: 60082401)

BEFORE: Bruce H. Fisher, MPA, CPA, Member

APPELLANT: **GEORGE HARALABAKOS**
Paul Dec

INTERVENOR: **GABRIEL ROUTHIER**

RESPONDENT: **MUNICIPALITY OF THE DISTRICT OF CHESTER**
Jenny K. Boehner, Counsel

HEARING DATE: July 13, 2026

FINAL SUBMISSIONS: August 24, 2026

DECISION DATE: **October 27, 2026**

DECISION: **The appeal is allowed.**

TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	BACKGROUND	3
2.1	The Proposal	3
2.2	Letters of Comment	7
2.3	Public Speakers	10
2.4	Site Visit	12
3.0	BOARD'S JURISDICTION	13
4.0	WITNESSES and SUBMISSIONS	19
5.0	FINDINGS AND ANALYSIS	22
5.1	The <i>Introduction</i> Section	24
5.2	Permitted Uses in the Two Zones	28
5.3	Reasons Given in the Notice of Refusal	32
5.3.1	"inconsistent with community character"	32
5.3.2	"community support was low"	35
5.3.3	"Policy V-10 in the Municipal Planning Strategy"	40
5.3.4	"community feedback" and compatibility with "surrounding residential uses"	43
5.4	Other Potential Issues	50
5.5	Should the Board Order Council to approve the DA?	52
6.0	CONCLUSION	56

1.0 INTRODUCTION

[1] George Haralabakos (Appellant) applied to the Municipality of the District of Chester (Municipality or Chester) on January 22, 2025, to rezone a vacant 4.3-acre property in Simms Settlement, just outside Hubbards to Mixed Use (MU) zone. The abutting properties are vacant on three sides, with a series of residential homes and properties on one side. The property is currently zoned Settlement Residential 2 or SR-2 in the Municipality of the District of Chester Land Use Bylaw.

[2] Mr. Haralabakos is proposing a 3,150 m² development for the property that includes a gas station, and convenience and retail stores. Gas stations and retail stores are allowed in both the SR-2 and the MU Zones but are subject to size limits in both zones based on the lower of gross floor area or land area.

[3] Both the Planning Advisory Committee (PAC) and staff recommended rezoning and entering into a Development Agreement (DA) to allow the development. At its April 8, 2026, Council meeting no Councillor moved a motion for rezoning or the DA, hence there was no vote, and the rezoning request was “deemed refused” by Council. Council provided a Notice of Refusal (Notice) on April 15, 2026.

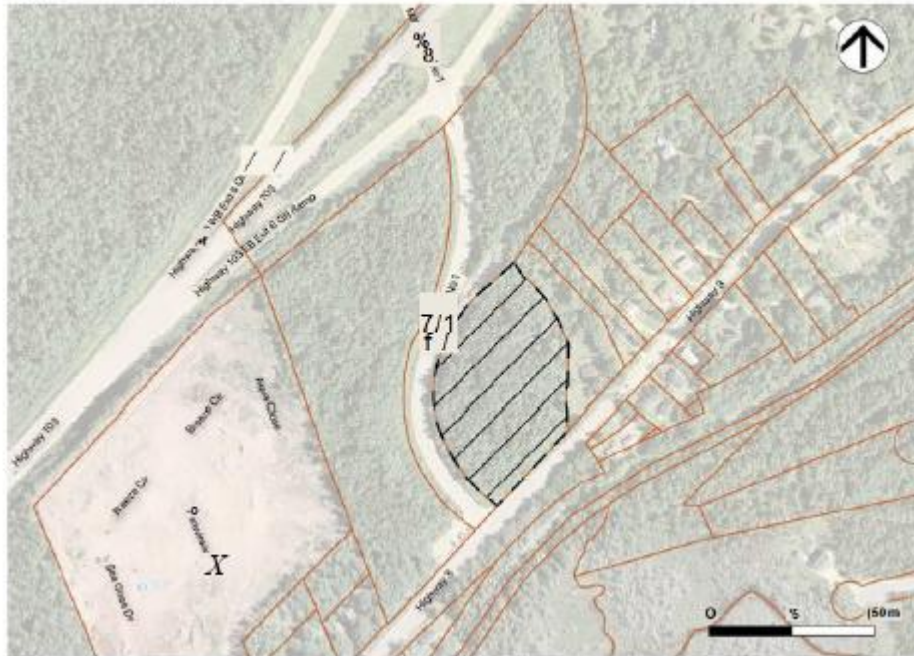
2.0 BACKGROUND

2.1 The Proposal

[4] Mr. Haralabakos applied to the Municipality of the District of Chester (Municipality or Chester) on January 22, 2025, to rezone a 4.3-acre property (PID#60082401) located on the corner of Mill Lake Road Number 1 (Mill Lake Road) and Highway 3, in the community of Simms Settlement, just outside Hubbards.

[5] The property is vacant and covered by vegetation and trees. The property is surrounded on three sides by vacant properties, with a series of residential homes and properties abutting its eastern boundary. A watercourse runs the length of the property, on its eastern boundary, close to the property line. Next to the property on its eastern boundary, and on the other side of Highway 3, are a series of residential homes and properties. While most properties are primarily residential, there are several that are either commercial properties or support home businesses. The following site maps show the subject property outlined in black lines and shaded in grey

Figure 1: Site map



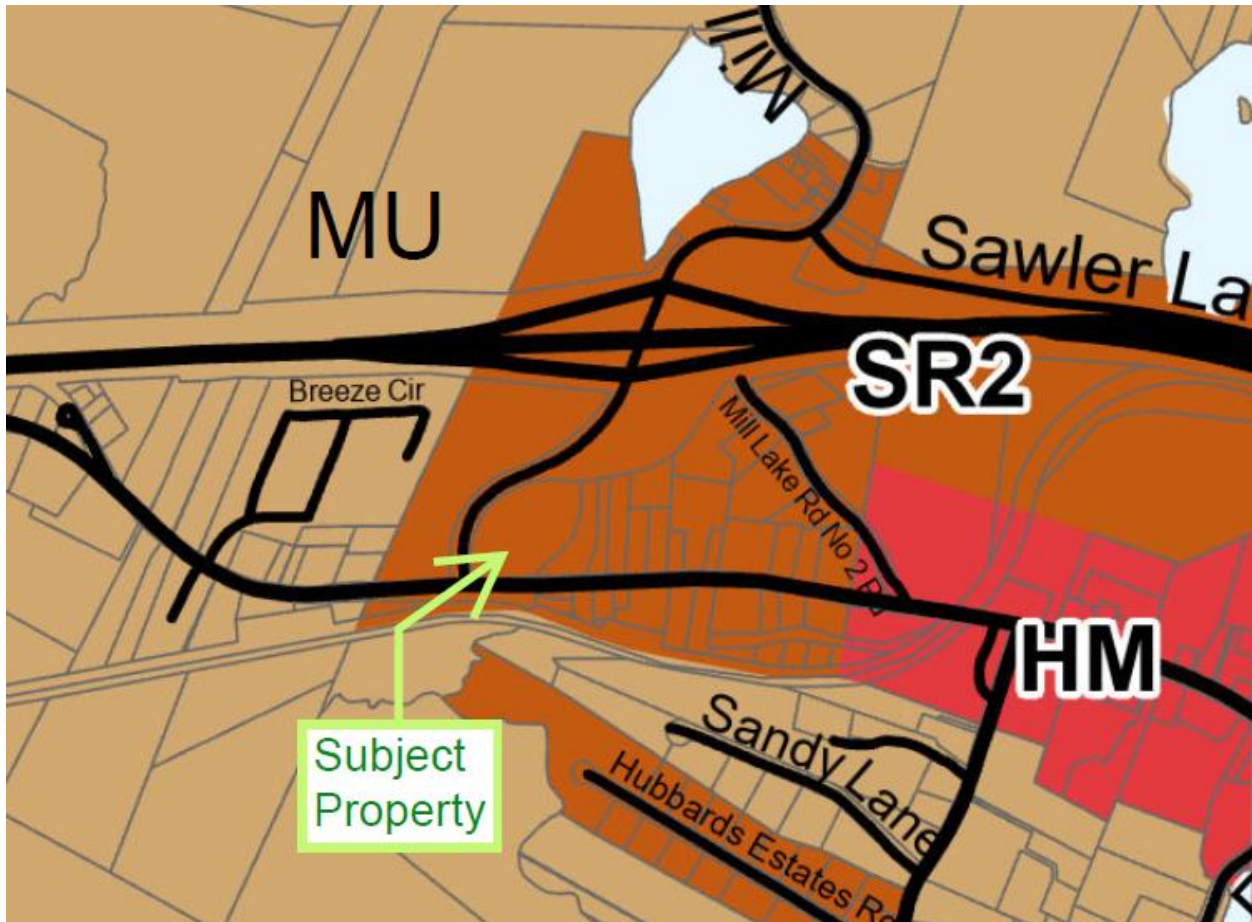
[Exhibit H-3, p. 47]



Figure 1: Site Context

[Exhibit H-10, PDF p. 17]

[6] The subject property is currently zoned Settlement Residential 2 or SR-2. While the surrounding properties, including those abutting Mill Lake Road, are also zoned SR-2, the subject property is close to the border with the Mixed-Use Zone (MU). Both the SR-2 and MU zones are in the Settlement designation. Hubbards, which is to the east, is in the Hamlet Zone (HM). The following is an excerpt from Schedule A, *Zoning Map*, from the Land Use Bylaw.



Note: The Board added the “MU” and the “Subject Property” box and arrow for context

[Exhibit H-9, PDF p. 289]

[7] Mr. Haralabakos is proposing a 3,150 m² development for the property that includes a gas station, and convenience and retail stores. The future retail tenants may include a grocery and liquor stores. Gas stations and retail stores are allowed in both the SR-2 and the MU zones as are any “other *commercial or institutional uses*” but are subject to size limits in both zones based on the lower of gross floor area or land area. In the SR-2 Zone (land area aside) the maximum allowable gross floor area is 500 m² under Site Plan approval, and in the MU Zone any gross floor area greater than 2,000 m² requires a

DA. Hence, for the project to proceed, the property must be rezoned to the MU Zone and requires a DA.

[8] Both the Planning Advisory Committee (PAC) and staff recommended that Council “give notice of intent to rezone the property to Mixed-Use Zone and consider entering into a DA with George Haralabakos to permit the development of commercial units”. A draft DA was included for Council’s consideration. At its April 8, 2026, Council meeting no Councillor moved a motion for rezoning, hence there was no vote, and the request was “deemed refused” by Council. Council provided a Notice of Refusal to the Applicant on April 15, 2026, which stated:

The request has been deemed refused by Chester Municipal Council. The proposed amendment was deemed inconsistent with community character and community support was low.

Policy V-10 in the Municipal Planning Strategy; community feedback at the Public Hearing determined the proposed development/use is not compatible with the surrounding residential uses.

[Exhibit H-3, p. 139]

2.2 Letters of Comment

[9] There were seven letters of comment, with some against the proposal and some in favour.

[10] Heather Norwood wrote that citizens voiced their concerns and opinions and the “consensus was not that they did not want any development” but they were against “a change to present zoning, thereby not allowing a large-scale development.” Citizens “addressed the impact a larger scale development could have on the existing ecosystems on the property.”

[11] Hillary Hughes was concerned with a number of issues including whether “intensification” could be supported “at this location”. She stated:

- The project would require “continuous electrical demand, including refrigeration systems, canopy lighting, and fuel or electric dispensing infrastructure” and there was no evidence the “existing system can accommodate this additional load without impacts.”
- There were “material considerations” over traffic including “turning movements for heavy delivery vehicles, interaction with fuel operations, heavy traffic flow, and performance under winter conditions.”
- There are “limitations and unresolved uncertainty” on water and septic services with “impacts to neighbouring wells.” There is “no evidence of enforceable mitigation measures to protect adjacent well users, monitor groundwater conditions over time, or provide remedy if interference occurs.”
- The record does not show how stormwater management “would perform under extreme conditions or failure scenarios, particularly given the presence of fuel related uses in a sensitive drainage area.”
- Fire or emergency response has not been assessed for “a higher risk land use, including fuel storage and increased public activity.”
- Through the Municipal Planning Strategy (MPS), “Council is entitled to determine whether critical matters, including infrastructure capacity, cumulative impact, environmental protection, transportation safety, and emergency response, have been satisfactorily demonstrated.”

[Exhibit H-7, PDF p. 4]

[12] Wendy Harrington brought up a number of concerns in her letter which states:

What **“assurances will the developer give to the neighbouring properties that their water supply will not be affected by the construction and ongoing operation of the development? And further, what steps will the developer take to remedy any adverse effects to the water source of the neighbouring properties should they occur?”**
[Emphasis in original].

What “protections are in place for the stream [next to the property]? Chemical spills such as gasoline, antifreeze, windshield washer fluid are poisonous to wildlife. Silt and runoff are known to deprive oxygen from the water and any living thing”.

“Has the entrance and exit been approved by the Department of Transportation? What has been done to address the likely increase in these traffic hazards?”
[Emphasis in original]

“The scale of houses and businesses of Hubbards and Simms Settlement is small, some might even call quaint but the scale of the proposed development is massive in comparison. The current zoning reflects the surrounding properties, the proposed re-zoning allows for almost twice the size and will dominate the area. There may not be a

business case for building a smaller structure, but **the ambience of the neighbourhood should be protected**". [Emphasis in original]

[Exhibit H-7, PDF pp. 8-9]

[13] Reese Parker wrote that he was concerned with "the potential negative effects and risks" on the community including "threatening the residential, village-style character, as well as compromising the integrity of the local water supply, traffic safety, and a significant watercourse."

[14] Mr. Parker disagrees with the Appellant's analysis of the intent of the MPS, saying that after public engagement Council choose to zone the area SR-2. He went on to note the specific MPS policies that supported Council's decision including V-8, CC-15 (b), A-27 (c), and A-30 (b). He also stated that:

- The development on "the north side of the 103 [referenced by the appellant] consists of very sparse residential density" while the application borders on "... the more densely populated, predominantly residential area of our community ..."
- The first view of the proposed development for traffic entering our community from the 103 would be "... loading docks, garbage bins and recycling stations ..."
- The Appellant claims the proposal "... repeats a pattern of the community that has already been established", but "... the Hubbards Shopping Center is located in the Hamlet area" and was built years ago "... under unrestricted rural zoning" (CC-15 (d)).
- There is "diversity between the north and south sides of Highway 103."
- The proposal is highway strip development and "does not constitute a well-designed building" (CC-15 (e)). The Appellant has made "no effort ... to connect or engage with our community in any way."
- Groundwater research was only done "to verify supply to support the development itself, while totally ignoring the potential impact on adjacent properties that rely on wells" (CC-15 (f)).
- The proposed gas bar, septic system, parking areas, and increased traffic risk contaminating the local water supply. The only "reasonable way" to safeguard the watercourse ecosystem and Hubbards Cove "is to not build an exclusively hard surface development practically on top of it."

[Exhibit H-7, PDF, pp. 11-13]

[15] Andrew Burchell wrote that he was "neither for or against development" but he didn't believe "the counsellors are treating people equitably and fair." He pointed out

that a recent rezoning “less than 500 m away was rubber stamped very quickly” whereas here not one counsellor “expressed any concern for an environmental impact statement” and rejected “an environmental setback.”

[16] Matthew Parliament of Fox Point wrote that he “strongly” supported the rezoning. He advocated growth saying that Hubbards has become “a more desirable location for young, growing families” and that fuel for vehicles is one of “the primary needs when living rural.” He said the project “is a must to meet needs of current and future population growth” and “fuel needs for commercial enterprises.” He said “The developer has selected an ideal location for its operation ... across from a carpool lot, near a T-intersection, and sandwiched between the 103 and HWY3. This location is out of core Hubbards and makes economic use of land that is otherwise unattractive.” [Exhibit H-7, PDF p. 1]

[17] Pat and Jacques Routhier wrote in favour of the project saying Hubbards “is a growing community” that does not “have the infrastructure to match that growth.” They wrote that Hubbards has a “makeshift gas station operating out of a construction trailer” without overhead shelters or pay at the pump. They stated they know many “seniors and people with disabilities who drive to other communities to purchase fuel because it is too difficult or inconvenient to do so locally.” They also said the “proposed location is excellent and would be convenient for both local residents and seasonal visitors coming to Hubbards.” [Exhibit H-7, PDF p. 2]

2.3 Public Speakers

[18] There were six speakers at the evening session.

[19] Bernadine Corkum has lived in Hubbards for 30 years. She said she found it worrisome that a developer could appeal and questioned whether the public had any

say in their community. She said that “residents and Council have already decided no to rezoning” and we should “stick with the original plan” without “further damaging our already fragile environment.”

[20] Keith Parker is a multi-generational resident. He said that Council was the “ultimate planning authority, not the planning staff.” The current SR-2 zoning was “intentionally applied following a gruelling five-year Municipal planning review process.” He stated that the issue was “scale and location” and that the proposal was textbook strip development. He added that the proposal “completely shatters the scale of our quiet residential zone where families rely on private well water.”

[21] Amy Parker lives five houses from the proposed development. She was concerned that, unless “approached thoughtfully”, rezoning could “gradually change the character, culture, and sense of a place that makes small communities so special.” She added that the current zoning “aligns with the scale and character of our seaside village. Expanding it to the MU Zone is a fundamentally different direction, the one that the community and Municipal council opposed for numerous reasons” and feels excessive.

[22] The fourth speaker was concerned the floodgates would open for more developers. She said that Hubbards was quaint and that's “what gives it soul, not these big department stores and big, huge Irving walk-ins and ... this is why she is what she is.” She wanted to keep Hubbards “as she is.”

[23] Keith Parker read a letter on behalf of Trina Richardson who works nightshifts and could not attend. She lives four driveways away from the site and is against development in that location. She said the community is all on the same page – against

development in that location. She said that property owners knew nothing of the study on neighbouring wells.

[24] James Boudreau spoke on behalf of Larex Properties. He quoted a number of MPS policies including V-8, V-10, V-11, CC-15, A-32, A-33, A-35 and said that the MPS should be read as a whole. He said that Council was trying to balance development in the settlement area with “the essential character of rural residential areas.” He spoke of compatibility “with neighbouring properties as well as issues such as traffic, lighting, noise, servicing, environmental impacts, and the impacts on nearby watercourses.” He concluded by saying that “council's decision was reasonably consistent with its intent. They considered community character, the compatibility, the purpose of the ... settlement residential zone, and the broader implications of the proposed re-zoning and the views of the residents. Those are all things the MPS specifically tells council to consider.”

2.4 Site Visit

[25] With the hearing assistant driving, I arrived at the property from Exit 6 and parked in the nearby carpool lot. I walked in front of the property on Highway 3 and proceeded on foot as far as #186, Highway 3. I observed the various residences, a mechanic shop and a home with firewood sales. I turned around and walked back to the subject property. There was a small, rough track with tire treads on the left side of the property fronting Highway 3. I followed this track through the woods to where it met up with the Mill Lake Road and observed the area where the second exit for the project is proposed. I re-entered the woods at a nearby no dumping sign and proceeded straight across the woods until I met up with the brook. This appeared to be the eastern corner of the property close to the edge of the septic field described in evidence. From here I proceeded back to the highway, following the hilly banks of the brook. I could observe the

abutting home and a shed at the back of that property. I was able to observe where a driveway would enter the proposed property and the area where the buffers are proposed.

[26] Returning to the car we proceeded west down Highway 3, past residential homes and the land lease park. We turned and drove back, passing the subject property again and continued into Hubbards, where I observed the Irving gas station, the grocery store and the NSLC. Passing through Hubbards we turned around and returned to, and departed from, Exit 6.

3.0 BOARD'S JURISDICTION

[27] In this appeal the burden of proof is on the Appellant to show, on the balance of probabilities, that Council's decision to refuse its application for the rezoning and the DA does not carry out the intent of the MPS.

[28] Under s. 247 of the *Municipal Government Act*, SNS 1998, c 18 (*MGA*), an applicant can appeal council's refusal to amend a land-use bylaw or a DA:

Appeals to the Board

247 (1) The approval or refusal by a council to amend a land-use bylaw may be appealed to the Board by

...

(b) the applicant;

(2) The approval, or refusal to approve, and the amendment, or refusal to amend, a development agreement may be appealed to the Board by

...

(b) the applicant;

[29] This provision applies to the appeal because Mr. Haralabakos' application requires amendments to the Land Use By-law (LUB) and, following that, approval of a DA.

[30] An applicant can only appeal a refusal to amend a land-use by-law or approve a DA on grounds that the decision does not reasonably carry out the intent of the MPS:

Restrictions on appeals

250 (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;

(b) the approval or refusal of a development agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;

(c) the refusal of an amendment to a development agreement, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy and the intent of the development agreement.

The powers of the Board are similarly limited on such an appeal. Under s. 251(2) of the *MGA*, the Board can only allow an appeal if it finds that council's decision "does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law."

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

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

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

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

...

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

...

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

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

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

(1) ... The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.

(2) The appellant to the Board bears the onus to prove facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.

(3) The premise, stated in s. 190(b) of the *MGA*, [*Municipal Government Act*] for the formulation and application of planning policies is that the municipality be the primary steward of planning, through municipal planning strategies and land use by-laws.

(4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS.

(5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.

(6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.

(7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. ... By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. This deference to Council's difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle. As Justice Cromwell said, the "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (*Lewis v. North West Community Council of HRM*, 2001 NSCA 98, ¶ 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.

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

[32] As noted above, the Board has no jurisdiction to allow the Appellant's appeal if Council "interpreted and applied the [MPS] policies in a manner that the language of the policies can reasonably bear."

[33] Additionally, the Board must address Council's conclusion and reasons in this appeal. Written reasons are required from Council, under s. 210(5) of the *MGA* when it refuses to amend the LUB:

210 (5) Within seven days after a decision to refuse to amend a land-use by-law referred to in subsection (1), the clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

[34] On this point, Justice Fichaud, writing for the Court of Appeal in *Archibald* (para. 30), notes the requirement for a municipality to state its reasons indicates an intention "... that the municipality's stated reasons be pivotal to the appeal." However, the Court went on to state that the Board is not confined to those reasons in deciding an appeal. Instead, the Court says the "ultimate question" for the Board is whether the decision by Council "... reasonably carried out the intent of the MPS ..." This is the test stated in s. 250(1) of the *MGA* and is the one which the Board must apply.

[35] The Court of Appeal in *Archibald* emphasized that council's written reasons for refusing the application establish the framework for the Board's review in the exercise of its appellate jurisdiction. However, where Council approves an application for a

development agreement or land use by-law amendment, it is not required to give reasons and often does not. In the end, whether or not there are written reasons, the Board's task is succinctly summarized in *Barrett*, at para. 29:

[29] The Board's job is to hear evidence, find the facts and determine whether the outcome - *i.e.*, the Council's approval of the development agreement - was reasonably consistent with the municipal planning strategy as a whole. It is not to micro-manage a *de novo* planning assessment.

[36] While *Barrett* and *Archibald* involved development agreements, the same general principles apply to rezoning appeals. That is, the Board must not interfere with the decision of Council unless the Board determines that the decision does not reasonably carry out the intent of the MPS.

[37] The materials before Council, and planning staff's recommendation, can provide the initial framework for the Board's review. Ultimately, even without specific reasons to focus its review, it is the outcome which the Board must ultimately address, based on the Appeal Record and the additional evidence and materials put before the Board.

[38] The Municipality's planning staff recommended that Council approve the Appellant's application. The Board's predecessor, the Nova Scotia Utility and Review Board, commented in *Armco (Re)*, 2021 NSUARB 147, about guiding principles for its review when Council has not followed the recommendations of its planning staff. Generally, Council must have "good planning reasons" for going against staff's recommendation that "must be rooted in the municipality's planning strategy":

[41] The Board recognizes that municipal councils are not bound by the recommendations of planning staff when considering planning applications and has repeatedly confirmed this in past decisions. The Board also recognizes the fact that a development is consistent with a municipal planning strategy does not automatically mean that a municipal council's refusal to approve the development is inconsistent with the strategy. As discussed above, the principles derived from Court of Appeal decisions confirm that there may be more than one conclusion that reasonably carries out the intent of a municipality's planning strategy.

[42] However, a municipal council should not arbitrarily dismiss the recommendations of its planning staff. When a municipal council disagrees with its professional planners, there should be good planning reasons to do so and these reasons must be rooted in the municipality's planning strategy (see *Re Bona Investments Limited*, 2009 NSUARB 58 at para. 75; *Re Griff Construction Limited*, 2011 NSUARB 51 at para. 146; *Re Rodgers*, 2013 NSUARB 131 at para. 109; *Re Abruzzi Properties Incorporated*, 2017 NSUARB 111 at para. 116; and *Re MacNeil*, 2021 NSUARB 78 at para. 59).

[39] The Board in *Liberty Lane Power and Logistics Inc. (Re)*, 2025 NSRAB 106,

also dealt with a matter where Council did not follow staff's recommendations and stated:

[63] The Board recognizes that municipal councils are not bound by the recommendations of planning staff when considering applications. Additionally, the fact that a planner has determined that a development is consistent with a municipal planning strategy does not mean that a refusal to approve the development must be "inconsistent." Sometimes, either outcome could be within the scope of the reasonable outcomes available under a planning framework.

[64] There are many policies within the MPS. Depending on how a council weighs the relative importance of one policy goal over another, it could be reasonable for it to approve the same application it may have refused in another circumstance where another policy goal was prioritized. Archibald recognizes that planning decisions often involve compromises between competing policies, and Council must weigh those factors to decide whether to allow a certain development that is not enabled as of right in the planning documents. If that discretion is exercised in a manner reasonably consistent with the overall intent of the MPS, Courts have said that the Board should defer to the authority of the elected officials in weighing their own policies.

[65] Despite this direction for deference, a municipal council must not arbitrarily overlook the recommendations of its planning staff and other responsible authorities. It is required to make evidence-based decisions that are grounded in the municipal planning documents, which are developed in a transparent process with public input and provincial oversight.

[40] In determining the intent of the MPS, the Board also applies the principles of statutory interpretation which have been adopted by the Court of Appeal, as well as the provisions of s. 9(1) and s. 9(5) of the *Interpretation Act*, RSNS 1989, c 235.

4.0 WITNESSES and SUBMISSIONS

[41] Under s. 27 of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, the Board operates under relaxed rules of evidence. To the extent any witnesses relied on

hearsay or testified on matters beyond their expertise or personal knowledge, the Board weighed the evidentiary value in the normal course.

[42] The Appellant was represented by Paul Dec at the hearing. The Appellant filed evidence but did not submit an expert report. Mr. Dec was qualified as an expert without objection in municipal land-use planning. As a witness at the hearing he provided an overview of the facts and timeline.

[43] It was Mr. Dec's opinion that Council's decision did not reasonably carry out the intent of the MPS. He pointed out that only one Councillor spoke at the Public Hearing. He thus concluded that in refusing the application, Council did not consider the MPS, the recommendations from staff or the PAC. He testified that Policy CC-15 enabled the re-zoning "where different uses can coexist with each other where there is generally a mixed character of uses, and where particularly areas around major highways should be prepared for development." He further described the proposal as compatible with its neighbours, saying that:

... on three sides of the property there are vacant lots. The area is wooded. There's only one immediate neighbour to the east, which is separated by some wooded buffer which would also be, for the most part of the property, continued on the proposed development except in the location where the Department of Public Works would like to see the driveway access.

Other than that, any ... so there is already a limited potential for interference with neighbours, because there are not many immediately neighbouring sites around it. As for ... but as for the policies around compatibility. So the landscaping, and especially the buffer on the eastern side of the property, provides for some buffering from properties to the east.

[Transcript, pp. 29-30]

[44] Mr. Dec went on to say the traffic impact analysis "would not cause any operational concerns for the intersection" and that the groundwater study indicates the proposal would not "take away resources from neighbouring properties." He also pointed out that nearby (but not adjacent) properties to the west are zoned MU. He emphasized

Policy CC-15(c) on preparing for development “especially near major highways”. He also referenced a recent nearby re-zoning north of the Exit 6 connector, saying it was larger and provided insight for this hearing.

[45] The Respondent called two witnesses. Emily Statton is a Municipal Planner with the Municipality. She testified as a fact witness. Garth Sturtevant is the Senior Planner for the Municipality. He filed an expert report [Exhibit H-3, Expert Report] and was qualified as an expert in land use planning matters, including the interpretation and application of municipal planning strategies and land use by-laws.

[46] Ms. Statton was the lead planner for the proposal and wrote the various staff reports that went to PAC and Council, including the report for the April 8, 2026, Public Hearing (H-8, p.105). She described the general requirements in the SR-2 and MU Zones and spoke to the public engagement, which she stated was generally against the proposal. She confirmed under questioning that, after reviewing policies in the MPS for rezoning and DAs, she concluded that the proposal was compliant with the MPS.

[47] Mr. Sturtevant testified as an expert witness and provided the Board with opinion evidence. He supervised Ms. Statton and reviewed her report before it went to Council. He stated he didn’t disagree with the report, but that Council made a reasonable decision in refusing the application. He testified that:

Simply meeting the intent of the MPS does not compel council to approve an application.
In fact, it is the minimum threshold for council to consider approving an application.

[Transcript, p. 161]

[48] He concluded in his Expert Report that Council’s refusal was “reasonable based on the totality of the existing planning strategy policies and considerations that they

were looking at.” He described the staff report as looking at “technical requirements” saying that is the “minimum threshold” and that:

... there are clear policies within the plan that may not have been highlighted in the staff report but may still be relevant to council's decision-making that do give them that leeway.

[Transcript, p. 162]

[49] Mr. Sturtevant explained that his Expert Report showed that Council could, using one of the rationales in his report, exercise discretion to reject the application and that his Expert Report provided a “path that Council can [use to] reasonably deny the application based on policy.” But he confirmed that he did not know, other than the Notice, the basis on which they rejected the staff report. He stated, “I’m not in their head” and “I don't know what they're thinking,” Under questioning, he agreed that most of the policies he quoted in his report were not in the Notice. When asked if, as a planner, he would be comfortable rejecting the proposal based on the intent of the MPS he said it was a “speculative question” but that he tended to think he “would end up recommending in favour from a purely planning perspective.”

[50] The Intervenor, Gabriel Routhier, did not file a report or evidence and did not present testimony. He participated in the cross-examination and submitted closing arguments.

5.0 FINDINGS AND ANALYSIS

[51] The Board must determine whether the Appellant has shown, on a balance of probabilities, that the Municipality’s decision to refuse to rezone the property and enter into a DA did not reasonably carry out the intent of the MPS.

[52] In determining whether the Council's refusal reasonably carried out the intent of the MPS, I have started by carefully reviewing each stated reason within the Notice. As the Notice did not specify the relevant MPS policy for each reason, I have attempted to map those reasons back to individual MPS policies. I then reviewed other reasons that were raised in either the written submissions at the hearing, or that I considered myself following a review of the various MPS policies.

[53] I have undertaken a "thorough factual analysis". I have looked not just at the Notice but at other evidence, I have reviewed the evidence "pragmatically and purposively, to make the MPS work as a whole."

[54] I have considered the various staff reports on the proposal, in particular the staff report that was before Council at the April 8, 2026, Public Hearing. The staff report concluded the proposal was in conformity with the MPS and recommended rezoning and entering into a DA. It provided specific analysis on multiple policies within the MPS. In some cases, the analysis was substantive while in other instances it was more a statement of fact or context.

[55] I have paid particular attention to Mr. Sturtevant's Expert Report. He explained at the hearing that, while his report shows how Council might potentially reject the proposal, he did not know their precise reasons or policies for refusing the proposal. Because of this I did not place significant weight on his report as evidence of Council's reasoning. I did, however, consult it extensively for guidance on interpretation of the MPS.

[56] I think it is valuable, before I discuss the deeper issues, to have a broad discussion on two specific topics that cut across these issues: the *Introduction* section of the MPS, and the similarity of permitted uses within the SR-2 and MU Zones.

5.1 The *Introduction* Section

[57] The *Introduction* section of the MPS and the various policies and statements within it, were discussed in detail at the hearing and appear in the Notice. As the MPS must be read as a whole, I consider understanding the *Introduction* section important to interpreting the MPS as a whole.

[58] The *Introduction* is divided into five sections, including *Purpose; Vision and Goals; Character and Land Use; Policy Approach; and Authority and Scope*. There are 18 policies within the *Introduction* (V-1 to V-18), several of which were discussed in submissions or at the hearing.

[59] Included within the *Introduction* is the Municipal Vision. It was constructed through public engagement:

The Municipality of the District of Chester will be a self-sufficient and resilient Municipality, built on the foundation of the character of each of our unique communities. Our communities will work together to provide economic opportunities and a balanced lifestyle for all. [Emphasis added]

[Exhibit H-9, PDF p. 14]

[60] The Vision section mentions “character” and that theme continues in the *Character and Land Use* section (1.3). That section’s preamble explains that:

... The different parts of the Municipality are defined by their community character. This character defined in the planning strategy in a range from rural (least dense) to village (most dense) – is its basic organizing structure. [Emphasis added]

[Exhibit H-9, PDF p.16]

[61] The narrative for the *Character and Land Use* section establishes that community character determines the land use designations:

... To account for their distinct needs, this Planning Strategy assigns a Community Character Area to all land within the Municipality.

The Community Character Areas are land use designations that accommodate degrees of density, as follows:

- **Rural Area**

- **Settlement Area**
- **Hamlet Area**
- **Village Area**

Community Character Areas express how different parts of the Municipality exist today, and how they will grow and change. Rural and settlement areas will continue to have low population densities. They will continue to have a wide mix of land uses, development patterns and large resource sectors. The Village (Chester) and Hamlets will continue to have higher population densities. To respond to development pressure and conflict, these denser Planning Areas will have stricter regulations. [Emphasis added]

[Exhibit H-9, PDF p.17]

[62] The narrative is followed by two policies, V-1 and V-4, that establish the municipalities' designations and require the land uses in each designation to be specified:

Policy V-1

All land in the Municipality shall be designated with a Community Character Area that expresses the area's desired character. [Emphasis added]

Policy V-4

The Municipal Planning Strategy shall identify the desired land uses allowed in each Community Character Area, Industrial and Business Area, and Environmental Protection Area. [Emphasis added]

[Exhibit H-9, PDF p.18]

[63] The *Policy Approach* section (1.4) explains the Municipality's approach in determining the level of planning regulation:

Council's longstanding policy has been to impose minimal planning regulations, unless a group of residents asks for more regulation. This Planning Strategy takes a different approach by providing guidance on how all parts of the Municipality should grow and develop. Under this Planning Strategy, basic planning regulations are in place across the Municipality to protect water quality and other critical common resources. Additionally, this plan establishes basic environmental protections in all zones, as well as regulations that will limit the impact of very large or disruptive developments.

Many residents are strongly connected to their land and want few restrictions on how they use it. Other residents desire regulations that would protect existing developed areas from incompatible forms of development. Such regulations include land use policy and policy on building design and physical character.

[Exhibit H-9, PDF p. 20]

[64] This section outlines its basic approach to regulation: provide minimum basic regulations and, if residents or Council wish greater regulation, Council shall consider doing so. It lays this out in Policies V-7, V-8 and V-9:

Policy V-7

All land in the Municipality shall be subject to, at a minimum, basic land use regulations that:

- a) control very large or disruptive land uses;
- b) safeguard the natural environment.

Policy V-8

Council shall consider more restrictive planning regulations when a group of residents has shown that it wishes to consider such regulations. Council shall undertake a public engagement program to understand the wishes of local residents and property owners before creating or approving any amendments.

Policy V-9

Notwithstanding Policy V-8, Council, on its own initiative, may consider more restrictive provisions of the Planning Strategy and the Land Use By-law where Council deems that such land use control is in the best interests of the Municipality. [Emphasis added]

[Exhibit H-9, PDF pp. 20-21]

[65] Policies V-10 and V-11, which will be discussed later in this decision, provide greater clarity by discussing conflicts and compatibility (V-10) and how to approach policies and regulations within an area (V-11).

[66] In reviewing the *Introduction* section, I have concluded that its importance lies not in creating specific restrictions, but in guiding the interpretation of the MPS and LUB. Policies V-1 and V-4, for instance, lead directly to Section 4.0 *Community Character*, that enables the land use designations and zones; Policy V-7 points to Section 3.0 on *General Land Use Policies*; and Policy V-8 and Policy V-9 influence the overall planning approach by guiding the degree to which planning should be restricted.

[67] While I will discuss the specifics of the Notice and various policies in the next sub-section, I have concluded that much of the *Introduction*, including its policy

statements, functions as a “purpose statement” in providing interpretation to the MPS, rather than providing substantive direction as to how the MPS or LUB can be applied in specific circumstances. I am guided in this by Ruth Sullivan’s *Sullivan on the Construction of Statutes*, 6th ed (Markham, ON: LexisNexis Canada, 2014) (*Sullivan*). While Sullivan’s references are to legislation, I find the principles and approach are applicable to interpreting an MPS:

14.38 Definition of purpose statement. Strictly speaking a purpose statement (or a policy statement or a statement of principles) is not a descriptive component, but rather is a type of interpretation provision. Its function is to set out the principles or policies the legislation is meant to implement or the objectives it is meant to achieve. Purpose statements are found near the beginning of Acts and at the beginning of Divisions, Parts or particular provisions within Acts. Some are explicit and begin with the words “The purpose of this Act are ...” or “The following principles shall be applied in interpreting this Act.” Others simply recite the principles or policies that the legislation wishes to declare without introductory fanfare. Purpose statements are a relatively recent innovation in Canadian statutes and are not mentioned in either the federal or provincial Interpretation Acts.

14.39 Purpose statements may reveal the purpose of legislation either by describing the goals to be achieved or by setting out governing principles, norms or policies. Unlike preambles, purpose statements come after the enacting clause of the statute and are part of what is enacted into law. **This makes them binding in the sense that they carry the authority and weight of duly enacted law. However, like definitions and application provisions, purpose statements do not apply directly to facts but rather give direction on how the substantive provisions of the legislation – that do apply to facts – are to be interpreted.** [Emphasis added]

[Sullivan, p. 454]

[68] This is not to say that purpose statements have no force and can be ignored but rather that, depending on their specificity and context, they may carry less weight than substantive provisions do. In *National Farmers Union v Prince Edward Island (Potato Marketing Council)* (1989 PEIJ No 14), J. McQuaid referred to purpose as a “signpost” while the words used “are the road which it does in fact follow.” To the extent the *Introduction*, including its policy statements, are signposts, I may place greater weight on those policies which are more substantive in their wording.

5.2 Permitted Uses in the Two Zones

[69] As discussed, Policies V-1 and V-4 set out the requirements to designate all land within a Community Character Area and to identify the land uses in each area. This leads to the *Community Character* section including Policies CC-1 and CC-3, the latter of which enables the “appropriate” land uses, and the designations and zones. Both the *Introduction* and the preamble to the *Community Character* section refer to four designations, styled Community Character Areas: Rural, Settlement, Hamlet and Village.

[70] The subject property and the surrounding properties are all part of the Settlement community character designation. No parties have challenged whether those properties are, or should be, part of that designation. The *Community Character* section includes sub-section 4.2 on the *Settlement Area*. Within that sub-section, Policy CC-14 creates the Settlement designation:

Policy CC-14

A Settlement Area designation shall be created, which shall generally be placed on the more densely-populated areas primarily south of Highway 103 that have experienced modest development pressures. The extent of the Settlement Area shall be identified on the Generalized Future Land Use Map.

[71] The intent of the designation is set out by Policy CC-15:

Policy CC-15

The intent of the Settlement Area designation is to:

- a) permit a mix of uses that can foster cohesive development of moderate density;
- b) provide a varying level of regulation which recognizes the diversity of the different development patterns within the Settlement Area;
- c) prepare for development, especially near major highways;
- d) encourage development compatible with the Area's character;
- e) ensure that commercial and light industrial development is well-designed and does not create highway strip development;
- f) safeguard the natural environment, especially water quality.

[72] The *Community Character* section goes further by laying out the various zones within it and describing the uses within those zones. There are extensive preamble and detailed policies, not all of which need to be detailed here. Sub-section 4.2 on the

Settlement Area is broken down further and includes 4.2.2 *Settlement Residential Zones* and 4.2.3 *Mixed Use Zone*.

[73] In 4.2.2 *Settlement Residential Zones*, the SR-2 Zone is enabled as one of the settlement residential zones. Policy CC-20 outlines the intended uses and sizes for the settlement residential zones:

Policy CC-20

In the Settlement Residential Zones, the permitted land uses, levels of land use intensity, and approval processes shall be tiered according to their assigned level, and shall:

- a) permit single-unit and two-unit dwellings as the primary land uses;
- b) permit small-scale commercial, institutional, and light industrial uses;
- c) prohibit heavy industrial uses and a range of intensive commercial and institutional uses. [Emphasis added].

[74] It is important to note what the MPS says about commercial uses and their size in the zones. Under Policy CC-20, in the *Settlement Residential Zones* “small-scale commercial” is permitted while a “range of intensive commercial” is prohibited. Further, Policy CC-21 explains that “small-scale commercial” is allowed by development permit, while Policy CC-22 says “Moderately-sized commercial” is allowed by site plan approval and development agreement.

[75] Conversely, in 4.2.3 *Mixed-Use Zone* the MU Zone is enabled by Policy CC-23. The MU Zone is intended to allow a “range of residential, commercial, institutional” uses (Policy CC-24) including “small commercial” by development permit (Policy CC-25) and “large commercial” by site plan approval (policy CC-26). The various terms used (“small-scale”, “Moderately-sized”, “large”, “intensive” and “range”) are left undefined.

[76] While the MPS describes these sizes and uses in broad terms, the LUB provides much greater detail. It is worth noting that they do not exactly correspond to the quoted MPS policies. For example, the LUB allows larger commercial uses in the MU Zone by development agreement, even though Policy CC-26 says “large commercial” is

by site plan approval. None of the parties noted this discrepancy and, as the LUB and MPS were passed concurrently, I will not consider this further.

[77] Section 6.4.1 of the LUB provides the “permitted uses and developments” and Section 6.4.2 provides the “prohibited uses and developments” for the SR-2 Zone. Prohibited uses in the SR-2 and MU Zones include all heavy industry, composting facilities, fur farming, and contaminated soil facilities. Meat, fish and processing facilities are prohibited in the SR-2 Zone but allowed in the MU Zone. Abattoirs and salvage yards are prohibited in the SR-2 Zone but allowed in the MU Zone if they are over 2,500 m².

[78] Commercial uses, such as proposed for the subject property, fall under the description of “Any other commercial or institutional use or combination of uses” not prohibited, and are subject to size restrictions. These size restrictions are:

- In the SR-2 Zone,
 - o a gross floor area less than 100 m² or which occupies a land area less than 500 m², whichever is lesser is by development permit; and
 - o a gross floor area between 100 m² and 500 m² or which occupies a land area between 500 m² and 2,000 m², whichever is lesser is by site plan approval.
- In the MU Zone,
 - o a gross floor area up to 2,000 m² or which occupies a land area up to 6,000 m², whichever is lesser is by development permit; and
 - o a gross floor area greater than 2,000 m² or which occupies a land area greater than 6,000 m², whichever is lesser is by development agreement.

[79] Comparing these requirements to the subject property is important. Appendix A of the draft development agreement shows the proposal as consisting of 3,150 m² including a gas station that is 220 m² and a retail building with two spaces (2,170 m² and 760 m²) totaling 2,950 m². Both gas stations and retail are allowable uses in both the SR-2 and MU Zones. This was confirmed at the hearing by the Mr. Sturtevant who emphasized that size and intensity were important to consider:

A. So size and intensity is what our by-law uses, and that's how those zones are separated. It's the size and intensity that differentiates between the different zones.

So I don't disagree that the land use is permitted in both, but I hope the Board can understand that a development that's many times more will have more impact and potential compatibility ... a neighbourhood store is compatible with a residential neighbourhood. A big box-store is not compatible with a residential neighbourhood.

[Transcript, p. 218]

[80] I have concluded that the proposed gas bar of 220 m² is a permitted use in both the SR-2 or the MU Zone. Mr. Sturtevant suggested that the canopy for the gas pumps was a roof and anything with a roof was a structure and should be included in the gross floor area. Hence, he says a gas bar of that size might not be built in the SR-2 Zone with the same number of pumps. However, the LUB's definition of gross floor area is the area "measured from the exterior of outside walls, or from the mid-point of common walls." While the pump area may be a structure it has no walls to measure from. There was no evidence presented that the Municipality measured the gross floor area of the gas pumps. I have concluded that the proposal for a gas bar of 220 m² is allowable in the MU Zone by development permit and in the SR-2 Zone by site plan approval, irrespective of the number of gas pumps. Its size aside, a gas station or gas bar is a permitted use in either zone.

[81] Likewise, retail is allowed in both zones although one should consider that there are variations in the type of retail operations that might be considered a different type of use. These variations may correlate to differences in size. As Mr. Sturtevant opined:

I think most would agree that a 200-foot corner store with five parking spaces versus a 50,000-square-foot Walmart with 800 parking spaces is quite different.

[Transcript, p. 217]

[82] Whether a 2,000 m² retail operation may be a different use from a retail operation less than 500 m², depends on the context. There was sparse evidence at the hearing as to what might occupy the proposed retail space, although it was designed so that a grocery store could be a tenant. However, a larger retailer may not differ significantly from a smaller retailer, and without evidence, it should not be assumed that they are different uses simply due to their relative sizes.

5.3 Reasons Given in the Notice of Refusal

[83] The Notice specified four reasons for the refusal, only one of which referred to a MPS policy:

The request has been deemed refused by Chester Municipal Council. The proposed amendment was deemed inconsistent with community character and community support was low.

Policy V-10 in the Municipal Planning Strategy; community feedback at the Public Hearing determined the proposed development/use is not compatible with the surrounding residential uses.

[Exhibit H-3, p. 139]

5.3.1 “inconsistent with community character”

[84] The Notice states that the “proposed amendment was deemed inconsistent with community character and community support was low.” I will first examine inconsistency with community character.

[85] The Notice provides no other information or context on the deemed inconsistency with “Community Character”. It does not specify where in the MPS or LUB this requirement exists or which policy statement is used to refuse the application. Community Character is an undefined term in both the MPS and the LUB. It appears numerous times in the MPS but is not used in the LUB. In the MPS it is used in:

- *Introduction* section including Policies V-1, V-4 and V-11;
- *General Land Use Policies* section including Policies G-2, G-11 and G12;
- *Community Character* section including Policies CC-1, CC-3 and CC-49;
- *Economic Development* section, including Policy E-42; and
- *Implementation & Administration* section, including Policy A-29.

[86] In reviewing the various references in the MPS to Community Character, the concept appears in 11 policy statements. Six of these statements (G2, G-11, G-12, CC-49, A-20, E-42) have no bearing on this matter as they deal with other issues such as agriculture, the Lakeside Zone or residential development agreements.

[87] Four of the other policy statements that include Community Character relate to Community Character Areas and the roles they play in determining designations. I have already mentioned Policies V-1 and V-4 which led to land use designations and zones. These do not provide any substantive direction as to when or how LUB amendments can be approved. They provide a signpost to Policies CC-1 and CC-3, which enable the designations, and mention community character, but provide no substantive direction on LUB zoning or other regulations:

Policy CC-1

The Generalized Future Land Use Map shall depict the Community Character Areas in the Municipality.

Policy CC-3

The Municipal Planning Strategy policies shall describe:

- a) the desired character of each Community Character Area;
- b) the types of land use appropriate in each Community Character Area;
- c) the appropriate zones and regulations that may apply in each Community Character Area. [Emphasis added]

[88] The matter at hand deals with a proposed zone change from SR-2 to MU. Both zones are within the Settlement Community Character Area. There is no proposed change in Community Character Areas. Policies CC-1 and CC-3 deal with designations and not the assignment of zones and, hence, provide no authorization to refuse a rezoning.

[89] The last of the 11 policies, V-11, is again a purpose driven statement that provides direction as to how policies and regulations are to be designed. It provides no substantive direction on rezoning or DA applications:

Policy V-11

Land use policies and regulations shall reflect each area's:

- a) rural or village context;
- b) existing land uses;
- c) community character;
- d) desire for regulation;
- e) vision. [Emphasis added]

[90] The Expert Report submitted by Mr. Sturtevant does not clarify what Council meant, or what might be meant, by “inconsistent with community character”. The only references in his Report to community character are to the views expressed by the public saying that “Council heard repeatedly from the vast majority of the public that the rezoning was not in keeping with community character” and that adjacent “neighbours expressed concerns about ... a change in the character, feel and scale of the existing neighbourhood.” This suggests that the term community character is being used by the public as a synonym for compatibility. The reference to community character in the Notice does not appear to tie into any MPS policy. Regardless, I will consider arguments around compatibility later in this section.

[91] At the hearing, Mr. Sturtevant was questioned about Community Character and whether he confirmed that it was “reasonable to say that compatibility could also encompass community character.” He stated:

Absolutely. Oftentimes that ... community character is often described as sort of the whole feel and look and does something fit. And so I ... compatibility is definitely a piece of that.

[Transcript, p. 236]

[92] He went on to confirm that “the different zones within, ... like say a settlement area could have different community characters” and that “there’s differentiation between each of the zones.” He went on to state that the MPS had policies that covered “an analysis on community character” or the “compatibility of community character.” However, he was unable at the hearing to identify any of those specific policies.

[93] I have reviewed the Notice, the MPS and LUB, the hearing testimony and the various submissions. I have concluded that there are no relevant policies in the MPS that reference both Community Character and zoning or that would allow Council to refuse the proposed rezoning due to the “inconsistency of community character” in this location. The MPS directs that Simms Settlement is Settlement Community Character Area, and enables the SR-2 zone and MU zone to exist in that area. The MPS is clear in its intent that MU zoning is compatible with that area’s community character. Council’s decision to refuse the proposal for being inconsistent with Community Character does not carry out the intent of the MPS. This is not language that the MPS can reasonably bear.

5.3.2 “community support was low”

[94] Two parts of the Notice referred to the role of the community in Council’s refusal. The first stated that the “proposed amendment was deemed inconsistent with

community character and community support was low.” [Emphasis added]. The second stated that “Community feedback at the Public Hearing determined the proposed development/use is not compatible with the surrounding residential uses.” I will address the first statement, although some of what I say will apply to the second statement.

[95] As with “Community Character,” the Notice provides no additional information or context on “low” community support, nor does it specify which policy statement Council used to refuse the application because of “low” support. “Community support” and “low” are undefined terms in the MPS and LUB.

[96] Municipal councils, by their very nature, typically consult with the public across a wide range of issues, including planning. Some forms of consultation, however, are legally required. The *MGA* lays out requirements for public hearings and requires a public participation program for “the preparation of planning documents.” In its *Introduction* section to the MPS, the Municipality requires a public engagement program before amendments are created:

Policy V-8

Council shall consider more restrictive planning regulations when a group of residents has shown that it wishes to consider such regulations. Council shall undertake a public engagement program to understand the wishes of local residents and property owners before creating or approving any amendments. [Emphasis added]

[97] The Appellant and Municipality disagree on the relevance of Policy V-8. The Appellant testified that Policy V-8 speaks to “how the Municipal Planning Strategy was arrived at and suggests which processes can be in effect in order to make amendments.” Mr. Dec did not consider it important for this application. Mr. Sturtevant testified that as a re-zoning was an amendment to the LUB it “triggers all applicable policies in the MPS to be reviewed and analysed against them.”

[98] There are two parts of Policy V-8. The first requires Council to “consider more restrictive planning regulations when a group of residents has shown that it wishes to consider such regulations”. Hence if a group of citizens advocates for stronger regulations, Council must “consider” those regulation changes. The Appellant placed considerable emphasis on the term “regulations” saying that this part of the MPS was only for MPS amendments, not LUB amendments. While I agree that this part of the MPS is generally purposeful, I have concluded that the term “regulations” may include LUB amendments. There are numerous references within the MPS to regulations within the LUB. For instance, the *Purpose* sub-section (1.1) in the *Introduction* states the MPS “includes policies for land use and development control, which are implemented by regulations in the Subdivision By-law and Land Use By-law” [Emphasis added]. More than a few policies refer to regulations in the LUB. These include, but are not limited to, G-26 (the “Land Use By-law shall detail regulations ...”), G-29 (The “Land Use By-law shall establish regulations ...”), EC-3 (“providing appropriate environmental standards through regulations in the Land Use By-law”), and E-1 (“The Land Use By-law may contain a range of stormwater regulations ...”) [Emphasis added].

[99] While I agree that the term “regulations” may refer to LUB amendments, such as a zone change, I would note that Policy V-8 states only that “Council shall consider more restrictive planning regulations” [Emphasis added]. The Policy does not require Council to approve or reject such “regulations”. It does not state that if residents propose more restrictive regulations Council must, or may, approve them, simply because a group of citizens advocates for them. It simply requires Council to “consider” such changes. If Council refused to consider changes for more restrictive regulations

advocated by the public, it might be argued that they had failed to follow Policy V-8. However, none of the parties argued that Council did not consider the wishes of residents and there is no evidence that they did not consider the public's wishes. In considering any such changes to the LUB, I have concluded that Council must still follow the intent of the MPS.

[100] The second part of Policy V-8 requires a public consultation program and requires that the program be used before "creating or approving any amendments." It requires public participation processes for Council to follow but it does not bind Council to any outcomes from that public participation. Policy V-8 establishes a signpost for a public engagement program.

[101] The *Implementation & Administration* section of the MPS includes subsection 9.1, on *Public Participation*, that leads to the creation of a Public Participation Program. This is outlined in the preamble to the section, that sets out the program's four principals (clarity, variety, timeliness and meaning), followed by six policies (A-1 to A-6) on public participation. Policy A-1 requires public participation to "follow the Municipality's Public Participation Program;" Policy A-2 outlines the principles from the preamble; A-4 lays out the public hearing requirements; and A-5 allows that Council "may vote to give second reading to approve the documents." Policy A-6 provides for notice to abutting municipalities.

[102] The content of the Public Participation Program is outlined in Policy A-3. The program laid out in Policy A-3 provides the steps for public consultations and the notice requirements:

Policy A-3: Public Participation Program

As required by the Municipal Government Act, a Public Participation Program (A-3) shall be completed before first notice of a Public Hearing is advertised. The minimum required Public Participation Program shall be as follows:

a) Council provides direction to staff to:

i) Prepare a draft Development Agreement; Or

ii) Prepare amendments to a Municipal Planning Strategy, Second Planning Strategy, Land Use By-Law or Subdivision By-Law; Or

[iii]) Conduct a review of, or prepare a new Municipal Planning Strategy, Secondary Planning Strategy, Land Use By-Law or Subdivision By-Law.

b) Public Information Meeting advertised in local newspaper, on the Municipal website, via Municipal Alerts, posted to the Municipal Office doors and may be posted to Municipal Social Media sites. This meeting is open to the public and advertised at least 5 days prior to the date of the meeting.

c) Planning Advisory Committee Meeting held. This meeting shall be advertised in a local newspaper, on the Municipal Website, via Municipal Alerts, posted to the Municipal Office doors and may be posted to Municipal Social Media sites. This meeting is open to the public and advertised at least 5 days prior to the date of the meeting

[103] The Public Participation Program creates certain requirements for Council to follow. None of the parties has suggested that Council did not follow the requirements of the program and there is no evidence to suggest that it did not. Like Policy V-8, the Public Participation Program does not bind Council to any outcomes from that public participation and Council must still follow the intent of the MPS.

[104] Two other policies in this section include public participation requirements. Policy A-24(c) states that when “reviewing development agreements, Council shall be satisfied that ... the applicable Public Participation Program has been followed and residents’ opinions have been carefully considered.” Policy A-32(c) uses almost identical language to A-24. It states that when “considering amendments to a land use by-law or a subdivision by-law, Council shall consider ... the applicable public consultation program has been followed and residents’ opinions have been carefully considered.” As with the

other policies that were examined, there is no suggestion the program was not followed and that residents' views were not considered.

[105] The Board has dealt with public consultations in a number of matters. Public engagement is an extremely valuable element of local government, regardless of whether it has been specifically included in the MPS. Engaging with the public assists a council in understanding the evidence and the context for planning proposals. The public may provide insights that help council understand if a proposal aligns with the intent of the MPS. Those consultations may provide valuable input to a council, but it remains council's decision, not the public's decision. Council is responsible for approving or rejecting such proposals. Regardless of public support, council's decision must follow the intent of the MPS. In doing this it may not just reference public opinion as its reason. Rather, it must identify valid planning reasons based on the intent of the MPS. I have therefore concluded that that it would not be reasonable to refuse the proposal relying solely on low community support.

5.3.3 "Policy V-10 in the Municipal Planning Strategy"

[106] The third reason cited by Council in the Notice was "Policy V-10 in the Municipal Planning Strategy." This is the sole policy that Council directly refers to in the Notice. Policy V-10 states:

Policy V-10

Council intends to control land use and development in a manner that will lessen conflicts between land uses and in a manner that is compatible with the existing pattern of land use in the Municipality.

[107] The Appellant says Policy V-10 "does not state that new development must reproduce the existing pattern of land use." The April 8, 2026, staff report did not mention Policy V-10. The Municipality, in its closing arguments, however, says that:

The existing pattern of development in the immediate area is predominantly residential. Council reasonably determined that the intensity and scale of the proposed development do not align with that character. The MPS policies provide Council with a reasonable basis for reaching that conclusion, particularly having regard to Policies CC-15, V-10, and A-35.

[Respondents Closing Submissions, p. 15]

[108] The question here is what Policy V-10 means. I respectfully disagree that Policy V-10 provides Council with the discretion to refuse a proposed LUB Amendment, and that it can be used to do so in this instance. I have read the section carefully. I have concluded that this is a broad, purposeful statement that describes how the MPS is to deal with land uses.

[109] The Policy starts by saying Council “intends to ...” This is not mandatory language, nor does it suggest the policy is simply restrictive. It suggests that the Policy may be intended more as a signpost for the MPS and is meant to be broader in its application.

[110] The term “control land use and development” is central to understanding its application. That wording tells us what this Policy is about. It is about controlling land uses, not zone changes or development agreements. It isn’t meant to apply to individual applications or developments. If it had, it might have read “Council intends to control a development ...” or “each application” or other language. It is useful to contrast Policy V-10’s wording of “Council intends to control land use and development” with the narrower and directive language of Policy A-35 that starts by saying:

When considering amendments to the Land Use By-law, Council shall be satisfied that the proposal is appropriate with respect to:

[111] Policy V-10 continues by explaining why Council is doing this. Council is attempting to achieve two outcomes: lessening “conflicts between land uses” and compatibility “with the existing pattern of land use in the Municipality.”

[112] Policy V-10 fits into the broader *Introduction* section as a purposeful statement. Similar policies discussed earlier pointed towards more substantive policies elsewhere in the MPS. Policy V-10 points towards the various policies that control and designate land use. The overall *Introduction* section sets out the elements of the MPS. As mentioned, Policy V-1 and Policy V-4 lead to the more specific community character requirements in Section 4; Policy V-7 leads to general land use policies, while Policy V-8 and Policy V-9 guide the degree to which planning is restricted. Policy V-10 leads to the use requirements, saying that lessening conflict and compatibility are the goals. It is accompanied in this by Policy V-11 which states:

Policy V-11

Land use policies and regulations shall reflect each area's:

- a) rural or village context;
- b) existing land uses;
- c) community character;
- d) desire for regulation;
- e) vision.

[Exhibit H-9, PDF, p. 21]

[113] This is not to say that Policy V-10 cannot form more than an interpretative role. It may be that in a different situation it might be determinative, such as a proposal on allowable land uses. But it plays no role in an individual application for a proposed zone amendment. It is a broad, purposeful statement and care must be taken in applying it to very narrow circumstances.

[114] There are two other points to consider with Policy V-10. First, it refers to "conflicts between land uses." As discussed, the allowable land uses are almost identical between the SR-2 Zone and the MU Zone, so it is not clear what might be the conflict "between land uses" in this application.

[115] Secondly, it refers to compatibility “with the existing pattern of land use in the Municipality.” The compatibility reference is not to neighbouring or adjacent properties but to “land use in the Municipality.” Again, this contrasts with Policy A-35 that sets up compatibility tests “within the proposed zone” (sub-section (a)), “with adjacent properties” (sub-section (b)), and “with nearby land uses” (sub-section (c)). Comparing an application for a zone change, however, to compatibility with “the existing pattern of land use in the Municipality” is problematic. There are multiple land uses across the Municipality, and it is unclear how such a compatibility test might compare a single property to multiple uses across the Municipality. If the policy is meant as a broader signpost, however, clarity is brought to those words. Council is saying it intends to design land use restrictions after considering the pattern of use across the entire Municipality. This leads to other policies that define permitted land uses. This interpretation allows the MPS to be read as a whole. The reference to the entire Municipality, however, precludes the interpretation that this part of the policy was intended to be narrowly applied to one application.

[116] For these reasons I have concluded that Policy V-10 cannot be used to refuse a zoning application. Policy V-10 is a purposeful statement that deals with broadly controlling land use, not zoning applications.

5.3.4 “community feedback” and compatibility with “surrounding residential uses”

[117] The fourth reason cited by Council in the Notice was that “community feedback at the Public Hearing determined the proposed development/use is not compatible with the surrounding residential uses.” The Notice did not cite a MPS policy for this reason.

[118] I have previously discussed public engagement and the various policies that support it so I will not repeat that analysis. A conclusion that the public considers a proposal to be incompatible may be valuable input for a council. But, as discussed, Council may not just reference public opinion when it is not supported by its approved planning policies. Council must identify valid planning reasons based on the intent of the MPS.

[119] Regardless, I have reviewed the compatibility wording. Policy V-10 comes closest to the language used in this part of the Notice. I have already discussed Policy V-10 and will not repeat it in depth as I have concluded it cannot be interpreted as applicable to a proposed zone amendment. I will note that the wording in the Notice bears a similarity to the last part of Policy V-10 that says: “compatible with the existing pattern of land use in the Municipality”, although the Notice says: “compatible with the surrounding residential uses.” While similar wording, the difference, however, is striking. Policy V-10 refers to land use across the Municipality while the Notice talks of residential use in the surrounding area. These phrases mean very different things. Council must find its reasons within the policies it included in the MPS; it cannot substitute words that have such different meanings.

[120] I have reviewed the other policies of the MPS that address compatibility to compare to the words used by Council. Most of the policies that use compatibility refer to zones or situations that are not relevant for this analysis (e.g., the Hamlet Zone or Waterfront Public Access Development Agreements). I note two situations of interest.

[121] First, the *Community Character* section includes sub-section 4.2 entitled *Settlement Area*. The preamble states that “Council has created the Settlement Area to lessen land use conflicts in more built-up areas.” Within that section Policy CC-15 states:

Policy CC-15

The intent of the Settlement Area designation is to:

...

d) encourage development compatible with the Area’s character;

This policy was used to establish the *Settlement Area* designation, but it does not establish the zones within the designation, nor does it specify how properties within the designation are assigned to the zones within the designation. Because it focuses on the designation and does not specify any controls or restrictions on zones, Policy CC-15(d) could not be used to prevent a zoning amendment.

[122] As discussed previously, both the SR-2 and the MU Zones have their own segments within the *Settlement Area* sub-section (the SR-2 Zone shares its segment with the SR-1 Zone.) The goals for the Settlement Residential Zones include safeguarding “the essential character of rural residential areas.” Within these two segments are a series of policies that establish the two zones and explain their permitted uses and approval processes. These include Policy CC-19 that “created” the SR-2 Zone and Policy CC-23 that does the same for the MU Zones; and a series of policies that specify the land uses and the approvals for development permits, site planning and DAs. However, none of the policies for the SR-2 or MU Zones refers to compatibility, or similar terms such as “character”. As Policy CC-15(d) refers to “compatible with the Area’s character” but not the zone’s character, and the other policies in the section refer to the zones but do not

specify zone compatibility, I have concluded that the Notice cannot reasonably rely on these policies to refuse the application on compatibility grounds.

[123] The second policy of note is Policy A-35, specifically sections (a), (b) and (c). In contrast to many of the policies I have reviewed, Policy A-35 is designed to review LUB amendments, which would include zone changes. It sets out 16 sections that the application must meet. The first three sections are relevant for my analysis:

Policy A-35

When considering amendments to the Land Use By-law, Council shall be satisfied that the proposal is appropriate with respect to:

- a) compatibility of the proposed land uses permitted within the proposed zone;
- b) compatibility of the development, and potential developments, with adjacent properties in terms of size, lot coverage and density;
- c) potential compatibility issues with nearby land uses resulting from lighting, signage, outdoor display and storage, traffic, vehicle headlights, and noise;

[Exhibit H-9, pp. 157-158]

[124] By contrast the wording of this Policy is different from others I have reviewed in this matter. The first part demonstrates that it applies to LUB “amendments”. The language that “Council shall be satisfied” means that it is mandatory [Emphasis added]. But it also provides Council with potential discretion in considering the requirement has been “satisfied.” This is a value-begging question that Council must resolve. That discretion is not absolute.

[125] There are several challenges with interpreting the Notice as allowed under any of the three sections of Policy A-35. First, Council did not say it determined there was a compatibility issue, it said the community determined there was a compatibility issue. It is for Council to decide if there is a compatibility issue, what that issue is, and how it relates to the intent of the MPS. Secondly, Council has made no mention of the policy

that compatibility would contravene. Policy A-35 involves a value-begging question that Council must address. They have not addressed Policy A-35 and while I have some latitude to review any decision under this policy, I cannot assume what their decision might be if they addressed Policy A-35 or give deference to Council's discretion and judgment when it did not consider a policy. Council is to be afforded discretion when it makes a value-based decision, but the Board cannot place words in the mouth of Council when Council has not spoken.

[126] While Council has not discussed Policy A-35, I will briefly address the merits of each of the three sub-sections. Section (a) refers to "compatibility of the proposed land uses permitted within the proposed zone." This can be interpreted to include the land uses that would be allowed should a zone change. The policy does not place any parameters on which properties the proposed uses must be compatible with. However, as discussed, the relevant uses between the current SR-2 Zone and the proposed MU Zone are nearly identical. The only difference that might be seen as significant is the size limitation on retail. Council might have opined that the small retail allowed in the SR-2 Zone was, in effect, a different use than the larger retail allowed in the MU Zone, but this is not supported by the evidence. I would further note that in his testimony Mr. Sturtevant testified that, since gas stations and retail are allowed in both zones, the proposal could not be turned down under Policy A-35(a).

[127] Section (b) refers to "compatibility of the development, and potential developments, with adjacent properties in terms of size, lot coverage and density." The proposed size of the retail stores triggered the need for the zoning amendment. Mr. Sturtevant stated in his Expert Report that Council agreed the "proposed scale ... was

inappropriate". At the hearing he said that size was a "significant" term and that Policy A-35(b) started "to move us into that territory where the differences between those zones become more relevant to the decision." However, neither size nor Policy A-35 were raised in the Notice. The staff report reviewed Policy A-35(b) but referred only to lot sizes, not building sizes. At the hearing Mr. Dec commented on compatibility, saying that it was a complex question and that size was one of a large number of factors. He elaborated more generally:

Compatibility essentially speaks to, you know, blending into the mix of land uses that are around it. So maybe the ...maybe a good example of what ... to speak about is what not compatibility is, right? Like if this development was to be located in a cul-de-sac of a residential subdivision that would not be a compatible development, right? Because the entire character of the entire street is residential low-rise. It would be a street with very low traffic volume.

Versus when we're looking at this site and its compatibility we're the first property next to a highway exit. So traffic volume is already fairly high. There is a mix of different land uses two properties away across the street. There is an automotive business. I believe it's a car garage. Two properties away there is a mobile home park, which is probably one of the highest-density residential developments in the area. There are 75 households on that property.

[Transcript, p. 69]

[128] There was limited evidence and testimony on size and compatibility to evaluate. I concur with Mr. Dec that it is difficult to separate out size alone. I would also note that the larger retail is at the back of the subject property. There is a 20-metre building setback and 30-metre septic setback from the watercourse (which is almost on the property line) that will remain wooded. The retail buildings are outside of the buffers, thus sheltering the larger retail from the neighbouring residential uses. Due to these factors, I am not persuaded that the proposal is incompatible due to its size.

[129] Section (c) refers to "potential compatibility issues with nearby land uses resulting from lighting, signage, outdoor display and storage, traffic, vehicle headlights,

and noise.” Noise and lighting were raised by Mr. Sturtevant in his Expert Report, but when questioned at the hearing he was unaware of any specific concerns around noise and lighting.

[130] Traffic was the subject of discussion among residents. The Appellant submitted a draft Traffic Impact Analysis authored by Harbourside Transportation Consultants. Their conclusions on future traffic were:

... Traffic volumes associated with the commercial development are expected to have a negligible impact on traffic operations at the intersection of Trunk 3 and Mill Lake 1 Road during the AM peak hour. During the PM peak hour, average delay on the stop-controlled approach (Mill Lake 1 Road) is expected to increase by approximately 15.5 seconds per vehicle. Queues on the approach are expected to increase by approximately 37 metres (approximately 5 vehicles). While the development will have some impact on traffic operations at the intersection of Trunk 3 and Mill Lake 1 Road during the PM peak hour, no operational concerns are anticipated at the intersection. Higher delays are expected at the site’s primary driveway on Trunk 3 during the PM peak hour under a shared left/right lane at the stop-controlled driveway. [Emphasis added]

[Exhibit H-10, PDF p. 31]

[131] It is worth noting that according to the Traffic Impact Analysis a significant portion of the new traffic is generated by trips to the gas bar, which is a permitted use under both the SR-2 and MU Zones.

[132] The Traffic Impact Analysis recommended a left turn lane on Highway 3 at the site driveway; separate left and right turn lanes on the proposed driveway on Highway 3; and clearing vegetation from sight lines on the Mill Lake access road.

[133] As with noise, lighting and other issues, traffic was not raised in the Notice.

[134] I would note that the staff report included comments on Policy A-35(a) and (b) but provided no definitive statements as to how it applied to the proposal. The staff report reviewed Policy A-35(c) and said:

Lighting, signage, displace [sic], traffic, etc. could have possible effects on neighbouring properties. A Development Agreement provides room for negotiation on these sorts of details.

[Exhibit H-3, PDF p. 108]

[135] Mr. Sturtevant's Expert Report quoted Policy A-35 and stated that the SR-2 Zone allowed "a smaller scale deemed appropriate by Council" and that Council "considered the concerns of nearby residents and ultimately agreed that the proposed scale and potential compatibility issues with traffic, noise and lighting was inappropriate."

[136] The Notice refers to community feedback on compatibility. It is not clear to me how Council might define compatibility or what policy it is using when it refers to compatibility. I have reviewed the policies in the MPS that refer to compatibility. I do not find the available evidence persuasive that the proposed project is incompatible. As such, I have concluded that a refusal by Council because "community feedback" determined the project was "not compatible" with "surrounding residential uses" is not an interpretation that the language of the MPS can reasonably bear.

5.4 Other Potential Issues

[137] I have considered other potential issues, not addressed in the Notice, that might prevent the re-zoning. In his Expert Report Mr. Sturtevant raised Policy A-32(d), which refers to the amendment being in the "best interest of the Municipality":

Policy A-32

When considering amendments to a land use by-law or a subdivision by-law, Council shall consider the following:

- a) that the amendment meets the intent of the Municipal Planning Strategy and the intent of any relevant Secondary Planning Strategies;
- b) that the amendment conforms to all relevant Municipal By-laws;
- c) that the applicable public consultation program has been followed and residents' opinions have been carefully considered;
- d) that the amendment is in the best interest of the Municipality. [Emphasis added]

[Exhibit H-9, PDF p. 156]

[138] He stated in his report:

This policy outlines the context in which Council may consider an amendment to a Land Use By-law (Rezoning). Whether or not the application was deemed to meet the intent of the Municipal Planning Strategy, d) allows a broad interpretation for Council to determine the overall best interest of the Municipality. This consideration may be applied by Council at their discretion, as the elected body, to determine the best course of action. [Emphasis added]

[Exhibit H-8, PDF p. 6]

[139] Policy A-32 was not included in the staff report but the report did review Policy A-24(d) as to whether the DA is in “the best interests of the Municipality.” It concluded that this Policy was “Deemed satisfied”. At the hearing Mr. Sturtevant was questioned on the meaning of “best interest.” He said that it was not defined and that he couldn’t “speculate on how they [Council] might interpret that” but that he thought there was a “broad range for interpretation.” He agreed that there was no evidence before Council as to what the “best interests” were. As Council did not raise this policy or the issue of “best interests” in its Notice, and as the staff report considered the DA in the Municipality’s best interests, I have given this argument no weight.

[140] In his Expert Report, Mr. Sturtevant said that the “development agreement was proposed in a manner that may be considered highway strip development.” This is an issue because Policy CC-15(e) says the intent of the Settlement designation is to “ensure that commercial and light industrial development ... does not create highway strip development”. At the hearing he also stated it could be considered a plaza development. The term strip development is not defined in the MPS or LUB. Policy CC-15(e) refers to the designation and does not distinguish between the SR-2 and MU zones. I accept the opinion of Mr. Dec that strip development is a “a corridor of continuous development over long stretches of transportation infrastructure”. I have concluded that this proposal, which

has three buildings off of one driveway, does not meet such a definition and I place no weight on this argument.

[141] The Appellant raised several arguments related to a 2022 approved re-zoning on the same connector but on the north side of Highway 103. While Council chose to approve that re-zoning, the circumstances are not identical. Moreover, a council may have the ability to either reject or accept a planning application. A council's approval of one application is not confirmation that they cannot reject a similar application, even if it were identical. I have placed no weight on this issue.

[142] I carefully reviewed all material in the matter. To the extent that this decision does not explicitly address a statement in an MPS policy, sub policy, or an argument raised by a party or in public commentary, it should be understood that argument was not actively pursued, or I did not agree with the argument or consider the issue to be relevant to the outcome of this appeal.

5.5 Should the Board Order Council to approve the DA?

[143] The PAC and staff both recommended the re-zoning and entering into the draft DA. Council understood that the two were linked, saying in its Notice that:

The Planning Advisory Committee's recommendation was in favour of moving forward the rezone request, ONLY if the development agreement was approved in concurrence. This was reflective of the community's concerns of scale & scope of the proposal, in relation to community character.

[Exhibit H-3, PDF p. 139]

[144] Council did not vote on the rezoning, leading to a deemed refusal, therefore the proposed DA became moot. I have considered whether in overturning the refusal and ordering the zone change, I should also order the draft DA to be approved. Council has not voted on the DA, and it is not clear that the draft DA contains provisions that Council would consider adequate, should they turn their minds to the proposed contents.

[145] I asked the parties for submissions on this issue. The Appellant has noted several procedural issues. In his view, if I order the process to continue at second reading, the Municipality might delay in favour of a MPS amendment or could defeat the DA. and the Appellant may have lost their appeal rights. However, the Appellant questions whether I have the authority to order the DA approved when it has not proceeded to second reading.

[146] The Municipality has taken no position, saying that it “does not seek to advance a position on an issue that Council has not itself determined.” It further stated:

The Municipality recognizes the potential concern with the Board making a determination on a Development Agreement that was never considered or decided by Council. At the same time, the recommendation of MPAC contemplated that the proposed rezoning should proceed only if the Development Agreement was also approved. This reflected the concern that rezoning the Subject Property to the Mixed-Use Zone, without a corresponding Development Agreement, would permit the broader range of as-of-right uses available in that zone without the site-specific controls intended to ensure compatibility with the surrounding residential neighbourhood. The proposed Development Agreement was intended to address that concern by regulating the form and scope of development on the Subject Property.

[Respondent's Closing Submissions, p. 20]

[147] I have considered the procedural and jurisdictional issues that are involved in this issue. I considered that Council provided public notice on both the rezoning and the development agreement and held the public hearing as advertised. They did not vote on either proposal and issued the Notice specifically on the rezoning application. I have concluded that this also led to a deemed refusal of the DA, hence allowing the Appellant to appeal. The Appellant's Notice of Appeal refers in general terms to both the rezoning and the development agreement.

[148] The Board's powers on appeal are:

Powers of Board on appeal

251 (1) The Board may

(a) confirm the decision appealed from;

(b) allow the appeal by reversing the decision of the council to amend the land-use by-law or to approve or amend a development agreement;

(c) allow the appeal and order the council to amend the land-use by-law in the manner prescribed by the Board or order the council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

(d) be granted;

(e) allow the appeal and order that the development permit allow the appeal by directing the development officer to approve the tentative or final plan of subdivision or concept plan.

(2) The Board shall not allow an appeal unless it determines that the decision of 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]

[*Municipal Government Act*, SNS 1998, c 18]

[149] Hence, the *MGA* provides the Board the authority to order the DA approved, amended or changed. Conversely, the *MGA* does not provide the Board with any explicit authority to order that the DA process recommence at Council or to direct Council procedures and processes in general. I would also note that under Section 78(5) of the former *Planning Act*, RSNS 1989, c 346, the Board had the power to refer a DA back to council, but that it no longer has that specific authority.

[150] I have concluded that the Board's jurisdiction is clear in that it may order a DA that was refused, to be approved, amended or changed. The Municipality has stated that the DA was "never considered or decided by Council." However, by refusing to approve the rezoning, the Municipality did decide to refuse the DA. It may be reasonable to say, however, that Council never fully turned its mind to the substance of the DA.

[151] It is not the role of the Board, however, to substitute its own planning policy for that of Council. The Board's powers on a planning appeal are narrow, and it may only

allow an appeal where council's decision "does not reasonably carry out the intent of the municipal planning strategy". I interpret this to mean that I may order a DA approved, amended or changed but only when the order is necessary so that the DA will reasonably carry out the intent of the MPS. I recognize that there may be a public interest in ensuring that a council has fully turned its mind to the DA. However, the Board lacks the authority to act solely for the purpose of improving a DA. To do so means the Board would, however inadvertently, intervene in planning matters outside its authority.

[152] In this particular instance, I am satisfied that the draft DA carries out the intent of the MPS. I note that it has been supported by both the PAC and by the staff report. The staff report included an extensive examination of the MPS policies for development agreements including those in 9.7 *Development Agreements* within the *Implementation and Administration* section, including Policies A-22 through A-25 and A-27 and A-28. This covers requirements for stormwater standards (Policy A-22); filing requirements (Policy A-23); requirements to ensure the proposal is not "premature or inappropriate" (Policy A-25); requirements on vegetated setbacks, stormwater infrastructure and standards, slopes and wetlands (Policy A-27); and, requirements for commercial developments such as traffic, separation from adjacent properties, effect on residential streets and the quality and quantity of water resources (Policy A-28). Under Policy A-24 the staff report concluded that the development agreement conforms to the intent of the MPS, that the Public Participation Program had been followed, and that the DA was in the "best interests" of the Municipality.

6.0 CONCLUSION

[153] I have carefully considered the evidence and submissions that have been made in this matter. Council has rejected the proposed rezoning and draft development agreement against the recommendations of its professional planners.

[154] In reviewing Council's Notice, they placed considerable emphasis on community feedback and support. The Board recognizes that community input and consultation is valuable; however, the decision to refuse an amendment or DA is one that Council must make after considering its MPS. Various policies in the MPS require the Municipality to engage the public but do not, however, require the Municipality to follow the results of that engagement if to do so would not carry out the intent of the MPS. Rather, in refusing a proposal, the Municipality must consider whether the refusal is based on an interpretation of the MPS that it can reasonably bear. If it cannot, the Municipality has no option but to approve the proposal.

[155] The Notice included language referring to "community character", "low" community support, and "compatible." These concepts are important but must be supported by policies within the MPS. I cannot find policies within the MPS that would allow this proposal to be rejected for inconsistency with "community character" or low "community support" based on the evidence provided. I have reviewed policies that refer to compatibility but, as the uses between the existing and proposed zones are nearly identical, I have concluded that they do not support refusing this proposal.

[156] I reviewed Policy V-10, which is the only MPS policy that Council referred to in its Notice. I have concluded that this is a purposeful policy that leads to the establishment of more substantive policies elsewhere in the plan, particularly those dealing with land uses. It is not a policy that is used to consider rezoning proposals.

[157] I recognize that there are other policies within the MPS that might, depending on the interpretation, give Council the discretion to reject the proposal. Council is allowed discretion on interpreting value-laden words. But it must demonstrate that it turned its mind to considering those words and that it “applied the policies in a manner that the language of the policies can reasonably bear.” In its refusal, Council did not reference the underlying policies (other than Policy V-10) behind the refusal nor provide support or reasoning for its conclusions. The Board cannot assume what Council thought, which policies it consulted, or how its decision was supported. As stated in *Archibald*, “deference to Council’s difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle.”

[158] While there were residents who disliked the proposal, it is not for the Board to interpret or weigh public support. The Board must focus on Council’s decision and whether its refusal can be supported by the intent of Council’s MPS.

[159] As such, I am ordering that the Municipality re-zone the property from the SR-2 Zone to the MU Zone, and that the draft development agreement be approved by Council.

[160] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 27th day of October 2026.



Bruce H. Fisher