DECISION **2025 NSRAB 147**
M11816

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

-and-

IN THE MATTER OF A REQUEST FOR COSTS by **HAZELVIEW INVESTMENTS INC.** respecting an appeal allowed by the Board from a decision of a Development Officer for Halifax Regional Municipality refusing a variance for property located at 41 Cowie Hill Road, Halifax, Nova Scotia

BEFORE:	Roland A. Deveau, K.C., Vice Chair Julia E. Clark, LL.B., Vice Chair Bruce H. Fisher, MPA, CPA, Member
APPLICANT:	**HAZELVIEW INVESTMENTS INC.** Kevin Latimer, K.C. Sarah Dobson, Counsel
RESPONDENT:	**HALIFAX REGIONAL MUNICIPALITY** Kelsey Nearing, Counsel Meg MacDougall, Counsel
FINAL SUBMISSIONS:	September 24, 2025
DECISION DATE:	**December 22, 2025**
DECISION:	**The Board approves Hazelview's request for costs. If the parties are unable to agree on quantum, the Board will direct written submissions.**

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1.0 SUMMARY

[1] Hazelview Investments Inc. (Hazelview) has requested an award of costs from Halifax Regional Municipality (HRM) after the Nova Scotia Regulatory and Appeals Board (Board) allowed its appeal from a decision of HRM's development officer refusing variances to "stepback" requirements of the Suburban Housing Accelerator Land Use By-Law (LUB). HRM takes the position that costs should not be awarded in this matter. Accordingly, the Board initiated a paper hearing process to receive submissions on the issue.

[2] This matter involved an appeal under s. 250A of the *Halifax Regional Municipality Charter*. Under s. 266(6A), the Board must impose costs on HRM if it:

a) overturns a decision of the development officer under s 250A; and
b) determines that the awarding of costs is in the interests of justice.

[3] Considering the text, context and purpose of the statutory framework underlying this appeal, the outcome of the appeal, the delay and costs incurred by Hazelview, the complexity and length of the hearing, and the circumstances of the appeal, the Board finds that it is in the interests of justice to award costs to Hazelview in this appeal.

2.0 BACKGROUND

[4] In a decision dated May 26, 2025 (2025 NSRAB 32), the Board allowed an appeal by Hazelview and overturned a decision of HRM's development officer refusing variances to "stepback" requirements of the Suburban Housing Accelerator LUB for property located at 41 Cowie Hill Road, Halifax, Nova Scotia. In its decision, the Board stated it would receive submissions from the parties on the issue of costs.

[5] Counsel for Hazelview wrote to the Board on July 28, 2025, indicating that the parties had not reached agreement on costs. She requested the "Board's guidance on a preferred approach for determining costs" under s. 266(6A) of the *Halifax Regional Municipality Charter,* SNS 2008, c 39 *(HRM Charter)*. She submitted that the effect of s. 266(6A) is "to bring the setting of costs for appeals under s. 250A within section 34(1) of the *Energy and Regulatory Boards Act* [SNS 2024, c 2, Schedule A] such that a successful party can request costs be 'fixed at a sum certain' or 'taxed'". In a letter dated July 30, 2025, HRM's counsel submitted that an award of costs would not be appropriate in this matter. She noted that if the Board determines that a costs award is appropriate "in principle", submissions from the parties about the calculation of costs can follow in short order.

[6] The Board initiated a paper hearing process to receive written submissions from the parties about whether costs are appropriate in this matter. Submissions closed September 24, 2025.

[7] The Board notes that HRM appealed the Board's decision to the Nova Scotia Court of Appeal on July 4, 2025. HRM's counsel submitted that a cost award may be premature at this point, given that the Court of Appeal may potentially reverse the Board's decision on the merits. However, HRM provided fulsome submissions on the costs issue and did not request to adjourn the determination of costs. Hazelview's counsel submitted that there was "no principled reason" why the Board could not address the issue of costs. She added that the Court of Appeal "deals with cost awards based on the outcome of an appeal - including, in the regular course, calculating the costs on appeal based on the cost award in the matter below". The Board concurs and has considered whether a costs award is appropriate in this matter.

3.0 STATUTORY PROVISIONS RELATED TO COSTS

[8] The Board generally does not have the authority to order costs in planning appeals under the *HRM Charter* or the *Municipal Government Act (MGA*). Section 34(1) of the *Energy and Regulatory Boards Act*, provides:

> **Costs and fees**
>
> **34 (1)** Except in respect of a proceeding pursuant to the *Municipal Government Act* or the *Halifax Regional Municipality Charter*, costs of and incidental to a proceeding before a Board, are in the discretion of the Board and may be fixed at a sum certain or may be taxed.

[9] However, the *HRM Charter* outlines two exceptions (the MGA only adopts the first exception, as variance appeals to the Board are not contemplated under that statute):

> **Procedures on appeal**
>
> **266 (6)** Notwithstanding subsection 34(1) of the *Energy and Regulatory Boards Act*,
>
> (a) the Board shall, by order, impose costs on the Municipality if it fails to file a complete appeal record within the time referred to in subsection (1); and
>
> (b) the Board may, by order, impose costs on any party to an appeal that fails to meet any deadline or time limit established pursuant to this Section or otherwise established or imposed by the Board.
>
> (6A) Notwithstanding subsection 34(1) of the *Energy and Regulatory Boards Act*, the Board shall, by order, impose costs on the Municipality if
>
> (a) the Board overturns a decision of a of [sic] development officer under Section 250A; and
>
> (b) the Board determines that the awarding of costs is in the interests of justice.
>
> **(7)** When imposing costs pursuant to subsection (6) or (6A), the Board shall consider, in addition to what the Board considers relevant, the financial ability of the party to pay and the conduct of the party in the appeal. [Emphasis added]

[10] Hazelview's counsel relies on s. 266(6A) in requesting costs. An award under this section is based on a successful appeal to the Board of a development officer's

refusal of a variance under s. 250A and the Board's finding that the awarding of costs is in the interests of justice. Section 250A of the *HRM Charter* provides:

> **Variance respecting setback or street wall**
>
> **250A (1)** A development officer shall grant under Section 250 a variance respecting a step back or a street wall notwithstanding any land-use by-law or development agreement unless the variance would materially conflict with the municipal planning strategy.
>
> **(2)** A decision to reject a variance under subsection (1) may be appealed to the Board, with the onus on the development officer to prove to the Board how the variance materially conflicts with the municipal planning strategy.
>
> **(3)** Sections 264 to 269 apply, with necessary changes, to an appeal under this Section.

[11] Thus, under s. 250A, a development officer must approve a stepback variance, unless the variance would materially conflict with the municipal planning strategy. If the variance is refused, and the Board overturns the refusal on appeal, s. 266(6A) provides that the Board shall, by order, impose costs on the municipality, provided the awarding of costs is in the interests of justice.

[12] Although there is a pending appeal of the Board's decision, there is no dispute that the Board overturned the decision of HRM's development officer under s. 250A. The issues raised by the parties include whether the Board has any discretion to consider an award of costs, and whether the awarding of costs is in the interests of justice.

[13] The principles of statutory interpretation apply in determining the intent of the above provisions. The Nova Scotia Court of Appeal reiterated the modern principle of statutory interpretation in *Sparks v Holland*, 2019 NSCA 3. Farrar, J.A., stated:

> [27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that "[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at ¶21).

> [28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, Sullivan on the Construction of Statutes, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.
>
> [29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slauenwhite*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:
>
> 1. What is the meaning of the legislative text?
>
> 2. What did the Legislature intend?
>
> 3. What are the consequences of adopting a proposed interpretation?

[14] The modern rule of statutory interpretation was recently reiterated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65:

> [117] A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."
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> [*Vavilov*, para. 117]

[15] The Court went on to elaborate on this concept in the specific context of administrative tribunals:

> [119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.
>
> [120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. [Emphasis added]
>
> [*Vavilov*, paras. 119-120]

[16] The Board must also have regard to the *Interpretation Act*, R.S.N.S. 1989, c. 235, including ss. 9(1) and 9(5):

> **9 (1)** The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.
>
> …
>
> **9 (5)** Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
> (a) the occasion and necessity for the enactment;
> (b) the circumstances existing at the time it was passed;
> (c) the mischief to be remedied;
> (d) the object to be attained;
> (e) the former law, including other enactments upon the same or similar subjects;
> (f) the consequences of a particular interpretation; and
> (g) the history of legislation on the subject.

4.0 HAZELVIEW'S SUBMISSIONS

[17] Counsel for Hazelview noted that since it was successful on its appeal to overturn the development officer's refusal under s. 250A, the only remaining issue is whether the awarding of costs is in the interests of justice. Hazelview asserts that the Board has no discretion on whether to award costs. Specifically, it states that the Board must award costs following a successful appeal under s. 250A, provided it is in the interests of justice.

[18] Hazelview states that the provision on costs in s. 266(6A) is a narrow exception to the general rule that there are no costs awarded in Board planning appeals. Hazelview submits that it reflects the Legislature's intent to "ensure that s. 250A is a robust provision", which "reinforces the intention of s. 250A itself, which is aimed at addressing the housing crisis in the province by removing barriers and increasing density". Hazelview added that it "creates a public interest in awarding costs against municipalities whose decisions are overturned".

[19] In its submissions, Hazelview highlighted the mandatory nature of the direction on the Board under s. 266(6A) and that the awarding of costs is in the interests of justice:

> In other words, the legislation is signalling to municipalities that there will be costs consequences for failing to properly apply s. 250A. This furthers s. 250A's intention to facilitate the construction of housing.
>
> This legislative intent is further solidified by the mandatory language of s.266(6A) in the use of the word shall. Costs must be awarded where a development officer's decision is overturned, and it is in the interests of justice.
>
> In our view, the Board ought to consider the statutory context that gives rise to the special provision for costs in this matter when deciding if a costs award is in the interests of justice. The specificity of the provision, it's intention in supporting the legislative goals, and its mandatory language are relevant and ought to inform a decision on the appropriateness of costs.
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> [Hazelview Submissions, pp. 3-4]

[20] Hazelview noted that despite the frequent use of the term "interests of justice", there is no single definition of the phrase. It referred to *Simms v Canada (Attorney General),* 2016 FC 770, at para. 55, involving a judicial review related to a grievance, where the Court held that the phrase is "broad, encompassing the interests of persons affected by the decision and should be assessed in its statutory context". The Court cited *Black's Law Dictionary* which stated it is the "proper view of what is fair and right in a matter in which the decision-maker has been granted discretion" (para. 56). Hazelview submitted:

> … In Hazelview's submission, the Board should consider what is fair and right in this case by considering the outcome of the appeal, the delay and costs incurred by the appellant, the complexity and length of the hearing, the circumstances of the appeal and the statutory context.
>
> [Hazelview Submissions, p. 3]

[21] Counsel for Hazelview submitted that there were several factors that supported its view that an award of costs is in the interests of justice:

- the cost and delay to the appellant – the refusal decision and subsequent appeal has caused Hazelview significant project construction delays with associated

costs. Absent the development officer's refusal, Hazelview's development could have been initiated in July 2024. It also referred to a preliminary motion by HRM about the Board's jurisdiction and an HRM motion canvassed following the hearing about the scope of the opinion evidence provided by Hazelview's planning expert. Both motions were rejected by the Board and Hazelview said these processes resulted in further delay and legal costs for their client. It noted the Board concluded that HRM's interpretation of the statute in the preliminary motion would have led to an unreasonable and absurd result and that HRM's interpretation was "strained" and "tortuous" (see paras. 41 and 44).

- the length and complexity of the hearing – while Hazelview acknowledged that this was the first appeal to the Board under s. 250A, it noted the appeal proceeding included the above preliminary motion, the three day hearing on the merits, which involved the interpretation of the novel provision, and the motion canvassed after the hearing about the scope of the expert's opinion evidence. Hazelview submitted that the complexity of the legal issues is a factor that has been considered by the courts in awarding legal costs: *Armour Group Ltd., v Halifax (Regional Municipality),* 2008 NSSC 123, at para. 4; *Landymore v Hardy,* 1992 NSSC 70, at paras. 12 and 22.
- the circumstances of the appeal – Hazelview stated that the Board's decision confirmed that HRM's refusal of the variance ignored the clear statutory language which required the development officer to consider whether there was a material conflict with the applicable municipal planning strategy, notwithstanding any land-use bylaw. Hazelview noted the Board's findings that the development officer did not consider the meaning of the new test under the *HRM Charter*, nor what is meant by 'material conflict' (para. 77). Hazelview added that HRM's expert witnesses placed significant emphasis on the LUB provisions, despite clear legislative direction to consider the application "notwithstanding any land-use bylaw".

[22] Hazelview refuted the suggestion by HRM's counsel that HRM acted in this proceeding in the nature of a public interest litigant and that it should not be subject to an award of costs against it.

5.0 HRM'S SUBMISSIONS

[23] Counsel for HRM submitted that an award of costs is not in the interests of justice. In the alternative, HRM submitted that the Board should exercise its discretion and make an order for reduced costs. It stated that if the Board determines that an award of costs is in the interests of justice, it must also consider the factors in s. 266(7), i.e., the

conduct of the party in the appeal and other factors considered relevant by the Board. It summarized its position as follows:

> …HRM says that a no costs award is in the interest of justice. HRM's position is similar to that of a non-typical public interest litigant which acted upon a bona fide belief in its position and sought to clarify a novel point of law which would certainly affect future cases. At no point did HRM act in an unreasonable, frivolous or vexatious manner and it remained cooperative with the Appellant throughout the course of the proceeding. Furthermore, the serious risk of a chilling effect as a result of this precedent-setting decision should be considered by this Board. In the alternative, should the Board determine that a costs award is appropriate, HRM respectfully submits that a significantly reduced costs award should be made given the risk the Appellant assumed with regard to engaging in litigation of a novel provision of the Charter.
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> [HRM Submissions, p. 11]

[24] HRM agreed with Hazelview that there does not appear to be a singular definition or test for the phrase "interests of justice" in the context of costs. However, HRM referred to *Armoyan v Armoyan,* 2013 NSCA 136, in which the Court held that a larger costs award than normal was necessary to "do justice between the parties" given the complexity, duration and conduct of parties, much of which was considered as unnecessary due to the obstructive nature of the litigants (para. 26).

[25] As noted above, HRM submitted that its position in this proceeding was "similar to that of a non-typical public interest litigant". It noted the courts have held that they "have the discretion to depart from the usual rule on costs" where a case involves a matter of true public interest and a litigant has shown that it has no personal, proprietary or pecuniary interest in the litigation and that it would not have been possible to pursue the litigation with private funding, citing *Carter v Canada (Attorney General)*, 2015 SCC 5, at paras.140-141. While HRM acknowledged that it does not meet the criteria of a "true public interest litigant", its counsel submitted that in this appeal the general principles of the public interest exception to the usual rule on costs apply.

[26] HRM counsel submitted that in *Whalley v Cape Breton Regional Municipality*, 2019 NSSC 410, the Supreme Court of Nova Scotia summarized the criteria used to identify public interest litigation:

> i) The issue or issues transcend the interests of the parties;
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> ii) The issues raised are of broad public importance;
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> iii) The ruling will benefit the larger community;
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> iv) The issues have never before been decided;
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> v) The cost award will have a chilling effect on future cases being advanced;
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> vi) The nature of the Plaintiff;
>
> vii) The nature of the Defendant;
>
> viii) The nature of the "lis", the action being taken; and
>
> ix) The ultimate issue to be decided.
>
> [Whalley, para. 32]

[27] HRM also referred to additional criteria in *Trinity Western University v Nova Scotia Barristers' Society*, 2015 NSSC 100, including whether the nature of the "lis" is in the public interest and whether the litigation had any adverse impact on the public interest: see *Trinity Western*, at para. 28. It said the list of factors is not a non-exhaustive list.

[28] HRM referred to various factors it said supported its view that it had the characteristics of a public interest litigant. It asserted that the municipality is analogous to the Nova Scotia Barristers' Society in *Trinity Western* and what the Supreme Court of Nova Scotia described as a "non-typical public interest litigant". It noted it had no pecuniary interest in the appeal and that it was involved in the matter "from a position of jurisdiction as well as advocating a point of principle". It noted that it is a governmental public corporation created by the Province. HRM added that the appeal involved a novel point of law respecting the application of s. 250A, which was a recent amendment to the

HRM Charter, and that an award of costs would have a “chilling effect” on a development officer’s consideration of future applications under s. 250A or other new provisions in the *HRM Charter*. HRM suggested a development officer would inappropriately weigh the possibility of a cost award against the municipality in making a decision on a variance application. Further, HRM submitted that the factors in s. 266(7) of the *HRM Charter* and the Board’s procedural rules on costs should be considered in deciding whether a cost award is in the interests of justice.

6.0 ANALYSIS AND FINDINGS

[29] The test for the awarding of costs in this appeal is set out in s. 266(6A) of the *HRM Charter*. It states that the Board must impose costs if it overturns a decision of a development officer under s. 250A and it determines that the awarding of costs is in the interests of justice. Subsection 266(7) provides that when imposing costs under s. 266(6A), the Board shall consider, in addition to what it considers relevant, the financial ability of the party to pay and the conduct of the party in the appeal. There is no dispute that the Board overturned the development officer’s refusal of the requested variance under s. 250A. The second part of the test requires the Board to determine whether the awarding of costs is in the interests of justice.

[30] The parties agree that there is no singular definition of the phrase “in the interests of justice”. This phrase is commonly used in statutes and in the common law in a variety of different contexts. For the purposes of this matter, the Board accepts the definition referred to the Board by Hazelview’s counsel, namely the “proper view of what is fair and right in a matter in which the decision-maker has been granted discretion”. As

noted in *Simms*, the phrase relates to the interests of the persons affected by the subject litigation and the specific statutory context.

[31] HRM claims that the Board should consider HRM's position in this proceeding as being "similar to that of a non-typical public interest litigant".

[32] The Board notes that the public interest exception normally applies to "the usual rule on costs". In the Board's view, the circumstances in this appeal do not reflect the usual rule on costs. While successful parties in litigation matters are normally entitled to costs, the costs are generally in the discretion of the court. The situation is different in this appeal. The awarding of costs is not in the discretion of the Board. Rather, s. 266(6A) requires the Board to award costs where an appellant is successful in an appeal under s. 250A, provided the award is in the interests of justice. Those two elements form the complete framework for the Board's decision on whether to impose costs. Absent s. 266(6A), the Board would not have the authority to award costs at all pursuant to s. 34(1) of the *Energy and Regulatory Boards Act*, which specifically excludes the awarding of costs for matters under the *HRM Charter*. Thus, the Board finds that the text, context and purpose of the costs provisions in this appeal mean that they fall outside the scope of the public interest exception that applies to "the usual rule on costs".

[33] Even if it could be argued that the "public interest exception" does apply in this instance, the Board finds that HRM is not a public interest litigant or similar to a public interest litigant in this matter.

[34] The Board considers that there is indeed a public interest advanced in the provisions of the *HRM Charter* that is relevant to this appeal. As noted in its decision on the merits, the amendments to the statute to add s. 250A were made to address the housing crisis by removing barriers to development and increasing density. Section

266(6A) supports that public interest in the sense that it places an onerous burden on HRM to approve variances under s. 250A. As noted in the Board's decision on the merits, and in s. 250A itself, unless the proposed variance materially conflicts with the municipal planning strategy, HRM must approve the variance. This duty is bolstered by s. 266(6A), which provides for an award of costs when HRM fails to do so. The Board is satisfied that this conclusion is consistent with the text, context and purpose of the statutory framework under the *HRM Charter* for the review of variances, specifically stepback variances. The fact that ss. 250A and 266(6A) were introduced together reinforces the Legislature's intent in this respect.

[35] The Board assigns little weight to HRM's argument that its participation in this matter was "similar to that of a non-typical public interest litigant". The are several factors that distinguish its participation in this appeal from the circumstances in cases like *Trinity Western* and *Whalley*.

[36] First, the consideration of costs in both *Trinity Western* and *Whalley* were in the discretion of the court, i.e., the usual rule on costs described above. The present appeal falls outside the usual rule because a specific cost framework applies in this matter. The Board has no inherent jurisdiction or discretion under this legislative scheme. Any discretion held by the Board is limited by the factors set out in the *HRM Charter*. Second, while the court in *Whalley* acknowledged that the municipality was a public body, it noted the matter involving Mr. Whalley was a private matter. In that case, the municipality was awarded costs because the matter "did not involve the resolution of an issue of wide public interest or importance". In *Trinity Western*, the issues involved equality rights and freedom of religion under the *Canadian Charter of Rights and Freedoms*, clearly matters of significant public interest that could potentially impact others

outside the immediate interests of the parties. Costs were awarded against the Barristers' Society in *Trinity Western*, both in the Supreme Court and in the Nova Scotia Court of Appeal, which dismissed the Barristers' Society's appeal: see 2016 NSCA 59. Third, notwithstanding the significant public interest issue involved in *Trinity Western*, the Supreme Court noted that while both parties were advocating in favour of a point of principle, the Barristers' Society was "a government actor acting to assert its jurisdiction not a party seeking to assert a right against a government policy". Likewise, in the present appeal, HRM was not seeking to assert a right against a government policy or a constitutional right. Indeed, it argued what was effectively a jurisdictional point during the preliminary stage of this appeal, and in support of the development officer's interpretation of the *HRM Charter* during the hearing on the merits. For the above reasons, the Board concludes that HRM's participation in this matter was not "similar to that of a non-typical public interest litigant" as it relates to the consideration of costs.

[37] Even if HRM's participation in this matter could be determined to have characteristics analogous to a public interest litigant, the Board notes that the Supreme Court of Nova Scotia in *Trinity Western* indicated that "the public interest considerations are not such that they justify the refusal to award costs." Rather, in that case, the Court found that the nature of the issues justified a reduction in the amount of costs that would otherwise be awarded. Moreover, if HRM's claim of being a public interest litigant exempted it from an award of costs in such variance appeals, that would render s. 266(6A) meaningless since that provision would never apply. Under the *HRM Charter*, the provision can only apply to HRM.

[38] The Board's analysis now turns to weighing the other factors in this appeal that are relevant in determining whether the awarding of costs is in the interests of justice.

The Board accepts Hazelview's submission that there are three primary factors in this appeal that warrant an award of costs as being is in the interests of justice.

[39] First, the Board considers that the statutory context of the present appeal is the primary factor supporting Hazelview's request for costs. The overarching issue in this appeal was the application of s. 250A of the *HRM Charter*. While the issue was undoubtedly a novel issue, there was clear legislative direction on how the test should be applied. The Board found in its decision that the HRM's development officer's review of the original application (and its two expert witnesses at the hearing) ignored that clear statutory language which required an analysis about whether there was a material conflict with the municipal planning strategy, notwithstanding any land-use bylaw. Instead, HRM focused on the land-use bylaw provisions. HRM's failure to apply the correct test under the *HRM Charter*, weighs in favour of awarding costs to Hazelview. Moreover, the accompaniment of the cost provisions with the introduction of s. 250A in the statute shows the legislative intent of reinforcing the burden on HRM to approve such stepback variances unless they materially conflict with the municipal planning strategy.

[40] Second, as noted by Hazelview's counsel, the development officer's refusal of the variance, and Hazelview's appeal to have the Board overturn his decision, have resulted in costs and delay for Hazelview's development of this project, which could have otherwise proceeded as early as July 2024. The Board notes that this delay and the additional costs defeat the intent of these *HRM Charter* provisions to address the housing crisis by removing barriers to development and increasing density. Third, the Board is satisfied that the length and complexity of the hearing support Hazelview's request for costs. The appeal involved the 3-day hearing on the merits, a preliminary motion on a jurisdictional issue and a motion at the hearing requiring separate submissions. The latter

two motions were raised by HRM. Hazelview also incurred the expense of engaging an expert to prepare a report and testify at the hearing to respond to the development officer's opinion and findings.

[41] Moreover, the Board does not accept HRM's argument that an award of costs would have a "chilling effect" on a development officer's consideration of similar variance applications. HRM's planning officials have a statutory duty to apply the tests in the *HRM Charter* when considering development applications, including requests for variances. This duty must be carried out in an objective and *bona fide* manner, irrespective of any cost consequences for the municipality.

[42] Finally, HRM submitted that s. 266(7) should also be considered in deciding whether to award costs. The Board does not accept this interpretation. Section 266(7) provides that "when imposing" costs under s. 266(6A), the Board shall consider, in addition to what it considers relevant, the financial ability of the party to pay and the conduct of the party in the appeal. The Board finds that s. 266(7) and its procedural rules on costs do not apply at this stage in deciding whether costs are in the "interests of justice". Rather, s. 266(7) applies "when imposing costs under ss. 266(6A)", not when deciding whether costs should be imposed in the first instance. Thus, in the Board's view, s. 266(7) comes into play when the imposition of costs takes place (i.e., in deciding whether there are mitigating factors to reduce costs).

[43] The Board finds that, on the balance of probabilities, the above factors weigh in favour of a finding that an award of costs to Hazelview is in the interests of justice.

[44] Considering the text, context and purpose of the *HRM Charter* provisions relevant to this appeal, the outcome of the appeal, the delay and costs incurred by

Hazelview, the complexity and length of the hearing, and the circumstances of the appeal, the Board finds that it is in the interests of justice to award costs to Hazelview in this appeal. The Board so directs.

7.0 CONCLUSION

[45] Section 266(6A) of the *HRM Charter* states that the Board must impose costs if it overturns a decision of a development officer under s 250A and it determines that the awarding of costs is in the interests of justice. Considering the text, context and purpose of the statutory framework underlying this appeal, the outcome of the appeal, the delay and costs incurred by Hazelview, the complexity and length of the hearing, and the circumstances of the appeal, the Board finds that it is in the interests of justice to award costs to Hazelview in this appeal.

[46] If the parties are unable to agree on the quantum of costs, the Board is prepared to direct the filing of written submissions on the issue.

[47] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 22nd day of December 2025.

Roland A. Deveau

Julia E. Clark

Bruce H. Fisher