DECISION **2025 NSRAB 18**
M11534

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **KEN NICKERSON** from a decision by a Development Officer of Halifax Regional Municipality refusing a development permit for property identified as vacant land and located at Mallard Drive, Hubley, Nova Scotia

BEFORE:	Roland A. Deveau, K.C., Vice Chair
APPELLANT:	**KEN NICKERSON** Appearing on his own behalf
RESPONDENT:	**HALIFAX REGIONAL MUNICIPALITY** Kelsey Nearing, Counsel
HEARING DATE:	March 6, 2025
DECISION DATE:	**May 1, 2025**
DECISION:	**Appeal dismissed.**

1.0 SUMMARY

[1] Ken Nickerson appealed to the Board from the decision of Halifax Regional Municipality's (HRM) development officer refusing a development permit to build a small accessory structure (shed) on vacant property located on Sheldrake Lake near Mallard Drive, Hubley, Nova Scotia. He built the shed before becoming aware he needed a development permit. There is no road access to the property, which is zoned Residential (R-1) under the Land Use By-law. Mr. Nickerson's dwelling is located on a separate property on Sunset Lane, about 750 metres away from the property containing the shed. He accesses the shed either by a five-minute walk from his home over a trail crossing a few intervening properties, or by boat on Sheldrake Lake.

[2] The development officer refused the development permit because the new shed is not an accessory use to a residential dwelling use or to an "open space use" as a public or private park, which are permitted uses in the R-1 zone. There is no residential building on the property, and it does not abut nor is it located across from a public street or highway. The development officer also concluded that the property was not being used as a public or private park.

[3] There is a limited right of appeal under s. 267 of the *Halifax Regional Municipality Charter*. The only issue the Board can consider is whether the development officer's refusal of the development permit complied with the Land Use By-law.

[4] After having reviewed all the evidence, the Board finds that the development officer's refusal of the development permit complies with the Land Use By-law. The appeal is dismissed.

2.0 BACKGROUND

[5] On January 22, 2024, Mr. Nickerson appealed to the Board under the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39 (*HRM Charter*) from the decision of Andrew Faulkner, an HRM development officer, refusing a development permit to construct an accessory structure (shed) on vacant property located on Sheldrake Lake near Mallard Drive, Hubley, Nova Scotia.

[6] Mr. Nickerson purchased the property in 2022 and built a small shed on the property measuring 12 feet by 16 feet (192 square feet), but he did not realize he needed a permit. He believed he could build the small shed without a building permit but was later advised by HRM By-law compliance officials that he needed a development permit. In December 2023, he applied for a development permit for his newly constructed shed.

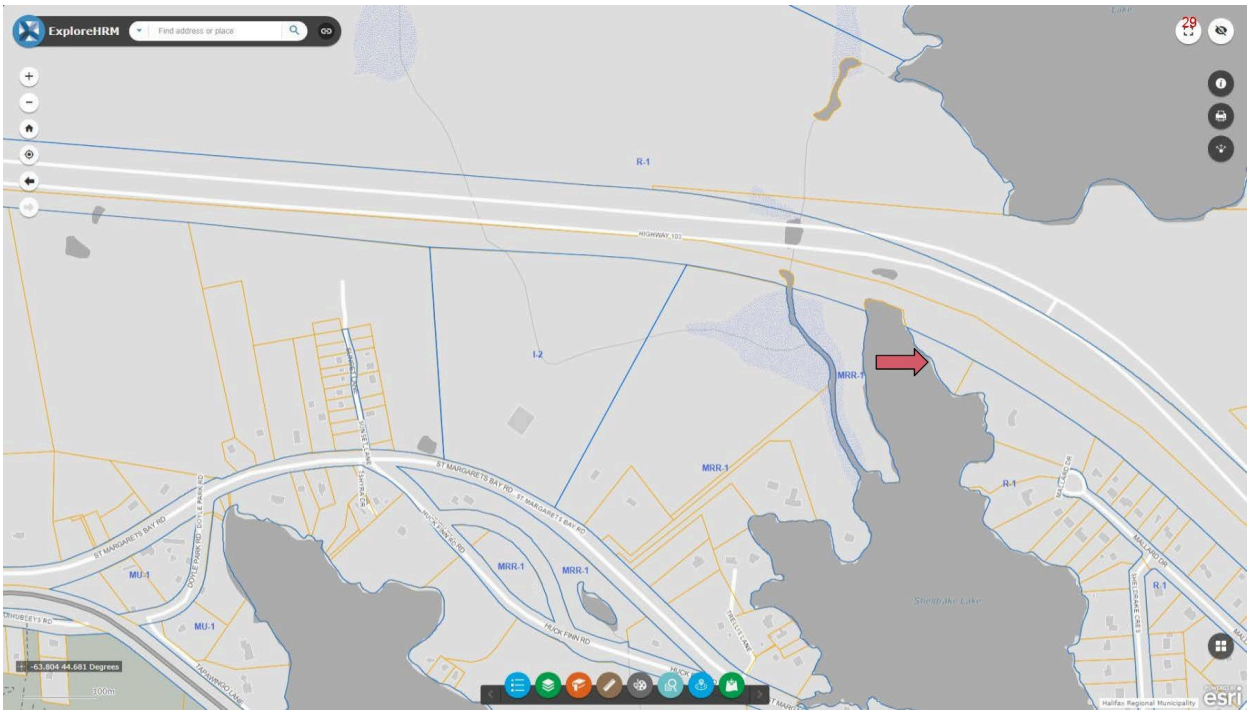
[7] There is no road access to the property, which is not assigned a civic number. It is described by HRM as being on Mallard Drive because the closest front boundary of the property is closest to that road. Mr. Nickerson's dwelling is located on a separate property on Sunset Lane, about 750 metres away from the property containing the shed. There is no road access to the property. He accesses the shed either by a five-minute walk over a trail crossing a few intervening properties, or by boat on Sheldrake Lake.

[8] On January 8, 2024, Mr. Faulkner wrote on behalf of HRM refusing the application for the development permit, stating:

> The structure being applied for is not located within the same zone as the principal building or use it is intended to serve or is located within an abutting zone in which the principal use or building is permitted, as a result, Development Permit Application # DEVONLY-2023-15749 must be **refused**. [Emphasis in original]
>
> [Exhibit N-3, p. 30]

[9] This appeal was filed with the Nova Scotia Utility and Review Board. On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, S.N.S. 2024, c. 2, Sch. A, the Nova Scotia Utility and Review Board was succeeded by the Nova Scotia Regulatory and Appeals Board for all appeals under the *HRM Charter*.

[10] The following map shows the relative location of the subject property containing the accessory shed (indicated by the arrow), Sheldrake Lake, Mallard Drive, Sunset Lane, St. Margaret's Bay Road, Highway #103 and the zoning that applies to properties in the area:



[Exhibit N-7, p. 29]

3.0 LAND USE BY-LAW PROVISIONS

[11] The property is zoned R-1 under the Land Use By-law for Planning Districts 1 and 3 (St. Margaret's Bay) (LUB). Section 6.1 of the LUB sets out the permitted uses in the R-1 Zone as follows:

> PART 6: R-1 (SINGLE UNIT DWELLING) ZONE
>
> 6.1 R-1 USES PERMITTED
>
> No development permit shall be issued in any R-1 (Single Unit Dwelling) Zone except for the following:
>
> Residential Uses
> Single unit dwellings
> Shared housing use with 10 or fewer bedrooms in conjunction with a permitted dwelling unit (RC-Aug 9/22;E-Sep 15/22)
> Day care facilities for not more than fourteen (14) children and in conjunction with permitted dwellings
> Business uses in conjunction with permitted dwellings
>
> Community Uses
> Open space uses
>
> [Exhibit N-4, LUB, p. 49]

[12] The land is vacant (other than the shed) as there is no residential dwelling on the property. The only other possible main use on the property in the R-1 Zone is as an "Open Space" use, which is described as follows:

> 2.52 OPEN SPACE USE means the use of land for public and private parks and playgrounds, athletic fields, tennis courts, lawn bowling greens, outdoor skating rinks, picnic areas, cemeteries, day camps, historic sites or monuments, and similar uses to the foregoing, together with the necessary accessory buildings and structures, but does not include camping grounds, golf courses or tracks for the racing of animals or of motorized vehicles. [Emphasis added]
>
> [Exhibit N-4, LUB, p. 11]

[13] An accessory use must also comply with other requirements in the LUB, including s. 4.12:

> 4.12 ACCESSORY USES AND BUILDINGS
>
> Provisions made under this by-law to permit uses, buildings, and structures shall, unless otherwise stated by this by-law, also be deemed to include any accessory uses buildings or structures provided that:

> (a) the accessory use, building, or structure is located within the same zone as the principal building or use it is intended to serve or is located within an abutting zone in which the principal use or building is permitted;
>
> (b) the accessory use building or structure is located on a lot which directly abuts or is directly across a public street or highway, private road or private right-of-way from the lot containing the principal building or use it is intended to serve; and
>
> (c) all other applicable conditions and requirements of this by-law are satisfied.
>
> [Exhibit N-4, LUB, p. 11]

[14] An accessory building or structure and an accessory use is defined in the LUB as follows:

> 2.1 ACCESSORY BUILDING OR STRUCTURE means a building or structure which is used exclusively for an accessory use and which is not attached in any way to the main building and which conforms with all applicable requirements of this by-law.
>
> 2.2 ACCESSORY USE means a use which is subordinate, normally incidental, and exclusively devoted to a main use or building permitted under the provisions of this by-law and, where residential uses are permitted by this by-law, shall include home occupations related to the domestic arts of cooking, sewing, tutoring or repairing household articles, or related to traditional crafts carried on within a dwelling without alteration to the dwelling and without devoting any space within the dwelling exclusively to such occupations.

4.0 EVIDENCE

[15] Mr. Nickerson said that he bought the land in 2022 from a couple living on Sheldrake Lake. He built a small building on the property for his family's recreational use. He removed dead trees from the land before he built the shed and has kept the property clean, to remove any forest fire risk. He thought he did not need a building permit, but HRM advised him that he needed a development permit. He added that he has built sheds on other properties he owned and never had a problem. He noted that the shed cannot be seen by anyone living in the Sheldrake Lake area and can barely be spotted from the opposite side of the lake, except slightly from his son's grandparents' home on St.

Margaret's Bay Road and the couple who sold him the property. He said that the shed is not visible from the homes on Mallard Drive.

[16] He said that his home is located on a separate property on Sunset Lane, about 750 metres away from the property containing the shed. There is no road access to the property containing the shed. He accesses the shed either by a five-minute walk from his home over a trail crossing a few intervening properties, or by boat on Sheldrake Lake.

[17] In his view, this is indeed an accessory building for other family property on the lake because his family uses the land and accesses it by boat or by a five-minute hike across other properties he has permission to access to reach his property. His children and grandchildren swim at the property in the summer and skate on the frozen lake during the winter. He built the shed for storage when the property is used for these activities. He noted that the building is well constructed and in good condition. Mr. Nickerson said that his grandchildren sometimes bring their friends to swim or skate at the property. He added that anyone in the community is welcome to use the property provided they keep it in a neat condition when they leave.

[18] Finally, Mr. Nickerson suggested that HRM should have no difficulty with the shed because it allows unauthorized campers and tents to occupy various other sites across HRM on land these individuals do not own. He repeated that this shed is accessory to his nearby home or to that of his son's grandparents' home directly opposite the lake on St. Margaret's Bay Road.

[19] HRM called Mr. Faulkner as their witness. He has been a development officer with HRM since 2005 and has been employed in the municipal planning field for

over 30 years. As a development officer for HRM, he uses and applies the Land Use By-law for Planning Districts 1 and 3 (St. Margaret's Bay) daily. He was qualified by the Board to testify as an expert, able to provide opinion evidence on land use planning matters, including the interpretation and application of the LUB.

[20] Mr. Faulkner noted that the shed is not the main use of the land so he considered whether it could be approved as an accessory building. He noted that there is no main residential building on the property. In his report filed in this appeal, he considered s. 4.12 of the LUB to determine if the conditions were met for an accessory building:

> [Section] 4.12 requires that accessory buildings meet three standards. It must be in the same zone or an abutting zone which also permits the main use the accessory building serves. In this instance the subject property is located approximately 750 metres from the owners' residence and … the R-1 Zone containing the accessory building is not abutting the MRR-1 Zone where the owners' residence is located. It is separated by an I-2 Industrial Zone.
>
> …
>
> Further, 4.12(c) (sic) requires the accessory building be located "on a lot which directly abuts or is directly across a public street or highway". As noted above the lot is 750 metres from the owners' residential lot, separated by several properties and a lake.
>
> In conclusion it is my opinion that the proposed use is not permitted in the R-1 Single Unit Dwelling Zone of the Planning District 1&3 Land Use By-law.
>
> [Exhibit N-7, pp. 6-7]

[21] Mr. Faulkner also noted the land is not used as a public or private park, therefore an accessory storage shed for an open space use is not permitted. In response to Mr. Nickerson's suggestion that it is a park, Mr. Faulkner said that to be considered as a park, the land would need to be held out to the public for that purpose and the owner would need to show that there was insurance in effect for this use and that there is access to the site. In Mr. Faulkner's view, the use of land as a park under the LUB would contemplate public access and public use of the land for that purpose, consistent with the

common meaning of the word. In his view, the property is not a public or private park, and the shed cannot be an accessory shed for such an open space use.

[22] With respect to Mr. Nickerson's claim that there are many other unauthorized tents or campers on vacant land across HRM, Mr. Faulkner said that this is an enforcement matter and HRM compliance staff deal with all matters referred to them by the public.

5.0 SCOPE OF REVIEW

[23] The appeal to the Board is made under s. 262(3) of the *HRM Charter*:

> **Appeals to the Board**
> **262 (3)** The refusal by a development officer to
> (a) issue a development permit; or
> …
> may be appealed by the applicant to the Board.

[24] There are limited grounds for an appeal by an applicant for a development officer's refusal to issue a development permit:

> **Restrictions on appeals**
> **265 (2)** An applicant may only appeal a refusal to issue a development permit on the grounds that the decision of the development officer does not comply with the land-use by-law, a development agreement, an order establishing an interim planning area or an order regulating or prohibiting development in an interim planning area.

[25] The Board's jurisdiction and powers in its consideration of such an appeal are set out in s. 267:

> **Powers of Board on appeal**
> **267 (1)** The Board may
> (a) confirm the decision appealed from;
> …
> (d) allow the appeal and order that the development permit be granted;
> …
> **(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]

[26] In short, the test an applicant must satisfy to successfully appeal a development officer's decision to refuse a development permit is that the decision "does not comply" with the LUB: s. 265(2) of the *HRM Charter;* and for the Board to reverse a development officer's decision to refuse the permit, it must find that the decision "conflicts with" the LUB: s. 267(2). As a decision which does not comply with the LUB would presumably be in conflict with it, the Board sees no issues arising from the different formulation of the statutory test, at least in the circumstances of the present appeal.

[27] The burden of proof in this appeal is on Mr. Nickerson, the appellant, to show, on the balance of probabilities, that the development officer's decision to refuse the development permit conflicts with the provisions of the LUB.

[28] In deciding whether a development officer's refusal conflicts with the LUB, the Board must ascertain the meaning of the relevant LUB provisions. The degree of deference to be afforded by the Board to a development officer's interpretation of these provisions was described in *Halifax (Regional Municipality) v. Anglican Diocesan Centre Corporation,* 2010 NSCA 38, where the Court of Appeal refers to the standard of correctness, but then says that the Board, as an administrative tribunal constituted by statute:

> …does not immerse itself in *Dunsmuir*'s standard of review analysis that governs a court's judicial review. The Board should just do what the statute tells it to do.
>
> …The Board said (¶62) that it "may only allow this appeal if it determines that the Development Officer's decision 'conflicts with' or 'does not comply' with the provisions of the Land-Use By-Law". After its analysis, the Board concluded (¶109) that the development officer's "decision to refuse conflicts with, and does not comply with, the LUB", namely s. 67(1)(d) which permits an "other institution of a similar type" in the P Zone. The Board correctly identified its standard of review, i.e. that prescribed by the *HRM Charter*, to the decision of the development officer. [Emphasis added]

[29] The Board's task is to interpret the relevant LUB provisions and determine whether the development officer's decision conflicts with, or does not comply with, the proper interpretation of the LUB.

[30] In *Anglican Diocesan,* the Court of Appeal, in reviewing a decision of the Board about a decision of a development officer, adopted, and expanded upon, its reasoning in an earlier decision, *Archibald et al v. Nova Scotia Utility and Review Board et al,* 2010 NSCA 27, which discussed how the Board should approach its task, saying:

> In *Archibald*, ¶ 24, this court summarized the principles that govern the Board in deciding whether an elected municipal council carried out the intent of a municipal planning strategy. Similar principles, but with some adjustment noted below, apply to the Board's appellate role from a decision of a development officer. The authorities for these principles are cited in *Archibald*, ¶ 25.
>
> > **(1)** The Board is the first tribunal to hear sworn and tested evidence. So the Board should undertake a thorough factual analysis of the proposal in the context of the LUB. The appellant bears the onus, on the balance of probabilities, to prove the facts that establish the conflict between the development officer's decision and the LUB. Here, the Board (¶ 57, 59) noted that the Church bore the onus on the balance of probabilities, and made determinative factual findings that I will discuss later.
> >
> > **(2)** The legislation expects the Board to interpret the LUB. The Board should interpret the LUB not formalistically, but pragmatically and purposively, to make the LUB work as a whole. The Board here (¶ 60) cited the purposive approach.
> >
> > **(3)** Subsections 234(1) and (3) of the *HRM Charter* direct that the LUB "enables" and should "carry out the intent" of the MPS. The MPS does not amend the LUB. But the LUB's interpretation may be assisted by the MPS, and the Board's purposive approach should encompass the LUB and MPS together. The Board here (¶ 84) cited the interpretive reflexivity between the MPS and LUB (discussed later ¶ 46-49).
> >
> > **(4)** The Board's deference to the elected municipal council's difficult choices among vague and intersecting intentions in the MPS, discussed in *Archibald* ¶ 24(7), does not apply to an unelected development officer who applies the LUB. This is apparent from the legislative mandates to the development officer and Board. Section 261(1) of the *HRM Charter* says that a "development permit must be issued if the development meets the requirements of the land-use by-law …." So a development officer with such a compliant application has an executory function. He holds no public hearing of objections as may occur before the council. At the appeal level, the legislation directs the Board to decide whether the council "reasonably carried out the intent of the municipal planning strategy" – a somewhat diffuse standard. But the Board's function with a development officer's decision – to determine whether that decision "conflicts with" the proper

> interpretation of the LUB – is more pointed. The Board here (¶ 62- 63) noted these principles.
>
> **(5)** The Board hears an appeal. It is not an initiating tribunal offering fresh direction on a planning issue. So the Board should focus on the development officer's decision and stated reasons. Section 260(2) of the *HRM Charter* says that, within 30 days from receipt of the application, the development officer "shall grant the development permit or inform the applicant of the reasons for not granting the permit". Then s. 264(e) states that notice of appeal to the Board must be filed within 14 days from the development officer's notice. Clearly the statute contemplates that the development officer's written reasons be central to the appeal, meaning the Board's decision should address those reasons. As stated in *Archibald*, ¶ 30, the Board is not confined to those reasons. The ultimate question - whether the development officer's refusal conflicts with the LUB - may involve other issues. But the focus on the development officer's stated reasons prompts the Board to respect its appellate role. [Emphasis added]

[31] The principles of statutory interpretation apply in determining the intent of any particular statute, including in the Board's interpretation of the statutory provisions under the *HRM Charter* to determine the scope of its powers, and when interpreting the provisions of the MPS or LUB.

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

> 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." [*Vavilov*, para. 117]

[33] 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]

[34] The Nova Scotia Court of Appeal summarized 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:
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> 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?
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> [Sullivan, pp. 9-10]

[35] The Board must also have regard to the *Interpretation Act*, R.S.N.S. 1989, c. 235, including ss. 9(1) and 9(5), which are consistent with, and complimentary to, the "modern principle" and Professor Sullivan's three questions:

> **Interpretation of words and generally**
>
> **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.
>
> …
>
> **(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;
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> (b) the circumstances existing at the time it was passed;
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> (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.

6.0 ANALYSIS AND FINDINGS

[36] Mr. Nickerson built a small shed on his vacant land on Sheldrake Lake. His children and grandchildren swim at the property in the summer and skate on the frozen lake during the winter. He built the shed to store items related to his family's swimming and skating activities.

[37] Under the LUB, he required a development permit. After being contacted by HRM's compliance staff, he applied to HRM for the development permit, but it was refused by HRM's development officer. He appealed that refusal to the Board.

[38] As the appellant, Mr. Nickerson has the burden of proof in this appeal to show, on the balance of probabilities, that the development officer's refusal of the development permit conflicts with the provisions of the LUB. The Board's powers are limited in this appeal. Under s. 267(2) of the *HRM Charter*, the Board can only reverse the development officer's refusal of the permit if it finds that the decision "conflicts with" the LUB.

[39] The property is zoned Residential (R-1) under the LUB. The permitted uses in the R-1 zone include residential uses and open space uses. At the hearing, Mr. Nickerson acknowledged that there is no residential dwelling on the property. However, he asserted that it should qualify as an accessory shed to his home on Sunset Lane, about 750 metres away. He also suggested that it could be an accessory building to his son's grandparents' home situated on the opposite side of the lake, on St. Margaret's Bay Road. There is no road access to the property containing the shed. He accesses the

property either by a five-minute walk from his home over a trail crossing a few intervening properties, or by boat on Sheldrake Lake from a landing near the grandparents' home.

[40] The Board notes that an accessory use or building must comply with the LUB requirements. In addition to other requirements, s. 4.12 of the LUB sets out two main requirements:

- the accessory use, building, or structure is located within the same zone as the principal building or use it is intended to serve or is located within an abutting zone in which the principal use or building is permitted; and
- the accessory use building or structure is located on a lot which directly abuts or is directly across a public street or highway, private road or private right-of-way from the lot containing the principal building or use it is intended to serve. [Emphasis added]

[41] The Board accepts HRM's evidence and finds that Mr. Nickerson's building does not comply with these requirements. As noted in the testimony at the hearing, and as shown on the map earlier in this Decision, the shed is not located within the same zone as Mr. Nickerson's principal residence, nor is it located in an abutting zone. Mr. Nickerson's dwelling is located in an MRR-1 zone and there are two other zones (as well as Sheldrake Lake) located between it and the land containing the shed. These two intervening zones are an I-2 zone and another area zoned MRR-1. Mr. Nickerson's residence is not located in a zone abutting the subject land.

[42] At the hearing, Mr. Nickerson suggested that his son's grandparents' home, situated on the opposite side of the lake, on St. Margaret's Bay Road, may be in an abutting zone. He suggested he might transfer ownership of the land to that couple if that

would make the shed a legal accessory use. Mr. Faulkner indicated that he did not consider this option because it was not what was applied for, but expressed doubt that the land on the opposite side of the lake would be in an “abutting zone”. Mr. Faulkner noted that the lake itself is not zoned on HRM’s zoning maps. The issue about the shed being an accessory use to land across the lake on St. Margaret’s Bay Road is not before the Board because it was not part of the application leading to this appeal.

[43] A second requirement under s. 4.12 of the LUB is that the accessory shed must be located on a lot that “directly abuts or is directly across a public street or highway, private road or private right-of-way from the lot containing the principal building or use it is intended to serve”. As noted earlier in this Decision, there is no road access to the property containing the shed. The lot cannot be accessed from Mallard Drive. Mr. Nickerson’s dwelling is located on a separate property on Sunset Lane, about 750 metres away from the property containing the shed. He accesses the shed either by a five-minute walk from his home over a trail crossing a few intervening properties, or by boat across the lake. He said he has the consent of the intervening property owners to use the trail but there is no legal easement or right-of-way crossing those properties to reach the lot containing the shed. The Board accepts HRM’s evidence that this informal access arrangement does not comply with the requirements of s. 4.12 of the LUB. Further, Mr. Nickerson’s home is not “directly across” a public street or private road or right-of-way from the land containing the shed.

[44] The Board accepts HRM’s evidence and finds that the shed is not an accessory use to a residential building and use under the LUB. It finds that HRM’s interpretation complies with the LUB.

[45] Finally, Mr. Nickerson also suggested at the hearing that the shed may be an accessory building to an “Open Space” use, which is a permitted use in the R-1 zone. Section 2.52 of the LUB states:

> 2.52 OPEN SPACE USE means the use of land for public and private parks and playgrounds, athletic fields, tennis courts, lawn bowling greens, outdoor skating rinks, picnic areas, cemeteries, day camps, historic sites or monuments, and similar uses to the foregoing, together with the necessary accessory buildings and structures, but does not include camping grounds, golf courses or tracks for the racing of animals or of motorized vehicles. [Emphasis added]

[46] In Mr. Nickerson’s view, he uses the land as a park for the enjoyment of his family, friends and anyone else in the neighbourhood who may wish to use it for that purpose, provided they leave it in a clean condition. HRM did not accept that interpretation. Mr. Faulkner’s opinion was that to be interpreted as a park, the land would need to be held out to the public for that purpose and the owner would need to show that there was insurance in effect for such use and that there was access to the site. In Mr. Faulkner’s view, the use of land as a park under the LUB would contemplate public access and public use of the land for that purpose, consistent with its common meaning.

[47] The Board must apply the modern principle of statutory interpretation described earlier in this Decision 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”: see *Rizzo & Rizzo Shoes* at para. 21. The interpretation of a statutory provision “must be consistent with the text, context and purpose of the provision”: see *Vavilov*, para. 120.

[48] The term “public park” is defined in the LUB:

> 2.59 PUBLIC PARK means a park owned or controlled by a public authority or by any board, commission or other authority established under any statute of the Province of Nova Scotia.

[49] The MPS and LUB did refer to a “provincial park designation” and a Regional Park Zone, but these references do not apply to the location of the property in this appeal.

[50] There is no definition for the term “private park” in the LUB. The definition of “public park” only addresses the ownership and control of a “park”. The Board referred to the dictionary meaning of “park”:

> **2.** An enclosed piece of ground, of considerable extent, usually within or adjoining a city or town, ornamentally laid out and devoted to public recreation; a ‘public park’, as the various ‘parks’ in and around London, and other cities and towns.
>
> **2 b.** An extensive area of land of defined limits set apart as national property to be kept in its natural state for the public benefit and enjoyment, as the *Yellowstone Park* … in the United States.
>
> [The Compact Edition of the Oxford English Dictionary]
>
> **1** A large public area in a town, used for recreation, **2** a large enclosed piece of ground, usu. with woodland and pasture, attached to a country house, etc. **3 a** a large area of land kept in its natural state for public recreational use. **b** esp. *Brit.* a large enclosed area of land used to accommodate wild animals in captivity (*wildlife park).*
>
> [Readers Digest Oxford Complete Wordfinder]
>
> **1.** A tract of land set aside for public use, as; **a.** An expanse of enclosed grounds for recreational use within or adjoining a town. **b.** A landscaped city square. **c.** A tract of land kept in its natural state. **3.** A country estate, especially when including extensive gardens, woods, pastures, and game preserves.
>
> [The American Heritage Dictionary of the English Language]

[51] In the Board’s view, these dictionary meanings also contemplate the public nature of parks and their use. Parks are intended for the public’s use, whether or not they are a public or private park. It is clear in this instance that the land is not a “public park”, as it does not fall within the LUB definition. The Board considers that to be a “private park” would require dedication to public use by a private landowner and its use for that purpose. There is no evidence in this case that the property was dedicated to public use as a park or open space.

[52] The Board accepts Mr. Faulkner's opinion that, to be considered as a park, the land needs to be held out to the public for that purpose. It would also contemplate public access and the public's use of the land for that purpose, consistent with the common meaning of "park".

[53] Having reviewed the evidence, the Board also concludes that Mr. Nickerson's land containing the shed is not a public or private park as contemplated in s. 2.52 of the LUB. While Mr. Nickerson has kindly allowed his grandchildren's friends to accompany them in their swimming and skating activities, and he is prepared to allow others in the neighbourhood to use the land, that is not enough to make the land a park. There is limited access to the site and it is not held out to the public as a park. The Board accepts HRM's evidence that the land is not used as a park and, accordingly, the shed is not an accessory use to an open space use under the LUB.

[54] Under s. 267(2) of the *HRM Charter*, the Board can only reverse the development officer's refusal of the development permit if the decision "conflicts with" the LUB. The Board finds that the shed is not an accessory use to a residential use or an open space use within the meaning of the LUB. HRM's LUB contains requirements for an accessory building and, unfortunately, Mr. Nickerson's shed does not comply with those requirements. For the above reasons, the Board concludes that the development officer's decision to refuse the development permit did not conflict with the provisions of the LUB. The appeal is dismissed.

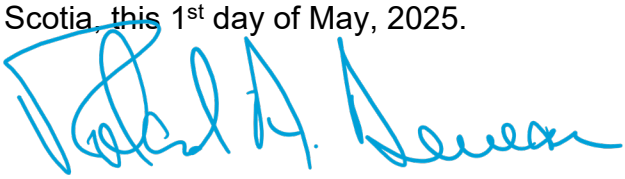
7.0 CONCLUSION

[55] Under s. 267 of the *HRM Charter*, there is a limited right of appeal. The only issue that the Board can consider is whether the development officer's refusal of the

development permit complied with the Land Use By-law. After having reviewed the evidence, the Board finds that the development officer's refusal of the development permit complies with the Land Use By-law. The appeal is dismissed.

[56] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 1st day of May, 2025.



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