

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **LIBERTY LANE POWER AND LOGISTICS INC.**
from a decision by the Municipality of Cumberland Council to refuse a rezoning
application respecting property located at 1370 Southampton Road, West Amherst, Nova
Scotia (PID 25394958)

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

APPELLANT: **LIBERTY LANE POWER AND LOGISTICS INC.**
Philip Allen
Carolyn Allen
Scott Allen

RESPONDENT: **MUNICIPALITY OF THE COUNTY OF CUMBERLAND**
Dennis James, K.C., Counsel

HEARING DATE(S): July 8, 2025

FINAL SUBMISSIONS: August 15, 2025

DECISION DATE: **October 8, 2025**

DECISION: **Appeal is allowed.**

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1.0 INTRODUCTION

[1] The Appellant, Liberty Lane Power and Logistics Inc. (Liberty Lane), is a trucking company run by Phillip Allen and Carolyn Allen. Mr. and Mrs. Allen were supported at the hearing by their son, Scott Allen, and all three appeared and testified before the Board. For years they have stored the company's trucks and trailers at Vaughn Melanson's Trucking and Excavating business on a property at 1405 Southampton Road, West Amherst (Melanson's). Concerned about the long-term future of their relationship with Melanson's, Liberty Lane purchased property across the street, hoping to ensure another safe location to store their trailers and accommodate an office to support their business. That property, zoned Country Residential, is located at 1370 Southampton Road, on the southeast side of the first intersection of Southampton and Boomer Roads.

[2] Phillip Allen, on behalf of Liberty Lane, applied to the Municipality of the County of Cumberland (Municipality) to amend the local Land Use By-law (LUB) to rezone the land to Rural Industrial, which would allow Liberty Lane to run their business on the property and store more than one truck and trailer. Municipal planning staff recommended that Council approve the rezoning proposal, as well as concurrent amendments to add "office" to the list of permitted uses in the Rural Industrial Zone and to impose a 10 m buffer between industrial and existing residential uses.

[3] Liberty Lane's application divided the close community around Boomer Loop, where Boomer Road intersects Southampton Road. Neighbouring property owners opposed the rezoning, and many provided their views to Council or joined a petition asking Council to refuse it. During Council's debate on the motion to approve the application, Deputy Mayor Fred Gould, also the councilor for the area, spoke against the proposal. He explained his concerns over the safety of traffic turning onto and off the

Southampton Road in proximity to the “y” shaped intersection with Boomer Road. Afterward, Council voted unanimously to reject the application. Council’s written reasons to Liberty Lane said that it refused the application based on Policy 6-19(c)(iv) - that Council was not satisfied that the proposal was “not inappropriate because of the creation of excessive traffic hazards”.

[4] The Board must frame its appellate review of Council’s refusal by looking principally at Council’s written reasons for the refusal. The intent of this Municipal Planning Strategy (MPS) is for Council to approve an amendment where the criteria in the policies are met. The evidence before the Board did not demonstrate, on a balance of probabilities, that the proposal would create excessive traffic hazards on adjacent or surrounding road networks. Council’s refusal on this basis did not carry out the intent of the MPS, and the Board allows the appeal.

2.0 BACKGROUND

2.1 Rezoning Application and Process

[5] From Trans-Canada Highway 104, traveling southwest, Southampton Road intersects Boomer Road just beyond Melanson’s, about 70 metres northeast of Liberty Lane’s property. Boomer Road, known locally as “Boomer Loop”, then intersects Southampton Road again about 700 metres southwest of Liberty Lane’s property. There is a stop sign at Boomer Road entering Southampton Road, and three chevron road signs marking the curved trajectory of Southampton Road, beginning in front of Melanson’s and continuing toward the subject property.



[6] The property and its adjacent neighbours are currently zoned “County Residential.” Melanson’s is zoned Rural Industrial, and several properties to the northeast across the street are zoned Commercial. Prior to finalizing the agreement of purchase and sale for the property, Phillip and Scott Allen consulted with planning staff about the possibility of rezoning the land to allow them to store the company’s trucks and trailers on it, as well as to maintain an office to assist with the administration of the company. Municipal staff said the property was a good candidate for rezoning. The company purchased the property without the condition that the rezoning be approved.

[7] Liberty Lane later applied to the Municipality, seeking rezoning of the property to Rural Industrial. The application to the Municipality identified Phillip Allen’s intent to park Liberty Lane’s company trucks and trailers, develop a small office space for

the administration of the business, and a garage for storage and light maintenance on their vehicles. While the planning process requires applicants to describe their intended proposal, if approved, Liberty Lane's application would have allowed any use permitted as of right in the new zone.

[8] Planning staff recommended that Council approve Liberty Lane's application. First reading of the proposed amendments was held on December 18, 2024. A Public Hearing was held on January 22, 2025. Council heard Second Reading of the proposed amendments on February 26, 2025, and unanimously voted against the motion to approve the amendments.

[9] Council advised Liberty Lane of its refusal of the application by letter dated March 6, 2025 [Exhibit L-2]. In its reasons for that decision, Council stated:

On February 26, 2025, second reading was given to the proposed rezoning of 1370 Southampton Rd. Based on feedback received at the Public Hearing, Council has voted to REJECT the proposed amendment. The Public Hearing for this rezoning was held on January 22nd, 2025. Council received significant feedback from the public that the irregular intersection (Southampton Rd and Boomer Loop) adjacent to the subject property, creates hazardous traffic conditions for commercial trucks.

The Municipal Planning Strategy states that any proposed rezoning that does not align with policy 6-19 shall not be approved by Council. It is the opinion of Council that the irregular intersection creates an excessive traffic hazard, therefore Council is not satisfied the proposed rezoning meets the requirement of policy 6-19 (c) (iv).

MPS 6-19 (c) Council shall not amend the Land Use Bylaw or approve a development agreement unless Council is satisfied the proposal is not inappropriate due to [Emphasis in original]

(iv) The creation of any excessive traffic hazards or congestion on road, cycling, and pedestrian networks within, adjacent to, or leading to the proposal

This was the sole reason given for Council's refusal.

2.2 Appeal to the Board

[10] Liberty Lane appealed Council's decision to the Nova Scotia Utility and Review Board under s. 247(1)(a) of the *Municipal Government Act*, SNS 1998, c 18

(MGA), on March 6, 2025, within the required limitation period. On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A, the Nova Scotia Utility and Review Board was succeeded by the Nova Scotia Regulatory and Appeals Board, for all applications under the MGA.

[11] Liberty Lane's Notice of Appeal alleged that Council's decision did not reasonably carry out the intent of the MPS, particularly Policy 6-19(c)(iv), for three principal reasons. First, Liberty Lane disputed the public feedback and position of council that the intersection adjacent to the property creates hazardous traffic conditions, given that the Nova Scotia Department of Public Works (Public Works) had issued a commercial driveway permit confirming it meets safe stopping distances and access requirements. Second, the company has operated and carried out the same proposed activities directly across the road on an appropriately zoned property without complaint or issue. Third, that the property is located on a heavy truck route close to the Trans-Canada Highway.

[12] After Liberty Lane filed its Notice of Appeal, the Board issued a Notice of Public Hearing, to be published in *The Casket* newspaper on April 30, 2025, and delivered to property owners within 500 ft of the subject property. The Board received one request to speak at the hearing and letters of comment from three individuals [Exhibit L-8]. The Municipality filed the appeal record [Exhibit L-3] and a copy of the MPS [Exhibit L-3, Tab 10] and Land Use By-law [Exhibit L-3, Tab 11].

2.2.1 The Board's Jurisdiction and Scope of Review

[13] Municipalities in the Province of Nova Scotia, through the adoption of municipal planning strategies and land use by-laws, are the primary authorities for planning within their boundaries. Their planning documents, which must be adopted after input from the public, create the framework for development within the Municipality and

rules for where and how developments can occur. A person seeking changes to those rules can apply to Council to amend the land use by-law. If Council refuses the application, the applicant can appeal Council's decision to the Board. The *MGA* is the applicable statute governing this process for all municipalities other than the Halifax Regional Municipality.

[14] As the applicant, Liberty Lane has the right to appeal the refusal of Council to amend a land use by-law under s. 247(1)(b) of the *MGA*. Section 250(1)(a) of the *MGA* says that the only grounds of appeal for the refusal of a rezoning application are "that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy."

[15] Section 251(1) of the *MGA* sets out and limits the Board's powers on an appeal of a municipal council's refusal to amend a land use by-law:

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 with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

...

(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 subdivision by-law.

[16] In planning appeals of this type, the burden of proof is on the person appealing the decision to show, on a balance of probabilities, that Council's refusal of the amendment did not reasonably carry out the intent of the MPS.

[17] Past cases guide the Board's review of municipal planning documents, and encourage a pragmatic approach, rather than a strict literal interpretation of the language. The Board follows statutory requirements for statutory interpretation, set out in the *Interpretation Act*, RSNS 1989, c 235, and the guiding principles identified in various Nova Scotia Court of Appeal decisions. The Board must not look simply at the words of a policy in isolation but must consider the whole scheme of the legislation and policies that impact the decision.

[18] The Court of Appeal, in *Archibald v Nova Scotia (Utility and Review Board*, 2010 NSCA 27 and, more recently in *Heritage Trust of Nova Scotia v AMK Barrett Investments Inc.*, 2021 NSCA 42, addressed the Board's task and summarized the principles the Board must follow in a planning appeal. These are applicable whether assessing a development agreement or a proposed amendment to a land use by-law (see, *Brison (Re)* 2024 NSUARB 81, para. 33):

[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, p. 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.

[19] The *MGA* replaced the *Planning Act*, but these views were quoted and elaborated more recently by the Court of Appeal in *Cornwallis Farms Limited v Nova Scotia (Attorney General)*, 2025 NSCA 9, which reviewed the guiding principles of the Board's review under s. 251(2) of the *MGA*.

2.2.2 Council's Reasons for Refusal

[20] The Municipality provided written reasons for its refusal of the Appellant's application, as Council is required to do under s. 210(5) of the *MGA*. The Court of Appeal's decision in *Archibald*, discussed in the previous section of this decision, emphasizes that focusing on these reasons, at least in the first instance, provides a framework designed to ensure the Board respects its appellate role:

[29] Section 230(6) of the *MGA* requires the municipality to give the applicant written reasons for the refusal to approve a development agreement:

Within seven days after a decision refusing to approve a development agreement or an amendment to a development agreement, the clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

[30] These reasons are to appear in the notice setting out the right of appeal. So the *MGA* intends that the municipality's stated reasons be pivotal to the appeal. Section 230(6) invites the appellant to address the Municipality's stated reasons in his grounds of appeal and beckons the Board to address them in the Board's analysis. I do not suggest the Board is confined to those stated reasons. The ultimate question – whether the Council's decision reasonably carried out the intent of the MPS – may propel the Board to other issues. See *Lewis*, ¶ 9, 22; *United Gulf*, ¶ 15, 72-74; *Midtown Tavern*, ¶ 52-53, 79. But the focus on the municipality's written reasons prompts the Board to respect its appellate role that I discussed earlier.

[21] In this case, Council relied on one policy of the MPS in its reasons for refusal, namely Policy 6-19(c)(iv):

Policy 6-19: Council shall not amend the Land Use By-law or approve a development agreement unless Council is satisfied the proposal:

(c) is not premature or inappropriate due to:

(iv) the creation of excessive traffic hazards or congestion on road, cycling and pedestrian networks within, adjacent to or leading to the proposal;

3.0 ISSUES

[22] The ultimate issue for the Board to decide is whether the evidence demonstrates, on a balance of probabilities, that Council's refusal of the application for rezoning does not reasonably carry out the intent of the MPS. This decision reviews the policies establishing the general criteria for Council to consider when evaluating Land Use By-law map amendments; in particular, whether the proposal would create excessive traffic hazards.

4.0 WITNESSES AND EVIDENCE

[23] The *MGA* requires a Municipality to file an appeal record within 14 days of notice of the filing of an appeal. It is well established, however, that the Board, in its analysis of the matter, can consider new evidence introduced by the parties during the appeal that was not presented to Council. The importance of factual context for the Board was noted by the Court of Appeal in *Midtown Tavern & Grill Ltd. v Nova Scotia (Utility and Review Board)*, 2006 NSCA 115:

[50] ... the fundamental question therefore becomes: Can it be said that Council's decision does "not reasonably carry out the intent of the MPS"?

[51] To answer this question, the Board must embark upon a thorough fact-finding mission to determine the exact nature of the proposal in the context of the applicable MPS and corresponding by-laws. As in this case, this may include the reception of evidence as to the intent of the MPS.

[24] Under s. 27 of the *Energy and Regulatory Boards Act*, the Board operates under relaxed rules of evidence, and can consider evidence including statements, documents, and other information that may not be admissible in a court of law. All witnesses, to some degree, relied on hearsay. There were no objections to the admissibility of those statements or documents, and the Board was able to weigh their evidentiary value in the normal course.

4.1.1 Appellant's Witnesses

[25] Liberty Lane's witnesses included Philip and Carolyn Allen, and their son Scott Allen, who were duly affirmed and gave their testimony as a witness panel. The Board found their testimony to be credible and forthright. As is common among self-represented parties, the panels' testimony occasionally mixed fact with opinions that went beyond their qualifications. However, the Board notes that Phillip Allen has long experience and training as a commercial truck driver and trucking company owner, and

both Phillip Allen and his son Scott Allen have a history of experience driving Southampton and Boomer Roads.

[26] Mrs. Allen submitted a written document outlining the Appellant's evidence, attaching supporting documents from the Appeal Record [Exhibit L-5].

4.1.2 Municipality's Witnesses

[27] Glen Boone, Director of Development and Planning for the Municipality, was qualified without objection "as an expert able to give opinion evidence on municipal land use planning, the interpretation and application of the [Municipality's] municipal planning documents including the Municipal Planning Strategy (MPS) and Land Use By-Law (LUB) to speak to the Planners' Reports presented to Council in the Appeal Record." [Exhibit L-7, p. 1] Though Mr. Boone is not a licensed professional planner, his curriculum vitae demonstrates many years of experience in municipal planning, development and real estate, including the past two years as Director of Development and Planning for the Municipality. At the hearing, the Board accepted his qualifications for the purpose of this appeal, which is limited to Cumberland's municipal planning documents, policies and procedures, of which Mr. Boone is very familiar. The Municipality also initially proposed Municipal Planner Kira Norgren as an expert witness, but she did not appear. Mr. Boone, as Ms. Norgren's supervisor, testified to the work and recommendations that went into the planners' reports. The Municipality did not submit a separate expert report or documents outside of the Appeal Record.

4.1.3 Supplementary Information

4.1.3.1 Public Speaker

[28] The Board received one request to speak from Brian Doiron, whose family owns the property abutting Liberty Lane's property on Southampton Road, adjacent to

the irregular intersection with Boomer Road. Mr. Doiron also provided written submissions and spoke in opposition to the application at the Public Hearing before Council. Mr. Doiron asked the Board to uphold Council's decision on the basis that it was democratic, and evidence based, giving "appropriate weight to the lived experience and safety concerns raised by residents." Mr. Doiron repeated the concerns of neighbours about truck traffic on Southampton Road. He said that the driveway permit did not "assess broader safety risks such as braking on an icy slope, poor winter traction on a sharp curve, or truck maneuverability at a confusing grandfathered intersection." Mr. Doiron is also concerned about the rezoning process overall and the lack of any guarantee about what the property will be used for. He says that Council considered "the full suite of industrial-level uses as of right under the Rural Industrial zone" and concluded that the site was not suitable [Exhibit L-8, pp. 1-14].

4.1.3.2 Letters of Comment

[29] Besides Mr. Doiron's written submissions, the Board received two other letters of comment. A submission from the owner of property directly across the street from the subject property outlines the writer's opposition to the rezoning and proposed land use. In addition to traffic safety and compatibility, the letter notes concerns about impacts on the safety of her livestock given increases in noise and activity to the "serene environment." [Exhibit L-8, p. 15] Another neighbouring owner of farmland across the road from the rezoning objected to industrial activity on that property. He indicated his opinion as a long-time holder of a Class-1 commercial driver's license that the corner is a poor location for truck traffic turning into and out of the property due to low visibility in poor weather and a dangerous turning radius for larger vehicles.

4.1.3.3 Site Visit

[30] With the agreement of the parties, I visited the property and surrounding areas alone on the day after the hearing. I exited the Trans-Canada Highway 104 and turned left onto Route 6 (Southampton Road), travelling southwest. I noted Fundy Bay Tractors, and Vaughn Melanson's Trucking and Excavation, where I observed several trailers parked in the yard as described by Scott Allen. I approached the y-shaped intersection with Boomer Road. I observed the three chevron signs identifying the curved trajectory of Southampton Road shown in photographs in the Appeal Record and marked in red ink by Scott Allen [Exhibit L-3, Tab 2, p. 6]. I stopped to view Mr. Doiron's family property and the vacant subject land at 1370 Southampton Road. I continued past the property and turned right onto Boomer Road, continuing around the loop to the stop sign at the intersection with Southampton Road. As described by Scott Allen, I noted several large truck cabs parked at residences on Boomer Road. I turned around at Melanson's and drove the loop again in the opposite direction, passing the property on my right side and observing the red flags Scott Allen described as Public Works' markings for the proposed driveway. It was a bright clear day and the road was dry. I did not meet any traffic travelling in either direction during the approximately 25-minute visit.

5.0 ANALYSIS AND FINDINGS

5.1 Review of Council's Reasons for the Refusal and Applicable Policies

[31] Following the Court of Appeal's guidance in *Archibald*, the framework for the Board's review of Council's decision is formed by its March 6, 2025, letter refusing the rezoning based on its determination that the proposal was "inappropriate due to the

creation of excessive traffic hazards.” The Board’s role is not to undertake a completely new and detached planning analysis. However, a review of the applicable policies provides context for the decision.

[32] Policy 6.2.3 of the MPS addresses amendments to the LUB. Its preamble states that “Council recognizes that it cannot foresee all possible types of development that might be accepted in the Municipality in general, or on a specific piece of land.”

[33] The enumerated policies under that section set out the requirements for approving or refusing amendments to the LUB.

Policy 6-7: Council shall amend the text of the Land Use By-law if the proposed amendment meets the general criteria set out in Policy 6-19.

Policy 6-8: Council shall consider amendments to the map of the Land Use By-law when the proposed zoning change is not specifically prohibited within this Plan and at least one of the following two conditions is true:

- (a) the proposed zone is enabled by this Plan for use within the same designation; or
- (b) notwithstanding the zones permitted within a designation, the land to be rezoned is under 5 hectares in area and is adjacent to a designation that permits the proposed zone. For clarity, land that abuts a right-of-way, such as a street, is considered to be adjacent to the designation on the other side of the right-of-way.

Policy 6-9: Council shall not amend the map of the Land Use By-law if the lot and existing buildings do not meet the requirements of the proposed zone.

Policy 6-10: Council shall not amend the map of the Land Use By-law unless Council is satisfied that:

- (a) the proposed meets any applicable zone placement criteria set out in policies, elsewhere in this Plan, applicable to the proposed zone; and
- (b) the proposed zone and the uses it permits meet the general criteria set out in Policy 6-19.

[Exhibit L-3, Tab 10, p. 70]

[34] The property is located within the Resource Designation. The MPS indicates that resource uses are to be prioritized over residential or commercial development in the lands designated for resource use in the Future Land Use Map (Schedule A to the MPS). Policy 5-35 states that:

Policy 5-35: Council shall consider proposals to rezone lands in the Resource Designation to any other zone permitted in that designation. Council shall not approve a rezoning unless council is satisfied:

- (a) if the proposed zone is the Highway Commercial Zone, the lands are located at an interchange of Highway 104;
- (b) the proposed change is not prohibited by any other policy in this Plan;
- (c) the purpose of the proposed zone, as described in the respective policy creating that zone, is consistent with the location and characteristics of the lands and with the proposed use of the lands;

(cA) the proposal is not premature due to impacts on wildlife corridors or due to the presence of geohazards; and [CHG-506]

- (d) the proposal meets the general criteria for amending the Land Use By-law, set out in Policy 6-19. [Emphasis in original]

[35] The purpose of the Rural Industrial Zone is described as:

- 11.3.1 The Rural Industrial Zone is intended to accommodate processing and other industries related to resource based industries, and to accommodate intensive uses that require large separation distances from dwellings and other less-intensive uses.

The as-of-right uses in the Rural Industrial Zone are:

- (a) Abattoir
- (b) Aggregate Related Industries
- (c) Agricultural Uses
- (d) Agricultural Related Industries
- (e) Airport
- (f) Animal Boarding Facility
- (g) Automotive Fueling
- (h) Automotive Service
- (i) Commercial Livestock Operation
- (j) Crematorium
- (k) Farm and Forestry Supply Sales
- (l) Fishery Related Industries
- (m) Forestry Related Industries
- (n) Forestry Uses
- (o) Heavy Equipment Repair
- (p) Heavy Equipment Sales
- (q) Manufacturing
- (q.1) Propane Fueling Facility**
- (r) Recycling Depot
- (s) Sanitary Service
- (t) Self-storage Facility
- (u) Solid Waste Disposal
- (v) Solid Waste Transfer Facility

- (w) Transportation Services
 - (x) Warehouse
- [Emphasis in original]

[Exhibit L-3, Tab 11, pp. 11-16]

5.1.1 Staff Report Recommendation

[36] The Municipality's planning staff recommended that Council approve Liberty Lane's application at all stages of the proposal. Mr. Boone, as Director of Planning, prepared a staff report for the Council Meeting for Second Reading on the request to amend the LUB, dated February 20, 2025 [Exhibit L-3, Tab 2, p. 81]. The report indicates:

The property owner would like to rezone the property to permit the development of transport truck and trailer storage and a small office for the transport truck company. The small office would not take clients or perform commercial transactions, it would be used for the administration of the truck transport business. In the future, the property owners would like the ability to permit an automatic service structure/area which would be used for repairs of the company trucks and trailers.

[Exhibit L-3, Tab 2, p. 3]

[37] Staff recommended that Council approve Second Reading of the By-law to Amend Land Use By-law 2024-16 to allow the rezoning. Staff advised that the alternatives open to Council included deferring the decision, requesting more information, or rejecting the application.

[38] In addressing the relevant criteria under the applicable policies, staff did not identify any conflicts with the governing policies. The report cited each of the applicable policies and included a staff comment on whether or how it was satisfied. Ultimately, planning staff determined the proposal was reasonably consistent with the MPS. In the section addressing Policy 6-19(a), which states that "Council shall not amend the Land Use By-law or approve a development agreement unless Council is satisfied that the proposal ... is consistent with the intent of this Municipal Planning Strategy", staff indicated "Yes." [Exhibit L-3, Tab 2, p. 80]

[39] The report explained that all the desired activities, other than the office, fall under the land use definition for Transportation Services. To accommodate the office use, staff also recommended a text amendment to the LUB to add “office” as a permitted use under the Rural Industrial Zone, explaining that it is considered a less intensive use and compatible with other permitted uses. Staff indicate that “one of the intentions of the Rural Industrial Zone is to protect dwellings and other less intensive uses from being disturbed from industrial and intensive uses.”

[40] Additionally, staff recommended a text amendment to section 11.3 “special requirements” to add a requirement in a new section 11.3.8 to maintain a 10 m buffer between industrial uses and existing residential land uses.

[41] The report dated February 20, 2025, attached written submissions from members of the public who raised concerns at the Public Hearing of January 22, 2025. The Staff Report summarized the public engagement and addressed the primary concerns raised by members of the public, including:

1. Public Safety/ Traffic Concerns: due to the irregular intersection that is in close proximity to the subject property, residents are concerned regarding the visibility of the driver’s truck drivers coming and going from the site driveway.
2. Environmental Protection: Residents of the area feel strongly that the property is in close proximity to wetlands that form part of the Chignecto National Wildlife area. Staff do not have data to support this claim. Residents have noted that the site sees seasonal flooding and are therefore concerned contaminants and chemicals produced from the site will impact the local wetlands.
3. Community Interest: Due to the number of people who spoke out about their concerns, residents feel the proposed use is not reflective of the community’s desires.

[Exhibit L-3, Tab 2, p. 4]

[42] The report for Second Reading updated the earlier staff report dated November 20, 2025, which had been completed prior to First Reading of the motion to approve the rezoning on December 18, 2025, and before the Public Hearing on January

22, 2025. The first report makes the same general findings and recommendations on the compatibility of the proposal with the MPS. However, it does not specifically address the issues of traffic or environmental concerns that were later raised by community members.

In respect of Policy 6-19(c)(iv), the first report states:

No traffic hazards created by the proposed development. Applicant was advised to get approval for a commercial driveway from Nova Scotia Public Works.

[Exhibit L-3; Tab 2, p. 90]

[43] In *Armco Capital Inc. (Re)*, 2021 NSUARB 147 as recently quoted in *Marchand (Re)*, 2025 NSRAB 34, at paras. 61-62, the Board reviewed the guiding principles for a review when Council has not followed the recommendations of its planning staff:

[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).

[*Armco (Re)*, paras. 41-42]

[44] In *MacNeil (Re)*, 2021 NSUARB 78, the Board emphasized that when Council does not accept the recommendation of their planning staff, there must be good planning reasons to do so that are rooted in the MPS:

[59] The Planner recommended approval of the Land Use By-Law amendment. There is nothing which requires Council to accept the recommendation of planning staff, but as noted in other decisions of the Board (for example, *Re Bona Investments Limited*, 2009 NSUARB 58, and *Re Griff Construction Limited*, 2011 NSUARB 51), there must be good planning reasons to do so. The Board considers that such reasons must be rooted in the

MPS. In this matter, the only expert evidence presented to the Board at the hearing was from the Appellants. CBRM did not call any witnesses, including any expert witnesses, challenging the evidence of its own planner, who was called as a witness by the Appellants in support of their position.

[60] The Board finds that there do not appear to be any good reasons for Council to have rejected the staff recommendation. CBRM did not identify any policy direction in the MPS for denying the proposed LUB amendment. The fact-finding mission discussed in *Archibald* did not uncover facts or opinion evidence, much less supporting reasons provided in the denial letter, or the rationales expressed during the deliberations which could be tied to the relevant MPS policy, as a basis for the denial.

Both *Armco (Re)* and *MacNeil (Re)* were decided in the context of staff recommending approval of a land use by-law amendment.

5.1.2 Council's Reasons for Rejecting the Staff's Recommendation and Refusing the Amendments

[45] The Allens emphasize that Council did not provide good planning reasons rooted in the MPS for rejecting staff's recommendations, which is "contrary to established principles requiring Council not to deviate from expert advice." (Appellant's Final Submissions, p. 1) Further, they say Council overemphasized community concerns without supporting evidence and was influenced by anecdotal concerns, not objective evidence, making the decision arbitrary. I agree with the Appellant's arguments for following reasons.

[46] In the initial staff report, planning staff advised that there "were no traffic hazards" associated with the proposal and recommended that Liberty Lane obtain a commercial highway access permit.

[47] Liberty Lane points out, confirmed by Mr. Boone, that the authority responsible for Southampton Road is the provincial Department of Public Works. Southampton is a "B-train" truck route that provides access from the Trans-Canada Highway to Amherst Point and into Nappan. Scott Allen, on behalf of Liberty Lane, applied to Public Works in November 2025 for a Work Within Highway Right-of-Way Permit,

requesting a permit for residential and commercial access and a culvert across the front of the property. The permit application shows that Public Works' staff approved a 21 m entrance and indicated that the stopping site distance was 119 m in one direction and 159 m in the other direction, exceeding the 109 m requirement. The application was stamped as approved and valid until January 26, 2026. Liberty Lane also provided a letter on Public Works' letterhead, dated January 22, 2025, and signed by Kate Fenton, Engineering and Survey Technician, Cumberland County, stating:

To Whom It May Concern:

I wish to advise that this lot has frontage on Southampton Rod, West Amherst, a provincial road owned and maintained by the Department of Public Works.

The proposed entrance for the frontage of this lot meets the Department of Public Works commercial specifications.

Stopping sight distance for the frontage of this lot, at the proposed locations, is available.

An approved Work Within Highway Right-of-Way Permit is required to install any new entrance or modify an existing entrance, and/or to build any structure within 100 metres of the centerline of a provincial highway.

[Exhibit L-5, p. 4]:

[48] Other than the issuance of the permit and the statements in the letter, the Board has no evidence of the criteria used by Public Works to determine safe stopping and sight distances. Even if that was available, the Board plays no role in deciding whether such criteria are reasonable. A traffic impact study was not required by planning staff and was not completed for the purposes of the application or this appeal.

[49] As noted in *Dumke, et al*, 2024 NSUARB 146, Public Works has jurisdiction over traffic safety and road network adequacy on provincially owned roads. In *Pilgrim (Re)*, 2023 NSUARB 85, the Board accepted that Council was entitled to rely on information presented in the staff report regarding the position of Public Works that road networks in, adjacent to, or leading to, the site were adequate for the development and

that it did not create issues related to access or egress. It did not require further investigation into the reasonableness of Public Works' decision. In that case the Board found that, despite community concerns, "no additional evidence was presented to the Board ... that would prove Council's decision to be unreasonable, on a balance of probabilities." [*Dumke*, para. 127]

[50] In *Steele (Re)*, 2025 NSUARB 12, at para. 133, the Board provided additional analysis on the role of the Province versus a municipal council in assessing traffic safety issues related to a development accessed by a provincial road. The Board found that a municipality could consider other factors beyond the approval of the responsible authority if the decision was reasonably supported by the evidence and carried out the intent of the MPS:

[133] Public Works is responsible for permitting access to provincial roads and approved and renewed an access permit for a commercial driveway from the property to Highway 358. Public Works is guided by its governing legislation and regulations, and its own policies. Under the *Bennett v. Kynock*, 1994 NSCA 114, principles enunciated by the Court of Appeal concerning environmental impact assessments, the Board is not to go "behind the curtain" to review non-planning matters subject to the jurisdiction of another lawful authority.

[134] The Municipality argued that staff, and Council, were entitled to accept the conclusions of the Provincial regulatory authority and defer to its findings. The Municipality cannot impose different standards or policies on a Provincial Department, although it could decide to require more stringent standards on a developer prior to approving a development agreement, as long as they reasonably carry out the intent of the MPS. The Municipality is entitled to rely on the province's exercise of its authority over provincial public highways, at least on its answers to the questions about access and adequacy of the provincial road to handle the development. Public Works answered the Municipality's queries on those issues.

[135] Nevertheless, staff and Council must assure themselves that an assessment, if it is to be relied on, addresses the particular proposal and the necessary elements of the policies Council must consider. As succinctly stated in the Municipality's written arguments:

This clause (and others within the General Policies) apply to a wide variety of development situations, including some within busy urban or suburban environments, and others in a less busy rural environment; some involving municipal roads, and others on provincial roads. It should be applied to the extent appropriate to the circumstances and not blindly applied in a uniform manner to all rezoning or development agreement applications.
[Emphasis added]

[136] While Public Works is the authority responsible for provincial highways, the “road networks” and “pedestrian networks” associated with a development proposal may be more complex. In drafting Policy 5.3.7(c)(vi), Council made no distinction between traffic hazards or congestion on a provincial road versus other roads. A blanket acceptance by Council of every “no concerns” response from Public Works may not always satisfy the intent of this MPS Policy, if the criteria that must be considered in the Policy are not addressed, or if evidence demonstrates other “excessive hazards” or congestion beyond the scope of Public Works’ review or authority.

[51] The policy on “excessive traffic hazards” discussed in *Steele (Re)* was nearly identical to Policy 6-19(c)(iv) in the MPS. As in *Steele (Re)*, the Board recognizes that the scope of that policy is not strictly limited to safe entry and egress onto a provincial road. Council might reasonably find that a proposal will create other traffic conditions or congestion that constitute an excessive hazard. In this case, however, Council’s reasons focused clearly on truck traffic turning into and out of the property, and sightlines from the irregular intersection.

[52] The Allens note that if they were to build a home on the property under its current zone, the LUB provisions would allow Phillip Allen to store one truck and one trailer on their property without any additional requirements. Their commercial driveway permit would provide the same entry/exit access for their single truck and trailer as is currently approved. The new zoning would simply allow the property to accommodate more of its company vehicles and equipment, up to five trailers.

[53] The Allens’ submissions to Council [Exhibit L-3, Tab 2, p. 59] indicate that they have used Melanson’s property across the road on the other side of the intersection, for four years, with no increase in traffic, noise, disruption, or accidents with that additional commercial traffic. Mr. Melanson confirmed Liberty Lane’s use of the property by letter dated January 22, 2025:

I, Vaughn Melanson, have permitted Liberty Lane Power and Logistics Inc to park their trucks and trailers on my property, at 1405 Southampton Rd, West Amherst, NS, which is directly across from their property at 1370 Southampton Rd, West Amherst, since September 19, 2023. Prior to that I allowed Phillip Allen to park the same vehicles on my

property for the previous 4 years. There have been no complaints to this date coming and going about commercial vehicles from my property. Also, Southampton Rd is a truck route to go to Parrsboro etc. Gravel trucks, B-trains etc. run this highway practically 24/7.

[Exhibit L-3, Tab 2, p. 22]

Mr. Melanson provided a second letter dated January 30, 2025, clarifying that he wished to remain neutral in Council's deliberations, and further clarified that:

My property at 1405 Southampton Rd has been available to them and still is. It's set up well for truck parking and industrial use, with about 180 feet of driveway space, excellent sightlines, and very safe access pulling in and out of the property. They've been operating from my property without any issues to my knowledge.

[Exhibit L-3; Tab 2, p. 23]

[54] Scott Allen provided his anecdotal and observational testimony about traffic on Southampton and Boomer Roads based on his years of living on Boomer Road and witnessing traffic flows from Melanson's property. The Allens say that Boomer and Southampton Roads are well travelled by commercial trucks and any speeding on Southampton Road is an existing issue unrelated to their request. Phillip and Scott Allen testified that rezoning the property based on their proposal will not introduce additional commercial traffic, it would simply allow them to operate from their own land instead of someone else's. Essentially, the net effect of trucks turning on the road would be neutral – they are currently turning at the curve in the road to enter and exit Melanson's and would move about 100 m up the street.

5.1.3 Other Evidence on Traffic Hazards

[55] On one hand, Public Works performed a study and determined that a measured driveway of 21 m as marked on the permit met the Department's requirements for safe turning and sightlines. As such, Liberty Lane was issued its commercial driveway permit. As a long-time commercial truck driver, Philip Allen testified that his primary concern was safety, and turning his trucks into the approved 70 ft / 21 m driveway would

not result in the truck crossing the centre line “barely, if at all.” On the other hand, community members, including Mr. Doiron, raised concerns about the existing conditions on Southampton Road and the irregular intersection of Boomer Road, which they speculated would worsen with the proposed rezoning.

[56] Council received correspondence from community members expressing concerns about trucks turning at the intersection and heard presentations at the Public Hearing on the same themes. A petition championed by Mr. Doiron generated over 300 signatures, apparently with 18 out of 20 immediate local households in the area from the Trans-Canada Highway to the western end of Boomer Road. All the correspondence was provided to Council attached to the January 20 staff report, and the concerns were highlighted to Council by Mr. Boone in his presentation at Second Reading [Exhibit L-3, Tab 2, p.13-57; YouTube Recording – Exhibit L-3, Tab 6].

[57] In his testimony, Mr. Boone pointed out some of the characteristics of Southampton Road, noting that the turn at 1370 Southampton Road is marked by three “Chevron signs” which he said indicates where the curve begins and help guide traffic in the proper direction along Southampton Road. A photograph provided by Mr. Doiron shows two of the signs [Exhibit L-3, Tab 2, p. 22], and Scott Allen confirmed their approximate location by marking Exhibit L-3, Tab. 2, p. 6. There was some disagreement between Scott Allen and Deputy Mayor Gould about whether the signs indicated a “dangerous curve” or merely directed traffic around the curve to the continuation of the highway. This issue is not determinative for the Board’s findings, but the Board accepts that the purpose of the chevron signs is to draw attention and caution to the curve in the road and direct traffic along Southampton Road rather than to Boomer Road.

[58] In the recording of the Council Meeting for Second Reading of the motion [YouTube link, Exhibit L-3, Tab 6], Deputy Mayor Gould articulated his observations about the road situation in front of the property during the debate on the motion. The Deputy Mayor also noted that the property is in his electoral district and he is familiar with the issue. His comments were cited in the reasons for Council's decision to deny the appeal. Council for the Municipality provided an unofficial transcription of Deputy Mayor Gould's comments at Appendix A of the Municipality's final submissions:

For me, it's a safety – it's a safety thing. And I'm familiar, very familiar, with that area. I have spent quite a few days out there sitting in Mr. Melanson's parking lot across and watching cars go by. And for me it's a safety issue, and it's probably not going to be the first time that I disagree with the Department of Transportation (sic). In ideal conditions, it is probably a safety place to go in and out, but as we all know off that marsh, the wind there on a good day is quite windy and the conditions aren't always ideal there. And I just feel that this is an area that – it's – it's not safe area for any extra traffic moving. And I can tell you when I'm sitting there, there is a lot of truck traffic going on that road, but my concern is the trucks coming in and out of – off the road and back on – onto the road.

[59] The Municipality's final submissions state that "Deputy Mayor Gould spoke about his own observations of the intersection and did not accept that the Public Works permit was a full answer to the safety concerns arising from the proximity of the Liberty Land to the First Intersection." The Board has often said that "Council speaks with one voice" in its vote on an issue and has chosen not to rely on an individual councilor's statements as evidence for Council's reasoning. This has typically been addressed in the context of an approval, when Council need not provide its reasons in writing and the Board or the parties may be trying to shed light on its reasons to target the analysis. In this case, Deputy Mayor Gould offered observations about his personal knowledge, which the Board finds it can give some weight to, similar to its treatment of letters of comment or public speakers.

[60] The Board had to consider what weight should be afforded to information about the traffic conditions that is on record based on public input into Council's process, and the comments of the Deputy Mayor prior to the vote. For the most part, this information is found in the Appeal Record filed with the Board, or in the submissions from the public in the Board's process. Mr. Doiron opted not to intervene formally in the hearing and presented his arguments through written letter of comment and a presentation as a public speaker. None of that information was presented in a way that could be tested through cross-examination.

[61] However, the *MGA* requires the Municipality to file an appeal record with the Board. As discussed by the Board in *Armco (Re)*, this points to an intention that its contents be available for the Board to rely upon. In addition, according to the Board's governing legislation, the *Energy and Regulatory Boards Act*, s. 27, it may receive any evidence that may help it in dealing with the matter before it, whether given under oath or authenticated in the same manner as in a judicial proceeding.

[62] Therefore, the Board considered the traffic and safety concerns expressed by nearby residents and Deputy Mayor Gould but ultimately placed more weight on Public Works' approval of the driveway permit and the conclusions reached in planning staff review, because these provided a more objective assessment. Furthermore, the Board finds that the comments from residents were more focused on existing concerns about the curve of the road and speculation about the impact of the development.

5.1.4 Deference to Council

[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.

[66] In this case, Council’s decision turned on its interpretation of one policy – Policy 6.19(c)(iv). That policy states that Council shall not amend the Land Use By-law unless Council is satisfied that the proposal “is not inappropriate due to ... (iv) the creation of any excessive traffic hazards or congestion on road, cycling or pedestrian networks within, adjacent to, or leading to the proposal.” There is no definition in the planning documents of any of those words – i.e., premature, inappropriate, or excessive.

Interpreting the boundaries of what is “excessive” requires some judgement. There is a level of subjectivity in that exercise, but the interpretation must be objectively reasonable. This is not a case of intersecting planning policies where the Board must defer to Council’s compromise of values.

[67] While the Board has no reason to doubt the truth of anecdotal observations about severe weather and traffic speed on Southampton Road, these observations are subjective and relate to existing conditions that are present whether Liberty Lane’s business operates from Melanson’s or its own property. The parties agree that the property is located on a heavy “B-train” truck route located close to the Trans-Canada Highway and the Amherst Industrial Park. There is little evidence before Council or the Board about other new traffic hazards (besides trucks entering and exiting the driveway at a different location) that may have supported an argument that Council reasonably concluded there were other hazards beyond that of safe highway access from the property. For instance, there was no evidence that allowed uses in the Rural Industrial Zone would create different or more intense traffic issues than current as-of-right uses in the County Residential Zone, which include agricultural uses, schools, and recreational vehicle parking sites.

[68] The Board faced a similar circumstance in *AG Properties (Re)*, 2023 NSUARB 136, where members of the community objected strongly to a proposed development agreement that would have allowed a new multi-unit residential use. At least nine speakers before Council, and two individuals before the Board, raised concerns about existing traffic and local road infrastructure and speculated that the existing traffic situation would worsen with development. Council’s reasons for denial included concerns

about the lack of traffic infrastructure to support the development, which were among the fiercest objections raised by community members. However, a traffic impact study determined the expected impact on traffic volumes and road safety was acceptable. The planner's report stated that the proposal was reasonably consistent with the relevant policy criteria related to traffic. The Board found that Council's reason for denial of the application was not supported by objective evidence.

[69] Here, Council rejected the conclusions of its professional planning staff that "No traffic hazards [are] created by the proposed development." It also rejected the finding of Public Works, the responsible authority for the road. In weighing the evidence, the Board was also guided, as it was in *Armco (Re)*, that there is some evidentiary burden on the Municipality to demonstrate its "good planning reasons, rooted in the municipality's planning strategy," for such a rejection.

[70] In this appeal, the Municipality's submissions do not reasonably connect the decision to anything that could be considered "good planning reasons" with objective support in the evidence. The Board finds the personal concerns of Deputy Mayor Gould about "trucks coming in and out of – off the road and back on – onto the road" should not be afforded the same or greater weight than the findings of the authority empowered to regulate that access on provincial highways. The Board reviewed and weighed the information in the Appeal Record, as well as the additional evidence and submissions presented during the Board's process. Having undertaken this factual analysis, the Board finds that Council's decision to refuse the application on the basis that it created an excessive traffic hazard or congestion on a road network was not supported by a reasonable weighing of the evidence. A lack of compliance with Policy 6-19(c)(iv) being

the only reason put forward to support the refusal, the Board finds that on a balance of probabilities that decision does not reasonably carry out the intent of the MPS.

5.1.5 Other Policies

[71] For clarity, the Board accepts the recommendation of the Municipality's planning staff on the interpretation of all other policies. There was no compelling evidence that weighed against any of those recommendations. The Board considered the comments from Mr. Doiron in this hearing and from other opponents about other elements of the proposal, including possible environmental impacts and disturbing noise or activity on existing residential or agricultural land uses. These concerns were largely speculative, unqualified opinions, and presumably intended to maintain the "status quo" of the current land use. The Board finds these arguments difficult to accept without any supporting evidence that the identical land use at Melanson's, which has carried on for years, resulted in any of those impacts.

5.2 Text Amendment to add "Office" to Permitted Uses in the Rural Industrial Zone

[72] According to the Definitions section of the LUB (s. 14), transportation services are defined as "a building, structure, land, or part thereof used for the purpose of transporting any kind of item or thing by truck or other vehicle, including but not limited to loading facilities, storage, maintenance facilities, but does not include the transport of people." By definition, therefore, transportation services do not include an operations office. In addition, offices are not among the listed permitted as-of-right uses in the Rural Industrial Zone.

[73] Planning staff indicated in the report dated February 20, 2025, that the development of the office would be permitted under s. 4.6 of the LUB, which permits

accessory uses in all zones. However, for future clarity and to “eliminate potential misinterpretation of the policy,” staff recommended a text amendment to s. 11.3.2, to add office to the uses permitted as-of-right in the Rural Industrial Zone. Staff indicated that offices are less intensive uses and can be used to further the intent of the zone to create separation with lower intensity uses. Staff did not anticipate any negative impacts of this decision.

[74] The Board has no contrary evidence on any of these points. Given staff’s opinion that office use could already be approved as an accessory use, the Board agrees that this is a clarifying amendment. Adding offices to the list of permitted uses in the Rural Industrial Zone is a logical change that carries out the intent of the MPS.

5.3 Amendment to s. 11.3 “Special Requirements”

[75] Staff also recommended a text amendment to s. 11.3 – Special Requirements, which is in the suite of LUB policies for the Rural Industrial Zone. This proposal would add a requirement that industrial uses must maintain a 10 m buffer from existing residential land uses in the zone. Staff said that the amendment would protect existing adjacent residential land uses, supporting the intent of the Rural Industrial Zone to ensure separation with lower intensity uses. There is currently no separation distance required, and the Board agrees with planning staff that this addition supports the intended purpose of the Rural Industrial Zone to allow transition and separation between existing residential and higher intensity uses.

[76] The Board accepts the evidence from planning staff’s reports on the application’s compatibility with other applicable MPS policies and the overall intent of the MPS.

6.0 SUMMARY OF BOARD FINDINGS

[77] The Board concludes that Council's refusal of Liberty Lane's application to rezone its property to Rural Industrial Zone does not reasonably carry out the intent of the MPS. Council rejected the recommendation of planning staff in the absence of reasonable planning reasons that were grounded in the MPS. The principal concerns about traffic raised by the public either exist currently or were addressed by Public Works in its evaluation of safe access to the provincial highway. There was no evidence beyond unsupported speculation that rezoning the property would create other traffic hazards on the road networks leading to and from the property. On a balance of probabilities, Liberty Lane's proposal meets the criteria set out in the MPS.

[78] In accordance with s. 251(1)(c) of the *MGA*, the Board finds that Land Use By-law 24-16 should be amended to:

- a. change the zoning of the subject property at 1370 Southampton Road (PID 25394958) from Country Residential Zone (RCou) to Rural Industrial Zone (IRur);
- b. add "office" to the list of permitted as-of-right uses in the Rural Industrial Zone; and
- c. create Section 11.3.8 to maintain a 10 m buffer area from the common property line of any adjacent residential use.

[79] The appeal is allowed and the refusal of Council is reversed.

[80] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 8th day of October 2025.



Julia E. Clark