



Nova Scotia Utility and Review Board

Mailing address

PO Box 1692, Unit "M"
Halifax, Nova Scotia
B3J 3S3
board@novascotia.ca
<http://nsuarb.novascotia.ca>

Office

3rd Floor, 1601 Lower Water Street
Halifax, Nova Scotia B3J 3P6
1 855 442-4448 (toll-free)
902 424-4448 t
902 424-3919 f

January 19, 2022

nrubin@stewartmckelvey.com

Nancy Rubin, Q.C.
Stewart McKelvey
Queen's Marque
600 – 1741 Lower Water Street
Halifax, NS B3J 2X2

leary.martha@gmail.com

Martha R Leary

coolican.coolican@gmail.com

Murray Coolican

maclaur@Halifax.ca

E. Roxanne MacLaurin
Senior Solicitor
Halifax Regional Municipality
3rd Floor, 5251 Duke Street
Halifax, NS B3J 3A5

kathleen.hall@bellaliant.net

Kathleen Hall

Dear Parties:

M10373 - John Tawil - Appeal of a Decision of Halifax and West Community Council refusing a Rezoning Application - 48 & 50 Old Sambro Road, Halifax, NS – (PL-21-16)

The Board has considered the request of the Williams Lake Conservation Company (WLCC) to become an Intervenor in this proceeding. Its correspondence of January 17, 2022 sets out the basis upon which WLCC submits it should be granted this status.

WLCC states that it is a non-profit organization whose objects include to preserve, for recreational, aesthetic, health, and other purposes, the lake known as Williams Lake, and make presentations to public and other authorities on behalf of the WLCC in order to further its objects. WLCC has provided a map showing the boundaries of the Williams Lake watershed. The property which is the subject of this appeal is within that boundary. WLCC is concerned with the impact the proposed development will have on Williams Lake and its watershed. The Appeal Record indicates that WLCC was actively involved in the process before the Halifax and West Community Council.

Halifax Regional Municipality does not oppose the Intervenor status request. Ms. Rubin, on behalf of the appellant, makes the following submission:

...The request for intervention is stated to be grounded in the following:

Our primary concern in this rezoning are the ramifications of another increase in the density in our immediate Watershed, so close to our key water sources.

The Appellant does not contest the WLCC's interest in the appeal as stated above; rather, these submissions focus on the scope of issues in dispute and materiality.

...

The Appellant's discomfort is not with respect to granting WLCC the procedural right to tender evidence, cross-examine and make submissions with respect to the **MPS** policies related to density (as stated in its application), but rather that it will use the intervention as a platform to pursue matters outside the scope of the appeal.

Ms. Rubin elaborates on her concerns related to relevance and materiality and the Board's role in controlling its process to limit evidence and participation to matters within the scope of the appeal.

The Board has considered the foregoing submissions and the information and submissions filed by WLCC, as well as the information in the Appeal Record. In these circumstances, it does not require oral submissions to decide on WLCC's request.

The issue currently before the Board is whether WLCC has met, on the balance of probabilities, the test to become an Intervenor. The test is based on the definition of an "aggrieved person" in s.209(a)(ii) of the *Halifax Regional Municipality Charter*, its incorporation by reference in s.25(2) of the *Municipal Government Act Rules*, and the test for an "interested person" in s.6 of the *Utility and Review Board Regulations* and elements of the common law test (see: *Re Ashcroft Homes Inc.*, 2016 NSUARB 166). It can be formulated as follows, in the context of this case:

- Whether WLCC's objects include promoting neighbourhood quality of life affected by Community Council's decision, or protecting features, structures, or sites in the community affected by the Council's decision having significant recreational value; or
- Whether WLCC has a real and substantial interest in the subject-matter of the proceeding.

WLCC's standing to become an Intervenor is not really contested. Given its objects related to the protection of the Williams Lake watershed, and its expressed concerns on the impact an increase in density will have on this watershed, the Board agrees that WLCC has a sufficient interest in the outcome of this planning appeal to become an Intervenor. Incorporating elements of the common law test for intervention, the Board further accepts that this interest is sufficiently delineated from that of the general public, as submitted by WLCC, to warrant granting Intervenor status.

The Board acknowledges Ms. Rubin's concerns. That said, the relevance and materiality of any evidence, cross-examination, or submissions made by WLCC, or any party, is for another day. As with all participants before the Board in a planning matter, the Board reminds the parties that the issue before it is whether the decision of Community Council reasonably carries out the intent of the MPS. That is the statutory test it must apply. Only evidence and submissions related to that issue will be entertained. Objections, if any, related to relevance and materiality will be dealt with in the usual way, either on a preliminary motion or at the hearing, depending on if, and when, any such objections arise.

The Board now encloses an Amended Hearing Order which sets out the remaining filing deadlines, which incorporates the two-week extension granted in relation to public participation.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'R. Melanson', with a long horizontal flourish extending to the right.

Richard J. Melanson, LL.B.
Member