

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **NORMA MAYER, STANLEY JUDSON, TANYA WALKER, WALKER MACKINNON, RAYMOND AND ROSE MACKINNON, RAYMOND MACKINNON, JR., AND RUSSELL AND GERTRUDE COPLEY** to a decision of the Municipality of the County of Inverness dated February 3, 2014 which amended the Inverness Planning Area Land Use By-Law by rezoning a portion of two (2) properties from Waterfront Development (W-D) to Commercial Mixed-Use (C-3) to allow for the construction of additional accommodations associated with the Cabot Links Golf Course, specifically 12 single-storey units (six semi-detached buildings)

BEFORE: Dawna J. Ring, Q.C., Member

REQUEST FOR INTERVENOR STANDING: **MARGAREE ENVIRONMENTAL ASSOCIATION**
Neal Livingston, co-chair

APPELLANTS: **NORMA MAYER, STANLEY JUDSON, TANYA WALKER, WALKER MACKINNON, RAYMOND AND ROSE MACKINNON, RAYMOND MACKINNON, JR., AND RUSSELL AND GERTRUDE COPLEY**

RESPONDENT: **MUNICIPALITY OF THE COUNTY OF INVERNESS**
Harold Maclsaac

APPLICANT: **CABOT LINKS VENTURE INC.**
Jocelyn Campbell, Q.C.

HEARING DATE: March 19, 2014

PRELIMINARY DECISION DATE: **March 21, 2014**

WRITTEN REASONS: **April 17, 2014**

PRELIMINARY DECISION: **Application for full Intervenor standing denied.**

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I INTRODUCTION

[1] These are the Board's reasons for its Decision to refuse the request of the Margaree Environmental Association ("MEA") to have Intervenor standing in this Appeal with full rights of participation including the right to present evidence, cross-examine and provide submissions.

[2] The Council of the Municipality of the County of Inverness ("Municipality") decided on February 3, 2014, to amend the Inverness Planning Area Land Use By-Law ("LUB") to rezone a portion of two (2) properties of Cabot Links Venture Inc. ("Cabot Links") from Waterfront Development (W-D) to Commercial Mixed-Use (C-3) to allow for the construction of additional accommodations associated with the Cabot Links Golf Course, specifically, 12 single-storey units in six semi-detached buildings.

[3] On February 18, 2014, Norma Mayer, Stanley Judson, Tanya Walker, Walker MacKinnon, Raymond and Rose MacKinnon, Raymond MacKinnon, Jr., and Russell and Gertrude Copley ("Appellants") filed their Notice of Appeal from Council's decision with the Nova Scotia Utility and Review Board ("Board"). The Appeal was made pursuant to s.250(1)(a) of the *Municipal Government Act*, S.N.S. 1998, c. 18, as amended ("*MGA*").

[4] The MGA requires an appeal to be heard within 45 days of the filing of the appeal record (s.250A). After a preliminary hearing with the parties, the hearing date of April 23, 2014, and a timetable within the MGA time limits were set. The Hearing Order, issued on February 28, 2014, required that after Notice of the Public Hearing was published anyone requesting intervenor standing had to do so by March 12, 2014. A

party had to state its objection to the standing request by noon on March 14, 2014. If necessary, a preliminary hearing would occur on March 19, 2014.

[5] In accordance with the timetable, the MEA filed its request for intervenor standing, which was subsequently revised and filed on March 13, 2014. On March 13, 2014, the Municipality made requests of the MEA for information it considered important for its decision of whether to oppose the Application; which MEA refused. Both the Municipality and Cabot Links objected.

[6] A summary of the submissions were provided in writing by the Municipality and Cabot Links on March 14 and 17, 2014, respectively. Reply submissions were filed by the MEA on March 18, 2014 and by the Municipality on March 19, 2014.

[7] The preliminary hearing was heard on March 19, 2014. The proceedings were to be done by conference call. Neal Livingston, co-chair of the MEA, represented it at the hearing. He was in Halifax and appeared before the Board in person. To ensure no party was disadvantaged by not being present before the Board, the Board member did not enter the room until all participants were on the conference call and Mr. Livingston was present. Similarly, the call did not terminate until the Board member left the room. The recording of the proceedings commenced when the Board Member entered the room and was not turned off until the Board Member left the room.

[8] The Board rendered its Decision on March 21, 2014, with written reasons to follow. These are those reasons.

II ISSUE

[9] The sole issue before the Board is whether MEA should be granted intervenor standing.

III FACTS AND ARGUMENTS

[10] In this Appeal the Board's jurisdiction is limited to determining whether Council's decision reasonably carried out the intent of the Municipal Planning Strategy ("MPS").

[11] The Appellants allege Council's decision is contrary to the Municipality's MPS, specifically policy A-3(b)(i) and (ii), (c)(ii) and (d), A-4, A-7, 1.2, 2.9, and 2.9-A. In summary, the Appellants allege the decision is contrary to the above MPS policies because:

1. The land is not located immediately adjacent to commercial mixed-use property;
2. It is a cottage tourism development subject to R-1 zoning and development agreement policy A-5; and
3. It is contrary to the requirement of the MPS to consider all other policies for this development which is immediately adjacent to low density urban residential lands by not having information to assess the community's ability to absorb any related costs; adequacy of sewer and utilities to reduce conflicts with adjacent lands, in particular, pollution; and the suitability of the steepness of the grades and/or location of water courses, stating it may involve marshlands.

[12] The relevant MPS policies read:

Policy A-3 In considering amendments to the Land Use By-law, in addition to all other criteria as set out in various policies of this strategy, Council shall have regard to the following matters:

...

b) That the proposal is not premature or inappropriate by reason of:

i) the financial capability of the Community to absorb any costs relating to the development;

ii) the adequacy of sewer services and utilities or if services are not provided, the adequacy of physical site conditions for private on-site sewer and water systems;

c) That adequate requirements are contained in the Land Use By-law to reduce conflict between the development and any other adjacent or nearby land use by reason of:

...

ii) emissions including air and water pollutants and noises;

d) Suitability of the proposed site in terms of steepness of grades, and/or location of watercourses is based on appropriate technical advice.

Policy 1.2 It shall be the intention of Council to consider a development agreement to permit a cottage tourism development in the Residential Urban (R-1) zone in accordance with the criteria for a development agreement, Policy A-5.

Policy 2.9 It shall be the policy of Council to prohibit the use of the Commercial Mixed Use (C-3) zone and the Commercial Tourism (C-2) zone outside the areas designated Commercial Mixed Use and Commercial Tourism as shown on the Generalized Future Land Use Map - Map 1.

Policy 2.9-A Notwithstanding Policy 2.9, and in conformance with Policy A-7 of this Strategy, it shall be the intention of Council to consider requests for rezoning areas to the Commercial Mixed Use (C-3) zone and the Commercial Tourism (C-2) zone if they are immediately adjacent to the given Commercial Designation.

[13] The MEA stated it qualified as an intervenor for the following reasons: (1)

MEA meets the standard of aggrieved person under s. 191(a)(ii) and outlined the objects of its organization; it had been granted standing before the Board in other cases such as the NewPage/Nova Scotia Power Inc. ("NSPI") Biomass Project hearing; and it would bring forward evidence relating to public participation as required by the *MGA* and an agreement between the Inverness Development Association and Cabot Links ("Agreement"). Specifically, MEA stated as follows:

5) The MEA position in regards to the rezoning appeal is that the NSUARB should strike down the zoning change in this matter as the County has failed in its duty under "Section 190 of the Municipal Government Act:

(d) provide for the fair, reasonable and efficient administration of this Part. 1998, c. 18, s. 190."

6) The MEA wishes to bring forward evidence that the County was aware of the agreement through which Cabot Links obtained the land in question for the rezoning, and that under this agreement Cabot is not allowed to build anything on this land besides a golf course until 15 years after the contract was signed in 2005, with the Inverness Development Association- who had been given these publicly owned lands to govern. (see the attached contract clause 7(k)- note: by email only),

(k) The Developer agrees that the deed of the Golf Course Lands to it shall contain the following restrictive covenant which shall be binding on it, its successors and assigns for the period of 15 years from the Closing Date:

The Golf Course Lands shall not be used for any purpose except the construction and operation of a public golf course and no buildings shall be constructed thereon, except for a club house, buildings required for maintenance of the golf course and buildings reasonably necessary for the operation of the Golf Course.

7) Inverness County Council should not have proceeded with engaging to make a decision and spending public funds, if the applicant was requesting a decision by government to do something for which they do not have the right to do.

8) The reason we suggest that a public body should not have engaged is;
-that public funds should not be spent on matters where they need not be,
-that government staff and decision makers are tasked with enough duties than to engage in approving or not approving activities that are not allowed, no matter what the decision by government is on such a matter.
-giving an applicant a government approval for something an applicant does not have a right to do under a land encumbrance, can bias or harm a relationship between the contractual parties.

9) Inverness County Staff and Officials should have rejected this request for rezoning when the application was received. Time and funds should not have been engaged with this matter.

The MEA filed a signed copy of the Agreement with its revised request for intervention on March 13, 2014.

[14] The MEA also filed its Memorandum of Association. The objects begin with the goal to unite and promote the interests of all persons in the preservation, enhancement and celebration of the environment in the Province of Nova Scotia. Specifically, the objects are:

(A) TO UNITE AND PROMOTE the interests of all persons in the preservation, enhancement and celebration of the environment in the Province of Nova Scotia;

TO UNITE AND PROMOTE the interests of all persons in the preservation of the environment to assure the ongoing health, welfare and enjoyment of the general public;

TO UNITE AND PROMOTE the interests of all persons in the preservation of the natural environment of the Province of Nova Scotia;

TO UNITE AND PROMOTE the interests of all all persons in the conservation of fish, game and wild life;

TO UNITE: AND PROMOTE: the interests of all persons in the health protection of domesticated animals;

TO UNITE AND PROMOTE the interests of all owners of real property in the Province of Nova Scotia in the preservation of the natural environment of their landholdings;

TO UNITE AND PROMOTE: the interests of all persons engaged in agriculture, horticulture, silvaculture and aquaculture in the preservation of the natural environment;

TO UNITE AND PROMOTE the interests of all persons in the preservation of water and air;

TO UNITE AND PROMOTE the interests of all persons to develop, recruit and secure public support throughout the Province of Nova Scotia for the enactment of legislation by the Legislature of Nova Scotia to abolish the use of pesticides;

TO UNITE AND PROMOTE the interests of all persons in public awareness of environmental issues;

TO gather and exchange ideas, data, and statistical, scientific and botanical information for dissemination to all persons interested in the preservation of the environment and to the Government and Legislature of Nova Scotia;

TO conduct research and perform investigations regarding the environment for dissemination to all persons interested in the preservation of the environment and to the Government and Legislature of Nova Scotia;

TO make representations to the Government and Legislature of Nova Scotia for the enactment of legislation to preserve the environment and to abolish the use of pesticides;

TO maintain close ties with organizations, societies and individuals within Canada interested in bringing about the abolition of pesticides and also with similar societies and individuals in other countries and Jurisdictions;

TO offer a forum for members of the Society to express their views and/or opinions with respect to any of the above matters;

AND TO take whatever lawful and legal action on behalf of the members of the Society and the citizens of the Province of Nova Scotia it may deem necessary or advisable under the circumstances in order to express its views and to assure the preservation of the environment;

[15] On March 13, 2014, the Municipality made a number of requests to the MEA for a list of its members and addresses. The Municipality stated the number of

members and their locations was important for its decision of whether to oppose the MEA's request for standing. The MEA refused to provide the information specifically stating: "Please be advised that we have a membership and a members list register, but are not making it available, as previously stated".

[16] During the preliminary hearing, the MEA further stated it seeks to place before the Board evidence, documents and information on matters relating to the following: the lands in question were public lands; they are the subject of the Agreement which have restrictive covenants preventing the development; failure of Cabot Links to provide public road access; Council making this decision despite the restrictive covenant; and Council's potential bias and/or conflict of interest through the process. The MEA also wished to speak to the restriction of views caused by these proposed single storey buildings for those residing in the area.

[17] Mr. Livingston, once again, refused to provide the names and addresses of its members. He stated, however, that the organization has 185 people throughout the Province, the majority are in Inverness County, and he is the closest member with a residence approximately 14 to 15 kilometres from the rezoned properties.

[18] The Municipality and Cabot Links objected to the MEA being given full intervenor standing in the proceedings, on grounds summarized as follows:

1. The issues the MEA wishes to raise in these proceedings are outside the Board's jurisdiction in this Appeal;
2. The MEA has not met the tests to be granted intervenor standing in the proceedings; and

3. Having intervenor standing before the Board (or Court) in previous NSPI proceedings does not mean the MEA should be intervenors in this planning Appeal.

IV LAW

[19] The Board does not have the jurisdiction of a Court. A Court may address a multitude of different issues in matters between parties in one proceeding.

[20] The Board only has the jurisdiction granted to it by the legislation which created it and confers powers upon it.

[21] The Board was created under the *Utility and Review Board Act*, S.N.S. 1992, c. 11 as amended ("*UARB Act*"), which gives the Board sole jurisdiction to decide the cases and matters conferred upon it (s.22(1)) and in those cases it may determine all questions of law and fact (s.22(2)).

[22] Under various statutes, approximately 33 mandates have been conferred upon the Board, including appeals under the *MGA*. The Board's jurisdiction varies among these mandates depending upon the legislation.

[23] Under the *MGA*, the Board is restricted in this appeal to determining whether Council's decision reasonably carries out the intent of the MPS. The Appellants may only appeal to the Board on the above grounds as set out in s.250(1)(a):

Restrictions on appeals

250(1) An aggrieved person or an applicant may only appeal (a) an amendment or refusal to amend a land-use by-law, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;

Similarly, the Board may not grant the Appeal unless it finds Council's decision has not reasonably carried out the intent of the MPS as set out in s. 251(2):

Powers of Board on appeal

251(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.

[24] In other legislation such as the *Public Utilities Act*, R.S.N.S. 1989, c. 380, as amended ("*PUA*"), or the *Motor Carrier Act*, R.S.N.S. 1989, c. 292, as amended, the Board has broad regulatory jurisdiction over various industries.

[25] The *UARB Act* provides the Board with broad procedural authority (ss.16 to 29), including an ability to receive in evidence any information, document, statement or matter that may assist the Board in determining the case before it (s.19), subpoena witnesses (s.17), has the authority of a commissioner under the *Public Inquiries Act* (s.16), and may make rules regarding practice and procedure (s.12). The pertinent sections read as follows:

Rules of practice and procedure

12 The Board may make rules respecting practice and procedure in relation to matters coming before it.

Public Inquiries Act

16 In a matter over which the Board has jurisdiction, the Board and each member has all the powers, privileges and immunities of a commissioner appointed pursuant to the Public Inquiries Act.

Powers of member

17 (1) A member may administer oaths or affirmations, certify as to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

(2) Where a person fails to comply with an order of the Board or a subpoena or where a witness refuses to testify to a matter regarding which the witness may be interrogated before the Board or a member, a judge of the Trial Division of the Supreme Court shall, on application of the Board or a member, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued by the Court or a refusal to testify therein.

Manner of taking evidence

18 The Board may, in an investigation, cause the evidence of witnesses residing within or without the Province to be taken in the manner prescribed by law for like depositions and civil actions in the Supreme Court.

Admissibility of evidence

19 The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.

Rights of a party

21 (1) A party may be represented before the Board by counsel.

(2) In a hearing before the Board, a party may call and examine witnesses, cross-examine opposing witnesses and present arguments and submissions.

Jurisdiction

22 (1) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it.

(2) The Board, as to all matters within its jurisdiction pursuant to this Act, may hear and determine all questions of law and of fact.

[26] Under the *Public Inquiries Act*, the Board has the power to summon anyone as a witness to give evidence and produce documents and things the Board deems requisite to determine the matter before it; ss.4 and 5 read as follows:

Witnesses and evidence

4 The commissioner or commissioners shall have the power of summoning before him or them any persons as witnesses and of requiring them to give evidence on oath orally or in writing, or on solemn affirmation if they are entitled to affirm in civil matters, and to produce such documents and things as the commissioner or commissioners deem requisite to the full investigation of the matters into which he or they are appointed to inquire.

Powers, privileges, immunities

5 The commissioner or commissioners shall have the same power to enforce the attendance of persons as witnesses and to compel them to give evidence and produce documents and things as is vested in the Supreme Court or a judge thereof in civil cases, and the same privileges and immunities as a judge of the Supreme Court.

[27] Pursuant to s.34(1) of the *UARB Act*, the Governor in Council may make regulations prescribing who may appear before the Board and the extent of their participation:

Regulations

34 (1) The Governor in Council may make regulations

...

(d) prescribing the necessary parties to applications, appeals or other matters or proceedings before the Board;

(e) permitting persons who are not parties to an application, appeal or other matter or proceeding before the Board to participate in an application, appeal or other matter or proceeding, with power to prescribe the extent of the participation;

[28] The Governor in Council under its *Utility and Review Board Regulations* (“*UARB Regulations*”) gave the Board the power and jurisdiction to determine a person’s participation before it in any matter:

Attendance and participation by any person

5 Any person may attend at a hearing and be heard on any matter before the Board, but may not participate in the hearing except as permitted by the Board.

[29] However, under *Regulation 6*, the Board has no discretion and must permit a person to participate in a hearing if they have a real and substantial interest in the subject matter of the proceeding:

Interested person

6 The Board shall permit any person who is determined by the Board to have a real and substantial interest in the subject-matter of the proceeding to participate in the hearing.

[30] If these *Regulations* conflict with the *MGA*, then the *MGA* prevails pursuant to s.34(3) which reads as follows:

34(3) For greater certainty, where a regulation made pursuant to subsection (1) conflicts with any Act of the Legislature, that Act prevails.

[31] The *MGA* is silent on who may appear before the Board as an intervenor. The *MGA* only sets out those who are able to commence an appeal: *R&N Farms Limited*, 2010 NSUARB 4, para. 71-83 and *Nova Scotia Mink Breeders Association*, 2010 NSUARB 30.

[32] Under the *MGA*, the following persons or organizations may appeal a decision of Council on an amendment to a by-law:

Appeals to the Board

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

- (a) an aggrieved person;
- (b) the applicant;
- (c) an adjacent municipality;
- (d) a village in which an affected property is situated;
- (e) the Director.

[33] An aggrieved person is defined by the *MGA* as follows:

Interpretation

191 In this Part and Part IX, unless the context otherwise requires

(a) "aggrieved person" includes

(i) an individual who bona fide believes the decision of the council will adversely affect the value, or reasonable enjoyment, of the person's property or the reasonable enjoyment of property occupied by the person,

(ii) an incorporated organization, the objects of which include promoting or protecting the quality of life of persons residing in the neighbourhood affected by the council's decision, or features, structures or sites of the community affected by the council's decision, having significant cultural, architectural or recreational value, and

(iii) an incorporated or unincorporated organization in which the majority of members are individuals referred to in subclause (i);

[34] The Board does not find the Governor in Council's *UARB Regulations 5* and 6 are in conflict with the *MGA* in this Appeal.

[35] The Board has adopted *MGA Rules* pursuant to s. 12 of the *UARB Act*, the objects of which are to secure a just, speedy and economic determination of every appeal or application under the *MGA* (s.2(2)). The Board may do what is necessary to effectively and completely adjudicate the matter if there are no procedures provided (s. 4(1)) or may dispense with, amend or supplement the rules if it is the public interest to do so or special circumstances require it (s.4). In its preliminary hearings the Board may consider the participation of "interested persons" (s.11(1)(e)). These sections read:

2(2) The object of these Rules is to secure the just, speedy and economic determination of every appeal or application.
General

4(1) Where procedures are not provided for in these Rules or in an enactment, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.

(2) The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of these Rules at any time by making a procedural order, if it is satisfied that the special circumstances of the appeal or application so require, or it is in the public interest to do so.

(3) The Board may make directions on procedure and procedural orders which shall govern the conduct of a specific appeal or application.

(4) The Board may extend or abridge the time fixed by these Rules or otherwise fixed by the Board, and may do so of its own initiative or in response to a motion by any party whether or not the motion to extend or abridge the time is made after the time so fixed has expired.

(5) Unless otherwise specified, where these Rules or a Board order make reference to the number of days between two events, not expressed to be clear days, the number of days shall be calculated by excluding the day on which the first event happens and including the day on which the second event happens. If the last day falls on a day the Board offices are closed, the time shall automatically be extended to the next business day.

(6) No appeal or application before the Board shall be defeated or affected by any technical objection or by any objection based upon defects in form or procedure.

11(1) In any appeal or application, the Board may, on its own initiative or at the request of any party, hold a preliminary hearing to deal with any matter that may aid in the disposition of the hearing, including to:

...
(e) consider the participation by interested persons;

[36] The Board's authority to receive any information or matter that may, in the Board's opinion, assist it to deal with the case before it under s. 19 of the *UARB Act* is restated as *Rule 15(5)* which reads:

15(5) The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.

[37] Under *Rule 25(5)* an aggrieved person has the right to intervene in an Appeal:

25(5) Any aggrieved person wishing to intervene in the public hearing shall file a notice with the Board advising of his or her intention to participate in the hearing.

[38] The *MGA* requires appeals to be heard within 45 days of the filing of the Appeal Record by the Municipality unless the parties agree or it would be unjust to do so. Consequently, these appeals are intended to be decided in an efficient manner.

[39] The Board has read the *MGA* as a whole and given it a broad and liberal interpretation to ensure the intent and objects of the *MGA* are met. The Board finds the issue of intervenor standing is a preliminary matter and is not intended to be a mini-trial to ensure the Appeal may be heard within the 45 day timeline, similar to preliminary proceedings to determine whether an appellant is an aggrieved person, as outlined in detail in *Ollive Properties Limited*, 2012 NSUARB 186.

[40] The person or organization requesting intervenor standing, in this case the MEA, has the burden of proving it should be granted standing.

V FINDINGS

[41] In general, intervenors are different from parties. The latter have a right to participate in the proceedings, while the former, usually, are only permitted to participate at the discretion of the Board.

[42] The Board has read the relevant statutes as a whole and given them a broad and liberal interpretation to meet their objects and purposes as they relate to this Appeal.

[43] The Board finds that, in general, under both s.19 of the *UARB Act* which is maintained in *MGA Rule 15*, the Board has the power to receive in evidence any matter, information, statement or document which, in the opinion of the Board, may assist the Board to deal with the matter before it. Consequently, the Board has the discretion to

grant a person intervenor standing for the purposes of eliciting any matter, information, statement or document the Board has determined will help it to conclude the case before it. Not everyone that has such information, document or statement will necessarily be granted full intervenor standing with a right to present evidence and/or cross-examine witnesses or parties. Rather, the Board may decide what level of participation the person will be given at its discretion. For example, instead of granting full rights of participation, the Board may decide the person may appear as a witness, attend an evening session, or submit written comments or submissions.

[44] This general discretion of the Board to grant intervenor standing is restricted in two cases. First, under *UARB Regulation 6*, a person who has a real and substantial interest in the proceedings has the right to participate. Secondly, under *MGA Rule 25(5)*, a person who is an aggrieved person has the right to participate as an intervenor in a planning appeal. Most appeals under the *MGA* permit an aggrieved person to be an appellant capable of commencing the appeal, itself. Although it is difficult to conceive of any aggrieved person wishing to participate in an appeal as an intervenor as opposed to an appellant, clearly, if they qualify for the latter they would be entitled to participate in the former capacity.

[45] The Board will first determine whether the MEA will elicit matters, statements, information or documents which, in the opinion of the Board, may assist it in dealing with this Appeal. Included in this, the Board will discuss the Board's ability to address the Agreement and MEA having been granted intervenor standing by the Board in the past.

[46] In this case, Council decided to amend its LUB and rezone portions of two properties to enable this development. The matter before the Board is whether Council's decision reasonably carried out the intent of the MPS. The Appellants have commenced this Appeal on the grounds outlined above.

[47] The MEA wants to present evidence, information, matters and documents regarding restrictive covenants in the Agreement and legal arguments pertaining to what it thinks Council should have done as a result of the Agreement.

[48] The Board recognizes the Agreement and the restrictive covenants are significant to the MEA. However, the Board concurs with the Municipality and Cabot Links. First, they are not relevant to the issues raised by the Appellants in this proceeding. Secondly, they are beyond the Board's limited jurisdiction in this Appeal. The Board is not permitted under the *MGA* to consider the matters raised by the MEA in this Appeal. Consequently, the Board does not find that any of the evidence, matters or information regarding the Agreement is of any assistance to the Board in determining this Appeal.

[49] The MEA argues the Board has considered agreements in past planning appeals. Mr. Livingston is correct, but the facts of those cases are distinguishable. The Board has the jurisdiction to deal with agreements that are necessary and incidental in determining a question on appeal. The Board's consideration of such agreements are interpreted solely for the purposes of answering the question under the appeal and are not a determination of the matter as between the parties nor does it have any binding effect on the Court, *Can-Euro Investments Ltd.*, 2007 NSUARB 100, appealed on other

grounds, *Can-Euro Investments Ltd. v. Nova Scotia (Utility and Review Board)*, 2008 NSCA 24.

[50] In this case, the Agreement and the issues the MEA wishes to raise about the Agreement are not necessary or incidental to the question in this Appeal and the grounds raised by the Appellants. Rather, the MEA's issues are separate questions totally outside of this Appeal.

[51] The MEA was also seeking intervenor standing to present evidence of how the development will restrict the views of the nearby residents. None of the MEA members are residents of the area whose views may be restricted. The Board concurs with counsel for Cabot Links that this evidence is best obtained from the Appellants who reside in the area and whose views will be restricted. Furthermore, this would be a duplication of the information the Board would receive from the Appellants. Once again, the Board finds that in its opinion this information from the MEA will not further assist the Board in the determination of the matter before it.

[52] MEA argues it should be granted intervenor standing because it has been given intervenor standing before the Board in the past, specifically in the NewPage-NSPI Biomass Project hearing P-128.10 and has also been granted intervenor standing before the Supreme Court of Nova Scotia.

[53] In each case, the Board has the power to determine if a party requesting intervenor standing has information, matters, documents that would be of assistance to the Board in determining the matter before it. A pivotal determination is the type of matter before the Board and the decision it is permitted to make under its enabling legislation. The Board has administrative or adjudicative functions under 33 separate

mandates. Under each mandate, the Board has specified jurisdiction and powers. Each case will be determined upon the facts, circumstances, mandate, issues, etc. before the Board in the case in which the intervenor application is being made. The issues and matters before the Board in a regulatory matter regarding NSPI's operations throughout the Province is very different from a planning appeal, addressing a specific LUB amendment for two properties in a community, in which the Board's jurisdiction is limited to determining whether the decision reasonably carried out the intent of an MPS. Consequently, while the Board allowed standing to MEA in the exercise of its discretion in an NSPI matter, it does not necessarily follow the MEA should be an intervenor in this planning Appeal.

[54] The MEA also argues it should be granted intervenor standing because it meets the requirement of an aggrieved person under the *MGA* under s.191(a)(ii). Under this section the Board reviews the objects of the organization to see if it meets one of the two standards outlined in this subsection. For ease of reference it is repeated:

Interpretation

191 In this Part and Part IX, unless the context otherwise requires

(a) "aggrieved person" includes

...

(ii) an incorporated organization, the objects of which include promoting or protecting the quality of life of persons residing in the neighbourhood affected by the council's decision, or features, structures or sites of the community affected by the council's decision, having significant cultural, architectural or recreational value, and

[55] An example of an organization that has qualified under this section is Friends of the Public Gardens whose objects are to protect the public gardens and has been granted intervenor standing for developments that may impact the Gardens.

[56] The MEA is a Province-wide organization with objects centred around issues of the environment, animals, wildlife, pollutants, pesticides, etc. None of those

objects include promoting and protecting the quality of life for persons in the neighbourhood of the Cabot Links which is affected by Council's decision. Mr. Livingston was questioned on MEA's objects in detail and the Board finds the objects also do not address features, structures, or sites affected by Council's decision that have significant cultural, architectural or recreational value. Consequently, the Board finds MEA does not qualify as an intervenor under this subsection.

[57] An organization can also be an intervenor under s.191(a)(iii), if the majority of the members are individuals that would qualify under s.191(a)(i), being that they have a *bone fide* belief Council's decision will adversely affect the value or reasonable enjoyment of their property. Mr. Livingston refused to provide the names and addresses of its members. He lives the closest; at 14 to 15 kilometres from the rezoned properties. Although he stated the majority of its 185 province-wide members live in Inverness County, there is no information before the Board that the majority of these individuals have a *bona fide* belief these rezoned properties will adversely affect the value or reasonable enjoyment of their property. The Board finds, therefore, MEA does not qualify as an aggrieved person under s.191(a)(iii).

[58] The definition of "aggrieved person" in the *MGA* is not an exhaustive list of who may be an aggrieved person, *Mitchell Brison and Brison Sand & Gravel Limited*, 2006 NSUARB 113; and *Robert James Milner*, 2006 NSUARB 102. There is no further evidence before the Board upon which MEA could be found to be an aggrieved person.

[59] Pursuant to *UARB Rule* 6, a person who has a real and substantial interest in the proceeding before the Board also has the right to participate. Once again, in the facts of this case, the Board finds the MEA does not have a real or

substantial interest in the subject matter of this Appeal for the same reasons noted above; that is, the interests it has in the Appeal are irrelevant to the issues of the proceeding and outside the jurisdiction of the Board.

[60] Although the Board has denied MEA intervenor standing with full rights of participation, this does not prevent the MEA from appearing as a witness for a party, presenting at the evening session, or filing written comments or submissions with the Board, recognizing any information it seeks to present must be relevant to the Appeal and the Board's limited jurisdiction.

VI CONCLUSION

[61] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 17th day of April, 2014.

Member