NOVA SCOTIA COURT OF APPEAL
Citation: ***Elderkin v. Nova Scotia (Service Nova Scotia and Municipal Relations)***, 2013 NSCA 79

Date: 20130626
Docket: CA 390640
Registry: Halifax

Between:

Peter Elderkin, Harold Forsyth, Hal Stirling, Doug Hennigar, and Catherine Streatch

Appellants

v.

Nova Scotia (Minister of Service Nova Scotia and Municipal Relations)

Respondent

Judges:	MacDonald, C.J.N.S., Oland and Fichaud, JJ.A.
Appeal Heard:	December 3, 2012, in Halifax, Nova Scotia
Held:	Appeal dismissed, with costs of $2,000 inclusive of disbursements payable by the Appellants to the Respondent, per reasons for judgment of Oland, J.A.; MacDonald, C.J.N.S., and Fichaud, J.A. concurring.
Counsel:	Robert G. Grant, Q.C., and Matthew Pierce, for the appellants Alison Campbell, for the respondent

Reasons for Judgment:

[1] The appellants – Peter Elderkin, Harold Forsyth, Hal Stirling, Doug Hennigar, and Catherine Streatch - own property adjacent to the Hamlet of Greenwich in the Annapolis Valley. The fertile soil of the Valley has been farmed for a very long time. The Elderkin farm has been in the Elderkin family since 1760. Each of the Forsyth and Hennigar farms has been in those families for three generations, and the Stirling farm in that family since 1917. The appellants' properties are zoned for agricultural, farm commercial or environmental open space use. These landowners applied for rezoning to permit non-agricultural uses.

[2] On February 1, 2011, the Municipal Council approved the rezoning application. The necessary amendments to the Municipal Planning Strategy ("Planning Strategy") and Land Use By-Law ("By-Law") were sent to the Minister of Service Nova Scotia and Municipal Relations for approval. The Minister rejected them.

[3] The landowners sought judicial review of the Minister's refusal of approval. In his decision dated February 9, 2012 and reported as 2012 NSSC 61, Justice Arthur W.D. Pickup dismissed their application. The landowners appeal his order dated February 28, 2012 to this Court.

[4] For the reasons which follow, I would dismiss the appeal.

Background:

[5] The Hamlet of Greenwich lies immediately west of Wolfville and east of New Minas, in Kings County. The appellants describe themselves as agri-business owners. Among other things, the five landowners own, operate and supply three farm markets and a garden nursery on property along Highway 1.

[6] After years of discussions with the Municipality, the landowners applied in early 2010 for amendments to the Planning Strategy and By-Law to establish a Greenwich Comprehensive Development District ("GCDD"). Over time, the GCDD would provide for mixed use development of their property. The amendments read in part:

> The purpose of the Greenwich Comprehensive Development District (GCDD) is to enable the ongoing growth of the community based upon a land use plan which seeks to enable urban type development in areas where municipal services and urban form can be extended in a rational and cost effective manner. The GCDD will also provide some protection for existing agricultural uses and require the establishment of new agricultural activities within the community on lands with documented high capability agricultural soils. New agricultural uses and practices will be enabled which are environmentally sustainable and commercially viable given the existing and growing constraints created by proximity to non-agricultural uses.

[7] A lengthy process which included extensive planning studies and public consultation followed. The studies included an Agrologist Report and Agricultural Impact Assessment dated July 15, 2010 (the "Assessment"). Among other things, it assessed the soil, climate and production capability of the appellants' land, the impact of the loss of the agricultural lands on the farming industry in Kings County, the economic impact of that loss, the quantity and quality of soil lost from agriculture, and possible effects on adjacent farms.

[8] The Assessment determined that 138 acres, 36 per cent of the total acreage of some 380 acres, is actively farmed. Each landowner is using less of the land for food production than ten years ago. The current annual farm gate sales (excluding value added through farm markets) for all of the properties combined is now less than $400,000. According to the Assessment, assuming all CLI rated productive agricultural lands were removed from the A-1 Zone, a total of 302 acres of Class 2, 3 and active 4 would be removed from production. However, the soil patterns, topography and ravines make it difficult for the farms to have large acreage in one place on the properties. The Assessment also described encroachment by non-agricultural development upon the agricultural lands of the appellants, and complaints by neighbouring residents to farm activities such as the spraying of pesticides on fruit trees and noise.

[9] The landowners' application to rezone their property was highly controversial. It attracted enormous interest and public engagement. Dozens of people appeared to speak at the public participation meetings and hearing, and scores wrote, to oppose removal of the agricultural or farm designation of the lands. Numerous others expressed strong support of the amendments.

[10] On February 1, 2011 a majority (6 to 5) of the Municipal Council of Kings County approved the amendments to the Strategic Plan and By-Law. The amendments started in part:

> Since the adoption of the original 1979 Municipal Development Plan Council has recognized and acknowledged that the community of Greenwich, by virtue of its strategic location within the Coldbrook-Wolfville Urban Corridor, would be and continues to be subject to unique development pressures.
>
> Greenwich's proximity to urban communities and the associated mixed use development, transportation infrastructure, municipal water, wastewater and storm water services and community facilities including schools has created pressure for residential and commercial development and high levels of urban services. From the original 1979 MDP, Greenwich has been positioned to become a fully integrated community within the Urban Corridor. At the same time Council also recognizes a desire within the community for the preservation of the community's rural character and its agricultural heritage and the continued presence of agricultural operations that serve to both support community farmers as well as reinforce the community's sense of identity.
>
> …
>
> The Greenwich Comprehensive Development District designation will require new development to be subject to detailed planning and be undertaken by development agreement. The Land Use Concept is based on studies which have identified the lands best suited for ongoing agricultural use, environmentally sensitive lands and lands which can support an urban type development form by means of being serviced with municipal infrastructure in an efficient and cost effective manner.

[11] Amendments to the Strategic Plan and By-Law fall within the definition of "planning documents" in s. 191 of the *Municipal Government Act*, S.N.S. 1998, c. 18 ("*Act*"). Sub-section 208(1) calls for these to be reviewed by the provincial Director of Planning, and s. 208(3) provides that:

> (3) Where the Director determines that the planning documents
>
> (a) appear to affect a provincial interest;
>
> (b) may not be reasonably consistent with an applicable statement of provincial interest;

> (c) appear to conflict with the law; or
>
> (d) in the case of a subdivision by-law, may conflict with the provincial subdivision regulations,
>
> the planning documents are subject to the Minister's approval. [Emphasis added]

[12] Pursuant to the *Act*, the Province has enacted Statements of Provincial Interest, N.S. Reg. 101/2001 ("SPI"). The Director was of the view that the amendments may not be reasonably consistent with two of the SPI, namely, those regarding agricultural land and municipal water protection. He sent them to the Minister.

[13] According to s. 208(6) of the *Act*, within a certain period the Minister "shall" approve all or part of the planning documents, approve them with amendments, or refuse to approve them. The Minister wrote to the Warden of the Municipality seeking a meeting so that the Warden could respond to the issues relating to "the specific measures that would be taken to protect the Wolfville water supply and the reasons why it is necessary to remove these lands from the agricultural protective zone". These issues were addressed by the Warden Diana Brothers in her letter before her meeting with the Minister, during that meeting, and in the letter to him afterwards from the Warden and the Deputy Warden, Chair of Planning Advisory.

[14] The Minister issued his decision on March 23, 2011. He was satisfied that the Municipality would do what was necessary to protect well fields for Wolfville. He concluded, however, that the amendments should not be approved on the basis that the need to remove the land from agricultural use had not been sufficiently demonstrated. Here is the substantial part of what the Minister wrote to Warden Brothers in refusing approval:

> These Municipal Planning Strategy and Land Use Bylaw amendments were adopted by Municipal Council on February 1, 2011. The amendments, as submitted, have been found to conflict with the Statements of Provincial Interest regarding drinking water protection and the preservation of agricultural land. As such, it was referred to me for ministerial review.
>
> After our meeting, I was satisfied that the Municipality of Kings County would do everything that was required to protect well fields for the Town

> of Wolfville. However, I remained unsatisfied that re-zoning this land was required to fulfill a pressing demand for development.
>
> In my opinion, the documents do not adequately support the need to remove the land from agricultural use. You indicated that the Wolfville to Coldbrook corridor was intended for development in the original municipal plan in 1979, but if this were the case, the document wouldn't need amending now.
>
> For these reasons I am not able to approve the amendments.
>
> I acknowledge, and I did consider, the interests of the owners of these lands. This was not an easy decision.

[15] The landowners applied for judicial review of the Minister's decision to refuse approval of the amendments. They urged that the Minister erred by failing to defer to the Municipality which had primary planning authority and had approved the amendments to the Strategic Plan and By-Law. In his decision dismissing their application, the judge determined that the standard of review was reasonableness and held that the Minister's decision was reasonable. Later in my decision I will examine his reasoning.

Issues:

[16] The landowners argue that:

(a) the judge erred in his application of the reasonableness standard of review;

(b) he erred by finding that no deference was owed by the Minister to the Municipality; and

(c) he erred by failing to consider the documents that were before the Minister to determine whether there was a reasonable basis to reject the Amendments.

Standard of Review:

[17] This Court is hearing an appeal from a lower court. This Court's standard of review which applies to the decision of Pickup, J. is that stated by Chief Justice

McLachlin in *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, ¶ 43:

> … At this stage in the analysis, the Court of Appeal is dealing with appellate review of a subordinate court, not judicial review of an administrative decision. As such, the normal rules of appellate review of lower courts as articulated in *Housen, supra*, apply. …

[18] Those normal standards are that the judge must be correct on issues of law and must not commit a palpable and overriding error – meaning an error that is both clear and determinative – on an issue of either fact or mixed fact and law with no extractable legal error: *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, at ¶ 8-10, 19-25, 31-36; *H.L. v. Canada (Attorney General)*, [2005] 1 S.C.R. 401, at ¶ 4, 65, 69, 72-74; *F.H. v. McDougall*, [2008] 3 S.C.R. 41, at ¶ 55.

[19] Pickup, J. decided that the standard of review that he would apply to the determination of the Minister was reasonableness. Whether Pickup J. misapplied the standard of review analysis is an issue of law that I will analyze for correctness. Whether Pickup, J. erred in his findings of fact is reviewable for palpable and overriding error.

[20] We have a ministerial discretion authorized by statute. The appropriate standard of review by a court to the Minister's exercise of statutory discretion or authority is reasonableness: *Montréal (City) v. Montreal Port Authority*, [2010] 1 S.C.R. 427, ¶ 32-38; *Lake v. Canada (Minister of Justice)*, [2008] 1 S.C.R. 761, ¶ 41; *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, [2012] 2 S.C.R. 108, ¶ 43.

[21] Whether, in this case, the Minister failed to give appropriate deference to the Municipality is a matter to be considered in the reviewing court's assessment of whether the Minister's decision was unreasonable.

The Statutory Scheme:

[22] An understanding of the *Act* and the SPI is necessary in order to appreciate the judge's analysis, the landowners' arguments including their submission that the judge showed the Minister undue deference, and the respondent Province's position that deference is owed to the Minister.

[23] I begin with the stated purpose of the *Act*:

> 2 The purpose of this Act is to
>
> (a) give broad authority to councils, including broad authority to pass by-laws, and to respect their right to govern municipalities in whatever ways the councils consider appropriate within the jurisdiction given to them;
>
> (b) enhance the ability of councils to respond to present and future issues in their municipalities; and
>
> (c) recognize that the functions of the municipality are to
>
> (i) provide good government,
>
> (ii) provide services, facilities and other things that, in the opinion of the council, are necessary or desirable for all or part of the municipality, and
>
> (iii) develop and maintain safe and viable communities.

[24] The *Act* is lengthy and divided into several discrete parts. Its Part VIII, which is headed "Planning and Development," sets out several purposes:

> 190 The purpose of this Part is to
>
> (a) enable the Province to identify and protect its interests in the use and development of land;
>
> (b) enable municipalities to assume the primary authority for planning within their respective jurisdictions, consistent with their urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province;
>
> (c) establish a consultative process to ensure the right of the public to have access to information and to participate in the formulation of planning strategies and by-laws, including the right to be notified and heard before decisions are made pursuant to this Part; and
>
> (d) provide for the fair, reasonable and efficient administration of this Part. [Emphasis added]

[25] Both ss. 2 and 190(b) address each municipality's authority in regard to land use planning within its jurisdiction. Section 190(b) adds that that authority is to be consistent with the "interests and regulations of the Province."

[26] This takes me to the SPI. Their Introduction reads:

> Nova Scotia's land and water resources are fundamental to our physical, social and economic well-being. But they are finite resources and using them in one way can mean the exclusion of other uses forever. Therefore, it is important that decisions about Nova Scotia's land and water be made carefully. Ill-advised land use can have serious consequences for the physical, economic and social well-being of all Nova Scotians.
>
> These statements of Provincial interest recognize the importance of our land and water resources. The statements also address issues related to the future growth of our communities. They are intended to serve as guiding principles to help Provincial Government departments, municipalities and individuals in making decisions regarding land use. They are supportive of the principles of sustainable development.
>
> Development undertaken by the Province and municipalities should be reasonably consistent with the statements.
>
> As the statements are general in nature, they provide guidance rather than rigid standards. They reflect the diversity found in the Province and do not take into account all local situations. They must be applied with common sense. Thoughtful, innovative and creative application is encouraged. [Emphasis added]

[27] The SPI are divided into several categories pertaining to different situations, namely drinking water, flood risk areas, agricultural land, infrastructure and housing. The focus of this appeal is on the portion of the SPI headed "Statement of Provincial Interest Regarding Agricultural Land." The term "agricultural land" is defined thus:

> **Agricultural Land** means active farmland and land with agricultural potential as defined by the Canada Land Inventory as Class 2, 3 and Class 4 land in active agricultural areas, speciality crop lands and dykelands suitable for commercial agricultural operations as identified by the Department of Agriculture.

As indicated earlier, the Assessment reported that the appellants' properties include lands which fall under these classifications.

[28] The SPI Regarding Agricultural Land is not lengthy. In its entirety, it reads:

> GOAL
>
> To protect agricultural land for the development of a viable and sustainable agriculture and food industry.
>
> BASIS
>
> The preservation of agricultural land is important to the future of Nova Scotians.
>
> Agricultural land is being lost to non-agricultural development.
>
> There are land-use conflicts between agricultural and non-agricultural land uses.
>
> APPLICATION
>
> This statement applies to all active agricultural land and land with agricultural potential in the Province.
>
> PROVISIONS
>
> 1. Planning documents must identify agricultural lands within the planning area.
>
> 2. Planning documents must address the protection of agricultural land. Measures that should be considered include:
>
> > (a) giving priority to uses such as agricultural, agricultural related and uses which do not eliminate the possibility of using the land for agricultural purposes in the future. Non-agricultural uses should be balanced against the need to preserve agricultural land;
> >
> > (b) limiting the number of lots. Too many lots may encourage non-agricultural development. The minimum size of lots and density of development should be balanced against the need to preserve agricultural land;

> (c) setting out separation distances between agricultural and new non-agricultural development to reduce land-use conflicts;
>
> (d) measures to reduce topsoil removal on lands with the highest agricultural value.
>
> 3. Existing land-use patterns, economic conditions and the location and size of agricultural holdings means not all areas can be protected for food production, e.g., when agricultural land is located within an urban area. In these cases, planning documents must address the reasons why agriculture lands cannot be protected for agricultural use. Where possible, non-agricultural development should be directed to the lands with the lowest agricultural value.

The Judge's Decision:

[29] In his reasons, the judge addressed the appellants' arguments. He determined that the Minister's refusal to approve the amendments was not unreasonable:

> [56] As to the applicants' argument that the Minister failed to recognize the need to defer to the primary planning authority of Kings Municipality, I am not satisfied that the legislation reflects this intent. To the contrary, s. 190(a) of the *Municipal Government Act* makes clear that the Minister is making a discretionary policy decision as to whether a statement of provincial interest is affected. While I agree the Municipality is given the primary authority for planning within its jurisdiction under s. 190(b), the legislation is clear that it is the Province that identifies and protects its interests in the use and development of land under s. 190(a). There is nothing in the legislation to suggest that the Minister must defer to a municipality in the interpretation of these interests.
>
> [57] What the applicants ask is that I substitute my view as to whether the Minister was correct in his decision. In other words, they request that I review the Minister's decision on a correctness basis. I have already determined that the standard of review is reasonableness, which connotes a degree of deference to the Minister's decision.
>
> [58] I am not satisfied that the Minister's decision was unreasonable on the basis alleged by the applicants. The Minister was exercising his discretion under the *Municipal Government Act*. The decision not to allow the amendments was one of the options that the Minister had under s. 208(6) of the *Act*. The Minister, in his decision, indicated that the documents submitted by the Municipality did not

> support the need to remove the land from agricultural use. The goal, as stated in the Statement of Provincial Interest Regarding Agricultural Land, is to "protect agricultural land for the development of a viable and sustainable agriculture and food industry". It goes on to state that agricultural land is being lost to non-agricultural development and that there are land use conflicts between agricultural and non-agricultural land uses. Moreover, s. 3 states that "planning documents must address the reasons why agricultural land cannot be protected for agricultural use". I am satisfied that is[*sic*] was within his discretionary authority for the Minister to follow the line of reasoning that he did, and, specifically, to take account of the necessity to remove that land from agricultural use. I see nothing unreasonable in his interpretation.

Analysis:

[30] The second issue raised by the appellants requires a consideration of the statutory provisions and the SPI just reviewed. I will begin with it. As stated previously, the applicable standard of review for this issue is correctness.

Error in Finding the Minister Owed No Deference to Municipality's Decision

[31] Here the appellants rely on s. 190(b) which states that one of the purposes of the Planning and Development part of the *Act* is to give municipalities the "primary authority for planning" within their respective jurisdictions. They insist that empowering the municipalities with "primary authority for planning" means that the Minister's role was severely constrained. With respect, this argument does not withstand a thorough examination of the *Act* and its SPI.

[32] The appellants' argument fails to take into account the full text of s. 190(a) and (b) which reads:

> 190 The purpose of this Part is to
>
> (a) enable the Province to identify and protect its interest in the use and development of land;
>
> (b) enable municipalities to assume the primary authority for planning within their respective jurisdictions, consistent with their urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province; …

[33] The first purpose set out in s. 190 speaks of the Province's identification and protection of provincial interests in land use and development. In the next purpose, the Legislature specifically limited the municipalities' "primary authority for planning" by requiring that such planning be consistent with the interests of the Province. Those interests would include those identified in the SPI, such as the SPI Regarding Agricultural Land.

[34] The wording of s. 190 (a) and (b) demonstrates that the Legislature intended that the "primary authority" given to the municipalities would not be without limits. Instead, the *Act* expressly states that municipal planning decisions have to accord with provincial interests. As a result of how the Legislature described the proper roles of the municipalities and the Province, the Province retains an overarching authority to protect provincial interests.

[35] It is also significant that the Legislature gave the Minister sole responsibility for the interpretation of the SPI. The Minister's authority in this regard is found at the very beginning of the Implementation provisions of the SPI:

> **1.** These statements of provincial interest are issued under the *Municipal Government Act*. The Minister of Housing and Municipal Affairs, in cooperation with other provincial departments, is responsible for their interpretation.

The SPI are not statutes or regulations, whose interpretation demands the application of established legal rules. Rather, their Introduction characterizes them as "guiding principles," and they are framed in general wording.

[36] The Minister's role as set out in s. 208(6) of the *Act* is important. That provision simply requires him to approve all or part of the planning documents, approve the documents with amendments, or refuse to approve the documents. Nothing in s. 208(6) obliges him to defer to Council's decision or any part of it. Furthermore, the Minister is not hearing an appeal from Council's decision. Nor is he conducting a judicial review of that decision. His task is to examine the planning documents anew, having regard to the SPI. His review necessarily involves considerations of complex policy issues and an overall weighing of policy considerations, which may include matters in addition to or different from those a municipality considers and weighs.

[37] The specific wording of s. 190(a) and (b), the designation the Minister as the person responsible for interpretation of the SPI, and the broad discretion granted to the Minister strongly support the Province's position that the municipalities are to defer to the Minister, not the Minister to the municipalities.

[38] The landowners then focus on the phrase "reasonably consistent." As explained earlier, the Introduction to the SPI includes a statement that "Development undertaken by the Province and municipalities should be reasonably consistent with the statements." The Implementation section defines "reasonably consistent":

> **5.** Reasonably consistent is defined as taking reasonable steps to apply applicable statements to a local situation. Not all statements will apply equally to all situations. In some cases, it will be impractical because of physical conditions, existing development, economic factors or other reasons to fully apply a statement. It is also recognized that complete information is not always available to decision makers. These factors mean that common sense will dictate the application of the statements. Thoughtful innovation and creativity in their application is encouraged.

[39] The appellants say that, in reviewing planning documents, the Minister's assessment had two parts: first, his interpretation of the applicable portions of the SPI and, second, his determination afterwards as to whether the documents are reasonably consistent with the SPI. According to the appellants, the second part is inherently deferential. In this regard they point to references to reasonable consistency in the *Act*, such as s. 196 which requires the Province's activities to be reasonably consistent with SPI, s. 198(1) which requires planning documents adopted after a SPI is adopted to be reasonably consistent with that SPI, s. 208(3)(b) which authorizes the Director's reference for ministerial review where planning documents may not be reasonably consistent with a SPI, and s. 213(c) which provides that the purpose of a Planning Strategy is to establish, among other things, policies that are reasonably consistent with the SPI. They say that the "reasonably consistent" test infuses the entire *Act*.

[40] In his decision rejecting the amendments, the Minister did not use the phrase "reasonably consistent." The landowners submit that he erred by using the wrong test: that is, the Minister did not base his decision on whether the amendments are "reasonably consistent" with the SPI Regarding Agricultural Land, but rather on whether the amendments conflicted with the SPI, or that a "pressing demand" for development had to be shown. They say that studies such as the Assessment

explained why the properties could not be preserved for agricultural purposes, and the Minister did not take into account the landowners' plight. While they accept that the Minister's decision is discretionary, the appellants submit that he conducted his review in the abstract, his decision did not clearly set out what he reviewed, the correct test and his analysis, and his decision was unreasonable because it undermined the very purpose of the legislative scheme granting the discretion: *Halifax (Regional Municipality) v. Canada (Public Works and Government Services),* 2012 SCC 29 at ¶ 51 – 53 and *C.U.P.E. v. Ontario (Minister of Labour),* 2003 SCC 29 at ¶ 184.

[41] I agree that the Minister's discretion pursuant to s. 208(6) of the *Act* is not completely unfettered. He was not empowered to make a decision without taking that legislation, any applicable regulations, and the SPI into consideration, or contrary to them. However, in my view, his decision did not disregard or undermine the legislation which granted him discretion.

[42] I begin with the stated goal of the SPI, namely the protection of "agricultural land for the development of a viable and sustainable agriculture and food industry." For convenience, I reproduce again portions of the SPI Regarding Agricultural Land:

> **2.** Planning documents must address the protection of agricultural land. Measures that should be considered include:
>
> (a) giving priority to uses such as agricultural, agricultural related and uses which do not eliminate the possibility of using the land for agricultural purposes in the future. Non-agricultural uses should be balanced against the need to preserve agricultural land. . . .
>
> **3.** Existing land-use patterns, economic conditions and the location and size of agricultural holdings means not all areas can be protected for food production, e.g., when agricultural land is located within an urban area. In these cases, planning documents must address the reasons why agricultural lands cannot be protected for agricultural use. Where possible, non-agricultural development should be directed to the lands with the lowest agricultural value. [Emphasis added]

[43] These provisions call upon the Minister to consider the reasons why changes to agricultural or agricultural related uses were sought, and to balance them against "the need to preserve agricultural land". The Municipality was obliged to set out

in the amendments it approved why such land could not be protected. It is apparent from the Minister's statements that he had not been satisfied that re-zoning was required "to fulfill a pressing demand for development" and was not persuaded that the documents adequately supported "the need to remove the land from agricultural use". The wording in these statements either references the "need" aspect described in the SPI or expressly uses that word. It demonstrates that he was addressing the requirements in the SPI, as he was obliged to do.

[44] It was the Minister who was responsible for interpreting the SPI, including what competing, non-agricultural uses should or could be balanced against the "need to preserve agricultural land," and applying it in the particular circumstances. Thus, although the SPI Regarding Agricultural Land does not specify that pressing demand for development must be established before rezoning can proceed, the Minister can properly take this into account. Moreover, his decision expressly stated that, in refusing to approve the amendments, the interests of the landowners was one of the factors taken into account and that he had considered them.

[45] In my opinion, the Minister did not act unreasonably in failing to defer to the decision of the Municipality. The judge correctly dismissed that ground for judicial review.

Failure to Consider Relevant Factors

[46] According to the landowners, the judge failed to assess the facts relevant to the Minister's decision such as the amendments and other material before the Minister. They submit that he did not make any findings as to how the amendments could have offended the SPI or consider whether there was a factual basis in the record for the Minister to decide as he did. With respect, I cannot accept this argument.

[47] In his decision, the judge recounted arguments made by the landowners:

> [50] The applicants go on to argue that the Minister applied the wrong test in reviewing the amendments. According to the applicants, had the Minister properly considered the relevant factors and deferred to the Municipality's planning authority, it would have been clear that he had no jurisdiction to reject the amendments. They say the Minister did not give sufficient consideration to the serious difficulty facing the applicants in sustaining the agricultural operations on

> their lands. They say that in focussing on whether the amendments were necessary to accommodate a pressing need for development the Minister ignored the necessity of the amendments in a different sense, that of allowing lands to remain economically viable to their owners. Further, they argue, the Statement of Provincial Interest contemplates that in some circumstances preservation of agricultural land will not be feasible, such as in an urban setting. They say the Minister failed to address the urban location of the subject lands in reaching his decision. Nor, they say, did he consider that any proposed development would be subject to supervision by the Municipality by way of a development agreement.

In doing so, he recognized facts which the appellants now say he did not consider.

[48] The Minister's decision that the amendments were not reasonably consistent with the SPI was within the range of permissible outcomes, factually and legally, and satisfied the reasonableness standard of review. The judge did not err by dismissing this ground of judicial review.

Error in the Application of the Reasonableness Standard of Review

[49] While the landowners do not appeal the judge's determination that the Minister's decision was to be reviewed on a standard of reasonableness, they submit that the judge committed an error of law in applying the reasonableness standard.

[50] The reasonableness standard of review was explained in *Dunsmuir v. New Brunswick*, 2008 SCC 9 at ¶47:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. [Emphasis added]

[51] The judge's application of that standard reads:

> [58] I am not satisfied that the Minister's decision was unreasonable on the basis alleged by the applicants. The Minister was exercising his discretion under the *Municipal Government Act*. The decision not to allow the amendments was one of the options that the Minister had under s. 208(6) of the *Act*. The Minister, in his decision, indicated that the documents submitted by the Municipality did not support the need to remove the land from agricultural use. The goal, as stated in the Statement of Provincial Interest Regarding Agricultural Land, is to "protect agricultural land for the development of a viable and sustainable agriculture and food industry". It goes on to state that agricultural land is being lost to non-agricultural development and that there are land use conflicts between agricultural and non-agricultural land uses. Moreover, s. 3 states that "planning documents must address the reasons why agricultural land cannot be protected for agricultural use". I am satisfied that is[*sic*] was within his discretionary authority for the Minister to follow the line of reasoning that he did, and, specifically, to take account of the necessity to remove that land from agricultural use. I see nothing unreasonable in his interpretation.

[52] According to the landowners, the judge simply relied upon the fact that the Minister was given broad discretionary powers in reviewing the amendments. They say that his decision did not show precisely what factors he considered the weighing of the proper considerations and the exclusion of irrelevant considerations. Only then, submits the appellants, could the judge conduct a review for reasonableness, including assessment of whether the Minister had any factual basis to conclude that the planning documents did not adequately support the need to remove land from agricultural use, and whether the Minister's statutory discretion had been exercised consistent with the purposes and policies of the legislative regime. According to the landowners, the judge's failures to address these matters are grounds for appellate intervention.

[53] With respect, the landowners' position calls for more than is required under the deferential standard of review of reasonableness.

[54] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 S.C.R. 708, Justice Abella quoted the passage from *Dunsmuir* quoted above:

> [14] Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and

> 12:5510). It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).
>
> [15] In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.
>
> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.
>
> [17] The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay "respectful attention" to the decision-maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful.

See also *Jivalian v. Nova Scotia (Community Services)*, 2013 NSCA 2 at ¶ 15; leave to appeal to the Supreme Court of Canada dismissed – [2013] S.C.C.A. No. 83 (May 30, 2013).

[55] I see no error by the judge in his application of the reasonableness standard that would attract appellate intervention. He recognized that Legislature chose the Minister to be interpreter of the SPI and gave him broad discretion in reviewing planning documents in the context of the SPI. He examined the reasons given by the Minister in the legislative context, including the SPI, and was satisfied that the result, factually and legally, fell within the range of possible results. The judge

fulfilled the "organic exercise" of reading the Minister's reasons and considering the outcome.

Disposition:

[56] I would dismiss the appeal with costs of $2,000 inclusive of disbursements payable by the appellants to the respondent.

Oland, J.A.

Concurred in:

MacDonald, C.J.N.S.

Fichaud, J.A.