C.A. No. 131328

NOVA SCOTIA COURT OF APPEAL

Chipman, Jones and Roscoe, JJ.A
Cite as: Anahid Investments Ltd. v. Cole Harbour/Westphal Community Council, 1997 NSCA 33

BETWEEN:	)	
	)	
ANAHID INVESTMENTS LIMITED, a body corporate	)	David P.S. Farrar for the Appellant
	)	
Appellant	)	
	)	
- and -	)	
	)	
COLE HARBOUR/WESTPHAL COMMUNITY COUNCIL OF HALIFAX COUNTY MUNICIPALITY/ HALIFAX REGIONAL MUNICIPALITY	)	Peter W. Gurnham for the Respondent
	)	
Respondent	)	
	)	
	)	
	)	Appeal Heard: January 14, 1997
	)	
	)	
	)	Judgment Delivered: January 14, 1997

THE COURT: The appeal is dismissed with costs which are fixed at $1,000.00, inclusive of disbursements as per oral reasons for judgment of Chipman, J.A.; Jones and Roscoe, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

CHIPMAN, J.A.:

This is an appeal from a decision of the Nova Scotia Utility and Review Board

dismissing an appeal by the appellant from a decision of the Cole Harbour/Westphal Community Council of Halifax County Municipality (now Halifax Regional Municipality) refusing to enter into a development agreement with respect to property in the Municipality on the southwest side of Caldwell Road between Astral Drive and Brookfield Avenue.

An appeal to this Court lies on any question as to the Board's jurisdiction or upon any question of law: **Utility and Review Board Act**, S.N.S. 1992, c. 11, s. 30(1).

The Board's power to interfere with a decision of the Council is set out in ss. 79(4) of the **Planning Act**, R.S., c. 346.

> 79 (4) The Board shall not interfere with the decision of the council pursuant to this Section unless the Board determines that the decision not to enter into the agreement cannot reasonably be said to be consistent with the intent of the municipal planning strategy, in which case the Board shall
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> (a) refer the matter back to the council; and
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> (b) instruct the council to hold a public hearing, if this had not been carried out prior to the appeal being made by the applicant,
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> and the same requirements for notice and the holding of the hearing apply to a hearing under this Section as are required before the council enters into a development agreement.

The Board, in its decision, noted that both sides agreed that there were three relevant policies in the Cole Harbour/Westphal Municipal Planning Strategy (MPS): Policies E-8(b), UR-12 and IM-11.

The Board recited the facts and the reasons given by Council for refusing to enter into the development agreement.

The Board referred at length to the three relevant policies of the MPS and said:

> The public at Council's public hearing raised a number of the criteria listed in **Policy IM-11** including the adequacy and proximity of school facilities; the adequacy of road networks; traffic generation; the suitability of the proposed site in terms of steepness of grades, soil and geological conditions and susceptibility to flooding; and impact on the future use of Morris Lake.
>
> Council was required by the M.P.S. to consider whether the proposal was premature or inappropriate by reason of the adequacy of sewer services. In order to ensure the adequacy of sewer services

it was necessary for the Appellant to secure amendments to the Heritage Hills subdivision development agreement. Council refused the proposed amendments.

All three relevant policies contain requirements respecting sewer services. Sewer services to the subject property depend on Council amending the existing Heritage Hills subdivision development agreement. Council refused to approve those amendments. Once it refused to approve those amendments, Council's decision not to enter into this development agreement is consistent with that refusal. It is for that reason also consistent with the intent of the M.P.S., given the express words of **Policy E-8(b)(a)**.

The additional concern with respect to stormwater problems is a matter which Council must consider under both **Policy E-8(b)(e)** and **Policy IM-11**. In addition, **Policy UR-12** requires that provisions respecting the proper handling of stormwater and general drainage within and from the subject property be included in the development agreement. The stated reasons for Council's refusal wasthat the proposed provisions dealing with drainage problems were inadequate. **Policy UR-12(f)** requires that the proposed development agreement have provisions for the proper handling of storm water and general drainage from the development. **Policy E-8(b)(e)** requires that Council have regard to "that . . . effective . . . stormwater management measures are established". In addition **Policy IM-11(c)(vi)** requires that controls be placed on a proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of any relevant matter of planning concern. Council was not satisfied that Section 5.3 and the other provisions of Part 5 of the proposed development agreement adequately addressed these matters. Council's decision to refuse to enter into the proposed development agreement for this reason was within the intent of the M.P.S.

In **Heritage Trust of Nova Scotia et al. v. Nova Scotia Utility and Review Board et al.** (1994), 128 N.S.R. (2d) 5, Hallett, J.A. said at p. 34:

> . . . 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. This court, on an appeal from a decision of the Board for alleged errors of interpretation, should apply the same test.

And at p. 35 Hallett, J.A. said:

> There is an appeal to this court from the Board's decisions on questions of law or jurisdiction. There is no appeal to this court on findings of fact by the Board; findings of fact will stand. It is only if the Board has erred in law in the interpretation of the relevant statutory provisions of the **Planning Act** or other relevant legislation or erred in its interpretation of the intent of the municipal planning strategy (the

> Plan) of the Bylaws or committed jurisdictional error that would give rise to a successful appeal to this court.
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> And at p. 36 Hallett, J.A. said:
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> . . . It was not an error, rather it was the Board's duty, as prescribed by s. 78 of the **Planning Act** to defer to City Council's decision if the appellants could not persuade the Board that the Council's decision could not reasonably be said to be consistent with the intent of the municipal planning strategy.
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> At p. 52 Hallett, J.A. concluded:
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> . . . 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. So long as a decision to enter into a development contract is reasonably consistent with the intent of a municipal planning strategy the Nova Scotia Utility and Review Board has no jurisdiction to interfere with the decision.

We are unable to accept the appellant's argument that, in reaching its conclusions, the Board erred in law or in jurisdiction.

The appeal is dismissed with costs which we fix at $1,000.00, inclusive of disbursements.

Chipman, J.A.

Concurred in:

Jones, J.A.

Roscoe, J.A.