S.C.A. No. 02731

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Jones, Hallett and Matthews, JJ.A.
Cite as: Armoyan Group Ltd. v. Halifax (County), 1992 NSCA 36

BETWEEN:

ARMOYAN GROUP LIMITED appellant - and - THE MUNICIPALITY OF THE COUNTY OF HALIFAX respondent	)	C.A. Mark Coffin for the appellant D. Kevin Latimer for the respondent Appeal Heard: December 2, 1992 Judgment Delivered: December 2, 1992

THE COURT: Appeal dismissed without costs per oral reasons for judgment of Jones, J.A.; Hallett and Matthews, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

JONES, J.A.:

This is an appeal from a decision of the Municipal Board.

There is an agreed statement of facts.

The appellant and respondent entered into a comprehensive development district agreement on July 16, 1990, to permit construction of Armcrest Estates Subdivision consisting of a mix of residential and associated local commercial and community facility uses on a parcel of land located in Lower Sackville.

The appellant subsequently made application to the municipality to amend the agreement to increase the commercial and community facility use floor area permitted under the agreement from 5000 to approximately 8000 square feet.

The application to amend the agreement came before council of the municipality for consideration on May 11, 1992, and, after a public hearing, council made a decision on the same date refusing the amendment.

The decision of council denying the amendment was appealed by the respondent to the municipal board by notice of appeal dated May 15, 1992.

On July 20, 1992, the Nova Scotia Municipal Board held a preliminary hearing to determine if it had jurisdiction under the **Planning Act**, R.S.N.S. 1989, c. 346, to hear the appeal.

By its decision and order dated July 23, 1992, the Nova Scotia Municipal Board decided that it lacked jurisdiction to entertain an appeal from the refusal decision of the council and dismissed the appeal.

On September 3, 1992, the appellant was granted leave to appeal to this Court.

The sole issue is whether the appellant had a right of appeal to the Municipal Board. Section 79(1) of the **Planning Act** provides:

> "79(1) Where a council has refused to enter into an agreement after application has been made to it pursuant to Section 55 or 56, the applicant may appeal the refusal to the Board."

The Board reviewed the **Planning Act** and the **Municipal Board Act** and concluded that there was no right of appeal under s. 79(1) from a refusal to enter into an agreement amending a development agreement. In coming to that conclusion the Board referred to s. 78 of the **Act** which

provides as follows:

> "78(1) Where a council has approved the entering into of an agreement pursuant to Section 55 or 56, or an amendment to such an agreement except respecting a matter that pursuant to Section 73 the parties have identified as not substantial, the decision of the council may be appealed by
>
> (a) an aggrieved person;
>
> (b) the Director;
>
> (c) the council of an adjoining municipality."

Section 55(1) of the **Act** provides:

> "55(1) Policies adopted by a council pursuant to clause (p) of subsection (2) of Section 38 to provide for development by agreement shall identify matters that the council shall consider prior to the approval of an agreement and the developments that are subject to agreement."

The appellant contends that a right of appeal from a refusal to amend an agreement is implied in the language in s. 79(1). With respect we are unable to agree. A right of appeal must be conferred by statute. The word "agreement" is not defined in s. 55 of the **Act**. In the context it can only refer to a development agreement. In view of the language used in s. 55 and s. 78 it is clear that the Legislature did not intend to include an amending agreement in s. 79. We agree with the conclusion of the Board. The appeal is dismissed without costs.

J.A.

Concurred in:

Hallett, J.A.

Matthews, J.A.