

NOVA SCOTIA COURT OF APPEAL

Citation: *Midtown Tavern & Grill Ltd. v. Nova Scotia (Utility and Review Board)*,
2006 NSCA 115

Date: 20061024
Docket: CA 257605
Registry: Halifax

Between:

Midtown Tavern & Grill Limited

Appellant

v.

Nova Scotia Utility and Review Board,
Heritage Trust of Nova Scotia, Paul and Joyce McCulloch,
Peninsula South Community Association,
Federation of Nova Scotian Heritage,
Halifax Regional Municipality

Respondents

Judge: The Honourable Chief Justice MacDonald

Appeal Heard: May 24, 2006, in Halifax, Nova Scotia

Subject: **Administrative Law, Standard of Review, Municipal Planning Strategies, reasonableness of development agreement.**

Summary: The appellant developer filed plans to construct a 17-storey hotel/shopping complex. It required approval from HRM by way of a development agreement which was granted through HRM's Peninsula Community Council. A group of concerned citizens appealed to the Nova Scotia Utility and Review Board, asserting that the structure would be too tall in relation to nearby Citadel Hill. The NSUARB agreed with the citizens and set aside the approval because it did not "reasonably carry out the intent of the municipal planning strategy". The developer appeals to this court.

- Issues:**
1. Standard of Review:
 - (a) by this court to the Board
 - (b) by the Board to Council
 2. Did the Board apply the appropriate standard when reviewing Council's decision to approve.

Result: Appeal dismissed.

1. Whether the Board applied the proper standard when reviewing Council's decision is an issue that this court reviews on a *correctness* standard. The clear wording of the statute "did not reasonably carry out the interest of the municipal planning strategy" dictates the standard upon which the Board should have reviewed Council's decision. A "pragmatic and functional" analysis was unnecessary.
2. The Board applied the appropriate standard of review to Council's decision.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 31 pages.