

NOVA SCOTIA COURT OF APPEAL

Citation: *Can-Euro Investments Ltd. v. Nova Scotia (Utility and Review Board)*,
2008 NSCA 123

Date: 20081223

Docket: CA 289704

Registry: Halifax

Between:

Can-Euro Investments Limited

Appellant

Respondent on Cross-Appeal

v.

Nova Scotia Utility and Review Board, Halifax Regional Municipality and Dixel
Developments Limited

Respondents

Appellants on Cross-Appeal

Judge: The Honourable Justice Linda Lee Oland

Appeal Heard: October 8, 2008

Subject: Municipal Law - Planning - *Municipal Government Act*, S.N.S.
1998, c. 18, s. 251(1)(c) and s. 251(2)

Summary: Appeal and cross-appeals of the order of the Utility and Review Board allowing Can-Euro's appeal of the approval by HRM's Harbour East Community Council of a development agreement, and ordering amendments to that agreement. The agreement allows for two buildings with residential and commercial uses on certain lands in the Micmac Mall area. Can-Euro owns Horizon Court, the only access to those lands, as well as other developed and undeveloped property is that area. The lands proposed for development have an easement over Horizon Court and other Can-Euro property.

Issues: On the appeal, whether the Board erred in law (a) in denying the appellant's requests to adjourn the hearing to present additional evidence; (b) in reaching its findings relating to the issues of access, and in failing to provide procedural fairness in determining those issues; or (c) by failing to appropriately consider the impact of the development agreement on Horizon Court and on various other planning issues.

On the cross-appeals, whether the Board erred in law in (a) the exercise of its jurisdiction under s. 251(1)(c) and s. 251(2) of the Municipal Government Act in allowing the appeal but then ordering only very minor changes to the agreement to render the commercial component of the development "reasonably" consistent with the intent of the Municipal Planning Strategy; or (b) in its articulation and application of its reviewing authority pursuant to that legislation.

Result: Appeal dismissed. The appellant failed to establish that the Board erred in law by failing to conclude that the development agreement approved by Council did not reasonably carry out the intent of the Municipal Planning Strategy.

Cross-appeals allowed, and costs awarded to Dixel. The Board sought to ascertain the single intent of the MPS and, by ordering what it itself described as "minor amendments" to "minor aspects" of the commercial component, substituted its opinion for that of Council. It strayed from the test in s. 251(2) of the *Municipal Government Act* and the approach to be taken as set out in the jurisprudence.

The Board's order is reversed and the decision of Council which approved the development agreement is confirmed.

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 34 pages.