

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
MAHONE BAY HERITAGE AND CULTURAL SOCIETY		3012543 NOVA SCOTIA LIMITED
(Appellant)	- and -	(Respondent)
	- and -	THE TOWN OF MAHONE BAY
		(Respondent)
CA 161806	Halifax, N.S.	HALLETT, J.A.

Cite as: 3012543 Nova Scotia Ltd. v. Mahone Bay Heritage and Cultural Society, 2000 NSCA 93]

APPEAL HEARD: June 7, 2000

JUDGMENT DELIVERED: August 8, 2000

SUBJECT: **Utility and Review Board Act, S.N.S. 1992, c. 11, section 30
Planning Act, R.S. 1989, c. 346, sections 51, 53, 55 and 78**

SUMMARY: The Council of the Town of Mahone Bay approved the entry into an agreement with the respondent company for the development of a 24 unit residential condominium project on the waterfront on land zoned Industrial Shoreline.

The appellant appealed that decision to the Nova Scotia Utility and Review Board which confirmed the Town Council's decision.

The Board's decision was appealed to the Nova Scotia Court of Appeal which allowed the appeal.

The Court reviewed the Municipal Planning Strategy and the Land Use By-Law of the Town.

ISSUES: The Court held:

Where the Board confirms a decision of Council to enter a proposed development agreement, the Board will have erred in law within the meaning of s. 30 of the **Utility and Review Board Act** if, on a review of the record, the Board
(i) misinterpreted, failed to consider or failed to correctly apply

relevant legislation; or (ii) failed to ascribe to the MPS an intent which it can reasonably bear.

The Board, in failing to consider the import of sections 53 and 55 of the **Planning Act** in seeking the intent of the MPS, erred in law in that it ascribed to the MPS an intent which it could not reasonably bear. Had it properly identified the intent, it could not have found that Council's decision to enter into the development agreement was "reasonably consistent with the intent of the MPS."

RESULT:

The Court set aside the Board decision and that of the Council.