



NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

THE MUNICIPALITY OF THE COUNTY  
OF CAPE BRETON (now the CAPE  
BRETON REGIONAL MUNICIPALITY

Appellant

- and -

GEORGE DUNN and SUSAN DUNN

Respondents

REASONS FOR  
JUDGMENT BY:

Clarke, C.J.N.S.  
(Orally)

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

**CLARKE, C.J.N.S.:**

The issue in this appeal is whether the Nova Scotia Utility and Review Board erred in finding that the respondents, Mr. and Mrs. Dunn, did not violate the Coxheath land-use by-law by locating a prefabricated modular residential unit, considered by the Planning Commission to be a mobile home, adjacent to their matrimonial home on their farm at Coxheath.

Mrs. Dunn's mother and father were no longer able to care for themselves due to their advancing ages and especially the disabling illness of her mother. The Dunns decided to add an addition to their home to accommodate these family members. Plans were prepared for a specially constructed, designed and fully serviced prefabricated unit which the Dunns proposed to place on a slab foundation abutting the exterior wall of their home.

Mr. Dunn, who was familiar with the function of the Cape Breton Metro Planning Commission, showed the plans and discussed his proposal with a development officer. He understood he would have no difficulty in obtaining a permit. Time overtook the planning process. The unit arrived and was put in place before a permit was issued.

His first application for a permit was refused on the ground that the unit was a mobile home and thereby violated the land-use by-law. A second and revised application was also rejected for the same reason with a further instruction that a recommendation would be made to the Planning Advisory Committee to prosecute Mrs. Dunn for bringing a mobile home on her property without a permit.

The land-use by-law provided that if a use is not listed as a permitted use in a zone, it shall be deemed to be a prohibited use. Further, it provided that mobile homes are only permitted with lots having frontage on the Beaton Road and MacMullin Road, neither

of which is applicable here.

The by-law defined a mobile home as follows:

Mobile Home means a building designed for transportation after fabrication on streets or highways, arriving at the site ready for occupancy as a residence, except for minor and incidental unpacking and assembly, having an average width of less than seventeen (17) feet when assembled.

The relevant uses permitted in Coxheath, a community in the residential unserviced rural (rur) zone, included, among others:

- single family detached dwellings
- duplex dwellings
- semi-detached dwellings
- converted dwellings up to two (2) dwelling units

...

The respondents appealed the decision of the Planning Commission to the Nova Scotia Utility and Review Board. A hearing was held at which evidence was received and submissions were made by the parties. In addition, in the company of the parties, Board Member Weldon went to the site and examined the structure, nature and location of the unit. In his comprehensive reasons for judgment, Board Member Weldon found that "... the structure did not fall within the technical definition of a mobile home contained in the LUB."

In arriving at his decision Board Member Weldon examined the relevant provisions of the by-law and made findings of fact upon which he based his conclusions. He decided the structure put in place by the respondents did not constitute a prohibited use.

He allowed the appeal and ordered that the respondents be granted a permit.

The appellant Municipality appeals contending that the Utility and Review Board committed errors in its findings of fact and in its application of those findings to the land-use by-law.

An appeal to the Nova Scotia Utility and Review Board is permitted by s. 85(1) of the **Planning Act**, R.S.N.S. 1989, c. 346. Section 85(3) requires the Board to "confirm

the decision of the municipal development officer" or "allow the appeal by ordering that the permit be granted ...".

The **Utility and Review Board Act**, S.N.S. 1992, c. 11, provides in s. 30(1) that an appeal from an Order of the Board lies to this Court "upon any question as to its jurisdiction or upon any question of law ...". By s. 22, the Board "may hear and determine all questions of law and of fact" within its jurisdiction which includes the subject under appeal. Further by s. 26, "The finding or determination of the Board upon a question of fact within its jurisdiction is binding and conclusive."

We have reviewed the record. We have considered the submissions of both counsel.

The jurisdiction of the Board to deal with this issue is not in dispute. It made findings of fact for which there was evidence in support. We cannot say that the Board was clearly wrong in applying those findings to its interpretation of the land-use by-law. It arrived at a conclusion which is not patently unreasonable. Having regard to the language of the **Act**, the decision of the Board, as a specialized tribunal, is entitled to a measure of deference. Such is consistent with the decisions of this Court and also those of the Supreme Court of Canada. See, as examples, **Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.**, [1979] 2 S.C.R. 227; **Canada (Attorney General) v. Public Service Alliance of Canada**, [1993] 1 S.C.R. 941; **U.E.S., Local 298 v. Bibeault**, [1988] 2 S.C.R. 1048; **Pezim v. British Columbia (Superintendent of Brokers)**, [1994] 2 S.C.R. 557; **United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.**, [1993] 2 S.C.R. 316.

We also refer to the attention of counsel the recent decision of the Supreme Court of Canada issued on March 20, 1997 in **Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.**, [1996] S.C.J. No. 116, and in particular that portion dealing with the standard of review beginning at paragraph 54 and following.

We dismiss the appeal. We affirm the order of the Board dated October 7, 1996.

We award costs to the respondents in one amount of \$1,500.00, plus their disbursements.

C.J.N.S.

Concurred in:

Hart, J.A.

Pugsley, J.A.