

NOVA SCOTIA COURT OF APPEAL

Citation: *Halifax (Regional Municipality) v. United Gulf Developments Ltd.*,
2009 NSCA 78

Date: 20090709

Docket: CA 306518

Registry: Halifax

Between:

Halifax Regional Municipality

Appellant

v.

United Gulf Developments Limited and The Waterton Inc.

Respondents

Judge: The Honourable Justice Hamilton

Appeal Heard: May 20, 2009

Subject: Planning Law, Appeal from Nova Scotia Utility and Review Board.

Summary: The Chebucto Community Council refused to amend a development agreement to permit the respondents to build a second twelve-storey tower (as opposed to a four-storey one) on a common podium with another twelve-storey tower. The Development Officer also refused to issue a development permit to the respondents that would have permitted them to build a second twelve-storey tower. The respondents' appeals to the NSURB were successful. HRM appealed to this court.

Issues: 1. With respect to the NSURB's decision relating to the appeal from Council's refusal to amend the Development Agreement:

(i) Did the NSURB err by applying the wrong test when it considered Council's decision?

(ii) Did the NSURB err in finding that Council's refusal did not reasonably carry out the intent of the MPS?

2. With respect to the NSURB's decision relating to the appeal from the Development Officer's refusal to grant a development permit:

(i) Did the NSURB err in applying the correctness standard of review when reviewing the Development Officer's refusal to grant a development agreement?

(ii) Did the NSURB err by finding the Development Officer's decision was not correct?

Result: Appeal dismissed. The NSURB applied the correct test, whether Council's decision did not reasonably carry out the intent of the MPS(s.251(2)). It did not err in finding that Council's refusal did not reasonably carry out the intent of the MPS or that the Development Officer's decision was not correct. Its interpretation of the development agreement including the attached plans was reasonable as was its interpretation of the meaning of the phrase "abutting existing residential areas". It correctly applied the correctness standard of review when reviewing the Development Officer's refusal to grant a development permit.

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 30 pages.