

NOVA SCOTIA COURT OF APPEAL

Citation: Oakland/Indian Point Residents Association v. Seaview Properties Ltd.,
2010 NSCA 66

Date: 20100729

Docket: CA 319856

Registry: Halifax

Between:

Oakland/Indian Point Residents Association

Appellant

v.

Sea View Properties Limited and
Municipality of the District of Lunenburg

Respondents

Judge: The Honourable Justice Linda Oland

Appeal Heard: May 12, 2010

Subject: Land Use Planning - Subdivision Approval - Municipal Government
Act s. 278 - Declarations

Summary: A property owner replaced its application for a development agreement for the construction of 26 residential units with an application for subdivision approval as of right. On its subdivision application, the owner had initially certified that the subdivision was for a "vacant/residential" purpose. This it changed to a "vacant woodlot" purpose. Before subdivision approval was granted, the owner applied for development permits for the construction of 26 residential units on the lots. The Municipality's development officer had received that application before she granted subdivision approval of the property. The appellant applied for *certiorari* quashing the final subdivision plan approval and seeking declaratory relief. It argued that the granting of the subdivision application was supported by a false certificate by the owner that was accepted by the development officer with full knowledge of its falsity. It appeals the judge's dismissal of its *certiorari* application.

Issues: Whether, in these circumstances, the judge erred in holding that it was reasonable for the development officer to grant the subdivision application.

Whether he erred in finding it reasonable for her to grant subdivision approval without compliance with the central sewer requirement of the subdivision by-law.

Whether he erred in failing to draw an inference that the "vacant woodlot" certification was untrue.

Whether he erred in refusing to grant the declarations.

Result: Appeal dismissed. The judge correctly observed that, unless it was unreasonable, deference must be paid to the decision of the development officer. His acceptance of her view that she could only review what was before her and decide whether it complies with the requirements did not amount to palpable and overriding error. There was no evidence and no finding that the owner proposed anything other than an on-site sewer system. Accordingly, the central sewer requirements were not applicable. The judge did not err in stating that the owner would have to comply with the same sewer services requirements whether it proceeded by way of development agreement and subdivision approval followed by development permits. The judge did not fail to address or make a finding as to the falsity of the certification. He stated that he was not satisfied that fraud had been established. The judge's refusal to grant declaration relief, a discretionary remedy, does not amount to an error in principle or give rise to a patent injustice.

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 18 pages.