C.A. No. 114210

NOVA SCOTIA COURT OF APPEAL

Freeman, Roscoe and Flinn, JJ.A.
Cite as: Ruffman v. Centennial Properties Ltd., 1996 NSCA 19

BETWEEN:	)	
	)	
ALAN RUFFMAN	)	Appellant appeared in person
Appellant	)	
	)	
- and -	)	
	)	
CENTENNIAL PROPERTIES (1978) LIMITED and the CITY OF HALIFAX	)	Peter J.E. McDonough, Q.C. for the Respondent, Centennial Properties and Barry S. Allen for the Respondent, City of Halifax
Respondents	)	
	)	
	)	Appeal Heard: January 23, 1996
	)	
	)	Judgment Delivered: January 23, 1996

THE COURT: The appeal is dismissed and the respondent Centennial shall recover costs in the amount of $1,000.00, including disbursements as per oral reasons for judgment of Roscoe, J.A.; Freeman and Flinn, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

ROSCOE, J.A.:

This is an appeal from a decision on the question of standing, made pursuant to the **Planning Act**, by the Nova Scotia Utility and Review Board.

The appellant, Alan Ruffman appealed a decision of the Halifax City Council to grant a development permit to the respondent, Centennial Properties (1978) Limited to build a multiple unit residential building on the waterfront of Halifax Harbour. On a preliminary application of the respondent Centennial, the Board ruled that the appellant was not an "aggrieved person" as defined in s. 78 of the **Planning Act,** R.S.N.S. 1989, c.346 and, therefore, the Board had no jurisdiction to hear his appeal.

The relevant section is as follows:

> 78 (1) Where a council has approved the entering into of an agreement pursuant to Section 55 or 56, or an amendment to such an agreement except respecting a matter that pursuant to Section 73 the parties have identified as not substantial, the decision of the council may be appealed by
>
> (a) an aggrieved person;
>
> (b) the Director;
>
> (c) the council of an adjoining municipality.
>
> (2) In subsection (1), "aggrieved person" includes
>
> (a) an individual who *bona fide* believes that the proposed agreement will adversely affect
>
> (i) the value of or the reasonable enjoyment of that person's property, or
>
> (ii) the reasonable enjoyment of the property occupied by that person;
>
> . . .

An appeal to this Court lies on a question of the Board's jurisdiction or upon any question of law. See s. 30 of the **Utility and Review Board Act,** S.N.S. 1992, c. 11.

The appellant, after extensive research into the title of lands adjacent to, and water lots extending into, Halifax Harbour, found that there had been a Provincial Crown grant of a water lot to Captain John Taylor Wood in 1879. He traced the heirs

of Captain Wood and in 1976 obtained a quit claim deed from Captain Wood's granddaughter for whatever interest she had in the property. The water lot, granted to Captain Wood, a portion of which has been infilled, is adjacent to the property of the respondent Centennial which is subject to the development permit. Much of the evidence before the Board and the argument there and before this Court concerned the validity of the Crown grant, because it was a post Confederation grant, and may or may not have consisted partly of land above water in either 1867 or 1879. It is, however, our unanimous view that it is not necessary to decide the questions of the validity of the Crown grant and the appellant's title, or whether the Board had the jurisdiction to inquire into his title, to determine whether the Board erred in finding that the appellant was not an aggrieved person.

Assuming therefore, without deciding, that the appellant does have an interest in land adjacent to the proposed development, the issues are whether the Board erred in law in its alternate findings: (1) that the appellant does not have a **bona fide** belief that the value of or reasonable enjoyment of his property will be adversely affected by the development agreement, in accordance with s. 78(2)(a)(i); and, (2) that he did not "occupy" the lot in a manner that entitled him to the benefit of s.78(2)(a)(ii).

The Board accepted the unrebutted evidence of an appraiser who testified on behalf of the respondent Centennial that the appellant's lot, which contains one parking spot and a wharf built by the City and open for use by the public, "has very little value at the present time given the use being made of it for a sewer outfall and the restrictions in the easement from the Ruffmans to the City of Halifax." The Board concluded that, at the very least, the value of the appellant's water lot will not decrease as a result of the development agreement.

On the question of whether the appellant's reasonable enjoyment of the property arising out of his occupation of it would be adversely affected by the

development, the Board found that the public use of the property, as mandated in the original Crown grant, and encouraged by the appellant, prevented him from exercising "such acts of occupation, particularly in terms of exercising control over the lot, which entitle him to be characterized as occupying the lot." Alternatively the Board found that even if the appellant was an occupant of the property, he did not have a **bona fide** belief that the development would adversely affect the reasonable enjoyment of it.

We have carefully reviewed the record and the oral and written submissions and have considered the appropriate standard of review and are satisfied that the Board committed no error on a point of law or jurisdiction. The appellant argued that the Board adopted too narrow an interpretation of the term "aggrieved person". However, the Board's interpretation was consistent with the language and intent of the statute and we have not been satisfied that it erred in law. Therefore, this Court should not interfere with the Board's conclusion that the appellant was not an aggrieved person as defined in s.78 of the **Planning Act**.

We accordingly dismiss the appeal. The respondent Centennial shall have costs fixed at $1,000.00, including disbursements.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Flinn, J.A.