

IN THE SUPREME COURT OF NOVA SCOTIA
APPEAL DIVISION

Cite as: Antigonish Mall Ltd. v. Nova Scotia Municipal Appeal Board,
1993 NSCA 15

Clarke, C.J.N.S.; Matthews and Chipman, J.J.A.

BETWEEN:

[illegible]

THE COURT: Appeal dismissed from decision and order of the Municipal Board concerning a proposal for the development of a shopping centre, per oral reasons for judgment of Clarke, C.J.N.S.; Matthews and Chipman, J.J.A. concurring.

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

CLARKE, C.J.N.S.:

This is an appeal from the May 22, 1992 decision and subsequent order of the Municipal Board (the Board) by which it approved the development of a shopping centre in the county of Antigonish, west of the town of Antigonish. The matter came before the Board by way of an appeal from the decision of the Municipal Council of the county of Antigonish which on October 11, 1991 approved the proposal.

The jurisdiction and authority of the Board is found in the **Shopping Centre Development Act**, R.S.N.S. 1989, c. 427 (the **Act**). The procedural steps leading up to the hearing and determination of the Board were followed.

The factors which the Board is required to consider are described in s. 6 of the **Act**:

6 In determining whether to approve or not to approve a shopping centre, the Board shall consider

(a) the need for or desirability of additional retail space in the area in which the shopping centre is proposed to be constructed or enlarged;

(b) the effect of the additional retail space on existing or proposed retail outlets in the general area to be served by the shopping centre;

(c) such considerations as the Governor in Council may prescribe. 1978-79, c. 74, s. 6.

There being no considerations prescribed by the Governor in Council, (a) and (b) of s. 6 are the two relevant factors.

Following lengthy hearings and detailed submissions, the Board concluded the appeals from the decision of the Municipal Council should be

dismissed and the proposal for the shopping centre should be approved.

Sobeys Inc. and Antigonish Mall Limited appeal this decision of the Board. They request that the application for the shopping centre be denied or in the alternative that the decision of the Board be set aside and the matter remitted to the Board for a new hearing. The respondents are the developer, Xanadu Investments Limited and Atlantic Wholesalers Limited, the Board having granted Atlantic the status of an Interested Person.

An appeal to this Court from an order of the Board is permitted by s. 34(1) of the **Municipal Board Act**, R.S.N.S. 1989, c. 297, with leave, "upon any question as to its jurisdiction or upon any question of law". Leave was earlier granted.

Several grounds of appeal are advanced which focus on alleged errors relating to the determinations made by the Board concerning the adverse effect upon existing retailers, the anticipated negative impact of the proposal, the need or desirability of an additional grocery store, and the manner by which the Board went about examining, or failing to examine, the evidence before it.

We have reviewed the extensive record in this proceeding and we have considered the detailed written and oral submissions advanced by all counsel. In our opinion, most of the grounds of appeal alleged to be errors in law are essentially based on findings of fact made by the Board. In that respect, s. 33 of the **Municipal Board Act** provides:

33 The finding or determination of the Board upon any question of fact within its jurisdiction is binding and conclusive. R.S., c. 297, s. 33.

The Board rendered a lengthy and detailed decision, with reasons, which reveals that it exercised its jurisdiction properly, that it dealt with the factors it was required to consider under the **Act**, and that it made findings of fact

which by s. 33 are binding and conclusive.

Finally, in reviewing the decision of the Board, this Court must be satisfied that the Board correctly interpreted the legislation from which it derived its authority and jurisdiction. In our respectful opinion it did, and in doing so made no errors in law which are reversible on appeal.

Accordingly, the appeal is dismissed with costs of \$750.00 and its disbursements to the respondent Xanadu and costs of \$750.00 and its disbursements to the respondent Atlantic Wholesalers Limited.

C.J.N.S.

Concurred in:

Matthews, J.A.

Chipman, J.A.