

NOVA SCOTIA COURT OF APPEAL

Citation: *Myers v. Windsor (Town)*, 2003 NSCA 64

Date: 20030612

Docket: CA 186392

Registry: Halifax

Between:

Laura and Graeme Myers, Penny and Brian Watling,
and Edward Poirier

Appellants/Respondents
by Cross-Appeal

- and -

Gary Mannette and John Proude, and Windsor Town Council

Respondents/Appellants
by Cross-Appeal

- and -

Windsor Hockey Heritage Society

Respondent

Judge: Hamilton, J.A.

Appeal Heard: May 14, 2003

Written Judgment: June 12, 2003

Subject: *Municipal Law, Section 251(1)(c) Municipal Government Act,
Procedural Fairness*

Summary: Messrs. Mannette and Proude applied to the Town of Windsor to have

four adjacent parcels of land re-zoned from two-unit residential to multiple residential. The Town's Director of Planning wrote a report approving the re-zoning of all four parcels. The Planning Advisory Committee approved the re-zoning of all four parcels. A public meeting was held where the re-zoning of all four parcels was considered. Town Council approved the re-zoning of all four parcels. Adjacent property owners appealed Council's decision to the Nova Scotia Utility and Review Board. The Board allowed the appeal and amended the land-use by-law in such a way that only one of the four lots was re-zoned multiple residential, with the other three parcels remaining two-unit residential.

- Issues:**
1. Did the Board err in law when it interpreted s. 251(1)(c) of the **Act** as authorizing it to direct the Council to amend the land-use by-law in the manner prescribed by the Board, on an appeal from a decision of Council granting an amendment to the land-use by-law?
 2. If the Board has this authority, did the Board err in this case in the manner in which it exercised its power, i.e. did it deny the parties the right to a fair hearing?

Result: Appeal allowed. The Board did not err in interpreting s.251(1)(c) of the **Act** as authorizing it to amend the land-use by-law in the manner prescribed by the Board, on an appeal from a decision of Council granting an amendment to the land-use by-law. The Board did err in the manner in which it exercised its authority in this case. The parties were denied a fair hearing because they were not given notice of or the right to make submissions with respect to the application and appeal which were effectively split into two by the Board.

<p>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 22 pages.</p>
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