

NOVA SCOTIA COURT OF APPEAL

Citation: Truro (Town) v. Creelman, 2003 NSCA 96

Date: 20030923

Docket: CA 194272

Registry: Halifax

Between:

Town of Truro

Appellant

v.

Calder Creelman and Nova Scotia
Utility and Review Board

Respondents

Judges: Cromwell, Freeman and Saunders, J.J.A.

Appeal Heard: September 23, 2003, in Halifax, Nova Scotia

Written Judgment: September 24, 2003

Held: **Appeal dismissed per oral reasons for judgment of
Cromwell, J.A.; Freeman and Saunders, J.J.A. concurring.**

Counsel: Gary Richard, for the appellant
Peter Rogers, for the respondent Calder Creelman

Reasons for judgment:

[1] The respondent, Calder Creelman, applied to the Town of Truro for a development agreement to permit construction of a 15-unit apartment complex. After a public hearing, Town Council unanimously rejected the application. Mr. Creelman appealed to the Utility and Review Board which allowed the appeal and approved the proposed development agreement. The Town appeals that decision to this Court pursuant to s. 30 of the **Utility and Review Board Act**, S.N.S. 1992, c. 11. The appeal is limited to questions of law or jurisdiction.

[2] The Councillors who spoke at the Council meeting at which the decision was made to deny Mr. Creelman's application referred to concerns about the "fit" of the development with the area as well as traffic and parking issues.

[3] On appeal, the Board found that "... [d]espite the concerns about on-street parking expressed by the residents at the evening session, [it was] persuaded by the evidence of the Planner, the Traffic Authority, the site visit, the photographic evidence of [Mr. Creelman] (which was not impugned by any witness or cross-examination) that there is extensive parking space." The Board noted that the proposed development was supported by the Truro Heritage Advisory Committee and accepted the opinion evidence of the Town's planner that not only was the proposed development reasonably consistent with the Municipal Planning Strategy ("MPS"), but that refusing it was not reasonably consistent with the MPS. There was no planning evidence to the contrary.

[4] The Town's position on appeal is that the Board erred in its conclusion that the evidence did not reasonably support Council's expressed concerns about the traffic and on-street parking ramifications of the proposed development, thus making Council's decision based on these concerns inconsistent with the MPS.

[5] In our view, there is no error of law or jurisdiction in the Board's decision. It is conceded that the Board asked itself the right question. The Board correctly stated the scope of its review and discharged its review function on the basis of the record before it. There was unanswered planning opinion evidence before the Board that the refusal of the proposed development agreement was not reasonably consistent with the MPS. While acknowledging that it was not obliged to do so, the Board accepted and acted on that opinion. In doing so, it did not err in law or jurisdiction.

[6] The appeal is dismissed.

[7] We think this is a case for costs. Therefore, we order that the Town pay Mr. Creelman his costs of the appeal fixed at \$2500 plus disbursements.

Cromwell, J.A.

Concurred in:

Freeman, J.A.

Saunders, J.A.