

SUPREME COURT OF NOVA SCOTIA

Citation: Peterson v. Kentville (Town), 2008 NSSC 254

Date: 20080903

Docket: S.H. 290467

Registry: Halifax

Between:

Floyd H. Peterson

Applicant

v.

Town of Kentville

Respondent

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Judge: The Honourable Justice Gerald R P Moir

Heard: March 10 and 11 and June 10 to 12, 2008 at Kentville

Final Written Submissions: July 11, 2008

Subject: Judicial Review; Standard of Review, Procedural Fairness, Correctness or Reasonableness of Certain Decisions

Summary: Developer of a residential subdivision to be developed in phases earmarked land to be deeded to the town under the *Municipal Government Act* for park, playground, or similar purposes. Many years later, land was deeded. Town officials held consultations, a standing committee heard submissions, then it decided to build a “pocket park” with a small play area. An abutter attacked this decision and also claimed that the park could not be built without a development permit. Town then obtained a development permit from its employee, the development officer.

Issues: (1) Whether standing committee had authority to make the decision? (2) Was procedural fairness afforded? (3) Whether the town had to obtain a development permit? (4) If so, does the park conform with the land use by-law? (5) If the permit was required, whether the applicant has a sufficient interest to challenge it on the basis of bias? (6) Whether paths in the park need to be at least fifteen feet wide?

Result:

(1) Subsection 50(3) does not mean that council, and only council, can manage municipal lands. Authority was given to the committee in accordance with the Act. (2) The abutter, and his group, were afforded procedural fairness before the decision was made. (3) The town, and the development officer, were wrong in their view that no permit was required. (4) The decision to issue the permit was reasonable. It was reasonable to conclude that the park had some frontage on streets. Minimum frontages in the by-law do not apply to a park. (5) The applicant did not have a sufficient interest to be entitled to procedural fairness when the development officer decided whether to issue a development permit. Neighbours have a sufficient interest when a by-law is being made or amended, or a minor variance is sought, but not when a landowner applies for a permit due as a matter of right. (6) The by-laws on pedestrian walkways do not apply to paths or trails.

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