

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: **St. George's Lawn Tennis Club v Halifax (Regional Municipality), 2007 NSSC 26**

Date: 20070126

Docket Number: S.H. 261036

Registry: Halifax, NS

Between:

St. George's Lawn Tennis Club, Joan Rankin & Ed Lake

Applicants

v.

Halifax Regional Municipality

Respondent

LIBRARY HEADING

Judge: The Honourable Associate Chief Justice Deborah K. Smith

**Written
Decision:** January 26th, 2007

Subject: *Judicial Review/Certiorari*

Summary: A developer made application to the Halifax Regional Municipality for site-plan approval for a six unit townhouse development to be built in Dartmouth, Nova Scotia. A Development Officer granted the said approval. The Applicants appealed this decision to the Harbour East Community Council (a Council of the Halifax Regional Municipality). An appeal hearing was held on May 25th, 2005. Prior to the hearing, a representative of the developer asked the Development Officer whether he would be given an opportunity to speak at the appeal hearing. He was advised that the Chair of the meeting would invite him to speak before Council made its decision. Through inadvertence this did not occur. Council voted not to uphold the Development Officer's decision to approve the site-plan application.

The day following the appeal hearing, the representative of the developer contacted the Development Officer and inquired as to why he had not been invited to speak at the appeal as was anticipated. An *in camera* report was prepared for Council concerning this issue and a motion was passed by Council that a new appeal hearing would be held. All interested parties were advised of the situation and

were given notice of the second hearing. At the second hearing all interested parties were invited to speak. At the conclusion of that hearing, Council voted to uphold the Development Officer's decision to approve the site-plan application. In other words, Council came to a different decision at the conclusion of the second hearing than they did at the conclusion of the first hearing.

The Applicants requested judicial review in relation to the second hearing. They submitted that Council acted in excess of jurisdiction and violated the doctrine of *functus officio* by reopening the appeal process in the face of a lawfully made decision to deny the approval of the site-plan. Further, they argued that Council erred during the second appeal hearing by not adhering to s. 217 of the *Municipal Government Act*.

Issues: What is the appropriate standard of review? Did Council act in excess of jurisdiction and violate the doctrine of *functus officio* by reopening the appeal? Further, did Council err during the second appeal hearing by not adhering to s. 217 of the *Municipal Government Act*?

Result: The first issue involved a question of procedural fairness and went to the manner in which Council made its decision as compared to the end product of its deliberations. Accordingly, it was not necessary for the Court to conduct a pragmatic and functional analysis in relation to this issue and the matter was decided without deference. The standard of review in relation to the second issue was found to be correctness.

On the first issue, the Court concluded that a breach of natural justice had occurred when the developer was not invited to speak at the appeal hearing after being told that such an invitation would be extended. This breach rendered Council's initial decision a nullity and Council was permitted to start afresh in order to cure this defect. The Court held that Council was not prevented by the doctrine of *functus officio* from holding the second hearing.

Section 232 of the *Municipal Government Act* sets out Council's powers when dealing with a site-plan approval appeal. Section 217 of the said *Act* did not provide additional powers to Council to analyze whether this development was consistent with the applicable Municipal Planning Strategy and must be read subject to and in conjunction with the provisions of s. 232 of the *Act*. The Court concluded that Council did not fail to adhere to s. 217 of the *Municipal Government Act*. Accordingly, the Application for an Order in the nature of *certiorari* was dismissed.