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## CASE SUMMARY: APPLICANTS WHO WERE AFFORDED PROCEDURAL FAIRNESS LOST AN APPLICATION TO QUASH A BYLAW AFFECTING OTHER INDIVIDUALS NOT BEFORE THE COURT

**Administrative law – Decisions of administrative tribunals – Municipal councils; Municipalities – By-laws – Planning and zoning – Notice and consultation; Judicial review – Procedural requirements and fairness – Parties – Notice**

*Miner v. Kings (County)*

2016] N.S.J. No. 260

2016 NSSC 163

Nova Scotia Supreme Court

April 7, 2016

C. R. Coughlan J.

The applicants sought to quash a bylaw passed by the respondent, The Municipality of the County of Kings (the “Municipality”), on the basis that the Municipality had failed to afford individuals other than the applicants with the required procedural fairness. The applicants themselves had been provided with all due procedural fairness.

The Municipality passed a bylaw rezoning a particular parcel of land (the “Lot”) so that it would be zoned as “Highway Commercial”, rather than “Forestry”. As part of the bylaw, the Municipality also made certain amendments to its land use bylaw in order to permit the operation of convenience stores on lands zoned as Highway Commercial. At the time, a second parcel of land was already zoned as Highway Commercial such that it would also be affected by this amendment.

Notice of the proposed bylaws was provided to the owners of any property within 500 feet of the Lot, as required by the Municipality’s Public Participation Policy. Notice was not given, however, to the owners of property within 500 of the parcel of land already zoned as Highway Commercial to advise of the amendment to the land use bylaw.

The applicants were owners of land within 500 feet of the Lot, and so were provided with the required notice and had participated in the public deliberations which took place prior to the bylaw being passed. After unsuccessfully opposing the bylaw, the applicants sought an order quashing the amendment to the land use bylaw on the basis that owners of property within 500 feet of the parcel of land already zoned as Highway Commercial had not been provided with the required notice.

Mr. Justice Coughlan held that while the applicants had standing to bring the application pursuant to s. 189 of the Municipal Government Act, S.N.S. 1996, c. 18, it would be a “misuse of judicial resources” for the court to allow individuals who had been provided with all required procedural fairness to seek to quash a bylaw on the basis that other individuals, not before the Court, had not been provided with that same fairness. Having been afforded all required fairness, the applicants had no basis on which to seek to quash the bylaw, and so the application was dismissed. Coughlan J. went on to award costs against the applicants.

This case was digested by [Nathaniel J. Turner](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at [nturner@harpergrey.com](mailto:nturner@harpergrey.com) or review his biography at <http://www.harpergrey.com>.