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***The Supreme Court rules that a private Halifax land developer can take the regional municipality to court for its plan to expropriate its land.***

The Annapolis Group started buying lands in the Halifax area in the 1950s. Over time, it acquired 965 acres of land, which the company planned to develop and sell. In 2006, Halifax adopted a 25-year Regional Municipality Planning Strategy for land development. It included the Annapolis lands.

The planning strategy indicates some of those lands would be zoned for a public park with the rest designated for “serviced development”, such as residential neighbourhoods. For serviced development to occur, Halifax must adopt a resolution authorizing a “secondary planning process” and make an amendment to the land use by-law.

Annapolis made several attempts to develop the lands, starting in 2007, with no success. In 2016, Halifax ultimately adopted a resolution refusing to initiate the secondary planning process.

Annapolis responded by filing a lawsuit against Halifax in the Supreme Court of Nova Scotia. It claimed, among other things, that Halifax had essentially expropriated private property for a public park, which amounted to a “constructive taking”. In 2019, Halifax asked the court for summary judgment to dismiss the constructive taking claim from the lawsuit. Summary judgment is a procedure that allows a party in a lawsuit to ask the court to decide an issue without a full trial.

In response, Annapolis argued that its claim of constructive taking raised issues that required a trial. The judge agreed but Halifax appealed that decision to the Nova Scotia Court of Appeal. Based on the Supreme Court of Canada’s 2006 ruling in *Canadian Pacific Railway Co. v. Vancouver (City)*, the Court of Appeal concluded that Annapolis had no reasonable chance of success. Annapolis then appealed to the Supreme Court of Canada.

The Supreme Court has allowed Annapolis’s claim of constructive taking to proceed to trial.

**The claim raises disputed issues of fact that need to be decided at trial.**

Writing for a majority of the judges of the Supreme Court, Justices Suzanne Côté and Russell Brown found that Annapolis’ claim of constructive taking raises disputed issues of fact that must be decided at trial, based on the constructive taking test set out in the *Canadian Pacific Railway Co.* case.

There are two parts to the test for establishing a constructive taking. First, the test must show the government has acquired a beneficial interest in the property or flowing from the property. A beneficial interest is an advantage, such as when private property is enjoyed as a public resource. Second, the test requires showing the proposed regulatory measures would remove all reasonable uses of the private property.

The Nova Scotia Court of Appeal had interpreted the first part of the test as requiring Annapolis to show that Halifax had actually taken possession of the lands. However, Justices Côté and Brown wrote, “what must be shown by the property owner can fall short of an actual acquisition by the state.” The majority said the Court of Appeal was also wrong in holding that Halifax’s intention is irrelevant to applying the second part of the test.

The majority of the Supreme Court noted, “Annapolis is entitled to adduce evidence at trial to show that, by holding Annapolis’ land out as a public park, Halifax has acquired a beneficial interest therein; and that, because Halifax is unlikely to ever lift zoning restrictions constraining the development of Annapolis’ land, Annapolis has lost all reasonable uses of its property”. Annapolis may also adduce evidence of Halifax’s intention in not doing so, the majority said.

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**Breakdown of the decision:** *Majority:* Justices [Côté](#) and [Brown](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#) and [Rowe](#) agreed) | *Dissenting:* Justices [Kasirer](#) and [Jamal](#) would have dismissed the appeal, finding that Annapolis had no real chance of proving its claim based on the legal requirements set out in the *Canadian Pacific Railway Co.* case (Justices [Karakatsanis](#) and [Martin](#) agreed)

**More information (case #39594):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [judgment](#) (Supreme Court of Nova Scotia) | [appeal](#) (Nova Scotia Court of Appeal)

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