CITATION: City of Niagara Falls v. Club Italia et al., 2017 ONSC 646
COURT FILE NO.: 16-650 ML
DATE: 2017-01-26

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
The Corporation of the City of Niagara Falls	Paul M. DeMelo, counsel for the Appellant
Applicant	
- and -	
Club Italia, Niagara, Order of Sons of Italy; Redeemer Bible Church; Regency Athletic Resort Ltd.; FKS, the Real Estate People Inc. and 623381 Ontario Inc.; River Realy Development (1976) Inc., Dr. Farouk K. Abou-Keer; Niagara Sports Centre Limited (together known as the Northwest Quadrant Landowners' Group); Regional Municipality of Niagara; Thundering Waters Development Corp.; Warren Woods Land Corporation; Preservation of Agricultural Lands Society ("PALS"); and Jean Grandoni	David R. Donnelly, for the Respondents PALS and Jean Grandoni
Respondents	
	READ: January 25, 2016

REASONS FOR DECISION

[1] The appellant seeks leave to appeal to the Divisional Court a decision of the Ontario Municipal Board, issued on March 25th, 2015. The decision allowed appeals against proposed Regional Official Plan Amendment No. 196 and Proposed Official Plan Amendment No. 106. Together, these proposals would have permitted expansion of the

urban boundary of the City of Niagara Falls to include approximately 75 hectares of privately owned land.

[2] The leave being sought is required under section 96(1) of the *Ontario Municipal Board Act*. Appeals under that section are limited to those which raise a question of law. It is well established that leave is to be granted in these circumstances only where:

(a) there is reason to doubt the correctness of the decision of the board with respect to the question or questions of law proposed as the basis of the appeal; and

(b) the question of law must be of sufficient importance to merit the attention of the Divisional Court.

[3] According to the appellant's factum, the questions proposed as the basis of the appeal (all unhelpfully posed in leading and convoluted terms) are as follows:

(a) did the Ontario Municipal Board err in law by requiring that the municipality conduct a detailed site analysis to identify under-utilized lands that could accommodate development with the urban boundary utilizing intensification be conducted in order to justify need before an urban expansion is permitted?

(b) did the Ontario Municipal Board err in law by requiring that a detailed site analysis to identify under-utilized lands that could accommodate development within the urban boundary utilizing intensification be conducted in order to justify need before an urban expansion is permitted in order to conclude that ROPA 196 and OPA 106 have regard to the 1997 Provincial Policy Statement?

(c) can the Ontario Municipal Board impose a requirement that a review be conducted or impose the requirement for additional studies or reviews be conducted that are not listed as required under the language of the Provincial Policy?

(d) does the assessment of "reasonable alternatives" require that the municipality review all alternative sites, without consideration as to whether or not such alternatives are even advanced as reasonable alternatives by the relevant property owners?

[4] At the risk of over-simplification, the thrust of the appellant's submissions are that the board member erred when she imposed upon the appellant the need to have "done a thorough review and assessment of development capability of lands with [in] the urban boundary before expanding into prime agricultural lands", when no such requirement is expressly stated in the applicable, i.e. 1997, Provincial Policy Statement. The appellant argues that the member wrongly conflated the requirements for such reviews in the 2005 and 2014 Provincial Policy Statements into the governing 1997 one.

[5] While I disagree with the submission of the respondents' that the grounds raised by the appellant are "at their highest, matters of mixed fact and law upon which no appeal may be granted", I do agree with their submissions that the appellant has not met the onus of demonstrating that there is reason to doubt the correctness of the board's decision to the

requisite degree. In these regards, I adopt and rely upon paragraphs 5(b) i, ii, iii, iv and 47 to 60 inclusive of the respondents' factum.

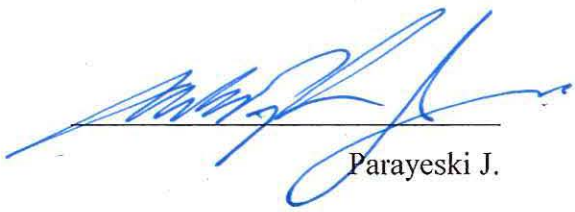
[6] I do not consider the correctness of the decision to be open to serious debate. The fact that able counsel can articulate an argument does not automatically mean that the issue or issues raised in that argument are open to serious debate.

[7] Both "sides" on this appeal agree that the standard of review is that of "a reasonableness".

[8] The requirement of doubt regarding correctness not having been established is itself fatal to this application for leave. Nonetheless, I turn to the requirement that the question(s) of law raised must be of general importance beyond the obvious importance to the parties, to paraphrase, the decision in *Avery v. Pointes Protection Association*, 2016 ONSC 6463, 2016 Carswell Ont. 18671, para 35.

[9] Although a decision regarding the proposed expansion of an urban gross boundary, by definition, is significant in general terms, the decision here has more to do with a board exercising its discretion in respect of the 1997 provincial policy. That discretion and its limits appear to be relatively settled by the Court and by other board decisions and need not be revisited. Further, the unexplained delay in seeking leave suggests a lack of urgency and importance to the appellant.

[10] For these reasons, the leave to appeal is denied.



Parayeski J.

Released: January 26, 2017

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MDP:jls

Released: January 26, 2016