

ISSUE DATE:

February 6, 2007

DECISION/ORDER NO:

0329



PL060971

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Albert J. Norris
Applicant: King/86 Developments Ltd.
Subject: Consent
Property Address/Description: 300 & 335 Farmer's Market Road
Part Lots 5 & 18, GCT
Municipality: Township of Woolwich
OMB Case No.: PL060971
OMB File Nos.: C060386 & C060387
Municipal File No.: B-34/06 & B-35/06

APPEARANCES:

Parties

King/86 Developments Limited	S. Mahadevan
Township of Woolwich	W. White
Albert Norris	

DECISION DELIVERED E. PENDERGRAST AND ORDER OF THE BOARD

This hearing was the result of a motion filed by King/86 Developments Limited (King/86) to dismiss two appeals by Albert Norris without holding a hearing. The motion to dismiss was supported by the Township of Woolwich, which submitted a response setting out its reasons for supporting the motion. Both King/86 and the Township appeared at the hearing of the motion, with professional planners in attendance as well. Mr. Norris did not appear.

The motion requested two orders from the Board: (1) pursuant to subsection 34(25) of the *Planning Act*, to dismiss without holding a hearing Mr. Norris' appeal of Township Zoning By-law No. 63-2006, which applies to lands owned by King/86 in the Township; and (2) pursuant to subsection 53(31) of the *Act*, to dismiss without holding a hearing Mr. Norris' appeal of decisions by the Township's Committee of Adjustment to grant two consents respecting portions of the same lands.

The Board had already dismissed Mr. Norris' appeal of By-law No. 63-2006, pursuant to subsection 34(25)(c) of the *Planning Act*, on the grounds that Mr. Norris

had not paid the required appeal fee. Consequently, the hearing dealt only with the request for an order dismissing the appeal of the King/86 severances. The severances were sought and granted in order to facilitate the transfer of lands from King/86 to the Township for the purposes of widening Farmers' Market Road.

The Board considered the submissions of counsel and reviewed the motion and response records, including the uncontested sworn affidavits of Ed Fothergill, a qualified professional planner retained by King/86, and John Scarfone, a qualified professional planner for the Township. In an oral decision the Board granted the motion to dismiss the consent appeals, for the following reasons:

- The consent appeal is essentially a compendium of complaints and observations not reasonably related to the consents granted by the Committee and consequently the Board finds that, pursuant to subsection 53(31)(a)(i) of the *Planning Act*, the appeal does not disclose any apparent land use planning ground upon which the Board could give or refuse to give the consents, and pursuant to subsection 53(31)(a)(ii) of the *Act*, the appeal is frivolous and vexatious.
- Pursuant to subsection 53(31)(b) of the *Planning Act*, and as set out in paragraph 19 of Mr. Fothergill's affidavit, which was supported by Mr. Scarfone, Mr. Norris did not make any written or oral submissions to the Committee of Adjustment with respect to the consent applications, prior to the Committee making its decision on the applications.

Costs

Both the motion and response records included requests for costs, but the Board asked Ms Mahadevan and Mr. White to seriously consider whether they wished to pursue these requests. Mr. White stated that the Township's main concern was to prevent future appeals similar to those filed by Mr. Norris in this case, as well as in others, including those noted in Mr. Scarfone's affidavit. He indicated that he was willing to abandon the Township's request for costs, if King/86 did as well, but requested that the Board include in its decision a statement that would leave no doubt with Mr. Norris that, in this case and in others, he was misusing the appeal process.

Ms Mahadevan was unable to reach her client in order to take instructions regarding costs, but said that she would advise the Board after consulting with her

client. Subsequently, Ms Mahadeval advised the Board that her client is no longer seeking costs.

Notwithstanding that costs will not be awarded in this instance, the Board advises Mr. Norris that filing appeals such as those filed in this instance is ineffective, inappropriate and wasteful of the resources of the Board, the Township and the applicant. Appeals should be focussed on the matter being appealed, and should contain land use planning reasons that are related to the decision the Board must make.

Mr. Norris' Voice Mail

After the Board had delivered its oral decision on the motion to dismiss, and while Ms Mahadevan was attempting to reach her client regarding the costs issue, a Township staff member advised the Board that it had just been determined that Mr. Norris had left a voice mail on a staff member's line saying that he was sick and could not attend the hearing. The Board considered the situation, and advised the parties and counsel that it had made its decision, based on the submissions of counsel and the sworn affidavits of qualified professional planners, and did not intend to reopen the matter. The Board now confirms its verbal advice at the hearing that its oral decision to dismiss the severance appeals stands. As noted, the Board's order to dismiss Mr. Norris' appeal of By-law No. 63-2006 has already been issued.

Order

The Board Orders that the motion brought by King/86 Developments Limited for a order dismissing the appeals of Albert Norris under subsection 53(31) of the *Planning Act*, as supported in the response to the motion by the Township of Woolwich, is granted, and the appeals are dismissed.

"E. Pendergrast"

E. PENDERGRAST
MEMBER