CITATION: Richmond Hill (Town) v. Elginbay Corporation, 2015 ONSC 4979
DIVISIONAL COURT FILE NO.: 59/15
DATE: 20150807

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

BETWEEN:	
THE CORPORATION OF THE TOWN OF RICHMOND HILL Moving Party	*Barnett H. Kussner* and *Kim Mullin*, for the Moving Party, Town of Richmond Hill
– and –	*Ira T. Kagan*, *David Winer* and *Caterina Facciolo*, for the Responding Parties, Elginbay Corporation and Zamani Homes
ELGINBAY CORPORATION, ZAMANI HOMES (RICHMOND HILL) LTD., HAULOVER INVESTMENTS LIMITED, MONTANARO ESTATES LIMITED, WILLIAM AND YVONNE WORDEN, ROBERT SALNA and SALNA HOLDINGS INC. Respondents	*Jeffrey Streisfield*, for the Responding Parties, Haulover Investments Ltd., Montanaro Estates, Yvonne Worden and Robert Salna Holdings Inc.
	Robert G. Doumani, for the Proposed Intervener, The Corporation of the City of Mississauga
MOTION UNDER Rule 13.02 of the *Rules of Civil Procedure*	*Nadia Chandra* and *Joanna Wice*, for the Proposed Intervener, The Corporation of the Town of Oakville
	Andrea Wilson-Peebles, for the Proposed Intervener, The Corporation of the City of Markham
	Bruce Engell, for the Proposed Intervener, the Corporation for the City of Vaughan
	HEARD at Toronto: July 16, 2015

H. SACHS J.:

Background

[1] On January 15, 2015, following a hearing, the Ontario Municipal Board (the "Board") issued a decision in respect of appeals brought by various parties respecting the parkland policies set out in the Moving Party's new Official Plan. In that decision, the Board imposed a cap on the "alternative requirement" for parkland dedication authorized under s. 42(3) of the *Planning Act*, R.S.O. 1990, c. P.13 to a maximum of 25% of the land area or its cash equivalent.

[2] The Moving Party is moving for leave to appeal this decision on the basis that the Board had no jurisdiction to impose the cap it did. According to the Moving Party, s. 42(3) of the *Planning Act* provides that the jurisdiction to impose a cap on the "alternative requirement" for parkland dedication rests with the municipality, which can do so by enacting a by-law as long as that requirement does not exceed one hectare for each 300 dwelling units proposed.

[3] The three Proposed Interveners are other municipalities who argue that the Board's decision raises for the first time the proper legal interpretation of s. 42 of the *Planning Act* and, specifically, the interplay between the discretion afforded to municipal councils with respect to parkland dedication by-laws and that of the Board on the appeal of an official plan. According to the Proposed Interveners, the Board's decision could have a real impact on their jurisdiction to frame parkland dedication policies.

[4] The Proposed Interveners seek leave to intervene on the Moving Party's motion for leave to appeal and, if leave is granted, on the appeal itself. They also seek to file evidence concerning the impact that the Board's decision could have on their parkland dedication policies.

[5] The Responding Parties oppose the motions by the Proposed Interveners.

[6] In accordance with Rule 13.03(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, I was designated by Associate Chief Justice Marrocco to hear these motions.

Legal Principles

[7] Rule 13.02 is the relevant rule applicable to these motions. It reads:

> Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

[8] The principles that govern intervention motions in cases that do not involve the *Charter* were summarized by Nordheimer J., in *Groia v. Law Society of Upper Canada*, 2014 ONSC 6026, as follows, at para. 4:

> (i) the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.
>
> …
>
> (iii) the submissions to be offered by the proposed intervener must be useful and different from those of the parties.
>
> (iv) the threshold for granting intervener status in a public interest or public policy case is lower than it is for a private interest case.
>
> …
>
> (v) the fact that the proposed intervener is not indifferent to the outcome of the appeal is not a reason to deny it the right to intervene (cites omitted).

[9] In *Ontario (Minister of Transportation) v. 1520658 Ontario Inc.* (2010) 100 O.R. (3d) 619, Laforme J.A. confirmed that a party seeking leave to appeal is entitled to file evidence directed at the issue of public importance provided that the evidence is limited to factual information.

Analysis

[10] In *Cloverdale Shopping Centre Ltd. v. Etobicoke (Township),*[1966] 2 O.R. 439, the Court of Appeal pointed out that planning issues that involve the consideration of an Official Plan are issues that transcend the interests of the parties and involve the public at large. Thus, I do consider this a case where the threshold for intervention is lower than it would be in a private interest case. Further, the Proposed Interveners, while they may not be indifferent to the outcome of the appeal, are not private parties. They are all municipalities who are seeking to intervene to address what they judge to be an important legal issue that could have an impact on their ability to carry out their public mandate.

[11] The Responding Parties argue that the decision of the Board does not and could not affect the Proposed Interveners as the Board decision only applies to the Moving Party's Official Plan and Board decisions do not have any precedential value. I disagree. The issue on the motion for leave is an issue that goes beyond the specifics of any particular Official Plan and deals with the jurisdiction of the Board to set alternative requirement parkland designation caps. There is no doubt that this is an issue that could arise with respect to other municipalities' Official Plans and, if it does, the appellants in those cases will urge the Board to apply the decision at issue.

[12] The Responding Parties also submit that since the Proposed Interveners did not seek leave to intervene at the first instance, they should be precluded from intervening at this stage. In *Regional Municipality of Peel v. Great Atlantic and Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164, at para. 9, Dubin J.A. found that the fact that a proposed intervener declined to intervene in earlier proceedings did not mean that they should be foreclosed from intervening at a later point.

[13] While the positions of the Proposed Interveners do overlap with that of the Moving Party and with each other, each has a distinct perspective to offer on the question on issue, a perspective that will be of assistance to the court hearing both the motion for leave and, if leave is granted, the appeal. Furthermore, each is prepared to abide by an order that sets limits on their submissions and prevents them from re-arguing a point that has already been made. In this way, the injustice to the Responding Parties that would be caused by their participation will be minimized.

Conclusion

[14] For these reasons, the motions for leave to intervene are granted on the following terms:

(a) The Proposed Interveners will be allowed to supplement the record only as set out in the affidavits put forward on this motion. Otherwise, they will not add to or adduce further evidence.

(b) The factum of each intervener on both the motion for leave and, if leave is granted, on the appeal, shall be limited to 10 pages.

(c) Subject to the discretion of the court hearing the leave motion and, if leave is granted, the appeal, each intervener shall have 20 minutes to make its submissions on the leave motion and on the appeal.

(d) The interveners will make every reasonable effort to avoid duplicating the submissions of any of the parties or each other.

(e) Each intervener will not seek, nor will they be subject to, any award of costs.

(f) The interveners will abide by any schedule that this court may impose.

[15] The parties have requested leave to make written submissions as to the costs of these motions. The Proposed Interveners and the Moving Party shall make their submissions within 10 days from the release of this decision and the Responding Parties shall have 10 days from the receipt of those submissions to file their responding submissions.

H. SACHS J.

Released: 20150807

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THE CORPORATION OF THE TOWN OF RICHMOND HILL

Moving Party

– and –

ELGINBAY CORPORATION, ZAMANI HOMES (RICHMOND HILL) LTD., HAULOVER INVESTMENTS LIMITED, MONTANARO ESTATES LIMITED, WILLIAM AND YVONNE WORDEN, ROBERT SALNA and SALNA HOLDINGS INC.

Respondents

MOTION UNDER Rule 13.02 of the *Rules of Civil Procedure*

JUDGMENT RE INTERVENOR MOTIONS

H. SACHS J.

Released: 20150807