

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Sachs, C. Horkins, Brown JJ.

BETWEEN:)
)
YVONNE WORDEN) *Jeffrey Streisfield*, for the Applicant
)
Applicant)
)
– and –)
)
ONTARIO MUNICIPAL BOARD,) *Stanley Floras*, for the Respondent Ontario
THE TOWN OF RICHMOND HILL, THE) Municipal Board
REGIONAL MUNICIPALITY OF YORK)
)
Respondents) *Stephen Waque*, for the Respondent The
) Regional Municipality of York
)
) *Barnet H. Kussner* and *Kim Mullin*, for the
) Respondent The Town of Richmond Hill
)
)
) **HEARD at Toronto:** December 9, 2014

C. HORKINS J.

[1] The applicant, Yvonne Worden, brings this application for judicial review.

[2] On July 12, 2010, the Town of Richmond Hill (“the Town”) adopted a comprehensive new Official Plan pursuant to s. 17(22) of the *Planning Act*, R.S.O. 1990, c. P.13. The Official Plan was subsequently forwarded to the Regional Municipality of York (“the Region”) in its capacity as approval authority for the Official Plan, pursuant to s.17 (31) of the *Planning Act*.

[3] Pursuant to s. 17(40) of the *Planning Act*, the Official Plan was appealed to the Ontario Municipal Board (“the Board”) by a number of landowners within the Town, when the Region

did not make a decision concerning the Official Plan within 180 days. The applicant was one of the landowners who commenced an appeal.

[4] The applicant seeks an order quashing and setting aside the Decision of the Board dated November 6, 2013 (“the Decision”). The Decision granted the Town’s motion to dismiss certain aspects of the applicant’s appeal of the Town’s Official Plan, without a full hearing. The applicant seeks judicial review of this Decision.

[5] In her application, the applicant states that her relief should be granted for the following reasons:

- (i) The Board breached the rules of natural justice and procedural fairness by denying the applicant an adjournment of the Town’s motion for partial dismissal of her appeals.
- (ii) The Board breached its own rules of procedure by hearing the motion.
- (iii) The Board erred in law and exceeded its jurisdiction by dismissing the appeals without holding a hearing and permitting the applicant to cross-examine on affidavits.
- (iv) The Board exceeded its jurisdiction by failing to carry out its statutory duty under s. 17(50) of the *Planning Act*.

[6] Judicial review is an extraordinary remedy that should not be permitted when the applicant, as in this case, has not exhausted her alternative remedies.

[7] Section 43 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28 (“*OMB Act*”) states that the Board “may rehear any application before deciding it or may review, rescind, change, alter or vary any decision, approval or order made by it.”

[8] When a person requests relief under s. 43, the Board’s Rules of Practice and Procedure (“Rules”) govern. Rules 111-118 set out a review protocol. The Rules demonstrate that the concerns raised in this judicial review application could have been dealt with under s. 43. For example, Rule 115.01 gives the Chair of the Board broad discretionary powers as follows:

The Chair may exercise his/her discretion and grant a request and order either a rehearing of the proceeding or a motion to review the decision only if the Chair is satisfied that the request for review raises a convincing and compelling case that the Board:

- (a) acted outside its jurisdiction;
- (b) violated the rules of natural justice or procedural fairness, including those against bias;

- (c) made an error of law or fact such that the Board would likely have reached a different decision;
- (d) heard false or misleading evidence from a party or witness, which was discovered only after the hearing and would have affected the result; or
- (e) should consider evidence which was not available at the time of the hearing, but that is credible and could have affected the result.

[9] This application for judicial review is predicated on a claim for alleged denial of procedural fairness and natural justice. Rule 115.01 demonstrates that a procedure exists under the *OMB Act* that is designed to address this type of claim.

[10] The applicant has not requested relief under s. 43. Further she has not explained why she failed to do so, when s. 43 and the Rules give the Board the power to specifically address the concerns that she seeks to raise on this application for judicial review.

[11] Judicial review is a discretionary remedy. It is not available when the applicant has an adequate alternative remedy, except in special circumstances (see *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561 at pp. 19-20; *Strazdins v. Caledon (Town)*, [1998] O.J. No. 3586 at para.11; *Stentsiotis v. Ontario (Social Benefits Tribunal)*, 2011 ONSC 5948 at para. 2; *Destito v. Ontario (Social Benefits Tribunal)*, 2012 ONSC 5236 at para. 5).

[12] This applicant has an adequate alternative remedy under s. 43 and she has failed to identify any "exceptional circumstances" that would justify permitting her to bring an application for judicial review.

[13] In addition to s. 43 , it is important to note that the *OMB Act* addresses the finality of a Board order in ss. 96(1) and (4) of the *OMB Act*. The order is subject to the statutory review process in s. 43 and an appeal to Divisional Court may only be pursued with leave, on a question of law (s.96 (1)). Subsection 96(4) of the *OMB Act* states as follows:

- (4) Save as provided in this section and in section 43,
 - (a) every decision or order of the Board is final; and
 - (b) no order, decision or proceeding of the Board shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari* or any other process or proceeding in any court.

[14] In the context of this statutory regime and in the absence of any extraordinary circumstances, the application for judicial review, if allowed, would undermine the legislative scheme for review of the Board's decisions. Specifically, it would permit the applicant to do indirectly what she is not permitted to do directly. Under the legislative scheme, appeals to this court from final decisions of the Board are only permitted with leave. Instead of applying for

leave, the applicant sought to come directly to this court by framing what is essentially an appeal of the Board's decision as an application for judicial review.

[15] In conclusion the application for judicial review is dismissed. Costs have been agreed upon. The applicant shall pay the Town and Region each \$5,000 all inclusive. The Board is not seeking costs.

C. Horkins J.

Sachs J.

Brown J.

Released: 20141223

CITATION: WORDEN v. ONTARIO MUNICIPAL BOARD, 2014 ONSC 7247
DIVISIONAL COURT FILE NO.: 513/13
DATE: 20141223

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BETWEEN:

YVONNE WORDEN

Applicant

– and –

ONTARIO MUNICIPAL BOARD,
THE TOWN OF RICHMOND HILL, THE
REGIONAL MUNICIPALITY OF YORK

Respondents

REASONS FOR JUDGMENT

C. Horkins J.

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