

ISSUE DATE:

Feb. 18, 2010



PL090457

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

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Westmillway (II) Limited Partnership, Canaway Limited Partnership and The Coalition for Affordable Student Accommodation
Subject: By-law No. 0080-2009
Municipality: City of Mississauga
OMB Case No.: PL090457
OMB File No.: PL090457

IN THE MATTER OF section 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 34 of the Board's Rules of Practice and Procedure

Request by: Edwin King
Request for: Request for Directions

APPEARANCES:

Parties

Counsel*/Agent

Westmillway (II) Limited Partnership
Canaway Limited Partnership and The
Coalition for Affordable Student Accommodation

Edward B. King

City of Mississauga

M. Minkowski *, M. Taggart* ,
Lena Vyas (student-at-law)

Sir John Holmstead Ratepayers Inc

V. MacLean*

**MEMORANDUM OF ORAL DECISION DELIVERED BY K.J. HUSSEY ON
DECEMBER 16, 2009 AND ORDER OF THE BOARD**

The City of Mississauga passed an amendment to Zoning By-law 0225-2007 to include definitions of "Lodging House" and "Lodging Unit" within the Zoning By-law. Westmillway (II) Limited Partnership, Canaway Limited Partnership and the Coalition for Affordable Student Accommodation, appealed the amendment.

Preliminary matters:

1. Counsel for Sir John Holmstead Ratepayers Inc., Ms. Virginia MacLean, sought, and was granted, participant status for her client.
2. Three motions on this matter were filed with the Board. At the start of the hearing, two were abandoned. These were motions brought by the City of Mississauga challenging the status of agents for the Appellants Westmillway (II) Limited Partnership and Canaway Limited Partnership and the Coalition for Affordable Student Accommodation.

Westmillway (II) Limited Partnership and Canaway Limited Partnership, Moving Parties for the remaining motion, requested that the motion, which sought to stay the appeal, be heard instead on December 16, the day scheduled for hearing the appeal. The motion was scheduled for December 17, 2009. There was no objection and the Board granted the request. It was understood by the parties that if the motion was unsuccessful, the hearing of the appeal would immediately follow.

3. There was no one in attendance representing the Coalition for Affordable Student Accommodation. Counsel for the City of Mississauga requested that the Board dismiss the appeal brought by Coalition for Affordable Student Accommodation if the party failed to appear within half an hour of the commencement of the hearing.

The Motion:

The Moving Parties, Westmillway (II) Limited Partnership and Canaway Limited Partnership, pursuant to Regulation 30/02 and Rule 57 of the Ontario Municipal Board's Rules of Practice and Procedure, sought the following order from the Board:

1. That the hearing of this appeal be stayed or adjourned until the adoption of the licensing by-law which the Respondent City proposed as part of the measure to control and limit the incidence of student housing in the City of Mississauga, or

2. That the hearing of the appeal be conducted simultaneously with the appeal which the Moving Parties intends to bring in regard to the adoption of the licensing by-law, or
3. That the hearing of this appeal be adjourned until the determination of the introduction of the licensing by-law.

The Moving Parties relied on the Affidavit of Edwin King to support the motion. The Moving Parties argued that the two measures, zoning and licensing, are interdependent and are intended to operate together for the common purpose of limiting the establishment of student housing in certain parts of the City of Mississauga. If the application and content of one were to be assessed without considering the second measure, the overall effect could not be properly analyzed and appraised.

The Moving party further argued that the licensing by-law is a method of regulating land use, disguised as a business regulatory measure. It therefore falls within the ambit of the *Planning Act*, and within the Board's jurisdiction.

In response, the City argued that the Board's authority to consolidate matters can only apply to proceedings which are before the Board. The City of Mississauga had yet to enact a licensing by-law to regulate lodging houses. In any event this would be a matter that falls outside the Board's jurisdiction as there is no right of appeal to the Board from the enactment of a licensing by-law by a municipality, pursuant to the *Municipal Act, 2001*. The Board could therefore never be seized with jurisdiction over both the appeal to the Zoning By-law amendment and the yet to be enacted licensing by-law; the Board would therefore be unable to consolidate these matters. In support of its argument the City relied on the affidavit evidence of James Hinton, Manager of Compliance and Licensing Enforcement for the City of Mississauga.

The Board dismissed the motion. The Board agreed with the City that the relief sought was beyond the Board's jurisdiction. The Board proceeded to hear the Appeal.

The Board dismissed the appeal brought by the Coalition for Affordable Student Accommodation, as no one appeared on behalf of that Appellant.

Mr. King, agent for the other Appellants, Westmillway (II) Limited Partnership and Canaway Limited Partnership sought to withdraw the appeal. The Board granted the request.

The Board's file on this matter is now closed.

This is the Order of the Board

"K.J. Hussey"

K.J. HUSSEY
MEMBER