

Issue Date:

Aug. 4, 2010



PL100114

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: Waechter Holdings Inc., and Helen and Donald Waechter (jointly)
Subject: By-law No. 2009-52
Municipality: Municipality of Brockton
OMB Case No.: PL100114
OMB File No.: PL100114

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: Waechter Holdings Inc., and Helen and Donald Waechter (jointly)
Request for: Request for Directions

APPEARANCES:

Parties

Town of Hanover

Municipality of Brockton

Waechter Holdings Inc, Donald Waechter &
Helen Waechter

Counsel

S. D'Agostino

G. Magwood

P. Fallis

**DECISION DELIVERED BY C. HEFFERON ON JULY 19, 2010 AND ORDER
OF THE BOARD**

The subject application by way of a notice of Motion was brought to the Ontario Municipal Board ("Board") pursuant to subsection 24(2) of the *Consolidated Hearings Act* ("CHA") by Mr. P. Fallis, counsel for Waechter Holdings Inc, Donald Waechter & Helen Waechter ("Moving Party") whose property is located in the vicinity of the subject site.

The Moving Party requests that the Board order the Corporation for the Town of Hanover and the Corporation of the Municipality of Brockton (“Respondents”) to give written notice as mentioned in subsection 3(1) of the CHA to the Hearings Registrar under subsection 24(2) of the CHA consolidating the present hearing before the Board with hearings that may be required before the Environmental Review Tribunal (“ERT”) under the *Ontario Water Resources Act* (“OWRA”) and the *Environmental Assessment Act* (“EAA”).

The Moving Party had previously launched an appeal with the Ontario Municipal Board (“Board”) against the Municipality of Brockton Zoning By-law 2009 – 52. This By-law amends Zoning By-law 2007-60 of the Municipality of Brockton to permit the expansion of an existing landfill site servicing both the community of Walkerton and the Town of Hanover. The Board was informed that the process to construct the landfill is also subject to an environmental assessment pursuant to the *Environmental Assessment Act*, RSO 1990, Chapter 18 (“EAA”), and that this process is currently underway.

Background

The appeal that is the subject of this Motion is in respect of the Respondents’ proposal to expand the existing Hanover/Walkerton Landfill to provide an additional 347,000 cubic metres of disposal capacity. The affidavit of Mr. Ron Cooper, who is the Director of Public Works for the Town of Hanover indicates that at the average rate of disposal over the past five years, the landfill is expected to be full to capacity in 2.3 years (that is, by September, 2012) and unable to accept any more refuse. He characterized the situation as “urgent”. Mr. Cooper’s affidavit is found at Exhibit M1, Tab 4.

In his affidavit, Mr. W. Hollo who is Deputy Director of Planning for the Municipality of Brockton stated that several statutory instruments including the County of Bruce Official Plan (waste management policies), Municipality of Brockton Zoning By-law 2007-60 (subsection 3.22.2) and Ministry of Environment Guideline D-4 (“Land Use on or Near Landfills or Dumps” section 5.4) prohibits the erection and use for human habitation of any building or structure closer than 500 metres from a fill area of an open

municipal solid waste disposal site or expansion of a solid waste disposal site. Mr. Hollo also cites a number of other relevant documents restricting sensitive land uses in the vicinity of landfill sites, including Ministry of Environment Guidelines D-1-1 and D-1-3 Land Use Compatibility, Definitions (sections 2.2.2, 3.1 and 3.3) and Implementation (sections 1.2 and 7.1) in further support of his contention that there is strong provincial policy support for restricting sensitive land uses in the vicinity of landfill sites. Mr. Hollo's evidence is found at Exhibit M1, Tab 3.

Mr. Fallis, counsel for the Moving Party submitted that since Brockton had previously allowed the Moving Party to construct an entrance to its property off the so-called Hanover By-pass Road, it was giving *de facto* permission to construct a home that would use that access. By its approval of By-law 2009-52, he submitted, Brockton has effectively precluded the Moving Party from constructing a home in proximity to that entrance.

Mr. Fallis told the Board that the Waechter family proposes to build a retirement home on a portion of their (Waechter family) lands that lie within the buffer zone. The family has appealed By-law 2009-52, which is the By-law that allows for the expansion of the existing landfill. It was noted by Mr. Magwood, counsel for the Municipality of Brockton that the Waechter family has merely indicated their intention to build a home within the buffer zone. They have not made application to the Municipality of Brockton to do so. This point was not contested by counsel for the Moving Party.

The Moving Party's Position

The Moving Party has requested a Joint Board hearing under the CHA because, it informed the Board, this is the most efficient and cost-effective way to resolve a matter that concerns or potentially could concern, issues that involve three statutes: the *Ontario Planning Act*, the *Ontario Water Resources Act*, and the *EAA*.

The Respondents' Position

The Respondents contend that since the Minister has still not made any decision on an *EAA* matter that was presented to him, the Moving Party's request under section 24(2) of the CHA is, at best, premature. Under subsection 2(1) of the *CHA*, a request to

the Hearings Registrar under section 3(1) for direction for a Joint Board hearing must wait until the Minister has made his decision on the Undertaking (that is, the matter that is the subject of the appeal).

Precedents

Mr. Fallis cited *Joint Board under the Consolidated Hearings Act, R.S.O. 1990, c. C.29 and Ontario Hydro et al*, which was a decision of the Divisional Court.

He also cited a number of other court decisions including *Regina v. Tener, [1985] 1 S.C.R. 533; Toronto Transit Operating Authority v. Dell Holdings Ltd., [1997] 1 S.C.R. 32*; among others.

After consideration of the facts of the cases cited by Mr. Fallis, I find that none of them is similar to the facts of the present appeal nor offers any support to the Moving Party's position.

The Respondents told the Board that they will rely on the Board's decision in *Westhill Redevelopment Co v. Town of Aurora (2009)*, which states that *Planning Act* gives the Board sufficient authority to decide cases in which land use and environmental issues are involved. They also maintain that the Board's "Rules of Practice and Procedure" allow sufficient leeway and discretion to decide cases that involve, for example, both planning and environmental issues. Hence, they contend, a Joint Board hearing is simply not required and would serve only to delay and obfuscate the matter at issue, which is the buffer zone restrictions in Municipality of Brockton Zoning By-law 2009-52.

The Board's Findings

The establishment of a Joint Board under the *CHA* would result in unnecessary delay, which would exacerbate the current shortage in landfill capacity and could result in an intolerable environmental situation in the near term and a health hazard in the near-to-medium term.

The environmental benefit that the Moving Party seeks from a joint board hearing can be achieved more efficiently and more cost-effectively through an Ontario Municipal Board hearing.

Before work on the landfill expansion (“Undertaking”) can commence, approval is required under the *EAA*. The Minister of Environment has not yet rendered a decision on the Undertaking as of this writing. There was no evidence presented by Mr. Fallis that the *EAA* process is in any way flawed. Nor was any evidence presented that the Undertaking will detrimentally affect the environment.

The Board hearing into Zoning By-law 2009-52 will not proceed in the absence of evidence respecting relevant environmental and other considerations. The Board is legally required to consider matters of Provincial interest under section 2 of the *Planning Act* along with Provincial policies listed in the Provincial Policy Statement 2005.

Hearings in which both land use issues under the *Planning Act* and environmental issues under the *EAA* are decided can and have been successfully held under the auspices and rules of the Ontario Municipal Board. No evidence was presented that the circumstances in the present case are so different as to warrant an entirely different forum.

Conclusion

To order the Respondents to give the notice mentioned in subsection 3(1) of the *CHA* to the Hearings Registrar under subsection 24(2) of the *CHA* is in effect to consolidate the appeals before this Board while matters proceed under the *EAA*. In the circumstances of this case, this, in the opinion of the Board, is unjustified.

The Motion is therefore dismissed, and the Ontario Municipal Board hearing into the Waechter appeal against the decision of the Municipality of Brockton to adopt Zoning By-law 2009-52 will begin at 1pm on November 30, 2010 in the Municipality of Brockton Administrative Offices, 30 Park Road, Walkerton, ON. Six days have been set aside. The Board was asked to remind the parties and interested observers that the locale will change for one day on Dec 2, 2010 due to a previously scheduled Municipal Council meeting.

No further notice is required.

This Member is seized of the matter up to but not including the actual full hearing.

So Orders the Board.

“C. Hefferon”

C. HEFFERON
MEMBER