

ISSUE DATE:

May 05, 2011



PL100500

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

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Robert Pike
Subject: Proposed Official Plan Amendment No. 4
Municipality: Municipality of North Huron
OMB Case No.: PL100500
OMB File No.: PL100500

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

Appellant: Robert Pike
Applicant: Estate Of Ethel Willis
Subject: Consent
Property Address/Description: Part Lots 5 & 6, Conc. 1
Municipality: Municipality of North Huron
Municipal File No.: B-6/2010
OMB Case No.: PL100500
OMB File No.: PL100529

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

Appellant: Robert Pike
Subject: By-law No. 48-2010
Municipality: Municipality of North Huron
OMB Case No.: PL100500
OMB File No.: PL100837

IN THE MATTER OF subsection 37(a) of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28, as amended

Request by: J. Richard Elliot
Request for: Motion for Directions to consider an application on the validity of
By-Law 48-2010
Municipality: Municipality of North Huron
OMB Case No.: PL100500
OMB File No.: MM100032

APPEARANCES:

Parties

Counsel

J. Richard Elliott (“Applicant”)

Alan Patton

The Corporation of the Township of North Huron (“Township”)

Gregory Stewart

Avon Maitland District School Board (“School Board”)

Tom Robson

DECISION DELIVERED BY STEVEN STEFANKO AND ORDER OF THE BOARD

[1] The Applicant has brought an application (“Application”) to repeal By-law 48-2010 (“ZBA”) passed by Township Council on July 5, 2010.

Background

[2] The School Board, by its agent, made an application to the Township for a zoning by-law amendment to permit an elementary school use in a part of Wingham, Ontario.

[3] Meetings were conducted under the *Planning Act* by Township Council on June 4 and July 5, 2010 in relation to the School Board’s rezoning application. The Applicant attended these meetings and in fact, spoke at the July 5 meeting.

[4] Immediately following the July 5 public meeting, Township Council approved the School Board’s application and passed the ZBA.

[5] On July 7, 2010, the Township sent a notice of passing (“Notice”) of the ZBA to interested parties. The Notice contained the following errors (“Errors”):

(a) Reference was made to s.36 of the *Planning Act* (“Act”) rather than s.34 of the *Act*; and

(b) the last day for appeal was stated to be Monday, July 28, 2010, rather than Wednesday, July 28, 2010.

[6] The Applicant received a copy of the Notice sometime between July 7, 2010 and July 23, 2010 but did not file any appeal of the ZBA.

[7] The Applicant did not communicate with the Township regarding the Errors but his lawyer, Mr. Patton, did so by emails dated July 26 and July 28, 2010. The Township responded to those emails by fax on July 28, 2010.

[8] Robert Pike, an individual who was affected by the ZBA and who received the Notice, appealed the ZBA but chose not to be involved in this proceeding. His appeal has not yet been dealt with by this Board.

Issue

[9] What I must determine in this matter is the effect, if any, of the Errors on the Notice and the ZBA.

Analysis and Discussion

[10] The Applicant argues that the Errors are of sufficient gravity to warrant a repeal of the ZBA. In that regard he suggests that the appropriate test to apply when assessing the propriety of a notice is whether the mistakes made, when examined objectively, caused the recipient to be misled or prejudiced. Although I agree that the test should be as suggested by the Applicant, I am not persuaded that when reviewing the Notice in detail and certain relevant facts, he has been so misled or prejudiced.

[11] For one thing, the Notice sent included a Schedule 2 which made specific reference to the construction of a new elementary school, accessory parking and playing field areas and provided detailed maps showing the location of the proposal and

the zone changes being made. A simple reading of the Notice would provide all information an interested party could possibly want.

[12] It is true that the expiration of the appeal period in the Notice stated Monday, July 28. However, s.6(9)4. of Ontario Regulations 545/06 of the *Act* requires that the last “date” for filing an appeal be set out. According to the Oxford Dictionaries On-line, “date” is defined as “the day of the month or year as specified by number.” The Notice therefore correctly specified the day and, in so doing, complied with Ontario Regulation 545/06. In my view therefore, the insertion of the word, Monday was unnecessary or superfluous and should not be used as a means of attacking what was set out as the correct date. [Board emphasis added]

[13] It is, in my estimation, also significant that one Robert Pike received the same notice as did the Applicant. Mr. Pike managed to file an appeal of the ZBA within the prescribed appeal period. It is illogical to conclude therefore that the Errors were misleading or prejudicial for one person when another individual had no difficulty whatsoever filing an appeal.

[14] Lastly, the evidence is clear that the Township sent out the Notice on July 7, 2010 and that it was received by the Applicant. In my opinion, there was ample time for him to obtain whatever clarification he may have felt he needed prior to expiration of the appeal period. The fact that he retained counsel and an email was sent to the municipality on July 26, does not change my view of the matter in this regard.

[15] Even if I am wrong in my determination that the Applicant was not misled or prejudiced, repealing the ZBA would still not be the appropriate relief because no concerns were raised with the consultative process leading up to its passage nor was any argument raised that it was otherwise flawed. To repeal the ZBA would be, in my view, entirely disproportionate to and inconsistent with the mistakes which were made. In simple terms, the punishment would not fit the crime. The correct remedy, in that instance, would be to order the Township to reissue a notice of passing of the ZBA pursuant to the authority conferred on the Board in s.38 of the *Ontario Municipal Board Act*. However, this relief is unnecessary in view of my conclusion that the Notice was not misleading or prejudicial.

[16] Before concluding my remarks in this case some brief comments regarding the responsibilities of a municipality post Bill 51 are in order. Bill 51 made significant changes to the *Planning Act* including the steps which must be followed in relation to the passing of by-laws. In my view, these changes attempted to make the planning process more efficient and more transparent. The significance of notices was thereby, either directly or indirectly, underscored and municipal responsibilities heightened as a result. Municipalities therefore should be diligent and meticulous when completing and sending any notices required because the potential consequences of being inattentive, can be far reaching and perhaps irreparable.

Disposition

[17] For all of the reasons above set forth, the Application is hereby dismissed.

[18] It is so Ordered.

“Steven Stefanko”

STEVEN STEFANKO
VICE-CHAIR