

ISSUE DATE:

January 15, 2013



PL120783

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

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Family Practice (Dixie) Ltd.
Appellant: Tom and Teresa St. Michael
Subject: OPA 143 Ancaster Wilson Street Secondary Plan
Municipality: City of Hamilton
OMB Case No.: PL120783
OMB File No.: PL120783

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: City of Hamilton
Request for: Request for Determination

APPEARANCES:

Parties

Counsel

City of Hamilton

M. Kovacevic

Tom and Teresa St. Michael

MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER ON NOVEMBER 22, 2012, AND ORDER OF THE BOARD

[1] Tom and Teresa St. Michael have filed an appeal of the City of Hamilton ("City") Official Plan Amendment 143 ("OPA 143"). The City has brought a motion to have the appeal dismissed on the grounds that neither Mr. nor Ms. St. Michael has standing under the *Planning Act*, R.S.O. c. P.13, to file an appeal in this case.

[2] The following facts are not in dispute:

1. A public meeting, in accordance with s. 17(15)(d) of the Act, was held on May 15, 2012, to consider OPA 143.
2. The notice for this public meeting was issued in accordance with Ontario Regulation 543/06.

3. On June 13, 2012, City Council adopted and approved OPA 143.
4. Neither Mr. nor Ms. St. Michael, before OPA 143 was adopted, made oral submissions at the public meeting or written submissions to the Council.

[3] OPA 143 was adopted pursuant to s. 21 of the Act, which provides that s.17 of the Act applies to any amendment to an official plan that is made by a municipality.

[4] OPA 143 is exempt from approval by the Minister and s.17(24) applies. This section sets out who may appeal a decision of Council to approve a plan. There are four categories of persons who may appeal a decision to adopt a plan, only one of which applies to Mr. and Ms. St. Michael. That is s.17(24)(1) which states:

...any of the following may...appeal all or part of the decision of council to adopt all or part of the plan...

1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council...

[5] Having regard to the facts that are not in dispute, and having regard to the plain reading of s.17(24)(1), the Board finds that Mr. and Ms. St. Michael are statute barred from appealing the City decision to adopt OPA 143.

[6] Mr. and Ms. St. Michael responded to the City's motion by saying that they were busy with other matters and were unable to attend the public meeting to speak or to make written submissions to Council prior to the adoption of OPA 143.

[7] Prior to the 2006 amendments to the Act, the Board had the discretion under s.17(45)(b) to allow an appeal to proceed if the Board was satisfied that the appellant provided a reasonable explanation for failing to make a submission. That provision was repealed, creating a different planning regime.

[8] Under the language of the Act as it now stands, the Board has no residual discretion in this matter.

[9] OPA 143 continues to be appealed to the Board by another appellant. Mr. and Ms. St. Michael have, in the alternative, sought party status for the hearing of this appeal.

[10] The question of whether Mr. and Ms. St. Michael should be added as appellants to the hearing of the appeal of OPA 143 is a matter to be decided by the panel of the Board assigned to hear that appeal. In finding that Mr. and Ms. St. Michael did not meet the requirements of the Act to file an appeal of the City decision to adopt OPA 143, the Board makes no finding on the question of whether Mr. and Ms. St. Michael should be added as parties to the hearing of the merits of OPA 143.

[11] The City has indicated that if Mr. and Mrs. St. Michael decide to seek party status at the hearing of the merits on OPA 143, the City will ask the panel of the Board presiding at that hearing to require that Mr. and Ms. St. Michael proceed by way of a formal motion for party status.

ORDER

[12] The Board orders that the appeal filed by Mr. and Ms. St. Michael regarding OPA 143 is dismissed.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE CHAIR