

ISSUE DATE:

June 27, 2013



PL130325

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: Donald Ede
Subject: By-law No. AM-2012-018
Municipality: City of Niagara Falls
OMB Case No.: PL130325
OMB File No.: PL130325

IN THE MATTER OF subsection 34(25) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Motion By: H2O Front Developments
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Donald Ede
Subject: By-law No. AM-2012-018
Municipality: City of Niagara Falls
OMB Case No.: PL130325
OMB File No.: PL130325

APPEARANCES:

Parties

H2O Front Developments

City of Niagara Falls

Donald Ede

Counsel*/Agent

T. Richardson*

K. Beaman*

D. Ede

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
JUNE 6, 2013 AND ORDER OF THE BOARD**

INTRODUCTION

[1] On June 6, 2013, the Board heard the motion of H2O Front Developments supported by the City of Niagara Falls, to dismiss the appeal of Donald Ede on behalf of the Village of Chippawa Citizen's Committee from a decision of the Council of the City of Niagara Falls, approving a rezoning of some six properties in the Chippawa area of the City of Niagara Falls, including one property on which is located the Boathouse building. The basis of the motion was twofold: first that the appeal did not disclose an apparent land use planning ground upon which the Board could allow all or part of the appeal and secondly that the Citizen's Committee was not incorporated and was not a valid appellant under the provisions of the *Planning Act*.

THE MOTION HEARING

[2] In the motion materials filed with the Board, it was established that the appeal by Donald Ede on behalf of the Village of Chippawa Citizen's Committee (unincorporated) against the rezoning by the City of Niagara Falls was on the following basis:

The object of this Appeal is to preserve the original Building, the Boathouse Restaurant and Tavern, and incorporate it into the 160 unit apartment building, and further that ..."
"We are not against the erection of the apartment building, we wish to have them incorporate the building into the site and therefore keep our heritage alive, and finally ..."
"We hope that our appeal will be given your absolute consideration and that our heritage building, the Boathouse Restaurant, can be saved.

[3] The motion materials also established the following facts with regard to the Boathouse building:

- It is not listed in the Heritage Register.
- It is not within a Heritage Conservation District.
- It is not a designated Heritage property.
- A demotion permit has been issued for it by the City of Niagara Falls.

[4] The developer would have been acting in accordance with the law had it chosen to proceed and have the Boathouse building demolished. However it did not, pending the hearing of this matter.

[5] The issue of the Boathouse building was raised during the processing of the development application requesting the rezoning of the lands assembled for the proposed apartment building. The Council of the City of Niagara Falls had the opportunity if it so desired, to add the Boathouse building to the Heritage Register. Council did not.

[6] The appeal to the Board has been filed seeking to have the Boathouse building “saved” and incorporated into the development proposal.

[7] In support of that appeal the motion materials disclose only a series of pictures of the Boathouse building, newspaper articles, and a narrative statement about the Boathouse building.

[8] No expert planning, heritage or other professional opinions were produced or even appear to have been sought.

[9] H2O Front Developments and the City of Niagara Falls submit that the appeal fails the test provided in s. 34(25) of the *Planning Act* and that the Board is required by s. 2.1 of the *Planning Act* to have regard for the decision of Council.

[10] Section 34(25) of the *Planning Act* states the following:

Despite the *Statutory Powers Procedures Act* and subsections (11.0.2 and (24), the Municipal Board may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party, if,

- (a) it is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal,

[11] Section 2.1 of the *Planning Act* provides as follows:

When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to,

- (a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter;

[12] The Board has had regard for the decision of Council and has considered the facts as set out above, and finds that the test set out in s. 34(25) has not been met. The Board has not been provided with any expert opinion evidence (planning, heritage, or other) that would suggest that City Council's decision to approve the rezoning ought to be overturned in whole or in part. In fact, that appeal does not seek to prevent the development of the apartment building, but rather, that its design be such as to include (and thereby "save") the Boathouse building. In light of an issued (and unchallenged) demolition permit by the City of Niagara Falls for the Boathouse building, the Board is at a loss as to how that could be accomplished.

[13] The case law is that for an appellant to withstand a motion to dismiss, that he/she must demonstrate in the reasons for the appeal that not only are there planning grounds for the appeal but also that the ground is one upon which the appeal can be allowed. (See East Beach Community Association (1996), 42 O.M.B.R. p. 505, (OMB)). In this case there are no such apparent land use planning grounds.

ORDER

[14] Thus, based on the facts outlined above, the Board dismisses the appeal of Donald Ede.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER