Student Housing Challenges and Solutions in Oshawa

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Introduction

- Zoning Enforcement
- Human Rights Commission
- Residential Rental Licensing
- Licensing Administrative Penalties
- Hearings Officer
- Conclusions

Student Accommodation Strategy

- “Post secondary education is an important part of Oshawa's future. Both the City's Community Strategic Plan and the Community Adjustment Strategy recognize post secondary education as critical in diversifying and growing the City's economy into one which is more knowledge based and capable of capitalizing on future trends and opportunities. Integral to the growth of post secondary education in Oshawa is the provision of an adequate supply of accommodations for students, both off-campus and on-campus, in appropriate locations and land use compatibility.”

Oshawa (City) v. Death et al.

- Zoning By-law “Lodging Houses”
- [2007] O.J. No. 3042 (S.C.J.) – motion to strike
- [2007] O.J. No. 5081 (S.C.J.) – vagueness motion
- [2008] O.J. No. 3298 (S.C.J.) – judgment
- [2009] O.J. No. 1324 (C.A.) – appeal dismissed
- [2009] S.C.C.A. No. 253 (S.C.C.) – applications for leave to appeal and to intervene dismissed
- [2010] O.J. No. 1304 (S.C.J.) – contempt motion

Windfields – Planning Background

- Windfields Part II Plan – lower density residential uses to east and north of UOIT campus
- Zoning By-law – “R1”
  - Lowest residential density designation
  - “Single Detached Dwellings” only
  - Prohibits “Lodging Houses”

ZBL "Lodging House" definition

- Lodging House: "means a building or a part of a building, containing three to ten lodging units, ***which does not appear to function as a dwelling unit***, although one may be included with the lodging units. It includes, without limitation, a rooming house and a boarding house, a fraternity or sorority house. It does not include a hotel, a crisis care residence, a hospital, a group home, a correctional group home, a bed and breakfast establishment nor a nursing home. A lodging house may involve shared cooking or washroom facilities. Meals may or may not be provided to residents. Common areas, such as living rooms, may or may not be provided."

“Dwelling Unit” definition

- “Dwelling Unit” means a unit consisting of one or more rooms, which unit contains toilet and cooking facilities and which is designed for use as a ***single housekeeping establishment”***

“single housekeeping establishment”

- "A single housekeeping establishment would generally approximate a typical family group of one or two adult persons, together with minor or adult children **or a similar social unit** either by relationship **or some other common bond for living together as a housekeeping establishment**, not simply the need by boarders for temporary sleeping quarters for which each pays rent to the landlord/landlady".

- "I find that a single housekeeping establishment, when read in context, means a use typical of a single family unit **or other similar basic social unit**. For example, it could include a group of unrelated persons, one or more of whom are dependent on the other due to physical or related challenges; or one person, or a couple cohabitating with children (not theirs biologically), to whom they stand in loco parentis. **There are many examples of such basic social units** in today's society which do not follow the traditional family model. However, they involve more between them as a unit than simply short-term temporary sleeping quarters and shared facilities on a rental basis."

[2009] O.J. No. 1324 (C.A.) ¶4

- “We see no legal error in the application judge's treatment of the relevant statutory provisions and case law. In particular, we reject the submission that s. 35(2) of the *Planning Act* which prohibits "distinguishing persons who are related and persons who are unrelated in respect of the occupancy or use of a building" barred the application judge from considering as a relevant factor how the renters related amongst themselves when determining whether they constituted a "single housekeeping establishment". Moreover, his assessment of the factual situations with respect to 30 different houses and his application of the law to those houses is a matter of mixed fact and law and, therefore, is subject to review on a reasonableness standard.”

Ontario Human Rights Commission ("OHRC")

- Application for leave to intervene in *Death* (SCC)
- 47(2): HR Code applies/prevails unless Act or regulation specifically provides that it is to apply despite HR Code
- 11(1): Constructive discrimination

OHRC submission at SCC re *Death*

- Per OHRC: “The effect of Oshawa’s by-law, as interpreted in the courts below, is to restrict students’ access to rental housing in a district zoned as R1, because of the nature of the students’ relationship to one another. A group of students renting a house together while pursuing post-secondary education do not form a “typical family group” or a “similar social unit” as described by the application judge.”

Residential Rental Licensing

- Why Licensing?
- By-law 20-2008 amends Licensing By-law 120-2005
- Comprehensive public process

Bill 130 – Municipal Statute Law Amendment Act, 2006

- 1 - Broadens municipal licensing powers
- 2 - Clarifies power to “differentiate”

Bill 130 (cont'd)

- 3 - Administrative penalties
- 4 - Delegation of powers by municipal councils

Residential Rental Licensing By-law

- Regulates “Landlords”
- Applies to “Rental Units” in “Rental Area”
- Imposes conditions as requirement of continuing to hold a licence
- Limits number of “Bedrooms”

Application for Licence

- “Landlord” particulars
- “Rental Unit” particulars
- Floor plan
- Maintenance plan
- Parking plan
- Proof of insurance
- Evidence of regulatory compliance
- Licence fee

Licence conditions

- Number of Bedrooms <=4
  - Until 2011<= 6 for certain streets
  - Commencing 2011 <=5 for “Simcoe Street Corridor”
- Basement Bedrooms <=40% Rental Unit’s gross floor area
- Ground floor Bedrooms <=40% Rental Unit’s gross floor area

Licence conditions (cont'd)

- Written tenancy agreement
- Landlord does not interfere with lawful inspections
- Landlord notifies City of changes to application information
- Copy of licence posted visibly
- Insurance >= $2,000,000

Licence conditions (cont'd)

- Compliance with all applicable law:
  - Various Statutes and regulations:
    - Health Protection and Promotion Act
    - Fire Protection and Prevention Act, 1997
    - Electrical Safety Code
    - Building Code Act, 1992
  - Various By-laws: Zoning, Property Standards, Lot Maintenance, Snow and Ice Removal, Unauthorized Parking, Waste Collection

Licence conditions (cont'd)

- Compliance with "maintenance plan"
- Compliance with "parking plan"
- No outstanding fine, "administrative penalty" or fee

Licensing Exemption process

- Delegation to “Director” of power to exempt
- Director satisfied that By-law’s “general intent and purpose” are maintained
- Director’s conditions
- Appeal to “Hearings Officer”
- $100 fee
- Neighbours’ right to be heard

Licensing Appeal process

- Delegation to Hearings Officer
- Time limited right to appeal
- Appeal fee
- Notice of hearing
- Right to be heard – including neighbours
- Hearings Officer may
  - deny application or exemption request,
  - grant application or exemption
  - impose conditions
- Decision “final and not subject to review including review by any Court”

Demerit Point System

- Assessed against “Rental Unit”
- In effect for 2 years
- 7 points – meeting with Director
- 15 points – hearing before Hearings Officer

Municipal Licensing Administrative Penalties

- Municipal Act, 2001, s. 151(1)(g)
- (O.Reg. 333/07 “Parking Regulation”)
- By-law 25-2008
- Penalty - $250 ($500 for operating w/o licence)
- Notice

Administrative Penalties (cont'd)

- Payment
- Director's discretion
- Administrative Screening
- Review by Hearings Officer
- Hardship

Administrative Penalties (cont'd)

- Extensions of time
- No review fee
- Refund
- "Mixed System"
- No "double jeopardy"
- Collection of administrative penalty

Hearings Officer By-law

- “Delegated Powers of Decision”
- Qualifications
- Conflicts of interest
- Fixed term
- Independence

Hearings Process

- SPPA
- Certificate evidence
- Representation
- Recording proceedings
- Interpreter

Conclusions

- Comprehensive planning strategy
- Enhanced enforcement powers
- Resources
- Objective and easily measured standards
- Manage expectations
- Role of Human Rights Commission?