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Rates of Off-site Levies May be Increased by Municipalities and must be Advertised Properly

Southpoint Landing JV Inc v. Camrose (City)

In 2022, the respondent City of Camrose passed bylaws 3219-22 and 3220-22, establishing off-site levies payable in respect of developed or subdivided land in the City (Off-site Levy Bylaws). Off-site levy bylaws allow municipalities to recover capital costs associated with new or expanded facilities for water, sewage, roads, recreation and other infrastructure required to support new development in the municipality pursuant to section 648 of the *Municipal Government Act* ("MGA"). The off-site levies payable by a developer cannot exceed the developer's "proportional benefit" from the infrastructure funded by the levy: *Off-site Levies Regulation*, Alta Reg 187/2017, s. 3(4). The respondent City's off-site levy bylaws replaced its 2017 off-site levy bylaws, significantly increasing the amounts payable by developers, like the appellant Southpoint Landing JV Inc, who apply for a development permit or subdivision approval.

The MGA requires municipalities to advertise certain bylaws prior to passing them, including off-site levy bylaws; it permits municipalities to advertise in a variety of ways, including as provided for by advertising bylaws adopted by a municipality: MGA, ss 606, 606.1, 648(6). The MGA requires bylaws establishing off-site levies to be advertised: MGA, s. 648(6). The advertisement may be accomplished in one of several ways, including through the methods established by a municipality's advertising bylaw: MGA, ss. 606, 606.1. The advertisement for a proposed bylaw must include a statement of its general purpose, the address where a copy of it may be inspected and the "procedure to be followed by anyone wishing to file a petition in respect of it": MGA, s. 606(6). Notice of a bylaw must be provided prior to its second reading, and notice "of a meeting, public hearing or other thing" must be provided at least five days before the "meeting, public hearing or other thing" occurs: MGA, ss. 606(3), 606(5).

The respondent City adopted an advertising bylaw in 2018: City of Camrose, bylaw No 3005-18, *Public Notification Bylaw* (7 August 2018) ("*Advertising Bylaw*"). The respondent's *Advertising Bylaw* permits advertising "2.2 electronically by posting the notice prominently on the City of Camrose official website: www.camrose.ca . . . and/or 2.3 electronically by posting the notice prominently on the City of Camrose Facebook page and the City of Camrose Twitter account... and/or 2.4 electronically by posting on the City of Camrose electronic bulletin board": *Advertising Bylaw*, ss 2.2-2.4.

On June 16, 2022, the respondent City electronically published notice of the June 20 meeting, at which the off-site levy bylaws were to be considered, along with a link to the meeting agenda. The linked meeting agenda listed the proposed bylaws, included copies of them, and had a statement of their general purpose. However, the electronic notice only indicated that a meeting was taking place on June 20. It did not identify the bylaws being considered at the meeting, and did not provide any details about the bylaws' purpose or substance; a person who saw the electronic notice would only obtain information about a proposed bylaw if they clicked the link.

Also on June 16, 2022, the City published a post on Facebook about the June 20, 2022 meeting. The Facebook post explicitly identified the two off-site levy bylaws as matters on the meeting agenda and included a link through which people could view the full agenda. The full agenda included copies of the off-site levy bylaws and a statement of their purpose, but the Facebook post itself did not.

The City did not post information about the off-site levy bylaws on Twitter prior to the June 20 meeting. On the day of the meeting, it posted the following to its Twitter account: "Council's first two items are related to the new Off Site Levy model. This project is in collaboration with Camrose County for coordinated service areas. The County approved first reading of the same bylaw at their meeting last week."

The appellant developer asserted that the City did not advertise the off-site levy bylaws as required by the MGA. It brought an originating application pursuant to section 536 of the MGA seeking a declaration that the off-site levy bylaws were invalid. The chambers judge refused the application. He found the City's advertising complied with its *Advertising Bylaw* and the MGA and, if it did not, the deficiencies were merely technical and not sufficient to justify invalidating the off-site levy bylaws: *Southpoint Landing JV Inc v Camrose (City)* 2024 ABKB 207 ("*Chambers Decision*").

The developer appealed the *Chambers Decision* on the basis that the chambers judge erred by finding the advertising for the off-site levy bylaws complied with the requirements of the MGA, and by finding that any deficiencies in the respondent City's advertising were not sufficient to declare the off-site levy bylaws invalid.

On appeal, the developer submitted that in concluding the City's advertising complied with the *Advertising Bylaw* and the MGA, the chambers judge erred by:

- interpreting section 606(6) of the MGA to permit an advertisement to provide the necessary information about a bylaw in a link rather than in the text of the advertisement itself;
- finding the City's electronic notice was given in accordance with a method specified in the *Advertising Bylaw*; and
- interpreting sections 606(3) and 606(5) of the MGA so that an advertisement of a bylaw may be published less than five days before the meeting at which a bylaw is to be considered, so long as it is published prior to the second reading of the bylaw (i.e., by applying only section 606(3) to bylaw advertisements).

HELD: Appeal dismissed.

DISCUSSION: However, the Court of Appeal found that the chambers judge erred in finding the City's advertising provided the information required by the MGA (*Southpoint*, para. 20), as the plain and ordinary meaning of the advertising provisions in the MGA was to ensure that municipalities provide effective notice to the public when they take steps subject to advertising requirements. The Court of Appeal found that the City's advertising for the off-site levy by-laws did not ensure effective notice.

The Court of Appeal also found that the chambers judge did not err in finding that the MGA only required notice of bylaws to be given prior to second reading but, while the City's advertising was done within time, it failed to contain the required information and therefore did not ensure effective notice (Southpoint, paras. 26 and 27).

With respect to determining whether the City's insufficient advertising warranted a declaration that the off-site levy bylaws are therefore invalid, the appellant developer submitted that the chambers judge erred by:

- Mischaracterizing the Off-site Levy Bylaws by failing to identify them as taxation bylaws or an interference with private rights requiring strict compliance with the procedural requirements of the *Municipal Government Act*; and
- Not invalidating the Off-site Levy Bylaws regardless of their characterization.

In considering whether the off-site levy bylaws required strict compliance with the MGA, the words of the MGA were read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the MGA, the object of the MGA, and the intention of the legislature, which the Court of Appeal found do not suggest that every failure to properly advertise a proposed off-site levy bylaw ought to result in the bylaw being void. It does not make a declaration of invalidity imperative: MGA, ss 536-538.

The Court of Appeal found that off-site levies defray the costs associated with a regulatory scheme. The MGA and the associated regulations create a detailed scheme through which municipalities construct the infrastructure and facilities necessary for new development, while developers like the appellant pay their development's proportionate share of the costs of that infrastructure. The amount to be paid is calculated based on the infrastructure built, using information, data and assumptions made available to developers, so they can replicate the calculations. The need for infrastructure arises from the activities of developers and its construction ensures their developments have the infrastructure they require; the off-site levy flows from the activities of the developers and the infrastructure construction those activities require. Thus, there is a regulatory scheme, it is relevant to the person being regulated, and there is a relationship between the levy and the scheme itself. The Court of Appeal ultimately found that while the City's advertising materially deviated from the legislative obligations found in section 606 of the MGA, the chambers judge made no reviewable error in declining to declare the off-site levy bylaws invalid because the developer was notified that the bylaws were being considered by council and when the bylaw process would commence. The appeal of the developer was dismissed by the Court of Appeal because the procedural deficiencies did not materially prejudice the developer and did not impugn the legitimacy of the levies enacted by section 606 of the MGA.

Order to Clean up Property and Pattern of Vexatious and Frivolous Behaviour

Adjala-Tosorontio (Township) v. Saunders

After seven years of attempting to enforce its property standards bylaw and compel the respondents, the property owner Mr. Lindhorst and the tenant, Mr. Saunders, to clean up the property, the applicant Township was granted a permanent injunction requiring them to clear abandoned vehicles, tires, trailers, and debris.

The respondents appealed. The registrar dismissed the appeal for delay. The respondents now sought a motion to set aside the registrar's order and for an extension of time to perfect their appeal.

HELD: Motion dismissed.

DISCUSSION: The Township opposed the motions, arguing that the appellants' history of delay disentitled them to equitable relief and that the proposed appeal was frivolous, vexatious and without merit.

The test for setting aside the registrar's dismissal order for delay is well established. There are both procedural and substantive requirements. The person challenging the registrar's dismissal order must serve a notice of motion forthwith after the order or decision comes to that person's attention and the notice of motion must name the first available hearing date that is at least three days after service of the notice of motion. A motion to set aside a registrar's order dismissing an appeal must be supported with proper evidence. Although some allowance may be made for self-represented litigants, the failure to provide evidence in the proper form may be a sufficient basis on which to dismiss the motion.

The judge's decision to set aside or vary a decision of the registrar is discretionary. The overarching consideration is the justice of the case, which includes consideration of the merits of the appeal and factors analogous to those typically considered on a motion to extend the time to appeal. Factors informing the analysis include: (1) the length of and explanation for the delay (both with respect to perfecting the appeal and moving to set aside the administrative dismissal); (2) the prejudice to the respondent caused by the delay; (3) and the merits of the appeal.

In this case, the Ontario Court of Appeal found that, having considered the context of the motion materials as a whole and the path of the litigation, it was not persuaded that the justice of this case warranted setting aside the registrar's dismissal order. None of the well-known factors outlined above favoured the respondents. The delay in perfecting the appeal remained inadequately explained by the respondents, and showed the respondents' attitude of entitlement to further indulgences. The respondents' delay repeated their pattern of delay and unreasonable behaviour in the underlying proceedings.

The Court of Appeal found that the respondents' proposed appeal was frivolous, vexatious, without any apparent merit, and was designed to further delay their compliance to clean up the property. The Court ended its analysis with the question of prejudice to the Township. The Court of Appeal found that there was continued prejudice to the Township and to the public interest by the respondents' ongoing resistance to their obligations under the bylaw and the orders to comply.

Regulatory Body Has Discretion Not to Take Steps to Enforce Compliance with its Permits

Husack v. Long Point Conservation

This was an application by a neighbour for an order compelling a conservation authority to direct property owners to comply with the permits issued to them by the authority. The respondent, Long Point Region Conservation Authority ("LPRCA") issued a permit to Robert and Cheryl Ritchie ("the Ritchies") for a development on their property in Norfolk County. The Ritchies were not parties to the application. The applicant, Donald Husack, owns a property that borders the property for which the Ritchies were granted a permit. At issue was the construction of a retaining wall by the Ritchies contrary to the permit issued by the LPRCA.

Mr. Husack notified the LPRCA that the Ritchies had deviated from the original grading plan pursuant to which the LPRCA permit was granted. The LPRCA conducted a site visit from the public road on November 1, 2023 following up on Mr. Husack's complaint. Photos were taken and it was confirmed that the lot grading did not follow the approved LPRCA permit. Consequently, the Ritchies were notified on November 8, 2023 that the property was in violation of the LPRCA permit due to lot grading not being in compliance with the grading plan as submitted. In response to the LPRCA, an updated site plan was submitted along with a letter from a professional engineer stating his opinion that the revised grading plan conformed with Norfolk County's design criteria. That additional information was reviewed by technical staff at the LPRCA and it was ultimately determined that the construction completed on the Ritchie Property conformed with the Conservation Authorities Act ("CAA") and the Prohibited Activities, Exemption and Permits Regulation.

Mr. Husack was advised that as a result of its investigation into his complaint, the LPRCA determined that there were no concerns with the revised grading plan or the construction on the Ritchie Property as completed. A follow-up letter was sent to Mr. Husack's counsel on November 26, 2024 confirming that the LPRCA was satisfied that the work as completed on the Ritchie Property complied with the legislation and therefore no action would be taken.

Mr. Husack applied for an order compelling the LPRCA to direct the Ritchies to comply with a permit issued by the LPRCA. The LPRCA opposed the application, taking the position that there was no legal basis upon which the Court could make the order requested.

The application raised two issues to be determined: (1) does the LPRCA have the authority to make an order enforcing its own permit; and (2) what is the role of the Ontario Superior Court of Justice in reviewing a decision made by the LPRCA not to take any action in relation to its permit.

HELD: After reviewing the applicable legislation and jurisprudence, the Court determined that the LPRCA does have the authority to make orders and take enforcement measures in relation to permits it issues, but upon review of the decision of the LPRCA to take no action, the Court determined that this was not unreasonable and the LPRCA was therefore entitled to deference.

DISCUSSION: The LPRCA is a creature of statute. Any authority that the LPRCA does have must be grounded in the legislation or regulations. It was not in dispute that the LPRCA had authority over the Ritchie Property. It was also not contested that any development of or construction on the Ritchie Property is prohibited under the CAA unless it is undertaken in compliance with a permit issued by the LPRCA.
In this case, the LPRCA issued a permit to the Ritchies for construction on their property. It is conceded by the LPRCA that the Ritchies did not comply with the permit as issued. However, there

is nothing in the CAA that provides the LPRCA the authority to issue an order to the Ritchies to comply with the permit.

Enforcement under the CAA is governed by Part VII. The only orders that the LPRCA have the authority to issue under Part VII are stop orders pursuant to section 30.4. A stop order would not be appropriate in this case as those orders require persons to stop engaging or not engage in an activity that contravenes the conditions of a permit. Issuing a stop order to the Ritchies would be moot as they were no longer engaged in any activity on their property, so there was nothing they could be ordered to stop doing.

The Court thought it important to note at the outset that Mr. Husack brought this application as an interested third party and not a person who was directly impacted by or involved in the decision-making regarding the issuance or enforcement of a permit. There could, therefore, have been an initial question as to whether or not Mr. Husack even had standing to bring an application for review of the LPRCA's decision. However, for the purpose of this application, the Court was satisfied that Mr. Husack was an interested person insofar as he is the owner of a property abutting the Ritchie Property and therefore was potentially impacted by drainage of stormwater onto and off of the Ritchie Property. It was the complaint to the LRPCA about the failure of the Ritchies to comply with the conditions of their permit that triggered the review and ultimate decision to take no enforcement action. Therefore, for the purpose of this application, the Court was of the view that it need not consider the issue of Mr. Husack's standing to challenge the decision of the LPRCA in relation to the Ritchie Property.

The decision not to take enforcement steps does not involve an interpretation of the provisions of the CAA. The measures available to the LPRCA to enforce conditions of a permit are all permissive rather than mandatory. Therefore, the decision not to act is within the jurisdiction of the LPRCA based on the authority granted to it under the CAA, and the applicable standard of review to be applied is reasonableness.

Although reasons are not required for all administrative decisions, the LPRCA did provide Mr. Husack with the reasons for its decision not to take action to enforce its permit, first by email directly responding to Mr. Husack and then by letter to Mr. Husack's counsel. The initial email indicated that LPRCA staff had reviewed the updated grading plan and determined that the plan addressed stormwater and drainage on the Ritchie Property. The follow up letter sent in November 2024 provides further details as to the information that was reviewed by LPRCA staff and the conclusion reached that the work completed on the Ritchie Property conforms with the legislation and therefore no further action would be taken.

There is nothing in the legislation requiring the LPRCA to enforce conditions of permits issued. Therefore, the decision whether to issue a stop order or to lay charges for failing to comply is completely discretionary. The LPRCA's decision not to take enforcement measures was based upon its assessment of drainage on the Ritchie Property in part, but also was made taking into consideration whether or not the works as constructed complied with the CAA and its regulations.

Overall, the Court was satisfied that the LPRCA’s decision not to take enforcement steps was reasonable and should not be interfered with.

Abuse of Process for Developer to Sue on Agreement at Certain Point in the Process

Vanguard Projects Inc. v. District of North Saanich

The claimant developer, Vanguard Projects Inc., sought approval for subdivision of two adjacent lots. The District of North Saanich advised that it would approve the subdivision plan on the condition that the developer replace a culvert, for which the parties entered into a development services agreement whereby the developer would replace the culvert at its own expense, and the District would supply $10,000 worth of infrastructure materials.

The developer completed the work, the subdivision application was approved by the District, and the subdivision was registered in the Land Titles office. The developer then commenced an action seeking to recover half of the cost of the work ($35,000) from the District.

The District brought an application for summary dismissal of the action.

HELD: Application granted.

DISCUSSION: In support of its application to dismiss, the District characterized Vanguard's action as being composed of two broad claims. These are: (a) that the District and approving officer acted contrary to the *Local Government Act*; and (b) that the District has been unjustly enriched at Vanguard's expense.

The Court found that it cannot be open to Vanguard to now sue on the agreement. This was not a case of mistaken assumption on the part of the contract parties. Rather, Vanguard voluntarily opted into the agreement rather than pursue legal remedies available to it at the material time, such as seeking judicial review or statutory appeal of the District's decision. The developer agreed to a condition in exchange for subdivision approval - it would be an abuse of the Court's process to allow Vanguard to challenge this decision at this juncture on the facts presented to the Court.