2013 CarswellOnt 946, 2013 ONSC 715, 225 A.C.W.S. (3d) 239, 7 M.P.L.R. (5th) 251, 303 O.A.C. 223, 76 O.M.B.R. 372

2013 CarswellOnt 946, 2013 ONSC 715, 225 A.C.W.S. (3d) 239, 7 M.P.L.R. (5th) 251, 303 O.A.C. 223, 76 O.M.B.R. 372

Hobo Entrepreneurs Inc. v. Sunnidale Estates Ltd.

Hobo Entrepreneurs Incorporated, Appellant (Moving Party) and Sunnidale Estates Ltd., Fresun Estates Ltd. & 1281533 Ontario Ltd., The Corporation of the Town of Wasaga Beach, Pacific Developments Inc. & 1415069 Ontario Ltd., The Corporation of the County of Simcoe, Nottawasaga Valley Conservation Authority, and Simcoe County District School Board, Responding Parties

Ontario Superior Court of Justice (Divisional Court)

T. Ducharme J.

Heard: November 26, 2012
Judgment: January 30, 2013
Docket: 349/12

Counsel: Patricia A. Foran, Andrea Skinner, for Appellant

Michael Melling, Meaghan McDermid, for Responding Parties, Sunnidale Estates Ltd., Fresun Estates Ltd., & 1281533 Ontario Ltd. and Pacific Developments Limited & 1415069 Ontario Limited

Ian Rowe, for Responding Party, the Town of Wasaga Beach

Subject: Public; Property; Civil Practice and Procedure

Municipal law --- Planning — Enactment and approval of plans — Amendments

H Inc. participated in town's public consultation process on amending official plan, seeking various amendments on transportation networks that town did not accede to — H Inc. appealed town's official plan amendment, which did not alter provisions on transportation networks, to Ontario Municipal Board — Appeal was dismissed without hearing, on basis that Board lacked jurisdiction to deal with transportation issues raised by appeal where town had not addressed them in amendment — Board found s. 17(50.1) of Planning Act did not allow it to approve or modify any part of official plan that was not dealt with by council — H Inc. brought motion for leave to appeal — Motion dis-

missed — Proposed grounds of appeal raised questions of law, but there was no reason to doubt correctness of Board's decision and no issue of public importance — Sections 17(50) and 17(50.1) of Act did not relate solely to remedies, as there would be no point in hearing appeal where Board had no jurisdiction to grant remedy sought — Board was correct in its interpretation of s. 17(50.1) of Act, for which there was sound policy reason in preventing endless appeals of issues not addressed by council — Public consultation process under s. 26 of Act allowed persons who attended meetings opportunity to be heard, thus broadening pool of potential appellants — Wording of s. 17(50.1)(b) of Act indicated legislative intent that decision of town council, not submissions or materials that were part of preceding planning process, would determine Board's appellate jurisdiction — Where, as here, Board could determine that it did not have jurisdiction without considering any evidence, appeal could be dismissed without hearing on merits.

Cases considered by *T. Ducharme J.*:

Angus Glen North West Inc., Re (2011), 2011 CarswellOnt 12479 (O.M.B.) — considered

IPCF Properties Inc., Re (1993), (sub nom. *Brampton (City) Proposed Official Plan Amendment 208, Re)* 15 Admin. L.R. (2d) 299, 1993 CarswellOnt 885, (sub nom. *Brampton (City) Proposed Official Plan Amendment 208, Re)* 28 O.M.B.R. 449 (O.M.B.) — referred to

Jay-M Holdings Ltd. v. Durham (Regional Municipality) (1999), 1999 CarswellOnt 5339, 40 O.M.B.R. 144 (O.M.B.) — referred to

Maplehurst Bakeries Inc. v. Brampton (City) (1999), 1999 CarswellOnt 1442, 2 M.P.L.R. (3d) 226, 44 O.R. (3d) 667 (Ont. Div. Ct.) — referred to

Niagara River Coalition v. Niagara-on-the-Lake (Town) (2010), 261 O.A.C. 76, 2010 ONCA 173, 2010 CarswellOnt 1332, 49 C.E.L.R. (3d) 159, 68 M.P.L.R. (4th) 1 (Ont. C.A.) — referred to

Rosen, Re (2012), 2012 ONSC 4215, 2012 CarswellOnt 9155, 99 M.P.L.R. (4th) 216, 73 O.M.B.R. 195, (sub nom. *Rosen v. Blue Mountain (Town))* 295 O.A.C. 58 (Ont. Div. Ct.) — referred to

Statutes considered:

Ontario Municipal Board Act, R.S.O. 1990, c. O.28

s. 96(1) — pursuant to

Planning Act, R.S.O. 1990, c. P.13

Generally — referred to

s. 2.1 [en. 2006, c. 23, s. 4] — considered

s. 2.1(a) [en. 2006, c. 23, s. 4] — considered

s. 2.1(b) [en. 2006, c. 23, s. 4] — considered

s. 17 — referred to

s. 17(36) — considered

s. 17(44) — considered

s. 17(45) — considered

s. 17(45.1) [en. 2006, c. 23, s. 9(11)] — considered

s. 17(46) — considered

s. 17(46.1) [en. 2006, c. 23, s. 9(12)] — considered

s. 17(50) — considered

s. 17(50.1) [en. 2006, c. 23, s. 9(13)] — considered

s. 17(50.1)(a) [en. 2006, c. 23, s. 9(13)] — considered

s. 17(50.1)(b) [en. 2006, c. 23, s. 9(13)] — considered

s. 26 — considered

s. 26(1) — considered

s. 26(1)(a) — considered

s. 26(5) — considered

s. 46 — considered

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

R. 61.03 — pursuant to

R. 62.02(4)(b) — considered

Authorities considered:

Ontario, Ministry of Municipal Affairs and Housing, *Provincial Policy Statement (2005)*, O.C. 140/2005 (in force March 1, 2005)Ontario, Ministry of Public Infrastructure and Renewal, *Places to Grow, Better Choices, Brighter Future: Growth Plan for the Greater Golden Horseshoe, 2006*, June 16, 2006Sullivan, Ruth, *Sullivan on the Construction of Statutes*, 5th ed. (Toronto, Ont.: LexisNexis Canada Inc., 2008)

MOTION by H Inc. for leave to appeal from decision of Ontario Municipal Board, dismissing its appeal from town's official plan amendment.

***T. Ducharme J.*:**

I. Introduction

1 This is a motion by the moving party, Hobo Entrepreneurs Inc. ("Hobo"), made pursuant to s. 61.03 of the *Rules of Civil Procedure* and s. 96(1) of the OMBA for an order granting leave to appeal the from a decision of the Ontario Municipal Board ("Board") dismissing its appeal of the Town of Wasaga Beach ("Town") Official Plan Amendment No. 23 without a hearing.

2 Hobo participated in the public consultation process conducted by Wasaga Beach and sought various amendments to the Town's official plan dealing with the Town's transportation network. The Town did not accede to Hobo's requests regarding the Town's transportation network. Hobo then appealed the result of the Town's five-year review, Official Plan Amendment No. 23 ("OPA 23") to the OMB.

3 The respondents Sunnidale Estates Ltd., Fresun Estates Ltd. and 1281533 Ontario Ltd. (collectively, "River's Edge") brought a motion requesting that the Board dismiss Hobo's appeal of OPA 23 without holding a hearing. The basis for this motion was that the Board lacked the jurisdiction to deal with the transportation issues being raised by Hobo's appeal. River's Edge [with the support of the Town and Pacific Developments Inc. & 1415069 Ontario Ltd. ("Pacific")] argued that, because the Town had not addressed Hobo's transportation issues in OPA 23, the Board was without jurisdiction to hear Hobo's appeal.

4 The Board agreed and dismissed Hobo's OPA 23 appeal without a hearing. In that decision Board Member S. Sutherland dismissed Hobo's appeal on the basis that it lacked jurisdiction to grant the relief requested by Hobo, or any variant thereof, pursuant to subsection 17(50.1) of the *Planning Act*.[FN1]

II. Proposed Grounds of Appeal

5 The moving party seeks leave to appeal on the following grounds:

(1) The Board erred in law in its interpretation of s. 17(50.1) of the *Planning Act*.

(2) The Board erred in law in its interpretation of s. 26 of the *Planning Act*.

(3) The Board erred in law by fundamentally misinterpreting the nature and the effect of OPA 23.

(4) The Board erred in law by dismissing Hobo's appeal without a hearing.

III. The Decision of the Board

6 Member Sutherland heard submissions from counsel with respect to the jurisdictional issue. He started his analysis by quoting s. 17(50) of the *Planning Act* which provides:

> On an appeal or a transfer, the Municipal Board may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan or refuse to approve all or part of the plan.

He explained that under s. 17(50) the Board could not deal with modifications which were so substantial as to require an OP amendment. However, the Board could deal with modifications to an OP, i.e. changes to an OP which did not alter the essential nature or character of the OP as adopted by council. The determination of whether a change was a modification and or an amendment was a matter of degree and s. 17(50) "afforded the Board some latitude to make that determination."[FN2]

7 However, the foregoing situation was changed by the addition of s. 17(50.1) of the *Planning Act* which provides:

> For greater certainty, subsection (50) does not give the Municipal Board power to approve or modify any part of the plan that,
>
> (a) is in effect; and

(b) was not dealt with in the decision of council to which the notice of appeal relates.

8 Member Sutherland stated that the addition of s. 17(50.1) of the *Planning Act* eliminated the latitude the Board had earlier enjoyed. He described the impact of s. 17(50.1) as follows:

> subsection 17(50.1) does not provide the Board with the power to approve or modify any part of a plan that is in effect and was not dealt with in the decision of council to which the appeal relates. This change effectively limits the Board's modification powers respecting official plan and official plan amendments, constituting a significant restriction on the Board's powers to resolve matters through such modifications.
>
> . . .
>
> Subsection 17(50)[FN3] is specific — the Board has no power to approve or modify any part of a plan that is in effect and was not dealt with in the decision of council to which the notice of appeal relates. It is not a matter of degree. It is not a matter of which section of the plan we are looking at. The door is not ajar; it is slammed shut. It is not a matter of being too legalistic or narrow, as Mr. Zakem suggests. The legislation says what it says and it says so 'for greater certainty.'
>
> [Emphasis added.]

9 In this regard, Member Sutherland quoted with approval from *Angus Glen North West Inc., Re*, [2011] O.M.B.D. No. 861 (O.M.B.) where the Board at para. 17 said of s. 17(50.1):

> This is not just a friendly reminder. It is a potent injunction against the Ontario Municipal Board to open up ("approve or modify") an Official Plan or part which are in legal effect and outside the purview of the decision of council to which the appeal notice relates.

IV. Test for Leave to Appeal

10 An appeal lies from the Ontario Municipal Board to the Divisional Court, with leave of the Divisional Court, on a question of law. With the exception of any appeal rights to the Divisional Court, every decision or order of the Ontario Municipal Board is final and no order, decision or proceeding of the Board shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari or any other process or proceeding in any court. The finding or determination of the Ontario Municipal Board upon any question of fact within its jurisdiction is binding and conclusive.

11 Under Rule 62.02(4)(b), in order to obtain leave to appeal to the Divisional Court the Appellant must establish that:

(1) The proposed appeal raises a question of law;

(2) There is good reason to doubt the correctness of the decision of the OMB with respect to the question of law raised; and

(3) The question of law of sufficient general or public importance to merit the attention of the Divisional Court?

I will discuss each of these in turn.

V. Standard of Review

12 The proper standard of review by the Divisional Court of a decision of the Ontario Municipal Board is one of either correctness or reasonableness, depending on the nature of the particular question of law. Questions of law that engage the specialized expertise of the Board, such as the interpretation of its own statute, attract a standard of reasonableness. Questions of law that are of general application for which the Board has no special expertise are reviewed on a standard of correctness.

13 The Ontario Municipal Board has specialized expertise in interpreting the provisions of the *Planning Act* and in applying its underlying policies. The Board is a highly specialized tribunal in a technical field that makes decisions every day about matters that are outside the normal expertise of the Court. This factor supports a higher degree of deference and therefore, in cases where the Board is dealing with appeals involving the interpretation of the Planning Act, the standard of review is that of reasonableness.

V. Does the Proposed Appeal Raise a Question of Law?

14 The first two grounds of appeal both relate to the interpretation of specific sections of the *Planning Act* and therefore raise a question of law. The fourth ground also relates to a question of law as they turn on the proper interpretation of ss. 17(36), 17(45), 17(45.1), 17(46), 17(46.1), 17(50) and 17(50.1) of the *Planning Act*. The third ground of appeal purports to relate to the interpretation of an official plan which is a question of law.[FN4]

VI. Is There Reason to Doubt the Correctness of the Decision of the Omb With Respect to the Question of Law Raised?

15 With respect to this second requirement, the Court need not be satisfied that the decision is wrong, or even probably wrong. Rather, it must be satisfied that there is some good reason to doubt the correctness of the Board's decision on a question of law.

(1) Did the Board Err in Law in its Interpretation of s. 17(50.1) of the Planning Act?

16 Hobo emphasizes that ss. 17(50) and s. 17(50.1) relate to the remedies that the Board may give after the hearing of an appeal. Thus, it says nothing about the jurisdiction of the Board to hear an appeal in the first place. Hobo submits that the Board gave an unreasonably narrow and legally incorrect interpretation to the appeal provisions of the *Planning Act*. This creates a new gate-keeping mechanism which acts as a constraint on the Board's appellate jurisdiction. They submit that such a constraint is contrary to the plain wording and scheme of the *Planning Act*.

17 Hobo emphasizes that where a municipality initiates the process of revising its official plan pursuant to s. 26, the *Planning Act* only requires oral or written submissions to be made before the adoption of an OP in order for a person's right of appeal to crystallize under s. 17(36). Nothing in s. 17(36) restricts the right to appeal to those persons whose submissions resulted in changes to the OP. Hobo submits that the effect of the Board's decision is to restrict appeal rights to those persons whose submissions to council were accepted by Council in the final form of the amended OP, as adopted. Conversely the decision denies a right of appeal to other persons whose submissions to Council during the same process were not accepted by council. Thus Hobo argues that this interpretation of s. 17(50.1) has a direct and substantial limiting impact on the pool of potential appellants of a municipally-generated official plan amendment arising from its five-year review obligations under section 26 of the *Act*.

18 Hobo's submissions overstate the effect of s. 17(50.1). S. 17(50.1) does not limit appeal rights to only those whose submissions were accepted by council. Rather s. 17(50.1) provides appeal right to all persons who have made submissions about some aspect of the OP that was changed by the decision of Council. For example, if Hobo had made submissions about the Sunnidale Trails Secondary Plan (STSP) road network and Council revised that road network in OPA 23, although not in the way that Hobo had requested in its submissions, the Board would have the jurisdiction to modify or approve those revisions on a hearing of an appeal by Hobo. Similarly, if Hobo had requested a revision to a transportation policy and Council instead made a decision to delete the policy in its entirety, the Board could consider the appropriateness of Council's decision and approve or modify its actions on a hearing of an appeal by Hobo.

19 I reject the submission that ss. 17(50) and s. 17(50.1) relate solely to the remedies that the Board may give after the hearing of an appeal and say nothing about the jurisdiction of the Board to hear an appeal in the first place. Ultimately this is a distinction without substance as there is no point in hearing an appeal when the Board lacks the jurisdiction to grant the relief sought. In my view, the Board was correct in holding that s. 17(50.1) was intended to limit the right of appeal to persons who had made submissions about a part of the OP that was changed by the decision of Council. There is a sound policy basis for such a restriction of appeal rights. Absent such a restriction, anyone who has made a submission to Council as part of the five year review process could appeal to the Board, even where their submissions did not relate to any of the changes implemented by Council. Moreover, as long as they repeated their submissions at the next five year review, the same party could again demand an appeal to the Board every five years on the same issue despite any relevant change to the OP. Section 17(50.1) is intended to eliminate such appeals, and their attendant expense in terms of time and money, and restrict appeals to actual changes in the OP.

20 Hobo further argues that if the Legislature had intended that subsection 17(50.1) be used to restrict appeals arising from an official plan amendment pursuant to section 26, then the Legislature would have made that intention explicit. In my view, the Legislature did make this restriction explicit. I agree with Member Sutherland that the meaning of s. 17(50.1) is clear in this respect and the words "for greater clarity" underscore this point.

21 For all of these reasons, there is no reason to doubt the correctness of the Board's interpretation of s. 17(50.1) of the *Planning Act* and leave to appeal on this ground is therefore denied.

(2) Did the Board Err in Law in its Interpretation of s. 26 of the Planning Act?

22 The Board found that it was within the Town Council's discretion to decide which sections of the official plan it would deal with in its five year review. The Board found that the five year review did not open the entire OP up for challenge, nor did it create a right of appeal for parties, like Hobo, who claimed that their issues were not dealt with.

23 Hobo submits that the Board's interpretation of s. 17(50.1) entirely frustrates the Board's ability to comply with its other obligations under the Act. It is inconsistent with the importance attached to public consultation in the five year review process under s. 26 of the *Act*. It also prevents the Board from complying with s. 2.1 of the *Planning Act* which provides that:

> 2.1 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; and
>
> (b) any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a).
>
> [Emphasis added]

Hobo's complaint here is that the Board's interpretation will prevent the Board from considering Hobo's submissions to Council as they did not relate to any part of the OP that was changed as part of the five year review. Hobo submits that the Board erred in allowing Council's decision, as opposed to what was before Council, to define and limit the scope of the Board's jurisdiction, and in failing to consider the specific requirements and function of section 26.

24 Section 26 of the *Planning Act* provides *inter alia* that, every five years, the council of a municipality is required to,

(a) revise the official plan as required to ensure that it,

(i) conforms with provincial plans or does not conflict with them, as the case may be,

(ii) has regard to the matters of provincial interest listed in section 2 (of the Planning Act), and

(iii) is consistent with policy statements issued under subsection 3(1) (of the Planning Act).

25 The public consultation process associated with municipally-initiated official plan amendments under section 26 of the *Planning Act* contains enhanced consultation requirements, compared to a private official plan amendment application pursuant to section 17. Thus, s. 26(5) of the *Planning Act* provides for public participation in five year reviews by giving persons who attend special meetings an opportunity to be heard and by requiring Council to have regard to any written submissions about what revisions may be required. This has the effect of broadening the pool of potential appellants, given the nature of the review and the requirement for enhanced consultation.

26 But while s. 26(5) broadens public consultation, under s. 26(1) of the *Planning* Act Council is only required to revise the official plan as required to ensure that it conforms with or is consistent with provincial policy. Council is not required to make a decision on the entirety of the official plan, nor on every policy with respect to which a submission has been made. There is no requirement to do so under the *Planning Act*, and in fact, section 26 specifically permits Council to limit its decision to revise only those policies that it determines require a change.

27 Subsection 17(50.1) prevents the Board from approving or modifying part of a plan that was not dealt with "in the decision of council." The principles of statutory interpretation dictate that every word in a statute is presumed to have a meaning and a function.[FN5] The inclusion of the words "in the decision of council" in subsection 17(50.1)(b) of the *Planning Act* indicate that the Legislature intended that the decision of Council, not the submissions or materials that were part of the planning process preceding that decision, would determine the Board's appellate jurisdiction.

28 I would note that this interpretation of s. 17(50.1) is not inconsistent with s. 2.1 of the *Planning Act* as Hobo submits. First, there is nothing in the Board's interpretation of s. 17(50.1) that would preclude the Board from considering such materials. Second, and more importantly, s. 17(50.1) makes it clear that such submissions or materials are irrelevant if Council did not deal with the policy in dispute in its decision and that policy was already in effect.

29 For all of these reasons, there is no reason to doubt the correctness of the Board's interpretation of s. 26 of the *Planning Act* and leave to appeal on this ground is therefore denied.

(3) Did the Board err in law by fundamentally misinterpreting the nature — and therefore the effect of — OPA

23 which was the product of the Town's five-year review?

30 The appellant's submissions on this point are less than clear. Their submission appears to be that the Board failed to recognize that, even though OPA 23 as approved by Council did not amend the road network for the STSP area, the Board, after a hearing of Hobo's OPA 23 appeal, could decide that OPA 23 does not conform with the Growth Plan and is not consistent with the Provincial Policy Statement. Similarly the Board failed to recognize that it could modify OPA 23 to amend the road network for the STSP area or decide that some other modification to OPA 23 is appropriate and necessary.

31 This does not have anything to do with the proper interpretation of OPA 23. Rather this relates to the effect of s. 17(50.1) of the *Act* which, as explained above, prevents the Board from making any such modifications. Therefore, this ground of appeal has no merit. There is no reason to doubt the correctness of the Board's interpretation of nature and effect of OPA 23.

(4) Did the Board Err in Law by Dismissing Hobo's Appeal without a Hearing?

32 At the outset, it is important to note that Hobo's appeal was not dismissed without any hearing. Member Sutherland considered the submissions of Hobo's counsel on the jurisdictional point. There was a hearing in this regard. Hobo's complaint here is that there was not a full hearing on the merits of Hobo's appeal as provided for in s. 17(44) of the *Planning Act*.

33 Hobo submits that the Board is required to hold a hearing pursuant to subsection 17(44) of the *Planning Act*, and it may only dismiss an appeal without holding a hearing if the requirements in subsections 17(45) and 17(45.1) are met.[FN6] Hobo submits that the Board erred by dismissing the hearing of its appeal without considering whether any of the requirements in these "gatekeeping" subsections were met.

34 The Board has the authority to hold hearings and make determinations in respect of only those matters for which jurisdiction has been conferred on it by statute. The Board cannot hold a hearing or make a determination on a matter where it has not been granted the authority to do so or where it has been expressly prohibited from doing so. Subsection 17(50.1) of the *Planning Act* constitutes such a prohibition on the Board's jurisdiction. It clearly and unequivocally removes the Board's jurisdiction to approve or modify any part of an official plan that is in effect and that was not dealt with in the decision of council to which the notice of appeal relates.

35 Where the Board has no jurisdiction, it need not assess the requirements in subsections 17(45) and 17(45.1) of the *Planning Act* before it dismisses an appeal without a hearing. These provisions create a means for the Board to dismiss an appeal without a hearing in certain circumstances, even though the matter is properly within its jurisdiction. This is not the situation in this case.

36 Hobo argues that the Board's Decision to dismiss its appeal of OPA 23 without a hearing is contrary to the jurisprudence which suggests that any determination of a lack of jurisdiction is premature until the Board has held a hearing. It is true that, in some circumstances, the Board and this Court have found it to be premature to dismiss an appeal for lack of jurisdiction before the Board has held a hearing. However, this determination is entirely dependent on the specific facts of the case and is by no means a hard and fast rule to be applied in all cases.

37 None of the cases relied upon by Hobo support the proposition that, in this case, the Board should have held a full hearing before determining its jurisdiction.[FN7] These cases are all distinguishable on the basis that it was necessary to hear the evidence in order to inform their decisions on the jurisdictional question. The same cannot be said in this case.

38 Pursuant to ss. 17(50.1)(a) and 17(50.1)(b), the only questions before the Board were whether the part of the plan in dispute, i.e. the part relating to the STSP road network, was (a) in effect; and (b) not dealt with in the decision of Council. This narrow determination did not require either an assessment of the substantive evidence of the case or the planning merits of Hobo's appeal.[FN8] Indeed, there is no dispute that the challenged part of the plan was in effect and was not dealt with in the decision of council.

39 Hobo's counsel received notice of the motion to dismiss their appeal on jurisdictional grounds. Member Sutherland heard submission from counsel with respect to the jurisdictional issue. In this regard he complied with the requirements of s. 46 of the *Planning Act*. Having done so, Member Sutherland correctly determined that the policies and mapping of the STSP transportation network were in effect and not dealt with in the Town's decision. Once the Board made its determination on these facts, s. 17(50.1) of the *Planning Act* explicitly removed its jurisdiction to approve or modify the STSP transportation policies and road network. The Board has no discretion in this regard. As such, it was correct for the Board to dismiss Hobo's appeal of OPA 23 without a hearing.

40 Where the Board can determine that it does not have jurisdiction without considering evidence, the appeal may be dismissed without a hearing. This is required by the plain wording of the *Planning Act*. This also makes sense from a public policy perspective. Certainly, where it is clear at the outset that the Board does not have the jurisdiction to decide a matter, it would not be just, expeditious or cost-effective to require a full hearing on the merits.

41 For all of these reasons, there is no reason to doubt the correctness of the way the Board dealt with the dismissal of Hobo's appeal and leave to appeal on this ground is therefore denied.

VII. Is the question of law of sufficient general or public importance to merit the attention of the Divisional Court?

42 Hobo has not raised a question of law that is of sufficient importance to warrant the attention of this Court. Subsection 17(50.1) is straightforward provision that is unequivocally clear on its face. Member Sutherland and other panels of the Board have interpreted and applied this provision in a clear and consistent manner based on

the facts of each individual case. This is not a situation where this Court's expertise is required to inform the development of the law.

VIII. Result

43 For the foregoing reasons, the application for leave to appeal the decision of the Ontario Municipal Board is dismissed.

44 If the parties cannot agree on costs of the application, they may make brief written submissions within 30 days of the release of these reasons.

Motion dismissed.

FN1 R.S.O. 1990, c. P.13

FN2 Decision of the Board, p. 4.

FN3 This should be a reference to s. 17(50.1) of the *Act*.

FN4 *Niagara River Coalition v. Niagara-on-the-Lake (Town)*, 2010 ONCA 173 (Ont. C.A.) at paras. 43 and 45; *Rosen, Re* (2012), 295 O.A.C. 58 (Ont. Div. Ct.) at paras 27 and 49.

FN5 Ruth Sullivan, Sullivan on the Construction of Statutes, 5th ed. (Canada: Lexis Nexis, 2008) ("Sullivan") at 201

> FN6 These provisions provide as follows: 17(45) Despite the *Statutory Powers Procedure Act* and subsection (44), 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 plan or part of the plan that is the subject of the appeal could be approved or refused by the Board,
> (ii) the appeal is not made in good faith or is frivolous or vexatious,
> (iii) the appeal is made only for the purpose of delay, or
> (iv) the appellant has persistently and without reasonable grounds commenced before the Board proceedings that constitute an abuse of process;
>
> (b) REPEALED: 2006, c. 23, s. 9 (10).
> (c) the appellant has not provided written reasons with respect to an appeal under subsection (24) or (36);
> (d) the appellant has not paid the fee prescribed under the Ontario Municipal Board Act; or

(e) the appellant has not responded to a request by the Municipal Board for further information within the time specified by the Board. 1996, c. 4, s. 9; 2006, c. 23, s. 9 (8-10).

17(45.1) Despite the *Statutory Powers Procedure Act* and subsection (44), the Municipal Board may, on its own initiative or on the motion of the municipality, the appropriate approval authority or the Minister, dismiss all or part of an appeal without holding a hearing if, in the Board's opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision. 2006, c. 23, s. 9 (11).

FN7 *IPCF Properties Inc., Re* (1993), 28 O.M.B.R. 449 (O.M.B.) at paras. 15-16, 19, 21; *Maplehurst Bakeries Inc. v. Brampton (City)* (1999), 44 O.R. (3d) 667 (Ont. Div. Ct.); *Jay-M Holdings Ltd. v. Durham (Regional Municipality)* (1999), 40 O.M.B.R. 144 (O.M.B.) at para 10-12.

FN8 In para 49 of their factum, Hobo indicated that they intended to "present land use planning and other expert evidence" with respect to alleged deficiencies of OPA 23. As none of this evidence would have been relevant to the jurisdictional issue, there was no need to hear it.

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