

CITATION: The Township of Oro-Medonte/Oro-Medonte et al v. Williams et al,
2023 ONSC 3830

COURT FILE NO.: DC-22-1301 and DC 22-1327

DATE: 20230628

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

IN THE MATTER OF a motion for leave to appeal pursuant to subsection 24(3) of the Ontario Land Tribunal Act, 2021, S.O. 2021, c. 4, Sched. 6, from a decision of the Ontario Land Tribunal dated September 17, 2021.

AND IN THE MATTER OF an appeal to the Ontario Land Tribunal pursuant to s. 34(19) of the Planning Act, R.S.O. 1990, c. P. 13, as amended.

RE: THE TOWNSHIP OF ORO-MEDONTE, Moving Party

AND:

ORO-MEDONTE ASSOCIATION FOR RESPONSIBLE STRS and
ORO-MEDONTE GOOD NEIGHBOURS' ALLIANCE, Responding Parties

BEFORE: Justice Alexander Sosna

COUNSEL: Christopher Williams Counsel, for the Moving Parties

Bruce Engell, Counsel, for the Responding Party Oro-Medonte Association for
Responsible STRs

James Feehely, Counsel, for the Responding Party Lawyers for Oro-Medonte
Good Neighbours' Alliance Inc.

HEARD: May 23, 2023

ENDORSEMENT

[1] The Moving Parties, The Township of Oro-Medonte (the "Township"), and the Oro-Medonte Good Neighbours Alliance Inc. ("Good Neighbours") bring a motion for Leave to Appeal to the Divisional Court from the decision of Member Sharyn Vincent (the "Member") of the Ontario Land Tribunal (The "Tribunal"), dated March 29, 2022 in OLT File No. PL200395 (the "Decision").

BACKGROUND HISTORY

- [2] The Township is a Municipal Corporation as defined by the Municipal Act, S.O. 2001, c. 25 and a constituent lower municipality of the Corporation of the County of Simcoe. The Township is an amalgamated municipality of the former Townships of Oro and Medonte.
- [3] Good Neighbours is a duly incorporated ratepayer corporation, incorporated pursuant to the laws of the Province of Ontario and represents a number of ratepayer associations within the Township.
- [4] The Oro-Medonte Association for Responsible STR's (the "Responsible STR's") represents bodies involved in short term rentals of properties.
- [5] The proliferation of short-term rental accommodations in the Township in recent years has given rise to a number of land use compatibility concerns and conflicts between short-term renters and long-term residents. Since 2017, short-term rentals have become a significant issue and nuisance in the Township by creating disruptions, safety and other issues through unsupervised third-party use of residential dwellings within established low density residential neighbourhoods.
- [6] In 2018, with the proliferation of short-term rentals, the Township availed itself of the authority under Section 38 of the Planning Act to pass Interim Control By-Law 2018-071 (ICBL), to control short term rental accommodations within the Township.
- [7] On July 15, 2020, Council for the Township passed By-Law 2021-73 (the "By-Law") an amendment to clarify the existing prohibition on commercial accommodations in dwelling units. The new definition of a dwelling with qualification for any period of up to 28 consecutive days would be a "commercial accommodation" for the purposes of the By-Law.
- [8] The Oro-Medonte Association for Responsible STR's (the "Responsible STR's") appealed Council's enactment of the By-Law.

THE HEARING

- [9] The Tribunal held a hearing in respect to the Responsible STR's appeal of the By-Law from March 22-29th, 2022.
- [10] The fundamental issue before the Tribunal was the planning merits of the By-Law's 29-day threshold, particularly its proportionality. The Township's position was that the By-Law was an interim measure pending the development of a more balanced regulatory framework. Furthermore, the By-Law represented good planning because it provided clarity on existing prohibitions while the Township devised a more appropriate long-term solution.

- [11] The Responsible STR's contended that the By-Law as framed was nothing more than a de facto interim control by-law without procedural safeguards which would potentially allow the Township to permanently prohibit STR's.
- [12] The Tribunal provided a brief oral decision on March 29, 2022, repealing the By-Law with written reasons to follow.
- [13] The written reasons set out in 16 paragraphs rescinding the By-Law were released August 24, 2022. The grounds for rescission were as follows:
- i. The By-Law was disproportionate to the mischief being interpreted, did not represent good planning, and was not in the public interest as the cumulative evidence was that it could not, in a timely and/or effective way regulate the serial, disruptive use of residential properties referred to as "party houses; and
 - ii. The By-Law would have the undesirable effect of potentially rendering illegal, the benign non-contentious occasional rental of family cottages for periods of 1-2 weeks. As such, the By-Law and would have further introduced a new prohibition under the guise of clarification.

POSITION OF THE PARTIES RE LEAVE APPLICATION

- [14] The Moving Parties submit the Tribunal failed to correctly interpret the Township's By-Law in accordance with relevant case law. Lastly the Tribunal failed to consider relevant evidence concerning the By-Law but based its decision to grant the appeal on irrelevant evidence.
- [15] The Moving Parties submit the Tribunal's decision impacts municipalities across the Province, which are seeking clarity and direction from the Tribunal and the Courts on how to appropriately regulate short-term rental accommodations and apply the correct process for adjudication by the Tribunal when considering a zoning-by-law amendment appeal.
- [16] The Respondent, The Responsible STR's seek that the motion be dismissed submitting that the Moving parties proposed grounds of appeal are disagreements on the Tribunal's findings on the By-Law's planning merits. The Tribunal's decision was a factual and policy-based decision finding that the By-Law was not good planning, not balanced and not in the public interest. Such findings are not questions of law and appealable to the Divisional Court.
- [17] The Respondent's further argue none of the proposed issues on appeal raise any question of broader public importance warranting the attention of a full panel of the Divisional Court. The issues raised are either settled law or of importance to the immediate parties only.

APPLICABLE LAW

[18] The Applicants must demonstrate that: (1) the proposed appeal raises an inextricable question of law; (2) there is reason to doubt the correctness of the OLT decision on the question of law raised; and (3) the question of law is of sufficient importance to merit the attention of a full panel of the Divisional Court. These three prerequisites are conjunctive and failure to satisfy any one of them means that leave to appeal is properly refused.

FINDINGS

[19] For the following reasons the appeal to Divisional Court is granted.

[20] Questions of law generally involve questions about the identification and scope of the correct legal test. Failure to provide functionally adequate reasons for the decision, and failure to consider relevant evidence, can each constitute an error of law.(CAMPP Windsor Essex Residents Assn. v Windsor (City), 2020 ONSC 4612 at paras 32, 33).

[21] Both grounds are engaged in this appeal.

[22] The Tribunal's written reasons rescinding the By-Law were set out in 16 paragraphs. The analysis portion of the decision is contained in six paragraphs (paras 9-15). The reasons are brief and lack context and detail. As such the reasons fail to meaningfully inform what evidence and what legal principles including case law were considered in granting the appeal, in light of the extensive the evidence and submissions heard over six days.

[23] Further, at a para 11 of the decision, the Tribunal reasoned that “ [i]t was on the basis of the commonly held opinion of all the witnesses who spoke to the unintended consequences of the amendment (the 28 day threshold regarding commercial properties) that the Tribunal rendered its decision to allow the appeal as it concurred that it was not in the broader public interest, particularly given the oral and written evidence of the Township's witness”

[24] Contrary to the Tribunal's finding, the evidence of the Township's land use planning expert was that the By-Law was good planning ,was in the public interest, although the witness did agree that further study was required through the Official Plan review process to devise a more appropriate regulatory response.

[25] Lastly, given the proliferation of short- term rentals throughout the Province, the matter is of importance beyond that of the immediate parties.

[26] For the above reasons the motion for Leave to Appeal is granted.

[27] If the parties cannot agree on costs, they may make written submissions. Counsel for the Moving Parties shall deliver submissions by July 21, 2023. Then within 15 days of receipt of those submissions, Counsel for the Respondents shall deliver submissions. Within five days of receipt of those submissions, counsel for the moving Parties shall deliver a brief reply. All submissions, with proof of service, are to be filed with the trial

coordinator in Oshawa. The trial coordinator may accept a party's submissions, however, if not completed on time, only with the consent of the other parties. When the filing of

Justice Alexander Sosna

Date: June 28, 2023