COURT OF APPEAL FOR ONTARIO

CITATION: Oro-Medonte Property Owners' Association v. Oro-Medonte (Township), 2024 ONCA 49
DATE: 20240124
DOCKET: COA-23-CV-0612

Nordheimer, Copeland and Dawe JJ.A.

BETWEEN

Oro-Medonte Property Owners' Association

Plaintiff (Appellant)

and

The Corporation of the Township of Oro-Medonte

Defendant (Respondent)

James J. Feehely, for the appellant

Christopher Williams, Brian Chung and Matthew Patterson, for the respondent

Heard: January 19, 2024

On appeal from the summary judgment granted by Justice Clyde Smith of the Superior Court of Justice, dated May 3, 2023.

REASONS FOR DECISION

[1] The plaintiff appeals from the summary judgment that dismissed its action in which it sought to quash a by-law, passed by the respondent, that imposes certain fees on users of a local water system. The appellant also sought a declaration that the water system in question be declared a municipal water

system. The appellant represents the interests of approximately 454 residential homes that are served by this water system, as described below.

[2] The water system in question, referred to as the Zone 1 system, was originally constructed by the Horseshoe Valley Resort to supply water to the resort and its adjacent residential development. There is a second water system that is owned and operated by the respondent and which serves other homes in the area. Both water systems are in the process of being integrated.

[3] The respondent has determined that it needs to embark on a process of upgrading both water systems as part of that integration. Because of the significant costs associated with the upgrades, the respondent passed a by-law that would require the owners of the residences serviced by the Zone 1 system to pay significant connection fees.

[4] The motion judge engaged in a detailed analysis of the history of the two water systems. He concluded that the Zone 1 system is, and always was, owned by the Resort owners. The motion judge also noted that the Zone 1 system was classified by the Ministry of Environment, Conservation and Parks as a non-municipal system.

[5] The appellant contends that the Zone 1 system is, in fact, now a municipal water system assumed by the respondent. While the history shows that consideration has been given to the transfer of the Zone 1 system to the respondent, such that it would become a municipal system, we agree with the

motion judge that there is no evidence that that transfer has occurred. Notably, the respondent has never passed a by-law to assume the Zone 1 system.

[6] In any event, it is unclear why the ownership of the Zone 1 system is suggested to be determinative of the issues raised. Regardless of the ownership, the Zone 1 system is a public utility. It is part of the broader water system that serves the area. Under s. 11(3)4 of the *Municipal Act, 2001*, S.O. 2001, c. 25, a municipality has the authority to pass by-laws with respect to a public utility. In addition, s. 391 of the *Municipal Act, 2001* authorizes a municipality to impose fees or charges for services provided. Further, the Resort owners and the respondent have entered into agreements regarding the interests and obligations that the respondent has with respect to the Zone 1 system, given its potential assumption by the respondent at some future date.

[7] We do not see any error in the motion judge's conclusion that the respondent was acting within its statutory authority when it passed the by-law in question. The appellant acknowledges that it cannot challenge the by-law on the basis that it is unreasonable. Rather, the appellant must establish that the by-law is illegal in order to have it quashed. The appellant has failed, on the record, to establish that illegality. On those points, it is important to remember that the motion judge's factual findings, and inferences drawn, are entitled to a high degree of deference: *Friends of Lansdowne Inc. v. Ottawa (City),* 2012 ONCA 273, 110 O.R. (3d) 1. This principle has particular application to the motion judge's conclusion that there

is a reasonable connection between the cost of the upgrades to the Zone 1 system and the connection fees being charged to existing users of that system under the by-law.

[8] The appeal is dismissed. The respondent is entitled to the costs of the appeal (including the costs of the motion before Doherty J.A.) fixed in the agreed amount of $20,000, inclusive of disbursements and HST.