

# Ontario East Municipal Conference

## The Case of the OMB Cases



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# The Sign of Rule 107

- **Dalron Construction Limited v. Greater Sudbury** (June 29, 2016, OMB Case PL120591)
  - Administrative dismissal by Board of 192 unit proposed plan of subdivision
  - Effective date of Board decision

107. A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.



# The Resident Planner

- **257 Adelaide Street West Inc. v. Toronto**(April 11, 2016, OMB Case PL151187)
- Qualification of planner with American credentials?



# The Noble Planner

- **Black v. Muskoka Lakes** (June 24, 2016, OMB Case PL150235)
  - Qualification of planner ruled on by Board after evidence given by planner.



# The Missing Summons

- **City of Toronto v. Toronto**(July 7, 2016, OMB Case PL151082)

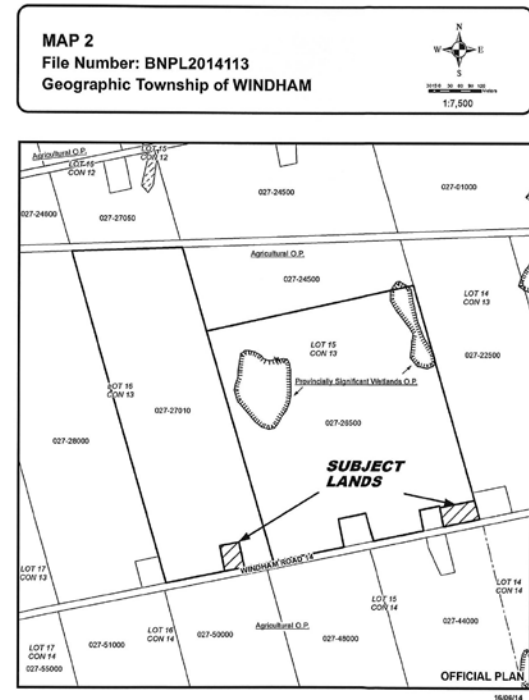
Rule 45(g) – Service of summons on a proposed witness



“Except in the event that it is impossible or impractical to do so, a summons must be served on the witness by personal service, no later than 5 days before the time for attendance. At the same time, the attendance money to be paid for attendance before the Superior Court of Justice shall be paid or offered to the witness.”

# The Hound of The Lot Swaps

- **Schuyler Farms Limited v. Norfolk (County)**(July 3, 2015, OMB Case PL141196)
- **Stenclik v. Norfolk (County)** (August 10, 2016, OMB Case PL150906)



# A Scandal in Ottawa

- **Ottawa v. 267 O'Connor Limited** (January 22, 2016, Divisional Court File 15-DC-2116)

16. (1) An official plan shall contain,

- (a) goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic, built and natural environment of the municipality or part of it, or an area that is without municipal organization;
- (b) a description of the measures and procedures for informing and obtaining the views of the public in respect of,
  - (i) proposed amendments to the official plan or proposed revisions of the plan,
  - (ii) proposed zoning by-laws,
  - (iii) proposed plans of subdivision, and
  - (iv) proposed consents under section 53; and
- (c) such other matters as may be prescribed.



(2) An official plan may contain,

- (a) a description of the measures and procedures proposed to attain the objectives of the plan;
- (b) a description of the measures and procedures for informing and obtaining the views of the public in respect of planning matters not mentioned in clause (1) (b); and
- (c) such other matters as may be prescribed.

# The Parkland Ritual

- **Richmond Hill v. Elginbay Corporation** (Sept. 6, 2016, 2016, Divisional Court File 59/15)

42. (1) As a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent of the land be conveyed to the municipality for park or other public recreational purposes.

...

(3) Subject to subsection (4), as an alternative to requiring the conveyance provided for in subsection (1), in the case of land proposed for development or redevelopment for residential purposes, the by-law may require that land be conveyed to the municipality for park or other public recreational purposes at a rate of one hectare for each 300 dwelling units proposed or at such lesser rate as may be specified in the by-law

(4) The alternative requirement authorized by subsection (3) may not be provided for in a by-law passed under this section unless there is an official plan in effect in the local municipality that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement.





# The Speckled Policies

- **Concept Young Inc. v. Kingston** (July 25, 2016, OMB Case PL151251)

No appeal of secondary suite policies means no appeal of secondary suite policies?

**16. (3)** Without limiting what an official plan is required to or may contain under subsection (1) or (2), an official plan shall contain policies that authorize the use of a second residential unit by authorizing,

- (a) the use of two residential units in a detached house, semi-detached house or rowhouse if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains a residential unit; and
- (b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse if the detached house, semi-detached house or rowhouse contains a single residential unit.



**34. (19.1)** Despite subsection (19), there is no appeal in respect of a by-law that gives effect to the policies described in subsection 16 (3), including, for greater certainty, no appeal in respect of any requirement or standard in such a by-law.

# The Township Valley Mystery

- **Muski Properties Ltd. v. Minden Hills (Township)** (March 22, 2016, OMB Case PL081034)



Can a municipality be required to participate in a phosphorous reduction pilot project?

**53. (12)** A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters under subsection 51 (24) and has the same powers as the approval authority has under subsection 51 (25) with respect to the approval of a plan of subdivision and subsections 51 (26) and (27) and section 51.1 apply with necessary modifications to the granting of a provisional consent.

# The “Not Dealt With” Puzzle

- **6980848 Canada Corp. (Sunset Lakes) v. Ottawa** (June 17, 2016, OMB Case PL101449)

**17. (50)** On an appeal ... 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.

**17. (50.1)** 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.



# The Minor Variance Treaty

- **2071430 Ontario Inc. v. Toronto** (Dec. 1, 2015, OMB Case PL150612)

**45. (1.3)** Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended.

**45. (1.4)** Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally.



# The Islands Problem

- **Cardinal v. Ottawa** (May 26, 2016, Divisional Court File Number 15-65299)
  - OMB Decisions dated July 20, 2015 and November 17, 2015, OMB Case PL141340)

**4.3** This Provincial Policy Statement shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982.



# Crop Blaze

- **Hines v. Port Colborne** (June 8, 2016, OMB Case PL160068)



# A Study in Vaughan

- **Campione v. Vaughan** (June 3, 2016, OMB Case PL141138)
  - Costs claimed in the sum of \$1.567M
  - Settlement offers and costs
  - Are costs a SLAPP (in the face)?
  - Board hearing not just a *lis*?



# The Man with the Twisted Costs

- **1960 Queen Street East Ltd. v. Graff** (July 15, 2016, Divisional Court File 631-15)

OMB decision dated August 26, 2015, OMB Case PL120820

- Costs against a non-party

## **103. Circumstances in Which Costs Order May be Made**

The Board may only order costs against a party if the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or if the party has acted in bad faith.





# A Case of Identity

- **Sinnot v. Lincoln (Town)** (Jan. 14, 2016, OMB Case PL150314)
  - Motion for costs

**64. Emergencies Only** The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses, so close to the hearing date that another representative or witnesses cannot be obtained. The Board must be informed of these emergencies as soon as possible.

