

LEARNERS

LAWYERS

Lerners LLP
85 Dufferin Avenue
P.O. Box 2335
London, Ontario N6A 4G4
Telephone: 519.672.4510
Facsimile: 519.672.2044
www.lerners.ca

Fred W. Tranquilli
Direct Line: 519.640.6353
Direct Fax: 519.932.3353
ftranquilli@lerners.ca

June 18, 2013

FILE NUMBER 87151-00002

Chair and Members
Planning and Environment Committee

Dear Chair and Members:

Re: OZ-8114
Application by Fincore Group
Public Participation Meeting June 18, 2013

I am the lawyer for Ed Dziadura, Peter Dziadura, Ann Wrobel and Stan Wrobel.

My clients' own:

- 69 Waterloo Street, London
- 73 Waterloo Street, London
- 75 Waterloo Street, London
- 319 South Street, London

My clients' lands are directly impacted by the above referenced Application by Fincore Group. My clients do not wish their lands to be the subject of this re-zoning Application nor do they consent to a change in the Land Use Designations currently enjoyed by them. They are not interested in being part of Fincore's plan.

On page 18 of the Planning Report, the Planning Department addresses the Municipal Council's request to report on the issue of property ownership and the fact that, in this case, the Applicant is attempting to change Land Use Designations on property it does not own against the will of the owners.

The Staff Report indicates:

"The term 'person' is not defined in the Act and therefore, an entity other than the owner of the affected lands can submit an Application to amend the Official Plan or Zoning By-law. Clearly, the *Planning Act* deliberately uses the term 'person' rather than owner relating to Official Plan and Zoning By-law amendments. Other types of Planning Applications require that only an owner may make an Application."

I would strongly submit to you that there is no support for interpreting the use of the word "person" to mean "other than an owner" in the situation before you. In today's London Free Press, Jim Yanchula, a City Planner, commented "in my entire career as a planner I have not come across that". Mr. Yanchula is referencing the very situation which my clients are facing, and I would suggest to you that there is a reason why Mr. Yanchula has never come across a situation like the one before you. That reason is that it is unreasonable for a private property owner to be subjected to the will of a third party who can, without permission, change that owner's intentions with that owner's property.

Interpreting legislation is an area of law in and unto itself. It is understood that legislatures use the words they intend. The seminal case governing the interpretation of legislation is a case called *Rizzo and Rizzo Shoes Limited (Re)*, [1998] 1 S.C.R. 27, at paragraph 27, where Iacobucci J. stated,

"It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. An interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent or if it is incompatible with other provisions or with the object of the legislative enactment."

I would submit that the interpretation of section 22 before you is absurd. Approving a private corporation's application to change the land use Designations on the property of another private corporation or person is ridiculous. It produces frivolous consequences whereby a Municipal council puts control of Land Use Designations in the hands of someone other than the private owner. The Act says "a person" can apply. Recommending approval is a different story in this case. Further, as highlighted by the Supreme Court of Canada, it is extremely unreasonable and inequitable. It is unfair and unjust for the Applicant in this matter to impose its will on my clients without their consent and without compensation. Further, it is most certainly illogical and incoherent to encourage such a practice and serves no meaningful or defensible land use purpose. The purpose of the Act is to create a framework within which land can be owned and developed while doing so in the public interest.

Further, the Ontario Municipal Board has determined that the use of the word "person" in this section should be given its common meaning. The Oxford English Language Dictionary is the accepted legal authority on the common meaning of words.

The Oxford English Language Dictionary defines the word "person" as:

Person - a human being regarded as an individual.

I would submit to you that the *Planning Act* uses the word 'owner' because an owner can be other than a person and the Act intends to include "owner" corporations or other entities which are capable of holding legal title to land. The fact the Act uses "owner" and "person" means the two words are not interchangeable. This very issue has been considered by the Ontario Municipal Board and, I would submit, the Board has not endorsed interpreting the word "person" in the manner you are being encouraged to adopt it on facts like those that are before you.

In 2001, in a case called *Oakwood Retirement Communities Inc. v. Toronto (City)* 43 OMBR 102, the subject property in that case was a school property, as in public property, which at the time of the Application, was being used as a community resource centre. The property was owned by the Toronto District School Board and had been declared surplus to its needs. In order to implement the development, which was the subject of the amendment application, the change in Land Use Designations was required.

This, in my submission, is a very different set of facts than the one before you where the owners of the lands are private individuals who oppose the Official Plan Amendment and Rezoning Application.

Similarly, in a case called *Yolanda Flanders Developments Inc. v. Toronto (City)*, 2013 Carswell Ont. 3068, the Board once again addressed this issue. This case was decided in March of 2013. This case also involved an Application affecting a City owned road allowance, Inez Court. Inez Court was owned by the City. In that case the member relied upon a previous interpretation in *Loblaws Properties Limited v. Ottawa (City)*, [2006] Carswell Ont. 1584 (OMB), which involved an Application for site plan approval. Member Jackson found in *Loblaws*, which also involved public property as the subject lands, that:

“This procedure properly divorces good planning considerations from considerations the City may have in ownership. The City as a legislative body must be careful not to, or appear to give itself, privileges in its legislative capacity, for its own lands. It was appropriate therefore to divorce good planning from what the City might grant itself and what it might convey or not.”

Again, the subject lands in each of these decisions by the Ontario Municipal Board does not stand as justification for interpreting the provisions of the *Planning Act* to justify re-zoning my clients' lands against their will. My clients' lands are privately held, unlike any of the cases which suggest the interpretation before you is acceptable.

Therefore, I submit to you that there is absolutely no justification in law for you to impose Fincore's will upon my clients. The interpretation of the legislation in the manner which the Planning Department has suggested is acceptable may be acceptable when dealing with public lands, as the Ontario Municipal Board has held, but not when it comes to private lands and, especially, not without the owners' consent and against the owners' wishes. If you approve the Application, it will take away my clients' control over their own lands. This cannot possibly be a justifiable interpretation of the Act. If Fincore wishes to incorporate my clients' lands in their development, Fincore ought to purchase them.

My clients have been pestered by Real Estate Agents purportedly acting for Fincore for more than a year. My clients have been willing to negotiate and were very close to a deal when Fincore refused to proceed further and offered my clients an option to purchase instead. Clearly, changing the Land Use Designations on my clients' lands so that they form part of Fincore's project makes my clients' lands unmarketable. If Fincore's Application is successful, the ability of my clients' to negotiate fair market value for their properties is compromised. This cannot be equitable and this cannot be fair.

If you are inclined to approve Fincore's Application it should either not include my clients' lands or be contingent on Fincore purchasing my clients' lands for fair market value. Fincore should not be allowed to compromise the value of my clients' lands through this process and the City should not be complicit in this Plan.

I urge you to be cautious in considering this very important issue. The property rights of every land owner in the City will be affected by this decision.

Yours very truly

A handwritten signature in blue ink, appearing to read "Fred W. Tranquilli". The signature is fluid and cursive, with a large initial "F" and "T".

Fred W. Tranquilli
FWT/lde

4003300.1