



Ontario

R860241

Ontario Municipal Board

IN THE MATTER OF Section 34 of The Planning Act, 1983

AND IN THE MATTER OF appeals by John Lazarou, Sherwood Park Restaurant Inc., Olympia & York Developments Limited and others in respect of Zoning By-laws 73-86, 74-86 and 75-86 of the Corporation of the Town of Markham

C O U N S E L :

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| Norman A. Endicott | for John Lazarou and Sherwood Park Restaurant Inc. |
| Reino Kallio | for Town of Markham |
| Richard R. Arblaster | for Olympia & York Developments Limited |

DECISION OF THE BOARD delivered by D.H. McROBB

The combined effect of by-laws 73-86, 74-86 and 75-86 is to prohibit adult entertainment parlours in the Town of Markham except for one such establishment in each of two defined areas. By-law 74-86 permits one establishment to be located in the industrial zoned area of Mount Joy which is located on the east side of Highway 48, about 1-3/4 miles north of Highway 7. By-law 75-86 permits one establishment to be located in the industrial zoned area of Langstaff which is located on the south side of Langstaff Road, about 1/4 mile east of Yonge Street.

It was the evidence of Mr. Roy Mason, a planner with the Town, that staff undertook research into the experiences in other municipalities in the Metropolitan Toronto area and made a survey of the Town of Markham to select two sites considered most suitable for the location of an adult entertainment parlour. Such an establishment is considered a nuisance use in that it results in high traffic and parking problems, noise and often unsavoury behaviour of patrons. There is presently one such establishment operating in the Town, known as Studio 134, which is located in a commercial plaza located on the north side of Highway 7, a short distance west of Highway 48. The municipality has received complaints from both area residents and businesses concerning the operation of Studio 134.

Mr. John Lazarou, the operator of Studio 134, indicated that he has been in the restaurant business at this location since 1969. In 1976 he expanded into the upstairs and in 1980, added exotic dancers. His patronage increased substantially in 1984 after he advertised in the Toronto papers, and complaints followed from the plaza merchants, particularly with respect to parking. His liquor license, which expired March 31, 1985, was not renewed by the Liquor License Board, however, that decision is under appeal and the business may carry on until the appeal is heard. The Town passed by-law 394-82 in 1982 to regulate the dress of serving persons in eating establishments. Mr. Lazarou was charged 165 times in 2 months under the by-law. The charges were withdrawn in 1985 after the Court of Appeal declared certain sections of the by-law ultra vires (Exhibit 11)

One of the effects of by-law 73-86 is to prohibit the operation of an adult entertainment parlour at the Studio 134 location. If the use was lawful at the date of passing of the by-law, which is unclear, Section 34(9)(a) of The Planning Act would operate to permit Mr. Lazarou to continue the operation of Studio 134 as a legal non-conforming use. However, Council also passed by-law 71-86 under Section 222 of The Municipal Act which provides for the licensing of adult entertainment parlours in only two defined areas, which are the same areas in which the zoning of lands for this use is permitted. Thus, even if Studio 134 is considered a legal non-conforming use under the Planning Act, Mr. Lazarou would not be able to obtain the required license to operate.

The Court of Appeal in re City of Oshawa and 505191 Ontario Ltd, 54 O.R. (2d) considered a by-law passed under Section 222 of The Municipal Act and circumstances very similar to those found by Mr. Lazarou. The Court concluded at p.642 that:

"S-SS 222(1) and (3) of the Act by their clear wording and by necessary implication indicate the intention of the Legislature to authorize municipalities to interfere with or impair existing rights of individuals to carry on the business of adult entertainment parlours."

Mr. Lazarou is appealing by-law 73-86 which prohibits an adult entertainment parlour use throughout most of the Town, including Mr. Lazarou's present operation. Counsel for Mr. Lazarou requests the Board to

allow the appeal and amend the by-law to permit the continued use of client's operation as a legal non-conforming use. In the Board's view, an amendment would have no effect above and beyond the statutory provisions contained in Section 34(9)(a) of The Planning Act. In any event, it is not the provisions of by-law 73-86 which prevent the continued operation of Studio 134, if in fact it becomes a legal non-conforming use, but the provisions of by-law 71-86. The Board has no jurisdiction with respect to that by-law. Even if the Studio 134 site was excluded from the provisions of by-law 73-86, by-law 71-86 would still operate to prevent a license being issued for the operation of Studio 134. Based on the evidence of planner that the Studio 134 site is too close to residential uses incompatible with those uses as well as the plaza commercial uses, the Board finds that it would not be appropriate to exclude the Studio 134 site from the by-law. The Board, therefore, dismisses this appeal against by-law 73-86.

Olympia & York Developments Limited is appealing by-law 74-86. Company is developing the southern 20 acres of the area included in the by-law for prestige industrial uses. The Company does not wish the adult entertainment parlour use to be permitted on these lands as such a use in its view is not compatible with a first class industrial development which it is promoting. It was the evidence of Mr. Martin that the objectives of Council would not be altered if these lands were deleted from the provisions of by-law 74-86, as sufficient lands remain to permit the development of one adult entertainment parlour. The Board will therefore allow this appeal with respect to by-law 74-86 and amend Schedule 'A' to the by-law by removing the lands in Part of Lot 18, Concession 8 from the shaded area, which lands are shown in Exhibit 5. Counsel for the Town is to provide the Board with a revised Schedule 'A' for attachment to the Board's order.

Three ratepayers gave evidence in opposition to by-law 75-86. They do not wish the adult entertainment parlour use to be a permitted use in the Langstaff area. They are particularly concerned because there is outside storage in the area and vandalism may result from this permitted use although the area is zoned rural industrial and rural industrial hold, are still a number of residences in the area. It was the evidence of Mr

Mason that this area is in transition. It was originally included in Parkway Belt but is no longer. The Town is presently processing an official plan amendment to designate the area industrial from the present Parkway Belt designation. The lands are not yet serviced and any development would have to be on the basis of a septic system. He indicated that there would only be one site in this area which could meet the 120 metre setback from a residential use as required in by-law 75-86 (a similar requirement is in by-law 74-86). However, as the number of residential uses are likely to decline as they have in the past from 96 in 1974 to 72 in 1986, more sites for an adult entertainment parlour could become available. It was his view that the separation distance from a residential use will reduce both noise and possible vandalism. He also noted that the area is under site plan control which affords the municipality with the opportunity of requiring such things as landscaping, fencing and berming between uses. The finds on the basis of this evidence that a single adult entertainment use in the Langstaff area is appropriate. The Board, therefore, dismisses the appeals against by-law 75-86

DATED at Toronto this 18th day of November 1986


D.H. McROBB
VICE-CHAIRMAN

G.T. THOMSON
MEMBER