

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: February 20, 2024

CASE NO(S): OLT-23-000729

PROCEEDING COMMENCED UNDER subsection 34.1(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18. as amended

Applicant/Appellant: Southbridge Health Care GP Inc., CVH (NO. 6) GP INC., CVH (NO. 6) LP
Subject: Refusal of application to demolish a building and structure
Description: Applied for Heritage Permit to demolish the buildings and structures to construct a new 192-bed long term care home.
Reference Number: 2023-12
Property Address: 65 Ward Street, 36-38 Hope Street & 20 Hope Street
Municipality/UT: Port Hope/Northumberland
OLT Case No: OLT-23-000729
OLT Lead Case No: OLT-23-000729
OLT Case Name: Southbridge Health Care GP Inc., CVH (NO. 6) GP INC., CVH (NO. 6) LP v. Port Hope (Municipality)

PROCEEDING COMMENCED UNDER subsection 9(1) of the *Ontario Land Tribunal Act*, 2021, S.O. 2021, c. 4, Sched. 6

Motion By: Southbridge Health Care GP Inc. (amalgamated with CVH (No. 6) GP Inc.) and CVH (No. 6) LP - Appellant
Purpose of Motion: Confirm existing consent to demolition, mootness of appeal

Heard: November 23, 2023 by Video Hearing

APPEARANCES:**Parties****Counsel**

Southbridge Health Care GP Inc.
(amalgamated with CVH (No. 6) GP
Inc. and CVH (No. 6) LP)

David Tang
Thomas Sanderson

Municipality of Port Hope

Jennifer Savini

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. DEBOER AND D.S.
COLBOURNE ON JANUARY 23, 2024 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This Decision and Order is the result of a Motion brought forth by Southbridge Health Care GP Inc. (amalgamated with CVH (No. 6) GP Inc. and CVH (No. 6) LP) (“Appellant”) pursuant to s. 34(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended (“OHA”), to decide the following requested Orders for the properties Municipally known as 65 Ward Street, 36-38 Hope Street and 20 Hope Street (“Subject Lands”):

An Order that the consent of the Council of the Corporation of the Municipality of Port Hope (“Municipality”) given by way of resolution 06/2022 of February 15, 2022, was not and could not have been rescinded and remains effective;

An Order declaring that Council of the Municipality is deemed to have consented to the application to demolish the buildings at the Property (defined below) and that the deemed consent remains effective;

An Order holding that this appeal is therefore moot and does not require adjudication;

If necessary, an Order abridging the time for service or filing of this motion;

Costs of this motion on a substantial indemnity basis; and

Such further and other relief as counsel may advise and the Tribunal deem appropriate.

BACKGROUND

[2] The purpose of the Demolition Permit was to allow for the demolition of the buildings and structures on the Subject Lands in order to construct a new 192-bed long term care home.

[3] The history of the permit application process dates back to 2018 and includes *inter alia* a decision in 2019 on the heritage designation of the property by the Tribunal previously known as the Conservation Review Board.

[4] In September 2019, the Appellant entered into an agreement with the Municipality. Conditions such as site plan, building permits, demolition permits, construction agreements, etc. were part of the conditions. These conditions had to be met by December 31, 2020.

[5] On December 15, 2020, the Appellant requested more time to meet the prerequisite conditions. The Municipality agreed to amend the deadline to December 31, 2021.

[6] On October 24, 2021, the Appellant Southbridge and its heritage Agent MHBC submitted to the Municipality the required Demolition Permit. This Demolition Permit Application (“Application”) was deemed complete on November 26, 2021.

[7] On November 11, 2021, a second amendment was agreed to extending fulfilment of the required conditions to a new expiry date of May 31, 2022.

[8] On February 15, 2022, the Municipality approved the issuance of a permit for the demolition of the Subject Lands subject to conditions. On December 20, 2022, the Municipality started the process to repeal the Demolition Permit due to its not approving the Zoning By-law Amendment needed as a condition of the Development Agreement.

[9] On June 3, 2023, the Appellant made another Application based on the revised

development that was submitted to the Municipality. On June 9, 2023, the Ministry of Municipal Affairs and Housing (“Ministry”) issued a Ministerial Zoning Order (“MZO”) in respect to the Subject lands to allow for the 2023 Revised Development.

[10] On June 29, 2023, Port Hope Council denied the 2023 Application. The Appellant appealed the decision of Council to the OLT.

HEARING OF THE MOTION

[11] The Tribunal marked the following as Exhibits to the hearing:

- Exhibit 1 Motion Record of the Appellant
- Exhibit 2 Response to Motion from the Municipality
- Exhibit 3 Reply by the Appellant to the Response

Appellant’s Position

[12] Mr. Tang presented the Motion and argued that the focus of the Tribunal should be the decision of Council before the Tribunal concerning the Application and if notice was provided to the Appellant concerning this decision.

[13] Mr. Tang submitted that the Application was deemed complete on November 26, 2021. The Appellant was advised that its Application was deemed complete by email on the same day. This Notice of Receipt of the completed Application stated that a decision deadline on the Application was by end of day on February 24, 2022.

[14] Mr. Tang contended that according to s. 34(4.3)(1) of the OHA, Council had 90 days to make a decision on the Demolition Permit. However, s. 34(4.4) stipulates that if Council fails to notify the Applicant within the 90-day time period as stated in s. 34(4.3), then Council has been deemed to have consented to the Application.

[15] Mr. Tang brought forth to the Tribunal the decision of Council on the Application. The Application was heard before Council at the meeting of February 15, 2022. It was the decision of Council to approve the Application as presented.

[16] Mr. Tang argued that even though a decision was approved by Council, the Appellant did not receive a Notice of Decision on the Application before the required deadline of February 24, 2022. Mr. Tang contends that without the Notice of Decision given to the Appellant within the statutory timelines, then as per s. 34(4.4) of the OHA, the Application is deemed to be approved.

[17] Mr. Tang submitted that the Notice of Decision was not received until March 21, 2022.

[18] Mr. Tang argued that there is not any case law that demonstrates that a Municipality can revoke a By-law which concerns a deemed consent. Once a deemed consent has been given, Mr. Tang argued that the Demolition Permit is still active and cannot be revoked.

Municipality's Response

[19] The Municipality's position concerning the Motion is that the issue regarding Council's Notice of Decision is moot. Council's decision was to allow the Demolition Permit, therefore, the issue of notice does not change the decision or the actions of Council after this decision was determined.

[20] The Municipality does confirm that the formal Notice of Decision was completed on March 21, 2022. The Municipality is not clear if the Applicant did receive the Notice of said decision.

[21] The Municipality contends that through this Notice, the Appellant was made aware of the permits approval. In fact, the Appellant and their representative(s) were at

the Council meeting on February 24, 2022, and heard the decision of Council concerning their Application.

[22] The Municipality submits that the Appellant did receive notice since they were in attendance when the decision was made. Even though the formal Notice was not completed until March 21, 2022, their presence to hear the decision implies they were aware of the decision and formal notice is not necessary.

[23] The Municipality alleged that the Appellant had continuous email communications with Municipal Staff after the February 24, 2022, Council meeting, demonstrating that the Appellant was well aware of the Decision, hence, this would qualify as a form of notice.

[24] The Municipality contends that the approval of the Demolition Permit still required conditions to be met by the deadline of May 31, 2022. It was the Municipality's position that the Appellant did not meet the prescribed conditions by the May 31, 2022 deadline.

[25] On June 21, 2022, Council then took the position to "designate" the Subject Lands under the powers of the OHA. The Municipality confirmed that the "Conditional Permission" was still in effect at this time.

[26] On December 20, 2022, Council then repealed the Conditional Permission since it was the Heritage Consultant's position that the development agreement had expired, and the proposal could not move forward.

[27] The Municipality submitted that it has the power to change and/or revoke By-laws as it deems necessary as per ss. 5(1), 5(3), 8(1) and 8(2) of the *Municipal Act*. The Municipality contends that ss. 5(1) and 5(3) give the Municipality the powers to exercise and make decisions that come before Council. The Municipality contends that ss. 8(1) and 8(2) allow the Municipality to use its authority under the *Municipal Act* or any other Act and these powers are to be interpreted broadly to enable the Municipality to govern its affairs and to respond to municipal issues. Concerning s. 8(2) of the *Municipal Act*,

the Municipality argued that if there was any ambiguity as to the Municipality's authority to revoke the By-law in question, the *Municipal Act* allows for this ambiguity to include the power to revoke, not exclude it. The Municipality contends that the *Municipal Act* grants the Municipality the power to revoke the By-law by repeal or as was done in this case, by resolution.

ANALYSIS AND FINDINGS

[28] The Tribunal has reviewed the evidence submitted and the submissions of the Parties concerning the Motion.

[29] The Tribunal agrees with the Appellant that the Application was not decided upon in the prescribed timelines set out in the OHA in the context that proper notice was not served upon the Appellant by the statutory deadline of February 24, 2022. Granted, Council did make its decision before the statutory deadline. However, proper notice was not given by the Municipality nor received by the Appellant as required by s. 34(4.4) of the Act.

[30] As such, the Tribunal finds that Council has deemed to have consented to the Application with the two recommended conditions that are needed to be fulfilled as the conditions for Site Plan Approval. Even though the conditions were apart of the "Deemed Consent", these conditions cannot be fulfilled until the Site Plan is approved by the Municipality.

[31] The Tribunal finds that the conditions of the Second Amending Agreement (which includes an approved Site Plan) were not met within the agreed upon timelines thereby making the Development Agreement not complete.

[32] The Tribunal agrees with the Municipality that Council has the power to change or revoke any By-law, including By-law No. 69/2021 as per ss. 5(1), 5(3), 8(1) and 8(2) of the *Municipal Act*.

[33] The Tribunal finds that the Appellant's Motion is correct with regards to the "Deemed Consent" as per s. 34(4.4) of the OHA. However, the Municipality has demonstrated that it has the powers to revoke the Demolition Permit as per ss. 8(1) and 8(2) of the *Municipal Act*. These sections of the *Municipal Act* have validated to the Tribunal that the Municipality has the power to govern its affairs and respond to Municipal issues in a manner as it sees fit, including the issuance or denial of demolition permits.

[34] The Tribunal agrees with the Appellant's position that their original Demolition Permit was deemed consented to by the Municipality for lack of compliance with s. 34(4.4) of the OHA. Whether the consent was "deemed" or given by the Municipality, the Municipality has demonstrated that it has the powers to revoke By-law No. 69/2021 in which the consented or "deemed" demolition was a condition of said By-law as per ss. 8(1) and 8(2) of the *Municipal Act*, regardless of how that consent is obtained.

[35] The Tribunal rules that the Demolition Permit is not alive due to the resolution by the Municipality revoking By-law No. 69/2021 and the Motion before the Tribunal should not be approved.

ORDER

[36] **THE TRIBUNAL ORDERS** that the Motion brought forth by Southbridge Health Care GP Inc. (amalgamated with CVH (No. 6) GP Inc. and CVH (No. 6) LP) is not granted.

[37] **THE TRIBUNAL ORDERS** that the next Case Management Conference that has been scheduled for January 23, 2024, continue as previously scheduled.

“S. deBoer”

S. DEBOER
MEMBER

“D.S. Colbourne”

D.S. COLBOURNE
VICE-CHAIR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.