

Welcome to Our Municipal Law Newsletter

Welcome to our firm's inaugural municipal law newsletter.

White, Duncan, Ostner & Linton LLP is a recognized leader in the fields of municipal and planning law. Our municipal law newsletter is one more way by which we reach out to our clients (and potential clients) in order to keep them as up to date as possible on this constantly changing field of law.

In recent years, the combined effect of provincial downloading and legislative change has resulted in an increasingly prominent role for municipalities. More than ever, it is important for municipal politicians and staff to understand the legal regime in which municipalities operate in order to meet their responsibilities, comply with their obligations at law and ensure that they get the best possible results for their residents and ratepayers.

The *Municipal Act, 2001*, which came into effect at the beginning of this year and is the most significant overhaul of this important piece of legislation in the past 150 years, has created both challenges and opportunities for municipalities in determining the manner in which they conduct their affairs. With this greater responsibility has come greater accountability, and municipalities are increasingly being expected to monitor and justify the ways in which they do business. To meet all of these increased expectations, it is important to have a solid understanding of municipal law.

From a planning law perspective, municipal councils continue to struggle to balance the many competing interests with which they are presented. The Ontario Municipal Board continues to play a prominent and sometimes controversial role in local planning matters. The Province, through the introduction of new legislation such as the *Nutrient Management Act, 2002* and the *Oak Ridges Moraine Conservation Act, 2001*, has displayed a renewed willingness to involve itself more deeply in the process. Our lead article in this issue looks back on the evolution of the planning law system in Ontario.

The articles contained herein are intended to be general in nature in order to be of interest to a broad municipal audience. In contrast, the issues that you encounter on a daily basis in your individual municipality will be based upon specific facts. The challenge for a municipal lawyer is to apply the general princi-

ples of municipal and planning law to the facts of each particular situation. The members of our firm have a great deal of experience in applying the law in a practical, effective and client-oriented fashion and would be pleased to discuss any specific matter with you at your convenience.

We hope that you find our newsletter to be of interest and welcome your feedback. We expect to publish the newsletter three times per year in the spring, fall and winter. The focus of our next newsletter will be "*The Municipal Act, 2001 - One Year Later*". It will examine how that Act has worked to date and whether or not it has lived up to the promise that it would be an empowering statute for municipalities. Future editions of the newsletter will cover such topics as municipal administration and development, municipal tax sales, proper tendering procedures, employment law issues and a host of other matters. We will also respond to questions of general interest and encourage you to contact any of the members of our firm with your inquiries.

In addition to this hard copy, we can distribute our newsletter to you electronically so that you can circulate it more readily within your organization. Please contact Steven O'Melia at (519) 886-3340 or sjo@kwlaw.net to make these arrangements.

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The Municipal Law Newsletter is a publication of White, Duncan, Ostner & Linton LLP, Barristers and Solicitors. The articles in the newsletter are intended to be an overview of current developments in the law that will be of interest to municipalities. They should not be regarded as legal advice. Any of the lawyers in our municipal law group would be pleased to assist you in determining how the legal principles dealt with herein apply to the facts of your particular situation.

Planning and Development of Land: Where Have We Been and Where Are We Going?

By William H. White, Q.C.

The land use planning and development process in Ontario has undergone many changes over the last few generations.

My memory goes back to the late 1940's when members of the Canadian Armed Forces were returning from the 2nd World War. Two brothers went as a delegation to a Council meeting at a small town in Perth County. Because they were no longer using their land as part of their horse raising business they offered to turn certain lands into a residential plan of subdivision. The only condition was that the Town would have to construct the services at its cost.

The overjoyed Town Council agreed with the proposal at the same meeting and it came to pass that basic services (municipal water, gravel roads, sewers and overhead hydro lines) were constructed and the lands were quickly developed. The Town did not ask for or receive any planning or other professional advice. The developers did not hire a planner or even know what a community planner was or where to find one. A surveyor laid out the lots, which sold for \$375 each, and the houses were built and everyone lived happily ever after even when 12 lots had driveways accessing a Provincial Highway. No one talked about buffering. No one talked about smart growth. No one talked about development charges or parkland dedications, although the two benevolent brothers did voluntarily donate some lands for a park provided that their name was put on it and the Town paid for the costs of developing it. There was no Official Plan and there was no zoning by-law. No one knew it was wrong to build a house across the road from a beer store or an automobile dealer. No one warned purchasers about the noise emanating from the adjacent Provincial Highway.

Development exploded in Southwestern Ontario in the 1950's and 60's. There were some brief bad periods but generally development continued on an upward trend with very little control. Larger municipalities were developing comprehensive zoning by-laws in the 1950's and other municipalities were using zoning by-laws for development such as residential subdivisions but did not have comprehensive zoning bylaws. It would not have been difficult to build and operate a rendering plant beside a hospital. Often the zoning by-laws were enacted before (or without) an Official Plan, which appears to be the backward way of doing things. Some municipal officials were suspicious of Official Plans because they might be too restrictive and some municipalities instead adopted policy statements, which they could amend or change at will.

When I started to practice in the early 60's I handled several first comprehensive zoning bylaw applications to the Ontario Municipal Board for several municipalities in Waterloo, Perth, Brant, Wellington and Huron Counties. Most of these zoning by-laws went forward without the benefit of Official Plans. In most cases Official Plans came later but they were often on the County level rather than the local level of government. Often the land use designation in the Official Plans was contrary to the applicable use in the existing zoning by-law but owners were told that they had legal non-conforming uses which were just as good. This, of course, was not true.

In the rush to get development completed and have some reasonable controls for the public benefit, two concerns arose: Firstly, Provincial Ministries were involved in the processing and approval of draft plans of subdivisions and Official Plans and they also had a commenting role to play in respect to zoning by-laws. Some planners, lawyers, developers and municipal officials felt the Province was a nuisance which resulted in unreasonable delay.

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Municipal Election 2003: The "Lame Duck" Period

By Steven O'Melia

We are in the midst of that magical period that occurs every three years when the municipal clerks of each of the local municipalities in this Province become responsible for the conduct of their municipal elections. On top of their already burgeoning workloads is thrust the additional duty of ensuring that the integrity of our local democratic process is maintained. Fulfilling this role can involve a myriad of tasks such as accepting and certifying nominations, monitoring campaign finances, policing sign-by-laws, preparing ballots, certifying the final voters' list, appointing deputy returning officers, establishing polling stations, notifying the public, determining the method of vote-counting, operating the polls, determining the results of the election, conducting recounts, and generally maintaining peace and order in connection with the election. Given that the process will result in the determination of a clerk's political masters for the next three years, it is not a responsibility that can be taken lightly.

Another issue for municipal clerks to consider while they are carrying out their electoral duties is the degree to which their current councils may become restricted in the actions that they can take in the period leading up to and following the election. The "lame duck" provisions under Section 275 of the *Municipal Act, 2001* are different from those that were in place under the old *Municipal Act*. The old Act provided for the lame duck provisions to take effect only from the polling day and they were very restrictive in prohibiting almost every corporate act. Under the new Act, the lame duck provisions can potentially take effect as early as the close of nominations, but they permit more acts to be carried out during the lame duck period.

Whether or not the new lame duck provisions take effect depends on whether or not an incoming council will contain less than 75% of the members of the outgoing council. The theory behind the provisions is that if the new council will be substantially the same as the old council, there is no reason to curb the old council's permitted activities prior to the council changeover. Conversely, where a new council will have a significantly different composition than the old council, there should be limits upon the degree to which members of the old council can affect matters that will be inherited by the new council.

The lame duck provisions are triggered only when it **can** be determined that the new council will include less than 75% of

the members of the outgoing council and not if this only **may** be the case. Whether or not an incumbent councillor is running for re-election can only be determined as of the close of nominations. If he or she chooses not to run, then it is certain that his or her council position will be held by a different person. If instead he or she chooses to run, then that determination can only be made once the election results are known. The mere fact that all council seats are being contested does not trigger the lame duck provisions provided that enough incumbent councillors are among the contestants.

The 75% threshold should therefore be reviewed after 5 p.m. on September 26, 2003 (nomination day), at the time of any nomination withdrawal after that date (as late as October 2, 2003, depending on the method of nomination) and on November 10, 2003 (voting day) or as soon thereafter as the election results can be determined. If on any of these dates a sufficient number of incumbents have either chosen not to run or have been defeated in the election, the lame duck provisions will take effect.

The new Act contains a list of permissible actions that are exempted from the lame duck provisions. These include incurring expenditures and liabilities that are less than \$50,000 or that were included in the most recent municipal budget and acts that have been delegated by a municipal council before it achieves its lame duck status. The ability to make such a delegation would have to be individually examined and, in some cases (such as appointing or removing an officer of the municipality), the restricted power could not properly be delegated.

These new provisions were designed to be less restrictive than the old section, which more or less prohibited all corporate acts in the period from the polling day until the installation of the new Council. However, the price of this greater latitude is less certainty, at least until some case law develops on the appropriate breadth of the section. For those harried clerks that are focussed on getting their new Council in place, we recommend that an appropriate goal would be to avoid becoming the subject of one of the court cases that will establish that certainty.

Steve O'Melia enjoys answering questions on municipal election issues or any other area of municipal and planning law. He may be reached at (519) 886-3340 or by e-mail at sjo@kwlaw.net.

Building Permits: Some Procedural Safeguards

By Darrell Hawreliak

A recent case decided by the Ontario Court of Appeal in which the author appeared as counsel has shed some light on steps a municipality can take to reduce errors and omissions claims arising out of the issuing of building permits.

The relevant facts were as follows. The Applicant for the building permit obtained a permit for the construction of a liquid manure storage tank on a site located on a farm owned by the Applicant. An employee of the local Conservation Authority learned about the proposed construction and contacted the Chief Building Official who had issued the permit in order to arrange a site visit.

As a result of the site visit, the Authority determined that the construction might be a violation of the Regulations established pursuant to the *Conservation Authorities Act*.

Charges were laid and a Stop Work Order issued. At the trial before a Justice of the Peace, the defence called no evidence. They argued, among other things, that the building permit was a complete defence to any charge because by issuing the permit, the Chief Building Official of the issuing municipality certified that the proposed construction did not contravene any "applicable law", including the applicable regulation under the *Conservation Authorities Act* (the defence of "officially induced error").

Though this argument was not accepted at trial, on appeal to the Provincial Court, the appeal judge accepted the argument and dismissed the charge. Leave to appeal was granted and the issue considered by the Ontario Court of Appeal.

In a split decision, the Court of Appeal decided that the defence of officially induced error was not made out. The one dissenting judge would have allowed the defence because "under the scheme of the [*Building Code Act*], anyone applying for a permit ... can reasonably be expected to have the permit refused if the appropriate construction violates any applicable law; conversely, ... an Applicant can reasonably assume that if a permit has been issued, the Chief Building Official is of the view no such contravention exists".

The dissenting judge reasoned further that the Chief Building Official is "obliged to ensure that he or she has all relevant information from the Applicant to determine whether, among other things, environmental concerns under relevant legislation have been satisfied. And if, based upon the information provided in good faith, an error has been made, his or her decision can be reviewed under the *Building Code Act*. But until the issuance of the permit is challenged ..., individuals acting in good faith should reasonably be able to rely on it for the assumption that they are in compliance with their legal obligations".

The other two judges of the Court of Appeal decided that because the defence called no evidence at trial, there was nothing in the Court record to establish that the defence of officially induced error existed. They reasoned that the Court could not "assume good faith" and the other elements necessary to establish the defence. In the result, a new trial was ordered.

Why is this case significant? It is significant because both the issuing municipality and its Chief Building Official have been sued by the Applicant on the basis of negligence for mistakenly issuing the permit. The damages claimed included the cost of construction, the cost to demolish and rebuild, all legal and defence costs associated with the charges which are now scheduled for a new trial, and an ongoing claim for loss of profits and other economic loss. As you can appreciate, the claim will measure in the hundreds of thousands of dollars.

From a municipal law perspective, the case emphasizes the necessity to carefully supervise the process by which building permits are issued and to have in place specific procedures for this purpose.

Those procedures should include the following:

1. Hiring a person with the relevant education and experience required of a Chief Building Official;
2. Asking the Chief Building Official to prepare and continually update a list of what constitutes "applicable law";
3. Requiring that the Chief Building Official and Building Department Staff make notes of all conversations with the Applicant and its representatives;
4. Ensuring that the application for the permit is complete in all respects, containing sufficient information to permit the Chief Building Official to arrive at a reasonably informed decision as to whether or not the proposed construction or demolition complies with all applicable law; and
5. In large projects, considering a review of the entire permit application by the municipal solicitor and a professional engineer or architect.

There are no guarantees. However, a municipality which implements these steps will reduce its exposure to errors and omissions claims arising out of the issuance of building permits.

Darrell Hawreliak successfully represented the Maitland Valley Conservation Authority at the Court of Appeal for Ontario. He may be reached at (519) 886-3340 or by e-mail at dnh@kwlaw.net.

Planning & Development of Land: Where Have We Been and Where are We Going?

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Secondly, the Ontario Municipal Board wished to ensure that development was in the public interest and wanted to carefully scrutinize development proposals that came before the Board. Sometimes these OMB Hearings were caused by objections of the Provincial Ministries. Sometimes adjoining residents objected because they were offered the opportunity, even though they had no resources to stop the approval.

In the 1970's when zoning by-laws became fashionable I was asked to attend a Council meeting of a rural township to discuss a proposed comprehensive zoning by-law prepared by a large consulting firm. The author of the by-law was wise enough to miss the meeting. A Councillor asked me what would happen if a building didn't fit on a lot because of all the setback regulations. I suggested a possible amendment to the zoning by-law. The Councillor said "We paid \$15,000 for this bylaw so we never want to amend it." I then suggested that the Committee of Adjustment could grant a minor variance. The Councillor asked "What is a Committee of Adjustment and how much will that cost? Why don't we pass the right by-law in the first place? Then we won't need a Committee of Adjustment." I left the meeting as fast as I could.

There was a desire by municipalities and developers alike for more planning matters to be in the hands of the local municipalities rather than the Province. In 1975 the Provincial Government established the Planning Act Review Committee under the Chairmanship of Professor Eli Comay to investigate, analyse and recommend changes to the Planning Act. Two years later in 1977 the Committee produced a controversial report often referred to as the Comay Report. The next step was a White Paper in 1979 and it was followed by a new draft Planning Act and new legislation in 1981. Bill 155 was given first and second reading in the Legislature and went to the Standing Committee for Hearings in February, 1982. There were many changes which caused much concern to planners, lawyers and municipal officials, but in general the framework of the old Act was still identifiable. Many drafts and briefs were submitted. Some municipalities wondered if they should take on additional burdens at the local level and had last minute second thoughts. Finally a watered down version passed the Legislature in the form of the *Planning Act, 1983*, which was not a radical departure from the past. There were still Official Plans, zoning by-laws and subdivision control but there were also new procedures and new tools to assist municipalities in good planning and growth control.

I remember the frustration of spending a day in Hamilton appearing before the Comay Commission and talking about things that were dear to my heart but too specific for the listeners. I recall repeating my lament of the early 60's that there was no authority for municipalities and developers to enter into development agreements as a condition of zoning by-law amendments. This request was too practical and not philosophical enough. We are still working on that one today.

To make a short story long, the Planning Act has generally maintained the same base but new tools have been added from time to time to the municipal repertoire. We now have such niceties as legal development charges, front-end financing, site plan control, interim control by-laws, holding by-laws, demolition permits and bonusing by-laws.

There is also other legislation that affects the development of land. Environmental legislation has been popular from time to time depending on which government is in power. I have encouraged many law students to embrace environmental law as a specialty. Most of these students who took my advice are now starving lawyers.

Although it seems like a Sherlock Holmes mystery or a rock group, it was The Hawks and Salamanders that whetted my appetite for environmental law. A developer retained me in the middle 1970's to contest a proposed environmentally sensitive designation for a farm in Waterloo Region. Apparently a red shouldered hawk's nest was found in a tree on the property and a triploid salamander was alleged to be living at the bottom of a pond in the woods on the farm. Scientific research told me that there are millions of salamanders all over North and South America. Unlike their frisky bright coloured cousins that run up your night clothes in Florida, the northern tailed amphibians are mud coloured and sluggish in their habitat at the bottom of a pond. Attending seventeen Regional Planning and Council meetings, I learned much about planning and municipal government, marvelling at the political wizardry of the late Chairman, Jack Young, and the masterful performances of the former Commissioner of Planning, Bill Thompson. After those seventeen meetings the Region passed a resolution removing the farm from the environmentally sensitive designation. The zoologists were not able to prove that the nest belonged to a red shouldered hawk rather than a red tailed or chicken hawk and the hawk never appeared in his/her own defence. The triploid salamander was passed around in a box from councillor to councillor but seemed to sleep through the whole meeting. When I informed the meeting that the salamander was taken into custody on an adjoining farm, that property was designated environmentally sensitive land. I submitted my modest account to my client and

was promptly paid. I don't want to leave the impression that I am an environmental villain. I was on the right side of the crusade to save Spongy Lake in Wilmot Township from the intrusion of a utility line, but that is another story. Perhaps it should be told in a bar after several drinks of San Pellegrino.

WHERE ARE WE NOW?

I sometimes wonder where we are now. Generally speaking there are many more controls at the local level (either local, County or Region). The Minister has delegated some substantial powers such as approval of local Official Plans and plans of subdivision. Some larger municipalities can even approve their own plans of subdivision. The law is somewhat stable. Municipalities would often like more power and developers would like municipalities to have less power. There is much talk of "smart growth" and "sustainable development", but not everyone agrees on what those terms mean. The role of the Ontario Municipal Board continues to attract scrutiny.

WHERE ARE WE GOING?

If I wonder where we are now, it's even harder for me to know where we are going. Will there be more downloading of powers without the accompaniment of money from the Province to the local municipalities in order for the locals to do the job? Will the Province follow through in its grab back powers for matters

such as nutrient management, which have traditionally been dealt with in zoning by-laws? The big buzz phrase right now seems to be "smart growth". Smart growth is what that small Perth County Town thought it was doing in the 1940's, although it wasn't called that. Smart growth seems to have something to do with public transit and urban sprawl - what else is new! When I started to practice law the emphasis seemed to be on the preservation of farmland and the stopping of strip development along highways as well as control of urban sprawl.

On April 17, 2003, the Central Ontario Smart Growth Panel (chaired by Mayor Hazel McCallion) handed its report to Ontario's Municipal Affairs Minister, David Young. It is intended to serve as a blueprint for curbing the urban sprawl that is choking the Greater Toronto Area. It argues, among other things, that much money should be spent on public transit as a means of promoting balanced growth and a balance of jobs and people. We shall see what happens. Governments in power intend to solve all of the planning problems, yet the problems persist. As George Bernard Shaw said in *Man and Superman*, "The road to Hell is paved with good intentions."

Bill White is the senior partner of White, Duncan, Ostner & Linton LLP. He may be reached at (519) 886-3340 or by e-mail at whw@kwlaw.net.

Our Recent Firm Activity

Our firm recently acted on behalf of the City of Waterloo in an Ontario Municipal Board matter that raised a number of planning issues.

A land developer, Summit Glen Developments Inc., had applied to the City for permission to rezone a property on University Avenue in Waterloo to permit the development of a 230 unit, 14 storey apartment building with ground floor commercial uses. The property was designated Arterial Commercial under the City's Official Plan and was zoned for industrial uses.

The City's planning staff supported the application on the basis that it would add much-needed units to the City's housing stock in an area that was well-served by transit and adjacent to a major arterial road. The site also had the advantage of being near the City's two universities (the University of Waterloo and Wilfrid Laurier University) and the proposal was structured to take advantage of the growing demand for student accommodation. The application was in general conformity with the City's planning policies that encourage growth in the uptown core rather than forcing development to spread across the farmland that lies at the borders of the City's boundaries.

The developer appealed City Council's refusal to approve its application to the OMB and retained a large Toronto law firm to represent it before the Board. An adjacent condominium corporation, which objected to the application on the basis that the proposed building was too high and dense for the subject site, obtained party status and was represented by a local firm. The Regional Municipality of Waterloo was also granted party status.

Since the City's staff opinion did not coincide with its Council position, our firm retained an independent planning consultant to give evidence before the Board. At the same time, we conducted extensive negotiations with both the developer and the condominium corporation to see if a mutually acceptable compromise could be reached. The result of these negotiations was a comprehensive set of Minutes of Settlement which resolved the issues between the parties by reducing the number of units requested and apportioning the remaining density on the site in such a way that it "stepped back" from the adjoining properties, thereby minimizing any negative impacts. These Minutes of Settlement were supported by City staff and Council and were presented to the Board and incorporated within a Board order that resolved the matter. What could have been a hearing lasting several weeks was ultimately dealt with in less than a day, saving a great deal of municipal time and resources for the City of Waterloo and the other parties to the hearing. Our firm was involved in the process every step of the way, including the drafting of the Minutes of Settlement and the provision of advice to City Council at several meetings that were called for that purpose.

Our firm recognizes that there is more than one way to approach a contentious OMB appeal and that it is not always in a client's best interest to proceed to a full-scale Board hearing. The municipal and planning area is an interesting hybrid of law and politics and it is important to take many interests into account rather than treating all matters in a "winner take all" fashion. That being said, we are prepared to proceed to a hearing where necessary and have extensive experience in that regard. If you have a planning or development issue that could benefit from legal input, please feel free to contact any of the members of our firm.

Caselaw Update: Municipal Decisions of Interest

By Jeffery Crannie

Melco Developments Ltd. v. Portage la Prairie (City), [2002] M.J. No. 381 (C.A.)

Facts: The City of Portage la Prairie (the "City") issued a request for proposals ("RFP") for the sale and development of city-owned land into a combination of single and multi-family dwellings. The reason that the City used the RFP method as opposed to calling for tenders was that it wanted the property developed promptly, was looking for new ideas and concepts and wanted to control the development of the lands beyond what would ordinarily be the case. Only two proposals were received by the City. The Plaintiff submitted the unsuccessful proposal and challenged the City's decision to select its competitor.

Issue: Is an RFP a formal tender document intended to create a binding contractual relationship or is it a non-binding invitation to enter into negotiations?

Decision: The answer is found in the normal principles of contractual intention. An RFP can be found to be either binding or non-binding, depending on the facts of the case. The drafting of the RFP is critical; a poorly drafted RFP may create a binding contractual relationship where such a relationship is not desired. In this case, the City had carefully drafted its RFP and therefore created the desired non-binding relationship.

Application: If you are circulating an RFP, make sure that it is well drafted. If the final terms of the contract are contained in the bid, the courts may find a valid tender and not an RFP relationship. It is not enough to simply state, "This is an invitation for proposals and not a tender call" without more. An RFP must indicate an intention to negotiate rather than an intention to create a binding agreement with the successful proponent. If you are submitting a proposal, it is also necessary to examine how the RFP is drafted in order to determine what obligations you may have should your proposal be accepted.

Material Handling Problem Solvers Inc. v. Minister of Natural Resources, released August 20, 2002 (Ont. Div. Ct.)

Facts: Development was proposed in an area which had been designated by the Ministry of Natural Resources ("MNR") as a Provincially Significant Wetland. For this reason, the proposal was denied and the Applicant appealed.

Issue: What is the legal effect of the MNR's Provincially Significant Wetland designation?

Decision: The Divisional Court found that the Ontario Municipal Board is free to find that land that is designated as a Provincially Significant Wetland is not in fact a wetland, based on the evidence before it. The designation is a non-binding opinion of the MNR.

Application: Designations made by government ministries under Provincial Policy Statements would appear to be non-binding for planning purposes. The OMB is free, and in fact must, review the evidence presented to it and make its own decision based on that evidence. A designation by a Ministry is not the end of the process.

Walmsley v. Ontario (Ministry of Municipal Affairs & Housing) (2001), 28 M.P.L.R. (3d) 108 (Ont. Div. Ct.)

Facts: A notice of appeal was filed at 5:21 p.m. with the Ontario Municipal Board ("OMB") on the last day for service, by facsimile. The OMB allowed the appeal and the Applicant appealed that decision to the Divisional Court, on the grounds that the notice of appeal should have been filed by 4:30 p.m.

Issue: Until what time can a notice of appeal be filed on the last day for service, if there is no time provision specified in the applicable legislation?

Decision: Unless expressly provided for in the legislation, the time for service extends to midnight of the day in question. In this case, s. 34(19) of the Planning Act does not provide for a time for service.

Application: When notices are required to be filed by a certain date, it is important to check the legislation to see if it provides for a time and method for service. Subject to what you find, appellants may have until midnight to file and municipalities should ensure that no late-arriving appeals were received before issuing a building permit. Of course, a better course of action for appellants is to ensure that all notices are filed in a timely manner so that these arguments don't have to be made.

Jeff Crannie practices municipal law and civil litigation. He may be reached at (519) 886-3340 or by e-mail at jrc@kwlaw.net.

Our Firm Profile

White Duncan, Ostner & Linton LLP is one of the oldest law firms in Ontario. In 1861, when Ontario was still Canada West and Waterloo was a small village, the law office of Frederick S. McGashaen was established. From that beginning, the firm grew to serve the needs of the community. Firm partners, such as A.B. McBride, Q.C., Walter McGibbon, Q.C. and William H. White, Q.C. have been leaders in Waterloo's business, legal and political life.

As Waterloo grew from village to town to city, the firm not only increased in size, but it developed the expertise required to serve its clients' needs. The firm offers a full range of legal services, with a focus on municipal and planning law and corporate/commercial litigation fields. Our modern offices have advanced computer and communications facilities, and our professional staff work with clients not only in Waterloo Region and southern Ontario but throughout North America and Europe. The firm's lawyers remain community leaders and serve their profession with distinction. The loyalty of its clients is the firm's proudest asset.

Throughout 142 years (and a number of name changes) the firm has provided sound legal advice supported by prompt, effective and responsive service to our clients. We would welcome the opportunity to assist you with your municipal and planning law needs.

The Lawyers of our Firm

William H. White B.A., LL.B., Q.C.

Nationally recognized as a leader in the field of municipal and planning law, Bill White began to practise with the firm in 1962, after graduating from Osgoode Hall Law School. Bill gives leadership to the firm as its senior partner. He is a member of the Advocates Society and a former secretary-treasurer and trustee of the Waterloo Law Association. A former local president of the Canadian Arthritis & Rheumatism Society and Chairman of the Kitchener-Waterloo Hospital Commission, this leading citizen has been recognized in Who's Who in Canadian Law and Who's Who in the Commonwealth. He advises and represents the City of Waterloo and several towns and townships, as well as other public bodies, community developers and individuals.

Irwin A. Duncan B.A., LL.B.

Irwin began his law practice with the firm in 1972 after graduating from Osgoode Hall Law School and completion of articling at a prominent Toronto law firm. He specializes in the areas of corporate and commercial law, with expertise in the fields of insolvency, construction liens and commercial litigation. He has taught law courses at Wilfrid Laurier University, the University of Waterloo and Conestoga College, and is a recognized authority in his field.

As a licensed pilot he maintains a keen interest in aviation matters. He has been active in the Waterloo Rotary Club, Junior Achievement of Kitchener-Waterloo and the Waterloo-Guelph Regional Airport Commission of which he is a past chairman. He is also a director and officer of several corporations.

Albert L. Ostner (1947-2002)

Al Ostner practised municipal and planning law with the firm from 1974 until his untimely passing in 2002. Al served his clients with passion and integrity and his contributions are missed by colleagues and clients alike.

J. David Linton B.A., LL.B.

David has degrees in economics and law from the University of Western Ontario. He has practised corporate and commercial litigation with the firm since 1978. A broad range of corporate clients attest to David's excellence as a corporate counsel. He is currently the Vice-Chair of the Board of Directors and the Director in charge of corporate governance for a major Canadian public corporation. He has also taught law courses at Wilfrid Laurier University and Conestoga College. He has special expertise in the areas of secured transactions, construction law and corporate governance and frequently acts on behalf of municipal clients.

Darrell N. Hawreliak B.B.A. (Hons.), J.D.

Darrell is a graduate of Wilfrid Laurier University and the University of Toronto Law School. Darrell began his legal practice prosecuting a wide variety of civil cases and defending personal

injury and product liability cases on behalf of a major Canadian insurer. He joined the firm in 1989 and, in addition to continuing his civil litigation practice with a focus on municipal law, his practice now includes Ontario Municipal Board, Workplace Safety and Insurance Board as well as Occupational Health and Safety matters, employment law and the enforcement, prosecution and defence of Building Code, by-law and regulatory offences. Currently he is Treasurer of the Waterloo Law Association and Chair of its Library Committee.

Steven J. O'Melia B.A., LL.B.

Steven received a degree in economics from the University of Western Ontario and a law degree from Queen's University. He articulated with a major Toronto law firm and joined that firm's municipal and planning law department after his call to the bar in 1991. He later accepted in-house legal appointments with the City of Scarborough and the Town of Markham. In 1996, he became the Director of Litigation for the Regional Municipality of York. Steven has a certificate in Alternative Dispute Resolution from Harvard University and has completed the course work toward his Master of Laws degree at Osgoode Hall Law School. He is the editor of an upcoming edition of municipal law precedents for Butterworths Canada. Steven has appeared regularly before administrative tribunals such as the Ontario Municipal Board and the Assessment Review Board and before all levels of Ontario Courts.

David M. Steele B.Sc., M.B.A., LL.B.

David was called to the Bar in Ontario in 1991 and has been at the firm since 1993. After graduating from the University of Toronto with a degree in engineering, he completed the joint LL.B./M.B.A. program at McGill University. His practice concentrates predominantly on business clientele including a major Canadian insurance company dealing with such issues as professional negligence, breach of contract, employment law and debtor-creditor disputes.

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Michael received his undergraduate degree in economics from Wilfrid Laurier University and his law degree from the University of Toronto Law School. After being called to the Bar in 1997, he practised with a Hamilton law firm. Michael joined the firm's litigation group in 1999 where he practises commercial litigation with a focus on construction litigation, employment law and insolvency matters.

Jeffery R. Crannie B.A., LL.B.

Jeffery articulated with the firm in 2001-2002 and, after being called to the Bar, joined the firm's litigation group as an associate. He received his undergraduate and law degrees from the University of Western Ontario. Jeffery practises general litigation and administrative law, specializing in municipal law matters.
