

CITATION: York Mills Heights Residents Assn. Inc. v. Committee of Adjustment, Rondinone,
2013 ONSC 6690
DIVISIONAL COURT FILE NO.: 302/13
DATE: 20131025

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
HIMEL, SACHS AND WARKENTIN JJ.

BETWEEN:)	
)	
YORK MILLS HEIGHTS RESIDENTS)	<i>Ian Flett</i> , for the Applicant
ASSOCIATION INC.)	
)	
Applicant)	
)	
– and –)	
)	
COMMITTEE OF ADJUSTMENT (CITY)	<i>Diana Dimmer and Alison E. Barclay</i>
OF TORONTO), FRANK RONDINONE)	for the Respondent, Committee of
and MARIA PANETTA)	Adjustment (City of Toronto)
)	
Respondents)	
)	HEARD at Toronto: October 25, 2013

HIMEL J. (ORALLY)

[1] York Mills Heights Residence Association Inc. (“the Applicant”) applies for an order of *certiorari* to quash the decision of the Committee of Adjustment (“the Committee”) dated June 19, 2013.

[2] York Mills Heights is a ratepayers’ association which is concerned with planning in the York Mills Heights area in Toronto. The Committee of Adjustment is an administrative tribunal which may authorize minor variances from provisions of zoning by-laws affecting land, if the Committee is of the view the general intent and purpose of the by-law and official plan are maintained.

[3] Frank Rondinone and Maria Panetta are the owners of property at 77 Mason Blvd., Toronto. They applied to the Committee of Adjustment for a minor variance to allow them to build a third-storey addition and made a concurrent application for additional lot coverage. The application was refused on December 13, 2012. The owners did not appeal the December 13, 2012 decision to the Ontario Municipal Board (“the OMB”) within the time frame of twenty days.

[4] The owners then made another application to the Committee of Adjustment in relation to the third-storey addition. At the June 19, 2013 Committee Hearing, the applicant made submissions urging the Committee to dismiss for lack of jurisdiction. The Committee refused without reasons and heard the application. In their Decision dated June 19, 2013, the Committee refused the 2013 application for a minor variance. There is a statutory right of appeal to the OMB and the owners appealed to the OMB on July 4, 2013. Their hearing is scheduled for January 2014.

[5] The applicant asks that the Committee Decision be quashed because the Committee lacked jurisdiction to hear the second application and did not give reasons for accepting jurisdiction.

[6] In our view, the law is clear that, absent exceptional circumstances, a party must exhaust any available adequate alternative remedies within the administrative process before seeking judicial review: (See *Toth Equity Ltd. v. Ottawa (City)*, [2011] O.J. No. 2128 (C.A.)).

[7] The parties have launched an appeal to the OMB and are awaiting their hearing. The applicant submits that the following exceptional circumstances apply:

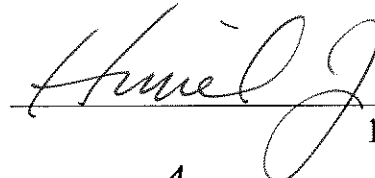
- (i) Section 45(17)(a)(i) of the *Planning Act*, R.S.O. 1990, c. P.13 (“the Act”) gives the Board the jurisdiction to dismiss appeals that do not disclose apparent land use planning grounds. The problem with this submission is that there is no suggestion that in this case the Board will choose or has chosen to exercise that discretion.
- (ii) Since, according to the Applicant, the Committee of Adjustment had no jurisdiction to entertain the second application, the OMB is also without jurisdiction to entertain an appeal.

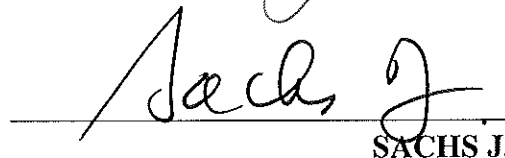
[8] However, the applicant will have an opportunity to make jurisdictional arguments before the Board. As the applicant concedes, the Board has jurisdiction to decide these questions.


[9] We do not see this case as an extreme situation where the discretion that must be exercised sparingly should be exercised in this case as there is an appeal process: (See *Ackerman v. Ontario (Provincial Police)*, [2010] O.J. No. 738 (Div. Ct.) at para. 19).

[10] Accordingly, the application for judicial review is dismissed. No order as to costs.

[11] I have endorsed the Record, "For oral reasons given, the application for judicial review is dismissed. As agreed, there will be no order as to costs."


HIMEL J.


SACHS J.


WARKENTIN J.

Date of Reasons for Judgment: October 25, 2013

Date of Release: NOV 4 2013

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Applicant

– and –

COMMITTEE OF ADJUSTMENT (CITY OF
TORONTO), FRANK RONDINONE and MARIE
PANETTA

Respondents

ORAL REASONS FOR JUDGMENT

HIMEL J.

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