

1962
 *May 16, 17
 June 25

THE WHITEHOUSE PROPERTIES }
 LIMITED (*Applicant*) } APPELLANT;

AND

M. DIMITRI, Building Inspector, and }
 THE CORPORATION OF THE } RESPONDENTS.
 TOWN OF LEASIDE }

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Municipal corporations—Mandamus application to require issuing of building permit—By-law passed exempting property from provisions of certain previous by-laws—Approval of by-law refused by Municipal Board—By-law not effective until approved by Board—Refusal to issue permit justified.

The appellant sought an order of *mandamus* directed to the respondent D, building inspector of the Town of Leaside, requiring him to issue a permit for the construction of a building on certain lands in the municipality in accordance with plans and specifications complying with the requirements of by-laws 1550 and 1551 of the municipality. D refused to issue the permit on the grounds that the plans and specifications did not comply with by-law 1711, as amended by by-law 1740. Prior to the approval by the Ontario Municipal Board of by-laws 1711 and 1740, the municipality passed by-law 1748, as a result of negotiations between the appellant and officers of the municipality which took place after the enactment of by-laws 1711 and 1740 but prior to their approval by the Board. Subsequently, the Board refused to approve by-law 1748 and it was later repealed.

The appellant contended that the approval of by-laws 1711 and 1740 could not affect appellant's lands because prior to that approval those lands had been removed from the scope of by-laws 1711 and 1740 by by-law 1748 and that therefore its rights fell to be determined under by-laws 1550 and 1551. The application for a *mandamus* was dismissed by the chamber judge and an appeal from his judgment was dismissed by the Court of Appeal. The appellant then appealed to this Court.

Held: The appeal should be dismissed.

The words of clause 2 of by-law 1748 were clear and unambiguous and enacted that no part of the by-law should take effect until approved by the Board, an event which never happened. The conclusion that the by-law never took effect in whole or in part was sufficient to dispose of the appeal.

APPEAL from a judgment of the Court of Appeal for Ontario¹, affirming a judgment of Wilson J. which dismissed the appellant's application for a *mandamus*. Appeal dismissed.

H. E. Manning, Q.C., for the appellant.

*PRESENT: Kerwin C.J. and Cartwright, Abbott, Judson and Ritchie JJ.

¹[1962] O.R. 390, 32 D.L.R. (2d) 417.

Royce H. Frith, for the respondents.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an appeal from the judgment of the Court of Appeal for Ontario¹ pronounced on January 31, 1962, affirming a judgment of Wilson J. dated October 16, 1961, which dismissed the appellant's application for a *mandamus*.

1962
WHITE-
HOUSE
PROPERTIES
LTD.
v.
DIMITRI AND
TOWN OF
LEASIDE
—

The appellant sought an order of *mandamus* directed to the respondent Dimitri, building inspector of the Town of Leaside, requiring him to issue a permit for the construction of an apartment house on certain lands situate on the east side of Bayview Avenue in the Town of Leaside in accordance with plans and specifications complying with the requirements of by-laws 1550 and 1551 of the Town of Leaside, which the appellant alleged were the by-laws governing such site.

The respondent Dimitri refused to issue the said permit on the ground that the plans and specifications did not comply with by-law 1711, as amended by by-law 1740 of the Town of Leaside, which had been approved on the 6th day of May, 1960, by the Ontario Municipal Board.

Prior to the approval of by-laws 1711 and 1740, the Council of the Town of Leaside had passed by-law 1748 on May 2, 1960, as a result of negotiations between the appellant and officers of the Town of Leaside which took place after the enactment of by-laws 1711 and 1740 but prior to their approval by the Ontario Municipal Board.

The appellant has contended throughout that the approval of by-laws 1711 and 1740 by the order of May 6, 1960, could not affect the appellant's lands because prior to that approval those lands had been removed from the scope of by-laws 1711 and 1740 by by-law 1748 and that therefore its rights fell to be determined under by-laws 1550 and 1551.

It is common ground that the plans submitted by the appellant do conform to the requirements of by-laws 1550 and 1551 but do not conform to those of by-laws 1711 and 1740.

¹ [1962] O.R. 390, 32 D.L.R. (2d) 417.

1962 { WHITE- HOUSE PROPERTIES LTD. v. DIMITRI AND TOWN OF LEASIDE — Cartwright J. —	It will be convenient to tabulate the dates of the relevant events.	
	June 4, 1956.	By-law 1550 was passed.
	July 9, 1956.	By-law 1551 was passed.
	(Both of these by-laws were approved by the Ontario Municipal Board; the exact date of approval is not material.)	
	October 19, 1959.	By-law 1711 was passed.
	March 7, 1960.	By-law 1740 was passed.
	May 2, 1960.	By-law 1748 was passed.
		Order made by Ontario Municipal Board approving by-laws 1740 and 1711.
May 20, 1960.	Application for permit made by appellant.	
July 12, 1960.	Ontario Municipal Board refused to approve by-law 1748.	

On a date after July 12, 1960, which is not fixed in the record by-law 1748 was repealed.

Subsequent to July 12, 1960, further attempts were made by the appellant both before the Council and the Ontario Municipal Board to obtain a by-law or order requiring the granting of a permit; they were unsuccessful and do not affect the question before us.

By-law 1748 reads as follows:

The Council of the Corporation of the Town of Leaside enacts as follows:—

1. Notwithstanding the provisions of By-law 1711 as amended by By-law 1740, the provisions of the said by-law, as so amended, shall not apply to the following lands:—

Lots 606, 607, 608 and 609, Plan 3110, known as 903, 905 and 907 Bayview Avenue, Town of Leaside, provided that any building or structure erected on the said lands complies with the plans on file with the Building Inspector identified by Plan No. 6021 dated March 1960, and initialled by E. J. Brisbois, Chairman of the Planning Board.

2. No part of this by-law shall take effect until approved by the Ontario Municipal Board but subject to such approval this by-law shall take effect from the date of passing thereof.

PASSED and ENACTED this 2nd day of May, A.D. 1960.

The lands described in paragraph 1 of the by-law are those of the appellant on which the building described in the application for permit was proposed to be erected. The application for permit submitted by the appellant complied with the plans mentioned in paragraph 1 of this by-law.

By-law 1711 and 1740 were passed pursuant to the powers conferred on the Council by s. 30 of *The Planning Act*, R.S.O. 1960, c. 296 (or its predecessor).

1962
 WHITE-
 HOUSE
 PROPERTIES
 LTD.
 v.

Subsections (9) and (10) of s. 30 read as follows:

(9) No part of any by-law passed under this section comes into force without the approval of the Municipal Board, and such approval may be for a limited period of time only, and the Board may extend such period from time to time upon application made to it for such purpose.

DIMITRI AND
 TOWN OF
 LEASIDE

Cartwright J.

(10) No part of any by-law that repeals or amends a by-law passed under this section or a predecessor of this section and approved by the Municipal Board comes into force without the approval of the Municipal Board.

It is submitted for the appellant that on the date by-law 1748 was passed by-laws 1711 and 1740 had not been approved by the Board and the Council was free to amend them in any way it saw fit; reference is made to *The Interpretation Act*, R.S.O. 1960, c. 191, s. 27(g) which reads:

(g) where power is conferred to make by-laws, regulations, rules or orders, it includes power to alter or revoke the same from time to time and make others;

There is no doubt that this is so. The argument proceeds, that, as prior to May 6, 1960, by-laws 1711 and 1740 had been further amended by by-law 1748 so as to exclude the lands of the appellant from their operation, the order of the Board purporting to approve them as they read prior to the enactment of by-law 1748 was ineffective either *in toto* or, at all events, as regards the appellant's lands.

The first point to be considered in the examination of this argument is whether by-law No. 1748 came into force in whole or in part prior to the approval of by-laws 1711 and 1740 on May 6, 1960, and the question whether it did so is one of construction. It is argued for the appellant that the first part of clause 1, reading as follows:

Notwithstanding the provisions of By-law 1711 as amended by By-law 1740 the provisions of the said by-law, as so amended, shall not apply to the following lands:

Lots 606, 607, 608 and 609, Plan 3110, known as 903, 905 and 907 Bay-view Avenue Town of Leaside

is severable from the remainder of the by-law and should be regarded as unaffected by clause 2. It is pointed out that the portion of clause 1 reading as follows:

provided that any building or structure erected on the said lands complies with the plans on file with the Building Inspector identified by Plan No. 6021 dated March 1960, and initialled by E. J. Brisbois, Chairman of the Planning Board.

1962
WHITE-
HOUSE
PROPERTIES
LTD.
v.
DIMITRI AND
TOWN OF
LEASIDE
Cartwright J.

while in form a proviso is in substance an enacting clause which would require the Board's approval and it is suggested that the draftsman inserted clause 2 of the by-law to cover this clause but not to cover the first part of clause 1 and that accordingly clause 2 should be construed as being limited in its operation to that part of clause 1 last quoted.

I find myself unable to agree with this argument. The words of clause 2 of the by-law appear to me to be clear and unambiguous and to enact that no part of the by-law shall take effect until approved by the Board, an event which never happened. On this matter of construction I agree with Wilson J. and with Laidlaw J.A. who delivered the unanimous reasons of the Court of Appeal. It is unnecessary to consider whether the Council was required by law to so provide as it appears to me that it saw fit to do so.

The Ontario Municipal Board Act contemplates a municipality making voluntary applications to the Board for approval of its by-laws. Section 53(1)(b) provides:

53(1) The Board has jurisdiction and power in relation to municipal affairs, . . .

(b) to approve any by-law or proposed by-law of a municipality, which approval the municipality voluntarily applies for or is required by law to obtain;

The conclusion that by-law 1748 never took effect in whole or in part is sufficient to dispose of the appeal.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Manning, Bruce, Paterson & Ridout, Toronto.

Solicitors for the respondents: Magwood, Frith & Casey, Toronto.