

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

The Corporation of the City of Sarnia

Applicant

– and –

Trustees of River City Vineyard Christian
Fellowship of Sarnia

Respondent

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) Joe Hoffer and Laura M. McKeen, for the
) Applicant

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) Murray Klippenstein and Kent Elson, for the
) Respondent

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) HEARD: October 10 and 11, 2013

CAREY J.:

Overview

- [1] This is an application for an injunction by the Corporation of the City of Sarnia (“the City”), to prohibit the respondent, Trustees of River City Vineyard Christian Fellowship of Sarnia (“RCV”), from continuing to operate a men’s shelter contrary to the City’s Zoning By-law. RCV has been operating the men’s shelter pursuant to temporary permissions from the City since early November 2006.
- [2] RCV says they were misled by the City and invested over \$100,000 to comply with various requirements to bring the shelter up to acceptable standards. RCV says that they never required the City’s re-zoning because the work of the shelter was auxiliary to their work as a church. In the alternative, they argue that their right to religious freedom has been violated by the Zoning By-law. In essence, they argue that their religious beliefs require them to help their fellow man; that the running of the shelter is an expression of their legitimate and conscientiously held religious beliefs. They argue that to prevent them from operating the shelter violates their constitutionally guaranteed religious freedom.

- [3] The City says that RCV was happy to comply with the City's direction until they lost an application for permanent zoning to allow for the shelter.
- [4] For reasons set out as follows, I accept the City's argument and an injunction will issue. I reject that the City has acted in an unfair manner towards the church and I do not agree that the City has violated a *Charter*-protected right of the congregation.

Facts

- [5] The respondent church has been operating a men's shelter in Sarnia since November 6, 2006. Three days after opening the shelter, the City advised RCV that the shelter operation was not a permitted use under the Zoning By-law. After discussions with the City, there was approval for a temporary zoning for the shelter for a maximum of 26 months. This "temporary use By-law" was passed pursuant to s. 344 of the Zoning By-law and s. 39 of the *Planning Act*, R.S.O. 1990, c. P.13. The intention, the City contends, was to provide time for the community to plan, develop and locate permanent emergency shelter within the community. Reverend George Esser's evidence was that during the operation of the temporary use By-law, RCV spent approximately \$100,000 renovating and designing the basement at 260 Mitton so that it would comply with the City's applicable billing standards.
- [6] The temporary use By-law was set to expire in 2009 but, as the review process applicable to the community emergency shelter was not completed, the church applied for and was granted an extension of the temporary use By-law for a maximum of 12 months as recommended by the Planning and Building Department. This extension and the previous temporary use By-law were not appealed.
- [7] In September 2010, the County of Lambton opened a permanent homeless shelter, the Inn of the Good Shepherd Lodge ("the Lodge"), and thus the extended use By-law was due to expire in September 2011, one year later. Consequently, RCV submitted another re-zoning application seeking re-zoning to permit its permanent use of the building as a homeless shelter.
- [8] Following a public meeting and submissions from local residents, the council denied the application based primarily on the opening of the Lodge and a finding that the continued use of the Mitton address as a shelter would have a negative impact upon the neighbourhood. RCV filed an appeal of council's denial on November 14, 2011, to the OMB. This appeal was withdrawn on April 3, 2012, and the position of the applicant is that the decision of council became final and binding upon that withdrawal. On June 12, 2012, the City council approved a motion to notify RCV that they were operating the shelter in contravention of the Zoning By-law and that if they were absent voluntary compliance by the end of July of that year, the City would file an application in Superior Court to force compliance. RCV continues to operate the homeless shelter to date.

Legal Principles

- [9] The principle statutory framework for regulating land use in Ontario is the *Planning Act*. Purposes of the *Planning Act* are set out in s. 1.1 of the *Planning Act*:
- (i) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
 - (ii) to provide for a land use planning system led by provincial policy;
 - (iii) to integrate matters of provincial interest in provincial and municipal planning decisions;
 - (iv) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
 - (v) to encourage co-operation and co-ordination among various interests;
 - (vi) to recognize the decision-making authority and accountability of municipal councils in planning.
- [10] Under the *Planning Act* processes for provincial and municipal development and re-development are established including official plans and zoning by-laws.
- [11] The Provincial Policy Statement 2005, the County of Lambton's official plan and the City of Sarnia's official plan, together established a policy-based framework used for decision making involving land use planning within the City of Sarnia. These documents set out in general terms the land use planning goals and objectives. The zoning by-laws of the City are specific documents regarding land use planning commission. The regulations that are part of those zoning by-laws are designed to implement planning policy and set out permissions as needed for use of parcels of land. These zoning by-laws of the City of Sarnia were enacted under s. 34 of the *Planning Act* and under the Zoning By-law no building within the City of Sarnia can be used in whole or in part except in conformity with the uses allowed under the Zoning By-law (*Planning Act*, s. 34 "Zoning By-laws", s. 67 "Penalty").
- [12] The Zoning By-law contains definitions, the following which are pertinent to this application:
- "ACCESSORY" shall mean a use or building subordinate, incidental and exclusively devoted to the main use, building, or structure located on the same lot therewith.
- "CHURCH (PLACE OF WORSHIP)" means a building used by a religious organization for public worship and church-sponsored

community activities and projects, and may include as accessory uses a rectory or manse, church hall, day nursery or religious school, offices, but shall not include a soup kitchen or food bank, unless otherwise permitted by this By-law.

“EMERGENCY SHELTER” means a supervised temporary residence comprised of beds arranged in a dormitory or traditional dwelling unit arrangement for persons in a housing crisis and in immediate need of emergency short-term shelter until alternative permanent housing accommodations can be obtained.

“TEMPORARY USE” means a use permitted for a temporary period by By-law passed under Section 39 of the *Planning Act*.

“USE” where it appears as a noun, means the purpose for which a lot, building or structure, or any combination thereof is designed, arranged, occupied or maintained.

- [13] The definitions set out in s. 2 of the Zoning By-law apply unless the context requires otherwise. The By-law provides where a term is not defined, its common usage shall apply (s. 1.3 “Interpretation” and s. 2 “Definitions”).

Issues and the Law

Is RCV operating the shelter at 260 Mitton in contravention of the zoning by-law?

- [14] I find that the homeless shelter does not conform to the permitted use regulations of the URI-27 zone. It is not a church and, in my view, is not included as a church sponsored community activity given the prohibition in the definition of soup kitchens and food banks. I agree with the applicant that these specific prohibitions illustrate the intent of the Zoning By-law to narrowly prescribe the range of activities which constitute church use.
- [15] RCV physically altered the basement of the church facility at 260 Mitton at an estimated cost of \$100,000 to accommodate its use as a homeless shelter operation. In applying the word “use” as it appears in the By-law definition section, it is clear that church sponsored community activities do not constitute a purpose for the way the building was “designed, arranged, occupied or maintained”.
- [16] I do not find the use of this property as a homeless shelter falls within the accessory uses permitted in the By-law. Clearly, this shelter is not incidental and exclusively devoted to the main use of the building, that of a church.
- [17] While the church may regard a homeless shelter as an extension of their spiritual mission, in my view, legally, it fits into the definition in the By-law of “emergency shelter”.
- [18] In conclusion, it is clear to me that the use of this church facility’s basement as a homeless shelter was always in contravention of the clear intention and meaning of the Zoning By-law. I find that at no time did the RCV have permission on a permanent basis

to operate a shelter and I find that they were not entitled under the By-law to operate the shelter except on a temporary basis under the permission granted by council. It is clear to me that the church was completely prepared to operate the shelter on a temporary basis and expend \$100,000 with the permission of the City in the hope that the shelter would become established and accepted in the neighbourhood allowing for approval in the future of a permanent re-zoning application. I find that this was a strategic decision. I am not persuaded that the City enticed RCV to apply for temporary zoning with false promises.

Does the Zoning By-law and its Enforcement Infringe RCV's Freedom of Religion?

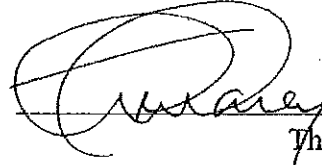
- [19] The Supreme Court of Canada has held that s. 2(a) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, protects not only a person's religious beliefs, but their right to act on his or her beliefs where that practice has a nexus with their religious beliefs. It is not disputed by the City that the congregation of RCV have a sincere belief in their religious obligation to feed and shelter the poor and homeless at 260 Mitton. But RCV must also show that the By-law interferes with their religious obligations in a way that is more than "trivial or insubstantial interference". The *Charter* does not require legislation to refrain from imposing any burdens on the practice of religion (see *Syndicat Northcrest c. Amselem*, 2004 SCC 47, 2004 CarswellQue 1543 (S.C.C.)).
- [20] In my view, the application of the By-law in this case is similar to that in *Milton (Town) v. Smith*, 1986 CarswellOnt (Ont. H.C.J.). Here, as in *Milton*, the congregation would be free to carry on the operation of the shelter in a zoned location. Thus, the restriction is on the location of the shelter, not on the congregation's ability to operate one. As well, the guarantee of freedom of religion should apply not only to the congregation of RCV, but to the citizens as a whole of the City of Sarnia. They have the right to be free from the imposition of the religious beliefs of the respondents if those beliefs infringe on their ability to plan and regulate land use in their municipality. Freedom of religion should not extend to permit an individual or congregation to remove themselves from the operation of a lawful mandatory legislative regime that was enacted for appropriate planning purposes and conceived in a way completely neutral to religious beliefs.
- [21] RCV or any religious organization is not prohibited from believing in their obligation to do good works as part of their religious belief. However, good works are hardly the exclusive domain of religious organizations. To allow any individual or organization to operate outside properly enacted zoning legislation and related by-laws in the name of doing "good works" would render such legislation virtually unenforceable and would involve an imposition of another's concept of their religious mandate on the community as a whole in violation of the clearly expressed wishes of the community in relation to planning order. Consideration must also be given to s. 15 of the *Charter* that guarantees all individuals the right to "the equal protection and equal benefit of the law" without discrimination based on religion amongst other reasons. Individuals living near the shelter location have a right to expect that zoning by-laws will be enforced in respect of everyone.

- [22] I have reviewed the American court decisions relied on by the respondents in support of their position that zoning by-laws prohibiting shelters or soup kitchens in churches violate religious freedoms. I am not persuaded that s. 2 of the *Charter* is analogous to the *Religious Freedom Restoration Act* that has been applied in the American cases. I do not find those cases helpful to this situation and have not relied upon them.
- [23] Furthermore, I do not find that restricting the uses of a church building is similar to banning prayer or the celebration of religious services. The church has failed to persuade me that there is a substantial infringement of the congregation's freedom of religion by the enforcement of legitimately motivated planning legislation.
- [24] For the preceding reasons, I find that any interference with the beliefs of the respondents is trivial and insubstantial.
- [25] The City has not questioned the sincere motivation of the Trustees of River City Vineyard Christian Fellowship of Sarnia. It is clear from the material before me on this application that good has come from the work done at the Mitton St. shelter and lives have been positively changed. Most of the neighbours closest to the shelter supported its continuance. Even those opposed to the rezoning did so based on the shelter location and its impact on the existing community in that location.
- [26] My decision is based on confirming that the zoning by-laws apply equally to all, even those on the 'side of the angels'. It is not a rejection of the values or sincere efforts of the congregation and the Trustees of the church. Good works allowed for under the Zoning By-law may continue.
- [27] Accordingly, I order as follows:
- a) RCV's request for declaration that City of Sarnia Zoning By-law No. 85 infringes the rights of River City's members under s. 2(a) of the *Charter* is dismissed;
 - b) There will be a declaration that the operation of a homeless shelter on the property located at 260 Mitton St. N., Sarnia, is in contravention of the City of Sarnia By-law No. 85 of 2002.
 - c) A permanent injunction prohibiting the respondents from operating a homeless shelter on the property located at 260 Mitton St. N., Sarnia, will issue effective June 15, 2014 to allow for the orderly transfer of residents of the shelter to other residences.

Costs

- [28] I have received cost submissions from both parties. I have found the church's position that good works are part of their theological mandate to be sincerely held. The City has conceded that point. The church is a charitable enterprise and has invested over \$100,000 into the shelter which has done much good. There was a novel legal issue here that was not frivolous and the church was relying on case law from neighbouring American

jurisdictions that gave support to their position. The City has presumably much greater resources than the church and if not awarded their costs, although successful, will not be substantially disadvantaged. In the circumstances, both parties will be responsible for their own costs.

A handwritten signature in black ink, appearing to read "T. Carey", written over a horizontal line.

Thomas J. Carey
Justice

Released: March 13, 2014

CITATION: Corporation of the City of Sarnia v. Trustees of River City, 2014 ONSC 1572
COURT FILE NO.: 6946/13 (Sarnia)
DATE: 20140313

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REASONS FOR JUDGMENT

Carey J.

Released: March 13, 2014