

CITATION: Paisley & Whitelaw Inc. v. The Chief Building Official of the City of Guelph, Jeremy Laur
2025 ONSC 4501
COURT FILE NO.: CV-25-00000025-0000
DATE: 2025 08 01

2025 ONSC 4501 (CanLII)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)
)
PAISLEY & WHITELAW INC.) James Wortzman, Catherine Allen,
) and Jennifer Meader,
) for the Applicant
Applicant)
)
- and -)
)
)
THE CHIEF BUILDING OFFICIAL) Jacob Damstra, for the Respondent
OF THE CITY OF GUELPH,)
JEREMY LAUR)
)
Respondent)
)
) **HEARD: July 14, 2025**
)
)

REASONS FOR JUDGMENT

Fowler Byrne J.

[1] The Applicant Paisley & Whitelaw Inc. (P&W), is a developer of a residential condominium project in Guelph, named West Peak Project (“West Peak”).

According to the most recent approved site plan, West Peak is to be comprised of three residential towers and a 2.5 story parking structure.

[2] West Peak is almost complete. Three residential buildings have been built. All but 31 units in Buildings A and B are occupied. 92 of the 138 units in Building C are occupied.

[3] This Application has been brought because West Peak is at a stand-still. P&W want to sell the remainder of the units before it builds the parking structure. The Respondent, the Chief Building Official for the City of Guelph Jeremy Laur (“CBO”), states that there is insufficient parking on site to accommodate any further occupancy permits, if West Peak is to remain compliant with the applicable zoning by-law on parking. The CBO states that if any further occupancy permits are issued, the building permit for Building C, which was issued on the basis that all applicable laws would be followed, could be revoked.

I. ISSUES

- [4] In order to resolve this dispute, the following questions must be determined:
- a) Did email communication sent by the CBO to P&W on December 4, 2023, and September 6, 2024, and subsequent verbal communication between the CBO and P&W constitute an “order or decision” within the

meaning of s. 25(1) of the *Building Code Act, 1992*, S.O. 1992, c. 23 (“*BCA*”)?

- b) If so, should P&W be granted an extension to the time allowed to appeal this “order or decision”?
- c) If an extension is granted, should I order that occupancy permits be issued if they are in compliance with the *BCA* only, and not with regard to any other applicable law?

II. WAS AN ORDER OR DECISION MADE?

[5] For the foregoing reasons, I find that the communications contained in the emails from the CBO dated December 4, 2023, and September 6, 2024, and related conversations, are not “orders or decisions” as contemplated by s. 25(1) the *BCA*. As such I have no jurisdiction in which to intervene and take any action as contemplated by s. 25(4) of the *BCA*.

A. Background

[6] At all materials times, the applicable zoning by-law in place in the City of Guelph required that for each of the first 20 units in the West Peak complex, 1.5 parking spots were required. For each subsequent unit, 1.25 parking spots were

required. This resulted in an aggregate requirement of 1.27 spots for every unit. This allowed for parking for both occupants and visitors.

[7] P&W's efforts to develop West Peak started in or around 2018. Various site plans were submitted for approval. Originally, it was thought that the residential buildings, or some of them, would have parking underneath. As it eventually transpired, construction of the residential towers, with no underground parking, proceeded first.

[8] From time to time over the course of this project, various Site Plan Approvals were granted. Each Site Plan specified the key elements of the project, including the buildings, roadways, parking, utility placements and other essential components.

[9] In this case, Site Plan Approval was granted for Buildings A and B on February 1, 2022. This Site Plan provided for parking that was in compliance with the zoning by-law. Following this approval, building permits for the superstructure of the towers were issued for Building A (June 29, 2022) and for Building B (May 2, 2023). Construction commenced.

[10] As occupancy for Building A approached, the issue of sufficient parking was raised by the City of Guelph. As early as July 31, 2023, an email was sent to

P&W's lawyer indicating that no one was responding to their inquiries about sufficient parking being available for the owners when they moved in.

[11] Mr. Schembri, the principal of P&W stated that in a conversation with a building inspector, he was advised that the *Ontario Building Code* ("OBC") did not require parking for occupancy and that he would not require it before issuing occupancy permits. On September 13, 2023, Mr. Schembri, wrote an e-mail to the building inspector wishing to confirm this discussion. In particular, he asked "can you also confirm our discussion that you agree we do not need temporary parking for the initial occupancies we will be achieving shortly. Obviously parking is required prior to final occupancies and condo registration." The building inspector never confirmed this information. Instead, on September 15, 2023, he confirmed that the OBC did not require parking to be provided to grant occupancy of a building, but the zoning department may proceed with further action if parking is not provided for its tenants.

[12] In November 2023, P&W's architects issued a partial occupancy report for Building A and concluded that it would be suitable for partial occupancy subject to inspections by the local authorities. It confirmed that in its opinion, Building A was compliant with the necessary provisions of the OBC.

[13] While the building inspector followed up on what needed to be completed in the building under the OBC, the CBO followed up with its own concerns. On December 4, 2023, the CBO emailed Melloul and Mr. Schembri and others and reminded them that in addition to the items listed by Mr. Malcolm, on-site parking is required to be provided in accordance with the zoning by-law and Site Plan Approval which formed the basis on which compliance with the applicable law was demonstrated and the building permit was issued. He continued,

If you request final inspections for occupancy or partial occupancy without the on site parking being provided in accordance with the Zoning By-Law and Site Plan Approval as demonstrated on the plans, specifications, documents and any other information on the basis of which a permit was issued as per 8. (13) of the Building Code Act (“the Act”), then I will be revoking the permit in accordance with 8. (10) of the Act as it will have been issued on a mistaken, false or incorrect information.

Since the building permit will have been revoked, there will be no ability for us to grant occupancy without the on site parking.

We issued the permit on the basis that you would be compliant with applicable law under section 8. (2)(a) of the Act, however, the Partial Occupancy Report from aba architects inc dated Friday, November 24, 2023 (attached) does not include any on site parking and is not in compliance with applicable law and is therefore not acceptable

Please submit an updated Partial Occupancy Report from aba architects inc. to include on site parking in accordance with the Zoning By-law and Site Plan Approval for our review and then ensure that this on site parking and safe access to it is constructed prior to calling for occupancy or partial occupancy. [Emphasis in original]

(“December 4, 2023 Email”)

[14] P&W disagreed with the City's position, and they tried to find a solution. In order to move forward though, P&W constructed temporary surface parking on the site, to satisfy the parking needs for Building A. P&W advised the City on December 15, 2023, that 70 temporary parking spaces had been constructed onsite in accordance with the approved Site Plan, which was confirmed by the City's Zoning Department on December 22, 2023. Occupancy permits for all 105 units in Building A were issued between December 22, 2023 and February 23, 2024.

[15] The issue was avoided when Building B was approaching occupancy. When P&W was getting ready to request occupancy permits for Building B, it submitted an amendment to the Site Plan to expand the temporary parking, expanding the temporary lot from 207 to 308 spaces, in addition to 27 other surface spaces. The amendment was granted on June 17, 2024. Occupancy permits were issued for 124 of the 138 units in Building B between June 21, 2024 and July 22, 2024.

[16] Meanwhile, on March 27, 2023, Site Plan Approval had been given for the second phase of the development, namely Building C and a stand-alone parking structure. It provided for 702 parking spaces: 27 surface parking spaces, 207 temporary parking spaces and 468 spaces in a parking structure. Based on this

Site Plan, the building permit for the superstructure of Building C was issued on October 1, 2023.

[17] On June 17, 2024, the City approved a red-line amendment to the Site Plan for Building C and the parking structure, expanding the temporary lot from 207 to 308 spaces. This was done by temporarily removing the proposed sport court. With this red line amendment, P&W proposed 803 parking spots – 27 surface, 308 temporary and 468 in the structure when it was completed.

[18] Difficulties arose as Building C was nearing completion. In July 2024, P&W applied to the City's Committee of Adjustment, seeking a reduction in the required number of spaces. It sought a temporary reduction in the required parking, from an aggregate rate of 1.27 spaces per unit, to 0.96 spaces per unit, and after construction to 1.1 spaces per unit. This request was deferred by the Committee of Adjustment and on August 28, 2024, P&W appealed that decision to the Ontario Land Tribunal ("OLT"). In their appeal, they ask the OLT to allow the reduction in parking spaces, as submitted to the Committee of Adjustment.

[19] The CBO, seeing that P&W had not even obtained the building permit for the Parking Structure, foresaw that the occupancy of Building C could be problematic, given the lack of parking spaces. Accordingly, on September 6, 2024, the CBO sent an email to P&W, Melloul and ABA, asking for an Occupancy or

Partial Occupancy report from ABA that included onsite parking as per the zoning by-law. It stated:

I understand that construction of Building C is progressing and so I wanted to proactively reach out with regards to occupancy.

As you know from our previous discussions over the past year on Buildings A and B, on site parking is required to be provided in accordance with the Zoning By-law and Site Plan Approval which formed the basis on which compliance with applicable law was demonstrated and the building permit was issued.

As has been done for Buildings A and B, prior to calling for the Final Building inspection please submit an Occupancy Report or Partial Occupancy Report from aba architects inc that includes on site parking in accordance with the Zoning By-law and Site Plan Approval for our review and then ensure that this on site parking and safe access to it is constructed prior to calling for final inspections for occupancy or partial occupancy of Building C.

.....

We are concerned about the residents being able to move in to Building C when expected and so that is the purpose of this proactive email, to be able to discuss this matter ahead of time. I'm sure given the previous discussions and challenges with Building A and B and the months of time to prepare for Building C that you have a plan in place and so we're just looking for that information.

However, as previously advised, I would just caution again that, if you request final inspections for occupancy or partial occupancy without the on site parking being provided in accordance with the Zoning By-law and Site Plan Approval as demonstrated on the plans, specifications, documents and any other information on the basis of which a permit was issued as per 8. (13) of the Building Code Act ("the Act"), then I will be revoking the permit for Building C in accordance with 8. (10) of the Act as it will have been issued on mistaken, false or incorrect information.

("September 6, 2024 Email")

[20] P&W took exception with the CBO's ability to revoke the building permit for Building C. Shortly thereafter, P&W submitted a Site Plan application to the City to revise the design of the parking structure. It would have a smaller footprint and

assumed parking at a rate of 1.1 spaces per unit. The City found various deficiencies in the proposed Site Plan, and it has not yet been approved.

[21] The appeal to the OLT was not argued until mid-January 2025. That decision is still on reserve. Given that P&W had purchasers who expected to occupy their units in Building C by the end of January 2025, this application was brought. At the first return date, being January 28, 2025, there was insufficient time to argue the application in full, so the parties agreed on a temporary order that the building permit not be revoked if P&W requested occupancy, that occupancy permits for a number of units that were not yet occupied in Building A and B would be rescinded, that parking will be available for all occupied units at a rate of 1.1 spaces per unit, that the City of Guelph conduct occupancy inspections within 48 hours of being requested, and that the available parking remain open and accessible. In accordance with these terms, occupancy inspections proceeded over the next week and occupancy permits were granted for 92 units in Building C by February 6, 2025.

[22] Given that the decision of the OLT is still under reserve, P&W cannot proceed to obtain occupancy permits for the remaining units in Building C, or obtain again the occupancy permits for Buildings A and B, unless they comply with the terms of the January 28, 2025 order that requires parking at a rate of 1.1 spaces

per unit. That would require approximately 43 more parking spaces to be made available, or an order of this court that the occupancy permits be issued, irrespective of parking.

B. Analysis

[23] P&W seeks a declaration that the December 4, 2023 Email and the September 6, 2024 Email are each an “order or decision” made by the CBO within the meaning of s. 25(1) of the *BCA*. As such, if they are aggrieved by that decision, they then have a right to appeal that decision to the Superior Court of Justice within 20 days.

[24] P&W argues that these two emails prevented them from even applying for occupancy permits because the repercussions of having their building permit revoked would be substantial. While not formally denying an occupancy permit, P&W argues that these emails demonstrate a clear decision on the part of the CBO to revoke the building permit if P&W moved forward with occupancy requests.

[25] The CBO argues that the two emails in question are, on their face, preemptive emails, written in the hope of avoiding a refusal of occupancy or the revocation of their building permit, but in no way constitute an order of decision within the meaning of s. 25(1) of the *BCA*.

[26] The CBO further argues that P&W has not yet requested the requisite final inspections or occupancy permit, and as a result, no final inspection has been carried out. With no final inspection, no decision has been made respecting the occupancy of Building C. Given that there is no decision or order that refuses occupancy for Building C, there is nothing to appeal.

[27] The interpretation of “order or decision” in s. 25(1) has already been canvassed by Justice Leach in *1353837 Ontario Inc. v. Pigozzo*, 2019 ONSC 2868. At paragraph 13, Justice Leach applies the principles of statutory interpretation, to determine the meaning of “decision” in s. 25(1). Relying on *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 599, at para. 26-27, he states that these words must be read in their entire context and in their grammatical and ordinary sense harmoniously within the scheme of the Act, the object of the Act, and the intention of the Legislature.

[28] In particular, Justice Leach confirmed that context is particularly important when interpreting the *BCA*, as it was intended by Legislature to be a complete code regarding the regulation of construction, maintenance and demolition of buildings or any material part thereof.

[29] In his analysis, Justice Leach stated,

...the rights of appeal provided in s.25(1) of the BCA are expressly limited to a decision “made” by a CBO, registered code agency or an inspector; i.e., an extant decision, relating to an established set of facts, in respect of which an official actually was called upon to make a determination pursuant to the BCA and did so. In that regard:

- No rights of appeal are granted in relation to possible or prospective *future* decisions, even when a CBO, registered code agency or an inspector goes so far as to indicate, in writing, his or her intentions as to how he or she is likely to decide if and when formally called upon to make such a decision.

.....

[30] Justice Leach continued, relying on the decision of *Caisse Populaire Nolin de Sudbury Inc. v. Greater Sudbury (City)*, [2007] O.J. No 778 (S.C.), at paras. 25-28, and stated that a mere indication by legal counsel of how a CBO intended to make a decision, if and when called on to do so, was not a “decision” under the *BCA* giving rise to any right of appeal pursuant to s. 25(1) of the *BCA*. He stated further that it made sense to limit appeals to decisions that have been made under the *Act*, in relation to precise and prevailing fact situations that effectively crystallized at the time officials were called upon to consider specific situations and make formal determinations pursuant to the *BCA*. He stated that the right of appeal conferred by s. 25(1) of the *BCA* does not permit appeals in relation to decisions that may or may not be made by a CBO in the future, even if the CBO provides an indication of what he or she may contemplate doing in that regard.

[31] P&W argues that it was not necessary to make the request for the occupancy inspection, so that the City could make the decision to refuse it or revoke the building permit before they could launch this appeal. They rely on the case of *Pedwell v. The Corp. of the town of Pelham* (2003), 174 O.A.C. 147 (C.A.). In *Pedwell*, a developer acquired a number of lots in an agricultural area by convincing the owner of the land to transfer the land to it through a testamentary devise, which at that time, allowed them to avoid the provisions of the *Planning Act* and the intent of the applicable zoning by-laws.

[32] When the developer applied for a building permit, the chief building official told the developer that approval from the Health Unit for a septic system was required first. Very soon thereafter, the Town determined that the development of 15 to 25 large lots would not be in the public interest. Accordingly, the chief building officer wrote to the developer and told him that the decision with respect to the permits had been deferred pending an evaluation of the impact on local, regional and provincial planning policies and legislation. They promised him a decision in approximately two weeks.

[33] Before the two weeks were up, the Town enacted a temporary by-law prohibiting any development on agricultural land. Later, they passed a further by-law making the minimum allowable lot larger than the lots the developer wished to

develop. The developer commenced an application before the Ontario Municipal Board (OMB) (as it was known then) to set aside the by-law and brought an appeal under s. 15 of the then *BCA*, (the predecessor to s.25) to review the decision to refuse to issue building permits.

[34] In his decision, the trial judge found that the septic tank permit was a condition precedent to a building permit. He further stated that to make the developer apply for septic tank before judicial review could be considered would be a travesty of justice. In this case, it was well known that no septic tank permit would be issued because the Health Unit was told about the Town's concerns about the legality of the lots. He found that the Town employees colluded so as to prevent the septic tank and the building permit to be issued. The judge found that the Town instructed the chief building officer to delay processing the applications for the building permits.

[35] The Town of Pelham appealed. While the Court of Appeal was not prepared to support a finding of collusion between the Health Unit and the Town, it found that the Town and the Health Unit did share the same view that the lots were illegal. The CBO was told to hold off on the permits.

[36] This case is distinguishable from the case before me.

[37] In *Pelham*, the trial judge also made a finding of bad faith on the part of the Town, and the appellate court did not disturb this finding. There is no bad faith here, and in fact it was not alleged. Here the City was not trying to prevent the issuing of occupancy permits at all costs but rather was trying to work with P&W preventively, so that they could issue the occupancy permits in a timely way. The City gave P&W advance notice of what would be required.

[38] Also, in *Pelham*, the developer applied for the building permit. He was told he needed a septic permit first. He never applied for the septic permit because an interim by-law was passed after he made this application, to prevent him from ever getting a permit. In the case before me, the City of Guelph is not taking any other steps, behind the scenes, to prevent the issuance of occupancy permits.

[39] P&W also relied on *Wolfond v. North York (City) Building Commissioner* (1990), 74 O.R. (2d) 466 (Dist. Ct.). In that case, the building commissioner refused to issue a building permit for the demolition of a home and the replacement by a larger home. This is another case where the Town, faced with a builder who has otherwise complied with all necessary steps to be issued a building permit, quickly passed a by-law prohibiting the construction of the home. The by-law was appealed to the OMB but had not yet been decided before the hearing of this matter. Shortly after the appeal was launched, the building commissioner refused

the building permit. The decision was appealed under s. 15 (the predecessor to s. 25 of the *BCA*). They asked the judge to find that the decision should be rescinded and a building permit issued. In that case, the court found that the administrative delay, between the request for a building permit (when all requirements had been satisfied) and the date the by-law was passed, should not be a reason to deny the builder to what it was otherwise entitled to.

[40] For our purposes, the important finding was that the court did not rely on the formal rejection of the building permit, which occurred after the appeal was launched. Rather, it relied on an “informal” decision given before hand, when the builder was advised that his permit would be ready in a “couple of days.” At the time of that informal decision, the builder was fully compliant with all the requirements and the by-law had not yet been passed. Accordingly, the court found that he should have been issued his building permit.

[41] The case before me is quite different. First of all, at no time was P&W ever told by the CBO that their occupancy permits were forthcoming. While the building inspector did not insist on parking in his communications, he was only advising with respect to OBC requirements. P&W was aware that the issue of sufficient parking had been a live issue since Building A was occupied. P&W knew that the City was insisting on parking in accordance with the zoning by-law, and it took the

necessary steps to provide that parking before it applied for occupancy permits for Buildings A and B. Nothing in the CBO's position has changed since then.

[42] Both parties also provided expert evidence on the various issues before the court, including what an "order of decision" is for the purposes of s. 25(1) of the *BCA*.

[43] Unfortunately, I do not find that their opinion evidence on this exigible issue is admissible. As stated in *R. v. Whatcott*, 2023 ONCA 536, at para. 32, opinion evidence is presumptively inadmissible. To consider this evidence, I must find that it is relevant, necessary to assist me, there is no exclusionary rule related to that evidence and the expert is properly qualified. In this case, I do not require opinion evidence to assist the court with an issue of statutory interpretation.

C. Conclusion

[44] In essence, it is P&W's position that the CBO had the option to not issue a building permit for Building C when insufficient parking would be available. By issuing the building permit, it argues that the CBO cannot now refuse occupancy because there is insufficient parking.

[45] Unfortunately, this position is not supported by the evidence. The most recent Site Plan showed both Building C and the parking structure, and was

compliant with the applicable zoning by-laws. P&W chose to construct Building C first. The CBO has no power over that choice and cannot be held responsible for it.

[46] For Building C, the City brought up the issue of parking several months before it anticipated receiving a request for occupancy permits to avoid this difficulty. P&W tried to find a solution before the Committee of Adjustment. It then sought relief through the OLT, with no success so far. Now P&W asks this court to force the CBO to issue occupancy permits when the OBC has been complied with, but not the zoning by-law with respect to parking.

[47] Unfortunately, having found that the CBO made no order or decision on the issue of occupancy permits for Building C, I have no jurisdiction to intervene.

III. CONTINUATION OF STATUS QUO

[48] Given my ruling on this Application, which is final, the interim order of January 28, 2025, is no longer in force. I recognize that this puts the parties in a difficult position given that occupancy permits have been issued for units where the parking is less than the required rate of 1.27 per unit. It would not be in anyone's interest for these occupancy permits be revoked, or that P&W be placed

in a position of default with respect to zoning, which would expose it to unnecessary penalties.

[49] Accordingly, given that the parties agreed to a temporary parking rate of 1.1 at the OLT (although terms of that variation have not been determined), I will keep that parking ratio in place until which time the OLT releases their decision. In the meantime, P&W should continue to work towards a building permit for the parking structure.

IV. CONCLUSION

[50] For the foregoing reasons, I make the following orders:

- a) Until which time the OLT releases its decision on the Applicant's appeal:
 - 1) Subject to the Applicant's compliance with the terms of this Order, the Respondent shall not revoke the Applicant's building permit for Buildings A, B or C, upon receipt of request by the Applicant for inspections required for occupancy or upon receipt of application for occupancy permits for units in Buildings A, B or C;

- 2) the Applicant shall ensure the current temporary parking lot will be open and accessible without barrier or prohibition, maintained on an ongoing basis (including but not limited to by undertaking any necessary repairs and attending to timely removal of ice and snow), and by organizing the parking spots in the temporary parking lot in a reasonable pattern of rows and aisles;
- 3) Upon receipt of requests, together with all necessary documentation and reports, by the Applicant for an occupancy inspection in respect of the remaining units in Buildings A, B, or C, for which the Applicant is seeking occupancy permits, the Respondent shall begin conducting occupancy inspections as soon as reasonably practicable;
- 4) Any requests for occupancy permits shall be considered on the basis that parking shall be provided at a rate of 1.1 spaces per unit;
- 5) the Applicant shall provide and maintain access to parking for all units for which occupancy permits are requested or issued

in Buildings A, B, and C, which parking shall be at a rate of no less than 1.1 spaces per occupied unit;

- b) The parties are encouraged to resolve the issue of costs between themselves; if they are unable, the Respondent is to serve and file its written costs submissions, limited to 3 pages, double spaced, plus its Bill of Costs and any Offers to Settle, on or before August 22, 2025; the Applicant will serve and file its written costs submissions, limited to 3 pages, double spaced, plus its Bill of Costs and any Offers to Settle, on or before September 12, 2025; reply submissions, if any, are limited to 2 pages double spaced, and shall be served and filed by September 26, 2025; and
- c) This Application is otherwise dismissed.

Fowler Byrne J.

Released: August 1, 2025

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SUPERIOR COURT OF JUSTICE

B E T W E E N:

PAISLEY & WHITE LAW INC.

Applicant

- and -

**THE CHIEF BUILDING OFFICIAL
OF THE CITY OF GUELPH,
JEREMY LAUR**

Respondent

REASONS FOR JUDGMENT

Fowler Byrne J.

Released: August 1, 2025