

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 24, 2025

CASE NO(S).: OLT-24-000670

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant:	Shophan Daniel
Subject:	Consent
Description:	To permit the conveyance of a parcel of land to create a new residential building lot and two new single detached dwellings
Reference Number:	AN/B-23:47
Property Address:	376 Philip Place
Municipality/UT:	Hamilton/Hamilton
OLT Case No.:	OLT-24-000670
OLT Case Name:	Shophan Daniel v. City of Hamilton

Heard: November 26, 2024 by video hearing

APPEARANCES:

Parties

Shophan Daniel

City of Hamilton

Giancarlo Fucile

Counsel/Representative*

Patrick Maloney

Patrick MacDonald

Leah Cummings
Ron Sebastian*

DECISION DELIVERED BY MICHAEL MENEZES AND A. MASON AND ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION

[1] This decision pertains to a one-day Merit Hearing of an appeal by Shopan Daniel (“Appellant”), pursuant to Section 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”), concerning the refusal of an application for provisional consent (“Original Consent”) to create a new lot by the Committee of Adjustment (“COA”) of the City of Hamilton (“City”) with respect to the property located at 376 Philip Place (“Subject Property”) in the City of Hamilton.

[2] In advance of the Hearing the Tribunal received a request from Giancarlo Fucile seeking Party status in this appeal. After considering submissions from the Parties and for the reasons that follow, the Tribunal granted Party Status to Mr. Fucile.

[3] In advance of the Hearing, the Appellant and the City advised the Tribunal the Parties had agreed to settle the appeal as reflected in the Minutes of Settlement (“Settlement”) dated November 20, 2024. After the Original Consent was refused by the COA, a new City-wide Zoning By-law Amendment No. 24-051 (“ZBL 24-051”) was approved, which resulted in changes to the Original Consent application, and negated the need for minor variances for the purpose of lot creation (“Amended Consent”). The Amended Consent was before the Tribunal for consideration in this Merit Hearing.

[4] The Tribunal confirmed, for reasons that follow, that the amendments proposed to the lot lines in the Original Consent are minor and bring the Appellant’s proposal into harmony with ZBL 24-051, and thereby, no minor variances are required. As such, the Tribunal exercised its power under s. 53(35.1) of the Act and found that no further Notice is required.

[5] Having considered the evidence and submissions of the Parties, the Tribunal allowed the Appeal and granted provisional approval of the Amended Consent subject to the Conditions set out at Attachment 1 to this Order.

REQUESTS FOR PARTICIPANT AND PARTY STATUS

[6] In advance of the Hearing, the Tribunal received a written request for Participant Status from Trudy McGovern. Her Participant statement outlined concerns with the proposal, including its impact on watershed and drainage issues and on the character of an established neighbourhood. Neither the Appellant nor the City objected to the request for Participant Status and upon consideration, the Tribunal granted Participant Status to Ms. McGovern.

[7] In advance of the Hearing, the Tribunal received a written request for Party Status from Mr. Fucile whose property is adjacent to the Subject Property. Mr. Fucile raised issues with regard to the compatibility of the Amended Consent with the character of the neighbourhood, drainage capacity and the feasibility of the proposal.

[8] Mr. Fucile was represented by legal Counsel in the preliminary matter of the Party Status request.

[9] The Tribunal received written submissions on the request for Party Status from Counsel for Mr. Fucile and from Counsel for the Appellant.

[10] Counsel for Mr. Fucile explained to the Tribunal that Mr. Fucile has a direct interest in this appeal and has participated throughout the application process and has raised legitimate issues regarding the Original Consent's consistency with the character of the neighbourhood, drainage capacity and the feasibility of the proposal. Counsel confirmed that Mr. Fucile had retained a land-use planning expert who has provided a written Affidavit to the Tribunal, and was ready to provide *viva voce* evidence to assist the Tribunal in its fair and just determination of this issue and, that the public interest would be advanced through his participation.

[11] Whilst the City took no position, counsel for the Appellant objected to granting

Party Status to Mr. Fucile. The Appellant's Counsel submitted to the Tribunal that with the passing of the new City-wide ZBL 24-051 and the Settlement reached between the Appellant and the City, all issues have been resolved between the statutory parties.

[12] On deliberation, the Tribunal determined that Mr. Fucile had a direct interest in the matter, and his land-use planning expert will provide the Tribunal with additional expert evidence. His participation in the proceedings will assist the Tribunal to make a fair and just determination of the issues before the Tribunal, including whether the Amended Consent constitutes good land-use planning and is in the public interest. For these reasons, the Tribunal granted Party Status to Mr. Fucile.

[13] After the preliminary matter of the Party Status request was determined, Mr. Fucile was represented by Ron Sebastian, who is not a lawyer.

BACKGROUND AND CONTEXT

[14] The Subject Property is located on the northwest corner of Philip Place and Massey Drive in the City of Hamilton. The Lot area is 1267 square metres ("sq m") and currently has a single detached dwelling on it. The property is identified as "Neighbourhoods" on Schedule E -Urban Structure and designated "Neighbourhoods" on Schedule E-1- Urban Land Use Designations in the Urban Hamilton Official Plan ("UHOP").

[15] The subject property is in the Ancaster Heights Neighbourhood located at the top of the Niagara Escarpment. There are approximately 188 lots in the neighbourhood which would be characterised as having large lot areas for an urban setting and with a mix of single detached dwellings of older one-storey bungalows and newer modern dwellings with both high-pitched roofs and flat roofs.

[16] On June 15, 2023 the owners of the Subject Property submitted the Original

Consent for the severance to creation of a new lot with the existing dwelling to be demolished. In addition, an application for minor variances was submitted seeking minor variances relating to the lot areas, lot frontage and rear yard setbacks (“Original Minor Variances”) that were necessary under the Zoning By-law No. 87-57 (“ZBL 87-57”). The Original Minor Variances were required to facilitate the Original Consent and achieve the Appellant’s objective of ultimately constructing two new single detached dwellings on the severed lots.

[17] At the COA meeting on May 7, 2024 only the Original Consent was brought forward for consideration; the Original Minor Variances were not before the COA at that time. The COA denied the Original Consent application, citing incompatibility with the UHOP and the prevailing Zoning By-law 87-57 and, that the application was not in keeping with the development in the area.

[18] On May 30, 2024 the Appellant appealed the COA’s decision to the Tribunal.

LEGISLATIVE FRAMEWORK

[19] The Tribunal was requested by the Parties to consider the Amended Consent for the purpose of the current hearing. Counsel for the Appellant highlighted that amendments made to the Original Consent reflect the new lot dimensions that now meet the requirements of the recently approved ZBL 24-051 and as the changes are minor no further Notice would be required. Counsel for the City and Mr. Fucile concurred that the Amended Consent as proposed was in compliance with ZBL 24-051 and that no minor variances were required.

[20] Where an application for consent is appealed under s. 53(19) of the Act, the Tribunal’s decision must be consistent with the Provincial Policy Statement 2024 (“PPS 2024”) and must conform with applicable provincial and official plans. The Tribunal must be satisfied that the Consent application has regard to the criteria set out in s. 51(24) of

the *Planning Act*, and the matters of provincial interest under s. 2 of the *Planning Act* and is considered to be good planning and is in the public interest.

THE HEARING

[21] At the start of the Hearing, Counsel for the Appellant advised the Tribunal of the following:

- a. Amendments to the UHOP and City of Hamilton Zoning By-law No. 05 -200 implement changes and additions to the Low-Density Residential zones, resulting in facilitating infill development and creating additional opportunities for intensification within existing properties in areas with access to existing municipal services and transportation network.
- b. The new ZBL 24-051, appealed with respect to other provisions of the by-law, was recently approved in part by the Tribunal on September 26, 2024 and was deemed to have come into force as of April 10, 2024, the date of passage by City Council.
- c. The Subject Property now falls under the new ZBL 24-051 which is designated Low-Density Residential- large Lot (R2) zone with a revised minimum lot area requirement of 630 square metres as against the minimum lot requirement of 695 square metres as per the earlier ZBL 87-57.
- d. The City and the Appellant have worked collaboratively and jointly agreed to the revised arrangements as reflected in the Settlement dated November 20, 2024 (marked as **Exhibit 2**).
- e. As a result of the new ZBL 24-051, the Appellant had elected to amend the lot lines from the Original Consent. The Amended Consent agreed to by the

Appellant and the City in the Settlement proposes to sever a lot (Lot A) with a width (frontage) of 26 metres and an area of 631 square metres and to retain a lot (Lot B) with a width (frontage) of 19 metres and an area of 635 square metres. This negates the need for any further minor variances for the purposes of lot creation and the Amended Consent is in full compliance with ZBL 24-051.

[22] The Parties acknowledge to the Tribunal that the lot lines resulting from the Amended Consent are in full compliance with the new ZBL No. 24-051. Counsel for the City confirmed to the Tribunal that its Planning staff had reviewed the Amended Consent and considered the Settlement as proffered, and subject to the Conditions set out, in their view, represents good land-use planning and is in the public interest.

[23] The Parties seek an order that the Appeal be allowed by the Tribunal and the Amended Consent be approved as modified and subject to the Conditions set out in accordance with the provisions of the Settlement.

[24] In a brief opening statement, Mr. Fucile's Representative, highlighted the unique geography of the area describing it as an established mature neighbourhood characterised by large lots with single dwellings. He set out that the proposed smaller lots resulting from the Amended Consent application would change the neighbourhood character, would result in drainage issues and that it was premature to consider the proposal until the City completed its planned 'Detailed Drainage Assessment Study Phase 3' ("Drainage Study") relating to stormwater management.

[25] The Appellant presented Peter De Iulio, a Member of the Canadian Institute of Planners and the Ontario Professional Planning Institute, to provide opinion evidence on his behalf. Upon reviewing the background and relevant involvement in this matter, the Tribunal qualified Mr. De Iulio to provide opinion evidence in land-use planning matters. His expert witness statement dated November 22, 2024 is marked as **Exhibit 3**.

[26] Mr. De Iulio provided a written witness statement and presented *viva voce* evidence to the Tribunal at the hearing. Mr. De Iulio testified to matters of provincial interest that must be considered in evaluating consent applications. He opined that the proposal is consistent with Policy 2.1.4 and 2.2.1 of the PPS 2024 as it provides for an appropriate range and mix of housing options, in an area identified for intensification and infill development and optimizes the use of existing infrastructure. The witness opined that the Amended Consent is consistent with the PPS 2024.

[27] Mr. De Iulio opined that the Amended Consent conforms with the Niagara Escarpment Plan (“NEP”) since the boundaries of the Urban Area designation reflect those established in the UHOP and, that the proposed creation of one lot within the Urban area designation will not require an amendment to the NEP.

[28] Mr. De Iulio opined to the Tribunal the Subject Property is designated as “Neighbourhoods” in the UHOP (Schedules E-1) and meets all the conditions laid out in 1.14.3.1 for new lot creation. In his opinion the lots in the Amended Consent comply with the policies of the UHOP, are in conformity with the zoning by-law and reflect the general scale and character of the established neighbourhood pattern.

[29] In Mr. De Iulio’s opinion the Amended Consent has regard to the matters to be considered when granting consent to sever under s. 51(24) of the Act. He highlighted in particular:

- a. On the effect of the development on matters of provincial interest as in s. 2 of the Act. The proposal efficiently utilizes the land base and existing municipal services, assists the City in meeting its intensification targets, enhances housing type and choice options and, is aligned to the UHOP and the ZBL.
- b. On matters relating to the suitability of the land in s. 51(24) (d). The

subject property is already used for residential purposes and is suitable for the infill being proposed. The proposal will enhance the choice of housing types. Smaller units will logically be more affordable than the existing larger dwelling unit that occupies the subject property.

- c. On matters relating to the dimensions and shapes of the proposed lots in s. 51(24) (f). Whilst the shape of the new lots to be created are smaller in area, they would not be out of character in the surrounding neighbourhood as there are a variety of lot shapes; some of which have lot frontages less than the proposed lots. The lots would not be dissimilar to the existing pattern of development and meets the compatibility threshold. The dimensions of the lots are intended to meet the low- density residential use and are in line with ZBL 24-051
- d. On matters relating to conservation of natural resources and flood control in s. 51(24) (h). As a Condition to the Amended Consent the Appellant has agreed, as part of the Settlement, to submit a Stormwater Management Report prepared by a qualified professional to the satisfaction of the City's Director of Development Engineering to demonstrate, across several criteria, that adequate stormwater management on-site assessment is in place to manage run-off volumes and flow rates up to a 100-year storm event and, address other risk mitigants. Mr. De Iulio confirmed to the Tribunal that this is adequately addressed in the conditions set out in Attachment 1 of this Order.

[30] Mr. De Iulio reviewed the Settlement dated November 20, 2024 reached between the Appellant and the City and confirmed to the Tribunal that in his opinion, the Settlement subject to the Conditions are in the public interest and represents good planning.

[31] In conclusion, Mr. De Iulio proffered his opinion that the Amended Consent as outlined in the Settlement, is consistent with the PPS 2024, conforms with the UHOP and City's ZBL, has regard to the criteria set out in s. 51(24) of the Act and, overall is in the public interest and represents good land-use planning.

[32] Mr. Fucile presented Michael Barton, a Member of the Canadian Institute of Planners and the Ontario Professional Planning Institute, to provide opinion evidence on his behalf. Upon reviewing the background and relevant involvement in this matter, the Tribunal qualified Mr. Barton to provide expert opinion evidence in land-use planning matters. His expert witness statement dated September 26, 2024, is marked as **Exhibit 4)** and the Addendum dated November 2024 is marked as **Exhibit 5).**

[33] Mr. Barton's written witness statement submitted to the Tribunal in advance of the Hearing contemplated the Original Consent that was not in compliance with the then prevailing ZBL 87-57. However, Mr. Barton provided oral evidence to the Tribunal with respect to the revised proposal, and confirmed that approvals for minor variances are no longer required because the Amended Consent contains revised lot lines that bring the proposal in line with ZBL 24-051 that was passed by the Council and effective April 10, 2024.

[34] In Mr. Barton's opinion, the Amended Consent is not consistent with the PPS 2024 particularly relating to safety impacts associated with the risk of flooding. He set out that based on findings of the Detailed Drainage Assessment Study (Phase 2) the City staff determined that a stormwater management strategy is necessary to mitigate the impacts of increased impervious area. As the stormwater management and drainage infrastructure to meet current and projected needs are yet to be confirmed by the City's "Detailed Drainage Assessment Study (Phase 3)", it is his opinion the proposal is premature.

[35] Mr. Barton asserted that the Amended Consent does not conform to the UHOP

particularly relating to the proposed lots not being compatible with the form and character of the established lot patterns in the established neighbourhood. He confirmed that the median lot size in the surrounding neighbourhood is 1185 sq m, being almost double what is proposed in the Amended Consent.

[36] In Mr. Barton's opinion, the Amended Consent does not have appropriate regard to the matters set out in s. 51(24) of the Act, relating primarily to the proposal being premature and not in the public interest (s. 51(24)b)), that the dimensions and shapes of the proposed lots are not appropriate for the neighborhood (s. 51(24)f)) and that flood control and adequacy of municipal services have not been appropriately addressed (s. 51(24)h and i)).

ANALYSIS AND FINDINGS

[37] The Tribunal is satisfied that the threshold questions have been addressed ; that, in accordance with s. 53(1) of the Act, a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality.

[38] The Tribunal noted that the changes from the original Consent to the Amended Consent were to modify the lot lines so that the proposed lots, if severed were in compliance with ZBL 24-051. The Tribunal finds that the changes from the Original Consent to the Amended Consent are minor in nature and is content that additional notice is not required pursuant to s. 53(35.1) of the Act.

[39] Based on the evidence presented and heard, the Tribunal narrowed down the matters to two key issues:

1. Whether the Amended Consent creating two smaller lots meets the compatibility threshold?

- a. The UHOP requires that residential intensification within Neighborhood designation areas should enhance and be compatible with the scale and character of the existing residential neighborhood.
- b. The Tribunal accepts the evidence of Mr. De Iulio that whilst the new lots are smaller in area, they would not be out of character in the surrounding neighborhood where some existing lots have lot frontages less than the proposed lots.

[40] The Tribunal accepts, as it relates to neighbourhood compatibility, that the City has established through the new ZBL 24-051 what it considers appropriate density and compatible development in this area of the City.

[41] The Tribunal is satisfied that the Amended Consent is consistent with ZBL 24-051 and does not require any minor variances to be implemented and is compatible with the form and character of the surrounding neighborhood and is in the public interest.

- 2. Whether it is premature for the Tribunal to consider this Amended Consent before the “Detailed Drainage Assessment Study (Phase 3)” is completed by the City?
 - a. Evidence was provided by Mr. De Iulio and confirmed by counsel for the City, that the City will consider applications for lot creation that requires the applicant to address matters relating to drainage and stormwater management as part of a Drainage Study to be conducted and to satisfy the Conditions set by the City.
 - b. The Tribunal relies on and accepts that as part of the Conditions, the City requires the Appellant to submit a detailed Stormwater Management Report prepared by a qualified professional to the

satisfaction of the City's Director of Development Engineering.

[42] The City confirmed that the Settlement and the Conditions were reviewed by appropriate City staff to provide the City with a mechanism for detailed review and approval of the specific storm water management for the Amended Consent. The Tribunal is satisfied that the matters related to storm water management are appropriately addressed by the City in the Conditions of Consent.

[43] Having considered the written and oral testimony of the witnesses and the submissions of the Parties, the Tribunal finds that the Amended Consent subject to the Conditions set out in Attachment 1 to this Order have regard to the provincial interest expressed in s. 2 of the Act, are consistent with the PPS 2024, conform to the overall intent of the UHOP and ZBL 24-051, has regard to the criteria set out in s. 51(24) of the Act and, is overall in the public interest and represents good planning.

ORDER

[44] **THE TRIBUNAL** having been asked to consider an application, which has been amended from the original application, and the Tribunal having determined as provided for in subsection 53(35.1) of the Act that no further notice is required:

[45] **THE TRIBUNAL ORDERS THAT** the appeal is allowed, and the provisional consent is to be given subject to the conditions set out in **Attachment 1** to this Order.

“Michael Menezes”

Michael Menezes
MEMBER

“A. Mason”

A. MASON
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

Attachment 1: Conditions to Consent

376 Philip Place, Ancaster

Consent Application No. AN/B-23:47

OLT Case No. OLT-24-000670

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar. The reference plan must be submitted in pdf and also submitted in CAD format, drawn at true scale and location and tied to the City corporate coordinate system. (Committee of Adjustment Section)
2. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer. (Committee of Adjustment Section)
3. The owner submits to the Committee of Adjustment office an administration fee, payable to the City of Hamilton, to cover the costs of setting up a new tax account for each newly created lot. (Committee of Adjustment Section)
4. The owner shall demolish all or an appropriate portion of any buildings straddling the proposed property line, including the existing single detached dwelling, to the satisfaction of the Planning and Economic Development Department (Planning Division – Zoning Review Section). May be subject to a demolition permit issued in the normal manner.
5. The owner shall submit survey evidence that the lands to be severed and the lands to be retained, including the location of any existing structure(s), parking and landscaping conform to the requirements of the Zoning By-Law or alternatively apply for and receive final approval of any variances from the requirements of the Zoning By-Law as determined necessary by the Planning and Economic Development Department (Planning Division – Zoning Examination Section).
6. A Permit to injure or remove municipal trees is a requirement of this application. A Tree Management Plan must be submitted to the Forestry and Horticulture Section c/o the Urban Forestry Health Technician, to address potential conflicts with publicly owned trees.
7. That the owner shall investigate the noise levels on the severed lands to determine and implement the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of Environment, Conservation and Parks (MECP) recommended sound level limits. An acoustical report prepared by a

qualified Professional Engineer containing the recommended noise control measures shall be submitted to the satisfaction of the City of Hamilton, Director of Planning and Chief Planner. Should a peer review of the acoustical report be warranted, all associated costs shall be borne by the owner and shall be submitted to the satisfaction of the City of Hamilton, Director of Development Planning.

8. That the owner submits and receives approval of a Tree Protection Plan including the review fee as per the Schedule of Rates and Fees, prepared by a qualified tree management professional (i.e., certified arborist, registered professional forester, landscape architect), to the satisfaction of the Manager of Heritage and Urban Design.
9. That the owner submits and receives approval of a Landscape Plan that shows the location of compensation trees to the satisfaction of the Manager of Heritage and Urban Design.
10. That the Owner must enter into with the City of Hamilton and register, a combined External Works and Consent Agreement, having an administrative fee of \$5,945.00 (includes grading plan review) to address issues including but not limited to: extension of the municipal sewers, road reconstruction, lot grading and drainage to a suitable outlet on the conveyed and retained parcels (detailed grading plan required), erosion and sediment control measures (to be included on the grading plan); cash payment requirements for items such as any outstanding servicing cost for the existing municipal services adjacent to the property, street trees (City policy requires one (1) street tree/lot, inspection of grading, stormwater management infrastructure and securities for items that may include: lot grading (\$10,900.00 grading security), water and sewer services inspections, driveway approaches, relocation of any existing infrastructure (such as hydrants) and any damage during construction (unknown costs at this time), to the satisfaction of the City's Director of Development Engineering. Such agreement shall include a requirement for any on-site stormwater management features to be maintained in perpetuity by the Owner or subsequent owners. If in the opinion of the Director of Development Engineering a Consent Agreement shall be sufficient to secure the requirements of this condition, then such Consent Agreement shall replace the combined agreement described above, with an administrative fee of \$4,850.00.
11. That the owner submits a Stormwater Management Report prepared by a qualified professional to the satisfaction of the City's Director of Development Engineering to demonstrate that:
 - a) An adequate stormwater management on-site to manage the increased runoff volumes and flow rates to the predevelopment levels up to the 100-year storm event is provided.

- b) Submit a detailed engineering, grading, and servicing drawings demonstrating no grading impacts to adjacent properties.
- c) Soil characteristics are conducive to infiltration and sizing of Low Impact Development techniques (i.e., infiltration galleries).
- d) A suitable emergency overland flow route exists; and
- e) Legal right to discharge the flow to adjacent lands.

12. The Owner will be required to pay for future urbanization costs for Philip Place for the frontage of their property, based on the City's "New Road Servicing Rates" and to the satisfaction of the City's Director of Development Engineering.