ISSUE DATE:

**February 22, 2013**

PL121240

Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

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| Appellant: | Ross Bain |
| Applicant: | Pinder Real Estate Developers Inc. |
| Subject: | Consent |
| Property Address/Description: | 2250 Doulton Drive |
| Municipality: | Mississauga |
| Municipal File No.: | B062/12, B063/12 and B064/12 |
| OMB Case No.: | PL121240 |
| OMB File No.: | PL121240, PL121241 and PL121242 |

Motion By:

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| Purpose of Motion: | Request for an Order Dismissing the Appeal |
| Appellant: | Ross Bain |
| Subject: | Consent |
| Property Address/Description: | 2250 Doulton Drive |
| Municipality: | City of Mississauga |
| Municipal File No.: | B062/12, B063/12, B064/12 |
| OMB Case No.: | PL121240 |

**A P P E A R A N C E S :**

| **Parties** | **Counsel** |
|---|---|
| Pinder Real Estate Developers Inc. | Gerald Swinkin |
| Ross Bain | Mark Kemerer |

**DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD**

[1] Pinder Real Estate Developers Inc., the Moving Party ("Applicant"), has brought a motion to the Ontario Municipal Board ("Board") seeking an Order of the Board pursuant to s. 53 (31) of the *Planning Act* ("Act") to dismiss without a full hearing the appeal of Ross Bain, the Respondent ("Appellant") against the decision of the City of Mississauga Committee of Adjustment ("Committee") that approved the Applicant's proposal to sever the lands (subject to conditions) to create four new lots for residential single family dwelling development purposes with the fourth lot beings the remnant parcel of the severances.

[2] Section 53 (31) of the Act states

> "…the Municipal Board may dismiss an appeal without holding a hearing…if, (a) it is of the opinion that, (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could give or refuse the give the provisional consent or could determine the question as to the condition appealed to it…."
>
> The Applicant submitted that it is on this basis that the Appellant's appeal should be dismissed.

[3] The Board reviewed the full wording of the Appellant's Notice of Appeal (Exhibit 2, Tab 2, p.4) and determines that the appeal lacks sufficient planning grounds to pursue a full hearing. The Applicant's affidavit to the Board outlines the Applicant's understanding of the basis for the motion; his affidavit references local residents' opposition and various Official Plan policies upon which he relied at the Committee meeting. However, the contents of the actual appeal lack such comprehensiveness and fail to provide a planning ground upon which to grant the hearing.

[4] There are three elements of the Appellant's Notice of Appeal: (1) that the applications should have been deferred until "satisfactory" site plan applications had been filed in accordance with the requirements of the Official Plan and Transportation and Works items were met; (2) severance is inappropriate due to the nature of the neighbourhood and a portion of the lot is heavily forested; and tied to the second point

regarding the trees, (3) the Official Plan “environmental test” as set out in s. 4.29.5.1(e) requires “comprehensive site and environmental analyses will be required in support of any divisions of land.”

[5] On this third point, the Applicant’s counsel Gerald Swinkin called this “test” the central policy consideration he argued the Appellant misinterpreted. While the Respondent’s counsel, Marc Kemerer, also submitted that this is a central consideration, he also argued that this policy (contained in the Site One policies of the Sheridan District Policies of the in-force Mississauga Plan – clauses (a) through (e) in s. 4.29.5.2) is a matter to be adjudicated at a full hearing. The Board was less concerned, however, with whether the Applicant had fulfilled the aforementioned five clauses (as per the Appellant’s reading of the policy) and instead confined itself to an assessment of whether the Appellant’s reference to this section of the Site One Policies in his Notice of Appeal and affidavit 1) raised a legitimate planning ground and 2) whether, as the Appellant and his counsel argued, the Committee had erred such that a valid planning ground has been raised through its approval of the severance applications. Clause (e) of the Site One Policies is relevant wherein “comprehensive site and environmental analyses will be required in support of any divisions of land.” In referencing this specific clause in his appeal, the Appellant wrote that such analyses will be required and they “should be fulfilled in order to get severance and not as a mere condition of severance”. Mr. Kemerer argued that the Committee erred in approving the severance application because it approved the severances before these analyses were not done beforehand.

[6] There is no policy direction that states that these analyses must be carried out beforehand. A closer reading of s. 4.29.5.2 by the Board and it’s consideration of what the Committee directed revealed no deviation from the Plan policy requirements, no anomalies and no errors. While planning staff recommended deferral of the application to meet the relevant Plan policies as cited, there is no apparent policy basis for making that recommendation. This is simply a matter of interpretation in the Board’s view. The Committee’s actions demonstrate persuasively to the Board that the Committee was aware of and guided by the requirements of the Site One Policies for “comprehensive

site and environmental analyses". The Committee in fact imposed no less than eight (8) conditions that the Applicant will have to meet before the severances can occur. These conditions correspond to, among other things, the reference to clause (e) that the Appellant raised in his Notice of Appeal. The conditions as imposed fulfill the requirements of the policies and relate to process, not to planning grounds. This series of conditions must be met to ensure that the above-cited clauses are fulfilled before the severances can occur. That is, no development can take place before the policy requirements as captured in the conditions are met. As the Applicant's planner Mark Rogers wrote in his affidavit, it is the practice of the City of Mississauga to achieve comprehensive site and environmental analyses through the general site plan review process. As he wrote:

> That has been specifically reinforced by the imposition by the Committee of Adjustment of Condition 8 in each of the decision which requires a letter to be received from the Planning and Building Department indicating that satisfactory arrangements have been made with respect to comprehensive site and environmental analysis as addressed in that department's comments….

[7] In its careful reading of both the grounds for appeal and the relevant policy, the Board can find nothing errant or incorrect in the manner in which the Committee proceeded or that the process, however differently viewed by the Appellant, raises any planning ground *per se*. The Committee put in place specific conditions through the site plan process that respond to the Appellant's points, which, as stated, have everything to do with process and nothing to do with planning grounds.

[8] The Board was persuaded by Mr. Swinkin's submissions that, in addition to no apparent planning ground raised, the matter of the Appellant's relationship to the lands and its possible relevance to the appeal should be considered. As Mr. Rogers wrote in his affidavit, the Appellant's property is located approximately 500 metres distant from the subject lands on a different street (Blythe Road); the subject property is not viewed from this distance (a tree screen or hedgerow visually screens the lands from properties to the north); and the Appellant's lands are not even part of the Site One area under the Sheridan District Policies. The Board is entitled to examine those instances wherein

appellants purport to represent the public interest (the role of private appellants versus public authorities). As referenced in *Re: Guelph (City) Official Plan Amendment No. 30*, August 16, 2006, the Board finds relevance in the decision of *Nu-Globe Developments Ltd. v. Carleton Place (Town)*, [2005] O.M.B.D. No. 1088 (QL) wherein the Board wrote: "where an appellant alleges impact…the Board will not bestow on such a party the role of sole protector of the public interest when it is neither located in the impacted area nor is negatively impacted by the proposal." Further expression of this approach is found in the Board's decision of November 1, 2007 (Decision No. 2850) wherein the Board noted that there are broader agencies with vested interests in upholding the public welfare and which are more professionally placed to assess any adverse impacts of the proposed development of a site than an individual whose property is situated distant from the subject property. In that case, the appellant's residence was situated some 800 metres from the subject lands and no planning ground was raised in the appeal, in spite of the fact that the municipality chose to approve the proposed development. In this case, the distance of the Appellant's property from the subject lands at approximately 500 metres and his statement that he drives by the site daily" do not constitute sufficient grounds on which to base an appeal. Nor does the recitation of a planning policy constitute any apparent planning ground.

[9] In the case at hand, the Board is satisfied that the Committee did not overstep its authority or competency to grant the severance applications subject to specific conditions that both reflect and flow from the Site One policy requirements that must be fulfilled before development can commence on the Applicant's lands. Stated simply, in the absence of any specific policy requiring an applicant to do so, the Board is not persuaded by the Appellant's suggestion that all of the analyses had to be completed before any approvals were given. As the Appellant's materials showed, the Committee in its decision deigned to ensure that the provisions of the Site One Policies were upheld through the imposition of relevant and related conditions that the Applicant must meet before the development proceeds. To reiterate, the Appellant has mistaken

process for planning matters and his Notice of Appeal does not raise any apparent planning ground.

[10] Where Mr. Kemerer submitted that the degree of impact that the Appellant might experience is appropriately adjudicated at the full hearing, the Board finds that an appellant must not only raise an apparent land use planning ground in its appeal but that the impact if any must be a demonstrable one upon the appellant itself. The Appellant has failed to do either for the reasons given. Expanding upon the Board's finding in paragraph 8, the Appellant's recitation of a policy in the Notice of Appeal and his listing of additional planning policies in today's affidavit (such as the consent criteria (s. 51(24) contained in the Act) where the Notice of Appeal is silent on those matters, does not automatically raise planning grounds on which to hold a hearing. Moreover, the Board has already addressed the matter of the Appellant's Site One Policies reference and the Committee's actions as being one of process and not raising a planning ground.

[11] The Board finds that the Appellant has not demonstrated an apparent planning ground that would justify a hearing for the reasons stated and as stated, a reading of his affidavit materials does not contain any evidence to support a planning basis for his appeal. In quoting language contained in the East Beach decision (*East Beach Community Association v. Toronto (City)* (1996), 42 O.M.B.D. No. 1850), the Board is entitled to examine whether there has been disclosure of planning grounds that warrant a hearing. That is, the Board is entitled to examine the reasons stated to see whether they constitute genuine, legitimate and authentic planning reasons, whether there is authenticity in the reasons stated, whether there are issues that should affect a decision in a hearing and whether the issues are worthy of the adjudicative process. In the Board's determination, the Appellant's Notice of Appeal raises no issue that justify a hearing.

[12] Lastly, the Board assigned little weight to the letters and signatures of some area residents (as found in the Appellant's materials) who oppose the proposed development

as these people have not appealed the decision of the Committee; there is no persuasive documentary evidence before the Board to establish that the Appellant speaks for or represents their opinions; and there was no practical way for the Board to test the content of the letters, which are determined to be of little probative value.

**ORDER**

[13] For these reasons, the Board orders that the Applicant's Notice of Appeal discloses no apparent land use planning ground that justifies a hearing. The Applicant's motion is allowed and there will be no hearing before the Board. As the Applicant has indicated in the motion that it seeks an award of costs, it may make this request to the Board in writing with a written response from the Appellant. Both parties are directed to provide their written materials on the matter of costs to the Board within thirty (30) days of the date of issue of this Order.

"R. Rossi"

R. ROSSI
MEMBER