

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: August 09, 2019

CASE NO(S):

PL170817
PL171390

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1331135 Ontario Limited
Appellant: 1559306 Ontario Limited
Appellant: 1744856 Ontario Inc.
Appellant: 1829963 Ontario Inc.; and others
Subject: Proposed Official Plan Amendment No. 107
Municipality: Municipality of Clarington
LPAT Case No.: PL170817
LPAT File No.: PL170817
LPAT Case Name: Camposeo v. Durham (Regional Municipality)

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Bowmanville East Developers Group
Subject: Failure of the Regional Municipality of Durham to announce a decision respecting Proposed Official Plan Amendment No. 107
Municipality: Municipality of Clarington
LPAT Case No.: PL170817
LPAT File No.: PL171459

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicants and Appellants: Michael Zygocki Limited and Boothia Developments Limited
Subject: Proposed Plan of Subdivision - Failure of the Municipality of Clarington to make a decision
Purpose: To permit 29 single detached dwelling lots, a number of part lots and open space blocks

Property Address/Description: Part Lot 33, Concession 3, Tooley Road,
Courtice
Municipality: Municipality of Clarington
Municipality File No.: S-C 2017-0002
LPAT Case No.: PL171390
LPAT File No.: PL171390
LPAT Case Name: Boothia Developments Limited v. Clarington
(Municipality)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicants and Appellants: Schleiss Development Company Limited and
Westley Heights Holdings Ltd.
Subject: Proposed Plan of Subdivision - Failure of the
Municipality of Clarington to make a decision
Purpose: To permit 29 single detached dwelling lots, a
number of part lots and open space blocks
Property Address/Description: Part Lot 33, Concession 3, Tooley Road,
Courtice
Municipality: Municipality of Clarington
Municipality File No.: S-C 2017-0003
LPAT Case No.: PL171390
LPAT File No.: PL171391

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Clifford Curtis
Subject: Proposed Plan of Subdivision - Failure of the
Municipality of Clarington to make a decision
Purpose: To permit 29 single detached dwelling lots, a
number of part lots and open space blocks
Property Address/Description: Part Lot 33, Concession 3, Tooley Road,
Courtice
Municipality: Municipality of Clarington
Municipality File No.: S-C 2017-0004
LPAT Case No.: PL171390
LPAT File No.: PL171392

Heard: June 3, 2019 in Bowmanville, Ontario

APPEARANCES:**Parties****Counsel/Representative***

Municipality of Clarington

Paul DeMelo

Regional Municipality of Durham

Kevin Ryan
Robert WoonMinistry of Municipal Affairs and
Housing – (Appeal No. 1)Ken Hare
Anna-Lee Beamish (student at law)1744856 Ontario Inc. (Fourteen
Estates Limited) – (Appeal No. 2)

Jennifer Savini

Anthony Camposeo and Anna
Camposeo (Appeal No. 3)

No one appeared

Clifford Curtis – (Appeal No. 5)

E. Drew Dowling

Michael Zygocki Limited and Boothia
Developments Limited – (Appeal No.
6)

E. Drew Dowling

Schleiss Development Company Ltd.
And Westley Heights Holdings Ltd. –
(Appeal No. 7)

E. Drew Dowling

1829963 Ontario Inc. (Fourteen
Estates Limited) – (Appeal No. 9)

Jennifer Savini

Coco Paving Inc. – (Appeal No. 10)

Steven Ferri

CRH Canada Group Inc. –
(Appeal No. 11)

Steven Ferri

1559306 Ontario Limited –
(Appeal No. 13)

Jennifer Meader

2408406 Ontario Inc.
2408426 Ontario Inc
2408428 Ontario Inc. (Fourteen
Estates Limited) – (Appeal No. 14)

Jennifer Savini

Canadian Tire Real Estate Ltd. – (Appeal No. 15)	Melissa Winch
CP REIT Properties Limited – (Appeal No. 16)	Rebecca Hines
Ontario Restaurant Hotel and Motel Association – (Appeal No. 18)	Raj Kehar
Restaurant Brands International (Tim Horton Restaurants) – (Appeal No. 19)	Raj Kehar
McDonald’s Restaurants of Canada Limited – (Appeal No. 20)	Raj Kehar
Fairhaven Investments Inc. – (Appeal No. 21)	Bruce Ketcheson
Bowmanville East Developers Group (Appeal No. 22)	Mark Flowers
Roland Sanders	Self- Represented*

**MEMORANDUM OF ORAL DECISION DELIVERED BY THOMAS HODGINS ON
JUNE 3, 2019 AND ORDER OF THE TRIBUNAL**

[1] This Memorandum of Oral Decision and Order results from the fourth Pre-hearing Conference (“PHC”) on appeals (LPAT Case PL170817) of the Municipality of Clarington’s (“Clarington”) broad Official Plan Amendment No. 107 (“OPA 107”) which is intended to bring Clarington’s Official Plan into conformity with certain Provincial policy and the Regional Municipality of Durham (“Region”) Official Plan (“ROP”). OPA 107 was approved by the Region with modifications and deferrals on June 19, 2017.

[2] Three appeals (LPAT Case PL171390) by (1) Michael Zygocki Limited and Boothia Developments Limited, (2) Schleiss Development Company Limited and Westley Heights Holdings Ltd. and (3) Clifford Curtis of Clarington’s failure to make decisions on applications for draft plans of subdivision are administratively consolidated

with and are to be heard with OPA 107 Appeals 5, 6 and 7. Accordingly, this PHC addressed these subdivision appeals as well.

[3] A hearing on the OPA 107 and the administratively consolidated subdivision appeals was scheduled in a previous Tribunal Order for 23 days beginning **Monday, September 30, 2019 at 10 a.m. and continuing October 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17 and 18, 2019 and re-starting Monday, January 13, 2020 and continuing January 14, 15, 16, 17, 20, 21, 22, 23 and 24 at:**

**Clarington Council Chambers
Town Hall
40 Temperance Street
Bowmanville, Ontario**

[4] A Procedural Order (“PO”) for the OPA 107 appeals was approved by a Tribunal Order on Case PL170817 issued January 21, 2019. A PO for the subdivision appeals was approved by a Tribunal Order on Case PL171390 issued January 21, 2019.

[5] References in this Decision to an Appeal number (e.g. Appeal 1) refer to the numbering of the Appeals as set out in the approved PO for OPA 107.

THE PHC

General

[6] In advance of the PHC, Mr. DeMelo prepared and circulated to the Tribunal and the Parties an agenda which is based on a list of items previously identified by the Tribunal to be addressed at this PHC. This agenda guided the PHC.

Identification of Counsel and Parties

[7] Counsel and a representative for the Parties appeared as noted above.

[8] Kathleen Kinch (Counsel) advised that she is now representing the Veltri Group which is a Participant in Appeal 14.

[9] It was noted that: Appeal 12 was withdrawn in its entirety by Honey Harbour Estates Limited on May 17, 2019; and that on May 15, 2019 the Appellant in Appeal 14 withdrew Issue 2 from the Issues List in the approved PO.

Update on Settlement Discussions

[10] Mr. DeMelo advised that settlements have been reached with respect to that part of Appeal 1 dealing with second residential units and Appeal 22 (certain arterial road designations) and that evidence in support of these settlements has been submitted to the Tribunal in writing pursuant to the decision from the third PHC issued November 20, 2018. These settlements are addressed later in this Decision.

[11] Mr. DeMelo further advised that Clarington continues to discuss the appeals with the other Parties and is optimistic that there may be further settlements.

Provincial Natural Heritage and Agricultural System Mapping and Policy

[12] The approved PO for OPA 107 provides: that the Ministry of Municipal Affairs and Housing (“Ministry”), working with Clarington, will identify the legal/policy impacts of the agricultural system and natural heritage system mapping released by the Province pursuant to the Growth Plan for the Golden Horseshoe, 2017 (“Growth Plan, 2017”) on the OPA 107 Appeals; will provide this information to the Tribunal and the affected Appellants by May 1, 2019; that any Appellant who disagrees with the identified legal/policy impacts of the provincial mapping is to provide its detailed reasons to the Tribunal, the Ministry, Clarington and other affected appellants by May 22, 2019; and that the impact of the provincial mapping on the appeals will be addressed at this PHC, including the potential addition/refinement of issues and the number of parties interested in the affected appeals.

[13] On May 1, 2019, pursuant to the PO, the Ministry circulated to the Tribunal and the Parties a table addressing the application of the provincial mapping in the context of the Growth Plan, 2017 to the OPA 107 appeals.

[14] On May 8, 2019, after the release of the Growth Plan, 2019, the Ministry circulated a second table (“May 8, 2019 Table”) addressing the application of several new natural heritage and agricultural policies to the OPA 107 appeals.

[15] The Ministry advises that most, but not all, of the Appellants whose appeals are identified in the May 8, 2019 Table have provided responses as directed by the Tribunal.

[16] At the PHC, Mr. Hare submitted and overviewed the following items prepared by the Ministry:

- A. A hard copy of the May 8, 2019 Table entitled “Appeals Overview dated May 8, 2019 - Provided after the release of the Growth Plan for the Greater Golden Horseshoe, 2019” (which was marked Exhibit 1); this Table, amongst other matters, identifies each appeal considered to be affected by the mapping and the Province’s opinion on the impact of the mapping and current Provincial policy on the appeal.
- B. A report prepared for the PHC entitled “Regarding the Application of Natural Heritage and Agricultural Areas and Systems policies to the lands and appeals of Municipality of Clarington Official Plan Amendment 107” (which was marked Exhibit 2).

[17] There continues to be discussions amongst the affected Parties on the appropriate application of the natural heritage and agricultural system mapping and policies as set out in the Ministry’s May 8, 2019 Table. To assist in potentially scoping the appeals, understanding the specific areas in dispute, arriving at common positions

where possible and responding to Tribunal directions, Mr. Hare requested that the Tribunal order the following:

- A. By June 11, 2019 – Anthony and Anna Composeo (Appeal 3) provide a detailed response to the May 8, 2019 Table to the Ministry, Clarington and the Tribunal as previously ordered, including as provided in paragraph 3(b) of the approved PO for OPA 107.
- B. By June 18, 2019 – the Ministry/Clarington will respond to requests for amendments or clarifications to the May 8, 2019 Table. This will include identifying specific areas of dispute between the parties regarding the application of natural heritage and /or agricultural policies.
- C. By June 26, 2019 – the Ministry will confirm whether it will be a party to the appeals identified in the May 8, 2019 Table. In the interim, until this has occurred, the Ministry will continue to be served with materials related to all appeals in the May 8, 2019 Table;
- D. At the expert witness meetings, the land use planning experts will discuss the specific areas of dispute between the parties (see B above) and will address areas of agreement and dispute in their list of agreed facts, matters in dispute and remaining issues to be addressed at the hearing as required by Paragraph 11 of the approved PO for OPA 107.

[18] Without challenge, the Tribunal orally ordered the four actions (A, B, C and D) requested by the Ministry as set out above. Although the Composeos were not in attendance at the PHC to hear the oral ruling, Clarington advised that it would be meeting with them on their appeal and this matter.

Scoped Circulation

[19] Upon request from Clarington, and without challenge, the Tribunal directed that material associated with a specific appeal need only be circulated to those Parties identified as having an interest in that specific appeal.

Updated Issues List and PO

[20] Mr. DeMelo overviewed a proposed update to the PO which, amongst other matters: reflects that Appeal 12 has been withdrawn; deletes the issue in Appeal 14 that has been withdrawn; and identifies the witnesses associated with individual appeals.

[21] Mr. DeMelo advised that he will continue to track potential updates to the PO as matters evolve leading up to the hearing. The Tribunal will not put an updated PO in place at this time but, rather, directs Mr. DeMelo to submit a proposed updated version of the PO to the Tribunal at the start of the hearing.

Hearing Schedule

[22] A hearing schedule intended to guide the organization of the hearing was reviewed. It was agreeable to all of the Parties but includes an extra day (October 7, 2019) not scheduled for this hearing.

[23] Mr. DeMelo is to adjust the hearing schedule to reflect the approved hearing dates and submit it to the Parties and Participants as a priority.

[24] Mr. DeMelo noted that Phase 1 of the hearing will deal with, amongst other matters, the environmental policy issues in Appeals 5, 6 and 7 while the details of the administratively consolidated subdivisions will occur in Phase 2 of the hearing. It is fair to say that the resolution of these environmental policy issues will determine, to a large extent, the limits of development in the subdivisions. Mr. DeMelo suggested that the

interval between the two phases of the hearing would allow the Tribunal enough time to decide the environmental policy issues in Appeals 5, 6 and 7 which would then inform the subdivision appeals to be heard as part of Phase 2.

Additional Matters

[25] Upon request, and without challenge, the Tribunal agreed that the Parties could adjust, to their mutual satisfaction, the dates set out in the approved POs for the expert witness meetings and the filing of material which results from such meetings (list of agreed facts, matters in dispute and the remaining issues to be addressed at the hearing).

[26] Pursuant to a request from Mr. Ferri, the Tribunal directed Clarington, without challenge, to provide comments back to Mr. Ferri, prior to the experts meeting, on written submissions made to Clarington on his clients' appeals.

[27] Mr. Sanders, who became involved in this matter through the subdivision appeals which are now administratively consolidated with Appeals 5, 6 and 7, indicated that both he (as a Party) and the Participants intend to fully participate in all aspects of the consolidated appeals, including the environmental policy issues identified in the approved PO as part of Appeals 5, 6 and 7. Messrs. DeMelo and Dowling had no concern or objection and assured the Tribunal that they would provide Mr. Sanders and the Participants with copies of all relevant environmental or other reports.

[28] Mr. Dowling advised that:

- A. Clifford Curtis has withdrawn an appeal (Tribunal Case No. PL150710) of Clarington's failure to make a decision on an application to amend the applicable zoning by-law for the land in the subdivision appeal (Tribunal Case PL171390/File PL171392) which is consolidated with Appeal 5;

- B. The property in Appeal 5 and the related subdivision (Tribunal Case PL171390/File PL171392) has been transferred from Clifford Curtis to Clifford Curtis Limited); and
- C. Hannu Halminen is acquiring an interest in the land in Appeal 6 and he will confirm with the Tribunal and the Parties the details of that interest.

SETTLEMENT OF PART OF APPEAL 1

[29] Appeal 1 was filed by the Ministry in respect to a number of matters in OPA 107. One of these matters is a concern that certain second residential unit policies in OPA 107 fail to comply with the provisions of s. 16.3 of the *Planning Act* (“Act”).

[30] Discussions between the Ministry and Clarington have resulted in a settlement that proposes modifications to certain second residential unit policies in OPA 107. The Tribunal previously directed that any proposed settlement of this matter would be adjudicated in writing.

[31] On May 29, 2019, the Tribunal was provided an electronic copy of an affidavit of Julianna Zhou, a land use planner in the Municipal Services Office - Central (Toronto) of the Ministry, which explains and supports the settlement. At the PHC, a hard copy of Ms. Zhou’s affidavit was provided to the Tribunal and marked Exhibit 4.

[32] Ms. Zhou advises in her affidavit that: the second unit provisions in policies 6.3.5, 6.3.6, and 24.2.1 of OPA 107 permit second units in detached and semi-detached dwellings, but do not explicitly mention “row houses” as contemplated by s. 16(3) of the Act; the settlement adds “townhouses” to the list of houses in which second residential units are permitted to reflect the Act; and that the Ministry and Clarington now agree that the urban area (Policy 6.3.5) and rural area (Policy 6.3.6) second unit policies and the definition of “accessory apartments” should be modified as set out in Part G of the Order.

[33] Ms. Zhou concludes her affidavit by advising that no Party in the OPA 107 case has raised any objections to the settlement and that it is her professional opinion that the proposed modifications to OPA 107 in respect to the second unit policies serve to improve housing options in Clarington and implement the second unit directives in s. 16(3) of the Act.

[34] Relying on the affidavit of Ms. Zhou, and with the support of the Ministry and Clarington and no objection from the Region of Durham, the Tribunal finds that it is appropriate to modify OPA 107 as set out in the settlement.

SETTLEMENT OF APPEAL 22

[35] Appeal 22 was filed by the Bowmanville East Developers Group (“BEDG”) because the Region failed to make a decision on two arterial road designations included in OPA 107: a type “C” Arterial Road designation on Mearns Avenue between Liberty Street and Concession Road 3; and the Type “B” Arterial Road designation on Concession Street between Lambs Road and Providence Road. The Region deferred its decision pending the completion of a Regional Transportation Master Plan (“TMP”) and an implementing Regional OPA (“ROPA”).

[36] The Region has now completed its TMP and implementing ROPA (ROPA 171) which opens the door for this settlement. The Tribunal previously directed that any settlement of this appeal would be adjudicated in writing.

[37] On May 29, 2019, the Tribunal was provided an electronic copy of an affidavit of Ryan Guetter, a consulting land use planner engaged by the BEDG. A hard copy of Mr. Guetter’s affidavit was provided to the Tribunal at the PHC and marked Exhibit 5.

[38] Mr. Guetter advises in his affidavit that: ROPA 171 allows the two subject arterial road segments in OPA 107 to be approved and to come into effect; that he recommends the settlement which proposes to approve and bring into effect the

deferred portions of Map J1 – Transportation Network Roads and Transit Rural Clarington Area and Map J3 – Transportation Network Roads and Transit Bowmanville Urban Area in OPA 107 in relation to the two above-noted arterial road designations; and that the approval of the subject arterial road designations will facilitate appropriate development, be consistent with the Provincial Policy Statement, 2014, conform to Provincial Plans and the ROP and be based on the principle of good planning.

[39] Relying on the affidavit of Mr. Guetter, and with the support of the BEDG and Clarington and no objection from the Region, the Tribunal finds that it is appropriate to approve the settlement. The Tribunal will withhold its final Order on this matter pending a recommendation from Mr. DeMelo on the form of said Order including appropriate references to the relevant Schedules and/or parts of Schedules in OPA 107.

ORDER

[40] The Tribunal orders as follows:

- A. The Parties are to comply, as directed at the oral hearing, with the four actions (A, B, C and D) set out in Paragraph 17 of this Decision.
- B. Material associated with a specific appeal need only be circulated to those Parties identified as having an interest in that specific appeal.
- C. Mr. DeMelo is to prepare and submit, as appropriate, a proposed updated version of the PO to the Tribunal at the start of the hearing.
- D. Mr. DeMelo is to adjust and submit a revised hearing schedule pursuant to Paragraph 23 of this Decision.
- E. The Parties can adjust, to their mutual satisfaction, the dates set out in the approved POs for the experts meetings and the filing of material which

results from such meetings (list of agreed facts, matters in dispute and the remaining issues to be addressed at the hearing).

- F. Clarington is to provide comments back to Mr. Ferri, prior to the relevant expert witness meeting, on written submissions made to Clarington on his clients' appeals.
- G. That part of Appeal 1 relating to second residential unit policies is allowed in part and Policies 6.3.5, 6.3.6 and 24.2.1 of OPA 107 are modified as follows:

*Note: **Bold** represents an addition and ~~strike through~~ represents a deletion.*

Modification to Policy 6.3.5:

An *accessory apartment* is permitted in Urban Areas within a detached, ~~or~~ semi-detached **or townhouse** dwelling subject to the following:

- a) Only one *accessory apartment* is permitted;
- b) One additional parking space is required for the *accessory apartment* in accordance with the Zoning By-law;
- c) Sufficient water supply and sanitary servicing capacity exists;
- d) The *accessory apartment* complies with the provisions of the Ontario Building Code, Ontario Fire Code and any other relevant regulations; and
- e) The *accessory apartment* is registered with the Municipality.

Modification to Policy 6.3.6:

An *accessory apartment* is permitted outside of Urban Areas within a detached dwelling or above or within a detached accessory building, subject to the following:

- a) That the accessory building use is maintained;
- b) That the *accessory apartment* complies with the development criteria of Section 6.3.5; and
- c) That in the case of an *accessory apartment* above or within an accessory building, the accessory building is in close proximity to the dwelling and is clearly secondary to the ~~principle~~ **principal** dwelling.

Modification to Policy 24.2.1:

Accessory Apartment: a self-contained second *dwelling unit* within a permitted residential dwelling or a permitted ~~detached garage~~ **accessory building** that is clearly secondary to the ~~principle~~ **principal** dwelling.

- H. Appeal 22 (by the BEDG) is allowed and the Tribunal withholds its Final Order on this matter pending receipt of a recommendation from Mr. DeMelo on the form of said Order including appropriate references to the relevant Schedules and/or parts of Schedules in OPA 107.
- I. The Parties and Participants are to receive a copy of this Memorandum of Oral Decision and Order and no additional notice of the hearing is required.
- J. This Member is not seized.

“Thomas Hodgins”

THOMAS HODGINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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